

# THE MEE™

MULTISTATE ESSAY EXAMINATION™

## *2010*

### *Information*

### *Booklet*

**February 23, 2010**  
**July 27, 2010**



**NATIONAL CONFERENCE OF BAR EXAMINERS**

**NOTE:** The information in this booklet is believed to be correct at the time of publication. Since rules and policies of jurisdictions change, examinees are advised to consult the jurisdictions directly for the most current information.

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Printed in the United States of America.

# CONTENTS

<b>Notice to Examinees</b> .....	2
<b>Introduction</b> .....	3
<b>Description of the Examination</b> .....	3
<b>Instructions</b> .....	5
<b>Subject Matter Outlines</b> .....	6
Business Associations .....	6
Conflict of Laws .....	8
Constitutional Law .....	9
Contracts .....	11
Criminal Law and Procedure .....	12
Evidence .....	13
Family Law .....	15
Federal Civil Procedure .....	16
Real Property .....	17
Torts .....	20
Trusts and Estates .....	21
Uniform Commercial Code .....	23
<b>MEE Sample Questions</b> .....	27

## NOTICE TO EXAMINEES

The following conduct is prohibited during the examination as it undermines the integrity and fairness of the examination process:

- Bringing unauthorized devices (whether turned on or off) or unauthorized materials into the testing room, including, but not limited to, calculators, cameras, cell phones, pagers, personal digital assistants, text messaging devices, audio or video recording devices, scanners, language translators, and written materials;
- Bringing test materials, unauthorized devices, or unauthorized materials out of the testing room during any scheduled or unscheduled break or at the conclusion of the testing period;
- Copying answers from another examinee or sharing answers with another examinee; and
- Continuing to work after a supervisor has instructed examinees to stop writing.

Engaging in prohibited conduct during the examination could result in some or all of the following penalties:

- Civil liability;
- Criminal penalties;
- Cancellation of the examinee's test scores;
- Denial of the examinee's application to sit for future exams;
- Denial of the examinee's bar application on character and fitness grounds; and
- Disciplinary action by a bar authority if the examinee is already admitted to practice law.

## INTRODUCTION

The Multistate Essay Examination (MEE) is developed by the National Conference of Bar Examiners (NCBE). It is administered by participating jurisdictions on the Tuesday before the last Wednesday in February and July of each year.

Applicants should contact the jurisdiction where admission is being sought to ascertain whether the MEE is administered as part of the jurisdiction's bar examination. Contact information for the jurisdictions can be found at [www.ncbex.org](http://www.ncbex.org).

The MEE is but one of a number of measures that a board of bar examiners may use in determining competence to practice. Each jurisdiction determines its own policy with regard to the relative weight given to the MEE and other scores. Grading of the MEE is the exclusive responsibility of the jurisdiction administering the exam. Any questions about scoring procedures should be directed to the appropriate jurisdiction, not to NCBE.

This booklet is intended to provide the applicant with a general description of the MEE, outlines of the subject matter covered, and sample questions. NCBE has published MEE Questions and Analyses for MEE administrations since 1995 and has sample MEE questions posted at [www.ncbex.org](http://www.ncbex.org). To order these publications, complete the MEE Study Aids Order Form at the end of this booklet or visit [www.ncbex.org](http://www.ncbex.org).

## DESCRIPTION OF THE EXAMINATION

The Multistate Essay Examination offers nine 30-minute questions. Jurisdictions may select questions from the nine offered; while some use fewer questions on their bar examinations, most jurisdictions administer six of the nine.

The purpose of the MEE is to test the applicant's ability to (1) identify legal issues raised by a hypothetical factual situation; (2) separate material which is relevant from that which is not; (3) present a reasoned analysis of the relevant issues in a clear, concise, and well-organized composition; and (4) demonstrate an understanding of the fundamental legal principles relevant to the probable solution of the issues raised by the factual situation. The primary distinction between the MEE and the Multistate Bar Examination (MBE) is that the MEE requires the applicant to demonstrate an ability to communicate effectively in writing.

Areas of law that may be covered on the MEE include the following: Business Associations (Agency and Partnership; Corporations and Limited Liability Companies), Conflict of Laws, Constitutional Law, Contracts, Criminal Law and Procedure, Evidence, Family Law, Federal Civil Procedure, Real Property, Torts, Trusts and Estates (Decedents' Estates; Trusts and Future Interests), and Uniform Commercial Code (Negotiable Instruments (Commercial Paper); Secured Transactions). Some questions may include issues in more than one area of law.

## INSTRUCTIONS

The back cover of each test form contains the following instructions:

Do not break the seal on this booklet until you are told to begin.

Each question is designed to be answered in 30 minutes. There will be no break once the formal testing session begins. 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 to follow.

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 conclusion. 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.

Your jurisdiction may instruct you to answer MEE questions according to the law of the jurisdiction. Absent such an instruction, you should answer the questions by applying fundamental legal principles rather than local case or local statutory law.

## **SUBJECT MATTER OUTLINES**

The following outlines indicate the examination's potential scope of coverage. The outlines are not intended to list each aspect of each topic mentioned.

Three of the questions on each test form will be taken from the traditional MBE subject areas included in this outline (Constitutional Law, Contracts, Criminal Law and Procedure, Evidence, Real Property, and Torts) and six will be drawn from the traditional MEE subject areas which are also covered in the outline (Business Associations, Conflict of Laws, Family Law, Federal Civil Procedure, Trusts and Estates, and Uniform Commercial Code). Some questions may require analysis of more than one subject area. The particular areas covered will vary from exam to exam.

### **Business Associations**

#### **Agency and Partnership**

- I. Agency relationships
  - A. Creation
  - B. Types
  - C. Termination
- II. Power of agent to bind principal
  - A. Authority
  - B. Apparent authority
  - C. Inherent agency power
- III. Vicarious liability of principal for acts of agent
- IV. Fiduciary duties between principal and agent
  - A. Duty of care
  - B. Duty of loyalty
  - C. Duty of obedience
- V. Creation of partnerships
  - A. General partnerships
  - B. Limited partnerships
  - C. Limited liability partnerships
- VI. Power and liability of partners
- VII. Rights of partners among themselves
  - A. Profits and losses
  - B. Management and control
  - C. Duty of care
  - D. Duty of loyalty
- VIII. Dissolution
  - A. Distinguished from winding up and termination
  - B. Rightful versus wrongful
  - C. General partnerships, limited partnerships, or limited liability partnerships
- IX. Special rules concerning limited partnerships
  - A. Disclosure requirements

- B. The control limitation
- C. Economic rights of limited partners

## **Corporations and Limited Liability Companies**

- I. Formation of organizations
  - A. Articles of incorporation
  - B. Bylaws
  - C. Articles of organization; certificates of formation
  - D. Operating agreements
- II. Pre-organization transactions
  - A. Promoters: contracts and fiduciary duties
  - B. Subscriptions for shares
- III. Piercing the veil
- IV. Financing the organization
  - A. Sources of finance
  - B. Securities issuance and characteristics
  - C. Dividends and distributions
  - D. Redemptions and repurchases
- V. Management and control
  - A. Shareholders
    - 1. Meetings: annual, notice, and quorum
    - 2. Voting: eligibility, cumulative voting, proxy voting, class voting, voting trusts, and shareholder voting agreements
  - B. Directors
    - 1. Meetings: quorum and notice
    - 2. Action by written consent
    - 3. Action by committee
    - 4. Director's objections to actions
  - C. Officers
    - 1. Authority
    - 2. Officer's liability on corporate obligations
  - D. Members and managers
    - 1. Authority
    - 2. Liability
    - 3. Powers
- VI. Fiduciary duties
  - A. Directors, officers, and shareholders
  - B. Managers and members
- VII. Close corporations and special control devices
  - A. Share transfer restrictions
  - B. Special agreements allocating authority
  - C. Resolutions of disputes and deadlocks
  - D. Option or buy/sell agreements
- VIII. Organizational structure including relationships between parents and subsidiaries
  - A. Amendments
    - 1. Articles of incorporation and bylaws

2. Articles of organization, certificates of formation, and operating agreements
  - B. Mergers and consolidations
  - C. Sales of substantially all assets
  - D. Recapitalizations
  - E. Exchanges of securities
  - F. Dissolution of organization
- IX. Shareholder and member litigation: direct, derivative, and class litigation

### **Conflict of Laws\***

- I. Domicile
  - A. Meaning and legal consequences
  - B. State's law by which determined
- II. Jurisdiction of courts
  - A. Types of jurisdiction
    1. In personam
    2. In rem and quasi in rem
  - B. Bases of jurisdiction
  - C. Notice and opportunity to be heard
  - D. Limits on exercise of jurisdiction
    1. Traditional limitations
      - a. Choice of forum by agreement
      - b. Fraud, force, and privilege
      - c. Forum non conveniens
    2. Constitutional limitations (due process)
- III. Choice of law
  - A. Basic concepts
    1. Legal characterization
    2. Renvoi
    3. Depecage
    4. Proof of foreign law
  - B. Choice of law theories
    1. Traditional "vested rights" approach
    2. Contemporary "policy" approaches (including the interest analysis approach and the substantial relationship approach of Restatement (Second) of Conflict of Laws)
  - C. Application in specific areas
    1. Torts
    2. Contracts
    3. Property
    4. Corporations
    5. Family law
    6. Substance vs. procedure
  - D. Defenses against application of foreign law
    1. Local public policy
    2. Penal laws
    3. Revenue laws
  - E. Constitutional limitations
    1. Due process

- 2. Full faith and credit
- 3. Privileges and immunities
- F. Federal-state conflicts
  - 1. Federal supremacy
  - 2. *Erie* doctrine
- IV. Recognition and enforcement of other states' judgments and foreign judgments
  - A. Full faith and credit
  - B. Effect: claim and issue preclusion
  - C. Defenses to recognition or enforcement
  - D. Family law judgments

\*Conflict of Laws issues are embedded in the other MEE topic areas. They do not appear as stand-alone questions.

