MEE Question 1

In 2008, a landlord and a tenant entered into a 10-year written lease, commencing September 1, 2008, for the exclusive use of a commercial building at a monthly rent of $2,500. The lease contained a covenant of quiet enjoyment but no other covenants or promises on the part of the landlord.

When the landlord and tenant negotiated the lease, the tenant asked the landlord if the building had an air-conditioning system. The landlord answered, "Yes, it does." The tenant responded, "Great! I will be using the building to manufacture a product that will be irreparably damaged if the temperature during manufacture exceeds 81 degrees for more than six consecutive hours."

On April 15, 2012, the building's air-conditioning system malfunctioned, causing the building temperature to rise above 81 degrees for three hours. The tenant immediately telephoned the landlord about this malfunction. The tenant left a message in which he explained what had happened and asked the landlord, "What are you going to do about it?" The landlord did not respond to the tenant's message.

On May 15, 2012, the air-conditioning system again malfunctioned. This time, the malfunction caused the building temperature to rise above 81 degrees for six hours. The tenant telephoned the landlord and left a message describing the malfunction. As before, the landlord did not respond.

On August 24, 2012, the air-conditioning system malfunctioned again, causing the temperature to rise above 81 degrees for 10 hours. Again, the tenant promptly telephoned the landlord. The landlord answered the phone, and the tenant begged her to fix the system. The landlord refused. The tenant then attempted to fix the system himself, but he failed. As a result of the air-conditioning malfunction, products worth $150,000 were destroyed.

The next day, the tenant wrote the following letter to the landlord:

> I've had enough. I told you about the air-conditioning problem twice before yesterday's disaster, and you failed to correct it. I will vacate the building by the end of the month and will bring you the keys when I leave.

The tenant vacated the building on August 31, 2012, and returned the keys to the landlord that day. At that time, there were six years remaining on the lease.

On September 1, 2012, the landlord returned the keys to the tenant with a note that said, "I repeat, the air-conditioning is not my problem. You have leased the building, and you should fix it." The tenant promptly sent the keys back to the landlord with a letter that said, "I have terminated the lease, and I will not be returning to the building or making further rent payments." After receiving the keys and letter, the landlord put the keys into her desk. To date, she has neither responded to the tenant's letter nor taken steps to lease the building to another tenant.

On November 1, 2012, two months after the tenant vacated the property, the landlord sued the tenant, claiming that she is entitled to the remaining unpaid rent ($180,000) from September 1 for the balance of the lease term (reduced to present value) or, if not that, then damages for the tenant's wrongful termination.

Is the landlord correct? Explain.

1) Please type your answer to MEE 1 below

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When finished with this question, click Â to advance to the next question.
(Essay)

======== Start of Answer #1 (552 words) ========

The landlord is entitled to remaining unpaid rent under a commercial lease agreement, or, in the alternative, damages for the tenant's wrongful termination.

Under the law, a landlord is typically not liable for repair unless it is stated in the contract. Here, the facts tell us that there was a convenant of quiet enjoyment (whereby the landlord claims that there will not be someone with superior claim to the property come and kick you out), but no other convenants were made. This is not particularly unsual in a commercial lease. The facts do tell us that tenant specifically asked whether there was air conditioning, then proceeded to tell landlord why tenant would need that air conditioning. However, the landlord merely being told about the need for the air conditioning does not change the fact the contract did not provide for the landlord to repair the air conditioning. Additionally, landlord told tenant on August 24, 2012 that he would not repair the air conditioning. The fact that tenant made a failed attempt to repair has no bearing on landlord's responsibility.

Tenant may have an argument that landlord should have answered the phone calls regarding the malfunctioning system and let tenant know that tenant would be responsible for the repairs, however this argument is likely to fail. In a commercial lease contract, the responsibility for knowing what is in the contract lies on the tenant. The tenant should have referred to the lease, where tenant would have discovered landlord had no duty to repair.

Tenant will also likely argue that the implied warranty of habitability should apply, and he therefore had a right to terminate the lease. Tenant may argue that under the implied warranty of habitability, it was landlord's duty to ensure the premises had air conditioning. However, this argument would only apply to a residential property. Therefore, the argument will fail because this is a commercial property and there is no implied warranty of habitability. The lease could not be terminated based upon this argument.

