

Maryland State Board of Law Examiners  
**FEBRUARY 2023 UNIFORM BAR EXAMINATION (UBE) IN MARYLAND –**  
**REPRESENTATIVE GOOD ANSWERS**

*NOTICE: These Representative Good Answers are provided to illustrate how actual examinees responded to the Multistate Performance Tests (MPT 1 & 2) and the Multistate Essay Examination (MEE 1-6). The Representative Good Answers are not “average” passing answers nor are they necessarily “perfect” answers. Instead, they are responses which, in the Board’s view, illustrate successful answers written by applicants who passed the UBE in Maryland for this session. These answers are reproduced without any changes or corrections by the Board, other than to spelling and formatting for ease of reading.*

**MPT 1**

**Representative Good Answer No. 1**

TO: Zoe Foss

FROM: Examinee

DATE: February 21, 2023

RE: Jasmine Hill Matter

MEMORANDUM I. Introduction

Below, please find my analysis regarding (1)The potential claims that Ms. Hill has against Reliant under the Franklin Deceptive Trade Practices Act (DTPA).

II. Analysis

The DPTA prohibits false, misleading, or deceptive acts or practices in the conduct of any trade or commerce. FR. BUS. CODE section 204. The elements of a DTPA claim are (1) the plaintiff is a consumer, 2) the defendant engaged in one or more of the false, misleading, or deceptive acts enumerated in section 204, 3) the act(s) constituted a producing cause of the plaintiff's damage and 4) the plaintiff relied on the defendant's conduct to his or her detriment. Gordon. A "producing cause" under the DTPA is a substantial factor that brings about the injury, without which the injury would not have occurred. Gordon citing Diaz. If a violation is committed knowingly, the plaintiff is entitled to receive three times his or her actual economic damages (treble damages), as well as damages for mental anguish. Gordon citing FR. BUS. CODE Section 205(b)(2).

A thorough review of each of the four elements of a DTPA claim are required to determine if there are any potential DTPA claims as the burden is on the Plaintiff consumer to each element.

1. Whether Jasmine Hill is a consumer under DTPA.

The first inquiry to establish a DTPA claim (or claims) is whether Jasmine Hill is a consumer under the DTPA. Pursuant to DTPA 203 (d), a consumer is an individual who seeks or acquires any goods or services.

In Gordon v. Valley Auto Repair Inc., the Franklin Court of Appeal established that the Plaintiff, Jack Gordon, was a consumer under the act as he asked the Defendant, Valley, to perform repairs on his truck.

Here, we can certainly establish that Jasmine Hill was a consumer. Her email correspondence with Greg Stevens indicates that she can come by the shop to purchase the Envoy. Further, we have the boat bill of sale and the invoice noting the services performed to the boat shortly after her purchase of the boat. These documents should establish that Jasmine Hill is a consumer under DTPA with regard to her purchase of the boat.

In conclusion, Jasmine Hill's purchase of the boat from Reliant will be enough to establish that she is a consumer under DTPA.

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2. Whether the Defendant, Reliant, engaged in one or more of the false, misleading, or deceptive acts enumerated in section 204 of the DTPA.

The second inquiry for us to establish a DTPA claim is determining whether Reliant engaged in one or more of the false, misleading, or deceptive acts enumerated in Section 204 of the DTPA. Pursuant to Section 204 of the DTPA, the acts by a Defendant that are included as a potential violation include 204(d) representing that goods or services i. have characteristics or uses they do not have, or ii. are of a particular standard, quality, or grade if they are of another; (f) representing that work or services have been performed on, or parts replaced in, goods when the work or services were not performed or the parts replaced and g) failing to disclose information concerning goods or services that was known at the time of the transaction if such failure was intended to induce the consumer to enter into a transaction into which the consumer would not have entered had the information had been disclosed.

In *Gordon v. Valley Auto Repair, Inc*, the Plaintiff, Gordon, alleged that the Defendant, Valley's, conduct violated the DTPA by representing that the goods and services were of a particular standard, quality, or grade when he testified that he stressed the need for quick repairs to his truck to ensure the success of his business. Specifically, Gordon testified, that a mechanic assured Gordon personally "We'll get it done, we'll get it fixed, we'll get it right back out on the road.". Valley responded and noted that these representations were merely puffing and thus not actionable under the DTPA. The court explained that "mere puffing" is not actionable under the DTPA and that three factors determine whether a representation is mere puffing.

A. Were Defendant Reliant's comments to Jasmine Hill "Mere Puffing".

As the facts here regarding potential misleading statements may be similar to the facts in *Gordon*, the issue is that for establishing the second requirement to bring forth a DTPA claim, we must determine if Reliant's comments to Jasmine Hill were "mere puffing" or were "false, misleading or deceptive acts" pursuant to Section 204 of the DTPA.

Three factors determine whether a representation is "mere puffing":

(1) The specificity of the alleged misrepresentation: vague or indefinite representations, statements that compare one product to another and claim superiority, and mere opinions are not actionable misrepresentations under the DTPA;

(2) The comparative knowledge of the consumer and the seller or service provider: representations made by a service provider with greater knowledge and experience than the consumer are more likely to be actionable; and

(3) whether the representation relates to a past or current condition as opposed to a future event or condition: statements about past or current conditions are more likely to be actionable than statement about the future. *Gordon*.

In *Gordon*, the court opined that Valley's representations about repair time were too general and indefinite to be actionable. In making this conclusion, the court acknowledged how none of the statements guaranteed a precise time frame for completion of repairs. Specifically, the court opined that the last statement acknowledged that some repairs would take longer than the "one to three days" "normally" required. The court opined that this rendered the statements too indefinite to be actionable.

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Here, unlike in Gordon, the Plaintiff, Jasmine Hill, would be buying and owning a boat for the first time. Gordon, however, was purchasing a used diesel pickup truck to use in his business hauling goods to locations in three states. While Gordon likely has more knowledge about the effectiveness of a truck and the quality of the work that a mechanic or repair shop would do, Jasmine Hill, as a first-time buyer, would be more susceptible to a reliance on the assurances of a Defendant. Reliant will likely argue that when Greg Stevens stated that the boat would be a "real gem" and would be a "perfect fit" for Jasmine and her family was merely puffery under the Gordon court analysis. However, Jasmine Hill noted that "I'm a little concerned about its age and "this would be a big purchase for me. I don't want to buy a boat that's going to need repairs." These comments can arguably show that Jasmine Hill is not a frequent buyer or user of boats. Further, and more importantly these comments indicate Jasmine Hill's anticipated reliance on the quality of the boat when she receives correspondence back from Greg Stevens. Greg Stevens responded and stated that "The Envoy is a few years old, but it's in excellent condition and runs just like new". These comments were relied upon by Jasmine Hill and the boat being in "excellent condition" was not mere puffery but likely an assertion that the boat was indeed in "excellent condition" and not in need of any major repairs. This comment was false, misleading, or deceptive act pursuant Section 204(d)(ii) of the DTPA as it is a statement indicating that the boat is of a particular standard, quality or grade, excellent condition, when in fact it was in need of major repair. Further, and arguable, Section 204(g) can be established as the mechanic said that it's not uncommon for a motor vehicle with a cracked engine block to run for a few minutes under test conditions and this was the exact action completed by Greg Stevens before Jasmine bought the boat. This indicates that Greg Stevens likely knew (or acted "knowingly") that the engine would run for a limited time and stopped running it prior to a showing of the damage to induce Jasmine to make the purchase.

In conclusion, the comments made by Greg Stevens in the email correspondence and the mechanic's opinion of the running of the engine block are likely enough to establish several qualifications that we may use to show that element two necessary to bring a DTPA claim is established. A defense by the Defendant that the comments were mere "puffery" would likely be insufficient.

3. Whether the act(s) done by Reliant constituted a producing cause of Jasmine Hill's damage and whether Jasmine Hill relied on Greg Stevens, on behalf of Reliant's, comments to her detriment.

A. Producing Cause

The third element of a DTPA claim requires that the act(s) constituted by the defendant constituted a producing cause of the plaintiff's damage. A producing cause under the DTPA are when the representations of a Defendant were enough to entice the defendant to rely upon those representations. See Abrams at 16. If a producing cause is found, a Defendant may be liable for its failure to disclose information. See Abrams. Under the DTPA, the Plaintiff must show that 1) The defendant failed to disclose information about goods or services 2) Known by the defendant at the time of the transaction and 3) Intended to induce the consumer to enter into a transaction and 4) Into which the consumer would not have entered had that information been disclosed. Abrams. A defendant cannot be liable for failing to disclose information about which the buyer has actual notice; such information could not be a producing cause of the buyer's loss. Abrams citing Ling v. Thompson.

In Abrams v. Chesapeake, the Defendant, Chesapeake, argued that the statements in its catalogue could not have been a producing cause of Abrams damages because Abrams read the catalogue (which contained alleged false misrepresentations) after she signed the contract. The court opined that the un rebutted proof showed that the catalogue contained representations that substantially contributed to Abrams's decision to enroll in the college. Abrams, the Plaintiff, proved that the CBC's representations in its catalogue were false and misleading and that she relied upon these representations in deciding not to cancel the agreement and instead to pay additional tuition. The court opined, with regard to the four-part test, that there was ample evidence

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that shows that CBC knew that its catalogue contained misrepresentations and that Abrams relied on those statements when she enrolled and paid tuition. The court specified that this was not a situation where statements were made without knowledge of their falsity or where information was withheld innocently.

Further, in Gordon, the court emphasized the "knowingly" aspect of a producing cause when they stated that actual awareness does not mean that a person, a Defendant, knows what he's doing. See Gordon. Rather, it means that a person knows that what he is doing is false, deceptive, or unfair. See Gordon. "The person must think at some point 'Yes, I know this is false, deceptive, or unfair, but I'm going to do it anyway'".