### **Constitutional Law**

NOTE: The terms "Constitution," "constitutional," and "unconstitutional" refer to the federal Constitution unless indicated otherwise.

- I. The nature of judicial review
  - A. Organization and relationship of state and federal courts in a federal system
  - B. Jurisdiction
    - 1. Constitutional basis
    - 2. Congressional power to define and limit
    - 3. The Eleventh Amendment and state sovereign immunity
  - C. Judicial review in operation
    - 1. The "case or controversy" requirement, including the prohibition on advisory opinions, standing, ripeness, and mootness
    - 2. The "adequate and independent state ground"
    - 3. Political questions and justiciability
- II. The separation of powers
  - A. The powers of Congress
    - 1. Commerce, taxing, and spending powers
    - 2. War, defense, and foreign affairs powers
    - 3. Power to enforce the 13th, 14th, and 15th Amendments
    - 4. Other powers
  - B. The powers of the president
    - 1. As chief executive, including the "take care" clause
    - 2. As commander in chief
    - 3. Treaty and foreign affairs powers
    - 4. Appointment and removal of officials
  - C. Federal interbranch relationships
    - 1. Congressional limits on the executive

2. The presentment requirement and the president's power to veto or to withhold action
  3. Non-delegation doctrine
  4. Executive, legislative, and judicial immunities
- III. The relation of nation and states in a federal system
- A. Intergovernmental immunities
    1. Federal immunity from state law
    2. State immunity from federal law, including the 10th Amendment
  - B. Federalism-based limits on state authority
    1. Negative implications of the commerce clause
    2. Supremacy clause and preemption
    3. Full faith and credit
    4. Authorization of otherwise invalid state action
- IV. Individual rights
- A. State action
  - B. Due process
    1. Substantive due process
      - a. Fundamental rights
      - b. Other rights and interests
    2. Procedural due process, including personal jurisdiction
  - C. Equal protection
    1. Fundamental rights
    2. Classifications subject to heightened scrutiny
    3. Rational basis review
  - D. Takings
  - E. Other protections, including the privileges and immunities clauses, the contracts clause, unconstitutional conditions, bills of attainder, and ex post facto laws
  - F. First Amendment freedoms
    1. Freedom of religion and separation of church and state
      - a. Free exercise
      - b. Establishment
    2. Freedom of expression
      - a. Content-based regulation of protected expression
      - b. Content-neutral regulation of protected expression
      - c. Regulation of unprotected expression
      - d. Regulation of commercial speech
      - e. Regulation of, or impositions upon, public school students, public employment, licenses, or benefits

- based upon exercise of expressive or associational rights
- f. Regulation of expressive conduct
- g. Prior restraint, vagueness, and overbreadth
- 3. Freedom of the press
- 4. Freedom of association

## **Contracts**

NOTE: Examinees are to assume that Articles 1 and 2 of the Uniform Commercial Code have been adopted and are applicable when appropriate. Examinees should assume that the 2001 proposed amendments to Article 1 have been adopted, but that the 2001 and 2003 proposed amendments to Article 2 have not been adopted.

- I. Formation of contracts
  - A. Mutual assent
    - 1. Offer and acceptance
    - 2. Indefiniteness or absence of terms
    - 3. Implied-in-fact contract
    - 4. "Pre-contract" obligations based on reliance
  - B. Consideration
    - 1. Bargain and exchange and substitutes for bargain: "moral obligation," reliance, and statutory substitutes
    - 2. Modification of contracts: preexisting duties
    - 3. Compromise and settlement of claims
- II. Defenses to enforceability
  - A. Incapacity to contract
  - B. Duress
  - C. Undue influence
  - D. Mistake, misunderstanding
  - E. Fraud, misrepresentation, and nondisclosure
  - F. Illegality, unconscionability, and public policy
  - G. Statute of Frauds
- III. Parol evidence and interpretation
- IV. Performance, breach, and discharge
  - A. Conditions
    - 1. Express
    - 2. Constructive
    - 3. Obligations of good faith and fair dealing in performance and enforcement of contracts
    - 4. Suspension or excuse of conditions by waiver, election, or estoppel
    - 5. Prospective inability to perform: effect on other party
  - B. Impracticability and frustration of purpose

- C. Discharge of contractual duties
  - D. Express and implied warranties in sale-of-goods contracts
  - E. Substantial and partial breach and anticipatory repudiation
- V. Remedies
- A. Measure of damages for breach; protecting the expectation interest
  - B. Consequential damages: causation, certainty, and foreseeability
  - C. Liquidated damages and penalties
  - D. Avoidable consequences and mitigation of damages
  - E. Rescission and reformation
  - F. Specific performance; injunction against breach; declaratory judgment
  - G. Restitutionary and reliance recoveries
  - H. Remedial rights of breaching parties
- VI. Third-party rights
- A. Third-party beneficiaries
    - 1. Intended beneficiaries
    - 2. Incidental beneficiaries
    - 3. Impairment or extinguishment of third-party rights
    - 4. Enforcement by the promisee
  - B. Assignment of rights and delegation of duties

## **Criminal Law and Procedure**

- I. Homicide
- A. Intended killings
    - 1. Premeditation, deliberation
    - 2. Provocation
  - B. Unintended killings
    - 1. Intent to injure
    - 2. Reckless and negligent killings
    - 3. Felony murder
    - 4. Misdemeanor manslaughter
- II. Other crimes
- A. Theft
    - 1. Larceny
    - 2. Embezzlement
    - 3. False pretenses
  - B. Receiving stolen goods
  - C. Robbery
  - D. Burglary
  - E. Assault and battery
  - F. Rape; statutory rape
  - G. Kidnapping
  - H. Arson
  - I. Possession offenses

- III. Inchoate crimes; parties
  - A. Inchoate offenses
    - 1. Attempts
    - 2. Conspiracy
    - 3. Solicitation
  - B. Parties to crime
- IV. General principles
  - A. Acts and omissions
  - B. State of mind
    - 1. Required mental state
    - 2. Strict liability
    - 3. Mistake of fact or law
  - C. Responsibility
    - 1. Mental disorder
    - 2. Intoxication
  - D. Causation
  - E. Justification and excuse
  - F. Jurisdiction
- V. Constitutional protection of accused persons
  - A. Arrest, search and seizure
  - B. Confessions and privilege against self-incrimination
  - C. Lineups and other forms of identification
  - D. Right to counsel
  - E. Fair trial and guilty pleas
  - F. Double jeopardy
  - G. Cruel and unusual punishment
  - H. Burdens of proof and persuasion

## **Evidence**

NOTE: All Evidence questions should be answered according to the Federal Rules of Evidence.

- I. Presentation of evidence
  - A. Introduction of evidence
    - 1. Requirement of personal knowledge
    - 2. Refreshing recollection
    - 3. Objections and offers of proof
    - 4. Lay opinions
    - 5. Competency of witnesses
    - 6. Judicial notice
    - 7. Roles of judge and jury
    - 8. Limited admissibility
  - B. Presumptions
  - C. Mode and order
    - 1. Control by court
    - 2. Scope of examination
    - 3. Form of questions
    - 4. Exclusion of witnesses
  - D. Impeachment, contradiction, and rehabilitation
    - 1. Inconsistent statements and conduct

2. Bias and interest
  3. Conviction of crime
  4. Specific instances of conduct
  5. Character for truthfulness
  6. Ability to observe, remember, or relate accurately
  7. Impeachment of hearsay declarants
  8. Rehabilitation of impeached witnesses
  9. Contradiction
  - E. Proceedings to which evidence rules apply
- II. Relevancy and reasons for excluding relevant evidence
- A. Probative value
    1. Relevancy
    2. Exclusion for unfair prejudice, confusion, or waste of time
  - B. Authentication and identification
  - C. Character and related concepts
    1. Admissibility of character
    2. Methods of proving character
    3. Habit and routine practice
    4. Other crimes, acts, transactions, and events
    5. Prior sexual misconduct of a defendant
  - D. Expert testimony
    1. Qualifications of witnesses
    2. Bases of testimony
    3. Ultimate issue rule
    4. Reliability and relevancy
    5. Proper subject matter for expert testimony
  - E. Real, demonstrative, and experimental evidence
- III. Privileges and other policy exclusions
- A. Spousal immunity and marital communications
  - B. Attorney-client and work product
  - C. Physician/psychotherapist-patient
  - D. Self-incrimination
  - E. Other privileges
  - F. Insurance coverage
  - G. Remedial measures
  - H. Compromise, payment of medical expenses, and plea negotiations
  - I. Past sexual conduct of a victim
- IV. Writings, recordings, and photographs
- A. Requirement of original
  - B. Summaries
  - C. Completeness rule
- V. Hearsay and circumstances of its admissibility
- A. Definition of hearsay
    1. What is hearsay
    2. Prior statements by witness
    3. Statements attributable to party-opponent
    4. Multiple hearsay

