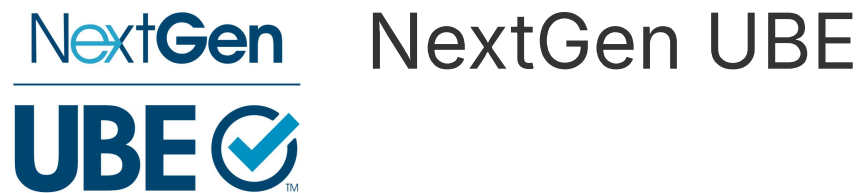


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Sample NextGen UBE Legal Research Performance Task

A legal research performance task (LRPT) focuses on legal research and analysis skills. It consists of multiple-choice and short-answer questions followed by a medium-length writing assignment.

LRPTs may assess skills through subject areas that are partially or fully outside of the Foundational Concepts and Principles; however, the question will provide the resources the examinee needs to give a complete answer. For example, an LRPT may include aspects of state Trusts and Estates law when assessing research and writing skills, but the library will provide all Trusts and Estates law necessary to give a complete answer.

For additional information on performance tasks, visit [About Performance Tasks](#).

The following is a sample legal research performance task, comprised of four multiple-choice questions, one short-answer question, and one medium-length writing assignment. It should take approximately 60 minutes to complete.

SAMPLE LEGAL RESEARCH PERFORMANCE TASK

- > [Memorandum to Examinee](#)
- > [Transcript of Interview with Jane Smith](#)
- > [Notes for Jane Smith's File](#)
- > [Franklin Truth in Lending Act excerpts](#)
- > [Restatement \(Third\) of Agency \(2006\) excerpts](#)

- > [Departure Lending Inc. v. Superior Airways Inc., Franklin Supreme Court \(2017\)](#)
- > [Edito Holdings Co. v. Spartan Lending Co., Franklin Court of Appeal \(2019\)](#)
- > [Component 1](#)
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- > [Component 5](#)
- > [Writing Assignment](#)

Select an option below to view the scoring guides for the Sample Legal Research Performance Task.

[LRPT Short Answer Sample Scoring Guide](#)

[LRPT Writing Assignment Sample Scoring Guide](#)

Legal Research Performance Task Assignment for Jane Smith

Memorandum

To: [You]
From: [Supervising attorney]

Date: [Today]
Re: Jane Smith's Credit Card Liability

Our pro bono client, Jane Smith, has asked whether she is legally responsible to Franklin Bank for credit card charges made by her sister, Kathy Smith. Kathy borrowed Jane's credit card, which was issued by Franklin Bank, and used it to repair the front and back brakes on her van and to purchase groceries.

I have attached the relevant material from Jane's file, which includes an excerpted transcript of the conversation I had with Jane, as well as other documentation.

Additionally, I have included the following four sources for your consideration:

- excerpts from the Franklin Truth in Lending Act;
- excerpted provisions from the Restatement (Third) of Agency;
- *Departure Lending Inc. v. Superior Airways Inc.* (Franklin Supreme Court, 2017); and
- *Edito Holdings Co. v. Spartan Lending Co.* (Franklin Court of Appeal, 2019).

Assume that if Franklin Bank pursues a claim against Jane regarding the credit

card charges, that action would be filed in the Franklin District Court.

After reviewing the file and the resources in the library, please answer the questions that follow.

End of memorandum

Excerpt of Transcript of Interview with Jane Smith

[Attorney]: Jane, tell me what happened with your credit card.

Smith: I gave my sister, Kathy, my credit card to use to repair the front brakes of her van. They were making this terrible, squeaky noise, and I was worried that the van was unsafe for driving. When I asked Kathy about the brakes, she said she could not afford to replace them, so I told her I would pay for them.

[Attorney]: Did you tell her how much she could spend?

Smith: Yes. Kathy had already received a quote for a replacement of the front brakes. She said the price was \$800. I told her she could use my card for the

\$800 charge. She was worried that the auto repair shop would not accept a credit card that did not bear her name, so I gave her a signed note to authorize her use of the card. I was concerned about this, too, so I called the auto repair shop, and they said using the note wouldn't be a problem. They said that doing so is common, especially in the service industry.

[Attorney]: Do you have that note?

Smith: Yes, once Kathy returned my card, she also gave the note back. I will show you the note.

[Attorney]: Did Kathy use your card for the \$800 repair?

Smith: Yes, she presented the repair shop with the note and my credit card after the service to her van, but I later learned that the total bill was \$1,200. Kathy used the card to pay the \$800 bill for the front brake replacement, but she also used the card to replace the rear brakes for \$400.

[Attorney]: And you never agreed to pay for the rear brake replacement?

Smith: No. I made it clear that Kathy could only spend \$800 for the front brake replacement.

[Attorney]: Did Kathy use the card for any other purchases?

Smith: Yes. She also used the card for a \$300 purchase at a local grocery store. I did not authorize that purchase.

[Attorney]: When did you discover that Kathy had spent more than you allowed?

