

Maryland State Board of Law Examiners
JULY 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

I. The Court should qualify Dr. Shulman as an expert and admit her opinion testimony.

a. For the Court to qualify Dr. Shulman as an expert and admit her opinion testimony, she must meet the qualifications as an expert under Rule 702, adopted by Franklin Civil Code 233, consistent with the Supreme Court's decision in Daubert.

The criteria for an expert under this standard is whether an expert's "reasoning or methodology properly can be applied to the facts at issue." This includes two distinct prongs of the Daubert inquiry: qualifications and reliability. Rule 702 tells us that a qualified expert who has knowledge, skill, experience, training or education may provide their opinion testimony. Further, the testimony must be based on sufficient facts or data, the product of reliable principles and methods, and those facts and data must have been reliably applied to the principles and methods used. Dr. Ariel Shulman meets both prongs of Daubert as both a qualified and a reliable expert, and therefore should be admitted under this Court's standards.

b. Dr. Ariel Shulman meets the proper standards to be qualified as an expert in orthopedics for the purposes of this trial.

Generally, experts can testify about the standard of care for a specialist only if the experts specialize in the same or a similar specialty that includes the performance of the procedure at issue. To be qualified as an expert the witness must possess scientific, technical, or specialized knowledge on all topics that form the basis of the witness's testimony. In this case, Dr. Shulman meets the criteria expressed in *Smith v. McGann* to be qualified as an expert in orthopedics. Dr. Shulman completed a residence in orthopedic surgery, she is board-certified in orthopedics, and is currently a professor of orthopedics at a Medical School. She has done hundreds of knee and hip replacement surgeries, and attends conferences and writes about how to properly perform these exact procedures. Although the plaintiff may argue that Dr. Shulman has not performed on hip replacement on a living patient since 2019, Dr. Shulman still possesses the knowledge and skills to testify regarding the proper standard of care for orthopedists and whether or not an orthopedist has breached their duty of care. Courts will also examine, as stated in *Smith*, whether the witness can demonstrate familiarity with the standard of care where the injury occurred. In *Smith*, the court mentions that Dr. Adams, the expert, testified that he had studied the demographics of the two locales where the case took place and where he practiced, and that the standard of care were virtually the same. Plaintiff may try to argue that the difference in locale between Olympia and Franklin disqualifies Dr. Shulman as an expert, however this is misstating the analysis in *Smith*. *Smith* did not require that an expert be intimately familiar with the two regions, and did not require that the expert have done a population and availability of medical care analysis. Rather, the court focused on those factors in addition to the fact that the testifying expert in *Smith* was aware that the standard of care between North Brunswick and Franklin was virtually the same. Dr. Shulman made a similar determination in her testimony to this court, when she stated that the "practice of orthopedics is pretty much the same in both states (Olympia and Franklin)." Additionally, she stated that she completed her residency in orthopedic surgery at Franklin Medical Center, so she is aware of the standard of care in orthopedics as Franklin is where she has completed most of her surgeries. Therefore, Dr. Shulman meets the standard to be qualified as an expert in orthopedics.

Maryland State Board of Law Examiners
JULY 2025 UNIFORM BAR EXAMINATION (UBE) IN MARYLAND –
REPRESENTATIVE GOOD ANSWERS

c. Dr. Ariel Shulman meets the proper standards to provide a reliable expert opinion.

An expert opinion is reliable if the opinion is based on a scientifically valid methodology. The trial courts are instructed to use the factors included in the statute, such as sufficient facts or data, reliable principles and methods, and a reliable application of those methods to the facts.

Additionally, courts can "utilize any other factors" they deem appropriate. Dr. Shulman testified that the fracture and dislocation that the plaintiff suffered did not occur during or immediately after the surgery but occurred two weeks later, and that at no time did Dr. Jost's treatment depart from the good and accepted standards in the community. This opinion was based on reviewing all the surgical and medical records, the complaint and answer, and performing a personal physical examination of the plaintiff herself. Those demonstrate reliable facts and data from which Dr. Shulman based her opinion. Further, Dr. Shulman used reliable principles and methods in forming these opinions because she based them on her long experience performing hip replacements, medical literature on this area, information she learned from attending conferences on joint replacements, and following relevant up-to-date articles. This demonstrates that Dr. Shulman used reliable principles and methods, and when she applied those to the reliable facts and data, she came to a reliable expert opinion.

d. Therefore, Dr. Shulman meets the two distinct prongs to be certified as an expert in orthopedics: She is qualified as an expert, and her opinion is reliable. For these reasons, Dr. Shulman should be admitted as an expert in orthopedics.

II. The Court should not find Dr. Ajax to be a qualified expert, but even if he is qualified, should exclude all of his proffered opinion testimony.

a. The Court should not find Dr. Ajax to be a qualified expert.

Dr. Ajax is not qualified as an expert because he does not possess the skills, and knowledge on all topics that form the basis of his testimony. Although he currently practices in Franklin as an orthopedist, is familiar with the standard of care, and does all types of hip replacements, he did not testify to any other specialized skills or knowledge from which he could base his opinion.

Although he has done 50 hip replacements in private practice and did around 100 during residency, only 20 of those were done by himself. He completed his residency in orthopedics in 2007, which means that over the span of the last 18 years he has only done around 3-4 orthopedic surgeries. As this is the only basis for his qualifications, he does not have enough of the specialized skills and knowledge to testify.

b. Even if Dr. Ajax is qualified as an expert, the Court should exclude all of his proffered opinion testimony as it is not reliable.

There are many factors with which courts can assess the reliability of expert testimony. One of these factors is the degree to which the expert's opinion and its basis are generally accepted within the relevant community, whether experts in the field would rely on the same kinds of evidence to reach their opinions. The court in Smith tells us that speculation about what might have occurred had the facts been different can never provide a sufficiently reliable basis for an expert opinion. In this case, Dr. Ajax could only provide speculation about what might have occurred had the facts been different. The facts of Smith regarding this factor exactly mirror the facts regarding Dr. Ajax's testimony. Dr. Ajax in his testimony, states that Dr. Jost departed from good and accepted medical practice because he failed to order another X-ray from a different position; this is the same argument that Dr. Brown made in Smith. The Smith court, as a result, excluded the testimony of Dr. Brown because she did not demonstrate that her methods were reliable because she based it on the "possibility" of a fracture. This type of speculation is the same as Dr. Ajax's, when he says a second X-ray "might have shown" a fracture. Because of this speculation, Dr. Ajax's testimony as to causation is speculative and without reliable basis and therefore should be excluded.

Maryland State Board of Law Examiners
JULY 2025 UNIFORM BAR EXAMINATION (UBE) IN MARYLAND –
REPRESENTATIVE GOOD ANSWERS

III. Even if the Court qualifies Dr. Ajax as an expert, the Court should grant our motion for summary judgment because the plaintiff has failed to offer any admissible evidence on elements of her malpractice claim.

The plaintiff failed to offer any admissible evidence to show that Dr. Jost's supposed breach was the cause of the injuries that plaintiff suffered.

If a plaintiff fails to produce any evidence to prove an element of the case on which the plaintiff bears the burden of proof, then the defendant is entitled to summary judgment. In this case, the plaintiff failed to prove that even if Dr. Emil Jost breached his duty of care, that the breach of the standard of care caused harm to the plaintiff.

According to the Franklin Appeals Court in *Jacobs v. Becker*, a plaintiff must prove three elements to establish a prima facie case for negligence: (1) that a duty existed requiring the defendant to conform to a specific standard of care, (2) that the defendant failed to conform to that specific standard of care, and (3) that the breach of the standard of care caused the harm to the plaintiff. According to *Jacobs*, in a medical malpractice case expert testimony is required for the plaintiff to meet their burden of proof for these elements. Only expert testimony in a medical malpractice case can demonstrate how the required standard of care was breached and how the breach caused the injury to the plaintiff. In this case, because the plaintiff failed to provide any expert testimony that sufficiently establishes the causation element of the prima facie negligence case, this justifies an adverse ruling on summary judgment against the plaintiff and in favor of Dr. Jost.

It is clear that the elements of causation is not met to survive a motion for summary judgment, because nowhere in the plaintiff's expert's (Dr. Robert Ajax's) testimony does Dr. Ajax make a clear statement establishing how Dr. Jost's breach caused the plaintiff's injury. To establish the breach of care, Dr. Ajax testifies that Dr. Jost "departed from a good and accepted medical practice in failing to order another X-ray from a different position." Dr. Ajax justifies this inaction as a breach because, "A second X-ray, from a different angle, might have shown that the prosthesis was out of place or that there was a broken bone." Dr. Ajax contends that the breach of the proper standard of care was the failure to do an additional X-ray, stating that the one front-to-back X-ray did not comport with the standard of care in Franklin. However, upon establishing this breach of the standard of care, Dr. Ajax does not allege facts sufficient to find that the failure to get a second X-ray caused the plaintiff's injury. Even viewing the evidence in the light most favorable to the nonmoving party (the plaintiff), the essential element of causation is missing from the plaintiff's prima facie case.

In *Smith v. McGann*, the court tells us that "speculation about what might have occurred had the facts been different can never provide a sufficiently reliable basis for an expert opinion." This means that the reliability of Dr. Ajax's conclusion regarding causation, that the failure to do an additional X-ray "might have shown" additional information, is not a sufficient basis to overcome the motion for summary judgment. Further, the court in *Jacobs* tells us that when there is a complete failure of proof concerning an essential element of the nonmoving party's case, that there is "no genuine issue as to any material fact" and the motion must be granted. In this case, Dr. Ajax's testimony suggests that there was a breach, but does not establish that but for the breach that the plaintiff's harm would have occurred. Instead, he offers speculation, which can never provide a reliable basis for an expert opinion. Dr. Ajax's testimony ignores key facts, such as the fact that the X-ray that was done showed no signs of fracture or damage, and that the plaintiff ignored the directions from Dr. Jost to not bend at a 90 degree angle for six weeks, and did so after two weeks. Therefore, the elements of the prima facie case for negligence did not establish a factual basis for these elements, even when viewing the evidence in the light most favorable to the nonmoving party. Therefore, our motion for summary judgment should be granted.

Maryland State Board of Law Examiners
JULY 2025 UNIFORM BAR EXAMINATION (UBE) IN MARYLAND –
REPRESENTATIVE GOOD ANSWERS

Representative Good Answer No. 2

TO: Sydney Nichols
From: Examinee Date: July 29, 2025
RE: Lowe v. Jost Medical Malpractice Expert and Summary Judgment Brief

Hi Sydney,

You have asked me to draft a section of our brief that outlines to the Court why 1) our expert, Dr. Ariel Shulman, and his testimony, should be admitted, 2) the plaintiff's expert, Dr. Robert Ajax, is not qualified as an expert, and even if he is his testimony should be excluded, and 3) even if Dr. Ajax is qualified as an expert, there is no genuine dispute of material fact so our motion for summary judgment should be granted.

Please find below that brief. Please let me know if you have any questions related to it.

Ms. Lowe has sued Dr. Jost for malpractice, alleging that Dr. Jost was negligent in performing a hip replacement which subsequently caused her injuries. In support of her allegations, Ms. Lowe seeks to admit testimony from Dr. Robert Ajax. As will be shown, Ms. Lowe has failed to offer any admissible evidence on the prima facie elements necessary for her malpractice claim.

Furthermore. Ms. Lowe's expert witness, Dr. Ajax, is unqualified to be an expert and nor his opinion testimony is not reliable. For these reasons, the Court should grant summary judgment in favor of Dr. Jost.

A plaintiff must prove three elements to establish a prima facie case for negligence: "1) that a duty existed requiring the defendant to conform to a specific standard of care for the protection of others against harm, 2) that the defendant failed to conform to that specific standard of care, and 3) that the breach of the standard of care caused the harm to the plaintiff." *Jacobs v. Becker* (Fr. Ct. App. 2020) "Expert testimony is required in medical malpractice cases because only expert testimony can demonstrate how the required standard of care was breached and how the breach caused the injury to the plaintiff." *Id.*

1) Dr. Schulman is qualified to be an expert and the court should admit her opinion testimony under FRE 702.

The standard of care for physicians is to act with that degree of care, knowledge, and skill ordinarily possessed and exercised in similar situations by the average member of the profession practicing in the field. *Jacobs*. Under the Franklin Rules of Evidence 702, "a witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if the proponent demonstrates to the court that it is more likely than not that a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact understand the evidence or to determine a fact in issue, b) the testimony is based on sufficient facts or data; c) the testimony is the product of reliable principles and methods; and d) the expert's opinion reflects a reliable application of the principles and methods to the facts of the case." "Experts can testify about the standard of care for a specialist only if the experts specialize in the same or a similar specialty that includes the performance of the procedure at issue."

