Maryland State Board of Law Examiners

FEBRUARY 2021 UNIFORM BAR EXAMINATION (UBE) IN MARYLAND – REPRESENTATIVE GOOD ANSWERS

MEE 1

Representative Good Answer No. 1

I. The first issue is whether or not the women and man are partners in the food-truck business; and if they are, would the woman be liable to the farmer for the damages caused by the man's negligence.

A. Did the man and woman form a partnership?

A partnership is two or more people running a business for profit. Both partners share in the profits and the losses of the company, along with owe fiduciary duties to one another. The partnership and other partners are liable to one another for actions done on behalf of the partnership. Each partner is an agent of the partnership and can make decisions on their own with regards to how the business is ran. Both parties also contribute to the partnership whether through action or monetary contributions. As a side note, simply getting a salary from a partnership does not mean that one is a partner.

Here, it could be easy to construe that the man is a partner due to the fact that he gets 10% of the profits from the business. However, the fact that the woman had substantial control over what the man buys and that he uses his own credit card, not a company card, to purchase produce, places questions on his status as a partner. In addition, simply getting a salary from the women via 10% profits when there was no talk of losses, indicates that the women did not intend to form a partnership with him or hold him out as a partner.

Thus, it would appear that the man and woman are not partners in the food - truck business.

B. If they were partners, would the woman be liable to the farmer for the damages?

As stated previously, partners in a partnership are liable to one another and to the partnership itself. This includes for tortious actions that occur within the scope and course of employment.

Here, the man was at the market on behalf of the partnership and the women to pick up produce. He was acting within his duties as a partner of the business.

Thus, since the man was acting within the scope and course of his employment the woman and the business would be liable.

II. The second issue is whether the man is an employee of the women; and if yes, would she be vicariously liable to the farmer for the man's negligence.

A. Is the man an employee of the women?

Employer - Employee relationships are often defined by the law of Agency. One party, typically the employee, works on behalf or for the betterment of the other, often the employer. When it comes to employer - employee relationships, the employer typically has great deal of control over the actions of the employee. This includes when the come to work, what they do when they are at work, payment of salary, and even use of a company car or credit card. The more control an employer has over a party, the more likely they are to be an employee. In addition, employees typically have more than one job function and help out in a variety of ways.

Here, the man appears to have a good deal of discretion over his functions. His only job appears to be running errands in the morning for the woman. While the woman sends him a list of things she needs, he is free to use any vendor at the market and which produce to purchase. In addition, he uses his own vehicle and credit card to make the trip / purchases and is later reimbursed for the payments. Lastly, other than this shopping trip and drop off, the man has no other dealings with the business.

Thus, it is improbable that the man is a legitimate employee of the women.

B. If the man is an employee, would the woman be vicariously liable to the farmer?

Employers are vicariously liable to their employees for tortious acts that occur when the employee is acting within the scope and course of employment. However, there is a distinction between frolic and demur. A frolic is when the behavior significantly departs from the scope and course of employment, and demur is when it is more closely related. The only time that vicarious liability may be waived, is if the employee commits an intentional tort. But even then, there are some situations where an employer may be liable if the act was instructed or related to the job.

Here, the man was driving to the market to pick up produce when he ran into the farmers booth. Since the man's main job functions were to drive to the market and buy produce, the man is within the scope and course of his employment when he crashed. The fact that the man was negligent is moot, as most accidents happen when there is negligence. The main factor is that the accident was not intentional or on purpose.

Thus, the woman and the business would be vicariously liable for the damages to the farmer.

III. The third issue is whether the man is an independent contractor, and if yes, would the woman be vicariously liable to the man.

As stated previously, for a party to be an employee, there must be significant control over the parties' actions. When the party has more control, such as when they come to work, what their job functions are, and they use their own tools, the parties are often considered independent contracts. Thus, while they do work for the employer, they have more freedom in doing their job and thus the employer is less liable for their actions.

Here, the man chose when he would do the shopping (after this shift), has the ability to choose which vendors to use and which produce to purchase from them, he uses his own vehicle to run the errands, and uses his own credit card to purchase the produce, which he then can submit for reimbursement. The only instruction from the woman that is given is a single text regarding what produce the business needs. In addition, the man has no other job functions within the company, that you would find with a normal employee.

Thus, the man is an independent contractor for the women.

B. If the man is an independent contractor, is the woman vicariously liable to the man?

When it comes to vicarious liability of independent contractors, often the employer is able to escape being liable for tortious behaviors. This is because the agency relationship between the two parties is that of a lesser degree. What this then comes down to is whether the farmer had knowledge of the women, as principal, thus making her more liable for the man's actions.

As previously stated, if the man was an independent contractor, then he would be acting on his own behalf. Most likely the farmer knew that the man was acting on behalf of the women, because she went to the market the first few times with him to show him what she liked. It could also be stretched that if it was not for the woman, the man would have never been at the market to cause the damage in the first place.

