MPT 1
September 2020

State of Franklin v. Daniels **(September 2020, MPT-1)**
The examinee works for the Franklin Public Defender's Office, which is representing Quinn Daniels, a 19-year-old sophomore at Franklin State College. At a party on campus, Daniels swung a hockey stick and hit fellow student Anthony Otis, tripping Otis and causing him to fall down. Otis then fell down a flight of stairs and sustained serious injuries. The State has now charged Daniels with aggravated assault in connection with that incident. Daniels would like to be released from jail pending trial, but the State has indicated that it will argue for detention. Examinees' task is to prepare the argument section of the defendant's brief in support of pretrial release, making the case against Daniels's detention in light of the testimony given at the pretrial hearing and the applicable provisions of the Franklin Bail Reform Act. The File contains the instructional memorandum from the supervising attorney, a file memorandum summarizing an interview with Quinn Daniels, an email from the assistant district attorney, excerpts from the hearing transcript, and a certificate of completion of probation. The Library contains excerpts from the Franklin Bail Reform Act and two cases: *State v. Donegan* (Fr. Ct. App. 2002) and *State v. Ross* (Fr. Ct. App. 2009).

ARGUMENT

The Franklin Bail Reform Act was adopted to limit the use of money bail bonds. *State v. Donegan*. "The idea behind the statute is that no person should be detained pending trial solely because he or she lacks the funds to pay for a money bail bond." *Id*. Instead, the system created by the statute "imposes the *least restrictive alternatives* on a defendant's release pending trial." *Id.* (emphasis added).

Quinn Daniels is exactly the type of defendant that this statute envisioned would be released pending trial. Mr. Daniels is a college sophomore pursuing a degree in accounting. He is from a working class family and is a first generation college student. Up until this incident, he has had no history of any specific intent adjudications or crimes. He has no history of intentional violence whatsoever. Although Mr. Daniels has one incident of juvenile delinquency from four years ago on his record, he dutifully completed all requirements related to this delinquency, including probation, psychological counseling, and public service work. Nevertheless, the prosecution in this case seeks to have him detained until trial, notwithstanding his lack of financial resources to afford any bail.

Mr. Daniels seeks release on personal recognizance, and in the alternative, release to the custody of his mother and father pending trial. See, e.g., FBRA (A) and FBRA (C)(i).

A. An application of the four factors found in FBRA (B) counsel strongly for Mr. Daniels' release on personal recognizance pending his trial.

In determining whether to release Mr. Daniels, this Court must consider (1) the nature and circumstances of the offense charged, (2) the weight of the evidence against the defendant, (3) the history and characteristics of the defendant, and (4) the nature and seriousness of the danger to any person or the community that would be posed by the defendant's release. FBRA (B). Further, the FBRA contemplates a strong presumption in favor of releasing defendants on personal recognizance. Indeed, this Court is "*mandated* to release the defendant on personal recognizance... or upon execution of an unsecured appearance bond... *unless* the judge makes a specific finding that the release will not reasonably ensure the defendant's appearance or will endanger the safety of any other person or the community." *Donegan* (emphasis added). Further, even if this Court finds that releasing Mr. Daniels on recognizance is not appropriate, this Court is "*required* to release the defendant under the *least restrictive means necessary* for ensuring his or her appearance and ensuring the safety of the community." *Donegan* (emphasis added).

Upon consideration of the four factors provided by the FBRA, each factor counsels toward Mr. Daniels' release on personal recognizance.

1. The facts presented at the release hearing suggest Mr. Daniels lacked intent to cause Mr. Otis serious bodily harm, evidencing circumstances that counsel for pretrial release.

The first factor courts are required to consider is the nature and circumstances of the offense charged. FBRA(B)(1). Upon review of the testimony presented at the pretrial hearing, this factor counsels toward pretrial release with recognizance.

At the pretrial release hearing, Ms. Brooks testified that she saw Mr. Daniels "playing with a hockey stick" and "swinging it," and then approach her boyfriend, Mr. Otis. Ms. Brooks testified that Mr. Otis stated, "Man, are you crazy?" to Mr. Daniels, to which Mr. Daniels replied, "Maybe I am, but so are you." After this, Mr. Daniels allegedly tripped Mr. Otis with the hockey stick he was "swinging," and Mr. Otis fell and landed on a staircase, and proceeded to fall down the staircase and suffer an injury.

To be sure, the behavior described by Ms. Brooks is surely negligent. However, the prosecution has presented no evidence that Mr. Daniels was swinging this hockey stick intentionally at Mr. Otis, or that Mr. Daniels intended for the hockey stick to hit Mr. Otis. Indeed, Ms. Brooks testified that she did not even know Mr. Daniels and had not seen him prior to this party.

Courts in Franklin have adjudged behavior far worse than this to still warrant pretrial release on recognizance. In *State v. Donegan*, the defendant was charged with aggravated assault, as in this case, when the defendant got into a bar fight and intentionally hit a fellow patron over the head with a beer bottle. That behavior was an intentional act of violence on the part of the defendant, unlike the facts here, which merely indicate a negligent act of swinging a hockey stick too close to others. Nevertheless, the court in *Donegan* found that, despite this act of intentional violence, the defendant was entitled to pretrial release on recognizance.

2. Because there is only one biased witness to the events, the weight of evidence against Mr. Daniels is thin and counsels toward pretrial release on recognizance.

The second factor courts are required to consider is the weight of the evidence against the defendant. To be sure, Ms. Brooks testified at the pretrial release hearing against Mr. Daniels. However, that testimony was severely lacking in many respects, including not adequately outlining any motive on the part of Mr. Daniels, nor even indicating that Mr. Daniels was intoxicated at the time of the incident. In contrast to cases involving many unbiased witnesses who provide consistent testimony in which courts have found there is great weight of evidence against the defendant, *see Donegan* (finding that the weight of the evidence was "substantial" because five unbiased witnesses reported that they observed the defendant's actions), here the only evidence is the testimony of one witness, who is undoubtedly biased in favor of Mr. Otis as she is the girlfriend of Mr. Otis. Under these circumstances, the weight of the evidence against Mr. Daniels is thin. This strongly counsels for a pretrial release on recognizance.

3. Because Mr. Daniels lacks any history of intentionally violent behavior, and is an ambitious student, his personal characteristics counsel for pretrial release on recognizance.

The third factor this Court considers in determining pretrial release is the history and characteristics of the defendant. FBRA (B)(3). Here, as stated above, Mr. Daniels is an aspiring accountant and is pursuing his degree in accountancy at a local college. He is the son of working class parents and is a first generation college student. In addition, he has no history whatsoever of intentional violence toward anyone. These facts strongly counsel toward a pretrial release on recognizance.

4. Because Mr. Daniels poses little danger to his community, he should be released on pretrial recognizance.

The last factor this Court considers in determining pretrial release is the nature and seriousness of the danger to any person or the community that would be posed by the defendant's release. Here, again as stated above, the prosecution cannot identify any danger that Mr. Daniels' release would pose, to any person in particular or to the community at large. Mr. Daniels has no history of any intentionally violent behavior. This strongly counsels toward a finding of pretrial release on recognizance.

