MEE®

Multistate Essay Examination

By breaking the seal on this test booklet, I certify that I am taking the Multistate Essay Examination (MEE) for admission to the bar and for no other purpose, and I affirm that I have read, understand, and agree to the following:

NCBE COPYRIGHT NOTICE AND PENALTIES. I will not copy or otherwise reproduce any MEE questions or answers by any means or disclose any MEE questions or answers to any unauthorized individual or entity before, during, or after the examination, whether orally, in writing, electronically, or otherwise. I acknowledge that the MEE is owned by NCBE and protected by US copyright laws, and that any unauthorized disclosure of its contents—in whole or in part—could result in civil liability, criminal penalties, cancellation of my test scores, denial of my bar application on character and fitness grounds, and/or other consequences, including disciplinary action if I have been admitted to practice law.

NCBE DATA USE. MEE testing information and data, including personally identifiable information, may be shared by your testing jurisdiction with NCBE for scoring, research, exam security, and statistical and other purposes. Such information and data are held by NCBE in accordance with the NCBE Privacy Policy (http://www.ncbex.org/privacy-policy), which also applies to information found in or provided by way of NCBE Accounts. NCBE may contact you via email after the test administration to ask you to participate in a voluntary survey regarding your testing experience.

NCBE LIMITATION OF LIABILITY. Each jurisdiction is responsible for handling test registration, test administration, requests for testing accommodations, and the reporting of scores for its bar examination. In the unlikely event that an error or mistake occurs or a claim arises relating to any of these activities, you agree that any remedy will be determined and provided under the exclusive authority and discretion of your jurisdiction. NCBE is not responsible for any such errors, mistakes, or claims.

If you do not agree to any of the above policies and procedures, do NOT break the seal on this test booklet and do not proceed with taking the MEE.

Read the directions on the back cover.
Do not break the seal until you are told to do so.

NCBE National Conference of Bar Examiners

302 S. Bedford St. | Madison, WI 53703 | 608-280-8550 | www.ncbex.org

© 2025 by the National Conference of Bar Examiners.
All rights reserved.

MEE Question 1

Pete lives in the northern United States. In the winter months, he earns his living by clearing snow from driveways and parking lots.

One morning, following a particularly heavy snowfall, Debbie contacted Pete and asked him to come to her residence and clear the snow from her driveway. Debbie was not a regular customer of Pete's. They had the following exchange via email:

> Debbie: Hi, Pete. Can you come to my house and clear the snow from my driveway? I live at 10 Arbor Lane, right here in town. What would you charge?
>
> Pete: I'm pretty busy today clearing snow for all my regular customers. I'm not sure I could get to you at all today, but if things go well, I could be there around 4 p.m. I charge $300 for a normal-size driveway.
>
> Debbie: Well, I have a plane to catch tonight, and I must leave the house by 5 p.m. I'm desperate. If you can get the snow cleared from my driveway before 5 p.m., I'll pay a premium price of $500.
>
> Pete: I will do my best, but I can't make any promises.

Pete worked extra hard and fast that day to finish clearing snow for his regular customers. To further ensure that he got to Debbie's house in time to get her driveway cleared by 5 p.m., he passed up an opportunity to clear a parking lot for $400. He was able to finish all his work for regular customers by 3:30, which left him plenty of time to get to Debbie's house and clear her driveway.

However, when Pete arrived at Debbie's house at 4 p.m., he saw that the driveway had already been cleared.

Pete left his truck, went to the front door of Debbie's house, and rang the doorbell. When Debbie appeared, he said, "I'm Pete. I accept your offer to clear your driveway. I'll get started right away." Debbie said, "Sorry, someone came by and offered to do the job for $300, so I paid him to do it. As you can see, it's already done." Pete replied, "I still want my $500." Debbie told Pete that she owed him nothing, and she shut the door.

Pete believes that, in light of the email exchange with Debbie, the fact that he passed up the opportunity to clear the parking lot, and the fact that he showed up at Debbie's house in time to clear her driveway by 5 p.m., he was entitled to clear Debbie's driveway and be paid $500.

1. Did the exchange of emails form a contract? Explain.

2. When Pete traveled to Debbie's house and said to her, "I accept your offer to clear your driveway," did that form a contract? Explain.

3.. Assuming that no contract was formed under Question 1 or 2, does Pete have a claim based on his reliance on Debbie's statement that she would pay a premium price of $500 if he cleared the snow from her driveway by 5 p.m.? Explain.

4. Assuming that Pete has a valid claim against Debbie under Question 3, how much could he recover? Explain.

July 2025
MEE 1
Representative Passing Answer

The Board of Bar Examiners did not select a representative passing answer for this question.

MEE Question 2

Testator was born in 1880 in a rural area of State A. At the age of 5, he was enrolled in the local one-room schoolhouse and remained in school there until he graduated at age 18. There were no more than 30 students in the school at any one time. All four students in Testator's graduating class attended State A University. In 1902, Testator graduated from State A University with a degree in business. Over the next 20 years, he was extremely successful financially.

In 1922, Testator died leaving a substantial estate. He had never married and had no children. His closest living relative at his death was his first cousin, with whom he'd had little contact since his childhood.

