MEE Question 1

A woman brought a tort action against a trucking company in a federal district court in State A one month after a traffic accident in State A. The woman had been driving a car that collided with a truck owned by the trucking company and driven by one of its employees. As a result of injuries sustained during the accident, the woman is permanently disabled and unable to work.

The diversity action, which is properly before the federal court, requires a determination of fault. The woman alleges that, at the time of the accident, the truck driver was driving under the influence of prescription narcotics and lost control of his truck on the highway, which caused the collision. The trucking company argues that the woman caused the accident by driving her car at an excessive speed.

The woman will seek to introduce the following three items of evidence:

1. In-court testimony from a trucking company representative that, less than one hour after the accident, the trucking company began an internal investigation into the accident, which resulted in the truck driver's being fired the next day.

2. A handwritten letter the woman received while she was recuperating in the hospital. The letter, dated one week after the accident, read: *"I am terribly sorry about the accident that I caused. It was all my fault. I was taking pain pills prescribed by my doctor and shouldn't have been driving."* The letter was signed with the name of the truck driver. The woman no longer has the original (hard copy) letter, but she has a photograph of the letter that she took with her cell phone.

3. In-court testimony from the truck driver's doctor that the truck driver has suffered from chronic pain for years and that she had prescribed a powerful narcotic to treat that pain one month before the accident. The doctor is licensed in State A, where she has treated the truck driver for many years.

The truck driver will be unavailable to testify at trial because neither party has been able to procure his attendance and his whereabouts are unknown. The woman's cell phone has been examined by a neutral computer expert, who reports that the photograph of the letter is clearly legible and that the image has not been altered in any manner. The doctor has informed the parties that she does not want to testify about her communications with her patient, the truck driver, and that she has had no contact with her patient since the week before the accident.

The defense team will seek pretrial to exclude all three items of evidence proffered by the woman. Assume that the judge will find all three items relevant under Rule 401 of the Federal Rules of Evidence and will refuse to exclude any item of evidence under Rule 403 of the Federal Rules of Evidence.

With respect to each item of evidence that will be proffered by the woman, identify and explain the most plausible objections that the trucking company's defense team could make, any plausible responses the woman's attorney should make to those objections, and how the court should rule.

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

Evidence Essay

In Court Testimony, trucking company representative, internal investigation.

Subsequent Remedial Measures

Under the Federal Rules of Evidence, measures undertaken by a defendant, such as necessary repairs, recalls, or internal investigations may not be introduced as evidence for the purpose of proving fault in a negligence action. Here, the trucking representative will be asked to testify about measures undertaken by the trucking company following the accident. These measures were undertaken in an effort to prevent future harms as well as determine if some mechanical failure or company controlled factor played a role in the accident. Further, the firing of the truck driver following the investigation, is also another subsequent remedial measure, as it is likely that the company's internal investigation resulted in the conclusion that the truck driver's negligence caused the accident. Therefore, the defenses most plausible argument is to object to entry of the testimony of the company representative as evidence of a subsequent remedial measure. The woman's most plausible argument will be to argue that the evidence is not being offered to prove negligence or fault, but rather for some other permissible use

such as control of the instrumentality, i.e., the company owned the truck, as well as to prove control over the truck driver, i.e., company can be vicariously liable for the negligent actions of its employee committed while acting within the scope of employment. Here, given that the company does not seem to be disputing the the truck was company property, or that the truck driver was not its employee, the judge will most likely rule this as evidence of a subsequent remedial measure undertaken by the company and therefore subject to exclusion.

Handwritten Letter signed by the Truck Driver.

Hearsay

Hearsay is an out of court statement offered for the truth of the matter asserted. Here, a plausible defense of the company will be to argue that the woman is attempting to enter into evidence inadmissible hearsay. However, the woman will more plausibly argue, that the letter is an opposing parties statement, made by an agent of the company, and therefore not hearsay. Further, the woman may also argue, given the unavailability of the truck driver, that the letter constitutes a statement against interest of the hearsay declarant, and is again therefore admissible via a hearsay exception. Therefore, it is likely that the judge will find that the letter, given its contents, signature, and it having been mailed to the women is not hearsay.

Best Evidence Rule

The best evidence rule requires, when the contents of a writing, photograph, or other document are at issue, that the original or a duplicate be introduced into evidence. However, in the event that the original or duplicate has been lost, a photograph of the document, properly authenticated may be admissible. In the present case, the defense will most likely raise the best evidence objection as the woman is attempting to introduce a photograph, taken on her phone, into evidence as evidence of the letter's contents. However, the woman will be able to argue that because the original letter as been lost, with know facts indicating the woman caused this event, a proper authentication of the photograph of the letter may be admitted. In the present case, such authentication has occurred, a a neutral computer expert specifically reported that the photograph of the letter is clearly legible and the image has not been altered in any way. Therefore, it is likely that the court will overrule the defenses best evidence objection and allow admission of the letter into evidence.

