



NextGen Bar Examination Grading and Rubrics

**Southeastern Association of Law Schools (SEALS)
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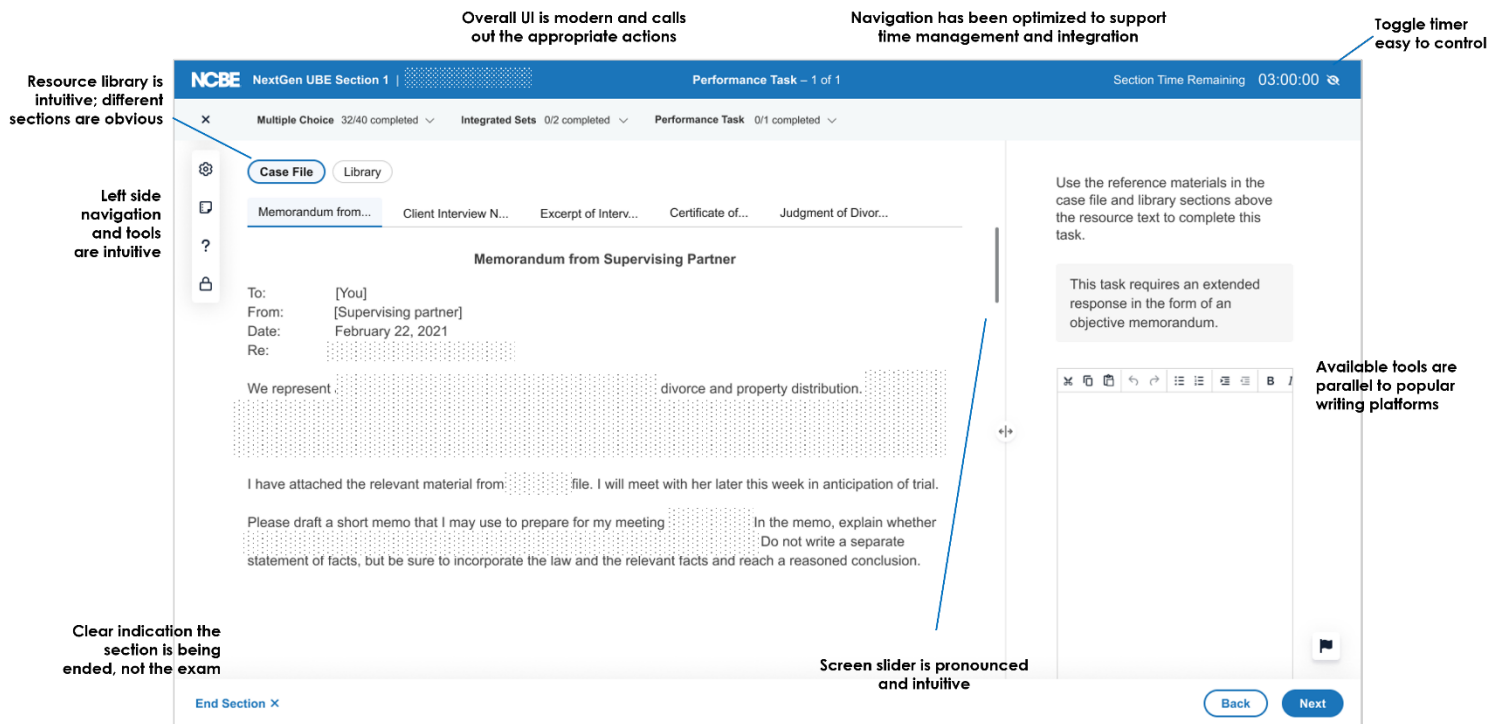


**Webpage for
Legal Educators**

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NextGen Test Delivery Platform



NextGen Question Types

Standalone Multiple-Choice Questions

- Select one of four options (select-one multiple-choice questions)
- Select two of six options (select-two multiple-choice questions)

Integrated Question Sets

Counseling Set

Evaluates skills in client counseling, advising, negotiation, and dispute resolution.

Drafting Set

Evaluates writing and editing skills not covered by longer written sections of the exam

- **Type 1:** Provides a draft document (or sections of a document) and asks examinees to find mistakes and suggest changes or additions to address them.
- **Type 2:** Asks examinees to draft documents such as a memo, brief, or correspondence.

Performance Tasks

Standard Performance Task (PT)

A single extended writing assignment that requires examinees to demonstrate foundational legal skills in realistic scenarios using provided case files and legal resources. Examinees will draft a portion of a memorandum, brief, letter, or other common document.

Legal Research Performance Task (LRPT)

A combination of multiple-choice questions, short-answer questions, and a medium-length writing assignment that tests practical application of legal research and analysis skills using provided case files and legal resources.

Where They Appear

Short-Answer Questions

- Counseling Sets
- Legal Research Performance Tasks (LRPT)

Medium-Length Questions

- Drafting Sets
- Legal Research Performance Tasks (LRPT)

Extended Response Questions

- Standard Performance Tasks (PT)

NextGen Grading Platform

LRPT-Jane Smith

[Instructions](#)

Question (Jane Smith)

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.

Response:

CATEGORY

0 1 2 3 4

Apparent Authority

☐ ☐ ☐ ☐ ☐

Quit

Submit

Jane Smith Source Material

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.

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 does 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 provided 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 note

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 \$89,000 in fuel 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. Frank. Stat. § 1602. Whether a card user has a cardholder's authority turns on the definitions of these terms as articulated in both 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 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



Jane Smith Short Answer Scoring Guide

Jane Smith Short Answer Rubric

Question: 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.

This rubric uses a system of bullets and "sub-bullets" to list correct and incorrect responses.

A response with a solid bullet point in front of it is a representative correct or incorrect response. If there are indented responses under it with hollow bullet points (sub-bullets), each sub-bullet is an anticipated alternative phrasing of the correct or incorrect response.

NOTE: A bullet and sub-bullet provided together cannot both receive points.

Correct responses:

- Jane discovered the fraud after four months, not twelve.
 - Kathy's unauthorized use occurred over the course of four months.
- Jane reported Kathy's unauthorized use immediately after she learned of it.
 - Jane did not wait five months to report.
 - Jane did not wait to report.

Incorrect responses:

- Jane noticed the fraud sooner.
- Jane reported the fraud sooner.
- Jane was not negligent in her review of the statements.
- Jane gave Kathy authority to use the card.
- Kathy's charges were significantly less than those of the unauthorized user in *Edito Holdings*.
- Jane's credit card was a personal card, but the card in *Edito* was a corporate card.
- Jane reported the fraud four months after discovery.
- Answers that provide facts from the *Edito* case without providing dispositive facts from Jane's case.

Score Point	Rationale
2	<p>The answer includes two factual issues to investigate, and each individually meets the following criteria:</p> <p>The response provides a fact from Jane's case.</p> <p>The facts provided are distinguishable from dispositive/outcome-determinative facts in the <i>Edito Holdings</i> case.</p> <p>The response is consistent with the rules of professional conduct listed in the content scope outline.</p>
1	<p>The answer includes one fact that meets the criteria listed above.</p>
0	<p>The answer is blank, incorrect, off topic, I don't know, off purpose, off task, or insufficient.</p>

Jane Smith Short Answer Benchmarks

Sample of Score Point 2

Benchmark Answer #1 (Score: 2)

Answer

Kathy used the card for four months.

Jane reported the use immediately.

Annotation

Response 1 (*Kathy used the card for four months*) receives a point because it provides a fact from Jane's case that is distinguishable from a dispositive fact in the *Edito* case. In *Edito*, the court found that Edito's failure to examine its credit card statements over 12 months, so that it could identify and notify the bank of the fraud, was a breach of Edito's duty to discover unauthorized use of the card. In Jane's case, Jane failed to examine her credit card statement (and Kathy was permitted to use the credit card) over only four months rather than an entire year.

