

***** MEE 1 STARTS HERE *****

1) Kim was not an agent of comet fitness when she purchased the treadmill.

The issue is whether an agency relationship had been created as between Kim and Comet Fitness.

An agency relationship is created when a principal manifests an intention in another (the agent) that they are to act on behalf of the principal, for the principal's benefit, and subject to the principal's control. The agent must also consent to the relationship.

Here, Bill and Nancy - the co-owners of Comet Fitness - ran into Kim at a party. Nancy then told Kim that she operated a gym with Bill, and that Kim should consider coming to work for them as a personal trainer. While this clearly shows a manifestation on the part of Comet Fitness to have Kim work for them, on their behalf, and subject to their control. However, Kim as the possible agent must consent to the agency relationship. Here, Kim merely stated that she would think about Nancy's offer and let her know. At the time Kim purchased the treadmill she had not yet consented to Kim's offer - she was merely thinking that she MIGHT be interested.

Therefore, Kim was not an agent of Comet Fitness when she purchased the treadmill.

2a) Assuming that Kim was an agent of Comet, she did not have actual authority to purchase the treadmill for Comet.

The issue is whether Kim had actual authority to purchase the treadmill.

In an agency relationship, an agent may bind a principal on a transaction where they act with authority. Actual authority exists where based on the principal's manifestation to the agent, the agent reasonably believes that they have the authority to act. Actual authority may be express or implied.

Here, the day after the party, Kim was hoping to impress Bill and Nancy with her initiative and went to the sporting goods store that was having a "going-out-of-business sale". Kim then told the store owner that she was acting on behalf of Comet and purchased a treadmill - telling the store to send it and the invoice to Comet. Here, Comet have made no manifestations to Kim. Kim overheard Bill and Nancy at the party saying "the gym only has 5 treadmills but I wish we had two more". There was no formal agency agreement/contract.

Therefore, Kim does not have actual authority to purchase the treadmill for Comet.

2b) Assuming that Kim was an agent of Comet, she did not have apparent authority to purchase the treadmill.

The issue is whether Kim had apparent authority to purchase the treadmill.

Apparent authority exists where based on the principal's manifestations to a third-party, the third-party reasonably believes that the agent had authority to act. This typically involves the principal holding someone out as their agent.

Here, Comet has made no manifestation to the store in which Kim purchased the treadmill. Kim, herself, made manifestations stating that she was acting on behalf of Comet and directing the store to send the treadmill/invoice to Comet...however, these are not manifestations made by Comet to the store. The only such manifestation made by Comet was when Bill called the store owner and said "I hope you've got some nice treadmills; the gym could use one or more. I'll try to get over there to check them out". With regard to this communication, it would be reasonable for the store owner to believe that Comet was in the market for a treadmill, however, Bill said that he would be over to check out some treadmill - not that he would send over an agent on his behalf. Based on these facts, it seems unlikely that it would be reasonable for the store owner to believe that Kim had the requisite authority to act on behalf of Comet.

Therefore, Kim did not have apparent authority to purchase the treadmill.

3) Nancy had the authority to bind Comet to the purchase of the two treadmills.

The issue is whether Nancy, as a partner had the authority to bind Comet.

In a general partnership, each partner is an agent to the partnership. A partner has authority to bind the partnership in a transaction where they were acting in the ordinary course of partnership business.

Here, Comet is a general partnership with Bill and Nancy operating as the partners - each is an agent of Comet. Nancy, went to the sporting goods store and purchased two treadmills with built-in video touchscreens. These treadmills were similar to ones that Nancy had previously purchased for Comet Fitness. These purchases therefore appear to have been made in the ordinary course of the partnership business. When doing so, a partner does not need the consent of other partners to enter into the transaction. The fact that Bill was furious about the purchases does not change the fact that Nancy was likely acting with authority.

As Nancy was acting in the ordinary course of partnership business, she had the apparent authority to bind Comet to the contract purchase of the two treadmills.

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1.

Kim was not an agent of Comet Fitness. The issue is whether consent from Comet Fitness, and its partners Bill and Nancy, was given to Kim, and whether or not control over Kim's actions.

For an agency relationship to exist between a principal (Comet Fitness and Nancy and Bill) and an agent (Kim), the parties must consent to the agent acting in the principal's benefit, and the principal must control the actions of the agent. In the present case, neither consent nor control are present. For consent, it would require a manifestation of the Principal's intent for the agent to act for his benefit. Kim did not receive consent from Comet Fitness/Bill/Nancy, only a mere offer of employment that was not explicit by saying that Kim should consider working for Comet Fitness. Furthermore, the partnership did not have control over Kim's actions, as it is explicitly stated that she purchased the treadmill without being asked so that she would show initiative to her possible future employers.

As a result, Kim was not an agent of Comet Fitness as there was a lack of consent and control from the general partnership.

2(a). Actual Authority

Kim did not have actual authority to enter into a contract to purchase the treadmill for Comet Fitness.

Assuming Kim is an agent of Comet Fitness, the issue is whether she had explicit actual authority or implied actual authority. Explicit actual authority gives an agent the ability to bind the principal to a contract entered into on the principal's behalf when the principal directs the agent to perform the act or explicitly tells the agent they have authority in the matter at issue. Implied actual authority requires that an agent, based on the principal's past course of conduct in dealing with the agent, reasonably believes that the principal has given them the authority to do so. Should an agent exceed his or her authority, or not have such authority in the first place, the agent will be liable for contracts entered into on the principal/partnership's behalf.

Kim was never directed by the principal (the partnership of Comet Fitness) to enter into any contracts or perform any duties of any kind as she was just given an uncertain offer of employment. And even if she did consider the statement of considering whether to work for Nancy as an offer of employment, neither Nancy nor Bill ever directed her to purchase the treadmill. Ergo, Kim does not have express actual authority to purchase the treadmill on Comet Fitness' behalf.