B. Even if this Court finds that a release on recognizance is inappropriate, a release on the condition that Mr. Daniels remains in the custody of his parents is more than sufficient to ensure the safety of the community and his presence at trial.

If this Court determines that a release on personal recognizance is inappropriate, this Court may order pretrial release subject to the defendant agreeing to not commit a crime during the period of release, and subject to the least restrictive further condition found in FBRA(C). These possible conditions include that the defendant:

1) remain in the custody of a designated person, who agrees to assume supervision and to report any violation of a release condition to the court, if the designated person is reasonably able to assure the judge that the defendant will appear as required and will not pose a danger to the safety of any other person or the community;

2) maintain employment or, if unemployed, actively seek employment

Mr. Daniels parents are both able to serve as a designated person who can properly supervise Mr. Daniels. Mr. Daniels' mother testified that she would be able to adequately supervise Mr. Daniels, along with help from Mr. Daniels' father, if he was put into her care by this Court. Mr. Daniels' parents raised an ambitious student, who dutifully graduated from high school and pursued his college studies before this incident. In addition, because Mr. Daniels is unable to continue his studies temporarily at this time, he can actively seek employment as he awaits his trial.

C. The prosecution's attempt to invoke a presumption that no condition will reasonably ensure the safety of any other person or the community must fail because of the circumstances of this case and Mr. Daniels' personal history.

FRBA (D) provides that, "a rebuttable presumption arises that no condition or combination of conditions will reasonably ensure the safety of any other person or the community if the judge finds that:

i) the defendant has been convicted of or otherwise adjudicated to have committed an offense that involves serious bodily injury, and

ii) a period of not more than five years has elapsed since the date of conviction or adjudication, or the release of the defendant from imprisonment, whichever is later."

Here, it is undisputed that Mr. Daniels committed the act of arson and aggravated assault as a 15-year-old boy, and was adjudicated delinquent for those actions. Mr. Daniels was dared to start a trash can fire in a parking lot, and after doing so, a Good Samaritan who attempted to put the fire out suffered burns. This incident occurred four years ago and Mr. Daniels completed all of the requirements of his delinquency finding, including serving probation, completing psychological counseling, and completing 100 hours of public service work. Nevertheless, the prosecution in this case is attempting to use this one event as a "gotcha" to ensure Mr. Daniels is not released at all. This is against the plain intent of the FRBA, and is inconsistent with the law of this state.

While cases in this state have held that juvenile delinquencies can create a presumption of detention, any presumption mandated by a finding of delinquency can be overcome "by less evidence than would be required in a case involving an adult conviction." *State v. Ross*. This is because the purpose of the juvenile system is to rehabilitate, and because minors do not have fully developed brains at the time of their delinquencies. *Id*. Even if there is a validly established presumption, the facts of this case strongly rebut this presumption.

An examination of an alternative case is illuminating. In *State v. Ross*, the court indicated that it would not have been an abuse of discretion for the trial court to conclude that pretrial detention was warranted based on the juvenile delinquencies of the defendant. In that case, the defendant had juvenile adjudications that were "relatively recent, numerous, and severe." *Id*. Indeed, these delinquencies included assault with intent to commit murder, armed robbery, aggravated assault, and kidnapping. These delinquencies included events that occurred less than one year ago. In addition, the court in *Ross* noted that the defendant had stopped pursuing her education at the age of 16 and was "living on the streets since then." *Id*.

Here, by contrast, Mr. Daniels has but one juvenile delinquency, which occurred four years ago. While serious, his arson and resulting aggravated assault evidenced no intent to commit violence toward anyone, unlike the defendant in Ross who committed many delinquencies of intentional violence. Mr. Daniels' lone incident occurred years ago,

unlike *Ross* where an incident that had occurred within the last year. Finally, Mr. Daniels is an ambitious student pursuing his college degree, unlike the defendant in *Ross*. In sum, the facts here strongly suggest that Mr. Daniels is not the type of prior offender that this provision envisioned.

MPT 2
September 2020

Eastwood v. Eastwood **(September 2020, MPT-2)**
In this performance test, the examinee's law firm represents Louisa Eastwood. Louisa and her husband, William Eastwood, have been married for 14 years, have two children together, and are now getting divorced. Before they married, they entered into a premarital agreement. Louisa has asked the firm to analyze the validity and enforceability of that agreement. In particular, Louisa is concerned about whether she has any right to the marital home or to receive spousal support. Examinees are asked to prepare an opinion letter to the client addressing the likelihood of successfully challenging the premarital agreement under the provisions of the Franklin Premarital Agreement Act of 1987. The File contains the instructional memorandum, the firm's guidelines on opinion letters, a summary of the client interview, an email from William Eastwood, and excerpts from the Eastwoods' premarital agreement. The Library contains excerpts from the Franklin Premarital Agreement Act and three Franklin Court of Appeal cases discussing the standards for finding a premarital agreement unenforceable on grounds of involuntariness, unconscionability, and/ or substantial hardship.

Dear Ms. Eastwood,

I am reaching out regarding your meeting earlier this week with my colleague, Ms. Ruiz, to discuss your potential divorce from Mr. Eastwood. This is an opinion letter based upon the facts that you told Ms. Ruiz, and is intended to help you understand the potential outcomes of any case regarding your divorce from Mr. Eastwood and the division of property and spousal support under your premarital agreement. This letter is based upon a thorough review of the facts you relayed to Ms. Ruiz and the applicable law. For your convenience, I have broken down the analysis into separate sections below, with each centering on the legal claims and arguments relevant to the disposition of property and your right to spousal support. If you have questions or concerns regarding any of the following, please do not hesitate to contact me for clarification.

The Premarital Agreement is generally enforceable, so long as it is not unenforceable because of any defenses.

First, the Premarital Agreement will be enforceable unless we can successfully raise the defenses discussed below. Under Franklin law, premarital agreements, or those between prospective spouses in contemplation of marriage to be effective upon marriage, are generally effective to distribute property and determine the rights and obligations of the spouses to property and spousal support. Franklin Premarital Agreement Act (FPAA) §§ 101, 104. Such agreements must be in writing and signed by both of the spouses to be bound by the agreement. § 102. Further, consideration, meaning the giving up of something of value or taking on a detriment, is not required for a premarital agreement to be valid. *Id.* Here, your premarital agreement with Mr. Eastwood will be valid and enforceable unless we are able to successfully raise the defenses discussed below. This is because of the fact that the agreement is in writing, was signed by both you and Mr. Eastwood in front of a notary, and generally covers the types of property and spousal support permissible under the FPAA.

However, if your agreement with Mr. Eastwood were deemed unenforceable due to a defense, the default Franklin law would apply, and you would likely be entitled to spousal support and at least 50% of the marital home. Franklin Family Code §14(a).

