Maryland State Board of Law Examiners

FEBRUARY 2025 UNIFORM BAR EXAMINATION (UBE) IN MARYLAND – REPRESENTATIVE GOOD ANSWERS

NOTICE: These Representative Good Answers are provided to illustrate how actual examinees responded to the Multistate Performance Tests (MPT 1 & 2) and the Multistate Essay Examination (MEE 1-6). The Representative Good Answers are not "average" passing answers nor are they necessarily "perfect" answers. Instead, they are responses which, in the Board's view, illustrate successful answers written by applicants who passed the UBE in Maryland for this session. These answers are reproduced without any changes or corrections by the Board, other than to spelling and formatting for ease of reading.

MPT 1

Representative Good Answer No. 1

MEMORANDUM

To: Elise Tan
From: Examinee
Date: February 25, 2025
Re: Peter Larkin - Defense of housing discrimination claim

1. The statute does not protect against marital status and there is nothing to indicate that there was discrimination based on familial status.

Section 3602 of the United States Fair Housing Act defines "Familial Status" as one or more individuals (who have not attained the age of 18) being domiciled with a parent or another person having legal custody of such individuals. In this case, the opposing party is Mr. Turner, a single parent with three children under the ages of 18. Section 3604(a) states that it shall be unlawful to refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin.

Mr. Turner claims that our client, Mr. Larkin, discriminated him based on his familial status after a brief text conversation. The court in Karns v. U.S. Department of Housing and Urban Development called on a three-part burden-shifting test set forth in McDonnell Douglas Corp. V. Green for evaluating claims for discrimination under the 42 U.S.C 3604(a).

First, the plaintiffs bear the initial burden of proving a prima facie case of housing discrimination under the preponderance of evidence. To establish this, the plaintiffs must show: (1) that they are a member of a protected class, (2) that they applied for and were qualified to rent the dwelling, (2) that they were denied housing, or the landlord refused to negotiate with them, and (4) that the dwelling remained available.

If the plaintiff establishes a prima facie case of discrimination, a presumption of illegality arises and the burden will shift to the defendant, who will have to give legitimate nondiscriminatory reasons for the challenged policies.

Finally, if the defendant can satisfy that burden, the plaintiff has the opportunity to prove by a preponderance of evidence that the nondiscriminatory reasons asserted by the defendant are merely pretext for discrimination.

Under the first element of the test, proving a prima facie cause of housing discrimination under the preponderance of evidence, Turner will be successful. Turner is a member of a protected class, given that he is a single father with three children under the age of 18. "Applied for" includes inquiries into the availability of the dwelling (Karns v. U.S. Department of Housing and Urban Development), which Mr. Turner did when he texted the phone number on the advertisement. "Qualified to rent" means that an individual meets facts such as the minimum credit score, rental and eviction history, minimum monthly income, etc. (Karns v. U.S. Department of Housing and Urban Development). Turner was qualified to rent the dwelling, given that he works as a data analysis with sufficient income, has a good rental history, and good credit. Mr. Turner was denied housing as evidenced by Mr. Larkins lack of communication. And, the dwelling remained available for at least two months after Mr. Turner inquired into it.

Therefore, the burden will now shift to our client to show that he had a legitimate, nondiscriminatory reason, and he will be successful in doing so.

Mr. Larkin states that his refusal to rent to Mr. Turner has nothing to do with his familial status, but rather his marital status. The Fair Housing Act does not include marital status among its protected classifications (Kerns v. U.S. Department of Housing and Urban Development). In the text exchange, Mr. Larkin only inquired about Mr. Turners marital status. After he was informed that Mr. Turner was widowed, Mr. Larkin asked about how many other people would be living in the apartment, and made no distinction between minors or adults. Mr. Turner provided the information on the children voluntarily, not because Mr. Larkin asked. In contrast to Kerns, there is no evidence to demonstrate that Mr. Larkin would have acted any differently had the individuals been friends of Mr. Turner rather than his children. In fact, in our interview with Mr. Larkin, he states that he has refused to rent the apartment to four single people in the past because he prefers to rent to married couples.

Therefore, Mr. Larkin has sufficient nondiscriminatory reasons for refusing to rent the apartment to Mr. Turner.

Given that Mr. Larkin satisfied the burden under element two, the burden will now shift back to Mr. Turner to show that by preponderance of the evidence, the nondiscriminatory reasoning given by Mr. Larkin are simply pretext for discrimination.

In Kerns, the case turned on the fact that the plaintiff had put out a second inquiry for the same apartment under the guise that he was single rather than married. After doing so, the landlord in that case willingly showed the apartment. There is no such evidence here.

There is nothing to indicate that, had Mr. Turner not mentioned his children, Mr. Larkin would have rented the apartment to him. As a matter of fact, Mr. Larkin stated in his interview that he often rents to married couples with children, and is currently doing so in the same building in which Mr. Turner inquired. And, as stated above, Mr. Larkin has turned down single people before.

Given the above facts and analysis applied to the burden-shifting test, Mr. Turner will be unsuccessful in bringing a claim for discrimination under the fair housing act because Mr. Larkin will be able to show that his reluctance to rent to apartment stemmed from Mr.

Turner's marital status, a nonprotected class, versus the familial status.

2. Mr. Larkin will be able to successfully show that another reason why he denied Mr. Turner the apartment was due to the number of individuals living in the apartment, not Mr. Turner's familial status.

Mr. Turner could argue that Mr. Larkins occupancy policies may be facially neutral, but they in fact have a disparate impact on familial status. In Baker v. Garcia, the court used a three-part disparate-impact analysis used by the 15th circuit. Under this test, the Plaintiff must (1) make prima facie showing that a challenged practice caused or will predictably cause a discriminatory effect, (2) if the plaintiff makes this prima facie showing, the burden will then shift to the defendant to prove that the challenged practice is necessary to achieve one or more substantial, legitimate, nondiscriminatory interests, and

(3)if the defendant meets the burden, the burden will shift back to the plaintiff, who may then prevail only if they are able to show that the substantial, legitimate, nondiscriminatory interests supporting the challenged practice could be served by another practice that has a less discriminatory effect.

<u>Prima Facie Case</u>

The court in Garcia found that the policy, which is similar to Mr. Larkins, clearly impacts families with minor child more than it does the general population. Mr. Turner can successfully say the same here. The court in Garcia further stated that it would impact those with minor children more because minor children often share rooms, and that families with minor children tend to have larger households than those who don't have minor children. Again, Mr. Turner could successfully raise the same argument.

Given the above facts, Mr. Turner will be able to show that he has a Prima Facie Case.

<u>Nondiscriminatory reason</u>

Because Mr. Turner is able to show a prima facie case, the burden will now shift to Mr. Larkin to show that he has a nondiscriminatory reason for his policy. Mr. Larkin states that his occupancy policy is due to the fact that there are many young people in the neighborhood, and he has had problems in the past with people cramming four people into two-bedroom apartments in order to keep costs down. Therefore, for a two-bedroom apartment he enacted a policy to rent to at most three people. This is very similar to the reasoning given in Garcia, and the court found that there had been a substantial, legitimate, nondiscriminatory reason for the policy. Therefore, Mr. Larkin has successfully shown a nondiscriminatory reason for his rental policy.

Overbreadth and Less Restrictive Means

Given that Mr. Larkin can successfully show that there is a nondiscriminatory reason for the policy, the burden will shift back to Mr. Turner to show that the policy is overbroad or that there is a less restive means to achieve Mr. Larkin's goal of avoiding cramming.

Overbroad:

Under section 15 of the Centalia Municipal Housing Code, the number of individuals in a dwelling is restricted based on square footage of the apartment. In Garcia, the plaintiff's case turned on the fact that the restriction being imposed by the landlord was much greater than that of the code. The fifteenth circuit has had that a "significant mismatch" between the occupancy limits set by the municipal code and those set by a landlord is evidence that the landlord's limit is overbroad (Baker v. Garcia Realty Inc.). The court also stated that while there is no mathematical formula, the case law indicates that, for example, a mismatch would occur when the code allows four but the landlord only allows two.

Here, Mr. Lakin states that for a two-bedroom apartment, he would not rent it to more than three people. He states that this is because it is a small apartment, only 500 square feet. Under the Centralia Municipal Housing Code, an apartment that is between 451-700 square feet should not be occupied by more than four people. This indicates that Mr.

Larkins three-person rule is not overbroad.

Less Restrictive means:

In Garcia, the plaintiffs were able to show that the information collected in the rental application would allow the rental company to differentiate between a group of college students and a family with minor children and therefore Garcia could have used less restrictive means. Here, Mr. Larkin had no such application and there was no such discrimination between the children vs. any other young adults. Further, Mr. Larkin has explained that the apartments overall size was the main reason for the three-person limit, not familial status.

Mr. Larkin will successfully show that his policy is nondiscriminatory, and not overboard, with no less restrictive means available, and therefore Mr. Turner will not have a disparate impact claim.

Given the above analysis, Mr. Larkin will successfully defend himself from both a claim of discrimination based on familial status in violation of the fair housing act, as well as a claim of disparate impact for his occupancy policy.

Representative Good Answer No. 2

To: Elise Tan
From: Examinee
Date: February 25, 2025
Re: Peter Larkin - Defense of housing discrimination claim

MEMORANDUM

Our client, Landlord (LL) Peter Larkin, is being sued in a housing discrimination claim brought by Martin Turner. Turner filed administrative complaint with HUD claiming that

Larkin violated the FHA by refusing to rent because of Turner's familial status. The matter has been assigned to an administrative law judge. There are two key claims that Turner will likely assert, and that we should be prepared to defend. First, Turner may claim that Larkin violated 42 USC § 3604(a) by engaging in discriminatory conduct when he told

declined to negotiate with Turner after learning that he is a single father. Second, Turner may claim that Larkin's policy, while facially neutral, had a disparate impact on Turner because of his familial status. This memorandum analyzes the legal and factual

arguments we should raise in Larkin's defense, identifies what legal and factual arguments Turner may raise in his own defense, and evaluates the likelihood of success of Larkin's arguments.

1. Turner can likely prove a prima facie case of housing discrimination by a preponderance of the evidence, but Larkin may succeed in showing that his policy is not pretext for discrimination.