Furthermore, on the issue of implied actual authority, Kim was never employed by Comet Fitness, nor do we know if she ever had past employment with Paul and Nancy. Assuming that she did not work for them previously, and as stated above she was not given any duties as an agent in the past, it would be unreasonable for Kim to believe that she was given authority by the past conduct of the principal (Paul and Nancy as the partners) to purchase equipment for the gym. As such, Kim did not have actual implied authority to bind the principal to the treadmill contract, even if she was an agent.

In the present case, Kim lacks both actual explicit authority and implied actual authority.

2(b). Apparent Authority

Kim did not have apparent authority to purchase the treadmills on behalf of comet fitness. At issue is whether or not Kim had apparent authority due to the sporting-goods store believing that Kim was an agent of the partnership.

To have apparent authority, the third party dealing with the agent must reasonably believe that, based on an act or neglect of the principle, that the agent has authority to enter into the contract. The only act by the principle in terms of the sporting-goods store is saying that he hoped they had nice treadmills, and that he would try to go over there and try one out. This may lean towards Kim possibly having apparent authority as the sporting-goods store expected Bill to

come by, however, it was likely not certain enough of a statement to let the sporting-goods store reasonably believe that a person that Bill did not identify to the store had authority to enter into the contract. While Kim did identify herself as working on behalf of Comet Fitness, the reasonable belief of the third party must be based on the conduct of the principal, not the agent.

Thus, Kim did not have apparent authority to enter into the contract.

3.

Nancy did have the authority to bind Comet Fitness to the contract to purchase two treadmills with video touchscreens. At issue is whether or not Nancy is a partner in the general partnership of Comet Fitness.

Partners to a partnership have mutual agency to act on behalf of the partnership for activities in the ordinary course of business, and partners act as agents of the partnership. This mutual agency gives partners to the general partnership to bind the partnership to contracts, unless the matter is an extraordinary issue, which would require unanimous consent by the partnership. The video touch screens are not a difference rising to the level of not being in the ordinary course of business, and while Bill did voice his displeasure over Nancy purchasing the treadmills, the partnership is still bound as Nancy herself is a partner and thus an agent with actual authority to bind the partnership.

As Nancy is a partner, as identified by opening a gym with Bill, and purchasing exercise equipment is well within the regular course of business for a gym, Nancy certainly had express authority to bind Comet Fitness.

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The first issue is whether the pedestrian median strip is a public, designated public, or nonpublic forum.

The constitutionality of content-neutral regulations of speech depends on the forum that the government seeks to regulate speech in. There are three such forums: (1) public forums, or places traditionally and historically used for public speech (like a sidewalk), (2) designated public forums, or places the government has opened up for public speech (like a school auditorium), and (3) nonpublic forums, or places that have never been historically or traditionally available for public speech (like a government office or military base).

In this case, Town seeks to regulate speech conducted on "pedestrian median strips." Pedestrian median strips are defined as paved portions of a median between two roads that is intended for use by pedestrians to cross safely from one side of the street to another. While there are no facts indicating that such areas have historically or traditionally been open for public speech activities, they are not dissimilar to a sidewalk because they border a public road that services businesses on each side. Further, the pedestrian median strips *have* been used for the solicitation of money from stopped vehicles historically. While the facts do not indicate whether such solicitation was for personal or charitable purposes, the fact that there had historically been some use of the median strips for speech and conduct activities likely indicates that the pedestrian median strip is a public forum.

The second issue is whether the Town ordinance is a content-based or content-neutral regulation of speech.

A content-based regulation of speech is one that seeks to regulate the type of speech made based on the messages, ideas, or thoughts communicated in that speech. A content-based regulation requires the government to consider the message conveyed by an instance of speech to evaluate its legality. On the other hand, a content-neutral regulation of speech does not concern itself with the actual message being conveyed by the speech and government enforcement does not require an analysis of the contents of the speech itself.

In this case, the Town ordinance outright prohibits communication or attempts to communicate with occupants of vehicles passing by or stopped near the pedestrian median strip. The Town ordinance does not concern itself with the message that is being conveyed by the speech; all speech is prohibited. Thus, the Town ordinance is a content-neutral regulation of speech.

The third issue is, assuming that the Town ordinance is content-based, if its application to the man violate his First Amendment rights.

The First Amendment protects the rights of individuals to engage in expressive conduct, either through action or speech. Content-based regulations of speech are subject to strict scrutiny and will rarely survive judicial analysis. Strict scrutiny analysis requires the government to prove that the regulation was narrowly tailored to a compelling government interest. Finally, any prohibition on so called "political speech" is highly suspect and likely to be struck down.

In this case, assuming that the Town ordinance is content-based, its application to the man would likely result in a violation of his First Amendment rights. The man has been charged with violating the ordinance by standing in a pedestrian median strip with a sign stating his opposition to a candidate for Town council. The man is engaged in political speech and expression, something highly protected by the First Amendment. For the ordinance to be constitutional, the Town will have to demonstrate that it is narrowly tailored to a compelling government interest.

The Town ordinance was passed to reduce annoying and unwelcome solicitations from stopped cars by people on the pedestrian median strip. The record indicates that Town enacted the law to promote traffic safety; but the facts indicate that there is no history of accidents caused by solicitations on the median strips. While the protection of citizens from traffic accidents is likely a compelling government reason to regulate conduct, it is not apparent that the Town ordinance is narrowly tailored to accomplish that goal. The ordinance prohibits all communication or attempts to communicate, not just communications for the solicitation of funds from passing vehicles. This likely indicates that the ordinance is facially overbroad and not sufficiently tailored to restrict the conduct it seeks to limit.

Thus, because the Town ordinance is unlikely to survive a strict scrutiny analysis, its application to the man would likely violate his First Amendment rights.

The fourth issue is, assuming that the Town ordinance is content-neutral, if its application to the man would violate his First Amendment rights.

A content-neutral regulation of speech will be upheld as constitutional if the government is able to prove that it is (1) narrowly tailored to (2) advance an important government interest and (3) allows for alternative channels of communication and expression. This level of scrutiny falls somewhere between intermediate and strict scrutiny, with the alternative channel requirement.

