

February 2026

New York State  
Bar Examination

Sample Essay Answers

## **FEBRUARY 2026 NEW YORK STATE BAR EXAMINATION**

### **SAMPLE ESSAY ANSWERS**

The following are sample candidate answers that received scores superior to the average scale score awarded for the relevant essay. They have been reprinted without change, except for minor editing. These essays should not be viewed as "model" answers, and they do not, in all respects, accurately reflect New York State law and/or its application to the facts. These answers are intended to demonstrate the general length and quality of responses that earned above average scores on the indicated administration of the bar examination. These answers are not intended to be used as a means of learning the law tested on the examination, and their use for such a purpose is strongly discouraged.

## **ANSWER TO MEE 1**

### **I. Question 1**

#### **(a) Carla Cannot Recover 12 Months of Unpaid Rent.**

The issue is whether Carla was entitled to receive 12 months of unpaid rent from the tenant at the end of the lease term.

As a general rule, when a tenant breaches their contract with a landlord, relief depends on whether the tenant remains in possession or vacates. When a tenant vacates, the landlord has three options: (1) accept the tenant's termination and release the property, (2) re-lease the property to a different tenant and sue the first tenant for damages, and (3) do nothing, wait until the lease terminates, and sue the tenant for the entire term. The third option is a minority rule and most states will not permit it, finding it a failure to mitigate damages.

Here, Carla had a valid 2-year term of years lease with the tenant. The tenant remained in possession for one year (January 1, 2023 - December 31, 2023). At this point, the tenant breached because she had a year left on the lease. Carla ultimately went with the third option, in which she did nothing and sued for damages at the end of the term, recognized by only a minority of jurisdictions.

In most jurisdictions, Carla will not be entitled to receive 12 months' rent because she failed to release to another person. The facts here indicate that Carla had three offers for rent at \$1,200 per month. However, in the minority of jurisdictions that recognize the landlord's ability to do nothing, and sue for rent, she will recover.

Thus, the majority rule is that Carla cannot recover 12 months' rent from tenant.

#### **(b) Alonzo and Barbara Are Entitled to Rental Income Paid to Carla.**

The issue is whether Alonzo and Barbara, as joint tenants, are entitled to rental income paid to Carla.

As a general rule, co-owners of property are entitled to recover income derived from the property, including rental income.

Here, Alonzo, Barbara, and Carla are joint tenants. As a result, they each have an undivided interest in the land, and an equal right to use the whole. During the time of the lease, their co-ownership remained intact, entitling Alonzo and Barbara to share in the proceeds made by the use of the land from Carla.

Thus, Alonzo and Barbara are entitled to rental income paid to Carla because they are co-owners.

## **II. Question 2**

The issue is whether Alonzo and Barbara were entitled to any of the house's fair rental value from Carla during the time of her possession of the house after the tenant's two-year lease expired.

As a general rule, absent ouster, tenants are not liable to each other for rent for their use of the premises. Joint tenants have an undivided, equal right to possess the whole. Ouster occurs when co-owners are wrongfully refused use of the property.

Here, none of the facts indicate that Carla ousted Alonzo or Barbara. Nor do the facts suggest that Carla prevented them from using the home in any other way. Instead, it appears Alonzo and Barbara voluntarily chose not to use the home. The home sat vacant for the one-year period in which Carla did not have a tenant. Accordingly, Carla is not liable to them for the rental value of the land during the time it was used solely by her.

Thus, Alonzo and Barbara may not recover the house fair market value during Carla's use.

## **III. Question 3**

The issue is, what effect, if any, did Carla leasing the house to tenant have on the ownership interests in the house following her death.

A joint tenancy is destroyed by (1) partition, (2) severance, (3) death, or (4) encumbering the property in a title mortgage jurisdiction. Severance will occur if one of the parties sells the property to another person and will destroy the joint tenancy with respect to that party's interest. This is because in order for there to be a joint tenancy, all parties must (i) take at the same time, (ii) by the same instrument, (iii) the same undivided interest, and (iv) have equal rights to possession of the whole. Upon death, the deceased party's interest is absorbed by the other joint tenants and is therefore not descendible or devisable. Moreover, partition may be caused by the court either selling the property or physically dividing the property.

The facts here provide that Carla, Alonzo and Barbara owned the land as joint tenants with rights of survivorship. None of the events that terminate a joint tenancy occurred. Leasing of the land is not an event of termination for a joint tenancy. Since Carla did not transfer her legal interest to the party, she did not destroy the joint tenancy by severance.

Here, while the facts do indicate that the property was leased without the knowledge or consent of Alonzo or Barbara, as discussed above, Alonzo and Barbara were not ousted from the property. While they might have been able to terminate the lease or sue Carla for an accounting to receive income, her leasing the property did not work to sever the joint tenancy.

Instead, the joint tenancy lasted until Carla died and Alonzo and Barbara absorbed her share.

Accordingly, Carla leasing the home did not affect the ownership interests in the house.

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## **ANSWER TO MEE 1**

### **Question 1(a):**

Issue: The issue is whether Carla accepted the tenant's surrender (and in doing so, extinguished the tenant's obligation to pay rent).

Rule: A tenancy for years is a lease that expires upon a certain date (i.e., it has a fixed term). If a tenant expressly communicates that they will abandon the leased premises, the landlord has two main options. First, the landlord may treat the abandonment as a surrender, terminate the lease and in doing so, extinguish the tenant's obligation to pay rent. Second, the landlord may refuse the surrender. In a majority of jurisdictions, a landlord must use reasonable efforts to re-let the premises. However, in a minority of jurisdictions, the landlord may do nothing and seek damages from the tenant for the remainder of the rent through to expiry of the lease. If the remaining lease term exceeds a year, the agreement between the tenant to surrender and abandon must be in writing, and it will fall subject to the Statute of Frauds.

Application: Here, the lease from Carla to the tenant commenced on January 1, 2023, and was for a two-year term, meaning that this was a tenancy for years. The tenant made the offer of surrender in writing on December 10, 2023. The tenant said, "I won't ever return". This is sufficiently clear for the purposes of an abandonment, especially since the tenant did in fact abandon on December 31, 2023. It is unclear whether Carla's statement "Thank you for letting me know" was an acceptance. Although her email response was in writing, it could be construed as an acknowledgment of the tenant vacating rather than an express acceptance.

Conclusion: While Carla did entertain three different offers from potential tenants, she ultimately elected to leave the premises vacant. Assuming this jurisdiction follows the majority rule, Carla failed to use reasonable efforts to mitigate her damages and so her recovery from the tenant (provided that a court finds her email reply on December 10, 2023, did not constitute acceptance of a surrender) for the remainder of the 12 months' rent will be reduced accordingly.