- B. Present sense impressions and excited utterances
- C. Statements of mental, emotional, or physical condition
- D. Statements for purposes of medical diagnosis and treatment
- E. Past recollection recorded
- F. Business records
- G. Public records and reports
- H. Learned treatises
- I. Former testimony; depositions
- J. Statements against interest
- K. Other exceptions to the hearsay rule
- L. Right to confront witnesses

## **Family Law**

- I. Getting married
  - A. Controversies arising in anticipation of marriage
  - B. Limitations on who may marry
  - C. Procedural requirements
  - D. State of mind requirements
  - E. Common law marriage and other curative or mitigative doctrines
  - F. Premarital contracts
- II. Being married
  - A. Rights and responsibilities of spouses
  - B. Family privacy
    - 1. Common law doctrine
    - 2. Constitutional privacy
    - 3. Reproductive choices
    - 4. Evidentiary privileges
  - C. Remedies for tortious interference with the marital relationship
- III. Separation, divorce, dissolution, and annulment
  - A. Grounds and defenses
  - B. Jurisdiction and recognition of decrees
  - C. Preliminary, interlocutory, and final orders
  - D. Division of property
  - E. Maintenance or alimony
  - F. Child support
  - G. Modification of maintenance and child support
  - H. Enforcement of awards
  - I. Mediation and other alternative means of dispute resolution
  - J. Separation agreements
- IV. Child custody
  - A. Standards for decision
  - B. Visitation
  - C. Joint custody
  - D. Enforcement

- E. Procedural issues
    - 1. Jurisdiction to decide custody
    - 2. Child's preference
    - 3. Counsel for the child
  - F. Modification
  - G. Mediation and other alternative means of dispute resolution
- V. Rights of unmarried cohabitants
- A. Rights of cohabitants inter se
  - B. Unmarried parents and their children: illegitimacy
    - 1. Constitutional limits on discrimination
      - a. Unfavorable treatment of illegitimate children
      - b. Unfavorable treatment of unmarried parents
    - 2. Presumption of legitimacy
    - 3. Establishing paternity
    - 4. Legitimation
- VI. Parent, child, and state
- A. Legal disabilities of childhood
  - B. Duty to support
  - C. Intra-family immunities
  - D. Claims for loss of consortium
  - E. Parent's right to control child's upbringing and limitations on parental autonomy
  - F. Custodial disputes between parents and third parties
- VII. Adoption
- A. Jurisdiction
  - B. Agency versus independent placements
  - C. Parental consent
- VIII. Alternatives to adoption
- A. Artificial insemination by donor
  - B. Surrogacy arrangements
  - C. In vitro fertilization, gestational surrogacy, and embryo transplantation

### **Federal Civil Procedure**

NOTE: Examinees are to assume that the 2006 and 2007 amendments to the Federal Rules of Civil Procedure apply.

- I. Jurisdiction and venue
  - A. Subject matter jurisdiction
    - 1. Federal courts
    - 2. State courts
  - B. Jurisdiction over parties
  - C. Jurisdiction over property
  - D. Service of process and notice
  - E. Venue, forum non conveniens, and transfer

- II. Law applied by federal courts
  - A. State law in federal court
  - B. Federal common law
- III. Injunctions and provisional remedies
- IV. Pre-trial procedures
  - A. Pleading and motions
  - B. Abstention doctrines
  - C. Joinder of parties and claims (including class actions)
  - D. Discovery (including e-discovery)
  - E. Adjudication without a trial
  - F. Pre-trial conference and order
- V. The trial process
  - A. Jury trials
  - B. Nonjury trials
  - C. Jury instructions
  - D. Motions
- VI. Verdicts and judgments
  - A. Jury verdicts
  - B. Judicial findings and conclusions
  - C. Directed verdicts and nonsuits
  - D. Post-trial motions
  - E. Effect; claim and issue preclusion
  - F. Appealability and review

## **Real Property**

- I. Ownership
  - A. Present estates
    - 1. Fees simple
    - 2. Defeasible fees simple
    - 3. Life estates
  - B. Future interests
    - 1. Reversions
    - 2. Remainders, vested and contingent
    - 3. Executory interests
    - 4. Possibilities of reverter, powers of termination
    - 5. Rules affecting these interests
  - C. Cotenancy
    - 1. Types
      - a. Tenancy in common
      - b. Joint tenancy
    - 2. Severance
    - 3. Partition
    - 4. Relations among cotenants
    - 5. Alienability, descendability, devisability
  - D. The law of landlord and tenant
    - 1. Types of holdings: creation and termination
      - a. Terms for years
      - b. Tenancies at will

- c. Holdovers and other tenancies at sufferance
        - d. Periodic tenancies
      - 2. Possession and rent
      - 3. Assignment and subletting
      - 4. Termination (surrender, mitigation of damages, and anticipatory breach)
      - 5. Habitability and suitability
    - E. Special problems
      - 1. Rule Against Perpetuities: common law and as modified
      - 2. Alienability, descendability, and devisability
      - 3. Fair housing /discrimination
- II. Rights in land
- A. Covenants at law and in equity
    - 1. Nature and type
    - 2. Creation
    - 3. Scope
    - 4. Termination
  - B. Easements, profits, and licenses
    - 1. Nature and type
    - 2. Methods of creation
      - a. Express
      - b. Implied
        - i. Quasi use
        - ii. Necessity
        - iii. Plat
      - c. Prescription
    - 3. Scope
    - 4. Termination
  - C. Fixtures (including relevant application of Article 9, UCC)
  - D. Zoning (fundamentals other than regulatory taking)
- III. Contracts
- A. Real estate brokerage
  - B. Creation and construction
    - 1. Statute of frauds and exceptions
    - 2. Essential terms
    - 3. Time for performance
    - 4. Remedies for breach
  - C. Marketability of title
  - D. Equitable conversion (including risk of loss)
  - E. Options and rights of first refusal
  - F. Fitness and suitability
  - G. Merger
- IV. Mortgages/security devices
- A. Types of security devices
    - 1. Mortgages (including deeds of trust)
      - a. In general
      - b. Purchase-money mortgages
      - c. Future-advance mortgages

2. Land contracts
  3. Absolute deeds as security
  - B. Some security relationships
    1. Necessity and nature of obligation
    2. Theories: title, lien, and intermediate
    3. Rights and duties prior to foreclosure
    4. Right to redeem and clogging equity of redemption
  - C. Transfers by mortgagor
    1. Distinguishing “subject to” and “assuming”
    2. Rights and obligations of transferor
    3. Application of subrogation and suretyship principles
    4. Due-on-sale clauses
  - D. Transfers by mortgagee
  - E. Payment, discharges, and defenses
  - F. Foreclosure
    1. Types
    2. Rights of omitted parties
    3. Deficiency and surplus
    4. Redemption after foreclosure
    5. Deed in lieu of foreclosure
- V. Titles
- A. Adverse possession
  - B. Transfer by deed
    1. Warranty and non-warranty deeds (including covenants for title)
    2. Necessity for a grantee and other deed requirements
    3. Delivery (including escrows)
  - C. Transfer by operation of law and by will
    1. In general
    2. Ademption
    3. Exoneration
    4. Lapse
    5. Abatement
  - D. Title assurance systems
    1. Recording acts (race, notice, and race-notice)
      - a. Indexes
      - b. Chain of title
      - c. Protected parties
      - d. Priorities
      - e. Notice
    2. Title insurance
  - E. Special problems
    1. After-acquired title (including estoppel by deed)
    2. Forged instruments and undelivered deeds
    3. Purchase-money mortgages
    4. Judgment and tax liens

## Torts

NOTE: The Torts questions should be answered according to principles of general applicability. Examinees are to assume that there is no applicable statute unless otherwise specified; however, survival actions and claims for wrongful death should be assumed to be available where applicable. Examinees should assume that joint and several liability, with pure comparative negligence, is the relevant rule unless otherwise indicated.