FRE 702 was amended by Franklin Civil Code §233 following the Franklin Supreme Court's "determination that Franklin would adopt the United States Supreme Court's approach in *Daubert*" in *Park v. Green* (Fr. Sup. Ct. 1999). In *Daubert*, the Supreme Court "clarified that 'general acceptance' was no longer the standard for determining the reliability of expert testimony. Instead, the trial court had broader latitude to determine whether an expert's 'reasoning or methodology properly can be applied to the facts at issue.'" *Smith v. McGann* (Fr. Ap. Ct. 2004). This standard makes the trial court the "gatekeeper" in determining whether expert testimony is admissible.

Maryland State Board of Law Examiners
JULY 2025 UNIFORM BAR EXAMINATION (UBE) IN MARYLAND –
REPRESENTATIVE GOOD ANSWERS

In following Daubert, the trial court must determine whether each party's experts are sufficiently qualified to testimony. Smith. The court must look to the qualifications and reliability of the witness. A witness is qualified as an expert if he is the type of person who should be testifying on the matter at hand. Id. An expert opinion is reliable if the opinion is based on a scientifically valid methodology. Id. The two inquiries are not to be conflated; to do so is legal error. Id.

In Smith v. McGann, the Franklin court faced a medical malpractice case where there was an issue of admitting expert testimony. In Smith, the plaintiff alleged a failure to diagnose a fracture of their tibia by the doctor which allegedly caused them pain. There, the court held that an expert witness must "demonstrate familiarity with the standard of care where the injury occurred" but that it is "not necessary for the expert witness testifying to the standard of care to have practiced in the same community as the defendant." The court went on to admit the expert testimony of Dr. Adams, who was an orthopedist in New Brunswick, a state 800 miles from Franklin. In admitting Dr. Adams as a qualified expert, the Franklin court found it important that Dr. Adams based his opinion on "his many years of experience in orthopedics, the many articles he had read and conferences he had attended, and the fact that other physicians relied on his diagnosis of fractured bones."

Under FRE 702, experts are qualified based on their knowledge, skill, experience, training, or education. Dr. Shulman is qualified to be an expert based on all of these criteria. Dr. Shulman, like Dr. Adams in Smith, has many years of experience in orthopedics as a practitioner and professor, the medical literature on joint replacements that he keeps up with from the Journal of The American Medical Association and the New England Journal of Medicine, and attends and lectures at conferences on joint replacement. Dr. Shulman has vast experience in the area of hip replacements, the subject area of this dispute, and he is a well-respected figure who is relied upon by many in the area as evidenced by his presenting lectures on the appropriate procedures for joint replacements at annual conferences and his teaching of students how to do knee and hip replacements at Olympia University of Medical School. Dr. Shulman is also board certified in orthopedics, which "means that [he has] finished [his] residency in orthopedics and that [he has] passed the board certification exam."

The plaintiff attacks Dr. Shulman's qualifications by arguing that he no longer practices in Franklin and so he is not familiar with the standard of care necessary for the state. This is a baseless argument. As the Franklin Court noted in Smith, an expert witness need not specifically practice in the same community as the defendant. But more importantly, while Dr. Shulman currently teaches orthopedics in Olympia, he was educated and practiced orthopedics for many years in Franklin. His personal experience in Franklin is numerous. According to his affidavit, Dr. Shulman graduated from the University of Franklin Medical School and completed his residency in orthopedic surgery at Franklin Medical Center. During his time in private practice, which occurred in Olympia, he completed on average, 100 knee and hip replacements per YEAR. Dr. Shulman has also written three articles on the proper procedures for knee replacement. And as Dr. Shulman has testified, he determined the standard of care in Olympia by his personal experience having operated in Olympia and Franklin. The plaintiff's find probative Dr. Shulman's admission that Olympia has a much smaller medical community than Franklin but this is immaterial. As the Franklin Court noted in Smith, Dr. Adams testified from his studying of Franklin and North Brunswick that the standard of care in orthopedics was virtually the same in Franklin and in North Brunswick. The court then noted that "he was properly qualified as an expert in orthopedics." So too here. It is evidence that Dr. Shulman is preeminently qualified to be an expert on the standard of care of orthopedics in Franklin based on his vast experience, training, and knowledge.

Furthermore, Dr. Shulman's testimony is reliable and should be admitted. Dr. Shulman conducted a thorough examination of all the surgical and medical records and performed a physical examination of Ms. Lowe, as noted in his affidavit. Dr. Shulman's testimony that Dr. Jost met the standard of care in the community is based on medical literature and his experience, and his reviewing of the notes of the surgery. In Smith, the court noted that reliability of an expert depends on whether or not it is based on speculation of what might have occurred. It is evidence that Dr. Shulman's testimony is not based on speculation but on the facts of the case. In Ridley v. St. Mark's hospital, the court noted that "expert opinions were based on sufficiently reliable methodology when based on medical records, Ct scans, medical notes, and deposition testimony." Dr. Shulman noted that Dr. Jost performed the adequate range-of-motion testing during surgery before closing the incision and he reviewed the post-operative X-ray that Dr. Jost ordered and reviewed. Dr. Shulman evaluated the x-ray and determined that Dr. Jost's medical assessment was at all times appropriate and fully comported with the standard of

Maryland State Board of Law Examiners
JULY 2025 UNIFORM BAR EXAMINATION (UBE) IN MARYLAND –
REPRESENTATIVE GOOD ANSWERS

care and that as a result “no act or omission attributable to Dr. Jost proximately caused any of the injuries.” It is clear that Dr. Shulman’s testimony is reliable because it is not speculative but determined on the basis of what proper care for his replacement looks like and a comparison of Dr. Shulman’s care to those standard. Dr. Shulman is credible based on the extent of his qualifications and his testimony should be admitted by the court under the standards set forth by FRE 702.

2) The court should not find Dr. Ajax as qualified to be an expert nor should it admit his testimony under FRE 702.

The same rules in evaluating Dr. Shulman’s qualifications and reliability apply to evaluating Dr. Ajax. However, it is clear that Dr. Ajax is not qualified nor reliable and any proffered testimony should be excluded by the court.

Dr. Ajax is unqualified to as an expert in orthopedics given his limited experience in the area. As Dr. Ajax admitted in his testimony, he has performed 50 hip replacements since he finished his residency in 2007. Further, during his residency he “probably did about 20 [himself.] Dr. Ajax’s first-hand experience with conducting his replacements is not sufficient to warrant him to be qualified as an expert in the area. While Dr. Ajax has done, at most, 70 hip replacements in his entire career, Dr. Shulman has done on average 50 a year even if one concludes he only did half hip replacements during that time). The multitude of replacements done by Dr. Shulman far outweighs those done by Dr. Ajax. As such, in comparing Dr. Ajax to Dr. Shulman, it is clear that Dr. Shulman’s experience and knowledge of the standard of care in hip replacements in Franklin far outweighs that of Dr. Ajax. Furthermore, Dr. Ajax has not provided any proof that he keeps up with the medical literature in the area, attends conferences, or is knowledgeable about the practices of other doctors in Franklin. Dr. Ajax seeks to testify solely from his own personal adoption of standard of care in Franklin. This is insufficient basis to form an opinion that is admissible.

Additionally, even if the court finds that Dr. Ajax is qualified to be an expert, the court should not admit his testimony because it is unreliable and uncredible. Dr. Ajax’s testimony is based on pure speculation and makes no reference to the proper standard of care adhered to in Franklin.

Dr. Ajax’s testimony makes no mention of his evaluating the medical record, the surgery notes, or any of the complaints and allegations in the case, in contrast to Dr. Shulman who evaluated all of the aforementioned items before forming his opinion. As the Ridley court noted, evaluation of these records is important for an expert to form a reliable opinion and that “speculation about what might have occurred had the facts been difference. can never provide a sufficiently reliable basis for expert opinion.” Dr. Ajax simply states that Dr. Jost departed from “good and accepted medical practice in failing to order another x-ray from a different position” because “a second x- ray, from a different angle, might have shown that the prosthesis was out of place or that there was a broken bone.” Dr. Ajax’s testimony is clearly speculative. The use of “might” and potential language to indicate that there was a possibility that further examinations could have yielded knowledge of any errors in the surgery is insufficient. This testimony proves no that the standard of care in Franklin was to order more than one x-ray and nor does it show that proximate causation that the lack of the second x-ray is what caused the injury to Ms. Lowe. Dr. Ajax claims that the front-to-back x-ray “did not comport with the standard of care in Franklin” but he provides no evidence of why this is the case. Dr. Ajax has no evidence nor anecdotal testimony that it is common practice for surgeons in Franklin to order more than one post- operative surgery when the first x-ray yields no evidence of issues or concerns.

Nor does Dr. Ajax also makes no mention of the standard of care in the actual surgery room to evaluate whether the hip prosthetic has been properly place. Contrastingly, Dr. Shulman’s testimony clearly makes reference to the proper standard of care exercised when the patient is under anesthesia and the post-operative care and instructions to be made. Additionally, Dr. Ajax mentions nothing about what kind of post-operation instructions are to be proffered to the patient. Rather, the testimony that Dr. Ajax offers is merely based on a claim that more additional inquiry by Dr. Jost could have yielded evidence of incorrect placement. As noted in *Park v. Green*, “an expert opinion is fundamentally unsupported when it fails to consider the relevant facts of the case.” Dr. Ajax has done precisely this. Dr. Ajax did not consider what instructions Dr. Jost provided Ms. Lowe for her post-operative care. Dr. Ajax did not evaluate the method of insertion and the surgical room evaluation of the prosthetic placement. Nor did Dr. Ajax consider whether the first x-ray offered provided any evidence of issues with the hip placement such that a second x-ray would have been warranted. Rather, Dr. Ajax simply

Maryland State Board of Law Examiners
JULY 2025 UNIFORM BAR EXAMINATION (UBE) IN MARYLAND –
REPRESENTATIVE GOOD ANSWERS

conjectures that a second x-ray could have helped discover an issue “from a different angle” and so there was deviation from the necessary standard of care. This is unreliable and incredible testimony. When an expert’s opinion “is so fundamentally unsupported that it can offer no assistance to the jury, it must be excluded.” Dr. Ajax’s testimony because it is fundamentally unsupported and so cannot offer any assistance to the jury. As such, even if the court finds that Dr. Ajax is qualified to be an expert, his testimony should be excluded.

“A party’s failure to provide any expert testimony on causation or the standard of care justifies an adverse ruling on summary judgment.” Jacobs If the court finds that Dr. Ajax should be excluded as an expert, summary judgment must be granted in favor of Dr. Jost.

3) The court should grant summary judgment for Dr. Jost because Plaintiff has failed to offer any admissible evidence to plead a prima facie claim of malpractice.

Even if the court admits Dr. Ajax as an expert, and his testimony, the court should grant summary judgment in favor of Dr. Jost because there is no material dispute of genuine fact. As previously noted, the plaintiff must prove three elements to establish a prima facie case of negligence - 1) duty, 2) breach, 3) causation. Jacobs. It is undisputed that Dr. Jost owed Ms. Lowe a duty of care as her physician. If Dr. Shulman’s expert testimony is admitted, as it should be, it is clear that Dr. Jost did not breach any duty owed to Ms. Lowe because he at all times abided by the specific standard of care necessary in Franklin for orthopedic surgeries. But even if the court believes that Dr. Jost breached the standard of care owed, the court must grant summary judgment because, viewed in the light most favorable to the nonmoving party (Ms.

Lowe), there is no genuine dispute of material fact that Dr. Jost caused the injury to Ms. Lowe. A material fact is a fact that is essential to the establishment of an element of the case and determinative of the outcome. Jacobs.

Ms. Lowe alleges in her complaint that she “felt a sharp and excruciating pain that caused her to drop her purse” and fall to the ground in pain on March 16, 2022. Ms. Lowe has not disputed Dr. Jost’s testimony that he instructed Ms. Lowe that she should not bend more than 90 degrees at the waist and should not twist at the hip for 6 weeks following her surgery. Dr. Jost gave her those instructions the day after surgery, on March 2. Furthermore, Dr. Jost testifies that the physical therapist reminded Ms. Lower of those precautions at their first meeting as well. And, Ms. Lowe was again instructed on these precautions when she began using a cane instead of a walker two weeks after surgery. This is undisputed in the record.

In *Jacobs v. Becker*, Ms. Jacobs “failed to use” the antibiotics prescribed by Dr. Jacobs. The court held that this failure to do so was the cause of her injuries rather than any malpractice on the part of Dr. Becker.

