MEE®

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MEE Question 1

In unrelated cases, the federal government charged Buster and Calvin each with two criminal offenses: illegal distribution of methamphetamine (Count 1) and illegal sale of firearms (Count 2). Buster and Calvin each entered into an agreement with the government pursuant to which each would plead guilty to Count 1 and the government would dismiss Count 2.

The same judge conducted separate plea hearings for Buster and Calvin. At each hearing, the judge directly questioned the defendant under oath. The judge asked each defendant whether he was pleading guilty voluntarily, knowingly, and intelligently. Each answered, "Yes." The judge also addressed all the matters that the rules of criminal procedure require a judge to address before accepting a guilty plea. Finally, the judge said to each defendant, "Do you admit that you are guilty of the crime charged in Count 1—illegal drug distribution? If so, tell me what you did and why you are pleading guilty."

In response, Buster stated, "Yes, I admit I'm guilty of drug distribution because I sold two pounds of methamphetamine for $19,000. I'm pleading guilty somewhat to take responsibility but mostly and especially because the prosecutor told me that, if I plead guilty, FBI agents will stop harassing my mother at her job, telling all her coworkers that I'm a criminal and embarrassing her with loud questions just to get to me. The prosecutor also said that only if I plead guilty would he drop his plan to charge my wife with bribery even though he admits that she has done nothing wrong."

Calvin answered by stating, "No, I'm not guilty. I didn't distribute any drugs. I'm pleading guilty only because the prosecutor promised that if I plead guilty, he will dismiss the gun charge, which is more serious and carries a long prison sentence. Also, he promised to ask you to give me only probation, not send me to prison, if I plead guilty to the drug charge. I've read the statements that four so-called friends of mine made to the police, saying that I sold them drugs. If I go to trial, the jurors will probably believe them and find me guilty. I swear I've never sold drugs to anyone, but I can't risk going to prison, and so I plead guilty to that charge."

The judge told each defendant the same thing: "I accept your guilty plea to Count 1 and find you guilty of illegal drug distribution. I dismiss Count 2 based on your plea deal."

Before sentencing, each defendant unsuccessfully asked the federal district court to rule that his guilty plea was invalid. After sentencing, each defendant timely filed a direct appeal of his conviction.

Buster claims on appeal, "First, the appellate court must set aside the guilty plea because the plea was involuntary. Second, assuming the plea was involuntary, the

appellate court must remand the case with instructions to the district court to enter a judgment of acquittal on Count 1."

Calvin claims on appeal, "The appellate court must set aside the guilty plea and reverse the conviction because the guilty plea resulted from improper governmental coercion or enticement. Alternatively, the appellate court must set aside the guilty plea and reverse the conviction because the judge violated the right not to be convicted by plea when the defendant has expressly denied guilt."

Each defendant properly preserved his claims for appellate review, and no procedural issue prevents the appellate court from addressing the arguments on the merits. The government has not disputed either Buster's or Calvin's factual assertions, made under oath in open court during their plea hearings, regarding their plea negotiations.

1. How should the appellate court decide Buster's two arguments? Explain.

2. How should the appellate court decide Calvin's two arguments? Explain.

1)

1.) Buster's Case

1(a): Whether the plea lacked knowledge, was involuntary, and was intelligent.

As a general rule, a guilty plea must be knowing, voluntary, and intelligent. This means that a defendant must have knowledge sufficient to understand the basis of the guilty plea, must understand their constitutional due process rights, must understand their trial rights, and must understand what is being given up by choosing to enter into a guilty plea. Further, it must be voluntary. This means guilty plea cannot be obtained through coercive pressures by either the prosecution or an officer - this would violate the defendant's rights and the voluntary standard. Finally, the defendant must actually plead guilty. It is not sufficient for a defendant to nod, to allude to a guilty plea, or to engage in any conduct outside of a clear, express statement of intention to plead guilty.

Buster's plea was likely involuntary.

Here, Buster, when asked by the judge, statement that his statement was somewhat voluntary, but mainly due to the fact the prosecutor told him the FBI would stop harassing him family. Further, the prosecutor stated that they would drop a fake charge they had on Buster's wife if Buster plead guilty.

A plea is not voluntary if it is made with coercive pressures. Both of these examples are coercive pressures that resulted in Buster's guilty plea. While he was willing to take some responsibility, that does not negate the bad acts and the threats by the prosecution.

Therefore, Buster's plea should not be found knowing, voluntary, and intelligent. The case should be remanded for a proper trial.

1(b): Whether, if the plea was involuntary, the court must remand with a judgment for acquittal.

A defendant may be acquitted for lack of evidence, acquittal by jury, insanity, etc. Here, Buster Buster is charged with one count of Illegal distribution of methamphetamine and one count sale of firearms. This means there was likely probable cause and proper evidence to charge Buster with these offenses. Further, the prosecutor only stated that the FBI would stop investigating Buster and would not bring a fake charge. While this is not good, it does not go to prove that there was insufficient evidence - or any real reason for acquittal.

Buster, however, was correct for the first start of the statement. The proper remedy in this scenario would be to remand the case to state court and have the case tried in a jury setting on the merits of the case.

2.) How should the appellate court decide Calvin's two arguments?

2(a): Whether the Appellate court should set aside the guilty plea and reverse the conviction due to improper governmental coercion or enticement.

