

### MEE Question 1

On June 15, a professional cook had a conversation with her neighbor, an amateur gardener with no business experience who grew tomatoes for home use and to give to relatives. During the conversation, the cook mentioned that she might be interested in “branching out into making salsa” and that, if she did branch out, she would need to buy large quantities of tomatoes. Although the gardener had never sold tomatoes before, he told the cook that, if she wanted to buy tomatoes for salsa, he would be willing to sell her all the tomatoes he grew in his half-acre home garden that summer for \$25 per bushel.

Later on June 15, shortly after this conversation, the cook said to the gardener, “I’m very interested in the possibility of buying tomatoes from you.” She then handed a document to the gardener and asked him to sign it. The document stated, “I offer to sell to [the cook] all the tomatoes I grow in my home garden this summer for \$25 per bushel. I will hold this offer open for 14 days.”

The gardener signed the document and handed it back to the cook.

On June 19, the proprietor of a farmers’ market offered to buy all the tomatoes that the gardener grew in his home garden that summer for \$35 per bushel. The gardener, happy about the chance to make more money, agreed, and the parties entered into a contract for the gardener to sell his tomatoes to the proprietor.

On June 24, the cook, who had not communicated with the gardener since the June 15 conversation, called the gardener. As soon as the cook identified herself, the gardener said, “I hope you are not calling to say that you want my tomatoes. I can’t sell them to you because I have sold them to someone else.” The cook replied, “You can’t do that. I called to accept your offer to sell me all your tomatoes for \$25 per bushel. You promised to hold that offer open for 14 days. I accept your offer!”

Is the gardener bound to sell the cook all the tomatoes he grows that summer for \$25 per bushel? Explain.

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1) Please type your answer to MEE 1 below

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*(Essay)*

===== Start of Answer #1 (894 words) =====

MEE #1

The gardener is not bound to sell the cook all the tomatoes he grows that summer for \$25 a bushel.

The issue is whether an irrevocable offer exists in the form of an option or firm offer.

Generally, offers are freely revocable and may be revoked by words or conduct by the offeror. However, there are specific offers that are irrevocable. When dealing with the sale of goods, as we are here, UCC Article 2 governs. Goods are defined as

moveable in nature and here tomatoes, are goods. Therefore UCC Article 2 will govern. The UCC Article 2 allows for option and firm offers. Both offers are irrevocable until a stated time.

We must first determine which communication is being referenced as the offer. The beginning dialogue between the professional cook and neighbor is not an offer and does not meet the formalities of a contract. This conversation where the professional cook states she may "branch out into making salsa" followed by the neighbor's statement that he "will sell her all the tomatoes he grew in his half-acre home garden that summer for \$25 a bushel." is not an offer. An offer is a communication that a reasonable offeree would believe they have the ability to accept. Here, there is no meeting of the minds and as such, no offer resulted. Instead, when the professional cook placed the neighbor's statement in writing that stated "I offer to sell to [the cook] all the tomatoes I grow in my home garden this summer for \$25 per bushel. I will hold this offer open for 14 days" then an offer commenced. The professional cook would have a reasonable belief that she may accept this offer and as such, an offer existed. The question is whether the offer that was made by the neighbor was irrevocable.

The Statute of Frauds also would not be an issue in this case. For all sell of goods over \$500, there must be a writing signed by the party to be charged. In addition, for goods contracts, as we have here, the quantity term must be included. UCC Article 2 allows for output and requirements contracts to satisfy this quantity term. Here, the offer is to supply the professional cook with all the gardner can grow. This will likely meet the requirements of an output contract in that the gardner is supplying all

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that is produced. As such, the offer would also not fail for not including the quantity.

Therefore, the only issue is to ask whether the offer was irrevocable as an option offer or whether the neighbor had the right to revoke the contract and did so properly.

An option offer may be entered into by nonmerchants, but requires consideration. The option contract does not have to be in writing, but consideration must be given for the offer to hold the offer open. A firm offer is an offer between merchants. The firm offer does not need to be supported by consideration, but must be in writing.

Here, the neighbor is an "amateur gardner" and as such, is not deemed a merchant. A merchant is someone that sales goods in the ordinary course of business. The neighbor does not sale tomatoes in the ordinary course of business and is therefore not a merchant. As such, the writing cannot be a firm offer even though it's in writing. To the contrary, the writing would have to comply withthe requirements of an option offer in order to be irrevocable. This writing does not meet the requirements of the opton offer as it is not backed by consideration.

