# Scaled Essay Scores

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|---|---|
| MEE 1: | **31.68** |
| MEE 2: | **38.89** |
| MEE 3: | **30.60** |
| MEE 4: | **38.47** |
| MEE 5: | **33.69** |
| MEE 6: | **32.25** |
| MPT 1: | **37.08** |
| MPT 2: | **53.78** |

**Written Score:** **110.7**

1)

**1. The Detective is an expert in the subject he is expected to testify about.**

Expert witnesses don't have need advanced degrees to be experts in their field. They must instead have knowledge and apply it according the best practices in the field *Daubert.* This detective has taken many classes in his field on gang structure, membership, and activities. He is presumably considered an expert by other law enforcement personnel because he has lead more than 75 training sessions over the past 75 years. He has first hand knowledge from his time in charge of the gang unit, and reports being familiar with "The Lions."

**2. The issue about whether the photograph of the Defendant's tattoo is inadmissible character evidence depends on whether it's opinion and reputation based.**

Character evidence is allowed if it is opinion and reputation based, rather than incident specific. In order for the prosecution to introduce the opinion and reputation based testimony of the former gang member, the defendant must first make reputation an issue. One way he could do that is by attacking the victim's reputation--such as by pointing out he was a member of The Lions or had committed violent crimes, if the prosecution doesn't get in front of it.

The photograph of the tattoo seems like the type of tangible physical evidence that should be admitted regardless of whether the former gang member testifies. If the photo of the tattoo is allowed in, then it's possible that the detective would be able to comment on it.

**3. If the victim's anticipated testimony is relevant to the case, it should be admitted.**

Since the prosecution's theory of the case is that both the victim and the defendant were members of "The Lions", it's highly relevant. It provides motive for the killing.

**END OF EXAM**

2)

1. Because there is no "integration" or "merger" clause, the courts have more reason to look beyond the "four corners" of the contract. In the negotiations, while there wasn't a specific agreement on the exact amount of the fair share because it ranged from 20-25%--there was a specific oral agreement that the Buyer would use the Seller's picture on the red wine labels. Oral agreements can constitute a contract. Having the seller's face on the label was a key term of the contract: "she told Buyer that she would not sell him the winery unless he agreed to continue using that label." This is the type of factor that induced her to enter the contract. Fraud in the inducement makes a contract voidable.

2. Yes evidence of the negotiations would be helpful to explain what both parties believed the meaning of the term was. Extrinsic evidence is allowed as is trade usage of the term.

3. Buyer's claim that Seller breached her non-compete depends on a balancing test:

- Duration: Given that wine grape vines take 5-7 years to mature; that wine takes time to age; and that businesses take time to get off the ground--is ten years really a reasonable time frame, or is it too long?
- Distance: Is a non-compete across the entire United States necessary in order for the two business to really avoid competing with one another?
- Skill & Specialization: Is the non-compete reasonable given the level of specialized knowledge involved?

Many states reserve the right to "blue pencil" non-compete agreements, to make them reasonable and appropriate. Under the common law of contracts, non-compete agreements are especially reasonable given that the sale of a business is consideration--and the profits of the sale--$3 million constitution a large degree of consideration. Since the Seller could buy vineyards ready to produce, since wine is frequently ship across the country, and since her skill and reputation was purchased as part of the consideration paid for with the business, the non-compete is reasonable.

**END OF EXAM**

3)

**1. The issue is whether Carol was acting as the corporation's agent in determining whether or not the corporation is bound by their agreement's with the bank.**

In determining whether or not Carole was acting as the corporation's agent or as Danielle's agent, we need to know whether the corporation would've approved of Carole signing financing agreements on Danielle and the corporation's behalf--and whether the bank reasonably believed that Carole had the ability to sign for the corporation.

**2. The issue is whether a bonus payment proposed by and made to the majority shareholder Danielle when it contravenes previous board resolutions.**

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

As a shareholder, Brian has the right to request to look at the corporation's books in order to determine the health of the corporation and determine if his share's are correctly valued. This is subject to reasonable notice limitations & etc, but for the board to refuse is a violation of the law.