The injury to Ms. Lowe that occurred on March 16, and the subsequent hip reversion, was the result of Ms. Lowe’s own negligent acts and cannot be traced back to Dr. Jost. As the affidavit of Karen Baines shows, Ms. Lowe did not abide by the instructions against bending and twisting for 6 weeks following surgery. Rather, 15 days after her surgery, and mere days after she was again reminded of the precautions against doing so when she received her cane in exchange for the walker, Ms. Lowe “bent over to pick up her purse” that she had dropped in the Cloverdale Condominiums. See affidavit of Karen Baines. Ms. Baine has testified, under oath and on the record, that she saw Ms. Lowe drop her purse and that she offered to pick it up for her. Rather than take ms. Baines up on that offer, “she said that she didn’t need my help and then she bent over to pick up her purse. To pick up the purse, she bent forward at the waist and touched the ground with her hands.” Ms. Lowe did precisely that which she was warned against doing - she bent forward 2 weeks post-operation. The causation of her injury that occurred “immediately after picking up the purse and standing back up” was not the result of a defective hip surgery but rather from Ms. Lowe’s personal negligence. Ms. Lowe was aware she was not to bend down and yet she did it anyway. She immediately “cried out in pain” and fell to the pavement, not because the hip was negligently inserted, but because Ms. Lowe acted negligently in failing to adhere to the instructions set forth by Dr. Jost and that which she was subsequently reminded of on numerous occasions in the two weeks following surgery.

Maryland State Board of Law Examiners
JULY 2025 UNIFORM BAR EXAMINATION (UBE) IN MARYLAND –
REPRESENTATIVE GOOD ANSWERS

The summary judgment motion must be viewed in the light most favorable to Ms. Lowe. On doing so, it is clear that the record is undisputed with regards to Ms. Baine’s testimony of Ms. Lowe’s actions on March 16. Ms. Lowe has provided no evidence to dispute this testimony or offer any evidence that she felt the pain prior to her dropping the purse. As such, there is no genuine dispute of material fact that Ms. Lowe bent down to pick up her purse which caused her injury. “The moving party is entitled to a judgment as a matter of law [when] the nonmoving party has failed to make a sufficient showing on an essential element of her case with respect to which she has the burden of proof. Alexander. Ms. Lowe has the burden of showing a prima facie case of negligence. Ms. Lowe has failed to meet her burden, and so summary judgment is warranted in favor of Dr. Jost.

As explained, this court should admit the expert testimony of Dr. Shulman, reject Dr. Ajax as a qualified expert, and exclude any proffered testimony by him. Furthermore, this court should grant summary judgment in favor of Dr. Jost because Ms. Lowe has failed to make a sufficient showing on essential elements of her claim. Because there is no genuine dispute of material fact on causation, summary judgment in favor of Dr. Jost should be granted.

MPT 2

Representative Good Answer No. 1

To: Anita Hernandez, partner
From: Examinee
Date: July 29, 2025
Re: Gourmet Pro response to CPSC

The legal standard is found in *Franklin Dep’t of Labor v ValueMart* (Franklin Supreme Court, 2019) and in *Infusion Technologies Inc. v Spinex Therapies LLC* (Powell County District Court, 2021). The attorney-client privilege applies to communications made between a client and their professional legal adviser, in confidence, for the purpose of seeking, obtaining, or providing legal assistance to the client. (citing *Franklin Mut. Ins. Co. v DJS Inc* (Franklin Supreme Court 1982)). The privilege extends to such communications between the company’s lawyers and its board of directors, executives, and managerial employees who seek legal advice on behalf of the company. The purpose of the privilege is to promote open and honest discussions between clients and their attorneys. (citing *Moore v Central Holdings, Inc.* (Franklin Court of Appeal 2009). A document is not cloaked with privilege merely because it bears the label “privileged” or “confidential.” *Id.* The privilege does not extend to accounting work performed by a lawyer or to occasions when a lawyer performs a financial audit or is advised of its results. *Id.* (citing *Franklin Dep’t of Revenue v Hewitt & Ross LLP* (Franklin Court of Appeal 2017)). When a document contains both business and legal advice, the protection of the attorney-client privilege applies to the entire document only if the predominant purpose of the consultation is to seek legal advice or assistance. *Id.* (citing *Federal Ry. v Rotini* (Franklin Supreme Court 1998)). If the predominant purpose is business advice, ... the privilege will still protect any portions of the document that contain legal advice. *Id.* (citing *Franklin Machine Co. v Innovative Textiles LLC* (Franklin Supreme Court 2003)). When assessing a document where the predominant purpose is business, care must be taken to identify any distinct portions that are protected by privilege because they contain legal advice or information. *Id.* If such portions are easily severable, they should be withheld from disclosure to preserve the privilege.

Determination of the predominant purpose is fact specific based on the totality of the circumstances. *Id.* (citing *In re Grand Jury* (District of Franklin 2016)). The relevant factors to determine the predominant purpose are: 1) the purpose of the communication; 2) the content of the communication; 3) the context of the communication; 4) the recipients of the communication; and 5) whether legal advice permeates the document or whether any privileged matters can be easily separated and removed from any disclosure. *Id.* (citing *J. Proskauer, Privilege Law Applied to Factual Investigations*, 78 *Univ. of Franklin L. Rev.* 16 (Spring 2018)). If a document is found to have a business advice predominant purpose, only the legal advice portions of the document may be excluded, not the entire document. *Infusion Technologies Inc. v Spinex Therapies LLC* (Powell County District Court, 2021). This is also found in Rule 2.1 of the Franklin Rules of Professional

Maryland State Board of Law Examiners
JULY 2025 UNIFORM BAR EXAMINATION (UBE) IN MARYLAND –
REPRESENTATIVE GOOD ANSWERS

Conduct, which states that, “In rendering advice, a lawyer may refer... to other considerations such as moral, economic, social, and political factors, that may be relevant to the client’s situation.” In that case, the court should take care to protect the intertwined content from disclosure. ValueMart.

1. The attorney-client privilege attaches to all of Document One under the predominant purpose test and should be shielded in its entirety.

The purpose of Document One is found in the email subject line, which is “Main Street class- action litigation.” This could lead to the finding that Document One is a legal advice document. The content of Document One revolves exclusively around the Main Street lawsuit, while giving relevant advice on how the class-action suit works, as well as how to prevent similar suits being directed towards Gourmet Pro. The context of Document One is that there is pending litigation against Main Street, Gourmet Pro’s competitor. While no litigation has begun against Gourmet Pro, this document was prepared to combat any potential litigation. As opposed to ValueMart, Ms. Washington is hired as General Counsel, so she is entitled to represent Gourmet Pro in any subsequent litigation. While there is no pending litigation, this leans heavily in favor of a legal advice document, as the context is between the lawyer and client regarding potential litigation. The fourth factor is the recipient of the document, in this case the CEO of Gourmet Pro. Under ValueMart, the documents were created as an analysis of the facilities, not any legal implications thereof. In this case, the document was created with specific legal advice of the company’s actions and any legal implications relating thereto. Similarly, the document was to the CEO, a management position in the company who can enforce this advice. The final factor is whether legal advice permeates the document. Here, the advice is intertwined with every paragraph except paragraph one. The second paragraph explains the lawsuit, the third explains potential liability for any actions taken by Gourmet Pro, and the final paragraph discusses shielding the company from any liability. For these reasons, it is likely to be found that the document is legal advice. If the document is found to be business advice with relevant legal advice therein, then paragraphs two and four should be excluded on the basis of pure legal advice, per the standard stated in Infusion Technologies.

2. The attorney-client privilege only applies to “Business Recommendations” paragraphs one and four of Document Two, as the rest of the document is pure business advice.

The purpose of Document Two is an audit and recommendation for safety protocols prepared by an outside firm. The content of Document Two is a safety audit of defects within Gourmet Pro’s line of grills. There seem to be no legal implications or advice that is not pertinent to the business advice purpose of the document. While there is information regarding legal issues, those are past issues that are stated to show an adherence to good safety standards and no deviation on the part of Gourmet Pro that would lead to liability. Paragraphs one and four of “Business Recommendations” are likely legal advice, as they are giving advice on how to protect from liability in a business setting. The context of the document is a prepared audit and safety evaluation conducted by a non-retained outside firm in preparation of litigation that is not imminent or current. This is consistent with ValueMart, as this document is very similar to the Middleton Report that is the basis of that case. The recipients of this communication are the management positions and the board of directors for Gourmet Pro. This is similar to the ValueMart report, as it was prepared for the management staff but mostly discusses the business implications of the company, not any legal implications of the company’s actions. The document is not permeated with legal advice, and instead the advice is contained to paragraphs one and four of the “Business Recommendations” section. This leads to the conclusion that this a business advice document, which should be produced with the relevant legal advice sections removed.

The relevant sections containing legal advice are, as stated, paragraphs one and four of the “Business Recommendations” section. These two paragraphs give legal advice on how to best prevent against any potential lawsuits and how to use the outside firm’s services to further protect Gourmet Pro. Under the ValueMart and Infusion Technologies holdings, Gourmet Pro should remove those relevant portions from Document Two and produce the rest of the document.

3. The attorney-client privilege applies only to Issue Two of Document Three, as it is legal advice while Issue One is purely business advice.

Maryland State Board of Law Examiners
JULY 2025 UNIFORM BAR EXAMINATION (UBE) IN MARYLAND –
REPRESENTATIVE GOOD ANSWERS

The purpose of Document Three is twofold. The purpose of Issue One is pure business advice for the manner in which the annual report should be presented. The purpose of Issue Two is legal advice on how to advance safety while discussing the issue with managers in another facility.

The content of Issue One is pure business presentation strategy, while the content of Issue Two is advice on how to handle a legal issue to prevent liability and further complaints from another facility. The context of Issue One is an annual report and website design, and the context of Issue Two is liability and protection from such liability. The recipient of Document Three is Ms.

Washington in first her management position, then in her general counsel position in issues One and Two, respectively. The document is not permeated by legal advice, and instead has two distinct sections that can be separated to protect from legal advice being disclosed. Therefore, the document is likely to be found with a predominant of business advice, with some legal advice that can be removed.

Under the ValueMart and Infusion Technologies holdings, Issue Two can safely be shielded from production under the attorney-client privilege. The rest of the document, however is not able to be protected from production, as it is solely business advice on an annual report and website design.

To conclude, Document One should be protected in its entirety, and if not entirely, paragraphs two through four should be protected as inseparable legal advice. Document Two should be produced with paragraphs one and four of “Business Recommendations” being shielded under the privilege. Document Three should be produced and Issue Two should be protected under the privilege. While the client would prefer to protect as many documents as possible, the Powell County District Court has held that attorneys must review the documents thoroughly to prevent the courts from having to conduct in camera review of contested documents. As such, we must produce the documents while protecting the pertinent sections from production under the attorney-client privilege in order to maintain our professional responsibilities as attorneys and officers of the court.

Representative Good Answer No. 2

TO: Anita Hernandez, Partner
FROM: Examinee
DATE: July 29, 2025
RE: Gourmet Pro response to CPSC

Issue Presented: How does the attorney Client Privilege apply to three representative documents?

Brief Answer:

- Document One:
- Document Two:
- Document Three:

Analysis:

Under Franklin law, the attorney-client privilege applies to “communications made between a client and their professional legal advisor, in confidence, for the purpose of seeking, obtaining, or providing legal assistance to the client. Franklin Mut. Ins. Co. v. DJS Inc.; Franklin Dep’t of Labor v. ValueMart. This privilege also typically extends to communications between a corporate company’s lawyers with the board of directors, executives, and managerial employees who seek legal advice on behalf of the company. The attorney-client privilege is strictly construed, and the purpose of it is to foster open, honest communications between attorneys and clients. Id.; Moore v. Central Holdings, Inc. The court must determine whether the contested document “embodies a communication in which legal advice is sought or rendered.” Franklin Dept of Labor v. Value Mart. Further, just because a document says “privileged” does not mean it is automatically “privileged”. Id.

Maryland State Board of Law Examiners
JULY 2025 UNIFORM BAR EXAMINATION (UBE) IN MARYLAND –
REPRESENTATIVE GOOD ANSWERS

Lawyers are often asked by clients for advice that goes beyond the technicalities of law. Rule 2.1 of the Franklin Rules of Professional Conduct. Advice from attorneys can serve purpose of providing legal advice or business-related advice. Often times, both might occur in one document or communication. When this happens, the “protection of the attorney-client privilege ‘applies to the entire document only if the predominant purpose of the attorney-client consultation is to seek legal advice or assistance.’” Id.; Federal Ry. v. Rotini. If the predominant purpose is business advice, the court must determine if any portions of the document contain legal advice, and if so, those portions will be protected by attorney-client privilege and must be excluded if they can be easily separated. Franklin Dept of Labor v. Valuemart; Infusion Tech v. Spinex Therapies.

Determining the predominant purpose of a document is highly fact specific and courts must look at the totality of the circumstances. In re Grand Jury. Courts should consider: 1.) the purpose of the communication; 2.) the content of the communication; 3.) the context of the communication; 4.) the recipients of the communication; and 5.) whether legal advice “permeates the document of whether any privileged matters can be easily separated and removed from any disclosure. See Franklin Dept of Labor v. ValueMart; J. Prosjauer, Privilege Law Applied to Factual Investigations.

