July 2026 Georgia Bar Examination Sample Answers

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Essay 1 — Sample Answer 1

Max's Strict Liability and Negligence Claims:

The first issue in this case is what strict liability and negligence claims Max may bring against Bob. Each will be discussed in turn.

Products Liability

The first claim that Max may bring is a strict products liability claim against Bob. For the following reasons, this claim will probably fail.

A strict products liability claim requires a showing of the following elements: (1) the suit is brought against a manufacturer; (2) a defective product (either design, manufacturing, or information); (3) the product is not substantially altered; (4) the product was being used in a foreseeable manner; and (5) causation, along with damages. With respect to the first elements, the suit is being brought against a manufacturer because the facts expressly indicate that Buffalo Bob Manley is a manufacturer of mechanical bulls, as well as a bar owner.

The trickiest issue here is whether the product was defective. As noted above, a defect can either be a manufacturing defect, a design defect, or an information defect. A manufacturing defect means that the product was designed correctly, but some defect in the actual manufacturing product renders it defective. Here, there is no indication that the bull was designed defectively in any way, so there is likely no manufacturing defect. A design defect is where an entire line of products is designed in a way that makes them defective. To show a design defect, the plaintiff must prove that the design is defective and that there are economically feasible alternatives. Here, there likely is a design defect. First, the product is defective because it flings people off of the bull in a way that is very likely to cause injury. Furthermore, there were feasible alternative designed because the facts indicate Lucy's Friendly Bulls, a competitor, offered Bob her comparable mechanical bull that included a protective housing to keep riders safe in the event they are bucked off too harshly and cannot land on their feet. The facts even indicate that this housing was offered at a discount. Therefore, there was likely a design defect in Bob's mechanical bull.

Furthermore, the product was not substantially altered because Max rode the bull at Bob's bar, where it was at all times maintained by Bob. Additionally, Max was making a foreseeable use--indeed, the intended use--of the product; that is, riding the bull. Finally, the bull caused Max's injuries because it flung him off, causing him to shatter his bones, which caused amputation to be required.

Therefore, Max could assert a strict products liability claim against Bob.

Abnormally Dangerous Activity

Max could also assert a strict liability claim based on an abnormally dangerous activity, but this claim would probably fail.

To make out a prima facie claim of strict liability based on an abnormally dangerous activity, the plaintiff must show (1) the activity cannot be made safe by the exercise of reasonable care; and (2) the activity is not a matter of common usage or practice in the area. Max's claim would fail on both elements. First, the mechanical bull could very easily be made safe if Bob would have purchased Lucy's protective housing. The facts indicated that there have been serious injuries on un-cushioned rides, but with cushioned bull rides, nobody has been injured. Therefore, this activity could be made safe if Bob had exercised ordinary care and purchased the protective housing. Additionally, even if the activity couldn't be made safe, there is no indication that bull riding is not a matter of common usage in the community. The facts indicate that the bull has been installed in Bob's bar for several years, and that people have ridden it consistently since. Also, Max is a "regular" customer at the bar, meaning that he has at least used the bull a lot in the past three years. In any instance, there is no indication that bull riding is not a common activity in Macon, so Max's strict liability claim would fail.

Negligence

Next, Max could bring a negligence claim, which would likely succeed.

A prima facie case of negligence requires proof of the following elements: duty, breach, causation, and injury. First, Bob had a duty to Max because Max was a patron of his bar. Generally speaking, people owe a general duty to behave as a reasonably prudent person in similar circumstances. However, Bob's duty is higher because he is a landowner. Landowners owe duties based on whether the plaintiff was a trespasser, a licensee, or an invitee. In this case, Max was an invitee because he entered the premises primarily for Bob's benefit as a patron of the bar. Therefore, Bob owed Max a duty not only to cure known defects, but also a duty to remedy defects which might be revealed by a reasonable inspection. Bob breached this duty when he failed to provide adequate protective housing for the mechanical bull, which injured Max. The facts indicate that there “have been reports” of serious injuries on uncushioned rides, and further, Bob was aware that protective housings for his bull existed when he was offered one by Lucy. A reasonable inspection would have revealed that the bull was unsafe and a reasonable

person would have installed the protective cushioning. Bob failed to do anything about these conditions. Therefore, Bob breached his duty to Max as an invitee.

Furthermore, Bob's breach was the cause of Max's injuries. Causation requires both but-for and proximate cause. But-for cause asks whether, but for the breach, the injury would not have occurred. Here, but for Bob failing to install protective cushioning on the bull, Max would not have broken his leg, been forced to amputate his leg, and lost his job and suffer depression (as well as losing his fiancee Susie Q to another dancer). Therefore, the breach was the but-for cause of Max's injuries. Also, it was the proximate cause. Proximate cause asks whether the injury is foreseeable in light of the defendant's breach. Here, it was foreseeable that an uncushioned mechanical bull might cause a person to suffer severe injuries to their limbs, which may be permanent. Finally, Max did suffer injury because his leg was broken, he had to have his leg amputated, and he lose his job and suffers depression.

Therefore, Max could make a prima facie case of negligence against Bob.

Negligent Security

Max may also bring a negligent security claim against Bob. A creature of Georgia statutory law, a negligent security claim may be brought against a landowner who has breached a duty to a plaintiff, knew or had reason to know of the dangerous condition, and the condition causes injury to the plaintiff.

Here, Bob breached his duty to Max because he failed to inspect the mechanical bull and install a protective cushioning. Furthermore, Bob knew that the bull was dangerous, because he knew about the reports of serious injuries and that Lucy was offering to sell him a safer alternative cushioning designed. Finally, this condition on the land, the bull, caused injury to Max. Therefore, a negligent security claim could be brought.

<u>Bob's Defenses to Max's Claims:</u>

The next issue in this case is what defenses Bob may bring. Bob may bring the following defenses: consent, assumption of the risk, comparative negligence, and Bob may also try to rebut the prima facie case of negligence brought by Max.

Consent

First, Bob may argue that Max consented to the activity. This might provide a defense to the negligence claim, but not the strict products liability claim.

If a plaintiff consents to an action that would otherwise be tortious, it is a defense to a negligence claim, as long as the consent is voluntary. Here, the facts indicated that Max had ridden the bull at least 20 times, and that on the night of the incident, he said to Susie Q, "Right now, I am in the mood for a bull ride." Therefore, Max likely consented to riding the bull, which is a defense to

Bob's negligence. Note that consent is only a valid defense if it is voluntary. Thus, if a would-be consenter is heavily intoxicated, they may lack the ability to consent. Here, Max does not appear to have ingested any alcohol, but has has ingested three caffeinated drinks. It is unclear whether caffeine would be sufficient to alter Max's mind such that his consent would be involuntary, but it appears unlikely. Therefore, consent may be a defense to the negligence claim.

However, consent would not be a defense to the strict products liability claim. Georgia law does not allow consent as a defense to a strict products liability claim, and therefore, Bob could not assert this defense against Max's strict liability claim; only his negligence claim.

Assumption of the Risk

Next, Bob may assert as a defense that Max assumed the risk. Again, this defense would likely succeed as to the negligence claim, but fail as to the products liability claim.

Assumption of the risk can be asserted whenever a plaintiff proceeds voluntarily in the face of a known risk. Assumption of the risk may either express or implied. Here, the facts indicate that Bob made any rider of the bull confirm that they had read and agree to the disclaimer explaining the risks of riding the bull. Therefore, it is likely that Max similarly expressly assumed the risk of riding the bull. Also, Max may have impliedly assumed the risk, even if he did not expressly assume it. The facts indicate that Max had ridden the bull and thrown off 15 times. Therefore, Max likely proceeded in the face of a risk that was known to him--that by riding the bull, he may be flung off. Therefore, whether express or implied, Max likely assumed the risk. Bob could therefore assert assumption of the risk as a defense to negligence.

However, like consent, a defendant may not assert assumption of the risk as a defense to a strict products liability claim. Therefore, Bob would not be able to assert this defense.

Comparative Negligence

Next, Bob may argue that Max was comparatively negligent.

Georgia has abolished the common law contributory negligence rule in favor of a partial comparative negligence system. Under this system, if the plaintiff is partly, but not more than 50%, at fault, he may still recover, but his damages will be reduced accordingly. If the plaintiff is more than 50% at fault, they are barred from recovery.

Bob may assert that, by ingesting several stimulating drinks then riding the bull, Max was comparatively negligent. It is impossible to make a determination on the facts of whether this defense would succeed. The factfinder would be responsible for determining the percentage of fault of each party, and then, if it determines that Max was less than 50% at fault, he would have his recovery reduced proportionally. If he was above 50% at fault, he will be barred. Either way, it is an issue for the factfinder.

Finally, comparative negligence may not be used in the strict products liability claim either.

Rebutting the Prima Facie Case: No Proximate Cause

Finally, Bob may attack the claim on its merits, arguing that proximate causation is lacking. Bob would argue that it was not foreseeable to him that Max would have to get his leg amputated because it was not known to him that Max suffered from eggshell osteoporosis. However, this claim would fail. Generally, a defendant takes the plaintiff as they find them. Therefore, it is inapposite that Max had a condition that required him, any maybe not another plaintiff, to be forced to amputate his leg. For these reasons, Bob's defense on the merits would fail.

Max's Damages:

The last issue in this case is the types of damages that Max may claim.

First, Max may seek compensatory damages. These are damages which seek to make the plaintiff whole, and consist of general and special damages. General damages are those that flow naturally from the tort and do not require any specific assertion or findings of facts. Here, general damages would include any physical pain and suffering Max has endured, as well as compensation for his depression (his mental pain and suffering). General damages would also include his loss of earning capacity because Max lost his job. Max may also claim special damages, which must be specifically pleaded and proven. Special damages in this case would include his hospital bills for his amputation, as well as the cost for his prosthetic, and his lifelong physical and mental care. As mentioned, these must be pleaded and proven.

Note that loss of consortium would not be recoverable here. Max could claim that Bob has deprived him of Susie Q's consortium because she married another dancer as a result of the incident. However, a loss of consortium claim only is available if the parties are married, and here Max and Susie were not married. Therefore, loss of consortium damages would not be available.

Max may seek punitive damages for his strict liability claim. Punitive damages are ordinarily not allowed in negligence cases, and are reserved for cases where the defendant has acted willfully or wantonly. In any instance, they are capped at $250,000 for such actions. Here, there is an argument that by rejecting Lucy's offer for cushioning, Max acted recklessly, especially since he said “cushions are for babies.” Nevertheless, the products liability claim provides a stronger basis for punitive damages, because not only are punitive damages available, but they are generally not capped in the same way as for wanton conduct. Therefore, Max may seek punitive damages for his products liability claim.

Essay 1 — Sample Answer 2

(1) The first issue is whether Max might assert strict liability or negligence claims against Bob.

Strict Liability: Products Liability

Under Georgia law, a products liability claim may be brought on the basis of strict liability. Strict liability requires a showing that a commercial seller manufactured or sold a defective product, caused damages to a plaintiff. In order to prevail, the product also must not be substantially altered when it leaves the manufacturer. If the plaintiff was misusing the product, the misuse must have been foreseeable. A design defect exists where every product is manufactured with a defective design, typically where a part or component of the design is defective. For design defects, the plaintiff must show that there was an alternative design that was both safer and feasible.

Here, Bob Manley is a commercial seller because he is a bull manufacturer. He manufactured a defective product, the product being the bull. The bull has a design defect because it does not have cushions. When cushions are not present on a bull machine, there have been reports of serious injuries. The alternative design of adding cushions is feasible. Lucy's Friendly Bulls offered Bob her bull rides with protective cushioned housing. She offered these to Bob at a 50% discount. This shows the design was both substantively and economically feasible. Bob may attempt to argue that he did not know the design was dangerous because he had not encountered any serious injuries on his un-cushioned ride since he opened three years ago. This argument is unlikely to be successful because strict liability requires only the act, there is no knowledge or intent element. Even if there were, Bob knew it was dangerous as evidenced by the warning sign he posted saying things like "danger" an "no cushions." Max was damaged because when he fell on his right leg, it had to be amputated due to his eggshell osteoporosis, he also had to have a prosthetic put on, lost his job as a forklift operator, suffers sever depression, and will require lifelong physical and mental healthcare.

Therefore, Max can likely succeed on a strict products liability claim against Bob.

Strict Liability: Inherently Dangerous Activity

Under Georgia law, strict liability exists for inherently dangerous activities. An inherently dangerous activity is one that cannot be made safe even with the exercise of the utmost or reasonable care.

Here, Max may attempt to assert that bull riding is inherently dangerous. However, this claim is unlikely to be successful because bull riding can be made reasonably safe by adding protective housing with well-cushioned floors. With cushioned bull rides, no one has ever been seriously injured.

Therefore, Max likely will be unable to assert a strict liability claim on the theory of an inherently dangerous activity.

Negligence

Under Georgia law, a negligence claim requires a plaintiff to prove duty, breach, causation, and harm.

Every person owes a duty to foreseeable plaintiffs. The standard of care requires such person to act with reasonable care. This is an objective standard based off of the reasonable person. The standard of care is generally heightened for professionals, and requires the care of a reasonable member of the profession.

Here, Bob owed a duty to Max. Max was a foreseeable plaintiff because as the owner of the bar and the bull, it is foreseeable that someone riding a bull designed specifically to buck people off of it in the bar could get hurt. Max would also argue for a professional standard of care to be applied because Bob is a bull manufacturer.

Breach occurs when a person falls below, or fails to act according to, the standard of care.

Bob likely breached this duty by failing to provide cushioned housing, or any type of padding, for the bull he operated in his bar. Bob would argue that it was reasonable to not have padding because although there have been reports of serious injuries, he was unaware of these injuries. However, this is likely to be unsuccessful because Bob was aware serious injury could result based on the reports and on the signs he posted about the ride calling it "dangerous" and including the fact that it had "no cushions" in part of the warning. Bob also stated that "danger is what people want. I don't give a flip about cushions and I never will." This shows that Bob knew the machine was dangerous, and despite that, failed to exercise reasonable care in adding cushions or padding around the Buffalo Bull ride.

Causation requires both cause-in-fact and proximate cause. Cause in fact is based on the "but for" test. This requirement is met where "but for" the defendant's negligence, the harm to the plaintiff would not have occurred. Proximate cause exists where the result is foreseeable based on the defendant's negligence.

Cause in fact exists because but for Bob's failure to cushion the area around the bull, Max would not have fallen on the hard floor and likely would not have suffered sever injury. Proximate cause is also likely met because it is foreseeable that failing to cushion the bull, and only having hard word floors, would injure someone who falls off. Notably, the bull's goal is to buck riders off, and it violently bucks in order to achieve such goal, which is typically within 8 seconds.

Damages requires simply that the plaintiff be harmed.

Here, this element is met because when he fell on his right leg, it had to be amputated due to his eggshell osteoporosis, he also had to have a prosthetic put on, lost his job as a forklift operator, suffers sever depression, and will require lifelong physical and mental healthcare.

Therefore, Max can likely bring a successful negligence claim against Bob.

(2) The second issue is whether Bob has any potential defenses to Max's claims.

Assumption of the Risk

In Georgia, assumption of the risk acts as a complete defense to both strict liability and negligence claims. Assumption of the risk exists where a person, with full knowledge of the facts and material risks, voluntarily accepts a risk.

Here, Max was a regular customer at Bob's bar in macon. He regularly dances there and, more importantly, is a regular bull rider. Max has ridden the bull at Bob's bar at least 20 times over the last year. Of those twenty times, Max has been thrown off 50 times. Further, there is a warning sign that is printed of placards that surround the bull. An attendant requires that before any patron is permitted to ride the bull, they must acknowledge that he or she has read and understood the warning. The warning stated that the ride was dangerous. It notified customers that there were not cushions, and that riders ride at their own risk. It also shows that injury may occur from being thrown off because Bob attempts to disclaim his liability from any such injuries. Though this alone may not be sufficient, being coupled with Max's regular bull riding Bob likely has a strong argument that Max assumed the risk of his injuries.

Max would argue he did not truly understand and appreciate the risk because his falls from being thrown off the bull typically involve him slipping gracefully down the side of the bull and catching himself, without any hard falls to the floor. However, this defense is unlikely to be successful because Max has regularly ridden the bull and each time, had to agree to the posted warning.

Therefore, Bob is likely to succeed on an assumption of the risk defense.

Comparative Negligence

Under Georgia law, comparative negligence may be a defense to a negligence claim. Georgia follows a partial comparative negligence approach. Georgia has abolished contributory negligence as a defense. Partial comparative negligence provides that a plaintiff may not recover where they are more than 50% negligent. This is a complete bar to the plaintiff's recovery in a negligence suit. Comparative negligence requires the same negligence elements outlined above.

