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February 2024 MEE Questions

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MEE Question 1

In February, Wendy opened Kibble, a store selling dog food made from organic ingredients as well as dog toys and dog grooming products. Wendy operated Kibble as a sole proprietorship. Kibble soon ran into financial difficulties, and Wendy could not pay its bills.

In early April, Wendy asked her friends Mary and Angelo for financial assistance.

On May 1, in response to Wendy's request, Mary delivered to Wendy a check payable to "Kibble." In exchange for this contribution, Wendy agreed in a signed writing to pay Mary 15% of Kibble's monthly profits for as long as Kibble remained in business. Mary also agreed that, if Kibble suffered losses, she would share 15% of those losses with Wendy.

As part of their deal, Mary began working at the store with Wendy and helped Wendy with business planning for Kibble.

On May 2, also in response to Wendy's request, Angelo delivered to Wendy a check payable to "Kibble." On the memo line of this check, Angelo wrote "loan to Kibble." Angelo agreed in a signed writing to accept 15% of the monthly profits of Kibble as repayment of the loan until the total loan amount, including interest, was repaid.

Wendy used the proceeds of the checks from Mary and Angelo to purchase equipment, supplies, and a delivery van in Kibble's name.

Beginning in June, Wendy paid 15% of Kibble's previous month's profits to Mary and another 15% to Angelo.

On October 1, Mary wrote a letter to her son Bob stating that she was assigning to Bob, as a gift, all her interest in Kibble effective immediately. Later that day Mary handed a copy of that letter to Wendy, who immediately read it and said to Mary, "I don't want Bob involved with Kibble." Mary continued to be active in the business operations of Kibble.

Early in November, Wendy distributed the appropriate October profits of Kibble to Mary and Angelo but distributed nothing to Bob.

On November 10, Bob demanded that Wendy distribute Mary's share of Kibble's profits to him and that she also allow him to inspect the books and records of Kibble.

On November 15, Mary learned that Wendy was using Kibble's delivery van on Sundays to transport her nieces to their softball games. Mary demanded that Wendy stop doing so, but Wendy refused, noting that the van was not being used for Kibble's business on Sundays.

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1. What legal relationships have the parties established through their dealings? Explain.

2. Is Bob entitled to Mary's share of the monthly profits of Kibble? Explain.

3. Is Bob entitled to inspect the books and records of Kibble? Explain.

4. Is Wendy entitled to use the delivery van on Sundays to take her nieces to their softball games? Explain.

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MEE Question 2

A wealthy art collector recently died, leaving her entire collection of artworks to Grandson. After receiving the artworks from the estate, Grandson, who did not share his grandmother's interest in art, decided to sell them. With the help of art appraisal experts, he prepared a catalog describing each of the artworks that he hoped to sell. The catalog, a copy of which was given to each person who expressed interest in buying any of the artworks, identified one painting as an early work by Artiste, a prominent American artist who died in 1956 at the age of 78.

Buyer, an art collector who loves the work of Artiste, read the catalog and was intrigued by the possibility of acquiring the painting described as one of Artiste's early works, so he asked to see it in person. Grandson allowed Buyer to examine the painting only visually for up to 30 minutes.

Buyer visually examined the painting for 30 minutes and did not notice anything that caused him to doubt that the painting was a genuine Artiste.

Buyer then told Grandson that he would be willing to pay $350,000 for "the Artiste painting." Grandson agreed to that price. Grandson and Buyer then executed an "Art Purchase Agreement" prepared by Grandson's lawyer. The Art Purchase Agreement identified the item being sold as a "painting by Artiste" and stated the price as $350,000. The Art Purchase Agreement also contained a number of conspicuous provisions labeled "Terms and Conditions of Sale." One of those provisions stated that "Seller disclaims all warranties, express or implied."

Shortly after Buyer and Grandson executed the Art Purchase Agreement, Buyer electronically transferred $350,000 to Grandson's bank account, and Grandson delivered the painting to Buyer.

Three weeks later, Buyer read a news article reporting that several counterfeits of Artiste paintings had recently been sold. The article reported that these counterfeit paintings were of such high quality that mere visual inspection could not detect the counterfeiting; only a chemical analysis could do so. Buyer consulted a professor of art history, who arranged for a chemical analysis of the paints used in the painting bought from Grandson. The analysis revealed that the painting was not the work of Artiste. Because it was not an authentic Artiste painting, it was worth only $500.

Buyer has sued Grandson, seeking either to recover damages on the theory that Grandson breached an express warranty that the painting was the work of Artiste or, alternatively, to rescind or avoid the purchase contract on the basis of a mutual mistake of fact. Each party has stipulated that the other believed in good faith that the painting was a genuine work of Artiste.

1. Has Grandson breached an express warranty? Explain. (Do not address any remedies to which Buyer may be entitled.)

2. Does Buyer have the right to rescind or avoid the contract on the basis of a mutual mistake of fact? Explain.

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MEE Question 3

Cara filed a civil suit against Dana, her former coworker, alleging that Dana had stolen Cara's cell phone from her locker at a gym. The jurisdiction has adopted rules of evidence that are identical to the Federal Rules of Evidence.

