

MPT-1 (Question 1)

Peek et al. v. Doris Stern and Allied Behavioral Health Services

The client, Rita Peek, is the named plaintiff in a federal class action brought pursuant to 42 U.S.C. § 1983. The complaint alleges that the defendants, who have contracted with the county to provide probation services, have discriminated against female probationers by failing to provide court-ordered counseling in a timely manner. Peek was convicted in Union County district court of a misdemeanor and sentenced to 10 months in jail, with the jail sentence stayed on the condition that she successfully complete 18 months of probation. The district court imposed certain conditions of probation, including receiving mental health counseling. At a recent case-management conference, the federal judge raised the issue of whether the defendants are state actors and requested simultaneous briefing on that sole issue. Examinees' task is to draft the argument section of the plaintiffs' brief, following office guidelines and persuading the court that under the relevant tests and approaches, the defendants are state actors and therefore subject to suit under 42 U.S.C. § 1983. The File contains the instructional memorandum, the firm's guidelines for drafting simultaneously filed persuasive briefs, the sentencing order, a memo to the file, and excerpts from the deposition transcript of one of Allied's employees. The Library contains the relevant Franklin statutes on probation and a case from the U.S. Court of Appeals.

Question 2

Alpha operates a retail store at which it sells luxury goods. Bravo provides security services to retailers. Alpha and Bravo entered into a binding contract under which Bravo provides security services at Alpha's stores. Alpha is unhappy with the terms of its contract with Bravo and wants to end its business relationship with Bravo. But to do so, it must pay Bravo \$10,000 to buyout the remainder of the contract.

Charlie also provides security services. Alpha contacts Charlie about entering into a contract for security services. During its negotiations with Charlie, Alpha mentions that it needs \$10,000 to pay Bravo the buyout before it can switch to Charlie's service. Alpha knows that security companies often provide incentive payments to new customers and asks if Charlie can provide such an incentive. Charlie acknowledges that it sometimes provides incentive payments and states that it may be able to lend the money to Alpha. Alpha and Charlie proceed to finalize the terms of the sales contract but neither says anything more about Alpha's buyout clause with Bravo, an incentive payment, or a loan.

On the day that Charlie is set to begin providing security services for Alpha, Alpha informs Charlie that it has not paid the buyout to Bravo and needs \$10,000 to do so. In a rush, Charlie makes a check payable to Alpha for \$10,000 and delivers it to Alpha. Charlie tells Alpha, "Use this money to buy out the contract with Bravo and we will work it out like we discussed." The check contained no notation whether Charlie intended it to be an incentive payment or a loan. No written correspondence or other writing mentions the check, an incentive payment, or a

loan.

Thereafter, Charlie charged Alpha's account \$10,000 in an attempt to collect repayment of the check and sent Alpha its first monthly bill. Alpha did not say anything upon receipt of the first bill or the next five monthly bills. But Alpha did not pay in full either. Upon receipt of its seventh monthly bill, Alpha objected to the account balance because it included the additional \$10,000.

Applying the law of contracts in Tennessee, answer the following questions and explain your answers:

- A. Did Alpha and Charlie enter into a contract for repayment of the \$10,000?
- B. If Alpha and Charlie did not enter into a contract for repayment of the \$10,000, can Charlie recover from Alpha under another theory of contract law?

Question 3

Under the direction of Michael, an experienced, well-paid former employee, Development Company (Devco) spent millions of dollars secretly developing America's first "smart" toilet for use in recreational vehicles (RVs). In hopes of receiving a promised "success bonus," Michael devoted two years of work to Devco's effort and obtained specialized training. When Michael had almost completed a functional prototype toilet, Devco abruptly fired him. Michael received no bonus.

The day after firing Michael, Devco discovered not only that the prototype was missing, but also that confidential design files and nationwide customer lists had been downloaded from Michael's work computer. The prototype, files, and lists belong to Devco. Two days after firing Michael, Devco learned that Michael had begun working in Tennessee for Rival Company (Rival), which is the only other company trying to develop a smart toilet for RVs.

A few days later, Devco emailed Rival, demanding that Rival fire Michael and return anything belonging to Devco. Rival responded only that it would "conduct itself appropriately." Rival did not fire Michael. Despite subsequent efforts, Devco—lacking both the prototype and Michael's unique engineering skills in developing various "smart" appliances—was unable to develop a viable smart toilet. Devco feared that Rival might be using Michael's skills, the prototype, design files, and customer lists to gain an advantage over Devco. Devco believed that, if it could recover and complete the prototype, Devco could quickly and profitably bring its smart toilet to market.

