ID: **03434** (Seat Number)

Question: 1

Exam Name: 2-2024_NYS Laptop Program for UBE_6-MEE

1)

1. Partnership

Issue: The issue is what relationship have Wendy, Mary, and Angelo established through their dealings.

Rule: Under Revised Uniform Partnership Act, a partnership is created when two or more persons associate to work for profit. There is no requirement that all have to be equal partner in the partnership business. The majority of jurisdiction follows that sharing of profits is presumptively a partnership. There is no requirement to file any documents for this. The losses are also to be bear by partners. However, it will not partnership when the profit are shared just to pay the partnership obligation which includes creditors.

Analysis: Here, Wendy opened Kibble in February, a store selling dog food made from organic ingredients including toys and dog grooming products. Subsequently, he faced financial problems and asked his friends Mary and Angelo for financial assistance. Mary joined the partnership on May by delivering a check payable to "Kibble" and Wendy gave her 15% Kibble's monthly profits as long as Kibble remained in business. Mary agreed to suffer losses too. Mary becomes the partner due to the sharing of profits and she started working with Kibble too. As far as Angelo in concerned, there was no partnership as Angelo too gave the check but it was as a creditor. It was payable to "loan to Kibble". Under the exception to the partnership, Angelo was just a creditor. Kibble also paid the

agreed 15% of profit to Mary as a partner and to Angelo as a creditor.

Conclusion: Therefore, there was a valid partnership between Wendy and Mary. Angelo was just a creditor who loaned to Kibble.

2. Inclusion of new partner

Issue: The issue is whether Mary validly created a gift of his current partnership to his son, Bob.

Rule: Under RUPA, there is no formality required to leave a partnership. Partners are fiduciary to each other but they can always assign their interest to anyone else. A written letter is sufficient to make it effective. It is irrelevant whether other partner agree to it or not as there is no majority vote. Moreover, in the two person partnership, one person can always leave. Winding up or dissolution can be done if other party not agrees to that.

Analysis: Here, Mary wrote a letter to her son, Bob on October 1 assigning her entire interest in the partnership as a gift. It was valid per the Partnership as there were two partners and objection of Mary will not nullify it. Mary is free to assign or gift her interest to her son. A partner can go for dissolution if she is not agree to this gift but she cannot prohibit.

Conclusion: Therefore, Bob is entitled to Mary's share of the monthly profits of Kibble.

3. Rights of Partners

Issue: The issue is whether Bob is entitled to inspect the books and records of Kibble.

Rule: Under RUPA and majority of states, a partner has a right to inspect the books and records of the Partnership.

Analysis: Here, Bob is entitled to right to inspect the books and records of the Partnership business. Kibble is his firm too and he can always demand to see and check the book and records. Bob got his right from her mother, Mary.

Conclusion: Therefore, Bob has the right to inspect the books and records of the Partnership.

4. Act in the course of employment

Issue: The issue is whether Wendy is entitled to use the delivery van on Sundays for family event.

Rule: A partner is liable to partnership business. All the acts of the partners must be done per their agreement. A partner is obligated to loss on the partnership if anything happened during the outsider course of employment. Consent is needed if any frolic activity were for the partnerships operation.

Analysis: Here, Wendy is using the van on Sundays to take her nieces to their softball games. A partnership is allowed to work over weekends per their business. Kibble is a store selling dog food made from organic ingredients including toys and dog grooming products which requires probably to deliver the products at various places by Kibble's van. The facts are not

clear if all partners working like that by using Kibble van. If van are used and given to all partners that it is likely the implied consent to use on Sundays. It will not be allowed if it was consented by the partners or part of their normal operations.

Conclusion: Therefore, Wendy likely may use the Kibbles' delivery Van to take her nieces to their softball games if it is specifically just a frolic activity and not a significant detour (facts are silent). Else, Wendy will not entitled unless it approve by Kibble.

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END OF EXAM

ID: **03434** (Seat Number)

Question: 2

Exam Name: 2-2024_NYS Laptop Program for UBE_6-MEE

2)

1. Governing Law

Issue: The issue is whether Common Law or UCC applies.

Rule: Article 2 of Uniform Commercial Code deals with the sale of Goods while the Common law deals with all other contracts including of services.

Analysis: Here, the facts is about selling the artworks. An artwork is a painting which is coming under goods.

