

MEE 1 – Decedents' Estates / Conflict of Laws

Testator's handwritten and signed will provided, in its entirety,

I am extremely afraid of flying, but I have to fly to City for an urgent engagement. Given that I might die on the trip to City, I write to convey my wish that my entire estate be distributed, in equal shares, to my son John and his delightful wife of many years if anything should happen to me.

January 4, 2010

Testator

When Testator wrote the will, he was domiciled in State A, and his son John was married to Martha, whom he had married in 2003. Testator had known Martha and her parents for many years, and Testator had introduced Martha to John. At the time John and Martha married, Martha was a widow with two children, ages five and six. Following their wedding, John and Martha raised Martha's children together, although John never adopted them.

Two years ago, Martha was killed in an automobile accident.

Six months ago, John married Nancy.

Four months ago, Testator died while domiciled in State B. All of his assets were in State B. The handwritten will of January 4, 2010, was found in Testator's bedside table. Testator was survived by his sons, John and Robert, and John's wife Nancy. Testator was also survived by Martha's two children, who have continued to live in John's home since Martha's death.

State A does not recognize holographic wills. State B, on the other hand, recognizes "wills in a testator's handwriting so long as the will is dated and subscribed by the testator."

Statutes in both State A and State B provide that "if a beneficiary under a will predeceases the testator, the deceased beneficiary's surviving issue take the share the deceased beneficiary would have taken unless the will expressly provides otherwise."

How should Testator's estate be distributed? Explain.

MEE 2 – Criminal Law & Procedure

On February 1, a woman began serving a 60-day sentence in the county jail for operating a motor vehicle under the influence of alcohol. On February 4, a detective from the county sheriff's department took the woman from her cell to an interrogation room in the jail building. He informed her that she was a suspect in a homicide investigation and that he wanted to ask her some questions. The detective then read the woman the state's standard Miranda warnings:

You have the right to remain silent. Anything you say can be used against you in court. You have the right to an attorney. If you cannot afford an attorney, one will be appointed for you. If you decide that you wish to speak with us, you may change your mind and stop the questioning at any time. You may also ask for a lawyer at any time.

The detective asked the woman if she understood these rights. When she replied, "Yes, and I want a lawyer," questioning ceased immediately, and she was returned to her cell.

On March 15, the detective removed the woman from her cell and took her back to the same interrogation room. The detective told her that he wanted to ask her questions about the homicide because he had new information about her involvement. The detective read her the same Miranda warnings he had read on February 4 and asked her whether she understood her rights. She said, "Yes."

The woman then asked the detective, "If I ask you to get me a lawyer, how long until one gets here?" The detective replied as follows:

We have no way of getting you a lawyer immediately, but one will be appointed for you, if you wish, if and when you go to court. We don't know when that will happen. If you wish to answer questions now without a lawyer present, you have the right to stop answering questions at any time. You also have the right to stop answering questions until a lawyer is present.

The detective's statement accurately characterized the procedure for appointment of counsel. The woman then said, "I might need a lawyer." The detective responded, "That's your call, ma'am."

After a few minutes of silence, the woman took a Miranda waiver form from the detective and checked the boxes indicating that the rights had been read to her, that she understood them, and that she wished to waive her rights and answer questions. She then signed the form. After the detective began to question her, she confessed to the homicide.

The woman was charged with murder in state court. Her lawyer filed a motion to suppress the woman's March 15 statements to the detective, alleging three violations of her Miranda rights by the detective:

- (1) Interrogating the woman on March 15 after she had invoked her Miranda right to counsel on February 4.

(2) Incorrectly conveying to the woman her Miranda right to counsel by the statements he made on March 15.

(3) Interrogating the woman on March 15 after she had invoked her Miranda right to counsel on March 15.

This state affords a criminal defendant no greater rights than those mandated by the U.S. Constitution.

After an evidentiary hearing, the trial court denied the motion to suppress on all three grounds raised by defense counsel.

Did the court err? Explain.

MEE 3 – Corporations & LLCs

Parent Inc., a company in the renewable energy business, has several subsidiaries. In all cases, Parent maintains control of its subsidiaries by selecting the members of each subsidiary's board of directors, most of whom also serve as officers and employees of Parent.

