Mary and Wendy have established a general partnership to operate Kibble, but Angelo is only a creditor to Kibble

At issue is what relationship the parties have established through their dealings. A general partnership is formed when two or more persons carry on as co-owners a business for profit. The sharing of profits raises a presumption that a general partnership has been formed. Loss sharing is also indicative of a general partnership. In contrast, a party that has merely loaned money to a partnership is not a general partner -- the loaning party is merely a creditor.

Here, Mary and Wendy have established a general partnership in operating Kibble. Wendy was previously operating Kibble as a sole proprietorship. But Mary subsequently made a contribution to Kibble, and Wendy agreed in a signed writing to pay Mary 15% of Kibble's monthly profits for as long as Kibble remained in business. This profit sharing raises a presumption of a general partnership. Mary is also sharing 15% of Kibble's losses with Wendy, which is indicative of a partnership. Lastly, Mary is active in managing Kibble, working at the store and helping Wendy with business planning. Therefore, Mary and Wendy have established a general partnership to operate Kibble.

In contrast, Angelo is a mere creditor to Kibble. His check to Wendy was also payable to "Kibble," but the memo line says "loan to Kibble." Angelo did agree to accept 15% of the monthly profits of Kibble as repayment of the loan until the total loan amount, including interest, was repaid. But this merely represents the cadence of loan repayment, and not an indefinite sharing of profits. Angelo is merely a creditor to Mary and Wendy's general partnership in Kibble.

Bob has been assigned Mary's financial interest in the partnership, but he is not a general partner. He does not have management rights in Kibble. Bob is discussed further below.

Bob is entitled to Mary's share of the monthly profits of Kibble

At issue is whether Bob is entitled to Mary's share of the monthly profits of Kibble. A general partner is free to transfer her financial rights or interest in a partnership to another party. However, a party can only become a partner in a general partnership if all the current partners unanimously elect him (unless the partnership agreement stipulates otherwise). This "pick your partner" rule exists in part because partners are personally liable for partnership debts. Only general partners can participate in the management of the partnership. Partnership management rights are not freely transferable.

Here, Mary has written a letter to Bob stating that she was assigning to Bob, as a gift, all her interest in Kibble effective immediately. This written, but gratuitous, transfer of Mary's "interest" in Kibble will operate to transfer Mary's financial rights in Kibble to Bob. This is true even though Wendy said that she "[doesn't] want Bob involved with Kibble." Wendy's statement precludes Bob from being elected to the partnership and precludes Bob from having management rights in the partnership, but Mary's transfer to Bob of her financial rights is valid. Therefore, Bob is entitled to Mary's share of the monthly profits of Kibble.

Bob is not entitled to inspect the books and records of Kibble

At issue is whether Bob is entitled to inspect the books and records of Kibble. A general partner is free to transfer her financial rights or interest in a partnership to another party. However, a party can only become a partner in a general partnership if all the current partners unanimously elect him (unless the partnership agreement stipulates otherwise). This "pick your partner" rule exists in part because partners are personally liable for partnership debts. Only general partners can participate in the management of the partnership. Partnership management rights are not freely transferable.

Here, Mary has written a letter to Bob stating that she was assigning to Bob, as a gift, all her interest in Kibble effective immediately. This written, but gratuitous, transfer of Mary's "interest" in Kibble will operate to transfer Mary's financial rights in Kibble to Bob. This is true even though Wendy said that she "[doesn't] want Bob involved with Kibble." However, Wendy's statement precludes Bob from being elected to the partnership and precludes Bob from having management rights in the partnership, even though Mary's transfer to Bob of her financial rights is valid. Inspecting the books and records of Kibble is best understood as a management right that belongs to general partners, which is not transferable to Bob, who is not a general partner. Therefore, Bob is not entitled to inspect the books and records of Kibble.

Wendy is not entitled to use the delivery van on Sundays to take her nieces to their softball games

At issue is whether Wendy is entitled to use the delivery van on Sundays to take her nieces to their softball games. Partners do not have an ownership stake in partnership property. Partnership property can only be used for partnership purposes, unless the partners agree otherwise. Property will be

considered partnership property if it is titled in the name of the partnership. When property is purchased with partnership funds, that also gives rise to a presumption that the property is partnership property.

Here, the delivery van is partnership property. It is titled in Kibble's name, and was purchased with the checks comprising Mary's partnership contribution and Angelo's loan to Kibbles. These check proceeds were partnership funds. Wendy does not have a separate ownership interest in the delivery van, and the partners have not agreed to allow personal use of the delivery van -- as evidenced by Wendy's objection to Mary's use of the van to take her nieces to softball games. Therefore, given Mary's objection, Wendy can only use the delivery van for Kibble's purposes and cannot use it to take her nieces to their softball games. It does not matter that the delivery van is not in use by Kibbles on Sundays.

1. The first issue is what legal relationships the parties, including Wendy, Mary, Angelo, and Bob, have established through their dealings.

A partnership is formed when two or more individuals act as co-owners of a business for profit. When the two parties share profits in the business, a rebuttable presumption that the intent to co-own a business is created. The specific intent to create a partnership is not required. However, this presumption of intent may be rebutted where the profit share is merely a repayment of a debt, rather than a general arrangement as compensation for operating the business.

Partners have actual authority to make decisions for the business. A partner may assign his interest in the profit share but may not assign decision-making capabilities to another person.

Wendy initially founded a pet store for dogs, "Kibble," as a sole proprietorship. However, Wendy sought financial assistance from her friends Mary and Angelo in running Kibble because she was having difficulty paying the company's bills. She created different legal relationships with each of these parties, and she developed a third legal relationship with Bob, Mary's son.

Wendy and Mary have a general partnership with each other. To start the partnership, Mary paid Wendy a check payable to "Kibble," and did not specify that this was a loan. As such, this check can be considered an investment in the business because Wendy did not create a balance to be paid off in full. Wendy paid 15% of Kibble's monthly profits to Mary so long as it remained in business, possibly indefinitely, and Mary also shared in the 15% losses if Kibble suffered losses. As such, this created a rebuttable presumption that the two intended to co-own the business for profit. Additionally, Mary had decision-making capabilities in Kibble, because she was actively involved in the business operations of Kibble. Mary further acted as a decision maker in the business when she asked Wendy not to use the delivery van on Sundays to transport her nieces to softball games.