Here, we can successfully establish that Greg Stevens's email correspondence was a producing cause of Jasmine Hill's damage. As established in section 2 of this analysis, Jasmine Hill emphasized her concern about the age of the Envoy and her need for a boat that is not going to need repairs. This was not a face-to-face communication which required an immediate response or indication from Greg Stevens. Rather, Greg Stevens had time to review the email and make a decision on how he would respond to her concern. Greg Stevens decided to state that the Envoy is in excellent condition and runs just like new. While Greg Stevens may argue that Jasmine Hill knew that she was buying a used boat and assumed the risk of minor repairs, his comments provided exceptional faith in the functionality of the boat when he stated "excellent" condition. He likely knew that this comment would entice Jasmine to buy the boat. Further, on the boat bill of sale, it states that the Seller has "no knowledge of any defects in and to the Boat". Greg's comments and the assertion of the bill of sale would acknowledge that Greg not only knew that his comments would be a producing cause for Jasmine to buy the boat but also that Greg, on behalf of Reliant, knew that he had to sign an affirmation that he knew of no defects for which Jasmine likely further relied. Greg had several instances to ensure that he was not knowingly producing cause for Jasmine to buy the boat but disregard them anyway.

B. Whether the Plaintiff relied on the Defendant's conduct to his or her Detriment and the specific relief that Jasmine is entitled to through Damages.

The fourth requirement is whether the Plaintiff relied on the Defendant's conduct to her detriment. Pursuant to Section 205(a) A consumer may maintain an action against any person who engages in any one or more of the false, misleading, or deceptive acts or practices enumerated in Section 204 of this chapter if such act or practice is a producing cause of the consumer's damages and the consumer relied upon such act or practice to the consumer's detriment. 205(b) then states that "In a suit filed under this section, a consumer who prevails may obtain 1) The amount of economic damages found by the trier of fact; or 2) If the trier of fact finds that the conduct of the defendant was committed knowingly: i) exemplary damages of three times (treble) the amount of economic damages and ii) damages for mental anguish. Lastly, under 205(c) the DTPA states that "each consumer who prevails shall be awarded court costs and reasonable and necessary attorney's fees.

In Abrams, the court opined that to justify an award of treble damages and damages for mental anguish, the plaintiff must prove that the defendant's actions were taken "knowingly". The court in Abrams, establishing that the Defendant knew that its representations in the catalogue were false, was liable for damages and that mental anguish awards may include "severe disappointment".

Here, we have sufficiently established above in section A, part 3 of the analysis that Jasmine Hill relied on the Defendant's conduct to her detriment. Therefore, with regard to damages in the amount paid by Jasmine Hill to have the mechanic remove the broken motor and install a refurbished motor in the amount of \$3,000.00. Further, additional damages for mental anguish can be established for "severe disappointment". The email correspondence establishes that Greg Stevens knew that Jasmine would be buying the boat to have plenty of room for her and her family. Jasmine intended to stay the weekend at Lake Franklin with the boat. The severe

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disappointment in not being able to use the boat properly can be of severe disappointment to Jasmine Hill under DTPA 205 due to her reliance on the Defendant's statements about the boat being in excellent condition.

In conclusion, there is sufficient evidence to prove that Greg's email correspondence and signature on the boat bill of sale were enough to indicate a knowing statement that was a producing cause in Jasmine buying the boat. Further, the mechanic invoice and interruption of Jasmine's boat trip with her family, which Greg Stevens knew that Jasmine would be using the boat with her family, is enough to satisfy element four that the Jasmine's reliance on Greg's comments were a detriment to her. She can obtain specific relief under DTPA for mental anguish, economic damages and the court costs and reasonable and necessary attorney's fees.

III. Conclusion -

Thank you for allowing me to complete the above analysis. If you need anything further, please do not hesitate to contact me.

**Representative Good Answer No. 2**

TO: Zoe Foss

FROM: Examinee

DATE: February 21, 2023

RE: Jasmine Hill Matter

MEMORANDUM I. Introduction

Below, please find my analysis regarding (1)The potential claims that Ms. Hill has against Reliant under the Franklin Deceptive Trade Practices Act (DTPA).

II. Analysis

The DPTA prohibits false, misleading, or deceptive acts or practices in the conduct of any trade or commerce. FR. BUS. CODE section 204. The elements of a DTPA claim are (1) the plaintiff is a consumer, 2) the defendant engaged in one or more of the false, misleading, or deceptive acts enumerated in section 204, 3) the act(s) constituted a producing cause of the plaintiff's damage and 4) the plaintiff relied on the defendant's conduct to his or her detriment. Gordon. A "producing cause" under the DTPA is a substantial factor that brings about the injury, without which the injury would not have occurred. Gordon citing Diaz. If a violation is committed knowingly, the plaintiff is entitled to receive three times his or her actual economic damages (treble damages), as well as damages for mental anguish. Gordon citing FR. BUS. CODE Section 205(b)(2).

A thorough review of each of the four elements of a DTPA claim are required to determine if there are any potential DTPA claims as the burden is on the Plaintiff consumer to each element.

1. Whether Jasmine Hill is a consumer under DTPA.

The first inquiry to establish a DTPA claim (or claims) is whether Jasmine Hill is a consumer under the DTPA. Pursuant to DTPA 203 (d), a consumer is an individual who seeks or acquires any goods or services.

In Gordon v. Valley Auto Repair Inc., the Franklin Court of Appeal established that the Plaintiff, Jack Gordon, was a consumer under the act as he asked the Defendant, Valley, to perform repairs on his truck.

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Here, we can certainly establish that Jasmine Hill was a consumer. Her email correspondence with Greg Stevens indicates that she can come by the shop to purchase the Envoy. Further, we have the boat bill of sale and the invoice noting the services performed to the boat shortly after her purchase of the boat. These documents should establish that Jasmine Hill is a consumer under DTPA with regard to her purchase of the boat.

In conclusion, Jasmine Hill's purchase of the boat from Reliant will be enough to establish that she is a consumer under DTPA.

2. Whether the Defendant, Reliant, engaged in one or more of the false, misleading, or deceptive acts enumerated in section 204 of the DTPA.

The second inquiry for us to establish a DTPA claim is determining whether Reliant engaged in one or more of the false, misleading, or deceptive acts enumerated in Section 204 of the DTPA. Pursuant to Section 204 of the DTPA, the acts by a Defendant that are included as a potential violation include 204(d) representing that goods or services i. have characteristics or uses they do not have, or ii. are of a particular standard, quality, or grade if they are of another; (f) representing that work or services have been performed on, or parts replaced in, goods when the work or services were not performed, or the parts replaced and g) failing to disclose information concerning goods or services that was known at the time of the transaction if such failure was intended to induce the consumer to enter into a transaction into which the consumer would not have entered had the information had been disclosed.

In *Gordon v. Valley Auto Repair, Inc*, the Plaintiff, Gordon, alleged that the Defendant, Valley's, conduct violated the DTPA by representing that the goods and services were of a particular standard, quality or grade when he testified that he stressed the need for quick repairs to his truck to ensure the success of his business. Specifically, Gordon testified, that a mechanic assured Gordon personally "We'll get it done, we'll get it fixed, we'll get it right back out on the road.". Valley responded and noted that these representations were merely puffing and thus not actionable under the DTPA. The court explained that "mere puffing" is not actionable under the DTPA and that three factors determine whether a representation is mere puffing.

A. Were Defendant Reliant's, comments to Jasmine Hill "Mere Puffing".

As the facts here regarding potential misleading statements may be similar to the facts in *Gordon*, the issue is that for establishing the second requirement to bring forth a DTPA claim, we must determine if Reliant's comments to Jasmine Hill were "mere puffing" or were "false, misleading or deceptive acts" pursuant to Section 204 of the DTPA.

Three factors determine whether a representation is "mere puffing":

(1) The specificity of the alleged misrepresentation: vague or indefinite representations, statements that compare one product to another and claim superiority, and mere opinions are not actionable misrepresentations under the DTPA;

(2) The comparative knowledge of the consumer and the seller or service provider: representations made by a service provider with greater knowledge and experience than the consumer are more likely to be actionable; and

(3) whether the representation relates to a past or current condition as opposed to a future event or condition: statements about past or current conditions are more likely to be actionable than statement about the future. *Gordon*.

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In Gordon, the court opined that Valley's representations about repair time were too general and indefinite to be actionable. In making this conclusion, the court acknowledged how none of the statements guaranteed a precise time frame for completion of repairs. Specifically, the court opined that the last statement acknowledged that some repairs would take longer than the "one to three days" "normally" required. The court opined that this rendered the statements too indefinite to be actionable.

Here, unlike in Gordon, the Plaintiff, Jasmine Hill, would be buying and owning a boat for the first time. Gordon, however, was purchasing a used diesel pickup truck to use in his business hauling goods to locations in three states. While Gordon likely has more knowledge about the effectiveness of a truck and the quality of the work that a mechanic or repair shop would do, Jasmine Hill, as a first-time buyer, would be more susceptible to a reliance on the assurances of a Defendant. Reliant will likely argue that when Greg Stevens stated that the boat would be a "real gem" and would be a "perfect fit" for Jasmine and her family was merely puffery under the Gordon court analysis. However,

Jasmine Hill noted that "I'm a little concerned about its age and "this would be a big purchase for me. I don't want to buy a boat that's going to need repairs." These comments can arguably show that Jasmine Hill is not a frequent buyer or user of boats. Further, and more importantly these comments indicate Jasmine Hill's anticipated reliance on the quality of the boat when she receives correspondence back from Greg Stevens. Greg Stevens responded and stated that "The Envoy is a few years old, but it's in excellent condition and runs just like new". These comments were relied upon by Jasmine Hill and the boat being in "excellent condition" was not mere puffery but likely an assertion that the boat was indeed in "excellent condition" and not in need of any major repairs. This comment was false, misleading, or deceptive act pursuant Section 204(d)(ii) of the DTPA as it is a statement indicating that the boat is of a particular standard, quality or grade, excellent condition, when in fact it was in need of major repair. Further, and arguable, Section 204(g) can be established as the mechanic said that it's not uncommon for a motor vehicle with a cracked engine block to run for a few minutes under test conditions and this was the exact action completed by Greg Stevens before Jasmine bought the boat. This indicates that Greg Stevens likely knew (or acted "knowingly") that the engine would run for a limited time and stopped running it prior to a showing of the damage to induce Jasmine to make the purchase.

