February 2025

Ohio Bar Examination

Multistate Essay Examination
Questions & Selected Answers

Multistate Performance Test
Summaries & Selected Answers

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THE SUPREME COURT OF THE STATE OF OHIO

OHIO BAR EXAMINATION

The February 2025 Ohio Bar Examination contained 6 Multistate Essay Examination (MEE) questions. Applicants were given three hours to answer a set of 6 essay questions. These essays were prepared by the National Conference of Bar Examiners (NCBE).

The exam also contained two Multistate Performance Test (MPT) items. These items were prepared by the NCBE. Applicants were given three hours to answer both MPT items.

The following pages contain the NCBE's summary of the MEE questions given during the February 2025 bar exam, along with the NCBE's summary of the MPT items given on the exam. This booklet also contains actual applicant answers to the essay and MPT questions.

The essay and MPT answers published in this booklet merely illustrate above average performance by their authors and, therefore, are not necessarily complete or correct in every respect. They were written by applicants who passed the exam and have consented to the publication of their answers. See Gov. Bar R. I, Sec. 5(C). The answers selected for publication have been transcribed as written by the applicants. To facilitate review of the answers, the bar examiners may have made minor changes in spelling, punctuation, and grammar to some of the answers.

Copies of the complete February 2025 MPT and its corresponding point sheet are available from the NCBE. Please check the NCBE's web site at www.ncbex.org for information about ordering.


THE SUPREME COURT OF THE STATE OF OHIO

Question 1

QUESTION

Bill and Nancy recently opened a gym, "Comet Fitness," that they operate as a general partnership. Three blocks from the gym is a sporting-goods store that is having a "going-out-of-business sale" with signs in the store's windows stating that "all sales are final." Bill and Nancy are acquainted with the store owner. Last week, Bill called the store owner and said, "I hope you've got some nice treadmills; the gym could use one or more. I'll try to get over there to check them out."

The next day, Bill and Nancy ran into Kim, one of Nancy's friends, at a party. Kim is a personal trainer. Nancy had not seen Kim for several months. Nancy told Kim that she and Bill had opened a gym and that Kim should consider coming to work for them as a personal trainer. Kim said that she would think about it and let Nancy know. While Kim was walking away, she heard Bill say to Nancy, "You know, the gym has only five treadmills, but I sure wish it had two more," and heard Nancy reply, "I agree. We desperately need to buy one or two more."

The day after the party, Kim, thinking that she might be interested in the trainer job and hoping to impress Bill and Nancy with her initiative, went to the sporting-goods store. Telling the store owner that she was acting on behalf of Comet Fitness, Kim purchased a treadmill and directed the store owner to send the treadmill to Comet Fitness, along with the invoice for the purchase. The store owner agreed to do so.

Later that day, Nancy went to the sporting-goods store and purchased two treadmills for the gym. Unlike the treadmill Kim had purchased, these treadmills had built-in video touchscreens and were similar to the ones that Nancy had previously purchased for Comet Fitness. Nancy told the store owner to have the treadmills delivered to Comet Fitness along with an invoice for the purchase. When Nancy returned to the gym, she told Bill that she had bought two treadmills for the business. Bill became furious and said, "You had no right to do that without first consulting me. You should have made sure that I was with you when you bought them to make sure I'd like what you were buying. I'll return them tomorrow after they arrive unless I like what I see."

The following day, three treadmills arrived at the gym. When Bill and Nancy saw the treadmill purchased by Kim, they told the delivery person, "Take that one back. There must be a mistake—we never bought this." When Bill saw the two treadmills Nancy had bought, he told the delivery person, "Take them back, too; they're nice but not the same color as our other treadmills, and they just won't fit in." Nancy objected and told the delivery person to leave the two treadmills.

The delivery person immediately called the store owner, who said, "Leave them all at the gym. All sales are final. Tell them to pay me what they owe me."

1. Was Kim an agent of Comet Fitness when she purchased the treadmill? Explain.
2. Assuming that Kim was an agent of Comet Fitness,

   (a) did she have actual authority to purchase the treadmill for Comet Fitness? Explain.

   (b) did she have apparent authority to purchase the treadmill for Comet Fitness? Explain.
3. Did Nancy have the authority to bind Comet Fitness to the contract to purchase the two treadmills with the video touchscreens? Explain.

ANSWER

1) Was Kim an agent of Comet Fitness?

An agency is created when a principal manifests an assent for the agent to act on behalf of the principal, the agent agrees to act on behalf of the principal, and the agent is subject to the control of the principal. While the agency agreement can be a formalized written agreement, it doesn't have to be. It can be a very casual, nonverbal communication. And there does not have to be any employee relationship or compensation exchanged to create the relationship.

Here, neither Bill nor Nancy had asked Kim to do anything for Comet Fitness except consider a job offer. While she did hear Bob tell Nancy that the club needed a new treadmill, neither Bill nor Nancy manifested any assent for her to act on their behalf. As such, Kim was not an agent of Comet Fitness.

2) (a) Did Kim have actual authority to purchase the treadmill?

When an agent has the authority of the principal, the agent can bind the principal to contracts. There are 2 kinds of actual authority. Actual express authority includes the express instructions of the principal to the agent. If the agent tells the principal "buy 2 widgets," the agent has the actual express authority to buy 2 widgets. Actual implied authority is the authority that an agent has to do what is reasonably necessary to carry out the express authority of the principal. In the widget example, the implied authority might be to use the company car or the company credit card, because those are reasonably necessary to fulfill the express authority of the purchase. Standards and customs of the industry can guide a court in determining whether an action was "reasonably necessary" in a particular situation.

Here, Bill and Nancy were talking to each other about the need for a treadmill. At no point did they tell her to buy a treadmill, so she didn't have actual authority. And with no express instructions to act on behalf of Comet Fitness, there was obviously no implied actual authority, since that implied authority would require an express act that would allow for the implied authority to be able to fulfill.

(b) Did Kim have apparent authority?

Another kind of authority is apparent authority. Apparent authority is created by the messages and actions of the principal toward the third party. It is created when the principal manifests to the third party that the agent has authority. Things such as company letterhead, uniforms, prior dealings with the agent or an agent similarly situated can create apparent authority as can verbal or written statements from the principal to the third party. Unless told otherwise, the third party can reasonably assume that an agent with authority from the principal has the authority to do anything that is reasonable for an agent in that position. Again, what is common in the industry for an agent of that type, is what the third party can assume that a particular agent has the authority to do.

Here, Nancy and Bill knew the owner of the sporting goods store (the third party). When Bill talked to the third party, he specifically said that he would go check out the treadmills. The third party had no reason to believe from his statement that a random woman whom he doesn't know to be related to Comet Fitness would have authority. Therefore, there has been no communication of Kim's agency power to the third party, and Kim has no apparent authority.

3) Did Nancy have authority to bind Comet Fitness with her purchase?

In a partnership, when there is an extraordinary decision or step that needs to be taken, all the partners have to agree (unless their partnership agreement states otherwise (not seen here). However, each partner in a general partnership is an agent of the partnership, and has the authority to bind the partner to contracts that are made in the ordinary course of business. Again, standards and practices of particular industry can be considered to determine whether an act would be considered an "ordinary" act for this analysis. Here, Nancy purchased 2 treadmills, which would be in the ordinary course of business for a fitness club. They were from a store that both partners were aware of and contemplated buying from. The treadmills she purchased were similar to the ones already in the club with touchscreens. Therefore, as an agent of the partnership conducting ordinary business within the scope of the partnership, she had the authority to bind the partnership to the contract.


THE SUPREME COURT OF THE STATE OF OHIO

Question 2

QUESTION

Town is a small municipality. Main Street is an eight-block public road that runs through the center of Town with retail shops, restaurants, and other businesses located on each side. The roadway has two lanes of traffic in each direction, separated by a 10-foot-wide median strip on each block. Each median strip is covered with grass and trees, except for paved 10- foot segments on each end. The paved portions of the median strip are part of the crosswalk and are marked for use by pedestrians as they cross the intersections on Main Street.

A Town ordinance prohibits any person other than authorized Town personnel from entering the unpaved portions of the median strip.

