

Maryland State Board of Law Examiners  
**FEBRUARY 2022 UNIFORM BAR EXAMINATION (UBE) IN MARYLAND –**  
**REPRESENTATIVE GOOD ANSWERS**

*NOTICE: These Representative Good Answers are provided to illustrate how actual examinees responded to the Multistate Performance Tests (MPT 1 & 2) and the Multistate Essay Examination (MEE 1-6). The Representative Good Answers are not “average” passing answers nor are they necessarily “perfect” answers. Instead, they are responses which, in the Board’s view, illustrate successful answers written by applicants who passed the UBE in Maryland for this session. These answers are reproduced without any changes or corrections by the Board, other than to spelling and formatting for ease of reading.*

**MPT 1**

**Representative Good Answer No. 1**

Law Offices of Harold Huss  
610 Main Street  
Monroe, Franklin 33002

MEMORANDUM

To: Harold Huss  
From: Examinee  
Date: February 22, 2022  
Re: Denise Painter Divorce

You have asked me to prepare an objective memorandum analyzing relevant issues in the Painter divorce proceedings. My analysis of (1) whether the court is more likely to award joint legal custody or sole legal custody to Denise and (2) the classification of the Painter’s assets and debts is below.

**(1) The Court is Likely to Award Sole Legal Custody to Denise Painter**

As defined in the Franklin Family Code (FFC) “legal custody” is “the right to make decisions about a child’s medical care, education, religion, and other important issues.” FFC 420(a). In *Sanchez v Sanchez*, the Franklin Court of Appeal held that determining whether a party should be granted legal custody, the trial court must consider the factors laid out in FFC 421, but under FFC 422 there exists a rebuttable presumption of joint legal custody. (*Sanchez*). Under FFC 421, the court will consider factors such as the agreement (or lack thereof) of the parents on the issue of legal custody, the past and present abilities of parents to communicate, the ability of the parents to encourage affection and contact with the other parent, and the mental and physical health of all involved.

**(a) Agreement as to Custody**

With regard to the parent’s agreements regarding custody, the Court will consider the fact that both parties agree that Denise be awarded physical custody of Emma, but that they disagree on whether joint legal custody should be awarded. This will likely weigh against joint legal custody.

**(b) Ability to Communicate**

Regarding the ability of the parents to communicate, while Denise and Robert had a loving and supportive relationship - both with each other and with Emma - the nature of those relationships have changed in the past year. The ability to cooperate concerning joint legal custody does not require the parents to have a totally amicable relationship, but parents must be able to cooperate in decisions concerning major aspects of child rearing. (*Sanchez* citing *Ruben*).

Joint legal custody should not be awarded unless there is a record of mature conduct on the part of the parents evincing an ability to effectively communicate, and then only when there is a strong potential for that conduct in the future.

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The Court will consider that for a significant majority of their 9-year relationship, the parties have been able to communicate well regarding important decisions regarding Emma. Thus, there exists a record of conduct on behalf of the parties demonstrating such ability to communicate regarding Emma's best interests.

However, Denise may desire to argue that the events of the last year are a sufficient rebuttal, arguing that Robert's inability or unwillingness to communicate by failing to answer or return her calls should serve to rebut the presumption of joint custody. In Sanchez, the Court found that where one parent remains hostile towards another and that hostility is the primary reason for the parents' inability to communicate, joint legal custody should not be awarded.

Here, however, Robert can rebut this argument by stating he is not unwilling or unable to communicate, he just prefers to do so by text rather than phone. Further, there are no facts that demonstrate an ongoing severe animus on the part of one parent against the other. While Denise and Robert may not be totally amicable, the mismatched communication preferences are unlikely to be sufficient to overcome the presumption of joint legal custody.

