Do not break the seal until you are told to do so.

Read the directions on the back cover.

**In re Key Strickham**

**Multistate Performance Test**

**The MPT**

Applicant Number

07701
Sloane v. Davis, Olympia Supreme Court (2009)

11


8

Lawrence v. Walker, Franklin Court of Appeals (2006)

6

Columbia State Bar Ethics Opinion 2011-91

5

Franklin Rule of Professional Conduct 1.8

LIBRARY

Letter from Key Struckman

2

Memorandum from Steve Ramires

1

FILE

In re Key Struckman
Be sure to set forth those conditions in your memorandum required agreements to require attribution of fee disputes, but only if certain conditions are met.

I think it is possible—from both an ethics and a legal enforceability perspective—to modify her

where appropriate.

Your conclusions with citation to legal authority, taking care to distinguish contrary authority.

Your memorandum should include support for your request for advice or communicate it in your letter. I refer you to prepare for the meeting please draft a memorandum to me responding to her letter. I am scheduled to meet with Ms. Struckehman this week to advise her on the goals set forth in her

Franklin Court of Appeals case that may be relevant.

Opinion that has addressed the specific issues raised by Ms. Struckehman, but there are two

rules of professional conduct of the American Bar Association. There is no Franklin ethics

rules. Model Professional Conduct and Olymnia have all adopted identical versions of Rule 1.8 of the Model

Franklin, Columbia, and Olymnia have all adopted identical versions both from one. I deal with similar issues.

I have attached some materials that bear on Ms. Struckehman’s question, including a judicial

decision and a formal Ethics opinion both from one of Franklin. I have dealt with similar issues.

official and when the attribution provision would be legally enforceable.

She wants to be sure that the modification of her client’s agreement to require attribution of fee disputes,

Struckehman agrees to modify her current retainer agreement to require attribution of fee disputes.

I have been retained by Kay Struckehman, a local attorney. As you will see from her letter, Ms.

RE:

DATE: July 29, 2014

FROM: Steve Runnells

TO: Michael E. Ramirez & Jay LLP

MEMORANDUM

Windover Franklins, 33073
60 E. Broadway
Attorneys at Law
My current retirement agreement allows annual increases in my fees, I would like to modify my

adding an application clause to my retirement agreement to be proactive.

I dream for their business. Although I haven’t had any fee disputes, I’ve been considering

retired to these matters. Many clients have asked me to insert arbitration clauses in the contracts

customary, and guardianship and estate planning. I do litigation as well as transactional work

licensing, incorporation, and related matters. Family matters including adoption, divorce,

who of my clients seek advice on small business matters including government regulation,

By way of background, I am a sole practitioner who represents small businesses and individuals.

would be legally enforceable.

resolve future fee disputes, and it’s, what is necessary to ensure that any resulting modification

retirement agreements with existing clauses to include a provision requiring binding arbitration to

As I told you, the question on which I need legal advice is whether I may ethically modify

what I said during our meeting.

have agreed to advise me in this matter. I write to confirm the scope of advice I seek and confirm

I am pleased that you found time to talk with me earlier today and even more pleased that you

Dear Steve:

Re: Modification of Retirement Agreements

Windsor, Franklin 33973
610 E. Broadway
Kraner & Kraner LPA
Sieve Kraner
July 22, 2014

Briar, Franklin 33046
9300 Wisconsin Boulevard, Suite 301
Alimony at Law
KAY STRUCKMAN
I look forward to meeting with you to discuss these matters.

Although I want to do right by my clients, I do not want to impose undue burdens on myself. Without costs to me—and to my clients—fee disputes are not contemplated. I would like to see fee disputes resolved quickly and with a minimum of cost to me.

Therefore, I would need to know the following:

- What steps do I need to take to ensure compliance with the Franklin Rules of Professional Conduct?
- What steps do I need to take to ensure that I am not violating any obligations to my clients?
- If not, why?
- What else do I need to do to make the provision consistent with my clients' expectations?
- What else would I need to do to ensure that I am not violating any obligations to my clients?

First, I request your advice on these particular issues:

- I need to ensure that I am not violating any obligations to my clients by involving them in any disputes. In the event of a dispute, the resolution may be by arbitration, and binding arbitration on all matters arising out of or relating to the representation of the client.
- Any claim or controversy arising out of or relating to the representation of the client.

I would like to include the following provision in exchange for future annual increases in my fees for two years:

- Fee disputes in exchange for future annual increases in my fees for two years.
Rule 1.8 Conflict of Interest: Current Clients: Specific Rules

Franklin Rule 1.8 is identical to Rule 1.8 of the ABA Model Rules of Professional Conduct.
misperceptions claims, the court will be called upon to scrutinize the agreement carefully. The
misperceptions claims, should a claim challenge the agreement requiring breach application of statute
demonstrating the reasonableness and good faith of the agreements. They enter into with their
demonstrating the reasonableness and good faith of the agreements. They enter into with their

Second, lawyers are in a fiduciary relationship with their clients. Lawyers bear the burden of

later time.

consideration of the particular facts and circumstances of the dispute that initially arise at some
covers future misperceptions claims, the client is asked to enter into the agreement without
as lack of formal discovery and lack of a jury or judge trial. Because the proposed agreement
application differs from litigation, clients must be told the major implications of application, such
application differs from litigation. Clients must be told the major implications of application, such

First, Rule 1.8 requires that the lawyer inform the client in writing of the essential terms of the
concerns.

concerns. governed by Rule 1.8 as well as by other principles discussed herein. We have a number of
application of existing misperceptions claims. An agreement to modify a prior agreement is
Nothing in the Columbia Rules of Professional Conduct prohibits agreements requiring

Discussion

Rules of Professional Conduct in making such a modification.

of the Columbia Rules of Professional Conduct prohibits agreements requiring

No, we do not believe that the lawyer can meet the requirements of Rule 1.8 of the Columbia

non-compete agreement. The court would have to decide whether the client will understand the

May a lawyer modify a restrictive agreement with an existing client to include a provision

Question Presented and Brief Answer

ETIQUES OPINION 2011-91

COLUMBIA STATE BAR ETIQUES COMMITTEE
Claims

require an agreement with an existing client to resolve any disputes arising out of prior representation and advise the client about alternative. However, we conclude that a lawyer may not modify a claim for a reasonable fee. And the client is represented by a new counsel who can adequately inform and advise the client about alternative. An agreement requiring resolution of multiple claims or multiple claims may be appropriate once the

foresee the right to pursue the

including the right to trial may be affected. The lawyer must also explain the implications of that

Another common condition is that the lawyer must advise the client that certain legal rights.

client is being held not to trust the client’s own lawyer.

seek and pay for independent counsel in the midst of the lawyer’s representation. Moreover, the

seek and pay for independent counsel in the midst of the lawyer’s representation. It is unrealistic to expect a client to

so. We are not convinced that lawyers can meet this condition with respect to an agreement to

seek the advice of independent counsel and give the client a reasonable opportunity to do

seek the advice of independent counsel and give the client a reasonable opportunity to do

condition is consistent with our Rule 1.6(a), which requires that the lawyer advise the client to

condition is consistent with our Rule 1.6(a), which requires that the lawyer advise the client to

discourage, they have imposed certain conditions. A common condition is that the lawyer must notify

Although some courts have approved agreements requiring resolution of multiple claims

undermine the authority of the Supreme Court to oversee the conduct of lawyers.

inconsistent with the Supreme Court’s authority to oversee the conduct of lawyers. We cannot condone a rule that

effect deprives the Supreme Court’s authority. By doing so, a lawyer would be

inconsistent with the Supreme Court’s authority. By doing so, a lawyer would be

Third, we are concerned that a few lawyers might use mandatory resolution of multiple claims to

problems for lawyers to meet their obligations as fiduciaries under these circumstances.

and rank in significant the terms of the attorney-client relationship. Most clients will be less
Because of the implications of an agreement

Expected from an attribution, the

unlikely that a client could know what to

access to these proceedings. Therefore, it is

system that provides convenient public

are often confidential. There is no reporting

in-person hearing. Attribution proceedings

examine them, or even to participate in an

right to subpoena witnesses, to cross-

procedural rights in attribution, such as the

Further, parties may or may not have certain

review, the choice of attribution is critical.

instances. Because of limited judicial

by the courts except in very limited

of the law of evidence cannot be overruled.

awards based on erroneous attribution

judges are not required to follow the law,

relying on an award, attribution, unlike

entities a waiver of several rights. In

an agreement requiring binding attribution

the matter to be attributed.

specialty that malpractice claims are one of

client RELATIONSHIP. The agreement does not

bles and any other aspect of our attorney-

binding attribution dispute require legal

state to the parties to submit to

The remaining agreement that Lawrence

v. C's EMPLOYEES (2004) CIR. v. JOHNSON & MJ Corp. (CA),

entered into open and fair to be legally

require binding attribution must have been

to protect their interests, an agreement

attorneys and the client deserve safeguards

dependent on, and we could agree to their

because clients as a class are particularly

binding attribution is a matter of concern,

appeal followed.

compelling attribution, and this information

The district court denied Walker's motion to

binding attribution of malpractice claims.

inception of the representation requires

agreement signed by Lawrence at the

Walker responded that the remaining

retained as an attorney in a divorce matter.

against Robert Walker, whom she had

China Lawrence filed a claim for malpractice

Franklin Court of Appeal (2006)

LAWRENCE V. WALKER
articulated the minimum requirements for application. We have examined the terms of an agreement, a concept we have applied. In Johnson v. L&M Corp., we examined the terms of an agreement, noting that the courts are fair and reasonable. In this context, the court must carefully scrutinize agreements between companies. Moreover, the court must consider into only whether the disclosure of their waiver of significant rights, and should be a requirement binding agreement involve a declarative. Having said this, we reject that agreements

procedure, employs more flexible rules of evidence and method to reach a resolution of a dispute. It neither parties a speedier and often less costly resolving such disputes. Application agrees appropriate and even desirable approach to information, application represents an agreement complex and with complete agreement on agreement. The critical sentence reads, "If the matter is deemed, that the term "malpractice" does not appear in the relevant agreement. He is undisputed that the term "malpractice" resolution. Her statement: It was not the product of the attorney's and presented to the client for the advice of a retained agreement drafted by the attorney's agreement provision in the present case into the agreement. The carriage is well advised to draft the agreements into with the client. In such a case, the good faith of any agreement the money awarded be the burden of proving the agreements between an attorney and a client, the agreements, where a duty arises, as

agree to apply the malpractice claims. We conclude that the Lawrence did not voluntarily in the language used. There is no reason to require the client not understand. The ambiguity interpreted most strongly against the party

that the agreement also affected malpractice binding agreement or before the disputes, not only by the parties was an agreement is mandatory. The critical sentence reads, "If the matter is deemed, that the term "malpractice" does not appear in the relevant agreement. He is undisputed that the term "malpractice" resolution. Her statement: It was not the product of the attorney's and presented to the client for the advice of a retained agreement drafted by the attorney's agreement provision in the present case into the agreement. The carriage is well advised to draft the agreements into with the client. In such a case, the good faith of any agreement the money awarded be the burden of proving the agreements between an attorney and a client, the agreements, where a duty arises, as
Affirmed.

