February 2025 Georgia Bar Examination Sample Answers

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Essay 1 — Sample Answer 1

1. Maggie will prevail on a claim to pierce the corporate veil.

There are three circumstances in which a Georgia court will pierce the corporate veil and hold a shareholder personally liable for the actions of the company. These three instances are: (1) the alter ego theory, where the company is being used by an individual as his "alter ego"; (2) inadequate capitalization; and (3) fraud or illegality. Presently, the facts indicate that Family has "never been adjudicated insolvent" which removes the argument for Maggie that the corporate veil can be pierced under a theory of inadequate capitalization. Instead, the alter ego theory and the use of the corporation for fraud or illegality are the best courses of action for Maggie.

a. There is evidence that Joe is using Family as his "alter ego."

The first way in which a Georgia court may pierce the corporate veil here is the "alter ego" theory. This theory will hold an individual personally liable for their actions within a corporation if there is sufficient evidence that the corporation is being used merely as the "alter ego" of the individual. Here, the facts indicate that "Family is wholly owned by Joe" and while Joe "was never an employee of Family" the facts indicate that Joe signed contracts for Family "as President." As such, it is presumed that Joe is an officer of Family, standing as president of the corporation. Each actionable course for Maggie is as follows:

1. Joe's withdrawal of a large sum for a personal vacation is Maggie's strongest fact.

As mentioned, Maggie's strongest argument in support of piercing the corporate veil is the fact that Joe "withdrew a substantial sum from Family's bank account and used the money to take his wife on an expensive trip to Europe for her birthday." Here, it is clear that Joe is using Family's funding to pay for expenses for his family. The personal use of corporate funds for non-business related expenses, being those which can not be reimbursed for their relation to the business, is one of the strongest indicators of the alter ego theory. Here, it is undeniable that Joe was using his position as President of Family for his own use. There is no indication that this "expensive trip to Europe" had anything to do with Family; instead, Joe was utilizing the success

of Family for his personal gain. As such, the fact that Joe withdrew a substantial sum from Family's account is a significant indicator of the alter ego theory, and Maggie will likely be successful here.

2. Joe's family's use of the Family American Express for spa treatments is another indicator of the alter ego theory.

Another fact that Maggie can use in support of her petition to pierce the corporate veil is the fact that "Joe let his wife use an American Express card in the name of Family to charge some treatments at a luxury spa in Europe." As with the withdrawal of funds for a personal vacation, a Georgia court will be hard pressed to find a reason to not find that Joe used the company as his alter ego here. By allowing members of his immediate family to access Family's finances for their personal use, Joe is clearly using the corporation to fund his personal expenses. Because the line between Joe as an individual and Family as a corporation has been diminished, it is clear that Maggie will be sucessful on a claim of piercing the corporate veil based on this fact.

3. Joe and his Wife drove company vehicles.

The first way Maggie can prove that Joe used Family as his alter ego is by the fact that "both Joe and his wife (who is not involved in the business in any way) drove vehicles leased and paid for by Family for their personal use." While this fact is not necessarily a red herring of the alter ego theory, the fact that Joe's wife "is not involved in the business in any way" yet uses a Family vehicle "for [her] personal use" is sufficient evidence that the corporation of Family was merely a front to offset Joe's personal expenses. A Georgia court, coupled with the other factors mentioned above, will see the use of Family's company vehicles for personal use, not only by Joe, but by his wife, as significant indicators that Joe is using the corporation as his alter ego. As such, the fact that Joe and his wife, who is not employed or in any way related to the company, both drive vehicles paid for by Family is another indicator that the corporate veil should be pierced.

b. There is sufficient evidence that the corporation is being used in furtherance of fraud and illegality.

As mentioned above, another factor other than the alter ego theory from which a Georgia court will pierce the corporate veil is if the corporation is being used in furtherance of fraud or illegality. Here, there is sufficient evidence that the corporation is being used in furtherance of illegality. The facts indicate that, on two occasions, Joe "borrowed money from Family to pay some gambling debts, but he never executed any loan document." While Maggie could use this fact aas another indicator of the alter ego theory, the stronger argument is its use for furtherance of fraud. The use of company funds to pay personal gambling debts is illegal in Georgia. Further, gambling is illegal in Georgia, so the fact that Family, and its funds, are being used to circumvent illegal gambling debts is further evidence that the corporate veil should be pierced and Joe should be held personally liable for these actions.

Additionally, the facts indicate that Joe was not following the requirements to be validly informed as a corporation in Georgia. In order to be held as a de jure corporation in Georgia,

there are certain requirements that must be met. One of these requirements is that an annual, at minimum, meeting must be held by the officers of the corporation. The facts here provide that Family "does not appear to have held a shareholders' meeting" nor have they "adopted bylaws." Clearly, the failure to adhere to the corporate requirements in Georgia, being an annual shareholder meeting, has not been met. Additionally, a Georgia corporation must adopt bylawys, either at the time of incorporation or shortly thereafter. Both of these facts further indicate that the corporate formality of Family was being used in furtherance of illegality.

To conclude, Maggie will be successful on the theory of piercing the corporate veil. Maggie has sufficient evidence that Joe used the corporation as his alter ego, as he withdrew large sums of money for a personal vacation, used the Family American Express for personal expenses, and he and his wife drove company vehicles. Additionally, there is sufficient evidence that Family is being used in furtherance of illegality, as Joe was using Family's income to pay off illegal gambling debts and the corporate requirements were not met. As such, the corporate veil will be pierced and Joe will be held personally liable.

2. Maggie will be successful on a breach of claim of tortious interference with contractual relations.

Under Georgia law, an individual has a cause of action of tortious interference with contractual relations where there are sufficient facts to indicate that a contract existed between two parties, a third party was aware of this contract, the third party intentionally interfered with the execution of the contract, and the contract suffered as a result.

a. A valid contract existed between Maggie and the competitor.

Presently, the facts provide that Maggie "signed a contract with one of Family's competitors to perform some work." As such, the first step for this cause of action has been met, as the facts indicate a valid contract existed and there is insufficient evidence to show that the contract between Maggie and the competitor was illegal.

b. Joe was aware of the contract between Maggie and the competitor.

The next factor to be successful on a claim of tortious interference with contractual relations is that the third party must be aware of the contract between the parties. Here, the facts indicate that "Maggie discussed this need for the money with Joe on several occasions." By "the money," Maggie is referencing the fact that she "needed the $100,000 from Family in order to purchase necessary equipment" for the contract with the competitor. Based on the fact that Maggie had "discussed" the issue with Joe "on several occasions" is sufficient to show that Joe was aware of the contract between Maggie and the competitor.

c. Joe knew that the competitor would suffer if Maggie cancelled.

The third factor that Maggie must prove is that the third party, being Joe, intentionally interfered with the execution of the contract. Maggie can argue that Joe intentionally interfered with the contract because Maggie had contracted with "one of Family's competitors." Further, it is clear that Joe "was aware that the competitor's success would suffer due to Maggie's cancellation." As such, the third factor for intentional interference with contractual relations has been met.

d. The contract between Maggie and the competitor suffered.

Finally, and most easily for Maggie, she must show the contract suffered as a result of Joe's actions. Here, because Maggie needed the money for the equipment, and she was unable to purchase the equipment, Maggie "had to back out of that new contract" and subsequently "subject[ed] herself to a breach of contract claim by the competitor." As such, the fourth and final factor has been met.

To conclude, Maggie will also likely be successful on a tortious interference with contractual relations claim. Maggie can prove that a contract existed between two parties, Joe was aware of this contract, Joe intentionally interfered with the execution of the contract, and the contract suffered as a result.

Essay 1 — Sample Answer 2

Issue 1: Can Maggie Prevail on a Claim to Pierce the Corporate Veil?

In Georgia, an individual or individuals can organize together to create an entity called a corporation to conduct business. The hallmark of a corporation is that it is an entity entirely distinct of that of the owners (who are referred to as shareholders). As a general rule, the shareholders of the corporation are normally not personally liable for the debts on the corporation on the theory that the corporation is distinct entity from its owners. Unless an exception applies, a creditor of the corporation can only reach the assets of the corporation to satisfy their debts. If the corporation does not have sufficient assets, the judgments are not paid.

There is an exception to the general rule described above and it is known as the doctrine of piercing the corporate veil. Under the theory of piercing the corporate veil, the shareholders of a corporation could be personally liable for the debts of the corporation based on the totality of the circumstances if the owner is abusing the corporate form. The Courts look to all available evidence to ascertain whether or not piercing the corporate veil is equitable. Some of the things Courts look to are: (1) the degree to which the corporation is capitalized, (2) the dominance that a majority shareholder has, (3) the commingling of personal and corporate assets, and (4) the degree to which the owner abides by corporate formalities. No one factor is dispositive and Courts (generally speaking) are reluctant to pierce the corporate veil (the idea is that they don't want to diminish the desirability of individuals engaging in for profit ventures through a corporation).

Here, Maggie seeks to pierce the corporate veil because Family does not have the assets to pay her judgment. Maggie's case has some merit because she apparently has credible evidence that Joe's wife drove vehicles that were leased and paid for by the company. This fact is probative because Joe's wife has no involvement in the corporation and a legitimate for profit enterprises (probably) wouldn't spend money giving benefits to an individual that provides no benefits to the company. Furthermore, Maggie has credible evidence that Joe allowed his wife to use an American Express card in the name of Family to charge treatment at a luxury spa in Europe. Again, this behavior is atypical of normal business practices. It also demonstrates Joe's dominance over Family's governance. Furthermore, Joe borrowed money from Family to pay debts and never executed any loan documents. Normal business practices would dictate that there should be some documentation of a receivable. Finally, there is evidence that Joe never held a shareholder's meeting or held board meetings. While he is the only shareholder and it is understandable that there are no board meetings, you would probably expect bylaws to govern the business in the event that it grows. Looking to the factors above these factors weigh in favor of piercing the corporate veil because: (1) the corporation is undercapitalized, perhaps because of Joe's financial mismanagement, (2) Joe clearly exercises dominance over the corporate form (as evidenced by the car leases, the loan to and from the company and a large distribution that he received from the company that he used on a vacation for him and his wife and the fact that he uses the corporate form to hire his other company for work), and (3) he hasn't abided by corporate formalities.

That being said, Joe has some good defenses to this claim. For instance, it appears, based on the example that Family Construction has held itself out as a legitimate business at least for a period of time (the example said it stopped work on "other projects" indicating that it has some other business going on). Although he only has two employees (he is not one of them), the fact that they are his uncle and brother-in-law in and of itself doesn't mean much (for example, they could be the most skilled laborers he could find). Although he took a large distribution from Family to go on vacation, the board of directions can, and routinely do, authorize distributions to their shareholders. There is nothing abnormal or atypical about those behaviors per se. Furthermore, it seems like prong (3) above, the commingling of assets, would favor Joe because it really hasn't happened (notwithstanding the personal loans, leases and credit cards which still remain in the company, it doesn't seem like he has taken his personal assets and transferred them or hid them in the business).

However, given all the other factors and the substantial evidence that Maggie has of what appears to be unwise and/or improper business practices a Court will probably find that Maggie would prevail piercing the corporate veil. Prongs (1), (2) and (4) favor Maggie, and there is substantial evidence that Joe is using the business in an improper manner. Maggie has a good chance of prevailing here.

Issue 2: Do you See Any Other Claim

There are several other claims that Maggie can persue. First, she could sue Joe for tortious interference with business relations (or prospective business advantage). Under Georgia law, to prevail on this tort, the claimant has to demonstrate that the Defendant intentionally engaged in practices that harmed a contract, business relation or prospective business advantage of the Plaintiff. The Plaintiff must also show damages.

Here, Maggie might be able to assert the claim (at least it would survive a motion to dismiss). The reason being is that Defendant knew that Maggie needed the $100,000 in order to purchase some equipment for a construction project in Atlanta. Joe intentionally withdrew money from Family in order to fund a trip even though he had actual knowledge that Maggie needed the money in order to fund another project. That would likely qualify as an intentional act intended to harm Maggie. Furthermore, Maggie was damaged because she did not have the $100,000 to fund the project. She had to pull out and is subject to a breach of contract claim. As a result of Joe's intentional act, Maggie was harmed and therefore has a cause of action for tortious interference with business relations.

Second, Maggie also might be able to assert a fraudulent transfer cause of action. Under Georgia law, a person who intends to hinder, delay or otherwise defraud a creditor by making a transfer is liable to the Defendant in tort. Here, Maggie claims she has credible evidence that the reason Joe does not have money is because he withdrew a substantial sum from Family's bank account to go on vacation. The facts indicate that Family knew Maggie needed the remaining $100,000 to fund another project in Atlanta. Accordingly, it appears that Joe's transfer was made

with the knowledge that he would not have enough money to pay Maggie. Accordingly, Maggie could assert that Joe committed a fraudulent transfer and Joe could be liable to her in tort.

Essay 1 — Sample Answer 3

1. PIERCING THE CORPORATE VEIL

VEIL PIERCING AS A REMEDY

As a general rule, shareholders and directors of a corporation are not personally liable for the obligations of the corporation. However, when a corporation is operated as a closely-held corporation, a corporate creditor is sometimes able to pierce the corporate veil and hold the shareholder or director personally liable. This is an extraordinary remedy that is only available when the corporation and the insider are so closely connected that the corporation is merely the alter ego of the individual and circumstances exist such that justice requires the imposition of personal liability. Here, Joe is the sole shareholder and sole director of Family. Joe manages all aspects of the corporate operations and makes all ownership decisions. Thus, Family is a closely-held corporation.

COMMINGLING

One of the primary factors courts examine in veil piercing scenarios is the commingling of personal and corporate assets. Here, Joe used corporate funds to lease vehicles for both he and his wife's personal use; he used Family funds to pay for a European vacation and allowed his wife to charge vacation expenses to the corporate credit card; used corporate funds to pay personal gambling debts without repayment; and he caused Family to pay his salary for work he purportedly performed for another of his wholly owned corporations, JCB. These all indicate substantial commingling of corporate and personal funds that would support an alter ego finding.

