

Maryland State Board of Law Examiners
FEBRUARY 2025 UNIFORM BAR EXAMINATION (UBE) IN MARYLAND –
REPRESENTATIVE GOOD ANSWERS

I hope this research assists you in advising the University on their duty to disclose under the Inspection of Public Records Act. Please let me know if I am in any way able to assist further in this matter or if you have any questions regarding my conclusions.

MEE 1
Representative Good Answer No. 1

1. Kim is not an agent to Comet Fitness when she purchases the treadmill as she had no authority to act.

An agent is someone who acts on behalf and for the benefit of the principal. There are three elements to create a Principal-agent relationship: 1) control; 2) assent; and 3) for the benefit of the principal. Control means that the principal can decide how the agent acts.

Assent means that the principal and agent consented to the agency relationship through either a discussion or agreement. Benefit requires that the agent is acting, or engaging in services for the benefit of the principal.

Here, Kim overheard a discussion with Bill and Nancy regarding the opening of Comet Fitness, and they merely stated that she should come for a job interview. Kim then overheard Bill say to Nancy, "I wish [the gym] had two more [treadmills]." Kim then took it upon herself to go to the sporting goods store that was going out of business and purchase the treadmills on her own volition. This is no way indicative of Comet Fitness' "control" as Kim, without even having the trainer job, acted on behalf of Comet Fitness. However, Comet Fitness never instructed her to do so. Assent is not satisfied as Nancy and Bill merely told Kim to come work for them, however there was no indication that Kim was even going to work for them or that this was a formal agreement. Further, Kim only said she would "think about it". Thus, there was no assent. Lastly, Kim did purchase the treadmills for the benefit of Comet Fitness, but she also had selfish goals, believing that the purchase would "impress" Bill and Nancy.

There was no agency relationship created.

2.a. Kim did not have actual authority to purchase the treadmill as the partnership granted her no express or implied authority.

An agent is granted the authority to act through either actual authority or apparent authority. Actual authority may be indicated in two ways: 1) express or implied. Express authority is straightforward, in that the principal directly grants the agent the power to act on behalf of the principal like in an employee relationship. Implied, more ambiguous, but may be inferred when the principal controls the agent and has the agent act for the benefit of the principal.

In this case, Bill and Nancy never hired Kim for the position of gym trainer, there was only conversation regarding the job. Thus, Kim was never an employee, acting as an agent under Comet Fitness, in which express authority could be granted. However, even for the more ambiguous "implied authority" there are still no facts which indicate that Kim had the authority to act on behalf of Comet Fitness. For one, Nancy and Bill had not seen Kim in several months, and two, they did not even state their need to acquire more treadmills directly to Kim, rather she overheard it in a conversation. There are no facts in which Kim realistically could have believed that she had the authority to act for the benefit of the partnership and bind it.

There is no actual authority for Kim to act on.

b. Kim did not have apparent authority as Nancy and Bill never held Kim out as an agent to the gym.

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Apparent authority may be indicated when a third party believes that someone has the power to make binding decisions on behalf of the principal.

In this case, the gym was recently opened, thus the sporting goods store may not have known the employees who were working for Comet Fitness. The sporting goods store reasonably could have believed that Kim's actions were for the benefit were sought by Comet Fitness as she specifically stated that she was acting on behalf of Comet Fitness. However, Comet Fitness never held Kim out to be their employee nor were there any facts that she was known to be an employee. Thus, she acted wholly on her own accord as she has no authority to make binding decisions on the partnership.

3. Nancy had the authority to bind Comet Fitness as she is a partner in Comet Fitness.

Partners have the ability to bind the partnership when it is within the scope of the partnership. The scope of the partnership includes generally conducted business would include areas, or purchases that the partnership usually or has engaged in. Partners do not need to receive permission from their other partners to bind the partnership.

In this case, Nancy went and bought the three treadmills with the television for Comet Fitness. Purchasing these treadmills were in the scope of the partnership as Nancy herself had purchased these versions treadmills prior, and the partnership is for a gym, which is wholly in the scope of the partnership. Nancy did not need to ask permission to acquire treadmills for the gym as they were in the scope of generally conducted business by the partnership. Further, this analysis does not change just because they are not the same color as the prior equipment. Nancy affirmed that they were suitable for the partnership and her decision should be binding.

Nancy has the authority to bind the partnership as it relates to purchasing the treadmills from the sporting goods store.

Representative Good Answer No. 2

1. The issue is whether Kim was an agent of Comet Fitness when she purchased the treadmill.

A principal-agent relationship is created through an agent's agreement to work on behalf of the principal, for the principal's benefit, and under the control of the principal. An agent has the authority to bind the principal. A common type of principal-agent relationship is employer-employee.

Here, Bill and Nancy told Kim that they had opened a gym, and that Kim should consider working for them as a trainer. Because Bill and Nancy did not agree to hire Kim, and only merely suggested Kim should consider working for them at their gym, an agency relationship was likely not created here. There was not an agreement, merely a suggestion. Further, Kim told Bill and Nancy that she would "think about it and get back to them." As such, Kim knew that she had not yet been hired as an employee.

Although agency relationships do not need to be explicit to be created, the interaction between Bill, Nancy, and Kim likely does not arise to the level of implicit creation of an agency relationship. It was not reasonable for Kim to believe that she was acting as an agent with the authority.

2.a. The issue is, assuming Kim was an agent of Comet Fitness whether she had actual authority to purchase the treadmill.

Actual authority exists when, based on a principal's words or conduct, the agent reasonably believes they have the authority to act. Actual authority is either express or implied. Actual express authority exists when a

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principal explicitly tells an agent to act on their behalf. For example, a principal telling an agent to hire employees. Actual implied authority comprises acts that are incidental to the agent's express authority. For example, if an agent had been told to hire employees, then it is reasonable for the agent to also believe they had the authority to make calls, conduct interviews, post listings, etc. in their pursuit of hiring employees.