**(c) Ability to Encourage Affection to Other Parent**

Despite Denise and Robert's issues over the past year, both parents appear to encourage affection and contact with the other parent. Denise has arranged visitation time with Robert, and Robert regularly attends Emma's soccer games with no objection from Denise. Further, Robert and Emma text from time to time with no objection from Denise. It is arguable that Denise is

less willing to encourage a relationship - since Robert is the one who instigates visitation - but that is likely insufficient to sustain such a finding, and no other facts suggest that Robert or Denise intend to keep Emma from contact or a loving relationship with the other parent. Thus, this factor will likely weigh in favor of joint custody.

**(d) Mental/Physical Health of All Parties**

In regards to the mental and physical health of all involved, Robert's issues concerning alcoholism will certainly be considered by the Court. In looking to how a Court may evaluate his alcoholism, the Franklin Supreme Court has held in *Ruben v Ruben* that in order to rebut the presumption of joint legal custody on the basis of a mental condition, there must be a nexus between the parent's condition and their ability to make decisions for the child. The Sanchez court also cites *Williams v Williams* which held that an untreated drug addiction was a legitimate factor in rebutting the presumption of joint legal custody.

However, Robert's alcoholism is not analogous to an 'untreated drug addiction' because Robert has sought treatment for his alcoholism for the last six months and has abstained from alcohol use for the past four months. Denise may argue that Robert's alcoholism has still

affected his ability to make decisions for Emma - citing the incidents where he forgot to pick Emma up because he was drunk and his arrest for a DUI. Further, Denise may also cite the fact that he was fired from his job due to missing too much work (presumably due to his alcoholism) as evidence of how it has affected his decision making. Robert will argue that his decision-making was not so severely affected, as his decision to seek treatment was voluntary and has largely been successful.

However, this factor may ultimately weigh against joint legal custody. While Robert's treatment has been successful, he has only been sober for four out of the six months he has been in treatment. Given the grave risk to Emma's physical safety, the Court may find that sole legal custody is warranted, at least until Robert is able to prove his ability to remain sober and employed for an extended period of time.

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Ultimately, although several factors weigh in favor of joint legal custody (ability to communicate and encourage affection) given the high risk of relapse and short period of Robert's sobriety, the Court is likely to award, at least, temporary sole custody to Denise. The court's award may be temporary and subject to a further evaluation at some designated point in time where - if Robert continues to be successful in his sobriety and remains employed - joint legal custody will be awarded.

**(2) Evaluation of Painter's Assets and Debts**

At divorce, the court will determine which property is community property and which is separate property. Under FFC 430(b), Community property includes personal and real property owned by either or both the spouses that was acquired by either or both spouse during the marriage. Separate property is such property acquired by one spouse prior to the marriage. FFC

430(a)(1). Community property and debt will be divided equally, but the Court has discretion over the distribution of specific properties and debt to each spouse in order to each an equal distribution. Separate property and debt will be divided as to whichever spouse acquired it.

**(a) House at 212 Lake Street and improvements (Deck + Garage)**

Here, the House was a gift to Denise from her uncle two days before the marriage. There was no mortgage on the house, and it is presumed Denise owned the house outright in her name. Although the House was a wedding gift, it was acquired prior to the marriage and it was acquired only by Denise as a gift from her uncle. Under FFC 430(a)(2), property acquired by either spouse by a gift is separate property. Thus, the House itself is Denise's separate property.

However, the House has appreciated in value over time and additions were made to the House during the marriage. Thus, these must be evaluated as well. In *Barkley v Barkley*, the Franklin Court of Appeals held that community property also includes all income and appreciation on separate property due to the labor, monetary, or in-kind contribution of either spouse during the marriage. Conversely, separate property includes passive income and appreciation acquired by one spouse during the marriage. Passive income is any income acquired other than as a result of labor, monetary, or in-kind contribution. (*Barkley*, citing *Chicago v Chicago*).

Here, the House was worth \$215,000 at the time Denise acquired it, but is worth \$245,000 in current value, an increase of \$30,000. The Painters paid \$5,000 to install a deck and \$5,000 to build a detached garage. Both improvements were made with the couple's savings, but Roberts statement that he put a lot of effort into these improvements suggests he did much of the labor involved.