Several months after firing Michael, and the day after RV makers in several western U.S. states received a catalog of Rival's first line of smart toilets, Devco sued Michael and Rival in Tennessee circuit court. Devco's Complaint attaches a contract that Michael had signed a while after starting work for Devco. The contract says: (1) "Michael must provide Devco with a smart toilet prototype"; and (2) "Michael must not work for any competitor of Devco in the U.S. for

five years after his employment with Devco ends." In his Answer, Michael denies any wrongdoing. Rival, in its Answer, alleges that Devco had stolen Rival's plan for a smart toilet. Tennessee law governs all issues.

Devco wishes to stop Michael and Rival from competing with Devco in the smart-toilet market.

- A. To accomplish this purpose, what remedy or remedies may Devco seek against Michael and Rival and what must Devco prove to obtain that relief?
- B. What defenses may Michael and Rival assert, and how may Devco reply to them?
- C. Is Devco likely to prevail?

Explain each of your answers.

Question 4

Harry, age 50, met his future wife, Wendy when she was 38. Harry was then Vice-President of a local bank and Wendy was unemployed at the time the relationship commenced. Harry owned a lakehouse valued at \$600,000 and Wendy was living in a one-bedroom apartment looking for work as a cosmetologist.

Six months into the relationship, things had progressed to the point where Harry invited Wendy to move into the lakehouse with him. Wendy did so. By this time she had secured a position at a local salon that was paying her an annual salary of \$38,000. Harry's job paid him an annual salary of \$90,000.

The lakehouse was titled in Harry's name and Harry had no debts. Wendy, on the other hand, owed \$20,000 in student loans she obtained to finance her education at a local cosmetology school and also owed \$5,000 on her car note and \$9,000 for medical expenses she incurred when she broke her leg on a ski vacation she and Harry took three months into their relationship.

After living together for one year, Harry was ready to propose marriage. He contacted a local attorney who drafted a prenuptial agreement that provided in pertinent part that, in the event of a divorce, each spouse would be entitled to retain "all assets which he or she then owns, whether or not those assets are acquired during the marriage."

At a romantic dinner one week after getting the agreement from the lawyer, Harry asked Wendy to be his wife. He produced an impressive diamond ring as an expression of his love and devotion. He then told her she could keep the ring only if she signed a prenuptial agreement he had prepared. He provided her with the agreement at that time and insisted that she make her decision prior to leaving the restaurant. Wendy expressed some reservations and disappointment that he would make her his wife only if she signed the agreement. However, she quickly looked it over, then commented, "I guess you only want to keep what you have

earned and I suppose I can understand that.” She then signed the agreement and the couple married two weeks later.

It is now four years later and Harry has filed for divorce from Wendy citing irreconcilable differences.

Wendy is seeking to invalidate the prenuptial agreement and an equitable division of the marital estate. She argues the prenuptial agreement should not be enforced because it did not disclose Harry’s investment account assets which were valued at \$600,000 at the time of the marriage and have risen to a present value of \$850,000.

- A. You are the law clerk for the judge in whose court the divorce action is pending.
 - i. The judge seeks a memorandum from you concerning whether the prenuptial agreement is enforceable. Please provide the memorandum and detail the applicable law for the judge.
 - ii. Assume that the judge declines to enforce the prenuptial agreement without the benefit of having reviewed your memorandum. Please identify any relevant factors the Court should consider in determining how to equitably divide any marital property in the divorce proceeding.
- B. You are Harry’s lawyer. Harry has begun to receive invoices from the company who services the student loans obtained by Wendy who has failed to maintain her payments and is in default. Wendy has likewise fallen behind on paying for the medical expense she still owes. Harry is now receiving invoices for those as well. He seeks to know whether he can be held liable for payment of these debts. Answer his question and identify and explain the applicable law.

Question 5

Davis owns a business, Pizza Shack which is based out of Clarksville, Tennessee, and has locations throughout the State of Tennessee. Davis originally began making the pizza sauce used in Pizza Shack pizzas from his basement with his grandmother’s recipe and he successfully turned that into a business that has over thirty Pizza Shack stores in Middle Tennessee. Though he has other investors, Davis owns 2/3 of the shares of the company and serves as President of the business and is in charge of most of the day to day operations. Davis generally makes all of the business decisions for Pizza Shack with very little input for the other shareholders and there has not been a formal meeting of the board of Pizza Shack for over 3 years.

