ID: **00175** (Seat Number)

Question: 1

Exam Name: 2-2025_NYS Laptop Program for UBE_6-MEE

1)

Kim was not an agent of Comet Fitness when purchased the treadmill.

In a principal-agent relationship, an agent is authorized to act on behalf of the principal when there is an express agreement of such authority between them. The agreement can also be effective if implied. Further, if the the manner in which the actions of the agent falls under the principal's control and management, the agent relationship has been established. An agent is hence, subject to the principal's control and management of the manner in which an agent acts and an agent's act can be binding. However, an agreement has to be in place.

Here, Kim was expressly told that she should "consider coming to work for them as a personal trainer." A personal trainer, generally speaking, is something that is hired by the owner of a gym. A personal trainer is therefore likely be subject to the owners' direction, control and management of the manner in which a trainer conducts their responsibilities. However, it was merely an invitation and suggestion and Kim never expressly accepted the position. Granted, Kim did hear Bill say to Nancy that the Gym needed more treadmills but until Kim accepted, no such principal-relationship is established.

Therefore, Without such an agreement, it is unlikely that Kim is an agent.

Assuming Kim was an agent of Comet Fitness, Kim had an apparent authority.

An apparent authority exists when a third party reasonably believes that the agent has an authority to act on behalf of a principal and that reasonable belief is traceable to the agent's act.

Here, Kim told the store owner that she was acting on behalf of the Comet Fitness when she purchased a treadmill and directed the owner to send the treadmill to Comet Fitness along with the invoice for the purchase. Here, the principal is disclosed and Bill even told the owner that the gym was looking for more treadmills. As Bill said that he would try to get over to the store in person and check them out, and Kim shows up as someone who claims that she was acting on behalf of Comet Fitness, the owner's belief that Kim had an apparent authority is both reasonable and that belief is traceable to both Kim and the Owner's conducts.

Therefore, Kim had an actual authority.

Assuming Kim was an agent of Comet Fitness, Kim did not have an actual authority

An actual authority exists when an agent acts on behalf of the principal with an express consent. The consent can specify the limitations on the responsibilities. Acting on behalf of an authority that doesn't exist when the third party believes so, the alleged agent may be deemed

to have breached an implied warranty of authority.

Here, Kim never had an agreement with Both Bill and Nancy and yet she acted and spoke as if she was acting on behalf of the Gym.

Therefore, she didn't have an actual authority and could be deemed as someone who has breached an implied warranty of authority.

Nancy authority to bind Comet Fitness to the contract to purchase the treadmills because she was a general partner of Comet Fitness.

A partnership exists when two or more people as co-owners of a business carry on in pursuit of a profit. No formalities such as declaration of partnership in writing or partnership meetings are necessary. Generally, courts view sharing losses and profits as sufficient signs of a partnership. And a general partner does not need a consent from his partner or need prerequisites for authority if she acts in the ordinary course of business.

Here, both Nancy and Bill had long been discussing the importance of getting new treadmills. Nancy's decision to purchase the tradmills similar to previous purchases are reasonable, too. Even if Bill was upset and said that she had no right to make such purchases, as a general partner, Nancy's purchases were well within the boundaries of the ordinary course of business and both Bill and Nancy are bound to the contract altogether.

Therefore, there is a binding contract that Nancy had authority to bind the partnership to.

END OF EXAM

ID: **00175** (Seat Number)

Question: 2

Exam Name: 2-2025_NYS Laptop Program for UBE_6-MEE

2)

The pedestrian median strip is a public forum for the purposes of First Amendment rights protections.

The United States Constitution states that First Amendment rights are only applicable to public forums. Such forums include public roads irrespective of the fact that they are surrounded by private entities.

Here, the pedestrian median strip is a public forum because even though the paved portions of the strip are part of the crosswalk and are marked, and how Main Street cuts through the center of Town with shops, restaurants, and other private businesses located on each side, the median strip is still marked for use by pedestrians ***to cross*** the intersections on Main Street, which is a public road. Cutting through the public road indicates an utility and utilization of a public forum here.

Therefore, the pedestrian median strip is a public forum.

The Town ordinance is a content-neutral regulation of speech.