The \$10,000 investment into the deck and detached garage from the couple's savings is clearly community property and will be divided evenly. However, the question remains as to the \$20,000 appreciation.

In *Barkely*, there was no evidence that an item of separate property increased in value due to any labor or monetary or in-kind contribution on the part of the other spouse. Thus, the appreciation of that item was deemed separate property. Here, in contrast, there seems to be an appreciation that is at least partially due to Robert's labor. Some may be attributable to the fact that property values tend to increase on their own as time passes, however the division is unclear.

Thus, in addition to the \$5,000 portion of the savings invested in improvements, at least some portion of the \$20,000 increase in value is attributable to Robert's labor and is thus community property.

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(b) Cars

Here, both cars were acquired during the marriage and are thus community property. However, both parties appear to want to keep their own vehicles. Thus, the Court is likely to award the Toyota to Robert, and the Ford to Denise.

(c) Motorcycle

Here, the motorcycle was a gift to Robert from his father. Although it was acquired during the marriage, separate property is any property that is acquired by one spouse by gift. FCC 430(a)(2). Similar to the House, the motorcycle is Robert's separate property and will be awarded to him.

(d) Personal Property & Debts

All the personal property identified (bedroom set, tv, couches, and dining set) and debts (best buy and target credit cards, and car loan) were acquired during the marriage and are community property.

However, the Court has discretion as to the division of these assets and debts to ensure an even split. Thus, the Court will consider the fact that each party will be awarded a car, but that the pickup is significantly higher in value than the Ford (\$17,000). The court will also consider that a \$5,000 credit is owed to Robert for his share of the marital savings, which was spent on the improvements to the House, as well as a portion of the remaining \$20,000 increase in value which is attributable to his labor. Thus, Robert's total share of the community property is at least \$22,000 without accounting for the remaining personal property and debts.

Denise has indicated she would like to keep the bedroom and dining sets (\$1000) as well as her car (\$7000) and her portion of the saving attributable to the improvements (\$5000), which

would bring her share to a total of \$13,000. If Robert is awarded the couches and TV (as Denise does not want to keep them), his share will increase to \$23,000.

Given the \$10,000 difference between the party's shares, the unavailability of additional assets to make up the difference, and the separate property distributions, the Court will likely distribute the entire debt to Robert, which amounts to a total of \$10,000. If the asset distribution had been more equal, the Court likely would split the debt in the middle - distributing the CarMax loan to Robert (as it relates to his truck) and the credit card debts to Denise, which total \$5,000.

**Representative Good Answer No. 2**

Memorandum

To: Harold Huss  
From: Examinee  
Date: February 22, 2022  
Re: Denise Painter Divorce

I. Legal Custody

Legal custody under Franklin Family Code (FCC) is defined as the right to make decisions about the child's medical care, education, religion, and other important issues regarding the child. FCC § 420(a). In determining whether a party should be granted legal custody, the court will consider the factors outlined in FCC § 421, these factors include (a) the agreement or lack of agreement of the parents on joint legal custody; (b) past and present abilities of the parents to cooperate and to make decisions jointly; (c) the ability of the parents to encourage the sharing of love, affection, and contact between the child and the other parent; and (d) the mental and physical health of all individuals involved. While the court must

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address these factors it is not an exhaustive list, and the court will look to the best interest of the minor child to make this determination. Further there is a rebuttable presumption under FCC § 422 that joint custody is in the best interest of the minor child.

(a) Agreement

Here there is no agreement between Ms. Painter and Mr. Painter in regards to the legal custody. Ms. Painter wants sole legal custody and Mr. Painter wants joint legal custody.