Turner may claim that Larkin violated 42 USC § 3604(a) by engaging in discriminatory conduct when he told declined to negotiate with Turner after learning that he is a single father. Larkin's defense would be that he has a longstanding preference for renting to married couples. The issue here is whether Turner can establish a claim for discrimination based on familial status, or if Larkin can show that his policy of refusing to rent to single people is not merely pretext for discrimination. Under 42 USC § 3604, it is illegal to refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of familial status. Under 42 USC § 3602, familial status is defined as one or more

individuals who are not yet 18 domiciled with a parent. *McDonnell Douglas Corp. v, Green, 411 US 792 (1973*) (herein after, *Green*), established a three-part burden shifting test for evaluating claims of discrimination under 42 USC § 3602. Plaintiffs bear the initial burden of proving a prima facie case of housing discrimination by a preponderance of the evidence. To do this, Plaintiffs must show that (1) they are a member of a protected class, (2) they applied for and were qualified to rent the dwelling, (3) they were denied housing or LL refused to negotiate with them, and (4) that the dwelling remained available.

A. Turner can likely prove a prima facie case of housing discrimination by a preponderance of the evidence.

Turner can likely prove a prima facie case of housing discrimination by a preponderance of the evidence. First, he is a member of a protected class, as he is a single parent with 3 minor children. Under 42 USC § 3602, familial status is defined as one or more individuals who are not yet 18 domiciled with a parent. Second, he applied for and was likely qualified to rent the dwelling. Under *Green*, "applied for" includes inquiring into availability, and "qualified to rent" means the person meets minimum factors such as credit score, rental and eviction history, minimum monthly income, LL and professional

references, and criminal background. The text exchange between Turner and Larkin shows that Turner inquired into the apartment's availability, and therefore "applied" for it under the standards set by *Green*. Additionally, Turner is a data analyst with good rental history and good credit, which suggests that he was likely qualified to rent the apartment. Third, Larkin effectively refused to negotiate with Turner when he said "I'll get back to you," and then never followed up. Finally, by Larkin's admission, the apartment remained available for several months after Turner's inquiry. Because his claim meets all four elements established in *Green*, Turner can likely prove a prima facie case of housing discrimination by a preponderance of the evidence.

B. Larkin may succeed in showing that his policy is not pretext for discrimination.

Under *Green*, once a plaintiff has proved a prima facie case of housing discrimination by a preponderance of the evidence, a presumption of illegality arises and the burden shifts to the defendant to articulate legitimate, non-discriminatory reasons for the challenged policies. If the defendant satisfies this burden, the plaintiff has the opportunity to prove by a preponderance of the evidence that the nondiscriminatory reasons asserted by the defendant are merely pretext for discrimination.

Larkin can potentially succeed in articulating legitimate, non-discriminatory reasons for refusing to rent to unmarried people, and in showing by a preponderance of the evidence that these reasons are not merely pretext for discrimination, but Turner also has a fair shot at succeeding here. In *Karns v. HUD (15h Cir. 2006)*, the LL refused to rent to a single woman with two minor children. The LL claimed that she refused because she was concerned about Karns' finances and that Karns was unmarried. She qualified this claim with a text exchange where the LL learns that Karns is a single mother and then declines to negotiate, stating "I need to pay my mortgage." The Court ultimately found in favor of Karns, stating

that the LL's refusal to rent, based on only the knowledge that Karns was a single mother, showed that the LL assessed Karn's ability to pay rent based on her familial status and not on her financial situation.

The text exchange between Larkin and Turner is almost identical to the text exchange in Karns, except that Larkin offered no reason for ending the negotiation. This point weighs in Turner's favor. If the Court were to base their ruling on only that evidence, Turner would likely succeed. However, Larkin has substantial extrinsic evidence supporting his established preference for renting to married people, including the fact that there is currently a married couple with two children renting an apartment from Larkin in the subject building. Even more beneficial to Larkin's claim is the two-year-old text exchange between Larkin and "Jake," an individual trying to rent an apartment for himself and three other single friends. In this exchange, where Larkin refuses to continue rental negotiations after learning that an unmarried person was inquiring, he explicitly states, "I really prefer to rent to married couples," and "I've found that married couples pay their rent on time and are less likely to flake out on me." This text exchange shows that Larkin's policy was established and enforced routinely, and long before Turner ever applied, which strongly supports the claim that the policy as applied to Turner was not merely pretext for discrimination. Based on this evidence, a court may decline to find that Larkin violated 42 USC § 3604(a) by engaging in discriminatory conduct when he told declined to negotiate with Turner after learning that he is a single father.

2. A Court may find that Larkin's policy, while facially neutral, had a disparate impact on Turner because of his familial status.

Larkin's states that he has a policy of only renting the subject apartment to a maximum of three people. Turner may claim that Larkin's policy, while facially neutral, had a disparate impact on Turner because of his familial status. In this type of case, the 15th circuit applies a three-part disparate-impact analysis: (1) the plaintiff tenant must make a prima facie showing that a challenged practice caused or will predictably cause a discriminatory effect; (2) if the plaintiff makes this prima facie showing, the burden shifts to the defendant landlord to prove that the challenged practice is necessary to achieve one or more substantial, legitimate, nondiscriminatory interests; and (3) if the defendant landlord meets the step two burden, the burden shifts back to the plaintiff, who may prevail only if they can show that the substantial, legitimate, nondiscriminatory interests supporting the challenged practice could be served by another practice that has a less discriminatory effect.

A. Turner can likely establish a prima facie case.

Turner can likely establish a prima facie case of disparate impact. In *Baker v. Garcia Realty Inc., (District Court 1996)*, the Court found that a "bedroom plus one" policy clearly impacts families with children more than the general population because minor children tend to share bedrooms and families tend to have larger households. Larkin's policy for this specific apartment, allowing a maximum of three people to reside in this two-bedroom apartment, is essentially a "bedroom plus one" policy. Accordingly, a court would likely find that this policy establishes a prima facie case of disparate impact.

B. Larkin can likely prove that his practice is necessary.

Larkin has a strong likelihood of proving that the challenged practice is necessary to achieve one or more substantial, legitimate, nondiscriminatory interests. In *Baker*, the Court found that avoiding renting to groups of college students was a substantial, legitimate, nondiscriminatory interest. Larkin's interest here is almost identical. Larkin states that he has had problems with young people cramming four people into a two-bedroom apartment to keep their housing costs down, so his policy is to rent this specific apartment to at most three people. He asserts that the policy is about the total number of people in the apartment, regardless of whether this includes children or adults. Under *Baker*, this is likely considered a substantial, legitimate, nondiscriminatory interest.

C. Turner may fail to show that the policy is overbroad, but would likely succeed in showing that the goals of the policy could be achieved with a less restrictive means.

Turner will likely argue that Larkin's occupancy policy is overbroad because it is more stringent than the requirements of the Centralia Municipal Housing Code. The 15th Cir. has held that in these cases, a significant mismatch between occupancy limits set by a

municipal code and those set by the landlord is evidence that the landlord's limit is overbroad. There is no mathematical formula, but case law suggests that a mismatch exists where the Code restricts occupancy to four people and a landlord restricts it to two. In *Baker*, an 8:4 ratio (code limit to landlord limit) was considered a significant mismatch.

The subject apartment here is 500 square feet, and Larkin restricts it to three people.

Under the Centralia Housing Code § 15 (a), a 500 square foot apartment is legally restricted to housing no more than four people. Case law indicates that this 4:3 ratio is not a significant mismatch. Turner may therefor fail to show that the policy is overbroad.

Turner would likely succeed in showing that the goals of the policy could be achieved with a less restrictive means. In *Baker*, the Court stated that the landlord's failure to explain why their policy remained in place even after learning that an inquiry was coming from a family and not college students was proof that the landlord could use a less restrictive means of meeting its stated goal of avoiding renting to large groups of college students. The facts are similar here. Larkin has not yet explained why his policy remained in place even after learning that Turner was a single father with kids and not a group of young students. Accordingly, a court would likely find that Turner has met his burden of showing that the goals of the policy could be achieved with a less restrictive means.

MPT 2
Representative Good Answer No. 1

To: Loretta Rodriguez
From: Examinee
Date: February 25th, 2025
Re: Professor Eugene Hagen Record Release

Introduction:

This Memo serves to assess whether record production request by Paul Chen is mandatory in the case regarding Professor Eugene Hagen of UF Law School. This memo will not include a separate statement of facts per your instruction.

Analysis:

To evaluate whether or not compliance is required with Chen's record request, each record must be evaluated individually, as well as the manner in which Chen requested the records outright.

1. Paul Chen conducted a valid record request.

Under Franklin Civil Code 14-1, public records include all documents created, maintained, or held by a public body. Per 14-5(a), any person wishing to inspect public records shall submit written request to the custodian. Additionally, 14-2 conveys the right of every person to inspect the public records of the state, barring exceptions.

Here, Paul Chen properly sent a written request to the custodian of records, and is within his stated right to inspect records not subject to exception. Thus, generally there is a duty to produce records requested. However, each request must be assessed against statutory exceptions and case law to determine the need to produce.

2.The Annual Performance Reviews by the Dean of UF School of Law from 2019 to the present do not need to be produced to Chen as performance reviews are exempt opinion records.

Per 14-2(a)(3), letters or memoranda that are matters of opinion in personnel files are exempted from disclosure under the Franklin Inspection of Public Records Act (IPRA). The court in Fox v. City of Briton, has interpreted matter of opinion within the statute to constitute personnel information of the type generally found in a personnel file including disciplinary reports, performance reviews, promotions, etc. This is consistent with Newton v. Centralia School District which barred a journalist from accessing personnel evaluations under the same rationale. Further, the courts in Pederson v. Koob found that documents exempt under 14-2(a)(3) are exempt as a whole unlike other exemptions which may apply to specific parts of a document.

Here, UF Law School, a public entity, is in possession of the requested annual performance reviews. The reviews contain various opinions and complaints from students, as well as information about Eugene's teaching quality and methods. While the negative comments in the teaching evaluations may be construed as complaints from the public, the court will likely hold that they are an extension of the performance review as their purpose was to collect information for performance review, rather than standalone complaints. Further, performance reviews are exempt as a whole under Pederson, and so the contained student evaluations would remain exempt.

Thus, the performance reviews are subject to exemption by 14-2(a)(3) and will not need to be produced to Chen.

