

Not for public distribution. For personal use only.

July 2025 MEE Questions

These materials are copyrighted by NCBE and are being reprinted with permission of NCBE. For personal use only.
May not be reproduced or distributed in any way.

Copyright © 2025 by the National Conference of Bar Examiners.
All rights reserved.

MEE Question 1

Lin and Bo are chemists. Over the course of two years, working together, they invented a new kind of antibacterial soap that reduces bacteria on skin for much longer than ordinary antibacterial soap. They shared ownership of the soap formula equally.

Lin and Bo agreed to start a business to manufacture, distribute, and sell their antibacterial soap. First, they formed a limited liability company (LLC) in State A, which has enacted the current version of the Revised Uniform Limited Liability Company Act (RULLCA). Lin and Bo did not enter into a written operating agreement for the LLC and did not discuss altering any of the default rules for limited liability companies. After forming the LLC, they contributed their soap formula to it; they agreed that the formula was worth \$20,000 at the time of their contribution. Bo also contributed \$5,000 to the LLC, which the LLC used to buy soap ingredients and advertise its product.

During the LLC's first year of operations, Bo contributed an additional \$2,000 to it. After this contribution, neither Lin nor Bo made any other contributions to the LLC.

During its first two years of operations, the LLC made a total profit of \$5,000. Through the end of the second year of its operations, the LLC made no distributions to Lin or Bo.

At the start of its third year of operations, the LLC had \$5,000 in cash, the proprietary soap formula now worth \$40,000, supplies worth \$1,000, and no debt. At that point, Lin and Bo disagreed about the company's direction. Lin did not want to expand the business beyond soap. Bo wanted to expand the business into other consumer products.

Lin and Bo are at an impasse about whether to expand the business.

1. Whose preference will prevail—Lin's preference not to expand the business into other products or Bo's preference to expand the business? Explain.
2. If the parties agree to dissolve the LLC, how would the LLC distribute its assets between Lin and Bo? Explain.
3. If the parties do not agree to dissolve the LLC and one party seeks judicial dissolution, is a court likely to order a dissolution? Explain.

MEE Question 2

Pete lives in the northern United States. In the winter months, he earns his living by clearing snow from driveways and parking lots.

One morning, following a particularly heavy snowfall, Debbie contacted Pete and asked him to come to her residence and clear the snow from her driveway. Debbie was not a regular customer of Pete's. They had the following exchange via email:

Debbie: Hi, Pete. Can you come to my house and clear the snow from my driveway? I live at 10 Arbor Lane, right here in town. What would you charge?

Pete: I'm pretty busy today clearing snow for all my regular customers. I'm not sure I could get to you at all today, but if things go well, I could be there around 4 p.m. I charge \$300 for a normal-size driveway.

Debbie: Well, I have a plane to catch tonight, and I must leave the house by 5 p.m. I'm desperate. If you can get the snow cleared from my driveway before 5 p.m., I'll pay a premium price of \$500.

Pete: I will do my best, but I can't make any promises.

Pete worked extra hard and fast that day to finish clearing snow for his regular customers. To further ensure that he got to Debbie's house in time to get her driveway cleared by 5 p.m., he passed up an opportunity to clear a parking lot for \$400. He was able to finish all his work for regular customers by 3:30, which left him plenty of time to get to Debbie's house and clear her driveway.

However, when Pete arrived at Debbie's house at 4 p.m., he saw that the driveway had already been cleared.

Pete left his truck, went to the front door of Debbie's house, and rang the doorbell. When Debbie appeared, he said, "I'm Pete. I accept your offer to clear your driveway. I'll get started right away." Debbie said, "Sorry, someone came by and offered to do the job for \$300, so I paid him to do it. As you can see, it's already done." Pete replied, "I still want my \$500." Debbie told Pete that she owed him nothing, and she shut the door.

Pete believes that, in light of the email exchange with Debbie, the fact that he passed up the opportunity to clear the parking lot, and the fact that he showed up at Debbie's house in time to clear her driveway by 5 p.m., he was entitled to clear Debbie's driveway and be paid \$500.

1. Did the exchange of emails form a contract? Explain.
2. When Pete traveled to Debbie's house and said to her, "I accept your offer to clear your driveway," did that form a contract? Explain.

3. Assuming that no contract was formed under Question 1 or 2, does Pete have a claim based on his reliance on Debbie's statement that she would pay a premium price of \$500 if he cleared the snow from her driveway by 5 p.m.? Explain.
4. Assuming that Pete has a valid claim against Debbie under Question 3, how much could he recover? Explain.

Do Not Copy

MEE Question 3

Testator was born in 1880 in a rural area of State A. At the age of 5, he was enrolled in the local one-room schoolhouse and remained in school there until he graduated at age 18. There were no more than 30 students in the school at any one time. All four students in Testator's graduating class attended State A University. In 1902, Testator graduated from State A University with a degree in business. Over the next 20 years, he was extremely successful financially.

In 1922, Testator died leaving a substantial estate. He had never married and had no children. His closest living relative at his death was his first cousin, with whom he'd had little contact since his childhood.

Under his probated will, Testator bequeathed a total of \$500,000 to several art museums throughout the United States, \$250,000 to Capital City Concert Hall, and \$1,750,000 to the business college at State A University. He bequeathed the balance of his estate (\$2,500,000) to a valid perpetual charitable trust, with Bank X in State A named as trustee. Under the terms of the trust, all trust income was distributable annually to pay the education expenses of any persons, as selected by the trustee, who had graduated from a one-room schoolhouse in State A and were attending State A University while under the age of 25.

For many years, the trustee had no difficulty identifying potential beneficiaries under the terms of the trust. Over time, however, there was a substantial decrease in the number of students graduating from one-room schoolhouses in State A. By 2010, there were no such students attending State A University, and the remaining one-room schoolhouse in State A permanently closed. There are now no longer any persons to whom the trustee can distribute trust income in accordance with the terms of the trust.

The value of the trust assets is \$10 million, earning roughly \$500,000 of trust income annually.

Bank X would like to resign as trustee and recommends that a court appoint Bank Y as trustee. Bank Y is a reputable bank with extensive experience in trust administration and is willing to assume the trusteeship but only if the terms of the trust are modified to allow it to distribute trust income to graduates of any rural public high school in State A attending State A University.

Fred, the closest relative of Testator now living and the sole surviving descendant of Testator's first cousin, believes that the trust can no longer continue and should be terminated, and that the principal should therefore be distributed to him.

Capital City Concert Hall, having recently learned of these facts, believes that the trust principal of \$10 million should be held exclusively for its benefit with trust income payable only to it.

State A has adopted the Uniform Trust Code. There are no other applicable statutes.

1. Does Bank X need judicial approval to resign as trustee? Explain.
2. Does Fred have any interest in the trust? Explain.
3. Can the trust's terms be judicially modified? Explain.
4. Assuming that Bank Y has been appointed trustee and that the trust terms can be judicially modified, between the suggestions offered by Bank Y and Capital City Concert Hall, which suggestion would a court be more likely to adopt? Explain.

Do Not Copy

MEE Question 4

Last year, Congress passed the "Economic Incentive Act" (Act), which the President signed into law. The preamble of the Act states that it was passed pursuant to Congress's power to regulate interstate commerce, and no legislative history indicates any other purpose.

The Act contains two substantive provisions. First, the Notice Provision prohibits "any employer with more than 100 employees from terminating an employee's employment without cause on less than 30 days' notice." The Notice Provision states that it applies to employees of both private businesses and state and local governments.

Second, the Housing Provision of the Act creates a federal program that provides grants to private developers of new low-income housing projects meeting the Act's requirements. The Housing Provision directs designated municipalities to administer this federal grant program by accepting applications for grants, reviewing the applications, making decisions, and enforcing the Act's requirements. The Housing Provision authorizes the United States to impose monetary penalties on a municipality that does not administer the grant program.

The last section of the Act provides:

Any person who is harmed by the failure of any state or municipality to adhere to any provision of this Act may recover actual damages suffered as a result of that failure and may bring an action to recover those damages in federal court. A state or municipality shall not be immune, under the United States Constitution, from suit in federal court under the Act.

A man worked for State A, which employs more than 100 people, and a woman worked for City, a municipality in State A, which employs more than 100 people. State A and City recently terminated the employment of the man and the woman due to budget cuts. The man and the woman each received only one week's notice from their employers.

The man and the woman have filed separate lawsuits in federal district court against State A and City seeking damages for violations of the Notice Provision of the Act. In the suits against them, State A and City have each moved to dismiss on two grounds: (1) sovereign immunity recognized by the United States Constitution bars the lawsuits, and (2) the Notice Provision of the Act commandeers state and local governments in violation of the Tenth Amendment. No provision of State A law indicates that State A consents to lawsuits in federal court.

County is a municipality in State A that has refused to accept grant applications for federal funding as required by the Housing Provision of the Act. The United States, therefore, recently applied that provision to impose a substantial monetary penalty on County. County has filed a federal lawsuit seeking a declaration that the Housing Provision of the Act is unconstitutional because it commandeers municipalities in violation of the Tenth Amendment.

