BOARD ANALYSIS

QUESTION 1

This issue is one of agency. Did Hank's conduct ratify the otherwise invalid Power of Attorney and mortgage?

The husband and wife relationship does not establish an agency relationship unless the spouse knowingly accepts benefits from the unauthorized acts of the other spouse. Duck v. Quality Custom Homes, 242 Md. 609, 220 A.2d 143 (1966).

In these facts Hank received the benefit of use of some of the mortgage proceeds. The pool table, refrigerator and furniture were in the house. He specifically received the watch for his exclusive use.

After learning of the fraudulently obtained mortgage, Hank did nothing to repudiate the transaction. He made no effort to return the goods obtained. Further, he made payments on the items purchased by Wilma with the proceeds of the mortgage, thereby ratifying the fraudulent transaction.

Hank may argue that the only benefit he received was the watch and he, therefore, should only owe $1000. This argument will fail as he ratified the whole transaction.

Once a ratifying principal knows all relevant facts, his liability is not limited to the benefits retained by him because the principal cannot ratify a transaction in part and repudiate the rest. The principal must adopt all or nothing. Smith v. Merritt Savings and Loan, Inc., 266 Md. 526, 295 A.2d 219 (1972).

Hank will be liable to Bank for the entire mortgage amount plus interest and fees as provided in the loan documents.

QUESTION 2

MCC must prove it had an enforceable contract with DDD to use it as a subcontractor on the project. At issue is the doctrine of detrimental reliance (promissory estoppel). To prove its case, MCC must show the following:

1. A clear and definite promise;
2. Where the promisor has a reasonable expectation that the offer will induce action or forbearance on the part of the promisee;
3. Which does induce actual and reasonable action or forbearance by the promisee; and
4. Causes a detriment which can only be avoided by the enforcement of the promise.

Citiroof Corp. v. Tech Contracting Company, Inc., 159 Md. App. 578; 860 A.2d 425(2004); Pavel Enterprises, Inc. v. A.S. Johnson Company, Inc., 342 Md. 143, 674 A.2d 521 (1996); Restatement (Second) of Contracts § 90(1);

MCC will first argue that DDD's estimate constituted an offer to perform the job at the estimated price. Judgment about how precise a bid must be to constitute an offer is best reached on a case-by-case basis. There is a dispute here that the estimate constituted a contract. It will be a factual dispute, likely based upon expert testimony within the trade as to whether the estimate constituted a contract.

Second, MCC must prove that DDD reasonably expected that MCC would rely upon the offer. This will be the strongest defense by DDD: namely, DDD would argue that the price discrepancy should have alerted the MCC to a potential error and that it either should not have relied on the estimated price or performed its own review into its accuracy, particularly since MCC sensed the price was, in some manner, incorrect. DDD's defense is analogous to the doctrine of last clear chance - although DDD erred, the error was also attributable to the MCC because it did not decline to accept DDD's low price. DDD would likely lose this argument as it is not the responsibility of the general contractor to guarantee the accuracy of subcontractor's bid. However, it would be a factual determination as to whether the amounts were so inaccurate that MCC knew or should have known they were wrong

As to the third element, MCC must prove that it actually and reasonably relied on the DDD's estimate. Although there is no checklist of potential methods of proving this reliance, the finder of fact will consider several issues such as: (1) a showing by the MCC, that it engaged in "bid shopping," or actively encouraged "bid chopping," or "bid peddling", (2) prompt notice by MCC to DDD that they did intend to use DDD on the job, is weighty evidence that the MCC did rely on the bid or, (3) if a bid is so low that a reasonably prudent general contractor would not rely upon it, the trier of fact may infer that the general contractor did not in fact rely upon the erroneous bid.

As to the fourth element, the trial court, and not a jury, must determine that binding DDD is necessary to prevent injustice. This element is to be enforced as required by common law equity

courts ---- the County must have "clean hands." There is no evidence that either party acted with unclean hands.

