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MPT 1
July 2022

In re Marriages of Walter Hixon **(July 2022, MPT-1)**
In this performance test, the client, Walter Hixon, seeks legal advice regarding his recent discovery that his first wife, whom he had not divorced, was still living when he married a second time. Hixon wants to annul the second marriage and to resolve claims to certain real property acquired during that second marriage. The examinee's task is to prepare an objective memorandum addressing whether Columbia or Franklin law governs the grounds for annulling the second marriage, the process for obtaining an annulment, whether a Franklin court would have jurisdiction to annul the marriage and to dispose of the parties' property, and where Hixon should file an action given that the couple's real property is located in Columbia. The File contains the task memorandum, a transcript of the client interview, and an investigator's memorandum. The Library contains an excerpt from Walker's Treatise on Domestic Relations, selected Columbia and Franklin statutes dealing with void and voidable marriages, sections of the Restatement (Second) of Conflict of Laws, and two Franklin appellate cases.

To: Marianne Morton

From: Examinee

Date: July 26, 2022

Re: Walter Hixon matter

This memorandum addresses the multiple marriage of Mr. Walter Hixon -- specifically issues related to his second marriage to Ms. Tucker. Mr. Hixon married Ms. Prescott in Columbia in 1986 and lost touch with her within a few years. He heard from a friend that she had died in 2001. Mr. Hixon married Frances Tucker in 2021, again in Columbia. Mr. Hixon moved to Franklin in 2019 and has lived here ever since. Having learned that Ms. Prescott is alive, Mr. Hixon seeks an annulment of his marriage to Ms. Tucker on the grounds that he was already married at the time he entered into it, and seeks a division of the couple's real estate property located in Columbia.

In short, Columbia law most likely governs the grounds for annulling Mr. Hixon's marriage to Ms. Tucker because the marriage relationship occurred entirely in Columbia. Under Columbia law, a court order is required to annul the marriage, but the court order must be granted on the grounds that one spouse was already married and their previous spouse was not known to be living for five years. A Franklin court probably has jurisdiction to grant the annulment, but not to enter on order regarding the real property located in Columbia. Because of this likely jurisdictional problem, I recommend we advise Mr. Hixon to file for an annulment in Columbia.

I. Columbia law most likely governs the grounds for annulling Mr. Hixon's marriage to Ms. Tucker because Columbia has the most significant relationship to the marriage.

Absent a statute defining the choice of law, Franklin courts apply the "most significant relationship" test. Here, there does not appear to be a statute on point for the choice of law.

A. Franklin law applies the Restatement's "most significant relationship" test to annulment conflicts of laws.

"Franklin law holds that the validity of a marriage should be determined by the law of the state with the most significant relationship to the spouses and the marriage." *Fletcher v. Fletcher* (Fr. Ct. App. 2014). Franklin has adopted the Restatement (Second) of Conflict of Laws § 283 (1971). The Restatement provides the court with a list of factors to consider when determining the state with the most significant relationship for purposes of determining whether a marriage is valid, including: (1) "the relevant policies of other interested states and the relative interests of those states," (2) "the protection of justified expectations," (3) "certainty, predictability, and uniformity of result," and (4) "ease in the

determination and application of the law to be applied." *Fletcher*.

When a spouse seeks an annulment in Franklin for a marriage between a couple that has only lived together in Columbia and that owns property in Columbia, Franklin courts apply Columbia law. *See Simeon v. Jaynes (*Fr. Sup. Ct. 2009). In *Simeon* -- a case remarkably similar to this -- a spouse moved to Franklin and sought an annulment on the grounds of bigamy. The couple had only lived together in Columbia, owned property there, and had incurred debts there. The Franklin Supreme Court held that Columbia law for annulment governed because Columbia had the most significant relationship to the marriage. *See also Fletcher* (holding that Franklin law applied to a marriage where the couple lived entirely in Franklin but one spouse moved to Columbia to seek annulment).

B. Columbia has the most significant relationship to this marriage.

Here, all of the factors point to Columbia having the most significant relationship.

1. *The relevant policies of other interested states and the relative interests of those states*

Here, unlike in *Fletcher*, there is little difference between the policies of the states regarding annulments for bigamy. Although the states apply different procedural requirements (with Columbia law requiring a 5 year period of belief that the other spouse was dead before remarrying and requiring a judicial proceeding, *see infra* Part II), both states will declare marriages where either party is lawfully married to another person to be void. Franklin courts have held that all states have "legitimate policy interests in defining how a relationship as fundamental as marriage can be initiated and ended," and consider differences between Franklin and Columbia law to underscore the significance of each state's relationship. *Fletcher*.

2. *The protection of justified expectations*

This factor strongly favors the application of Columbia law. The marriage between Mr. Hixon and Ms. Tucker began in Columbia, and the parties started the marriage with "the whole deal" (a church wedding and reception) in Columbia. The couple bought a house in Columbia, had joint accounts (presumably in Columbia), and lived together in Columbia for about seven years. By contrast, although Mr. Hixon now lives in Franklin and has since 2019, Ms. Tucker has not visited him there once, while Mr. Hixon has at least visited her in Columbia "a few times." Therefore, the parties had a reasonable expectation that Columbia law would govern this marriage.

3. *Certainty, predictability, and uniformity of result; and*
4. *Ease in the determination and application of law.*

Both of these factors suggest that, for the same reasons given above, a Franklin court would apply Columbia law to promote predictability and administrative efficiency. *See Fletcher*.

C. Columbia law will apply.

Because a Franklin court would apply Columbia law and a Columbia court would also apply its own law (given its interests), Columbia law will probably apply.

II. A court probably must annul the marriage under Columbia law, and if the requirements are met the court has no discretion.

Columbia Revised Statute § 718.02 provides that a marriage is voidable if "[t]he spouse of either party was living and the marriage with that spouse was then in force and that spouse was absent and not known to the party commencing the proceeding to be living for a period of five successive years immediately preceding the subsequent marriage..." A party may seek annulment in court, and the "court must issue an annulment decree."

Here, Mr. Hixon appeared to genuinely believe that his former spouse was dead for the requisite five years before marrying Ms. Tucker. A friend told him that Ms. Prescott had died in 2001 in a bad car accident, and Ms. Prescott was in fact in a very severe accident that year and nearly died. Mr. Hixon moved hundreds of miles away from Ms. Prescott in 1990, just a few years into their marriage, and had very limited contact with her after that point. Furthermore, Mr. Hixon had not heard from or contacted Ms. Prescott for over twenty years after hearing that she had died. Therefore, Mr. Hixon had a good faith belief that Ms. Prescott was dead.

The interpretation of "absent" might be an open question. It is unclear whether "absent" refers to absence from the marriage (which is probably met by these facts) or "absent" from the jurisdiction. We should conduct further research into Columbia law on this point.

In addition, this belief went on for longer than five years. Mr. Hixon heard that Ms. Prescott was dead in 2001, and did not marry Ms. Tucker until 2012. Thus, assuming "absent" refers to absence from the relationship, the court will probably be required to grant the annulment.

