MEE Question 1

For many years, a furniture store employed drivers to deliver furniture to its customers in vans it owned.

Several months ago, however, the store decided to terminate the employment of all its drivers. At the same time, the store offered each driver the opportunity to enter into a contract to deliver furniture for the store as an independent contractor. The proposed contract, labeled "Independent-Contractor Agreement," provided that each driver would

> (1) provide a van for making deliveries;
> (2) use the van only to deliver furniture for the store during normal business hours and according to the store's delivery schedule; and
> (3) receive a flat hourly payment based upon 40 work hours per week, without employee benefits.

The proposed Independent-Contractor Agreement also specified that the store would not withhold income taxes or Social Security contributions from payments to the driver.

The store also offered each driver the opportunity to lease a delivery van from the store at a below-market rate. The proposed lease required the driver to procure vehicle liability insurance. It also specified that the store would reimburse the driver for fuel and liability insurance and that the lease would terminate immediately upon termination of the driver's contract to deliver furniture for the store.

All the drivers who had been employed by the store agreed to continue their relationships with the store and executed both an Independent-Contractor Agreement and a lease agreement for a van.

Three months ago, a driver delivered furniture to a longtime customer of the store during normal business hours. The customer asked the driver to take a television to her sister's home, located six blocks from the driver's next delivery, and offered him a $10 tip to do so. The driver agreed, anticipating that this delivery would add no more than half an hour to his workday.

In violation of a local traffic ordinance, the driver double-parked the delivery van in front of the sister's house to unload the television. A few minutes later, while the driver was in the sister's house, a car swerved to avoid the delivery van and skidded into oncoming traffic. The car was struck by a garbage truck, and a passenger in the car was seriously injured.

The passenger has brought a tort action against the store to recover damages for injuries resulting from the driver's conduct. Pretrial discovery has revealed that delivery vans routinely double-park; survey evidence suggests that, in urban areas like this one, 80% of deliveries are made while the delivery van is double-parked.

In this jurisdiction, there is no law that imposes liability on a vehicle owner for the tortious acts of a driver of that vehicle solely on the basis of vehicle ownership.

The store argues that it is not liable for the passenger's injuries because (a) the driver is an independent contractor; (b) even if the driver is not an independent contractor, the driver was not making a delivery for the store when the accident occurred; and (c) the driver himself could not be found liable for the passenger's injuries.

1. Evaluate each of the store's three arguments against liability.

2. Assuming that the store is liable to the passenger for the passenger's injuries, what rights, if any, does the store have against the driver? 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 (1096 words) ========

1a. *The Driver as an Independent Contractor*

The driver is probably not an independent contractor for the furniture store. At issue is whether or not the furniture store exercised enough control over the driver to qualify them as an employee rather than as an independent contractor.

Typically, one working for a business is considered to be an employee of that business. However, it is possible to create an employer / individual relationship that results in the individual being an independent contractor instead of an employee. The most central issue in this inquiry is the amount of control over the activities and behavior of the individual that the employer exerts. Under these facts the "Independent-

Contractor Agreement" requires that each driver provider their own van for making deliveries. However, the furniture store provides a below-market rate lease opportunity to the drivers which has the effect of the store choosing the vehicle that will be used. Also, the driver is required to purchase their own liability insurance. That factor might help support the notion that the driver is an independent contractor. But the furniture store stipulates that the van can only be used to make deliveries during normal business hours and according to the store's delivery schedule - both factors that would be under the control of the independent contractor if they were truly in charge of themselves. As well, the fact that the furniture store allows for only 40 hours of flat pay per week seems to indicate that the furniture store is stipulating how much time the delivery person will work. This also runs counter to the notion that they are independent contractors because as an independent contractor they would bill and be paid for the actual hours they worked, regardless of the store's schedule.

The fact that the furniture store does not withhold income taxes, social security, or pay benefits for the drivers is certainly a bonus for the company but this alone is not dispositive of the matter and is probably one of the more self-serving elements of a test of the furniture store's creation of an independent contractor relationship.

Because of the extreme amount of control that the furniture store exercises over the drivers, they are most likely employees and not independent contractors.

