

MEE Question 1

In 2012, David and Meg had a baby girl, Anna. At the time of Anna's birth, David and Meg were both 21 years old. For the next four years, they lived separately. David and Anna lived with David's mother (Anna's grandmother). The grandmother cared for Anna while David worked. David cared for Anna most evenings and weekends. During this period, Meg attended college in a distant city; she called weekly but visited Anna only during school breaks and for one month each summer.

In 2013, David bought an auto repair business with money he had saved. The grandmother continued to care for Anna while David was working in his auto repair business.

In 2016, David and Meg were married in a small wedding held at the grandmother's house. One week before their wedding, David surprised Meg by asking her to sign a premarital agreement prepared by his attorney. The agreement provided that, in the event of a divorce,

1. all assets owned by each spouse at the time of the marriage would remain the sole property of that spouse;
2. neither spouse would be entitled to alimony; and
3. the spouses would have joint physical custody of Anna.

Attached to the proposed agreement was an accurate list of David's net assets (his personal possessions, the auto repair business, a used car, and a small bank account), a list of his liabilities, and his tax returns for the past three years.

David told Meg that he would not proceed with the marriage unless she signed the agreement. Meg believed that the marriage would be successful, and she did not want to cancel or postpone the wedding. She therefore signed the agreement and appended a list of her own debts (student loans); she correctly indicated that she had no assets other than her personal possessions.

Since the wedding, David, Meg, and Anna have lived together and the grandmother has continued to provide child care while David and Meg are at work. Meg has worked full-time as a computer engineer, and David has continued to work full-time in his auto repair business. Their incomes are relatively equal.

They have the following assets: (a) the auto repair business (owned by David); (b) stocks (owned by Meg, which she inherited last year); and (c) the marital home (purchased by David in his name alone shortly after the wedding). The down payment and all mortgage payments for the marital home have come from the couple's employment income.

Last month, David discovered that Meg had been having an affair with a coworker for the past year.

David wants a divorce. He also wants to obtain sole physical custody of Anna; he believes that Meg's adultery should disqualify her as a custodial parent. His plan is to live with the grandmother, who would provide child care when he is unavailable.

This jurisdiction has adopted a statute modeled after the Uniform Premarital Agreement Act.

1. May either spouse successfully enforce the premarital agreement in whole or in part? Explain.
2. Assuming that the premarital agreement is not enforceable, what assets are divisible at divorce? Explain.
3. Assuming that the premarital agreement is not enforceable, may David obtain sole physical custody of Anna based on (a) Meg's adultery or (b) other factors? Explain.

1) Please type your answer to MEE 1 below When finished with this question, click to advance to the next question.

1. May either spouse successfully enforce the premarital agreement in whole or in part?

Either spouse may successfully enforce the premarital agreement as it pertains to the division of property and alimony, but not custody of Anna. The issue is whether the premarital agreement is enforceable. A premarital agreement is enforceable if entered into voluntarily and knowingly, and it does not violate public policy. The agreement is entered into voluntarily if there was no fraud or duress. Factors to look at are the length of time an agreement was made before a wedding, whether the party to be bound was able to receive counsel from an attorney, and the level of sophistication of the party to be bound. The agreement is entered into knowingly if the drafter properly discloses all relevant assets. And agreements as to alimony may be contracted; however, custody of children may not.

Here, The agreement was voluntary. David asked Meg for the agreement one week before the weddings. Anna had the opportunity to seek counsel; however she chose not to because she thought the marriage would work. Furthermore, Meg is a college educated computer engineer, so she was sophisticated enough to enter into the agreement. Secondly, the agreement was entered into knowingly because David (as well as Anna) properly disclosed all assets. Finally agreements as to the division of property and alimony do not violate public policy. However, an agreement as to the custody of childred does violate public policy. The best interes of the child should always be the determinative factor. For these reasons the premarital agreement is enforceable except for the provision about child custody.

2. What assets are divisible at divorce?

The issue here is how the property will be divided assuming the premarital agreement is not enforceable. Generally, property gained by a party prior to a marriage is separate property and property collected after a marriage is marital property. However, if a spouse contributes to separate property or marital funds are used, it will become marital property. Furthermore, gifts and inheritance remain separate property.

