ID: **03446** (Seat Number)

Question: 1

Exam Name: 2-2023_NYS Laptop Program for UBE_6-MEE

1)

Issue 1: At issue is whether the Joan's will valid considering her use of drugs which causes hallucinations.

Insane-delusion rule prescribes that a will will be invalid if it was written while the Testator was in the effect of delusion which impacted her free will resulting in the wrong drafting of will. For a will to be valid, it has to be made by the testator, in writing, and executed in the presence of two witnesses. The courts in UBE jurisdiction prefers that witnesses must be disinterested else their share will be reduced during distribution as they may have interest during will drafting.

Here, the fact state that Joan was prescribe a drug three years ago which did cause hallucination in her but she keep taking it. She had difficulties with the drug and began to delusion that the male line of her family was "cursed" by Martians. However, she keep taking drugs as that's her only medication. She drafted the will one year ago and didn't write herself but took the help of Attorney. We can assume that attorney did follow all the rules regarding will considering the true intent of Joan. The hallucination was there since last three years but it didn't cause significant change in her life-style as she took rental cabs. She did boast to her regular friends that how rich she is "multimillionaire" but this doesn't signify that she lacked the testamentary capacity to do the will.

The court will also look at the extensive criminal background of Joan's son and three grandsons too. It was natural to have negative feeling about males family members when all were involved in extensive criminal behavior.

Hence, the court will likely decide that Joan's will is valid in spite of having the delusion as it doesn't effect her testamentary capacity. She approached attorney likely to avoid any errors.

Issue 2: At issue is whether Joan lacked the mental capacity to execute a will.

Mental capacity of a testator is a conclusive factor in determining if the action taken by the testator is valid. To establish the mental capacity, the court generally requires that testator must be 18 years old or over, of sound mind, doesn't regarded as mentally incompetent by the court, and knows what she is doing.

Here, three years ago, Joan's doctor prescribed a drug. Joan's has difficulties with the drug which resulted in delusion that the male line of her family was "cursed" by Martians. She keep taking drugs as that's her only medication. She drafted the will one year ago and didn't write herself but took the help of Attorney. We can assume that attorney did follow all the rules regarding will considering the true intent of Joan. The hallucination was there since last three

years but it didn't cause significant change in her life-style as she took rental cabs. Her mental capacity was fine as she regularly had lunch with several friends. She did boast to her regular friends that how rich she is "multimillionaire" but this doesn't signify that she lacked the testamentary capacity to do the will. People do boast about their life-style and courts in all jurisdiction allow such puffing if it doesn't impact anyone. The facts do show that she live in a modest apartment and do monitor her bank account regularly. Also, she never forget to reconcile her bank statement. This shows that she was mentally sound and has no issue with mental capacity.

Hence, Joan's will is valid as she has the general mental capacity.

Issue 3: At issue is if Joan's surviving relative has standing to contest Joan's will.

Standing required individualized and particularized injury. It has to be redressable by the action of the court. To have standing the matter must not be moot. The injury is not economical but actual injury.

Here, Joan's surviving relatives have no standing in spite of the fact that they suffered. They do suffer particularized injury as were left out of the will but court will look whether the property in question is self acquired or ancestral property. As the facts suggest, it seems the property is of Joan's only which is $100,000 in her bank account. It is indeed a self acquired and she is free to give to anyone without the interference of anyone. The facts suggests that she consulted attorney to ensure that her property goes to her intended heir who is not involved in any criminal cases. The court will not able to give the relief to the surviving relatives as their injury can't be redressed by the court as will is valid. The court often respect the intent of testator considering the situations in which Joan is living. To have a delusion against male member is not tantamount to cancellation of a valid will.

Hence, her surviving relative likely not having standing.

END OF EXAM

ID: **03446** (Seat Number)

Question: 2

Exam Name: 2-2023_NYS Laptop Program for UBE_6-MEE

2)

1. At issue is if the officer's entry into the house result in exclusion of evidence.

Fourth Amendment to US Constitution prescribes for the rights of individuals during arrest. It says that arrest needs warrant specifically if it conducted in home. The exception is the exigent circumstances like handling emergency. The warrant has to be executed by a neutral and detached magistrate, on the basis the supported probable reason by the officer. The arresting officer have to knock and announce before entering the house and only enter forcefully if there is any exigency like they feel some hiding is going on in the house after they announce. The consent of home-owner is must. Police can't enter if they able to get consent from the guest who happen to be there. The Exclusionary rule bars any evidence which police get in the violation of Knock-and Announce rule. It consider it as a fruit of the poisonous tree.