Generally, a conviction may be reversed when a conviction is the result of governmental

Generally, a conviction may be reversed when a conviction is the result of governmental coercion or improper enticement or entrapment on part of the government. To prove government entrapment or enticement, the defendant must show that the government set them up to engage in conduct they wouldn't normally engage in, they engaged in that conduct as a result, and they were subsequently charged.

Here, Calvin is charged with one count of Illegal distribution of methamphetamine and one count sale of firearms. This means there was likely probable cause and proper evidence to charge Calvin with these offenses.

Further, the prosecution only promised that if Calvin pleaded guilty, he would dismiss the gun charge and ask for only probation - not a jail sentence. This is not an enticement or entrapment on part of the government. Rather, the prosecution offered Calvin a proper plea bargain to avoid trial. Plea bargain are standard in the US criminal justice system - a plea bargain does not have to be taken, but many are offered as an alternative, often less harsh form of punishment.

Moreover, Calvin stated that he would plead guilty, as his friends made statements to the police and the jury would probably believe those statements. Therefore, Calvin was accepting the plea deal, not due to enticement, but due to wanting to avoid trial.

Therefore, the appellate court not set aside the guilty-plea and reverse the conviction due to improper governmental coercion or enticement.

2(b): Whether the appellate court must set aside the guilty plea and reverse because the judge violated Calvin's rights.

The appellate court must set aside the guilty plea and reverse due to the judge violating Calvin's right not

As a general rule, a guilty plea must be knowing, voluntary, and intelligent. This means that a defendant must have knowledge sufficient to understand the basis of the guilty plea, must understand their constitutional due process rights, must understand their trial rights, and must understand what is being given up by choosing to enter into a guilty plea. Further, it must be voluntary. This means guilty plea cannot be obtained through coercive pressures by either the prosecution or an officer - this would violate the defendant's rights and the voluntary standard. Finally, the defendant must actually plead guilty. It is not sufficient for a defendant to nod, to allude to a guilty plea, or to engage in any conduct outside of a clear, express statement of intention to plead guilty.

Here, Calvin answered the judge's statement by explicitly stating, "No, I'm not guilty." This means that Calving did not accept a guilty plea and the judge did not act properly when they entered a guilty plea in as a disposition.

A guilty plea that is not made with the proper knowledge, voluntariness, and intelligence must be set aside - and is made with no basis of guilt. Therefore, Calvin's guilty plea, in which he did not plead guilty, must be set aside.

END OF EXAM

MEE Question 2

Ten years ago, a married couple bought land in State A on which there were two single-family houses, each two stories high. When the couple purchased the land, it was predominantly rural and was zoned for "commercial" use. The municipality's zoning is cumulative.

The couple used one house (House #1) as their residence and the other house (House #2) to operate a catering business. The catering business prepared all food on-site and then delivered the food to customers' locations; it did not serve any food to retail customers on its premises.

One year ago, with an increase in residential development, the local zoning board passed an ordinance that rezoned the district in which the land is located from "commercial" to "residential." A catering business in a single-family house is not a "residential" use. The zoning ordinance contains typical language protecting existing nonconforming uses.

One month ago, the couple signed a contract to sell the land to Betty, who plans to live in House #1 as her primary residence and to use House #2 to operate a retail bakery. Betty would not need to modify House #2 to operate a bakery, and she plans to operate the bakery during hours consistent with those of the couple's catering business. Unlike the catering business, however, the bakery will serve customers food items solely on its premises in House #2.

The sale contract set the closing for 45 days after it was signed and required the couple to have a marketable title subject only to encumbrances of record. At the time that the contract was signed, Betty had no notice of an existing unrecorded covenant on the land restricting all structures on the land to no more than two stories. The contract did not address the risk of loss due to events before closing.

The day before the closing, Betty first learned of the unrecorded covenant. That same day, a fire destroyed House #1. The fire was not the fault of the couple, and House #2 was not damaged.

State A applies the traditional common-law doctrine of equitable conversion with respect to risk of loss.

1. Would the rezoning of the land from commercial to residential prohibit Betty from operating a bakery in House #2? Explain.

2. Would the unrecorded covenant with the two-story restriction prevent the couple from delivering marketable title to Betty at the closing? Explain.

3. Can Betty rightfully refuse to close because House #1 was destroyed by fire? Explain.

2)

Whether rezoning the land from commercial to residential prohibit Betty from operating a bakery in House 2

R. Generally, a zoned area can only be used for the purpose it was zoned for. There is an exception when property is being used in a non-conforming way and then the laws change. This sort of "grandfathering in" applies when the property is continued to be used in a like manner as the original non-conforming use or like it was being used when it was appropriate. This "grandfathering in" of ordinances also can apply to transfers of the property, if they continue to use it in a like manner.

A. Here, the married couple purchased land with two single family houses when the land was predominantly rural and when it was appropriate to use the land for commercial purposes. They ran a catering business and prepared all the food on site where it later delivered to the food while not serving any customers on site. Later, the zoning commission changed the ordinance to make this area solely residential. Thus, the catering business became a non-conforming use, however, since it was grandfathered in the operation of this would be alright under the zoning change, as it contained "typical language protecting existing non-conforming uses."