The principle of detrimental reliance is a more accurate term than promissory estoppel although the issues are similar. *Pavel, supra.*

QUESTION 3

1. Darryl must file his answer or other responsive pleading within 30 days. Even though he is not a Maryland resident, he was served within the State. Maryland Rule 2-321(a).

2. Rich has 60 days to file his answer as he was served outside of the State. Maryland Rule 2-321(b)(1).

3. Maryland Annotated Code Courts and Judicial Proceedings Article Section 6-202(11) provides that an action against a non-resident individual may be brought in any county. Section 6-201(b) provides that, where there is more than one defendant and no single venue is applicable to all, the suit may be brought in a county where any one of them could be sued or in the county where the cause of action arose. Here Neither Darryl nor Rich are residents of Maryland, thus the action can be brought in Baltimore City. However, a court, invoking the doctrine of *forum non conveniens,* may, in its discretion, transfer a civil case in the interests of justice and the convenience of the parties. Here, the plaintiff is a resident of Kent County, all or most of the fact witnesses, other than Darryl, live or work in Kent County and the accident took place there. Transfer of the case to Kent County under these circumstances would be appropriate. *Stidham v. Morris*, 161 Md. App. 562, 569 (2005).

If Darryl's lawyer wants to change the venue, he must file a preliminary motion prior to his answer, or the issue is waived. Maryland Rule 2-322.

4. The complaint alleges that Rich is liable because he negligently entrusted the pickup to Darryl. This act took place in Maine, where both live and the truck is registered. Thus, Rich is alleged to be liable for a tortious act taking place outside of Maryland. Courts and Judicial Proceedings Article Section 6-103 sets out the basis for the exercise of personal jurisdiction under these circumstances:

(b) A court may exercise personal jurisdiction over a person, who directly or by an agent:

> (4) Causes tortious injury in the State or outside of the State by an act or omission outside the State if he regularly does or solicits business, engages in any other persistent course of conduct in the State or derives substantial revenue from goods, food, services, or manufactured products used or consumed in the State . . .

The standard in Section 6-103 is intended to extend Maryland's "long arm" jurisdiction to the full extent permitted by constitutional law. A defendant must meet the Supreme Court's "minimum contacts" test, *Harris v. Arlen Properties,* 256 Md. 185 (1969). Rich's contacts with Maryland have consisted of attendance at a professional conference five years ago and visits to his son.

To determine whether the exercise of specific jurisdiction comports with due process, the court must consider "(1) the extent to which the defendant has purposefully

> availed itself of the privilege of conducting activities in the state; (2) whether the plaintiffs' claims arise out of those activities directed at the state; and (3) whether the exercise of personal jurisdiction would be constitutionally reasonable." . . . . A defendant has purposely availed himself of the privilege of conducting business in the forum state if the defendant has created a "substantial connection" to the forum.

Harte-Hanks Direct Marketing Baltimore, Inc. v. Varilease Tech. Fin. Group, Inc., 299 F. Supp 2d 505, 512 (D. Md., 2004). Rich's contacts with Maryland have been sporadic and were not connected with the negligent entrustment claim. His other connection to the State lies in his relationship with Hi-Tech. However "jurisdiction over a shareholder of a corporation cannot be predicated on jurisdiction over the corporation. Personal jurisdiction must be based on an individual's personal contacts with or purposeful availment of the forum state." *Id* at 513 - 514 (Citations omitted). The same rule applies to directors and officers of a corporation. *Id.*

Some examinees applied a principal/agent analysis to the facts. They indicated that Darryl was acting as his father's agent in operating the pickup truck. If Darryl were acting as Rich's agent, Section 6-103(b)(3) would provide a basis for personal jurisdiction since Rich, through his agent Darryl, caused a tortious injury within the State. This argument finds some support in Maryland case law for Maryland recognizes that there is a presumption that the operator of a motor vehicle is acting as the agent of the owner, *see, e.g., Toscano v. Spriggs*, 343 Md. 320, 328 (1996) (presumption rebutted):

> Proof of permissive use is not the equivalent of proof of agency . . . .[t]he mere fact that the owner has given permission to the driver to use his car is not enough. (Citations omitted.)