Here, the auto repair business will likely remain with David because he saved up for and started the auto repair business prior to marriage. However, if marital funds were put into the business after marriage it may be split. The stocks inherited by Meg will remain with Meg because inheritance is exempted from marital property. Finally the marital home is marital property because it was bought after the wedding, despite only being in David's name, and marital proceeds were used to pay for the down payment and mortgage.

3. May David obtain sole physical custody of Anna based on (a) Meg's adultery or (b) other factors?

The issue is the custody of Anna. The court will look primarily at the best interest of the child in custody matters. Factors the court will consider include the child's relationship with each parent, the child's wishes, the parent's ability to support and care for the child, etc.

Here, David has a long history of caring for Anna, such as for the four years that Meg was in college. Furthermore, David's grandmother can assist in caring for Anna. David also is a successful businessman. However, Meg had always been in Anna's life, even visiting in college. Meg is also a college educated computer engineer. Therefore both can properly care for Anna. David argues that Meg is not fit because of her Adultery. However, adultery is common and not a crime or overtly dangerous to the child. For that reason, the court will not grant sole custody to David, and will likely assign joint custody.

END OF EXAM

MEE Question 2

A defendant, age 25, is charged in State A with armed robbery. According to the indictment, on June 1, the defendant went into a store, pulled out a gun, and said to a cashier, "Give me all your money or I'll shoot you!" The cashier gave the defendant \$5,000. The police arrived as the defendant was driving away. The police car followed the defendant, who was driving over 80 mph. The defendant crashed his car into a tree and suffered a serious head injury, losing consciousness. He was taken by ambulance to a hospital, where he regained consciousness on June 8. On June 15, he was discharged from the hospital. On July 1, he was arraigned on the armed robbery charge and released on bail. Over the next few months, the defendant recovered full physical mobility, but he continued to show symptoms of cognitive impairment resulting from brain trauma suffered during the car crash.

Police interviews with the defendant's family and friends have revealed that, in the months preceding the robbery, the defendant had experienced financial and emotional difficulties. According to the defendant's best friend, the defendant had recently started a new business, which was struggling. A month before the robbery, the defendant told his best friend, "I cannot attract customers because the United Nations has organized a secret boycott of my new business." On the day before the robbery, the defendant texted his best friend: "I've been a victim for too long. I've decided to start making up for my losses. If you read about me in the papers tomorrow, I'll already be far away, so delete this text and tell the police you never knew me."

In December, as the state began preparing for trial, two court-appointed psychiatrists evaluated the defendant and prepared the following joint report to the court:

Before the robbery, the defendant had a slightly above-average IQ. The defendant had completed a community college program in business administration and had recently opened his own business, which he owned and managed at the time of the robbery. A few months before the robbery, the defendant's business was struggling, and he began experiencing some mental health difficulties. His mental health difficulties apparently did not impair his relationships with his family and friends or his ability to manage his everyday life and operate his business. The defendant never sought mental health treatment.

On the day of the robbery, during the crash, the defendant sustained brain trauma that has impaired his cognitive functioning. The defendant has not returned to work, and there has been no cognitive improvement to date. When questioned about the pending criminal charge, the defendant typically responds, "My mother told me I did something bad, but I can't remember what." He is unable to remember anything about the robbery. When asked about his appointed counsel, the defendant usually says, "She's nice" or "She comes to see me and helps me." He describes the judge as "the guy in charge," but when asked to explain what happens in court he responds, "I don't know what they are talking about." During repeated interviews, we have seen no evidence that the defendant currently understands abstract language and concepts. We have also seen no evidence that he is feigning or exaggerating his cognitive impairment.

State A uses the *M'Naghten* not guilty by reason of insanity (NGRI) test and requires that the affirmative defense of NGRI be proved by a preponderance of the evidence.

Defense counsel has requested a hearing to determine whether the defendant is competent to stand trial (in some jurisdictions, this is called "fitness to stand trial") and has informed the court that, if the trial proceeds, the defendant will argue that he is NGRI.