2a. *Even if Driver not an Independent Contractor, the Driver was not making a delivery for the store when the accident occurred*

The driver will probably still be seen as operating within the scope of his employment even though he was not officially making a delivery for the store because the deviation was so small. At issue is whether or not the deviation by the driver will be seen as within the scope of his employment or as a frolic and take him outside the scope of his employment and allow the employer to escape vicarious liability because of that.

Employers are typically only vicariously responsible for the torts of their employees who are acting within the scope of their employment. When an employee goes on a complete frolic from their normal scope of work, the deviation will operate to remove the employer from vicarious responsiblity for the employee's torts. However, instances where the deviation is small and perhaps forseeable to the employer, it has been found that the deviation does not amount to a frolic and the employer is still liable. This is the case when an employee driving a company vehicle may take a detour of a few blocks on the way home to get groceries. Under these facts, the delivery driver was making a delivery for a longtime customer of the furniture store of a piece of furniture only a few blocks away from his current stop. Although some courts may see this departure from the delivery schedule and instructions of the furniture store as a frolic, it is just, and perhaps more, likely that the deviation will be seen as minimal and the employer will still be held vicariously liable.

3a. ***The Driver himself could not be found liable for the passenger's injuries***

The driver himself is probably liable for the injury to the passenger due to his negligence. At issue is whether the violation of the traffic ordinance was the type of negligence that could cause tortious liability to attach to the driver for the passenger's injury.

A prima facie case of negligence requires the proving of a (1) duty, (2) breach of that duty, (3) causation, and (4) damages. When there is a statute or traffic ordinance as in these facts, it may replace the normal standard of reasonable care under the circumstances owed by most parties. This is certainly the case when the statute was designed to protect the type of harm that occurred. The facts presented seem to indicate that the double parking statute was likely created to address the possible injuries likely to be caused due to accidents from the great number of double parked cars used in deliveries. Because of this fact, the driver's violation of this statute can be seen as negligence per se and satisfy the duty and breach factors of the prima facie case for negligence. The passenger would need to prove that the breach was the actual and proximate cause of her injuries and this is clearly the case under these facts - the car the passenger was in had to swerve to avoid the delivery van and but for that she would not have been injured. Her injuries satisfy the damages component.

Because of the establishment of the prima facie case for negligence under a

negligence per se theory, the driver himself would likely be liable for the passenger's injuries.

2. *What rights, if any, does the store have against the driver?*

The store will be able to file a claim for indemnity against the driver for any damage award that it has to pay to the passenger. At issue is what rights does a third-party have against the original tortfeasor if they are found vicariously liable for their tortious behavior.

When a third-party is found liable for the tortious behavior of another party they have the ability to sue for indemnification against that amount from the original tortfeasor. This is compared to contribution where the third-party is also themselves to blame and they would then seek a contribution amount from the other tortfeasor based on their level of negligent fault. Here there has been no claim of negligent entrustment so it would appear that the store would be able to seek indemnification from the driver for any damage award they have to pay the passenger.

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

MEE Question 2

State A, suffering from declining tax revenues, sought ways to save money by reducing expenses and performing services more efficiently. Accordingly, various legislative committees undertook examinations of the services performed by the state. One service provided by State A is firefighting. The legislative committee with jurisdiction over firefighting held extensive hearings and determined that older firefighters, because of seniority, earn substantially more than younger firefighters but are unlikely to perform as well as their younger colleagues. In particular, exercise physiologists testified at the committee's hearings that, in general, a person's physical conditioning and ability to work safely and effectively as a firefighter decline with age (with the most rapid declines occurring after age 50) and that, as a result, firefighting would be safer and more efficient if the age of the workforce was lowered.

State A subsequently enacted the Fire Safety in Employment Act (the Act). The Act provides that no one may be employed by the state as a firefighter after reaching the age of 50.

A firefighter, age 49, is employed by State A. He is in excellent physical condition and wants to remain a firefighter. His work history has been exemplary for the last two decades. Nonetheless, he has been told that, as a result of the Act, his employment as a firefighter will be terminated when he turns 50 next month.

The firefighter is considering (a) challenging the Act on the basis that it violates his rights under the Fourteenth Amendment's Equal Protection Clause, and (b) lobbying for the enactment of a federal statute barring states from setting mandatory age limitations for firefighters.