Conclusion: Therefore, UCC applies.

2. Express Warranty

Issue: The issue is whether Grandson breached an express warranty.

Rule: Uniform Commercial Code deals with the contracts between merchants for the sale of goods. An express warranty include warranty of good faith dealing and the goods are the same as claimed by the seller. The contract is void if goods are not what it suppose to be. There is a warranty of merchantability whereby merchants has to deal with other party in fair and good faith way.

Analysis: Here, a wealthy are collected died and left her entire collection of artworks to the Grandson. A art collector deals in arts on a regular basis. They are aware about all nuances related to artworks. Grandson was not a fan of artworks and

decided to sell them and took the help of appraisal experts. Hence, irrespective of his interest, he is aware and took the expertise of an expert to manage the artworks. The Buyer is an art collector himself and loves the work of prominent American artist, Artiste. He visually examined for 30 minutes but not able to figure out any issues but got to know three weeks later that it was fake and is worth just $500 instead of what he pays ($350,000). Express warranty of merchantability is basic principle of such contract and that got breached by the grandson even when he consulted expert. Grandson may claim that new counterfeit check by chemical analysis was not available earlier but he will not succeed as he should check it properly before selling it for such hefty price tag.

Conclusion: Therefore, Grandson breached the express warranty.

2. Rescission of contract-Mutual mistake

Issue: The issue is whether Buyer can rescind the contract because of mutual mistake.

Rule: The contracts can be rescinded because of mutual mistake. If both parties to the contract were mistaken about the material part of the contract then the contract can be rescinded subject to the fact one party is just faking it or it was just a unilateral mistake.

Analysis: Here, Grandson got the artworks collection but he is novice to this. The Buyer is an art collector himself. Both parties are considered to merchant due to their exposure in this

field of work. As discussed above, if both merchants are mistaken about the artwork genuinely than contract must be rescinded. The technology is new and the buyer just learnt three weeks later only. He not able to figure out the fake artwork even after he visually checked for 30 minutes. The facts is clear that Grandson is also new. The facts is silent that there was no unilateral mistake. If both Buyer and Grandson were mistaken about this material part of the contract then the contract can be rescinded. The price difference of genuine and fake one is too much ($350k and $500) to go with the contract.

Conclusion: Therefore, Buyer has the right to rescind or avoid the contract.

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END OF EXAM

ID: **03434** (Seat Number)

Question: 3

Exam Name: 2-2024_NYS Laptop Program for UBE_6-MEE

3)

1. Judicial Notice

Issue: The issue is whether trial court erred by denying Dana an opportunity to be heard before it took judicial notice of the weather on October 18.

Rule: Under, Federal Rule of Evidence, the courts can took judicial notice of a fact either by itself or when it was bring to her attention the parties. A fact is relevant if it has any tendency to make a fact more or less probably then it would be without it and the fact is of consequence.

Analysis: Here, Cara asked the court to take judicial notice of the weather on October 18 based on certified public record from the federal govt.'National Weather Service agency. The court can take judicial notice. A fact of rainy day is relevant to the current case as it will refute the claim of Dana if the fact of contrary weather has any tendency to make a fact more or less probable then it would be without it and the fact of rainy day is of consequence. The court is not required to give Dana an opportunity to be heard when it can take judicial notice.

Conclusion: Therefore, the trial court was correct in denying Dana an opportunity to be heard before it took judicial notice of the weather on October 18.

2. Judicial Notice

Issue: The issue is whether trial court erred by taking judicial

notice of the weather on October 18.

Rule: Under, Federal Rule of Evidence, the courts can took judicial notice of a fact either by itself or when it was bring to her attention the parties. A fact is relevant if it has any tendency to make a fact more or less probably then it would be without it and the fact is of consequence.

Analysis: Here, the court did not erred in taking judicial notice of the weather on October 18. Cara asked the court to take judicial notice of the weather on October 18 based on certified public record from the federal govt.'National Weather Service agency. The court can take judicial notice. A fact of rainy day is relevant to the current case as it will refute the claim of Dana if the fact of contrary weather has any tendency to make a fact more or less probable then it would be without it and the fact of rainy day is of consequence. The court is not required to give Dana an opportunity to be heard when it can take judicial notice.

Conclusion: Therefore, the trial court was correct by taking judicial notice of the weather on October 18.

