

## MEE Question 1

Bill and Nancy recently opened a gym, "Comet Fitness," that they operate as a general partnership. Three blocks from the gym is a sporting-goods store that is having a "going-out-of-business sale" with signs in the store's windows stating that "all sales are final." Bill and Nancy are acquainted with the store owner. Last week, Bill called the store owner and said, "I hope you've got some nice treadmills; the gym could use one or more. I'll try to get over there to check them out."

The next day, Bill and Nancy ran into Kim, one of Nancy's friends, at a party. Kim is a personal trainer. Nancy had not seen Kim for several months. Nancy told Kim that she and Bill had opened a gym and that Kim should consider coming to work for them as a personal trainer. Kim said that she would think about it and let Nancy know. While Kim was walking away, she heard Bill say to Nancy, "You know, the gym has only five treadmills, but I sure wish it had two more," and heard Nancy reply, "I agree. We desperately need to buy one or two more."

The day after the party, Kim, thinking that she might be interested in the trainer job and hoping to impress Bill and Nancy with her initiative, went to the sporting-goods store. Telling the store owner that she was acting on behalf of Comet Fitness, Kim purchased a treadmill and directed the store owner to send the treadmill to Comet Fitness, along with the invoice for the purchase. The store owner agreed to do so.

Later that day, Nancy went to the sporting-goods store and purchased two treadmills for the gym. Unlike the treadmill Kim had purchased, these treadmills had built-in video touchscreens and were similar to the ones that Nancy had previously purchased for Comet Fitness. Nancy told the store owner to have the treadmills delivered to Comet Fitness along with an invoice for the purchase. When Nancy returned to the gym, she told Bill that she had bought two treadmills for the business. Bill became furious and said, "You had no right to do that without first consulting me. You should have made sure that I was with you when you bought them to make sure I'd like what you were buying. I'll return them tomorrow after they arrive unless I like what I see."

The following day, three treadmills arrived at the gym. When Bill and Nancy saw the treadmill purchased by Kim, they told the delivery person, "Take that one back. There must be a mistake—we never bought this." When Bill saw the two treadmills Nancy had bought, he told the delivery person, "Take them back, too; they're nice but not the same color as our other treadmills, and they just won't fit in." Nancy objected and told the delivery person to leave the two treadmills.

The delivery person immediately called the store owner, who said, "Leave them all at the gym. All sales are final. Tell them to pay me what they owe me."

1. Was Kim an agent of Comet Fitness when she purchased the treadmill? Explain.
2. Assuming that Kim was an agent of Comet Fitness,
  - (a) did she have actual authority to purchase the treadmill for Comet Fitness? Explain.
  - (b) did she have apparent authority to purchase the treadmill for Comet Fitness? Explain.
3. Did Nancy have the authority to bind Comet Fitness to the contract to purchase the two treadmills with the video touchscreens? Explain.

1)

1. Under partnership law, Kim was not an agent of Comet Fitness when she purchased the treadmill because she is not a partner in Comet Fitness and neither Bill nor Nancy held Kim out to the sporting goods store as their agent.

An general partnership is created when two or more people associate to carry on a business for profit. General partners are agents of the partnership and can bind the partnership through actual or apparent authority. An agency relationship is created when a party consents to have another act on his behalf and under his control, and the other so consents to act. Actual authority exists in a general partnership when the majority of partners agree to routine transactions of the kind for that business. Actual authority exists for an agent of the business based on the agent's reasonable belief that he has the express or implied authority to act based on the manifestations of the principal.

Extraordinary transactions require unanimous agreement. When there is an even split between two partners, there can be no majority and one partner may prevent the other from having actual authority. Apparent authority is the authority that a third party reasonably believes the person has based on the partnership's holding out of that person as a partner or other agent of the business. When there is apparent authority, the partnership is bound. There can be no apparent authority unless the partnership holds out the person as an agent.

Here, the facts indicate that only Bill and Nancy are general partners who operate Comet Fitness, so Kim is not an agent of Comet Fitness by virtue of being a partner. The conversation that Bill and Nancy had with Kim at the party did not create an agency relationship between Bill and Nancy as principals and Kim as a purported agent because neither Bill nor Nancy asked Kim to take any action on behalf of the Comet Fitness, so Kim was not an agent by agreement. Even though the sporting goods business will argue it was reasonable to believe Kim, because only Kim held herself out to be an agent of Comet Fitness, the business is not bound on the contract (but Kim is).

