

## AM ESSAY 1 - EXAMPLE #1

1)

1. The land is owned by Adam, Joe, Harry, and whomever Hoss's heirs or devisees are (propably Wife and Children) as a Tenancy in Common.

A Tenancy in Common is a type of ownership whereby all owners have a percentage of ownership and complete right to possess the entire property. A Tenancy in Common must have the unity of time and title which means the tenancy must be created in one document and at the same time. Tenancy in Common differentiate from Joint Tenancy with Right of Survivorship in that each person interest is freely alienable (able to be sold or gifted) and passes to their heirs or devisees at their death. In a Joint Tenancy with Right of Survivorship when a owner dies his interest is automatically transferred to the remaining owners. Ownership interests in Joint Tenancy with Right of Survivorship's are also freely alienable but destroy the Joint Tenancy with Right of Survivorship creating a Tenancy in Common.

Each owner of a Tenancy in Common has the right to completely possess the entire property. Under Missouri Law, a deed or other document that creates a Joint Tenancy with Right of Survivorship must clearly state that in the document.

In this case, Ben has a fee simple absolute (ownership of his land is "free and clear") and has deeded it to his sons using the word "property jointly to my four sons." Because he did not state that the ownership would be in Joint Tenancy with Right of Survivorship or had any discussion of survivorship rights that land will be presumed to be passed as Tenancy in Common. Since a Tenancy in Common is created each Son owned the land in a Tenancy in Common. When Hoss died his interest in the land was passed to his heirs or devisees who are probably his Wife and Children. This means that currently the land is owned by Adam, Joe, Harry, and whomever Hoss's heirs or devisees are (propably Wife and Children) as a Tenancy in Common.

2. Harry cannot make Adam pay him rent for the use of the house.

Each owner of a Tenancy in Common has the right to completely possess the entire property and does not own rent to the other Tenancy in Common owners unless there has been an

ouster. An ouster is when one owner in Tenancy in Common refuses to allow the other owners complete right to possess the property. If a possessor of land refuses to let a rightful owner in property use the land the owner can sue for a partition or can sue for a percentage of the rent based upon how much the suing owner has in the Tenancy in Common

In this case, Adam as an owner in Tenancy in Common has the right to possess the entire property including the house. There are no facts that state that Adam has in fact committed an ouster so as an owner in Tenancy in Common he has the complete right to possess the house without paying rent.

3. Harry is entitled to a share of the rent being paid to Joe on the farm ground.

Each owner of a Tenancy in Common has the right to completely possess the entire property and has the right to share in the rents that are generated by the land. The percentage of the rents an owner in Tenancy in Common can collect is would be based upon his percentage of ownership interest.

In this case, Harry has a 1/4 ownership interest in the land in Tenancy in Common therefore he would be entitled to 1/4 of the rents paid to Joe.

4. Harry cannot directly compel the other owners to buy his interest in the land and he can sell the interest as a tenancy in common or can request that a court, partition the land.

Tenancy in Commons are freely alienable and may be sold, bought or given. If owners of a Tenancy in Common do not want to be owners in Tenancy in Common or cannot agree how to use the land they may request a court to partition the land. Partition means that the court will divide up the land equal amongst the ownership interests. If the land can be easily divided physically the court will do that. If there are different improvements to the land the court will balance the value of those improvements and divide the land so that each owner gets an equal value of land. An owner in Tenancy in Common has no right to force the other owners to buy their land.

In this case, Harry cannot force the other owners to purchase the land. He can give the remaining owners the opportunity to purchase his interest but if they do not do so there is nothing legal he can do to compel it. Harry could also sell his interest to another person. This may be difficult in that other person may not pay full value for land that is owned in Tenancy in Common.

He can however request that a court partition the land. Here Harry could request that the court divide the land among his brothers (and heirs and devisees) so that each gets an equal value of the land.

## AM ESSAY 1 - EXAMPLE #2

1)

1

The land is now owned by Adam, Joe, Hoss's wife, and Harry. This issue how title passes when the father deeded the property to the four sons, and if the deed was valid when it passed the property to the four sons. A valid conveyance of a deed must identify the parties, the land, intent to transfer, and it must be signed by the grantor. Additionally, there must be an act of conveyance by the grantor. Here, the deed properly described the grantor, the four brothers by name, it described the property and it was acknowledged, therefore there is a valid deed. Here it passed to them making them tenants in common. Tenants in common share the right to possession and ownership in the property. Each brother has an equal right in ownership and possession. When Hoss died his share of the property passed to his wife and children, because unlike a joint tenancy with the right of survivorship an interest can pass when tenants in common and it will go to them by intestacy if there is no will. Here there is no mention of a will, therefore his immediate family receives his interest. Additionally to convey as a joint tenancy with the right of survivorship it must say with the right of survivorship and here the deed transferred did not.

2

No, Harry cannot make Adam pay him rent for the use of the house. As tenants in common they all have equal interests in the property and equal rights to possession, but there is no right to payment for the use of the property, unless there is an ouster. An ouster is an indication by one of the persons using the property that they are not going to allow somebody else to use the property, maybe locking them out, but objection is all that is necessary. Upon an ouster, the party that is ousted has the right to half of the fair rental value of the property. Harry has not approached Adam yet for possession, and Adam has not indicated that he would keep Harry out, thereby ousting him, therefore, Harry has no right to force Adam to pay him rent.