(b) Past and Present Abilities to Cooperate

To be effective, joint custody requires that the parents be willing and able to communicate and cooperate with each other and reach agreement on issues regarding the child's needs. (See *Sanchez v. Sanchez*). The court will look to the past and present abilities of the parents to cooperate and make decisions together. This does not require the parents to have a totally amicable relationship, but parents must be able to cooperate in decision concerning major aspects of child rearing. *Ruben v. Ruben*. Joint custody should not be awarded unless there is a record of mature conduct on the part of the parents that demonstrates their ability to effectively communicate with each other concerning the best interest of the child, along with strong potential of this continuing into the future. *Sanchez*.

In *Sanchez*, it was shown that the mother remained hostile to the father and refused to directly communicate with him, instead the mother would only relay message through his parents. The exchanges of the child were so acrimonious that the parties were to exchange the child at a public library. The appellate court found that there was no substantial evidence that both parents are able to communicate and cooperate in promoting the child's best interest or to work together in such a way to justify an award of joint custody.

Unlike *Sanchez*, Ms. Painter and Mr. Painter have attempted to communicate directly during their separation. Mr. Painter via text and Ms. Painter via phone calls. There is a clear divide in how the parties wish to communicate with one another, but likely this alone will not rebut the presumption for joint legal custody. When in person, the parties are able to have casual conversations together, and do not appear to have an animous relationship with one another. The sheer amount of unreturned phone calls that Ms. Painter had made is concerning and will likely factor against joint legal custody of Emma. However, when parties have communicated they seem to be able to reach agreements, Ms. Painter has allowed Emma to see Mr. Painter whenever he has requested. In the past, both Ms. Painter and Mr. Painter were very involved with Emma on a day-to-day basis, and they jointly made decisions about her childcare, schooling, extracurricular activities and medical care. Because parties seem to cooperate when they communicate and because they were able to make decisions together in the past, this factor will probably weigh towards joint legal custody.

(c) Ability to encourage love and affection, and contact between the child and other parent

Ms. Painter and Mr. Painter both seem open to encourage love and affection between Emma and the other parent. Ms. Painter has stated while she is seeking Sole legal custody, she is fine with Mr. Painter and Emma exchanging text messages from time to time. Mr. Painter is fine with Emma living with Ms. Painter and continuing that relationship, while he does not have a proposal for communication he wishes to be regularly involved in Emma's life. This factor will likely be weighed toward the award of joint legal custody.

(d) Mental and Physical Health

The final factor is the mental and physical health of all individuals involved. In *Reuben*, the court found the presumption to joint legal custody was rebutted when the mother was diagnosed with a medical condition that affected her ability to participate in decision making for the child. To rebut the presumption based on mental condition, there must be a nexus between the parent's condition and the parent's ability to make decisions for the child. *Williams v. Williams*. In *Williams*, and untreated drug addiction was considered a legitimate factor in rebutting the presumption of joint legal custody.

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Here, Mr. Painter has a known history of alcohol dependence. However, unlike *Williams* he has been working on his dependence for more than 6 months in order to become a more reliable parent. He has not consumed an alcohol in 4 months and gets tested regularly at rehab. He states that his lack of contact with Emma, was because he wanted to get his act together first. Since Mr. Painter is taking affirmative steps to work on his alcohol dependence it is not likely that the court will weight this factor against the presumption of joint legal custody.

(e) Conclusion

Based on the above factors, it is unlike the presumption against joint legal custody will be met that would warrant the court to award sole legal custody to Ms. Painter. While there is no agreement between the parties concerning joint legal custody, in the past the parties have demonstrated they were able to communicate together, currently the parties have been able to communicate without animosity with one another, further both parents seem to be willing to encourage the love, affection, and contact with the other parent. While Mr. Painter has struggled with alcohol dependence in the past, since he is working on recovery the presumption will likely not be overcome based on his mental health.