In this case, and as explained above, the Town ordinance was passed to promote traffic safety by prohibiting the active engagement of drivers in a distracting manner. The safety of roads is an important government interest. Further, the facts indicate that Town has existing ordinances that allow posting of signs on trees and utility poles in median strips, as well as on sidewalks. The fact that the Town allows such signage likely suffices to show that Town allows for alternative channels of communication and expression.

However, the facts further indicate that most complaints from drivers of vehicles were due to annoying and unwelcome solicitations, not necessarily dangerously distracting ones. Thus, it is unclear whether the Town ordinance is sufficiently tailored to achieve this important purpose. As explained above, the Town ordinance seems particularly broad by prohibiting all communication or attempts to communicate from the median strips.

Thus, whether the Town ordinance, as a content-neutral regulation of speech, violates the man's First Amendment rights will turn on a reviewing court's analysis of whether the ordinance is sufficiently tailored to advance the Town's interest in keeping public roadways safe. As there is an existing ordinance that permits solicitation of funds from passing vehicles while standing on a sidewalk (which, presumably, is mere feet from the median strip) it seems unlikely that the Town ordinance would survive scrutiny - if the town was truly concerned with keeping roadways safe, it should seek to similarly restrict solicitation from anywhere along the public roadway.

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1. What type of First Amendment forum is the pedestrian median strip?

The issue is what type of First Amendment forum is the pedestrian median strip.

There are two kinds of forums that affect First Amendment analysis - public and non-public. Public forums are ones that are traditionally and historically used for first amendment expression and are typically open to the public, in open areas and easy to access. Typical public forums are parks, streets, and town centres. Non-public forums are those that are not typically used for first amendment expression such as government property, or workplaces.

The pedestrian median strip separates the roadways, of Main Street which runs through the centre of town. This area contains many commercial businesses. The strip has grass and trees as well as pavement on each end which is used for a crosswalk to allow pedestrians to walk across intersections on Main Street. The unpaved portions are not accessible to anyone other than authorized Town personnel. It appears that existing town ordinances allowed signs on freeways, and utility poles on other median strips including pedestrian median strips as well as posting and carrying signs on sidewalks adjacent to roadways. Sidewalks are also permitted areas for soliciting money from cars. This median strip particularly the paved area seems to be no different than those areas where signage is permitted except for its location on Main Street. Main Street being an area of businesses and much activity, it is likely that the pedestrian median strip would be classified as a public forum as it has many of the characteristics of the areas where signage or other first amendment expression is permitted in the Town, and as well main streets and public areas by main streets such as sidewalks or other pedestrian areas are typically and historically areas where first amendment expression has occurred and been exercised.

2. Is the ordinance content based or content neutral?

To determine whether the ordinance is content based or content neutral it must be asked what the purpose of the ordinance is. If the purpose is to directly limit first amendment expression or free speech based on the content of the expression, then it is content based. If the ordinance by incidental effect but not primary purpose limits expression or free speech then it is content neutral.

The ordinance preamble explains its purpose to be "to promote traffic safety by prohibiting those within pedestrian median strips from actively engaging with drivers in a distracting manner". The background information for why the ordinance was enacted is helpful in determining this question as well, there were numerous complaints from Town residents about people standing in the median strips soliciting money from the drivers who were stopped at the traffic signals. The complaints were about how unwelcome and annoying the solicitations were. There are arguments either way on this question. On one hand, it may be that the contents of the solicitations themselves were what made people annoyed (ie. asking for money). Though the actual ordinance makes no mention of the outlawing specifically solicitations of money, since it was enacted in response to the complaints which were about the content of the solicitation, this indicates that the ordinance may be content based. However, the language of the ordinance as well as the preamble specify that the ordinance is prohibiting "communications with occupants of vehicles" in a "distracting manner". The language of the ordinance does not speak to any kind of content of expressing being specifically discriminated against. Also, as the Town has charged a man (M) holding a sign stating his opposition to a candidate of Town Council of violating this ordinance, it appears that the ordinance is not being used specifically to target those who are soliciting money on the median strip but more broadly. Thus the facts indicate that the ordinance is more likely content neutral than content based.

3. If it is content based, are the man's (M) first amendment rights violated?

If the ordinance is content based, then the test to be applied when asking whether the M's first amendment rights have been violated is the test of strict scrutiny: the government must show that the law is necessary to meet a compelling government interest and that it is narrowly tailored to meet that interest and not restrict other forms of expression. This is a very high

standard for the government to meet and the government (govt) presumptively does not meet the test. IN this case, the govt interest is to promote traffic safety by prohibiting those on the median strip from actively engaging with drivers in a distracting manner per the ordinance's preamble. Though traffic safety is a legitimate interest of the govt, prohibiting all communication or attempts to communicate with occupants of vehicles in a public forum is too overboard and is not narrowly tailored. The prohibition of all communication from the median strip is also not "necessary" to meet the govt interest of ensuring traffic safety. There are many other ways to address traffic safety that will not distract drivers, and especially when the complaints that led to the ordinance had more to do with direct money solicitations rather than signage. The M's first amendment rights are invoked in this case because he is expressing his political stance, and this is a very common example of a first amendment expression. Thus, because the govt is not able to meet the strict scrutiny test, it can be concluded that the M's first amendment rights were violated if the ordinance is applied to him.

4. if content neutral? are the M's first amendment rights violated?