UNDERCAPITALIZATION

Another factor that leads to alter ego findings is a corporation that is undercapitalized. Here, we are told that Family has no cash with which to pay Maggie for her work. However, undercapitalization is only relevant when it is insufficiently capitalized upon formation, not when the corporation later becomes insolvent. Without more, Family's current financial position does not support an alter ego claim.

LACK OF FORMALITIES

Another indication of alter ego is the shareholders lack of adherence to corporate formalities. Failure to comply with basic corporate formalities indicates a lack of treatment and intent for the corporation to be a separate entity, independent from the individual shareholders. Here, Joe has maintained the annual registration for Family, but he has failed to adhere to several standard formalities, including failure to hold regular shareholder meetings, never electing officers or independent directors, executing loan documents for the money he purportedly borrowed from the corporation to pay his gambling debts, or documenting any treatment of the relationship

between Family and JCB explaining the payments to him by Family for his work for JCB. All of these weigh in favor of treating Family as Joe's alter ego.

REVERSE VEIL PIERCING

In addition to the possibility of piercing Family's corporate veil to reach Joe individually, there is also the possibility of reverse piercing the veil to reach JCB to cover Joe's personal debts. Here, we told that Joe also wholly owns JCB and that JCB works on virtually every project that Family undertakes. Family also pays Joe for his work for JCB. Unlike Family, JCB has 25 employees who are presumably not Barker family members. Despite these overlapping interests, we do not have enough information about JCB or enough evidence of JCB's intertangling with Joe or Family to equate JCB with Joe or Family.

CONCLUSION

Based on the above, weighing all the evidence, it appears that Maggie would likely prevail on a claim to pierce the corporate veil of Family to reach Joe individually. However, we are not given the same level of information regarding Joe's relationship with JCB to justify piercing the corporate veil as Joe's alter ego. Neither do we have sufficient evidence of intermingling between JCB and Family to hold JCB liable for Family's obligation to Maggie.

2. ADDITIONAL CLAIMS

SPECIAL DAMAGES

In a breach of contract action, normally the party is entitled to compensatory damages. Family breached the contract by failing to pay Maggie the remaining $100,000 due on the contract However, if the breaching party knew of special circumstances that would result in additional damages to the plaintiff int he event of breach, he may be held liable for special damages. In this case, Maggie told Joe about her other, subsequent contract and her need for money from this project with Family in order to make the next project. Joe knew or should have known that his breach in failing to pay Maggie would result in her inability to perform the contract with the competitor. Thus, he may be held liable for special damages in addition to compensatory damages.

TORTIOUS INTERFERENCE WITH EXISTING CONTRACTUAL RELATIONS

When a person or company wrongfully and knowingly interferes with the existing contractual relationship between two other persons, thereby causing injury to either, he is liable for tortious interference with contractual relations. In this case, Joe knew of the existing contract to be performed between Maggie and a competitor upon Maggie's completion of the project with Family. Joe also knew that if Family did not pay Maggie as promised, she would be unable to perform this next contract and that it would harm his competitor's business. As Family's sole

shareholder and director, Joe's knowledge is imputed to the company. As such, Maggie may be able to bring a claim for tortious interference against Family and Joe.

TORTIOUS INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE CONTRACTOR'S LIEN

As a masonry contractor, Maggie may be entitled to file a contractor's lien against the real property in the county in which the property sits. This must be done within the statutorily prescribed timeframe and must comply with all statutory requirements. This would give Maggie a security interest in the real property and right to recover against the property. However, the lien may only be filed by a contractor who is licensed or authorized to do business within the state of Georgia. Maggie is a resident of Alabama. We are not told if she is licensed to work in Georgia. If she is not, she may be precluded from properly filing a lien.

Essay 2 — Sample Answer 1

Number One:

A Contract Was Not Formed:

The formation of a contract requires an offer, acceptance, and consideration. Dante Products' promotion has the characteristics of an offer for performance (a unilateral contract) by appearing to invite performance and thereby promise a reward. Namely, if parties present to Dante the correct formulation of specified scratched off cards and observe the correct formalities (no more than one one spot scratched off on any one box, etc), then Dante Products will pay out a prize corresponding to the rules of the game for that particular pattern and card. Furthermore, furnishing the cards to Dante has the characteristics of an acceptance (by performance). The parties receive the communication and stipulation by Dante's, and accept by performing: They present to Dante's the specified cards corresponding to the specific prizes. However, the third aspect of contract formation is missing: There is no consideration. In fact, the facts go so far as to explicitly say no consideration is being paid: "The rules recited that no consideration was required, and the game was free". Consideration is the mutual detriment or forbearance of the parties to the contract. Here, there is no purchase involved in the game. Nothing was required but the bare act of playing the game. But playing a game is not consideration, because consideration requires the exchange of some form of legal detriment, either a promise for a promise, or the exchange of some form of monetary or legal value. The players of the game have not paid, promised, endeavored, or forborne to do anything. They have simply played a free game. For that reason, Dante isn't obligated to pay anything to Francis, because the game amounts to nothing more than an unenforceable promise by Dante to confer some benefit. Dante would therefore have no legal obligation to Francis.

Could Francis, even if there was no contract, have a claim for a Quasi-Contract (Detrimental Reliance)? I believe that is unlikely. Detrimental Reliance involves a situation where a contract was not formed, but a party nevertheless reasonably relied on the promises of another and therefore suffered a detriment as a result. There are two problems with this, from Francis' perspective. First, his reliance on the promises of Dante don't seem reasonable or something to which a party could reasonably anticipate. Inventing a massive scheme to decode a game and thereby bankrupt a food products company to enrich oneself does not appear to be normal reasonable behavior. Furthermore, Dante in no way anticipated this or sought to induce it. Indeed, they were "aghast." Secondly, Francis has suffered no real detriment from this situation. He isn't even paying for the game cards, and all he lost was his time.

For all these reasons, Dante foods would prevail on a contract claim.

But If We Assume Consideration Was Valid:

However, let us assume the consideration is valid. If we assume that the act of performing by sending in the free game could be an act of forbearance to constitute a contract, then how would

the rest of the events determine a contract claim between Dante and Francis? If we have a valid contract, the performance required for acceptance appears to be to mail the cards to Dante's. Does the mailbox rule apply, whereby acceptance is given effect from the moment it is mailed? The mailbox rule typically does not apply to Unilateral contracts, because in such instances you accept by performance (playing the game according to the rules, in this case) rather than by communicating an acceptance to the offeror. However, in this case, performance is accomplished by mailing the cards through the literal mail. In that case, it appears that performance was complete as to the 1,000 game cards when Francis placed them in the mail, just as performance for a unilateral contract to paint a house would be complete when the house was painted, not when a party was informed it had been painted.

Thereafter, Dante attempts to revoke the contract. However, Unilateral contracts cannot be revoked once performance is initiated. Had Francis initiated performance for the remaining $3,000 cards? It appears he had, He had already acquired them and was only waiting to scratch them off and delivered them prior to the deadline set in the original terms of the contract for May 15. Therefore, a revocation by Dante would not be effective due to the commencement of performance.

It appears then, that if Consideration is presumed, then Dante is contractually obligated to Francis for $20 Million dollars. Does Dante have a defense, beyond attacking the validity of the consideration? Yes, Dante can raise a defense of Unilateral Mistake. Unilateral Mistake is a defense to contract formation if one party had a mistake as to the basic terms of the contract, the other party knew of such mistake and took advantage of the mistake to the detriment of the other party. In this instance, Dante's believes that the subject matter of the contract is pure chance and will be governed by chance. This is a fact that is basic to the contract, because its the essence of the type of game Dante's is offering. However, Dante's notion is mistaken because, unknown to them, it is possible to discern a pattern the game is based on and "rig" the results in your favor, which is precisely the action Francis took. For that reason, I believe that, even presuming the contract is valid, a Court is likely to hold that the contract is voided (or voidable, and Dante would certainly elect to void the contract if given the chance). A Court would likely view upholding the validity of the contract and subsequently enriching Francis has somehow unjustly enriching him or perhaps ratifying a quasi-fraud. For this reason, I believe Dante could prevail on a defense of a unilateral mistake in the contract formation.

Number Two:

Lottery and Illegality:

If a Court were to find that the game constituted a illegal lottery, it would provide an additional defense to the Contract formation for Dante. Since Illegality of the underlying subject matter is a defense to Contract formation, Dante's could assert it along with Unilateral Mistake as a way to either void the contract or declare that a contract was never entered into by reason of the illegality.

In determining whether the game constitutes a lottery, the arguments Dante and Francis would be in an awkward situation, because their interests would compel them to make arguments on Consideration that were the exact opposite of the ones they would have made on the contract as a whole. Dante does not want the contract to be enforced and so therefore argues that Consideration for it did not exist. But if it is enforced, then he would like the Contract to be deemed an illegal lottery, in order to provide him a defense to contract enforcement; which then leads him to be forced to argue that Consideration (for the lottery) did exist. Francis wants the contract to be enforced, and therefore argues that it consisted of consideration. But he does not want the contract to be declared an illegal lottery, for that would provide a defense that could rob him of his winnings. The issue of lottery consideration, therefore, would leave both parties in a very uncomfortable position before the Court, contradicting the positions they previously articulated on Consideration.

In terms of Chance - Dante would argue that the game was fundamentally designed as a game of Chance, and therefore meets the definition of a lottery. Meanwhile, Francis would insist that the way he has manipulated the scheme proves that it is not a game of chance at all, and therefore not a lottery.

On the whole, I believe a Court would deem the game not to be an illegal lottery for the same reason I believe the game is not a contract: There is no consideration. There is no payment, no reliance, and no detriment. Additionally, Francis' ability to rig the system demonstrates the game, unlike a lottery, is not a game of chance, but a game in which someone of certain skills and determination has the possibility to manipulate.

Essay 2 — Sample Answer 2

1. Francis will likely prevail on the contract claim, but only to the extent that he should recover money for the first 1,000 game cards. A contract for the sale of goods is governed by the UCC, while other contracts, like those for services is governed by the common law. Here, Dante's launched a product promotion scratch-off game. This is a service, not a good. While the goal of the game was to sell goods, Dante's was not selling goods when it was promoting the scratch-off; rather, it was promoting a service. Where there is ambiguity as to whether a contract is one for services or goods, the predominant purpose test applies, which asks whether the predominant purpose of the agreement is to provide a good or service. Here, the predominant purpose was to provide a service; therefore, the common law applies. A contract is made up of an offer, acceptance, and consideration. An offer contains the material terms of a contract and unequivocally places the power of acceptance in the offeree. An acceptance is the objective manifestation of the offeree to be bound by the terms of the offer. Consideration is a bargained-for exchange and requires the parties to suffer a detriment or gain a benefit.

An offer must be made to an objectively ascertainable person or group of people. The offer would not objectively be understood to be a joke, but a true offer with terms. Here, Dante's offered the game to consumers all over the country. There is an objectively ascertainable group of people because there are 3 million game cards distributed to American grocery stores. This unequivocally placed the power of acceptance in the grocery store shoppers who would return the scratch offs for a reward. The offer stated the material terms by announcing the prizes and how to return the winning cards by mail. Therefore, there was an offer. As stated in the offer, acceptance is made when mailing winning cards by May 15, 2024. Under the mailbox rule, the offeree accepts the offer once he places his acceptance in the mail. Here, Francis accepted the offer when he first mailed 1,000 cards to Dante's. Revocation occurs when the offeror revokes his offer. Here, Dante's attempted to revoke its offer of the games, but did so after Francis formally accepted. Thus, the revocation does not apply to Francis' acceptance of the first 1,000 cards.

Under the mailbox rule, the offeror's revocation of the offer is valid once the offeree receives the revocation. After Dante's revoked its offer by placing the revocation in national ads, Francis then scratched off and mailed the 3,000 remaining cards. While it is unclear as to whether Francis received Dante's revocation in the national ads, it can be assumed based on the facts. Because Francis received notice of the revocation, there was no longer an offer, i.e., game to be played, and Francis could not send his acceptance. Accordingly, Francis could not claim Dante's owed him money for the 3,000 remaining cards.

There is consideration in this agreement, even though Dante's stated that there was no consideration required to play and the game was free. Although Dante's seemingly has everything to lose and nothing to gain in this agreement, Dante's received product promotion through the game. And although Francis seemingly has everything to gain and nothing to lose, he took time out of his delivery schedule to acquire the games and completed the time-

consuming task of scratching them off. Under Georgia law, consideration can be nominal. Here it is nominal and supported.

Mistake is a defense to formation, among others like negligent and fraudulent misrepresentation and misunderstanding. In its defense, Dante's can argue it was mistaken as to a material term of the contract. A unilateral mistake allows the court to cancel or rescind the contract when one party attributes one meaning to a material term of the contract, and but for that meaning, that party would not have entered into the agreement. The other party must have known or should have known that the other party attributes that meaning to the term and induced the other party to rely on that meaning to its detriment. Here, Dante's believed the game would operate as a game of chance, with cardholders having no knowledge of what number was hidden beneath the spot. But for that belief, Dante's would never have entered into the agreement with cardholders. While Francis should have known that Dante's believed the game would operate as a game of chance, it did not induce Dante's to rely on that meaning to its detriment. If anything, Dante's was in a superior negotiating position because it created the game and sent it to consumers like Francis. Accordingly, Dante's may not rely on mistake as a defense to formation of contract.

2. Although Dante's created the game, Dante's would now argue the game is a lottery, and thus illegal under Georgia law. A lottery consists of a combination of prize, chance, and consideration. Prize is not at issue. Dante's would argue the game is one of chance because it is impossible to determine from the face of the card what the prizes are for each spot. However, Francis was able to figure out the pattern to the cards. Dante's would also argue there was consideration because Dante's received product promotion through the game. and Francis took time out of his delivery schedule to acquire the games and completed the time-consuming task of scratching them off. Under Georgia law, consideration can be nominal.