If Franklin law applies, the mere fact that Mr. Hixon was already married to Ms. Prescott when he married Ms. Tucker will void the marriage to Ms. Tucker. Fr. Domestic Relations Code § 19-5. No court proceeding would be required. *Id.*

III. A Franklin court probably has jurisdiction to annul the marriage, but probably lacks jurisdiction to dispose of the marital property because the property is located in Columbia.

To grant an annulment, a Franklin court must have jurisdiction over the marriage (*in res*). *Daniels v. Daniels* (Fr. Ct. App. 1997). To dispose of property, the court must have either *in personam* jurisdiction over both spouses or *in rem* jurisdiction over the property itself. *Id.*

Here, Franklin courts could exercise jurisdiction over the annulment but not the property.

A. A Franklin court has jurisdiction over the annulment because Mr. Hixon has established residency in Franklin for the requisite six months.

For a Franklin court to exercise jurisdiction over an annulment, one party must have been domiciled in Franklin for six months. *Daniels*. (*Daniels* dealt with divorce, but *Walker's Treatise on Domestic Relations* §1.7 and the Franklin Domestic Relations Code §19-7 provide that the jurisdictional rules for dividing property are the same in annulment as divorce). *See also Carew v. Ellis* (Fr. Sup. Ct. 1957) (granting annulment without personal jurisdiction over one party). This rule is consistent with the relevant Supreme Court precedent, *Williams v. North Carolina* (1942).

Here, Mr. Hixon has been domiciled in Franklin for about three years, exceeding Franklin's six-month requirement. He has had a job here the entire time, has the intention of making Franklin his permanent home, and apparently has only left for brief visits to other states. He also uses a Franklin address. These facts are more than sufficient to establish domicile.

Thus, Franklin has jurisdiction over the marriage itself, if not its property.

B. A Franklin court probably lacks jurisdiction over the property because it lacks *in personam* jurisdiction over Ms.Tucker and it lacks *in rem* jurisdiction over the property.

To exercise jurisdiction over real property from a marriage, a Franklin court must have either *in personam* jurisdiction over both parties or *in rem* jurisdiction over the property itself. *Daniels* (citing *Boyd v. Boyd* (Fr. Sup. Ct. 1977) for the proposition that courts cannot award alimony or fees without *in personam* jurisdiction but exercising jurisdiction over marital property sited in Franklin). Here, the court would lack both *in personam* and *in rem* jurisdiction, and thus cannot divide the property.

The court lacks personal jurisdiction over Ms. Tucker because Ms. Tucker has not had sufficient minimum contacts with Franklin. As discussed, Ms. Tucker still lives in Columbia and apparently has never even visited Mr. Hixon in Franklin. She also has not consented to jurisdiction here, although she might choose to and this is a factor worth investigating, particularly if the interpretation of "absent" might be more favorable in Franklin.

In addition, the court lacks *in rem* jurisdiction because the property is sited in Columbia. Thus, unlike in *Daniels* where the property to be divided was located in Franklin, here a Franklin court would not be able to exercise *in rem* jurisdiction. This might raise due process concerns if it attempted to divide the property. *See Daniels.*

IV. We should advise Mr. Hixon to file in Columbia because the lack of jurisdictional problems outweighs any potential tactical advantage.

A. Although a Franklin court has not yet so held, a Franklin court would probably find it lacks jurisdiction over the property.

As discussed above, a Franklin court would probably find it lacks jurisdiction over the property. Thus, Mr. Hixon would not be able to obtain his objective of dividing the property. By contrast, a Columbia court probably has in rem jurisdiction. Therefore, I recommend we file in Columbia unless we get consent from Ms. Tucker.

B. The jurisdictional problem outweighs any potential tactical or convenience benefits.

Although it might be more convenient to litigate in Franklin, and Mr. Hixon might have an advantage as a state resident, it is probably not enough of an advantage to outweigh the likely litigation over jurisdiction.

If Ms. Tucker consents to jurisdiction in Franklin, this might be a good option because a Franklin court might give a more favorable interpretation of "absent" and annul the marriage readily, even if applying Columbia law. Because Ms. Tucker wants the marriage over with, she might agree.

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MPT 2
July 2022

In re Nina Briotti **(July 2022, MPT-2)**
This performance test requires the examinee to draft an objective memorandum that the supervising partner can use to advise attorney Nina Briotti, a sole practitioner, on the legal and ethical issues presented by her concern that one of her clients might commit a criminal act. Briotti fears that her client, a financial adviser, might invade a trust that he administers in order to cover investment losses in other accounts that he manages. As Briotti intends to telephone her client and counsel him that such a use of trust funds would be illegal, she wants to know whether recording the telephone call would be legal and ethical under applicable state law and the rules of professional conduct, as well as whether she must inform him that she is recording the call. The File contains the instructional memorandum from the supervising partner, a transcript of the client interview, and Briotti's notes of her last telephone conversation with her client. The Library contains excerpts from the Franklin and Olympia criminal codes dealing with recording of telephone conversations, excerpts from the American Bar Association's Model Rules of Professional Conduct, an opinion of the ABA Standing Committee on Ethics and Professional Responsibility, commentary of the Franklin State Bar Ethics Committee on Franklin Rule of Professional Conduct 8.4 (which is identical to the ABA Model Rule), and an Olympia District Court case addressing the legality of recording a telephone conversation with only one party's consent.

MEMORANDUM

To: Howard Zeller
From: Examinee
Date: July 26, 2022
Re: Briotti Request for Advice

I. Introduction

You asked me to research three issues relating to our client Briotti and her ability to record her verbal warning to her client, X, about the illegality of his taking specific financial action. The first issue is whether Briotti may lawfully record her telephone conversation with X without informing X that she is doing so. The second issue is whether creating this recording without X's knowledge would violate the Rules of Professional Conduct (herein "the Rules") and the ethical considerations involved. The third issue is whether Briotti must inform X of her recording if he asks.

II. Analysis

1. **Briotti may lawfully record her conversation with X under the one-party consent requirement of Franklin Criminal Code § 200 because the recording is taking place in Franklin, not Olympia, and she is a party consenting to the recording.**

Franklin Criminal Code (FCC) § 200 allows exceptions to the prohibition on the interception of communications for recordings made with the prior consent of one party to the communication. However, under Olympia Criminal Code (OCC) § 500.4, the prior consent exception requires consent from *all* parties to the communication. In *Shannon*, the Olympia District Court held that OCC § 500.4 does not apply when the act of interception takes place outside of Olympia and instead notes that "interceptions and recordings occur where made."

Here, Briotti has her law office in Franklin and X is located in Olympia. During a call together, Briotti would likely take the call from her office in Franklin. Therefore, under *Shannon*, if she were to make a recording the recording would occur in Franklin, even though X is taking the call from Olympia. Applying Franklin's criminal laws, Briotti would only need one party to consent to the recording. As a party to the call, Briotti could herself fulfill this consent requirement. Therefore, Briotti's recording would be considered legal under FCC § 200 and would not pose any criminal liability.