Response 2 (*Jane reported the use immediately*) receives a point because it provides a fact from Jane's case that is distinguishable from a dispositive fact in the *Edito* case. In *Edito*, the court found that Edito's decision to wait five months to report the fraud was not reasonable, which supports the court's determination that the Act's protections do not extend to Edito. In Jane's case, Jane reported the use immediately after she learned of it rather than waiting five months after discovering the fraud to report it.

Sample of Score Point 2

Benchmark Answer #2 (Score: 2)

Answer

Kathy spent money using Jane's credit card over a period of four months, not 12.

When Kathy told Jane about the extra charges, Jane called the bank and told them.

Annotation

Response 1 (*Kathy spent money using Jane's credit card over a period of four months, not 12*) receives a point because it provides a fact from Jane's case that is distinguishable from a dispositive fact in the *Edito* case. In *Edito*, the court found that Edito's failure to examine its credit card statements over 12 months, so that it could identify and notify the bank of the fraud, was a breach of Edito's duty to discover unauthorized use of the card. In Jane's case, Jane failed to examine her credit card statement (and Kathy was permitted to use the credit card) over only four months rather than an entire year.

Response 2 (*When Kathy told Jane about the extra charges, Jane called the bank and told them*) receives a point because it provides a fact from Jane's case that is distinguishable from a dispositive fact in the *Edito* case. In *Edito*, the court found that Edito's decision to wait five months to report the fraud was not reasonable, which supported the court's determination that the Act's protections do not extend to Edito. In Jane's case, Jane reported the use immediately after she learned of it rather than waiting five months after discovering the fraud to report it.

Sample of Score Point 1

Benchmark Answer #3 (Score: 1)

Answer

The use of Jane's card was not long-term.

Jane reported the unauthorized use immediately after she learned it.

Annotation

Response 1 (*The use of Jane's card was not long-term*) does not receive a point because it does not provide a fact from Jane's case that is distinguishable from a dispositive fact in the *Edito* case. It is too vague because it does not specify the four-month time frame. Additionally, the prompt asked for "facts" and this is not a specific fact.

Response 2 (*Jane reported the unauthorized use immediately after she learned it*) receives a point because it provides a fact from Jane's case that is distinguishable from a dispositive fact in the *Edito* case. In *Edito*, the court found that Edito's decision to wait five months to report the fraud was not reasonable, which supports the court's determination that the Act's protections do not extend to Edito. In Jane's case, Jane reported the use immediately after she learned of it rather than waiting five months after discovering the fraud to report it.

Sample of Score Point 1

Benchmark Answer #4 (Score: 1)

Answer

Jane learned about the fraud after four months.

Edito waited five months to report the fraud.

Annotation

Response 1 (*Jane learned about the fraud after four months*) receives a point because it provides a fact from Jane's case that is distinguishable from a dispositive fact in the *Edito* case. In *Edito*, the court found that Edito's failure to examine its credit card statements over 12 months, so that it could identify and notify the bank of the fraud, was a breach of Edito's duty to discover unauthorized use of the card. In Jane's case, Jane failed to examine her credit card statement over only four months rather than an entire year.

Response 2 (*Edito waited five months to report the fraud*) does not receive a point because it does not provide a fact from Jane's case that is distinguishable from a dispositive fact in the *Edito* case. While the fact that Edito waited five months to report the fraud is dispositive in the *Edito* case, this response does not provide a fact from Jane's case that is distinguishable, and it is therefore nonresponsive.

Sample of Score Point 1

Benchmark Answer #5 (Score: 1)

Answer

In *Edito*, *Edito* did not examine the credit card statement until five months after the spending had occurred. In *Jane's matter*, she noticed within four months of the charges.

In *Jane's matter*, she had given express actual authority to her sister to use her card, while *Edito* only granted apparent authority to Larch by issuing him a credit card.

Annotation

Response 1 (*In Edito, Edito did not examine his credit card statement until five months after the spending had occurred. In Jane's matter, she noticed within four months of the charges*) receives a point because it provides a fact from *Jane's case* that is distinguishable from a dispositive fact in the *Edito* case. The response notes that *Jane* failed to examine her credit card statement over only four months. It incorrectly states that *Edito* failed to examine its credit card statement for 5 months. In *Edito*, the court found that *Edito's* failure to examine its credit card statements over 12 months—not 5—was a breach of *Edito's* duty to discover unauthorized use of the card. However, the relevant fact from *Jane's case* is included, so the incorrect fact from *Edito* does not make the response incorrect.

Response 2 (*In Jane's matter, she had given express actual authority to her sister to use her card, while Edito only granted apparent authority to Larch by issuing him a credit card*) does not receive a point because it does not provide a fact from *Jane's case* that is distinguishable from a dispositive fact in the *Edito* case. *Kathy's* authority (apparent or actual) is not relevant because the *Edito* court found that "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."

Sample of Score Point 1

Benchmark Answer #6 (Score: 1)

Answer

In *Edito*, the employee obtained the credit card using a fraudulent application, while Jane had voluntarily provided her card to Kathy.

Edito had not checked their statements for a full year and still waited an additional five months before contesting the charges, while Jane had not reviewed her statements for only three months and promptly contested the charges upon discovery.

Annotation

Response 1 (*In Edito, the employee obtained the credit card using a fraudulent application, while Jane had voluntarily provided her card to Kathy*) does not receive a point because it does not provide a fact from Jane's case that is distinguishable from a dispositive fact in the *Edito* case. Facts related to the manner in which the credit card was received were not dispositive in the *Edito* case.

Response 2 (*Jane . . . promptly contested the charges upon discovery*) receives a point because it provides a fact from Jane's case that is distinguishable from a dispositive fact in the *Edito* case. In *Edito*, the court found that *Edito*'s decision to wait five months to report the fraud was not reasonable, which supports the court's determination that the Act's protections do not extend to *Edito*. In Jane's case, Jane reported the use promptly. **Note:** The response additionally notes that "Jane had not reviewed her statements for only three months." That statement is inaccurate but does not invalidate the correct portions of the response. Jane checked her credit card statements four months after Kathy used the card, not three months.

Sample of Score Point 0

Benchmark Answer #7 (Score: 0)

Answer

Kathy had authority to use the card.

Kathy's charges were significantly less than those of the unauthorized user in *Edito Holdings*.

Annotation

Response 1 (*Kathy had authority to use the card*) does not receive a point because it does not provide a fact from Jane's case that is distinguishable from a dispositive fact in the *Edito* case. Kathy's authority (apparent or actual) is not relevant because the *Edito* court found that "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."

Response 2 (*Kathy's charges were significantly less than those of the unauthorized user in Edito Holdings*) does not receive a point because it does not provide a fact from Jane's case that is distinguishable from a dispositive fact in the *Edito* case. The amount of the charges was not a dispositive fact in the *Edito* case.

Sample of Score Point 0

Benchmark Answer #8 (Score: 0)

Answer

Didn't check the credit card statements for over a year, rather than a few months.

It was 37,000 instead of a few hundred dollars.

Annotation

Response 1 (*Didn't check the credit card statements for over a year, rather than a few months*) does not receive a point because it does not provide a fact from Jane's case that is distinguishable from a dispositive fact in the *Edito* case. It is too vague because it does not specify the four-month time frame.

Response 2 (*It was 37,000 instead of a few hundred dollars*) does not receive a point because it does not provide a fact from Jane's case that is distinguishable from a dispositive fact in the *Edito* case. The amount of the charges was not a dispositive

Jane Smith Short Answer Practice Set

Response #1:

Box 1:

The credit card use was for 5 months rather than a year.

Box 2:

Jane called Franklin Bank immediately.

Box 1 (0-1)	Box 2 (0-1)

Response #2:

Box 1:

Jane did not hesitate in telling the bank about the charges.

Box 2:

Kathy was not Jane's employee, and Jane learned of the fraud 4 months after she gave her the card.

