

Applicant Number

07057

**THE
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MEE Question 1

A boy lives in a northern state where three to four feet of snow typically blankets the ground throughout the winter, creating excellent conditions for snowmobiling. The boy is an experienced snowmobiler and a member of a club that maintains local snowmobile trails by clearing them of rocks, stumps, and fallen tree limbs that could cause an accident when buried under the snow. In January, the boy received a snowmobile as a present on his 12th birthday. The following Sunday, the boy took his friend, age 10, out on the boy's new snowmobile, which was capable of speeds up to 60 miles per hour. The friend had never been snowmobiling before.

The boy and his friend went snowmobiling on a designated and marked snowmobile trail that follows the perimeter of a rocky, forested state park near the friend's home. The trail adjoins forested property owned by a private landowner. Neither the boy nor his friend had previously used this trail.

The landowner's property is crossed by a private logging trail that intersects the snowmobile trail. The logging trail is not marked or maintained for snowmobiling, and access to it is blocked by a chain approximately 30 inches above ground level on which a "No Trespassing" sign is displayed. However, on the day in question, both the chain and the sign were covered by snow.

On impulse, the friend, who was driving the snowmobile, turned the snowmobile off the designated snowmobile trail and onto the logging trail. The snowmobile immediately struck the submerged chain and crashed. Both the boy and the friend were thrown from the snowmobile and injured. As a result of the accident, the snowmobile was inoperable.

About an hour after the accident, a woman saw the boy and his friend as she was snowmobiling on the snowmobile trail. After the woman returned to her car, she called 911, reported the accident and its location, and then went home. Emergency personnel did not reach the boy and his friend for two hours after the woman's departure. No one other than the woman passed the accident site before emergency personnel arrived.

As a result of the accident, the boy suffered several broken bones and also suffered injuries from frostbite. These frostbite injuries could have been avoided had the boy been rescued earlier.

The boy has brought a tort action against the friend, the landowner, and the woman.

1. Could a jury properly find the friend liable to the boy for his injuries? Explain.
2. Could a jury properly find the landowner liable to the boy for his injuries? Explain.
3. Could a jury properly find the woman liable to the boy for his injuries? Explain.

1) Please type your answer to MEE 1 below

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(Essay)

===== Start of Answer #1 (1567 words) =====

I. A jury could likely properly find the friend liable to the boy for his injuries; however, the friend could likely raise a successful pure comparative fault defense. The issue is determining whether or not a child, aged 10, can be liable to another for negligence. Negligence is an area of tort law requiring four primary elements: first, there must be a duty; second, there must be a breach of duty; third, there must be causation, both actual and proximate; and, finally, there must be damages.

With regard to duties owed, a person owes a duty to any foreseeable plaintiff. The duty of care required is that of the "Poindexter Rule," in that a person must act as a reasonably prudent person would act under such conditions. This rule is a static one, and is not changed if a situation is more or less dangerous; it simply requires that, under the circumstances, the person is acting reasonably. With regard to children, the law affords special duties of care. Typically, the law considers that the standard to

which a child is held is that of a child of like age, intelligence, and experience. (This is in contrast to the Rule of Sevens, a minority approach, in which a child under the age of 7 cannot be held liable for his negligence, a child between the age of 7 and 14 is *presumed* not liable, and 14 and above is presumed laible.) However, there are certain exceptions. If a child is engaging in what would be considered "adult activities," then the child *can* be held to the same standard of negligence as that of an adult. With regard to a breach of duty, there must simply be some sort of act that broke the typical duty that would be afforded in such a situation. Regarding actual cause, courts impose a "but for" test, which simply states that, but for the defendant's actions, would the injury to the plaintiff have occurred. If so, the defendant is the actual cause of the plaintiff's injuries. Next, regarding proximate cause, the courts analyze any potential intervening acts that occurred in between the occurrence of the breach of duty and the damages suffered. If an intervening act or actor is reasonably foreseeable, and the consequences that have resulted are, too, reasonably foreseeable, then, no matter how extenuated the damages that resulted were, the defendant will be said to have been the proximate cause of the plaintiff's damages. Finally, the plaintiff must have suffered damages. A plaintiff may assert present and future medical expenses, lost of wages, or any other potential damages that have resulted from the defendant's negligence.

In this case, the boy and his friend were each 12 and 10, respectively. While courts would typically compare their actions to those actions of like-minded 12- and 10-year-olds with similar experience and levels of intelligence, here, the boys were driving a snowmobile, that is capable of speeds up to 60 miles per hour. Therefore, they were engaging in adult activities, which will cause a jury to assess their behavior under the previously mentioned reasonable prudent person standard (Poindexter rule). Here, the

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friend had no experience snowmobiling, unlike the boy, who was a very experienced snowmobile driver. There were designated and marked trails; however, the boy decided, "on impulse," to turn off the designated trail and onto the logging trail, which was not marked or maintained for snowmobiling, and *typically* had blocked/restricted access. In such a situation, a reasonably prudent person, in this much snow and without experience driving a snowmobile, would likely not consider turning onto an unmarked trail without having experience as to what is on that trail, especially in these conditions. Therefore, the friend likely breached the duty that he owed to the boy, an obviously foreseeable plaintiff riding on the snowmobile, too.

