NOTE: The information in this booklet is believed to be correct at the
time of publication. Since rules and policies of jurisdictions change,
examinees are advised to consult the jurisdictions directly for the most
current information.
NOTICE TO EXAMINEES

The following conduct is prohibited during the examination, as it undermines the integrity and fairness of the examination process:

- Bringing unauthorized devices (whether turned on or off) or unauthorized materials into the testing room, including, but not limited to, calculators, cameras, cell phones, pagers, personal digital assistants, text messaging devices, audio or video recording devices, scanners, language translators, and written materials;
- Bringing test materials, unauthorized devices, or unauthorized materials out of the testing room during any scheduled or unscheduled break or at the conclusion of the testing period;
- Copying answers from another examinee or sharing answers with another examinee; and
- Continuing to work after a supervisor has instructed examinees to stop writing.

Engaging in prohibited conduct during the examination could result in some or all of the following penalties:

- Civil liability;
- Criminal penalties;
- Cancellation of the examinee’s test scores;
- Denial of the examinee’s application to sit for future exams;
- Denial of the examinee’s bar application on character and fitness grounds; and
- Disciplinary action by a bar authority if the examinee is already admitted to practice law.
Introduction

The Multistate Essay Examination

The Multistate Essay Examination (MEE) is developed by the National Conference of Bar Examiners (NCBE) and is administered by participating jurisdictions on the Tuesday before the last Wednesday in February and July of each year. This booklet provides the examinee with a general description of the MEE, outlines of the subject matter covered, and sample questions.

Jurisdiction Information

Examinees should contact the jurisdiction to which they seek admission to ascertain whether the MEE is administered as part of the jurisdiction’s bar examination and to find out the relative weight given to the MEE and other scores. (Jurisdictions that administer the Uniform Bar Examination [UBE] weight the MEE component 30%.) To obtain information about bar admission requirements or to apply for admission to the bar, examinees should contact the appropriate jurisdiction. Contact information for jurisdictions can be found in the Bar Admission Offices directory at www.ncbex.org.

About the National Conference of Bar Examiners

NCBE is a not-for-profit corporation founded in 1931. The mission of the Conference is to work with other institutions to develop, maintain, and apply reasonable and uniform standards of education and character for eligibility for admission to the practice of law; and to assist bar admission authorities by providing standardized examinations of uniform and high quality for the testing of applicants for admission to the practice of law, disseminating relevant information concerning admission standards and practices, conducting educational programs for the members and staffs of such authorities, and providing other services such as character and fitness investigations and research.

Accommodations for Persons with Disabilities

An examinee with a documented disability may be eligible for auxiliary aids or services in order to complete the MEE. The standard version of the MEE is printed in 12-point Times New Roman font. The MEE is also routinely available in Braille, in large-print (18- and 24-point Helvetica font) versions, on audio CD, and as a Microsoft Word document on a data CD for use with screen-reading software. All decisions and arrangements for these or other accommodations are made by the jurisdictions, and each jurisdiction has its own formal application and approval process. Examinees seeking accommodations must apply separately to each jurisdiction in which they plan to take the MEE. Contact information for each jurisdiction’s bar admissions office can be found in the Bar Admission Offices directory at www.ncbex.org.

Test Preparation

NCBE publishes study aids for the MEE that include questions from previously administered tests and model analyses that are illustrative of the discussions that might appear in excellent answers to the questions. MEE Questions and Analyses may be purchased from NCBE by visiting www.ncbex.org to access the NCBE Online Store. MEE Questions and Analyses from older administrations are available at no cost on the NCBE website. Recent MEE questions (without analyses) are available at no cost on the NCBE website and on pages 17–29 of this booklet.
Description of the Examination

NCBE offers nine 30-minute questions per administration. User jurisdictions may elect which of the nine questions they wish to use. (Jurisdictions that administer the Uniform Bar Examination [UBE] use a common set of six MEE questions as part of their bar examinations.) The MEE questions are developed by the MEE Drafting Committee and outside experts in the fields covered by the test.

The purpose of the MEE is to test the examinee’s ability to (1) identify legal issues raised by a hypothetical factual situation; (2) separate material which is relevant from that which is not; (3) present a reasoned analysis of the relevant issues in a clear, concise, and well-organized composition; and (4) demonstrate an understanding of the fundamental legal principles relevant to the probable solution of the issues raised by the factual situation. The primary distinction between the MEE and the Multistate Bar Examination (MBE) is that the MEE requires the examinee to demonstrate an ability to communicate effectively in writing.

Areas of law that may be covered on the MEE include the following: Business Associations (Agency and Partnership; Corporations and Limited Liability Companies), Conflict of Laws, Constitutional Law, Contracts, Criminal Law and Procedure, Evidence, Family Law, Federal Civil Procedure, Real Property, Torts, Trusts and Estates (Decedents’ Estates; Trusts and Future Interests), and Uniform Commercial Code (Negotiable Instruments and Bank Deposits and Collections; Secured Transactions). Some questions may include issues in more than one area of law. The particular areas covered vary from exam to exam.

Instructions for Taking the Test

The back cover of each test booklet contains the following instructions:

You will be instructed when to begin and when to stop this test. Do not break the seal on this booklet until you are told to begin.

You may answer the questions in any order you wish. Do not answer more than one question in each answer booklet. If you make a mistake or wish to revise your answer, simply draw a line through the material you wish to delete.

If you are using a laptop computer to answer the questions, your jurisdiction will provide you with specific instructions.

Read each fact situation very carefully and do not assume facts that are not given in the question. Do not assume that each question covers only a single area of the law; some of the questions may cover more than one of the areas you are responsible for knowing.

Demonstrate your ability to reason and analyze. Each of your answers should show an understanding of the facts, a recognition of the issues included, a knowledge of the applicable principles of law, and the reasoning by which you arrive at your conclusion. The value of your answer depends not as much upon your conclusions as upon the presence and quality of the elements mentioned above.

Clarity and conciseness are important, but make your answer complete. Do not volunteer irrelevant or immaterial information.

Answer all questions according to generally accepted fundamental legal principles unless your jurisdiction has instructed you to answer according to local case or statutory law. (UBE instructions: Answer all questions according to general accepted fundamental legal principles rather than local case or statutory law.)
Subject Matter Outlines

The following outlines indicate the examination’s potential scope of coverage. The outlines are not intended to list each aspect of each topic mentioned. Some questions may require analysis of more than one subject area. The particular areas covered vary from exam to exam.

Business Associations

Agency and Partnership
I. Agency relationships
   A. Creation
   B. Types
   C. Termination
II. Power of agent to bind principal
   A. Authority
   B. Apparent authority
   C. Inherent agency power
III. Vicarious liability of principal for acts of agent
IV. Fiduciary duties between principal and agent
   A. Duty of care
   B. Duty of loyalty
   C. Duty of obedience
V. Creation of partnerships
   A. General partnerships
   B. Limited partnerships
   C. Limited liability partnerships
VI. Power and liability of partners
VII. Rights of partners among themselves
   A. Profits and losses
   B. Management and control
   C. Duty of care
   D. Duty of loyalty
VIII. Dissolution
   A. Distinguished from winding up and termination
   B. Rightful versus wrongful
   C. General partnerships, limited partnerships, or limited liability partnerships
IX. Special rules concerning limited partnerships
   A. Disclosure requirements
   B. The control limitation
   C. Economic rights of limited partners

Corporations and Limited Liability Companies

I. Formation of organizations
   A. Articles of incorporation
   B. Bylaws
   C. Articles of organization; certificates of formation
   D. Operating agreements
II. Pre-organization transactions
   A. Promoters: contracts and fiduciary duties
   B. Subscriptions for shares
III. Piercing the veil
IV. Financing the organization
   A. Sources of finance
   B. Securities issuance and characteristics
   C. Dividends and distributions
   D. Redemptions and repurchases
V. Management and control
   A. Shareholders
      1. Meetings: annual, notice, and quorum
      2. Voting: eligibility, cumulative voting, proxy voting, class voting, voting trusts, and shareholder voting agreements
   B. Directors
      1. Meetings: quorum and notice
      2. Action by written consent
      3. Action by committee
      4. Director’s objections to actions
   C. Officers
      1. Authority
      2. Officer’s liability on corporate obligations
   D. Members and managers
      1. Authority
      2. Liability
      3. Powers
VI. Fiduciary duties
   A. Directors, officers, and shareholders
   B. Managers and members

VII. Close corporations and special control devices
   A. Share transfer restrictions
   B. Special agreements allocating authority
   C. Resolutions of disputes and deadlocks
   D. Option or buy/sell agreements

VIII. Organizational structure including relationships between parents and subsidiaries
   A. Amendments
      1. Articles of incorporation and bylaws
      2. Articles of organization, certificates of formation, and operating agreements
   B. Mergers and consolidations
   C. Sales of substantially all assets
   D. Recapitalizations
   E. Exchanges of securities
   F. Dissolution of organization

IX. Shareholder and member litigation: direct, derivative, and class litigation

Conflict of Laws

NOTE: Conflict of Laws issues are embedded in the other MEE topic areas. They do not appear as stand-alone questions.

