Maryland State Board of Law Examiners

JULY 2022 UNIFORM BAR EXAMINATION (UBE) IN MARYLAND – REPRESENTATIVE GOOD ANSWERS

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MPT 1

Representative Good Answer No. 1

Memorandum

To: Marianne Morton
From: Examinee
Date: July 26, 2022
Re: Walter Hixon Matter

Marianne,

First, our investigator did confirm that Walter Hixon and Joan Prescott were married in Columbia in 1986 and that Walter Hixon and Frances Tucker were married in Columbia in 2012. The rest of this memo will address the questions presented in your memo dated July 26, 2022.

Columbia Law will govern the grounds for annulling Mr. Hixon's Marriage to Ms. Tucker.

Regardless of whether Mr. Hixon brings an action for annulment in a Franklin or Columbia Court, Columbia laws will govern. According to the 2nd Restatement of Conflict Laws Sec. 283, which has been recognized by the Courts in Franklin, the validity of a marriage will be determined by the local law of the state which has the most significant relationship. Here, the overwhelming weight of the facts would support that the state of Columbia has had the most significant relationship with regard to Hixon's marriage to tucker. They were married there for a majority of their relationship, she still resides there, and he has only been living in Franklin for a short period of time.

Moreover, even if the action were brought in Franklin, the Franklin court would most likely apply the law of Columbia under the state's choice of law jurisprudence. In Fletcher v. Fletcher, Franklin Ct. (2014), the court stated that Franklin law holds that the validity of a marriage should be determined by the law of the state with the most significant relationship to the spouses and the marriage. In overturning a lower court's decision in case with similar facts, the Court held that the Franklin Court should have applied Columbia law given the significant connections between the spouses and that state. Therefore, the law that will govern for annulling the marriage to Ms. Tucker will be Columbia law.

Mr. Hixon will have to file a lawsuit in Columbia to annul his second marriage and he would be able to obtain the annulment under applicable law. Mr. Hixon does not need to file a lawsuit in Franklin.

Mr. Hixon will be able to obtain an annulment because his marriage is voidable under Columbia law. Columbia Revised Statutes 718.02 states that a marriage is voidable if the spouse of either party was alive and the marriage with that spouse was then in force and that spouse was absent and not known to the party commencing the proceeding to be living for a period of five consecutive years immediately preceding the subsequent marriage. Additionally, for a voidable marriage to be declared void, a party must seek a court issued decree. Here, the marriage between Hixon and Tucker is voidable because Hixon had a living spouse that was not known to him to be living and the statutory period had passed. Therefore, Hixon can initiate proceedings seeking a court issued decree and he will likely be successful in obtaining one.

Additionally, Mr. Hixon's marriage to Tucker is considered void under Franklin Law. In an annulment case in Franklin, at least one-party assents that the marriage was void and asks the court to declare that the marriage was void. Under FDRC 19-5, all marriages between parties where either party is lawfully married to another person are void without the need for any decree of divorce or annulment. Therefore, Mr. Hixon does not need to file a lawsuit in Franklin.
If Mr. Hixon files an annulment action in Franklin, a Franklin Court will not have jurisdiction to annul the marriage but will not have jurisdiction dispose of the parties' property.

As previously discussed, in Franklin courts, the validity of a marriage will be determined by the local law of the state which has the most significant relationship. As discussed in the relevant case law, the courts will follow the choice of law principles outlined in the Restatement Second of Conflict of Laws. The court will consider the relevant policies of other interested states and parties, the protection of justified expectations, the certainty and predictability of the result, and the ease of determination. Here, the parties were married in Columbia, lived there for most of the marriage, and the parties' property is located in Columbia. The court will not have jurisdiction over the rest of the marriage.

Mr. Hixon should file in Columbia.

Under the circumstances of this case, Mr. Hixon should file both the divorce action and the annulment action in the State Courts of Columbia. This is the state with the most significant relationship to all of the spouses and the Courts in Franklin will likely apply Columbia law in actions brough there. Therefore, Mr. Hixon should file in Columbia.

Representative Good Answer No. 2

In re Marriages of Walter Hixon

To: Marianne Morton
From: Examinee
Date: July 26, 2022
Re: Walter Hixon matter

SHORT ANSWERS

You asked me to research Mr. Hixon's options with regard to ending his second divorce. In sum, these are my conclusions:

1. Columbia law governs the grounds for annulling Mr. Hixon's marriage to Ms. Tucker.
2. Mr. Hixon must file a lawsuit, but when he does, he will be able to obtain an annulment.
3. A Franklin court would have jurisdiction to annul the second marriage, but it would not have jurisdiction to dispose of the parties' property.
4. We should advise Mr. Hixon to file in Columbia.

ANALYSIS

1. Under the Restatement (Second) of Conflict of Laws, Columbia has the most significant connections to the marriage, and thus Columbia law will apply to the annulment.

Franklin law follows the Restatement (Second) of Conflict of Laws, which holds that the validity of a marriage should be determined by the law of the state with the most significant relationship to the spouses and the marriage. See Fletcher. If a state has no such relationship, the state must apply the law of the state that does. Id. The factors to be considered when analyzing the significant connections are the policies of interested states, the justified expectations of the parties, certainty, predictability, and uniformity of result, and ease in the determination and application of the law to be applied. Id. The first element, the policies of the interested states, does not weigh in favor of either state's laws. "All states have legitimate policy interests in defining how a marriage . . . can be ended." Fletcher. This is particularly true if both states have codified laws determining the outcome. The issue for Mr. Hixon is the effect of his first marriage on his ability to annul his second marriage. Columbia Revised Statute Sec. 718.02 provides that his second marriage is voidable if certain elements are met, such as whether he was unaware that the first spouse was still living for five years prior to the subsequent marriage. Franklin Domestic Relations Code Sec. 19-5, on the other hand, holds that the second marriage is void, regardless of his awareness whether the first spouse was living. Thus, because both states have statutes governing this issue, they both have legitimate policy interests with regard to this dispute.

The second element weighs heavily in favor of applying Columbia law. Parties have a justified expectation that the law of the state where most events related to the marriage occurred will apply. See Fletcher. In Fletcher, the court looked to where the parties were married, where they lived during the marriage, where they owned property together, and whether anyone involved in the marriage (including spouses and children) still lived there. Further, the Franklin Supreme Court in Simeon, in addition to where the parties lived and owned property, considered where they incurred debts together. However, one party living in a state for a short period of time is not sufficient to create the requisite justified expectation. Here, Mr. Hixon and Ms. Tucker got married in Columbia. See Transcript of Interview. They bought a house in Corinth, Columbia, with both names on the deed. Id. While living in Columbia, they had a joint bank account and paid bills out of that. Id. Thus, they were married in Columbia, owned property together there, lived there together, and incurred debts together there through their joint account. The only connection to Franklin is that Mr. Hixon's family is from there and he moved there in 2019. Id. Ms. Tucker did not move with him. Id. Though he lives there permanently now and thus has more connections to Franklin then the party in Fletcher did when temporarily moving somewhere, this connection does not arise from anything related to the partnership. Id. Thus, the parties only have a justified expectation as to Columbia, not Franklin.

The last two factors typically follow the same analysis. As to uniformity, simply moving to another state cannot be enough, because that would undermine the need for a "system of well-defined rules to govern which state's laws apply." Fletcher. And the ease of determination will follow the state with the most connections to the marriage. As the above analysis describes, all the important events in the marriage occurred in Columbia, and so ease and administrative efficiency suggests that Columbia is the appropriate forum.

Thus, Columbia law should apply.

2. Pursuant to Mr. Hixon must file a lawsuit to Columbia Revised Statute Sec. 718.02, Mr. Hixon must file a lawsuit to annul his second marriage, and this lawsuit will be successful.

Columbia law and Franklin law conflict on whether Mr. Hixon would need to file a lawsuit. Pursuant to Columbia Revised Statute Sec. 718.02, a marriage is voidable if, at the time of the second marriage, the spouse of the first marriage was living and the marriage still in force, but the party seeking annulment did not know she was still living for at least the five years before the second marriage. When a marriage is voidable under this

law, either party must seek an annulment decree from the court. Franklin law, on the other hand, holds that a second marriage is void when the first marriage was still valid, regardless of the knowledge or awareness of the parties to the second marriage. When a marriage is void, no decree of annulment is necessary.

Mr. Hixon meets the elements of the Columbia law. At the time of second marriage in 2012, Mr. Hixon had already marriage Ms. Prescott. See Transcript of Interview. He and Ms. Prescott never formally divorced; they simply moved apart without any formal proceedings. Id. Thus, the first marriage was still valid in 2012. However, in 2001, Mr. Hixon was told Ms. Prescott had died. Id. For the following 11 years, he believed his first wife to be dead. Id. Thus, he meets the 5-year element required by Columbia law as of the time of his second marriage in 2012. As such, his marriage is voidable under Columbia law, not void. Because it is voidable, Columbia law requires that he seek an annulment decree from the court.

As discussed in section 1 above, Columbia law applies to this matter. Thus, pursuant to Columbia Revised Statute Sec. 718.02, Mr. Hixon's marriage is voidable, and so he must file a lawsuit to seek a decree of annulment from the court. Because he believed his first wife to be dead for over five years before his second marriage, the court will grant the decree of annulment.

3. A Franklin court would have jurisdiction to annul the marriage through its res jurisdiction over the marriage, but it would not have in personam jurisdiction or in rem jurisdiction sufficient to dispose of the parties' property.

A Franklin court would apply its own personal jurisdiction rules to this controversy to determine if it has the jurisdiction to annul the marriage and dispose of property. See Daniels. As to the annulment, in Franklin, a court has jurisdiction over the res of the marriage relationship when one of the parties to the marriage has been domiciled within the state for six months. Id. In personam jurisdiction over the nonresident defendant is not required to issue a decree of annulment. Id. (citing Carew). The party seeking the annulment need only establish residency in Franklin for at least six months. Id. Mr. Hixon moved to Franklin in 2019 and has lived there ever since. See Transcript of Interview. He has thus lived there for over three years, and so easily meets the residency requirement. As such, Franklin has jurisdiction sufficient to issue the annulment, regardless of Ms. Tucker's domicile.