3. Character Evidence

Issue: The issue is whether Dana's testimony that Cara was "careless" is inadmissible character evidence.

Rule: Under, FRE character evidence is generally not admissible to prove the propensity of the defendant in either civil or criminal matter unless it is central to the issue or defendant open the door by presenting evidence of her own character. All

relevant evidences must be admitted subject to Rule 403 exclusion like confusing the jury, undue delay, prejudicial effect etc. A fact is relevant if it has any tendency to make a fact more or less probably then it would be without it and the fact is of consequence. A habit evidence shows the routine way of things done at certain time by certain people. Habit evidence is admissible.

Analysis: Here, the fact that Cara is careless in handling her phone. It is significant and relevant and will not confuse the jury as it may Cara is just lying and she may have left her phone somewhere else like she did on earlier occasions. All relevant evidence is admissible. The character of Cara shows that she just want to blame Dana for her lost phone when she might have missed it somewhere in the gym. It may show her habit too if it can be supported substantively but can be admitted for impeachment purposes.

Conclusion: Therefore, Dana's testimony that Cara was "careless" is admissible character evidence.

4. Inadmissible Character Evidence

Issue: The issue is whether Dana's testimony that Cara often misplaced or forgot her cellphone is inadmissible character evidence.

Rule: As stated above, per Federal Rule of Evidence character evidence is generally not admissible to prove the propensity of the defendant in either civil or criminal matter unless it is

central to the issue or defendant open the door by presenting evidence of her own character. All relevant evidences must be admitted subject to Rule 403 exclusion like confusing the jury, undue delay, prejudicial effect etc. A fact is relevant if it has any tendency to make a fact more or less probably then it would be without it and the fact is of consequence. A habit evidence shows the routine way of things done at certain time by certain people. Habit evidence is admissible.

Analysis: Here, the fact that Cara is careless in handling her phone. It is significant and relevant and will not confuse the jury as it may Cara is just lying and she may have left her phone somewhere else like she did on earlier occasions. All relevant evidence is admissible. The character of Cara shows that she just want to blame Dana for her lost phone when she might have missed it somewhere in the gym. It may show her habit too if it can be supported substantively but can be admitted for impeachment purposes.

Conclusion: Therefore, Dana's testimony that Cara often misplaced or forgot her cellphone is admissible character evidence.

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END OF EXAM

ID: **03434** (Seat Number)

Question: 4

Exam Name: 2-2024_NYS Laptop Program for UBE_6-MEE

4)

1. (a) Hold-over tenancy rule

Issue: The issue is whether the ruling of the court applies when it holded that Tom could have rightfully terminated the lease because Helen held over on January 1, 2021

Rule: Under common law dealing with property matter, the lease period begins and end per the contract. In the majority of jurisdiction, the landlord is not liable to give vacant apartment before the new tenancy begins. Modern court are favoring the tenants when there are out of the apartment with no fault of theirs. A periodic tenancy is by the certain period of time with a particular start and end date.

Analysis: Here, Tom signed the written lease for $1,300 per month with landlord on Nov. 1, 2020. The lease will start from Jan. 1, 2021. The apartment was occupied by other prior tenant, Helen. She took three additional days to vacate the apartment. If the court hold that Tom could have rightfully terminated the lease because Helen held over on January 1, 2021 must be because tenant was holding over and landlord can evict them. The court can give relief to Tom as there was breach from Tom. Some jurisdiction follows the approach that Tom can break the lease when there is no fault of him. He was ready, willing to have the apartment but landlord didn't provide that.

Conclusion: Therefore, the court could have rightfully terminated the lease by itself in some jurisdiction because

Helen held over on January 1, 2021.

1. (b) New Periodic tenancy rule for Hold-over case

Issue: The issue is whether the ruling of the court applies when it holded that Tom could not have rightfully terminated the lease because Helen held over on January 1, 2021

Rule: As stated above, under common law dealing with property matter, the lease period begins and end per the contract. In the majority of jurisdiction, the landlord is not liable to give vacant apartment before the new tenancy begins. Modern court are favoring the tenants when there are out of the apartment with no fault of theirs. A periodic tenancy is by the certain period of time with a particular start and end date. A new periodic tenancy begins when the last tenant did not vacate the apartment. They are liable to keep paying the rent as agreed by the landlord and tenant.