I. Document One

Document One contains an email from Trisha Washington (General Counsel) to Maria Johnson (CEO) on March 25th, 2025, discussing the Main Street class action litigation as well as any potential implications for GourmetPro and steps she recommend Gourmet Pro take. To determine if this email is privileged, the Court will use the 5 factors from Franklin Dept of Labor v. Valuemart to determine what the predominant purpose of the document is.

1.) The Purpose of the Communication:

The Court will look at the purpose of the communication. Here, the email indicates that Trisha Washington, the General Counsel, was reaching out to the CEO to, as she states, “give some thought as to the implications for Gourmet Pro of the high-profile litigation against [their] competitor Main Street. This purpose suggests that this is legal as Ms. Washington is analyzing the class action against their competitor Main Street, analyzing the legal implications that this may have for Gourmet Pro (including a safety audit that could create sources of liability for Gourmet Pro), as well as steps that will be necessary to protect themselves against litigation. Thus, the purpose of the communication appears to be entirely legal advice as to what Ms. Washington believes will protect Gourmet Pro from liability and cuts in favor of it being privileged.

2.) The Content of the Communication:

The content of the email was a legal analysis of why Main Street is subject to liability and a class action and what steps Gourmet Pro must take to protect themselves against liability. This is similar to Booker, where the Court determined that the report was predominantly a legal analysis of state tax statutes and regulations, rather than Valuemart, where the court considered it to be more of a factual analysis. Thus, the content of the communication also is more legal advice and analysis and cuts in favor of it being privileged.

3.) The Context of the Communication:

The Court could go either way when analyzing the context of this communication. At the point that the email was written, there was no pending litigation against Gourmet Pro. Thus, the court could determine as it did in Valuemart, that it is not legal. However, the court will likely consider heavily the fact that GourmetPro and Main Street are competitors, and since Main Streets litigation was so highly publicized, that Gourmet Pro could also fear or be anticipation of litigation since they are the same type of company in the same community. Thus, the court will likely find the context of the communication to cut in favor of being privileged as well.

4.) The Recipients of the Communication:

The recipient of this email is the CEO of Gourmet Pro, Maria Johnson. It appears to be a private email, with no one else included. Legal advice from the general counsel to the CEO of the company via email is totally normal and reasonable. Thus, the court will likely find that the recipients of the communication also cuts in favor of privileged.

5.) Whether Legal Advice Can Be Easily Separated:

Maryland State Board of Law Examiners
JULY 2025 UNIFORM BAR EXAMINATION (UBE) IN MARYLAND –
REPRESENTATIVE GOOD ANSWERS

The majority of this document includes legal analysis and advice. There are some parts that could possibly be considered business advice, such as when Ms. Washington shares that she should ask the marketing department to track media reports and generally discussing their marketing tactics. However, these are merely a few sentences in a three-paragraph email that is mostly focused on legal advice/analysis. Thus, they likely cannot be easily separated as the entire document would be so heavily redacted that those sentences would be effectively meaningless. Therefore, in conclusion, under the totality of the circumstances the predominant purpose of Document One is legal analysis, and thus the Court will likely find that the entire document is protected by privilege.

II. Document Two

Document Two is an executive summary of a report from WatsonSmith (an outside law firm) titled “embracing safety as a business priority”. It was drafted on June 30, 2024.

A.) 5-Factor Analysis:

1.) The Purpose of the Communication:

The document states that it is made after it was “prompted by high-profile controversy over several accidents and related injuries associated with propane grills” manufactured by Gourmet Pro’s competitors. While the stated purpose appears to be legal, it actually more resembles the purpose in Valuemart which was actually deemed to be business. This report is a factual analysis of GourmetPro’s processes and practices and includes business recommendations to “make the company even better when dealing with safety concerns.” Thus, the court will likely find that the purpose is more business related.

2.) The Content of the Communication:

As was with the first factor, the content of this document also resembles the report at issue in ValueMart. It contains facts regarding Gourmet Pro’s sales and business model and a factual analysis with business recommendations of prior history of product defects and recommendations to protect safety in future. Thus, the contents are less of a legal analysis and more factual.

3.) The Context of the Communication:

The context of this document cuts to be more legal than business however as this document was prepared by an outside law firm because Gourmet Pro could likely reasonably anticipate litigation against them given the litigation against other similar manufacturers. The fact that it is outside and former counsel could cut against it, but the court will likely outweigh this with Gourmet Pro’s risk of litigation. Thus, the court will likely find the context to be legal.

4.) The Recipients of the Communication:

This report was prepared for the Management and Board of Directors. While that is typically a part of the core privilege group, the court found in Value mart that the focus was an analysis on the facility itself. Here, teh report is an analysis on the company itself, and not legal implications of the Gourmet Pro. Thus, the court will likely find that this does not make the predominant purpose legal.

5.) Whether Legal Advice can be Easily Separated:

Yes

B.) What is likely to be redacted/privileged?

The business recommendations are business purpose and admissible. Paragraphs 1-3 are also business related. The only paragraph that appears legal is paragraph 4, which can easily be redacted or separated. this discusses risks of claim and loss against Gourmet Pro. This will be redacted. The rest is business related.

III. Document Three

Maryland State Board of Law Examiners
JULY 2025 UNIFORM BAR EXAMINATION (UBE) IN MARYLAND –
REPRESENTATIVE GOOD ANSWERS

This document is an email from Lionel Alexander, a Chief Auditor, to Trisha Washington, as General Counsel on January 15, 2024. Mr. Alexander sends an email asking for advice relating to two issues he is experiencing. The purpose of this document is not entirely clear, so the court will again look at the 5 factors to determine the predominant purpose.

A.) 5-Factor Analysis:

1.) The Purpose of the Communication:

Here, the email states that Mr. Alexander's auditors are "running into some questions with regard to [] employees in our neighboring State of Olympia," and that he is hoping Ms. Washington could help. He does not state any legal issues. Issue One deals with her advice on how to best deal with portraying graphics and data on the website, while Issue Two seeks her advice on how to best sit down with employees. She would likely not be providing legal advice for either of these issues, and it would be more general advice. Thus, the court will likely find that the purpose of this is not legal.

2.) The Content of the Communication:

The content of this email is largely an analysis of two issues that the auditor was having and seeking Ms. Washington's advice. The Court has held that tax/accounting advice may not be a legal purpose, but an email that is primarily intended to assist the company with complying with tax regulations, would be legal content. *Booker v. Chemco*. Here, this is less of an email seeking her advice on complying with statutes and regulations and moreso a general factual and business-related advice. Thus, the court will likely find that the content is also not legal.

3.) The Context of the Communication:

This email does not surround any pending or active litigation, and there are no facts to suggest that it deals with any anticipatory litigation either. While this is likely how the court would rule, Gourmet Pro can attempt to argue that the email discussed product defect issues by Gourmet Pro and is thus legal. The court will not likely rule in favor however since it is still seeking business advice.

4.) The Recipients of the Communication:

Here, the email was sent to Ms. Washington, who is General Counsel for Gourmet Pro. Typically, this would cut in favor of it being a legal purpose, however, it is important to remember Ms. Washington's dual-role as general counsel and as an executive. It appears that he is reaching out to her in context as her role as an executive, rather than as general counsel, as in Issue One he acknowledges that she is general counsel and not an accountant, yet he seeks her help in how to display data on the website, something that appears to be separate from her legal role. Additionally, in Issue Two, he seeks her advice dealing with people that she used to work with. While it does not say whether this was in her role as general counsel, the court could imply it is unrelated as it is dealing with managers in general, which she is likely to have more experience dealing with in her role as an executive rather than as general counsel. Thus, the court will likely find that this factor cuts in favor of it being a business purpose and thus not privileged.

5.) Whether Legal Advice can be Easily Separated:

Any legal advice in this email could be easily redacted as the majority of this email seeks business advice.

B.) What is likely to be redacted/privileged?

The predominant purpose of this document is business related. Thus, it is not privileged. However, the court can redact any legal related issues. Thus, the court could determine that the discussions under Issue Two regarding potential products liability issues deal with legal issues and thus those can be separated. In that case, the court would redact the first two sentences of Issue Two.

Maryland State Board of Law Examiners
JULY 2025 UNIFORM BAR EXAMINATION (UBE) IN MARYLAND –
REPRESENTATIVE GOOD ANSWERS

MEE 1

Representative Good Answer No. 1

First, under the ultra vires doctrine, Lin's preference to not expand the business beyond soap will control because it goes beyond the scope of the agreement of the business. Second, if the parties agree to dissolve, the assets will be distributed equally based on the investments and profit-sharing agreement. Third, if the parties do not agree to dissolve the business, a court is unlikely to order judicial dissolution because it is not impracticable for the business to continue based on its operations.

I. Expansion of business - application of ultra vires doctrine

The issue is whether the LLC can expand beyond the scope of its business without unanimous approval of the board under the ultra vires doctrine.

As an agent of the company, typically a director Bo would be able to bind the business to decisions that were reasonably within the ordinary scope of its work. However, if there is an action presented that goes beyond the scope of its work, without approval from the board of directors, the action cannot be taken and status quo prevails.

The ultra vires doctrine applies when an action is presented to the board of directors of an LLC that asks the directors to approve an action that goes beyond the bounds of its ordinary course of business. Under the ultra vires doctrine, a business is not required to go beyond the scope of its work to areas that are not within its business model. However, this does not prevent a business from modifying the scope of its work.

A company can modify its scope of work by adopting an amended scope. Upon creation, an LLC enters into an operating agreement that defines the scope of the business and how the LLC will operate when it comes to topics like profit-sharing and voting processes. When the operating agreement does not discuss a rule, the default rules for LLC from RULLCA apply. Under the default rules for voting, an LLC can approve an action at a Board of Directors meeting by a majority vote if there is a quorum present.

Here, Lin and Bo created an LLC with two board of directors—Lin and Bo—and a scope of work that was “to manufacture, distribute, and sell their antibacterial soap.” The action presented by Lin asks the business to expand into other consumer products. However, this is beyond the scope of the business that Bo agreed to enter. Under the ultra vires doctrine, Bo cannot bind the company to an action that goes significantly beyond its scope.

Bo could argue that he only sought to make the company go into consumer products. Soap is a consumer product so he only wanted the company to go into a similar area. However, there is not sufficient evidence to suggest that Lin wanted to go into a large market. They are chemists and focused two years of their lives on antibacterial soap—not other consumer products. Therefore, it is unlikely that this argument will weigh in favor of Bo.

Therefore, without Lin's approval, the scope cannot be modified at a board meeting because a tie vote will not approve the action. Lin's preference will prevail as the status quo decision.

II. Distribution of assets

The issue is how the assets of the business will be distributed between Bo and Lin upon dissolution.

When parties agree to dissolve an LLC, the LLC will distribute its assets based on its operating agreement. When an operating agreement is silent as to distribution of assets upon dissolution, the default rules under RULLCA apply. First, the LLC must settle all debts with creditors. Second, after settling debts, the parties may take out investments such as operating and supply costs that were paid with their own money. Third, the assets should be divided equitably based on the share each party has in the business.

Here, Bo and Lin both shared ownership of the soap formula equally: 50-50. However, Bo put \$5,000 into the LLC initially that allowed the business to buy soap and advertising. Additionally, Bo contributed \$2,000 more during the first year of operations when the business was getting off the ground. In that same time, Lin contributed \$0 to the operating of the

Maryland State Board of Law Examiners
JULY 2025 UNIFORM BAR EXAMINATION (UBE) IN MARYLAND –
REPRESENTATIVE GOOD ANSWERS

business. Bo should receive money back because the LLC needed that money to benefit from by buying soap and advertising.

At dissolution, the LLC had \$5,000 in cash, \$1,000 in supplies, and no debt. The \$5,000 in cash was also the same amount as the profit they made in the first two years. They have no debts to pay out other than the \$7,000 that Bo contributed to the company. So, Bo will take the \$5,000 in cash. The remaining \$1,000 in supplies should also go to Bo because that was purchased with his own personal investment.

The remaining soap formula is now worth \$40,000. The parties agreed to share ownership equally in the formula, so each party should take half of the value that they sell the formula for—likely \$20,000. Bo may be entitled to \$1,000 from Lin's share.

III. Judicial dissolution

The issue is whether a court can order judicial dissolution of a company that has no debts.

Judicial dissolution of an LLC is appropriate when the company's stated goals are no longer possible or when the operation of the LLC becomes so impractical that it no longer is a functioning company. A company may be ordered to dissolve if the party seeking judicial dissolution makes operation of the company so impractical in their absence.

Here, the company has no debts and has made sizable profits based on its cash-on-hand and the value of the formula. At the point of considering judicial dissolution, one partner (Bo) was considering expanding the business so it does not appear appropriate. The company seems to be profitable and operable, so it is inappropriate for a court to order judicial dissolution.

Representative Good Answer No. 2

1a. The issue here is which member's business decision will control when LLC's members have a dispute.