3. The single complaint from the public must be produced to Chen as they are nonexempt public records.

Per 14-2(a)(3), letters or memoranda that are matters of opinion in personnel files are exempted from disclosure under the Franklin Inspection of Public Records Act (IPRA). The court in Fox v. City of Briton, has interpreted matter of opinion within the statute to constitute personnel information of the type generally found in a personnel file including disciplinary reports, performance reviews, promotions, etc. Notably however, the court in Franklin found that the placement of nonexempt opinion information does not exempt that information from requests for production. Additionally, the court in Fox held that complaints from the public are not protected from disclosure as they stem from the very body of persons who has the right to inspect these records, rather than being administrative productions.

Here, Egebe has received one complaint, from Pamela Rodgers, and that record is kept in Eugene's personnel file. The location of the complaint in the personnel file does not protect it from production, and the lack of complaints generally bears no weight on the requirement of production. Portions of the complaint have been paraphrased publicly by Pamels Rodgers in Chen's article "What Is UP with Professor Eugene Hagen", though that publication, despite alleging a substance abused problem, has no bearing on the discoverability of the record.

Thus, the single complaint from Pamela Rodgers must be produced to Chen.

4.The chart of names of complaining parties does not need to be produced as a record request cannot mandate creation of a public record.

Under IPRA 14-5(b), the Franklin Inspection of Public Records Act shall not be construed to require a public body to create a public record.

Here, Chen requests the production of a chart of anyone (faculty, staff, students, or members of the public) who have made a complaint about Professor Hagen. Various existing information exists that is pertinent to this request, including several complaints from students, and a single complaint from the public. Nonetheless, Dean Williams has attested that no chart exists of the names of these persons. A public body is not required to create a record based on a records request, and so there is no need to create and produce this record. The underlying complaints could be produced as they are not subject to an exemption, but Dean Williams has indicated a priority of protecting as many documents as possible from disclosure.

Thus, the chart of names of complaining parties does not need to be produced.

5.Professor Hagen's record with UF Campus Police Department needs to be produced, with the identity of confidential sources redacted and photograph and written identity of Professor Sykes redacted.

Under IPRA 14-2(a)(4), portions of law enforcement records are exempt from production that reveal confidential sources or methods or that are related to individuals not charged with a crime, including any record from inactive matters or closed investigations. Where portions of a record are exempt and others are not, per 14-6, the custodian shall separate the disclosure and nondisclosure prior to inspection and the nonexempt information shall be made public. Further, in Torres v. Elm City, in reversing the opinion of the lower courts, the Supreme Court held that whether or not an investigation is ongoing is not material to a request for document production. Separation of police records has been evidenced by Wynn v. Franklin Department of Justice, in which a police recording had confidential information redacted. Further, under Dunn v. Brandt, the exemptions to IPRA's mandate of disclosure are narrowly drawn, which can be used as a guiding principle when interpreting specific facts. Further, not previously mentioned when assessing the previous

pieces of evidence is that IPRA, under section 14-1 defines public records as not only documents and writings, but also photographs, recordings, etc.

Here, The UF Campus Police Department have a single record of Professor Hagen; an arrest for possession of marajuana that occurred two weeks ago. The record from the arrest contains two photographs as well as an incident report, with the incident report notably including the time, date, location, and name of a confidential source. Confidential sources must be redacted from public disclosures.

The photographs notably contain Hagen and another professor, Sykes, who was not charged with a crime. Per the stated exception, records regarding parties not charged with a crime are an exception to the record production requirement. The courts have not been clear on whether the entire photo must be redacted, or if the part of the photos including Sykes is a "portion", and can thus be redacted or blacked-out from the photo, with the rest of the photo being disclosed. Per the "narrowly drawn" standard set out in Dunn v.

Brandt, the court may lean towards redacting only Syke's identification from the photos, but allowing the rest of the two photos to be disclosed. This position may also be substantiated by Wynn when portions of an audio recording were redacted while the remainder of the audio recording was left subject to public disclosure. Additionally, any written descriptions of Sykes at the scene must be redacted under the same non-charged-parties provision.

Finally, despite the recent timing of the arrest and ongoing charge by the District Attorney, the ongoing nature of an investigation of case does not preclude production of public documents; the charge prevents Hagen from arguing that the records may not be produced due to containing persons not charged with a crime.

Thus, the custodian will need to redact the information regarding the confidential source from the police report, and redact Sykes identity from the photographs for production as well as the written report. Note that a court may find that the entirety of the photographs are not subject to disclosure.

Conclusion:

Pursuant to the stated purpose of complying with IRPA while protecting as many documents as possible from disclosure, the single public complaint and a redacted version of the police request must be produced, while the annual performance reviews and chart of complaining parties do not need to be produced. Please let me know if I can be of further assistance in this matter.

Representative Good Answer No. 2

In re University of Franklin

To: Loretta Rodriguez, General Counsel
From: Examinee
Date: February 25, 2025
Re: Professor Eugene Hagen - IPRA Request by Paul Chen - Analysis

Dear Ms. Rodriguez,

As requested, I have analyzed the issues of what the University of Franklin is bound to produce in response to Mr. Chen's public records request.

Broadly, and as you know, every person has a right to inspect public records absent certain documents which fall under statutory exemptions. Franklin Civil Code s 14-2. The University is subject to this disclosure, as well, as a public body and this includes records relating to public employees such as Professor Hagen.

In order to request documents, a person must submit a written request to the custodian.

Franklin Civil Code s 14-5. Here, Mr. Chen submitted a proper written request to the University of Franklin custodian of records on February 24, 2025, seeking documents related to Professor Hagen's employment and criminal records, as well as complaints made to the University about him. Each will be analyzed in turn.

1. The University of Franklin is not bound to produce Professor Hagen's annual performance reviewed completed by the Dean of the UF School of Law from 2019 to the present.

Mr. Chen seeks Professor Hagen's annual performance reviews completed by the Dean of the Law School from 2019 to present. The University is not bound to produce these.

The University has advised that it is in possession of Professor Hagen's last two annual performance reviews. These contain mixed substance, including both opinions and objective material. Dean Williams states that these reviews include reviews that his teaching is strong and he is a popular teacher, but that he hasn't been showing up for faculty or committee meetings or office hours. Dean Williams also referenced poor student course evaluations, but students are not named. Those reviews noted that Professor Hagen has been late for classes and has been moody and erratic in class. He also doesn't respond to students in addition to the aforementioned failure to attend office hours. The annual reviews also include objective information regarding Professor Hagen's classes, quality of his teaching, committees he has served on, what publications he has completed, and the quality of his publications.

The Court in Fox v. City of Brixton considered what was intended to be included in the exemption under section 14-2(a)(3) of the Public Records Act. It was concluded that it was intended to include only the following - "personnel information of the type generally found in a personnel file, i.e. information regarding the employer/employee relationship such as internal evaluations; disciplinary reports or documentation; promotion, demotion, or termination information; or performance reviews."

Expressly, this interpretation prevents disclosure of performance reviews. Although there are some matters of opinions and some matters of fact contained, it is unlikely that this will trigger the duty to separate the records. In Pederson v. Koob, the plaintiff sought disclosure of an investigation report pertaining to Kenneth Larson, a livestock inspector for the Franklin Livestock Board. Because the report contained potential disciplinary action, there was evidence to shield disclosure. On appeal, Pederson argued that the facts pertaining to misconduct by a public officer must be disclosed whereas opinions may be properly shielded. The Appeals Court disagreed. Citing Newton v. Centralia School District, the court upheld the contention of the Newton court that the exemption for "letters or memoranda that are matters of opinion in personnel files to include items such as letters of reference, documents concerning infractions and disciplinary action, personnel evaluations, opinions as to whether a person would be rehired or as to why an applicant was not hired, and other matters of opinion" would be characterized, as a whole, as opinion information.

Subject to this analysis by the Pederson and Newton courts, this indicates that, although the performance reviews of Professor Hagen contain factual information that falls into a more objective category, because they are contained in performance reviews held by his employer, they are characterized, in their entirety, as opinion information and are exempted from disclosure under the IPRA.

2. The University of Franklin is bound to produce any complaints about Professor Hagen submitted by members of the public to the UF School of Law.

Mr. Chen seeks any complaints made by members of the public to the UF School of Law regarding Professor Hagen. The University is bound to produce responsive documents.

The University has received a single complaint from members of the public, though complaints have also been received by students. The one complaint is that of Ms. Pamela Rogers, the mother of a current law student.

She wrote a letter complaining about Professor Hagen and stating that he has a substance abuse problem and should not be teaching.

In Fox v. City of Brixton, the plaintiff made a written request to the City asking to inspect and copy all citizen complaints filed against John Nelson, a police officer. The City attempted to argue that these documents fell into the exempted category of s14-2(a)(3), exempting from disclosure "letters or memoranda that are matters of opinion in personnel files." The Court, subsequently noted that the core purpose of the IPRA is to provide access to public information, thus encouraging accountability for wrongful acts by public officials. The Court in Fox determined that this exemption is intended to include only the following - "personnel information of the type generally found in a personnel file, i.e. information regarding the employer/employee relationship such as internal evaluations; disciplinary reports or documentation; promotion, demotion, or termination information; or performance reviews."

Fox argued that the citizen complaints he sought had to do with Mr. Nelson's role as a public servant, not as an employee, while the City argued that the complaints were related to job performance. The Court noted that, while these complaints could lead to investigations about the employee's job performance, they were not, in and of themselves, opinions about job performance in that context. Instead, they were unsolicited complaints from members of the public. Because the complaints concern the officer's ability to do his job and come from the public he is intended to serve, they do not fall into the Legislature's intent of protecting employer/employee records. "It would be against IPRA's stated public policy to shield from public scrutiny as 'matters of opinions in personnel files' the complaints of citizens who interact with city police officers."

Similar to Fox, the complaint letter sent by Ms. Rogers is likely subject to disclosure by the University. Ms. Rogers is impacted by the conduct of Professor Hagen in that her child was being taught by him. She has a right to make a complaint and for that complaint to be utilized for accountability purposes, the whole point of the Public Records Act.

Other members of the public should be able to scrutinize complaints by citizens, like in Fox, as they may also be subjected to the misconduct by particular officials. Here, Mr. Chen is a student at the University, possibly a student of the law school. He has a right to know of the misconduct alleged against Professor Hagen and what information the University has on such conduct.