Tenant's liability to landlord will likely be reduced by some amount due to landlord's failure to mitigate damages. When a tenant terminates a lease before the end date, a landlord has several options. She can ignore the breach and sue for damages as the rent comes due, or she can accept the surrender and relet. Regardless of which she chooses, she will be required to make an attempt to mitigate her damages in order to be awarded the full amount she is due. Mitigation of damages is where the landlord attempts to relet the premesis. She would not have to do much, but at least list the property for lease, put a sign up, etc. Here, it appears landlord has decided to ignore the surrender and sue for the full amount of rent. Due to the fact the tenant has stated he will not pay the remainder of rent due, the court will likely allow her to sue on the full amount due. She has made no effort to mitigate his damages, however, and therefore the court will likely frown upon this and may limit the amount of his recovery.

Therefore, tenant will likely be liable to landlord for the amount of unpaid rent minus any amount the court might take out for failure to mitigate damages.

======== End of Answer #1 ========

END OF EXAM

MEE Question 2

On June 1, a bicycle retailer sold two bicycles to a man for a total purchase price of $1,500. The man made a $200 down payment and agreed to pay the balance in one year. The man also signed a security agreement that identified the bicycles as collateral for the unpaid purchase price and provided that the man "shall not sell or dispose of the collateral until the balance owed is paid in full." The retailer never filed a financing statement reflecting this security interest.

The man had bought the bicycles for him and his girlfriend to use on vacation. However, shortly after he bought the bicycles, the man and his girlfriend broke up. The man has never used the bicycles.

On August 1, the man sold one of the bicycles at a garage sale to a buyer who paid the man $400 for the bicycle. The buyer bought the bicycle to ride for weekend recreation.

On October 1, the man gave the other bicycle to his friend as a birthday present. The friend began using the bicycle for morning exercise.

Neither the buyer nor the friend had any knowledge of the man's dealings with the retailer.

1. Does the buyer own the bicycle free of the retailer's security interest? Explain.

2. Does the friend own the bicycle free of the retailer's security interest? Explain.

2) Please type your answer to MEE 2 below

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When finished with this question, click Â to advance to the next question.
(Essay)

======== Start of Answer #2 (945 words) ========

1. Yes, the buyer owns the bicycle free of the retailer's security interest. At issue is whether the "consumer-to-consumer transaction" or "garage-sale" exception applies in this context so that buyer takes the bicycle free of retailer's security interest.

Article 9 of the UCC governs secured transactions. First, it is important to determine whether there is attachment under Article 9, as a creditor is only deemed secured if there is attachment. There are three requirements for attachment: 1) the debtor must have rights in the collateral; 2) there must be value given; and 3) an authenticated security agreement. Here, the bicycle retailer is the secured party, and the man would be the debtor. The man had rights in the bicycles when he purchased them on credit with a down payment to the retailer, and there was value given. Also, we are told that the man signed a security agreement which identified the bicycles as collateral for the unpaid purchase price.

Importantly, the transaction between retailer and the man is a "purchase money security interest" or PMSI under Article 9. A PMSI simply means that the debtor uses the value given to obtain rights in the collateral. Here, the man acquired rights in the collateral (the bicycles) by entering into a financing agreement with the retailer. This fits the category of a PMSI.

In dealing with secured transactions, it is important to classify the type of collateral at issue in

the transaction. One type of collateral under Article 9 is a "consumer good," which is an item used or intended to be used primarily for household, personal or family purposes. Here, man bought the bicycles to use on a vacation with his girlfriend. The bicycles intended to be used primarily for personal purposes. The fact that man never used the bicycles is of no consequence, as Article 9 allows the parties to look at the intent of the debtor at the time of entering into the security agreement. Therefore, we are dealing with consumer goods based upon the facts.

The next issue becomes whether buyer owns one of the bicycles free of retailer's security interest. In determining the rights as between a secured creditor and some third party, the rules regarding perfection apply. Perfection may be done by filing a UCC-1 financing statement with the Secretary of State's office, or, in some instances, there is automatic perfection. A secured creditor who takes a security interest in a consumer good by way of a PMSI (discussed above) enjoys automatic perfection of his security interest. Here, we are told that the retailer never filed a financing statement reflecting this security interest. While this would generally not be problematic for retailer, it is a problem with respect to the buyer because of the "consumer-to-consumer" or "garage sale" exception.

Under the "consumer-to-consumer transaction," which is also referred to as the "garage sale" exception, a buyer takes free of a security interest in consumer goods if the following things are met: 1) the buyer gives value; 2) the buyer acts in good faith; 3) the buyer does not have notice of the secured party's security interest in the goods; and 4) the transaction is one where the collateral is a consumer good in the hands of both the buyer and the seller. This exception is somewhat similar to the buyer in the ordinary course of business rule (BIOCB), though it is not the same since with a BIOCB, a purchaser takes free of a security interest if he buys some

goods from a person in the business of selling those goods. Here, a simply BIOCB analysis would not work because we have absolutely no facts to support the notion that man was in the business of selling bicycles. Simply holding a garage sale does not cut it. Nonetheless, the "garage sale" exception will work so that buyer takes free of retailer's security interest in the bike.