Under the Constitution, regulation of speech is two-fold: content-based and content-neutral. If a regulation is content-based, the regulation seeks to regulate the message, and the image contained in the speech, which is automatically subject to strict scrutiny. The very high burden will be on the government to prove that there is a compelling state interest necessary to achieve. However, if the regulation is content-neutral, the regulation seeks to regulate not the content but the manner, time, and place in which the speech is disseminated. For instance, a regulation of an advertisement's vibrant colors, font sizes, its numbers will not be a regulation on the content but the manner in which the advertisement is regulated. If so, then the government can overcome its burden by demonstrating that there are still other open, alternative medium/outlets for the speech, and that the regulation is not the most restrictive. This burden for the content-neutral regulation will be akin to intermediate scrutiny unlike content-based.

Here, the first clause of the ordnance merely states that no one on the strip on Main STreet shall "communicate or attempt to communicate" with the occupants of vehicles passing by or stopped near the pedestrian median strip. Here, context and totality of circumstances must be analyzed. Because the Ordinance likely came into its being after numerous complaints were received regarding unwanted solicitations directed at drivers at traffic signals, the ordinance seeks to protect the citizens in the municipality. Although the word "communicate" was used, it is ambiguous. Even though one may argue that communication per se regulates what one can

say and what one cannot say, under the circumstances, this regulation is most likely content-neutral. It is likely that the ordinance seeks to regulate verbal approach and communication and probably subsequent harassment as part of "communication," which is the manner and place in which such interaction takes place. Whether or not there are documented records to prove the intent behind enacting the ordinance is irrelevant.

Therefore, the town ordinance is content-neutral regulation of speech because it doesn't seek to regulate the actual content of the message embedded in the communication.

If content-based, the ordinance to the man with a sign violates his first amendment rights by failing strict scrutiny.

As mentioned above, if a regulation is content-based, the regulation seeks to regulate the message, and the image contained in the speech, which is automatically subject to strict scrutiny. The very high burden will be on the government to prove that there is a compelling state interest necessary to achieve.

Here, the man is entitled to his first amendment rights because he has a freedom of association (evidenced by his political expression) and speech. An ability to express a political belief freely is a guaranteed, fundamental right under the Constitution and if the ordinance were to prohibit the man from holding a sign stating his opposition to a political candidate because of these reasons renders the ordinance subject to strict scrutiny. It will be difficult for the government to prove that there exists a compelling interest necessary to achieve by such prohibition here and the government will most likely fail.

Therefore, if content based, the ordinance violates first amendment rights by failing strict scrutiny.

If content-neutral, the ordinance to the man with a sign does not violate his first amendment rights.

As mentioned above, if the regulation is content-neutral, the regulation seeks to regulate not the content but the manner, time, and place in which the speech is disseminated. For instance, a regulation of an advertisement's vibrant colors, font sizes, its numbers will not be a regulation on the content but the manner in which the advertisement is regulated. If so, then the government can overcome its burden by demonstrating that there are still other open, alternative medium/outlets for the speech, and that the regulation is not the most restrictive. This burden for the content-neutral regulation will be akin to intermediate scrutiny unlike content-based.

Here, the government will likely prevail by not violating the man's first amendment rights. Because of content-neutral regulation, the man will be allowed other open, alternative places for

him to express his political beliefs. The government could potentially provide the man with a designated time and specific location of the Main Street to protest without even touching the topic of the message inside the sign. That way, the government will likely prevail by satisfying the intermediate scrutiny-like test for the content-neutral regulation.

Therefore, there would be no violation of first amendment rights if content-neutral.

END OF EXAM

ID: **00175** (Seat Number)

Question: 3

Exam Name: 2-2025_NYS Laptop Program for UBE_6-MEE

3)

Brenda can establish that Alan breached his duty of care because of Alan's possible negligence per se

Negligence per se is also known as the statutory violation of a law is established when the violation and its affiliated injuries are what the statute was designed to protect/prevent, and the person protected is the class of people that the statutes seeks to protect.

Here, the law seeks to prohibit passing a stopped vehicle in situations of speeding. Here, both Brenda and Alan are drivers of vehicles and exposed themselves to the exact situations that the statute was designed to protect. Therefore, Brendan will likely establish that Alan breached his duty of care following violating negligence per se.

Brenda can establish Alan's liability on Alan's allegedly detaining her against her will via assault and confinement

Assault is defendant's intentional tort that intentionally puts plaintiff in reasonable fear and apprehension of an imminent bodily harm. The available defense to an assault claim is self-defense.

