

Maryland State Board of Law Examiners
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REPRESENTATIVE GOOD ANSWERS

Finally, where offenses are joined and evidence for one offense would not have been admissible if the offenses were tried separately, severance is appropriate, especially where there is prejudice. *Pierce*. Here, there would be prejudice because evidence of the gun charge would not be admissible if Counts I and II were tried separately. Moreover, when a jury learns of a separate offense committed by a defendant, the jury can be tempted to infer the worst about that defendant. *Pierce*. For these reasons, all charges should be severed and tried separately.

MEE 1

Representative Good Answer No. 1

1) Bank's Interest in Portable Welding Machine

The issue here is whether the Bank (B) has a valid security interest in the welding machine.

In order to have an enforceable security interest, the interest must attach. In order to attach, there must be an exchange of value, the debtor must have rights in the collateral, and there must be a valid security agreement signed by the debtor which sufficiently describes the collateral. "Equipment" is a recognized descriptor of collateral and is used as a 'catch-all' term to describe anything that is not inventory, accounts, or consumer goods.

Here, there is an exchange of value in the form of the loan from B to the Man (M). There is a valid security agreement which has been signed by M and describes the collateral as "all my equipment, including equipment hereafter acquired." This is a sufficient description of collateral, as the standard is quite low and allows for broad descriptions and equipment is a recognized description of collateral. M has a possessory interest in his equipment, and thus B has a valid security interest in M's equipment.

However, M likely does not have an interest in the portable welding machine. Although the welding machine fits the description of 'equipment,' the issue remains that M does not have an interest in the welding machine. Here, M's mother specifically instructed him to not use her welding machine. That he continued to use it without her knowledge is insufficient to establish a possessory or ownership interest in the welding machine. Accordingly, M had no interest in the welding machine to grant to B.

Thus, B does not have an enforceable security interest in the portable welding machine. 2)(a) Bank's Interest in Tools

Applying the above rule, B likely has an interest in the specialized tools because 'repair tools' are likely classified as 'equipment.'

The UCC defines 'inventory' as any goods held for sale or lease, or raw materials used for inventory. The specialized repair tools clearly are not held for sale or lease, nor are they raw materials used to create such goods. Therefore, the tools do not fit the description of inventory.

Similarly, the UCC defines consumer goods (aka personal property) as household goods designed for personal use. Arguably, tools may fit such a description. However, the goods fitting this description are such things as office supplies. These tools, in contrast, are specialized and used for diesel engine repair. Further, while a description of the tools is not provided, the cost of the tools indicate that the tools are far beyond what would be considered a household good or household tool. Thus, it is likely that the tools fit the catch-all description of equipment.

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As noted above, B has an enforceable interest in M's equipment. Therefore, B has a security interest in the tools.

(b) Tool Seller's Interest in Tools

Applying the above rules, the Seller also has a valid security interest in the tools. First, the Seller's interest is attached because there was an exchange of value (the tools) and the debtor has a possessory interest in the collateral. Further, the security agreement was signed by M and the collateral was identified as the repair tools. This is a more specific descriptor than the class of goods required by the UCC, but is nonetheless sufficient.

Thus, the Seller's interest in the tools has attached and he has an enforceable interest.

(c) Priority as to Bank vs Tool Seller

When there are multiple enforceable security interests in the same collateral, priority is determined based on which interest is perfected. Where there are multiple perfected interests, the first to perfect has priority. In order to perfect a security interest, it must first be attached. Once attached, an interest may be perfected in any one of multiple ways, including a filing of a financing statement identifying the debtor and including a description of the collateral. The standard for a sufficient description on a financing statement is lower than what is required for attachment.

Here, both B's interest and the Sellers are perfected. As noted above, both interests are attached.

B perfected its interest by filing a financing statement listing M as the debtor and identifying the collateral as "all equipment including equipment hereafter acquired." As this is the same language included in the security agreement, it is sufficient for the filing statement.

Seller perfected his interest by filing a financing statement listing M as the debtor and again indicating that the collateral was "diesel engine repair tools." For the same reasons, Seller's interest is also perfected.

Although both interests are perfected, B was first to perfect. Moreover, the fact that the tools were acquired after B's interest attached is irrelevant because the collateral includes any equipment later acquired.

Because B was first to perfect, B has priority.

Representative Good Answer No. 2

1. The bank does not have an interest in the portable welding machine. The issue is whether the bank has a security interest in the mother's portable welding machine. Attachment protects the creditor's security interest against the debtor. For attachment, to take place there must be evidence of security agreement, creditor gives value, and debtor has possession rights. The facts state that the bank gave the man a 50,000-dollar business loan and the man signed granted a security interest "in all my equipment, including equipment hereafter acquired." This is evidence of a security agreement. In addition, the bank gave the man value. The after acquired clause is valid, allowing the bank to take a security interest in the man's future acquired equipment, in addition to presently owned equipment. Equipment is defined by how the man uses the collateral. If the man uses them to repair diesel-engine trucks as his business specifies, the collateral will be considered equipment. The man uses the portable welding machine in his business as equipment, which is covered under the security interest. However, the portable welding machine is not the man's but his mother's. The man has no interest in the machine as to use it as collateral. The mother clearly stated to the man, that he could use the barn but may not

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use the welding machine. Due to the man's lack of possession rights in the portable welding machine, it is likely the court would rule that the bank does not have an enforceable security interest in the portable welding machine.