Thus, Wendy and Mary are general partners operating Kibble for profit.

Note that although Wendy used Mary's proceeds to purchase equipment, supplies, and a delivery van in Kibble's name, Mary was not a creditor or secured creditor, because she did not take collateral in the

items or expect a payoff of any sort, apart from her 15% profit share, which as to compensate Mary's operation of the business.

Angelo acted as Wendy's creditor. Although Wendy paid Angelo 15% of the profits from Kibble, this was to pay back the loan Angelo made to Wendy, and would only continue until the check Angelo wrote to Wendy was paid off in full. Thus, Angelo and Wendy were not partners, but merely creditor and debtor.

Partners may assign monetary interest in the partnership, but they may not assign decision making authority, including authority to manage and operate affairs, in the partnership.

With regard to Bob, he was merely an assignee of Mary's 15% profit share, not a partner. Thus, Bob had no other interest in the partnership, and no ability to make decisions, manage, and operate the business. This was clear because Bob was not actively involved with Kibble, as Wendy stated, and Mary's involvement in the business operations of Kibble persisted.

2. The second issue is whether Bob is entitled to Mary's share of the monthly profits of kibble.

A partner may assign their profit share to another person. As such, Bob is entitled to Mary's share of monthly profits in Kibble. Such an assignment was proper.

3. The third issue is whether Bob is entitled to inspect the books and records of Kibble.

A general partner has a duty of care, through which the partner must act in good faith in the best interest of the partnership, using reasonable means. The duty of care includes the duty to inspect the documents of the business to keep up the knowledge necessary to make decisions in the partnership's best interest. However, an assignee of a partner's monetary interest has no such duty, as they do not operate the business.

Because Bob is not a partner in the business, Bob is not involved in its operations. Thus, Bob is not entitled to inspect Kibble's books and records.

4. The fourth issue is whether Wendy is entitled to use the delivery van on Sundays to take her nieces to their softball games. This issue turns on whether the delivery van is partnership property or personal property. If the van is partnership property, Wendy is not entitled to use the delivery van for such personal use; however, if it is personal property, Wendy is entitled to use it for personal purposes.

Partnership property is created where the partners use loans and investments in the partnership or partnership profits to purchase the property for partnership use.

The delivery van was purchased with the proceeds of the checks from Mary and Angelo, i.e., the investment check from Mary and the loan from Angelo. Thus, this was purchased using a loan and an investment for partnership, and the van is therefore a partnership asset. As such, Wendy is not entitled to use the delivery van on Sundays to take her nieces to softball games.

1. Yes, Grandson has breached an express warranty of the sale contract Under Article 2 of the UCC.

First, this contract is governed by Article 2 of the UCC because it is for the sale of goods. A good is anything that is readily movable at the time it is identified as being for sale in the contract. At the time it was identified, the painting was movable and is, therefore, a good.

An express warranty is any affirmative promise/description/etc that a Seller makes during his negotiations with a buyer. An express warranty becomes a part of the contract if it formed a basis of the bargain, which happens if it comes for the Seller at a time where a reasonable buyer would've relied on it.

Here, not only was the fact that the painting was by Artiste promised in the catalog (which a reasonable buyer would've relied on if they responded to it) but that language was included in the contract.

An express waiver can be waived either generally or expressly. However, where a Seller attempted to waive an express warranty via a general waiver, courts will attempt to construe/interpret that waiver as not waiving a particular express warranty unless the circumstances would make it unreasonable to do so. Furthermore, a waiver of an express warranty must be inconspicuous in the contract language.

Here, by including the language, "Seller disclaims all warranties, express or implied," the Seller has attempted to generally waive the express Artiste warranty because the language did not specifically refer to the warranty Seller was attempting to waive. Therefore a court will attempt to interpret that language as not referring to the Artiste waiver unless circumstances make such an interpretation unreasonable. Here, because the facts provide that Buyer was induced into the contract because of a belief that the painting was genuine, and because that warranty was made in the catalog and in the language of the contract, it would not be unreasonable for the court to interpret the Seller's attempted waiver as not referring to the Artiste warranty. Accordingly, under such an interpretation, that waiver would be ineffective, and the painting's forged nature will breach the express warranty made to the Buyer.

2. Yes, Buyer has the right to rescind the contract on the basis of a mutual mistake.

In order for a contract to be voidable for mutual mistake, there must have been a mistake of fact concerning the subject matter of the transaction by both parties. The mistake of fact must relate to a present of past fact, and it must have been material to the transaction. If this is the case, the contract is voidable by either party, provided that the voiding party was not in a position such that he assumed a risk of the fact not being true. This occurs when one party is in a better position to know the fact was untrue or where one party has a legitimate doubt as to the existence of the fact at the time the contract was executed.

Here the facts provide that both the Buyer and the Grandson were under the mistaken belief that the painting sold was a genuine work of Artiste at the time the contract was executed. This fact was a present fact at the time, and it was material because the facts provide that, as a fan of Artiste's work, Buyer only entered into the contract because he believed the work was genuine. Additionally, Buyer was not in a position at the time the contract was executed such that he assumed the risk of the fact being untrue. There is an argument that,as between the parties, the Buyer is in a better position of knowing the fact was untrue because he is an avid art fan/collector of Artiste's work and was given 30 minutes to visually inspect the painting, whereas Grandson merely inherited the work and the facts provide he did not share his grandmother's interest in art. However, the facts additionally provide that a mere visual analysis of the painting would not have revealed its fraudulent nature. Therefore, Buyer's heightened knowledge with respect to the artwork will not put him in the position of having assumed the risk of the fact being untrue, and he can rescind the contract.

1. Whether Grandson breached an express warranty when he sold a counterfeit painting to Buyer

The sale of goods is dictated by the Uniform Commercial Code. An express warranty is when a party signifies to the other party that the item is what it claims to be. Statements, written and oral, regarding facts may be an express warranty. Opinions are typically not considered an express warranty. An express warranty may be disclaimed if the disclaimer is clear and unambiguous and as long as it does not directly undermine the express warranty. Additionally, there may be a warranty that the item is fit for a particular purpose if the seller knows the buyer has certain use of the good and the buyer is relying on the seller's expertise.