The Premarital Agreement is not likely to be found unenforceable due to a lack of voluntariness.

There is a possibility of raising a defense in your case that the agreement is unenforceable because you did not sign voluntarily, although it is likely that doing so will not be successful. Under the FPAA, premarital agreements are not enforceable against a person if that person did not execute the agreement voluntarily. §105(1)(a). In your case, Mr. Eastwood is seeking to enforce your premarital agreement against you, and if you did not sign the agreement voluntarily, he cannot enforce it and its terms will not govern your divorce.

Under Franklin law, the determination of whether an agreement was signed voluntarily

looks to the extent to which there was independent action, free from coercion and intimidation, and an apparent element of choice. *Richards v. Richards*, (Fr. Ct. App. 2010). In more plain terms, voluntariness is based on whether you signed the agreement of your own free will without coercion. *Id.* In making this determination, the courts consider all of the facts, but especially 1) whether circumstances in signing the agreement, such as the shortness of time between execution and marriage, indicate coercion or lack of knowledge; 2) whether there was any surprise or malfeasance in the presentation of the agreement; 3) the presence or absence of an opportunity to consult independent counsel; 4) whether there was a full disclosure of assets and obligations; and 5) the parties' understandings of the rights being waived under the agreement. The party against whom enforcement is sought bears the burden of proving the lack of voluntariness, meaning it will be an uphill battle for us and you and your counsel will have to prove that the agreement was not voluntary.

It is unlikely that these factors weigh in your favor in arguing the agreement was not voluntary. The court in *Kosik v. Kosik*, (Fr. Ct. App. 1995), found that there was coercion or a lack of knowledge because the agreement was received and signed by the wife mere days before the wedding, the signing was pressured, the wife did not have an attorney present and was advised not to get one, she had only a high school education and little business experience, and the signing was intentionally orchestrated to prevent the wife's understanding and knowledge. Similarly, the *Richards* court found that there was a lack of voluntariness where the wife received the agreement two weeks before signing, but did not review it until signing because she asked the husband to have her counsel present at signing, had only a limited knowledge of finances and education, limited knowledge of her husband's assets, and was pressured into signing because it was occurring the day before leaving for a destination wedding. On the other hand, courts have found insufficient grounds to prove the signing was involuntary when receiving a premarital agreement seven months before the wedding, being able to review the agreement and being repeatedly advised to obtain independent counsel, and having great experience in business and familiarity with the husband's business.

In your case, there are favorable facts under these factors, but on balance they weigh against us being able to carry our burden of proving the agreement was not voluntary. First, you received the agreement four months before your wedding date, so there was not additional pressure from a looming wedding, and you signed it shortly thereafter. Although the time in between was short, you were arguably not pressured into doing so and had ample opportunity to seek counsel, and Mr. Eastwood offered to pay for independent counsel for you. Additionally, the only pressure or coercive effort Mr. Eastwood exerted was his comment that he wanted love for himself, not his money, which by itself is likely insufficient.

Further, although we can argue that you were unfamiliar with the financial nature of Mr. Eastwood's assets and did not have business experience, you are obviously highly educated and are better able to understand the agreement and its consequences than in other cases where courts have found that factor to suggest a lack of voluntariness. Unlike

in other cases where there has been an absence of voluntariness, the disclosure of assets by both you and Mr. Eastwood was very thorough and detailed: his list was six pages long and you were aware of his familial wealth, at least to a degree. There does not appear to be any intent on his part to have surprised or tricked you, and although you did not understand the full nature of his assets and business, you had an opportunity to seek counsel or further consider the agreement.

Unfortunately, on balance this likely means that we would not be able to prove that you did not sign the agreement voluntarily, and unless another defense applies, it would likely be enforceable against you.

The Premarital Agreement is not likely to be found unenforceable due to unconscionability.

There is also possibility of raising a defense in your case that the agreement is unenforceable because it was unconscionable at signing, although it is likely that doing so will not be successful. Under the FPAA, premarital agreements are not enforceable against a person if the agreement was unconscionable when executed. §105(1)(b). In your case, Mr. Eastwood is seeking to enforce your premarital agreement against you, and if the agreement was unconscionable at the time of signing, he cannot enforce it and its terms will not govern your divorce. Again, however, the party against whom enforcement is sought bears the burden of proving unconscionability. This means it will be an uphill battle for us and we will have to prove by a preponderance of the evidence (meaning that a majority of the evidence as a whole must support our argument) that the agreement was unconscionable. *In re Marriage of Federman*, (Fr. Ct. App. 2011).

Under Franklin law, a contract is unconscionable if there was a gross disparity in bargaining power, which led the party with the lesser bargaining power to sign a contract unwillingly or unaware of its terms, and the contract is one that no sensible person would accept. *Rider v. Rider*, (Fr. Ct. App. 2000). Under the FPAA, this means providing protection against one-sidedness that rises to the level of oppression. *Federman*. In *Federman,* the court found a premarital agreement unconscionable because of the gross disparity in life experience between the spouses. The husband was a 38-year-old business owner, while the wife was an 18-year-old college freshman who married after becoming pregnant by the husband and left school thereafter. She had no assets, while the husband had extensive assets, and the agreement as a result was entirely in the husband's favor because he took all the benefits while she bore all the burdens.

Here, it is unlikely that we can successfully prove your agreement was so one-sided at execution as to preclude enforcement. Despite the fact that your husband had more assets and familial wealth while you had significant debt, the fact that you were roughly the same age, were a professor in a highly educated field, and had a good salary and owned a car suggests that the agreement at the time was not so one-sided at the time it was signed as to be unenforceable. Thus, it is unlikely we would succeed in this argument, and the division of the marital home will likely be in accordance with the premarital agreement and go entirely to Mr. Eastwood. However, there is one additional defense we

can raise that applies only to the issue of spousal support.

There is likely a claim for spousal support, despite the terms of the Agreement, due to changed circumstances since the execution of the Agreement.

We will likely be able to convince the court not to enforce the waiver of spousal support in your premarital agreement. Under the FBAA, a court may still choose not to enforce a provision in a premarital agreement regarding spousal support if the enforcement of the provision would result in a substantial hardship for a party in light of a material change in circumstances arising after the agreement was signed. §105(3). If the court rules in your favor, it will sever the spousal support provision from the rest of the agreement and find that provision unenforceable. This means that the remainder of the agreement would remain in place, and while you would be entitled to spousal support, you still would not receive any portion of the marital home.

Courts have found sufficient grounds to refuse to enforce a waiver of spousal support where, after the execution of a premarital agreement similar to your own, and where both were gainfully employed at the time of the agreement and shortly thereafter, one of the spouses became unable to work. *Hughes v. Hughes*, (Fr. Ct. App. 2007). In *Hughes*, the husband was awarded spousal support under §105(3) despite a premarital agreement provision to the contrary because he became paralyzed in a car accident and lost his job and retirement benefits as a result. Although your circumstances are not as dire as paralysis, your rheumatoid arthritis that arose after the marriage does present significant challenges affecting your ability to work. Additionally, you likely have fallen behind in your fast-moving career field after spending years not working, after you followed Mr. Eastwood's urging to stop working and stay home with your children. The circumstances suggest that we will win on this argument and be able to make a claim for spousal support despite the premarital agreement.