2A) The bank has an enforceable security interest in the tools as a secured creditor. The issue is whether the bank is a secured creditor or not, in regards to the diesel-engine repair tools. As stated above attachment, protects the creditor's interest against the debtor. If the creditor wants to protect their security interest in the collateral against third parties, they must perfect. In order to perfect a security interest the creditor must file a financing statement. When both attachment and the financing statement occur, the creditor is said to perfect and becomes a secured creditor. In our facts, both attachment and perfection took place on June 1st. The bank executed a security agreement, gave value, and the man took possession of the value given. In addition, the bank filed a financing statement referencing "all equipment, including equipment hereafter acquired." As stated above, the after acquired clause is valid. Thus the bank is a secured creditor in all after acquired equipment including the tools.

2B) The Tool Seller has an enforceable security interest in the tools. The issue is whether the tool seller is a secured creditor or not, in regards to the diesel-engine repair tools. The rules for attachment and perfection under Article 9 of the UCC, governing secured transactions is above. In this case, the tool seller sold the tools on credit to the man, evidenced by a written agreement granting the seller a security interest in these tools to secure the man's obligation to pay the remaining balance. This gives rise to what is a Purchase Money Security Interest or PMSI. Attachment is shown because the seller gave the man value, the man took possession of the repair tools and it is evidenced by a security agreement. The facts state the tool seller properly filed a financing statement indicating the collateral was "diesel-engine repair tools". In light of the seller giving the tools on credit and retaining a security interest in those tools, the tool seller is a PMSI secured interest holder.

2C) Secured Party vs PMSI in Equipment Holder

The issue is whether a secured party has an higher interest than a PMSI holder in Equipment. Under Article 9, a PMSI holder in equipment is going to have superior priority interest in the collateral. As stated above the Tool Seller has a PMSI. Thus, the Court would rule that the Tool Seller will have priority over the bank in the default.

MEE 2

Representative Good Answer No. 1

A) The woman did not commit armed robbery of the \$100 cash because she was not in the course of a theft, she was not carrying a dangerous weapon as defined by the statute in State A and even though the person was placed in fear of serious injury the necessary elements are not met.

A crime requires both the mens rea, guilty mind and actus reus the criminal act. An Armed Robbery under State A is theft of property when in the course of the theft the offender is carrying a dangerous weapon and either 1. uses force, violence or assault or 2. puts the victim in fear of serious injury. A dangerous weapon is any 1. firearm, 2. device that was designed for use as a weapon and capable of producing death or great bodily harm, or 3. device that is being used in a manner likely to produce death or great bodily harm.

Theft is the unlawful taking and carrying away of property from the person or custody of another, with intent to permanently deprive the owner of the property.

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Here, the woman did not have the mens rea required to commit theft because she intended only to get money that was owed to her. She did not intend to carry away the property of another with intent to deprive them, she intended to take her own property, cash that was owed to her by the customer. She also did not commit Armed robbery because she was not carrying a dangerous weapon. Thus she was not in the course of a theft. She was carrying a pair of gardening shears which upon first glance may seem threatening enough to be a dangerous weapon but the statute in State A says that a dangerous weapon is a firearm, device designed for use as a weapon or device that is being used in a manner likely to cause death or bodily harm, which the shears were not. The woman was a gardener and although unidentified by the customer the woman had the shears pointed down by her side. She was not brandishing them, they were not made to be a weapon and they were not a firearm. Thus she was not using a deadly weapon. Lastly, the woman did not use force violence or assault even though the customer was placed in fear of serious injury, evidenced by her saying "take it, This is all I have!" and the homeowner slamming the door and calling the police. The fact that the woman's tone was cold and she bluntly said "where my money?" does not change the outcome because these words alone not coupled with frightening behavior and the other elements are not enough to fulfill the elements required for Armed Robbery.

Thus, the woman is not guilty of Armed Robbery.

B) The woman is guilty of theft of the figurine.

Theft -see def. above.

Here, the woman was still annoyed that it had taken so long for payment, she muttered to herself, " More than three months overdue and not even a tip!" and decided that she was entitled to something extra, showing that she was angry and had the mental state to commit the criminal act of theft. She glanced over her shoulder to make sure the homeowner wasn't looking and grabbed a bronze garden figurine from the homeowner's front lawn, put it in her truck and drove away, showing that she carry the figurine away, which was the property of another with the intent to deprive her of it permanently. The woman then sold it to her assistant, further showing her intent not to return the figurine.

Thus, the woman committed theft of the figurine.

C)The woman committed criminal possession of the figurine as stolen property because Criminal Possession of Stolen Property occurs when a person commits criminal possession of stolen property when the person possesses property that the person knows or reasonably should know is stolen property with intent either 1. to benefit that person or a person other than an owner thereof or 2. to impede the recovery by an owner.

Here, the woman possessed the figurine, the property, and knew it was stolen and intended to impede the recovery by an or receive a nominal benefit. The woman looked over her shoulder thus showing that she knew that she was committing theft even though she felt she was "entitled to it" and she sold it for a nominal profit of \$10 to her assistant making the more like intent to deprive and impede the owner's recovery of the figurine out of spite.