An LLC may be controlled by an operating agreement or by the default rules under the RULLCA. In the absence of an operating agreement or any other agreement to deviate from the RULLCA, the RULLCA will control in a state that has adopted it. Under the default rules of the RULLCA, all members of an LLC have the authority to enter into agreements in the ordinary course of business. All members also share equal control in any management decisions.

However, any decisions that are outside of the ordinary course of the business require unanimous approval by the members. An LLC's ordinary course of business is determined by examining the purpose of the business, any past agreements or ventures the business entered into, the products the business sells, and the market that the LLC operates in.

There is no operating agreement; therefore, the default rules of the RULLCA apply. Here, both Bo and Lin share authority to take action and share in the management of the LLC. The LLC was started to manufacture, distribute, and sell antibacterial soap. The LLC has been in existence for two years and has only dealt in antibacterial soap. Bo wishes to expand the business into other consumer products while Lin wishes to keep the business within the soap market. The ordinary course of business for this LLC is to manufacture and sell soap. Therefore, any decisions taken in relation to expanding into making another type of soap is likely considered in the regular course of business. But, any decision relating to expanding into another type of market entirely (non-soap products) is likely to be outside of the regular scope of business and therefore subject to unanimous approval. Because there is not unanimous approval to expand beyond soap, Lin's preference not to expand will prevail.

1b. The issue here is determining the distribution of the LLC's assets upon dissolution.

Upon dissolution a LLC's assets are subject to distribution between the members. In the absence of an operating agreement, the members will equally divide any profits after any contributions made by a member are repaid. Additionally, any proprietary assets are usually split in the sense that each member will be able to reproduce and use the asset in further endeavors unless an agreement is made to the contrary. If a proprietary interest increased in value from the time both parties contributed to it and the LLC is dissolved, then the members may split the increased value.

Maryland State Board of Law Examiners
JULY 2025 UNIFORM BAR EXAMINATION (UBE) IN MARYLAND –
REPRESENTATIVE GOOD ANSWERS

The LLC has \$5,000 in cash, a nonpropriety interest in the soap worth \$20,000 (\$20,000 increase from the start of the LLC), supplies worth \$1,000, and no debt. Bo has made \$7,000 to the LLC to be used for ingredients and advertisements. Because Bo contributed funds to the LLC, the \$5,000 in cash will go to Bo. The supplies will be sold and the amount recovered will go to Bo as well. The non-proprietary interest in the soap is unlikely to result in either member receiving any money from it and it would be hard to split this interest. Therefore, it is likely that both members may retain the soap formula to be used in further endeavors.

1c. The issue here is whether the court would order a judicial dissolution based on one party's request.

An LLC may be dissolved upon unanimous agreement by the members or upon appeal to a court for a judicial dissolution. A judicial dissolution is typically granted when carrying on the LLC becomes impracticable or illegal. The court may also order a dissolution if the members of the LLC are unable to collaborate or agree on the direction or management of the LLC to the extent that the members themselves are suffering from the inability to effectively carry on the LLC.

Here, if the parties do not agree to dissolve then the court would likely look at whether the LLC is unable to be carried on by the members. In this case, the Court would examine whether the failure of Bo and Lin to agree on whether to expand the business or not is a disagreement that either fundamentally frustrates the management of the LLC or destroys the relationship between the members to the extent that further management of the LLC is impossible. Here, there are no facts that indicate that the decision on whether to expand or not expand would make the continuation of the LLC impossible. There are no facts to indicate that the parties would be unable to continue working together even if they disagreed on the expansion. Therefore, it is unlikely that the court would order dissolution based on the inability to agree upon an expansion.

MEE 2

Representative Good Answer No. 1

1. - Did the email exchange create a contract?

Governing Law

Contracts dealing with the sale of goods are governed by UCC Art. 2. All other contracts, namely those for services or land, are governed by the common law.

Here, we are dealing with an agreement for Pete to provide the service of snow shoveling to Debbie. Therefore, this agreement would be governed by the Common Law Contract Formation

Under the common law, in order for a contract to be valid, there must be (1), mutual assent, (2), consideration, and (3) certainty of terms.

Mutual assent requires both a valid offer and a valid acceptance. An offer is an outward manifestation of intent to enter into an agreement with another party, done in such a way that the other party reasonably understands that they have been invited to deal and that their acceptance will form an agreement. An acceptance of an offer is the outward manifestation of agreement to the terms of the offer in a manner that is either invited under the offer or reasonable under the circumstances. Mutual assent is judged objectively, and the intent of the parties to form a contract is irrelevant.

Here, in the email exchange between Debbie and Pete, the only statement that may qualify as a valid offer from Debbie was "If you can get the snow cleared from my driveway before 5 p.m., I'll pay a premium price of \$500." However, in response to this, Pete said, "I will do my best, but I can't make any promises." Pete's response was an illusory promise, allowing him the option to forgo performance if he chose to, and this is not an acceptance. Since Pete did not accept Debbie's offer, there was no mutual assent and thus no contract formed by the email exchange. Therefore, the email exchange did not form a contract.

Maryland State Board of Law Examiners
JULY 2025 UNIFORM BAR EXAMINATION (UBE) IN MARYLAND –
REPRESENTATIVE GOOD ANSWERS

Maryland State Board of Law Examiners
JULY 2025 UNIFORM BAR EXAMINATION (UBE) IN MARYLAND –
REPRESENTATIVE GOOD ANSWERS

2. - Did the statement “I accept your offer to clear your driveway” form a contract?

Revocation

Under the common law, an offeror has the power to revoke at anytime after making the offer, so long as certain exceptions do not apply.

Here, Pete made no promise to meet the terms of Debbie’s offer, and Debbie had the right to revoke her offer at any time. Further, by the time Pete made this statement, the job had already been done, and there was no purpose for the contract. Pete would likely argue that an option contract was formed, and that Debbie did not have the right to revoke her offer until 5 p.m.

Under the common law, an option contract, like any other contract, requires consideration. Consideration is bargained for exchange between the parties. Benefit and detriment to the parties can serve as evidence for consideration. When there is an option contract, the offeror is precluded from revoking their offer until the period of time the offeror promised to keep the offer open lapses.

Here, there was no bargained for exchange in the email. Neither party was required to do anything that would establish consideration that would form an option contract. Since there was no option contract, Debbie was still free to revoke her offer. Therefore, Pete’s statement accepting Debbie’s offer at her home did not form a contract.

3. - Did Pete detrimentally rely on Debbie’s offer?

Promissory Estoppel

Under the doctrine of promissory estoppel, the court will find a contract even when there was not one when (1) a promise was made to another party with the intent to induce reliance, (2) the other party detrimentally relied on that promise, (3) the reliance on the promise was justifiable, and (4) the other party suffered damages as a result of that reliance.

Here, while Pete did not legally accept Debbie’s offer, he did respond in a way that suggested he was going to rely on it. Debbie made the offer with the clear intent that Pete would be induced by it as she clearly wanted her driveway cleared before the end of the day and offered Pete more money to get him to do it. Pete did rely on the offer because he passed up an opportunity to clear another driveway for \$400 so that he would have time to get to Debbie’s house. Debbie did not say anything about making the offer to anyone else, and Pete had no reason to believe that the offer was open to the public, making his reliance justifiable. And Pete did lose money and possibly even business because of his reliance on Debbie’s inducement. Therefore, the court will likely find that Pete is owed damages under the doctrine of promissory estoppel.

4. - Pete’s damages?

Reliance Damages

Under reliance damages, the courts seek to put the injured party in the position they would have been in had they not entered into the agreement. Here, Pete lost \$400 in his reliance on Debbie’s promise when he decided to skip another house in order to get to hers. If the court finds that Pete is owed damages, his damages will be \$400.

Representative Good Answer No. 2

1. At issue is whether the emails constituted a valid contract.

A threshold issue is which body of law governs this problem. Contracts for movable goods are governed by the Uniform Commercial Code. Contracts for the sale of real estate or for services are governed by the common law. This contract, which concerns the service of clearing snow from a driveway is for services. Therefore the common law governs this contract.

Maryland State Board of Law Examiners
JULY 2025 UNIFORM BAR EXAMINATION (UBE) IN MARYLAND –
REPRESENTATIVE GOOD ANSWERS

Contract formation requires an offer, acceptance, and consideration. An offer is an objective manifestation by the offeror to enter into a contract that creates the power of acceptance in the offeree. An acceptance is the offeree's objective manifestation of assent to the terms and to be bound by the deal. Under the common law, essential terms include the price, subject matter, date, parties, and price. Consideration is the bargained for exchange of value between parties.

Consideration is typically marked by the detriment to one party, like giving up a legal right, or by a benefit to another. The exchange of promises is sufficient for valid consideration.

1.a. Offer

Applying the rules from above, there was not an objective manifestation of willingness to enter into the contract that created a power of acceptance in the offeree until Debbie's email, "Well, I have a plane to catch tonight, and I must leave the house by 5 p.m. I'm desperate. If you can get the snow cleared from my driveway before 5 p.m., I'll pay a premium price of \$500.00." This objectively shows Debbie's intent to pay \$500 in exchange for clearing of snow by 5:00 pm. It also creates the power of acceptance in Pete. Indeed, Pete could reply "Deal," and all essential terms would be present. The previous communications, "What would you charge," and "I could be there around 4 p.m. I charge \$300 for a normal size driveway" are not definite enough to constitute a valid offer and instead show mere invitations to deal. Therefore, there was an offer in Debbie's last email.

1.b. Acceptance

Applying the rules from above, there was not likely a valid acceptance from Pete. The statement, "I will do my best, but no promises" do not indicate an objective manifestation to be bound by Debbie's terms. The terms of her offer were clearing the driveway at 5:00 pm at 10 Arbor Lane for \$500. The tentative nature of the statement "no promises," and "I will do my best" show too much hesitation to be an acceptance. Therefore, there was no acceptance.

1.c. Consideration

Applying the rules from above, the consideration here would be an exchange of promises. Here, the promise to pay \$500 in exchange for the promise to clear the driveway would be sufficient consideration. However, Pete's statement was not an acceptance, nor was it a return promise to perform. To the contrary, he said "no promises." Therefore, there was not consideration either. Ultimately, the emails did not create a contract because there was no acceptance and no consideration.

2. At issue is whether Pete was able to accept by commencement of performance by traveling to Debbie's house and telling her he accepts.

Generally, whether a contract may be accepted by a return promise depends on if it is bilateral or unilateral. A bilateral contract is marked by a contract exchanging promises that requires both parties to perform independently. A unilateral contract, however, can be best described by the reward-promise style. Under these contracts, one party must perform for a reward. Under a unilateral contract, an offer may not be revoked upon the commencement of performance. The other party must allow the party to complete performance. However, contracts are presumed to be bilateral. Accordingly, under a bilateral contract, acceptance must be seasonably communicated to the other party or by commencement of performance. An offering party may revoke by clear communication to the offeree or by conduct that renders performance impossible. Upon the offeree's discovery that performance is no longer possible, there is proper revocation.

Here, a court would likely consider this contract to be bilateral given the presumption. Even if Pete argued that the contract was a reward (payment of \$500 upon completion of the snow clearing), Pete did not attempt to commence performance (let alone, actually commence) until the work was already completed. Indeed, while Debbie did not communicate any rejection to Pete over email, he did not accept over email, and when he arrived, he saw that the work was already done. Debbie even said that the work had been completed and the offer was no longer available when Pete knocked on her

Maryland State Board of Law Examiners
JULY 2025 UNIFORM BAR EXAMINATION (UBE) IN MARYLAND –
REPRESENTATIVE GOOD ANSWERS

door. Because Debbie hired someone else to do the work before Pete began performance, her actions rendered acceptance and performance impossible. Upon Pete's learning of the performance of the job by someone else, the offer was properly revoked.

Therefore, Pete did not accept the contract by traveling to Debbie's house and telling her he accepts.

3. The issue is whether Pete can recover under a theory of promissory estoppel.

A party may enforce an otherwise unenforceable promise under the doctrine of promissory estoppel if one party (1) makes a promise reasonably expected to induce the other party to act, (2) the other party foreseeably and detrimentally relies on the promise, and (3) the only way to prevent injustice is to enforce the promise.

Here, all of the elements are met. To the first requirement, Debbie's promise communicated urgency to clear her driveway before her flight, no later than 5:00 pm. She even offered to pay a premium price of \$500 because she needed the work done so badly. This urgency can be reasonably expected to induce action or forbearance in reliance on the promise. Additionally, while Pete did not accept the offer over email, he did say he would do his best, which shows that it is reasonable that Debbie should have expected Pete to try his best to comply with the terms to get the premium price.

Second, Pete likely did foreseeably rely on the promise due to the urgency of the communication and his steps to get to Debbie's house in time to clear her driveway by 5:00 pm. He even told Debbie he would try. Indeed, he passed an opportunity to clear a parking lot for \$400. This reliance is sufficiently detrimental and foreseeable to support promissory estoppel. Not only did he pass up the job in order to fulfill Debbie's promise to pay, but he lost money doing it.

