

July 2023
MEE Question 1
Torts

JULY 2023 MEE
QUESTION 1 – TORTS

GS gas is a commonly used pesticide injected into the soil before farmers plant crops. After two weeks, 90% of GS will have risen from the soil into the air, and crops can be safely planted. GS is highly toxic and can be fatal to people in a confined area, where even slight exposure can cause serious respiratory problems. Some scientists believe that GS likely causes cancer. Several studies have linked GS exposure to cancer in mice, but no study has definitively linked GS exposure to cancer in humans.

Ten years ago, State A's health department researched GS. It found that GS injected into the soil eventually rises above ground and can then drift to nearby land up to one mile from each application point. It also found that before GS rises into the upper atmosphere, it can remain near ground level for several days in concentrations much higher than the department's suggested "safe" exposure limit. It therefore banned GS use in farming.

Two years ago, however, the health department lifted the GS ban in a county where most farms produce valuable crops that are very difficult to grow without effective pesticides. After the only other effective pesticide was taken off the market, the department lifted the GS ban because of several factors, including the need for GS in order to grow the county's traditional crops, the lack of viable substitute crops, the lack of other effective pesticides on the market, the estimated cost of crop losses county-wide if GS were not allowed (\$500 million annually), and the low population density in the county. The department requires all farmers using GS to attend a safety seminar that presents information on various risks of GS use (including the risks described in the department's findings supporting its earlier GS ban) and instruction on prudent GS application.

A married couple moved to this county 10 years ago and rented a house on land adjacent to fields that were owned by a local farmer. The couple has rented and lived in the house for the past 10 years.

When the health department lifted the ban on GS in the county, the local farmer attended the department's safety seminar and then began applying GS to the fields according to the application safety recommendations presented in the seminar. The farmer has used GS at the beginning of the last two planting seasons. The couple's house is less than a mile from several points where the farmer applied GS.

Last year, the wife was diagnosed with cancer and the husband began experiencing severe respiratory problems during the planting season. The wife believes that GS caused her cancer, and the husband believes that GS caused his respiratory ailments. Although cancer rates in the county are consistent with the state rate, reports of severe respiratory problems in the county have increased by 50% since the department lifted the ban on GS. The rate of respiratory illness in the county during planting season is now well above the rate of respiratory illness in other counties in the state at the same time of year.

The wife has sued the farmer to recover damages for her cancer, alleging negligence. The husband has also sued the farmer, alleging trespass and seeking injunctive relief to stop the farmer's GS use within one mile of the couple's house.

1. What must the wife prove to establish her negligence claim? Will she likely prevail? Explain.
2. What must the husband prove to establish his trespass claim? Will he likely prevail? Explain.
3. Assuming that the husband prevails, is it likely that the court will permanently enjoin the farmer from using GS within one mile of the couple's house? Explain.

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MEE Question 2
Corporations & LLCs / Agency

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QUESTION 2 – CORPORATIONS & LLCs / AGENCY

Parent LLC and Sub LLC are both manager-managed LLCs, each with a sole manager. Parent LLC is the sole member of Sub LLC and selects Sub's manager. Parent obtains recycled plastic from various sources. Parent then sells some of this plastic to Sub at prevailing market prices. Sub uses the plastic to make upscale shoes, which it then sells.

The two companies work closely together. Sub sets its shoe production schedule and creates marketing programs based on Parent's projections of its access to recycled plastic. The local newspaper once characterized the two companies as "partners promoting business sustainability."

The two companies' collaboration is also reflected in their management structures and operations. They share personnel for human resources, accounting, and government relations. In addition, Parent's technical staff regularly works with Sub in designing and testing new processes for using recycled plastic. The two companies have no arrangement for sharing the costs of these services.

Last November, Sub entered into a delivery agreement with VanCo pursuant to which VanCo would deliver shoes made by Sub to Sub's customers. At the request of Sub's manager, who was away from the office, the agreement was signed by Greta, the manager of Parent, who happened to be visiting the Sub offices that day. Greta, who was not employed by Sub, signed the agreement and wrote beneath her signature: "as agent of Sub."

Recently, Sub ran into financial difficulties after a slowdown in the upscale shoe market. Sub is no longer able to pay its creditors and has stopped payments due under the delivery agreement with VanCo. Therefore, Sub, which for a time had been regularly distributing its profits to Parent as the sole member of Sub, has discontinued making distributions to Parent. Although Sub's operating agreement requires that its manager "consult with Parent's management group" before discontinuing distributions to Parent, Sub's manager discontinued these payments without consulting with Parent.