As to the disposition of property, however, res jurisdiction over the marriage is not enough. In order to dispose of property, the court must have either in personam jurisdiction over Ms. Tucker or in rem jurisdiction over the property. See Daniels. In personam jurisdiction required the nondefendant party to have at least minimum contacts with the forum state. See Daniels. Ms. Tucker still lives in Columbia and has lived there since at least 2012 when the parties were married. See Transcript of Interview. Thus, she does not have minimum contacts sufficient for Franklin to have in personam jurisdiction over her. In rem jurisdiction pertains to the location of the property. A court has in rem jurisdiction when the property that is the source of the controversy is located in that state. While the marital home is the main source of controversy in the disposition of property between Mr. Hixon and Ms. Tucker, the home is located on the outskirts of Corinth, in Columbia. See Transcript of Interview. Thus, Franklin does not have in rem jurisdiction over the disposition of the house.

As such, though Franklin can issue the annulment, it cannot determine the disposition of the property, including the home in Columbia.

4. Mr. Hixon should file in Columbia so that he may obtain not only an annulment but also a judgment regarding the Columbia house.

Mr. Hixon would face no downside to filing in Columbia, other than the inconvenience of traveling to Columbia to litigate the dispute. First, because Columbia law would apply pursuant to the Restatement (Second) of Conflict of Laws even if he filed in Franklin, the state that he files in gives him no advantage or disadvantage as to the substantive law the applies to the annulment decision.

Second, though the court in Franklin would have jurisdiction to issue the annulment, it would not have jurisdiction to determine the disposition of the house in Columbia. Mr. Hixon's primary goals are to figure out what to do about the second marriage, obtain a fair share of the Columbia house, and divorce Joan. See Transcript of Interview. His first goal, to sort out the second marriage, can be accomplished in Franklin court. His second goal, obtaining a fair share of the Columbia house, cannot. Thus, in order to avoid having to go to court two separate times, Mr. Hixon should pursue annulment and disposition of the Columbia house in Columbia.

MPT 2

Representative Good Answer No. 1

Zeller & Weiss LLP
Attorneys at Law
Franklin City, Franklin 33705

TO: Howard Zeller
FROM: Examinee
DATE: July 26, 2022
RE: Briotti Request for Advice

MEMORANDUM

We have been obtained to advise attorney and sole practitioner concerning a client matter. Ms. Briotti is concerned her client may undertake an illegal and criminal action and wishes to secretly record a conversation with him for her records. To determine whether such action is legally and ethically permissible, we must determine three things: first, which state laws apply to the recording of conversations and whether the action is legal in that jurisdiction; second, whether the recording of the conversation would violate the Rules of Professional Conduct; third, whether Ms. Briotti must inform her client of the fact she is recording their conversation. The applicable discussion and analysis are below.

STATEMENT OF FACTS

[omitted]

DISCUSSION

I. Because Ms. Briotti is located in the jurisdiction of Franklin, the jurisdiction of Olympia will honor Franklin law on interception.

Ms. Briotti's office is located in the state of Franklin, but her client, X, is located in the neighboring state of Olympia. The two states have conflicting laws on interception of wire communications.

Franklin Criminal Code §200 provides, in relevant part, that it is unlawful for any person to intercept or attempt to intercept any wire communication unless it is made with the prior consent of one of the parties to the communication.

Conversely, Olympia Criminal Code § 500.4 provides, in relevant part, that it is unlawful for any person to intercept or attempt to intercept any wire communication unless it is made with all parties' prior consent to the communication.

In Shannon v. Spendrift, the Olympia District Court examined whether the recording of a telephone conversation at issue was lawfully made. In Shannon, the court acknowledged that Olympia is an "all-party consent" state. However, the other party to the communication at-issue was located in Columbia, which is a "one-party consent" state, similar to Franklin. The communication was made when one party was in Olympia and the other was in Franklin. The court addressed how to proceed. Citing to earlier precedent, the court held that "Olympia law allows the admission of evidence legally obtained in the jurisdiction seizing the evidence." While the earlier precedent dealt with a criminal case, Shannon applied it to civil standards. It held that in both a civil or criminal actions, Olympia statute § 500.4 does not apply when the act of interception takes place outside of Olympia. They stated expressly, "interceptions and recordings occur where made."

Applying this standard to the situation at-hand, Ms. Briotti can lawfully record her telephone conversation with X without informing X that she is doing so. Ms. Briotti's office is located in Franklin, and as previously discussed, Franklin is a "one-party consent" state, meaning only Ms. Briotti must have knowledge of the recorded conversation. Despite X being in an "all-party consent" state, the location of the interception controls.

Being that that is Franklin, Ms. Briotti is within her legal rights to record the conversation without informing X.

II. Because it is only speculation that X is going to commit a crime, Ms. Briotti's non-disclosure of the recording of her conversation with X would violate the Rules of Professional Conduct.

A. Ms. Briotti has an obligation to keep confidential her conversation with X because at this point, her suspicions are merely speculation of his intent to commit a crime.

Under The American Bar Association Rules of Professional Conduct 1.6, a lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent. But, a lawyer may reveal information if the lawyer deems it reasonably necessary to prevent the client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the lawyer's services.

This question turns on whether Ms. Briotti is reasonably certain X is going to commit a crime. In her meeting, she stated she "thinks it's possible" that X will go forward with his plan to invade a trust he administers to get money he owes clients. When asked how certain she is, she states "I'm not really sure." Though he is desperate, Ms. Briotti states that X knows it is illegal and "might not do it." The Model Rules make clear that a lawyer has a duty of confidentiality unless they believe it reasonably necessary to disclose such information and that they must be reasonably certain their clients' actions would result in substantial injury.

Under this standard, it is unlikely that Ms. Briotti's suspicions rise to the level where the duty of confidentiality can be breached.

Though Ms. Briotti is simply contemplating whether she can record her conversation with X, this should be taken into account. If Ms. Briotti were to face disciplinary action, the ABA would almost certainly use standards of attorney/client confidentiality privilege as a guidepost.

B. Ms. Briotti's disclosure would violate the Rules of Professional Responsibility because it is almost always advisable to inform a client that a recording is being taken.

The American Bar Association Standing Committee on Ethics and Professional Responsibility (herein after "the Committee") issued a formal opinion (01-422) on the matter of recordings by lawyers without the knowledge of all participants.

The formal opinion rejected former opinion (337) which originally stated that a lawyer ethically may not record any conversations with clients without their prior knowledge. In the new opinion, the Committee reasoned that the mere act of secretly but lawfully recording a conversation is not inherently deceitful. The Committee stated that surreptitious recording of conversations is a widespread practice by law enforcement and other agencies today, and the courts universally accept evidence acquired by such techniques.

Further, and of particular importance to Ms. Briotti's inquiry, there are circumstances in which requiring disclosure of the recording of a conversation may defeat a legitimate and even necessary activity. The Committee sets a prohibition on secretly recording a conversation only where it is accompanied by other circumstances that would make it unethical. The Committee takes into account reasons why is is advisable for lawyers to inform their clients of recordings. Most importantly, lawyers owe their clients a duty of loyalty that transcends the lawyer's convenience and interests. As a result, the Committee unanimously advises a lawyer almost always inform a client that a conversation is being or may be recorded before doing so.

The Committee provides factors for a lawyer's consideration when contemplating whether to record a conversation with a client without the client's knowledge. Of particular relevance, the Committee states recording a conversation without a client's knowledge is inadvisable except in circumstances where the lawyer has no reason to believe that the client might object, or where exceptional circumstances exist. Exceptional circumstances include if a client has forfeited the right of loyalty or confidentiality. The Committee specifically cites a situation where a lawyer believes it is likely to result in imminent death or substantial bodily harm, or where a client plans or threatens to commit a criminal act.

Bouncing off of ABA Formal Opinion 01-422, the Franklin Bar Committee (herein after "Franklin Committee") issued a commentary reflecting on the rule. In it, the Franklin Committee adopts ABA Formal Opinion 01-422 and provides further context. The Franklin Committee recognizes that it may be difficult to predict whether a future conversation will meet the requirements of such an exceptional circumstance. It states the standard of decision is whether such a recording will violate the lawyer's duty of loyalty to the client. In this decision, "a lawyer should take care to act on facts and well-grounded judgment, rather than speculation, as to a client's intended actions."

Further, the Franklin Committee instructs lawyers to consider the client's previous statements, client's circumstances, and alternative methods of memorializing the conversation when determining the need to record a conversation without the client's knowledge.

As a result, the Franklin Committee concludes that recording a conversation without client knowledge is "almost always inadvisable unless the lawyer reasonably believes it necessary."

Here, as previously mentioned, Ms. Briotti has stated she is "not really sure," as to whether X will go through with his intention to remove funds from the trust to pay debts and said she "thinks it's possible. " She stated that there is "at least a possibility that he might commit a crime."

Because it is questionable, Ms. Briotti's suspicions -- though well-founded -- likely do not rise to the reasonable certainty needed to justify a secretly recorded conversation with a client. This is especially true considering she has memorialized their conversations beforehand via notes and can continue to do so.

The duty of confidentiality and loyalty are hallmarks of the client/lawyer relationship and are not to be taken lightly, as expressed by both the Committee and the Franklin Committee's opinions and commentary.

Before Ms. Briotti should secretly record a client conversation, she must be reasonably certain he is going to commit a crime.

III. Ms. Briotti must inform X that she is recording the conversation if he asks, as there is no exception that would allow for a lawyer to lie to a client about such an issue.