I. Domicile
   A. Meaning and legal consequences
   B. State’s law by which determined

II. Jurisdiction of courts
   A. Types of jurisdiction
      1. In personam
      2. In rem and quasi in rem
   B. Bases of jurisdiction
   C. Notice and opportunity to be heard
   D. Limits on exercise of jurisdiction
      1. Traditional limitations
         a. Choice of forum by agreement
         b. Fraud, force, and privilege
         c. Forum non conveniens
      2. Constitutional limitations (due process)

III. Choice of law
   A. Basic concepts
      1. Legal characterization
      2. Renvoi
      3. Depecage
      4. Proof of foreign law
   B. Choice of law theories
      1. Traditional “vested rights” approach
      2. Contemporary “policy” approaches (including the interest analysis approach and the substantial relationship approach of Restatement (Second) of Conflict of Laws)
   C. Application in specific areas
      1. Torts
      2. Contracts
      3. Property
      4. Corporations
      5. Family law
      6. Substance vs. procedure
   D. Defenses against application of foreign law
      1. Local public policy
      2. Penal laws
      3. Revenue laws
   E. Constitutional limitations
      1. Due process
      2. Full faith and credit
      3. Privileges and immunities
   F. Federal-state conflicts
      1. Federal supremacy
      2. Erie doctrine

IV. Recognition and enforcement of other states’ judgments and foreign judgments
   A. Full faith and credit
   B. Effect: claim and issue preclusion
   C. Defenses to recognition or enforcement
   D. Family law judgments

Constitutional Law

NOTE: The terms “Constitution,” “constitutional,” and “unconstitutional” refer to the federal Constitution unless indicated otherwise.

I. The nature of judicial review
   A. Organization and relationship of state and federal courts in a federal system
B. Jurisdiction
   1. Constitutional basis
   2. Congressional power to define and limit
   3. The Eleventh Amendment and state
      sovereign immunity
C. Judicial review in operation
   1. The “case or controversy” requirement,
      including the prohibition on advisory
      opinions, standing, ripeness, and
      mootness
   2. The “adequate and independent state
      ground”
   3. Political questions and justiciability
II. The separation of powers
A. The powers of Congress
   1. Commerce, taxing, and spending
      powers
   2. War, defense, and foreign affairs
      powers
   3. Power to enforce the 13th, 14th, and
      15th Amendments
   4. Other powers
B. The powers of the president
   1. As chief executive, including the “take
      care” clause
   2. As commander in chief
   3. Treaty and foreign affairs powers
   4. Appointment and removal of officials
C. Federal interbranch relationships
   1. Congressional limits on the executive
   2. The presentment requirement and the
      president’s power to veto or to withhold
      action
   3. Non-delegation doctrine
   4. Executive, legislative, and judicial
      immunities
III. The relation of nation and states in a federal
      system
A. Intergovernmental immunities
   1. Federal immunity from state law
   2. State immunity from federal law,
      including the 10th Amendment
B. Federalism-based limits on state authority
   1. Negative implications of the commerce
      clause
   2. Supremacy clause and preemption
   3. Full faith and credit
   4. Authorization of otherwise invalid state
      action
IV. Individual rights
A. State action
B. Due process
   1. Substantive due process
      a. Fundamental rights
      b. Other rights and interests
   2. Procedural due process, including
      personal jurisdiction
C. Equal protection
   1. Fundamental rights
   2. Classifications subject to heightened
      scrutiny
   3. Rational basis review
D. Takings
E. Other protections, including the privileges
   and immunities clauses, the contracts
   clause, unconstitutional conditions, bills of
   attainder, and ex post facto laws
F. First Amendment freedoms
   1. Freedom of religion and separation of
      church and state
      a. Free exercise
      b. Establishment
   2. Freedom of expression
      a. Content-based regulation of
         protected expression
      b. Content-neutral regulation of
         protected expression
      c. Regulation of unprotected
         expression
      d. Regulation of commercial speech
      e. Regulation of, or impositions upon,
         public school students, public
         employment, licenses, or benefits
         based upon exercise of expressive
         or associational rights
      f. Regulation of expressive conduct
      g. Prior restraint, vagueness, and
         overbreadth
   3. Freedom of the press
   4. Freedom of association
Contracts

NOTE: Examinees are to assume that Article 2 and Revised Article 1 of the Uniform Commercial Code have been adopted and are applicable when appropriate.

I. Formation of contracts
   A. Mutual assent
      1. Offer and acceptance
      2. Indefiniteness or absence of terms
      3. Implied-in-fact contract
      4. “Pre-contract” obligations based on reliance
   B. Consideration
      1. Bargain and exchange and substitutes for bargain: “moral obligation,” reliance, and statutory substitutes
      2. Modification of contracts: preexisting duties
      3. Compromise and settlement of claims

II. Defenses to enforceability
    A. Incapacity to contract
    B. Duress
    C. Undue influence
    D. Mistake, misunderstanding
    E. Fraud, misrepresentation, and nondisclosure
    F. Illegality, unconscionability, and public policy
    G. Statute of frauds

III. Parol evidence and interpretation
IV. Performance, breach, and discharge
    A. Conditions
       1. Express
       2. Constructive
       3. Obligations of good faith and fair dealing in performance and enforcement of contracts
       4. Suspension or excuse of conditions by waiver, election, or estoppel
       5. Prospective inability to perform: effect on other party
    B. Impracticability and frustration of purpose
    C. Discharge of contractual duties
    D. Express and implied warranties in sale-of-goods contracts
    E. Substantial and partial breach and anticipatory repudiation

V. Remedies
    A. Measure of damages for breach; protecting the expectation interest
    B. Consequential damages: causation, certainty, and foreseeability
    C. Liquidated damages and penalties
    D. Avoidable consequences and mitigation of damages
    E. Rescission and reformation
    F. Specific performance; injunction against breach; declaratory judgment
    G. Restitutionary and reliance recoveries
    H. Remedial rights of breaching parties

VI. Third-party rights
    A. Third-party beneficiaries
       1. Intended beneficiaries
       2. Incidental beneficiaries
       3. Impairment or extinguishment of third-party rights
       4. Enforcement by the promisee
    B. Assignment of rights and delegation of duties

Criminal Law and Procedure

I. Homicide
    A. Intended killings
       1. Premeditation, deliberation
       2. Provocation
    B. Unintended killings
       1. Intent to injure
       2. Reckless and negligent killings
       3. Felony murder
       4. Misdemeanor manslaughter

II. Other crimes
    A. Theft
       1. Larceny
       2. Embezzlement
       3. False pretenses
    B. Receiving stolen goods
    C. Robbery
    D. Burglary
    E. Assault and battery
F. Rape; statutory rape
G. Kidnapping
H. Arson
I. Possession offenses

III. Inchoate crimes; parties
A. Inchoate offenses
   1. Attempts
   2. Conspiracy
   3. Solicitation
B. Parties to crime

IV. General principles
A. Acts and omissions
B. State of mind
   1. Required mental state
   2. Strict liability
   3. Mistake of fact or law
C. Responsibility
   1. Mental disorder
   2. Intoxication
D. Causation
E. Justification and excuse
F. Jurisdiction

V. Constitutional protection of accused persons
A. Arrest, search and seizure
B. Confessions and privilege against self-incrimination
C. Lineups and other forms of identification
D. Right to counsel
E. Fair trial and guilty pleas
F. Double jeopardy
G. Cruel and unusual punishment
H. Burdens of proof and persuasion

Evidence
NOTE: All Evidence questions should be answered according to the Federal Rules of Evidence, as restyled in 2011.