In conclusion, the comments made by Greg Stevens in the email correspondence and the mechanic's opinion of the running of the engine block are likely enough to establish several qualifications that we may use to show that element two necessary to bring a DTPA claim is established. A defense by the Defendant that the comments were mere "puffery" would likely be insufficient.

3. Whether the act(s) done by Reliant constituted a producing cause of Jasmine Hill's damage and whether Jasmine Hill relied on Greg Stevens', on behalf of Reliant, comments to her detriment.

A. Producing Cause

The third element of a DTPA claim requires that the act(s) constituted by the defendant constituted a producing cause of the plaintiff's damage. A producing cause under the DTPA are when the representations of a Defendant were enough to entice the defendant to rely upon those representations. See Abrams at 16. If a producing cause is found, a Defendant may be liable for its failure to disclose information. See Abrams. Under the DTPA, the Plaintiff must show that 1) The defendant failed to disclose information about goods or services 2) Known by the defendant at the time of the transaction and 3) Intended to induce the consumer to enter into a transaction and 4) Into which the consumer would not have entered had that information been disclosed. Abrams. A defendant cannot be liable for failing to disclose information about which the buyer has actual notice; such information could not be a producing cause of the buyer's loss. Abrams citing Ling v. Thompson.

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In *Abrams v. Chesapeake*, the Defendant, Chesapeake, argued that the statements in its catalogue could not have been a producing cause of Abrams damages because Abrams read the catalogue (which contained alleged false misrepresentations) after she signed the contract. The court opined that the unrebutted proof showed that the catalogue contained representations that substantially contributed to Abrams's decision to enroll in the college. Abrams, the Plaintiff, proved that the CBC's representations in its catalogue were false

and misleading and that she relied upon these representations in deciding not to cancel the agreement and instead to pay additional tuition. The court opined, with regard to the four-part test, that there was ample evidence that shows that CBC knew that its catalogue contained misrepresentations and that Abrams relied on those statements when she enrolled and paid tuition. The court specified that this was not a situation where statements were made without knowledge of their falsity or where information was withheld innocently.

Further, in *Gordon*, the court emphasized the "knowingly" aspect of a producing cause when they stated that actual awareness does not mean that a person, a Defendant, knows what he's doing. See *Gordon*. Rather, it means that a person knows that what he is doing is false, deceptive, or unfair. See *Gordon*. "The person must think at some point 'Yes, I know this is false, deceptive, or unfair, but I'm going to do it anyway'".

Here, we can successfully establish that Greg Stevens's email correspondence was a producing cause of Jasmine Hill's damage. As established in section 2 of this analysis, Jasmine Hill emphasized her concern about the age of the Envoy and her need for a boat that is not going to need repairs. This was not a face-to-face communication which required an immediate response or indication from Greg Stevens. Rather, Greg Stevens had time to review the email and make a decision on how he would respond to her concern. Greg Stevens decided to state that the Envoy is in excellent condition and runs just like new. While Greg Stevens may argue that Jasmine Hill knew that she was buying a used boat and assumed the risk of minor repairs, his comments provided exceptional faith in the functionality of the boat when he stated "excellent" condition. He likely knew that this comment would entice Jasmine to buy the boat. Further, on the boat bill of sale, it states that the Seller has "no knowledge of any defects in and to the Boat". Greg's comments and the assertion of the bill of sale would acknowledge that Greg not only knew that his comments would be a producing cause for Jasmine to buy the boat but also that Greg, on behalf of Reliant, knew that he had to sign an affirmation that he knew of no defects for which Jasmine likely further relied. Greg had several instances to ensure that he was not knowingly producing cause for Jasmine to buy the boat but disregard them anyway.

B. Whether the Plaintiff relied on the Defendant's conduct to his or her Detriment and the specific relief that Jasmine is entitled to through Damages.

The fourth requirement is whether the Plaintiff relied on the Defendant's conduct to her detriment. Pursuant to Section 205(a) A consumer may maintain an action against any person who engages in any one or more of the false, misleading, or deceptive acts or practices enumerated in Section 204 of this chapter if such act or practice is a producing cause of the consumer's damages and the consumer relied upon such act or practice to the consumer's detriment. 205(b) then states that "In a suit filed under this section, a consumer who prevails may obtain 1) The amount of economic damages found by the trier of fact; or 2) If the trier of fact finds that the conduct of the defendant was committed knowingly: i) exemplary damages of three times (treble) the amount of economic damages and ii) damages for mental anguish. Lastly, under 205(c) the DTPA states that "each consumer who prevails shall be awarded court costs and reasonable and necessary attorney's fees.

In *Abrams*, the court opined that to justify an award of treble damages and damages for mental anguish, the plaintiff must prove that the defendant's actions were taken "knowingly". The court in *Abrams*, establishing that the Defendant knew that its representations in the catalogue were false, was liable for damages and that mental anguish awards may include "severe disappointment".



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Here, we have sufficiently established above in section A, part 3 of the analysis that Jasmine Hill relied on the Defendant's conduct to her detriment. Therefore, with regard to damages in the amount paid by Jasmine Hill to have the mechanic remove the broken motor and install a refurbished motor in the amount of \$3,000.00. Further, additional damages for mental anguish can be established for "severe disappointment". The email correspondence establishes that Greg Stevens knew that Jasmine would be buying the boat to have plenty of room for her and her family. Jasmine intended to stay the weekend at Lake Franklin with the boat. The severe disappointment in not being able to use the boat properly can be of severe disappointment to Jasmine Hill under DTPA 205 due to her reliance on the Defendant's statements about the boat being in excellent condition.

In conclusion, there is sufficient evidence to prove that Greg's email correspondence and signature on the boat bill of sale were enough to indicate a knowing statement that was a producing cause in Jasmine buying the boat. Further, the mechanic invoice and interruption of Jasmine's boat trip with her family, which Greg Stevens knew that Jasmine would be using the boat with her family, is enough to satisfy element four that the Jasmine's reliance on Greg's comments were a detriment to her. She can obtain specific relief under DTPA for mental anguish, economic damages and the court costs and reasonable and necessary attorney's fees.

III. Conclusion -

Thank you for allowing me to complete the above analysis. If you need anything further, please do not hesitate to contact me.

**MPT 2**

**Representative Good Answer No. 2**

To: All Attorneys

Re: Happy Frock's Liability for Award of Profits

Date: February 21, 2023

I. Caption [omitted]

II. Statement of Facts [Omitted] III. Legal Argument

(1)Happy Frocks was an innocent trademark violator because they did not know that Quality Clothes was not using trademarked buttons, and therefore this weighs heavy against an award of profits for B&B.

The holding in Romang Fasteners v. Fossil Group Inc. makes it clear that the innocence of the infringing party is a very important factor to consider when determining if an award of profits is proper in an infringement action. They state "without question, a defendant's state of mind may have a bearing on what relief a plaintiff should receive." Other courts also have gone further to bar relief if a plaintiff cannot show that the defendant's infringement was willful. While the holding of the other courts is not mandatory, and the Supreme Court also weighs other factors, it was still persuasive to the Supreme Court's holding that the defendant's state of mind is a highly important consideration.

In the District Court's holding in Spindrift Automotive Accessories, Inc. v. Holt Enterprises, Ltd., which is a mandatory holding, the District Court also discuss the willfulness state of mind factor in an infringement action. While the District Court held that willfulness need not be found to justify an award of profits, they still found that the Defendant's state of mind is a factor that weighs heavily in their analysis of whether to award Profits, and that a culpable defendant is more likely to be subjected to an award of profits. In Spindrift, the Court found

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that the defendant knowingly and deliberately sold infringed parts. Even your Honor acknowledged in the Post-Trial hearing that Happy Frocks did not imitate the infringement.

That is not the case for Happy Frocks. Though liability has already been determined against Happy Frocks, it is clear that they did not willingly infringe upon B&B products. The Direct Examination of Samuel Harris shows that Happy Frocks played no part in the infringement and did not learn about the infringement until B&B notified them. The action to use cheaper buttons was completely done by Quality Clothing, and Happy Frocks did not authorize it. This is further shown because upon learning of the infringement, Happy Frocks completely cut ties with Quality Clothing. Further, Happy Frocks learned that they also were being harmed by Quality Clothing because Quality Clothing was still charging them the full value of the original high-quality buttons, despite the fact that they had started using cheaper buttons. Even further, Happy Frocks had a quality control system in place just for instances like this, and despite the fact that the use of cheaper buttons eluded the quality control's analysis, there is no evidence that this elusion was willful, and it instead can be contributed to the high demand for their products.

Therefore, Happy Frocks did not purposely infringe on B&B's product, and quickly stopped infringing upon learning of the actions taken by Quality Clothes. Therefore, this factor weighs heavily against an award of profits.

(2) There is insufficient evidence that B&B suffered a great loss of profits due to Quality Clothes choice to infringe on their bottom design, or that Happy Frock's profits increased due to Quality Clothes' infringement.

Another important factor that the Court in Spindrift weighed was whether there was a connection between the infringer's profits and the infringement. They weighed both the increase in the infringer's profits, and the decrease in the damaged party's profits.

As discussed above, there was no increased profits for Happy Farms due to the Happy Frock's use of the cheaper buttons. The actual source of the infringement, Quality Clothes, continued to charge Happy Frock the same rate for the cheaper buttons that they did for the proper buttons. They did not see any increased profits due to the infringement, and any increased profits can be attributed to the increase in demand, rather than the buttons. Also, it is important to note that this increase in demand came forth during the year when Happy Frocks was using the cheaper buttons, but there is no indication that this also led to an increase in profits because they were still paying the same manufacturing costs.

This is further shown by the expert testimony of Tiffany Chen, which shows that the quality of the buttons is not an important factor considered by consumers when choosing clothing. Only 3% of consumers even consider the logo on the button when purchasing the clothing.