If the ordinance is content neutral, then the test to be applied is an intermediate test: the govt must show that the law meets an important govt interest and leaves open other forms of communication for first amendment expression. The interest of traffic safety could be considered an important govt interest as it involves the safety of the public. Also the ordinance was enacted in response to legitimate complaints from drivers at that particular intersection who were having issues with solicitations. However, there had not been any accidents from the solicitation nor were the solicitations aggressive, threatening or distracting of drivers, they were merely "annoying". These factors detract from the characterization of the ordinance meeting an important government interest. The other issue to be addressed is whether there are other forms of communication open for first amendment expression. the ordinance prohibits persons on the median strip from communicating to drivers, but it does not prohibit general signage without a person on the median strip, and there are other ordinances that permit carrying of signs on sidewalks next to roadways. So it appears that other forms of communication are open to those who wish to exercise their first amendment rights. Because there are arguments for and against the ordinance being related to an important govt interest, and there are other forms of communication available in the general area for first amendment expression, it is likely that the M's first amendment rights have not been violated.

content based - strict scrutiny. govt must show that the law is necessary to meet a compelling interest and is narrowly tailored

content neutral -- intermediate test - govt must show that the law meets an important govt interest and there are other forms of communication open for first amendment expression

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***** MEE 3 STARTS HERE *****

1. The issue is if Brenda can establish a prima facie case of negligence per se. Negligence per se occurs when somebody violates a law, that violation of a law causes an injury, the injury is the type that was to be prohibited by the law, and the people harmed were the people who were of the type to be protected by the law. Here, Alan did violate the law. The law prohibits passing a stopped school bus with the bus is flashing its red lights and has extended its side-mounted stop sign. This violation also caused the injury to Brenda's car, as doing so scraped the side of her car. However, the law is likely created not to protect other drivers, but to protect children crossing the street. Brenda, as another driver on the street, was not a child, bus-driver, or anybody else reasonably anticipated by the law to be crossing in front of the bus. Her harm was also likely not the type that was to be protected, but rather physical injury to pedestrians and children who are hurt, not the scraping of a car. Therefore, Brenda cannot establish that Alan breached his duty of care solely on the violation, and she will need to show that he breached a general duty owed to other drivers on the street.

2. The issue is if Alan can be held liable for false imprisonment of Brenda. Tortious false imprisonment occurs when somebody intentionally confines somebody, the confinement is against their will, and the person knows that they are confined. Confinement can occur not only by physical force, but also a show of force or a threat preventing them from leaving an apparent area. Here, Alan expressly showed his intention to confine Brenda in the bathroom. He threatened her by saying "come out so you and me can have a talk, if you know what I mean". This statement threatened that he may cause her serious bodily harm if she came out, giving her no choice but to stay inside the bathroom. He then said "I've got all day, so get comfortable", which informs her that she has to stay inside unless she wants to go out and risk serious bodily injury. Here, the confinement is against Brenda's will. Although she willingly went into the bathroom, it was her only choice. Alan had already expressed his dangerous propensities to her by following her off of the highway and chasing her into the gas station. Brenda did not want to be there, but wanted to be heading to perform the emergency surgery at the hospital. Finally, she knew she was being confined, and proved it by saying "I'm not coming out until you leave". Therefore, Brenda can establish Alan's liability for false imprisonment based on Alan allegedly detaining her against her will.

3. The issue is if Alan's admission eliminates any genuine dispute of material fact as to every element of the family's wrongful death claim. Summary judgment is awarded when there is no genuine dispute of material fact on any element to the case in the light most favorable to the nonmoving party. To prove a case of negligence causing wrongful death, it must be proven that there is duty, breach, causation, and damages.

a. The issue is whether there was a genuine dispute of material fact as to if Alan had a duty to the patient's family. Generally, people have a duty of reasonable care to others, which is to act as a reasonable person would in those circumstances. Under the majority view, a duty is owed to anybody who may be foreseeable harmed by their negligence. Under the minority view, a duty is owed to anybody if anybody can be harmed by the negligence. Under the minority view, Alan clearly has a duty to the family because his negligence on the road could have harmed anybody. Under the majority view, even in the light most favorable to Alan, he also owed a duty. He admitted that he saw "MED DOC", said "Don't miss the exit to the clinic", and assumed she was a doctor. Therefore, blocking her exit could foreseeable result in her not being able to see a patient. Based on these admissions, there is no genuine dispute of material fact that he owed a foreseeable duty of care under either the majority or minority view to the family.

b. The issue is if there was a genuine dispute of material fact as to if Alan breached the duty. It is undeniable on the facts that Alan breached a duty of reasonable care to others. A reasonable person under the circumstances would not dangerously tail Brenda's car, traveling 15 mph above the speed limit, repeatedly honking his horn, and trapping Brenda at high speeds for nearly 90 mph in her lane while cutting her off, and then subsequently trapping her in a bathroom. Therefore, there is no genuine dispute of material fact that Alan acted in an unreasonable manner and breached his duty.

c. The issue is if there was a genuine dispute of material fact as to actual and proximate causation.

Actual causation means that the person's injury would not have happened but-for the defendant's actions. Here, but-for Alan trapping Brenda, she would have had a normal drive to the clinic and would not have been late for the surgery. Therefore, there is no genuine issue of material fact as to the actual causation.

Proximate causation means that the result was foreseeable, and there was no superseding cause. Superseding cause is the type of cause that cuts off proximate liability because it was so abnormal and unforeseeable. General negligence does not count as unforeseeable. Here, there are some intervening causes. Brenda waited in fear inside the restroom for 20 minutes, and took only back roads to make sure that the truck was not following her. If she had arrived fifteen minutes sooner, she would have time to perform the surgery and the patient likely would have survived. Here, it is foreseeable from him telling her "I've got all day, so get comfortable", that she would stay in there for another twenty minutes. It is also not unreasonable foreseeable that he would have scared her into taking a different route than the highway route. However, in the light most favorable to Alan, he may be able to establish with other facts that it was patently unreasonable for her to take a different route than the highway route, and therefore the chain of proximate causation was broken. Therefore, this element may not be provable on summary judgment.

d. The issue is if there was a genuine dispute of material fact as to the existence of damages. The actual amount may still be disputed and pass summary judgment. Here, there was somebody who died because of Alan's actions if all of the other elements are established. Therefore, there is no genuine dispute as to the existence of damages.