### **Question 1(b):**

Issue: The issue is whether joint tenants have a duty to account to each other for rental payments derived from one of the joint tenants leasing their interest to a third party.

Rule: Joint tenants have a duty to account to the other from rental payments received from a third party through leasing the premises.

Application: Here, Carla is a joint tenant with Alonzo and Barbara. Carla received rental income from the tenant (i.e., a third party) by leasing the premises.

Conclusion: Accordingly, Alonzo and Barbara would be entitled to a share of the rental income received from the tenant.

### **Question 2:**

Issue: The issue is whether a joint tenant may seek contribution from another when the other occupies the property.

Rule: When a joint tenant occupies the premises and the other joint tenants do not, such other joint tenants generally do not have a right to recover the fair market value of rental payments that the occupying joint tenant would have otherwise paid. The key exception to this rule is where there has been an ouster. An ouster is when a joint tenant wrongfully excludes another joint tenant from occupation of the premises.

Application: The facts do not provide any evidence of an ouster. Carla simply occupied the premises. She did not take any acts or omissions that would constitute an ouster.

Conclusion: Accordingly, Alonzo and Barbara would not be entitled to the house's fair rental value from Carla during the time of her possession of the house after the tenant's two-year lease expired.

### **Question 3:**

Issue: The issue is whether leasing a joint tenant interest severs a joint tenancy (and whether such an interest can be devised in a will to another).

Rule: A joint tenancy will only be severed in certain ways. The two main ways are an inter vivos conveyance and execution of a mortgage in a title theory state. The devise of a joint tenant's interest has no impact. The right of survivorship means that upon the death of a joint tenant, the remaining joint tenants take that interest in equal shares.

Application: Here, Carla only leased the premises for a certain defined term. This does not sever the joint tenancy. Carla attempted to leave her joint tenancy interest to her son by devise in her will. However, this had no impact. The fact that her interest was a joint tenant interest means that her share passed to Alonzo and Barbara.

Conclusion: Accordingly, Carla's leasing of the house to the premises did not have any impact. Her share passed in equal shares to Alonzo and Barbara.

## **ANSWER TO MEE 2**

### **1. Whether Clyde can recover the unpaid contract price from Angie.**

As a general matter, a corporation is formed upon the filing proper articles of incorporation with the applicable state agency. Prior to that date, the corporation cannot contract in its own name and an individual contracting on the corporation's behalf is known as a promoter. A promoter will be liable for any contracts entered into on behalf of the corporation unless, following incorporation, the corporation, the promoter and the counterparty to the contract enter into an agreement to release the promoter from personal liability.

Here, Angie started a new business on her own called XYZ to license and market her app thinking that she would incorporate the business. However, she did not incorporate the business until June when she filed the appropriate paperwork with the appropriate state agency. Prior to that point, in April, Angie entered into a contract with Clyde to make the app usable by the general public with payment due in part at signing and in part when the app was delivered.

Angie entered the contract in the name of XYZ and immediately paid Clyde \$10,000. The issue is that at that point, Angie had not yet formed XYZ since the articles of incorporation had not yet been filed. Therefore, Angie was acting as a promoter of XYZ entering into contracts on behalf of a not yet formed corporation. This means that Angie is personally liable for the contract with Clyde and Clyde can recover the unpaid contract price from her. We have no evidence that, following XYZ's incorporation, the corporation took any formal action with respect to the agreement with Clyde and, therefore, Angie cannot argue her liability was released. Angie also cannot argue that she is protected by de facto corporation or corporation by estoppel. De facto corporation, in some jurisdictions that do not follow the RMBCA, will protect a person acting on behalf of a not yet formed corporation if there was a defective but good faith attempt at incorporating. Here, we have no evidence of any attempt by Angie to incorporate prior to the contract. Corporation by estoppel will prevent a third party from arguing that an individual is personally liable when they contracted with the individual as if they were a formed corporation. Here, while Angie entered into the contract in the name of XYZ, there is no indication of outward expressions to Clyde that XYZ was a corporation with limited liability (i.e., Inc., etc.).

Therefore, Angie will be personally liable, and Clyde can recover the unpaid contract price from Angie.

**2(a). Whether Clyde can recover the unpaid contract price from Basra on the theory that Basra is a partner.**

A partnership is formed when two or more people associate to carry out a for profit business as co-owners. No intent to form a partnership needs to be found, only the intent to carry out a for profit business as co-owners. A rebuttable presumption of a partnership arises when the partners share profits. Partners in a general partnership are personally liable for the debts and obligations of a partnership.

Here, in their conversation in March, Basra told Angie that her idea would be great, that he believed it would make money, that he would invest \$5,000 and that he would introduce Angie to Clyde, a software developer he had known. While this shows that Basra was excited about Angie's idea, it was not enough to form a partnership. This is because Angie said nothing about starting a business at that time and Basra's actions could be seen as support of his best friend's idea rather than an intention to carry on a for-profit business as co-owners. There is no evidence that, following that conversation, Basra received a share of any profits that Angie made, participated in the management of Angie's new business or did anything other than introduce her to Clyde. Rather, Angie started XYZ on her own to license and market her app without Basra involved and did not reach out to him about the investment until after a corporation had been formed. As Angie was acting alone in operating XYZ as a for-profit business, there can be no partnership as there is no association of two or more people.

Therefore, since no partnership was formed, Clyde may not recover the unpaid contract price from Basra on the theory that he is a partner.

**2(b). Whether Clyde can recover the unpaid contract price from Basra on the theory that Basra is a shareholder of the corporation.**

A hallmark attribute of a de jure corporation is that the corporation's shareholders enjoy limited liability and are not liable for the debts and obligations of the corporation absent piercing of the veil. A de jure corporation is formed upon the filing of its Articles of Incorporation with the appropriate state agency.

Here, XYZ became a de jure corporation when Angie completed the paperwork to form a corporation and filed such paperwork with the appropriate state agency in June. Following the formation of the corporation, Angie approached Basra about making an investment in the corporation and Basra contributed \$5,000 to the corporation in exchange for 2,500 shares of stock. Only at that point did Basra become a shareholder in the corporation. Since Basra only became a shareholder in the corporation after it was properly incorporated as such, Basra enjoys limited liability and will not be personally liable for any of the debts and obligations of the corporation. This is true unless the veil is

pierced and we have no facts (i.e., ignoring corporate formalities, fraud, undercapitalization, etc.) to indicate that it would be in this instance.

Therefore, as a shareholder in a properly formed corporation, Basra is insulated from personal liability and Clyde may not recover the unpaid contract price from him.