On the other hand, Francis would argue the promotion was not a lottery because the game is not of chance, but of skill. Here, Francis used his skill to ascertain the patterns to the games, allowing him to win thousands of cards worth $20 million. This, Francis would claim, was no chance. Francis would also argue there was no consideration because he suffered no detriment and received no benefit and Francis received no benefit.

Francis is likely to prevail on this claim because he can demonstrate that he used skill, not chance to win $20 million in prize money. If the court found that the promotion was a lottery, then the contract between Francis and Dante's, as well as the game in general was illegal. Illegality is a defense to enforcement, among others like unconscionability, and public policy. If an agreement is illegal or against public policy, the court will not enforce the agreement and hold the agreement void. If the agreement is void, Francis' claim for breach of contract is rendered moot. Still, Francis can sue for restitution damages, to return him back to his original position before he entered into the agreement. Francis may not recover expectation damages, i.e., the amount he would have received had the agreement been executed, because that agreement was illegal and he cannot reasonably expect to see that money.

Essay 2 — Sample Answer 3

1. The issue is who will prevail on the contract claim.

A contract is just a legally enforceable agreement. It requires an offer, acceptance, and consideration -- and is enforceable, unless a valid defense exists.

Offer

An offer is an objection manifestation of an intent to enter an agreement that conveys the power of acceptance to an offerree. An offer can be bilateral, meaning it must be accepted by a return promise, or it can be unilateral, meaning it can be accepted by performance. In general, an offer has to be directed to a specific person. But there is an exception for reward offers, i.e., an offer that promises a reward for someone performing the specific task in the offer.

Here, Dante's made an offer when it created the product promotion scratch-off game. Although the offer was not directed at a specific person, it was a reward offer. It promised prizes for anyone who played the game -- and won. Thus, there was a valid offer.

Acceptance

An acceptance is an objection manifestation of an intent to be bound by the offer. Generally, it has to be communicated to the offeror. For a unilateral reward offer, acceptance is presumed when someone starts to perform the action indicated in the offer.

Here, Francis accepted Dante's offer by starting to perform, i.e., play the game. There is a question about whether Francis was obligated to inform Dante of his acceptance, under the circumstances. However, there is no question that Dante's knew about Francis' acceptance -- at the very latest -- when Francis called Dante's to tell the company that he had cracked the code. Thus, there was a valid acceptance of the reward offer.

Consideration

Consideration is just the bargained-for exchange. It can be either a benefit or a legal detriment. Consideration does not have to be money to be valid.

Here, there are arguments on both sides. Dante's will likely argue that there was no consideration. The game was free and the rules specifically said that no consideration was required to play. But Francis will argue that there was consideration. His time is valuable. He traded precious time and mental energy to play Dante's game. Thus, he will argue -- and I agree -- that there was valid consideration.

Revocation

The general rule for revocation is that an offeror is the master of the offer. He can revoke at any time prior to acceptance. There is an exception, however, for unilateral offers. If the offer requests a performance, and someone starts to perform, that offer becomes irrevocable during the time that that person performs. To do otherwise would be unfair.

Here, Dante's revoked its offer -- cancelled the game -- by placing national ads. It did so one minute after Francis mailed the first 1,000 game cards. After the cancellation was announced, Francis scratched off the remaining 3,000 cards. He then mailed them. Dante's revocation is likely valid for the last 3,000 cards, but not for the first 1,000.

The Mailbox Rule

The mailbox rule is the rule for acceptance. It states that an acceptance is valid the second someone drops it into the mail. It doesn't matter when it is received -- or if it is received at all. Acceptance happens the moment you mail it. Note that the mailbox rule does not apply to all other communications, i.e., a rejection, the exercise of an option.

Here, as stated above, Francis mailed the first 1,000 cards prior to Dante's revocation. Those are good. The final 3,000 cards were not mailed, however, until after the revocation. Those are likely not valid, given Dante's revocation. At the time of the revocation, Francis had not scratched off the cards.

Mistake

A contract can be voidable based on mistake. The elements for mistake are: (1) There has to have been a mistake; (2) The mistake must relate to a basic assumption of the contract; and (3) The party seeking to avoid the contract must not have borne the risk of the mistake.

Here, Dante's might try to argue the defense of mistake. It thought that it had created a game of chance, when -- perhaps -- it was a game of skill. The fact that it was a game of chance was a basic assumption of the contract. However, Dante's -- as the game's creator -- bore the risk. Thus, I do not think Dante's would be successful in arguing a defense of mistake.

In sum, Francis will likely prevail on the contract claim -- but probably only for the first 1,000 cards.

2a. The issue is what arguments Dante's and Francis might make with respect to the elements of chance and consideration.

Please see above for a discussion on the element of consideration. I believe there was adequate consideration.

With respect to the element of chance, Dante's might argue that the game is one of chance. That's what it believed it was. Cardholders were meant to have no knowledge of what number was hidden beneath each spot. (Although this position might seem counterintuitive for Dante's, by arguing the game is a game of chance, it might be able to avoid the contract based on illegality. More on that below.) Based on his own experience, Francis would likely have to argue that the game is one of skill. He cracked the code, which suggests there was code to crack.

2b. The issue is who will prevail on this issue and why.

I believe the promotion will be found to be a game of chance that involves consideration.

2c. The issue is how would a finding that the promotion was a lottery affect Francis's claim for breach of contract.

Under Georgia law, it is illegal for any person or entity -- other than the State -- to conduct a lottery. If the promotion were found to be a lottery, it would be illegal. A contract is void if the subject matter of the contract is or becomes illegal. Thus, a finding that the promotion was a lottery would hurt Francis's claim for breach of contract. On the basis of illegality, Dante's obligation to perform would be excused.

Essay 3 — Sample Answer 1

The issue is in determining how the following five assets should be distributed by way of Georgia's intestacy statute:

1) Primary residence: The rule in Georgia for real property owned as joint tenants with rights of survivorship (JTROS) is that as long as the deed correctly and clearly states the JTROS designation, upon the death of one of the joint tenants, the property will automatically pass solely to the surviving joint tenant outside of probate. Here, Fred and Mary owned a home as JTROS in Lumpkin, Georgia. The facts indicate that it was properly and clearly titled to both of them as JTROS, so upon Fred's passing, title passed fully to Mary as the surviving joint tenant. This is a non-probate transfer.

2) Individual bank account: Fred died owning a bank account solely in his own name and having made no beneficiary designations on the account. The rule in Georgia is that, if such accounts have valid beneficiary designations, those designations control over any contrary will provision or intestacy rule. However, since there were no beneficiary designations, this account would become part of his probated residuary estate.

3) Joint bank account: Similar to the rules stated above for bank account designations and real property JTROS status, if a bank account has a proper designation or is owned jointly, then it will be transferred outside of the probate process. Here, Mary owned the account jointly with Fred as JTROS. Thus, Mary becomes the sole owner of the $240,000 account upon Fred's passing. This is a non-probate transfer.

4) Bitcoin cryptocurrency: As for the two units of bitcoin, the rule is that this type of currency is treated like any other standard currency and, if there are no beneficiary or payable-on-death designations, it will fall into the residuary of the decedent's estate. It will then be distributed through the probate process according to intestacy rules. Fred owned two bitcoin units worth $420,000, so this amount will become part of the residuary.

5) Retirement account: Similar to the rules stated above for accounts with beneficiary designations, here, Mary was listed as the sole beneficiary of Fred's IRA account that contained a balance of $90,000. She will receive the $90,000 outright as a non-probate transfer.

   His intestate estate holds a total of $600,000 in assets that would need to be distributed according to intestacy rules. Under Georgia law, the spouse is entitled to the entire estate if there are no children, 1/2 the estate if there is one child, and 1/3 if there is more than one child. Mary would take a 1/3 share in Fred's residuary estate, so in summary, Mary would receive the primary residence, 1/3 of the $600,000 residuary estate, as well as the $240,000 from the joint bank account and $90,000 from the IRA. Fred's issue will receive the remaining $400,000 in the residuary, split three ways between Adam, Becky, and Chris. Becky's daughters will take her share by representation (each getting one-half of her 1/3 share) since

Becky predeceased Fred. Although Adam was born one month before Fred and Mary's marriage, there is a presumption that Fred is the natural father because it was so soon before the marriage and Fred signed Adam's birth certificate as his father. Donna will receive nothing because she was never legally adopted by Fred, and therefore has no legal right to take from his estate.

Essay 3 — Sample Answer 2

General issues

Under Georgia law, when someone dies without a will, there estate is subject to intestate succession. Assets that go through probate will be subject to strict per stirpes distribution. A surviving spouse will receive equally to heirs with at least 1/3 distribution.

Fred's paternity of Adam

Under Georgia law, Fred's signature of Adam's birth certificate creates a rebuttable presumption of Fred's paternity of Adam. Further, DNA testing and match at 97% would also create a rebuttable presumption. A rebuttable presumption means that Fred is presumptively the father though evidence to the contrary may be submitted for the court to fined otherwise. Given these facts, Adam will receive distributions of the estate as an heir.

Fred's paternity of Becky and Chris

Under Georgia law, there's a rebuttable presumption that a child born during the marriage is a child of the husband. Becky and Chris were born during Fred and Mary's marriage. Given these facts, Chris and Becky via her heirs will inherit as heirs of Fred.

Fred's paternity of Donna

Donna was the child of another marriage. While Fred raised her as his child, he never legally adopted her. Under Georgia law, when a child has different biological parents, legal adoption is required for a child to inherit from the nonbiological parent via intestate succession. Thus Donna will not inherit from Fred as he was not her biological father and did not adopt her. Here, Fred also could have granted Donna a gift as a beneficiary in will had he written one, and would also not need to legally adopt her.

Becky, Emily, and Erin

Under Georgia law, intestate succession defines distribution to heirs via strict per stirpes. Becky has predeceased Fred. Becky's heirs, her daughters Emily and Erin will take Becky's share equally.

Fred's Assets

1) Primary residence. A joint tenancy with right of survivorship is a form of tenancy where the surviving spouse becomes the owner automatically in the event of the death of the other joint tenant. A joint tenancy with right of survivorship does not transfer through probate. Given Mary is the surviving joint tenant, Mary owns the residence in entirety.

2) Bank account. Given this bank account does not have a beneficiary, it will be transferred through probate.

   Mary receives 1/3 as the surviving spouse: $60,000. The remaining $120,000 is distributed between the children.

   Adam and Chris each receive a third of $120,000: $40,000

   Emily and Erin take Becky's 1/3 share equally, 1/6 for each: $20,000

3) A joint tenancy with right of survivorship does not transfer through probate. Mary will take the entirety of the joint bank account.

4) The cryptocurrency account is personal property subject to probate. Given Fred held 2 bitcoin the court may require the sale of the bitcoin in order to distribute. However if fractional bitcoin amounts can be maintained this may not be an issue. The amount due to each her.

   Mary receives 1/3 of 2 bitcoin as the surviving spouse: $140,000. The remaining $280,000 is distributed between the children.

   Adam and Chris each receive a third of the remaining bitcoin (1 and 1/3) value of $280,000: approx. $90,000

   Emily and Erin take Becky's 1/3 share equally, 1/6 for each: approx $45,000

5) Fred's IRA account listed Mary as the beneficiary. This asset will transfer outside of probate. Mary is entitled to the entirety of the account as the sole beneficiary.

Essay 3 — Sample Answer 3

(1) Concerning the primary residence.

The primary residence Fred and Mary owned in Lumpkin, Georgia was valued at $500,000. Fred and Mary were joint tenants with right of survivorship, and Mary continues to live in the house with Chris.

In Georgia, the rule is that when a residence is held by two people as joint tenants with right of survivorship, the death of one of the tenants automatically transfers all their interest in the property to the surviving spouse. In addition, the transfer would not be done through probate since the property would not be considered part of the estate.

Therefore, Fred's interest in the property in automatically transferred to Mary because they were joint tenants with right of survivorship, and the interest will be transferred outside of probate.

(2) Concerning the individual bank account in Fred's name.

In Georgia, when a person dies and does not leave a will, their estate passes through intestacy. When an estate is being distributed through intestacy, assets are distributed per stirpes. Per stirpes means that each level of lineal descendants takes equally, so long as at least one descendant remains alive in that level. For example, let's say that Fred and Mary have two children, Adam and Becky. If both Fred and Mary die intestacy, then Adam and Becky share the estate, one half to each. However, if Becky dies prior to the intestacy, and leaves descendants Emily and Erin, then Emily and Ering share in Becky's interest. If Fred and Mary die intestacy, then Adam would take one half, Emily would take one quarter, and Erin would take on quarter.

Here, Fred's bank account is in his own name, and has a balance of $180,000. This account would be considered part of Fred's estate. Since it is considered part of his estate, it would need to be distributed through probate since he died without a will. There are a couple of important rules that deviate from the general example given above. Generally, if Fred and Mary's children were all made together, Mary would receive the entire estate, unless a specific beneficiary was listed through a will. However, since Mary had a child from a previous marriage, Donna, and Fred never adopted Donna, Donna is not considered to be Fred's heir and would not share in a distribution. Even though Fred may have always treated Donna as if she were his own, Fred never made a commitment or promise to become Donna's adoptive father, and never made any action to do so either. Therefore, Donna would not be considered Fred's heir and would not take anything through intestacy.

In Georgia, the wife has the option to one-third of the entire estate. So, Mary would receive a third of the bank account, approximately $60,000. The rest of the $120,00 would be distributed between Fred's heirs. Even though Adam was born before Fred and Mary married, and there has not been any genetic testing done to confirm Fred is Adam's father, there is an automatic presumption that Fred is Adam's father because Fred signed Adam's birth certificate. It can be

assumed that Becky and Chris were born during the marriage, meaning they are also automatically presumed to be Fred's children.