Here, Max owed a duty to act as a reasonable person. Bob would argue that he breached this duty by consuming three energy beverages before riding the bull. However, this is likely not sufficient because the beverages were non-alcoholic and there is not showing that the consumption of the beverages impaired Max in any way other than potentially increasing his

heart rate, which is likely not so unreasonable so as to breach the duty of care. Bob will also point to Susie Q telling him to ride later, but for the same reasons, this is likely not sufficient to establish a breach of the duty of care.

If breach were met, there is likely not but for cause, because there is not much evidence to show that if he had not had the energy drinks, he would not have fallen. Bob would argue there is because he usually slides off gracefully. Proximate cause is also likely not met because it is not necessarily foreseeable that drinking energy drinks would make you fall off a bull faster, though Bob would likely attempt the argument.

Max was damaged as outlined above.

Therefore, because Max likely did not breach a duty of care, Bob is unlikely to succeed on a comparative negligence defense.

(3) The third issue is what damages Max might claim.

Under Georgia law, the goal of tort damages is to place the plaintiff in the position they would have been in but for the wrongful act. In tort, there are two types of damages: general and special. General damages are presumed to flow from the breach and need not be specifically proven. These include emotional distress, lost earning capacity, and mental and physical pain and suffering. Special damages must be specifically plead and proven with reasonable certainty. Reasonable certainty does not require mathematical precision, but rather a reasonable basis from which a jury can decide damages. These include lost wages and medical expenses. Where mental or emotional distress is coupled with a physical injury, it is generally recoverable in tort.

Here, Max could seek to recover for his depression and any pain and suffering he occurred as a result of the fall or amputation of his leg as general damages. Max can also likely recover his medical bills for the amputation, the prosthetic, and his future medical care as special damages. Max could prove the prior items with receipts and could likely have an expert witness come testify about the future cost of medical care, both mental and physical. Max can also seek lost wages as special damages, and will likely show the money he was unable to make as a result of Bob's actions. He likely cannot recover for Susie marrying another square dancer because the amount of this damage may be too speculative for a jury to determine.

Max will be able to recover for all of his injuries, even though he didn't know he had eggshell osteoporosis. This is because Georgia follows the eggshell plaintiff rule, which provides that a defendant is liable for all of a plaintiffs harms, even if they were more excessive than what could have been foreseeable. In other words, the defendant takes the plaintiff as they find the plaintiff. The plaintiff need not know of their eggshell-nature to recover.

Further, Georgia allows recovery for punitive damages where there is willful or intentional misconduct, or gross negligence. There is generally a $250,000 cap except for products liability cases, cases where the actor was under the influence of alcohol or drugs, or cases where the

defendant acted intentionally. In products liability cases, 75% of the award goes to the state of Georgia. Punitive damages are based on the enlightened conscience of an impartial jury. Here, if max succeeded on his strict products liability claim, he could seek punitive damages with no cap, though part of the award would go to the state. He likely could not seek these on the negligence claim alone, but if Max can show Bob was reckless in knowing of the danger and disregarding it anyway, he may still be able to recover punitive damages on that basis as well. Max would do so by showing that Bob was well aware that the ride was dangerous without cushions based on his own statement that “danger is what people want,” the danger sign, and the reports about serious injuries and that it was reckless to disregard that simply because Bob “doesn't give a flip about cushions and never will.”

Therefore, Max could likely seek general, special, and possibly punitive damages for his claims against Bob.

Essay 1 — Sample Answer 3

1. Max's Claims Against Bob

Strict Liability

Max could bring a claim for strict products liability. To bring such a claim, Max would have to show that Bob's products, the mechanical bulls, were defective, and that the defect caused Max damages. There are three different theories of defects: manufacturing defect, design defect, and failure to warn.

Max would bring a design defect claim. A design defect exists when a product is designed in such a way that it creates an unreasonable risk of harm to the user and there are no commercially feasible alternatives available that would be safer. Here, Max can argue that the absence of cushions or other protective housing made Bob's mechanical bulls more dangerous. Further, Max can argue that cushioning and protective housing were both available and feasible, because Lucy offered to sell such protective housing to Bob at a 50% discount. This alternative is safer because no one has ever been seriously injured on cushioned bull rides, but there are reports that people have been seriously injured on un-cushioned bull rides.

Max would not claim a manufacturing defect or failure to warn defect. A manufacturing defect exists when one specific product is produced differently than other like products, like an error on the assembly line. Here, no facts indicate that the bull Max rode was any different than Bob's other bulls. Failure to warn claims arise when the product fails to appraise consumers of the inherent and known risks of the product's use. Here, the bull was surrounded by a large warning, so this is an unlikely claim.

Max would also have to show that the defective design caused him damages. Causation has two elements: cause-in-fact and proximate cause. Cause-in-fact is assessed by the "but-for test;" that is, but for the defective design of the product, the plaintiff would not have been harmed. Here, Max would argue that, but for the lack of cushioning, Max would not have been seriously injured. This is reinforced by the fact that cushioned bulls have not caused any serious injuries. Proximate cause is an assessment of whether the harm the plaintiff suffered is within the natural risks caused by the defendant's misconduct. Here, Max could easily argue that suffering injuries from a collision is exactly the risk created by foregoing padding and protective housing.

Max would finally have to prove damages. This will be assessed in part 3 of this essay below.

Another theory of strict liability arises when the defendant is engaged in an abnormally dangerous activity. Generally, abnormally dangerous activities include things like launching explosions or working with toxic fumes. Max probably will fail to establish that mechanical bull riding is abnormally dangerous, because it is a simple recreational activity.

Negligence

Max could bring a negligence claim against Bob. To prevail on a negligence claim, the plaintiff must show that the defendant owed a duty of care, breached that duty, and caused the plaintiff damages.

Generally, a person owes a duty to exercise reasonable care to avoid causing harm to others. Certain affirmative duties can also arise. When the defendant owns a piece of land, he owes certain duties to people based on the land. An invitee is a person who the defendant allows onto his land for his own personal or pecuniary benefit. Under the duty owed to an invitee, landowners must make safe all known or discoverable and dangerous conditions on the land.

Here, Bob is a bar owner and Max was a customer, which makes Max an invitee because Bob lets Max into his bar for Bob's pecuniary gain. Therefore, Bob owed a duty to make the premises safe from known or discoverable dangerous conditions. Max could argue that Bob breached this duty by failing to make the bull safe. Max could also argue that Bob breached the ordinary duty of reasonable care by disregarding known dangers in the design of his bulls. This is supported by the facts because Bob said that "people want danger" when he rejected Lucy's cushions.

For causation, the same analysis from the strict liability discussion above applies. Max would argue that, but for Bob's negligence, the bull would be safe, and that Bob's failure to make the bull safe proximately caused his injury because dangerous collisions are the natural risk of an unsafe mechanical bull.

2. Bob's Defenses to Max's Claims

To Strict Liability

First, Bob might argue that the bull was not defective. Bob might point to the fact that his bars have never had a rider suffer a serious injury before. This is not a meritorious argument, however, because under strict products liability, a defendant's knowledge of the risk is immaterial. Alternatively, Bob might be able to argue that other commercially feasible alternatives were available. For example, Bob might argue that even at a 50% discount, Lucy's protective housing and cushioning was still extremely expensive. The price of the housing is unclear from the facts, but this argument is relatively weak. First, the fact that Lucy offered the cushioning at a discount shows commercial feasibility, because presumably other bull manufacturers who do use cushioning pay full price for product. Second, Bob's stated reason for rejecting the cushions is that they are "for babies" and that "danger is what the people want." This has nothing to do with commercial feasibility; instead, it seems that Bob preferred to design his product in a more dangerous manner.

To Negligence

Bob might argue that Max's injuries were unforeseeable because of Max's condition. The "eggshell skull plaintiff rule" provides that a tortfeasor takes his victim as he finds him. The defendant is liable for any injuries that are made worse by the plaintiff's conditions, whether or not the defendant knew about them. Here, Max had a condition that caused his right leg bones to disintegrate upon falling from the bull. The fact that Max had this condition is no defense to Bob, because Max's condition is irrelevant to causation and Bob must bear the losses caused by it.

Defenses to Both Claims

Bob might argue that Max assumed the risk of his injuries by getting on a riding bull. A plaintiff assumes the risks of their injuries when they knowing and voluntarily decide to undertake in an activity despite the risk of harm. In Georgia, a plaintiff's assumption of the risk is a complete defense to liability. Bob would argue that Max is an experienced bull rider who has a "cowboy" reputation and has ridden his bull at least 20 times. Further, Bob would point to the large warning signs indicating that there is no protective cushioning for consumers. This is a strong defense because Max accepted the very same risk that is inherent in bull riding, which is being thrown off the bull.

Bob might also argue that Max was contributorily or comparatively negligent. Contributory negligence, at common law, was a defense to negligence claims. If the plaintiff was found to be negligent himself, he was barred from recovering entirely. Most states have done away with this and adopted some form of comparative negligence. Georgia has adopted partial comparative negligence. If the plaintiff is negligent, his recovery is reduced by his portion of fault, and if that portion of fault is greater than 50%, he cannot recover at all.

Here, Bob might argue that Max was comparatively negligent by consuming three energy drinks back to back before mounting the bull. This defense is weak because Iit is unclear how Max's consumption would affect his riding. Moreover, the industry standard for mechanical bulls is that 90% of riders are thrown off, and Max himself has been thrown off around 75% of the time before. It's unlikely that Max being heavily caffeinated would have contributed to him being thrown off the bull, so this is not a strong defense on these facts.

Bob might instead argue that Max was contributorily negligent because Max flailed wildly trying to remain upright and falling with his leg fully extended. This is a stronger argument because Max should have rode the bull like a prudent mechanical bull rider in the same situation, and his behavior atop the bull could have contributed to how hard he landed. It is likely that Max's recovery will be reduced on account of his negligence, but unlikely that Max would be barred from recovery, because Bob created the dangerous bull in the first place. Hence, Max will probably not be found more than 50% at fault.

3. Damages

In Georgia, a tort victim is entitled to recovery all foreseeable damages caused by the defendant's negligence. This includes general damages, such as pain and suffering, which are left to the enlightened conscious of the jury and do not require proof of a specific amount. This also includes special damages, which the plaintiff must prove, including medical expenses and lost wages.

Here, Max could recover general damages for the physical and mental suffering he's experienced as a result of his leg injury. Max likely suffered a great deal of pain when his leg bones disintegrated and now suffers from depression as a result.

Max can also recover special damages for his hospital bills, the costs of his prosthetic, and his current and future lost earnings. Here, Max had to stay in the hospital and have his leg amputed, and likely incurred significant expenses in the form of hospital bills. He also had to get a prosthetic, incurring further medical expenses. He can also prove how much he would have made as a forklift driver in the time that he has missed by showing what he was earning before the injury. He can also recover his lost earning capacity for the future as a result of being an amputee.

Punitive damages may be available becuase Bob willfully refused to make his product safer. In Georgia, punitive damages are available when the defendant acted willfully, wantonly, or with malice. These damages are intended to serve as a punishment and a deterrent to others, not as compensation for the plaintiff. Here, Max might be able to argue that Bob willfully refused to make his product safer when he mocked Lucy's proposal. This knowing disregard of his customer's safety is probably sufficiently willful and wanton to make punitive damages appropriate.

Essay 2 — Sample Answer 1

Applicability of Article 2 of the UCC:

The first issue in this case is whether Article 2 of the Georgia Uniform Commercial Code ("Article 2") applies to this situation. For the following reasons, Article 2 does apply to this situation.

In Georgia, there are two distinct bodies of contract law. The common law of contracts applies to contracts for services, and UCC 2 applies to contracts for the sale of goods. If there is a contract which provides for both services and goods, the test is whether the services or goods are the predominant part of the contract. Here, the contract is clearly only for the sale of goods. (Note, the existence of a contract will be discussed below.) Cypress agreed to sell Waycross 400 tents at a certain price, and therefore, the contract was only for the sale of goods.

For these reasons, Article 2 of the UCC applies to this situation.

Telephone Agreement Between Waycross and Cypress: Contract?

The second issue in this case is whether the June 2, 2026 telephone agreement was an enforceable contract between Waycross and Cypress. While the June 2, 2026 contract did not create an enforceable contract in and of itself, Cypress's confirmatory memorandum likely made that oral agreement enforceable as a contract.

A valid contract requires an offer, acceptance, and consideration. Here, there was an offer and acceptance to sell 400 tents at $60 per tent, as evidenced by the facts. The facts clearly indicate that an oral agreement to sell the tents was reached, even if the particulars of the offer and acceptance. Under Article 2, a contract for the sale of goods may be accepted either by a promise to ship or a prompt shipment of conforming or nonconforming goods, and Cypress agreed to ship the tents promptly. Furthermore, this agreement was supported by consideration, because Waycross would pay $60 per tent.

The main argument against formation of a contract is that the statute of frauds was not satisfied. Certain contracts must be in writing under the statute of frauds. One such category of contracts is contracts for the sale of goods over $500. Here, the sale of 400 tents at a price of $60 per tent clearly exceeds the $500 requirement for the contract to be in writing. And, the facts indicate that nothing was ever put in writing during that call. Therefore, it would appear as thought the statute of frauds was not satisfied, and no contract was formed. However, under Article 2, if a merchant sends a confirmatory memorandum that is signed by them, describes the essential parts of the contract including quantity and price, and is not objected to in a reasonable time, the statute of frauds will be satisfied. Here, Cypress is a merchant. Cypress manufactures and sells camping tents, which means that they "regularly deal in goods of the kind," which, under Article 2, makes them a merchant. Waycross is also a merchant because they regularly buy camping equipment from manufacturers to resell to consumers. Therefore, the contract here is between merchants. As such, when Cypress sent Waycross the signed memorandum confirming

the quantity, price, and delivery provisions, a contract was formed between the two parties which satisfied the statute of frauds.

The remaining issues are that the effects of the later writings on the parties' contract. These writings, although they may have an impact on the terms of the contract, do not have any impact on the enforceability of the contract. Article 2 strongly favors the formation of contracts, and these later writings, which are discussed fully below, will not have any effect on the enforceability of the contract, only its terms.

Therefore, while the June 2 phone call may not have formed a contract by itself, the confirmatory memorandum sent by Cypress satisfied the statute of frauds, giving rise to an enforceable contract.

Terms of the Contract: Warranty Disclaimer and Limited-Remedy Clause:

The next issue in this case is whether the terms of the contract include the warranty disclaimer and limited remedy clauses. For the following reasons, these terms are likely not part of the contract.

Battle of the Forms

Under Article 2 of the UCC, in a contract between merchants, an acceptance which contains additional or different terms forms a contract which includes these terms, unless (1) the terms materially alter the contract; (2) acceptance is made expressly conditional on assent to the additional terms; or (3) objection is made within a reasonable time. For different terms, the jurisdictions are split between the knockout rule and following the same rules as for additional terms. However, here, only additional terms are at issue because the June 12 letter contained additional warranty disclaimer and limited-remedy clauses.

As a threshold matter, as discussed above, this contract is between merchants. The question is then whether the additional terms became part of the contract. Here, the clauses disclaiming warranties and limiting Buyer's sole remedy to repair or replacement likely has a material effect on the terms of the contract because it waives two important warranties in every sale of goods contract, as well as limits the Buyer's remedy in the event of a breach. Therefore, these terms have a material impact on the terms of the contract, so they do not become part of it. However, if they did not materially alter the contract, they would potentially become part of the contract, subject to the warranty disclaimer rules below, because acceptance was not made expressly conditional, and Waycross did not object within a reasonable time.

Therefore, the warranty disclaimer and limited remedy clauses likely did not become part of the contract.

Disclaimer of Warranties

Separately from Article 2's "battle of the forms" provision, a related but distinct sub-issue is whether, even if the warranty disclaimer provision was included in the contract, whether it would be enforceable.

There are certain implied warranties in sale of goods contracts. First is the implied warranty of merchantability, which provides that the Seller impliedly warrants the goods will be fit for their ordinary purpose. Additionally, the implied warranty of fitness for a particular purpose applies when the seller knows that the buyer is relying on the seller's superior expertise with respect to the goods in question. At issue here is the implied warranty of merchantability, which applies in all sale of goods contracts, including between merchants.

Even if a provision purporting to waive the implied warranty of merchantability is a term of the contract, which, as discussed above, it is likely not, the waiver must be conspicuous and mention merchantability. In Georgia, a waiver is "conspicuous" if it is in all capital letters, in bold, or in a different size or typeface. Here, the wavier does mention merchantability specifically, and that they seller disclaims all warranties. However, the waiver is likely not conspicuous because it is in the same size and typeface as the rest of the agreement, not in bold, all capital letters, or a different color or size font.

Therefore, even if the warranty-disclaimer provision was included into the contract under the battle of the forms provision, it would not be included in the contract because it is not conspicuous.

<u>Waycross's Rights and Remedies, and Cypress's Options:</u>

The final issue in this case is what Waycross's rights and remedies are with respect to the 75 nonconforming tents, and what Cypress's options are.