3

Yes, Harry is entitled to the share of the rent that Joe is collecting on the use of the farm ground, that is being paid to Joe. As tenants in common, the parties must share the profits from

the land, as they have equal interests and right to possession in the land. Here Joe is renting out the farm land and profiting from the renting and the use of the farmland by someone else. Therefore, Joe who is a tenant in common with Harry must pay Harry his share of the profits when Harry requests for the profits.

4

Harry cannot compel the other owners to purchase his interest in the property. Harry could sell his interest, or go to the court and attempt to receive a partition of the land in kind or via sale. The court could partition the land between the parties, or the court could sell the property and distribute the proceeds to the parties. Courts generally favor a partition in kind and will generally do so if it is feasible. Here with the farmland it is more likely than not feasible to partition in kind. Once Harry received the partition in kind of the land he could then sell the land. If Harry doesn't receive the partition in land and it is sold there are several consequences. First, Adam made an addition to the house which is an improvement. Tenants in common have no right to contribution from the other tenants in common for such, but upon a sale they will be able to recoup the improvement if it increased the value of the property. Additionally, if Harry doesn't want to go through the court process, he could simply sell his interest in the tenancy, which is freely transferable, but a party who wants the land may not be willing to give as much because they would have to share it with the other tenants in common. Therefore, Harry's best bet is to go to the court and seek a partition in kind or sale by the court with a distribution of the proceeds.

## AM ESSAY 1 - EXAMPLE #3

1)

1. This is a tenancy in common with Adam, Harry, Joe, and Hoss's wife & children (together) each having a 1/4 interest.

The issue is what type of interest the grant purported to convey to each of Harry's sons.

A joint tenancy is created when a grantor conveys an interest with four requirements: there must be unity of title, unity of time, unity of possession, and unity of interest. The grant must also with reasonable certainty show intent to convey a joint tenancy, the magic words are "joint tenancy with right of survivorship." Joint tenants have the right to account to one another for profits and the right to the other tenant's interest at their death. Here, the grantor conveyed the land to the four sons in the same deed at the same time with each son receiving an equal interest. All had the right to possess. However, the deed does not say that the grant is for "joint tenancy" with "right of survivorship." Therefore a court will probably construe the grant as a tenancy in common.

With a tenancy in common, each tenant just has an equal right to possession and there are no rights of survivorship. A tenant may freely sell, devise or otherwise alienate his or her interest. Because this is a tenancy in common, Adam, Joe and Harry each still have a 1/4 interest, Hoss's wife and children inherited his 1/4 interest.

2. No, Harry may not make Adam pay rent for use of the house.

The issue is what rights each tenant has to the use of the land. Under a tenancy in common, each tenant has equal right to full possession of the land. A tenant may not make another co-tenant pay for that co-tenant's personal use of the land unless there has been an ouster. Here, Adam has not ousted Harry and has the right to fully use the land, so he does not have to pay rent to Harry.

3. Yes, Harry is entitled to a share of the rent being paid to Joe.

The issue is what rights a cotenant has to profits or rents paid by a 3rd party.

A co-tenant has the right to full possession, but must account to other tenants for any rent for use by third parties. Here, Joe is not personally using the farm, but has rented out the farm to another

farmer. Because the farmer is a third party, Joe must account to Harry for his portion (1/4) of the amount of rent paid by the farmer.

4. No, Harry may not make the others buy out his interest.

The issue is what rights a co-tenant has to partition of the property.

If the sons took by joint tenancy, Harry can either voluntarily or involuntarily sever the tenancy. A voluntary severance is called a partition. In a partition, the court may either sell the land, and give each cotenant his share of the proceeds. A cotenant who has made capital improvements will be able to recover any appreciation due to those improvements at the partition. The court may also divide the land, in equal shares. Since there are 400 acres, the court could divide them into four equal pieces, with Adam taking the part with the house, Joe, the tract with the farm, and Ben with the trucking business. Harry would receive the other tract, or if it is part of the farm, divide the farming tract into two parts (probably half that produces corn and half that produces wheat). Harry may also sever the interest by an involuntary severance. In a state that follows the lien theory, he may mortgage his interest or sell his interest within his lifetime to a 3rd party effectively severing the interest.

If it is a tenancy in common, Harry's interest may be alienated irrespective of the other's interest with the buyer taking a 1/4 interest and Harry's rights to possession. He may first ask the others if they'd like to purchase his interest, but if not, he is not bound to the land and may transfer his interest.

## AM ESSAY 2 - EXAMPLE #1

2)

1)

Yes, the public school is required to allow Jane to provide a defense, however, it can be as simple as stating her defense before she is suspended. When a public agency settles a dispute and there is no formal trial like procedures required by the organic act that created the agency, a non-contested case is present. The amount of procedure that an individual receives in a non-contested case is based on due process. There is a DP interest in liberty, based on the suspension. The agency is only required to give enough process as necessary by using the Mathews v. Eldridge test. This test determines the amount of process by weighing three factors: 1) the harm to the individual by not giving more due process, 2) the benefit that would be created by giving more process and 3) the interest the government has in fast and efficient hearings. Even though a liberty interest is at stake, it has been found that when a student is confronted with suspension (up to 10 days) the amount of process that is due is being confronted with evidence against them and then allowing the student to present her side. This can be done as informally as sitting in the office of the administrator who is charging the student.

