

Maryland State Board of Law Examiners
REPRESENTATIVE GOOD ANSWERS FROM THE JULY 2014 MARYLAND GENERAL BAR EXAMINATION

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Maryland Essay No. 1

Representative Good Answer # 1

Donald may find himself subject to law suits by Lillian, Maya and Will. He has defenses on assumption of the risk grounds against Maya and Will. He may seek indemnity from Will, as well as assert an ill-fated negligence claim against him

1. Lillian may assert liability for the damage to her car and Maya and Lillian may sue for any personal harm on several grounds, the first of which is the Negligent Entrustment of a Vehicle. Donald has a duty to limit the driving of his vehicle to persons he believes to be safe and responsible drivers, failure to do so gives rise to a negligence claim in its own right. Donald breached his duty to Lillian by allowing a 19 year old with a suspended license - for various speeding violations - to drive his car at 4:00 in the morning when he was clearly very tired - indicated by repetitive yawning. This breach, the entrustment of his car to a sleep deprived teenager with a history of driving violations, is a proximate and factual cause of the accident. The crashing of a vehicle is the natural and foreseeable result of entrusting a vehicle to one not reasonably qualified to be driving it. It was also the "but for" cause. But for Donald entrusting his car to Will, the car would not have crashed into Lillian.

Maya and Lillian will also have grounds to sue Donald based on vicarious liability. Donald's own negligence aside, he authorized Will to drive his car, more so, he requested this act. In Maryland, when one is driving another's car, there is a presumption that the person is acting as an agent of the owner. In our case will was driving at the direction of Donald and for Donald's own benefit. Furthermore he was under direct instruction of Donald ("speed up")- which may indicate more than mere agency but an employee relationship between the two. Regardless of whether Will classifies as Donald's employee, he was certainly an agent, therefore making Donald liable for the negligent acts of Will.

Finally they both may assert a third negligent act against Donald - that is the order from Donald to Will to "speed up." Aside from the negligent entrustment and vicarious liability issues discussed above, Donald's saying the words "speed up" may be a breach of a duty in their own right, and subject to the same duty, breach, causation, damage analysis above.

Will may also bring any of the claims Lillian may have brought against Donald except for vicarious liability as he was the actor.

2. Donald has a number of defenses, however only a few of them have any real hope of succeeding and none of them will work against Lillian.

Donald may first and foremost assert any defense that Will may assert against Lillian. Most importantly, Donald may argue contributory negligence, which in Maryland is a complete bar to recovery by the plaintiff. In our case however we have no facts to support a claim for contributory negligence, merely that Lillian was breaking.

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Donald may attempt to rebut the claim of vicarious liability by arguing Will was not his agent, but considering the presumption of agency in Maryland and the facts that Will was acting under his direction, it will likely fail.

Donald may assert the defense of "assumption of the risk" against both Will and Maya. Maya knew of Will's prior driving record, knew what time it was and decided to get in the vehicle with him anyways. Assumption of the risk defenses require the defendant establish the plaintiff knew the risk, appreciated the severity of the risk, and voluntarily encountered it anyways. Both Will and Maya knew the circumstances under which they were driving and did not object.

3. Donald may bring a claim against Will under both indemnity and negligence grounds.

If Donald is found liable under a vicarious liability standard for the negligent acts of Will, he is able, as a principal, to seek total indemnification from Will for all claims against him.

Donald will likely also be able to bring a negligence suit against Will, as will was negligent in crashing into Lillian. He was negligent by breaching a duty (to drive safely), breaching it by crashing, which caused the harm to Donald's car and Donald himself. Will however has the same assumption of the risk defense outlined above, and also has a defense of contributory negligence. Will can successfully argue that Donald's instruction to "speed up" was contributory to the harm suffered and therefor Donald is precluded from recovery.

Representative Good Answer #2

1. Claims that Can Be Raised Against Donald

Donald should be concerned about two potential claims that arise out of this course of action. Both potential claims arise out of negligence actions, which require 1) duty, 2) breach, 3) causation, and 4) harm. Because Lillian (L) and Maya (M) were both injured, they both have potential claims against Donald and Will. For purposes of this section, both claims are the same as to both plaintiffs.

A. Negligence under Respondeat Superior

A principal is liable for the torts committed by his agent under the scope of the agent's duties under the theory of respondeat superior. For this claim to be cognizable, L and M must establish 1) an agency relationship, and 2) that W was liable for the tort while acting as D's agent.

i. Agency - It is likely that W was acting as D's agent at the time of the incident. D contacted W and asked him "to drive D and M to the airport so they wouldn't have to worry about parking." Though there is no official document that outlines the scope of the agency relationship, an agency relationship does not have to be formal. In this case, W agreed to do this for D. Therefore, while he was driving D and M to the airport, he was acting as D's agent.

ii. Negligence - A person is liable for a plaintiff's harms if he 1) owed a duty to the plaintiff, 2) breached that duty, and 3) his breach caused the plaintiff 4) harm. Here, as a driver, W owed M and L a duty to exercise reasonable care while driving. The evidence indicates that he did not exercise reasonable care. The first and most important indication that he did not exercise due care is the fact that he rear ended L. When a defendant rear ends a plaintiff, it is usually the case that the defendant failed to exercise reasonable care while driving, and that failure is what led to the incident. Additionally, W

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indicated that he was sleepy while driving. Drivers who drive while they are sleepy and know that their ability to drive may be impaired are breaching their duty to act with reasonable care while driving. Thus, it is likely that L can make out a strong prima facie case for negligence against D under the theory of respondeat superior.

B. Negligent Entrustment

A parent or employee may be held liable for the torts committed by a person they lend an automobile to under the theory of negligent entrustment. In a negligent entrustment with an automobile case, a person with reason to believe another person would fail to operate an automobile safely will be held liable for the torts committed by the driver. Here, there is some evidence that W should have been aware of the dangers posed by D's driving. D is a relatively inexperienced driver (only 14 months), and he has accrued several speeding tickets. Because this tort was related to speeding - even if it was at D's insistence - a court might hold that D will be liable under the theory of negligent entrustment.

C. Direct Negligence

L may additionally claim that D should be held liable under a direct negligence theory for telling W to "speed up." L will face more difficulty here, because it will be more difficult to prove that simply saying "speed up" constitutes a negligent action.

2. Defenses that Can Be Raised By Donald

A. Lillian v. Donald

Donald has no affirmative defenses against L - it cannot be said that L was contributorily negligent or assumed the risk of being rear ended by simply being a driver on the road. Thus D must challenge L on the elements of negligence.

i. Lack of Proximate Causation

Under the direct negligence case, D may attempt to claim that his saying "speed up" was not a proximate cause of the accident. This challenge will likely fail because rear ending a car is a foreseeable harm.

ii. Lack of Agency

D may additionally claim that when he rear ended L, W was acting outside the scope of his agency. This defense will likely fail because D asked W to drive him to the airport.

B. Maya v. Donald

i. Assumption of the Risk

If M brings a claim against D, D may claim that he cannot be held liable because M assumed the risk of entering the car with W, a known poor driver. D will likely prevail on the theory that by entering the car, she assumed the risk and is barred from bringing a negligent entrustment claim.

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3. Can Donald Bring Claims Against Will?

A. Indemnification

Donald may attempt to indemnify Will for the damages he caused as a result of his negligence. D will have to show that W failed to exercise caution within the scope of his agency or that his tort was intentional. Because the court will likely find that W was acting as D's agent and D approved his actions - including by telling him to "speed up" - D will not be able to indemnify his liability to W.

Maryland Essay No. 2.

Representative Good Answer #1

I would advise Widget Inc. that Teresa may have to get separate counsel because I represent the company and not her and because her actions may come into question. Next, I would advise Widget that whether or not the \$980k check was properly charged to it depends on whether or not Jerry was an entrusted employee under 3-405. Because Jerry is likely not entrusted with "responsibility" of check because he was only the shipping manager, the money is likely not chargeable against Widgets and Alpha will have to re-credit Widget's account.