II. Distribution of Marital Property and Debts

(a) Property

Before granting a divorce, the court must determine what constitutes the parties' community property and debt, and what constitutes their separate property and debt. *Barkley v. Barkley*. Under FCC § 433 community property includes personal and real property owned by either or both of the spouses that was acquired by either or both of the spouses **during** marriage. Separate property, however, is defined under FCC §430 includes personal and real property either (1) acquired by one spouse prior to the marriage, (2) acquired by either spouse by gift, bequest, devise, or descent; or (3) designated as separate property by a written agreement between the spouses.

(i) Ms. Painter's Separate Property

The house was acquired by Ms. Painter before marriage as a gift from her Uncle. This property will therefore not be considered community property but will instead be classified as Ms. Painter's Separate Property

(ii) Mr. Painter's Separate Property

The 2009 Kawasaki Motorcycle will be classified as Mr. Painter's separate property as it was given to him as a gift from his Uncle in 2019, therefore it will not be included into community property.

(iii) Community Property

The remaining property of the parties including their personal items, two vehicles, and deck and garage added to their home will constitute community property.

The deck and garage constitute improvements made on the house during the marriage. The out-of-pocket costs of these improvements was collectively \$10,000. In *Barkley*, the court found that absent of evidence to determine whether the improvements increased fair market value of the house, the court can award credit to the party who paid for the improvements equal to 50% of the total cost of improvements. Here, while the current value of the home is \$245,000 it is not clear what the value of the home was before the improvements were made. As such the court will likely award the parties 50% of the amount paid to install the deck and the garage. Therefore, the parties will be entitled to 5,000 each based on the cost of these improvements. However, if it comes to light that the fair market value of the home before such improvements were made, the court may then award the difference between the fair market value pre-improvement and post- improvement.

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(b) Debts

Under FCC § 431(b) community debt is debt incurred by either spouse or both spouses during marriage. In FCC §431(a) separate debt is a debt incurred by a spouse either before marriage or after the entry of a divorce decree.

The debts listed for the parties include a Best Buy Credit card, a CarMax loan for the Tacoma, and a target gift card. All of these debts were acquired during the marriage and will be considered community debts for the purpose of the court to distribute equally among the parties.

**MPT 2**

**Representative Good Answer No. 1**

Office Memorandum

To: Lucas Pines, Deputy Public Defender

From: Assistant Public Defender

Date: February 22, 2022

Re: Argument Section for Motion to sever in *State v. Ford*, 2021 CF 336

Please see below for the Argument Section for the Motion to sever in *State v. Ford*, 2021 CF 336. Per your instruction, I have omitted the Statement of the Case and Statement of Facts.

**Argument:**

Ford's charges should be separated into separate trials because (1) The indictment against Ford does not suggest the acts are of similar character, are based on the same act or transaction, or are connected with a common scheme or plan; (2) Ford could be prejudiced because the jury could consider the Ford to be a bad person because she is charged with more than one offense; (3) Ford's prior conviction of the felony of assault with intent to commit murder is would not otherwise been admissible with respect to count 1 (possession of a controlled substance) and count 2 (knowingly possess with intent to sell a controlled substance; and (4) Ford wishes to testify with respect to her gun possession charge.

Pursuant to Rule 8(a) of the Franklin Rules of Criminal Procedure, two or more offenses may be charged in the same indictment if they are of the same or similar character, are based on the same act or transaction, or are connected with or constitute parts of a common scheme or plan. The defendant must establish the impropriety of the joinder. In deciding whether charges have been improperly joined, the trial court should generally limit itself to those facts contained in the indictment. If, however, the indictment does not provide sufficient facts to clarify the connection between the counts, the trial court may look to documentary evidence in the case such as affidavits in support of arrests or affidavits in support of search warrants. See *State v. Sayers*.

There are generally three kinds of prejudice that may occur if separate offenses, particularly those that are merely of similar character and do not arise out of a single transaction are joined. (1) The Defendant could be prejudiced because the jury could consider the defendant a bad person and find her guilty of all offenses simply because he is charged with more than one offense; (2) Prejudice may occur if proof of the defendant's commission of one of the illegal acts would not otherwise have been admissible in the trial for the other offense See *State v. Ritter*.