Further, there is no indication that B&B suffered great loss due to the lower quality buttons. They had a 9-year relationship with Happy Frocks, and Happy Frocks continued to use their high-quality buttons in clothing made by their other 3 manufacturers. B&B did not even notice the use of cheaper buttons due to a loss of profits, rather they learned through actual examination of the clothing with cheaper buttons. Further, there was no decline in B&B's over the time of the infringement or that any customers chose to stop buying B&B because of the cheaper buttons, despite B&B's CEO's belief that customers could tell the difference during his cross-examination.

Therefore, since Happy Frocks did not receive increased profits during the infringement, and B&B did not see decreased profits, this factor also weighs heavily against the award of profits for B&B.

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(3) B&B waited 9 months until an opportune time to bring an infringement claim rather than bringing the claim when they first learned of the infringement.

Another factor the Court considered in Spindrift is whether the defendant has equitable defenses. They held that if there were to be an unreasonable delay in pursuing legal remedy, it would weigh against the award of profits. In Spindrift, as soon as learning of the sale of the infringing parts, it took action to stop the sale.

In this case, it is true that B&B sent a cease-and-desist letter immediately upon learning of the infringement. Upon receiving this letter, Happy Frocks launched their investigation, and after completing their investigation, they promptly cut their relationship with Quality Clothing. However, it is noted that B&B did not choose to bring actual legal action until a time where it was more opportune for them, right before the Black Friday holiday. They had all the evidence available to show Happy Frocks about the infringement, but instead made Happy Frocks conduct their own investigation, and waited a full 9 months before actually taking action. This unreasonable delay stood to harm Happy Frock because it would not give them time to correct the unknown error until after the most profitable sale of the year.

Therefore, B&B's unreasonable delay in enforcing their action weighs against the award of profits.

(4) B&B can be made whole by other remedies other than receiving profits from Happy Frocks.

The District court weighs whether the trademark owner can be made whole by other available remedies. If so, there would be no basis for an award of profits.

In this case, B&B has gotten their injustice relief that they requested. In B&B CEO's testimony, he indicated that B&B wanted Happy Frocks to stop producing the product. Happy Frock has stopped production of the infringing buttons and did so promptly. Happy Frock continues to use B&B as their button supplier but eliminated the infringing manufacturer.

Since B&B got full relief by Happy Frocks ending their relationship with Quality Clothes, this factor is very persuasive for the denial of awarding profits. The injunction by itself was adequate, especially because there was no increase in Happy Frock's profits or decrease in B&B profits.

(5) There is no public interest justifying an award of profits for B&B because there was no potential harm to consumers by Quality Clothes choosing to produce cheaper buttons without Happy Frock's knowledge.

Lastly, the Court weighs whether there is any risk to the public, such as safety concerns due to the infringement.

B&B CEO admitted that there was nothing patently dangerous or wrong with the cheaper buttons. There was no danger to the public, and the production of the cheaper buttons was promptly shut down by Happy Frocks after learning of the problem. Therefore, there is no public interest justification for the award of profits.

Given that all the factors considered in Spindrift weigh in favor of Happy Frock and against the awarding of profits to B&B, we ask your Honor to not grant profits as damages to B&B, the injunctive relief that has already occurred is enough.

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**Representative Good Answer No. 2**

BRIEF

I. Caption

[omitted]

II. Statement of Facts

[omitted]

III. Legal Argument

A. Because all five factors considered by the court in *Spindrift and Romag* point against, Happy Frocks Inc. is not liable for an award of profits.

An award of profits is justified by three rationales: (1) to deter the wrongdoer from doing so again, (2) to prevent the defendant's unjust enrichment, and (3) to compensate the plaintiff for harms caused by the infringement. *Spindrift Automotive Accessories, Inc. v. Holt Enterprises, Ltd.* In determining whether to award an infringer's profits as part of a recovery, the court must balance a number of factors, including: (1) the infringer's mental state, (2) the connection between the infringer's profits and the infringement, (3) the adequacy of other remedies, (4) equitable defenses, and (5) the public interest. *Id.*

1. Because Happy Frocks Inc. exhibited, at most, mere negligence in its lack of quality control measures and immediately ceased production after finding evidence of trademark infringement, its trademark infringement does not likely justify an award of profits.

In *Romag Fasteners, Inc. v. Fossil Group, Inc.*, the Supreme Court determined that the infringer's mental state is a highly important consideration in determining whether an award of profits is appropriate, but it is only one factor in the overall consideration. In analyzing the infringer's mental state, the court should look at factors such as willingness and recklessness as arguing for an award of profits. *Spindrift*. However, "mere negligence [. . .] would argue against an award of profits." *Spindrift*. In *Spindrift*, the defendant knowingly and deliberately sold automotive parts not made by *Spindrift* but containing its trademark and continued to do so even after notification. In contrast, here defendant did not originally know of the trademark infringement and immediately ceased upon corroborating plaintiff's claims after an internal investigation (despite B&B never being made aware of this fact). While plaintiff could argue that defendant did not adhere to its own quality control measures because it failed to notice the infringement until after four deliveries, at most it could be argued that defendant was negligent in maintaining its quality control.

Therefore, because Happy Frocks Inc. exhibited, at most, mere negligence in its lack of quality control measures and immediately ceased production after finding evidence of trademark infringement, its trademark infringement does not likely justify an award of profits.

2. Because B&B Inc. was minimally harmed (if at all) by lost or diverted sales due to Happy Frocks Inc.'s trademark infringement, there was a minimal connection between Happy Frocks's profits and the infringement, and such a minimal connection would not justify an award of profits.

In cases in which trademark owners are harmed by lost or diverted sales due to the infringement, such as in *Spindrift*, it can be argued that profits should be awarded. However, this case is in contrast to *Spindrift* because as explained quantitatively by an expert during direct examination, an expert survey determined that the use of B&B's logo on Happy Frocks's buttons played a minimal role in consumers choosing to purchase

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Happy Frocks's products. Direct Examination of Chen. In said survey, only 3% of consumers noticed the B&B logo specifically and thought it contributed to the desirability of the clothes. Id. More generally, less than 1% of clothing consumers said that the appearance of a brand name on a button was the only reason for purchasing a particular item of clothing over another. While this particular survey was not conducted on consumers of the Happy Frocks closing, it is still a notable statistic. Id. Therefore, Happy Frocks's profits likely did not flow directly from the infringement. It is more likely that consumers would have purchased the Happy Frocks clothing regardless of the type of buttons used entirely, never mind the use of B&B's trademark. Additionally, it must be noted that B&B does not sell clothes with its buttons on its own, it only sells the buttons. Therefore, while B&B lost sales to Happy Frocks, it was not in direct competition with Happy Frocks in the sale of clothing (with use of the B&B trademark) and did not lose sales to consumers due to Happy Frocks's infringement. In fact, by B&B's own admittance, overall sales increased during the period the trademark infringement was occurring. Cross-Examination of Garcia.

Therefore, Because B&B Inc. was minimally harmed (if at all) by lost or diverted sales due to Happy Frocks's trademark infringement, there was a minimal connection between Happy Frocks's profits, and the infringement and such a minimal connection would not justify an award of profits.

3. Because only 3% of Happy Frocks consumers notice the B&B logo on Happy Frocks clothing and use that as a factor in their purchase, consumers are not likely to lose confidence in the B&B buttons and it is likely that B&B will be made whole by other available remedies and will not require an award of profits to be adequately remedied.

Like in Sprindrift, the consumers who purchased Happy Frocks clothing with fake B&B buttons likely will not lose confidence in B&B products due to the infringement. By the expert testimony discussed previously, surveys have found that consumers likely do not even pay attention to the buttons of a particular garment before purchasing it. Instead, only 3% of respondents said they noticed the B&B logo on Happy Frocks clothing and thought it added to the desirability of the clothing. Direct Examination of Chen.

Therefore, consumers purchasing Happy Frocks clothing likely do not take into account the B&B logo on the clothing buttons, consumers would not lose confidence in B&B products because of the trademark infringement, and B&B would receive adequate remedies by other available means not including an award of profits.

4. Because B&B purposely waited months to begin action against Happy Frocks for its trademark infringement so that it would coincide with Black Friday sales, it is likely that Happy Frocks has an equitable defense against B&B in the form of an unreasonable delay in pursuing a legal remedy and, therefore, an award of profits is not justified as it pertains to this factor.

Unlike in Sprindrift, in which plaintiff immediately took action against defendant, by its own admittance, B&B waited months after its initial discovery of Happy Frocks's trademark infringement to take action against Happy Frocks. Because B&B's action coincided with Black Friday sales, there is evidence to suggest that not only did B&B wait to take action, but it also did so purposely to affect Happy Frocks's sales during the holiday season. Additionally, B&B's delay in beginning action against Happy Frocks could even be argued as an acquiescence by B&B to the infringement because B&B (to its own knowledge because it did not know Happy Frocks had already made the order to cease) allowed the trademark infringement to continue for a significant period of time before making a complaint.

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Therefore, Happy Frocks likely has an equitable defense against B&B because B&B pursued an unreasonable delay in pursuing a legal remedy and, in some ways, acquiescence in the infringement due to its delay.

5. Because the fake buttons used by Happy Frocks did not contain any materials that would harm public safety and awarding profits would likely not deter other infringements in any way, there is likely no public interest that would be served by awarding profits here.

In this case, a Happy Frocks manufacturer used counterfeit buttons made with cheap plastic and infringed on the B&B trademark by using it on buttons that were not made by B&B. While the quality of materials used by the manufacturer is not up to standard for B&B buttons, no evidence in the record suggests that the plastic used would be harmful to the public in any way. Similarly, an award of profits would likely not deter other infringements any more than the other available remedies to B&B would.

Therefore, because the fake buttons used by Happy Frocks would likely not harm the public and awarding profits would likely not deter other infringements in an additional way, there is likely no public interest that would be served by awarding profits here.

#### Conclusion

Therefore, all five factors considered by the court in deciding if profits should be awarded, balanced together, determine that the court should not award profits to B&B in this case.

