

MEE Question 1

One year ago, a man was injured when the car in which he and a woman were traveling slid off an icy highway during a winter storm and overturned. At the time of the accident, the woman was driving the car. The man was sitting in the front passenger seat, wearing his seat belt. The woman was driving 40 mph at the time of the accident, although the posted speed limit was 50 mph.

The man and the woman were rushed to a local hospital in its ambulance. There, hospital surgeons performed emergency surgery on the man. The man remained in the hospital for 10 days following his admission. Numerous medical instruments were used during his surgery and subsequent hospitalization, including needles, clamps, and surgical tools. However, he did not receive a blood transfusion or any blood products.

Three days after the man was released from the hospital, he developed a fever and visited his personal physician, who is not affiliated with the hospital. The physician ordered routine blood tests. The tests revealed that the man had a serious infection that is transmitted in nearly all cases through exposure to either contaminated blood products or improperly sterilized medical instruments (needles, clamps, surgical tools, etc.) that come into contact with a patient's blood. There are, however, other possible sources of the infection in a hospital environment, such as a failure of staff to follow proper handwashing techniques to avoid transmitting infection from one patient to another and staff failure to properly identify and discard certain used medical instruments that cannot safely be sterilized.

Infections occurring in individuals who have not received a blood product and have not been hospitalized during the period of likely exposure are possible but rare. The physician told the man that he "must have contracted this infection at the hospital" because the period between infection and symptom development is 10 to 13 days and the man was a patient at the hospital during the entire relevant period. The physician also stated that "at hospitals that have adopted medical-instrument sterilization procedures recommended by experts, cases of this infection have been almost completely eliminated." The man has no history of intravenous drug use, and he did not receive any medical treatment for several months before his hospital stay. All sterilization procedures at the hospital are performed by hospital employees. However, the particular sterilization procedure used while the man was hospitalized cannot be determined because, while the hospital now uses the sterilization procedure recommended by experts, there is no record of when it started using that procedure.

The man has sued the woman and the hospital, alleging negligence. Neither defendant is judgment-proof, and this jurisdiction has no automobile-guest statute. The parties have stipulated that the man's damages for the injuries he suffered in the accident are \$100,000 and his damages from the infection he contracted are \$250,000.

1. Could a court properly find that the woman was negligent even though she was driving below the posted speed limit? Explain.

2. Could a court properly find that the woman is liable for the man's damages resulting from the infection? Explain.
3. Could a court properly find that the hospital is liable for the man's damages resulting from the infection? Explain.
4. If a court found that both the woman's negligence and the hospital's negligence caused the man's infection, could the woman's liability be limited to \$100,000 for injuries the man suffered in the accident? Explain.

1) Please type your answer to MEE 1 below When finished with this question, click to advance to the next question.

1. The issue is whether the woman was acting reasonably under the circumstances. For a plaintiff to win under a negligence claim, the plaintiff must prove four elements: the defendant had a **duty**, the defendant **breached that of duty**, the defendant's breach **caused** the resulting injury and that the defendant's conduct resulted in **damages**.

Duty and breach of duty -- The recognition of duty is a reasonable person's standard. The test is how would a reasonable person in the circumstances act. Additionally, if there are special circumstances. Driver's have a reasonable standard duty when having passengers in their care. They should take reasonable care when driving the vehicle as not to cause unreasonable injury to their passenger. Here, the facts state that the man and woman were traveling and slid off an icy highway during a winter storm. The woman was driving the car and driving 40 mph at the time of the accident although the posted speed limit was 50 mph. Although she was driving under the speed limit, the facts state that it was an icy highway during a winter storm. A reasonable person would not likely drive only 10 miles under the speed limit during a winter storm. Reasonable people would know that even the slightest move on an icy surface would cause one to slip. Because she was to act as a reasonable person to have care for her passenger, her driving only 10 miles below the speed limit

was not reasonable and she did not act with reasonable care. She had a duty to have reasonable care for her passenger and she breached her duty.

Causation-- Causation has two parts: actual and proximate. These parts include foreseeability for unreasonable conduct. Would it be foreseeable for a defendant to appreciate her repercussions of her conduct if she acted unreasonably. Here, the driver was going only 10 miles under the speed limit during a winter storm. It would be foreseeable for her to recognize that her conduct would somehow cause the car to slide off the road if proper precaution was not taken. As such, but for her unreasonable action, the car would not have slid off an icy highway and the man would not have been injured.