### **3. Whether Clyde can recover the unpaid contract price from the corporation, on the theory that it adopted the contract.**

If a promoter acting on behalf of a corporation that has not yet been incorporated enters into a contract on behalf of that corporation, the corporation itself can become liable for the obligation, once formed, if the corporation, the promoter and the third party expressly enter into a novation agreement pursuant to which the corporation is substituted into the place of the promoter as the counterparty. Absent such formal action, the corporation itself will not become liable for debts and obligations incurred prior to the formation of the incorporation.

In this instance, Angie entered into the contract with Clyde on April 1. While Angie entered into the contract in the name of XYZ, XYZ was not incorporated at that point. Additionally, use of the name XYZ did not indicate to Clyde that Angie was acting on behalf of a corporation since it lacked the typical required indicators such as "Inc.", "Corporation", etc. Following incorporation, XYZ took no formal action with respect to the agreement. This means that it did not ever formally enter into a novation that released Angie from personal liability and substituted itself into the contract as Clyde's counterparty. Additionally, the corporation did not accept the benefits of the contract since Angie told Clyde to immediately stop work before he ever delivered the work shortly after the corporation was formed. In the absence of such formal agreement or acceptance, there is no evidence that the corporation adopted a contract to which it was not a party.

Therefore, Clyde may not recover the unpaid contract price from the corporation for a contract entered into before its existence since the corporation never adopted the contract.

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## ANSWER TO MEE 2

1. The issue is whether a promoter of a corporation is personally liable for the contracts entered into on behalf of the not yet formed corporation.

To create a valid corporation, there must be a valid filing of articles of incorporation with the state agency. The creation of a corporation generally shields the shareholders and directors from personal liability for the corporations' debts. Promoters are people who enter into contracts with third parties on behalf of a corporation before the corporation is finalized and certified by the state agency. Promoters are generally personally liable for the contracts entered into, even after adoption by the corporation absent a novation. A novation exists when the corporations and the third party enter into another agreement to adopt the contract and absolve the promoter.

Here, Angie entered into an agreement with Clyde on behalf of XYZ corporation, before incorporation of XYZ occurred. This agreement caused Angie to be a promoter of the corporation. The agreement stated that Clyde would be entitled to 15K at completion and delivery of the app. The facts later state that Angie approved the contract after incorporation, but there are no facts to indicate a novation had occurred. There has not been another agreement entered into by XYZ and Clyde. Therefore, Angie will be personally liable on the contract to Clyde.

Angie will be personally liable on the contract to Clyde because she was a promoter of the corporation and there was no novation after incorporation.

2A. The issue is whether a partnership existed between Angie and Basra at the time the contract with Clyde existed.

Partners are each personally liable jointly and severally for the debts of the partnership. A partnership is created when two or more people enter into a business as co-owners for profit. A rebuttable presumption of a partnership is when the parties split profits. Other factors to consider is loss sharing and management rights. Parties do not have to intend or agree to create a partnership. A partnership is created as soon as the stated elements are met.

Here, it is unlikely that a partnership would be found to have formed at the time Angie entered into the contract with Clyde. Basra told Angie that she would be willing to invest \$5,000 IF Angie started a business. Furthermore, Basra provided the contact of Clyde, but took no actions herself to enter into an agreement. There is nothing to suggest profit sharing or loss sharing.

Additionally, there is nothing to suggest management rights. Basra merely provided a contact and took no steps towards the management of the business. Additionally, Basra did not pay the \$5,000 to Angie until after incorporation. There is nothing to suggest that Basra was a "co- owner" of a business with Angie at the time of the agreement with Clyde.

Basra will not be held personally liable on a theory that a partnership existed at the time of the contract with Clyde.

2B. The issue is whether a shareholder of a corporation can be held personally liable for the debts of the corporation.

Shareholders, generally, are not liable for corporate debts. Shareholders have limited liability and can only lose the amount of contribution they put into the corporation (stocks). An exception to shareholder liability can arise when courts decide to pierce the corporate veil. Courts will pierce the corporate veils and impose personal liability on a shareholder when there is a finding of the corporation as the shareholders "alter ego" or an undercapitalization of the cooperation.

Alter ego arises when there is a commingling of shareholders and corporate assets, to a point where the two can fairly be treated as a single entity. Undercapitalization occurs when the shareholder creates and maintains a corporation at a value lower than its liabilities, for the purposes of protecting assets.

Here, Basra has \$2,500 shares of XYZ Corp. stock. Basra was a minority shareholder, to Angie's 10,000 shares. There is nothing to indicate that Basra makes any financial decisions for the corporation that would lead a court to believe she used the corporation as her alter ego. Basra did not commingle with the corporation or have the authority to capitalize it.

Basra will not be held liable as a shareholder for the corporate debts because there is nothing to indicate a court would pierce the corporate veil in this situation.

3. The issue is whether a corporation can be held liable for contracts entered into on its behalf by promoters before it came into existence.

Corporations can adopt previous contracts created on its behalf before they came into existence. Corporations can adopt by accepting the goods or services, paying the bills on the contract or expressly accepting the terms of the agreement. Corporations come into existence at the time the articles of incorporation are filed with the correct state agency. An agreement by the corporation will cause liability by the corporation for the contract, however the promoter will continue to be personally liable as well, absent a novation (see

above). The corporation must take affirmative steps in adopting a contract created by a promoter. An agreement entered into before the corporation exists will not be binding absent an adoption.

Here, the contract between Angie and Clyde stated the Angie was signing "in the name of XYZ". However, XYZ was not incorporated until 2 months after the agreement. Additionally, the agreement provided an initial payment of 10,000 dollars and a future payment of 15,000 dollars. The initial payment was paid by Angie, also before the corporation's existence. And there is nothing in the facts to indicate that the corporation took any steps to adopt this contract. XYZ did not accept the product, pay the balance, or affirm the terms of the agreement. However, if XYZ accepts delivery they will be bound by the agreement.

XYZ is not bound by the agreement with Clyde because they took no steps to adopt the contract after incorporation.

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## **ANSWER TO MEE 3**

### **1. Relevance**

The first issue is whether the evidence that James was once accused of the theft of grapes is relevant. Evidence is relevant if it makes a fact of consequence more or less likely. Relevance has a relatively low bar and is generally easy to overcome. A fact of consequence includes material facts relevant to the charged offense's elements or defenses. Relevant evidence is subject to Rule 403 - meaning that the probative value of the evidence is substantially outweighed by the fact it is misleading, prejudicial, confusing to the jury, etc, but it is a separate objection.

