Maryland State Board of Law Examiners

JULY 2024 UNIFORM BAR EXAMINATION (UBE) IN MARYLAND – REPRESENTATIVE GOOD ANSWERS

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MPT 1

Representative Good Answer No. 1

MEMORANDUM

TO: Hannah Timaku

FROM: Examinee

DATE: July 30, 2024

RE: Laurel Girard Matter

QUESTION PRESENTED

Whether the alleged violations in the Notice are valid bases for termination of Girard's tenancy.

Violation Notice 1: Paragraph 2, which requires rent to be paid in full by the 3rd day of the month.

VALIDITY OF RENT INCREASE

According to the Residential Lease Agreement (Lease) signed by Mr. Fortum, on behalf of Hamilton Place lLC, and Ms. Girard, rent is permitted to be raised no sooner than 12 months after the commencement of the lease. The Franklin Tenant Protection Act (FTPA) § 505 imposes a limitation on rent increases which prohibits an increase of the rental rate of a dwelling or unit more than 10 percent within any 12-month period.

The Lease was signed on January 1, 2023, and Mr. Fortum notified Ms. Girard of the rent increase on June 1, 2024, effective July 1, 2024. This was more than 12 months after the commencement of the lease; therefore, it is permitted by the Lease. The amount of the increase is $150, which is 10 percent of the previous rental rate of $1,500, and is the first such increase since the commencement of the lease more than 12 months ago.

Since the increase is not more than 10 percent in a 12-month period and the increase took place more than 12 months after the commencement of the lease, the increase in rent to $1,650 is permitted by both the terms of the Lease and § 505 of the FTPA.

LATE PAYMENT AS A BASIS FOR TERMINATION

The FTPA requires that, after a tenant has continuously and lawfully occupied a residential real property for 12 months, the owner of the residential real property shall not terminate the tenancy without just cause, which shall be stated in the written notice to terminate the tenancy (FTPA §500). Just cause to terminate tenancy includes (1) a material breach of the term of the lease; and/or (2) maintaining or committing a nuisance (§ 501(a)). The FTPA further requires that, before an owner files an eviction action seeking to terminate a tenancy for just cause that is a curable lease violation, an owner shall first give notice of the violation to the tenant with an opportunity to cure the violation (§501(b)).

The Franklin Court of Appeal in *Westfield Apartments LLC v. Delgado* noted that "[c]ourts have consistently concluded that ' a lease may be terminated only for material breach, not for a mere technical or trivial violation,'" (2021, quoting *Kilburn v. Mackenzie*, 2023). The court relied on *Vista Homes v. Darwish* (2005) in discussing that payment of the rent in accordance of the terms of the lease is one of the essential obligations of the tenant, and the failure of the tenant to properly discharge this obligation is a legal cause for dissolving the lease (W*estfield Apts*., 2021). However, in *Vista Home*s, the rent shortfall was only 1% of the rent amount owed, and the court concluded that this *de minimis* shortfall was not a material breach (*Westfield Apts.*, 2021).

Here, Ms. Girard was required to pay the validly increased rent of $1,650 by July 3, 2024, in accordance with Paragraph 2 of the Lease, and the Notice of Rent Increase (letter dated June 1, 2024), and only paid $1,500. The shortfall of 10% is likely more than a court would consider *de minimis*, particularly because Ms. Girard purposefully withheld $150 from the rent due because she was opposed to the valid increase.

The late fee of $50 is also validly imposed according to the terms of the Lease.

Mr. Fortum has given a three-day notice to cure the violation or deliver possession of the premises before Hamilton Place will declare a forfeiture of the Lease, in compliance with FTPA §501(b).

Ms. Girard's lack of payment of the $150 portion of the rent past due is a material breach of the Lease, which constitutes good cause for termination under the terms of the Lease and the FTPA.

Therefore, the violation of Paragraph 2, payment of rent in full by the 3rd of the month, if not cured within three days, in accordance with the Notice, is a valid basis for termination of Ms. Girard's tenancy.

Violation Notice 2: Paragraph 15, which prohibits pets from being kept on the Premises

The FTPA requires that, after a tenant has continuously and lawfully occupied a residential real property for 12 months, the owner of the residential real property shall not terminate the tenancy without just cause, which shall be stated in the written notice to terminate the tenancy (FTPA §500). Just cause to terminate tenancy includes (1) a material breach of the term of the lease; and/or (2) maintaining or committing a nuisance (§ 501(a)). The FTPA further requires that, before an owner files an eviction action seeking to terminate a tenancy for just cause that is a curable lease violation, an owner shall first give notice of the violation to the tenant with an opportunity to cure the violation (§501(b)).

The Franklin Court of Appeal in *Westfield Apartments LLC v. Delgado* noted that "[c]ourts have consistently concluded that 'a lease may be terminated only for material breach, not for a mere technical or trivial violation,'" (2021, quoting *Kilburn v. Mackenzie*, 2023). The court noted that, in *Sunset Apartments v. Byron* (2010), harboring a pet when a lease contains a "no-pet clause" constitutes a material breach of the lease agreement. (W*estfield Apts*., 2021).

However, the Franklin Fair Housing Act (FFHA), in pertinent part, provides that tenants with disabilities are permitted to have assistance animals in all dwellings, including common and public use areas (Franklin Civil Code § 756).

An assistance animal includes both service and support animals that provide emotional, cognitive, physical, or similar support that alleviates one or more identified symptoms or effects of an individual's disability (FCC §755(o)). A "support animal" as defined in the FCC is an animal that provides emotional, cognitive, or other similar support to an individual with a disability, and may also be known as a "comfort animal" or "emotional support animal." A support animal does not need to be trained or certified (FCC § 755 (n). Further, a "disability" under the Franklin Fair Housing Act shall be broadly construed to include mental disability, which includes but is not limited to any mental or psychological disorder or condition that limits a major life activity, such as anxiety, PTSD, or depression (FCC § 755(c)).

Confirmation that an individual has a disability may be provided by any reliable third party, including a medical professional or health-care provider, who is in a position to know about the individual's disability or the related need for an accommodation or modification (§ 756(b)).

Additionally, an individual with an assistance animal shall not be required to pay any pet fee, additional rent, or other fee, in connection with the assistance animal (FCC § 756(c)). Other reasonable requirements and restrictions may apply, such as mitigating risk of harm to others from animal, waste disposal requirements, and requirements to cover cost of repairs for damage from animal (FCC § 756(c)).

Here, Ms. Girard is in possession of a pet when the Lease contains a restriction on pets, which would ordinarily constitute a material breach.

However, Ms. Girard meets the definition of a tenant with a disability under the Franklin Fair Housing Act. Ms. Girard has anxiety and panic attacks, for which she is medicated and under the care of a therapist.

However, she continues to experience anxiety, and, at the advice of her therapist, has procured an emotional support animal which alleviates her symptoms and improves her condition significantly. She has fewer panic attacks and is better able to manage stress (File). Her cat Zoey thus meets the definition of a support animal and an assistance animal, under the Fair Housing Act.

The letter from Sarah Cohen, a licensed professional counselor, is reliable, third-party confirmation that Ms. Girard has a disability, and describes in sufficient detail the disability, Ms. Cohen's knowledge of the disability as a licensed therapist who has been treating Ms. Girard for four years, and the necessity of the emotional support animal for Ms. Girard's mental health.

Since no pet fees or additional rent are required for assistance animals possessed by tenants with disabilities, Ms. Girard is not required to pay any additional fee under Paragraph 15 of the Lease

Therefore, because the possession of the pet is permitted by the Franklin Fair Housing Act, Paragraph 15 of the Lease, as it applies to Ms. Girard, is not a valid basis for the termination of her tenancy.

CONCLUSION

The violation of Paragraph 2 of the Lease, payment of rent in full by the 3rd day of the month, is a valid basis for termination of Ms. Girard's tenancy, because it constitutes a material breach of the Lease that is just cause for termination of the tenancy.

The violation of Paragraph 15 of the Lease is not a valid basis for termination of Ms. Girard's tenancy, because, even though keeping a pet would constitute a material breach of the Lease, the provision of the Lease as it applies to Ms. Girard violates the Franklin Fair Housing Act.

Because Ms. Girard expressed her desire to remain at Hamilton Place if she may keep her cat, I would advise her to immediately cure the Paragraph 2 lease violation by paying the past-due rent of $150, and the $50 late fee, by cashier's check or money order, in accordance with the Notice and Lease Paragraph 10, and provide Mr. Fortnum with a copy of the applicable Franklin Fair Housing Act provisions and the letter from therapist Sarah Cohen.

Representative Good Answer No. 2

TO: Hannah Timaku

FROM: Examinee DATE: 8/1/24

RE: Laurel Girard matter

Memorandum

I. Franklin Tenant Protection Act

A. Applicability of Lease to Franklin Tenant Protection Act (FTPA)

First, the lease in question, ("Lease") is subject to the FTPA. §500 states that the FTPA applies when a tenant has continuously and lawfully occupied a residential real property for 12 months. Here, Ms. Girard ("Girard"), has been lawfully occupying the property for 19 months; which exceeds the 30-day minimum requirement. §500(b)(3); Lease Agreement. The FTPA protects tenants by prohibiting landlords from terminating a lease without just cause. Hamilton Place LLC ("Hamilton" or "Landlord") also falls under the definition of an owner liable under the FTPA because it has the right to offer property for rent, and in fact does.

B. Validity of Lease Termination on Unpaid Rent Grounds

Under the FTPA, rent cannot be increased more than 10% in any 12-month period. §505. Here, Landlord correctly followed the FTPA and even included a lease provision prohibiting the increase in rent sooner than 12 months after the commencement of the lease. The lease began January 1st, 2023, and so at the time of rent increase July 1st, 2024, 18 months had passed. The original lease was $1500 from January 2023 to June 2024, which is outside of the 12-month prohibition period. Regardless of the time period, under the FTPA, the rent cannot be increased more than 10% within that 12-month period. Here, the rent was increased 10%, which is within the bounds of the FTPA as well. Thus, the Landlord is following the law in regard to the rent increase dated June 1st, 2024.