1. Does the Act violate the Equal Protection Clause of the Fourteenth Amendment? Explain.

2. Would Congress have authority under Section Five of the Fourteenth Amendment to enact a statute barring states from establishing a maximum age for firefighters? 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 (666 words) ========

Question 2

Applicant 113

1. Equal Protection Clause

The issue is which standard of scrutiny will apply to the firefighter's claim and whether the burden is on the firefighter or the government. The 14th Amendment of the United States Constitution applies to the states through the due process clause of the 5th Amendment. The equal protection clause is used to ensure equal protection of the laws as applied to protected classes. The equal protection clause applies when a state enacts a law that discriminates against some people based on various classifications.

In order to prove discrimination, the state law must either be discriminatory on its fact or have a discriminatory impact and a discriminatory purpose. If a law is discriminatory, the next step in the analysis is to determine which type of scrutiny should be applied. The Supreme Court has outlined three different types of scrutiny: 1) rational basis review 2) intermediate scrutiny and 3) strict scrutiny. Strict scrutiny applies to protected classes, such as race and national origin. Intermediate scrutiny applies to quasi-protected classes, sch as gender and illegitimacy. Rational basis review applies to all other classifications.

Strict scrutiny provides that a law will only be upheld if it is necessary to achieve a compelling government interest. Intermediate scrutiny allows a state law to be upheld if it is substantially related to an important goverrntment interest. Rational basis review, by contrast, will be upheld upon a showing that the law is rationally related to a legitimate government interest. The three standards of scrutiny have corresponding burdens of proof, with that of strict and intermediate scrutiny on the government. For rational basis, however, the burden is on the plaintiff to demonstrate that there is no rational relationship to any legitmate government interest--a very high and difficult bar.

Here, plaintiff is a firefighter adversely affected by a new state law that requires mandatory retirement at the age of 50. The first question is to determine whether or not the law is discriminatory on its face--which it is by clearly barring people over the age of 50 from being firefighters. The law also has discriminatory intent with a discriminatory purpose, as it is intended to prevent people from over age 50, which the state

legislative committee found to be generally unfit for firefighting. However, discrimination based on age is not entitled to a higher degree of scrutiny, and the plaintiff will have to show that the law does not meet rational basis review--a difficult showing. The state likely does have a legitimate interest in creating a workforce of effective firefighters and apparently they have evidence that firefighters over 50 cannot always meet the phsyical requirements. The equal protection clause is unlikely to prevail.

**As another note, the plaintiff in State A is 49, and does not turn 50 until next month. The plaintiff must show an injury-in-fact, causation, and redressability in order to bring suit against the state under the principles surounding standing. The plaintiff may risk the court declining Art.III jurisdiction based on standing if he brings his suit before turning 50.

2. Congressional authority under 14th Amendment

The issue is whether or not Congress has acted outside the scope of their power. Unlike the states, which have police power, Congress must act according to its ennumerated powers and under the provisions of the Constitution. Congress has ennabling clauses under the 13th, 14th, and 15th Amendments to enact laws that govern state action regarding the subject of discrimination. Congress does not, however, have the power to create additional rights under the 14th Amendment, only to modify and increase the protections to those rights already covered. In order to enact a law under the 14th Amendment, Congress must demostrate that the state's have

engaged in widespread violations regarding discrimination and craft a law that congruently and proportionally remedies those violations. It is unlikely, especially in light of the state's legitimate interest and legislative research, that Congress will be able to meet its burden in crafting such a law.

======== End of Answer #2 ========

MEE Question 3

Acme Violins LLC (Acme) is in the business of buying, restoring, and selling rare violins. Acme frequently sells violins for prices well in excess of $100,000. In addition to restoring violins for resale, Acme also repairs and restores violins for their owners. In most repair transactions, Acme requires payment in cash when the violin is picked up by the customer. It does, however, allow some of its repeat customers to obtain repairs on credit, with full payment due 30 days after completion of the repair. In those cases, the payment obligation is not secured by any collateral and the payment terms are handwritten on the receipt.

Acme maintains a stock of rare and valuable wood that it uses in violin restoration. Acme also owns a variety of tools used in restoration work, including a machine called a "Gambretti plane," which is used to shape the body of a violin precisely.