In court testimony of trucker driver's doctor

Doctor Patient Privilege

Under the physician patient privilege, communications between a doctor and patient communicated for the purpose of seeking medical treatment are generally treated as privileged. However, the court may limit this privilege

where a party is unable to obtain the relevant information in any other manner and has a substantial need for such evidence. Here, the defense counsel will most likely object on grounds of privilege to admission of the doctor's testimony, as the subject matter of the testimony concerns the doctor's prescribing of narcotics to the truck driver, after the truck driver sought medical treatment from the doctor for his chronic back pain. The defense will also likely argue that admission of the truck driver's medical records, rather than his treating physicians own in court testimony, will just as readily show that the truck driver had been prescribed these narcotics. Further, the defense will likely argue that the treating physician's own objection to testify, coupled with the physician's having no contact with her patient during the week before the accident further reduces the importance of this evidence. The woman's attorney will argue, that given the absence of the defendant, as well as, the use of the narcotics being a crucial element of the woman's case in establishing fault, the evidence should be admitted. Upon hearing both arguments, the court is likely to sustain the Defense counsel objection, and prevent the woman's attorney from compelling the in court testimony of the doctor concerning her patient's treatment.

END OF EXAM

MEE Question 2

A shareholder of Retailer Inc., a publicly traded corporation in the retail business, is concerned about reports in a respected national business magazine that Retailer has been making large donations to a secretive political group, Americans Fighting Against Wrongdoing (AFAW). AFAW places television election advertisements supporting state and federal political candidates who AFAW believes are committed to fighting wrongdoing. The shareholder believes that Retailer's donations to AFAW do not promote Retailer's business in any way.

The shareholder, who owns 100 shares of Retailer stock, has decided to take action. The shares, which the shareholder has held for the past 10 years, have a current market value of $5,000.

The shareholder has sent a letter to Retailer requesting that she be allowed to inspect all minutes of the meetings of Retailer's board of directors relating to donations made by Retailer to AFAW. The shareholder explains that her purpose is to confirm these donations and seek to have the board desist from further waste of corporate assets.

The shareholder has also sent a second letter to Retailer requesting that a proposed shareholder resolution be presented for a vote of the shareholders at the upcoming annual shareholders' meeting. The resolution reads: "We the shareholders of Retailer Inc. hereby resolve that Retailer's board of directors shall not approve any political expenditures by Retailer unless such expenditures are specifically authorized by a majority vote of all outstanding shares of Retailer." The shareholder explains, "This resolution is to stop the board from wasting corporate assets, including by making further donations to AFAW."

Retailer is incorporated in State X, which has adopted the Model Business Corporation Act (MBCA).

1. Under State X law, is the shareholder entitled to inspect the requested board minutes? Explain.

2. Under State X law, is the shareholder's proposed resolution a proper subject for submission to Retailer's shareholders for their vote? Explain.

3. Assuming that the resolution is proper for submission for shareholder action under State X law, would the resolution (if approved) infringe Retailer's First Amendment rights? Explain.

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

Is the shareholder entitled to inspect the requested board minutes?

At issue is whether the shareholder has a proper purpose for inspecting the minutes. Under State X Law, which likely follows the default laws for corporations, a shareholder of a corporation has a right to inspect corporate documents so long as a he states a proper purpose which relates to his rights and duties as a shareholder. Further, if the request relates to inspecting the articles of incorporation, the bylaws, or communications to shareholders, the shareholder does not have to state a proper purpose. However, reviewing minutes of the board's meetings will require a proper purpose, that is stated in a demand that is made on the corporation 5 days in advance. Here, the shareholder wishes to view the requested board meetings for the purpose of looking at what the Board is spending the corporations money on and the shareholder wish to view those records is a proper purpose for a shareholder looking out for the best interests of the corporation. Therefore, the shareholder will be entitled to view the minutes so long as he serves a proper demand with 5 days notice.

Is the shareholders proposed resolution a proper subject for submission to Retailer's shareholders for their vote?

At issue is whether the shareholders have the ability to limit the Board of Directors's actions through a resolution voted on by the shareholders. Generally, the right to manage the operations and decisions of the corporation is vested in the Board of Directors and appointed officers. The shareholders typically do not have the ability to alter how the corporation is run. Further, the proper avenue for making changes to the corporation is through an adoption of a resolution by the Board that is then voted on by the shareholders. Here, the shareholder purposes to make a change to how the corporation is being run through an adoption of the resolution by the shareholders. Further, the proper venue for challenging the Board of Director's actions is through a derivative suit brought by a shareholder alleging that the board of directors has violated their duty of care, which would likely fail here. Here, as the Board has adopted no such resolution, the shareholders are not acting within the proper channels by voting on a resolution that limits the board of directors powers to make decisions for the corporation. The proper action for shareholder to take would be to act to remove directors from the board by a vote of the shareholders and replace them with directors that better suit the shareholder's wishes, if enough shareholders disapprove of the donations to AFAW.