Since the Board originally agreed that the proceeds from the home sales would be paid to the corporation and that Brian would be responsible for the construction of all single family homes, it is surprising that a $1 million payment would be given to Danielle as a bonus. The Board's most recent unanimous agreement on how the corporation should pursue business opportunities regarding the land should control the corporations actions, instead of a special meeting. The special meeting is a problem because despite the 2/3 board vote, the change in purpose regarding the business purpose of the land had already taken place.

**END OF EXAM**

4)

1a. In order for a trust to be created, there must be clear language effectuating the trust and assets put into the trust. Ms. Doe used the proper language but did not put any assets into the trust (deliberately). For that reason, she didn't create a trust.

1b. If the AD Trust was validly created, the presumption would be that it would be a revokable trust, since it would be created during the donor's lifetime. However, the only way to effectively revoke it would be to go to court and show a Judge that it had fulfilled it's material purpose. Many people skip this step when the Donor, Trustee, and Beneficiaries are all willing to revoke the trust. Here the material purpose was to care for both Ms. Doe "during her lifetime" and her nieces after Ms. Doe's death, so Ms. Doe's actions of writing that she revoked the trust wouldn't be enough to cancel the trust, because her nieces had a property interest in the trust.

2. The courts have been flexible on what constitutes the language opening a trust when the financial health of a minor child is at stake, as Donna's is here. Ms. Doe's instruction to close friend to hold tangible property and bonds for her daughter "as a trustee" might be clear enough for a court to hold a trust was created with Donna as a beneficiary, especially since the instructions included at what ages the property should be sold and what the money should be used for.

3. The testamentary trust for the Political Party wasn't valid because trusts can only be created for charitable purposes (or for caring for individuals/family members in the family law sense). She could have created a trust with the purpose of getting out the vote or raising awarness of a issue with political implications (like environmentalism or racism) that align with her favorite political party.

4.The bank account should be distributed to the children of Ms. Doe's parent's per stirpes. In a per stirpes distribution, the first generation at which someone survives, they take their share of the inheritance. So Bob takes 1/2 of Arlene's estate. His son Fred takes nothing because it is presumed that eventually he will inherit from his father. Carla Donna and Edna would have inherited 1/2 of the estate through their mother, but instead each inherit 1/6.

**END OF EXAM**

5)

1. Developer is a person "required to be joined if feasible" if they are essential to adjudicating the case. Typically, they are involved in the common nucleus of operative facts that are part of the central incident to the case.  In many cases, if the required parties are not joined, it would waste judicial resources because it would result in a second law suit. Here if the Developer is not joined, the Builder might simply sue the Developer in State B separately--or at least that would be what the Lender would likely allege. The central overlapping incident in the Builder's suit against either/both the developer or the lender is the lack of payment.

2.

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

The Lender has moved to dismiss the action on the ground that Developer is a required party, but if the Developer cannot be joined the federal court could still hear the cause because court retains diversity jurisdiction (The Builder is at home is state B and the Lender is at Home in state A because it is incorporated there). The amount in controversy meets the threshold of >$75,000 necessary to remain in the federal court system.

**END OF EXAM**

6)

1. Frank is obligated to pay the property taxes on the family home because he will ultimately inherit it. Wanda only has a life estate to property. If she moved out of the home and rented it to another, generating $1,500 in rental income, she would be able to pay the $6,000 in property taxes, but she would lose her use of the property. This would defeat Oscar's purpose in leaving her the life estate in the family home, and force her to rent a different property on the difference between the two incomes. In the interim, there would be wear and tear on the family home, a widow would be forced to pack, potentially sell furniture, and move....Clearly, there are policy reasons why the heir pays the taxes on the property he will inherit.

2. Oscar's language in the conveyance is interesting. "Frank and his heirs so long as..." is conditional language, which suggests that Frank will only have the land as long as the condition is being fulfilled. However, by naming himself, "Oscar" rather than saying "Oscar's estate" it could be read to mean that the conditional is only operant as long as Oscar himself is alive. Ambiguous language language is supposed to be read against the drafter; here presumably Oscar's attorneys...

