



Jane Smith Short Answer Scoring Guide

Table of Contents

Jane Smith Source Material	1
Jane Smith Short Answer Rubric.....	9
Correct answers:	9
Incorrect answers:	10
Jane Smith Short Answer Benchmarks	11
Samples of Score Point 2	11
Samples of Score Point 1	13
Samples of Score Point 0	16

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 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 answers.

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

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

Score Point	Rationale
2	<p>The response includes two correct answers that individually meet the following criteria:</p> <ul style="list-style-type: none"> • Each fact provided is from Jane's case. • Each fact provided is distinguishable from a dispositive fact in the <i>Edito Holdings</i> case. • Each fact is consistent with the rules of professional conduct listed in the content scope outline.
1	The response includes one correct answer that meets the criteria listed above.
0	The response is blank, incorrect, off topic, I don't know, off purpose, off task, or insufficient.

Correct answers:

- 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 answers:

- 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.

Jane Smith Short Answer Benchmarks

Samples of Score Point 2

Benchmark Response #1 (Score: 2)

Response

Kathy used the card for four months.

Jane reported the use immediately.

Annotation

Answer 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.

Answer 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 supported the court's determination that the Act's protections did 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.

Benchmark Response #2 (Score: 2)

Response

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

Answer 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.

Answer 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 did 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.

Samples of Score Point 1

Benchmark Response #3 (Score: 1)

Response

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

Jane reported the unauthorized use immediately after she learned it.

Annotation

Answer 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.

Answer 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 supported the court's determination that the Act's protections did 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.

Benchmark Response #4 (Score: 1)

Response

Jane learned about the fraud after four months.

Edito waited five months to report the fraud.

Annotation

Answer 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.

Answer 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 was dispositive in the *Edito* case, this answer does not provide a fact from Jane's case that is distinguishable, and it is therefore nonresponsive.

Benchmark Response #5 (Score: 1)

Response

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

Answer 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 answer 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 answer incorrect.

Answer 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."

Benchmark Response #6 (Score: 1)

Response

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

Answer 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.

Answer 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 supported the court's determination that the Act's protections did not extend to *Edito*. In Jane's case, Jane reported the use promptly. **Note:** The answer 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 answer. Jane checked her credit card statements four months after Kathy used the card, not three months.

Samples of Score Point 0

Benchmark Response #7 (Score: 0)

Response

Kathy had authority to use the card.

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

Annotation

Answer 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."

Answer 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.

Benchmark Response #8 (Score: 0)

Response

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

Answer 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.

Answer 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 dispositive.