MEE Question 1

A woman owns and operates a food-truck business. Business has been good. The woman asked a man she knew to work with her. "It would be great if you'd help with my food-truck business. There is just not enough time in the day. I need someone to do the early morning produce shopping for me at the farmers' market. Are you interested?"

The man has a job as a night watchman and had been looking for a way to make extra money. He answered, "Sure, I'm interested. Text me at night what type of produce you want me to buy in the morning when I get off work. The market opens just as I get off my night shift. I could stop by the market with my car and then drop off the purchases at your truck." He then asked, "And how much would I be paid?"

The woman responded, "Texting works for me. I'll go to the market with you the first few times to give you a general idea of what I'm looking for. But then you'd be on your own, making the choices of which vendors to use and which produce to buy. Please use your own credit card to make the purchases, and I'll reimburse you."

Then the woman paused and continued, "As for pay, I can afford to pay you only $20 per daily delivery. I know that's a bit low, but the business doesn't have the cash flow yet. So, my offer to you is that, in addition to $20 per day, I will give you 10% of the food truck's profits."

The man thought for a bit and said, "Okay. It's a deal." They shook hands.

For the first few months, the arrangement worked well. The woman sent texts to the man each night indicating the type of produce to buy, and the man selected and purchased the requested produce in the morning from vendors he selected. He then dropped the produce off at the woman's food truck. The man paid the vendors with his own credit card and later was reimbursed by the woman. Except for the man's purchase and delivery of the produce, the woman did all the work related to the food-truck business.

One morning, while parking at the market, the man negligently ran his car into a farmer's stall, causing extensive damage. The man truthfully told the farmer that, although the accident was the man's fault, he had no money to pay for the farmer's damage and his automobile insurance had lapsed.

The farmer wrote the woman a letter demanding that she pay him for the losses caused by the man's negligence. The woman has asked her attorney what legal relationship she has with the man and what the liability implications would be in each case.

1. (a) Are the woman and the man partners in the food-truck business? Explain.

   (b) Assuming that the woman and the man are partners in the food-truck business, would the woman be liable to the farmer for the damage proximately caused by the man's negligence? Explain.

2. (a) Is the man an employee of the woman? Explain.

   (b) Assuming that the man is an employee of the woman, would the woman be vicariously liable to the farmer for the damage proximately caused by the man's negligence? Explain.

3. (a) Is the man an independent contractor for the woman? Explain.

   (b) Assuming that the man is an independent contractor for the woman, would the woman be vicariously liable to the farmer for the damage proximately caused by the man's negligence? Explain.

1)

1. (a) Are W and M partners in the food truck biz

To create a general partnership, there are no formal requirements or paperwork to be filed to establish the partnership. A partnership can be established explicitly, via contract, or implicitly by the parties words or conduct. Evidence of a partnership can include many factors, such as sharing duties and responsibilities of running the business, control over the business operations and major decisions, sharing profits and losses, by agreement, or by other evidence.

Here, the woman ("W") initially offered the man ("M") to work with her and help her with her food truck business. Particularly, M was to go to the farmers market to do early morning produce shopping. When inquiring about pay, W offered M to pay him $20 per day and 10% of the food trucks profits. However, M was to pay for the produce on his own card, and W would reimburse him. They both orally agreed to the deal and had an ongoing arrangement for a few months.

It is unlikely that the W and M are in a partnership for the food truck business. While there is evidence that the two are "sharing profits," M is only receiving 10% of the food truck's profits in exchange for his services. Thus, this appears to be more of a commission than the creation of a partnership, where profits and losses are shared by the partners. Further, with the exception of the M's

purchases, the W did all work related to the food-truck business. This implies that she controlled the management, finances, profits and losses, risk of loss, and exclusive control over the operations of the business.

Therefore, in conclusion, there is very little evidence that partnership was established between M and W.

(b) Assuming they are partners, would the woman be liable to the farmer for the damage proximately caused by the mans negligence?

In a general partnership, the partners can be held personally liable for the negligence of their partner, if their partner was acting in the ordinary course of business / within the scope and the purpose of the business.

Here, because the M was retrieving produce for the partnership, and thus, acting within the scope of the business and doing something in furtherance of the businesses purpose, and subsequently negligently ran his car into a farmer's stall, the W may be held personally liable for his tortious conduct because she is personally liable to the partnership.