Where an offer is not a firm or option offer, an offer may be readily reovable where the offeror revokes unambiguously be words or conduct before the offeree accepts and where the offeree receives notice of such revocation. Here, the neighbor did not revoke the offer to the professional cook when it entered into a contract for the gardener to sell his tomatoes to the proprietor as the offeree (the professional cook)

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## MEE Question 2

Forty years ago, Settlor, a successful businesswoman, married a less-than-successful writer. Settlor and her husband had two children, a son and a daughter.

Two years ago, Settlor transferred most of her wealth into a revocable trust. Under the terms of the trust instrument, a local bank was designated as trustee, and the trustee was directed to distribute all trust income to Settlor during her lifetime. The trust instrument further provided that “upon Settlor’s death, the trustee will distribute trust principal to one or more of Settlor’s children as Settlor shall appoint by her duly probated last will or, in the absence of such appointment, to Charity.” The trust instrument also stated that Settlor’s power of revocation was exercisable only “during Settlor’s lifetime and by a written instrument.”

Following the creation of the trust, Settlor gave written direction to the trustee to accumulate trust income instead of distributing the income to Settlor as specified in the trust instrument. The trustee did so.

Six months ago, Settlor executed a valid will. The will, exercising the power of appointment created under Settlor’s revocable trust, directed the trustee of Settlor’s trust, upon Settlor’s death,

- (1) to distribute half of the trust assets to Settlor’s daughter,
- (2) to hold the other half of the trust assets in continuing trust and pay income to Settlor’s son during the son’s lifetime, and
- (3) upon the son’s death, to distribute the trust principal in equal shares to the son’s surviving children (grandchildren of Settlor).

Settlor also bequeathed \$50,000 “to my descendants, other than my children, in equal shares,” and she left the residue of her estate to her husband, whom she also named as the executor of her estate.

Two months ago, Settlor died. At Settlor’s death, the trust assets were worth \$500,000 and Settlor’s probate assets were worth \$100,000. Settlor was survived by her husband, her daughter, her son, and her son’s child (Settlor’s grandchild, age 18).

A statute in this jurisdiction provides that a decedent’s surviving spouse is entitled to a “one-third elective share of the decedent’s probate estate.” There are no other relevant statutes.

1. Was it proper for the trustee to accumulate trust income during Settlor’s lifetime? Explain.
2. Under Settlor’s will and the trust instrument, what, if any, is Charity’s interest in the trust assets? Explain.
3. Does Settlor’s husband have a valid claim to any trust or probate assets? Explain.

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**2) Please type your answer to MEE 2 below**

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*(Essay)*

===== Start of Answer #2 (573 words) =====

1) It was proper for the trustee to accumulate trust income during Settlor's lifetime. At issue here is whether Settlor has authority to direct the trustee in a manner that conflicts with the trust's terms.

Generally, a trustee of a revocable trust must act at the sole discretion of the Settlor. Alternatively, a trustee of an irrevocable trust must act for the benefit of the beneficiaries of the trust. The Settlor of a revocable trust retains the power to revoke, amend, or otherwise make decisions concerning the trust property and otherwise control the trust during his lifetime even if his directions contradict the terms of the trust.

Here, the terms of the trust instrument designated the local bank as trustee and directed the bank to distribute all trust income to Settlor during her lifetime. However, the Settlor subsequently directed the bank to accumulate trust income instead of

distribute pursuant to the trust terms. The trust instrument provided that Settlor's power of revocation was exercisable only during Settlor's lifetime and by written instrument. The facts indicate that Settlor gave written direction to the trustee to accumulate trust income and thus, Settlor properly invoked her power of revocation. Therefore, it was proper for the trustee to accumulate income during Settlor's lifetime.

2) Charity may have an interest in the trust principal devised to Settlor's grandchild. At issue here is whether Settlor's power of appointment to "children" allowed Settlor to include his grandchild.

Settlor's trust created a specific testamentary power of appointment in which Settlor directed trustee to distribute trust principal upon Settlor's death and to distribute to "one or more of Settlor's children as Settlor shall appoint by her duly probated last will, or in the absence of such appointment, to Charity." The facts indicate that Settlor executed a valid will, exercising the power of appointment directing trustee to distribute half of the trust assets to Daughter, to hold the other half in continuing trust for Son during his lifetime, and upon Son's death, to distribute the trust principal in equal shares to the Son's surviving children. The appointment to Son's children likely fails because the trust specifically requires that trust principal be distributed to the children of Settlor, not grandchildren. In absence of a specific appointment to Settlor's children, the trustee is directed to appoint to Charity and thus, Charity may have a half interest in the trust assets at the Son's death.

3) Husband does have a valid claim to both trust and probate assets. At issue here is whether the elective share that Husband will include trust property in addition to

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### MEE Question 3

In 2005, Andrew and Brenda began living together in State A while both were attending college there. Andrew proposed marriage to Brenda, but she refused. However, after learning that she was pregnant, Brenda told Andrew that she wanted to marry him before the baby was born. Andrew was thrilled and told her that they were already married “in the eyes of God.” Brenda agreed.

