

October 2020

Remote

New York State

Bar Examination

MEE & MPT Questions

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MEE QUESTION 1

Aldo, Belinda, and Carlos are equal partners in a general partnership that owns and operates a trash collection company in State A. They have no written partnership agreement. The three partners meet periodically to discuss the partnership's business, but they do not hold formal partner meetings.

Aldo manages the partnership's day-to-day operations. Belinda, who is an accountant, keeps the partnership's books and records. Carlos owns a landfill where the company dumps its trash collections.

Aldo contracted to purchase an all-electric garbage truck for the partnership for \$100,000 from a truck dealership that had previously sold garbage trucks to Aldo for the partnership. All-electric garbage trucks, which are more fuel-efficient than gas-powered trucks, have become common in the trash collection business. A gas-powered truck similar to what the partnership had been using would have cost only \$60,000. Aldo purchased the truck in the partnership's name, using \$30,000 of his personal funds as a down payment. Carlos believes that Aldo wasted money buying an all-electric truck because fuel costs had never been a problem for the partnership. Carlos is particularly concerned because the balance of the purchase price (\$70,000) is due in six months, and the partnership does not have sufficient funds to pay the bill. Belinda and Carlos never authorized Aldo to purchase the all-electric truck and did not ask him to advance his own money for the down payment.

Aldo spends about twice as much time conducting the partnership's business as Belinda and Carlos do. Aldo has demanded that the partnership pay him for the value of his services, although there is no express agreement that any of the partners should be compensated for their services.

Five years ago, the partnership purchased a 500-acre tract of land in State B zoned for residential use only, as a long-term speculative investment. Last month, Aldo, purporting to act on behalf of the partnership, contracted to sell the land to a developer. The developer knew that the partnership operated its trash collection business only in State A and did not operate any business in State B. When Carlos heard what Aldo had done, he immediately told Aldo that the sales contract was not binding on the partnership because Carlos had not agreed to the making of the contract. Aldo, however, believes that he had the power to sign the contract for the partnership because Belinda had also agreed to the sale even though Carlos had not.

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1. With respect to Aldo's purchase of the all-electric garbage truck:
 - (a) Is the partnership bound on the purchase contract? Explain.
 - (b) Assuming that the partnership is bound, is Carlos liable for any part of the unpaid balance of the purchase price? Explain.
 - (c) Assuming that the partnership is bound, is Aldo entitled to reimbursement from the partnership for the down payment he made on the truck? Explain.
2. Is Aldo entitled to be paid for the value of all or part of his services to the partnership? Explain.
3. Is the partnership bound on the sales contract for the land? Explain.

MEE QUESTION 2

On July 1, a restaurant owner was arrested and charged with arson after a June 1 fire destroyed his failing restaurant.

The prosecutor plans to call a bartender to testify at trial. The bartender had worked at the owner's restaurant and is expected to testify as follows:

The owner fired me at the beginning of May, a few weeks before the fire. On April 23, before I was fired, I showed up at the restaurant a little early for my shift. The owner was talking on the phone when I arrived. As I walked in, I heard him say, "I know it's risky, but I'll do whatever it takes to get back some money from this lousy restaurant." When I came to the restaurant after I was fired to pick up my final paycheck, I overheard one of the waiters telling the owner, "Count me in on your plan to burn down the restaurant. I've recently done that sort of thing and haven't been caught."

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The prosecutor also plans to introduce a written and certified report prepared by a police arson investigator on August 1. The arson investigation report states:

This arson investigation report was prepared to assist in determining the cause of the June 1 restaurant fire and in developing evidence relevant to the pending prosecution of the owner for arson. Pursuant to investigation of the interior and exterior of the premises, I have concluded that the fire began inside the restaurant, where I detected the presence of fire accelerants. The possibilities of a naturally occurring or accidental fire, electrical fire, or gas fire have each been eliminated using a range of tests and reconstruction models. Based on my training as an arson investigator, I conclude that the fire did not occur accidentally and that the use of fire accelerants inside the structure caused the fire to spread quickly and increased the extent of the damage.

The bartender is available to testify at trial, but the waiter is unavailable because he fled overseas after learning that he was under investigation for arson, and the court cannot compel him to attend the trial or otherwise testify. The arson investigator is unavailable to testify at trial because he has died, but the prosecutor plans to introduce the arson investigation report through the testimony of an expert witness, an out-of-state arson investigator who did not participate in the arson investigation.

The jurisdiction's rules of evidence are identical to the Federal Rules of Evidence, and the jurisdiction affords criminal defendants no greater rights than those mandated by the federal Constitution. The owner has objected to all the proffered evidence mentioned above on the grounds of hearsay. The owner has also raised a constitutional objection to the introduction of the arson investigation report.

1. Should the judge allow the bartender to testify about what he overheard the owner saying on the phone? Explain.
2. Should the judge allow the bartender to testify about what he overheard the waiter saying to the owner? Explain.
3. Should the judge admit the certified arson investigation report in light of
 - (a) the owner's hearsay objection? Explain.
 - (b) the owner's constitutional objection (assuming that the hearsay objection is overruled)? Explain.

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MEE QUESTION 3

A father and mother divorced last year after a 12-year marriage. At the time of their divorce, they lived in State A. They were both 41 years old, each had a college education, and they had two children, ages 11 and 9.

The divorce court in State A, among other things,

- (a) awarded the mother sole custody of the two children;
- (b) ordered the father to pay the mother a total of \$4,000 per month in child support;
- (c) ordered the father to pay the mother \$3,000 per month in spousal support for five years; and
- (d) ordered an equitable division of the couple's property, such that after the division each of them wound up with \$80,000 and a car.

Following the divorce, the mother continued to live in State A with the children. Before the divorce, she had been working full-time for \$28,000 per year at a day-care center. Five months after the divorce, however, she had a heart attack, forcing her to cut back her work. As a result, her annual pay was reduced to \$7,000. Her doctor recommends that she not resume full-time work, because full-time work and caring for the children and the home would be too stressful.

For the first five months after the divorce, the father paid the mother the full amount he owed for child and spousal support. Shortly thereafter, he was terminated from his \$150,000-per-year job because of company downsizing. He received a lump sum severance payment of \$75,000. When he was terminated from his job, he stopped paying child and spousal support.

He then decided to move to State B, in part because he hoped he could avoid paying anything to the mother and in part because the job prospects in State B were better. He transferred all his bank accounts to banks in State B. The father is currently unemployed. However, he has had several job interviews in State B, and market conditions make it likely that he will eventually find a job comparable to the one he had in State A.