Under his probated will, Testator bequeathed a total of $500,000 to several art museums throughout the United States, $250,000 to Capital City Concert Hall, and $1,750,000 to the business college at State A University. He bequeathed the balance of his estate ($2,500,000) to a valid perpetual charitable trust, with Bank X in State A named as trustee. Under the terms of the trust, all trust income was distributable annually to pay the education expenses of any persons, as selected by the trustee, who had graduated from a one-room schoolhouse in State A and were attending State A University while under the age of 25.

For many years, the trustee had no difficulty identifying potential beneficiaries under the terms of the trust. Over time, however, there was a substantial decrease in the number of students graduating from one-room schoolhouses in State A. By 2010, there were no such students attending State A University, and the remaining one-room schoolhouse in State A permanently closed. There are now no longer any persons to whom the trustee can distribute trust income in accordance with the terms of the trust.

The value of the trust assets is $10 million, earning roughly $500,000 of trust income annually.

Bank X would like to resign as trustee and recommends that a court appoint Bank Y as trustee. Bank Y is a reputable bank with extensive experience in trust administration and is willing to assume the trusteeship but only if the terms of the trust are modified to allow it to distribute trust income to graduates of any rural public high school in State A attending State A University.

Fred, the closest relative of Testator now living and the sole surviving descendant of Testator's first cousin, believes that the trust can no longer continue and should be terminated, and that the principal should therefore be distributed to him.

Capital City Concert Hall, having recently learned of these facts, believes that the trust principal of $10 million should be held exclusively for its benefit with trust income payable only to it.

State A has adopted the Uniform Trust Code. There are no other applicable statutes.

1. Does Bank X need judicial approval to resign as trustee? Explain.

2. Does Fred have any interest in the trust? Explain.

3. Can the trust's terms be judicially modified? Explain.

4. Assuming that Bank Y has been appointed trustee and that the trust terms can be judicially modified, between the suggestions offered by Bank Y and Capital City Concert Hall, which suggestion would a court be more likely to adopt? Explain.

July 2025
MEE 2
Representative Passing Answer

The Board of Bar Examiners did not select a representative passing answer for this question.

MEE Question 3

Last year, Congress passed the "Economic Incentive Act" (Act), which the President signed into law. The preamble of the Act states that it was passed pursuant to Congress's power to regulate interstate commerce, and no legislative history indicates any other purpose.

The Act contains two substantive provisions. First, the Notice Provision prohibits "any employer with more than 100 employees from terminating an employee's employment without cause on less than 30 days' notice." The Notice Provision states that it applies to employees of both private businesses and state and local governments.

Second, the Housing Provision of the Act creates a federal program that provides grants to private developers of new low-income housing projects meeting the Act's requirements. The Housing Provision directs designated municipalities to administer this federal grant program by accepting applications for grants, reviewing the applications, making decisions, and enforcing the Act's requirements. The Housing Provision authorizes the United States to impose monetary penalties on a municipality that does not administer the grant program.

The last section of the Act provides:

> Any person who is harmed by the failure of any state or municipality to adhere to any provision of this Act may recover actual damages suffered as a result of that failure and may bring an action to recover those damages in federal court. A state or municipality shall not be immune, under the United States Constitution, from suit in federal court under the Act.

A man worked for State A, which employs more than 100 people, and a woman worked for City, a municipality in State A, which employs more than 100 people. State A and City recently terminated the employment of the man and the woman due to budget cuts. The man and the woman each received only one week's notice from their employers.

The man and the woman have filed separate lawsuits in federal district court against State A and City seeking damages for violations of the Notice Provision of the Act. In the suits against them, State A and City have each moved to dismiss on two grounds: (1) sovereign immunity recognized by the United States Constitution bars the lawsuits, and (2) the Notice Provision of the Act commandeers state and local governments in violation of the Tenth Amendment. No provision of State A law indicates that State A consents to lawsuits in federal court.

County is a municipality in State A that has refused to accept grant applications for federal funding as required by the Housing Provision of the Act. The United States, therefore, recently applied that provision to impose a substantial monetary penalty on County. County has filed a federal lawsuit seeking a declaration that the Housing Provision of the Act is unconstitutional because it commandeers municipalities in violation of the Tenth Amendment.

1. Does sovereign immunity bar the man's lawsuit against State A? Explain.

2. Does sovereign immunity bar the woman's lawsuit against City? Explain.

3. Does the Notice Provision of the Act commandeer State A in violation of the Tenth Amendment? Explain.

4. Does the Housing Provision of the Act commandeer County in violation of the Tenth Amendment? Explain.

3)

1. The issue is whether the Act abrogated sovereign immunity.

Under the 11th Amendment of the Constitution, states enjoy sovereign immunity against lawsuits seeking damages unless sovereign immunity is waived or abrogated. A waiver must be unequivocal by the state. Further, Congress may pass legislation that abrogates a state's sovereign immunity. When it does so, it must speak clearly and unequivocally. However, Congress's power to abrogate comes from it's power to enforce the provisions of the 14th Amendment. The Supreme Court has held that Congress may not abrogate sovereign immunity in exercising its Commerce Clause powers under Article I.