Here, Kim did not act with actual express authority because she had not been told to purchase the treadmill. Instead, Kim overheard Bill and Nancy say that they "desperately" needed more treadmills. Kim thought that she had been hired and wanted to impress

2.b. The issue is, assuming Kim was an agent of Comet Fitness whether she had apparent authority to purchase the treadmill.

Apparent authority exists when, based on a principal's words or conduct, a third party reasonably believes the agent has the authority to act. There is no apparent authority when a third party knows that the agent lacks the authority to act.

Here, it is more likely that there was apparent authority than actual authority. The store owner is the third party in this situation. Because of the storeowner's past interactions with Bill and Nancy, it may not be unreasonable for the storeowner to have thought Kim had apparent authority to bind Comet Fitness. During Bill's conversation with the storeowner, Bill specifically said he needed one or more new treadmills.

Based on Bill and Nancy's words and actions, and Kim then picking up treadmills, they may have created the appearance of apparent authority to the storeowner.

However, there likely was not apparent authority. During the storeowner's conversation with Bill, Bill told him that Comet needed more treadmills and that he--Bill--would be over to check them out. Had Bill told the storeowner he would send an employee to get a treadmill, it would be more reasonable for the storeowner to have reasonably relied on the appearance of apparent agency. The storeowner had no earlier interactions with Kim in which she purchased anything on behalf of Comet fitness. It was likely not reasonable for the storeowner to have relied on Kim's appearance of authority to bind the gym.

Thus, there likely was not apparent agency.

3. The issue is whether Nancy had the authority to bind Comet Fitness to the contract to purchase the two treadmills with video touch screens.

Partners are agents of the partnership. Contracts entered into by partners, in the ordinary course of business of the partnership, will bind the partnership. Each partner is personally liable for the obligations of the partnership.

Here, Nancy's purchase of the treadmill was done in the ordinary course of the partnership's business--she was purchasing treadmills for the partnership. Further, Bill had previously told Nancy that he "sure wished" the gym had specifically two more treadmills. It was reasonable for Nancy to believe she had authority to bind the partnership based on Bill's words, especially as Nancy is a general partner and acted in the ordinary course of business. As such, it is likely she had actual authority.

Further, it was likely that the storeowner knew Nancy was a partner of Comet Fitness, as the store was only 3 blocks away. As stated above, Bill told the storeowner that the gym needed new treadmills and that he would be by the store to pick up treadmills. As such, it was likely Nancy had apparent authority.

Counterargument ?

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Thus, based on both Bill's statements to her, Bill's statements to the storeowner, and the fact that the treadmills were purchased in the ordinary course of the partnership's business, Nancy likely had the authority to bind Comet Fitness to the contract to purchase the two treadmills.

MEE 2
Representative Good Answer No. 1

1. Type of First Amendment Forum

Generally, the First Amendment protects the constitutional right of free speech.

However, there are certain ways for the government to either restrict or somewhat limit speech depending on where the speech is taking place, otherwise known as the forum.

For the purposes of First Amendment speech protection and regulation, there are four different types of forums: (1) public forums; (2) designated public forums; (3) limited public forums; and (4) non-public forums. Each different type of forum has different rules for what type of speech can be regulated, and the standards that must be met in order for that regulation to be valid.

Public forums are places where public speech is historically and traditionally known to take place. Sidewalks and public parks are typical examples of public forums. In public forums, an ordinance restricting speech must be both content and viewpoint neutral, unless the government can prove a substantial and compelling interest in restricting that speech. The government actor must also prove that there is no less restrictive means for achieving this interest.

Designated public forums are forums that is ordinarily not considered public, but is held open to the public at designated times or for designated purposes. A typical example of this would be a school that allows organizations to hold meetings in their classrooms after school hours. In a designated public forum, content-based restrictions are allowed, but viewpoint-based restrictions are not allowed. Ordinances restricted speech in a designated public forum are subject to time, manner, and place restrictions as well. There is also a requirement that the government use the least restrictive means to achieve the purpose of the ordinance.

Limited public forums are forums that are open to the public, but for limited purposes.

An example of this would be a courthouse. In a limited public forum, an ordinance attempting to restrict speech can be both content-based and viewpoint-based. It is also subject to time, manner, and place restrictions. There is not a requirement that the government use the least restrictive means analysis in these forums.

A non-public forum is a forum that is privately owned and may regulate or restrict speech based on both content and viewpoint. There need not be any least restrictive means analysis.

Here, the pedestrian median strip is covered with grass and trees, but has 10 feet paved segments on each end. The ordinance states that the definition of the median strip for the purposes of this ordinance is the paved part of the strip. This pedestrian median strip is the most similar to a public sidewalk, supported by the fact that ordinances approving signs on trees and poles in median strips also address carrying signs on sidewalks adjacent to public roadways.

Therefore, the pedestrian median strip would be considered a public forum for First Amendment purposes.

2. Content-Based or Content-Neutral Regulation

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The issue is whether the ordinance, in banning persons on the median strip from communicating with drivers, is a content-based or content-neutral restriction. This classification will impact whether the ordinance is valid, considering that the median strip would be considered a public forum. As stated above, a public forum cannot restrict speech based on content.

Here, the ordinance states that no person “shall communicate or attempt to communicate with occupants of vehicles passing by or stopped near the pedestrian median strip.” The ordinance does not list any specific content that is prohibited. Though the Town council has received complaints about solicits asking for money, the ordinance does not mention solicitation or any such specifics as to content.

Therefore, the Town ordinance would be considered a content-neutral regulation of speech.

3. Potential Violation if Content-Based

If the ordinance were to be content-based, then applying it to the man who held up a sign stating his opposition to a candidate for Town council would likely violate his First Amendment rights.

The rules for restricting speech in a public forum are stated above. If the ordinance were to be considered to restrict content based on solicitation, then the ordinance being applied to the man would violate his rights because the ordinance would not apply to him.