Thus, it is highly likely, that even though the man is an independent contractor, due to the agency relationship formed, that the woman still may be vicariously liable for the damages.

However, in all these situations, it does not eliminate or mitigate any liability that be directly inferred onto the man.

Representative Good Answer No. 2

Woman and Man are Not Partners in Food-Truck Business

The issue is whether the Woman and the Man entered into a general partnership based on the profit-sharing arrangement. General Partnerships ("GP") can be formed orally. They do not require a written agreement. A partnership is characterized by two or more people holding themselves out as co-owners of a business for profit. Under our facts, the woman has independently owned and operated the Food-Truck Business ("FTB") and business has been good. She asked for "help" from the Man. The Man has another job and was looking for extra opportunities to earn money. The Man continued to work at his night job after the arrangement with the Woman began. The only fact that points to a potential partnership is that she is paying a nominal amount per delivery and is sharing 10% of the business's profits. The Man agreed this arrangement, and they shook hands on the agreement. The Man has no other role in the FTB other than to make morning produce purchases and deliveries. While profit-sharing is a very strong indicator of intent to form a partnership, the other factors in our scenario negate the formation of a partnership. Therefore, the facts do not support the formation of a partnership.

If a Partnership was Formed: The Woman is Liability to Farmer for Damage Proximately Cause by Man's Negligence

The issue is whether a partner is personally liable for the damages caused by a co-partner. Partners in general partnership are liable for damages incurred in the operation of the GP. Unlike an LLC or a corporation, there is no liability shield to protect general partners from risk from the business. A partner exposes the partnership to liability for acts committed during the ordinary course of business. If the Woman and the Man had formed a general partnership based on the 10% profit-sharing arrangement, the Woman is personally liable for the Man's negligence while he is engaged in his ordinary role in the business, which is produce procurement and delivery.

The Man is NOT an Employee of the Woman

The issue is whether a person is an employee when he is performing tasks for a business using his own instrumentalities. The key factor to determine the status of a person in relation to a business - whether he is an employee - is whether the business remains in control of the person's conduct. An employee is subject to his employer's control in several ways. First, the employer provides the instrumentalities required to do his job. Second, the employer controls and directs the conduct of the employee. Under our facts, the woman asked the

Man to use his own credit card and that she would reimburse him for expenses. She is paying him a nominal fee per delivery with a 10% share of the profits. The Woman gave the man a little guidance on the front-end of the arrangement - "I'll go to the market with you the first few times to give you a general idea of what I'm looking for. But then you'd be on your own, making choices..." After the initial guidance, the Man was given free license to pick the vendors and produce for the deliveries to the FTB. Because the man assumes the costs for the produce, drives his own car, and operates independently of the Woman's control, he is not an employee.

If the Man is an Employee: The Woman Would be Vicariously Liable to the Farmer for Damage Proximately Caused by the Man's Negligence While Operating in the Scope of His Employment

The issue is whether an employer is liable for an employee's negligence occurring within the scope of his employment. Under the doctrine of respondeat superior, an employer is vicariously liable for the negligent acts of her employees if they occur while operating in the scope of employment. An employee is operating in the scope of employment when is is conducting the tasks specific to his employment and during regular business activities of the business. Under these facts, if the Man is an Employee, the negligent act occurred while he was performing the task he was hired to perform. Therefore, the FTB would be liable for the damages caused to the Farmer.

The Man is an Independent Contractor for the Woman

The issue here is whether a person who perform flat-fee tasks, but also shares a profit in the business, is an independent contractor. Generally, a business is not vicariously responsible for the acts of its independent contractors (barring a nondelegable duty or control and supervision over the contractor). One of the factors that normally point to an independent contractor is whether the tasks for which he was hired was a high-functioning or low-functioning task. Here we have a person, the Man, who was hired to make produce purchases and deliveries. This is a low-functioning task that is not normally indicative of a independent contractor. However, he is using his own car and credit card for the tasks. If a partnership was not formed because of the 10% profit-sharing arrangement, then an independent contractor arrangement was formed.

The Woman is Not Liable to the Farmer for Damages Caused by the Man

Independent contractors are liable for their own negligence. If the Man is an independent contractor, he is liable for all of the damage caused to the Farmer unless the Farmer believed he was an agent.

MEE 2

Representative Good Answer No. 1

Portrait

At issue is whether Testator effectively revoked the gift of the portrait to their brother, Adam, by writing on the back of the Testator's will. Wills may be completely or partially revoked by a subsequent will or codicil, or by physical act or by cancellation when accompanied with an intent to revoke the will or codicil. Whether the gift was effectively revoked depends on the effect given to the handwriting on the back of the will.

Typically, holographic wills require material provisions to be in handwriting, and the will to be signed by the testator. In this jurisdiction, a signature is not necessary. Here, the Testator effectively executed a holographic will on the back of their original will, naming Charles as the beneficiary of the portrait. This valid holographic will explicitly revokes the earlier bequest to Adam and replaces him with Charles. Thus, the portrait should be distributed to Charles.