Box 1 (0-1)	Box 2 (0-1)

Response #3:

Box 1:

The credit card use occurred over a period of one year.

Box 2:

The card user was an independent contractor.

Box 1 (0-1)	Box 2 (0-1)

Response #4:

Box 1:

Kathy told Jane about the unauthorized use of her credit card.

Box 2:

Jane called Franklin Bank to report the fraud.

Box 1 (0-1)	Box 2 (0-1)

Response #5:

Box 1:

Immediate reporting of charges

Box 2:

4 months

Box 1 (0-1)	Box 2 (0-1)

Response #6:

Box 1:

Jane examined her credit card statements immediately.

Box 2:

The discovery occurred at 4 months.

Box 1 (0-1)	Box 2 (0-1)



Jane Smith Writing Assignment Scoring Guide

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.

Outline of Analysis

In this legal research performance task (LRPT), the examinee is an associate in a law firm representing a pro bono client, Jane Smith, who has asked whether she is legally responsible to Franklin Bank for a credit card charge made by her sister, Kathy Smith. Kathy borrowed Jane's credit card, which was issued by Franklin Bank, and used it to pay for the replacement of the rear brakes of her van without Jane's permission. The examinee has been asked to draft an email to their supervising attorney analyzing whether Kathy had apparent authority to make this purchase. The following is a complete outline of the rules, application, and conclusion for the "apparent authority" legal analysis. However, a response need not include everything in this outline to earn the highest score. Descriptions of the content required for each score level are noted later in the Rubric Grading Notes.

- **Rules:**

- Under the Restatement (Third) of Agency § 2.03, which Franklin has adopted, an actor has apparent authority to act when a third party "reasonably believes that the actor has authority to act on behalf of the principal and that belief is traceable to the principal's manifestations."
- The provided *Departure* case applied that section to credit card use, explaining that a credit card user has apparent authority to use the card when a third party can reasonably infer from the cardholder's words or actions that the user is acting with the cardholder's consent. *Departure Lending Inc. v. Superior Airways Inc.* (Franklin S. Ct. 2017).
 - Case illustration of *Departure Lending*:
 - In *Departure*, a pilot used his employer's credit card to purchase fuel for a private (noncommercial) flight when he had authority to purchase fuel for commercial flights only.
 - The Court held that the pilot had apparent authority to use the credit card for the purchase because he had physical possession of the card and there is an industry custom for pilots to use credit cards for all types of fuel purchases.
 - This led to a third party's reasonable belief that the pilot had authority to use the card for the private fuel purchase.
 - The third party's reasonable belief could be traced back to the cardholder's action of giving the pilot physical possession of the card.

- **Application:**

- Jane gave Kathy her credit card and a signed note authorizing Kathy to use the card.
- Although Jane verbally restricted Kathy's use of the card to the front brakes, Jane's signed note did not include this restriction. Rather, it broadly noted that Kathy was authorized to use Jane's card "to repair the brakes on her van."
- Thus, when Kathy agreed to the additional (rear brake) repair and presented Jane's credit card and authorization note to pay the repair shop for the repairs, the repair shop could reasonably infer that Kathy was acting with Jane's consent in using the card to pay for the requested repairs.
- This reasonable belief is traceable to Jane's manifestations because Jane (1) provided Kathy with physical possession of the credit card, (2) gave Kathy the signed note, and (3) called the repair shop to discuss the note.
- The repair shop employee told Jane that it is common in the service industry for customers to present notes showing permission to use another person's credit card. This is similar to *Departure's* discussion of an industry custom that pilots use credit cards to purchase fuel for all types of flights.

- **Conclusion:** Kathy had apparent authority to use the credit card to pay for the van's rear brake repair.

Jane Smith Writing Assignment Rubric

Rubric Grading Guidelines

Instructions: Select a score of 0–4 for each response. The table below provides general descriptions of the achievement levels for each score; each level is explained in more detail in the grading notes on the following pages.

Score Point	Rationale
4	Legal analysis is accurate and thorough, and the additional requirements are satisfactory.
3	Legal analysis is mostly accurate and thorough, and the additional requirements are satisfactory. or Legal analysis is accurate and thorough, but one or more of the additional requirements are unsatisfactory.
2	Legal analysis is somewhat accurate and thorough, and the additional requirements are satisfactory. or Legal analysis is mostly accurate and thorough, but one or more of the additional requirements are unsatisfactory.
1	Legal analysis is mostly inaccurate or is so unthorough that it is cursory; the additional requirements may be satisfactory or unsatisfactory. or Legal analysis is somewhat accurate and thorough, but one or more of the additional requirements are unsatisfactory.
0	No legal analysis exists for the issue.

Rubric Grading Notes

These grading notes provide guidance for the score components specific to this legal research performance task (LRPT). Legal analysis accounts for the baseline component of the score. Graders should then consider additional requirements, including the response's organization/structure and its language relating to audience/tone. If these additional requirements are satisfactory, the score will not be affected. If either or both components are unsatisfactory, the score must be reduced by one point total, as reflected in the scoring table.

Legal Analysis

Legal analysis is assessed on its accuracy and thoroughness. *Accuracy* assesses an examinee's ability to identify the correct legal rules associated with the issue at hand and to apply the correct facts to those rules. An “accurate conclusion” is the conclusion designated in the Outline of Analysis provided above. *Thoroughness* assesses the degree to which the examinee uses the rules and facts provided to analyze an issue.

The following are descriptions of the content required for each score level. Note that the rules and application are considered and weighed together to achieve a score value. For example, if a rules section is accurate and thorough (score of 4) and an application section is somewhat accurate and thorough (score of 2), these are balanced for a “mostly accurate and thorough” designation (score of 3) overall. If a rules section is mostly accurate and thorough (score of 3) and an application section is somewhat accurate and thorough (score of 2), that balances to a 2.5 overall. In that situation, graders must determine whether the legal analysis for that issue, overall, is more in line with a score of 3 or a score of 2. The benchmarks and annotations provide examples of this balancing.

Note: To receive a score of 4, both the rules section and the application section must be accurate and thorough (score of 4).

- **Rules section**
 - **Accurate and thorough (score: 4):** Response includes any 4 of the following:
Express rule statements:
 - Apparent authority exists 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.” (Restatement definition)
 - Apparent authority for credit card use exists when a third party can reasonably infer from the cardholder's words or actions that a card user is acting with the cardholder's consent. (*Departure Lending*)

Implied rule statements (Note: Credit should be given when this information is provided as a rule statement or when provided as a reasoning statement in a case illustration):

- Using a credit card in a way that is consistent with “industry custom” provides the third party with a reasonable belief that the agent acted with authority.
- Having physical possession of a credit card leads to a reasonable belief that the agent acted with authority.
- A third party’s reasonable belief that the agent acted with authority can be traced back to the cardholder’s actions when the cardholder provided the agent with physical possession of the credit card.

Thorough case illustration:

- Example of apparent authority – *Departure Lending*: A pilot used a credit card, which his employer had given him, to purchase fuel for a private (noncommercial) flight without actual authority to do so. The Court held that the pilot had apparent authority to use the card for that purchase.
- **Mostly accurate and thorough (score: 3):** Response includes EITHER
 - all requirements needed to earn a score of 4 but with minor omissions or inaccuracies

OR

 - any 3 of the requirements in the list for a score of 4 (except that the case illustration may be unthorough).
 - **Somewhat accurate and thorough (score: 2):** Response includes EITHER
 - all requirements needed to earn a score of 3 but with minor omissions or inaccuracies

OR

 - any 2 of the requirements in the list for a score of 4 (case illustration may be unthorough).
 - **Mostly inaccurate or so unthorough that it is cursory (score: 1):** Response includes EITHER, which may be unthorough or inaccurate:
 - all requirements needed to earn a score of 2 but with minor omissions or inaccuracies;
 - any 1 of the requirements in the list for a score of 4;

OR

 - other rule language relating to apparent authority not listed above (from *Departure Lending* or *Edito Holdings*).

