MEE Question 1

A woman was born and raised in the largest city ("the city") of State A, where she also attended college.

Three years ago, the woman purchased a 300-acre farm and a farmhouse in neighboring State B, 50 miles from the city. She moved many of her personal belongings to the State B farmhouse, registered her car in State B, and acquired a State B driver's license. She now spends seven months of the year in State B, working her farm and living in the farmhouse. She pays income taxes in State B, but not in State A, and lists State B as her residence on her federal income tax returns.

However, the woman has not completely cut her ties with State A. She still lives in the city for five months each year in a condominium that she owns. She still refers to the city as "home" and maintains an active social life there. When she is living on the farm, she receives frequent weekend visits from her city friends and occasionally spends the weekend in the city at her condominium. She is a member of a health club and a church in the city and obtains all her medical and dental care there. She is also registered to vote and votes in State A.

A food product distributor sells food items to grocery stores throughout a five-state region that includes States A and B. The distributor is a State C corporation. Its corporate headquarters are in State B, where its top corporate officers, including its chief executive officer (CEO), have their offices and staff. The distributor's food processing, warehousing, and distribution facilities are all located in State A.

Three years ago, the woman and the distributor entered into a 10-year written contract providing that the woman would sell all the produce grown on her farm each year to the distributor. The contract was negotiated and signed by the parties at the distributor's corporate headquarters in State B.

The woman and the distributor performed the contract for two years, earning her $80,000 per year. Recently, the distributor decided that the woman's prices were too high. At a meeting at its corporate headquarters, the distributor's CEO asked the woman to drop her prices. When she refused, the CEO informed her that the distributor would no longer buy produce from her and that it was terminating the contract.

The woman has sued the distributor for anticipatory breach of contract. She seeks $400,000 in damages. She has filed suit in the United States District Court for the District of State A, invoking the court's diversity jurisdiction.

State A's long-arm statute provides that "a court of this State may exercise personal jurisdiction over parties to the fullest extent permitted by the due process clause of the Fourteenth Amendment to the United States Constitution."

The distributor has moved to dismiss the woman's action for lack of subject-matter jurisdiction and for improper venue.

1. Should the court grant the motion to dismiss for lack of subject-matter jurisdiction? Explain.

2. Should the court grant the motion to dismiss for improper venue? 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 (890 words) ========

1. Lack of Subject Matter Jurisdiction.

The court should not grant the motion to dismiss for lack of subject matter jurisdiction. The issue is whether there is complete diversity among the parties to qualify for diversity jurisdiction.

Federal subject matter jursidiction is appropriate when there is either a (i) federal question at issue or (ii) complete diversity. To invoke federal question jurisdiction, the plaintiff must present a federal question (a question arising under the laws of the U.S., Constitution, or treaty) that is apparent on the face of a well pleaded complaint. Since the woman is suing the distributor for anticpatory breach of contract, a state law claim, there is no federal question jurisdiction available.

To invoke diversity jurisdiction, there must be (1) complete diversity (each plaintiff has a diverse domicile from each defendant), and (2) damages in excess of $75,000 (not including interest and costs) plead in good faith by the plaintiff. Diversity is determined at the time the lawsuit is commenced (pleading is filed). First, the domicile of an individual is determined by her domicile. Domicile requires physical presence and an

intent to permanently remain. Here, the woman was born and raised in State A, where she also attended college, thereby presuming she has lived in State A for at least 22 years (average age upon graduting from college). Woman lives in State A for five months in a condominium she owns there, and frequently visits State A on the weekend to see friends and family. Moreover, State A is where woman has memberships and receives fundamantal healthcare, and where she is registered to vote. Although woman now has a second home in State B, which is where the land is located that concerns the contract, woman has only lived in State B for three years, which is also when she entered the contract with distributor. Since the woman has lives the majority of her personal life in State A and still has significant ties to state A, and the facts indicate that she has only been in State B a short time for the primary purpose of earning a living on her recently purchased farm (most state B activity revolves around the farm as a business - income taxes paid, federal income taxes, driving), a court is likely to conclude that woman is domiciled in State A for diversity jurisdiction purposes.

Second, the domicile of a corporation (defendants here) for diversity jurisdiction purposes is determined by any state in which the corporation is incorporated and the one state where the corporation has its primary place of business, typically the corporate headquarters. Distributor is incorporated in State C, and has it's corporate headquarters in State B. Although distributor's food processing, warehousing, and distribution facilities are in State A, that is of no consequence to determing diversity jursidiction. Distributor is domiciled in both State B and C for purposes of diversity jursidiction.