If the ordinance were to be considered to restrict speech with the content of being “distracting,” since the preamble to the ordinance explains that its purpose is to promote traffic safety and prevent pedestrians from engaging with drivers in a distracting manner, then the ordinance would properly apply to him, but it would violate his First Amendment rights because public forums cannot restrict speech based on content unless the government can prove a substantial and compelling interest. Because other Town ordinances allowing posting signs trees, poles, and carrying them on sidewalks adjacent to public roadways, this shows that the ordinance regarding the pedestrian median strip to promote traffic safety is not substantial or compelling enough for the Town to meet that burden of proof.

Therefore, if the ordinance were content-based, applying it to the man would violate his First Amendment rights.

4. Potential Violation if Content-Neutral

If the Town ordinance were content-neutral, it would likely still violate the man’s First Amendment rights if applied to him because it is not the least restrictive means for achieving the ordinance’s purpose.

The rules for regulation of speech in a public forum are listed above. The Town ordinance must survive a no less restrictive means analysis in order for it to be valid, even if it is content neutral.

Here, the other Town ordinances that allow posting approved signs on trees and utility poles in median strips and the posting and carrying of signs on sidewalks adjacent to public roadways shows that the ordinance as applied to the man carrying his sign is not the least restrictive means for promoting traffic safety near the pedestrian median strip. If the man’s type of speech is permitting in other similar forums by other Town ordinances, it would not be valid as applied to the man in this case.

In conclusion, if the ordinance were content-neutral, it would still violate the man’s First Amendment rights if applied to him.

Representative Good Answer No. 2

1. The issue is whether Kim was an agent of Comet Fitness when Kim purchased the treadmill.

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A principal/agent relationship is formed when the principal assents for the agent to act on her behalf, the agent assents to act for the benefit of the principal, and the principal exercises some degree of control over the agent. A principal/agent relationship often arises in an employer/employee context, though such a relationship is not necessary.

Here, Kim was not an employee of Comet Fitness; rather, she was Nancy's friend who Bill and Nancy happened to run into at a party. Although Nancy told him that Kim "should consider coming to work for them as a personal trainer," an employer/employee relationship was not formed when Kim said she would think about it and let Nancy know. Thus, it is highly unlikely that a court could reasonably find that Nancy provided assent for Kim to act as an agent of Comet Fitness. Additionally, the conversation about Kim possibly working for Comet Fitness was with respect to Kim being a personal trainer, which role would not typically include making purchases of equipment for the business.

Although the requirement of assent is not met, the facts do indicate that Kim intended to act for the benefit of Comet Fitness as she had heard Bill say to Nancy that he wished the gym had two more treadmills, and Nancy agreed that they "desperately needed to buy one or two more."

However, Nancy and Bill, as partners of Comet Fitness, did not exercise control over Kim.

Therefore, although Kim intended to benefit Comet Fitness, because neither partner of Comet Fitness assented to or exercised control over Kim's conduct, Kim was not acting as an agent of Comet Fitness when she purchased the treadmill.

2.a. Assuming Kim was an agent of Comet Fitness, the issue is whether she had actual authority to purchase the treadmill for Comet Fitness.

When an agent is acting on behalf of a principal, the agent may act under actual authority, either express or implied. Express actual authority is when the principal expressly requests that the agent take a particular course of action. Implied actual authority exists when the agent reasonably believes that such conduct is necessary to carry out the purpose of the agency relationship for the benefit of the principal.

Here, Kim did not have express actual authority, because neither Nancy nor Bill expressly asked her to purchase a treadmill on behalf of Comet Fitness. However, Kim can argue that since both partners had communicated that they wanted one or two more treadmills, she was expressly authorized. However, this argument will likely fail as these statements were an internal conversation between Bill and Nancy and were not directed to Kim.

It is also unreasonable for Kim to believe that purchasing a treadmill was necessary to carry out the purpose of an agency relationship, if any, as the only "authority" granted to Kim by a partner of Comet Fitness was to work for them as a personal trainer. Thus, Kim did not have implied actual authority.

2.b. Assuming Kim was an agent of Comet Fitness, the issue is whether she had apparent authority to purchase the treadmill for Comet Fitness.

When an agent is acting on behalf of a principal without express authority, the agent's conduct may be binding nonetheless under a theory of apparent agency. Apparent agency exists when the principal manifests to a third party that the agent has authority to act on behalf of the principal. When apparent authority exists and if the agent discloses that they are acting on behalf of a principal, the agent will not be bound to the contract, and the principal will be.

Although Bill and Nancy are acquainted with the owner of the sporting goods store, there is nothing to indicate that Bill or Nancy had made any manifestation to the sporting- goods store that Kim was authorized

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to act on behalf of Comet Fitness. Bill had called the store owner and indicated that the gym could use one more, but he never mentioned that Kim was authorized to make any purchases. Rather, he specifically said that “I’ll try to get over there to check them out.”

Though Kim told the store owner that she was acting on behalf of Comet Fitness, the disclosure of a principal is not relevant if there is no apparent authority to begin with.

Because Comet Fitness did not make any manifestations to the sporting goods store that Kim was authorized to act as its agent, Kim did not have actual authority to purchase the treadmill for Comet Fitness.

3. The issue is whether Nancy had authority to bind Comet Fitness to the contract to purchase the two treadmills with the video touchscreens.

A general partnership is a business arrangement where two or more people agree to carry out a business as co-owners for profit. In a partnership, all partners have the authority to take whatever actions are reasonably necessary to carry out the business of the partnership, and each partner may bind the partnership without the consent of the others for activities that occur in the ordinary course of business.

Here, the partnership is a gym, and it already owns five treadmills. Both partners had expressed that they wanted to acquire one or two treadmills (including Bill saying that he wishes that “it had two more”). There is nothing to indicate that the transaction was out of the ordinary course of business nor that it was unreasonable or unfair to the partnership.

Additionally, the facts indicate that the treadmills were similar to treadmills that Nancy had previously purchased for the business. Bill’s complaint after the transaction took place that “they’re nice but not the same color as our other treadmills” is not sufficient to undermine Nancy’s authority to bind the partnership in this transaction.

Therefore, Nancy had authority to bind Comet Fitness to the contract to purchase the two treadmills with the video touchscreens and thus the partnership is liable to the store owner for the cost of the two treadmills.