In this case, Jane will be able to present her side of the story because she faces the possibility of suspension, (a liberty interest) and the amount of process that is required is that she should be confronted with the evidence against her and that she is allowed an opportunity to state her defense.

2)

No, the school is not required to give Jane trial like procedure. Under a non-contested case, see above, the agency only has to provide as much procedure that is required under Due Process, see above. Rarely is an agency required to provide trial like procedure in a non-contested case because the DP requirements are never that stringent. As above, the amount of process due is determined by the Mathews v. Eldridge test.

In this case, Jane will not be given the formal procedures because 1) it is a non-contested case and 2) by weighing the DP options, courts have determined that formal process is not required when an individual is challenging a suspension. Jane will only be allowed to hear the evidence presented against her and to make a defense. Jane's interest is only suspension for 3 days, extra process would not alter the outcome greatly and the school board has an interest in

efficient and fast proceedings in these situations. Therefore Jane will not be given formal trial like procedure.

3)

No, Jane will be required to present her defense and have her suspension determined before she files a lawsuit against the school. Courts are typically unwilling to hear cases until the individual has exhausted all her administrative remedies. The only time courts will forgoe exhaustion is if 1) exhaustion would be futile, 2) there is threat of immediate harm, 3) the administrative agency cannot offer the relief sought or 4) it would be prejudicial, such as delay.

In this case, Jane would have to attend the hearing first to exhaust her remedies before the case would be heard by a court. Jane has not yet been suspended, she may still win her case, the hearing is whenever Jane would prefer, (as long as the school board agrees to the time) and the relief she is seeking can be provided by the administrators. Therefore Jane has no need for judicial review that would circumvent exhaustion of remedies.

## AM ESSAY 2 - EXAMPLE #2

2)

1. The public school is likely required to provide Jane an opportunity to present a defense before suspending her. The issues is whether Jane is entitled to due process rights and whether this is a contested case.

The public school is an agency of the state of Missouri. Agencies are generally free to set out their own procedures and requirements for an affected person to make a complaint or if the person is subject to sanctions by the agency. These procedures and requirements must be within the agency's enabling act. A contested case is one where there is a conflict and one of the parties opposes the agency's decision. In a contested case, the party may be entitled to a trial -like procedure. The procedure required and whether the party is entitled to a procedure may hinge on whether the party is entitled to due process rights. Due process requires that whenever state action deprives a person of a life, liberty, or property interest, the state must ensure adequate procedures to protect that person's rights. The formality of the proceedings and what type of process is required is determined by a balancing test. The state will balance the harm to the party, the interest of the government, and the cost to the government (both in terms of judicial economy and the risk of the outcome producing an inequitable or erroneous decision).

In this case, Jane likely has a property interest in her education. Thus, the suspension denies Jane of her property interest. She is opposing the school's decision, which makes this a contested case. Because this involves a denial of a property interest, a more trial-type procedure is likely required to protect Jane's interest, in the interest of judicial economy, and to protect against erroneous decisions.

In a contested case, agencies are typically required to provide a party the opportunity to be presented with the evidence against that party, the opportunity to present evidence supporting their story, test and rebutt the evidence against them, and have a decision made on the evidence presented. Thus, Jane will likely be provided an opportunity to present a defense before she is suspended.

2. The school is not required to provide Jane with all the elements of a trial-type hearing, such as the right to confrontation and cross examination. The issue is what rights is a party entitled to in a contested case.

As previously discussed, this is a contested case. In a contested case, a party is not afforded all the rights he or she is afforded at trial. MAPA has set forth certain requirements including that the party is entitled to be presented with the evidence against her, is entitled to present supporting evidence, is entitled to test and rebutt the opposing evidence, and is entitled to a decision on the evidence. MAPA authorizes each agency to create rules of evidence for the proceeding. The federal rules of evidence or Missouri rules of evidence do not apply. A party may present evidence in his or her favor. In addition, MAPA generally authorizes the use of affidavits as long as they are for a legitimate purpose, business records may be admitted without the same authentication required at trial, public records may be admitted without the same authentication required at trial, and the rules of hearsay do apply. The party is entitled to confront the evidence against her and test and rebutt the evidence. The party is also entitled to cross examine a witness. However, the same procedures required at trial are not required in the contested case.

In this case, Jane is likely entitled to cross examine witnesses and confront the evidence against her. However, these rights are not the same as they would be in a trial. Jane's lawyer will not be allowed to make arguments. The lawyer may be allowed to be present during the proceeding, however Jane is not entitled to have a lawyer present or entitled to have her lawyer make a defense for her.

3. Jane probably cannot forgo the opportunity to present her defense and immediately file a civil lawsuit. The issue is whether exhaustion of remedies is required.