2. **A nonconsensual recording is not inherently deceitful under the Rules, but Briotti must consider her duties of loyalty and confidentiality to X and whether the recording is based on well-grounded judgment that the recording is reasonably necessary.**

ABA Opinion 01-422 abandons the previous ABA position that all nonconsensual recordings are inherently deceitful. Instead, Opinion 01-422 explains that there are many factors to consider in making such a determination, including that the majority of states that allow one-party consent to recordings, the presence of numerous exceptions that may necessitate the lack of disclosure of the recording, and fact that the model rules do not include the requirement for lawyers to "avoid even the appearance of impropriety."

This is echoed under the Franklin State Bar Committee on Ethics and Professional Responsibility Commentary on Rule 8.4 (herein "Franklin State Bar Commentary"), which requires a fact-based assessment when a lawyer seeks to determine whether to undertake a recording of a client conversation using well-grounded judgment about the client's intended actions. The Committee also states that "a recording of a conversation with a client, but without the client's knowledge, is almost always inadvisable unless the lawyer reasonably believes it necessary." *See id.*

Together, Opinion 01-422 and the Franklin State Bar Commentary make clear that there is not a black-and-white prohibition on nonconsensual recordings, unless the same is outlawed by a state. Therefore, this ethical consideration will require a more fact-based assessment including the weight of the duties of loyalty and confidentiality and the alternative options for memorializing the conversation.

a. ***The recording will likely violate Briotti's duties of loyalty and confidentiality to X because X is not reasonably certain to commit a crime or fraud by merely suggesting he could take his client's trust fund money.***

Lawyers have both a duty of loyalty to their clients and a duty to preserve the confidentiality of communications with that client about the matters involved in the representation. *See Model Rules; Opinion 01-422*. Although clients should assume that a lawyer will memorialize a communication in some way, a direct recording of client conversation without consent could pose other issues, including that the recording falls into the wrong hands and causes damage or embarrassment to the client. *See Opinion 01-422*.

However, there is no ethical obligation to keep confidential a client's plans to commit a criminal act or fraud that "is reasonably certain to result in substantial injury to the financial interest or property of another and in furtherance of which the client has used or is using the lawyer's services" or "to prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services." *Model Rules 1.6(b)(2)* and *(3).*

Here, Briotti owes X a duty of loyalty and confidentiality in relation to their conversations about the matters in which she is acting as his lawyer. To overcome those duties, she must demonstrate that X is "reasonably certain" to commit a crime or fraud that causes

harm to another person’s finances or property. *Model Rules 1.6(b)(2)* and *(3).* Briotti talked with X once about this issue and he suggested the idea of taking money from the trust account. When he suggested it, he may not have known whether it was legal or illegal. In response, Briotti explained clearly that taking the money from the trust was illegal. Although Briotti noted that X continued to return to this idea, it may have been his stress or the nature of their conversation that made him continue to bring up the trust account. Because he did not respond that he would like to move forward with that plan regardless of its illegality or provide any indication that he was planning to ignore Briotti's advice, there is not a reasonable basis for Briotti to conclude that X is "reasonably certain" to commit this crime.

Therefore, Briotti should not record the call nonconsensually because it would violate her duty of loyalty and confidentiality since an exception under Model Rule 1.6 does not apply.

b. ***Briotti can record the conversation in using other methods like notetaking, sending a memorandum or email to X outlining her concerns, or obtaining X's consent to record the conversation.***

There are still other means for Briotti to easily memorialize the conversation without violating the duty of loyalty and confidentiality. For example, Briotti could use her existing method of typing her handwritten notes following the conversation and adding them to the client file. If she does not think that is sufficient, she may take additional action such as drafting a memorandum, letter, or email that clearly outlines her concerns and reiterates the previously provided warning of illegality and send that document to X. This document would seek to provide her cover from any future criminal actions by X, but also to possibly act as a "record" should X take action that makes it reasonably certain that he is going to commit a crime or fraud.
Therefore, because of the ease of alternative recording, Briotti should not record the call and should instead use a different method.

3. **Briotti may not falsely deny that the call is being recorded if X specifically asks her.**

Opinion 01-422 is very clear that simply because a lawyer may nonconsensually record a call with a client without violating the Rules, the lawyer may not state falsely that a client is not being recorded.

Here, even if Briotti decides to record the call, she should be prepared to share this information with X if he should ask. Although the recording is not illegal under Franklin law and Briotti could argue that it was not unethical because it was reasonably necessary under the Rules, Briotti would violate the Rules if she falsely denied the recording of the call to X.

Therefore, Briotti must disclose the recording if X expressly inquires.

III. Conclusion

Briotti would not face criminal liability for recording the call with X because the recording occurs in Franklin, not Olympia, and Franklin law allows for only one party to consent to the recording. Because Briotti would qualify as the consenting party, she would not face any criminal consequences for recording the call.

However, there is a strong ethical argument against recording the call nonconsensually. Although the ABA does not treat these recordings as inherently deceitful, there is a presumption that lawyers should uphold the duty of loyalty and confidentiality to clients unless reasonably necessary based on the exclusions in the Model Rules, such as a client who is reasonably certain to commit a crime or fraud using the lawyer's advice to harm a third party financially. Here, Briotti would likely be unable to satisfy these requirements based on the limited conversation she had with X. Finally, Briotti must disclose the recording to X if he asks about it; falsely denying the recording will almost certainly violate her ethical obligations.

Therefore, Briotti should seek to memorialize the conversation in an alternative way, such as written notes or a written memorandum, letter, or email, instead of risking the ethical violations and breaking her client's trust by recording the call.

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MEE Question 1

Four months ago, Victim was shot and seriously wounded in City. Defendant has been charged with attempted murder. The prosecution's theory is that Victim and Defendant were both members of a criminal street gang called "The Lions," which engages in drug dealing, robbery, and murder in City. The prosecutor alleges that the shooting was the result of a gang dispute.

Defendant has brought a pretrial motion objecting to the prosecutor's introducing the following anticipated evidence:

(A) Testimony by a City detective who will be offered as an expert in gang identification, gang organizational structure, and gang activities generally and as an expert on particular gangs in City. The detective is expected to testify as follows:

> I have been a detective on the police force for six years. Throughout that time, my primary assignment has been to investigate gangs and criminal activity in City. I have also worked closely with federal drug and firearm task forces as they relate to gangs. Prior to becoming a detective, I was a corrections officer in charge of the gang unit for City's jail for three years, and my duties included interviewing, investigating, and identifying gang members.
>
> Throughout my career, I have attended training sessions providing education and information on gang structure, membership, and activities. As I've gained experience and knowledge in this area, I've frequently been asked to lead such sessions. I would estimate that I've taught more than 75 such training sessions over the past three years.
>
> Street gangs generally engage in a wide variety of criminal activities. They usually have a clear leadership structure and strict codes of behavior. Absolute loyalty is required and is enforced through violent acts. Members of particular gangs can be identified by clothing, tattoos, language, paperwork, or associations.
>
> I am quite familiar with "The Lions." It is one of City's most violent and feared criminal gangs. Members of The Lions can be identified by tattoos depicting symbols unique to the gang.