It is more than likely the University will need to produce Ms. Rogers' complaint to Mr. Chen in response to his request to inspect records.

3. The University of Franklin is not bound to produce a chart containing the names of anyone who made a complaint about Professor Hagen.

Mr. Chen has sought a chart containing the names of anyone who made a complaint about Professor Hagen. However, Dean Williams has informed us that this is not a type of record maintained by the Law School or University. While she states that it would be possible to make one, this is likely not necessary.

Franklin Inspection of Public Records Act, Franklin Civil Code s 14-5(b) states, "Nothing in this Act shall be construed to require a public body to create a public record." As such, because a chart as requested by Mr. Chen is not something regularly maintained or created by the University of Franklin, there is no duty to create and produce one in response to Mr. Chen's request.

4. The University of Franklin is bound to produce some of the records involving Professor Hagen in the possession of the UF Campus Police Department.

Mr. Chen has sought law enforcement records involving Professor Hagen. Subject to some limitation and some separation of information by the custodian of records, these documents are subject to disclosure.

The Chief of UF Campus Police, Chip Craft, has informed us that, relevant to Professor Hagen, the UF Campus Police is in possession of the following records: an incident report and two photographs. Mr. Craft has informed our office that the incident report contains details about an incident involving Professor Hagen smoking marijuana in his office on campus and includes the time, date, location, and the name of the confidential source who tipped off the police about the incident. It also contains descriptions by the responding officer and statements made by Hagen and a Professor Sykes who was also involved. The photos are selfies taken by Professors Hagen and Sykes.

Section 14-2(a)(4) of the Franklin Civil Code exempts from inspection certain law enforcement records. However, this exemption is limited to those records which reveal confidential sources or methods or that relate to individuals not charged with a crime. Other law enforcement records must be produced regardless of the stage at which investigation is at.

In Torres v. Elm City, the plaintiff sought records from the City involving arrest records for his sister, Francine Ellis. The City agreed to produce a primary incident report and one subpoena, but refused to produce anything else due to the fact they were actively investigating the crime committed and the "release of the requested information posed a demonstrable and serious threat to that ongoing criminal investigation." They further stated they would produce the records following the completion of the investigation. The Court disagreed with the City's assertion that s 14-2(a)(4) only intended that records be released only after the completion of ongoing investigations. Instead, the intent of the statute "is to ensure... that all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of public officers and employees. " citing s 14 - Declaration of Policy. This purpose states nothing about infringing upon the integrity of an investigation. The Legislature's specific exemptions indicate that if they wanted to include further restrictions on disclosure, they would. They are not concerned with the stage of investigation, but, instead, only with the disclosure of private information such as confidential sources and methods, and of information regarding individuals not charged with a crime. As explained by the Court in Torres, police investigation records are subject to disclosure absent this exception.

Further, even where records may contain some exempted and some non-exempted, the public agency has a duty to separate out the non-exempted material and produce that in response to a request. Torres; s 14-6(a). Here, the UF Campus Police, a public agency, have stated that the records they have relevant to Professor Hagen's arrest include the name of a confidential informant. While their office may be permitted to separate out/redact that name, as well as any information/evidence related to Professor Sykes who was not charged, and unless the Office can demonstrate any of the other material shows confidential information or methods, the remainder of the records are non-exempted and must be produced to Mr. Chen in the name of upholding the Legislature's purpose of providing persons with the greatest possible information regarding public officials and employees.

5. Conclusion

In short, subject to the Inspection of Public Records Act, the University of Franklin is bound to produce the following documents in response to Mr. Chen's written public record response:

1. The Complaint about Professor Hagen submitted by Ms. Rogers as a member of the public to the UF School of Law.

2. Some of the records involving Professor Hagen in the possession of the UF Campus Police Department, excluding those related to the confidential source and Professor Sykes.

Maryland State Board of Law Examiners

FEBRUARY 2025 UNIFORM BAR EXAMINATION (UBE) IN MARYLAND – REPRESENTATIVE GOOD ANSWERS

I hope this research assists you in advising the University on their duty to disclose under the Inspection of Public Records Act. Please let me know if I am in any way able to assist further in this matter or if you have any questions regarding my conclusions.

MEE 1
Representative Good Answer No. 1

1. Kim is not an agent to Comet Fitness when she purchases the treadmill as she had no authority to act.

An agent is someone who acts on behalf and for the benefit of the principal. There are three elements to create a Principal-agent relationship: 1) control; 2) assent; and 3) for the benefit of the principal. Control means that the principal can decide how the agent acts.

Assent means that the principal and agent consented to the agency relationship through either a discussion or agreement. Benefit requires that the agent is acting, or engaging in services for the benefit of the principal.

Here, Kim overheard a discussion with Bill and Nancy regarding the opening of Comet Fitness, and they merely stated that she should come for a job interview. Kim then overheard Bill say to Nancy, "I wish [the gym] had two more [treadmills]." Kim then took it upon herself to go to the sporting goods store that was going out of business and purchase the treadmills on her own volition. This is no way indicative of Comet Fitness' "control" as Kim, without even having the trainer job, acted on behalf of Comet Fitness. However, Comet Fitness never instructed her to so do. Assent is not satisfied as Nancy and Bill merely told Kim to come work for them, however there was no indica that Kim was even going to work for them or that this was a formal agreement. Further, Kim only said she would "think about it". Thus, there was no assent. Lastly, Kim did purchase the treadmills for the benefit of Comet Fitness, but she also had selfish goals, believing that the purchase would "impress" Bill and Nancy.

There was no agency relationship created.

2.a. Kim did not have actual authority to purchase the treadmill as the partnership granted her no express or implied authority.

An agent is granted the authority to act through either actual authority or apparent authority. Actual authority may be indicated in two ways: 1) express or implied. Express authority is straightforward, in that the principal directly grants the agent the power to act on behalf of the principal like in an employee relationship. Implied, more ambiguous, but may be inferred when the principal controls the agent and has the agent act for the benefit of the principal.

In this case, Bill and Nancy never hired Kim for the position of gym trainer, there was only conversation regarding the job. Thus, Kim was never an employee, acting as an agent under Comet Fitness, in which express authority could be granted. However, even for the more ambiguous "implied authority" there are still no facts which indicate that Kim had the authority to act on behalf of Comet Fitness. For one, Nancy and Bill had not seen Kim in several months, and two, they did not even state their need to acquire more treadmills directly to Kim, rather she overheard it in a conversation. There are no facts in which Kim realistically could have believes that she had the authority to act for the benefit of the partnership and bind it.

There is no actual authority for Kim to act on.

b. Kim did not have apparent authority as Nancy and Bill never held Kim out as an agent to the gym.

Apparent authority may be indicated when a third party believes that someone has the power to make binding decisions on behalf of the principal.

In this case, the gym was recently opened, thus the sporting goods store may not have known the employees who were working for Comet Fitness. The sporting goods store reasonably could have believed that Kim's actions were for the benefit were sought by Comet Fitness as she specifically stated that she was acting on behalf of Comet Fitness. However, Comet Fitness never held Kim out to be their employee nor were there any facts that she was known to be an employee. Thus, she acted wholly on her own accord as she has no authority to make binding decisions on the partnership.

3. Nancy had the authority to bind Comet Fitness as she is a partner in Comet Fitness.

Partners have the ability to bind the partnership when it is within the scope of the partnership. The scope of the partnership includes generally conducted business would include areas, or purchases that the partnership usually or has engaged in. Partners do not need to receive permission from their other partners to bind the partnership.

In this case, Nancy went and bought the three treadmills with the television for Comet Fitness. Purchasing these treadmills were in the scope of the partnership as Nancy herself had purchased these versions treadmills prior, and the partnership is for a gym, which is wholly in the scope of the partnership. Nancy did not need to ask permission to acquire treadmills for the gym as they were in the scope of generally conducted business by the partnership. Further, this analysis does not change just because they are not the same color as the prior equipment. Nancy affirmed that they were suitable for the partnership and her decision should be binding.

Nancy has the authority to bind the partnership as it relates to purchasing the treadmills from the sporting goods store.

Representative Good Answer No. 2

1. The issue is whether Kim was an agent of Comet Fitness when she purchased the treadmill.

A principal-agent relationship is created through an agent's agreement to work on behalf of the principal, for the principal's benefit, and under the control of the principal. An agent has the authority to bind the principal. A common type of principal-agent relationship is employer-employee.

Here, Bill and Nancy told Kim that they had opened a gym, and that Kim should consider working for them as a trainer. Because Bill and Nancy did not agree to hire Kim, and only merely suggested Kim should consider working for them at their gym, an agency relationship was likely not created here. There was not an agreement, merely a suggestion. Further, Kim told Bill and Nancy that she would "think about it and get back to them." As such, Kim knew that she had not yet been hired as an employee.

Although agency relationships do not need to be explicit to be created, the interaction between Bill, Nancy, and Kim likely does not arise to the level of implicit creation of an agency relationship. It was not reasonable for Kim to believe that she was acting as an agent with the

authority.

2.a. The issue is, assuming Kim was an agent of Comet Fitness whether she had actual authority to purchase the treadmill.

Actual authority exists when, based on a principal's words or conduct, the agent reasonably believes they have the authority to act. Actual authority is either express or implied. Actual express authority exists when a

principal explicitly tells an agent to act on their behalf. For example, a principal telling an agent to hire employees. Actual implied authority compromises acts that are incidental to the agent's express authority. For example, if an agent had been told to hire employees, then it is reasonable for the agent to also believe they had the authority to make calls, conduct interviews, post listings, etc. in their pursuit of hiring employees.

Here, Kim did not act with actual express authority because she had not been told to purchase the treadmill. Instead, Kim overheard Bill and Nancy say that they "desperately" needed more treadmills. Kim thought that she had been hired and wanted to impress

2.b. The issue is, assuming Kim was an agent of Comet Fitness whether she had apparent authority to purchase the treadmill.

Apparent authority exists when, based on a principal's words or conduct, a third party reasonably believes the agent has the authority to act. There is no apparent authority when a third party knows that the agent lacks the authority to act.