[While it was not meant to be discussed in this brief, both Happy Frocks and B&B likely have claims against the malfeasant manufacturer in this case, but that is another discussion entirely.]

### MEE 1

#### **Representative Good Answer No. 1**

1. The issue is whether Joan's will is valid under the insane-delusion rule.

Under the insane-delusion rule, a testator's will may be invalidated by a court if it is determined that the testator, at the time of the will's execution, was debilitated by a mental disease which significantly affected their ability to reason, or if the testator was suffering from a delusion that affected their capacity to determine reality from fiction.

Applied here, it is clear that Joan suffered from a delusion as a side effect from the drug she was taking that made her believe her male descendants were cursed by Martians. However, weighing all factors in the fact pattern, a court is unlikely to find that this delusion had such an effect on Joan as to invalidate her will. Her male descendants were all criminals with extensive criminal histories. It does not matter that Joan thinks they were cursed by Martians; they son and grandsons are in fact criminals. When Joan told her lawyer she wanted to leave out her male descendants, she made no mention of the Martian theory and instead gave a valid reason to exclude them; their criminal histories. Further, Joan lied to her friends about her assets but that does not rise to the level of incapacity; people lie to impress their friends all the time. The facts are clear that Joan monitored her bank account, her only asset, closely and reconciled all of her bank activity every month. Finally, Joan was not insane; her delusion was brought on by the medication, which she could have stopped at any time, and it apparently had no other ill effects on her life.

When all factors are taken into account, the insane-delusion rule does not invalidate Joan's will.

2. The issue is whether the facts provide a basis for Joan's will to be invalidated due to a lack of mental capacity.

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Under the Uniform Probate Code, a testator is deemed to have capacity if they understand they are signing a will, they understand the extent and nature of their estate, they know their natural family members, and they understand the dispositions they are making in their will. Another widely accepted requirement is the testator being 18 years or older.

Applied here, it is unlikely that a court would deem Joan to lack testamentary capacity. She clearly understood she was signing a will as she went to her attorney to have a will drafted; the facts indicate she did this under her own volition. Joan clearly understands the extent of her estate; she only had one asset, the bank account, and she checked it regularly and reconciled it every month. Joan certainly seems to know the extent of her natural bounty as she specifically excluded her male descendants from the will and left everything to her daughter. Finally, Joan was clearly 18 and understood the dispositions she made in her will as, again, she specifically excluded her male descendants because of their criminal history.

Because Joan meets all the requirements of testamentary capacity, she had capacity to sign the will.

3. The issue is who has standing to challenge the validity of Joan's will.

As a general rule, only beneficiaries have standing to receive under a will. Normally, the beneficiaries of a will are the lineal descendants of the testator, but this is not always the case. A beneficiary who might otherwise receive an estate distribution under a previous testamentary document or under intestacy laws has standing to contest the validity of the will, but the burden is always on the challenger. Remainder beneficiaries, those who stand "next in line" to inherit do not have standing if their beneficiary interest has not vested. Absent very few exceptions, a validly executed will by a testator with capacity will not be invalidated.

Applied here, only Joan's son would have capacity to challenge the will. Joan's daughter has no reason to contest the will as she is the sole beneficiary, and her granddaughter does not have standing to contest the will as she is still currently a remainder beneficiary behind her mother. The grandsons also do not yet have standing as they are remainder beneficiaries behind their father. The father is the only one who could contest the will currently. Although his mother has specifically, and validly, excluded him from the will, he has standing to challenge the validity of Joan's will as otherwise he would inherit half of Joan's estate under the intestacy laws of most states.

For the foregoing reasons, only Joan's son currently has standing to contest the validity of Joan's will.

**Representative Good Answer No. 2**

1. Under the insane-delusion rule, the testator must be delusional at the time of creating the will, that a person reasonably would not have created such a will had she not have such delusion.

Joan started taking the medication 3 years ago, she was consistently taking the pills since it was the only medication available to control her medical condition. Her will was executed one year ago, while she is still taking the medication. Facts are clear that Joan had difficulties with the drug and began to experience frequent hallucinations leading to the delusion that the male line of their family was "cursed by Martians." When later she went to her lawyer to draft her will, however, she told the lawyer that she wanted to leave all her property to her daughter and nothing to her male line, not because the male line was "cursed" but because giving her property to the male line would be "a complete waste on burglars and thieves." It is true that her three grandsons had extensive criminal records for theft and burglary. Look at these facts together, Joan shows clear intention to leave her property not to the males of her family for a legit reason, which did not show that she made her decision due to her hallucination. However, since Joan was not close to her kids and grandkids, and it is unclear whether Joan knows that her son and grandsons have the said criminal records, Joan's statement to her lawyer about "complete waste on burglars and thieves" could come from her delusion, which may affect

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her decision on whom to leave all her property to. But the facts overall lean towards that Joan was not delusional at the time creating the will as she was able to provide a good reason for not leaving anything to the males in her line. Thus, Joan's will is likely valid under the insane- delusion rule.

2. A testator need to have capacity in order to create a valid will, that she understands the nature of the will (understanding that she is creating a will that will dispose her property when she dies); she knows the nature, quality, and extent of her property; the persons who are natural objects of her bounty; her plan, i.e., how she is going to dispose her property to each person.

Here, Joan went to her attorney to draft her will. With an attorney, it is more likely that Joan, even if initially not understand much about will, will be advised as to the nature of a will, what is a will and what does it do. So, Joan likely understands the nature of her will especially with the help from her attorney.

Although Joan is not close to her kids or grandkids and rarely saw them, she did regularly send them birthday cards and inexpensive presents. Nothing in the facts suggests that Joan does not know who the natural objects of her bounty are. Thus, this element is satisfied.

Also, the fact is clear that Joan is leaving all her estate to her daughter because leaving anything to her male descendants would be a wasted. Joan thus knows how she was distributing her assets/property.

However, Joan does not look like she knows the nature, quality, and extent of her property. For the last five years, consistently, she said she was a multimillionaire and owed luxury home and a very expensive car but in fact she never owned such properties. She lived in a modest apartment, and her primary source of income was her social security benefits. When die died, she owned no significant assets other than her bank account. Therefore, Joan has no idea of what she owns, and this element under capacity is not met. Joan thus lacks general capacity to execute a will.

3. All Joan's son and grandsons, and her granddaughter would have standing to contest Joan's will. They could claim that Joan lacks the general capacity to create the will, that Joan could not have the intent to create the will without understanding her assets and property. If the son and grandsons can produce evidence that Joan in fact had no knowledge of their criminal records, they could try to prove that Joan was delusional at the time of executing the will since her statement to her attorney about "complete waste on burglars and thieves" would not make sense and Joan was more likely to be delusional thinking that the kids were cursed.

**MEE 2**

**Representative Good Answer No. 1**

1. The issue is whether the officers' entry into the house would result in the exclusion of evidence because the search violated the 4th amendment right to privacy.

Under the 4th amendment, police officers must have a warrant to search areas where an individual has a reasonable expectation of privacy. An individual in their own home has an expectation of privacy, but there are certain circumstances where the police may still seize what is within the home. A visitor to a home who is not an overnight guest and in a space where an overnight guest would expect privacy, is not subject to privacy in another individual's home.

To effectuate a warrant, the warrant must be valid. Valid warrants may specify that a no-knock entry is authorized if there is knocking and announcing would not be reasonable. A knock and announce warrant may



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not be reasonable if there is an exigent circumstance, or it would leave the individuals inside the home with enough time to destroy the evidence or get rid of it. However, if the warrant does not specify that it is not a knock and announce warrant, a warrant will not become invalid for failure to knock and announce.

Here, the homeowner has a reasonable expectation of privacy within his home. Since the homeowner has a reasonable expectation of privacy within his home, the police may only look for items specified in the warrant, which would be the counterfeit \$100 bills. To violate one's expectation of privacy in their own home outside of the item(s) identified in the warrant with particularity, police may only seize items that meet the exception of the warrant requirement. For example, there must be an exigent circumstance, consent, plain view or smell, an emergency, or a stop and frisk. Provided that one of the exceptions is met, the homeowner can suppress evidence seized.

Driver did not have a reasonable expectation of privacy in the home because Driver was not a resident of the home or an overnight guest. Driver was at the home only to deliver the pizza and stepped inside of the house only because the homeowner allowed driver to, while homeowner retrieved his wallet. Since driver did not have a reasonable expectation of privacy in the home, the officers' entry into the house should not result in the exclusion of evidence seized from driver for this reason.

The fact that the police officers did not knock and announce their entry into the home will not make the warrant invalid and automatically result in the exclusion of evidence unless the officers violated a constitutional right in the home while searching for evidence. therefore, the entry likely will not result in the exclusion of evidence.

2.

a. The issue is whether the marijuana from the driver will be excluded from evidence despite the stop and frisk.

An officer may stop and frisk an individual if the officer has reasonable, articulable suspicion that the individual is carrying a weapon and may use that weapon to harm officers or anyone else in the vicinity. When the officer is patting down an individual, the officer must be able to identify the item in the pocket, particularly as a weapon, before the officer can retrieve the item.

Officer was permitted to stop and frisk driver because Officer reasonably believed that Driver had a handgun. Officer saw what was believed to be a gun in the back pocket of drivers pants and was concerned for her safety if Driver had access to a handgun. In patting down Driver, officer could not determine what was in Driver's pocket. "[T]he officer discovered that the lump was not a weapon but a soft object. She could not determine what the object was by patting the outside of Driver's pants." Since the officer was able to determine that Driver was not carrying a gun and could not reasonably identify what was in Driver's pockets, the marijuana (item in driver's pocket) should be suppressed due to an illegal seizure.

b. The issue is whether the seizure of computer from Homeowner should be suppressed if the serial number was in plain view.

If an item is out in plain view, or in the public, there is no reasonable expectation of privacy. Since there is no reasonable expectation of privacy for items in plain view, if it is incriminating, officers may seize it.