(B) Testimony by a former leader of The Lions concerning a photograph of Defendant's tattooed arm. After the photograph is authenticated as a photograph of Defendant's arm, the witness is expected to testify in part as follows:

> I am certain that this is a Lions tattoo. I had a similar one removed. You'll notice that it has a shield containing the numbers for the police code for homicide, and Lions' members frequently include police codes in their tattoos to indicate crimes the gang has committed. The tattoo also has a shotgun and sword crossed as an

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> "X," and a lion. Those are symbols frequently used by The Lions. This tattoo indicates to me, based on my experience, that Defendant is a member of The Lions gang.

(C) Testimony by Victim, who is expected to testify for the prosecution in part as follows:

> I got into an argument with a gang boss at a meeting of The Lions. I said I wouldn't participate in an attack that was planned on another gang because my cousin was in that gang. The boss looked at Defendant and nodded to him. Next thing I knew, after the meeting, Defendant pulled a gun on me and shot me. I'm sure he did it because of that argument.

The jurisdiction has adopted rules of evidence identical to the Federal Rules of Evidence. Defense counsel's motion raises the following objections to the evidence described above:

1. The detective's anticipated testimony about gang identification, organization, and activities is improper expert testimony.

2. The photograph of Defendant's tattoo and the former gang leader's anticipated testimony about it is inadmissible character evidence.

3. Victim's anticipated testimony that Defendant shot him because of a gang dispute is irrelevant.

How should the trial court rule on each objection? Explain. (Do not address constitutional issues.)

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testimony about the tattoo because the evidence goes to motive rather than propensity and thus is not inadmissible character evidence.

In a criminal trial, character evidence offered by the prosecution is inadmissible unless the defendant opens the door or a non-character evidence purpose exists. Character evidence is defined as evidence of a person's character or character trait offered to suggest that a person acted in conformity with their character and committed the acts alleged. This use is also known as "propensity evidence." However, evidence of a person's character or character trait can be offered to prove motive, intent, lack of mistake, identity, or control.

Here, the prosecution appears to be offering the tattoo evidence to establish motive. If the prosecution was merely suggesting that Defendant's gang membership made him a "bad guy" likely to commit attempted murder, that would be propensity evidence and inadmissible. But here, the prosecution alleges that Defendant's membership in the gang was his motive for the attempted murder. Further, prosecution is offering the tattoo evidence for identity has a member of The Lions. Thus, the evidence is not inadmissible character evidence.

3. **The judge should <u>deny</u> Defendant's motion to exclude the victim's testimony about the gang dispute on the grounds of relevance.**

Relevant evidence is evidence that makes any fact of consequence to determining the action more or less likely than it would be without that fact. FRE 402. Evidence of motive and opportunity in a criminal trial is almost always considered relevant. Evidence can be excluded if, although it is relevant, its probative value is substantially outweighed by the risk of prejudice, confusion of the issues, or suggesting a verdict on an improper basis. FRE 403.

Here, the evidence is relevant. Victim will testify that Defendant pulled a gun on him and shot him immediately after a gang meeting. This makes it more likely that the gang meeting provided Defendant with a motive to kill, rather than some other defense. Because premeditated murder and attempt are specific intent crimes, the Defendant's motive is of consequence to the action. Thus, evidence about the gang dispute is relevant.

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MEE Question 2

Five years ago, Seller started a small winery that catered to a regional market. The winery became wildly successful. Two years ago, Seller decided to retire and sell the winery. Seller entered into negotiations with Buyer, who was interested in buying a winery. Seller was proud that the label for her red wines bore her picture so, during the negotiations, she told Buyer that she would not sell him the winery unless he agreed to continue using that label. Seller and Buyer orally agreed that if Seller sold the winery to Buyer, he would continue to use the label for as long as he sold red wines.

Buyer and Seller agreed that Buyer would buy the winery from Seller for a purchase price of $3 million plus a "fair share" of the profits generated by the winery during the first year after it was acquired by Buyer. While they did not agree on the precise share of the first-year profits that Buyer must pay to Seller, Buyer said that 20% would be fair, while Seller said that 25% would be fair.

Buyer and Seller entered into and signed a lengthy written agreement. It stated that, in exchange for the assets of the winery, Buyer would pay Seller $3 million at the closing and, 15 months later, a "fair share of the winery's profits" during Buyer's first year of ownership. It also stated that Seller was not permitted to own or operate a winery anywhere in the United States for 10 years after the closing, a term that Seller was happy to accede to because she intended to retire. The agreement did not include any provision about future use of the red wine label with Seller's picture and did not contain an "integration" or "merger" clause.

After Seller transferred ownership of the winery to Buyer, Buyer continued to sell red wines but discontinued using the label with Seller's picture. When Seller complained about this, reminding Buyer of his oral agreement to continue using the label, Buyer said, "The agreement we both signed doesn't say anything about the label."

Fifteen months after the closing, Buyer sent Seller $10,000, which was equal to 5% of the winery's profits during the first year of his ownership. Seller emailed Buyer, complaining about the low amount of the payment and reminding Buyer that they had both understood that a "fair share" of the first-year profits would be in the 20–25% range. In response, Buyer pointed out that the agreement that they had signed did not say that a "fair share" of the profits would be that high.

Fed up with Buyer, Seller came out of retirement and opened and began operating a winery in another state in the United States far from her original winery.

In litigation between the parties:

1. Is Seller's and Buyer's oral agreement that Buyer would use Seller's picture on red wine labels enforceable even though it was not included in the written agreement? Explain. (Do not discuss any potential statute of frauds issues.)

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2. Could Seller introduce evidence of the negotiations about what would constitute a fair share of the winery's first-year profits to help explain the meaning of that term? Explain.

3. Assuming that Buyer is not in breach of any of his obligations under the purchase agreement, would Buyer prevail on a claim that Seller breached her obligations under the agreement by opening her new winery? Explain.

Assume for all questions that, in the jurisdiction whose law governs the dispute, the sale of an ongoing business is governed by the common law of contracts, not Article 2 of the Uniform Commercial Code.

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Seller's and Buyer's Oral Agreement Regarding Labels Is Enforceable

The issue here is whether evidence of the oral agreement may be admitted under the parol evidence rule.

Under the parol evidence rule, when parties enter into a written contract, extrinsic evidence regarding any oral agreements from before the contract was signed will not be considered if it directly contradicts the terms of the contract. When a contract is fully integrated, no extrinsic evidence pre-contract evidence will be considered, unless it helps to clarify an ambiguous term. When a contract does not contain a merger clause or does not otherwise specify that it is intended to be the complete and final agreement, it is partially integrated. When a contract is merely partially integrated, extrinsic pre-contract evidence may be offered to prove consistent or supplementary terms, so long as those terms do not contradict the express terms of the contract.