Thus, the woman committed criminal possession.

2. The woman's assistant committed criminal possession of stolen property because she likely knew or should have known it was stolen and possessed the figurine with intent to make a profit.

Criminal possession - see above.

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Here, the assistant was offered the figurine with the woman saying "I'll sell you this cheap. How about \$10?" "Just don't ask where I got it" the figurine looked new, and the assistant noticed a \$200 price tag attached to the bottom of the figurine, she quickly hands the woman \$10 and say "Wow that a great deal, these are in high demand and I can sell it for a hefty profit" showing that she reasonably should have known it was stolen and she sought to benefit from the profit.

Thus, she has committed criminal possession

Representative Good Answer No. 2

1) Analyzing all elements of each crime, did the woman commit:

a) armed robbery of the \$100 cash?

Armed robbery involves the theft of property, when in the course of the theft the offender is carrying a dangerous weapon and either (1) uses force, violence, or assault, or (2) puts the victim in fear of serious injury. In this case, the woman fits some, but not all, of the armed robbery elements.

Theft is the unlawful taking and carrying away of property from the person or custody of another, with intent to permanently deprive the owner of the property. Here, the woman took property she viewed as her own: the \$100 owed to her as services rendered. She did not take property of another. However, there are several other factors to consider.

First, the crime demands that she be carrying a dangerous weapon. A dangerous weapon is any 1) firearm, 2) device that was designed for use as a weapon and capable of producing death or great bodily harm, or 3) device that is being used in a manner likely to produce death or great bodily harm. The woman was not carrying a firearm, so that part of the definition is not applicable here. She was carrying pruning shears, large enough to cut small branches off of trees and bushes. The shears do not quite fit the second part of the dangerous weapon definition. Pruning shears, being sharp and large enough to cut small branches, are capable of producing death or great bodily harm. However, they were not designed for use as a weapon. Because the second part of the definition uses the word "and" not "or" between those two clauses (requiring both that the device was designed for use as a weapon and that it was capable of producing death or great bodily harm) the shears do not fit this part of the definition. Finally, the woman was not using the shears in a "manner likely to produce death or great bodily harm". She was carrying them at her side, ends pointed down. We have no facts to suggest that she waved them at the homeowner or made any other motion or gesture with them. In this case, the shears do not likely count as a dangerous weapon.

If a court does decide that the shears count as a dangerous weapon, two more factors must be considered. The first is whether the woman used "force, violence, or assault" to get the \$100 from the homeowner. The facts we were provided do not support this. According to the narrative, the woman asked "bluntly" for the money she was owed and said "Fine. That's what I was expecting" when she received the outstanding \$100. Neither of these statements, nor her actions, suggest that she used force, violence, or assault in her confrontation with the homeowner. We have no facts suggesting she did anything beyond talk "bluntly" to the homeowner.

The final factor is whether the woman put the homeowner in "fear of serious injury". The facts show that the homeowner was certainly afraid of the woman. She was "frightened by the woman's cold tone and pruning shears" and did not recognize her as someone from the landscaping business. On these facts alone, she did place the homeowner in fear of serious injury. A court, however, would likely apply a reasonable person

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standard to the homeowner's fear. It is not a foregone conclusion that a reasonable person would be so afraid of someone at their door demanding payment that they would simply give \$100 without asking for clarification.

Because the woman took property that was her own (\$100 owed for services rendered), the shears are not likely to count as a dangerous weapon, the woman did not use violence, force, or assault, and it is unclear if the homeowner was in reasonable fear of serious injury, the woman did not commit robbery of the \$100 cash.

b) theft of the figurine?

As stated above, theft is the unlawful taking and carrying away of property from the person or custody of another with the intent to permanently deprive the owner of the property.

Here, the woman took and carried away the property of another by taking the bronze garden figurine from the homeowner's front lawn. She put the figurine in her truck, and drove away with it, demonstrating the "carrying away" portion of the crime. She also sold it to her assistant for \$10, demonstrating her intent to permanently deprive the owner (the homeowner) of the property. Because her actions align with the statute for theft, the woman is guilty of theft.

c) criminal possession of the figurine as stolen property?

Criminal Possession of Stolen Property requires that a person possesses property that the person knows or reasonably should know is stolen property with the intent to either 1) benefit that person or a person other than the owner thereof or 2) to impede the recovery by the owner.

Here, the woman knows the property (the bronze figurine) is stolen because she, herself stole it. It is unlikely that it can be argued that she intended to take it to benefit herself or another person. She stole it on a whim, and sold it to her assistant for \$10, much less than what it was worth. She did not profit from the theft, nor did she appear to think about her assistant's potential profit beforehand.

The woman did, however, take the figurine to impede recovery by the owner (the homeowner). The facts state that she took the figurine and promptly sold it to her assistant for \$10 to get rid of it. She did this after an altercation with the homeowner and the realization that she did not get a tip on her landscaping services. As previously stated, she did not receive the value of the figurine in the sale to her assistant, so her intent was not to profit, but rather to keep the homeowner from regaining the figurine.

Because the woman knew she possessed stolen property with the intent to impede recovery by the owner, she committed criminal possession of the figurine as stolen property.

2) Did the woman's assistant commit criminal possession of stolen property?