The FTPA also requires the Landlord to give notice of the violation and allow the tenant to cure it. Here, Landlord gave Girard 3 days' notice to cure or vacate the apartment before they would terminate the lease. There is no requirement on the amount of time required for the notice, and thus the Landlord followed this requirement.

However, the next question to consider is whether the Landlord can terminate Girard's lease for the failure to pay the increase in rent and the late fee.

Leases can only be terminated for just cause. Just cause to terminate includes a material breach of the term of the lease or maintaining or committing a nuisance. §501(a). A mere technical or trivial violation is not a material breach. Westfield Apartments LLC v. Delgado, Fr. Ct. App.

2021("Delgado")(citing Kilburn v. Mackenzie, Fr. Sup. Ct. 2003). A material breach must go to the essential purpose of the agreement or make it impossible for the other party to perform. *Delgado*. Typically, a failure to pay rent in accordance with the lease is one of the essential obligations of the tenant, so a failure to pay rent would be considered a material breach and grounds for termination. Delgado (citing Vista Homes v. Darwish, Fr. Ct. App. 2005). In Darwish, the tenant failed to pay $10 of a $1,000 rent and the court found that to be a breach, however, because it was only a de minimis breach at only 1% of the total amount owed, the court did not consider it a material breach.

Here, the rent increase could possibly go either way. Hamilton will likely first argue that the "Default" clause in the Lease trumps the material breach requirement of the FTPA. The "Default" clause states that any failure to comply with a provision of the lease allows the Landlord to terminate Girard's possession. This argument will fail because it is effectively the same statement and that is in the "Forfeiture" clause in Delgado. The Landlord in Delgado argued that the "Forfeiture" clause in that lease trumped the FTPA; the court quickly struck that argument down and stated that "the FTPA makes clear that its tenant protection provisions cannot be waived".

Hamilton will likely then argue that 10% is material because it is 9% more than the de minimis rent increase of 1% in Darwish and because it breaks into the double-digits. We could argue that 10% is an allowed increase in rent under the FTPA, and thus breaching that lease covenant is not material because it is what the drafters thought was a reasonable increase. However, I am not convinced of that argument. We should advise Ms. Girard to pay the $150 she owes to Hamilton to prevent being evicted from her apartment, as she indicated that she would like to continue living there. The late fee is also appropriate and is in the terms of the Lease.

II. Franklin Fair Housing Act

A. Applicability of Franklin Fair Housing Act (FFHA)

The FFHA allows individuals with disabilities to have assistance animals in all dwellings that may otherwise not permit pets. §756(a). The issue is whether Girard, her therapist Sarah Cohen, and cat Zoey fit within the scope of the FFHA and thus prevents Hamilton from terminating her lease on those grounds. The FFHA requires a tenant to have a disability, a qualifying assistance animal, and be evaluated by a reliable third party who is authorized to detail the need of the assistance animal.

Disability

Under the FFHA and relevant to the issue at hand, a disability includes any mental or psychological disorder or condition that limits a major life activity. §755(c). These can include anxiety, PTSD, or depression. Here, Girard experiences anxiety and even takes medication to help control her symptoms. Girard described having panic attacks and feeling generally overwhelmed often. While the facts do not say if she has been formally diagnosed, the prescription medication infers a diagnosis. Anxiety is expressly one of the conditions listed in the FFHA, so Girard fits the disability requirement.

Assistance Animal

The next requirement under the FFHA is having an assistance animal. An assistance animal includes a service or support animal "that alleviate one or more identified symptoms or effects of an individual's disability". §755(o). Support animals (also known as comfort or emotional support animals) are animals "that provide emotional, cognitive, or other similar support to an individual with a disability". They do not need any formal training or certifications to be considered support animals. §755(n).

Here, Zoey the cat likely qualifies as an assistance animal. Since adopting Zoey, Girard has experienced fewer panic attacks and can work through her stress without feeling overwhelmed. Her Therapist, Sarah Cohen also described the effects of Zoey on Girard, stating that Girard's emotional and mental health have improved as Zoey helps regulate and mitigate the distress anxiety and panic attacks bring. The alleviation of some of Girard's symptoms is the kind of support an assistance animal under the FFHA brings. Zoey is not required to have any training to be considered a support animal and additionally, there are no breed, size or weight limitations on animals that can be qualified as "support animals". §756(c).

Qualified Third Party

The final requirement for the FHHA is that the individual's disability or disability-related need is provided by a reliable third party "who is in a position to know about the individual's disability" that provides an individualized assessment. §756(b). Examples of qualified third parties include medicinal professionals or health care providers.

Here, Sarah Cohen is a state-licensed professional counselor. Mental health services usually fall under health care for insurance companies and so it is likely the drafters of the FHHA also considered therapists to be health care providers/professionals. Additionally, Sarah Cohen "is in the position to know" Girard and her experiences with anxiety. She has been working with Girard for four years, so she is familiar with Girard's history with anxiety and the specific limitations it imposed on her. Sarah Cohen certified that Girard has anxiety and that she benefits from having a support animal, and in fact was the one to suggest Girard get one as part of her ongoing mental health treatment. This indicates that Sarah Cohen is familiar with Girard, her disability, and her need for Zoey, her support animal. Thus, Sarah Cohen fits the requirements for a reliable third party, and satisfies the FHHA.

B. Validity of Lease Termination on "No-Pet Clause" Grounds

As mentioned, the Tenant Protection Act (FTPA) only allows landlords to terminate leases for "just cause"; a material breach of the lease is considered an appropriate "just cause". Harboring a pet in violation of a "no-pet clause" constitutes a material breach, and could be considered grounds for termination of the lease. Delgado (citing Sunset Apartments v. Byron Fr. Ct. App. 2010).

However, the existence of the FHHA, which requires qualified individuals to be allowed to have their assistance animals in all dwellings, including any common/public areas, is expressly an exception to any "no-pet clause". Allowing a Landlord to circumvent the FHHA through a "no- pet clause" is strictly against public policy. As discussed in Delgado, the Franklin legislature has determined that the typical free market contract principles do not apply in the same way to residential leases. In Delgado it was to emphasize the reasoning behind the FTPA, which was because of the unequal bargaining power between tenants and landlords. Here, it is discrimination against persons with disabilities to not allow them their reasonable accommodations, which includes assistance animals. The purpose of the FHHA is to prevent such discrimination, so allowing a "no-pet clause" to trump the FHHA is going against the very purpose of the Act.

Girard is allowed to have Zoey, subject to any reasonable restrictions regarding waste disposal, nuisance behavior, or liability for property damage. The facts do not indicate that Zoey has caused any damage or noise issues, especially since the Landlord did not even know about Zoey until she was brought outside of the apartment in a carrier. We should advise Ms. Girard that she is entitled to have Zoey with her in her apartment by law, and her lease cannot be terminated by Hamilton.

MPT 2

Representative Good Answer No. 1

To: Damien Breen

From: Examinee

Re: Sidecar Design Matter

Date: July 30, 2024

Memorandum

I. Sidecar's CFAA Liability

The Computer Fraud and Abuse Act ("CFAA")applies to any computer that connects to the internet. HomeFresh LLC v. Amity Supply Inc. (D. Frank. 2022) (citing 18 U.S.C. §1030(e)(2)(B); Van Buren v. United States, 141 S.Ct. 1648, 1652 (2021)). In order to maintain a civil action under the CFAA, plaintiffs must show one of two types of conduct from the defendant. First, they can show that the defendant "intentionally access[ed] a computer without authorization or exceed[ed] authorized access," to obtain protected information. The other option is to show that the defendant "knowingly and with the intent to defraud, access[ed] a protected computer without authorization, or exceed[ed] authorized access, and by means of such conduct further[ed] the intended fraud and obtain[ed] anything of value[.]" CFAA 10 U.S.C. § 1030(a)(2), (4). In other words, the plaintiff must show that the defendant accessed the computer without authorization or in a way that exceeds the scope of their authorized access. HomeFresh, supra (citing 18 U.S.C. § 1030(a)(2)-(4)).

In Van Buren, the Supreme Court held that a person only "exceeds authorized access" under the CFAA when they "access[] a computer with authorization but then obtain[] information located in particular areas of the computer that are off limits to him." Homestead, supra (citing Van Buren, supra). For example, in that case, the Court found that the defendant did not exceed his authorized access by using his work computer and log in credentials to search the police database for license plate information in exchange for payment because there was no technical barrier preventing him from using the data for non-law enforcement purposes. Thus, because he had the log in credentials, the Court held that he did not violate the CFAA, even if his actions violated internal business policies. The HomeFresh court applied this same line of reasoning. There, the Court held that because the defendant was permitted by the plaintiff to use computers that gave him access to all of its data, he was not a hacker and thus did not violate the CFAA. Thus, under this precedent, in order to exceed authorized access under the CFAA, one must circumvent technical barriers to be held liable. Mere violation of corporate policy regarding accessible electronic data is insufficient.

Furthermore, despite a national jurisprudential split, the Franklin District Court has held that once an employee voluntarily or involuntarily leaves a job, they no longer have a legal right to use the employer's computers or log in credentials to access data. HomeFresh, supra. Thus, even if the employer has not changed the log in credentials post termination, any access to information using those credentials amounts to unauthorized access under 18 U.S.C. § 1030(A)(2), for which liability can be imposed. HomeFresh, supra; see also 18 U.S.C. § 1030(A)(2).

In the case at hand, Smith was given the CDI log in credentials on or around June 25, 2024, when he began working for SideCar and started accessing the credit card information for CDI. Thus, clearly Smith had authorized access to the information under the CFAA, because doing so was an inherent part of his job. As a result, Smith can only be liable if he exceeded that authorized access by circumventing technical barriers, akin to a traditional hacker. See HomeFresh, supra.