Assuming the resolution is proper for submission for shareholder action under State A law, would the resolution infringe Retailer's First Amendment Rights?

At issue is whether the shareholders actions amount to state action that would implicate protections under the 1st Amendment. Under the 1st Amendment, corporations are protected by the First Amendment just as citizens are. Donations have been found by the Supreme Court to be speech that is subject to First Amendment Protections. For such a protection to apply, the restriction on speech must originate from state action. State action only occurs when a corporation takes on an exclusive, traditional government function, such as operating a company town, or the state actively encourages or facilitates the private action such that it amounts to state action. Thus, if the shareholders act to restrict the speech of the corporation, that is private action that is occurring within the corporation. The corporation is not acting as a company town and further, the state is not encouraging or facilitating such conduct, therefore, there is no state action. Thus, because it is not state action, such a limitation on the corporation would not be subject to the First Amendment's protection. Therefore, the restriction (if passed) by the shareholders does not implicate the First Amendment protections as it applies to the Board of Directors in what political causes they choose to donate their money to.

END OF EXAM

MEE Question 3

Ann, a successful entrepreneur, grew up in a small town in State A. Ann's family could not afford to send her to college, but a group of local store owners, sensing Ann's potential, paid Ann's tuition for college and graduate business school. Twenty years later, in honor of the store owners, Ann created a trust and funded it with $1,000,000.

Under the terms of the trust, the trustee (a local bank) must annually use trust income to purchase and install seasonal plantings on all principal streets in the town where Ann grew up. The trustee is authorized to invade trust principal to purchase and install such plantings if the trust income is insufficient. The trust instrument further provides that the trust will last in perpetuity or until such time as the principal of the trust has been exhausted; no individuals are named as trust beneficiaries. Currently the trust's annual income is $40,000 and the annual cost of seasonal plantings is anticipated to be about $35,000.

Last week, Ann died unexpectedly and without a will. At the time of her death she had $100,000 in a bank account in her name alone. Ann's uncle and niece survive her.

The personal representative of Ann's estate properly filed an action to set aside the $1,000,000 trust on the ground that it is invalid under the common-law rule against perpetuities, which applies in State A. The personal representative also requested judicial approval of a proposal to distribute the assets of the allegedly invalid trust, with the other assets of Ann's estate, to Ann's niece but not to her uncle. Ann's uncle contends that he is entitled to half of Ann's estate.

State A has adopted the Uniform Trust Code.

1. May the trust endure for its stated duration (in perpetuity or until its assets are exhausted)? Explain.

2. Assuming that the trust cannot endure for its stated duration, could a court preserve the trust for any period of time to carry out Ann's intentions? Explain.

3. To whom should Ann's estate be distributed and in what shares? Explain.

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

1. Rule Against Perpetuities

The first issue is whether the trust can exist given the common-law Rule Against Perpetuities. The Rule Against Perpetuities prohibits the disposition of property that will uncertain for more than 21 years after the death of the last being in creation at the time of purported disposition. However, some trusts are immune, even at common law, from the Rule. One relevant example is charitable trusts. A charitable trust exists to serve the public in some charitable way (the arts, education, religion, etc.). The beneficiaries are unascertainable because they are the public at large. Such trust is immune from the Rule Against Perpetuities and can last indefinitely.

Here, the trust is likely a charitable trust. Ann created in honor of the store owners that funded her tuition for college and graduate business school. The income is used to benefit the town as a whole by planting trees on all the principal streets in her hometown. Given that the beneficiaries are the town as a whole and that there is some charitable purpose, the beautification of the town, it is likely that Ann's trust will be considered a charitable trust that is not subject to the Rule Against Perpetuities.

Even if it does violate the Rule, most modern courts will exercise a wait-and-see approach. This is where the Court will see if in fact the assets are exhausted within 21 years. The other approach, would be to merely strike the language creating the violation. While this may be difficult, a court, given the power to modify a trust when the administration is impossible, could restrict the overall trust to 21 years after Ann's death so that in essence the trust does not violate the Rule Against Perpetuities.

The other issue that the trust runs into is that it inherently violates the trustees duty to be impartial. Trusts produce income and have principal, and in respect, they have income beneficiaries and principal beneficiaries. Generally, the trustee must treat both impartially. While this does not mean that the trustee must treat both equally, he or she must not favor one at the expense of the other. Ann, the settlor, permitted the trustee to basically deplete the principle for the sake of the income. But at the moment, the annual income is $40,000 and the expense is $35,000, and therefore is not a current issue with impartiality. This is not necessarily a duty that the settlor can alter. As such, this inherent violation of duties may cause the trust to itself fail.

This also raises the problem if a trust is formed at all. Ann is the settlor, the bank is the trustee, but if the court does not find a charitable trust, there is no beneficiary to actually enforce the provisions against the trustee. The trust could fail to be valid unless the first analysis is correct.