Complainant's argument was critically holding we need not address the question of whether the agreement was legally enforceable. In light of these binding arbitration of malpractice claims not enter into an agreement requiring accordingly, we conclude that the claim did discussed in Johnson.

We need not consider the provisions we are the arbitration of malpractice claims. Therefore, entered into the agreement requiring binding burden to show that the claim knowingly. In this case, the attorney has failed in his

former's duty.

Here, involving attorneys and clients and the statutory rights. We believe that the context employers and employees and the latter's binding arbitration in a contract involving the contractability of an agreement requiring
On the basis of their holding, the Court in 


"Lawful, and the employees appealed. The district court declared the program unlawful. The IJM program requires mandatory arbitration of employment disputes to bring arbitration, including those claims based on theories such as the Equal Pay Act and the Human Rights Act. Where claims based on theories such as the

Franklin v. IJM Corporation

Franklin Court of Appeal (2004)
remedies available. Whether the alternative considered all the
employees will be able to determine whether the employees will follow the law and produce
applicants in the event a written resolution of discovery, including writing the
reasons for the decision, may be required when there is a fair opportunity to be
required the same degree of discovery, while the process does
not require the same degree of discovery, while the process may
be more than a single round of deposition, and this will be
required, parties' interest in ability to conduct
program, namely, those depositions by each
number of depositions provided in the LIM
program.

The employees claim that the limit on the
remedies available. While the procedure in
means of discovery useful to the parties in
is needed. Decisions are not the only
without a showing that additional discovery
number of depositions that may be taken
such a decision. By reviewing the reasons
application will follow the law and produce
the decision, this court must assume that the
parties do not require a written resolution
1994). While the procedure in the case of
processes, Laite v. Whysides (Fr. Sup. Ct.,
processes, allowing written reasons for the
decision in application did not consider the necessity of a written decision
decision. Our Supreme Court has already
issue written decisions providing the law unless they
means of determining whether the
employees have agreed that they may
for their decisions, and no assurance that
issue a written resolution stating the reasons
provide no assurance that the
employees agree that the LIM program
provision or discovery in the company
because there is no evidence to the contrary,
employees in their preparation, we presume,
exchange of documents will assist the
preparation for hearings. Often, a simple
alternative. Based on a proper showing were made.
then an applicant would provide additional
information necessary to determine whether
interest so that the parties have the
information about potential conflicts of
place requires that the applicants provide
neutrally, assuming that the problem in
interest that could compromise their
activities to disclose any conflicts of
maintain its reputation, the LIM requires its
Vacated and remanded.

Procedings.

The district court and remand for further
unclear, we vacate the judgment of the
may be unlawful. Because the record here is
their statutory claims. If so, the program
institute the employees' ability to pursue
possible that coordination fees and costs will
the employers and the employer. It is
ablation expenses will be divided between
The parties are in dispute as to how the
unclear as to what fees and costs are.
Unfortunately, in this case, the record is

By the arbitrators.

costs of the ablation incurred or approved
fees of the ablation, together with other
arbitral form. They point to provisions in
fees or costs as a condition of accessing the
parties not be required to pay unreasonable
program violates the requirement that the
Finally, the employers argue that the LW
examples of application procedures that
integrate policies. Claims and also provided
of manner that might be anticipated, including
jury that, the procedure explained the steps
appropriate. Showing would write the letter to
procedure explained the steps to achieving the
procedure explaining the attorney. The
retainer agreement to show along with a
divorce. Davis then mailed a copy of the
to retainership agreement, including the application
with showing, she orally explained the
understandable to the client. When Davis
writing in a manner that was easily
Second, Davis made a full disclosure in
need not further consider that issue.
application procedure Davis uses is fair, we
were fair. Since showing concludes that the
transaction, here the application process,
Rule 18. First, the terms of the business
Davis more than met her obligations under

of Professional Conduct 1.8:
informal concern in writing. Olympia Rule
involves concern in writing. The client must then give
separate independent legal advice about the
sectioning independent legal advice about the
client in writing of the desirability of
client. The attorney must also advise the
not be deemed to use application to avoid
as a matter of public policy, attorneys should
legally enforceable. He simply agreed that,
other than attorney malpractice, if it would be
that if this agreement applied to any issue
process was generally fair, and concerned
concerned, concludes that the application
concerned, concludes that the application
concerned conclusions can be voluntarily agreed

Olympia Supreme Court (2009)
Stone v. Davis
We disagree.

Denied.

of Attorney Discipline.

Anyone from filing a charge with the Board
referring an agreement presented to this
Board in accordance with the Board of
Accountancy's procedures. If the Board
finds the allegations of the Discipline
Supreme Court to have no merit, then
allegation cannot be filed. If the
allegation does not appear to be any
merit, then it is not
remedies, if any, consistent with the law,
bound to follow the law and to award
harm, whether the attorney is
refusing to settle in a timely manner when
the allegations are made. This resolution
process is initiated by the client. But
Shoane also argues that the attorney cannot
be subject to ethics. A private forum, when
more informal means of resolution and
more efficient, the application process can offer a
better way. As Shoane so eloquently put it:
under the law, anyone chooses to file.

The application process under Rule 1.8 is
without merit. Likewise, Shoane's argument that he
ought to file to meet Shoane's argument that Davis failed to meet
the

on the same day he received it.

2. Shoane had no help, professional advice, or legal advice and could not seek
the

Furthermore, the brochure sent to Shoane
explained the basis for the decision
under the law, and issue a written decision
law, and any applicable Remedies. If the
discharge is necessary or advisable, the
court should, when appropriate, explain the

Shoane's argument that Shoane should have

mignt be different from those Shoane would

We disagree.

Denied.

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discharge is necessary or advisable, the
court should, when appropriate, explain the

Shoane's argument that Shoane should have

mignt be different from those Shoane would
MULTISTATE PERFORMANCE TEST DIRECTIONS
and is given a reasonable opportunity to seek the advice of independent legal counsel understood by the client: (2) the client is advised in writing of the desirability of seeking and are fully disclosed and transmitted in writing in a manner that can be reasonably terms on which the lawyer acquires the interests are fair and reasonable to the client security or other pecuniary interest adverse to a client unless: (1) the transaction and business transaction with a client or knowingly acquire an ownership, possessory, would fall under FRPC 1.8(a). That rule states that a lawyer shall not enter into a First, a modification of the retainer agreement requiring attribution of fee disputes ethical under the Franklin Rules of Professional Conduct?

1. Would a modification of a retainer agreement requiring attribution of fee disputes be

RE: Key Stuckman consultation
DATE: July 29, 2014
FROM: Examinee
TO: Steve Ramirez

MEMORANDUM

Sten of Answer #1 (1214 words) =========== (Essay)

When finished with this question, click A to advance to the next question.

A

1) MPT1 - Please type your answer to MPT 1 below

ARGUE 7-23-14 - MPT
not modify a retainer agreement with an existing client to require binding arbitration of
ambiguous language modifying the rights of the client in Columbia, an attorney may
claim, or controvertory. Other authorities outside of Franklin have followed upon
clause does not fully disclose the nature of the interest affected, because if covers any
interest. Stricklin, letter July 22, 2014. As written, it could be interpreted that the
judgment on the arbitration award may be entered by any court having jurisdiction
relating to lawyers' representation of client shall be settled by arbitration, and binding
arranged. As proposed, the provision reads: "Any claim or controvertory arising out of or
for Ms. Stricklin's proposed provision to comply with the ethical rules, it must be

shall comply with the three requirements set out above. Signed a consent letter to that effect. Therefore, Ms. Stricklin's proposed modification
understood that she could avoid seeking independent legal counsel, and the client

attorney made full disclosure in writing in a manner easily understood, the client
was valid, so long as the terms of the transaction were fair (the arbitration process).
the

binding arbitration clause to resolve any disputes covering the client's representation

Court ruled in Siogane v. Davis (2009) that a retainer agreement entered into with a
meaning of Rule 1.8. In a recent state interpreting the same Rule, the Supreme
retainer agreement with an existing client amounts to a business transaction within the
in Riche v. Greater Go. (1992), the Franklin Supreme Court ruled that modifying a
including whether the lawyer is representing the client in the transaction. FRPC 1.8(a).
client, as the essential terms of the transaction and the lawyer's role in the transaction.
on the transaction, and (3) the client gives informed consent in a writing signed by the
By adding a clause or separate document which includes the consequences of binding transaction, including whether the lawyer is representing the client in the transaction, the client, to the essential terms of the transaction and the lawyer's role in the transaction, between the client and attorney must include informed consent, in a writing signed by informed consent to the binding arbitration, as explained above, a business transaction

Finally, the modification needs to include a separate clause for the client to give client, W.S. Struchman will comply with the second prong of 18(a).

transaction, if language to that effect is added to the modification, and explained to the reasonable opportunity to seek the advice of independent legal counsel on the reasonable opportunity to seek the advice of independent legal counsel, for any business transaction, FRPC 1.8(a).

Also, to comply with FRPC 1.8(a), W.S. Struchman must include in the writing advice the effects of binding arbitration, such as the lack of a jury or judge trial.

falseness and reasonableness of the modification by including terms that explicitly state reasonably understood by the client, W.S. Struchman may also wish to improve the continuing the modification as not being transmitted in a manner that can be instead of any claim or controversy. W.S. Struchman may avoid the risk of a court disputes. By narrowing the scope of the modification to include only fee disputes, modifications that require binding arbitration for future malpractice claims (not fee 91. It is important to note that the Columbia opinion only applied to the validity of future malpractice claims. Columbia State Bar Ethics Committee, Ethics Opinion 2011-
1. Would a modification of the remainder agreement to require binding arbitration in lieu of litigation be legally enforceable under Franklin Law?