Based on all the information presented above, including the information in the psychiatrists' report:

1. Should the prosecution be suspended because the defendant is currently incompetent to stand trial? Explain.
2. If the defendant is found competent to stand trial and the prosecution proceeds, will the jury likely find that, with respect to each element of the *M'Naghten* test, the defendant has met his burden of proof? Explain.

2) Please type your answer to MEE 2 below When finished with this question, click to advance to the next question.

1. Prosecution can be suspended if a criminal defendant is found to be incompetent to stand trial. A criminal defendant is incompetent to stand trial when, because of mental disease or defect, he does not understand why he is there or is unable to assist counsel with his own defense. Typically, incompetency must be brought by the defendant to the court's attention but the judge in a criminal proceeding may require an evaluation of the criminal defendant if he notices the potential for incompetency. Incompetency to stand trial is not a defense to the charge being brought, it is a Due Process protection for the criminal defendant (Due Process is violated if trial proceeds against a person who is not able to defend himself or is unable to understand that he should defend himself). When a defendant is claiming incompetency, there is usually a mental evaluation performed (usually requested by the prosecution) to establish actual incompetency. If the defendant is found by the court to be incompetent, he will be admitted to a mental facility until such time that he regains competency and is able to proceed with trial. Incompetency is not a defense and does not discharge the case; it simply stays the case until competency is regained. Additionally, it is not a Due Process violation to administer medication to a mentally incompetent criminal defendant in order to regain competency and proceed with trial so long as the medication is an established treatment for the condition and does not create symptoms that would be prejudicial against the defendant.

Here, when asked about the pending trial, the defendant reported saying, "my mother told me I did something bad, but I can't remember what." There are also medical records and psych evals establishing a brain injury taking place, resulting in a significant loss in cognitive ability. The psych evaluators also believe that the defendant doesn't know who his attorney is ("she's nice" or "she

comes to see me and helps me"), who the judge is ("the guy in charge") or what's going on in the courtroom ("I don't know what they're talking about.") The evaluators also report that the defendant has not returned to work since the injury because of the results of the injury. The report/evaluation was also conducted by two different court-appointed psychiatrists which reduces/eliminates any perception of bias of the expert testimony.

Due to the fact that the criminal defendant here has suffered a brain injury that has resulted in a significant cognitive impairment causing him to not remember his criminal actions leading to his arrest which, in turn causes him to not understand why he is in the courtroom to begin with. The injury and cognitive impairment have also caused him to not understand the proceedings that are taking place (the facts indicate that he show up for court simply because someone told him to be there). Also, because he has lost his memory of the criminal act as well as his ability to understand the proceedings, he is clearly unable to assist his attorney with his own defense. Therefore, the court should suspend the prosecution and submit the defendant to a mental facility until such time that he has regained competency to stand trial.

2. Not guilty by reason of insanity can be established by various tests (depending on the jurisdiction). The *M'Naughten Test* is one of the most common tests used and requires that the criminal defendant show: (1) that he has a mental disease or defect; (2) and *because of* that mental disease or defect, he was either (3) unable to understand/appreciate the illegality of his action or (4) unable to conform his actions to societal standards (5) at the time the criminal activity took place. Mental disease or defect can be shown by providing a medical history or having a thorough evaluation performed. The criminal defendant can use expert testimony, eye witnesses, or any other type of evidence at trial to allow the jury to make a decision regarding his state of mind at the time the

criminal activity took place that resulted in his arrest/charge. Evidence of irrational thoughts alone are not enough to establish inability to understand/appreciate the criminality of his action or to conform. The critical question is whether, in the mind of the criminal defendant, he truly believed that he was doing the right thing. Established by a preponderance of the evidence (more likely true than not true).

Here, there are multiple indicators that the criminal defendant lack the very first requirement of succeeding on a defense of "NGRI": having a mental disease or defect. In order to be found NGRI, the defendant must have had a mental disease or defect *at the time of the criminal activity* which caused him to be unable to understand/appreciate the criminality of his actions or /conform his actions to societal standards. Evidence of irrational thoughts alone are not enough to establish inability to understand/appreciate the criminality of his action or to conform. The critical question is whether, in the mind of the criminal defendant, he truly believed that he was doing the right thing. The facts indicate that the defendant owned his own business and had an above average IQ at the time of the robbery. While there is evidence of stress (financial stress also could be motive) that may have caused him to experience irrational thoughts that the UN had a secret boycott against his business, this thought alone isn't sufficient to establish an inability to conform his actions. He also told his friend on the day of the robbery that he was "making up for losses" and that he would be "far away" the next day, to delete the message and to tell the police he was unknown to the friend; all of which indicate intent to commit the robbery and intent to evade capture (which indicates an understanding of criminal activity and an appreciation for the wrongness of his actions).