Here, State A has not consented to suit, thus sovereign immunity must be abrogated by Congress in order to overcome immunity. The Act unequivocally abrogates sovereign immunity of states as made evident by the language Congress used. However, the Act was passed under Congress's Commerce Clause power. Congress cannot abrogate state sovereign immunity using its Commerce Clause power. Thus, sovereign immunity was not abrogated and man's suit for damages against State A is barred.

2.The issue is whether municipalities enjoy 11th Amendment sovereign immunity.

Sovereign immunity under the 11th Amendment expressly applies only to the states. Municipalities are not states and are not immune under the Constitution.

Here, woman was suing City. City is not a state. Therefore, City is not immune from suit.

3. The issue is whether the Notice provision violates anti-commandeering principles under the Tenth Amendment.

Under the Tenth Amendment's anti-commandeering doctrine, the federal government cannot compel states to enforce federal law or adopt and administer federal programs. Under the Spending Clause, Congress may condition the receipt of funds on certain conduct, but the federal government cannot unilaterally force adoption of programs. Underlying anti-commandeering doctrine is respect for the system of federalism whereby states are separate sovereigns from the federal government, and the federal government cannot unduly infringe on the states. However, when it comes to regulating state's conduct as an employer, rather than as a government, anti-commandeering principles do not apply.

Here, the Notice provision requires 30 days notice before termination. This provision is expressly applied to the states. Thus, the federal government is requiring a state to enforce federal law, conduct typically violative of anti-commandeering doctrine. However, the provision is directed at states in their capacity as employers. This is an appropriate exercise that does not implicate anti-commandeering. Accordingly, the notice provision does not violate the Tenth Amendment.

4. The issue is whether the Housing provision violates anti-commandeering principles under the Tenth Amendment.

Anti-commandeering under the Tenth Amendment applies to municipalities as well. Cities and counties cannot be compelled to administer a federal program.

Here, the Act sets up a housing grant program whereby municipalities must administer it or they risk a monetary penalties. Here, County is confronted with "substantial monetary penalties." This is not the case of Congress imposing conditions in order to receive grant monies. This is an example of the federal government compelling a County to administer a federal program. This is violative of anti-commandeering doctrine under the Tenth Amendment,

END OF EXAM

MEE Question 4

A public high school in City, State A, has a rule that prohibits students from going to the gas station across the street from the school during school hours because the police have identified that gas station as the site of frequent drug dealing. The school includes the rule in the student handbook that the school provides to all students and their parents at the beginning of each school year. The school's principal also orally informs all students of the rule.

On October 10, at 2:30 p.m., during the last class of the day, the school principal looked out a window of the school building and observed a student walking from the school toward the gas station across the street. Once at the gas station, the student walked close to a car, talked to the driver through the open driver's-side window, and handed something to the driver. The principal could not see whether the student took anything from the driver, but after the car drove away, the principal saw the student put his hands in the front pockets of the jacket he was wearing.

The student returned to the school. About 10 minutes later, the principal ordered the student into the principal's office. When the student arrived, the principal reached into the front pockets of the student's jacket, which he was still wearing, and removed three $20 bills and a small, clear plastic bag containing two white pills. As set forth in the student handbook, possession of any kind of medication in school is prohibited unless permission has been given by the school. The student did not have the school's permission to possess any medication. The principal informed the student that the money would be returned to him if it was not connected with a crime. The principal told the student to return to class.

The principal decided to search the student's assigned locker. The school's locker policy provides that lockers are the property of Local Public School District (LPSD), that an assigned locker may be searched at any time, and that the school administration has a master key to all lockers. This policy is written in the student handbook. In addition, on the outside of every locker is a sticker stating, "This locker is the property of LPSD and may be subject to search." The principal unlocked the student's assigned locker with the master key. On the locker's top shelf was a clear plastic bottle containing white pills that appeared to be identical to the pills found in the student's jacket pocket. There was also a small, clear plastic bag containing a green, leafy material that looked and smelled like marijuana, possession of which is a crime in State A. The principal confiscated both the bottle of pills and the plastic bag of leafy material.

The principal phoned City police. An officer arrived at the school and took into custody the items seized by the principal from the student and the locker. Chemical testing of these items determined that the white pills were methamphetamine and the leafy material was marijuana.

That evening, City police obtained a valid warrant to arrest the student for possession of controlled substances in violation of State A law.

The next day, two City police officers arrived at the school during the school day and arrested the student, who was wearing his backpack. The officers searched the student and his backpack, from which an officer removed the student's unlocked cell phone. One of the officers looked through the cell phone's text messages and found a series of messages that set meeting times and places and listed "number of units" and "cost." A message from 10:00 a.m. on October 10 referred to a meeting in the gas station parking lot at 2:35 p.m. and mentioned a "cost" of $60.

State A charged the student with possession of controlled substances.

1. Did the principal's search of the student's jacket pockets violate the student's rights under the Fourth Amendment? Explain.

2. Did the principal's search of the student's locker violate the student's rights under the Fourth Amendment? Explain.

3. Did the officer's search of the student's text messages violate the student's rights under the Fourth Amendment? Explain.

4)

1. The principal's search of the student's jacket pockets did not violate the student's rights under the Fourth Amendment. At issue is whether a principal is allowed to search a student's pockets when the principal suspects that the student possesses an item that violates school rules.