Damages -- Damages are the result of defendant's conduct. Damages may be loss of wages, property, pain and suffering, etc. Here, the facts state that the man was injured and hospitalized. He suffered damages as a result of the woman's conduct.

Based on the information, a court could properly find that the woman was negligent even though she was driving below the posted speed limit.

2. The issue is whether the man's damages were foreseeable. -- A person acting unreasonable should foresee that his conduct could cause further damages or create injury. When one's conduct causes the injury, she should be responsible for the injuries that flow from the conduct unless the injury is too remote from

the defendant's conduct. In other words, were there intervening acts that would make the conduct less likely to flow from the conduct. Here, the woman did not act reasonably by driving only 10 miles under the speed limit. She should have known that her unreasonable conduct would cause injury and damages to her passenger. Her conduct led to the man having to go to the hospital. Having to go to the hospital to have surgery carries the risk of infection. What happened to the man is a foreseeable outflow of the initial accident from the icy highway and unreasonable driving. A court could properly find that the woman is liable for the man's damages resulting from the infection.

3. The issue is whether the hospital could be liable based on *res ipsa loquitur*. *Res ipsa loquitur* is a negligence standard when there is no other explanation for how things would be. Here, the man had an infection that is rare only if two things occur: those who have not received a blood product AND have not been hospitalized during the period. While the man did not receive a blood transfusion or any blood products, he was hospitalized during the time period and had not been hospitalized during any other time period. Additionally, there is no record of the hospital using the procedure that would completely eliminate the infection. Having the information that the man would not have contracted this infection other than his stay in this hospital during this time, the court could properly find that the hospital is liable based on *res ipsa loquitur*.

4. The issue is whether joint and several liability would limit the woman's liability. Joint and several liability is used when there are more than one actor to a cause of action and the facts do not clearly show who is responsible for the resulting injury. Here, the woman's negligence put the man's injury in motion and she would be responsible for the injuries that flow from her actions. She would not be limited to the \$100,000 for injuries the man suffered in the accident.

END OF EXAM

MEE Question 2

A company is in the business of manufacturing and selling stereo equipment. Several months ago, the company borrowed money from a bank, to be repaid by the company in monthly installments. The loan agreement, which was signed by the company's owner, provided that, to secure the company's obligation to repay the loan, the company granted the bank a security interest in "all personal property" owned by the company. Also that day, under an oral agreement with the company's owner (who had full authority to speak on behalf of the company), the bank took possession of one of the most valuable items of the company's property—an original Edison gramophone that the company had acquired because it was the earliest precursor of the company's digital music players—as part of the collateral for the loan. The bank properly filed a financing statement in the appropriate filing office, listing the company as debtor and, in the space for the indication of collateral, listing only "all personal property."

Since borrowing the money, the company has run into various financial troubles. It has missed some loan payments to the bank and recently lost a lawsuit, resulting in a large judgment against the company. Last month, the judgment creditor obtained a judicial lien on the gramophone.

Last week, the bank notified the company that it was in default under the loan agreement. Without giving advance notice to the company, the bank sold the gramophone to an antiques collector in a commercially reasonable manner. The judgment creditor has learned about the sale of the gramophone and asserts that he had a superior claim to it.

The sale of the gramophone did not generate enough money to satisfy the company's obligation to the bank. The bank would like to seize some of the company's other property in which the bank has an enforceable security interest.

1. Does the company have any claim against the bank with respect to the sale of the gramophone? Explain.
2. As between the bank and the judgment creditor, who had a superior claim to the gramophone? Explain.
3. Does the bank have an enforceable security interest in any personal property of the company other than the gramophone? Explain.

2) Please type your answer to MEE 2 below When finished with this question, click to advance to the next question.

1) Does the company have any claim against the bank with respect to the sale of the gramophone?

The company does have a claim against the bank with respect to the sale of the gramophone because the bank must give reasonable notice to the debtor and all junior creditors, including the time, location and method of sale of any collateral, regardless of whether the creditor has possession, control or a perfected security interest in the collateral. A security interest may be perfected by possession. Perfection by possession need not be in writing. Here, the company's owner, who had authority, gave the gramophone to the bank as collateral, so its interest was perfected. The issue is whether a creditor can sell collateral without notice to a debtor when the debtor has defaulted. Under UCC Chapter 9, which governs security interests, in cases of default, if a creditor repossesses, forecloses or seeks to sell something in their control, possession or in judicial action, the creditor must give reasonable notice to the debtor and any junior interests in the collateral before a commercially reasonable sale. This gives the debtor the opportunity to redeem the collateral by satisfying its obligation before the sale if it is able and willing to do so, and it also puts the junior interests on notice because their interests in the collateral will be foreclosed if they do not need to do so. Also, under Chapter 9, if repossessions

