

### 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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*(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.

3) No, the board's decision not to ~~investigate~~ investigate or take further action regarding the bribes is not consistent with its duty to act in good faith and is not protected by the business judgment rule. The issue is what directors must do to comply with their fiduciary duty of good faith and the business judgment rule.

Directors of a corporation owe fiduciary duties to the corporation, *inter alia*, duty of care, duty of loyalty, duty to act in good faith. Directors ~~breach these~~ ~~duties when they do not act in the~~ are protected by the business judgment rule in their exercise of these duties. A director is not liable to the corporation when he acted in good faith, with the reasonable care that a person in a like situation under similar circumstances would act, and if he acted in ~~reasonable~~ a manner he reasonably believed to be in the best interests of the corporation. Directors' business decisions are given great deference under the business judgment rule.

Here, it is clear the directors violated the duty to act in good faith, and their actions will not be protected by the business judgment rule. When

faced with the ~~fact~~ news that MEGA had potentially paid large bribes in a foreign country, bribes that would be illegal under US law and would expose MEGA to significant civil and criminal penalties, the directors did nothing. They did not investigate and took no other action to determine whether these bribes took place. Their failure to even investigate potentially exposes MEGA to serious civil and criminal penalties, and this is a breach of their duties.

They will not be protected by the business judgment rule, as reasonable directors in similar circumstances would investigate and take further action.

### MEE Question 5

An inventor retained a woman to act as his agent to purchase 25 computer chips, 25 blue lenses, and 25 lawn mower shutoff switches. The inventor told her to purchase only:

- Series A computer chips,
- blue lenses that cost no more than \$300 each, and
- shutoff switches that could shut down a lawn mower in less than one second after the mower hits a foreign object.

The woman contacted a chip manufacturer to purchase the Series A computer chips. She told the manufacturer that she was the inventor's agent and that she wanted to purchase 25 Series A computer chips on his behalf. The manufacturer told her that the Series A chips cost \$800 each but that she could buy Series B chips, with functionality similar to that of the Series A chips, for only \$90 each. Without discussing this with the inventor, the woman agreed to purchase 25 Series B chips, signing the contract with the chip manufacturer "as agent" of the inventor. The Series B chips were shipped to her, but when she then took them to the inventor and explained what a great deal she had gotten, the inventor refused to accept them. He has also refused to pay the manufacturer for them.

The woman also contacted a lens manufacturer for the purchase of the blue lenses. She signed a contract in her name alone for the purchase of 25 blue lenses at \$295 per lens. She did not tell the lens manufacturer that she was acting as anyone's agent. The lenses were shipped to her, but when she took them to the inventor, he refused to accept them because he had decided that it would be better to use red lenses. The inventor has refused to pay for the blue lenses.

The woman also contacted a switch manufacturer to purchase shutoff switches. She signed a contract in her name alone for switches that would shut down a lawn mower in less than five seconds, a substantially slower reaction time than the inventor had specified to her. When she signed the contract, she told the manufacturer that she was acting as someone's agent but did not disclose the identity of her principal. The switches were shipped to her. Although the inventor recognized that the switches were not what the woman had been told to buy, he nonetheless used them to build lawn mowers, but now refuses to pay the manufacturer for them.

All elements of contract formation and enforceability are satisfied with respect to each contract.

1. Who is liable to the chip manufacturer: the inventor, the woman, or both? Explain.
2. Who is liable to the blue-lens manufacturer: the inventor, the woman, or both? Explain.
3. Who is liable to the shutoff-switch manufacturer: the inventor, the woman, or both? Explain.

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**5) Please type your answer to MEE 5 below**

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

*(Essay)*

===== Start of Answer #5 (1277 words) =====

1. Only the woman, and not the inventor, is liable to the chip manufacturer. The woman was retained to act as an agent for the inventor. In order to establish an agency relationship, the elements of assent, benefit, and control must be met. Here, it states that the inventor retained the woman to serve as his agent, and the facts show that he gave her specific directions, which the woman attempted to follow. Thus, this indicates that she was sufficiently under the control of the inventor. Moreover, benefit requires that the agent be acting for the benefit of the Principal (inventor.) Here, the inventor gave her specific directions and she tried to carry out those directions, thus, she is attempting to benefit the principal through her actions. The element of assent, however, is more difficult to establish here. There is no evidence that the inventor and the woman have ever worked together before, so there is not a prior course of dealing that she would be able to rely on to justify buying the Series B chips, notwithstanding