On balance, I think we should read the language to suggest that the Oscar only has a life interest in the building. If Frank stops fulfilling the conditions, Oscar will only have a life-long reversionary interest in the building.

3. Though Wanda inherited the residue of Oscar's estate, she didn't inherit Oscar's life-long reversionary interest in the apartment building he conditionally gifted to Frank.

4. After February 1, 2021, Frank owns the apartment building because of the poor drafting of Oscar's conveyance. Frank fulfilled Oscar's conditions for the duration of Oscar's life, which prevented the building from automatically reverting to Oscar. However, he waited until after Oscar's death before validly and lawfully terminating the leases of the tenants with below median incomes.

**END OF EXAM**

7)

***Law Office of Marianne Morton***

10 Court Plaza, Suite 2000

Franklin City, Franklin 33705

**MEMORANDUM**

**To:** Marianne Morton

**From:** Examinee

**Date:** July 26, 2022

**Re: Walter Hixon**--possible annulment & jdx of Franklin Courts

**1. The issue is whether Columbia or Franklin law governs the grounds for annulling Mr. Hixon's marriage to Ms. Tucker:**

The four Factor Test from the Restatement §6, as analyzed in Fletcher:

1. The relevant policies of other ineterested states:

2. The protection of justified expectations:  All parties were married in Columbia. Joan appears to have been always a Columbia resident, as was Franny. Hixon married Joan Preston in Columbia in 1986 in Columbia, and then he moved further away in Columbia 1990.

**2. Must Mr. Hixon file a lawsuit to annul his second marriage:**

Mr. Hixon must file a lawsuit to annul his second marriage because he married both of his wives in Columbia under Columbia law. Under Columbia Revised Statutes §718.02A "A marriage is voidable if ...the Spouse of either party was living and the marriage with that spouse was then in force and that spouse was absent...and not known to the party commencing the proceeding to be living for a period of five successive immediately preceding the subsequent marriage for which the annulment decree is sought." Hixon moved out of the marital home he shared with Ms. Preston in 1990 and away to Corinth. In 1993 he heard gossip that Ms. Preston had died. He continued to believe she was deceased and married Ms. Tucker in 2012--after more than 5 years had passed.

**3. If Hixon files the annulment in Franklin, the Franklin would proper jurisdiction to dispose of the parties property--assuming they have proper jurisdiction for the annulment.**

As Walker's Treatise on Domestic Relations explains, once the Franklin courts have proper jurisdiction to hear an annulment, they have proper jurisdiction to adjuicate the normal divison of property disputes that occur during a divorce. In order to petition the court for a divorce, Hixon must be a resident of Franklin. In most states that means at least six months. Since he has been living in Franklin since 2019, that's long enough to establish residency and file for divorce in most states.

Franklin Domestic Relations Code §19-7 states: "The provisions relating to the property rights of the spouses, support, and custody of children on dissolution of marriage are applicable to proceedings for annulment" which means that as courts of Franklin family law courts are empowered to address all of the important subjects that would arise in a divorce case in an annulment case. Hixon's objective is his fair share of his house with Franny in Columbia.

**4. We should advise Mr. Hixon to file in Columbia.**

If the judge believes our client knew or should've known his wife was alive, he/she might follow *Simeon v. Jaynes* (Fr. Sup. Ct. 2009). Hixon truly believed Joan died when she was terribly injured in the accident. As his attorneys, however, we have to consider how his actions will appear to others--it doesn't make him seem sympathetic that he didn't reach out to his in-laws to offer his condolences, which would easily have allowed him to verify this gossip. His decision not to confirm whether his wife was actually dead--by say--looking at the newspaper obituaries or pulling her death certificate before remarrying, fails what a "reasonable man" would do in like circumstances. While I have not found a legal requirement that his belief pass a "reasonable man" test, family law courts are courts of equity, and much rests on the credibility of our client. If the Judge follows *Simeon v. Jaynes,* he/she could believe that our client knew/should've know that he needed to get divorced before marrying Franny. In this case, the Franklin Supreme Court held that the trial court should've applied Columbia law, given significant connections between the spouses and the State of Columbia. If we file in Franklin, and if our client's credibility is impugned in this way, the Franklin trial courts would likely apply this Franklin Supreme Court case, because the strongest factual ties between are client and both women he married are in the state of Columbia (see supra.)