Please let me know if you have any questions regarding any of the information above and I would be happy to explain further.

Sincerely,

Examinee

MEE Question 1

State A's homicide statutes provide, in relevant part:

> § 100 Murder defined.
> A person who unlawfully causes the death of another person with malice aforethought, either express or implied, commits murder.
>
> § 101(a) Murder in the first degree.
> A person commits murder in the first degree when the person
> (i) willfully, deliberately, and with premeditation kills another person, or
> (ii) causes the death of another person while participating in a forcible felony.
>
> § 101(b) All other murder is murder in the second degree.
>
> § 102 Voluntary manslaughter.
> A person commits voluntary manslaughter when the person intentionally kills another person without malice aforethought.

State A's self-defense doctrine follows the common law and has not changed in any substantive way since 1850.

State A defines felony theft to include "the unlawful taking or carrying away of merchandise, property, money, or negotiable documents with a value that exceeds $200."

State A requires proof, by the defendant, of all affirmative criminal defenses by a preponderance of the evidence.

One evening a girlfriend and boyfriend entered a pawnshop. As soon as they entered, the girlfriend stopped to admire a necklace worth $500 in a display case near the front of the store, while the boyfriend walked to the back of the store. While the pawnbroker's back was turned, the girlfriend spontaneously decided to steal the necklace, so she reached into the case, grabbed the necklace, and ran out the shop's front door.

Just then, the pawnbroker turned and saw the theft, chased the girlfriend, grabbed her, and pushed her to the ground on the sidewalk just outside the shop.

Moments earlier, the boyfriend had been standing in the rear of the shop looking at a handgun he had removed from a shelf on the back wall. The boyfriend had just discovered that the gun was loaded when he heard the commotion. He turned around just in time to see the pawnbroker push his girlfriend to the ground in front of the shop. Still holding the loaded handgun, the boyfriend immediately fired a single shot, which hit the pawnbroker in the chest, killing him.

The boyfriend and the girlfriend were arrested shortly afterward. While under interrogation by a detective at the police station, the boyfriend truthfully said, "I was checking out the handgun to see whether I should buy it. Next thing I saw was the pawnbroker pushing my girlfriend onto the ground just outside the door. I got so angry I just pulled the trigger without thinking. I mean, maybe I felt like shooting the guy, but it wasn't something I planned to do or anything."

1. Has the boyfriend committed murder in the first degree under § 101(a)(i)? Explain.

2. Has the boyfriend committed voluntary manslaughter under § 102? Explain.

3. Assuming that the boyfriend's conduct constitutes either first- or second-degree murder, do the facts present a valid legal defense? Explain.

4. Has the girlfriend committed murder in the first degree under § 101(a)(ii)? Explain.

1. Has the boyfriend committed murder in the first degree under § 101(a)(i)?

Rule: Under State A's statute, murder is defined as "a person who unlawfully causes the death of another person with malice aforethought, either express or implied, commits murder." § 101(a)(i) specifically states murder in the first degree is a murder committed "willfully, deliberately, and with premeditation..." Premeditation or intent can occur in a short period of time, but premeditation usually requires more thought or planning than occurs in a split second in or mere moments, for example, like in a heat of passion killing/incident.

Application: After being taken to the police station the boyfriend told the police he did not plan to kill the pawnbroker. The facts state he truthfully asserted that he saw the pawnbroker push the girlfriend to the ground. He became angry and pulled the trigger. In that moment, he stated, "...maybe I felt like shooting the guy, but it wasn't something I planned to do or anything." This statement may indicate that he willfully and/or deliberately shot the pawnbroker. However, this statement indicates he did not have premeditation or plan to kill the pawnbroker. In order to commit murder in the first degree under subsection (i) there must be all three - willful, deliberate and premeditation - to commit the murder. While premeditation can occur in a short period of time, in this instance the decision to pull the trigger was almost reactionary. The gun was the not boyfriend's. He happened to have picked it up to look at after they had entered the shop, and the boyfriend pulled the trigger in an almost instinctive manner after he saw the girlfriend pushed to the ground. While the boyfriend admits to being angry and deliberately pulling the trigger (he does not claim it was an accident), he clearly indicates it was not a planned reaction or situation.

Conclusion: Since the boyfriend did not premeditate his shooting of the pawnbroker, he did not commit first degree murder.

2. Has the boyfriend committed voluntary manslaughter under § 102?

Rule: Voluntary manslaughter in State A is "when the person intentionally kills another person without malice aforethought." Voluntary manslaughter at common law would tend to include heat of passion killings, or killings wherein someone responded in self-defense in an unreasonable way or in a way that used more force than was necessary. It differs from intentional murder in that there is no deliberation present before the incident. As with other murder statutes and issues, it is relevant whether a defendant's act(s) reasonably could foreseeably lead to the severe injury or death of another individual.

Application: In this instance, the boyfriend became angry when, unbeknownst to him, the girlfriend stole the necklace causing the pawnbroker to give chase and push the girlfriend to the ground. Boyfriend's statement to the police is evidence that he was upset but that the killing was unplanned, and more reactionary. The boyfriend stated the pulling of the trigger was intentional at the time, and though he felt like shooting the man due to his anger at the girlfriend being pushed to the ground, it was not pre-planned. However, there was an intentional act by the boyfriend to pull the trigger. The logical consequence of pulling the trigger of a loaded gun pointed at another person is serious bodily injury or death.

Conclusion: While the boyfriend did not pre-plan to kill the pawnbroker, he did in the moment intend to shoot the pawnbroker. His intent and act to pull the trigger mean it is likely he could be convicted of voluntary manslaughter under § 102.

3. If the boyfriend's conduct constitutes first or second degree murder, what are his valid defenses?

Rule: Murder has various defenses, including self-defense and defense of others. To prove self-defense or defense of others a defendant must show he or she reasonably believed the third party or him/herself was in danger of death or great bodily harm, that this belief was honest and objectively reasonable, and the force used in response was proportional to the force exhibited by the victim.

Application: The boyfriend likely could make a defense of others argument since he did not realize the pawnbroker was trying to stop the girlfriend from stealing. From the boyfriend's perspective, the pawnbroker was throwing his girlfriend to the ground unprovoked. The relationship between the boyfriend and girlfriend would also likely increase the boyfriend's desire to protect the girlfriend and assert force against pawnbroker to protect her from injury. However, the pawnbroker was unarmed and was not using deadly force against the girlfriend even though he pushed her to the ground. The force applied by boyfriend is excessive in comparison to the force exerted by pawnbroker against girlfriend.

Conclusion: Thus, though he meets some of the elements of the defense of a third person, his excessive force would make his defense imperfect at best. This defense could be made but would not be likely to prevail (though it might be considered as a mitigating factor).