Finally, woman plead $400,000 in damages from anticipatory breach of the contract, which looks to be a good faith estimate since she has earned $80,000 per year for hte past two years from the contract and still has 8 years left on the contract ($80,000 x 8).

Therefore, there is complete diversity among the parties and the woman has plead in excess of $75,000 (exclusive of interest and costs) for the court to properly invoke subject-matter, diversity jurisdiction in this case.

*Personal Jxd

*Statutory - long arm

*Constitutional (Int. Shoe)

*Minimum Contacts (Availment; Foreseeability)

*Fairness

*Notice

2. Improper Venue. The court should not grant the motion to dismiss based on improper venue. The issue is whether State A has personal jurisdiction over distributor.

Venue is not whether the court has the power to hear the case (like subject matter jurisdiction), but whether the court is the proper court to hear the case. Venue is proper in the jurisdiction where the defendant is domiciled or where a substantial amount of the events that give rise to the action occurred. For the corporate defendant in this case, domicile is determined by whether the court would have proper personal jurisdiction. Personal jurisdiction has both a statutory and a constitutional due process aspect. The

statutory component is satisfied by State A's long-arm statute that provides the State A court to "exercise personal jurisdiction to the full extent allowed by the due process clause of the 14th Amendment" (same as Arkansas). The due process requirements for personal jurisdiction were outlined in International Shoe (1945) and require (1) minimum contacts (purposeful availment and foreseeability) (2) "traditional notions of fair play and substantial justice" and (3) reasonably calculated notice.

Here, distributor has minimum contacts with State A. Distributor has various warehouses, etc. in State A and has thereby purposefully availed itself to the benefits and protections of State A's laws, and it is foreseeable for distributor to be sued in State A based on these contacts. Second, it is fair to bring suit against distibutor in State A because distributor has systematic and continuous contact with State A (specific jxd) based on all of distributor's facitilities being located there. The facts do not provide information about the notice delivered to distributor, but since they have already filed motions, it is obvious they received notice of the suit.

Therefore, State A has proper personal jurisdiction over distributor for venue to be proper in State A.

======== End of Answer #1 ========
END OF EXAM

MEE Question 2

After a dump truck unloaded gravel at a road construction job site, the trucker negligently drove away with the truck bed still in a raised position. The raised truck bed hit an overhead cable, causing it to fall across the highway.

The telephone company that owned the fallen cable sent one of its employees to the scene in a company vehicle. The employee's responsibilities were expressly limited to responding to cable-damage calls, assessing damage, and reporting back to the telephone company so that a repair unit could be dispatched.

The foreman of the road construction job site asked the telephone company employee if the foreman's crew could lift the cable off the highway. Fearful that the cable might be damaged by traffic, the telephone company employee said, "Go ahead, pick it up. Just don't damage the cable." The foreman then directed his crew to stretch the cable over the highway so that traffic could pass underneath.

Shortly thereafter, a bus passing under the telephone cable hit the cable and dislodged it, causing the cable to strike an oncoming car. The driver lost control of the car and hit a truck carrying asphalt to the road construction site. As a result of the collision, hot asphalt spilled and severely burned the foreman.

The foreman is now threatening to sue the telephone company on the ground that it is responsible for its employee's negligence in authorizing the road construction crew to stretch the cable across the highway. The telephone company argues that, even assuming that its employee was negligent, the telephone company is not liable because:

1. the telephone company employee's acts were outside the scope of his employment and thus cannot be attributed to the telephone company;

2. there is no other agency theory under which the foreman could hold the telephone company liable for its employee's acts; and

3. the telephone company employee's acts were not the proximate cause of the foreman's injuries.

Assess each of the telephone company's responses.

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 (1114 words) ========

1. Respondiat Superior

It is likely that the employee's acts were not outside the scope of his employment because the employee was acting for the benefit of the employer. The issue is whether an employee who takes actions beyond his express authority will relieve the employer from vicarious liability. An employee is considered an agent of the employer, and the acts taken in the scope of employment are attributed to the employer. Accordingly, the tortious acts of an employee are also attributed to the employer through vicarious liability under the doctrine of Respondeat Superior. Whether or not the telephone company will be held liable under Respondiat superior depends on whether the employee acted within the scope of his employment when he told the foreman that the contruction crew could raise the fallen wire above the street.