ABA Formal Opinion 01-422, which addressed the ethics of electronic recordings by lawyers without the knowledge of all participants expressly states in Subsection 4 that a lawyer must inform their client if the client inquires as to if the conversation is being recorded. It expressly states, "That a lawyer may record a conversation with another person without that person's knowledge and consent does not mean that a lawyer may state falsely that the conversation is not being recorded."

As such, if Ms. Briotti does record the conversation and X inquires as to if she is doing so, she must be honest and inform him that she is.

CONCLUSION

Legally, Ms. Briotti is within her right to record a conversation with X and be free from criminal or civil liability. However, ethically, the matter is much closer of a call. Ms. Briotti must be reasonably certain that a crime is going to be committed. Because Ms. Briotti does not appear to be certain, and merely thinks it as a possibility, she should not record the conversation without X's knowledge. There are alternatives, such as handwriting her notes, that are still available. If the next conversation gives further evidence that X will commit a crime regardless of her advice, Ms. Briotti can revisit the topic and potentially record a subsequent conversation.

Representative Good Answer No. 2

TO: Howard Zeller
FROM: Examinee
DATE: July 26, 2022
RE: Briotti Request for Advice

1. May Briotti lawfully record her telephone conversation with X without informing X?

Briotti can likely lawfully record her telephone conversation with X without informing him, because the law to be applied is Franklin law.

The first question to address is which law governs, Franklin or Olympia law. When conversation occurred between Briotti and X occurred, Briotti was in Franklin, and X was in Olympia. Under the Franklin Criminal Code, recording a telephone conversation is permissible as long as only one of the parties consents. Under the Olympia

Criminal Code, recording a telephone conversation is only permissible if all parties consent. Thus, we must determine which law governs.

Here, Franklin law likely governs. In Shannon v. Spendrift, the Olympia District Court held that the Olympia Criminal Code does not apply when the act of interception took place outside of Olympia. In that case, a company located in Columbia secretly recorded a telephone conversation with a resident of Olympia. There, the court, interpreting the Olympia Supreme Court's opinion in Parnell v. Brant, held that if the act of "interception," that is the act of recording, takes place outside of Olympia, the law of the other state applies. Per Parnell, "[I]nterception and recordings occur where made." Thus, the court applied Columbia state law governing secret recordings and held that such recordings were permissible.

Here, the act of interception would occur in Franklin, not Olympia, because Briotti would record the conversation from her office in Franklin. Because the act of interception would occur in Franklin, the law to be applied is Franklin law, not Olympia law. Shannon. Under Franklin law, to be valid, the act of recording would require the consent of only one of the parties to the conversation. Thus, because Briotti would consent to the recording, the recording would not violate either Franklin or Olympia law.

2. Would doing so violate the Rules of Professional Conduct?

Assessing all of the ethical considerations laid out in the Rules of Professional Conduct, it is more likely than not that Briotti does not have a valid basis to secretly record a conversation with X.

In making this determination, we must look to the ABA Model Rules of Professional Conduct, any ABA Formal Opinions that have been adopted by Franklin, as well as the Franklin Rules of Professional Conduct. Starting with the Model Rules, the rules state that a lawyer shall not reveal information relating to the representation of a client unless "the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation" or the disclosure falls into a number of exceptions. One such exception, exception (2), allows a lawyer to reveal information related to the representation of a client "to prevent the client from committed a crime or fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the lawyer's services." In addition, the Rules state that it is professional misconduct for a lawyer to "engage in conduct involving dishonesty, fraud, deceit, or misrepresentation."

In ABA Formal Opinion 01-422, the Committee abandoned the previous standard, established in Opinion 337, regarding electronic recordings by lawyers. The Committee held in Opinion 01-422 that "the act of secretly but lawfully recording a conversation is not inherently deceitful." However, the Committee's holdings were more equivocal as they relate to the lawyer's recording of a client. The Committee was divided as to whether a lawyer secretly recording a client violated professional ethics standards. The Committee noted that lawyers owe to clients a duty of loyalty. Secretly recording a conversation "likely would undermine[]" a lawyer's relationship of trust and confidence with their client. Thus, the committee held that such recordings were inadvisable unless there are exceptional circumstances. One such circumstance is if the lawyer intends to use the recording as a defense if charges are brought related to her representation of her client. ABA Formal Opinion 01-422 has been adopted by Franklin, and so it is persuasive authority in Franklin.

The last rule to examine is that of the Franklin's Rules of Professional Conduct and Comments, which are

also persuasive authority. In a comment to the Rules of Professional Conduct, Franklin's State Bar Committee on Ethics and Professional Responsibility explained that the "key question" to ask when contemplating a secret recording is whether the recording would violate a lawyer's duty of loyalty to the client, which includes a duty of confidentiality. In circumstances in which a lawyer believes their client might commit a crime that would result in the financial harm to others or where she records a conversation in anticipation of a future defense, the lawyer's belief regarding the client's intentions must be more than mere speculation. The lawyer must examine the client's previous statements, their circumstances, and alternative methods of memorializing the conversation. Overall, the Committee states that secret recordings of a client are "almost always inadvisable unless the lawyer reasonably thinks it's necessary.

Here, Briotti wishes to secretly record a conversation with her client X. X works as both a trustee and an investment manager. Briotti believes that X is likely to commit a crime by using trust assets in order to be able to make payments to their personal investment clients. A secret recording is likely to undermine Briotti's duty of loyalty to X, because if X learned of the recording, it would likely violate X's expectation's regarding their relationship of "trust and confidence." As explained by both Formal Opinion 01-422 as well as the comments to the Franklin Rules of professional conduct, a lawyer's duties of loyalty to their client are crucial duties owed to a client, indeed they are the "hallmark of the attorney-client relationship." Franklin Comment. Thus, only in rare cases may these duties give weigh to exceptional circumstances.

Briotti has asked us whether her good faith belief that X is likely to commit a crime that would financially harm others is a basis to make the recording. While a belief that a client will commit such a crime may be a basis for making a secret recording, this belief must be a reasonable one, not based on mere speculation. Here, the circumstances do not indicate that it is substantially likely that X will in fact commit the crime. When Briotti mentioned the illegality of X's scheme to him, he merely didn't respond. His silence caused Briotti to become worried of his intentions, but such silence is likely not enough to indicate to a reasonable certainty X's criminal intent. Further when asked how certain she was that X would commit the crime, Briotti stated that she's "not really sure." In addition, Briotti mentioned that X was "desperate." While X's desperate condition might suggest a criminal intent, without more, it is likely insufficient. People are oftentimes put in desperate situations, but that does not mean that it is reasonably certain that those people will commit a crime. In order to validly, secretly record X, Briotti must have more than a mere speculation regarding X's intentions. Here the facts indicate that Briotti has little more than speculation as to X's intent.

Further, it is unclear why taking notes of any such recording would be inadequate. Secret recordings of conversations are much more likely to upset a client's expectations of loyalty than merely taking notes. Here it appears that taking notes would be a viable alternative to recording the conversation. Taking notes seems to be Briotti's normal practice, and although contemporaneous notes might not have the same evidentiary effect as a recording, notes are still likely be a useful defense if litigation should result from her representation of X.

Taking all of the ethical considerations together, it appears more likely than not that Briotti does not have a valid basis to secretly record a conversation with X.

As an additional note, Briotti's explanation of the situation to us would likely not violate any ethical rules, because she did so "to secure legal advice about the lawyer's compliance with the Rules [of Professional Conduct]." See ABA Model Rules 1.6(b)(2).

Finally, we should note that Briotti is also licensed to practice law in Olympia. If the Olympia Committee on Ethics follows a similar standard to that of Franklin, her recording of a conversation with X would also likely violate that state's Rules of Professional Conduct.

3. Must she inform X that she is doing so if he asks?

If Briotti decides to secretly record a conversation with X, she must likely disclose that she is making the recording if X asks.

Per Rule 8.4 of the ABA Model Rules of Professional Conduct, it is professional misconduct for a lawyer to "engage in conduct involving dishonesty, fraud, deceit, or misrepresentation." Further, according to Formal Opinion 01-422, a lawyer cannot falsely represent that they are not recording a conversation when they actually are. In essence, the rules draw a distinction between making a secret recording and proactively misrepresenting whether you are making a recording when asked.

Applying these standards here, Briotti would likely be required to disclose that she is recording the conversation if X asks her. If X asks her whether the conversation is being recorded, and she denies it, she would be actively and dishonestly misrepresenting the confidentiality of the conversation to X. To make such a false denial would very likely violate the Rules of Professional conduct. Thus, she must tell X that she is recording the conversation is he asks.

MEE 1
Representative Good Answer No. 1

Expert Testimony by City Detective

The objection to City Detective's testimony should be overruled. The issue is whether City Detective is providing proper expert testimony pursuant to Rule 702. Expert testimony that aids the trier of fact in determining an issue is admissible pursuant to Federal Rule of Evidence 702 if four prongs are met: (1) the witness must possess skill, education, training, or experience that qualifies them to provide an opinion, (2) the witness must rely on sufficient facts and data in forming their opinion, (3) the witness must have used reliable principles and methods in coming to their conclusions, and (4) the principles and methods employed must have been reliably applied to the facts of the case. Expert testimony is not inadmissible solely because it goes to an ultimate issue of the case. The reliability of a witness's principles and methods can be shown through whether those principles and methods were peer reviewed, whether there is a known error rate, or whether it is standard practice in the field.

In this case, the City Detective is relying on his experience being a detective on the police force for six years, during which time his primary assignment has been to investigate gangs and criminal activity in the city. Prior to becoming a detective, he worked as a corrections officer where his duties included interviewing, investigating, and identifying gang members. Additionally, he has attended training sessions in gang structure, membership, and activities. City detective has even lead multiple sessions. Based on the city detective's prior experience and training, it is clear that he possesses the requisite expertise to provide expert testimony.