I. Presentation of evidence
A. Introduction of evidence
   1. Requirement of personal knowledge
   2. Refreshing recollection
   3. Objections and offers of proof
   4. Lay opinions
   5. Competency of witnesses
6. Judicial notice
7. Roles of judge and jury
8. Limited admissibility
B. Presumptions
C. Mode and order
   1. Control by court
   2. Scope of examination
   3. Form of questions
   4. Exclusion of witnesses
D. Impeachment, contradiction, and rehabilitation
   1. Inconsistent statements and conduct
   2. Bias and interest
   3. Conviction of crime
   4. Specific instances of conduct
   5. Character for truthfulness
   6. Ability to observe, remember, or relate accurately
   7. Impeachment of hearsay declarants
   8. Rehabilitation of impeached witnesses
   9. Contradiction
E. Proceedings to which evidence rules apply

II. Relevancy and reasons for excluding relevant evidence
A. Probative value
   1. Relevancy
   2. Exclusion for unfair prejudice, confusion, or waste of time
B. Authentication and identification
C. Character and related concepts
   1. Admissibility of character
   2. Methods of proving character
   3. Habit and routine practice
   4. Other crimes, acts, transactions, and events
   5. Prior sexual misconduct of a defendant
D. Expert testimony
   1. Qualifications of witnesses
   2. Bases of testimony
   3. Ultimate issue rule
   4. Reliability and relevancy
   5. Proper subject matter for expert testimony
E. Real, demonstrative, and experimental evidence
III. Privileges and other policy exclusions
   A. Spousal immunity and marital communications
   B. Attorney-client and work product
   C. Physician/psychotherapist-patient
   D. Other privileges
   E. Insurance coverage
   F. Remedial measures
   G. Compromise, payment of medical expenses, and plea negotiations
   H. Past sexual conduct of a victim

IV. Writings, recordings, and photographs
   A. Requirement of original
   B. Summaries
   C. Completeness rule

V. Hearsay and circumstances of its admissibility
   A. Definition of hearsay
      1. What is hearsay
      2. Prior statements by witness
      3. Statements attributable to party-opponent
      4. Multiple hearsay
   B. Present sense impressions and excited utterances
   C. Statements of mental, emotional, or physical condition
   D. Statements for purposes of medical diagnosis and treatment
   E. Past recollection recorded
   F. Business records
   G. Public records and reports
   H. Learned treatises
   I. Former testimony; depositions
   J. Statements against interest
   K. Other exceptions to the hearsay rule
   L. Right to confront witnesses

Family Law
I. Getting married
   A. Controversies arising in anticipation of marriage
   B. Limitations on who may marry
   C. Procedural requirements
   D. State of mind requirements
   E. Common law marriage and other curative or mitigative doctrines
   F. Premarital contracts

II. Being married
   A. Rights and responsibilities of spouses
   B. Family privacy
      1. Common law doctrine
      2. Constitutional privacy
      3. Reproductive choices
      4. Evidentiary privileges
   C. Remedies for tortious interference with the marital relationship

III. Separation, divorce, dissolution, and annulment
   A. Grounds and defenses
   B. Jurisdiction and recognition of decrees
   C. Preliminary, interlocutory, and final orders
   D. Division of property
   E. Maintenance or alimony
   F. Child support
   G. Modification of maintenance and child support
   H. Enforcement of awards
   I. Mediation and other alternative means of dispute resolution
   J. Separation agreements

IV. Child custody
   A. Standards for decision
   B. Visitation
   C. Joint custody
   D. Enforcement
   E. Procedural issues
      1. Jurisdiction to decide custody
      2. Child’s preference
      3. Counsel for the child
   F. Modification
   G. Mediation and other alternative means of dispute resolution

V. Rights of unmarried cohabitants
   A. Rights of cohabitants inter se
   B. Unmarried parents and their children: illegitimacy
      1. Constitutional limits on discrimination
         a. Unfavorable treatment of illegitimate children
         b. Unfavorable treatment of unmarried parents
      2. Presumption of legitimacy
3. Establishing paternity
4. Legitimation

VI. Parent, child, and state
A. Legal disabilities of childhood
B. Duty to support
C. Intra-family immunities
D. Claims for loss of consortium
E. Parent’s right to control child’s upbringing and limitations on parental autonomy
F. Custodial disputes between parents and third parties

VII. Adoption
A. Jurisdiction
B. Agency versus independent placements
C. Parental consent

VIII. Alternatives to adoption
A. Artificial insemination by donor
B. Surrogacy arrangements
C. In vitro fertilization, gestational surrogacy, and embryo transplantation

Federal Civil Procedure

NOTE: Examinees are to assume that the 2006 and 2007 amendments to the Federal Rules of Civil Procedure apply.

I. Jurisdiction and venue
A. Subject matter jurisdiction
   1. Federal courts
   2. State courts
B. Jurisdiction over parties
C. Jurisdiction over property
D. Service of process and notice
E. Venue, forum non conveniens, and transfer

II. Law applied by federal courts
A. State law in federal court
B. Federal common law

III. Injunctions and provisional remedies

IV. Pretrial procedures
A. Pleadings and motions
B. Abstention doctrines
C. Joinder of parties and claims (including class actions)
D. Discovery (including e-discovery)
E. Adjudication without a trial
F. Pretrial conference and order

V. The trial process
A. Jury trials
B. Nonjury trials
C. Jury instructions
D. Motions

VI. Verdicts and judgments
A. Jury verdicts
B. Judicial findings and conclusions
C. Directed verdicts and nonsuits
D. Posttrial motions
E. Effect; claim and issue preclusion
F. Appealability and review

Real Property

I. Ownership
A. Present estates
   1. Fees simple
   2. Defeasible fees simple
   3. Life estates
B. Future interests
   1. Reversions
   2. Remainders, vested and contingent
   3. Executory interests
   4. Possibilities of reverter, powers of termination
   5. Rules affecting these interests
C. Cotenancy
   1. Types
      a. Tenancy in common
      b. Joint tenancy
   2. Severance
   3. Partition
   4. Relations among cotenants
   5. Alienability, descendability, devisability
D. The law of landlord and tenant
   1. Types of holdings: creation and termination
      a. Terms for years
      b. Tenancies at will
      c. Holdovers and other tenancies at sufferance
      d. Periodic tenancies
   2. Possession and rent
3. Assignment and subletting
4. Termination (surrender, mitigation of damages, and anticipatory breach)
5. Habitability and suitability

E. Special problems
  1. Rule Against Perpetuities: common law and as modified
  2. Alienability, descendability, and devisability
  3. Fair housing/discrimination

II. Rights in land
A. Covenants at law and in equity
   1. Nature and type
   2. Creation
   3. Scope
   4. Termination
B. Easements, profits, and licenses
   1. Nature and type
   2. Methods of creation
      a. Express
      b. Implied
         i. Quasi-use
         ii. Necessity
         iii. Plat
      c. Prescription
   3. Scope
   4. Termination
C. Fixtures (including relevant application of Article 9, UCC)
D. Zoning (fundamentals other than regulatory taking)

III. Contracts
A. Real estate brokerage
B. Creation and construction
   1. Statute of frauds and exceptions
   2. Essential terms
   3. Time for performance
   4. Remedies for breach
C. Marketability of title
D. Equitable conversion (including risk of loss)
E. Options and rights of first refusal
F. Fitness and suitability
G. Merger