Here, two police officers arrived at Homeowner's house to execute a valid warrant to search the house for counterfeit $100 bills. The officers kicked open the front door and entered the house without knocking and without announcing their identity and purpose in violation of Fourth amendment guidelines. Police has to knock and ask for the permission from the homeowner before entering the house. They cannot circumvent this rule by just storming into the house. The warrant doesn't need to show that they have to knock and announce. The evidence collected will be evaluated below but they all fruit of the poisonous tree as the arrest and their entry in the homeowner house was wrong.

Hence, the evidence seized will be excluded.

2. At issue is if the officer's entry into the house does not result in exclusion of evidence then what will be the result of following conduct:

The question assumes that officer entry into the house does not result in the exclusion of evidence. Here is the result of following conduct:

a. Seizure of the Marizuana

The officer was not in the house to arrest or having warrant against the Pizza driver.

Search incident to arrest give police power to do the pat-down if they feel there is weapon or contraband in the possession.

The driver was there to deliver pizza and officer shows up and arrest him too. The officer saw a lump in the backpocket of driver. Considering it to be handgun she pat down and feel some soft

object. The officer has to stop there as it was not what she thought. There was no probable cause to search more. The officer found the plastic bag containing marijuana. The conduct of the officer in going for the plastic bag was was not warranted by the Fourth Amendment.

Hence, seizing of marijuana will be excluded.

b. Seizure of the computer from Homeowner

Plain View Exception: The police is in their right to take custody of the things which they found in plain view.

Here, the police notice that the desktop computer on Homeowner's kitchen counter. They match the serial number in their search app using law enforcement app and it was shown as a stolen computer. The officer is in his right to confiscate such stolen items as it was in the plain view of the officer. The officer saw the serial number on it.

Hence, the desktop computer is seized properly.

c. Seizure of the narcotics from Homeowner

Contrary to palin view exception, the officer is not allowed to search the entire house particularly bedroom where they found a two-inch unlabeled transparent medicine bottle that contained several pills. The pill bottle was kept next to the night stand. It was not in plainview of officer. Officer can search the house for any other assailant who may harm them but it doesn't go the looking at nightstand next to the bed.

Hence, the court will likely exclude the narcotics too.

END OF EXAM

ID: **03446** (Seat Number)

Question: 3

Exam Name: 2-2023_NYS Laptop Program for UBE_6-MEE

3)

1. At issue is whether Federal Rule of Civil Procedure permit the woman to bring the insurance company into the action as a third-party defendant.

A Third-party defendant is allowed to join the case as an impleader only when the third party is liable to the damages in any way. The court can allow third party defendant to join when it is certain that not joining them will affect their right substantively arise from the same transaction or occurrence. Third party will be jointly and severally liable with the plaintiff and will indemnify/share the responsibility with defendant.

Here, the Third-party defendant is the insurance company who is responsible for giving the policy to the def. However, a policy holder has the claim only when the policy holder has paid the insurance premiums on time. Here, the facts says that woman has not premiums for several months before the accident and hence, the policy is lapsed. Because the policy is lapsed, they cannot cover the accident. They are not liable to indemnify if the policy is not current. Joining the third party def. will not help the woman as policy on which she is claiming is already lapsed.

Hence, FRCP will not permit the woman to implead the insurance company as third-party def.

2. At issue is if the insurance company is allowed to join the action, does the court have personal jurisdiction over the company despite lack of contact.

The federal court must have personal jurisdiction over the parties apart from subject matter jurisdiction. If the court allows the company to join, then it has to check if it has personal jurisdiction over the company too. Personal jurisdiction can be established on a traditional basis. The traditional basis requires that parties domiciled in the state, they have consented to the jurisdiction. In case of company, the court has jurisdiction only in the location where the state of incorporation and principal place of business exist. There is general and specific jurisdiction too. General jurisdiction exists when the court is using its jurisdiction to the full extent of due process without violating it.