(1) The indictment against Ford does not suggest the acts are of similar character, are based on the same act or transaction, or are connected with a common scheme or plan, and therefore the court should separate the claims.

Looking at just the indictment, there is a charge for possession of cocaine charge on April 17th, there is a charge for possession with the intent to sell marijuana on October 24th, and there is a charge for possession of handgun. The alleged possession of cocaine, while similarly a controlled substance, is a different drug from marijuana. It is clear that the

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marijuana and cocaine charge are based on different acts or transactions, as they allegedly happened on different dates. Additionally, there is no evidence in the indictment itself that the charges are related to a common scheme or plan.

The prosecution will argue the court should look at the documentary evidence to support the joinder of claims since the indictment does not provide specific facts, and the court is permitted to do so. However, even if the prosecution successfully convinces the court that possession of the cocaine (count 1) is related to a common scheme with the possession with intent to sell marijuana based on the documentary evidence count 1 related to a sale, or that the count of possessing a handgun illegally (count 3) related to the intent to sell in count 2, Linking all three claims by virtue of one rationale is still not possible, and therefore the court should sever the claims.

(2) Ford could be prejudiced because the jury could consider the Ford to be a bad person because she is charged with more than one offense;

The linking of all of these claims exposes Ford to unreasonable risk that the jury will find her guilty based of all the charges. Additionally, count 3 means the jury will be exposed to Ford's prior conviction of felony assault with intent to commit murder. This is all unfairly prejudicial, although the court has generally held that it is rarely a sufficient basis to justify severance, it is still a relevant factor and should be considered.

(3) Ford's prior conviction of the felony of assault with intent to commit murder is would not otherwise been admissible with respect to count 1 and count 2

Rule 404(b) of the Franklin Rules of Evidence allows admission of other acts if introduced for a purpose other than to prove "propensity." Permissible purposes for admission of "other acts" evidence include proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident. However, Evidence of other acts may still be excluded if the prejudicial effects of admission substantially outweigh the probative value of the evidence.

Here the prosecution may argue that the possession of a weapon is highly correlated with the intent to sell drugs (see *Ritter*). However, this issue doesn't relate to the admissibility of the gun as evidence, but the admissibility of the prior assault conviction. the prior conviction does not speak to any of permissible purposes listed above and addition would be highly unfairly prejudicial, because it danger of unfair prejudice (convincing the jury Ford is guilty because of previous bad act) is much greater than its probative value (none).

(4) Ford wishes to testify with respect to her gun possession charge.

Ford is considering testifying for both trials but may testify for one but not the other. The evidence of Ford's Felony assault is necessary evidence and will be introduced for the weapons charge. The evidence of Ford's felony assault would only be admissible as impeachment evidence should she choose to testify in the drug related charges. It would be unfair for the court to force Ford to decide whether she wanted to testify as to all or none of the charges, instead of allowing her to choose.

In conclusion, Ford's charges should be separated into separate trials.

**Representative Good Answer No. 2**

Slayers (Appeals, 2013)

-Facts: Reversing conviction due to denial of motion to sever. Trial court looked at only the indictment, which provided insufficient facts for joinder.



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Rule:

-Two or more offenses may be charged in the same indictment if they are of the same or similar character, are based on the same act or transaction, or are connected with or constitute parts of a common scheme or plan. *Rule 8(a)*.

-In deciding whether charges have been improperly joined, the trial court should limit itself to those facts contained in the indictment. *Sayers*. If the indictment doesn't provide sufficient facts to clarify the connection between the counts, the trial court may look to other documentary evidence, such as affidavits in support of arrests or search warrants. *Sayers*.

-Simply because two charges have similar titles is not a sufficient basis on which to join charges in a single indictment. *Sayers*.