- **No legal analysis exists (score: 0):** No relevant rule language or case illustration is provided.

- **Application section**

- **Accurate and thorough (score: 4):** Response includes a thorough factual discussion and EITHER

- a tie-in of at least 4 of the following rule words:

- reasonable belief/reasonably infer
 - trace(able)
 - manifestation/words/actions
 - consent
 - industry custom
 - perception
 - physical possession

OR

- a thorough analogy to *Departure Lending* AND a tie-in of at least 2 rule words.

The conclusion is correctly stated (Kathy had apparent authority for the rear brakes purchase).

- **Mostly accurate and thorough (score: 3):** Response includes EITHER

- a *thorough* factual discussion and **EITHER**

- a tie-in of 2 or 3 rule words **OR**
 - a thorough analogy to *Departure Lending*

OR

- an *unthorough* factual discussion and **BOTH**

- a tie-in of 1 or more rule words **AND**
 - a thorough analogy to *Departure Lending*.

The conclusion is correctly stated.

- **Somewhat accurate and thorough (score: 2):** Response includes EITHER

- a *thorough* factual discussion with no tie-in of rule language and no analogy to *Departure Lending* (or an *unthorough* analogy to *Departure Lending*)

OR

- an *unthorough* factual discussion and EITHER

- a tie-in of 1 or more rule words **OR**
 - a thorough or *unthorough* analogy to *Departure Lending*.

The conclusion may be correct, incorrect, or missing.

- **Mostly inaccurate or so unthorough that it is cursory (score: 1):** Response includes EITHER
 - an *unthorough* factual discussion with no tie-in of rule language and no analogy to *Departure Lending***OR**
 - an inaccurate application.

The conclusion may be correct, incorrect, or missing.
- **No legal analysis exists (score: 0):** No facts relevant to the legal issue are discussed, and the conclusion is missing.

Additional Requirements

Apart from legal analysis, there are additional requirements to consider in selecting a score. Graders should consider the response's organization/structure and its language relating to audience/tone. If these components are satisfactory, the score will not be affected. If either or both components are unsatisfactory, the score must be reduced by one point total, as reflected in the scoring table.

While it is up to the grader to weigh these factors and determine whether the response's deficiencies are severe enough to deem the response "unsatisfactory" for these criteria, it should be noted that deficiencies within examinee responses are expected. If those deficiencies do not severely affect the quality of the work product, the additional requirements should be deemed "satisfactory." However, if the deficiencies severely affect the quality of the work product or the ability to understand the response, the additional requirements should be deemed "unsatisfactory."

Organization and Structure

Because this item assesses only one legal issue, the response's "overall organization" is not assessed. Instead, only the response's internal organization is assessed. Examinees should structure the analysis such that the explanation of the legal rules is connected to the application of those rules in a way that supports the legal conclusion provided in the Outline of Analysis.

The benchmarks and annotations provide examples of criteria deemed "satisfactory" and "unsatisfactory" for organization. Additionally, the following are descriptive examples of when a response may be deemed "satisfactory" or "unsatisfactory."

Internal organization

- **Satisfactory:** The analysis is structured such that, for the most part, rule language is provided before the application of such language. While the structure may be imperfect, it does not interfere with the reader's ability to understand the analysis.
- **Unsatisfactory:** The analysis is disorganized, and there is no logical flow from rules to application. For example, if the response includes an application of a rule but does not state the rule until much later in the analysis, this organization would interfere with the reader's understanding of the analysis.

Audience and Tone

This component assesses the examinee's ability to use language that is appropriate for the document's intended audience. Law-trained and lay audiences should be addressed with the appropriate level of assumed knowledge and understanding of the issue.

For this LRPT, examinees are writing an email to a supervising attorney. They are instructed to determine whether Kathy acted with apparent authority, so they should use objective, rather than persuasive, language. Additionally, examinees must demonstrate their ability to communicate effectively in writing. (Note: Misspellings, typos, and/or grammatical errors should be disregarded unless they severely affect the substance of the response to the extent that the grader cannot understand what the examinee is trying to convey.)

The benchmarks and annotations provide examples of criteria deemed "satisfactory" and "unsatisfactory." Additionally, the following are descriptive examples of when a response may be deemed "satisfactory" or "unsatisfactory":

- **Satisfactory:** The response includes language that is appropriate for the document recipient. For this LRPT, that is a supervising attorney, and the language should be objective. Language such as "a court would likely find," or other predictive language, is appropriate. In addition, the use of formal language and complete sentences is appropriate.
- **Unsatisfactory:** The response includes language that is not appropriate for the document recipient, which is a supervising attorney, and this language interferes with the quality of the work product. Language arguing for the client's position or stating that "this court should find" would be inappropriate. In addition, because this is an email to a supervising attorney, the use of slang, colloquialisms (such as "you only live once"), or incomplete sentences would be inappropriate.

Jane Smith Writing Assignment Benchmarks

The following pages contain samples of examinee responses and the scores they received. The grid below is an index of the sample responses and their scores.

Benchmark	Score
Response 1	4
Response 2	3
Response 3	3
Response 4	2
Response 5	2
Response 6	1

Benchmark Response #1 (Score: 4)

Kathy had apparent authority to use Jane's credit card to pay for the rear brake replacement.

Kathy had apparent authority to use Jane's credit card to pay for the rear brake replacement, because the note she provided to the repair shop authorized Kathy to "repair the brakes on her van," which could be reasonably understood by the repair shop to be a manifestation of Jane that Kathy had authorization to get all of her brakes repaired, not just her front brakes repaired.

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." When certain manifestations of consent are considered industry custom - even if there was not actual consent - those manifestations weigh in favor of there being apparent authority. *Departure Lending Inc. v. Superior Airways Inc.*

Apparent authority, as defined above, relies on manifestations of consent from the principal, which the third-party can reasonably rely on. As the court in *Departure Lending Inc. v. Superior Airways Inc.* put it, "the focus is on the perceptions of the third-party." When a person uses a credit card without actual, implied, or apparent authority, and the cardholder received no benefit from the purchase, that is considered an unauthorized use, and the cardholder is not liable for that payment. Â§1602, 1643 of the Franklin Truth in Lending Act.

For example, in *Departure Lending*, a pilot used his company credit card for fuel for a private flight. He had apparent authority because he had physical possession of the card and there is an industry custom for pilots to use credit cards for all types of fuel purchases.

Here, there was apparent authority for Kathy's transaction, and therefore she would be liable for that purchase. The note that Jane provided was ambiguous as to what services she consented Kathy paying for – a reasonable person could understand her note to consent to all of Kathy's brakes being paid for. Additionally, the manifestation of consent that Jane provided was an industry standard, and the third party reasonably relied on that manifestation.

Response #1 Annotation (Score: 4)

This response receives a score of 4 because the legal analysis is accurate and thorough. Both the rules section and the application section are accurate and thorough (score of 4). The additional requirements regarding organization and audience/tonal are satisfactory.

Legal Analysis – Accurate and Thorough

The rules section is accurate and thorough (score of 4). The response provides two express rule statements, one implied rule statement, and one thorough case illustration, which are sufficient to earn a score of 4 for the rules section.

- **Express rule statements:**
 - Restatement’s definition of 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.’”
 - *Departure Lending*’s rule on apparent authority for credit card use: “Apparent authority . . . relies on manifestations of consent from the principal, which the third-party can reasonably rely on. As the court in *Departure Lending Inc. v. Superior Airways Inc.* put it, ‘the focus is on the perceptions of the third-party.’”
- **Implied rule statement:**
 - Regarding industry custom: “When certain manifestations of consent are considered industry custom - even if there was not actual consent - those manifestations weigh in favor of there being apparent authority.” (The response also mentions industry custom in the reasoning of the *Departure Lending* case illustration.)
- **Thorough case illustration:**
 - The response provides the relevant facts and holding of *Departure Lending*.