Here, the buyer paid $400 for one of the bicycles and therefore gave value. Next, we have no facts to suggest that buyer did not act in good faith. Buyer did not have notice of retailer's security interest in the bicycle since retailer did not file a UCC-1 financing statement. Also, the transaction between the man and the buyer was in fact a consumer-to-consumer transaction. As discussed above, it does not matter that the man did not actually use the bicycles as he intended to use them for personal purposes. Also, we are told that buyer bought the bicycle to ride for weekend recreation, which also falls into the category of a consumer good.

It should be noted that had retailer filed a UCC-1 financing statement, the buyer would not be able to use the "garage sale" exception because the buyer would be deemed to have notice of the security interest by virtue of the public filing.

2. No, the friend does not own the bicycle free of the retailer's security interest. The issue here is also whether the "consumer-to-consumer transaction" or "garage-sale" exception applies to enable friend to take free of the retailer's security interest. As more fully discussed above, there are certain requirements that must be met for this exception to apply. If the exception does apply, then a third party is able to take free of a secured party's security interest in the goods.

Here, the man gave the other bicycle to friend for a birthday present. The man did not give

value for the bicycle, and while it appears that the other requirements for the "garage sale" exception are met in this case, the lack of value means that the friend does not own the bicycle free of the retailer's security interest.

======== End of Answer #2 ========
END OF EXAM

MEE Question 3

Mother and Son, who are both adults, are citizens and residents of State A. Mother owned an expensive luxury car valued in excess of $100,000. Son borrowed Mother's car to drive to a store in State A. As Son approached a traffic light that had just turned yellow, he carefully braked and brought the car to a complete stop. Driver, who was following immediately behind him, failed to stop and rear-ended Mother's car, which was damaged beyond repair. Son was seriously injured. Driver is a citizen of State B.

Son sued Driver in the United States District Court for the District of State A, alleging that she was negligent in the operation of her vehicle. Son sought damages in excess of $75,000 for his personal injuries, exclusive of costs and interest. In her answer, Driver alleged that Son was contributorily negligent in the operation of Mother's car. She further alleged that the brake lights on Mother's car were burned out and that Mother's negligent failure to properly maintain the car was a contributing cause of the accident.

Following a trial on the merits in Son's case against Driver, the jury answered the following special interrogatories:

> Do you find that Driver was negligent in the operation of her vehicle? Yes.
>
> Do you find that Son was negligent in the operation of Mother's car? No.
>
> Do you find that Mother negligently failed to ensure that the brake lights on her car were in proper working order? Yes.

The judge then entered a judgment in favor of Son against Driver. Driver did not appeal.

Two months later, Mother sued Driver in the United States District Court for the District of State A, alleging that Driver's negligence in the operation of her vehicle destroyed Mother's luxury car. Mother sought damages in excess of $75,000, exclusive of costs and interest.

State A follows the same preclusion principles that federal courts follow in federal-question cases.

1. Is Mother's claim against Driver barred by the judgment in *Son v. Driver*? Explain.

2. Does the jury's conclusion in *Son v. Driver* that Mother had negligently failed to maintain the brake lights on her car preclude Mother from litigating that issue in her subsequent suit against Driver? Explain.

3. Does the jury's conclusion in *Son v. Driver* that Driver was negligent preclude Driver from litigating that issue in the *Mother v. Driver* lawsuit? Explain.

3) Please type your answer to MEE 3 below

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When finished with this question, click Â to advance to the next question.
(Essay)

======== Start of Answer #3 (750 words) ========

1) Is Mother's claim barred by Claim Preclusion:

Claim Preclusion bars the litigation of an entire claim where (1) the party asserting the claim was a party or in privity with a party in prior litigation, (2) the prior litigation arose out of the same transaction and occurence as the current claim. It is not necessary for a claim to have been actually litigated for it to be barred in the subsequent suit.

Same Party or Privity: since the mother was not actually joined in the suit between the son and driver, the driver's only arguement is that the mother and sone were in privity with eachother. Privity only applies to situations where individuals have a vested contractual relationship with eachother. Even if it were to extend to familial relationships since the son was not in infancy it is unlikely the courts would extend privity to thier relationship. Also, there is no privity created simply because mother let son borrow the car, a licensee relationship does not create privity.

Same Transaction: since the suit arise out of the same incident, the care accident between the son and driver, this element is satisfied.