It is also evidence that City Detective has sufficient facts and data in coming to his conclusions. He he very familiar with street gangs in general and understands their structure and values. He is also quite familiar with the gang at issue, "The Lions" considering the fact that it is one of the City's most violent and feared criminal gangs and City Detective has been working in City for six years.

City Detective used reliable principles and methods since he identified the common characteristics of these gangs by their structure and how members of gangs may be identified. He in turn appeared to apply this to the case at hand when he identified the tattoos that members of the Lions gang utilize. Finally, City Detective reliably applied these principles and methods to the case at hand, since he used his knowledge on the common characteristics of street gangs and applied it to the Lions.

Therefore, since all four prongs of Rule 702 have been met, the trial court should overrule the objection since this is proper expert testimony.

Admissibility of Photograph of Defendant's Tattoo

The trial court should overrule the objection to the photograph and testimony because it is not inadmissible character evidence. Character evidence is inadmissible if it is used to show action in conformity therewith. In other words, character evidence is evidence that suggests that because someone acted a certain way before, they have acted in the current matter in conformance with that character trait.

In this case, the former leader of the Lions is not providing character evidence. He is not alleging that because someone acted in accordance with a character trait before, he is acting in accordance with that character trait now. Being a member of a certain gang is not character evidence, therefore it is not inadmissible character evidence. This is lay witness testimony that the former leader is testifying based on his rationally based perception, and it is helpful to the trier of fact in determining a fact in issue.

However, if the court finds that it is character evidence pursuant to Rule 404, this testimony is still likely admissible because it goes to prove identity. Testimony that may be character evidence can be admissible if it is offered for a purpose other than to show action in conformity therewith. In this case, the former leader's testimony goes to show the identity of the defendant as a member of the Lions gang, therefore if the court finds that this is character evidence, it may be admitted to prove identity.

Therefore, the court should overrule the objection to the photograph and the tattoo.

Relevance of Victim's anticipated testimony

The trial court should overrule the objection to the Victim's testimony because it is relevant. Testimony is relevant if it makes any fact in the case more or less probable than it would be without the evidence and, the evidence is of consequence in the action.

This evidence is relevant because it makes it more likely that the Defendant intended to kill Victim. While motive is not an express element of attempted murder, it is relevant to show whether or not Defendant actually committed attempted murder. Here, the fact that Victim refused to participate in an attack because he has a cousin in that gang and in turn the boss nodding at Defendant and Defendant shooting Victim makes it more

likely that he intended to murder Victim. Attempted murder is a specific intent crime, therefore, Defendant needed to have the intent to carry out the offense, here being murder.

Therefore, the testimony is relevant to show this intent to kill Victim, and the objection should be overruled.

Representative Good Answer No. 2

Defense counsel submitted a motion raising objections to the anticipated evidence. Each piece of evidence will be considered below individually.

1.) Defense counsel raised an objection to the detective's anticipated testimony about gang identification, organization, and the activities, on the grounds that it is improper expert testimony. The trial court should rule against the objection and should rule that the evidence is admissible.

Under the federal rules of evidence, expert testimony is admissible, if it is helpful to the jury, and if the expert is qualified to testify as to the matter, and if his testimony has proper factual bases, and it is reliable. Whether the expert is qualified to testify on a matter depends on whether the expert has sufficient skill, experience, or training to testify on the matter. A proper factual bases can be found through the expert having direct personal knowledge, or obtaining knowledge through learning it at trial, or by being provided with the factual information from the party, if it is the type of information normally relied upon by experts in the field. The expert's testimony also has to be reliable, and this is where the court will consider testing of the expert's procedures or methodology, the rate of error, acceptance by other experts in the field, and peer review. The expert's testimony should also be relevant. Evidence is relevant if it makes a fact of consequence to the determination of the outcome more or less probable than it would be without the evidence.

Here, a city detective is being offered as an expert in gang identification, gang organizational structure, and gang activities generally and as an expert on particular gangs in the city.

The detective is clearly qualified. He has been a detective on the police force for six years, and throughout that time, his primary assignment has been to investigate gangs and criminal activity in the City. He also worked closely with federal drug and firearm task forces as they relate to gangs. Prior to becoming a detective, the detective was a corrections officer in charge of the gang unit for the City's jail for three years, and his duties involved interviewing, investigating, and identifying gang members. He is being offered to testify about gang identification, organization, and activities. Based on his employment history, especially with a primary assignment to investigate gangs and criminal activity and working closely with task forces as they relate to gangs, and having interviewed gang members, he is qualified about gang identification, organization, and activities. This is relevant, because it shows that he is qualified as an expert to testify and will also go to the knowledge element.

The city detective will also testify to knowledge that he gained personally. He plans to testify that during his career, he attended many training sessions providing education and information on gang structure, membership, and activities; he gained knowledge in the area, and then has been asked to lead the sessions too,

estimating that he has taught more than 75 training sessions over the past three years. This speaks both to his qualifications, as well as his personal knowledge that he obtained through training sessions attendance, leading them, and through interviewing and investigating and identifying gang members. This is relevant, because it shows that he is qualified and has personal knowledge that he can testify to.

He will also testify that street gangs generally engage in a wide variety of criminal activities, testifying to their clear leadership structure and strict codes of behavior, the requirement of absolute loyalty that is enforced through violent acts, and how gang members can be identified (clothing, tattoos, language, paperwork, associations). He also will likely have learned all of this through his personal knowledge of his time as a detective on the police force, and while being a corrections officer and interviewing and identifying gang members, and through his training sessions. This will also satisfy the knowledge aspect, and it is relevant, because it again allows him to discuss gang identification, gang organizational structure, and gang activities.

Lastly, he will testify that he was familiar with "The Lions." He will testify that it is one of the City's most violent and fear criminal gangs, and that Members can be identified by tattoos depicting symbols unique to the gang. This testimony is relevant to gang identification, which goes to the ultimate issue of whether the Lions was involved in the shooting as a gang dispute. He obtained this knowledge likely personally through his experience as a city detective and as a corrections officer and through working closely with task forces as they relate to gangs.

The City detective is also not testifying as a lay witness, which would only allow him to testify from his personal knowledge based on what he directly perceived. He is testifying as an expert witness, which allows him to testify based on specialized or expert knowledge and make legal conclusions.

The City detective expert is clearly qualified, based on his many years as a detective, where his primary assignment was to investigate gangs and criminal activity, and then his other work experience, as described above, including being a corrections officer in charge of the gang unit, and interviewing and investigating and identifying gang members. Also, as an expert, he can testify to his personal knowledge, which he obtained through his time as a detective and running training sessions. His testimony will finally be helpful to the trier of fact, because the theory of the case is that the Victim and Defendant were both members of a criminal street gang, The Lions, and that the shooting was a result of a gang dispute. Presuming that his testimony is found to be reliable, which includes rate of error, testing of the methods he uses, acceptance by other experts in the field, and peer review, his evidence is relevant, was obtained through personal knowledge, is helpful to the jury, and he is qualified to testify. Therefore, the detective's anticipated testimony is not improper expert testimony, and should not be excluded, so the court should rule against the objection.

2.) Defense counsel raised an objection to the admission of a photograph of the Defendant's tattoo and the former gang leader's anticipated testimony, on the grounds that it is inadmissible character evidence.

The trial court should overrule the objection the former gang leader's anticipated testimony because it is not inadmissible character evidence, but not admit the photograph itself, because it is extrinsic evidence. The issue is whether it is inadmissible character evidence and whether the photograph is extrinsic evidence.

This is a criminal case, where Defendant is charged with attempted murder of Victim. In a criminal case, character is generally inadmissible to prove conduct in conformity with the issue in question. There are certain exceptions when character evidence is admissible, such as if the Defendant introduces evidence of his own good character for a pertinent trait. However, that is not present here. Character evidence may also be admissible for a purpose independent of character evidence. A purpose independent of character evidence includes to prove motive, identity, intent, lack of mistake, or a common scheme or plan. Here, the Lions former leader will testify about a photograph of the defendant's arm, testifying that he is certain it is a Lions tattoo, because he had a similar one removed, and that it has a shield containing numbers for the police code for homicide, which Lions members frequently include, and that it has a shotgun and sword with an X, which are symbols frequently used by the Lions, and that based on his experience, Defendant is a member of the Lion's gang. This is relevant, because it shows that Defendant is a member of the lion's gang. It is also going to be provided for a reason independent of character evidence, as it is being provided to identify a Lions Tattoo, and that Defendant is a member of the Lions organization, based on the gang leader's personal knowledge.

Additionally, this can be proven by specific acts, but it cannot be proven by extrinsic evidence. The gang leader can testify as to what the tattoo will look like, based on his own personal knowledge, but the introduction of the photograph will be extrinsic evidence, and thus cannot be admitted.

Admission of the testimony also likely does not violate Rule 403, because its probative value is very high, and is not substantially outweighed by its risk of unfair prejudice.

Because the testimony is being offered for a purpose independent of character evidence and is relevant, the testimony itself is likely admissible, but the photograph itself cannot be introduced as extrinsic evidence to prove the specific act.

3.) Defense counsel raised an objection to victim's anticipated testimony that Defendant shot him because of a gang dispute, on the grounds that it was irrelevant. Evidence is relevant if it makes a fact of consequence to the determination of the outcome more or less probable than it would be without the evidence. Irrelevant evidence is inadmissible. Relevant evidence is generally admissible, unless it is kept out by another Federal Rule of Evidence, or unless Rule 403 keeps it out. Under Rule 403, otherwise relevant evidence can be excluded if its probative value is substantially outweighed by a risk of unfair prejudice, confusion of the issues and of the jury, misleading the jury, needlessly cumulative, or delay of time.

