CONNECTICUT BAR EXAMINATION

5 October 2020

PERFORMANCE TEST

From the Multistate Performance Test

FILE

Memorandum to examinee

Certified letter from Janet Klein

Traffic collision report

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Excerpts from Franklin Tort Claims Act

Rodriguez v. Town of Cottonwood, Franklin Court of Appeal (2018)

Farrington v. Valley County, Franklin Supreme Court (2015)

Beck v. City of Poplar, Franklin Supreme Court (2013)

FILE

Law Offices of Bunke & Huss 600 Center Street,
Suite 210 Franklin City,
Franklin 33113

MEMORANDUM

To: Examinee
From: George Bunke
Re: Janet Klein matter

Janet Klein met with me last week about a potential claim she has against the State of Franklin for the actions of Randall Small as a State employee, for injuries Ms. Klein suffered in a car accident at the Franklin State Fairgrounds on May 23, 2020, the Saturday of Memorial Day weekend. As you know, governmental entities and governmental employees typically cannot be sued because of sovereign (or governmental) immunity. In Franklin, the Franklin Tort Claims Act waives sovereign immunity in certain circumstances. The Franklin Tort Claims Act also provides specific notice requirements for bringing suit against a governmental entity. If the State did not receive notice within the required time frame, Ms. Klein cannot pursue a claim against the State or Mr. Small.

I would like you to prepare an objective memorandum to me analyzing two issues:

1. Is the State of Franklin protected from liability in this case by sovereign immunity?
2. Did the State of Franklin receive sufficient notice as required by the Franklin Tort Claims Act?

You should address both issues in your memorandum regardless of your conclusion as to each one. For each issue, be sure to explain your analysis, cite relevant legal authority, and state your conclusion. Do not include a separate statement of facts, but be sure to incorporate the relevant facts, analyze the applicable legal authorities, and explain how the facts and law affect your analysis.

Because Mr. Small is a State employee, the State of Franklin is vicariously liable for any negligence committed by Mr. Small in the scope of his employment. For purposes of your

memorandum, assume that Mr. Small was negligent and acting within the scope of his employment and that if the State is found to have waived its immunity, his negligence will be imputed to the State.

SENT BY CERTIFIED MAIL

August 30, 2020

Janet Klein
512 Lake Ave.
Franklin City, FR 33105

Risk Management Division
State of Franklin Office Building
448 Central Ave.
Franklin City, FR 33113

To Whom It May
Concern:

I am writing to give you official "notice" that I will be suing the State of Franklin for injuries I suffered in a three-car collision at the Franklin State Fairgrounds while exiting after the Hopps Rodeo. This tragic accident resulted from the State's negligence. My car was simultaneously hit by two other cars—one car rear-ended mine and the other hit my passenger-side rear door.

Because of the accident, I suffered a serious back injury and a broken wrist. My 2017 Toyota Corolla was damaged. I had to pay the $500 auto insurance deductible to have it repaired. I also missed three weeks of work due to my injuries. I am a physical therapist and could not provide full therapy services because of my back and broken wrist. I have not been able to engage in my usual activities—running errands, visiting with family, horseback riding, and participating in my kick-boxing classes—because of this incident. I have incurred $57,500 in expenses for my lost income, my medical expenses, and my auto insurance deductible. I demand to be compensated for these expenses and the pain that I suffered.

The Hopps Rodeo is the most well-attended event at the annual State Fair. This year it was on the Memorial Day weekend, making it especially popular. In fact, the rodeo was sold out! At the time of the accident, the fairgrounds had only ONE exit available. All the parking spots in the fairgrounds parking lot channeled onto a single dirt road that then funneled all the cars to this ONE exit. There should have been more lanes for traffic and more exits—especially for the rodeo.

The State should have known that an accident like this was going to happen. Randall Small, the parking supervisor who runs that parking lot, is a real dingbat. Small and his employees should have opened at least one other exit after the rodeo. I attend the Hopps Rodeo every year, and the traffic after the rodeo is always total chaos. It was only a matter of time before something like this happened. Shame on you. The State is supposed to protect its citizens.

I will be hiring a lawyer soon. See you in court.