2. If the Trust Fails

If the trust were not maintainable for the intended duration, the court could execute a resulting trust. Such a trust is created by the court whenever the underlying trust fails for whatever reason. The result is a trust that benefits the settlor's estate. However, it is unlikely that this type of trust would actually serve the purpose Ann intended, as this disposition of money would go to benefit her estate.

The other option, is that the court might find that this is an honorary trust. Not noted above because it fell outside of the Perpetuities issue, the trust really doesn't have a beneficiary. Usually, even a charitable trust has a beneficiary who can enforce such rights. While the city or a townsperson could maybe claim themselves as a beneficiary with standing to enforce, the trust is more similar to one where the beneficiary is a pet. When such case arises, the court can still find that the trustee has the equitable obligation to perform the duties of the trust but they cannot actually be enforced. As such, this type of trust might be the best way for the court to maintain Ann's original intent, which is the underlying theme of trusts law.

If there is an honorary trust, it is likely that the court would permit the trust to continue so long as the income satisfied the expense or for 21 years as described in Part I.. Right now, the income is $5,000 greater than the expense; however, if

the expense becomes too great, the court may find that the trustee can no longer be impartial and it would be impossible to dutifully administer the trust.

3. Ann's Inheritance

The last issue is to whom should Ann's estate be distributed and in what shares. When a decedent is without a will, their inheritance is passed intestate, or by operation of law. Typically, this would be through their spouse, descendants or parents, but we are told that Ann lacks both. Therefore, general rules such as "per stirpes," or "by generation" don't aid our analysis. Instead, it greatly matters what approach State A takes.

Under the Parentella Approach, the closest to the family line would receive. Because Niece is within the direct family line (by and through her brother) Niece would receive the full share.

Under the Degree Approach, we look at the actual distance from the decedent to the family member claiming. Here, Niece is two degrees away (Ann - Sibling - Niece) and Uncle is also two degrees away (Ann - Parent - Uncle). Therefore, under this approach, both parties would have equal claim to the inheritance.

Under the Uniform Probate Code, which is not expressly stated as being used in this jurisdiction, the inheritance passes up to the older generation and then falls down the various heirs. So here, for example, Ann's inheritance would be

passed up to her parents and be distributed to anyone in that lineage (i.e., Ann's Siblings). Here, that means Niece would take the full share.

Therefore, unless this jurisdiction follows the Degree Approach, Niece should take Ann's full estate.

Note that this would not normally include the money in the trust, but if the trust fails, or if it is put into a resulting trust, then that money may be allocated to the claimants. Otherwise, the Niece would only be entitled to the $100,000 in Ann's bank account.

END OF EXAM

MEE Question 4

Ten years ago, a husband and wife were married during a one-day stopover in State A while they were traveling by train on a cross-country vacation. After this trip, the husband and wife returned to their home in State B.

Five years ago, the couple had a child, Sarah, in State B. The wife then quit her job and stayed at home to serve as Sarah's primary caregiver.

Two years ago, the husband was seriously injured when he was struck by a car while walking across a street. After the accident, the husband began drinking to excess. He also became physically and emotionally abusive toward his wife and was convicted of assault after a physical attack led to her hospitalization. The husband has not worked since his injury.

Nine months ago, the wife took Sarah and moved to State A, where the wife's sister lives. The wife did not tell her husband that she was leaving, but she called him a week after arriving in State A, gave him her address, and told him that she intended to remain in State A with Sarah. The wife found a job in State A and moved out of her sister's home and into a nearby apartment. The husband made no effort to contact the wife or Sarah.

One week ago, the wife commenced a divorce action against the husband in State A. In this action, the wife seeks custody of Sarah and a share of the couple's marital property. The husband was personally served with a summons and divorce complaint at his home in State B.

The husband has never been to State A except for the one-day stopover when he and the wife were married there. He owns no assets in State A.

State A law allows for both fault-based and no-fault divorce and requires that either the divorce plaintiff or the defendant have been residing in State A for six months before the plaintiff may file a divorce petition. State A has adopted the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA).

1. Does a State A court have jurisdiction to grant the wife

    (a) a divorce? Explain.

    (b) sole physical custody of the couple's daughter, Sarah? Explain.

    (c) a share of the couple's marital property? Explain.

2. Assuming that the State A court has jurisdiction, could the court grant the wife

    (a) a divorce based on the husband's fault? Explain.

    (b) sole physical custody of Sarah? Explain.

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

1.

Does a State A court have jurisdiction to grant the wife a divorce:

The State A court does have jurisdiction to grant the wife a divorce because she is now domiciled there. The issue presented is whether the wife is domiciled in State A.

As a general rule, a court may only grant a divorce to a spouse if the court has personal jurisdiction over the spouse. This is primarily done when the spouse is domiciled in the courts jurisdiction. Domicile requires two elements. First, the spouse must be present in the state. Second, the spouse must have the intent to make that state their home for the foreseeable future. Likewise, some states' may have a required time period that the spouse must be domiciled in the jurisdiction before a divorce may be granted.