Here, before entering the contract, Buyer and Seller orally agreed that Buyer would continue using the label that bore Seller's picture. Later, Buyer stopped using the label. The contract itself is a partial integration; it does not contain an "integration" or "merger" clause, and it also leaves essential items to be determined in the future between the parties (namely, the profit sharing agreement). The oral agreement was not contained within the written contract. The agreement regarding the labels does not contradict any of the express terms of the written contract, though it does supplement it. There is no inconsistency between the terms of the contract as written and the oral agreement to continue using the label.

Thus, the parol evidence rule will not bar evidence of the agreement to continue using the label, and it will be enforceable if Seller can prove that the oral agreement occurred.

Seller Could Introduce Evidence of the Negotiations Regarding Profit Sharing

The issue here is the same as above: whether the parol evidence rule will prevent Seller from introducing evidence of the negotiations regarding profit sharing.

As discussed above, extrinsic evidence may be offered to give meaning to ambiguous terms in a partially integrated contract. Here, the contract specifies that Buyer would pay Seller a "fair share of the winery's profits" 15 months after closing. During negotiations, Buyer and Seller seemed to agree that a "fair share" would mean something between 20-25% of the winery's profits. However, once the time came to actually share the profits, Buyer only gave Seller 5% of the profits. The term "fair share" is ambiguous and open to many interpretations, and there is no way to determine whether 5% may be considered "fair" by looking only to the contract itself.

Thus, a court will allow extrinsic evidence to help determine its meaning.

Buyer Likely Would Not Prevail on a Claim that Seller Breached by Opening New

Winery

The issue here is whether the non-compete agreement is unconscionable and thus unenforceable.

Generally, if one party to a contract performs his duties under the contract, the other party must perform, or they will be in breach. A covenant not to compete is enforceable if it is for a reasonable period of time and reasonably bounded geographically. However, a covenant not to compete will be deemed unconscionable, and thus unenforceable, if it is substantially more restrictive than is necessary.

Here, Seller agreed not to operate any other winery anywhere in the United States for 10 years after the closing. Seller was happy to agree to this term because she intended to retire anyway. The question assumes that Buyer is not in breach; thus, ordinarily, Seller would be required to perform, or else she would be in breach. However, the covenant not to compete here is unconscionable. The term of 10 years is exceptionally long, and the geographic scope is substantially broader than is necessary, given that the winery that Seller sold to Buyer caters to a regional market.
Thus, the covenant not to compete is substantially broader and more restrictive than necessary, and that provision will be unenforceable.

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MEE Question 3

Brian, a home builder, and Danielle, a land developer, properly formed a corporation. The articles of incorporation state that the corporation's purpose is to pursue property development opportunities and any other lawful business. Brian owns 20% of the corporation's shares, and Danielle owns 80%. Under their shareholders' agreement, Brian and Danielle serve as directors on the corporation's three-member board of directors, and Danielle selects the third director.

Shortly after the corporation's formation, the corporation (following unanimous board approval) purchased a parcel of land for $5 million for the purpose of dividing it into residential lots and constructing a single-family home on each lot. The board also decided that (1) Brian would be responsible for the construction of all homes on the parcel, (2) Danielle would be responsible for securing the financing necessary to build the homes, and (3) the proceeds from home sales would be paid to the corporation. After setting a reasonable salary for Brian during the home-construction period, the board agreed to periodically consider whether to issue dividends.

The board unanimously authorized Danielle to hire Carol, a consultant, to negotiate financing agreements on behalf of the corporation with several banks. Danielle asked Carol to act on behalf of the corporation to obtain the loans, and Carol agreed to do so.

The first bank that Carol contacted declined to provide financing to the corporation but offered instead to buy the parcel for $6 million. Without discussing any of this with any of the corporation's directors, Carol signed a written agreement with the bank on behalf of the corporation to sell the parcel to the bank for $6 million.

The next day, Carol informed Danielle about the terms of the sale agreement with the bank. Danielle agreed with Carol that the deal was in the corporation's best interest and properly called a special meeting of the board to approve it.

At the special meeting three days later, Carol described to the board the terms of the agreement. Danielle and the third director voted to approve the land sale under the terms of the written agreement signed by Carol. Brian voted against approving the sale. Danielle and the third director then voted to distribute all the sale proceeds to Danielle as a "bonus payment." Brian, who would receive no payment from the sale, properly made a request to see all accounting records related to the purchase and sale of the parcel. But the board refused Brian's request, with Danielle and the third director voting against it.

The corporation was incorporated in a jurisdiction whose corporation statute is modeled on the Model Business Corporation Act (MBCA).

1. Is the corporation bound by the land-sale agreement with the bank signed by Carol? Explain.

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2. Was the bonus payment made to Danielle, which was approved by a majority of the board of directors, proper? Explain.

3. Does Brian have sufficient grounds to seek the judicial dissolution of the corporation? Explain.

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Corporation Is Bound by the Land-Sale Agreement Signed by Carol

The first issue here is whether Carol had authority to enter the agreement with the bank.

Generally, when an agent acts on behalf of the principal, the principal will not be bound unless the agent acted either with actual authority or apparent authority. An agent has actual authority if the agent reasonably believes that she has authority to act based upon the principal's conduct, and may be either express (i.e., by contract or other agreement) or implied (e.g., based on past conduct or dealings between them, or by necessity). An agent has apparent authority when a third party with whom the agent deals reasonably believes, based on the principal's conduct, that the agent has authority to act.

Here, Carol was an agent of Corporation. The board unanimously authorized Danielle to hire Carol as a consultant, and Carol was charged with negotiating financing agreements on behalf of Corporation.
However, Carol lacked actual authority to enter the agreement with the bank. She exceeded the scope of her authority when she signed the agreement with bank to sell the parcel to the bank; she had authority to negotiate financing, not to sell the Corporation's property. Carol also lacked apparent authority. There are no facts to indicate that anyone from Corporation besides Carol dealt with the bank. As such, bank could not have reasonably relied on conduct from anyone at Corporation in forming its belief that Carol had authority to enter the agreement. Thus, Carol lacked authority to enter the transaction.

The second issue here is whether Corporation properly ratified the agreement, despite Carol exceeding the scope of her authority.

Even when an agent acts without authority, the principal may still be bound if the principal later ratifies the agent's act. A principal may ratify the agent's acts expressly (i.e., by agreeing to be bound by the agent's unauthorized acts), or impliedly (e.g., by accepting benefits that flow from agent's unauthorized acts).

Here, after Carol entered the agreement, Corporation's board called a special meeting to approve the sale. Brian voted against approving the sale, but the other two directors voted to approve it.

Accordingly, Corporation's board expressly ratified the agreement and will be bound by its terms, despite the fact that Carol acted without authority.

Bonus Payment Made to Danielle Was Not Proper

The issue here is whether the vote to approve the bonus payment was proper.

When a director has a conflict of interest in some transaction (i.e., she stands to

personally gain from it), it may be approved one of three ways: (1) majority vote of disinterested directors, after full and complete disclosure of material facts; (2) majority vote of disinterested shareholders, after full and complete disclosure of material facts; or (3) by proving that the transaction was manifestly fair at the time.