Here, Alan was "impatient" and swerved around Brenda's car and the bus. Brenda's changing to the left lane and speeding past Alan "angered" Alan. The court will likely view that Alan committed an assault against Brenda because Alan intentionally decided to pursue Brenda out of malice by repeatedly honking his horn and chasing after her, which effectively put Brenda in fear that Alan's truck would hit her car, which is equivalent to an apprehension of an imminent bodily harm. Brenda's assault claim against Alan gains strength because Alan intentionally blocked Brenda from changing into the right lane and chased after another 10 miles and chased after and forced her into the bathroom and locked the bathroom, unable to leave for twenty minutes out of pure fear and threat. There could additionally be another intentional tort claim involving confinement/detainment combined with assault because of forcing her into the bathroom for solid twenty minutes after chasing after over 10 miles.

Therefore, Alan will likely be liable for assaulting and detaining her against her will.

Alan's admission will likely be sufficient for the patient's family to prevail in a motion for partial summary judgment.

FRCP 56 provides that summary judgment can be granted to a party as a matter of law if there are no genuine disputes to material fact in light most favorable to the nonmovant. For the

negligence causing wrongful death to survive, the plaintiff will have to establish whether or not the defendant's negligence in causing the wrongful death was foreseeable.

Here, assuming Alan admits all of his acts ranging from threatening and putting Brenda in fear and intentionally chasing after her for over 10 miles and detaining her against her will for twenty minutes, the court will likely see that there are no genuine disputes to the material fact. However, there needs to be step further to establish foreseeability because the plaintiff here now is the patient's family. It is likely that Alan's reckless behaviors should have been made clear to him and to any reasonable person that such actions obviously delayed Brenda's arrival at the hospital and given the fact that Alan saw Brenda's personalized license plate "MED DOC" and muttered and knew that Brenda was likely on her way to save a patient by labeling it as "banding a scraped knee" the foreseeability claim will be easily claimed. He was well aware that Brenda was a physician and was going to save lives and he intentionally intervened her. Combined with his admission, there would be no genuine disputes to material facts and foreseeability will also have been established.

Therefore, the patient's family will likely be granted partial summary judgment against Alan.

END OF EXAM

ID: **00175** (Seat Number)

Question: 4

Exam Name: 2-2025_NYS Laptop Program for UBE_6-MEE

4)

Subject matter jurisdiction

There are two ways to get to federal courts in terms of subject matter jurisdiction: federal question and complete diversity. A federal question subject matter jurisdiction arises when there is a sufficiently detailed federal claim arising from the Constitution, federal law, and treaties of the U.S. A complete diversity subject matter jurisdiction is established when two parties are of completely different citizenships and the amount in controversy exceeds 75,000 dollars with legal certainty. An additional claim without an original subject matter jurisdiction grounded on these two types can make its way into the court via supplemental jurisdiction if the additional claim is so related that it arises out of the same controversy and occurrence.

Here, there are no federal questions at issue so complete diversity is the only medium through which parties can get to federal courts. Coach is a citizen of State A and Fran is a citizen of State H given their domiciles. Coach's complaint only sought damages in the amount of 74,999 dollars, which fails to meet the minimum requirement for amount in controversy. More importantly, she asserted that the loss of 130,000 dollars in damages due to Fran's defamatory statements should not be sought on her behalf and the stipulation is binding under State A law. On the surface, it may seem that federal court does not have subject matter jurisdiction because of the minimum requirement for amount in controversy is not satisfied at the insistence of Coach. However, federal courts may choose exercise supplemental jurisdiction if it determines that adding the 130,000 dollars of loss in wages will serve judicial efficiency. Also, because under Erie, federal pleading law prevails if the federal procedural law conflicts with state procedural law, and because federal law may allow the addition of 130,000 dollars because it arises out of the same controversy (defamation claim), the court may exercise supplemental jurisdiction. The extent to which Coach's stipulation of not seeking the wage loss will be accepted when balanced against judicial efficiency is up to the district court's discretion.

Therefore, assuming that the court exercises supplemental jurisdiction, there will be subject matter jurisdiction. If not, and Coach's stipulation is honored, then there will be no subject matter jurisdiction and the case will have to stay in state court in A.

No dismissal for lack of personal jurisdiction over Fran

Personal jurisdiction is twofold: general personal jurisdiction and specific personal jurisdiction. General personal jurisdiction requires what is "essentially at home," indicating systematic, continuous affiliation with the forum state whereas specific personal jurisdiction requires purposeful availment and directed activities at the forum state. Specifically, specific personal jurisdiction under the Constitution requires sufficient minimum contacts with the forum state, not offending the traditional notions of fair play and justice. However, state's long arms statute is also important constitutionally because the US Constitution enables the extent to which personal jurisdiction can be exercised in accordance with the state law. The Constitution specifically carved out the long arms statute for the state law's determination.