Here, in the first incident, Smith did not exceed the scope of his authorized access because he did not do anything to circumvent technical barriers to the data. Shortly after beginning employment, on June 28, Smith used his password to access the data and charge the CDI customer $25,0000. In doing so, Smith did not circumvent any barriers, he simply logged on with his company credentials and took the money. Thus, this June 28 incident does not amount to exceeding authorized access, because Smith merely violated corporate policy.

Shortly after, on July 2, SideCar completed the work it was doing for CDI, and advised them to change their passwords, which CDI did not immediately do. Three days later, again, using the passwords provided to him that had yet to be changed, Smith charged another $50,000 to the same customer. Like the June 28 incident, Smith did not circumvent technical barriers because he simply used his provided password. However, at this point, Smith/SideCar were no longer working for CDI, and thus, did not have authorization to use their log in information to access any data. As a result, Smith's July 2 actions amount to unauthorized access for which he/SideCar can be liable under the CFAA.

In sum, assuming SideCar is vicariously liable for Smith's conduct, SideCar can be liable under the CFAA for the July 2 incident, but not the June 28 incident, given the total damages are over $5,000.

II. CDI's Recovery

Under 18 U.S.C. § 1030(g) anyone who suffers damages as a result of violation of the CFAA may obtain compensatory damages. However, damages under the CFAA are limited to economic damages, which does not include punitive damages. Slalom Suppy v. Bonilla (15th Cir. 2023) (citing Demidoff v. Park (15th Cir. 2014)). Under § 1030(e)(11) of the CFAA, losses generally include the costs of: (1) responding to the hack, (2) conducting a damages assessment, and (3) restoring the data to it's condition before the hack. Id.

A. $6,000 Cost of Investigating and Correcting Breach

Here, the costs of investigating and correcting the breach are broken down as follows: $4,000 to investigating the breach, $500 for SideCar to upgrade its system, and $1,500 for employee overtime during the investigation. Of these amounts, SideCar can only recover $5,500, the costs of the investigation and overtime. Like in Slalom, SideCar can recover the costs of hiring a cyber security firm to investigate the breach and the overtime costs of its employees assisting in that investigation, because these damages fall under those expenses necessary to restore the plaintiff to its pre-hack condition. See Slalom, supra (holding that the costs of a cybersecurity investigation and overtime for employees assistance in that investigation are recoverable consequential damages under the CFAA).

However, the Slalom court also explicitly held that money spent to upgrade a system following a breach does not meet the CFAA definition of losses. There, the court held that "a victim of hacking cannot use the violation as a means of improving its own security or system capability." Slalom, supra. Thus, in that case the plaintiff was denied recovery for the $1,500 it had spent upgrading its system post-hack. Thus, under this holding, CDI cannot recover the $500 it spent upgrading its system after the events unfolded.

As a result, in regard to investigation and correction, SideCar can only be liable for $5,500 of the requested $6,000.

B. $75,000 Restitution and $125,000 Contract Termination

In terms of lost business resulting from a breach, under applicable case law, "losses" under the CFAA, are restricted to those experienced as a result of interruption in internet/computer service from the hack. Slalom, supra (citing Delvage Pharm. v. George (D. Frank 2018); Next Corp. v. Adams (D. Frank 2015)). Most on point cases concerning these damages cover things like

deleted files that result in a lost business opportunity, changes to system-wide passwords, or temporary server interruption.

Here, there are no facts in the File that show that the shutdown of CDI's website caused them to lose profits or business. Instead, they claim that their losses stem from repaying the CDI customer and the subsequent contract termination by that customer. In terms of the restitution, CDI will likely not be able to recover the $75,000, because as the court held in Slalom, it was a business decision to repay them, thus the expenses are a result of that discretionary judgment, not the breach itself. See Slalom supra.

The same reasoning applies to the contractual claim. Although CDI certainly lost a lucrative business opportunity as a result of the customer's lost trust in CDI, this was not a result of the system shutdown following the breach. Thus, this case is not like Ridley MFg. v. Chan (D Frank. 2015), where the deletion of critical files caused the plaintiff to lose out on a lucrative opportunity. Here, it was the customer's lost trust that caused him to cancel the contract, nothing related to the server or system or technology itself. Thus, under the Slalom case and the CFAA, CDI cannot recover the $125,000 termination contract claim.

D. Punitive Damages

As discussed above, the 15th Circuit has held that punitive damages are not included in the definition of economic damages, which are all that is recoverable under the CFAA. See Slalom, supra (citing Demidoff, supra).

As a result, it will not be possible for CDI to recover $400,000 in punitive damages.

E. Conclusion

If SideCar is liable, CDI could likely recover $5,500 the total of the $4,000 for the investigation and the $1,500 in related employee overtime.

Representative Good Answer No. 2

TO: Damien Breen From: Examinee Date: July 30, 2024

Re: Sidecar Design matter

Good morning Damien,

Please find my memorandum below discussing the issues you asked me to look into regarding the request by Yolanda Davis for advice regarding Sidecar Design's liability under the CFAA for the actions of Sidecar's former employee John Smith.

I. Introduction

This memorandum discusses the following questions regarding the actions of 1) whether Sidecar Design LLC (Sidecar) is liable to Conference Display Innovations Inc. (CDI) under the Computer Fraud and Abuse Act (CFAA), and 2) assuming that Sidecar Design is liable, what damages, if any, CDI can recover under the CFAA. As requested, this memorandum will assume that Sidecar is liable for the actions of it's employee, John Smith.

II. Analysis

i) Liability

Liability occurs under the CFAA when a person 1) knowingly and with intent to defraud 2) accesses a protected computer 3) without authorization, or exceeds authorized access, 4) by means of such conduct furthers the intended fraud and 5) obtains anything of value. 18 U.S.C. Section 1030(a)(4).

a) Knowingly and with intent to defraud

Smith clearly acted knowingly by fraudulently charging one of CDI's customers and arranged to transfer those funds to his own bank account, rather than CDI's bank account. As such, Smith acted knowingly and with intent to defraud.

b) Accesses a protected computer

Here, CDI's payment system stored credit card information protected by login credentials. Smith accessed that system using Sidecar's login credentials, thereby accessing the protected computer system.

c) Without or exceeding authorized access

Under the CFAA, the term "exceeds authorized access" means "to access a computer with authorization and to use such access to obtain or alter information in the computer that the accessor is not entitled to retain or alter." 18 U.S.C. Section 1030(e)(6). The United States Supreme Court in it's *Van Buren* case clarified that a person "exceeds authorized access" "only when a person accesses data that the person does not have the technical right to access. '[A]n individual 'exceeds authorized access' when he accesses a computer with authorization but then obtains information located in particular areas of the computer... that are off limits to him.'" *Homefresh LLC v. Amity Supply Inc.* (citing *Van Buren v. United States*). While that case involved criminal charges, courts should apply the statute consistently across civil and criminal contexts. *See HomeFresh* (citing *U.S. v. Nosal*).

In the *Van Buren* case, a police sergeant used his work computer and login credentials to search a police database in excess of departmental policy, but without any technical barrier to accessing that information. *HomeFresh* (citing *Van Buren*). The Supreme Court determined that "[b]ecause Van Buren had a computer and login credentials that gave him access... he did not violate the CFAA, even if the purpose for his access violated departmental policy." *Id.* (citing *Van Buren*). The Supreme Court left explicitly unresolved whether liability under the CFAA relies only on technological limitations on access, or instead also looks to limits contained in contracts or policies. *See id*.

Here, Smith has technological access to CDI's systems: Sidecar's login credentials gave the ability to reach and even to alter customer data as well as CDI's own bank account information. As such, under *Van Buren* Sidecar is not liable under the CFAA for actions taken while Sidecar has legal authority to access the system, specifically the June 5th transfer of $25,000.

As mentioned above, *Van Buren* did not answer the question of whether liability also looks to limits contained in contracts or policies. *See HomeFresh*. In the persuasive case of *HomeFresh*, the court outlined the two possible approaches. *See id.* In that case, the issue turned on whether the employee downloaded data after the termination of his use to use HomeFresh's computers with the end of his employment. *Id.* In the first approach, rejected by the court in *HomeFresh* but used in other circuits, only technological limitations on access matter. *Id.* The court in *HomeFresh*, however, took the second approach favored in other circuits: that access after the termination of the right to use the computer system would violate the CFAA even where technical access remains. *Id.*

Here, Smith made the second and final transfer, constituting $50,000, on July 5th. This was three days after Sidecar terminated its contractual relationship with CDI on June 2nd, but 4 days before CDI changed the passwords on the payment system on July 9th. As such, this issue will turn on which approach the court takes.

If the court takes the first approach hinging on technical access, then Smith did not exceed his authorized access and Sidecar will not be liable. On the other hand, if the court takes the second approach hinging on legal right to access, then Smith did exceed his authorized access by accessing CDI's system after the termination of the contractual relationship and Sidecar will be liable of the other required elements of the CFAA are met. The court will likely take this second approach to maintain consistency with its sister court, but is not bound to so rule.

d) By means of such conduct furthers the intended fraud

Smith furthered his intended fraud of charging CDI customers to send himself money through his access of CDI's payment system. As such, this element is met.

e) Obtains anything of value

Smith obtained value by sending himself money on two separate occasions: $25,000 during the contractual relationship with CDI, and $50,000 after the termination of the contract with CDI. As such, Smith acquired value through funds in his bank account and this element is met.