Here, James is charged with the theft of comic books, which is the unlawful taking and carrying away or appropriating of property with intent to permanently deprive the other person of that property. The stealing of grapes accusation is based on James tasting grapes at a local grocery store without purchasing any. While James was arrested, but not charged for the crime, such evidence can go to show that James potentially stole or deprived others of property in the past. It may be argued, albeit difficult to argue, that James steals and taught his sons how to steal, or that they observed him committing such acts regularly - hence placing the books in his brief case to take home. Despite such evidence likely being more prejudicial than probative in a case where James is being charged for the theft of comic books (and was not charged for the theft of grapes), this evidence is nonetheless relevant because it makes the fact of consequence - that James might have stolen - marginally more likely.

Therefore, while the evidence might be ultimately excluded on 403 grounds, and others described below, the grape theft evidence is ultimately relevant and the court would overrule a relevance objection.

### **2. Character Evidence**

The next issue is whether the evidence of James being accused of grape theft is improper character evidence. Character evidence is generally not permissible unless the defendant's character is at issue. Exceptions to impermissible character evidence are if it is used to show motive, intent, lack of mistake, identity, or to show other factors of a crime aside from propensity - meaning that simply because the defendant acted in such a way once, they will act that way again. Character evidence based on the defendant's reputation or the opinion of a witness may also be used to impeach a witness, but specific bad acts cannot be used.

Additionally, evidence of the defendant's habit is permissible and requires showing that an actor repeatedly behaves in a particular way under specific circumstances.

Here, James was accused of stealing grapes once, arrested, and not charged with a related crime. There is no evidence indicating that the stealing of the grapes created a reputation for James in the community as a thief, or that this was an act he habitually committed. It may be argued, however, that it demonstrates lack of mistake because James claimed to have been testing the grapes prior to purchase, arguably similar to how he was browsing books and did not purchase the ones in his bag. However, this is a weak argument and would likely be considered propensity by a court because by entering such evidence, the prosecutor will more likely use the evidence to show that James has been accused of theft before and probably, therefore, acted as a thief again.

Thus, the court is likely to sustain an objection for improper character evidence.

### **3. Improper Evidence of Other Acts**

The next issue is whether the evidence is improper evidence of other acts. Evidence of wrongs, crimes, or other bad acts of a defendant may be admitted for impeachment purposes and to attack credibility. Such evidence may also be used to show motive, intent, lack of mistake, identity, or to show other factors of a crime aside from propensity. Evidence of a bad act that did not result in a conviction is subject to a reverse 403 balancing test, meaning that the probative value of the act substantially outweighs prejudicial value.

Here, the grape theft accusation did not amount to a charge or conviction. James is being accused for theft based on evidence that his sons placed books in his briefcase when he was not looking and he carried them out of the store. Arguably, the elements of the statute cannot be proven with such evidence. The evidence that James allegedly stole grapes would not be more probative than prejudicial, as it would make James look like a petty thief. Additionally, given the disparate value in a handful of grapes that James was previously accused of stealing and five comic books - the court, or a jury, is unlikely to find any correlation between the two acts, making the evidence inadmissible. Thus, the evidence of the bad act is unlikely to pass the reverse 403 balancing test, as well as the regular 403 balancing test for being substantially more prejudicial than probative.

As a result, the court would likely sustain an objection to improper evidence to other bad acts, unless it is to be used for impeachment.

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## **ANSWER TO MEE 3**

### **Relevancy of the Evidence**

The first issue is whether the evidence is relevant to the case at hand.

Under FRE 401, evidence is relevant if it has any tendency to make a fact of consequence to the determination of the action more or less probable than it would be without the evidence. Still, even if certain evidence is relevant, the court has the power under FRE 403 to exclude relevant evidence if its probative value is substantially outweighed by unfair prejudice, waste of time, undue delay, or other conflicting factors.

Here, the fact that James was once accused of theft of grapes would make it more likely that he would steal other items. The fact that an individual once stole an item from a store would make a jury more inclined to believe that the individual would not hesitate to do it again. Regardless of whether the court would serve in its gatekeeping role to exclude the evidence of the prior grape theft under a 403-balancing inquiry, there is no denying that the fact that James was once accused of stealing grapes is relevant to a case in which he is accused of stealing comic books. The other evidence is material (since it is exactly the same unlawful conduct) and it is probative (since a jury could conclude that he would be more likely to steal again).

Thus, defense counsel would be unsuccessful in challenging the admission of the evidence of James' prior grape theft on the basis that it is irrelevant.

### **Improper Character Evidence**

At issue is whether a specific act can be offered into evidence as character evidence during the prosecutor's case in chief.

Character evidence is generally inadmissible if offered to demonstrate that the defendant has a certain propensity to commit a crime. In a criminal case, a defendant may put their character in question by offering reputation or opinion evidence of the pertinent trait. For example, in a theft case, a defendant would be able to call a witness to testify that the defendant has a reputation in the community as someone who is honest and would never steal. In rebuttal, a prosecutor can then offer the testimony of another witness as to defendant's bad character trait for that relevant characteristic or ask, in good faith, "did you know" or "have you heard" questions to cross-examine the defendant's witness. However, neither the prosecutor nor the defendant can offer specific evidence of a defendant's prior act that relates to a pertinent trait.

Here, the prosecutor is attempting to offer evidence of a specific act as propensity character evidence in its case in chief. The prosecutor would only be allowed to inquire

into the grape stealing incident on cross examination of James' character witness if James' witness put the pertinent trait into question. Again, such questioning would have to come in the form of "did you know that James was once accused of stealing grapes" in order to impeach James' hypothetical character witness' testimony of James' good reputation for the pertinent trait of honesty.

In addition, conviction evidence of a crime bearing on truthfulness or another conviction may come in to impeach a defendant. However, as explained in the facts, James was never charged with a crime regarding the grapes. Thus, the evidence would not be admissible under this theory either.

Character evidence of a specific act in this form is inadmissible during the prosecutor's case in chief - especially since James, the defendant, has not put his character in issue. In addition, there was never a conviction for James' grape stealing; so conviction impeachment evidence would not be admissible either. Defense counsel's objection should be sustained.

### **Improper Evidence of Other Acts**

At issue is whether the prior grape stealing could come in under an alternative purpose theory under FRE 404(b).

While a specific other act may not be admissible for propensity purposes, evidence of another act may be admissible under FRE 404(b) for an alternative purpose such as motive, intent, lack of mistake, identity, part of greater scheme. Again, the judge may weigh such an act, even if admissible under 404(b), through a 403 balancing test to analyze whether the other act's probative value would be substantially outweighed by unfair prejudice to the defendant.