Here, Fran is likely to have personal jurisdiction despite not having what is considered sufficient minimum contacts with the forum state because the State A law authorizes its courts to exercise personal jurisdiction over persons who are served with process while physically present in the state whether or not they have any other meaningful connection with the state. Here, Fran was personally served while attending a basketball game in State. It doesn't matter how long she had stayed or how often she had visited State A because that's the boundary set forth by the State A law. The federal court in State A will abide by State A law on this.

Therefore, there will be no dismissal for lack of personal jurisdiction over Fran.

Improper venue

FRCP governs that a venue is proper if all defendants reside in the same state, and where the witnesses and occurrences giving rise to the legal action are located, and in diversity cases, where personal jurisdiction exists.

Here, even though Fran is not a citizen of State A, because the newspaper in State A and the impact of the allegations spread there, the court will likely find that a venue is proper as damages and a wealth of evidence of allegations are likely found in State A. Also, as established earlier, in accordance with State A law, because Fran also has personal jurisdiction in State A, despite not domiciled in State A, venue in State A is proper.

Therefore, federal court should not dismiss the case for improper venue.

END OF EXAM

ID: **00175** (Seat Number)

Question: 5

Exam Name: 2-2025_NYS Laptop Program for UBE_6-MEE

5)

Admissibility of the Bank's original video recording

The Best Evidence Rule sets forth that original copy of a document and video must be provided to prove what it purports to portray unless the original copies are destroyed and unavailable on reasonable grounds such as obtaining the original copy would be unlawful. Evidence is also relevant if a material fact is more probable than not with its presence as long as it's not substantially weighed by the FRE 403 dangers such as jury confusion, delay.

Here, the Bank's original video recording will likely be admitted by the court because it's the original copy and satisfies the best evidence rule. Once admitted, finding similarities and differences between David and the purported person to be David may be referred to the jury finding. And the evidence at issue is relevant because the presence of this video makes it more probable than not that David could be the perpetrator of a crime. And None of the FRE 403 dangers will be a factor against admission. Rather, the jury will likely assess the video after admission.

Hence, the original video recording will likely be admitted.

Investigator's testimony as to customer's oral complaint to the investigator

FRE provides that hearsay is an out of court statement offered to prove its truth asserted therein. Admission by an opposing party for example is not hearsay. There exist a number of hearsay exceptions such as present sense impression, excited utterance, business records, etc which do not require declarant's availability.

Here, because Customer promptly called Bank to complain as soon as the check had just been charged to her account, and was transferred to an investigator, and exclaimed "I didn't write that check that you just charged to my account!" the hearsay statement will likely be admitted under the excited utterance and present sense impression exceptions. Because these exceptions are allowed regardless of declarant's availability, the statement will be admitted.

Therefore, the oral complaint will be admitted.

Investigator's written report will be admitted to refresh her memory during the

testimony only

FRE allows a witness on stand during testimony to refresh her memory if she cannot recall both the details of the investigation and writing the report under the hearsay exception. However, it comes with a limitation: while she can glance at the report to refresh her memory and continue testifying, the report cannot be admitted into the record/exhibit unless expressly agreed by the opposing party and gives the opponent a chance to review the report. This exception is distinct from admission of a business record because of the requirement that witness not be able to recall.

Here, the report details Customer's complaint, describing the video recording and attaching copies of the check at issue and a copy of Customer's signature from Bank's records. In accordance with FRE, the report will be allowed for the investigator to refresh her memory if she testifies that she is unable to recall both the details and writing the report.

Therefore, the written report will be admitted to refresh her memory during the testimony.

END OF EXAM

ID: **00175** (Seat Number)

Question: 6

Exam Name: 2-2025_NYS Laptop Program for UBE_6-MEE

6)

The Trust is revocable under the UTC

Under the UTC, when a trust is silent as to whether it is revocable or irrevocable, the default is that the trust is revocable and hence amendable. Also, when the testator of a trust executes a durable health0care power of attorney conditioned upon the declining health, it adds to the revocability.

Here, because the trust is silent as to whether it was revocable or irrevocable, in compliance with the UTC, the trust will be deemed revocable and thus amendable at any time. Also, Alice named John and her neighbor to make healthcare decisions for her expressly conditioned upon her declining health. This signals, though silent, that Alice intended her trust to be revocable by naming these individuals to exercise power.

Therefore, the trust is revocable.