Waycross's Rights

First, Waycross's rights. Under Article 2, the "perfect tender" rule applies, which means that the goods must be tendered exactly as specified, in terms of price, quantity, time and place of delivery, and specification. Anything less is a breach. Here, Cypress did tender the 400 tents and agreed to accept the price agreed to. However, the goods were not perfectly tendered because 75 of the tents were missing their support poles. Therefore, Cypress has breached the contract.

When a seller breaches, a buyer has several rights under Article 2. They may accept all of the goods, reject all of the goods, or accept the conforming goods and reject the rest. With respect to goods rejected, the buyer may either store the goods for the seller and arrange for shipment back to the seller or resell the goods for the seller's benefit. The buyer may also "cover" on the open market, which means purchase conforming goods from another seller, and then sue the original seller for the difference between the cover price and the contract price. Here, Waycross's

best option appears to be to accept the 325 tents that conform to the contract, and reject the 75 nonconforming tents. Furthermore, selling these tents for the seller's benefit does not appear to be a good option because the tents are useless without the support pole, so it is unlikely they will be able to find a buyer. Waycross should probably, therefore, cover on the market, and recover damages for any additional expenses incurred, as well as arranging for the reshipment of the nonconforming goods back to Cypress.

Cypress's Options

Next, Cypress's options. Cypress has several options here. First, they can give instructions to Waycross on where and how to store the nonconforming tents before they are shipped back to Cypress. These instructions will be binding on Waycross. However, Cypress's more attractive option is to exercise their right to cure under Article 2.

The perfect tender rule of Article 2 is subject to the seller's right to cure. As mentioned, acceptance may be made by a prompt shipment of nonconforming goods, which constitutes a simultaneous acceptance and breach, unless the goods are offered merely as an accommodation. If nonconforming goods are shipped, and the time for performance has not yet matured, the seller can notify the buyer of its intent to cure the defect, and may do so within the time to perform under the contract. here, Cypress delivered nonconforming goods to Waycross, but this delivery was on July 20, 2026, and the contract provided that delivery could be made up to August 1st. Therefore, there is still time for Cypress to cure its breach. Cypress should notify Waycross that these 75 nonconforming tents are merely an accommodation, and make arrangements for the delivery of conforming tents.

Essay 2 — Sample Answer 2

1. **The first issue is whether Article 2 of the Uniform Commercial Code applies to the situation.**

Article 2 of the Uniform Commercial Code ("UCC") applies to the sale of goods. A good is tangible, movable object.

Here, the purported contract is for the sale of tents. Tents are goods because they are tangible, three dimensional objects that can be moved as further evidenced by the shipment, or movement, of the tents.

Therefore, Article 2 of the UCC applies to the situation between Waycross and Cypress.

2. **The second issue is whether the June 2, 2026 telephone agreement is an enforceable contract between Waycross and Cypress, and what effect the later writings have on its enforceability.**

June 2, 2026 Telephone Agreement

A valid contract requires offer, acceptance, and consideration.

An offer must be a reasonable manifestation of willingness to enter into a transaction, such that the other party's acceptance is invited and will conclude it. Under the UCC, acceptance may be made by any reasonable means, unless otherwise specified by the offeror in the offer. Here, there was likely offer and acceptance when Waycross and Cypress orally agreed that Cypress would sell Waycross 400 tents at $60 per tent.

Consideration requires a bargained for exchange. Here, there is consideration because Cypress would sell the tents in exchange for Waycross's payment of $60 per tent.

Under the statute of frauds certain contracts are required to be in writing to be enforceable. Under the UCC, a contract for the sale of goods over $500 is required to be in a writing, signed by the party to be charged, that states the enforceable term. Here, the oral telephone call alone is not sufficient to create an enforceable contract because it is oral, not in writing, and nothing was put into writing during the call.

However, the UCC provides an exception to this rule: the merchant's confirmatory memorandum exception. This exception provides that in a transaction between merchants, a writing confirming a prior oral agreement will be enforceable against a party where the other party sends a signed writing confirming the essential terms of the agreement, the recipient has reason to know of its contents, and the recipient does not object to the memorandum within 10 days. The essential terms for a contract for the sale of goods are quantity and price. A merchant is someone who regularly deals in goods of the kind or holds themselves out as such.

Here, Waycross is a merchant because they regularly purchase camping equipment, including tents, from manufacturers to sell at its sporting-goods retail stores. Cypress is a merchant because they regularly manufacture and sell camping tents. The first writing confirming the telephone agreement was signed by Cypress and stated the essential terms, that there were 400 tents for $60 a piece. Waycross had reason to know of its contents because it received the letter and put the letter in its file drawer without responding. This is likely sufficient to show there was no objection, and satisfy the merchant's confirmatory memorandum exception to the statute of frauds. However, only 8 days later and within the 10 day period, Waycross mailed its own confirmatory memorandum. Waycross might argue that this was an objection, in which case the merchant's confirmatory memorandum exception would not be satisfied. This may not be sufficient to constitute an objection because it merely adds an additional term. If it is not, Cypress's June 4 signed memorandum will be sufficient to bind Waycross.

If the purchase orders sent by Cypress on June 4 does not satisfy the merchant's confirmatory memorandum exception to create an enforceable contract, the June 4 letter will likely be construed as an offer to buy the tents by Waycross. Cypress June 12 acknowledgment would likely be considered the acceptance. Consideration is sufficient as stated above. The terms of the contract, as affected by the later June 4 and June 12 writings are outlined below.

Therefore, although the telephone call alone is not an enforceable contract, it likely became an enforceable contract because Cypress's memorandum likely satisfied the merchant's confirmatory memorandum exception to the statute of frauds.

3. The third issue is whether the warranty-disclaimer and limited-remedy clause are a part of the contract.

Under the common law, acceptance was required to mirror the terms of the offer exactly (the mirror image rule). The UCC has modified this requirement in Section 2-207, also known as the "battle of the forms provision." The battle of the forms provides that where an acceptance differs from the terms of the offer, additional terms will become part of the contract unless (1) the offer is expressly limited to its terms (2) the additional term is material to the agreement, or (3) the offeror objects to the term within a reasonable time. There is a jurisdictional split on different terms. Some jurisdictions treat different terms the same as additional terms and others will knock both terms out and have the UCC gap filler provisions fill in the term.

Here, if Waycross's signed purchase order constituted an offer, Cypress's own signed acknowledgement form was likely the acceptance. Waycross's form stated the 400 tents for $60 a piece and August 1 delivery. Because Cypress's form kept these terms the same, they will become a part of the contract. However, Cypress also added a warranty-disclaimer and limited-remedy clause in its acknowledgement. Waycross's form said nothing about warranties, so this is an additional term. Waycross's offer did not say that acceptance was expressly limited to the terms. And there is no showing that Waycross objected because neither party said anything further about the disclaimer. However, this provision is likely material. It limits Cypress's liability exponentially by removing any liable for implied warranties and by limiting Buyer to a sole

remedy of repair or replacement. If a judge or jury found these terms to be material, which they likely are, they would not become a part of the contract. In determining whether the term is material, and accordingly what the terms are, a court may consider the parties' course of dealing under the UCC. Because Waycross and Cypress have done business together several times in the past, the court may consider whether this term was usually included in their contracts in determining its materiality. Without more information on course of dealing, it is likely both clauses are material.

Therefore, the warranty-disclaimer and limited-remedy clauses are not likely part of the contract because they are different, material terms.

4. **The fourth issue is what Waycross's rights and remedies are with respect to the 75 nonconforming tents, and what options Cypress has.**

The UCC requires perfect tender in a contract for the sale of goods. This means that any nonconformity, however, slight gives the buyer a right to (a) accept all the goods, (b) reject all the goods, or (c) accept any commercial units and reject any commercial units. However, this right is limited where a seller tenders delivery prior to the date required in the contract. If a seller tenders early delivery, and the goods are nonconforming, the buyer must give the seller until the contract date to cure tender and make it perfect before the date specified in the contract.

Here, the contract had a delivery date of August 1. When Cypress delivered the tents that were missing support poles, and thus nonconforming, it was only July 20. This means that Waycross must at least give Cypress until August 1 to repair the nonconforming goods. In the meantime, Waycross can accept the 325 conforming tents and allow Cypress to cure the remainder.

If the seller does not cure within the stated period, the seller breaches the contract and the buyer has a right to damages. If Cypress does not cure by August 1, Waycross can accept or reject some or all of the goods as stated above. It can also sue for damages. Damages generally are the difference between the contract price and either cover price or market value, depending on whether the buyer purchases cover, plus incidental damages, minus expenses saved due to breach. Buyer has a duty to mitigate damages by seeking cover. Consequential damages are generally not recoverable in contract. If Waycross pursues a breach of warranty claim the damages will be the difference between the goods as warranted and as delivered.

Cypress is likely to be able to recover these damages because even if the warranty and remedy clauses became part of the contract they may not be enforceable. Under the UCC, such clauses generally must be conspicuous in order to be enforceable. In Georgia, writings are conspicuous if they are in header form. If they are part of the text, they may be conspicuous if they are in another typeface, font sized, bolded, or otherwise made to stand out. Here, the clauses were printed in the same size and typeface as the rest of the form. Accordingly, the clauses will likely be unenforceable, in which case Waycross can recover standard UCC damages.

Cypress, as stated above has the option to cure the nonconforming goods by August 1. If it does not, it will breach the contract and be subject to damages as outlined above.

Therefore, Waycross must give Cypress the remainder of the contract period to cure the nonconforming goods, which if Cypress does not, Waycross may accept or reject some or all of the goods, and/or sue for breach of contract and damages.

Essay 2 — Sample Answer 3

1. Whether Article 2 of the UCC Applies

Article 2 of the UCC applies to any contract for the sale of goods. A "good" is any movable object. Where a contract involves both the sale of a good and services, the application of the UCC is based on the primary purpose test, which analyzes whether the main subject matter of the contract was for a sale of goods with services in connection to those goods, or whether the goal of the contract was the services themselves.

Here, Article 2 of the UCC applies because Waycross agreed to buy and Cypress agreed to sell tents, which are movable objects and thus goods. Therefore, the contract was for the sale of goods, and Article 2 applies.

2. The June 2, 2026 Telephone Agreement

The essential elements of a contract are an offer, acceptance, and consideration. An offer is a clear invitation by the offeror to enter into an agreement which states the terms of that agreement. An acceptance, generally, is a manifestation by the offeree of his or her assent to those terms. Consideration is a mutual exchange of something of legal value. Here, all three of these elements are likely present in the telephone call, because Waycross offered to purchase tents, Cypress accepted that agreement, and consideration would be exchanged when Waycross paid for the tents and Cypress shipped the tents.

However, the Statute of Frauds provides that any contract for the sale of goods for more than $500 must be in writing and signed by the party against whom enforcement is sought to be enforceable. Under the UCC's merchant's confirmatory memo rule, when both parties to a contract are merchants, this requirement is satisfied for an otherwise oral contract when one merchant sends a confirmatory memorandum with the terms of the agreement in writing to the other and the other party does not object. A merchant is a usual buyer or dealer of the goods that are the subject matter of the contract.

Here, the Statute of Frauds applies, because the contract is for the sale of goods as explained above and for the price of 400 tents at $60/tent, well above $500. The Statute of Frauds would make this agreement unenforcable, because it is not in writing or signed by either party. Therefore, the telephone call alone did not create an enforceable agreement.

However, the merchant's confirmatory memorandum rule probably saves the agreement. Here, Waycross and Cypress are merchants with regards to tents because Waycross regularly buys tents from manufacturers to sell to customers, and Cypress manufactures and sells tents. On June 4th, two days after the phone call, Cypress mailed Waycross a signed letter detailing the material terms of the sale that the parties orally agreed to, including the price, quantity and delivery date. Waycross did not object to this letter. This confirmatory memorandum likely created an enforceable contract.

However, the June 12 purchase order may show that Waycross did not intend to be bound by the confirmatory memorandum, and perhaps that it objected to the confirmatory memorandum. In that case, the purchase order would be a new offer, and neither the parties' telephone agreement nor the confirmatory letter would have any binding effect on the parties.

3. The Warranty Disclaimer and Limited-Remedy Clause

At common law, an acceptance must assent to all terms of the offer and include no new terms to be valid. An acceptance that contains new terms is considered a counteroffer that extinguishes the previous offer. The UCC altered the common law rule with the battle-of-the forms provision. Under the UCC, when the parties are merchants, new terms in an acceptance that do not materially alter the agreement become a part of the agreement unless the offer expressly states that the terms are limited to those within the offer or if a party objects. Terms that materially later the agreement do not become part of the contract unless the other party consents.

Here, Cypress included new terms within the signed acknowledgement form because Waycross's purchase order did not include any express terms about warranties. Because the UCC applies, this does not constitute a counteroffer. As discussed above, the parties are merchants, so the disclaimer could potentially become part of the agreement because Waycross did not object, nor did its offer state that it was limited to its terms.

However, the disclaimers probably did not become a part of the agreement because the warranty disclaimers materially altered the contract. All contracts for the sale of goods include implied warranties, such as the implied warranty of merchantability. Even though Waycross's purchase order did not expressly include this warranty in its language, the warranty was implied, so this was a term of the agreement. Therefore, by attempting to disclaim warranties, Cypress sought to materially alter the terms of Waycross's offer. So, the disclaimer did not become a part of the contract that was formed.

Moreover, in Georgia, a disclaimer of contractual warranties must be conspicuous. This can be accomplished by using a larger front size or different type face than the rest of the agreement, setting the terms off from the other terms, or other means that make them obvious to the other party. Here, Cypress did nothing to make the disclaimer conspicuous, because Cypress used the same size and type face as the other terms in its acknowledgement form. Therefore, this is an invalid attempt to disclaim implied warranties.

4. Waycross's Rights

At common law, the person performing was required to make a perfect tender of goods. That means even one defective good meant the party did not perform its obligations under the contract. The UCC has altered this rule. In a contract for the sale of goods, if the seller ships defective goods, the seller has a right to cure by shipping conforming replacement goods, either within a reasonable time or the time of shipment provided in the contract. If the seller does not

tender conforming goods, the buyer then has the right to either accept and pay for only the conforming goods it did receive or reject the shipment entirely.

Here, Waycross received 325 conforming tents and 75 noncomforming tents. Before Waycross can exercise its rights under the contract, it must notify Cypress of its objection to the 75 defective tents. Cypress has the right to ship 75 conforming tents before August 1st, the date provided in the contract for shipment. At that point, if Cypress ships conforming tents, Waycross has to accept the tents and pay for the contract price. If Cypress cannot ship the 75 tents in time, then Waycross may either pay for the 325 tents at $60/tent, or reject Cypress's tender and avoid the contract, but if it does the latter, it must return the tents to Cypress.

Essay 3 — Sample Answer 1

TO: Michael Scott

FROM: examinee

DATE: july 28, 2026

RE: Pam and Dwight

MEMORANDUM

1. **The issue is whether the County ordinance is unconstitutional on its face or as applied to Pam; and what arguments would support the constitutionality of the ordinance, and Pam's defense that the statute is unconstitutional.**

a) Unconstitutional on its face

Freedom of speech is protected under the first amendment of the US Constitution, and a state actor cannot restrain the right to free speech in many circumstances. However, governments are capable of passing constitutional certain time, place, and manner [TPM] restrictions on speech. The analysis of the constitutionality of a TPM restriction depends on its specific context. First, courts determine whether the TPM restriction is viewpoint based or viewpoint neutral. A viewpoint neutral TPM restriction applies to all type of speech generally, while viewpoint based restrictions restrict speech based on its specific content and message. Viewpoint-based restrictions are presumptively unconstitutional, as are attempts to restrict speech based on its viewpoint before that speech is made. Second, courts look to the location the TPM addresses: if a viewpoint-based restriction applies in a traditional public forum or limited public forum, strict scrutiny applies. However, if it applies to a non-public forum, then only rational basis applies, because there are generally no free speech rights in a non-public forum. Traditional public forums include public streets, sidewalks, parks, and other areas that represent a public gathering place or 'town square.' Limited public forums are spaces open to the public but which are only sometimes used for free speech activity, such as theaters. Nonpublic forums include highly regulated places like courthouses, jails, and military bases.

When strict scrutiny applies to a TPM restriction, the government has the burden of demonstrating that the restriction is narrowly tailored to serve a compelling government interest. Strict scrutiny is the highest level of scrutiny a court can apply to a government regulation, and most restrictions will not pass it absent extraordinary circumstances.

Here, the ordinance Mifflin county passed is a TPM restriction that aims to limit free speech for a limited time near the Preserve, specifically on the public roads and sidewalks within 1,000 yards of the private Preserve property. This restriction is content-based, as it applies only to speech

that is made on gun rights or mental health. Therefore, because the TPM restriction applies to a traditional public forum, the public roads and sidewalks, and is content based, it must pass strict scrutiny in order to be constitutional on its face. Mifflin county has the burden of establishing that the ordinance is narrowly tailored to serve a compelling government interest.