Here, the wife is domiciled in State A. This first occurred when she moved to the state 9 months ago. Soon after moving there, the wife found a job in State A and an apartment. It is evident that the wife is settling down in State A for the foreseeable future. State A's relevant statute only requires that the spouse be domiciled in the state for 6 months. Therefore, because the wife became present

in State A and established an intent to remain in the state for the foreseeable future, and she did this over 6 months ago, State A does have jurisdiction to grant the wife a divorce.

Does a State A court have jurisdiction to grant the wife sole physical custody of the couple's daughter, Sarah:

Yes, State A does have jurisdiction to grant the wife sole physical custody of the couple's daughter, as State A is now Sarah's home state. The issue presented is whether State A is the home state of Sarah.

Under the UCCJEA, custody of a child is initially determined by the child's home state. The child's home state is the state in which the child has been living for the previous six months, before the issue of custody has came before the court. Here, Sarah has been living in State A for at least six months. This is evident by the fact that wife and Sarah moved to State A nine months ago. Therefore, State A does have jurisdiction to grant the wife sole physical custody of Sarah.

Does a State A court have jurisdiction to grant the wife a share of the couple's marital property:

State A does not have jurisdiction to grant the wife a share of the couple's marital property as it does not have jurisdiction over the husband. The issue

presented is whether the court may adjudicate the rights to marital property while not having jurisdiction over one of the spouses.

In order to adjudicate financial interests during a divorce hearing, the court must have personal jurisdiction over both spouses. If the court does not have personal jurisdiction over both spouses, it cannot, legally, determine the financial interests of either spouse. Here, it is evident that State A does not have personal jurisdiction over the husband. The husband has minimal connections with State A. He does not own property in the state, nor does he conduct business in the state. In fact, his sole connection is State A is where he and his wife were married. This is insufficient to satisfy State A's personal jurisdiction requirement. Therefore, State A does not have the jurisdiction to adjudicate the couple's marital property.

2.

If State A does have jurisdiction, can the court grant the wife a divorce based on the husband's fault:

Yes, the State A court does have the ability to grant the wife a divorce based on the husband's fault. The issue presented is whether the husband's abusive nature constituted fault grounds for divorce.

As a general rule, a divorce can be granted for no-fault grounds or fault grounds. Fault grounds include habitual drunkenness, insanity, abandonment, and abuse.

If either of these are present in a case, then the court holds the authority to grant a divorce based on one spouse's fault. However, there are some defenses that the accused spouse may raise. These defenses include collusion, condonation, connivance, and recrimination. Here, condonation was arguably present. Condonation is when one spouse forgives the accused spouse for his wrongdoing. After the husband's accident two years ago, this was arguably present. Although the exact timeline is not certain. The wife lived with the husband up till 9 months ago. However, if any condonation did exist, the wife was certainly permitted to revoke it after continued abuse from her husband. Therefore, because the husband abused his wife, and likely has no applicable defenses, the State A court will be able to grant a divorce based on the husband's fault.

If State A does have jurisdiction, can the court grant the wife sole physical custody of Sarah:

Yes, State A will be able to grant the wife sole physical custody of Sarah. The issue presented is whether the sole physical custody in the wife of Sarah, would be in Sarah's best interest.

Under the applicable law, the overarching standard of any custody proceeding is the best interest of the child. The court will also consider additional factors in assessing what the best interest of the child is. These factors include the wishes of each parent, the child's adjustment to his current surroundings, and the mental

and physical health of each party involved. Here, it is abundantly clear that the best interest of Sarah lies with the wife. It's probably true that both husband and wife want custody of Sarah. And it is likely true that the new surroundings for Sarah has been initially harmful. However, this is something that will be quickly overcome. It is the mental and physical health of the husband that dictates the decision of this case. As evident from the facts provided, the husband was seriously injured after his accident two years. Because of this accident, he became an alcoholic. He would also physically and emotionally abuse his wife. This abuse led to his wife being hospitalized. This is certainly not a home environment that Sarah should grow up in. Therefore, because the husband has proven to have substantial mental health problems, the sole physical custody of Sarah should be vested in the wife.

END OF EXAM

MEE Question 5

On February 1, a company borrowed $100,000 from a bank. Pursuant to an agreement signed by both parties, the company granted the bank a security interest in "all of [the company's] present and future inventory, accounts, and equipment" to secure its obligation to repay the loan. Later that day, the bank filed, in the appropriate filing office, a properly completed financing statement listing the company as the debtor and the bank as the secured party and indicating "inventory, accounts, and equipment" as collateral.

On March 1, the company bought a power generator, for use in the company's business, from a manufacturer. The purchase price of the power generator was $24,000. The manufacturer agreed that the company could pay the purchase price in 12 monthly installments of $2,000 each. Pursuant to an agreement signed by both parties, the company granted the manufacturer a security interest in the power generator to secure the company's obligation to make all the installment payments. Later that day, the manufacturer filed, in the appropriate filing office, a properly completed financing statement listing the company as the debtor and the manufacturer as the secured party and indicating the power generator as collateral. The manufacturer delivered the power generator to the company on March 3.