The application section is also accurate and thorough (score of 4). The response includes a thorough discussion of Jane’s relevant facts and a tie-in of at least four of the required rule words, which are sufficient to earn a score of 4 for the application section.

The response’s discussion of Jane’s relevant facts is thorough because it provides information related to Jane’s signed note. Although the response does not mention Jane’s phone call to the auto repair shop, the reference to the note’s language, and the details provided surrounding the note, capture the “reasonable belief” issue enough to deem the facts “thorough.”

The response uses four rule words when it states that the “note that Jane provided was ambiguous as to what services she consented Kathy paying for – a reasonable person could understand her note to consent to all of Kathy's brakes being paid for. Additionally, the manifestation of consent that Jane provided was an industry standard, and the third party reasonably relied on that manifestation.”

The conclusion is correctly stated.

Additional Requirements – Satisfactory

The response's additional requirements are satisfactory. The response includes an internal structure that connects the discussion of rules and their application. Although the response is not perfectly structured, as it contains application language before rule language, the structure does not interfere with the reader's understanding of the analysis. Additional application language is provided following the rule language, which allows the reader to understand the basis for the response's conclusion.

The response's language is appropriate in tone. The language is sufficiently objective, properly taking into account the document's recipient, which is the supervising attorney.

Benchmark Response #2 (Score: 3)

Kathy had apparent authority to make the charge of \$400 to get the back brakes of her car repaired. The restatement third of agency defines apparent authority as the power held by an agent 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. With credit cards, apparent authority exists when a third party can reasonably infer from the cardholder's words or actions that a card user is acting with the cardholder's consent.

To address the first nonauthorized charge on Jane's card it is important to point out that Jane gave Kathy a note that gave her actual authority to use the card "to repair the brakes on her van." Although Jane specified to Kathy that the card was to only be used to pay for the front brakes on the van for \$800, Jane did not specify that the card could only be used for the front brakes in her note or in her phone call to the repair shop. This shows that according to the information that the repair shop had Kathy had permission from Jane to use Jane's card to pay to repair brakes on her van. The note Jane gave Kathy did not say that Kathy only had permission to get the front brakes repaired and not the back brakes.

This presents the court with an ambiguity similar to the one provided in *Departure Lending Inc. v. Superior Airways*, the court addressed the ambiguity between what fuel the pilot could purchase with his company credit card. The distinction in that case was that the pilot could purchase fuel for commercial flights with the card but could not purchase fuel for noncommercial flights with the card. This distinction is not very distinct or clear because the pilot was allowed to purchase the same good, being airplane fuel, for some flights but not others. In Jane's case the distinction was even less clear than in *Departure Lending Inc.* because she made her distinction known to Kathy but not to the receiving repair shop. The only information that the repair shop knew was that Jane had lent her card to Kathy with the permission to use it to pay for her brake repairs. The note given to the repair shop did not specify or make any distinction between the front brakes and the back brakes. The repair shop is the third party whose only option was to rely on the manifestations of the principal, Jane. Jane's manifestations were her phone call to the repair shop and her note written to the shop. Based on Jane's manifestations, the repair shop reasonably believed that Kathy had the authority to use the card to repair both sets of brakes, not just one.

It is also important to note that the repair shop recognized that they run into customers using relatives credit cards to pay for their own service regularly in the service industry. This shows that the kind of situation that Kathy and Jane are involved in is a common occurrence that the repair shop would not scrutinize.

If the court finds that Jane's conduct was not negligent, then the court will find that Jane is liable for the \$400 charge at the repair shop. It is not clear whether the court will find that Jane's conduct was not negligent because of the amount of time it took for her to recognize and report the charges on her card. It took Jane about 4 months to recognize that there were additional unauthorized charges on her card, but she reported them immediately upon finding out. The court will likely compare Jane's four month period with the over a year waiting period in the *Edito Holdings* case. In *Edito Holdings*, the court found that the cardholder was negligent because it had a duty to examine its credit card statements promptly, using reasonable care to discover unauthorized uses. The cardholder in *Edito Holdings* did not exercise reasonable care because it waited over an entire year to review its card statements. When the court compares Jane's 4 months to *Edito's* over a year, the court will likely find that Jane was not negligent.

Response #2 Annotation (Score: 3)

This response receives a score of 3 because the legal analysis is mostly accurate and thorough. While the rules section is mostly accurate and thorough (score of 3), the application section is accurate and thorough (score of 4). In balancing these together, the legal analysis is only mostly accurate and thorough. The additional requirements regarding organization and audience/tone are satisfactory.

Legal Analysis – Mostly Accurate and Thorough

The rules section is mostly accurate and thorough (score of 3). The response provides two express rule statements and one unthorough case illustration, which are sufficient to earn a score of 3 for the rules section.

- **Express rule statements:**
 - Restatement’s definition of apparent authority: “[A]pparent authority [is defined] as the power held by an agent 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.”
 - *Departure Lending*’s rule on apparent authority for credit card use: “With credit cards, apparent authority exists when a third party can reasonably infer from the cardholder’s words or actions that a card user is acting with the cardholder’s consent.”
- **Unthorough case illustration:**
 - The response provides the relevant facts from *Departure Lending* but does not include a clear holding on the issue of apparent authority.

The application section is accurate and thorough (score of 4). The response includes a thorough discussion of Jane’s facts, a tie-in of at least two of the required rule words, and a thorough analogy to *Departure Lending*, which are sufficient to earn a score of 4 for the application section.

Specifically, the response uses three rule words when it states that the “shop[’s] only option was to rely on the manifestations of the principal,” which “were her phone call to the repair shop and her note written to the shop. Based on Jane’s manifestations, the repair shop reasonably believed that Kathy had the authority to use the card to repair both sets of brakes. . . .”

The response also notes that the shop allows customers to use relatives' "credit cards to pay for their own service regularly in the service industry." Although this does not include precise "industry custom" rule language, the response's use of "regularly in the service industry" is synonymous with "industry custom," thus conveying the same meaning as the language used in *Departure Lending*.

The response also includes a thorough analogy to *Departure Lending* in comparing the third parties' reasonable belief under the case facts.

The conclusion is correctly stated.

Note: The rubric requires that both the rules section and the application section be deemed "accurate and thorough" to achieve a score of 4. Therefore, the legal analysis falls into the "mostly accurate and thorough" category because the rules section is only "mostly accurate and thorough" for a score of 3.

Additional Requirements – Satisfactory

The response's additional requirements are satisfactory. The response includes an internal structure that connects the discussion of rules and their application. The response's language is appropriate in tone. The language is sufficiently objective, properly taking into account the document's recipient, which is the supervising attorney.

Benchmark Response #3 (Score: 3)

Actual authority exists where the cardholder manifested an intent for the user to use the card for particular transactions. *Departure Lending Inc. v. Superior Airways Inc.* (2017). 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. This was true in *Departure* when the pilot had apparent authority when he used a credit card to buy fuel.

Here, Jane gave physical possession of the card and a letter to her sister to pay for the brake's repair. The Mechanic can reasonably infer from Jane's words or actions in the letter that her sister is acting with her consent. This demonstrate apparent authority based on her manifestations and Jane would be bound if the mechanic incurred a liability in good faith. Arguably, the mechanic has reason to believe that Jane's sister had apparent authority to pay for the \$800 dollar charge. Additionally, the mechanic would have reason to believe that Jane's sister had apparent authority to pay for the additional \$400 charge. Moreover, the letter did not specifically state an amount but does state that the payment should be for brake repairs. Additionally, it is unreasonable to pay a credit card without checking the statements, specially after 4 months. Therefore, Jane would be bound to pay for the mechanic's \$400 dollars for the brake's repair.