Since Fred had three children, the remaining estate ($120,000) would be divided up, a third to Adam, a third to Becky, and a third to Chris. Under Georgia's survival statute, Becky's children would get her share even though she had predeceased Fred, because Emily and Erin are descendant's of Fred. Therefore, Adam would receive $40,000, Chris would receive $40,000, and Emily and Erin would split Becky's share evenly, meaning each would receive $20,000.

Fred's individual account would be transferred through probate since it was part of Fred's estate at the time of his death.

(3) Concerning the joint bank account.

Here, the same rules with regards to right of survivorship are applicable as those which were listed in section (1).

Fred and Mary had a joint bank account with a balance of$240,000, and the account was held by Fred and Mary jointly with right of survivorship. Since the account was held jointly with right of survivorship, Fred's interest in the bank account would automatically transfer to Mary outside the of probate.

(4) Concerning the Bitcoin cryptocurrency.

The Bitcoin cryptocurrency, valued at $420,000, would be distributed in the same manner as (2). A third of it would go to Mary ($140,000). The remaining $280,000 would be distributed as a third going to Adam, a third going to Chris, a sixth going to Emily, and a sixth going to Erin.

This asset would be part of the estate since it was solely owned by Fred and would need to be transferred through probate.

(5) Concerning the retirement account.

Fred had a balance of $90,000 in his IRA account. The rule in Georgia is that the beneficiaries of an IRA account take the asset free of probate. Here, since Mary is the listed as the sole beneficiary of Fred's IRA account, Mary would take the $90,000 without the need of having it go through probate court.

Essay 4 — Sample Answer 1

1. <u>Lawsuit and Remedies Against Bubba's Tow Yard</u>

Jake should sue Bubba's Tow Yard and seek an TRO and then a preliminary injunction to prevent Bubba's from selling the Electron to a chop shop next week. Jake should also ask the Court to require Bubba's to return the Electron to Jake. Jake should consider serving on Bubba's a preservation notice advising Bubba's that the Electron has crucial evidence for Jake's tort claims against Zephyr and that disposing of the car would be unlawful spoliation. If Bubba's sells the car to a chop shop anyway, Jake should try to find out what the chop shop is so that he can serve a similar preservation notice on the chop shop and pursue similar equitable remedies against the chop shop to prevent it from destroying the car.

Jake could assert a variety of causes of action, including an equitable action to put the Electron in a constructive trust. The elements of a constructive trust focus on whether the property rightfully belongs to Jake and it would be inequitable for Bubba's to have control and possession of it. Jake could also potentially assert a claim for conversion on the theory that Bubba's has effectively stolen the car and is holding it hostage to an unreasonably high payment of $20k. Jake could also try extortion, but he is not likely to succeed because Georgia law requires the extorting party to actually get the money from the victim to have a claim, and Jake hasn't paid Bubba's yet here. Jake could also potentially assert claims related to Bubba's status as a bailee of the Electron car, potentially including breach of contract claims under any bailment contract they may have.

In terms of remedies, in Georgia, a civil litigant can seek a temporary restraining order to preserve the status quo. The elements of a TRO focus on whether the party seeking the TRO can show an immediate irreparable harm unless the status quo is preserved. TROs also require notice to the other side or an affidavit explaining all the efforts the party seeking the TRO has made to give the other side notice and why they haven't been successful. The TRO can last up to 30 days (longer than the 14 days the federal rules permit) or until the defendant obtains a modification of the TRO.

Here, Jake has a strong argument for a TRO against Bubba's. Jake already has an expert lined up who can explaining that the car is crucial evidence for wrongful death and products liability claims. That evidence will be permanently and irreparably lost unless a TRO is granted to prevent the destruction of the car. There is thus a strong case to use a TRO to preserve the status quo. That is especially true because Bubba's will not be able to credibly argue that it has any urgent need to sell the Electron to a chop shop, and Bubba's will likely have difficulty showing that a $20,000 fee is a reasonable fee to store a wrecked car. Indeed, $20,000 can buy a perfectly functional vehicle. In terms of notice, Jake and his counsel should make all reasonable efforts to give Bubba's notice of the TRO they are seeking. If successful, Bubba's can appear and oppose the TRO. Otherwise, a TRO can be granted without notice to the other side to preserve the status quo until both sides have an opportunity to be heard.

After obtaining a TRO, Jake can consider other equitable remedies like a preliminary injunction. A civil litigant in Georgia can get a preliminary injunction (PI), which Jake could seek here after obtaining a TRO. The elements for a PI are irreparable harm, likelihood of success on the merits, balance of equities favoring the party seeking the injunction, and the public interest. A preliminary injunction can last longer than a TRO and potentially last until the case is concluded and final injunctive relief is granted.

Here, there aren't enough facts to fully analyze whether Jack will succeed in obtaining a preliminary injunction, but the facts strongly suggest he would prevail. There is irreparable harm from destroying the vehicle and the evidence it has about Lindsay's death and the potential wrongful death and products liability claims against Zephyr. There is already an expert available to testify to that. In addition, destroying the vehicle is likely spoliation that is unlawful in its own right. The likelihood of success on the merits probably favors Jake unless there are additional facts that show Bubba's is somehow justified in charging $20k to keep a wrecked car. The balance of equities likewise favor Jake. Bubba's will be hard pressed to show that there is an urgent reason that it needs to sell the car to a chopshop. Same for public interest. The fact that destroying the car would be spoliation is strong support for the position that the public interest favors granting Jake a preliminary injunction. That is especially true because the tort claims against Zephyr themselves show an important public interest. The cars may be dangerous to many other drivers--not just Lindsay--and the car may have evidence of that. Preserving that evidence would benefit the public, especially if Zephyr is ultimately found liable and makes changes to its cars that protect the public.

Jake could seek an order from the court requiring Bubba's to return the car to him, potential using remedies like replevin, trover, and specific performance.

Jake could also try other remedies like recording a security interest in the Electron, though this is a stretch and likely would not succeed. Jake wouldn't be giving value for a security interest in a car that was already his and his deceased son's.

2. <u>Personal jurisdiction over Zephyr and venue in Georgia</u>

Personal jurisdiction over Zephyr in GA: There are two types of personal jurisdiction: General jurisdiction and specific jurisdiction.

When general jurisdiction exists over a party in a given state, any lawsuit may be brought against that party in the state, regardless of the lawsuit's connection to the state. General jurisdiction exists in the business's state of incorporation and principal place of business (where the company is headquartered). General jurisdiction also exists when a business's contacts with the forum state are so continuous and systematic that it is fairly considered "at home" there, although this is a stringent standard that is rarely met. In Georgia, general jurisdictional also exists over foreign corporations that register to do business in Georgia. The U.S. Supreme Court recently held that state laws like this extending general jurisdiction over business that register in a state is constitutional. The case involved a Pennsylvania statute that is similar to Georgia's.

Specific jurisdiction is narrower. It permits jurisdiction in a state only when the dispute is related to the state. For specific jurisdiction to exist, the case must arise out of and relate to the defendant's contacts with the forum. The focus is on the defendant's contacts with the forum. The plaintiff's unilateral contacts cannot be the only connection with the state. Walden v. Fiore. In tort cases, the analysis focuses on whether the defendant purposefully directed the conduct toward the state from which the lawsuit arises. In cases involving websites, courts focus on how interactive the website is. In cases involving product sales, the courts analyze whether the defendant sold a product to someone it knew to be in the forum state and whether the product foreseeably harmed the forum state resident.

Here, general jurisdiction likely exists for Zephyr in Georgia. Zephyr is a foreign corporation registered and authorized to transact business in Georgia, and it has a registered agent in Athens-Clarke County. Under the Georgia code, Zephyr effectively consented to general jurisdiction in Georgia by registering to do business here. That means Zephyr can be sued in Georgia regardless of whether the claims in the lawsuit are connected to Georgia. Other grounds for general jurisdiction do not apply. Zephyr's state of incorporation is Delaware (not Georgia) and its principal place of business is California (not Georgia). Nor would Zephyr be considered "at home" in Georgia based on its conduct there. While it has plans for a plant and significant manufacturing, they are still just plans and it's not doing that stuff yet. And it still might not be enough for general jurisdiction.

General jurisdiction alone is enough for Jake to sue Zephyr in Georgia. Jake might also be able to show specific jurisdiction. For example, Jake can argue that Zephyr purposefully directed conduct to the state that the dispute arises out of or relates to. Zephyr operated an interactive website to sell cars to GA residents. It delivered those cars to GA residents, including Lindsay and Jake. And it delivered nearly 200 such vehicles to GA. That said, the main obstacle to specific jurisdiction is that the crash occurred in Florida, not GA. So while it may have been foreseeable that directing cars to GA would harm a GA resident in GA, that is not what occurred here. Instead, a car directed to GA caused harm in FL. Specific jurisdiction is therefore a tossup, and may not exist over Zephyr in GA.

Venue in GA for suit against Zephyr and Truck driver: In Georgia, Venue exists where the defendant resides or where a substantial part of the activities in controversy occurred.

For Zephyr, that means venue lies in Athens-Clarke County, where it resides. It could also be in Chatham County, where the vehicle was delivered--a place where a substantial part of events giving rise to the dispute occurred.

For the truck driver Tim Bell, venue would lie either where Tim Bell resides or where a substantial part of the events in controversy occurred. Tim Bell is a resident of Glynn County, GA, so venue exists there for the claims against him. But Zephyr would not be subject to venue in Glynn County. Zephyr does not reside there. And a substantial part of the events giving rise to the dispute did not arise in Glynn County either. It's just where Tim Bell the truck driver happens to live.

Given that Zephyr and Tim Bell (the truck driver) are residents of different counties in Georgia, it would likely make the most sense to sue them both in a venue where they could both be defendants. That would be Chatham County here, because it is a place where a substantial part of the events giving rise to the dispute occurred (even though neither defendant resides there).

Essay 4 — Sample Answer 2

1. The issue regards which equitable, non-monetary, or injunctive remedies are potentially available against Bubba's Tow Yard, as well as defenses Bubba's may raise

Equitable, non-monetary, or injunctive remedies

Jake may seek a temporary restraining order. In Georgia, an injunction may be awarded when damages are inadequate. A temporary restraining order seeks to preserve the status quo until future proceedings occur. A temporary restraining order may be issued ex parte, without notice, if a party can demonstrate that irreparable harm will occur without the injunction, and certify the efforts made to provide notice to the opposing party, and why notice should not be required. The order may be entered for a maximum of 30 days, unless Bubba's consents. Here, Jake can seek a temporary restraining order because irreparable harm will occur if the vehicle is disposed of, and he is not able to gain access to the data which is crucial to his litigation. He will need to demonstrate why notice should not be required to Bubba's in the meantime.

Jake may seek a preliminary, or interlocutory, injunction. In order to earn a preliminary injunction, a party must show that damages are inadequate. Further, the party must demonstrate a likelihood of success on the merits, a substantial risk of irreparable harm if the injunction is not entered, a balance of the equities, and that the injunction is in the public interest. Here, Jake can likely prevail on a suit to recover the vehicle, as Bubba's noted that they "know" Jake owns the vehicle. As noted above, Jake can demonstrate substantial risk of irreparable harm if the data is lost. He will be able to demonstrate a balance of the equities, because the hardship to Jake is much greater in losing the crucial data for his litigation, than Bubba in releasing the vehicle. Finally, the injunction will likely serve the public interest because the public has an interest in the compensation of victims who have suffered torts.

Finally, in order to recover personal property, Jake may bring an action for replevin. An action for replevin will exist when an individual has rightful ownership over goods, and is entitled to possession of those goods. Here, if Jake can demonstrate that he owns the vehicle and has the right to possess it, he will be able to seek replevin.

Here, I recommend that Jake immediately pursue a temporary restraining order, ex parte, against Bubba's, to prevent them from disposing the vehicle. Subsequently, Jake can pursue a preliminary injunction against Bubba's while he seeks to recover the vehicle from them.

Defenses Bubba's may raise

Bubba's may raise the equitable defenses of unclean hands, or laches. The defense of unclean hands will exist when a party seeking an injunction has themselves engaged in a form of wrongdoing. Laches will exist when a party has unduly delayed bringing an action. Here, it does not appear that either defense will be meritorious, because Jake has not engaged in any wrongful conduct, nor delayed in bringing an action.

2.a. The issue regards the arguments for and against the ability to procure personal jurisdiction over Zephyr in Georgia

Personal jurisdiction can be either general, or specific, when it is rooted in specific contacts with a forum state. When general jurisdiction is available, the forum state will have jurisdiction over the defendant for all matters rather than only for matters related to their contacts with the state. In Georgia, personal jurisdiction will exist when there is domicile or residence, consent, voluntary presence, or under the long-arm statute.

Jurisdiction under the long-arm statute will only provide specific jurisdiction, and must also comport with the Due Process clause. Georgia's long arm statute will authorize jurisdiction when an individual 1.) has committed a tort in the state, 2.) has transacted business in the state, 3.) has committed an act outside of the state resulting in an injury inside of the state, 4.) in a domestic relations action, when an individual previously resided in Georgia or maintains a matrimonial domicile in the state, and 5.) when an individual is bound by an order in a domestic relations action. In order to exercise jurisdiction based on transacting business, the defendant must have purposely entered into some transaction or consummated some act in the state, the action must be connected to that action, and not offend traditional notions of fair play and substantial justice. When an injury arises through a website, the same test should be applied. Personal jurisdiction over a defendant which has committed an act outside of the state resulting in an injury inside the state will exist when 1.) the defendant regularly solicits business or engages in another persistent course of conduct in the state, or 2.) derives substantial revenue from goods or services sold in the state. As noted, when jurisdiction arises under the long-arm statute, the Due Process clause must be complied with. In order for the exercise of personal jurisdiction to comply with the Due Process clause, the defendant must have minimum contacts with the forum state, such that the exercise of jurisdiction does not offend traditional notions of fair play and substantial justice. In finding minimum contacts, a court will consider whether the defendant has purposefully availed himself of the forum state, such that he could reasonable foresee being brought into court there. In analyzing traditional notions of fair play and substantial justice, the court will weigh several factors affecting both the forum state and defendant, including the burden upon the defendant and the interest of the state in having the matter litigated.