Here, it is more likely that there was apparent authority than actual authority. The store owner is the third party in this situation. Because of the storeowner's past interactions with Bill and Nancy, it may not be unreasonable for the storeowner to have thought Kim had apparent authority to bind Comet Fitness. During Bill's conversation with the storeowner, Bill specifically said he needed one or more new treadmills.

Based on Bill and Nancy's words and actions, and Kim then picking up treadmills, they may have created the appearance of apparent authority to the storeowner.

However, there likely was not apparent authority. During the storeowner's conversation with Bill, Bill told him that Comet needed more treadmills and that he--Bill--would be over to check them out. Had Bill told the storeowner he would send an employee to get a treadmill, it would be more reasonable for the storeowner to have reasonably relied on the appearance of apparent agency. The storeowner had no earlier interactions with Kim in which she purchased anything on behalf of Comet fitness. It was likely not reasonable for the storeowner to have relied on Kim's appearance of authority to bind the gym.

Thus, there likely was not apparent agency.

3. The issue is whether Nancy had the authority to bind Comet Fitness to the contract to purchase the two treadmills with video touch screens.

Partners are agents of the partnership. Contracts entered into by partners, in the ordinary course of business of the partnership, will bind the partnership. Each partner is personally liable for the obligations of the partnership.

Here, Nancy's purchase of the treadmill was done in the ordinary course of the partnership's business--she was purchasing treadmills for the partnership. Further, Bill had previously told Nancy that he "sure wished" the gym had specifically two more treadmills. It was reasonable for Nancy to believe she had authority to bind the partnership based on Bill's words, especially as Nancy is a general partner and acted in the ordinary course of business. As such, it is likely she had actual authority.

Further, it was likely that the storeowner knew Nancy was a partner of Comet Fitness, as the store was only 3 blocks away. As stated above, Bill told the storeowner that the gym needed new treadmills and that he would be by the store to pick up treadmills. As such, it was likely Nancy had apparent authority.

Counterargument ?

Thus, based on both Bill's statements to her, Bill's statements to the storeowner, and the fact that the treadmills were purchased in the ordinary course of the partnership's business, Nancy likely had the authority to bind Comet Fitness to the contract to purchase the two treadmills.

MEE 2
Representative Good Answer No. 1

1. Type of First Amendment Forum

Generally, the First Amendment protects the constitutional right of free speech.

However, there are certain ways for the government to either restrict or somewhat limit speech depending on where the speech is taking place, otherwise known as the forum.

For the purposes of First Amendment speech protection and regulation, there are four different types of forums: (1) public forums; (2) designated public forums; (3) limited public forums; and (4) non-public forums. Each different type of forum has different rules for what type of speech can be regulated, and the standards that must be met in order for that regulation to be valid.

Public forums are places where public speech is historically and traditionally known to take place. Sidewalks and public parks are typical examples of public forums. In public forums, an ordinance restricting speech must be both content and viewpoint neutral, unless the government can prove a substantial and compelling interest in restricting that speech. The government actor must also prove that there is no less restrictive means for achieving this interest.

Designated public forums are forums that is ordinarily not considered public, but is held open to the public at designated times or for designated purposes. A typical example of this would be a school that allows organizations to hold meetings in their classrooms after school hours. In a designated public forum, content-based restrictions are allowed, but viewpoint-based restrictions are not allowed. Ordinances restricted speech in a designated public forum are subject to time, manner, and place restrictions as well. There is also a requirement that the government use the least restrictive means to achieve the purpose of the ordinance.

Limited public forums are forums that are open to the public, but for limited purposes.

An example of this would be a courthouse. In a limited public forum, an ordinance attempting to restrict speech can be both content-based and viewpoint-based. It is also subject to time, manner, and place restrictions. There is not a requirement that the government use the least restrictive means analysis in these forums.

A non-public forum is a forum that is privately owned and may regulate or restrict speech based on both content and viewpoint. There need not be any least restrictive means analysis.

Here, the pedestrian median strip is covered with grass and trees, but has 10 feet paved segments on each end. The ordinance states that the definition of the median strip for the purposes of this ordinance is the paved part of the strip. This pedestrian median strip is the most similar to a public sidewalk, supported by the fact that ordinances approving signs on trees and poles in median strips also address carrying signs on sidewalks adjacent to public roadways.

Therefore, the pedestrian median strip would be considered a public forum for First Amendment purposes.

2. Content-Based or Content-Neutral Regulation

The issue is whether the ordinance, in banning persons on the median strip from communicating with drivers, is a content-based or content-neutral restriction. This classification will impact whether the ordinance is valid, considering that the median strip would be considered a public forum. As stated above, a public forum cannot restrict speech based on content.

Here, the ordinance states that no person "shall communicate or attempt to communicate with occupants of vehicles passing by or stopped near the pedestrian median strip." The ordinance does not list any specific content that is prohibited. Though the Town council has received complaints about solicits asking for money, the ordinance does not mention solicitation or any such specifics as to content.

Therefore, the Town ordinance would be considered a content-neutral regulation of speech.

3. Potential Violation if Content-Based

If the ordinance were to be content-based, then applying it to the man who held up a sign stating his opposition to a candidate for Town council would likely violate his First Amendment rights.

The rules for restricting speech in a public forum are stated above. If the ordinance were to be considered to restrict content based on solicitation, then the ordinance being applied to the man would violate his rights because the ordinance would not apply to him.

If the ordinance were to be considered to restrict speech with the content of being "distracting," since the preamble to the ordinance explains that its purpose is to promote traffic safety and prevent pedestrians from engaging with drivers in a distracting manner, then the ordinance would properly apply to him, but it would violate his First Amendment rights because public forums cannot restrict speech based on content unless the government can prove a substantial and compelling interest. Because other Town ordinances allowing posting signs trees, poles, and carrying them on sidewalks adjacent to public roadways, this shows that the ordinance regarding the pedestrian median strip to promote traffic safety is not substantial or compelling enough for the Town to meet that burden of proof.

Therefore, if the ordinance were content-based, applying it to the man would violate his First Amendment rights.

4. Potential Violation if Content-Neutral

If the Town ordinance were content-neutral, it would likely still violate the man's First Amendment rights if applied to him because it is not the least restrictive means for achieving the ordinance's purpose.

The rules for regulation of speech in a public forum are listed above. The Town ordinance must survive a no less restrictive means analysis in order for it to be valid, even if it is content neutral.

Here, the other Town ordinances that allow posting approved signs on trees and utility poles in median strips and the posting and carrying of signs on sidewalks adjacent to public roadways shows that the ordinance as applied to the man carrying his sign is not the least restrictive means for promoting traffic safety near the pedestrian median strip. If the man's type of speech is permitting in other similar forums by other Town ordinances, it would not be valid as applied to the man in this case.

In conclusion, if the ordinance were content-neutral, it would still violate the man's First Amendment rights if applied to him.

Representative Good Answer No. 2

1. The issue is whether Kim was an agent of Comet Fitness when Kim purchased the treadmill.

A principal/agent relationship is formed when the principal assents for the agent to act on her behalf, the agent assents to act for the benefit of the principal, and the principal exercises some degree of control over the agent. A principal/agent relationship often arises in an employer/employee context, though such a relationship is not necessary.

Here, Kim was not an employee of Comet Fitness; rather, she was Nancy's friend who Bill and Nancy happened to run into at a party. Although Nancy told him that Kim "should consider coming to work for them as a personal trainer," an employer/employee relationship was not formed when Kim said she would think about it and let Nancy know. Thus, it is highly unlikely that a court could reasonably find that Nancy provided assent for Kim to act as an agent of Comet Fitness. Additionally, the conversation about Kim possibly working for Comet Fitness was with respect to Kim being a personal trainer, which role would not typically include making purchases of equipment for the business.

Although the requirement of assent is not met, the facts do indicate that Kim intended to act for the benefit of Comet Fitness as she had heard Bill say to Nancy that he wished the gym had two more treadmills, and Nancy agreed that they "desperately needed to buy one or two more."

However, Nancy and Bill, as partners of Comet Fitness, did not exercise control over Kim.

Therefore, although Kim intended to benefit Comet Fitness, because neither partner of Comet Fitness assented to or exercised control over Kim's conduct, Kim was not acting as an agent of Comet Fitness when she purchased the treadmill.

2.a. Assuming Kim was an agent of Comet Fitness, the issue is whether she had actual authority to purchase the treadmill for Comet Fitness.

When an agent is acting on behalf of a principal, the agent may act under actual authority, either express or implied. Express actual authority is when the principal expressly requests that the agent take a particular course of action. Implied actual authority exists when the agent reasonably believes that such conduct is necessary to carry out the purpose of the agency relationship for the benefit of the principal.

Here, Kim did not have express actual authority, because neither Nancy nor Bill expressly asked her to purchase a treadmill on behalf of Comet Fitness. However, Kim can argue that since both partners had communicated that they wanted one or two more treadmills, she was expressly authorized. However, this argument will likely fail as these statements were an internal conversation between Bill and Nancy and were not directed to Kim.

It is also unreasonable for Kim to believe that purchasing a treadmill was necessary to carry out the purpose of an agency relationship, if any, as the only "authority" granted to Kim by a partner of Comet Fitness was to work for them as a personal trainer. Thus, Kim did not have implied actual authority.

2.b. Assuming Kim was an agent of Comet Fitness, the issue is whether she had apparent authority to purchase the treadmill for Comet Fitness.

When an agent is acting on behalf of a principal without express authority, the agent's conduct may be binding nonetheless under a theory of apparent agency. Apparent agency exists when the principal manifests to a third party that the agent has authority to act on behalf of the principal. When apparent authority exists and if the agent discloses that they are acting on behalf of a principal, the agent will not be bound to the contract, and the principal will be.

Although Bill and Nancy are acquainted with the owner of the sporting goods store, there is nothing to indicate that Bill or Nancy had made any manifestation to the sporting- goods store that Kim was authorized

to act on behalf of Comet Fitness. Bill had called the store owner and indicated that the gym could use one more, but he never mentioned that Kim was authorized to make any purchases. Rather, he specifically said that "*I'll* try to get over there to check them out."

Though Kim told the store owner that she was acting on behalf of Comet Fitness, the disclosure of a principal is not relevant if there is no apparent authority to begin with.

Because Comet Fitness did not make any manifestations to the sporting goods store that Kim was authorized to act as its agent, Kim did not have actual authority to purchase the treadmill for Comet Fitness.