On April 1, the company entered into an agreement entitled "Lease Agreement" with a supplier. The Lease Agreement, signed by both parties, stated that the supplier was leasing to the company a retinal scanner for use in the company's security system for a fixed term of three years with no right of cancellation by either party. The Lease Agreement also provided that, if the company made each of the 36 required monthly lease payments of $3,000, it would have the option to become the owner of the retinal scanner for no additional consideration. The supplier delivered the retinal scanner to the company on April 2. The supplier did not file a financing statement with respect to this transaction.

The company has defaulted on its obligations to the bank, the manufacturer, and the supplier. The bank and the manufacturer are each asserting an interest in the power generator, and the bank and the supplier are each asserting an interest in the retinal scanner.

1. (a) Does the bank have an enforceable interest in the power generator? Explain.

   (b) Does the manufacturer have an enforceable interest in the power generator? Explain.

   (c) Assuming that both the bank and the manufacturer have enforceable interests in the power generator, whose interest has priority? Explain.

2. (a) Does the bank have an enforceable interest in the retinal scanner? Explain.

   (b) Does the supplier have an enforceable interest in the retinal scanner? Explain.

   (c) Assuming that both the bank and the supplier have enforceable interests in the retinal scanner, whose interest has priority? Explain.

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

1a. Bank's Interest in the Power Generator

The issue is whether the bank's security agreement and filing executed on February 1 served to establish an enforceable interest in the later acquired power generator.

Secured interests in goods and personal property are governed by the Uniform Commercial Code Article 9. In order to have an enforceable security interest, a creditor must establish the interest through an agreement with the debtor that a security interest is being created in collateral that the debtor has an interest in with the exchange of value from the creditor. This interest attaches if it is evidenced by a writing authenticated by the debtor that identifies the interest and identifies the collateral involved. Authentication can include the debtor's signature, mark or symbol to show adoption. Collateral can be described specifically by item or serial number or generally by the categorical descriptions in UCC Article 9. Article 9 categories include goods, which are movable tangible items at the time of attachment. Goods can include inventory, equipment, and livestock. Goods that are used in business and are not inventory and livestock are equipment. Super generic terms such as "all debtor's assets" are insufficient in the security agreement. A security interest is created only in the

assets that the debtor has at the time, unless the agreement provides for an after-acquired property clause in which case the security interest extends to future acquired collateral covered under the category type once debtor has rights in that collateral.

Here, Bank and debtor had a writing signed by both parties that stated the intent to create a security interest in all of the company's present and future inventory, accounts, and equipment. In exchange, the bank provided a $100,000 loan. Therefore, Bank's security interest attached. Because the power generate was to be used in the company's business, and it is neither inventory nor livestock, the power generator would be considered equipment, and the after acquired property clause "future...equipment" would create an interest in the generator upon debtor's receipt of the generator on March 3.

1b. Manufacturer's Interest in the Power Generator

The issue is whether manufacturer's interest attached to the power generator.

The same rules regarding attachment noted above apply here. The manufacturer on March 1 also had a signed agreement that established that the company would grant the manufacturer an interest in the power generator in exchange for the manufacturer's agreement to let the company pay the purchase price over several monthly installments. The agreement identified the intent to create .a security interest and specifically named the generator as the collateral. The

company ultimately provided credit to the debtor in the amount of $24,000 and the debtor had a right to possession upon the promise to pay the installments. Therefore, manufacturer has an enforceable interest in the power generator for providing value.

1c. Whose Interest in Power Generator has Priority

The issue is between two perfected security interests, one of which is a PMSI, who takes priority.

While attachment establishes the interest in the collateral as against the debtor, perfection establishes the priority and rights of secured parties as against other third parties. Perfection can be accomplished for equipment by either taking possession of the equipment or filing a financing statement. A financing statement is filed with the secretary of state, listed in the name of the debtor and describing the collateral. The purpose is to put other parties on notice that there may be further inquiry needed on a debtor's collateral. Generally, as between two perfected interests, the first to file or perfect takes priority. However, where a secured party has provided a purchase money security interest (PMSI), it takes superpriority if the requirements are met. A PMSI occurs when the secured party provides all or part of the funds to purchase the collateral that is being offered as security either through (i) an advance of funds to purchase the collateral or (ii) by extending credit to the debtor for the purchase price. A PMSI in goods other than consumer goods (those bought/used for household, family, or personal use)

must take steps to perfect by either taking possession or filing a financing statement. A PMSI will have superpriority over previous secured interests, even those with after acquired clauses, if the secured party files before the debtor takes possession or within 20 days thereof.