- I. Intentional torts
  - A. Harms to the person such as assault, battery, false imprisonment, infliction of mental distress; and harms to property interests such as trespass to land and chattels, conversion
  - B. Defenses to claims for physical harms
    - 1. Consent
    - 2. Privileges and immunities: protection of self and others; protection of property interests; parental discipline; protection of public interests; necessity; incomplete privilege
- II. Negligence
  - A. The duty question, including failure to act, unforeseeable plaintiffs, and obligations to control the conduct of third parties
  - B. The standard of care
    - 1. The reasonably prudent person: including children, physically and mentally impaired individuals, professional people, and other special classes
    - 2. Rules of conduct derived from statutes and custom
  - C. Problems relating to proof of fault, including *res ipsa loquitur*
  - D. Problems relating to causation
    - 1. But for and substantial causes
    - 2. Harms traceable to multiple causes
    - 3. Questions of apportionment of responsibility among multiple tortfeasors, including joint and several liability
  - E. Limitations on liability and special rules of liability
    - 1. Problems relating to “remote” or “unforeseeable” causes, “legal” or “proximate” cause, and “superseding” causes
    - 2. Claims against owners and occupiers of land
    - 3. Claims for mental distress not arising from physical harm; other intangible injuries
    - 4. Claims for pure economic loss

- F. Liability for acts of others
  - 1. Employees and other agents
  - 2. Independent contractors and nondelegable duties
- G. Defenses
  - 1. Contributory fault, including common law contributory negligence and last clear chance, and the various forms of comparative negligence
  - 2. Assumption of risk
- III. Strict liability: claims arising from abnormally dangerous activities; the rule of *Rylands v. Fletcher* and other common law strict liability claims; defenses
- IV. Products liability: claims against manufacturers and others based on defects in manufacture, design, and warning; and defenses
- V. Other torts
  - A. Claims based on nuisance, and defenses
  - B. Claims based on defamation and invasion of privacy; defenses and constitutional limitations
  - C. Claims based on misrepresentations, and defenses
  - D. Claims based on intentional interference with business relations, and defenses

## **Trusts and Estates**

### **Decedents' Estates**

- I. Intestate succession
  - A. Share of the surviving spouse
  - B. Share of children and more remote descendants
    - 1. Adopted children
    - 2. Children born out of wedlock
    - 3. Half-bloods
  - C. Share of ancestors and collaterals
  - D. Advancements
  - E. Simultaneous death
- II. Wills
  - A. Execution requirements
    - 1. Governing law
    - 2. Wills complying with law of domicile
    - 3. Foreign wills
    - 4. Holographic wills
    - 5. Interested witnesses
  - B. Integration of wills
  - C. Codicils
  - D. Incorporation by reference
  - E. Facts of independent significance
  - F. Revocation
    - 1. Dependent relative revocation
    - 2. Revocation due to changed circumstances

- 3. Revocation by physical act
    - 4. Partial revocation
  - G. Revival
  - H. Contractual wills
  - I. Construction problems
    - 1. Lapsed legacies
    - 2. Ademption
    - 3. Accretions
    - 4. Satisfaction
    - 5. Exoneration
    - 6. Slayer statutes
    - 7. Disclaimers
    - 8. Simultaneous death
    - 9. Abatement
    - 10. Classification of legacies and devises
    - 11. Gifts to classes
    - 12. Gifts to children and issue
  - J. Will contests
    - 1. Age requirement
    - 2. Mental capacity
    - 3. Undue influence
    - 4. Fraud
    - 5. Mistake
    - 6. No-contest clauses
    - 7. Standing to contest
  - K. Non-probate transfers
    - 1. Inter vivos gifts
    - 2. Joint tenancy
    - 3. Tentative trusts and pay-on-death accounts
    - 4. Other non-probate transfers
  - L. Powers and duties of personal representative
- III. Family protection
- A. Spouse's forced or elective shares
    - 1. Size
    - 2. Assets subject to share
  - B. Share of after-born or pretermitted child
- IV. Living wills and durable health care powers
- A. Execution requirements
  - B. Revocation
  - C. Individuals eligible to be agent or attorney-in-fact
  - D. Authority of agent or attorney-in-fact

### **Trusts and Future Interests**

- I. Trusts
  - A. Classification
  - B. Creation
    - 1. Requirement of trust res
    - 2. Requirement of beneficiary
    - 3. Requirement of trustee
  - C. Types of trusts
    - 1. Revocable

- 2. Irrevocable
  - 3. Testamentary
  - 4. Pourover
  - 5. Charitable
  - D. Alienability of trust interests
  - E. Protective trusts
    - 1. Discretionary trusts
    - 2. Support trusts
    - 3. Spendthrift trusts
  - F. Powers of invasion
  - G. Modification
  - H. Termination
  - I. Powers and duties of trustees
    - 1. Prudent person rule
    - 2. Duty of care
    - 3. Duty of loyalty
    - 4. Duty to act impartially
    - 5. Principal and income allocations
- II. Future interests
- A. Classification of reversions, remainders, and executory interests
  - B. Life estates and terms of years
  - C. Vested and contingent interests
  - D. Powers of appointment
  - E. Acceleration of future interests
  - F. Rule Against Perpetuities
    - 1. Common law
    - 2. Wait-and-see
    - 3. Cy pres
    - 4. Other reforms
- III. Construction problems
- A. Survivorship problems
  - B. Gifts to classes
  - C. Gifts to heirs
  - D. Doctrine of Worthier Title
  - E. Gifts to children and issue
    - 1. Adopted children
    - 2. Children born out of wedlock
  - F. Death without issue
  - G. Gifts by implication

### **Uniform Commercial Code**

NOTE: Examinees should assume that the 2001 revision to Article 1 has been adopted. Article 2, Sales of Goods, is included under the Contracts specifications.

#### **Negotiable Instruments (Commercial Paper)**

- I. General UCC principles
  - A. Rules of construction and application (§ 1-101, *et seq.*)
  - B. General definitions and principles of interpretation (§ 1-102, *et seq.*)

- II. General provisions and definitions (§ 3-102, *et seq.*)
  - A. Definitions (§ 3-103)
  - B. Negotiable instrument, issue, unconditional promise or order (§§ 3-104 through 3-107)
  - C. Payable on demand or at definite time (§ 3-108)
  - D. Payable to order or bearer; identification of payee (§§ 3-109, 3-110)
  - E. Other terms (§§ 3-111 through 3-113)
  - F. Contradictory terms; incomplete terms (§§ 3-114, 3-115)
  - G. Joint and several liability; contribution (§ 3-116)
  - H. Other agreements affecting instrument (§ 3-117)
  - I. Statute of limitations; notice of right to defend (§§ 3-118, 3-119)
  
- III. Negotiation, transfer, and indorsement (§ 3-201, *et seq.*)
  - A. Negotiation, rescission, and transfer (§§ 3-201 through 3-203)
  - B. Indorsements (§§ 3-204 through 3-206)
  - C. Reacquisition (§ 3-207)
  
- IV. Enforcement of instruments (§§ 3-301 through 3-311)
  - A. Person entitled to enforce; holder in due course (§§ 3-301, 3-302)
  - B. Value and consideration (§ 3-303)
  - C. Overdue instrument (§ 3-304)
  - D. Defenses, claims in recoupment, and claims to an instrument (§§ 3-305, 3-306)
  - E. Notice of breach of fiduciary duty (§ 3-307)
  - F. Proof of signatures and status as holder in due course (§ 3-308)
  - G. Enforcement of lost, destroyed, or stolen instrument (§ 3-309)
  - H. Effect of instrument on obligation for which taken; accord and satisfaction (§§ 3-310, 3-311)
  
- V. Liability of parties (§ 3-401, *et seq.*)
  - A. Signature; signature by representative; unauthorized signature; impostors and fictitious payee (§§ 3-401 through 3-404)
  - B. Employer's responsibility for employee's fraudulent indorsement (§ 3-405)
  - C. Alteration; negligence contributing to forgery or alteration (§§ 3-406, 3-407)
  - D. Drawee not liable on unaccepted draft (§ 3-408)
  - E. Acceptance of draft, certified check; acceptance varying draft (§§ 3-409, 3-410)

- F. Refusal to pay cashier's, teller's, and certified checks (§ 3-411)
  - G. Obligations of issuer, acceptor, drawer, indorser (§§ 3-412 through 3-415)
  - H. Transfer and presentment warranties (§§ 3-416, 3-417)
  - I. Payment or acceptance by mistake (§ 3-418)
  - J. Instruments signed for accommodation (§ 3-419)
  - K. Conversion of instrument (§ 3-420)
- VI. Dishonor (presentment, dishonor, notice, excuse, evidence of dishonor) (§§ 3-501 through 3-505)
- VII. Discharge and payment (§§ 3-601 through 3-605)
    - A. Discharge and effect of discharge (§ 3-601)
    - B. Payment; tender of payment (§§ 3-602, 3-603)
    - C. Discharge by cancellation, renunciation (§ 3-604)
    - D. Discharge of indorsers, accommodation parties (§ 3-605)

## **Secured Transactions**

- I. General UCC principles
  - A. Rules of construction and application (§ 1-101, *et seq.*)
  - B. General definitions and principles of interpretation (§ 1-201, *et seq.*)
- II. Applicability and definitions (§ 9-101, *et seq.*)
  - A. Subject matter of Article 9 (§ 9-109)
  - B. Perfection of security interests in multiple state transactions (§ 9-301)
  - C. Excluded transactions (§ 9-109)
  - D. Definitions: "account"; "purchase money security interest"; "control" (§§ 9-102 through 9-107)
  - E. Classification of goods (§ 9-102)
  - F. Including sufficiency of description (§ 9-108)
  - G. Including security interests arising under Article 2 (§ 9-110)
  - H. Priority of consignments (§§ 9-103, 9-324)
- III. Validity of security agreements and rights of parties (§ 9-201, *et seq.*)
  - A. Title to collateral immaterial (§ 9-202)
  - B. Enforceability (§ 9-203)
  - C. After-acquired property; future advances (§ 9-204)
  - D. Use or disposition of collateral by debtor (§ 9-205)
  - E. Collateral in secured party's possession (§§ 9-207, 9-208)
  - F. Request for accounting (§ 9-210)