I will advise my client that the Alpha will likely argue that Teresa, who is an entrusted employee, was negligent because she did not make sure the check of that size was properly locked up. She just went to lunch with a \$980k check in an unlocked draw. If Alpha can show that Teresa was negligent then Widgets will not be able to claim that the check was forged and that Alpha must re-credit its account. I would then advise my client that it may still have a chance under 3-406. I would tell Widgets to argue that Alpha failure to exercise ordinary care is substantially responsible for the loss to Widgets. Alpha did not ask for any information or documents from Jerry. It just opened up an account in the wrong name—Widgets Co instead of Widgets Inc. If Alpha is found to be guilty of negligence, then the court will split the damages according to each party's negligence.

Representative Good Answer #2

An endorsement by any person in the name of the payee stated in the instrument is effective as the endorsement of the payee in favor of a person who, in good faith, pays the instrument or takes it for value or for collection. So J would be responsible to A for the \$980k if A could find J. W is entitled to get its account charged back. A can only withdraw the money from W's account if the fraudulent party (J) was an employee with "responsibility" as described in 3-405. J's duties included tracking and taking inventory of widget supplies and placing orders for more supplies. He was not responsible for checks. The facts say that he knew that Teresa was authorized to process checks. Because A withdrew the \$980k from W's account with a forged endorsement, A must charge back W's account.

3-406 states that a person whose failure to exercise ordinary care substantially contributes to a forged check is precluded from asserting the alteration or the forgery against a person who, in good faith, pays the instrument or takes it for value or for collection. So A will argue that W substantially contributed to the forged check by failing to properly secure the check. The check was for a large amount of money (\$980k), but T just put it in an unlocked drawer. The facts state that T did notify the bank quickly, but the fact that T put the check in the drawer and left is a problem. If W did not act reasonably, then it will not be able to get A to charge back its account. W will have to respond by arguing that A failed to use ordinary care in opening up the Widget account for J. First, the name of the company is wrong. 3-103 defines ordinary care as

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observance of reasonable commercial standards. Thus, if normal banking standards require banks to check ID and other information regarding the opening of a business account, then A will be found not to have acted with reasonable commercial standards. If that happens, then 3-406 states that “the loss is allocated between the person precluded and the person asserting the preclusion according to the extent to which the failure of each to exercise ordinary care contributed to the loss.” The burden of proving who was at fault is on the party trying to preclude the other party from arguing that it is the others’ fault.

If A is at fault, then W can bring an action of conversion against A for the money.

Maryland Essay No. 3

Representative Good Answer #1

A. Paula's Evidence of Other Fires

The court should admit Paula's evidence of other dryer fires as evidence of similar occurrences. To be admissible, evidence must be relevant; it must have a tendency to make any material fact more or less probable from its admission. Generally, evidence of occurrences remote in time from the event at issue in the current litigation is not relevant. However, the Maryland Rules of Evidence allow for some exceptions to this general rule of relevancy. One of those exceptions is evidence of similar occurrences that are related to the event at issue, which help to show that the defendant had notice of a dangerous situation or that a common instrumentality was used in the injuries. Here, Paula's evidence that there were dryer fires in the same apartment in the preceding four months. This evidence, although not directly related to the dryer fire that caused Paula's injuries, serves to show both that Dependable had notice of the dangerous condition of the dryer in that apartment, as well as the fact that that dryer was the instrumentality that caused Paula's injury. Therefore, because this is evidence of a similar occurrence, the court should admit it.

B. Paula's Evidence of Replacement Dryers

The court should also admit evidence of the replacement dryers. As explained above, this evidence too must be relevant. However, evidence still may not be admissible, even if it is relevant, if it is subject to an exclusionary rule. The Maryland Rules of Evidence contain several exclusionary rules on the basis of public policy; the Maryland courts and legislature have determined that, although relevant, this evidence should not be admitted for reasons related to the good of the public. One of these exclusions is subsequent remedial measures taken by a party potentially liable for personal injuries. Because repairing dangerous conditions is encouraged, evidence that the defendant repaired the allegedly dangerous condition that caused the plaintiff's injury is inadmissible to show that the defendant was negligent. However, an important limitation to this rule is that the remedial measure must be taken subsequent to the plaintiff's injury. Here, Dependable arguably took a remedial measure by replacing the damaged dryer after each previous dryer fire. However, the facts do not indicate that Terry replaced the dryer after Paula's injury, nor that Paula is seeking to admit such evidence. Therefore, the court should admit the evidence of the replacement of the dryers, over any objection related to subsequent remedial measures, to show that Dependable had notice of the problem or that Paula's injury stemmed from the same instrumentality.

C. Dependable's Evidence of No Other Fires

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The court should not admit Dependable's evidence that there had been no fires associated with identical dryers. First, this evidence is arguably irrelevant. Dependable's evidence relates to dryers that are not implicated at all in this trial; they are not the same dryer, nor located in the same apartment. This is different than Paula's evidence because it does not tend to indicate that the dryer was more or less probable to be the cause of Paula's injury; they are totally independent dryers. However, even if this evidence is considered relevant, it is still likely inadmissible. Unlike Paula's evidence, evidence of the other dryer's likely is not "similar occurrences" evidence; it does not indicate that Paula's injury was not caused by the same instrumentality (they are different dryers in a different apartment complex, with different exhaust systems and hoses), nor does it indicate that Dependable was not on notice of the dangerous conditions posed by the dryers in apartment 2B. Therefore, Dependable's evidence is neither relevant nor a similar occurrence and should not be admitted.

D. Dependable's Request for Missing Witness Instruction

The court should grant not Dependable's missing witness instruction with regard to the expert. Under the Maryland Rules of Evidence, a party is entitled to a missing witness instruction if the opposing party does not call a witness who will provide facts that are important or essential to the case; the jury is entitled to make an inference as to why the witness was not called. However, in this civil case, Dependable could call the expert on his own; he had the time and funds to depose the witness and evidently had access to him. If Dependable wanted to use his testimony to discredit Paula's expert, he could call the expert himself.

Representative Good Answer #2

A.

The court should admit evidence of the other dryer fires because the fires put Dependable on notice of a problem with the dryer they were using. Ordinarily, evidence of other crimes, wrongs, or acts that occurred in the past are not admissible to prove that a similar incident occurred in the present case. However, a party may offer such evidence when it is being used to show that the opposing party was on notice of a particular fact. Here, Paula may not offer the evidence of prior fires to prove that the dryer in fact caused the fire at issue in her case, but she may offer the evidence to show that Dependable was on notice of a problem with the particular model of that dryer. Further, because Dependable claimed that there had been no fires associated with identical dryers in any of the other apartments in the previous 5 years, Paula may offer the evidence of the fires as extrinsic evidence to impeach this testimony.

B.

The court should admit the evidence of replacement dryers. Ordinarily, evidence of subsequent repairs is inadmissible to show that the defendant acted negligently in the present case. However, the repairs at issue in this case were not "subsequent." Rather, the repairs occurred prior to the fire at issue in this case, and do not fall under the rule. Further, the prior repairs are relevant to show that Dependable was on notice of a problem with the dryers and should have installed a different model.

C.

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The court should admit the evidence that there had been no fires associated with the identical dryers, but for a limited purpose. Evidence of prior acts or events are inadmissible to prove conduct in conformity therewith. In the present case, that means that Dependable may not offer evidence of a lack of fires in other dryers as proof that the dryer was not the cause of the fire in the present case. However, the evidence will be admissible to show that Dependable was not on notice of a problem with the dryer. Dependable's negligence will hinge on whether they had notice of the problem. If there were no fires associated with the dryer in the past, Dependable had no reason to expect that replacing prior dryers with an identical model would cause a problem in the future.

D.

The court should deny Dependable's request for a missing witness instruction. A missing witness instruction is a judicial explanation that a particular witness's testimony would have been favorable to the moving party. Such an instruction is only permitted when the non-moving party wrongfully caused the witness's absence from the trial. Here, Paula did nothing to wrongfully cause the second expert's absence. Even though Dependable had deposed the expert, Paula is entitled to call the witnesses she sees fit in order to prove her case, and is not bound by any preliminary witness lists she provides to the opposing party. Dependable could have called the second expert witness in its own case in chief, but it did not, and Paula in no way interfered with Dependable's ability to call the expert witness. Therefore, the request should be denied.