Analysis: Here, Helen's lease term ended on Dec. 31, 2020 but she still occupied the apartment. A new tenant Tom signed the written lease for $1,300 per month with her landlord on Nov. 1, 2020 with the effective start date from Jan. 1, 2021. Helen took three additional days to vacate the apartment. If the court hold that Tom could not have rightfully terminated the lease because Helen held over on January 1, 2021 must be because Helen able to secure the new periodic tenancy with the landlord and landlord accepted the rent as a consideration. The acceptance of rent by Tom's landlord from Helen might give her this right. In the majority jurisdiction, the landlord cannot ensure to vacate the apartment.

Conclusion: Therefore, the Tom could not have rightfully terminated the lease by itself in some jurisdiction because Helen held over on January 1, 2021.

2. Assignment and Sublet

Issue: The issue is whether landlord rightfully refused to consent to Tom's proposed assignment of the lease to the friend.

Rule: The courts allow the assignment of lease term unless it is not specifically mentioned in the lease agreement. In the majority of jurisdiction, the court prefer the assignment and subletting of remaining lease term to new sublessee.

Analysis: Here, Tom signed the lease agreement, "term-of-years lease" on Nov. 1, 2020. The lease provided that Tom neither assign nor sublet the apartment "without the landlord's prior written consent." Tom is not allowed to assign or sublet the lease. The court do sometime check if its reasonable or not but considering that its mutually beneficial terms, they allow such terms. It will be beneficial to landlord as they don't need to worry about new tenant as it will be beneficial to tenant as they stay in the same lease with same rates. Non assignment and subletting clause will bar Tom to assign it to his friend.

Conclusion: Therefore, landlord has rightfully refused to consent to Tom's proposed assignment of the lease to the friend.

4. Periodic Tenancy

Issue: The issue is whether Tom's failure to vacate the apartment made his current expired lease as new periodic tenancy, subject to the same provision as earlier lease.

Rule: Under, a periodic tenancy is by the certain period of time with a particular start and end date. A new periodic tenancy begins when the last tenant did not vacate the apartment. They are liable to keep paying the rent as agreed by the landlord and tenant. If the tenant continue to stay after his lease ends, the presumption is that the parties entered into new periodic tenancy unless facts says otherwise.

Analysis: Here, Tom's lease expired on Dec. 31, 2023. He didn't vacate the apartment. There is no facts to say that he informed the landlord about any deference due to extraordinary situation or circumstances. If there is no new facts, Tom will be entering into new lease on the same terms as the landlord has not increased the rent too. Tom claimed it as unfair to pay the same rent of $1300 but there is no other facts to suggest that there is other way for him. He can approach court by showing unconscionability and court may give relief with the lesser term or new lease.

Conclusion: Therefore, Tom's failure to vacate the apartment made his current expired lease as new periodic tenancy, subject to the same provision as earlier lease unless parties agree otherwise.

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END OF EXAM

ID: **03434** (Seat Number)

Question: 5

Exam Name: 2-2024_NYS Laptop Program for UBE_6-MEE

5)

1. Double Jeopardy and Issue Preclusion

Issue: The issue is whether State B hate-crime prosecution barred by the United States Constitution's double jeopardy clause.

Rule: Under, the Double Jeopardy clause of U.S. Constitution, the court is barred to try and punish a same convict twice for the same offense. Issue preclusion gives the preclusive affect to the same issues when its tried again. Issue preclusion or Collateral estoppel will estopped the re-litigate the same issue again if the same was decided by the court of competent jurisdiction, the judgment was on the merits and it was between the same parties. Issue preclusion allows the case if the parties are different.

Analysis: Here, the officer was charged with hate-crime by City located in State A which is adjacent to the border of State B. The officer stopped a driver nad made disparaging remarks about a religious sticker on the bumper of his care. The officer subsequently threw a rock injuring him. City attorney filed a charge and the officer pleaded guilty to it. The municipal court sentenced the officer to three days in jail. However, the double jeopardy clause will not attach here as city is located in State A. The jurisdiction bringing the charge is State B. There is no preclusive affect attached due to different state altogether.

Conclusion: Therefore, State B hate-crime prosecution is not barred by the United States Constitution's double jeopardy

clause.

2. Double Jeopardy and Erie Doctrine

Issue: The issue is whether the federal hate-crime prosecution barred by the United States Constitution's double jeopardy clause.