Six months ago, Acme borrowed $1 million from Bank. The loan agreement, which was signed by Acme, grants Bank a security interest in all of Acme's "inventory and accounts, as those terms are defined in the Uniform Commercial Code." On the same day, Bank filed a properly completed financing statement in the appropriate state filing office. The financing statement indicated the collateral as "inventory" and "accounts."

Last week, Acme sold the most valuable violin in its inventory, the famed "Red Rosa," to a violinist for $200,000 (the appraised value of the instrument), which the violinist paid in cash. The sale was made by Acme in accordance with its usual practices. The violinist, who has done business with Acme for many years, was aware that Acme regularly borrows money from Bank and that Bank had a security interest in Acme's entire inventory. The violinist did not, however, know anything about the terms of Acme's agreement with Bank.

Acme is 15 days late in making the payment currently due on its loan from Bank. Bank's loan officer, who is worried about Bank's possible inability to collect the debt owed by Acme, has asked whether the following items of property are collateral that can be reached by Bank as possible sources of payment:

(1) Acme's rights to payment from customers for repair services obtained on credit
(2) Used violins for sale in Acme's store
(3) Violins in Acme's possession that Acme is repairing for their owners
(4) Wood in Acme's repair room that Acme uses in repairing violins
(5) The Gambretti plane, used by Acme in violin restoration
(6) The Red Rosa violin that was sold to the violinist

Yesterday, a creditor of Acme obtained a judicial lien on all of Acme's personal property.

1. In which, if any, of the items listed above does Bank have an enforceable security interest? Explain.

2. For the items in which Bank has an enforceable security interest, is Bank's claim superior to that of the judicial lien creditor? 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 (986 words) ========

1. Which, if any, of the items listed does the Bank have an enforceable security interest?

_____ The issue is whether the Bank has an enforceable security interest in Acmes property and accounts. In order for a creditor to have a valid security interest in materials the secured party must attach the security interest to property. In order for a security interest to attach there must be a valid security agreement, value must be given, and the debtor must have rights in the property. A valid security agreement is signed by the parties and gives a description of the collateral. Value is given when the debtor receives value, ie obtains money from the loan. A secured party then perfects its secuirty interest by filing a valid financing statement with the appropriate state

agency, normally the sectretary of state. A valid financial statement identifies both the secured party and the debtor and describes the collateral. Accounts are open lines of credit where a debtor is owed money, such as accounts receivable from customers. Inventory is goods held for the sale by the debtor and used in their business. Security interst in inventory are presumed to be here and after acquired inventory due to the nature of inventory. Equipment is machinery or intents held by the owner to aid in their work, they are not held for sale. A buyer in the ordinary course of business takes free and clear of all security interest if they buy from a seller who is in the business of selling this type of good and take without notice of the security agreement. A secured party can attach a security interest to the identifiable proceeds. Proceeds can be many things, such as cash from the sale of inventory.

Here the Bank perfected their interest in inventory and accounts of Acme by filing a properly completed financing statement with the appropriate state office. The security interest woudl attach to all of Acme's inventory and accounts. First acme's rights to payment form customers for repair services obtained on credit are accounts receivable from customers. The security interest has attached to the accounts, value was given, a valid security agreement was signed, and Acme has rights in these accounts. As accounts receivable the Bank has an enforceable security interest in the customer accounts. Second, used violins for sale in Acme's stores are inventory, they are goods being kept and sold in the store,The security interest has attached to the used violins, value was given, a valid security agreement was signed, and Acme has rights in these violins. The Bank has an enforeceable security interest in the used violins. Thrid the violins in Acme's possession that Acme is repairing for their owners.

The Bank does not have an enforceable security interest in the owners violins. These items are not considered inventory. Nor does Acme have an interest in the goods. Therefore the Bank's security interest has not attached to the owner's violins. Fourth the wood in the repair room that Acme uses in repairing violins. This wood is considered inventory. They are goods kept on had to aid in Amce's business of repairing violins. The security interest has attached to the wood, value was given, a valid security agreement was signed, and Acme has rights in the wood. Therefore there is an enforceable security interest in the wood. Fifth, the gambretti plane. This plane is considered equipment. As such it is not covered by the security interest executed and the Bank does not have an enforceable security interest in the plane.