Here, the Grandson's catalog represented that the painting in question was by Artiste and was one of his early works. Buyer also stated to Grandson that he was willing to purchase "the Artiste painting." Finally, the Art Purchase Agreement identified the item being sold was a "painting by Artiste." Thus, the Grandson likely made an express warranty to Buyer that the painting was indeed by Artiste.

The question is whether the express warranty was breached. Grandson and Buyer signed a contract with various conspicuous provisions labeled "terms and conditions of sale." One of the provisions read: "Seller disclaims all warranties, express or implied." Typically, when parties sign an agreement and disclaimers are disclosed therein and obvious, courts will enforce those disclaimers. However, when the disclaimer undermines an express warranty or primary purpose of the contract, courts will not honor the disclaimer. Because the disclaimer here was overly broad and in direct contradiction with the express warranty that the painting was by Artiste, courts will likely find it unenforceable.

Accordingly, Grandson has breached an express warranty and the disclaimer has no effect.

2. Whether Buyer has the right to rescind or avoid the contract on the basis of a mutual mistake because the painting was not by Artiste

When two parties enter into a contract based on mutual mistake, courts may excuse the parties from performing their duties under the contract. A mutual mistake to a contract exists when both parties to the contract made a mistake as to a material, present fact that was a basic underpinning of the

contract. A mutual mistake will not be found if one of the parties assumed the risk of mistake. A party can assume the risk of mistake if they're aware they lack sufficient knowledge about the nature of the deal but proceed anyway.

Here, both parties seemed to believe the painting was by Artiste. Grandson, who was not experienced in artwork, relied on an art appraisal expert to help market the paintings. Based on this, he describe the painting in a catalog as an early work of Artiste. It also appears that Buyer relied on the representation of the artwork as an authentic Artiste painting when he purchased it. Moreover, Buyer was an art collector who loved Artiste, and that was the sole reason he purchased the painting. It was only three weeks after the purchase that both parties learned the painting was a counterfeit.

The question is, however, whether Buyer assumed the risk of mistake. As mentioned, Buyer was an experienced art collector, whereas Grandson knew little about paintings. Moreover, Buyer was able to inspect the painting for 30 minutes prior to purchasing it. While 30 minutes may not be a significant amount of time, Buyer did not insist on additional time or other safeguards to ensure the painting was by Artiste. On the other hand, the counterfeits were of such high quality that visual inspection of the painting was not enough to determine whether it was authentic. Rather, a chemical analysis was necessary. Buyer had to consult an art professor who in turn arranged for a chemical analysis. Additionally, Buyer had no reason to believe the painting was counterfeit; it was only after the purchase that a news article indicated Artiste counterfeits were in circulation.

Because it was nearly impossible for Buyer to unearth the true nature of the painting prior to purchase--or, at least, it would have been incredibly cumbersome--Buyer likely did no assume the risk. Thus, a court may find there was a mutual mistake and rescind the contract.

1. The first issue is whether the court erred by denying Dana an opportunity to be heard before it took judicial notice of the weather

A court may take judicial notice of a fact sua sponte or at the request of a party. When a party requests that a court take judicial notice of a fact, the other party has a right to object and be heard.

Here, Cara asked the court to take judicial notice of a fact. When Dana requested to be heard, the court denied her request. This was improper because Dana had a right to object and be heard, therefore the trial court erred in denying Dana this opportunity.

2. the next issue is whether the court erred by taking judicial notice of the weather

Taking judicial notice of a fact means that the court will take the fact as true and in a civil case instruct the jury to accept the fact as true. The court will take a fact as true if it is not subject to reasonable dispute. A fact is not subject to reasonable dispute if it is one commonly known within the community or if it is established by a credible source whose credibility cannot reasonably be questioned.

Here, Cara asked the court to take judicial notice of the weather on October 18 based on a certified public record from the federal government's national weather service agency. The record was a report for October 18, applied to the area where the gym was located and at the time Cara testified she was at the gym. The court did not err by taking judicial notice of this fact because it is not subject to reasonable dispute because it was established by a credible source (by certified record of the federal government's national weather service), whose credibility cannot reasonably be questioned. The federal government's national weather service agency is credible and this credibility is likely not subject to question, especially in a certified public record from their office. Therefore the court did not err.

3. the next issue is whether Dana's testimony that Cara was careless was inadmissible character evidence

Relevance

Evidence must be relevant to be admissible. Evidence is relevant if it has any tendency to make a fact more or less probable and the fact is of consequence in determining the action

Here, the evidence sought to be brought in is evidence that Cara is careless. This case involves allegations against Dana that she stole Cara's phone. Dana is alleging that Cara lost it. Therefore this evidence is relevant because it makes the fact that Dana stole it less likely and this is of consequence.

Character evidence

Evidence of a person's character or character trait is not admissible to prove that on a particular occasion that person acted in accordance with that character or character trait. However, a defendant in a criminal case may offer evidence of an alleged victim's pertinent trait in the form of reputation or opinion evidence and the prosecution may then offer evidence to rebut that trait or offer evidence of the defendant's same trait. Evidence of character may also be admissible if it is an essential element of a charge, claim, or defense.

Here, Dana is seeking to say that Cara is careless. This is opinion evidence that would not be admissible to prove that Cara acted in accordance with her careless character trait. However, it is a pertinent trait, as it is pertinent to whether Cara in fact lost her phone instead of Dana stealing it therefore it could be brought in in a criminal case as a pertinent trait of a victim, Cara. However, this is not a criminal case, rather, a civil case, therefore it is not being offered by a defendant in a criminal case. Further, this trait is not an essential element of a charge claim or defense. Therefore, it is not admissible character evidence as it goes against the propensity ban.

4. the next issue is whether Dana's testimony that Cara often misplaced or forgot her cell phone was inadmissible character evidence

Relevance

Evidence must be relevant to be admissible. Evidence is relevant if it has any tendency to make a fact more or less probable and the fact is of consequence in determining the action

Here, the evidence sought to be brought in is evidence that Cara has often misplaced her phone or forgotten it. This case involves allegations against Dana that she stole Cara's phone. Dana is alleging that Cara lost it. Therefore this evidence is relevant because it makes the fact that Dana stole it less likely and this is of consequence.