Finally, a court would likely find that the only way to prevent injustice would be to enforce the promise. Because Pete lost money in foreseeable reliance of Debbie's promise to pay him for work, it would be a failure of justice for Pete to walk away with nothing but lost earnings in his effort to fulfill Debbie's request.

Therefore, Pete has a claim for promissory estoppel based on his reliance on Debbie's statement that she would pay a premium price of \$500.

4. The issue is how much money Pete could recover if the promise is enforceable.

Courts of contract seek to put the parties in the position that is most fair. Accordingly, the typical money damages award is expectation damages. These damages seek to put the party in the same position they would be in had the contract been fully performed. Often associated with expectation damages are incidental damages and consequential damages. Alternatively, parties may seek reliance damages, which seek to put the party in the position they would have been had no contract ever been formed. Finally, restitution prevents a party from being unjustly enriched by providing the party with the value of the benefit conferred. Generally, claims for promissory estoppel allow a party to recover the amount needed to prevent injustice.

In this case, if Pete were to be awarded expectation damages, which are the most common damages, he would have made \$500 had he fully performed. However, this is a claim for promissory estoppel, and the courts will consider the amount necessary to prevent injustice. Debbie may argue that Pete's usual price is \$300, so any money other than \$300 would create unjust enrichment. Because Pete did not perform, a court would not likely consider \$500, the premium price, to be the price necessary to prevent injustice. Instead, courts would consider how Pete lost out on the job for the parking lot, which deprived him of a job valued at \$400. This would be the amount necessary to prevent Pete's injustice. If a court were to award Pete \$500, he would receive \$100 extra for two jobs he did not complete. Therefore, Pete has a strong argument for recovery of \$400 assuming that he has a valid claim for promissory estoppel.

Maryland State Board of Law Examiners
JULY 2025 UNIFORM BAR EXAMINATION (UBE) IN MARYLAND –
REPRESENTATIVE GOOD ANSWERS

MEE 3

Representative Good Answer No. 1

1. Yes, Bank X needs judicial approval to resign as trustee.

The issue presented is whether a trustee may resign without cause.

In order for a trustee to resign, a trustee needs the agreement of all beneficiaries under the trust, or needs the approval of the court.

Here, receiving approval from all of the beneficiaries under the trust will prove hard. For example, under the trust, there are multiple art museums, a concert hall, and an entire class of unidentified State A students that are all beneficiaries under testator's trust. Locating, identifying, and getting all beneficiaries to agree will be impossible for Bank X. Therefore, bank X will need the approval of the court.

2. No, Fred does not have any interests in the trust.

The issue presented is whether Fred has an interest in any of the bequests made by testator Under the rules of trust construction, the testator's intent controls. When a testator clearly

identifies who a bequest is going to, it is the duty of the trustee to see that transfer through. When a testator establishes a perpetual charitable trusts such trusts are enforceable and not subject to the rule against perpetuities. Therefore, charitable trusts can continue on for as long as possible.

Here, Fred has no interests in the trust even though he is the closest living relative of the testator. That is because under testator's probated will, testator's intent was clear. Testator bequeathed 500,000 to several arts museums, 250,000 to capital city concert hall, and 1,750,000 to the business college at State A university. The remainder/ balance of his estate was placed into a valid perpetual trust- leaving nothing for Fred. since Charitable trust can be perpetual, Fred has no interest in the trust.

3. Yes, the trust terms can be judicially modified under the doctrine of Cy Pres.

The issue presented is where a court can modify the terms of a charitable trust when the trust purpose is no longer achievable/ has been frustrated.

Under the traditional rules of trust interpretation, when a charitable trust becomes futile (i.e. does not work, fails, or is otherwise impossible), a court used to have to determine specific charitable intent by a testator. Under modern views however, courts infer a general charitable intent from the testator. By inferring a general charitable intent by the testator, a court may modify a trust to reflect the testator's intent and supplement a different charity under the doctrine of Cy Pres.

Here, the purpose of the charitable trust because frustrated so the court is permitted to apply Cy Pres and select another charity, thereby modifying the terms of the trust.

Originally, the trust was created to pay the education expenses of any person, as selected by the trustee, who had graduated from a one room schoolhouse in State. For a while there was no issue with the direction. However, over time, there was a substantial decrease in the number of students graduating from one-room schoolhouses in state A. Further in 2010 there were no such students attending State A university and the only one room schoolhouse permanently closed, thereby frustrating the trusts purpose and making it impossible to execute.

Maryland State Board of Law Examiners
JULY 2025 UNIFORM BAR EXAMINATION (UBE) IN MARYLAND –
REPRESENTATIVE GOOD ANSWERS

Based on the terms of the testator's bequest to the charitable trust, a court can infer that the testator intended to support local students in their college endeavors. Therefore, the court is permitted to judicially modify the trust to reflect that change of circumstances.

4. Assuming that Bank Y has been appointed trustee and that the trust terms can be judicially modified, the court is more likely to adopt Bank Y's suggestion rather than Capital City Halls because it more clearly aligns with the testator's intent.

When determining how to interpret the terms of a trust, courts will always attempt to ascertain the testator's intent. The testator's intent can be found in the terms of the trust or in circumstances around the trust.

Here, the testator's intent indicate that the testator wanted the funds to be used for education purposes- specifically for education of rural youth. The original terms of the charitable trust required that the funds be used for education for students who had graduated from a one-room schoolhouse. One-Room schoolhouses are a predominantly rural structure, creating the implication that the testator wanted the money to be used for rural students.

Further Capital City Concert hall specifically received a lump sum amount under the testator's will. A court could find that because Capital City Concert Hal already received a pot of money of its own- the testator did not intend for the concert hall to get more than they should have.

Since Bank Y's suggestion is more in line with the testator's intent the court is more likely to adopt its suggestion rather than Capital City Concert's halls.

Representative Good Answer No. 2

1. The first issue is whether a trustee may resign without judicial approval.

Generally, a trustee may resign from their role as trustee with judicial approval. A court may also remove a trustee from their role for a variety of reasons, including upon request, petition by a beneficiary, neglecting duties, violation of their fiduciary duties, among others. When a trustee is specifically designated, the trustee will need the court's approval. Though a trust will not fail for lack of trustee, a court will need to appoint a new trustee.

Here, Testator specifically designated Bank X as its trustee. Upon petitioning the court, Bank X may request permission to resign, which is likely to be granted.

2. The second issue is whether Fred has any interest in the trust now that the charitable trust's purpose is no longer able to be effectuated as designated by Testator and whether the cy pres doctrine will apply.

When a Testator provides for a pour-over trust, i.e., provides for a trust in his will with estate assets, and the trust is terminated for whatever reason, the trust assets and income will proceed as though Testator had not had a will--i.e., through intestacy. With regard to a charitable trust, the UTC presumes that general intent, which means that there just needs to be general charitable intent (i.e., an intent that is mostly altruistic in some way). If a charitable trust has general charitable intent, the court may sometimes apply the cy pres doctrine, which means "as near as possible." In other words, if there is some way to effectuate the Testator's general charitable intent, the purpose of the trust is still valid (which is an essential element of a valid trust).

Here, the Testator's trust instrument stated that all trust income was distributable annually to pay the education expenses of any persons, under the trustee's discretion, who had graduated from a one-room schoolhouse and were

Maryland State Board of Law Examiners
JULY 2025 UNIFORM BAR EXAMINATION (UBE) IN MARYLAND –
REPRESENTATIVE GOOD ANSWERS

attending State A University under the age of 25. The court will have to determine if the purpose of the trust would be frustrated now that there are no longer any individuals to whom the trustee may distribute income. If the court assumes a general charitable intent, then it can apply the cy pres doctrine and allow the income to be distributed in another way, like to graduates of any rural public high school in State A attending State A university.

This is likely, so if the court applies cy pres, then Fred, who would have inherited under intestacy as Testator's closest and only living relative, gets nothing.

3. The third issue is whether a court may judicially modify the trust's terms.

Generally, the trust instrument and terms will govern, and if the purpose of the trust pursuant to those terms is unable to be fulfilled, then a trust will generally be terminated. Again, under the cy pres doctrine, though, a court may adjust a charitable trust's income to still satisfy the Testator's general charitable intent.

Here, the trust's terms may be judicially modified under the cy pres doctrine as analyzed above.

4. The fourth question is that if Bank Y has been appointed trustee and that the trust terms can be modified, which suggestion is more likely to be adopted.

Bank Y suggested that the terms of the trust be modified to allow it to distribute trust income to graduates of any rural public high school in State A attending State A University.

Capital City Concert Hall, who received \$250,000 under the terms of Testator's will, believes that the trust principal of \$10 million should be held exclusively for its benefit with trust income payable only to it.

Again, under the doctrine of cy pres, a court is trying to get as near as possible to the Testator's intent. Here, Capital City Concert Hall (CCCH) already took under the will. Had Testator intended to give them additional money, he could have, or set up a trust for it. It is much more likely that a court would accept Bank Y's suggestion, as this is much nearer to the Testator's intent under cy pres.

MEE4

Representative Good Answer No. 1

Does Sovereign Immunity Bar the lawsuit against State A?

Sovereign Immunity bars the lawsuit against State A.

At issue will be whether an individual citizen can sue a state in federal court. The Eleventh Amendment limits the powers of the federal government by precluding suits by citizens against a state in federal court. While citizens may sue individual public servants for injunctive relief, a suit against a State for damages is barred by Sovereign Immunity. A suit is only permitted by a Citizen against a state if the STATE has waived sovereign immunity or permitted suits. Here, because the suit is one by a citizen against a state in federal court for money damages, and because State A has not waived sovereign immunity, the suit is barred.

Does Sovereign Immunity Bar Woman's Suit Against the City?

Sovereign Immunity does not bar Woman's suit against the city.

Maryland State Board of Law Examiners
JULY 2025 UNIFORM BAR EXAMINATION (UBE) IN MARYLAND –
REPRESENTATIVE GOOD ANSWERS

At issue will be whether citizens can sue a political subdivision of a state in federal court. While states are immune to suits for damages by citizens, political subdivisions of states do not enjoy the same immunity. For that reason, sovereign immunity does not bar woman's suit against the city.

Does Notice Provision Commandeer State A in violation of the Tenth Amendment?

Notice Provision does not commandeer State A in violation of the Tenth Amendment.

At issue is whether the requirement in the notice provision applies only to the states, or if it is generally applicable to both state and private conduct. The federal government cannot usurp the functions of a state. While the federal government may place certain requirements on grants of money to the states (they can "attach strings"), those requirements cannot be so onerous and complete as to make the state officials extensions of the federal government. Further, restrictions that the federal government places on everybody, but that happen to also fall on the states, do not run afoul of the Tenth Amendment. Because the requirement in the notice provision is one of general applicability that does not specifically target the states, the provision is not a violation of the Tenth Amendment.

Does the Housing Provision of the Act Commandeer County?

The Housing Provision of the Act commandeers County in violation of the Tenth Amendment.

At issue will be whether the Housing Provision usurps the County officials for federal functions. The federal government can place requirements on funds granted to the states, so long as the states can afford to reject the funds if they choose not to accept the restrictions on that money.

However, in the absence of restrictions and requirements accompanying such funding, the federal government is not permitted to make blanket requirements that turn state officials and workers into federal functionaries. Here, the states had no option to refuse the restrictions and requirements of the Housing provision. Consequently, the Housing Provision is one that commandeers the County officials, requiring them to carry out federal governmental functions.

Representative Good Answer No. 2

1. Sovereign immunity bars the man's lawsuit against State A.

Issue: The issue is whether sovereign immunity prohibits suits against a state by its citizens absent the state's consent.

Rule: Under the Eleventh Amendment, states are immune from suit by citizens of the state or of another state. Each U.S. state is a sovereign and exercises its right to sovereign immunity. A state may consent to be sued, but it must do so explicitly. Courts will not find an implied consent to suit by citizens on the part of a state.

Analysis: Here, Congress passed a law that purports to waive sovereign immunity for states. While Congress has considerable power under its commerce power (under the Commerce Clause), it cannot violate a separate provision of the U.S. Constitution in its exercise of that power. While Congress has the ability to waive its own sovereign immunity (for example, in the Federal Tort Claims Act), it cannot do so for the states on their behalf.

Conclusion: Because only the state itself may consent to suit, and State A has not so consented, the man's suit against State A is barred.

2. Sovereign immunity does not bar the woman's lawsuit against City.

Issue: The issue is whether subsidiaries of states enjoy the same sovereign immunity as states.