Here, Danielle has a clear conflict. She stands to gain personally from this "bonus payment," and it is unclear precisely what Danielle did to have earned it. Because Danielle has a conflict of interest, the vote required in this case to approve the transaction is, effectively, unanimity; there are only two other directors, and a majority is required for approval. A 1-1 tie will not suffice. There are no facts to indicate that this proposal was presented to the shareholders, though the outcome would end up the same; Brian is the only disinterested shareholder, and he has withheld approval. Finally, the parcel being sold was Corporation's asset, not Danielle's, so Danielle should not solely benefit from the proceeds of the sale. There are no facts to suggest the transaction was fair at all, much less manifestly so.

Therefore, the bonus payment was improper because it was not adequately approved by Corporation.

Brian Has Sufficient Grounds to Seek Judicial Dissolution

The first issue here is whether Brian can show that Corporation is incapable of carrying on business.

A corporation may be judicially dissolved under various circumstances. One such manner is if the party seeking dissolution can show that the Corporation has sold all or substantially all of its assets, such that it can no longer function as a business.

Here, shortly after Corporation was formed, Corporation purchased a parcel of land for $5 million for the purpose of dividing it into residential lots and constructing single-family homes on each lot. Brian was to be responsible for the construction of all homes on the parcel. Corporation's articles of incorporation state the business's purpose as "to pursue property development opportunities and any other lawful business." Thus, the Corporation may engage in "any lawful business," even beyond property development. However, it is not clear what if any assets the Corporation now has left. Corporation sold the parcel to the bank, and paid the proceeds to Danielle. There may be no assets with which the Corporation could pursue any business venture.

The second issue here is whether Brian is being oppressed as a minority shareholder.

Brian also has a case that the actions of the majority shareholder (Danielle) so oppressed him as a shareholder that he is entitled to judicial dissolution. Brian received nothing from the Corporation's $1 million windfall because the Corporation routed the funds to a bonus to Danielle rather than to shareholders, as had been previously agreed. This was an improper and unfair enough transaction that a court would

probably order a sale of Brian's shares at a reasonable value. Given the young age of the Corporation, it is unclear what that value might be. Dissolution might be an easier remedy.

Thus, it appears Brian has sufficient grounds to seek judicial dissolution.

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MEE Question 4

Ten years ago, Arlene Doe, age 34, signed and dated a "Declaration of Trust," the pertinent part of which provided as follows:

> I, Arlene Doe, do hereby create the Arlene Doe Trust (AD Trust). I name myself sole Trustee of the trust. I reserve the right to all trust income during my lifetime. Upon my death, all trust assets shall be paid in equal shares to my three nieces Carla, Donna, and Edna. I declare that this trust applies to all assets listed in Schedule A, attached hereto.

In Schedule A, Arlene wrote, "I have not transferred any assets to this trust yet, but I will before I die."

The trust instrument had no provision regarding whether it was revocable or irrevocable.

Four years ago, Arlene bought bonds with her personal funds and revised Schedule A to list them as assets of the trust.

Two years ago, Arlene wrote across the face of the Declaration of Trust for the AD Trust, "This AD Trust is revoked" and "I'm taking back the assets."

One year ago, Arlene gave her friend a package containing a valuable necklace and the bonds. As she handed her friend the package, Arlene said, "This package contains a valuable necklace and bonds. I revoked the AD Trust because I decided that I want my niece Donna to have everything I own except what I'm giving to a worthy cause in my will. Hold this package as trustee for Donna. When Donna reaches age 18, sell the necklace and bonds, use the proceeds to pay for Donna's college education, and then give her what's left over when she reaches age 22." The friend said, "Okay."

Later, Arlene properly executed a will naming a bank as executor of her estate and as trustee of a perpetual trust created under her will. This testamentary trust directed that "all of my worldly goods not otherwise validly disposed of during my life, I leave in trust for the Political Party. I direct the trustee to pay all income from this trust, annually, to the Political Party and not to any other person." The Political Party's exclusive mission is to support candidates for public office who accept its political views.

Last month, Arlene died. At Arlene's death, she owned a bank account with a balance of $300,000. The bonds in the package given to Arlene's friend were worth $200,000, and the necklace was worth $50,000. Arlene was survived by her younger brother Bob, her three nieces Carla, Donna, and Edna (the only children of Arlene's deceased sister), and her nephew Fred (the only child of Arlene's deceased older brother). Donna is 16 years old.

The jurisdiction in which Arlene died has adopted the Uniform Trust Code. It also applies the common law Rule Against Perpetuities. Another statute in this jurisdiction

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provides, "If a decedent died intestate without a surviving spouse, issue, or parent, the decedent's property is distributed to the issue of his or her parents *per stirpes*."

1. (a) Was the AD Trust validly created, and if so, when was it created? Explain.

   (b) Assuming that the AD Trust was validly created, was it effectively revoked? Explain.

2. Was the trust for the benefit of Donna valid? Explain.

3. Was the testamentary trust for the benefit of the Political Party valid? Explain.

4. Assuming that the testamentary trust to Political Party is invalid, to whom should the bank account be distributed? Explain.

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1a. The issue is whether the AD Trust was validly created and if so, when it was created.

In order to create a trust, a settlor must, with intent to create a trust, convey property to a trustee and the trustee must name a specified beneficiary. For the trust to be valid, the trustee must have directions in how to manage the trust. When a trust is created, title to the trust property is divided, with the legal and equitable title divided between the trustee and the beneficiary. A trust must also have a proper purpose, which is broad, and includes most legal purposes. Under the common law Rule Against Perpetuities, a gift is only valid if it will be vested within 21 years of a life in being at the creation of a gift.

Here, Arlene Doe is the settlor of the AD trust and named herself as trustee. She provided instructions and demonstrated intent for the trust in the Declaration of Trust ten years ago. However, she did not convey property to the trust until four years ago. While Arlene was the income beneficiary of the trust during her lifetime, title to the property was still divided because the trust created a future interest in the principal in Arlene's three nieces. Additionally, because the three nieces were lives in being at the creation of the trust, the Rule Against Perpetuities does not apply.

Therefore, AD Trust was validly created, but it was not created until 4 years ago, when Arlene conveyed property to the trust.

1b. The issue is, assuming that the AD Trust was validly created, whether it was effectively revoked.

Under the Uniform Trust Code (UTC) a revocable trust may be revoked through an intentional act of revocation by the settlor, such acts of revocation include written over the text of the document, tearing, burning, or otherwise destroying the document. An irrevocable trust may not be similarly revoked, however, the UTC presumes that trusts are revocable based on favoring alienability and control of property.

Here, because Arlene did not determine whether the trust was revocable or irrevocable, it will be assumed to be revocable under the UTC. Arlene clearly wrote "This AD Trust is revoked" across the face of the trust and stated that she was taking back the assets. She further demonstrated her intent to revoke by giving the bonds previously given to the trust and attempting to create a new trust.

Therefore, the AD trust was effectively revoked.

2. The issue is whether the trust for the benefit of Donna was valid.

The rules for creation of a trust are stated above. Under the common law Rule Against Perpetuities, a gift is only valid if it will be vested within 21 years of a life in being at the creation of a gift.