Shirley's interest in the trust

A trust is a fiduciary relationship between a testator, a trustee with interests bestowed upon beneficiary. To establish a valid interest in the trust, there needs to be a capacity, intent, ascertainable beneficiary, property/asset with a valid purpose, and the sole trustee and the sole beneficiary must not be the same person. Upon the testator's death, the residuary interest in the trust passes to the trust principal, validly giving her an interest in the trust.

Here, Shirley had both capacity and intent when she had just created the trust. The sole trustee and the sole beneficiary are not the same as they are the bank and herself and even though unclear, there are "trust assets" that can be invested only in prudent investments. Therefore, there is a valid interest in the trust and consequently, Shirley has a valid residuary interest in the trust.

Shirley has a special testamentary power/interest in the trust

UTC provides that the testator who appoints to benefit herself has a general testamentary power in the trust. Anything non-general will be considered special testamentary power, arising from conveyance from the testator upon death. The special testamentary power holder cannot appoint to benefit herself and can only pass interest in the trust to

permissible objects.

Here, because Alice named herself as the sole beneficiary of the trust income, she appointed herself to benefit herself so she has a general testamentary power/interest in the trust. Shirley will be entitled to the trust principal after Alice's death and she will subsequently enjoy her special testamentary power in the trust.

Therefore, she has a special testamentary power in the trust.

Shirley has a claim against the bank for making the imprudent investment.

Under the UTC, the special testamentary power holder can act in the best interest of the trust if the trustee does not abide by the restrictions and express conditions that testator stipulated. Also the trustee has a fiduciary duty to comply with the express condition set upon the trust and in case of breach, the trustee can be held liable.

Here, because the bank failed to invest trust assets only in prudent investments, which negatively impacts Shirley's future interest, Shirley has a valid claim against the bank. It is irrelevant whether or not Alice had approved the investment knowing that it was imprudent. The trustee has a fiduciary duty to abide by the condition, which has nothing to do with Alice's competence. The fact that the trust officer disregarded a breach of fiduciary duty as "you win some and lose some" provides further grounds that there is a breach, which Shirley has a valid claim against the bank.

Therefore, Shirley has a valid claim against the bank.

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

Under the UTC, testator's intent prevails and courts in modern days pay close attention to and weigh in on the testator's intent upon testator's death when there are ambiguities involving the trust.

Here, Alice clearly told John and Shirley that she didn't want to be on life-support. John did not honor Alice's wishes that were made clear repeatedly. Because Shirley's decision and argument is consistent with Alice's intent, she alone has the legal authority to direct the doctor to remove Alice from the life support system.

Therefore, Shirley's opinion prevails.

ID: **00175** (Seat Number)

Question: 7

Exam Name: 2-2025_NYS Laptop Program for UBE_2-MPT

7)

From: Examinee

To: Elise Tan

Date: February 25, 2025

Re: Peter Larkin -- Defense of housing discrimination claim

MEMORANDUM

INTRODUCTION

The purpose of this memorandum is to assess our client Peter Larkin's likelihood of success in his defense to plaintiff Martin Turner's complaint in which he claims that Peter Larkin violated the federal Fair Housing Act, 42 USC § 3601, due to his familial status.

ANALYSIS

1. **Mr Larkin's claim that because single parent households do not accompany dual incomes, raising doubts about timely payment of the rents and hence he did not violate the FHA is unlikely to be a successful defense because he did not make a single inquiry into finances when denying housing rentals**

The three-part burden-shifting set in McDonnell provides:

First, bear the initial burden of proving a prima facie case of housing discrimination by a preponderance of the evidence. To establish a prima facie case of discrimination under the FHA, plaintiffs must show that (1) they are a member of a protected class, (2) that they applied for and were qualified to rent the dwelling, (3) that they were denied housing or the landlord refused to negotiate with them, and (4) that the dwelling remained available. The term "applied for" is interpreted broadly and includes inquiries into the availability of a dwelling. "Qualified to rent" means that the individual meets such factors as minimum credit score, rental and eviction history, minimum monthly income, landlord and professional references, and criminal background. Second, if a plaintiff establishes a prima facie case of discrimination, a presumption of illegality arises and the burden shifts to the defendant to article legitimate nondiscriminatory reasons for the challenged policies. Last, if the defendant satisfies this burden, the plaintiff has the opportunity to prove by a preponderance of the evidence that the nondiscriminatory reasons asserted by the defendant are merely pretext for discrimination. Further, the FHA defines familial status as one or more individuals (who have not attained the age of 18 years) being domiciled with a parent or someone with an equivalent custodial

relationship. 42 USC Section 3602(k).