MEE 3
Representative Good Answer No. 1

1. Whether Brenda can show that Alan breached his duty of care based on his violation of the school-bus law.

Negligence per se is a cause of action that can be used to assert liability on a party who has violated a statute. If a party asserts this cause of action, they must show that the defendant violated the statute, the harm caused was one that the statute was meant to protect, and the plaintiff was in the class of persons that the statute was meant to protect.

Here, the statute in question that Brenda is asserting against Alan is the school bus law that prohibits vehicles from passing a stopped school bus under these circumstances. Brenda is likely unable to show that Alan breached his duty of care based on violating the statute when he impatiently swerved around her car and the bus and caused her bumper to get a gash on her driver’s side door. Although Alan clearly violated the statute in his actions and the harm that was caused is likely the kind that the statute is trying to prevent, Brenda will not be able to show that she was in the class of persons that the statute is meant to protect. This statute is likely geared towards protecting children who are crossing dangerous intersections and streets before and after school. The statute is meant

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to enforce unsafe driving, but Brenda is not in the class of persons that the statute was likely designed to protect. Therefore, she will not prevail in establishing a claim solely under negligence per se even though Alan admitted to the facts above.

2. Whether Brenda can prove Alan's liability based on Alan's allegedly detaining her against her will.

False imprisonment requires a party to show that a defendant intended to confine another; actually, confined another; and the other party has knowledge of the confinement or was harmed by it and there were no reasonable means of escape at that time.

Here, Brenda is likely to show that she has a claim against Alan for false imprisonment. When Brenda pulled into a gas station lot, ran into the restroom, and locked the door as Alan began pounding on the restroom door, shouting "Come out so you and me can have a talk, if you know what I mean!", and "I've got all day, so get comfortable" this was the beginning of the intent to confine. Although Alan did not physically force Brenda into the bathroom for the 20 minutes that she stayed inside the stall, others in her situation would not have found it safe to leave. Alan's aggression on the highway leading up to this incident, plus the compounding threats for Brenda to come out of the stall establishes the knowledge that Brenda was confined and that she had no other reasonable means of escaping because opening the door to leave, at the moment Alan was right behind the door, was not reasonable. Therefore, there is likely a cause of action for false imprisonment against Brenda.

3. Whether Alan's admission is enough to prevail in a motion for partial summary judgment to establish that Alan is liable on the wrongful death claim.

Negligence requires duty, breach, causation, and damages.

A summary judgment motion is granted when the moving party is able to show that there is no genuine dispute of material fact. If the nonmoving party is able to refute this by presenting compelling evidence to show that there is a genuine dispute of material fact, the motion must be denied.

Duty

Although it can be established that Alan had a duty to exercise reasonable care while driving on the road, there was no direct duty owed to the family patient that Brenda was responsible for performing the scheduled surgery on.

Breach

However, Alan submits to the facts in this case and admits that he breached his duty of due care when he was driving. He also submits to the actions he engaged in when following Brenda to an exit that was not his to continue to harass her. People in similar circumstances would not think it was reasonable for Alan to engage in such behavior.

There was a breach because he did not act as a reasonably prudent person when driving or when engaging in the kind of conduct that caused Brenda to be confined in a bathroom for over 20 minutes.

Causation

There was actual causation to Brenda's confinement and the patient's death because if Brenda had arrived 15 minutes sooner, she would have arrived in time to perform the surgery and the patient would have likely survived. The issue here is with proximate cause because it is not foreseeable for Brenda to be held up from performing the surgery thereby causing the patient's death.

Damages

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Although the damages are present, a loss of life, negligence is not likely to be proven from all elements. Therefore, these facts are not sufficient to grant a motion for partial summary judgment in the family's wrongful death claim.

Representative Good Answer No. 2

1. The first issue is in a negligence action against Alan, can Brenda establish that Alan breached his duty of care based solely on his violation of the school-bus law

Negligence per se is established when there is a statute that is seeking to (1) protect a specific class of person, (2) the statute established to protect against the harm that resulted and (3) the expected harm occurs as a result of the defendant's act.

There is this jurisdiction, there is a law that prohibits passing a stopped school bus when the school bus has its flashing red lights and side-mounted stop sign extended.

Here, Alan was driving a dump truck behind Brenda's car and saw the bus's extended stop sign. Impatient, he swerved around Brenda's car and the bus. As he did so, his truck's bumper scraped a gash into Brenda's driver's-side doors.

There is a statute in place but the statute is likely designed to protect students getting on and off of the school bus. Not to protect cars from being scraped while another driver attempts to pass them.

Therefore, Brenda is likely not able to establish that Alan's act was in fact negligence per se.

2. The second issue is whether Brenda can establish Alan's liability based on Alan's allegedly detaining her against her will

False imprisonment or confinement exists when (1) the defendant intends to confine a person, (2) the person is aware of the confinement and does not believe there is a way to escape and (3) the defendant actually confines the person. Consent is a defense to false imprisonment or confinement.

Here, after having several encounters with Alan on the highway including having Alan lowering his window and yelling "Oops! Don't miss the exit to the clinic!" Brenda exited the highway while traveling nearly 90 mph so she could exit the highway and then double back toward the hospital. Brenda then pulled onto a gas station lot, ran into the restroom and locked the door. Alan pounded on the restroom door, shouting, "Come out so you and me can have a talk, if you know what I mean!" Brenda shouted back, "I'm not coming out until you leave". Alan yelled back, "I've got all day, so get comfortable". Even though Brenda was waiting in fear in the restroom for 20 minutes. Alan will likely argue that she put herself in the restroom. That he did not have anything to do with confining her to the restroom. Though he may have tried to intimidate her with his yelling and choice of words, Brenda was likely not detained against her will.

Therefore, Brenda will not be able to establish Alan's liability of detaining her against her will because she put herself in the bathroom.