The mother has brought an action in a State B court to collect child and spousal support from the father. She claims that the spousal support obligation should be increased to \$4,500 per month because she is in poor health and cannot resume full-time employment. She also asks that the spousal support be extended for an additional five years.

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The father claims that the State A child support order is no longer effective and cannot be enforced because he has moved to State B. In the alternative, he claims that his child support obligation should be reduced from \$4,000 to \$2,000 per month because of his current unemployment. In addition, he asks that this reduction be made retroactive to the date he lost his job. He also opposes any increase in his spousal support obligation.

Neither party's expenses have changed since the time of the divorce judgment. Both State A and State B are in compliance with federal law concerning the enforcement of child support orders.

1. Is State B required to enforce the State A child support order? Explain.
2. Does the State B court have jurisdiction to modify the father's child support obligation? Explain.
3. Without regard to jurisdictional issues, how should a court rule on the father's requests to reduce his child support obligation and to make the reduction retroactive? Explain.
4. Without regard to jurisdictional issues, how should a court rule on the mother's request for an increase in and extension of the spousal support obligation? Explain.

MPT 1 – Klein v. State of Franklin

The examinee's task is to draft an objective memorandum regarding sovereign immunity and notice requirements under the Franklin Tort Claims Act. The client, Janet Klein, wants to make a claim against the State of Franklin for the actions of a State employee with regard to injuries Klein sustained in a three-car collision in the parking lot of the Franklin State Fairgrounds. Klein suffered both physical injuries (a serious back injury and a broken wrist) and property damage to her car. The State of Franklin and governmental employees are protected from liability because of sovereign immunity unless one of the waiver provisions of the Franklin Tort Claims Act applies. The examinee is to analyze whether the State is protected from liability in this case by sovereign immunity and whether the State received sufficient notice as

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required by the Act. The File contains the instructional memorandum, a letter from Janet Klein to the State's Risk Management Division, the accident report, a memorandum from the law firm's investigator, and email correspondence between the investigator and Randall Small, a State parking supervisor. The Library contains excerpts from the Franklin Tort Claims Act and three Franklin cases interpreting the Act.

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Sample Essay Answers

OCTOBER 2020 NEW YORK STATE BAR EXAMINATION

SAMPLE ESSAY ANSWERS

The following are sample candidate answers that received scores superior to the average scale score awarded for the relevant essay. They have been reprinted without change, except for minor editing. These essays should not be viewed as "model" answers, and they do not, in all respects, accurately reflect New York State law and/or its application to the facts. These answers are intended to demonstrate the general length and quality of responses that earned above average scores on the indicated administration of the bar examination. These answers are not intended to be used as a means of learning the law tested on the examination, and their use for such a purpose is strongly discouraged.

ANSWER TO MEE 1

1. a. The partnership is bound on the purchase contract. At issue is whether Aldo had actual or apparent authority to enter into the contract. A partnership's liability for contracts entered into on its behalf by a partner is governed by agency law principles. An agent can bind their principal (here, the partnership) if they act with actual or apparent authority or if the partnership ratifies the contract, which occurs when a principal accepts the benefits of the contract. There are no facts to suggest the partnership has ratified the contract.

Aldo likely had actual authority. Actual authority can be express, implied, or inherent. Express authority for a partner's actions requires approval of a majority of the partners (when the action is within the partnership's ordinary course of business, but unanimity is required when it is outside the partnership's usual business) or otherwise be granted in the partnership agreement. Here, there is no written partnership agreement and Aldo did not have the consent of *any* of his partners for the transaction. Thus, there was no express actual authority. Implicit actual authority arises when an agent reasonably believes that they have been given authority by the partnership's words or conduct. Failure to disprove a prior action can grant implicit authority for an agent to continue doing that action going forward. Here, Aldo is responsible for day-to-day operations, which implicitly could include purchasing garbage trucks. In addition, Aldo has previously purchased garbage trucks for the partnership before, without objection by the other partners. True, Aldo has never before purchased such an expensive truck, but these trucks have become common in the trash collection business thus it would still be reasonable for him to conclude that he had the authority to do so. Aldo thus had implicit actual authority.

Even if Aldo did not have actual authority, he had apparent authority. Apparent authority arises when a principal holds out an agent such that a reasonable third-party could conclude that the agent had authority to enter into a contract on the principal's behalf. Here, Aldo had previously purchased trucks from a dealership which has previously sold trucks to the partnership via Aldo. There are no facts to indicate the partnership has told the dealership Aldo was not authorized to make such purchases. Although Aldo had never before purchased such an expensive truck, these trucks have become increasingly common in the industry and the price differential is not large enough to put a reasonable person on notice they should confirm Aldo's authority. Thus, the dealership could reasonably conclude that Aldo was acting on authority from the partnership. Therefore, Aldo had apparent authority to enter into the contract. The partnership is bound because Aldo entered into the contract with implied actual authority and apparent authority.

b. Aldo is potentially personally liable on the purchase price. At issue is whether a partner's individual liability is limited in a general partnership and whether a partner is

liable on a contract they sign on behalf of the partnership when they disclose they are signing it on behalf of the partnership. A partnership, unlike other business forms, does not limit its partner's personal liability. Although creditors must first seek satisfaction from partnership assets and funds, any deficiency in partnership assets may be reclaimed by the partnership's creditors directly from the partners themselves. Here, the facts reveal that the partnership does not have sufficient funds to cover the remaining purchase price. Thus, Aldo (along with the other partners) will be liable.

To be clear, Aldo's personal liability does not arise from agency law. There, an agent may be liable on a contract they sign on behalf of an undisclosed or partially disclosed principal. Here, Aldo disclosed the principal of the contract (the partnership, on whose behalf he signed) and thus is not personally liable for the contract himself.

c. Aldo is entitled to reimbursement for the money he put down. At issue is whether a partnership must reimburse a partner for their authorized business expenses. A partner who, with actual authority, incurs expenses in the pursuit of partnership business is entitled to reimbursement from the partnership. Here, Aldo had actual authority (discussed above). The facts reveal that the garbage truck was purchased for the partnership because Aldo purchased the garbage truck in the partnership's name. And Aldo incurred an expense in doing so, by putting down \$30,000. He is therefore entitled to reimbursement of this expense.