The property was then transferred to Betty, who plans to operate a retail bakery out of one of the houses. This operation would require no structual modifications, making it, at first blush, seem to be consistent with the way the catering business was ran prior. The hours will remain the same as well. However, Betty does plan to serve customers food items SOLELY on the premises. This likely means an increase in foot traffic and vehicles, which would run anathema to the existing non-conforming use.

C. While the operation of a bakery in and of itself would not violate the new zoning ordinance as it would be grandfathered in, Betty's plan to serve food on the premises would likely run afoul of that. Her plans would increase traffic and interrupt the residential use of the zoned area.

Whether the unrecorded covenant within the two story restricting prevent the couple from delivering marketable title to Betty at Closing

R. A real estate transaction consists of two steps: the contracting and the closing. Once contracted, the parties are essentially in a true contract that will be finalized at the close, when the seller delivers the deed to the buyer. The requirement to deliver marketable title is implied in all conveyances of real property and cannot be circumvented. It states that, at closing, the seller warrants that he is delivering title that is good and free from all encumbrances. Encumbrances includes interests in property like liens, easements, mortgages, and covenants. If, before closing, the buyer learns that the title is unmarketable, it does not give the buyer the right to rescind the contract because seller's have the opportunity to cure the encumbrance, if possible, by the time the deal closes. There are certain exceptions, particularly to easements or covenants for commercial purposes that the buyer would have notice of, but generally any encumbrance makes the title unmarketable.

A. Here, the land Betty wishes to purchase is restricted by an "unrecorded" covenant on the land that all structures be no more than two stories. She had no notice of this covenant, indeed because it is predominantly rural and the only structures on it are two stories tall, falling within

the covenant's restrictions. In the contract with the couple, it stated that marketable title only had to be applied to "encumbrances of record." While cheeky on the couple's behalf, this is not possible. The warranty of marketable title cannot be circumvented via a contract, and adding disclaimer that it is only good to recorded encumbrances is a hindrance on the buyer's rights. While the couple has a chance to get the title clear by the time of closing, it is likely going to be difficult.

C. Because the land is burdened by an unrecorded covenant and the warranty of marketable title cannot be circumvented via contracting, Betty can rescind the contract if the title is not marketable by closing.

Whether Betty can rightfully refuse to close because House 1 was destroyed by a fire

R. The doctrine of equitable conversion states that the risk of loss of real property passes to the buyer at the time of contracting. Thus, if the parties enter into a contract and something happens in between the time of contracting and the time of closing, that loss is imputed to the buyer. The doctrine of equitable conversion is the default rule, unless otherwise contracted around. There are exceptions to this, of course, like if the seller was responsible for the loss, but generally, acts of god and the like are still attributable to the buyer.

A. Here, the couple entered into a contract with Betty a month ago. During the period between closing and contracting, House 1 burned down. Since State A follows the doctrine of equitable conversion with respect to risk of loss, that loss passes to the buyer, Betty.

C. Under equitable conversion, Betty will not be able to refuse to close because the risk of loss of House 1 transferred to her at the time of contracting.

END OF EXAM

MEE Question 3

Acoustic Studios Inc. (Acoustic) operates several music recording studios. In January, Acoustic leased space in a warehouse to construct additional studios. By April, the studios were almost complete, and Acoustic had begun to schedule clients in those studios for recordings.

One of the final steps in construction of the studios was the installation of soundproof tiles on the walls and ceilings of the studios to ensure that outside sounds would not interfere with recording. On April 10, Acoustic entered into a valid signed agreement with Soundwave LLC under which Acoustic agreed to pay $40,000 and Soundwave agreed that it would, on or before May 30, deliver and install enough tiles to soundproof the new recording studios. The tiles, which were manufactured exclusively by Soundwave, were particularly suited to Acoustic's needs. The agreement stated that $38,000 of the price was for the soundproof tiles and $2,000 was for their installation.

On April 12, Acoustic's president received a call from the chief executive officer (CEO) of Soundwave. "I hate to ask this," said the CEO, "but because we have a long history with you, I hope you'll be understanding. When we agreed to sell you the soundproof tiles and install them for $40,000, our sales manager forgot to take into account recent significant increases in the cost of raw materials necessary to make those tiles. We're prepared to honor our deal, but it will be a hardship. I'm hoping that you'll agree to raise the deal price to $48,000, which will just barely cover our actual costs on the tiles."

Acoustic's president agreed to this request. She was aware of recent price increases for soundproofing materials, and she judged the request to be a fair cost increase under the circumstances; moreover, she also valued having a good relationship with Soundwave. The Soundwave CEO drove to Acoustic's headquarters later on April 12, and the parties crossed out the existing pricing terms in the written agreement, writing "$48,000 total" in their place; both the CEO and the president signed their initials next to the change.

On May 30, when the tiles had not been delivered by mid-morning, Acoustic's president emailed Soundwave's CEO. The CEO immediately emailed back, "I'm afraid I have bad news. We won't supply you with the tiles after all. A longtime customer desperately needs the tiles, so we plan to supply them to that customer instead. We apologize."

Acoustic's president quickly tried to find an alternative source for soundproof tiles that fit Acoustic's needs, but she was unable to find anything suitable. The lack of soundproofing for the new studios would cause Acoustic to be unable to honor several lucrative contracts with musical artists and thereby cause significant financial loss and reputational harm to Acoustic. Soundwave still has the tiles and has not yet delivered them to the other buyer.