3. The third issue is whether Alan's admission is sufficient for the patient's family to prevail in a motion for partial summary judgment establishing that Alan is liable on the family's wrongful-death claim

To properly grant a motion for summary judgment, the court will look that there is no genuine issue of material facts such that the moving party is entitled to judgment as a matter of law. The court will look at all documents weighing the evidence in the light most favorable to the non-moving party. Such that the jury

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would not find the non-moving party. The jurisdiction's rules mirror the Federal Rules of Civil Procedure. The jurisdiction expressly allows common-law negligence actions despite the death of the injured party.

Here, the patient died moments before Brenda arrived at the hospital to perform emergency surgery. Due to Alan's actions, Brenda arrived one hour later than she would have had Alan not prevent her from exiting the highway. If Brenda had arrived 15 minutes sooner, she would have arrived in time to perform the surgery and the patient would have likely survived.

Alan has admitted to all of the facts described above. This means that there is no genuine issue or dispute of material facts in this case. The court would look at the facts in the light most favorable to Brenda, the non-moving party. The court would find that a jury could find that if not for Alan's not allowing Brenda to exit the highway and by following into the gas station, Brenda would not have arrived late to the hospital.

Therefore, Patient's family is likely to prevail in a motion for partial summary judgment establishing that Alan is liable on the family's wrongful-death claim.

MEE4

Representative Good Answer No. 1

1. The Federal Court should likely remand the case back to state court for lack of subject matter jurisdiction.

At issue is the amount in controversy and whether the federal district court should apply State A law.

Under the Federal Rules of Civil Procedure (FRCP), a federal court must have subject matter jurisdiction over a case in order to be able to rule on the issues. A court can have federal question jurisdiction or diversity jurisdiction. Federal question jurisdiction arises when the plaintiff seeks to enforce a right granted by federal statute, treaty, or the U.S. constitution. The case here is a defamation torts case and therefore there is no federal question jurisdiction. A state law claim (such as a torts case) may get into federal court with diversity jurisdiction. Diversity requires complete diversity between the parties and an amount in controversy over \$75,000. Complete diversity is measured on the citizenship of the litigants and means that no plaintiff can be a citizen of the same state as any defendant. A natural person is a citizen of the state in which they are domiciled. The amount in controversy must be plead in good faith but will not be successfully challenged unless it is proven to a legal certainty that the plaintiff cannot recover the amount they have plead.

Here, complete diversity exists. Coach is domiciled in state A and therefore a citizen of state A. Fran is domiciled in State H and therefore a citizen of state H. Thus, the parties are citizens of different states. As to the amount in controversy: Coach plead damages of less than the amount in controversy in state court and stipulated that she would not seek any other damages. This stipulation is binding under state A law. So the issue is whether the stipulation is binding on the Federal District Court for State A. Under the Erie Doctrine, a federal district court sitting in diversity will apply its own procedural rules but will apply the substantive law of the state in which it sits. Here, the district court is in state A and so will apply state A substantive law. The issue becomes whether the State A law that considers Coach's stipulation binding is substantive or procedural. Where there is a valid Federal statute of procedure like the FRCP or Evidence rules on point, the rule is procedural and federal law applies. Where that is not case, the inquiry is as to whether application of the rule is outcome determinative and would encourage forum shopping. If it would, the rule is substantive. Here, no federal rule is on point. The rule is likely substantive because it limits the amount that a plaintiff can recover in a lawsuit and is in that sense outcome determinative. It certainly could encourage forum shopping because it

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will determine the amount of a plaintiff's recovery. Therefore, the rule is likely substantive and should be applied in Federal Court in State A under Erie. Because the State A law should be applied, the amount in controversy is less than \$75,000 to a legal certainty (the stipulation is legally binding) and diversity jurisdiction is therefore destroyed. Because there was neither diversity nor federal question jurisdiction, the court should remand for lack of subject matter jurisdiction.

2. The court should not dismiss for lack of personal jurisdiction.

At issue is whether the federal court has personal jurisdiction (PJ).

Personal jurisdiction requires authorization under a state statute as well as conformity with the FRCP and the constitution. A federal court has the same PJ as the state courts sitting in the state in which it sits.

Under the state's personal jurisdiction statute, a court has "tag" personal jurisdiction when a person is served within the state unless the person is there specifically to appear in court as a party or witness. Here, Fran was in State A to see a basketball game, there is nothing in the facts about a court appearance. She was served in state A and therefore the court has PJ over her. It does not matter that this was her first time in State A and she was there only for a day. This form of PJ is also authorized under the FRCP and where a state statute authorizes this form of personal jurisdiction, it will not offend the constitution.

PJ was therefore proper in the federal court.

3. The court should not dismiss the case for lack of venue.

At issue is whether venue in state A was proper.

Under the FRCP, venue is ordinarily proper in the state where a substantial portion of the events or omissions leading to the case occurred or where any defendant resides.

However, in the case of a removal to state court, venue is proper in the federal court embracing the state court from which the case was removed.

Here, the case was removed from state court in State A and Fran was not a resident of state (which would have barred removal). Assuming that the state A federal court has subject matter and personal jurisdiction, venue is proper in the federal court embracing the state court in which it sits.

Venue was therefore proper in the Federal District Court for State A.

Representative Good Answer No. 2

1. The issue is whether the amount in controversy alleged in the complaint is controlling for purposes of diversity of citizenship jurisdiction.

Federal courts are courts of limited jurisdiction. To hear a case, they must have subject matter jurisdiction. Removal of a case from state court to federal court is proper when the case could have initially been filed in federal court, that is when there is federal question or diversity of citizenship jurisdiction.

For federal question jurisdiction, the plaintiff's claim in their well pleaded complaint must arise under federal law or the constitution. This is a state law defamation claim, therefore there is no federal question jurisdiction to base removal jurisdiction on.

Diversity jurisdiction exists when there is complete diversity (that is, each plaintiff is a citizen of a different state of each defendant) and the amount in controversy is more than \$75,000. Citizenship for natural persons

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is their state of domicile. The amount in controversy is established by what is pleaded in the plaintiff's complaint.