Here, it is not immediately clear what other FRE 404(b) purpose the other act of stealing grapes could possibly be offered for. The prosecution may try to make the argument that such evidence demonstrates an intent to steal where James' malicious intent; however, stealing grapes and stealing comic books are quite different from one another. In addition, identity would probably not work as a justification either. If, hypothetically, James stole the grapes in the same manner in which he stole the comic books, evidence of how he previously stole the grapes could be admissible under 404(b) under a theory that it demonstrates a modus operandi. However, James is charged with stealing comic books by instructing his son to place the comic books in a briefcase; on the other hand, James was accused of stealing the grapes by falsely claiming that he was merely tasting them.

Thus, it would be highly unlikely for the evidence to come in under any theory under FRE 404(b). Defense counsel's objection should again be sustained.

## ANSWER TO MEE 4

### 1. Disposition of Automobile

The bequest of the automobile will not lapse and therefore apply to the brother's adopted child, Fred. The issue is whether the anti-lapse statute applies to the will, which would save the automobile gift.

When a testator provides a gift to a beneficiary who predeceases the testator, it is said that such a gift lapse or in other words fails. However, many jurisdictions will save a gift that otherwise lapses by application of an anti-lapse statute. In such case, an anti-lapse statute saves the gift of the predeceased beneficiary and will be passed along to the beneficiary's successors. The anti-lapse statute applies when the predeceased beneficiary in question is related to the testator and unlike some jurisdictions has more general applicability in which predeceased beneficiaries will fall under anti-lapse purview, in that grandparents, adopted, and stepchildren also apply as qualifying beneficiaries. Moreover, anti-lapse statutes may not necessarily apply in situations where it is clear that the testator intended for the beneficiary to survive them in order to take. However, under the UPC, mere words of survivorship will not render an anti-lapse statute inapplicable.

Here, the will gifted the automobile to the brother "if he survives me." Since this is a UPC state, the anti-lapse statute applies since mere words of survivorship alone are insufficient to render the anti-lapse statute inapplicable. Since the brother is a qualified beneficiary with his adopted- son as his successor, Fred will be able to take the automobile.

### 2. Disposition of 500 South Street House

The mother is entitled to the house at 500 South Street as substitute for the 211 Pearson Drive. The issue is whether the gift of property is adeemed as the testator did not intend for the new house to be provided to the mother.

When a testator makes a gift in a will and such gift is no longer in existence or in possession by the Testator's estate, that gift is considered adeemed and as such, the beneficiary will not take anything. However, there are certain situations where a beneficiary may be able to take a substitute. Where the adeemed property in question was then sold and whose proceeds were then used to buy another similar property, a court may allow the beneficiary to then take that property as a substitute. Moreover, the court will more likely allow a substitute in ademption situations where it is clear that the testator intended the new property to be a replacement of the old property in question and is identical for all intents and purposes.

Here, the testator gifted to his mother an investment property. However, before his death, the Testator then sold that house at 211 Pearson and purchased another property on South Street, which was also purportedly to be used as investment property since the husband and wife did not live in the new house either. Thus, it appears that it was intended to be a replacement and since the proceeds of the original property was used to buy the new property on South Street, a court will likely allow for the mother to take the South Street property as a substitute.

### 3. Doris's Share as an Omitted Child

Doris will be entitled to the Husband's share. The question is whether as a pretermitted child Doris is entitled to take as a nonmarital child.

The UPC does provide exceptions for situations such as omitted children where a share will be provided to them notwithstanding a validly executed will that does not provide for them. Usually if a child is omitted, a court will not provide a share for them in situations where a majority of the estate goes to the spouse of the testator who is also the parent of the child. However, in the event that a child is not provided for and their parent is not named in the will, then an omitted child may take as a pretermitted child. However, if it is clear that the Testator clearly did not intend for that child to take, such as naming their siblings in the will, then the child may not take as an omitted child. In such case, a child would be entitled to the same share as other siblings or what they would take under intestate succession.

Here, it is likely that Doris will be able to take as a pretermitted child since Doris's mother was not provided for. Moreover, although it may appear it be deliberate, it seems that the omission of that child was not intentional in the sense that the testator did not want the child provided for, but possibly due to social, moral, privacy reasons as opposed to cutting a child out of a will. Therefore, under these circumstances, it is likely that Doris is entitled to take as an omitted child. Moreover, it is likely that Doris's share will come from the residuary and thus reducing the overall residuary estate.

### 4. Sam's Share as an Omitted Child

Sam, on the other hand, is likely not able to take as an omitted child.

As aforementioned above, where a child is omitted from a will but the testator's spouse who is the parent of the child is given a majority of the estate, the court will not then provide a separate share for such omitted child. The rationale here is that it is presumed that upon the death of the second parent, the omitted child would be provided.

Here, Sam was omitted from the will, but under the will his mother was given the residuary which is valued at \$3 million where the estate in its entirety is valued at

\$3,325,000. Thus, it is likely that the testator intended that Sam would be provided for indirectly by the surviving wife, Sam's mother, and that Sam would eventually take the remainder upon the mother's death.

Therefore, Sam is likely not entitled to a share as an omitted child.

#### 5. Residuary to Wife

The wife will be entitled to the residuary estate, although it will be reduced in order to account for the pretermitted child, being Doris.

Under the will, Testator clearly stated that the residue of the estate would go to his Wife "if she survives me."

Absent any other provisions, as the wife clearly survived him, the wife would be entitled to the residuary, which would first be reduced to account for Doris's share as a pretermitted child.

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## ANSWER TO MEE 4

**The bequest of the automobile to Husband's brother passes to the brother's adopted child, Fred.** The issue is how the UPC will interpret a survival requirement.

A will speaks at the time of death. Therefore, its terms will be interpreted according to the assets in the estate at that time. A general gift may be supplied by an asset acquired after will execution. A testator may provide language of survivorship, which seeks to require a named beneficiary to survive the testator to receive any gift for himself or his estate. However, while traditionally that language was effective in lapsing gifts of predeceased beneficiaries into intestacy, the UPC provides that this survivorship requirement is not enough. Instead, an anti-lapse statute will save the gift of the predeceased beneficiary and issue it to that taker's heirs as substitute takers. Some states' anti-lapse rules only apply to blood relatives of the testator.

State Y has adopted the Uniform Probate Code (UPC). The testator's domicile at his death determines the distribution of personal property, and the situs of real property determines the distribution of real property.

Husband died in State Y, where he was domiciled and where his real property is located. Therefore, State Y controls the distribution of his entire estate.