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The basis of the claim against Rich is not *respondeat superior* but negligent entrustment:

> One who supplies directly or through a third person a chattel for use of another whom the supplier knows or has reason to know to be likely because of his youth, inexperience, or otherwise, to use it in a manner involving unreasonable risk of physical harm to himself and others whom the supplier should expect to share in or be endangered by its use, is subject to liability for physical harm resulting to them.

RESTATEMENT (SECOND) OF TORTS § 390 (1965); quoted in *Robb v. Wancowicz*, 119 Md. App. 531, 538 (1998). Maryland does not recognize, even in the relationship of a birth parent and child, the so-called "family purpose doctrine." *Talbott v. Gegenheimer*, 245 Md. 186, 189 (1967). From the facts, there is no basis to argue that Darryl was acting as Rich's agent.

Rich must raise this issue in a preliminary motion prior to filing his answer, or he waives the defense. Maryland Rule 2-322. *Beyond Systems, Inc. v. Secure Medical, Inc.*, Number 2793, September Term, 2004 (Court of Special Appeals, April 7, 2006).

QUESTION 4

1. Lot 2 is owned in equal shares by Mrs. Baker and the YMCA. At divorce, the common law conceptual "unity of persons" was severed and the Baker's tenancy by the entireties converted into a tenancy in common. Mr. Baker's undivided ½ interest in Lot 2 is alienable by him, either in his life time or by his will at his death. *See generally*, *Beall v. Beall*, 291 Md. 224 (1981).

2. Acme Streets is owned jointly by Mrs. Baker and the YMCA (½ interest) and Acme (½ interest). When Acme recorded the subdivision plat, and conveyed lots from that plat, he conveyed fee simple interest in the bed of Acme Street to binding property owners. Maryland Annotated Code Real Property Article 2-114. Lots 1 and 2, as binding lots own to the center line of Acme Street, subject to the right of other abutting lot owners to use the road for access purposes.

3. Lots 1, 2 and 3 each have an implied easement to use Acme Street for purposes of access to and from East Street. (Lots 1 and 2, as abutting owners, each own one-half of the street in fee simple as well. Their ownership interest is subject to the easement enjoyed by the owners of all three lots to use the street.). The easement by implication was created when Acme recorded the plat and conveyed the Lots 2 and 3 by reference to the plat. *Boucher v. Boyer*, 301 Md 679 (1984). Lot 3 has an easement even though it has access to another public road. *Boucher v. Boyer*, *supra*:

> Therefore, absent an express provision to the contrary in the deed, those who purchase a lot with reference to a plat depicting an abutting street acquire a private easement to that street regardless of whether it has been dedicated to the public and accepted by the local government. By virtue of this easement, the purchaser has the right to keep the street open and to make use thereof. *Id.* at 694.

QUESTION 5

Narcissist and Dessert Flower have standing to challenge the law. Narcissist is forced to pay more for in-state Mineral X and Dessert Flower and similarly situated companies are forbidden to ship their product into Maryland. The following challenges may be brought:

Commerce Clause: Article 1, Section 8, clause 3 of the United States Constitution (the Commerce Clause) grants Congress the power to regulate commerce among the several states. It is generally held that it is a violation of the Commerce Clause for a state to enact legislation that requires "differential treatment of in-state and out-of-state economic interests that benefits the former and burdens the latter." **Oregon Waste Systems Inc. v. Department of Environmental Quality of Oregon**, 511 U.S. 93, 99 (1994) Legislation will be upheld if it "regulates even handedly to effectuate a legitimate local public interest and its effects on interstate commerce are only incidental …." **Pike v. Bruce Church, Inc**., 397 U.S. 137, 141 (1970) The legislation at issue bans the purchase of out-of-state Mineral X - a product of national concern and interest since the facts show that it is approved by the Federal Drug Administration. The law was enacted to "encourage" the purchase of Maryland products and the State may assert that the law furthers a legitimate local public interest. However, the effect upon interstate commerce is not "incidental" and may only be upheld if Maryland can show that all alternatives that do not impact interstate commerce are unworkable. **Maine v. Taylor**, 477 U.S. 131 (1986) There has been no such showing under the facts. Narcissist and the affected companies may successfully argue that the legislation should therefore be struck down as a violation of the Commerce Clause.