Here, there is not diversity jurisdiction. While there is complete diversity (Coach is domiciled in State A and Fran is domiciled in State H), the amount in controversy in Coach's complaint is \$74,999 (under \$75,000). While Coach stated in her affidavit that she has lost more than \$130,000 in wages (which would be enough for diversity jurisdiction), she has stipulated that she will not seek damages in excess of the amount in her complaint and that stipulation is binding under State A law. Under the Erie doctrine, federal courts sitting in diversity apply the substantive law of the state in which they sit. Therefore, in assessing the amount in controversy, the State A US District Court will apply the State A substantive law, which would include the effect of stipulating about damages. Therefore, there is no subject matter jurisdiction because the amount in controversy is not established. As such, the federal court should remand the case to state court in State A.

2. The first issue is whether Fran waived her argument of lack of personal jurisdiction. Personal jurisdiction is the court's power over the defendant. Generally, lack of personal jurisdiction must be raised in the defendant's answer or first responsive motion. Failure to raise lack of personal jurisdiction constitutes a waiver. Here, because the notice of removal was filed with the federal court before Fran answered the complaint or filed a responsive motion, she did not waive her argument to dismiss for lack of personal jurisdiction.

The second issue is whether Fran has sufficient minimum contacts with State A for its courts to exercise personal jurisdiction over her. The personal jurisdiction inquiry is twofold -- first, there must be a state statute (a long arm statute) authorizing the court to exercise jurisdiction; second, the exercise of jurisdiction over the defendant must meet the constitutional requirements.

Federal courts follow the long arm statutes in the states in which they sit. Here, State A's long arm statute authorizes courts in the state to exercise personal jurisdiction over persons served with process while physically present in the state, regardless of whether they have other connections with the state. The Supreme Court has upheld such long arm statutes. Here, Fran was personally served while in State A at a basketball game.

Accordingly, the long arm statute is met.

The constitutional requirements focus on whether exercise of personal jurisdiction (PJ) over the defendant comports with notions of fair play and substantial justice. When the person purposely avails themselves of the forum state such that they could reasonably foresee and it would be fair for them to be hauled into court in that state, the constitutional requirement is usually met.

A court can exercise PJ over a defendant for all claims under general jurisdiction when the defendant is "practically at home" in the state - that is limited to the defendant's domicile. Here, Fran is domiciled in State H, therefore State A does not have general jurisdiction.

A court can exercise specific PJ over a defendant for a particular claim when the above standard is met and the defendant has sufficient minimum contacts with the forum state related to the cause of action such that they could reasonably foresee being hauled into court there. Here, Fran has such contacts. The underlying cause of action is a defamation claim. The claim is based both on statements that Fran allegedly made to people and a newspaper article from a State A newspaper that was based on Fran's rumors and included quotations that Fran made to the reporter when the reporter traveled to State H.

While the statements were made to the reporter in State H, Fran presumably knew that the reporter was a State A newspaper reporter and that the article would be published in State

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A. While Fran's only time stepping foot in State A was when she was served at the basketball game, she knew her statements targeted someone in State A and that her quotes would be in a newspaper published in State A. Therefore, the federal court would have personal jurisdiction over Fran and it should not dismiss the complaint for want of personal jurisdiction.

3. The issue is where venue is proper when a case is removed.

Venue is the question of which particular federal judicial district should hear the case. Ordinarily, when a case is initially filed in federal court, venue is proper: (1) in any judicial district in which a defendant resides, provided all defendants reside in the same state, (2) in any judicial district where a substantial amount of the events underlying the claim arose or a substantial portion of the property at issue, or (3) if options one and two fail, in any judicial district where the defendant is subject to personal jurisdiction.

Under this general rule, had the case initially been filed in federal court, venue would be proper in the district in which Fran resides, or in State A district court because that is where the claim arose -- in large part because of the article published by the State A newspaper. Similar to the PJ analysis, because no responsive motion or answer was filed, venue (which is lost if waived), was not waived.

However, when a case is removed from state court, venue is proper in the judicial district encompassing the state court. Here, venue is proper assuming that State A has only one district or that the district court for State A encompasses where the state court the case was initially filed in was. Accordingly, venue is proper and the court should not dismiss the case for improper venue.

MEE5
Representative Good Answer No. 1

1. The bank's original video recording of its lobby, counters, and tellers from April 18, 2024, which shows David stopping at the counter in the lobby and interacting with the teller is admissible. First, the video is relevant. Relevance is rule 401 and requires that evidence make a fact of consequence more or less likely. Here, the video would be relevant because it would make the fact of consequence that David is the one that gave the check to the teller on April 18 more likely.

Under 403, any potential prejudice of this evidence would not be substantially more prejudicial than probative, especially because this evidence is highly probative.

Finally, evidence is admissible through someone who can testify as to the authenticity and lay the foundation for the video. Typically, videos come in through the individual that took the video or someone who can identify and can speak to the events within the video. Here, the Bank investigator is an employee of the bank. He also reviewed the original video recording taken by the Bank's security cameras on April 18, 2024. The Bank Investigator can identify the bank, the lobby, the counters, and the teller because he is a 10-year employee of the Bank and works in an office next to the bank.

2. The investigator's testimony as to Customer's oral complaint to the investigator is admissible. First, the complaint is relevant because it makes the fact of consequence that the signature on the check was forged more likely. It also comes in under 403, because it is not substantially more prejudicial than probative, especially because it is highly probative.

The potential issue with the oral complaint is that it is inadmissible under rule 801 of hearsay. Hearsay is the rule that prohibits out of court statements offered for the truth of the matter asserted. However, it is likely that the oral complaint is admissible under an exception to hearsay. The most pertinent exceptions would be

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present sense impression and excited utterance. Both exceptions found under rule 803 apply whether a witness is available to testify or not. Therefore, it would not matter whether the Customer was available to testify or not. If the statement came in under one of these exceptions, then the investigator could testify to it.