Sincerely,

Janet Klein

cc: Randall Small, Director of Parking Facilities

STATE OF FRANKLIN TRAFFIC COLLISION REPORT

REPORT NO. 5729

CITY: Franklin City
LOCATION: Franklin State Fairgrounds, near the NashTel Arena

DATE AND TIME: May 23, 2020, 10:58 p.m.
OFFICER ID: Police Officer Chad Silversmith, Badge #45622

PARTY 1: Janet Klein, 512 Lake Ave., Franklin City, FR 33105, 2017 Toyota Corolla Injured? Yes, Ms. Klein complains of wrist pain

Property damage? Yes, to rear bumper, rear, and passenger side of car

PARTY 2: Roger Akin, 222 Holly St., Franklin City, FR 33113, 2010 Chevy Suburban Injured? No

Property damage? Yes, to front driver's-side bumper

PARTY 3: Sean Grant, 210 7th St., Apt. 5, Franklin City, FR 33145, 2019 MINI Cooper Injured? No

Property damage? Yes, to front bumper and hood of car

NOTES: I arrived approximately 10 minutes after the collision. Witnesses and parties to the collision reported the same facts. All three parties had been driving toward the fairgrounds exit. Party 1 was driving on the main gravel road toward the Lomas Boulevard exit. An unknown driver's vehicle pulled in front of Party 1's vehicle as Party 1 was approximately 100 feet from the exit. Party 1 braked quickly to avoid rear-ending the unknown driver's vehicle. Party 2, who had been turning from a parking spot onto the main gravel road, then collided with the passenger-side rear door of Party 1's vehicle. Party 3 simultaneously collided with Party 1's vehicle directly from behind. Party 3 was driving on the main road toward the exit, directly behind Party 1, when the accident occurred. The unknown driver immediately left the scene. Witnesses reported that none of the parties were driving at an unreasonable speed. When I arrived, Party 1 was yelling expletives at Party 2 and Party 3 and

gesticulating wildly. Party 1 then turned to me and yelled, “You need more than one exit here. Whoever runs this parking lot is an idiot. The State will pay for this!”

I certify under penalty of perjury under the laws of the State of Franklin that the foregoing is true.

Officer Chad Silversmith, Badge #45622 May 23, 2020

Law Offices of Bunke & Huss 600 Center Street,
Suite 210 Franklin City,
Franklin 33113

MEMORANDUM

To: George Bunke
From: Ernest Thomas, investigator
Date: September 28, 2020
Re: Janet Klein matter

Per your request, I have obtained more facts about the incident at the Franklin State Fairgrounds involving Janet Klein. I will continue my investigation, but this is the information I have obtained thus far. Please note the attached email correspondence with Randy Small, the State parking supervisor who manages the parking lots at the fairgrounds.

Parking Lots at the State Fairgrounds

I visited the fairgrounds yesterday at noon to inspect the scene of the collision. There are two parking lots at the fairgrounds. Lot A is adjacent to the area where the rides, booths, and tents are erected during the State Fair. The other parking lot, Lot B, is adjacent to the NashTel Arena, where concerts and events are held. The arena has 6,000 seats.

Lot B, where the accident occurred, is a 70,000-square-foot gravel parking lot. It accommodates 5,000 vehicles. There are two possible exits from Lot B:

—**Lomas Boulevard exit:** This is a paved exit and was the only exit open on May 23, 2020, the day of the accident.

—**Central Avenue exit:** This is also a paved exit. However, this exit is barricaded by galvanized steel barriers. While heavy and substantial, these barriers are not affixed to the ground and could be moved if desired.

There is one gravel roadway through the center of Lot B that leads to the Lomas Boulevard exit. This gravel roadway also leads, at its other end, to the Central Avenue exit, which could be

used by removing the barriers. To exit the parking lot, one must drive down this roadway to the Lomas Boulevard exit.

I visited the fairgrounds again last night. The NashTel Arena was hosting a country music concert, and I wanted to see if Lot B was being operated in the same manner as it had been during my daytime visit. Again there was only one exit available, the exit onto Lomas Boulevard. The exit onto Central Avenue was still barricaded.