Character evidence

Evidence of crimes, wrongs, or other acts are not admissible to prove a person's character trait in order to prove that on a particular occasion the person acted in accordance with that trait. However, they may be admissible for other purposes such as proving motive, opportunity intent, plan, preparation, knowledge, identity, absence of mistake, or lack of accident.

Here, Dana is seeking to enter evidence that Cara often misplaced her phone at work or forgot it in the conference room after a meeting or in the break room after lunch. These are specific instances of other acts that Cara took and are not admissible to prove her character for being careless. Further, none of the other purposes for which such evidence may be admitted apply here. Therefore, this evidence is inadmissible character evidence.

Further, when a defendant is entitled to offer character evidence that goes to a victim's pertinent trait, it must be in the form of reputation or opinion. Evidence of specific instances of conduct is only admissible on cross examination. Therefore, while this evidence is not admissible because this is not being offered by a defendant in a criminal case, it is also in the improper form as it is specific instances of Cara's conduct.

MEE 3

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

Before a court takes judicial notice of a fact, the court must give both plaintiff and defendant an opportunity to be heard before judicial notice is taken. Such opportunity to be heard can be in the form of a hearing, or in the form of submitting written briefs to the court upon its request. Here, Dana was denied the opportunity to present an argument that taking judicial notice would be improper, in either oral or written form. Therefore, the court erred by denying Dana the opportunity to be heard before taking judicial notice of the weather on October 18th.

2. The issue is, assuming that the trial court did not err by denying Dana an opportunity to be heard, whether the trial court erred by taking judicial notice of the weather on October 18th.

In a civil case, the trial court can take judicial notice of any fact that can be readily proven and identified by trustworthy public documents or records, if the judicially noticed fact is relevant to the case in question. Evidence is relevant if it has a tendency to make a fact more or less probable than would be without the evidence. In a civil case, the judge can instruct the jury that it must accept the judicially noticed fact as true.

Here, the weather is relevant because it has a tendency to make Cara's observation of Dana in a large orange jacket more or less probable than would be without the evidence, especially because Dana asserts that she was not wearing the heavy jacket because it was "not cold and rainy." The weather on October 18th can be readily identified by a certified public record from the federal government's National Weather Service agency. The gym is located in an area that the weather service reports on, and the record in question is a weather report from October 18th at the time Cara testified that she was at the gym. Such a certified public record is appropriate for taking judicial notice, and weather is an area of commonly judicially noticed facts. Therefore, the trial court did not err by taking judicial notice of the weather on October 18th.

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

A defendant may only introduce character evidence of the plaintiff if it is relevant to the elements of the claim presented by the plaintiff (such as negligent hiring), or if necessary to present a relevant defense (for example, if asserting self-defense, a defendant can introduce evidence that the plaintiff is violent). Character evidence is inappropriate to prove that an individual acted in conformation of that trait on a specific day in question. Here, Cara is accusing Dana of theft. Whether Cara is "careless" or not has nothing to do with whether Dana stole the cell phone out of the locker. By seeking to introduce evidence of Cara's carelessness, Dana is trying to assert that Cara acted in conformance with that character trait in the date in question. Such use of character evidence is inappropriate.

Cara's carelessness may be relevant to Dana's defense, namely, that Cara just left her phone somewhere as opposed to Dana stealing it. However, in order to introduce evidence of Cara's carelessness, Dana would need to introduce relevant witness testimony that shows Cara's carelessness in the date in question, such as a witness who saw Cara leave her phone somewhere in the gym on October 18th. Merely stating that Cara is "careless" without introducing witness testimony of a specific act of carelessness that took place on October 18th is inadmissible character evidence.

In conclusion, Dana's testimony that Cara was "careless" is inadmissible character evidence.

Habit Evidence

Habit evidence is admissible to prove that an individual acted in accordance with that habit on the day in question. Habit evidence must be proved by a witness who knows of the individual's repetitive habits and can testify as to the repetitiveness of such actions. Dana may try to assert that she is introducing Cara's carelessness as habit evidence. However, Dana is merely asserting that Cara is "pretty careless" but does not make any additional statements about how her carelessness occurs every time in a certain manner. Therefore, such evidence of carelessness is not specific enough, or alleged to be repetitive enough, to constitute character evidence. As such, the testimony regarding Cara's carelessness is inadmissible as habit evidence.

4. The issue is whether Dana's testimony that Cara often misplaced or forgot her cell phone is inadmissible character evidence.

Specific acts are inadmissible to prove that a person acted in conformance with that behavior on a date in question. Therefore, Dana's testimony that Cara often misplaced or forgot her cell phone is

inadmissible to prove that Cara misplaced or forgot her cell phone on the date in question.

Habit Evidence

As described above, habit evidence is admissible to prove that an individual acted in accordance with that habit on the day in question. Habit evidence must be proved by a witness who knows of the individual's repetitive habits and can testify as to the repetitiveness of such actions. Here, Dana asserts that Cara "*often*" misplaced her cell phone at work by leaving it in the conference room or break room. However, doing something "often" is not enough to legitimate character evidence, instead, the individual must always do the action in question. Therefore, because Dana only asserted that Cara "often" leaves her cell phone around but not that Cara "always" or habitually leaves her cell phone around is not enough to present the testimony as habit evidence.

Landlord Requirements / Holdover Tenant; Rightful/Not Rightful Termination:

Issue 1: Whether a tenant has the right to terminate a lease on the theory that possession must be physically given (modern view).

Issue 2: whether the tenant does not have the right to terminate a lease on the theory that possession is granted when the keys are given (common law).

Rule: A landlord must provide a tenant the possession to the property when the term starts, or the tenant has the right to terminate. The rational is that the tenant is not in as good a position to remove the tenant as the landlord. Sometimes though, possession is enough if the landlord gives the tenant the keys to the apartment, and the tenant would then be required to remove the holdover tenant through the court system. The rational is that the tenant is not in possession, they have the keys to the apartment, the landlord no longer has a duty to the tenant.