In total, this case will depend solely on whether the second use by Smith constituted authorized access. *See* Section II(i)(c) *infra*. A court will likely find liability, but is not legally guaranteed to do so.

ii) Damages

The CFAA only allows recovery of losses where the claimant's losses exceed $5,000 in a one- year period. 18 U.S.C. 1030(g); *see also Slalom Supply v. Bonilla*. Loss means any reasonable cost to any victim, including the cost of responding to an offense, conducting a damage assessment, and restoring the data, program, system, or information to its condition prior to the offense, and any revenue lost, cost incurred, or other consequential damages incurred because of interruption of service. Costs upgrading the security system do not meet the statutory requirement. *Slalom Supply*. It can include, however, the costs of an investigation, including the costs paid to the company's own employees in assisting with the investigation. *See id.*

Consequential damages are limited to those incurred because of an interruption of service. 18 U.S.C. Section 1030(e)(11); *see Slalom Supply; see also Selvage Pharm. v. George*, *Next Corp v. Adams*. Lastly, "the CFAA limits the recovery of damages in civil cases to 'economic damages.' Courts have consistently refused to include punitive damages within the definition of 'economic damages.'" *Slalom Supply* (citing *Demidoff v. Park*); *see also* 18 U.S.C. 1030(g).

Here, the security firm which investigated the problem charged CDI $4,000. CDI additionally estimated that it paid its own employees $1,500 in overtime to help with the security firm's investigation. This totals $5,500, meeting the minimum $5,000 requirement to recover for losses under the CFAA. Assuming these numbers provided by CDI are correct, then Sidecar would be liable to CDI for $5,500.

As to the other damages alleged by CDI, $500 of the total for "correcting the breach" was the amount the firm charged to upgrade CDI's security system with stronger protections. This directly goes against *Slalom*, which as discussed above held that upgrading the security system does not meet the statutory requirements of the CFAA. As such, Sidecar is not liable for this $500.

Regarding restitution to the improperly billed customer of $75,000 and the cancellation of the contract with the customer worth $125,000, the *Slalom Supply* case held that such restitution, unless as a result of an interruption in service, is not recoverable. *Slalom Supply*. Here, the customer lost this money from the two charges issued by Smith before there was any interruption in service; CDI's website was only shut down between July 11th and July 16th. The charges were not as a result of the shutdown, and the customer terminated the contract two days prior to the shutdown, on July 9th. In fact, there are no evidence of any damages resulting from the interruption in service. As such, the damages for restitution to the improperly billed customer and the termination of the contract with the customer did not result from the shutdown, and CDI cannot recover these damages.

Lastly, because punitive damages are not recoverable economic damages and are barred under the CFAA, CDI will not be able to recover punitive damages in any amount, let alone the $400,000 in punitive damages CDI seeks.

In total, Sidecar will be liable for $5,500 in damages resulting from the costs of CDI's investigation.

III. Conclusion

The issue of Sidecar's liability will turn on how the court interprets the phrase in the CFAA "exceeds authorized access." If this term considers only technical limitations, then Sidecar will not be liable. If, however, the court follows the approach of the court in *HomeFresh* considering the termination of legal right to access, then Sidecar will be liable. Assuming Sidecar is found liable, then Sidecar will be liable for $5,500 in damages to CDI.

MEE 1

Representative Good Answer No. 1

A. Crack in the Foundation

It is likely that Adam has a cause of action against Connie as a result of her building the house. At issue is whether a purchaser can sue the original landowner for construction related issues. At common law, generally, purchasers of land bear the risk of any improvements of the land under the doctrine of caveat emptor. That means that they take the land “as is” unless there is some express warranty by the seller. Additionally, a buyer is unable to recover unless the seller knew about the dangerous, or significantly negative condition, the seller hid it, and did not disclose it. Yet, there is a significant exception to the caveat emptor doctrine where the person who sold the land is also the builder of the land. If the seller is the builder of the land there are implied warranties of merchantability and fitness for habitation that the buyer has as a recourse against the seller. Here, Adam bought the land by quitclaim deed from Bert who purchased the land from Connie who was the builder. Adam through the transaction from Bert is able to get to Connie for her breach of warranty for fitness as the quality of the house was suspect due to the crack in the foundation. It is immaterial that there were no express warranties as to the quality of construction due to the existence of prior guarantees. Connie sold the house with such defects as the builder. Therefore, Adam is likely to be able to sue Connie as the builder of the house.

B. Adam against Connie for Adverse Possession

It is likely that Adam would be unlikely to prevail against Connie for the adverse possession claim.

At issue is whether a subsequent buyer of a purchaser with a warranty deed may be able to exercise the warranty against the original guarantor. A warranty deed is an instrument that provides significant protections to purchasers. The warranty deed guarantees through its covenants that the conveyor of land, and their predecessors had the: (1)right to convey, (2)right of seisin (3)Lack of encumbrances of the land. Additionally, it vests future covenants in case of interruptions such as the covenant for quiet enjoyment, and covenant for replevy of court costs in defending the claim to the land. Warranty deeds are good from a subsequent purchaser as a successor in interest against the grantor of the warranty deed. Here, Connie gave Bert a

warranty deed which implies that all of the covenants need be followed. Yet, the warranty deed contained a limitation in that excepted "all titles covenants and restrictions on records in the county recorder". This limitation on the covenant of lack of encumbrances would limit recovery if the adverse possession claim was filed and ran against the land, which it does. Therefore, despite being able to reach Connie for her warranty deed, Adam will be unable to prevail because the warranty deed did not include recorded encumbrances which it was. C. Adam v. Bert for Adverse Possession.

It is unlikely thar Adam will have a cause of action against Bert based on the quitclaim deed.

At issue is whether Adam will have a cause of action against Bert based on the quitclaim deed. A purchaser of land usually takes the land "as is" unless there are given warranties. A quitclaim deed is one were the grantor disclaims and the grantee accepts a deed with no warranties or protections on the land. The quitclaim deed does not include any covenants not even stating that the grantor has the right to grant the land. Here, Adam has a quitclaim deed as it pertains to Bert, as a result he will be unable to support a claim against Bert as he bears the risk of the purchase and accepted a quitclaim deed. Therefore, as there are no guarantees between Bert and Adam there should be no cause of action.

D. Adam v. Connie for Easement

Adam will be unable to succeed against Connie for the easement over the land.

At issue is whether the road easement is subject to the warranty deed. [SEE B for definition of warranty deeds and covenants included]. Regardless of a warranty deed a buyer will be put on notice of an encumbrance if they had actual, record or inquiry notice. Inquiry notice is charged when a buyer through a cursory inspection of the land would have discovered the adverse interest. Inquiry notice would excuse the guarantor. Here, the roadway is an obvious interest that runs north-south through the middle of the land. Regardless of a warranty deed, Adam as the buyer should have realized that an easement or adverse interest existed in the land as it was obvious. As a result, he is charged with inquiry notice. The fact that he did not do an inspection is immaterial. Therefore, Adam would be unable to prevail against Connie.

Representative Good Answer No. 2

1. **The issue is whether Adam has an implied warranty of habitability from Connie.**

Generally, there is no warranty for structures on land in the transfer of a deed. However, one exception is the implied warranty of habitability on a new house. This implied warranty runs from the builder of the house to a buyer, and warrants that the house was built in a workmanlike manner and has no latent defects. In most jurisdictions, the implied warranty of habitability runs only from the builder to the initial home buyer. However, some jurisdictions allow the warranty to extend to remote purchasers in privity with the original buyer.

In this case, Connie, the builder of the house, gave the implied warranty to Bert. The fact that there were no express warranties on the quality of the house is immaterial, as the warranty is implied in all new house construction.

The question now becomes whether that warranty extended to Adam. In a state where such implied warranties are transferrable to remote buyers, Adam would have a warranty claim against Connie, as Adam bought for value from Bert. The fact that Adam bought through quitclaim deed would have no effect on the implied warranty, as a quitclaim gives no warranty as to the title of the land, not the structures on it.

However, in a majority of states, Adam would have no claim against Connie because he was not the initial purchaser of the home.

2. **The issue is whether Adam has a cause of action against Connie when he bought from Bert by quitclaim.**

A warranty deed contains warranties, both current and future, regarding the title, including the warranty against encumbrances. This warranty has current guarantees that the land is free of encumbrances such as easements or adverse possession. It also has future warranties that the seller guarantees against future claims against the land, and that the seller will work to quiet title if there are future claims. These warranties apply to future purchasers of land as well.

However, exceptions can be made to the warranties contained in the deed if included in the deed itself. In this case, because Connie's deed to Bert had an exception for all titles, covenants and restrictions recorded with the county recorder, Diane's adverse possession was an exception to the warranty, as it had been properly recorded and was disclaimed in the deed by record notice. Thus, when Adam bought by quitclaim deed from Bert, he took the land subject to Diane's adverse possession. Therefore, Connie owed no warranty to any future purchasers, and Adam has no cause of action against Connie.

3. **The issue is whether a purchaser of a quitclaim deed has a claim against the seller for a portion of the property taken by adverse possession.**

A quitclaim deed makes not warranties as the quality of title. It merely conveys whatever interest the seller has in the land to the buyer, even if that interest is no interest at all.

When Adam bought from Bert, he took whatever title Bert had, including the loss of the adversely possessed portion of the lot. Therefore, Adam has no cause of action against Bert.

4. The issue is whether Adam took the land subject to the neighbor's easement.

A bona fide purchaser for value takes land free of an easement if he had not notice of the easement. Notice can be made through record, inquiry or actual. Record notice is when the easement has been recorded in the appropriate county office. Inquiry notice is the notice a person would get based on a reasonable inspection of the land. Actual notice is when a buyer actually knows of the easement.

In this case, Adam is a bona fide purchaser as he paid value for the land. There is no record notice, as an implied easement cannot be recorded. There is no actual notice either, as Adam had not inspected the tract. Therefore, to take free of the easement, there must not be inquiry notice. Here, a reasonable inspection of the land would have shown Adam that there was in fact a gravel road that ran to the neighbor's land. However, the existence of this road would not reasonably lead him to believe that the neighbor had an easement by necessity over the road. An easement by necessity is formed when a piece of land has no access to public roadways. Reasonable inspection of the tract Adam bought from Bert would not have given him notice that the neighbor's lot had an easement by necessity to use the gravel road. This means that Adam took the tract free of the easement and does not have a cause of action against Connie because of it.