Motorcycle

At issue is whether the modification, crossing out "antique bookcase" and typing in "motorcycle" is an effective modification to the will. First, a court will determine whether the gift of the antique bookcase was revoked. A will may be partially or completely revoked by physical act or by cancellation when accompanied with an intent to revoke the will or codicil. Here, the crossing out of the term "antique bookcase" effectively revoked the gift by physical act. An argument can also be made that there was a cancellation accompanied by an intent to revoke the provision. Thus, the bequest of the bookcase is revoked.

Next, the question turns to whether the typewritten modification is effective. Modifications to wills must be executed with the same formalities as an original will. Here, there is nothing to indicate that there were two uninterested witnesses nor a notary attesting to the modification, so the modification is ineffective. Further, the new provision is typewritten, and not in the Testator's handwriting. Thus, it does not meet the requirements of a holographic will. Accordingly, the motorcycle and the antique bookcase will fall to the residuary estate.

Tangible Personal Property

At issue is whether a document may be incorporated into the will. In order for a document to be incorporated into a will, it must be (1) in existence at the time of the execution of the will, (2) there must be a sufficient description to identify the document, and (3) there must be an intent to incorporate the document.

Here, there is no evidence to suggest that the letter was not in existence at the time the will was executed. Secondly, there is a sufficient description to identify the document, and it was subsequently identified. Further, the Testator had an intent to incorporate the document.

Because this incorporation was valid, Donna will take all tangible personal property, including the motorcycle and bookcase.

Bank Account

At issue is how property not deposed of in a will should be distributed. The bank account is not tangible personal property, thus falls outside of all of the bequests made in the will. Accordingly, the bank account should pass according to intestacy statutes. Because the Testator has no spouse, no descendants, and no parents, the residuary of their estate will pass to their siblings, being in lineal descent of the Testator's grandparents.

Representative Good Answer No. 2

The portrait

The portrait will go to Charles. The issue is whether Testator's initial will, bequeathing the portrait to Adam has been revoked by codicil by the writing in the back of the will. In State A, unsigned holographic wills and codicils are valid. Thus, the handwritten note on the back of the will is valid. Moreover, State A allows the revocation of a will by subsequent codicil. Thus, the initial will bequeathing the portrait to Adam is revoked by codicil, and the codicil granting the painting to Charles is valid, and the painting will go to Charles.

Codicils that do not explicitly revoke wills are read together with the will and only revoke portions of the will that are not reconcilable with the codicil. Therefore, the rest of the will remains valid and the codicil will only revoke the grant of the portrait to Adam.

The antique bookcase

Beth will get the bookcase. The issue is whether the gift of the antique bookcase to Beth has been revoked when it was scratched out. In State A, cancellation can be accomplished by (1) a physical act coupled (2) with intent to revoke. Courts generally found that when a provision in a will is crossed out, both physical act and intent are satisfied. Therefore, the gift of the bookcase is revoked. However, the insertion of the motorcycle is not valid, because it is not signed or witnessed (and likely doesn't meet the requirements of being a holographic codicil). Therefore, the doctrine of DRR applies.

DRR is the doctrine where courts will invalidate an otherwise valid revocation when a testator (1) revokes a gift (2) to a close relative (3) because of a mistake but-for which he would not have made the revocation. Here, all the elements are met, because testator (1) revoked the gift of the bookcase, (2) to his sister, (3) because he mistakenly thought his gift of the motorcycle would be valid. Thus, DRR is met assuming that the court decides that Testator would rather Beth end up with the bookcase than nothing. Thus, assuming DRR is applied, Beth will get the bookcase.

The motorcycle

The motorcycle will go to Donna. The issue is whether the June 15 letter bequeathing the motorcycle to Donna is valid. A letter accompanying a will is valid if (1) it is mentioned in the will (2) with enough specificity to reasonably identify it (3) it predates the will. Here, all three elements are satisfied because (1) the will mentions the letter (2) the will mentions the date and location of the letter (and it was actually found there), and (3) the letter predates the will because it was dated as of June 15, and the will was dated July 1. In addition, for tangible personal property, there is an exception which allows the letter to postdate the will. Thus, the letter will be valid as to any tangible personal property, which is only the motorcycle. Thus, the motorcycle will go to Donna.

The bank account

The bank account will be split according to the rules of intestacy. The bank account is not tangible personal property, so it will not go to Donna under the provisions of the June 15 letter. The laws of intestacy state that where there is no spouse or issue, the intestate estate goes to the parents. When there are no parents, it goes to the issue of the parents. Here, there are no children nor a spouse, so the bank account will go to the issue of the parents - Adam and Beth. When there are multiple members of a class, the estate is split equally among the class. Thus, the bank account will be split equally, $5k to Adam and $5k to Beth.

