

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

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MPT 1

Representative Good Answer No. 1

To: Beverly Garcia
From: Examinee
Date: February 24, 2026
Re: Kari Otto Matter

1. Issue

Common Law Marriage

Did the parties enter into common law marriage in 2006 or was the marriage not created until 2019?

Martial Property - 2006 Common Law Marriage

Which property is marital property and which property is separate property of either Eric or Kari if a common law marriage existed in 2006?

Martial Property - 2019 Marriage

Which property is marital property and which property is separate property of either Eric or Kari if a the marriage was npt created until 2019?

2. Analysis

Common Law Marriage

According to §211 of the Franklin Family Code, "common law marriage shall be recognized as a valid marriage in this state." Therefore, it must be determined if the parties had a common law marriage, and if so, when was it created. The test to determine whether a common law marriage exists is whether there has been "mutual agreement of the couple to enter the legal and social institution of marriage, followed by conduct manifesting that mutual agreement, often referred to as "holding out."(Schwartz v.

Darrow, referencing Howard v. Howard). The totality of circumstances must be evaluated to determine if there is clear and convincing evidence for such a finding. (Id.) The factors to consider are 1) cohabitation, 2) reputation in the community as married, 3) maintenance of joint banking and credit accounts, 4) purchase and joint ownership of property, 5) filing of joint tax returns, 5) shared financial responsibilities, 6)joint estate planning, 7)symbols of commitment, and 8) the couples labels for each other.

In our case, Eric and Kari have cohabitated since January 2005. In Schwartz, the parties had lived together for eight years which was sufficient to find cohabitation. Next, Eric asked Kari to marry him in August 2006 and proposed by giving her a diamond ring and Kari agreed to marry Eric which is similar to the facts in Schwartz. However, Eric claims that the ring was not intended to be a wedding ring, but only a promise ring and that he did not intend to marry her until later. Arguably,

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though, Eric expressed his intent to marry immediately by obtaining a marriage license (which have expiration dates) within a month of the presentation of the ring and celebrated it with friends, so his statement on lack of intent lacks credibility. Furthermore, he began to refer to Kari as "his wife" and even though the couple did not have a ceremony, Eric told his friends they were married, which his friends acknowledged by referring to them as a married couple. Additionally, Eric's grandmother created a wall-hanging that depicts her belief the couple were married in 2006. Therefore, as in Schwartz, the community viewed them as married. Furthermore, the labels used by the parties indicted marriage such as the Christmas cards signed Mr. and Mrs. Nolan and the references to Kari as "his wife."

Furthermore, the fact that Kari and Eric had joint bank accounts in 2006 from which they paid bills, including the mortgage, and had filed joint tax returns since 2007 strengthen the case for common law marriage in 2006. The lower court in Schwartz had used the lack of these types of facts as reason to deny finding common law marriage despite cohabitation and reputation in the community as married, but the district court pointed out that the lack of shared finances may be a factor but is not alone sufficient to negate intent to be married. Therefore, there is more evidence here than in Schwartz to support common law marriage, and even in that case the district suggested the matter would have to be relooked at by the lower court.

Martial Property - 2006 Common Law Marriage

According to §200 of the Franklin Family Code, Marital Property is "all property acquired by either or both spouses during the marriage except" when qualified as separate property by subsection (d) of the statute. Separate property includes 1) property acquired before the marriage or from someone other than the spouse as a "bequest, devise or descent, or gift," 2) compensation for personal injuries, 3) property acquired for an increase in value of separate property - unless spouse contributes to the appreciation, and 4) property labeled separate property by written agreement. Absent an agreement otherwise, the property shall be divided with separate property remaining separate and marital property distributed equitably based on circumstances according to § 215 of the Franklin Family Code. The determination of equitable dispositions requires us to look at case law.

The property that will be viewed as marital property includes 1) photography equipment 12/06-2025, 2) both vehicles acquired in 2024, 3) the joint bank account, and 4) the house and mortgage. An equitable distribution will have Kari and Eric each keep their own cars, particularly since both are paid off and close in value. The cars and the photo equipment from 12/06-2025 were acquired during the marriage and no exception applies to make them separate property. The facts do not support an extension of sperate property to the later purchased photo equipment based on the Bower case. Even though Eric lived in the house first, the property was not owned by him until during the marriage and no exception applies to make it separate property. The mortgage is not relevant to this memo because it is not property but a debt and is not a deciding factor on whether property is marital or separate property.

The property that will be viewed as separate property of Eric includes 1) photography equipment from 12/05. This is because it was acquired before the marriage and no exception applies to make it separate property.

The property that will be viewed as separate property of Kari includes 1) Tract of land in Frankfurt Acres. The land was acquired before the marriage, even before they met, so remains her property. This generally includes the increase in value of the separate property. However, if the other spouse contributes to improvements to the property, then that appreciation becomes marital property. The court can consider the circumstances and base the distribution on those factors. In Jones v. Cardiff, the improvements were distributed 75% to 25% because the other spouse made nonfinancial contributions to the improvement. In this case, the improvements were made by Kari with funds she received as a gift from her mother, noting a gift during marriage is still separate property. Eric did not participate any money, time, or effort as Kari hired a local contractor. Therefore, the improvements in this case will remain the separate property of Kari.

Martial Property - 2019 Marriage

The determinations as to whether property is marital or separate would shift only if the date of acquisition was prior to

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2019. Therefore, there may be some camera equipment that would shift to the separate property of Eric if purchased prior to 2019. Furthermore,

the house would become the separate property of Eric because it was purchased solely by Eric in 2008 and no exception applies to make it marital property.

3. Conclusion

Common Law Marriage

A court is likely to find that the parties' had a common law marriage since 2006 based on the totality of the circumstances, for example, the parties cohabited, had the reputation in the community as married, filed joint tax returns and had joint bank accounts and referred to each other with terms of marriage. Therefore, an intent to marry and a holding out existed in 2006.

Marital Property - 2006 Common Law Marriage

The property that will be viewed as marital property includes 1) photography equipment 12/06-2025, 2) both vehicles acquired in 2024, 3) the joint bank account, and 4) the house and mortgage. The property that will be viewed as separate property of Eric includes 1) photography equipment from 12/05. The property that will be viewed as separate property of Kari includes 1) Tract of land in Frankfurt Acres.

Marital Property - 2019 Marriage

Some camera equipment that would shift to the separate property of Eric if purchased prior to 2019. Furthermore, the house would become the separate property of Eric.

Representative Good Answer No. 2

Law Offices of Stapleton & Garcia LLP
400 Central Avenue, Suite 505
Frankfurt City, Franklin 33122

MEMORANDUM

To: Beverly Garcia
From: Examinee
Date: February 24, 2026
Re: Kari Otto Matter

The purpose of this Memorandum is to analyze when the marriage between our client, Kari Otto, and Eric Nolan was created, and allocate the property owned by those two individuals accordingly in anticipation of divorce proceedings.

1. The Parties Marriage was Created in 2006.

The State of Franklin is one where Common Law Marriage is recognized under Franklin Family Code § 211(a). This permits the occurrence of a legal marriage even absent traditional licensing and ceremonies that are associated with legal marriage. In order to make a showing that a common law marriage has occurred, the party must show that there was a "mutual agreement of the couple to enter into the legal and social institution of marriage, followed by conduct manifesting that mutual agreement." *Schwartz v. Darrow* (2022) quoting *Howard v. Howard* (2015). In evaluating whether a couple has sufficiently held themselves out to be a married couple, the court utilizes a balancing test that looks to: "cohabitation; reputation in the community as spouses; maintenance of joint bank and credit accounts; purchase and joint ownership of

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property; filing of joint tax returns; evidence of shared financial responsibility, such as leases in both parties names, joint bills, or other payment records; evidence of joint estate planning, including wills, power of attorney, and beneficiary designations; symbols of commitment, such as ceremonies, anniversaries, cards, and gifts; and the couple's references to or labels for one another." Schwarts (2022).