Analysis: Under the modern view the landlord gives possession of the apartment when they sign the lease, and the apartment must be clear of all prior tenants. Here, the tenant would be able to terminate the lease immediately, and could require any damages necessary, such as the cost of his hotel, and the cost of finding a new apartment to live in. Generally, we as a society believe that the landlord is in a better position to have the tenant removed, since the landlord is in privity with the holdover tenant. If the landlord does not remove the holdover tenant, the landlord is the first to breach the contract leaving open the avenue for the tenant to terminate the lease.

Under the common law view, the landlord gives possession when they hand the keys to the tenant. This means that it doesn't matter if the prior tenant has moved out. The tenant would not be able to terminate the lease, but would have to go to court to get the prior tenant ejected, it would be their job to do so.

Conclusion: Therefore, under the modern view, the tenant could terminate the lease rightfully, but under CL the tenant would have to seek removal of the tenant on their own.

Assignment of Lease:

Issue: Whether the landlord rightfully refused to consent to tenant's suggested assignment of the lease.

Rule: Any lease agreement can be assigned or sublet unless the terms of the contract specifically say otherwise. If the terms state that a landlord must approve the new tenant, the landlord must approve using good faith -- which means if the person is not suitable, the landlord has a good faith basis for rejecting that tenant.

Analysis: Here, the landlord acted in good faith. Landlord did not automatically refuse the new tenant, but instead went ahead and conducted a background check on the friend and learned that the friend had a very low credit rating. The landlord refused the consent to the proposed assignment. This is permissible. However, Tom could have go ahead and assigned the lease anyway, but would have remained liable for any damages that the assignee did while there, and remained liable for the rent to be paid.

Conclusion: Yes, the landlord had a valid reason for refusing the consent to the suggested assignment, because after a valid check of the suggested assignee, the person did not look like a viable candidate. However, the landlord could have consented, and Tom would have continued to remain liable for the rent.

Holdover/Periodic Tenant:

Issue: Whether the landlord could rightfully treat a term-of-years holdover tenant as a periodic tenant subject to the provisions of the expired lease.

Rule: A holdover tenant is a tenant who stays past the terms of the lease. The landlord has a few options when a tenant holds over. The landlord can continue to charge the rate that the tenant was paying and the lease renews as if it was the same terms as the lease before. The landlord can turn it into a periodic tenancy, and charge FMV, or the landlord can eject the tenant through proper legal channels.

Analysis: Here, Tom held over on his lease. He was still in possession on January 1, and on January 4, the landlord sent Tom a letter telling him that she was treating him as a periodic tenant subject to all the terms of their original lease, and keeping the rent the same. The FMV for the apartment at this time was significantly lower. However, the landlord is within her rights to continue to charge the same rent amount. Tom did not have to stay. The lease would then be treated like a tenancy of years, because that is what the original lease term was. If may be "unfair" but that is irrelevant. Tom stayed past his allotted term.

Conclusion: A holdover to a tenancy of years will be held as renewing the lease if the landlord elects that. Therefore, Tom must continue to pay $1300 per month for rent, and the tenancy of years will continue for the same time as the original lease, and under the same terms.

1. The issue is whether the Landlord was required to deliver (a) *actual physical possession or* (b) *legal possession.*

Depending on the jurisdiction or the lease agreement between the parties, a landlord has the duty to deliver physical possession of the premises when the lease commences or simply deliver legal possession of the premises upon commencement.

(a) If the landlord is required to deliver physical possession of the premises the tenant may terminate the lease if he is unable to occupy the premises on the commencement day because either the landlord or a third party is interfering with the tenant's right of possession. Under this theory, Tom could've have rightfully terminated the lease on January 1, 2021 when Helen was still there.

(b) If the landlord is only required to deliver legal possession of the premises a tenant cannot terminate the lease if a third party interferes with its right of possession, but the tenant can enforce their lease and seek judicial assistance in removing any third parties. Under this theory, Tom did not have the right to terminate the lease on January 1, 2021, but could've initiated eviction proceedings on his own.

2. The issue is whether the landlord had commercially reasonable grounds for withholding consent to Tom's assignment.

Assignment prohibition clauses negotiated in lease agreements are valid. Unless the lease provides certain criteria that a an assignee must meet in order for landlord to consent, the general rule is that a landlord may only withhold consent on commercially reasonable grounds. If the lease only prohibits assignments, the tenant may sublet the premises without seeking landlord's consent. An assignment does not release the original tenant from liability unless the landlord grants a novation.

Here, the lease was silent as to assignee's criteria, but provided that Tom could neither assign nor sublet the apartment without the landlord's prior written consent. When Tom wanted to assign his apartment lease to his friend he contacted the landlord to request his consent. However, the friend's background check revealed that he had a very low credit rating. The friend's credit rating creates a risk for the landlord that he may not be able to consistently collect the rent on time from his friend.

And although Tom would still remain liable under the original lease, this risk is a commercially reasonable basis to withhold consent.

Accordingly, the landlord rightfully withheld consent to Tom's proposed assignment.

3. The issue is, if because Tom failed to vacate the apartment, whether landlord could treat Tom as a periodic tenant, subject to the provisions of the expired lease.

A term-of-years lease is for a specific number of years and it ends automatically upon the lease expiration, however certain provisions of the lease may survive termination if it is clearly indicated in the lease agreement. A holdover tenant is one who remains in possession of the premises after the lease expires. A landlord may initiate eviction proceedings or continue to accept rent payments and establish a periodic tenancy (usually month-to-month) under the same terms of the original lease unless the parties negotiate otherwise.

Here, Tom had a three-year lease term that ended automatically on December 31, 2023. When Tom failed to vacate the premises that day, he became a holdover tenant and was subject to eviction. While the lease did not address what would happen if Tom remained in possession, the landlord sent him a letter telling him that she was treating him as a periodic tenant subject to all the terms of the original lease, including the monthly rent of $1,300. While this was substantially above the market rate for comparable units, it was what the landlord was willing to accept. Because Tom failed to negotiate a better offer before his lease expired and remained in possession of the premises when he did not have the right to do so, he is liable for the $1,300 monthly rent for January. He can either move out or try to negotiate a better deal ahead of time.

Therefore, because Tom failed to vacate the apartment, the landlord could rightfully treat him as a periodic tenant, subject to the provisions of the expired lease.