Finally Red Rosa violin. The violin would be considered inventory, it was held for sale by Acme. The security interet attached to the violin as previously discussed. The Bank had an enforceable security interest. However a buyer in the ordinary course of business takes free and clear of all security interest. The violinist bought the violin from Acme who is in the business of selling used violins. The violinist was aware that Acme borrowed money from the Bank, however the violinist was unaware of the terms of the agreement between Acme and the Bank. The violinist did not have knowledge of the security interest in Red Rosa. She would be a buyer in the ordinary course of business and the Bank would not have a valid security interest in the Red Rosa violin. The Bank may be able to claim a security interest in the $200,000 from the sale of Red Rosa. They woudl have to be able to identify the specific proceeds, such as where they went whether any of that money remains at the store or in one of Acme's accounts.

2. For the items in which the Bank has an enforceable sercuirty interest, is the Bank's claim superior to that of the judical lien creditor?

_____The issue here is whether the judicial lien creditor has priority over the Bank. A secured creditor must perfect their interest in collateral. A secured party perfects its secuirty interest by filing a valid financing statement with the appropriate state agency, normally the sectretary of state, once a security interest has attached to the collateral. In determining who has priority the normal rule is First in time first in right. This means that the first party to perfect their security interest has priority. In disputes between a pefected security interest and an unprefected secruity interest the pefected security interest takes priorty. A judicial lien creditor that obtains a valid judgment prior to a security party perfecting their security interest will take priority.

Here as discussed in part 1 the bank has perfected their security interet by filing a properly executed financiing statement with the appropriate state agency. The bank pefected their security interest prior to the time that the judicial lien creditor obtained their judgment against Acme. As such Acme was the first in time and as such their security interest takes priority over the judicial lien creditor.

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

MEE Question 4

Seventeen years ago, a property owner granted a sewer-line easement to a private sewer company. The easement allowed the company to build, maintain, and use an underground sewer line in a designated sector of the owner's three-acre tract. The easement was properly recorded with the local registrar of deeds.

Fifteen years ago, a man having no title or other interest in the owner's three-acre tract wrongfully entered the tract, built a cabin, and planted a vegetable garden. The garden was directly over the sewer line constructed pursuant to the easement the owner had granted to the sewer company. The cabin and garden occupied half an acre of the three-acre tract. The man moved into the cabin immediately after its completion and remained in continuous and exclusive possession of the cabin and garden until his death. However, he did not use the remaining two and one-half acres of the three-acre tract in any way.

Eight years ago, the man died. Under the man's duly probated will, he bequeathed to his sister "all real property in which I have or may have an interest at the time of my death." The man's sister took possession of the cabin and garden immediately after the man's death and remained in exclusive and continuous possession of them for one year, but she, too, did not use the remaining two and one-half acres of the tract.

Seven years ago, the man's sister executed and delivered to a buyer a general warranty deed stating that it conveyed the entire three-acre tract to the buyer. The deed contained all six title covenants. Since this transaction, the buyer has continuously occupied the cabin and garden but has not used the remaining two and one-half acres.

A state statute provides that "any action to recover the possession of real property must be brought within 10 years after the cause of action accrues."

Last month, the property owner sued the buyer to recover possession of the three-acre tract.

1. Did the buyer acquire title to the three-acre tract or any portion of it? Explain.

2. Assuming that the buyer did not acquire title to the entire three-acre tract, can the buyer recover damages from the sister who sold him the three-acre tract? Explain.

3. Assuming that the buyer acquired title to the entire three-acre tract or the portion above the sewer-line easement, can the buyer compel the sewer company to remove the sewer line under the garden? 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 (651 words) ========

1. Yes, the buyer acquired title to a portion of the tract of land, the one-half acre that he used. Adverse possession allows a non-owner of land to gain title to the land if certain requirements are met. To satisfy the requirements of advere possession, the adverse possessor must possess the land: (1) continuously; (2) actually; (3) notoriously; (4) hostily; (5) openly; and (6) exclusively. All these requirements must last for the statutory period. If these requirements are satisfied for the requisite time period, the possessor obtains title to the land. If a possessor only occupies part of the land, he is only entitled to that portion of the land unless he has "color of title". Color of title means that he entered the land with what he thought was a valid will or deed showing his entitlement to the property. Without color of title, a possessor only receives title to that land which he occupied or used. Here, the relevant statutory period is 10 years, meaning that the possessor must satisfy all these requirements for 10 years. Generally, tacking of time

between different possessors is allowed if there is a relationship between the possessors. For example, tacking is allowed if a deed is exchanged or rights granted in a will.