The Town council received numerous complaints from Town residents about people who stood in the paved portions of the median strips at intersections on Main Street to solicit money from the drivers of vehicles that stopped at traffic signals. The residents complained that the solicitations were annoying and unwelcome. Law enforcement had no official reports that solicitations from the pedestrian median strips had been aggressive, threatening, or distracting to drivers. Nor were there records of any traffic accidents caused by solicitations made from pedestrian median strips.

In response to the complaints, the Town council enacted the following ordinance:

1. No person on a pedestrian median strip on Main Street shall communicate or attempt to communicate with the occupants of vehicles passing by or stopped near the pedestrian median strip.
2. A "pedestrian median strip" is the paved portion of the median strip, which is the portion intended for use by pedestrians to cross from one side of the street to the other.
3. A violation of this ordinance is a misdemeanor.

The preamble to the ordinance explains that the law was enacted to promote traffic safety by prohibiting those within pedestrian median strips from actively engaging with drivers in a distracting manner. Existing Town ordinances permit posting approved signs on trees and utility poles in median strips, including pedestrian median strips, as well as the posting and carrying of signs on sidewalks adjacent to public roadways. It is also lawful to solicit money from passing vehicles while standing on a sidewalk along Main Street.

Town has charged a man with violating the ordinance by holding a sign stating his opposition to a candidate for Town council while standing in a pedestrian median strip on Main Street in Town.

1. What type of First Amendment forum is the pedestrian median strip? Explain.
2. Is the Town ordinance a content-based or content-neutral regulation of speech? Explain.
3. Assuming that the Town ordinance is content-based, would applying it to the man violate his First Amendment rights? Explain.
4. Assuming that the Town ordinance is content-neutral, would applying it to the man violate his First Amendment rights? Explain.

ANSWER

1) What type of forum is the pedestrian median strip?

For purposes of First Amendment analysis, there are three types of forums. A traditional public forum is one that has historically and practically been a place of community interaction and involvement. They are government property that is open to the public. Examples of traditional public forums are sidewalks, town squares, and public parks.

A designated public forum is a forum that has not historically or uniformly been a place of public exchange of ideas, but rather it is government-owned land that the government has opened up to the public for communication. Examples of designated public forms are bulletin boards in public buildings, classrooms after school where students can meet, and city buses if the city allows message on the bus. As long as the government continues to allow messaging and communication in such a forum, the analysis of what is allowed in that forum is the same as the analysis for what is allowed in a traditional public forum.

A nonpublic forum is government owned property that is not traditionally or held out to be a place of communication and messaging. Examples of nonpublic forums would be army bases or the school principal's office.

Here, the medians are present throughout the main street. They are by nature-like sidewalks. They are meant for people to walk on as they move through town. As such they are considered traditional public forums.

2) Is the ordinance content-based or content-neutral?

Content-based regulation is one that permits speech about some topics while prohibiting other types of speech. (This is distinct from viewpoint-based regulation that only regulates certain "sides" of an issue.) In contrast, content-neutral regulation prohibits all speech in a certain time, place, or manner. The test for whether it is content-based or content-neutral is whether law enforcement would need to see or know what message was being shared in order to enforce the regulation. If he or she would, it is content-based.

Here the regulation prohibits a pedestrian from attempting to communicate with a person in a car. Even if a police officer were far away and couldn't hear what the person was saying, they could see that the person was breaking the law. As such, it is content-neutral regulation.

3) Assuming that the Town ordinance is content-based, would applying it to the man violate his First Amendment rights?

Content-based speech regulation is subject to strict scrutiny. In order for content-based speech regulation to be Constitutional, it has to be necessary for a compelling government interest. It is said that such a regulation is generally unconstitutional per se, because it is such a high burden to reach. Generally, only government interests, such as troop location when it would put troops in jeopardy (i.e. national security) or perhaps public health, could result in the regulation possibly being held necessary for a compelling government interest.

The government states that they enacted the regulation to promote traffic safety and to prevent pedestrians from distracting drivers. While this is a rational goal, it does not rise to the level of compelling in this context. Furthermore, many ordinances could be enacted that would be less of a burden on speech and would still meet their goal. They could enforce aggressive behavior, for example. As such, applying it to the man would be unconstitutional.

4) Assuming that the Town ordinance is content-neutral, would applying it to the man violate his First Amendment rights?

While the government cannot prohibit speech, the government is allowed to regulate the time, place, and manner of speech. For that to be constitutional, the regulation has to:

- be content-neutral
- be narrowly tailored to meet an important government interest (note that narrowly tailored in this context does not mean the "least restrictive" but would be considered a "good fit")
- leave open ample other channels of communication.

Here, assuming that the regulation is content-neutral, the next question is whether the regulation is a good fit. That is, it is narrowly tailored to meet an important government goal.

The stated goal of the regulation is to promote traffic safety and prevent drivers from being distracted, which is an important government goal. However, banning all attempts to communicate with a person in a car would include not only yelling at them or approaching the window, but even holding a sign, as the defendant was when he was holding the political sign. There is a vast difference between some of the behavior that people were opposed to (solicitation from drivers) and the mere attempt by someone on the median to communicate with a person in a car. In addition, there is no evidence that the activities of people in the median had caused any accidents, and there were no reports of communication from the median being aggressive, threatening, or distracting. Therefore, the regulation is incredibly broad and doesn't actually address a documented problem in the community. The regulation fails the second step of the analysis.

It seems that the regulation does still allow message posting on the trees and utility poles in the area, as well as soliciting money from passersby from the sidewalk along main street, so ample channels of communication are left open by this regulation.

However, since it fails the second prong of the test, the regulation is unconstitutional.

Question 3

QUESTION

Brenda, a trauma surgeon, was on her way to perform emergency surgery at the hospital. As she drove through her neighborhood, a school bus stopped ahead of her, flashed its red lights, and extended its side-mounted stop sign. The law prohibits passing a stopped school bus under these circumstances. Brenda slowed, considering whether she should pass the bus because of the medical emergency.

Alan was driving a dump truck behind Brenda's car and also saw the bus's extended stop sign. Impatient, he swerved around Brenda's car and the bus. As he did so, his truck's bumper scraped a gash into Brenda's driver's-side doors. Alan drove out of the neighborhood and onto the four-lane divided highway. Brenda did so also, intent on reaching the hospital quickly. She changed to the left lane and sped past Alan. This angered Alan. He saw Brenda's personalized license plate, "MED DOC." He muttered, "A self-important physician, probably headed to bandage a scraped knee." Alan accelerated and dangerously tailed Brenda's car as both vehicles traveled at 15 miles per hour (mph) above the speed limit. As Alan repeatedly honked his horn, Brenda feared that Alan's truck would hit her car.

Brenda signaled to change from the left lane to the right lane so that she could exit the highway, but Alan positioned his truck beside Brenda's car, matching her speed. Brenda slowed to allow Alan to pull ahead, but Alan slowed also, lowered his window, and yelled, "Oops! Don't miss the exit to the clinic!" Because Alan blocked Brenda from changing into the right lane, she missed the exit for the hospital.

Brenda accelerated more and pulled ahead of Alan into the right lane. She continued 10 miles further at nearly 90 mph, with Alan still close behind. She left the highway at the next available exit intending to double back toward the hospital, but she saw that Alan had followed her off the highway. Brenda pulled into a gas station lot, ran into the restroom, and locked the door. Alan pounded on the restroom door, shouting, "Come out so you and me can have a talk, if you know what I mean!" Brenda shouted back, "I'm not coming out until you leave." Alan yelled back, "I've got all day, so get comfortable." After two minutes, Alan got into his truck and left.

Brenda waited in fear inside the restroom for 20 minutes, after which she peeked out and saw that Alan was gone. She drove to the hospital, using only back roads to make sure that the truck was not following, adding more time to her drive. She finally arrived at the hospital one hour later than she would have arrived if Alan had not prevented her from exiting the highway. The patient had died moments before she arrived. If Brenda had arrived 15 minutes sooner, she would have arrived in time to perform the surgery and the patient likely would have survived.