and sales of property are not conducted according to the rules Chapter 9, remedies may be available to the debtor. Once such remedy is to assume that the outstanding debt owed is equal to the price for which that the collateral was sold. This would apply most often when there is a purchase money interest where the collateralized item was purchased from funds resulting from the agreement. Here, the bank clearly did not give notice to anyone, so it violated the UCC rules. We do not know how much debt there was and how much of it was based on the collateral, so this probably would not be an appropriate remedy in this case. The courts often find other remedies for the plaintiff such as granting a percent of the value (10% often) of the property sold as damages, so this may be an option.

2) As between the bank and the judgment creditor, who had superior claim to the gramophone.

The bank had superior claim to the gramophone. The issue is whether the bank had perfection by possession of the gramophone and has priority, or whether the later judgment lien has priority. In order for a security interest to be effective, there must be attachment. To have attachment, there must be 1) a signed security agreement identifying the collateral, the parties, signed by the debtor granting a security interest in the collateral to the creditor; control; or possession; 2) the creditor must give value (loan money usually); 3) and the

debtor must have rights in the collateral. Perfection must occur in order to give a creditor or lien holder superior rights in property over that of another creditor or lien holder, usually ranked in time as to first to perfect has priority.

Perfection of a security interest occurs by having a attached secured interest, along with filing a financing statement with the secretary of state of the debtor, or by possession, or by control. When a creditor takes possession, perfection happens at the same time that the creditor takes possession, provided that the security interest attaches. A judgment lien is effective as a security interest as to the date of the judgment lien, however, it must be filed to be perfected. Here, bank gave value when it loaned money; company still had rights in the gramophone because it didn't give title to it to bank; and bank took possession. Therefore bank had perfected its security interest. Because the judgment lien was obtained by the judgment creditor several months after the perfected interest, bank has superior claim.

3) Does the bank have an enforceable security interest in any personal property of the company other than the gramophone?

The bank does not have an enforceable security interest in any personal property of the company other than the gramophone. See above section 2, for the requirements for a valid security agreement. The signed security agreement description must be sufficient to identify the collateral in the agreement. Super

generic descriptions in the security agreement are not valid and enforceable, even though they may be valid and enforceable in a financing statement filed with the secretary of state. "All assets", "all personal property", "all property", are considered to be too generic to be enforceable, whereas slightly more specific terms, such as "all inventory" would be sufficient. Therefore, the security agreement would not be effective and enforceable, other than the gramophone, even though the other elements seem to be present to establish a valid security agreement.

END OF EXAM

MEE Question 3

Five years ago, three radiologists—Carol, Jean, and Pat—opened a radiology practice together. They agreed to call their business “Radiology Services,” to split the profits equally, and to run the practice together in a manner that would be competitive. Toward that end, they purchased state-of-the-art radiology imaging equipment comparable to that of other radiology practices in the community.

Shortly after opening the practice, Carol, Jean, and Pat retained an attorney to organize the practice as a limited liability company. The attorney prepared all the necessary documents and forwarded the documents to Carol, Jean, and Pat for signature. However, they were so involved in their radiology practice that they forgot to sign the documents, and they have never done so.

Four months ago, Carol suggested to Jean and Pat that the practice replace some of the imaging equipment. Jean was worried about overspending on imaging equipment, but she did not express her concern to Carol and Pat.

Three months ago, Carol, without discussing the matter further with either Jean or Pat or obtaining their consent, purchased for the practice a \$400,000 state-of-the-art imaging machine like those recently acquired by other radiology practices in the community.

After the purchase but prior to delivery, Jean learned what Carol had done and was furious. Jean did not believe the practice could afford such an expensive machine. When Jean confronted Carol, Carol said, “Too bad, it’s a done deal—get over it.” At that, Jean responded, “That’s it. I’ve had enough. This machine was purchased without my consent. It’s a terrible idea. I’m out of here and never coming back. Just give me my share of the value of the practice.” Carol responded, “Fine with me.” Carol and Pat subsequently agreed to continue their participation in Radiology Services without Jean.

Radiology Services is in a jurisdiction that has adopted both the Revised Uniform Partnership Act (1997, as amended) and the Uniform Limited Liability Company Act (2006, as amended).