Maryland Essay Question No. 4

Representative Good Answer #1

The question is here is whether the neighbors have acquired an easement to use the neighborhood path. I would advise the neighbors that they likely do not have an easement to use the path, and thus cannot use it.

An easement is a right to use the property of another (the servient estate) for a specific purpose. Most easements are express and, as an interest in land, must comply with the Statute of Frauds and be in writing. However, it is possible for an implied, unwritten easement to exist under limited circumstances.

The best argument that the neighbors can assert is an implied easement by prescription. An easement by prescription exists when an owner of land (the dominant estate) (1) actually uses the land of another in a manner that is (2) hostile to the interests of the owner of the servient estate; (3) open and notorious; and (4) continuous until the statute of limitations runs. The statute of limitations in Maryland is 20 years. (Note that unlike adverse possession, use of land to acquire an easement by prescription does not have to be exclusive.) In this case, the neighbors were using Joe's land in a specific manner--crossing the path to access first street--and in a way hostile to Joe's interest, because they were uninvited trespassers. The use of the land was open and notorious, despite the fact that Joe could not view the foot traffic from his house, because the neighbors made no attempt to disguise their actions and used the path in an ordinary manner. Moreover, the use was clearly noticeable, because the priests discovered it. However, the neighbors used the land for only 18 years--from approximately 1994 to 2012--until Joe sold the land to the priests. At that point, the priests granted the neighbors permission to use the path. Once the priests gave permission for pedestrian traffic, the use was no longer hostile. Because the hostile use did not continue for 20 years, no easement by prescription was created. Instead, after the priests moved in, the neighbors had a license to use the path, and licenses are freely revocable.

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The above analysis assumes that the neighbors stopped driving dirt bikes or cars over the path once the priests posted a sign saying "Foot traffic only--no motorized vehicles." If the use of vehicles on the path continued, than there would be an implied easement by prescription to use the path for vehicular traffic, because that use continued to be hostile to the interests of the owners of the servient estate, from 1994 until 2014--20 years. (The statute of limitations would not have restarted with the priests, because the priests were in vertical privity with Joe, so the statute of limitations would have continued to run against them.)

The neighbors cannot argue that they have an implied easement by necessity. An easement by necessity is created when plots of land were formally under common ownership, and at the time of severance, an easement for one plot land became strictly necessary (e.g., because at severance, that plot became landlocked). Joe's plot and the development were under common ownership until 1994. However, severance did not create strict necessity, because the development is not landlocked. It faces Second Street, a public road. An easement by necessity cannot be created merely because crossing over the servient estate is more convenient. The easement must be strictly necessary to make use of the dominant estate, and that is not the case here.

The neighbors also cannot argue that they have an implied easement by estoppel. An easement by estoppel is created when the owner of the servient estate gives the owner of the dominant estate permission to use the land, the owner of the dominant estate detrimentally relies on that permission, and an easement is necessary to prevent unjust enrichment. In this case, there has been no detrimental reliance. The neighbors have not changed their position as a result of the priest's permission to use the path such that they would suffer unjustly if that permission were revoked. There has also been no unjust enrichment. There is no evidence that the neighbors have improved the path in a way that would be unjust to allow the priests to enjoy the benefits of under the circumstances.

Finally, there is no implied quasi-easement. A quasi-easement is created when two plots are originally under common ownership and the owner uses the plot in an open and apparent and specific way, such that at severance, it is implied that the owner of the dominant estate continues to have the right to use the servient estate in such way. The easement must also be reasonably necessary to the use and enjoyment of the dominant estate. That situation is not applicable here, because there is no evidence that Joe used the path to access First Street when the two plots were under his ownership. Moreover, access to the neighborhood path is not reasonably necessary to use the development, because the development has access to Second Street and other pedestrian pathways.

For the foregoing reasons, the neighbors likely only had a license, not an easement to use the land, and the license can be revoked.

Representative Good Answer #2

The issue here is whether or not the residents of the subdivision had an easement which permitted the to use the unpaved path to reach first street. Easements can be created in three ways: express easements, by implication or by prescription. Express easements must be in writing on the deed that transfers the property and satisfy the requirements of the statute of frauds. Easements by implication can be created where there was common ownership of the dominant and servient parcel that was severed, the use was in existence at the time of the severance and the use was reasonable necessary. Easements by implication can also be created by strict necessity, which is where there is no other way for the dominant parcel owner to access something without the easement being recognized. Finally, easements can be created

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by prescription, which essentially means that it is created by adverse possession. This requires that for the 20 yr. statutory period the use of the easement was open, visible, notorious, actual, continuous, and hostile under a claim of title or right.

Here the facts tell us that there never was any writing at all concerning an easement on the deed which conveyed the 20 acres or the deed which conveyed the 5 acres later. Thus, there is no way that the neighbors can argue that they had an express easement. Joe owned both the dominant (20 acre) and the servient parcels (5 acres) at one time and then he sold the 20 acres which did sever ownership of the dominant and servient parcels. However, at the time of the severance no one was using the dirt path on the 5 acres. It did not being to be used until construction of the homes on the 20 acre lot began. Thus, there is a good argument that the path was not in use at the time of severance of the dominant and servient parcel's common ownership and thus there can be no easement by implication. The use of the easement may be deemed to be reasonably necessary because there is no other path directly to first street, however the 20 acres do abut a public street, second street, which weakens their argument for any kind of necessity for the foot path to exist. There is no evidence in the facts that would support a claim of strict necessity by the homeowners of the 20 acre subdivision so they cannot argue easement by implication on a theory of strict necessity.

The best option for the owners of the homes on the 20 acre parcel to make is that they have an easement by prescription. The 20 acre parcel was sold in January of 1994 and construction began and during construction people began using the unpaved path through the 5 acre parcel. If construction began right away in January of 1994, then when the house was sold in 2012 the neighbors would have been using the easement for 18 yrs. and when Father Joe moved in the easements use would have been continuous for 20 years. So the question is did the neighbors meet the elements of easement by prescription and what effect if any did Joe's selling of the 5 acres in January of 2012 and Father Jones' moving in January of 2014 have on the 20 yr. adverse possession requirement. First, the use of the easement must have been open, visible, and notorious. Although the facts tell us the use of the path was not visible from Joe's house, it was not concealed and was certainly visible from his property. There is no requirement that the use be visible from your house or from every vantage point on the property so there open use of the foot path is likely sufficient to satisfy this requirement. The second requirement is that the path was actually used. The facts clearly tell us that the neighbors actually used the path to walk to school or the store and sometimes used dirt bikes and cars on the path, so the path was actually used. The third requirement is that the use is hostile under a claim of title or right. Here the neighbors use was not hostile under a claim of right because they did not receive a conveyance containing the foot path, but it was likely hostile under a claim of title, because they used it and called it the neighborhood path. They treated it as their own and as if they had every right to use it. This is sufficient. Hostility does not require that they actually knew they did not have a right to use it and did so anyways. Thus, they satisfied this element. Finally the use must have been continuous for the statutory period of 20 years. Here the neighbors continued to use the path for 20 years starting with construction in January of 1994, so their use was continuous. However, Joe did sell the property in 2012 before the 20 year statutory period expired. This will likely not have an effect because the use continued to meet the elements of adverse possession, the new owners of the 5 acres were not under a disability which may have tolled the 20 year time period, and they could have discovered the use any time before the running of the statute of limitations. There is one additional problem, the priests discovered the use and then gave permission for it to continue so long as no motorized bikes or cars were used. So the question is does this eliminate the hostile under claim of title element of adverse possession. If the owner gives you permission to use something it cannot be hostile under a claim of title, but if they merely acquiesce to your continued use by not doing anything this does not affect the hostile element. Here the facts tells use the priests told the neighbors it was ok to use it but posted a sign prohibiting motorized vehicles. This likely constitutes permission not acquiescence and this likely caused the adverse possession elements for an easement by prescription to fail at the 18 year mark when permission was granted. The neighbors can try to argue this was acquiescence not permission and if successful then they

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would have an easement by prescription, however it seems like this was more permission than acquiescence. Therefore, the neighbors likely do not have a claim to continued use of the foot path and the priests were justified in locking it to prevent damage to their garden. No easement by implication or express easement was created when the priests said they could continue to use it because there was no common ownership severed and there was no writing.