Here, the company is headquartered in State A. The woman is also the resident of State A. The case was filed in federal district court of State B. The court has not have the Personal jurisdiction as the company is a resident of State A. Sending the summons by process server will not change the fact that company is outside of personal jurisdiction of the court. The court didnot have personal jurisdiction on a traditional basis. The facts doesnot say that State B has statue prefering such jursidiction towards the extent of distance allowed by Due process clause. It is usually called 'buldge provision' which is generally 100 miles. There is no facts to

suggest that court is using this.

Hence, court in State B does not have personal jurisdiction over the company.

3. At issue is if there is any immediate appeal available to the woman's dismissal of her complaint and should the court take any action on it.

Appeal is only available if their is a final judgment on the merits. The court has issue partial judgment too when they able to resolve partial issues not the full cause of actions.

The court doesnot have personal jurisdiction over the company and the denial action is proper. The appeal is not allowed as its not a final judgement on the merits. Unless woman bring some new facts establishing the personal jurisdiction like the company has property like in rem or quasi in rem, then court can hear the action again.

Hence, the court can not take any action as appeal is not allowed.

END OF EXAM

ID: **03446** (Seat Number)

Question: 4

Exam Name: 2-2023_NYS Laptop Program for UBE_6-MEE

4)

Article 9 of the Uniform Commercial Code deals with secured transactions. The facts in the current case is about all the secured interest over the goods which is used by the lawyer for her home and offices.

1. At issue is does the store (State X resident) have an enforceable and perfected security interest in the couch.

A secured interest has to be attached and perfected to be enforceable against the debtor. A secured interest in attached when three requirements is met, (1) passed the value, (ii) the creditor has the property interest over the secured property, and (iii) it was authenticated by the secured party or in possession of the secured interest. A secured interest is granted on goods, equipment, chattel papers. A secured interest is only perfected when it is filed with the proper govt. office or Secretary of State by filing the financing statement by giving details of secured interest like name of debtor, details of secured interest and signature by the parties to be charged.

Here, the furniture store in State X has given the couch on credit to lawyer for her use in the law firm. It is a goods as it is movable. The fact says that it will be used in the waiting room in the lawyer's new law office. The lawyer signed the the Credit Sales Agreement that stated that the lawyer granted the store a security interest in the couch. The terms shows that the furniture store did attached the security as it passed the couch to the lawyer and lawyer agrees to pay. They agreement is signed by both. The couch was delivered to the lawyer office next day. However, the furniture store failed to perfect the same by filing the financing statement.

Hence, the secured interest in the couch was not perfected .

2. At issue is does the State X furniture store have an enforceable and perfected security interest in the table.

A secured interest has to be attached and perfected to be enforceable against the debtor. A secured interest in attached when three requirements is met, (1) passed the value, (ii) the creditor has the property interest over the secured property, and (iii) it was authenticated by the secured party or in possession of the secured interest. A secured interest is granted on goods, equipment, chattel papers. A secured interest is only perfected when it is filed with the proper govt. office or Secretary of State by filing the financing statement by giving details of secured interest like name of debtor, details of secured interest and signature by the parties to be charged. Purchase Money Security Interest (PMSI) is the interest which is mainly on goods which is used for household or personal use. PMSI get perfected automatically if its for personal

use.

Here, the furniture store in State X has given the table on credit to lawyer for her use in the law firm. It is a PMSI goods as it is movable and to be use for the lawyer's home in State A. The fact says lawyer is going to use in her home which shows that it is for household needs. The lawyer signed the the agreement that stated that the lawyer granted the store a security interest in the couch. The terms shows that the furniture store did attached the security as it passed the couch to the lawyer and lawyer agrees to pay. They agreement is signed by both. The table was having manufacturer and model number which is required for attachment and financing. Also, it's a PMSI. Hence, it will get perfected by itself.

Hence, the furniture store has enforceable perfected security interest in table.

2. At issue is does the State Y furniture store have an enforceable and perfected security interest in the desk used by lawyer in her parent's home.

A secured interest has to be attached and perfected to be enforceable against the debtor. A secured interest in attached when three requirements is met, (1) passed the value, (ii) the creditor has the property interest over the secured property, and (iii) it was authenticated by the secured party or in possession of the secured interest. A secured interest is granted on goods, equipment, chattel papers. A secured interest is only perfected when it is filed with the proper govt. office or Secretary of State by filing the financing statement by giving details of secured interest like name of debtor, details of secured interest and signature by the parties to be charged. Purchase Money Security Interest (PMSI) is the interest which is mainly on goods which is used for household or personal use. PMSI get perfected automatically if its for personal use.