2. (a) Is the man an employee of the woman

In determining whether an employment relationship exists, the courts look numerous factors, including:

- Exclusive control over the employee, where the employer has the power to dictate the manner in which an employee performs. The power to prescribe job duties, job description, uniforms, instructions on how employee's are to operate and work, thus, the general management and exclusive control over how the employee conducts their business.
- Pay roll - evidence that the individual is on pay roll with the company is proof that the individual is an employee; raises; etc.
- Benefits - whether the employee receives benefits from the company
- Employment contract - strong facially valid evidence of an employment relationship
- Hours/Scheduling - is the employer dictating the individuals hours, overtime pay, scheduling? Is the individual on hourly or salary pay
- Length - is the individual contracted for particular necessities or is the person a regular working employee
- Training - was the individual trained by the employer

Here, as discussed above, M would merely make produce runs to obtain produce for the food truck. Outside of the purchase and delivery, he had no other job duties. On one hand, W did have some control over the manner in which M did his job, in which she sent texts to the man each night indicating the type of produce to buy, however, the man would purchase the requested produce in the mornings from the vendors of his choosing. Thus, while it may appear W had control in the manner in which M performed his job, M also had the power to

make decisions of his own and the vendors that he would purchase from. W specifically told M that once he's on his own (after she visited the market with him a few times to get a general idea) he had the choice of what vendors to use and which produce to buy. Thus, W did not have exclusive control on the manner in which M performed his work. Further, W showing M what produce she liked and briefly showing him the ropes isn't enough to constitute the type of training a formal employee would receive to work for a business.

M also had to purchase the produce with his own credit card, not the company credit card. He would then be reimbursed for his purchases. Likewise, M was not a regularly scheduled employee and he had no uniform or other requirements and standards that employees may have. He specifically did side work and simply collected the produce and delivered it. In addition, there was no employment contract present, although a written agreement is not required to establish an employee/employer relationship.

M was also paid at a fixed rate of $20 per day, with an additional 10% in profits, further evidencing that he was not a regular scheduled employee where his hours and schedule were set-- either hourly or salary. Finally, M worked for a few months, but just for a short bit each morning to collect the groceries.

As outlined above, it is not likely M was an employee of W because the totality of the circumstances, ie, lack of control over the individual, no formal training, pay, or scheduling, no employment contract, and no other additional

duties to the employer that what establish an employer employee relationship. Thus, M was likely an independent contractor (IC)

(b) Assuming he is, would the woman be VL to the farmer for the damage proximately caused by the man's negligence

Yes. An employer is vicariously liable for the tortious acts committed by their employees when (1) they were acting within the scope of their employment and (2) for the benefit of the employer. An employee can fall outside of the scope of VL if they are deemed to have acted outside of the scope of employment by drifting off to do something for a purpose other than serving the business, and a distinction exists here between a "frolic" and a "detour"-- where one is a minor detour from the purpose/scope of employment and the other is a major detail so far outside the scope that the employer could be held VL. However, that is not applicable here.

Here, if M is deemed to be an employee, M was acting within the scope of his employment. While at the market to collect produce for W, M negligently backed his car into a farmer's stall and caused extensive damage. Thus, he was acting within the purpose and scope of his employment, in furtherance and for the benefit of the business.

Therefore, because M was acting within the scope of his employment, and because there is no possible issue with the distinction between a frolic and a

detour since the was 100% present at the scene of the accident for the purpose of his job, W could be held VL for M's negligence because an employer can be responsible for the tortious conduct committed by an employee acting with the scope of employment.

3. (a) Is the man an IC?

Yes. An Independent Contractor (IC) is someone who is hired for a limited purpose and who has the power to control the manner in which they perform this purpose. An IC has more freedom to choose how they conduct their business and typically only work with a business for a limited or temporary purpose.

Here, M was an IC to W, because he was hired for a particular purpose, to collect and deliver the produce, and had the ability to choose the vendors and produce of his choice. He was not paid salary, and he was not subjected to rules of operation. In fact, he had free will on how to conduct his job and the manner in which he did it.

Therefore, M is an IC.

(b) Assuming he is, would the woman be VL to the farmer for the damage proximately caused by the mans negligence

Not likely. For an employer to be VL for the tortious conduct of an IC, there must be some relationship between the negligent conduct and the employers

control over that conduct. An employer could be VL for a IC in a situation where the employer instructed the IC to do something that then resulted the tortious act. Further, it is very unlikely for an employer to be VL to an IC in cases of negligence, without a showing that the employer was negligent somehow--either in the instructions or in the hiring of the IC. However, that is not present here.

Here, W hired M to collect produce and deliver to her food truck daily. However, W did not act negligently in his hiring. There is nothing to lead W to believe that M was a negligent driver, and M had been a great employee with no issues leading up to that day. Further, M's negligence in running his car into the farmer's stall has nothing to with the scope of job as an IC.

Therefore, in conclusion, the woman would not likely be VL to the farmer for the damage proximately caused by the mans negligence, because the man's negligence did not fall within the scope of his job and the woman was not negligent in hiring him / had no reason to know that he may exude negligent conduct.

END OF EXAM

MEE Question 2

On July 1, 2015, Testator duly executed a typewritten will that had only the following three dispositive provisions:

1. I give the portrait of my grandparents to my brother, Adam.

2. I give my antique bookcase to my sister, Beth.

3. I give all of my tangible personal property not otherwise effectively disposed of to the person I have named in a letter I signed and dated June 15, 2015. I have put that letter in the night table drawer in my bedroom in my home along with this will.