The Fourth Amendment to the United States Constitution provides all persons have the right to be secure in their papers, persons, home, and effects from unreasonable searches and seizures. The Supreme Court has held that all searches without a warrant are per se unconstitutional subject to a few delineated and well defined exceptions. A search occurs when the government physically intrudes on a protected area with the intent to collect information or when a person has a reasonable expectation of privacy in an area and the government searches that area. Here, the principal's actions were a search because the principal physically invaded a constitutionally protected area. In other words, the principal invaded an area protected by the fourth amendment (the student's person).

The fourth amendment applies to public school officials because the Supreme has held that students do not shed their constitutional rights at the schoolhouse gate. The Supreme Court has held that one of the exceptions is that school officials may search students and their effects if the official has a reasonable suspicion that the student possesses evidence of a crime or items that violate school rules.

The search of the student must be reasonable based on the student's age and the crime or rule violation that the principal suspects the student committed. For example, the Supreme Court held that a search of a female student's underwear was not reasonable when the principal suspected the student of possessing pills and a search of her backpack did not turn up any evidence of the violation. The Supreme Court has held that a public official has reasonable suspicion when he can point to articulable facts that make it more likely than not that a person committed a crime or possesses a prohibited item. The finding of reasonable suspicion is based on a totality of the circumstances.

Here, the principal had a reasonable suspicion that the student violated school rules. The principal observed the student leave the campus during the last class of the day and visit a gas station that is known for selling drugs. The principal further saw the student speak to someone in a car at the gas station and then place his hands in his jacket pockets afterwards. These facts support a finding that the principal had a reasonable suspicion that the student possessed drugs in violation of the school's rules.

Additionally, the principal's search of the student was reasonable. The principal only reached into the student's jacket pockets and pulled out the pills and money in his pocket. The principal believed that the student had drugs and watched the student place his hands in his pockets afterwards. The principal did not search any other part of the student's body. Thus, the search was reasonable.

Because the principal has reasonable suspicion to believe that the student was violating school rules and because the search of the student was reasonable in scope, the search of the student's pockets did not violate the student's fourth amendment rights.

2. The search of the student's locker did not violate the student's fourth amendment rights. At issue is whether a school official can search a student's locker for evidence that the student was violating school rules.

The Fourth Amendment to the United States Constitution provides all persons have the right to be secure in their papers, persons, home, and effects from unreasonable search and seizure. The Supreme Court has held that all searches without a warrant are per se unconstitutional subject to a few delineated and well defined exceptions. A search occurs when the government physically intrudes on a protected area with the intent to collect information or when a person has a reasonable expectation of privacy in an area and the government searches that area. A person has a reasonable expectation of privacy in an area when that person has a subjective expectation of privacy and his expectation is one that society is prepared to recognize as reasonable. Here, the student does not have a subjective expectation of privacy in his locker. Thus, it could be argued that the principal's actions were not even a search. The principal did however, physically intrude on a constitutionally protected area. The fourth amendment protects persons, places, and things (secure in his effects). The student's personal possessions were thus a constitutionally protected area because they are his effects. Therefore, the principal did search the student's locker.

The fourth amendment applies to public school officials because the Supreme has held that students do not shed their constitutional rights at the schoolhouse gate. The Supreme Court has held that one of the exceptions is that school officials may search students and their effects if the official has a reasonable suspicion that the student possesses evidence of a crime or items that violate school rules.

The search of the student must be reasonable based on the student's age and the crime or rule violation that the principal suspects the student committed. For example, the Supreme Court held that a search of a female student's underwear was not reasonable when the principal suspected the student of possessing pills and a search of her backpack did not turn up any evidence of the violation. The Supreme Court has held that a public official has reasonable suspicion when he can point to articulable facts that make it more likely than not that a person committed a crime or possesses a prohibited item. The finding of reasonable suspicion is based on a totality of the circumstances.

Here, the principal had reasonable suspicion that the student was violating school rules because he left campus and when the student returned, he was found with pills in his pockets in violation of school rules. Because the principal found pills on the student, the principal then had reasonable suspicion to believe that the student might have more medications in his locker. Students who are violating school rules and have prohibited items on their person usually have the same items in their locker.

Additionally, the search of the locker was reasonable because the principal opened the locker and immediately found pills that looked identical to the one's found in the student's pockets. While searching the locker, the principal also found marijuana. The principal did not search more area than necessary to uncover the items that violated school rules. Thus, the search of the locker was reasonable.

Because the principal had reasonable suspicion to believe that the student had items that violated school rules and because the search was reasonable, the search of the student's locker did not violate his fourth amendment rights.

3. The officers search of the student's text messages violated the students fourth amendment rights. At issue is whether a police officer is allowed to search the electronic data on a suspect's cell phone when he is placed under arrest.

The Fourth Amendment to the United States Constitution provides all persons have the right to be secure in their papers, persons, home, and effects from unreasonable search and seizure. The Supreme Court has held that all searches without a warrant are per se unconstitutional subject to a few delineated and well defined exceptions. The Supreme Court has held that police officers are allowed to search a suspect without a warrant if the search occurs contemporaneous to a valid, constitutional arrest. The Supreme Court has that the police may search and observe the physical attributes of a suspect's cell phone but the officers may not search the digital data on the suspect's cell phone incident to arrest. To search the digital data, the officer must obtain a warrant.