The facts indicate that the Customer received a notification alerting a \$1000 check, she "promptly" called the Bank, "immediately exclaimed," and was "noticeably frustrated and angry." Present sense impression could apply because this exception applies when someone is describing facts as they are occurring or shortly thereafter. However, in this case, the most appropriate hearsay exception would be excited utterance. Excited utterance exception applies when someone speaks about an event either during or shortly after and they are still under the stress or excitement of the event. Here, the facts indicate that while noticeably frustrated and angry, the Customer made the statement immediately after learning of the check. Therefore, the Customer's complaint would be admissible in the investigator's testimony.

3. The investigator's written report, if the investigator testifies that he is unable to recall both the details of the investigation and writing the report, is not admissible. First, the report is assumed to be relevant and is likely not substantially more prejudicial than probative, so it would get past the initial admissibility hurdles. However, the report would likely be hearsay. Assuming, as the question indicates that the report is not admissible as a business record, the report would not fall within the other exceptions or exemptions of hearsay.

The exception of hearsay that is most pertinent is the recorded recollections exception.

However, this exception would not be applicable here, and even if it were, the written report itself would still not be admissible. First, this exception does not apply because in order to use the recorded recollection exception, the investigator would need to remember that he had written the report as a foundational measure. The question indicates that the investigator does not recall the details of the investigation or writing the report, so his testimony would not establish the necessary foundation to use the exception. Further, even if the investigator could lay the necessary foundation for the exception, the Recorded Recollections exception allows the document to be read onto the record as testimony, but not admitted as evidence.

The investigator's report could be used to refresh his recollection, as to the writing of the report and the details of the investigation. However, in refreshing a witness's recollection, the document is not read onto the record nor is it admitted into evidence. Instead, the investigator would be able to read his report silently to refresh his recollection, and then testify independently of the report.

Representative Good Answer No. 2

1. At issue is whether the Bank's recording of the lobby, counters and tellers showing David interacting with the teller can come in.

For evidence to be admissible at trial the evidence must be relevant. Relevant evidence is said to make a material fact of the trial more probable than not. When tangible evidence is introduced at trial, the party seeking to admit the evidence must lay the foundation of the evidence. A party may do this by having a witness testify about the authenticity of the evidence.

Here, the video recording of the bank's lobby, counters, and tellers from April 18, 2024 is relevant evidence. It shows that David was present in the bank talking to the tellers in direct opposition to David's statement that he did not visit the bank that day. However, the prosecution would need to have someone with personal knowledge to authenticate the evidence. In this scenario, since the investigator is available to testify, and has been an employee for the bank for 10 years he would be able to lay the foundation. He would need to testify

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that is what is shown in the video is an accurate representation of the bank, and that there are no errors with the video recorder.

2. At issue is whether the investigator can testify at the customer's oral complaint.

Hearsay is an out of court statement stated for the truth of the matter asserted. Even if evidence is relevant it may not be admissible if it is hearsay. Present sense impression is an exception to the hearsay rule. It applies when someone says a statement right after perceiving an event. An excited utterance is also another exception to the hearsay rules. It allows statements made by a witness who just perceived an exciting or startling event to come in as long as sufficient time has not passed for their excitement to pass. However, some statements are not hearsay because they are not being offered for their truth.

Here, the statement from the customer would be hearsay because it is offered for its truth, that the customer lost \$1000. However, it is stated in the facts that the customer received the notification in her banking app, and then she promptly called customer service which directed her to the fraud investigator. It seems like not a lot of time passed since the customer perceived the notification and when she called the investigator. It is likely that this would qualify as a present sense impression exception to the hearsay rule since the customer called the investigator promptly after receiving the notification from the app when the matter was fresh on her mind.

The testimony from the customer could also qualify as an excited utterance exception to the hearsay rule. The customer probably was startled or very surprised when she received the notification that money had withdrawn from her account without her knowledge. Then she promptly called customer service which passed her to the investigator and she uttered that testimony. The woman sounded noticeably frustrated and angry when she talked to the investigator.

Therefore, although hearsay, testimony as to the Customer's oral complaint could come in as an excited utterance or present sense impression exception to the hearsay rule.

3. At issue is whether the investigator written report can under the past recollection or present recollection refreshed exceptions.

The past recollection recorded exception of the hearsay rule allows a witness to read from a record if the witness cannot recall after being refreshed. The record must have been done by someone who had personal knowledge of the event, within a short time after the event past. Under past recollection recorded the witness is allowed to read the written record to the jury, however, the party offering the evidence cannot put the record as an exhibit. The opposing party has the option to put the record as an exhibit if they want to.

Here, the investigator claims that he cannot recall the investigation and writing the report. The Prosecution can give the investigator the report for him to inspect under present recollection recorded. If after inspecting the record the investigator still cannot recall, the prosecution can have the investigator read the record to the jury under past recollection recorded. This is depending if the investigator once had knowledge of the events in the record, and the investigator wrote them down within a short time after knowledge of those events. However, the investigator would only be allowed to read the record to the jury and not put the evidence as an exhibit. In this case only the defense can put the record as an exhibit.

MEE6
Representative Good Answer No. 1

1. The Trust is a revocable trust.

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The issue is whether the trust is revocable or irrevocable.

Under the UTC, a trust that has the settlor as the lifetime beneficiary is considered a revocable trust unless the trust specifies otherwise. Further, the UTC presumes that a trust is revocable absent language to the contrary. This is the opposite of the traditional rule at common law.

Here, the trust is revocable. Alice was the settlor and the sole beneficiary of the trust income and silent as to revocable or irrevocable. The UTC presumes revocable, and the trust was therefore revocable.

2. Shirley has a vested future interest in the trust.

The issue is the character of Shirley's interest in the trust and if she has one.

A. Under the UTC, the beneficiary of trust property upon the death of the lifetime beneficiary has an interest in the trust.

Here, Shirley is to receive the trust principal upon Alice's death. This gives her a future interest in the trust.

B. Shirley has a vested future interest in the trust. A beneficiary who takes after the death of the lifetime beneficiary has a future interest in the trust. That interest is considered "vested" when the future beneficiary is named in the trust, is alive at the time of the trust, and is not subject to any condition which might deprive the beneficiary of their interest upon its occurrence.