In Schwartz, the lower court had found that the couple was not common law married based on the factors that the couple did not file joint tax returns, own joint property or accounts, or share a last name despite cohabitating for 8 years and holding themselves out in the community as married. The lower court placed heavy emphasis on the fact that the couples friends and family "knew they were not ceremonially married." Id. The judge in the court of appeals found that the man asking the woman to marry him, her acceptance, and the subsequent wearing of rings and holding out as married could evidence the existence of a marriage even without a formal ceremony and license. Id. Ultimately the Court of Appeal reversed and remanded with instructions to reconsider the existence of a common law marriage because the magistrate should determine if the couple "in fact agreed to be married" when making the determination. Id.

Here, Kari and Eric began cohabitating 21 years ago. In August of 2006, Eric gave Kari a diamond ring and asked her to marry him. While Eric contends this was a promise ring, Kari claims it is an engagement ring, and social standards suggest that it is an engagement ring (it is a diamond ring) which she began wearing. This factor weighs in favor of there being an agreement to marry between the couple in 2006.

On September 19, 2006, the couple applied for an got a marriage license from the state and held a celebratory dinner thereafter, and began calling each other "husband and wife." They did not ever file the marriage license with the appropriate state agency or have a formal ceremony, and allowed the license to expire. These facts are mixed--while the usage of "husband" and "wife" holds them out to be married to the community, and the dinner may appear to be similar to a celebration of marriage, the failure to complete and file the applied for license suggests that the couple did not actually intend to marry in 2006. However, Eric's September 19, 2007 "anniversary card" where he refers to himself as Kari's "husband" again suggests that the couple intended to be married on September 19, 2006 when they received the original marriage license. This is a symbol of commitment that the court will find weighs in the favor of the existence of a common law marriage.

The contention that they were married in 2006 is also supported by their reputation among family, friends, and the community as married. There are complaints from Eric's family members that they were "deprived" of attending the September 19, 2006 "wedding. " Additionally, Christmas cards sent out to friends and family annually were signed "Mr. and Mrs. Nolan." The fact that there is a reputation of marriage in this manner supports the creation of the common law marriage between Eric and Kari in 2006. Additionally, there is a sharing of financial commitments, bank accounts and tax returns dating back to 2006 (2007 for the filing of the first joint tax return) that suggests that the couple was married in 2006.

It weighs against the existence of a common law marriage in 2006 that Kari and Eric had a wedding ceremony in 2019 where they actually reapplied for and this time filed a marriage license with the state. This suggests that the couple was not married until they took the time to complete this paperwork. Additionally, Kari did not use Eric's last name but for socially prior to that 2019 wedding ceremony, which weighs against the existence of a common law marriage.

However, when reviewing the totality of the circumstances, the court will most likely find that the marriage was created by common law in 2006. This is based on the couple's reputation as being married in 2006, sharing of joint accounts and bills, holding themselves out as married in the community, and symbols of commitment such as the anniversary card and engagement ring despite the lack of a wedding ceremony and filing of the marriage license with the state until 2019.

2. Division of Assets if Marriage was Formed in 2006

Franklin is community property state according to Franklin Family Code §200(c) which defines marital property as "all property acquired by either or both spouses during the marriage except as specified in subsection (d)." Under subsection

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(d) separate property can be acquired during the marriage by: (1) property acquired prior to the marriage or property acquired by bequest, devise, descent, or gift from a party other than the spouse, (2) compensation for personal injuries, (3) property acquired in exchange for or the increase in value of separate property, except to the extent that such appreciation is due in part to the contributions of or efforts of the other spouse, or (4) property described as separate property by written agreement.

Here, there is no written agreement that property be kept separate, so that is not relevant. According to Franklin Family Code §215 in a divorce separate property remains separate and marital property should be divided equitably. The court will likely distribute the property owned by Kari and Eric jointly and separately as follows:

a. The Tract of Land at Frankfurt Acres

The tract of land at Frankfurt acres will be found to be separate property that is owned by Kari. Kari acquired the property prior to even meeting Eric in September of 2001. As property acquired prior to the marriage in 2006, Kari will keep this as separate property following the marriage.

An issue arises with the land at Frankfurt Acres, however, because during the time of the marriage a equipment shed was constructed on the property that would be considered an improvement to the property. Improvements to property can be considered marital property, since “funds spent on renovations [are] marital property subject to equitable distribution.” See Jones v. Cardiff. Contributions can be direct via financial contribution to the property, or indirect such as by personally maintaining, improving or renovating the property. Id. Here, Kari paid for the improvements with money that was a gift from her mother. Under, Franklin Family Code §200(d)(1) property acquired by use of a gift not from the spouse is not considered marital property. As long as Kari’s mother did not intend that the monetary gift be a gift to both Eric and Kari, Kari should still be found to be the sole owner of both the land and the equipment shed since marital funds were not used. Additionally, there is nothing to suggest that Eric personally contributed to the improvement--Kari hired a contractor to build the shed. As such, Eric should not be entitled to any reimbursement related to the construction of the shed in 2022 on the Frankfurt Acres land.

b. The House at 1505 Clark Street.

The house at 1505 Clark Street will be considered marital property if the court finds that the couple became common law married in 2006. Though Eric purchased the home solely in his name and took out the mortgage in his name only, the house was purchased during the marriage which makes it a marital asset under Franklin Family Code §200(c). Though he previously was renting the home, that will be considered an “exchange” of property under §200(d)(3) because the property was not “owned” within the meaning of the law previously by Eric, so no exchange occurred. This determination is further supported by the fact that Kari split expenses related to the home with Eric.

c. The photography equipment

The photography equipment that was acquired by Eric in 2005 prior to the common law marriage in 2006 is separate property, but the equipment acquired from 10/2006 to the present will be considered marital property because it was acquired during the course of the marriage and was not an “exchange” of property that would fall into any exception to marital property. This is because depreciate marital property that is “replaced by” property that is of greater value or quality will not fall into the meaning of “exchanged property.” See Bower v. Bower.

d. The Vehicles

Both Kari’s Toyota Tundra that was purchased in 2024 and Eric’s Nissan Altima that was purchased in 2024 will be considered marital property because they were purchased during the marriage between the couple and there is no written agreement that either vehicle is not marital property.

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e. The Joint Bank Account Funds

The funds in the joint bank account will be considered marital property. The bank account was opened following their common law marriage in December of 2006, and both of their names are on the account. As such, the court will find this to be joint marital property.

3. If the Marriage was Not Found to Be Created Until 2019, the Property Classification would be changed as Follows:

a. The Tract of Land at Frankfurt Acres

No change would occur in this instance; the property would still be considered separate property.

b. The House at 1505 Clark Street.

The house at 1505 Clark Street would be considered separate property if Kari and Eric were not married until 2019. Since Eric bought the home prior to the marriage in 2008 in this circumstance, this is separate property that he has brought into the marriage.

However, Kari would likely still be entitled to a portion of the house as “marital property” because of her contributions to the home and property during the marriage. Any “appreciation in value due to the contributions or efforts of the nontitled spouse will be considered marital property.” *Jones v. Cardiff*. Direct contributions include financial contributions to the property, and non-financial contributions include maintenance, repairing, and renovating of the property by the non-titled spouse. *Id.* Here, Kari has been helping to pay the mortgage on the property since Eric took it out on the property in 2008. Additionally, she has undoubtedly helped to maintain the property during the 18 years that she lived there. As such, there will be contributions to the house at 1505 Clark Street that will be considered marital property even though the house itself will be considered Eric’s separate property.

c. The photography equipment.

The photography equipment will be considered Eric’s separate property but for any equipment acquired after the marriage in 2019, which will be considered marital property. Since the equipment was acquired separately from any previously owned equipment in 2019, and if anything was a replacement for defunct previously owned equipment rather than an exchange, any of the photography equipment purchased after June 8, 2019, will be considered marital property. See *Bower v. Bower* (discussing that “replacement” property of greater quantity and value is not “exchanged property” within the meaning of Franklin Family Code § 200(d)(3)).

d. The Vehicles.

There is no change to the designation of the vehicles if the marriage occurred in 2019-- they are still marital property.

e. The Bank Account

The funds in the bank account will likely still be considered marital property, particularly because both parties names are on the account which would entitle them to equal ownership under property law regardless.