1. Does sovereign immunity bar the man's lawsuit against State A? Explain.
2. Does sovereign immunity bar the woman's lawsuit against City? Explain.
3. Does the Notice Provision of the Act commandeering State A in violation of the Tenth Amendment? Explain.
4. Does the Housing Provision of the Act commandeering County in violation of the Tenth Amendment? Explain.

Do Not Copy

MEE Question 5

A public high school in City, State A, has a rule that prohibits students from going to the gas station across the street from the school during school hours because the police have identified that gas station as the site of frequent drug dealing. The school includes the rule in the student handbook that the school provides to all students and their parents at the beginning of each school year. The school's principal also orally informs all students of the rule.

On October 10, at 2:30 p.m., during the last class of the day, the school principal looked out a window of the school building and observed a student walking from the school toward the gas station across the street. Once at the gas station, the student walked close to a car, talked to the driver through the open driver's-side window, and handed something to the driver. The principal could not see whether the student took anything from the driver, but after the car drove away, the principal saw the student put his hands in the front pockets of the jacket he was wearing.

The student returned to the school. About 10 minutes later, the principal ordered the student into the principal's office. When the student arrived, the principal reached into the front pockets of the student's jacket, which he was still wearing, and removed three \$20 bills and a small, clear plastic bag containing two white pills. As set forth in the student handbook, possession of any kind of medication in school is prohibited unless permission has been given by the school. The student did not have the school's permission to possess any medication. The principal informed the student that the money would be returned to him if it was not connected with a crime. The principal told the student to return to class.

The principal decided to search the student's assigned locker. The school's locker policy provides that lockers are the property of Local Public School District (LPSD), that an assigned locker may be searched at any time, and that the school administration has a master key to all lockers. This policy is written in the student handbook. In addition, on the outside of every locker is a sticker stating, "This locker is the property of LPSD and may be subject to search." The principal unlocked the student's assigned locker with the master key. On the locker's top shelf was a clear plastic bottle containing white pills that appeared to be identical to the pills found in the student's jacket pocket. There was also a small, clear plastic bag containing a green, leafy material that looked and smelled like marijuana, possession of which is a crime in State A. The principal confiscated both the bottle of pills and the plastic bag of leafy material.

The principal phoned City police. An officer arrived at the school and took into custody the items seized by the principal from the student and the locker. Chemical testing of these items determined that the white pills were methamphetamine and the leafy material was marijuana.

That evening, City police obtained a valid warrant to arrest the student for possession of controlled substances in violation of State A law.

The next day, two City police officers arrived at the school during the school day and arrested the student, who was wearing his backpack. The officers searched the student and his backpack, from which an officer removed the student's unlocked cell phone. One of the officers looked through the cell phone's text messages and found a series of messages that set meeting times and places and listed "number of units" and "cost." A message from 10:00 a.m. on October 10 referred to a meeting in the gas station parking lot at 2:35 p.m. and mentioned a "cost" of \$60.

State A charged the student with possession of controlled substances.

1. Did the principal's search of the student's jacket pockets violate the student's rights under the Fourth Amendment? Explain.
2. Did the principal's search of the student's locker violate the student's rights under the Fourth Amendment? Explain.
3. Did the officer's search of the student's text messages violate the student's rights under the Fourth Amendment? Explain.

MEE Question 6

After a homeowner's curbside mailbox was damaged, the homeowner phoned Quick Mailboxes, a small corporation that installs and repairs mailboxes. The homeowner told the Quick Mailboxes receptionist, "I don't care how you fix it; I just want it done by the end of the week." The receptionist said that the company would charge \$220 for the repair, and the homeowner agreed to hire Quick Mailboxes to perform the job.

Quick Mailboxes has 10 local employees. It conducts background checks on all its employees, verifies that they have appropriate driver's licenses, and trains them as needed. After receiving the homeowner's call, Quick Mailboxes promptly sent Jane, one of its part-time employees, from its main office to the homeowner's property to perform the repair. Jane works 20 hours each week for Quick Mailboxes. She drives to work sites in a small, old pickup truck owned by Quick Mailboxes.

When Jane arrived at the homeowner's address, she stopped the pickup truck along the curb on the hilly street so that she could survey the mailbox's damage from her window. As she was about to exit the truck, she answered a personal call on her cell phone. The call lasted about three minutes. Distracted by the call, Jane left the truck without shifting it into "park" and did not engage the parking brake before she walked to the homeowner's front door to introduce herself and explain the work she planned to perform.

While Jane and the homeowner were talking at the front door, the Quick Mailboxes truck began rolling down the street. The homeowner saw it and stared in surprise but said nothing. Seconds later, the truck rolled partly off the pavement into a street sign. The post holding the street sign collapsed, sending the sign crashing onto a vintage luxury car worth \$430,000 that a neighbor had parked on the public street.

The neighbor had the car repaired. Because of the special parts needed and the difficulty of finding them, the repairs cost \$55,000. The neighbor also suffered serious emotional harm, requiring medical attention, because he had happened to look out his living room window just as the sign fell and damaged his car, which had significant sentimental value to him.

1. Is Jane directly liable to the neighbor in a negligence action? Explain.
2. Is Quick Mailboxes liable to the neighbor either directly or vicariously? Explain.
3. Is the homeowner liable to the neighbor because the homeowner hired Quick Mailboxes? Explain.
4. (a) Assuming that any of the parties is liable, can the neighbor recover the cost to repair the car even though the repairs were unusually expensive? Explain.
(b) Assuming that any of the parties is liable, can the neighbor recover damages for emotional harm? Explain.

July 2025

New York State
Bar Examination

Sample Essay Answers

JULY 2025 NEW YORK STATE BAR EXAMINATION

SAMPLE ESSAY ANSWERS

The following are sample candidate answers that received scores superior to the average scale score awarded for the relevant essay. They have been reprinted without change, except for minor editing. These essays should not be viewed as "model" answers, and they do not, in all respects, accurately reflect New York State law and/or its application to the facts. These answers are intended to demonstrate the general length and quality of responses that earned above average scores on the indicated administration of the bar examination. These answers are not intended to be used as a means of learning the law tested on the examination, and their use for such a purpose is strongly discouraged.

ANSWER TO MEE 1

1. The issue is whether Lin or Bo has more power to decide on the decision about expanding the business than the other.

Under RULLCA, an LLC is presumed to be member-managed. Unless otherwise agreed, each member has equal power make decisions regarding the LLC's management. For matters involving ordinary course of business, a majority vote of the members is required. For matters involving extraordinary course of business, each member must consent.

Here, Lin and Bo formed the LLC in State A which has adopted RULLCA. Lin and Bo did not enter into a written operating agreement for the LLC and did not discuss altering any of the default rules for limited liability companies. Hence, default rules of RULLCA governs. Their LLC is presumed to be member-managed under equal power of each member. Although Bo contributed more money to the LLC, Bo does not have more power in the management of the LLC than Lin. The decision to expand the business beyond soap is not a matter within ordinary course of business. Both Lin and Bo must consent to it.

Therefore, Lin's preference not to expand the business into other products will prevail.

2. The issue is the way of distributing LLC's assets between Lin and Bo after dissolution.

Under RULLCA, unless otherwise agreed, the profit of an LLC will be equally shared among the members. After dissolution, the process of winding-up governs. Winding-up process will convert the assets of an LLC into cash and distribute in the following order: (1) creditors, (2) member's capital contribution, and (3) the remaining profits.

Here, at the start of its third year of operations, the LLC had \$5,000 in cash, the proprietary soap formula worth \$40,000, supplies worth \$1,000, and no debt. After forming the LLC, Lin and Bo agreed that the formula worth \$20,000 and they shared ownership equally. So as to the formula, each of them contributes \$10,000. Later, Bo also contributed \$5,000 and \$2,000 to the LLC. Lin did not make any other contributions to the LLC. As a result, at the time of dissolution, Bo has a contribution capital of \$1,7000 and Lin has a contribution capital of \$10,000.

At winding-up, after converting these assets into cash, the LLC has a total of \$46,000 in cash. Since the LLC has no debt, the cash will first pass to members based on their capital contribution. Bo would take \$17,000 and Lin would take \$10,000 based on their respective contribution. The remaining profits would be \$19,000. Since Bo and Lin do not have agreement as to profit sharing, the profits would be shared equally between them. Each of Bo and Lin would get \$9,500. As a total, Bo would get \$26,500 and Lin would get \$19,500.

Therefore, the LLC would distribute its assets by giving Bo \$26,500 and giving Lin \$19,500.

3. The issue is whether the court likely to order a judicial dissolution when the parties disagree to dissolve the LLC.

Under RULLCA, a court may order a dissolution if there is deadlock in the management of the LLC, the member engaged in illegal conduct or fraud, the property of the LLC has been misused or wasted, or the LLC has no profits for a amount of time. Instead of dissolution, A court may order the LLC or members to purchase the petitioner's shares in a fair value.