2. Would a modification of the remainder agreement to require binding arbitration in lieu of litigation be effectively comply with the FRCP.

ARPAB 7-29-14

(Question 1 continued)
consideration, and therefore the modification would be valid if accepted by the other party.

Bargained for exchange by both parties would satisfy the requirements for

annual increases in her fees for two years. Struckman letter July 22, 2014. This
include a binding arbitration provision for future fee disputes in exchange for forgiving

contractual. Ms. Struckman wants to modify the retainer agreements with existing clients to
forgoing annual increases in her fees. As stated above, the modification is a matter of

Finally, the modification would be valid because it would be given in consideration for

agreement includes those terms, it would satisfy the requirements of Franklin.

unreasonable fees or costs as a condition of accessing arbitration. If the arbitration

should avoid any language that might permit the attorney to force the client to pay

should include specific language dictating how fees will be shared among the parties, and

consideration of all remedies available at law. Finally, the arbitration agreement should
agreement should also include statements that require written reasoned decisions and

to allow additional discovery if a proper showing is made. To be safe, the arbitration

arbitration agreement should also include a clause that states the arbitrator is permitted

Franklin Arbitration Association provides guarantees of a neutral arbitrator. The

requirements of Johnson. In Johnson, the Franklin Court of Appeals found that the

Struckman should include more details about the arbitration process to satisfy the

consent. To satisfy the remainder of the requirements to be enforceable, the

the client explicit awareness of the meaning of the clause and would require explicit

ABRR-7-29-14-AV ~ REV

(Cause 1 continued)
In re Linda Duram
In re Linda Duram

FILE

Memorandum from Henry Fines .................................................................1
Guide for drafting demand letters ..........................................................2
Email correspondence .............................................................................3
Affidavit of Linda Duram .......................................................................5
Letter from Maria Oliver, M.D. ...............................................................7

LIBRARY

Excerpts from the Family and Medical Leave Act, 29 U.S.C. § 2601 et seq. .........................9
Excerpts from Code of Federal Regulations, Title 29, Labor ..................................................10
Shaw v. BG Enterprises, U.S. Court of Appeals (15th Cir. 2011) .............................................12
Carson v. Houser Manufacturing, Inc., U.S. Court of Appeals (15th Cir. 2013) ....................15
not address those issues.

The is no dispute that Signs Inc. is a covered employer under the FMLA. Nor is there a dispute
affected describing her relationship with her Grandmother.

along with the medical evidence I have just received from Mrs. Basdon’s doctor and Linda’s
Your letter should also respond to the arguments raised by Mr. Glenn. I will submit the letter
letter, so we need to provide a persuasive legal argument, including citing relevant authority.

Please prepare a letter for my signature addressed to Mr. Steven Glenn, Vice President of Human

and request the denial of continuation.

We have been returned to persuade Signs Inc. to reverse its earlier decision denying FMLA leave

will almost certainly need to take additional leave in the future to care for her Grandmother.

another medical opinion. Linda is particularly concerned about a denial of continuation because she
without an approved leave, Signs Inc. has not made the request for FMLA leave. The employer denied her request. Despite the denial, Linda received her
employees, including herself. Because Linda left town

Our client, Linda Durnam, is a Graphic Artist employed by Signs Inc. She applied for leave under


MEMORANDUM

RE:

DATE:

FROM:

TO:

Swanson, Franklin & Street
963 N. Oak Street
Alhambra, CA 91801

Burton & Fines, LLC
of the law, because doing so can undermine the strength of our client’s position. An

attachment alone is not enough, and it is necessary to substantiate the facts and

assertions. Use language appropriate to the recipient; the assumption that the letter will be read by an

intelligent, knowledgeable reader who has been trained and aware of our client’s position

in the law. You should respond to arguments that have been made against our client’s position

when discussing the basis for the client’s claim, you should thoroughly analyze and

evaluate demands.

Demand letter

A demand letter is a letter in which an attorney or party states a legal claim and demands

resolution of the claim without the time or costs involved in litigation

position and persuade the reader. A well-written demand letter can promote a favorable

relationship between the recipient and the sender. Demand letters are designed to advocate a

strong position for the claimant, and they are considered essential in legal proceedings.

Guide for Drafting Demand Letters

Swanson, Franklin 33594
963 N. Oak Street
Attorneys at Law
Burton and Finis, LC

Office Memorandum

Re: November 3, 2012

DATE: Mailing Partner
FROM: All Attorneys
TO: Office Memorandum
Vice President of Human Resources

Seven Glenn

Dear Ms. Durnan,

I am sorry to learn of the death of a family member. You may take the two days of vacation time rechargeable 30 days' notice available to you. Please notify Human Resources of your decision.

Date: July 7, 2014

Re: Your request for Family and Medical Leave

To: Linda Durnan, VP

From: Seven Glenn, Vice President, Human Resources

Last night, please approve this request as soon as possible—we have to leave tomorrow. She is very distraught. So am I. I just learned of her sister’s death yesterday and I could not sleep and her health. She has been depressed because of her health and now with losing her only sister, she cannot travel by herself. She needs me to care for her and to give her medications.

My grandmother has only a few months to live because of her heart disease. My grandmother is her sister’s informal. She died yesterday, and the funeral is Wednesday, July 9th. I request five days’ leave under the Family and Medical Leave Act to accompany my grandmother to her sister’s funeral. She died yesterday, and the funeral is Wednesday, July 9th.

Date: July 7, 2014

Re: Request for Family and Medical Leave

To: Linda Durnan, VP

From: Seven Glenn, Vice President, Human Resources

Email Correspondence
Vice President of Human Resources, Signis Inc.

Steven Glenn

In accordance with our Employee Policy 12.7, you are placed on probation. Any future
unapproved absence will be grounds for immediate termination.

You were absent from your position without approved leave for three days,
approved for the remaining three days, and you will not be paid for those three days. Therefore,
accrued vacation time, so we have allowed two days as vacation time. However, there was no
my email of July 7, 2014. Despite that general, you left the office for five days. You had two days
As you know, we denied your request for leave under the FMLA for reasons previously stated in

Dear Ms. Dunn,

Date: July 16, 2014, 8:30 a.m.

Re: Your Request for Family and Medical Leave

To: Linda Dunn, Art Department

From: Steven Glenn, Vice President, Human Resources


6. Grandma Bill died a few years ago, and Grandma has been steadily declining in health. My "clean" from things, but our grandparents helped us the money to get a car to go to school.

"clean" from things, but our grandparents helped us the money to get a car to go to school.

5. When our parents were gone, our grandparents took care of us. Our grandparents took care of us, clothed us, gave us

4. Grandma Bill and Grandma Emma never adopted us because our parents were gone only for a few years, but in my junior year of high school, our parents went to prison again for the third time.

3. When our parents got out of prison, they moved into an apartment and took us back. Six months later, they invited their friends and we stayed with our grandparents for three months. When we moved in, they invited their friends and we stayed with our grandparents for three months.

2. When I was in grade school, one of my parents was usually in jail, so my brother and I lived

1. My maternal grandparents, Emma and Bill Parker, raised me for many years since I was six years old.

Upon first being diary sworn, I, Linda Durnan, residing in the County of Vina, Franklin, do swear:

Affidavit of Linda Durnan
Norway Public, State of Franklin

Jane Minnen

Signed before me this 22nd day of July, 2014.

Linda D. Trim

Signed and sworn this 22nd day of July, 2014.

Care for her on this difficult trip to her sister’s funeral.

home. I take care of her every Sunday. Grandma told me that I was the only one who could
If you need any further information, please do not hesitate to contact me.

needed to be absent from work for five days to make this trip. To administer the medications and provide the personal care Mrs. Basion required. Mrs. Dunham
transport Mrs. Basion into and out of the wheelchair, administer oxygen, operate the heart pump, transport Mrs. Basion into and out of the wheelchair, administer oxygen, operate the heart pump, transport Mrs. Basion into and out of the wheelchair, administer oxygen, operate the heart pump, transport Mrs. Basion into and out of the wheelchair, administer oxygen, operate the heart pump.

Mrs. Basion was cared for by a maternal grandmother for the past two months. Linda has learned how to make decisions and attend to Mrs. Basion along with other family members and home health care.

Her Granddaughter, Linda Dunham, has the power of attorney over her health care.

Outlined above,

familiar with her condition and her personal needs and able to attend to her and assist her as understood required her to be gone a week. Mrs. Basion had to be accommodated by someone

Mrs. Basion was able to travel to Franklin, City to attend the funeral of her sister, which I

Services and chose services to assist her with daily functioning. I monitored her condition weekly.

as she lives her final months. Mrs. Basion also suffers from depression. I ordered Home Health

Mrs. Basion at home. Those will not cure her but will relieve her suffering and make her comfortable

pumped from her heart. I have prescribed medications and therapies to be provided for Mrs.

call the without assistance. She uses a wheelchair and oxygen. She needs to have funds

condition and high blood pressure. Two months ago, I diagnosed Mrs. Basion with end-stage

I have needed Emma Basion for the past 10 years for issues related to her cardiac.

To whom it may concern:

July 24, 2014

Swansens Franklin 33936
43 Hospital Drive, Suite 403
Swansea Cardiology Center
LIBRARY
Employee shall provide such notice as is practicable:
e except that if the date of the birth of the employee, the employee's intention to take leave under such subparagraph,
the date the employee files to begin, or the employee's intention to take leave under such subparagraph,
the date the employee files to begin, or the employee's intention to take leave under such subparagraph,
émployee shall provide the employer with not less than 30 days' notice before
employee shall provide the employer with not less than 30 days' notice before
(provision of subsection (a)(1) of this section is foreseeable based on an expected birth or
(1) Requirement of notice. In any case in which the necessity for leave under subparagraph
(foreseeable leave

 functions of the position of such employee.
(d) Because of a serious health condition that makes the employee unable to perform the
spouse, son, daughter, or parent has a serious health condition.
(e) In order to care for the spouse, or a son, daughter, or parent of the employee, if such
(f) Because of the placement of a son or daughter with the employee for adoption or
such son or daughter.
(g) Because of the birth of a son or daughter of the employee and in order to care for
workweeks of leave during any 12-month period for one or more of the following:
(1) In general.
(b) In general.
29 U.S.C. § 2612 Leave requirement

(b) Continuing treatment by a health care provider.
(a) Inpatient care in a hospital, hospice, or residential medical care facility.
---
Serious health condition. The term "serious health condition" means an illness, injury,

(7) Parent. The term "parent" means the biological parent of an employee or an individual who

29 U.S.C. § 2611 Definitions
§ 825.115 Continuation treatment

* * *

A serious health condition involving continuation treatment by a health care provider includes any health condition and do not qualify for FMLA leave:

(d) Ordinarily, unless continuation treatment for purposes of FMLA leave is to conclude a regimen of continuation treatment for purposes of Medicare, an activity that can be performed without a visit to a health care provider, is not by itself sufficient activity that includes the taking of over-the-counter medications such as aspirin, antihistamines, or salves, or bed-rest, drinking fluids, exercising, and other similar activities. A regimen of continuation treatment that includes the taking of over-the-counter medications such as aspirin, antihistamines, or salves, or bed-rest, drinking fluids, exercising, and other similar activities is considered to resolve or alleviate the health condition.