1. Does Article 2 of the Uniform Commercial Code apply to the transaction between Acoustic and Soundwave? Explain.

2. Assuming that Article 2 of the Uniform Commercial Code applies to the transaction, if Soundwave delivers and installs the tiles (notwithstanding its CEO's statement to the contrary), is Acoustic bound to pay $48,000 instead of $40,000? Explain.

3. Assuming that Article 2 of the Uniform Commercial Code applies to the transaction and Soundwave refuses to supply the tiles to Acoustic, would Acoustic prevail in seeking a court order directing Soundwave to specifically perform its obligations under the agreement to supply the tiles? Explain.

3)

1. The issue is whether the UCC or common law applies to the transaction between Acoustic and Soundwave.

The threshold issue for every contract dispute is determining which law applies to the contract at issue. Contracts for the sale of goods are governed by Article 2 of the UCC, whereas contracts for services or the sale of real estate are governed by the common law. Where a contract is mixed, that is, calls for both the sale of goods and the provision of services, the court will apply the UCC or common law after determining the "predominant purpose" of the contract. When determining the predominant purpose of the contract the court will consider whether the goods or services are mere incidental or ancillary to the provision of the other, the costs for the goods versus the services, and the relative importance to the contracting parties for obtaining the goods or the services. In a mixed contract the court may instead decide to apply the UCC to the provisions relating to the sale of goods, and the common law to the provisions regarding the rendering of services. Moreover, where a contract is governed by the UCC, if no UCC provision addresses the issue at hand the common law will be used to fill such gaps.

In this case, Acoustic entered into a contract with Soundwave whereby Acoustic agreed to pay $40,000 to Soundwave. The contract provides that $38,000 of the purchase price was for the purchase of soundproof tiles, and $2,000 was for the installation of those same tiles. Moreover, the tiles were specially manufactured by Soundwave and were particularly suited for Acoustic's needs; the soundproof tiles would be used by Acoustic in their recording studios for recording their client's music. Here, it is likely that the UCC will control. First, and most clearly, the cost between the tiles and the installation is drastic. Acoustic would be paying 19 times more for the tiles than for their installation. Although not dispositive, this is strong evidence of the predominant purpose of the contract. Moreover, Acoustic seems to have more of an interest in obtaining the tiles than having the tiles installed. As the facts provide, Acoustic needs the tiles to honor lucrative contracts with their customers, and Soundwave is the only individual that produces such tiles. Similarly, nothing indicates that Acoustic would not be able to have someone else install the tiles, whereas they are unable to obtain the tiles from other sources. Therefore, a court would likely find that the predominant purpose of the contract is for the sale of the tiles, and not for their installation. Thus, Article 2 of the UCC will likely control any disputes arising from this contract.

2. The issue is whether Acoustic is bound to pay $48,000 or $40,000 if Soundwave upholds their end of the contract.

Under the UCC contract modifications need not be supported by new consideration, unlike under the common law, and instead, need only be made in good faith. Contracts for the sale of goods over $500, however, are subject to the statute of frauds, and must be contained in a writing, identifying the essential terms of the contract, and signed by the party to be charged. Where a contract is subject to the statue of frauds and is later modified, that modification need not be in writing unless it would otherwise place the contract within the statute of frauds. Under the statue of frauds, the only essential term of a sale of goods contract is the quantity of goods

to be sold. Thus, if the contract identifies the parties, and the quantity of goods to be sold, the contract will satisfy the statute of frauds.

In this case, Acoustic originally agreed to pay $40,000 for the delivery and installation of Soundwave's soundproof tiles. After the contract was signed, however, Acoustic received a call from the CEO of Soundwave, who stated that the price of raw materials has significantly increased, that the sales manager had forgotten about this increase, and that as a result, performing under the existing contract would result in hardship to Soundwave. That being said, Soundwave stated that they were prepared to follow their obligations under the contract, but asked Acoustic if they would be willing to increase the price under the contract to $48,000. Later, the CEO drove to Acoustic's headquarters, and the president of Acoustic found the modification to be fair and reasonable and agreed to the modification. Both parties crossed out the existing price terms in the contract, replaced it with a price of $48,000, and initialed the change. Here, this modification was made in good faith. As stated in the facts, Acoustic was aware of the recent price increase and found the increased price to be fair. Thus, under the UCC, the modification is enforceable, even though no new consideration supports the modification. Moreover, although this modification originally occurred over the phone, the statue of frauds is not an issue. Both parties crossed out the existing price term and initialed the increase price term. Therefore, the contract was signed by the party to be charged (Acoustic) and would be enforceable. Thus, Acoustic is obligated to pay the $48,000 under the modified agreement, and not the $40,000 originally agreed upon.

3. The issue is whether Acoustic would prevail in seeking a court order to compel Soundwave to specifically perform its obligations under the agreement to supply the tiles.

Where a contract has been breached, the non-breaching party may seek specific performance of the contract. Specific performance requires that the other party carry out their obligations under the contract. When considering whether to grant specific performance as a remedy, a court will consider the hardship a party will face without such a remedy, the uniqueness of the goods at issue, the ability of the breaching party to specifically perform, as well as whether the court would be able to adequately supervise such performance. Because of the difficulty involved in the oversight of performance of a services contract, courts rarely, if ever, grant specific performance for a service contract.