Exhaustion of remedies is required in a contested agency case. There are several exceptions however. Exhaustion is not required where it is highly probable that the administrative hearing would be a waste of time because the outcome is predetermined, where there is a challenge to the constitutionality on the face of the agency's organic/enabling act, where there is only a challenge

to the law and no facts are in dispute, or where exhaustion would cause substantial and irreparable harm because of the delay. In addition, the Missouri courts have suggested that exhaustion is not required where rulemaking is an issue.

In this case, Jane's hearing would be a contested hearing, which requires exhaustion unless one of the exceptions are met. It is unlikely any of these exceptions will be met, therefore, Jane will be required to exhaust her remedies with the agency first. Jane may argue that exhaustion would be a waste of time because the outcome is predetermined. This is very narrowly construed and only available where there is only one possible way the agency will determine the decision. In this case, the administration (or whoever hears the case) may hear Jane's evidence and decide she is not guilty. It does not appear the administration is required to find only against Jane. Therefore, it is not predetermined that Jane will be suspended, and this exception is not likely met. Jane is not making a constitutional challenge to the face of the agency's organic/enabling act, therefore this exception does not apply. Jane is also not challenging a rule or law with no facts are in dispute. This is purely a factual issue, it appears: Jane says she was not cheating; the school says she was. Therefore, this exception will not apply. Finally, it does not appear that Jane is being suspended immediately. Instead, it appears the suspension is pending until the outcome of the hearing. Furthermore, her suspension is only recommended. Thus, it does not appear that Jane will suffer immediate and irreparable harm. Because Jane has not met any of the exceptions and this is a contested case, she is likely going to be required to exhaust her administrative remedies prior to filing a civil lawsuit.

## AM ESSAY 2 - EXAMPLE #3

2)

1) Yes the school is required to provide Jane with an opportunity to present a defense but it can be after she is suspended. The issue is whether Jane has a protectible property right in the right to attend school that she is owed due process before she has the right taken away. A person does have a protectible right in education that would allow them to due process of the law before this right was taken away, however, the school could provide Jane with an opportunity to be heard within a reasonable time after the suspension. For a person to have a protectible property right so that they are owed due process before having it taken away it must be a fundamental right. A fundamental right something that the government cannot take away from a person without a proper hearing. To determine if the right is protectible it must be determined if the right is a privilege or a right. Something is a privilege if the government can take the right away at any time. For example, a driver license is a privilege. However, things like employment and education are rights that cannot be taken away from a person without a procedural due process. This means that a person must have a right to protect this interest. The right to protect this interest however, may come within a reasonable time after the right has been taken away.

2) No, Jane does not need to be provided with all trial type rights. The hearing must be fair and reasonable. Thus, the hearing will not need to follow all the evidentiary standards but the hearing will be required to allow Jane to present a fair and reasonable response to the allegations against her. She must be able to present her side to the story so that she awarded due process before her right to education is taken away. To be fair and reasonable Jane must have a chance to present all her evidence and must be shown all the evidence against her. She does not necessarily have a right to confront the witnesses or to cross-examination, but the board that hears her case will have all the evidence and will be able to decide from all the evidence if she was given an opportunity to respond.

3) Yes Jane can forgo the opportunity to present her defense but she will not be allowed to file a civil lawsuit against the public school. There are two reasons that Jane would not be allowed to file a civil lawsuit before going to the hearing. First, Jane must exhaust all other

remedies before seeking legal remedy. The school is offering an opportunity to present her case so that she may be allowed to come back to school before any harm has been caused to her. The second reason is that the issue is not ripe yet. Technically, Jane has not been injured. She has not been suspended and the hearing could prevent the suspension from ever happening. For a person to have a claim the issue must be ripe, which means that the injured party must have been actually injured. In this case, Jane was told by the principal that he was going to recommend that she be suspended for three days. This shows that she has not been suspended yet but that she is being awarded an opportunity to respond to these allegations. To bring a lawsuit would be frivolous at this point because she has not been injured. She may claim that she has been injured because the whole incident was embarrassing and the other classmates now think that she is a cheater, but this is a claim that may fail. In any case, the courts would probably say that Jane has no injury yet because she has not been suspended and that her issue is not ripe.

## AM ESSAY 3 - EXAMPLE 1

3)

**State A's Jurisdiction Over Dad:** State A's assertion of personal jurisdiction over Dad is consistent with due process requirements. State A long arm statute provides that, for the purposes of determining paternity and establishing child support, jurisdiction is proper over out of state defendants if the defendant engaged in sexual acts in the state and a child was possibly conceived from that act of intercourse.

In order to fully analyze this situation the court must first look at the due process of the state's long arm statute then review to make sure the state's long arm statute is consistent with due process principles of the Constitution. State A's jurisdiction is based on the voluntary sexual acts of the Dad occurring within the State of A which serve as the basis to the instant paternity action. State A also has a strong policy consideration in protecting their citizens especially the children of their state. Therefore, State A's long arm statute is sound.