While officers were in homeowner's home to search for counterfeit bills, Officer saw a computer out in the open on desktop computer. On that computer, the Officer was able to see the serial number on top of the computer. After searching through a law-enforcement app, the officer discovered that the computer was stolen

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equipment. Since the computer, and more importantly the serial number were out in the open on Homeowner's kitchen counter, homeowner did not have a reasonable expectation of privacy under the plain view exception. Since the plain view exception applies, officer's seizure of the computer from homeowner should not be suppressed.

c. The issue is whether the seizure of narcotics from Homeowner should be suppressed since no exception to the warrant requirement applies.

For officers to seize items not identified in a warrant, an exception to the warrant requirement must apply. If an exception to the warrant requirement does not apply and an officer would not have otherwise discovered the incriminating evidence under the attenuation doctrine, then the item should be suppressed.

The narcotics in homeowner's house should be suppressed because officer's went to homeowner's home to effectuate a warrant for counterfeit \$100 bills. The narcotics recovered were not identified in the warrant, as it is not \$100 bills, and no warrant exception applies. Although the pills were in plain view, the plain view exception does not apply because the officers could not reasonably identify what the pills were. The pills were sent to a lab to determine what they were. Because officers would not have otherwise recovered the pills under the attenuation doctrine and there is no exception to the warrant requirement, the narcotics should be suppressed.

**Representative Good Answer No. 2**

No knock entry should not exclude evidence.

When executing a search warrant, officers must knock and identify themselves unless the warrant explicitly states that it is not required. However, failure to knock does not make the evidence obtained inadmissible. If the officers execute a warrant imperfectly or even if a warrant has error this does not necessary require the exclusion of the evidence obtained in the warrant. Any mistakes must rise to the violation of the fourth amendment in order to require exclusion of evidence obtained. In this case the officers executed an otherwise valid search warrant and so the evidence obtained should not be excluded based of the no knock entry.

Seizure of the marijuana should be excluded

An officer may conduct a pat down to search for weapons if the officer has reasonable suspicion that the suspect may be armed. Reasonable suspicion may arise from visual observation, suspect actions and location. Here in this case the Officer seen a "lump" in the drivers back pocket. Additionally, the officers were executing a lawful search warrant when the driver was present in the home. Taken as a whole the officer likely had reasonable suspicion to conduct a pat down of the driver. However, once the officer patted the "lump" the officer noticed it was a "soft object" and not a gun. Once it was determined the "lump" was not a firearm reasonable suspicion was disproved. However, the officer in this case preceded to reach in and grab the "lump" from the back pocket discovering that it was marijuana. The officer needed probable cause in order to search the driver, which the officer did not have as it was clear it was not a gun. The marijuana should be excluded.

The officer's seizure of the computer should not be excluded

Under the plain view doctrine an officer may seize evidence if 1) the evidence is openly in plain view, 2) the officer has a legal right to be in the location that he observed the evidence, 3) the illegality of the evidence is apparent. In this case the officer seen a serial number on the top of a computer on the kitchen counter. The officer was able to observe the serial number without having to open or move anything. The serial number was

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in "plain view". The officer was serving a valid search warrant of the home and thus had a legal right to be present in the position he observed the serial numbers. Although the illegality of the serial number was not readily apparent, the officer has a right to run numbers through the data base as this does not constitute a search or seizure. Once the numbers confirmed the laptop was stolen, the officer was in his rights to seize the laptop. The laptop should not be excluded.

The seizure of the narcotics should be excluded

Unlike the seizure of the lap top under the plain view doctrine, the narcotics seizure violated the fourth amendment. Unlike the laptop serial numbers that could be run through the database, the narcotics had to be seized to be tested. Under the plan view doctrine as described above the illegality of the evidence must be apparent. In this case the narcotics were in an unmarked medicine bottle, this is not illegal on its face. The illegality of the bottle was not known until it was tested outside the home. Additionally, the search warrant was for counterfeit bills and searching for narcotics specifically was outside the scope of warrant. As the plan view doctrine does not apply and the warrant did not authorize a search for narcotics, the narcotics should be excluded.

**MEE 3**

**Representative Good Answer No. 1**

Do the Federal Courts permit Woman to bring Insurance Company in as third-party defendant?

The federal rules of civil procedure allow for a defendant to bring in a third party if that third party has liability to the defendant or if the defendant claims that the third party must indemnify her. Compulsory party joinder is allowed when complete relief would not be possible if the missing party is not brought into the suit.

Here, the FRCP would allow woman to bring in the insurance company. It would be appropriate because if this is her insurance company, it would need to indemnify her if she is liable to the man. The insurance company may argue that it is not her insurance company because the contract has lapsed because she has not made payments. Since this is an issue of dispute, it would be appropriate for the woman to bring in the insurance company as a third party; or, in the alternative, as a compulsory party joinder. Here, if the issue of the insurance liability is not figured out, then that will materially change the amount that plaintiff man can recover. Because complete relief may not be possible to the plaintiff without the addition of the insurance company, it should be brought in.

Does State B have personal jurisdiction over Insurance despite its lack of contacts with  
State B?

The rule is that a forum court cannot have personal jurisdiction over a party if it is incompatible with Constitutional Due Process concerns. In order to meet the Due Process standard, personal jurisdiction exists if the party had certain minimum contacts in the forum state and if the party's presence adheres to traditional notions of fair play and justice.

Here, the insurance company has minimum contacts with State B because it is foreseeable that an insurance company would be subject to State B litigation. Although Insurance does not have formal business in State B and has no facilities in State B, its headquarters is in Big City, which is no more than ten miles away from State B. It is foreseeable that drivers from Big City in State A would

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go to State B, considering how close by it is located. Furthermore, there is specific jurisdiction over this claim as the actions that gave rise to the cause of action took place in State B. The accident happened in State B and thus the events that gave rise to the cause of action occurred in State B. Finally, there are no justice issues here - it is not unduly burdensome for defendant to go to State B court and State B is an appropriate jurisdiction for relief for the plaintiff.

What actions can district court take to allow woman to immediately appeal? Should it?

The general rule described as the Final Judgement Rule states that a case is not appealable until a final judgment has been ordered. However, there are some exceptions to that rule. One exception is that if there is one claim in the action or one issue that the court rules upon and states in its findings that there is no reason to delay the appeal, then that particular issue can be appealed. The Interlocutory Appeals Act also allows an appellate court to choose to take up an issue if there is ambiguity concerning the disposition and that the appellate ruling would provide certainty to a material issue that could be dispositive of the whole case.

Here, the court should at the very least make a finding that there is no reason to delay on the issue of whether the insurance company is liable to her or if the insurance has lapsed. Under the Interlocutory Appeals Act, the insurance company issue should also be reviewed by the Appellate court because if the insurance company cannot be brought in to indemnify, then that is a material issue that will likely affect the outcome of the case; in particular, it will probably reduce the damages claim significantly if the woman cannot pay a high amount to the man on her own.

**Representative Good Answer No. 2**

Question 1:

The issue is whether the Federal Rules of Civil Procedure (FRCP) allow the woman to implead the insurance company as a third-party defendant.

The FRCP allow a defendant to “implead,” or bring into the suit, a “third-party defendant” who may be liable to the original defendant, in this context referred to as the “third-party plaintiff,” for some (contribution) or all (indemnity) of any judgment rendered against the third-party plaintiff in her capacity as the original defendant. A court will allow impleader if the third-party defendant is an indispensable party, meaning that, without the third-party defendant’s participation in the suit, the parties to the lawsuit may be permanently deprived of substantive rights, such as the ability to recover for any damages owed to them, or the litigation will be incapable of full resolution. If a party is not indispensable to the litigation, the court has discretion to either grant or deny impleader.

Here, the court properly found that the insurance company was not indispensable to the litigation. Without the company’s participation, the man could nevertheless be awarded the damages he seeks, and the woman will not in any way suffer prejudice to her efforts to defend the suit. The woman could file a separate action against the company for indemnity or contribution if the man prevails. Since the company is not indispensable, the court may but is not required to allow for impleader of the company.

Therefore, while the judge permissibly chose not to permit impleader, the FRCP nevertheless gave the court the discretion to permit the woman to implead the company as a third-party defendant.

Question 2:

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The issue is whether, in the absence of minimum contacts, properly serving process on a corporate defendant is a valid basis for personal jurisdiction, even where the defendant is domiciled out-of-state in a location 10 miles from the location of the forum state's courthouse.

Under the FRCP, a federal court can exercise jurisdiction over a defendant who lacks minimum contacts with the forum state if the defendant is properly served with process, including by personal service, in another state in a location that is within 100 miles of the forum state's courthouse.

Service of process is properly effected on a corporation when a president or officer of the corporation is personally served with the complaint and summons at his place of business no more than 90 days after the lawsuit is filed.

Here, the corporation was located in Big City, State A, which is 10 miles, i.e., less than 100 miles, from the district court for the District of State B, located in Small Town, State B. The complaint and summons were personally served on the president ten days after suit was filed, i.e., fewer than 90 days after suit was filed.

Therefore, the court has personal jurisdiction over the company despite its lack of contacts with State B.

Question 3:

The issue is whether the woman is entitled to an interlocutory appeal.

Under the final judgment rule, under all but the most exceptional of circumstances a party cannot appeal a federal trial court's decision on a particular issue in a case until the entire litigation has concluded. Appeals filed before the entire litigation has been resolved are known as interlocutory appeals.

There are two noteworthy exceptions to the final judgment rule. First, an interlocutory appeal is proper when a court disposes of an issue and notes on the record that there is "no just reason for delay." Second, under the collateral order doctrine, a decision can be immediately appealed if failure to grant an immediate appeal would permanently deprive the parties of substantive rights or effectively strip an interested party of its ability to vindicate its rights on appeal.

Neither exception applies here. The court did not make a "no just reason for delay" finding on the record. In addition, failure to allow for immediate appeal would not deprive anyone of the ability to vindicate its rights on appeal or otherwise. The woman could appeal the decision once the litigation between her and the man is disposed of. The dispute between her and the insurance company will not even exist unless the woman loses the suit the man filed against her. If the woman does lose the suit, she can nevertheless sue the company for indemnity or contribution in a separate suit.