Here, the furniture store in State Y has given the desk on credit to lawyer for her use in her parent's home. It is a goods as it is movable. The fact says that it will be used in the waiting room in the lawyer's State Y office. The lawyer signed the the Agreement that stated that the lawyer granted the store a security interest in the couch. The terms shows that the furniture store did attached the security as it passed the couch to the lawyer and lawyer agrees to pay. They agreement is signed by both. The couch was delivered to the lawyer office next day. The furniture store filed the financing statement to the State Y central office, named the furniture store as the secured party and indicated the desk as the collateral.

Hence, the furniture store in State Y has perfected her security interest in the desk.

END OF EXAM

ID: **03446** (Seat Number)

Question: 5

Exam Name: 2-2023_NYS Laptop Program for UBE_6-MEE

5)

1. Title by Adverse possession.

The issue is whether Wendy acquire title by adverse possession to the Central Acre.

An adverse possession requires that the possession must be actual, open and notorious, continuous, exclusive and hostile.

Here, Wendy received the property by quit claim deed in 2009. By 2020, it will be 11 years but Wendy started occupying the 1 acre parcel in Jan 2010 which gives 10 years required for adverse possession claim. She got the entire three-acre parcel from the Smiths's descendants. The quit claim deed accurately describes the parcels. However, the prior deed by Smith to John and Beth was recorder which gives notice to Wendy. John and Beth never bother to look into the parcel of land. Wendy was exclusively using the one acre out of three-acre property without any interference from the recorded owner. It was actual, hostile as owner was different and she was using it like a owner, continuous as there was no gap in the possession.

Hence, Wendy has the adverse possession on one acre plot of land which is central acre.

2. The issue is did Wendy acquire the title to the Western Acre and Eastern Acre in 2020.

An adverse possession requires that the possession must be actual, open and notorious, continuous, exclusive and hostile. The possession of the property is required. The owner has to use the property in a continuous way to claim it an adverse possession. There is tacking concept also where the current possessor takes the right of old possessor but it's applicable in the current fact.

(a) Western Acre

Wendy got the entire three acre parcel of land in 2009 but she used only one eastern acre for her use which suffice the requirement of adverse possession. She was not using the Western acre at all which does not meet the requirement of adverse possession as there was no actual use. Wendy will not be able to claim the western acre as she is not fulfilling the requirement of adverse possession.

Hence, Wendy not acquired the title to Western Acre.

B) Eastern Acre

Wendy got the entire three acre parcel of land in 2009 but she used only one eastern acre for her use which suffice the requirement of adverse possession. She was not using the eastern

acre at all which does not meet the requirement of adverse possession as there was no actual use. Wendy will not be able to claim the eastern acre as she is not fulfilling the requirement of adverse possession.

Hence, Wendy not acquired the title to Eastern Acre in 2020.

END OF EXAM

ID: **03446** (Seat Number)

Question: 6

Exam Name: 2-2023_NYS Laptop Program for UBE_6-MEE

6)

The court will allow any evidence is admitted by if it is probative and its probative value does not outweigh its importance. The evidence is relevant if it has the tendency to prove the fact probable or less probable without its. It's proof the facts which is true.

1. The issue is how court will rule on the motion to exclude the admissions of defendant made in connection with the guilty plea he later withdrew.

Guilty plea are a way by court discusses with the def. and which gives the def. right to freely check if its for his benefit or not. Any statement made during this will be questioned by the other party.

Here, the court will not deny the motion to exclude the admissions of defendant made in connection with the guilty plea he later withdrew as it was made in the court before the judge. The common rule is that any discussion during guilty plea is not to be used later on. The charge was criminal voyeurism charge. However, the court can use to cross-examine the def. as he was aware about the hold and he did spy on plaintiff.

Hence, the court will exclude the admission of def. but will likely use it to cross-examine the def. considering its probative value.

2.The issue is how court will rule on the motion to exclude the deposition testimony of the man who stated that Defendant watched him.