1. What type of business entity is Radiology Services? Explain.
2. Did Carol have the authority to purchase the imaging machine without the consent of Jean and Pat? Explain.
3. Did Jean’s statements to Carol constitute a withdrawal from Radiology Services? Explain.
4. Were Jean’s statements sufficient to entitle her to receive a buyout payment from Radiology Services for her interest in the practice? Explain.

3) Please type your answer to MEE 3 below When finished with this question, click to advance to the next question.

MEE Question 3

1. Radiology Services is a General Partnership

At issue is what type of business Radiology Services is. The business is a general partnership. A partnership exists when two or more people enter into an ongoing business for profit. Here, Carol, Jean and Pat opened the radiology practice and share profits together equally. For the formation of a general partnership, no special formalities are required. The three individuals share profits equally so they are a general partnership.

At issue is whether a limited liability company was ever formed. Under the Uniform Limited Liability Company Act, A limited liability company must be formed in accordance with specific formalities. The name must include LLP or Limited Liability company, which the current does not. All the partners must agree in a partnership agreement and the necessary documents be signed and the fee filed with the secretary of state. None of this happened here so a LLP does not exist.

At issue is whether the partnership remained a general partnership when Jean left. A general partner is free to leave the partnership unless the partnership

agreement states otherwise. Here, no partnership agreement exists. As long as there are two people in the business then it is a partnership. Thus, the partnership remains in tact.

This is a general partnership.

2. Carol did have authority to purchase the imaging machine without consent of Jean or Pat.

At issue here is whether a general partner has permission to make a purchase without consent of other general partners. The general rule is that a general partner is an agent of the partnership principal and may act to bind the partnership as long it is within the scope of the business. There are various forms of authority that an agent may have: express, implied or apparent authority. A general partner has implied authority to make purchases for the business, absent a partnership agreement. Therefore Carol had implied authority.

The issue is whether four months ago when Carol suggested the purchase, whether the lack of express concern or protest from the other partners affected his authority. The general rule is that a partner may make purchases, if it is within the scope of the business then a majority must agree, if there is protest. If it is outside the scope of business, then there must be unanimous agreement. First, the company is in the business of radiology and had already purchased imaging equipment comparable to that of other radiology practices. The purchase by

carol was for imaging equipment, which is clearly within the scope of the business. Jean never expressed her protest to the decision before the purchase. Absent any protest, the purchase need no agreement because it was within Carol's implied authority.

Thus, carol did have authority to purchase the equipment without the consent of Jean or Pat

3. Jean Stamentes constitute a withdrawal

At issue is whether a statment is an effective withdrawal where one general party states: "That's it. I'm out of here and enver coming back. Just give me my share of the value of the practice." Under the Uniform Partnership Act, an express and unequivocal statement of intent to withdraw from a partnership will constitute a withdrawal. Here, the withdrawal is effective because Jean demanded ehr share of the practice which shows she no longer wished to continue in the ongoing sharing of the business for profit. Carol agreed. Pat subsequently agreed to continue the participation with Carol (and without Jean) as partners.

Yes, the statement constituted an effective withdrawal from Radiology Services.

4. Jeans statments do constitute a sufficient statment to receive buyout payment.

At issue is whether Jean's statement of demanding her share of the value of the practice entitles her to a buyout plan. A general partner may dissociate from the partnership. He or she is entitled to his or her interest in the firm. Generally, debts are allocated in proportion to the way profits are shared. Jean shared equally in the profits. She is likely to be liable for any debts but may recover some portion of her interest in the property.

END OF EXAM

MEE Question 4

An airline is incorporated in State A, where its corporate headquarters are located. The facility where it receives and processes online and telephone reservation requests is located in State B. It employs 150 people at that facility. The airline's base of physical operations, including its transport hub and major maintenance facility, is in State C, where more than 12,000 of its 15,000 employees are located. The airline serves States A and C but not State B.

In August, a woman who lived in State C called the reservation center in State B to obtain a round-trip ticket for the woman to fly between State C and State A in early September.

In early September, the woman used the ticket to fly to State A. The purpose of her trip was to hunt for an apartment in State A, where she was planning to start working at a new job that was set to begin in December. The woman found an apartment and signed an agreement to rent the apartment for one year, starting on December 1.