(e) The term "continuation treatment" includes (but is not limited to) examinations to determine if a serious health condition exists and evaluations of the condition. Treatment does not include routine medical, vision, dental, or physical examinations, or examinations of dental examinations. A regimen of continuation treatment may include inpatient care or outpatient care.

§ 825.113 Serious health condition

(c) To care for the employee's spouse, son, daughter, or parent with a serious health condition;

§ 825.112 Qualifying reasons for leave:

General Rule

Title 29, Labor
Code of Federal Regulations
care provider.

whether the employee or the employer's family member is under the continuing care of a health

the functions of the job: when the employee is pregnant or has been hospitalized overnight:
such information may include that a condition renders the employee unable to perform
reasonably determine whether the FMLA may apply to the leave requested. Depending on the
ecircumstances of the particular case...

employee shall provide sufficient information for an employer to

employee must provide notice to the employer as soon as practicable under the facts and

§ 825.303 Employee notice requirements for unforeseeable FMLA leave.

employee or of a family member. If 30 days notice is not practicable, such as because of

be patient and/or of a family member, before FMLA leave is to begin if the need for leave is foreseeable based on an expected birth,

employee must provide the employer at least 30 days advance notice

§ 825.302 Employee notice requirements for foreseeable FMLA leave.

* * *

(3) May cause episodic rather than a continuing period of incapacity (e.g., asthma,

(2) Continues over an extended period of time (including recurring episodes of a

care provider, or by a nurse under direct supervision of a health care provider,

(1) Requires periodic visits (defined as least twice a year) for treatment by a health

chronic serious health condition. A chronic serious health condition is one which:

(6) Chronic conditions. Any period of incapacity or treatment for such incapacity due to a

(5) May be caused by a single identified condition or by a combination of related medical conditions.

(4) includes episodes of a chronic serious health condition due to exacerbation of the

(5) May be caused by a single identified condition or by a combination of related medical conditions.

(4) Includes episodes of a chronic serious health condition due to exacerbation of the

(3) May cause episodic rather than a continuing period of incapacity (e.g., asthma,

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(2) Continues over an extended period of time (including recurring episodes of a

(1) Requires periodic visits (defined as least twice a year) for treatment by a health

chronic serious health condition. A chronic serious health condition is one which:

(6) Chronic conditions. Any period of incapacity or treatment for such incapacity due to a

(5) May be caused by a single identified condition or by a combination of related medical conditions.
hospitalizations that Jane had suffered
achieved a medical certification from the
doctor and also to attend her funeral. He
under the FMLA for leave to care for his
documentation supporting his prior request
On May 19, Shaw submitted written
work because of his daughter’s accident.
Shaw informed BG that he would not be at
some 200 miles away. On Monday, May 12,
2008, the Shaws returned to Franklin Medical
Center where Jane was being treated,
hospital where Jane was being treated,
and immediately left for the
attended Franklin Medical University. Shaw
in a car accident in Franklin City, where she
her daughter Jane had been severely injured.
Saturday, May 10, 2008, Shaw learned that
and subsequent days. On
daughter, who was seriously injured in an
daughter, who was seriously injured in an
defendants sought leave to care for his
Shaw, a managerial employee for BG
employee was entitled to take leave.
employee was entitled to take leave. The
only issue here is whether the
FMLA because to which the employee was
leave leave, and that his employer denied the
leave leave, and that his employer denied the
employee, provided sufficient notice of his intent to
employee, provided sufficient notice of his intent to
was entitled to take leave under the Act. That
was entitled to take leave under the Act. That
FMLA leave. A plaintiff must show that he
To succeed on a claim of interference with

serious health condition. In 1§ 2612,
of a child, spouse, or parent who has a
the birth or adoption of a child, or for the
treasons, such as a serious health condition,
leave for specified family and medical
leave for specified family and medical
covered employees to take unpaid, job-protected
covered employees to take unpaid, job-protected
members. 29 U.S.C. § 2601(q). The
The FMLA
health conditions of specified family
health conditions of specified family
reasonably leave to care for the serious
reasonably leave to care for the serious
intermittent, and to enable employees to take
intermittent, and to enable employees to take

Congress enacted the FMLA to balance the
Congress enacted the FMLA to balance the

after a brief trial. Shaw appeals. We affirm.
court ordered judgment for BG Enterprises.
inference with FMLA leave. The district
that leave was denied. Shaw sought, alleging
§ 2601 et seq., from BG Enterprises. When
and Medical Leave Act (FMLA), 29 U.S.C.

Courts

United States Court of Appeals (11th Cir. 2011)
Shaw v. BG Enterprises
under the FMLA. The court found that
Circuit court upheld the denial of leave
psychological condition. The Tenth
wealth in that the conclusion was rendered for his
move him to a safer location. She claimed
bullying by other students, and she wanted
condition that caused him to be easily prey for
claimed that her son had a psychological
another state to live with an uncle. Roberts
in a Tenth Circuit case, Roberts v. Ten.
South FMLA leave to relocate her son to
Pen Bowl (12th Cir. 2006). Serra Roberts
In a Tenth Circuit case, Roberts v. Ten.

member," continuing proximity to the ill family
monitoring his condition. The court found that the person
require to invoke the protections of the
held that the law was not "suiting" for her as
her another treatment. The Ninth Circuit
side for four days instead of participating in
because the employee had left his wife's
wife during her hospitalization.

"FMLA Leave is not an automatic right to
needs FMLA Leave to go to another state to
mechanism based in Seattle after the employee
had not been an employee enumerated in a
reservation of a serious health condition in
sought recommendation in another
required that there be "some actual care.
the Ninth Circuit held that the FMLA
In Tellew v. Alaska Airlines (9th Cir. 2005),
"Our sister circuits have interpreted to
provisions to FMLA define the "care"
not the regulations promulgated
not read this issue until now. Neither the
FMLA's "use of the term "care" for, We have
The critical issue here is where is meant by
Shaw asked BG to reconsider his denial of
another facility, or attending the funeral
doing home reports, pursuant to transfer to
"care for" does not include hospital visits,
agreeing that the FMLA's "use of the term
BG denied Shaw's Request for FMLA leave,'

BG left on May 16, while still hospitalized.
dearth certificate indicating that Janet had
death certificate indicating that Janet had
the Shaw home so that Janet could be cared
regularly called the hospital and asked if
regularly called the hospital and asked if
at home, the Shaw's seemed to be at the hospital.
while his wife stayed at the hospital, while
then returned to his home in High Ridge
initial weekend by Janet's bedside and had
hospital, Shaw was able to care for
traumatic injuries as a result of the accident.
The FMLA allows for a parent to take leave in the event of the birth of a child or the adoption of a child. However, if a parent is already caring for a child, they may not be eligible for further leave under the FMLA for the same child. In the case of Roberts, the FMLA did not allow for an extension of leave to care for a dependent child who was already being cared for by the parent.
Philippines, the FMLA does not define the
grandson. The FMLA does not define the
grandson, it stands in loco parentis to the
caretaker or FMLA leave to care for his
grandchildren. The plaintiff can only be
authorized FMLA leave for the care of
The plaintiff's amendment of the FMLA does not
add "grandson," who was recovering from
two weeks of FMLA leave to care for his
Casino's employer denied his request for
physical disability" in § 2611(12). Here,
impossible of self-care because of a medical or
incurable of self-care because of a mental or
age; or (B) 18 years old or older and
in loco parentis, who is (a) under 18 years
in loco parentis, who is (a) under 18 years
child ... of a child of a person standing
... son or daughter" means "a biological
If § 2612(a)(1)(C) Under the FMLA, the
daughter who has a serious health condition.
leave unpaid leave to care for a son or
The FMLA creates an employee's right to
We affirm.

AC (FMLA), 29 U.S.C. § 2601 et seq.
the FMLA and Medical leave
adopted by state law.

Albert States Court of Appeals (15th Cir. 2013)

Casino v. House Master Manufacturing, Inc.
that the proof offered by Sam Carson was
that he was offered by Sam Carson was incorrect. The real court was correct in finding
grandparents do without assuming a parental
they are not the dissimilar from what many
and added David’s criteria line in his life.
While these efforts by Carson likely guided
from college.
advices and attended David’s graduation
college gave him financial and moral
David with financial support while he was in
holiday’s Carson claims that he provided
two to Carson’s home during summers and
remained often to his brother’s home and
took vacations with Carson. While in college, he
did spend some weekends and extended
time after his parents were deceased, David
brother until he lost for college. During the
with his older brother and lived with his
David was 15 years old, David moved in
until his parents died in a car accident when
David Simmons, David lived with his parents
that of Philip’s, Carson is the grandchild of
The evidence in this case is not similar to
meet the in loco parentis standard.
soon loop. That was sufficient proof to
even served as driver for Anthony’s boy
attended parent-teacher conference, and
for his day-to-day financial support.
took him to medical appointments, provided
insufficient to meet the standard of one who

Ahmed

is in loco parentis.
Although there are no restrictions on how you approach your time, you should allocate an estimated hour to read and digest the materials and to organize your work.

Work:

Analyze the problem: the file and library provide the specific materials with which you must work.

Knowing what you have learned in law school and elsewhere provides the essential background for answering the performance test question. Your jurisdiction will provide specific instructions in the file and library.

To answer the question, you will need to be familiar with the law and the facts of the case. You are using a laptop computer in the answer book provided. Do not assume that they are not relevant. Any cases may be read, modeled, or written solely for the purpose of this examination.