Rule: As stated above, under the Double Jeopardy clause of U.S. Constitution, the court is barred to try and punish a same convict twice for the same offense. Issue preclusion gives the preclusive affect to the same issues when its tried again. Issue preclusion or Collateral estoppel will estopped the re-litigate the same issue again if the same was decided by the court of competent jurisdiction, the judgment was on the merits and it was between the same parties. Issue preclusion allows the case if the parties are different. Erie doctrine allows the Federal court to use substantive law of the court where it sits and federal procedural law.

Analysis: Here, the United States Attorney is bringing the federal criminal charge against the officer who was charged earlier with hate-crime by City located in State A which is adjacent to the border of State B. The Federal district court has to use the substantive law of the State A. Federal can bring the law it was different jurisdiction but it can't apply federal law. If State A gives the punishment as stated below, the Federal court has to abide by that as they will use the same State A law to avoid multiple litigation. The officer stopped a driver nad made disparaging remarks about a religious sticker on the bumper of his care. The officer subsequently threw a rock injuring him.

The officer was charge by City attorney and the officer pleaded guilty to it. The municipal court sentenced the officer to three days in jail. However, the double jeopardy clause will not attach here as city is located in State A. The jurisdiction bringing the charge is State B. There is no preclusive affect attached due to different state altogether.

Conclusion: Therefore, State B hate-crime prosecution is not barred by the United States Constitution's double jeopardy clause.

3. Double Jeopardy and Issue Preclusion

Issue: The issue is whether State A hate-crime prosecution barred by the United States Constitution's double jeopardy clause.

Rule: Under, the Double Jeopardy clause of U.S. Constitution, the court is barred to try and punish a same convict twice for the same offense. Issue preclusion gives the preclusive affect to the same issues when its tried again. Issue preclusion or Collateral estoppel will estopped the re-litigate the same issue again if the same was decided by the court of competent jurisdiction, the judgment was on the merits and it was between the same parties. Issue preclusion allows the case if the parties are different.

Analysis: Here, the State A will be barred to bring the claim as its municipal court has already charged the officer with hate-crime by City located in State A. City attorney filed a charge and the officer pleaded guilty to it. The municipal court

sentenced the officer to three days in jail. However, the double jeopardy clause will not attach here as city is located in State A. The jurisdiction bringing the charge is State B. There is a preclusive affect attached due to different state altogether. Issue preclusion will bars this new case as it will be relitigated by the State A.

Conclusion: Therefore, State A hate-crime prosecution is barred by the United States Constitution's double jeopardy clause.

4. Double Jeopardy and Claim Preclusion

Issue: The issue is whether State A assault prosecution barred by the United States Constitution's double jeopardy clause.

Rule: Under, the Double Jeopardy clause of U.S. Constitution, the court is barred to try and punish a same convict twice for the same offense. Issue preclusion gives the preclusive affect to the same issues when its tried again. Claim Preclusion or Res Judicata bard retry of same claim by the different court when there is final judgment was on the merits and it was between the same parties or privies.

Analysis: Here, the State A will not be barred to bring the assault claim as it is different that what municipal court has brought. There is no preclusive affect attached due to different claim altogether. Claim preclusion will not bars this new case as it will be relitigated by the State A.

Conclusion: Therefore, State A assault crime prosecution is not barred by the United States Constitution's double jeopardy clause.

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END OF EXAM

ID: **03434** (Seat Number)

Question: 6

Exam Name: 2-2024_NYS Laptop Program for UBE_6-MEE

6)

1. 300 Shares of ABC Corporation

Issue: The issue is who is entitled to get 300 Shares ABC corporation,

Rule: Under UPA the trust of the property is to be divided per the testator wishes.

Analysis: Here, on Sept. 4, 2010 executed a valid will. The term of will be effective upon his death. The shares are now 300 which got added from original 200. It will go to Donna.

Conclusion: Therefore, the entire shares will go to Donna.

2. Home

Issue: The issue is who is entitled to get home.

Rule: Under UPA the trust of the property is to be divided per the testator wishes.

Analysis: Here, on Sept. 4, 2010 executed a valid will. The term of will be effective upon his death. The home was part of his will which was given to him to his brother, Edward.

Conclusion: Therefore, the home will go to Edward as he is still alive at the time of Testator's death.