4. Has the girlfriend committed murder in the first degree under § 101(a)(ii)?

Rule: Murder in the first degree can also occur while committing a forcible felony under § 101(a)(ii). Forcible felonies are not explicitly enumerated, but under the common law include burglary, arson, rape, robbery, and kidnapping. In State A, felony theft is defined as "the unlawful taking or carrying away of merchandise, property, money or negotiable documents with a value that exceeds $200."

Application: In State A, felony theft does not involve any elements of force like certain common law crimes such as burglary and robbery. The girlfriend did not use force to commit the crime. She simply grabbed the necklace and ran. While guilty of felony theft, girlfriend would not be guilty of a "forcible felony."

Conclusion: Since girlfriend is not guilty of a forcible felony, she cannot be found guilty of murder in the first degree under § 101(a)(ii).

MEE Question 2

A landlord owned a commercial building in State A, where temperatures often fall below zero degrees Fahrenheit during three to four months each year.

On May 1, the landlord rented the building for a five-year lease term to a tenant who took immediate possession. The lease specified that the rent for the building was $2,000 per month and that the landlord would maintain the building, including the furnace, in "good working order and repair" during the term of the lease. The lease had no provision relating to the transferability of the tenant's leasehold interest.

One year later, the tenant validly assigned the lease to a medical doctor for the entire balance of the lease term. The doctor immediately took possession of the building.

The following January, the building's furnace broke down due to the landlord's failure to properly inspect and maintain it. At the time, temperatures had been well below zero for weeks. Because of the extreme cold in the building, the doctor could no longer use the building. The doctor promptly notified the landlord about the broken furnace and the extreme cold in the building and told the landlord that if the furnace was not fixed within three weeks, she would vacate the building.

Although the furnace could have been repaired within three weeks, the landlord failed to have it repaired. The doctor then vacated the building and moved to an office in another location. When vacating, the doctor tried to hand all the building keys she possessed to the landlord, but the landlord refused to accept them. The landlord told the doctor that he would hold her liable for future rent due under the lease. The doctor responded by throwing the keys at the landlord's feet and walking away.

Immediately after the doctor vacated, the landlord extensively remodeled the building at his own expense, including substantially reconfiguring the building's interior spaces and installing a new furnace. Two months after the doctor vacated the building, the landlord leased it, as remodeled, to an attorney for a six-year term with rent fixed at $3,500 per month.

State A law does not provide for an implied warranty of suitability.

If the landlord sues the doctor to recover two months of overdue rent, what colorable defense(s), if any, may the doctor raise to avoid liability? Explain.

1. **The landlord breached the lease by failing to repair the furnace, constructively evicting the doctor.**

The issue is whether the landlord breached the implied covenant of quiet enjoyment. A landlord owes a tenant the covenant of quiet enjoyment in both commercial and residential leases. A landlord breaches the covenant if the landlord's actions or inactions render the property unusable by the tenant and the tenant is constructively evicted. Under the doctrine of constructive eviction, if the landlord fails to repair the property as provided in the lease, the tenant notifies the landlord and gives reasonable opportunity to cure the problem, and the tenant leaves the property, the tenant may claim constructive eviction.

Here, the lease provided that the landlord would maintain the building and furnace in "good working order and repair." Given that in State A, temperatures fall below zero for multiple months every year, the landlord had a duty to repair the furnace so that the temperature in the building allows the building to remain useable. Here, the doctor promptly notified the landlord and gave him time to fix the furnace, when it was broken and the temperature was below zero for weeks. In fact, the doctor gave the landlord three weeks to fix the furnace, which the facts indicate was enough time, and the landlord did not do so. The building became unusable when the landlord failed to cure the problem. Because the doctor gave the landlord notice and time to cure, and the landlord did not, and the doctor left, the doctor would be relieved of her duty to pay rent under the doctrine of constructive eviction and the landlord's breach of the covenant of quiet enjoyment.

2. **The landlord could sue the doctor under the assignment.**

The issue is whether the landlord sued the right tenant because of the assignment. An assignment of a lease occurs when the original tenant gives the rest of the lease over to a new tenant. A sublease occurs when the original tenant gives part of the balance of the lease over to a new tenant. Both are permitted unless the lease provides otherwise. Under an assignment, the new tenant has privity of estate with the landlord, and privity of contract with the original tenant.

Here, the doctor properly took the lease under an assignment because it was not prohibited by the lease. The doctor may claim that the landlord could not sue the doctor under the assignment. However, because it was an assignment, and not a sublease, the doctor was in privity of estate with the landlord. Therefore, the landlord could properly sue the doctor under the assigned lease.

3. **The doctor effectively surrendered the property, relieving the doctor of his duty to pay rent.**

The issue is whether the landlord accepted the doctor's surrender of the lease, relieving the doctor of the duty to pay rent, or whether the doctor merely abandoned the lease. A tenant may voluntarily surrender her lease by notifying the landlord and giving over possession of the property. The tenant may do this by giving her keys back to the landlord and moving out. However, if the landlord refuses to accept the surrender prior to the end of the lease, then the tenant has merely abandoned the lease and continues to be responsible for unpaid rent.

Here, the doctor attempted to surrender the lease to the landlord by giving all the keys she possessed to the landlord. She also told the landlord that she was leaving, and gave three weeks' notice pending the repair of the furnace. However, the landlord did not accept the doctor's surrender because he told her he would hold her liable for future rent. The landlord did not take the keys, but rather the doctor threw them at the landlord's feet. Therefore, the landlord did not demonstrate acceptance of the surrender. However, the doctor could argue that the landlord later accepted the surrender by remodeling the building at his own expense as soon as the doctor left the building.

MEE Question 3

In 2012, Testator properly executed a will devising her estate to her two adult children, Son and Daughter, in equal shares. The will included a provision that stated: "I might leave a document providing for the distribution of certain assets to University, and if I do, I would like those assets to be distributed according to my expressed wishes in that document."

In 2014, Testator wrote a document on her computer that stated: "I give $5,000 to University." Testator printed the document, signed her name at the end, and stapled the document to the back of her 2012 will. No one witnessed the signing of the document.

In 2016, Testator consulted her physician because she was forgetting appointments and information she had recently read. Testator was diagnosed with minor cognitive decline with some memory loss.

In 2019, Testator began to worry about Son. They rarely talked to each other, he seemed withdrawn, he was losing weight, and one of his friends was arrested for selling drugs. At around the same time, Son asked Daughter to loan him $1,000. Daughter, concerned that Son might be using drugs, refused to give him any money. Daughter told Testator about Son's loan request and the reason for her refusal. Shortly after this conversation, Testator, believing Son was using illegal drugs, but also concerned about Son's recent behavior and his friends, properly executed a codicil to her will. The codicil stated: "I revoke my bequest to Son but otherwise republish my 2012 will." Testator did not tell Son or Daughter about this codicil.