As stated above, a person commits criminal possession of stolen property when the person possesses property that the person knows or reasonably should know is stolen property with the intent to either 1) benefit that person or a person other than the owner thereof or 2) to impede the recovery by the owner.

First, it should be noted that the assistant did not have the knowledge of the woman that the property was stolen. The assistant was not present at the time of the theft, and the woman specifically told the assistant not to ask where she got the figurine. However, this disclosure, that the assistant should not ask about the provenance of the figurine, provides evidence that the assistant should have known that the property was stolen. Further, the woman sold the figurine to the assistant for \$10, far less than the \$200 tag on the bottom

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of the figurine. The mysterious provenance of the figurine combined with the extreme markdown in its value both argue that the assistant should have known that the figurine was stolen.

Because the assistant did not know the provenance of the figurine, it cannot be said that she is in possession of the property specifically to “impede recovery by the owner”. She doesn’t know who the owner is, nor does she technically know that the woman is not the owner. She is, however, in possession of the figurine for her own benefit. When she bought the figurine from the woman, the assistant stated that \$10 was a great deal on the figurine and that she could likely sell it for a “hefty profit”. Thus, upon buying the figurine, the assistant intended to benefit from the profit she could make on it.

Because the assistant should have known that the figurine was stolen property and intended to benefit from its sale, she committed criminal possession of the figurine as stolen property.

MEE 3

Representative Good Answer No. 1

1. Amy (A) and Bill (B) have authority as members of the board of BC to vote to approve their trip to Belgium as a corporate expense.

Authority of Board Members

Under the law of corporations, shareholders (SH) can elect members of the board of directors who have the authority to enter into contracts on behalf of the corporation and spend money in furtherance of the corporation’s interest. A and B are the original incorporators of BC and were BC’s sole shareholders (SH) and sole directors when it was incorporated 6 years ago. Therefore, A and B, as members of the board, have authority to vote to approve their trip to Belgium.

Corporate Purpose

Each corporation must have a general stated business purpose outlined in the Articles of Incorporation. BC is a craft beer business. Their past trips to Germany have been for a craft brewery trade show to learn about the latest in craft brewing. Expenses associated with attending this trade show are treated ordinary and necessary within the craft beer industry. The trips give A and B new ideas about ingredients and brewing techniques. Many of BC’s competitors cover such trips for their key employees. A and B are going to Belgium instead of Germany this year because they believe Belgium, not Germany, is where innovations in craft brewing are now happening. While A and B may do some sightseeing on these trips, such activities are incidental and not the primary purpose of their travel. Since attending trade shows in Europe is a craft brew industry norm, taking this trip to stay ahead of their competitors and learn techniques that further the business interest of BC and thereby make more money for SH.

Therefore, as members of the board of BC, and because the trip to Belgium will further the business interests of BC, A and B have authority to vote to approve their trip to Belgium as a corporate expense.

2. A and B did not violate the duty of loyalty by having the corporation pay for their Belgium trip over Sharon’s (S) objection.

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Duty of Loyalty

Under the law of corporations, Directors (D) and Officers (O) elected to the board of directors owe a duty of loyalty to the corporation to act in the corporation's interest and not engage in self-dealing at the corporation's expense.

As stated above, trips to trade shows like the one in Belgium are standard in the craft beer industry, will further the business purpose of the corporation, and will help BC make more money for its' SH. A and B are not engaging in self-dealing by having the corporation pay for their trip. They are going to Belgium for the benefit of BC, not solely themselves.

Also, A and B own 60% of the stock of BC compared to S's 40%. 60% of the SH have more voting power than 40%, so S's objection can be overridden.

There, as majority SH and members of the board of BC acting in the interest of the corporation and not engaged in self-dealing, A and B will not breach their duty of loyalty to BC by having BC pay for their trip to Belgium over S's objection.

3. Even if A and B violated the duty of loyalty by having the corporation pay for the Belgium trip, S cannot personally recover from A and B all the expenses for that trip paid by BC.

Under the law of corporations and the Model Business Corporations Act (MBCA), directors and officers of a corporation can be held liable for the corporation's losses if those losses were incurred due to the directors breaching the duty of loyalty to the corp. However, a SH or a member of the board of a corporation cannot personally recover from members of the board that breach the duty of loyalty. Instead the corporation itself can recover from the breaching board members. Therefore, in this case, even though S is a SH and member of the board, she cannot personally recover from A and B if they breach their duty of loyalty by having the corporation pay for the Belgium trip. BC itself could recover, not individual SH.

4. Even if A and B violated the duty of loyalty by having the corporation pay for their prior trips to Germany, S cannot bring a derivative claim to recover from A and B the expenses paid by BC related to their prior trips.

Ultra Vires

Under the law of corporations and the MBCA, an ultra vires act is one that falls outside of the scope of corporation's purpose put forth in the Articles of Incorporation. Under the law of corporations, ultra vires contracts entered into by members of the board are valid. However, a SH can sue for an injunction to stop the members of the board from engaging in these ultra vires acts or entering into ultra vires contracts. Such an injunction could prevent the corporation from suffering future losses. Also, if the ultra vires acts or contracts cause the corporation to suffer financial losses, members of the board responsible for those acts and contracts can be held personally liable for them.