Next, in ascertaining whether or not the friend was the actual cause of the injuries suffered by the boy, we must determine that, but for the friend's action of going onto this unmarked trail, would the boy have suffered these injuries. The answer here is plainly yes. Had the friend stayed on the marked trail suitable for snowmobiling, it is likely that this injury would not have occurred. Third, with regard to proximate cause, the only intervening issue was the woman who saw the boy and friend, but left after calling emergency services. Because negligence invites rescue, it is perfectly foreseeable that, because they were on a rare, unmarked path, that either someone could see them and walk away, or that no one at all would see them, thus delaying rescue even more. Both this cause and the result are foreseeable; therefore, the friend is the proximate cause, too. Finally, it is clear what damages were suffered here; the boy suffered from several broken bones and injuries from frostbite. The fact that the frostbite was not the direct result of the accident occurring is no matter; it is a foreseeable result due to the weather and this terrain. The final element of negligence has been established; therefore, the boy can bring a successful action for negligence against the friend.

Last, though, it is important to consider any defenses the friend could raise. It is presumed we are in a pure comparative fault state, which means that a plaintiff will *always* recover if he successfully establishes a claim for negligence; however, his recovery will be properly reduced based on the amount of negligence he contributed to the accident. Here, it is likely that the friend could at least mitigate damages owed to the boy by asserting that the friend allowed him, an inexperienced driver, to drive onto an unmarked trail that neither of them were familiar with; therefore, his damages should at least be reduced by the proportion of the boy's negligence. Additionally, there could potentially be a defense of consent, in that the boy impliedly consented the friend's actions by not protesting, despite his knowledge that the friend has no experience driving snowmobiles, and he was not familiar with the terrain.

2. The landowner is likely not liable to the boy for his injuries, because he did not breach a duty of care owed. The issue is determining what duties the landowner owed to the boys on his private forested property.

The aforementioned rules and elements regarding negligence apply in this situation, too. Typically, a landowner does owe certain duties to others, based upon the others' status as entrants onto his land, and the activity or condition the others faced on his land (common law). With regard to undiscovered trespassers, landowners do *not* owe a duty. Regarding foreseeable trespassers, though, landowners typically owe a reasonable duty with regard to activities on the land, and a duty to warn, or protect, against artificial conditions on the land that are unreasonably dangerous and likely not to be discovered. Regarding a licensee, who is an entrant that enters the premises for

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his own benefit, a landowner also owes him a reasonable duty of care for activities, and owes him a duty to warn and protect against any artificial or natural condition on the land which could not reasonably be discovered. Finally, for invitees, which are those who enter the premises for the benefit of a landowner (i.e. a store), the landowner owes a reasonable duty of care regarding activities, and a duty to both protect and warn against, as well as inspect for, any dangerous artificial or natural condition on the land. The rules concerning breach of duty, actual/proximate cause, and damages are as stated above.

Here, the landowner's property is crossed by a private logging trail that intersects the snowmobile trail on which the boys were. The trail, which is marked and designated, adjoins the forested property owned by the private landowner, and the logging trail, which is typically blocked with a chain and has a "no trespassing" sign was not so designated on this day, due to the snow. The court will likely take into account the fact that this was a *private* logging trail, that merely intersected with the landowner's property, and therefore, the landowner owed no duty to maintain the trail. This factor will likely be dispositive, and, therefore, because the duty cannot be established, it is unnecessary to assess the remaining 3 elements of a negligence cause of action.

3. The woman would likely not be found liable by a jury to the boy for his injuries. The issue is whether a person owes a duty to another to rescue. The rules regarding the elements of negligence are identical as stated in number 1. The primary issue to deal with with regard to the woman is what duty, if any, she owed to the boy. Typically, while danger invites rescue, there is *no* duty to rescue, unless the rescuer and rescuee

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are in a close relationship, the rescuer attempted a rescue, or the rescuer caused the peril inviting the need to be rescued. In this case, the woman was merely a passerby who saw the injured boys. She owed them no duty to rescue. She called the proper authorities, and left. While the boy's injuries regarding frostbite were no doubt exacerbated due to the delayed rescue, the woman owed him no duty; therefore, the boy could not hold the woman liable for his furthered injuries. Therefore, no further discussion is needed regarding the final 3 elements of negligence.

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===== End of Answer #1 =====

MEE Question 2

A woman attended a corporation's sales presentation in State A. At this presentation, the corporation's salespeople spoke to prospective buyers about purchasing so-called "super solar panels," rooftop solar panels that the corporation's salespeople said were 100 times as efficient as traditional solar panels. The salespeople distributed brochures that purported to show that the solar panels had performed successfully in multiple rigorous tests. The brochures had been prepared by an independent engineer pursuant to a consulting contract with the corporation.

Based on what she was told at this presentation and the brochure she received, the woman decided to purchase solar panels from the corporation for \$20,000. The corporation shipped the panels to the woman from its manufacturing facility in State B. The woman had the panels installed on the roof of her house in State A. The panels failed to work as promised, even though they were properly installed.

A federal statute prohibits "material misstatements or omissions of fact in connection with the sale or purchase of solar panels" and provides an exclusive civil remedy for individuals harmed by such statements. This remedy preempts all state-law claims that would otherwise apply to this purchase.

