

## MEE Question 1

A homeowner entered into two separate contracts with a contractor for the renovation of her kitchen and the remodeling of her bathroom. The homeowner has refused to pay the contractor on both contracts because of dissatisfaction with his work.

Under the kitchen contract, the contractor had agreed to renovate the homeowner's kitchen for \$50,000, payable in installments. The final installment of \$8,000 was due 10 days after completion of the project. The kitchen contract called for repainting the cabinets, installing new appliances bought by the homeowner from a third party, and replacing the flooring in the kitchen with linoleum, which is a floor covering made from natural materials. When the contract was negotiated, the contractor had asked the homeowner why she wanted "such old-fashioned flooring instead of more modern resilient flooring like vinyl." The homeowner had responded, "We are a green household, and it is very important to us to use linoleum, which is a green product, unlike vinyl. Moreover, I grew up in a house with a linoleum floor in the kitchen, and I really want to be reminded of my youth when I walk into the kitchen."

Despite the clear contract language, the contractor installed vinyl flooring in the kitchen. The vinyl flooring looks similar to the contractually required linoleum but is not as durable. Before the final payment was due, the homeowner discovered that the flooring was vinyl rather than linoleum and confronted the contractor. The contractor stated, "I knew that you wanted linoleum, but that's a crazy idea. Vinyl was a lot easier for my workers to install, and it looks as good as linoleum. So I made an executive decision to go with vinyl." The homeowner announced that she would not make the last installment payment unless the contractor removed the vinyl flooring and replaced it with linoleum. Removing the vinyl flooring and replacing it with linoleum would be labor-intensive and would cost the contractor approximately \$10,000. The market value of the house, however, would be the same whether the kitchen had vinyl flooring such as that installed by the contractor or linoleum flooring as called for in the contract.

Under the bathroom contract, the contractor had agreed to remodel the homeowner's bathroom for \$25,000. The contract called for the existing bathtub to remain along one wall and a new vanity (cabinet and sink) to be installed along the opposite wall. The contract called for a 30-inch space between the vanity and the bathtub (so that a person could easily walk between them).

After the contractor said he was finished, the homeowner measured the space between the vanity and the bathtub and discovered that it was only 29 inches. The homeowner then announced that she would not pay the last installment of the contract price (\$10,000), which was due upon completion of the remodeling, unless the contractor "did something" to make the space at least 30 inches wide. The only way to make the space at least 30 inches wide would be to remove either the vanity or the bathtub and to obtain and install a smaller custom-made model. This would cost the contractor about \$7,500. The market value of the house with only a 29-inch space between the vanity and the bathtub, however, would be \$500 less than with a 30-inch space.

The homeowner had selected the contractor because of the contractor's reputation for high-quality installation. In both contracts, the price was based mostly on labor costs because the cost of materials and fixtures was relatively small.

Assuming that the contractor will do nothing to address the homeowner's concerns:

1. How much more, if anything, is the homeowner required to pay the contractor under the kitchen contract? Explain.
2. How much more, if anything, is the homeowner required to pay the contractor under the bathroom contract? Explain.

## MEE Question 2

Ten years ago, a woman and her husband purchased a one-story commercial building in a city in State A “as joint tenants with right of survivorship and not as tenants in common.” They had a “commuter marriage.” The husband lived in an apartment in State A. The woman, who worked for an international corporation, lived in a rented apartment overseas. They met one weekend each month.

Three years ago, the husband borrowed \$150,000 from a friend and granted the friend a mortgage on the commercial building to secure repayment of the loan. The husband used the \$150,000 to purchase a yacht. The certificate of title for the yacht was issued in his name alone.

Two years ago, the husband leased the building to a commercial tenant for a 10-year period at an annual rent of \$9,000, “payable in equal monthly installments solely to” the husband.

The woman did not know about either of these transactions, and she did not join in the mortgage or the lease.

Last year, following the husband’s unexpected death, the woman first learned of the mortgage and the lease.

State A applies the title theory of mortgages, and its courts strictly apply the common law four-unities test. State A does not recognize tenancies by the entirety.