Derivative claim

In this case, even if A and B violated the duty of loyalty to BC by having BC pay for their trips to Germany, S cannot bring a derivative claim to recover from A and B the expenses paid for prior trips to Germany. This is because the prior trips to Germany occurred before S was a SH or director of BC. Under the law of corporations, a SH can bring a derivative claim against directors and officers to recover for losses incurred while the SH was a SH of the corp. When A and B brought S into BC last year, they issued her new shares in BC making her owner

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of 40% of the outstanding shares. S cannot bring a derivative claim to recover from losses that occurred before she was a SH in BC.

Therefore, even if A and B violated the duty of loyalty by having BC pay for their prior trips to Germany, S cannot bring a derivative claim to recover from A and B the expenses paid by BC for those trips.

Representative Good Answer No. 2

1. The issue is whether Amy and Bill have the authority as members of the board to vote to approve their trip to Belgium at corporate expense?

Board of director members are agents of the corporation. They have express authority based upon the articles of incorporation and implied authority to conduct themselves in the best interest of the corporation to carry out the purpose of the corporation.

For a board of directors to vote, there must be a quorum of board of directors present.

The members can be present either in person or virtual/audio if they can hear and be heard (participate in the meeting). In order to pass the vote, a majority of the quorum made up of disinterested parties, must vote. Interested parties have an interest in the outcome of the vote.

Here, Beer Corporation is a craft beer business. The corporation was founded with only two shareholders and two directors, Amy and Bill. Sharon invested shares in BC and received 40% of the outstanding shares for BC. Amy and Bill then each owned 30% of BC's outstanding shares. Amy and Bill continued to run the day-to-day business as a member-managed business.

The board of directors are voting on approval of a trip to Belgium at corporate expense. Amy and Bill will be taking the trip for 'fresh ideas' and to 'take in nearby museums and historic sites.' This makes Amy and Bill interested parties because they have an all-expense trip to Belgium on the line.

Therefore, Amy and Bill do not have the authority as members to approve their trip to Belgium at corporate expense.

2. The issue is whether Amy and Bill violated the duty of loyalty by having the corporation pay for their Belgium trip over Sharon's objection.

All directors have a duty of care and duty of loyalty to the shareholders and corporation. Directors are presumed to have acted in good faith under the business judgment rule. Directors breach their duty of loyalty if there is fraud, illegality, or self-dealing. In these instances, the business judgment rule will not apply. Self-dealing is when a director acts in their own best interest and not the corporation's best interest.

Here, Amy and Bill did not commit fraud or illegality. They also did not self-deal because their primary purpose for their trip to Belgium was for innovations in craft brewing and fresh ideas for BC.

Sharon will need to show evidence to rebut the presumption that Amy and Bill acted in good faith. Sharon told Amy and Bill the trips to Europe must stop. Amy and Bill believe the trips give them new ideas about ingredients and brewing techniques for BC. Many of BC's competitors covered such travel to Europe to their key employees so it is not out of the ordinary for a trip to be covered by the corporation.

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Therefore, it is unlikely Amy and Bill violated the duty of loyalty by having the corporation pay for their Belgium trip.

3. The issue is whether Sharon can personally recover all the expenses for the trip to Belgium from Amy and Bill.

A shareholder owes a duty to other shareholders to prevent waste of the corporation. A shareholder can be held personally liable if the corporate veil is pierced. The veil can be pierced if the corporation is undercapitalized, business formalities are foregone, shareholder usurps a business opportunity, or the shareholder uses the corporation's funds for their own personal gain.

Here, Amy and Bill were using the corporation's bank account to make a business trip for innovations in craft brewing, to look for fresh ideas, and visit different breweries. These are all ordinary and necessary business expenses. Stopping by museums and historic sites does not mitigate the fact that the primary purpose for the trip was for the business. Further, Amy and Bill did not forego business formalities as they voted on the trip. It is unlikely there is enough evidence for Sharon to pierce the corporate veil and personally recover expenses for the trip to Belgium.

Therefore, Sharon cannot personally recover all expenses for the trip to Belgium from Amy and Bill.

4. The issue is whether Sharon can bring a derivative claim to recover the expenses paid by BC that related to their prior trips to Germany.

Shareholders can bring direct or derivative claims against a corporation. A direct claim is for personal injury by the shareholder, like prevention from voting. A derivative claim is against the board of directors. Any recovery is given to the corporation. For a derivative claim, a shareholder must give notice to the board of directors of the intent to sue and reasons for the intent. If there is no response or change within 90 days, the shareholder can move forward with the suit. A shareholder is exempt from this notice requirement if the notice would be futile.

Here, we are assuming Amy and Bill violated the duty of loyalty by having the corporation pay for their prior trips to Germany. Sharon, a shareholder, would like to bring suit against the board of director members to recover the expenses related to their trips. A derivative claim is proper in this instance because it is against the board and for recovery to the corporation.

Sharon does not need to give notice because notice would be futile. The other board members voted for the trips to Germany and were the ones who made such trips. Further, they planned to continue their trip to Belgium even after Sharon threatened to sue.

Therefore, Sharon can bring a derivative claim to recover the expenses paid by BC that related to their prior trips to Germany.

MEE 4

Representative Good Answer No. 1

1a) Is Peter bound to the contract signed by Angela for the purchase of the 50 yellow chairs for \$10,000?