Relying on this federal statute, the woman has sued the corporation and the independent engineer in the U.S. District Court for the district of State A. She alleges that the statements made by the engineer in the brochure and the statements made by the corporation's salespeople at the presentation were false and misleading with respect to the solar panels' performance and value. She seeks damages of \$30,000 (the cost of the solar panels plus the expense of installing them).

The woman is a State A resident. The corporation is incorporated in State B and has its principal place of business in State B. The engineer, who has never been in State A, is a State B resident with his principal place of business in State B. He prepared the brochures in State B and delivered them to the corporation there. He knew that the brochures would be distributed to prospective buyers at sales presentations around the country.

The federal statute has no provision on personal jurisdiction. State A's long-arm statute has been interpreted to extend personal jurisdiction as far as the U.S. Constitution allows.

The engineer has timely moved to dismiss the complaint against him for lack of subject-matter and personal jurisdiction. The engineer has also filed an answer (subject to his motion to dismiss) denying the claims against him and asserting a cross-claim against the corporation. The engineer's cross-claim alleges that the corporation must indemnify the engineer for any damages he may have to pay the woman. The indemnity claim is based on the terms of the consulting contract between the corporation and the engineer.

The corporation has filed timely motions to dismiss the woman's complaint for lack of subject-matter and personal jurisdiction and to dismiss the engineer's cross-claim for lack of subject-matter jurisdiction.

1. Does the State A federal district court have personal jurisdiction over
 - (a) the corporation? Explain.
 - (b) the engineer? Explain.

2. Assuming that there is personal jurisdiction over both defendants, does the State A federal district court have subject-matter jurisdiction over
 - (a) the woman's claim against the corporation and the engineer? Explain.
 - (b) the engineer's cross-claim against the corporation? Explain.

2) Please type your answer to MEE 2 below

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When finished with this question, click Â to advance to the next question.
(Essay)

===== Start of Answer #2 (1018 words) =====

1. (a) *Personal jurisdiction over the corporation*

The State A federal district court has personal jurisdiction (PJD) over the corporation. The issue is whether the exercise of PJD is fair.

A federal district court analyzes PJD based on the law of the state in which it sits. PJD is proper over a defendant when the state has a statute authorizing it and the constitutional requirements are met. The constitutional requirements are relatedness (the claim must be related to the defendant's contact with the state), contacts (the defendant must have purposefully availed himself of the protections of the state's law and it must have been foreseeable that the defendant could be sued in the state), and fairness (includes factors such as inconvenience to the defendant, the plaintiff's interest in the forum, and the state's interest in providing a forum).

In this case, the district court will analyze PJD as a State A state court would because the court sits in State A. State A's long-arm statute authorizes PJD to the extent the Constitution allows, so if the constitutional requirements are met, the statute will allow it.

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Relatedness can involve general jurisdiction or specific jurisdiction. General jurisdiction exists if the defendant is "at home" in the state. Specific jurisdiction exists if the claim is related to the defendant's activities in the state. The corporation is incorporated in State B and has its principal place of business, including its manufacturing facilities in State B, so State A probably does not have general jurisdiction over it. State A could have specific jurisdiction, though, because the claim arises from the corporation's sales activities in State A. The corporation purposefully availed itself of State A's laws by sending salespeople to State A to give presentations and solicit business for the corporation. It was foreseeable that the corporation could be sued as a result of these presentations and people buying the corporation's products based on them, particularly based on false and misleading statements in the presentations. The woman has an interest in suing in State A because she lives there, and the State A federal court probably has an interest in providing a forum for a resident of the state. The forum has to be extremely inconvenient to the defendant for it to be unfair for the defendant to be sued there. State A is probably not so inconvenient for the corporation because it has conducted business there.

Therefore, the court should have PJD over the corporation.

(b) Personal jurisdiction over the engineer

The district A court probably does not have personal jurisdiction over the engineer. The issue is whether the engineer has sufficient contacts with State A.

The rules are the same as stated in part (a).

State A would not have general jurisdiction over the engineer because he lives in and does business in State B. Specific jurisdiction could be possible because the engineer's brochures about the solar panels was related to the sale to the woman in State A. The engineer probably did not purposefully avail himself of State A's laws because he has never been there and all his work on the brochures was done in State B. He knew that the brochures would be distributed around the country, but that is probably not enough for purposeful availment. However, if he knew the brochures were specifically being distributed in State A, that might be different. That could also make it foreseeable that he could be sued there for making false and misleading statements about the solar panels in the brochures. It would probably not be unfair for State A to exercise jurisdiction over the engineer for the purposes stated above, but because he probably lacks the necessary contacts, the District A court probably cannot exercise PJD over him.

2. (a) Subject-matter jurisdiction of the woman's claim

The federal district court has subject-matter jurisdiction over the woman's claim. The issue is whether a ground for jurisdiction is present.