Response #3 Annotation (Score: 3)

This response receives a score of 3 because the legal analysis is mostly accurate and thorough. While the rules section is somewhat accurate and thorough (score of 2), the application section is accurate and thorough (score of 4). In balancing these together, the legal analysis is mostly accurate and thorough. The additional requirements regarding organization and audience/tone are satisfactory.

Legal Analysis – Mostly Accurate and Thorough

The rules section is somewhat accurate and thorough (score of 2). The response provides one express rule statement and one thorough case illustration, which are sufficient to earn a score of 2 for the rules section.

- **Express rule statement:**
 - *Departure Lending's* rule on apparent authority for credit card use: “[A]pparent 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.”
- **Unthorough case illustration:**
 - The response provides the holding of *Departure Lending*, but the facts provided are too sparse to provide an effective example.

The application section is accurate and thorough (score of 4). The response includes a thorough discussion of Jane’s facts and a tie-in of at least four of the required rule words, which are sufficient to earn a score of 4 for the application section. Specifically, it uses four rule words when it states that “Jane gave physical possession of the card and a letter to her sister to pay for the brake's repair. The Mechanic can reasonably infer from Jane's words or actions in the letter that her sister is acting with her consent. This demonstrate[s] apparent authority based on her manifestations. . . .” (Note that “words,” “actions,” and “manifestations” are synonyms that count only once in the tally of rule words.)

The conclusion is correctly stated.

In balancing a somewhat accurate and thorough rules section (score of 2) with an accurate and thorough application section (score of 4), the legal analysis is deemed “mostly accurate and thorough” (score of 3) overall.

Additional Requirements – Satisfactory

The response's additional requirements are satisfactory. The response includes an internal structure that connects the discussion of rules and their application. The response's language is appropriate in tone. The language is sufficiently objective, properly taking into account the document's recipient, which is the supervising attorney.

Benchmark Response #4 (Score: 2)

Per the Franklin Truth in Lending Act, a card owner will be liable for the authorized use of card. Later, the Act states that authorized use also include, the use by an agent with actual, apparent or implied authority. Additionally, in *Edito Holdings Co. v. Spartan Lending Co.* Franklin Court of Appeal (2019), the Court also analyzed that even if there was a non authorized use, if the card owner fails to properly review the statements in a timely manner and notify to the bank about the unauthorized use, then the card owner will be held liable for the unauthorized use of the card.

Jane will likely be responsible for rear brake replacement (\$400) because Kathy had apparent authority to use Jane's credit card to pay for the rear brake replacement (\$400) because Jane gave her a letter. As analyzed in *Departure Lending Inc.*, we have to focus is on the perceptions of the third-party sellers. The rear are part of the breaks and it can be a custom that the person who is repairing breaks also include the rears in the reparation. In *Departure*, the court said industry custom provides the third party with a reasonable belief that the agent acted with authority. There a pilot who possessed a company card had apparent authority to buy fuel for a non commercial flight because he had physical possession of the company credit card. Like the apparent authority in *Departure*, this court should find that Kathy had apparent authority too. Per the Third Restatement of Agency, adopted in *Franklyn*, there is apparent authority when a third party (in this case the auto repair shop) reasonably believes the actor to be authorized and the belief is traceable to the manifestation. In *Departure Lending Inc. v. Superior Airways Inc.* Franklin Supreme Court (2017), 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.

Response #4 Annotation (Score: 2)

This response receives a score of 2 because although the legal analysis is mostly accurate and thorough (with an accurate and thorough rules section and a somewhat accurate and thorough application section, which balances to “mostly accurate and thorough”), the additional requirements are unsatisfactory due to the response’s poor internal organization and its language relating to audience/tone. Therefore, the score is lowered from a 3 to a 2 due to the unsatisfactory additional requirements.

Legal Analysis – Mostly Accurate and Thorough

The rules section is accurate and thorough (score of 4). The response provides two express rule statements, one implied rule statement, and one thorough case illustration, which are sufficient to earn a score of 4 for the rules section.

- **Express rule statements:**
 - Restatement’s definition of apparent authority: “[T]here is apparent authority when a third party . . . reasonably believes the actor to be authorized and the belief is traceable to the manifestation.”
 - *Departure Lending*’s rule on apparent authority for credit card use: “[A]pparent 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 rule statements:**
 - Regarding industry custom: “In *Departure*, the court said industry custom provides the third party with a reasonable belief that the agent acted with authority.”
 - NOTE: The response provides this additional implied rule statement regarding physical possession, but because it has minor omissions, it does not count toward the four required rules: In *Departure Lending*, “a pilot who possessed a company card had apparent authority to buy fuel for a non commercial flight because he had physical possession of the company credit card” (partial reasoning statement because it omits any connection between the idea that the pilot had “physical possession” of the credit card and the “reasonable belief” or “traceable” rule language).
- **Thorough case illustration:**
 - The response provides the relevant facts and holding of *Departure Lending*.

The application section is somewhat accurate and thorough (score of 2). The response includes an unthorough discussion of Jane’s relevant facts and an unthorough analogy to *Departure Lending*, which are sufficient to earn a score of 2 for the application section. Specifically, it provides minimal facts from

Jane's case in noting that "Jane gave her a letter." It also provides an unthorough analogy that includes only the *Departure* case name, the word of comparison ("Like"), and *Departure*'s holding and conclusion: "Like the apparent authority in *Departure*, . . . Kathy had apparent authority." There is no clear factual comparison between Jane's facts and *Departure*'s relevant facts.

Further, although the response provides that "[t]he rear are part of the [brakes,] and it is can be a custom that the person who is repairing breaks also include the rears in the reparation," that application is inaccurate: whether it is customary to repair front and rear brakes at the same time is irrelevant. The legal standard is concerned with whether it is customary for the business to accept a credit card that does not bear the agent's name. Therefore, the analysis provided for industry custom is inaccurate. However, because the application, as a whole, is not inaccurate, and because the unthorough analogy to *Departure Lending* qualifies the application for a score of "2," the inaccurate use of "industry custom" does not affect the score.

The conclusion is correctly stated.

In balancing an accurate and thorough rules section (score of 4) with a somewhat accurate and thorough application section (score of 2), the legal analysis is deemed "mostly accurate and thorough" (score of 3) overall.

Additional Requirements – Unsatisfactory

The response is deficient as to internal organization and audience/tone. Note that either deficiency on its own would bring the score down by one point; however, the rubric limits the reduction for unsatisfactory additional requirements to a single point.

The response's rules section regarding apparent authority is included after its application. While the misplacement of a rule statement will not always interfere with the reader's understanding of the analysis and render the additional requirements "unsatisfactory," it does in this situation.

The placement of the relevant rules at the very conclusion of the analysis fails to provide the reader with any foundational legal standards needed to understand the relevance of the provided case facts and the applied rule language.

The response's language is also inappropriate in tone because it is not sufficiently objective. The response states that "this court should find," which is persuasive, not objective, and it is not addressing the appropriate audience, which should be a supervising attorney, not "this court."

Because the additional requirements are unsatisfactory, the score is reduced by one point.

Benchmark Response #5 (Score: 2)

Kathy Had Apparent Authority to Pay for the Rear Brake Replacement

Under section 20.3 of the Restatement Third of Agency, apparent authority exists “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.” And having physical possession of a credit card makes it reasonable to believe that they had apparent authority. In *Departure Lending*, the court held that a pilot had apparent authority to use a credit card.

Here, Jane provided Kathy with a note to “repair the brakes on her van” and even called the auto shop to ensure Kathy would not have any issues using her credit card to have her brakes repaired. Although Jane told Kathy her usage would be limited to the \$800 front brakes, the auto shop had no knowledge of this limitation. The note provided only specified “brakes” and did not limit the expenditure to a certain amount. Under those circumstances, Kathy acted with apparent authority and this would not be considered an unauthorized use under Franklin Truth in Lending Act. Accordingly, Jane would be liable for the purchases.