MEE 2

Representative Good Answer No. 1

1a. The issue is whether, as a controlling shareholder did XYZ owe ResortCo (R) and R's shareholders a duty of loyalty.

Generally, shareholders do not owe the corporations for which they hold shares a duty of loyalty. However, when a shareholder ends up in a position where they are a controlling shareholder,

then they may owe the corporation and their fellow shareholders a duty of loyalty. A duty of loyalty for a controlling shareholder normally arises when the shareholder owns more than 50% of the corporations shares, or they do not own a majority of the shares, but they are in a position where they can exert significant decision-making power over the corporation.

In this case, XYZ is clearly a controlling shareholder of ResortCo. They own 90% of the common stock, and the shareholder ownership puts them into a position where they are able to appoint all of the boards of directors to ResortCo. This extreme power would most certainly put them into a position where they could exert significant control over the corporation, so they owe a duty of loyalty to the other shareholders.

Accordingly, yes XYZ owes a duty of loyalty to both ResortCo and the other shareholders.

1b. The issue is whether XYZ breached their duty of loyalty by causing a self-dealing transaction between ResortCo and CruiseCo.

The duty of loyalty owed by the majority shareholders generally prevents the majority shareholder from either opening the corporation up to looters who seek to destroy or oust other shareholders from the corporation. Additionally, the majority shareholder must not take an improper benefit at the expense of the corporation. This can happen during self-dealing transactions or when they enter into transactions that are unfair and are adverse to the interests of the shareholders.

In this case, the second type of violation was committed by XYZ. ResortCo normally charged CruiseCo the market rate for docking fees. However, simply to alleviate costs for CruiseCo, XYZ took advantage of their position at ResortCo and provided CruiseCo with the benefit. Additionally, as full owners of CruiseCo, this amounted to a benefit for them at the expense of both ResortCo and the other shareholders of ResortCo. Additionally, because there were no board members who were uninterested because they were all appointed by XYZ, the transaction was certainly unfair and an improper use of majority shareholder power.

Accordingly, by stopping charging the docking fees, XYZ certainly breached their fiduciary duty of loyalty to ResortCo and the ResortCO shareholders.

2. The issue is whether the minority shareholders of ResortCo could compel the board to issue a dividend.

A dividend is a payment of funds from a corporation to its shareholders. Whether or not a corporation wishes to issue dividends are within the full discretion of the board of directors. Generally, a dividend cannot be issued if the dividend would cause the corporation to become insolvent or they are already insolvent, but otherwise, a board of directors is free to determine whether or not issuing a dividend is proper. With that, a group of shareholders is very unlikely to be successful in compelling a board of directors to issue a dividend. In the absence of a breach of fiduciary duty or some other violation of law resulting the corporation wrongfully withholding funds, a shareholder is unlikely to be successful in compelling a board to issue a dividend.

In this case, although the shareholders desire a dividend, their challenge would be unsuccessful. There is no indication that the board acted wrongfully. Instead, the board of directors decided not to issue a dividend because they wanted to reinvest in the hotel business. To reach this decision, they spend several hours discussing the financial implications and obtained an advisory opinion regarding the consequences. As stated above, and well within their rights as the board, they took the time to make a sound decision with respect to issuing a dividend and decided against it. Nothing indicates a wrongful withholding.

Accordingly, the shareholders would be unlikely to succeed in challenging the board's decision not to issue a dividend because the board acted properly in reaching the decision and the decision was theirs to make.

3. The issue is whether the board violated the business judgment rule for failing to investigate the real estate transaction with Ava.

Boards of directors to corporations have a number of fiduciary duties. One such duty is the duty of care. The duty of care requires that a director act as a reasonable person would in their position, and takes into account a reasonable person of the directors' skills and knowledge. They must take reasonably action to act in the interest of the corporation and must do without falling below the standard of care of a reasonable person. An additionally component of the duty of care is the business judgement rule (BJR). The BJR generally protects the decisions of directors and officers of corporations who make decisions for the corporation in good faith and in line with their duty of care. Generally, in the absence of fraud, illegality, self-dealing, or a violation of the duty of care, the decision of the board will be upheld, and courts will not entertain challenges by angered shareholders. However, a deviation from the standard care caused by a failure to properly investigate or consider a significant purchase could cause a director to lose protection from the BJR.

As directors of a corporation, these directors certainly owe ResortCo and the shareholders a duty of care. Moreover, as directors, their decisions are generally protected by the BJR. To earn that protection, though, they must act reasonably when making their decisions. A failure to properly investigate decisions that a reasonable board of director could definitely result in losing protection of the BJR. Here, the board received Ava's offer, asking for $50M in exchange for

1000 acres of oceanfront land 30 minutes before a meeting. The offer was valid for 48 hours. However, instead of taking that time to investigate the transaction and make a sound decision regarding the consequences, the board took 15 minutes to make their decision.

Unlike their dividend decision, they sought no outside advice, did not take their time, and made an extremely large purchase that ended up being over the fair market value of the property. As stated above, the BJR generally protects the reasonable decisions made by board of directors. However, this protection does not extend to decisions that are not made reasonably.

Accordingly, the BJR would not protect this decision because the board failed to prosecute its consequences and did not act reasonably.

Representative Good Answer No. 2

1. The issue is whether XYZ, as a controlling shareholder of ResortCo, breached a fiduciary duty of loyalty to ResortCo or ResortCo's minority shareholders by causing ResortCo to stop charging CruiseCo docking fees.

Generally, shareholders do not owe fiduciary duties to other shareholders. An exception exists in the case of a controlling shareholder. A controlling shareholder holds over 50% of a company's stock options, therefore enabling it to control company decisions subject to a shareholder vote. A controlling shareholder owes a duty of loyalty to the minority shareholders. In particular, a controlling shareholder may not use its power to act against the interest of the company for its own benefit. A controlling shareholder, for example, may not engage in self-dealing, as this conflict of interest is always a violation of the duty of loyalty.

In this case, XYZ is a controlling shareholder of both Cruise Co and ResortCo. It owns all the common stock of CruiseCo and 90% of the common stock of ResortCo, giving it the power to choose all members of the boards of directors for both companies (a decision typically made by shareholders). As a controlling shareholder, XYZ has a duty of loyalty to other shareholders of both companies and to the companies themselves.

XYZ engaged in self-dealing when it caused ResortCo to stop charging CruiseCo docking fees. ResortCo had always charged ResortCo the same docking fees as it charged any other cruise line. However, as soon as CruiseCo was experiencing financial difficulties, XYZ demanded ResortCo stop charging CruiseCo's ships docking fees, despite being contractually entitled to those fees. This was a direct conflict of interest, as XYZ owned all the common stock of CruiseCo and while the halt on the charge of the docking fees helped CruiseCo, it substantially hurt ResortCo by lowering ResortCo's revenues. XYZ chose all of the board members who voted to meet XYZ's demand, so it's decision to act against the best interest of ResortCo for the benefit of CruiseCo was a clear conflict of interest and act of self-dealing.

Thus, XYZ violated its duty of loyalty to ResortCo and ResortCo's minority shareholders by causing ResortCo to stop charging CruiseCo docking fees.

2. The issue is whether ResortCo's minority shareholders are likely to prevail if they challenge the board's decision not to declare a dividend this year.

A company's board of directors owe fiduciary duties to its shareholders, including the duty of care and the duty of loyalty. The duty of care requires that the board act in the company's best interest and act as prudent directors in their position would act in making business decisions. Most business decisions made by the Board of Directors are protected by the business judgment rule. The business judgment rule presumes that the Board is acting in the business's best interest and that they are not violating the duty of care. Typically, decisions not to declare dividends are protected by the business judgment rule. The business judgment rule can be overcome if the board has failed to obtain reasonable information and failed to reasonably consider all the facts in making a decision.

In this case, ResortCo's directors voted six months ago not to declare or pay the usual yearly dividend to its shareholders. The director's reasoning not to pay dividends was because it wanted to use those funds to construct new hotels and therefore increase ResortCo's market share. Such

a decision not to declare dividends is a business decision that is typically protected by the business judgment rule. The facts here provide no indication that the business judgment rule should be overcome, as the board seemed to reach this decision after careful consideration of all the information it had available to it. The board took several hours to make the decision and had consulted a report on the financial implications of the dividend from its CFO, a report from an independent accountant, and an advisory opinion that was prepared by an outside (i.e., neutral) law firm.

Because the board seemed to have carefully made this decision, the decision is reasonable, and the decision was made based of adequate information, it is protected by the business judgment rule and the minority shareholders are unlikely to prevail if they challenge the board's decision not to declare dividends this year.

3. The issue is whether ResortCo board of directors' decision to purchase Ava's land is protected by the business judgment rule.

As mentioned, the business judgment rule presumes that a board is acting in the best interest of the company in making business decisions and not breaching its duty of care. However, this presumption can be overcome when the evidence shows that the board did not adequately consider sufficient information in coming to a decision. For example, if the board made a decision swiftly without seeking any input from sources say in regard to its financial position, the business judgment rule can be overcome.

Here, ResortCo accepted an offer from Ava to purchase her land for $50 million. This was a business decision of the board, and such business decisions are presumed not to be a fiduciary violation of the board's duties. Ava had no previous connection to ResortCo and told ResortCo's president that she would only hold the offer open for 48 hours. It must be acknowledged, therefore, that ResortCo needed to act quickly in reaching a decision. However, ResortCo only discussed Ava's offer for 15 minutes before unanimously voting to accept it. And they did so without obtaining guidance about the transaction's fairness or potential impact on the company's financial condition from any outisde experts, or even from the company's own CFO. It turns out the price was more than the property's fair market value and therefore not a prudent investment. Such facts indicate that the board did not take the time to make a reasonable decision. It could have met for several hours in one day to discuss the purchase, and still met Ava's 48-hour deadline. Even if the board did not have sufficient time to seek outside advice, it certainly had time to consult its own CFO.

Thus, it is likely the board's decision to purchase Ava's land is not protected by the business judgment rule in this case.