At trial, Cara testified during her case-in-chief, stating:

> On October 18, I worked out at the gym. After I completed my workout, I returned to the locker room to change clothes and retrieve my belongings from my assigned locker (#344). My locker (#344) was near the entry door to the locker room, and when I walked into the locker room, I saw Dana hurriedly closing the door to my locker. I am positive it was Dana because it was cold and rainy that day and Dana was wearing a heavy, bright orange coat. I had seen Dana wearing that coat several times before at work and the gym. When I got to my locker, my cell phone was not there.

Dana also testified at trial during her case-in-chief, stating:

> I definitely worked out at the gym on October 18 because I was training for a marathon. I don't recall seeing Cara at the gym that day. For several reasons, I am also positive that I was not wearing a heavy, bright orange coat. First, I ran on the outdoor track that day because the weather was overcast but not cold and not rainy. Second, as I always do for my track workouts, I ran in shorts and a T-shirt; I never wear a coat or jacket while running on the track. Third, I never take my coat or jacket into the gym; I always leave it in my car so it doesn't take up space in my locker.

Dana also testified as follows:

> I'm not surprised that Cara lost her cell phone at the gym. She's pretty careless. At work she often misplaced it, or forgot it in the conference room after a meeting or in the break room after lunch.

Cara objected to this testimony, asserting that it constituted inadmissible character evidence. The judge overruled the objection.

During her rebuttal case, Cara asked the court to take judicial notice of the weather on October 18 based on a certified public record from the federal government's National Weather Service agency. The record was a weather report for October 18 in the area where the gym was located and at the time Cara testified that she was at the gym. According to the record, on October 18 it had rained all day and the high temperature was 41 degrees Fahrenheit (5 degrees Celsius) in the area of the gym.

Dana objected to Cara's request and asked for the opportunity to present an argument that taking judicial notice would be improper. The court immediately overruled Dana's objection and denied her request to be heard. The court took judicial notice of the weather as detailed in the public record.

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1. Did the trial court err by denying Dana an opportunity to be heard before it took judicial notice of the weather on October 18? Explain.

2. Assuming that the trial court did not err by denying Dana an opportunity to be heard, did the trial court err by taking judicial notice of the weather on October 18? Explain.

3. Was Dana's testimony that Cara was "careless" inadmissible character evidence? Explain.

4. Was Dana's testimony that Cara often misplaced or forgot her cell phone inadmissible character evidence? Explain.

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MEE Question 4

On November 1, 2020, a landlord leased an apartment to Tom for $1,300 per month based on a signed, written "term-of-years lease" for a three-year term to begin on January 1, 2021, and end on December 31, 2023. The lease provided that Tom could neither assign nor sublet the apartment "without the landlord's prior written consent." The lease included no provision stating what would happen if Tom remained in possession beyond the term.

On January 1, 2021, Tom attempted to move into the apartment but could not do so because the prior tenant, Helen, whose lease term had ended on December 31, 2020, still occupied the apartment. Tom immediately notified the landlord that Helen remained in possession. The landlord responded, "I will get rid of her as soon as possible." Tom then booked a hotel room expecting that he would be able to move into the apartment within the next few days. On January 4, the landlord told Tom, "The apartment is now vacant, so you can move in immediately. Also, I will reduce the February rent by $100 for your inconvenience." Tom promptly moved into the apartment.

About one year later, in January 2022, Tom found a house that he wanted to rent and told the landlord that he wanted to assign his apartment lease to a friend. The landlord conducted a background check on the friend and learned that the friend had a very low credit rating. The landlord told Tom that she would not consent to Tom's proposed assignment. Tom said, "Okay," and he continued living in the apartment.

On January 1, 2024, the day after the lease termination date, Tom was still in possession of the apartment. On January 4, the landlord sent Tom a letter telling him that she was treating him as a periodic tenant subject to all the terms of their original lease, "including the monthly rent of $1,300," which substantially exceeded the then-current market rate for comparable units. Tom wrote back, "That's unfair. I should have to pay only the current market value. I have remained in the apartment only a few days beyond the lease termination date." The landlord rejected Tom's suggestion and told him that, as a periodic tenant, he would be liable for rent at the rate of $1,300 for each month of the periodic tenancy.

No statute or local ordinance affects either party's position on any issue.

1. (a) If a court were to hold that Tom could have rightfully terminated the lease because Helen held over on January 1, 2021, what rule would the court apply and what would be the rationale for that rule? Explain.

   (b) If a court were to hold that Tom could not have rightfully terminated the lease because Helen held over on January 1, 2021, what rule would the court apply and what would be the rationale for that rule? Explain.

2. Did the landlord rightfully refuse to consent to Tom's proposed assignment of the lease to his friend? Explain.

3. Following Tom's failure to vacate the apartment, could the landlord rightfully treat Tom as a periodic tenant, subject to the provisions of the expired lease? Explain.