Like other agency relationships, an employee owes a duty to the employer to reasonably follow directions and to exercise ordinary care while doing so. An agent who fails to do so may may relieve the employer of liability in certain situations. The court looks to several factors in determining whether the employee's acts were within the scope of employment, including whether the agent was on a detour or a frolic, for

whose benefit the employee's actions were taken, and the degree to which the employee departed from his express authority. Here, the detour/frolic analysis does not really apply, as the agent did not depart from the immediate task. The employee told the worker that they could raise the cable above the highway because he was fearful that passing traffic would damage the company's property. In so doing, the employee was acting for the employer's benefit, and not his own. Finally, the employee's express authority was limited to responding to calls, assessing damage, and reporting back to the company. He did not have the express authority under his employment to direct the workers to raise the line. This is a strong factor showinfg that the employee acted beyond the scope of employment. However, these actions could arguably be considered to be incidental to the scope of his employment. He was authorized to report damage to wires and to assess the situation. He was fearful that the situation could get worse without further action, and his action was taken to protect company property. For these reasons, the employee's acts were most likely not outside the scope of his employment.

2. Other Agency Theories

Even if the employee's actions were considered to beyond the scope of his employment, the telephone company will most likely be liable for his actions because the employee had apparent authority. The issue is whether the employee had apparent authority.

Apparent authority arises when the principal's words or conduct to the third party

reasonably indicate to the third party that the agent has authority to act on its behalf. Apparent authority can arise in seversal situations, including where the principal negligently allows the agent to act on its behalf and does nothing to prevent it, past dealings with the third party or ratification of the agent's conduct, and where express authority has terminated but notice of the termination has not been relayed to the third party. An agent can also have implied actual authority that is incidental to the agent's express actual authority. Here, the issue is whether the telephone company's words or conduct to the foreman made it reasonable for the foreman to believe that the employee had authority, or whether the employee's actions were taken incidental to his express actual authority.

Here, the facts show that the telephone company responded to the fallen wire by sending the employee to the scene in a company vehicle. The foreman asked the employee if they could raise the wire, to which he responded in the affirmative. These actions, alone, probably made it reasonable for the foreman to believe that the employee had authority to act on behalf of the employer. If the company truck had company logos or other identification marks on the truck, it would be even more likely that the employee had apparent authority.

Alternatively, the employee had express authority to assess damage and report the damage to the employer. It would be reasonable to conclude that, incidental to that authority, the employer had the ability to remove damages wires that could cause a greater harm to company property and to third parties. Thus, even if it was not reasonable for the foreman to believe the employee had authority, it is possible that that

he had implied actual authority, incidental to his express authority.

3. Proximate Causation

The telephone company employee's negligence was most likely considered the proximate cause of the foreman's injuries. At issue is whether there was an independent intervening force that would cut off the company's liability for negligence.

An essential element of a negligence claim is that the plaintiff's injuries have to be caused by the defendant's negligence. This requires the conduct to be both the actual and proximate cause. Actual cause is a but-for cause, that is easily satisfied here. Proximate cause deals more with the foreseeability of the harm that occured and whether it was reasonable for the defendant to foresee the harm to the plaintiff. Because negligence is based in the policy of requiring people to exercise due care, if the type of harm that occured was unforeseeable to the defendant, there is no reason to punish him for his conduct. If another cause of the plaintiff's injuries that was both independent of the defendant's conduct and unforeseeable, occured after the defendant's negligent conduct, the defendant's negligence will not be considered to be the proximate cause.

Here, the employee instructed the workers to raise the cable. The cable was then hit by an oncoming car, causing it to fall on another oncoming car. The driver of that car lost control of his car and hit a truck travelling to the construction site carrying hot asphault, which then spilled on the foreman and causing his injuries. The defendant's negligent

conduct was telling the workers that they could raise the wire. Raising a fallen wire over a road, where traffic is still present, creates the foreseeable risk that the wire may fall again and cause damage to a car travelling underneath. That is exactly what happened here. The car that was hit by the wire then lost control and hit a truck carrying asphault to a contruction site, which is also foreseeable based on the circumstances. None of the acts that occured after the defendant's negligence were independent of the defendant's conduct; rather, they were all a direct consequence of his negligence. As such, the defendant's conduct was the procimate cause.