The library contains the legal authorities needed to complete the task and may also include some that are not relevant. Include some facts that are not relevant.

Complete the other documents in the file containing factual information about your case and may contain the necessary information for the task you are to perform. The problem is set in the fictional state of Franklin, in the fictional Federal Circuit of the United States. Columbia and Olympia are also fictional cities in the fictional Circuit. In the problem, you will be instructed when to begin and when to stop this test. Do not break the seal on this booklet until you are told to begin. This test is designed to evaluate your ability to handle a select number of legal authorities in the context of a real-world problem involving a client.
Dear Mr. Glenn,

Date: July 29, 2014

Re: Linda Duram FMLA Request

To: Steven Glenn, Vice President, Human Resources

From: Examinee, Burton and Fines LLC

---

(2) MPT2 - Please type your answer to MPT2 below (Essay)

---
those who stand in loco parentis as defined by state law.

The Carson case that the definition of parent includes

defines "parent." The US Court of Appeals recognized in

Although neither the Act nor corresponding CFR explicitly

to her and therefore meets the definition of "parent."

is Ms. Durham's grandmother; she stands in loco parentis

has a serious health condition. First, although Ms. Barton
gives proper notice to take leave to care for a parent who

As you know, the FMLA entitles an eligible employee who

("CFR" provisions).

FMLA and corresponding Code of Federal Regulations

notice and her situation meets the standards set out in the

condition. Ms. Durham provided you with the requisite

in loco parentis to her and who has a serious health

requested leave to care for her grandmother who stands
they would provide all care for the Duram children, feeding
their home for months and years at a time, during which
drug addiction. Ms. Duram and her brother moved into
college while her parents were in and out of jail due to
provided Ms. Duram with care from the age of six through
detailed in her affidavit, Mrs. Batsan and her husband, Bill,
doco parents to Ms. Duram since the age of six. As
the person, in this case, Ms. Batsan has clearly stood in
dependence, and/or the amount of support provided by
the court looks at the child's age, the child's degree of
deciding whether a person stands in loco parentis, the
without going through the formalities of legal process. In
assuming the obligations incident to the parental relation
does put himself in the situation of a lawful parent by
In loco parentis "refers to a person who intends to and
total support for significant periods of time, more like the
during summers like Mr. Carson; she provided her with
Duram did not simply visit Ms. Batson on weekends and
Carson case then it is to the Carson case itself. Ms.
more similar to that of the Phillips case described in the
support to her as a parent would do. Ms. Duram’s case is
and the Batsons provided both financial and psychological
she was totally dependent on her for much of that time,
parents, as Ms. Batson cared for her since a young age,
Batson’s care of Ms. Duram meets the standard of in loco
dependent on the Durams for care and support. Ms.
adolescence, Ms. Duram and her brother were completely
For significant periods of their childhood and
holidays and birthdays, and providing financial support.
them, clothing them, taking them to school, celebrating
course of treatment under the supervision of a doctor that

Such a condition is more than a common cold; it is a

equipment to resolve or alleviate the health condition.

prescription medication and therapy requiring special

an outpatient continuing treatment including

treatment as in-clinic not only in-patient care, but also

treatment by a healthcare provider. The CFR defines

serious medical condition is one includes continuing

corresponding CFR provisions. Under the FMLA, a

condition as required by the FMLA and defined in the

Second, Ms. Duram suffers from a serious medical

meaning of the Family Medical Leave Act.

to Ms. Duram and as such, qualifies as a parent within the

For all these reasons, Ms. Barton stands in loco parentis

support Mr. Phillips provided to his orphaned grandson.
her oxygen and operate the heart pump. Ms. Batson
administer her medications properly, and administration
how to transport Ms. Batson with her wheelchair,
accompanied by Ms. Duran because Ms. Duran knows
unable to attend her sister's funeral without being
Further, she confirms that Ms. Batson would have been
special care and assistance to meet her medical needs.
conditions just outlined and has iterated that she requires
Batson's treating physician, that she suffers from the
of Swansea Cardiology Center has confirmed, as Ms.
including an oxygen tank and heart pump. Dr. Maria Oliver
which requires prescribed medications and therapies
as she is in the end-stage of congestive heart failure,
case, Ms. Batson suffers from a serious medical condition
requires special medication and/or equipment. In this

(Continued)
day trip, as was necessary in order for Ms. Duram to
and continuing proximity to Ms. Biston during their five
accompanied her to her sister's funeral. She was in close
was clearly "caring for" Ms. Biston when she
with a serious health condition. In this case, Ms. Duram
cared for, and (2) to offer some actual care to the person
in close and continuing proximity to the person being
court outlined that "the employee seeking leave (1) to be
defined by the US Court of Appeals in the Shaw case. The
FMLA nor in the corresponding CFR, but it has been
by the FMLA. The phrase "to care for" is not defined in the
Third, Ms. Duram was "caring for" Ms. Biston as required
CFR.
required by the FMLA and outlined in the corresponding
clearly suffers from a serious medical condition a
the FMLA and detailed in the corresponding CFR. It is true

Fourth, Ms. Duram gave the requisite notice required by

as set as in the Shaw case.

travel. Ms. Duram's care meets the definition of "care for"

necessary actual physical care required for Ms. Batson to

or attending the relative's own funeral, but rather, was

was not secondary, like retrieving a car or building a ramp

and corresponding Tellis and Roberts cases; as her care

distinctive from the care described in the Shaw case

transporting her by wheelchair. Ms. Duram's care is

medications, operating the oxygen and heart pump, and

she provided actual physical care in administering her

is not necessarily included in the definition of care, but

did she offer psychological comfort to Ms. Batson, which

administer the care. Ms. Batson required. Further, not only
Required Ms. Durham to accompany her in order to provide for her leave: that Ms. Barton's terminal heart condition practicable. Ms. Barton included in her request the reason even and 30 days notice would not have been Barton to travel. Her sister's death was an unforeseeable accompany Ms. Barton to the funeral. The need for Ms. her leave, as soon as she learned that she would need to requested five days notice in writing. Stating the basis for the basis for the requested leave. In this case, Ms. Durham circumstances of the particular case and should include notice as soon as practicable under the facts and unforeseeable event, the employee is required to supply when such notice is impracticable. In the case of an unforeseeable event, but it does not require 30 days notice that the FMLA requires 30 days notice in the event of a
Rather, she requested leave to provide essential, actual
Durm did not request FMLA leave to attend the funeral;
Third, although the Act does not apply to funerals, Ms.
well, which includes the treatment Ms. Durm provided,
hospital, but rather, applies to "continuing treatment as
the Act not only applies to care provided in a home or
who meet that definition, which Ms. Batson does. Second,
standing in loco parents, which includes grandparents
does not apply to grandparents, it does apply to those
dated July 7 have been addressed. First, although the Act
of your concerns outlined in your letter to Ms. Durm
Lastly, I hope you have noted in this discussion that each
corresponding CFR in Requesting FMLA leave.
Clearly, Ms. Durm complied with the FMLA and
care, specifically to give her medications and therapies:“
Sincerely,

Inquiries regarding this matter,

Please contact me directly should you have further.

Ms. Duran leave and remaining your threat of termination.

Request that you promptly reverse your decision denying
requirements set out in the Family Medical Leave Act. We
you now understand why Ms. Duran's request meets the

Thank you for your understanding in this matter. I hope

Funeral.

was practicable, given the unforeseeable nature of a
case of an unforeseeable event, which was as soon as
Ms. Batson gave the notice required by the statute in the
medical care to Ms. Batson during her journey. Fourth,

 Ausbeet-7-29-14-AMN-TR
(Continued)
Do not break the seal until you are told to do so.

Read the directions on the back cover.
criminal defendant’s rights.

The state supreme court follows federal constitutional principles in all cases interpreting a

connection with the DWI charges.

The lawyer has filed a motion to suppress all statements made by the suspect to the detective in

In addition to the DWI, the suspect has been charged with two counts of burglary.

10:00 a.m.

interviewing statements regarding the burglary. The interview lasted from 9:15 a.m. to

suggested that he sign a Miranda waiver form and agree to an interview. The detective made

here I propose you should keep my mouth shut. I'm willing to talk to you for a while. "The

know. Let's not waste any time walking for someone to call my attorney and having her drive

After a few minutes of silence, the suspect said, "Well, unless there is anything else I need to

10.

Told him, "I want my lawyer here before I talk to you." The detective responded, "There's up

the detective asked him, "The detective then entered the detective reach to the suspect full and accurate Miranda warnings.

presumed to be present. The detective told the suspect that the lawyer would need to wait

the lawyer, and asked to speak with the lawyer. The detective stated that the suspect had been notified that the lawyer was present. The detective told the lawyer that the lawyer could enter the

Early the next morning, Leora learned of her client’s arrest. The lawyer went to the jail where

The detective, who had also arrived at the jail at 9:00 a.m., overheard the lawyer’s conversation

with the lawyer. The detective then entered the windowless interview room in the cell where the

The lawyer’s presence of her demands.

After speaking with the lawyer, the officer did not inform anyone of

come hour to see the suspect. After speaking with the lawyer, the officer did not inform anyone of

The lawyer refused until she was present. The lawyer told the detective that she would need to wait

The lawyer refused until she was present. The lawyer told the detective that she would need to wait

describe him and was providing information on the assailant charge by a lawyer.

At the time of his DWI arrest, the suspect had a six-month-old aggravated assault charge pending.

neighborhood where the suspect had been arrested.

in the detective’s car to a detective who was investigating a number of recent burglaries in the

and placed him in a holding cell. Later that day, the detective gave the tools he had found

The officer seized the burglary tools. He then took the suspect to the county jail, booked him for

bounced on the suspect, the officer observed burglary tools on the backpack

When on routine patrol, a police officer observed a suspect driving erratically and pulled the
1. Did the detective violate the suspect's Sixth Amendment right to counsel when he questioned the suspect in the absence of the lawyer?

2. Under Miranda, did the suspect effectively invoke his right to counsel? Explain.

3. Was the suspect's waiver of his Miranda rights valid? Explain.
The 6th Amendment Right to Counsel is charge-specific, meaning that if it applies to the charges that have been formally brought against the defendant, the right to counsel attaches. The suspect must have an attorney present at any post-charge line-ups, hearings, questioning, or other components of the process of the charge against the suspect that attached the right to counsel. That being said, the 6th Amendment right to counsel is charge-specific.