Brenda sued Alan, asserting two common-law claims. Alan has admitted to all the facts described above. In Brenda's lawsuit, she alleged that Alan "damaged her car as he violated the school-bus law" and that he then "detained her in a public restroom against her will." The patient's family sued Alan for "negligence causing wrongful death." The jurisdiction expressly allows common-law negligence actions despite the death of the injured party. The jurisdiction's rules mirror the Federal Rules of Civil Procedure.

1. In a negligence action against Alan, can Brenda establish that Alan breached his duty of care based solely on his violation of the school-bus law? Explain.
2. Can Brenda establish Alan's liability based on Alan's allegedly detaining her against her will? Explain.
3. Is Alan's admission sufficient for the patient's family to prevail in a motion for partial summary judgment establishing that Alan is liable on the family's wrongful-death claim? Explain.

ANSWER

1. Brenda v. Alan

The issue is whether Alan can be found to have breached his duty of care under a negligence per se theory.

Negligence per se is a theory that allows the court to use a safety statute to provide the applicable standard of care. When the statute is the appropriate standard, the violation of the statute by the defendant establishes both duty and beach. To find the statute appropriate, the court must find that three factors are met: 1. The defendant violated the safety statute; 2. The plaintiff falls within the class of protected persons that the statute creates; and 3. the harm resulting from the defendant's violation constitutes a harm within the risk of harm the statute contemplates and seeks to avoid.

Here, the defendant violated the statute. The statute, however, arguably aims to protect school children getting off and on the bus. The plaintiff, therefore, cannot establish the second prong of the test. Moreover, the statute seeks to prevent harm to school children getting off and on the bus. The plaintiff would, therefore, fail to establish the third prong of the test. The plaintiff cannot rely on negligence per se. However, the court can apply the ordinary standard of care, that of a reasonably prudent person in the defendant's circumstances. The plaintiff will then have to show breach and the other elements.

2. Alleged unlawful detention

The issue is whether Brenda can sue Alan for false imprisonment.

False imprisonment occurs when one confines another without their consent to a bounded area for any length of time and with no reasonable means of escape. The confined person need not have been forced into the bounded area, so long as pressure is exerted against them that makes it unreasonable or impossible to leave. Confinement means there must be no reasonable means of escape, and this can be achieved by threats or locking the person in and there is no way out. The person needs to be aware of their confinement.

Here, Brenda locked herself in the bathroom, a bounded area, to avoid an altercation. Although she entered the bathroom herself, Alan confined her when he threatened violence against her should she leave the restroom. There was no reasonable means of escape as leaving the restroom meant she would be hurt. Alan said come out so we can have a talk if you know what I mean, insinuating he would hurt her. Out of fear she remained in there for 20 minutes. However, Alan only confined her for two minutes. The length of time of her confinement, however, is irrelevant and might be considered in awarding damages.

Brenda can establish Alan's liability for false imprisonment.

3. Alan's admission v. the family

The issue is whether Alan was the proximate cause of the decedent's death.

To establish a prima facie case for negligence, the plaintiff must prove duty, breach, factual and proximate causation, and damages. The duty standard of a reasonable person applies here as explained above. One owes a duty to act reasonably to foreseeable plaintiffs. Under the majority Cardozo approach, a plaintiff is foreseeable when they are in the zone of danger when the defendant acts (physical proximity such that they can be harmed like in Palsgraf). Under the minority approach (Andrews), all plaintiffs are foreseeable when one breached a duty of care.

Here, under the majority approach, it is unlikely that the family can show the patient was in the zone of danger and was a foreseeable plaintiff. Under the minority approach they could show this because under the duty standard explained above, defendant breached his duty of care to act as a reasonable prudent person when she scrapped Brenda's car while violating the statute. Courts will follow the majority approach.

Assuming that the decedent was in the zone of danger and was owed a duty, the family must show breach. Breach occurs when one falls under the requisite standard of care. Here, Alan fell way below the duty of care. No reasonable person would have committed all those acts.

Next the family must show factual causation. Factual causation is established when the defendant was the but-for cause of the injury.

Here, the test is met. But for Alan scraping Brenda's car and violating the statute, the sequence of events that followed would not have occurred. Alan is, therefore, the but-for cause.

Next the family must show proximate causation. Proximate causation cuts off unreasonable liability. It is shown when the harm that resulted was the foreseeable harm within the risk of harms presented by defendant's negligent conduct. Here, although Alan knew Brenda was a doctor after seeing her license plate, it was not objectively foreseeable that she was rushing to attend to a patient who was nearing death. The death of the patient was not a foreseeable risk of violating the safety statute and negligently scrapping Brenda's car.

Finally, the family can show damages because their family member died, and this is a wrongful death suit.

However, they cannot show all elements of negligence and will not prevail.


THE SUPREME COURT OF THE STATE OF OHIO

Question 4

QUESTION

Coach is a high school basketball coach who currently lives and works in State A, where she is domiciled. One year ago, Coach visited Hometown, in State H, for her high school reunion. During the reunion, she got into an argument with Fran over which of them was the better athlete in high school. Fran lives in State H, where she is domiciled.

A week after the reunion, when Coach had returned to State A, she learned that Fran was spreading rumors about her. In particular, Fran was telling people that Coach had used illegal drugs with students during her visit to State H.

A newspaper in State A learned of the allegations about Coach and published them, along with quotations from Fran, who had repeated her allegations to a news reporter who had visited Fran in State H. The newspaper story led to a public outcry against Coach, and she was fired. She was unable to find another job for many months.

Coach sued Fran in a state court in State A, alleging that Fran had defamed her under state law. Coach's complaint sought damages in the amount of $74,999. In a sworn affidavit attached to the complaint, Coach asserted that she had lost $130,000 in wages due to Fran's defamatory statements, but she stipulated that she would not seek or accept damages in excess of the amount sought in her complaint. That stipulation is binding under State A law.

A process server handed Fran a summons and a copy of the complaint when Fran was attending a basketball game in State A. That was the first time Fran had ever been in State A, and she was there for less than a day. She had no other connection with State A. Statutory law in State A authorizes its courts to exercise personal jurisdiction over persons who are served with process while physically present in the state, without regard to whether they have any other connection with the state.

Ten days later, before filing any answer or responsive motion, Fran filed a notice of removal and the case was removed from state court to the federal district court for the District of State A. The notice of removal asserted that the amount in controversy was $130,000, the alleged amount of Coach's lost wages.

Coach has moved the federal district court to remand the case to the state court in State A, arguing that the federal court lacks subject-matter jurisdiction over the case.

Fran has moved the federal court to dismiss the case for lack of personal jurisdiction over her and for improper venue.

1. Should the federal court remand the case to the state court in State A on the ground that the federal court lacks subject-matter jurisdiction? Explain.
2. Assuming that the case is not remanded for lack of subject-matter jurisdiction, should the federal court dismiss the case for lack of personal jurisdiction over Fran? Explain.
3. Assuming that the case is not remanded and is not dismissed for lack of personal jurisdiction, should the federal court dismiss the case for improper venue? Explain.

ANSWER

1. Should federal court remand case to the state court in State A based on lack of subject matter jurisdiction?

The issue is whether the amount in controversy stated in the plaintiff's well pleaded complaint satisfies the requirement for diversity jurisdiction.

Federal courts are courts of limited subject matter jurisdiction. Jurisdiction is appropriate for federal courts where: 1) the plaintiff's well-pleaded complaint arises under a federal law, treaty, or the constitution (federal question jurisdiction), 2) all plaintiffs are diverse in citizenship from every defendant and the amount in controversy asserted in the plaintiff's well-pleaded complaint exceeds $75,000 (diversity jurisdiction), and 3) a claim shares a common nucleus of operative fact and may be heard alongside another claim asserting federal jurisdiction (supplemental jurisdiction). Upon notice of removal, the plaintiff may, within 21 days, file a motion to remand if the removal was improper. Removal is improper when: the federal court does not have one of the above-listed jurisdictions satisfied or if the defendant is domiciled in the state where the action is filed (home state defendant rule). Domiciles for individuals are based on their physical presence in the state with an intent to remain there indefinitely. Domiciles are established based on when the action was filed. A well-pleaded complaint is a complaint by a plaintiff alleging the conduct that led to injury, the violations of law by the defendant, and asserts damages. The damages asserted in the complaint are considered for amount in controversy purposes, and the requirement is simply that a jury could reasonably award those damages for the injury suffered.