-The fact that the crimes occurred years apart weighs against joinder. *Sayers*.

Pierce (Appeals, 2011).

Facts: Trial court erred in denying motion to sever. Rule:

-Where offenses are joined and evidence for one offense would not have been admissible if the offenses were tried separately, severance is appropriate, especially where there is prejudice. *Pierce*.

-When a jury learns of a separate offense committed by a defendant, the jury can be tempted to infer the worst about that defendant. *Pierce*.

Ritter (Appeals, 2005)

Facts:

-Affirming joined conviction of two separate counts of possession with intent to sell heroin. If Defendant had been tried separately, evidence of both heroin sales would have been admissible because of a common scheme/plan. Also, evidence that Defendant possessed a weapon was not propensity, but went to intent.

Rule:

-Under Rule 14, severance can be granted if joinder would cause prejudice.

-There are three types of prejudice: (1) the jury could consider the defendant a bad person and find him guilty on all offenses simply because he is charged with more than one offense (rarely a sufficient basis to justify severance); (2) proof of the defendant's commission of one illegal act wouldn't have been admissible in the trial for the other offense, and the inadmissible evidence is used to convict; (3) the defendant wishes to testify in his own defense on one charge but not another (severance warranted when there is a convincing showing that he has important testimony to give on one count, and a strong need to refrain from testifying on the other). *Ritter*.

-Evidence allows admission of other acts if introduced for a purpose other than to prove propensity. *Ritter*. Permissible purposes include motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident. *Ritter*.

-Evidence of other acts may still be excluded if prejudicial effects of admission substantially outweigh the probative value of the evidence. *Rule 403*.

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-Limiting instructions may curb the application of unfair prejudice. *Ritter*.

**The State Should Sever All Three Charges Because Joinder Violates Rule 8(a), and The Defendant Is Entitled to Relief Pursuant to Rule 14**

I. Joinder of The Offenses Violate Rule 8(a) Because The Offenses Are Distinct Charges Under Rule 8

Under Rule 8(a), two or more offenses may be charged in the same indictment if they are of the same or similar character, are based on the same act or transaction, or are connected with or constitute parts of a common scheme or plan. Here, however, joinder is improper because these are three separate offenses stemming from three separate causes of action. Counts I and II occurred on different dates, and thus do not involve the same act or transaction. Additionally, there is no common scheme or plan because the counts are two separate drug offenses involving different drugs. The first offense involves the alleged sale of cocaine at Floyd's brother's apartment, while the second offense involves the alleged possession with intent to distribute marijuana stemming from a traffic stop. Floyd often borrowed her boyfriend's car and had no reason to know that there were drugs in the car. This charge is separate and distinct from Count I. While the State may argue that both charges are of the same or similar character because they involve the alleged sale of drugs, they are distinguishable because one charge is an actual sell, and the second charge is an intent to sell. *See Sayers* (simply because two charges have similar titles is not a sufficient basis on which to join charges in a single indictment).

Furthermore, Count III is wholly unrelated to Counts I and II because it stems from a conviction that is 6 years old. The fact that the crimes occurred years apart weighs against joinder. *Sayers*. Count III does not meet any of the requirements under Rule 8 because the gun charge is not of a similar character, based on the same act or transaction, nor part of a common scheme or plan. The gun charge stems from an assault conviction, not a drug crime. Additionally, charge I does not involve any type of weapon for there to be a common scheme or plan of mixing weapons with selling drugs. Thus, all three charges should be severed.

II. The State Should Order Severance Because Joinder is Unduly Prejudicial Under Rule 14

Under Rule 14, severance can be granted if joinder would cause prejudice. There are three types of prejudice: (1) the jury could consider the defendant a bad person and find him guilty on all offenses simply because he is charged with more than one offense; (2) proof of the defendant's commission of one illegal act wouldn't have been admissible in the trial for the other offense, and the inadmissible evidence is used to convict; (3) the defendant wishes to testify in his own defense on one charge but not another (severance warranted when there is a convincing showing that he has important testimony to give on one count, and a strong need to refrain from testifying on the other). *Ritter*.