Assume that Sub is liable to VanCo under the delivery agreement and is unable to satisfy the claims by VanCo.

1. Is Parent liable to VanCo as a partner of Sub? Explain.
2. Is Parent bound by the agreement between Sub and VanCo signed by Parent's manager? Explain.
3. Should the fact that Parent and Sub are separate organizations be disregarded so that Parent is liable for Sub's obligations to VanCo? Explain.

July 2023
MEE Question 3
Trusts & Future Interests

JULY 2023 MEE

QUESTION 3 – TRUSTS & FUTURE INTERESTS

In 2008, Tom died in State A survived by his 64-year-old wife, Betty, to whom he had been married for 35 years. He was also survived by his estranged daughter from a previous marriage.

Tom had created a valid testamentary trust stating as follows:

- (1) Betty and I have had a wonderful marriage; she is the love of my life, and my primary purpose in creating this trust is to ensure that there will be sufficient funds to provide for her care and support for the rest of her life.
- (2) During Betty's lifetime, 80% of trust income shall be paid to her annually, and the balance of income shall be accumulated and added to trust principal to ensure further growth in the principal that will generate more future income for her.
- (3) Upon Betty's death, all trust assets shall be paid to my daughter. Sadly, I have no other relatives, so I have little choice but to bequeath the trust to my daughter rather than have the trust property escheat to the state.
- (4) No beneficiary may alienate or assign her interest in this trust, nor shall such interest be subject to the claims of her creditors.

Until 2019, 80% of trust income was sufficient, as Tom had anticipated, to provide for Betty's care and support. In 2019, when Betty was 75 years old, she was diagnosed with a health problem that necessitated her move to a nursing home. Initially, her income from the trust and Social Security enabled her to pay for her nursing-home care and other support needs.

Betty is now 79. Nursing-home fees have dramatically increased, a circumstance that Tom had not anticipated. Even with all available resources and government benefits, Betty can no longer afford current and likely future nursing-home fees.

Betty has asked the trustee to terminate the trust and invest the entire trust principal in an annuity, payable to her. A financial adviser has identified two annuities. Annuity A would provide payments sufficient for Betty's care and support for the rest of her life.

Annuity B would provide payments to Betty that are 3% less than the payments under Annuity A but still sufficient for her care and support. It would also include a cash payment payable to the testator's daughter at Betty's death. This payment would be substantially less than the amount the daughter would receive under the trust.

Betty has asked the trustee that, if the trust cannot be terminated, she be paid 100% of trust income so that she can at least meet her current nursing-home expenses and remain in her current nursing home for the time being.

State A's Trust Code includes the following provisions:

§ 1 A trust may be terminated upon consent of all the beneficiaries, if the court concludes that continuance of the trust is not necessary to achieve any material purpose of the trust.

§ 2 Upon termination of a trust under Section 1, the trustee shall distribute the trust property as agreed by the beneficiaries.

§ 3 For purposes of Section 1, a spendthrift provision in the trust is not presumed to constitute a material purpose of the trust.

§ 4 If not all beneficiaries of a trust consent to a proposed termination of the trust pursuant to Section 1, the court may nonetheless approve the termination if the court is satisfied that, if all the beneficiaries had consented, the trust could have been terminated under that section, and the interests of a beneficiary who does not consent can be appropriately protected in accordance with the testator's probable intention.

§ 5 A court may modify the dispositive terms of a trust if, because of circumstances not anticipated by the testator, modification will further the primary purpose of the trust. To the extent practicable, the modification must be made in accordance with the testator's probable intention.

1. If the daughter consents to the termination of the trust and the purchase of Annuity A (wholly for the benefit of Betty), may a court authorize the trustee to terminate the trust and purchase Annuity A? Explain.
2. If the daughter does not consent to the termination of the trust and the purchase of Annuity B (for the benefit of Betty and the daughter), may a court authorize the trustee to terminate the trust and purchase Annuity B? Explain.
3. If a court does not authorize the termination of the trust, may it, without the daughter's consent, authorize the trustee to pay 100% of the trust income to Betty? Explain.