One of the subsidiaries, HomeSolar Inc. (incorporated in a jurisdiction that has adopted a version of the Model Business Corporation Act), was acquired three years ago by Parent. Parent owns 80% of HomeSolar's voting shares, with the remaining shares publicly traded on a national stock exchange. HomeSolar manufactures and sells products exclusively for the residential solar power market.

Another subsidiary, IndustrialSolar Inc., is wholly owned by Parent and manufactures products exclusively for the industrial solar power market.

A shareholder of HomeSolar, after making a proper demand on the board to which the board failed to timely respond, brought a derivative suit against Parent, as the controlling shareholder of HomeSolar, making the following allegations:

(1) HomeSolar has not paid dividends since being acquired by Parent three years ago. In SEC filings, HomeSolar has explained that its no-dividend policy provides funds for its research and development budget as it seeks to develop new products for the residential solar power market in which it operates. Nonetheless, HomeSolar has more than adequate earnings and was obligated to pay dividends to its shareholders.

(2) Since acquiring HomeSolar, Parent has caused HomeSolar to purchase the "rare earth" minerals necessary for the manufacture of its residential solar panels from SolarMaterials Corp., a wholly owned subsidiary of Parent. SolarMaterials was created for the purpose of acquiring such minerals and reselling them to the various renewable energy subsidiaries of the Parent group. The long-term contract under which HomeSolar purchases rare earth minerals from SolarMaterials, however, sets prices significantly higher than the current market prices under similar long-term contracts for such minerals.

(3) After Parent learned about a large government grant to develop industrial-scale solar projects, Parent caused IndustrialSolar to apply for and secure this grant, denying HomeSolar the opportunity to obtain this grant.

1. Did Parent breach any duties to HomeSolar with respect to HomeSolar's no-dividend policy? Explain.
2. Did Parent breach any duties to HomeSolar with respect to HomeSolar's contract with SolarMaterials for the purchase of rare earth minerals? Explain.
3. Did Parent breach any duties to HomeSolar by denying HomeSolar the opportunity to apply for the government grant? Explain.

MEE 4 – Contracts

On March 1, a contractor and an owner of movie theaters signed an agreement providing that, no later than August 15, the contractor would install seats in the owner's new movie theater. The agreed-upon price was \$100,000, which was less than the \$150,000 that other similar contractors would charge for the same work. The agreement required that the owner pay the contractor half the price at the time the work commenced and the other half at completion. The contractor was willing to do the work for less money than its competitors because the contractor was new to the area and hoped to build up a positive reputation.

The agreement further provided that the contractor would start work no later than July 1. On July 1, before beginning the agreed-upon work, the contractor informed the owner that it would not perform its obligations under the agreement because it had obtained a more lucrative installation contract elsewhere. At that point, no payments had been made to the contractor.

The installation of the seats was the last step necessary for the theater to open to the public. The owner, which had anticipated that the contractor would install the seats by the August 15 deadline, had planned and widely promoted a film festival for September 1–10 to celebrate the opening of the new movie theater.

Immediately after learning that the contractor would not install the seats, the owner began to look for a substitute contractor. Despite diligent efforts, the owner could not find a contractor that would agree to install the seats by August 15. Eventually, after an extensive search, the owner found a substitute contractor that agreed to install the seats for \$150,000 by September 15. No other contractor could be found who would agree to install the seats at a lower price or before September 15.

Installation of the seats was completed on September 15, the substitute contractor was paid \$150,000, and the theater opened a few days later. Because the theater had no seats at the time of the film festival scheduled for September 1–10, the owner canceled the festival.

The owner sued the original contractor for breach of contract, and the parties agreed to a non-jury trial. The judge has concluded that the contractor's actions with respect to the seat-installation agreement constituted a breach of contract by the contractor. In addition, the judge has made the following findings of fact:

- The contractor was unaware that the owner was planning to hold a film festival when it entered into the contract.
- The owner would have made a profit of \$35,000 if the seats had been installed in the new movie theater and the film festival had been presented there as scheduled on September 1–10.
- The owner could have relocated the film festival to a nearby college auditorium that was available September 1–10 and, if this had occurred, the owner would have made a profit of \$25,000.

1. Do the damages recoverable by the owner include \$50,000 for the amount paid to the substitute contractor above the \$100,000 price to be paid to the original contractor under the contract? Explain.
2. May the owner recover for lost profits resulting from the cancellation of the film festival? Explain.
3. Assuming that the owner is entitled to recover for lost profits resulting from the cancellation of the film festival, how much should the owner recover? Explain.