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

MEE Question 3

Seven years ago, a married couple had a daughter.

Recently, the mother joined a small religious group. The group's members are required to contribute at least half their earnings to the group, to forgo all conventional medical treatments, and to refrain from all "frivolous" activities, including athletic competitions and sports. The mother has decided to adhere to all of the group's rules.

Accordingly, the mother has told the father that she has given half of her last two paychecks to the group and that she plans to continue this practice. The father objects to this plan and has accurately told the mother that "we can't pay all the bills without your salary."

The mother has also said that she wants to stop giving their daughter her prescribed asthma medications. The father opposes this because the daughter has severe asthma, and the daughter's physician has said that regular medication use is the only way to prevent asthma attacks, which can be life-threatening. The mother also wants to stop the daughter's figure-skating lessons. The father opposes this plan, too, because their daughter loves skating. Because the father works about 60 hours per week outside the home and the mother works only 20 hours, the father is afraid that the mother will do what she wants despite his opposition.

The mother, father, and daughter continue to live together. They do not live in a community property jurisdiction.

1. Can the father or the state child welfare agency obtain an order
    - (a) enjoining the mother from making contributions from her future paychecks to the religious group? Explain.
    - (b) requiring the mother to take the daughter to skating lessons? Explain.
    - (c) requiring the mother to cooperate in giving the daughter her prescribed asthma medications? Explain.

2. If the father were to file a divorce action against the mother, could a court award custody of the daughter to him based on the mother's decision to follow the religious group's rules? 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 (593 words) ========

1. The father or the state child welfare agency will not be able to obtain an order enjoining the mother from making contributions from her future paychecks to the religious group or requiring the mother to take the daughter to skating lessons, but may be able to obtain an order requiring the mother to cooperate in giving the daughter her prescribed asthma medications.

The issue is whether a court will issue an order relating to private matters between married parties when the parties differ as to spending and rearing of a child.

A court will normally abstain from issuing orders relating to the management of money or the raising of children when the parties to the action are married. The right to raise a child as the parents see fit is protected by the courts. However, when the conduct of the parties rises to the level of endangering the life of the child, a court will issue an order requiring the parents to provide medical care for the child.

The wife's contributions of her paycheck to the religious group will not be regulated by the court as it is a matter for the married parties to decide how they will spend their money and the qualify of life they wish to live. The court does not require married parties to make contributions to each other, except for necessities such as medical care and food. While the husband is fearful that he will not be

able to pay all of the family's bills without the wife's income, the facts do not state that he will be unable to pay for necessities.

For the same reasons the court will not require the wife to take the child to figure skating lessons. This is a private matter to be determined by the married parties, not for a court to determine.

The father, or the state child welfare agency may be able to obtain a court order requiring the mother to cooperate in giving her child the required asthma medication. A parent may decide matters such as a child's diet, but a parent is not permitted to harm their child by refusing life saving medication. A state child welfare agency may begin child endangerment proceedings against the mother if the

child's health is in danger because of the lack of medicine. While the father and the mother are married, a court may issue an order when the life of a child is at stake.

2. A court could award custody of the daughter to the father based on the mother's decision to follow the religious group's rules if the award of custody would be in the best interest of the child.

The issue is whether a court can award custody to the father based on the mother's decision to follow the religious group's rules.

A court determines custody based on the best interest of the child. Many factors are taken into account when determining the best interest of the child including

adherence to medical advice, lifestyle, safety, drug use, stable home life, and after a certain age the child's wants. The court is not permitted to take religion into account unless some aspect of adherence to that religion would affect the child's best interest.

The court could consider the mother to be a danger to her child because the mother is refusing to give the child her required asthma medicine. If the court feels that the mother's adherence to her religious beliefs will place the child in danger, then the court can award custody to the father.

========= End of Answer #3 ========
END OF EXAM

MEE Question 4

The city police department received a 911 call regarding a domestic violence incident. The caller said that she was staying with her sister and her sister's boyfriend. The caller said that she had called the police because her sister's boyfriend was becoming violent. The police department records all 911 calls. The relevant portions of the 911 recording are as follows:

> Caller: My sister's boyfriend is out of control right now. He just threw a broken beer bottle at my sister. It hit her on the arm. Now he's holding a chair like he's going to throw that at her, too.
> Police Dispatcher: Where is your sister?
> Caller: She's running toward the bathroom.
> Police Dispatcher: Is she injured?
> Caller: I see some blood on her arm.
> Police Dispatcher: Does he have a gun?
> Caller: I don't see a gun.