The Constitution also requires that the assertion over non-resident defendant be due to the purposeful availment of the defendant by the defendant having sufficient minimal voluntary contacts with the forum state and that such contacts be related to the cause of action. This is so not to offend the traditional notions of fair play and justice. As discussed above, although the Dad only had one contact with the State, the Dad's minimal contacts are enough to pass constitutional muster due to the Dad's voluntary actions in having sex in the State of A, producing a child from that sexual encounter and that the sexual encounter is closely related to the cause of action.

**Child support should be ordered to be paid by Dad after Mom obtains personal service on Dad.** The right to child support is the child's right. A parent cannot, without court authority, waive the child's rights to have support from their natural parents. Additionally, the contract between Mom and Dad violate public policy and should be disregarded. However, in order for the Court to order the Dad to pay child support statute requires that Dad be served by personal service. In this case, the Father was served by registered mail, the Father challenged the jurisdiction of the Court in regards to personal jurisdiction and preserved the matter for appeal.

Until the Father is served by personal service the Missouri court lacks the jurisdictional authority, as limited by statute, to order the Dad to pay money.

Once personal service is obtained, the Court should proceed to order child support according to the statutory guideline taking into account the income of the parties and not based on public-assistance levels. The Dad should also be ordered to pay child support for the last 10 years. The statute of limitations on child support is ten years.

**Custody and Visitation:** Under the Uniform Child Custody Jurisdiction Act, State A has exclusive jurisdiction over the custody and visitation issues relating to the minor child because State A is the home state of the minor child. A court has original and exclusive jurisdiction over the child custody issues of the state is the home state: i.e. that the child and one parent has resided in the state for six months and also if there are significant contacts between the state and the minor child so that evidence can be presented regarding the best interest of the minor child.

The court should order that the Mother have sole custody of the minor child with unrestricted visitation to the Dad unless there is a showing that the Dad is a danger to the child or that it would be in the Child's best interest to go through an introductory process with the Dad. The court should decide custody in accordance with the best interest of the child. The court should take into account the child's wishes, the wishes of the parents, the mental and emotional status of the parents, and which parent is likely to be the friendly parent i.e. allowing the non-custodial access and involvement in the child's life. Although there is a strong favor for joint legal custody, the hypothetical did not provide enough information to evaluate if the parents would share a commonality of beliefs necessary to raise the child in a joint custody situation.

## AM ESSAY 3 - EXAMPLE #2

1. Yes, the court's assertion of personal jurisdiction over dad to determine Dad's paternity and support obligations satisfied due process. A state can have personal jurisdiction over a defendant by numerous means including but not limited to serving the defendant in the state, satisfying the state's long arm jurisdiction (specific jurisdiction) plus due process, and based on general jurisdiction. Here, the proper basis is long arm jurisdiction/specific jurisdiction. Specific jurisdiction can be based on one contact with the state so long as the cause of action is related to that contact. Here Dad conceived child in State A, and according to the long arm statute of State A, that is sufficient to satisfy the long arm standard as given in the facts. The second step is then to evaluate whether the due process requirements are met in addition to the long arm statute. Missouri has a provision similar to the one given in State A's long arm statute; Missouri's long arm also comports with the due process requirements so typically the analysis can end with an evaluation of the long arm statute. However, State A is not necessarily Missouri so it must be analyzed whether due process requirements have been met. The standard is whether the defendant had minimum contacts with the forum state - whether he purposefully availed himself of the benefits of the forum state, in which he is not domiciled, such that it is reasonable for him to be hailed into court there. Here, he and Mom conceived a child in State A and he thus availed himself to the benefits of the state and it is reasonable that he be hailed into court as related to the child and his corresponding obligations for that child, consistent with Missouri's notion that long arm jurisdiction on this basis comports with due process.

2. The court should rule that it is not bound by the contract that Mom and Dad entered into regarding paternity and child support. While a couple may enter into agreements regarding marital property and maintenance which typically bind a court, the same is not the case for issues related to children. This is because it is the court's mandated role to determine the best interests of the child, which cannot be circumvented by the parents where a dispute arises. Therefore, the court must use the applicable standards to determine child support, custody, and visitation.

As to child support, the levels of money are not determined by public assistance benefit levels, but rather balance a variety of factors including the resources available to both parents, the custody arrangement, the level at which the child would have been living if the parents stayed together, and any other relevant factor. The courts in Missouri take into account the proportional levels and the amount of each parties' income and there are guidelines that set the corresponding amount. Many of the facts related to these factors are not given, but the court would take this all into consideration and if Dad was found to be the father of Child, he would have to pay child support, until he reaches 18 or if he goes to college age 22.

As to custody, the court looks at the best interests of the child to determine who should get custody, which also includes several factors, such as: 1. Who has the child lived with previously, 2. Which parent will ensure contact with the other parent; 3. Possibly the wishes of the child after a judge conducts an in camera interview; 4. Any other relevant factors. Here, it is likely in the best interests of the child to have Mom remain as the primary custodian, both legally (to make decisions such as education) and physically - he has lived with his mother his whole life and doesn't know his dad. It would be tough, also, to grant partial custody to Dad because they live in different states (depending on distance) but it is possible that the court could do that once the child is comfortable in knowing his dad.