The family can likely prove duty, breach, actual causation, and damages on summary judgment, as based on Alan's admissions there is no genuine dispute of material fact. However, if Alan responds to a motion for summary judgment with facts that create a direct dispute as to Brenda's reasonableness, the claim may not succeed on summary judgment as to proximate causation.

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#3

1. Brenda cannot establish negligence based solely on the violation of the school bus law. The issue is whether violation of the school bus law can establish negligence per se in this case.

Negligence per se allows a plaintiff to establish breach of a duty in a negligence action by establishing a violation of law. For negligence per se to apply, the law must be one to protect the class of plaintiff from the type of harm at issue in the case.

Here, the school bus law stop sign law is presumably designed to protect children, or school bus passengers, from getting hit by oncoming traffic when the exit the school bus and cross in front of it. Brenda is not a school bus passenger and the harm of having her car damaged by the truck that was behind her is not the type of harm that the law was intended to avoid. As such, she can not use the law violation on its own to prove breach of duty in a negligence action against Alan.

2. Brenda can establish Alan's liability based on detaining her against her will.

The issue is whether she can establish false imprisonment for detaining her in a public restroom against her will.

False imprisonment requires that the tortfeasor intentionally confined a person physically or by threat, and the person was aware of the confinement and had no reasonable means of escape.

Here, Brenda entered the bathroom on her own and locked it, and Alan pounded on the door and told her to come out. However, because he was threatening her by chasing her at high speed in her car and following her to the restroom door, he intentionally caused her to fear that coming out of the bathroom would result in bodily injury. She did in fact fear such injury if she exited, thus she was confined to had no reasonable means of escaping the bathroom. Further, Alan stated that he would stay all day, so even though he left, she had no reason to believe that she could leave the bathroom safely. She was not in the bathroom of her own volition. As such, he could be found liable for detaining her in the public restroom against her will.

3. Alan's admission is not sufficient for the patient's family to establish partial summary judgment establishing liability on the wrongful death claim. Summary judgment is permitted when there is no genuine issue of material fact for a jury such that the non-moving party is entitled to judgment as a matter of law. The issue is whether his admission is sufficient to establish a duty owed to the child and proximate cause as a matter of law.

Negligently causing wrongful death would require the family to establish that Alan had a duty to the child, that duty was breached, the breach was the cause in fact and proximate cause of the death, and that harm (death) resulted.

A person has a duty to exercise reasonable care under the circumstances. The duty is owed to foreseeable plaintiffs. A person who breaches that duty will be liable if they are the cause in fact of an injury, that is, but for their action, injury would not have resulted. An action is proximate cause of an injury if it was foreseeable that the injury caused could result.

Here, Alan's conduct in chasing and detaining Brenda, and blocking her from the exit, was not the conduct of an ordinary reasonably prudent person. But for his conduct, she would have made it to the hospital and saved the child, thus his conduct was the cause in fact.

He was aware that Brenda was a doctor, and was on her way to the hospital, thus it was arguably foreseeable that he was preventing her from treating her patients, including the child. There is a jury question as to whether his conduct was the proximate cause of the child's death. The harm, the child's death, did result.

As such, Alan could be held liable for the wrongful death, but a jury could find otherwise. Thus there is a genuine issue of fact and summary judgment should be denied.

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***** MEE 4 STARTS HERE *****

1. The issue is whether the federal court should remand the case back to state court for lack of subject matter jurisdiction.

In order for a federal court to have subject matter jurisdiction over a case, the claim must be federal in nature or there must be complete diversity of citizenship (no plaintiff lives in the same state as any defendant) and the amount in controversy must be over 75,000 dollars. Under the Klaxon doctrine, a federal court sitting in diversity jurisdiction is bound by the laws of the state in which it sits. If there is no subject matter jurisdiction, the case must be remanded back to state court.

Here, the claim is brought under state law so there is no federal question jurisdiction.

Here, Fran is from state H and Coach is from state A and they are the only parties to the suit. Thus, complete diversity of citizenship exists.

Here, The amount in controversy is 74,999 in the complaint but 130,000 in the affidavit. Coach has stipulated that she will only seek damages in the amount sought in her complaint. Under state A's law, this stipulation is binding. Under the Klaxon doctrine, the federal court must apply the laws of the state in which it sits and where the case was first brought to promote uniformity and certainty and to conform with the reasonable expectations of the parties. Since the stipulation is binding on the federal court, the amount in controversy is 74,999 and diversity jurisdiction is not met.

Since the federal court has neither federal question or diversity jurisdiction, the court must remand the case to state court.

2. The next issue is whether the case should be dismissed for lack of Personal jurisdiction over Fran.

Personal jurisdiction may be exercised by the court if the long arm statute of the state in which it sits authorizes personal jurisdiction and to the extent allowed by the due process clause. The due process clause allows for general and specific personal jurisdiction. General personal jurisdiction can be exercised under the due process clause if a person is served while physically present in that state. That person must not be present by fraud or to appear in court.

Here, the long arm statute of State A authorizes personal jurisdiction over parties who are personally served within the jurisdiction. Fran was personally served in state A and thus the long arm statute authorizes the federal court in State A to exercise Personal Jurisdiction over her. The due process clause allows the same as discussed in the general personal jurisdiction rule above. Fran was in State A to see a game and not for purposes of going to court and she was not fraudulently brought there. Thus, personal jurisdiction is proper over Fran in state A.

The case should not be dismissed for lack of personal Jurisdiction.

3. The last issue is whether the case should be dismissed for proper venue.

Venue is proper where a solo defendant lives, and when substantial events giving rise to the claim happened with the state.

Here, Fran lives in state H, so venue is not proper under the domicile venue rule. Additionally, Fran has not been to state A before the basketball game, the argument between the two occurred in state A. Coach was fired in state A and the newspaper article that caused the firing was published in state A. Had it not been for the newspaper article, coach would likely not have been fired and this claim would not have come about. Despite Fran having very few interactions with state A, the newspaper publishing the article that got Coach fired was a substantial event that gave rise to coach's defamation claim. Therefore, the venue is proper and the case should not be dismissed for proper venue.