As part of their system, Pizza Shack buys dough for its store from a distributor of bread products, Breads & More. Breads & More has filed a lawsuit against both Pizza Shack and Davis personally because of unpaid invoices over the past six months totaling \$75,000.00. Davis had become dissatisfied over the past year with the quality of the Breads & More dough that was

being supplied and, therefore, refused to pay for it as he considered it to be of inferior quality. Therefore, he unilaterally decided to buy the dough from Ted's Breads, which was owned by his friend Ted, despite the fact that he had to pay over 30% more per crust for the dough from Ted's Breads. Davis did this, in part, because he felt that Ted needed some new accounts to help his business out, which had been struggling a bit.

Due to this lawsuit and the switch to Ted's Breads as a supplier without consultation of other people in the company, the other shareholders are frustrated with Davis' stewardship of Pizza Shack and would like to see another person be hired as President. They believe that Davis did well to get the company off the ground, but he is a micro-manager and gets into petty feuds, like the one that resulted in the Breads & More lawsuit. When confronted with this, Davis refused to step down, or negotiate about his duties and position as President of Pizza Shack. Due to his recalcitrance over this issue, the other shareholders have filed their own legal action against Davis alleging that he refused to honor contracts of Pizza Shack to Breads & More resulting in a lawsuit and he inappropriately engaged Ted's Breads to supply the dough despite a significant increase in costs.

Davis becomes infuriated by the two lawsuits that were filed against him and decides that he has had enough of the pizza business. He announces his intention to sell the company to rival Deep Dish Pies for what the shareholders feel to be a price far below the market value of the business. Despite the shareholders' concerns regarding the valuation of the business in the transaction, Davis completes the sale of Pizza Shack. Consequently, the shareholders sue Davis over the sale of Pizza Shack in addition to their other, previous litigation.

- A. Assuming Davis has not provided a personal guarantee for the debts of the business, discuss the merits of the Breads & More lawsuits against both Pizza Shack and Davis for debts of the business.
- B. Provide a detailed discussion of the merits, or lack thereof, of the Ted's Breads related lawsuit against Davis that was filed by the shareholders in Pizza Shack regarding his potential removal as President and his actions while he has been President.
- C. Provide a detailed discussion regarding the basis and merits of the Deep Dish Pies related lawsuit brought by the shareholders against Davis over his sale of Pizza Shack to Deep Dish Pies.

Question 6

Valleyview is a 100-acre parcel of hilltop land in Lincoln County, Tennessee. Valleyview is owned by a general partnership called BRO Partnership, made up of three brothers, Bill, Robert, and Owen, each of whom have apparent and actual authority to bind the partnership for any and all matters.

Bill, Robert, and Owen have a fourth brother named Sidney. On January 1, 2010 Sidney moves

to a parcel of property that abuts Valleyview. Sidney incorrectly believes that he owns a percentage of Valleyview. Sidney thinks that (i) his driveway to State Highway 231 is too hilly to be passable during icy weather, and (ii) Valleyview's access to State Highway 64 is necessary for Sidney to have shorter access to Fayetteville, the county seat of Lincoln County. As such, every day since Sidney moved next to Valleyview, Bill watches and waves as Sidney crosses onto Valleyview and uses Valleyview's driveway to reach State Highway 64 to go to town.

Often, Bill will go into town to have breakfast with friends and acquaintances. One day, Bill mentions that BRO Partnership is utilizing only half of Valleyview. The Mayor is at the breakfast and realizes that the location of Valleyview would be a perfect location for her to build a weekend retreat. On February 1, 2017, The Mayor offers to lease on an exclusive basis 50 acres of Valleyview (that she decides to call the "Retreat") for 30 years at \$1000 per acre per year. Bill is so flattered by the Mayor's offer that he grabs the Mayor's hand, shakes it vigorously, and says "Mayor, I accept your offer." Excited about having a getaway location, the Mayor grabs her camping gear, rushes out to the Retreat, hikes all around the Retreat, and spends the night on the Retreat property.

Celia overhears the terms of their conversation and thinks that the rental income would make Valleyview a good investment. On March 1, 2017, Celia and Bill agree that Bill will sell Valleyview to her for \$700,000.00. Bill executes and delivers a warranty deed to Celia for Valleyview, and Celia hands to Bill a promissory note in the amount of the purchase price, with a maturity date of March 31, 2027.