Here, the original man entered the land without color of title, meaning that if he satisifed all the requirements, he was only entitled to title for land he used. While he did satisfy the requirements for adverse possession, he only possessed the land for seven years, not the statutory ten. However, at his death, the man passed the land onto his sister in his will, establishing a relationship, and allowing tacking to occur. She only occupied the land for a year (pushing the total up to eight). The sister disposed of the land by conveying it in a general warranty deed. Again, this conveyance allowed tacking to continue. The buyer occupied the land for more than the two years remaining in the adverse possession, and consequently, the ten year statutory period was satisifed, and the buyer acquired title to a portion of the tract by adverse possession. The buyer did not gain title to the entire portion of the tract because no one with color of title occupied the land and satisfied the requirements for the ten year statutory period. Although the sister entered the property with color of title (under a will that seemed to convey the land to her), there was not a ten year period between the current action and the sister beginning possession.

2. Yes, the buyer can recover damages from the sister who sold him the entire three acre tract. In selling the property to the buyer, the sister conveyed a general warranty deed. A general warranty deed is a deed that offers the most protection to the buyer as it contains six covenants, and in it, the seller warrants the validity of the deed all the way up the chain of title. One of the covenants contained in the deed warrants that the seller owns everything that she is conveying to the buyer. Based on a breach of this covenant, the buyer is entitled to damages from the

sister.

3. No, the buyer cannot compel the sewer company to remove the sewer line under the garden. Generally, an easement travels with the property if there is notice of the easement. Here, although the land was acquired through adverse possession, the easement was properly recorded with the local registrar of deeds. This recording gave the buyer constructive notice of the existence of the easement. If he had checked the property in the deed office, he would have discovered the easement. The buyer could try and argue that the easement has been terminated through a method of termination, but there is no way for the buyer to compel the sewer company to remove the sewer line.

======== End of Answer #4 ========

MEE Question 5

MedForms Inc. processes claims for medical insurers. Last year, MedForms contracted with a data entry company ("the company") to enter information from claims into MedForms's database. MedForms hired a woman to manage the contract with the company.

A few months after entering into the contract with the company, MedForms began receiving complaints from insurers regarding data-entry errors. On behalf of MedForms, the woman conducted a limited audit of the company's work and discovered that its employees had been making errors in transferring data from insurance claims forms to the MedForms database.

The woman immediately reported her findings to her MedForms supervisor and told him that fixing the problems caused by the company's errors would require a review of millions of forms and would cost millions of dollars. In response to her report, the supervisor said, "I knew we never should have hired a woman to oversee this contract," and he fired her on the spot.

The woman properly initiated suit against MedForms in the United States District Court for the District of State A. Her complaint alleged that she had been subjected to repeated sexual harassment by her supervisor throughout her employment at MedForms and that he had fired her because of his bias against women. Her complaint sought $100,000 in damages from MedForms for sexual harassment and sex discrimination in violation of federal civil rights law.

After receiving the summons and complaint in the action, MedForms filed a third-party complaint against the company, seeking to join it as a third-party defendant in the action. MedForms alleged that the company's data-entry errors constituted a breach of contract. MedForms sought $500,000 in damages from the company. MedForms served the company with process by hiring a process server who personally delivered a copy of the summons and complaint to the company's chief executive officer at its headquarters.

MedForms is incorporated in State A, where it also has its headquarters and document processing facilities. The woman is a citizen of State A. The company's only document processing facility is located in State A, but its headquarters are located in State B, where it is incorporated and where its chief executive officer was served with process.

State A and State B each authorize service of process on corporations only by personal delivery of a summons and complaint to the corporation's secretary.

The company has moved to dismiss MedForms's third-party complaint for (a) insufficient service of process, (b) lack of subject-matter jurisdiction, and (c) improper joinder.

