July 2024
MEE Question 1
Real Property

JULY 2024 MEE
QUESTION 1 − REAL PROPERTY

Four years ago, Connie, a professional homebuilder, purchased a five-acre, rectangular tract of land. On its western side, the tract was bordered by land owned by Diane. One month after Connie purchased the tract, Diane sued Connie in state court to establish her adverse possession claim to a 12-foot-wide strip immediately inside the western border of Connie's tract, where Diane had maintained a vegetable garden. The court issued a judgment in Diane's favor, which was filed at the county recorder's office.

Three years ago, Connie built a house on the eastern half of the tract. One month after Connie completed the house, she contracted to sell the entire five-acre tract to Bert and convey it by warranty deed. The purchase agreement contained no express warranties regarding the quality of the house's construction. At the closing, Connie delivered to Bert the warranty deed, which excepted from warranties "all titles, covenants, and restrictions on record with the county recorder."

One year ago, Bert conveyed the five-acre tract to Adam by a quitclaim deed that contained no warranties. Adam had never inspected the tract.

Three months ago, a major crack appeared in the foundation of the house due to faulty construction. This resulted in frequent water intrusion and substantial water damage to the house.

Two months ago, when Adam started to construct a fence around the entire five-acre tract, Diane correctly told him that he could not lawfully build a fence that would block her access to the portion that she owned by adverse possession.

A gravel road runs from north to south through the middle of the five-acre tract. The gravel road connects the adjoining northern lot to the highway that abuts the tract to the south. One month ago, during Adam's fence construction on the north side of the tract, Adam's northern neighbor correctly told him that she had an implied easement of necessity over the gravel road, preventing her land from being landlocked.

1. Does Adam have a cause of action against Connie based on the crack in the house's foundation? Explain.

2. Does Adam have a cause of action against Connie based on Diane's ownership of a portion of the tract by adverse possession? Explain.

3. Does Adam have a cause of action against Bert based on Diane's ownership of a portion of the tract by adverse possession? Explain.

4. Does Adam have a cause of action against Connie based on the neighbor's easement over the tract? Explain.

In answering these questions, assume that none of Adam's claims are barred by any statute of limitations.

July 2024
MEE Question 2
Corporations & LLCs

JULY 2024 MEE
QUESTION 2 – CORPORATIONS & LLCs

XYZ Corp owns all the common stock of CruiseCo, which operates a fleet of 24 oceangoing passenger cruise ships. In addition, XYZ owns 90% of the common stock of ResortCo, which operates several large hotels and marinas on ocean coastlines. As a result of its share ownership, XYZ has the power to choose all members of the boards of directors for both ResortCo and CruiseCo, and it has voted its shares so as to elect XYZ employees for all seats on each board. All three corporations are incorporated in State A, which has adopted a corporate statute identical in substance to the Model Business Corporation Act.

During the past two years, CruiseCo's profits have steadily declined because fewer people have booked cruises. Moreover, many of the marinas where CruiseCo's ships stop to refuel have increased their docking fees. CruiseCo's ships frequently dock at ResortCo-owned marinas as part of their ordinary operations. ResortCo charges CruiseCo the same docking fees as it charges other cruise lines.

Last year, XYZ demanded that ResortCo stop charging CruiseCo's ships docking fees. At a board meeting to consider this demand, ResortCo's directors voted unanimously to acquiesce to XYZ's demand, even though ResortCo was contractually entitled to those fees. Eliminating the fees would help CruiseCo by reducing its operating costs and hurt ResortCo by lowering ResortCo's revenues.

Six months ago, at a board meeting, ResortCo's directors voted unanimously not to declare or pay the usual yearly dividend. The directors' rationale for this decision was to retain funds to construct new hotels and increase ResortCo's market share. The board reached its dividend decision after considering for several hours a report on the financial implications of the potential dividend from the company's chief financial officer and its independent accountant, as well as an advisory opinion prepared by an outside law firm.