Testator died on February 10, 2019, a domiciliary of State A. Both the typewritten will and the letter of June 15 were found in the night table drawer. In clause 2 of the will, the phrase "antique bookcase" had been scratched out by Testator and immediately above it he had typed in the word "motorcycle." And, on the back of the will, the following language appeared wholly in Testator's handwriting: "I don't want Adam to have the portrait of my grandparents. I want it to go to my first cousin, Charles." No signatures appeared on the back of the will beneath this writing.

In the letter referred to in clause 3 of the will, Testator named his niece, Donna, who is Beth's daughter, as the beneficiary.

Testator's only surviving blood relatives are Adam, Beth, Charles, and Donna. In addition to the portrait of his grandparents, the antique bookcase, and the motorcycle, Testator's only other asset was a bank account with a balance of $10,000.

State A permits wills to be completely or partially revoked by the execution of a subsequent will or codicil, or by physical act or by cancellation when accompanied with an intent to revoke the will or codicil. State A law also provides that "unsigned holographic wills or codicils are valid." There are no other relevant statutes.

To whom should the property in Testator's estate be distributed? Explain.

2)

I. The issue is to whom the property in Testator's estate should be distributed.

The facts state that Testator ("**T**") "duly executed" a typewritten will. Assuming the will is valid, the issue is to whom T's property should be distributed when T made amendments to the will and referenced an existing document.

A. The issue is who should inherit the portrait of the grandparents when T made a bequest of the portrait to Adam in the will, but a later codicil devised the portrait to Charles.

Under the law of State A, which controls here, a subsequent will or codicil can completely or partially revoke a prior will. Furthermore, "unsigned holographic wills or codicils are valid." A valid holographic will must be entirely in the testator's handwriting.

Here, T devised the portrait of his grandparents to his brother Adam. However, on the back of the will, T wrote: "I don't want Adam to have the portrait of my grandparents. I want it to go to my first cousin Charles." The note was not signed. Under the law of State A, the holographic will on the back of the document will control. Because it is wholly in T's handwriting and indicates that it is meant to revoke the prior gift to brother Adam, the holographic will or

codicil successfully partially revokes the prior gift. Cousin Charles will take the portrait of the grandparents.

B. The issue is who should take the antique bookcase, when T originally devised it to Beth, scratched out his bequest, and did not name an alternate beneficiary.

The law of State A permits wills to be partially revoked by physical act when accompanied with an intent to revoke the will or codicil. However, under the modern trend, a court will not revoke a portion of the will if the surrounding circumstances indicate that the testator intended to make an alternate gift which will fail due to testator's mistake. This is because modern courts wish to honor the intent of the testator as much as possible, and will not cancel a gift if the testator is mistaken about will formalities.

Here, the requirement for revocation of T's original gift to Beth is likely not met. T scratched out the words "antique bookcase." The scratching out is a physical act to partially revoke the will. Furthermore, it is clear that T intended to revoke this part of the will, since T typed out the word "motorcycle" above the bequest. However, T's attempt to leave Beth a motorcycle will fail, as discussed below. Under the modern trend, a court will likely not cancel the gift of the antique bookcase to Beth, since doing so would go against T's intent to leave her a gift. The State A law allowing revocation only with intent to revoke may be interpreted to allow Beth to take, since T only had intent to revoke if he knew

that Beth would take the gift of the motorcycle. Therefore, Beth will likely inherit the bookcase despite T's attempt to revoke this portion of the will.

C. The issue is who should inherit the motorcycle when T typed a bequest to Beth above clause 2 in the will, and when the bequest to Donna was in an extrensic document.

As noted, a valid holographic will must be entirely in the testator's handwriting.

Here, the note above clause 2 is typewritten. This means that it is not wholly in T's handwriting. Therefore, it is not a valid holographic will or codicil, and the gift of the motorcycle to Beth will fail.

A document that is not included in the will can be read as part of the will if the document is in existence at the time that the will is executed, is reasonably identified in the will, and is found in the place where it was expected to be.

In clause 3 of the will, T stated that all of his tangible personal property not otherwise disposed of "to the person I have named in a letter I signed and dated June 15, 2015. I have put that letter in the night table drawer in my bedroom in my home along with this will." The document was found in the side table with the will. This letter names Donna as the beneficiary. The letter was in existence one month prior to the execution of the will, and it was found along with the will in the side table. Therefore, it is valid and can be read as part of the will.

Because the gift of the motorcycle to Beth failed, the motorcycle is tangible personal property, and because the letter naming Donna as beneficiary is valid, Donna will take the motorcycle under the will.

D. The issue is who will take the bank account when there is no residuary clause in the will and no bequest of the bank account is made.

If a will does not contain a residuary clause, the residuary of the estate will pass by the laws of intestacy of that state. Under the laws of intestacy, the property of a will pass per capita, per stirpes, or per capita with representation depending on the jurisdiction. Under any of those rules, the property of a person with no living parents, spouse, or children will pass to any living siblings as the closest blood relatives.