The court will use the evidence as it was a testimonial statement made in the court as the def. and the attorney were present and had an opportunity to cross-examine it. The man is not available to testify but def. has the chance to cross-him. The court will not exclude the evidence as it has a substantial impact. It proves that there was hole in the bathroom earlier too and the owner was aware of it. He still didn't tries to fix it. The def. did the same to the current Plaintiff too.

Hence, the court should not exclude the evidence as it has evidentiary value which is not outweighed by its probative value.

3. Evidence about plaintiff plagiarized.

It is not admitted. Usually, any evidence of dishonesty is admissible but here the plaintiff is not charged. Hence, the substantive value of such lying on college application is not much. The court should dismiss and exclude this.

END OF EXAM

ID: **03446** (Seat Number)

Question: 7

Exam Name: 2-2023_NYS Laptop Program for UBE_2-MPT

7)

MEMORANDUM

TO: Zoe Foss

FROM: Examinee

DATE: Feb. 21, 2023

RE: Jasmine Hill matter

INTRODUCTION:

Below, please find my analysis whether Ms. Hill has one or more claims against Reliant Boating, a local bat shop, under the Franklin Deceptive Trade Practices Act (hereinafter "DTPA") regarding the issues with the used boat. We are specifically addressing any (1) available legal remedies, and (2) any specific relief if any available to Ms. Hill.

ANALYSIS:

As a preliminary issue, this analysis deals with §204 of DTPA says that False, misleading, or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful, including following acts... (g) failing to disclose information concerning goods or services that was known at the time of the transaction if such failure was intended to induce the consumer to enter into a transaction if such failure was intended to induce the consumer to enter the transaction into which consumer would not have entered has the information been disclosed.

ISSUE 1: LEGAL REMEDIES AVAILABLE TO MS. HILLS DUE TO THE CRACKED ENGINE UNDER THE VIOLATION OF DTPA

A plaintiff my recover "economic damages" where the defendant's misconduct was a producing cause FBC Sec. 205. The term economic damages has been construed to include "the total loss sustained by the consumer as a result of the deceptive trade practice," which includes related and reasonably necessary expenses. Diaz. The trial court found that Plaintiff's economic damages included (1) the repair costs he incurred (2) lost net profits resulting from interupption in his business due to repairs. Gordon. A "producing cause" is a substantial factor that brings about the injury, without which the injury would not have occured. Diaz. The plaintiff consumer has the burden to proof each element. If a violation is committed "knowingly," the

plaintiff is entitled to receive three time (treble) damages as well as damages of mental anguish.

In Gordon, the court held that economic damage is awarded because Sec. 203 (f) expressly includes repair and replacement costs in the definition of "economic damages" because Gordon suffers the not only the cost of buying but also incurred the expenses as truck need to be in the shop for extended period of time due to leaks.

§204 of DTPA says that False, misleading, or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful, including following acts... (g) failing to disclose information concerning goods or services that was known at the time of the transaction if such failure was intended to induce the consumer to enter into a transaction if such failure was intended to induce the consumer to enter the transaction into which consumer would not have entered has the information been disclosed; §205(a) of DTPA confirms that a consumer may maintain an action against any person who engages in any one or more of the false, misleading, or deceptive acts or practices enumerated in §204. §205(b) says about the damages. It says In a suit under this section, a consumer who prevails may obtain (1) the amount of economic damages found by the trier of fact; or (2) if the trier of fact finds that the conduct of the def. was committed knowingly: (i) exemplary damage of three times (treble) the amount of economic damages, and (ii) damage of mental anguish.§205(c) Each consumer who prevails shall be awarded court costs and reasonable and necessary attorney's fees. In Gordon, the court held that each consumer who prevails shall be awarded courts costs and reasonable and necessary attorney's fees. FBC Sec. 205 (c). The award of reasonable and necessary attorney's fees is mandatory for a prevailing DTPA plaintiff.

Here, Ms. Hills bought the boat to have fun but it's engine got died within 15 minutes after they got out in the water. Ms. Hill called Stevens, the store owner and he mentioned that there is no warranty and blame the issues on Ms. Hill who operated the boat on earlier occasions too over the summer. She paid $7,500 for this used boat which has significant issue like crack in the engine and has to be replaced.