Here, Victim is expected to testify for the prosecution that he got into an argument with a gang boss at a meeting of the Lions, and that he said he would not participate in an attack that was planned on another gang because his cousin was in that gang, so the boss looked at Defendant and nodded, and then Defendant pulled a gun and shot him, which Victim will testify, he was sure happened because of the argument. On sole relevancy grounds, this evidence is relevant. It makes it more probable than not that the shooting of the Victim was the result of a gang dispute, because Victim plans to testify that he was shot because there was a gang dispute, when he said he would not participate in the attack, so Boss looked at defendant, nodded, and then Defendant shot him. Defendant has been charged with attempted murder of Victim, and the prosecution's theory is that Victim and Defendant were members of the Lions gang, and that the shooting was a result of a gang dispute.

This evidence is relevant because it makes it more likely that it was a result of a gang dispute that Victim was shot. Therefore, the trial court should overrule the objection, and allow in Victim's testimony.

MEE 2

Representative Good Answer No. 1

The oral agreement that Buyer would use seller's picture on the wine bottles is likely enforceable even though it was not included in the written agreement.

The common law applies to contracts for services and real estate. If the contract is for a sale of goods that are moveable at the time of contract formation, Article 2 of the UCC applies. In this jurisdiction, the common law of contracts applies to the sale of an ongoing business. Here, this is the sale of an ongoing business.

1.

Under the parol evidence rule, subsequent and concurring oral agreements are not admissible when there has been a final integration or writing. If there has only been a partial integration, then subsequent or concurring agreements are admissible if they do not conflict with the partial integration. An integration or merger clause can serve as evidence that the parties intended a writing to be a final integration.

While the agreement was lengthy, the agreement did not contain an "integration" or "merger" clause. The "fair share of winery's profits" was not fully described in the agreement. Therefore, this was likely not a final writing or integration.

During the oral agreement, Seller stated that she would not sell him the winery unless he agreed to continue using that label. Buyer agreed he'd continue to use the label as long as he sold red wines. The written agreement did not include any provision about future use of the red wine label with Seller's picture. This provision of the label does not conflict with the written agreement, as there was no provision that stated to the contrary. Thus, the oral agreement of using Seller's picture on the red wine labels is likely enforceable even though not included in the written agreement.

2.

The seller can likely introduce evidence of the negotiations to explain the meaning of the term "fair share." If a term is ambiguous in a writing, the parties can introduce evidence that explains the ambiguous term.

The "fair share of the winery's profits" is likely an ambiguous term. It is not a figure or percentage that was spelled out in the agreement. During the oral agreement, Buyer said 20% and Seller said 25%. The Buyer sent 5% of the winery's profits, asserting that this is fair share, which is different than the 20% and 25% discussed during negotiations. The term is likely ambiguous as a reasonable person would not know what the term specifically means and does not provide an exact price. Therefore, seller can likely introduce evidence of the negotiations to explain the meaning of the term.

3.

The enforceability of a clause that restricts the employment of an individual is dependent on the jurisdiction. In some jurisdictions, provisions restricting future employment are enforceable if they are reasonable in scope, geography, and length of time.

The agreement stated that Seller was not permitted to own or operate a winery anywhere in the United States for 10 years after closing. Seller acceded due to intending to retire. Seller ended up opening a winery in another state in the United States.

The Seller not being permitted to own or operate a winery anywhere in the United States is likely not reasonable in geographic scope. Seller would not be able to continue business anywhere in proximity and would have to move to a different country to own or operate a winery. Thus, likely not permissible due to scope of geography. Ten years is also likely not a reasonable time to restrict the employment The provision is likely not enforceable due to being unreasonable.

Thus, the Buyer would likely not prevail on a claim that Seller breached her obligations under the agreement by opening her new winery.

Representative Good Answer No. 2

Article 2 of the Uniform Commercial Code governs contracts for the sale of goods. The common law governs contracts for services, or real property. Because this is a contract for services, the sale of a business, the common law will govern.

1. The issue is whether Seller and Buyer's oral agreement that Buyer would use Seller's picture on red wine labels is enforceable even though it was not included in the written agreement.

Extrinsic evidence of prior negotiations and agreements that are not in a written contract are generally barred by the parol evidence rule. This evidence is only allowed in under certain circumstances, such as when there is an ambiguity in the contract or there is a dispute over a material term in the contract. Contracts that are reduced to writing are generally determined to be the final agreement between the parties, and the rules of contract interpretation state that written contracts are to be interpreted only by "the four corners" of the contract itself. A contract that has been reduced to writing may either be partially integrated or fully integrated. A partially integrated contract is a contract in which there is more wiggle room to allow outside evidence to assist in the interpretation of the contract. A fully integrated contract contains what is called an integration clause or a merger clause, and this clause signifies that this is the final, complete agreement between the parties. Under the common law, oral agreements and modifications to contracts are enforceable if they are given in exchange for consideration.

Here, the facts state that the contract between Buyer and Seller did not contain an integration or merger clause, thus the contract is not fully integrated. Because the contract is partially integrated, the evidence of prior negotiations regarding the wine label would likely be deemed enforceable as it was a material term in the contract between the parties. Seller made clear that she would not sell Buyer winery unless he continued to use

the label that bore her picture on the red wine because she was proud of it. Though the agreement was oral, it may be enforceable because the sale of the winery was given in exchange for Buyer continuing to use the label, and this was a material term of the agreement. However, under the parol evidence rule, because this was a prior negotiation, had the parties intended this to be part of the contract, they could have included it in the final written contract terms. Therefore, under the parol evidence rule, though this oral agreement may have been enforceable prior to reducing the contract to writing, because the agreement was made prior to the finalized contract the oral agreement is not enforceable.

2. The issue is whether seller could introduce evidence of the negotiations about what would constitute a fair share of the winery's first-year profits to help explain the meaning of that term.

The parol evidence rule does not bar extrinsic evidence where the contract has an ambiguity, and extrinsic evidence would help the court and the parties interpret the ambiguous term. A term is ambiguous where it is susceptible to more than one meaning. The court is also very likely to allow in evidence of the parties' past dealings, or industry standards as well in order to interpret ambiguous terms, especially when those terms are material to the contract.

Here, the term "a fair share of the winery's profits" is a term in the contract that is ambiguous, as it is open to more than one interpretation. During negotiations, Buyer and Seller agreed that Buyer would buy the winery from Seller for a purchase price of $3 million plus a "fair share" of the profits generated by the winery during the first year after it was acquired by Buyer. The facts show that the parties did not agree on a precise share, with Buyer saying 20% would be fair and Seller stating that 25% would be fair. Because both parties have a different idea of "what is fair" and the contract does not contain any specificity regarding the term "fair share" the court would allow Seller to introduce evidence of the negotiations in order to clarify the meaning of this ambiguous, material term in the contract.

3. The issue is whether Buyer would prevail on a claim that Seller breached her obligations under the agreement by opening her new winery.

A non-compete clause is a clause in a contract that essentially forbids one party from opening a business, or gaining employment with a competitor or sharing trade secrets. A non-compete clause will be valid if it is limited in time, location, and duration. When a non-compete clause sets forth requirements that a party cannot open a business anywhere, be employed with any other business in the same field, or to never be able to participate in the same field again, the clause will likely be deemed invalid and unenforceable. Noncompete clauses are generally used to protect a business from competition by former employees who know trade secrets and would be in the same geographical area. These limitations are placed on non-compete clauses because a clause of this type that was to continue indefinitely, could severely limit a party's ability to find employment or provide for their own livelihood.

Here, the agreement stated that: "Seller was not permitted to own or operate a winery anywhere in the United States for 10 years after the closing." Seller, originally, was happy to concede to the term because was planning
To retire. However, Seller decided to later come out of retirement in order to open and operate a winery in another state in the United States far away from her original winery. The clause here states that seller cannot own or operate another winery anywhere in the entire United States for 10 years. This clause is not enforceable because 10 years is a very long time for this clause to be in force. Further, even though Seller knows the secrets

of the Wine industry, because she opened the winery in a state far from the original winery, the new winery would not be in competition with the Buyer's winery, and the geographic limitation of the clause "anywhere in the United States" is far too broad to be enforceable. Therefore, because the clause is not limited in time, duration, or geographical location, and Seller opened a new winery far from the old winery so as to not compete with Buyer, Buyer would not prevail on a claim that Seller breached her obligations under the agreement by opening her new winery.

MEE 3

Representative Good Answer No. 1

1. The issue is whether Carol had authority to contract with the bank to sell the parcel of land to the bank.

Principals are bound to contracts made by their agents if the agents acted with actual or apparent authority to enter the principal into that kind of contract. Employees are agents of their corporations.

Here, Carol was hired to negotiate financing agreements on behalf of the corporation with several banks. Danielle, a shareholder and director of the corporation, asked Carol to act on behalf of the corporation to obtain loans, and Carol agreed to do so.

An agent gains actual authority either explicitly or impliedly. Explicit authority can come through the words made to an agent by the principal. Implicit authority is obtained when the agent has a reasonable belief based on the actions, even past actions, of the principal that authorizes the agent to act on behalf of the principal corporation.

An agent has apparent authority when a third party reasonably believes that an agent is acting on behalf of the principal corporation either due to the action or lack of action by the principal. A contract is not enforceable against a principal when the third party does not have full disclosure of the principal.

Here, Danielle Carol was meant to negotiate financing agreements on behalf of the corporation with several banks, Danielle explicitly asked Carol to act on behalf of the corporation to obtain the loans, and Carol agreed to do so.

Carol did not have actual authority because Danielle explicitly told her to obtain the loans no to enter into contract for the bank to buy the parcel of land. Additionally, carol did not discuss this to Danielle, the board or anyone else from the corporation. she was acting without actual authority. However, Carol did act with apparent authority because the bank reasonably believed that Carol had the authority to make that kind of purchase. Carol was not sent to the bank with any statement that would indicate the scope of the authority, additionally, the bank was aware of the principal corporation that Carol was acting on behalf of, so they were disclosed. it was reasonable for the bank to believe that Carol was acting on the authority of the corporation, therefore, the corporation is bound by the land sale agreement with the bank singed by Carol.