For Mifflin County's arguments that the ordinance is constitutional, they first and foremost need to argue that they have a compelling interest at stake. There are facts to support a compelling interest: while merely avoiding embbarrasment is not an interest, the county does have a strong interest in preserving safety for the President and many other important global leaders. Given the scale of the gathering and how many significant parties will be attending, the county has a strong basis for establish that their interest in restricting speech is compelling.

The more challenging argument for the county to make is that their restriction is narrowly tailored to address this interest. While the ordinance is limited in time to just a week, it effectively limits all form of protest the public would have on the issues of gun rights and mental health, which are content-based topics the ordinance is attacking. While the ordinance does provide an alternative means of speech through the protest at Memorial park, it is arguably not a meaningful alternative channel of speech given that it is miles away from the Preserve, and so far that it is effectively detached from the conference of leaders. If the county had made the ordinance to merely prevent all sorts of speech or signage on that strip of land for that week, they would have a stronger leg to stand on due to the content-neutrality of the regulation, as it tends to show they did not mean to prevent public dialogue on a certain topic and just merely wanted to preserve safety in a specific, narrow way whilst keeping the park as an alternative channel of speech.

However, because this ordinance does discriminate on speech based on its content, Pam has an extremely strong argument that even this somewhat narrow tailoring by the government such as the week long length and 1,000 foot limitation will not lead this ordinance to pass strict scrutiny. Content-based speech discrimination is perhaps the most harshly treated speech regulation by courts because it damages the core of the first amendment, which is to protect the people's right to free speech on matters of political and public discourse. Because this ordinance is a content-based future restriction on speech, it is presumptively unconstitutional and the government must prove that it passes strict scrutiny, in that it is narrowly tailored to address a compelling government interest. While the government has strong arguments regarding how compelling their interest is, Pam has the better argument that this ordinance is unconstitutional on its face due to its content-based restriction of speech.

b) Unconstitutional as applied to Pam

Generally, in Georgia, the state legislature is responsible for establishing crimes in the state. However, county governments do retain some police powers, and can criminalize certain conduct in its control, such as choosing to implement lower speed limits within its borders. But, even if a county does have the power to criminalize conduct, a criminal ordinance can be unconstitutional as applied to a specific individual if charging them with that crime does not comport with due

process: while ignorance of the law is no excuse, if a defendant had no notice of the criminal nature of conduct, applying that crime to them could be unconstitutional.

Here, the ordinance was passed very soon before the protest, and no facts indicate that the restricted zone was marked off with any warnings or rope or placards. If Pam was just walking along the public street and had no way of knowing she had passed into the restricted zone, it would not comport with due process to charge her with this crime, as she would have no way to know she was trespassing on a restricted area if it looked the same as the rest of the public street.

Pam could also argue that typically, trespass is a specific intent crime: essentially, to be guilty of a trespass, the defendant must intentionally enter the land of another, even if they do not know that the land belongs to someone else. Here, Pam arguably did not possess that specific intent, as for all appearances she was just continuing to walk along a public road. She accidentally strayed into the restricted area, and had no intent to actually enter that area, and seemingly had no reason to know that there was a boundary she was crossing. If Pam lacks the requisite mens rea required for this crime covered in the county ordinance, it would be unconstitutional to convict her under the statute as it applies to her.

2. **The issue is what criminal charges should be brought against Dwight, including what defenses Dwight could assert on each charge.**

Under Georgia law, there are different degrees of battery. Simple battery constitutes an unwanted offensive or harmful physical contact, battery constitutes a physical contact which causes physical harm, and aggravated battery is a physical contact that causes a loss of a limb or permanent physical disability or scarring.

Here, since Dwight's voluntary physical strike caused the officer's face to be permanently disfigured and deformed, the injury supports a charge of aggravated battery. But, Dwight has a strong argument that he was acting in imperfect self-defense, as he only made a voluntary movement under the assumption he was facing imminent physical force from the officer. However, the officer was taking such action in order to effectuate an arrest, so Dwight may not be successful in claiming that he was privileged to act in self defense. And, even though Dwight did not intend to physically injure the officer, the only intent required for battery is to make a voluntary movement- Dwight did not need to intend to actually injure the officer in order to be charged with battery.

Additionally, Dwight could be charged with aiding or abetting Pam's crime of violating the ordinance and her resistance of arrest as an after-the-fact accomplice. Pam fled the scene to avoid arrest, and Dwight acted affirmatively to aid her in that endeavor by stopping the police officer's path. Even if Pam had already committed her crime under the ordinance, a party can still be liable for aiding or abetting after the commission of the crime if they assist in helping the defendant avoid detection or custody, such as by obstructing law enforcement or secretly harboring the fugitive defendant. Here, since Dwight obstructed the officer, he could be seen as aiding Pam in avoiding capture and thus be an accomplice after-the-fact.

Also, since Dwight obstructed the arrest of Pam, he could be charged with obstruction of justice, because he interfered with the Police's attempt to carry out an arrest.

Essay 3 — Sample Answer 2

TO: Michael Scott

FROM: Assistant D.A.

Date: July 28, 2026

RE: Pam and Dwight Matter

The issue is what the legal elements and standard are for reviewing the constitutionality of the ordinance.

Time, place, manner restrictions of public forums are upheld if three elements are met: the law is content-neutral; the law is narrowly tailored to serve an important government interest; and it leaves open alternate channels of communication. A public forum is a place traditionally held out for speech-related activities, such as public sidewalks and parks.

The issue is why the ordinance is constitutional.

Here, the ordinance may be a constitutional time place and manner restriction. It is a time place and manner restriction because the law does not prohibit all speech activity, but only speech activity that is at a certain place and for a limited duration. The ordinance prohibits public gatherings and protests for one week, October 14-21, within 1,000 yards of the Preserve, in which the contents of gun rights or mental health will be tolerated. Signs of that nature are also prohibited

The strongest facts pointing in favor of constitutionality are the government's weighty interest in passing this ordinance. Here, the government is hosting a three-day summit of political leaders, including the US President. The County is deeply concerned with the safety of the US President and other visiting foreign leaders, and is trying to prevent protests from becoming a national security threat. This is the county's single best argument that the law is narrowly tailored to serve an important government interest, because the county can argue that the protests are only concerned with the area the president will be in and for a duration that is not unreasonably linger than the president's stay in the county. The county can further argue that logistical interests like preventing traffic during the summit are important, as well as their interest in preserving the county's tourism, as the Preserve where the summit is hosted is the county's economic jewel. Though these arguments are not as strong as the argument for preserving national security, they may help support the ordinance's constitutionality. The fact that the County does not want to look bad is not an important government interest.

The fact that alternate channels of communication are still open also point to the fact that the ordinance is constitutional. The ordinance specifically mentions that public gathering and protests are still allowed in Memorial Park. Further, while not explicitly mentioned, the ordinance

is only "bans" activity within 1000 yards of the Preserve. Jim, Pam, Dwight, and the others were successfully protesting near the 1,000 yard perimeter of the preserve. Therefore, the ordinance leaves open alternate channels of communication.

The issue is what Pam's defenses that the statute is unconstitutional are.

Prior restraints on speech are laws that are passed in order to stop speech before it is happening. They are generally unconstitutional. Here, Pam can argue that this is a prior restraint on speech and that therefore it is unconstitutional on its face.

Pam also has several arguments as to why the ordinance is not a proper time place and manner restriction. First, the ordinance is content based. It specifically only applies to speech related to gun rights or mental health topics. Therefore, based on this alone, the ordinance is unconstitutional.

Second, the ordinance is not narrowly tailored to serve an important government interest. As discussed above, the ordinance likely serves an important government interest, most importantly national security followed by efficiency and economic interests. However the ordinance is not narrowly tailored. First, the law covers the entire week when the summit is only for 3 days. Second, the 1,000 yard ban is very large. A more narrowly tailored law would prohibit just the area outside the summit where the president is likely to have an increased risk of harm, like 100 feet, or even 100 yards. Finally, the protest is for all hours of the day of the week, and not limited to when the president and others are more exposes, like entering and leaving the Preserve. Therefore, the ordinance is likely unconstitutional because it is not narrowly tailored to the important government interest.

Finally, Pam could argue that while the ordinance leaves open alternate channels, that they are inadequate. Memorial Park, which the ordinance designates as an alternate forum, is located miles from the Preserve, in a rundown crime-ridden area of the County. Pam could argue that this is not sufficient to be an alternate channel. However, as discussed above, this argument might fail, because while the county designated memorial park as an alternative channel, others were actually available; Pam was able to protest very close to the 1000 yard perimeter.

The issue is what criminal charges should be brought against Dwight, and what his defenses are.

In Georgia, there are three levels of battery: simple battery, battery, and aggravated battery. Simple battery occurs when the defendant harms the victim by touching in a harmful or offensive way. Battery occurs when the defendant substantially harms the victim through harm or offensive contact. Aggravated battery occurs when the defendant causes significant loss of use of a body part, loss of a body part, or a severely deformed or disfigured body part through aggravated means, such as even more substantial force, strangulation, or other excessive force.

Here, Dwight battered the officer. Though Dwight knew he could kill a person with his bare hands due to his training as a navy seal, Dwight did not have the specific intent to kill the officer, so he

cannot be charged with attempted murder. The officer also did not die, so he can not be charged with any homicide crime. Therefore, because the office was severely personally injured, Dwight should be charged with one of the forms of battery.

Dwight should likely be charged with aggravated battery. Dwight should not be charged with simple battery because the officer was severely injured. He also likely should not just be charged with battery because the officer's nose was broken and his face was permanently and grossly deformed. Therefore, Dwight should likely be charged with aggravated battery. Dwight satisfies the elements of aggravated battery because by a harmful or offensive touching (he touched the deputy with his hand to slow him down), he caused the officer to suffer an injury and resulted in a broken nose and a grossly and permanently disfigured and deformed face. Dwight did not need to have the specific intent to batter the officer, just the general intent to touch the officer in a manner he knew could harm the officer. Dwight knew that his touching could harm the officer because he knowns that he can kill someone with just his bare hands. Therefore, Dwight should be charged with aggravated battery.

Dwight could also be charged with trespass under the ordinance if he stepped within the 1000 yard area defined in the ordinance. He could also be charged with obstruction of justice for getting in the way of the officer when he yelled at Pam, if the officer was going to arrest Pam. Dwight stepped in front of her and told her to run so she was not caught/ arrested. Therefore, if the officer was going to arrest Pam for violating the ordinance, then Dwight could be charged with obstruction of justice.

Dwight's best defense to the battery claim is self defense. To succeed in a self defense claim, the defendant must show that they had a reasonable belief that they were about to experience bodily harm, and their use of force must also be reasonable. Before Dwight battered the officer, he stepped in front of Pam so she was not confronted by the Officer. the officer did not appreciate that, so he yelled at Dwight and started to raise his hand towards Dwight. In response, Dwight tried to touch the deputy's chest to slow him down. However, at the same time, the deputy ducked, and instead of hitting the deputy in the chest, Dwight hit him in the face. Dwight's self defense claim may succeed. It was reasonable that Dwight thought harm to him was imminent, because the officer was raising his hand towards Dwight. It is reasonable to assume that Dwight was about to be struck by the officer. Further, Dwight's use of force was reasonable. He did not intend to strike the officer in the face, but just to place his hand out towards the officer's chest in order to slow the officer down. This is a reasonable use of force. Dwight did not use deadly force and was not trying to harm the officer in any way. Therefore, his self defense claim may succeed.

Essay 3 — Sample Answer 3

MEMORANDUM

TO: Michael Scott, Mifflin County D.A.

FROM: Assistant D.A.

DATE: July 28, 2026

RE: Mifflin County Shooting

(1) The first issue is whether the County ordinance is unconstitutional on its face or as applied.

The Free Speech Clause of the First Amendment protects the right of free speech. Generally, content-based restrictions, whether subject matter or viewpoint restrictions, are subject to strict scrutiny. Strict scrutiny requires that the ordinance be upheld only if it is necessary to achieve a compelling government interest. The government has the burden of proving this requirement is met. Ordinances reviewed under strict scrutiny are rarely upheld. Where there is a time, place, and manner designation in a public forum, the law is subject to strict scrutiny, and will likely be struck down unless it is content-neutral, narrowly tailored and necessary to achieve a compelling government interest, and leaves open alternative channels of communication. A public forum is a place generally held open to the public for speech, like a public park or a sidewalk. The First Amendment can only be violated by state action, meaning action by the government. The First Amendment applies to state and local governments through the Fourteenth Amendment, which incorporates certain amendments, including the First, to the states and makes them applicable at the state level.

(a) Arguments Supporting Constitutionality

Here, the government would argue that the regulation is merely a time, place, and manner restriction and should be upheld. However, the law is not content-neutral and therefore will be subject to strict scrutiny. Although not content-neutral, the government would argue that is narrowly tailored and necessary to achieve a compelling government purpose, and leaves open alternative channels of communication. The law is narrowly tailored because it runs only for one week, October 14-21, during the period when the summit is to occur and for only a few days surrounding it to allow for safe ingress and egress. Notably, the ordinance need not be the least restrictive means available, and accordingly is not unconstitutional simply because it extends past the dates of the summit. It is further tailored by only applying within 1,000 yards of The Preserve, the location where the summit is to occur. There is a compelling government interest in keeping political leaders safe during this period. Both the President of the United States and other foreign leaders could be in danger by protestors, and this ordinance only restricts speech as is necessary to achieve this interest. The ordinance also leaves open alternative channels of communication

by providing for Memorial Park, as well as any other public forum. As demonstrated by Pam, the area beyond 1,000 yards is an open alternative channel of communication that is sufficient.

(b) Arguments Supporting Defense of Unconstitutionality.

Here, there is state action because Mifflin County promulgated this regulation. The regulation applies to public forums because it prohibits speech on public streets and sidewalks. The regulation is not content-neutral because it is a subject matter restriction that restricts only messages on the topics of gun rights and mental health. It will likely be argued that the ordinance does not leave open alternative channels of communication. Although it purports to provide a space for protesting in Memorial Park, Pam will argue that is not a sufficient alternative forum. Memorial Park is located miles from the Preserve, and accordingly, would not allow for the desired effect of getting the message across to many of those who will likely be in attendance at The Preserve. Further, Memorial Park is in a rundown, crime-ridden area that may be unsafe for protestors. Accordingly, there is no sufficient alternative channel of communication open. Pam would further argue that the law is not narrowly tailored, because the summit is only three days, and the regulation is for seven days. Even adding a day for everyone to arrive and one to leave, it is not sufficiently tailored to achieving the purpose. Further, even if safety is a compelling purpose, Pam would argue that extra traffic, a brief stint in tourism, or the county's visual image are not as compelling of interests. The ordinance is not necessary to achieve these interests because speech could have been limited to only a time, place, and manner restriction to allow the people a forum to communicate their message.

Though there are competing arguments on both sides, strict scrutiny is an exceptionally high bar, and because the ordinance is not content-neutral, it is unlikely to meet this standard.

Therefore, the ordinance is likely unconstitutional on its face.

As Applied to Pam

A person who violates a law generally may not challenge its constitutionality. Here, Pam violated the regulation by protesting with the topic of gun rights and straying onto the prohibited area within 1000 yards of the Preserve. Her message was about gun rights because even though it did not explicitly say so, it was implied. Pam had lost her child in a shooting, which raised many gun rights issues. On her sign Pam put a photo of her child and the message "enough is enough - protect our kids." This message coupled with the photo sends a message that it is about gun rights and wanting the legislature to do something about it. Therefore, by violating the statute Pam has likely lost her right to challenge the constitutionality of the ordinance. However, if she was able to, the law would likely be unconstitutional as applied to Pam for the same reasons as stated above.

Therefore, the law is likely unconstitutional on its face, but not as applied to Pam.

(2) The second issue is what charges should be brought against Dwight.

Under the Georgia Rules of Professional Conduct and Rules of Criminal Procedure, a prosecutor has a duty to only bring charges that are supported by probable cause. The following crimes may be charged against Dwight.

Battery

Under Georgia law, a simple battery occurs where a person intends to, and does so procure, a harmful or offensive contact with a person of the other. A battery occurs where the person does so and causes visible or substantial physical injury. An aggravated battery occurs where the battery causes loss or disabling of a limb, or serious disfigurement to the body.

Here, Dwight likely committed an aggravated battery. He intended to contact the deputy as evidence by raising his hand toward the deputy's chest in an attempt to slow him down. This intent did cause a harmful or offensive contact because Dwight hit the deputy severely in the head. This likely rises to the level of aggravated battery because the deputy's face was permanently and grossly deformed.

Therefore, Dwight can likely be charged with aggravated battery, and the lesser included offenses of battery and simple battery.