MEE 3

Representative Good Answer No. 1

1. The issue is whether the statute substantially frustrates the purpose of existing contracts between CarCo and rural dealerships such that it violates the Contracts Clause.

States are prohibited from passing laws that substantially interfere with a parties existing contracts because these laws would violate the Contracts Clause of the Constitution.

Here, the restriction on terminating contracts between a manufacturer and a dealer does not substantially interfere with CarCo's existing contracts. The main purpose of these contracts is to give the dealers the right to sell cars made by CarCo. Under the new law, the dealers would still have the right to sell cars made by CarCo and CarCo would still have the right to profit under these contracts. Just because CarCo intended to promote its website by cancelling its contracts with retailers does not mean the new law substantially interferes with the original purpose of the contract or the ability to carry out the contract. CarCo would likely argue that it relied on its ability to cancel the contracts when it invested its website business, but the law does not prevent consumers from buying on the website. Therefore, the law does not violate the Contracts Clause of the Constitution.

2. The issue is whether CarCo would be able to meet its burden of showing that the law is arbitrary and capricious such that it is not rationally related to a legitimate state interest.

The Equal Protection Clause of the 14th amendment, as applied to the states through the fifth amendment, prohibits the discriminatory application of laws. Courts use various tests to determine whether a law is constitutional based on the rights being discriminated against. If the discrimination is based on race, national origin, or ethnicity , courts employ strict scrutiny. If the law discriminates based on gender or legitimacy, courts use intermediate scrutiny. If the law discriminates on any other basis, courts use the rational basis test. Under the rational basis test, the plaintiff has the burden to show that the law is arbitrary and capricious such that it is not rationally related to a legitimate state purpose.

Here, a court would likely have to employ rational basis scrutiny because the discrimination alleged is based on automobile dealerships versus contracts involving other products. This type of discrimination does not trigger a heightened level of scrutiny. CarCo may argue that the law is arbitrary and capricious because of the anger legislators may feel towards CarCo for terminating their agreements with rural dealers, but the State would argue that the law addresses imbalanced bargaining power between manufacturers and dealers. The State has a legitimate interest in ensuring equal bargaining power between contracting parties and the restriction on cancelling contracts without cause is rationally related to this interest. Therefore, the stature does not violate the Equal Protection Clause.

3. The issue is whether the statute violates CarCo's substantive due process rights of notice and the opportunity to be heard.

Substantive Due Process prohibits a state from arbitrarily

A state's infringement on Substantive Due Process is evaluated based on rational basis or strict scrutiny. If state action is infringing upon a fundamental right, the courts use strict scrutiny to determine whether the state is using the least restrictive means to further a compelling state interest. State infringement on any other rights is evaluated based on rational basis and, as discussed above, the plaintiff has the burden to show that the infringement is arbitrary and capricious.

Here, there is no infringement on CarCo's fundamental rights so a court would use rational basis scrutiny. Here, the CarCo would have the burden to show that the good-cause requirement is arbitrary and capricious. The good-cause requirement protects rural dealerships from unforeseeable cancellations of the contract, so it would be difficult for CarCo to show that the infringement is arbitrary and capricious. Therefore, the statute does not violate CarCo's substantive rights.

Representative Good Answer No. 2

1. The issue is whether the State A statute violates CarCo's rights under the Contracts Clause. Under the contracts clause of the United States Constitution, a state cannot impede upon private parties' right to contract. It is well established that the Supreme Court applies a strict scrutiny standard to regulations which impede upon the right to contract. This requires that the state show that the statute or regulation is necessary to achieve a compelling state interest.

Here, the state's interest is keeping car sales accessible for those in rural areas. CarCo's termination of the agreements with dealerships in rural areas would allow CarCo to save a significant amount of money. Further, after terminating these agreements, CarCo relied on the ability to save money when expanding their online presence. CarCo's rationale was that individuals in rural areas could use their newly expanded online platform to purchase cars. Additionally, CarCo had never entered into an agreement with a dealership without the termination provision, and the new state statute applies to contracts entered into before and after the effective date of the statute. As such, the statute significantly impairs contractual rights of auto manufacturers by terminating rights provided in contracts prior to the effective date of said statute. The state's interest in individual's in rural areas having access to cars and contributing to the economy is significant, but these individuals can still purchase cars from other manufacturers and from CarCo through their online store. As such, the state statute terminating CarCo's right to terminate contracts is not necessary to achieving the state interest of rural individuals purchasing cars and contributing to the state economy.

Thus, the State A statute violates CarCo's rights under the Contracts Clause.

2. The issue is whether the State A statute violates the Equal Protections Clause.

The Equal Protection Clause ("EPC") of the United States Constitution applies to the states through the 14th Amendment. Under the EPC, states cannot promulgate legislation that has a discriminatory effect on suspect classes (groups of people). The first suspect class applies to statutes and regulations discriminating against race, national orgin, and alienage. Strict scrutiny applies to this suspect class, which states that the government must show that the statute is necessary to achieve a compelling state interest. Intermediate scrutiny applies to the second suspect class, which includes discrimination based on gender and illegitimate children. Intermediate scrutiny requires the government to show that the statute is substantially related to an important government interest. Discrimination of all other groups is governed by the rational basis test, which is a low standard, and requires the challenger-plaintiff to show that the statute is not rationally related to a reasonable state interest.

Here, the statute discriminates against automobile manufacturers, which is not a suspect class under the EPC. As such, the plaintiff, CarCo must prove that the statute is not rationally related to a reasonable state interest. It is likely that the state's interest in addressing the imbalance of bargaining power between automobile manufacturers and dealers is a reasonable state interest. Further, the statute prohibiting automobile manufacturers from terminating contractual rights of a dealer located in a county with a population of less than 1,000 people is rationally related to this interest, as the state has an interest in having dealers located in rural counties to further the state economy through the purchase and sale of cars. The private statements of individual legislators will likely not tip the scales in favor of the CarCo, as the rational basis test is a low threshold.

Thus, the State A statute does not violate CarCo's Equal Protection Rights under the US Constitution.

3. The issue is whether the State A statute violates CarCo's substantive due process rights.

Substantive due process is the process by which fundamental rights can be regulated. The Court recognizes several fundamental rights, including contraception, parental rights, marriage, and education. For the government to regulate these rights, the government must prove that such regulation is necessary to achieve a compelling state interest. All other rights are subject to the rational basis test described above.

Here, the good-cause requirement for terminating the automobile-dealership agreements is not a fundamental right under substantive due process. As such, the court will apply the rational basis test, which, as described above, is a low threshold on which plaintiff's usually lose. The state has a rational basis related to a reasonable state interest for requiring good cause for contract termination, as the state wants to encourage contracting and keep dealerships in rural areas.

Good cause will provide a more stringent standard on which auto manufacturers can terminate contracts, providing for more protections for the dealers in these rural areas.

Thus, State A statute does not violate CarCo's substantive due process rights under the US Constitution.

MEE4

Representative Good Answer No. 1

0 [Preliminary]. What Contract Law Governs

The issue is what law governs the following contract analysis. The common law governs contracts related to services and real property. The Uniform Commerce Code ("UCC"), specifically UCC Article 2, governs contracts related to the sale of goods. When a contract considers two types of result (i.e., a contract for sales and services), the predominant purpose test provides the correct controlling law. The predominant purpose test looks at what the major purpose of the contract was ("the predominant purpose") and applies the law that governs over the predominant purpose. A contract may not have two purposes.

Here, any contract at issue regards a general deal between the store owner, who would pay $5000, and SignCo, who would make a sign for the store owner. Although this contract considers both goods (the sign itself) and services (the making of the sign), the predominant purpose of the contract is for the sale of the sign. The service (making the sign) is incidental to this purpose. Thus, Article 2 of the UCC should govern this contract analysis.

1. Did the Store Owner and SignCo Enter into a Contract on May 1?

A contract requires mutual assent (offer and acceptance) in conjunction with bargained-for consideration. An offer is an objective manifestation of intent by the offeror to enter into a deal and creates the power of acceptance in an offeree. An acceptance is an objective manifestation of intent by the offeree to accept the terms of the deal and bind themselves to it. Bargained-for consideration can be anything that the two parties deem of value. Generally, the only restriction is that is cannot be consideration that essentially functions as no consideration (e.g., a sale for a yacht for $.01). Under the UCC the only required term for a contract to be formed is quantity.

Here, there was mutual assent and bargained-for consideration. SignCo agreed to deliver to the store a 10-foot-long sign and the Store Owner would pay $5000. The agreement was made between the store owner and an authorized party for SignCo. As there is mutual assent, consideration, and a proper essential term (quantity-1 sign), there is a contract entered into between the parties under the UCC. However, the Statute of Frauds may be a bar to this contract's formation, but in this case it is not. *See Answer 2*.

2. Assuming that the Store Owner and SignCo Entered into a Contract on May 1, Is It Enforceable Against the Store Owner Even Though the Store Owner Did not Sign a Document Reflecting the Agreement?

The issue is, assuming that that there was a contract, if the contract is enforceable against the store owner even though the store owner did not sign a document reflecting the agreement. The Statute of Frauds ("SoF") serves as a bar to formation of certain types of contracts including the sale of a good over $500. To satisfy the SoF, there must be (1) a writing; (2) containing essential terms; and (3) is signed by the party to be charged. However, certain exceptions apply to make a contract valid that otherwise would be invalid under the Statute of Frauds. In the context of the sale of goods over $500, a contract can be formed, despite not meeting the SoF requirements, if the contract is for a sale of unique goods and the unique goods have begun to be manufactured. An agent can bind the principal to a contract if they have authority. If a contract is exempt from the SoF it binds both parties to the contract.

Here, assuming there was a contract. The contract was not in writing, signed, containing the essential terms. Thus, the contract would be violative of the SoF but for an exception. Here, the contract is for a specifically manufactured good-a sign, bearing the unique name of the store, constructed of bent red glass. On May 6, substantial progress began on the unique good. This meant that the May 1 agreement became an enforceable contract to both parties. Thus, assuming that there was a contract, it is enforceable against the store owner even though the store owner did not sign a document reflecting the agreement.