Thus, under partnership law, Kim was not an agent of Comet Fitness when she purchased the treadmill.

- 2a. Under agency, assuming Kim was an agent of Comet Fitness, Kim did not have actual authority to purchase the treadmill for Comet Fitness because she was not an agent of Comet Fitness and neither Bill nor Nancy told her to purchase the treadmill.

See rules above.

Here, assuming Kim was an agent of the business, Kim had no actual authority because

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the "should consider coming to work for them" comment was insufficient to create a reasonable belief in Kim's mind that Bill and Nancy wanted Kim to buy a treadmill.

Similarly, an overheard conversation and Kim's purpose to impress Bill and Nancy in hopes of being hired is not a reasonable basis to believe she had implied actual authority.

Thus, under agency, assuming Kim was an agent of Comet Fitness, Kim did not have actual authority to purchase the treadmill for Comet Fitness.

2b. Under agency, assuming Kim was an agent of Comet Fitness, Kim did not have apparent authority to purchase the treadmill for Comet Fitness because only Kim held herself out as an agent to the sporting goods store.

See rules above.

As discussed above, neither Bill nor Nancy held Kim out to the sporting goods store as their agent, only Kim held herself out as an agent. Even if the sporting goods store knew that Kim was a trainer, that is insufficient to form a reasonable belief that Kim had the authority to purchase the treadmill.

Thus, under agency, assuming Kim was an agent of Comet Fitness, Kim did not have apparent authority to purchase the treadmill for Comet Fitness.

3. Under agency restrictions, Nancy had the authority to bind Comet Fitness to the contract to purchase the two treadmills with the video touchscreens because at the time of her purchase, she did not know that Bill would insist on going with her to approve of the purchase.

See rules above. When a partner is unaware of a restriction and acts in good faith, his acts will bind the partnership. When a partner knows he is restricted but the seller does not, and the partner forms a contract, the partnership is not bound, but the partner who made the contract will be bound.

Here, Bill's comment to the sporting goods store that he would "try to get over there to check them out" did not expressly or impliedly inform Nancy that Bill would not approve of her treadmill purchase unless Bill accompanied her. Because Nancy did not know Bill would object, Nancy had implied actual authority as a partner to purchase the treadmills. Because actual authority existed at the time of the purchase, Bill's later objection is ineffective to prevent Comet Fitness from being bound on the contract.

Thus, Under agency restrictions, Nancy had the authority to bind Comet Fitness to the contract to purchase the two treadmills with the video touchscreens.

**END OF EXAM**

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## MEE Question 2

Brenda, a trauma surgeon, was on her way to perform emergency surgery at the hospital. As she drove through her neighborhood, a school bus stopped ahead of her, flashed its red lights, and extended its side-mounted stop sign. The law prohibits passing a stopped school bus under these circumstances. Brenda slowed, considering whether she should pass the bus because of the medical emergency.

Alan was driving a dump truck behind Brenda's car and also saw the bus's extended stop sign. Impatient, he swerved around Brenda's car and the bus. As he did so, his truck's bumper scraped a gash into Brenda's driver's-side doors.

Alan drove out of the neighborhood and onto the four-lane divided highway. Brenda did so also, intent on reaching the hospital quickly. She changed to the left lane and sped past Alan. This angered Alan. He saw Brenda's personalized license plate, "MED DOC." He muttered, "A self-important physician, probably headed to bandage a scraped knee." Alan accelerated and dangerously tailed Brenda's car as both vehicles traveled at 15 miles per hour (mph) above the speed limit. As Alan repeatedly honked his horn, Brenda feared that Alan's truck would hit her car.

Brenda signaled to change from the left lane to the right lane so that she could exit the highway, but Alan positioned his truck beside Brenda's car, matching her speed. Brenda slowed to allow Alan to pull ahead, but Alan slowed also, lowered his window, and yelled, "Oops! Don't miss the exit to the clinic!" Because Alan blocked Brenda from changing into the right lane, she missed the exit for the hospital.

Brenda accelerated more and pulled ahead of Alan into the right lane. She continued 10 miles further at nearly 90 mph, with Alan still close behind. She left the highway at the next available exit intending to double back toward the hospital, but she saw that Alan had followed her off the highway. Brenda pulled into a gas station lot, ran into the restroom, and locked the door. Alan pounded on the restroom door, shouting, "Come out so you and me can have a talk, if you know what I mean!" Brenda shouted back, "I'm not coming out until you leave." Alan yelled back, "I've got all day, so get comfortable." After two minutes, Alan got into his truck and left.