On the woman's return flight from State A to State C, a mechanical failure forced the plane to make an emergency landing in State A. The woman suffered serious and permanent injuries during the emergency landing and was hospitalized for three weeks in State A. Upon leaving the hospital, she returned to her home in State C. Because of the injuries she suffered, the woman has been unable to work, and she has received an indefinite deferral of the starting date for her job in State A. She continues to live in State C, where she has lived her entire life, although she hopes one day soon to move to the apartment in State A and begin working at her new job.

The woman has retained an attorney, who recommended filing a personal injury claim against the airline in State B because of the larger awards that State B juries tend to give in such cases. Accordingly, the woman sued the airline in federal court in State B, making a state-law tort claim for damages in excess of \$1 million for the injuries she suffered during the plane's emergency landing.

The airline promptly filed a motion to dismiss for lack of subject-matter and personal jurisdiction.

State B's long-arm statute allows its courts to exercise personal jurisdiction to "the maximum extent allowed by the Fourteenth Amendment of the United States Constitution."

How should the federal district court rule on the motion to dismiss? Explain.

4) Please type your answer to MEE 4 below When finished with this question, click to advance to the next question.

1. The district court should not grant the motion to dismiss on grounds of lack of subject-matter jurisdiction.

28 U.S.C. 1332 gives federal district courts diversity jurisdiction over actions between, inter alia, citizens of different states where the amount in controversy is above \$75,000. All plaintiffs must be diverse, i.e., from different states, from all defendants. In this suit there is one plaintiff and one defendant. The citizenship of an individual is determined by where they are domiciled, i.e., where they reside and presently intend to stay. Domiciliary is measured as of the time of the filing of an action. The plaintiff lives in State C, currently, has lived there her entire life, and though she intends to leave the state soon, the mere hope to move in the future does not make someone a non-domicile of their state of current residence. More definite plans to leave State C would be required, and here, the woman has received an indefinite deferral of the starting date for her job in State A on account of her injuries, making her plans to leave State C too tentative to defeat her claim to be a citizen of State C at the present time.

As for the airline, a corporation is a citizen of both its state of incorporation and its principal place of business, for purposes of diversity jurisdiction. The

airline's state of incorporation is State A. A principal place of business, for purposes of diversity, is a corporation's "nerve center," i.e., its corporate headquarters. The airline's headquarters are located in State A. Thus, it is solely a citizen of State A for purposes of diversity jurisdiction. The fact that the bulk of its employees and base of physical operations are located in State C would defeat diversity jurisdiction were bases of physical operations deemed corporations' principal places of business for diversity purposes, but they are not; the corporate headquarters is. Therefore, the woman and the airline are diverse.

As to the requisite amount in controversy, the woman has sought damages in excess of \$1 million. Pleading an amount above the jurisdictional minimum satisfies the amount-in-controversy requirement unless there is a legal certainty that the plaintiff cannot recover the jurisdictional minimum. There is no such legal certainty here; the woman's injuries are serious and permanent and there is no damage-capping statute at play. So amount in controversy is satisfied.

2. The district court should likely dismiss the action for lack of personal jurisdiction.

Federal courts generally exercise the personal jurisdiction of the courts of the state in which they sit. State B's long-arm statute allows its courts to exercise personal jurisdiction to the maximum extent allowed by the Fourteenth Amendment, entirely collapsing the statutory inquiry into the constitutional

inquiry. The woman could make two arguments for State B's courts having personal jurisdiction over the airline in this action, but neither is likely to succeed.

First, the woman might argue that State B has general jurisdiction over the airline, irrespective of her claim's particular connections to the forum state. A state has general jurisdiction over a company when that company is "at home" there. A company is generally only "at home" in the state where it is incorporated or has its principal place of business. For these purposes, a base of operations, rather than a corporate headquarters, may qualify as the sort of principal place of business that makes a corporation at home in a particular state. Here, however, the airline's facilities in State B are limited. 150 of its 15,000 employees work in State B at a reservation-processing facility; its base of physical operations is in State C and its corporate headquarters is located in State A. A mere reservation-processing facility, employing 1% of a company's employees, is hardly enough to make a company at home in that state and amenable to any suit in that state, which is what a holding that the airline was at home in State B and that State B had general jurisdiction over the airline would entail.

Second, the woman will argue that State B has specific jurisdiction over the airline because of its contacts with State B with respect to her action, namely the booking of the reservation for the flight that was forced to make an emergency

landing in State B. A company has minimum contacts with a forum as to some action when it can reasonably anticipate being haled into that forum's courts in that action because it purposely availed itself of the forum with respect to that action. And when a company has minimum contacts with a forum with respect to that action, that forum may exercise personal jurisdiction over the action so long as doing so would comport with fair play and substantial justice.