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MEE 3

Representative Good Answer No. 1

The woman and the passenger are permitted to join their individual claims in a single lawsuit against the man

The Federal Rules of Civil Procedure permit the joinder of plaintiffs against a single defendant when there is at least one common question of law or fact between the claims. In addition, the federal court must still have proper jurisdiction and venue.

Here, there are no issues with jurisdiction or venue. The court in State B would have diversity jurisdiction because both plaintiffs are citizens of State A whereas the defendant is a citizen of State B. In addition, both plaintiffs have claims exceeding the $75,000 amount in controversy requirement. So there is proper subject matter jurisdiction given the complete diversity of the parties and the amount in controversy. The District Court in State B would also have personal jurisdiction over the parties. The man is a citizen of State B, and the plaintiffs have consented by bringing the suit there. Finally, venue is proper. Venue is proper in the district where the defendant resides, which is the case here.

Because the woman's claim and the passenger's claim arise out of the same occurrence--the accident with the man--joinder of their claims is proper. Their claims relate to personal injuries they each suffered in an accident as a result of the man's negligence. The woman and the passenger were in the same vehicle. Therefore, at the very least, both claims will hinge on the man's negligence in causing the accident. There will also likely be substantial factual questions that overlap related to the negligence element. Thus, because the claims deal with the same accident, and there will at least be one common question of law or fact, the joinder is proper.

The woman is claim precluded from bringing her claim against the man because of the previous judgment

The woman is precluded from bringing her claims against the man in the new suit because she should have brought them as counterclaims in the previous suit that went to judgment. The Federal Rules of Civil Procedure mandate that certain counterclaims be brought in a suit if they arise from the same transaction or occurrence that is being litigated. Such claims are compulsory counterclaims. Once a suit goes to judgment, any claims arising from the same transaction or occurrence that were not already brought are claim precluded.

The woman's claims are claim precluded here because they were compulsory counterclaims. She should have brought these claims when filing her answer in response to the man's suit. The woman's claims deal with the same exact accident as the man's claims in the first suit that went to judgment. The man alleged that the woman's negligence caused the accident and his injuries. The issues of each party's negligence have already been litigated. Now, after prevailing in the man's suit, the woman wants to recover for damages from the same accident, claiming that the man's negligence caused her injuries. This would essentially result in needlessly relitigating the same exact accident. Had the woman simply brought these claims as counterclaims in the first suit, she would have prevailed. Because she did not, however, she is precluded from bringing them now because they deal with the same set of facts.

The man is issue precluded from denying his negligence with respect to the passenger because he already litigated and lost this issue in federal court

A party is precluded from relitigating the same issue if he has already litigated and lost that same issue in another suit. The issue must have been essential to the judgment, and the party must have had similar incentives to litigate it in the previous judgment.

The man would be issue precluded from arguing that he was not negligent in the suit with the passenger. The man already litigated and lost this issue in his suit with the woman. In that suit, the man's negligence was relevant because it provided a defense of contributory negligence to the woman. Thus, the man had every incentive to litigate the issue of his negligence fully in the suit with the woman, otherwise he could be barred from receiving damages. In fact, that is what happened. The man lost the issue of his negligence. And the issue of the man's negligence was thus essential to the judgment in the previous suit, because the man would have otherwise recovered from the woman but-for the court's finding that the man was contributorily negligent.

Finally, it is no matter that the previous judgment was in State A and the new suit is in State B. Federal courts must give full faith and credit to the judgments of other federal courts. Therefore, the federal court in State B would give full faith and credit to the earlier judgment of the federal court in State A. The man's arguments denying negligence would thus be issue precluded in the suit with the passenger.

Representative Good Answer No. 2

1. The woman and passenger's ability to join their individual claims together will turn on whether aggregation is available to them as co-plaintiffs. Under the FRCP, two plaintiffs may join their claims against the same defendant together so long as the claims arise from the same transaction or occurrence, there is a question of law or fact shared by the claims, and the aggregation of the claims would not defeat diversity jurisdiction.

Here, the woman and passenger's claim both arose from the car wreck between man and woman, so they arise from the same occurrence. The primary issue in both claims is whether the man was negligent in the operation of his vehicle, so the claims also share a common question of law or fact. Each claim seeks over $75,000 in damages and therefore each claim meets the minimum amount required for diversity jurisdiction. Finally, both the woman and the passenger are citizens of State A, while the man is a citizen of State B. Thus, each plaintiff is diverse from each defendant. Therefore, the woman and passenger will be able to join their individual claims against the man.

2. The woman's ability to bring her claim against man following the man's suit being litigated depends on whether her claim was compulsory or permissive. Under the FRCP, a counter claim is one a brought by a defendant against a plaintiff in an existing action. A counterclaim is compulsive if it arises from the same transaction or occurrence as the original claim brought by the plaintiff. If a defendant fails to bring a compulsory counterclaim during the course of the original suit, that claim is merged into the judgment on the original claim and the defendant will be barred from bringing the claim in the future by the doctrine of claims preclusion.