At ResortCo's properly called board meeting last week, the board considered an offer that had been presented to ResortCo's president half an hour before the meeting. The offer was from Ava, the owner of 1,000 acres of coastal land well suited for commercial property development, to sell her land to ResortCo for $50 million. Ava, who had no previous connection to ResortCo, had told the president that she would hold the offer open for only 48 hours. Citing the time-sensitive nature of the offer and the attractiveness of the property, ResortCo's directors discussed Ava's offer for only 15 minutes before unanimously voting to accept it. ResortCo's directors did not obtain any guidance about the transaction's fairness or potential impact on the company's financial condition from outside experts or from ResortCo's chief financial officer before voting. In fact, the price was above the property's fair market value.

1. Did XYZ, as a controlling shareholder of ResortCo, breach a fiduciary duty of loyalty to ResortCo or ResortCo's minority shareholders by causing ResortCo to stop charging CruiseCo docking fees? Explain.

2. If ResortCo's minority shareholders challenge the board's decision not to declare a dividend this year, are they likely to prevail? Explain.

3. Is the ResortCo board of directors' decision to purchase Ava's land protected by the business judgment rule? Explain.

July 2024
MEE Question 3
Constitutional Law

JULY 2024 MEE
QUESTION 3 – CONSTITUTIONAL LAW

Three years ago, CarCo, an automobile manufacturer located in State A, entered into contracts with several State A automobile dealers. Under these contracts, the dealers had the right to sell cars made by CarCo. The term of each contract was 10 years, but the contract gave CarCo the absolute right to terminate the dealer's rights upon 60 days' written notice. CarCo insisted upon this termination provision because badly performing dealerships impact CarCo's profitability. CarCo has never entered into a dealership agreement without this provision and, during contract negotiations with other potential dealers, has consistently refused to omit the provision from dealership agreements.

Two years ago, CarCo announced that it planned to terminate agreements with rural dealers in many states and to encourage potential car buyers in rural areas to use CarCo's website to purchase cars. CarCo estimated that this new business model would result in significant cost savings. CarCo relied on the ability to terminate dealers' rights when it invested in expanding its online business.

After learning that CarCo intended to terminate agreements with rural dealers, the State A legislature passed a statute regulating agreements between automobile dealers and automobile manufacturers. The statute provides:

> Notwithstanding the terms of any contract, an automobile manufacturer shall not, without good cause, terminate any contractual rights of a dealer located in a county with a population of less than 1,000. This provision applies to contracts entered into both before and after the effective date of this statute.

The legislature had not previously regulated agreements between automobile manufacturers and dealers, and State A's highest court had held that the state common law did not generally limit the enforceability of contract-termination provisions.

Prior to enactment of the statute, some members of the state legislature privately expressed anger that automobile manufacturers were terminating agreements with rural dealers and thought that the statute was a good way to "get back at them." The statute includes the following legislative finding and statement of legislative purpose:

> This Act addresses the imbalance of bargaining power between automobile manufacturers and dealers. We find that if the parties were able to freely bargain on an equal footing, their agreements would contain a provision allowing termination only for good cause.

Last month, CarCo gave a State A rural dealer timely written notice of termination as provided in the dealership agreement. The dealer sued CarCo, citing the statute and asserting that CarCo could not terminate its rights as a dealer because CarCo lacked good cause to do so.

CarCo asserts that the statute is unconstitutional for three reasons. First, applying the statute to the dealership agreement, which the parties entered before the statute was enacted, violates the

Contracts Clause of the Constitution. Second, the statute violates the Equal Protection Clause of the Constitution because it impermissibly discriminates between automobile-dealership agreements and contracts involving other products with similar provisions that allow termination without cause. For this second claim, CarCo has offered evidence of the legislators' private statements to prove that the state's actual purpose for the law was to effectuate the state's animus against automobile manufacturers. Third, the statute's good-cause requirement for terminating automobile-dealership agreements violates CarCo's substantive due process rights.