3. PIANO

Issue: The issue is who is entitled to Piano.

Rule: Under UPA the trust of the property is to be divided per the testator wishes.

Analysis: Here, on Sept. 4, 2010 executed a valid will. The term of will be effective upon his death. The piano was given to Faye but he is dead now and his only heirs were testator who is dead now and Edward. Edward has to pay for the casualty loss claim which he can claim from the $200,000 cash.

Conclusion: Therefore, the Piano will got to Edward.

4. CASH and ademption

Issue: The issue is who is entitled to get cash and if the $30,000 given to George is adeemed and is an advancement.

Rule: Under UPA the trust of the property is to be divided per the testator wishes. The cash is the principal and can be used to pay back the debts per the wishes of testator.

Analysis: Here, the will has the provision to direct all of Testator just debts before going for foregoing devises. The cash available at the time of death is $200,000 which is sufficient to pay the remaining Home mortgage and the $10,000 owed to the insurer. The Issac is the heir of George who is the only son. Issac got the advancement per the letter. It is disputed if the letter will adeem the gift of $30k. There will advancement subject to the validity of letter given by the testator two months before his death.

Conclusion: Therefore, the entire cash will be used to pay the

debts.

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END OF EXAM

ID: **03434** (Seat Number)

Question: 7

Exam Name: 2-2024_NYS Laptop Program for UBE_2-MPT

7)

MEMORANDUM

TO: Deanne Gray, District Attorney

FROM: Examinee

DATE: February 27, 2024

RE: State v. Iris Logan

You have given me this memorandum to evaluate whether you should charge Iris Logan with robbery and with felony murder. Below, please find my analysis on both the issues per the Franklin Criminal Law.

LEGAL ANALYSIS

ROBBERY

The issue was there a robbery with the meaning of Franklin Criminal Code § 901 when there was no force and the victim just gave away the item.

Under Franklin Criminal Code § 901, Robbery is the intentional or knowing theft of property from the person of another by violence or putting the person in fear. (quoted in State v. Driscoll). Robbery requires proof of four elements: (1) intentional of knowing nonconsensual taking of (2) money or personal property (3) from the person of presence of another (4) by means of force, whether actual or constructive. Driscoll.

Franklin case law further clarified that robbery is coextensive

with violence and force. Id. The force necessary to constitute robbery is the posing of ab immediate danger to the owner of the property. State v. Schmidt. The court held in Driscoll that robbery requires "shaking the owner or struggling with the owner while trying to take the item from the owner". Driscoll. The court held that pricking laptop and pushing the victim away irrespective of actual injury constitutes robbery as defendant struggle with her for control over the laptop. Id.

Here, similar to the case is Driscoll, where court held that robbery requires "shaking the owner or struggling with the owner while trying to take the item from the owner", the Ms. Owens did struggle even if she gave the purse. Ms. Owens sprained her wrist when the Ms. Logan too forcible pulled the purse off her arms. Excerpt on page 3. Similar to Driscoll where the court held that pricking laptop and pushing the victim away irrespective of actual injury constitutes robbery as defendant struggle with her for control over the laptop, in the current case even if Ms. Owens gave her purse "and be done with her" will not constitute it as theft as the required force was there. All four elements are satisfied: (1) intentional of knowing nonconsensual taking of (2) money or personal property (3) from the person of presence of another (4) by means of force, whether actual or constructive. The taking of purse was intentional by Ms. Logan as she came from the back to take the purse. It was nonconsensual taking of purse as Ms. Owens didn't consented for it as she was running her errands and suddenly Logan grabbed her purse from behind. There was a personal property involved which was her purse and it was in the presence of her. The final element is the force whether actual or constructive. This element also satisfies the

requirement as there was sufficient force used just like in the case of Driscoll, wherby Ms. Owens sprained her wrist and her arm hurt really bad due to it. Excerpt on page 3. The direct examination of Mr. Rogers also confirm the act of grabbing the purse by force from behind. It was sudden and he can't see if it was force or not. Excerpt on page 4.

Therefore, I can conclude that there is sufficient evidence to put Ms. Logan on the charge of robbery.

FELONY MURDER:

The issue was there a first degree felony murder with the meaning of Franklin Criminal Code § 970 when act of killing occurs not during the defendant's flight.