Therefore, because the mother was neither a party nor in privity with a party in hte prior

suit, claim preclusion does not bar her suit.

2)Is Mother precluded from litigating the issue of her brake lights?

Issue Preclusion, or collateral estoppel, bars the relitigation of an issue if (1) the issue was actually litigated, (2) necessary to the judgement, (3) the party against whom preclusion is being sought had the same or similar interests in the prior suit, (4) Mutuality.

Actually Litigated: here the issue was raised in the answer and actually decided by the jury, therefore it was actually litigated.

Necessary to the Judgment: since the jury found in favor of the son, it does not appear that the decision was necessary for the judgment.

Same or Similar Interests: This measures the amount of energy a party would have decided to put into litigating a prior suit, I.e. how much was at risk to the party if they lost the suit. Here, the mother was not even a party to the prior suit so it is not met, even if she had been a party, since the suit was not by here or against here, there was little to lose.

Mutuality: At CL both the party seeking preclusion, and the party to be precluded must have been parties to the prior litigation. non-mutuality is allowed in most Jx today, but all Jx. retain the requirement that hte party against whom preclusion is sought must have been a party or in privity in the prior suit. Since Mother was not a party, not was she in privity (see above). this element is not met.

Therefore, Mother is not precluded from relitigating the issue of whether she was negligent with respect to the brakes.

3)Is Driver precluded from litigating the Negligence Issue:

Issue Preclusion, or collateral estoppel, bars the relitigation of an issue if (1) the issue was actually litigated, (2) necessary to the judgement, (3) the party against whom preclusion is being sought had the same or similar interests in the prior suit, (4) Mutuality.

Actually Litigated: here the issue was raised in the answer and actually decided by the jury, therefore it was actually litigated.

Necessary to the Judgment: The Jury found in favor of the Son, therefore the finding of the Driver's negligence was necessary for the disposition of the case.

Same or Similar Interests: This measures the amount of energy a party would have decided to put into litigating a prior suit, I.e. how much was at risk to the party if they lost the suit. Here the driver was the defendant in the prior suit, the suit was about whether or not she was negligent. therefore she had a tremendous interest to litigate the issue fully.

Mutuality: At CL both the party seeking preclusion, and the party to be precluded must have been parties to the prior litigation. non-mutuality is allowed in most Jx today, but all Jx. retain the requirement that hte party against whom preclusion is sought must have been a party or in privity in the prior suit. Here, since the Driver was a party in the prior suit, Mother should be able to use offensinve non-mutual issue prelusion to bar relitigation of that negligence issue.

Therefore, Driver is precluded from relitigating the issue of whether or not she was negligent.

======== End of Answer #3 ========

END OF EXAM

MEE Question 4

Over 5,000 individuals in the United States operate hot-air balloon businesses. A hot-air balloon has four key components: the balloon that holds the heated air, the basket that houses the riders, the propane burner that heats the air in the balloon, and the propane storage tanks.

The owner of a hot-air balloon business recently notified several basket and burner manufacturers that she or her agent might be contacting them to purchase baskets or burners. The owner did not specifically name any person as her agent. Basket and burner manufacturers regularly receive such notices from hot-air balloon operators. Such notices typically include no restrictions on the types of baskets or burners agents might purchase for their principals.

The owner then retained an agent to acquire baskets, burners, and fuel tanks from various manufacturers. The owner authorized the agent to buy only (a) baskets made of woven wicker (not aluminum), (b) burners that use a unique "whisper technology" (so as not to scare livestock when the balloon sails over farmland), and (c) propane fuel tanks.

The agent then entered into three transactions with manufacturers, all of whom had no prior dealings with either the owner or the agent.

(1) The agent and a large manufacturer of both wicker and aluminum baskets signed a contract for the purchase of four aluminum baskets for a total cost of $60,000. The agent never told the manufacturer that he represented the owner or any other principal. The contract listed the agent as the buyer and listed the owner's address as the delivery address but did not indicate that the address was that of the owner rather than the agent. When the baskets were delivered to the owner, she learned for the first time that the agent had contracted to buy aluminum, not wicker, baskets. The owner immediately rejected the baskets and returned them to the manufacturer. Neither the owner nor the agent has paid the basket manufacturer for them.

(2) The agent contacted a burner manufacturer and told him that the agent represented a well-known hot-air balloon operator who wanted to purchase burners. The agent did not disclose the owner's name. The agent and the burner manufacturer signed a contract for the purchase of four burners that did not have "whisper technology" for a total price of $70,000. The burner contract, like the basket contract, listed the owner's address for delivery but did not disclose whose address it was. The burners were delivered to the owner's business, and the owner discovered that the agent had ordered the wrong kind of burners. The owner rejected the burners and returned them to the manufacturer. Neither the owner nor the agent has paid the burner manufacturer for the burners.