2. Aldo is not entitled to be paid for his services to the partnership. At issue is whether a partner is entitled to compensation for services they provide to a company. In general, partners are not entitled to payment for their services to the partnership but are instead entitled to a partnership's profits. Although there is an exception to this rule for services contributed to the winding down of a partnership, there are no facts to indicate that the partnership is being wound down. Thus, Aldo's services do not fall within the winding down exception and he is not entitled to compensation for his work.

3. The partnership is not bound by the sales contract for the land. At issue is whether Aldo had actual or apparent authority. As discussed above, an agent must have actual or apparent authority. Aldo had neither here. There was no express authority because decisions made outside of the ordinary course of a partnership's business must be authorized unanimously by the partners. Here, Carlos did not authorize the sale. The sale was outside the ordinary course of the partnership's business because the partnership is a trash collection business in State A while this was a speculative land transfer in State B. This transaction therefore required unanimous approval, which was not provided, despite Belinda's approval. Thus, the transaction was without actual authority.

Nor was there apparent authority for the transaction. As mentioned above, apparent authority requires the third-party to reasonably believe the partner had authority to act on the part of the partnership. Here, the developer knew that the partnership

operated a trash collection business rather than land investment speculation. Moreover, the developer knew that the partnership only operated in State A and that the land at issue was in State B. It was therefore not reasonable for the developer to believe Aldo acted with apparent authority. Because Aldo had neither actual nor apparent authority, the transaction is not binding.

Finally, I note that agency authority to enter into land transactions requires a written agreement under the Statute of Frauds. The partnership has no written operating agreement nor does it appear Aldo was given other written authorization so the sales contract would, regardless, be unenforceable against the partnership.

ANSWER TO MEE 1

1.a. The partnership is bound on the purchase contract with respect to Aldo's purchase of the all-electric garbage truck. The issue is whether Aldo had actual or apparent authority to purchase the all-electric garbage truck.

A partnership is bound by contracts entered into by its agents if the agents had authority. Every partner is an agent of the partnership. Authority can be either actual or apparent. A partner has actual authority if the partner reasonably believes that he has the authority to enter into a contract based on his own dealings with the partnership, such as a vote at a partnership meeting authorizing the act. A partner has apparent authority if the third-party reasonably believes based on representations made by the partnership that the partner has authority. Additionally, a partner has authority to deal with a third-party, even if he does not have actual authority, if he is dealing in the kind of business that the partnership usually does and the third party had no knowledge that the partner did not have the authority to act.

Here, Aldo, Belinda and Carlos are equal partners in a general partnership. Aldo manages the day-to-day operations of the partnership. The partnership owns and operates a trash collection company. Aldo contracted to purchase an all-electric garbage truck for the partnership for \$100,000 from a truck dealership that had previously sold garbage trucks to Aldo for the partnership. All-electric garbage trucks have become common in the trash collection business. Not only is buying an all-electric garbage trucks in the regular course of business for the partnership, but in addition to that, Aldo had already bought other garbage trucks from the dealership. Accordingly, the contract was a contract in the regular course of business for the partnership and the dealership had no

reason to know that Aldo did not have authority. It is irrelevant that the electric-truck was more expensive than a gas-powered truck because it has become common the trash collection business. Aldo had authority to buy the truck.

Therefore, the partnership will be bound on the purchase contract.

1.b. Carlos is liable for any part of the unpaid balance of the purchase price if the partnership cannot pay for it. The issue here is whether a partner who did not authorize a contract is liable on the contract.

All partners in a general partnership are jointly and severally liable for the partnership debts. This means that a creditor can collect debts from the individual partners. To collect from the individual partners, the creditor must obtain a judgment against the partnership *and* the individual partners. However, a creditor may only obtain a debt from the individual partners if the partnership's assets have been fully exhausted.

Here, the partnership is bound by the contract, meaning that it is a partnership debt. Carlos is one of the partners. Accordingly, if the creditor obtains a judgment against the partnership *and* the individual partners and the partnership's assets have been fully exhausted, the creditor will be able to recover from Carlos.

Thus, Carlos is liable for any part of the unpaid balance of the purchase price.

1.c. Aldo is entitled to reimbursements from the partnership for the down payment he made on the truck. The issue here is whether a partner may seek reimbursement for a partnership expense he made personally.

Not only do partnerships share profits, they share losses as well. In the absence of a partnership agreement, profits will be shared equally among the partners. In the absence of a contrary provision, losses are shared the same way as profits.

The partnership does not have a partnership agreement. Accordingly, both profits and losses are shared equally. Given that the expense will be considered a loss, Aldo is entitled to receive \$10,000 from each Carlos and Belinda.

2. Aldo is not entitled to be paid for the value of all or part of his services to the partnership. The issue here is whether a partner is entitled to a salary. Absent any agreement, partners are not entitled to a salary. Instead, partners are entitled to a share of profits. Here, Aldo is looking for a salary because he wants to be paid for the value of his services to the partnership. However, he is not entitled to a salary given that there is no agreement that he is entitled to a salary. He is only entitled to a share of the profits.

3. As explained above, A partnership is bound by contracts entered into by its agents if the agents had authority. Authority can be either actual or apparent. A partner has actual authority if the partner reasonably believes that he has the authority to enter into a contract based on his own dealings with the partnership, such as a vote at a partnership meeting authorizing the act. To approve of acts in the ordinary course of business, a simple majority vote is required. To approve of acts outside the ordinary course of the partnership, a unanimous decision is required.

Here, Aldo, purporting to act on behalf of the partnership, contracted to sell a tract of land the partnership owned to a developer in State B. The developer knew the partnership operated its trash collection business in State A and did not operate a business in State B. Buying and selling land is not in the regular course of business of a trash collection business. This means that Aldo would need the approval of all partners to have actual authority to enter into the contract. However, only Belinda agreed; Carlos did not. Thus, Aldo did not have actual authority to enter into the contract. Given that the developer knew that the partnership was operating only a trash business, and that only in State A, not State B, the developer should have reasonably known that selling land was not in the ordinary course of business for the partnership. Accordingly, Aldo also did not have apparent authority.

Therefore, the partnership will not be bound on the sales contract for the land.

ANSWER TO MEE 2

1. The issue is whether the bartender's testimony about the owner's statement constitutes a party opponent's statement or a statement of mind exception to hearsay rules.