State Parking Lot Employees

While I was there last night, I spoke to several State employees who work for the State's parking bureau at the fairgrounds and have worked during large events in the past. I first spoke to Edward "Ed" Cranston. Mr. Cranston reported that he was working in the parking lot on May 23, the night of the collision involving Janet Klein. He said he was nearby when the collision occurred, saw the collision, and remembers Janet Klein yelling. He reported that he was certain that only one exit was operational that night, and that it was the exit to Lomas Boulevard. He said that the exit to Central Avenue has been barricaded since he started working for the parking bureau two years ago. He went on to say that he has repeatedly told his supervisor, Randy Small, that the barricades should be moved so that the Central Avenue exit can be used.

I spoke to Emma Moore, who is also employed by the State parking bureau and who works as an attendant when there are big events at the NashTel Arena. Ms. Moore confirmed that the barrier blocking the exit to Central Avenue has been in place "for years." She said that she thinks that the accident was the result of her supervisor's (Randy Small's) negligent supervision of her team and the parking lot operations. She told me that numerous staff members have expressed safety concerns about having only one exit in Lot B and that she personally warned Mr. Small that this would cause an accident. Ms. Moore said that Mr. Small is a "terrible supervisor" and is "super lazy." She said that she has considered asking her coworkers to help her move the barricades blocking the Central Avenue exit, but that she knows she is not allowed to do so without her supervisor's permission.

State Ownership of the Property

I confirmed that NashTel Arena, the fairgrounds, and the surrounding parking lots are owned by the State of Franklin.

Attachment

Email correspondence between Ernest Thomas and Randy Small

To: Randall Small <randallsmall@parking.franklin.gov>
From: Ernest Thomas <ethomas@bunkehuss.com>
Date: September 27, 2020, 2:30 p.m.
Subject: Accident at Franklin State Fairgrounds

Dear Mr. Small,

I am an investigator with the Bunke & Huss law firm, which has been retained by Ms. Janet Klein. I am investigating a three-car collision that occurred in the Franklin State Fairgrounds parking lot after the Hopps Rodeo on May 23, 2020. The collision involved Ms. Janet Klein, Mr. Roger Akin, and Mr. Sean Grant. I would like to meet with you to discuss the incident. If a lawyer is representing you or the State in this matter, please inform them of my inquiry, pass this request along, and have them call me. Otherwise, let me know of your availability.

Sincerely yours,
Ernest Thomas

To: Ernest Thomas <ethomas@bunkehuss.com>
From: Randall Small <randallsmall@parking.franklin.gov>
Date: September 27, 2020, 4:15 p.m.
Subject: RE: Accident at Franklin State Fairgrounds

Mr. Thomas,

I received your email. I remember that accident and was there on-site when it happened. That lady Janet Klein was yelling at the police officer and threatening to sue the State. I received a copy of the State of Franklin Traffic Collision Report the week after the incident. Therefore, I am unwilling to meet with you unless I have a lawyer present. I operate a safe parking lot at the fairgrounds, and my employees do a good job. I have been the director of that parking lot for nine years. I know what I'm doing.

Randy Small
Director of Parking Facilities

LIBRARY

Excerpts from Franklin Tort Claims Act

§ 41-1. Legislative declaration

It is the public policy of Franklin that state and local governmental entities and public employees shall only be liable within the limitations of the Tort Claims Act.

…

§ 41-4. Granting immunity from tort liability; authorizing exceptions

Any state and local governmental entity and any public employee acting within the scope of employment are granted immunity from liability for any tort except as waived by §§ 41-5 through 41-15.

…

§ 41-6. Liability; buildings, public parks

The immunity granted pursuant to Section 41-4 is waived when bodily injury, wrongful death, or property damage is caused by the negligence of public employees while acting within the scope of their duties in the operation or maintenance of any building or public park.

…

§ 41-16. Notice of claims

(a) Every person who claims damages from the State or any local governmental body under the Tort Claims Act shall present to the Risk Management Division for claims against the State, to the mayor of a municipality for claims against the municipality, to the superintendent of a school district for claims against the school district, to the county clerk of a county for claims against the county, or to the administrative head of any other local governmental body for claims against such local governmental body, within 90 calendar days after an occurrence giving rise to a claim for which immunity has been waived under the Tort Claims Act, a written notice stating the time, place, and circumstances of the loss or injury.