Maryland Essay No. 5

Representative Good Answer #1

A. The Standard in the Motion to Suppress is Based in the 4th Amendment but Less Than the Privacy Expectation in the Home.

The standard to be applied to the motion to suppress falls under the 4th Amendment. The 4th Amended guarantees the right to be free from unreasonable search and seizure. It requires that a person have an interest in privacy in both the place and the thing searched. This interest is most strongly protected in the home. However, in the workplace, where personal items are comingled with company property and space is shared, an employee has a lesser privacy interest. An employer may search an employee's work space or locker if there is a reasonable suspicion of something illegal and the search is conducted reasonably. This standard is less than that of probable cause generally required under the 4th Amend to search a person or personal belongings. Further, the employer may consent to a general search of the work place by police. However, an employer may not consent to a search by police of an employee's person or areas where an employee has a privacy interest.

B. Joe Has Minimal Rights Pertaining to the Search of the Desk and the Items Found Therein because it is A Common Workspace.

The Judge should reject the motion to suppress the drugs found inside desk number 5. Joe has a limited right pertaining to the search of the desk and the items found there in. As discusses above, an employer may complete a reasonable search of an employee's work space if the employer has reasonable suspicion to believe that there is evidence of an employee's illegal conduct in the work space. While calling the police to search the space increases the intensity and lessens the reasonableness of the search, the fact that the employer received a reliable report that an employee brought a gun to the office makes the need for police more reasonable. Further, the fact that Joe shares the desk space with other employees lowers his privacy interest in the space. The employer in this situation had the right to consent to the search of the desk by Police. While Joe does have an interest in the bag with his name on it, the search itself was reasonable and the bag was left in a place where Joe did not have a privacy interest. It was possible that the drugs or a gun could be located in the bag. Thus, the Judge should reject the motion to suppress the drugs found inside desk number 5.

C. Joe Has Minimal Rights Pertaining to the Search of the Locker but Stronger Privacy Rights Pertaining to His Backpack because the Backpack is a Personal Item Protected by the 4th Amendment.

The Judge should suppress the drugs found inside Joe's backpack in the locker. Joe has a stronger privacy interest in the locker. Facts indicating that Joes had a privacy interest in the locker include that each employee is assigned a personal locker, employees are invited to store personal items in the locker and employees are allowed to bring a lock from home to secure his/her belongings in the locker. The employer also maintains an interest in the locker as demonstrated by the fact that work product is stored in employees' lockers and the locker is located in the employer's office. However, even if the employer has the right to consent to a search of the locker, the search of the backpack was impermissible in violation of Joe's 4th Amend right. Joe did not consent to a search of his backpack and the employer did not have a right to consent to a search of Joe's backpack. Joe's higher privacy interest in the backpack is indicated by the fact that is zips closed and was Joe's personal property. If the police wanted to search Joe's backpack they needed a warrant.

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While the Supreme Court has held that police may feel the outside of a bag in a public space (meaning a space one does not have privacy interest), they may not open the bag without consent of the owner.

Representative Good Answer #2

Standard to be applied in ruling on the Motion to Suppress

A fourth amendment violation is triggered when a government agent conducts a search and/or seizure of an area in which an individual has an expectation of privacy. Generally, searches and seizures must be carried out pursuant to a valid search warrant issued by a neutral and detached magistrate. The warrant must be based on probable cause and state the places to be searched and items to be seized with particularity.

Here, there was a search and seizure by a government agent because local law enforcement conducted the search.

Although the employer received a reliable report that an employee brought guns and drugs into the work place, the law enforcement failed to obtain a search warrant. When a search and seizure is conducted without a warrant, a warrant must either not be necessary for the search or an exception to the warrant requirement will apply.

The government could argue here that there were exigent circumstances that excused the lack of a warrant. A report of guns and drugs for the purpose of trafficking in a government building where members of the public will be present could be construed as an emergency.

Further, there is not a fourth amendment violation if an individual does not have a reasonable expectation of privacy in the place searched that society is prepared to accept. For a place to be protected by the fourth amendment, an individual must have a subjective expectation of privacy in that place. Also, the public must recognize that subjective expectation as reasonable.

What are Joe's rights pertaining to the search of the desk and the items found therein; How should the Judge rule?

Joe has a low expectation of privacy in his desk and the items found therein because it is his workspace in a government building that he shares with another employee as well as the general public.

Joe has not shown any strong subjective expectation of privacy in his desk, and even if he did, the public would not be likely to accept it as reasonable.

Here, the desk does not belong exclusively to Joe since he shares it with a coworker for part of the day. Other employees and members of the public can be expected to be present in the general work area and around Joe's desk.

Also, as a quality control officer employed by the state of Maryland, Joe may be found to have a lower expectation of privacy in his job. The Supreme Court has held that a person's employment can partially dictate their expectations of privacy. Federal agents who work in drug interdiction are subject to random drug testing. The same is true for rail road employees after an accident.

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It is unclear whether the Sanitation Evacuation Service is particularly on notice of a lowered expectation of privacy, but the argument can be made given the case precedent.

Given the low expectation of privacy in the desk, a judge should rule that the search was not a fourth amendment violation.

What are Joe's rights pertaining the the search of the locker and the items found therein?

Joe has a stronger expectation of privacy in his locker and back pack, and so the seizure of these objects is more likely to be a fourth amendment violation.

Joe has manifested his subjective expectation of privacy by choosing to place a lock on the locker and keeping all of the pockets in his back pack zipped closed. Employees were not required to have locks on their locker, but Joe chose to use one. This subjective expectation would be even higher if Joe was the only one with the code to the lock.

The back pack was completely closed, which makes it less susceptible to the plain view exception. Police may seize items that are obviously part of a criminal act if they have a right to be in the area and the objects are in plain view.

Here, drugs and weapons in plain view would be seizable by police because they had permission to be in the general locker room area. However, these items were concealed by Joe's personal backpack.

The government could argue that there is not a sufficient expectation of privacy because the locker was provided by the employer, the State, and because employees were required to keep work product inside of the lockers. This alone should not defeat Joe's subjective expectation or society's objective acceptance that people have an expectation of privacy in closed bags secured in locked lockers.

Therefore, the evidence from the locker should be suppressed by the judge.

Arrest

A proper arrest supported by probable cause gives law enforcement much broader authority to conduct searches and not violate the fourth amendment. Here, it appears that Joe was not arrested or charged until after the search. Therefore, none of these exceptions can apply.

Maryland Essay Question No. 6

Representative Good Answer #1

The court should overrule the objection. Although at this point Adler has not filed a complaint Rule 2-404 of the Maryland Rule of Civil Procedure allow for a person who may have interest in an action which they expect to bring to request that the other party to perpetuate testimony or produce evidence relevant to any claim or defense that may be asserted in an expected action. The Request for Production and subpoena duces were properly served on the Center. Because the rules explicitly allow for this request before an action has commenced the court should overrule the centers objection that the request is premature.

Part B.

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1. In a motion to dismiss, the Center should raise the defense that the action was not timely filed. Rule 5-101 of the Maryland Rules of Civil Procedure state that a civil action must be filed within 3 years after the action has commenced. In this case Adler discovered in January 2010 that the Center failed to pay all of the money, however the action was not commenced until 4 years later.

2. I would advise my judge that the motion to Dismiss should be granted. Rule 2-101 states that a civil action is commenced by the filing of a complaint. The Request for Document Production was not a complaint, the complaint was not filed until January 2014. This was beyond the statute of limitations to commence a civil complaint.