Andrew and Brenda did not obtain a marriage license or have a formal wedding. Nonetheless, Brenda started using Andrew’s last name even before their daughter, Chloe, was born. After Andrew graduated from college and started a new job, he listed Brenda as his spouse so that she could qualify for benefits through Andrew’s employer. They also filed joint income tax returns.

In March 2007, just after Chloe’s first birthday, Andrew and Brenda decided to separate. They had little property to divide and readily agreed to its disposition. Andrew agreed that Brenda should have sole custody of Chloe, and Brenda, desiring the cleanest break possible, agreed that Andrew would not be responsible for any child support. Andrew told Brenda that no formal divorce was necessary because they had never formally married.

In June 2007, Brenda and Chloe moved to start a new life in State B. Andrew sent Chloe an occasional card or birthday gift, but otherwise maintained no contact with Chloe or Brenda. Not long after settling in State B, Brenda met and fell in love with Daniel.

In 2008, Brenda and Daniel obtained a State B marriage license and wed. Thereafter, Daniel formed a close and loving bond with Chloe. Indeed, with only very infrequent contact from Andrew, Chloe regarded Daniel as her father and called him “Dad.”

In January 2017, Brenda purchased a lottery ticket. The ticket won a jackpot of \$5 million, which was paid that month. Shortly thereafter, Brenda informed Daniel that she wanted a divorce and that she intended to use her lottery winnings to launch a new life with Chloe in a distant state and break off all contact with Daniel. When Chloe learned about this, she became very upset because she continues to regard Daniel as her father.

State A recognizes common law marriage. State B formerly allowed common law marriage until a statute, enacted in 2001, prospectively barred the creation of new common law marriages within the state. Neither State A nor State B is a community-property state.

1. On what basis, if any, would Andrew have a claim to a share of Brenda’s lottery winnings? Explain.
2. Assuming that Andrew and Brenda have a valid marriage, on what basis, if any, would Daniel have a claim to a share of Brenda’s lottery winnings? Explain.
3. If Brenda cuts off all contact between Chloe and Daniel, can Daniel obtain court-ordered visitation with Chloe? Explain.

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**3) Please type your answer to MEE 3 below**

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**When finished with this question, click Â to advance to the next question.**

*(Essay)*

===== Start of Answer #3 (735 words) =====

The formation of a valid marriage has certain requirements which must be met.

Usually, there is a waiting period, an authorized officiant to perform the ceremony, a marriage license, capacity to marry and no other legal impediment to the marriage.

However, courts have held that failing to meet some of these formalities will not prevent the formation of a valid marriage so long as there are no legal impediments to the marriage. The legal impediments which create a void marriage are being too closely related, lack of capacity, being married to someone else.

However, if two individuals live in a jurisdiction which allows for common law marriage, a court will likely uphold the marriage and treat it as though it was and is a valid, marriage with the parties entitled to all the rights and responsibilities of a validly formed

marriage. Normally, for a common law marriage to be treated and adjudicated a valid marriage there are certain requirements which must be met.

One requirement is that there must be no legal impediment to marriage, there usually is a statutory period in which the two individuals/spouses cohabit. In addition, they must hold each other out as being married and must show the intent to be in a marriage relationship. Here, they held themselves out to be married and cohabited. Brenda began using Andrew's last name and Andrew listed Brenda as his spouse on a benefits form. In addition, they also filed joint tax returns. All of these actions tend to show that both had the intention to be in a marriage relationship and it should be treated as such.

Applying all this to the facts of this case, it is likely that court would find there to have been a valid marriage formed between Andrew and Brenda. Since a court would have likely hold that Andrew and Brenda were married in State A, State B would likely give State A's finding of a valid marriage full faith and credit.

1. Andrew would have a claim to a share of Brenda's lottery winnings because they are still married. He would only be able to get the share, though, if he or Brenda files for divorce and there is an equitable distribution of the winnings. He or Brenda would need to file for divorce in either State A or State B. Equitable does not always mean equal. If marital income was paid into the marriage, then that property will be considered marital property and divided accordingly. Because a valid marriage had been formed a court would likely hold that Andrew is entitled to some share of the winnings because he and Brenda were still married. Andrew would have a basis Lottery Winnings if he

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can show that some marital income was used to pay for the lottery ticket and the winnings would be considered marital property and maybe distributed according to how much the court finds Andrew is entitled to given his contribution to the marital income.