Here, Bank perfected its interest by filing its financing statement on February 1. As noted above, its security interest extended to later-acquired property. Manufacturer perfected its security by filing on March 1 and the delivery occurred on March 3. Under the traditional rule, because Bank was the first to file and perfect its interest, including in future acquired property, it would have priority. However, manufacturer provided a PMSI, because it allowed the debtor to purchase the generator on credit over installments in exchange for the security interest -- creating a PMSI. It perfected by filing immediately. Manufacturer also filed within the 20 days of debtor getting possession to preserve its super priority status. Therefore, manufacturer has priority in the generator

2a. Bank's Interest in Retinal Scanner

The issue is whether leased equipment is included in the bank's security interest in future equipment.

As noted above, the bank has a future interest in the company's equipment. Because the retinal scanner is being used in business, it would be considered equipment. And the company has a right to ownership/possession of the

equipment for the term of the lease period. Therefore, the bank has an enforceable interest in the retinal scanner because of the company's rights to the collateral and the banks previous filing is broad enough to cover this equipment.

2b. Supplier's Interest in Retinal Scanner

The issue is what if any interest supplier has in the retinal scanner given the terms of the lease agreement.

UCC Article 9 extends to agreements that are really security interests in substance. Even where an agreement may identify itself as a lease, the courts will look to the nature of the transaction rather than its form to determine if the lease was a sale disguised as a lease. Factors the courts consider include: whether the leasing party has the option to cancel, whether the leasing party's term extends over the entire economic life of the collateral, whether there is an optional or mandatory requirement to renew or purchase for little value, and the value exchanged over the life of the lease (is it the total economic value of the collateral). Where the courts find that the "lease" extends over the full economic life, offers purchase for little or no additional consideration, and there is no option to cancel or mandatory renewal - the court will imply a security interest rather than abide by the parties classifications.

Here, supplier and company entered into a "lease agreement" for the retinal scanner to be used in the company's security system. However, the lease

provided that it would last for 36 months, with no right of cancellation. The full cost of the contract of $3,000 per month over 36 months amounts to a cost of $108,000. While it is not clear what the value of the machine is, the company had no right to cancel and could own the machine at the end of the lease term without having to pay any additional money. The court would likely find that this was a security interest/sale rather than a lease given these factors. As such, the lease agreement - signed by the parties and laying out its terms - likely served to create a security interest in the retinal scanner.

2c. Priority of Interests in Retinal Scanner

The issue is which creditor takes priority between a perfected secured party and a PMSI who did not perfect to maintain super priority.

Under UCC Article 9, a perfected secured party has priority over an unperfected secured party. As noted above, a PMSI can arise when a secured party provides funding for the purchase of collateral either through advancing funds or extending credit. However, a PMSI in goods other than consumer goods (those bought or to be used for household, family, or personal use) are not automatically perfected. To perfect a secured interest in equipment, the party must either have possession or have filed a financing statement covering the equipment. In order to preserve a PMSI's super priority, the filing must occur before the debtor gets possession of the collateral or within 20 days thereof.

Here, while a security interest arose based on the supplier's extending credit to purchase the retinal scanner because of the implied sale and security interest, the supplier never filed the financing statement required to perfect its interest. As noted above, Bank filed its financing statement on February 1, and its interest in the equipment -- here the retinal scanner - would attach and be perfected upon company's taking possession which would relate back to its filing date. Because Bank is a perfected secured party with an enforceable interest in the scanner as against the supplier, an unperfected secured party, the bank has priority.

END OF EXAM

MEE Question 6

The owner of a two-story building converted it into three two-bedroom apartments. The owner occupied the ground-floor apartment; the other two apartments were rental units. All the apartment interiors had a similar modern look and design. In the apartments, the owner installed standard modern light fixtures in all rooms except the master bedroom of her own apartment, where she installed a gold-plated chandelier. The chandelier was of an ornate, old-fashioned style and did not match the modern light fixtures in her apartment or the other apartments. But because the owner had inherited the chandelier from her mother, she had a strong sentimental attachment to it. In her living room the owner also placed a 65-inch television on a wall mount affixed to the wall over the fireplace. The conversion was completed last year, and immediately upon completion, the owner moved into her apartment.

The owner then wrote the following advertisement and paid to have it published in the local newspaper:

> Two 2-bedroom apartments for rent. Only professional women (but not lawyers) need apply.

Eight individuals applied to rent the apartments. Three were male accountants. Five were women, three of whom were lawyers. The owner told the men that she "[does] not rent to men." She then rented one of the apartments to a female architect and the other to a female physician. Both leases ended last month and were not renewed. The owner then decided to sell the building.

Last week, the owner showed the apartment building to a prospective buyer. While showing her own apartment, the owner commented to the buyer that the chandelier had come from her mother and meant a lot to her. After seeing all three apartments, the buyer agreed to buy the building. The sales contract, signed by both parties, does not mention fixtures, and the owner and the buyer now disagree on whether the chandelier and the wall-mounted television are fixtures included in the sale of the building.