Here, the will does not contain a residuary clause. Clause three only bequeaths personal property--not intangible personal property. Therefore, the bank account will pass by the laws of intestacy. The facts state that Adam and Beth are T's brother and sister. Donna is Beth's daughter and Charles is a cousin. Because Adam and Beth are T's closest blood relatives, they will each take half of the bank account, or $5000 each. Donna will not take because under any rule, she will inherit from Beth eventually. Charles will not take because he is a cousin, who is not entitled to take. Therefore, Beth and Adam will each take $5000.

II. Conclusion

In conclusion, cousin Charles will take the antique portrait, Beth will take the antique bookcase, Donna will take the motorcycle, and Adam and Beth will each take half of the bank account, or $5000 each.

END OF EXAM

MEE Question 3

A man was driving his truck on a divided highway in State B when the truck collided with a car driven by a woman. As a result of the collision, the man lost control of his truck, which skidded off the road into a deep ravine. The woman's car was knocked into the highway median and rolled over several times before coming to a stop. The truck and its cargo were damaged beyond repair, but the man was not injured. The woman, on the other hand, suffered serious injuries. A passenger in the woman's car was also seriously injured.

Two lawsuits resulted from the collision.

In the first lawsuit, the man, a citizen of State B, sued the woman, a citizen of State A, in the United States District Court for the District of State A. The man alleged that the woman had caused the accident by negligently changing lanes while he was attempting to pass her and that he, the truck driver, had exercised due care and caution at all times. The man's complaint sought damages of $98,000—the value of the truck, trailer, and cargo. The woman answered the complaint, denying that she had driven negligently and asserting that the man had caused the accident by driving well above the speed limit and failing to look out for other vehicles on the road. The woman raised no other claims or defenses in her answer.

Following a bench trial in which both sides offered evidence as to the cause of the accident and the actions of each party, the judge entered judgment for the woman. The judge issued a short opinion finding, as a matter of fact, that "both the woman and the man operated their vehicles negligently" and that "both were at fault in causing the accident." The judge further correctly concluded, as a matter of law, that the contributory negligence law of State B applied. In addition, the judge concluded that the man could not recover because his negligence had contributed to the accident. The judgment was promptly entered denying all relief to the man and awarding costs to the woman. The man did not appeal, and the judgment became final three months ago.

One month ago, the woman and the passenger joined together in a second lawsuit. In this lawsuit they sued the man to recover damages for the personal injuries they had suffered in the accident as a result of his negligence. Like the woman, the passenger is a citizen of State A. This lawsuit was filed in the United States District Court for the District of State B. The woman and the passenger are each seeking damages well in excess of the $75,000 diversity-jurisdiction threshold, and their claimed injuries warrant such damages. The man has filed an answer denying liability and raising several defenses including that the claims by the woman and the passenger are precluded by the earlier suit.

1. Do the Federal Rules of Civil Procedure permit the woman and the passenger to join their individual claims in a single lawsuit against the man? Explain.

2. Is the woman precluded from bringing her claim as a result of the judgment in her favor in the lawsuit brought by the man in federal court in State A? Explain.

3. Is the man precluded from denying that he was negligent with respect to the passenger as a result of the judgment against him in the lawsuit he brought against the woman in federal court in State A? Explain.

3)

Joinder of Woman's and Passenger's Claims

The issue is whether two plaintiffs may join together in a single lawsuit against a single defendant.

Two plaintiffs may join together in a single lawsuit against a defendant when the plaintiffs' claims arise out of the same transaction or occurrence, and if the court has jurisdiction over each claim. Each claim must satisfy subject matter jurisdiction to bring the claim in federal court-- either through federal question jurisdiction or diversity jurisdiction. Federal question jurisdiction does not apply in the present case, because the plaintiffs' claims are based on tort law (a state matter) rather than federal law. For diversity jurisdiction to apply (thus getting a state law claim into federal court), there must be complete diversity of citizenship between all plaintiffs and all defendants, and the amount in controversy must exceed $75,000.

Here, the woman and passenger were both injured in the same accident: the collision with man's truck. Thus, their claims arise from the same transaction or occurrence. Each are citizens of State A, whereas the defendant truck driver is a citizen of State B. Complete diversity is therefore satisfied. Also, both the woman and passenger each made good faith claims for damages well in excess of $75,000, satisfying the amount in controversy requirement.

Accordingly, the federal court has subject matter jurisdiction over the claims.

Since the woman and passenger's claims arose out of the same transaction or occurrence and since the court has subject matter jurisdiction over the claims, the two plaintiffs may join together in a single lawsuit against the man.

Woman's Preclusion from Bringing Her Claim

The issue is whether the woman's claim is barred by claim preclusion.