If the woman's claim concerned the contract she made with the airline, the airline could possibly reasonably anticipate being haled into the courts of the state where it executed the contract. But her claim does not concern her contract with the airline; it concerns negligence in a flight that began and ended in State A, on a plane maintained and likely sent out of its transport hub in State C. The airline could reasonably anticipate being haled into court in State A, where the accident occurred; it could also reasonably anticipate, if negligent maintenance was alleged, its being haled into court in State C. It could not reasonably anticipate being haled into court in State B over a tort claim about a plane that flew out of and landed in State A and was maintained in State C, merely because the airline executed its end of the contract for the woman to fly on that plane in State B. The airline does not have minimum contacts, with respect to the woman's claims, with State B. So State B does not have personal jurisdiction over the action, and the district court, therefore, does not have personal jurisdiction over it either.

END OF EXAM

MEE Question 5

Eight years ago, a settlor created a \$300,000 irrevocable trust. The settlor's brother is the sole trustee of the trust. The trust's primary beneficiaries are the settlor's son and daughter. The trust instrument provides, in relevant part:

During the term of this trust, the trustee shall pay to and between my two children so much, if any, of trust income and principal as he deems advisable, in his sole discretion, for each child's support. Upon the death of the survivor of my children, the trustee shall distribute any remaining undistributed trust principal and income equally among my surviving grandchildren.

The trust contains a spendthrift clause that prohibits the voluntary assignment of a beneficiary's interest and does not allow a beneficiary's creditors to reach that interest.

Two months after creating the trust, the settlor died. Both the settlor's son, now age 35, and the settlor's daughter, now age 32, survived the settlor and are still alive. The settlor's son has three living children, now 9, 11, and 14 years of age. These children currently live with their mother, from whom the settlor's son was divorced seven years ago. The settlor's daughter is unmarried and has no children. Both the son (employed as a waiter) and the daughter (employed as a bookkeeper) have earned, on average, less than \$35,000 per year during the past seven years.

Over the past eight years, the son has incurred and has not paid the following debts:

- (a) \$10,000 to a hospital for the son's emergency-room care
- (b) \$35,000 to his former wife in unpaid, judicially ordered child support
- (c) \$5,000 to a friend for repayment of a loan, five years ago, to purchase a high-end computer-gaming system for recreational use

Repayment of the debt to the friend was due last year, but the son defaulted on the loan.

During the first year of the trust, the trustee distributed \$9,000 of trust income to each of the settlor's two children for their support. Thereafter, relations between the settlor's son and the trustee deteriorated. After the son and his wife divorced, the trustee frequently told others, behind the son's back and without any direct basis, that the son was an "adulterer" and a "terrible father." The trustee often referred to the son as a "bum," and he told the settlor's daughter, without any explanation, "Your brother is rude to me."

Over the last seven years, although the son's and daughter's financial needs were similar, the trustee has distributed \$80,000 from trust income and principal to the settlor's daughter and nothing to the settlor's son, despite the son's repeated requests for trust distributions to help him pay his hospital bill, child support, and loan.

1. Given the terms of the trust the settlor created, could the trustee have properly distributed trust assets to the son to enable him to pay (a) his hospital bill, (b) child support, and (c) the loan to purchase the computer-gaming system? Explain.

2. Did the trustee abuse his discretion in refusing to make any distributions to the son during the past seven years? Explain.
3. In light of both the discretion granted the trustee and the spendthrift clause in the trust, may the son's three creditors obtain orders requiring the trustee to pay their claims against the son from trust assets? Explain.

5) Please type your answer to MEE 5 below When finished with this question, click to advance to the next question.

1. Given the terms of the trust the settlor created, the trustee could have properly distributed trust assets to the son to enable him to pay a) his hospital bill, b) child support, and c) loan to purchase the gaming system.

A trustee who has sole discretion to distribute trust funds to the beneficiaries must do so in good faith and while maintaining his fiduciary duty to all beneficiaries of the trust. When administering a discretionary support trust, the trustee must pay for necessities, which would include hospital bills. The trust instrument in this case gives the trustee, the settlor's brother, the sole discretion to determine how much the children need for support. He had wide latitude to determine how much son and daughter need for support by the terms of the trust.