Accessory After the Fact

In Georgia, a person can be liable as an accessory after the fact where they intend to, and do so assist in helping another who has committed a crime escape or avoid law enforcement.

Here, Pam had violated the city ordinance that has criminal penalties. Dwight knew Pam had done something wrong because the deputy had approached Pam and was shouting at her. Dwight jumped in front of Pam and blocked the Pam from the deputy in an effort to allow Pam to escape. This was Dwight's intent because he said to Pam "Run for it, I'll keep him at bay." This action allowed Pam to flee the scene and prevented her from being apprehended.

Therefore, Dwight can likely be charged as an accessory after the fact to Pam's violation of the ordinance promulgated by the city.

Self Defense

Under Georgia law, a person may exercise reasonable force to defend themselves when they reasonably believe they are about to be met with imminent unlawful force. The person may only use force that is reasonable in response to the force being brought against them. A person is not entitled to raise self-defense where they are the first aggressor, unless the responding party raises the level of force being used. A person is entitled to defense of others where the other

would be entitled to exercise such self defense. But they may only use such force as is reasonably necessary.
Here, Dwight would likely claim a self-defense defense to the battery charge. Dwight would argue that he reasonably believed that Pam had a right to self defense because the deputy put his hand on his holster, which presumably contained a deadly weapon. Dwight would argue that in the heat of the gun violence and messages, this belief was even more reasonable. However, once Pam left, her right to self-defense likely did too. Therefore, Dwight likely does not have a defense based on defense of others.

Dwight may also claim self-defense as to himself. When the deputy began yelling threateningly at Dwight and started to raise his right hand, it was likely reasonable for Dwight to believe that the officer was about to use unlawful force on him. However, whether Dwight's exercise of force was reasonable is a closer call. Dwight would argue that he only intended to slow the officer down. However, this argument is likely to be unsuccessful because Dwight also knew that he was a former Navy Seal and had sufficient self-defense training such that he had the capability of killing someone with just his hands. As such, the application of force sufficient to permanently disfigure the deputy's face was likely unreasonable.

Therefore, Dwight's claim of self-defense to the battery charge will likely be unsuccessful.

In conclusion, Dwight can likely be charged with aggravated battery and as an accessory after the fact, and will likely not have a successful self-defense defense.

Essay 4 — Sample Answer 1

The issue is whether Alice can establish personal jurisdiction over Brian in Georgia and whether venue is proper as to Brian in Bibb County.

To establish personal jurisdiction in Georgia, there must be a Georgia statutory basis in Georgia for personal jurisdiction, and jurisdiction must be constitutional. Georgia courts have personal jurisdiction over a defendant who is domiciled in Georgia. Personal jurisdiction is constitutional if there are sufficient minimum contacts (International Shoe) with the forum state. Minimum contacts can be established by looking to see whether the defendant purposefully availed himself to the laws of Georgia and whether a suit in Georgia is foreseeable.

Here, Brian is domiciled in Georgia because he is a resident of Bibb County. Therefore, there is a statutory basis for personal jurisdiction in Georgia. Further, personal jurisdiction over Brian is constitutional. Brian, as a resident of Georgia who was lives, presumably works, and drives on the highways of Georgia, purposefully availed himself to the laws of Georgia when he registered his car in Georgia and drove on Georgia roads. Further personal jurisdiction over Brian is foreseeable, because it is foreseeable to be sued where you live and where you drive. Therefore, Georgia courts will have personal jurisdiction over Brian.

For a Georgia resident, venue is proper where a defendant resides. When a case is removed to state court, only the removal venue that embraces the state court where the action was removed from is proper. Here, Brian resides in Bibb County. Therefore, venue is proper as to Brian in Bibb County. If the case is removed to federal court, the proper venue will be the federal court that embraces the Bibb County court.

The issue is whether Alice can establish personal jurisdiction over Driven/ Driven USA in Georgia and whether venue is proper as to Driven in Bibb County.

In Georgia, the bases for general jurisdiction are: domiciled in Georgia, served with process in Georgia, incorporated in Georgia, principal place of business in Georgia, or registered to do business in Georgia. When general jurisdiction is not available, courts can look to specific jurisdiction under Georgia's long arm statute. Georgia's long arm statute allows jurisdiction for claims related to land in Georgia, insurance contracts, matrimonial issues, if an injury occurred in Georgia, or if the defendant transacted any business in Georgia. The transacting business prong is construed by Georgia courts to allow personal jurisdiction to the full extent of the constitution. The injury prong is two-fold: 1) if the defendant did the tortious act or omission in Georgia, there is specific jurisdiction; or 2) if the defendant only caused the injury in Georgia, there is personal jurisdiction only if the defendant has substantial contacts with Georgia or derives substantial revenue from Georgia.

When personal jurisdiction is based on specific jurisdiction, when determining whether jurisdiction is constitutional, courts also look at whether the action arise out of or relate to the defendants contacts, and to whether the exercise of jurisdiction is fair. Further, when analyzing

minimum contacts, unilateral acts of another will not give rise to jurisdiction. Further, under Daimler, contacts of a subsidiary are generally not attributed to the parent company.

Here, it is arguable whether Georgia's long arm statute applies. There is no general jurisdiction because Driven/ Driven USA are incorporated in China and Delaware respectively, and their respective principal places of business are China and California. Neither are registered to do business in Georgia. Therefore, there must be specific jurisdiction for Georgia courts to have personal jurisdiction. Driven/ Driven USA do not transact any business in Georgia; Driven does not do business in the United States at all; it has no offices, employees, or direct retail operations in the US. Driven USA also does not transact any business in Georgia; it only has dealerships in New York and California Just sending a notice of recall is likely not enough to be considered to transaction business, but because that prong is construed to allow jurisdiction to the full extent of the constitution, then maybe Alice will succeed in this argument. Further, there is likely not jurisdiction under the injury prong. The tortious act or omission occurred in China, because that is where the product was designed (Driven designed it; Driven USA had no part in designing the car). Therefore, because only the injury occurred in Georgia, Driven/ Driven USA must also derive substantial revenue from Georgia or have other substantial contacts. Here, they do not. Driven USA has only sold 2000 cars total to the United States, and only in California or New yYork (Brian bough his car in New York). Driven does not sell anything to the US. Therefore, there is likely no personal jurisdiction under Georgia's long arm statute, though maybe under the transacting business prong.

Even if there was jurisdiction under the long arm statute, it likely would not be constitutional because there are not sufficient contacts between Driven/ Driven USA and Georgia. Driven USA has sold no cars in Georgia. Brian purchased the car in New York and unilaterally brought it down to Georgia. Like World Wide Volkswagon, this unilateral act by Brian is not enough contact for Driven USA to be subject to personal jurisdiction in Georgia. They have otherwise not availed themselves, and it is not foreseeable to be sued in a state where you did not sell a product. Further, Driven likely does not have enough contacts in Georgia for personal jurisdiction. Driven ran a national ad campaign four years ago, but otherwise has had no US contact. Again, this is not enough because one national ad campaign is not enough for Driven to personally avail itself to the laws of Georgia or make it foreseeable that Driven would be sued here. Again, Driven did send a notice of recall, but this one contact is likely not enough for personal jurisdiction.

Driven/ Driven USA's minimal contacts also do not arise out of or relate to the transaction. The only thing that does is the letter Driven directed Driven USA to send about the recall. If this contact is enough o establish jurisdiction, which it is unlikely, then perhaps the contact does arise out of or relate to Driven/ Driven USA's contact, because the notice was about the defect that caused Brian and Alice's wreck.

Therefore, there is likely no personal jurisdiction over Driven/ Driven USA in Georgia.

If Georgia courts do not have personal jurisdiction over Driven/ Driven USA, then venue would not be proper in Georgia. However if for some reason there is personal jurisdiction, then venue

is proper in Bibb County. In Georgia, when there are multiple defendants who are joint tortfeasors, venue is proper where any one of them resides. If there are nonresidents, then venue must be proper per the Georgia resident. Therefore, venue would be proper in Bibb County because Brian, Driven, and Driven USA are joint tortfeasors, and Brian is a resident who resides in Bibb County, and Driven/ Driven USA are nonresidents.

The issue is what arguments defendants will make to remove the case to federal court and what arguments Alice can make to remand the case to state court.

A defendant can remove a case to federal court when the federal court has subject matter jurisdiction over the case. A federal court has diversity of citizenship jurisdiction when all plaintiffs are diverse from all defendants, and the amount in controversy exceeds $75,000. For diversity of citizenship, a person is a citizen where they are domiciled. A corporation is a citizen where they are incorporated and where they have their principal place of business.

Here, Alice is a citizen of Florida, where she has been a lifelong resident. Brian is a citizen of Bibb County, where he is a resident. Driven is a citizen of China, where it is incorporate and has its principal place of business. Driven USA is a citizen of Delaware, where it is incorporated, and California, where its principal place of business is. Because all plaintiffs are diverse from all defendants, and the amount in controversy exceeds $75,000 (it is $1 million), the defendants can move to remove to federal court.

Alice can argue that removal is not proper under the instate defendant rule. Under this rule, if any defendant is a citizen of the state forum court, then removal is not proper. Here, Brian is a citizen of Georgia, the forum state court, and a defendant. Therefore, because of the instate defendant rule, removal is not proper. Based on this, removal is not likely to succeed and the case will be remanded back to state court.

The issue is what substantive and procedural law will govern each claim if the case is tried in a state or federal court in Georgia.

All of Alice's claims are state tort claims (negligence, strict products liability, negligent design, negligence per se (even though the negligence per se discusses a federal standard, negligence per se is still state law tort claim)). If the case is tried in Georgia state court, then Georgia substantive and procedural law will apply. Georgia applies the substantive law of the jurisdiction with the most substantial connection to the case, but applies its own procedural laws. Here, Georgia has the most substantial connection, because this is where the accident occurred, where Brian, who owned the car lives, and where evidence and witnesses will be. Therefore, if the case is tried in state court in Georgia, Georgia procedural and substantive law will apply.

If the case is tried in federal court in Georgia, then Erie will apply. Under Erie, federal courts apply the substantive law of states and the procedural law of federal courts. Under Erie, substantive law is defined as elements of claims and defenses, or procedural rules that are bound up with claims and defenses, like the statute of limitations. Therefore, if the case is filed in federal court

in Georgia, then the federal court will apply Georgia substantive law to determine the elements of Alice's claims/ the defendants's defenses and the Georgia statute of limitations (2 years for personal injury), and federal procedural law.

Essay 4 — Sample Answer 2

1. **The issue is whether Alice can establish personal jurisdiction in Georgia and proper venue for each defendant.**

A Georgia court can have personal jurisdiction over a defendant in Georgia in a variety of ways. First, there can be specific jurisdiction if the incident occurred in Georgia. Second, there can be general jurisdiction if a defendant is domiciled in Georgia. Additionally, there can be jurisdiction under Georgia's long-arm statute which permits jurisdiction when a defendant commits a tort in Georgia or conducts business in Georgia, amongst other things. Finally, the exercise of personal jurisdiction must satisfy due-process rights, such that the exercise of personal jurisdiction does not offend traditional notions of fair play and justice. In order to do so, a defendant must minimum contacts with the state such that they have purposefully availed themselves of the benefits of the state. Merely injected a product into the stream of commerce is not enough to satisfy minimum contacts. In essence, the activity must be enough that it would put the defendant on notice of potentially being sued in the state. The general rule for venue in Georgia is any county in which the defendant resides. For motor vehicle accidents, venue is proper wherever the accident occurred.

Brian – PJ

Brian is domiciled in Bibb County, Georgia because he is a permanent resident of Bibb County. Therefore, Georgia has general personal jurisdiction over Brian. Georgia also has specific personal jurisdiction over Brian because his actions in Georgia (negligently operating the vehicle) caused the accident in Georgia.

DRIVEN – PJ

DRIVEN is a corporation organized under the laws of the People's Republic of China with its sole headquarters and principal place of business in Shanghai. Therefore, Georgia does not have general personal jurisdiction. It might have jurisdiction under the long-arm statute because they allegedly committed a tort that resulted in an injury in Georgia. However, this must still satisfy due process requirements. DRIVEN has no offices, employees, or direct retail operations in the United States. While it ran an add in the Super Bowl four years ago, it does not do any U.S. advertising and does not focus on the U.S. market due to tariffs and regulatory issues. However, DRIVEN did direct their subsidiary to send written recall notices to registered owners in the United States, including Brian at his address in Georgia. This recall could put them on notice of potentially being sued in Georgia, but it is unlikely that this satisfies the minimum contacts required by due process. Therefore, Georgia likely cannot exercise personal jurisdiction over DRIVEN.

DRIVEN USA – PJ

DRIVEN USA is a subsidiary of DRIVEN that is incorporated in Delaware and has its principal place of business in California. It operates authorized dealerships in New York and California, but not Georgia. It also has no dealership, office, or registered agent in Georgia, meaning that it is not domiciled in Georgia and Georgia cannot exercise general jurisdiction. DRIVEN USA did sell Brian the car, but it did so in New York. There is no indication that DRIVEN USA had any reason to know that Brian would take the car back to Georgia. Therefore, DRIVEN USA did not purposefully avail themselves of the rights and benefits of doing business in Georgia. Additionally, as explained above, the recall notice likely does not satisfy the minimum contacts requirement. Therefore, Georgia likely cannot exercise personal jurisdiction over DRIVEN USA.

Venue

Venue is proper in Bibb County, or the encompassing federal district, because one of the defendants (Brian) lives in Bibb County and the accident took place in Bibb County.

2. The issue is what arguments the defendants could make in support of removal to federal court and what arguments Alice could make in support of remand.

A defendant in Georgia is generally entitled to remove a case brought in state court if the claims could have originally been brought in federal court. Federal court has jurisdiction over claims arising under federal law or under diversity. Diversity jurisdiction requires that the amount in controversy exceed $75,000 and complete diversity amongst the parties. Compete diversity requires that no plaintiff shares a domicile with any defendant. All defendants must agree to the removal. Additionally, under the home-state rule, if any defendant is a resident of the state encompassing the federal district court, then the case should be remanded back to state court.

Here, one of the claims brought in the suit is negligence per se based on violation of specific federal standards. Therefore, a federal court likely has original jurisdiction over the claim. Alice is claiming over $1 million in damages. She is domiciled in Miami, Florida, Brian is domiciled in Bibb County, DRIVEN is domiciled in China, and DRIVEN USA is domiciled in Delaware and California. Therefore, a federal district court would also have diversity jurisdiction because both the amount in controversy requirement and diversity requirement are met. Lastly, all defendants consented to the removal Therefore, the defendants will argue that they have a right to removal because the claims could have originally been brought in federal court.

Alice, however, will likely argue for remand under the home-state rule. Brian is a resident of Bibb County in Georgia, and under the home-state rule, that means that a case originally brought in state court in Georgia cannot be removed to federal court.

3. **The issue is what procedural and substantive law would govern each claim if they were brought in a state court or federal court.**

If brought in a state court, state procedural law would govern every claim. Additionally state law would govern the negligence claim against Brian, the strict products liability claim against DRIVEN and DRIVEN USA, and the negligent design claim would be governed by state law. However, the products liability and negligent design claims might not be brought under Georgia law specifically because those events did not take place in Georgia. The negligence per se claim will be governed by federal law because it is a federal question.

If brought in federal court, federal procedural law will govern unless it impacts a substantive right or would change the outcome of the case in order to prevent forum-shopping. However, that is unlikely here so federal procedural law would govern every claim. Under the Erie Doctrine, state substantive law would still like govern the first three claims, while federal substantive law would govern the final claim for the same reasons stated above.

Essay 4 — Sample Answer 3

(1)

The issue is whether Alice can establish personal jurisdiction in Georgia and proper venue in either Bibb County or an appropriate federal court for Brian, DRIVEN and DRIVEN USA.

In Georgia, a court must have both a statutory means and jurisdiction must be constitutional proper in order to exercise personal jurisdiction over an individual. Under Georgia's statutory provisions, a court will have jurisdiction over an individual who is domiciled in the state, which means where they reside and intend to stay, or over a corporation who is registered to do business in Georgia. Georgia's long-arm statute also allows the state to exercise jurisdiction over multiple different claims, including any individual or business who causes injury in Georgia from the commission of a tort or who transacts business in Georgia. In order for personal jurisdiction to be constitutional it must be so that the traditional notions of fair play and substantial justice are not offended. A person or corporation must have minimum contacts within the state sufficient for it to be reasonable to try them in the court of the state and in which they have purposefully availed themselves to the laws of the forum state. Jurisdiction must also be related, as the claim must be related to their minimum contacts and fair to have the defendant tried in Georgia.

In Georgia, venue is proper in either any county in which the defendant resides, and if all defendants of Georgia who are being held jointly liable, than any country where any one of them reside. Venue is also proper in the county in which the claim arose, and for a business, it will be proper in the county where the claim occurred if the business has an office or transacts business there.