Brenda waited in fear inside the restroom for 20 minutes, after which she peeked out and saw that Alan was gone. She drove to the hospital, using only back roads to make sure that the truck was not following, adding more time to her drive. She finally arrived at the hospital one hour later than she would have arrived if Alan had not prevented her from exiting the highway. The patient had died moments before she arrived. If Brenda had arrived 15 minutes sooner, she would have arrived in time to perform the surgery and the patient likely would have survived.

Brenda sued Alan, asserting two common-law claims. Alan has admitted to all the facts described above. In Brenda's lawsuit, she alleged that Alan "damaged her car as he violated the school-bus law" and that he then "detained her in a public restroom against her will." The patient's family sued Alan for "negligence causing wrongful death."

The jurisdiction expressly allows common-law negligence actions despite the death of the injured party. The jurisdiction's rules mirror the Federal Rules of Civil Procedure.

1. In a negligence action against Alan, can Brenda establish that Alan breached his duty of care based solely on his violation of the school-bus law? Explain.
2. Can Brenda establish Alan's liability based on Alan's allegedly detaining her against her will? Explain.
3. Is Alan's admission sufficient for the patient's family to prevail in a motion for partial summary judgment establishing that Alan is liable on the family's wrongful-death claim? Explain.

The Board of Bar Examiners did not select a representative passing answer for this question.

### **MEE Question 3**

Coach is a high school basketball coach who currently lives and works in State A, where she is domiciled. One year ago, Coach visited Hometown, in State H, for her high school reunion. During the reunion, she got into an argument with Fran over which of them was the better athlete in high school. Fran lives in State H, where she is domiciled.

A week after the reunion, when Coach had returned to State A, she learned that Fran was spreading rumors about her. In particular, Fran was telling people that Coach had used illegal drugs with students during her visit to State H.

A newspaper in State A learned of the allegations about Coach and published them, along with quotations from Fran, who had repeated her allegations to a news reporter who had visited Fran in State H. The newspaper story led to a public outcry against Coach, and she was fired. She was unable to find another job for many months.

Coach sued Fran in a state court in State A, alleging that Fran had defamed her under state law. Coach's complaint sought damages in the amount of \$74,999. In a sworn affidavit attached to the complaint, Coach asserted that she had lost \$130,000 in wages due to Fran's defamatory statements, but she stipulated that she would not seek or accept damages in excess of the amount sought in her complaint. That stipulation is binding under State A law.

A process server handed Fran a summons and a copy of the complaint when Fran was attending a basketball game in State A. That was the first time Fran had ever been in State A, and she was there for less than a day. She had no other connection with State A. Statutory law in State A authorizes its courts to exercise personal jurisdiction over persons who are served with process while physically present in the state, without regard to whether they have any other connection with the state.

Ten days later, before filing any answer or responsive motion, Fran filed a notice of removal and the case was removed from state court to the federal district court for the District of State A. The notice of removal asserted that the amount in controversy was \$130,000, the alleged amount of Coach's lost wages.

Coach has moved the federal district court to remand the case to the state court in State A, arguing that the federal court lacks subject-matter jurisdiction over the case.

Fran has moved the federal court to dismiss the case for lack of personal jurisdiction over her and for improper venue.

1. Should the federal court remand the case to the state court in State A on the ground that the federal court lacks subject-matter jurisdiction? Explain.
2. Assuming that the case is not remanded for lack of subject-matter jurisdiction, should the federal court dismiss the case for lack of personal jurisdiction over Fran? Explain.
3. Assuming that the case is not remanded and is not dismissed for lack of personal jurisdiction, should the federal court dismiss the case for improper venue? Explain.

The Board of Bar Examiners did not select a representative passing answer for this question.

#### **MEE Question 4**

Based on the following facts, David has been charged with knowingly obtaining money under the control of a financial institution (Bank) by means of false or fraudulent representations.

David entered Bank on April 18, 2024. After stopping at the counter where pens and banking slips were located, David presented to the teller a check that appeared to be drawn by Customer on her account at Bank and payable to the order of "David" in the amount of \$1,000. Before cashing the check, the teller asked David to produce photo identification (ID), which David did. The teller examined the ID, confirming that it was David's and bore his picture. The teller then returned the ID and gave \$1,000 to David, who left Bank.