Here, the trustee could have paid the son the money needed for the hospital bill because it is considered a necessity. He probably could not pay the son for child support because that would be garnished and go directly to the ex-wife to eliminate the possibility that the son would use the funds for something else. Paying the child support would probably further the interests of the settlor by providing for his grandchildren; the grandchildren are the ultimate beneficiaries of the remaining balance of the trust upon the son and daughter's deaths. Finally,

he could not give the son the money to purchase the gaming system, because that is exactly the kind of spending that the trust was created to avoid. Generally, the trustee, because he has sole discretion, has an enormous amount of room to decide what purchases or debts to pay for the beneficiaries. He likely could have authorized the first two--hospital bills and child support--without breaching a fiduciary duty to the daughter or other beneficiaries. The loan, however, may be too much of an extension because it is not for "support." In addition, the trust has a spendthrift provision, which shows the settlor probably expected his children to make purchases that they could not pay for like the gaming system and prevents creditors from accessing the trust assets; thus, it would be against the settlor's intent to distribute funds to pay such a creditor.

2. The trustee abused his discretion in refusing to make any distributions to the son during the past seven years.

A trustee, with sole discretion, must still act in good faith and not violate his fiduciary duty to any of the beneficiaries of the trust; he must act in the interest of all beneficiaries and cannot favor one over another. Here, it is clear that the trustee did not act in good faith when he refused to make any distributions to the son. The first year the trustee distributed 9k to the son and 9k to the daughter, but after that the relationship between the son and the trustee went downhill. The facts say that subsequently although the daughter and the son's financial needs were similar, the trustee gave the daughter 80k and nothing to the son.

The trustee also spoke badly of the son to others referring to him as a "bum" "adulterer" and "terrible father." These actions indicate that the trustee's refusal to distribute trust assets to the son was motivated by something other than an exercise of good faith. Therefore, the trustee has abused his discretion by distributing funds to the daughter to the exclusion of the son, and appearing to do so for bad faith reasons.

3. The hospital can require the trustee to pay its claim and the ex-wife can require the trustee to pay the child support arrears. The friend, however, cannot get repayment of his loan from the principal of the trust.

The issue is whether creditors can access principal or income of a trust even if the trust has a spendthrift clause.

The rule is that a spendthrift clause insulates the trust principal and income from garnishment or liens by third party creditors. The purpose of this is to protect the beneficiary from his own inability to curb his spending. The trust is still liable for debts from necessities, like medical care, and child support. Child support orders must be enforced to any extent possible.

Here, the hospital can require the trustee to pay the hospital bills from the trust assets, because trustees of support trusts are required to pay for necessities like food and medical care. The instrument gives the trustee the discretion to pay with income or principal, but he should pay with income to the extent possible.

The ex-wife can probably garnish son's income from the trust. The trustee is not currently, but must pay son an income, because he is doing so for daughter. If son gets an income, the ex-wife can garnish it until the child support arrearage is paid. Finally, the friend cannot get a repayment of the loan from the trust because the loan is just the type of creditor the settlor intended to protect against. Thus, the trustee cannot distribute funds to the friend. Therefore, typically creditors cannot reach the income or principal of a trust--they have to wait until it is in the debtor's hands--but if the bill is for necessities or child support, it can be recovered from the trustee.

END OF EXAM

MEE Question 6

One evening, Ben received a visit from his neighbor. Hanging on Ben's living room wall was a painting by a famous artist. "I love that artist," the neighbor said. "I've collected several of her paintings." Ben remarked that the famous artist was his ex-wife's mother and that whenever his new girlfriend visited, the fact that the painting still hung in his house made her jealous. The neighbor said, "I have a solution. Why don't you give the painting to me for safekeeping? I have an unsigned print by the same artist that you can hang in its place. The print is not in the artist's usual style, so your girlfriend will not get jealous and your living room will still have great art."

Ben thought this was a good idea. He and his neighbor carried the painting to the neighbor's house and hung it in the neighbor's dining room. Ben then took the neighbor's unsigned print home and hung it in his living room.

The next day, Ben decided that he really didn't like the print, and he took it off the wall. Then, around 10:00 p.m., he decided to retrieve the painting from his neighbor.