Robert did not attend the breakfast, and therefore did not know that Bill had deeded the property to Celia. Instead, on March 1, 2017, Robert had gone to the local office of "Protect Tennessee Group," a land conservation organization. Robert shares the group's vision for protecting the state's natural resources, so at the end of the meeting, Robert executed and delivered a warranty deed to Protect Tennessee Group for the Valleyview property in exchange for a check for \$500,000.00.

Nathan witnesses Robert's deed transfer to Protect Tennessee Group, and decides that he wants to try to offer a better price for the Valleyview property. On March 1, 2017, before either Robert or Bill have a chance to tell Owen about their deeds, Nathan offers to Owen to buy Valleyview for \$600,000.00 in cash. Owen likes the idea of liquidating the Valleyview property, so he executes and delivers a new warranty deed to Nathan for Valleyview. In turn, Nathan pays the agreed upon price to Owen.

On March 2, 2017, Celia overhears the discussions of Bill, Robert, and Owen as they realize they have delivered three separate deeds to Valleyview. Celia is concerned and employs your law firm to advise her on various real property questions with respect to Valleyview. Based solely upon the facts given, prepare a memorandum that provides detailed legal reasoning, analysis, and advice on the following issues:

- A. Who owns the Valleyview real property?
- B. Discuss the Mayor's property rights, if any, to the Retreat.
- C. Must the owner of Valleyview allow Sidney to cross the property to get to Highway 64?

Question 7

Mickey, age 15, collects antique Zippo brand lighters, generally purchasing them through online auctions. Mickey cannot legally purchase lighter fluid, so he usually asks his 18-year-old friend Taylor to buy some for him. Mickey's mom does not approve of Mickey's collection, so Mickey keeps his lighters in a locker that Taylor rents for Mickey from No Questions Asked Storage Units and Dry Cleaning. Although Taylor's name is on the lease, Mickey is the only one who has access, since he always keeps a heavy-duty combination lock on it.

One day, Taylor intentionally sets fire to his mom's uninhabited lake house. He is arrested and charged with arson. Taylor admits buying lighter fluid, but he says Mickey started the fire and that the proof is at the storage locker. Taylor is then also charged with violation of the state's recently-enacted Omnibus Highway Restoration Act, a bill that also includes a provision making it a crime for any person over the age of 18 who has knowledge that a minor is using a storage unit without his parent's permission to fail to report such knowledge to the Tennessee Bureau of Public Restrooms, Storage Units, and Phone Booths. Persons convicted under the Act lose the right to vote and are subject to a \$750 fine to be assessed in the trial court's sole discretion.

Officer Key and Officer Stone are assigned to investigate Mickey. They split up to cover ground. Mickey is at home when Officer Key knocks on the door. Mickey answers and confirms his identity. Officer Key says, "We know you've been setting fires. I'm coming in to confiscate your lighter collection and illegal lighter fluid." Mickey asks if Officer Key has a warrant, and the Officer replies "You're a minor; I don't need a warrant." Officer Key searches the house but does not find anything related to the lighters or lighter fluid.

Meanwhile, Officer Stone goes to the storage unit without a warrant. The attendant, knowing that there is no warrant, agrees to cut off the lock to let Officer Stone see Mickey's unit, which contains lighter fluid. Mickey is arrested.

In juvenile court, Mickey asks for a lawyer. The judge says, "Juvenile delinquency matters are not the same as criminal matters, so you can't have a lawyer." Mickey's case is transferred to criminal court where, without counsel, he is tried as an adult, convicted, and he is sentenced to life without parole.

What potential issues of U.S. and Tennessee Constitutional law are implicated for Taylor and Mickey? For each, please explain your reasoning as to why.

Question 8

Adam and Brenda are husband and wife. They have been married for twenty-five years. During their marriage, Adam became involved in a dispute with Chad and was charged with criminal assault. Adam hired Don, an attorney in the law firm of Marshall & Collins, PLLC, to represent him in the criminal matter. During the criminal matter, Adam's mental status became an issue and Don was required to perform an extensive review of Adam's medical history. Unfortunately, Adam had previously retired from the military and suffered from post-traumatic stress disorder along with some other mental issues. After meeting with Adam and reviewing his medical history, Don was able to reach an agreement with the local district attorney's office based upon Adam's mental status wherein the criminal matter would be dismissed after Adam received individual counseling. Adam attended the required counseling and the criminal matter was dismissed. A few years later, Adam and Brenda separated. Brenda hired Don to file for divorce. In the divorce proceeding, Brenda alleged she suffered abuse and that Adam's behavior had been erratic. At the time Brenda hired him, Don had left the law firm of Marshall & Collins, PLLC and opened his law practice.