In Georgia, a corporation will be considered a resident for purposes of general jurisdiction when it is either incorporated in the state, or has registered to do business in the state. Here, Zephyr has registered with the state of Georgia and is authorized to transact business in Georgia; therefore, general jurisdiction will exist. Separately, if general jurisdiction did not exist, Georgia may be able to exercise jurisdiction under the long-arm statute, based on their transacting business in the state and committing an act outside of the state resulting in an injury inside of the state. Jurisdiction based on transacting business is proper because Zephyr advertises and sells its vehicles nationally, and likely derives substantial revenue from the sale of goods in the state. Further, the exercise of jurisdiction will not offend traditional notions of fair play and substantial justice because in selling vehicles, and releasing press releases to Georgia that Georgia is Zephyr's home state, the company availed itself of the state in such a manner that they could reasonably foresee being brought into court there. In addition, the exercise of jurisdiction will not be overly

burdensome to Zephyr, because they have already begun shifting their operations to Georgia. Further, Zephyr committed an act outside of the state which caused an injury in the state. However, Zephyr will be able to argue that they do not yet derive substantial revenue from goods in the state, as they have only sold 190 vehicles. They will be able to further argue that Zephyr has not yet begun to regularly solicit business or engage in other persistent conduct in the state.

However, as noted, Georgia will be able to exercise general jurisdiction over Zephyr due to their registration in the state, and will not need to rely on specific jurisdiction.

2.b. The issue regards the venue options available for a case against Zephyr and the truck driver under Georgia's venue laws

In Georgia, if all defendants are residents of Georgia, venue will be proper wherever any of the defendants reside. For suits against corporations, venue will be proper wherever the corporation maintains a registered office, or last had a registered or principal office. If there is a tort or contract action, venue will be proper wherever the tort occurred or the contract was carried out, assuming the corporation has an office and transacts business in that jurisdiction.

Here, the truck driver is a Georgia resident. Further, Zephyr can be considered a Georgia resident by virtue of having registered to do business in Georgia. Therefore, venue will be proper wherever the Defendants reside, including Glynn County, where the truck driver resides. If the corporation feels that venue is improper, they can seek removal within 45 days.

The issue regards the existence of a defect in the airbag, and the existence of potential claims against Zephyr

Jake has asked us to show that there is a defect in the air bag system to support a lawsuit for wrongful death, product liability, and negligence.

A product manufacturer may be liable for a defect in either negligence or strict liability. A negligence action will be viable when a defendant has breached a duty to a defendant, and that breach was the actual and proximate cause of the plaintiff's damages. A manufacturer can be held strictly liable when there was either a defect in manufacturing, design, or failure to warn. There will be a manufacturing defect if the product failed to comply with the manufacturer's own standards. Regarding design defects, Georgia applies the risk utility test. If there existed a reasonable alternative, for which the utility outweighed risk, and failure to adopt that design made the product unreasonably unsafe, a defendant can be held strictly liable for design defect. Here, Jake will likely be able to show both a manufacturing defect if he can demonstrate that Zephyr's vehicle did not meet its own standards, as well as a design defect action if he can demonstrate that a reasonable alternative design existed for which utility outweighed risk. Jake will also be able to proceed for an action in negligence, if he can demonstrate that Zephyr breached its duty to Lindsay and caused her death.

In Georgia, a lawsuit will survive the death of a victim or tortfeasor, if the tort was the cause of the victim's death, or if the tortfeasor benefited from the tort. Here, the tort was the cause of the victim's death, and therefore, it will survive her death. Here, Jake has the sole right to pursue such claims, and he will be allowed to do so because the action survives Lindsay's death.

In Georgia, an action for wrongful death can be brought by the surviving spouse of the deceased. If there is no surviving spouse, then the children may bring the action. If there are no surviving children, a parent may bring the action. A wrongful death action will seek to recover the full value of the life of the deceased, as measured through their own eyes. This can include any special skills, employment, life expectancy, and contributions made by the deceased. Consequently, Jake will be able to pursue a wrongful death action for the death of Lindsay to recover the value of her life.

Essay 4 — Sample Answer 3

(1) What remedies exist to provide Jake access to and possession of his car at Bubba's Tow Yard?

To immediately gain access to his car, Jake should file a temporary restraining order with the court against Bubba's Tow Yard to enjoin Bubba from moving or destroying the car in the time before a preliminary injunction hearing. Following this, Jake should immediately file a motion for a preliminary injunction, to enjoin Bubba from destroying the car and to require Bubba to return the car to Jake's possession and/or provide immediate access for Jake to acquire the necessary forensic evidence from the car's in-cabin systems. Bubba may argue the equitable defenses of unclean hands and laches, but these are unlikely to overcome Jake's entitlement to intermediate injunctive relief.

In general, a party is entitled to equitable relief when other legal (i.e. money damages) remedies would be insufficient. This is certainly the case here, as Jake's chief source of evidence in his claims against Zephyr/the truck driver would be destroyed by Bubba's threatened actions, not only depriving Jake of the financial compensation he may be entitled to, but also damaging his ability to be vindicated in a court of law regarding the responsibility of those who may have caused his son's death. This is the type of scenario in which the court's equitable powers are the most potent, and the most appropriate. Such equitable relief here includes a temporary restraining order, preliminary injunction, and replevin.

TRO. Jake may first seek a temporary restraining order (TRO) against Bubba's Tow Yard. A TRO is obtainable without a hearing or notice to the party to be restrained, as it is an emergency measure meant to maintain the status quo until a hearing can be held on further injunctive relief. The TRO will last for a maximum of 30 days in Georgia, or until the hearing and disposition on the motion for a preliminary injunction. To obtain the TRO, Jake must show the cause for the emergency and why notice should not be given to the other party. Here, Jake will be able to show that Bubba has made a legitimate threat to destroy his most important source of evidence within a week. This level of exigency, and the bad faith displayed by Bubba, are likely sufficient to obtain a TRO.

Preliminary Injunction. While a TRO will provide temporary relief until a preliminary injunction hearing, the preliminary injunction, if granted, would maintain the status quo through the pendency of a case between the parties. To obtain a preliminary injunction, the party must show (1) that they are at threat of irreparable harm without the relief requested, (2) there is a likelihood of success on the merits, (3) the balance of harms weighs in favor of granting the injunction, and (4) there is a public interest in granting the injunction. The party seeking the preliminary injunction must also post a bond in case the parties later show that the preliminary injunction was not justified. Jake will likely be able to obtain a preliminary injunction. There is a clear threat of irreparable harm in the form of destruction of the most important source of evidence in his claim against Zephyr and/or the truck driver. The balance of harms between a bad-faith wrecker service operator and a father trying to recoup for the loss of his son weighs in

Jake's favor. And the public interest requires that a court step in during instances of bad-faith negotiating (if not extortion) in the manner Bubba has done here.

Further, Jake is likely to succeed on the merits of his claims. Jake is considering pursuing a suit for wrongful death, product liability, and negligence against Zephyr and/or the truck driver. To prove a prima facie case for negligence/wrongful death, Jake must show that Zephyr had a duty, breached that duty by its actions, that the breach was the but-for and proximate cause of the injury, and that the plaintiff suffered damages as a result. There is a colorable claim for wrongful death and negligence here as to Zephyr because of the failure of the air bag system to deploy, leaving Lindsay unprotected from the crash. Further, there is a very good claim of wrongful death and negligence as to the truck driver, as he was driving extremely unsafely (50 miles under the posted maximum speed limit, and likely under the posted minimum speed limit, and without taillights showing). The truck driver likely violated multiple motorist laws, causing him to be negligent per se--i.e. violating a statute that is meant to protect a certain class of people (here, drivers), and the plaintiff being among that protected class. Further, Jake likely has a colorable claim against Zephyr for products liability. In Georgia, products liability is a strict liability regime, meaning that fault on the part of the manufacturer does not need to be proven--they are liable as long as the plaintiff can show that the product was being used in a foreseeable way (even if not the intended way), the product was defective, the product was not altered in some way before use by the consumer, and the defect caused the consumer injury. Compliance with relevant regulations is not enough to show the product was not defective, but failure to meet safety standards can create an inference that the product was defective. To the extent Jake can access the Electron's systems, it is likely he would be successful in his products liability case, too, as it is highly likely that a defect in the Electron's systems caused the airbag not to deploy.

So it is likely that Jake will succeed on his preliminary injunction motion. The court may craft the preliminary injunction to (1) require Bubba to return the car to Jake, (2) require Bubba to grant access to the car so Jake can acquire the necessary forensic evidence, and (3) enjoin Bubba from destroying the car on the conditions and in the time frame he set. Courts are typically hesitant to include affirmative acts in crafting their injunctive relief, as it is easier to enforce injunctions prohibiting (rather than requiring) certain behavior, but such affirmative acts would be warranted in this case for the reasons above.

Replevin. The court may also order the return of personal property that is improperly in the possession of/converted by another. Assuming Jake is able to prove title over the vehicle, the court would be able to enforce his ownership and secure possession on his behalf.

Defenses. In defending the preliminary injunction, Bubba may argue that Jake should not be entitled to this equitable relief because of laches or unclean hands. Laches is an equitable defense that applies where a defendant can show that by the plaintiff's own delay, the plaintiff's access to such relief has expired. Unclean hands is an equitable defense that applies where a defendant can show a plaintiff engaged in misconduct that resulted in their own damages. Neither of these defenses are likely to apply here. First, there is no evidence that Jake unduly delayed in retrieving his car from Bubba's, as he went there a few days after the crash to pick up the vehicle. And the

only argument that Bubba could likely rely on to prove unclean hands is that Jake seemingly bragged about having a "billion dollar lawsuit" on his hands. However, Jake in no way caused or contributed to his own damages in this instance, so the defense is unlikely to apply.

(2) Can the case against Zephyr go forward in Georgia?

(a) It is unlikely that there is personal jurisdiction over Zephyr in a Georgia court.

In order for a Georgia court to have personal jurisdiction over Zephyr, Zephyr would either have to be "at-home" in Georgia or be subject to Georgia's long-arm statute. In Georgia, a corporation is "at home" in the jurisdiction if it is organized under the laws of Georgia or is registered to do business in the state. Zephyr is neither organized under Georgia law (it is incorporated in Delaware), but it is "authorized to transact business" in Georgia. If this authorization is commensurate with the registration to do business in the state, then Georgia would have personal jurisdiction over Zephyr.

If not, then a Georgia court could have personal jurisdiction over Zephyr if the company met one of the prongs of Georgia's long-arm statute. Under Georgia's long-arm statute, there can be jurisdiction for (1) disputes regarding real property located in the state; (2) tort actions where (i) the tortious action occurred in Georgia, or (ii) the injury occurred in Georgia AND either the defendant had persistent conduct in the state, did regular business in the state, or received profits from the state; (3) issues of divorce, child custody, and child support; (4) disputes regarding insurance contracts located in Georgia; and (5) contractual disputes where the performance was due in Georgia.

Zephyr's conduct would possibly meet the standards for the second prong of long-arm jurisdiction here. Jake is likely to argue that the injury from Zephyr's negligence and defective product is felt in Georgia, to the extent that Lindsay was a citizen of Georgia who was wrongfully killed and to the extent that Jake himself (a citizen of Georgia) lost his son due to their negligence. In addition, Jake will argue that the Zephyr has persistent conduct in the state as well as receiving profit from their business in the state by selling their cars (at least 190 in one year) and planning to open a manufacturing facility in Georgia, on top of advertising to be "home" in the state. However, Zephyr will argue that their conduct in the state is minimal, depending on how the 190 cars compares to overall sales, that their future plans to make a manufacturing facility cannot impose personal jurisdiction in the present, and that in any event the purportedly tortious event and injury were felt in Florida, where the accident happened.

Even if Jake satisfied Georgia's long-arm statute, Jake would have to show that personal jurisdiction over Zephyr would be constitutional--that is, the exercise of personal jurisdiction would comport with "traditional notions of fair play and substantial justice." To show this, Jake would have to prove that Zephyr had "minimum contacts" with the state and that Zephyr's contacts with Georgia are related to the claims he would bring against them. Jake would argue again that Zephyr had at least minimal contacts with the state by selling cars here, advertising in the state, and becoming an authorized corporation to transact business here. On the other hand,

Zephyr will argue that their main source of liability is a products liability and negligence claim relating to their manufacturing, all of which took place in Virginia, and their sales, which occurred from a website hosted in California. Zephyr will also argue that being hailed into court in Georgia was unforeseeable and prejudicial given their operations have a principal place of business in California and they are registered in Delaware. These are likely substantial defenses that Zephyr could use to defeat personal jurisdiction in Georgia.

(b) If there is personal jurisdiction as to Zephyr and the truck driver, there is likely venue for Zephyr in Athens-Clarke County and venue for the truck driver in Glynn County.

In Georgia, venue is appropriate where the defendant(s) is (are) domiciled. If the defendant is out-of-state, then venue is appropriate where the defendant would accept service in the state. If the defendants are jointly and severally liable, the case may be brought in any county where venue is appropriate as to one of the defendants. If the defendants are not jointly and severally liable, then the case may be brought where appropriate for each, but if those counties are different, the cases must be brought separately. A court may change the venue on motion by the parties if there is undue hardship presented on a party (or its witnesses or ability to obtain evidence) because of a particular venue, or if the parties have agreed to a different forum (in a forum selection clause, for example). The party seeking the change in venue must prove their hardship. If a change in venue is effectuated because of a party's hardship, the transferee court will apply the law of the transferor. If a change in venue is effectuated because of the parties' prior forum selection agreement, the transferee court will apply its own laws.

For Zephyr, an out-of-state resident, venue would be appropriate in Athens-Clarke County, where its registered agent is located. In Georgia, service on corporations is properly affected on individuals authorized to accept service, such as registered agents. Thus, the appropriate venue for Zephyr would be Athens-Clarke County.