IV. Mortgages/security devices
A. Types of security devices
   1. Mortgages (including deeds of trust)
      a. In general
      b. Purchase-money mortgages
      c. Future-advance mortgages
   2. Land contracts
   3. Absolute deeds as security
B. Some security relationships
   1. Necessity and nature of obligation
   2. Theories: title, lien, and intermediate
   3. Rights and duties prior to foreclosure
   4. Right to redeem and clogging equity of redemption
C. Transfers by mortgagor
   1. Distinguishing “subject to” and “assuming”
   2. Rights and obligations of transferor
   3. Application of subrogation and suretyship principles
   4. Due-on-sale clauses
D. Transfers by mortgagee
E. Payment, discharges, and defenses
F. Foreclosure
   1. Types
   2. Rights of omitted parties
   3. Deficiency and surplus
   4. Redemption after foreclosure
   5. Deed in lieu of foreclosure

V. Titles
A. Adverse possession
B. Transfer by deed
   1. Warranty and nonwarranty deeds
      (including covenants for title)
   2. Necessity for a grantee and other deed requirements
   3. Delivery (including escrows)
C. Transfer by operation of law and by will
   1. In general
   2. Ademption
   3. Exoneration
   4. Lapse
   5. Abatement

D. Title assurance systems
   1. Recording acts (race, notice, and race-notice)
     a. Indexes
     b. Chain of title
     c. Protected parties
     d. Priorities
     e. Notice
   2. Title insurance

E. Special problems
   1. After-acquired title (including estoppel by deed)
   2. Forged instruments and undelivered deeds
   3. Purchase-money mortgages
   4. Judgment and tax liens

Torts

NOTE: The Torts questions should be answered according to principles of general applicability. Examinees are to assume that there is no applicable statute unless otherwise specified; however, survival actions and claims for wrongful death should be assumed to be available where applicable. Examinees should assume that joint and several liability, with pure comparative negligence, is the relevant rule unless otherwise indicated.

I. Intentional torts
   A. Harms to the person, such as assault, battery, false imprisonment, and infliction of mental distress; and harms to property interests, such as trespass to land and chattels, and conversion
   B. Defenses to claims for physical harms
      1. Consent
      2. Privileges and immunities: protection of self and others; protection of property interests; parental discipline; protection of public interests; necessity; incomplete privilege

II. Negligence
   A. The duty question, including failure to act, unforeseeable plaintiffs, and obligations to control the conduct of third parties
   B. The standard of care
      1. The reasonably prudent person: including children, physically and mentally impaired individuals, professional people, and other special classes
      2. Rules of conduct derived from statutes and custom
   C. Problems relating to proof of fault, including res ipsa loquitur
   D. Problems relating to causation
      1. But for and substantial causes
      2. Harms traceable to multiple causes
      3. Questions of apportionment of responsibility among multiple tortfeasors, including joint and several liability
   E. Limitations on liability and special rules of liability
      1. Problems relating to “remote” or “unforeseeable” causes, “legal” or “proximate” cause, and “superseding” causes
      2. Claims against owners and occupiers of land
      3. Claims for mental distress not arising from physical harm; other intangible injuries
      4. Claims for pure economic loss
   F. Liability for acts of others
      1. Employees and other agents
      2. Independent contractors and nondelegable duties
   G. Defenses
      1. Contributory fault, including common law contributory negligence and last clear chance, and the various forms of comparative negligence
      2. Assumption of risk

III. Strict liability: claims arising from abnormally dangerous activities; the rule of Rylands v. Fletcher and other common law strict liability claims; defenses
IV. Products liability: claims against manufacturers and others based on defects in manufacture, design, and warning; and defenses

V. Other torts
A. Claims based on nuisance, and defenses
B. Claims based on defamation and invasion of privacy, defenses, and constitutional limitations
C. Claims based on misrepresentations, and defenses
D. Claims based on intentional interference with business relations, and defenses

Trusts and Estates

Decedents’ Estates

I. Intestate succession
A. Share of the surviving spouse
B. Share of children and more remote descendants
   1. Adopted children
   2. Children born out of wedlock
   3. Half-bloods
C. Share of ancestors and collaterals
D. Advancements
E. Simultaneous death

II. Wills
A. Execution requirements
   1. Governing law
   2. Wills complying with law of domicile
   3. Foreign wills
   4. Holographic wills
   5. Interested witnesses
B. Integration of wills
C. Codicils
D. Incorporation by reference
E. Facts of independent significance
F. Revocation
   1. Dependent relative revocation
   2. Revocation due to changed circumstances
   3. Revocation by physical act
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III. Family protection
A. Spouse’s forced or elective shares
   1. Size
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B. Share of after-born or pretermitted child

IV. Living wills and durable health care powers
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**Trusts and Future Interests**

I. Trusts  
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B. Creation  
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III. Construction problems  
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E. Gifts to children and issue  
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F. Death without issue  
G. Gifts by implication  

**Uniform Commercial Code**

NOTE: Examinees should assume that the 2001 text of Article 1 has been adopted. Article 2, Sales of Goods, is included under the Contracts specifications.

**Negotiable Instruments and Bank Deposits and Collections**

NOTE: To test knowledge of the basic principles of negotiable instruments (including both notes and checks) more fairly and effectively, section VIII, bank collections (sections in Article 4 dealing with issues unique to checks), has been added to these specifications. These added Article 4 specifications do not, however, include issues relating to the check collection system that are addressed in a combination of Article 4 and federal regulatory law. Section VIII will not appear on an MEE exam until 2013 or later.
VIII. Bank collections
   A. General provisions and definitions (UCC §§ 4-101 through 4-105)
   B. Collection of items: transfer and presentment warranties; bank as holder in due course (UCC §§ 4-207, 4-208, 4-210, 4-211)
   C. Relationship between payor bank and its customer (UCC Article 4, Part 4)

IV. Rights of third parties; perfected and unperfected security interests; rules of priority (§ 9-301, et seq.)
   A. Priority over unperfected security interests (§ 9-317)
   B. Requirement of filing and steps to be taken for perfection (§§ 9-308 through 9-316; § 9-501, et seq.); assignment of security interest (§§ 9-514, 9-519)
   C. Protection of buyers of goods and chattel paper (§§ 9-320, 9-330), including protection of holders and purchasers of negotiable instruments (§ 9-331)
   D. Priority of liens arising by law (§ 9-333)
   E. Alienability of debtor’s rights (§ 9-401)
   F. Priority among conflicting security interests (§§ 9-322 through 9-329)
   G. Fixtures (§ 9-334)
   H. Accessions; commingling (§§ 9-335, 9-336)
   I. Subordination (§ 9-339)
   J. Defenses against assignee; modification of contract (§§ 9-404 through 9-406)
   K. Termination statement (§ 9-513); release of collateral (§ 9-512)

Secured Transactions

I. General UCC principles
   A. Rules of construction and application (§ 1-101, et seq.)
   B. General definitions and principles of interpretation (§ 1-201, et seq.)
   C. General Rules (§ 1-301, et seq.)

II. Applicability and definitions (§ 9-101, et seq.)
   A. Subject matter of Article 9 (§ 9-109)
   B. Perfection of security interests in multiple state transactions (§ 9-301)
   C. Excluded transactions (§ 9-109)
   D. Definitions: “account”; “purchase money security interest”; “control” (§§ 9-102 through 9-107)
   E. Classification of goods (§ 9-102)
   F. Including sufficiency of description (§ 9-108)
   G. Including security interests arising under Article 2 (§ 9-110)
   H. Priority of consignments (§§ 9-103, 9-324)

III. Validity of security agreements and rights of parties (§ 9-201, et seq.)
   A. Title to collateral immaterial (§ 9-202)
   B. Enforceability (§ 9-203)
   C. After-acquired property; future advances (§ 9-204)
   D. Use or disposition of collateral by debtor (§ 9-205)
   E. Collateral in secured party’s possession (§§ 9-207, 9-208)
   F. Request for accounting (§ 9-210)
The following are MEE questions from July 2011 and February 2012. (In the actual test, the questions are simply numbered rather than being identified by area of law.) Study aids containing previously administered MEE questions and model analyses may be purchased from NCBE by visiting the NCBE Online Store at www.ncbex.org. MEE Questions and Analyses from older administrations, as well as recent MEE questions (without analyses), are available at no cost on the NCBE website.