Here, there is no indication that Lin or Bo engage in illegal conduct or fraud and no indication that the LLC's property has been misused or wasted. The mere fact that Lin and Bo disagreed on the expanding decision does not render the LLC in deadlock. In fact, the LLC has made sound profits and its property value has grown up.

Therefore, the court will not likely to order a dissolution. If either Lin or Bo petitions, the court may likely order the other to purchase the petitioner's shares in a fair value.

ANSWER TO MEE 1

1. Whose preference will prevail- Lin's preference not to expand the business into other products or Bo's preference to expand the business? Explain

At issue is whether a LLC's fundamental purpose can be changed without consent of its members.

Unless otherwise specified in their operating agreement, under the RULLCA, in order for an LLC to adopt fundamental changes outside the scope of its ordinary course of business, there must be unanimous consent by the governing members. Members of an LLC, unless otherwise specified in their operating agreement, under the RULLCA equally share in the rights of managing and decision-making for the company. An LLC that has been validly formed but has not created its own operating agreement between its members is governed by the RULLCA. A decision to change the company's business venture or to adopt a new business different from its original purpose counts as a fundamental change to the company, which must be agreed on unanimously in order to take effect. Furthermore, such a change must also be accompanied by an amendment to the filing articles, so that they accurately represent the new scope and business of the company.

Here, Bo and Lin are the only members running their LLC. It was formed with the express purpose of manufacturing, distributing, and selling their antibacterial soap. As they have no written operating agreement, they are governed by the RULLCA. Expanding their company beyond the sale of soap would be a fundamental change to the company - it would exceed the company's fundamental purpose as intended at its inception and as described in their filing statements when officially forming the LLC. In order to adopt this fundamental change, they would need to both agree to it.

As Lin is not in agreement about expanding the company's scope, Bo's preference for expansion does not have the requisite votes to be adopted by the RULLCA, and so Lin's preference to not expand will prevail.

2. If the parties agree to dissolve the LLC, how would the LLC distribute its assets between Lin and Bo? Explain

At issue is whether Bo and Lin's differing personal contributions to the LLC would impact how its assets are distributed upon dissolution.

When an LLC dissolves, its assets are first distributed to any creditors it may have. Its assets then are distributed to the interested members according to the operating agreement if one was existing, or if not, according to the RULLCA's distribution rules. Under the RULLCA's dissolution rules for LLC's, each member receives what they had contributed, if there are enough company assets to do so. Profits and losses, however, unless otherwise

specified, are split equally among the members. This does not change even if one member contributes more to the company or spends more time working on the property.

Here, Bo's initial contributions were \$15,000- half of the formula worth 20,000 and attributed equally to both of them, as well as his personal additional \$5,000 contribution. He contributed another \$2,000 in the company's first year, bringing his total contribution to \$17,000. Lin only contributed his half of the formula, which would be \$10,000. At the time of dissolution, the company has no debt, \$5,000 in cash, a \$40,000 formula, and \$1,000 in supplies, totaling \$46,000 in assets. As there are no creditors, these assets go straight to Lin and Bo. Once Bo gets his \$17,000 back and Lin gets his \$10,000 back, there remain \$19,000 to split up between them. They would split this equally, so they each get \$9,500 on top of their original contributions.

As Lin and Bo would each get their individual contributions back plus half of the profits of the company, Lin ends up with \$19,500, and Bo ends up with \$26,500.

3. If the parties do not agree to dissolve the LLC and one party seeks judicial dissolution, is a court likely to order a dissolution? Explain

At issue is whether a court will grant judicial dissolution without the consent of both parties.

A member can petition a court for judicial dissolution of an LLC when it is not agreed to voluntarily by all members of the LLC. A court may grant an individual member's request for dissolution under a number of circumstances, including when the parties are at such an impasse that the company can no longer function as it was intended to. This means that the members' lack of agreement impairs the company's ability to function in its day-to-day activity.

Here, although Lin and Bo are at a disagreement about what direction to take their company in, it does not appear that their disagreement is so big as to fundamentally impair the day to day operations of their company. There is no showing that the company is unable to continue with its original function of making and selling soap, or that Lin and Bo's stalemate has detrimentally hurt the company. The company is actually profiting and doing well, indicating that even though Lin and Bo are disagreeing, it is still able to run and function properly. Although the parties might be unhappy with their situation, it has not risen to the level of severity needed in order to warrant a granting of judicial dissolution.

As Lin and Bo's LLC is still able to function as intended, despite their disagreement, a court is not likely to order a dissolution.

ANSWER TO MEE 2

1. Whether the exchange of emails formed a contract

The first issue here is whether the initial emails between Debbie and Pete formed a contract. A valid contract requires an offer, consideration, and acceptance. An offer is a statement by an offeror that creates a power of acceptance in the offeree; consideration must be bargained for, and acceptance must be according to the offeror's terms and create a legal detriment to the accepting party. An illusory promise, one that is vague and overbroad, is not an offer because the promisor may change his or her mind with respect to the promise, therefore creating no legal detriment to the promising party.

Here, Debbie's initial email was not an offer but rather an inquiry into how much Pete charged for snow clearing services. Pete's reply also did not constitute an offer because though he revealed his price for snow clearing services, he did not state that he would perform those services for Debbie at said price. If anything, Pete made more of an illusory promise; he said he'd try his best to be at Debbie's driveway, but wasn't sure if he could make it. Of course, Pete likely had good intentions in writing this email. Nevertheless, his communication was vague and did not create any legal detriment to himself and was thus not an offer.

Debbie's subsequent reply did constitute an offer: with sufficient particularity, she said that she was willing to pay \$500 if Pete shoveled her snow before 5 PM. (Note that as this was a contract for services rather than goods, the \$500 UCC Statute of Fraud requirement does not apply and the offer and any subsequent acceptance did not need to be in writing). However, Pete's final email, stating that he would do his best and couldn't make any promises, was not clear enough to be an acceptance. Thus, by the end of the emails, no contract was formed.

2. Whether Pete's travel and words formed a contract

The next issue is whether Pete's travel to Debbie's house and words of acceptance created a contract. An offeror may revoke his offer in certain scenarios, one of them being if the offeror does so before the offeree accepts the offer. Once the offeree finds out that the offer has been revoked, he or she can no longer accept it.

Here, when Pete arrived at Debbie's house, he saw that the driveway had already been cleared. Only following this discovery did he attempt to accept the offer by ringing Debbie's doorbell and literally saying "I accept." However, because at that point, Pete already knew that Debbie had hired someone else to clear her driveway, he knew that the offer had been revoked, and he could no longer accept it. Thus, no contract was formed upon Pete's "acceptance."

As a side note, a party can accept a unilateral contract by beginning performance. So, had Debbie not hired someone else to clear snow from her house, Pete likely could've accepted the contract via unilateral performance, so long as Debbie had the opportunity to observe the beginning of his performance. Of course, this doesn't apply to these facts; Pete couldn't have begun performance because someone else had already cleared Debbie's house.

3. Whether Pete can recover damages in the absence of a contract

The third issue here is assuming that no contract was formed under Question 1 or 2, whether Pete has a claim based on his reliance on Debbie's statement that she would pay a premium price of \$500 if he cleared the snow from her driveway by 5 PM. In the absence of a contract, a party may still recover under promissory estoppel, which states that a party may recover if an offeror made an offer, it was foreseeable to the offeror that the offeree would take steps in reliance on said offer, and the offeree suffered losses as a result of his or her reliance on the offer.

Here, on one hand, it was foreseeable to Debbie that Pete may take steps in reliance on her offer: she offered \$200 above his normal price just to get him to shovel her house before 5 PM. However, Pete's responses stating he wasn't sure he could get to her house on time make his later reliance less foreseeable. "I'll do my best, but I can't make any promises," in other words, is arguably not enough for Debbie to think that Peter was going to rely on her offer and suffer losses as a result. Thus, I think it'll be difficult for Pete to recover damages under a theory of promissory estoppel.

4. How much Peter could recover in reliance damages

The final issue is assuming Pete can establish a claim under Question 3, presumably under the theory of promissory estoppel, how much he could be entitled to recover. Pete can pursue damages in two ways. Under expectation damages, Pete could recover damages to place him in the position he would be in had the contract been performed. Expectation damages usually equal the value of the contract minus the value of any replacement contract. Here, because Pete lost out on a \$500 contract and had no replacement contract in place, he would be entitled to \$500 in expectation damages.

Pete is however more likely to recover reliance damages, which are more common in cases of promissory estoppel. Reliance damages are meant to place a party in the same position they would be in had they never entered into the contract to begin with. Here, if Pete had never attempted to enter into the contract with Debbie, he wouldn't have passed up the opportunity to clear a parking lot for \$400, and would have thus been \$400 better off. Thus, Pete is likely to recover \$400 if he pursues reliance damages.

ANSWER TO MEE 2

Formation of Contract

At issue is whether at any point in the email exchange between Debbie and Pete there was mutual assent that would form a contract.