Because Tim Bell is a resident of Glynn County, venue is appropriate for him in Glynn County. Because he and Zephyr are not jointly and severally liable for their respective liability, Jake would have to bring individual cases against each in their appropriate venue.

MPT-1 — Sample Answer 1

To: Elise Tan

From: Examinee

Re: Turner v. Larkin

Memorandum

You have asked me to write an objective memorandum regarding the arguments on both sides of Turner v. Larkin. Per your instructions, I have omitted a recitation of the facts. There are two applicable points of contention in this matter: (1) whether Mr. Larkin's policy of favoring married people is a pretext for discrimination; and (2) whether Mr. Larkin's Policy of having a maximum of three people in the apartment in question is a has a disparate impact on the protected class of familial status.

Relevant Law

Mr. Turner (or "Turner") has filed against Mr. Larkin (or "Larkin") under the federal Fair Housing Act, 42 U.S.C. § 3601 et seq. (the "Act") The Act prohibits the refusal "to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of . . . familial status." The Act defines familial status as one or more individuals who have yet to reach the age of majority (18 years) being domiciled with a parent or guardian. There is an exemption if the owner maintains and occupies living quarters on the property as his residence. Mr. Larkin does not reside in the building in question and therefore no such exemption will apply here.

The Pretext for Discrimination Argument

Franklin courts apply the three-part burden-shifting test set forth in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973) when evaluating claims of discrimination under the Act. As articulated in Karns v. U.S. Department of Housing and Urban Development (15th Cir. 2006), "[f]irst, plaintiffs bear the initial burden of proving a prima facie case of housing discrimination by a preponderance of the evidence. To establish a prima facie case of discrimination under the [Act], plaintiffs must show (1) that they are a member of a protected class, (2) that they applied for and were qualified to rent the swelling, (3) that they were denied housing or the landlord refused to negotiate with them, and (4) that the dwelling remained available." Second, if such a prima facie case is made, "a presumption of illegality arises and the burden shifts to the defendant to articulate legitimate
nondiscriminatory reasons for the challenged policies. Finally, if the defendant satisfies the burden, the plaintiff has an opportunity to prove by a preponderance of the evidence that the nondiscriminatory reasons asserted by the defendant are merely pretext for discrimination.

Here, Turner, as plaintiff must first prove a prima facie case of housing discrimination. Turner is a member of a protected class, because he has three minor children, which are protected under the Act. Turner applied by text to rent the apartment in response to Larkin's Craigslist ad and was qualified to rent the dwelling. *Karns* states that inquiries into availability are included in the definition of "applied for," which is precisely what Turner texted to Larkin ("Is it still available?"). *Karns* also states that "qualified to rent" regards factors such as minimum monthly income, minimum credit score, rental and eviction history, landlord and professional references, and criminal background. Turner has a good rental history, good credit, and can easily afford the apartment. Larkin refused to negotiate with Turner. *Karns* held that a landlord's failure to respond after a statement requesting time to consider and a promise to "get back to" to applicant constitutes a refusal to negotiate. Larkin's exact words to Turner were "I need to think about that. I'll get back to you." These words are almost identical to those of the landlord in *Karns*. The apartment remained available for at least two months until Larkin was able to rent the apartment to a married couple. In *Karns*, the landlord held the apartment open for only one month, and that was enough to reach the standard required for the prima facie case. Therefore, Turner will be able to establish a prima facie case of discrimination based on familial status under the FHA.

Larkin has a policy of renting only to married couples for this apartment specifically. With Turner's prima facie case established, the burden will shift to Larkin to articulate a legitimate nondiscriminatory reason for this policy. Larkin may argue that his reason for this policy is based on his experience as a landlord, and has articulated that based on this experience he believes married people are more stable in their relationships, more likely to pay their rent on time, and are more financially stable than single people. He has rejected both single people and unmarried couples who have applied for the apartment in question in the past. As noted in *Karns*, marital status is not included in the Act as a protected classification. Larkin's reasons are legitimate and nondiscriminatory. Therefore, the burden will shift back to Turner to show by a preponderance of the evidence that Larkin's reasons are mere pretext.

The *Karns* court found pretext when, after refusing to negotiate with the plaintiff upon discovering the plaintiff's marital status and children, the landlord then agreed to do a showing to the plaintiff when the plaintiff called again, this time electing not to mention her children, but still stating that she was single. Here, Larkin and Turner only had one brief exchange by text. Furthermore, Larkin has rejected people in the past as single applicants and as unmarried couples. While Larkin never got back to Turner, there is not the same degree of evidence showing that Larkin's refusal to negotiate was mere pretext for discrimination as opposed to the application of his legitimate and nondiscriminatory reasons for favoring married couples. Furthermore, Larkin's first question to both Turner and Jake, a former applicant was "Are you married?" He never inquired about children, only marital status. While Turner informed him about the children, there is nothing to evidence that the children were a deciding factor on Larkin's decision. Therefore, Larkin will likely be successful in arguing that Turner will fail to establish by a preponderance of the evidence that Larkin's reasons are mere pretext.

The Disparate Impact Argument

A plaintiff under the Act may argue that an occupancy policy, while facially neutral, has a disparate impact because of familial status, as was argued successfully in *Baker v. Garcia Realty Inc. (1996)*. In such a case, the Fifteenth Circuit applies a three-part burden-shifting test similar to, but distinct from, the test set forth in *McDonnel Douglas*. As articulated in *Baker*, the analysis requires: (1) a plaintiff's prima facie showing that the "challenged practice caused or will predictably cause a discriminatory effect;" (2) after such a showing, the burden "shifts to the defendant landlord to prove that the challenged practice is necessary to achieve one or more substantial, legitimate, nondiscriminatory interests;" and (3) if the defendant meets that burden, the burden shifts back to the plaintiff, who may only prevail "if they can show that the substantial, legitimate, nondiscriminatory interests supporting the challenged practice could be served by another practice that has a less discriminatory effect."

The prima facie case for disparate impact differs from the prima facie case for discrimination. Nonetheless, Turner may establish a prima facie case for disparate impact as well. Larkin's policy for the apartment is that he will almost exclusively rent to married people, and may not have any more than three people in the apartment clearly impacts people with minor children more than it does the general population. Even a married couple would only be able to have one child in such an arrangement. If a married couple were to apply with more children they would be rejected under this policy. Therefore, it has a disparate impact on a protected classification under the Act, and the burden shifts to Larkin to prove that the practice is necessary to achieve one or more substantial, legitimate, nondiscriminatory interests.

Larkin's reason for the limit of three to the apartment has two components. First, the apartment is only 500 square feet. Second, the character of the neighborhood is one where many young people live, and it is near many nightclubs. He has had problems in the past of having young people cram "four people into a two-bedroom apartment to keep their housing costs down." This is substantially similar to the propose articulated by the defendant landlord in Baker, with avoiding the risk of large groups of young people "overpopulating units in an attempt to reduce their rental payments." As in *Baker*, Larkin's reason here is likely to be held to be a substantial, legitimate, nondiscriminatory interest, avoiding renting to large groups of young people in a small apartment. This will shift the burden back to Turner to show a way to serve such an interest with a less discriminatory effect or that the policy is overbroad.

As articulated in *Baker*, "[t]he Fifteenth Circuit has held that in cases of alleged familialstatus discrimination, a significant mismatch between occupancy limits set by a municipal code and those set by a landlord is evidence that the landlord's limit is overbroad." The Fifteenth Circuit has held an example where a landlord limits occupancy to two people in an apartment that, under the applicable code, could be occupied by four is a significant mismatch. In *Baker*, the code allowed eight, and policy allowed four, which was also held to be a significant mismatch. Section 15 of the Centralia Municipal Housing Code (the "Code") states that a dwelling of 451-700 square feet is not to be occupied by more than four people. Larkin's policy only allows three. Minor children may often share bedrooms, and Turner's family would be admissible under the

Code. Nonetheless, this is a much closer mismatch between code and policy than seen in the other examples. Both of those examples had a code allowing double the people allowed for in the policy. The lower end example still showed a difference of two people. Here, there is only a difference of one. It is therefore unlikely that Turner will succeed in showing that Larkin's policy is overbroad.

Turner may also attempt to show that a less restrictive policy exists. The purposes of Larkin's policy are the general stability of married couples and the prevention of allowing young people to overpopulate the unit. While he could easily tell that Turner's minor children were not a group of young people looking to overpopulate a unit, his concern about having a married couple is nonetheless justifiable. As such, while the number of tenants rule could likely be proven to have less restrictive means, the married couple aspect likely could not. Therefore, Larkin will likely prevail over both the pretext argument and the disparate impact argument under the Act.

MPT-1 — Sample Answer 2

MEMORANDUM

TO: Elise Tan

FROM: Examinee

DATE: Feb. 25, 2025

Re: Peter Larkin

You had asked me to draft a memorandum to determine if Peter Larkin will be successful in defending against a claim of violating the Fair Housing Act (FHA) when he refused to rent to Martin Turner. The short answer is yes. It is likely that Turner can prove a prima facie case for discrimination, Larkin has a strong argument for a discriminatory policy and Turner will have a difficult time proving that such a policy is overbroad.

I. DISCUSSION

1. The FHA applies to Larkin because he does not live in the unit that he is renting.

Generally the Fair Housing Act protects against discriminatory renting practices. 42 USC § 3601 *et seq*. This act does not apply when the rooms or units are intended to be occupied by no more than four families living independently and the owner resides in one of the units. *Id* § 3603.

Here, according to a statement by Larkin at our offices, Larkin lives in a townhouse about a mile away from the rental property at issue. Therefore, because Larkin does not live in the apartment complex at issue, the exception does not apply to him, and therefore must abide by the other provisions of the FHA.

2. Turner can prove a prima facie case for discrimination because he is a member of a protected class, applied for and was denied housing and the unit was made available to him.

To prove a case for housing discrimination under the FHA, the Court will apply a three part burden shifting test. Baker v. Garcia Realty Inc (1996). The first prong of this test is that the plaintiff must prove a prima facie case for discrimination. Id. To prove a prima facie case, a plaintiff must show that: (1) they are a member of a protected class, (2) applied for housing, (3) was denied housing, and (4) the housing remains available for rent to others. *Karns v. US Dept. of Housing and Urban Development (2006).*

A. Turner can prove that he is a member of a protected class

The FHA protects certain individuals of protected classes by preventing landlords from refusing to rent to them because of their membership in a protected class. FHA § 3604. One of these protected classes is Family Status. *Id.* Family Status is defined as "one or more individuals (who have not attained the age of 18) being domiciled with a parent ...." *Id § 3602.*

Here, Turner can easily establish that he is a member of a protected class as he was attempting to rent an apartment where both he and his three minor children could live. Because of this, he squarely falls into the Family Status protected class, and therefore the FHA protects him from discrimination in renting based upon his family status.

B. Turner can prove that he applied for and was qualified to rent the apartment because he has good rental and credit history and a stable job.

The term "applied for" in the prima facie test is interpreted broadly and includes mere inquiry into renting. *Karns*. To be qualified to rent, means that the plaintiff has met minimum credit requirements, and has the proper criminal history, eviction history, and minimum monthly income requirements to rent the designated apartment. *Id*.

Here, Turner can prove that he applied for the apartment in question when he sent an inquiry to Larkin in their text exchange on 11/6/24. Hud Complaint. Furthermore, Tuner can prove that his qualified to rent such a unit because he is currently employed as a data analyst and could have easily afforded the unit, and has good rental and credit histories. Id. Because of this, Turner can prove that he applied for and was qualified to rent the apartment.

C. Tuner can prove that he was denied the apartment and that the apartment was still avalible.

Under the prima facie test, the last two elements require that the renter be denied the housing and that the unit is still available. Karns. Availability is satisfied if the unit remains open to be rented by another. *Id*.

Here, Turner can show that he was denied the housing when Larkin refused to follow up with Tuner after their initial conversation. Furthermore, the unit remained available for rent by others as the unit was still being shown on Craigslist for at least the next two months following Larkin and Turner's conversation. Therefore, Turner can prove the last two elements and establish a prima facie case for housing discrimination.

3. Larkin can prove a non-discriminatory reason for denying Turner's application because he did so because Turner was unmarried and also to further the goal of not renting small apartments to large numbers of renters.

Once a plaintiff can establish a prima facie case for Housing Discrimination, the burden then shifts to the defendant to show that the practice "is necessary to achieve one or more substantial, legitimate, nondiscriminatory interests ..." *Baker.*

A. Larkin can show that he had a non-discriminatory interest in not renting to Turner because he was unmarried.

The FHA does not protect against discrimination based upon marital status. FHA § 3604. Franklin Courts have held that discrimination based upon martial status is allowable so long as it not a pretext to discriminate based upon a protected class. Karns. In Karns, a renter who intended to rent an aparment for her and her minor children was denied and the landlord stated that it was because the renter was single. The renter then contacted the landlord again and stated that she was single but did not have kids and was allowed to rent.

The Court found that the stated reason of denying based upon marital status was just a pretext to allow for discrimination based upon the renter's family status. Id. The Court reasoned that if the renter truly only wanted married couples, he would not have agreed to rent to the renter the second time she contacted the landlord stating that she was single but had no kids. *Id.*

Here, we see that the main reason that Larkin offers for denying Tuner his apartment is based upon Turner's marital status as Larkin likes having renters with two incomes and a stable home. While Turner may try to argue that this is just a pretextual reason for denying Turner and that the real reason is based upon his family status much how it was in Karns, Larkin can refute that by showing his 2022 conversation with a renter when he denied him and his three friends an apartment because he said he "really prefer[s] to rent to married couples." Larkin can further rebut a claim of pretext by the fact that he has other renters that have children live in his units so long as the parents are married.

Because of this, Larkin has a strong nondiscriminatory reason for denying Tuner a unit based upon his marital status.