Generally, the 6th Amendment right to counsel attaches once formal charges have been filed. The underlying policy of the 6th Amendment right to counsel is to ensure that the suspect receives fair representation throughout the judicial process of charges against him. Generally, for the formal charges to attach is when the government has taken action that is clear of its intention to prosecute on the charge.

The issue here is whether formal charges had been brought against the suspect with the intent to prosecute. The detective did not violate the suspect's 6th Amendment right to counsel. The detective did not violate the suspect's 6th Amendment right to counsel.

Question 1:

1. Sixth Amendment Right to Counsel

Start of Answer #1 (562 words)

(essay)

When finished with this question, click A to advance to the next question.

A

A

1. Please type your answer to ME below.
Court developed the scope of this 5th Amendment right as afforded under Miranda be free of self-incrimination from testimonial evidence. Under case law, the Supreme Court ruled, under the 5th Amendment, the Constitution, a suspect is afforded the right to counsel after given Miranda warnings.

Amendment. The issue is whether the suspect clearly and unambiguously invoked his right to counsel under the 5th Amendment.

The suspect did not effectively invoke his right to counsel under the 5th Amendment.

2. *Miranda - Invoke Right to Counsel*  

6th Amendment right to counsel.

Right to counsel to question him. Therefore, the detective did not violate the suspect's right to counsel. The police were not precluded under this 6th Amendment.

Amendment is charge-specific, the police were not precluded under this 6th Amendment. The proceedings against the suspect since it was merely questioning, and since the 6th Amendment does not entitle a formal adversarial proceeding.

Further, the questioning regarding the burglary did not invoke any formal adversarial booking does not equal a formal adversarial proceeding against the suspect. Furthermore, the suspect may argue that the booking for DUI constitutes a charge. Thus, this 6th Amendment right to counsel attached, he would not win this argument because a charge or the burglary charges. His 6th Amendment right to counsel attached initially to charge of the burglary charges. His 6th Amendment right to counsel attached initially to charge.

Here, the suspect's 6th Amendment right to counsel attached before the DUI proceedings without his lawyer present for said charge.

*Question 1 continued*
The suspect validly waived his Miranda rights. The issue is whether the suspect knowingly and voluntarily waived his rights to counsel and silence under Miranda.

3. Miranda - Valid Waiver

right to counsel under the 5th Amendment.
unambiguously in his statements. Therefore, the suspect did not effectively invoke his
waste time to wait for the attorney to get there that further illustrates the lack of
right to an attorney. It must be very clear. Nonetheless, the suspect also said "I'm not
His invocation must be unambiguous, and "I think" does not unambiguously invoke his
does not qualify as an effective invocation of his right to counsel under the Miranda.
Here, the suspect saying, "I think I want my lawyer here before I talk to you"
questioning the suspect without his attorney present.
stop immediately, and the police must scrupulously honor the invocation by not
an attorney has been clearly and unambiguously invoked, any and all interrogations must
counsel or right to silence, the invocation must be clear and explicit. Once the right to
against them in a court of law. Generally, for a person to validly invoke the right to
a (1) right to counsel and (2) the right to remain silent, and anything can be used
informing the person that the police may say in order to elicit an
be in form of statements or questions that the police may say in the circumstances in each case. "Interrogation" can
custodial interrogation. For a person to be in "custody," a reasonable person standard
warnings. Miranda warnings must be given, and are triggered when a person is in
Therefore, the suspect validly waived his rights both knowingly and voluntarily.

The suspect said, "I'm not saying anything more than I volunteered this information. The pressure by the police, nor does it affect the validity of his waiver of his rights. When the suspect that his attorney was present in the building. This is not considered undue one overhearing that his attorney was present, the police did not have a duty to inform waiting in the holding cell for 30 minutes. While the police did not tell him, even after about him. He also seemed to understand his rights under Miranda. He had only been that he did not understand the charges against him, or whether he was being questioned. Here, the suspect did not clearly invoke his rights. There are no facts to suggest capably to understand the waiver of rights will be taken into account by the court.

Also, the person's ability to comprehend charges at hand as well as his police. In order to determine if there was undue pressure put on the suspect by the suspect was held in a cell, or the length and types of questioning made by the police to pressure of the custodial environment. The court will consider factors like how long the
reliability of the person's confessions or incriminating statements so as to avoid the rights be made both knowingly and voluntarily. The purpose of the law is to ensure the
In general, the Due Process clause requires that a person's waiver of Miranda

(continued)
2. Must the conservator pay the additional $4,000 for the new organ? Explain.

1. Must the conservator pay the additional $60,000 for the organ repair? Explain.

The conservator now has refused to pay the business the additional amounts for the repair and $100,000.

After receiving this unwelcome news, the conservator agreed to pay the extra amounts.

be able to perform either contract, and you'll be out the money you already paid us.

be able to perform either contract, and you'll be out the money you already paid us.

that, which was covered under the original agreement.

that, which was covered under the original agreement.

by the time we actually paid it 2 weeks later. Before the business had commenced repair of the existing organ, the business

Two weeks later, before the business had commenced repair of the existing organ, the business

a local of $25,000. I was told there was a $9,000 charge for the conservator to perform the business.

a local of $25,000. I was told there was a $9,000 charge for the conservator to perform the business.

a local of $25,000. I was told there was a $9,000 charge for the conservator to perform the business.

the conservator to perform the business.

the conservator to perform the business.

the conservator to perform the business.

the conservator to perform the business.

the conservator to perform the business.
the organ. Both parties accepted legal determinants, and agreed to perform
that the conservatorship would pay $100,000 up front for the company to repair
existing legal obligation that the parties must fulfill. Here, the parties agreed
contract with supporting legal determinants on both sides creates a pre-
on the part of both parties. In the eyes of the common law, the creation of a
modification of an existing contract be supported by separate consideration
are covered by the common law. The common law requires that any
contract for services, i.e., the repair of a pipe or organ. Contracts for services
nature of the contracts involved differ significantly. The first contract was a
signed two separate contracts. Although the parties are the same, the
contract can be modified without consideration. The parties in this problem
of the pipe organ. The issue here is whether an amendment to an existing
1. No, the conservatorship does not need to pay the extra $60,000 for the repair

Start of Answer #2 (991 words)

Essay

When finished with this question, click A to advance to the next question.

A

A

(2) Please type your answer to MEE 2 below
Legal determinants remain on both sides of the contract. Here, the only amendment. Pre-existing obligations can be discharged or waived only if completely performed its side of the bargain when the business asked for an

In addition, it's worth nothing here that the conservatorship had already the business.

Thus, the conservatorship need not pay the additional amount sought by law. Thus, the conservatorship need not pay the additional amount sought by the common not supported by the additional consideration required under the common instead. This appears to be an amendment or an existing contract which is consideration to support the amendments proposed by the business.

allowed to pay later, as opposed to up front, but that is not sufficient performance. The only difference is that the company has asked that it be not incurred any additional legal detriment or accept any different service of fixing the origin in the amount of $60,000. The conservatorship has the company has asked for an increase in the amount it is to be paid for the amendment to this contract, citing unexpected financial problems on its end.

repairing its origin. The business has subsequently asked for an whereby the conservatorship agrees to pay $100,000 in return for the business contingent upon the other's performance. We have an enforceable contract (Citation continued)
preexisting agreement. Upon completion of the accord, consideration, and which suspends performance on a separate contract, that is supported by separate to the contract was an accord and satisfaction, meaning a

It could also be argued that the subsequent amendment

need not pay the $60,000 required by the business to complete the service.

be sufficient necessary to discharge the contract. Thus, the conservatory or that a new organ cannot be installed. A threat of ongoing bankruptcy will not money. Nothing from these facts suggests that the organ cannot be repaired being frustrated. Here, the necessity is merely that the business is losing contract cannot no longer be performed and the purpose of the contract has discharged a contract must be such that the fundamental nature of the However, no such necessity is apparent from these facts. Necessarily which unforeseen necessity which would otherwise discharge the contract.
The business may try to argue that the amendment was justified by

remaining obligation was on the business, which is another reason why they

ABRN-7-29-14-PM ME
(Question 2 continued)
For a contract and this is not an accord and satisfaction. The contractor must incur to provide consideration performance is complete. This is not the sort of legal conservancy's request to hold off on payment until the accord. The only chance in circumstances is the consideration on the part of the conservancy to support consideration is that, as noted above, we have no separate problem is that, as noted above, we have no separate both contracts are considered to have been satisfied. The
End of Answer #2

pay the $40,000 for the new organ.

subsequently signed, is enforceable and the consentory will be required to

of the parties to modify the contract, as evidenced in the writing

absence of any evidence showing bad faith, then the subsequent agreement

very nice. I'm not sure I raise to the level of bad faith. However, in the

additional money will mean they lose the money already spent isn't really

faith, although the threat of suggesting that refusing to pay the

standards. Here, nothing suggests that the business was not acting in good

obligation to determine if their conduct follows commercial

analysis of the party's conduct to determine if it is indeed honest and

reasonable commercial standards. The standard requires both a subjective

sides. Good faith under the UCC is honesty in fact and adherence to

existing contracts can be modified with only a showing of good faith on both

legal duty established in common law. Instead, under the UCC, treaty of the goods in question. The UCC does not follow the pre-existant

(Area 2-29-1 PM MEE)

(Question continued)
Divorce decree: Explain.

(c) modification of the marital-residence/self-proceeds provision of the State B Divorce Decree.
(p) prospective modification of the child support obligation in the daughter's care.
(a) retroactive modification of the child support obligation for the daughter.

2. On the merits, could the husband obtain

Explain.

(a) the marital-residence/self-proceeds provision of the State B Divorce Decree?
(p) the child support provision of the State B Divorce Decree? Explain.

1. Does the State A court have jurisdiction to modify?

Last week, when the wife brought the daughter to the husband's State A home for a weekend visit, the husband served the wife with a summons in a State A action to modify the support and marital-residence/self-proceeds provisions of the State B Divorce Decree. The husband brought 25% of the net sale proceeds given his financial difficulties. The plaintiff is moving to a smaller residence. The husband believes the wife should receive more than $1,000 per month after paying off the mortgage, One month ago, the wife sold her marital home, netting $1,000 after paying off the mortgage. Since returning to State A, the husband has not paid child support because, due to his lower salary, he has had insufficient funds to meet all his obligations.