In Karns, Karns had two children under the age of 18 who resided with her. Karns demonstrated that she was denied housing. She inquired about renting the apartment and was qualified to rent the apartment. Dickson, the property owner, refused to negotiate with her and the apartment available when Karns made her second call to inquire about the apartment. So, Karns has made a prima facie case of discrimination based on familial status under the FHA. Similarly, here, Mr. Turner demonstrated that he was denied housing and he has three minor children. He similarly exchanged text messages with Mr. Larkin, asking questions about renting the apartment at issue and given his credit score, and occupation, he was qualified to rent the apartment. Finances do not seem to be an issue here. While the instant matter does not document a second exchange of communication, which was more apparent in terms of alleged denial of housing in Karns than here, Mr. Turner can make a prima facie case of discrimination based on familial status under the FHA as well.

The court in Karns agreed with the defendant's argument that she was clearly more concerned with financial matters than the makeup of Karn's family because she expressed her need to pay her mortgage, addressing that her financial argument is merely pretextual for discrimination. There, Dickson asserts two nondiscriminatory reasons for her refusal to negotiate with Karns: (1) she was concerned about karn's finances and (2) she was concerned that Karns was unmarried. Evidence shows both of these reasons are pretextual. However, Dickson's messages do not support that the only concern was Karns's ability to pay the rent. After learning Karns was an unmarried mother of two minor children, Dickson immediately declined to negotiate with Karns for the rental. It must be noted that the only thing known about Karns was the single parent status with minor children. The important part here is that Dickson never asked a single question about Karns's finances nor did she at any point in the conversation. She did not have any information as to Karns's income, credit history, assets or liabilities. Under these circumstances, it does not support that Dickson refused to rent to Karns because of concern about finances. Rather, Dickson's refusal was based on the fact that Karns was a single parent with two minor children, which was the only basis upon which ability to pay rent could be established.

Similarly, in the instant matter, the excerpt from HUD Administrative Complaint Form indicates that Mr. Larkin immediately paused and said "I don't know. I need to think about that. I'll get back to you" which provides grounds for immediate refusal. Even though Mr. Turner has good rental history, good credit score, and a stable employment as a data analyst (and he specifically said that he can "easily" afford the apartment), not a single time did Mr. Larkin attempt to make any inquiries into Mr. Turner's finances. If a financial and stability were his priority, it would have been helpful for his defense that he took actions to address such care and concern. The text messages do not indicate any such thing. Further, Mr. Turner was not

contacted after the initial messaging. Further, the fact that Mr. Larkin has had almost identical allegedly discriminatory interactions with others such as Jake could be used against Mr. Larkin in his defense that finances were his primary concern.

Therefore, Mr. Larkin will be unlikely to be successful in his defense that his discrimination was based on finances and stability rather than familial status.

2. Mr. Larkin's maximum number of people per unit policy will likely be defeated by Mr. Turner's claim because Mr. Turner can raise a prima facie case by demonstrating that it's overbroad and could have used a less restrictive means.

The FHA makes it unlawful to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of familial status. 42 USC 3604(a). Familial status refers to the presence of minor children in the household. 42 USC 3602(k).

Similar yet distinct from the aforementioned McDonnell test, Garcia sets forth another test when it comes to an occupancy policy that has a disparate impact because of familial status. First, the plaintiff tenant must make a prima facie showing that a challenged practice caused or will predictably cause a discriminatory effect. Second, if the plaintiff makes this prima facie showing, the burden shifts to the defendant landlord to prove that the challenged practice is necessary to achieve one or more substantial, legitimate, nondiscriminatory interests, and third, if the defendant landlord meets the burden at step two, the burden shifts back to the plaintiff, who may then prevail only if they can show that the substantial, legitimate, nondiscriminatory interests supporting the challenged practice could be served by another practice that has a less discriminatory effect. Courts apply this disparate-impact analysis when analyzing a facially neutral policy.

In Baker, the court established that there was a prima facie showing of a disparate impact. The defendant's bedrooms plus one policy impacts families with minor children more than it does the general population. Minor children often share bedrooms and families with minor children tend to have larger households than families without minor children at home. Similarly, here, it is clear that Mr. Turner also had a disparate impact on him and his children. It is evident that all three of his minor children are bound to share the bedrooms in the small two-bedroom apartment.