1. The first issue is whether the State B hate-crime prosecution is barred by the U.S. Constitution's double jeopardy clause in light of the police officer's guilty plea to the City ordinance within State A.

Under the double jeopardy clause of the U.S. Constitution, a state or federal government may not try a defendant again for a crime for which they were previously convicted, or the convicted crime's lesser included offense, or a crime including the same elements as a convicted crime. However, separate sovereigns may try the same crime if the crime involves multiple jurisdictions. Separate sovereigns include different states, or a state and federal government.

A crime involves multiple jurisdictions where the cause of the crime is in one state and the injury or impact of the crime is in another state, or where the crime violates both state and federal laws. A jurisdiction has the power to charge a defendant where the defendant's conduct would have violated that state's law if the defendant is convicted for that conduct.

The crime at issue involves both States A and B, because the police officer threw a rock from State A, which struck the driver's face in State B. The City ordinance was that "any person who assaults another person because of that person's religious expression commits a serious misdemeanor and is punishable for up to six months in jail." City had jurisdiction to convict police officer because the crime occurred in City near the state border, and the police officer assaulted the driver by threatening him, chasing him, and ultimately by committing battery on him with a rock, because of the driver's religious bumper sticker. State B has jurisdiction to prosecute because its statute provided that it was unlawful for "any person" to assault "another person because of that person's religious expression." Thus, State B's statute, though almost identical to City's ordinance, meets the jurisdictional requirements because the same facts apply. Thus, both states have a right to prosecute the crime under their laws.

The police officer was convicted for a City ordinance in State A when he pleaded guilty to that charge. The State B hate crime is being prosecuted by a separate sovereign, not by State A, where City is. Thus, the State B hate-crime prosecution falls within the separate sovereign exception, and it is not barred by the double jeopardy clause.

2. The second issue is whether the federal hate-crime prosecution is barred by the U.S. Constitution's double jeopardy clause in light of the police officer's guilty plea to the City ordinance within State A.

As explained above, the separate sovereign exception to double jeopardy applies as between the federal and a state government. The rules for jurisdiction are listed above, too.

Here, State A had jurisdiction to convict for the reasons stated above. The federal district of State A has jurisdiction to charge the police officer, too. The federal statute provides that it is unlawful for any person "acting under color of state or local law, to assault another person because of that person's religious expression." Because the police officer was acting under color of local law (he was a City police officer), he could have violated this federal statute as well.

Because State A and the federal district of State A are separate sovereigns, the federal hate-crime prosecution is not barred by the U.S. Constitution's double jeopardy clause.

3. The third issue is whether the State A hate-crime prosecution is barred by the U.S. Constitution's double jeopardy clause in light of the police officer's guilty plea to the City ordinance within State A.

A municipal government and its state government are not separate sovereigns.

As explained above, City had jurisdiction to prosecute and convict the police officer of violating its ordinance. However, the hate-crime statute provides that "any person who assaults another person" for their "religious expression" and "thereby causes injury" to that person "commits a felony punishable by one to five years in prison." This is nearly identical language to the City ordinance, but adds an additional element of causing injury to the person. As such, the City offense is a lesser included offense to the hate-crime statute because each of its elements (namely, (1) committing assault upon a person (2) due to their religious expression) are within the State A hate-crime statute.

The State A hate-crime prosecution is barred by the U.S. Constitution's double jeopardy clause.

4. The final issue is whether the State A assault prosecution is barred by the U.S. Constitution's double jeopardy clause in light of the police officer's guilty plea to the City ordinance within State A.

The State A assault prosecution provides that any person who (1) assaults another person, (2) with intent to cause injury is guilty of a felony "punishable by not more than two years in prion." The assault element is included in the City offense, but the intent to cause injury is a different element, and the missing element is the religious expression motive. Thus, the assault charge is not a lesser included offense and contains different elements than the City ordinance, and the U.S. Constitution doe not bar the prosecution of the State A assault charge.

1. The issue in determining if the State B hate-crime prosecution is barred by the US constitution's double jeopardy clause is whether or not

The US constitution's double jeopardy clause applies in criminal cases. A person cannot be tried for the same crime twice. To be a different crimes the two crimes must have an element the other does not. (punishment does not count) Additionally, the clause does not apply until it has attached. attachment happens in a jury trial when the jury is sworn in and in a bench trial when the judge begins to hear evidence. Further the clause does not include prosecution from different sovereigns. States are each their own sovereign (but municipalities are not, they are part of the state) and so is the federal government.

The officer was originally charged with City's ordinance which provides "any person who assaults another person because of that person's religious expression commits a serious misdemeanor punishable up to six months in jail." City is part of State A. The officer pleaded guilty. The double jeapardy clause attached here when the officer pleaded guilty, as he did this instead of a trial.

State B is a separate sovereign therefore even though the clause attached to the officer crime, it only attached in state A. State B statute is a felony punish able by 1-2 years in prison "any person who assaults another person because of that person's religious expression." Even though the crimes are essentially the same because the state B and city are separate sovereign the double jeopardy clause does not apply, the prosecution is not barred by the US constitution.

2. The issue in determining if the federal hate-crime prosecution is barred by the US constitution's double jeopardy clause is whether or not the federal governemtn is a separate sovereign.

The US constitution's double jeopardy clause applies in criminal cases. A person cannot be tried for the same crime twice. To be a different crimes the two crimes must have an element the other does not. Additionally, the clause does not apply until it has attached. attachment happens in a jury trial when the jury is sworn in and in a bench trial when the judge begins to hear evidence. Further the clause does not include prosecution from different sovereigns. The federal government is considered a separate sovereign from states and municipalities, therefore the same crime can be tried in both the state and federal court.

The officer was originally charged with City's ordinance which provides "any person who assaults another person because of that person's religious expression commits a serious misdemeanor punishable up to six months in jail." City is part of State A. The officer pleaded guilty. The double jeapardy clause attached here when the officer pleaded guilty, as he did this instead of a trial.

Even so, the federal law makes it unlawful for "any person, acting under the color of state or local law, to assault another person because of that person's religous expression." this statute provides for an element, city's does not "acting under the color of state or local law" City's ordinance would be considered a lesser included crimes since it does not have an element the federal statute does not.