Here, the officers had a valid arrest warrant and validly placed the student under arrest. Because the student was arrest, the police were allowed to search the student and his effects. The police were allowed to take all of the items out of his pockets and backpack and search those items as well. The officers were allowed to search the physical attributes of the student's cell phone. The officers were not allowed, however, to search the digital data on his phone. The officers did not have a warrant to go through the student's text messages. When the officer looked through the student's phone without a warrant, the officers committed an unreasonable search in violation of the fourth amendment.

Because the officers did not have a warrant to look through the digital data on the student's cell phone, the search of the student's text messages violated the student's fourth amendment rights.

END OF EXAM

MEE Question 5

After a homeowner's curbside mailbox was damaged, the homeowner phoned Quick Mailboxes, a small corporation that installs and repairs mailboxes. The homeowner told the Quick Mailboxes receptionist, "I don't care how you fix it; I just want it done by the end of the week." The receptionist said that the company would charge $220 for the repair, and the homeowner agreed to hire Quick Mailboxes to perform the job.

Quick Mailboxes has 10 local employees. It conducts background checks on all its employees, verifies that they have appropriate driver's licenses, and trains them as needed. After receiving the homeowner's call, Quick Mailboxes promptly sent Jane, one of its part-time employees, from its main office to the homeowner's property to perform the repair. Jane works 20 hours each week for Quick Mailboxes. She drives to work sites in a small, old pickup truck owned by Quick Mailboxes.

When Jane arrived at the homeowner's address, she stopped the pickup truck along the curb on the hilly street so that she could survey the mailbox's damage from her window. As she was about to exit the truck, she answered a personal call on her cell phone. The call lasted about three minutes. Distracted by the call, Jane left the truck without shifting it into "park" and did not engage the parking brake before she walked to the homeowner's front door to introduce herself and explain the work she planned to perform.

While Jane and the homeowner were talking at the front door, the Quick Mailboxes truck began rolling down the street. The homeowner saw it and stared in surprise but said nothing. Seconds later, the truck rolled partly off the pavement into a street sign. The post holding the street sign collapsed, sending the sign crashing onto a vintage luxury car worth $430,000 that a neighbor had parked on the public street.

The neighbor had the car repaired. Because of the special parts needed and the difficulty of finding them, the repairs cost $55,000. The neighbor also suffered serious emotional harm, requiring medical attention, because he had happened to look out his living room window just as the sign fell and damaged his car, which had significant sentimental value to him.

1. Is Jane directly liable to the neighbor in a negligence action? Explain.

2. Is Quick Mailboxes liable to the neighbor either directly or vicariously? Explain.

3. Is the homeowner liable to the neighbor because the homeowner hired Quick Mailboxes? Explain.

4. (a) Assuming that any of the parties is liable, can the neighbor recover the cost to repair the car even though the repairs were unusually expensive? Explain.
   (b) Assuming that any of the parties is liable, can the neighbor recover damages for emotional harm? Explain.

5)

1. Jane is directly liable to neighbor in a negligence action. At issue is whether an employee is liable for her own torts while on the job.

To prove a prima facie case of negligence, a plaintiff must prove that (1) the defendant had a duty to act according to the appropriate standard of care; (2) the defendant breached her duty of care by failing to act according to the standard of care; (3) the defendant's actions caused an injury to the plaintiff; and (4) the plaintiff suffered damages as a result of the breach.

All people have a duty to act as a reasonably prudent person would act in the same or similar circumstances. To prove causation, the plaintiff must actual and proximate cause. Actual causation exists if the plaintiff would not have been injured but for the defendant's breach. Proximate causation exists if the plaintiff proves that his injury was the natural consequence of the defendant's actions.

Here, Jane had a duty to act as a reasonably prudent person would act under the circumstances because she was engaged in human activity. Jane breached her duty when she left the truck on a hilly street and failed to put the truck in park or set the parking brake. A reasonable person would have made sure the truck was in park before exiting the truck and Jane did not do that. Thus, she breached her duty. Additionally, Jane's failure to set the brake caused neighbor's injuries. Actual causation can be proven because but for Jane's failure to set the parking brake, the neighbor's car would not have been damaged. Proximate cause can be proven because the natural consequence of failing to set the parking brake on the hill is that the truck would roll down the hill and hit whatever was at the bottom. In this case, the truck hit a sign. The natural consequences of a runaway truck hitting a sign is that the sign will fall over. The fact that the sign hit the neighbor's car does not brake the causal chain. Finally, the neighbor can prove damages because his car needed to be repaired.

Additionally, all persons are liable for their own torts even if the tort was committed in the scope of one's employment. Thus, the fact that Jane was on the job and that her employer might be liable for the damage does not relieve Jane of liability.

2. Quick Mailboxes is liable to the neighbor vicariously. At issue is whether Jane was an employee acting within the scope of her employment to give rise to liability.