Next, as for the nondiscriminatory reason for policy, the burden shifted to defendant to articulate one or more substantial, legitimate, nondiscriminatory interests served by its policy. Defendant there asserted that its occupancy policy avoided the risk of large groups of students overpopulating units in an attempt to reduce their rental payments. Defendant Garcia articulated a substantial, legitimate, nondiscriminatory interest served by its practice -- avoiding renting to groups of college students. Here, similarly, Mr. Larkin is concerned with the character of the

neighborhood where there have been a number of younger people in their early 20s. The neighborhood is close to Slate Street where it's filled with nightclubs and there have been issues with young people cramming four people in a two-bedroom apartment to keep their housing costs down, which is injurious to Mr. Larkin's legitimate financial interests.

Lastly, in Baker, the burden shifts back to plaintiff to demonstrate that defendant's policy is overbroad or that there is a less restrictive means to achieve defendant's goal of avoiding renting to groups of college students. Plaintiffs there argued that defendant's policy regarding the number of people living in apartments of various sizes is overbroad because it is far more stringent than the requirements of the Creekside Municipal Code. Unlike the defendant's policy, the Code is stated in terms of number of people per square foot of living space. The code allowed up to 8 people to live in an apartment of this size. Occupancy of the unit by the seven members of the plaintiff's family would therefore be allowed under the Code. In contrast, the defendant's policy states that three-bedroom apartments can only be occupied by a maximum of four people. The court has held that in cases of alleged familial-status discrimination, a significant mismatch between occupancy limits set by a municipal code and those set by a landlord is evidence that the landlord's limit is overbroad. In Baker, the mismatch is clear: 8 versus 4. The plaintiffs in Baker correctly noted that this difference constitutes a significant mismatch and proved that the defendant's policy is overbroad.

Here, Section 15 Maximum occupancy of dwellings from the Centralia Municipal Housing Code also provides that there shall be no more than four people in a dwelling of a size between 451 and 700 square feet. Mr. Larkin's apartment that the plaintiff was seeking to rent is 500 square feet. In accordance with the Code, Mr. Turner and all of his 3 minor children are allowed statutorily. Hence, Mr. Larkin's policy is likewise overbroad.

Further, the Bakers could also show that Garcia could use a less restrictive means of meeting its stated goal of avoiding renting to large groups of college students. Namely, the Bakers demonstrated that the information collected by Garcia' rental application allows the rental company to tell the difference between a group of college students and a family with minor children protected by the familial-status provisions of the FHA. Garcia didn't explain why it applies the occupancy policy regardless of whether those seeking to inhabit its apartments are college students rater than families with children too young to attend college. The instant matter raises the exact same question: can Mr. Larkin provide reasoning as to why he applies the occupancy policy when he can easily tell the difference between college students and applicants with minor children protected by the familial-status provisions of the FHA upon receiving an inquiry text message or a housing application? Thus far, we have seen no such cogent explanation from our client.

Therefore, similar to Baker, Mr. Turner will likely be successful in his claim that Mr. Larkin's

housing policy is both overbroad and that his policy could be achieved with a less restrictive means.

CONCLUSION

For the foregoing reasons, both of Mr. Larkin's defenses will be unlikely to be successful.

END OF EXAM

ID: **00175** (Seat Number)

Question: 8

Exam Name: 2-2025_NYS Laptop Program for UBE_2-MPT

8)

TO: Loretta Rodriguez

FROM: Examinee

Re: Professor Eugene Hagen matter

MEMORANDUM

INTRODUCTION

This memorandum assess whether or not each of the four requested records pursuant to the State of Franklin's Inspection of Public Records Act should be produced or not while keeping in mind that it is in our best interest to protect as many requested documents as possible from disclosure.

ANALYSIS

1. Professor Hagen's annual performance reviews completed by the Dean of the UF School of Law from 2019 to the present

Newton held that IPRA exemption applies to letters or memoranda in their entirety because the legislature intended the phrase letters or memoranda that are matters of opinion in personnel files to include items such as letters of reference, documents concerning infractions and disciplinary action, personnel evaluations, opinions as to whether a person would be rehired or as to why an applicant was not hired and any other matters of opinion. Newton. These documents as a whole are opinion information, a reading consistent with the plain language of the exemption. The locations of the record are irrelevant and the nature of the document itself is the guiding principle. Fox.

Here, Professor Hagen's last two annual performance reviews should be exempted from disclosure because such internal performance reviews within the boundaries of a public school clearly fall under the category of matters of opinion. The record of his absences, and a wealth of general information regarding classes he has taught the quality of his teaching, and the committees he served, what publications he completed, the quality of his publication continue to support the claim that this is a matter of opinion in personnel files.