Equal Protection Clause: The legislation treats two classes of consumers differently – the Maryland consumer purchasing in-state Mineral X and the Maryland consumer who wishes to purchase out-of-state Mineral X. The Equal Protection Clause of the 14th Amendment to the United States Constitution precludes a state from denying any person within its jurisdiction the equal protection of the laws. The disparate treatment at issue does not appear to be based on any protected class, nor does it affect a fundamental right, so the law could be upheld if there is a rational basis for the distinction. The court may find there is no rational purpose for the law, given its clear impairment of commerce. Dessert Flower and Narcissist may be successful in its challenge of the law on this ground.

Due Process Clause: The 14th Amendment Due Process Clause does not grant an absolute freedom from reasonable regulation but does protect one's liberties from being limited by arbitrary restraints. There was no rational basis for the legislation; indeed, the facts suggest that the manufacturers of America's Idol persuaded the General Assembly that it was needed to encourage the purchase of Maryland products and not their competitors'. Thus, Narcissist's liberty interest in purchasing a less costly product, and Dessert Flower's liberty interest in selling to Maryland residents are being restricted for an arbitrary reason and the law should be voided.

Privileges and Immunities Clause: Article IV of the Constitution states that the citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several states. Narcissist

may challenge the law as violative of Article IV and the Privileges and Immunities Clause of the 14th Amendment since he is effectively being barred access to less costly Mineral X produced outside of Maryland. Desert Flower is precluded from raising this argument since corporations are not "citizens" of a state for the purposes of the Privileges and Immunities Clause.

QUESTION 6

A. The answer should address violations of the following Maryland Lawyers' Rules of Professional Conduct:

Rule 1.3. Diligence – A lawyer shall act with reasonable diligence and promptness in representing a client. (Agnes should have addressed client's case prior to the impending statute of limitation.)

Rule 1.4. Communication – A lawyer shall keep a client reasonably informed about the status of their matter. (Agnes should have returned Client's calls and responded to queries.)

Rule 1.5. Fees – A lawyer's fee shall be reasonable considering several factors including time involved, likelihood that the acceptance of the case would preclude the attorney from other employment, the fee customarily charged for such cases, the amount involved, and the lawyer's experience. Any fee that is contingent upon the outcome of the case shall be in writing and shall state the method by which the fee is to be determined. (Agnes' fee may have been steep for a new attorney and her contingent fee had to be in writing)

Rule 1.15. Safekeeping property - A lawyer is required to hold a clients' funds in a separate account from her own, pursuant to the requirements set forth in Title 16, Chapter 600 of the Maryland Rules. The lawyer must usually deposit into a client trust account any legal fees and expenses paid in advance. (Agnes had a duty to keep Client's funds separate from her funds and to deposit Client's funds in a separate trust account.)

Rule 1.16. Declining or Terminating Representation – Once representation is terminated the lawyer shall take steps to the extent reasonable to protect the client's interest and shall surrender papers and property to which the client is entitled, and refund any advance payment of fee or expense that has not been earned. (Agnes had to surrender Client's property upon termination of representation and should have refunded any moneys that were not earned.)

Rule 5.3. Responsibilities regarding Nonlawyer assistants –A lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer and the lawyer is responsible for the conduct of the nonlawyer if such conduct would be a violation of the Rules of Professional Conduct. (Agnes had a duty to monitor Paralegal and was responsible for her failure to maintain the operating account and for Paralegal's deposits into the improper form of account.)

Rule 7.1. Communications concerning a Lawyer's services - A lawyer shall not make a false or misleading communication about the lawyer or her services, nor create an unjustified expectation about the results she can achieve.