Evidence is relevant when it makes a fact of consequence more or less probable without its presence. Hearsay statement is an out-of-court statement offered to prove the truth of the matter asserted and generally barred from admission unless the statement falls under the several exceptions. A statement by a party opponent, when offered by an opposing party is considered to be a non-hearsay and admissible. A statement of mind exception to the general hearsay prohibition allows statements which show a present intent or plan to do something in conformity with such intent. Even when a piece of evidence is relevant and otherwise admissible, if the probative value is substantially outweighed by the prejudice, then the evidence is not admissible.

Here, the bartender's testimony regarding the owner's statement is clearly relevant as it relates to the potential cause of the fire which is the subject matter of the prosecution. And the testimony is a hearsay statement because it is an out-of-court statement and offered to prove the truth of the matter, which is that the owner had planned to burn down his restaurant. However, the testimony constitutes both a party opponent's statement, which is a non-hearsay and a statement of mind exception to the hearsay rule. Because it was made by the defendant and offered by the prosecution, the testimony is a party opponent's statement. Also, because the statement shows the mind of the owner at the time, which is the intent and plan to burn down the restaurant and his conduct in conformity with the intent, this statement is admissible as a state of mind exception to hearsay rules.

Lastly, if it is true that the owner had made such a statement, the probative value is substantially larger than any potential prejudice to the owner and therefore the admission is not barred for that reason.

Therefore, the bartender's testimony is admissible.

2. The issue is whether the bartender's testimony about the waiter's statement constitutes a state of mind exception or statement against interest exception

Evidence is relevant when it makes a fact of consequence more or less probable without its presence. Hearsay statement is an out-of-court statement offered to prove the truth of the matter asserted and generally barred from admission unless the statement falls under the several exceptions. A statement by a party opponent, when offered by an opposing party is considered to be a non-hearsay and admissible. A statement of mind exception to the general hearsay prohibition allows statements which show a present intent or plan to do something in conformity with such intent. A statement against interest exception is an exception applies to an unavailable witness who made a statement which is against his interest and a reasonable person would not have made such statement unless it was true. Even when a piece of evidence is relevant and otherwise admissible, if the probative value is substantially outweighed by the prejudice, then the evidence is not admissible.

Here, the statement would be a hearsay as it is an out-of-court statement offered to prove that truth that they conspired to commit arson. However, the statement qualifies under the state of mind exception as it clearly shows the waiter's intent to commit the act in conformity with the stated intent, and the statement is clearly against the interest of the person, especially the "I've recently done that sort of the thing and haven't been caught", which no reasonable person would have made.

Lastly, because the probative value is not substantially outweighed by the prejudice, the admission is not barred.

Therefore, the testimony can be admitted.

3.a. The issue is whether the certified arson investigation report constitutes a business record exception to hearsay rules

Evidence is relevant when it makes a fact of consequence more or less probable without its presence. Hearsay statement is an out-of-court statement offered to prove the truth of the matter asserted and generally barred from admission unless the statement falls under the several exceptions. Public records, which include not only factual observations but also conclusions, prepared by an officer as part of a public agency's duty with knowledge of the subject matter at or near the time of the event are one of such exceptions to hearsay rules. However, public records exception does not apply to a police investigation report in a criminal proceeding against a criminal defendant. Business records are another type of exception to hearsay rules when the record is prepared as part of the organizations' routine practice of business, by someone who is under duty to report and has personal knowledge, at or near the time of the event, accurately prepared and certified. Even when a piece of evidence is relevant and otherwise admissible, if the probative value is substantially outweighed by the prejudice, then the evidence is not admissible.

Here, the police investigation report is a hearsay statement as it is an out-of-court statement offered to prove the truth of the matter. Also, as it was prepared as part of the agency's duty by someone under duty to report with personal knowledge at or near the time of the event could have qualified as public record exception. However, because it is a criminal proceeding and the evidence is offered against the defendant, it cannot be admitted. However, the record can alternatively admit under the business record exception because it was prepared as part of the agency's ordinary business, by someone under duty and with personal knowledge at or near the time of the event. Also, there is no evidence that it is incorrect and the record is certified.

Lastly, the report's probative value is not substantially outweighed by the prejudice because the report includes an official analysis of the matter which is not biased.

Therefore, it can be admitted under the business record exception.

b. The issue is whether the testimony by the expert will be barred by the Confrontation Clause

Confrontation clause prevents an evidence from being admitted against a criminal defendant when the evidence is 1) a testimonial hearsay, 2) the declarant is not available to testify at trial and 3) the party against whom the evidence is offered did not have an opportunity to cross examine the declarant. A statement is testimonial when its principal

purpose is to support the prosecution of a crime by ascertaining a criminal conduct. A party is considered to be unavailable when the party died and thus cannot attend the proceeding. However, when a privy attends the proceeding, it may be considered to be an opportunity to cross examine.

Here, the investigation reports are testimonial because its primary purpose is to assist the prosecution by ascertaining a criminal conduct. Also, as the investigator already had died before the proceeding, he is considered to be available. Lastly, even though another expert will be testifying on behalf of the investigator, as he did not participate in the investigation, it is difficult to see that the investigator is available for the proceeding or the defendant will have opportunity to properly cross examine the investigator.

Lastly, again because the report is an objective investigation prior to prosecution, its probative value is not substantially outweighed by the prejudice.

Therefore, the report itself cannot be admitted because it is a violation of the Confrontation Clause.

ANSWER TO MEE 2

1. Testimony about Owner's Statements over Phone

The issue is whether the owner's own out-of-court statements are admissible against him at trial.

All evidence must be relevant to be admissible. Evidence is relevant if it is probative of a material fact: if it makes a fact of consequence in the action more or less likely to be true. Generally, relevant evidence is admissible unless it falls within a specific exclusion or if a privilege applies. Here, testimony that the owner knows something is risky but that he is willing to "do whatever it takes to get back some money from this lousy restaurant" makes a material fact (his guilt) more likely to be true, and is thus relevant save for a rule to the contrary.

Under the Federal Rules of Evidence, relevant statements may be excluded if they are hearsay: out-of-court statements are hearsay, and thus inadmissible to prove the truth of the matter asserted therein, unless a specific exclusion or exception applies. Statements by a party opponent (including the defendant in a criminal case) are considered "not

hearsay" and are thus admissible for their truth. The owner's own statement over the phone, overheard by the bartender, is thus admissible.

Here, there is no confrontation clause issue (below) because the declarant is the defendant himself.