Here, the plaintiff is a citizen of State A, where she lives and works, and the facts do not indicate she has any other intent but to remain there indefinitely. Similarly, the defendant is domiciled in State H. The complaint actually asserts a damage award request of $74,999. The parties are completely diverse, but the amount in controversy requirement is not met, so there is no diversity jurisdiction satisfied here. It appears that Coach has a claim that would have satisfied it, but under state law, the binding stipulation in the complaint is that she only seeks $74,999. This is lower than $75,001, so it is not sufficient for the amount in controversy requirement. Further, the claim is entirely under a state law claim for defamation, so no federal question arises under the Constitution, treaties, or federal laws of the United States, meaning there is no federal question jurisdiction. Supplemental jurisdiction obviously does not apply because there must first be a claim the federal court may hear that the otherwise impermissible claim could attach to.

Therefore, because the amount in controversy is not satisfied, the federal court should remand the case to the State A state court based on lack of subject-matter jurisdiction.

2. Should the federal court dismiss the case for lack of personal jurisdiction over Fran?

The issue is whether state A's statutory personal jurisdiction applies to the federal court exercising diversity jurisdiction over this claim.

Personal jurisdiction is required over the parties to an action. A court has personal jurisdiction over the parties based on statutory personal jurisdiction and constitutional personal jurisdiction. Personal jurisdiction may be either general or specific. Statutory personal jurisdiction provides that the state has a "long arm" to reach parties and assert personal jurisdiction. General personal jurisdiction gives a court jurisdiction over a person who is "at home" in the state and allows any claim to be brought against that individual. Specific personal jurisdiction looks at the minimum, purposeful, contacts an individual has with the state; whether they availed themselves of the privileges and benefits of that state so that they would expect to be haled to court there; and looks at fairness factors in whether it would be reasonable and fair to force that party into court in that venue. A federal court sitting in diversity applies the substantive law of the state which encompasses the federal district per the Erie doctrine, but applies the federal procedural rules. A rule is procedural if it simply addresses the order and process of the case, while a substantive law looks at whether the outcome would be different if a state law was applied in place of a federal law. If the outcome is determined by which law is applied, the law is substantive and a federal court sitting in diversity must apply state substantive law.

Here, assuming the federal district court asserts subject matter jurisdiction, the only viable option is for diversity jurisdiction to apply. So, the federal court in the State A is required to apply State A substantive law, per Erie. State A has a "long arm" statute that supplies personal jurisdiction over any party served with process while physically present in the state. Whether that personal jurisdiction applies would determine whether Coach can even have the case heard in State A, so it is arguably substantive - a State A court would allow personal jurisdiction in this method, but federal court would not allow personal jurisdiction in this method. Thus, the outcome would be different, and the federal court should likely apply the State A law. Fran was served in State A in accordance with the statute that provides personal jurisdiction over persons served with process while physically in the state.

Therefore, because the State A court would have statutory personal jurisdiction over Fran, and the claim is sitting in diversity jurisdiction in federal court, the federal court has personal jurisdiction over Fran and should not dismiss the case for lack of personal jurisdiction.

3. Should the federal court dismiss the case for improper venue?

The issue is whether the district of State A is where a substantial part of the claim arose.

Under the Federal Rules of Civil Procedure, venue is proper over a claim where: the federal district where a substantial part of the claim or injury arose, or, the district in which any one defendant lives if all defendants reside in the same state. When a claim is filed in state court and removed by the defendant to federal court, the case is removed to the federal district court that encompasses where the state court is located. If venue is not proper, the court may proceed in the interests of justice, transfer the case to an appropriate venue, or, in the case of a forum non conviens, may dismiss the action (rare).

Here, the claim was filed in State A. This is Coach's domicile. The claim arose fundamentally out of rumors spread by Fran in State H after an argument between the two there. However, a newspaper in State A published the allegations and rumors with quotes by Fran, and the community in State A (who knew of Coach) were the audience whose response caused the specific injury claimed. So, it is likely that the claim arose based on the published statements in the State A newspaper rather than the actual rumors spread in State H, but the facts are split. In any case, a substantial part of the claim arose in State A - the witnesses (readers of the newspaper), a substantial part of the evidence (the published statements, the reporter's source, etc.) are located in State A, and Coach (one of the parties) is there in State A. It could be said that this is a convenient forum because the claim technically arose there. Further, there is no indication that it is unreasonable for Fran to expect to be haled to court, as she was in the state for unrelated reasons when she was served, so it probably wouldn't be extremely unfair to litigate there. Lastly, because the supporting evidence, witnesses, and community enraged by the statements are all in State A, it is likely the most convenient place to litigate. So, while State H (the district where Fran lives) is also an appropriate venue, State A could be said to be an appropriate venue based on this being where the statements were published, the injury arose, and the witnesses/evidence are located.

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


THE SUPREME COURT OF THE STATE OF OHIO

Question 5

QUESTION

Based on the following facts, David has been charged with knowingly obtaining money under the control of a financial institution (Bank) by means of false or fraudulent representations.

David entered Bank on April 18, 2024. After stopping at the counter where pens and banking slips were located, David presented to the teller a check that appeared to be drawn by Customer on her account at Bank and payable to the order of "David" in the amount of $1,000. Before cashing the check, the teller asked David to produce photo identification (ID), which David did. The teller examined the ID, confirming that it was David's and bore his picture. The teller then returned the ID and gave $1,000 to David, who left Bank.

Customer received a notification on her banking app, alerting her that a $1,000 check had just been charged to her account. Customer promptly called Bank to complain. She was transferred to a fraud investigator and immediately exclaimed, "I didn't write that $1,000 check that you just charged to my account!" Customer was noticeably frustrated and angry.

The investigator began an investigation. First, he compared the signature on the check with Customer's signature in Bank's records and concluded that Customer's signature had been forged on the check. He then reviewed the original video recording of the lobby, counters, and tellers, taken by Bank's security cameras on April 18, 2024. Based on that review, the investigator determined that an individual, later identified as David, had presented a $1,000 check purportedly drawn on Customer's account and that the teller had cashed it. The investigator wrote a report detailing Customer's complaint, describing the video recording, and attaching copies of the check at issue and a copy of Customer's signature from Bank's records.

In a statement to law enforcement, David denied visiting Bank that day. He has pleaded not guilty. The case is now scheduled for trial in federal court. Neither Customer nor the teller is available to testify. However, Bank's investigator, who is a 10-year employee of Bank and works in an office next to Bank's lobby, is available and will testify.

Evaluate the admissibility of the following evidence if it is offered during the testimony of Bank's investigator in the government's case-in-chief. (Do not discuss constitutional issues.)

1. Bank's original video recording of its lobby, counters, and tellers from April 18, 2024, which shows David stopping at the counter in the lobby and interacting with the teller. Explain.
2. The investigator's testimony as to Customer's oral complaint to the investigator. Explain.
3. The investigator's written report, if the investigator testifies that he is unable to recall both the details of the investigation and writing the report. (Assume that the report is relevant and not admissible as a business record.) Explain.

ANSWER

1. The issue is whether Bank's original video recording of its lobby, counters, and tellers from April 18, 2024, that shows David stopping at the counter in the lobby and interacting with the teller, is admissible.

Under the Federal Rules of Evidence, in order to be admissible, evidence must be relevant and non-privileged. Evidence is relevant if it makes any fact in controversy more or less probable than without the evidence. Here, Bank's original video recording of David as he committed the alleged crime of knowingly obtaining money from a bank by fraud, will make it more probable that he did in fact obtain the money from the bank by fraud. The video is not subject to any privilege, and can be properly authenticated by the bank. Therefore, this video is admissible under the Federal Rules of Evidence.