(3) The agent contracted with a solar cell manufacturer to make three cells advertised as "strong enough to power all your ballooning needs." The agent did not tell the manufacturer that he was acting on behalf of any other person. One week after the cells were delivered to the agent, he took them to the owner, who installed them and discovered that she could save a lot of money using solar cells instead of propane to power her balloons. The owner decided to keep the solar cells, but she has not paid the manufacturer for them.

Assume that the rejection of the baskets and the burners and the failure to pay for the solar cells constitute breach of the relevant contracts.

1. Is the owner liable to the basket manufacturer for breach of the contract for the aluminum baskets? Is the agent liable? Explain.

2. Is the owner liable to the burner manufacturer for breach of the contract for the burners? Is the agent liable? Explain.

3. Is the owner liable to the solar cell manufacturer for breach of the contract for the solar cells? Is the agent liable? Explain. (Do not address liability based upon restitution or unjust enrichment.)

4) Please type your answer to MEE 4 below

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When finished with this question, click Â to advance to the next question.
(Essay)

======== Start of Answer #4 (1267 words) ========

1. The owner is not liable to the basket manufacturer for breach of the contract for the aluminum baskets, but the agent is likely liable. At issue is whether or not the agent had the authority to enter into the contract for aluminum baskets. As a general rule, a principal is liable for the contracts entered into by his agent if the agent has been given (1) actual express authority, (2) acutal implied authority, (3) apparent authority, or through (4) ratification. First, actual express authority is shown through words either oral or written and is authority that is expressively detailed. Actual implied authority occurs when there is not necessarily authority for a particular act on the part of the agent, but through, custom or necessity, it is one that is traditionally bestowed upon an agent in regards to the actual express authority that he or she has. Apparent authority occurs when the principal holds the agent out to having authority and cloaks that agent with authority and third parties rely upon that. Finally, ratification occurs when even though the agent likely did not have the authority to enter into a contract and bind the principal, the principal subsequently accepted the benefit and in a sense adopted the contract.

Additionally, agents are generally not liable for the contracts that they enter into on behalf of their principals if the principal is known. However, if the principal is undisclosed or only partially disclosed, the agent can also be found liable on the contract.

In this case, the agent and a large manufacturer of both wicker and aluminum baskets signed a

contract for the purchase of four aluminum baskets for a total cost of $60,000. There is definitely not actual express authority bestowed upon agent to bind principal to this contract because the owner only authorized the agent to buy baskets made from woven wicker, and expressly said not aluminum. Additionally, it is unlikely that the agent had actual implied authority or apparent authority because even though the owner principal notified several basket and burner manufacturers that she or her agent might be contacting them to purchase baskets or burners, the owner did not specifically name any person as her agent. Furthermore, the agent never told the manufacturer that he represented the owner or any other principal. The contract listed teh agent as the buyer and only listed the owner's address as teh delivery address, but did not indicate that the address was that of teh owner rather than the agent. These facts show that this contract between the agent and the manufacturer was likely not relied upon by the manufacturer to be one of an agent-principal relationship because the manufacturer did not know a principal existed and did not know that the agent was an actual agent. Therefore, because the authority for the agent to buy aluminum baskets was not express, implied, apparent, or ratified, and even was definatly contrary to the authority given by the owner, the owner is unlikely to be liable under breach of the contract.

Moreover, the agent is likely liable under the contract. As stated above, agents are generally not liable for the contracts that they enter into on behalf of their principals if the principal is known. However, if the principal is undisclosed or only partially disclosed, the agent can also be found liable on the contract. In this case, the principal owner was undisclosed and the manufacturer had no reason to know that the agent was acting on the behalf of a principal. For this reason, the agent will likely be found to be liable under the contract.

2. The owner may be liable to the burner manufacturer for breach of the contract, and the

agent is likely also liable. At issue is whether or not the agent had the authority to enter into the contract for aluminum baskets. As a general rule, a principal is liable for the contracts entered into by his agent if the agent has been given (1) actual express authority, (2) acutal implied authority, (3) apparent authority, or through (4) ratification. First, actual express authority is shown through words either oral or written and is authority that is expressively detailed. Actual implied authority occurs when there is not necessarily authority for a particular act on the part of the agent, but through, custom or necessity, it is one that is traditionally bestowed upon an agent in regards to the actual express authority that he or she has. Apparent authority occurs when the principal holds the agent out to having authority and cloaks that agent with authority and third parties rely upon that. Finally, ratification occurs when even though the agent likely did not have the authority to enter into a contract and bind the principal, the principal subsequently accepted the benefit and in a sense adopted the contract.