3. The issue is whether Nancy had authority to bind Comet Fitness to the contract to purchase the two treadmills with the video touchscreens.

A general partnership is a business arrangement where two or more people agree to carry out a business as co-owners for profit. In a partnership, all partners have the authority to take whatever actions are reasonably necessary to carry out the business of the partnership, and each partner may bind the partnership without the consent of the others for activities that occur in the ordinary course of business.

Here, the partnership is a gym, and it already owns five treadmills. Both partners had expressed that they wanted to acquire one or two treadmills (including Bill saying that he wishes that "it had two more"). There is nothing to indicate that the transaction was out of the ordinary course of business nor that it was unreasonable or unfair to the partnership.

Additionally, the facts indicate that the treadmills were similar to treadmills that Nancy had previously purchased for the business. Bill's complaint after the transaction took place that "they're nice but not the same color as our other treadmills" is not sufficient to undermine Nancy's authority to bind the partnership in this transaction.

Therefore, Nancy had authority to bind Comet Fitness to the contract to purchase the two treadmills with the video touchscreens and thus the partnership is liable to the store owner for the cost of the two treadmills.

MEE 3
Representative Good Answer No. 1

1. Whether Brenda can show that Alan breached his duty of care based on his violation of the school-bus law.

Negligence per se is a cause of action that can be used to assert liability on a party who has violated a statute. If a party asserts this cause of action, they must show that the defendant violated the statute, the harm caused was one that the statute was meant to protect, and the plaintiff was in the class of persons that the statute was meant to protect.

Here, the statute in question that Brenda is asserting against Alan is the school bus law that prohibits vehicles from passing a stopped school bus under these circumstances. Brenda is likely unable to show that Alan breached his duty of care based on violating the statute when he impatiently swerved around her car and the bus and caused her bumper to get a gash on here driver's side door. Although Alan clearly violated the statute in his actions and the harm that was caused is likely the kind that the statute is trying to prevent, Brenda will not be able to show that she was in the class of persons that the statute is meant to protect. This statute is likely geared towards protecting children who are crossing dangerous intersections and streets before and after school. The statute is meant

to enforce unsafe driving, but Brenda is not in the class of persons that the statute was likely designed to protect. Therefore, she will not prevail in establishing a claim solely under negligence per se even though Alan admitted to the facts above.

2. Whether Brenda can prove Alan's liability based on Alan's allegedly detaining her against her will.

False imprisonment requires a party to show that a defendant intended to confine another; actually, confined another; and the other party has knowledge of the confinement or was harmed by it and there were no reasonable means of escape at that time.

Here, Brenda is likely to show that she has a claim against Alan for false imprisonment. When Brenda pulled into a gas station lot, ran into the restroom, and locked the door as Alan began pounding on the restroom door, shouting "Come out so you and me can have a talk, if you know what I mean!", and "I've got all day, so get comfortable" this was the beginning of the intent to confine. Although Alan did not physically force Brenda into the bathroom for the 20 minutes that she stayed inside the stall, others in her situation would not have found it safe to leave. Alan's aggression on the highway leading up to this incident, plus the compounding threats for Brenda to come out of the stall establishes the knowledge that Brenda was confined and that she had no other reasonable means of escaping because opening the door to leave, at the moment Alan was right behind the door, was not reasonable. Therefore, there is likely a cause of action for false imprisonment against Brenda.

3. Whether Alan's admission is enough to prevail in a motion for partial summary judgment to establish that Alan is liable on the wrongful death claim.

Negligence requires duty, breach, causation, and damages.

A summary judgment motion is granted when the moving party is able to show that there is no genuine dispute of material fact. If the nonmoving party is able to refute this by presenting compelling evidence to show that there is a genuine dispute of material fact, the motion must be denied.

Duty

Although it can be established that Alan had a duty to exercise reasonable care while driving on the road, there was no direct duty owed to the family patient that Brenda was responsible for performing the scheduled surgery on.

Breach

However, Alan submits to the facts in this case and admits that he breached his duty of due care when he was driving. He also submits to the actions he engaged in when following Brenda to an exit that was not his to continue to harass her. People in similar circumstances would not think it was reasonable for Alan to engage in such behavior.

There was a breach because he did not act as a reasonably prudent person when driving or when engaging in the kind of conduct that caused Brenda to be confined in a bathroom for over 20 minutes.

Causation

There was actual causation to Brenda's confinement and the patient's death because if Brenda had arrived 15 minutes sooner, she would have arrived in time to perform the surgery and the patient would have likely survived. The issue here is with proximate cause because it is not foreseeable for Brenda to be held up from performing the surgery thereby causing the patient's death.

Damages

Although the damages are present, a loss of life, negligence is not likely to be proven from all elements. Therefore, these facts are not sufficient to grant a motion for partial summary judgment in the family's wrongful death claim.

Representative Good Answer No. 2

1. The first issue is in a negligence action against Alan, can Brenda establish that Alan breached his duty of care based solely on his violation of the school-bus law

Negligence per se is established when there is a statute that is seeking to (1) protect a specific class of person, (2) the statute established to protect against the harm that resulted and (3) the expected harm occurs as a result of the defendant's act.

The is this jurisdiction, there is a law that prohibits passing a stopped school bus when the school bus has its flashing red lights and side-mounted stop sign extended.

Here, Alan was driving a dump truck behind Brenda's car and saw the bus's extended stop sign. Impatient, he swerved around Brenda's car and the bus. As he did so, his truck's bumper scraped a gash into Brenda's driver's-side doors.

There is a statute in place but the statute is likely designed to protect students getting on and off of the school business. Not to protect cars from being scraped while another driver attempts to pass them.

Therefore, Brenda is likely not able to establish that Alan act was in fact negligence per se.

2. The second issue is whether Brenda can establish Alan's liability based on Alan's allegedly detaining her against her will

False imprisonment or confinement exists when (1) the defendant intends to confine a person, (2) the person is aware of the confinement and does not believe there is a way to escape and (3) the defendant actual confines the person. Consent is a defense to false imprisonment or confinement.

Here, after having several encounters with Alan on the highway including having Alan lowering his window and yelling "Oops! Don't miss the exit to the clinic!" Brenda existed the highway while traveling nearly 90 mph so she could exit the highway and then double back toward the hospital. Brenda then pulled onto a gas station lot, ran into the restroom and locked the door. Alan pounded on the restroom door, shouting, "Come out so you and me can have a talk, if you know what I mean!" Brenda shouted back, "I'm not coming out until you leave". Alan yelled back, "I've got all day, so get comfortable". Even though Brenda waiting in fear in the restroom for 20 minutes. Alan will likely argue that she put herself in the restroom. That he did not have anything to do with confining her to the restroom. Though he may have tried to intimidate her with his yelling and choice of words, Brenda was likely not detained against her will.

Therefore, Brenda will not be able to establish Alan's liability of detaining her against her will because she put herself in the bathroom.

3. The third issue is whether Alan's admission is sufficient for the patient's family to prevail in a motion for partial summary judgment establishing that Alan is liable on the family's wrongful-death claim

To properly grant a motion for summary judgment, the court will look that there is no genuine issue of material facts such that the moving party is entitled to judgment as a matter of law. The court will look at all documents weighing the evidence in the light most favorable to the non-moving party. Such that the jury

would not find the non- moving party. The jurisdiction's rules mirror the Federal Rules of Civil Procedure. The jurisdiction expressly allows common-law negligence actions despite the death of the injured party.

Here, the patient died moments before Brenda arrived at the hospital to perform emergency surgery. Due to Alan's actions, Brenda arrived one hour later than she would have had Alan not prevent her from exiting the highway. If Brenda had arrived 15 minutes sooner, she would have arrived in time to perform the surgery and the patient would have likely survived.

Alan has admitted to all of the facts described above. This means that there is no genuine issue or dispute of material facts in this case. The court would look at the facts in the light most favorable to Brenda, the non-moving party. The court would find that a jury could find that if not for Alan's not allowing Brenda to exit the highway and by following into the gas station, Brenda would not have arrived late to the hospital.

Therefore, Patient's family is likely to prevail in a motion for partial summary judgment establishing that Alan is liable on the family's wrongful-death claim.

MEE4
Representative Good Answer No. 1

1. The Federal Court should likely remand the case back to state court for lack of subject matter jurisdiction.

At issue is the amount in controversy and whether the federal district court should apply State A law.

Under the Federal Rules of Civil Procedure (FRCP), a federal court must have subject matter jurisdiction over a case in order to be able to rule on the issues. A court can have federal question jurisdiction or diversity jurisdiction. Federal question jurisdiction arises when the plaintiff seeks to enforce a right granted by federal statute, treaty, or the U.S. constitution. The case here is a defamation torts case and therefore there is no federal question jurisdiction. A state law claim (such as a torts case) may get into federal court with diversity jurisdiction. Diversity requires complete diversity between the parties and an amount in controversy over $75,000. Complete diversity is measured on the citizenship of the litigants and means that no plaintiff can be a citizen of the same state as any defendant. A natural person is a citizen of the state in which they are domiciled. The amount in controversy must be plead in good faith but will not be successfully challenged unless it is proven to a legal certainty that the plaintiff cannot recover the amount they have plead.

Here, complete diversity exists. Coach is domiciled in state A and therefore a citizen of state A. Fran is domiciled in State H and therefore a citizen of state H. Thus, the parties are citizens of different states. As to the amount in controversy: Coach plead damages of less than the amount in controversy in state court and stipulated that she would not seek any other damages. This stipulation is binding under state A law. So the issue is whether the stipulation is binding on the Federal District Court for State A. Under the Erie Doctrine, a federal district court sitting in diversity will apply its own procedural rules but will apply the substantive law of the state in which it sits. Here, the district court is in state A and so will apply state A substantive law. The issue becomes whether the State A law that considers Coach’s stipulation binding is substantive or procedural. Where there is a valid Federal statute of procedure like the FRCP or Evidence rules on point, the rule is procedural and federal law applies. Where that is not case, the inquiry is as to whether application of the rule is outcome determinative and would encourage forum shopping. If it would, the rule is substantive. Here, no federal rule is on point. The rule is likely substantive because it limits the amount that a plaintiff can recover in a lawsuit and is in that sense outcome determinative. It certainly could encourage forum shopping because it

will determine the amount of a plaintiff's recovery. Therefore, the rule is likely substantive and should be applied in Federal Court in State A under Erie. Because the State A law should be applied, the amount is controversy is less than $75,000 to a legal certainty (the stipulation is legally binding) and diversity jurisdiction is therefore destroyed. Because there was neither diversity nor federal question jurisdiction, the court should remand for lack of subject matter jurisdiction.