To form a valid contract, there must be mutual assent (offer and acceptance) and consideration (a bargained-for exchange of something of legal value). An offer is a communication that invites an offeree to enter into a contract with the offeror on definite and certain terms set by the offeror. An acceptance is a manifestation of assent to the terms of the offer and willingness to enter into a contract on those terms. Common law governs the rules on contracts relating to services, whereas Article 2 of the Uniform Commercial Code governs sales contracts (sale of goods). At common law, the mirror image rule applies to acceptances: the acceptance must mirror the terms of the offer in order for there to be a valid acceptance and mutual assent. The terms of an acceptance must be unambiguous, clear, and certain to be valid acceptance.

Here, there is no problem as far as consideration: Debbie is offering money in exchange for Pete's snow-shoveling service. Debbie's first email to Pete was not an offer, but rather an invitation to offer, because while she asked Pete to come to her house to clear snow, she did not provide a price term, which is an essential term in a personal services contract, so there is no offer for the offeree, Pete, to accept. Pete's first response is an offer (with a condition precedent): if Pete's schedule allows for it and business moves quickly, he will come to Debbie's house around 4pm for \$300. Debbie never accepted this offer: instead, she provided a counteroffer (which effectively rejects the first offer) for Pete to clear the driveway before 5pm for \$500. Pete did not accept this offer by saying "I will do my best, but I can't make any promises," because this is not an unambiguous and clear manifestation of intent to enter into Debbie's provided terms of contract.

Therefore, the exchange of emails did not form a contract.

Pete's Statement at Debbie's House

At issue is whether Pete had the ability to accept the terms of Debbie's earlier email at 4pm when he arrived after sending the last message "I will do my best, but I can't make any promises."

A rejection of an offer terminates the offer and makes it no longer something the offeree can accept to form a contract. A counteroffer or clear rejection to the terms of an offer amount to a contract. Contracts are generally revocable, unless it is an options contract, so long as the offeree receives notice either directly from the offeror that the offer has been

terminated or the offeree indirectly learns that the offer has been terminated from a reliable source. Once an offer has been revoked it can no longer be accepted.

Here, Debbie never created an option contract. At common law, the option itself to keep an offer open for a certain period of time must be supported by consideration. However, Debbie never intended to keep an offer open for Pete by offering \$500: instead, she offered \$500 to entice Pete to change his plans and come shovel the snow out of her driveway. This is not an option contract offer, but just a typical, revocable common law offer. Debbie never directly notified Pete that the offer had been terminated; however, when Pete arrived to Debbie's house, he saw that the driveway had already been cleared. This provided Pete with indirect notice that the offer was terminated: there no longer was a need for his services, and clearly given Debbie's rush to get to the airport, she found another way to get the driveway shoveled. When Pete saw the cleared driveway, the offer became revoked by his notice of it, so he had no power to accept Debbie's earlier offer from the emails.

Therefore, Pete's "I accept your offer to clear your driveway" did not form a contract.

Reliance on Debbie's Statement

At issue is whether promissory estoppel provides a claim for Pete based on his reliance on Debbie's statement.

In lieu of consideration, the doctrine of promissory estoppel exists to protect parties that detrimentally rely on the statements of others in contract formation when no contract was actually formed. Such actions are called quasi-contract actions. Even though no contract was actually formed, a party may recover under a theory of promissory estoppel when they reasonably and detrimentally relied on the statements of a counterparty, and the counterparty had reason to foresee that the party might rely on their statements, and the party suffers harm as a result.

Here, Debbie should have known from the email exchange that Pete was likely to rely on her statement that she would pay him \$500 if he could get the snow cleared by 5pm because Pete responded by saying "I will do my best, but I can't make any promises." When she received that message, she knew that Pete was going to make efforts to meet her offer. Pete already told Debbie that he was "pretty busy today clearing snow for all my regular customers," so Debbie knew that if Pete did alter his schedule to accommodate her, that might mean cancelling jobs with regular customers, which would mean that Pete would lose money from those jobs in order to provide the service to Debbie. Debbie, fully knowing that her offer and Pete's response might lead to Pete relying on those statements in order to get to her house before 5pm, did nothing to stop Pete from relying to his detriment. She could have emailed back "You know what, Pete, don't bother, I need to find someone else who can come with certainty today. Maybe next time." But she did not

do that, and as a result, Pete relied to his detriment (he passed up an opportunity to clear a parking lot for \$400, so missed out on \$400 and then never made up for it at Debbie's).

Therefore, Pete has a quasi-contract claim against Debbie under a theory of promissory estoppel or detrimental reliance.

Pete's Remedy

At issue is what type of remedies are available to Pete under a theory of promissory estoppel/detrimental reliance against Debbie.

The typical remedy for damages at common law are compensatory damages, which are measured often by expectation damages. Expectation damages seeks to provide the injured party the benefit of the bargain, or to put them in the position they expected to be in had that contract been performed. Alternatively, reliance damages may be more likely under a cause of action for detrimental reliance. Reliance damages are measured by the damage that the injured party incurred as a result of the relying on the statements and conduct of the other party. Further, consequential damages may be awarded to a party for any damages that arose out of the harm from the original misconduct that is reasonably foreseeable to the defendant.

Here, reliance damages seem most likely to be the best fit for a cause of action for detrimental reliance, so Pete would be able to recover the amount that he was damaged as a result of relying on Debbie's statement. By relying on her statement, he turned down an opportunity that was reasonably foreseeable to Debbie (she knew he had a busy docket and she was trying to rush him) that was worth \$400. It is less likely that Pete will be able to recover the \$500 for the job that Debbie offered because she did effectively revoke that offer, and this cause of action is for detrimental reliance, not breach of contract.

Therefore, Pete will be able to recover \$400 in reliance damages from Debbie.

ANSWER TO MEE 3

(1) Does Bank X need judicial approval to resign as trustee?

Generally, a valid express trust requires the following: (1) a settlor with intent and capacity to create a trust; (2) a designated trustee; (3) determinable or definite beneficiaries; (3) trust property; and (4) a valid purpose. Testamentary charitable trusts do not need to meet the definite beneficiary requirement to the same degree as private trusts, so long as beneficiaries are generally determinable.

For changes in a trust (especially a testamentary trust for which the settlor is no longer available to consent to changes), changes may be made to the trust with the consent of all beneficiaries, or with court approval.

Here, the beneficiaries of the trust likely cannot be ascertained such that all beneficiaries (including future beneficiaries) would be able to consent to the change in terms of the trust, namely who the trustee is. As a result, Bank X may need to petition the court to grant a modification to the trust instrument such that Bank X could resign and Bank Y could take its place, also subject to court approval. The court's approval would be especially important in this case, given that Bank Y only intends to take trusteeship if it can change the terms of the trust.

In conclusion, Bank X likely would have to obtain judicial approval to resign as trustee.

(2) Does Fred have any interest in the trust?

Generally, property not disposed of by will passes by law of intestacy. Even if a testator has a valid will, any property not distributed explicitly in that will will pass by "partial intestacy." Intestacy laws require that property be passed to heirs based on statutory rules, including to distant relatives if no other heirs are alive to take. Courts generally construe wills so as to avoid intestacy based on understandings of testators' intent, including based on extrinsic evidence.

The only way in which Fred could have an interest in the trust is (1) if he was a graduate of a one-room schoolhouse attending state A university and under the age of 25, or (2) if the trust property was deemed not to pass by testamentary trust in the will and thus pass to him by intestacy as Testator's only living heir.

Here, there are no facts to suggest that the trust can be terminated, as its purpose can be carried on if a cy pres order is granted. Moreover, a trust can only be terminated with consent of beneficiaries and by court order. No facts here suggest that Fred would be able to convince the court to terminate the trust (likely over a trustee's objection), and especially that the trust property should pass to him, since that would be inconsistent with

Testator's intent.

Thus, Fred likely does not have any interest in the trust, aside from the most remote future interest in the event the trust purpose *truly* cannot be carried out. However, based on the likelihood of a cy pres grant (as discussed below), it is highly unlikely that a court would find the trust property to pass by intestacy at any point.

(3) Can the trust's terms be judicially modified?

At issue is likely the cy pres doctrine, which allows courts to intervene at the request of the settlor, beneficiaries, or trustee (or some combination of the three, depending on the trust) to grant a change in the purpose of the trust or allow the trustee to carry on the trust in a manner other than that described in the trust. Cy pres orders are often granted when the trust no longer has a valid purpose (that is, when the purpose is illegal or contrary to public policy), or when the purpose is impracticable or no longer possible.

Here, the issue is whether the purpose of the trust--to provide for graduates of one-room school houses attending the university--is practicable or possible any longer. Given the facts, there are zero such students at this point and it seems unlikely that there will be more students to whom the trust income can be distributed. Thus, a court could be likely to grant a cy pres motion by finding that the purpose of the trust is no longer possible or substantially impracticable.

In conclusion, the trust's terms can be judicially modified.

(4) Assuming Bank Y has been appointed trustee and that the terms can be judicially modified, between the suggestions offered by Bank Y and Capital City Concert Hall, which suggestion would likely prevail?

When granting a cy pres motion and allowing the modification of the terms of a charitable trust, the court will prioritize the intent of the settlor as evidenced by her or his writings, the terms of the original trust, or extrinsic evidence when needed. The court will generally allow a modification or deviation in line with the settlor's intent as closely as possible. Generally, courts also prefer to grant modifications that are as minimal as possible, staying close to the original trust purpose when that is an option.