Additionally, a principal ratifies a contract an agent enters into when they have knowledge of the material provisions of the contract and accept the contract. here, the majority of the board agreed to enter into the contract and the corporation is bound to it.

2. The issue is whether the bonus payment to Danielle was proper.

Majority shareholders do not owe any duties to minority shareholders or the corporation. By contrast, the board of directors owe a duty of loyalty and care to the corporation. Under the duty of loyalty, directors are prohibited from engaging in self-dealing. If Self-dealing is involved, then the director may be protected by safe harbor provisions that state if the director discloses the self-dealing actions and they are approved by disinterested shareholders and disinterested board of directors, and it is fair and that they were acting in the best interest of the corporation, then the safe harbor provisions apply to the director. They also owe a duty of care to act as a reasonable prudent board of director and take actions that are in the best interest of the corporation.

Here, Danielle does not owe a duty to the corporation or minority shareholders as a shareholder. However, she does owe a duty of loyalty as a board of director. Danielle serves as a director of a three-member board with Brian and also Danielle chooses the third director.

Danielle violated her duty of loyalty by voting to self-deal by distributing a voting payment to herself. A special meeting was improperly called in three days where Danielle described the terms of the contractual agreement. The safe harbor provisions do not apply because she did not share the agreement information with a majority of disinterested board because she herself was a board member and other board member that was not Brian was chosen by Danielle, making her interested. Therefore, Danielle violated her duty of loyalty to the corporation.

She also violated her duty of care because by calling a meeting so fast and voting in favor of the sale of land, the did not act as a reasonably prudent director in the best interest of the corporation because the corporation's purpose was to pursue property development and other lawful business, not sell property to banks. The business judgement rule does not apply when there is self-dealing involved and therefore it does not apply here because there is obvious self-dealing.

By calling special meetings in 3 days which goes against rules under the MBCA that shareholders and directors have proper notice of special meeting at the very least of 10 days and disclosing the contract to interested and deciding her bonus with interest board members, the bonus payment made to Danielle was improper.

The issue is whether Brian has sufficient grounds to seek judicial dissolution of the corporation

A shareholder can seek judicial dissolution of the corporation by derivative suit on behalf of the corporation if the directors are acting in such a way that frustrates the purpose of the corporation and not acting in the best interest of the corporation. Here, the board decided that the proceeds from home sales would be paid to the corporation and the board periodically agreed to consider whether to issue dividends. Here, the actions of Danielle, Carol and the third board member were not in the best interest of the corporation. Carol, an agent was allowed to make decisions with consent of the board, votes were taking place without disinterested members that gave Danielle a very high bonus. Therefore, Brian would does have sufficient grounds to seek judicial dissolution of the corporation. Additionally, him can make it a derivative suit on behalf of the corporation without giving notice because notice would be futile since Danielle was a majority shareholder and elected the third director.

Representative Good Answer No. 2

Maryland State Board of Law Examiners

JULY 2022 UNIFORM BAR EXAMINATION (UBE) IN MARYLAND – REPRESENTATIVE GOOD ANSWERS

1. The issue is whether the corporation is bound by the land-sale agreement with the bank signed by Carol.

Existence of Agency Relationship:

Any directors and officers of a corporation are agents of the corporation. An agency relationship may be created by 1) agreement, 2) to provide a benefit to the principal, and 3) the principal has ability to control the agent/agent consents to being controlled by the principal. Control need not be direct control - even an independent contractor can be an agent - however, there must be some direction given to the agent in order to create the agency relationship.

Here, it does not appear that Carol is a direct officer of the corporation because she was hired as a consultant. However, Carol is nonetheless an agent for the corporation. Danielle (director) hired Carol to act as a consultant to negotiate the financing agreements on behalf of the corporation (agreement). By negotiating such agreements and obtaining the loans, Carol agreed to act for the benefit of the corporation (benefit). Lastly, although Carol was hired to act as a consultant (thus, not a direct employee of the corporation) presumbably she is subject to some forms of control by the corporation. She agreed to act on behalf of the corporation in obtaining the loans and has been directed to negotiate financing agreements with several banks. This is a particular direction, although there is some freedom within the directive.

Overall, though, the balance weighs in favor of finding the existence of an agency relationship.

Actual Authority:

Pursuant to an agency relationship, an agent has the authority to bind a corporation to a contract if given actual or with apparent authority. Actual authority may be express or implied. Express authority comes from the manifestations of the principal either through oral or written words. Implied authority may be found from the agent's reasonable belief about the objectives and desires of the principal and what is reasonably necessary to carry out those objectives.

Here, Carol was hired specifically to negotiate financing agreements and obtain loans for the corporation. This is an express authorization to act to obtain such loans and negotiate financing agreements. Instead, Carol decided to buy the parcel of land for $6 million rather than obtain financing. This is outside of the express authority granted to Carol (she was not given authority to purchase land outright without financing). Additionally, this is outside the implied authority given to Carol. It would be unreasonable to believe that purchasing land rather than financing it would be reasonably necessary to carry out the objective of obtaining loans for purchase. Indeed, hiring Carol to negotiate the loans and financing directly contradicts any objective or desire of purchasing land outright. Thus, Carol acted outside of both express and implied authority.

Apparent Authority:

If an agent acts outside the scope of authority, the agent may still be able to bind a corporation, its principal, if the agent had apparent authority. When looking at apparent authority and whether the agent's conduct can still bind the principal, we consider the communications or dealings between the principal and the third-party to the contract. Where such dealings indicate that it is reasonable to believe that the agent has been

imbued with such authority, the court may find that the agent acted with apparent authority to bind the principal to a contract.

Here, there is no indication of prior dealings with the bank, thus, it would not be reasonable for the bank to assume that Carol had the apparent authority to bind the corporation.

Ratification:

Lastly, even if an agent acts without authority to bind the principal, the conduct of the agent may still later bind the principal if the principal ratifies the contract. Ratification occurs when 1) the principal ratifies the entire agreement, 2) the principal has legal capacity, 3) the principal accepts the benefits of the agreement, and 4) the principal does so before the third party has learned of the lack of authority.

Here, it is possible that the vote at the board of director's meeting ratified the land-sale contract. The corporation (principal) ratified the entire agreement to the land sale under the terms of the written agreement signed by Carol. The corporation has legal capacity to be bound by contracts entered into by an agent. The corporation accepted the benefit of the agreement by approving of the land sale contract, and this acceptance was done before the bank learned that Carol lacked authority. Thus, the corporation may be bound by the land sale contract signed by Carol.

2. The issue is whether the bonus payment made to Danielle, which was approved by a majority of the board of directors, was proper.

All directors of a corporation are bound by fiduciary duties to the corporation such as the duty of care and the duty of loyalty. Generally, under the duty of loyalty, a director cannot engage in self-dealing, or usurp a corporate business opportunity. Furthermore, in closely held corporations, or corporations of a small number of shareholders and directors, the controlling shareholder may owe fiduciary duties to other shareholders. Such a duties include the duty of loyalty. A controlling shareholder might breach the duty of loyalty when they accept a benefit that is not offered to other shareholders.

Violations of the duty of loyalty may be subject to special safe harbors. The safe harbors come into play when the director or controlling shareholder makes a full and fair disclosure of the conflict, and either 1) a majority of disinterested shareholders approve the payment, or 2) a majority of disinterested directors approve the payment. If an interested director or shareholder does vote on the transaction, their vote is discounted when considering whether a majority of votes is met. Additionally, an apparent violation of the duty of loyalty may be forgiven upon a showing that the transaction was ultimately fair to the corporation.

Here, the court will likely find that the bonus payment was a violation of the duty of loyalty. Danielle is a controlling shareholder, owning 80% of the business. Additionally, she is a director of the corporation. The bonus payment gave her a distribution that other shareholders did not receive and is a form of self-dealing because she is on both sides of the transaction. Additionally, she does not get the protection of any safe harbors because she is an interested director, and only one other director voted in favor of her receipt of the bonus payment. Thus, she has only one disinterested vote in her favor. Additionally, the payment of all the sale proceeds is an outrageous payment that is not fair to the corporation itself. Thus, the bonus payment to Danielle was not proper.

3. The issue is whether Brian has sufficient grounds to seek the judicial dissolution of the corporation.

A judicial dissolution of the corporation may be granted where a shareholder is able to show that there is an oppressive majority of shareholders that are inhibiting the fair and efficient functioning of the corporation. Here, Brian is a minority shareholder, owning 20% of the corporation. Danielle is a majority shareholder, owning 80% of the corporation. The board's recent behavior approving the land-sale contract - veering from the agreed upon plan for dealing with the parcel of land -, then giving all the sale proceeds to Danielle as a bonus and having Danielle attempt to vote even though she is an interested director is likely enough to show that the corporation is not being run fairly or efficiently by the majority. Therefore, Brian could seek dissolution on oppressive majority grounds.

MEE 4

Representative Good Answer No. 1

(a) The issue here is whether the AD Trust was validly created and if so, when was it created. The rule to apply is that a trust is created when it is intended to be formed, given a trustee, and properly funded. In the present case, Arlene intended to create the trust by signing it and dating it and describing herself as the trustee and describing who the trust would benefit during her lifetime (herself) and after her death (her three nieces). The trust was finalized four years ago when she bought bonds and added them to the trust. Accordingly, the trust was validly created 4 years ago.

(b) The issue here is assuming the trust was validly created, was it effectively revoked. The rule to apply is that a trust is generally revocable at any time during the trustee's lifetime if not otherwise declared irrevocable in the written language of the trust. Therefore, the AD Trust was revocable. Arlene had the power to revoke her trust by writing across it that she revoked it and by personally taking back all the assets she had personally funded the trust with. Accordingly, Arlene effectively revoked the AD Trust.