1. Did the husband’s execution of the mortgage sever the joint tenancy? Explain.
2. Assuming that the execution of the mortgage did not sever the joint tenancy:
  - (a) Did the husband’s execution of the lease sever the joint tenancy? Explain.
  - (b) Assuming further that the lease severed the joint tenancy, then upon the husband’s death, what rights, if any, does the tenant have in the building? Explain.
3. Assuming that neither the mortgage nor the lease severed the joint tenancy:
  - (a) During the spouses’ lifetimes, was the woman entitled to half of the rental income payable to her husband under the lease? Explain.
  - (b) At the husband’s death, what rights, if any, do the woman and the tenant have in the building? Explain.

### MEE Question 3

During a snowstorm, a woman and a man were driving in opposite directions on a state highway when their cars collided head-on in the middle of the road. At the moment of impact, the locking mechanism on the woman's seat belt malfunctioned, and the woman was thrown from her car and seriously injured.

The woman was transported from the scene of the accident in an ambulance owned and operated by AmCo, a private ambulance company. On the way to the hospital, the ambulance driver lost control of the ambulance, which skidded off the highway, causing further injury to the woman and exacerbating the injuries she had suffered in the original accident.

Six months later, the woman filed a tort action in federal district court against the man, AmCo, and CarCo, the manufacturer of the woman's car. The complaint alleges that each defendant is liable for all or part of the woman's injuries. In particular, the complaint alleges that the man caused the original accident by swerving across the median of the highway, that AmCo's driver was driving too fast for the weather and road conditions, and that CarCo is liable because the seat belt in the woman's car was defectively manufactured. The woman's complaint properly invoked the court's diversity jurisdiction, and each defendant was properly served with process. Each defendant filed an answer to the complaint and denied liability.

Seven days after it served its answer, CarCo served a summons and complaint on LockCo, the company that manufactured and supplied the seat belt locking mechanism that CarCo installed in the woman's car. CarCo seeks to join LockCo as a party to the woman's action, alleging that LockCo must indemnify CarCo if the seat belt locking mechanism is found to have been defective and CarCo is held liable to the woman.

1. Under the Federal Rules of Civil Procedure, did the woman properly join the man, AmCo, and CarCo as defendants in a single action? Explain.
2. Under the Federal Rules of Civil Procedure, did CarCo properly join LockCo as a party to the woman's action against CarCo? Explain.

### MEE Question 4

On February 1, Construction Company borrowed \$500,000 from Bank. Construction Company's president, on behalf of the company, contemporaneously signed and delivered to Bank a security agreement that included the following language:

To secure the repayment obligation of Construction Company to Bank, Construction Company hereby grants Bank a security interest in all rights of Construction Company to be paid with respect to any contract for the construction or repair of bridges or roads, whether such right exists now or arises in the future.

On March 1, Construction Company entered into a contract with a developer to build roads for a housing development. The contract required the developer to pay \$450,000 to Construction Company upon completion of the road-building project.

On September 1, Construction Company defaulted on its obligations to Bank under the loan and the security agreement. Bank immediately sent a letter to the developer. The letter, which was signed on behalf of Bank by its president, read as follows: "In accordance with a security interest granted to us by Construction Company, all payments under your contract with Construction Company should be made to us at [address of Bank]."

This letter was received by the developer on September 3.

On October 1, Construction Company completed its project for the developer and sent an invoice to the developer demanding payment. The developer's treasurer decided to pay Construction Company, and not Bank, because the developer had a contract with Construction Company but not with Bank. The developer's treasurer promptly sent a check for \$450,000 to Construction Company, which deposited the check and used the proceeds to pay its employees and subcontractors.

A few days later, when Bank learned that Construction Company had completed the road-building project, Bank sent an email to the developer demanding that the developer pay Bank the \$450,000 contract price. Attached to the email was a copy of the security agreement signed by Construction Company and a copy of Bank's September 1 letter to the developer directing it to make all contract payments to Bank. The developer responded that it had already paid Construction Company and was therefore discharged from its payment obligation under the road-building contract. The developer also stated that the security agreement executed on February 1 could not have encumbered Construction Company's right to be paid under the road-building contract because that contract did not exist until March 1.

1. Did Bank have a security interest in Construction Company's right to be paid \$450,000 by the developer for the road-building project? Explain.
2. Was the developer discharged from its payment obligation under the road-building contract by virtue of its having paid Construction Company? Explain.