An employer is vicariously liable for the negligence of its employees if the employee was negligent while acting in the scope of her employment. The employer is not liable for the torts committed by an independent contractor. To determine whether the agent was an employee, the court will determine whether the employer has the right to control the manner in which the agent works.

Here, Jane is an employee because the facts tell that she is an employee. Also, Quick

Mailboxes has the right to control the manner in which Jane works because Quick Mailboxes trains its employees on how to fix mailboxes. If an agent is an independent contractor, the principal usually will not train the agent. Additionally, Quick Mailboxes sent Jane out the homeowner's house. This proves that Quick Mailboxes has control over Jane's activities. If Quick Mailboxes did not control the manner in which Jane worked, the homeowner would have contacted Jane directly. Thus, Jane is an employee and Quick Mailboxes is vicariously liable for the torts committed within the scope of her employment.

Jane is expected to drive her truck to customer's homes to repair their mailboxes. Additionally, Jane was driving a truck owned by Quick Mailboxes and was acting at the direction of Quick Mailboxes. Thus, Jane was acting within the scope of her employment at the time of neighbor's injury and Quick Mailboxes will be vicariously liable for neighbor's injuries.

Quick Mailboxes cannot be directly liable to neighbor. To be directly liable, Quick Mailboxes would have had to act negligently. Quick Mailboxes had a duty to train its employees and ensure that they have valid driver's licenses. The facts tell us that Quick Mailboxes conducts background checks on employees, verifies they have the appropriate driver's licenses, and provided training as needed. Quick Mailboxes's actions meets its standard of care and there is no breach. Thus, Quick Mailboxes will not vicariously liable.

3. The homeowner is not liable to the neighbor because he hired Quick Mailboxes. At issue is whether a principal is liable for the torts of an independent contractor.

When a person employs another, they create an agency relationship. The employer is the principal and the person doing the work is the agent. A principal is not liable for the torts of his agent if the agent is an independent contractor. An agent is an independent contractor when the principal has not authority to control the manner and function of the agent's duties.

Here, homeowner hired Quick Mailboxes. Thus, homeowner is the principal and Quick Mailboxes is his agent. The homeowner does not have the power to control the manner and function of Quick Mailboxes's duties. When he hired Quick Mailboxes, the homeowner stated that he doesn't care they fix the mailbox and that he just wants it done. Thus, the homeowner did not control the manner in which Quick Mailboxes performed its duties and Quick Mailboxes is an independent contractor.

Because Quick Mailboxes is an independent contractor of the homeowner, the homeowner cannot be liable to the neighbor for his damages.

4a. The neighbor can recover the cost to repair the car even though the repairs are unusually expensive. At issue is whether the defendant is liable for severe injuries caused by her negligent conduct.

When a defendant is negligent, the defendant is liable for all of the damages actually and proximately caused by her actions. It is no defense that the plaintiff's injuries were unusually expensive or that the injury caused a bizarre injury to the plaintiff.

Here, Jane's actions caused damage to the neighbor's $430,000 car that needed special parts. It is no defense that the an ordinary car would not need such specialized parts and Jane is liable for the damages she caused even though the damages were extremely high.

Because it is no defense that the defendant's actions caused an unusual injury, the neighbor can recover all of his damages despite the fact that they were unusually expensive.

4b. If at least one of the parties is liable, the neighbor cannot recover damages for emotional harm. At issue here is whether a plaintiff can recover for emotional harm caused to his property.

Generally, a plaintiff can recover all of his damages caused by the defendant's negligence. The plaintiff cannot, however, recover damages for emotional harm when the only damages he suffered were to his property. Thus, the neighbor will not be able to recover for his emotional harm.

The neighbor may wish to argue that one of the parties is liable for negligent infliction of emotional distress (NIED). To prove his NIED claim, the neighbor would have to prove that he was in the zone of danger and the defendant's actions nearly missed him or that he observed a close family member get injured because of the defendant's negligence, and that he suffered severe emotional distress.

Here, neighbor cannot make out either NIED claim. The neighbor was not in the zone of danger because he was in his house when the truck rolled down the hill. The neighbor was not outside and thus could not be in the zone of danger. Additionally, he cannot recover under the other NIED theory because his car does not qualify as a close family member. Thus, even though he observed the car's damage as it happened and suffered severe emotional distress, the neighbor cannot sustain a claim for NIED.

Accordingly, the neighbor's claim for emotional harm is not recoverable.

END OF EXAM

5)

1)

The issue is whether Jane is directly liable in negligence even though she is an employee.

In a negligence action, the plaintiff must prove that the defendant had a duty of care, that they breached that duty of care, that they were the proximate and factual cause of the breach, and that the defendant suffered damages. The duty of care is typically that of a reasonably prudent person. The breach is determined in court, and is usually owed to those in the zone of danger. The defendant's actions must be the proximate cause, meaning that such damages were a foreseeable consequence of the negligent behavior. Further, they must be the "but for" or factual cause, meaning that but for the negligence, the injury would have occurred. Damages must be shown, and you must take the plaintiff as you get them.