In this case, Soundwave informed Acoustic that they would be unable to perform under the contract, as a longtime customer needs the tiles. Although Acoustic searched for an alternative source for similar tiles, they were unable to find a provider of any tiles suited for their needs. Moreover, if Acoustic is unable to acquire such tiles. they will be unable to honor several of their lucrative contracts and will suffer significant financial loss. Here, a court would likely grant a request for specific performance. First, the goods sought by Acoustic are unique, and Acoustic is unable to purchase the tiles from any other source. Moreover, Acoustic would suffer significant hardship if significant performance is not granted, as they are unable to acquire similar goods, and would suffer significant financial loss. Further, nothing is preventing Soundwave from performing, they still have the tiles in their possession, and could easily deliver

those tiles to Acoustic. Finally, specific performance could be easily supervised by the court, Soundwave must merely deliver the tiles called for under the agreement. Thus, Acoustic would likely prevail if they seek an order for specific performance. That being said, Acoustic is almost certain not to prevail on a request for the provision of the contract calling for the installation of the tiles. As stated above, specific performance for services is rarely if ever granted, and nothing here indicates that such a remedy would be appropriate. Accordingly, Acoustic would likely prevail on a request for specific performance for the purchase of the tiles, but would almost certainly fail if they sought specific performance for their installation.

END OF EXAM

MEE Question 4

Plaintiff, a citizen of State A, worked for Defendant, a citizen of State B, at a factory operated by Defendant in State A. Plaintiff worked for Defendant for 20 years and then retired on December 31, 2022.

In early 2025, Plaintiff began to notice that he was suffering mild hearing loss. His doctor determined that the hearing loss was untreatable and would progressively worsen. The doctor said that the loss resulted from Plaintiff's having worked without proper ear protection in a noisy factory for many years.

On June 1, 2025, Plaintiff sued Defendant in the federal district court of State A, properly invoking the court's diversity jurisdiction. Plaintiff alleged that Defendant had acted negligently in failing to provide Plaintiff with proper hearing protection in the workplace and in failing to warn Plaintiff of the risk of hearing loss. Plaintiff further alleged that those negligent acts caused Plaintiff's hearing loss, resulting in more than $200,000 in harms to him beginning on February 1, 2025, when Plaintiff first began to notice his hearing problem.

Defendant's answer admitted the basic facts of Plaintiff's employment by Defendant but denied that Plaintiff's hearing loss had been caused by Defendant's actions or that Defendant had behaved negligently. Defendant raised no defenses in its initial answer.

In State A, the statute of limitations for tort claims is two years. In 2021, State A's highest court ruled, in a case involving injuries caused by an allegedly defectively performed surgery, that the limitations period would run from the date of discovery of the injury, rather than the date the injury occurred. Other states have also adopted date-of-discovery rules, although the rules vary and are sometimes limited to particular kinds of injuries.

One year after Plaintiff filed suit and during discovery, Plaintiff admitted that the injury that had caused his hearing loss had occurred more than two years before suit was filed. Defendant then filed a motion to amend its answer to include the affirmative defense that the statute of limitations had run on Plaintiff's tort claim.

Plaintiff objected to the amendment, relying on a provision of State A law that prohibits any party from amending pleadings after discovery has begun. The district court granted Defendant's motion to amend, and Defendant amended its answer.

Defendant moved for summary judgment based on its statute-of-limitations defense and Plaintiff's admission that his injury had occurred more than two years before suit was filed. Defendant argued that State A should follow the traditional date-of-injury approach

to determining when the tort limitations period begins running. Under that approach, Defendant argued, the undisputed facts showed that the statute of limitations had run because Plaintiff's complaint was filed on June 1, 2025, more than two years after Plaintiff stopped working in Defendant's factory.

Ten days after Defendant's motion for summary judgment was served on Plaintiff, Plaintiff filed a response. Plaintiff argued that summary judgment was inappropriate because, under State A law, the limitations period runs from the date of discovery of an injury (early 2025), which was less than two years before Plaintiff filed suit. Plaintiff's response also asked the court to impose sanctions against Defendant under Federal Rule of Civil Procedure 11, arguing that Defendant's motion for summary judgment was frivolous because State A's rule provides that a torts limitations period begins to run on the date of discovery.

1. Did the district court properly grant Defendant's motion to amend its answer despite the fact that State A law forbids amendments once discovery has begun? Explain.

2. Should the district court grant Plaintiff's request for sanctions against Defendant under Rule 11 of the Federal Rules of Civil Procedure? Explain.

4)

1. The issue is whether the District Court properly granted Defendant's motion to amend its answer despite the fact that State A law forbids amendments once discovery has begun.

When a federal court sits in diversity, whether the court should apply the law of the forum state or federal law turns on whether the state law is substantive or procedural. First, the federal court must determine whether the federal law conflicts with state law. If there is no conflict, the federal court may apply both laws simultaneously as the outcome is not affected. However, where the state and federal law conflict, the federal court must determine which law to apply. First, the court must determine if there is a federal rule on point. If there is a federal rule on point, and the rule is arguably procedural, the federal court should apply the federal rule unless the federal rule modifies, abridges, or enlarges a substantive right of the parties. If there is no federal rule on point, however, the court should apply the state law where the state law is outcome determinative, unless there is a countervailing federal interest in not applying the state law. Laws which modify the statute of limitations, burden of proof, or elements of a claim are generally accepted to be substantive. The federal rules provide that a party may amend their pleadings once as a matter of right within 21 days of service of the pleading if no response is required, or within 21 days of a response to that pleading if a response is required. The federal rules of civil procedure provide that even where a party may not amend their pleading as a matter of right, the court shall freely grant leave for a party to amend their pleadings if the interest of justice so require.