3. The Request for Document Production should not have a major impact on the trial court's ruling. Adler would argue that the Request for Document Production was filed within the statutory period. However the request is not a complaint and so this did negate the fact the complaint was not timely. Furthermore Adler may argue that the cause of action for some of the claims only arose after she received the documents (if she received them) after 2012. However the standard for filing is after the action accrues not after the party has enough evidence to bring a claim. Therefore the Request should not affect the trial court's ruling.

Representative Good Answer #2

A. Dr. Adler's valid Request for Production of Documents

The issue arises in the case at bar as to whether or not Dr. Adler's filing of a Request for Production of Documents is premature as no litigation is pending before the Circuit Court. The answer is no, it is not premature, and as a result, the Court should overrule the Center's objection.

Under Rule 2-404 of the Maryland Annotated Code, before an action is instituted, any person that may have an interest in an action that they expect to bring at a future date, they may perpetuate testimony or other evidence relevant to the future claim pursuant to discovery rules. Further, the request must conform to the rules set forth in Rule 2-404, including what must be included in the request, how the request should be filed, and how service must be conducted on the adverse party, including the service of a subpoena.

Applying the facts of the instant case, Dr. Adler filed a request for production of documents with the Circuit Court for Calvert County seeking to preserve documents currently in the possession of the Center related to her claim of wrongfully withheld money. The request and subpoena were properly served. The facts are, however, limited, so it is not clear as to whether the request contained the other required contents in order to be proper. However, the Center only objected on the grounds that the request was premature, so that is the focus. As stated with Rule 2-404, the Code allows discovery to be served on an opposing party prior to litigation commencing so long as the proper procedures are followed.

Based upon the related facts and the Center's narrow objection, the Court should overrule the Center's objection that the request is premature.

B. The Center's Motion to Dismiss

1. The Center's Motion to Dismiss Based on Statute of Limitations Defense

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In response to the complaint filed by Dr. Adler, the Center should raise the defense that the claim was barred by the statute of limitations.

Under the Maryland Annotated Code for Courts and Judicial proceedings §5-101, general civil actions must be filed with three years from the date of injury, unless another provision of the Code applies a different statute of limitations for a specific action. Rule 2-101 of the Maryland Annotated Code Maryland Rules specifically notes that civil actions are commenced by the filing of a complaint with a court.

The facts established by the case at bar show that the date of injury, or the date that the "injury" was discovered was January of 2010. Although Dr. Adler filed her request for production of documents in August of 2012, she did not file her complaint with the Circuit Court until January 15, 2014, four years after the date of injury. Although the facts contained in the Complaint may be sufficient, Dr. Adler is barred from bringing the action as a result of the lapsed time.

2. Granting the Center's Motion to Dismiss

As previously stated, Maryland Annotated Code requires that any general civil action be filed within three years of the date of the injury, and that the action is commenced when a valid complaint is filed with the Court.

As the date of injury was more than three years prior to the filing date of the Complaint, I would advise the judge to grant the Center's Motion to Dismiss as the action is barred by the statute of limitations.

3. Request for Production of Documents Has No Impact on the Ruling

While the request for production of documents was a valid discovery request by Dr. Adler at the time that it was filed, its filing has no impact on the statute of limitations running on the action. As noted, an action is commenced by the filing of a complaint, not discovery. The discovery filing merely created "parties" to future litigation, but did not give rise to actual litigation in itself. As a result, the discovery filing should have no impact on the Court's ruling.

Maryland Essay Question No. 7

Representative Good Answer #1

a. Bill's entitlement to the 3-acre lot

\$10,000 of the value of the 3-acre lot constitutes marital property, as this is the extent that it was improved by the \$4,000 investment by Amy and Bill.

In Maryland, only marital property is split up between divorcing spouses. Property that is not considered marital is any property that was independently owned by the parties prior to the marriage, any property that is acquired by either of the spouses through a gift, devise, or intestacy in that spouse's name only, any property that is directly traceable to either of these sources, or any property that is considered non-marital through an agreement of the parties.

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Where property is properly considered a mix of non-marital and marital property, however, that extent to which the value of the property can be traced to marital property can be divided between the spouses even if the property itself is deeded in the name of only one of the spouses and was acquired through a gift, devise, or intestacy. When determining whether the value of property was improved by the efforts of the marriage, courts will consider the value of the property before a spouse received it and the value at the time the marriage ends, and determine how much of the increase is attributable to the investments of the married couple together.

Maryland is an equitable division state, which means that marital property is divided between divorcing parties equal to the fair value of the amount that each party invested in the marital property. This includes a consideration of both economic and non-economic contributions made by each party. A division does not have to be 50/50.

Here, the value of the lot gifted to Amy was \$10,000. This lot at this value constituted solely non-marital property. Subsequent to the gift, however, both Amy and Bill invested \$4,000 of marital funds to have the lot certified as a building lot. This raised the value of the property to \$20,000, an increase of \$10,000. That \$10,000 increase is directly attributable to the investment of the married couple. It would therefore be split up amongst Amy and Bill equal to the court's determination of what an equitable division of marital property would entail.

2. Bill's requirement to pay for schooling

Bill will not be required to pay for schooling solely. The cost for the schooling will be split up among the parties using an income sharing formula.

When determining child support payments, Maryland applies an income sharing model. Under this model, the incomes of both parents are added together to get a joint income amount. This amount is used to determine the total amount of support the child is entitled to by applying the amount to support guidelines set by statute. The court then splits up the support to be paid by either parent equal to their pro rata share of the total income. The court will factor in the support paid by a physical custodial parent in determining whether that parent is required to pay out any additional support for the child.

In Maryland, parents can exercise both physical and legal custody over children. Physical custody is the determination of what parent the child will live with. Legal custody is the right of the parent to make important decisions about the child's upbringing, including the school they will attend. When parents are granted joint custody, they share both or one of these types of custody. Joint custody is not presumed or required in Maryland.

The two most important factors when adjudicating a custody dispute are the best interests of the child and whether the parents can cooperate. The court will always consider whether a proposed decision by the parents is in the best interests of the child before compromising or siding with one of the parents. Furthermore, a court will not allow the parents to exercise joint custody freely if they cannot cooperate. In most custody disputes, however, the court will hear each party out, and then determine what decision makes the most sense for the child, taking into consideration their present conditions, any physical or psychological impact a chance will cause, the fitness of the parents, and other related factors.

Here, the decision as to whether Shiloh should attend private school is one in which both parents have say as they share joint legal custody. If Bill and Amy cannot agree as to whether Shiloh should attend the school, they will have to appear in front of the court. The court will hear both sides of the argument and render a decision, taking into consideration the

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financial burden on the parties and any effect unenrolling Shiloh may have on the child. The court will then either side with Amy and demand that the parties pay for the private school, side with Bill and have Shiloh attend public school, or find some compromise in between.

If the court rules that Shiloh should stay in private school, the cost will not be borne by Bill alone. The incomes of both parents will be added together, and the court will thereafter find how much money Bill and Amy are required to provide in support. The guidelines will dictate how much Bill will have to pay from the total support award, and that support will go towards the tuition. Anything above that amount would have to be provided by Amy.

Representative Good Answer #2

Interest in Property

I would advise Bill that he does have an interest in the 3-acre lot that Amy owns. I would explain to him that generally, when property is distributed during divorce proceedings, it is separated into non-marital property--usually acquired before the marriage, and marital property--any property acquired after the marriage. Although Amy's father deeded the 3-acre lot to her following her marriage, the general rule under Maryland law is that even if property is acquired after marriage, if it is given as a gift or inheritance to only one spouse, the property is considered separate property. Yet, there is an exception to this rule, which states that if the value of any property is increased by contribution by the other spouse, i.e., he helped maintain, manage, improve, and increase value, it is deemed to be marital property.

When Amy's father conveyed the property, it was valued at \$10,000. Thereafter, Bill and Amy paid \$4,000 from their earnings to have the lot certified, which resulted in an increase of value to \$20,000. Thus, because there was contribution which led to an increase in value, I would tell Bill that he may have some interest. However, I would also warn him of the collateral source rule, which states that if funds can be traced to individual sources/contributions, a spouse may only have an interest as to those funds and the other spouse may retain her share of the property. I would make sure Bill understands that Amy may claim he personally did nothing to the property and may not have an equal interest, but more likely than not, a court would find that the certification moved the lot into the umbrella of marital property, to which he would have an interest.