How should the District Court rule on each of the grounds asserted in the company's motion to dismiss? 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 (876 words) ========

(a) ***Motion for insufficient service of process***

The court should deny company's motion.

The issue here is whether personal service upon a CEO of a company constitutes valid service pursuant to the Federal Rules of Civil Procedure

Pursuant to Rule 4 of the Federal Rules of Civil Procedure ("FRCP") service of process may be done by actual service upon the defendant (in-person service). Furthermore pursuant to Rule 4 of the FRCP, service may be properly done by serving the summons and complaint at the defendant's usual abode to an individual of suitable age (usually

over the age of 18). Under the latter method, service does not have to be given to the actual defendant. When a case is filed in federal court, it is often an issue at to whether federal or the state's substantive law should be applied. When a case is filed in federal court, the federal court usually is to apply only state substantive law. This is pursuant to the *Erie* doctrine. When a case is in federal court, and there are conflicting procedural laws (between state and federal laws) the federal procedural law is usually the one that must be applied as long as the federal procedural law is constitutional.

Here, both State A and State B have a service of process law whereby service on corporations is only to be done by delivery of the summons and complaint to the corporations secretary. This conflicts with FRCP Rule 4 for service of process, which was stated above. Pursuant to FRCP Rule 4, service may be had on an individual if it is done at his or her usual abode on a person of suitable age. Here, there is no question that Medforms service was done pursuant to the FRCP. This is because they served company at its headquarter, which is obviously there usual abode; furthermore, the service was given to someone of suitable age (the CEO). Because State A and State B have conflciting procedural laws with the FRCP's rule on service of process, the FRCP procedural law will govern this issue pursuant to the Erie Doctrine. As such, the FRCP will govern and the service should be found to have been proper.

The District Court should deny company's motion to dismiss for insufficient service of process.

(b) ***Motion for lack of subject matter jurisdiction***

The court should also deny company's motion to dismiss for ack of subject matter jurisdiction.

The issue here is whether there is complete diversity present between company and MedForms.

In order for a federal district court to hear a case, there must be proper subject matter jurisdiction ("SMJ"). To have proper SMJ, a federal court can either have (1) federal question SMJ, or (2) diversity of citizenship SMJ. Under diversity of citizenship SMJ, there must be (1) complete diversity between the parties and (2) the amount in controversy must exceed $75,000. When determining an individual's citizenship, courts look to an individual's domicile. An individual is domiciled in the place where he or she is physically present with the intent to remain indefinetely. When determining corporations citizenship, they can have more than one place of citizenship. A corporation is deemed to be a citizen of the place where it is incorporated, as well of the place where it has its principal place of business.

Here, MedForms Inc. is a citizen of State A. The facts state that State A is where it is incorporated and also where it has its headquarters. Company is a citizen of State B. The facts state that company is incorporated and has its headquarters in State B. It does not matter that it has a processing facility in State A--this does not make them a State A citizen. Furthermore, the amount in controversy that MedForms seeks from

company exceeds $75,000. This is the amount that the sought in their well pleaded complaint. Therefore both requirement for diversity of citizenship SMJ have been met.

The District Court should deny Company's motion to dismiss for lack of SMJ.

(c) ***Motion to dismiss for improper joinder***

The court should grant Company's motion for improper joinder

The issue here is whether a defendant may properly join a third party defendant if the suit does not arise out of the same transaction or occurence as the original suit in question.

A defendant may properly bring a third party claim against a third party defendant is the claim arises out of the same common nucleus of operative fact as the orignal suit in question. This means that the claim brough by the defendant against the third party defendant must arise out of the same transaction or occurence as the original suit between plaintiff and defendant.

Here, MedForms claim against Company does not arise out of the same common nucleus of operative fact from the original claim by the woman. MedForms third party claim is a separate breach of contract claim against Company that does not arise out of the same transaction or occurence as the woman's orignal sex discrimination claim. As such, this is not a proper joinder of parties by MedForms.

Because MedForms claim does not arise out of the same transaction or occurence as the original claim, Company's motion to dismiss for improper joinder should be granted.

======== End of Answer #5 ========

MEE Question 6

A husband and wife were married in 2005.