2. The issue here is whether the trust for Donna was valid. The rule is that someone can place property in the possession of another in trust for a third party. In the present case, Arlene gave her possessions over to her friend to hold for the benefit of Donna and her friend agreed to do so and to distribute the property for Donna's benefit for specific reasons at specific times defined by Arlene. At her death, the bonds and necklaces were worth $250,000. The friend, as trustee, was charged with selling the bonds and necklaces to pay for Donna's college and then giving Donna whatever was leftover when Donna turned 22. Accordingly, the trust for the benefit of Donna was valid.

3. The issue here is whether the testamentary trust for the benefit of the Political Party was valid. The rule is that the common law Rule Against Perpetuities would invalidate any gift given to a person or entity that could not vest within 21 years of a life in being at the time of the testator's death. An exception to this rule would be for charities. In the case of charitable organizations, the Rule Against Perpetuities does not apply. In the present case, Arlene is attempting to gift to the Political Party all income from her trust for the rest of time. Because Political Party is not a charity, this would violate the Rule Against Perpetuities and invalid that testamentary trust. Accordingly, the testamentary trust for the benefit of the Political Party was invalid.

4. The issue here is assuming that the testamentary trust to Political Party is invalid, to whom should the bank account be distributed. The relevant statute provides, "If a decedent died intestate without a surviving spouse,

issue, or parent, the decedent's property is distributed to the issue of his or her parents per stirpes. In the present case, the issue of Arlene's parents include: her younger brother Bob, Arlene's deceased sister, and Arlene's deceased older brother. Bob would take for himself one third of Arlene's estate; Arlene's deceased sister had Carla, Donna, and Edna, who would take equally their deceased mother's one third share; Fred would take Arlene's deceased older brother's one third share.

Representative Good Answer No. 2

1a. The first issue is whether the AD trust was validly created, and if so, when it was validly created.

Under the UTC, a trust is validly created when the following occurs: (1) there is a Settlor that has identified assets to be distributed; (2) identified beneficiaries (unless it is a charitable trust under cy pres); (3) a trustee in charge of distributing assets; and (4) a stated duration (unless charitable or honor trust). A trust is only validly created when there are assets that are identified to be distributed. A settlor and a trustee can be the same person. A trust is presumed to revocable under the UTC unless it is expressly stated to be irrevocable. A testamentary trust is one that is incorporated in a will and takes effect upon death. A trust does not violate RAP if the interest vests or fails within 21 years after a life in being.

Here, Arlene signed the AD Trust ten years ago. In that trust, she was permitted to grant herself as both trustee and settlor. The lack of a revocability clause is okay because under the UTC the trust is presumed to be revocable. However, the AD trust could fail because she names herself as the trustee of the AD Trust but the trust only kicks in for the beneficiaries at the time of her death, leaving no trustee to manage the trust. This trust could be considered a testamentary trust because it reads like a supplemental document to a will because the trust is activated for her beneficiaries at her death. A good argument can be made that the AD Trust fails because there is no identifiable trustee at the time of Arlene's death. If the court finds that this trust was validly created, it was created at the first identification of assets (the bonds) which would have been four years ago, not ten years ago. It does not violate RAP because the purpose the trust ends at the moment of asset distribution.

1b. The second issue is whether the AD Trust was effectively revoked.

As previously stated, under the UTC a trust is presumed to be revocable unless stated. A trust, like a will, can be revoked by a physical act. A physical act includes revocation by express writing, other documents demonstrating clear intent to revoke, etc.

Here, Arlene made it loud and clear that she intended to revoke the will. She crossed out the document with a pen, she wrote that it was revoked and that she's taking back the assets. She also wrote to her friend a year later that she revoked the AD Trust and even provided a reason for why she was revoking. Therefore, Arlene likely had an effective revocation by physical acts.

2. The issue is whether the trust for the benefit of Donna is valid.

The rules pertaining to the validity of a trust listed above are repeated.

Here, Arlene was a settlor with rights in the assets she was giving to Donna, she clearly named Donna as an identified beneficiary, she named her friend as the trustee to manage the trust, and she had a stated purpose. It does not violate RAP because the trust ceases when Donna is 22. Therefore, the trust for Donna is likely valid.

3. The issue is whether the testamentary trust for the benefit of the Political Party is valid.

The rules pertaining to the validity of a trust listed above are repeated. Under the UTC, a trust is considered to be a charitable trust when it operates for the benefit of society at large, not just a small interest group. A charitable trust can last forever and does not violate RAP.

Here, the trust to the Political Party is likely not valid as a charitable trust because the Political Party does not benefit society at large. The fact pattern states that the mission of PP is to support people who only subscribe to their viewpoint. That does not benefit the public at large. Since it is not a valid charitable trust, the trust must have a finite duration, and it does not. Therefore, the non-charitable trust is in perpetuity and is not valid under the UTC.

4. The issue is how the bank account should be distributed.

In order to distribute per stripes, one has to distribute at the first surviving generation and keep distributing down through the parent's issue.

Because Arlene's bank account passed intestate, the property should be distributed per stirpes. Since Donna has three siblings, each get a third of the bank account (100,000). However, two of them are dead. So, Bob gets 100,000 because he is alive. Fred, who is the older brother's only surviving issue, takes 1/3 of the account, 100,000 (old brother's share). The three nieces take 1/9 of deceased sister's share, or about 33,000 each of them. That adds up to 300,000 in the bank account distribution.

MEE5

Representative Good Answer No. 1

1. Is Developer a person "required to be joined if feasible" to the Builder v. Lender action?

Developer is a person required to be joined if feasible. A party must be joined in an action if that parties' interest are impacted by the litigation or no complete remedy is possible without joining them. Joiner is never required for joint tortfeasors. Additionally, the court must be personal jurisdiction over the party to be joined.

Here, complete remedy is possible without joining Developer. Builder is seeking $100,000 from Lender and has joined Lender. The court is capable of awarding complete relief by ordering Lender to pay the $100,000.

However, Developer is still a party that is required to be joined if feasible because their interest are so implicated by the outcome of the litigation. Developer has a contract to reimburse with interest any funds that Lender pays to Builder. Therefore, an outcome for Lender directly saves them $100,000 plus interest while an outcome against Lender directly incurs it on them. Additionally, if the outcome of the dispute ends with Developer being unable to use the building they will have to vacate and stop leasing it. Thus, their interests are so implicated by the litigation that they are required to be joined if feasible.

In order for them to be a required party, the court must have personal jurisdiction over them. Personal jurisdiction is proper, inter alia, when there is general personal jurisdiction. General personal jurisdiction exists

when a party is a resident of the form. A non-incorporated entity is a resident of any jurisdiction in which their members are domiciliaries. Amy and Barbara are members of Developer LLC which is an unincorporated entity. Amy and Barbara are domicialiries of State A and State B respectively. Therefore, Developer LLC is a citizen of A and B. Since this is a suit in federal court in state A, it has general personal jurisdiction over Developer LLC.

2. Would joinder of Developer deprive the court of subject-matter jurisdiction?

Joinder of Developer would deprive the court of subject matter jurisdiction. Subject matter jurisdiction is proper in, inter alia, three instances.

First, it is proper if there is federal question jurisdiction. This exists when the claim arises out of federal law. Here, there is no federal law question and so this is inapplicable.

Second, it is proper if there is diversity jurisdiction. Diversity jurisdiction exists when all defendants are of diverse citizenship from all plaintiffs and the amount in controversy exceeds $75,000. Citizenship of natural person is determined by their domicile which is determined by physical presence and an intent to indefinitely remain. Citizenship of a corporation is determined by ever place they are incorporated and the one place that is their principal place of business. Citizenship of unincorporated business entities like LLC's is determined by the domicile of each of their members.

Here, the amount in controversy is $100,000 but there is no diversity jurisdiction because Builder and Developer share a citizenship. based on the above rules, Builder is a citizen of state B, Lender is a citizens of state A, and Developer is a citizens of both state A and B. Since Builder is the plaintiff and Developer is proposed to be joined as a defendant that would be a state B party against a state B party and complete diversity would be defeated. Notably, supplemental jurisdiction does not change this analysis. Under supplemental jurisdiction, a claim that does not satisfy federal question or diversity jurisdiction may still be heard in federal court if it shares a common nuclease of operative fact and a common question of law or fact with a claim that does.

However, supplemental jurisdiction may not be applied to claims by a plaintiff that fail to satisfy the diversity element of diversity jurisdiction when the basis of jurisdiction for the claim sharing a common question of law or fact with the new claim is diversity. Here, the claim by Builder against Lender, by itself, could satisfy diversity jurisdiction. And the claim against Developer will have the exact same facts involved and involve the same questions of law or fact as the claim against Lender. However, supplemental jurisdiction is not available because it is a claim brought by a plaintiff and it does not satisfy diversity requirements.

3. Assuming that Developer cannot be joined, how should the court rule on the motion to dismiss?

If Developer cannot be joined, the court should likely dismiss the claim. If a court is unable to join a necessary party, they have discretion between hearing the claim and dismissing them claim. To make this decision the court determine what would be in the interest of fairness and justice by looking at the hardship to the parties through either course of action, the hardship to the required to be joined party if the litigation proceeds without them, and the availability of alternative forums. Here, the hardship to the parties if the court dismisses the claim is minimal due to the availability of an alternative forum.

This claim could easily be brought in state court. IN state court, there will be no issue of federal jurisdiction and so it will not matter if the parties are diverse. Furthermore, the litigation is at the begin phase and there is no

indication that it would be unfair to the parties to make them restart in state court. At the same time, it would be a hardship to Developer if they were not joined and the litigation continued without them since they will be forced to pay if Lender loses and may also lose access to a building they rely on. Therefore, the court should grant the motion to dismiss.

Representative Good Answer No. 2

1. The issue is whether Developer (D) is a required party under Rule 19.

A party is a required party subject to compulsory joinder under Rule 19 when three conditions hold if the party were not joined: 1) the court could not grant complete relief to existing parties; 2) the absent party would suffer prejudice; and 3) the existing parties would face multiple or inconsistent obligations.