Private School Expense

I would advise Bill that he may be required to pay a portion of Shiloh's private school tuition. When a court determines payment of child support and/or expenses such as private school education, it will consider several factors including the parents' income and the best interest of the child. Some of the factors the court will consider include annual income, who contributed to the expense prior to the divorce, the amount of time the child received the private education, the child's interests and performance, feasibility of a transfer and impact on the children, and history of such an education.

In the present case, Bill makes \$60,000 and Amy makes \$40,000, whereas the private school tuition amounts to \$1,000 per month. The court would acknowledge, that previously, Bill had paid the cost, and Shiloh had attended the school for three years consecutively. The court would also note that she is an average student, and further look into the impact of transferring her and what would be the best interest. If the court found that it is in Shiloh's best interest to remain at the same school, Bill may be required to contribute to the expense. However, I would explain to Bill that he could always request the court to apportion the expense, so that both parents contributed to the education per their respective shares.

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Because Bill had solely contributed to the education for three years, the court probably would not view the expenditure as unnecessary and may uphold the education expenses. Therefore, Bill would be required to contribute to the expense.

Maryland Essay No. 8

Representative Good Answer #1

A. To rescind the contract, Widow could argue that she signed the contract under duress and that there was a mutual mistake as to a material term in the contract.

With regard to either duress or undue influence, Widow could argue that Grandson's actions essentially forced her to sign the contract against her will. Regarding duress, Widow can argue that she was aware of Grandson's conviction and imprisonment for theft and aggravated assault, and that his standing behind her with a hand firmly resting on her shoulder, combined with his angry, belligerent whisperings about her "best interests," left her in reasonable fear for her own safety if she did not sign the contract. As such, she did not voluntarily enter into the contract, and it should be rescinded.

Energy may argue in response that Energy did not itself subject Widow to any duress, and that Grandson was not actually threatening Widow - merely acting in a reasonable manner to try to persuade her to act in her best interests. Energy may be helped in this argument to the extent that the contract is not clearly unfair to Widow, and therefore the use of duress or other undue influence is not as apparent.

Widow may also argue that the contract should be rescinded due to the mutual mistake by both Widow and Energy as to the acreage of her farm. Although the metes and bounds were accurately described, there was a material difference between the actual and calculated acreage, which caused a significant reduction in the up-front payment. She could, therefore, argue that the difference was significant enough that the entire contract should be rescinded, as this is a land contract not under the UCC - therefore, the price is a material term.

In response to this, Energy could argue that the acreage itself wasn't material so long as the metes and bounds description of the property was accurate and an accurate price per acre was stipulated. Therefore, the contract should merely be reformed to reflect the accurate acreage and compensation for the entire property at the specified price per acre of \$50.

B. If Widow elects not to rescind the contract, she can seek reformation of the contract to properly adjust the up-front payment.

As stated above, there was a mutual mistake in the contract between Widow and Energy with regard to the actual total acreage of her farm - though not with regard to the description of the metes and bounds of the farm as specified under the lease agreement. As such, the intention of the parties remains clear despite their mutual mistake as to the actual calculation of the acreage (a number that was not actually stated in the written lease agreement). Because a price per acre was specified, along with a description of the boundaries of the property being contracted for, Widow can argue for an equitable reformation of the contract to adjust for the mutual mistake of the parties in order to make the agreement reflect the clear intention of the parties - thereby adjusting the up-front payment to \$100,000 in light of the actual acreage of the farm.

Representative Good Answer #2

(A) Widow's Arguments.

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Widow can argue that she only entered into the contract under duress. A contract is not enforceable when a party entered into it upon a threat of physical harm. Here, it is apparent that Widow signed the agreement only because her Grandson threatened her. Widow had made clear up until this point that she had no interest in leasing the farm to Energy and intended to live on the farm for the rest of her life. It was not until her Grandson physically put his hands on her and used a strong, threatening tone that she signed the contract. Energy should have been suspicious of the deal, given that Widow had made her lack of interest in leasing the farm known to Energy and that Energy's communications with Widow were at Grandson's request. Energy should have been alerted when they received the contract directly from Grandson, despite Widow's previous strong protests that she did not wish to lease the property to Energy. Assuming that Widow can prove duress, she would be entitled to rescission of the contract.

Energy's Arguments.

Energy can respond by saying that they were not aware of any duress. They had no way to know that Grandson was an abusive felon who was strong arming his grandmother into signing the lease. Energy will argue that Widow's initial refusal to sign and the subsequent delivery of the contract by Grandson is equally consistent with the Widow attempting to negotiate with Energy for a better deal. Further, Energy can argue that Grandson's conduct with Widow did not amount to duress. While he might have been pushy, he did not make any overt threat to harm her or physically force her to sign the contract. As a result, Energy can argue, the contract with Widow is valid.

(B) If Widow does not wish to rescind the contract, she can attempt to have the contract reformed. Reformation of a contract is appropriate where the language of the contract does not reflect the agreement that the parties actually reached. It is a common remedy in land sale contracts where the contract understates the amount of land that has been conveyed. Here, Widow has several compelling arguments for reformation. For one, the understatement in the contract was Energy's fault. It was their surveyor who made a miscalculation when measuring the property. Widow should argue that she should not be held responsible for Energy's mistake in measuring. In addition, Widow can argue that reformation is fair, given that Energy drafted the contract. As an equitable matter, reformation is most appropriate when used against the party who drafted the contract. Additionally, Widow had no chance to review the contract. She signed it under considerable pressure from her Grandson and should not be held responsible for any technical errors that would require careful review. Finally, reformation is appropriate because the contract already contained an accurate metes and bounds description of the property. Reformation of the contract would simply resolve the internal inconsistency in the contract between the metes and bounds description and the size of the parcel.

Maryland Essay No. 9

Representative Good Answer #1

(a) Consequences of the proclamation and Remedies

The main consequence of the proclamation is that the Easton is being involuntarily dissolved. Involuntary dissolution may occur if a corporation fails to file its annual report or fails to pay taxes with the SDAT. When a corporation goes through the dissolution process, it must sell all of its assets, stop accepting any new business, and begin the winding up process. However, a corporation may have its charter reinstated if it cures its mistakes with the SDAT within the statutory time period. Here, if Easton pays its taxes and files its report with the SDAT, it could have its charter reinstated.

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Alternatively, the corporation could sue John for breaching the duty of care. As a shareholder and President of a closely held corporation, John had a duty to act as a reasonable person and place the corporation's interest before his. In this case, John was the person who received the notice of the proclamation and he threw it in the trash. By being so careless, Easton could argue that John breached his duty of care to the corporation

(b) How Can the Property be validly Conveyed

In this case, Easton may convey the property provided that the appropriate parties who may act on behalf of the corporation sign on the writing. However, because Easton is currently not authorized to perform any business in Maryland, the conveyance of the property could be accomplished validly by the trustee for the dissolved corporation. In this case, a court could appoint a trustee, or the corporation's bylaws would specify who could do so in such an event. Alternatively, Easton could pay all of its taxes and file its annual report with the SDAT before the date of conveyance. Doing so would allow it to perform business again.

(c) Liability for Fishing Rods

Because Easton was not a legal corporation at the time additional merchandise was needed, John will be liable personally for the payment of the order. If a corporation does not meet the requirements for legality in its jurisdiction, it may not engage in business within that jurisdiction. If an individual does engage in business in that corporation's name, he or she will be personally liable for any such business. In this case, Easton was not an authorized corporation in Maryland on December 3, 2013. Because John signed the purchased order for the fishing rods, he will be personally liable for the payment because Easton was not a legally recognized entity at that time.

If Easton files its annual report and pays its taxes with SDAT, SDAT will reinstitute the charter. This act of reinstatement will retroactively validate any deals an individual made on behalf of the corporation and remove personal liability. If Easton files its taxes and its annual report, John's personal liability will be removed.