3. Assuming that the May 1 Agreement Constitutes a Contract that is Enforceable Against the Store Owner, Is the Store Owner Bound to Accept the Sign From the Substitute Manufacturer?

The issue is whether SignCo could properly delegate their contract and whether the Store Owner is bound to accept the sign from the substitute manufacturer. A contract is generally able to be delegated. However, a party may oppose a delegation because they had sought out the specific expertise/style of a certain person/business. In the UCC, if there is no proper basis for delegation, and no contract term prohibits, a party must accept the tendered goods. If they do not accept the tendered goods, they can be subject to damages under a theory of breach of contract. However, if there is a genuine issue with the goods, the buyer is not obligated to accept the goods. A delegation or assignment does not need to be agreed to by the opposite party. Further, notice is not necessarily required. Assignment gives a third-party the rights that the original party would have had under the contract. If a party to a UCC contract anticipatory repudiates, the adverse party may perform as required and attempt to seek payment.

Here, the contract between SignCo and the Store Owner did not prevent delegation. Additionally, the contract was not sought after because of the expertise or style of SignCo. Rather, the contract was sought after because of SignCo's low advertised priced. Thus, a delegation does not impair the parties' contract. This delegation, and subsequent assigning of payment rights, was done without the notice or agreement of the Store Owner-two elements that are not required. On May 12, the store owner anticipatorily repudiated the contract by saying that she had no intention of accepting a sign made by anyone other than SignCo. Thus, the substitute manufacturer, by virtue of the rights assigned to them by SignCo, had the choice of pursuing payment. The Store Owner then rejected the sign on May 31. At this point the store owner was bound to accept the sign, despite her objections, and in not doing so breached the contract.

Representative Good Answer No. 2

1. The issue is whether the store owner and SignCo entered into a contract on May 1 when they orally promised to exchange $5,000 for a custom-made sign.

A contract is a legally enforceable promise that is created pursuant to mutual assent and consideration. An offer must create the power of acceptance in the offeree, and the offeree must show a willingness to be bound to the terms of the offer. A bilateral contract entails the exchange of 2 promises. Generally, promises are not enforceable unless they are supported by consideration in a bargained-for exchange. Modernly, consideration is considered present when the promisor incurs a legal detriment. Contracts for the sale of goods are governed by the UCC, while contracts for services and the sale of land are governed by common law.

Here, the store owner and SignCo representative orally agreed that in exchange for payment of $5,000 by the store owner, SignCo would create a 10-foot-long sign bearing the store's name. This was a bargained-for exchange in which the store owner promised to pay $5,000, and SignCo's representative promised that SignCo would create a product for the store owner. SignCo's representative was authorized to enter into contracts on behalf of SignCo, and there is no indication that either this representative or the store owner lacked the capacity to contract. Since this agreement is for the purchase of a sign, a good, the UCC governs.

The fact that this agreement was entered into orally does not mean it is not a contract. Whether this oral agreement is *enforceable* is a separate issue that will be discussed below. Regardless of enforceability, a contract was formed between the store owner and SignCo on May 1 because they engaged in a bargained-for exchange in which they exchanged promises with each other supported by consideration.

2. The issue is whether, under the Statute of Frauds (SOF), this contract is enforceable against the store owner even though she did not sign a written manifestation of the agreement.

Under the UCC, a contract for the sale of goods for over $500 is subject to the SOF. The SOF requires this contract to be written to be enforceable. Specifically, the writing must be a representative manifestation of the contract (it does not need to be the contract itself), contain all material terms (which under the UCC is only quantity), and be signed by the party to be charged. If the SOF is not satisfied, then the contract can be found unenforceable. However, the UCC provides an exception to the SOF requirements when the contract is for the sale of custom-made goods. Under this exception, the party to be charged cannot claim that the contract is unenforceable under the SOF when the other party has already substantially begun performance. Goods are custom-made when they are made pursuant to the buyer's specifications and are so unique that they cannot reasonably be sold to a replacement buyer.

Here, the store owner and SignCo contracted for the purchase of a custom-made sign for $5,000. Since this purchase price exceeds $500, the SOF applies, and the contract cannot be enforceable if it does not meet the requirements of a signed writing that contains all material terms. At first glance, the parties' contract violates the SOF because it was entirely oral. However, the exception for custom made goods applies because the contract was for a sign that bears the unique name of the store and meets the owner's quality and design specifications. Since the entire purpose of the sign is to bear the name of this specific store, the sign cannot reasonably be sold to another buyer and is therefore a custom-made good. The SOF exception applies because SignCo had already substantially begun shaping the glass into the store's name when the store owner claimed that the contract was unenforceable.

Therefore, this contract is enforceable against the owner even though it does not satisfy the SOF.

3. The issue is whether, assuming the contract is enforceable, the store owner is bound to accept the sign from the substitute manufacturer.

Unless the parties contract otherwise, each party is free to delegate its duties and assign its rights under the contract to a third party. Delegation of duties does not relieve the original party of liability under the contract unless a complete novation has occurred. Delegation is not permitted when the other party contracts with the original party specifically because of their personal identity and/or skills ("special person contract"). Since the identity of the party is so inherently important in a special person contract, delegation is not permitted.

Here, the parties did not create a special party contract. The store owner sought out SignCo "on the basis of its low advertised prices," not SignCo's unique design skills. Additionally, the parties did not expressly contract against delegation or assignment of rights under the contract. Therefore, SignCo was free to delegate its duty to create the sign and its subsequent right to payment to the substitute manufacturer without the store owner's permission. The store owner cannot reject the sign from the substitute manufacturer on the basis of SignCo's delegation or assignment.

Nor can the store owner reject the sign on the basis of dissatisfaction. A satisfaction contract allows the buyer to reject performance if it does not honestly satisfy their subjective expectations, even if such expectations are unreasonable. This contract was arguably a satisfaction contract because the sign was required to "meet quality and design specifications stated by the store owner." However, even though the sign was made by the substitute manufacturer, it still "conformed to all the specifications of the store owner's agreement with SignCo." Therefore, the owner cannot cite dissatisfaction as a reason not to accept the sign.

Finally, the store owner cannot cite imperfect tender as a reason to reject the sign either because the sign was delivered on May 31 as required by the contract, and it satisfied all of the store owner's specifications. Therefore, neither the substitute manufacturer nor SignCo violated the UCC's perfect tender rule (requiring tender of perfect goods and perfect delivery), and the store owner cannot reject the sign on this basis either.

In conclusion, the store owner remains bound to accept the sign from the substitute manufacturer.

MEE5

Representative Good Answer No. 1

1. The issue is whether Wanda has sufficiently demonstrated a change in circumstances such as to permit the trial court to reconsider the order of sole custody for Harvey.

A trial court may alter or modify a child custody determination where the party seeking modification alleges sufficient facts to demonstrate a change in circumstances warranting modification of custody. A change in circumstance sufficient to warrant modification of custody may include the inability of the parent with sole custody to adequately care for the child, abuse by the parent with sole custody, or a combination of circumstances demonstrating that the parent with sole custody is unfit to care for the child *or* that the child has a strong preference towards, and the facts otherwise support, custody with the non-custodial parent. Here, Wanda argues for a custody modification based solely on the fact that Harvey's non-marital partner, Patrice, has moved in with Harvey. Wanda argues that the parties' daughter should not be "exposed to the nonmarital cohabitation of Harvey and Patrice." Wanda offers no more evidence or testimony to support her argument that the custody ruling should be modified.

Generally, courts are not permitted to consider a parent's relationship or sexual history in making child custody decisions unless there is evidence that it would negatively affect the child should the parent be granted custody. This extends to modifications of child custody rulings as well. Here, Wanda's only argument that the custody ruling should be modified is that Harvey now resides with his non-marital partner, Patrice, and that her daughter should not be exposed to this relationship. However, Wanda offers no evidence that this relationship is damaging in any way to the daughter. In fact, the daughter has shown no change in behavior since Patrice moved in, and stated herself "Patrice is fine." Nothing about Harvey and Patrice's relationship seems to negatively impact the daughter such that Wanda's petition for custody modification is proper under the facts. Thus, the facts are not legally sufficient to justify the trial court to modify the custody order to grant Wanda sole custody.

2. The issue is whether the trial court can properly modify the existing child custody order based on the best interests of the child standard.

In making a child custody determination, a trial court is expected to prioritize the best interests of the child. A child's parent or guardian (biological or adoptive) is usually considered to be the best and most appropriate caretaker of the child. An initial custody determination generally considers the relationship of the parents, the preference of the child (if the child is of sufficient age and maturity to express such preference), the living situation and means of each parent, and the ability of the parents to cooperate and work in the best interest of the child together. There is a rebuttable presumption in favor of joint custody, as joint custody is considered to be in the child's best interest. However, where the parents seem incapable of cooperation or are otherwise hostile towards one another, as here, sole custody may be granted instead.

Based on the facts presented, the trial court's initial determination of sole custody for Harvey seems proper. The fact that Wanda and Harvey are so hostile towards one another and expressed that they were unwilling to share custody, paired with the fact that the daughter expressed a preference for Harvey, indicate that it was in the daughter's best interest to grant Harvey sole custody with liberal visitation for Wanda. Presently, the daughter has expressed that she enjoys living with Harvey and still harbors some anger about the divorce, though she misses Wanda and would like to see her more. This weighs in favor of a finding of joint custody. It seems that, since the initial custody determination, the daughter may have stopped blaming Wanda for the divorce and wants to have a closer relationship with her. However, based on the rest of the facts, this preference alone is likely not sufficient to warrant a modification in favor of joint custody. This is because neither Harvey nor Wanda have ever requested joint custody, either in the initial custody dispute or in light of Wanda's recent modification petition, and their relationship remains "bitter and acrimonious." While joint custody may be more in line with the daughter's current preference, it seems that Harvey and Wanda may be incapable of the cooperation and amicability required in order to make a joint custody arrangement work. Thus, the trial court should not modify the existing custody arrangement to award joint legal and physical custody of the daughter.