Claim preclusion acts to bar a party from relitigating a claim that has already been actually litigated, decided on the merits with final judgment. For claim preclusion to apply, the present claim must involve the same claim by the plaintiff against the same defendant as in the prior case, the claim must have been actually litigated, and decided on the merits. The parties must have been part of the prior action.

Here, the case does not involve the same plaintiff against the same defendant. In the first case, the man sued the woman in a negligence action. In the present case, the woman is suing the man for negligence seeking damages for her personal injuries. Although the parties litigated the man's negligence, it was as part of woman's defense of her own negligence in the prior case (she asserted that the man was negligent, as part of a contributory negligence defense). The judgment on the prior case is final as of three months ago.

Since the current case does not involve the same plaintiff against the same defendant, claim preclusion should not bar the woman's claim.

However, it is possible that woman's claim should be barred since it is likely a compulsory counterclaim that she failed to make in the man's original action.

When a defendant has a claim against a plaintiff that arose out of the same transaction or occurrence as the claim for which the defendant is being sued, the defendant must make a counterclaim or else the claim is forfeited. In the first case, woman had a claim arising out of the same accident for which the man was suing the woman, yet she failed to make a counterclaim. Instead, she asserted man's negligence as a defense (State B law allows contributory negligence as a defense).

Since she failed to assert the counterclaim, her claim is likely barred in the present suit.

Man's Preclusion from Denying Negligence

The issue is whether issue preclusion will prevent man from denying that he was negligent with respect to the passenger.

Issue preclusion acts to bar a party from re-litigating an issue that was decided in a prior case. Nonmutual preclusion occurs when one party seeks to use issue preclusion against another party who was not a party to the previous case. For

issue preclusion to apply against a party, the issue must have been actually litigated in the prior case, it must be an issue that was determinative in the prior action, and the party must have been a party to the prior action with reason to defend against the issue.

Here, one party (the passenger), who was not a party to the prior case between man and woman, is seeking to bar the man from re-litigating his negligence in the current case. The man's negligence was actually litigated in the prior case (woman asserted that man was negligent to defend against the man's claim that woman was the cause of the accident, and it was used as part of a contributory negligence defense). The man's negligence was determinative in the prior case, because finding the man negligent is the very reason his claim failed against the woman (since he was contributorily negligent). Furthermore, the man had reason to defend against his negligence in the prior case, and he presented evidence on the issue.

There is a trend in the federal courts that would allow a plaintiff to assert issue preclusion against a defendant, despite the plaintiff not having participated in the first case, when it is fair to do so. Some courts still will not allow this type of issue preclusion. Thus, the preclusion question is ultimately decided jurisdiction to jurisdiction, but the trend is to favor allowing nonmutual offensive issue preclusion.

Accordingly, the man should be precluded from denying his negligence with respect to the passenger as a result of the judgment against him in the first lawsuit.

END OF EXAM

MEE Question 4

KeyCo, a company that manufactures keys, has had significant cash flow problems as a result of market trends away from keys and toward electronic locks. Accordingly, last year KeyCo borrowed money on three occasions.

On February 1, KeyCo borrowed $200,000 from Firstbank. Pursuant to an agreement signed by both parties, KeyCo promised to repay the loan within two years and granted Firstbank a security interest in "all of KeyCo's assets" to secure its repayment obligation. On the same day, Firstbank filed a properly completed financing statement in the appropriate filing office, listing KeyCo as the debtor and indicating the collateral as "all of KeyCo's assets."

On April 1, KeyCo borrowed $400,000 from Secondbank. Pursuant to an agreement signed by both parties, KeyCo promised to repay the loan within four years and granted Secondbank a security interest in "all of KeyCo's equipment" to secure its repayment obligation.

On June 1, KeyCo borrowed $600,000 from Thirdbank. Pursuant to an agreement signed by both parties, KeyCo promised to repay the loan within six years and granted Thirdbank a security interest in "all of KeyCo's equipment" to secure its repayment obligation. At the time of this transaction, Thirdbank knew about KeyCo's transactions with Firstbank and Secondbank as described above.

On August 1, Thirdbank filed a properly completed financing statement in the appropriate filing office, listing KeyCo as the debtor and indicating the collateral as "all of KeyCo's equipment."

On October 1, Supplier obtained a judgment against KeyCo for an unpaid debt and, in connection with that judgment, obtained a lien on KeyCo's key-manufacturing machine.

Except as described above, no financing statements have been filed that list KeyCo as the debtor.

KeyCo has defaulted on its obligations to Firstbank, Secondbank, and Thirdbank. Each of those banks, as well as Supplier, is asserting an interest in the key-manufacturing machine.

1. Which banks, if any, have enforceable security interests in the key-manufacturing machine? Explain.

2. Which banks, if any, have perfected security interests in the key-manufacturing machine? Explain.

3. What is the order of priority of the enforceable security interests and Supplier's lien on the key-manufacturing machine? Explain.

4)

1)

The issue is whether any of the banks have enforceable security interests in the key-manufacturing machine.