Here, both the man's claim in State A district court and the woman's claim brought in State B arises from the same occurrence; the wreck between man and woman. Thus, any claims the woman had arising from the wreck were compulsory and were required to be brought in the State A action. Woman failed to assert the claim before a judgment was rendered in the case, and once the judgment against the man became final woman's claim as merged into that judgment. Therefore, woman is now barred from bringing any claims arising from the wreck with man.

3. The man's ability to deny his own negligence turns on whether the application doctrine of non-mutual offensive collateral estoppel to prevent him from relitigating the issue of his own negligence would be fair and just under the circumstances. Offensive non-mutual collateral estoppel, a subset of issue preclusion will prevent a party from arguing an issue that has been decided against them if four requirements are met. First, the issue in question must have been a material or actual issue in the prior proceeding. Second, the forum where the

issue was previously litigated must have been a court or tribunal (the functional equivalent of a court). Third, the party against whom collateral estoppel is being asserted against must have been a party to the previous action and had a motivation to litigate the issue. Fourth, the application of offensive non-mutual collateral estoppel must be fair and just under the circumstances.

Here, there is no denying that the issue of the man's negligence was a material issue in the State A proceedings. In fact, it was the dispositive issue because his negligence prevented him from recovering from woman. Likewise, there was clearly a motivation for man to litigate the issue of his own negligence because his recovery depended on it. There is no dispute a district court in another state is considered a court or tribunal and found the man to be negligent at the time in question. Given the substantial motivation man had to litigate his own negligence in the prior proceeding and the identical factual posture of the man's previously claim and the passenger's current claim, it would appear that the application of offensive non-mutual collateral estoppel would be fair here. Furthermore, the interest in judicial efficiency encourages the application of the doctrine. Therefore, issue preclusion will likely estop the man from denying he was negligent in operating at the time of the collision.

MEE 4

Representative Good Answer No. 1

1. The issue is which banks have an enforceable security interest in the key-manufacturing machine. A security interest will become enforceable when it attaches. In order for attachment typically there needs to be all of value given to debtor, debtor rights in the collateral and a valid security agreement. Assuming KeyCo had rights in the key-manufacturing machine (the collateral), and the money from all the banks counts as value given to KeyCo, the issue is which banks have a valid security agreement.

A valid security agreement requires a record, authenticated by the debtor, containing a sufficient description of the collateral. Here, both Secondbank and Thirdbank have agreements containing the phrase "all of KeyCo's equipment". The key-manufacturing machine by the nature of its use will be classified for purposes of Article 9 as equipment for KeyCo. Article 9 permits broad categorizations in security agreements. Therefore, Secondbank and Thirdbank have a valid security agreement, leading to attachment, and they have an enforceable security interest.

Firstbank has a description of collateral as "all of KeyCo's assets". While Article 9 does permit broad categorization, super generic-descriptions such as that language is overbroad. Therefore, there is not sufficient description, leading to an invalid security agreement, so Firstbank does not have an enforceable security agreement (although KeyCo still owes them money).

2. For perfection, unless automatic or by other means, there needs to be a financing statement filed and the date of perfection is when there is both attachment and the financing statement accepted.

Here Secondbank has not filed a financing statement and there is no issue such as a purchase money security interest in consumer goods for automatic perfection, so Secondbank's security interest is not perfected.

Firstbank has a financing statement filed, HOWEVER as mentioned above, perfection does not occur until there is both attachment AND a financing statement. As also mentioned above, Firstbank's security interest never attached, so despite its financing statement, its security interest is not perfected.

Thirdbank has both a financing statement and attachment. Therefore, as of August 1, Thirdbank has (and is the only bank that has) a perfected security interest.

3. The 2 enforceable security interests as mentioned above are Secondbank and Thirdbank which are unperfected and perfected respectively. Under the rules of priority, perfected security interests have priority over unperfected security interest, regardless of knowledge considerations. Therefore, despite Thirdbank's knowledge of Secondbank's prior attached security interest, Thirdbank's perfected security interest will have priority.

Supplier has obtained a judgment lien against KeyCo. Per the rules of priority, judgment liens have priority over unperfected security interests. Therefore, Supplier will have priority over Secondbank. However, prior perfected security interests have priority over judgment liens. As Thirdbank's security interest was perfected on 8/1 prior to Supplier's 10/1 judgment lien, Thirdbank's security interest will have priority.

Firstbank, as mentioned before due to the lack of description, does not have an enforceable security interest.

Representative Good Answer No. 2

1. Banks with an enforceable security interest in the key-manufacturing machine?

A security interest is created when attachment has occurred. Attachment is the method of creating the security interest. Attachment occurs when the secured party has given value, the debtor has rights in the collateral or the right transfer the collateral, and the transaction is evidenced in a security agreement that validly indicates the collateral that is being used as security.

Firstbank:

Does Firstbank have an enforceable security interest in the key-manufacturing machine?