Franklin law provides that a defendant may be charged with felony murder when the defendant's actions in the course of committing, attempting to commit, or fleeing from certain felonies were the cause of death. See Fr. Crim. Code § 970 (quoted in State v. Flinch). The causation required by statute needed both "cause in fact" and "legal cause/proximate cause". Flinch. The felony-murder rule applies if the killing occurs during the defendant's flight. State v. Clark. The court held that "[i]t is critical to determine whether the fleeing felon has reached "a place of temporary safety."" The court held that if there is no break in the chain of events when the defendant is still engaged in fleeing from the crime, that will constitutes felony-murder. Id.

On the contrary, when the defendant robbed the store and

reached home, he will not be liable for felony-murder for the killing as he was no longer fleeing. State v. Lowery. The act of the defendant was the cause in fact or the "but-for" cause of the said act of robbery. It must be the proximate or legal cause of the act. The Legal cause is basically, when the reasonable person would see as a likely result of that felonious conduct. Finch. It has to be consistent with the sound public policy to hold felon liable when they set in motion a chain of events which resulted in the act. Id. The court in Finch also mentioned about the superseding cause by quoting State v. Knowles, where the Olympia Supreme Court held that gross negligence will generally be considered superseding cause which is "wantonness and disregard of the consequences to others that may cause. Id. The court held in Finch, that the death of the security guard was not foreseeable.

Here, Ms. Logan was fleeing from the crime after robbing the purse from Ms. Owens which satisfies the requirement of Felony-murder rule. See Fr. Crim. Code § 970 (quoted in State v. Flinch). The defendant was fleeing from the active crime, when the Officer Torres find the matching the description of the BOLO in a green vehicle with the license plate number DDD555. The officer followed up and found the object thrown out of the car which gives the probable cause for the officer to activate the sirens. Direct examination on page 4-5. The vehicle collided with an SUV due to fault traffic lights. The officer confirms that the object was the same purse of Ms. Owens. The driver died due to impact of collision. Id. Unlike the case in Lowery, here there were still fleeing and have not reached a place of temporary safety as required by the court in Clark.

The act of the Ms. Logan was the cause in fact or the "but-for" cause of the act of robbery. It is the proximate or legal cause of the act as the reasonable person would see it as a likely result of that felonious conduct of forcible grabbing purse from the back. See Finch. The felony murder conviction is consistent with the sound public policy to hold Ms. Logan liable when she set in motion a chain of events which resulted in the killing of the driver of the fleeing vehicle. Unlike in Finch, the not working traffic light will not constitute the superseding cause as they were chased by patrolling officer. Similarly held in State v. Knowles, that gross negligence will generally be considered superseding cause as the act of robbery and running away from police was an act of "wantonness and disregard of the consequences to others that may cause. Unlike the court held in Finch, where the death of the security guard was not foreseeable, here it was foreseeable that killing may happen when you run away from cops. One has to stop when police is following you with active sirens.

Hence, Ms. Logan can likely be charge with felony-murder too.

Conclusion:

Thank you for giving me this opportunity to write this memorandum. As mentioned above and in view of above case laws, you should charge Iris Logan with both robbery and felony murder.

END OF EXAM

ID: **03434** (Seat Number)

Question: 8

Exam Name: 2-2024_NYS Laptop Program for UBE_2-MPT

8)

MEMORANDUM

TO: Michael Carter

FROM: Examinee

DATE: February 27, 2024

RE: Randall v. Bristol County

I. Captions

[omitted]

II. Statement of Facts

[omitted]

III. Legal Argument

The Bristol County has violated Ms. Olivia Randall's (hereinafter 'Randall') First Amendment rights pursuant to 42 U.S.C. § 1983. Randall must be restored to her pay and expungement of the suspension from her employment record as her Facebook post was not done in the her official capacity and was not part of her official duties.

Bristol County violated Randall's First Amendment rights pursuant to 42 U.S.C. § 1983. She must be restored to her pay and expungement of the suspension from her

employment record as her insubordination act was not the correct determination as the facebook posts was not done in the her official capacity.

A public employee does not surrender all First Amendment rights merely because of the employment status. Garcetti v. Ceballos. (quoted in Dunn v. City of Shelton Fire Department). The court held that [t]o show that the speech is protected under the First Amendment, a public employee must demonstrate that (1) the employee made the speech as a private citizen, and (2) the speech addressed a matter of public concern. Dunn. A plaintiff in a public-employee free-speech case bears the burden of proving that speech is entitled to First Amendment protections. Garcetti. (quoted in Smith v. Milton S D).