The rule is that Article 9 of the UCC applies to any property in which a security interest attaches. In order for a security interest to be enforceable there must be attachment. Attachment exists when: 1) there is a valid security agreement; 2) the debtor has rights in the collateral pledged as security; and 3) value is given. A security agreement is valid when it: 1) lists the debtor's name and creditor's name; 2) lists the collateral pledged as security with specificity; and 3) is signed by both the debtor and creditor. Collateral can consist of a debtor's goods, inventory, or equipment. Goods are all things moveable at the time a security interest attaches. Inventory are goods held by the debtor that are sold in the normal course of business. Equipment is all items used by the debtor in producing goods.

Here, only Secondbank and Thirdbank have enforceable security interests. First, a valid security agreement existed between KeyCo and Secondbank/Thirdbank. These security agreements listed the debtor's name and creditor's name, listed the collateral pledged as security with specificity (all of KeyCo's equipment), and were signed by both the debtor and creditor. Second, KeyCo was in

possession of the collateral pledged as security and, therefore, had "rights in the collateral pledged as security." Third, KeyCo was loaned monies and, therefore, "value was given." The description of the collateral contained in the security agreements between KeyCo and Secondbank/Thirdbank unquestionably include KeyCo's key-manufacturing machine. Firstbank's security agreement satisfied all of the requirements for a valid security agreement, except for listing the collateral pledged with security with specificity. The collateral described as "all of KeyCo's assets," is too vague and does not specify whether KeyCo's goods, inventory, or equipment is being pledged as collateral.

In conclusion, Secondbank and Thirdbank have enforceable security interests in the key-manufacturing machine.

2)

The issue is whether any of the banks have perfected security interests in the key-manufacturing machine.

The rule is that Article 9 of the UCC applies to any property in which a security interest attaches. A security interest can be perfected only when there is attachment. Attachment exists when: 1) there is a valid security agreement; 2) the debtor has rights in the collateral pledged as security; and 3) value is given. A security agreement is valid when it: 1) lists the debtor's name and creditor's

name; 2) lists the collateral pledged as security with specificity; and 3) is signed by both the debtor and creditor. Collateral can consist of a debtor's goods, inventory, or equipment. Goods are all things moveable at the time a security interest attaches. Inventory are goods held by the debtor that are sold in the normal course of business. Equipment is all items used by the debtor in producing goods. Once a security interest is attached, it can be perfected. A security interest can be perfected by filing a financing statement with Secretary of State's office, by taking possession, or automatically, by virtue of a purchase money security interest ("PMSI").

Here, Firstbank filed a properly completed financing statement with the appropriate filing office. However, because Firstbank's security interest was not attached, its security interest could not be perfected. Secondbank and Thirdbank both had enforceable security interests. However, Secondbank did not take any action to perfect its security interest. Thirdbank, on the other hand, filed a properly completed financing statement in the appropriate filing office.

In conclusion, Thirdbank has a perfected security interest in the key-manufacturing machine.

3)

The issue is whether a judgment lien creditor takes priority over enforceable perfected/unperfected security interests.

The rule is that Article 9 of the UCC applies to any property in which a security interest attaches. An enforceable perfected security interest takes priority over a judgment lien creditor, so long as the security interest was perfected prior to the judgment lien. An enforceable perfected security interest takes priority over an enforceable unperfected security interest. A judgment lien takes priority over an enforceable unperfected security interest.

Here, Secondbank and Thirdbank have enforceable security interests in the key-manufacturing machine. Secondbank did not perfect its security interest, but Thirdbank perfected its security interest on August 1. The Supplier obtained a judgment lien on October 1. Since Secondbank did not perfect its security interest, it is last in priority. Since Thirdbank perfected its security interest 2 months prior to the Supplier obtaining a judgment lien, it is first in priority.

In conclusion, the order of priority of the enforceable security interests and Supplier's lien on the key-manufacturing machine is Thirdbank, Supplier, and Secondbank for the reasons stated above.

END OF EXAM

MEE Question 5

Thirty years ago, a man purchased a 170-acre tract of farmland. The farmland was bordered on the east by a county road that connected to the main street of a small town where the man worked in the local feed store. On the west, the farmland was bordered by a state highway.

Immediately after acquiring the farmland, the man built and moved into a house on its easterly portion. He constructed a vehicle shed on the westerly portion of the farmland in which he stored farm tractors and some of his cars. He then built a 10-foot-wide east-west gravel road that stretched across the entire farmland connecting the county road to the state highway. This gravel road allowed the man to travel between his house and the vehicle shed and also to drive tractors and cars out of the shed and onto the county road. It additionally gave him two routes from his house to the small town. It took the man 15 minutes to drive to town using the county road; using the state highway, which resulted in a more circuitous trip, took 45 minutes.

After building the gravel road across the farmland, the man usually used the county road to drive to work, although occasionally he used the state highway. On weekends, however, when he wasn't working, he frequently used the state highway because it allowed him to easily reach other towns where he visited friends.