Smith: Four months after I gave Kathy the card. I didn't notice the charges when Kathy made them because I usually pay the balance without checking the statement. When Kathy gave me the card and the note back, she admitted that she had spent more than \$800. That's when I reviewed the statements from the previous four months and saw the \$1,200 charge from the auto repair shop and the \$300 purchase from the grocery store.

[Attorney]: What happened after you discovered the charges?

Smith: I immediately contacted Franklin Bank and told them that my credit card was used without my permission and that I should not be responsible for \$400 of the auto repair shop's charge or the \$300 grocery store purchase.

[Attorney]: What did the bank say?

Smith: That I was responsible for all charges.

End of excerpt

Notes for Jane Smith's File

Copy of the note Jane gave to Kathy:

I, Jane Smith, authorize my sister, Kathy Smith, to use my Franklin Bank credit card to repair the brakes on her van.

Account number: [omitted]

Credit card's expiration date:
[omitted]

Signed: Jane Smith

End of document

Excerpts from the Franklin Truth in Lending Act

§ 1602 Definitions and Rules of Construction

...

(p) The term "unauthorized use," as used in section 1643 of this title, means a use of a credit card by a person other than the cardholder who does not have actual, implied, or apparent authority for such use and from which the cardholder receives no benefit.

§ 1643 Liability of Holder of Credit Card

...

(d) Exclusiveness of liability. . . . [A] cardholder incurs no liability from the unauthorized use of a credit card.

End of excerpts

Excerpts from the Restatement (Third) of Agency (2006)

§ 2.01 Actual Authority

An agent acts with actual authority when, at the time of taking action that has legal consequences for the principal, the agent reasonably believes, in accordance with the principal's manifestations to the agent, that the principal wishes the agent so to act.

§ 2.03 Apparent Authority

Apparent authority is the power held by an agent or other actor to affect a principal's legal relations with third parties when a third party reasonably believes the actor has authority to act on behalf of the principal and that belief is traceable to the principal's manifestations.

End of excerpts

Departure Lending Inc. v. Superior Airways Inc. Franklin Supreme Court (2017)

The plaintiff, Departure Lending Inc. (Departure), a bank, issued a credit card to the defendant, Superior Airways Inc. (Superior), an airline. Superior gave the card to a jet pilot, who was an independent contractor, for the specified purpose of purchasing fuel for commercial flights only. However, the pilot used the card to purchase fuel costing \$89,000 for a private (noncommercial) flight. Superior refused to pay the \$89,000 charge, and Departure brought an action to recover

the money. The trial court found in Departure's favor. The Franklin Court of Appeal upheld the decision. We affirm.

The Franklin Truth in Lending Act controls the question of a cardholder's liability for unauthorized uses of a credit card. The term "unauthorized use" covers situations in which the card user had neither actual nor implied nor apparent authority from the cardholder to conduct certain transactions. Franklin Stat. § 1602. Whether a card user has a cardholder's authority turns on the definitions of these terms as articulated both in case law and in the Restatement (Third) of Agency, which Franklin has adopted. *Wilson v. Evans* (Franklin S. Ct. 2010).

Actual authority exists where the cardholder manifested an intent for the user to use the card for particular transactions. *Cox v. Adams* (Franklin S. Ct. 2015). When an agent acts without actual authority, the principal may nevertheless be liable to a third party if the agent acted with apparent authority. Apparent authority exists where a third party can reasonably infer from the cardholder's words or actions that a card user is acting with the cardholder's consent. Implied authority is not at issue in this case. *Id.*

Here, Superior authorized the pilot to make certain charges, yet the pilot made

additional charges that went beyond the actual authority. The pilot had actual authority to purchase fuel only for commercial flights. As to whether the pilot had authority to purchase fuel for noncommercial flights, the focus is on the perceptions of the third-party sellers of the fuel. Superior gave the pilot physical possession of the card, and evidence at trial showed that there is an industry custom for pilots to use such cards to purchase fuel for all types of flights. It was therefore reasonable for the third-party sellers to believe that the pilot had authority to use the card for all fuel purchases, and this can be traced back to the cardholder's action of giving the pilot physical possession of the card.

Accordingly, while there was no actual authority for the pilot's purchase of fuel for a noncommercial flight, we agree with the trial court that in these circumstances, the pilot had apparent authority to make the purchase. We therefore conclude that Superior is liable for the \$89,000 charge for fuel for the noncommercial flight.

AFFIRMED.

End of opinion

Edito Holdings Co. v. Spartan Lending Co. Franklin Court of Appeal (2019)

Defendant Edito Holdings Co. (Edito) appeals the trial court's decision holding Edito liable for credit card purchases made by Edito's office manager, Dorian Larch. Edito supplied credit cards to many of its employees for use during business travel. Larch, however, was not issued a credit card. On May 16, 2016, Larch submitted a credit card application bearing her signature, and the purported signature of Edito's general manager, to Spartan Lending Co. (Spartan). Spartan issued a Gold credit card to Larch. The trial court determined that Larch had forged the general manager's signature.

