

*July 2022
MEE
Questions*

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MEE Question 1

Four months ago, Victim was shot and seriously wounded in City. Defendant has been charged with attempted murder. The prosecution's theory is that Victim and Defendant were both members of a criminal street gang called "The Lions," which engages in drug dealing, robbery, and murder in City. The prosecutor alleges that the shooting was the result of a gang dispute.

Defendant has brought a pretrial motion objecting to the prosecutor's introducing the following anticipated evidence:

(A) Testimony by a City detective who will be offered as an expert in gang identification, gang organizational structure, and gang activities generally and as an expert on particular gangs in City. The detective is expected to testify as follows:

I have been a detective on the police force for six years. Throughout that time, my primary assignment has been to investigate gangs and criminal activity in City. I have also worked closely with federal drug and firearm task forces as they relate to gangs. Prior to becoming a detective, I was a corrections officer in charge of the gang unit for City's jail for three years, and my duties included interviewing, investigating, and identifying gang members.

Throughout my career, I have attended training sessions providing education and information on gang structure, membership, and activities. As I've gained experience and knowledge in this area, I've frequently been asked to lead such sessions. I would estimate that I've taught more than 75 such training sessions over the past three years.

Street gangs generally engage in a wide variety of criminal activities. They usually have a clear leadership structure and strict codes of behavior. Absolute loyalty is required and is enforced through violent acts. Members of particular gangs can be identified by clothing, tattoos, language, paperwork, or associations.

I am quite familiar with "The Lions." It is one of City's most violent and feared criminal gangs. Members of The Lions can be identified by tattoos depicting symbols unique to the gang.

(B) Testimony by a former leader of The Lions concerning a photograph of Defendant's tattooed arm. After the photograph is authenticated as a photograph of Defendant's arm, the witness is expected to testify in part as follows:

I am certain that this is a Lions tattoo. I had a similar one removed. You'll notice that it has a shield containing the numbers for the police code for homicide, and Lions' members frequently include police codes in their tattoos to indicate crimes the gang has committed. The tattoo also has a shotgun and sword crossed as an

"X," and a lion. Those are symbols frequently used by The Lions. This tattoo indicates to me, based on my experience, that Defendant is a member of The Lions gang.

(C) Testimony by Victim, who is expected to testify for the prosecution in part as follows:

I got into an argument with a gang boss at a meeting of The Lions. I said I wouldn't participate in an attack that was planned on another gang because my cousin was in that gang. The boss looked at Defendant and nodded to him. Next thing I knew, after the meeting, Defendant pulled a gun on me and shot me. I'm sure he did it because of that argument.

The jurisdiction has adopted rules of evidence identical to the Federal Rules of Evidence. Defense counsel's motion raises the following objections to the evidence described above:

1. The detective's anticipated testimony about gang identification, organization, and activities is improper expert testimony.
2. The photograph of Defendant's tattoo and the former gang leader's anticipated testimony about it is inadmissible character evidence.
3. Victim's anticipated testimony that Defendant shot him because of a gang dispute is irrelevant.

How should the trial court rule on each objection? Explain. (Do not address constitutional issues.)

MEE Question 2

Five years ago, Seller started a small winery that catered to a regional market. The winery became wildly successful. Two years ago, Seller decided to retire and sell the winery. Seller entered into negotiations with Buyer, who was interested in buying a winery. Seller was proud that the label for her red wines bore her picture so, during the negotiations, she told Buyer that she would not sell him the winery unless he agreed to continue using that label. Seller and Buyer orally agreed that if Seller sold the winery to Buyer, he would continue to use the label for as long as he sold red wines.

Buyer and Seller agreed that Buyer would buy the winery from Seller for a purchase price of \$3 million plus a "fair share" of the profits generated by the winery during the first year after it was acquired by Buyer. While they did not agree on the precise share of the first-year profits that Buyer must pay to Seller, Buyer said that 20% would be fair, while Seller said that 25% would be fair.

Buyer and Seller entered into and signed a lengthy written agreement. It stated that, in exchange for the assets of the winery, Buyer would pay Seller \$3 million at the closing and, 15 months later, a "fair share of the winery's profits" during Buyer's first year of ownership. It also stated that Seller was not permitted to own or operate a winery anywhere in the United States for 10 years after the closing, a term that Seller was happy to accede to because she intended to retire. The agreement did not include any provision about future use of the red wine label with Seller's picture and did not contain an "integration" or "merger" clause.

After Seller transferred ownership of the winery to Buyer, Buyer continued to sell red wines but discontinued using the label with Seller's picture. When Seller complained about this, reminding Buyer of his oral agreement to continue using the label, Buyer said, "The agreement we both signed doesn't say anything about the label."

Fifteen months after the closing, Buyer sent Seller \$10,000, which was equal to 5% of the winery's profits during the first year of his ownership. Seller emailed Buyer, complaining about the low amount of the payment and reminding Buyer that they had both understood that a "fair share" of the first-year profits would be in the 20–25% range. In response, Buyer pointed out that the agreement that they had signed did not say that a "fair share" of the profits would be that high.