Two years ago, the man conveyed the westernmost 90 acres of the farmland, including the vehicle shed, to a woman who worked in the same feed store as the man. This 90-acre portion included the western portion of the gravel road that the man had constructed across the property. The deed conveying the westernmost 90 acres to the woman did not mention the gravel road, and the deed was not recorded. The woman built a house on the 90 acres and moved in. She used the gravel road across the man's land to access the county road when driving to work.

One year ago, the woman conveyed her 90 acres to a friend, who moved into the house the woman had built. The friend worked in the same small town as the man and the woman, and the friend also used the gravel road across the man's land to access the county road. The deed conveying the property to the friend stated that the woman was conveying to the friend the 90 acres, together with "the right to use the gravel road" crossing the adjacent 80 acres owned by the man to reach the county road. This woman-to-friend deed was promptly recorded.

Five months ago, the man conveyed his 80 acres to a builder by a deed that made no mention of the gravel road. The builder paid the man fair value for the land and promptly recorded this man-to-builder deed.

Four months ago, the builder erected a barrier across the gravel road. The barrier prevented the friend from using the gravel road across the builder's land to reach the county road.

Three months ago, the friend recorded the man-to-woman deed.

The land is in a state that has a notice-type recording act and uses a grantor-grantee index. In this jurisdiction, the time to acquire an easement by prescription is 20 years.

1. Before the man's conveyance to the builder, did the friend have an implied easement from prior use over the man's 80 acres? Explain.

2. Assuming that the friend had an implied easement from prior use, did the builder take ownership of the 80 acres free and clear of that easement? Explain.

5)

1. Did the friend have an easement by implication due to prior use?

The issue here is whether an implied easement was created when the two tracts were severed.

Easements can be created by an express clause in a deed, by necessity, by prescription (adverse possession for easements), or by implication. Easements by implication require that the estates in question previously had been part of the same estate, that the land was severed into two estates, the path or road was used by the previous owner before severance, is still being used, and that the easement is necessary (not absolutely necessary like an easement by necessity) but for the reasonable enjoyment of the dominant estate's land.

Here, the man had constructed the road to the county road in order to better access the county road to the east from both the easterly and westerly halves of the property. This gravel road was used often by the man because the county road was the quickest way to get to the town where he worked. Since the county road was the fastest way to town, the woman and the man used the gravel road more often to get to the county road. Here, the man also severed the property into east and west halves. The woman, the next owner of the westerly half used the gravel road extensively in order to get to work on time in the nearby town.

So, since the tract was once an entire tract, was severed by the previous owner, contained a road from the westerly tract to the county road over the easterly tract, and that gravel road was the woman's (and the friend's eventually) best way to get to work, an easement by implication of prior use was created when the man severed the property.

2. If there is an easement by implication, does the builder take free and clear of the easement?

The issue here is whether the builder was a Bona Fide Purchaser (BFP) that takes possession of property over against any competing interests.

For a purchaser to be a BFP, the purchaser must 1. be a purchaser for value and 2. have no notice of any prior conveyances. For a BFP to have notice, it has to be either record, inquiry, or actual notice. Inquiry notice arises when, by reasonable inquiry or inspection of the land, the purchaser would have found another interest in the property or prior conveyance. This can be by way of a physical condition noticed on the property or some other way of finding out. Record notice occurs when, by a title search, the BFP would have gained notice by searching the relevant title records. If a prior conveyance is recorded in the BFP and grantor's chain of title, then record notice exists. If a deed is "wild" however, BFP takes clear of record notice. Wild deeds are deeds that would not show up in a chain of title. This is especially common in grantor-grantee indexes where the recorded deeds are recorded by making connections directly from the

grantor to the grantee. So, if X grants to Y, but then grants to Z, but Z then grants to A and A records, the title of A in the land will not show up because his title has no connection to X's. It just has a connection to Z's, with no mention of X. I a notice recording statute jurisdiction, the recording of a deed only counts for record notice and the priority is on the BFP's status as a BFP.

Here, the woman's conveyance to the friend was recorded. However the deed from the man to her was not recorded. So, in a grantor-grantee index state, this would be a wild deed an not discoverable from a title search. So, record notice does not exist. However, the builder did have inquiry notice because he could have reasonably inspected the land before the conveyance and see the usage of the road to the county road. The fact that the man knew of the road was also actual notice, which is an immediate awareness of the easement by the person in question. The man is not a BFP despite paying value in a notice jurisdiction.

Therefore, since the builder had notice, he does not take the property free and clear of the easement as a BFP.