Additionally, agents are generally not liable for the contracts that they enter into on behalf of their principals if the principal is known. However, if the principal is undisclosed or only partially disclosed, the agent can also be found liable on the contract.

In this case, the agent and a burner manufacturer entered into a contract for teh purchase of four burners that did not have "whisper technology." This situation is different however from the aluminum baskets because the agent told the manufacturer that he represented a well-known hot-air balloon operator who wanted to purchase burners. However, the agent did not disclose the owner's name. There is definitely no actual express authority for the agent to bind the owner to this contract because the owner specifically said that he only wanted burners that use a unique "whisper technology." However, there is likely some sort of either implied authority or apparent authority. The facts state that notices such as the one the principal gave to the

manufacturers generally include no restrictions ont eht ypes of baskets or burners agents might purchase for their principal and this would likley be normal in the custom of this industry. Additionally, the principal cloaked the agent with authority by telling the manufacturers that his agent was going to be entering into contracts and did not list any restrictions. Additionally, the burner manufacturer relied upon this. Therefore, it is likely that the agent did have implied or apparent authority to bind principal to this contract. Additionally, because the principal was only partially disclosed, the agent is likely to be liable upon this contract as well.

3. Both the agent and principal are liable to the solar cell manufacturer for breach of the contract for the solar cells. At issue is whether or not the owner can be seen to have ratified the conduct of the agent. Ratification occurs when even though the agent likely did not have the authority to enter into a contract and bind the principal, the principal subsequently accepted the benefit and in a sense adopted the contract. In this case, the owner received the solar cell and she isntalled them and discovered that she could save a lot of money using them instead of propane to pwer her balloons. Even though the principal, when she notified the manufacturers, did not say the the agent was going to be purchasing fuel tanks, the fact that she ratified the authority she gave the agent and accepted the benefit will be enough to hold her liable under this contract. Additionally, because the agent did not tell the manufacturer that he was acting on behalf of another person, the principal would be considered undisclosed, and the agent would also likely be liable under this contract.

======== End of Answer #4 ========
END OF EXAM

MEE Question 5

A woman who owns a motorized scooter brought her scooter to a mechanic for routine maintenance service. As part of the maintenance service, the mechanic inspected the braking system on the scooter. As soon as the mechanic finished inspecting and servicing the scooter, he sent the woman a text message to her cell phone that read, "Just finished your service. When you pick up your scooter, you need to schedule a follow-up brake repair. We'll order the parts."

The woman read the mechanic's text message and returned the next day to pick up her scooter. As the woman was wheeling her scooter out of the shop, she saw the mechanic working nearby and asked, "Is my scooter safe to ride for a while?" The mechanic responded by giving her a thumbs-up. The woman waved and rode away on the scooter.

One week later, while the woman was riding her scooter, a pedestrian stepped off the curb into a crosswalk and the woman collided with him, causing the pedestrian severe injuries. The woman had not had the scooter's brakes repaired before the accident.

The pedestrian has sued the woman for damages for his injuries resulting from the accident. The pedestrian has alleged that (1) the woman lost control of the scooter due to its defective brakes, (2) the woman knew that the brakes needed repair, and (3) it was negligent for the woman to ride the scooter knowing that its brakes needed to be repaired.

The woman claims that the brakes on the scooter worked perfectly and that the accident happened because the pedestrian stepped into the crosswalk without looking and the woman had no time to stop. The woman, the pedestrian, and the mechanic will testify at the upcoming trial.

The pedestrian has proffered an authenticated copy of the mechanic's text message to the woman.

The woman plans to testify that she asked the mechanic, "Is my scooter safe to ride for a while?" and that he gave her a thumbs-up in response.

The evidence rules in this jurisdiction are identical to the Federal Rules of Evidence.