Customer received a notification on her banking app, alerting her that a \$1,000 check had just been charged to her account. Customer promptly called Bank to complain. She was transferred to a fraud investigator and immediately exclaimed, "I didn't write that \$1,000 check that you just charged to my account!" Customer was noticeably frustrated and angry.

The investigator began an investigation. First, he compared the signature on the check with Customer's signature in Bank's records and concluded that Customer's signature had been forged on the check. He then reviewed the original video recording of the lobby, counters, and tellers, taken by Bank's security cameras on April 18, 2024. Based on that review, the investigator determined that an individual, later identified as David, had presented a \$1,000 check purportedly drawn on Customer's account and that the teller had cashed it. The investigator wrote a report detailing Customer's complaint, describing the video recording, and attaching copies of the check at issue and a copy of Customer's signature from Bank's records.

In a statement to law enforcement, David denied visiting Bank that day. He has pleaded not guilty. The case is now scheduled for trial in federal court. Neither Customer nor the teller is available to testify. However, Bank's investigator, who is a 10-year employee of Bank and works in an office next to Bank's lobby, is available and will testify.

Evaluate the admissibility of the following evidence if it is offered during the testimony of Bank's investigator in the government's case-in-chief. (Do not discuss constitutional issues.)

1. Bank's original video recording of its lobby, counters, and tellers from April 18, 2024, which shows David stopping at the counter in the lobby and interacting with the teller. Explain.
2. The investigator's testimony as to Customer's oral complaint to the investigator. Explain.
3. The investigator's written report, if the investigator testifies that he is unable to recall both the details of the investigation and writing the report. (Assume that the report is relevant and not admissible as a business record.) Explain.

The Board of Bar Examiners did not select a representative passing answer for this question.

## MEE Question 5

Six years ago, Alice properly created a trust naming a local bank as the sole trustee and naming herself as the sole beneficiary of the trust income. The trust provided that upon Alice's death, the trust principal would be distributed to her niece, Shirley. Alice and Shirley had a very close relationship, although they lived far apart. The trust also directed the trustee to invest trust assets only in "prudent investments." The trust was silent as to whether it was revocable or irrevocable.

When Alice created the trust, she also properly executed a durable health-care power of attorney naming John, her friend and next-door neighbor, as her agent to make health-care decisions for her. This power was expressly conditioned upon Alice's being unable to make health-care decisions for herself.

Four weeks ago, before she left for a vacation in Europe, Alice had separate telephone conversations first with Shirley and then with John. In both conversations, Alice mused about her wishes if "something should ever happen to me." Alice said to Shirley, "If something should happen to me, I don't want to be connected to a life-support system." In her later conversation with John, Alice told him, "In no event do I ever want to be connected to a life-support system if there is little or no hope of my recovery."

Three weeks ago, Shirley found out that the trustee had imprudently invested 30% of the trust's assets in the stock of a company that later went bankrupt, resulting in a significant loss to the trust. Furious, Shirley immediately contacted the bank officer overseeing the trust. After hearing Shirley's complaints, the trust officer responded truthfully that Alice had approved the investment knowing that it was imprudent. He also accurately told Shirley that Alice was fully competent when she approved the investment. The trust officer then told Shirley, "I guess you win some and you lose some."

The next day, Shirley called Alice, who was still vacationing in Europe, to express her anger about the investment. Alice responded, "We can talk about this when I get home in two weeks."

The day after Alice returned home, she had a stroke and was rushed to the hospital. Three hours later, Alice was connected to a life-support system. Her doctor determined that the stroke had left her unable to make her own health-care decisions. The doctor contacted John and Shirley and told them, "It is unclear whether she will survive or, if she survives, what kind of life she will have. We should know much more in a week or so." Shirley believed that the life-support system should be removed immediately and told the doctor to do so at once. John disagreed and told the doctor to keep Alice on the life-support system.

Ten years ago, the jurisdiction adopted the Uniform Trust Code and a health-care power of attorney act.

1. Is the trust revocable or irrevocable? Explain.
2. (a) Does Shirley have an interest in the trust? Explain.  
(b) Assuming that Shirley has an interest in the trust, how is this interest characterized? Explain.
3. Assuming that Shirley has an interest in the trust, does she have a claim against the bank for making the imprudent investment? Explain.
4. Between Shirley and John, who has the legal authority to direct the doctor whether to remove Alice from the life-support system? Explain.