In 2020, Testator died. Son then first learned about the 2012 will and the 2019 codicil. When Daughter told Son that Testator had probably revoked the bequest to him in her 2012 will because she was worried that he was using illegal drugs and would use the money for drugs, Son truthfully explained that his behavior had been due to the loss of his job and that he had not told Testator and Daughter at the time to avoid worrying them.

Testator's 2012 will, the 2014 document, and the 2019 codicil have been offered for probate.

1. If Son contests the codicil, should the court refuse to give it effect based on

    (a) Testator's mental state? Explain.

    (b) Testator's mistaken belief about Son's illegal drug use? Explain.

2. Is University entitled to $5,000 from Testator's estate? Explain.

1. Whether the court should refuse to give Testator's codicil effect because of (a) Testator's mental state or (b) Testator's mistaken belief about her son.

a. Whether Testator had sufficient mental capacity to validly execute the 2019 codicil to her will.

In order for a will to be validly executed the Testator must have sufficient mental capacity at the time of execution. In order to be deemed mentally competent the testator must understand who the intended beneficiaries of her will are, what her property is and what the beneficiaries will be receiving, why she is entering into the will and distributing assets/money to the beneficiaries, and how she is doing so. Here, a court will likely find that the testator had sufficient mental capacity.

Although the testator was diagnosed with minor cognitive decline with some memory loss three years before she executed the 2019 codicil, it appears that her memory loss was primarily affecting her ability to remember appointments and information she had recently read. It does not appear as though it impact her ability to remember her family members (or her son or daughter who were the primary beneficiaries of her will), what her assets and estate were, and why and how she wanted to distribute her assets upon her death. It is unclear from the facts whether the Testator's mental cognition continued to decline in the next three years. If in 2019 she was in a worst state, for example if she was presented with the codicil but then could not remember what it said after she read it, then there may be a valid argument that the Testator lacked capacity. However, from the facts given it does not appear as though the Testator's diagnoses impacted her ability to validly execute her will.

b. Whether Testator's mistaken belief that her son was using drugs should invalidate her codicil.

If a testator decides to distribute or withhold property from a beneficiary based on a mistaken fact, a court may sometimes choose not to give the will or the provision effect. In order to invalidate a will or provision for mistake of fact the interested party must show that *but for* the mistake, the change or provision would not have occurred.

Here, the son may be able to show that the 2019 codicil was based on a mistake of fact, and that but for that mistake, his mother would not have revoked her bequest to her Son. When Testator's Daughter told her that she was worried that Son asked to borrow $1,000 from her so that he could buy drugs, she believed that he was illegally using drugs. The facts state that because Testator believed her son was using illegal drugs she decided to revoke her bequest to her Son. If this was the only reason that Testator revoked her bequest to Son he may be able to invalidate her codicil.

However, importantly, the Son must show *absent* Testator's mistaken belief that he was using drugs, she would not have executed the codicil. This will be difficult for Son to establish because according to the facts Testator also made the change because she

concerned about his recent behavior, which included not talking to his mother, acting withdrawn, and losing weight. She was also concerned because his friend had just been arrested for selling drugs. The burden will rest on the Son to prove that regardless of her other concerns, Testator would not have revoked her bequest to him absent her mistaken belief that he was using illegal drugs.

2. Whether University is entitled to $5,000 from Testator's estate though either: (a) the doctrine of incorporation, or; (b) because her 2019 codicil sufficiently validated her previously invalid 2014 codicil?

The Testator attempted to create a codicil to her will in 2014 when she printed off a document on her computer stating she wanted to give $5,000 to University. However, this was not a valid codicil. To be a valid a codicil must meet the same elements as a will: it must be written, it must be executed with testamentary intent, and it must be signed by the testator in the presence of two witnesses. The codicil was not valid because it was not witnessed.

A holographic will, or a holographic codicil, does not need to be witnessed but it must be handwritten and signed by the testator. Here, the woman printed off the document from the computer. Because it was not handwritten, the document was not a valid holographic codicil.

A. Whether the document providing for the distribution of assets to the University was incorporated into the will?

Under the doctrine of incorporation, a separate document may be incorporated into a will if it: (a) existed at the time of execution; and (b) was described with sufficient certainty such that it could be identified. Although Testator attempted to incorporate the document providing for distribution of certain assets to University into her validly executed will she did not do so. Not only did the document not exist at the time (it was not created until two years after execution of the will) but also the will did not describe the document with enough detail that it could be adequately identified.

B. Whether Testator's 2019 codicil validated Testator's invalid 2014 codicil?

Although the 2014 document was not valid, Testator did affix the document to the back of her will. A codicil can validate a previously valid will or codicil if it appears that the testator is attempting to re-establish her previous will codicil. Here, the Testator's 2019 codicil stated that in all other ways she was republishing her 2012 will. Because her 2012 will now included the 2014 document affixed/stapled to the back of it, it was likely republished and the University will be entitled to the $5,000.

MEE Question 4

The following three large parcels of land are located in a municipality:

> Parcel 1, which is owned by Aaron, was used as a landfill for solid waste disposal by a previous owner. Five years ago, Aaron acquired this parcel and immediately ceased the landfill operations. He plans to remediate any environmental issues, subdivide Parcel 1 into smaller lots, and develop a residential community on it.
>
> Parcel 2, which is owned by Barbara, is directly to the east of Parcel 1 and contains residential apartment buildings.
>
> Parcel 3, which is owned by Carrie, is adjacent to the northern borders of both Parcel 1 and Parcel 2 and has never been developed. Carrie plans to leave Parcel 3 undeveloped.

Aaron, Barbara, and Carrie have no connection to one another.

The municipality recently completed a comprehensive plan to promote economic development. As part of that plan, it took actions that affected each parcel.

Parcel 1 was affected by two actions. First, the municipality rezoned a portion of the municipality including all of Parcel 1 as "exclusively residential," prohibiting any commercial, industrial, agricultural, or other uses. Second, citing health concerns, the municipality enacted an ordinance that forbids the construction of any single- or multifamily residence on any land within the municipality that was previously used for solid waste disposal.

With respect to Parcel 2, the municipality took note of the difficulty the local, privately owned electric utility was experiencing in running electrical power lines connecting a power plant directly east of Parcel 2 with some land directly to the south of Parcel 2. As a result, the municipality authorized the utility to run high-tension electrical power lines diagonally across Parcel 2 and to erect towers supporting the lines on Parcel 2. The utility then erected towers on Parcel 2 and ran power lines over it. Barbara, the owner of Parcel 2, received no compensation for this.

With respect to Parcel 3, the municipality announced its intent to seize the parcel from Carrie, pay her for the parcel, and resell it to a private developer that will erect and operate a high-end shopping mall on the site. According to the findings in the municipality's comprehensive plan, these actions will lead to the collection of increased property-tax revenues to fund police and fire services and will stimulate citywide business development. The municipality projects that the mall will also create leisure, recreational, and employment opportunities for residents.

The municipality's zoning ordinances terminate any nonconforming use that has been discontinued for more than one year.