An agency is created when two people, an agent and a principal, mutually agree to create an agency where the agent acts on behalf of the principal. The agent can act with actual authority or apparent authority. Actual

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authority can be express or implied through the principal's actions, but it must reasonably cause the agent to believe that they have the authority to act on behalf of the agent. Agents are only permitted to act within the scope of their authority, if the agent acts outside of their authority then they are likely liable to the contract if the principal is undisclosed or only partially disclosed. An undisclosed principal is one that the third party to the agency does not know of the existence or the identity of the principal. A partially disclosed principal is one that is known to the third party but has not been identified.

Here, Angela (A) had express actual authority from Peter to buy 50 red chairs from the local furniture store for no more than \$10,000. A was caused to reasonably believe that she had the authority to purchase red chairs for \$10,000. However, A bought yellow chairs and not red chairs which is outside of the scope of the agency between Angela and Peter. Thus, to know who is liable for the contract we must look to whether Peter was a disclosed or partially disclosed principal. When looking at the facts, Angela did NOT tell the furniture store that she was buying the chairs for anyone other than herself or that she had the authority to only buy red chairs. Additionally, Angela signed the contract in her own name, not on behalf of Peter, or as the pizza shop. Thus, Peter is an undisclosed principal and is not liable for the contract purchasing the 50 yellow chairs from the furniture store for 10,000 dollars.

1b) The question is whether Angela is liable for the contract for the 50 yellow chairs.

As mentioned above, when a principal is undisclosed the principal is NOT liable for the contract. However, the agent becomes a party to a contract where there is an undisclosed principal. Thus, Angela is likely liable for the \$10,000 contract for the 50 yellow chairs.

2) The question is whether Peter ratified the actions of Angela when she bought the cargo bike instead of the electric bike.

As in number one, Angela had express actual authority to purchase an electric bike from the local bike shop and to not exceed \$5,000 for the bike. She exceeded the scope of this authority when she purchased a cargo bike instead for the cost of \$8,000. Angela also did not disclose that she was purchasing the bike for someone else and paid with her own personal check. However, when a principal ratifies actions taken by the agent that were outside the scope of their express authority, the principal can ratify those actions if (1) they ratify the whole contract, (2) ratify within a reasonable time or before the third party rescinds the contract, and (3) knows of the material terms of the contract.

Here, Peter ended up calling Angela two days later and said that he would keep the \$8,000 bike because he liked the carrying capacity, additionally, the third party had not backed out of the contract prior to Peter stating that he would keep the bike. This satisfies the reasonable time element. Further, Peter knew the price of the bike and that the bike was a used cargo bike instead of a new electric bike he requested, thus he knew of the material terms of the contract and in knowing those terms and stating he would keep the bike, he ratified the entire contract. Because of these actions taken by Peter, Peter ratified the actions that Angela took outside the scope of her agency and is liable for the cargo bike.

3) The question is whether Peter is bound by the contract signed for the pizza oven.

An agency can also be created by apparent authority. Apparent authority is when a principal causes a third party to reasonably believe that the agent is acting within the scope of their authority to create a contract.

Here, Angela had express actual authority to purchase a pizza oven for \$12,000 from the local pizza parlor. Instead, she bought a \$15,000 pizza oven which is outside the scope of her agency. However, Angela acted with

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apparent authority to buy the pizza oven because Peter called the local restaurant supplier and stated that his sister Angela will go to the store and purchase a pizza oven on his behalf. This statement induced the supplier to believe that Angela had the authority to purchase the pizza oven. Additionally, Peter did not state how much the pizza oven was to cost so the supplier did not know that Angela was exceeding her scope of price point for the pizza oven. Furthermore, Peter was also a disclosed principal to the pizza oven supplier. The supplier knew that Angela was acting on behalf of Peter because (1) he called to tell them that Angela was acting on his behalf and (2) when Angela signed the contract for the pizza oven she signed as “Angela on behalf of Peter.”

Thus, Peter is liable for the contract for the pizza oven once it is delivered.

Representative Good Answer No. 2

1)a) Peter will not be bound by the contract signed by Angela with the furniture store for the yellow chairs. A principal will be liable for the contracts entered into by his agent if the agent has actual authority, or apparent authority to the 3rd party. An agency need not be formed by any writing or formalities, and an agency relationship will be formed if there is mutual assent to join into the relationship, the agent intends to act to benefit the principal, and principal can exercise control over the agent. Here, the principal gave Angela direct direction in regards to what chairs to buy. Angela was given actual authority to buy red chairs. In purchasing yellow chairs, Angela acted outside her authority given by the principal. When an agent violates clear guidance in authority, there is a breach in the agent principal relationship that will relieve the principal. Here, due to clear violation of actual authority, Angela had no authority and Peter will not be bound.

b) Angela is now bound by the contract she formed with the furniture store. The reason for her being bound is that she did not disclose the principal. When an agent does not disclose the principal in a transaction, she becomes a party to the transaction. Due to not disclosing the principal she will be bound by the contract. Moreover, Angela acted with no authority as discussed above.