Here, there was a breach of duty of care. Jane did not act as a reasonably prudent person in the circumstances. She did not put it into park, as one would in her position. Furthermore, the breach of care must occur to one in the zone of danger of said breach. A car down the street from Jane is in the zone of danger. Furthermore, it is clear that her actions are the proximate and factual cause. It is foreseeable that leaving your car in park on a tall hill would foreseeably cause an accident down the hill. Furthermore, but for her negligent action of leaving the car in drive, the car would not have been hit. Finally, the neighbor clearly suffered damages as the car was in deed of repair.

Another issue arises in vicarious liability. Typically a company will be liable to the torts of an employee if the tort was done during the scope of employment. Although this likely applies, regardless of vicarious liability, an employee is still liable for a tort that they commit. Rather if vicarious liability applies, they are both jointly and severally liable.

Because Jane was negligent in her operation of the vehicle, she is directly liable to the neighbor.

2)

The issue is whether Quick boxes is directly or vicariously liable for the negligent actions of its employee.

A court will find an employer vicariously liable if an employee commits a tort during and in scope of their employment. Employers are liable for frolic, or small deviation of an employee, but not for a large detour.

Here it is clear that Jane is an employee. She was acting under the scope of her employment by checking on the new assignment. Furthermore, the court will likely find that this is a frolic, as it was not a large deviation from the scope of her employment. Her 3

minute phone call will not be enough to create a detour.

Therefore, the Quickmailboxes is liable vicariously.

However, they are not liable directly. Quickmailboxes would need to have failed the four prongs of negligence laid out above to be directly liable. Rather they are jointly and severally liable. Quickmailboxes would have had to make a large deviation in standard practice to be found liable directly.

3)

The issue is whether the homeowner is liable because they hired the QuickMailboxes employee.

For the homeowner to have been found liable here they must show that they were an employee or an independent contractor. A person who hires an independent contractor is liable for any tort that occurs because of negligent hiring, nondelgable duties, or inherently dangerous acitivites. Independent contractors are usually less limited in scope.

This is an independent contractor based on the facts. This is not an inherently dangerous activity, non delegable duty, or negligent hire. They are trusted company and have good practices.

The homeowner will not he liable.

4)

a. The issue is whether the homeowner would be able to get full damages for his vehicle.

Damages do not need to be foreseen at the time of the accident. Damage awards that are large need to be taken as they are found. The only way a court would find otherwise is if the award given by the jury shocks the conscious. Here, they are allowed. The cost of the car is much higher, so he could get money for repairs.He could recover from all as they are jointly and severally liable.

Thus, he is entitled too full damages.

b.

No the neighbor cannot recover for NIED. Negligent infliction of emotional distress requires negligent conduct that would foreseeably cause extreme emotional distress.

It was not foreseeable that this negligent action would cause the amount of distress it would. One cannot foresee that the plaintiff would be so attached to his car. Sentimental harm is not enough to get NIED, as it is a tough burden.

Therefore, the neighbor is unlikely to recover for NIED.

END OF EXAM

Indian Law Question
July, 2025

Larry Two Two, an enrolled member of the Navajo Nation, camped on the Cheyenne Indian Reservation for two months as part of a cross-country vacation. After drinking too much one evening, he started driving back to his campsite. Tom Rederth, an enrolled member of the Cheyenne River Tribe, was walking through the campground back to his home.

Two Two's vehicle hit Rederth who suffered broken ribs and a broken leg as a result.
Two Two is charged with assault resulting in serious bodily injury. Which, if any, of these entities have jurisdiction? Cheyenne River Sioux Tribe, Navajo Tribe, State of South Dakota, U.S. Government? Explain why.

6)

The present issue is which governments have criminal jurisdiction over an Indian when he commits a criminal offense on a different reservation against an Indian of that different reservation.

The Major Crimes Act set out a number of serious crimes which the federal government has claimed jurisdiction over when they occur in Indian Country. Among these crimes is assault resulting in serious bodily injury. When one of the enumerated crimes is involved, the federal government can assert its jurisdiction if the crime occurred between two Indians.

The case at hand involved Two Two, an Indian, assaulting Rederth, who is also an Indian. Because one of the enumerated crimes is involved and this crime was between two Indians, the Federal Government has jurisdiction.

The Federal Government claiming jurisdiction does not necessarily mean that other jurisdictions cannot have concurrent jurisdiction over a crime. The basic principle of tribal sovereignty generally grants a tribe jurisdiction over an Indian defendant. This is the case whether the defendant is a member Indian (meaning a member of this specific tribe) or a non-member Indian (meaning a member of a different tribe) as of SCOTUS's recent decision in *U.S. v. Lara,* which overturned precedent in *U.S. v. Duro* which did not make this distinction. Because of this, the Cheyenne River Sioux Tribe can assert jurisdiction over Two Two, a Navajo.

The Navajo tribe, on the other hand, does not have jurisdiction in this case because it did not occur within its territory. In order for a tribe to have jurisdiction over a criminal case, the alleged crime must have occurred on its Indian Land. That is not the case here, even though its own member is being prosecuted, so the Navajo Nation does not have jurisdiction.

Generally, states do not have criminal jurisdiction over cases arising in Indian Country between two Indians. This, again, reinforces tribal sovereignty from the states. This is the case even when crimes occur on state right-of-ways, which this may have occurred on. Because this case is between two Indians in Indian Country, South Dakota does not have jurisdiction.