2. The issue is whether the investigator's testimony as to Customer's oral complaint to the investigator is admissible.

As stated, above, in order to be admissible, evidence must be both relevant and non-privileged. In addition to relevance, statements can be kept out based on other rules. Hearsay, for example, is when an out-of-court statement is offered to prove the truth of the matter asserted. There are exceptions for these hearsay statements that allow them to come in for substantive purposes. An excited utterance is a statement given about a startling event while still under the stress of the event. A statement made under these conditions is seen to be more trustworthy, as they are still under the stress of what happened to them. A present sense impression is when someone makes a statement during a startling event or immediately after, that is describing the event in question.

Here, the investigator's testimony as to Customer's oral complaint, "I didn't write that $1,000 check that you just charged to my account," is relevant because it makes it more probable that David was the one who actually cashed the check. Therefore, as a relevant statement, it is admissible unless it conflicts with another rule of evidence.

The investigator's testimony of the customer's statement is an out-of-court statement that is being offered to prove the truth of the matter asserted: that the customer, in fact, did not cash the check. Therefore, this statement is hearsay unless covered by an exception. Customer made the statement on a call that she received immediately after she got the notification that $1,000 has been charged to her account. The call was made to the bank to complain and she was transferred to the investigator. She was still noticeably frustrated and angry, therefore, still likely under the stress of being notified that someone other than her had taken money from her account. Therefore, although the statement is hearsay, it is likely admissible as an excited utterance.

Customer's statement was made regarding the check that had just been charged to her account. She even stated on the call "you just charged my account." Therefore, even though the statement was made just after the event, it was describing the event in question and therefore may qualify also as a present sense impression, and would be admissible that way as well.

3. The issue is whether the investigator's written report is admissible if he testifies that he is unable to recall both the details of the investigation and writing the report.

As stated above, hearsay is an out-of-court statement offered to prove the truth of the matter asserted. There is a hearsay exception for a business record when a document is made in a record, that is held for business purposes, by someone with knowledge at the time it was written. There is also an exception for documents to be used to refresh recollection, both present recollection refreshed and past recollection recorded. Present recollection refreshed allows a witness to look at a document to refresh their memory when they are unable to recall the details while testifying. They may only look at the document, and then testify from memory. They may not enter the document into evidence unless the other side requests it. Past recollection recorded allows a document that was made by the witness when they had knowledge of the details, and it may be read into evidence. It cannot be entered into evidence, however, unless the adverse party requests it.

The investigator's written report is relevant, because it contains details of the case that make it more likely than not that David committed the alleged crime. It is hearsay, because it is being offered for its truth on the details of the case. This document was made in the course of the investigator's investigation. He had knowledge at the time this was created. There is no evidence, however, that these documents were kept regularly in the course of his business. Therefore, it is possible that this would not be recognized as a business record, and therefore would not be admissible as evidence because it constitutes hearsay.

If the investigator, on the stand, testifies that he is unable to recall the details of the investigation, then the prosecutor can refresh his recollection. With present recollection refreshed, the investigator can look at any document to refresh his recollection. He may only then testify from his current recollection and may not read off of the document. For past recollection recorded, the investigator can read off of the document, because it was written by him when he had knowledge. However, the report would not be brought in as an exhibit unless opposing counsel requests that it be put in the record.

Question 6

QUESTION

Six years ago, Alice properly created a trust naming a local bank as the sole trustee and naming herself as the sole beneficiary of the trust income. The trust provided that upon Alice's death, the trust principal would be distributed to her niece, Shirley. Alice and Shirley had a very close relationship, although they lived far apart. The trust also directed the trustee to invest trust assets only in "prudent investments." The trust was silent as to whether it was revocable or irrevocable.

When Alice created the trust, she also properly executed a durable health-care power of attorney naming John, her friend and next-door neighbor, as her agent to make health-care decisions for her. This power was expressly conditioned upon Alice's being unable to make health-care decisions for herself.

Four weeks ago, before she left for a vacation in Europe, Alice had separate telephone conversations first with Shirley and then with John. In both conversations, Alice mused about her wishes if "something should ever happen to me." Alice said to Shirley, "If something should happen to me, I don't want to be connected to a life-support system." In her later conversation with John, Alice told him, "In no event do I ever want to be connected to a life support system if there is little or no hope of my recovery."

Three weeks ago, Shirley found out that the trustee had imprudently invested 30% of the trust's assets in the stock of a company that later went bankrupt, resulting in a significant loss to the trust. Furious, Shirley immediately contacted the bank officer overseeing the trust. After hearing Shirley's complaints, the trust officer responded truthfully that Alice had approved the investment knowing that it was imprudent. He also accurately told Shirley that Alice was fully competent when she approved the investment. The trust officer then told Shirley, "I guess you win some and you lose some."

The next day, Shirley called Alice, who was still vacationing in Europe, to express her anger about the investment. Alice responded, "We can talk about this when I get home in two weeks."

The day after Alice returned home, she had a stroke and was rushed to the hospital. Three hours later, Alice was connected to a life-support system. Her doctor determined that the stroke had left her unable to make her own health-care decisions. The doctor contacted John and Shirley and told them, "It is unclear whether she will survive or, if she survives, what kind of life she will have. We should know much more in a week or so." Shirley believed that the life-support system should be removed immediately and told the doctor to do so at once. John disagreed and told the doctor to keep Alice on the life-support system.

Ten years ago, the jurisdiction adopted the Uniform Trust Code and a health-care power of attorney act.

1. Is the trust revocable or irrevocable? Explain.
2. (a) Does Shirley have an interest in the trust? Explain.

   (b) Assuming that Shirley has an interest in the trust, how is this interest characterized? Explain.
3. Assuming that Shirley has an interest in the trust, does she have a claim against the bank for making the imprudent investment? Explain.
4. Between Shirley and John, who has the legal authority to direct the doctor whether to remove Alice from the life-support system? Explain.

ANSWER

Revocable

At issue is whether a trust is presumptively revocable in a UTC jurisdiction.

At traditional common law, trusts were presumptively irrevocable unless they clearly and expressly provided otherwise. Under the modern rule, including in the UTC, a trust is presumptively revocable unless otherwise provided.

Here, the state adopted the UTC 10 years ago, and the trust was formed 6 years ago. It names the trustor as the income beneficiary and her niece as the reminder beneficiary. It is silent as to revocability.

Because this is a trust created in a UTC jurisdiction and it is silent regarding revocability, it is revocable under state law.

Shirley's Interest

A trust may split the beneficial interests in the trust property into multiple beneficiaries and multiple classes of beneficiaries. In a revocable trust naming a non-grantor beneficiary as the recipient of the trust principal on the death of the grantor who is the income beneficiary, that person has a vested remainder interest subject to total divestment. It is subject to total divestment because the grantor/trustor may revoke the trust and name a new remainder beneficiary. Where the trust is revocable, the trustee has the implicit power to take principal from the trust for the benefit of the trustor if doing so would comport with the trustor's wishes.

Here, Alice created the trust and named herself as the income beneficiary and Shirley as the recipient of the principal upon her death. Alice is still alive, though she appears to be on the precipice of death due to her stroke. But the outcome is uncertain according to the doctor and we will know more in a week. Alice has told Shirley that she doesn't want to be connected to machines if something happens to her, and then later told John, her friend who holds a durable health care power of attorney that she "in no event wants to be connected to life support . . . if there is little or no hope for recovery." Theoretically, if she gets better over the next week, John could direct that she remain on life support, and if she remains on life support the trustee of the trust could validly take some or all of the trust principal to pay for Alice's care. Hence, even though Alice may be very close to death and hasn't shown any specific interest in giving the remainder to someone else, Shirley's interest is subject to divestment.

Claim Against the Bank

A trustee of a trust owes fiduciary duties to the beneficiaries of that trust. One of the duties owed is the duty of care, which includes an obligation that the trustee invest the assets of the trust as a prudent investor would. Where the trustee breaches that duty and losses result the beneficiaries of the trust have a claim against the trustee for the losses which resulted from the breach. However, where the trustor of a revocable trust approves of or directs the trustee to make an imprudent investment, the trustee may follow those directions without being subject to liability for any losses.