In Conclusion, the court should find that Kari and Eric did have a valid common law marriage starting in 2006, which would make the Home at 1505 Clark Street, the Photography Equipment, the Vehicles, and the Bank Account Marital property, while the Tract at Frankfurt Acres would be considered Kari’s separate property.

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MPT 2

Representative Good Answer No. 1

MEMORANDUM

To: Maria Delatorre, City Attorney
From: Examinee
Date: February 24, 2026
Re: Measure 15

Issue: Must the City Council adopt the ordinance as stated in Measure 15?

(1) Does the United States Flag Code bar the flying of the Earth Flag above the United States flag?

No, the United States Flag Code does not bar the flying of the Earth Flag above the United States Flag.

Under section 201 of Walker's Treatise on Legislation, the use of "shall" or "must" make the action set forth in the legislation mandatory. The use of terms such as "should," "may," or similar signify that the act set forth is merely legally permissible rather than mandatory. These permissive terms may be called "precatory" terms to differentiate them from mandatory terms.

The United States Flag Code (the "Code") exclusively uses precatory terms in Section 7 of the Code, in which the position and manner of display of flags is described. In Section 7(c), the Code states: "No other flag or pennant should be placed above, or if on the same level, to the right of the flag of the United States." The use of "should" in this provision means that the action described is advised but not mandated by the code.

The Code uses precatory terms to describe whether other flags may be flown above the United States flag; therefore, it is legally permissible to fly other flags above the United States flag under the Code.

(2) Does Franklin state law bar the flying of the Earth Flag above the United States Flag? Is Measure 15 enforceable under Franklin state law?

Yes, Franklin state law bars the flying of the Earth Flag above the United States flag. Please see the discussion in (1) regarding mandatory as opposed to precatory terms. Section 436 of the Franklin State Government Code (the "State Code") uses the mandatory term "shall" to describe whether other flags may be flown above the national flag; it mandates that they may not, in the provision, "At all times the national flag shall be placed in the position of first honor." Further, Section 617 of the Franklin Military and Veteran's Code (the "Military Code") also uses the mandatory term "shall" to describe whether other flags may be flown above the national flag; it mandates that they may not, in the provision, "No other flag or pennant shall be placed above [...] the flag of the United States of America."

Further, Measure 15 is not enforceable under Franklin state law, because local ordinances explicitly contrary with state law are preempted by the state law. In the case *In re Hubbell* (Fr. Sup. Ct. 1964), the court found that a local ordinance is preempted by state law if "the subject matter has been so fully covered by general law as to clearly indicate that it has become exclusively a matter of state concern." In *Elder v. Board of Supervisors* (Fr. Sup. Ct. 1979), the court determined that the Legislature shows the intent to exercise statewide control over an issue if it addresses the issue with a state statute. Here, the state showed its intent to control flag position by its adoption of the State Code and Military Code provisions cited above. Therefore, the state codes preempt Measure 15, since Measure 15 seeks to enforce a local ordinance contrary to state law.

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An argument may be made that ballot measures preempt the intent of the legislature as expressed via state law based on the Franklin State Constitution (the "Franklin Constitution"), which reserves to the people the powers of initiative and referendum; however, this argument fails because what is at issue here is a local rather than a state ballot measure. Article 4, section 1 of the Franklin State Constitution (the "Franklin Constitution") states that although the legislative power of the state rests in the Franklin legislature, the people reserve to themselves the powers of initiative and referendum.

However, this portion of the state constitution does not grant the people of a particular city the powers of initiative and referendum; city ballot measures are preempted by state law. In *Mancini v. City of Greenwich*, the court found that voters may only enact ballot measures that are compliant within the legal framework established by the constitution of the state and enacted by the legislature. In *Mastai v. Ross*, in reliance on *Mancini*, the court held that no matter the source of the local regulation, whether by initiative in a city or county, it cannot be contrary to the laws adopted by the state legislature.

Therefore, the local ordinance mandated in Measure 15 is unenforceable under state law, despite it being passed via ballot measure.

(3) Does the First Amendment to the United States Constitution require that Franklin Defenders of the Earth ("FDE") be allowed to fly the Earth Flag above the United States flag?

No, the First Amendment to the United States Constitution does not require that FDE be allowed to fly the Earth flag above the United States flag.

As detailed in *Shurtleff v. City of Boston*, when the government encourages diverse expression, such as by creating a public forum, it may not prevent discrimination against speakers based on their viewpoint; however, when the government speaks for itself, the First Amendment does not demand airtime for all views. Here, the City of Whitney creates a public forum on the City Plaza for Earth Day, and FDE may express private speech there. However, under section 4.2 of the City of Whitney Rules and Regulations, the city mandates that "No event activities shall occur on or in City Hall itself." City Hall is therefore not a public forum. Further, FDE may not mandate government speech.

Measure 15 requires that the Whitney City Council enact an ordinance that states as the official policy and practice of the City to fly the Earth Flag on the tallest flag pole on City Hall. Measure 15 is therefore attempting to mandate government speech in a non-public venue (the flag pole on City Hall). FDE does not have a First Amendment right to do that. Governments may speak for themselves.

In conclusion, must the city council adopt the ordinance?

The City Council is not required to adopt the ordinance. In fact, although compliant with the United States Flag Code, the ordinance is in conflict with state law (i.e., the State Code and Military Code) regarding flag positioning and display, and local ordinances in opposition to state law are not to be enacted. Further, by declining to adopt the ordinance, the City Council is not out of compliance with the state constitution that reserves to the people the powers of initiative and referendum, nor is it out of compliance with the First Amendment of the US Constitution, which disallows discrimination of private speech.

Representative Good Answer No. 2

MEMORANDUM

To: Maria Delatorre, City Attorney
From: Examinee
Date: February 24, 2026
Re: Measure 15

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US Flag Code Permissibility

The US Flag Code prohibitions do not technically bar the flying of the Earth Flag above the US flag because it is written in permissive language. Where precatory terms such as “should” or “may” are used in the drafting of legislation, the action in the law is permissive, and therefore not mandatory. Walker’s Treatise on Legislation §201(h).

Section 7 of the US flag code is written entirely with precatory language. The FDE wants to be able to fly the Earth Flag higher than the US flag. The flag code states “No such flag or pennant may be place above the flag of the United States...” See US Flag Code § 7(f). May is precatory language, and therefore does not make the action outright prohibited, or mandatory. Interpreting Section 7, the US flag should not be flown below other flags, but it is not mandatory that it be flown above all other flags either.

Therefore, it is permissible under the US Flag Code for the FDE to fly the Earth Flag above the US flag on City Hall Plaza.

Franklin State Law Issues

Earth Flag Above US Flag

Franklin state code bars flying the Earth Flag above the United States flag. Where terms such as “shall” or “must” are used in legislation, the action set forth is mandatory. Walker’s Treatise on Legislation §201(h).

Franklin State Government Code states that the national flag shall be flown about the state flag, and that at all times the national flag shall be place in the position of first honor. Tit. 1, Div. 2, Ch. 3 § 436. And the Franklin Military and Veteran’s Code states that no other flag shall be places above ... the flag of the United States, except during church services. §617. Both provisions make use of “shall,” indicating that the action in the legislation is mandatory. The legislation requires no other flag be higher than the US flag in the Military and Veterans code. The State Government Code also requires the US flag always be in a position of “first honor” which likely implies not being flown lower than another flag, because the preceding sentence states that the national flag be above the state flag.

Franklin state law therefore bars flying the Earth Flag above the United States flag.

Enforceability of Measure 15

The issue is whether the Franklin state laws above preempt Measure 15.

A local ordinance is preempted if “the subject matter has been so fully covered by general law as to clearly indicate that it has become exclusive a matter of state concern, or if the subject matter has been partially governed by general law couched in such terms as to indicate a paramount state concern that will not tolerate further local action.” Mastai v. Ross.

In Mastai v. Ross, there were several state government provisions that regulated the eligibility of city and county officials which conflicted with a city ordinance prohibiting a council member from serving more than two consecutive terms. The state legislation was determined to show an intent to exercise statewide control over elected local officers. Mastai. Here, there are several provisions of state code regulating how the flag is flown. Additionally, there is an entire chapter, of the State Government Code dedicated to the display of flags. The state has probably indicated that the regulation of flag flying is exclusively within the power of the state.