Fed up with Buyer, Seller came out of retirement and opened and began operating a winery in another state in the United States far from her original winery.

In litigation between the parties:

1. Is Seller's and Buyer's oral agreement that Buyer would use Seller's picture on red wine labels enforceable even though it was not included in the written agreement? Explain. (Do not discuss any potential statute of frauds issues.)

2. Could Seller introduce evidence of the negotiations about what would constitute a fair share of the winery's first-year profits to help explain the meaning of that term? Explain.
3. Assuming that Buyer is not in breach of any of his obligations under the purchase agreement, would Buyer prevail on a claim that Seller breached her obligations under the agreement by opening her new winery? Explain.

Assume for all questions that, in the jurisdiction whose law governs the dispute, the sale of an ongoing business is governed by the common law of contracts, not Article 2 of the Uniform Commercial Code.

MEE Question 3

Brian, a home builder, and Danielle, a land developer, properly formed a corporation. The articles of incorporation state that the corporation's purpose is to pursue property development opportunities and any other lawful business. Brian owns 20% of the corporation's shares, and Danielle owns 80%. Under their shareholders' agreement, Brian and Danielle serve as directors on the corporation's three-member board of directors, and Danielle selects the third director.

Shortly after the corporation's formation, the corporation (following unanimous board approval) purchased a parcel of land for \$5 million for the purpose of dividing it into residential lots and constructing a single-family home on each lot. The board also decided that (1) Brian would be responsible for the construction of all homes on the parcel, (2) Danielle would be responsible for securing the financing necessary to build the homes, and (3) the proceeds from home sales would be paid to the corporation. After setting a reasonable salary for Brian during the home-construction period, the board agreed to periodically consider whether to issue dividends.

The board unanimously authorized Danielle to hire Carol, a consultant, to negotiate financing agreements on behalf of the corporation with several banks. Danielle asked Carol to act on behalf of the corporation to obtain the loans, and Carol agreed to do so.

The first bank that Carol contacted declined to provide financing to the corporation but offered instead to buy the parcel for \$6 million. Without discussing any of this with any of the corporation's directors, Carol signed a written agreement with the bank on behalf of the corporation to sell the parcel to the bank for \$6 million.

The next day, Carol informed Danielle about the terms of the sale agreement with the bank. Danielle agreed with Carol that the deal was in the corporation's best interest and properly called a special meeting of the board to approve it.

At the special meeting three days later, Carol described to the board the terms of the agreement. Danielle and the third director voted to approve the land sale under the terms of the written agreement signed by Carol. Brian voted against approving the sale. Danielle and the third director then voted to distribute all the sale proceeds to Danielle as a "bonus payment." Brian, who would receive no payment from the sale, properly made a request to see all accounting records related to the purchase and sale of the parcel. But the board refused Brian's request, with Danielle and the third director voting against it.

The corporation was incorporated in a jurisdiction whose corporation statute is modeled on the Model Business Corporation Act (MBCA).

1. Is the corporation bound by the land-sale agreement with the bank signed by Carol? Explain.

2. Was the bonus payment made to Danielle, which was approved by a majority of the board of directors, proper? Explain.
3. Does Brian have sufficient grounds to seek the judicial dissolution of the corporation? Explain.

MEE Question 4

Ten years ago, Arlene Doe, age 34, signed and dated a "Declaration of Trust," the pertinent part of which provided as follows:

I, Arlene Doe, do hereby create the Arlene Doe Trust (AD Trust). I name myself sole Trustee of the trust. I reserve the right to all trust income during my lifetime. Upon my death, all trust assets shall be paid in equal shares to my three nieces Carla, Donna, and Edna. I declare that this trust applies to all assets listed in Schedule A, attached hereto.

In Schedule A, Arlene wrote, "I have not transferred any assets to this trust yet, but I will before I die."

The trust instrument had no provision regarding whether it was revocable or irrevocable.

Four years ago, Arlene bought bonds with her personal funds and revised Schedule A to list them as assets of the trust.

Two years ago, Arlene wrote across the face of the Declaration of Trust for the AD Trust, "This AD Trust is revoked" and "I'm taking back the assets."

One year ago, Arlene gave her friend a package containing a valuable necklace and the bonds. As she handed her friend the package, Arlene said, "This package contains a valuable necklace and bonds. I revoked the AD Trust because I decided that I want my niece Donna to have everything I own except what I'm giving to a worthy cause in my will. Hold this package as trustee for Donna. When Donna reaches age 18, sell the necklace and bonds, use the proceeds to pay for Donna's college education, and then give her what's left over when she reaches age 22." The friend said, "Okay."

Later, Arlene properly executed a will naming a bank as executor of her estate and as trustee of a perpetual trust created under her will. This testamentary trust directed that "all of my worldly goods not otherwise validly disposed of during my life, I leave in trust for the Political Party. I direct the trustee to pay all income from this trust, annually, to the Political Party and not to any other person." The Political Party's exclusive mission is to support candidates for public office who accept its political views.