that her explicit directions were to Series A chips. This is what the principal assented to, for the woman to purchase series A chips. This is known as actual authority, which is the authority bestowed on the agent by her relations with the principal. Because the investor stated explicitly that she was to purchase Series A computer chips, her actual authority extended only to purchasing those chips. Even though she disclosed to the manufacturer that she was an agent of the principal, which normally would not make her liable, when the agent goes beyond the actual authority given to her and acts outside of it, this is considered to be an ultra vires act, as nothing indicates that she could have established the actual implied authority to purchase different computer chips because there is no prior course of dealings indicated b/t the parties. Thus, she exceeded the scope of her authority by deciding on her own to purchase the Series B instead of the Series A chip, and she can only be relieved of her liability for contracts entered into that exceed the scope of her authority if the principal ratifies the contract. Here, because the principal did not ratify the contract, but instead expressly rejected it, only the woman will be liable to the manufacturer. Its important to note that under the principle of ratification, the inventor could only approve or deny the contract that the agent entered into in whole. He could not have accepted some of the chips but denied other chips, as such actions would have constituted acceptance and thus made him liable. But because he rejected the contract outright, and it was beyond the scope of the womans/agent's authority, the inventor will not be liable, and instead, only the woman will be held liable to the manufacturer.

Apparent authority is not available either to hold the principal liable, because nothing indicates in the facts that the third party relied on the agent's apparent authority due to

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some previous interactions with the principal. In fact, there is no indication that the inventor has ever dealt with this manufacturer, and thus apparent authority could not exist because it can only be created by the principal. Thus, only the woman is liable.

2. Both the inventor and the woman are liable to the blue lens manufacturer (hereinafter "B"). The principal directed the woman, his agent, to purchase blue lenses that cost no more than \$300 each, and this is exactly what the woman did when she purchased the lenses from B for \$295. Although she never expressed to B that she was acting as an agent, she nonetheless was acting within her actual authority given to her by the inventor, b/c she bought the lenses that he requested. If she had merely disclosed to B the fact that she was entering into the contract on behalf of the inventor, she would not be liable under the contract with B because she fully performed her duties. However, when a principal is only partially disclosed, or undisclosed entirely, and the agent enters into the agreement by asserting that B's contract was with her, this made her liable to B for the contract. Had she disclosed that she was an agent, she would not be liable to B, but because she purported to buy them for herself, and the inventor remained undisclosed, she remains liable on the contract.

The inventor is also liable on the contract because the woman/agent acted within the actual authority he gave to her and procured the items requested. Although he may have been able to limit her duties before the contract, at the time she entered into the contract with B, the woman was still under the explicit and actual authority of the inventor's statement to her that she should buy blue lenses that are no more than \$300. Thus, the inventor is liable because the agent did exactly what he authorized her to do,

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and he never notified the woman before the purchase that he no longer wanted blue, but instead red, lenses to be bought by the woman. So this intent, no matter whether he changed his mind in good faith, is irrelevant to whether he is bound b/c at the time she entered into the contract with B, she was still acting under the actual authority given to her by the inventor. Had she merely disclosed his identity and the fact that she was entering the contract on his behalf, the woman would have no liability under this contract. But because she chose to keep the inventor undisclosed, B may hold both the woman and the inventor liable on the contract.

3. Similar to question 2, both the principal and the woman are liable on the contract for the shutoff switches. Once again, the woman is liable because she did not disclose the fact that she was acting on behalf of the inventor when she entered the contract with the manufacturer. Moreover, had it not been for the inventor's subsequent ratification of the contract, only the woman would have been bound because when she entered the contract on his behalf, she once again exceeded the authority explicitly directing her to purchase switches that will shut down in less than 1 second. By buying the 5 second switches, in direct contradiction to the inventor's specific directions, she was acting beyond the scope of her authority. However, because the inventor decided to use the switches to build lawn mowers, he is deemed to have ratified the contract and is liable to the manufacturer along with the woman. For an effective ratification, the principal can only accept the entire benefit of the deal or reject the entire deal, he cannot keep part of the items procured and reject the rest. Thus, simply by using some of the switches to build the lawnmower, he is deemed to have ratified the contract and accepted all of the switches purchased by the agent/woman. Once again, however,

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### MEE Question 6

On January 1, 2015, a landlord who owned a multi-unit apartment building consisting only of one-bedroom apartments leased an apartment in the building to a tenant for a two-year term ending on December 31, 2016, at a monthly rent of \$2,000. The tenant immediately took possession of the apartment.

The lease contained the following provision:

Tenant shall not assign this lease without the Landlord's written consent. An assignment without such consent shall be void and, at the option of the Landlord, the Landlord may terminate the lease.