The FDE may argue that because Measure 15 was passed by ballot measure that the ballot initiative must prevail based on Art4, sect. 1, of the Franklin State Constitution that “the people reserve to themselves the powers of initiative and referendum.” However, “no matter the source of the local regulation, whether by initiative in a city or county, it cannot be contrary to the laws adopted by the state legislature.” Mastai, citing Mancini. Although Mancini was applied to the

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selection of one's government officials, the broader principle of preemption likely applies to other areas of law. Here, the ordinance would be in conflict with the state law, and therefore would be preempted.

Because Measure 15 would be preempted by conflicting state law, it is not enforceable.

First Amendment

The issue is whether by making City All Plaza available for event, the city of Whitney has created a public forum in the flagpole, or if the flagpole remains an instrument of government speech. "The First Amendment's Free Speech Clause does not prevent the government from declining to express a view." Shurtleff. When the government invites the people to participate in a program of expression, the lines then blur. *Id.* A holistic totality of the circumstances of assessment is made to determine whether the government is regulating its own speech or is attempting to unconstitutionally regulate private expression. *Id.* Factors include "the history of the expression at issue; the public's likely perception as to who (the government or a private person) is speaking; and the extent to which the government has actively shaped or controlled the expression." *Id.* Additional considerations seem to include the location of the speech and ownership of that property. See Shurtleff citing Pleasant Grove City.

Here, Whitney has made City Hall Plaza available to the public for events, but requires a permit to display temporarily items like kiosks, statues, posters, product demonstrations, and the like. The Rules for events also state that no activities shall occur on or in City Hall itself. Activities conducted on the plaza might blur the line between government and private expression, but city ordinance makes it clearer that activities are not permitted on or in City Hall, maintaining that space for government speech.

Looking at the history of the use of the flagpoles, no organization besides the government has made use of them for protests, demonstrations, or similar activities. And the city as expressly prohibited such use. Compare this to Shurtleff, where the city expressly permitted organizations raising their flags in the plaza.

The public's perception as to who is speaking would likely result in a perception that the government is speaking in this case. The flagpoles are on top of City Hall, rather than accessible in the plaza. Compare this to Shurtleff, where the flagpoles were located in the plaza and groups could access them easily to raise their flags. This would likely lead people to think the government raised the flag and was communicating the Earth Day message.

Relatedly, the property is a government building, rather than space in front of a government building as in Shurtleff or a public park as in Pleasant Grove. If a public park with permanent monuments was enough to imply government speech, then speech on the government building itself likely implies this as well.

In Shurtleff, Boston's program also influenced people to perceive that when organizations raised their own flag in the plaza, that it was not the government speaking but part of the program the city ran allowing private organizations to communicate their message via raising their flags. Here, there is no such history and raising a flag on the city flagpoles has been prohibited, so the people will likely not perceive that FDE is communicating the Earth Day message with the raising of the Earth Flag. The control has been to wholly prohibit anyone but the government from using the flagpoles and therefore, if another group does so, it is unlikely to be attributed to that group, and would likely be attributed to the government.

Denying enforcement of Measure 15 would not violate the First Amendment.

Conclusion

Although flying the Earth flag above the US flag would not violate the US flag code technically, it would still be in discord with it. Allowing enforcement of Measure 15 would violate state law as the ordinance is likely preempted. And there is likely not a First Amendment issue. For those reasons, it is likely permissible to deny adoption of Measure 15.

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MEE 1

Representative Good Answer No. 1

1) With respect to the two-year lease between Carla and the tenant:

a) Conclusion: Carla was entitled to receive damages from the tenant at the end of the lease term, however, her recovery will be limited since she did not mitigate her damages. Carla was not entitled to receive 12 months unpaid rent from the tenant at the end of the lease term.

Rules/Analysis: When a tenant breaches their duty to pay rent and is no longer staying in the property, the landlord has various remedies. The landlord may view the lease as terminated, they may consider this a breach and sue for damages, they can consider the lease still active and wait until the end of the lease term to sue for damages. Landlords do, however, have a duty to mitigate damages. In this case, the tenant gave landlord one month of notice prior to moving out. Carla advertised the apartment unit for rent the very next day after receiving notice that the tenant intended to vacate. She received three rental applications from qualified potential tenants. Carla could have easily filled the unit with a new tenant who paid at the same rate as the original tenant and only missed out on one or two months of rent. However, Carla decided not to rent to anyone and let the house remain vacant for a month.

Because Carla failed to mitigate the damages caused by tenant's breach, she will not be able to receive 12 months of unpaid rent from the tenant at the end of the lease term.

b) Conclusion: Alonzo and Barbara are entitled to a share of the rental income payable to Carla under the lease.

Issue: Do joint tenants share rental income on property held in joint tenancy? Rules/Analysis: Joint tenants share in the rights and responsibilities associated with property held in joint tenancy. Joint tenants must all contribute towards general repairs and maintenance of property. If one joint tenant chooses to make major changes to the property they will be solely responsible for those expenses. When property held in joint tenancy is used for lease/profit of some other manner, all joint tenants are entitled to a share of the proceeds. Even though Alonzo and Barbara didn't know about/consent to the lease, they are entitled to a portion of the rental income.

2) Conclusion: Alonzo and Barbara are not entitled to any of the house's fair rental value from Carla during the time of her possession of the house after the tenant's two-year lease.

Rules/Analysis: Joint tenants all have equal rights in use and possession of property. If one tenant's use excludes the other tenants to the degree that they are 'ousted,' then the joint tenants may receive damages or take action against that joint tenant. So long as Carla's use did not oust Alonzo and Barbara/prevent them from also using the property, they are not entitled to any compensation for this period of time. There is nothing in the facts to show that Carla ousted Alonzo or Barbara by living in the house.

3) Conclusion: Carla's leasing the house to tenant does not have any effect on the ownership interests in the house following her death.

Issue: Does leasing property held in joint tenancy have an effect on the right of ownership? Does leasing property terminate joint tenancy relationship?

Analysis/Rules: Carla did not transfer her interest in the house by leasing it to a tenant. When Carla died, her interest in the joint tenancy passed to her siblings, Alonzo and Barbara, due to their right of survivorship. Alonzo and Barbara now each own a one-half interest in the house as joint tenants. One's interest in a joint tenancy interest is transferrable during their lifetime, but the interest cannot be transferred via will. Leasing does not terminate joint tenancy.

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Representative Good Answer No. 2

1a. The issue is whether Carla is entitled to receive 12 months of unpaid rent from the tenant.

A tenant is responsible for any rent during the leasehold period. A landlord has a duty to mitigate damages in the event a tenant vacates the unit prematurely. In the event the tenant prematurely vacates the unit, the landlord must make a good faith and reasonable effort to fill the unit to mitigate potential damages. If the landlord gets someone to rent the unit for the same price and misses only one month's rent, the only recovery for the landlord would be the premature tenant's one month's rent. Absent a good faith effort by the landlord to rent the unit the landlord cannot recover for future rent from the previous tenant's premature decision to vacate the unit.

Here, the tenant living in the house prematurely vacated the premises a year before her leasehold was set to expire. The landlord, Carla, has a duty to mitigate the losses and fill the unit. After the tenant prematurely left, Carla received a variety of applications to rent the house -- three of which were qualified to rent. Nonetheless, Carla decided she no longer wanted the burden of being a landlord and decided not to continue renting the house. As a result the house sat empty for over a year and the rental income seized. A landlord's decision to not rent a unit despite having qualified valid candidates does not allow the landlord to receive future rent payments from her previous tenant. Despite Carla's efforts to rent the house out she chose to let the house sit vacant and not fill it with a new tenant thereby failing to mitigate her damages.

Therefore, Carla is not entitled to receive the 12 months of unpaid rent from the tenant.

1b. The issue is whether Alonzo and Barbara are entitled to a share of the rental income payable to Carla under the lease.