Ben went to his neighbor's house and knocked on the door, but there was no answer. Just as he was about to leave, he noticed that a ground-floor window was ajar. Ben pushed the window fully open and began to climb into the house to retrieve the painting. The neighbor, who had been asleep upstairs, was awakened by the noise and ran downstairs to find Ben halfway through the window. The neighbor became enraged. Ben tried to explain, but the neighbor would not stop yelling. Ben decided that it would be better to return to his home and retrieve the painting later, after the neighbor had a chance to cool off. But the neighbor followed him outside and across the lawn, yelling, "How dare you sneak into my house!" The yelling attracted the attention of a police officer who was passing in her patrol car. The officer stopped to investigate, and Ben was arrested, questioned, and released.

Two days later, the neighbor returned the painting to Ben, saying "Here's your painting. Give me back the print that I loaned you and we'll forget the whole thing." However, the previous day Ben had been so angry with the neighbor about his arrest that he had contacted an art dealer and had sold her the print. Ben did not tell the art dealer that the unsigned print was by the famous artist. Ben simply offered to sell the print at a very low price and told the art dealer, "I can sell this print to you at such a good price only because I shouldn't have it at all." Although the art dealer often investigated the ownership history of her purchases, she bought the print without further discussion. An hour after the sale, the art dealer contacted a foreign art collector famously uninterested in exploring the ownership history of his acquisitions, and sold him the print for 10 times what she had paid for it.

The prosecutor is considering bringing the following charges: (i) a charge of burglary against Ben in connection with the incident at the neighbor's house, (ii) a charge of larceny or embezzlement against Ben for his actions involving the unsigned print, and (iii) a charge of receiving stolen property against the art dealer for her actions involving the print.

The jurisdiction where these events occurred has a criminal code that defines burglary, larceny, embezzlement, and receiving stolen property in a manner consistent with traditional definitions of these crimes.

With what crimes listed above, if any, should Ben and the art dealer be charged? Explain.

6) Please type your answer to MEE 6 below

1. Ben cannot be charged with burglary.

The issue is whether Ben had the intent to commit a felony when he entered the neighbor's house.

The rule is that a burglary is an unlawful entering of another's dwelling place at night with the intent to commit a felony therein. Burglary is a specific intent crime, and Ben lacked the intent to commit a felony. An unlawful entry does not require breaking in, it can include an act such as pushing an open window even more open to allow yourself inside.

Here, the ground-floor window was ajar and Ben pushed it open and climbed through the window. Thus, he unlawfully entered another's home--the neighbor's house. It was night-time because it was 10 pm and the neighbor was sleeping. Ben, however, did not meet the requisite intent because he only intended to retrieve his painting that the neighbor was holding for him. Retrieving your property from another is not a felony, and thus he did not have an intent to commit a felony when he entered the neighbor's house and cannot be charged with burglary.

2. Ben can probably be charged with larceny but not embezzlement.

The issue is whether Ben had the requisite intent to commit larceny or embezzlement.

The rule is that larceny is the carrying away of another's property with the intent to permanently deprive him of it. Larceny by trick is when a person convinces another to let him use or hold the property while in actuality he intends to convert it. Larceny by false pretenses is when someone acquires title to property through fraud in order to permanently deprive the person of the property.

Embezzlement is when a person has a right to possession of the property and under color of that right deprives the rightful owner of the property of possession or title.

Here, Ben did not acquire the print by trick or false pretenses. The neighbor actually recommended that he take it. The neighbor, however, gave it to him for the purpose of hanging on his wall not for selling to an art dealer. He had possession of the painting, but not title. In selling it, he likely "carried it away," which is required for larceny, because he would have to transport it to the art dealer. In selling it, he clearly intended to permanently deprive the neighbor of the print. He did not have a right to sell the painting or to do anything with it other than hang it on the wall, which means that he could not meet the requirements for embezzlement. Thus, he can likely be charged with larceny but not embezzlement.

3. The art dealer probably could be charged with receiving stolen property for buying the print.

The issue is whether the dealer must have actual knowledge the property was stolen to be charged.

The rule is that a person receiving stolen goods must have actual knowledge that the goods were stolen or recklessly disregard an obvious indication that they are stolen.

Here, the art dealer probably did not have actual knowledge that the print was stolen. Though Ben told her "I shouldn't have it at all," this was probably not enough to indicate that he did not have the right to sell it. For example, he could have meant that he should not have had it at all because he found it while cleaning out an attic not because he stole it. This language was, however, enough to put her on notice that something was not entirely right. Her business practice is to investigate the ownership history of her purchases, but in this case she just bought it without any further discussion. This activity indicates that she likely knew Ben did not have the right to sell the print and recklessly disregarded it in order to make substantial profits on the sale. Thus, she can likely be charged with receiving stolen property.

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