2. Testimony about Waiter's Statements to Owner

The issue is whether the waiter's statement was against his penal interest at the time it is made such that it is admissible despite his unavailability.

First, the waiter's statement is relevant because it tends to make a material fact--the defendant having a plan to burn down the restaurant--more likely to be true. His statement may nevertheless be admissible if it is hearsay, as discussed above, unless an exception applies. Here, the waiter's statement is considered hearsay, as discussed above. The waiter made it out of court and it is offered to prove that the waiter was part of the owner's plan to commit arson.

However, it may first be considered a statement by an opposing party as a statement of a co conspirator, which is excluded from the rule against hearsay even when offered for its truth. Such statements are considered unreliable in criminal cases, however, without corroborating evidence. Thus, even though the waiter is involved in a conspiracy with the defendant, the court may not allow it in under this exclusion.

Alternatively, it may be admissible under the exception for statements against interest. This exception to the rule against hearsay applies only where the declarant (here, the waiter) is unavailable to testify. Here, because the waiter fled overseas after learning he was under investigation for arson, he is properly unavailable and thus the statement is admissible if it meets the other elements of the exception; namely, the statement must have been against the declarant's penal, financial or other interest at the time it was made. Here, the waiter's statement that he had "recently done that sort of thing and haven't been caught" evinces that he knows the statement could subject him to criminal liability. As such, it is admissible under this exception.

3. Certified Arson Investigation Report

a. *Hearsay*

The issue is whether the report is admissible as a public record.

First, the contents of the arson investigation report are relevant because it makes material facts of consequence in the action--that the fire began inside the restaurant due to

the use of fire accelerants and that natural or accidental causes were eliminated--make the facts establishing the defendant's guilt in his arson trial more likely to be true.

Next, documentary evidence is admissible only if the judge determines that it is properly authenticated (as a matter of law). Certified public records, such as this report, are self-authenticating.

Most importantly, as discussed above, relevant, authenticated evidence may nevertheless be inadmissible if it is hearsay, unless a specific exception to the hearsay rule applies. Here, the arson investigation report is hearsay because the arson investigator prepared it out of court and it is offered to prove the truth of his findings. Hearsay evidence may be admissible, however, if it is a public record. A public record is admissible if it is a record made in the course of a government entity's investigatory authority that includes matters observed under a duty to report. In criminal cases, the result of criminal investigations, while public records, are typically not admissible under this exception given concerns that police will place anything into their reports in order to circumvent the hearsay rule and ensure evidence probative of a suspect's guilt is admissible at trial. However, the officer's factual observations may be admissible as a matter observed.

Here, the arson report was made by an arson investigator, a government employee within the scope of his investigatory authority. To the extent his report has factual findings, they may be admissible under this hearsay exception. However, much of the report consists of his conclusions as to the cause of the fire, including ruling out other factors. These would not be admissible, and the judge should not allow them into evidence.

b. *Constitutional Objection*

The issue is whether the arson report is testimonial.

Under the Confrontation Clause of the Sixth Amendment, a criminal defendant has the right to confront the witnesses against him. Under this clause, a statement made by an unavailable declarant is inadmissible unless it is (a) non-testimonial and (b) the defendant had a prior opportunity to cross-examine the declarant about the statement. A statement is testimonial (and thus violates the defendant's Constitutional rights) if its principal purpose is to aid in the successful prosecution of a criminal suspect, but not if it is made to enable law enforcement to meet an ongoing emergency.

Here, the Confrontation Clause is at issue because the police investigator who wrote the report is dead and thus unavailable to testify. The report itself is testimonial: it was made only after any emergency circumstances posed by the fire were abated. Instead, its principal purpose was to determine whether a criminal investigation into the fire was

warranted, and thus solely to assist in the apprehension and prosecution of an eventual suspect. Finally, the facts do not indicate that the owner had a previous opportunity to cross-examine the investigator of the witness. Thus, the judge should not admit the report in light of the defendant's objection.

Note that the prosecution plans to admit this evidence through an expert witness. While the expert--so long as he is qualified by training and experience, methodology, and reliable principles and methods--may be able to rely on the statements contained therein to form his own expert opinion as to the cause of the fire and testify on that basis. However, the certified arson investigation report is not admissible on this point under the Sixth Amendment (above).

ANSWER TO MEE 3

1. Full Faith and Credit

The issue is whether State B is required to enforce the State A child support order.

The Uniform Interstate Family Support Act (UIFSA) governs the enforcement and modification of child support orders; the full faith and credit clause of the Constitution requires courts to enforce valid child support orders entered by courts of other states. The divorce court in State A ordered the father to pay the mother a total of \$4,000/month in child support. The father now claims that the State A child support order is no longer effective and cannot be enforced because he has moved to State B. Under UIFSA and the full faith and credit clause, however, the father is wrong. State B is required to enforce the State A child support order because it is a valid order from a court of competent jurisdiction (i.e. the divorce court in State A).

2. Modification of Child Support Obligations

The issue is whether, under the UIFSA, the State B court has jurisdiction to modify the father's child support obligation.

Under UIFSA, a court that enters a child support order has continuing exclusive jurisdiction unless all of the parties (including the parents and children) no longer reside in that state or they agree that the state no longer has jurisdiction. Here, although the father moved to State B, the mother and both children continue to live in State A. State A

was the court that initially entered the divorce order containing the child support order, so it has continuing exclusive jurisdiction over the order since some of the parties still reside there. Because the facts do not suggest that the parties agreed that State A no longer has jurisdiction, State B court lacks jurisdiction to modify the father's child support obligation.

3. (a) Retroactive Reduction of Child Support Obligations

The issue is whether a court may retroactively reduce child support obligations.

Although a court with proper jurisdiction may modify child support obligations, including reducing them, it may only do so *prospectively*. A court may **never** apply such modification retroactively. Here, the father seeks retroactive reduction of his child support obligation from \$4,000 to \$2,000/month from the date that he lost his job five months after their divorce. A court with proper jurisdiction may not rule for the father on this point and, if it chooses to reduce his obligations, may only do so prospectively applied to future payments.

3. (b) Modification of Child Support Obligations

The issue is whether the court should reduce the father's child support obligations.