- IV. Rights of third parties; perfected and unperfected security interests; rules of priority (§ 9-301, *et seq.*)
  - A. Priority over unperfected security interests (§ 9-317)
  - B. Requirement of filing and steps to be taken for perfection (§§ 9-308 through 9-316; § 9-501, *et seq.*); assignment of security interest (§§ 9-514, 9-519)
  - C. Protection of buyers of goods and chattel paper (§§ 9-320, 9-330), including protection of holders and purchasers of negotiable instruments (§ 9-331)
  - D. Priority of liens arising by law (§ 9-333)
  - E. Alienability of debtor's rights (§ 9-401)
  - F. Priority among conflicting security interests (§§ 9-322 through 9-329)
  - G. Fixtures (§ 9-334)
  - H. Accessions; commingling (§§ 9-335, 9-336)
  - I. Subordination (§ 9-339)
  - J. Defenses against assignee; modification of contract (§§ 9-404 through 9-406)
  - K. Termination statement (§ 9-513); release of collateral (§ 9-512)
- V. Default (§ 9-601, *et seq.*)
  - A. Rights and remedies on default (§§ 9-601 through 9-606)
    - 1. Including secured party's collection rights (§ 9-607)
    - 2. Including secured party's right to take possession and dispose of collateral (§§ 9-608 through 9-624)
  - B. Debtor's rights (§§ 9-625 through 9-628)

## **MEE SAMPLE QUESTIONS**

Reprints of previously administered actual MEE Questions and Analyses may be purchased from NCBE using the MEE Study Aids Order Form at the end of this booklet or via the NCBE website at [www.ncbex.org](http://www.ncbex.org). The MEE Questions and Analyses from earlier administrations are available free online for viewing or downloading. The following are MEE Questions from July 2008 and February 2009. In the actual test, the questions are simply numbered rather than being identified by area of law.

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**July 2008**

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### **Secured Transactions Question**

Debtor sells and delivers medical supplies to hospitals. It owns a fleet of 40 trucks that it uses to make deliveries. Debtor has a state-issued certificate of title for each truck. The state has a statute that provides: “All security interests in a motor vehicle must be noted on the vehicle’s certificate of title as a condition for perfection.”

On June 1, Bank made a \$100,000 loan to Debtor. In order to secure the loan, Debtor signed a valid security agreement granting Bank a security interest in “all Debtor’s inventory and equipment, whether now owned or hereafter acquired.” Bank did not note its security interest on the certificates of title issued for the trucks. However, Bank immediately filed an appropriate financing statement in the proper state office that listed its collateral as “all Debtor’s inventory and equipment, whether now owned or hereafter acquired.”

On July 1, Finance Company loaned \$75,000 to Debtor. On that same day, Debtor signed a valid security agreement granting Finance Company a security interest in 25 of Debtor’s “delivery trucks” and “any accessories now or hereafter installed.” Each truck was identified individually and by its vehicle identification number. Although Finance Company never filed a financing statement, its security interest was noted on the certificate of title for each truck.

On August 1, Debtor entered into a contract with Global Inc. to buy 40 global positioning system units (GPS units) to be installed on all 40 delivery trucks (including the 25 trucks

covered by Finance Company's security agreement). GPS units are bolted on the dashboard of a vehicle and hooked up directly to the battery for power, but they otherwise operate independently of the vehicle.

The GPS units cost \$50,000. Debtor made a down payment of \$10,000 and signed an agreement to pay the remaining \$40,000, plus interest, in equal monthly installments over a two-year period. To secure the amount owed on the contract, Debtor signed a security agreement giving Global a security interest in "the GPS units to be installed on Debtor's delivery trucks."

On August 2, Global properly filed a financing statement covering the GPS units. The GPS units were delivered to Debtor on August 10, and Debtor installed them on its delivery trucks shortly thereafter.

On October 1, Debtor defaulted on its obligations to Bank, Finance Company, and Global. Bank has repossessed all 40 of Debtor's trucks, and it is now negotiating with Finance Company and Global about their respective claims to the trucks and the 40 GPS units installed in them.

1. Which of Bank or Finance Company has the superior claim to the 25 delivery trucks claimed by Finance Company? Explain.
2. Which of Global or Finance Company has the superior claim to the GPS units installed in the 25 delivery trucks claimed by Finance Company? Explain.
3. Which of Bank or Global has the superior claim to the remaining 15 GPS units? Explain.

### **Constitutional Law Question**

Lex, a nationally prominent criminal defense attorney, has a weekly television show on LNN, a national cable television station devoted to legal news. Lex's show deals with a variety of legal topics. Lex often uses his show as a platform to argue that adultery should be criminalized. Lex and his wife are both 60 years old.

Scoop is a reporter for *News*, a nationally distributed newspaper. Scoop received an accurate tip that Lex was

engaging in an adulterous affair at a hotel in State X. Scoop then broke into the hotel through a back door, an act constituting trespass under generally applicable tort law, and attempted to get into Lex's hotel room. Before he could get into the room, however, he was discovered by a hotel employee and escorted out of the hotel. Later that day, while waiting on a public street outside the hotel, Scoop saw Lex get into a car with a young woman who was clearly not Lex's wife. Scoop took a photograph of Lex and the young woman, who were kissing passionately. Scoop mistakenly thought the woman was Star, a world-famous actress.

Scoop hurried back to the newspaper and wrote a news story that was published with the photograph in *News* the next day. The story stated that Lex was having an affair with Star and that Lex's adultery was contrary to the beliefs he advocated on his television show. By coincidence, the next page of the same edition of *News* featured a separate story about the premiere of Star's new movie, correctly stating that Star had been in State Y for the entirety of the previous day. Scoop honestly believed that the woman in the photograph was Star, even though most people would have been able to tell from the photograph that this was not the case.

Would the First Amendment preclude liability if:

- 1) Star sued *News* for libel on the ground that the news story falsely stated that she was having an affair with Lex? Explain.
- 2) the hotel sued Scoop for trespass? Explain.
- 3) Lex sued *News* for invasion of privacy, claiming that the publication of the news story and photograph disclosed the truthful but highly offensive fact that he had engaged in an extramarital affair? Explain.

## Agency and Partnership Question

Fifteen years ago, Amy, Beck, and Curt formed a partnership, “Amy, Beck, and Curt Co.,” to engage in a retail shoe store business. The partnership is for a 25-year term. All real estate owned by the partnership is titled to “Amy, Beck, and Curt Co., a partnership.”

While the partnership has done well, the three partners have not managed their respective personal finances successfully. In order to deal with personal financial problems, Amy borrowed \$25,000 from Green, Beck borrowed \$50,000 from Red, and Curt borrowed \$75,000 from White. The three partners each have defaulted on their respective loans.

Green, Red, and White are pursuing various avenues to recover what is owed to each of them.

Green has obtained a judgment against Amy, who is judgment-proof, and is considering attaching the partnership real estate.

Red has taken no legal action against Beck but wants to collect the amount of his loan to Beck from Beck’s interest in the partnership.

Curt has assigned all of his interest in the partnership to White. After the assignment, White asked to inspect the partnership books and records and demanded the right to participate in the management and affairs of the partnership. White is also considering the possibility of collecting Curt’s debt by forcing a dissolution and winding up of the partnership.

1. Can Green, as a judgment creditor of Amy, attach and execute upon the partnership real estate? Explain.
2. What steps should Red take to collect the amount of his loan to Beck from Beck’s interest in the partnership? Explain.
3. Does White have a right to inspect partnership books and records and to participate in the management of the partnership? Explain.
4. Can White force a dissolution and winding up of the partnership? Explain.

## Real Property Question

Two years ago, Landlord and Tenant entered into a five-year oral lease of an office at \$800 per month, payable on the first day of each month. The lease was silent regarding Tenant's right to assign or sublet the office.

Three weeks ago, Tenant called Landlord, gave two weeks' notice of lease termination, and said that she planned to move out of state permanently.

Tenant told Landlord that Friend had agreed to take over the office space for the balance of the five-year lease. Landlord said that he would not accept Friend as a new tenant even though she was financially capable of paying the rent and that he would hold Tenant to the lease agreement for the balance of the five-year term.

Two weeks ago, Tenant vacated the office.

One week ago, on the day the next month's rent payment was due, Friend sent Landlord a check for \$800, which Landlord refuses to cash. Landlord insists that Tenant is liable for the \$800 rent. Tenant has not paid the \$800 monthly rent. Landlord has sued Tenant to recover the \$800 rent that she has not paid.

1. What type of tenancy did the oral lease agreement between Landlord and Tenant create? Explain.
2. Did Tenant properly terminate the tenancy? Explain.
3. Is Landlord entitled to collect \$800 from Tenant? Explain.