B. Larkin can show a nondiscriminatory purpose by not wanting to rent a small unit to a large number of people

Franklin Courts have found that limiting the amount of renters in a given unit is a valid nondiscriminatory practice. *Baker.*

Here, Larkin can show that the reason that he denied Turner was not because of his family status, but because he did not want to rent a three bedroom unit to Turner and his three children. By asserting this, he can show another non-discimintory purpose in denying Tuner's application.

4. It is unlikely that Turner can show that Larkin's limiting renting his unit to three people is overbroad because there is not a significant mismatch between this limit and the local occupancy limit.

Once a defendant makes a showing of a nondiscrimintory reason for denying the unit, the burden then shift to the plaintiff to show that the interests can be met by a less discriminatory practice. Baker. A less restrictive alternative exists when the landlord limits renting based upon occupancy sizes and there is a significant mismatch from their policy and local occupancy limits. Baker. In Baker, a landlord denied a renter a unit based upon not wanting to rent a five bedroom unit to a family of 7. The tenant then sued based upon discrimination based on family status.

The Court held that the landlord did not enact the least restrictive means of achieving this policy. The Court reasoned that because the local occupancy limits for a unit of that size was 8 people, and their policy was to only rent to four in that unit, a siginficant mismatch existed and therefore the policy was overbroad and in violation of the FHA.

Here, we see that the Centralia Occupancy limit for a unit of the size Turner attempted to rent was for five people, and Larkin limited to four. This is not a significant mismatch like the policy in Baker and will therefore not be likely to be deemed overbroad and therefore Turner has a valid defense to the discrimination claim.

CONCLUSION

While Turner has a valid prima facie case for housing discrimination based upon family status, Turner has several nondiscriminatory reasons, such as martial status and limiting occupancy, and Turner will likely not be able to show that these policies are overbroad. Therefore, there is a strong likelihood that Larkin will be able to sucessfully defend the lawsuit against him.

MPT-1 — Sample Answer 3

To: Elise Tan

From: Associate

Date: 02/25/2025

Re: Defense of Housing Discrimination Claim

MEMORANDUM

STATEMENT OF FACTS:

[omitted]

ANALYSIS:

Under 42 USC Section 3601 et. seq., "'Familial status' means one or more individuals (who have not attained the age of 18 years) being domiciled with-- a parent or another person having legal custody of such individual or individuals..." That provides protections against discrimination on the basis of familial status, marital status is not included. The statute further lays out that it is "unlawful to refuse or sell or rent after making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin." The statute provides that for a residence/unit that is 451-700 square feet there can be no more than four people in that residence.

The courts in determining and weighing the arguments in Fair Housing Complaints have created a 3 part burden shifting test. In *Karns*, they used this test which comes from *McDonnell Douglas Corp*. In *Karns*, the court provides the following test:

1) for a prima facie case:

a) Plaintiff must show they are a member of a protected class;

b) Plaintiff applied for and were qualified to rent the dwelling;

c) Plaintiff was denied housing or the Landlord refused to negotiate with Plaintiff; and

d) the dwelling remained available. The courts have interpreted "applied for" as a broad interpretation where inquiry is suffice. They have interpreted qualified to rent as being that the plaintiff meets the factors (i.e. credit score, rental/eviction history, minimum monthly income, references, criminal background).

2) If Plaintiff establishes above test, burden shifts to Defendant "to articulate legitimate nondiscriminatory reasons for the challenged policies."

3) If Defendant satisfies their burden, Plaintiff can prove by preponderance of evidence that the nondiscriminatory reasons by D are pretextual.

The Court also noted that marital status is omitted from the statute and is thus not a protected classification under this federal law.

Here, Martin Turner has a familial status and is thus protected on that basis because he is the parent of three minor children who will be living with him and based on the facts of him being financially able to afford the rent of $2,200/ month, he is a qualified applicant. He also inquired via text to the defendant and was denied housing. The apartment then remained available for months after this inquiry. Thus, it is likely that Turner will be successful in creating a prima facie case. The defendant has shown that he has a policy of not renting to single and unmarried people including those with minor children. He also has a policy limiting the amount of people in the apartment being inquired into to 3 people. Turner, including his children, would amount to four people. He argues that he does this for two reasons: 1) he believes that married couples are much more reliable in paying rent than single or unmarried people and he prefers two incomes; and 2) he states that he is trying to avoid young people cramming several people in the apartment to lower rent costs (primarily college aged or younger people). He denied the same apartment to a group of 4 young people in their 20s two years prior because they were unmarried and made no mention of finances, just marital status in that exchange.

In *Baker*, the defendant stated his policy (similar policy to Peter Larkin) aims to avoid risks of large groups of Aberdeen (college) students overpopulating units to reduce rent costs. The court found this to be a legitimate reason. Thus, the burden would then shift back to Turner who would indicate, as the plaintiff did in Baker that the policy is "far more stringent" than the federal law in this case (city ordinance in that case--which governed the number of residents based on the size of the residence not the people per bedroom). The court found this to be enough but here it will be a factual determination by the court if the policy here is too stringent since it is not by bedroom, just by apartment.

Further, the rationale regarding marital status being the reason to deny Turner is reflected in his prior denial of other applicants who were unmarried and had multiple incomes or applicants who did not. Thus, it will be difficult for Turner to argue that the denial was based on his protected familial status. The rationale also does not appear to be pretextual, so Turner would likely fail at the last step in the 3-step test from Karns which cited McDonnell.

CONCLUSION

For the reasons above, it will be difficult to determine if the policy set by Larkin was truly based on his familial status and not his married status and that the policy was overly broad because it is factually distinct from the case in which the court has determined the policy was too broad.
Outline

Facts of Martin Turner situation

Martin Turner complaint (P)

- Widow, 3 minor children.
- Qualified applicant.
- Inquired regarding the apartment via text. LL responded and never got back to Turner after being informed of Turner's familial status.
- Apartment remained available after this exchange.

Interview with Peter Larkin (D)

- Admits to the facts and validates the text exchange.
- Put ad on craigslist, 2bdrm w/ 2,200/month.
- **Reasons why D rejected P:** 1) He's single, "I really don't like to rent to unmarried people because I like to have two incomes for each apartment that I rent. It just makes me feel more comfortable." 2) "I have a policy of renting that particular apartment to a maximum of three people, and with his kids, there would have been four people."
- Ended up renting the apartment to a married couple after a couple months.
- **Rationale behind policy:** "Financial and stability thing"; "I want to have married couples with two incomes." In his experience, "married people are just more stable in their relationships and are more likely to pay rent on time. They are just more financially stable than single people." D states he has turned down single people and unmarried couples who have applied for that apartment before.
- **Financial Inquiry:** D stated that he has no reason to think that P does nto have good credit and cannot pay the rent but still prefers married couples.
- **3 people in the apartment policy**: D states that he is trying to avoid young people cramming four people in the apartment to lower rent costs.
- **D addresses P and his familial status (3 kids):** D ostensibly has no issue with P having minor children and states he just does not want more than three people in the apartment regardless if they are minors or not.
- **Married couples with children**: D states he often rents to married couples with children and states he would not mind if a married couple with one child live in the apartment that P inquired into.
- The other example of an inquiry shows D rejecting a group of four people in their 20s for the same apartment 2 years prior and D stated that due to the marital status of the

candidate, he would not rent to them. The candidate had no familial relationship to the others.

US FHA 42 USC 3601

- "Unlawful to refuse or sell or rent after making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin."
- 500 square feet; no more than 4 people

Karns v US Department of HUD (15th circuit COA, 2006)

- **Rule**: 3-part burden shifting test (McDonnell Douglas Corp.)
- 1 - For prima facie case: 1) P must show they are a member of a protected class; 2) P applied for and were qualified to rent the dwelling; 3) P was denied housing or LL refused to negotiate with P; and 4) the dwelling remained available.
- Applied for = broad interpretation (inquiry suffice)
- Qualified to rent = P meets factors (i.e. credit score, rental/eviction history, min monthly income, references, criminal background)
- 2 - If P establishes above test, burden shifts to D "to articulate legitimate nondiscriminatory reasons for the challenged policies.
- 3 - If D satisfies their burden, P can prove by preponderance of evidence that the nondiscriminatory reasons by D are pretextual
- Court noted marital status is omitted from statute and is thus not a protected classification
- **Facts:**
- Karns (P) had 2 children under 18 and showed she was denied housing. She inquired to rent the apartment and was qualified. LL refused to negotiate and apartment remained available. Dickson (D) argued concerns about her financial ability and marital status. D did not have any info beyond her marital and familial status and assessed P's ability to pay on her familial status, not financial status.
- **Holding:** REVERSED, P provided enough evidence to support a showing that D's reasons for not renting were pretextual and and the underlying reason was due to P's familial status.

Baker v Garcia Realty (US District Court for Franklin, 1996) Facts based case analyzing test factors

- **Rule:**
- Lays out same test from Karns but with distinctions.
- "Courts apply ... disparate impact analysis when we are analyzing a facially neutral policy"
- **Facts:**
- Baker is married with five children and sought a 3 bedroom apartment.
- Prima facie analysis: Bakers (P) satisfied first burden. Families with minor children tend to have larger households than the general population thus creating disparate impact.

- Nondiscriminatory reason analysis: Burden on Garcia (D) to articulate one or more substantial, legitimate, nondiscriminatory interests serving their policy. D states the policy avoids risk of large groups of Aberdeen students overpopulating units to reduce rent costs. D has met his burden.
- Overbreadth and less restrictive means analysis: Burden back to P. P argues that the policy is "far more stringent" than the city ordinance which governs the number of residents based on the size of the residence not the people per bedroom. P would be permitted under the city ordinance but under the Garcia policy, only 4 can live in a 3 bedroom apartment.
- **Holding**: MSJ GRANTED for P, P successfully showed that D's "bedroom plus one" policy was overly broad or by showing the goals of the policy can be achieved with a less restrictive means. Court found that D could have found less restrictive means of achieving their goal of limiting college students than creating a an overly broad policy disparately impacting families with minor children.

MPT-2 — Sample Answer 1

MEMORANDUM

To: Loretta Rodriguez, General Counsel

From: Examinee

Date: February 25, 2025

Re: Professor Eugene Hagen Matter

I. Introduction

We have been requested to advice regarding an Inspection of Public Records Act (IPRA) request for records relating to Professor Eugene Hagen. There are four documents in question, and we have been asked to determine which documents must be produced. The four documents in question are: (1) Professor Hagen's annual performance review; (2) any complaints about Professor Hagen submitted by the public; (3) A chart containing a list of names of anyone who submitted complaints; (4) Any records regarding Professor Hagen from the UF Campus Police Department. As provided by the Franklin Supreme Court in *Torres v. Elm City*, the purpose of the IPRA is "to ensure...that all persons are entitled ot the greatest possible information regarding the affairs of government and the official acts of public officers and employees." Id. at § 14. Each document is analyzed below.

II. Statement of Facts

[Omitted per instructions]

III. Legal Argument

A. Professor Hagen's annual performance reviews cannot be produced.

1. <u>The performance reviews contain matters of opinion which are exempt from production.</u>

The first set of documents in question are Professor Hagen's annual performance reviews completed by the Dean of the UF School of Law. In her *Privileged and Confidential - IPRA Request* email correspondence, Dean Williams provides that these "performance reviews contain a lot of general information - what classes Eugene taught, the quality of his teachings, the committees he served on, what publications he completed, and the quality of his publications. In determining whether or not these reviews can be produced, we look to Franklin Inspection of Public Records Act § 142 which provides a list of exempted documents that cannot be produced, with (a)(3) providing that "letters or memoranda that are matters of opinion in personnel files" are not those

listed of which the public has a right to inspect. It is understood that the documents relating to "the quality of his teachings" and the "quality of his publications" are matters of opinion. Additionally, Dean Williams "referenced student course evaluations in his annual reviews" which are also matters of opinion.

In interpreting § (a)(3), we look to the Franklin Supreme Court, which held in *Newton v. Centralia School District* (Fr. Ct. 2015), where the court held that this exemption applies to "letters of reference, documents concerning infractions and disciplinary action, personnel evaluations, opinions as to whether a person would be rehired, or as to why an applicant was not hired, and other matters of opinion." In providing context for such an exemption, the Newton court held that these documents are such that are "generated by an employer or employee in support of the working relationship." The Franklin Court of Appeals held similarly in *Fox v. City of Brixton*, Franklin Court of Appeal (2018), where it determined that the exemption in § (a)(3) was purported to "protect the employer/employee relationship from disclosure of any letters or memoranda that are generated by an employer or employee in support of the working relationship between them." As such, given the definition of the requested documents as provided by Dean Williams, these documents are not to be produced. Dean Williams stated herself in her *Privileged and Confidential Email* that the documents were completed by herself, and "were mixed."

2. <u>The performance reviews contain matters of fact, but under Koob, must also be excluded.</u>

It is likely that The Daily Howl may argue that some of the documents must be produced under § 146, which provides that "requested public records that is exempt and nonexempt from disclosure shall be separated by the custodian prior to disclosure and the nonexempt information shall be made available for inspection." Dean Williams provides that Professor Hagen's performance reviews contains information such as his committee information and a list of his publications. This information is likely permitted for production. However, we turn to the Franklin Court of Appeals in *Pederson v. Koob*, in which a petitioner argued that "factual matters concerning misconduct by a public officer related to that officer's role as a public servant" must be divided from such documents that are related to "matters of opinion constituting personnel information that are related to the officer's role as an employee." The *Koob* court has held that documents relating to "personnel information that contain both matters of fact and opinion are conclusively excluded." Thus, because the fact that Professor Hagen's personnel file contains both factual matters such as his committee information and publications, as well as personnel information discussed above, the *Koob* court furthers that § 14(a)(3) "applies to a document as a hole" and "the entire document is exempt from disclosure and matters of fact in that document do not have to be separated from matters of opinion and disclosed.