Here, Husband gifted "any automobile I own at the time of my death to my brother if he survives me." This is a general gift, providing his brother with whatever car is in his estate at the time of death, since a will speaks at the time of death rather than at its execution. State Y follows the UPC, which applies the concept of anti-lapse rather than following a testator's strict language of survivorship, such as "if he survives me."

Husband's brother predeceased him. However, per the UPC, anti-lapse will apply. Even if State Y only allows gifts to be saved if the beneficiary is a blood relative, brother is related to Husband, so that is not restrictive. Husband is survived by his brother's adopted child, Fred. For purposes of intestacy, an adopted child is treated as any other child. Therefore, Fred is an appropriate substitute taker for Husband's brother under the will. UPC anti-lapse will gift Husband's automobile, in his estate at the time of his death, to Fred.

**Husband's mother is entitled to the house at 500 South Street as a substitute for the house specifically bequeathed to her.** The issue is how the UPC will treat property specifically bequeathed that does not exist in the estate at death.

A gift in a will is a specific gift if it references details about the testator's property and can only refer to one thing, such as a home's address. If a specific gift no longer exists in the estate at the time of the testator's death, it is said to have adeemed. There are three theories of ademption. The identity theory grants the beneficiary no gift, since the

specific gift bequeathed to them is not in existence. The intent theory will consider the testator's intent and may grant the beneficiary a replacement if one exists. The UPC theory entitles the beneficiary to a replacement or the sale price of the property, if sold, and presumes the testator's intent. State Y adopted the UPC.

Husband gifted "the house I own at 211 Pearson Drive, City, State Y, which I purchased as an investment, to my mother." This is a specific gift with reference to a house at one address. At the time of his death, he had sold his house and reinvested the proceeds in another house, located at 500 South St. Therefore, the house devised in the will is no longer within the estate, and as a specific gift, is subject to ademption.

The UPC theory of ademption will assume that Husband intended his mother to receive a replacement or sale proceeds of the 211 Pearson Dr house. The 500 South St house was acquired using the sale proceeds from the gifted house. Moreover, both houses were acquired for investment purposes. At no time did Husband or Wife live in the old house or the newly acquired house. These facts bolster Husband's presumed intent. Therefore, under the UPC, Husband's mother is entitled to the 500 South St house as a substitute for the one specifically bequeathed to her.

**The residuary estate should be distributed to Wife.** The issue is whether a surviving spouse is entitled to the will distribution as written.

Husband gifted "the residue of my estate to Wife if she survives me." Wife survived husband and is entitled to the residue of his estate, as written in the will and pursuant to Husband's

**Doris is entitled to take a share of Husband's estate as an omitted child.** The issue is whether Doris was otherwise provided for.

A pretermitted child is one who was born after will execution and is not accounted for in the testator parent's will. The UPC allows pretermitted children to take an intestate share of a parent's assets unless (i) the omission was intentional, (ii) the testator had other children, and the child's parent received the entire estate, or (iii) the child was otherwise provided for. State Y has adopted the UPC. A non-marital child may take an intestate share from her father if the father established parental rights during his lifetime or if the child can establish the parental relationship after his death.

Two years after will execution, Husband had a nonmarital child with his neighbor. The child is Doris. Husband's will does not account for any children, including Doris. Therefore, if Husband established a relationship with Doris while alive or if Doris can prove paternity after Husband's death, she is a pretermitted child. Doris was not otherwise provided for under these facts.

Additionally, there is no evidence that the omission of Doris was intentional. Lastly, Husband has another child, but Doris's mother did not receive any gift under the will.

Therefore, Doris is entitled to a share of Husband's estate as an omitted child.

**Sam is not entitled to take a share of Husband's estate as an omitted child.** The issue is whether Sam's mother has received a substantial portion of the estate.

A pretermitted child is one who was born after will execution and is not accounted for in the testator parent's will. The UPC allows pretermitted children to take an intestate share of a parent's assets unless (i) the omission was intentional, (ii) the testator had other children, and the child's parent received the entire or a substantial majority of the estate, or (iii) the child was otherwise provided for. State Y has adopted the UPC.

One year after will execution, Husband and Wife had a child named Sam. Sam is not accounted for in Husband's will and is therefore a pretermitted child under the UPC. Sam was not otherwise provided for under these facts, and there is no evidence that the omission of Sam was intentional. However, Husband has another child, and Sam's mother (Wife) is the beneficiary of some of Husband's estate. In fact, Wife is the beneficiary of a large majority of the estate. Therefore, Sam is not entitled to a share of the estate under the UPC because his mother excepts him.

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## **ANSWER TO MEE 5**

### **1. The issue is whether Bank has a security interest in the flute that is enforceable against Joan.**

#### ***Attachment***

Under the UCC, a security interest is an interest granted in collateral that secures an obligation from the debtor to the secured party (i.e., the creditor). To be enforceable, a security interest must attach to the collateral. Attachment requires the following: (i) the secured party gives value to the debtor, including a line of credit; (ii) the debtor has rights in the collateral at the time of the security interest creation; and either (iii) the debtor authenticates (i.e., signs) a security agreement that states the parties and sufficiently describes the collateral as to reasonably identify the collateral subject to the security agreement, or (iii) the secured party takes possession or exercises control over the collateral pursuant to a security agreement. One type of collateral is inventory, which is goods that the debtor sells or leases to third parties, raw materials, or works in progress. Here, the secured party gave value because Bank loaned, and continues to loan, Harmony Corporation money. The debtor had rights in the collateral because Harmony Corporation presumably has rights in its own inventory. There was an authenticated security agreement because Harmony Corporation signed the security agreement, which also stated the parties and sufficiently described the collateral as "inventory," which is acceptable as a term of art. The flute is inventory because Harmony Corporation sells musical instruments to customers, including the flute. The security interest attached to even after acquired inventory because the security agreement expressly stated such, which is permitted. Thus, Bank's security interest attached to the flute.

#### ***Perfection***

To be enforceable against other interests, a security interest must be perfected. Perfection occurs when the security interest attaches, and the secured party follows one of the methods of perfecting. One method of perfection is filing a financing statement in the appropriate state filing office (e.g., the Secretary of State) that correctly lists the secured party and debtor and sufficiently identifies the collateral.

Here, as stated above, Bank's security interest attached to the flute. Bank perfected this security interest because it filed a financing statement in the appropriate filing office that listed Harmony Corporation as the debtor, Bank as the secured party, and described the collateral as "inventory." Thus, Bank had a perfected interest in the flute.