Joint tenants is a form of concurrent ownership for which there are multiple parties with the same amount of interest in the property. Joint tenants carry the four unities where upon they receive the same interest, at the same time, under the same legal instrument, and each joint tenant has a right to possess the entire property. Joint tenants carry the right of survivorship, therefore in the event one joint tenant dies the other joint tenants retain the deceased person's interest. Additionally, a joint tenant can sever her interest via alienation by which her interest in the joint tenancy is converted to a tenancy in common, while the other joint tenants retain joint tenancy. Alienation of an interest can occur when a joint tenant mortgages her interest, or places an encumbrance on her interest.

Joint tenants have the right to receive rental income in the event the property is being leased, but they do not have to compensate another joint tenant for operational expenses or fixing things related to the property.

Here, the house was left to Carla, and her siblings Alonzo and Barbara. Carla did not alienate her interest when she decided to lease the property, despite not telling her siblings. Because no alienation occurred, Carla does not forfeit her joint tenancy. Carla has the right to possess the entirety of the property as a joint tenant, and therefore can rent the entirety of the property. Typically to rent the entire property the joint tenant would need to notify the fellow tenants. Regardless, by renting the property the fellow joint tenants are privileged to receive part of the rental income proceeds.

Therefore, Alonzo and Barbara are entitled to the rental income from tenant received by Carla.

2. The issue is whether Alonzo and Barbara are entitled to any of the house's fair rental value from Carla during the time of her possession of the house after the tenant's two year lease expired.

A joint tenant has the right to possess the entire residence alongside her other joint tenants. As such, a joint tenant does not need to pay rental income to possess the property for which she owns a shared interest in joint tenancy. The joint tenant who resides on the property has the obligation to pay for operational expenses and repairing or fixing any parts of the residence without the aid of her other joint tenants. Where a tenant on the residence owes the joint tenant's rental income, a joint tenant does not owe rental income to any of her fellow joint tenants.

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In this case, the residence fair market value is \$1,500 but Carla is paying nothing to reside in the residence as of Dec. 31, 2024. However, Carla does not have to pay rent to possess the entirety of the residence. Indeed, Carla is not disallowing the other joint tenants to enter the property and as a joint tenant she has the right to possess the property without additional investment or rent paid. Carla did not alienate her interest by renting out the house to the previous tenant. If she had, however, then she would likely owe rental income to the other joint tenants.

Therefore, Alonzo and Barbara are not entitled to the house's fair rental value from Carla.

3. The issue is whether Carla's leasing the house had any effect on the ownership interests in the house following her death.

In the event a joint tenant alienates her interest in the tenancy it converts to a tenancy in common. A tenancy in common does not carry the right of survivorship and therefore can be inherited or passed down via a will. A joint tenancy requires the deceased joint tenants' interest be absorbed by the other joint tenants so the living joint tenants can still enjoy equal interests in the property. If one of the four unities in joint tenancy is broken the related interests convert to a tenancy in common.

Here, Carla left her interest in the house to her Son upon her death. Carla is a joint tenant and renting the property to tenant does not qualify as an alienation of her interest, and none of the four unities were broken as a result. Therefore, Carla remains a joint tenant. As a result Carla cannot devise her interest to anyone because when she dies Alonzo and Barbara take her interest. While Carla was alive their interests were 1/3rd, 1/3rd, and 1/3rd. After Carla's death Alonzo will take 1/2 and Barbara will take the other 1/2, leaving no interest to be gained by Carla's son. In the event the alienation occurred the son would take 1/3rd interest as a tenant in common while Alonzo and Barbara retain the other 1/3rd interests remaining as a joint tenants. However, as described, it's unlikely to be found that Carla alienated her interest by renting the house to tenant.

Therefore, Carla's leasing of the house did not have an effect on the ownership interests of the house following her death.

MEE 2

Representative Good Answer No. 1

May Clyde recover the unpaid contract price Fraud Angie?

When contracts are created prior to the formation of the corporation the default rule is that the individual party making the contract is liable. An exception exists when the party tried to follow the formalities to create a corporation but failed and then presented the contract as being in the name of the corporation. An additional exception arises when the other party reliance on the contracting party as being a corporation. In such a case, the party cannot later deny that the party was a corporation. If the corporation alters ratifies the contract, then both the original contracting party and the corporation may be liable.

With agreement of the other party, the original contracting party liable may be extinguished.

Here the contract was here prior to the formation of the corporation. Angie presented herself as XYZ corporation and purported created a contract on their behalf. Given the facts, Clyde believed that he was contracting with XYZ corporation. However, Angie had not intended to incorporate the business. The facts stated that she was "thinking that in a couple of months she would incorporate the business." Because she had not intended to incorporate the business she cannot benefit from the first exception cited above.

The next question is whether Clyde himself acted in reliance on the existence of a corporation such that he is estoppel from claiming his agreement was with Angie. Clyde was introduced to Angie prior to the discussion of the business.

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Nothing in the facts indicate that Clyde benefited from his belief in the corporation status in a way that would preclude him from seeking damages against Angie.

Finally, the facts specifically note that the corporation did not ratify the contract. Moreover, even if they did, Angie would still be liable unless Clyde released her, which there is no indication that he did here.

May Clyde recover the unpaid contract price from Basra on the theory that Basra is a partner of Angie?

When two individuals work together for a common business interest a partnership is formed. Partners also must both invest some resources into the joint enterprise. Unless additional formalities are taken, a partnership is a general partnership. Partners in a general partnership are personally liable for the action of other partners in the furtherance of that business. In determining whether a partnership has formed, courts look to both the intent of the partners to form a common business interest and to the actions.

The critical questions here are whether the initial business discussions between Angie and Basra created a partnership, and if so whether Angies actions where in furtherance of that partnership.

Angie had described her application to Basra, who said he thought it was a great business idea and that he would be willing to invest 5000 dollars in the effort. He then introduced Angie to Clyde. The facts here are mixed.

Notably, Basra had not invested any money at that time. He indication that he "would be willing" to invest seems like a statement of interest in forming a partnership, but I do not believe would constitute the formation of one. On the other hand, he did introduce Angie to Clyde, which could support the idea that we was working in common interest, but I believe the connection is too tenuous, especially given that he had not invested any resources at the time and the work he provided towards the venture was minimal (i.e., just introducing Clyde).

May Clyde recover the unpaid contract price from Basra under the theory that Basra is a shareholder of the corporation?

Shareholders are generally not liable for the actions of the corporation. Direct liability can occur when proper formalities associated with the formation and operation of the corporation aren't followed (e.g., when funds are intermingled) or when offerors involved commit fraud or other wrong doing, or when the interests of the shareholder.

Here, Angie followed all proper formalities to create the corporation. The facts provide no indication of fraud or wrongdoing by Basra. In addition, Basra did not appear to take any management role in the corporation. Given the protections offered by a corporation to its shareholders, the fact that a corporation was formed here, and the fact that none of the exceptions exist, Basra would not be held liable.

May Clyde recover the unpaid contract price from the corporation, on the theory that it adopted the contract?

A Corporation is not liable for agreements made prior to the formation of the corporation unless it ratifies the agreement. Ratification can be express or implied if the corporation takes action indicating the existence of an agreement between the corporation and other party.

Here the facts directly state that the corporation never took any formal action with respect to the agreement with Clyde. The question still remains whether it actions implied. Here, Clyde could argue that Angie implicitly ratified the software agreement by failing to cancel or otherwise disclaim the agreement once the contract was formed. However, the time period between incorporating and her cancelling the agreement was only a month and it does not appear that she took any action between the formation and that time to indicate that the corporation was accepting liability. While there are facts both ways, I believe the lack of formal action and the relative timely cancelling of the agreement would block Clyde from successfully suing the corporation.

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Representative Good Answer No. 2

1. Clyde's recovery from Angie

Clyde may recover the unpaid contract price from Angie. The issue is whether Angie was acting as a "promoter" for the company.

A promoter is a person who contracts on behalf of a company before the company is incorporated. The promoter typically contracts on behalf of the company and then the contract is subsequently ratified by the company, which can relieve the promoter from full liability. Until then, the promoter is fully liable to the obligations of the contract.