1. Do the municipality's actions with respect to Parcel 1 constitute a taking under the Constitution? Explain.

2. Do the municipality's actions with respect to Parcel 2 constitute a taking under the Constitution? Explain.

3. Assuming that the municipality offers to pay just compensation to Carrie, may the municipality seize Parcel 3 under the takings clause of the Fifth Amendment as incorporated by the Fourteenth Amendment? Explain.

The Fifth Amendment of the Constitution, applied to the states through the Fourteenth Amendment, requires just compensation for takings. Under the Constitution, a taking occurs when the government (1) permanently physically occupies an owner's private land or (2) totally deprives the land of any economic value.

1. **The municipality's actions with respect to Parcel 1 constitute a taking under the Constitution because they render Aaron's land totally deprived of any economic value.**

The issue is whether Aaron's land is totally deprived of any economic value by the zoning ordinance. A zoning ordinance does not automatically constitute a taking unless the ordinance renders the land totally economically nonviable.

Here, Aaron's parcel was rezoned as exclusively residential. This is in line with Aaron's plans for the Parcel, except because of the ordinance forbidding construction of residences on land previously used for solid waste disposal, Aaron cannot develop a residential community on it. He also cannot go back to using it for waste disposal because the municipality has terminated nonconforming uses discontinued for more than one year. The waste disposal would be a nonconforming use because the land is not residential as zoned, and it has been five years since the waste disposal was discontinued. Together, these ordinances leave no apparent economic use for the parcel, so it appears that the government has enacted a taking and Aaron is entitled to just compensation.

2. **The municipality's actions with respect to Parcel 2 constitute a partial taking under the Constitution because they constitute a permanent physical occupation of Barbara's land.**

The issue is whether the poles and power lines constitute a taking of Barbara's land. A taking occurs if the government permanently physically occupies a citizen's private land. Landowners have airspace rights over their land which can also be subject to the Takings Clause. A partial taking occurs when only part of the owner's land is taken, in which case the owner has a right to proportional just compensation for the portion taken.

Here, the municipality erected towers for the power lines that ran over Barbara's parcel. This constituted a permanent physical occupation of Barbara's parcel. However, it was not a total taking because the entire parcel was not rendered unusable. Therefore, Barbara only has a right to partial compensation.

3. **Assuming the municipality offers to pay just compensation to Carrie, the municipality may seize Parcel 3 under the Takings Clause of the Fifth Amendment as incorporated by the Fourteenth Amendment because the development plan is rationally related to a public good.**

The issue is whether the development plan served the public good such that it was a valid taking. Under the doctrine of eminent domain, a government entity may take private land for any public use, broadly construed, including economic development.

As long as the taking is rationally related to a public good, the court will uphold the taking. The government must pay just compensation for seizing private land. Here, the municipality plans to facilitate the building of a shopping mall, leading to increased revenues for emergency services and citywide business development. This is considered a public good within the scope of the takings clause. Therefore, the municipality is permitted to seize Carrie's land with just compensation.

MEE Question 5

Adele and Ben are winegrowers who organized their business as a member-managed limited liability company, AB Vineyard LLC (LLC). LLC's operating agreement is silent regarding the authority of either member to hire agents for LLC. Adele and Ben made equal contributions to LLC and received equal ownership interests. Shortly after LLC was organized, LLC purchased a five-acre tract of land to use as a vineyard. Ben planted and managed the vineyard, and Adele handled the finances.

One day Ben's neighbor, who was planning to start a vineyard herself, told Ben that there was a great deal at the local farm-supply store on hole diggers, a piece of machinery widely used in vineyards. Ben asked the neighbor, who knew that Ben had a one-half interest in LLC, to buy a hole digger for LLC at the bargain price. The neighbor said, "No problem. I'd be happy to, and of course, there's no need to compensate me for placing the order." That same day, the neighbor went to the store and signed a purchase agreement for a $600 hole digger. The neighbor signed the purchase agreement in the name of AB Vineyard LLC.

A few days later, the owner of the farm-supply store called Ben and said that the hole digger was ready for pickup. "I didn't buy a hole digger," said Ben. The owner replied, "I have the purchase agreement here in front of me. It says the purchaser is AB Vineyard LLC." Ben no longer wanted the hole digger and said, "I never signed any agreement. And our neighbor doesn't work for us. We never paid her to act on behalf of our company."

The same day that the neighbor had purchased the hole digger, the neighbor had stopped at a vegetable stand and met a man who told the neighbor that a tree had fallen across the road adjacent to LLC's vineyard. The neighbor said, "I should tell Ben." The neighbor, however, did not say anything about the tree to Adele or Ben. Under state law, the owner of property is responsible for removing any tree that falls on a public road adjacent to the owner's property within 24 hours after receiving notice of the fallen tree.

Three days later, Adele received an email sent to LLC's email account from the owner of the farm-supply store asking for payment for the hole digger. She also received a call from a driver who said that his car had been damaged because of a fallen tree on the road adjacent to LLC's vineyard, pointing out to her that state law requires LLC, as the adjacent property owner, to remove the tree.

Adele, upset by the email and the phone call, sent a text message to Ben: "I'm sorry, but the life of a winegrower is not for me. I hereby give you notice that I am leaving our business. Please send me a check for my half interest in our company." The operating agreement for LLC does not mention member withdrawal, member buyout rights, or company dissolution.

The jurisdiction has adopted the Uniform Limited Liability Company Act (2006).

1. Was LLC bound on the purchase agreement with the farm-supply store? Explain.

2. Assuming that the neighbor was an agent of LLC in purchasing the hole digger, did LLC receive notice of the fallen tree when the neighbor was told about it by the man? Explain.

3. Did Adele's text message to Ben cause a dissolution of LLC and give her a right to payment from LLC for her half interest in the company? Explain.

1. **Was LLC bound on the purchase agreement with the farm-supply store?**

The issue here is if the agreement by Ben, a member of the member managed LLC, with his neighbor for the neighbor to purchase the farm implement, constituted a valid agency agreement and thus a valid contract. The general rule is that a member of a member managed LLC is capable of contracting of behalf of the business for things in the ordinary course of business. Additionally, under agency law a principal-agency relationship is formed when the principal asks the potential agent to act on their behalf and subject to their control and the agent agrees to do. Contracts entered into by an agent with a known principal bind the principal to the contract under the agent's authority, which was actual in this instance. Since Ben's express agency agreement with the neighbor was properly executed she had actual authority to act, and since the purchase was for an object in the normal course of business Ben did so properly. The neighbor executed the contract within the scope of her actual authority and made her principal known by contracting under their name, meaning the company is directly liable as a known principal. Therefore, the LLC is bound on the purchase agreement to the farm store.