Therefore, the district court should not allow the woman to immediately appeal the dismissal of her third-party complaint against the insurance company.

**MEE 4**

**Representative Good Answer No. 1**

A security interest is created when a creditor loans money to a person, or permits a sale on credit, and retains an interest some form of collateral to ensure the repayment of the debt. The security interest becomes effective upon attachment. Attachment requires: (1) a security agreement; (2) the creditor gives value; and (3) the debtor has interest in the collateral. A valid security agreement must: (1) sufficiently describe the collateral; (2) show and intent to create a security interest; and (3) be signed by debtor. The description of the collateral will be sufficient if it specifically identifies the collateral or uses that type of collateral's Article 2 category. When the collateral is goods it tangible property then it is classified based on how it is used. To perfect a security

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interest the creditor must follow the appropriate method of perfecting their security interest in the type of collateral. The proper method of perfection depends on the type of collateral.

I. State X furniture store has an enforceable, but unperfected, security interest in lawyers office couch in State X.

The issue is whether the State X furniture store properly perfected their security interest. As discussed above a security interest is created upon attachment. Here, the lawyer signed the “Credit Sales Agreement” agreeing to grant a security interest in the couch, which is a security agreement. The creditor gave value by loaning the lawyer the money to purchase the couch. The debtor also has an interest in the couch. Thus, all three requirements for attachment are present creating an enforceable security interest.

Therefore, the furniture store has an enforceable security interest in the collateral.

As discussed above, the collateral’s category for tangible property is based on how the debtor uses it. Here, the lawyer bought the table for use in conjunction with his law practice. Equipment is the Article 2 collateral category for goods bought or sold for use in conjunction with a business. Thus, the couch is equipment. To perfect equipment a secured party must file a financing statement in the central filing office of the debtor’s home state. But, the State X furniture store did not file a financing statement. So, their security interest in enforceable, but it is unperfected.

II. State X furniture store has an enforceable and perfected security interest in lawyers home table in State X.

The issue is whether the State X furniture store properly perfected their security interest. As discussed above a security interest is created upon attachment. Here, the lawyer did sign a security agreement, and the debtor gave value (the funds to purchase the table), and the debtor has possessory rights in the collateral. Thus, all three requirements for attachment are present creating an enforceable security interest. Therefore, the furniture store has an enforceable security interest in the table.

As discussed above, the collateral’s category for tangible property is based on how the debtor uses it. Here, the lawyer bought the table for use in his home. Under Article 2, consumer goods are categorized as personal property if bought for personal, family, or household use. So, the table is a consumer good. A purchase money security interest (PMSI) arises when the creditor lends the debtor the money used to purchase the collateral. The furniture store lends the lawyer the money to buy the table, the collateral. A PMSI in consumer good is automatically perfected if the debtor takes possession within

20 days. Therefore, the furniture store has an enforceable and perfected security interest in the table.

III. The State Y Furniture store has an enforceable, but unperfected security interest in the desk.

The issue is whether the furniture store filed the financing statement in the proper location. As discussed above, the State Y’s security interest attached when the lawyer signed the security agreement, the store lent him the money to acquire the desk, and the debtor took possession of the collateral. The table is equipment because it was bought for use in the lawyers business. To perfect a security interest in equipment the creditor must file a financing statement in the central filing office of the debtor’s state. Here, however, the State Y furniture store filed the financing statement in State Y’s central office.

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However, the lawyer is a resident of state X. Thus, the financing statement was filing in the wrong place. Therefore, they have an enforceable, but unperfected interest in the desk.

**Representative Good Answer No. 2**

1. The State X furniture store has an enforceable but not perfected interest in the couch used by the lawyer in her office waiting room in State X.

For a security interest to be enforceable, it only needs to attach to the collateral. The party does not need to perfect - perfection only ensures that the creditor has priority over other competing security interests down the line (if the debtor defaults). Attachment requires (1) value-that the secured party give value for the interest, (2) that the debtor has rights in the collateral, and (3) that the parties execute an authenticated security agreement, which names the parties, describes the collateral in sufficient terms, and is authenticated by the debtor (usually by signature).

Perfection requires that one of the parties (usually the secured party, but it doesn't have to be) file a financing statement with the relevant central filing office in the state where the debtor is located. The financing statement needs to have both parties names, a description of the collateral (this can be much less descriptive than the security agreement), and the parties addresses.

In this case, the store has a Purchase Money Security Interest (PMSI) in the State X couch, and it is enforceable. There is value because the store gave the lawyer the couch in exchange for money and a secured interest, the debtor/lawyer has rights in the collateral in that she has possession, control, and ownership of the couch, and the lawyer signed a security agreement granting the store a security interest in the couch. The couch is sufficiently identified in the security agreement and the agreement is authenticated by the lawyer's signature. If the lawyer defaults on her payments, the store will be able to enforce the debt.

The store does not, however, have a perfected interest in the couch, because they did not file a financing statement with the relevant central filing office.

2. State X furniture store does have an enforceable and perfected security interest in the table, however. For the reasons stated above, the store has an enforceable interest in the table because the table was given for value, the lawyer has rights in the collateral/table, and she signed a valid and authenticated security agreement. The fact that the lawyer does not have title to the table until she finishes paying for it does not mean that this is not a secured transaction under Article 9. On its face, the transaction might look like a lease, but courts will interpret a transaction to be a secured transaction if it substantially conforms to the requirements of one, including in situations where the lease covers the entire economic life of the good, or where the debtor has the chance to purchase the good at the end of the lease for nominal or no additional consideration. Because the financing agreement allows title to transfer to the lawyer when she makes the last payment, it is likely to be interpreted as a secured transaction.

Because this will be interpreted as a secured transaction, it will also be interpreted as a Purchase Money Security Interest in a consumer good. A PMSI in consumer goods happen when the creditor lends money for the purchase of an item, the money is actually used to pay for that item, and the good itself is intended to be used for personal/home/family use. In this case, the store extended credit for the explicit purpose of the lawyer buying the table, the lawyer used that credit to actually buy the table, and the lawyer intends to use the table for her home. The table, then, is a PMSI in consumer goods. PMSI's in consumer goods automatically perfect on attachment of the interest, so the store has both an attached/enforceable interest in the table, and a perfected interest in the table.

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The store should, however, file a financing statement with respect to the table to avoid the “garage sale exception” to perfection. Where a consumer sells another consumer a consumer good with a PMSI, the buyer will take free of the security interest (even though it auto-perfected) if there is no financing statement filed.

3. State Y has an enforceable but not perfected interest in the desk bought in state Y. The security interest in the desk has attached for the above reasons (value, lawyer’s rights in the collateral, and an authenticated security agreement), and is therefore enforceable, but it is not perfected because the furniture store filed the financing statement in the wrong place. Financing statements need to be filed in the state in which the debtor lives - not where the collateral is located. This is because future creditors will search for security interests in the debtor’s name based on their place of domicile/residence. The lawyer’s periodic presence in State Y does not convert State Y to her principle residence, because she still lives and intends to live in State X for the most part. The furniture company should have filed in State X.

This mistake may be excused (and the collateral considered perfected) if the mistake is not material - meaning that if a creditor searches in State X they will still come across the interest in State Y. It is unlikely that a search in one state would bring up security interests located in an entirely different state, so it’s likely that State Y’s security interest is not perfected here.

**MEE5**

**Representative Good Answer No. 1**

1. The issue is whether Wendy acquired title by adverse possession to the Central Acre.

Adverse possession requires the possession to be actual, exclusive, continuous, open, and notorious, and hostile. Actual possession requires that the adverse possessor actually possess the land in dispute. Exclusive possession requires that the disputed area is not simultaneously used by the owner at the same time as the adverse possessor. Continuous possession means that the adverse possessor does not intermittently utilize the land; however, seasonal use that is consistent with typical land use is sufficient to prove continuousness. Open and notorious use requires that the adverse possessor not attempt to hide their use of the land, but rather any passerby would be able to reasonably see that the land is being used by someone. Hostile possession means that the adverse possessors are in opposition to the property interests of the landowner. Further, these elements must be occur for the statutorily prescribed amount of time for an adverse possession to take effect.

Here, the facts at trial established that Wendy did possess Central Acre in a manner that was actual, open, and notorious, continuous, exclusive, and hostile under claim of right. Since she took began this adverse possession by physically occupying the land in 2010, as of 2020, Wendy had sufficiently met the statutory requirements for adverse possession. At the time of the cause of action accruing, the person entitled to bring action was John, who was over the age of 18. This means that while Beth was not 18 in 2016, this was not the time in which the adverse possession had initiated, and Beth was 18 by the time the statutory period had been met.

Therefore, Wendy acquired title by adverse possession to the Central Acre.

2. The issue is whether Wendy acquired title to the Western Acre or Eastern Acre in the same year as Central Acre.



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As stated, adverse possession requires the possession to be actual, exclusive, continuous, open, and notorious, and hostile.

Here, Wendy did not actually possess either Western Acre or Eastern Acre in an open or notorious manner at any point throughout the adverse possession claim against Central Acre. While she was provided a quitclaim deed for all three acres, the facts at the trial established that it was colorable title and title itself is insufficient to show actual possession in an open and notorious manner.

Therefore, Wendy is not able to raise a claim of adverse possession for either Western Acre or Eastern Acre.

**Representative Good Answer No. 2**

The first issue to deal with here is determining whether or not there was an adverse possession of the central acre in 2020. Under the law of property adverse possession is a classic and historied doctrine. It requires that the possession is actual and exclusive, open, and notorious, continuous for the statutory period and hostile. As these elements were found to exist by the court, there is no merit in going through a detailed examination of each one. However, adverse possession may be blocked where the individual who is transferred titled is a minor or a mentally disabled person. Such disabilities will work to stop the clock on adverse possession until the removal of the legal impediment. However, this will only work where the infirmity existed prior to the adverse possession. In essence this means that an individual cannot simply stop the adverse possession period by seeking to transfer to a disabled or infirm or individual without capacity, simply to thwart the process, rather it must exist before. Further, While a quitclaim deed provides no guarantees as to the title of third-party individuals or the grantor and thus is a relatively unsafe deed, such a deed has no effect on passing color of title or on adverse possession. Of course, if someone with superior title comes along and seeks to take the property, then that quitclaim deed will fall flat, but where the possession is accomplished then there will be.