2. Angela will be able to recoup her money. Angela as the agent once again acted outside her authority in buying the used bike, rather than the electric bike as instructed by Peter. However, when an agent acts without authority, and then a principal uses or benefits from the transaction, the principal ratifies the contract. In the facts, although Peter was initially upset by the transaction, Peter on his own volition, decided to use it and later called Angela to approve it. This is clear ratification and Peter will need to pay the \$8,000 although it exceeded his initial price request.

3. Peter will be bound by the contract signed by Angela for the pizza oven. Peter, as the principal contacted the third party, here local restaurant supplier and gave notice of his agent acting on his behalf. In this call, without any more specifications to the supplier, the supplier had reasonable belief that the agent would be acting on the principal’s behalf and had apparent authority. Apparent authority exists when a third party has reasonable belief that an agent is acting on behalf of their principal in good faith. Angela although exceeding the amount specified to her, gave no notice of that to the supplier, the supplier made a reasonable deal and the principal will be liable for paying the supplier. Of course, the principal may try to indemnify the agent for acting outside her scope of authority.

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MEE5

Representative Good Answer No. 1

1. No the bank may not reach Bob's interest in present or future distributions or trust income to satisfy its judgement against Bob. The Settlor created a Spendthrift trust. A valid trust is created when there is a Trustee, named beneficiaries and trust property. A spendthrift trust protects the beneficiaries from their carelessness/ their creditors. Under this provision the bank will not be entitled to any of Bob's interest in the trust nor will they be able to receive anything from the principal balance of the trust. However, the bank will be entitled to receive their payment from Bob once Bob is issued his interest. Once the trustee provides Bob with his interest the bank is entitled to go after those funds but not while it's in the trust itself. The purpose of a Spendthrift trust is to protect against creditors. Therefore, the bank will not reach Bob's interest only once the funds are distributed to Bob specifically will the bank be able to reach not while its being held in trust.

2. Bob's wife will be allowed to reach Bob's present and future distributions of trust income to satisfy her judgement against Bob. Although the spendthrift trust is designed to protect against creditors when its a judgement for alimony or child support the creditor will be allowed to take part in a beneficiaries interest prior to them receiving their interest directly. Here, Bob owes his former wife \$30k for unpaid child support for their 5-year-old daughter. His former wife will be allowed to collect from Bob's interest in the Trust because it's a judgement for a child support payment.

3.(a) Daughter has a special power of appointment. A power of appointment can be granted in a Trust to a donee by the settlor. The power of appointment can instruct a trustee to distribute the donee's interest either under a general power or a special power. A general power allows for a donee/beneficiary of a trust to allocate their interest any way they wish. A special power of appointment direct how the donee can allocate their interest set out in the trust. Here, the settlor stated in clause 3 of the trust that following Daughter's death as she may appoint by her will among her heirs at law and in such shares as she in her sole discretion may deem appropriate. The settlor created Daughter's appointment to be special where she has to make appointment through her will to her heirs at law. Therefore, Daughter's appointment is special.

3.(b) It is not likely that an appointment to Settlor's Twins by Daughter will be effective. Daughter is an Heir of Settlor and so are the Twins. The twins are not heirs of daughter. As directed by Clause 3 of the trust daughter has a special appointment that directs her to distribute her share by will to her heirs. Daughter has 2 children Ann and Bob who will be allowed to receive in here share based on the clause set out in the trust. Therefore, Daughter's appointment to the Twins will not be effective.

3.(C) If Daughter fails to exercise her appointment the trust principal will pass to Ann and Bob in equal share. If an appointment is not executed, it will follow the original wishes of the settlor. The Settlor left trust income to Daughter, Ann, and Bob in equal shares. If Daughter does not appoint her interest in her will to her heirs whoever they maybe at the time of her death Ann and Bob will take in her shares equally.

Representative Good Answer No. 2

Question 1

The bank may not reach Bob's interest. The issue here is whether creditors can reach a trust beneficiary's interest when the trust is a spendthrift trust.

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Spendthrift trusts restrict beneficiaries' rights to alienate their interests and the beneficiaries' creditors' rights to reach the beneficiaries' interest. Spendthrift trusts are valid and are created when both of these restrictions (on both beneficiaries and their creditors) are expressly present in the trust instrument. Some creditors can still reach the beneficiary's interest, though, such as when child or spousal support payments are sought.

Here, both restrictions are expressly present and so this is a valid spendthrift trust. The bank is not seeking child or spousal support payments, so as a creditor it cannot reach Bob's interest.

It should also be noted that this trust is a valid trust in the first place. It has a trustee, a trust res (presumably, since income is being paid), definite and ascertainable beneficiaries (the three named individuals and the daughter's heirs), and there was presumably a present intent on the part of the settlor to establish a trust (since the settlor apparently successfully established the trust).

Question 2

Bob's former wife may reach Bob's interest, because she is a creditor seeking to enforce a judgment for child support payments. As explained above, such creditors can reach a beneficiary's interest even when a spendthrift trust is involved.

Question 3(a)

The daughter's power of appointment is a testamentary power of appointment since it is effective on her death.