B. The complaints submitted by the members of the public can be produced.

The next set of documents sought by The Daily Howl are those consisting of "any complaints about Professor Hagen submitted by members of the public to the UF Law School." In determining whether or not these documents can be produced, we again turn to the Franklin

Inspection of Public Records Act § 142. The IPRA defines public records as those which are "all documents, papers, letters, books, maps, tapes, photographs, recordings, and all other materials." As discussed above, however, exemptions exist to the ability to produce such documents. In order to determine whether or not the complaints in question here fall under the exemption in § 142(3), which exempts, "letters or memoranda that are matters of opinion in personnel files" we look to *Fox v. City of Brixton*, Franklin Court of Appeal (2018).

The *City of Brixton* court handled an issue similar to that here in which "all citizen complaints filed against [party]" were requested. The defendant in *City of Brixton* claimed the exemption under § 142(a)(3). However, the Court determined here that "unsolicited complaints about the on-duty conduct...voluntarily generated by the very public that now requests access to those complaints..." are not an exempted from production. Some of the documents in question with regards to Professor Hagen will clearly reflect negatively on the professor; in the *What is UP with Professor Eugene Hagen* article in *The Daily Howl*, a Pamela Rogers states "last year I wrote a letter to Dean Williams complaining about Professor Hagen...that man has a substance abuse problem and should not be teaching our children." However, unfortunately for Professor Hagen, the *City of Brixton* court also held that, "the fact that citizen complaints may bring negative attention to the officers is not a basis under this statutory exemption for shielding such records from public disclosure."

Further, as in *City of Brixton*, it is clear that complaints arising from Professor Hagen's service as a teacher are not those which related to his position as an employee of the university. In *City of Brixton*, the court held that "unsolicited complaints about the on-duty conduct of a law enforcement officer, voluntarily generated by the very public that now requests those complaints" are not "matters of opinion in personnel files..." and thus not exempted. Dean Williams provides in her *Privileged and Confidential* email that she "[has] received a number of complaints from students about Eugene" excluding the complaint discussed in *The Daily Howl*. As such, despite the complaints existence in "Eugene's personnel file," these documents can be produced.

C. The chart cannot be produced because it does not exist.

The third item requested by The Daily Howl is a "chart containing the names of anyone (faculty, staff, students, or members of the public) who has made a complaint about Professor Hagen." In her *Confidential and Privileged* email, Dean Williams provides that "we don't have a chart containing the names of people who have made a complaint about Eugene. It would take some time to make one, but we can do it." Simply put, the IPRA provides that a public body cannot be forced to create a public record. The IPRA § 145 provides the procedure in which an individual can request records, but § 145(b) provides that "nothing in this act shall be construed to require a public body to create a public record." As such, so long as Dean Williams is correct in her statement that they do not have such a chart as requested, then UF cannot be forced to create such a record and subsequently produce it.

D. Only those records not containing documents relating to the investigation can be produced; the burden is on UF to separate the exempt documents from the nonexempt documents.

1. <u>The documents can be produced.</u>

The final group of documents that are requested by *The Daily Howl* are "are records involving Professor Hagen in the possession of the UF Campus Police Department." In determining whether such documents can be produced, we look to the IPRA § 141 which provides an exemption from production for "portions of any law enforcement record that reveal confidential sources or methods that are related to individuals not charged with a crime, including any record from inactive matters or closed investigations." The applicability of such an exemption was litigated in *Torres v. Elm City*, Franklin Supreme Court (2016). Here, the *Elm City* court handled a request for production of police records and found that documents that did not "reveal confidential sources or methods or that [did not relate] to individuals not charged with a crime" could be produced. In applying this holding to the issue at hand, it would seem that, pursuant to Chief Craft in his *Privileged and Confidential* correspondence, records exist that are "related to the recent arrest of Professor Hagen for possession of marijuana." These records are related to the "8 ounces of marijuana in [Hagen's] office" as Professor Hagen had sufficient amounts of marijuana on him to be charged with a crime. Chief Craft provides that three items exist in the records, being "an incident report and two photographs." These documents can be produced, so long as UF follows the holding of Elm City which found that these documents "shall be made available for inspection."

2. <u>However, the exempt portions must be redacted.</u>

While the records from the police department can be produced, a question remains as the records contain both exempt and nonexempt documents. As stated, the IPRA exempts those documents that "reveal confidential sources or methods that are related to individuals not charged with a crime." Chief Craft provides that the incident report in the issue at hand contains "the name of a confidential source" as well as "what Officer Marx observed in Hagen's office and the statements made by both Hagen and Sykes." As provided by Chief Craft in his Privileged and Confidential email communications "Professor Sykes was not arrested because, while she was smoking, she was not in possession of a sufficient amount of marijuana to be charged with a crime." However, the two photographs in Chief Craft's possession are those of "selfies showing both Hagen and Sykes with the bond in Hagen's office on the night in question."

As such, clearly the name of a confidential source and a photograph of an individual not charged with a crime are exempt from production. However, UF is still charged to produce as much information as they can, pursuant to the Franklin Court of Appeals in *Pederson v. Koob*, Franklin Court of Appeal (2022). The *Koob* court has held that the exemption provided in § 142(a)(4) "applies only to certain portions of a document." As such, when only portions of documents are exempted, "such as § 146(a)," then the individual with the burden of production must "separate the exempt from nonexempt demands redaction of the exempt material in the document."

In applying this analysis to the issue at hand, the police report that Chief Craft holds can be produced, but the name of the anonymous informant must be redacted. Additionally, the image of Professor Sykes must be redacted in order to protect her privacy. Thus, the documents must be produced, but due care must be taken in order to oblige the holding in *Pederson v. Koob.*

IV. Conclusion.

To conclude, the performance reviews must be excluded, as all documents containing opinion in personnel files must be excluded. Additionally, when documents contain matters of opinion and matters of fact, they must be excluded entirely. The documents relating to complaints by members of the public must be produced. The chart containing names of those who filed complaints does not have to be produced, as it does not exist. The records from the police department must be produced so long as confidential information such as names and faces are excluded.

MPT-2 — Sample Answer 2

To: Loretta Rodriguez, General Counsel

From: Examinee

Date: February 25, 2025

Re: Professor Eugene Hagen Matter

The university has received a request for several different documents from the University. Each individual request is evaluated in detail below.

Hagen's Annual Performance Reviews

The university does not need to produce any of Professor Hagen's annual performance reviews or student evaluations. The issue here is whether these documents are considered "matters of opinion" in personnel files, and thus are exempt from disclosure.

IPRA §14(a)(2) exempts letters or memoranda that are matters of opinion in personnel files. In Newton v. Centralia School District, a journalist sought access to all nonacademic staff personnel records held by the district that were not exempt under IPRA. The Newton court held that the exemption in 14(a)(2) applies to "letters of reference, documents concerning infractions and discipinary action, personnel evaluations....and other matters of opinion" in their entirety. The location of the document in a personnel file is not dispositive of whether the exemption applies; rather, the critical factor is the nature of the document itself. Fox v. City of Brixton (2018). The court characterized these documents as a whole as "opinion information". The Franklin Court of Appeals would later clarify in Fox v. City of Brixton that the documents at hand in Newton are all generated by an employer in support of the working relationship. The Fox court stated that a police department could not exempt certain complaints by members of the public that were placed in an officer's personnel file. Their reasoning was that the complaints were unsolicited complaints by the public, and while they may lead to a job performance investigation, that fact alone does not transmute such records into "matters of opinion in personnel files".

In our case, the annual reviews themselves are clearly within the definition of "personnel evaluations", and they are also generated by an employer in support of the employee/employer working relationship. However, the student course evaluations are solicited by the university itself and form a core part of the evaluations.

A separate issue here is whether we are obligated to separate exempt and nonexempt information from these records under 14-6(b), which states that "requested public records contiaining information that is exempt and nonexempt from disclosure shall be separated by the custodian prior to inspection, and the nonexempt information shall be made available for

inspection." We have no obligation to separate this information, and can exempt them in their entirety. As mentioned above, the Newton court described this exemption as applying to letters or memoranda in their entirety. Furthermore, the full document exemption in 14-2(a)(3) overrides the requirement in 14-6 that nonexempt matter in those documents be disclosed. Pederson v. Koob (2022) When an exemption applies only to certain portions of a document, such as portions of law enforcement records, then the material must be separated. Id. In our situation, the exemption would apply to the entirety of the personnel evaluations and the solicited student evaluations, so we have no obligation to separate any part of them.

Complaints about Professor Hagen submitted by members of the public to the School of Law

The university needs to produce the letter from Pamela Rogers. The issue here is the same as above, whether these documents are considered "matters of opinion" in personnel files, and thus are exempt from disclosure. As mentioned above, the key factor is not the physical location of the document, but rather the nature of the document and whether it is generated in support of the working relationship. The Fox court ruled that a public complaint in a police officer's personnel file could not be exempted from disclosure under this rule. Just as in fox, this document was an unsolicited complaint from the public, so it must be disclosed.

A chart containing the names of anyone who has made a complaint about Professor Hagen

IPRA §145(b) states that nothing in this act shall be construed to require a public body to create a public record. The university does not currently have such a chart, and is under no obligation to create one to satisfy this request.

Any records involving Professor Hagen in the possession of the UF Campus Police Department.

The issue here is whether what parts of the police departments must be redacted. IPRA §142(a)(4) exempts from disclosure "Portions of any law enforcement record that reveal confidential sources or methods or that are related to individuals not charged with a crime". 14-6 states that requested public records containing information that is exempt and nonexempt from disclosure shall be separated by the custodian prior to inspection, and the nonexempt information shall be made available for inspection. As mentioned above, the 14-6 exception does apply to portions of law enforcement records as mentioned in §142(a)(4). See Pederson v. Koob. Courts have found that whether or not an investigation is ongoing is not the controlling factor in this analysis. Rather, the key factor is whether the information would reveal confidential sources or methods, or would relate to individuals not charged with a crime. Torres v. Elm City (2016). In this situation, the Campus police department should redact all portions of their incident report about the identity of the confidential source, as well as all references to Hope Sykes, as she was not charged with a crime. The two photographs depicting both Professor Hagen and Sykes should be blacked out so that professor Sykes is not visible, for the same reason.

In summary, we should produce the complaint from Pamela Rogers and a redacted version of the police report and photographs related to the February 11th incident. We should not produce any other materials in response to this request.

MPT-2 — Sample Answer 3

To: Loretta Rodriguez

From: Examinee

Re: IPRA and Hagen

Memorandum

You have asked me to write an objective memorandum regarding the production of requested documents under the Inspection of Public Records Act (IPRA) Per your instructions, I have omitted a recitation of the facts. I have organized this memorandum by each item requested by Mr. Chen regarding Professor Hagen (Hagen).

Relevant Law

The IPRA requires all requested public records to be offered to the requesting person but for certain narrowly construed exemptions. Public records include "all documents, papers, letters . . . photographs . . . and other materials, regardless of physical form or characteristics, that are used, created, received, maintained, or held by or on behalf of any public body and relate to public business." As discussed in *Fox v. Brixton* (2018), the IPRA is construed to give a presumption in favor of disclosure, and the exemptions are to be construed narrowly. In *Pederson v. Koob* (2022), the Franklin Court of Appeal held that the full document exemption of § 142(a)(3) "overrides the requirement in § 146 that nonexempt matter in that document be disclosed." Therefore, unless an exemption applies only to portions of a document, the entirety of the document may be omitted.

Annual Performance Reviews

As documents produced by a public body, here Dean Williams, relating to public business, here the business of FU, Hagen's performance reviews are public records. However, Hagen's performance reviews likely fall under the exemption of matters of opinion in personnel files. §14-2(a)(3) of the IPRA holds that matters of opinion in personnel files are exempt from public record requests. As held in Fox, "matters of opinion" specifically regards "the employer/employee relationship such as internal evaluations . . . or performance reviews."

Here, performance reviews, like Hagen's, are specifically listed in *Fox* as being exempt from the IRPA. Unlike in *Fox*, these reviews are entirely focused on the employer/employee relationship between Hagen and Dean Williams. These reviews do not include any nonexempt material, and even if they did, per *Pederson* and *Newton*, the entirety of the performance reviews may be omitted.

Complaints from the Public

As discussed in *Fox*, complaints made by the public are admissible even if they are located in a personnel file. The physical location of the record does not matter; "the critical factor is the nature of the document itself." In Fox, the plaintiff requested complaints generated by the public, and the court held this to not be exempt under the IPRA, even as they pertained to matters of opinion in personnel files.

Here, the only complaint from a member of the public is that of Mrs. Rogers. Mrs. Rogers's letter was placed in Hagen's personnel file, and it is a matter of opinion. As a letter received by a public body, Mrs. Rogers's letter is a public record. However, it does not arise from the employer/employee relationship and is, like in Fox, a complaint generated by the public. Therefore, it should be provided to Chen in its entirety under the IPRA.

Chart of Complaints

§ 145(b) of the IPRA states that "nothing in this Act shall be construed to require a public body to create a public record." While there have been some student complaints about Hagen, FU does not currently have a chart containing the names of any person to complain about Professor Hagen, and it would take some time to make one. As such, under the code, the IPRA may not be used to require FU to create such a chart, although it would be required to be sent if such a chart already existed.

Police Records

Portions of police reports may be exempted from the IPRA if they "reveal confidential sources or methods or that are related to individuals not charged with a crime, including any record from inactive matters." As held in *Pederson*, these portions do not exempt the production of the entire document, rather permitting the police to redact exempt elements from a document. In *Torres v. Elm City*, the Franklin Supreme Court held that documents could not be withheld merely because an investigation is ongoing.

Here, there are three items that pertain to Mr. Chen's request: an incident report and two photographs. These include both Hagen and another Professor Sykes (Sykes). Sykes was not arrested. As stated time and time again, as in *Dunn*, the exemptions are narrowly drawn.

Incident report

The incident report contains details about the incident, the name of a confidential source, and statements made by Hagen and Sykes to Officer Marx. These must be produced per the IPRA, but the police department may redact any mention of the confidential source and Sykes, per the IPRA.

Photographs

The photographs are selfies showing both Hagen and Sykes and the bong. The images may be redacted to exclude Sykes, but must otherwise be produced per the IPRA.