2. The court should not dismiss for lack of personal jurisdiction.

At issue is whether the federal court has personal jurisdiction (PJ).

Personal jurisdiction requires authorization under a state statute as well as conformity with the FRCP and the constitution. A federal court has the same PJ as the state courts sitting in the state in which it sits.

Under the state's personal jurisdiction statute, a court has "tag" personal jurisdiction when a person is served within the state unless the person is there specifically to appear in court as a party or witness. Here, Fran was in State A to see a basketball game, there is nothing in the facts about a court appearance. She was served in state A and therefore the court has PJ over her. It does not matter that this was her first time in State A and she was there only for a day. This form of PJ is also authorized under the FRCP and where a state statute authorizes this form of personal jurisdiction, it will not offend the constitution.

PJ was therefore proper in the federal court.

3. The court should not dismiss the case for lack of venue.

At issue is whether venue in state A was proper.

Under the FRCP, venue is ordinarily proper in the state where a substantial portion of the events or omissions leading to the case occurred or where any defendant resides.

However, in the case of a removal to state court, venue is proper in the federal court embracing the state court from which the case was removed.

Here, the case was removed from state court in State A and Fran was not a resident of state (which would have barred removal). Assuming that the state A federal court has subject matter and personal jurisdiction, venue is proper in the federal court embracing the state court in which it sits.

Venue was therefore proper in the Federal District Court for State A.

Representative Good Answer No. 2

1. The issue is whether the amount in controversy alleged in the complaint is controlling for purposes of diversity of citizenship jurisdiction.

Federal courts are courts of limited jurisdiction. To hear a case, they must have subject matter jurisdiction. Removal of a case from state court to federal court is proper when the case could have initially been filed in federal court, that is when there is federal question or diversity of citizenship jurisdiction.

For federal question jurisdiction, the plaintiff's claim in their well pleaded complaint must arise under federal law or the constitution. This is a state law defamation claim, therefore there is no federal question jurisdiction to base removal jurisdiction on.

Diversity jurisdiction exists when there is complete diversity (that is, each plaintiff is a citizen of a different state of each defendant) and the amount in controversy is more than $75,000. Citizenship for natural persons

is their state of domicile. The amount in controversy is established by what is pleaded in the plaintiff's complaint.

Here, there is not diversity jurisdiction. While there is complete diversity (Coach is domiciled in State A and Fran is domiciled in State H), the amount in controversy in Coach's complaint is $74,999 (under $75,000). While Coach stated in her affidavit that she has lost more than $130,000 in wages (which would be enough for diversity jurisdiction), she has stipulated that she will not seek damages in excess of the amount in her complaint and that stipulation is binding under State A law. Under the Erie doctrine, federal courts sitting in diversity apply the substantive law of the state in which they sit. Therefore, in assessing the amount in controversy, the State A US District Court will apply the State A substantive law, which would include the effect of stipulating about damages. Therefore, there is no subject matter jurisdiction because the amount in controversy is not established. As such, the federal court should remand the case to state court in State A.

2. The first issue is whether Fran waived her argument of lack of personal jurisdiction. Personal jurisdiction is the court's power over the defendant. Generally, lack of personal jurisdiction must be raised in the defendant's answer or first responsive motion. Failure to raise lack of personal jurisdiction constitutes a waiver. Here, because the notice of removal was filed with the federal court before Fran answered the complaint or filed a responsive motion, she did not waive her argument to dismiss for lack of personal jurisdiction.

The second issue is whether Fran has sufficient minimum contacts with State A for its courts to exercise personal jurisdiction over her. The personal jurisdiction inquiry is twofold -- first, there must be a state statute (a long arm statute) authorizing the court to exercise jurisdiction; second, the exercise of jurisdiction over the defendant must meet the constitutional requirements.

Federal courts follow the long arm statutes in the states in which they sit. Here, State A's long arm statute authorizes courts in the state to exercise personal jurisdiction over persons served with process while physically present in the state, regardless of whether they have other connections with the state. The Supreme Court has upheld such long arm statutes. Here, Fran was personally served while in State A at a basketball game.

Accordingly, the long arm statute is met.

The constitutional requirements focus on whether exercise of personal jurisdiction (PJ) over the defendant comports with notions of fair play and substantial justice. When the person purposely avails themselves of the forum state such that they could reasonably foresee and it would be fair for them to be hauled into court in that state, the constitutional requirement is usually met.

A court can exercise PJ over a defendant for all claims under general jurisdiction when the defendant is "practically at home" in the state - that is limited to the defendant's domicile. Here, Fran is domiciled in State H, therefor State A does not have general jurisdiction.

A court can exercise specific PJ over a defendant for a particular claim when the above standard is met and the defendant has sufficient minimum contacts with the forum state related to the cause of action such that they could reasonably foresee being hauled into court there. Here, Fran has such contacts. The underlying cause of action is a defamation claim. The claim is based both on statements that Fran allegedly made to people and a newspaper article from a State A newspaper that was based on Fran's rumors and included quotations that Fran made to the reporter when the reporter traveled to State H.

While the statements were made to the reporter in State H, Fran presumably knew that the reporter was a State A newspaper reporter and that the article would be published in State

A. While Fran's only time stepping foot in State A was when she was served at the basketball game, she knew her statements targeted someone in State A and that her quotes would be in a newspaper published in State A. Therefore, the federal court would have personal jurisdiction over Fran and it should not dismiss the complaint for want of personal jurisdiction.

3. The issue is where venue is proper when a case is removed.

Venue is the question of which particular federal judicial district should hear the case. Ordinarily, when a case is initially filed in federal court, venue is proper: (1) in any judicial district in which a defendant resides, provided all defendants reside in the same state, (2) in any judicial district where a substantial amount of the events underlying the claim arose or a substantial portion of the property at issue, or (3) if options one and two fail, in any judicial district where the defendant is subject to personal jurisdiction.

Under this general rule, had the case initially been filed in federal court, venue would be proper in the district in which Fran resides, or in State A district court because that is where the claim arose -- in large part because of the article published by the State A newspaper. Similar to the PJ analysis, because no responsive motion or answer was filed, venue (which is lost if waived), was not waived.

However, when a case is removed from state court, venue is proper in the juridical district encompassing the state court. Here, venue is proper assuming that State A has only one district or that the district court for State A encompasses where the state court the case was initially filed in was. Accordingly, venue is proper and the court should not dismiss the case for improper venue.

MEE5
Representative Good Answer No. 1

1. The bank's original video recording of its lobby, counters, and tellers from April 18, 2024, which shows David stopping at the counter in the lobby and interacting with the teller is admissible. First, the video is relevant. Relevance is rule 401 and requires that evidence make a fact of consequence more or less likely. Here, the video would be relevant because it would make the fact of consequence that David is the one that gave the check to the teller on April 18 more likely.

Under 403, any potential prejudice of this evidence would not be substantially more prejudicial than probative, especially because this evidence is highly probative.

Finally, evidence is admissible through someone who can testify as to the authenticity and lay the foundation for the video. Typically, videos come in through the individual that took the video or someone who can identify and can speak to the events within the video. Here, the Bank investigator is an employee of the bank. He also reviewed the original video recording taken by the Bank's security cameras on April 18, 2024. The Bank Investigator can identify the bank, the lobby, the counters, and the teller because he is a 10-year employee of the Bank and works in an office next to the bank.

2. The investigator's testimony as to Customer's oral complaint to the investigator is admissible. First, the complaint is relevant because it makes the fact of consequence that the signature on the check was forged more likely. It also comes in under 403, because it is not substantially more prejudicial than probative, especially because it is highly probative.

The potential issue with the oral complaint is that it is inadmissible under rule 801 of hearsay. Hearsay is the rule that prohibits out of court statements offered for the truth of the matter asserted. However, it is likely that the oral complaint is admissible under an exception to hearsay. The most pertinent exceptions would be

present sense impression and excited utterance. Both exceptions found under rule 803 apply whether a witness is available to testify or not. Therefore, it would not matter whether the Customer was available to testify or not. If the statement came in under one of these exceptions, then the investigator could testify to it.

The facts indicate that the Customer received a notification alerting a $1000 check, she "promptly" called the Bank, "immediately exclaimed," and was "noticeably frustrated and angry." Present sense impression could apply because this exception applies when someone is describing facts as they are occurring or shortly thereafter. However, in this case, the most appropriate hearsay exception would be excited utterance. Excited utterance exception applies when someone speaks about an event either during or shortly after and they are still under the stress or excitement of the event. Here, the facts indicate that while noticeably frustrated and angry, the Customer made the statement immediately after learning of the check. Therefore, the Customer's complaint would be admissible in the investigator's testimony.

3. The investigator's written report, if the investigator testifies that he is unable to recall both the details of the investigation and writing the report, is not admissible. First, the report is assumed to be relevant and is likely not substantially more prejudicial than probative, so it would get past the initial admissibility hurdles. However, the report would likely be hearsay. Assuming, as the question indicates that the report is not admissible as a business record, the report would not fall within the other exceptions or exemptions of hearsay.

The exception of hearsay that is most pertinent is the recorded recollections exception.

However, this exception would not be applicable here, and even if it were, the written report itself would still not be admissible. First, this exception does not apply because in order to use the recorded recollection exception, the investigator would need to remember that he had written the report as a foundational measure. The question indicates that the investigator does not recall the details of the investigation or writing the report, so his testimony would not establish the necessary foundation to use the exception. Further, even if the investigator could lay the necessary foundation for the exception, the Recorded Recollections exception allows the document to be read onto the record as testimony, but not admitted as evidence.

The investigator's report could be used to refresh his recollection, as to the writing of the report and the details of the investigation. However, in refreshing a witness's recollection, the document is not read onto the record nor is it admitted into evidence. Instead, the investigator would be able to read his report silently to refresh his recollection, and then testify independently of the report.

Representative Good Answer No. 2

1. At issue is whether the Bank’s recording of the lobby, counters and tellers showing David interacting with the teller can come in.