- A. State whether Don's representation of Brenda in the divorce action is ethical and discuss the legal basis for your answer.
- B. State whether it would be ethical for Don's law partner, Ken, at the new law firm to represent Brenda in the divorce proceeding and discuss the legal basis for your answer.
- C. State whether Larry, a new lawyer with Marshall & Collins, PLLC, may represent Brenda in the divorce proceedings and discuss the legal basis for your answer.

Question 9

You are an attorney with Keating & Associates in Nashville, Tennessee. Hank Middleton has retained your firm to represent his wife, Wendy Middleton. Wendy is a high-level executive at Acme Corporation. Last year, Wendy was arrested and charged with first-degree murder. Wendy was accused of killing her secretary, and lover, Lucas Stone. Lucas was found shot to death in a heart-shaped Jacuzzi in a local bed and breakfast, The Secret Place, on February 14, 2015. After a lengthy trial and media frenzy, Wendy was found not guilty of first-degree murder. Convinced that Wendy was involved with Lucas' death, Lucas' family filed a wrongful death lawsuit against Wendy seeking \$100 million in damages.

You have been assigned to Wendy's defense team. Anna, the partner in charge, wants you to analyze the admissibility of the following evidence:

- On the evening of February 14, 2015, Hank observed Wendy frantically scrubbing the white shirt she had worn earlier that day. Hank observed Wendy pour bleach on the shirt.

- On the evening of February 14, 2015, Wendy told Hank that she “loved him very much” but that she had made a “very terrible mistake.”
- Acme Corporation has produced records subject to a subpoena issued by the Stone family. The records include check registers for February 2015, which shows that an Acme check was used to pay for a 2-night stay at the Secret Place.
 - A. Hank Middleton has emphatically expressed that he is committed to his wife and that he does not want to testify against his wife, unless he is legally obligated to do so. Please discuss whether Hank may be compelled to testify against Wendy regarding Hank’s observations and communications with Wendy.
 - B. Anna wants to object to the introduction of the Acme check register. Please discuss whether the check register is admissible at trial.
 - C. A few months after you start working on the case, the parties participate in mediation in an attempt to settle the lawsuit. During the mediation, and in the presence of the Stone family, Wendy has an emotional outburst and exclaims, “It’s all my fault! You deserve the money!” Immediately afterward, Wendy quickly composes herself and advises Anna to end the mediation. The parties did not settle the lawsuit. The Stone family now wants to introduce Wendy’s statement as evidence at trial. Please discuss whether Wendy’s statements are admissible at trial.

Question 10

Siblings John and Mary own a family farm located in Tennessee as tenants in common. John lived and worked on the farm for his whole life never marrying or having children. Mary moved away in 1982 but returned to the farm in 2002 with her 16 year old son Cane.

In April 2010, John went to the town attorney for estate planning advice. John signed a durable general power of attorney which designated Cane as his attorney in fact. On May 1, 2010, with John’s knowledge, Cane went to the bank and had his name added as a signatory to John’s savings account. In January 2012, without John’s knowledge, Cane instructed the bank to change the mailing address of the bank statements to a new post office box in Cane’s name.

On October 1, November 1, and December 1, 2012 Cane made successive withdrawals of \$90,000 each from John’s account and deposited the funds into his own account without John’s knowledge. In December 2012, Cane, as attorney in fact for John, also signed a quit claim deed conveying John’s entire interest in the farm to himself. Cane immediately duly recorded the quit claim deed at the appropriate real estate record’s office.

On February 1, 2013, John went to the bank to find out why he wasn't getting his bank statements. John learned that the bank was sending the statements to the address in the account files which was a post office box in Cane's name. John also discovered that Cane withdrew \$270,000 from John's savings account.

That night, John confronted Cane about the bank account. Cane was so remorseful that he confessed to the whole bank debacle. Cane also admitted that he conveyed the farm to himself and promised to convey it back to John. Cane also promised to return the money. On February 1, 2016, John sued Cane for conversion.

- A. Explain whether Cane's actions satisfy the civil elements of conversion and include in your answer all acts of conversion. Fully describe how the elements are satisfied or why the elements are not satisfied. Do not address any criminal issues.
- B. Discuss (1) the statutes of limitation for the conversion claims against Cane; and (2) when each claim began to accrue. Do not address any criminal issues.