As to visitation rights, Dad is entitled to visitation unless it would harm the child. This is a tougher standard for Mom to meet than in the custody realm. Typically, even if there might be harm, supervised visitation is the remedy rather than no visitation. The facts here do not indicate anything about Dad that

would be harmful to Child so he is entitled to visitation. The court would likely grant some sort of segway for the child to get to know the father if before full visitation rights were granted. Last, as the child is now 14, the court would probably ask the child for input, too.

### AM ESSAY 3 - EXAMPLE #3

3)

1. Yes. In order to establish personal jurisdiction over Dad there are two test that must be met. First the court must have personal jurisdiction by statute. Second the minimum contacts, fairness, and foreseeability requirements of the Constitutional due process clause must be met. Here State A's long arm statute confers personal jurisdiction to State A's courts upon Dad. State A's long-arm statute provides that a court has personal jurisdiction over an alleged parent for purposes of determining paternity and support obligations if the alleged parent "engaged in sexual intercourse in this state and the child may have been conceived by that act of intercourse." Clearly this is the case. It is an uncontroverted fact that Mom and Dad engaged in sexual intercourse while Dad was in State A, that nine months later Mom gave birth to the child, and that Mom telephoned Dad and informed him of the child's birth. Thus, the long-arm statute gives State A's courts personal jurisdiction over Dad.

Next the due process clause must be satisfied. The Supreme Court has held that in order for the due process clause to be satisfied in personal jurisdiction cases that there need to be some minimum contacts with the State and some events creating a nexus between the State and the party, that the jurisdiction must satisfy the notion of fairness, and that it must be foreseeable that the State would have jurisdiction over the party (the International Shoe test). Here it appears these elements have been satisfied. There is a nexus of events that point to minimum contacts between State A and Dad. Here Dad came to the State on vacation and conceived a child. Additionally, he talked on the phone to Mom nine months later and negotiated a contract over the phone. As well, the written contract contained terms outlined by Mom, a resident of State A, which he agreed to and signed. The fairness element seems to be fulfilled. Here, Dad conceived a child. It is the duty of all parents to care for their children regardless of the child's legitimate or illegitimate status. It seems fair that a court in the State in which the child is domiciled would have jurisdiction over the father's paternity and support obligations. Lastly, the foreseeability test appears satisfied. Here Dad came to State A. Had a relationship with a resident of State A. Likely conceived a child in State A that was born in State A by a mother who is domiciled in State A. Had telephone conversations with Mom who was in State A. About subject matter, the child, who was in State A. Negotiated a Contract to be partially performed in State A. And lastly, signed a written contract with a resident of State A. It is foreseeable that Dad could come

under the jurisdiction of State A from the time he spent there, his conversations with residence of State A, and from him knowing that he likely conceived a child that was residing in State A. Therefore, the long-arm statute gives the court personal jurisdiction over Dad and Dad's due process rights have not been violated. State A can order Dad to undergo a paternity test. If not done in State B, State A can use the power of full faith and credit to have State B enforce the order as it is not penal it is civil. If paternity is established, State A can determine Dad's support obligations.

2. The contract made between Mom and Dad is void on public policy reasons. A parent cannot contract out their child support obligations or waive parental rights in exchange for consideration. Because this would encourage child trafficking and be adverse to public policy of electing not to support one's children, this contract between Mom and Dad is void as a matter of law and unenforceable. Before the court rules on the child support, custody, and visitation issues, paternity must be established. If paternity is not established, Dad has no obligation to support the child. Only a parent has the obligation to support a child, if Dad is not established as a parent, the questions of support, custody, and visitation will be moot. I answer the question assuming paternity is established and Dad is the father of the child, because if not there is no reason do discuss support, custody or visitation.

Every parent is responsible for the support of their children until the death of the child or parent, or the emancipation of the child. The child is currently 14 years old. The statute of limitations on child support is typically 10 years, therefore, Dad will not be obligated to pay the first 4 years of child support. Dad may also argue that the defense of laches applies, however, the court typically will not award this defense in a child support case. Every state has child support guidelines that are based on the incomes of the parents. The guidelines are used to determine the amount of money/lifestyle the child would have enjoyed should the parents have stayed together. Therefore, Dad's argument that the value of any child support awarded to Mom be calculated based on state public-assistance benefits has no merit. It will be awarded on the basis of Dad and Mom's earnings. For the time that Mom made more money, Dad may pay less. From the time Mom was disabled, the court will establish that there was a material change in circumstance upon the custodial parent, therefore Dad will have to pay more child support to counteract this change.

The custody issue is based on the best interests of the child. There are two kinds of custody. Physical and Legal. Legal custody has to do with the decisions in the child's life like where she will go to school and what religion she will grow up with. Physical custody is where the child will primarily live. Both physical and legal custody can be joint or primary. Joint legal custody is where parents share the responsibility of making the legal custody decisions. Joint physical custody is where the child shares time with both parents, not necessarily equally, but close to it. Here the child has never met Dad let alone lived with him. Mom, on the other had, has a chronic disease and can not provide for herself. However, money is usually never a reason for a custody change. A custody change is based on the best interests of the child. Dad has properly asked the court for a custody change, and the court will look at the best interest of the child taking into account the time she has spent with Mom, the detrimental removal from her home and school, the interest of the child, i.e. what the child wants, and the condition Mom is in and whether she is a proper care giver. In this case, as changing custody would be an extraordinary move considering the child has never even met Dad, the court is likely to continue to have Mom as the primary physical custodian.