July 2023
MEE Question 4
Civil Procedure

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QUESTION 4 – CIVIL PROCEDURE

On January 4, 2023, Diner Inc. sued Tech Inc. in federal district court in State A. Diner Inc.'s complaint read in full (excluding captions and signatures) as follows:

Complaint

1. Diner Inc. (Diner) seeks damages for breach of contract by Tech Inc. (Tech). The contract is governed by the law of State A.
2. This Court has jurisdiction based on diversity. Diner is incorporated in State C, and Tech is incorporated in State D. The amount in controversy exceeds \$75,000.
3. Venue is proper in the District of State A because each party maintains its principal place of business in State A and all the material facts in this matter occurred in State A.
4. On January 15, 2018, Diner and Tech entered into an oral contract in State A. Under the terms of the contract, Tech agreed to design software for a voice-recognition ordering system for Diner's locations. Diner paid \$125,000 for the software.
5. On November 30, 2018, Tech delivered software for a voice-recognition ordering system. However, the software did not enable Diner's computers to recognize orders for all the items on a typical Diner menu. It permitted recognition only of "combination meal" orders identified by number, such as "combo #2."
6. On December 1, 2018, Diner notified Tech that the software failed to allow recognition of orders for all menu items and that this failure constituted a breach of contract. Tech refused to correct this breach.
7. As a result of this breach of contract, the software was useless to Diner and Diner is entitled to a return of the contract price plus other damages.

Tech's answer, excluding captions and signatures, read in full as follows:

Answer

1. Tech admits the allegations in paragraphs 1–5 of the Complaint.
2. Tech denies the allegations in paragraphs 6–7 of the Complaint.

One month after filing its answer, Tech filed a motion asking the court to grant summary judgment for two reasons. First, Tech argued that Diner's action was barred by the applicable four-year statute of limitations governing contract disputes. Second, Tech contended that its contract with Diner required it to produce voice-recognition software capable of recognizing only "combination meal" orders and that it fully performed that obligation.

In support of its motion, Tech cited the applicable statute of limitations, which states that actions for breach of contract must be brought within four years after the breach occurred. Tech also attached to its motion the affidavit of its president, who asserted (1) that she and Diner's president had agreed that the voice-recognition software would cover "only combination meals identified by number" and (2) that in any event, any breach occurred no later than November 30, 2018, when Tech delivered the software to Diner, which was more than four years before suit was filed.

Diner opposed Tech's motion for summary judgment and made a cross-motion for partial summary judgment on the issue of a contract breach. Diner asserted that the terms of the contract covered all menu items and that Tech's admission of the allegations in paragraph 5 of the Complaint (i.e., that the software did not cover all menu items) established Tech's breach of contract. In support of its cross-motion, Diner submitted the deposition testimony of eight witnesses to the agreement (including two Tech employees), who testified that they were present when the company presidents met and entered into the contract and that they heard the two presidents agree that the voice-recognition system would "cover all menu items."

Neither party offered a copy of a written contract because there was no written contract.

1. Did Tech properly raise the statute of limitations defense? Explain.
2. Assuming that the court reaches the issue of contract breach, how should it resolve the summary-judgment motions on that issue? Explain.
3. Is there any significant action that the court should take on its own initiative unrelated to the merits of the parties' summary-judgment motions? Explain.

July 2023
MEE Question 5
Secured Transactions

JULY 2023 MEE

QUESTION 5 – SECURED TRANSACTIONS

On February 1, Company acquired from Supplier a machine for use in Company's business. The price of the machine was \$30,000. Supplier agreed that, in exchange for a down payment of \$6,000 and a promise to pay the remaining \$24,000 in 12 monthly payments of \$2,000, Supplier would immediately deliver the machine to Company but retain title to it until Company paid the remaining \$24,000. This arrangement was memorialized in a writing signed by both parties. The writing clearly described the machine. Company paid the down payment, and Supplier delivered the machine. Supplier did not file a financing statement with respect to this transaction.

On March 2, Company borrowed \$1,000,000 from Lender. The loan agreement, which was signed by both parties, stated that, to secure its obligation to repay the loan, Company granted a security interest to Lender in "all of Company's personal property." Also on March 2, Lender filed a financing statement reflecting this transaction, listing Company as the debtor and Lender as the secured party and indicating "all of Company's personal property" as the collateral. The financing statement was filed in the proper filing office.