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Question MEE-4 - February 2025 - Selected Answer 2

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1. The issue is whether the federal court sitting in State A has subject matter jurisdiction over coach's claim.

A federal court can have subject matter jurisdiction in several ways. A federal court has subject matter jurisdiction under federal question jurisdiction for all claims arising under federal law, statute, the US constitution, etc. A federal court has subject matter jurisdiction under diversity jurisdiction if there is complete diversity, meaning that the defendants and plaintiffs are not citizens of the same state and the amount in controversy exceeds \$75,000. A federal court can also have subject matter jurisdiction by supplemental jurisdiction. Supplemental jurisdiction allows a federal court that has jurisdiction over one claim to review another claim it may not originally have had jurisdiction over.

Here, the court does not have subject matter over coach's case because although coach is a citizen and domiciled in state A, and Fran is a citizen and domiciled in state H evidencing diversity, the amount in controversy is not over \$75,000. Even though coach lost \$130,000 in lost wages, she stipulated that she would not seek or accept damages more than \$74,999 and that stipulation is binding under state A law.

A case that has been removed from state court to federal court may be heard by the federal court if the claim could have originally been brought there in the first place.

Here, coach brought the claim under state law so the federal court does not have federal question jurisdiction. Further, the federal court does not have supplemental jurisdiction because it did not already have jurisdiction over one claim and then another was brought.

Even though Fran asserted in her removal that the amount in controversy was 130,000, the stipulation mentioned earlier is binding. A defendant may not remove a case to federal court based solely on the diversity factor because courts want to prevent forum shopping. Here, Fran is clearly wanting to remove based solely on the diversity factor and courts are not likely to uphold this.

Thus, because the original claim is based on a state law and the court lacks subject matter jurisdiction, the federal law should remand the case back.

2. The issue is whether the federal court has personal jurisdiction over Fran.

A party may file a motion for lack of personal jurisdiction in their first pleading which is the response or answer. Here, Fran filed a notice of removal first and then filed a motion to dismiss based off of lack of personal jurisdiction.

Furthermore, the statutory law in state A authorizes its courts to exercise personal jurisdiction over persons who are served with process while physically present in the state, without regard to whether they have any other connection with the state. This state law follows the FRCP of general personal jurisdiction which occurs when the defendant consents to service, is physically present in the state when served or waived the right to service by mail. However, under traditional notions of fairplay and substantial justice, service must comply with the state's statutory constitutional laws and the United States constitutional law of due process when a court has specific personal jurisdiction. Here, since Fran was physically in state A when a process server handed her the summons and complaint, that sufficed for the state's statutory law and general personal jurisdiction.

Thus, the court should not dismiss the case because it has general personal jurisdiction over Fran.

3. The issue is whether venue is proper in the federal court.

Venue is proper in 1) any district where any defendant resides if all defendants reside in the same state, 2) in any state where the court has subject matter jurisdiction and personal jurisdiction over the defendant, 3) if neither of these apply then in the state where the substantial parts of claim arose out of or where property concerning the case is located. Courts will also look at the convenience of the venue and the interest of justice.

Here, because the federal court has personal jurisdiction over the defendant, and the reason for coach's suit mainly arose from the newspaper article in state A, venue is proper and the court should not be dismissed.

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Question MEE-5 - February 2025 - Selected Answer 1

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1. The issue is whether Bank's original video recording of its lobby, counters, and tellers from April 18, 2024.

Relevant evidence is both material and probative. In other words, In order to be relevant, the evidence tends to make a fact of consequence (material) more probable than it would be without the evidence (probative). Here, the video tape is relevant evidence, it captures David at the bank that day and committing the crime of fraudulently obtaining the Customer's money, thus contradicting David's argument that he never went to the bank that day. The video makes the fact of consequence (i.e., David was at the bank that day) more probable than it would be without that video, and is therefore relevant.

Not all relevant evidence is admissible, but instead must satisfy other rules of evidence, including authentication. All tangible evidence must be authenticated in order to be admissible. A lay witness with personal knowledge can authenticate certain tangible evidence, including videos. Some evidence is self-authenticating, but videos are not. Here, the video can be authenticated by the security camera operator at the bank, or even the investigator who described the video in a report, so long as whoever testifies as the lay witness has personal knowledge of the video, and can attest to its currentness and accuracy under oath.

If authenticated, the best evidence rule also allows the video to come in if the investigator testifies about it or his report mentioning the video.

Thus, if the video can be authenticated by the Prosecution, then it is admissible as relevant evidence.

2. The issue is whether the investigator's testimony as to Customer's oral complaint to the investigator is admissible.

Hearsay is an out-of-court statement offered to prove the truth of the matter asserted therein. Here, the Customer exclaimed over the phone that she did not write the check, immediately after learning about the check from the investigator. The customer thus made an out of court statement, and the prosecution is offering the evidence of the customer's complaint to prove its truth: that the customer did not write the check. The evidence is hearsay, and is inadmissible unless an exception or exclusion applies to the rule against hearsay.

Here, the prosecution can establish that the woman made an excited utterance on her phone call with the investigator. To meet the excited utterance exception to the hearsay rule, the declarant must have been startled and excited as a result of a startling condition or event, and must have made the statement while still under the stress of excitement. Here, the facts indicate that declarant had just found out that fraud had occurred on her account (the check being written and cashed against her consent) when she phoned the investigator and aired her complaints; she was still clearly under the stress of excitement based on how close in time the discovery of the check and the phone call were, and on how she was exclaiming over the phone over this news.

The present sense impression hearsay exception may also allow the oral complaint to be admitted. To meet this exception, the declarant must have communicated something that showed what was on his mind, what was his present mental state. The customer's exclamation over the phone showed a clearly upset person whose outburst that she did not cash the check was not hers can be understood as inherently trustworthy.