All three types of prejudice are present here. First, the jury will consider Floyd more likely to have committed all offenses simply because she is charged with more than one offense. Although rarely a sufficient basis to justify severance alone (*Ritter*), the other two forms of prejudice are also present.

As to the second factor, the prior assault conviction is not admissible in the drug cases unless Floyd chooses to testify. If she invokes her right not to testify in the drug cases, the prior assault conviction will not be admissible. However, if all offenses are charged together, the prior assault conviction will be introduced as evidence in the gun offense whether Floyd testifies or not. Thus, introduction of the assault conviction in the drug case would severely prejudice her defense in the drug cases. Because Floyd has the option to have the assault conviction be inadmissible in the drug cases, these should be tried separately to avoid undue prejudice. Unlike *Ritter* where evidence would have been admissible regardless due to a common scheme/plan, there is no 404(b)(2) exception here. The assault conviction does not prove motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident. Rule 404. Moreover, evidence of other acts may still be excluded if prejudicial effects of admission substantially outweigh the probative value of the evidence. Rule 403. That is the case here, as the prior felony is likely to substantially outweigh any negligible value of its introduction.

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Finally, where offenses are joined and evidence for one offense would not have been admissible if the offenses were tried separately, severance is appropriate, especially where there is prejudice. *Pierce*. Here, there would be prejudice because evidence of the gun charge would not be admissible if Counts I and II were tried separately. Moreover, when a jury learns of a separate offense committed by a defendant, the jury can be tempted to infer the worst about that defendant. *Pierce*. For these reasons, all charges should be severed and tried separately.

**MEE 1**

**Representative Good Answer No. 1**

1) Bank's Interest in Portable Welding Machine

The issue here is whether the Bank (B) has a valid security interest in the welding machine.

In order to have an enforceable security interest, the interest must attach. In order to attach, there must be an exchange of value, the debtor must have rights in the collateral, and there must be a valid security agreement signed by the debtor which sufficiently describes the collateral. "Equipment" is a recognized descriptor of collateral and is used as a 'catch-all' term to describe anything that is not inventory, accounts, or consumer goods.

Here, there is an exchange of value in the form of the loan from B to the Man (M). There is a valid security agreement which has been signed by M and describes the collateral as "all my equipment, including equipment hereafter acquired." This is a sufficient description of collateral, as the standard is quite low and allows for broad descriptions and equipment is a recognized description of collateral. M has a possessory interest in his equipment, and thus B has a valid security interest in M's equipment.

However, M likely does not have an interest in the portable welding machine. Although the welding machine fits the description of 'equipment,' the issue remains that M does not have an interest in the welding machine. Here, M's mother specifically instructed him to not use her welding machine. That he continued to use it without her knowledge is insufficient to establish a possessory or ownership interest in the welding machine. Accordingly, M had no interest in the welding machine to grant to B.

Thus, B does not have an enforceable security interest in the portable welding machine. 2)(a) Bank's Interest in Tools

Applying the above rule, B likely has an interest in the specialized tools because 'repair tools' are likely classified as 'equipment.'

The UCC defines 'inventory' as any goods held for sale or lease, or raw materials used for inventory. The specialized repair tools clearly are not held for sale or lease, nor are they raw materials used to create such goods. Therefore, the tools do not fit the description of inventory.

Similarly, the UCC defines consumer goods (aka personal property) as household goods designed for personal use. Arguably, tools may fit such a description. However, the goods fitting this description are such things as office supplies. These tools, in contrast, are specialized and used for diesel engine repair. Further, while a description of the tools is not provided, the cost of the tools indicate that the tools are far beyond what would be considered a household good or household tool. Thus, it is likely that the tools fit the catch-all description of equipment.