For evidence to be admissible at trial the evidence must be relevant. Relevant evidence is said to make a material fact of the trial more probable than not. When tangible evidence is introduced at trial, the party seeking to admit the evidence must lay the foundation of the evidence. A party may do this by having a witness testify about the authenticity of the evidence.

Here, the video recording of the bank’s lobby, counters, and tellers from April 18, 2024 is relevant evidence. It shows that David was present in the bank talking to the tellers in direct opposition to David’s statement that he did not visit the bank that day. However, the prosecution would need to have someone with personal knowledge to authenticate the evidence. In this scenario, since the investigator is available to testify, and has been an employee for the bank for 10 years he would be able to lay the foundation. He would need to testify

that is what is shown in the video is an accurate representation or the bank, and that there are no errors with the video recorder.

2. At issue is whether the investigator can testify at the customer's oral complaint.

Hearsay is an out of court statement stated for the truth of the matter asserted. Even if evidence is relevant it may not be admissible if it is hearsay. Present sense impression is an exception to the hearsay rule. It applies when someone says a statement right after perceiving an event. An excited utterance is also another exception to the hearsay rules. It allows statements made by a witness who just perceived an exciting or starling event to come in as long as sufficient time has not passed for their excitement to pass. However, some statements are not hearsay because they are not being offered for its truth.

Here, the statement from the customer would be hearsay because it is offered for its truth, that the customer lost $1000. However, it is stated in the facts that the costumer received the notification in her banking app, and then she promptly called customer service which directed her to the fraud investigator. It seems like not a lot of time passed since the customer perceived the notification and when she called the investigator. It is likely that this would qualify as a present sense impression exception to the hearsay rule since the costumer called the investigator promptly after receiving the notification from the app when the matter was fresh on her mind.

The testimony from the customer could also qualify as an excited utterance exception to the hearsay rule. The customer probably was startled or very surprised when she received the notification that money had withdrawn from her account without her knowledge. Then she promptly called customer service which passed her to the investigator and she uttered that testimony. The woman sounded noticeably frustrated and angry when she talked to the investigator.

Therefore, although hearsay, testimony as to the Customer's oral complaint could come in as an excited utterance or present sense impression exception to the hearsay rule.

3. At issue is whether the investigator written report can under the past recollection or present recollection refreshed exceptions.

The past recollection recorded exception of the hearsay rule allows a witness to read from a record if the witness cannot recall after being refreshed. The record must have been done by someone who had personal knowledge of the event, within a short time after the event past. Under past recollection recorded the witness is allowed to read the written record to the jury, however, the party offering the evidence cannot put the record as an exhibit. The opposing party has the option to put the record as an exhibit if they want to.

Here, the investigator claims that he cannot recall the investigation and writing the report. The Prosecution can give the investigator the report for him to inspect under present recollection recorded. If after inspecting the record the investigator still cannot recall, the prosecution can have the investigator read the record to the jury under past recollection recorded. This is depending if the investigator once had knowledge of the events in the record, and the investigator wrote them down within a short time after knowledge of those events. However, the investigator would only be allowed to read the record to the jury and not put the evidence as an exhibit. In this case only the defense can put the record as an exhibit.

MEE6
Representative Good Answer No. 1

1. The Trust is a revocable trust.

The issue is whether the trust is revocable or irrevocable.

Under the UTC, a trust that has the settlor as the lifetime beneficiary is considered a revocable trust unless the trust specifies otherwise. Further, the UTC presumes that a trust is revocable absent language to the contrary. This is the opposite of the traditional rule at common law.

Here, the trust is revocable. Alice was the settlor and the sole beneficiary of the trust income and silent as to revocable or irrevocable. The UTC presumes revocable, and the trust was therefore revocable.

2. Shirley has a vested future interest in the trust.

The issue is the character of Shirley's interest in the trust and if she has one.

A. Under the UTC, the beneficiary of trust property upon the death of the lifetime beneficiary has an interest in the trust.

Here, Shirley is to receive the trust principal upon Alice's death. This gives her a future interest in the trust.

B. Shirley has a vested future interest in the trust. A beneficiary who takes after the death of the lifetime beneficiary has a future interest in the trust. That interest is considered "vested" when the future beneficiary is named in the trust, is alive at the time of the trust, and is not subject to any condition which might deprive the beneficiary of their interest upon its occurrence.

Here, Shirley's interest is in the future because she will take after Alice's death and it is vested because it is not subject to any condition and Shirley is alive at the time of the trust's creation. It is true that because the trust is revocable, Alice could change the term of the trust and thereby deprive Shirley of her interest, but this does not make it any less vested while the terms remain as they are in the trust.

3. Shirley does not have a claim against the bank.

At issue is the rights of a future beneficiary in a revocable trust.

Under the UTC, a trustee owes a fiduciary duty of care and prudent investment to invest prudently and as a reasonable investor would. The terms of the trust also explicitly require this. Under an irrevocable trust, the trustee owes this duty to all qualified beneficiaries, both present (here, Alice) and future (here, Shirley). In a revocable trust, however, the trustee only owes this duty to the settlor and further must follow the settlor's direction even as to imprudent investments.

Here, the trust is a revocable trust because Alice was alive at the time of the investment (and likely remains so because she has not died: though it is unclear if she will live, the facts do not state that her brain or body has ceased all functioning, which would render her technically dead and the trust would then become irrevocable). Because the trust was revocable at the time that Alice directed the imprudent investment, the trustee Bank owed only a duty to Alice and had to invest according to her instructions. The fact that the investment was imprudent is of no moment.

Therefore, Shirley does not have a claim against the Bank for imprudently investing even though she would if the trust were irrevocable.

4. John has the legal authority to direct the doctor to remove Alice from the life support.

At issue is whether John can make healthcare decisions under the power of attorney.

In a state with a healthcare power of attorney act, a valid healthcare power of attorney will give rights to the holder to make healthcare decisions for the person issuing the healthcare power of attorney. By contrast, the

holder of a future interest in a trust has no power to control the healthcare decisions of the settlor or lifetime beneficiary of that trust.

Here, Alice properly executed a healthcare power of attorney giving John healthcare power of attorney over her medical decisions conditioned on her being unable to make health-care decisions for herself. The doctor determined that Alice's stroke left her unable to make healthcare decisions, thus fulfilling the condition. John therefore had the power under the healthcare power of attorney to make healthcare decisions for Alice. By contrast, Shirley did not. Her future interest in the trust gives her no power to make healthcare decisions for her aunt. Alice should stay on the life support system.

John therefore had the legal authority to make healthcare decisions for Alice and therefore had the legal authority to direct the doctor to remove or not remove Alice from the life support system.

Representative Good Answer No. 2

1. The trust is revocable.

The issue is whether a trust silent on revocability is revocable or irrevocable.

Under the Uniform Trust Code, a trust that is silent on the revocability of a trust is presumed to be revocable. This can be rebutted by the intent of the settlor or by express wording in the trust that it is irrevocable.

Here, there is no indication that Alice intended the trust to be irrevocable and there is no express language making the trust irrevocable.

Thus, the trust is presumed to be and is revocable.

2.a. Shirley does have an interest in the trust.

The issue is whether a person has an interest in a trust when their interest is unvested, remote or contingent.

Under the Uniform Trust Code, a beneficiary of a trust includes any contingent or later- taking beneficiary. Just because a beneficiary's share is not vested, and the beneficiary will take after a settlor is deceased, does not make their interest void. Trustees owe a duty to even unascertained and contingent beneficiaries.

Here, Shirley is the sole beneficiary of the trust income after Alice's death. Just because her interest is not vested does not mean that she does not have an interest. Thus, Shirley has an interest in the trust.

2.b. Assuming Shirley has an interest in the trust, the interest is unvested.

The issue is what is the characterization for a beneficiary's share that will not take effect until the settlor is deceased.

Under the Uniform Trust Code, a beneficiary who will not take their share until the settlor of the trust is deceased possesses an unvested share in the trust. The beneficiary is a certain beneficiary.

Here, Shirley's interest in the trust income will vest as soon as Alice dies. Thus, Shirley's interest in the trust is an unvested interest in the principal.

3. Assuming Shirley has an interest in the trust, she does not have a claim against the bank for making the imprudent investment.

The issue is when a trustee is liable for imprudent investment of the trust assets.

Under settled principles of trust law, a trustee or investor of trust assets has a duty to be a prudent investor. This duty will be analyzed based on the trust investments as a whole, by examining the portfolio as a whole. The investor has a duty to diversify the trust assets, and individual trust asset investments will not be judged

based on their individual success. However, the trustee is entitled to rely on the instruction of the settlor when making investments and the contingent beneficiaries will not have a cause of action against the trustee when the trustee makes investments pursuant to the settlor's instructions.

Here, Bank made an imprudent investment by investing 30% of the assets in stock of a company that later went bankrupt. The trust suffered a significant loss due to this investment. Although Bank would owe a duty to Shirley because she has an interest in the trust, Alice approved the investment knowing that it was imprudent. Bank is entitled to rely on Alice's instructions as the settlor when making the investments, and Shirley has no cause of action against Bank for the imprudent investment.

Thus, Shirley does not have a claim against Bank for making the imprudent investment because Bank is entitled to rely on Alice's approval of the investment.

4. Between Shirley and John, John has the legal authority to direct the doctor to remove Alice from the life-support system.

The issue is who has the authority to make medical care decisions for an incapacitated person.

Under the Uniform health care power of attorney act, a durable health-care power of attorney is valid when the executing person possesses capacity. The person designated may make reasonable health care decisions in the best interest of the incapacitated person. Here, Alice created a durable health-care power of attorney, naming John. This was conditioned on her being unable to make decisions for herself. Alice, now unable to make decisions for herself because she had a stroke and is on life support, requires someone else to make decisions for her. Even though Alice spoke to Shirley and John about her wishes to not ever be on life-support if there is little or no chance of recovery, and there is little to no chance of recovery now, Shirley does not possess the power to make those decisions. It is immaterial that Shirley wants to enact Alice's expressed wishes, and that John disagrees. John was the person who Alice appointed and executed in the position, so John has the authority.

Thus, between Shirley and John, John has the legal authority to direct the doctor to remove Alice from the life-support system because Alice executed the health-care power of attorney naming John and not Shirley.