**July 2011 Questions**

### Secured Transactions Question

Decorator operates a business that sells decorative items for the office. Eight months ago, Decorator borrowed $10,000 from Lender and, pursuant to a properly completed and signed security agreement, granted Lender a security interest in all of Decorator’s present and future inventory and equipment to secure that indebtedness. Lender filed a properly completed financing statement on the same day that the loan was made and the security agreement was signed.

Seven months ago, Clockwork and Decorator entered into a signed agreement pursuant to which Decorator bought and received delivery of 25 decorative clocks from Clockwork for resale to Decorator’s customers. Under the terms of the agreement, Decorator agreed to pay the $2,500 purchase price in six months. The agreement also provides that, until the payment of the purchase price to Clockwork by Decorator, title to the clocks will be retained by Clockwork. No financing statement was filed in conjunction with this transaction.

Three months ago, Decorator leased an industrial vacuum cleaner from Vac for use in Decorator’s business. The lease, which was signed by both parties, provides that, at the end of the four-year lease term (which cannot be terminated early), Decorator will automatically become the owner of the vacuum cleaner so long as all monthly payments have been made. No financing statement was filed in conjunction with this transaction.

Decorator has defaulted on all obligations to Lender, Clockwork, and Vac. Your law firm represents Lender, who has asked the following questions:

1. Who has a superior interest in the clocks? Explain.
2. Who has a superior interest in the vacuum cleaner? Explain.

### Criminal Law and Procedure Question

A police officer (Officer) on routine traffic patrol watched Suspect drive by. Suspect was in compliance with all applicable traffic laws except the state seat belt law. The state motor vehicle code provides that police officers have discretion to make an arrest for any traffic infraction, including violation of the state seat belt law. Officer had never stopped a driver merely for violating the seat belt law. However, Officer knew that Suspect was a reputed drug dealer and stopped Suspect’s vehicle, hoping to uncover evidence of a more serious crime.
Officer directed Suspect to get out of his vehicle, handcuffed Suspect, and told Suspect that he was under arrest for violating the seat belt law. Immediately afterward, Officer looked through the driver’s-side car window and noticed a clear plastic bag containing white powder on the front seat of Suspect’s car. Officer asked Suspect, “Are those drugs yours?” Suspect responded, “No, that cocaine isn’t mine!” Officer then opened the car door and removed the bag of white powder.

Officer transported Suspect to the police station for booking. An hour later, Detective visited Suspect in the police station holding cell to attempt an interview. Detective read Suspect his Miranda rights. Suspect stated that he understood his Miranda rights but nonetheless would answer Detective’s questions. Suspect voluntarily answered Detective’s questions for about five minutes and then said, “I’m not sure about this. Maybe I need a lawyer.” Detective did not seek clarification of Suspect’s statement but continued to question Suspect, who ultimately confessed to possessing the cocaine found in his car.

The state charged Suspect with misdemeanor violation of the seat belt law and felony drug possession. Suspect has moved to suppress all the state’s evidence, alleging an unlawful stop, an unlawful arrest, an unlawful seizure of evidence, and multiple Miranda violations.

1. Did the traffic stop and subsequent arrest violate Suspect’s constitutional rights? Explain.
2. Did Officer’s seizure of evidence from Suspect’s car violate Suspect’s constitutional rights? Explain.
3. Did Officer’s questioning of Suspect violate Suspect’s Miranda rights? Explain.
4. Should Suspect’s confession to Detective be suppressed? Explain.

**Trusts Question**

Forty years ago, Testator executed a valid will under which he devised his home to the trustee of a trust. Testator’s will directed the trustee to

> retain the home to ensure that my Daughter has a comfortable residence throughout her life. The home shall not be sold until Daughter dies. After Daughter’s death, I direct the trustee to sell the home and to distribute the sale proceeds to Charity, a charitable corporation organized to end homelessness in Capital City.

Thirty years ago, Testator died. At the time of his death, Testator still owned the home, which was located in Capital City in a quiet residential neighborhood of single-family homes near both a local college and the city’s business district. The business district was commercially successful, but it had attracted a large number of homeless people.

During the last 30 years, the character of the neighborhood where the home is located has changed dramatically. Many apartment buildings have been built, greatly increasing population density and noise. Several bars and restaurants catering to college students have also opened in the formerly residential blocks near the home. Stores in the city’s business district have moved to suburban shopping malls, and the vacated buildings have been converted to bars and dance clubs. This shift has increased public rowdiness, but it has also been associated with a marked decline in the number of homeless individuals in the business district.

Daughter recently decided that she wants to move from the home to a rental apartment in a quieter and less congested neighborhood. Daughter consulted a real estate agent, who correctly told her that the home is worth about $300,000 and will easily sell for that amount.

Daughter asked the trustee to sell the home, to hold the expected sale proceeds of $300,000 in trust, and to use the proceeds and the income to pay Daughter’s rent, which will be about $2,000 per month. The monthly income from the $300,000 trust, however, is expected to be only $1,000.
When the trustee attempted to contact Charity to discuss Daughter’s request, he discovered that Charity no longer exists.

The trustee has consulted the law firm where you work for advice on these questions:

1. Can the terms of Testator’s testamentary trust be reformed to permit the sale of the home? Explain.
2. Assuming that the trust can be reformed to permit the sale of the home, can the trustee also obtain authorization to use the sale proceeds and the earnings thereon to pay Daughter’s rent? Explain.
3. After Daughter’s death, will the trust assets pass to Testator’s estate? Explain.

**Real Property Question**

In 1980, Oscar sold undeveloped land that he owned in fee simple to Sam, but Sam failed to record the deed.

In 1985, Sam granted Railroad an easement to operate a rail line across a portion of the land to serve a grain storage facility located on a neighboring tract of land. Railroad recorded this easement, laid railroad tracks on the land, and operated trains weekly until the grain storage facility went out of business in 2000. The tracks are still in place and clearly visible, but no trains have operated over them since 2000.

In 1990, Sam conveyed the land to Daughter as a graduation gift. Daughter promptly recorded the deed given to her by Sam. Except for the railroad tracks, the land has remained undeveloped.

Oscar died six months ago. Unaware of the prior transactions, the executor of Oscar’s estate sold the land to Purchaser for its fair market value. Purchaser was also unaware of these prior transactions. The executor gave Purchaser a quitclaim deed to the land. Purchaser promptly recorded this deed.

The state in which the land is located maintains its records under a grantor-grantee indexing system, and the state’s recording act provides: “No conveyance or mortgage of real property shall be good against subsequent purchasers for value and without notice unless the same be recorded according to law.”

What are the rights, if any, of Purchaser, Daughter, and Railroad in the land? Explain.

**Federal Civil Procedure Question**

OfficeEquip is a U.S. distributor of office machines. It is incorporated in State A, where it has its principal place of business. BritCo is a manufacturer of copiers. It is incorporated in Scotland and has its principal place of business in London, England. OfficeEquip sued BritCo, alleging that BritCo had breached a long-term contract to supply copiers to OfficeEquip.

The suit was filed in the United States District Court for State A, and OfficeEquip properly invoked the court’s diversity (alienage) jurisdiction.

BritCo made a timely motion to dismiss the complaint on the ground that it was filed in violation of a forum-selection clause in the supply contract that required all contract disputes to be adjudicated in London. While its motion to dismiss was pending, BritCo filed an answer to the complaint.
In its answer, BritCo denied breaching the supply contract. BritCo also made a counterclaim seeking damages for OfficeEquip’s alleged breach of a contractual covenant not to compete with BritCo.

OfficeEquip filed a motion for judgment on the pleadings on BritCo’s counterclaim, arguing that the covenant not to compete was unenforceable as a matter of law.

After a short period of discovery, the district judge issued the following two orders:

OfficeEquip’s motion for judgment on the pleadings is granted. The contractual covenant not to compete is void as a matter of public policy and is therefore unenforceable. Given that this is strictly a legal issue and entirely severable from OfficeEquip’s breach of contract claim, there is no just reason for delay, and I accordingly direct that judgment should be entered in favor of OfficeEquip on BritCo’s counterclaim.