(b) No suit or action for which immunity has been waived under the Tort Claims Act shall be maintained and no court shall have jurisdiction to consider any suit or action against the State or any local governmental body unless notice has been given as required by this section, or unless the governmental entity had actual notice of the occurrence.

Rodriguez v. Town of Cottonwood

Franklin Court of Appeal (2018)

The plaintiffs appeal from a summary judgment entered in favor of the Town of Cottonwood. We review to determine whether the Franklin Tort Claims Act waives sovereign immunity when a child is injured on a playground during a summer day camp conducted by a municipality.

The plaintiffs enrolled their five-year-old son, Jack, and his sister in the Town of Cottonwood's summer day camp program. The operation of the program, which was held at Blue Mound Park, called for an active on-site supervisor and three additional employees. At the time Jack was injured, neither the on-site supervisor nor any other person performing her function was present. In fact, there were only two employees with the children at the park.

On August 4, 2016, camp had ended for the day and the children were gathered at the playground waiting for their parents to pick them up. The two employees present with the children were inattentive. Jack followed other children up a slide rather than using the steps and was injured when he fell from the top as he attempted to turn around. Jack's father, Robert Rodriguez, arrived immediately after the accident and took his son to the hospital. Jack suffers from nerve damage caused by his fall from the slide.

The district court entered summary judgment in favor of the Town, finding that § 41-6 of the Tort Claims Act did not waive sovereign immunity for the Town's failure to exercise ordinary care in the supervision of children who participated in its summer day camp program. The court rejected the plaintiffs' argument that the absence of adequate supervision was a dangerous "condition" of the playground for which sovereign immunity had been waived. This appeal followed.

The issue on appeal turns on the waiver language of § 41-6, "caused by the negligence of public employees while acting within the scope of their duties in the operation or maintenance of any building or public park." This language has been interpreted to refer only to "operation" or "maintenance" that results in a condition creating a risk of harm. In *Arthur v. Custer County* (Fr. Ct. App. 2008), we found that § 41-6 did not waive immunity for negligent performance of an

employee's duties unless negligent performance of those duties resulted in a dangerous or defective condition in a public building or public park. The claim cannot be based solely on negligent supervision. While negligent supervision is a tort at common law, it is not one of the torts for which immunity is waived by § 41-6 of the Act.

The plaintiffs allege that the Town's negligence in permitting the day camp to operate with inadequate staffing constituted an unsafe condition. In support, the plaintiffs assert that Franklin courts have found the following to be unsafe, dangerous, or defective conditions: failure to properly install windows so that they would not fall out, *Williams v. Central School District* (Fr. Sup. Ct. 2008); the negligent maintenance of electrical systems on school property that was so defective it led to a fire, *Schleft v. Board of Education of Terry* (Fr. Sup. Ct. 2010); the failure to keep residents safe from roaming dogs on the common grounds of a county housing project, *Farrington v. Valley County* (Fr. Sup. Ct. 2015); and the failure to rectify a prison layout that inhibited inmate surveillance, limiting the guards' ability to monitor prisoners to prevent attacks on a prisoner, *Callaway v. Franklin Dep't of Corrections* (Fr. Ct. App. 2011). Thus, the plaintiffs argue, the absence of supervision at the day camp constituted an "unsafe, dangerous, or defective *condition*" for which governmental immunity had been waived.

All cases cited by the plaintiffs concern instances of negligent conduct that created unsafe conditions. In the case at bar, however, the playground was a safe area for children, and the slide was safely built and in sound condition. Rather, it was the negligent supervision of the campers by the camp employees and not the condition of the premises that resulted in Jack's injury. Therefore, sovereign immunity had not been waived under § 41-6, and summary judgment in favor of the Town on the plaintiffs' tort claim was appropriate.

Affirmed.