Response #5 Annotation (Score: 2)

This response receives a score of 2 because the legal analysis is somewhat accurate and thorough. While the rules section is mostly accurate and thorough (score of 3), the application section is somewhat accurate and thorough (score of 2). In balancing these together, the legal analysis is somewhat accurate and thorough. The additional requirements regarding organization and audience/tone are satisfactory.

Legal Analysis – Somewhat Accurate and Thorough

The rules section is mostly accurate and thorough (score of 3). The response provides one express rule statement, one implied rule statement, and one unthorough case illustration, which are sufficient to earn a score of 3 for the rules section.

- **Express rule statement:**
 - Restatement’s definition of apparent authority: “Under section 20.3 of the Restatement Third of Agency, apparent authority exists ‘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.’”
- **Implied rule statement:**
 - Regarding physical possession: “[H]aving physical possession of a credit card makes it reasonable to believe that they had apparent authority.”
- **Unthorough case illustration:**
 - The response provides the holding of *Departure Lending*, but the facts provided are too sparse to provide an effective example.

The application section is somewhat accurate and thorough (score of 2). The response includes a thorough discussion of Jane’s relevant facts with no tie-in of rule language and no analogy to *Departure Lending*, which is sufficient to earn a score of 2 for the application section. Specifically, the response provides facts about Jane’s note authorizing Kathy to “repair the brakes on her van” and her phone call to the repair shop. It also indicates that the note “only specified ‘brakes’ and did not limit the expenditure to a certain amount.”

The conclusion is correctly stated.

Note: This is an example of a response that falls on the line between a score of 2 and 3 because a portion of the analysis is somewhat accurate and thorough (score of 2) while the other is mostly accurate and thorough (score of 3). The middle ground of those two designations is 2.5, which falls between two scores. However, because the rules section is on the weaker end of “mostly accurate and thorough” because the case illustration is unthorough, the balance swings in favor of the lower designation of “somewhat accurate and thorough” overall.

Additional Requirements – Satisfactory

The response's additional requirements are satisfactory. The response includes an internal structure that connects the discussion of rules and their application. The response's language is appropriate in tone. The language is sufficiently objective, properly taking into account the document's recipient, which is the supervising attorney.

Benchmark Response #6 (Score: 1)

1) Kathy is liable for the rear brake purchase. To gain apparent authority a third party must have reasonable belief that the agent in this case Katy had authority from the principal in this case Jane to make decision on their behalf.

Here Kathy allowed Jane to use her card to fix her front brakes and even gave her a letter to give to the mechanic. The mechanic thought Kathy had apparent authority to act to fix both brakes.

2) Jane is not protected by the truth and Lending as she did not report the unauthorized charges to the bank immediately, she did not report it until 4 months later and similarly to Edito she waited too long to report it and thus takes her out of the protections of the the act.

The truth and lending act of franklin protects from unauthorized use of a credit card from someone without authority whether apparent or actual. Apparent authority I have mentioned before and actual authority is when the agent has direct authority to act under the principles manifestations. The person who suffered the unathorized use is not liable to pay for the damages as related to the unauthorized use of that credit card.

In departure flights the possession of the mere card for a purchase was enough for the court to uphold that the airline was on the hook for the charge made by the pilot for the noncommerical flight. Here Jane gave Kathy her card to use and did not take it back until 4 month afterwards. In Edito the company did not check their credit card statements for over a year and waited to report it after 5 months of finding out. The court found that edito should have checked their credit card statements regularly which they did not and that took them out of the protections of the act. Here similarly Jane paid her card automatically and did not check her statements. Had she did she would find out the about the unauthorized purchases, but she did not. As with the holdings of these two cases the act would not be afforded to Jane.

Response #6 Annotation (Score: 1)

This response receives a score of 1 because the legal analysis is so unthorough that it is cursory. Both the rules section and the application section are cursory (score of 1). The additional requirements regarding organization and audience/tone are satisfactory.

Legal Analysis – Cursory

The rules section is cursory (score of 1). The response provides one express rule statement (with an omission), which is sufficient to earn a score of 1 for the rules section.

- **Express rule statement:**
 - Restatement’s definition of apparent authority: To “gain [apparent] authority[,] a third party must have reasonable belief that the agent . . . had authority from the principal . . . to make decision on their behalf.” (This definition omits rule language relating to a belief that “is traceable to the principal’s manifestations.”)

The application section is also cursory (score of 1). It includes an unthorough discussion of Jane’s relevant facts with no tie-in of rule language and no analogy to *Departure Lending*, which is sufficient to earn a score of 1 for the application section. Specifically, the response only mentions the “letter” that Jane provided to Kathy and notes that “[t]he mechanic did not know the limitation” that Kathy could only use Jane’s credit card to repair the front brakes.

Note: The response includes additional analysis related to cardholder negligence. The prompt asks only about apparent authority. Because this additional analysis does not invalidate or otherwise affect the analysis provided on apparent authority, it does not affect the score.

The conclusion is missing. Although the response concludes that Jane is liable for the rear brakes repair, it fails to conclude that Kathy had apparent authority for the purchase. However, this does not affect the score because a conclusion may be correct, incorrect, or missing for a score of 1 for application.

Additional Requirements – Satisfactory

The response’s additional requirements are satisfactory. The response includes an internal structure that connects the discussion of rules and their application. The response’s language is appropriate in tone. The language is sufficiently objective, properly taking into account the document’s recipient, which is the supervising attorney.

Benchmark Response #7 (Score: 0)

Under the Franklin Truth in Lending Act, an unauthorized use is one without actual, implied, or apparent authority and from which the cardholder receives no benefit, and a cardholder incurs no liability from the unauthorized use of a credit card. Jane did not notice that Kathy spent more than was allowed until four months after Kathy was given the card, and she stated she usually pays the balance without checking the statement. While Jane did wait four months, she then contacted Franklin Bank immediately, and was not negligent like in the Spartan Lendings case.

Response #7 Annotation (Score: 0)

This response receives a score of 0 because no legal analysis exists for the legal issue of apparent authority.

NOTE: Although the response includes the phrase “apparent authority” when providing the requirements of the Franklin Truth in Lending Act, it does not provide any relevant rule language for the meaning of apparent authority, and it provides no legal analysis regarding apparent authority for the rear brakes purchase. A response would be eligible for a score of “1” if, at a minimum, it showed the skill of issue-spotting by providing some indication that apparent authority—and not the other legal requirements mentioned (for example, actual or implied authority or negligence)—was the correct legal requirement at issue. However, merely mentioning apparent authority in conjunction with the Franklin Truth in Lending Act fails to do so.

Jane Smith Writing Assignment Practice Set

Response #1:

Kathy had apparent authority to use Jane's card for the brakes repair. Apparent authority exists when a third party can reasonably believe that the agent has authority to act because that belief is traceable to the principal's manifestations. For example, the court in *Departure Lending* held that a pilot had apparent authority to use a company credit card to purchase fuel for a private flight because he had physical possession of the card and because there is an industry custom for pilots to use credit cards for all fuel types. This provided the fuel sellers with a reasonable belief of authority.

Similar to the pilot's purchase of fuel in *Departure Lending* in which the pilot had physical possession of the card when purchasing fuel and this led to a finding of apparent authority, Kathy had physical possession of Jane's card when paying for the rear brakes. Additionally, Kathy used a note that Jane signed which said that Kathy could use the credit card to repair her brakes. The note did not limit it to just the front brakes. This provided the repair shop with a reasonable belief that Kathy had authority to use the card.