2. **Assuming that the neighbor was an agent of LLC in purchasing the hole digger, did LLC receive notice of the fallen tree when the neighbor was told about it by the man?**

In this matter we must examine whether the scope of authority granted to neighbor made her a general agent for the LLC or if not, whether informing her of the tree still constituted valid notice. Generally, a general agent for a company, meaning one who has broad authority to act on its behalf, can take notice for most things. In this instance, the LLC only had the neighbor as a specific agent for the purpose of purchasing the farm equipment. Since that agreement concluded, so did the neighbor's agent status and neighbor's duty to inform the LLC. Given that neighbor is not an agent anymore, not authorized to take notice, that the man had no reason to believe she was an agent due to a holding out as such by LLC, and since neighbor had no duty to inform them, the notice is not valid. The LLC did not receive notice of the fallen tree.

3. **Did Adele's text message to Ben cause a dissolution of LLC and give her a right to payment from LLC for her half interest in the company?**

The question here is whether a text message is sufficient to cause dissolution of the LLC and if it entitles her to a payment from the LLC for her interest in the company. As a rule, LLCs are statutory creations filed with the secretary of state and function somewhat analogously to a corporation. While a member managed LLC is somewhat similar to a partnership in that it is typically run by fewer people with directly injected capital, it is very different in its durability. LLCs have perpetual duration and do not dissolve when a member disassociates or leaves nor does a member leaving entitle them to receiving their capital contributions back for their interest. Here her text message does not dissolve or start dissolution of the LLC because the LLC is a distinct entity from the members. Although she may leave, this does not entitle her to receive back the capital as a right from the company absent any type of provision in operating agreement.

MEE Question 6

A father visited a computer store owned by a woman who touted her expertise in computer systems for gamers. The father explained to the woman that he wanted a computer system that would enable his son to play even the most advanced online computer games with ease. But, as he told the woman, "I know nothing about computers. I really need you to pick the right system."

The woman showed the father a display model of a computer gaming system and said, "Here's the system for you—only $2,500." She then described some of its technical specifications, none of which the father understood. Relying on the woman's recommendation, the father told the woman that he would buy the computer gaming system for $2,500. The woman replied, "Sign our purchase agreement, pay me, and it's yours." The father said, "Great!" and both he and the woman (on behalf of the store) signed the store's standard purchase agreement.

The front page of the purchase agreement indicated that the store was selling the man a computer gaming system for $2,500, listed the basic specifications of the system and its components, and indicated that the sale was "subject to our standard terms and conditions." There were signature lines for the buyer and the seller at the bottom of the front of the purchase agreement. The back of the purchase agreement contained a list of "Terms and Conditions"—16 numbered paragraphs printed in a very small typeface. The 12th paragraph stated, "Seller makes no warranties that extend beyond the description of the computer on the first page of this agreement." Nothing on the front of the purchase agreement indicated that there was any text on the back, and there is no indication that the father turned over the purchase agreement and saw the text on the back.

The father paid for the computer system, took it home, and gave it to his son, who was thrilled. After a week of use, however, it became clear that the computer system was inadequate for the needs of online gaming. The father then consulted a computer expert, who reported that the system was adequate for use in an office environment but did not have the high-speed components necessary for online gaming. The expert also said that a system that would be sufficient for the son's needs, as had been described by the father to the woman who owned the computer store, would cost at least $3,200.

The father immediately went back to the computer store with the computer system, told the woman that the computer system was inadequate, told her about the expert's analysis, and demanded his money back. The woman pulled out her copy of the purchase agreement and said, "This computer is exactly as specified in the description on the front of the purchase agreement. Plus, as the terms and conditions on the back say, there are no warranties beyond that description. You're not entitled to any money back."

Assume that the computer system is identical to the display model shown to the father and is as specified on the front of the purchase agreement, and that the expert is correct about the inadequacies of the computer system for online gaming and the cost of a system that would meet the son's needs.

1. Does the computer system conform to the store's contractual obligations? Explain.

2. Assuming that the computer system does not conform to the store's contractual obligations, does the father have the right to return the computer system to the store and get the purchase price back? Explain.

3. Assuming that the computer system does not conform to the store's contractual obligations and that the father has the right to return the computer system and get the purchase price back, does the father also have the right to additional money damages? Explain.

1. The Computer System Does not Conform to the Store's Contractual Obligations

Article 2 of the UCC governs contracts for the sale of goods. Goods are movable items that are movable as of the time of identification. A computer is a movable item and is therefore a good. Therefore, Article 2 of the UCC will apply.

The store has violated its implied warranty of fitness for particular purpose. An implied warranty of fitness for particular purpose arises where a seller is an expert who makes representations about a good or its qualities, the buyer relies on the seller's expertise, and the seller is aware of the buyer's reliance. Here, the father relied on the seller's expertise and the seller was aware of that reliance, as the father explicitly told her that he knew nothing of computers and was relying on her to help him pick the right system. Moreover, the seller made specific representations about the computer's qualities as a gaming system, meaning that an implied warranty of fitness for particular purpose was created with respect to those characteristics.

The warranty disclaimer was insufficient to be enforceable in the contract because where one of the parties is a merchant dealing in the type of goods for sale, such disclaimers of warranties must be sufficiently noticeable. Here, the disclaimers of warranty were in very small typeface, when they must typically be bold or underlined, and were tucked away in the 12th of 16 paragraphs on the back of the page, and there was no indication that there was any text on the back. Therefore, the store is liable for breaching the warranty.

2. Right to Return

The Father has a right to return because the computer does not conform to the store's contractual obligations. The main issue is whether a purchaser of goods may reject the goods after accepting them after becoming aware of a material defect. Under the UCC, there is an obligation of perfect tender, meaning that the goods tendered by the seller must perfectly conform with the contractual specifications. Here, as discussed in the preceding section, the computer as delivered breached the contractual obligations of the store to deliver a gaming computer. Where there is not perfect tender, the buyer has a right to accept all of the goods, reject all of the goods, or accept some of the goods. Here, at first at least, the father accepted the computer. Normally, once the goods are accepted, they may not be returned unless there is a specific agreement in the purchase agreement to do so. However, where the defect is not immediately discoverable by the purchaser or the seller specifically warranted that the goods were suitable, the purchaser may return once the goods are discovered to not in fact be a perfect tender. Here, the store warranted the computer was fit for gaming. The father was in no situation to know that and the defect was not discovered until later. Therefore, the Father has a right to return the computer to the store as a delayed rejection and receive the amount of the purchase price back.

3. Additional Money Damages

The father has a right to additional money damages. Normally in a contract for the sale of

goods where there is a breach by the seller, the buyer is entitled to expectation damages or the cost to cover. Here, Father expected to receive a gaming computer, the store contracted to give him one, and in fact did not, and therefore the contractor may receive cover damages equal to the amount required to purchase goods comparable to the ones he contracted to purchase. Because a computer of the type he contracted to purchase would be $3200, he would be entitled to $700 in cover damages in addition to recovery of the purchase price, plus incidental damages, such as if the father had paid for the evaluation of the expert. Because of the implied warranty of fitness for a particular purpose by the woman, the father may also be entitled to consequential damages, although it is unlikely they would be much in this instance.