Here, Shirley is a beneficiary as the remainder beneficiary. The bank is the sole trustee for the trust. The terms of the trust document expressly state that the trustee should only invest in prudent investments. We are told that Bank "had imprudently invested 30% of the trust's assets" which resulted in a significant loss. However, Bank explains to Shirley that Alice approved the investment knowing that it was imprudent and Alice was fully competent when she approved the imprudent investment.

Because it is a revocable trust, the trustee can make imprudent investments at the direction or approval of the trustor. Alice was the trustor and she, fully competent, approved the investment. Furthermore, when Shirley called Alice to express anger about the imprudent investment, Alice's only response was "we can talk about this when I get home" which doesn't seem to indicate that Alice was troubled by the investment. If Alice were incompetent, then even though the trust is revocable, the trustee could not rely on her approval or direction, but because she is competent and the trustor of this revocable trust, Bank will be protected from the losses caused by the imprudent investment.

John Has Legal Authority

Generally, where a person is unable to make their own healthcare decisions, their closest family members will have the authority to direct doctors according to what they reasonably believe would be the wishes of the person needing care. The person named to make decisions in a durable health-care power of attorney has the power to direct doctors to take or not take lifesaving precautions, including whether to stay on or be removed from life support.

Here, Alice named John in a properly executed durable health-care power of attorney. This power was expressly conditioned on Alice being unable to make health-care decisions for herself. After her stroke, she was placed on life support and doctors determined that the stroke left her unable to make her own decisions. Shirley is Alice's niece with whom she has a very close relationship despite living far apart. Alice had a recent phone call in which she expressed her wishes to Shirley that she not be put on life support, but then had a subsequent conversation with John saying much the same but conditioning it on there being basically no hope for recovery.

As a close family member in whom Alice has actually confided her wishes for healthcare, Shirley would generally have legal authority to give directions to the doctors when Alice is incapacitated. Because the doctor determined that Alice is unable to make her own decisions due to the stroke, the durable health care power of attorney is now effective. Because there is properly executed durable power of attorney that will control unless expressly revoked in writing by the person who executed it. Because it has not been revoked and John is named and not Shirley, John has legal authority to make the decision, rather than Shirley even though Shirely as a close relative with knowledge would normally have greater authority than John who is merely a friend and neighbor.


THE SUPREME COURT OF THE STATE OF OHIO

MPT 1

TURNER V. LARKIN (FEBRUARY 2025, MPT-1)

In this performance test, the client, Peter Larkin, is a residential landlord. Larkin had a text exchange about one of his apartments with a prospective tenant, Martin Turner. In this exchange, Turner revealed that he was widowed and had three minor children. Larkin was noncommittal and said that he would follow up about the apartment. He never did so. Three months later, Turner initiated a complaint with the United States Department of Housing and Urban Development (HUD), alleging unlawful discrimination based on familial status. The examinee's task is to draft a memorandum identifying and evaluating the legal and factual arguments that the firm should raise in Larkin's defense. The File consists of the instructional memorandum from the supervising attorney, Turner's administrative complaint filed with HUD, and a file memorandum summarizing the client meeting. The Library contains provisions of the Fair Housing Act and the Centralia Municipal Housing Code, as well as two federal cases, *Karns v. U.S. Dep't of Housing* and *Urban Development and Baker v. Garcia Realty Inc.*

ANSWER

TO: Elise Tran

FROM: Examinee

DATE: February 25, 2025

RE: Peter Larkin - Defense of Housing Discrimination Claim

The Fair Housing Discrimination Act (FHA) applies to Larkin's case, due to the size and character of the building. Because the FHA applies, Larkin will have to rebut the tenant Turner's claims in regards to two tests applied by the courts in the 15th Circuit and Franklin District Courts. The first, the McDonnell Douglas test is a three-part test used to determine whether a plaintiff is a member of a protected class who was discriminated against; the test also assesses whether the landlord's provided reasons for the alleged discrimination are mere pretexts for discrimination. The second test is a three-party disparate impact analysis for facially neutral policies, which courts have used to determine if a landlord's policy has a racially disparate impact and is overbroad or fails to use the least restrictive means necessary to achieve their desired goal.

Because Larkin has a history of renting to tenants with minor children, provided sufficient reasoning for his preference to rent to married couples, and Turner made only one attempt to rent from Larkin, Larkin should successfully pass the McDonnell Douglas Test. Additionally, because Larkin's maximum occupancy policy is not a significant mismatch compared to the municipal housing code and he rents to families with minor children in larger units in the same building, the court is unlikely to find that Larkin's occupancy policy is overbroad or too restrictive. While Turner will be able to raise some strong arguments, Larkin will likely be able to successfully defend against Turner's discriminatory claims.

Application of the Fair Housing Act to this Case

The FHA focuses on protected classes of individuals and the type of housing sought; both requirements must be met to trigger FHA protections. The FHA prohibits landlords from "refusing to negotiate for the sale or rental of, or otherwise making unavailable or denying, a dwelling to any person because of...familial status." 42 U.S.C. 3604(a). The "familial status" protected class refers to the presence of minor children in the household who have not attained the age of 18 and are domiciled with a parent. 42 U.S.C. 3602(k). Marital status is not a protected class under the FHA. *Karns v. HUD*, 15th Circuit (2006), citing 42 U.S.C. 3604(a). Further, the FHA protections expressly do not apply to owner- occupied housing with four or less distinct units, one of which is occupied by the building owner. 42 U.S.C. 3603.

The FHA applies to Larkin's case, because 1) Turner and his children meet the requirements of familial status, a protected class under the FHA, because Turner has three children under the age of 18 and he is their parent, and 2) the unit Turner was seeking to rent is within a five-floor building with 20 units, none of which are occupied by Larkin. With both the protected class being met and the building being larger than the exemption provided for owner-occupied building of four units or less, the FHA protections and requisite legal tests apply to Larkin's case and will certainly be raised by Turner.

***McDonnell Douglas* Test for Evaluating Discriminatory Claims under the FHA**

To determine whether a prospective tenant has faced discrimination under 42 U.S.C. 3604(a), courts apply a three-part burden shifting test established in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). The three-part test, as applied in *Karns* requires the following:

1. The plaintiff must initially establish a prima facie case of housing discrimination by a preponderance of the evidence, showing that they are a member of a protected class; that they applied for and were qualified to rent the dwelling; that they were denied housing or the landlord refused to negotiate with them; and that the dwelling remained available.

2. If the plaintiff establishes the prima facie case outline above, a presumption of illegal discrimination arises and the burden shifts to the defendant to articular legitimate, nondiscriminatory reasons for the challenged policies.

3. If the defendant satisfies this burden, the plaintiff is then given a final opportunity to prove by a preponderance that the defendant's states nondiscriminatory reasons are merely pretext for discrimination.

1. Plaintiff's Prima Facie Case

Turner can successfully establish the prima facie case required under the first part of the McDonnell Douglas Test. Turner is a single father with three minor children, which was established in the text exchange with Larkin. Excerpt from HUD Complaint Form. The second element in the prima facie case is construed broadly, with "applied for" requiring that the unit was available and "qualified to rent" meaning the prospective tenant's individual financial, rental, and criminal history is satisfactory for rental purposes. Here, online advertisement and texts with Turner establish that the unit was available for rent when Turner reached out and though Larkin did not inquire about Turner's qualifications to rent, Turner attested to his income and credit being sufficient to rent the unit in his administrative complaint. Excerpt from HUD Complaint Form. Next, Turner can show that once he volunteered the information about his marital and familial status, Larkin didn't communicate with him any further. Excerpt from HUD Complaint Form. Finally, the fact that the unit continued to be listed for rent online, and Larkin providing that he was able to rent the unit to a married couple a couple months later, establishes that the unit continued to be available for rent after Larkin ended communications with Turner.

In *Karns*, a single parent of two children had a nearly identical exchange with the owner of a unit Karns inquired about renting, with this communication occurring over the phone, rather than through text, like in Larkin's case. *Karns* at 9. The court considered all elements of the prima facie case being met, finding that the landlord's response "I don't know. I've got to pay my mortgage. I'll think about it and get back to you." followed by no return communication to the prospective tenant met the requirement that the landlord refused to negotiate. *Karns* at 11. Additionally, the unit in Karns continued to be advertised after the communication with Karns and the landlord, as is the case for Larkin's unit in question. *Karns* at 9.