### MEE Question 5

Linda owned and operated a clothing store as a sole proprietorship. To increase sales, she decided to offer a same-day delivery service to local customers. Rather than hiring an employee to make deliveries, she decided to use a driver who was an independent contractor to make deliveries on an as-needed basis. Because she did not know anyone who could do this work, she searched a website that listed local delivery drivers.

The website included the drivers' names, their hourly rates, and customer reviews of their work. A driver on the list with the lowest hourly rate by a wide margin used his own delivery van for making deliveries. But 40 recent customer reviews of this driver on a scale of 1 (low) to 5 (high) rated him as 1.5, citing specific instances of misbehavior, untrustworthiness, and bad driving. The website also reported that in the last couple of years, the driver had been sued three times for negligent driving and had been found liable in each case. Nonetheless, Linda decided to use this driver to make deliveries because of his inexpensive hourly rate and because he had his own delivery van.

When she hired the driver, Linda told him that, when making deliveries for the store, he would have to place self-sticking, removable signs advertising the store on both sides of his delivery van. He agreed, but because such signs ranged in price from \$100 to \$500 per pair, he told Linda that she would have to purchase them for him to use. Because she was too busy to do that, Linda asked him to purchase the signs but not to spend more than \$300 for the pair when doing so. Linda gave the driver one of the store's cards, and as a means of identifying the driver as acting for the store, she wrote on the back, "This is my agent to purchase signs for my store."

The driver then went to a local sign shop, showed the shop owner the business card that Linda had given him (including her handwritten note on the back), and purchased a pair of custom-made signs for \$450 on credit. Because the signs were custom-made, they were not returnable or refundable. When the completed signs were delivered to Linda, she refused to take possession of them or pay the sign shop for them because their cost exceeded the amount she had told the driver to spend by \$150. The driver then made two smaller signs with the store name on them and, with Linda's approval, put them on his van when making deliveries.

Three weeks ago, Linda called a customer and told her, "My driver is on his way to make a delivery to you in a van with the store's name on its side." The customer kept watch at her window, and when she saw the van with the store's signs on it, she went out to the driveway through her garage. As she started to walk toward the van, the driver negligently hit the accelerator pedal, causing the van to hit the customer, who sustained substantial injuries.

Assume that there was an enforceable contract to buy the signs from the sign shop, that the driver's negligence proximately caused the customer's injuries, and that the driver was acting as Linda's independent-contractor agent.

1. Is Linda liable to the sign shop for the purchase price of the signs? Explain.
2. Is the driver liable to the sign shop for the purchase price of the signs? Explain.

### MEE Question 6

A man and a woman were waiting in line at a public park for tickets to attend an outdoor performance of a play. They soon began arguing about sports, and as their conversation became more animated, the man began shouting at the woman and poking her shoulder with his finger. As the man poked harder and harder, the woman responded by punching the man in the nose.

The woman was arrested at the scene and charged with battery.

At trial, the prosecutor intends to elicit the following testimony from an eyewitness who was standing in the line:

Before the man arrived, I saw the woman talking to a friend. The friend said to the woman, "You and I have waited so long for these tickets, if anyone annoys us today they will not be seeing this play—they'll be going to the hospital!" The woman nodded her head and gave the friend a thumbs-up signal.

I recognized the woman. I live in her neighborhood, and I probably see her at least twice a week. Every time I see her, she is arguing with people, acting out, and generally causing problems.

Assuming that the eyewitness is permitted to testify for the prosecution, defense counsel plans to

(1) cross-examine the eyewitness about her five-year-old conviction for shoplifting, a crime punishable by a maximum sentence of six months in jail; and

(2) cross-examine the eyewitness about a letter recently written by the eyewitness to the man saying, "Thanks for 10 years of a great friendship."

The jurisdiction's rules governing crimes and affirmative defenses follow common law principles. The evidence rules of the jurisdiction are identical to the Federal Rules of Evidence.

The woman's friend is unavailable and will not testify at trial.

1. Assuming that the prosecution proves the elements of battery, can the woman establish a common law affirmative defense based on these facts? Explain.
2. What portions of the eyewitness's testimony, if any, would be admissible? Explain.
3. What portions, if any, of the defense counsel's cross-examination should the court permit? Explain.

Do not discuss any constitutional issues.