In this case, State A law provides that the state of limitations is two years after the discovery of the injury. In contrast, the traditional approach for statutes of limitations is that the statute of limitations begins to run after the injury occurs. Here, Defendant originally included in their answer no affirmative defenses, but later sought to amend their complaint to add the affirmative defense that the statute of limitations had run. Under the law of the forum state, State A, a party is prohibited from amending their pleadings after discover had closed. The federal rule for amendments contains no such limitation. Thus, the laws of State A and the federal rules are in conflict. Therefore, the court must determine whether to follow the law of State A, or apply the federal rules. Here, there is a federal rule on point; the rule which allows amendments whenever justice so requires. This rule is arguably procedural, as it affects the timelines for amendments to pleadings. Similarly, the rule does not modify, abridge, or enlarge a substantive right, such as the statute of limitations, the burden of proof for the claim, or the elements of the claim at issue. Thus, the rule regarding amendments is likely procedural, and the court should apply the federal rule.

In this case, Defendant sought to amend their answer approximately one year after suit had been filed. Because the amendment would occur well over the 21 days after service of the pleading, that is, the answer, the defendant does not have the right to amend the pleading. Instead, Defendant must obtain leave of the court to amend their pleading, and the court should freely grant that pleading if the interest of justice so requires. Here, the court likely acted properly in granted Defendant leave to amend. Although Defendant will likely fail on their

argument that the statute of limitations has run, as the State A rule is almost certainly substantive and thus controls, Defendant should be granted leave to make such an argument and have the court determine the outcome. Because the federal rule relating to amending a pleading is rather generous, it was likely proper for the court to grant Defendant leave to make such an amendment. Thus, the court properly granted Defendant's motion to amend their answer despite the fact that State A law forbids amendments once discovery has begun.

2. The issue is whether the district court should grant Plaintiff's request for sanctions against Defendant under Rule 11.

Under Rule 11, any attorney submitting a paper to the court must sign and certify that paper. The attorney's certification certifies that the paper is not being brought for an improper purpose, is supported by existing law or a non-frivolous argument to extend the law, that all factual assertions are supported by known facts or if so specified are likely to be supported by future discovery, and that all denials are supported by known facts or if so specified a genuine belief that there is not enough information to admit the existence of those facts. Where one party believes that the other has violated one of these provisions, they may seek sanctions from the court under Rule 11. Before seeking such sanctions, however, the party must serve a copy of the motion for sanctions on the party allegedly violating the provisions of Rule 11 and provide them with 21 days to ameliorate the deficiency. If the served party does not correct the pleading with 21 days, the moving party may then file the motion for sanction with the court and seek an order for sanctions.

In this case, Defendant filed a motion for summary judgment asserting that the statute of limitations had run under the general rule that the statute of limitations begins to run at the date the injury occurs. Plaintiff, however, believes that State A law should control, which states that the statute of limitations begins to run on the date the injury was discovered. If Defendant prevails, Plaintiff's claim would be barred by the statute of limitations, and it Plaintiff prevails, the claim would not be barred. Ten days after Defendant filed their motion for summary judgment, Plaintiff filed a response which also sought sanctions against Defendant under Rule 11. First, it is questionable if Defendant's conduct would truly be sanctionable. Although State A law is rather clear, Defendant could likely show that the argument that the general rule for statute of limitations is non-frivolous, and that State A law should not control. Whether or not that argument is compelling, however, Plaintiff's motion for sanctions is procedurally defective. Plaintiff never served Defendant with a motion for sanctions, and similarly, never afforded Defendant 21 days to ameliorate the allegedly sanctionable conduct. Because Plaintiff has failed to meet the required showing under Rule 11, the court should not grant Plaintiff's request for sanctions, and should deny Plaintiff's motion.

END OF EXAM

MEE Question 5

Derek, who has a general dentistry practice in Small Town, State A, attempted to perform a root canal procedure on a patient. The procedure failed, resulting in the patient's needing a tooth extraction and a tooth implant. The patient sued Derek, alleging malpractice.

The patient's lawyer asked several other Small Town dentists with general dentistry practices to serve as an expert witness on the patient's behalf, but none wanted to testify against a local dentist, and each declined. The patient's lawyer then met with another State A dentist who specializes in root canals and who lives in a similarly sized town 150 miles away. The specialist has no particular knowledge of the practice of dentistry in Small Town. The specialist has agreed to serve as an expert witness and testify that Derek negligently performed the root canal procedure.

The patient suffered the following harms: the loss of her tooth, additional dental bills, three days of lost wages, and physical pain. Because of an earlier trauma, she has also experienced unusually significant and ongoing emotional turmoil because, with an artificial tooth, she no longer feels "whole." These feelings have led the patient to seek psychological counseling at her own expense.