Because Turner can successfully establish a prima facie case as required by the test, the burden will shift to Larkin to establish legitimate, nondiscriminatory reasons for his policy to prefer renting to married tenants.

2. Defendant's Rebuttal

In *Karns* the landlord raised concerns over financial matters as support for the landlord's policy refusing to rent to Karns as a non-married person (not due to her familial status), expressing that the landlord needs to pay their mortgage in the initial phone call with Karns. *Karns at 9-11.*

Larkin's response to Turner did not illustrate any reason why Larkin would need to consider Turner's interest in the unit before getting back to him. Excerpt from HUD Complaint Form. However, Larkin should establish that he prefers renting to married tenants because of their having dual incomes and the stability that married tenants bring over single tenants, as stated in the File Memo. In doing so, it will be important for Larkin to illustrate his experience as a landlord for over 20 years, having found that married couples are less likely to move out in the middle of their lease and more likely to be able to afford their rent if one partner loses income. It will also help Larkin's likelihood of success if he points out that he has turned down single people and unmarried couples who have applied for the unit before, as marriage is not a protected class under the FHA and can solidify Larkin's position that financial status and stability, not familial status, are legitimate and important concerns for his business as a landlord that earns all of his income through his rental properties.

3. Plaintiff's Opportunity to Establish Pretexts for Discrimination

After Larkin's statements regarding his policy and history of renting to married couples due to their financial stability and tendency to remain in a unit for the duration of the lease, Turner will likely argue that these are pretexts for discrimination on the basis of familial status. The fact that Larkin did not request any of Turner's financial information or rental history weighs against Larkin's argument, as the court found this as one reason the policy in *Karns* was pretextual for discrimination. *Karns* at 11. However, in *Karns*, the landlord did not establish a history of renting to married tenants and the landlord was willing to rent to Karns when she called him back pretending to be a single person with no children. *Karns* at 10-11.

The court in *Karns* found that the landlord's assertion that their refusal to rent to Karns was based on marital status and income, but Larkin's situation is much different. There is no evidence to show that Larkin would have rented to Turner had Turner represented himself as a widow with no children. Additionally, Larkin has a history of renting to married couples, he has tenants currently in the same building with children, and he has decades of experience to illustrate his preference for married tenants produces more regular income and tenants more likely to possess the unit through the duration of their leases. Larkin has a very strong argument, largely due to the fact that he rents his units to families with minor children in the same building, he has turned down other non-married prospective tenants in the past, and there was no attempt by Turner, like in *Karns*, to represent himself as a single prospective tenant without children.

Outcome of McDonnell Test

Though Turner can establish an initial prima facie case of housing discrimination, Larkin has a very high likelihood of being able to prove that his policy is not a pretext for discrimination, due to his rental history, current tenants with children, and having turned down other single applicants for the same unit.

Is Larkin's Maximum Occupancy Policy Overbroad or Too Restrictive?

Though Larkin can likely establish that his policy to rent to married couples is not pretextual, the ALJ will also likely assess his maximum occupancy policy. In *Baker v. Garcia Realty*, again involving prospective tenants with minor children, the Bakers were denied an apartment unit due to the landlord's maximum occupancy policy. In assessing whether the maximum occupancy policy was discriminatory, the *Baker* court employed a three-part test as follows:

1. Plaintiff must make a prima facie case showing that the challenged practice has or will cause a discriminatory impact;
2. If plaintiff can successfully make this showing, the burden shifts to the defendant to prove that the challenged practice is necessary to achieve one or more substantial, legitimate nondiscriminatory interests; and
3. If the Defendant meets this requirement, the burden shifts back to the plaintiff, and the plaintiff prevails only if it can show the landlord's stated nondiscriminatory interest could be served by another practice with a less discriminatory effect.

Plaintiff's Prima Facie Case

Like in *Baker*, where the court found that the landlord's maximum occupancy policy would burden families with children more than the general public, because it is typical for children to share bedrooms and for families to be comprised of more people than groups of single tenants, Turner can likely establish a prima facie case by making the same arguments. *Baker v. Garcia Realty Inc.*, U.S. District Court for District of Franklin (1996).

Defendant's Proof of Need to Achieve Substantial Legitimate Nondiscriminatory Interests

Larkin's motives are very similar to the landlord's in *Baker*, arguing that he aims to prevent single young people from cramming too many bodies into too small of a unit in their attempt to keep their rent low. *Baker* at 14. The *Baker* court found that the landlord's argument in *Baker* was substantial and legitimate, so Larkin should have no issue succeeding here, as long as he focuses on the character of the neighborhood and trends he has seen in his experience as a landlord, as provided in the memo.

Can Plaintiff show that Larkin's interests could be served with another, less discriminatory practice?

In making this assessment, the *Baker* court compared the landlord's maximum occupancy policy to the local municipal code, as the significant discrepancy was raised by the plaintiff. In *Baker*, the municipal code would have allowed up to eight people in the unit at issue, while the landlord's policy allowed for no more than four individuals in the same unit. Following the municipal code, the seven-person Baker family could have met the code maximum occupancy requirements, and the court noted that the code allows for twice as many people to live in a unit of the same size as the landlord's policy did. *Baker* at 14.

In comparing Larkin's policy to the applicable municipal code, the court is unlikely to find that Larkin's policy is overbroad, and therefore discriminatory, as was the outcome in *Baker*. For the same size unit, 500 square feet, the municipal code allows for a maximum of four people, while Larkin limits his unit to three occupants maximum. Centralia Municipal Housing Code Sec. 15. Only one person less is not a substantial deviation from the housing code.

Additionally, Larkin's unit is 500 square feet and the category in the housing code that allows for four people maximum is 451-700 square feet. Centralia Municipal Housing Code Sec. 15. Larkin's unit is near the smaller end of the category, with the next smallest category in the code allowing no more than three people for units that are 301-450 square feet.

Because Larkin's unit size is at the smaller end of the housing code's category and his policy is only for one person less than the code allows, the ALJ is not likely to find his policy to be overbroad or too restrictive, such that it is discriminatory.

Outcome of Maximum Occupancy Test

Though Turner can make a prima facie showing, Larkin has a legitimate interest in capping his maximum occupancy and his policy is not a substantial deviation from the housing code. It is unlikely that the ALJ would find this policy to be discriminatory, thus Larkin will likely prevail under this test as well.

Conclusion

Turner will be able to make prima facie cases necessary to trigger FHA protections under both tests outlined above. However, Larkin has strong reasons for policies that, when coupled with the evidence he can provide related to the many units he owns and his many years in practice as a landlord, can likely allow Larkin to succeed in front of the ALJ.


THE SUPREME COURT OF THE STATE OF OHIO

MPT 2

IN RE UNIVERSITY OF FRANKLIN (FEBRUARY 2025, MPT-2)

In this performance test, the examinee works in the Office of University Counsel for the University of Franklin (UF). A reporter at a student newspaper has sent an Inspection of Public Records Act (IPRA) request to the University seeking records related to Professor Eugene Hagen, who teaches at the law school. The request is for records held by the Dean of the UF School of Law and the Chief of Police of the UF Campus Police Department. Examinees are asked to analyze whether the requested categories of documents must be made available for inspection under IPRA. The four categories are the professor's annual performance reviews; any complaints about the professor submitted to the law school by members of the public; a chart containing the names of anyone (faculty, staff, students, or members of the public) who has made a complaint about the professor; and any records involving the professor in the possession of the campus police department. The File contains the instructional memorandum; an article from the student newspaper, The Daily Howl; the IPRA request; and emails from the law school dean and the campus police chief to the University's general counsel. The Library contains excerpts from Franklin's Inspection of Public Records Act, two Franklin Court of Appeal cases: *Fox v. City of Brixton* and *Pederson v. Koob*, and one Franklin Supreme Court case: *Torres v. Elm City*.