Federal courts are courts of limited jurisdiction. If an allowable ground for subject-

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matter jurisdiction (SMJD) is not present, a federal court cannot hear a case. The two usual grounds for SMJD are diversity jurisdiction and federal question jurisdiction. Diversity jurisdiction exists when no plaintiff is a citizen of the same state as any defendant and the amount in controversy exceeds \$75,000. Federal question jurisdiction exists when the plaintiff's claim, as pleaded in her well-pleaded complaint, arises under federal law.

In this case, diversity jurisdiction is not present. Although the woman is a citizen of State A (her state of residence) and the corporation and engineer are both citizens of State B (their states of incorporation/principal place of business and residence, respectively), the amount in controversy is only \$30,000 because that is all the woman claimed as damages. Federal question jurisdiction exists, however, because the woman's claim arises under a federal statute prohibiting material misstatements or omissions of fact in connection with sales of solar panels, and she is claiming the corporation and engineer violated this statute.

Therefore, the district court has SMJD over the woman's claim.

(b) *Subject-matter jurisdiction over the engineer's cross-claim*

The district court has SMJD over the engineer's cross-claim. The issue is whether a ground for exercising jurisdiction exists.

MEE Question 3

A seller and a buyer both collect antique dolls as a hobby. Both live in the same small city and are avid readers of magazines about antique dolls. The seller placed an advertisement in an antique doll magazine seeking to sell for \$12,000 an antique doll manufactured in 1820.

On May 1, the buyer saw the advertisement and telephoned the seller to discuss buying the doll. During this conversation, the seller and the buyer agreed to a sale of the doll to the buyer for \$12,000 and also agreed that the seller would deliver the doll to the buyer's house on May 4, at which time the buyer would pay the purchase price.

The next day, May 2, the buyer changed his mind and decided not to buy the doll. He signed and mailed a letter to the seller, which stated in relevant part:

I have decided not to buy the 1820 doll that we agreed yesterday you would sell to me.

The seller received the letter on May 3, immediately telephoned the buyer, and said, "I consider your letter of May 2 to be the final end to our deal. I will sell the doll to someone else and will hold you responsible for any loss."

On May 4, the seller received a telephone call from another antique doll collector. The collector had seen the seller's advertisement for the doll and expressed interest in buying it. After some discussion, the seller and the collector agreed to a sale of the doll to the collector for \$11,000. Because the collector lived in a distant part of the state, the agreement provided that the seller, at her expense, would arrange for delivery of the doll by an express delivery service. The express delivery service that they selected charges \$150 for deliveries of this type. The sale, the method of delivery, and the fee were all commercially reasonable. The seller acted in good faith in entering into this agreement with the collector.

On May 5, the buyer telephoned the seller and said, "I made a mistake when I sent the letter, and I will buy the doll from you on the terms we agreed to. Come to my house tomorrow—I'll have the \$12,000 for you." The seller replied, "You're too late. I've already sold the doll to someone else." The seller then took the doll to the delivery service and paid the \$150 delivery fee. The delivery service delivered the doll to the collector, who immediately wired the \$11,000 payment to the seller. Two weeks later, the seller sued the buyer for breach of contract.

1. Is there a contract for the sale of the doll that is enforceable against the buyer? Explain.
2. Assuming that there is a contract enforceable against the buyer, did the buyer breach that contract? Explain.
3. Assuming that there is a contract enforceable against the buyer and that the buyer breached that contract, how much can the seller recover in damages? Explain.

3) Please type your answer to MEE 3 below

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When finished with this question, click Â to advance to the next question.
(Essay)

===== Start of Answer #3 (790 words) =====

1. Contract with buyer

There is an enforceable contract against the buyer. The issue is whether the statute of frauds was satisfied.

This is a contract for the sale of goods, so Article 2 of the UCC applies. Formation of a contract requires an offer, acceptance, and consideration. An offer occurs when the offeror communicates that he is willing to enter a contract with the offeree on stated terms. Acceptance occurs when the offeree agrees to the offeror's terms. Consideration is a bargained-for exchange of legal value, meaning either party agrees/promises to do or give up something he is not legally obligated to do or give up and each party gives value in exchange for the value given by the other. Under Article 2, a contract for goods valued at \$500 or more must be in writing to satisfy the statute of frauds (with certain exceptions for performance not relevant here). The writing must indicate the existence of a contract, state the quantity of goods, reasonably identify the goods, and be signed by the party to be charged. If a price is not stated, the court will imply a reasonable price term.

Here, the parties formed a contract on May 1 when the buyer called the seller and offered to buy the doll for \$12,000 and the seller accepted the offer by agreeing to sell for \$12,000. The parties' promises to pay and deliver the doll on May 4 constituted consideration. The contract is subject to the statute of frauds because the purchase price is more than \$500, but the buyer's letter of May 2 satisfies the statute because it indicates the parties agreed to a sale, specifically identifies the doll (1 doll made in 1820), and is signed by the party to be charged (the buyer).

Therefore, the contract satisfies the statute of frauds and is enforceable against the buyer.

2. Buyer's breach

The buyer did breach the contract. The issue is the effect of an anticipatory repudiation.

If a party to a contract communicates to the other party before performance is due that the party will not perform, there is an anticipatory repudiation of the contract. The nonrepudiating party can treat the repudiation as a breach and sue immediately, cancel the contract, suspend performance and wait until the date of performance to see if the repudiating party performs, or urge the repudiating party to perform. A repudiating party can withdraw the repudiation if the withdrawal comes before the nonrepudiating party

has relied on the repudiation or cancelled the contract.