Here, Testator specifically executed the testamentary trust in question as a "perpetual charitable trust," indicating an intent that the trust property be put to use for charitable purposes for its perpetual duration. The trust corpus was put to use for the benefit of students in one- room school houses, which is commonly a rural phenomenon. Bank Y's suggestion, that the income be distributable to graduates of rural public high schools in state A attending State A university (the same university designated in the original trust) is very close to Testator's original trust instrument.

Capital City Concert Hall's suggestion, on the other hand, is somewhat consistent with the intent communicated in other terms in testator's will, but is not relevant to the intent communicated specifically in the charitable trust instrument. To grant the entire trust income to Capital City CH would be a considerable deviation from the original trust purpose.

Thus, because Bank Y's suggestion more closely reflects Testator's original intent in creating the testamentary trust, a court would probably be more likely to adopt Bank Y's suggestion.

ANSWER TO MEE 3

1) The issue is whether Bank X needs judicial approval to resign as trustee

Typically, a trustee may resign without judicial approval. A trustee must simply provide notice to the beneficiaries of the trust. However, with a charitable trust, which exists when the trust has a charitable purpose and benefits the community, there is often no ascertainable beneficiary to whom notice can be provided. Moreover, charitable trusts are overseen by the state's Attorney General. Therefore, judicial approval is required for the trustee of a charitable trust to resign as trustee. In this case, the trust is a charitable trust, because it has a valid charitable purpose -helping to fund education- and it benefits the community by supporting students from rural areas. Therefore, Bank X needs judicial approval to resign as trustee.

2) The issue is whether Fred has any interest in the trust

Trusts can have both life beneficiaries and remainder beneficiaries. Life beneficiaries are entitled to trust income, whereas remainder beneficiaries, who have future interests in the trust, are entitled to trust principal. Traditionally, trust income refers to value received for use of the trust, whereas trust principal refers to value received for a conveyance of trust property. However, under the Uniform Trust Code a trustee can be more flexible with the allocation of income and principal to life and remainder beneficiaries, so long as such allocation is fair.

In this case, Fred asserts that he has an interest in the trust principal. However, Fred was not made a remainder beneficiary by Testator, so is not entitled to the principal after the completion of the charitable use of the trust. Moreover, since Testator created a perpetual charitable trust, it is clear that Testator's intention was for the trust assets to remain for charitable use, not to return to his estate. Consequently, Fred does not have an interest in the trust.

3) The issue is whether the trust's terms can be judicially modified

If a settlor is dead, the terms of a trust can be modified when an unforeseen circumstance occurred that frustrates a material purpose of the trust. In this case, the trust's original charitable purpose was to pay the education expenses of any persons who graduated from a one-room schoolhouse in State A and were attending State A University while under the age of 25. However, the remaining one-room schoolhouse in State A has now permanently closed. This frustrates the material purpose of the trust because there will no longer be any new students who graduated from a one-room schoolhouse in State A and are attending State A University while under the age of 25. Moreover, this circumstance was unforeseen at the time the trust was created under Testator's will, because at the time of Testator's death in 1922 one-room schoolhouses were fairly common. It has only been

over time after Testator's death that there was a substantial -and now total -decrease in the number of students graduating from one-room school houses in State A. Therefore, there has been an unforeseen circumstance that frustrates a material purpose of the trust, Consequently, the trust's terms can be judicially modified.

4) The issue, assuming that Bank Y has been appointed trustee and that the trust terms can be judicially modified, whether a court would be more likely to adopt Bank Y's suggestion or Capital City Concert Hall's suggestion

When the specific charitable purpose of a charitable trust is no longer possible to achieve, the *cy pres* doctrine is applicable. Under the *cy pres* doctrine, a court will modify the charitable purpose of a trust to an alternative charitable purpose, preferably as similar as possible to the original charitable purpose, when the original charitable purpose can no longer be achieved (for example if there is a specific charity named as beneficiary and that charity then closes down).

In this case, the trust's original charitable purpose was to pay the education expenses of any persons who graduated from a one-room schoolhouse in State A and were attending State A University while under the age of 25. However, this purpose has become impossible to achieve because by 2010 there were no students who graduated from a one-room schoolhouse attending State A University and the remaining one-room schoolhouse in State A has now permanently closed. Under the application of the *cy pres* doctrine, a court could thus modify the trust's charitable purpose to one very similar - for example, as Bank Y suggested, for the trust to distribute trust income to graduates of any rural public high school in State A attending State A University. This is very similar to the original charitable purpose, the only difference being the size of the rural school in State A. In contrast, Capital City Concert Hall suggested that the trust principal of \$10 million should be held exclusively for its benefit. This is very different from the trust's original purpose - it has no focus on education of State A students or on education of rural students. Moreover, Testator already provided for Capital City Concert Hall in his will by bequeathing \$250,000 to the Hall, and he demonstrated no intention to want to further support the Hall. Therefore, a court would be more likely to adopt Bank Y's suggestion as it applies the *cy pres* doctrine.

ANSWER TO MEE 4

1. The issue is whether sovereign immunity bars the man's lawsuit against State A.

The Eleventh amendment provides states with sovereign immunity against suits by private citizens for monetary and injunctive relief. States can dismiss an action brought by a private citizen on the basis of Eleventh Amendment sovereign immunity. A state may consent to suit and abrogate sovereign immunity. If the suit is brought under one of the civil war amendments (13, 14, and 15) congress may abrogate state immunity and create a private cause of action for private citizens to bring suit against a state. However, congress may not abrogate state immunity using its commerce clause power.

Here, the Man is suing State A for money damages. The man is a private citizen and the defendant is a state government. Therefore, State A may dismiss the claim on the basis of 11th Amendment sovereign immunity. Congress, despite the provision in the act, may not abrogate state sovereign immunity in this situation because congress enacted the Act using its commerce clause power, not its power under the 13th, 14th, or 15th amendments. Additionally, State A has not consented to suit. *Therefore, the Man cannot sue State A under this act.*

2. The issue is whether sovereign immunity bars the woman's lawsuit against City.

While state governments are generally immune from suits brought by individuals, local governments and municipalities do not enjoy state sovereign immunity under the 11th Amendment. The state need not consent to such suits so long as the individual has a viable claim against the municipality.

Here, the woman is an individual bringing a suit for damages against a municipality, rather than the State government. There is no constitutional prohibition on suits by private individuals against municipal governments so long as all other requirements for standing and justiciability are met. Therefore, State A need not consent to suit by the woman and the woman's claim should not be dismissed on the basis of 11th Amendment state sovereign immunity.

3. The issue is whether the Notice Provision of the Act commandeers state A in violation of the 10th amendment.

Congress has broad discretion to regulate the items and instrumentalities of interstate commerce. A congress may regulate both private and public actors engaging in economic activity in interstate commerce. Even if an activity wholly occurs within the confines of one state, the Supreme Court has held that, if in the aggregate, the economic activity

affects interstate commerce, then congress can regulate that activity pursuant to its commerce power. State and Local governments are not immune from following the regulations congress enacts pursuant to its commerce power in so far that it applies to the government actor.

However, in regulating commerce congress cannot commandeer a State government to enact legislation or enforce a federal regulatory scheme. Congress may withhold funding under its taxing and spending power to incentivize states to enact certain legislation, but under congress's commerce power, congress cannot force states to enact or enforce federal law or penalize them for not doing so.

Here, the notice provision of the Act is valid use of congress's commerce clause power to regulate interstate commerce. The act, applying equally to all employers employing over 100 people, applies to the state government in so far that the state government acts as an employer. Therefore, it is a proper use of congress's power to require the state government to provide such notice pursuant to the act. The Notice Provision does not require the state to enact a law enforcing the Notice Provision nor does it require state law enforcement officials to enforce the Notice provision. Therefore, the Notice Provision does not commandeer the State G government in violation of the 10th amendment.

4. The issue is whether the Housing Provision of the Act commands County in violation of the 10th amendment.

As discussed above, under the 10th amendment, congress may not commandeer state or local governments to enact certain legislation or enforce federal law. An act that penalizes a state or local government for failing to enact certain legislation is unconstitutional under the 10th amendment anti-commandeering principal.

Here, the housing provision directs designated municipalities to administer a federal grant program and enforce the Act's requirements. Additionally, the housing provision penalizes the designated municipalities if they fail to administer the federal grant program. The housing provision is an unconstitutional exercise of congress's power because the provision forces the municipalities to both administer a federal program and enforce a federal statute's requirements or be subject to federal penalties. Therefore, the housing provision improperly commandeers the designated municipalities and should be severed from the rest of the Act if severable.

ANSWER TO MEE 4

1) The issue is whether sovereign immunity bars the man's lawsuit against State A.