A nearby police officer arrived on the scene five minutes after the caller telephoned 911. The police officer found the boyfriend pacing in the front yard and ordered him to sit in the rear seat of the patrol car. The boyfriend sat in the patrol car, and the officer locked the door from the outside so that the boyfriend would stay in the car while the officer spoke to the sister.

When the sister saw that her boyfriend was locked in the patrol car, she came out on the porch to speak with the officer. The sister was in a highly agitated and emotional state, and she had several fresh cuts on her right arm. The officer asked her how she got the cuts. The sister replied, "My boyfriend threw a bottle at me which cut my arm." The sister declined the officer's offer of medical assistance but said that she wanted to press charges against her boyfriend. The sister was in tears throughout her conversation with the officer.

The boyfriend was charged in state court with battery and disorderly conduct. The prosecutor made every effort to secure the appearance of both the sister and the caller at trial, but when the trial began, the sister and the caller did not appear.

The prosecutor is attempting to convict the boyfriend without trial testimony from the sister or the caller. The prosecutor plans to introduce the caller's statements to the police dispatcher and to call the officer to testify and to repeat the statements the sister made to him at her house to prove that the boyfriend attacked the sister.

The 911 recording containing the caller's statements to the police dispatcher has been properly authenticated. Defense counsel has objected to the admission of (1) the caller's statements to the police dispatcher on the 911 recording and (2) the officer's testimony repeating the sister's statements to the officer (at her house). Defense counsel asserts the following:

a) The caller's statements to the police dispatcher are inadmissible hearsay.
b) Admission of the caller's statements to the police dispatcher would violate the boyfriend's constitutional rights.

c) The officer's testimony repeating the sister's statements is inadmissible hearsay.
d) Admission of the officer's testimony repeating the sister's statements would violate the boyfriend's constitutional rights.

This jurisdiction has adopted rules of evidence identical to the Federal Rules of Evidence and interprets the provisions of the Bill of Rights in accordance with relevant United States Supreme Court precedent.

How should the trial court rule on each defense objection? Explain.

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 (973 words) ========

a. The trial court should overrule defense's first objection. The issue is whether the statements made in the 911 call fall into an exception to the hearsay rule.

The Federal Rules of Evidence prohibit the admission of hearsay as evidence in a trial. Hearsay is generally defined as statements made by a witness other than those at trial that are offered to prove the truth of the matter asserted. Although hearsay is generally excluded, several examples of nonhearsay and several exceptions to the hearsay rule are provided in the Federal Rules of Evidence. One particular exception that is relevant here is the present-sense impression exception to the hearsay rule, which applies regardless of whether the declarant is unavailable as a witness. A present sense impression is a statement describing or relating an event or condition as it is happening or immediately thereafter.

The statements made to the 911 operator qualify for the present sense impression exception to the hearsay rule. Each statement described an event that was currently transpiring, especially those made that say, "My sister's boyfriend is out of control right now," "Now he's holding a chair like he's going to throw that at her, too," "she's running toward the bathroom," "I see some blood on her arm," and "I don't see a gun." These statements describe an ongoing event, and under the rules, should be

admitted. Furthermore, the statement, "He just threw a broken beer bottle at my sister. It hit her on the arm," should also be admitted under this exception because it likely happened so closely in time that it falls within the "immediately after" portion of this exception. Additionally, these statements could qualify for the excited utterance exception if she made the statements while in an excited state (see below). Of course, the facts do not indicate this, but the statements nonetheless qualify as a present sense impression regardless.

b. The admission of the 911 call does not violate the caller's constitutional rights. The issue is whether the criminal defendant's constitutional right of confrontation has been violated.

A criminal defendant has a 5th Amendment/14th Amendment constitutional right to confront the witnesses who speak against him and get him convicted. This helps to ensure the accuracy of witness testimony and allows defendant to cross examine witnesses. Although a statement may qualify for admission under the Federal Rules of Evidence, the statement may nonetheless violate one's Confrontation Clause rights if the statement is made by someone who did not testify at trial. In fact, the Supreme Court of the United States recently so held in the landmark case of *Crawford v. Washington*. The Court noted that a defendant's confrontation rights are violated when a statement is admitted under a hearsay exception, the witness does not testify at trial or another proceeding where meaingful cross examination could occur, and the statements are testimonial. Statements are testimonial generally when they are garnered by police personnel or stated by the police for trial purposes. In colloquial

terms, if the statements are made in order to convict the defendant, then the statements are testimonial and violate the Confrontation Clause.