Here, the buyer made an anticipatory repudiation by stating in his May 2 letter that he would not buy the doll when performance was due on May 4. The seller then cancelled the contract by calling the buyer on May 3 and telling him the letter was the end of the deal and she would sell the doll to someone else. She also relied on the repudiation by making a deal to sell the doll to another collector on May 4. Then the buyer tried to withdraw his repudiation on May 5, but it was too late because the seller had already cancelled the contract and relied on the repudiation. It does not matter that the seller had not actually delivered the doll to the collector yet.

Therefore, the buyer breached the contract by repudiating it before performance.

3. Amount of damages

Nonbreaching parties to contracts are usually entitled to expectation damages, which means they are put in the same position they would have been in had the contract been performed as agreed. If a buyer breaches under the UCC, the seller can recover the difference between the actual resale price of the goods and the contract price if the resale of the goods was commercially reasonable and in good faith. A nonbreaching party under the UCC is also entitled to incidental damages, which include the costs of storage, shipping, etc. caused by the other party's breach. Any savings the nonbreaching party had from nonperformance of the contract is subtracted from

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damages.

In this case, the seller expected to receive \$12,000 if the buyer had performed but only received \$11,000 from reselling the doll. In addition, she incurred \$150 in shipping costs to ship the doll to the collector that she would not have had from the sale to the buyer with a delivery at the buyer's house, which qualifies as incidental damages. The resale of the doll was commercially reasonable and in good faith, so the seller should recover \$1,000 in expectation damages (difference between resale price and contract price).

Therefore, the seller should recover \$1,150 from the buyer due to the buyer's breach, perhaps minus her saved gas money from delivering the doll to the buyer's house.

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===== End of Answer #3 =====

MEE Question 4

The board of directors of a commercial real estate development corporation consists of the corporation's chief executive officer (CEO) and three other directors, who are executives at various other firms.

The corporation owns a commercial office tower, the value of which is approximately 10 percent of the corporation's total holdings. The corporation uses one floor of the tower as its corporate headquarters, but it wants to vacate that floor as soon as it locates suitable replacement space.

Two years ago, the board obtained an independent appraisal of the tower, which indicated a fair market value of between \$12 and \$15 million. After considering that appraisal, the board authorized the corporation's CEO to seek a purchaser for the tower.

The CEO immediately showed the tower to several sophisticated real estate investors and received offers ranging from \$8 million to \$13 million. The CEO decided that these offers were insufficient, and after he reported back to the board, no further action to sell the tower was taken.

Two months ago, the CEO and the other three directors of the corporation formed a limited liability company (LLC) in which each holds a 25 percent ownership interest.

One month ago, the corporation's board unanimously authorized the corporation's sale of the tower to LLC for \$12 million. The minutes of the board's meeting at which the tower sale was authorized reflect that the meeting lasted for 10 minutes and that the only document reviewed by the corporation's directors was the two-year-old appraisal of the tower.

The minutes of the board's meeting further state that the transaction was to be carried out with "a friendly company so that the corporation will have time to relocate to a new headquarters" and that the board "authorized the transaction because the \$12 million price is toward the high end of the range of offers received in the past from sophisticated real estate investors and is within the range of fair market values listed in the appraisal."

After the board's authorization of the tower sale, the corporation entered into a contract to sell the tower to LLC. The board did not seek shareholder approval of the transaction.

A non-director shareholder of the corporation is upset with the board's decision authorizing the sale of the tower to LLC. The shareholder believes that the corporation could have obtained a higher price for the tower.

1. Does the business judgment rule apply to the board's decision to have the corporation sell the tower to LLC? Explain.
2. Did the directors breach their fiduciary duties by authorizing the tower sale? Explain.

4) Please type your answer to MEE 4 below

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(Essay)

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===== Start of Answer #4 (491 words) =====

1. Application of the Business Judgment Rule

The business judgment rule does not apply to the board of directors decision to sell the tower because there was a conflict of interest. The issue is whether there was a conflict of interest in this case.

The court typically defers to the business judgment of directors in making an ordinary business decisions. In the case at hand, the business judgment rule will not apply because of the obvious conflict of interest. Anytime there is a transaction between a corporation and an executive/board member, it will provoke a conflict of interest. In a case of self-dealing, the business judgment rule will not apply if the interested board member educates the board of the conflict and gathers majority approval from either the disinterested board of directors or the shareholders. In this case, the board members were aware of the conflict because all of them were part of the transaction as members of the LLC purchasing the tower. Therefore, it was impossible to have a vote of unbiased directors. The only alternative was to seek an approval of a majority vote

among shareholders, which the board did not do. Therefore the business judgment rule will not apply to the transaction.