Rule 7.4. Communication of Fields of Practice – A lawyer shall not hold himself out as a specialist. (Agnes could not state that she is a specialist in any area of law other than patent law, and cannot create the unjustified expectation that she is an accident specialist.)

B. The admissibility of the following evidence hinges upon the strictures set forth in the Maryland Rules and Maryland Courts and Judicial Proceedings Code Annotated:

1. The Court could allow the statement from the husband since it is a statement against interest by Agnes, and therefore an exception to the hearsay rule. However, it is privileged as a marital communication and should be kept out on that basis. Maryland Courts and Judicial Proceedings Code Annotated, Section 9-105.

2. The law professor's statement should be disallowed for two reasons. First, as an opinion of a lay witness, it is only allowed if it is "helpful to a clear understanding of the witness's testimony or the determination of a fact in issue." Maryland Rule 5-701. Similarly, testimony is permissible only to the extent that it is relevant. Maryland Rule 5-402. There appears to be no need for this testimony and it should be kept out.

3. Finally, evidence of a theft conviction may arguably be the type of crime that can be used to impeach Agnes' credibility. However, Agnes record should be precluded because it is more than 15 years old. Maryland Rule 5-609.

QUESTION 7

The causes of action Rufus may have against Caleb based on the given facts revolve around the adjustments for bonuses and taxes which were omitted from the computer printout. In each of the following causes of action there could have been other contributing factors which caused Rufus' business loss in the first year lessening or eliminating Caleb's omission as the cause of damage to Rufus.

1. Intentional misrepresentation.

A. Concealment or non-disclosure. Caleb had a duty to disclose the adjustments because Rufus specifically requested information on the profitability of the business. The omission was the failure to disclose the material facts that the adjustments would have on the profitability of the business. It is unstated under the given facts whether Caleb intended to deceive Rufus by the omission; however, it is reasonable that Rufus would probably have acted differently if he had known about the adjustments. Rufus relied on the computer printout produced and the verbal assurances of Caleb as they were the only sources of information provided by Caleb. Rufus suffered a monetary loss in his first business year which provided the damage element.

B. False representation. Caleb asserted a false statement of material fact when he assured Rufus that the computer printout accurately reflected the financial status of the business. Arguably, Caleb either knew the representation was false or made the representation with such reckless disregard for truth that knowledge of falsity of statement could be imputed to him. Arguably, Caleb made the false representation for the purpose of defrauding Rufus. Rufus was justified in relying on the misrepresentation as Caleb and the information he provided were the only sources for the information. Rufus had a $85,000 business loss in his first year which could be a direct result of his reliance on the misrepresentation.

2. Negligent misrepresentation. Intent to deceive is not a element of this cause of action. Caleb may have negligently provided the computer printout omitting the adjustments. Caleb had a duty of care to Rufus to provide accurate information in response to Caleb's request for information on the profitability of the business. Caleb knew that Rufus relied upon him for that information as Caleb was the sole provider of that information. Rufus suffered damages in the form of a monetary business loss in the first year arguably as a result of the omission of the adjustment information.

3. Constructive fraud. Caleb was Rufus' older brother. Rufus looked to him for advice and help. There was a relationship of trust and confidence and an equitable duty that Caleb owed to Rufus. Caleb breached that duty. No actual dishonest purpose or intent to deceive is necessary. Caleb's conduct deceived or violated that relationship of confidence. Rufus suffered damages.

4. Caleb can claim Rufus was contributorily negligent.

5. Relief possible in these causes of action include contractual money damages and possibly rescission of the contract based on fraud in the inducement. If so, it is possible to void the contract *ab initio* and restore Rufus and Caleb to the *status quo.* However, rescission would not

be appropriate as relief in a cause of action grounded in negligence. A recovery of punitive damages may be possible under causes of action for intentional misrepresentation, negligent misrepresentation, and constructive fraud. There must be evidence of actual compensatory damages and an award based on that evidence to support an award for punitive damages. Where the tort is one arising out of a contractual relationship, actual malice must be shown to recover punitive damages.