Therefore, because there is evidence that the criminal defendant did not have a mental disease or defect at the time of the robbery, he would be automatically prohibited from being able to use NGRI defense. BUT, if he were to get past that initial hurdle, there is also ample evidence that he knew/understood the

criminality of his actions and understood the wrongness of those actions. NGRI would be denied to the criminal defendant.

END OF EXAM

MEE Question 3

A woman whose hobby was making pottery wanted to improve her pottery skills both for her own enjoyment and to enable her to create some pottery items that she could sell. Accordingly, she entered into negotiations with an experienced professional potter about the possibility of an apprenticeship at his pottery studio.

The negotiations went well, and after some discussion, the woman and the professional potter orally agreed to the following on May 1:

- The woman would be the potter's apprentice for three months beginning May 15. During the apprenticeship, the potter would provide education and guidance about the artistry and business of pottery. The woman would pay the potter \$4,000 for the right to serve as the potter's apprentice, payable on the first day of the apprenticeship.
- The potter would supply the woman with equipment and tools that she would use during the apprenticeship and would be entitled to take with her at the conclusion of the apprenticeship. On or before May 8, the woman would pay the potter \$5,000 for the equipment and tools.
- The woman would be provided with a private room in the potter's studio in which to stay during the apprenticeship.

On May 2, the woman and the potter signed a document titled "Memorandum of Agreement." It contained the terms orally agreed to the day before, except that it did not refer to the woman's living in a private room in the potter's studio. The last sentence of the document stated, "This is our complete agreement."

On May 8, the woman went to the potter's studio and paid him the \$5,000 called for in the agreement for the equipment and tools. While she was there, the potter said that he had decided that the \$4,000 price was too high for the right to serve as his apprentice and proposed lowering it to \$3,500. The woman happily agreed, and they shook hands on this new arrangement.

On May 15, the woman arrived at the potter's studio to begin the apprenticeship and move into the room she would occupy during that time. The potter refused to let her move in, however, and said that their deal did not require him to provide lodging for the woman. When the woman protested that they had agreed to the lodging arrangement, the potter took the signed Memorandum of Agreement out of his pocket and pointed out to her that it contained no reference to the woman's living in his studio. He then said, "If it's not in here, it's not part of the deal."

The woman then said, "At least you were reasonable in agreeing to change the price for the apprenticeship to \$3,500. Saving that extra five hundred dollars means a lot to me." In response, the potter pointed to the Memorandum of Agreement again and said to the woman, "That's not what this says. This says that you'll pay me \$4,000 today. Even if I agreed to lower the price, I didn't get anything for that, so why should I be bound by it?"

The woman is quite angry about this turn of events and is considering suing the potter.

1. If the woman sues the potter about the disputes relating to the apprenticeship, will those disputes be governed by the common law of contracts or by Article 2 of the Uniform Commercial Code? Explain.
2. Assuming that the common law of contracts governs, is the oral agreement concerning the woman's lodging binding on the parties? Explain.
3. Assuming that the common law of contracts governs, is the oral agreement lowering the price for the apprenticeship binding on the parties? Explain.

3) Please type your answer to MEE 3 below When finished with this question, click to advance to the next question.

1. The dispute would be governed by the common law because the predominant purpose of the contract was for services not goods.

The issue is whether the contract between the woman and the professional potter were for services or goods. The UCC governs a contract for goods and the common law governs contracts for services. When the contract includes services and goods, the majority of courts use the predominant purpose test. This states that the predominant focus of the contract will determine if the common law or the UCC applies. A minority of courts will apply the UCC to the goods part of the contract and apply the common law to the services part of the contract.