On May 1, 2015, the tenant learned that her employer was transferring her to a job overseas to begin on August 1, 2015. On May 2, the tenant emailed the landlord that she needed to vacate the apartment on August 1, but that she had found a well-to-do and well-respected lawyer in the community who was willing to take over the balance of the lease term at the same rent. The landlord immediately emailed the tenant that he would not consent to the lawyer taking over the lease. He wrote, "I don't rent to lawyers because I've learned from personal experiences with them as tenants that they argue about everything, make unreasonable demands, and make my life miserable. Find somebody else."

On July 25, 2015, the tenant vacated the apartment and removed all her personal property from it. She left the apartment keys in an envelope in the landlord's mail slot. The envelope also contained a note in which the tenant wrote, "As you know, I am moving overseas and won't be back before my lease ends. So here are the keys. I won't pay you any rent from August 1 on."

On July 26, 2015, the landlord sent the tenant an email acknowledging that he had found the keys and the note. In that email, the landlord wrote: "Although this is a problem you created, I want to be a nice guy and help you out. I feel pretty confident that I can find a suitable tenant who is not a lawyer to rent your apartment."

As of August 1, 2015, the landlord had four apartments, including the tenant's apartment, for rent in the building. The landlord put an "Apartments for Rent" sign in front of the apartment building and placed advertisements in the newspaper and on a website listing all the apartments for rent. However, because of a recent precipitous decline in the local residential rental property market, the landlord listed the apartments for a monthly rent of \$1,000. The landlord showed all four vacant apartments, including the tenant's apartment, to each prospective tenant.

By September 1, 2015, the landlord was able to rent only two of the apartments at \$1,000. The landlord was unable to rent the two remaining apartments, including the tenant's, at any price throughout the rest of 2015 and all of 2016, notwithstanding his continued efforts to rent them.

On January 2, 2017, the landlord sued the tenant to recover 17 months of unpaid rent, covering the period August 1, 2015, through December 31, 2016.

Identify and evaluate the arguments available to the landlord and the tenant regarding the landlord's claim to 17 months of unpaid rent.

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**6) Please type your answer to MEE 6 below**

*(Essay)*

===== Start of Answer #6 (547 words) =====

**Assignment**

At issue is whether the Landlord's rejection of the lawyer have to be unreasonable for disallowing the assignment.

Assignments occur when a tenant turns over the full remaining lease time to a third person in order for them to take over the lease. A landlord may prohibit lease assignments in the lease agreement by making them void or at the option of the Landlord consent to the assignment. The landlord may prohibit an assignment of a lease for any reason that does not violate public policy. The tenant notified that the Landlord she was being transferred to another job over seas. She informed the landlord in writing that she had someone else to replace her. That person was well-to-do and and well-respected lawyer in the community. Despite the praise from the tenant, the Landlord informs her that he dislikes attorneys and for her to find someone else. She does not. The landlord was in his rights to prohibit the assignment. Disallowing lawyers to live in his units may be distasteful, but it is not a violation of public policy. Therefore, the landlord's rejection of the attorney was not unreasonable.

**Surrender**

At issue is whether the tenant properly surrendered and did Landlord accept the surrender?

A tenant may surrender their residence to the Landlord by (i) notifying the landlord in writing their intent to surrender, (ii) leaving the keys for the landlord and (iii) moving out of the dwelling. The Landlord may accept the surrender (in writing) or sue for damages. Here, The tenant leaves a writing of the landlord explaining that she is leaving for the job overseas. She will not pay any rent for August 1 or anytime beyond that. She leaves the keys in the mailbox and has moved out of her apartment. The landlord receives the notice and emails her that he could find someone suitable and help her out. This would probably constitute as an acceptance of the tenant's surrender. Therefore, the tenant properly surrendered and the landlord accepted thus the tenant will not be liable for the claim of unpaid rent.

#### Mitigation

At issue if there was not a valid surrender whether the Landlord properly mitigate his damages?

A Landlord must mitigate his damages for a tenant that has moved out before the lease was to end. The Landlord may not accrue the lost rent of the tenant, but he must actively seek a replacement for the tenant to the best of his endeavors. The landlord may sue the tenant for the remaining rent due minus the mitigation. The financial climate of the renter's market will not have an effect of the mitigation of damages. Here, the landlord put an 'apartments for rent' sign in front of the complex. He listed advertisements in the newspaper and on websites listing the apartment for rent. There

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was decline in rental property market. Despite his best efforts he could not rent the tenant's apartment. The landlord can show that he tried to mitigate his damages by finding a replacement tenant. The decline in renter's property will have no effect on the on the damages. The court will subtract the efforts of the Landlord to mitigate from the rent owed. Therefore, the tenant will be liable to the Landlord for some of the rent owed.

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===== End of Answer #6 =====

**END OF EXAM**