Here, Arlene, as a Settlor, conveyed property to her friend as trustee. She also gave her friend specific directions in how to manage the trust and named a specific beneficiary, Donna. Because Donna was 16 years old as of 1 month ago, Donna was a life in being at the time the trust was created, so the Rule Against Perpetuities does not apply to her Donna receiving the future assets at age 18 and 22.

Therefore, the trust for the benefit of Donna was valid.

3. The issue is whether the testamentary trust for the benefit of the Political Party is valid.

The general rules for trust creation are stated above. Under the UTC, trusts may be properly made for the benefit of a charity and are not subject to the Rule Against Perpetuities and can have a broader class of beneficiaries. However, a trust will only qualify as a charitable trust if the beneficiary has a proper charitable purpose. Such charitable purposes include education, environmental causes, relief of poverty, and religious organizations. Political purposes are not valid charitable purposes under the UTC.

Here, Arlene appears to have attempted to create a charitable trust for the benefit of Political Party and wanted that trust to be "perpetual." If Political Party had a proper charitable purpose, such perpetuity would be permissible, however, Political Party's exclusive mission is to support candidates for public office who accept its political views, which it not an acceptable charitable purpose under the UTC. Thus, the trust for the benefit of Political Party fails because it violates the Rule Against Perpetuities.

Therefore, the testamentary trust for the benefit of the political party is not valid.

4. The issue is, assuming that the testamentary trust to Political Party is invalid, to whom should the bank account be distributed.

This jurisdiction has an intestacy statute which states that, "If a decedent died intestate without a surviving spouse, issue, or parent, the decedent's property is distributed to the issue of his or her parent *per stirpes*." A gift is advanced by a prior inter vivos gift if specifically acknowledged by the decedent or the beneficiary.

Here, Arlene is survived only by her younger brother Bob, her three nieces Carla, Donna, and Edna (only children of Arlene's deceased sister), and her nephew Fred (only child of Arlene's deceased older brother). Thus, the issue of Arlene's parents, besides her, are Bob, Arlene's deceased sister, and Arlene's deceased brother. Arlene's assets would thus be divided by three amongst those three siblings. Arlene's deceased brother's full share would go to Fred, as he has no other children. Arlene's deceased sister's 1/3 share would be divided by three to Carla, Donna, and Edna. The trust for Donna was valid, so the bonds and necklace are not part of the intestate property, so Arlene's intestate property includes only the $300,000. While Donna will already have

received benefit from the trust, there is no indication that either Donna nor Arlene acknowledged that this was an advancement.

Therefore, under the jurisdiction's intestacy statute, then, Bob should receive $100,000, Fred should receive $100,000, and Carla, Donna, and Edna should each receive $33,333.33.

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MEE Question 5

Developer LLC is a limited liability company organized in State A, with its principal place of business in State A. Its only two members are Amy, a domiciliary of State A, and Barbara, a domiciliary of State B. Amy is the managing member of Developer.

Developer entered into a written construction contract with Builder Co., a State B corporation with its principal place of business in State B. Builder agreed to build an office building for Developer on a vacant lot owned by Developer in State A. Lender Corp., a finance company, agreed to lend Developer up to $2 million to finance the construction project. Lender is incorporated in State A with its principal place of business in State A.

Lender disbursed $250,000 of the loan amount to Builder to cover the down payment on the construction contract. The loan agreement between Developer and Lender provided that any funds disbursed by Lender under the loan agreement would be added to Developer's loan balance and repaid, with interest, over a five-year period.

As construction of the office building proceeded, Lender made disbursements to Builder pursuant to the loan agreement between Lender and Developer. But when Builder finished construction of the office building, Lender refused to make the final $100,000 disbursement to Builder even though Developer had occupied the building and had begun leasing space to tenants. Lender told Developer that it was refusing to authorize the final disbursement because Builder's construction was "substandard." Developer also has not made final payment to Builder.

Builder has sued Lender in federal district court in State A, invoking the court's diversity jurisdiction. Builder's complaint alleges that Lender's withholding of the final payment of $100,000 violated the loan agreement with Developer. Builder claims to be a third-party beneficiary of Lender's promise to Developer, entitled to payment of $100,000 from Lender.

Lender has moved to dismiss the action on the ground that Developer is a required party to the action and has not been joined as a defendant.

1. Is Developer a person "required to be joined if feasible" to the *Builder v. Lender* action under Federal Rule of Civil Procedure 19(a)? Explain.

2. Would joinder of Developer deprive the court of subject-matter jurisdiction? Explain.

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

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I. Is Developer A Necessary Party?

The issue is whether Developer is a necessary party. Under FRCP 19(a) a party is necessary (1) if the court cannot award adequate relief without the party, (2) if the party's interests are not currently adequately represented, or (3) a resolution will subject that party to multiple obligations. A court must join such a party if it is feasible to do so. It is feasible to join the party if the court has jurisdiction over them. Here, because Builder has not received final payment from Developer, the court cannot adequately award relief without determining whether Developer must pay Builder. Builder is claiming to be a beneficiary under the contract between Lender and Developer. A court should not determine the rights and obligations under this contract without including Developer in the action. Developer's interests are arguably represented because Lender has an interest in defending the suit to the best of its ability. A resolution of the lawsuit in Lender's favor would likely subject Developer to liability. Thus, Developer is a necessary party and must be joined if feasible.

II. Would Joinder of Developer Deprive the Court of Subject-Matter Jurisdiction?

Subject Matter Jurisdiction ("SMJ") refers to the federal court's power over the case. Federal courts are limited in what kinds of disputes they may hear. To exert SMJ over a case, there must be either (1) federal question jurisdiction, (2) diversity jurisdiction, or (3) supplemental jurisdiction. Federal question jurisdiction arises when the claim asserts federal rights (not just federal defenses). Diversity jurisdiction exists if there is (1) complete diversity among the parties and (2) the case exceeds $75,000.

A corporation is domiciled in all of the places it is incorporated and the one place that is its principal place of business. Builder is a resident of State B (both incorporated there and having its principal place of business there). Lender is a resident of State A (both incorporated there and having its principal place of business there).Thus, in the original claim of Builder versus Lender, there is complete diversity between the plaintiff and the defendant.

An LLC is domiciled where each of its members are residents. Thus, Developer is domiciled in both State A (Amy) and State B (Barbara). If Developer is joined as a defendant, Developer will destroy diversity jurisdiction because it shares residency with Builder.

III. Is Developer an Indispensable Party?

The issue is whether Developer is an indispensable party. If a court determines that a necessary party that cannot be joined is indispensable, the court must dismiss the action. In determining whether a party is indispensable, the court will consider: (1) an alternative forum is available; (2) the extent of harm likely; and (3) whether the court can shape relief to avoid the harm.

The parties have an alternative forum because they can bring the court to state court,

which is not as limited as federal courts in the cases it can hear. The extent of possible harm to Developer is high because the court threatens to determine the contractual rights and obligations under a contract that Developer is a party to without Developer. It would also be difficult for a court to shape full relief to Lender without including Developer. Thus, because Developer cannot be joined, the federal court should dismiss the action.