The issue is whether the Eleventh Amendment bars the man's lawsuit against State A in federal court. The Eleventh Amendment prohibits private individuals from suing states (not cities or municipalities) in federal court for damages or injunctive relief, absent an exception. These exceptions include consent by the state, suits for money damages against state officials in their individual capacity (not to be paid out from the state's treasury), suits seeking injunctions for violations of federal law, and matters involved the 13th, 14th, and 15th amendment, among a few others (such as bankruptcy matters).

Here, no provision of State A law indicates that State A consents to lawsuits in federal court. Further, because the Eleventh Amendment is an explicit constitutional protection granted to the states, it cannot be abrogated by the last section of the Act which authorizes suits against states in federal court. This is in direct contravention to the Eleventh Amendment, and the constitution is the supreme law of the land and therefore trumps statutes in the hierarchy of authorities. Congress only has the power to abrogate state sovereign immunity for matters related to the Reconstruction Amendments (13th-15th), not for legislation that Congress has passed pursuant to its commerce clause powers. In conclusion, the man's suit against State A is likely barred by the Eleventh Amendment.

2) The issue is whether sovereign immunity bars the woman's lawsuits against City.

As noted above, sovereign immunity pursuant to the Eleventh Amendment covers states, not cities or municipalities. As such, the woman's suit against the City (a municipality within State A) would not be barred by sovereign immunity. The portion of the last section of the Act that authorizes suits against municipalities in State A is likely valid.

3) The issue is whether the Notice Provision commandeers State A in violation of the Tenth Amendment.

The Tenth Amendment stands for the proposition that the powers not explicitly granted to the federal government are reserved for the states. The implication of this is the anti-commandeering principle: the federal government may not coerce state and local governments to either enact legislation or enforce federal legislation (which includes directly forcing states to advance federal policies). However, Congress has the power to regulate the means and instrumentalities of interstate commerce, which includes employers with more than 100 employees (because such employers, in the aggregate, are likely to have a substantial effect on interstate commerce).

Here, the Notice Provision does not (i) coerce states into adopting legislation nor (ii) does it force states to enforce federal legislation. Instead, the Notice Provision merely governs state and local governments in their capacity as employers and market participants (not in their capacity as equal sovereigns in our system of federalism). As such, it seems unlikely that the Notice Provision violates the anti-commandeering principle.

4) The issue is whether the Housing Provision commandeers County in violation of the Tenth Amendment.

Unlike the Notice Provision, the Housing Provision does raise potential anti-commandeering issues. As a preliminary matter, Congress does have the right to incentivize local governments to enact federal policies pursuant to grants that are issued under Congress' spending powers. This, however, is not the situation here. Under the Housing Provision, Congress is not providing grants to local governments in order to incentivize them to carry out the policy priorities of the Economic Incentive Act. Instead, Congress is coercing municipalities into (1) administering grants to private developers, (2) reviewing applications, (3) making decisions, and (4) enforcing the Act's requirements. In other words, Congress has passed legislation pursuant to its interstate commerce powers and has told municipalities that they must enforce this legislation or be subject to monetary penalties. This is likely a blatant violation of the Tenth Amendment's anti-commandeering principle because it coerces local governments into enforcing federal legislation.

ANSWER TO MEE 5

1. Search of Student's Jacket Pockets

The search of the student's jacket pocket did not violate the Fourth Amendment. At issue is whether the principal had a reasonable basis for the search.

The Fourth Amendment, as applied to the states through the Fourteenth Amendment, prohibits unreasonable searches and searches by the government. Although the Fourth Amendment applies only to government actors, school officials in public schools are considered government actors. For the Fourth Amendment to apply, the person must have a reasonable expectation of privacy in the place searched or the government actor must have trespassed into a constitutionally protected area (like a house). Typically, for a government actor to search someone's person, there must be probable cause that the person is carrying a weapon or the search must be incident to a valid arrest. However, students in public schools have a reduced expectation of privacy. Accordingly, school officials may search a student's person when they have a reasonable basis to believe that the student has contraband or other evidence on their person. The reasonable basis standard is similar to a reasonable suspicion standard, which requires that the searching actor have more than a hunch that contraband will be found. The government actor must have an individualized and particularized basis for the search. In determining whether the search is valid, courts will weigh the government's interest in the search against the person's privacy interest and the intrusiveness of the search.

Here, the principal reached into the student's front pockets of their jeans to recover the money and a bag containing bills. The Fourth Amendment applies because the student had a reasonable expectation of privacy in their body and jeans pocket. However, because this search took place at school by a school official, the principal only needed a reasonable basis that evidence or contraband would be found. Here, the principal had a sufficient basis: the student went across the street to a gas station that he was prohibited to go to during school hours, that gas station was the site of frequent drug deals, the principal observed the student walking from the school to the gas station, observed the student talk to someone in a car, hand the driver something, and saw the student put his hands in the front pockets of his jeans. Even without seeing what the student put in his jeans, the principal had a sufficient basis for suspicion. Further, the search was not more invasive than it needed to be, as the principal only put his hands in the jeans pockets.

Because the principal had a reasonable basis, the search did not violate his Fourth Amendment rights

2. Search of Student's Lockers

The search of the student's lockers likely does not violate the Fourth Amendment. At issue is first whether the student had a reasonable expectation of privacy in the locker.

As discussed above, for the Fourth Amendment to apply the person must have a reasonable expectation of privacy or the search must trespass into one of the constitutionally enumerated places (like a home). The test is an objective one. Courts vary on whether students have a reasonable expectation of privacy in school lockers. Courts will look at factors such as school rules and whether school officials have access to the locker.

Here, a court is likely to find that that the student does not have a reasonable expectation of privacy in the locker. The school's locker policy states that lockers are property of the district, that they may be searched at any time, and that the school has a master key to the lockers. All of this information is in the student handbook. Further, there is a sticker on the outside of every locker explicitly stating that the lockers is school property. All of these factors suggest that an objective student would not have a reasonable expectation of privacy in the locker. However, even if the student had a reasonable expectation of privacy, the principal likely had a reasonable basis for the search because he found the prohibited medicine in the student's pocket, and there could be more of such medicine in the pocket.

At issue next is whether the pill bottle and leafy material could be seized because they were in plain view. Government actors may seize any evidence or contraband that they find in plain view. Evidence is in plain view if the government actor sees the evidence from a place they had a legal vantage to be in and the contraband nature of the evidence is immediately apparent. Here, assuming the principal had a basis to search the locker, the pill bottle and "green, leafy material" were in plain view because the principal had a right to be there and their contraband nature was immediately apparent. The pills were identical to the ones that the principal already found in violation of the school policy and the leafy material appeared to be marijuana, in violation of State A law.

Accordingly, the search of the student's lockers likely did not violate the Fourth Amendment.

3. Search of Student's Text Messages

The officer's search of the student's texts were in violation of the Fourth Amendment. At issue is whether officer can search a phone incident to a lawful arrest.

Under the Fourth Amendment, after police officers carry out a valid arrest, they may conduct a search incident to that arrest. This search extends to the arrestee's person and

their wingspan or lunging distance. This right to search is automatic with every valid arrest. However, the Supreme Court has held that police may not automatically search a cellphone pursuant to an arrest. To search the cellphone, police must obtain a valid search warrant. This is because a search of a cellphone is significantly more invasive than a search of other items on one's person.

Here, the police arrested the student pursuant to a valid arrest warrant. Accordingly, they could carry out a search incident to arrest. The officers were free to search his backpack because it was on his person. However, the officers could not search the cellphone, including its text messages, without a search warrant. They could only search the physical phone itself, not its contents. Although the officers may argue that the phone was unlocked, the officers would still need a search warrant.

Thus, the officer's search of the text messages violated the student's rights under the Fourth Amendment.

ANSWER TO MEE 5

1) Principal's Search of Student's Jacket Pockets Violating Student's Rights under 4th A

The issue is whether the principal's search of the student's jacket pockets violated the Student's Fourth Amendment Rights. The answer is likely no, because in school students have a lowered expectation of privacy, and the principal's search was reasonable.

Under the Fourth Amendment of the US Constitution, individuals have a right against unlawful search and seizure. Whether a person has a fourth amendment right depends, however, on whether there is state action (i.e., it is the government who is searching or seizing) and whether the person had a reasonable expectation of privacy in the area searched. Typically, a warrant, or probable cause, is needed to make a search of a person. An individual has a reasonable expectation of privacy in their person, and thus warrantless searches, or searches of the person without probable cause, violate the 4th Amendment. However, in public schools, the Supreme Court has held that students have a lowered expectation of privacy. When a school official conducts a search, the standard is not whether there was probable cause, but rather whether the (1) search was based on a reasonable suspicion of illegal/illicit activity; (2) whether the search was reasonable in terms of scope; and (3) whether the search was reasonable in light of the age and sex of the child/student being searched.

Applied here, the search was valid under the Fourth Amendment. As a cursory matter, there is state action here sufficient to apply the Fourth Amendment. Student attends a public high school in City, State A. The principal is a public employee, and thus is a state actor for purposes of the Fourth Amendment. However, despite the Fourth Amendment's applicability, students in school have reduced expectations of privacy, and the Fourth Amendment's protections are not as rigorous when a public school official conducts a search. Further, it is important to note that despite all the policies regarding the prohibition on visiting the gas station, the student still has a reasonable expectation of privacy in his person. But because Student was in school and because principal is the one who conducted the search, a lower standard applies.