BritCo’s motion to dismiss is denied. Enforcement of the forum-selection clause would be unreasonable in this case. OfficeEquip has never done business in London, and it would be extremely inconvenient for it to litigate there.

Trial on the breach of contract claim is scheduled in three months.

1. Can BritCo immediately appeal the district court’s order granting OfficeEquip’s motion for judgment on the pleadings with respect to BritCo’s counterclaim? Explain.

2. Can BritCo immediately appeal the district court’s order denying its motion to dismiss? Explain.

**Family Law/Conflict of Laws Question**

Dave and Meg lived in State A. Three years ago, they began dating. Two years ago, Meg became pregnant with their child. Shortly thereafter, Dave and Meg discussed marriage. Dave told Meg, “Perhaps we should get married if we’re going to have a child.” Meg told Dave, “I am committed to marrying you, but I want a real wedding, and we can’t afford that now.” Meg proposed that Dave move in with her so that “we can save money to get married.” Dave agreed and began living in Meg’s rented apartment. Meg did not tell her landlord about Dave. She did tell her family and friends that “Dave, my fiancé, has moved in.”

Fifteen months ago, Meg gave birth to Child. Meg and Dave agreed that Child’s birth certificate would identify Dave as Child’s father. Meg and Dave sent birth announcements to friends and relatives noting the birth of “our son, Child.” After Child’s birth, Meg quit work. Dave took on a second job in order to support Meg and Child.

Five months ago, Meg took Child and abruptly left Dave. Dave hired a private investigator to find Meg and Child. The investigator recently discovered that they are living in State B with Husband, whom Meg married three months ago. The investigator also discovered that Meg and Husband have filed a petition to terminate Dave’s parental rights and authorize Husband’s adoption of Child.

State B permits a mother or a married father to veto the adoption of his or her child unless he or she “has willfully refused to support said child for a period of one or more years.”

State B permits an unmarried father to veto the adoption of his child only if he (a) “has consistently supported such child” and (b) “has maintained a residential relationship with such child for at least 9 of the 12 months immediately preceding the filing of an adoption petition.”
State B does not have a putative father registry.

State A recognizes common law marriage. State B does not. Both State A and State B have adopted the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA).

2. Did Dave and Meg enter into a common law marriage in State A? Explain.
3. Assuming that Dave is an unmarried father, can State B constitutionally grant Meg and Husband’s adoption petition over Dave’s opposition? Explain.
4. Does the UCCJEA permit State B to terminate Dave’s parental rights or issue an order awarding custody of Child to Meg? Explain.

**Negotiable Instruments (Commercial Paper) Question**

Supplier sold Manufacturer some raw materials to be used in its manufacturing business. In payment for those raw materials, Manufacturer sent Supplier a check for $10,000 payable to the order of Supplier. The check was drawn on Manufacturer’s checking account at Bank.

Supplier then used the check to buy a diamond ring from Jeweler. Before giving the check to Jeweler in exchange for the ring, Supplier indorsed the check by writing “Pay to Jeweler” and signing his name on the back of the check. Shortly after this exchange took place, Jeweler’s store was robbed by a thief, who took Jeweler's cash box containing the check.

The thief forged Jeweler’s signature underneath Supplier’s signature and gave the check to Checkco, a check cashing company, in exchange for $8,000 in cash. Checkco took the check with neither knowledge nor notice of the history of the check. Immediately after obtaining the $8,000, the thief disappeared and cannot be found.

Checkco then presented the check to Bank, which paid the check and debited Manufacturer’s account for $10,000. After the check was paid, Jeweler informed Manufacturer about the theft of the check and Manufacturer, in turn, informed Bank. After investigation, Bank discovered the forgery of Jeweler’s signature. Accordingly, Bank recredited the account because, under its account agreement with Manufacturer, it was obligated to do so because Jeweler’s signature was forged.

1. What rights, if any, does Bank have against Checkco with respect to the check? Explain.
2. Assuming that Bank is able to recover its loss from Checkco, what rights, if any, does Checkco have against Jeweler and Supplier with respect to the check? Explain.

**Constitutional Law Question**

There are two nursing schools in State A: Public Nursing School (Public) and Private Nursing School (Private). Public is an agency of the state government, and all its faculty and staff are state employees. Private is owned by a private corporation and receives no direct funding from the state. The State A Board of Education regulates the curriculum of each nursing school and certifies all graduates of the two nursing schools as eligible to become licensed nurses in State A.

Both Public and Private have a long-standing policy of restricting admission to women. Neither school has ever admitted a male applicant. There has been general discrimination against women in State A in the health care field. Historically, however, 95 percent of State A nurses have been female.
A male resident of State A wants to be a nurse. The man first applied to Private and was denied admission. His rejection letter from Private stated that he was “not eligible to enroll because Private was established as an all-female institution and does not admit or enroll male students.”

The man next applied to Public and was again denied admission. His letter from Public stated that “you are not eligible to enroll because Public does not enroll male students. Mindful of the historical discrimination that women have faced in State A, our state has established Public to remedy this discrimination and provide opportunities for women who want to work in the growing field of health care as nurses.” The letter continued, “Because your grades and test scores would have been sufficient to admit you if you were female, we offer you admission to our new Male Nursing Opportunity Program instead.”

The Male Nursing Opportunity Program allows male residents of State A to become nurses by studying at a nursing school in an adjacent state. Graduates of the program are certified by the State A Board of Education as eligible to become licensed nurses in State A. However, the Male Nursing Opportunity Program facilities are not as modern as those at Public, the faculty is not as experienced, and graduates of the Male Nursing Opportunity Program do not enjoy the same employment opportunities as graduates of either Public or Private.

1. Has Private violated the man’s rights under the Equal Protection Clause of the Fourteenth Amendment? Explain.
2. Has Public violated the man’s rights under the Equal Protection Clause of the Fourteenth Amendment? Explain.

Agency and Partnership Question

Portable Shredder Services (PSS) is a partnership that operates a mobile shredding business. When a client needs paper shredded, PSS sends a truck and a crew to perform the operation.

Adam, Beth, and Chris are partners in PSS. Each of them contributed $50,000 in start-up capital, and each actively works in the business.

The PSS partnership agreement provides in relevant part that (1) each partner is required to devote substantially all of the partner’s working efforts to the business and (2) any partner can withdraw from the partnership upon giving six months’ written notice. The partnership agreement contains no other relevant provisions modifying any of the statutory default rules.

PSS has not been profitable. Adam is convinced that the assets of PSS are worth more than the value of the business as a going concern. He believes that the only way he can receive a fair price for his share of partnership assets is if those assets are sold. Beth and Chris, on the other hand, wish to continue operating the business, if they can.

Adam would like to withdraw immediately from the partnership in order to force Beth and Chris to cease the operations of PSS immediately and sell the partnership’s assets.

Adam has asked your law firm to answer the following three questions:

1. If Adam immediately withdraws from the partnership, what will be the consequences (a) to him and (b) to the partnership? Explain.
2. If Adam gives six months’ written notice before withdrawing from the partnership, what will be the consequences (a) to him and (b) to the partnership? Explain.

3. If the partnership’s business is wound up after Adam’s withdrawal, will he be liable for partnership debts incurred during the winding-up process after his withdrawal? Explain.

Evidence Question

Six months ago, a woman was taken to a hospital following what she alleged was a sexual assault by a man during a fraternity party. The woman and the man were both seniors attending the college where the party was held.

At the time of the alleged assault, the hospital’s policy required that “in all cases of alleged or suspected sexual assault, non-emergency patients must be interviewed by a victim counselor before receiving medical treatment.” The woman was deemed a non-emergency patient and was told to wait in the waiting room to see a victim counselor. Three hours later, the victim counselor finally interviewed the woman. Thereafter, hospital personnel treated the woman for her injuries and sent her home.

There was no contact between the woman and the man until one week later, when the man sent the woman a text message on her cell phone. The text message said, “If you are upset about what happened, I can send you a check for $10,000 to help you forget the whole thing. I can also pay any medical expenses.” The woman did not respond.