## Federal Civil Procedure Question

Guest, a citizen of State A, ate oysters at Ron's Restaurant in State B. Guest paid for the meal with a \$50 check. Ron's Restaurant is owned and operated by Ron, a citizen of State B.

After eating the oysters at Ron's Restaurant, Guest ate an ice cream sundae at the ice cream shop next door, which is owned and operated by CreamCorp, a State B corporation with its principal place of business in State B.

An hour later, Guest became ill and went to a hospital emergency room. Guest had to be admitted to the

hospital for several days of tests, treatment, and observation. Ultimately, the doctors concluded that Guest was suffering from a severe case of food poisoning. Guest's hospital bills exceeded \$75,000.

Guest stopped payment on the \$50 check to Ron's Restaurant before the check cleared and has not otherwise paid for the meal.

Guest sued Ron (doing business as Ron's Restaurant) in the federal district court for the District of State B. Guest's complaint alleged that the oysters she ate at Ron's Restaurant caused her food poisoning. Guest further alleged that her damages exceed \$75,000, exclusive of costs and interest.

Ron doubts that the oysters were contaminated because no other patrons suffered an adverse reaction to the oysters served that day. Ron believes that Guest became ill because the ice cream served at CreamCorp's shop was made with unpasteurized milk. Thus, Ron has moved to compel the joinder of CreamCorp as an additional defendant in the lawsuit so that, if the jury concludes Guest became sick from the ice cream, it can render a verdict against CreamCorp and not Ron. Ron has also added to his answer a claim against Guest for the unpaid \$50.

Guest objects to the joinder of CreamCorp. Guest has also moved to strike Ron's claim for the unpaid \$50 from Ron's answer.

1. Should the court order the joinder of CreamCorp as an additional defendant? Explain.
2. Do the Federal Rules of Civil Procedure permit Ron to join his claim against Guest for the unpaid \$50 to Guest's lawsuit against Ron? Explain.
3. If the Federal Rules of Civil Procedure permit Ron to join his claim against Guest for the unpaid \$50, will the court have subject matter jurisdiction to hear that claim? Explain.

## Trusts Question

Ten years ago, Wife created a valid trust (Wife's Trust) and named Bank as trustee. The trust instrument directed Bank to (1) pay all trust income to Wife during her lifetime; (2) upon Wife's death, pay all trust income to Niece during Niece's lifetime; and (3) upon Niece's death, distribute the trust principal to Niece's "then living issue."

Article Five of Wife's Trust provided as follows:

Wife may revoke or amend this trust at any time prior to her death by a written instrument delivered to Bank.

Contemporaneously with the creation of Wife's Trust, Wife and her husband, Husband, executed separate wills. Each will devised the respective testator's entire probate estate to Bank "to hold as part of the principal of Wife's Trust, which was created simultaneously with the execution of my will."

Five years ago, Wife delivered to Bank a written instrument titled "Amendment to Wife's Trust." In this instrument, Wife directed Bank to distribute the trust principal to Niece's "children age 21 years or older who are living when Wife's Trust terminates."

Four months ago, Wife, Husband, and Niece were involved in an automobile accident. Wife was pronounced dead in the ambulance. Husband died three days later, and Niece died seven days later. Wife, who had previously transferred all of her assets to Wife's Trust, had no probate estate. Husband's probate estate was worth \$300,000.

Niece had two children: Son, now age 20, and Daughter, who died one year ago at the age of 28. Daughter had one child (Grandchild), now age 4.

1. Does the Amendment to Wife's Trust apply to the assets distributable to that trust from Husband's probate estate? Explain.
2. Is Son entitled to a share of the assets of Wife's Trust given the language of the Amendment to Wife's Trust? Explain.
3. Is Grandchild entitled to a share of the assets of Wife's Trust given the language of the Amendment to Wife's Trust? Explain.

## **Family Law and Conflict of Laws Question**

Six years ago, Hal and Wendy were married in State A. Both of them had been previously divorced. Hal, age 40, was a successful businessman earning \$200,000 per year. Wendy, age 30, was a struggling songwriter earning \$20,000 per year.

Two weeks before their wedding, Hal told Wendy that his lawyer (Lawyer) had advised him not to marry Wendy unless she signed a premarital agreement. Hal gave Wendy a copy of the agreement Lawyer had proposed and suggested that she review it with Lawyer or another attorney of her own choosing. The agreement specified that in the event of divorce:

1. Each spouse waives all claims to property acquired by the other during the first five years of the marriage;
2. The spouses will share joint physical and legal custody of any children born to them during the marriage.

When Hal gave Wendy the proposed agreement, she burst into tears. Wendy was very angry and hurt, but she did not want to call off the wedding at such a late date. Reluctantly, she agreed to discuss the matter with Lawyer.

Lawyer gave Wendy an accurate list of Hal's assets and a copy of Hal's tax returns for the past three years. Lawyer urged her to consult another attorney. After conferring with her family, but not an attorney, Wendy decided to sign the proposed agreement. The day before their wedding, she and Hal signed the agreement in Lawyer's office in State A.

Four years ago, Hal and Wendy had a child (Child).

Six months ago, Hal and Wendy moved to State B. Hal's business has continued to prosper. He currently earns \$300,000 per year. Since the marriage, Hal has used his business income to acquire assets worth about \$500,000. Wendy has continued to write songs. Her current income is \$30,000 per year.

Three months ago, after Wendy discovered that Hal was having an affair, she took Child and moved back to State A, where she plans to remain. Since leaving Hal, Wendy has written and recorded several songs about her marriage. Wendy's agent believes that these songs "will hit the top of the charts."

State A has adopted the Uniform Premarital Agreement Act. State B has not. The premarital agreement contains no choice-of-law provision.

1. Which state's law governs the enforceability of the premarital agreement? Explain.
2. Is the waiver-of-property-rights provision in the premarital agreement enforceable? Explain.
3. Is the child-custody provision in the premarital agreement enforceable? Explain.
4. Are the profits to be derived from Wendy's songs written after she left Hal subject to division at divorce? Explain.

### **Contracts Question**

Rancher conducts cattle roping clinics in various locations around the country. Rancher thought it would be more profitable to buy his own land and conduct the clinics there.

In March, Rancher bought the Bar-X Ranch (Ranch) with a large pasture on which Rancher could hold the roping clinics.

In April, before Rancher had offered any roping clinics on the property, Rancher agreed to allow Gasco, an oil and natural gas company, to explore for gas reserves on Ranch. Before the parties signed a contract, Gasco executives drove around Ranch, and Rancher pointed out to them the pasture where he planned to hold his roping clinics. Rancher told the Gasco executives, "I can't wait to start holding my clinics here so that I won't have to go on the road anymore. Every summer that I travel with my clinics costs me \$50,000. It will cost me only \$10,000 to work from Ranch."

In July, Rancher and Gasco signed a contract in which Gasco agreed to complete its gas exploration and restore

Ranch to its pre-exploration condition by March 31 of the following year. Gasco immediately began exploring for gas on Ranch.

By March 31 of the following year, Gasco had completed its exploration but chose not to restore Ranch to its pre-exploration condition. Because of Gasco's failure to restore Ranch, the pasture was not usable, and Rancher had to cancel his plans to conduct roping clinics on Ranch that summer.

Rancher sued Gasco for breach of contract. At trial, an expert for Rancher testified that because of Gasco's failure to promptly restore Ranch to its pre-exploration condition, it would cost \$500,000 and take three years to restore Ranch. Furthermore, during that time Ranch could not be used for roping clinics.

An expert for Gasco testified that Ranch was worth only \$20,000 less in its unrestored condition than if it had been restored to its pre-exploration condition. There was no other expert testimony.

Rancher testified that Ranch could not be used for roping clinics for the next three summers. Rancher estimated that 50 people would have attended the roping clinics each year, and each person would have paid a fee of \$2,000, for a total of \$100,000 per year. Therefore, Rancher seeks \$300,000 for his losses.

The trial court found that there was an enforceable contract between the parties and that Gasco had breached the contract by failing to restore Ranch. The court awarded Rancher \$500,000 for the cost of restoring Ranch to its pre-exploration condition and \$300,000 for his losses.

1. Did the court err in awarding Rancher the cost of restoring Ranch to its pre-exploration condition? Explain.
2. Did the court err in awarding Rancher \$300,000 for damages resulting from Rancher's inability to conduct roping clinics on Ranch for three years? Explain.

## **Negotiable Instruments (Commercial Paper) Question**

Two months ago, Finisher, an individual who refinishes antique furniture, entered into a contract with Law Firm to refinish a bookcase for \$3,000.

Two weeks ago, Finisher entered into a contract with Restaurant to refinish a table for \$1,000.

Ten days ago, Finisher hired Administrator to help Finisher manage the business. Finisher put Administrator in charge of opening the mail, recording incoming payments from customers, indorsing checks on behalf of Finisher, and depositing checks to Finisher's account at Bank. Finisher also put Administrator in charge of answering and resolving customer complaints.

Five days ago, Administrator opened Finisher's mail and found two checks.