In this case, the principal's search was entirely reasonable. First, the search was based on the principal's legitimate suspicion the student had committed illicit or illegal activity. The school in City prohibits in their handbook the students' visits to the gas station across the street because it is a local spot where drug dealing is frequent. Teacher observed student through the window cross the street, during the school day, and go to the gas station. The student further engaged in some suspicious activity because the student talked to a driver and handed something to the driver. In school searches, reasonable suspicion that there is a likelihood of illegal activity is sufficient to justify a search, and the first prong is met here.

Second, the search was reasonable in terms of the scope. The principal was looking for potential illegal drugs, on the basis that he observed the student lean over and hand something to the driver at the gas station. While the principal could not see whether the student took anything from the driver, he observe the student put something in his front pockets of the jacket he was wearing. And here, the principal's search was of the student's front pockets - in other words, the principal was not baselessly expanding the scope of the search. Instead, the principal's search was reasonable in terms of its scope- it was limited to the jacket.

Last, the search was reasonable in light of the student's age and sex. The student is a high school aged boy. Reaching in the front jacket pockets of a high school aged boy's jacket is not unreasonable in light of the student's age and sex.

For these reasons, the principal's search did not violate the student's rights under the Fourth Amendment.

2) Principal's Search of the Student's Locker and the 4th Amendment

The issue is whether the principal's search of the student's locker violated the student's rights under the Fourth Amendment. The answer is likely no, because the student likely had no reasonable expectation of privacy as to the locker.

The Fourth Amendment's protections against unreasonable search and seizure applies only to the extent that an individual has a reasonable expectation of privacy in the area searched. With no expectation of privacy, there can be no Fourth Amendment violation. The same school search rules as noted in (1) similarly apply here.

Applied to this case, the student likely had no reasonable expectation of privacy in his locker. The facts indicate that upon the principal's discovery of the two white pills, suggesting drugs, the principal preceded to the student's assigned locker. While normally a locker could suggest a reasonable expectation of privacy, the school's locker policy states that an assigned locker can be searched "at any time." Importantly, this policy is noted in the student handbook, and even more blatantly on the outside of every locker. Specifically, every locker exclaims that "this locker is the property of LPSD and may be subject to search."

Accordingly, although the principal searched the locker, there was no violation of the Fourth Amendment, because the Fourth Amendment does not apply when there's no reasonable expectation of privacy. A student who is aware of the student policy, in conjunction with the explicit warnings on the outside of every locker via the sticker, no student would have a reasonable expectation of privacy in the contents of the locker.

Anything the principal found in the locker, therefore, is not a violation of the 4th Amendment because there is no reasonable expectation of privacy. Furthermore, even if there were somehow a reasonable expectation of privacy, the same rules noted in (1) would apply- the principal's search would still be reasonable in light of his reasonable suspicion, and in light of the reasonableness of the search of the locker. Based on the information the principal had, through seeing the student go to the gas station and finding pills from the reasonable jacket search, a search of the locker would nevertheless be reasonable.

The principal's search of the locker did not violate the student's Fourth Amendment Rights.

3) Officer's Search of the Student's Text Messages

The issue is whether the officer's search of the student's text messages violated his Fourth Amendment rights. The answer is likely yes, because the police would have needed a warrant to search the contents of the phone.

Under the Fourth Amendment, action by the police, even within a school, is subject to the full provisions of the Fourth Amendment. In other words, there is no reduced standard to apply to searches made by police officers. Searches must either be based on a warrant, or one of the exceptions to the warrant requirement. A warrant requires probable cause, issued by a neutral and detached magistrate, and which is specific in scope and content to be searched. Once the contents of the warrant have been found/seized, the police may generally not continue a further search. However, when a lawful arrest is made, no warrant is needed to search the person or anything in his wingspan. Police are entitled to observe and inspect a phone physically, but may not open into such a telephone without a warrant.

Applied here, the officer's search of the student's text messages violated the student's Fourth Amendment rights because the search was conducted without a warrant. Although it is true the police had a valid warrant for the arrest of the student for possession of controlled substances in violation of State A law, the officer's search went beyond the scope and particularity of the warrant when they inspected the student's phone. Because it is officers conducting the search, and not the principal, full fourth amendment protections apply.

In this case, the officers validly arrested the student at the school, two days after obtaining the warrant. \When they arrested the student, the officers were entitled to conduct a search incident to a lawful arrest, which includes anything in the student's arm-span or on his person. The student was wearing his backpack, which would likely be considered on his person for the purposes of the Fourth Amendment, and thus subject to search. While the officers were entitled to search the backpack pursuant to the lawful arrest, and therefore find the phone, the officers overstepped by searching the student's cellphone.

The officers may argue that because the student's phone was unlocked, there was no reasonable expectation of privacy. However, that is likely not true. Courts have held that a person has a reasonable expectation of privacy in their cellphone, and thus apart from physically inspecting it, the police need a warrant to search the phone. The officers had no such warrant in this case.

Accordingly, the officers' discovery of the text messages were obtained in violation of the student's rights under the Fourth Amendment.

ANSWER TO MEE 6

1. The issue is whether Jane is directly liable to the neighbor in a negligence action.

Negligence is a tort which requires proof of four elements: (i) duty, (ii) breach, (iii) causation, and (iv) damages. The general standard of care in a garden-variety negligence action is to act as a reasonably prudent person would under the same circumstances. The majority (Cardozo) view is that a defendant owes a duty to all foreseeable plaintiffs in the zone of danger, whereas the minority (Andrews) view is that a defendant owes a duty to anyone who was harmed if anyone could have foreseeably been harmed. Causation must be both actual and proximate. Actual causation is factual causation-- the conduct of the defendant must be the but-for cause of the harm. Proximate cause is wrapped up in foreseeability; an act is the proximate cause of a harm if it was foreseeable that such a harm could be done by virtue of the act or omission. An employee is directly liable for their own negligence if they engaged in conduct regarding which the four elements of negligence can be proven.

Here, under either view of duty, Jane owed a duty to act as a reasonably prudent driver would while parking their car along a curb on a hilly street. Jane breached this duty when she answered a personal call on her cell phone as she was about to exit the truck. Because she was distracted by the three minute call, Jane left the truck without shifting it into "park" and did not engage the parking brake. This constitutes a breach of duty. Here, Jane's negligent actions (i.e., breach) resulted in the car rolling down the hill, and hitting the street sign, which collapsed and crashed onto the neighbor's car. Jane's actions are both the actual cause and the proximate cause. But for Jane's breach of duty (negligently answering the phone), the truck would not have rolled down the hill and hit the sign which hit the neighbor's car. Furthermore, it's foreseeable that a car that is not properly parked on a hill could roll down that hill and hit a street sign which would further damage property. The truck hitting the street sign which itself hit the neighbor's car can be argued to be an intervening cause, but it's not a superseding cause that cuts off causation/liability, because it is foreseeable that a car rolling down a hill could hit a street sign, and that that street sign could in turn hit something else causing damage. Therefore, there is proximate cause. Finally, damages are evident. The neighbor's car was damaged and needed to be repaired at a cost of \$55,000.

Therefore, yes, Jane is directly liable to the neighbor in a negligence action because the four elements of negligence are present.

2. The issue is whether Quick Mailboxes is liable to the neighbor either directly or vicariously.

An employer is liable directly, when its employee's engage in torts, only if they themselves were negligent in the hiring of the employee. However, an employer can be

responsible for an employee's torts vicariously under the theory of respondeat superior. If an employee is acting within the scope of their employment when committing a tort such as negligence, the employer can be held vicariously liable. The scope of employment is defined as acting under the time, place, and conditions of the job you were hired to do by the employer. A small deviation from the scope of employment (e.g., answering a personal cell phone call) is called a detour and does not cut off liability. This is opposed to a frolic, which is a major derivation from the duties/scope of employment.

Quick Mailboxes could be liable to the neighbor directly only for negligent hiring, because Quick Mailboxes did not itself commit the tort that Jane committed. However, there is no evidence that Quick Mailboxes was negligent in hiring. It conducts background checks on all its employees, verifies that they have appropriate driver's licenses, and trains them as needed. Therefore, Quick Mailboxes is likely not liable to the neighbor directly (for negligent hiring).

On the other hand, Quick Mailboxes could be held liable vicariously for Jane's conduct under the theory of respondeat superior. Jane was undoubtedly acting in the scope of her employment when she committed negligence. She was parking the truck along the curb in order to survey the mailbox's damage from her window, and then proceed to talk to the homeowner and explain the work she planned to perform. The answering of the personal call on her cell phone is a detour (a minor derivation), not a frolic, that does not take Jane out of the scope of employment. Therefore, Quick Mailboxes is liable to neighbor vicariously through the doctrine of respondeat superior.