The husband accepted the job in State A and moved from State B back to State A. Six months ago, the husband was offered a job in State A that pays significantly less than his job in State B, but provides him with more responsibilities and much better promotion opportunities. In State B, but provides him with more responsibilities and much better promotion opportunities. In State B, but provides him with more responsibilities and much better promotion opportunities.

(c) the remaining marital assets were divided between the husband and the wife equally.
(b) the remaining marital assets were divided between the husband and the wife equally.
(a) the remaining marital assets were divided between the husband and the wife equally.

Reaches age 18:

(c) the marital residence was awarded to the wife, with the proviso that it is sold before.
(b) the husband must pay the wife $1,000 per month in child support until their daughter.
(a) the husband and wife share legal and physical custody of their daughter.

In 2012, the husband and wife divorced in State B. Under the terms of the divorce decree:

In 2010, the family moved to State B.

In 1998, their daughter was born in State A.

In 1994, a man and a woman were married in State A.

WEF QUESTION 3
under the consent of the parties, if the divorce were granted in the original state and the issuing state had jurisdiction, the local family support act UFSA; also divorce decrees are given full faith and credit in the granting state, may be registered in another state and enforced under the uniform provision of the state B divorce decree. To modify the divorce decree, a decree from the state B does have jurisdiction to modify the marital residence sale proceeds.

Issues.

The custody matter and remaining the most appropriate court to determine child support.

Here, the child lived in state B and state B has a continuing right to hear the child. To the child living in state B and state B has a continuing right to the child in the state, as that state’s parent with the state or no evidence relating to the child’s interests in the state.

Another state may determine child support issues if the child no longer lives in the state or has no connection with the state and could be said to live in state A continuously. The child’s needs make it appear as if the husband had weekend visitation, and thus the child had spent the majority of the time in the home state has a relationship with the custodial parent and has the most evidence related to the child’s needs. Here, the facts make it appear as if the state B divorce decree, under UFSA and UCJEA (for child custody), The child’s home state is B divorce decree. The state A does not have jurisdiction to modify the child support provision of the state B divorce decree.

Question 3

Start of Answer #3 (607 Words)
garnishment

court will order him to pay the sum of the could be subject to contempt or wage
taking into account that the order he would be obligated to pay the ordered sum and the
change in circumstances was intentional and voluntary. The husband knew when
on this changed job circumstances, but will likely refuse to modify his obligation because
the court can consider prospective modifying the husband’s support obligation based

wages, attaching property, and are punishable by contempt of court.

obligations. Past and unpaid child support obligations can be enforced by garnishing
rights. Here, the husband is obligated by law to meet all past and unpaid child support
retrospectively modified. However, non-payment of child support does not affect visitation
unmodified. Further, child support obligations are due when current and can be
pay. Additionally, the change in the paying spouse’s circumstances must be
material change of circumstances of the child’s needs or the paying spouse ability to
obligation to his daughter. A child support order is modifiable upon a substantial and

2A:8B. The husband could not have retroactive modification of his child support

were domiciled there at the time of the divorce.

and credit because state B had proper jurisdiction over the divorcing parties as both
state A was the husband’s domicile. Further, the divorce decree is entitled to full faith
state A’s jurisdiction because the wife was subject to personal service in the state and
with A and it could be modified by state A. Both the husband and wife were subject to
jurisdiction over the parties. The husband could have state B register the divorce decree
jurisdiction. Further, to have jurisdiction as to property, the state would need personal
B's decree. voluntary entered into the property settlement agreement, and thus is bound by state
and voluntarily consented to. Despite the husband's unfavorable financial status, he
are final and are not subject to modification, especially when they are fair, reasonable,
proceeds of the state B divorce decree. Property distribution agreements, and orders
2c. The husband will not be able to obtain modification of the marital residence sale

(Answer continued)
2. When types of relief could the nonprofit seek to stop the USFS from issuing a logging permit: If the logging company seeks to join the litigation as a party, must the federal district court allow it? Do so as a matter of right? Explain.

Explain the conditions or criteria that might allow the federal district court to permit the nonprofit to proceed with its claim. Include any relevant case law or statutes.

National Forests, including some endangered species, would destroy important wildlife habitat and thereby cause serious harm to wildlife in the Seanec. The nonprofit believes that the logging project

Environmental Impact Statement is completed. In the nonprofit's view, the logging project is not

barring the USFS from issuing a logging permit to the logging company until an adequate environmental impact statement has been prepared.

The USFS failed to join as a defendant in the litigation. The nonprofit alleges that the USFS violated the National Environmental Policy Act (NEPA) by failing to prepare an environmental impact statement for the proposed logging project. Among other corrective measures, the nonprofit seeks a preliminary injunction forcing the USFS to join as a defendant in the litigation. This nonprofit organization whose mission is the preservation of natural resources has filed suit in federal district court against the USFS. The nonprofit alleges that the USFS violated the National Environmental Policy Act (NEPA) by failing to prepare an environmental impact statement for the proposed logging project. Among other corrective measures, the nonprofit seeks a preliminary injunction forcing the USFS to join as a defendant in the litigation.

The USFS solicited bids from logging companies to harvest the trees on the 5,000 acres of forest

loggers permit. Once it does so, the company intends to begin cutting down those immediately.

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The USFS failed to join as a defendant in the litigation. The nonprofit alleges that the USFS violated the National Environmental Policy Act (NEPA) by failing to prepare an environmental impact statement for the proposed logging project. Among other corrective measures, the nonprofit seeks a preliminary injunction forcing the USFS to join as a defendant in the litigation.
The court cannot deny such a lawsuit. In the litigation, the court is protecting the plaintiff's interests, and the result of the litigation is so strong that the plaintiff's rights are going to be impacted by the outcome of the litigation as of right is different. A party has the right to intervene when his interest is not adequately represented by a party to the action. The court can decide to allow the intervention or deny it. In these cases, the party seeking to intervene must show that the party to the action has failed to protect a right. A federal court can permit a party to intervene in an action if the party has an interest in the quality of the trial. The party seeking to intervene must show that the party to the action has failed to protect a right. The issue is whether this state would have jurisdiction. Yes, if the Loggins company seeks to join the litigation as a party, the federal district court must decide whether to allow it to intervene as a matter of right. The issue is whether this state would have jurisdiction. 1.110 words) Start of Answer #4

(ESSAY)

When finished with this question, click A to advance to the next question.

A

A

4) Please type your answer to MEE 4 below
Because of its extreme financial stake in the litigation and the fact that no other party is
as such, the logging company should be permitted to intervene as a matter of right
while waiting for the permit issuance.

The logging company will be forced to seek logging contracts elsewhere, and lose the
company will have no way to protect its financial venture at this point. II will be too late.
Additionally, if the non-profit succeeds in obtaining a permanent injunction, the logging

project to go through at this point, but their like-minded view is for different reasons.
company. Both the USFS and the logging company may both want this development
consider the interest of the national lands, not the financial stake of this logging
company; however, this argument is not persuasive. The USFS has the obligation to
The non-profit will likely argue that the USFS is looking out for the rights of the logging
public lands, and approved a development project in this area.
financial stake in the venture as does the logging company. It simply seeks to manage
needs of the logging company. Specifically, the USFS does not have the same
company in this litigation. Additionally, no other party is looking out for the rights and
futility. Thus, extreme financial rights are at stake for the logging
Here, if the permanent injunction is awarded, the logging company will not be able to
party the right to join.
destroyed, the harm could be great and irreparable.

The trees at stake, endangered species live in these trees. If their habitats are
of years old, and replacing new ones will take hundreds of years. Finally, not only are
these hundreds of years old, and replacing new ones will take hundreds of years. Finally, not only are
license. Once the trees have been cut, there is no going back. The trees are hundreds
and this logging company has stated that it will begin "immediately" after receiving the
and schedule a hearing. Additionally, logging companies can cut down trees quickly.
company could begin cutting down trees. As such, there is no time to notify the USFS.
Specifically, the USFS could issue the license at any moment, and the logging
The non-profit organization will likely be able to demonstrate these facts to the court.

Great and irreversible; and will cause great, irreversible harm if permitted.
Here is no time to notify the other party and have a hearing. The interest at stake is
acting within those 14 days. To receive legal relief, the non-profit must demonstrate
Restaining order. The Temporary Restaining, if issued, would keep the USFS from
have time to have a hearing before the court on the issuance of a Preliminary

A TRO is a restraining order that lasts fourteen days after its issuance, until the parties
the logging activity and the quickness at which trees can be cut down.

Temporary Restaining Order ("TRO"), the court is likely to grant both orders due to the finality of
2. The non-profit can seek a Temporary Restaining Order ("TRO") and a Preliminary
Looking out for its interests.

ABRAHAMS 7-29-14-PMA-MEE
(Case on continued)
nature of the development on cannot say for sure what the public would desire. Much of the public would likely want it to be preserved. However, without knowing the few places still exist where thousands of years old house endangered species, and likely has an interest in seeing this national forest preserved in its natural state. Very to protect its mission in preserving the natural resources of this region. Second, the initial and all the trees are cut down, it will be too late. Non-profit will no longer be able if injunction is not issued. Specifically, if the license is issued during the pendancy of the injunction is not issued. First, the burden on the USFS is outweighed by the harm to the non-profit if the federal district court would be likely to grant non-profits a PRO for several reasons.

merits.

possible harm. And (4) the likelihood that the requesting party has in succeeding on the PRO is denied; (2) the interests of the public; (3) the irreparable nature of the injunction is issued versus the harm on the requesting party if one seeks a party from acting during the pendancy of a suit, and will either cease to exist at the end of the injunction or become a permanent injunction. A PRO is issued on the injunction party if the Prohibition is issued versus the harm on the requesting party. After a hearing with the parties, and the court weighs the following factors: (1) the burden.

In addition to the PRO, the non-profit could also seek a PRO. A PRO is restricting able to plead its case after the 14 days at a PRO hearing. not yet issued the license, so it is obviously not too big of a hurry. The USFS will be because the PRO only lasts 14 days, the harm to the USFS will not be too great. If it has
Likely to side with the non-profit organization, the court is likely to succeed on the merits. If in fact the USFS was

endangered species, have been cut down. Additionally, you cannot just go create new habitats for

irreparable. One cannot just go cut and plant new hundred year old trees once they

Third, the harm the non-profit could suffer if the PFO is not granted would be
Explain:

1. When evidence, if any, presented by the inmate to impeach the guard should be admitted.

2. When evidence, if any, presented by the guard to impeach the inmate should be admitted.

Justification that has adopted all of the Federal Rules of Evidence.