Farrington v. Valley County
Franklin Supreme Court (2015)

This case concerns the waiver of immunity under § 41-6 of the Franklin Tort Claims Act. At issue is whether the "maintenance of any building" includes keeping the grounds of a public housing project safe from unreasonable risk of harm to its residents and invitees. The trial court dismissed all named defendants under the immunity granted by the Tort Claims Act, and the court of appeal affirmed. In this appeal, Farrington requests that we review only the dismissal of the cause of action against defendant Valley County Housing Authority, the governmental agency authorized by Valley County to operate County-owned and publicly funded housing within the County.

The facts are as follows. On October 23, 2013, three-year-old Daniel Farrington was severely bitten by a dog roaming the grounds of the Valley Vista Housing Project, a residential complex owned by Valley County and operated by the Valley County Housing Authority. Daniel was in the care of his aunt, a resident of Valley Vista.

Heather Farrington, Daniel's mother, sued the defendants on Daniel's behalf for their alleged failure to keep the premises of Valley Vista safe and for their alleged failure to enforce the County's animal-control ordinances. The trial court dismissed the complaint against all defendants for failure to state a claim upon which relief could be granted (commonly known as Rule 12(B)(6)). The court of appeal affirmed, holding that the applicable statute, § 41-6, did not contemplate that the "maintenance of any building" included keeping the grounds safe from roaming dogs or requiring enforcement of animal-control ordinances. Without any specific regard to animal-control statutes, we find that § 41-6 does contemplate waiver of immunity where, due to the alleged negligence of public employees, an injury arises from an unsafe, dangerous, or defective condition on property owned and operated by the government. For that reason, we reverse.

The complaint alleges that the Housing Authority was aware or should have been aware of the continuing problem of roaming dogs and the resulting danger this condition posed for the common areas of Valley Vista, which the Housing Authority had the duty to maintain in a safe condition.

The Housing Authority claims that it is immune from suit pursuant to the Franklin Tort Claims Act and that dismissal under Rule 12(B)(6) is proper. It argues that the Act does not apply to grounds, only to buildings and parks. It also contends that there was no waiver of immunity under § 41-6 because the failure to control loose dogs bears no relationship to the maintenance of a public building or park and that the child's injuries were not caused by a defect in a public building or park. Moreover, the Housing Authority maintains that Daniel's injury did not arise from a defective condition existing upon the land of the housing project.

A plain reading of § 41-6 convinces us that the Franklin Legislature intended to ensure the safety of the general public by imposing on public employees a duty to exercise reasonable care in maintaining premises owned and operated by governmental entities. The legislature included both buildings and parks within the waiver provision ("while acting within the scope of their duties in the operation or maintenance of any building or public park"). Thus, we discern no intent to exclude from that waiver liability for injuries arising from defective or dangerous conditions on the property surrounding a public building. We therefore conclude that the Tort Claims Act waives immunity for unsafe conditions in buildings *or on the grounds surrounding the buildings*. The common grounds upon which the County-owned and -operated Valley Vista Housing Project is situated fall within the definition of "building" under § 41-6.

This case rests upon whether dogs roaming the common grounds of a government-operated residential complex could represent an unsafe condition. Given the potential safety risks to Valley Vista residents and invitees, we find that under these circumstances, loose-running dogs could represent an unsafe condition upon the land.

The complaint alleges that the Housing Authority knew of the unsafe condition represented by dogs running loose within the project. As landlord, the Housing Authority has a duty to safely maintain those areas expressly reserved for the use in common of the tenants. Whether the Housing Authority exercised reasonable care in maintaining the common grounds of Valley Vista under the circumstances would depend on what it knew or should have known about loose dogs in the common areas, whether those dogs should have been foreseen as a threat to the safety of the residents and invitees, and the means available to the Housing Authority to control the presence of those dogs. We hold that the complaint sufficiently alleges facts that state a claim upon which relief could be granted.

Reversed and remanded.

Beck v. City of Poplar
Franklin Supreme Court (2013)

Matthew Beck sued the City of Poplar to recover damages for personal injuries received in a car accident. The district court granted summary judgment to the City on the ground that Beck had failed to comply with the notice requirement of the Tort Claims Act § 41-16. The court of appeal reversed. On appeal we consider whether the City traffic department's receipt of an accident report in this case is "actual notice" under the Act.