The first check was from Law Firm and was drawn on Law Firm's account at Bank. The check was payable to the order of Finisher in the amount of \$1,500. The words "Payment in full for bookcase work" appeared in handwriting on the bottom left-hand corner of the face of the check. The Law Firm check was stapled to a letter addressed to Finisher in which Law Firm reminded Finisher that when Finisher's employees were installing the refinished bookcase, one of them ripped a hole in an expensive carpet. Law Firm claims that the damage was \$1,500, while Finisher claims that the damage to the carpet was only \$500.

The second check was from Restaurant and was drawn on Restaurant's account at Bank. It was payable to the order of Finisher in the amount of \$1,000.

The day the checks arrived, Administrator indorsed both checks in the name of Finisher. Administrator deposited the Law Firm check in Finisher's account at Bank. Administrator cashed the Restaurant check at CheckNow, a check cashing business. CheckNow gave Administrator \$1,000 for the check. CheckNow then deposited the Restaurant check in its account at Bank.

The following day, Bank paid the Law Firm and Restaurant checks, and Administrator disappeared.

Two days ago, Finisher discovered that the Restaurant check was cashed by CheckNow and demanded that CheckNow repay the \$1,000 to Finisher.

Yesterday, Finisher discovered the “full satisfaction” letter in Administrator’s files. Finisher immediately contacted Law Firm, tendered back \$1,500, the amount of the Law Firm check, and demanded payment of the full amount owed. Law Firm refused to accept the tender and insisted that it was no longer liable for the additional \$1,500 that Finisher claimed was still owed.

1. May Finisher recover the balance of \$1,500 from Law Firm for the refinishing work on the bookcase? Explain.
2. May Finisher recover from CheckNow the amount of the Restaurant check? Explain.

### **Agency and Partnership Question**

Hanson's Fruitcakes (Hanson's) is the largest producer of fruitcakes in the world. The company was founded 150 years ago and uses an original secret recipe closely guarded by the company.

Because of a significant drop in the demand for fruitcakes, Hanson's decided to expand its product line to include other baked goods that will not compete with its fruitcakes.

Because Hanson's has limited experience producing baked goods other than fruitcakes, it decided to hire Taster as a consultant. The contract between Hanson's and Taster provided as follows:

- (1) Taster would travel for six months tasting baked goods at "high-end" bakeries. Taster was expressly authorized, on behalf of Hanson's, to buy the recipes of any baked goods he thought Hanson's could produce successfully. Taster was expressly prohibited from committing Hanson's to pay more than \$5,000 cash for any one recipe, because market research confirmed that baked-goods recipes typically sold for prices between \$3,000 and \$6,000.
- (2) Hanson's would disclose to Taster the secret recipe for Hanson's fruitcake so that Taster would not inadvertently agree to buy any baked-goods recipes that were substantially similar to the fruitcake. Taster is required to keep Hanson's recipe secret from everyone.

Hanson's president announced the company's plans to expand its product line at the annual baking industry trade show attended by everyone in the baking industry. At the trade show, Hanson's president stated: "Hanson's is breaking new ground in the baking industry by hiring a consultant, Taster. Taster will be entering into contracts to buy recipes from other bakers on Hanson's behalf." Hanson's president did not disclose the precise terms of the Hanson's-Taster contract.

Purporting to act on behalf of Hanson's, over the next four months Taster entered into contracts to buy the following recipes:

- (1) Boysenberry-granola muffins for \$4,000 from Monumental Muffins,
- (2) Almond-pecan tarts for \$6,000 from Bakers Bonanza, and
- (3) Chocolate truffle cake from Parisian Delights in exchange for a copy of Hanson's secret fruitcake recipe.

Purporting to act on behalf of Hanson's, Taster also entered into a contract with Ironcast Enterprises to buy a sophisticated baking oven for \$5,000.

Is Hanson's legally bound to any of the four contracts made by Taster? Explain.

### **Evidence Question**

Plaintiff, an employee of Contractor, was injured while using a table saw manufactured by Defendant and owned by Contractor. Plaintiff sued Defendant in federal court to recover damages for his injuries.

At trial, Defendant called Witness, another employee of Contractor. Neither Witness nor Contractor is a party to Plaintiff's action against Defendant. On direct examination, Witness testified that he saw Plaintiff remove a safety guard from the table saw on the morning of the accident.

During cross-examination by Plaintiff's Counsel, Witness testified as follows:

PLAINTIFF'S COUNSEL: At the time you applied for your job with Contractor, you had three years of previous construction experience, didn't you?

WITNESS: Yes.

PLAINTIFF'S COUNSEL: Didn't you lie about how much construction experience you had when you applied for the job with Contractor?

DEFENSE COUNSEL: Objection, inadmissible character evidence.

PLAINTIFF’S COUNSEL: We are impeaching this witness with a specific instance of untruthful conduct under Rule 608(b), Your Honor.

COURT: Overruled.

PLAINTIFF’S COUNSEL: I’ll repeat my question—didn’t you lie about how much construction experience you had?

WITNESS: No, I did not.

PLAINTIFF’S COUNSEL: Isn’t Plaintiff’s Exhibit 37 a genuine copy of your job application?

WITNESS: Yes, it is.

PLAINTIFF’S COUNSEL: Didn’t you lie on that application?

WITNESS: No.

PLAINTIFF’S COUNSEL: We offer Plaintiff’s Exhibit 37.

DEFENSE COUNSEL: Objection, inadmissible character evidence.

COURT: Approach the bench. (The following occurred outside the hearing of the jury.)

PLAINTIFF’S COUNSEL: Judge, this is a copy of Witness’s job application in which he represented that he had twelve years of construction experience when he actually had only three.

COURT: Sustained.

Plaintiff’s Counsel then asked Witness to review Plaintiff’s Exhibit 37 to refresh his recollection about whether he had lied. Witness did so and then testified: “I didn’t lie.”

Plaintiff’s Counsel thereafter re-offered Exhibit 37, claiming that it was admissible under Rule 612 to refresh Witness’s recollection. Defense Counsel objected, and the Court sustained the objection.

Later, Plaintiff’s Counsel called Contractor to testify. During direct examination, Plaintiff’s Counsel asked Contractor, “Did Witness tell you that he had twelve years of construction experience during his job interview?” Defense Counsel

objected that this was inadmissible character evidence, and the Court sustained the objection.

Did the Court err in:

1. Overruling Defense Counsel's objection to cross-examination about an alleged lie by Witness? Explain.
2. Sustaining Defense Counsel's objection to the introduction of Exhibit 37 as inadmissible character evidence? Explain.
3. Sustaining Defense Counsel's objection to the introduction of Exhibit 37 to refresh the recollection of Witness? Explain.
4. Sustaining Defense Counsel's objection to Contractor's testimony? Explain.

### **Decedents' Estates Question**

In 2004, Testator duly executed a will providing as follows:

1. I give my 100 shares of XYZ common stock to my cousin Andy.
2. I give my home at 4 Cypress Garden to my cousin Ben.
3. I give my automobile to my friend Carrie.
4. I give \$10,000 to my friend Donna.
5. I give the residue of my estate to my friend Ed.

In 2006, Testator sold her home at 4 Cypress Garden and, with the entire sales proceeds, purchased a condominium as her new home.

In 2007, Testator traded the white automobile that she owned when her will was executed for a blue automobile.

In 2008, Testator died. At the time of her death, Testator owned 200 shares of XYZ common stock, having acquired an additional 100 shares as the result of a dividend paid by XYZ to its shareholders in its own stock. Testator also owned the condominium, the blue automobile, and a \$50,000 bank account.

Testator was survived by Andy, Ben, Carrie, Donna, and Ed. She was also survived by Donna's daughter. Three months after Testator died, Donna made a valid disclaimer of any rights to the \$10,000 bequest to which she might otherwise be entitled. Testator's will was admitted to probate.

To whom should Testator's probate estate be distributed? Explain.

### **Real Property Question**

Several years ago, Parent, the record owner of a farm in fee simple absolute, conveyed the farm as a gift "jointly in fee to my beloved daughters, Jessie and Karen, equally, to share and share alike." Parent delivered the deed to Jessie and Karen. The deed was never recorded.

Two years ago, Jessie borrowed \$60,000 from Credit Union, securing the loan by granting Credit Union a mortgage on her interest in the farm. Credit Union properly and promptly recorded the mortgage.

Six months ago, Jessie validly contracted to sell her one-half interest in the farm for \$90,000 to Buyer, who was very anxious to acquire Jessie's interest. Buyer paid Jessie \$40,000 as earnest money and agreed in the contract to accept a deed with no warranties of any kind and to accept the title regardless of whether title was marketable. Buyer had no actual notice of the mortgage Jessie had granted to Credit Union.

Two months ago, before closing the sale with Buyer, Jessie died, survived by Karen. At the time of Jessie's death, the loan secured by Credit Union's mortgage was still outstanding. Jessie's will provided: "I give all of my real property to Devisee and all of my personal property to Legatee." Both Devisee and Legatee survived Jessie.

Last month, the executor of Jessie's estate executed a deed purporting to convey a one-half interest in the farm to Buyer in exchange for the balance of the purchase price.