3. The issue is whether the homeowner is liable to the neighbor because the homeowner hired Quick Mailboxes.

Generally, employers are responsible vicariously for the torts of their employees (when committed within the scope of employment). This is rooted in the principle that employers retain a large degree of control over the when, where, and how under which employees do their work for the employer. On the contrary, one who hires an independent contractor to perform a task or service is generally not liable for that independent contractors' torts. That is because the independent contractor is generally hired on a case-by-case basis, retains control over its own work, is largely "independent" from the person who hired them, in a way that is dissimilar from the employer-employee relationship. There are however cases when a person can be liable for the torts of an independent contractor they hired. For example, if the contractor is engaging in abnormally dangerous activities, or the individual hired the contractor to perform non-delegable duties.

Here, the homeowner hired Quick Mailboxes as an independent contractor. They did not hire them to perform abnormally dangerous activities or to perform nondelegable duties. They hired them for a one-off job to fix their mailbox. In fact, in hiring them, they explicitly said "I don't care how you fix it." This supports the proposition that the

homeowner truly exercised very minimal control over Quick Mailboxes, and emphasizes the independent contractor relationship. Because no exception applies and homeowner is not an employer of Quick Mailboxes-- but instead, Quick Mailboxes is an independent contractor-- the homeowner is not liable to the neighbor.

4(a). The issue is whether the neighbor can recover the cost to repair the car even though the repairs were unusually expensive (assuming that any of the parties are liable).

The eggshell-skull rule in torts says that the tortfeasor takes their plaintiff as they come. This means that a defendant tortfeasor is liable for the full extent of damages caused by their tort (i.e., negligence), even if those damages were not immediately apparent or were not otherwise foreseeable to the defendant.

Here, the car was repaired at a cost of \$55,000 because of the special parts needed and difficult of finding them. Despite this unusually expensive cost, the neighbor can recover the full cost of its property damage because of the eggshell-skull rule.

4(b). The issue is whether the neighbor can recover damages for emotional harm (assuming that any of the parties is liable).

There are two applicable theories here. Intentional infliction of emotional distress (IIED) and negligent infliction of emotional distress (NIED). IIED requires the defendant to cause emotional harm in the plaintiff by intentional severe and outrageous conduct. To recover for NIED, someone's negligence must have extreme emotional distress, and importantly one must have been in the zone of danger, or under a bystander theory, if a human is involved, one must have been related to the individual and seen the injury.

There is no evidence that any party intentionally caused harm to the neighbor's care. Furthermore, the homeowner was not them self in the zone of danger of the car when it was hit by the street sign, because although the neighbor was looking out of his living room window from his home and saw the sign fall and damage the car, he was far enough away to be considered outside the zone of danger. Finally, despite having significant sentimental value to him, and having witnessed the sign falling on it, the car is personal property and not a human being --so the neighbor cannot recover under the bystander theory either. Therefore, the neighbor cannot recover any damages for emotional harm in this case.

ANSWER TO MEE 6

1. The issue is whether Jane is directly liable to the neighbor for negligence.

To prevail on a negligence action, the plaintiff must show that the defendant owed the plaintiff a duty of care, that the defendant breached that duty of care, that the defendant's breach directly and proximately caused the plaintiff injury, and that the plaintiff suffered an injury.

A defendant owes a duty of care to anyone that could be foreseeably harmed by the defendant's conduct. Under the Cardozo/majority view, a defendant only owes a duty of care to reasonably foreseeable victims of the defendant's harm. Under the Andrews/minority view, a defendant owes a duty of care to anyone harmed by the defendant's conduct, whether they are foreseeable or not. A defendant breaches that duty when the defendant fails to act as a reasonable person would under like circumstances. The defendant's breach must be the legal but-for cause of the plaintiff's injury as well as the proximate cause of the plaintiff's harm, meaning that the plaintiff's harm was a foreseeable consequence of the defendant's conduct. Finally, the plaintiff must suffer an actual injury, such as property damage as a result of the defendant's conduct.

Here, Jane owed a duty to care to the neighbor as he could be foreseeably harmed by Jane's carelessness in parking her car. Under the Cardozo/majority view, the neighbor and his car were foreseeable victims of Jane's carelessness in parking along a hilly road. Moreover, Jane breached her duty of care when she failed to act as a reasonable person by putting her car in park or engaging the parking brake when she parked on a hilly street. A reasonable person under like circumstances would realize the importance of ensuring their car is parked safely on a hill when it is possible to roll down and injure others and their property. Jane's breach of her duty of care was the but-for cause of the damage to the car because the car would not be damaged had Jane parked her car properly. Moreover, it was a foreseeable consequence of Jane's failure to properly park her car that the car would roll down the hill and hit cars or street signs that could fall and cause damage to other property. Finally, since the neighbor's car was damaged as a result of Jane's breach, the neighbor has suffered an injury. Therefore, Jane can likely be held directly liable to the neighbor in a negligence action.

2. The issue is whether Quick Mailboxes can be held directly or vicariously liable for the negligence of Jane.

Under the theory of respondeat superior, an employer can be held vicariously liable for the torts of her employees when there is an (1) employee-employer relationship and (2) the employee's tortious conduct occurred within the scope of their employment. An act is within the scope of employment when it is an act the employee was hired to perform or done for the benefit of the employer. Commuting to work falls outside the scope of

employment, however, commuting to a job is within the scope of employment. Minor deviations from the scope of employment are not enough to release the employer from liability, however, major deviations are.

Here, Jane was a part-time employee of Quick Mailboxes (QM). Although Jane only worked 20 hours a week, her conduct on the job is controlled by QM and she is provided the tool necessary for her job by QM. Thus, an employer-employee relationship exists. Jane drove to the homeowner's house in a pickup truck owned by QM in order to perform the repair for QM. Jane did get distracted when she picked up her phone to take a personal call, however, this call lasted three minutes and was not a major deviation that would release QM from liability for Jane's conduct. Jane was performing an act she was employed to perform and acting for QM's benefit. Therefore, Jane's negligent conduct occurred within the scope of her employment and QM can be held vicariously liable for Jane's negligence.

An employer can also be held directly liable for torts committed by their employees based on negligent hiring, supervision, or training. To be liable for negligent hiring, supervision, or training, the employer must have knowledge of certain negligent behavior of their employee and fails to take steps to remedy that behavior.

Here, QM conducts background checks on all of their employees, verifying that they have valid driver's licenses. Moreover, QM trains their employees as needed. The facts do not indicate that QM had any prior awareness of negligent action by Jane or that she was incapable of properly driving a car. Therefore, since QM acted reasonably in hiring and training Jane, QM cannot be held directly liable to the neighbor.

3. The issue is whether homeowner is liable to the neighbor for hiring QM.

As stated above, to hold an employer vicariously liable for the torts of her employees, there must be an employer-employee relationship and the tortious conduct must have occurred within the scope of employment. An employer is generally not liable, however, for tortious conduct carried out by independent contractors (IC). An independent contractor is someone who is not controlled by the employer in a sufficient manner to create an employer-employee relationship. The more control, the more likely an employer-employee relationship exists. However, an IC brings her own tools, is paid by the job rather than by a fixed rate, and is in control of her own conduct.

Here, with respect to the homeowner's employment of QM and Jane, Jane operated as an independent contractor. The homeowner had no control over Jane's work. On the phone, the homeowner stated that she did not care how they fixed it just that they fix it by the end of the week. Moreover, the homeowner would pay QM for \$220 for the repair, not a salary like an employee. Finally, Jane arrived in a QM truck and brought her own supplies.

Therefore, Jane was an IC and the homeowner cannot be held vicariously liable for Jane or QM's negligence.

4(a) The issue is whether the neighbor can recover the cost to repair his car despite the repair being unusually expensive.

Under the eggshell skull rule, a defendant is liable for all harm caused to the plaintiff, even if the extent of damages are unforeseeable. Here, although the cost of the repair of the car is unusually expensive, Jane and QM are required to take the neighbor and his car as they are, even if the extent of the damage is unforeseeable. Therefore, QM and Jane can be required to cover the cost of repair to the neighbor's car.

4(b) The issue is whether the neighbor can recover damages for negligent infliction of emotional distress.

While recovery under a negligence action does allow for parasitic damages (emotional damages) on top of damages for physical harm caused by negligent conduct, relief for emotional damages caused by property damages cannot be recovered unless a theory of negligent infliction of emotional distress applies. A plaintiff can recover for NIED if they are within the zone of danger (i.e., they anticipate imminent harm towards themselves). Under the bystander theory of NIED, a bystander not within the zone of danger can recover if they are related to the victim and perceive the injury inflicted on the victim. In both cases, the plaintiff must prove that they suffered physical manifestations of emotional harm.

Here, the neighbor was not within the zone of danger. The neighbor was in his living room when he looked outside and saw the sign fall, causing damage to his car. Since the neighbor did not anticipate imminent harm to himself, he cannot recover. Moreover, despite the neighbor's sentimental attachment to the car, the car was not a human and the neighbor was not related to the car in a way sufficient to provide him relief for NIED. Therefore, although the neighbor had to seek medical attention due to the stress caused by Jane's negligent conduct, he will be unable to recover for emotional damages on a theory of negligent infliction of emotion distress.