Representative Good Answer No. 2

I. The first issue is whether the facts are legally sufficient to authorize the trial court to consider whether to modify the existing custody order.

In order to modify an existing custody order, the moving party must establish that there has been a material and substantial change in circumstances from the time of the previous order. The change must not have been foreseeable at the time of the previous custody decision.

Here, the fact that Patrice has moved in with Harvey and the daughter is a substantial and material change. Harvey may argue that the change was foreseeable because the parties' divorce was based on the fact that he had an extramarital affair with Patrice. He may contend that it is foreseeable that his relationship with her would continue. Wanda may respond that Patrice was also married at the time of the affair, and it is not foreseeable that she would have moved in with Harvey so soon. Although only two months has passed since the trial court entered the divorce decree and custody order, it is likely that the addition of Harvey's romantic partner to the household where the daughter lives constitutes a material and substantial change. The trial court may therefore properly consider Wanda's modification petition.

II. The second issue is, assuming there is a legally sufficient basis for modification, whether the trial court should grant Harvey and Wanda joint physical and legal custody of their daughter.

When evaluating both legal and physical custody, the court will apply the best interests of the child standard. Under the best interests of the child standard, the court may properly evaluate a range of factors, which include the parties' wishes, the child's wishes, the ability of the parents to co-parent, who has typically performed the majority of the parenting duties, the child's relationship to both parents, and the child's emotional well-being. The parent's sexual and romantic relationships are generally not properly considered, unless there is a specific reason that the relationship affects the child. The weight that a court places on the child's preference will vary depending on the child's age.

In addition to the factors described above, there is generally a presumption that fit parent should have the right to parent their child.

Physical Custody

Physical custody pertains to which parent the child lives with. Here, the custody evaluator previously found that both Wanda and Harvey were devoted parents to their daughter. There is nothing in the facts suggesting that either parent is unfit. Although Wanda is concerned about Harvey exposing their daughter to nonmarital cohabitation through his relationship with Patrice, the relationship does not appear to have had a negative effect on the daughter. Harvey has testified that the daughter and Patrice "get along well" and the daughter has testified that "Patrice is fine." The relationship should not be weighed against granting Harvey custody.

The daughter is currently 13 years old, and the court will therefore give her testimony and preferences more weight than it would for a younger child. The daughter, although she initially blamed Wanda for the divorce, seems to have moved past some of her anger and currently expresses a desire to see her mom more. The parties do have an acrimonious relationship and neither has expressed a desire for joint physical custody. Applying the best interests of the child standard, given that the daughter's preference is to see her mom more, and the fact that the custody evaluator found that both parents were devoted to their daughter, the court should order joint physical custody.

Legal Custody

Legal custody involves which parent has the right to make decisions on behalf of the child. Legal custody decisions are not merely day to day choices related to the child's care, but involve larger scale decisions such as where the child attends school, medical decision-making, and religious choices. Here, the court will likely consider the facts that the parties have a contentious relationship and seek only sole legal custody to weigh against joint legal custody. In order for joint legal custody to succeed, the parties must be able to successfully co-parent. Unless that can occur, the child may suffer because the parties will not be able to make timely and effective decisions on their behalf. Given that the relationship between Wanda and Harvey continues to be acrimonious, the court should not award joint legal custody.

As an alternative, if this jurisdiction allows it, the court could award joint legal custody, but permit one parent to be a tiebreaker in the event that they cannot reach a joint decision. This could permit both Wanda and Harvey to still be involved in legal decision making for their daughter, while still allowing one parent to make a final choice if needed.

MEE6

Representative Good Answer No. 1

1. The issue is whether the insurance policy and witnesses to the accident are within the scope of required initial disclosures. Within fourteen days of the Rule 26f Conference, each party must send the other (1) the names and addresses of any witnesses they might use to support their claim at trial, (2)copies of any documents or tangible things they might use to support their claim at trial, if they are in the party's control, (3) a calculation of damages, and (4) the information of any insurance policies they might use to cover claims against them. Because the man's car insurance policy covers personal injuries and property damage, it would likely be used to cover a personal injury claim, such as this one, that arose from a car accident. For this reason, the man should have included information about the insurance policy in his initial disclosures.

The man did not need to include the identities of the other passengers or the bystander in his initial disclosures because they each told the man's attorney that the man was looking at his cell phone when the accident occurred. Because this testimony would be harmful to the defendant's case, he would not use them to support his claim at trial. As such, the names and addresses of these witnesses do not fall within the scope of the initial disclosure rule.

2. The issue is whether information about the defendant's eyesight is discoverable. Material is discoverable so long as it is (1) relevant, (2) non-privileged, and (3) proportional to the needs of the case. The information sought about the man's eye sight is not privileged. It was not obtained for the purposes of litigation, and federal courts do not recognize a physician-patient privilege. The information is also relevant to the case because any problems the man has with his eyes could make it more or less likely that his negligence caused the car crash. For example, the defendant might have been looking at his phone for an extended period of time because he had trouble seeing it, and caused the crash while his eyes were off the road. Finally, answering a simple question is proportional to the needs of this case. For these reasons, the trial court erroneously denied the plaintiff's motion to compel.

3. The issue is whether the standard for a motion for judgement as a matter of law (JMOL) is met. A party can move for JMOL at any time before the case is submitted to the jury, but the court cannot rule on it until the non-movant has an opportunity to be heard. Here, both the plaintiff and defendant have had an opportunity to present evidence. Therefore, the court should grant the plaintiff's motion for JMOL if the appropriate standard is met.

The standard for granting a motion for JMOL is that reasonable people could not disagree on the result of the case. The plaintiff's claim is that the car accident was caused by the defendant's negligence. To support her theory, the plaintiff offered the testimony of three witnesses, each of whom testified that the defendant was looking at his cell phone when he collided with the plaintiff's car. In response, the defendant presented one witness who said that he was not looking at his phone when the accident occurred. Although the weight of the evidence favors the plaintiff, the trial court should not grant the motion for JMOL under these circumstances. Each party has presented testimony that directly contradicts each other, and reasonable people could disagree about whose testimony to credit. For this reason, the case should be submitted to the factfinder.

Representative Good Answer No. 2

1. At issue is whether the man was required to include in his initial disclosures information about the insurance policy and identity of the three other witnesses to the accident.

Generally, the Federal Rules of Civil Procedure requires that a litigating party must disclose to the opposing party all relevant facts and information related to the potential claims and defenses that they will raise or utilize at trial. Further, the disclosure of an insurance policy is also required pre- trial to be disclosed to the opposing party.

Here, the man's initial disclosures did not identify or refer to the three other witnesses of the accident (the bystander and the man's two friends). The man had hired an attorney that consulted these witnesses. however, the man ultimately did not use these three witnesses at trial and the facts do not indicate that he used the information at trial since at trial, the man only called his brother. Thus, the man was only required to disclose that the brother's information, since this is the information relevant and used by the man at trial.

Further, the man was required to disclose the insurance policy in his initial disclosures. This is relevant information related to the man's claims and defenses. It is also important for both parties to be aware of whether the man had insurance as it determines the ability of the man to be able to adequately protect himself in case he is found liable for damages.

2. At issue is whether the trial court ruled correctly on the woman's attorney's motion to compel the man to answer deposition questions about his eyesight.

Generally, parties must comply to discovery rules. deposition is a way for a court to gather more information from witnesses and parties ahead of trial. When a party does not comply with discover, the party can seek a motion to compel in court to ensure that the party complies with the discovery request. Ordinarily, the court will grant the motion to compel if it finds that the requesting party made a substantial effort without court involvement first before seeking the motion.

Here, during discovery, the woman's attorney took the man's deposition and when the woman's attorney asked the man about the man's eyesight, the man's attorney objected and argued that this was not relevant. When the woman's attorney persisted in asking, the man and his attorney ended the deposition.

The question about the man's eyesight is relevant, as it makes it more probable that man may have been liable to the woman for negligence and for causing the accident. Thus, the man should be required to answer the deposition and the trial court erred in ruling that questions about the man's health and physical conditions were irrelevant. Further, the woman's attorney was persistent in her efforts to get the man and his attorney to comply without court involvement, which would justify the motion to compel. Thus, the trial court erred in denying the motion to compel.

3. At issue is what the court should rule on the woman's motion for judgment as a matter of law. Moving for a judgment as a matter of law occurs when there is no legally sufficient evidentiary basis for the jury to find for

the non-moving party. In other words, a judgment as a matter of law is granted if no reasonable jury could find for the non-moving party. In its determination, the court will view all evidence in light of the non-moving party and will analyze whether any reasonable jury could find for the non-moving party. A judgement of a matter of law is typically motioned for after the non-moving party's arguments.

Here, the woman moved for a judgment as a matter of law on the issue of the man's liability for negligence. at trial, the man called his brother, who testified that the man had not been looking at his phone when the accident occurred. On the other hand, the woman called the man's two friends and the bystander to testify. each witness testified that the man had been looking at his cell phone at the time of the accident. The woman also called a physician who testified to the nature and extent of the woman's injuries.

Viewing all the evidence presented at trial, a court is likely to find that the jury may have a legally sufficient basis to find for the man. The issue of the man's liability for negligence likely rests on whether the man had been looking at his phone when the accident occurred. The brother testified for the man that he had not been looking at his phone when the accident occurred. The brother was also in the front passenger seat at the time and was more likely to see the man's actions, as opposed to the two man's friends and the bystander. The court is likely to find that the brother's testimony provides a legally sufficient evidentiary basis for a reasonable jury to find for the man. The brother's credibility as a witness should also be determined by the jury. Thus, the court should deny the woman's motion for the judgment as as matter of law and allow the issue of the man's liability for negligence to go to the jury.