Either way, the federal hate-crime prosecution is not barred by the US constitution's double jeopardy clause because the federal government is a separate sovereign.

3. The issue in determining if the State A hate-crime prosecution is barred by the US constitution's double jeopardy clause is whether or not a lesesr included crime triggers the DJC.

The US constitution's double jeopardy clause applies in criminal cases. A person cannot be tried for the same crime twice. To be a different crimes the two crimes must have an element the other does not. Additionally, the clause does not apply until it has attached. attachment happens in a jury trial when the jury is sworn in and in a bench trial when the judge begins to hear evidence. Further the clause does not include prosecution from different sovereigns. A municipality/city is considered to be part of the sovereign state.

The officer was originally charged with City's ordinance which provides "any person who assaults another person because of that person's religious expression commits a serious misdemeanor punishable up to six months in jail." City is part of State A. The officer pleaded guilty. The double jeapardy clause attached here when the officer pleaded guilty, as he did this instead of a trial.

State A hate-crime statute provides "any person who assaults another person because of that person's religious expression and there by causes injury to that person commits a felony punishable by 1-5 years in prison ."

City is part of state A. City's ordinance is a lesser included crime because it doesn't require an element that State a statute does (actual injury). City's ordinance would need to have another element that state A statutes does not. Lesser included crimes trigger the double jeopardy clause because a lesser included crime is considered the same crime. a person cannot be convicted fro a greater crime coming from the same instance.

State A hate-crime prosecution is barred by the US constitution's double jeopardy clause.

4. The issue in determining if the State A assault prosecution is barred by the US constitution's double jeopardy clause is whether or not the assault and the city ordinance each require an element the other does not.

The officer was originally charged with City's ordinance which provides "any person who assaults another person because of that person's religious expression commits a serious misdemeanor punishable up to six months in jail." City is part of State A. The officer pleaded guilty. The double jeopardy clause attached here when the officer pleaded guilty, as he did this instead of a trial.

State A assault provides "any person who assaults another person with intent to cause injury is guilty of a felony punishable by not more than 2 years in prison"

State A additional term is intent to cause injury and City additional term is for religious expression, therefore these are separate crimes.

State A assault prosecution is not barred by the US constitution's double jeopardy clause.

Testator's 300 shares of ABC Corp will go to Donna

At issue is how Testator's 300 shares of ABC Corp will be distributed. Under the UPC, shares received as part of a stock dividend will be included as part of an original gift.

Here, Testator gives 200 shares of ABC Corp common stock to Donna in her properly executed, valid will. In 2021, Testator received another 100 shares of ABC Corp common stock due a stock dividend. While stock dividends were considered separate property under the common law, the UPC treats stock dividends as part of the original property. Therefore, Testator's 300 total shares of ABC Corp will go to Donna.

Testator's home will go to Edward after the $125,000 mortgage is paid off

At issue is how Testator's home will be distributed. Under the UPC, beneficiaries are not entitled to exoneration of liens. However, liens will be exonerated if a will specifically provides for exoneration.

Here, Testator gives her home to her brother Edward. Edward would ordinarily take the Testator's home subject to the $125,000 mortgage, per UPC rules. However, Testator's will specifically provides that all just debts be paid before distributing the listed devises. Therefore, $125,000 from Testator's $200,000 in cash will be used to pay off the home's mortgage. Edward will subsequently take the home free of any mortgage.

Harriet and Isaac will split equally Testator's remaining $75,000 in cash, the piano, and the $10,000 owed by the insurer

At issue is how Testator's remaining property will be distributed -- $75,000 in cash, the piano, and the $10,000 owed by the insurer.

The piano was originally intended for Testator's sister, Faye. However, Faye predeceased Testator, dying in 2022 (Testator died in 2023). The piano therefore lapses and will pass by intestacy. The UPC's anti-lapse statute might operate to give the piano to Faye's heirs by intestacy, Testator and Edward. However, Testator is also dead. And, the UPC anti-lapse statutes would only operate to pass Faye's gift if [A] Faye was related to Testator and [B] Faye had descendants that were also related to Testator. Here, Faye is Testator's sister but Faye's heir by intestacy, Edward, while related to both Faye (her

brother) and Testator (her brother), is not a descendant of Faye. Therefore, the UPC anti-lapse statute will not save the gift of the piano to Faye and it will pass by intestacy to Harriet and Isaac equally.

The $10,000 owed by the insurer will also pass equally to Harriet and Isaac. Harriet and Isaac would take if this was residue via intestacy, and take in equal shares whether a classic per stirpes, per capita with representation, or per capita at each generational level approach were used. However, the UPC would identify the proceeds from an insurance payout related to a specific gift to that gift -- here, the piano. But as discussed above, the piano will probably go to Harriet and Isaac equally, rather than to Edward, because Edward is not a descendant of Faye whom an anti-lapse statute would protect. So even though the $10,000 is identified to the piano under the UPC, it still goes to Harriet and Isaac equally.

The remaining $75,000 of Testator's estate will pass equally to Harriet and Isaac via intestacy. This money is the residue of Testator's estate, and passes in equal shares to Harriet and Isaac whether a classic per stirpes, per capita with representation, or per capita at each generational level approach is used. Harriet and Isaac take by intestacy because they are the lineal descendants of Testator (daughter and grandson).

Note that Isaac and Harriet take in intestacy because they are the lineal descendants of Testator (daughter and grandson)

Note also that Testator gave George a $30,000 gift in 2020. Three months before her death in 2023, Testator wrote George a letter informing him that the $30,000 she had given him in 2020 was intended "as an advancement" that would reduce "any share of my estate to which you might ever be entitled." However, to qualify as an advancement, the advancement must be made with the present intention of an advance at the time it was made. Here, Testator made a gift outright to George, and later tried to categorize it as an advancement. This recategorization attempt by Testator will fail, and the $30,000 given to George in 2020 will not be treated as an advancement and will not reduce Isaac's (George's son) share of Testator's estate.

1. 300 Shares of ABC Corp Common Stock

The issue is whether Donna is entitled to the extra 100 Shares of ABC Corp common stock.