2. Breach of Fiduciary Duties

Duty of Loyalty

The directors probably violated the duty of loyalty owed to the Corporation. A duty of loyalty is violated if self-interested director engages in behavior not in the best interest of the corporation. This does not mean that all self-dealing transactions violate the duty. The transaction must be considered "fair" or have the approval of a majority of disinterested directors or shareholders. As discussed above, the board did not have majority approval of either. Therefore, the test turns to whether the transaction is fair. The main fact supporting the fairness of the transaction is the independent appraisal of the tower between \$12 million and \$15 million. The sale price does fall into this range. However, the appraisal was done two years before the final sale and is out of date. They also previously turned down an offer of \$13 million on a previous occasion. This would probably lead a court to believe that the directors violated their duty of loyalty to the corporation by selling the building to themselves for \$12 million.

Duty of Care

Alternatively, the directors violated the duty of care owed to the Corporation. The issue is whether they acted as a reasonably prudent person in evaluating the sale price of \$12 million.

The duty of care is violated if the board of directors does not make decisions usually the care of a reasonably prudent person. In this case, a reasonably prudent person would do their homework on the details of the deal. The reliance on an out-of-date appraisal and a 10 minute meeting discussing the transaction are likely unreasonable. Therefore, the directors likely violated the duty of care.

===== **End of Answer #4**=====

MEE Question 5

On his way to work one morning, a man stopped his car at a designated street corner where drivers can pick up passengers in order to drive in the highway's HOV (high-occupancy vehicle) lanes. When the man, who was driving alone, opened his car door and announced his destination, a woman (a stranger) jumped into the front seat.

As soon as the man drove his car onto the busy highway, the woman took a knife from her backpack and held it against the man's throat. She said to him, "I am being followed by photographers from another planet where I am a celebrity. Pictures of me are worth a fortune, so I never give them away for free. Forget the speed limit and get me out of here fast, or else."

With the woman holding the knife at his neck, the man sped up to 85 miles per hour (30 mph over the posted speed limit of 55 mph), weaving in and out of traffic to avoid other cars, while the woman urged him to drive faster. While attempting to pass a motorcycle at a curve in the highway, the man lost control of the car, which struck and killed the motorcyclist before crashing into a railing.

A police car arrived at the scene a few minutes later. The man and the woman were treated for minor injuries at the scene and then arrested and taken to the police station.

While in custody, the woman was examined by two psychiatrists. Both psychiatrists submitted written reports stating that the woman suffers from schizophrenia and that, at the time of the accident, her delusions about alien photographers were caused by her schizophrenia.

The State A prosecutor has charged the woman with felony murder for the motorcyclist's death based on her kidnapping of the man, but is not sure whether to charge the man with any crime.

In State A, the rules governing crimes and affirmative defenses follow common law principles. However, in State A the Not Guilty by Reason of Insanity ("NGRI") defense is defined by statute as follows:

To establish the defense of NGRI, the defendant must show that, at the time of the charged conduct, he or she suffered from a severe mental disease or defect and, as a result of that mental disease or defect, he or she did not know that his or her conduct was wrong. The defendant has the burden to prove all elements of the defense by a preponderance of the evidence.

Assume that the two psychiatric reports will be admitted into evidence.

1. Can the woman establish an NGRI defense? Explain.
2. With what crimes, if any, can the man be charged as a result of the motorcyclist's death? Explain.
3. What defenses, if any, will be available to the man if he is charged with a crime related to the motorcyclist's death? Explain.

5) Please type your answer to MEE 5 below

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(Essay)

===== Start of Answer #5 (1108 words) =====

1. The woman cannot establish an NGRI defense. The issue is whether because of her schizophrenia, she did not know that her conduct was wrong. Insanity is a type of defense the defendant may assert where she has some kind of mental defect inhibiting her from forming any sort of criminal intent at the time of the crime but what precisely must be proven depends on the jurisdiction. State A appears to have adopted the M'Naughten test. The defendant must prove to a preponderance of the evidence that she suffered from a severe mental disease and that because of that disease, she did not know that her conduct was wrong. Here, the woman will certainly be able to establish by a preponderance of the evidence that she suffered from a severe mental disease. Preponderance is a lower burden than that on the prosecution to prove the defendant's conduct and intent beyond a reasonable doubt. The woman must merely show that it is more likely than not that she suffered from a mental disease. Two psychiatrists have submitted written reports that the woman suffers from schizophrenia and was under a schizophrenic delusion at the time of the accident. This is sufficient to establish a mental disease by a preponderance of the evidence. But merely experiencing a delusion does not mean that the defendant did not know that her conduct was wrong. The woman told the man that she was being followed by photographers from another planet where she was a celebrity. She believed that

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pictures of her were worth a fortune, so she never gave them away for free. She ordered the man to forget the speed limit and get her out of there. These statements indicate that she was indeed delusional during the crime but it does not show that she did not know that it was wrongful to hold a knife to a man's throat and order him to drive away. Her delusions merely show why she engaged in the wrongful act. The facts indicate that she still knew her actions were wrongful, even if she believed them to be justified. Therefore, the woman cannot establish an NGRI defense. The woman's insanity will not prohibit the prosecution from demonstrating the intent required to establish a prima facie case for kidnapping, which is the underlying crime of the charge of felony murder.