1. Does application of the State A statute to CarCo's rights under the dealership agreement with the dealer violate the Contracts Clause? Explain.

2. Does the State A statute violate the Equal Protection Clause? Explain.

3. Does the State A statute violate CarCo's substantive due process rights? Explain.

July 2024
MEE Question 4
Contracts

JULY 2023 MEE
QUESTION 4 – CONTRACTS

A store owner wanted a new sign for her store. On May 1, she met with a representative of SignCo, a sign company, which she had selected on the basis of its low advertised prices, and detailed her proposed specifications for the sign. The store owner and the representative, who was authorized to enter into contracts on behalf of SignCo, orally agreed that SignCo would deliver to the store owner a 10-foot-long sign, for which the store owner would pay $5,000. They agreed that the sign would bear the unique name of the store, would be constructed of bent red glass, and would meet quality and design specifications stated by the store owner. They also orally agreed that the sign would be delivered to the store owner no later than May 31.

On May 6, SignCo had made substantial progress in shaping the glass into the store's name. By May 8, however, SignCo determined that it would not be able to finish the sign on time. Without the store owner's knowledge, on May 9 SignCo entered into an agreement with another company (the "substitute manufacturer"). The agreement required the substitute manufacturer to complete work on the sign and supply it to the store owner in accordance with the agreement between SignCo and the store owner. In addition, the agreement assigned to the substitute manufacturer SignCo's right to be paid under the agreement with the store owner.

On May 12, SignCo and the substitute manufacturer jointly called the store owner to tell her that the substitute manufacturer would be furnishing the sign to her and that the sign would be ready for delivery by the May 31 deadline. The store owner was angry. She told SignCo and the substitute manufacturer that she had contracted to buy a sign made by SignCo, not by the substitute manufacturer, and that she had no intention of accepting a sign made by anyone other than SignCo.

On May 31, the substitute manufacturer delivered to the store owner a sign that conformed to all the specifications of the store owner's agreement with SignCo. The store owner rejected the sign and refused to pay for it, arguing that the May 1 agreement could not be enforced against her because she had never signed a document reflecting that agreement. She also argued that even if she was bound by the May 1 agreement, its terms required that she receive a sign made by SignCo, not by the substitute manufacturer.

1. Did the store owner and SignCo enter into a contract on May 1? Explain.

2. Assuming that the store owner and SignCo entered into a contract on May 1, is it enforceable against the store owner even though the store owner did not sign a document reflecting the agreement? Explain.

3. Assuming that the May 1 agreement constitutes a contract that is enforceable against the store owner, is the store owner bound to accept the sign from the substitute manufacturer? Explain.

July 2024
MEE Question 5
Family Law

JULY 2024 MEE
QUESTION 5 – FAMILY LAW

Wanda, who had been married to Harvey for 15 years, filed a complaint for divorce from Harvey shortly after she learned that he was having an affair with their married neighbor, Patrice. In the divorce proceeding, both Wanda and Harvey sought sole custody of their 13-year-old daughter.

Because Harvey and Wanda bitterly argued about and were highly critical of each other's parenting, the trial court appointed a neutral child-custody evaluator to investigate the family dynamics and provide an informed custody recommendation to the court. Both Wanda and Harvey told the evaluator that they were unwilling to share custody. The daughter told the evaluator that she was very upset because her parents were divorcing. She blamed her mother for the divorce and wanted to live with her father. The evaluator found that both parents were devoted to their daughter and recommended that the trial court grant Harvey sole physical and legal custody of the daughter, with Wanda to have liberal visitation with the daughter. The trial court granted the divorce and entered a custody order consistent with the evaluator's recommendation. Neither parent appealed this order.