Four months after the alleged assault, the woman contacted a lawyer and filed a civil action against the man and the hospital. She sought damages from the man for physical injuries resulting from the alleged assault. She also sought damages from the man for psychological injuries. According to the woman, these injuries were especially traumatic because of her belief in sexual abstinence before marriage and her lack of prior sexual experience. She sought damages from the hospital for exacerbating her injuries by negligently delaying her medical treatment.

The man filed an answer admitting that he had had sexual relations with the woman but asserting that they were consensual. In its answer, the hospital denied that its conduct had exacerbated the woman’s injuries.

Immediately after filing its answer, the hospital contacted the woman and offered to settle the claim for $5,000. The woman refused the hospital’s offer.

Five weeks after the woman filed her suit, the hospital changed its policy on dealing with sexual assault victims to provide that “in all cases of alleged or suspected sexual assault, immediate medical care will be provided to emergency and non-emergency patients.”

The woman’s suit against the man and the hospital is now set for trial. The following properly filed motions are before the court:

1. The hospital’s motion to exclude evidence of its new policy providing immediate medical treatment to emergency and non-emergency patients in all cases of alleged or suspected sexual assault.
2. The hospital’s motion to exclude evidence of its offer to settle with the woman.
3. The man’s motion to exclude evidence of
   (a) his offer to pay the woman $10,000.
   (b) his offer to pay the woman’s medical expenses.
4. The man’s motion to admit evidence that the woman had sexual relations with another student during her junior year.

The rules of evidence in this jurisdiction are identical to the Federal Rules of Evidence.

How should the court rule on each of these motions? Explain.

**Negotiable Instruments Question**

On September 1, Ned bought 1,000 liters of an industrial chemical from Steve for the price of $20 per liter, for a total of $20,000. Steve convinced Ned to buy the chemical by falsely telling Ned that Steve’s company would soon announce a new use for the chemical that would dramatically increase its market price. Because Ned did not have $20,000 in cash available, Steve accepted as payment a negotiable promissory note for $20,000. When Ned gave the note to Steve, it was signed on the front by Ned (as maker of the note) and indorsed on the back by Ned’s Uncle. Ned’s Uncle had indorsed the note as a favor to Ned to help induce Steve to take the note rather than insisting on payment in cash. The note stated that it was payable to the order of Steve and that it was payable on November 15.

On October 14, Steve, who was nervous not only about Ned's ability to pay the amount of the note but also about the prospect that his representation to Ned might soon be exposed as false, sold the note to Cal for $19,000. Cal was an honest businessman who had never dealt with Steve before and was unaware of any of the facts surrounding the sale of the chemical by Steve to Ned. Steve told Cal that Ned was an excellent risk but that he (Steve) was unable to wait until November 15 for payment. To effectuate the sale, Steve indorsed the note by signing his name below Uncle’s indorsement and handed the note to Cal. Cal then handed Steve $19,000 in cash.

On October 15, Cal read an article in a local newspaper revealing that Steve was a con artist who had convinced several people, including Ned, to buy the chemical based on false claims of imminent increases in its market price.

On November 1, Cal used the note as partial payment for a new car he contracted to buy from Dealer, handing the note to Dealer without indorsing it. The contract to buy the car provided that the car would not be delivered to Cal until December 1.

On November 15, Dealer, who had not yet delivered the car to Cal, presented the note to Ned. Ned refused to pay and told Dealer that he had been induced to issue the note by Steve’s lie. Dealer did not sue Ned because Dealer did not believe that Ned would be able to satisfy a judgment against him. Dealer then gave timely notice to Uncle of Ned's refusal to pay and sued Uncle on the note.

Will Dealer be successful in his suit against Uncle? Explain.

**Contracts Question**

GreenCar owns a fleet of 10 identical energy-efficient, electric “green” cars that it rents out for special events. GreenCar is the only company that has such specialized cars available for rental. GreenCar needed all 10 of its
cars to fulfill a contract to provide 10 identical green cars to carry dignitaries in the local Earth Day parade on April 22, but each of the cars needed repair to be operable for the parade.

In order to have all 10 cars repaired in time for the parade, GreenCar entered into a contract with RepairCo pursuant to which RepairCo promised to “repair all 10 cars and return them to GreenCar no later than April 21 for $1,000 per car, $10,000 total.”

On April 21, RepairCo had completed repairs on only 6 of the 10 cars and returned those 6 cars to GreenCar. When RepairCo delivered the 6 cars, it informed GreenCar that the remaining 4 cars were not ready because RepairCo workers had walked off the job when salary negotiations broke down. RepairCo also explained to GreenCar that it planned to give its workers the raises they wanted, but it first wanted “to teach them a lesson.” RepairCo estimated that the remaining 4 GreenCar cars (all still inoperable) would be repaired by April 30.

GreenCar demanded that RepairCo return the remaining 4 unrepaired cars immediately. RepairCo did so. GreenCar refused to pay RepairCo for any repairs to the other 6 cars.

RepairCo sued GreenCar, alleging that GreenCar’s refusal to pay anything was a breach of contract.

Is RepairCo entitled to any payment from GreenCar, and if so, under what theory or theories? Explain.

Torts Question

Paul, age eight, and Paul’s mother, Mom, spent the morning at Funworld, an amusement park. Paul decided to ride the Ferris wheel. Mom, who was pregnant and tired, waited for him about 100 yards away.

After Paul entered a Ferris wheel car, the attendant, Employee, fastened the car’s safety bar. As the Ferris wheel began to turn, Paul could hear loud screams from a car carrying two boys, both age six. The boys were rocking their car vigorously. Employee also heard the two boys screaming and saw them rocking their car, but Employee took no action to stop them.

As Paul’s car began to descend from the top of the wheel, the two boys—whose car was right behind Paul’s car—shook the safety bar on their car hard enough that it unlatched. Both boys fell to the ground. One of the boys struck Paul on his way down.

After the two boys fell, Employee stopped the Ferris wheel and sounded an emergency alarm to notify Funworld security guards of the incident.

Mom did not see the accident, but she heard the alarm and rushed to the Ferris wheel. A crowd had already gathered, and Mom was unable to see Paul. A bystander told Mom that “a little boy has been killed.” Mom, panic-stricken, attempted to make her way through the crowd but could not.

Ten minutes later, the two boys who had fallen were taken to the hospital by an ambulance.

Paul and several of the other passengers begged to be taken off the Ferris wheel. Employee, however, refused without any explanation to restart the Ferris wheel. Thirty minutes later, a manager showed up and ordered Employee to restart the Ferris wheel and allow the passengers to exit.
Forty minutes after the accident, Mom was finally reunited with Paul. Both Paul and Mom went to the hospital, where Paul was treated for minor injuries caused by being hit when the two boys fell and where Mom suffered a miscarriage as a result of accident-related stress.

National accident records show that during the last 40 years, there has been only one other incident in which injuries have occurred as a result of passengers rocking a Ferris wheel car.

Paul and Mom have sued Funworld. Funworld has conceded that Employee was acting within the scope of his employment.

Based on the facts, could a jury properly find that

2. Funworld was negligent because Employee failed to take action to stop the boys from rocking their car? Explain.
3. Mom is entitled to damages for her emotional distress and resulting miscarriage? Explain.

**Decedents’ Estates Question**

Five years ago, Testator asked her attorney to draft a will that would leave Testator’s entire estate to Nephew. One week later, the attorney mailed to Testator a document captioned “Last Will and Testament.” Although the document complied with Testator’s instructions, Testator did not sign it or have it witnessed.

Three years ago, Testator called her attorney and said, “I want my 400 shares of XYZ Corporation common stock to go to Aunt instead of Nephew.” Testator added, “I also want my home to go to Cousin. The house has five bedrooms, and Cousin has such a large family.” Testator told the attorney that her home was located at 340 Green Avenue, Springfield, State A.