Brian

Here, Brian is domiciled in Bibb County, Georgia and thus Georgia does have personal jurisdiction over him. As for venue, a claim against Brian would be proper in Bibb County, both because that is where he resides and that is where the claim arose because that is where the car accident occurred. For a federal district court, venue would be proper in the district court which sits or maintains jurisdiction over claims from Bibb County.

DRIVEN

Here, DRIVEN is a corporation that is organized under the laws of the People's Republic of China and has its sole principal offices and businesses in Shanghai. Georgia may attempt to exercise jurisdiction over DRIVEN under Georgia's long-arm statute for manufacturing the car which caused an injury in the state. However, even if the Georgia court could exercise jurisdiction under the long-arm statute, personal jurisdiction over DRIVEN would likely fail under the constitutional requirements for personal jurisdiction.

DRIVEN has no offices, employees, or direct retail operations in the United States. They do have a wholly owned subsidiary which does conduct business in the states, however the entities seem kept as separate entities because they maintain separate books, officers, and bank accounts. However, DRIVEN, as the manufacturer of the cars, does have DRIVEN USA distribute them in the states. However, DRIVEN has only had one advertisement four years ago and does not focus on targeting the US market due. Any of its products seem to come from DRIVEN USA. This indicates that DRIVEN does not have minimum contacts with either the United States or Georgia, and they have not purposefully availed themselves to the laws of Georgia. Further, it would not be either foreseeable to have them tried in a Georgia court nor seemingly fair as they have no contacts with Georgia, and barely any with the United States. However Alice could argue they did have contacts through the notice they had DRIVEN USA issue to buyers of the car about the defect and control over the company still. However this alone is unlikely. Thus, Alice likely cannot establish personal jurisdiction over DRIVEN.

Thus, a Georgia state court would not be proper for any venue in which DRIVEN would be a party, and the only proper venue would be a federal district court.

DRIVEN USA

Here, DRIVEN USA is domiciled for purposes of personal jurisdiction in both California and Delaware. DRIVEN seemingly has not transacted business in regards to the truck in Georgia, but it's sale of it's truck to Brian did cause an injury in the state. However, for similar reasons as stated above with DRIVEN, personal jurisdiction may not be found based on the constitutionality prong. DRIVEN does not conduct business in the state of Georgia, they have only sold about 2,000 cars in the United States and they do not maintain any registered agent or office here. Thus, it is unlikely Alice can establish DRIVEN has such minimum contacts with Georgia to have purposefully availed themselves to the law or for it to be reasonable to try them in a Georgia state court. Thus, similar to above, there is likely not personal jurisdiction over DRIVEN and the proper venue for such an action against them would be in a federal district court.

(2)

The issue is what arguments the defendants will make in support of removal and whether removal would be likely to succeed.

For a case to be removed to federal court by the defendants, they are likely to argue that a Georgia state court does not have personal jurisdiction over them, the federal court does have diversity subject matter jurisdiction, and that the amount in controversy exceeds $75,000. A federal court has subject matter jurisdiction over a case when all the party's on the separate sides of the controversy are diverse from each other so there can be no plaintiff and no defendant of the same state, and the amount in controversy exceeds, $75,000.

Here, for purposes of domicile and diversity, Alice is a resident and domiciled in Florida. Brian is domiciled in Bibb County, Georgia. For a corporation, their domicile is their place of incorporation

and their principal place of business. For DRIVEN that would be in Shanghai, and for DRIVEN USA that would be in Delaware and California. Thus, all the defendants are diverse from the plaintiff. Further, Alice is seeking $1 million dollars in damages, which exceeds $75,000.

Thus, the defendants are likely to argue the federal court has federal subject matter jurisdiction over the claim in support of removal.

However there is a limitation which prevents a defendant who is a citizen of that state from removing to a federal court in the same state, and thus is removal may not be likely to succeed because Brian is a citizen of Georgia and he is attempted to remove the case to a Georgia federal district court. If the limitation applies, the removal likely won't succeed.

The issue is what arguments Alice may make in support of remand.

For an argument in support of remand, Alice may argue that the location of the accident, the witnesses of the accident are all more-so available and accessible in a Georgia state court in the county in which the accident occurred. Further, Alice will argue the limitation mentioned above applies, and that Brian as a citizen-defendant of Georgia cannot remove the case under diversity subject matter jurisdiction to a Georgia federal court.

(3)

The issue is what substantive and procedural law will govern each claim if tried in a state or federal court of Georgia.

In Georgia, if a rule is procedural, the Georgia rule will automatically govern. For a tort, the substantive rule of the state in which the last act which gave rise to the injury occurred will govern, unless the substantive law of that state substantially offends Georgia public policy.

Here, for a claim tried in a Georgia state court, Georgia law would apply to any procedural matters, and it would apply substantive law as well because the last act which caused the injury occurred in Bibb County, Georgia when the truck veered across the median and struck Alice's sedan head on.

Thus, if the claim is tried in a Georgia court, both the procedural and substantive law would be governed by Georgia law and Georgia law would apply.

Under the *Erie* Doctrine in federal courts, if there is a federal rule that is on point, that rule will apply. If there is not, the court will determine whether the law would be procedural or substantive. In diversity subject matter cases, the federal court will apply the substantive state law of the state in which it is sitting. Substantive law includes law that governs the statute of limitations, an element or defense of the claim, and other areas.

Here, the federal court would likely apply any federal procedural laws, and it would apply the substantive state law in which the court is sitting. If removal in Georgia did succeed, then the federal court would apply Georgia substantive law. However, if the case was filed in a federal court in Florida or another state, the substantive law of that state would likely govern the case.

Thus, the federal rules would likely govern the procedural elements and the state's substantive law would govern any substantive elements.

MPT-1 — Sample Answer 1

MEMORANDUM

To: Simone Rice

From: Examinee

Date: July 28, 2026

Re: Subpoena from US Attorney

Below, I have analyzed whether the Franklin Rules of Professional Conduct (FRPC) prevent you from disclosing the documents in your possession, whether the crime-fraud exception to the rule of confidentiality applies, and whether the government may compel disclosure of your files.

1) Do the Franklin Rules of Professional Conduct prevent Attorney Rice from disclosing to the government the documents in her files about her conversations with Mr. Dawes?

Absent an exception to the rule of client confidentiality, Attorney Rice may not disclose to the government her documents regarding her conversations with Mr. Dawes.

The Franklin Rules of Professional Conduct (FRPC) apply in the District of Franklin, and govern the conduct of attorneys acting in this district. Generally, the FRPC prevents disclosure of documents obtained relating to the representation of a client. Pursuant to Rule 1.6(a), a lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation, or the disclosure is permitted by an exception. Additionally, Rule 1.9(c)(2) states that a lawyer who has formerly represented a client in a matter shall not thereafter reveal information relating to the representation except as these rules would permit or require with respect to a client. Furthermore, the rules of confidentiality apply even to prospective clients, as it says in Rule 1.18: even when no client-lawyer relationship ensues, a lawyer who has learned information from a prospective client shall not use or reveal that information, except as Rule 1.9 would permit would permit with respect to a former client. If no exception applies, however, the rule prevents disclosure. *United States v. Coving*, (15th Cir. 2019).

Here, Mr. Dawes was a prospective client to the firm. Attorney Rice and Mr. Dawes met on March 11, 2020, and had a discussion regarding potential representation. During that conversation, Attorney Rice learned that Mr. Dawes likely had an outstanding warrant which may preclude him from receiving benefits from the Department of Veteran Affairs. Attorney Rice informed him that he needed to disclose these facts, or otherwise deal with the outstanding warrant, but he would not do so. On March 12, 2020, Attorney Rice talked to Mr. Dawes a second time, and in this conversation declined representation of Mr. Dawes. Attorney Rice partly relied upon FRPC 1.16

and 1.2, which state that "a lawyer shall not represent a client... if...the... prospective client seeks to use or persists in using the lawyer's services to commit or further a crime," and "a lawyer shall not... assist a client... in conduct that the lawyer knows is criminal." It was at this time that Attorney Rice officially declined representation. In this situation, Attorney Rice learned information from Mr. Dawes, a prospective client, and cannot use or reveal that information, unless there is a relevant exception to the rule prohibiting disclosure of information related to the representation of a client.

Therefore, absent an exception to attorney-client privilege, the FRPC prevents Attorney Rice from disclosing to the government the documents in her files regarding her conversation with Mr. Dawes.

2) Based on the information in our possession relating to the crime charged in the indictment, would the crime-fraud exception to the attorney-client privilege apply to the documents in Attorney Rice's files?

Based on the information in our firm's possession, the documents at hand are likely to fall into the crime-fraud exception to the attorney-client privilege.

Under FRPC 1.6(b)(1-6), a lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary for a variety of reasons: (1) to prevent reasonably certain death or bodily harm; (2) to prevent the client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interests or property of another, and in furtherance of which the client has used the lawyer's services; (3) to prevent, mitigate, or rectify substantial injury to the financial interests or property of another that has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services; or (6) to comply with other law or a court order.

Rule 1.6(b)(3) has been held primarily to apply to cases where disclosure would prevent or reduce some kind of ongoing financial injury. It does not apply where all the financial losses have already occurred; it only requires disclosure where the client has used the lawyer's services "in furtherance of" either the future crime or future injury. *Coving.*

Here, there was likely a future or ongoing crime. On July 9, 2026, Mr. Dawes was indicted for the crime of knowingly and willingly concealing and covering up a material fact when applying for disability compensation benefits with the Department of Veterans Affairs. This allegedly occurred between July 2020 and May 2026. It was at that time that the government cut off his benefits and began efforts to collect the back-due amount of $260,000 from Mr. Dawes. Though there was substantial financial injury involved, at the time that the subpoena was issued, there was no longer any ongoing financial injury. It is possible that the court interprets future or "ongoing" at the time of the conversation between Attorney Rice and Mr. Dawes in 2020, at which time it was allegedly in contemplation of Mr. Dawes' future crimes. If the court chooses to set the timing for future or "ongoing" crimes at the time of the conversations, the documents would likely fall into the crime-fraud exception.

If a client consults with an attorney about a plan to commit a crime, but does not commit the crime until after the relationship with the client ends, the crime-fraud exception still applies. *In re Grand Jury Proceedings* (15th Cir. 2023). The client need not have completed the act; even so, conversations in furtherance of criminal conduct may still fall under the crime-fraud exception. The phrase "in furtherance of" covers situations where the lawyer gives advice to the client, even if the client later disregards the lawyer's advice. In United States v. Jones, the court held that the crime-fraud exception still applied where a client was told by her lawyer that her proposed actions were illegal, but the client later disregarded that advice and proceeded. *Grand Jury Proceedings, citing United States v. Jones* (15th Cir. 2014). The exception applies even where the attorney knew of the client's intentions, advised the client not to pursue them, and withdrew from representation. *Grand Jury Proceedings.*

Here, Mr. Dawes met with Attorney Rice two times. Both times, Attorney Rice informed Mr. Dawes that his course of action was likely illegal. She told Mr. Dawes that he likely could be prosecuted for "not telling them the whole story," and later advised him of the following matters: that he has an outstanding warrant; that he has an ongoing obligation to report for probation and to deal with the consequences for failing to do so; that he will not be eligible for disability benefits until the warrant is resolved; that if he filed for benefits without disclosing the warrant and received benefits on that basis, he would violate a federal criminal statute and possibly prosecuted; that if the VA found out later about the warrant after granting benefits, the VA could terminate the benefits and try to recover all the money paid, and could prosecute him for a felony, which, if convicted, would send him back to prison. Mr. Dawes heard these warnings on March 12, 2020, but by July 1, 2020, the VA was paying Mr. Dawes full benefits. Attorney Rice knew of Mr. Dawes' intentions, advised him in detail not to pursue them, and declined representation so as not to commit a fraud. Therefore, Attorney Rice's counsel to Mr. Dawes likely was in furtherance of the later commission, and the documents prepared may fall under the crime-fraud exception.

Therefore, the documents at hand, based on the information in our possession, may fall into the crime-fraud exception to the attorney-client privilege.

<u>3) Based only on the information in the government's possession, can the government successfully compel disclosure of the documents in Attorney Rice's files under the crime-fraud exception?</u>

The prosecution likely has insufficient information to warrant compelling disclosure of Attorney Rice's documents.

The government must provide sufficient information to support a reasonable belief that the client intended the consultation with the attorney to further an ongoing or planned criminal or fraudulent scheme. Grand Jury Proceedings. The process for finding an exception to the attorney-client privilege requires (1) a presentation of the factual basis for a reasonable belief that the

exception may apply, (2) in camera review of the material by the court, and (3) affording the party opposed to disclosure an opportunity to contest the disclosure. *Grand Jury Proceedings.*

The court in In re Grand Jury Proceedings held that a mere showing that an entity met with counsel and later committed some allegedly fraudulent or criminal act is insufficient to establish the requisite belief that the communication furthered the crime. It must be established through other, non-confidential sources that the communications concerned the later charged crime. *Grand Jury Proceedings.*

Here, Dawes has told the prosecution that he consulted with Attorney Rice a month prior to filing for VA benefits, and that she declined to take his case. There is no evidence to show that the government knows, from any other source, the material of Mr. Dawes and Attorney Rice's conversations. Furthermore, there is no evidence to show that the government provided sufficient information to support a reasonable belief that Mr. Dawes intended to have the conversation in furtherance of his alleged fraud.

However, there has been a subpoena issued in this case from the US Attorney's office. It is unclear what facts were used as the basis for the subpoena, but it could be presumed that the US Attorney's office has prepared to present the factual basis for a reasonable belief that the exception applies. If there has been a sufficient presentation, Attorney Rice may be obligated under FRPC 1.6(b)(6) to submit the documents for in camera review, to comply with a court order. At this time, Attorney Rice will be afforded an opportunity to contest the disclosure.

Therefore, the government likely has insufficient information to warrant disclosure pursuant to the crime-fraud exception. However, if the court orders that Attorney Rice present the documents for in camera review, she must do so pursuant to FRPC 1.6(b)(6), but may still contest and oppose it until there has been a court order that she disclose the documents.

Please let me know if I can be of any more assistance in this matter.

MPT-1 — Sample Answer 2

To: Simone Rice

From: Examinee

Date: July 28, 2026

Re: David Dawes Subpoena from US Attorney

Memorandum

You have asked me to write a memorandum regarding whether you have grounds to contest the subpoena issued by the US Attorney in regards to your conversations with David Dawes. Specifically, you have asked whether the Franklin Rules of Professional Conduct prevent you from disclosing to the government the documents in your files about your conversations with Dawes, if the crime-fraud exception to the attorney client privilege apply, and whether the government successfully compel disclosure of the documents in your files under the crimefraud exception, based only on the information in the government's possession. In short: (1) the Franklin Rules of Professional Conduct would likely not prevent you from disclosing the documents in your files about your conversations with Dawes to the government, as while the rules gives you the discretion to do so, the combination of multiple sections of the rule being present has made courts compel the documents; (2) the crime-fraud exception would to the attorney-client privilege would likely apply; and (3) the government can likely not compel disclosure of the documents in your files under the crime-fraud exception, based only on the information in the government's possession. I will provide my reasoning and analysis on the applicable law below.

1. Do the Franklin Rules of Professional Conduct prevent you from disclosing to the government the documents in your files about your conversations with Dawes?

In general, a lawyer shall not reveal information in relation to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b). Rule 1.6 Confidentiality of Information. Further, in regards to duties to prospective clients, even when no client-lawyer relationship ensues, a lawyer who has learned information from a prospective client shall not use or reveal that information, except as Rule 1.9 would permit with respect to information of a former client. Rule 1.18: Duties to a Prospective Client. Moreover, Rule 1.9 states that a lawyer who has formerly represented a client in a matter shall not thereafter, reveal information except as these rules would permit or require with respect to a client.

As stated above, the general rule is that a lawyer shall not reveal information in relation to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph

(b). Paragraph (b) of Rule 1.6 states that a lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary: (1) to prevent reasonably certain death or substantial bodily harm; (2) to prevent the client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the lawyer's services; (3) to prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services; and (6) to comply with a court order. We would mainly be concerned with sections 2,3 and 6. We would not be concerned with section (1), as there is no evidence that Dawes was to cause certain death or substantial bodily harm.

In regards to section 2, of Rule 1.6, paragraph (b), the lawyer may be compelled to share the information if the disclosure is to prevent the client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the lawyer's services. In our case, Mr. Dawes contacted you for a potential representation in regards obtaining disability. During the course of this initial consultation, you learned that Mr. Dawes was imprisoned for felony possession and intent to distribute cocaine. Also, that he served one year in prison, got out and was on probation, has left the state, is not in contact with his probation officer, and likely has an outstanding warrant. Further, you alerted him that he would have to disclose this potential outstanding warrant in the disability application to which he responded that he was not going to because they do not ask about it and he would not be lying by concealing that information. This goes straight to section 2 of Rule 1.6 paragraph (b). There, you may reveal information to prevent the client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interests or property of another of which your services were used. Based on the conversations with Dawes and his corresponding actions of concealing the warrant information, to which you confirmed there was a warrant, it would appear reasonably certain that Dawes would commit a crime or fraud that would injures the financial interests or property of another to which he was made aware would be illegal after consulting you.