In this case, Angie and Clyde executed a valid contract in April, before the company was incorporated. Since Clyde fully performed his end of the contract, he is owed the agreed upon price. Once the company was incorporated, Angie transferred all her intellectual property rights in the app in exchange for 10,000 shares of stock. While the company ratified the contract after the fact by accepting the intellectual property rights of the app, Angie is still liable to the original contract duties until she is fully released from her obligation. Here, there is no evidence of XYZ company releasing her from that obligation, so Clyde can recover the unpaid contract price from her.

2. Clyde's recovery from Basra

A. As a partner

Clyde will likely not be able to recover the unpaid contract price from Basra on the theory that he is a partner of Angie.

A partnership can be established informally or formally and can be evidenced by the intent between the parties. Partnership agreements do not need to be in writing or explicitly arranged. The court will consider the intent of the parties to form a partnership. Partners typically share similar levels of ownership and control of the company, and can be equally liable for contractual duties under a joint and several liability theory.

Here, there is no indication that Basra and Angie intended to be partners. Angie did all of the contracting and incorporation of the company and issued stock on her own. Angie solely manages the company and makes these business decisions alone. Basra merely offered to invest in the company and put Angie in contact with Clyde, which in itself is not an indication that the parties intended to form a partnership. With the lack of intent to form a partnership coupled with there being no evidence of the parties acting as partners, Clyde will not be able to recover the unpaid contract price from him.

B. As a Shareholder

Clyde will likely not be able to recover from Basra on the theory that he is a shareholder.

A shareholder of a corporation holds stock in the company and votes to elect the members of the board. Shareholders are not independently liable for the company's contractual or tort obligations, since they do not exercise any management over the corporation. However, in a close corporation, a shareholder may be liable to the company if they "pierce the corporate veil" by taking a substantial interest in the corporation and exercise control beyond the scope of a typical shareholder. However, that is not the case in this scenario, since there is no evidence of Basra managing XYZ company.

While Basra can be considered a shareholder, his shareholder status does not make him liable for contractual obligations formed before he held stock in the company. Basra can be considered a shareholder because he holds a substantial share of the stock in XYZ. Nonetheless, Clyde cannot recover the contract price from him.

3. Clyde's recovery from the corporation

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Clyde may recover the unpaid contract price from the corporation. The issue is whether or not the corporation ratified the contract.

Ratification is when a company adopts as its own a contractual duty made either without the corporation's knowledge, authority, or before the corporation was formed. The corporation does this by enjoying the benefits of the agreement and holding out as if they had contracted.

In this case, since the director (Angie) transferred all the intellectual property rights to the app to the corporation in exchange for stock, it can be argued that the corporation ratified the contract. This allows for Clyde to recover the unpaid contract price from the corporation.

MEE 3

Representative Good Answer No. 1

1. Relevance

Relevance is a low bar. Courts may permit evidence that tends to make the charges more likely than not. Even when evidence is relevant, a court must evaluate whether the evidence is more probative than prejudicial under FRE 403. Courts evaluate whether the admission of the evidence is more likely to confuse the jury than assist them with their role.

Here, James is on trial for theft, so evidence of his prior theft would tend to make his current theft more likely than not. Though it is relevant, it is likely that a court would not admit the evidence because it may confuse the issues for the jury. James was not charged with theft for the grapes, so admission of this evidence during a theft trial would most likely be prejudicial to James more than probative for the jury. Additionally, the proposed evidence was from fifteen years ago so it is likely too remote to be useful.

Thus, the court is likely to overrule the Defendant's objection to the admission of James' accused theft of grapes on the grounds that it is irrelevant, but keep the evidence out on the grounds that it is more prejudicial than probative to the jury's fact finding role.

2. Improper Character Evidence

Evidence of a defendant's character is not admissible. Character evidence that is used to show Motive, Intent, Lack of mistake, Identity, or Common Plan or scheme is admissible. If evidence is introduced for one of those limited purposes, the court would still have to apply the 403 balancing test to establish if the admission of the evidence is more probative than prejudicial.

Here, the facts do not indicate for what purpose the prosecution is seeking to admit this evidence of a prior accusation/arrest. Analyzing it in regard to MIMIC evidence, the admission of the evidence does not help establish James' motive, intent, lack of mistake, identity or common plan/scheme. The grape event was completely isolated from the current charge of theft and does not assist the jury.

Thus, the court is likely to sustain the Defendant's objection to the admission of James' accused theft of grapes on the grounds that it is improper character evidence.

3. Prior Bad Acts

A defendant's prior bad acts are inadmissible to prove that the defendant was more likely to have committed the charged act. This is called propensity evidence. A defendant's prior convictions may come in if they are felonies of moral turpitude. Arrests with no convictions may not come into evidence. Additionally, a defendant's prior acts can come in if the defendant

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first bolsters their reputation for truthfulness. Even so, the prosecution may not admit evidence of the prior acts, they can only question the defendant about the event and have to accept whatever answer they give on cross-examination.

Here, the facts state that this stage of the trial is during the state's case in chief, so the defense has not put on any evidence. This means that James has not yet attempted to bolster his reputation for truthfulness. The state cannot bring up prior bad acts that are not convictions until the defendant attempts to bolster his character for truthfulness. The facts also state that James was arrested for theft but was never convicted. This evidence is not admissible because there was no conviction. Additionally, the proposed evidence was from fifteen years ago so it is likely too remote to be useful.

Thus, the court is likely to sustain the Defendant's objection to the admission of James' accused theft of grapes on the grounds that it is improper evidence of other acts.

Representative Good Answer No. 2

1.) Relevance.

In order for evidence to be admissible in the court of law, it must be relevant.

Evidence is relevant if it makes a fact more or less probable than the absence of such evidence. Relevant evidence is both material and probative to the case at hand. Relevant evidence may be deemed inadmissible if the evidence is prejudicial, confuses the jury of the issue, creates undue delay, or is cumulative. All other rules above apply herein.

Here, even though at face value, the evidence of a prior occurrence of James stealing, here the evidence of the grapes being stolen, would likely be relevant to show that James has stolen before and would likely show that may be the case again with the comic books, the introduction of the grape stealing conviction might be prejudicial in nature. First, the incident report is over fifteen years old when it was created, the length of time that has passed would cause concern for certain courts due to that fact. Also, this incident report was for another criminal act that not totally relatable to the instance here, although the act of stealing grapes was similar in the nature of the crime of stealing comic books, they are two separate instances of crime. Finally, James was not convicted of stealing the grapes, he was only arrested. The introduction of evidence of stealing the grapes would most likely prejudicial, therefore, although relevant, it would likely not be permissible due to the prejudicial nature of the past criminal incident report.

However, it is deemed not prejudicial, a court may find that since the State A statute defines theft as a "unlawful taking and carrying away... appropriating any property of another with the intent to permanently deprive the person of the property", since both acts, stealing grapes and the comics, are related and fall under the statutes definition, it could be admitted. But since the report is prejudicial, that is not likely here.

2.) Character Evidence.

Character evidence is used to introduce to the court that a defendant exhibits a certain trait pertinent to the case at hand. Character evidence is generally inadmissible in the court. There are two exceptions to this rule. First, in a criminal case, a defendant may first introduce the evidence of a pertinent character trait that is relevant to the case at hand, the prosecution may then rebuttal the evidence to impeach it. The second instance is during a civil trial, a defendant may introduce a pertinent character trait to prove an assertion, with the opposing side allowing to rebut on cross-examination to prove against the character evidence. All other rules above apply herein.

Here, the use of the report to show that James is a thief would most likely be deemed inadmissible character evidence. James did not initially bring up the character issue that he was thief. Since the state would be bringing the incident report on character grounds, it would likely be admissible. Therefore, since James did not bring up the issue of character and the incident report would likely raise the character issue of James being a thief, the report would likely be inadmissible on character evidence grounds.

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3.) Evidence of other Specific Instances.

Evidence of prior past conduct is generally inadmissible unless the evidence is used to show a particular occurrence within an exception of the rules. A prior act may be admitted if the act is shown to prove an absence of mistake, identity, motive, identical plan, or common scheme. All other rules above apply herein.