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MEE Question 5

City is located in State A adjacent to the border with State B. One evening, a City police officer stopped a driver.

The next day, the driver posted a social-media video, alleging the following:

> Late last night a City police officer stopped my car in City near the state border, supposedly for speeding, and ordered me to get out of the car. The officer made disparaging remarks about a religious sticker on the bumper of my car and ridiculed my religious beliefs. He picked up a rock, threatened me, and asked how fast I could run. I ran about 50 feet and turned to see if he was chasing me. He wasn't, but he threw the rock at me, and it struck me in the face. He laughed and shouted, "Look where you are! There's nothing you can do about it!" I saw that I was standing in State B and the officer was still standing in State A. My lip is busted and swollen. I had to get stitches. I want justice.

The officer was charged with committing various crimes.

City Criminal Charge. A City ordinance provides that "any person who assaults another person because of that person's religious expression commits a serious misdemeanor punishable by up to six months in jail." The City attorney filed a charge alleging that the officer had violated this ordinance by striking the driver with a rock because of the driver's religious beliefs and religious expression.

The officer admitted that the driver's allegations were true and pleaded guilty to the charge filed by the City attorney. The municipal court sentenced the officer to three days in jail.

After his conviction for violating the City ordinance, the officer was charged with four additional crimes. All the additional charges were based on the same incident that led to the officer's prosecution for violating the City ordinance.

State B Criminal Charge. Claiming jurisdiction because the rock thrown by the officer struck the driver in State B, a prosecutor in State B has charged the officer with violating State B's hate-crime statute, which, like City's ordinance, provides for the punishment of "any person who assaults another person because of that person's religious expression." This conduct is a felony punishable by one to two years in prison.

State A Criminal Charges. A prosecutor in State A has charged the officer with two different state-level offenses. First, the officer is charged with violating State A's hate-crime statute, which provides that "any person who assaults another person because of that person's religious expression and thereby causes injury to that person commits a felony punishable by one to five years in prison." Second, the officer is charged with violating a State A assault statute that provides that "any person who assaults another person with intent to cause injury is guilty of a felony punishable by not more than two years in prison."

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Federal Criminal Charge. The United States Attorney for the federal district of State A has filed a criminal charge against the officer, alleging that the officer violated a federal statute that makes it unlawful for "any person, acting under color of state or local law, to assault another person because of that person's religious expression." The federal crime is punishable by a term of imprisonment of not more than two years.

1. Is the State B hate-crime prosecution barred by the United States Constitution's double jeopardy clause? Explain.

2. Is the federal hate-crime prosecution barred by the United States Constitution's double jeopardy clause? Explain.

3. Is the State A hate-crime prosecution barred by the United States Constitution's double jeopardy clause? Explain.

4. Is the State A assault prosecution barred by the United States Constitution's double jeopardy clause? Explain.

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MEE Question 6

On September 4, 2010, Testator, who had two living children, George and Harriet, properly executed a valid will. The will contained only these dispositive provisions:

1. I give my 200 shares of ABC Corp common stock, which I inherited from my grandfather, to my cousin, Donna.

2. I give my home to my brother, Edward.

3. I give my grand piano to my sister, Faye.

4. I direct that all my just debts be paid before distributing the foregoing devises.

None of the devises were subject to a survivorship contingency. The will contained no residuary clause.

In 2012, ABC Corp distributed 100 shares of its common stock to Testator as a stock dividend.

In 2015, Testator borrowed $125,000 to make home renovations. The 20-year loan was secured by a mortgage on Testator's home. Testator was personally liable on this debt.

In 2020, Testator gave $30,000 to her son, George.

In 2022, Faye, the named beneficiary of the piano in the will, died intestate leaving Testator and Edward as her only heirs.

Three months before Testator died in 2023, her grand piano was substantially damaged. She filed a $10,000 casualty-loss claim with her insurer for the damage, and the insurer approved the claim. The insurer had not made any payment on the claim at the time of Testator's death, and the damaged piano remained in Testator's home. The insurer agrees that Testator's estate is entitled to $10,000 on Testator's claim.

Two months before her death, Testator wrote George a letter informing him that the $30,000 she had given him in 2020 was intended "as an advancement" that would reduce "any share of my estate to which you might ever be entitled."

One month before Testator died, George died survived by his only child, Isaac.

Testator is survived by four relatives: her cousin, Donna; her brother, Edward; her daughter, Harriet; and her grandson, Isaac (George’s son).

Testator’s estate consists of 300 shares of ABC Corp common stock (the 200 shares she inherited and the 100 shares received as a stock dividend), her home, her piano, $200,000 in cash, and the $10,000 owed by the insurer. Testator’s only debt at her death was the mortgage loan on the home she devised to Edward.

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Faye’s estate is still in administration. Her estate's debts are greater than its current assets, and Faye's personal representative is seeking to recover the piano and the insurance proceeds payable to Testator's estate.

The jurisdiction has adopted the Uniform Probate Code.

How should the assets of Testator’s estate be distributed? Explain.

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