Question 3(b)

It is unlikely that an appointment of trust principal by the daughter to the settlor's twins would be effective. For one thing, the trust is an irrevocable one, so it cannot be modified easily. And although the trust language granting the power of appointment appears to contain a mistake (the daughter is to distribute trust principal to her "heirs" through her will, even though the term "heirs" is associated with intestate succession, not wills), it is unlikely that the mistake goes to a material matter such that reformation of the trust instrument would be permitted. And even if reformation were permitted, it would only be to correct the mistake or ambiguity in accordance with the settlor's original intent. The settlor's original intent appears to have been to limit the trust principal to the daughter's lineal descendants or issue, so the settlor's new twins don't qualify.

Question 3(c)

If the daughter fails to exercise her power of appointment, the trust principal would pass to the settlor or his issue. That is, the failure to exercise the power of appointment would create a resulting trust in the settlor's favor.

MEE 6

Representative Good Answer No. 1

This transaction between the Buyer and Seller is the sale of goods. Goods are tangible moving objects. The sale of goods is governed by Article 2 of the UCC. The common law governs unless specifically displaced by the UCC

1) The issue is whether the January 9 conversation satisfies the statute of frauds. Generally, the sale of goods worth over \$500 requires that the agreement be in writing, with definite terms, and signed by the party to be

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bound. The facts state that the sale of the silk was \$100,000 and silk is a good. Therefore, the statute of frauds applies. There was a writing with definite terms. The buyer sent over a letter confirming \$100,000 worth of silk. However, the buyer sent the writing memorializing the telephone conversation. The seller is the party sought to be bound by the lawsuit, not the buyer. Therefore, it does not satisfy the common law statute of frauds.

However, as mentioned earlier, the common law governs unless displaced by the UCC. The UCC allows a contract to be formed if the conversation was between two merchants.

Additionally, a writing memorializing the agreement must be sent immediately after the verbal communication with no objections by the receiving party. A merchant is defined in the UCC as someone who routinely work in a particular trade or hold themselves out to have experience in the field. The facts show that both parties are merchants. The Buyer has routinely made purchases for silk and other various fabrics. The Seller has routinely supplied the buyer with the silk. Therefore, these facts tend to show that the Buyer and Seller were merchants. Further, the writing sent by the buyer to the seller after the telephone conversation was sufficient to bind the seller. Therefore, under the UCC a valid contract was formed.

In conclusion, under the common law there would not be a valid contract but the UCC governs, and a valid contract has been created.

2) Generally, a contract will only be interpreted within the "four corners" of the document. However, when a contract is moot on a material element, the court can look at prior dealings and customs within the industry to help interpret the contract. These facts state that Seller has routinely delivered the silk to the buyer at no additional charge for the past six years. Therefore, it would be customary in the dealings between buyer and seller for the silk to be delivered to the buyer. Therefore, Seller should have delivered the silk to the buyer assuming there was a valid contract unless the Seller had expressly changed the terms of delivery.

3) Under the UCC, a non-breaching party can receive the difference between the cover and original contract. As mentioned earlier, the UCC controls this issue, therefore, the Buyer will only be entitled to the difference between an adequate cover and the original contract. The facts show that Seller was selling the silk for \$10 per yard for 10000 yards but the subsequent seller was selling the silk for \$12 per yard. The facts specifically mentioned that the seller made a good faith attempt to cover the original contract and that \$12 was a reasonable price. There is nothing in the fact pattern that would suggest reducing or eliminating the \$20,000. Therefore, Buyer would be entitled to the \$20000 to cover the original contract

Representative Good Answer No. 2

1. For a contract to be enforceable there must be an offer, acceptance of the offer, mutual asset, and consideration. UCC Article 2 governs contracts for the sale of goods. Good are all movable objects. A contract for goods over \$500 must be in writing to be enforceable. A merchant is a party who regularly deals in the kinds of goods at issue in the contract. Where the parties are both merchants, a written confirmatory memo may suffice as a written contract as long as the other party does not reject within a reasonable time.

Here, Buyer (B) called Seller (S) to place an order on January 9. The agreement made between the party's at that time was oral. However, because B is a scarf manufacture who purchased silk from S, a fabric importer, for use is the scarves he sells, both parties are merchants. As such, B's note to S on January 10th may be considered a confirmatory memo. S received that memo on January 11th and did not object within a reasonable time. Thus, an enforceable contract was formed when B sent the confirmatory memo and S did not object.

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2. The essential term in a contract for goods is quantity. All other terms can be supplied by the court. Course of dealing is one way a court may supply terms. Course of dealing between parties refers to actions taken over a series of transactions between that parties that may give rise to reasonable belief of a certain term.

Here, B and S had been conducting business together for 6 years. Over those 6 years, S always delivered to B at no extra cost. As such, it is reasonable for B to believe that that term was automatically included in their contract and that there was no need to specify it. Based on course of dealing, the contract between the parties required S to deliver the silk to B.

3. Where a party to a contract breaches, the non-breaching party is entitled to damages. Expectancy damages are granted to place injured party back into the position that they would have been in had that contract never been breached. Where an injured party must seek cover, or replacement, due to the breach, the injured party may recover the difference between the price of the contract and the price paid for replacement even if the party did not suffer any incidental or consequential damages.

Here, B & S's contract called for 10,000 yards of silk for \$10/per yard. This would give a total contract price of \$100,000. However, because S breached, B had to purchase the 10,000 yards of silk from another supplier for \$12/yard at a total cost of \$120,000. As such, B is entitled to the \$20,000 difference.