### ***Buyer in the Ordinary Course of Business***

Generally, a perfected security interest will remain attached and perfected to the collateral upon its disposition given that the secured party follows the specified method of continued perfection under the UCC. However, a buyer in the ordinary course of business takes free and clear of a security interest. A buyer in the ordinary course of business is a buyer who (i) gives value for the collateral, (ii) purchases in the ordinary course of business of the seller who is in the business of selling goods of the kind, (iii) acts in good faith, and (iv) does not have knowledge that the purchase violates a security agreement. When a buyer in the ordinary course of business then sells the collateral to another buyer, that buyer also takes free of the security interest.

Here, Walter gave value for the flute because he paid \$300 in cash and promise to make future payments for the flute. Walter purchased the flute in the ordinary course of business for Harmony Corporation because Harmony Corporation is in the business of selling musical instruments and sold it to Walter in its showroom. Walter presumably acted in good faith absent facts indicating otherwise. Walter did not have knowledge that the purchase violated any security agreement because Walter was wholly unaware of the security agreement between Bank and Harmony Corporation. Thus, Walter was a buyer in the ordinary course of business that took free of Bank's security interest. As a subsequent buyer of the flute, Joan also took free of the security interest.

Therefore, Bank does not have a security interest in the flute that is enforceable against Joan.

### **2. The issue is whether Harmony has a security interest in the flute that is enforceable against Joan.**

#### ***Attachment***

*See attachment rule above.*

Here, the secured party gave value because Harmony Corporation extended a line of credit to Walter. Walter had rights in the flute because he paid cash and promised to make future payments and was given possession of the flute. There was an authenticated security agreement because Walter signed a credit sales agreement that identified the parties and sufficiently described the collateral as the flute itself. Thus, Harmony Corporation's security interest attached to the flute.

#### ***Perfection***

Another type of good is a consumer good, which is when a consumer uses the collateral for family, personal, or household use. A purchase money security interest ("PMSI") is a

security interest granted in collateral when the secured party's extension of value allows the debtor to purchase the collateral itself (e.g., a line of credit). A PMSI in consumer goods automatically perfects once attached.

Here, the collateral is a consumer good because Walter intended to use it for personal purposes as a professional flutist. Harmony Corporation's security interest is a PMSI because the extension of credit allowed Walter to purchase the flute itself. Thus, Harmony Corporation's security interest was automatically perfected as a PMSI in a consumer good.

### ***Consumer Buyer***

A consumer buyer will take free of a security interest if the buyer (i) gives value for the consumer good, (ii) in good faith, (iii) from a consumer seller (i.e., a seller not in the ordinary course of selling the good), and (iv) without knowledge of a security agreement.

Here, Joan gave value for the flute because she paid \$900. Joan made the purchase in good faith absent any facts to the contrary. Walter is a consumer seller because he is not in the business of selling flutes, or any musical instruments. Joan had no knowledge of the security agreement because Joan had no knowledge of any interest of Bank or Harmony.

Therefore, Harmony does not have a security interest in the flute that is enforceable against Joan.

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## **ANSWER TO MEE 5**

### **1. Whether the Bank has a security interest in the flute that is enforceable against Joan?**

Under Article 9 of the UCC, for an enforceable security interest to exist, it must first attach. A security interest is said to have attached if:

- a) Secured party gave value
- b) The debtor has rights to the collateral
- c) An authenticated security agreement that describes the property was filed or the secured party retains possession of the collateral

Here, the bank gave value to Harmony by loaning money to the Corporation. The collateral is all current and future inventory of Harmony which Harmony owns and therefore has rights to. Finally, the Bank has signed an agreement with Harmony that properly describes the collateral as 'all present and future inventory'. Such a description is sufficient for the purposes of a valid security agreement. Therefore, Bank's security interest has attached. Furthermore, Bank filed a financial statement and therefore, bank's security interest has perfected. Harmony sells musical instruments and therefore the flute sold to Walter is inventory. A buyer buys a good subject to the security interest. Therefore, the bank has an enforceable security interest in the flute. However, an exception exists wherein a buyer in the ordinary course of business (BCOB) takes the good free of the security interest. A BCOB is a (i) buyer, who buys, (ii) in good faith, (iii) in the ordinary course of business, (iv) from a merchant who is in the trade of selling that good, (v) without knowledge that a security interest exists on the good. Here, Walter bought the flute, from Harmony who is a merchant in the business of selling musical instruments. Walter had no knowledge about the security agreement between the bank and Harmony. Furthermore, there is no evidence of the transaction between Harmony and Walter having any bad faith elements. Therefore, Walter is a BCOB and takes the flute free of the security interest. Joan, having purchased the flute from Walter, also therefore, takes the flute free of the security interest.

Therefore, the bank does not have a security interest in the flute that is enforceable against Joan.

### **2. Whether Harmony has an enforceable security interest in the flute against Joan?**

For an enforceable security interest it must first attach. Here, Harmony gave the flute to Walter on credit, thereby giving value. Harmony had rights to the flute since it owned the flute. Finally, Harmony and Walter entered into a 'credit sales agreement' which essentially is a security agreement. Therefore, Harmony's interest in the flute attached. For a security interest to have priority over future interest, it must be perfected. A security interest perfect by either: (i) filing a financial statement, (ii) having possession or

control over the collateral or (iii) automatic perfection. A seller Purchase Money Security Interest (PMSI) is one where the seller sells the good on credit but retains title in the good. A PMSI is a special type of security interest that has its own priority rules. A PMSI in consumer goods is automatically perfected. However, Walter is a professional flutist and he purchased the flute for his professional performances. Therefore, the flute is not a consumer good. Therefore, it is not automatically perfected. Harmony therefore, should have filed a financial statement to perfect the security interest. Harmony did not file any financial statement and also no other perfection methods are applicable. Therefore, Harmony has not perfected the security interest.

A buyer of a good takes the good subject to the security interest only if the security interest is perfected. Joan bought the flute from Walter. Had Harmony perfected its security interest, Joan would have taken the flute subject to the security interest. One might argue that Joan is a consumer buyer and therefore would still take the flute free of security interest unless Harmony filed a financial statement prior to Joan purchasing the flute from Walter. But since Joan was also not buying the flute as a consumer good, since she is also a professional flutist, she would not have qualified as a consumer seller. Furthermore, Walter is not a consumer seller himself, which additionally poses a problem in classifying Joan as a consumer buyer.

Therefore, due to Harmony not perfecting its security interest, Harmony does not have an enforceable security interest in the flute against Joan.

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## **ANSWER TO MEE 6**

### **1. The issue is whether service of process on Dan was sufficient.**

The Federal Rules of Civil Procedure allow service on a defendant by personal service, registered agent, delivery to a person of suitable age and discretion residing at the defendant's residence, or any method authorized under state law in which service was made. However, service of process must comply with due process notice requirements that mandate service be designed to reasonably apprise the defendant of the complaint. If the plaintiff knows or has reason to know that notice will not reach the defendant, then service is improper under due process.