Maryland State Board of Law Examiners
JULY 2025 UNIFORM BAR EXAMINATION (UBE) IN MARYLAND –
REPRESENTATIVE GOOD ANSWERS

Rule: As explained above, under the Eleventh Amendment, U.S. states are immune from suit - this is an application of sovereign immunity. However, subsidiaries of states, such as cities and towns, are not immune from suit. Cities, unlike states, are not sovereigns. For this reason, one sees civil rights and other lawsuits filed against municipalities and not states. Municipal liability is not absolute, but neither does a municipality enjoy the complete immunity from suit by citizens enjoyed by states.

Analysis: Here, the woman seeks to sue City under the Act. City is a municipality within State A. While State A enjoys sovereign immunity under the Eleventh Amendment as a U.S. state, City does not enjoy that immunity. For that reason, the woman's suit against City is not barred by sovereign immunity.

Conclusion: Because City is a subsidiary of a state and not itself a state, it does not enjoy sovereign immunity. The woman may file suit against City because City is not immune from suit by citizens.

3. The Notice Provision of the Act does not commandeer State A in violation of the Tenth Amendment.

Issue: The issue is whether, by establishing across-the-board rules for hiring and firing employees, Congress has unconstitutionally commandeered the state.

Rule: Under the Commerce Clause of Article I, Congress has broad power to regulate the channels of interstate commerce, the instrumentalities of interstate commerce, and activities that impact interstate commerce. This power has even been used historically to prohibit discrimination when it impacts interstate commerce.

Analysis: Here, the Act requires all employers, public and private, to institute new notice requirements and timing requirements when terminating employees without cause. Arguably, this is an exercise of the Interstate Commerce Power because the rights employees have in their jobs directly impacts interstate commerce.

Conclusion: Because the Act is squarely within the Commerce Clause's power and does not force the state to act in a particular way, but instead changes the rules generally for all employers, it is likely not commandeering and not unconstitutional for that reason.

4. The Housing Provision of the Act commandeers County in violation of the Tenth Amendment.

Issue: The issue is whether, by exercising its Commerce Power to force states and municipalities to enforce the Housing Provision of the Act, Congress is engaging in unconstitutional commandeering.

Rule: The Constitution prohibits commandeering by the federal government. Commandeering occurs when the federal government orders the states to enact federal laws or to otherwise enforce federal laws. While the Commerce Power is broad, it is not unlimited, and the Commerce Power cannot be used to violate any other provision of the U.S. Constitution including the provision against commandeering. Of note, if this program were structured as a grant program and enacted by an exercise of Congress's Taxing and Spending Powers, it might be constitutional. Funds could be reasonably conditioned on compliance with Congress's regulatory scheme and rather than imposing monetary penalties, as here, Congress could condition part of the funding on compliance. As long as the "strings" were clearly stated, reasonably related to the purpose of the funding, and not coercive, it would likely be constitutional.

Analysis: Here, the Housing Provision orders states to administer a federal grant program where the funds will be paid to private developers. The Act does not seem to include any funding to pay for the administrative costs here - staff to review applications, staff to enforce the act, the infrastructure to set up an application system, etc. And specifically requiring states to enforce the law is clear commandeering.

Conclusion: Because Congress is forcing states to enforce its law and threatening fines for failure to comply, it is commandeering the state in violation of the constitution.

Maryland State Board of Law Examiners
JULY 2025 UNIFORM BAR EXAMINATION (UBE) IN MARYLAND –
REPRESENTATIVE GOOD ANSWERS

MEE5

Representative Good Answer No. 1

1. The issue is whether the principal's search of the student's jacket violate the student's rights under the 4th Amendment?

The fourth amendment is applicable to the states via the 14th amendment. The fourth amendment protects citizens from unreasonable searches and seizures by the government. To have standing to object to a search or seizure, a person must have reasonable expectation of privacy in the thing to be searched or the item to be seized. government officials usually need a warrant to conduct a search, however there are many exceptions, some of which apply to this fact pattern and will be discussed in turn.

One exception is for administrative or school searches. Generally, students have a lower expectation of privacy than other citizens by virtue of them attending public school. Public school officials have broad authority to search students and their property. While police officers generally must have reasonable suspicion to conduct a search- meaning they have good faith belief that they will find evidence of a crime or belief that a crime is being committed- school officials can search with less than reasonable suspicion. However with school official searches, the method of searching must be no more intrusive than necessary and the policy that allows for the search must be clearly articulated so that students understand the policies they are consenting to by attending school.

Here, the school had a clear policy that students were prohibited from going to the gas station across from school during school hours. The rule was included in the student handbook that is provided to all students and their parents, and the principal orally informs the students of this rule. The basis of this rule is that drug dealing has been known to occur at this gas station.

Further, students are not allowed to possess medication that the school does not authorize them to have. This policy is outlined in the student handbook as well.

Here, the school principal, as a school official, had grounds for suspicion to suspect that the student was engaging in activity that was prohibited by the handbook. He observed the student walk to the gas station during school hours, walk close to a car, talk to the driver, and after the driver left, he saw the student put his hands in the front pocket of the jacket he was wearing.

Based on the school policy that prohibits students from going to the gas station, and the basis for that policy being to protect students from getting involved in drug dealing, the principal had reasonable suspicion that the student may have been engaging in similar activity, and at the very least violated the school policy.

The student had a reasonable expectation of privacy in his person, however once he violated the school policy and the principal developed articulable suspicion that he was engaged in an activity that was in violation of the policy and could be related to drug use, the principal had grounds to search the student's jacket pockets without a warrant.

Further, the search of the student's jacket pockets was not more intrusive than necessary and was tailored to the extent of the official's suspicion- that he may have just been part of a drug deal and he saw the student put his hands in his pockets upon leaving the gas station.

Thus, the school official's search did not violate the 4th Amendment.

2. The issue is whether the locker search violated the 4th Amendment.

Maryland State Board of Law Examiners
JULY 2025 UNIFORM BAR EXAMINATION (UBE) IN MARYLAND –
REPRESENTATIVE GOOD ANSWERS

In order to have standing to challenge search as being unconstitutional under the 4th Amendment, a person must have reasonable expectation of privacy in the thing searched. A person usually has reasonable expectation of privacy in things that they do not hold out to the public, including containers that are obscured from public view. However, a student's property inside a school is held to a lower expectation of privacy. A student may have a greater expectation of privacy in the contents of their backpack, which they purchased with their own money and bring home from school, than their school locker, which is property of the school. Further, as stated above, school officials need only articulable suspicion before engaging in a search.

Here, the student's had no reasonable expectation of privacy in his locker because it was property of the school. This is further supported by the fact that the policy of the lockers being school property is written in the school handbook, there is a policy that lockers may be searched at any time, the school has a master key to all lockers, and there is a sticker on every locker stating that the locker is the property of LPSD and may be subject to search. The principal had an articulable suspicion that he may find more instrumentalities of a crime in the student's locker because he had recently found unauthorized medications on his person. And the fact that the locker was property of the school and subject to a search at any time affords the principal with the right to search the student's locker.

Therefore, the search of the locker did not violate the student's 4th Amendment rights.

3. The issue is whether the search of the student's cell phone violate the student's rights under the 4th Amendment?

Another exception to the warrant requirement is that police may search a person without a warrant if they are conducting a lawful arrest. A search incident to a lawful arrest may encompass the person's clothing or anything they can reach in their wingspan. A police may also search containers that they believe may hold evidence or instrumentalities of a crime. However, the supreme court has held that a search of a person's cell phone is unreasonably intrusive and violates the fourth amendment.

Here, the student was subject to a lawful arrest as the police had an arrest warrant for him based on violation of controlled substances and served it on him at school. Under the search incident to lawful arrest exception, the police were able to search the student's person as well as containers that they believe may have held instrumentalities of a controlled substance offense. Thus the student's backpack, which was attached to his person, would be valid to search. However the officer's search of the student's cellphone and text messages would violate his fourth amendment rights as this is unconstitutionally intrusive.

Representative Good Answer No. 2

1. Public School Search: Student's Jacket Pockets

No, the principal's search of the student's jacket pockets did not violate the student's rights under the Fourth Amendment.

At issue is whether the principal's warrantless search of the student's jacket pockets falls within an exception to the warrant requirement of the Fourth Amendment.

The Fourth Amendment provides protection against unreasonable searches and seizures. Specifically, the Fourth Amendment applies to government actions, which includes any action by an employee of the government or any action by a private individual at the direction or request of a government employee.

An "unreasonable" search or seizure is one that violates a person's reasonable expectation of privacy. In general, the government must obtain a search warrant from a neutral magistrate before administering a search of a private individual. However, there are many exceptions to this general requirement, and these exceptions permit warrantless searches under certain circumstances.

Maryland State Board of Law Examiners
JULY 2025 UNIFORM BAR EXAMINATION (UBE) IN MARYLAND –
REPRESENTATIVE GOOD ANSWERS

One of these exceptions is an administrative search, which often comes up in a public-school setting. Under the administrative search exception, an public school official may search a student without a warrant if doing so is reasonably likely to produce contraband in violation of school rules, as long as the search is reasonable and not unduly invasive.

Here, the principal personally witnessed the student walking across the street to the gas station during school hours in violation of school rules. The principal then saw the student suspiciously hand something to the driver of a car before putting his hands in his pocket and walking back across the street to school.

It was reasonable for the principal to be suspicious of the student's behavior. After all, the reason the school prohibited students from visiting the gas station during school hours was because police had identified the location as the site of frequent drug dealing. Thus, it is reasonable for the principal to suspect that he had witnessed the student taking part in a drug deal.

The principal witnessed the student put his hands into his front jacket pockets after walking away from the car, so it was reasonable for the principal to search the student's front jacket pockets for possible contraband. Because the gas station had been identified as a site for frequent drug dealing, the principal's search was reasonably likely to produce contraband in violation of school rules. And, indeed, it produced pills in violation of the school's rule prohibiting possession of medication of any kind without express school permission. Finally, although it would have been less invasive if the principal had asked the student to remove the jacket prior to searching the pockets, the search was, nonetheless, not unduly invasive. Additionally, because the principal did not search any of the student's clothing beyond the contents of the front jacket pockets, the principal reasonably limited the scope of the search to the areas that the principal suspected might contain contraband.

In sum, the principal's search of the student's jacket pockets did not violate the student's rights under the Fourth Amendment.

2. Public School Search: Student's Locker

No, the principal's search of the student's locker did not violate the student's rights under the Fourth Amendment.

At issue is whether the student had a reasonable expectation of privacy in the contents of his locker.

As noted above, a public-school official may search a student without a warrant if doing so is reasonably likely to produce contraband in violation of school rules, as long as the search is reasonable and not unduly invasive.

Here, the school's locker policy (as included in the student handbook) stated that a student's assigned locker is the property of Local Public School District (LPSD) and may be searched at any time, and indicated clearly that the school administration had a master key to all lockers. Furthermore, the sticker affixed to the outside of each locker reinforced the message that "[the] locker is the property of LPSD and may be subject to search." Because the locker policy is clear, unambiguous, included in the student handbook, and concerns school property that is clearly marked so as to alert students that they have a greatly reduced expectation of privacy in the contents of their locker, the administrative exception extends to the principal's search of the student's locker.

When the principal (1) witnessed the student violating the school rule prohibiting students from going to the gas station across the street during school hours and (2) subsequently discovered that the student had a bag containing two pills in his pocket and (3) that the student did not have school permission to possess any medication, this gave the principal adequate grounds to suspect that the student might have been breaking more school rules. This reasonably could have included wrongful possession of more pills in the student's locker.

Maryland State Board of Law Examiners
JULY 2025 UNIFORM BAR EXAMINATION (UBE) IN MARYLAND –
REPRESENTATIVE GOOD ANSWERS

Because the principal had a valid and reasonable basis for making the search, and because the student had a reduced expectation of privacy, the principal's search of the student's locker did not violate the student's Fourth Amendment rights.

In sum, because the principal's search was reasonably likely to produce contraband in violation of school rules, was reasonable in manner and scope, was not unduly invasive, and concerned a location in which the student had a reduced expectation of privacy, the search did not violate the student's rights under the Fourth Amendment.

3. Officer School Search: Student's Text Messages

Yes, the officer's search of the students text messages violated the student's rights under the Fourth Amendment.

At issue is whether the student had a reasonable expectation of privacy in the text messages on his phone such that a police officer would be required to obtain a valid search warrant to view the contents.

As explained above, the Fourth Amendment protects individuals against unreasonable searches and seizures by government officials. This most commonly refers to searches by members of law enforcement, as is the situation here.

Under the Fourth Amendment, a person has a reasonable expectation of privacy in the contents of their mobile phone. Although this was not always the case, the Supreme Court has held that the scope of information contained on, and accessible through, one's mobile device permeates virtually every facet of private life such that a warrantless search would be clearly unreasonable.

Here, the officers' search of the student and his backpack were both proper as a search incident to arrest (which is not at issue here). However, the officers' search of the student's cell phone was an unreasonable violation of the student's privacy that violated the student's rights under the Fourth Amendment. Even though the student's cell phone was unlocked, the data contained on a cell phone is, potentially, so sensitive that a search warrant is required to search it.