Two months after the trial court entered the divorce decree and custody order, Patrice moved into Harvey's home. Wanda immediately petitioned the trial court to modify the custody order. She sought sole physical and legal custody of the daughter because of Harvey's nonmarital cohabitation with Patrice. Harvey opposed Wanda's petition, arguing that there was no justification for modifying the custody order. Neither Wanda nor Harvey requested joint custody, and the relationship between Wanda and Harvey remained bitter and acrimonious.

The trial court held a hearing on Wanda's petition to modify custody. The daughter testified, "I am still angry that my parents got divorced, but I do miss my mom and wouldn't mind seeing her more. Patrice is fine." Harvey testified that there had been no change in the daughter's behavior since Patrice moved into his home and that she and the daughter "get along well."

Wanda testified that the daughter should not be exposed to the nonmarital cohabitation of Harvey and Patrice. There was no other testimony.

1. Are the facts legally sufficient to authorize the trial court to consider whether to modify the existing custody order? Explain.

2. Assuming that the facts are legally sufficient to authorize the trial court to consider whether to modify custody, should the trial court modify the existing custody order to grant Harvey and Wanda joint physical and legal custody of their daughter? Explain.

July 2024
MEE Question 6
Civil Procedure

JULY 2024 MEE
QUESTION 6 − CIVIL PROCEDURE

A woman was driving in State A when her sport-utility vehicle (SUV) collided with a car driven by a man. As a result of the accident, the woman, who is a citizen of State A, had significant injuries requiring treatment by a physician. The man is a citizen of State B and was in State A visiting his brother at the time of the accident.

Three passengers were in the man's car: the man's brother was in the front passenger seat, and two of the man's friends were in the backseat.

The man had a car insurance policy that provided coverage of up to $1,000,000 for personal injuries and property damage.

The man hired an attorney, who began investigating the accident. The attorney spoke to four people: a bystander who had witnessed the accident, the man's brother, and the man's two friends who had been in the car. The bystander recounted that the man had been looking at his phone at the time of the accident. The man's two friends also stated that the man had been trying to read directions on his phone at the time. The man's brother stated that the man had not been looking at his phone when the accident occurred.

Shortly after the man's attorney completed his investigation, the woman sued the man in the US District Court for the District of State A. Her complaint asserted a claim of negligence against the man and sought $250,000 in damages for personal injury and property damage. Pursuant to Federal Rule of Civil Procedure 26, the woman and the man exchanged initial mandatory disclosures. The man's initial disclosures included his brother's name and contact information, along with a summary of the information that the brother could provide concerning the accident. The man's initial disclosures did not identify or refer to the other passengers or the bystander, although the man later identified them in answers to interrogatories. The man's initial disclosures also did not include any information about his car insurance policy.

During discovery, the woman's attorney took the man's deposition. When the woman's attorney asked the man about his eyesight, the man's attorney objected and instructed the man not to answer, asserting that the line of questioning was not relevant. When the woman's attorney persisted in asking the man about his eyesight, the man's attorney abruptly ended the deposition, and the man and his attorney immediately departed.

Subsequently, the woman's attorney filed a proper motion to compel the man to answer deposition questions, but the court denied the motion, finding that "questions about the man's health and physical condition are irrelevant to this tort suit, and inquiry about them is improper."

Later, the woman's lawsuit was tried to a jury. At trial, the woman called the man's two friends and the bystander to testify. Each witness testified that the man had been looking at his cell phone at the time of the accident. The woman also called her treating physician to testify. The physician described the nature and extent of the woman's injuries. The only witness the man called was his brother, who testified that the man had not been looking at his phone when the accident occurred. Immediately after the man rested his case, the woman moved for judgment as a matter of law on the issue of the man's liability for negligence.

1. Was the man required to include in his initial disclosures information about the insurance policy and the identity of the three other witnesses to the accident? Explain.

2. Did the trial court rule correctly on the woman's attorney's motion to compel the man to answer deposition questions about his eyesight? Explain.

3. How should the court rule on the woman's motion for judgment as a matter of law? Explain.