A court may prospectively modify a party's child support obligations if there is a significant change in circumstances which support the modification, and the modification will not impair the child's best interests. A party may not voluntarily change their circumstances with the sole intent of avoiding child support obligations, but they may nonetheless be able to receive a modification if it would be in the child's best interests. Here, the father was terminated from his \$150,000 salary job, received a lump sum severance of \$75,000, and stopped paying his support obligations. He decided to move states, in part so he might avoid paying his obligations and in part because he had better job prospects in the new state. He is currently unemployed but has several job interviews in State B, and the market conditions indicate that he will be able to find a job comparable to the one he had in State A. Although a court may find that there is a significant change in circumstances since the court entered his support obligation--namely the loss of his well-paying job in State A and his subsequent move to State B--a court will be unlikely to reduce his support obligation by \$2,000/month. Although he has been unemployed for a few months, he moved partially to avoid meeting his support obligations. While he also hoped to get a job in doing so, the facts suggest that he is likely to be employed soon and at a comparable job to the one he had held when the \$4,000/month figure was first set against him. Their children are preteens and likely still require substantial support (especially considering the state of their mother's health and her own employment issues). Accordingly, a court is unlikely to reduce the father's child support obligation.

4. Spousal Support Modification

The issue is whether the court should grant the mother's request that her spousal support obligation should be increased from \$3,000 to \$4,500/month due to her poor health and inability to resume full-time employment, and additionally that her support should be extended for five more years.

A court of competent jurisdiction may modify spousal support if the circumstances have changed significantly and unexpectedly; the court has discretion to do so and will consider various factors including the earning capacity of both parties, their child-care and support obligations, their medical needs, the length of their marriage, among other factors.

Here, the mother and father had been married for 12 years, and the original order provided \$3,000/month in spousal support to the mother for five years (despite their comparable college educations). Before the divorce, the mother made \$28,000/year, but she suffered a heart attack five months after the divorce which forced her to cut her pay by \$7,000; her doctor recommends that she not resume work full-time because caring for the children and working would be too stressful for her heart condition. Unfortunately, at the time of her heart attack, the father also stopped paying child and spousal support because he had been terminated from his much higher paying job. He received a severance payment that was almost triple the amount of the mother's annual salary, pre-reduction. He also is likely to find a comparable job in State B soon, meanwhile the mother is unlikely to resume full-time employment and remains in poor health. On these facts, a court is likely to find that her heart attack is a sudden, significant change in circumstances warranting a modification (increase) in the father's spousal support obligations to her. They were married for 12 years, and so the prolongation of spousal support by an additional 5 years may seem too long to a court (as combined, that would make 10 years of support following 12 years of marriage). However, the mother remains the primary caretaker of both children and is unable to work to provide for them. Accordingly, a court should modify the spousal support obligation by increasing it, although for how long will be in the court's discretion.

ANSWER TO MEE 3

1. Is State B required to enforce the State A child support order

Under the Constitution's Full Faith and Credit Clause, a state is required to enforce another's state valid judgement. A valid judgement is one which is on the merits and is final and made by a court having jurisdiction. In cases of child support, the state where the child stay has jurisdiction to make a child support order. To ascertain jurisdiction, the Court looks at whether the State is the child's home-state i.e. the child stays/resides in such a state.

Here, the facts provide that the couple lived in State A prior to their divorce; and after their divorce, the mother and the children lived in State A (who was awarded sole custody). It can be said that State A had jurisdiction to pass the child support order. This means that the State B court ought to enforce the State A's court's judgement/child support order which was validly made.

Therefore, State B court is required to enforce the State A child support order.

2. Does State B have jurisdiction to modify the father's child support obligation

A state court which originally made a child custody or child support decision has continuing and exclusive jurisdiction to modify the order/decision. Exceptions to this continuing jurisdiction is when the child/children and the parents move out of the original state or the parties otherwise consent to moving to the other state.

Here, only the father had moved to State B. The mother and the children continue to reside in State A, where the child support order was originally made. It can then be said that State A has continuing and exclusive jurisdiction to modify the child support order. There are also no facts provided that the mother and children moved or parties otherwise consented to move jurisdiction to State B court.

Therefore, State B does not have jurisdiction to modify the father's child support obligations.

3. Father's request to reduce child support obligations and make reductions retroactive

Child support orders are generally not modified unless a substantial and continuous change of circumstances is shown that make the earlier order unreasonable. Further, no order can be modified/changed retroactively by the Court.

Here, the father was terminated from his employment and he moved to State B to look for other job opportunities. He has several job interviews lined up in State B. Pertinently, market conditions make it likely that he will get a job soon comparable to the one he had earlier. It can then be said that although there has been a substantial change in circumstances as the father is unemployed for no fault of his own (terminated because of company downsizing), the change is not continuing. He will be able to get a job in the near future going by market expectations. Also, he received severance payment which will help him tide through these tough times. It cannot then be said that the change in circumstances of the father has made the earlier order unreasonable.

Therefore, the court should deny the father's request to reduce child support and make reductions retroactive.

4. Mother's request for increase and extension of spousal support obligations

Spousal support obligations are generally not interfered with by the Court unless there is a substantial and continuing change in circumstances of the parties. The Court would look at changes which have not come about by the parties' own fault (e.g. to reduce support obligations, a spouse quits his high paying job and takes a low paying job.).

Here, the mother's annual pay reduced by almost 75% following her heart-attack. Her doctor recommends that she does not resume full-time work and work along with looking after children would be too stressful. On the other hand, the father has lost his high paying job for no fault of his own, but is expected to find suitable employment in State B where he moved recently. A Court can find that a substantial and continuous change in circumstances has occurred wherein the mother's circumstances have substantially deteriorated in the past several months. Also, the Court will be mindful that the mother has custody of the children.

Therefore, while Courts are reluctant to change spousal support orders earlier made, here, substantial and continuing changes in circumstances can justify the court to acceded to mother.

ANSWER TO MPT

MEMORANDUM

To: George Bunke

From: Examinee

Re: Janet Klein matter- Issues of sovereign immunity and notice

The following memorandum will discuss two issues pertaining to the potential claim of our client, Janet Klein, against the State of Franklin for injuries she suffered in a car accident on May 23, 2020.

1. The State of Franklin is likely not protected from liability in this case by sovereign immunity because the accident resulted from unsafe conditions negligently created by the state and the incident occurred on State grounds.