In this case, the primary goal and focus of the contract was for the woman to learn under the tutelage of the professional potter. She was to be his apprentice for three months. In addition, this was her own personal goal. The equipment discussed under the contract was incidental to the services. If she didn't receive the instruction from the professional potter, the equipment purchase would be no good to her. In addition, the living arrangement was for convenience of her being at the studio. This was also incidental to her learning from the potter. Therefore, the court would find that the services of learning from the potter was the predominant purpose of the contract and the common law should govern.

2. The oral agreement is not binding on the parties because of the merger clause included in the contract.

The issue is whether the contract was fully integrated or partially integrated due to the merger clause. A partially integrated contract includes the final essential terms of the contract. It does not mean that there are not other terms to be included that the parties have not thought of. A fully integrated contract is the

final representation of all the provisions and negotiations of the parties. Anything outside the four corners of the contract will not be considered. Merger clause is prima facie evidence that the parties intended this. Thus, the parol evidence rule would not be able to bring in evidence of prior or contemporaneous discussions or writings that would explain or interpret the contract. More importantly, parol evidence cannot be used to contradict the terms in a contract.

Here, the parties discussed the woman staying at the studio but did not include it in the contract. The merger clause stating "This is our complete agreement" is evidence that the provisions in the agreement were all the parties intended in the contract to provide. The woman would not be able to bring any evidence to contradict the writing. The woman could challenge the formation of the contract by other concepts but will not be successful in enforcing the living arrangement. Therefore, the oral agreement is not binding on the parties because of the merger clause included in the contract.

3. The oral agreement lowering the price for apprenticeship is not binding on the parties.

The issue is whether the oral modification was supported by consideration as required by the common law of contracts. An oral modification is a verbal alteration to the terms of the contract. Under the common law, it must be supported by consideration. Hence, one party must change positions to their detriment in order to bargain for the other party to change his or her position as well. Under the UCC, consideration is not necessary to modify a contract. All that is required is good faith.

Here, the parties discussed modification of an existing and enforceable contract after the woman had begun her performance under the contract. The woman paid the man the 5,000 for the equipment before May 8th. Her performance had

begun. The potter morally felt bad about the price of the apprenticeship. Acting on his own with no inducement from the woman, the potter offered to reduce the negotiated amount for the potter to teach the woman but the woman didn't rely on the additional savings to her detriment. Shaking hands on the deal is not enough to say that she relied on it. Because, the oral modification was not supported by consideration, the parties are not bound to the price reduction of the apprenticeship.

END OF EXAM

MEE Question 4

A developer acquired a 30-acre tract of land zoned for residential use. The developer thereafter marked out 60 building lots. The developer granted various utility providers appropriate easements to install underground sewer and utility lines. These utility easements were promptly and properly recorded.

Subsequently, the developer contracted with a man to build a home for the man on one of the 60 lots. The contract provided that, at closing, the developer would convey the home and lot to the man by a warranty deed excepting all easements and covenants of record. The home was completed nine months later.

At the closing, the developer conveyed the home and lot to the man by a valid warranty deed containing the six title covenants. Notwithstanding the language in the contract, the deed contained no exceptions to these six covenants. The deed was promptly and properly recorded.

Two months later, following a heavy storm, the man discovered rainwater in the basement level of his home. Three bedrooms were located on this level, and the influx of rainwater made all of them unusable. An expert determined that the cause of the rainwater influx was a defect in the construction of the home's foundation.

The man contacted the developer, who denied any responsibility for the influx. Rather than argue with the developer, the man contacted a plumber, who concluded that the problem could be solved by installing a sump pump in the basement. The plumber accurately told the man that the usual cost of installing a sump pump was \$750, but that the location of the sewer lines coming into the home created more work, raising the installation cost to \$1,500. The man told the plumber to install the pump.

Thereafter, the man sued the developer for \$5,000 in damages for the cost of the sump pump, its installation, and damage to the floors and carpeting in the basement. He also sought additional damages for breach of one or more title covenants.

1. Which present title covenants, if any, did the developer breach with respect to the utility easements? Explain.
2. Assuming that there was a breach of one or more of the present title covenants, can the man recover damages from the developer for the breach? Explain.
3. May the man force the utility company that installed the underground sewer lines to remove them from the land? Explain.
4. May the man recover the \$5,000 in damages from the developer? Explain.