Angry about her experience and hoping to warn other patients about possible harm, the patient posted a message on an online forum. The forum was used by only five or six residents of Small Town, who accessed it only occasionally. On that forum, the patient posted a message that accurately described the details of her root canal procedure and her resulting injuries. She concluded her post by stating that Derek was "a real numbskull." One person responded to the patient's post by thanking her and stating that he had canceled scheduled procedures with Derek as a result of the patient's post. Derek is considering asserting a defamation counterclaim against the patient.

1. What is the standard of care that will be applied to determine whether Derek is liable for malpractice? Explain.

2. Given that no local general dentists will testify against Derek, can the testimony of the out-of-town specialist establish the standard of care? Explain.

3. Assuming that the patient proves the liability elements of her malpractice claim, for which harms can the patient recover damages against Derek? Explain.

4. Does Derek have a defamation claim against the patient? Explain.

5)

1. What is the standard of care that will be applied to determine whether Derek is liable for malpractice?

The issue here is what standard of care applies to a dentist

The general rule is that in a negligence action, the defendant must exhibit the care of a reasonable person in like circumstances. However, there is a special rule for professionals. That rule is that a professional must exhibit the care of a reasonable professional in the persons profession in good standing. This is a hightened standard of care that is often used for doctors, lawyers, and dentists. Typically this is a local standard and the professionals standard of care will be compared to others in the community.

In this case, Derek is a dentist. Because a dentisit is consdiered a professional, a hightened standard of care will apply. Therefore, Derek will be held to the standard of a dentist in his local that is in good standing.

2. Given that no local general dentists will testify against Derek, can the testimony of the out-of-town specialist establish the standard of care?

The issue here is whether the out of town dentist can establish the duty of care owed by Derek in this case.

The general rule is that the standard of care for professionals such as dentists is based on other professionals in the field in good standing that are local.

In this case, no local dentists agree to testify against Derek. However, a dentist from a neighboring town is willing to testify regarding the standard of care. The facts tell us that the neighboring dentist lives about 150 miles away but has no particular knowledge of the practice of a small town dentist. Because a root canal procedure is pretty standard nation wide, and the guidlines for dentists are probably similar in that regard, the dentist will likely be allowed to testify as to the standard of care. For one, the neighboring dentist specializes in root canals and lives in a similarly sized town about 150 miles away. The court would likely find that this dentist is a qualified expert with knowledge on the subject of root canal operations and allow him to testify to establish the standard of care in this case.

In conclusion, the court should allow the dentist to testify as to the standard of care.

3. Assuming that the patient proves the liability elements of her malpractice claim, for which harms can the patient recover damages agaisnt Derek?

The issue here is whether the patient will be able to recover both actual damages for the harm caused due to the loss of her tooth, as well as the emotional damages that stemmed from an earlier trauma.

The general rule is that in tort, a plaintiff may recover all foreseeable damages stemming from the negligent conduct of a defendant. However, there is a limitation on this rule. A plaintiff cannot recover solely for emotional damages under a claim of negligence. However, under the eggshell plaintiff doctrine, the plaintiff may be able to argue that she is entitled to recover emotional

damages as well. The eggshell plaintiff doctrine states that a defendant takes the plaintiff as he finds them. Therefore, a defendant will be liable for injuries that occured because of a plaintiffs latent or underlying conditions even if not foreseeable to the defendant.

In this case, there is no question that if the plaintiff can establish a prima facie case for negligence by showing duty, breach, causation and damages that she will recover for the loss of her tooth, additional dental bills, the lost wages, and physical pain. This is because applying the rule above, the plaintiff is entitled to recover all damages stemming from the defendants negligence. The issue is only whether the plaintiff can recover for the emotional damages that she suffered because of an eariler trauma. The facts state that because of a previous incident, the plaintiff no longer feels "whole" with her artificial tooth and this has caused her to suffer emotional damages. Additionally, these emotional damages have caused the plaintiff to seek counseling.

Although these damages stem from a previous incident and are strictly emotional, the defendant will likely be liable under the eggshell plaintiff doctrine. Under eggshell plaintiff doctrine, Derek takes his patients as he finds them. It is not relevant that the underlying condition that caused the plaintiff to suffer emotional damages was not foreseeable. Therefore, Derek will be liable for the emotional damages as well under the eggshell plaintiff doctrine.

4. Does Derek have a defamation claim against the patient?

The issue is whether Derek has a claim for defamation

The general rule for defamation is that a plaintiff must show that the defendant conveyed a defamatory statement to a third party other than the plaintiff, and that the third party understood the statement. Additionally, the plaintiff must have acted with some level of fault as to the falsity of the communication and most likely must prove that the statement was in fact not true. lastly, the plaintiff must show that their reputation was damaged. If the plaintiff is not a public figure, the majority rule is that the defendant must have been at least negligent as to the falisty of the statement. Libel is written defamation and special damages are not required because damages are presumed

In this case, the patient posted a statement online that the dentisit was a "numbskull." The statement was published to at least one individual other than the plaitniff who understood it, and it was written, so damages were presumed. However, Derek will likely not be able to succeed on a defamation claim. First off this statement is likely not defamation because it is an opinion and not a statement of fact. Second, there is not indication that this statement was false at the facts indicate it accuratly described the root canal procedure. Although Derek lost a client because of the statement, there is no viable defamation claim here because the elements are not satisfied.