From June 2016 until June 2017, Larch wrongfully and fraudulently used the Gold card to obtain personal goods and services in the amount of \$37,339.12. Edito paid for these purchases until it discovered the fraud and confiscated Larch's Gold card in July 2017. Edito did not notify Spartan of the fraud until five months later, in December 2017. Edito then sought to recover its payments under the Franklin Truth in Lending Act ("the Act").

The Act limits a cardholder's liability for charges if the credit card's use was unauthorized. Franklin Stat. § 1643. The Act defines "unauthorized use" as a use "by a person other than the cardholder who does not have actual, implied, or apparent authority for such use." Franklin Stat. § 1602. The trial court concluded that the principle of apparent authority controls in this case.

The Restatement (Third) of Agency provides that apparent authority is created when a third party reasonably believes the actor is authorized to act and the belief is traceable to the manifestation of the principal. *Farmers Bank v. Wood* (Franklin Ct. App. 2016). Thus, Edito is bound by Larch's acts under apparent authority only to third persons who have incurred a liability in good faith. However, we need not decide whether Larch had apparent authority to act because we find that Edito's negligence in failing to examine its monthly statements from Spartan removes this case from the Act's protections. Although the Act does not address the consequences of cardholder negligence, we hold that a cardholder has a duty to examine his credit card statement promptly, using reasonable care to discover unauthorized uses. A cardholder who fails to examine his statement is precluded from asserting his unauthorized signature against the card issuer after a certain time.

Edito's failure to examine its credit card statements over 12 months, from June 2016 to June 2017, so that it could identify and notify Spartan of the fraud, breached its duty to discover unauthorized use of the card. Additionally, Edito's decision to wait five months to report the fraud was not reasonable and further supports this Court's determination that the Act's protections do not extend to Edito.

We therefore conclude that Edito is liable for all of Larch's Gold card purchases from the time the credit card was issued. The trial court's decision is **AFFIRMED**.

End of opinion

Component 1

Which of the following statements are true regarding the Franklin Truth in Lending Act?

Select **two** response options.

- A.** In order of authority, it ranks lower than the Restatement (Third) of Agency.
- B.** It contains a common-law rule statement.
- C.** It contains an ambiguity or undefined term that requires the use of additional resources.
- D.** It is a primary authority.
- E.** It is a secondary authority.

F. It supersedes the Restatement (Third) of Agency.

Component 1 Answer

Component 2

Which of the following statements are true regarding *Edito Holdings Co. v. Spartan Lending Co.* (Franklin Ct. App. 2019)?

Select **two** response options.

- A. In order of authority, it ranks higher than *Departure Lending Inc. v. Superior Airways Inc.* (Franklin S. Ct. 2017).
- B. It contains a common-law rule statement.
- C. It distinguishes *Farmers Bank v. Wood* (Franklin Ct. App. 2016).
- D. It is mandatory authority for Jane's legal issue.
- E. It is persuasive authority for Jane's legal issue.
- F. It overrules *Departure Lending Inc. v. Superior Airways Inc.* (Franklin S. Ct. 2017).

Component 2 Answer

Component 3

Which of the following statements accurately represents the court's decision in *Edito Holdings Co. v. Spartan Lending Co.* (Franklin Ct. App. 2019)?

Select **one** response option.

- A. Edito is bound by Larch's acts under apparent authority.
- B. Edito was negligent in failing to timely examine its credit card statements.
- C. Larch's use of the credit card was unauthorized.
- D. The Act limits a cardholder's liability for charges if the credit card's use was unauthorized.

Component 3 Answer

Component 4

Review *Edito Holdings Co. v. Spartan Lending Co.*, Franklin Court of Appeal (2019). List **two** specific facts from Jane's case that are distinguishable from the facts that were dispositive in the Edito Holdings case.

The length of each answer should be about one sentence

Component 4 Representative Correct Answers

Component 5

For which of the following research questions is your library of four sources most in need of supplemental research?

Select **one** response option.

- A.** How are "actual and apparent authority" established in determining whether the use of a credit card is an "unauthorized use"?
- B.** How quickly must a reasonable cardholder identify and object to fraudulent transactions to retain the protections of the Franklin Truth in Lending Act?
- C.** Under what circumstances is a cardholder liable under the Franklin Truth in Lending Act for an "unauthorized use" of the cardholder's credit card?
- D.** What are the characteristics of a transaction that would constitute an "unauthorized use" under the Franklin Truth in Lending Act?





Component 5 Answer

Writing Assignment

In your research, you were unable to find any additional sources related to Jane's question. Using the sources in your library, write an email to your supervising attorney. In your email, thoroughly analyze whether Kathy had apparent authority to use Jane's credit card to pay for the \$400 rear brake replacement. Analyze only this issue.

Do not include a separate statement of facts, but be sure to refer to the relevant facts when preparing your analysis. Do not include a greeting or closing in the email; rather, focus only on the legal analysis needed to answer the legal question.

Writing Assignment Sample Answer Outline

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