A plaintiff like Ms. Hill my recover "economic damages" as the defendant's misconduct was a producing cause FBC Sec. 205. It was a deceptive trade practices by Reliant imn selling the defective boat while their email dated Aug. 10, 2022 confirms that "the Envoy is a few years old, but it's in excellent condition and runs just like new." Ms. Hill is similar to Diaz as it the total loss sustained by the consumer as a result of the deceptive trade practice of Reliant inspite of email affirmation to Ms. Hill and because it was deceptive it will includes related and reasonably necessary expenses. Diaz. Similar to Gordon, Ms. Hill's economic damages included (1) the repair costs she incurred which is $3,000 (2) lost net profits resulting from interruption in her trip due to repairs. Like, Gordon, the defective boat was a "producing cause" and is a substantial

factor that brings about the injury, without which the injury would not have occured. Diaz. The plaintiff here proves the each element. If a violation is committed "knowingly," the plaintiff is entitled to receive three time (treble) damages as well as damages of mental anguish.

Similar to Gordon, where the court held that economic damage is awarded because Sec. 203 (f) expressly includes repair and replacement costs in the definition of "economic damages", here Ms. Hill suffers the not only the cost of buying but also incurred the expenses as boat needed mandatory repair else it will not work.

Hence, Ms. Hill will get the $3,000 of the repair cost and the Attorney costs as the court may find to put her in the position as if the damages to her boat never happened as claimed by the def. as a "excellent condition".

ISSUE 2: ANY SPECIFIC RELIEF OR EXEMPLARY DAMAGES WHICH MS. HILL CAN RECOVER

§205(a) of DTPA confirms that a consumer may maintain an action against any person who engages in any one or more of the false, misleading, or deceptive acts or practices enumerated in §204. §205(b) says about the damages. It says In a suit under this section, a consumer who prevails may obtain (1) the amount of economic damages found by the trier of fact; or (2) if the trier of fact finds that the conduct of the def. was committed knowingly: (i) exemplary damage of three times (treble) the amount of economic damages, and (ii) damage of mental anguish.§205(c) Each consumer who prevails shall be awarded court costs and reasonable and necessary attorney's fees. Under the DTPA, the plaintiff must show that (1) the defendant failed to disclose information about goods or services (2) known by the defendant at the time of the transaction and (3) intended to induce the consumer to enter into a transaction (4) into which the consumer would not have entered had the information been disclosed. Fr. Bus. Code Sec. 204(g). A seller cannot be held liable for failing to disclose information about which the buyer has notice. Ling. The court in Abrams held that an award of damages of mental anguish "implies a relatively high degree of paid and distress beyond mere worry or anxiety.

In Abrams, the court held that CBC, the def., is liable for a failure to disclose under sec. 204 (g) because they knew that its catalogue contained misrepresentations and that Abrams relied on those statements when she enrolled and paid tuition fo $12,000. Also, because she paid additional $4,000 after she started classed.However, because CBC has no such faculty, modern equipment, or low student teacher ration which was promised. Because of this CBC know that its representation in the catalogue were false. In Gordon, the court held that knowledge may be inferred where objective manifestations indicate that a person acted with actual awareness. FBC 203(k). The DTPA defines "knowingly" to include "actual awareness" of the falsity, deception, unfairness of the act or practice giving rise to the consumer's claim FBC

Sec. 203 (k).

Here, Unlike the facts in Ling, Ms. Hill has no notice of the damage to the used boat as it was working when she got it. However, the mechanic mentioned to her that it's not uncommon for a motor with a cracked engine block to run for a few minutes under test conditions but fails later on when you try in the water.

Here, Ms. Hill will prevails may obtain per Sec. 205(c): (i) exemplary damage of three times (treble) the amount of economic damages, and (ii) damage of mental anguish.§205(c) Each consumer who prevails shall be awarded court costs and reasonable and necessary attorney's fees. As said in the DTPA, Ms. Hill can show that (1) the Reliant failed to disclose information about goods or services (2) which was known by the defendant at the time of the transaction and (3) intended to induce the consumer to enter into a transaction (4) into which the consumer would not have entered had the information been disclosed. Fr. Bus. Code Sec. 204(g). Similar to the court in Abrams, Ms. Hill will get the award of damages of mental anguish as it implies a relatively high degree of paid and distress beyond mere worry or anxiety. Similar to Oliver, she suffered grief, severe disappointment too.