See the above rule for attachment. For a security agreement to be valid and enforceable, the agreement has to list the collateral that is being used with enough specificity to indicate what items are being used as collateral. The description of the collateral cannot be super-generic.

Here, all other aspects of the security agreement are valid other than the super-generic description of the collateral. Listing as collateral "all of KeyCo's assets" is way too generic for it be enforceable. Even though the rest of the security agreement is valid, the super-generic description causes the security agreement to fail.

Therefore, Firstbank does not have an enforceable security interest in the key-manufacturing machine.

SecondBank:

The issue is whether Secondbank has an enforceable security interest in the key-manufacturing machine?

See the above attachment rule.

Here, there is a valid security agreement because there has been value given, and the description that was included in the agreement is specific enough to meet the standard that is required in Article 9. Even though the description is generic, classifying collateral as a type of asset is allowed, and can be used to enforce hte secutity agreement.

Therefore, SecondBank has an enforceable security interest in the key-manufacturing machine.

ThirdBank:

The issue here is does Thirdbank have an enforceable security interest in the key-manufactuing machine?

See the above rule on attachment. See also rule on generic description of the collateral in discussion of SecondBank security interest.

Here, there is a valid security interest created. knowledge that there is an existing security agreement between the debtor and another secured party does not render a security agreement unenforceable. All elements of a valid security agreement are present here.

Therefore, ThirdBank has an enforceable security interest in the key-manufacturing machine.

2. Banks with perfected security interests in the key-manufacturing machine

Perfection is the method of putting the world on notice that you have a security interest in collateral that is owned by the debtor. This generally can be achieved through filing a financing statement with the proper Secretary of State's office. For perfection to occur, the security interest must have attached to the collateral. without attachment, there can be no perfection.

FirstBank:

The issue here is whether perfection can occur without attachment?

See rule for perfection.

Here, Firstbank does not have an enforceable security interest in the key-manufacturing machine. First Bank filed a financing statement in the appropriate office, but this does not matter, it will not be enforceable due to the lack of attachment. Because it has not abided by the proper rules for attachment, Firstbank does not have a perfected security interest in the collateral. This financing statement is pointless.

Therefore, Firstbank is unperfected.

SecondBank:

The issue here is can you perfect a security interest without filing a financing statement?

There are multiple ways to perfect a security interest, the main way is filing a financing statement, but you can also perfect through possession and control.

Here, Secondbank did not file a financing statement, nor did they take possession of the collateral.

Therefore, SecondBank does not have a perfected security interest in the key-manufacturing machine.

Thirdbank:

Did Thirdbank properly perfect its security interest?

See above rules covering perfection.

Here, Thirdbank filed a financing statement with the appropriate office, and indicated that the collateral was "all of KeyCo's equipment." This is a proper filing of a finance statement and will perfect its security interest.

Therefore, Thirdbank has a perfected security interest.

3. Order of Priorities

Priority is the method of ranking who has a superior interest in the collateral in case of a default. A perfected security interest will take priority over an unperfected security interest. A lien will take priority over a security interest if the lien attaches prior to the time that the interest is perfected. Priority among unperfected security interests ranks in order of who attached first.

Here, Thirdbank has priority over Supplier who is a lien creditor, because Thirdbank perfected his security interest before the lien attached. Suppliers lien attached on October 1 and Thirdbank perfected on August 1. Supplier takes priority over FirstBank and SecondBank because neither one of them are perfected. Secondbank would have priority over Firstbank because even though both of them are unperfected, Firstbank does not have an enforceable security interest in the collateral because its security interest never attached, Secondbank's security interest did attach, and therefore takes priority based on that fact.

Therefore, the order of priority is as follows: ThirdBank, Supplier with the lien judgement, SecondBank, and then FirstBank.

MEE5

Representative Good Answer No. 1

1. The issue is whether the friend had an implied easement from prior use. An easement is an interest granted to someone that allows them to make use of another's property in a specified and certain way. Similarly to a license, it requires permission but unlike a license, it is often not revocable. An express easement is one that is written and signed by the servient party/estate (the land being used). On the other hand, an implied easement exists when: (1) two parcels of land were once one whole parcel and prior to their severance, the owner had a "quasi easement" on his land (*note: it's referred to as a quasi-easement because an owner of land cannot have an easement over his own land), (2) the land was then severed, (3) the owner intended for the easement to continue after severance, and (4) the easement is necessary to the use and enjoyment of the land. The necessity of the implied easement does not have to rise to the level of "land locked property," as it would if being granted an easement by necessity.