1) The issue is whether the employee made the speech as a private citizen

"[W]hen public employees make statements pursuant to their official duties, the employees are not speaking as citizens for First Amendment purposes." Id. In Lane v. Franks, the court held that it needs to determined "...whether the employee made the speech pursuant to his ordinary job duties. In Garcetti, the held that the defendant was not writing as a private person but spoke pursuant to his official duties as a prosecutor. (quoted in Dunn). Similarly, the defendant in Dunn spoke in his official position and not as a private citizen. The Court held that Dunn spoke not as citizen but as an employee. In Pickering v. Bd. of Ed., the court held that teacher comments were as a citizen but at that there was no social media presence. In Smith, the court held that def. spoke as a citizen and not as a public employee

by raising the public concern.

Here, the Randall was working as a Director of the workforce-development grant which helped county residents who did not finish high school prepare to take the GED test. The passing in the GED test will equate as a high school diploma. Randall helped 40 Bristol county residents to get the basic employment skills. Excerpts on page 6. The facebook posts were just the result of non-renewal of the grant and it was just information which was beneficial to the public as they get benefitted by it. Unlike the case of Dunn, where the fire chief told the defendant to stop posting on Facebook, here there was no such communication. Randall's public post just annoyed the County Executive. There was no contact of her supervisor with her before. Inspite of she is the director, she was not consulted for this non-renewal of grant. Excerpt at page 9. Her supervisor just got annoyed due to "trouble" because of public inquiries as he had to waste his time dealing with the public. Id. He accepted that the grant was designed to help public and did helped. Similarly to Smith, Randall was speaking as a citizen and not as a public employee by raising the public concern as he was alerting the public.

Therefore, Randall was speaking as a citizen in the public interest.

2) the speech addressed a matter of public concern

The court in Dunn, gave the guidelines when the speech be a matter of public concern. The court should consider, a) the speech's content, b) the speech's nature; and the c) context in which the speech occurred. Id. The court further held that "[i]f

it is determined that the employee spoke as a matter of public concern, the inquiry moves to balancing test. In Smith, the court said that the speech was about public issues like school policies, corruption, discrimination etc.

Here, similarly to Smith, Randall was speaking as a citizen and not as a public employee by raising the public concern. Randall was using her Facebook post to make public aware about the loss of great grant. She was not getting any response from her department/county and time was running out.

Therefore, Randall's speech was a matter of public concern as it was part of "public square" per Smith.

3) Balancing Test

The court held in Dunn, that defendant interest in speaking freely in outweighed by the department's interest in a team that is unified in firefighting. The department is justified that the post will undermine the teamwork needed for the job. In Smith, the court held that the balance tilts in favor of an employee calling attention to an important matter of public concern.

Here, Randall's Facebook posts were just the result of non-renewal of the grant and it was just information which was beneficial to the public as they get benefitted by it. Unlike the case of Dunn, where the fire chief told the defendant to stop posting on Facebook, here there was no such communication. Randall's public post just annoyed the County Executive. There was no contact of her supervisor with her before. Inspite of she is the director, she was not consulted for this non-renewal of

grant. Excerpt at page 9. Her supervisor just got annoyed due to "trouble" because of public inquiries as he had to waste his time dealing with the public. Id. He accepted that the grant was designed to help public and did helped. Similarly to Smith, Randall was speaking as a citizen and not as a public employee by raising the public concern as he was alerting the public.

Therefore, the balancing test favors that Randall is a matter of public concern.

IV. Conclusion:

We request this honorable court to award the summary judgment in favor of our client, Ms. Olivia Randall, as she has shown the genuine issue of material fact and cannot be addressed without giving this remedy. She is invoking her First Amendment rights to free speech by speaking publicly on the matter of public concern. The county also agreed that her job performance were positive. There was no insubordination. She just tries to get the grant for the benefit of the public-at-large. The expungement is needed as her bad employment records will bar her to get any future jobs anywhere in any respectable position.

Please let me know if you need further clarification or assistance in this matter.

Thank you.

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Michael Carter, Esq.

END OF EXAM