Representative Good Answer #2

a. When a Charter of a corporation is forfeited, that means that the corporation as a legal entity no longer exists. The Directors of the corporation may no longer be protected by the corporate limited liability shield. They may conduct business for the purposes of winding up the business, in which case the Board of Directors becomes the Board of Trustees, or they may choose to pursue methods of regaining their Charter. In this case Easton, Inc. would need to get up to date on its paperwork and taxes in order to refile as a corporation.

b. The property can be valid conveyed if it is done within the scope of winding up business. After a forfeiture, the Board of Trustees. Although they may not enter into new contract, may wind up business for the corporation. In this case, because there is already an enforceable contract, if it is done for the purposes of winding up business the land may be conveyed.

c. John would be personally liable for the purchase order on December 3, 2013. Normally, when actions are done in the scope of a corporation, there is no personal liability on the part of the directors except for intentionally tortious acts or prohibited acts. John would argue that as President of Easton, Inc. he had actual authority to make such a purchase in the name of the corporation and had the charter not been forfeited this would have been true and the corporation would be liable for the payment of the purchase order. In this case however the charter was forfeited in October and John had

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timely notice of such. By signing the purchase order in December he made himself personally liable for the payment of the order.

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Maryland Essay No. 10

Representative Good Answer #1

Sam will seek to exclude the following evidence:

Sam's fingerprints, the shoes found on Sam's porch, and the statements by Sam at the police station as "fruits of the poisonous tree" because Sam was arrested without a warrant or probable cause.

The Judge will rule as follows:

The Shoes.

The police saw a pair of shoes on Sam's porch. The facts do not say there was anything immediately illegal about the shoes. So the plain view doctrine does not apply. A porch is considered within the boundary of a person's home. Therefore, the police needed a warrant which they did not have. The facts state that they "were acting only on a hunch." The judge will probably find that seizure of Sam's shoes was a violation of the Fourth Amend and exclude it.

Finger Prints.

As already stated, the police had no warrant to arrest Sam. They did not have probable cause either because they were going on a hunch. Although the police will argue that Sam voluntarily agreed to go to the station with them, a closer look at the facts shows different. When Sam said he did not want to go to the station, the police threatened him with arrest. A reasonable person would not feel that they were free to not go along with the police. As a result, the judge will probably throw out the finger prints because the police did not have probable cause to arrest Sam in the first place.

Statements by Sam.

For the same reasons that the finger prints will be thrown out, the statement by Sam that the shoes were his will also be thrown out by the judge. It does not matter that the police gave Sam Miranda, it was already too late. The police did not have probable cause to arrest Sam and only got the statements after they violated his Fourth Amend rights. It will not be allowed.

However, Sam's confession to his priest will probably be allowed. Maryland has a Priest-Penitent privilege. However, the priest holds that privilege. Here, Sam voluntarily confessed to the priest. The facts do not suggest that the priest was working for the police. So, the priest's decision to tell what Sam said is an admission exception to the hearsay rule which can and will be used against Sam in trial. Since Sam made an admission (confession) to the priest, the judge will allow it to be used against Sam.

Representative Good Answer #2

Sam's motion to suppress will likely have several arguments.

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First, he may argue that there was no reasonable suspicion or probable cause stopping by his house to get fingerprints from him. The court will most likely agree with this argument because the police were just acting on “a hunch”. The 5th amendment requires that police have a warrant or an exception to a warrant to get into someone’s home because homes are protected under the Constitution. The police did not have a warrant but threatened to arrest Sam anyway if he did not go with them to the police station. He will argue that his 6th amendment right to an attorney was violated. The court will reject this argument because fingerprinting is not a pivotal stage of the process. The court will however not allow the fingerprinting because Sam was arrested in his home without a warrant and no probable cause.

Second, Sam will argue that his statement about owning the shoes is inadmissible because it was made after he was taken into custody against his free will without a warrant and no probable cause. He was under custody and would not feel he could just leave because they police threatened to arrest him. Third, Sam will argue that the shoes were taken from his house on the porch without a warrant. Homes are highly protected under the Constitution. The plain view doctrine does not apply because the shoe’s unlawfulness was not immediately apparent. The police could have easily just gotten a warrant but they did not. The court will not admit either the statement about the shoes or the shoes.

Fourth, Sam will argue that the minister testimony is privileged and should be kept out. In Maryland there is a minister-penitent privilege, as long as this conversation is related to a religious discourse. Here, it is clear that Sam was in pursuit of religious benefits because it says that he confessed to his church minister. Moreover, the holder of this privilege is the minister, and thus the minister can decide whether to share the information or not. Here, he decided to share the information, and thus it will be admitted.

Sam may argue that the minister was an agent of the police to obtain testimony and thus his 5th and 6th amendment rights were violated. However, the facts state that it was Sam’s church minister.

Multistate Performance Test

Representative Good Answer #1

July 29, 2014

Mr. Steven Glenn, Vice President of Human Resources

Re: Ms. Linda Duram

Dear Mr. Glenn

My name Henry Fines. I am an attorney with the law firm of Burton and Fines. Ms. Duran is an employee of Signs, Inc. I have been retained by Ms. Linda Duram to represent her in a dispute she has with Signs, Inc.

The purpose of this letter to request that (1) Signs, Inc. reverse its earlier decision denying FMLA leave; and (2) Signs, Inc. retract kits threat of termination.

Brief Description of the Situation

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On July 7, 2014, Ms. Duram requested 5 days' leave under the FMLA to accompany her grandmother to her grandmother's sister funeral on July 9, 2014. Linda Duram asked to accompany her grandmother to the funeral since Ms. is responsible for caring for giving her grandmother by providing medications and therapies. Ms. Duram's grandmother cannot care for herself due to a chronic heart disease which will result in her grandmother's death according to Dr. Maria Oliver, who is the grandmother's attending physician.

On July 7, 2014, you denied Ms. Durham's request for several reasons including (1) that Ms. Duram failed to give the requisite 30 day notice; and (2) FMLA does not apply to care for grandparents; and (3) the Act only applies to care provided in a home, hospital, or similar facility, not to travel.

According to the laws of the State of Franklin your denial of Ms. Duram and threat of termination is in violation of the FMLA.

Basis for the Basis for the Claim

Grandmother was Ms. Duram' Parent for Purposes of FMLA

You claim that Grandmother was not Ms. Durham's parent under FMLA and thus did not qualify for the FMLA.

Section 2612(a)(1)(C) of the Family and Medical Leave Act provides that an employee is entitled to leave during any 12 month period . . . to care for [a] parent . . . if such parent has a serious health condition.

Section 2611(7) states that the term parent means . . . an individual who stood "*in loco parentis*" to an employee when the employee was a son or daughter. While the FMLA does not define "in loco parentis," the court in Carson v. Houser Manufacturing, defines *in loco parentis* as a person who intends to and does put himself in the situation of a lawful parent by assuming the obligations incident to the parental relation without going through the formalities of legal process Carson v. Houser Manufacturing.

Grandmother was Ms. Duram's parent. Ms. Duram's parents were in and out of rehab and jail. When her parents were gone, Ms. Duram, lived with her grandmother who paid for their schooling. Even when the parents were home, Ms. Duram continued to live with the grandmother. The grandmother fed her, took her to school, clothed her, and took her to the doctor. Even when the parents returned from rehab or jail, Ms. Duram continued to live with her grandmother. I copy of Ms. Duram's affidavit is attached which sets forth this information.

FMLA Only Applies to Care Provided in A Home, Hospital, etc.

You claim that the FMLA only applies to in home care. This is incorrect pursuant to Shaw v. BG. The court in Shaw provides that there be some actual care, some level of participation in ongoing treatment of a serious health condition. The person giving the care must be in close and continuing proximity to the ill family member. The care must be for a serious health condition Shaw.

Here, Ms. Duram provides care for her grandmother. Grandmother cannot care for herself. She cannot bath herself. She cannot take her medications herself. Ms. Duram does all of this for her. The fact that Ms. Duram does not care for her at home doesn't matter under Shaw.