Subsequently, the attorney sent Testator a document stating in its entirety:

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I, Testator, being of sound and disposing mind, give my home, located at 340 Green Avenue, Springfield, State A, to Cousin and my 400 shares of XYZ Corporation common stock to Aunt. In all other respects, I republish my will.
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Upon receipt of this document, Testator properly executed it.

Two years ago, Testator sold her five-bedroom house at 340 Green Avenue and used the proceeds to purchase a two-bedroom house located at 12 Elm Street in Springfield. The same year, Testator received 200 shares of XYZ common stock from XYZ Corporation in the form of a “dividend paid in stock.”

Three weeks ago, Testator died. Her probate estate consists of $200,000, her house at 12 Elm Street, and 600 shares of XYZ Corporation common stock, consisting of Testator’s original 400 shares and the 200-share stock dividend.

Testator is survived by Daughter, Daughter’s child (Grandson), Nephew, Cousin, and Aunt.

Fifteen years ago, Daughter was convicted of murdering her father, Testator’s husband. Testator and Daughter have had little contact since Daughter’s conviction, and Daughter remains in prison.
Testator is a resident of State A, and all of Testator’s assets are located in State A.

How should Testator’s probate assets be distributed? Explain.

**Agency and Partnership Question**

A man and a woman validly formed a partnership (“Garden Partnership”) to fix commercial gardening equipment. Several months after Garden Partnership began operations, it hired an employee who was a skilled mechanic.

The employee negligently repaired a piece of equipment for a customer. As a result, the customer was severely injured. The customer successfully sued Garden Partnership and recovered a judgment for $500,000, which has not been paid.

Shortly after entry of this judgment, the man and woman took the necessary steps to qualify Garden Partnership as a limited liability partnership, and they renamed it “Garden LLP.”

 Shortly thereafter, the man and woman decided to expand the business. Because they needed more capital, they agreed to admit an investor as a partner. The investor contributed $50,000 and became a partner in Garden LLP.

1. Is Garden LLP liable for the $500,000 judgment against Garden Partnership? Explain.
2. Are the man and woman personally liable to the customer for the $500,000 judgment against Garden Partnership? Explain.
3. Is the investor personally liable to the customer for the $500,000 judgment against Garden Partnership? Explain.

**Federal Civil Procedure/Conflict of Laws Question**

The owner of a rare antique tapestry worth more than $1 million is a citizen of State A. The owner contacted a restorer, a citizen of State B, to restore the tapestry for $100,000. The owner and the restorer met in State A and negotiated a contract, but the final documents, prepared by the parties’ respective attorneys, were drafted and signed in State B. The contract has a forum-selection clause that specifies that any litigation arising out of or relating to the contract must be commenced in State B.

The restorer repaired the tapestry in State B and then informed the owner that the restoration was complete. The owner picked up the tapestry and paid the restorer $100,000. Subsequently, the owner discovered that the restorer had done hardly any work on the tapestry.

Despite the forum-selection clause in the contract, the owner filed suit against the restorer in a state court in State A, claiming breach of contract. The owner’s suit sought rescission of the contract and a return of the full contract price—$100,000.

The laws of State A and State B are different on two relevant points. First, State A courts do not enforce forum-selection clauses that would oust the jurisdiction of State A courts, regarding such clauses as against public policy; State B courts always enforce forum-selection clauses. Second, State A would allow contract rescission on these facts; State B would not allow rescission but would allow recovery of damages.

Under the conflict-of-laws rules of both State A and State B, a state court would apply its own law to resolve both the forum-selection clause issue and the rescission issue.
After the owner filed suit in State A court, the restorer removed the case to the United States District Court for the District of State A and then moved for a change of venue to the United States District Court for the District of State B, citing the contractual forum-selection clause in support of the motion. (There is only one United States District Court in each state.) The owner moved for remand on the ground that the federal court did not have removal jurisdiction over the action. Alternatively, the owner argued against the motion to transfer on the basis that the forum-selection clause was invalid under State A law.

1. Does the federal court in State A have removal jurisdiction over the case? Explain.
2. Should the change-of-venue motion, seeking transfer of the case to the federal court in State B, be granted? Explain.
3. Would a change of venue affect the law to be applied in resolving the rescission issue? Explain.

**Real Property Question**

Blackacre, which is immediately to the west of Whiteacre, is bounded on its west by a state highway. Whiteacre is bounded on the east by a county road. Both roads connect to a four-lane highway.

Twenty years ago, Tom, who then owned Blackacre, sold to Sue, who then owned Whiteacre, an easement over a private gravel road that crossed Blackacre. This easement allowed Sue significantly better access to the four-lane highway from Whiteacre than she had had using only the county road adjacent to Whiteacre. The easement was promptly and properly recorded.

After acquiring this easement, Sue discontinued using the county road to the east of Whiteacre and used the private gravel road crossing Blackacre to travel between Whiteacre and the four-lane highway. Sue used the private gravel road across Blackacre for that purpose almost every day for the next 18 years.

Fifteen years ago, Sue purchased Blackacre from Tom. The deed from Tom to Sue was promptly and properly recorded.

Two years ago, Sue sold Whiteacre to Dan. The deed from Sue to Dan, which was promptly and properly recorded, did not mention the private gravel road crossing Blackacre, although Dan was aware that Sue had used the road to more easily access the four-lane highway.

Following the purchase of Whiteacre, Dan obtained a construction loan from Bank secured by a mortgage on Whiteacre. This mortgage was promptly and properly recorded. The loan commitment, in the amount of $1,500,000, which was reflected in the mortgage, obligated Bank to loan Dan $300,000 immediately. It further obligated Bank to loan Dan an additional $500,000 in 180 days and $700,000 in 280 days.

After obtaining the second loan installment from Bank, Dan realized that he would need additional funds and borrowed $400,000 from Finance Company. This loan was also secured by a mortgage on Whiteacre. Upon Dan’s signing the note and mortgage, Finance Company immediately remitted the $400,000 to Dan and promptly and properly recorded its mortgage.

Thereafter, Bank advanced the final $700,000 loan installment to Dan.
Recently, Dan defaulted on the loans from both Bank and Finance Company. At the time of these defaults, Dan owed $1,500,000 to Bank and $400,000 to Finance Company.

At a proper foreclosure sale by Bank, Whiteacre was sold for $1,500,000 net of sale expenses.

1. Immediately before Sue sold Whiteacre to Dan, did Sue have an easement over Blackacre? Explain.
2. Immediately after Sue sold Whiteacre to Dan, did Dan have an easement over Blackacre? Explain.
3. How should the proceeds from the sale of Whiteacre be distributed between Bank and Finance Company? Explain.

**Corporations Question**

A corporation’s articles of incorporation state that the corporation shall have a seven-member board of directors. Neither the articles of incorporation nor the corporation’s bylaws contain any special provisions regarding the board of directors.

On March 1, the corporation’s president told its secretary to convene a special meeting of the board of directors. Accordingly, the secretary prepared a Notice of Special Meeting (Notice) and sent it by overnight mail to six of the seven directors. The secretary did not send the Notice to the seventh director—Claire—because Claire had recently moved and the corporation did not have a current mailing address for her.

The Notice stated only that a special meeting of the corporation’s board of directors would be held on March 31 at 10 a.m., at the corporate headquarters.

On March 2, each member of the board of directors except Claire received the Notice. Directors Alan and Barb, both of whom had vacation plans for March 31, made arrangements with the secretary to participate in the special meeting by telephone.

On March 30, Alan called Claire and informed her that a special meeting of the board of directors was going to be held on March 31.

On March 31, five members of the board of directors (including Claire but neither Alan nor Barb) gathered in the corporation’s conference room. Alan and Barb called in from their vacation homes. The five directors present in the conference room could hear both Alan and Barb. Alan and Barb could each hear the five directors in the conference room but could not hear each other.

After a lengthy discussion, the board of directors voted 4–3 to approve the corporation’s purchase of a major asset. Alan and Barb both voted to approve the purchase.

Claire, who voted against the purchase, is very upset and has brought an action seeking an injunction to prevent the purchase of the asset. Claire asserts that the board of directors did not properly approve the purchase of the asset.

Did the board of directors properly approve the purchase of the asset? Explain.
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