3. The issue is whether the investigator's written report is admissible.

Here, if the investigator testifies that he is unable to recall both the details of the investigation and writing the report, his testimony can be refreshed by the Prosecutor under the refreshed recollection doctrine, which is non-hearsay. The witness must have a lapse in memory on the witness stand about a matter he had once known but cannot now recall, the witness had written evidence over which he was testifying, the witness reads the evidence to refresh his memory, and then confirms or denies if his memory was refreshed and he can accurately recount his

memory on the stand. The testimony, if refreshed, can be used for impeachment purposes. The writing used to refresh the witness's memory must be shown to the opposing attorneys, and it cannot be admitted into evidence by the proponent of the evidence; it can only be read to the jury. For the evidence to be admitted as substantive evidence, the defendant must make that request. It is admissible/

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1. Bank's original video recording

The issue is whether the real evidence of the video recording is admissible.

Federal courts follow the Federal Rules of Evidence. Under these Rules, to be admissible, evidence must be relevant, meaning it has any tendency to prove that a fact of consequence to the litigation is more or less likely. For real evidence to be admitted (physical evidence such as photographs, videos, etc) it must be properly authenticated. Recordings from automated cameras can be authenticated by testimony that the recording device was properly functioning at the time of the recording being made.

Here, the government seeks to admit the Bank's original video recording of its lobby, counters, and tellers from April 18, 2024. David is being prosecuted from knowingly obtaining money under the control of a financial institution by means of false or fraudulent representations. This recording is relevant to the government's case because it shows that an individual had presented a \$1,000 check purportedly drawn on Customer's account and that the teller had cashed it. Therefore, it has a tendency to prove that an individual knowingly obtained money under the control of a financial institution by means of false or fraudulent representations. However, to be admitted, the Bank will need to provide testimony that the recording device was functioning properly at the time the record was made. Here, Investigator has been a 10 year employee of Bank and Investigator's office is next to Bank's lobby. Therefore, the Investigator will be able to testify that it does in fact depict the Bank's lobby. However, it is unclear if Investigator has enough experience with the video camera's operation to testify that it was working properly.

Therefore, the original video recording will be admissible if properly authenticated.

2. Investigator's testimony as to Customer's oral complaint to the investigator

The issue is whether the Customer's oral complaint as testified to by the Investigator is inadmissible hearsay.

To be admissible, the evidence must be relevant, as discussed above. However, even relevant evidence may be excluded by public policy considerations or other Federal Rules of Evidence. One such exclusion is the prohibition against hearsay. Hearsay is the statement of a declarant outside of the current court proceeding that is offered to prove the truth of the matter asserted. However, several exemptions and exclusions from the hearsay rule apply, which allow evidence to be admissible. One exception is the present sense impression, in which a declarant describes a startling situation during or immediately after the startling situation. Another exception is the excited utterance, in which a declarant, while still under the stress of the situation, describes the stressful situation. Neither exception requires that the declarant be unavailable.

Here, the government would like to admit Investigator's testimony that the Customer said "I didn't write that \$1,000 check that you just charged to my account!" This is hearsay because it is a statement by the Customer made outside of the current court proceeding, and the government is assumingly using this statement for its truth - that is, that the Customer did not write the check. However, the government may successfully argue that this is a present sense impression because the Customer had promptly called the Bank after receiving a notification on her banking app that a \$1,000 check has just been charged to her account. The Customer was therefore describing a startling situation immediately after perceiving the startling situation (a fraudulent charge on her bank account). Additionally, the government will be able to successfully argue that this statement was an excited utterance because as noted previously, the Customer called promptly after receiving the notification and was noticeably still frustrated and angry.

Therefore, the Customer's oral complaint as testified to by the Investigator will be admissible under the present sense impression or excited utterance exceptions to hearsay.

3. Investigator's written report

The issue is whether the Investigator's written report as a refreshed recollection or recollection recorded.

While on the stand, an attorney may use any document or object to try to refresh the witness's memory ("refreshed recollection"). However, the witness may just look at the document or object to try to refresh their memory and may not read from it and it may not be offered into evidence. If the witness is still unable to refresh their memory, the attorney may seek to read a document into evidence if the witness testifies that they made the document while the event was fresh in their mind under the recorded recollection exception for hearsay. See rules for hearsay above.

Here, the government would like to offer the investigator's written report if the investigator testifies that he is unable to recall the details of the investigation and writing the report. The government may provide the report to the investigator while on the stand to try to refresh the investigator's memory. However, this will not allow the report to be entered into evidence. If the government would like to offer the report for the truth of its contents, it is hearsay. If the investigator testifies that he is still unable to recall the investigation and writing the report, the written report will not be admissible under the recorded recollection hearsay exception because the investigator does not remember writing the report.

Therefore, the report may be used to refresh the investigator's memory on the stand, but will not be admissible if the investigator can still not remember.

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(1) Revocable or Irrevocable

The trust is revocable. The issue is whether its terms expressly make the trust irrevocable.

Under the common law, a trust was presumptively irrevocable unless the settlor expressly reserved the right to revoke or amend the trust. However, under the Uniform Trust Code (UTC), a trust is presumed revocable unless the terms of the trust expressly make the trust irrevocable.

Here, the jurisdiction adopted the Uniform Trust Code before Alice created the trust, so its provisions govern the trust. The trust was silent as to whether it was irrevocable or revocable, so the terms of the trust do not expressly make it irrevocable. Thus, the trust is presumed revocable.

The trust is revocable.

(2) Does Shirley have an interest? How is the interest characterized?

Shirley has an interest in the trust that is properly characterized as a vested remainder.

A future beneficiary of trust assets is said to have a future interest in the trust. When the interest will come into enjoyment after the death of a party who currently accesses the benefits, the interest is called a remainder. When the party with the future interest is ascertainable, the interest is vested.

Here, Shirley is a future beneficiary of the trust assets, and so has a future interest in the trust. The interest is a remainder because she does not come into possession of the benefits until Alice dies. The interest is vested because Alice is ascertained as the beneficiary.