In 2009, the husband transferred $600,000 of his money to a revocable trust. Under the terms of the properly executed trust instrument, upon the husband's death all trust assets would pass to his alma mater, University.

In 2012, the husband properly executed a will, prepared by his attorney based on the husband's oral instructions. Under the will, the husband bequeathed $5,000 to his best friend and the balance of his estate "to my wife, regardless of whether we have children." The husband failed to mention the revocable trust to his attorney during the preparation of this will, and the attorney did not ask the husband whether he had made any significant transfers in prior years.

In 2013, the husband and wife had a daughter.

In 2014, the husband was killed in an automobile accident. After his death, the wife found the husband's will and the revocable trust instrument on his desk. On the first page of the will, beginning in the left-hand margin and extending over the words setting forth the bequests to the husband's best friend and his wife, were the following words: "This will makes no sense, as most of my assets are in the trust for University and neither my wife nor my daughter seems adequately provided for. Estate plan should be changed. Call lawyer to fix." The statement was indisputably in the husband's handwriting. The wife also found a voice message on the phone from the husband's lawyer, which said, "Calling back. I understand you have concerns about your will."

The husband is survived by his wife, their daughter, and the husband's best friend. The assets in the revocable trust are now worth $900,000. The husband's probate estate is worth $300,000. He owed no debts at his death.

All the foregoing events occurred in State A, which is not a community property state. State A has enacted all of the customary probate statutes, but of particular relevance to the wife are the following:

(i) If a decedent dies intestate survived by a spouse and issue, the decedent's surviving spouse takes one-half of the estate and the decedent's surviving issue take the other half.

(ii) A revocable trust created by a decedent during the decedent's marriage is deemed illusory and the decedent's surviving spouse is entitled to receive one-half of the trust's assets.

1. How should the assets of the husband's probate estate be distributed? Explain.

2. How should the assets of the revocable trust be distributed? Explain.

6) Please type your answer to MEE 6 below

(Essay)

======== Start of Answer #6 (517 words) ========

1. The assets of the husband's probate estate should be divided up according to his will with $5,000 to his best friend, and the rest of the estate going to the surviving spouse. To revoke a will, there must be clear intent by the maker of revocation. Most states require that the will actually be destroyed to formally revoke. Even in the states that do not require physical destruction, revocation must be evidenced by clear intent or by the adoption of new will that implicitly revokes the old will. Here, there is neither clear intent to revoke or a new instrument. While the decedent wrote on his will that it "didn't make sense" and that the "plan should be changed", there is nothing to indicate that the decedent, at the time of writing those phrases, disclaimed the present will or revoked it at the present. The only indication given by the decedent's writing on the will is the future intent to change the will, and that future intent is not enough to evidence of current intent to revoke the will. Consequently, the will is valid, and the estate should be divided according to the will.

A child who is born after the creation of a will and who is left out of the terms of the will is called a pretermitted child. Generally, a probate court will include the child in the distribution of the assets, even though the child isn't mentioned, unless: (1) the decedent shows a clear intent to exclude the child; (2) the decedent has other children, and the other children do not receive anything under the will; or (3) the child is otherwise provided for outside of the will. In this case,

the decedent clearly stated in the will that the provisions applied "regardless of whether we have children". This provision evidences a clear intent of the decedent not to include children in the will. Consequently, the court will not redistribute assets to give to the child. The assets should be distributed as set out in the decedent's will.

2. The revocable trust is still valid. Half of the trust's assets ($450,000) should be distributed to the wife as the surviving spouse of the decedent, and the other half of the trust's assets ($450,000) should be distributed to the University as the beneficiary under the trust. Revocable trusts are valid if there is the intent to create a trust, trust property, a trust purpose, and ascertainable beneficiaries. Here, all of these requirements are present, confirming that the trust is valid. Revoking a revocable trust requires clear intent by the settlor. There is no indication that the decedent clearly intended to revoke the trust. Without the settlor's intent, the trust remains valid. Under the law of State A, a revocable trust created by a decedent during marriage is illusory, and the decedent's spouse and the beneficiary of the trust split the trust property. Here, the decedent and his wife were married in 2005, and the revocable trust was created in 2009, during the marriage. The trust assets should be distributed according to this rule.

======== End of Answer #6 ========

END OF EXAM