Here, the man owned the eastern and western portions of the land jointly prior to their severance and constructed a gravel road that allowed him to travel between his house (on the eastern portion) to a vehicle shed (on the western portion). Second, the land was severed, as he conveyed the western portion to the woman two years ago (who then conveyed her rights to her friend). Third, the owner demonstrated intent for the easement to continue after severance as he continued to live on the eastern portion and allowed the woman to use the gravel road to cross the man's land to access the county road when driving to work. Finally, the easement can be argued to be necessary for the use and enjoyment of the land as it significantly reduced the time it took for the man to drive to town (from 45 minutes to 15 minutes) without the road. Though not completely necessary, the significant reduction in time traveled is significant justification that it was necessary for the use and enjoyment of the land by the friend and the friend indicates he worked in the same small town as the man and used the gravel road often.

It is also important to note that the jurisdiction recognizes easements by prescription. Similarly to adverse possession, easements by prescription exist if the owner of the easement use the easement (1) open and notoriously, (2) the use was hostile, and (3) the use was continuous for the statutory required time period-- in this jurisdiction that is 20 years. Here, those factors do not exist as the friend was conveyed the property only one year ago and was able to openly use the road up until four months ago, thus it was not hostile nor was it continuous for the statutory required time period.

Ultimately, the friend will likely be able to prove he had an implied easement from prior use over the man's 80 acres.

2. The issue is whether the builder took subject to the easement even though his deed made no mention of it. An easement is generally considered to be appurtenant, i.e. tied to the land rather than the person. However, easements are subject to recording acts. The applicable recording act in the jurisdiction is a notice-type recording statute and uses a grantor-grantee index. Thus, a bona fide purchaser takes land free of an easement if he paid value for the land and did not have notice of the easement, regardless of whether he recorded his deed or not. A person can have notice in three different ways: (1) actual notice, (2) inquiry notice, or (3) constructive notice. A person has actual notice when they were told or their deed clearly stated the easement. A person has inquiry notice when a reasonable investigation into the property or inquiry of the neighbors would have yielded information of the easement. Finally, constructive notice, or record notice, occurs when the state's recording system would have indicated the prior recorded easement.

Here, the builder paid the man fair value for the land. The facts do not indicate he had actual notice, as he was not told about the easement nor was it mentioned in his deed. Additionally, he did not have constructive notice as the grantor-grantee index system would have prevented him from finding the easement. The easement was recorded from the man to the woman (the original easement) after the purchase by the builder, thus every other recording (the woman to friend deed) of the easement was recorded outside the chain of title (this is referred to as a wild deed) and would not have put the builder on notice as he would not have been able to find it under the grantor-grantee indexing system. However, it is likely the builder had inquiry notice as a reasonable investigation of the land would have yielded a clear understanding that the gravel road was still in use and had not been abandoned. Therefore, the builder did not take ownership of the 80 acres free and clear of the easement as he had inquiry notice of the easement and is not protected under the State's recording act.

Representative Good Answer No. 2

1. The friend may have an implied easement from prior use over the man's 80 acres if she can show reasonable necessity.

Easements represent the right to use land; they can be expressly created in a writing, or implied. Land that benefits from the easement is called the dominant parcel, and the land that is burdened is called the servient parcel.

Easements can be implied through prior use, strict necessity, or prescription. To establish that an easement was implicitly created through prior use, the proponent must show that (1) there was once common ownership of the servient and dominant parcels; (2) the prior use existed and was apparent; and (3) the prior use is reasonably necessary.

Here, the dominant parcel (the western 90 acres) and the servient parcel (the eastern 80 acres) were once owned by the same person -- the man. The use, or the right to use the gravel road, existed at the time that the parcels were under common ownership. The man installed the gravel road and used it to access both ends of his property, as well as both of the public roads bordering his property. Further, that use would be apparent to anyone: the facts indicate that the road is 10 feet in width, covered in gravel, and stretching 170 acres. This road isn't a cow path through overgrown weeds; the use was a fully installed road that was used regularly. The friend will be able to easily establish the question of common ownership and prior use.

What will be more difficult for the friend to establish is that it is reasonably necessary for the prior use easement to continue. The standard for prior use implied easements is lower than that of strict necessity implied easements. If a party seeks to establish a strict necessity implied easement, they must show absolute necessity that is not dependent on cost. Here, the standard is relaxed, and the proponent must show a necessity that is reasonable.

The friend, who also works in the small town, can establish that if she is forced to use the highway, she will have to take a more circuitous route to work; using the highway takes 45 minutes, but using the country road takes 15 minutes. Thus, we do not have an absolute necessity, but it is reasonable for her to want to avoid that extra commute. If a court finds that avoiding the highway is a reasonable necessity, the friend can establish that she has an implied easement over the 80-acre parcel.

2. The builder did take the 80 acres free and clear of the easement.

The issue here is whether the builder had sufficient notice of the implied easement so as to be bound by it. Even if the builder did not have actual notice of the easement (i.e., the man did not tell him about the road and the friend's right to use it), he may have had constructive notice. Constructive notice will be found when an instrument is properly recorded in the appropriate land index filing office. Thus, a person is deemed to have notice of an instrument if it is publicly recorded, even if that person did not actually see it.