Here the statute clearly follows the above stated rules. While at first glance it may appear that the statute would allow John's daughter to take the property, it mirrors the rule by requiring that the infant take the property before the action/ the adverse possession starts. Here however, that possession started before title was ever given to the daughter and thus the increased time period of 5 years will not trigger. As a result, neither the quitclaim deed nor the daughter's possession will stop the accrual of time, it meets the time, meets the element and thus there is adverse possession, Wendy did so acquire.

Next we need to deal with the issue of whether, assuming adverse possession did occur, was the eastern and western also recovered at that time. Color of title is a document that on its face purports to provide title, but in fact does not. Such a situation can arise where someone else is in possession and an innocent buyer takes the deed either by mistake or fraud of the seller. Color of title is important because it has extreme implications for adverse possession. Normally, an individual will only adversely possess what they actually possess and use. In essence, normally, an individual will only take that part of the property they actually use. However, there is an exception to this where the adverse possessor enters the property and possess an adequate or acceptable portion of a unitary lot when they enter with the color of title. What this all means is that if a person in essence controls a part of the land that would lead an individual to look at that property and think that the house and the yard make sense in proportion to one another, then the individual will give notice of that ownership to the world, and they will adversely possess the whole. Finally, a unitary lot is one that is not split by a road, rather it is single, contiguous.

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Here Wendy did enter the property under color of title. THE QUITCLAIM DEED that she received and as judged by the court, achieved that status. Further, it appears that no roads or fences or any obstruction actually blocks off these acres from one another. As a result, the question then becomes if the actual possession of a third of the property will be enough to get us to that adequate percentage. Further that property was not possessed by either of the other parties, nor was it improved. Thus, to the outside it would seem to be one property. The court should find that the possession of one third of the property is sufficient to meet this percentage mark. As a result, Wendy did achieve adverse possession of the both the eastern and western parcel at the same time.

In the alternative. Wendy, even if she does not get the eastern parcel, may be able to claim that the western parcel is contiguous still and in that regard a percentage of 1/2 possession will be more than adequate. If the court decides to split it this way, the result will still allow for acquisition of the rest of the western even if alone.

**MEE 6**

**Representative Good Answer No. 1**

The first issue that needs to be tackled is that of the confession that was made during the withdrawn guilty plea. Certain statements are excluded because they are against public policy to admit those statements, either due to the fact that we would want to encourage candor in these situations or we want to allow for certain actions without fear of punishment from exercise of the right, statements made during guilty pleas are such a rule. Under the rules of evidence, statements made in connection with as well as the plea itself will be inadmissible where such are the subject of a withdrawn guilty plea. This exception will not apply to full guilty pleas that have been honored and these are generally admissible. As to the statements, where there is a withdrawn guilty plea, even statements that amount to admissions would not be allowed to come in.

Here, although the statements made by the defendant would be incredibly helpful to the case of the plaintiff and are jarring, these statements cannot come in because they were part of the withdrawn guilty plea, they were a part of that plea negotiation process. Here even though the defendant initially pleaded guilty, that will not matter, what matters is that at the end of the day, the plea was withdrawn.

Next, we must look at the statements that were made in the deposition testimony by the man indicating that the defendant had previously looked through the whole in order to spy on the man. Under the laws of evidence, generally similar occurrences, those that may involve the defendant, but at some other time event or condition are generally not admissible in the current case. There are exceptions to this rule of course. Generally, such evidence is closely akin to propensity and will generally show carelessness or lead to such a finding on the part of the jury. however, such evidence may be used in order to show a lack of accident or mistake or even knowledge.

In this case such evidence could attempt to come in for this purpose and it will not be considered to indicate a careless personality of the defendant. As such, these similar circumstances will likely come in.

Further. hearsay is a statement made by an out of court declarant being introduced for the truth of the matter asserted. A statement is any assertive statement, verbal, written or just conduct itself. A declarant must be a human being and cannot be machine generated or an animal. It is a statement made anywhere but the

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stand at the current trial or hearing, even another trial or hearing. And the truth of the matter asserted is the purpose of the statement where the proponent introduces the statement in order to prove the actual contents of that statement, they are introducing it to prove what the statement says. There are a number of common non-truth purposes, including in order to show legally operative words or acts, circumstantial evidence of state of mind or effect on the listener or reader. However, the most important thing is that statements that are hearsay are likely not to come in due to their lack of reliability. There are however exceptions to this rule. Some such exceptions will require that the declarant be unavailable, however.

To be unavailable, the laws of evidence state that the declarant must be either: Dead or incapacitated, they must be suffering from a lack of memory loss or knowledge, stubbornly refusing a court order, Under a privilege, or finally, are absent from the jurisdiction and will not come to court despite the reasonable and good faith efforts of the proponent.

Here the declarant meets the last of these exceptions, the man who was disposed is out of the jurisdiction and as a result, the plaintiff tried commendably to retrieve him and his testimony but failed to do so. As a result, the man is unavailable.

Under those exceptions to the rule against hearsay that require unavailability, the first of those exceptions is the former testimony exception. There, where a hearsay declarant is unavailable, former testimony where that was: (1) taken under oath at a former proceeding in this or different trial is admissible where, (a) The defendant had an opportunity and (b) Similar motive to develop the testimony through cross. For such an opportunity it must be the defendant who was the party in the prior case and for motive the issue or subject must be the same but not the ultimate issue or claim.

Here this is met easily. This statement was made by the declarant at a deposition. Such a statement is taken under oath. Further such a statement is given the opportunity to cross whether you decide to take it at the deposition or not. Here the issue was the same as well as both cases involved the perverse habit of the man to peer through the whole at his tenants. As a result, this statement will come in under the former testimony exception

Finally, we can consider the evidence that the plaintiff plagiarized their senior thesis. Impeachment is an attempt to discredit the witness on the stand. There are two kinds, impeachment by non-character grounds and impeachment on the grounds of a bad character for truthfulness. One of the latter grounds includes introducing evidence of bad acts indicative of that untruthfulness. Such evidence may only be introduced where the plaintiff takes the stand. Further such statement must be tailored towards those acts and not consider any consequences of those acts like arrests or being fired.

Here the statement does not include the consequences. These acts clearly show untruthfulness and dishonesty and are tailored to such. As a result, should the plaintiff take the stand, the defendant may introduce this evidence for the purpose of impeachment only and not as substantive evidence

**Representative Good Answer No. 2**

1. The issue is whether the admissions of the Defendant made in connection with the guilty plea that he later withdrew is inadmissible or not.

Statements made in connection to plea negotiations, including during a withdrawn guilty plea are inadmissible statements. The statements made by the defendant are not hearsay, they are made by a party opponent, but the statements in connection to plea negotiations are flatly not admissible in criminal or civil

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litigation. There are public policy reasons behind this rationale; namely that litigators and parties to litigation/prosecution should be able to freely work out and resolve cases to prevent unnecessary litigation/trials. The inadmissibility of plea negotiations/statements made during a withdrawn guilty plea are based around encouraging parties to freely be able to work out cases and propose potential outcomes without burdening or hampering parties with fear that their negotiations would later be used against them. Because of this public policy reason, the defendant's statements made in connection to the guilty plea are absolutely inadmissible and should be excluded.

2. The issue is whether the deposition testimony of the man constitutes bad- acts/propensity evidence.

The statements of the man who stated that the Defendant watched him under similar circumstances to those alleged by Plaintiff are hearsay statements- meaning that because the man (the declarant) is unavailable to come to court, the defendant seeks to exclude is out of court statements. Hearsay is generally prohibited unless it comes under a non-hearsay category or satisfies a hearsay exception. Rule 403 generally weighs in favor of admission of relevant evidence and balances admission with fairness to the parties. Here, the man was deposed in the presence of both the defense and the plaintiff. This means that the man was sworn under oath and was subject to cross examination. Because the man was under oath and subject to cross examination, his statements may come in as a non-hearsay category.

BUT- Prior bad acts may almost never come in as evidence of propensity to commit a crime. Prior bad acts may only come in to show absence of mistake, identity (modus operandi), motive, or common scheme. Here, the plaintiff can use the man's statements to show an absence of mistake and the identity of the defendant/modus operandi. If the circumstances of the man's situation and the defendant are in fact nearly identical to those described in the Plaintiff's complaint, then the plaintiff can use the man's testimony to show that this is not the first time that the Defendant has been peeking in through this hole in THIS closet that connects to THIS shower, that it is not a mistake as the Defendant initially claimed in his answer. Additionally, because intent is an essential element for invasion of privacy, the cause of action that the plaintiff is alleging, the court should refuse to exclude the man's testimony as well. When the character evidence is related to an essential element of the allegation, the bad character evidence may be permitted. Here, the man is testifying that the defendant had previously spied on him in the shower in nearly identical circumstances. The defendant, in his answer is claiming that he did not have the required specific intent. Therefore, the man's statements go directly to an essential element of invasion of privacy, that the defendant DID in fact have the specific intent to invade privacy. Therefore, because the statement of the man is non-hearsay and because the statement concerns MIMIC bad act evidence to show absence of a mistake, the man's statement can come in and the defendant's motion to exclude should be denied.

3. The issue is whether evidence that the Plaintiff plagiarized her senior thesis in college and lied about it on her graduate school application is admissible under character evidence as it pertains to truthfulness.

Generally, character evidence is almost always inadmissible to show propensity. However, the defense may elicit testimony about the victim's truthfulness. While normally character, and especially bad character evidence is inadmissible, truth-finding is the essential role of a trial and so, in a trial situation, a party of a case may elicit questions about a testifying party's truthfulness and candor. The judge should not exclude this evidence, but the judge should permit the plaintiff to provide an explanation on re-direct if they so choose.