Martens Chevrolet, Inc. v. Seney, 292 Md. 328, 439 A.2d 534 (1982)

Levin v. Singer, 227 Md. 47, 175 A.2d 423 (1961)

Scheve v. McPherson, 44 Md. App. 398, 408 A.2d 1071 (1979)

General Motors Corporation v. Piskor, 281 Md. 627, 318 A.2d 16 (1977)

QUESTION 8

(A) Alimony – Maximum claim is $10,400 (104 w x $100).

Alimony due from 6/1/92 to 5/31/94.

Claim for alimony in arrears impacted by statute of limitations of 12 years for judgments under Court and Judicial Proceedings Article 5-102.

12 year S/L applies to each payment when due. As of 2/1/06 – Bertha could only claim alimony due from 2/1/94 through 5/31/94 or for four (4) months. Alimony from 6/1/92 to 1/31/94 barred by 12 year statute of limitations, if Bertha filed as of 2/1/06.

(B) Child Support – Judgment said child support due from 6/1/92 until further order of Court.

Court has no authority, absent agreement of the parties, to order support for a healthy child beyond the age of majority.

Quarles vs. Quarles 62 Md App 394, 403, 489 A2d 559 (1985)

Cory vs. O'Neill 105 Md App 112, 658 A2d 1155

Factual pattern suggest Moe is a healthy child – DOB 4/4/87

Child support for him would normally end at age of majority 4/4/2005. But under Article 1, Section 24(a)(2) child support entitlement for Moe could continue until age 19 (4/4/06) as he is still enrolled in high school.

However, the same statute of limitations applies to arrearages in child support under the Judgment – 12 years – such that Bertha's claim for child support for Moe would be from 2/1/94 forward ending 4/14/06. Her claim for child support from 6/1/92 to 1/31/94 would be barred by statute of limitations.

As to disabled Larry, if there was recognition of his disabled status, child support would continue beyond Larry's 18th birthday (2/2/03) and up to the present. Again the statute of limitations would bar recovery from 6/1/92 to 2/1/94, but would allow recovery from 2/1/94 forward.

Bertha could also claim interest on the amounts due her at the legal rate of interest under a judgment dating from the date each payment was due.

Ace could argue, in addition to statute of limitations, a laches defense, but he would have to show not only an undue lapse of time, but also some disadvantage or prejudice to him in order to prevail. He also could be branded with "unclean hands".

(See Weedner vs. Weedner 78 Md App 367, 553 A2d 263 (1989))

(C) On the issue of attorney fees, Family Law Article Section 11-110 and 12-103 authorize a Court in proceedings involving claims for alimony or arrearages in child support to award reasonable and necessary litigation expenses, including counsel fees and Court costs. The Court is required to look at two principal factors (1) the financial needs and resources of both parties, and (2) whether there is substantial justification for bringing the action.

(See generally McCleary vs. McCleary 150 Md App 448, 822 A2d 460(02)

QUESTION 9

Pursuant to 4-401(a) Alpha bank was not supposed to debit Watson's account because the check was not authorized by Watson. Alpha Bank should have noticed that it was not Watson's signature.

Alpha Bank will argue that because Watson did not notify it of the fraudulent transactions until several months later, Watson under 4-406 (c) and (d) failed to promptly review his bank statements and is precluded from arguing that the check was unauthorized.

Watson will argue that pursuant to 4-406(e), the bank failed to exercise ordinary care in paying the unauthorized items, because the account was designated as a "petty cash" account and the most he wrote on the account was for $10. Thus, the loss should be allocated between the bank and him.

The Bank will argue that pursuant to 4-406(f), Watson failed to notify it within 12 months, and therefore, is precluded from asserting the unauthorized signature even if the bank failed to exercise ordinary care.

Watson will argue that the bank was notified within 12 months of the unauthorized $5000 check. As a result, the loss of the $5000 check will be allocated between the bank and Watson based on their comparative negligence.