Last month, Arlene died. At Arlene's death, she owned a bank account with a balance of \$300,000. The bonds in the package given to Arlene's friend were worth \$200,000, and the necklace was worth \$50,000. Arlene was survived by her younger brother Bob, her three nieces Carla, Donna, and Edna (the only children of Arlene's deceased sister), and her nephew Fred (the only child of Arlene's deceased older brother). Donna is 16 years old.

The jurisdiction in which Arlene died has adopted the Uniform Trust Code. It also applies the common law Rule Against Perpetuities. Another statute in this jurisdiction

provides, "If a decedent died intestate without a surviving spouse, issue, or parent, the decedent's property is distributed to the issue of his or her parents *per stirpes*."

1. (a) Was the AD Trust validly created, and if so, when was it created? Explain.
(b) Assuming that the AD Trust was validly created, was it effectively revoked? Explain.
2. Was the trust for the benefit of Donna valid? Explain.
3. Was the testamentary trust for the benefit of the Political Party valid? Explain.
4. Assuming that the testamentary trust to Political Party is invalid, to whom should the bank account be distributed? Explain.

MEE Question 5

Developer LLC is a limited liability company organized in State A, with its principal place of business in State A. Its only two members are Amy, a domiciliary of State A, and Barbara, a domiciliary of State B. Amy is the managing member of Developer.

Developer entered into a written construction contract with Builder Co., a State B corporation with its principal place of business in State B. Builder agreed to build an office building for Developer on a vacant lot owned by Developer in State A. Lender Corp., a finance company, agreed to lend Developer up to \$2 million to finance the construction project. Lender is incorporated in State A with its principal place of business in State A.

Lender disbursed \$250,000 of the loan amount to Builder to cover the down payment on the construction contract. The loan agreement between Developer and Lender provided that any funds disbursed by Lender under the loan agreement would be added to Developer's loan balance and repaid, with interest, over a five-year period.

As construction of the office building proceeded, Lender made disbursements to Builder pursuant to the loan agreement between Lender and Developer. But when Builder finished construction of the office building, Lender refused to make the final \$100,000 disbursement to Builder even though Developer had occupied the building and had begun leasing space to tenants. Lender told Developer that it was refusing to authorize the final disbursement because Builder's construction was "substandard." Developer also has not made final payment to Builder.

Builder has sued Lender in federal district court in State A, invoking the court's diversity jurisdiction. Builder's complaint alleges that Lender's withholding of the final payment of \$100,000 violated the loan agreement with Developer. Builder claims to be a third-party beneficiary of Lender's promise to Developer, entitled to payment of \$100,000 from Lender.

Lender has moved to dismiss the action on the ground that Developer is a required party to the action and has not been joined as a defendant.

1. Is Developer a person "required to be joined if feasible" to the *Builder v. Lender* action under Federal Rule of Civil Procedure 19(a)? Explain.
2. Would joinder of Developer deprive the court of subject-matter jurisdiction? Explain.
3. Assuming that Developer cannot be joined, how should the court rule on the motion to dismiss? Explain.

MEE Question 6

In 2015, Oscar validly conveyed an apartment building that he owned

to my grandson Frank and his heirs so long as at least four apartments in the apartment building are rented to families with incomes below the state median income for a family of their size. If at any time fewer than four apartments are being rented to below-median-income families, the apartment building automatically reverts to Oscar.

In 2017, Oscar died owning the family home. His valid will included the following provisions:

1. I give my family home to my new wife, Wanda, for life, and upon her death to my daughter, Adele, and her heirs.
2. I give the entire residue of my estate to my wife, Wanda.

In 2020, Adele died. Pursuant to her valid will, Adele left her entire estate to Frank.

Before her death, Adele had regularly paid the property taxes on the family home because she believed that Wanda could not afford them. After Adele died, Frank told Wanda that he would not pay the property taxes because "they are your responsibility, Wanda."

Wanda accurately asserts that she cannot afford to pay the \$6,000 annual property tax out of her limited income. Frank accurately observes, however, that if Wanda moved out of the home and rented it to another, she could generate at least \$1,500 per month in rental income, more than enough to pay the property tax.

Until February 1, 2021, Frank had leased four apartments in the building to below-median-income families. On that date he validly and lawfully terminated the leases of all tenants in the building to begin his plan to convert all the apartments in the building to luxury apartments. As a result, beginning February 1, 2021, no apartments in the building were being rented to below-median-income families.

On February 7, 2021, Wanda learned what had happened and immediately told Frank, "I now own the building."

The jurisdiction has adopted the Uniform Statutory Rule Against Perpetuities.

1. As between Wanda and Frank, who is obligated to pay the property taxes on the family home? Explain.
2. Upon conveying the apartment building to Frank, what if any interest did Oscar have in the apartment building, and was that interest valid? Explain.
3. Upon Oscar's death, what if any interest does Wanda have in the apartment building, and is that interest valid? Explain.
4. After February 1, 2021, who owns the apartment building? Explain.

MULTISTATE ESSAY EXAMINATION DIRECTIONS

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

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

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

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

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

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

Examinees testing in UBE jurisdictions must answer questions according to generally accepted fundamental legal principles. Examinees in non-UBE jurisdictions should answer according to generally accepted fundamental legal principles unless your testing jurisdiction has instructed you to answer according to local case or statutory law.