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MEE Question 6

In 2015, Oscar validly conveyed an apartment building that he owned

> to my grandson Frank and his heirs so long as at least four apartments in the apartment building are rented to families with incomes below the state median income for a family of their size. If at any time fewer than four apartments are being rented to below-median-income families, the apartment building automatically reverts to Oscar.

In 2017, Oscar died owning the family home. His valid will included the following provisions:

> 1. I give my family home to my new wife, Wanda, for life, and upon her death to my daughter, Adele, and her heirs.
> 2. I give the entire residue of my estate to my wife, Wanda.

In 2020, Adele died. Pursuant to her valid will, Adele left her entire estate to Frank.

Before her death, Adele had regularly paid the property taxes on the family home because she believed that Wanda could not afford them. After Adele died, Frank told Wanda that he would not pay the property taxes because "they are your responsibility, Wanda."

Wanda accurately asserts that she cannot afford to pay the $6,000 annual property tax out of her limited income. Frank accurately observes, however, that if Wanda moved out of the home and rented it to another, she could generate at least $1,500 per month in rental income, more than enough to pay the property tax.

Until February 1, 2021, Frank had leased four apartments in the building to below-median-income families. On that date he validly and lawfully terminated the leases of all tenants in the building to begin his plan to convert all the apartments in the building to luxury apartments. As a result, beginning February 1, 2021, no apartments in the building were being rented to below-median-income families.

On February 7, 2021, Wanda learned what had happened and immediately told Frank, "I now own the building."

The jurisdiction has adopted the Uniform Statutory Rule Against Perpetuities.

1. As between Wanda and Frank, who is obligated to pay the property taxes on the family home? Explain.

2. Upon conveying the apartment building to Frank, what if any interest did Oscar have in the apartment building, and was that interest valid? Explain.

3. Upon Oscar's death, what if any interest does Wanda have in the apartment building, and is that interest valid? Explain.

4. After February 1, 2021, who owns the apartment building? Explain.

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Whether Wanda or Frank is obligated to pay property taxes on the family home

Wanda is obligated to pay property taxes on the family home. The issue is whether a life tenant or a remainderman is required to pay property taxes, and whether the annual property taxes exceed the fair rental value of the property.

Under property law, life tenants are required to pay property taxes for their life estate. However, if the property is not income-producing, the life tenant is only required to pay up to fair rental value of the property, which is usually significantly less than its fair market value. Any excess expenses above fair rental value would have to be paid by the remaindermen. Additionally, a remainderman who pays for the property taxes that should have been paid by the life tenant is entitled to reimbursement.

Here, Wanda has a life estate in the family home, as granted to her by Oscar's will. Upon Wanda's death, the remainder is to go to Oscar's daughter, Adele. Adele died in 2020, leaving her entire estate to her husband, Frank. This made Frank the holder of the remainder on the family home. As the life tenant, Wanda is responsible for paying taxes on the family home. However, the family home does not appear to be income-producing, which means Wanda may be entitled to pay less than the full amount of taxes, as her obligation is capped at the fair rental value of the property. However, Frank determined (and did so accurately) that Wanda could rent out the home for $1,500 per month, for a total of $18,000 per year. This would be significantly more than the $6,000 annual property tax amount, which means that Wanda would still be obligated to pay all $6,000 of property taxes due.

Therefore, because the fair rental value of the family home exceeds the annual property taxes, Wanda is obligated to pay all of the property taxes on the family home during her life tenancy.

Upon conveying the apartment building to Frank, whether Oscar had any interest in the apartment building and whether that interest was valid

Upon conveying the apartment building to Frank, Oscar had a valid possibility of reverter in the apartment building. The issue is whether the grant to Frank with the condition violates the Rule Against Perpetuities.

Under property law, a fee simple determinable exists when a grantor grants property to someone subject to a durational condition. This can be found with durational language, such as "so long as," "until," or "while." If the stated condition is no longer true, the property would revert back to the owner immediately. The Rule Against Perpetuities does not apply to fees simple determinable and possibilities of reverter.

Here, Oscar conveyed the apartment building to his grandson Frank and his heirs "so long as at least four apartments in the apartment building are rented to families with incomes below the state median income for a family of their size." The durational language "so long as" means that the building is Frank's (or Frank's heirs)

as long as that condition remains true. However, if that is ever no longer true, then the property would automatically revert back to Oscar, who retains a possibility of reverter. This is true even if the second sentence in the grant from Oscar to Frank was not included. It does not change the result that the property would automatically revert to Oscar, whether or not that result is specifically stated.

Therefore, because the property would automatically revert to Oscar upon the failure of Frank or Frank's heirs to meet the condition, Oscar has a valid possibility of reverter which is not subject to the Rule Against Perpetuities.

Upon Oscar's death, what interest Wanda has in the apartment building and whether that interest is valid

Upon Oscar's death, Wanda has a valid possibility of reverter in the apartment building. The issue is whether a possibility of reverter can be devised or descend through intestacy.

Under property law, a possibility of reverter can be devised through one's will or pass through intestacy. Some sources also indicate it can be transferred during life, although that is not applicable here. A possibility of reverter is still not subject to the Rule Against Perpetuities, even after it has been devised.

Here, Oscar retained a possibility of reverter when he conveyed the apartment building. In 2017, Oscar's will devised the entire residue of his estate to his wife, Wanda. This included Oscar's possibility of reverter in the apartment building. Even if Oscar had died intestate, this would have gone to Wanda as Oscar's spouse. Because this is still a possibility of reverter, it remains free from being subject to the Rule Against Perpetuities.

Therefore, because Wanda received a possibility of reverter through her husband's will (and would have received that same possibility of reverter through intestacy), Wanda has a possibility of reverter in the apartment building.

Who owns the apartment building after February 1, 2021

After February 1, 2021, Wanda owns the apartment building. The issue is whether a possibility of reverter automatically reverts back to the holder or whether judicial action must be brought.

Under property law, a possibility of revert applies automatically. That means that as soon as the condition or the prohibited activity occurs, then ownership of the building reverts back to the person who holds the possibility of reverter.

Here, Oscar's will created a fee simple determinable in Frank and Frank's heirs, as long as at least four apartments in the building are rented to families with incomes below the state median income for a family of their size. Until February 1, 2021, Frank

complied with this, and Frank was the owner of the building.

However, on February 1, 2021, Frank terminated the leases of all tenants and began his plan to convert the apartments to luxury apartments. Even though Frank terminated the leases validly and lawfully, his actions violated the grant from Oscar. This means that ownership of the property automatically reverted back to the grantor. However, since Oscar had died and left the residue of his estate to his wife, Wanda, Wanda was the one who owned the possibility of reverter and therefore owned the apartment building. On February 7, 2021, when Wanda learned what had happened and told Frank that she now owns the building, she was right.

Therefore, because Wanda had a valid possibility of reverter and Frank violated the requirements of his fee simple determinable, Wanda owns the apartment building after February 1, 2021.