Hence, the court may award her damages of mental anguish as she has not get the benefit of her bargain. The issue of exemplry damages will not be certain as the facts doesn't support this.

CONCLUSION:

Based on the above analysis, I can conclude that Ms. Hill will able to get legal remedies of cost of repair and specific relief of mental anguish.

Thank you for giving me this analysis. Please let me know if I be any further help.

END OF EXAM

ID: **03446** (Seat Number)

Question: 8

Exam Name: 2-2023_NYS Laptop Program for UBE_2-MPT

8)

MEMORANDUM

TO: Hamid Aziz

FROM: Examinee

DATE: Feb. 21, 2023

RE: B&B Inc. v. Happy Frocks Inc.

I. Caption [omitted]

II. Statement of Facts (if applicable) [omitted]

III. Legal Argument

Because our client, Happy Frocks Inc ("HFI") has to examine their inventory and samples from overseas manufacturers which takes time to evaluate, and there was no "willfulness" in the act of the Plaintiff, B&B Inc. (hereinafter "BB").

The relevant authorities, particularly pre-Lanham Act case law, show that willfulness is a highly important consideration in awarding profits under [the Lanham Act], but not an absolute precondition. Justice Alito's concurring opinion in Romang, 2020. The court reviewed the specific statutory language and structure, the argument that "principles of equity" include a willfulness requirement, and the history of trademark case law regarding the profits. Romag.

As a general matter, an award of profits is justified by three rationales: (1) to deter a wrongdoer from doing so again, (2) to prevent the defendant's unjust enrichment, and (3) to compensate the plaintiff for harms caused by the infringement. Spindrift. The court held that in determining whether to award an infringer's profits as part of a recovery, a court must balance many factors like infringer's mental state- whether willful or otherwise. Spindrift. The court should consider the following:

1. The Infringer's mental state:

The court must consider the infringer's mental state in light of the harm to the trademark owner and to customer, for particularly culpable defendants should be more likely to be subjected to an award of profits. It says that apart from willfulness, the court will look at other factors like recklessness, callous disregard for the plaintiff's rights, willful blindness, and a specific intent to

deceive should be taken into account. In Spindrift, the court held that loss profits will not be awarded for mere negligence, or an innocent nature to the infringement.

Unlike the case in Spindrift, where the def. knowingly and deliberately sold automotive parts not made by Spindrift but having their trademark and it continued to do so after notification, in the case of HFI, the act of infringement was not deliberate. HFI was not aware about the infringement until they got the cease and desist letter from BB. They have started examining the infringement internally by asking for samples from its manufacturer which took ample time. HFI's CEO admits in the cross-examination, that "I wish we had notice of the problem sooner". They never try to cut corners even when there was increase in demand. HFI agrees that it was impossible to stop the defective products as the defective buttons had been shipped to 900 of their retailers, and so recall was not possible as they did recall in earlier occasions in the case of defective fabric.

Tiffany Chen, an expert witness of HFI mentioned that the use of logo was not much important for consumers. Less than 1% noted about the appearance of brand name. Hence, HFI will not be liable to BB to give them a share of $450,000 of the profits which they earned. HFI is aware about the infringement issue and they don't go for unjust enrichment. HFI is not liable for lost profits to BB as it was not a willful act. Justice Gorsuch noted that plaintiff can win a profits remedy only after swhowing the willfully infringement of the trademark which is not what happened in this case. Here, there was an increase in demand for buttons but it was not because of BB brand but the designs.

2. The connection between the infringer's profit and the infringement

Here, the profit was of $450,000 but the response of actual consumer was not much. The consumer not buy because of brand but because of HFI logo. The expert witness do testify that (Tiffany Chen, an expert witness) use of logo was not much important for consumers. Less than 1% noted about the appearance of brand name.

Hence, HFI will not be liable as there was not significant connection between HFI profit and infringement as they were using multiple manufacturers including of BB. The infringement was not willful per the Supreme court guidelines in pre-Lanham Act. There was no finding of willful action of infringement by HFI. There was delay in stopping the infringement but it was because they not able to evaluate who is the manufacturer responsible for this BB's button trademark infringement.

IV. Conclusion:

As discussed above, our client, HFI is not liable to share the profits it earned due to the sale of BB buttons. Please let us know if you need any further clarification to find for our client.

Thank you.

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END OF EXAM