On April 3, Company borrowed \$750,000 from BigBank. The loan agreement, which was signed by both parties, stated that, to secure its obligation to repay the loan, Company granted a security interest to BigBank in "all of Company's present and future equipment." On May 4, BigBank filed a financing statement reflecting this transaction, listing Company as the debtor and BigBank as the secured party and indicating "all of Company's present and future equipment" as the collateral. The financing statement was filed in the proper filing office.

By August 1, Company had defaulted on its obligations to Supplier, Lender, and BigBank. Each of those creditors is claiming an interest in the machine supplied to Company by Supplier and is asserting that its interest has priority over any interest of either of the other creditors.

1. (a) Does Supplier have an enforceable interest in the machine? Explain.
(c) Does Lender have an enforceable interest in the machine? Explain.
(d) Does BigBank have an enforceable interest in the machine? Explain.
2. What is the order of priority of the enforceable interests in the machine? Explain.

July 2023
MEE Question 6
Criminal Law & Procedure

JULY 2023 MEE

QUESTION 6 – CRIMINAL LAW & PROCEDURE

Just after midnight, police in State A received a report of four men lurking in the alley behind a pharmacy that had been burglarized two weeks earlier. Five minutes later, Officers One and Two stopped a car operating illegally without headlights one block from the pharmacy. Four men were in the car: Adam, Ben, Carl, and Dillon.

Officer One told Adam, the driver of the car, "You were driving illegally without headlights. Step out of the car and hand me your driver's license." Although Officer One did not say so, he suspected that Adam had been involved in the prior burglary and in fact planned to arrest him. As Adam got out of the car, Officer One saw a bulge in Adam's jacket. He pat-searched Adam for weapons and felt nothing suspicious. Wanting to conceal his plan to arrest Adam, he said to him, "Just hold on here a couple of minutes. You're not free to leave now, but you will be as soon as I finish ticketing you for the headlight violation and verify that your license is valid. By the way, where were you guys coming from when we stopped you?" Adam responded, "I say nothing without a lawyer." Officer One said, "Relax, I'm just making small talk. We'll release you in a few minutes whether or not you answer questions. I'm just curious where you guys were tonight." Adam replied, "We were coming from behind the pharmacy."

Ten minutes into the traffic stop, based on incriminating evidence that other officers had just found behind the pharmacy, Officers One and Two arrested all four men on suspicion of burglary and drove them to the police department.

Officer Two took Ben into a room and said, "I need to tell you that you have all the rights the Constitution gives you, along with any Miranda rights you might have. Do you understand?" Ben replied, "Yes, but to avoid prison, I'll admit that me and my buddies broke into the pharmacy a few weeks ago. If you agree not to charge me, I promise to testify against the others."

Officer Three took Carl to a different room. He read this statement aloud: "You have the right to remain silent. Anything you say can be used against you in a court of law. You have the right to an attorney and to have the attorney with you for questioning. If you cannot afford an attorney, one will be provided for you." Officer Three then gave Carl a copy of the statement and watched Carl silently read it. Carl said that he understood his rights, and through two hours of questioning, he sat staring sternly at Officer Three and said nothing. Finally, Officer Three said, "I'm not assuming you're exercising a right to remain silent; I don't read minds. So again, were you involved in the burglary?" Carl then said, "OK. I was there two weeks ago, but I was only sort of a lookout."

Officer Four sincerely but incorrectly thought that another officer had advised Dillon of his Miranda rights. Officer Four took Dillon to the county jail, and while there, Officer Four spoke privately with Cellmate, an inmate and police informant. Officer Four urged Cellmate to introduce himself to Dillon, gain his trust, and ask him about the burglary. Officer Four promised in exchange to give Cellmate \$50 and to convince the prosecutor to offer him an early-release deal. Three hours later, Cellmate informed Officer Four,

"I did everything you asked, and Dillon bragged that he broke into the pharmacy two weeks ago and tried again last night."

Two days later, State A charged all four men with burglary and agreed to try them separately. Each moved the trial court to suppress evidence solely on the ground that admission of his statement into the criminal trial would violate his rights under *Miranda*. Specifically,

1. Adam moved to suppress the incriminating statement he made to Officer One.
2. Ben moved to suppress the incriminating statement he made to Officer Two.
3. Carl moved to suppress the incriminating statement he made to Officer Three.
4. Dillon moved to suppress the incriminating statement he made to Cellmate.

How should the trial court rule on each motion to suppress? Explain.