Under the Franklin Tort Claims Act (hereinafter the Act), the State is only "liable within the limitations" of the Act. § 41-1. All state and local governmental entities and public employees acting within the scope of their employment are generally granted immunity from liability, except as specifically waived pursuant to the Act. § 41-1. Under § 41-6, immunity is "waived when bodily injury, wrongful death, or property damages is caused by the negligence of public employees while acting within the scope of their duties in the operation or maintenance of any building or public park." § 41-6. In considering whether immunity is waived pursuant to Klein's claim, we must determine whether the state employee's conduct created the negligent conditions and whether the incident occurred in connection to a building or park.

In *Rodriguez v. Town of Cottonwood*, the Court of Appeals distinguished between cases where negligent conduct on the part of the state created unsafe conditions and cases in which the conditions were safe but injury arose due to other circumstances. *Rodriguez v. Town of Cottonwood* (Fr. Ct. App. 2018). In *Arthur v. Custer*, the court found that the Act does not waive immunity for negligent performance of an employee's duties *unless* negligent performance of those duties resulted in a dangerous or defective condition in a public building or public park. As a result, the court found that the immunity had not been waived in the case at hand, in which the conditions of a playground were safe, but the child was negligently supervised. This is in contrast to cases in which immunity was waived, such as the negligent maintenance of an electric system, the failure to properly install windows, or the failure to rectify a prison layout. *Rodriguez*.

In our case, Klein could argue that similarly to the case of the negligent prison layout, Small's decision to negligently close one of the exits created an unsafe condition. Unlike the plaintiff in *Rodriguez*, Klein is in fact arguing that the government's negligent actions resulted in an inherently unsafe condition. This claim is bolstered by the investigator's interviews with employees, who agreed that the closure of the second exit was irresponsible and negligent, creating an unsafe environment. Thomas Memorandum. Her injuries were thus caused in an accident, which we could argue was the predictable result of the unsafe conditions caused by employee negligence.

The second relevant issue is the definition of "in the operation or maintenance of any building or public park." § 41-6. In *Farrington v. Valley County*, the court considered whether maintenance of any building includes keeping grounds of a public housing project safe from unreasonable risk of harm to residents and invitees. *Farrington v. Valley County* (Fr. Sup. Ct. 2015). The Supreme Court there determined that § 41-6 does contemplate waiver of immunity where, due to alleged negligence of public employees, an injury arises from an unsafe, dangerous, or defective condition on property owned and operated by the government. *Farrington*. Noting that the purpose of the provision was to ensure the safety of the general public, the court found no "intent to exclude from that waiver liability for injuries arising from defective or dangerous conditions on the property surrounding a public building." They therefore found that the Act waived immunity not just for dangerous conditions in state owned buildings, but also on grounds surrounding the buildings.

In this case, the investigator's report confirms that NashTel Arena, fairgrounds, and the surrounding parking lots are owned by the State of Franklin. *Thomas Memorandum*. Even if the parking lot itself might not clearly constitute either a building or park, it would likely be comparable to the "grounds" considered in *Farrington*. It is state owned, and surrounding a state-owned park and buildings on which immunity would be waived. Moreover, finding that such land is covered by the Act would be in accord with the purpose of the Act, which is to protect the general public. *Farrington*.

Therefore, Klein will likely be able to establish that the negligence of a state employee created a dangerous condition which resulted in an accident causing her bodily injury, and that such accident occurred on grounds surrounding state owned property on which immunity is waived. As a result, the State will likely not be protected from liability under the act.

2. The State of Franklin likely did receive sufficient notice as required by the Franklin Tort Claims Act because they received actual notice within 90 calendar days.

We turn now to the issue of whether or not the State of Franklin received sufficient notice as provided under the Franklin Tort Claims Act. The FTCA provides in §

41-16 that every person who claims damages against the State under the FTCA "shall present to the Risk Management Division ... a written notice stating the time, place, and circumstances of the loss or injury." FTCA §41-16(a). Such written notice must be provided "within 90 calendar days after an occurrence giving rise to a claim for which immunity has been waived" under the Act. However, §41-16(b) provides in the alternative an action may be maintained if "the governmental entity had actual notice of the occurrence. FTCA § 41-16(b). If actual notice is provided, it must also be given within 90 calendar days of the occurrence. *Beck v. City of Poplar* (Fr. Sup. Ct. 2013) (citing *Solomon v. State of Franklin* (Fr. Sup. Ct. 2012)). We will discuss in turn whether Klein provided adequate written notice as provided under § 41-16(a) or whether the State had sufficient actual notice as provided under § 41-16(b).

Klein did provide written notice to the Risk Management Division of the State of Franklin, as demonstrated by her attached letter. Such notice provided some details on the place and circumstances of her injury, noting that she was injured at the state fair and describing in detail the physical and financial damages she suffered. The notice may have been lacking some detail of the exact time and place of her injury. Moreover, such notice was insufficient because it was dated August 30, 2020. Ms. Klein was injured on May 23; therefore, this notice falls outside of the 90-calendar day window provided by the Act. Therefore, the state did not receive adequate written notice provided under §41-16(a).

We not turn to whether the State received actual notice within 90 calendar days. The State could arguably receive such notice either through the police report or through Randy Small's witnessing of the incident. In *Beck v. City of Poplar*, the Supreme Court addressed the issue of the notice requirement, and specifically whether receipt of an accident report is sufficient actual notice under the Act. *Beck v. City of Poplar* (Fr. Sup. Ct. 2013). The court provided that under some circumstances a police report might be sufficient notice. *Beck*. However, such notice is only sufficient when the report "contains information that puts the governmental entity allegedly at fault on notice that there is a claim against it" so that the entity is reasonably alert of the necessity to investigate. *Beck*. For example, there was sufficient notice in *Solomon v. State of Franklin* when the plaintiff described the facts related to the incident and told the official he had hired a lawyer to start legal proceedings against the State. *Beck* (citing *Solomon*). On the other hand, the court in *Beck* rejected the plaintiff's claim based on the fact that although the report listed the date, time, and location of the accident, identifying information about the parties, and the fact that plaintiff suffered a minor injury, there was nothing in the report that "could be construed as informing or notifying the City traffic department that it may be subject to a lawsuit.