Here, Shirley's interest is in the future because she will take after Alice's death and it is vested because it is not subject to any condition and Shirley is alive at the time of the trust's creation. It is true that because the trust is revocable, Alice could change the term of the trust and thereby deprive Shirley of her interest, but this does not make it any less vested while the terms remain as they are in the trust.

3. Shirley does not have a claim against the bank.

The issue is the rights of a future beneficiary in a revocable trust.

Under the UTC, a trustee owes a fiduciary duty of care and prudent investment to invest prudently and as a reasonable investor would. The terms of the trust also explicitly require this. Under an irrevocable trust, the trustee owes this duty to all qualified beneficiaries, both present (here, Alice) and future (here, Shirley). In a revocable trust, however, the trustee only owes this duty to the settlor and further must follow the settlor's direction even as to imprudent investments.

Here, the trust is a revocable trust because Alice was alive at the time of the investment (and likely remains so because she has not died: though it is unclear if she will live, the facts do not state that her brain or body has ceased all functioning, which would render her technically dead and the trust would then become irrevocable). Because the trust was revocable at the time that Alice directed the imprudent investment, the trustee Bank owed only a duty to Alice and had to invest according to her instructions. The fact that the investment was imprudent is of no moment.

Therefore, Shirley does not have a claim against the Bank for imprudently investing even though she would if the trust were irrevocable.

4. John has the legal authority to direct the doctor to remove Alice from the life support.

The issue is whether John can make healthcare decisions under the power of attorney.

In a state with a healthcare power of attorney act, a valid healthcare power of attorney will give rights to the holder to make healthcare decisions for the person issuing the healthcare power of attorney. By contrast, the

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holder of a future interest in a trust has no power to control the healthcare decisions of the settlor or lifetime beneficiary of that trust.

Here, Alice properly executed a healthcare power of attorney giving John healthcare power of attorney over her medical decisions conditioned on her being unable to make health-care decisions for herself. The doctor determined that Alice's stroke left her unable to make healthcare decisions, thus fulfilling the condition. John therefore had the power under the healthcare power of attorney to make healthcare decisions for Alice. By contrast, Shirley did not. Her future interest in the trust gives her no power to make healthcare decisions for her aunt. Alice should stay on the life support system.

John therefore had the legal authority to make healthcare decisions for Alice and therefore had the legal authority to direct the doctor to remove or not remove Alice from the life support system.

Representative Good Answer No. 2

1. The trust is revocable.

The issue is whether a trust silent on revocability is revocable or irrevocable.

Under the Uniform Trust Code, a trust that is silent on the revocability of a trust is presumed to be revocable. This can be rebutted by the intent of the settlor or by express wording in the trust that it is irrevocable.

Here, there is no indication that Alice intended the trust to be irrevocable and there is no express language making the trust irrevocable.

Thus, the trust is presumed to be and is revocable.

2.a. Shirley does have an interest in the trust.

The issue is whether a person has an interest in a trust when their interest is unvested, remote or contingent.

Under the Uniform Trust Code, a beneficiary of a trust includes any contingent or later- taking beneficiary. Just because a beneficiary's share is not vested, and the beneficiary will take after a settlor is deceased, does not make their interest void. Trustees owe a duty to even unascertained and contingent beneficiaries.

Here, Shirley is the sole beneficiary of the trust income after Alice's death. Just because her interest is not vested does not mean that she does not have an interest. Thus, Shirley has an interest in the trust.

2.b. Assuming Shirley has an interest in the trust, the interest is unvested.

The issue is what is the characterization for a beneficiary's share that will not take effect until the settlor is deceased.

Under the Uniform Trust Code, a beneficiary who will not take their share until the settlor of the trust is deceased possesses an unvested share in the trust. The beneficiary is a certain beneficiary.

Here, Shirley's interest in the trust income will vest as soon as Alice dies. Thus, Shirley's interest in the trust is an unvested interest in the principal.

3. Assuming Shirley has an interest in the trust, she does not have a claim against the bank for making the imprudent investment.

The issue is when a trustee is liable for imprudent investment of the trust assets.

Under settled principles of trust law, a trustee or investor of trust assets has a duty to be a prudent investor. This duty will be analyzed based on the trust investments as a whole, by examining the portfolio as a whole. The investor has a duty to diversify the trust assets, and individual trust asset investments will not be judged

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based on their individual success. However, the trustee is entitled to rely on the instruction of the settlor when making investments and the contingent beneficiaries will not have a cause of action against the trustee when the trustee makes investments pursuant to the settlor's instructions.

Here, Bank made an imprudent investment by investing 30% of the assets in stock of a company that later went bankrupt. The trust suffered a significant loss due to this investment. Although Bank would owe a duty to Shirley because she has an interest in the trust, Alice approved the investment knowing that it was imprudent. Bank is entitled to rely on Alice's instructions as the settlor when making the investments, and Shirley has no cause of action against Bank for the imprudent investment.

Thus, Shirley does not have a claim against Bank for making the imprudent investment because Bank is entitled to rely on Alice's approval of the investment.

4. Between Shirley and John, John has the legal authority to direct the doctor to remove Alice from the life-support system.

The issue is who has the authority to make medical care decisions for an incapacitated person.

Under the Uniform health care power of attorney act, a durable health-care power of attorney is valid when the executing person possesses capacity. The person designated may make reasonable health care decisions in the best interest of the incapacitated person. Here, Alice created a durable health-care power of attorney, naming John. This was conditioned on her being unable to make decisions for herself. Alice, now unable to make decisions for herself because she had a stroke and is on life support, requires someone else to make decisions for her. Even though Alice spoke to Shirley and John about her wishes to not ever be on life-support if there is little or no chance of recovery, and there is little to no chance of recovery now, Shirley does not possess the power to make those decisions. It is immaterial that Shirley wants to enact Alice's expressed wishes, and that John disagrees. John was the person who Alice appointed and executed in the position, so John has the authority.

Thus, between Shirley and John, John has the legal authority to direct the doctor to remove Alice from the life-support system because Alice executed the health-care power of attorney naming John and not Shirley.