In regards to section 3 of Rule 1.6 paragraph (b), the lawyer may be compelled to share the information if the disclosure is to to prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services. For the same reasons stated above, section 3 would apply. The main difference between section 2 and 3 is that section 3 allows revealing the information to prevent, mitigate or rectify the injury. Here, we know David was made aware that applying to obtain these benefits without first dealing with the probation warrant would result in a financial injury. That financial injury was in the amount of $260,000. You may reveal the information to mitigate and rectify the injury. Here, revealing the information and documents you obtained can directly help rectify Dawes's situation, fitting right into the definition of section 3. Further, as the court states in United States v. Coving, this exception is limited to situations in which disclosure would of a past crime would prevent or reduce some kind of ongoing financial injury. US v. Coving. Here, Dawes was receving

ongoing dissability benefits. These would make this an ongoing injury rather than all the financial losses already occurring

Section 6 of Rule 1.6, paragraph (b), allows an attorney to reveal information to comply with law or court order. Here, you received a subpoena. A subpoena is a court order. The rule states that you may reveal the information to comply with that court order.

The big piece here is that the first sentence of paragraph (b) states that a lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes is necessary. The word "may" creates discretion. Meaning, that you do not have to reveal the information but you can if you feel it is reasonably necessary. However, following the ruling from Coving, in which the court ruled that when directed by a court order and after the court has properly assessed the evidentiary privilege for attorney-client communications, an attorney must disclose otherwise confidential information. Therefore, the Rules of Professional Responsibility would likely not prevent you from disclosing the information.

2. Would the crime-fraud exception to the attorney client privilege apply?

The protection of the attorney-client evidentiary privilege does not extend to communication that furthers continuing illegal conduct, whether present or future. Of course, the general rule is that a lawyer does not need to reveal information that is privileged but that privilege does not exist when the client consults the attorney to further the commission of crime or fraud. The crimefraud exception does not protect communications made in furtherance of a crime or fraud. *In re Grand Jury Proceedings*. The 15th Circuit set forth a three step process to figure out if the crime-fraud exception applies: (1) presentation of the factual basis for a reasonable belief that the exception may apply; (2) in camera evaluation of the material by the court; and (3) affording the party opposed to disclosure the opportunity to contest the disclosure. Further, the government must provide sufficient information to support a reasonable belief that the client intended the consultation with the attorney to further an ongoing or planed criminal or fraudulent scheme. *Id*. If the crime-fraud exception is deemed to apply, then the attorney is required to disclose the information.

In regards to our case, there is likely a factual basis for a reasonable belief that the exception may apply. Here, Dawes disclosed to federal officers that he had consulted with you about obtaining VA benefits. Further, he knew at that point that there was a warrant out for his arrest, and he stilled applied for the benefits. There is likely a reasonable belief that the exception would apply because a person is likely told the consequences of violating probation when they are being released from prison, Dawes knowingly violated his probation by voluntarily using cocaine, and even stated to you that his reason for attempting to obtain the benefits in Franklin, as opposed to Columbia, was because Franklin would not be aware of his criminal record. Therefore, prong 1 is likely satisfied. Presently, we are likely at prong 2 and 3. The court will need to conduct an in camera review of the material and then provide you the opportunity to contest the disclosure.

However, Dawes met with you and you made him aware that the conduct that he was about to do would be illegal. Following the opinion of the court in United States v. Jones, the crime-fraud exception applied even when the attorney told the client that her proposed actions would amount to insider trading and the client disregarded the lawyer's advice and proceeded with the action. United States v. Jones F.3d 788 (15th Cir. 2014). In comparison to our case, you told Dawes that if he followed through on his actions, that they would be illegal unless he first dealt with the outstanding warrant. Dawes disregarded your advice and proceeded with the illegal action. Following that ruling, the exception here would likely apply and you would be compelled to disclose the documents and contents of your conversations.

The one discrepancy could be the language "in furtherance of," however, according to *Jones*, the exception would still apply.

3. Can the government successfully compel disclosure of the documents in your files under the crime-fraud exception, based only on the information in the government's possession?

The last thing you asked me to analyze was whether the government successfully compel disclosure of the documents in your files under the crime-fraud exception, based only on the information in the government's possession. According to In re Grand jury Proceedings, if all the government has shown was that some communication occurred between the lawyer and client and that, later, the client committed a criminal act, that showing would be insufficient to establish the requisite reasonable belief that the communication furthered the crime. Here, the only information that we know the government has that ties Dawes to you is the fact that he mentioned consulting with you regarding the VA benefits. This likely follows the reasoning the Court provided in In Re Grand Jury Proceedings that would not be sufficient enough to disclose the information solely on what the government has. Contrast this with the corporation in the aforementioned case. There, the government established through nonconfidential sources that the corporation and its president consulted with counsel about the immigration status of the identified employees at a time when they knew that these employees lacked appropriate documentation. For our case, there is no evidence of any other material tying Dawes to you other than him telling the officers that he consulted you. This is substantially less than what the government had regarding the Corporation. Therefore, that is not enough information in the government's possession to successfully compel the disclosure of documents.

Conclusion

In conclusion, the rules of professional conduct grant lawyers discretion in revealing confidential information, but Courts have stated that when a combination of multiple sections of Rule 1.6 (b) apply that a lawyer is required to make those disclosures. Further, following the Court from Jones, the crime-fraud exception will likely apply, but there is not enough information in the possession of the government to successfully compel the documents under that exception. If there is anything else you need from me, or you need me to explain something further, please let me know.

MPT-1 — Sample Answer 3

TO: Simone Rice

FROM: Examinee

DATE: July 28, 2026

RE: Subpoena from US Attorney

MEMORANDUM

(1) The issue is whether the Franklin Rules of Professional Conduct prevent disclosing confidential information of David Dawes to the Government.

Under the rules of Professional conduct, a lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized by law, or an exception applies. Fr. Rules of Professional Conduct ("FRPC") 1.6(a). A lawyer may reveal confidential information if the lawyer reasonably believes it is necessary (1) to prevent reasonably certain death; (2) to prevent the client from committing a crime or fraud that is reasonably certain to cause financial injury or loss and the lawyer's service has been used in furtherance of the crime; (3) to prevent, mitigate or rectify substantial injury from the client's fraud or crime where the lawyer's service was used in furtherance of; or by lawful court order. FRPC 1.6(b). This duty of confidentiality extends to prospective clients, current clients, and former clients.

Here, Dawes sought your advice regarding his VA eligibility benefits in March of 2020. At that point, Dawes had an outstanding probation warrant, which precluded him from VA benefits. You advised him of such, and it appears he did not listen to such advice. The US attorney now seeks disclosure of the confidential materials during the prospective client relationship you formed with Dawes in 2020.

In *United States v. Coving (15th Cir. 2019)*, the client was indicted for kidnapping his minor child during a custody dispute. The client informed the attorney of the location of the child, and assured that the child was safe. The Government subpoenaed the attorney, Jackson, for the location of the child. Jackson advised the client to disclose the location, and sought to withdraw when the client refused. Upon being subpoenaed, Jackson refused to disclose the information, and sought to withdraw citing Fr. Rule of Professional Conduct 1.6. The Court then ordered Jackson to comply with subpoena, after finding that the communication fell within the crime-fraud exception.

In *Coving*, the district court found that the crime fraud exception applied to the disclosure of the information. In that case, the attorney did not challenge the evidentiary ruling, that the crime

fraud exception applied, so the 15th Cir. proceeded only on the ethical obligations. There the Court found that the ethical obligations did not prevent disclosure, because the exception to attorney-client privilege satisfied the exception to rule 1.6(b)(6) for the disclosure pursuant to a court order.

Here, similarly, the attorney-client privilege is likely to be abolished due to the crime fraud exception (See below). Here, the disclosure would not be permitted under FRPC 1.6(b)(1), as there is no evidence of bodily injury or death. Disclosure under FRPC 1.6(b)(2) likely does not hold water, as the communication must be for future conduct. Arguably at the time of the communication, this was the intent of Dawes. Dawes stated that he understood that he was ineligible for VA benefits, and following the consultation where he was advised of the consequences, stated he was not going down that route. However, it may be argued that the intent of was solely for seeking legal advice as to his rights under the VA statute.

Here, under FRPC 1.6(b)(3), may provide an avenue for preventing disclosure. An attorney may only disclose information of a past crime to prevent or reduce some kind of ongoing financial injury. United States v. Coving (15th Cir. 2019). When the financial losses of have already occurred, the exception does not apply. Here, according to Dawe's attorney, the VA has already cut off his benefits in May of 2026. There is no ongoing financial loss, and the VA is now only attempting to recover what has already been taken.

Therefore, unless a court orders disclosure, the FRPC prevent disclosure, as none of the exceptions to FRPC 1.6(b)(3) apply.

(2) The issue is whether the crime-fraud exception applies to the documents in David Dawes' case.

Under Franklin law, the attorney-client privilege is an evidentiary privilege that protects confidential communications made between attorney and client for the purpose of obtaining or providing legal assistance. *In Re Grand Jury Proceedings* (15th Cir. 2023). The privilege applies both during and after the attorney-client relationship. The privilege does not extend to communication that furthers continuing illegal conduct, whether future or present. *Id*. This is known as the crime fraud exception, and will eliminate attorney client privilege. The exception does not require that the crime or fraud be completed, only that the client consulted the attorney in furtherance of the crime. *Id*. "In Furtherance" of the crime covers the situation where the lawyer gives advice to the client, even if the client later disregards the advice. The exception does not require that the attorney participate, willingly or unwillingly in the client's criminal activity nor does it depend on whether the attorney committed or even intended to commit a crime. It would apply when the attorney knew of the client's actions or intentions, advised the client not pursue them, and withdrew from representation because of the client's actions or plans.

Here, the issue is whether Dawes used your advice "in furtherance" of his illegal conduct. There is some evidence that supports this conclusion from your file. First, when discussing the warrant for Dawe's arrest, he stated that he was pretty sure they had issued a warrant, but got out before

it caught up with him. Further, when advised that he was unable to receive benefits with an active warrant, he stated that "the VA will never find out about a Columbia warrant." Dawes further stated that "as far as the VA office knows, I will have a clean record," despite being told that the conduct would be criminal. These facts indicate an intent to use your services in furtherance of his future crime for which he is indicted. Despite you taking the reasonable steps to remedy the issue so no violation of professional conduct would occur, declining representation and advising taking a different course of action, the crime-fraud exception still will apply. See United States v. Jones (15th Cir. 2014) (crime fraud exception applied even when the attorney told the client that the proposed actions would be criminal and the client proceeded anyways).

Therefore, it is likely that crime-fraud exception applies to Dawes' case, as the communications were made in furtherance of the scheme to defraud the VA and used your services.

(3) The issue is whether the Government may compel disclosure under the crime-fraud exception to attorney-client privilege.

Under Franklin law, the use of privileged materials under the crime-fraud exception is subject to a three part test: (1) presentation of the factual basis for a reasonable belief that an exception may apply; (2) in camera evaluation of the material by the court; and (3) affording the party opposed to disclosure the opportunity to contest the disclosure. The Government must provide sufficient information to support a reasonable belief that the client intended the consultation with the attorney to further an ongoing or planned criminal or fraudulent scheme. It is insufficient to show that there was a communication and the client then committed a criminal act.

Here, the issue is whether the government can provide sufficient information to support a reasonable belief. In In Re Grand Jury Proceedings (15th Cir. 2023), there was a grand jury investigation into a corporation's illegal hiring practices. The corporation's attorney was subpoenaed to testify at the grand jury. The corporation consulted with the attorney, knowing that the employees were already hired illegally, and continued to employ them following the conversation with the attorney. These facts were proved by independent sources, and did not originate from the privileged documents themselves. There, the Court held that the Government satisfied it's requirement to show that there was a reasonable belief that the client intended the consultation to further a criminal act. The Court held that the attorney-client privilege did not apply due to the crime fraud exception.

Unlike in the above mentioned case, the present case presents less evidence of crime fraud provable by the government. According to Dawes' new counsel, Dawes only stated that he consulted with you a month prior to receiving benefits. He indicated that Dawes' volunteered any substantive information or that the prosecution has anything more than mere suspicion. This is likely not enough to compel disclosure.

Therefore, it is unlikely that the government can compel disclosure because there is not a reasonable belief that the conversation was intended to further a future criminal scheme.

Conclusion

Therefore, disclosure will likely not violate the rules of professional conduct but the government will likely not meet it's burden of persuasion.

MPT-2 — Sample Answer 1

MEMORANDUM

To: LaVonda Wallace

From: Examinee

Date: July 28, 2026

Re: Estates of Linh and John Nguyen

(1) Applicability of the Uniform Simultaneous Death Act of 1993 (USDA 1993)

The USDA 1993 will apply to the Nguyens' deaths.

Under the Franklin Probate Code, the USDA 1993, section 2 states that an individual who is not established by clear and convincing evidence to have survived the other individual by 120 hours is deemed to have predeceased the other individual. This may be determined by a certified or authenticated copy of a death certificate purporting to be issued by an official or agency of the place where the death purportedly occurred, and is prima facie evidence of the fact, place, date, and time of death and the identity of the decedent. Section 5.

There are some exceptions to this rule laid out in section 6. If the governing instrument contains language which explicitly deals with simultaneous deaths and that language is operable under the facts and circumstances, survival by 120 hours is not required. A governing instrument includes a deed, will, trust, insurance policy, or annuity instrument. Section 1(2). Additionally, if the governing instrument indicates that an individual is not required to survive an event, including the death of another individual, by any specified period, or expressly requires survival of the event for a specified period, survival by 120 hours is not required, but any survival of the event or for the specified period must be established by clear and convincing evidence. Section 6.

Practically, if spouses die within 120 hours of each other, the law treats each spouse as if that spouse had predeceased the other. This means that rather than each spouse's assets passing to the other, rather, the assets will go to each spouse's secondary or contingent beneficiaries in each of the spouses' wills. It applies unless a will, trust, or other governing instrument explicitly states otherwise, and covers intestate succession, wills, joint tenancies, and life insurance policies. Excerpts from Walker's Treatise on Estates.

In the case *In re Estates of Skow*, the court held that survival by four minutes, without any other evidence in the record, implicates the USDA 1993. *In re Estates of Skow*, Franklin Court of Appeal (2007). In the respective wills of Mary and David Skow, each spouse required in the will that the other survive in order to take. If there is a simultaneous death, section 3 provides that "for

provisions of a governing instrument that relates to an individual surviving the event, including the death of another individual, an individual who is not established by clear and convincing evidence to have survived an event by 120 hours is deemed to have predeceased the event." If neither survived the other, the provisions in the will fall to the contingency beneficiaries in the will. Since neither survived the other by 120 hours, and there was a provision in the will stating that survivorship was a necessary condition to take, the contingency beneficiaries will take instead. *Skow*.

Here, there are two certified death certificates for each of the Nguyens, which provides prima facie evidence of the fact, place, date, and time of death for each of the decedents. Linh Nguyen died on March 18, 2026 at 10:23pm. She was pronounced dead at the scene of the accident. John Nguyen survived the accident, but died due to organ failure caused by the accident on March 20, 2026 at 10:03pm. The two died about 2 days apart, or about 47 hours apart. Since there is no evidence- clear and convincing or otherwise- that John survived Linh by the requisite 120 hours, the USDA will apply. Therefore, each of the Nguyens will be deemed to have predeceased the other.

In the absence of language to the contrary, the USDA will apply to the Nguyens' deaths because they died within 120 hours of each other.

(2) Distributions of the assets

(a) John and Linh's interests in the home, 432 Fairview Drive.

Deeds are considered to be governing instruments for the purposes of the USDA. For coowners with rights of survivorship, the USDA provides that if it is not established by clear and convincing evidence that one of two co-owners with right of survivorship survived the other coowner by 120 hours, one half of the property passes as if one has survived by 120 hours and one half as if the other had survived by 120 hours. Section 4. Pursuant to section 1, coownership includes joint tenancies, tenancies by the entirety, and other co-owners which entitle one or more to the whole of the property or account on the death of the other or others. Practically, this operates as a severance of the joint tenancy with rights of survivorship, and one half of the property will be distributed to each estate.

i. John's interest:

John's interest will be shared equally between Brandon Nguyen, Melissa Nguyen-Stevenson, and the University of Franklin Medical Center.