In sum, even though the officers lawfully seized the student's cell phone during a proper search incident to arrest, they violated the student's rights under the Fourth Amendment when they searched through the text messages on his cell phone without first obtaining a valid search warrant.

MEE6

Representative Good Answer No. 1

1. Whether Jane is liable to the neighbor in a negligence action Jane is directly liable to the neighbor in a negligence action.

At issue is whether the neighbor would have a strong case for negligence, specifically concerning if Jane owed him a duty of care, if she breached that duty, and if any breach cause injury.

In order for someone to be liable for a negligence action, there must be duty, breach, causation, and injury. Duty refers to the duty of care that the defendant owes the plaintiff. Absent special relationships or circumstances, this duty is usually one of ordinary care - what the reasonably prudent person would do. A breach is an action by the defendant which does not conform to the duty of care required. Causation refers to a link between the breach of duty and any injury. Causation comes in two forms - actual and proximate. Actual causation, sometimes called but-for causation, refers to when the consequence would not have happened without the defendant's action. Proximate causation refers to there being a causal link between the defendant's action and the resulting consequence that is not too attenuated or unrelated. Finally, injury refers to physical or emotional suffering that the plaintiff underwent.

Maryland State Board of Law Examiners
JULY 2025 UNIFORM BAR EXAMINATION (UBE) IN MARYLAND –
REPRESENTATIVE GOOD ANSWERS

Jane had a duty of care to be a reasonably prudent person in parking her truck so that it would not damage other people or property. She breached this duty by not shifting the truck into park nor engaging the parking brake which allowed for the truck to roll. Injury occurred by the property damage that the neighbor incurred. Finally, there was actual and proximate causation between the breach and the injury. Actual cause existed because the neighbor's car would not have been damaged but-for Jane's failure to park properly. Proximate cause exists because Jane's truck directly broke the sign which crashed into the neighbor's car; there is no attenuated event breaking the causal chain.

Because Jane breached a duty of care causing injury to the neighbor, she can be held liable in a negligence action.

2. Whether Quick Mailboxes is liable to the neighbor

Quick Mailboxes can be held liable to the neighbor on a theory of vicarious liability.

At issue is whether Quick Mailboxes can be held vicariously responsible for the actions of their employee, or directly responsible for negligently hiring/supervising.

"Respondeat superior" refers to the doctrine that often holds employers liable for the actions of their employees. However, this idea is governed by the concept of frolic and detour. In other words, an employee's complete abandonment of their employment responsibilities will cut off responsibility to their employer, while just a minor deviation from their employment duties can still allow their employer to be responsible. Additionally, an employer will not be responsible for intentional torts of the employee, such as assault, which represent such a gross violation of employment that they could not be held responsible. For direct liability for negligent hiring or supervising, the employer's neglected responsibility must be the direct cause of what happened.

While Jane's personal phone call is what caused her to negligently park the truck, it was just a minor deviation from her work duties rather than a complete abandonment. A brief phone-call would not sever the employer's liability, on the contrary, if Jane had completely abandoned her duties and went to the friend's house to socialize, that would be a more severe abandonment that could cut off the employer's responsibility. Additionally, this is a negligence action and not an intentional tort that would sever liability. However, the employer did not make any negligent action in hiring or supervising Jane that would hold them directly liable on that theory of liability. Nothing in the facts indicate Jane was a risk that the company should have known about more so than an ordinary person.

Quick Mailboxes is liable to the neighbor under a doctrine of respondeat superior for their employee in the line of duty, even if she was making a minor and brief deviation from her duties. They are not directly liable under a theory of negligent hiring or supervision.

3. Whether the Homeowner is liable to the Neighbor

The homeowner is not liable to the neighbor for his hiring of Quick Mailboxes.

At issue is if the homeowner's contracting with Quick Mailboxes was negligent in a way that impacted the neighbor.

Negligent hiring refers to a hirer that should have known the risks associated with who they hired. There is a similar duty, breach, causation, injury requirement to what was explored in Part 1.

Generally, no theory of liability would directly implicate the neighbor for hiring the tortfeasor. The homeowner did not commit any negligent action in hiring a company he reasonably thought would do a prudent job at repairing his mailbox. No breach existed since he had no indication that hiring Quick Mailboxes put his neighbor's property at risk.

The homeowner is not liable to the neighbor for his hiring of Quick Mailboxes.

4a. Recovery For Expensive Repairs

Maryland State Board of Law Examiners
JULY 2025 UNIFORM BAR EXAMINATION (UBE) IN MARYLAND –
REPRESENTATIVE GOOD ANSWERS

The neighbor will be able to recover the cost to repair the car despite the repair being unusually expensive.

At issue is whether a plaintiff can recover at an elevated cost due to special conditions that made repair more expensive.

In general, common law follows the “Eggshell Plaintiff” rule. This refers to the concept that a tortfeasor takes their plaintiff as they find them. Metaphorically, if they hurt someone with delicate eggshell for skin, they would still be responsible for fixing it. This also applies to cost. Damaging something more expensive than its usual brand would be still makes the defendant responsible for as the defendant found that item - in such case, a state of being “more expensive to repair”.

In the case at hand, it is irrelevant that the car was more expensive to fix when compared to a more average model. The tortfeasor took the car as they found it, with its relevant fanciness, and did not take the car as an average model. Damaging the expensive car means fixing the expensive car.

The neighbor will be able to recover the unusually expensive cost to repair the car.

4b. Recovery for Emotional Harm

The neighbor will not be able to recover for emotional harm.

At issue is when a plaintiff is able to recover additional damages for negligent infliction of emotional distress.

Negligent infliction of emotional distress governs emotional harm to bystanders in negligence cases. It requires there to be a special relationship between the person injured and the claimant (such as spouse or child) as well as the claimant to be personally present and witnessing the injury as it happens.

In the case at hand, the neighbor cannot recover because a car was damaged and not a person to which he had a special relationship.

Because the car is an inanimate object, the neighbor cannot recover for the emotional harm he may have suffered.

Representative Good Answer No. 2

I. The issue here is whether Jane is directly liable to the neighbor in a negligence action. The rule here is that in order to establish a prima facie case of negligence, the plaintiff must establish that the defendant owed a duty to the plaintiff, that the defendant breached that duty, that the defendant breach actually and proximately caused the plaintiff’s harm, and that the plaintiff suffered damages as a result.

Duty: A defendant owes a duty to all foreseeable plaintiffs. In a negligence action, the defendant owes a duty to act as a reasonably prudent person would under the circumstances. Here, the facts are clear that by parking the car in the neighborhood, Jane owed a duty to all other people whose cars on the road and in the neighborhood, including neighbor’s car who was parked behind it. Therefore, in conclusion, Jane owed a duty to act as a reasonably prudent person would in parking the car on the street.

Breach: A breach occurs when the defendant does not meet their standard of care. Here, Jane had a duty to act as a reasonably prudent person would in parking their car on the street. The facts here state that Jane parked her car on a hilly street, and that while she exited the truck she got distracted by answering a phone call, which caused her to forget to put her car in park. A reasonably prudent person would put their car in park, especially when parking on a hill. Thus, Jane breached her duty of care.

Maryland State Board of Law Examiners
JULY 2025 UNIFORM BAR EXAMINATION (UBE) IN MARYLAND –
REPRESENTATIVE GOOD ANSWERS

Causation: A defendant's breach must be an actual cause and a proximate cause of the harm. A breach is the actual cause when the damage would not have happened "but-for" the defendant's breach and the breach was a substantial factor in the defendant's harm. A proximate cause occurs when it is reasonably foreseeable that that is the type of harm that would occur. An intervening cause is a cause that occurs after the defendant's breach that contributes to the damages. An intervening cause is considered superseding, and breaks the chain of proximate causation, if it is not reasonably foreseeable.

Here, the facts indicate that Jane failing to put her car in park caused the car to roll down the hill, hit the stop sign which then fell on the neighbor's car. Thus, the damage would not have occurred but-for Jane forgetting to put her car in park, and this was an actual cause of the neighbor's damages. It was also a proximate cause because it is reasonably foreseeable that if you forget to put your car in park on a hill, that it could, and likely would, roll down the hill and would cause damage to anything in its path, including the neighbor's car. The stop sign falling on the car is an intervening cause as it occurred after Jane did not put on her breaks, however it is not superseding and does not break the chain of proximate causation because it is foreseeable that if you hit a stop sign that it could fall on whatever is behind it. Thus, Jane's breach caused neighbor's harm.

Damages: The plaintiff must suffer actual economic damages in a negligence action. The neighbor had to pay \$55,000 to fix their car after it was damaged. Thus, the neighbor suffered actual damages. Therefore, in conclusion, Jane is directly liable to the neighbor in a negligence action.

II. The issue here is whether Quick Mailboxes is liable to the neighbor either directly or vicariously.

Vicarious Liability: The rule here is that an employer can be held vicariously liable for the torts of their employees if the employees were acting within the scope of their employment. If the employee was engaged in a frolic, meaning that they substantially deviated from their course of employment, then the employer will not be held vicariously liable. If the employee was engaged in a mere detour, meaning that they briefly were away from employment, then the employer will still be held vicariously liable.

Here, the facts indicate that Jane was driving a car owned by Quick mailboxes and was sent to fix the homeowners mailbox. She was parking on the side of the street to inspect the mailbox when this occurred. Thus, she was acting within the scope of employment. It does not matter that Jane had briefly answered a quick personal call which caused her to forget to put on her parking break, because this was merely a detour and not a frolic. Thus, Quick Mailboxes can be held vicariously liable to the neighbor for Jane's torts.

Direct Liability: The rule here is that an employer can be held directly liable to a third party for negligent training or negligent hiring on their part.

Here, the facts indicate that Quick Mailboxes has 10 local employees and that they conduct background checks on all employees, verify that they have appropriate driver's licenses, and also trains them as needed. Jane is one of their part time employees and works 20 hours a week. The facts do not indicate or suggest that Jane has ever raised any red flags or that anything like this has ever happened before. Thus, the employers likely did not breach their duty of care as they acted as any reasonably prudent employer would in their hiring and training through conducting various trainings as needed and also conducting background checks. Thus, Quick Mailboxes cannot be held directly liable to the neighbor.

III. The issue here is whether the homeowner is liable to the neighbor because the homeowner hired Quick Mailboxes.

The rule here is that an individual is not held liable for the acts of independent contractors. An independent contractor is someone who is hired and who specializes in the area they are hired in and whom exercises control over themselves. An individual can be held liable for an independent contractors' torts if that contractor is engaged in a nondelegable duty or an inherently dangerous activity.

Maryland State Board of Law Examiners
JULY 2025 UNIFORM BAR EXAMINATION (UBE) IN MARYLAND –
REPRESENTATIVE GOOD ANSWERS

Here, homeowner hired Quick Mailboxes to fix their mailbox. Homeowner exercised no control in how they were to fix their mailbox. This is clear from the fact that homeowner stated: “I don’t care how you fix it. I just want it done by the end of the week.” This is important because it highlights that Quick Mailboxes was an independent contractor, and not an employee of homeowner. Fixing a mailbox is also not a nondelegable duty or an inherently dangerous activity. Therefore, in conclusion, homeowner is not liable to the neighbor because the homeowner hired quick mailboxes.

IV.(a). The issue here is whether the neighbor can recover the cost to repair the car even though the repairs were unusually expensive.

The rule here is that under the “eggshell plaintiff” rule, the extent of one’s damages do not need to be reasonably foreseeable. All that has to be foreseeable is the harm.

Here, the facts state that the neighbor owned an expensive car worth \$430,000. Further, the car needed special parts which were difficult to find, thus the repairs cost \$55,000. When applying the eggshell plaintiff rule to the facts here, it does not matter that the repairs were exceptionally or unusually expensive as the defendant takes their plaintiff as they get them and the extent of damages need not be reasonably foreseeable. Therefore, in conclusion, the neighbor can recover the cost to repair the car even though the repairs were unusually expensive.

IV.(b). The issue here is whether the neighbor can recover damages for emotional harm. The rule here is that an individual can recover from negligent infliction of emotional distress (NIED) if they are in the “zone of danger” (likely to be endangered by the defendant’s actions) and if they suffered emotional harm as a result of the defendant’s actions. A bystander can recover if they witnessed the incident, if they have a close relationship with the person harmed, and if they suffered emotional harm themselves.

Here, the facts indicate that the neighbor was not in the car but that the car has significant sentimental value to the neighbor, and the neighbor watched the car get hit while looking from the window. The man was not within the zone of danger as he was far away and inside the house when the accident occurred, so he could not have been personally injured. Furthermore, he can likely not recover as a bystander because although he witnessed the car getting damaged and suffered emotional harm, the car is not a person and the court will probably not be willing to extend NIED to an instance of watching a car get damaged if there was no person with a close relationship involved. Therefore, in conclusion, the neighbor cannot recover damages for emotional harm.