Neither Watson nor the bank have a claim against Beta Bank unless it had notice of the fraudulent transactions.

QUESTION 10

Matt will be charged with robbery and robbery/deadly weapon.

Matt will be charged with assault.

Matt will be charged with theft under $500.00.

Matt will be charged with Conspiracy to commit all of the above.

Matt will NOT be charged with felony murder. Under the felony-murder doctrine,"a participating felon is guilty of murder when a homicide has been committed **by a co-felon**." The killing of a co-felon by a third party in the course of opposing the robbery or in an attempt to apprehend the perpetrators does not constitute felony murder on the part of the surviving co-felon. Mark Watkins v. State of Maryland, 357 Md. 258, 744 A.2d 1 (2000). Since Bill killed the co-felon in the course of opposing the robbery, the felony murder doctrine does not apply.

Matt's attorney will file a motion to suppress the evidence of the stop ($475.00 that Officer Garcia found on Matt). The Motion will fail. The initial stop of Matt was a valid ***Terry*** stop. The Fourth Amendment prohibits unreasonable searches and seizures by the government, and its protections extend to brief investigatory stops ("Terry Stops") of persons or vehicles that fall short of traditional arrest. The Fourth Amendment is satisfied if the officer's action is supported by reasonable suspicion to believe that criminal activity may be afoot. *See Terry v. Ohio*, 392 U.S. 1 (1968); *see* also *United States v. Arvizu*, 534 U.S. 266 (2002). Because of the closeness to the time of the robbery, Matt's proximity to the shop, and his flight at the sight of the officer, Garcia had reasonable articulable suspicion that "criminal activity was afoot." The search of Matt which yielded the $475.00 was a valid consent search. Matt did not tell the officer he could not search him. In fact, his actions of raising his hands and telling the officer he would be wasting his time manifested his consent to the search.

Matt's attorney will move to suppress Matt's confession based on Miranda and an illegal arrest. Officer Garcia *Mirandized* Matt who then asked for a lawyer. There is an issue concerning whether the officer stopped the questioning at that point; however, this is without merit. The officer did not question Matt further and, therefore, the confession will not be suppressed based on a violation of *Miranda*. Officer Garcia, however, arrested Matt at his home without an arrest warrant. This is presumptively unreasonable for 4th Amendment purposes. There is no exception to the warrant requirement in this case as there is no exigency preventing Officer Garcia from obtaining an arrest warrant. The confession will be suppressed as it was the fruit of an illegal arrest.

QUESTION 11

When New Frontier failed to file its annual reports and the State Department of Assessments and Taxation certified the failure, New Frontier forfeited its charter. MD. Corps. & Ass'ns Code Ann. §3-503. A corporation that forfeits its charter is not amenable to suit, since a corporation that has forfeited its charter has no legal existence, Kroop & Kurland, P.A. v. Lambros, 118 Md. 651, 703 A.2d 1287 (1998). A corporation that has forfeited its charter cannot function as a corporation. See, Cloverfields Impr. Assn. v. Seabreeze Properties, Inc., 32 Md. App. 421, 362 A.2d 675 (1976), aff d 280 Md. 382, 373 A.2d 935, modified 280 Md. 382, 374 A.2d 906 (1977). Once a corporation forfeits its charter, it is unlawful for anyone to carry on business in the name of the corporation, and anyone who does so is guilty of a misdemeanor. Md. Corps. & Assns Code Ann., §3-514.

When New Frontier ceased to exist, Bud and Lou, as its sole directors, became trustees of its assets for the purpose of liquidating the corporation. Md. Corps. & Ass 'ns Code Ann., § 3-515. As trustees of the corporate assets, Bud and Lou were empowered to: (1) carry out the contracts of New Frontier; (2) sell the assets of the corporation; (3) sue or be sued in their own names as trustees or in the name of the corporation; and (4) take all actions consistent with the law and the charter to liquidate New Frontier and wind up its affairs. Md. Corps. & Ass'ns Code Ann., §3-515 (b). The Court could, in the alternative, appoint a receiver or receivers to wind up the affairs of New Frontier. An appointment of a receiver would terminate the authority of Bud and Lou as trustees. Md. Corps. & Ass'ns Code Ann., §3-516.