2. The man can be charged as a result of the motorcyclist's death with murder--unlikely to be successful-- or involuntary manslaughter--more likely to be successful. The issue is whether the man acted recklessly or negligently by driving 30 miles per hour over the speed limit of 55 miles per hour. At common law, murder was defined as the intentional killing of another human being with malice aforethought. There were four types of common law murder: willful and intentional; felony murder; killing with intent to cause serious bodily injury; and abandoned and malignant heart. Here, because the man clearly did not purposefully kill the motorcyclist, the only type of murder that is remotely invoked by the man's conduct is abandoned and malignant heart murder. This involves a killing caused by a substantial and unjustifiable risk to human life. Here, the man was driving at 85 miles per hour, weaving in and out of traffic to avoid other cars. Then, he attempted to pass a motorcycle at a curve in the highway and lost control, striking and killing the motorcyclist. A weak argument could be made that driving so fast around

other cars constituted a substantial and unjustifiable risk to human life, given the amount of traffic on the road. However, given the circumstances and the knife to his throat, the prosecution is unlikely to be successful with a murder charge.

But the prosecution can likely be successful in a charge for involuntary manslaughter. The issue is whether speeding constitutes "another crime" or whether the man was criminally negligent. At common law, involuntary manslaughter was an unintentional killing either due to the negligence of the defendant or during the commission of another crime. The standard required to avoid being criminally negligent is much lower than that to be negligent in tort. The defendant should have known of some high risk. It is not an ordinarily prudent person standard. Here, there was certainly a high risk of crashing into another car while going 30 miles an hour above the speed limit and weaving in and out of traffic. This is probably enough to show that the man was criminally negligent. He should have known that such dangerous driving could lead to someone's death. The second type of involuntary manslaughter recognized in some common law jurisdictions is involuntary manslaughter based on a death occurring during the commission of a crime. Here, the man was committing the crime of speeding. But it is questionable whether such a minor strict liability offense would constitute a basis for involuntary manslaughter. Either way, the man can be charged for involuntary manslaughter based on criminal negligence.

3. The defense of duress is available to the man. The issue is whether the bar against using duress against a homicide charge applies to using duress against a charge based on an unintentional killing. Duress is a defense when a defendant has no reasonable

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alternative but to commit the crime because of a threat of imminent violence to himself or to his family. Here, the woman was holding a knife to the defendant's throat and urging him to go faster. While she did not explicitly tell the man she was going to slit his throat, the fact that she was holding it there and giving him instructions was sufficient to amount to duress. Implied in her conduct was the assertion that if he did not comply with her instructions to driver more quickly and get away from those people who wanted to take her picture, she would slit his throat and they would go careening off a curve. The general rule is that duress is not a defense to homicide. The idea is that if someone has a gun to a person's head and tells them they must kill another person, duress is not a defense to that intentional killing. Here, however, the man did not engage in an intentional killing. It seems unfair to preclude the man from using the defense of duress, given the circumstances and the unintentional nature of the killing. Homicide refers to the intentional killing of a human being. Involuntary manslaughter is not homicide, therefore, the man will be able to assert duress as a defense. None of the other common law defenses such as mistake of fact or mistake of law apply.

===== **End of Answer #5**=====

MEE Question 6

In 1995, a man and his friend created a corporation. The man owned 55% of the stock, and the friend owned 45% of the stock. When the man died in 2005, he left all of his stock in the corporation to his wife.

In 2009, the wife died. Under her duly probated will, the wife bequeathed the stock her husband had left her to a testamentary trust and named her husband's friend as trustee. Under the wife's will, the trustee was required to distribute all trust income to the wife's son "for so long as he shall live or until such time as he shall marry" and, upon the son's death or marriage, to distribute the trust principal to a designated charity. The stock, valued at \$500,000 at the wife's death, comprised the only asset of this trust.

In 2013, after the stock's value had risen to \$1.5 million, the trustee's lawyer properly advised the trustee to sell the stock in order to comply with the state's prudent investor act. Because of this advice, the trustee decided to sell the stock. However, instead of testing the market for potential buyers, the trustee purchased the stock himself for \$1.2 million. Thereafter, on behalf of the trust, the trustee invested the \$1.2 million sales proceeds in a balanced portfolio of five mutual funds (including both stocks and bonds) with strong growth and current income potential.

Recently, both the son and the charity discovered the trustee's sale of the stock to himself and his reinvestment of the proceeds from the stock's sale. They learned that, due to general economic conditions, the stock in the corporation that had been purchased by the trustee for \$1.2 million had declined in value to \$450,000 and the value of the trust's mutual-fund portfolio had declined from \$1.2 million to \$1 million. Both the son and the charity have threatened to sue the trustee.

The son has also decided that he wants to get married and has notified the trustee that he believes the trust provision terminating his income interest upon marriage is invalid.

1. Would the son's interest in the trust terminate upon the son's marriage? Explain.
2. Did the trustee breach any duties by buying the trust's stock and, if yes, what remedies are available to the trust beneficiaries if they sue the trustee? Explain.
3. Did the trustee breach any duties in acquiring and retaining the portfolio of mutual funds and, if yes, what remedies are available to the trust beneficiaries if they sue the trustee? Explain.