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Insufficient Notice

You also claim that Ms. Duram did not provide appropriate notice.

This is incorrect pursuant to FMLA(e)(1) and Section 825.303 of the Labor code which provide that an employee may provide notice to the employer as soon as practicable under the facts and circumstances of a particular case.

The grandmother's sister's death occurred on 7/6/2014 and the funeral was on 7/9/2014. Ms. Duram have notice on 7/7/2014. This was appropriate notice given the circumstances.

Specific Settlement Demand.

You are hereby requested to immediately (1) reverse the decision denying FMLA leave to Ms. Duram and (2) Retract the Threat of Termination. Failure to do so will result in legal action against. Signs, Inc.

Sincerely
Henry Fines

Representative Good Answer #2

PERSUADE!!!

- Argue that Linda is entitled to leave
- Ask them to reverse decision re: FMLA leave and retract threat of termination
- Respond to Glenn's arguments
- Submit w/ medical evidence of grandmother and Linda's affidavit
- NOT - whether covered employer or employee

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963 N. Oak Street
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July 29, 2014

Mr. Steven Glenn
Vice President of Human Resources
Signs, Inc.

Dear Mr. Glenn:

My name is Henry Fines, and I am the attorney for Linda Duram, and employee in the Art Department of Signs, Inc. I am writing you today to address the denial of Ms. Duram's first Family and Medical Leave Act (FMLA) request, as

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well as her recent probation and possible future termination. I am also writing in the hopes that we may find a solution that is acceptable and satisfactory to both Ms. Duram and your company.

As I understand, on July 7, 2014, first thing in the morning, Ms. Duram requested five days' leave under the FMLA via email to you for the purpose of accompanying her ailing grandmother to her sister's (Ms. Duram's great aunt's) funeral. Ms. Duram's great aunt had passed away only the previous day, and the funeral was to take place in just two days' time (on Wednesday, July 9, 2014). This request was subsequently denied via by you for four reasons outlined below, though Ms. Duram was permitted to take two vacation days and reminded of company disciplinary policies. After her absence of five days, Ms. Duram received an email addressing her unaccounted three days of absence, denying her pay for three days, placing her on probation, and threatening termination for a future instance of misconduct.

At this point, Ms. Duram is considering her options to address this situations, and I have gone over the factual and legal records applicable in this situation. Based on the four reasons proffered in your email of July 7, 2014, it appears that Ms. Duram was in fact entitled to FMLA leave. As you may know, an employee may be entitled to up to 12 workweeks of total leave per year "[i]n order to care for the . . . parent[] of the employee, if such . . . parent has a serious health condition." 29 U.S.C. § 2612(a)(1)(C). For your convenience, I have addressed each justification for the denial in turn.

1) Grandparents are not covered

Under 29 U.S.C. § 2611(7), a "parent" may mean "an individual who stood in loco parentis to an employee when the employee was a son or daughter." As confirmed by the U.S. Court of Appeals for this jurisdiction, a "son or daughter" under the FMLA can mean "a child of a person standing in loco parentis, who is (A) under 18 years of age." See 28 U.S.C. § 2611(12); *Carson v. Houser Manufacturing, Inc.* (15th Cir. 2013). In *Franklin*, "in loco parentis" may cover a grandparent so long as that grandparent "intends to and does put himself in the situation of a lawful parent by assuming the obligations incident to the parental relation without going through the formalities of legal process." *Carson v. Houser Manufacturing, Inc.* (15th Cir. 2013). Looking at Ms. Duram's age at the time when her grandmother began raising her, the degree of dependence on her grandmother during her childhood, and the amount of support her grandmother provided (see *id.*), it is clear that her grandmother would be deemed to stand *in loco parentis* as Ms. Duram's parent.

Ms. Duram's situation is more analogous to *Phillips v. Franklin City Park District*, as outlined in *Carson*, rather than to the situation in *Carson* itself. Similar to the child in *Phillips*, Ms. Duram was very young when her grandmother began caring for her full time--only six years old, as compared to a three-year-old in *Phillips*. Unlike the child in *Carson*, who lived primarily with his brother during his final years of infancy after his parents passed away when he was 15, Ms. Duram was raised by her grandparents from the age of six onward. See Affidavit of Linda Duram. During this time, Ms. Duram's parents were frequently incarcerated or absent due to their drug abuse problems, maintaining sole custody of Ms. Duram for only six months. See *id.* Even when her parents were living with her in her grandparents' home, Ms. Duram was primarily cared for by her grandparents. See *id.* It is certainly true that Ms. Duram's parents did not relinquish formal parental rights, nor did her grandparents ever adopt her. See Affidavit of Linda Duram. However, as the court noted in *Carson*, a grandparent can be deemed to stand *in loco parentis* even if the child has a living parent who has not relinquished parental rights and the grandparent does not formally adopt the child.

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Thus, Ms. Duram's grandmother may be deemed her "parent" for FMLA purposes, and care of her would be covered by the Act.

2) Act does not apply to travel, but only care in a facility

The FMLA permits employees to take leave to care for ailing family members, particularly those suffering under a serious health condition. The FMLA defines a "serious health condition" in part as "an illness, injury, impairment, or physical or mental condition that involves . . . continuing treatment by a health care provider." 29 U.S.C. § 2611(11)(B). The attached letter from Dr. Oliver--and accompanying medical records--demonstrate that Ms. Duram's grandmother (Emma Batson) is suffering from a chronic condition of congestive heart failure. See Oliver Letter. She is being treated continuously for both her physical ailments and depression, and she is unable to care for herself on a daily basis. See *id.* The FMLA does not require that the individual be cared for in a facility--rather, an individual undergoing continuous treatment by a qualified provider may be covered. See CFR 29 § 825.113(a). Ms. Batson's condition would be deemed a "chronic condition" as it required treatment for an extended period of time.

Additionally, to "care for" an ailing parent, an employee seeking leave must "be in close and continuing proximity to the person being cared for, and . . . offer some actual care to the person with a serious health condition." *Shaw v. BG Enterprises* (15th Cir. 2011). The court in *Shaw* explained that: "If the employee seeks leave to offer psychological care to the person with a serious health condition, the ill person must be receiving some treatment for a physical or psychological illness." *Id.* Unlike the plaintiff in *Shaw*, Ms. Duram was in close and continuing proximity to her grandmother during the travel and the funeral, and Ms. Duram both provided care and offered psychological comfort to her grandmother. See *id.* Thus, the travel in this case would be covered by the FMLA because Ms. Duram was caring for her grandmother throughout.

3) Act does not apply to funeral

Although Ms. Duram herself may not have been entitled to receive FMLA leave for the sole purpose of attending her great aunt's funeral, as "care must be given to a living person" during the leave (See *Shaw v. BG Enterprises* (15th Cir. 2011)), she was entitled to attend the funeral alongside her grandmother as her grandmother's caregiver and companion. As discussed above, she was caring for her grandmother, as defined by the Act, during the funeral itself and travel to and from.

4) Did not give 30 days' notice

Although 30 days' notice may be required for foreseeable leave, particularly when the leave is for the birth or care of an employee's child (see 29 U.S.C. § 2612(e)(1)), employees may give less notice for unforeseeable FMLA leave. See CFR 29 § 825.303. Here, Ms. Duram gave notice "as soon as practicable," first thing in the morning after she learned of the death of her great aunt. See *id.* In her written notice, she provided information about her grandmother's illness, the need for care, and all other information required by the FMLA and CFR guidelines.

As the analysis above indicates, Ms. Duram's request for FMLA leave was wrongfully denied on all four grounds. Although Ms. Duram may be able to file a claim of interference based on this denial, she would prefer to

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resolve things peaceably and quickly with Signs, Inc., as she values her position and your company. Thus I propose: 1) that Ms. Duram's probation be withdrawn; and 2) that the email threatening termination for future acts be withdrawn.

Please let me know of your company's intentions as soon as practicable. On behalf of Ms. Duram, I sincerely appreciate your continued cooperation, and I look forward to the possibility of reaching a satisfactory solution as soon as possible.

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Regards,

Henry Fines

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