Analyze whether each of these items of evidence is relevant and admissible at trial:

1. The authenticated copy of the mechanic's text message;

2. The woman's testimony that she asked the mechanic, "Is my scooter safe to ride for a while?"; and

3. The woman's testimony describing the mechanic's thumbs-up.

5) Please type your answer to MEE 5 below

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When finished with this question, click Â to advance to the next question.
(Essay)

======== Start of Answer #5 (669 words) ========

1. The authenticated text message to the mechanic is relevant to show whether the woman had knowledge that her brakes needed repair. Relevant evidence is any evidence that tends to make any fact more or less likely. Here, the text message speaks directly to the Woman's notice that her breaks needed repair. Therefore, it is relevant

The text message may be hearsay under the Rules of Evidence. Hearsay is an out of court statement offered for the truth of the matter asserted. Here, the statement is certainly out of court. It is possible that the text is offered for the truth of the matter asserted. The text message if offered for the purpose of showing that the Woman's scooter needed brake repair is inadmissible hearsay. However, this statement can be offered to show notice or the efffect on the listener. Here, the listener is the Woman. If the pedestrian offers the text to show that the woman was on notice of the needed repair and based on her inaction, the statement may be considered non-hearsay.

There is also an issue as to the opinion within the mechanics text. The statement with regard to the need of repair may be improper lay opinion under the Federal Rules. If the expert opinion of the mechanic is needed to explain the need for brakes and if the opinion would assist the trier of fact, then this statment may be improper lay opinion.

2. The Woman's statement to the mechanic is relevant to show the Woman's knowledge of

whether the brakes are needed. The rule for relevance is stated above. It specifically speaks to negligent and whether she acted reasonably under the circumstances by asking the mechanic if the scooter was safe.

There is an issue that the Woman's question to the Mechanic is hearsay. As stated, hearsay is an out of court statement offered for the truth of the matter asserted. The statement must actually be a statement, that is an assertion. An assertion is a statement of fact. Here, the woman's question is not an assertion. It is not offered for the truth of the matter asserted because nothing is asserted. Moreover, if the court were to determine that this question is offered for the truth of the matter asserted, then it falls into the category of an admission by a party opponent. An admission of a party opponent is non-hearsay when offered against a party. Here this statement would probably be offered by the woman and thus will not be an admission under the rules of evidence.

3. The Woman's testimony describing the mechanic's thumbs-up is relevant to show the Woman's negligence. The rule for relevance is discussed in (1) above. This tesitmony addresses whether it was reasonable for the woman to rely on this thumbs-up assertion and operate the scooter. This testimony is likely relevant.

The thumbs-up is admissible at trial. Under the rules of evidence, a witness is competent to testify when he or she has personal knowledge of an event. Personal knowledge is gained through the senses, that is sight, hearing, smell, etc. Here, the Woman saw the thumbs-up from the Mechanic. She perceived this event. It is admissible as it is within her personal knowledge.

There is an issue as to whether this thumbs-up is hearsay and thus inadmisible. Hearsay is an out of court statement offered for the truth of the matter asserted. A non-verbal act that is meant to be an assertion will qualify as a statement under the hearsay rule. Here,

the thumbs-up will likely be offered for its truth. It will be offered to show that the scooter was safe to ride for a while. While this technically qualifies as hearsay, it may be offered to show the affect on the listener. If offered to show the affect on the listener, a statement is not precluded by the hearsay rule. Here, the Woman will argue that the thumbs-up caused her to actually operated the scooter. Therefore, the thumbs-up testimony is likely admissible.

======== End of Answer #5 ========
END OF EXAM

MEE Question 6

Ten years ago, Settlor validly created an inter vivos trust and named Bank as trustee. The trust instrument provided that Settlor would receive all of the trust income during her lifetime. The trust instrument further provided that

> Upon Settlor's death, the trust income shall be paid, in equal shares, to Settlor's surviving children for their lives. Upon the death of the last surviving child, the trust income shall be paid, in equal shares, to Settlor's then-living grandchildren for their lives. Upon the death of the survivor of Settlor's children and grandchildren, the trust corpus shall be distributed, in equal shares, to Settlor's then-living great-grandchildren.

The trust instrument expressly specified that the trust was revocable, but it was silent regarding whether Settlor could amend the trust instrument.

Immediately after creating the trust, Settlor validly executed a will leaving her entire estate to Bank, as trustee of her inter vivos trust, to "hold in accordance with the terms of the trust."

Five years ago, Settlor signed an amendment to the inter vivos trust. The amendment changed the disposition of the remainder interest, specifying that all trust assets "shall be paid upon Settlor's death to University." Settlor's signature on this amendment was not witnessed.

A state statute provides that any trust interest that violates the common law Rule Against Perpetuities "is nonetheless valid if the nonvested interest in the trust actually vests or fails to vest either (a) within 21 years of lives in being at the creation of the nonvested interest or (b) within 90 years of its creation."