Thus, Alice has an interest in the trust that is characterized as a vested remainder.

(3) If Shirley has an interest, does she have a claim against the bank?

Shirley does not have a claim against the bank. The issue is whether the bank owed a fiduciary duty to Shirley, and if so, whether the bank breached that duty.

Generally, a trustee owes a fiduciary duty to the beneficiaries of a trust. Where a trust is revocable, the trustee's duties are owed to the settlor. One of a trustee's fiduciary duties is the duty to protect trust property and make it productive. This includes the duty to invest. Under the Uniform Prudent Investor Act (UPIA), a trustee must prudently invest trust assets with the skill, care, and caution of a reasonably prudent investor. Where a trustee has specialized knowledge in the field, the trustee is expected to use that knowledge. A trustee may deviate from the duty to prudently invest because of the express terms of the trust or under the express direction of the settlor of a revocable trust.

Here, the bank, as trustee, imprudently invested 30% of the stocks assets. Generally, this would be a breach of the duty to protect the trust property and make it productive. However, the trustee made this investment pursuant to express instruction from Alice, the settlor. Because Alice is the settlor of a revocable trust, the bank as trustee owes fiduciary duties solely to Alice, and not to Shirley. Thus, the bank did not breach a fiduciary duty to Shirley because (1) the bank's duties were owed to Alice, and (2) Alice gave express instructions to invest the trust assets in the failing stock.

Shirley does not have a claim against the bank for making the imprudent investment.

(4) Legal authority to direct the doctor

John has legal authority to direct the doctor whether to remove Alice from the life-support system. The issue is whether John has a valid healthcare power of attorney.

A health-care power of attorney grants the person who holds the power the ability to make healthcare decisions for the grantor pursuant to the terms of the grant. Where a power of attorney contains express conditions, those conditions must be met before the power may be exercised. Expressions of wishes by the grantor to third parties do not amend the power of attorney, but may be relevant to the grantee in making healthcare decisions.

Here, Alice properly executed a healthcare power of attorney naming John as the agent to make decisions. The grant was conditioned on Alice being unable to make decisions for herself, which occurred when she had her stroke. Thus, John was able to exercise the power at the hospital. Alice's statements to John and Shirley are evident of her desire to not remain on life support system if there is little or no hope of her recovery do not amend the power, but may be used by John in deciding whether to take Alice off of life support. Because John was vested with the power, he may make the healthcare decisions.

John has legal authority to direct the doctor whether to remove Alice.

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Trust Revocable or Irrevocable

The issue is whether the trust is revocable or irrevocable. Under the Uniform Trust Code (UTC), a trust is presumed to be revocable unless it explicitly states otherwise, while under the common law, a trust is presumed to be irrevocable unless stated otherwise.

Here, Alice created a trust that was silent to whether it was revocable or irrevocable. Under the UTC, adopted by this jurisdiction 10 years ago, a trust that is silent to whether it is revocable or irrevocable is assumed to be revocable.

As such, the trust is revocable.

Shirley's Interest in the Trust

The issue is whether Shirley has an interest in the trust. A person has an interest in a trust if there is a known entity and their identity is ascertainable. While a trust may create a present interest, it can also create a future interest that will vest in the beneficiary once their rights have vested.

Here, Shirley has a future interest in the trust. Alice has created a life estate for herself in the trust, which shifts to Shirley upon Alice's death. Alice is the sole beneficiary of the trust for her life. Alice created a future interest for Shirley that will vest upon Alice's death.

As such, Shirley does have an interest in the trust.

Characterization of Shirley's Interest in the Trust

The issue is how Shirley's interest is characterized. A trust created in a life estate that springs to another person upon the death of life estate is a springing future interest. Upon Alice's death, the trust automatically springs to Shirley as the sole beneficiary.

As such, Shirley holds a springing future interest.

Claim Against Bank for Imprudent Investment

The issue is whether Shirley has a claim against the bank for making the imprudent investments. A trustee of a trust has a duty to act as a prudent person and to make sound and prudent investments for the benefit of the trust and its beneficiaries. Trustee's must act within the best interests of the trust. If a trustee acts imprudently with consent from all beneficiaries, then the trustee cannot be held liable for imprudent actions. The beneficiary must be competent when making this decision. However, a person holding a future interest could bring an action if a beneficiary acted in an unreasonably and substantially imprudent manner.

Here, Alice is the sole beneficiary until her death. She knowingly directed the bank to make an imprudent investment, while competent, in direct contradiction of the trust documents which state trust assets must be held in "prudent investments" only. As Alice consented to this investment, the Bank, as the trustee, is not liable for the imprudent investment.

Shirley does not have a claim against the bank for making the imprudent investment, because the bank acted on the direction of Alice who is the sole beneficiary. Shirley could have a claim against Alice.

Legal Authority to Direct the Doctor

The issue is whether Shirley or John has the legal authority to direct the doctor to remove Alice from life support. The healthcare power of attorney act provides power a named power of attorney through the directives of a living will, or alternatively, the legal authority to act as power of attorney will go first to the person's spouse, if they do not have a spouse to their parents, and if they do not have parents, then the children of the person must come to a general consensus

regarding healthcare decisions.

Alice created a durable health-care power of attorney naming John as her agent to make health-care decisions. This power is conditioned upon Alice being unable to make her own health-care decisions, which doctors have determined is the case following Alice's stroke. Shortly before her stroke, Alice said Shirley that she did not want to be on life support, and Alice said to John, "I do not want to be connected to life support if there is little or no hope in my recovery." The doctor has told Shirley and John that they will have more information regarding Alice's condition in a week.

The durable health-care power of attorney creates a legal authority in John to direct the doctor as to how and when Alice should be removed from life support. Additionally, while John should act reasonably within what he believes Alice would want, he alone has the power to make decisions regarding her healthcare.

As such, John has the legal authority to direct the doctor to remove Alice from life support, and Shirley does not.

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