Therefore, the annual performance reviews should be withheld from disclosure.

2. Any complaints about Professor Hagen submitted by members of the public to the UF School of Law should be exempted from disclosure

Courts have long held IPRA's core purpose of providing access to public information, encouraging accountability in public officials. Fox. A citizen has a fundamental right to have access to public records. Fox. The public's right to inspect, however, comes with limitations. Fox. IPRA contains narrow statutory exemptions: "letters or memoranda that are matters of opinion in personnel files" are exempted from disclosure under IPRA. Section 14-2(a)(3). Interpreting this requires a determination as to what the legislature intended to include within matters of opinion in personnel files. The location of a record in a personnel file is not dispositive of whether the exemption applies but what matters is the nature of the document itself. Fox. To hold that any matter of opinion could be placed in a personnel file, and avoid disclosure under IPRA would be a violation. Fox.

The Fox court ruled that the legislature intended to exempt from disclosure matters of opinion that constitute personnel information of the type generally found in a personnel file such as information regarding the employer/employee relationship such as internal evaluations, disciplinary reports or documentation, promotion, demotion, or termination information, or performance reviews. The purpose of the exemption is to protect the employer/employee relationship from disclosure of any documents that are generated by an employer or employee in support of the working relationship between them.

While the citizen complaints regarding a police officer's conduct while performing his or her duties as a public official are not the type of opinion material the legislature intended to exclude from disclosure in Section 14-2(a)(3) in Fox, the instant matter needs to be distinguished from Fox. It is not as clear as police officers when it comes to defining a tenured professor at a public university a public servant or an individual performing his public duty even if the university is a public institution. Here, beyond the aforementioned annual reviews, records show that student course evaluations were not attached; the numerous negative comments in the student course evaluations in the past two years and his tardiness for class combined with missing office hours and not responding to students' e-mail are another clear and convincing evidence that such complaints are matters of opinion. Such records are entirely different from citizen complaints about the on-duty conduct of a law enforcement officer, voluntarily generated by the very public that now requests access to those complaints in Fox.

Therefore, any complaints about Professor Hagen received by the UF School of Law should also be exempted from disclosure.

3. A chart containing the names of anyone (faculty, staff, students, or members of the public) who has made a complaint about Professor Hagen should be

exempted from disclosure

The same governing law mentioned above that is applicable to the annual reviews and the complaints applies to the question of whether or not a chart should be withheld.

Here, Kate Rogers's comment and "I thought there was something wrong with Hagen. I thought that he was a drunk. How was I supposed to know that he was using cocaine?" Rogers's Mother's "Last year I wrote a letter to Dean Williams complaining about Professor Hagen, and I wrote, 'that man has a substance abuse problem and should not be teaching our children" further strength the legal argument that matters of opinion should be exempted. The Rogers complaint are essentially a sub-category of the first two requested documents.

4. The arrest record of Professor Hagen in the possession of the UF Campus Police Department should be separated and the portion relating to Professor Sykes should be exempted from disclosure

Section 14-2(a)(4) does not exempt all law enforcement records relating to an ongoing criminal investigation. What the legislature cares about is not whether there was an ongoing investigation but what the specific content of the records is.

As for any of the specific records that has been refused to produce, confidential source or methods or related to individuals not charged with a crime must be established for an exemption. 14-2(a)(4). In Torres, the city failed to present any evidence that it had reviewed the requested records to separate exempt from nonexempt information or that it had provided any nonexempt information. Simply and broadly withholding law enforcement records because there was an ongoing criminal investigation is unlawful. Such an interpretation is overbroad and incongruent with the plain language of 14-2(a)(4). Hence, in Torres, the requested records should not have been exempted from inspection.

On the other hand, here, Professor Hagen's recent arrest for possession of marijuana on February 11, 2025 establishes that there exists a confidential source related to individuals not charged with a crime. The incident report and two photographs included details about the incident including the time, the date, the location, and the name of the confidential source. It also includes a description of what Officer Marx saw in Hagen's office and the statements made by Hagen and Sykes to Officer Marx. The two photographs are self-taken pictures showing both Professors with the bong in Hagen's office on the night in question. What is important is that Professor Sykes was not arrested because she was not in possession of a sufficient amount of marijuana to be charged with a crime. Further, despite the ongoing investigation,

CONCLUSION

For the foregoing reasons, the first three requested documents should be exempted from disclosure in their entirety and the arrest record of Professor Hagen should be separated and only the portion relating to Professor Sykes should be exempted from disclosure.

END OF EXAM