Recently, Settlor died, leaving a probate estate of $200,000. She was survived by no children, one granddaughter (who would be Settlor's only heir), and no great-grandchildren. The granddaughter has consulted your law firm and has raised four questions regarding this trust:

1. Was Settlor's amendment of the inter vivos trust valid? Explain.

2. Assuming that the trust amendment was valid, do its provisions apply to Settlor's probate assets? Explain.

3. Assuming that the trust amendment was valid, how should trust assets be distributed? Explain.

4. Assuming that the trust amendment was invalid, how should trust assets be distributed? Explain.

6) Please type your answer to MEE 6 below
(Essay)

======== Start of Answer #6 (904 words) ========

1.

Settlor's amendment to the inter vivos trust was valid. At issue is how a trust may be amended.

Under the law of trusts, an otherwise validly executed trust may be amended with a writing signed by the settlor. No other formal requirements to validly amend a trust are necessary. There is not requirement that amendments to a trust must be witnessed, as is the case with wills.

Here, the settlor has made an otherwise valid inter vivos trust. He has then attempted to modify the trust to change one of the beneficiaries to University with a writing that he has signed. The fact that the amendment here was not witnessed is not relevant to whether the amendment was valid. As such, all applicable requirements for amending a trust have been met here and the University is the new beneficiary of the trust as amended.

Therefore, Settlor's amendment of the inter vivos trust was valid as all formal requirements to amend a trust have been met here.

2.

Assuming that the amendment was valid, the amendments do apply to Settlor's probate assets. At issue is whether assets given to a trust through a provision in a will are subject to the

terms of the trust.

Under the applicable trust law, a Settlor may make a provision in his will leaving assets to a trust. Such a provision is called a pour over provision and is a common method used in estate planning. When such assets in the probate estate are transferred to the trust, they will be subject to the terms of the trust even though the trust was amended after the execution of the will.

Here, Settlor has made an amendment to his trust that changes one of the beneficiaries to the trust. He has done this after executing a will that leaves her estate to the trust. Upon the Settlor's death the probate estate will thus be transferred to the trust and will be distributed according to the terms of the trust. This gift will not fail as a testamentary disposition that does not comply with the statute of wills because the assets are left to Bank as trustee and furthermore the Bank is trustee of a revocable trust that Settlor is free to amend.

Therefore, the provisions of the trust as amended will apply to the Settlor's probate estate.

3.

Assuming that the trust was valid, all trust assets should be distributed to University. At issue is how Settlor's estate should be distributed if the amendment is effective.

Under the rules of trust law, the benficiary of named in a trust will receive the distrubtion of the trust assets upon the stated condition in the trust. the common law rule agaisnt perpetuities applies to trust beneficiaries if not changed by the jurisdiction. Here, the stated condition as

amended was that upon Settlor's death the property was to be distributed to University. Assuming that the amendment was valid, the trust assets should be distributed to University now that Settlor is deceased. The rule against perpetutities at common law and as revised by this jurisdiction will have no effect on the validity of the gift to University because it will vest immediately upon the death of the Settlor, which is when the perpetuties period will begin to run for a revocable trust.

Therefore assuming that the trust amendment was valid, the assets of the trust should be distributed to University upon Settlor's death.

4.

Assuming that the trust amendment was invalid, the trust assets should be distributed to . At issue is how the trust assets should be distributed upon the event that the amendment was invalid.

Under the applicable trust law as above, the trust assets should be paid out upon the settlor's death according to the beneficiaries of the trust and according to the applicable state law. As noted, the rule against perpetuities applies to gifts in a trust. However, the jurisdiction here has revised the common law rule by statute and provided that the gifts that would otherwsie violate the rule will not fail if they actually vest within the perpetuities period. This is sometimes referred to as the "wait and see" method of modifying the common law RAP. The perpetuities period for a revocable trust begins to run at the settlor's death.

Here, the trust unamended, gives trust assets to the children, grandchildren and then great

grandchildren of the testator. Several of these gifts might have failed under the common law rule against perpetuities. However, the jurisdiction here has saved the gifts to the great grandchildren. Therefore, upon Settlor's death, the property would be distributed to settlor's suriving children for life. As Settlor has no living children, the estate will go all to his granddaughter. Upon her death the the granddaughter the assets should be distributed to the great grandchildren regardless of the statute. This is because granddaughter was alive at the creation of the interest and is therefore a life in being for perpetuties purposes. Thus the remainder in her childen, the settlor's only possible great-grandchildren, will vets, if at all, within 21 years after a life in being at the creation of the interest.

Therefore, the trust assets, if the amendment is invalid, should be distributed to granddaughter upon settlor's death with a remainder in the great grandchildren of the Settlor that will not be invalidated by either the common law RAP or the jurisdiction's revised RAP.

======== End of Answer #6 ========
END OF EXAM