The transcript and the response have been properly authenticated. The trial will be held in a

based on this evidence:

The guard's counsel objects to the admission of this evidence and to any cross-examination

indicative that the guard dropped out after his first semester and did not receive a degree.

from a local college. An official copy of the guard's academic records from that college

resides in the state the inmate indicated that he had been sworn to by criminal justice

Last year, the guard applied for a promotion to prison supervisor. The guard submitted a

Guard, with the following:

The guard also plans to testify at trial. The inmate's counsel has moved for leave to impeach the

and to any cross-examination based on this evidence.

The inmate's counsel objects to the admission of any evidence related to these convictions

daughter, who was 15 years old at the time of the assault.

continually serving a 10-year prison sentence for the crime. The victim was the inmate's

(6) Between years ago, the inmate was convicted of robbery sexual assault of a child and is

up to one year in jail. He paid a $5,000 fine.

(7) Eight years ago, the inmate pleaded guilty to factually a misdemeanor punishable by

served a three-year prison sentence, which began immediately after he was convicted. He

(4) Twelve years ago, the inmate was convicted of robbery distribution of marijuana. He

for leave to impeach the inmate with the following:

The guard will be before a jury. The inmate plans to testify at trial. The guard's counsel has moved

occurred.

are the only witnesses to this altercation. They have provided contradictory reports about what

A prison inmate has filed a civil rights lawsuit against a guard at the prison, alleging that the
standard favors admission, given that the evidence need only be slightly more
prejudicial to the defendant. This determination could go either way; however, the
admissibility of the judge determines that his probative value outweighs the
evidence. If the judge determines that the conviction is not too remote, hence, the conviction is
from the date of release. The conviction is not too remote. Hence, the conviction is
years ago, the inmate was released from prison only nine years ago. Measured
not a crime involving dishonesty. Although the conviction was entered into
here, the inmate was convicted of felony distribution of marijuana, which is
entered on the conviction was released from prison.

too remote if more than ten years has elapsed since either the conviction was
admission, the conviction must not be too remote in time. Generally, a conviction is
determined is probative value outweighs the danger of unfair prejudice. In
a felony conviction, not involving dishonesty, only if the trial judge
inmate. In a criminal case, the prosecution may impeach the defendant-witness
the judge determines that its probative value outweighs the prejudice to the
inmate's conviction for felony distribution of marijuana is admissible.

1. Evidence presented by the guard

==START OF ANSWER==

(essay)

When finished with this question, click A to advance to the next question.

A

A

5) Please type your answer to MEQ 5 below

ARBAR-7-29-14-PW-060
The probative value of this crime in light of the lawsuit (a civil rights action) is
jury. This is especially true given that the victim was the defendant's daughter.
assault is inherently personal and likely to evoke an emotional response from the
prejudice to the defendant probably outweighs its probative value. A sexual
the conviction is not too remote-7 was entered seven years ago. However, the
value outweighs the prejudice to the inmate and it is not too remote in time. Here,
impediment purposes is admissible if the judge determines that its probative
excluded. Again, a felony conviction offered against a criminal defendant for
The inmate's conviction of felony sexual assault should probably be
conviction for perjury should be admitted.

crime was only a misdemeanor under the Federal Rule. As such, the inmate's
inherently dishonest-in fact that is the essence of the crime. It is irrelevant that
illegal duty to tell the truth (7.e. in a court proceeding), perjury is a crime that is
Perjury is the taking of a false oath (lying) about a material matter while under a
Here, the inmate pleaded guilty to a misdemeanor charge of perjury.

whether to admit this type of impeachment evidence.

a felony or misdemeanor conviction. The trial judge generally has no discretion
may be impeached by a crime involving dishonesty, regardless of whether it was
Rules of Evidence, a witness may be impeached by a prior conviction. A witness
The inmate's conviction for perjury should be admitted. Under the Federal
claim as an inmate, it probably will not prejudice him in the eyes of the jury.
probative than prejudicial to be admissible, and because the inmate is bringing a
End of Answer #5

examination.

That the guard did in fact lie. He is limited to what he can elicit on cross-examination, such as the register of the college or the guard’s supervisor, to prove that the residue of the transcript into evidence. And, he may not call other witnesses, such as the register of the college or the guard’s supervisor, to prove that the guard did in fact lie. He may not offer the transcript on your resume but never in fact completed college. He may not bring about on cross-examination (e.g., “Isn’t it true that you failed a B+ from the local college on your resume but never in fact completed college?”). He may not ask the inmate’s attorney on cross-examination. However, he can only ask the inmate’s attorney about the guard’s lie in his resume as to his B.A. in Criminal Justice is permissible for this type of impeachment.

Here, the guard’s act of lying on his resume as to his B.A. in Criminal Justice is permissible for this type of impeachment.

Evidence of any of the consequences of the bad act. No extrinsic evidence may not reference any of the consequences of the bad act. No extrinsic evidence can only be elicited on cross-examination and the impeachment attorney evidence can only be elicited by a prior bad act. However, such evidence presented by the inmate’s attorney should be allowed to question the guard as to his likely title. Thus, the conviction should probably be excluded by the judge.

ARBAQ-7-29-14-PWME
(Question 5 continued)
Explain why the investor made a demand on Mega's board of directors before bringing suit.  

2. If the investor's proposed bylaw provision were approved by the shareholders, would the provision be inconsistent with state law? Explain.

3. The investor's proposed bylaw provision and challenging the board's amendment of the bylaws at its recent meeting. Explain why the investor is considering bringing a suit challenging management's refusal to include the bylaw amendment on the agenda of the next shareholder meeting, and whether or not the investor's proposed bylaw provision would be consistent with relevant state law.

4. The investor's amended proxy materials in order to exchange the investor's proxy from the corporation's proxy materials. Why?

5. The Corporation shall supplement any inconsistent provision in these bylaws and may not be amended or repealed by the board of directors without shareholder approval.

The investor's proposed bylaw provision would be inconsistent with relevant state law.
(2) The investors' proposed bylaws are not inconsistent with state law.

Laws are not inconsistent with state law. Bylaws are subject to amendment by shareholders. Thus, the investors' proposed bylaws are not inconsistent with state law. Rather, the Board's bylaw passed by the Board of Directors conflicts with the investors' proposed by-laws. Although the election of directors, moreover, none of the investors' proposed by-laws relate to the nomination and election of directors. Although the election of directors, moreover, none of the investors' proposed by-laws relate to the nomination and election of directors.

Here, Mega Inc.'s articles of incorporation do not provide for the nomination and election of directors. Shareholders elect directors. This is reflective of the basic structure of the corporation. And election of directors. However, if the articles of incorporation contain nothing about the corporation, a corporation may enact by-laws governing the area. Moreover, if there are no by-laws providing otherwise, shareholders are free to amend by-laws providing for the nomination and election of directors. Moreover, if the articles of incorporation contain nothing about the corporation, a corporation may enact by-laws governing the area. The articles of incorporation provide for matters governing the nomination and election of directors. When the corporation's articles of incorporation are silent, generally, a state has adopted the MBCA, the MBCA provides the governing law. As a result, the state has adopted the MBCA, the MBCA provides the governing law. Thus, the investors' proposed by-laws are not inconsistent with state law. Because the investors' proposed by-laws are not inconsistent with state law.

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Essay: Please type your answer to MEE 6 below.

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harmful; they are merely unsatisfactory when the manner in which the corporation is being
operated and case to the corporation. In such an action, the shareholders' rights are not
prescribed when a shareholder sues a corporation's directors for breaching their duties
nearly the corporation's directors before bringing a derivative action. A derivative action
nearly the corporation's directors before bringing suit. In contrast, a shareholder must
bylaws is directly harmed by the corporation. In a direct suit, the shareholder need not
some manner. A shareholder is directly harmed when his or her power to vote or enact
corporation because the corporation has interfered with the shareholders' rights in
suit. All issue is whether a demand is required when a shareholder is suing a

(3) The investor does not have to make a demand on the board before bringing

precedence.

Shareholders are charged with this matter. Thus, the investor's proposed bylaws take
are to be nominated and elected. As such, the default rule governs, and the
the board, because Mega Inc's articles do not specify the manner in which directors
in this instance, the investor's proposed bylaw provision takes precedence over

in this matter means that the MEGA's default rules govern.

corporations' articles of incorporation may provide for a different result, the silence of
with electing directors and voting on fundamental corporate policies. Although a
with setting corporate policy and hiring officers. In contrast, shareholders are charged
nomination and election of the corporation's directors. Generally, directors are charged
prior bylaw amendment. All issue is whether the board of directors can provide for the

(Area-7-29-47-MME
(Continued)
have to make a demand on the board before bringing suit.

Thus, the investor has a direct suit against the corporation, and does not
has been run by the directors: the merely wants to have his right to amend the bylaws
pattern indicates that the investor is unsatisfied with the manner in which the corporation
amend bylaws have been harmed directly with the corporation. Nothing in the fact
Here, the investor's suit against the corporation is a direct action. His rights to
run.

(continued)
Fundamental legal principles rather than local case or statutory law.

NOTE: Examinations testing in UPE jurisdictions must answer according to generally accepted
legislative interpretation has instructed you to answer according to local case or statutory law.
Answer all questions according to generally accepted fundamental legal principles unless your
intellect or intellectual information.

Clarity and conciseness are important, but make your answer complete. Do not volunteer
elements mentioned above.

Examine the case(s) upon the presence and quality of the
answer depends not as much upon your conclusions as upon the reasoning by which you arrive at your conclusions. The value of your
principles of law, and the reasoning by which you arrive at your conclusions, the value of your
understanding of the facts, a recognition of the issues involved, a knowledge of the applicable
demonstrate your ability to reason and analyze. Each of your answers should show an
cover more than one of the areas you are responsible for knowing.

Do not assume that each question covers only a single area of the law; some of the questions may
read each fact situation very carefully and do not assume facts that are not given in the question.

If you are using a laptop computer to answer the questions, your jurisdiction will provide you

with specific instructions.

Through the material you wish to deletion

each question booklet. If you make a mistake or wish to revise your answer, simply draw a line

You may answer the questions in any order you wish. Do not answer more than one question in

booklet until you are told to begin.

You will be instructed when to begin and when to stop this test. Do not break the seal on this

MULTISTATE ESSAY EXAMINATION DIRECTIONS