The facts indicate that this state has a notice recording act and uses a grantor-grantee index. A notice recording act means that a person who pays value for land without notice (imputed by recording) takes title to the land. A grantor-grantee index means that deeds and other real property instruments are recorded under the name of the grantor and grantee. Thus, if the builder wanted to ensure that he had good title to the 80 acres, he would look up the man's name in the index. Because the woman's deed was not recorded until four months ago, he would not have found the deed from the man to the woman, and thus would not have found the deed from the woman to the friend, which mentioned the easement. Further, the builder paid value for the land. Without notice, he will be found to have taken the land free of the implied easement.

Maryland State Board of Law Examiners

FEBRUARY 2021 UNIFORM BAR EXAMINATION (UBE) IN MARYLAND – REPRESENTATIVE GOOD ANSWERS

MEE 6

Representative Good Answer No. 1

A contract for the sale of goods is governed by the UCC. Since shopping carts are moveable, they are goods. Thus, the UCC applies.

1. Contract Formation: Offer, Acceptance, and Consideration

An enforceable contract requires (1) an offer, (2) an acceptance, and (3) consideration.

An offer is a manifestation of the willingness to enter into a binding contract that creates the power of acceptance in the offeree. Here, the grocer's initial inquiry on March 1 about the shopping carts ("When can you get me 100 of them?") was not an offer but an inquiry because the supplier could not conclude the contract by agreeing. However, once the supplier said that he could deliver 100 shopping carts to the grocer's supermarket within 30 days, the supplier made an offer that the grocer could accept by agreeing to those terms. The grocer accepted the offer when she said, "That's great" and asked the supplier to ship her 100 shopping carts by March 31, 30 days from March 1.

Consideration exists when the parties' promises are bargained for. Here, the grocer exchanged a promise of wiring payment of $12,500 for the supplier's promise to deliver 100 shopping carts within 30 days.

Because offer, acceptance, and consideration exist, the parties formed an enforceable contract.

2. Statute of Frauds

Under the UCC, the sale of goods over $500 requires a writing signed by the party to be charged.

Here, the grocer's handwritten unsigned note on plain paper confirming the deal for 100 shopping carts at $125 each does not count as a writing conforming to the Statute of Frauds because it was not signed by the supplier. Only the document of March 31 printed on the supplier's letterhead (equivalent to a signature) stating that the 60 shopping carts for $125/cart were on their way meets the Statute of Frauds. If this is the only sufficient writing, the grocer can only enforce the contract for 100 shopping carts up to the 60 shopping cart quantity stated in the letter.

However, if both parties are merchants, the party to be charged may not raise the Statute of Frauds as a defense if that party received a signed writing from the other party containing the terms of the deal but failed to object within 10 days. Here, the grocer and supplier are both merchants, and the supplier received the grocer's note on March 4 and read it but did not object to it within 10 days. Although the letter was not signed, it was handwritten. If this is enough, then an enforceable contract for 100 shopping carts was formed.

Representative Good Answer No. 2

UCC Article 2 governs the sale of goods, this contract involves the sale of shopping carts so UCC Article 2 will govern.

Contract, at minimum to form a contract you need offer, acceptance and consideration. Mutual assent of an offer to enter the contract and acceptance of the offer to enter into a contract, with consideration a bargained-for exchange for legal detriment. Here, the offer and acceptance were made on March 1 when the grocer was

looking around the showroom pointed to the shopping carts and asked the supplier "when can you get me 100 of them?", the supplier replied in 30 days and the grocer responded "that's great. please ship me 100 of these shopping carts by March 31, and I will wire you payment for $12,500 as soon as they arrived. There was a bargained for exchange supplier is providing the shopping carts and the grocer is to pay $12,500 when they arrive, the parties entered into a bilateral contract.

Statute of fraud, certain transactions need to be put in writing in order for an enforceable contract to exist. The writing must be signed by the party against who enforcement is sought, detailing the contract. Contracts involving goods over the amount of $500 must be in writing. Here the grocer and the supplier entered into a contract for 100 shopping carts at the price of $125 on March 1 for a total of $12,500, well over $500. On March 1 the contract was not put in writing. On March 2, the grocer sent an unsigned note confirming the deal for the 100 shopping carts on a plain piece of paper. This document does not satisfy the statute of fraud writing requirement.

On March 31 the grocer received a letter printed on company letter, the company letter head would satisfy the signature requirement for statute of fraud, the letter also detailed the contract, however, the quantity listed was 60 shopping carts instead of 100 shopping carts. The grocer received the note and did not reply to the supplier. The 60 shopping carts arrived, and the grocer refused to take the carts or pay for them. The March 31 letter is the enforceable contract. It is on grocer's letter head which satisfies the signature requirement and the contract details the contractual agreement with the quantity of shopping carts as 60 shopping carts and the price listed.

Therefore, there is no enforceable contract requiring the supplier to sell 100 shopping carts to the grocer for $125 each. The enforceable contract is for 60 shopping carts at $125.