Here, the introduction of the report fails to show a absence of mistake, the boys stole the magazines, there is nothing in the facts that would indicate the boys acted in concert with James. There are no facts to suggest that James had the motive to steal the magazines, James paid for them and again, there is no evidence to show James had motive to use his boys to steal. Lastly, there is no evidence to show any common plan or scheme with James stealing the grapes and the stealing of the magazines. Therefore, the introduction of prior acts is likely inadmissible.

However, if the prosecution introduces the report on the basis of identity, the court may admit the report on that basis.

MEE4

Representative Good Answer No. 1

1. The bequest of the automobile lapses and passes as part of the residue and does not pass to the brother's adopted child.

When a devisee in a will predeceases the testator the gift fails. Many states and the UPC rely on antilapse statutes which provide that if a descendant of the testator predeceases the testator the gift will not fail and it will go to the predeceased descendant's heirs.

Additionally adopted children are considered descendants of their adoptive parents. Here, an antilapse statute would not save the gift from failing. Husband's brother is not his descendent, because they are brothers. Additionally, even if the anti lapse statute would allow the bequest, it would not do so here because the will specifically said if the brother survives Husband, which shows that Husband intended the gift to lapse. Therefore, the gift would fail and instead of passing to the brother's adopted child, the gift would lapse and pass as part of the residue.

2. The mother is entitled to the hose at 500 South Street as a substitute for the house specifically bequeathed to her and the bequest did not adeem and pass to the residue.

When there is a specific bequest the court will not look at evidence outside a latent or patent ambiguity. A patent ambiguity occurs when there is a difference between what is in the will between the actual facts at the time of devise. Here, there is evidence of an ambiguity. The will devises the house that Husband owns at 211 Pearson Drive, City, State Y, which he purchases as an investment to hist mother. 6 month after the will was executed, Husband told the house in the will and reinvested the proceeds to the house at 500 South Street, where Husband and Wife did not live, similar to the house in the will. This is evidence that both of the houses were used as investment properties and that court is likely to counter that the mother is entitled to the hose at 500 South Street as a substitute for the house specifically bequeathed to her and the bequest did not adeem and pass to the residue.

3. The residuary estate should be distributed to wife subject to the shares of the estate that Husband's children will take as discussed below.

Wife has been specifically bequeathed the residue o the estate if she survived Husband. Husband survives wife therefore she is entitled to a share of the residuary.

4. Doris is entitled to take a share of Husband's estate as an omitted child.

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Children who are born after a will is executed are normally allowed to take a share of their parent's estate if there is no evidence that the will specifically excluded them. Under the constitution, nonmarital children have the same rights as marital children. Here, Doris was a nonmarital child who was born 2 years after the will's execution. There is no evidence that Husband intentionally omitted Doris from the will as he died 5 years after executing the will having never revised it. Unlike Sam, as discussed below, Doris's mother is not provided for as a spouse in Husband's will. Therefore, Doris is entitled to take a share of Husband's estate as an omitted child.

5. Sam may not be entitled to a share of Husband's estate as an omitted child.

As discussed above, children who are born after a will is executed are normally allowed to take a share of their parent's estate if there is no evidence that the will specifically excluded them. However, if the child is the child of a spouse who is provided for in the will, then they will not be entitled to collect a share of the estate. Here, Same is the child of Husband and Wife. Therefore, because he is not provided for but Wife is, Sam is not entitled to a share of Husband's estate as an omitted child.

Representative Good Answer No. 2

1. Whether the bequest of the automobile to Husband's brother will lapse and pass as part of the residue or pass to brother's adopted child, Fred.

A will bequeathing a general gift to a recipient is one in which the will describes the general attributes but suggests that a substitute may be permitted. A general bequeath of property is valid at the time of the testator's intent to make a gift, despite not owning the property at the time the will was made, as long as the property is within the testator's estate at the time of death. Should the recipient die before the testator, the gift may lapse and be included in the estate to pass as residue.

Here, Husband's will bequeathed any automobile owned at time of death to his brother. AT the time Husband executed his will, he did not own an automobile. However, at the time Husband died, he owned an automobile valued at \$25k, which he acquired two months before he died. Because Husband's will used general terms for the gift (i.e. any automobile I own at the time of death, if my brother survives me), the automobile would have passed to Brother. However, because the will specifically required brother to survive Husband, the gift lapsed because at the time of death, brother was survived by adopted child Fred.

Thus, Fred does not take under the will and automobile passes as part of the residue.

2. Whether Husband's mother is entitled to house at 500 South Street as a substitute, or whether the bequest adeemed resulting in 500 South Street passing to takers of the residue.

A will bequeathing a specific gift to a person is said to adeem if the estate no longer contains the specific property at the time of the testator's death. However, a specific gift may be substituted if the gift is no longer in the estate upon passing, and if it can be shown that the testator's intent was for the recipient to have the exact property, or replacement.

Here, Husband's will bequeathed house at 211 Pearson Drive, which he purchased as an investment property, to Mother. When Husband sold Pearson house and reinvested proceeds to by, it appears to have been another investment by Husband. Indeed, at no time did Husband and Wife live in either property as residents - both Pearson and South houses were investments. The fact that Husband's will specifically noted that the property was an investment, and all proceeds from the original property on Pearson can be traced to the new property on South. Court will likely find that the gift to Mother did not adeem, Mother is entitled to take the property.

3. To whom the residuary estate should be distributed

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When an individual dies testate (i.e. with a will), the gifts will be distributed according to the terms of the will, with the residue passing to surviving members under the law.

Here, Husband's will specifically bequeaths all residue to Wife, should Wife survive him.

Based on the analysis, residuary estate will contain the automobile, and the \$3m in cash, which will pass to wife, less portion for Doris (see below).

4. Whether Doris is entitled to take a share of Husband's estate as an omitted child

Under the UPC, a non-marital child may take a share of an individual's estate absent an express provision in the will. This is because the court determines that in the interest of justice and fairness, a non-marital child should be cared for absent other circumstances.

Here, two years after executing will, Husband had Doris with neighbor. The facts do not specify the relationship between Doris, Wife, or neighbor. Nonetheless, as nonmarital child, Doris is entitled to a defined share of Husband's estate, as determined by State Y's law.

5. Whether Sam is entitled to take a share of Husband's estate as an omitted child.

The issue is whether an omitted child is entitled to take of an individual's estate. Court will determine whether factors exist to support whether omitted child was inadvertently or intentionally omitted.

Here, one year after Husband executed will, he and Wife had son, Sam. Husband dies five years after executing will and never changed the will during that time. Additionally, because wife is still living, court will give residue to Wife, under the presumption that wife will still be caring for son, Sam.

Sam is not entitled to take share of Husband's estate as omitted child.

MEE5

Representative Good Answer No. 1

1. The issue is whether the service of process on Dan was sufficient.

The federal rules provide that service of process is adequate by a method prescribed by the state in which the federal district court sits. Other bases of proper service include personal service, abode service, or service on defendant's agent. To satisfy constitutional requirements, the service of process must reasonably notify the defendant of the pendency of the action against him. Any method of service permitted by the FRCP is deemed to be constitutional--including service of process by a method approved by the state in which the court sits.

Here, the action was filed in State C federal court, so State C's service of process rules apply to the action. State C permits service of process by sending the summons and complaint by first-class mail to a defendant's place of residence. Because Penny sent Dan service by first-class mail to his primary place of residence, service was proper under the law of State C, and thus it was proper under the federal rules.

2. The issue is whether the court has personal jurisdiction over the corporation.

Personal jurisdiction is the power of a federal court over a specific party. Generally, there are four bases for personal jurisdiction including consent, voluntary presence, domicile, and the long-arm statute of the state where the federal district court sits. A party may consent to the personal jurisdiction of a state expressly, impliedly through conduct, or by appearing in the court (for a reason other than challenging the basis of personal jurisdiction). A federal district court has general

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jurisdiction over a party when that party is either domiciled in the state, or has such systematic and continuous contacts with the state such that exercising personal jurisdiction over the party would not be unfair.