Here, the statements were clearly not testimonial. The woman called the police in order to obtain police assistance with a safety concern. She told the 911 operator the information needed for a police officer to safely diffuse the situation. Her statements were not made with the purpose of convicting the defendant but only to receive help. Thus, the defendant's confrontation rights were not violated by admission of these statements.

c. No. The issue is whether the statements by the sister fall into another hearsay exception.

As noted above, hearsay is generally precluded from a trial unless it fits within an exception. One relevant exception here is the excited utterance exception. An excited utterance is a statement relating or describing a startling event made while the declarant was still excited or under the rush of the event. It is slightly different than the present sense impression in that it can be made later in time so long as the declarant is still under the pressure of the exciting event. Additionally, the statement of current physical or mental condition is also an exception, and this exception encompasses one's plans or intent. Finally, there is also a statement made for medical diagnosis or treatment exception, but these statements must be made to medical personnel.

In this case, the sister's statement about the boyfriend throwing a bottle at her qualifies as an excited utterance. She was just a victim of domestic abuse, so it is understandable that she is excited. Additionally, she was in tears while making the

statement. Thus, it fits the exception. Also, the statement that it cut her arm is admissible as an excited utterance and as a statement of physical condition. Finally, the statement that she wanted to press charges is also admissible under both exceptions. The medical diagnosis exception would not apply because the statement was not made to medical personnel.

d. Probably so. The issue is whether the statements to the police officer are testimonial and thus violate the confrontation clause.

As noted in part 2 of this essay, criminal defendants have a right to confront witnesses and their statements even if a statement qualifies for a hearsay exception. These rights are violated under *Crawford* if the statement was made by one not testifying at trial and testimonial.

The statements here are most likely testimonial. They were made to a police officer not for safety or protection but for conviction purposes. This is clear considering that the boyfriend was constrained in the police car at the time the statements were given. Thus, the defendant should have a right to confront the sister/his girlfriend at trial and have a adequate opportunity for meaningful cross examination. Because he does not, his confrontation rights were violated.

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

MEE Question 5

A man asked a friend for a loan. The friend was willing to make the loan so long as the man paid interest at a rate that would enable the friend to make a profit on the transaction. After some discussion, they agreed that the friend would lend the man $4,000, to be repaid one month later together with interest at a rate two percentage points higher than the "prime interest rate" charged by First Bank. (First Bank's prime interest rate is reported daily in the financial press.)

At dinner that evening, the friend handed the man a check for $4,000, payable to his order, that was drawn on the friend's account at First Bank. In exchange, the man handed the friend a document signed by him and dated that day. The document read, in its entirety, as follows: "The undersigned hereby agrees to pay to bearer the sum of $4,000, plus interest at a rate two percentage points higher than the prime interest rate charged by First Bank on the date hereof, no later than one month from the date hereof."

After dinner, as the two waited for a bus together, they were robbed. The robber took the check from the man and the document described above from the friend.

The next day, the robber forged the man's signature on the back of the check and then sold the check to a check-cashing business, handing the check to the manager of the business in exchange for $3,500 in cash. The business and its employees acted in good faith and had no reason to believe that the check did not belong to the robber or that the man's signature had been forged. The following day, the robber sold the document that he had stolen from the friend to a local investor, handing the investor the document in exchange for $2,500 in cash. The investor acted in good faith and had no reason to believe that the document did not belong to the robber.

A few days later, the manager of the check-cashing business took the check to First Bank, handed the check to the teller, and asked that the amount of the check be paid. But the teller refused to pay because the friend had contacted First Bank and stopped payment on the check. Accordingly, the teller handed the check back to the manager.

On the date on which the document signed by the man called for him to pay, the investor contacted the man and demanded payment. The man responded that he would not pay because his promise had been made to his friend, not to the investor, and, moreover, he should not have to pay because the friend's check had been stolen from him with the result that he never received the money that his friend was supposed to loan him.