2. Daniel would likely have a claim to a share of Brenda's lottery winnings. In order for Daniel to have a claim to a share of Brenda's lottery winnings a court would have to hold that Daniel is a putative spouse. This means that while their marriage was void, Daniel and Brenda both believed they were married and he will be given all the rights and responsibilities that a legal spouse would have to marital property. In addition, it was marital income that likely paid for the lottery ticket so he would be entitled to some equitable distribution of the lottery winnings.

3. The right to parent and decide who is around one's children is a fundamental right with a high scrutiny level. However, there are certain criteria that a court will look to when deciding when it is appropriate to intervene, interfere, with a parent's decision. Of the utmost importance is what is in the best interests of the child? In addition, a court will look at who is the primary caregiver of the child. What is the child's relationship to the person petitioning for visitation? Here, Chloe and Daniel had been in each other's lives for 10 years. It is likely that allowing Brenda to cut Daniel out of Chloe's life, and move away, would have a detrimental effect on Chloe's life. A court could very well likely hold that it is in Chloe's best interest to see Daniel and order visitation.



#### MEE Question 4

A shareholder owns 100 shares of MEGA Inc., a publicly traded corporation. MEGA is incorporated in State A, which has adopted the Model Business Corporation Act (MBCA).

The shareholder read a news story in a leading financial newspaper reporting that MEGA had entered into agreements to open new factories in Country X. According to the story, MEGA had paid large bribes to Country X government officials to seal the deals. If made, these bribes would be illegal under U.S. law, exposing MEGA to significant civil and criminal penalties.

On May 1, the shareholder sent a letter to MEGA asking to inspect the minutes of meetings of MEGA's board of directors relating to the Country X factories mentioned in the news story, along with any accounting records not publicly available relevant to the alleged foreign bribes. The shareholder explained that she was seeking the information to decide whether to sue MEGA's directors for permitting such possible illegal conduct.

In her letter, the shareholder also demanded that the MEGA board investigate the possible illegal bribes described in the news story and take corrective measures if any illegality had occurred.

On June 1, MEGA responded to the shareholder in a letter, which stated in relevant part:

The corporation will not give you access to any corporate documents or take any action regarding the matters raised in your letter. We cannot satisfy the whim of every MEGA shareholder based on unsubstantiated news stories. Furthermore, given our continuing operations in Country X, the board of directors will not investigate or take any other action regarding the matters raised in your letter because doing so would not be in the best interest of the corporation.

On October 1, the shareholder filed a lawsuit in a State A court. Her petition includes (1) a claim against MEGA seeking inspection of the documents previously requested and (2) a derivative claim against all of the MEGA directors alleging a breach of their fiduciary duties for failing to investigate and take action concerning the alleged foreign bribes.

MEGA's board has asked the corporation's general counsel the following questions:

- (1) Is the shareholder entitled to inspect the documents she requested?
- (2) May the board obtain dismissal of the shareholder's derivative claim if the board concludes that it is not in the corporation's best interest to continue the lawsuit, even though the board has not investigated the allegations of illegal foreign bribes?
- (3) Is the board's decision not to investigate or take further action with respect to alleged illegal foreign bribes consistent with the directors' duty to act in good faith, and is that decision protected by the business judgment rule?

How should the general counsel answer these questions? Explain.

i) Yes, the shareholder is entitled to inspect the minutes of board meetings and accounting records. At issue is whether shareholders are allowed to view corporate documents if they have a legitimate business purpose.

Shareholders have the right to inspect certain corporate records upon showing she has a legitimate business purpose, provided she gives the Corporation 5 days' notice. She can bring other people to inspect, including an attorney or accountant. A shareholder can inspect some ~~business~~ corporate records, including the articles of incorporation, bylaws, and annual reports at any time without showing purpose.

Here, the shareholder demanded to ~~see~~ inspect ~~the~~ minutes of meetings of the board of directors relating to potential illegal bribes. She also asked to inspect accounting records relevant to the alleged bribes. She has a legitimate business purpose in inspecting these documents, namely to determine whether MEGA was involved in bribery. Therefore, she is entitled to inspect them.

2) No, the board may not obtain dismissal of the claim if the board has not investigated the allegations of bribery. At issue is under what circumstances a board of directors may obtain dismissal of a derivative claim.

A derivative claim is one brought by a shareholder on behalf of the corporation, to protect the corporation's interest and to protect the corporation from injury or harm. After a derivative claim is brought, the board may obtain dismissal of the claim if a majority of the directors concludes the suit is not in the best interests of the corporation after investigation of the claims.

Here, the shareholder properly brought a derivative action against the M&A directors alleging a breach of fiduciary duties. The board has not investigated or taken any action regarding the claim. Without this investigation, the board cannot obtain dismissal of the claim.