END OF EXAM

July 2026
Indian Law Question
ICWA

A.W. is a three-year-old child. Her mother, Sarah, is an enrolled member of the Oglala Sioux Tribe, a federally recognized Indian tribe. A.W.'s father, Daniel, is not an enrolled member of any tribe.

A.W. was born on the Pine Ridge Indian Reservation and lived there with her parents until she was two years old. At that time, Sarah and Daniel moved with A.W. to Rapid City, South Dakota, outside the reservation boundaries.

After the move, Sarah struggled with substance abuse. Daniel was later arrested for domestic abuse against Sarah. Following an investigation by the Department of Social Services, A.W. was removed from Sarah's and Daniel's custody, and the State initiated an abuse and neglect proceeding.

The State notified the Oglala Sioux Tribe of the proceeding. The Tribe confirmed that A.W. was eligible for membership with the Tribe. The Tribe intervened in the proceeding.

A.W. was originally placed with John and Emily Johnson, a non-Indian foster family, in Rapid City, because she has a rare medical condition requiring specialized treatment three times per week at a pediatric clinic in Rapid City, and no relatives of Sarah or Daniel lived near Rapid City.

The Johnsons cared for A.W. for twelve months. During that time, A.W. became strongly bonded with the Johnsons and began referring to them as "Mom" and "Dad." The Johnsons have managed all of A.W.'s medical appointments and have developed relationships with her medical providers.

Sarah's and Daniel's parental rights were eventually terminated, and the State began considering adoptive placements for A.W. The Oglala Sioux Tribe objected to any adoptive placement outside the ICWA placement preferences and requested that A.W. be placed according to ICWA's placement preferences.

Three possible placements were identified by the State:

1. Rose — Maternal Grandmother

Rose is an enrolled member of the Oglala Sioux Tribe and lives on the reservation. She has maintained a close relationship with A.W. since birth and frequently cared for A.W. before removal. Rose has a stable home and support from extended family members.

2. The Whitecloud Family — Tribal Foster Placement

The Whiteclouds are enrolled members of the Oglala Sioux Tribe and have been approved by the Tribe as an adoptive placement for Indian Children. They have no prior relationship with A.W.

3. The Johnsons – Current Placement

The State opposed any change in placement. The State argues that A.W.'s best interests require remaining with the Johnsons because: she has lived with them for twelve months; she is bonded to them; they have provided stability; they are familiar with her extraordinary medical needs; and moving her would cause emotional harm.

Analyze all legal issues arising under the Indian Child Welfare Act, including ICWA's applicability to A.W. and the governing adoptive placement preferences. In your answer, compare and evaluate each proposed placement under ICWA's statutory hierarchy, and determine whether good cause exists to deviate from those preferences.

MEE 6 – Indian Law

ICWA

ICWA was passed by Congress in response to the generations of removal of Native/Indian children from Indian parents (many times via kidnapping and without cause), causing generational trauma. To ensure that this ended, ICWA applies to all children under 18 years that are old/non-married. These individuals must be enrolled or eligible for enrollment in a Tribe, and at least one parent must be an enrolled member of a Tribe.

A.W. is 3 and the Oglala Sioux verified she is eligible for membership; therefore ICWA applies.

Next we should consider, under ICWA, the termination of parental rights of Indian parents. In order for parental rights to be terminated, the court must show a finding of severe risk of harm to the Indian child. It is not clear that the finding of the court used that rubric standard, as only domestic abuse was attributed to the father.

Regarding placement options and the hierarchy of placements of Indian children, ICWA is clear. First, the preference is related Indian relatives; next, unrelated Tribal members; and lastly, unrelated members of a different Tribe. Placement with an Indian, regardless of Tribe, ensures the counter-sins of the past (and after ICWA at least in this form). The placement with a non-Tribal family is not in contention under ICWA.

The argument for the Johnsons is an argument that relies on savior/white-colonial ideals that go against the sovereign political ideals of Tribes and non-Tribal Indians alike. The argument relied upon, presumably by the State and the Johnsons, will be a “best interest of the child” argument due to the apparent ability to provide for special needs of the child.

The other argument will rely on the “emotional harm” of moving A.W., which is not a proven point but instead presumed. ICWA preempts the state here, and “best interest” standards are to be applied only after a set of placements with equal standing are given as options. Best interest standards don’t overrule ICWA.

The maternal grandmother, Rose, is at the top of the ICWA hierarchy as a related Tribal member, and she has a close relationship with the child. Rose provides the necessary political + cultural environment, and the Tribe supports a Tribal placement.

Furthermore, her home is stable and has support from others to assist in the traditional rearing of an Indian child.

The argument against Rose might be that she is (appears) single based on the facts, and she might be old. But those are not de-factors under ICWA and are also addressed by the assistance of family.

The Whitecloud family would be a safe and adequate family for A.W., and as they are located second on the hierarchy, if Rose were unable to take care of A.W., they would be sufficient. The Tribe has approved them as adoptive placements, but they are not related to A.W. and therefore not as good for A.W. as Rose.

In the best interest of A.W., the Tribe, and following ICWA, Rose would be the best permanent placement, with the Whiteclouds being a sufficient backup. The Johnsons can continue a relationship with A.W. — various SD State cases find this appropriate — but due to the history underlying ICWA and federal Indian policy, the harm of placing an Indian child with a white family outweighs their current arrangement or the State's wishes.