The visitation issue is based on parental rights. Every parent has a right to see their child absent a danger to the child. Dad should be awarded visitation right if he is the real father and he has no prior history of physical or sexual abuse. The court will likely gradually intergrate the child and father, setting goals for longer stays with Dad.

Assuming the court had personal jurisdiction over Dad, the court should order child support based on the income of the parents, custody should be in the best interest of the child, and Dad should recieve visitation rights.

## AM ESSAY 4 - EXAMPLE #1

4)

1. The other directors will not be protected by the business judgment rule.

The Business Judgment rule states that directors that comply with their fiduciary duties and in good faith make a business decision and that decision turns out to be wrong or harms the company the directors will not be liable for the innocent mistake in judgment. This rule is only available to directors that exercise proper care and comply with their duty of loyalty (fiduciary duties). The director's fiduciary duties require that they exercise a duty of care and loyalty. Duty of care means that the director should act as reasonably prudent person would act if managing their own business. The duty of loyalty requires that the director engage in no self-dealing. Self-dealing means taking advantage of a corporate opportunity or by inappropriately profiting from a transaction with the company. A director normally may rely upon the reasonable reports of the officers of the company. However, when an officer is asserting something where they blatantly have an interest a director should not take it at face value.

In this case, the directors did not comply with their standard of care. When Major asserted the value of property that he owned the directors should not have relied solely on that without doing further investigation. A reasonable person running their own business would not take a person's word for it when buying their property. A reasonable person would investigate to determine the value independently and the other directors should have done this as well.

2. Major will not be protected by the business judgment rule

As discussed above, the Business judgment rule does not apply when a director breaches their duty of loyalty.

In this case, Meyer engaged in self-dealing. Meyer sold property to the corporation at inflated value to benefit himself. Meyer clearly obtained a benefit for himself at the corporation's expense and breached his duty of loyalty. Since he breached his duty of loyalty his mistake was not innocent and the business judgment rule will not apply.

3. Major will not be protected.

A director can engage in a transaction with the corporation if the material facts of the transaction are disclosed and the transaction is approved by a majority of the disinterested directors, a majority of the disinterested shareholders, or is fair.

In this case, there was no vote of the shareholders so there can be a waiver of liability there. The transaction gouges the corporation in that they overpay for property so the transaction is not fair. That leaves on the disinterested shareholders that voted when Major abstained. That is still not sufficient because there was no full and fair disclosure of the material facts of the transactions. For that to have occurred Major would have had to tell the directors of the actual value of the property and let them vote. If the directors would have approved that transaction they would have violated their duty of care and would be open to suit by the shareholders.

4. The other directors will be protected by the exculpation clause.

Missouri law does allow a corporation to indemnify a director for violations of their duty of care.

In this case, as discussed above, the directors only violated their duty of care. Missouri does allow a corporation to indemnify directors if they merely violated their duty of care. Since the clause extends "to the fullest extent permitted" the directors would be indemnified from the wrong doing since Missouri allows it.

5. Major will not be protected by the exculpation clause.

Missouri law does not allow a corporation to indemnify a director for violations of their

duty of loyalty.

In this case, as discussed above, Major clearly violated his duty of loyalty and would therefore will not able to be indemnified by the corporation. Since the clause extends only "to the fullest extent permitted" Major would not be indemnified from the wrong doing since it is not allowed.

## AM ESSAY 4 - EXAMPLE #2

4)

1. The directors will not be protected from liability by the business judgment rule (BJR). At issue is whether or not directors met the requirements for BJR protection.

Under Missouri Law a director is protected by the business judgment rule if they are acting as a reasonably prudent person would in the course of running their own business. If directors are acting in this manner they will not be liable for acts of simple judgment error.

Here the directors cannot claim the protection of the BJR because they were not acting as reasonably prudent people would when running their own business. This is evidenced by the fact that the directors did not seek any outside investigation into the value of the property and relied solely on the word of the property's seller. Directors are allowed to rely on outside experts in matters such as these but those people must be independent and Major clearly was not. As a result the directors will not be able to claim protection under the BJR and will be liable.

2. Major also will not be protected by the BJR. At issue is whether or not an interested director can take the protection of the BJR to avoid liability for improper interested transactions.

The same rule applies to Major as the other directors with regard to the BJR

Here the BJR will not protect Major who was an interested party, who sold his land to the corporation for vastly inflated prices and who appears to have dealt in bad faith with the corporation.

3. Major will not be protected from liability by the board's vote. At issue is whether Major is cleansed of his liability by a vote of the disinterested directors when he breached his duty of full disclosure to the board.

Under Missouri corporation law a director who wants to deal with the corporation in a transaction where they are an interested party may do so if they make a full disclosure to the board of all material facts related to the transaction and allow the board to vote on the matter and the interested board member abstain (also a disclosure to and majority vote by the disinterested shareholders makes the transaction permissible and the transaction is permissible if it is fair to the corporation). If the board votes in favor of the transaction then the interested director is

purged of his possible breach of a duty of loyalty.