END OF EXAM

MEE Question 6

A grocer planned to open a supermarket and needed shopping carts for her store. On March 1, she went to the showroom of a shopping-cart supplier to look at a variety of samples of modern shopping carts. After looking around the showroom, the grocer pointed to a shopping cart that bore a price tag of $125 and said to the supplier, "These are the carts I want for my store. When can you get me 100 of them?" The supplier said that he could deliver 100 of those shopping carts to the grocer's supermarket within 30 days. The grocer responded, "That's great. Please ship me 100 of these shopping carts by March 31, and I will wire you payment of $12,500 as soon as they arrive." The supplier said, "You've got a deal!"

On March 2, the grocer sent the supplier an unsigned note, handwritten on plain paper, stating in its entirety: "It's a pleasure doing business with you. This will confirm the deal we made yesterday for 100 shopping carts at $125 each." The supplier received the note on March 4 and read it immediately but never responded to it in any way.

On March 31, the grocer received an envelope delivered by an express delivery service. Inside the envelope was a document printed on the supplier's letterhead. The document stated, in its entirety: "Thanks so much for your business. The 60 shopping carts you ordered from us are on the way. Be on the lookout for our delivery truck—it may even arrive today! Please send us payment of $7,500 (60 carts x $125/cart) as soon as you receive the carts."

Later that day, the supplier's truck arrived at the grocer's supermarket, and the truck driver said to the grocer, "I've got 60 shopping carts for you in the truck." The grocer replied, "I didn't order 60 shopping carts; I ordered 100. You go back to your boss and tell him to send me the right order." The grocer refused to allow the truck driver to unload the 60 shopping carts from the truck and did not pay for them.

The grocer would like to sue the supplier for breach of contract for failing to deliver 100 shopping carts.

Is there an enforceable contract requiring the supplier to sell 100 shopping carts to the grocer for $125 each? Explain.

6)

The issue is whether an enforceable contract exists between the grocer and the shopping-cart supplier.

As an initial matter, the UCC applies because shopping carts are goods - tangible personal property. Second, the parties are likely both merchants. First, the shopping-car supplier deals in goods of that kind, as he is selling shopping carts to the grocer. Next, whether the grocer is a merchant is likely a closer call. The grocer may be a merchant, dealing in goods of that kind, such as shopping carts because he owns a grocery store. On the other hand, the grocer is not in the business of selling grocery carts.

An enforceable contract requires three things: (1) offer, (2) acceptance (collectively mutual assent), and (3) consideration.

The first subissue is whether there was an offer. An offer is analyzed under the objective reasonable person standard. An offeror must communicate an offer and indicate to the offeree a willingness to be bound by the offer. Here, the grocer's statement"these are the carts I want for my store. When can you get me 100 of them?" Was likely an offer. Not all the terms must be included, however, under the UCC the material term--the quantity--is required. Here, the quantity (100 is supplied). However, the grocer may not have intended to be bound by asking when he would get the shopping carts. But the supplier stating he could ship 100

within 30 days (at a price of $125 a car was definitely an offer if the grocer's wasn't.

The next subissue is whether there was acceptance. Here, there was likely acceptance when the grocer responded "that's great, please ship me 100 of the carts by March 31 and agreed to pay the the supplier when they arrived." Although agreeing to pay the supplier when the carts arrived was an additional term, under the UCC additional terms are not counteroffers, but get in to the agreement when between merchants and the other exceptions do not apply. Thus, here, if the parties are merchants then this additional payment term gets in.

Either way, the quantity, price, delivery date, and terms of payment all provide certainty and definiteness to conclude that the parties mutually assented to the contract.

The third issue is whether there was consideration. This issue is easily met because the grocer agreed to pay the supplier $12,500 in exchange for the promise to the ship the carts.

However, the next issue is whether there are any applicable defenses to this contract.

There is likely a statute of frauds defense here because the deal was for goods in excess of $500 as the shopping carts totaled $12,500 for 100 and even though only 60 were sent, this still greatly exceeded $500. However, if the grocer is a

merchant, then the confirmatory memo sent by the grocer may remedy the statute of frauds issue. However, the grocer did not sign the note, which is required under the merchant's confirmatory memo doctrine. Thus, the agreement likely does not satisfy the statute of the frauds even if considered a merchant. Moreover, the grocer is likely not considered a merchant for our purposes because it unlikley deals in "goods of this kind": shopping carts. Rather it deals in goods such as groceries. Therefore, the memo unlikely remedies the statute of frauds issue.

However, the supplier also sent a potential merchant's confirmatory memo. The supplier deals in grocery carts and thus is a merchant. The memo stated, however, that it had 60 grocery carts shipped instead of 100, in contrast to the parties oral agreement. The letterhead constituted a signature as required. However, the memo contradicted the original terms. Thus, this does not indicate an agreement for delivery of 100 shopping carts. However, if the memo satisfies the statute of frauds for finding an agreement to deliver 100 shopping carts, then by sending 60 instead, the supplier likely breached the agreement by not stating it was an accomodation.

There may be an enforceable contract. It is a close call. But likely, the statute of frauds is not satisfied and thus there is no enforceable contract to deliver 100 shopping carts.

END OF EXAM