The court of appeal reasoned that if the City traffic department is the governmental agency responsible for overseeing the safety of intersections, then notice of the occurrence to that department in the form of the accident report constitutes actual notice to the City. The court's holding and instructions were based on our statement in *Ferguson* that subsection 41-16(b) means that "the *particular agency that caused the alleged harm* must have actual notice before written notice is not required." *Ferguson v. State of Franklin* (Fr. Sup. Ct. 2010) (emphasis added).

Subsection 41-16(a) clearly states the legislature's intent that the governmental entity that is the subject of a claim must be given *written notice* of the alleged tort. Subsection 41-16(b) creates an exception to this requirement where the governmental entity allegedly at fault had *actual notice* of the tort. The purpose of subsections 41-16(a) and (b) is "to ensure that the agency allegedly at fault is notified that *it may be subject to a lawsuit.*" *Id.* (emphasis added).

Under some circumstances, a police or other report could serve as actual notice under § 41-16(b). But that occurs only where the report contains information that puts the governmental entity allegedly at fault on notice that *there is a claim against it.* The statute contemplates that the governmental entity must be given notice of a likelihood that litigation may ensue, in order to reasonably alert it to the necessity of investigating the merits of a potential claim against it.

In *Solomon v. State of Franklin* (Fr. Sup. Ct. 2012), we held that notice, whether given under § 41-16(a) or by actual notice, must be given within 90 calendar days of the occurrence. In *Solomon*, the plaintiff provided actual notice. In that case, in a phone call with an official of the State Parks Commission made within 90 calendar days of the decedents' deaths, the plaintiff described the facts related to the decedents' deaths and told the official that he had hired a lawyer to start legal proceedings against the State.

We have reviewed the report pertaining to the accident involving Matthew Beck. The report listed only the date, time, and location of the accident, identifying information about Mr. Beck and the city driver, and the fact that Beck suffered minor injury. There is nothing in the report that could be construed as informing or notifying the City traffic department that it may be subject to a lawsuit. Nor is there evidence that the City was notified in any other manner that legal proceedings would be initiated.

The court of appeal is reversed, and the trial court's grant of summary judgment in favor of the City is upheld.

CONNECTICUT BAR EXAMINATION

5 October 2020

ESSAY QUESTION #1

From the Multistate Essay Examination

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

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

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

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

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

1. With respect to Aldo's purchase of the all-electric garbage truck:

   (a) Is the partnership bound on the purchase contract? Explain.

   (b) Assuming that the partnership is bound, is Carlos liable for any part of the unpaid balance of the purchase price? Explain.

   (c) Assuming that the partnership is bound, is Aldo entitled to reimbursement from the partnership for the down payment he made on the truck? Explain.

2. Is Aldo entitled to be paid for the value of all or part of his services to the partnership? Explain.

3. Is the partnership bound on the sales contract for the land? Explain.

CONNECTICUT BAR EXAMINATION

5 October 2020

ESSAY QUESTION #2

From the Multistate Essay Examination

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

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

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

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

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

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

an expert witness, an out-of-state arson investigator who did not participate in the arson investigation.

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

1. Should the judge allow the bartender to testify about what he overheard the owner saying on the phone? Explain.

2. Should the judge allow the bartender to testify about what he overheard the waiter saying to the owner? Explain.

3. Should the judge admit the certified arson investigation report in light of

   (a) the owner's hearsay objection? Explain.

   (b) the owner's constitutional objection (assuming that the hearsay objection is overruled)? Explain.

CONNECTICUT BAR EXAMINATION

5 October 2020

ESSAY QUESTION #3

From the Multistate Essay Examination

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

The divorce court in State A, among other things,

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

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

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

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

The mother has brought an action in a State B court to collect child and spousal support from the father. She claims that the spousal support obligation should be increased to $4,500 per month

because she is in poor health and cannot resume full-time employment. She also asks that the spousal support be extended for an additional five years.

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

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

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

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

3. Without regard to jurisdictional issues, how should a court rule on the father's requests to reduce his child support obligation and to make the reduction retroactive? Explain.

4. Without regard to jurisdictional issues, how should a court rule on the mother's request for an increase in and extension of the spousal support obligation? Explain.