Here, the corporation is registered to do business in State C. In State C, there is a statute that provides that any corporation that registers to do business in the state agrees that the state's courts may exercise general personal jurisdiction over the corporation, and that the registered corporation shall be subject to the same liabilities and duties as a corporation incorporated in State C. This statute provides for express consent for the courts of State C to exercise general personal jurisdiction over a corporation that registers to do business in State C. Corporation expressly agreed to allow the State C courts to exercise personal jurisdiction over corporation in exchange for allowing Corporation to do business in State

C. Thus, the court has personal jurisdiction over the corporation through the corporation's consent.

A federal district court's exercise of personal jurisdiction over the defendant must satisfy the Due Process Clause of the Fourteenth Amendment of the US Constitution. An exercise of personal jurisdiction pursuant to consent, voluntary presence, or domicile satisfies the Due Process Clause. Here, because the corporation consented to the exercise of general personal jurisdiction by the State C courts in order to conduct business in State C, this personal jurisdiction based on express consent satisfies the Due Process Clause.

Representative Good Answer No. 2

1) The issue is whether Bank has a security interest enforceable against Joan (J).

A purchase money security interest exists when the secured party (Bank (B)) lends debtor (Harmony (H)) money for the specific purpose of acquiring goods. A PMSI automatically attaches to the goods in question. If the goods are consumer goods, the PMSI is automatically perfected. A secured party can also perfect by filing a financing statement in conjunction with attachment.

Here, the collateral was all of H's inventory then possessed or after acquired. B had a perfected PMSI in all of H's inventory. This means that B had the right to repossess the inventory. Since B's PMSI was perfected, B had priority over all other lenders.

When a buyer in the ordinary course of business purchased part of that inventory as a consumer, from a merchant that is in the business of selling that type of good, they typically take free of any security interest if the buyer was unaware that another party had rights in the goods.

Here, Walter (W) was a BOCB. He purchased the violin without awareness of B's PMSI. Since W was a BOCB, he took the violin free from B's security interest. So, when W sold to Joan (J), J took free from the security interest. Since J bought the violin free from B's security interest, B does not have an enforceable security interest against J.

2) The issue is whether a secured party that maintains title of the good can enforce that title after the good is sold by a consumer to a consumer.

For a secured party to enforce its rights to the collateral, the security must have attached. A security is attached when:

1. the secured party gives value
2. the debtor has rights in the goods, and
3. there is a valid security agreement.

Here, H gave W the violin (value), W was in possession of the violin (rights). However, the facts do not indicate that a valid security agreement was filed with the state. So traditional attachment is not applicable.

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A security can also attach when the secured party retains title of the secured good.

Here, H is a secured party with rights in the violin because H retained title.

However, under the garage sale rule, a consumer buyer who buys from a consumer seller without knowledge another party's rights to the good is not subject to any security interests on that good.

Here, J (consumer buyer) purchased the violin from W (consumer seller). Here, J did not know that H retained title of or had a security interest in the violin. So, J bought the violin from H free of any security interest.

Thus, H does not have an enforceable security interest against J since bought the violin in a consumer to consumer sale without knowledge of H's security interest.

MEE6

Representative Good Answer No. 1

1. The issue is whether Dan had actual notice that a lawsuit was filed against him

Upon the filing of a civil action, the plaintiff must serve the defendant with a copy of the summons and the complaint within a prescribed timeframe of the jurisdiction where the action was brought. Generally, if the defendant is out of state, service must be made within 60 days. If the defendant is out of the country, service must be made within 90 days. For service of process to be proper, the person making service must be 18 years or older and not a party to the action. Additionally, service must be made upon the person unless the laws of the jurisdiction in question permit an alternative form of service. Here, State C allows service by first class mail. For service to be proper by mail, it must be delivered to the usual abode of the defendant and left with a person of suitable discretion and ability to communicate with the defendant concerning the service. Finally, under the Due Process Clause, service of process must give actual notice to the defendant that an action has been filed against them. The overall purpose of the due process clause in terms of service of process are to allow a defendant to mount a defense.

Here, the facts tell us that Dan was known to be living with his parents in State C and his parents are persons of suitable age and discretion so as to make Dan aware of his mail because they have been keeping his mail in anticipation of his return. Additionally, because State C allows service by first class mail, Penny's mailing of the summons and complaint was proper form of service. However, there are no facts that indicate Dan's parents were in frequent communication with him while he was away and the mail which included the complaint and summons had no markings that indicated it was a court document or a summons. Thus, Dan likely did not have actual notice that an action had been filed against him. Therefore, service of process was not sufficient.

2. The issue is whether the State C district court has personal jurisdiction over the corporation

Personal jurisdiction is the court's power over an individual (or a corporation in this case) or property. There are generally two types of personal jurisdiction: general and specific. General jurisdiction refers to the court's jurisdiction over the citizens who reside in the state of the court, who are served in the state, and who consent to the court's jurisdiction over them. Specific jurisdiction typically refers to the court's jurisdiction over defendants who have minimum contacts within the jurisdiction, such as conducting in business there or otherwise purposefully availing themselves of the jurisdiction. A court has personal jurisdiction over a corporation in the state where the corporation is incorporated, in the state where the corporation has its principal place of business, and any state where the corporation has minimum contacts.

Here, the corporation is incorporated in and has its principal place of business in State A. However, the facts tell us the corporation also has offices in States B and C, and conducts business with citizens in both states. Thus, the corporation can

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be said to have purposefully availed itself of State C and therefore the State C district court likely has personal jurisdiction over it.

Representative Good Answer No. 2

1. The issue is whether service of process on Dan was sufficient.

Under the FRCP, service of process can occur in one of four ways. First, service of process can follow state law. Second, a defendant can be personally served at their residence and have someone with suitable age and discretion, such as being over 18 years old, receive the summons and complaint. Third, a defendant can be served through their agent, and fourth a defendant can be personally served in a state if they are in that state for a reason unrelated to the claim at issue. Waiver of service of process must be clearly marked and include the summons, complaint and a prepaid envelope, so the defendant can send back their answer

Here, Penny brought an action against Dan in the US District Court for the District of State C. In the action against Dan, Penny's attorney mailed a request for waiver of service of process to Dan's home, but no one responded. The law of State C allows service of process in its courts of general jurisdiction by sending the summons and complaint by first-class mail to the defendant's place of residence. Being consistent with this law, Penny's attorney sent an envelope containing the summons and complaint by first class mail to the home of Dan's parents. The envelope had no markings indicating the nature of its contents, and Dan's parents placed the envelope with the rest of his mail. Dan failed to respond to the summons and complaint. Pursuant to the FRCP, this a valid way to serve process since it is pursuant to State C law. Moreover, the service of process was sent to the defendant's abode and left with a person of suitable age and discretion in Dan's parents.

To conclude, service of process was proper as it followed State C law and was personally served on the defendant's abode and left with someone of suitable age and discretion.

2. The issue is whether the district court has personal jurisdiction over the corporation.

Personal jurisdiction is the exercise of jurisdiction over a defendant that is fair and reasonable. States have long-arm statutes that state that the exercise of jurisdiction is fair to the extent allowed by the Constitution. The Constitution states that the exercise of jurisdiction over a defendant is fair so long as it does not offend the traditional notions of fair play and substantial justice. In analyzing personal jurisdiction, courts look to see if the defendant had sufficient contacts with the state as to purposefully avail themselves to the state, the relatedness of the claims and the overall fairness of exercising jurisdiction.

General jurisdiction looks at where a person or corporation is domiciled. Corporations have general personal jurisdiction in the state in which they are incorporated in. If they are incorporated in multiple states, then whatever state they consider their principal place of business is the court that will have personal jurisdiction.

Here, a corporation was incorporated in and had its headquarters in state A. The corporation is registered to do business in State C, pursuant to State C's long arm statute that states "court may exercise general jurisdiction" over the corporation and that the registered corporation shall be subject to the same liabilities and duties as corporations incorporated in State C. State C's long-arm statute extends its personal jurisdiction in a way that offends the traditional notions of fair play and substantial justice. Corporations' general jurisdiction lies in the state in which they have their principal place of business. If the corporation has not purposefully availed itself to the state, and is not domiciled there, then the court does not have jurisdiction and it would be unfair for a state to exercise their jurisdiction on that basis. Here, the corporation has its headquarters, principal place of business and domicile in State A, not State C.

To conclude, the district court of state C does not have personal jurisdiction of the corporation because its domicile is State A.