Rules (0-4)	Application (0-4)	Additional Requirements (Satisfactory/ Unsatisfactory)
Overall (0-4)		

Response #2:

Apparent authority exists when a third party reasonably infers from the cardholder's words or actions that the card is used with consent, and here, there was apparent authority for the rear brake purchase. The auto repair shop (third party) reasonably believed that Kathy had the authority to use the card based on Jane's actions, which is Jane signing the note to authorize her use of the card and by calling the auto repair shop. Furthermore, the note that Jane gave Kathy did not specify that the card needs to be only used for the front brakes but rather it just says repair the brakes on her van which is not specific.

Rules (0-4)	Application (0-4)	Additional Requirements (Satisfactory/ Unsatisfactory)
Overall (0-4)		

Response #3:

To summarize my response, Jane would be liable for Kathy's use of her credit card at the mechanic shop because Jane unintentionally authorized Kathy to use her card at the mechanic's shop to replace all of her brakes through apparent authority.

A person will not be liable for unauthorized use of his or her credit card, unless there was actual, implied, or apparent authority for someone else to use the card. Â§ 1602. If the use of the card was not authorized, the cardholder will have no liability for the use. Â§ 1643. Actual authority is granted to an agent when the agent reasonably believes the principal wishes the agent to act after the principal has manifested assent to the agent. Â§ 2.01. Apparent authority is when the principal manifests assent to a third party that the agent is authorized to act on her behalf. Â§ 2.03. Franklin Supreme court has adopted these definitions of the authority and therefore would be binding in our state.

Additionally, when a principal provides an agent with physical possession of the credit card, this provides third parties with a reasonable belief the use is authorized. In one instance, a pilot was given access to a credit card in which he was only authorized to buy fuel for commercial flights through actual authority. Departure. However, the pilot had used the card to buy fuel for some noncommercial flights and the principal wanted to refuse payment of the noncommercial fuel. Although the pilot did not have actual authority to purchase the noncommercial fuel, the airline had notified the bank that the pilot could use the card for purchasing fuel because it is the custom in the industry to allow pilots to buy fuel for the airlines and this resulted in a reasonable belief that the pilot had authority for the card's use. Because of the custom, the pilot had apparent authority to purchase the non-commercial fuel, and thus the airline was liable for the fuel purchased.

In this case, it is the custom in the service industry for people grant other's use of their card to pay for services like mechanic work. So, although Jane had told Kathy she could only use the card for \$800, the note specified only that the brakes would be fixed, not which brakes should be fixed. Jane had also called the mechanic shop and told them that her card could be used and that Kathy would be coming in, granting Kathy apparent authority to use the card to fix her brakes (both the front and back).

Furthermore, it could also be argued that Jane should have checked her credit card statement when she made the payments. One court found that 13 months was way too long to be given the benefit of the doubt to have not discovered the fraudulent use of the card. Edito. There, a card was used improperly for 13 months prior to finding out about the fraudulent use and then waited another 5 months to notify the company of the use. Id. There, the court found that that was too long to allow for reimbursement of the money because they had failed to realize and notify sooner.

Here, although it was only 4 months and Jane notified as soon as she found out, the court may agree with the Edito court and find that she should have reviewed her credit card statements instead of just paying them. Had she done so, she would have realized the problem sooner and been able to have a better argument.

Rules (0-4)	Application (0-4)	Additional Requirements (Satisfactory/ Unsatisfactory)
Overall (0-4)		

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Legal Educators**

Jane Smith Writing Assignment Scoring Chart Summary

SCORE	RULES DESCRIPTION	APPLICATION DESCRIPTION
4	<p>Accurate and thorough: Response includes any 4 of the following:</p> <p>Express rule statements:</p> <ul style="list-style-type: none"> • Apparent authority exists 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." (Restatement definition) • Apparent authority for credit card use exists when a third party can reasonably infer from the cardholder's words or actions that a card user is acting with the cardholder's consent. (<i>Departure Lending</i>) <p>Implied rule statements (Credit should be given when this is provided as a rule statement or when provided as a reasoning statement in a case illustration):</p> <ul style="list-style-type: none"> • Using a credit card in a way that is consistent with "industry custom" provides the third party with a reasonable belief that the agent acted with authority. • Having physical possession of a credit card leads to a reasonable belief that the agent acted with authority. • A third party's reasonable belief that the agent acted with authority can be traced back to the cardholder's actions when the cardholder provided the agent with physical possession of the credit card. <p>Thorough case illustration:</p> <ul style="list-style-type: none"> • Example of apparent authority – <i>Departure Lending</i>: A pilot used a credit card, which his employer had given him, to purchase fuel for a private (noncommercial) flight without actual authority to do so. The Court held that the pilot had apparent authority to use the card for that purchase. 	<p>Accurate and thorough: Response includes a thorough factual discussion and EITHER</p> <p>- a tie-in of at least 4 rule words (see attached)</p> <ul style="list-style-type: none"> • reasonable belief/reasonably infer • trace(able) • manifestation • consent • industry custom • perception • physical possession <p>OR</p> <p>- a thorough analogy to <i>Departure Lending</i> AND a tie-in of at least 2 rule words</p> <p>The conclusion is correctly stated (Kathy had apparent authority for the rear brakes purchase).</p>

Jane Smith Writing Assignment Chart Summary

SCORE	RULES DESCRIPTION	APPLICATION DESCRIPTION
3	<p>Mostly accurate and thorough: Response includes EITHER</p> <ul style="list-style-type: none"> all requirements needed to earn a score of 4 but with minor omissions or inaccuracies <p>OR</p> <ul style="list-style-type: none"> any 3 of the requirements for a score of 4 (except that the case illustration may be <i>unthorough</i>). 	<p>Mostly accurate and thorough: Response includes EITHER</p> <ul style="list-style-type: none"> a thorough factual discussion and either a tie-in of 2 or 3 rule words or a thorough analogy to <i>Departure Lending</i> <p>OR</p> <ul style="list-style-type: none"> an unthorough factual discussion and BOTH a tie-in of 1 or more rule words AND a thorough analogy to <i>Departure Lending</i> <p>The conclusion is correctly stated.</p>
2	<p>Somewhat accurate and thorough: Response includes EITHER (which may be <i>unthorough</i> or inaccurate)</p> <ul style="list-style-type: none"> all requirements needed to earn a score of 3 but with minor omissions or inaccuracies <p>OR</p> <ul style="list-style-type: none"> any 2 of the requirements in the list for a score of 4 (case illustration may be <i>unthorough</i>). 	<p>Somewhat accurate and thorough: Response includes EITHER</p> <ul style="list-style-type: none"> a thorough factual discussion with no tie-in of rule language and no analogy to <i>Departure Lending</i> (or an <i>unthorough</i> analogy to <i>Departure Lending</i>) <p>OR</p> <ul style="list-style-type: none"> an unthorough factual discussion and EITHER a tie-in of 1 or more rule words or a <i>thorough</i> or <i>unthorough</i> analogy to <i>Departure Lending</i> <p>The conclusion may be correct, incorrect, or missing</p>
1	<p>Mostly inaccurate or so unthorough that it is cursory: Response includes EITHER (which may be <i>unthorough</i> or inaccurate)</p> <ul style="list-style-type: none"> all requirements needed to earn a score of 2 but with minor omissions or inaccuracies any 1 of the requirements in the list for a score of 4 <p>OR</p> <ul style="list-style-type: none"> other rule language relating to apparent authority not listed above (from <i>Departure Lending</i> or <i>Edito Holdings</i>). 	<p>Mostly inaccurate or so unthorough that it is cursory: Response includes EITHER</p> <ul style="list-style-type: none"> an unthorough factual discussion with no tie-in of rule language and no analogy to <i>Departure Lending</i> <p>OR</p> <ul style="list-style-type: none"> an inaccurate application <p>The conclusion may be correct, incorrect, or missing</p>
0	<p>No legal analysis exists: no relevant rule language or case illustration is provided</p>	<p>No legal analysis exists: no facts relevant to the legal issue are discussed</p> <p>The conclusion is missing</p>