Here, Penny's attorney complied with State C law that authorizes service of process by "sending a summons and complaint by first-class mail to a defendant's place of residence" because Dan was domiciled in State C at the time the lawsuit commenced (he physically lived with his parents there after getting fired and moving out of State B). However, the attorney knew that Dan would likely not receive notice. This is because the attorney had failed for weeks to contact Dan at his parents' home and learned that Dan was frequently away from home for weeks traveling throughout the country. Additionally, the attorney should have known that the letter sent to Dan's parents would not reach him in time while he was away because the envelope made no effort to distinguish itself as an item of immediate importance. Thus, because Penny's attorney knew and had reason to know that mailing the complaint and summons would not reasonably make Dan aware of the lawsuit, service of process on Dan was insufficient insofar as it failed to satisfy due process.

### **2. The issue is whether the district court has personal jurisdiction over the corporation.**

Generally, a federal court may exercise personal jurisdiction to the extent of the state in which it sits. A court may exercise general personal jurisdiction over a defendant corporation if the corporation has continuous and systematic connections to the forum state (either incorporated or has its headquarters (nerve center) there). Alternatively, a court may exercise specific personal jurisdiction if the defendant corporation has such minimum contacts that it purposefully availed itself to the laws of the forum state and would be reasonably foreseeable to go to court there. This requires both that the claim arise out of or relate to the contacts with the forum state and that the exercise of jurisdiction would not offend traditional notions of fair play and substantial justice.

Here, the corporation is incorporated with its headquarters (nerve center) in State A, so the corporation does not have systematic and continuous ties to State C sufficient to exercise general personal jurisdiction. Additionally, Penny's claims arise out of and relate to the corporation's contacts with State B; more specifically, Penny's contractual

relationship with the corporation, Dan's risky unauthorized asset allocation, and Penny's subsequent losses all occurred in State B. Thus, State C has neither general nor specific personal jurisdiction over the corporation with regard to Penny's claims.

However, a defendant may consent to personal jurisdiction through their conduct. Here, State C law requires that any corporation that voluntarily registers to do business in State C consent to the exercise of general personal jurisdiction in State C. Because the corporation voluntarily registered to do business in State C pursuant to the State C statute, the corporation is likely subject to personal jurisdiction in State C. Thus, the district court likely has personal jurisdiction over the corporation because the corporation voluntarily consented.

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## **ANSWER TO MEE 6**

### **1a) Whether Penny properly served Dan with process under the federal rules of civil procedure.**

Service of process is the method by which a party receives notice of a pending litigation against them. The federal rules of civil procedure govern the proper method of providing notice by service of process in federal court. To be sufficient, process must be served on the party personally, upon a person of suitable age and discretion at the party's usual place of abode, or in any manner authorized by the law of the state where the federal court sits.

Here, Penny served notice by mailing a copy of the complaint and summons to Dan's parents. This was not personal service on Dan or his parents at his usual place of abode. But the State C law does allow service by first class mail on a person's residence. Therefore, if his parents' house is deemed his residence, service would be proper. Residence is not defined in the federal rules, which use terms like "domicile" or "usual place of abode." But assuming it is an analogous term to those, it would likely incorporate a facts-based approach, considering whether the party is employed at or nearby the location, whether they plan to remain there permanently, and whether they return there. And under these facts, this would likely apply to Dan's parents' house. While he had been living in State B, Dan lost his job and moved back to State C to live with his parents. He is apparently unemployed, and has no apparent intent to return to State B or move elsewhere. Thus, a court could properly determine that his parents' house is his "residence" under the statute. If that is the case, service would be proper under the federal rules.

### **1b) Whether Penny's service by mail is proper notice under the Due Process clause of the constitution.**

In addition to compliance with the federal rules, the Due Process Clause of the Fifth Amendment to the United States constitution requires that notice to a party be adequate. Due process is only satisfied if the notice is reasonably calculated under the circumstances to apprise the party of the pending litigation and allow them an opportunity to respond. A party must make this calculation based on facts known to it at the time of providing notice. Mailing letters by unregistered or uncertified mail, for example, with no proof of delivery, has been found to provide inadequate notice because there is no guarantee a recipient receives it.

Here, Penny served Dan by mailing first-class mail to his house. But Dan did not receive the mail immediately due to his traveling. Further, there was nothing on the outside of the mail that gave his parents any indication of what the contents were, so they were unable to inform Dan on a timely basis. This is important, because Penny's attorney knew that

Dan traveled frequently for long periods of time, and therefore there could be a delay in him receiving notice. And this lack of timely notice is what prevented Dan from being able to appear in court before a default was entered against him. Because he was aware of these facts, Penny will be charged with not providing "reasonably calculated" notice by failing to let Dan's parents know that the contents were urgent and they should be opened or communicated to Dan. Therefore, Penny's method of service was improper as not providing adequate notice and denying Dan due process of the law.

## **2. Whether the Court of State C has personal jurisdiction over Corporation.**

Personal jurisdiction is the authority of the court to exercise jurisdiction over a defendant. The federal courts' personal jurisdiction is typically limited by state boundaries, and is deemed to be consistent with the jurisdiction of the state courts, unless a federal statute provides otherwise. Personal jurisdiction over a corporation can be based on many things, including 1) service of process in the forum state upon an officer or agent; 2) domicile in the forum state; 3) consent to the action; or 4) as authorized by state law and consistent with the Due Process clause of the Fourteenth Amendment. A corporation is domiciled wherever it is incorporated or has its principal place of business. Further, consent may be express (by appearing in the action) or implied (by taking an action that a state statute deems to be consent). Such implied consent can be specific to the cause of action and or can be general and apply to all causes of action. If one of these bases for personal jurisdiction is not met, the court must dismiss the case.

Here, corporation is incorporated in and headquartered in State A. Thus, it is domiciled in State A for personal jurisdiction. Likewise, service was waived, so the corporation was not served in State A. But the corporation is registered in State C. And State C's foreign corporation statute requires a corporation to consent to general jurisdiction and be subject to the same liabilities and duties as a State C corporation. Therefore, the corporation gave implied consent to personal jurisdiction in State C. Because that was general jurisdiction, the court has personal jurisdiction over any claim, including this claim brought by Penny. Even if the court limited it to jurisdiction that could be exercised against State C incorporated entities, that would also include general jurisdiction because it would be treated as the corporation's domicile and fully subject to personal jurisdiction.

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