In this case, a Police Officer created a State of Franklin Traffic Collision Report, dated May 23, 2020. The report provided the names of the parties involved, their injuries, and the date and time of the incident. In addition to this basic information, the report also

provided the officer's notes on what had transpired, including that Klein turned to him and yelled that there needed to be more than one exit in the lot and that the "State will pay" for that. In his September 27, 2020 email to Thomas, Small states that he received a copy of the State of Franklin Traffic Collision Report the week after the incident, so the 90-day requirement for actual notice would be satisfied. Thomas Memorandum. Because this goes beyond the bare bones description of the accident that was found to be insufficient in *Beck*, this level of detail may be sufficient notice. The fact that Klein specifically stated that she contemplated suit may be of particular relevance, as it fulfills the purpose of allowing the agency to be on notice that it may need to prepare itself for suit. However, on the other hand it could be argued that this notice was insufficient as an agency could have written her statements off as the product of being angry and in pain due to her injury, rather than a serious indication of likelihood to sue. Therefore, although the report itself is evidence of possible actual notice, it is not conclusive. Ms. Klein's claim of notice could be bolstered by Small's awareness of the possibility of a suit. In his email to Thomas, Small states that he witnessed Klein yelling at the police officer and threatening to sue the State and that he didn't want to engage with the investigator because he anticipated suit. Such fact indicates that he was indeed on actual notice of the possibility of litigation, and that he took such notice seriously.

Therefore, although not certain, it is likely that through the receipt of the report and personal observation of Ms. Klein's threat to sue the agency which faced the possibility of suit was on notice sufficient to the requirements of § 41-16(b) and within the 90-day time window.

ANSWER TO MPT

MEMORANDUM

TO: GEORGE BUNKE

FROM: EXAMINEE

DATE: OCT. 5, 2020

RE: JANET KLEIN MATTER

I have been tasked to prepare an objective memorandum to you analyzing whether the State of Franklin is protected in this case by sovereign immunity and if the State of Franklin received sufficient notice as required by the Franklin Tort Claims Act. For the purpose of this memorandum, I was told to assume that Mr. Small was negligent and acting within the scope of his employment and that if the state is found to have waived its immunity, his negligence will be imputed to the state.

The State of Franklin in This Case Is Not Protected from Liability by Way of Sovereign Immunity

As per Section 41-6 of the Franklin Torts Claims Act, the immunity granted to state and local government entities and employees is waived when bodily injury, wrongful death or property damage is caused by the negligence of public employees while acting within the scope of their duties in the operation or maintenance of any building or public park. As per the investigatory discoveries performed by investigator Ernest Thomas, there are two parking lots located on the fairgrounds owned and operated by the State of Franklin: Lot A and Lot B. Lot B is the parking lot where Janet Klein's accident occurred and is a 70,000- square-foot gravel parking lot with two possible exits. One exit is located on Lomas Boulevard that is paved and was the only exit available on the date of Janet Klein's accident. The other exit is located on Central Avenue which is barricaded by galvanized steel barriers. While heavy, these barricades can be removed. Investigator Thomas spoke to two employees of the State-owned fairgrounds: Edward Cranston and Emma Moore. Mr. Cranston explained that he worked the fairgrounds for two years and that the exit had been barricaded for at least the two years he had been working there. He has since tried to report the unsafe condition of leaving the second exit barricaded to his supervisor, Mr. Smalls, to no avail. Ms. Moore also explained to Investigator Thomas that the second exit off of Central Avenue had been barricaded "for years" and that she and numerous other employees recognized the danger of leaving the second exit barricaded off. They had tried reporting this to the supervisor again to no avail. Thus, by leaving the central Avenue exit barricaded off to the traffic in Lot B, the

State of Franklin by way of the negligent actions of Mr. Small, has created an unsafe, dangerous and defective condition on a State owned and operated property.

The first case that enforces this position is the Rodriguez case. In this case, the Court of Appeals stated that Section 41-6 of the Tort Claims Act does not waive Sovereign immunity for negligent performance of an employee's duties unless negligent performance of those duties results in a dangerous condition in a public building or park. In the Rodriguez case, the Court held that a playground owned and operated by the State used for children was in a safe condition and that a child's injuries was a result of the negligence by camp employees and not due to the condition of the state's premises that resulted in the child's injuries so sovereign immunity was not waived. However, in our case, sovereign immunity likely would be waived since it could be argued that the supervisor created and maintained an unsafe and dangerous condition in Lot B because he has ignored the warnings of his employees that barricading the Central Avenue Exit is dangerous. Also, this case is directly supported by the Supreme Court's holding in the Farrington case where the court held that loose running dogs could represent an unsafe condition on the land owned and operated by the state. The Court reasoned that Section 41-6 of the Franklin Tort Claims Act contemplates waiver of immunity when due to the alleged negligence of public employees, an injury arises from an unsafe condition on property owned and operated by the government. In our case, the barricade could have been and should have been contemplated as a dangerous condition by the employees and the supervisor and should have been removed to allow access to the Central Avenue Exit.

The State of Franklin Received Sufficient Notice as Required By the Franklin Tort Claims Act

Section 41-16 of the Franklin Tort Claims Act provides that every person who claims damages from the state or local government entity shall present to the Risk Management Division for claims against the state. In our case, Ms. Klein presented to the Risk Management Division for her claim against the state. Section 41-16 of the Tort Claims Act also provides that the claimant present this within 90 calendar days after the occurrence giving rise to the claim for which immunity has been waived under the Tort Claims Act, a written notice stating the time, place and circumstances of the loss or injury. Here, Ms. Klein presented to the Risk Management Division a written letter, thoroughly stating the incident of what happened at the place of the incident which was the Fairground's Lot B. The only area where the State may argue is that Ms. Klein did not state the actual date in which the incident occurred, which was on May 23. However, Ms. Klein does state that it happened on Memorial Day weekend, more specifically, on the day of the Hopps Rodeo, which most likely will sufficient enough for the time of occurrence. In addition, Ms. Klein adhered to the 90-day limitation by sending the notice to the Risk Management Division on August 20, 2020. This case is not like the Back case decided by the Supreme Court because in the Beck case, the plaintiff did not give the proper government entity written notice containing the time, place and circumstances

surrounding the incident. The Court held that the accident report in that case was not "actual notice" and affirmed the lower court's decision that the government was not charged with proper notice. Here, even if the traffic report on May 23, 2020 is not considered to be proper notice, Ms. Klein will still have met the requirements for notice in her written notice to the Risk Management Division.

Thus, the State of Franklin will not be protected from liability in this case by sovereign immunity due as the state's supervisor and employees maintained an unsafe condition within Lot B by barricading the exit to Central Avenue. The State of Franklin received sufficient notice as required by the Franklin Torts Claims Act because Ms. Klein wrote to the Risk Management Division within 90 calendar days of the incident and included the time, place and circumstances surrounding the occurrence.