Specific devises are those that specifically list the property to pass and the person it should be passed to. Traditionally, beneficiaries were not entitled to receive stock dividends as part of the Testator's estate and were only entitled to the specific devise listed in the will. However, under the UPC, stock dividends will be included in the distribution to beneficiaries and they are not limited to the specific devise in the will.

Here, the 200 shares of ABC common stock is a specific devise because it specifies the gift and the person to receive it. Moreover, because the jurisdiction has adopted the UPC, Donna will be entitled to the additional 100 shares of ABC corp common stock that Testator acquired as stock dividends.

Therefore, Donna is entitled to the full 300 shares of ABC Corp common stock.

2. Testator's Home

The issue is to determine who is entitled to the Testator's home.

A general devise is one that generally describes the property to be passed.
Here, the devise to Edward is general because it states that Testator gives "her home" to Edward. There is no address listed. As such, this is a general description and thus will be interpreted at the time of Testator's death.

Under common law, mortgage debt was required to be satisfied before the home could pass under the will. However, under the UPC, a devisee will take real property subject to the mortgage and will not be required to satisfy the debt before taking possession.

Here, Edward is entitled to take Testator's home subject to the mortgage and will not be required to satisfy the debt before taking possession. However, as discussed further below, if the debt is paid off before distribution, the mortgage will be paid off and Edward will not be subject to the mortgage.

Therefore, Edward is entitled to Testator's home.

3. Testator's Piano

The issue is to determine who is entitled to Testator's piano.

If a beneficiary of a specific devise predeceases the Testator, the gift will lapse, absent a relevant anti-lapse statute. Traditionally, anti-lapse statutes prevent the gift from lapsing to the residuary estate or by intestacy if the beneficiary is related by blood to the Testator and has issue that survives them.

Here, Faye died before Testator. Thus, her gift lapses. However, if the jurisdiction has an anti-lapse statute it may prevent the gift from lapsing and passing via intestacy because Faye is Testator's sister and is thus related by blood. Although Faye is related by blood, Faye did not have any descendants. As such, the gift will pass via intestacy.

Therefore, the piano will likely pass via intestacy if it is not reclaimed by insurance in exchange for the $10,000 pay out.

4. $200,000 cash

The issue is to determine who is entitled to the $200,000 in cash left by the Testator.

If property does not pass via will and there is no residuary clause, it passes via intestacy. In a per stirpes jurisdiction, interest is divided at the first generation regardless if there are living takers. Any deceased issue's share will be divided among their issue.

Here, Testator was survived by her daughter, Harriet, and her grandson, Isaac. As such, the interest is divided at the first generation and Harriet and George (who is deceased) are entitled to 1/2. However, because George predeceased Testator, his share is divided among his issue. In this case, George had one son, Isaac. Thus, under the per stirpes approach, Harriet is entitled to $100,000 and Isaac is entitled to $100,000.

On the other hand, in a per capita at each generation jurisdiction, interest is divided at the first generation with living takers. Any deceased issue's shares will be pooled and equally divided among the issue of the deceased.

Here, the result is the same as above. The interest is divided at the first generation with living takers, Testator's children, because Harriet is still alive. Moreover, George's share is pooled and equally divided among his issue.

Therefore, under the per capita at each generation approach, Harriet is entitled to $100,000 and Isaac is entitled to $100,000.

5. $10,000 owed by the insurer

The issue is to determine who is entitled to the $10,000 owed by the insurer.

If a gift is no longer in the Testator's estate at the time of distribution, the gift adeems/fails. Under common law, the Testator's intent was irrelevant. However, under the UPC, if a specific gift is replaced, then the beneficiary may be entitled to the replacement gift, or the market value of the gift, if they can show that the Testator intended them to have the specific item.

Here, the piano effectively failed because it was substantially damaged. As such, Faye's estate may argue that they are entitled to the $10,000 proceeds on Testator's claim for the damage of the piano because the piano was specifically devised to her. Intent can be shown because Testator specifically stated that she wanted the piano to go to Faye. However, as discussed above, because Faye is no longer alive, and does not have any issue, the gift will lapse and will pass via intestacy.

Therefore, the $10,000 will pass via intestacy, and not via the anti-lapse statute, because Faye is no longer alive and doesn't have any issue.

6. Abatement

The issue is to determine what order the property will abate in order to satisfy debts of the Testator.

If a Testator's estate debts are greater than their assets, property will abate/be reduced. The general order for abatement is: (1) property that passes via intestacy, (2) property that passes via a residual clause, (3) general devisees, and (4) specific devisees.

Here, the Testator owes $125,000 on a 20-year loan that was secured by a mortgage on Testator's home that will likely pass to Edward. Because the will specifically states that all debts be paid before distribution, abatement will likely occur. Thus, the property that will be abated first are the $200,000 in cash passing via intestacy, and potentially the $10,000 for the piano. However, because the loan is only for $125,000 and there is $210,000 available in her estate, only the $200,000 will be abated. As a result, the remaining funds, $85,000 ($75,000+$10,000) will be split among Harriet and Isaac at 1/2 each.

Therefore, the $200,000 cash will be abated and Harriet and Isaac are entitled to receive half of the abated amount and 1/2 of the $10,000 from the insurance payout, totaling $42,500 each.

7. Advancement to George

The issue is whether the $30,000 constitutes a valid advancement.

Under common law, if a payment was made to a beneficiary before the will is probated, it was considered an advancement and would be deducted from the beneficiaries interest at the time of probate. However, under the UPC, gifts made inter vivos are not considered an advancement unless it is evidenced by a writing, it was the Testator's intent for it to be an advancement, and the beneficiary is aware of this fact at the time he received the advancement and agreed to the advancement.

Here, the Testator wrote George a letter 2 months before her death advising that the $30,000 provided to him in 2020 was "intended as an advancement." As such, there is a writing that evidences Testator's intent for it to be an advancement. However, because the Testator did not communicate this intent at the time the $30,00 was tendered to George, this cannot constitute an advancement because

George was not aware that this was an advancement at the time he received the funds. Instead, Testator waited for 2 years to advise George that this would be considered an advancement.

Therefore, the $30,000 was not a valid advancement and does not affect Isaac's share of Testator's property via intestacy.