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1. Under state law, the trust is revocable because the state adopted the Uniform Trust Code ten years ago.

Under common law, a trust that is silent as to revocability is irrevocable, but under the Uniform Trust Code, a trust that is silent is revocable.

Here, the facts indicate that Alice's trust instrument was silent as to whether it was revocable or irrevocable, and that the state adopted the Uniform Trust Code ten years ago. Because Alice's trust was formed in a UTC jurisdiction and it is silent as to revocability, her trust is revocable.

Thus, under state law, the trust is revocable.

2a. Under the UTC, Shirley has an interest in the trust because she is a qualified beneficiary.

Under the UTC a qualified beneficiary is any current beneficiary and any first line remainder beneficiary. A qualified beneficiary has rights to enforce the trust.

Here, because Alice is a living settlor of her own trust, she is the current beneficiary and has a life estate. Because Shirley will receive the trust principal after Alice dies, Shirley is a first line remainder beneficiary, making her a qualified beneficiary.

Thus, under the UTC, Shirley has an interest in the trust

2b. Under estate law, assuming Shirley has an interest in the trust, her interest is an indefeasibly vested remainder because there are no other possible takers who can divest her interest.

See rules above. The interest that follows a life estate is either a contingent or vested remainder. The remainder is contingent if the beneficiaries are not fully and completely ascertained at the time of creation of the interest. A remainder is vested if the beneficiaries are in existence at the creation of the interest. A vested remainder is subject to defeasance if part or all of his interest can be depleted, e.g., part of a class which could obtain more members over time, making his share smaller at distribution. A remainder is indefeasibly vested if the interest created will go to a one or more ascertained beneficiaries in existence at the time the interest was created and no others.

Here, Shirley has an indefeasibly vested remainder because 1) her interest follows Alice's life estate, 2) at its creation, Alice's gift of the trust principal after her death was to a single,

living, ascertained beneficiary (Shirley).

Thus, under estate law, assuming Shirley has an interest in the trust, her interest is an indefeasibly vested remainder.

3. Under the duty of prudence, assuming that Shirley has an interest in the trust, she does not have a claim against the bank for making the imprudent investment because Alice directed the investment.

See rules above. A trustee owes fiduciary duties to the settlor and all beneficiaries. A trustee has a duty to invest prudently, with care, skill, and caution, and to diversify holdings to make the estate productive. When the settlor is alive and the trust is revocable, the trustee owes his duties solely to the settlor until the trust becomes irrevocable (usually at the settlor's death). A trustee must follow the living settlor's instructions for the revocable trust property, and will not be liable for doing so if the instructions are reasonable.

Here, the trustee Bank did not breach its duty of care or prudence because Alice is alive, the trust is revocable, and Alice ordered the investment at issue. Because Shirley is a qualified beneficiary, she has the right to enforce the terms of the trust and sue for breach of duty, but because Alice made the decision to invest unwisely, Shirley has no claim against the trustee Bank.

Thus, under the duty of prudence, assuming that Shirley has an interest in the trust, she does not have a claim against the bank for making the imprudent investment.

4. Under the health care power of attorney act, John has legal authority to direct the doctor whether to remove Alice from the life support system because his authority is in writing.

Generally, a valid health care power of attorney must be in writing, signed by a grantor with capacity to assign his rights. Between a properly executed written healthcare power of attorney and later oral statements, the written power of attorney should prevail. The holder of a healthcare power of attorney should consult others who may have more current information, but is not bound by the additional information except to the extent that he has been granted authority to substitute his judgement for the grantor's.

Here, the facts indicate that John has a "properly executed" durable health care power of attorney naming him as her agent to make health care decisions for her only once Alice was unable to make health care decisions for herself, but the power is not specific with regard to life sustaining care. The conversations between Alice and Shirley and Alice and John were slightly different because Alice flatly told Shirley, "I don't want to be connected to a life-support system" while her statement to John was qualified by "if there is little or not hope of my recovery." John should consult Shirley, but he retains the authority to make the decision for Alice because he has a written healthcare power of attorney.

Thus, under the health care power of attorney act, John has legal authority to direct the doctor whether to remove Alice from the life support system.

**END OF EXAM**