ANSWER

University of Franklin

Office of University Council Howler Hall

10 Campus Drive, Ste. 100 Franklin City, Franklin 33701

MEMORANDUM

To: Loretta Rodriguez, General Counsel

From: Examinee

Date: February 25, 2025

Re: Professor Eugene Hagen Matter

You asked me to draft a memorandum analyzing whether the following documents must be produced pursuant to the Inspection of Public Records Act (IPRA) and Fr. Civil Code Section 14-1 *et seq*. First, under the Civil Code, any person wishing to inspect public records shall submit a written request to the custodian. Franklin Civil Code Section 14-5(a). Mr. Chen has submitted a written request to the custodian of records, and therefore it is a valid request to inspect documents. This right to inspect is not absent exemptions, and it is likely that a number of the requested documents are subject either to complete exemption or partial redactions. Below are my findings on each specific request.

1. Professor Hagen's Annual Performance Reviews from 2019 to Present

UF Law School can redact information as it relates to Professor Hagen's performance reviews and quality of teaching, but it may need to produce the student evaluations. Since the request specified for reviews from 2019 to present, and the University only has two annual reviews from that time, the University is only required to produce nonexempt information related to those two. Further information regarding this limitation is provided in Section 3 of this memo.

Under the Civil Code, "(3) letters or memoranda that are matters of opinion in personnel files" are exemptions to the right to inspect under the Franklin Inspection of Public Records Act, Franklin Civil Code Section 14-2(a)(3). Further, in *Newton v. Centralia School District*, the Franklin Supreme Court found that this IPRA exemption applies to letters or memoranda in their entirety. When the exemption applies to a document as a whole, the entire document is exempt from disclosure and matters of fact in that document do not need to be separated from matters of opinion and disclosed. *See Pederson v. Koob* (Franklin Ct. App. 2022) *citing Newton v. Centralia School District* (Fr. Sup. Ct. 2015). However, if an exemption only applies to certain portions of the record, the exempt and nonexempt material demands redaction.

In *Pederson v. Koob*, an appeal was raised when a request for an investigative report for an employee was denied. This investigative report, known as the "Larson report", contained information related to the Franklin Livestock Board's rules of conduct and whether billing of time had been violated, information related to Larson's job performance and compliance with rules of conduct, and advisement on whether disciplinary actions should be taken. Pederson, the requestor, alleged matters of opinion and factual matters needed to be separated and produced, and the Franklin Court of Appeals disagreed. They found the document in its entirety fit "matters of opinion" and as a whole it could be exempt.

This is unlikely to be the same for Professor Hagen's performance review. Per the letter from Dean Cheryl Williams, the two annual performance reviews contain both general information such as classes Professor Hagen taught, his quality of teaching, committees served, and what type and quality of publications the professor has completed. In *Newton*, the Franklin Supreme Court identified items such as "letters of reference, documents concerning infractions and disciplinary action, personnel evaluations...and other matters of opinion" are the types of records that qualify as matters of opinion in personnel files. All of these documents listed in the personnel file equate to these examples set forth by the Franklin Supreme Court and are subject to exemption.

The student evaluations, however, may not be. Although these are matters of public opinion, because they are generated not by the law school, but rather by the students and are being requested by a student, they may be subject to disclosure. In *Fox v. City of Brixton*, the court reasoned unsolicited and voluntarily generated complaints were not in the matters of opinion exemption under IPRA. The question would be whether these evaluations were compelled by the law school pursuant to an evaluation of the teacher. If they are, these documents could be exempted under the statute and case law. If they are not, they could be subject to disclosure. Further information regarding this specific disclosure is found below as it relates to the Pamela Rodgers letter. Regardless, all other information found in the performance review can be redacted, even if these student evaluations need to be disclosed.

As such, it is possible the annual performance reviews in their entirety could be exempt from IPRA, but more information is needed to determine whether the student evaluations in the annual performance reviews would be nonexempt.

2. Complaints Regarding Professor Hagen from Members of the Public to UF School of Law

UF Law School will need to produce the Pamela Rodgers letter in his personnel file.

Again, in *Fox v. City of Brixton*, the court emphasized whether the location of a record is contained within a personnel file is not dispositive of whether the exemption exists, rather it is the content of the file itself that is material. In *Fox*, the city argued citizen complaints are personnel information because they relate to the officer's job performance and subjects the officer to disciplinary action. The court found for the plaintiff because these were not generated by the city, and since they are unsolicited complaints voluntarily generated by the "very public that now requests access," these do not fall into the records exception for "matters of opinion in personnel files" for the purposes of Section 14-2(a)(3).

Although this specific citizen complaint is not being requested by a citizen at large, because Pamela Rogers's letter is similarly voluntary and unsolicited and it is not generated by the University, this too is unrelated to Professor Hagen's job performance and despite it being contained in his personnel file, it does not qualify as a "matter of opinion" in his personnel file.

As such, UF Law School will need to produce this letter.

3. A Chart Containing Names of Anyone Who has Alleged a Complaint Against Professor Hagen

UF Law School will not need to create and produce a chart of names alleging complaints.

Under Franklin Civil Code Section 14-1 *et seq.*, "public records" are defined as all documents, papers, letters, books, maps, tapes, photographs, recordings, and other materials...that are used, created received, maintained, or held by or on behalf of any public body and related to public business. Further, Section 14-5(b) specifies that "nothing in this act shall be construed to require a public body to create a public record." Here, as indicated by the letter from Dean Cheryl Williams, there is not currently in existence a chart regarding the names of people who have made a complaint about Professor Hagen. The Code is very explicit that a public body is not required to create a public record and while a chart would fall into the definition of a public record, because UF Law School does not currently have nor maintain a chart of this kind, it is not required to create one. If the Dean does create a chart, this would be subject to disclosure under IPRA.

Therefore, I would advise the Dean not to create this chart and this is not a required disclosure under the records request.

4. Any UF Campus Police Department Records Involving Professor Hagen

First, the records request is specific to "any records involving Professor Hagen in the possession of the UF Campus Police Department." In his letter, Chief Chip Craft inquired about the DUI arrest and the record in possession of the Franklin City Police Department. Since this record is not in the possession of UF Campus Police Department, this does not need to be produced and the burden of locating the record is on the requester. As for the recent marijuana possession charge, the UF Campus Police Department will need to produce some of the material but can redact portions.

Under the Civil Code, there is an exemption under IPRA for "(4) portions of any law enforcement record that reveal confidential sources or methods or that are related to individuals not charged with a crime, including any record from inactive matters or closed investigations." In *Torres v. Elm City*, the city incorrectly asserted a police record was not subject to IPRA because it related to an ongoing criminal investigation. *Torres v. Elm City*, Franklin Supreme Court (2016). In the decision, the Franklin Supreme Court specified the legislative intent was to exempt specific contents of the records that related to confidential sources, methods, or that are related to individuals not charged with a crime. Further, a record cannot be withheld in its entirety, rather a custodian prior to inspection must separate out the nonexempt from the exempt material and redact as appropriate.

Here, the records are related to both Professor Hagen and Professor Sykes. Professor Sykes has not been charged with a crime, and pursuant to *Torres* and the legislative intent of Franklin, any information as it relates to her is able to be redacted. This includes the statement made by Professor Sykes and her likeness as it appears in the photographs. Further, the incident report lists a confidential source- the name of this confidential source is additionally exempt and must be redacted pursuant to the Civil Code. Unfortunately, any information specific to Professor Hagen and his likeness as it appears in the photographs is nonexempt and must be produced.

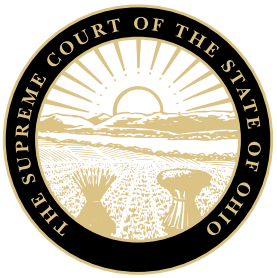
Therefore, both the incident report and the photographs will need to be redacted to protect the exempt material, but ultimately this record is subject to IPRA and will need to be produced.

If there are any questions or concerns regarding any of the above assessments, please let me know.


THE SUPREME COURT OF THE STATE OF OHIO

On the cover:

Detail from the Thomas J. Moyer Ohio Judicial Center Law Library Reading Room Mural 7, depicting the availability of knowledge in printed books.



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