1. Does the check-cashing business have a right to recover the amount of the check from the friend? Explain.

2. Is the document signed by the man a negotiable instrument? Explain.

3. Assuming that the document is a negotiable instrument, does the investor have a right to recover from the man the amount that the man promised to pay in the document he gave to the friend? Explain.

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 (1019 words) ========

MEE QUESTION 5

1) The check-cashing business does not have a right to recover the amount of the check from the friend

At issue is whether a payee is liable on a check that was stolen and has a forged indorsement.

Under general principels of commercial paper, a payee is secondarily liable on a check which the payee indorses. The check must be presented to the drawee bank and dishonored, triggering liability. However, where a payee never indorsed the check, the payee does not incur liability for the dishonor because she has not signed the instrument. A payee is the person the check is made payable to. A drawee is the bank the check is drawn on. A holder is a person who is in possession of bearer paper, or is in possession of order paper made payable to them. A holder is entitled to enforce a check, but a non-holder is not entitled to enforce a check. Anybody who takes after a forged indorsement is not a holder of a check, but is actually a converter of the check.

Here, the man is the Payee, because the check was made payable to him. First Bank is the drawee, because that is the bank the check was drawn on. The check was stole by thief prior to the man endorsing the check, and therefore the thief was not a holder because he was not in possession of bearer paper or order paper payable to him. When he transfered the check to the check-cashing business, although the check-cashing business took in good faith and had no reason to believe the document did not belogn to the robber, they still are not holders because the check was not negotiated to them. Because the check-cashing business is not a holder, they are not entitled to enforce the instrument. Thus they can not sue up the chain of endorsers, because the check was never properly endorsed to begin with. The check is still order paper made payable to man, and the only person entitled to enforce the instrument is man. Therefore, check-cashing business cannot hold man liable for payment on the check. Man never signed/indorsed the check and therefore cannot be held liable for its dishonor.

Therefore, check-cashing business cannot recover for man for liability on the dishonored check.

2) The document signed by the man is a negotiable instrument

At issue is whether the note that the man made to friend is a negotiable instrument.

A negotiable instrument is a writing, made by a maker or a drawer, which is a promise

or order to pay a fixed amount of money on demand, or at a definite time, which is unconditional, with no additional undertakings, and with order or bearer language. Fixed amount may include interest. A maker is the person who made the note, and who is promising to pay. The currency used must be recognized by the United States government.

Here, the note that man made to friend was a writing, because it was a document that the man handed to the friend. It was made by the man, who is now the maker of the note. It was a promise by the man to pay the friend. It was a fixed amount, the $4,000 with a fixed amount of interest. It was in a currency recognized by the United States Government (dollars). It is payable on demand, or at a definite time because it is due no later than one month from the date of the note. There is no other undertaking on the note, and the note has no other conditions. And finally it is bearer paper, because it stated "pay to bearer."

Therefore, the note that the man made to the friend is a negotiable instrument because it meets all the requirements of negotiability.

3) The investor has a right to recover from the mant he amount that the man promised to pay in the document he gave to the friend.

At issue is whether a holder in due course, who was transferred the note, may enforce bearer paper which he took from a thief.

Under general principles of commercial law, bearer paper is payable to whomever is a holder in possession of the instrument. A holder is a person whom may enforce the instrument. A holder in due course is a holder who takes a note for value, in good faith, and without notice of any claims or defenses against the note. In good faith means subjective honesty-in-fact, and the objective acting under the commercial standards of fair trade. A holder in due course may prevail against the maker of a note even though the maker of the note has a personal defense against him. A personal defense is any general contract defense. A real defense is fraud-in-the-inducement, or forgery of the instrument.

Here, the investor has a negotiable instrument which is in bearer-paper form. The investor is a holder, because he is in possession of bearer paper. The investor is a holder in due course because he is a holder, who took in good faith (because there are no facts which suggest he did not take with honesty-in-fact, or violating the commercial standards of fair dealing), for value (because he gave $2,500 to the thief), and without knowledge of any defenses or claims against the note (because there are no facts which suggest he had any knowledge of any defenses against the note). Because he is a holder-in-due-course, he is able to enforce the instrument against the maker of the note even if the maker of the note has a personal defense. Here, Man will attempt to claim that the note was stolen from him and thus he should not be liable on the note. However, theft of a piece of bearer paper is a personal defense. Thus, because Investor is a holder-in-due-course, he takes free of personal defenses and will be able to hold the man liable on the note he made.