END OF EXAM

6)

Jurisdiction Generally

Generally, when determining criminal jurisdiction in relation to Indian law the location of the crime, the Indian classification of the defendant and victim, and type of crime must be determined. As a matter of location, Indian Country is any of the following locations: (1) within the exterior boundaries of a federally recognized tribal reservation, (2) dependent Indian Communities which are listed by the federal government, and (3) Indian land allotments. This includes right of ways within tribal reservations. If a crime occurs outside of these areas the Tribe does not have jurisdiction except in exceptionally rare circumstances where matters violating a tribes sovereignty were implication. To determine whether a person is an Indian for purposes of criminal jurisdiction the person must satisfy a two part test. First, they must meet a blood quantum requirement (commonly the mere presence of Indian blood). Second they must be (a) a member of a federally recognized tribe, (b) have the ability to receive benefits from the federal government reserved for Indian people, or (3) have the ability to receive benefits from a tribal while participating in tribal cultural events. Lastly, the type of crime must be determined. Under the Assimilated Crimes Act, also know as the Interracial Crimes Act, Congress granted the federal government the ability to prosecute certain crimes on federal enclaves. While the Major Crimes Act permits the federal government to prosecute a defendant based on the nature of the crime, regardless of their Indian classification. Further, whether the crime has been established in tribal code for the relevant jurisdiction. Under the Violence Against Women Act, Congress provided for tribal jurisdiction in certain cases. Lastly, because tribal communities are within states (separate sovereigns) states may have jurisdiction to punish crimes that occur within their state. Overarching these questions is the Dual Sovereigns Doctrine; this doctrine provides that double jeopardy does not apply between the tribes and federal/state prosecutions. Only when an Indian is punished by a tribe may the federal government not subsequently punish for the same crime.

Location of the Crime

First, we must examine the location of the crime. South Dakota contains nine federally recognized tribal reservations: Flandreau Santee Sioux, Sisseton-Wapheton, Oglalla Lakota, Standing Rock, Lower Brule, Crow Creek, Rosebud, Cheyenne River, and Yankton. Here, the crime occurred in a campsite within the Cheyenne River Indian Reservation. Thus the location is within South Dakota and Indian Country.

Classification of the Parties

Second, we examine the Indian classification of the parties. The defendant, Larry Two Two, is an enrolled member of the Navajo Nation. Although information about blood quantum is not present, that is typically a requirement for tribal membership. Thus, Larry Two Two is classified as an Indian. Next, the victim, Tom Rederth. Rederth is an enrolled member of the Cheyenne River Tribe. Once again because Rederth is a tribal member he is an Indian for this analysis.

Crime at Issue

Lastly, we must examine the crime at issue. Here, the crime charged was assault resulting in serious bodily injury. Although assault is not a major crime or a VAWA crime, it is classified as

crime under the Major Crimes Act. Common other major crimes include murder, assault with a deadly weapon, or incest. Based upon the facts presented, it is unknown whether or not the Cheyenne River Tribe has penalized assault resulting in a serious bodily injury.

Appropriate Jurisdiction

After completing the classifications, the issue becomes whether the state of South Dakota, U.S. Government, Navajo Tribe, or Cheyenne River tribe has sole, concurrent, or joint jurisdiction. It is worth nothing that although the defendant is a member of the Navajo Tribe, that does not preclude punishment for conduct that occurred outside of the Navajo nation.

Here, there is an Indian defendant with an Indian victim that committed a Major Crime (and likely a crime under Cheyenne River Tribal law) within Indian Country. Under such a circumstance, the Cheyenne River Tribe has shall primary jurisdiction over the prosecution assuming the tribal code reflects such a charge. The federal government shall have concurrent jurisdiction under the Major Crimes Act. The State of South Dakota does not have jurisdiction over such a crime, nor shall the Navajo Tribe. If is worth nothing that the Navajo nation will likely not have jurisdiction because the crime was not committed against the tribe in such a way that threatens their tribal sovereignty.

END OF EXAM

MULTISTATE ESSAY EXAMINATION DIRECTIONS

You will be instructed when to begin and when to stop this test. Do not break the seal on this booklet until you are told to begin.

You may answer the questions in any order you wish. Do not answer more than one question in each answer booklet. If you make a mistake or wish to revise your answer, simply draw a line through the material you wish to delete.

If you are using a laptop computer to answer the questions, your jurisdiction will provide you with specific instructions.

Read each fact situation very carefully, and do not assume facts that are not given in the question. Do not assume that each question covers only a single area of the law; some of the questions may cover more than one of the areas you are responsible for knowing.

Demonstrate your ability to reason and analyze. Each of your answers should show an understanding of the facts, a recognition of the issues included, a knowledge of the applicable principles of law, and the reasoning by which you arrive at your conclusions. The value of your answer depends not as much upon your conclusions as upon the presence and quality of the elements mentioned above.

Clarity and conciseness are important, but make your answer complete. Do not volunteer irrelevant or immaterial information.

Examinees testing in UBE jurisdictions must answer questions according to generally accepted fundamental legal principles. Examinees in non-UBE jurisdictions should answer according to generally accepted fundamental legal principles unless your testing jurisdiction has instructed you to answer according to local case or statutory law.