The state has adopted a fixtures code, of which Sections 1 and 2 provide as follows:

> (1) Unless the terms of a residential real estate contract otherwise provide, upon the closing of the contract the seller shall deliver to the buyer the real property described in the contract, including all fixtures that were affixed or attached to the real property at the time the contract was signed.
>
> (2) For purposes of Section 1, a fixture is an item of personal property affixed or attached to the real property by the seller unless a reasonable person would conclude, based upon all the facts and circumstances relating to the specific personal property, that the item of personal property at the time it was affixed or attached was not affixed or attached to the real property with the intent to make it a permanent part of the real property.

1. Did the owner violate the Fair Housing Act of 1968 by refusing to rent to men and lawyers? Explain.

2. Did the owner or the newspaper publisher violate the Fair Housing Act of 1968 by publishing the owner's rental advertisement? Explain.

3. Assuming that both the television and the chandelier are affixed or attached to the real property:

(a) Is the television a fixture? Explain.

(b) Is the chandelier a fixture? Explain.

6) Please type your answer to MEE 6 below.

1. The owner did not violate the Fair Housing Act of 1968 by refusing to rent to men and lawyers. The issue is whether the owner's building was subject to the provisions of the Fair Housing Act. The Fair Housing Act of 1968 makes it illegal for a landlord to refuse to rent a dwelling place to any person on account of that person's race, national origin, sex, religion, or familial status. The Act carves out an exception for landlord-occupied buildings with four or fewer dwelling places. The act, therefore, only applies if the building with four or fewer dwelling places is not owner occupied or if the building has more than four total dwelling places, even if one of the units is owner occupied. Here, the landlord's building had three two-bedroom apartments, one of which the landlord occupied. Thus, the act does not apply to the landlord's refusal to rent to individuals on account of their sex. In any event, the landlord's refusal to rent to lawyers would not violate the act because lawyers are not a protected class under the Act.

2. Both the owner and the newspaper violated the Fair Housing Act of 1968. The issue is whether the Fair Housing Act prohibits the advertisement of a discriminatory preference covered by the Act. The Fair Housing Act of 1968 makes it illegal for a landlord or a publisher to publish an advertisement that states a preference for renters on account of the renters' race, national origin, sex, religion, or familial status. The Act does not carve out any exceptions with

reference to advertisements, and, therefore, advertisements that so discriminate are prohibited outright. Here, the owner's advertisement stated that only women need apply for housing. This is a direct violation of the Act because it discriminates on the basis of sex. As a result of the publishing of the advertisement, both the newspaper and the owner violated the Act and may be held liable for the violation. As with the discriminatory preference in the previous question, neither the newspaper nor the owner would violate the act by reason of stating a preference for non-lawyers because lawyers are not a protected class.

3.

a) The television is not a fixture. Under the state law, a fixture is an item of personal property affixed or attached to the real property by the seller unless a reasonable person would conclude, based upon all the facts and circumstances relating to the specific personal property, that the item of personal property at the time it was affixed or attached was not affixed or attached to the real property with the intent to make it a permanent part of the real property. Generally, a television set is an item of personal property that one would not reasonably believe passes with the land. The ubiquity of television sets in most households is a primary indication that they are of a personal nature and not meant to be conveyed with land. Here, the television was 65 inches and much larger than televisions in most households. The increased value of the television

makes it an item that most reasonable buyers would consider personal property and not a part of the reality because it is an item of personal property that would require some sort of bargained for exchange. A person would not normally convey an expensive piece of personal property without first bargaining for its release. The fact that no mention of the television set was made in the negotiations weighs in favor of the owner because its value would substantially increase the value of the building as a whole. Though the facts do not indicate that the building was sold at a mark-up, if it had been, then this may indicate that the buyer in fact considered the television before entering into the land sale contract. Finally, because there is no indication that any of the other units contained a similar 65-inch television, the seller had no reason to believe that the television in the owner's apartment was affixed with the intent for it to remain. Because there is no indication that the television served as a motivation for the buyer in the first place, it is unlikely that it would be considered a fixture under the state fixture law.

b) The chandelier is not a fixture. The issue is whether the communication between the buyer and the seller as to the chandelier's personal value to the seller would suffice to put the buyer on notice that it was not installed with the intent for it to remain. A reasonable person would have concluded that the chandelier was installed with the intent for it to be removed from the building upon the owner's quitting of the premises. First, the chandelier did not match the modern light fixtures in the building. Because the chandelier was not similar to

any other items in the building it would be unreasonable for the buyer to think that it was installed with the owner's intent for it to remain in the building. Second, prior to entering into the land sale contract, the seller commented on the personal value of the chandelier to the owner. This would put a reasonable person on notice that the chandelier was not installed with the intent for it to remain in the building. Under the totality of the circumstances, it was unreasonable for the buyer to believe that the chandelier was intended to remain with the building when it was affixed. Therefore, it is not a fixture under the state fixture law.

END OF EXAM