MEE 5 – Family Law

Twelve years ago, Wendy and Frank were married in State A. One year later, their daughter, Danielle, was born in State A. The couple and their daughter have continued to live in State A.

One year ago, Frank lost his job as a steelworker after suffering a serious back injury. Frank's doctor has said that he will not be able to return to work.

One month ago, Frank filed an action against Wendy seeking spousal support. Frank filed the action after Wendy, a commercial airline pilot whose work frequently necessitates her absence from home, stopped depositing her wages into the couple's joint bank account and refused to pay household bills. Frank's unemployment insurance is inadequate to pay all the household bills.

Danielle's school recently sent her parents a note indicating that Danielle will not be allowed to enroll in school next year unless the parents provide proof of her vaccination. Frank, based on his personal, nonreligious beliefs, has consistently refused to allow Danielle to receive any vaccinations. Danielle does not satisfy the requirements for a medical exemption. State A has amended its mandatory vaccination law by eliminating all nonmedical exemptions based on "personal beliefs." As amended, the law requires, as a precondition to a child's enrollment in any public school, that "the child's parent or guardian must provide proof that the child has received all vaccinations mandated by the State Department of Health." Frank has brought an action challenging the State A vaccination law under the U.S. Constitution as a violation of his parental rights.

Two weeks ago, Danielle, age 11, with her parents' permission, went to visit her aunt in State B. One week into the visit, the aunt called Frank and Wendy and told them that Danielle did not want to return to her parents' home because "Mom is always traveling, Dad is really depressed since his back injury, and I just can't stand living there anymore." The aunt told Frank and Wendy that "I can't in good conscience send her home, so I'm immediately going to court to seek legal custody."

1. May Frank obtain spousal support from Wendy? Explain.
2. Will Frank's constitutional challenge prevail? Explain.
3. In what state must the aunt file a custody petition? Explain.
4. Is the court likely to grant legal custody of Danielle to her aunt? Explain.

MEE 6 – Civil Procedure / Constitutional Law

Trident Healthcare Inc., incorporated in State X, owns and operates hospitals and clinics in States X, Y, and Z. Medical information for all of Trident's current and former patients is stored on computer equipment housed at Trident's corporate headquarters in State X.

Last December, unknown persons hacked into Trident's computer system and obtained the personal medical information of at least 30,000 Trident patients, including 5,000 patients living in State X, 10,000 patients living in State Y, and 15,000 patients living in State Z. However, there is no evidence that the thieves have used any of this medical information.

The State X Privacy Protection Act imposes an absolute duty on health-care providers, including companies like Trident, to keep patient medical information private. The legislature concluded that the "invasion of privacy" resulting from data breaches causes significant harm to the individuals involved. Thus, the law allows any person whose private medical information is obtained by an unauthorized third party in any manner to recover actual damages from the health-care provider. Further, because such damages are sometimes difficult to quantify, the state law provides that an individual is entitled to a minimum statutory (nominal) damages award of \$500 to compensate for this "invasion of privacy." This state law is not preempted by any federal law.

A man, who is a citizen of State X and whose medical records were stored in the Trident computers, has brought a class action in the federal district court of State X against Trident on behalf of himself and all the persons whose health-care information was taken during the hacking of Trident's computer system. The man is represented by counsel with extensive experience in class actions of this type. The complaint is limited to claims arising out of the hacking of medical information. It seeks no actual damages but does seek statutory damages on behalf of all members of the class pursuant to the State X statute. The complaint alleges the facts detailed above and alleges that the court has jurisdiction based on diversity, pursuant to 28 U.S.C. § 1332. The complaint also alleges that most if not all of Trident's patients are U.S. citizens who are domiciled in the states where they receive their health care.

State X's legislatively adopted Civil Practice Rules provide that "if any statute or law of this state allows for an award of statutory or nominal damages, recovery of such damages may be sought in an individual action but not in a class action."

Trident has moved to dismiss the man's class action brought in federal district court, arguing that (i) the court lacks subject-matter jurisdiction over the state-law claim raised by the class action, (ii) the action fails to allege a claim upon which relief can be granted because of the state law barring class actions to recover statutory damages, and (iii) the man does not have standing to bring a statutory damages claim in federal court.

With respect to each of these arguments, how should the court rule? Explain.