Since Bud and Lou are trustees of New Frontier, the HOA can file suit against them in their capacity as trustees of New Frontier's assets to compel them to specifically perform the outstanding contracts of the corporation. So long as Bud and Lou did not convey the property to a *bona fide* purchaser for value prior to suit, the HOA should be successful, since it is difficult to conceive of a *bona fide* purchaser in this situation. Common Area is generally identifiable as such because of its obvious locations and use in a community, which would put any purchaser on inquiry notice, and the plat and covenants identifying the property as HOA property would be recorded in the local land records, giving actual notice to any purchaser of the HOA's ownership interest in the property. The Court should compel Bud and Lou as trustees of New Frontier to convey the real property to the HOA.

It is clear that Bud and Lou may have authorized the distribution of the bonus of New Frontier in violation of Maryland Law because no distribution may be made if, after giving effect to the distribution, the corporation would not be able to pay indebtedness as it becomes due in the ordinary course of business. Md. Corps.& Ass'ns Code Ann., §2-311. Since the facts indicate that HOA did not receive the assessments, Bud and Lou, as the sole directors of both New Frontier and HOA breached their respective duties of care and loyalty. The Court will find Bud and Lou personally liable to the extent of the distributions unlawfully made by New Frontier, and may order payment of those distributions to HOA and all other creditors. Md. Corps.& Ass'ns Code Ann., §2-212. Assuming Bud and Lou have sufficient assets to disgorge the distribution, HOA may recover a part or all of its assessments.

QUESTION 12

During his representation of Mr. and Mrs. Jones, Charles Counsel violated several of his ethical obligations contained in the Maryland Lawyers' Rules of Professional Conduct ("Rule" or "Rules", as the context may require) promulgated by the Court of Appeals and effective July 1, 2005.

Charles Counsel violated Rule 1.7(a)(1) because a direct conflict of interest existed between Mr. and Mrs. Jones. Since the divorce proceeding necessarily involves the adverse assertion of claims by Mr. and Mrs. Jones, the conflict of interest cannot be waived by them, and Charles Counsel cannot adequately represent the interests of both parties. In addition, a conflict existed as a result of Mr. Counsel's representation of the business interests of Mark. It is evident from the facts that Mr. Counsel's representation of Mark's company materially limited Mr. Counsel's representation of Mrs. Jones in violation of Rule 1.7(b). She should have been advised by Mr. Counsel to seek the advice of independent counsel.

Mr. Counsel breached his obligation to provide competent representation under Rule 1.1 since he may not have known, but should have known, that the financial statement used by him in the divorce proceeding was not accurate and that all assets may not necessarily require division under Maryland law on an equal basis.

With regard to the preparation and filing of the financial statements, Mr. Counsel breached his ethical duties by failing to advise both Jane Jones and the Court that the financial statement for Mark Jones was not accurate. Since Mr. Counsel assisted Mark Jones in recovering the substantial debt from the defense contractor, he knew that the financial statement was incorrect. Pursuant to Rules 1.2(d), 3.3(a)(1), (2) and (4) and 4.1(a)(2), Mr. Counsel was required (i) to discuss the legal consequences of the possible fraudulent behavior of Mr. Jones; (ii) to reveal the inaccuracies in the financial statement to the tribunal when disclosure is necessary to avoid Mr. Counsel assisting Mark Jones in a fraudulent act or in making false statements; and (iii) to disclose to Mrs. Jones the inaccuracies contained in the financial statement, and advise her to seek the advice of independent counsel.

Generally, Mr. Counsel must comply with the requirements of Rule 1.6 regarding the confidentiality of information. However, Rules 4.1(b) and 3.3(b) require disclosure of information otherwise protected by Rule 1.6 when that information must be disclosed to assure candor to the tribunal and truthfulness to others.