Here Major did not make a full disclosure, he failed to inform the board of the overpricing of the land and told the board that he had made an investigation into the price and that it was fair. Because of this misstatement the board's vote cannot be used to relieve Major of liability in this case

4. The directors may be protected by the exculpatory clause in the articles of incorporation. At issue is whether the director exceeded the protection of that clause by their bad acts.

Generally exculpatory clauses are permissible provided that they do not propose to exclude the directors from liability from bad faith and intentional bad acts.

Here the directors do not appear to have acted in bad faith. They breached their duty of care to the corporation by failing to act as a reasonably prudent person would in investigating the property that they purchased from Major but no facts exist that suggest that they knew that the land was over valued or they had some personal gain or ulterior motive in approving the transaction. As a result they should be protected by the exculpation provision

5. Major will not be protected by the exculpatory provision. At issue here is whether Major's bad faith excludes him from the protection of the provision.

Under Missouri Corporation law a exculpatory provision is permissible to the extent that it does not excuse intentional bad acts and bad faith dealing by the exculpated party.

Here, it appears that Major was dealing in bad faith with the corporation when he asserted to the board that he had investigated the value of his property and assured the board that the amount that he was asking for was fair market value. Because Major was dealing in bad faith and appears to have made intentional misrepresentations about the land (inferred by the fact that the corporation paid vastly over priced prices for the property) he will not be exculpated under the provision. It would not be permissible to remove

## AM ESSAY 4 - EXAMPLE #3

4)

1) The directors (other than Major) will not be protected from liability by the business judgment rule. The issue is the duty of directors to a corporation where interested-director transactions are involved. A director has discretion in managing a corporation, but a director is a fiduciary who owes a corporation a duty of care and a duty of loyalty. The duty of care is to manage the corporation as a prudent person would. A director is insulated for liability on any decisions made in the course of managing the corporation by the Business Judgment Rule. Decisions made (i) after full investigation of facts, (ii) in the best interest of the corporation, and (iii) that are reasonable, are insulated from liability by the business judgment rule. Directors who rely on appraisals in determining the price to be paid by the corporation are normally insulated by the business judgment rule. Where the property is being sold by an interested director, however, this rule does not apply. Instead, the disinterested directors have an obligation to perform an independent inquiry into the reasonableness of the price to be paid in an interested-director transaction. Here, the disinterested directors did not perform an inquiry into the value of Major's property, but blindly accepted Major's assertion that he was offering it at fair market value. In this case, then, the business judgment rule does not insulate the directors from liability, and they breached their duty of care to the corporation.

2) Major will not be protected from liability by the business judgment rule. The issue is whether a director breaches his fiduciary duty of loyalty by selling personal property to the corporation at inflated prices. As stated above, a director has discretion in managing a corporation, but a director is a fiduciary who owes a corporation a duty of care and a duty of loyalty. The duty of loyalty prohibits a director from profiting at the expense of the corporation. The business judgment rule does not insulate such behavior. Here, Major sold personal property to the corporation at vastly inflated prices. He has therefore profited at the corporation's expense. Although the facts state that Major told the board that he had investigated the value of his property and that the price represented fair market value, it is unlikely that this is true. Major has violated his fiduciary duty of loyalty to the corporation, and he is not insulated by the business judgment rule.

3) Major will not be protected from liability by the board's approval of the transactions. The issue is whether Major followed proper procedures in getting his interested-director transactions approved. As stated above, a director has discretion in managing a corporation, but a director is a fiduciary who owes a corporation a duty of care and a duty of loyalty. The duty of loyalty prohibits a director from profiting at the expense of the corporation. Thus, where a director seeks to conduct business with the corporation (an "interested-director" transaction), he must (i) provide a full and fair disclosure of the terms of the agreement, (ii) abstain from voting and (iii) get the transaction approved by a majority of the disinterested directors. Here, although a majority of the disinterested directors approved the transactions with Major, they did so only based on his misrepresentations that his property was being offered for fair market value. Because Major misrepresented the fair market value of his property, he is not insulated from liability.

4) The disinterested directors will be protected from liability by the exculpatory provision in the articles of incorporation. A corporation may choose to exculpate its directors for liability from their breach of duty of care if they acted in good faith and in reliance on information received when voting on a particular transaction. Here, there is no evidence that the disinterested directors acted in bad faith in approving the transactions with Major. Instead, they relied on the information he gave them that the deals were fair. This should be sufficient to insulate them from liability under the exculpatory provision in the articles of incorporation.

5) Major will not be protected from liability by the exculpatory provision in the articles of incorporation. A director who profits at the expense of the corporation is liable to the corporation for his profits. These can be awarded via a constructive trust on the profits. By law, a corporation is not permitted to exculpate directors who violate their fiduciary duty of loyalty and are found liable to the corporation. Here, Major breached his fiduciary duty of loyalty by profiting at the corporation's expense. Thus, the exculpation clause does not reach Major's behavior, and he will be liable to the corporation in the amount of the profits he received.