Here, Builder (B) has sued Lender (L) for withholding payments in violation of L's loan agreement with D. D is likely a required party under Rule 19. First, without D as a party, the court could not grant complete relief to B. This is because B seeks relief based on L's withholding of payments not as to a loan agreement with B but as to a loan agreement with D. Therefore, resolving the loan agreement with D is required for B to receive complete relief. Second, D would be prejudiced if not made a party because D has separate contracts with B and L, for construction and financing, respectively. B's cause of action is based on breach of L with respect to D. Therefore, D would suffer prejudice if it could not represent its own interests with respect to that loan agreement with L. Third, the existing parties would face multiple obligations if D were not joined. This is because if B prevailed, then B would receive payment of $100,000 from L as a third-party beneficiary of L's contract with D; at the same time, if B were awarded these funds, L would have less funds with which to finance D's construction project, and B is the performer of that construction contract. Therefore, B would both gain and lose by prevailing in this suit if D were not joined.

Accordingly, D is likely a required party subject to compulsory joinder under Rule 19.

2. The issue is whether joinder of D would deprive the court of subject matter jurisdiction (SMJ).

SMJ exists when the case at issue is based on, among other grounds, a federal question (i.e., federal question jurisdiction) or when diversity jurisdiction (jx) exists. Diversity jx exists when there is complete diversity of citizenship between the parties (i.e., no plaintiff is a resident of a state where any defendant resides) and where the amount in controversy exceeds $75,000. Corporations are citizens where they are incorporated and where their principal place of business (i.e., their headquarters or "nerve center") is located. LLCs are citizens where their members are domiciliaries. The amount in controversy requirement is not met only where there exists a legal certainty that the amount will not be met or where the plaintiff alleges an amount in controversy that is not in good faith.

Without D as a party, B has successfully invoked diversity jx in federal court. The amount in controversy is met because B seeks relief of $100,000. No facts suggest this is made in bad faith or that a certainty exists that this amount is not met. B is a citizen of State B because it is incorporated there, and its principal place of business is located there. L is a citizen of State A because it is incorporated there, and its principal place of business is located there. D, however, is a citizen of State A because it is organized in State A, State A is where its principal place of business is located, and its managing member is a domiciliary of State A. D is also a citizen

of State B because its member, Barbara, is a domiciliary of State B. If D were joined, then complete diversity would fail because D is a citizen of both the plaintiff and defendant in the B v. L action.

No facts suggest B's claim is based on a federal question jx (in fact the facts stipulate that B invoked diversity jx), so joining D would deprive the court of diversity jx and hence SMJ.

3. The issue is how the court should rule on L's motion to dismiss (MTD), assuming D cannot be joined.

If a required party cannot be joined because doing so would deprive the court of SMJ, the inquiry turns to whether the required party is an indispensable. If so, case must be dismissed because a federal court must have SMJ to hear a case. If not, then the case may proceed, and a MTD for lack of joinder under Rule 19 should be denied. A party becomes indispensable where there is truly no fair way to adjudicate the case without that party represented. Practically speaking, a court will entertain the same factors (discussed above) as it does when determining whether a party is required, but there is essentially no leeway, as proceeding without that party would deprive that party of its due process rights to be heard.

Here, it is likely that D is not indispensable because B and L can still litigate without D as a party such that D is not necessarily deprived of due process. This is because the court can decide whether L violated the loan agreement with D without necessarily hearing from D itself. For example, the court can simply look to the terms of the agreement and rule on whether a violation had occurred.

Therefore, a court will likely not find that D is indispensable and will therefore deny the MTD and allow the case to proceed. However, if the court did find that D is indispensable, the court must grant the MTD on Rule 19 grounds and should also dismiss the action sua sponte for lack of SMJ.

MEE 6

Representative Good Answer No. 1

1. Who pays taxes, Wanda or Frank?

The issue is who pays taxes on a family home, the holder of a life estate or the holder of the future interest.

Here, the language "to Wanda, for life" creates a life estate for Wanda. The language "upon her death, to my daughter, Adele, and her heirs" creates a remainder in Adele. Remainders are descendible and divisible, so Frank took the remainder.

As between a life estate holder and a remainderman, the life estate holder is the person who pays taxes on the present income to the estate or, if there is no present income, the present fair market rental value. The family home does not currently generate income, but it has a fair market rental value of $1,500 per month. Therefore, Wanda must pay taxes on the $1,500 per month present fair market rental value of the home. If the fair market rental value is less than the taxable portion of the home, then Frank must pay any remaining taxes owed.

2. What interest did Oscar have in the apartment building after conveying to Frank? Was it valid?

The issue is whether the conveyance violated the Rule Against Perpetuities [RAP].

The jurisdiction has adopted the Uniform Statutory Rule Against Perpetuities, which prohibits conveyances of interests in land that may not vest within 21 years of some life in being at the creation of the interest. The RAP does not apply to future interests held by the grantor, including reversionary interests or possibilities of reverter.

Here, Oscar conveyed a fee simple determinable to Frank. A fee simple determinable is a present interest that immediately cuts off by the happening of a stated event. Thus, Oscar retained a possibility of reverter, which is the reversionary interest that follows a fee simple determinable. The language that the apartment building "automatically reverts to Oscar" makes clear that this is a possibility of reverter; the reversion happens regardless of whether Oscar takes any action, and the reversion goes back to the grantor, Oscar, rather than a third party. Since the RAP doesn't apply to possibilities of reverter, the grant does not violate the RAP, and Oscar retains a valid possibility of reverter.

3. Upon Oscar's death, what interest does Wanda have in the apartment building?

The issue presented is whether and how a person can devise a possibility of reverter. Upon Oscar's death, Wanda owns a possibility of reverter in the apartment building. At common law, a possibility of reverter was not transferable inter vivos, but it was descendible and devisable by will to the holder of the residuary estate. Here, Oscar's will granted his residuary estate to his wife, Wanda. Therefore, upon Oscar's death, Wanda now has a possibility of reverter in the apartment building. A possibility of reverter is not subject to the rule against perpetuities, and the transfer of a possibility of reverter to the residuary estate does not convert the possibility of reverter into some other interest.

Therefore, Wanda's possibility of reverter in the apartment building is valid.

4. After 2/1/21, who owns the apartment building?

The issue presented is what happens to a piece of property when the condition triggering termination of a present interest holder's fee simple determinable is fulfilled.

Before 2/1/21, Frank had a fee simple determinable in the building (see above). Although Frank's present interest in the apartment building could extend indeterminately into the future and Frank could pass his interest to his heirs, the language "so long as at least four apartments in the apartment building are rented to families with incomes below the state median income for a family of their size" would automatically cut off Frank's present interest in the land. Although courts normally prefer to read ambiguous grants as fees simple subject to conditions subsequent, rather than fees simple determinable, when possible, the grant here is not ambiguous. The specification that the apartment building otherwise "automatically" reverts to Oscar makes clear that this is a fee simple determinable. On February 21, 2021, Franklin terminated the leases of all of the below-median-income-family- tenants in the building and planned to convert all the apartments into luxury apartments. This triggered the language in the fee simple determinable, cutting off Franklin's present interest in the land. When a fee simple determinable terminates, the property automatically transfers to the person with the possibility of reverter. Wanda had a possibility of reverter after Oscar's death (see above).

Therefore, after 2/1/21, Wanda now owns the apartment building.

Representative Good Answer No. 2

(a) Property taxes

Wanda is obligated to pay property taxes on the family home. The issue is whether a life tenant or a party with a remainder is required to pay property taxes on the property that the life tenant occupies. A life tenant is one that receives a conveyance for the life of herself or someone else. Here, Oscar conveyed the property to Wanda "for life." Thus, she is a life tenant as it pertains to the family home. Frank has an indefeasibly vested remainder in the property because he is certain to take after Wanda's life because Adele has died and left her entire estate to Frank.

A life tenant has certain obligations to the property occupied. These obligations include a duty not to commit waste on the property and a duty to pay taxes on the property. Here, as a life tenant, Wanda has a duty to pay taxes on the property. The fact that Adele gratuitously paid taxes for Wanda as a remainder will not alter Wanda's obligations as a life tenant. Similarly, the fact that Wanda presently cannot afford to pay taxes will not relieve her of her duty, especially since there is an alternative to rent the property and thus obtain the necessary income to pay the taxes. Thus, if Frank refuses to pay property taxes, Wanda must do so.

(b) Oscar's interest in the apartment building and Wanda's rights in the building.

Oscar had a possibility of reverter upon conveying the apartment building to Frank. The issue is whether Oscar had any interest in the apartment building and whether the Rule Against Perpetuities applied to the transfer. When Oscar conveyed the apartment building to Frank, Frank had a fee simple determinable in the building and Frank had a possibility of reverter. Fee simple determinables are granted when the grantor puts a condition on the use of the property (typically using words like "so long as") and expressly calls for an automatic reversion of the property once that condition is not met. This automatic reversion is known as a possibility of reverter. The Rule Against Perpetuities typically bars any conveyance of property that a condition that has a possibility of not vesting within 21 years after the life of being in a transaction. The fact that the property has to have at least four apartments rented to families below the state median income is certainly a condition that creates uncertainty as to whether after 21 years following Frank's life, it will still be satisfied or not. However, the Rule Against Perpetuities does not apply to possibility of reverters, rights of reentry, or reversions of the initial grantor. Further, possibility of reverters are devisable and transferrable. Here, Oscar executed a valid will that gave Wanda his entire residue of his estate, which included the possibility of reverter. Thus, Wanda had the possibility of reverter upon Oscar's death, and once Frank breached Oscar's initial condition on February 1, 2021 by terminating leases of all tenants and having no apartments that were being rented to below-median income families, the apartment building automatically reverted to Wanda, so she is correct in telling Frank that she now owns the building.