**Hixon married Joan Preston in Columbia in 1986 in Columbia, and then he moved further away in Columbia 1990.**

**He married Tucker in 2012. They bought the Columbia house together in 2015--both on the deed and the mortgage. He moved back to Franklin in 2019.**

**Franny wants to end things.**

**Joan wants a divorce.**

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**END OF EXAM**

8)

**Zeller & Weiss LLP**

Attorneys at Law

Franklin City, Franklin 33705

**MEMORANDUM**

**To:** Howard Zellner

**From:** Examinee

**Date:** July 26, 2022

**Re:** Briotti's request for advice

**1. Under applicable state law, may Briotti lawfully record her telephone conversation with X without informing X that she is doing so?**

It depends:

If Briotti is in her office in Franklin, she can lawfully record her telephone conversation with X without informing him prior to the conversation that she is doing so because Franklin Criminal Code only requires the prior consent of one of the parties. (FCC §200.1.a) While Franklin is a "one party recording state", Olympia is a "two party recording state"; Olympia requires the consent of "all parties to the communication" or recording to agree in order for it to be legal to record a conversation. (§ 500.4.1.a).

Which state Ms. Briotti makes the recording matters because "Interceptions and recordings occur where made" (*Parnell v. Brant,* Olympia Supreme Court 2004). Similarly, the court in *Shannon v. Spindrift* held: "that in civil or criminal actions, §500.4 does not apply when the act of interception takes place outside of Olympia" (Olympia District Court 2018). However, Briotti takes the call while she is seated in Olympia, she must get the prior consent of Mr. X because the Olympia Criminal Code requires the prior consent of all parties to the communication (§ 500.4.1.a).

**2.Even if Briotti can lawfully record, it raises ethical issues under the Model Rules of Professional Conduct.**

Briotti is a member of both the Franklin and Olympia state bar associations, and subject to both their ethics rules and the national ethics rules. For this reason, the Franklin ethics rules have great persuasive weight.

Franklin Rule 8.4 recommends that the lawyer should consider the client's previous statements, the client's circumstances, and alternative method's of memorializing the conversation" when determining whether to record. Ms. Briotti reported that her client will go bankrupt if he doesn't rob from the trust; despite being warned his actions were illegal, he kept talking about the trust. While her notes are a good way of memorializing the conversation, only a recording can capture his affect in their next conversation. She has a reasonable belief that he's desparate and listening to her counsel.

The ABA Standing Committee on Ethics and Professional Responsibility's report has come to the conclusion that "the mere act of secretly but lawfully recording a conversation is not inherently deceitful. This is in conversation with **Model Rule 8.4c.** Some of the reasons for the change include: a) that there are often exceptional  circumstances where recording the conversational is reasonable, and there are safeguards in place; b) clients can expect conversations to be memorialized in notes; c) it is best practices to disclose to the client prior to recording.

For these reasons, my recommendation is that she record the conversation.

**3. Even if Briotti can lawfully and ethically record, she must tell her client that she is recording if directly asked.**

If Briotti's client directly asks her whether she is recording the conversation and Briotti denies it, she would be in violation of **Model Rule 8.4c**, which states that it is "porofessional misconduct for a lawyer to engage in conduct involving dishonesty..deceit or misrepresentation." ABA Standing Committee on Ethics and Professional Responsibility's report is clear that a lawyer falsely stating the conversation is not being recording is not what their reforms are trying to address. Furthermore, for policy reasons, clients need to be able know that their attorneys will be fully honest with them within the scope of their representation.

**END OF EXAM**