Therefore, the investory (HDC) is able to enforce the note against the man for the amount the note was originally made for.

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

MEE Question 6

Twenty years ago, John and Mary were married. One month before their wedding, John and Mary signed a valid prenuptial agreement in which each of them waived "any property rights in the estate or property of the other to which he or she might otherwise be legally entitled upon the termination of their marriage by death or divorce."

Seventeen years ago, John executed a valid will, which provided as follows:

> I, John, leave my entire estate to my wife, Mary. However, if I should hereafter have children, then I leave three-fourths of my estate to my wife, Mary, and one-fourth of my estate to my children who survive me, in equal shares.

Fifteen years ago, John had an extramarital affair with Beth, who gave birth to their child, Son. Both Beth and John consented to Son's adoption by Aunt. At the time of the adoption, Beth, John, and Aunt agreed that Son would not be told that he was the biological child of Beth and John.

Three years ago, Aunt died, and Son moved into John and Mary's home. At that time, John admitted to Mary that he had had an extramarital affair with Beth which had resulted in Son's birth.

Three months ago, Mary filed for divorce. Nonetheless, she and John continued to live together.

One month ago, before John and Mary's divorce decree was entered, John was killed in a car accident. John's will, executed 17 years ago, has been offered for probate. John's will did not designate anyone to act as the personal representative of his estate.

John was survived by Mary, Son, and John's mother.

1. To whom should John's estate be distributed? Explain.

2. Who should be appointed as the personal representative of John's estate? Explain.

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

======== Start of Answer #6 (661 words) ========

1. John's entire estate should be distributed to Mary. At issue is the effects a prenuptial agreement, pending divorce, and adopted children have on a validly executed will.

Under the Uniform Probate Code, a divorce subsequent to a validly executed will is treated as if the spouse predeceased the testator. However, the divorce must be a final decree from the court. If the divorce is pending and a final decree has not be issued, then the couple are still considered married for probate purposes. Additionally, an adoption of a child is the termination of the existing parental relationship and the creation of a new relationship with new parents. Typically, adopted children have no rights to inherit from the biological parents unless the child is adopted by the spouse of one of the natural parents. Furthermore, although prenuptial agreements are generally enforceable in the court, a prenuptial agreement has no effect on a validly executed will provision since it is assumed the testator had full testamentary capacity and understood the effects of his will.

Here, even though Mary and John filed for divorce, the divorce decree has not been entered and so their divorce was not final and effective at John's death. Thus, making the provisions in John's will to his wife Mary still valid. Even though John and Mary executed a valid prenuptial agreement, it has no effect on the provision in John's will since the prenuptial agreement would only affect the rights of Mary to property had John died without a will or had disinherited her

through his will.

In regards to the son born out of John's extramarital affair, the child was adopted by his Aunt. As a result, the rights to son to inherit from his parents was terminated thereby making the provision in John's will for his children not applicable. Although it could be argued that John's description of children is broad enough that he intended to encompass any offspring he may have fathered or that son is actually pretermitted (afterborn) child, by plain reading of the will, the provision was meant for any children that John may have. Under the UPC, son is technically no longer a child of John's and so the provision in John's will for any children fails due to the fact that the adoption terminated any rights and thus making John childless. Additionally, it could be aruged that had John intended to provide for son out of any guilt that he may have felt over the extramarital affair or the adoption, he had ample time to amend his will to provide for son in any way he chose.

Therefore, John's entire estate should be distributed to his wife Mary in accordance with his will.

2. Mary should be appointed as the personal representative of John's estate. At issue is who should be appointed as a personal representative of the estate when a will does not designate one.

Under the UPC, a personal representative is responsible for administering the probate of the estate. When a personal representative is not designated, one can be appointed by the court or a person can petition the court for designation as the personal representative.

Here, John's will did not designate a personal representative, thus the court will need to appoint one. Mary would be the natural choice for personal representative of John's estate since she is still is wife, but because she is the sole devisee of John's will. Although John and Mary have a valid prenuptial agreement in which Mary waived her rights to any property in the estate or in the other which she would be entitled to uupon termination of their marriage by divorce, the prenputial has no effect on the appointment of personal representative. A personal representative can be any person. Mary would be most familiar with the claims against the estate and the person best equipped to administer the claims.

Therefore, Mary should be appointed as the personal representative of John's estate.

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