John's real property was intended to pass to his wife, Linh, if she survived him. Since she did not survive him by 120 hours, his one half interest in the home has been severed, and it will pass to the beneficiaries of his will. His beneficiaries, Brandon Nguyen, Melissa Nguyen-Stevenson, and the University of Franklin Medical Center will take in equal parts, and each will have a 1/6 share of John's half of the home.

Therefore, each of Brandon Nguyen, Melissa Nguyen-Stevenson, and the University of Franklin Medical Center will take 1/6 of the property interest.

ii. Linh's interest:

Linh's one half interest in her real property will be divided equally between Brandon and Melissa.

Linh's property was intended to pass to her husband, John, if he survived her. Linh added language to her will which explicitly dealt with simultaneous deaths, as she stated that "If we die simultaneously, or if we die within three days of each other, I give my property in equal shares to my son Brandon Nguyen and my daughter Melissa Nguyen-Stevenson." Here, because Linh and John did die simultaneously, pursuant to the USDA, as well as within three days of each other, Linh's one half interest in her real property will be divided between Brandon and Melissa, with each taking a 1/4 interest in the property.

Therefore, Melissa and Brandon will split Linh's property interest in the home equally.

Therefore, Brandon Nguyen will get 1/6 of his father's interest and 1/4 of his mother's interest in the home. Melissa Nguyen-Stevenson will receive the same. The remaining 1/6 interest will go to the University of Franklin Medical Center.

(b) Proceeds of Linh's and John's life insurance policies

The Nguyens' life insurance policies are governing instruments within the meaning of the USDA.

i. Linh's life insurance policy:

Linh's life insurance policy will be split between Brandon and Melissa.

Linh's life insurance policy states that her husband, John, is to receive the proceeds of the policy if he survives her, in a provision similar to Skow. Since John did not survive Linh by the required 120 hours under the USDA, her contingency beneficiaries under the life insurance policy are her two children, Brandon and Melissa. They will split the $500,000 policy equally, and so each will receive $250,000 from Linh's insurance policy.

Therefore, Brandon and Melissa will each get half of the insurance policy, or $250,0000.

ii. John's life insurance policy:

John's life insurance policy will be split between Brandon, Melissa, and the University of Franklin Medical Center.

John's life insurance policy was to be distributed to his wife, Linh, if she survived him. However, John included explicit survivorship language that stated that if "my wife and i die simultaneously,

or if we die within three days of each other, I designate my estate to be the beneficiary of this policy." This indicates that John intended to explicitly deal with simultaneous deaths, and therefore, his language will govern. Linh did not survive John, and they died simultaneously, pursuant to the USDA, as well as within three days of each other. Therefore, John's estate will be the beneficiary of the insurance policy.

John's estate, pursuant to his will, will be given in three equal shares to Brandon, Melissa, and the University of Franklin Medical Center, Linh's one half interest in her real property will be divided between Brandon and Melissa, Therefore, the life insurance policy will also be split in three equal shares, and so Brandon, Melissa, and the University of Franklin Medical Center will each get $200,000 of John's $600,000 life insurance policy.

Therefore, Brandon, Melissa, and the University of Franklin Medical Center will each get one third of John's insurance policy, or $200,000 each.

(c) Any and all other assets under John and Linh's respective wills.

i. John's assets

John's assets will pass to the contingent beneficiaries of his will.

John, as in Skow, included a provision in his will which required that Linh survive him in order to take. Since Linh did not survive him, his assets, including real property, tangible personal property, and intangible personal property, will all go to his contingent beneficiaries: Brandon Nguyen, Melissa Nguyen-Stevenson, and the University of Franklin Medical Center. It will all be divided into three equal shares, as according to John's will.

Therefore, John's contingent beneficiaries will equally share in his assets.

ii. Linh's assets

Linh's assets will pass to her children, Brandon Nguyen and Melissa Nguyen-Stevenson.

Similarly to *Skow*, Linh included a provision that required that John survive her in order to take. Since he did not survive her, he will not take under the will, and the assets will pass down. However, Linh included another provision which gave alternate beneficiaries based on if she and John died simultaneously or within three days of each other. Since Linh had contemplated their simultaneous deaths and provided for a structure for property division in that event, and Linh and John did die simultaneously according to the USDA, as well as within three days of each other, the assets will be divided equally among Brandon and Melissa. There is no clear and convincing evidence to the contrary, and so Brandon and Melissa will take, and Franklin Animal Rescue will not take.

Therefore, Linh's assets will pass to Brandon and Melissa in equal shares.

MPT-2 — Sample Answer 2

To: LaVonda Wallace

From: Examinee

Date: July 28, 2026

Re: Estates of Linh and John Nguyen

Memorandum

You have asked me to write a memorandum regarding the Estates of Linh and John Nguyen. Specifically, you have asked to me analyze whether the Uniform Simultaneous Death Act of 1993 applies to the estates of Linh and John Nguyen and what is the correct distribution of assets regarding John's interest in the home located at 432 Fairview Drive, Linh's interest in the home located at 432 Fairview Drive, the proceeds of John's life insurance policy, the proceeds of Linh's life insurance policy, any other assets applicable to the provisions of John's will, and any other assets applicable to the provisions of Linh's will. In short: (1) the Uniform Simultaneous Death Act of 1993 would apply to John's will; (2) the Uniform Simultaneous Death Act of 1993 would also to Linh's will; (3) John's interest in the home would pass to his two children and the University of Franklin in thirds; (4) Linh's interest in the home would pass to her two children; (5) John's life insurance policy proceeds would be split between the two children and the University in thirds; (6) Linh's life insurance policy proceeds would pass to the two children; (7) John's other assets will pass evenly in three ways to the two children and the university; and (8) Linh's interest in all other assets would pass to her two children eqaully.

1/2. Does the Uniform Simultaneous Death Act of 1993 apply to John and Linh's wills indivually?

The Uniform Simultaneous Death Act of 1993 would apply to both John's will and Linh's will, but the distribution of assets would differ. The act was created to address inheritance issues that arise when two or more individuals die simultaneously or in close succession to each other. This is because simultaneous or close succession deaths often complicate the distribution of estates, especially when determining the order of inheritance. The act creates a 120-hour (five day) survival requirement, creating a presumption that if an individual does not survive another by at least 120 hours, then that individual is deemed to have predeceased the other for purposes of asset distribution. The rule applies unless a will, trust, or other governing instrument applies.

Based on John's will and Linh's will a court will likely find that the act does apply to both John's and Linh's assets, but how those assets are distributed would be different.

In *In re Estates of Skow*, the court determined that the Simultaneous Death Act applied to both individual's assets. The reasoning the Court provided was that there was an absence of a governing instrument, and that the two individuals died within 120-hours of each other. As a

result, the court divided the assets as they were intended to be in the will, where the Father's property was passed to only his two birth children, while the Mother's was passed to both her children, and her step children. When both individuals die in this simultaneously, they are presumed to predecease one another. The presumption that if an individual dies within 120-hours can only be rebutted through clear and convincing evidence of proof of survival. Here, Linh died on March 18 at 10:23p.m.. Additionally, John died on March 20, at 10:03p.m.. Therefore, they died within 120-hours of each other and the act would apply. There a potential rebuttable to the presumption that John survived longer than Linh--his death is documented to be approximately two days later. If this were the case, Linh's property would pass to John and then all the property would be split in three equal shares amongst the two children and the University of Franklin. However, this situation is the very purpose for which this Act was created--to prevent the complication of the distribution of the estates.

Furthermore, a court will first look to see if there is a governing instrument that applies to situations where both individuals die within 120-hours of each other. A governing instrument can be a will or trust. In our case, Linh's will has explicit language stating that if the two were to die simultaneously, then the assets are to go in equal shares to her two children. Contrasty, John's does not mention anything about a simultaneous death. Therefore, his assets, except for his life insurance policy which does have a governing instrument, will be divided as to his will which states that if Linh predeceases him, then his assets go in three equal shares to his two children and the University of Franklin, as the secondary beneficiaries listed in the will. The Simultaneous Death Act would apply to the present case because the two individual's both died within 120-hours of each other. Due to the governing instruments of some of the assets, they will be distributed differently. I will further analyze the correct distribution of assets below.

(3) John's interest in the home located at 432 Fairview Drive

John's will does not have a governing instrument that applies to a simultaneous death. Therefore, his interest in the home located at 432 Fairview Drive will be distributed in accordance with the secondary beneficiaries of his estate: the two children and the University of Franklin. The home is a joint tenancy with right of survivorship. When one of the joint tenants dies, that severs the joint tenancy and creates a tenancy in common. However, under the USDA, the Act states that in this scenario, half the interest will go to one person and the other half goes to the other. Therefore, John's interest in the home will be divided three ways between the two children and the University of Franklin.

(4) Linh's interest in the home located at 432 Fairview Drive

In contrast to John, Linh's will has a governing instrument. Here, Linh specifically states that if John and Linh die simultaneously then her assets would be divided equally between her two children. However, under the USDA, the Act states that in this scenario, half the interest will go to one person and the other half goes to the other. Therefore, the governing instrument controls, and her joint tenancy interest that is also severed upon her death will be passed equally to her two children.

(5) John's Life Insurance Policy

Life insurance policies usually are in a different category then the assets listed in a will, and therefore the analysis for John's life insurance proceeds are slightly different then that of the will's assets. John's life insurance policy states that if he and Linh die within three days of each other, then beneficiary of the proceeds is his estate. As mentioned above, his estate is to be equally divided in three amongst his two children and the University of Franklin, and therefore, his proceeds will be divided equally between the three of them.

(6) Linh's life insurance Policy

For the same reasons stated in section 5 regarding life insurance policies and a will, Linh's policy is analyzed slightly different from the rest of her will. Here, Linh's policy in naming beneficiaries does not have a governing instrument as to how to handle this in the event of a simultaneous death. However, due to the Act governing, the proceeds will pass in two equal shares to her two children. This is due to the 120-hour rule and the fact that both Linh and John died within 120 hours of each other. Because of this they are deemed to predecease each other and the proceeds here pass to the listed secondary beneficiaries, her children. So, her children with share her proceeds equally.

(7) John's other assets

John's will does not have a governing instrument describing what to do in the event of a simultaneous death. Under the Simultaneous Death Act, he would be deemed to predecease Linh because he died within 120-hours of her. Therefore, the rest of his estate including other real property, tangible property, and intangible property is to be distributed in three equal shares amongst his two children and the University of Franklin.

(8) Linh's other assets

Similarly to the analysis in section 4, Linh has a governing instrument that instruct the court what to do in the event of a simultaneous death. That instrument states that if her and John die within three days of each other, then the rest of her real property, tangible property and intangible property is to be distributed equally amongst her two children. Therefore, all the other assets besides the home and life insurance policies are distributed equally amongst the two children.

Conclusion:

In conclusion, the Simultaneous Death Act of 1993 would apply to both Linh's estate and John's estate because by law they died simultaneously, however the distribution would slightly differ. The home would be divided into halves and be distributed in accordance to the will. Here, John's interest is split three ways between his children and the University of Franklin, Linh's interest goes to her two children. Further, John's life insurance policy goes to his estate because of the

language that mandates that action if he and Linh die within three days of each other. Linh's interest goes to her two children equally. The other assets follow a similar analysis to the house: John's other assets will pass in three equal shares to his two children and the University of Franklin, and Linh, with the governing instrument would pass in equal halves to her two children. If there is anything else you need to know or need me to explain something further, please let me know.

MPT-2 — Sample Answer 3

MEMORANDUM

To: LaVonda Wallace

From: Examinee

Re: Estates of Linh and Nguyen

Date: July 28, 2026

Introduction:

Legal Analysis:

(1) The Uniform Simultaneous Death Act of 1993 (USDA 1993) applies to some but not all of the Nguyens' governing instruments.

The USDA 1993, in conjunction with its USDA 1940 predecessor, aims to simplify the distribution of assets upon a simultaneous or near-simultaneous death. The principal vehicle for achieving this is the 120-hour (5 day) window, which does two things: first, it creates a presumption that one person did not survive the another by 120 hours (presumably when they are involved in the same or substantially similar event) and, second, requires this presumption to be rebutted by clear and convincing evidence that the person did survive the event. A certified or authenticated copy of a death certificate, in turn, can provide prima facie evidence of the fact, place, date, and time of death as well as the identity of the decedent. *USDA 1993 Sec 5(2)*. The USDA 1993 thus resolves many of the practical problems that arose from simultaneous death estate distribution while holding to the presumed intent of the drafters of survivorship provisions, namely, that the person survive the drafter by more than 5 days. There are several exceptions to the 120 hour requirement, however, including Sec. 6(1), which disposes of the 120 hour requirement if the governing instrument--defined in Sec. 1(2) to mean a deed, will, trust, insurance, or annuity policy--contains language dealing explicitly with simultaneous deaths or deaths in a common disaster and that language is operable, and Sec. 6(2), which encompasses situations where a governing instrument expressly indicates that an individual does not have to survive an event by any specified period or expressly requires the individual to survive the event for a specified period. Survival of a specified period in this latter case must also be shown by clear and convincing evidence.

In *In re Estate of Skow* (Skow), the Franklin Court of Appeals held that the USDA 1993 did squarely apply to the carbon-monoxide deaths of David and Mary Skow, who according to their death certificates died within 4 minutes. The Skow court reasoned that the presence of the death certificates of both decedents indicated that the Skows died within 120 hours of each other under the USDA for two reasons: first, due to the presumption that one person did not survive the other

and, second, because the death certificates provided uncontested prima facie evidence of their time of death. In addition, none of the relevant exceptions in Section 6 of the USDA applied. The Skows did not plan around a simultaneous death in their wills, nor did they place any requirements (or lack thereof) on survival.

In many respects, the Nguyens are like the Skows, but several of the relevant governing instruments do fall within a USDA 1993 exception. In general, the Nguyens' deaths do place them within the statute's ambit. The respective death certificates included in the file record their deaths as occurring approximately 20 minutes apart, at 10:03 (John) and 10:23 (Linh). This provides prima facie evidence that their deaths did occur within 120 hours of one another and, absent any evidence to the contrary, this will be sufficient to implicate the USDA 1993. Unlike the Skows, however, the Nguyens had a variety of governing instruments that use different language-- two wills for each of the decedents, two life insurance policies, and a house which they owned as joint tenants with a right of survivorship.

Both Linh's will and John's insurance fall under the USDA 1993 exception in Sec. 6(1), which removes the 120 hour requirement when a governing instrument deals explicitly with simultaneous deaths or deaths in a common disaster and that language is operable. Linh's will contains a clause that states "If we die simultaneously, or if we die within three days of each other, I give...," while John's insurance uses the same language to redirect the proceeds of the insurance policy to a new beneficiary. Thus, these governing instruments will not fall under the USDA 1993, and will be distributed in accordance with the respective documents.

(2) Under USDA 1993, the assets should be divided as follows.

(a) The Nguyens' home at 432 Fairview Drive should pass to the two kids and to the Franklin Medical Center

When a governing instrument creates a joint tenancy, and there is a simultaneous death, the asset is split into two and divided by secondary beneficiaries. Thus, the kids will take 50% of the house from Linh and 2/3 from John, with the remaining 1/3 interest going to the Franklin Medical Center as his will describes. Thus, they will take 5/6 collectively and 1/6 to FMC>

(b) $500,000 should be distributed equally from Linh's insurance policy to Melissa and Brandon Nguyen, and the $600,000 in John's policy should be distributed into his estate.

Linh's insurance policy makes John the beneficiary if he survives her, with her children Brandon and Melissa becoming beneficiaries in equal shares if John predeceases her. Because this policy is a governing instrument under USDA 1993, and because the USDA 1993 creates an operable presumption here that John effectively predeceased Linh, her policy will pass to her two children. Thus, each child should receive $250,000 from the insurance policy.

John's insurance policy, likewise, makes Linh the beneficiary if she survives him. It also creates an explicit provision (discussed above) dealing with simultaneous or 72-hour death, in which case

John's estate would becoming he beneficiary of the policy. Regardless of whether this policy falls within the USDA, the result will be the same. If the language does create a specific time for Linh to survive him (3 days), this will still be demonstrable only with clear and convincing evidence. The record has created a prima facie assumption however that they both died within 20 minutes--well short of the 3 day period. If it does fall within the USDA, Linh will be considered to have predeceased John and the policy will pass to his estate.

(c) Linh's assets should pass to Brandon and Melissa in equal shares, and John's assets (including the $600,000) should pass in equal shares to Brandon, Melissa, and the Franklin Medical Center.

Because Linh's will is outside the USDA 1993 and deals with simultaneous death, that language controls. This provision leaves her assets to her two children in equal shares. John's will, by contrast, falls within the USDA 1993. Thus, Linh will have predeceased him for purposes of the governing instrument, and the secondary beneficiaries will take--including the Franklin Medical Center. All three of these beneficiaries will thus receive $200,000 from the policy.