The jurisdiction has a notice-type recording statute and a grantor-grantee index system.

1. Did Parent convey the farm to Jessie and Karen as “tenants in common” or as “joint tenants with right of survivorship”? Explain.
2. Assuming Jessie and Karen acquired a joint tenancy with right of survivorship in the farm, what are the rights, if any, of Karen, Credit Union, and Buyer in the farm? Explain.
3. Assuming Jessie and Karen acquired a joint tenancy with right of survivorship in the farm, who is entitled to the balance of the purchase price Buyer paid the executor of Jessie’s estate? Explain.

### **Federal Civil Procedure and Conflict of Laws Question**

Bearco is a corporation incorporated under the laws of State A. Bearco maintains its corporate and administrative offices in State A; its factories are located in State B. Bearco’s popular stuffed toy bear, “Griz,” is sold throughout the United States. Bearco has registered the trademark “Griz” with the United States Patent and Trademark Office.

Copyco is a corporation incorporated under the laws of Country X, a foreign country, where Copyco has its manufacturing facilities and corporate offices. Copyco sells a line of toy bears called “Griz,” which look remarkably similar to the Bearco “Griz” bears. Copyco sells its bears to consumers throughout the United States. However, it sells only on the Internet, using a parcel delivery service to deliver the bears to consumers. The Copyco website does not list a telephone number, street address, or post office box for the company. It lists only an e-mail address and an Internet address.

Bearco has filed an action against Copyco in the United States District Court for State A, properly invoking the court’s federal question and diversity jurisdiction. Bearco alleges both trademark infringement (a federal law claim) and unfair competition (a tort claim that, in the United States, is based on state law).

State A and State B have materially different unfair-competition laws. Unfair competition is not actionable under the law of Country X.

To address choice-of-law problems, State A follows the “most significant relationship” approach of the Restatement (Second) of Conflict of Laws. State B applies the “vested rights” approach of the Restatement (First) of Conflict of Laws. Country X’s choice-of-law methodology is unknown.

Bearco has been unable to determine Copyco’s street address or post office box address either in the United States or in Country X and has filed a motion requesting that the district court authorize service of the summons and complaint by e-mail. There are no international agreements that affect the court’s resolution of the issues in this case.

1. If the United States District Court for State A permits service of process on Copyco by e-mail, would such e-mail service be consistent with the Federal Rules of Civil Procedure and the United States Constitution? Explain.
2. Which jurisdiction’s law should the United States District Court for State A apply to resolve Bearco’s unfair-competition claim? Explain.

### **Negotiable Instruments (Commercial Paper) Question**

Drawer wrote a check, drawn on Bank, to Payee for \$3,000 and delivered the check to Payee as payment for services Payee had performed for Drawer. Before Payee had a chance to deposit the check in her bank account, she was robbed at gunpoint by Thief, who took her handbag with the check in it. After Thief discovered Payee’s check in her handbag, he used the examples of Payee’s signature on various pieces of identification inside her wallet to create a perfect forgery of Payee’s signature on the back of the check.

The next day, Thief agreed to buy a used car from Seller for \$3,000. Thief offered Seller the \$3,000 check stolen from Payee as payment for the car. Thief told Seller that his friend, Payee, owed him \$3,000 and had signed the check over to him so that he could use it to pay for the car. Seller was initially reluctant to take the check in payment for the car. However, Thief showed Payee’s driver’s license to Seller, explaining that Payee had lent him her ID while

she was at work. Seller saw that the signature on the check matched the signature on the driver's license, so he was convinced that Thief was telling the truth and that Payee had negotiated the check to Thief. Acting in good faith, Seller took the check in payment for the car, gave Thief the car keys, and signed the certificate of title over to him. Thief drove off in the car.

The next day, Seller took Payee's check to Bank and tried to cash it, but Drawer had stopped payment on the check after Payee had told him that the check had been stolen. Accordingly, Bank's teller refused to pay the check.

Does Seller have a right to recover the amount of the check from any of Payee, Drawer, Bank, or Thief? Explain as to each.

### **Torts Question**

Tenant lives in Landlord's apartment building. The furnace in the building was inoperable during three periods last winter, causing the loss of heat and hot water. On each of those occasions, Landlord made temporary repairs.

On March 25, the furnace again broke down. Landlord was promptly notified of the problem and he ordered the parts needed to fix the furnace on March 26, but they did not arrive until April 6, at which time Landlord fixed the furnace. Between March 25 and April 5, there was no heat or hot water in the building.

In order to bathe from March 25 through April 5, Tenant heated a large pot of water on the stove. After the water boiled, Tenant transferred the water to the bathtub, mixed in cold water, and then used the water to bathe.

On April 3, Nephew, Tenant's eight-year-old nephew, arrived for a visit. On April 4, Tenant was carrying a pot of boiling water down the hall to the bathroom when Nephew, who was chasing a ball out of a bedroom that opened into the hall, collided with Tenant. As a result of the collision, the hot water spilled on Nephew, seriously burning him. Nephew did not look or call out before running into the hall.

A state statute provides that “every apartment building . . . and every part thereof shall be kept in good repair. The owner shall be responsible for compliance. . . . A violation shall be punishable by a fine not exceeding \$500.”

Nephew, by his guardian, sued Tenant and Landlord for damages. At trial, both Tenant and Landlord argued that Nephew’s negligence was the sole cause of the accident.

Based on these facts, may the jury properly award Nephew damages for his personal injury:

1. From Tenant? Explain.
2. From Landlord? Explain.

### **Family Law Question**

Fourteen years ago, Mom and Dad had a brief romance while Dad was on vacation in State A, where Mom lived. Nine months after Dad returned to his home in State B, Mom telephoned Dad. Mom told Dad that she had just given birth to Child and that Dad was Child’s father. Mom also told Dad that, if he would agree to waive his right to establish his paternity of Child, she would sign a release waiving all rights to seek child support from him. Dad agreed to Mom’s proposal, and they signed a written contract containing the terms outlined by Mom.

Mom is a college graduate and had an excellent job when Child was born. However, she has developed a chronic disease and is no longer able to fully provide for herself and Child, now age 14.

Mom brought an action against Dad in State A seeking to establish his paternity of Child and obtain child support, claiming that the contract waiving her right to child support is unenforceable. She served Dad by registered mail in State B, where he has continued to live since Child’s birth. Dad has not visited State A since his vacation there more than 14 years ago and has never met Child.

State A’s long-arm statute provides that a court has personal jurisdiction over an alleged parent for purposes of determining paternity and support obligations if the alleged parent

“engaged in sexual intercourse in this state and the child may have been conceived by that act of intercourse.”

Dad moved to dismiss Mom’s petition on the ground that the State A court’s assertion of personal jurisdiction over him to determine paternity and child support would violate due process requirements. The trial court denied the motion, and Dad entered a special appearance, preserving his right to appeal on the jurisdictional claim.

On the merits, Dad argues that the contract he and Mom made shortly after Child’s birth should be enforced. In the event that the court declines to enforce the contract, Dad argues that the equities of the case require that the value of any child support awarded to Mom be calculated based on state public-assistance benefit levels or, in the alternative, that he be awarded custody of Child. Dad also seeks liberal visitation with Child in the event that the court awards custody to Mom.

1. Was the court’s assertion of personal jurisdiction over Dad to determine Dad’s paternity and support obligations consistent with due process requirements? Explain.
2. Assuming the court has personal jurisdiction over Dad, how should the court rule on the child support, custody, and visitation issues? Explain.

### **Corporations Question**

Corporation has 20 shareholders. Its largest shareholder, Major, owns just over 30 percent (30%) of Corporation’s shares. No other shareholder owns more than five percent (5%) of the shares.

Major is also the president and one of the five directors of Corporation. The other four directors are also shareholders of Corporation.

Over the past two years Major, acting in his capacity as president of Corporation, has persuaded Corporation’s board of directors (Board) to approve the purchase of a number of valuable items of Major’s personal property appropriate for Corporation’s business. Corporation paid vastly inflated prices for Major’s property.

Major always informed Board of each proposed purchase before it was made. In each case, Minor, another member of Board, asked Major whether the purchase price was “fair.” Major always replied: “I have investigated the value of my property to be purchased by Corporation and I assure you that the purchase price represents its fair market value.” Board, relying on this statement and undertaking no further inquiry, always approved the purchases, with Major abstaining from voting.

Corporation’s articles of incorporation contain a provision that exculpates the directors of the corporation for liability to the corporation for money damages “to the fullest extent permitted” by the applicable corporation-law statute.

A shareholder derivative suit has been properly brought against Corporation’s directors seeking money damages for breach of their fiduciary duties as directors with regard to the transactions between Corporation and Major.

1. Will the directors (other than Major) be protected from liability by the business judgment rule? Explain.
2. Will Major be protected from liability by the business judgment rule? Explain.
3. Will Major be protected from liability by Board’s approval of the transactions? Explain.
4. Will the directors (other than Major) be protected from liability by the exculpatory provision in the articles of incorporation? Explain.
5. Will Major be protected from liability by the exculpatory provision in the articles of incorporation? Explain.

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