6) Please type your answer to MEE 6 below
(Essay)

===== Start of Answer #6 (935 words) =====

1. The son's interest would terminate upon the son's marriage. The issue is whether the termination conditioned upon the son's marriage is void as against public policy. Terms of a trust will not be upheld if they are against **public policy**. An example would be a trust term contingent on someone marrying another individual of a certain race or nationality. Such discriminatory terms cannot be enforced by the court while simultaneously complying with the constitution. Another example, and more relevant here, are terms that discourage marriage. It is a well-established policy to encourage marriage. In fact the ability to marry is a fundamental right. The son's interest is to terminate either when he dies or until such time as he shall marry. These sorts of provisions have been upheld by courts where the beneficiary was a woman and the settlor's intentions were construed as a desire to provide support for the woman until she married rather than to discourage her from marrying. While those types of provisions may be more closely construed now, support does not seem to be the issue here. The facts do not indicate that it was his mother's intention to provide for him until he got married. Therefore, the provision providing that the son's interest will terminate upon his marriage is void as against public policy because it discourages marriage.

2. The trustee breached his duties of loyalty to avoid engaging in self-dealing, to promote and grow trust assets, and to act in the beneficiary's best interest by buying the trust's stock and the trust beneficiaries may sue for any losses incurred as a result of the breach. The issue is whether a trustee purchasing trust assets in his individual

capacity is a breach of the duty against self-dealing. A trustee owes the highest fiduciary duty of loyalty to the trust and to its beneficiaries. He must not engage in self-dealing, must diversify trust assets, must grow and protect trust assets, must act to benefit the trustees, must treat the interests of income and principal beneficiaries as equally as possible, and must follow the provisions of the trust. The facts indicate that the state has a prudent investor act. This requires the trustee to act as a reasonably prudent investor in making all business decisions regarding trust assets but allows the trustee to reasonably rely on certain individuals in making investment decisions.

Here, while it was reasonable and in accordance with the prudent investor rule for the trustee to rely on his lawyer—given that the facts do not indicate he had reason to doubt his competence—and while he was acting in accordance with the **duty to diversity**, it was a breach of the trustee's fiduciary duty to engage in **self-dealing**. Self-dealing occurs when the trustee enters into an action regarding the trust assets in his individual capacity. Here, the trustee purchased the stock himself for \$1.2 million instead of testing the market for potential buyers. This was a violation of his duty to avoid self-dealing. Also, he was to promote and grow trust assets. A part of that duty is that when selling trust assets, the trustee must seek a commercially reasonable sell to ensure that the trust assets are being sold for as high a price as possible. Further, because he did not seek out any other purchasers for the stock, he was not acting in the beneficiary's best interest. And further, the trustee was already owned 45% of the stock in the corporation, therefore, he certainly had a personal interest in acquiring the other 55%.

Trust beneficiaries have three options when a trustee breaches his fiduciary duties

against self-dealing to the beneficiaries and to the trust. They may ratify the action, they may sue to disgorge the trustee of any profits made, or they may sue the beneficiary for any losses sustained. Here the stock in the corporation that had been purchased by the trustee declined in value to \$450,000. But the beneficiaries may be able to recover the trust's losses, which could be calculated as the difference between the price the trustee was advised to sell the stock by his attorney--\$1.5 million--and the price which he paid--\$1.2 million. That would be a recovery of \$300,000.

While the charity is entitled to the principal after the son dies and the son to the income to his lifetime, creating different interests, there is no indication that the trustee has favored either interest over the other in his management of the trust.

3. The trustee did not breach any duties in acquiring and retaining the portfolio, even though the trust's mutual-fund portfolio has declined in value from \$1.2 million to \$1 million. The issue is whether the trustee complied with the prudent investor rule and the duty to diversity. A trustee has a duty to diversify unless trust instructions indicate otherwise. Here, there is no indication that trustee was required to limit trust assets to only stock in the corporation. Also, the trustee has a duty to act as a prudent investor. He did so here in reliance on his lawyer's advice to sell the stock in order to comply with the act, which presumably requires a trustee to diversify, protect, and grow trust assets. He did so here by investing in a balanced portfolio of five mutual funds—including both stocks and bonds—with strong growth and current income potential. The fact that the portfolio declined by \$200,000 was purely due to general economic conditions. The beneficiaries may not recover those losses because the trustee has breached no

MULTISTATE ESSAY EXAMINATION DIRECTIONS

You will be instructed when to begin and when to stop this test. Do not break the seal on this booklet until you are told to begin.

You may answer the questions in any order you wish. Do not answer more than one question in each answer booklet. If you make a mistake or wish to revise your answer, simply draw a line through the material you wish to delete.

If you are using a laptop computer to answer the questions, your jurisdiction will provide you with specific instructions.

Read each fact situation very carefully and do not assume facts that are not given in the question. Do not assume that each question covers only a single area of the law; some of the questions may cover more than one of the areas you are responsible for knowing.

Demonstrate your ability to reason and analyze. Each of your answers should show an understanding of the facts, a recognition of the issues included, a knowledge of the applicable principles of law, and the reasoning by which you arrive at your conclusions. The value of your answer depends not as much upon your conclusions as upon the presence and quality of the elements mentioned above.

Clarity and conciseness are important, but make your answer complete. Do not volunteer irrelevant or immaterial information.

Answer all questions according to generally accepted fundamental legal principles unless your testing jurisdiction has instructed you to answer according to local case or statutory law.

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