

Maryland State Board of Law Examiners
BOARD'S ANALYSES FOR THE JULY 2014 MARYLAND GENERAL BAR EXAM

Notice: The General Bar Exam Board's Analysis consists of a discussion of the principal legal and factual issues raised by each question on the Maryland general bar essay test. It is prepared by the Board. The Board's Analysis is not a model answer, nor is it an exhaustive listing of all possible legal issues suggested by the facts of the question.

Board's Analysis for Maryland Essay No. 1

(1) What claims may be brought against Donald?

If Will is found negligent for his actions (i.e., he had a duty to drive in a safe manner, he breached the duty by speeding, and Maya and Lillian were harmed as a result of his actions), Maya and Lillian may be able to bring a claim against Donald for negligent entrustment of his vehicle to Will. Section 390 of the Restatement, 2nd, Torts, provides as follows:

One who supplies directly or through a third person a chattel for the 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.

Maryland has adopted the Restatement's approach to negligent entrustment. See, *Moore v. Myers*, 161 Md. App. 349, 868 A.2d 954, 964, 966 (2005). Donald would be liable for negligent entrustment if he was aware of Will's bad driving record and the fact that he was sleepy, and could have foreseen that a negligent act would occur when he allowed Will to drive his car. *Curley v. General Valet Services, Inc.*, 270 Md. 248, 311 A.2d 231, 241 (Md. 1973). Under the facts, Maya and Donald had knowledge of Will's abysmal driving record, and Donald knew Will was a fairly inexperienced driver. He also should have recognized that Will was sleepy, yet Donald still goaded him to drive faster. Thus, Donald may be liable if these facts led to the accident.

There is also a rebuttable presumption that the driver's negligence may be imputed to the owner of the vehicle who was present in the car at the time of the negligent act. See, *Bowser v. Resh*, 170 Md. App. 614, 907 A.2d 910 (2006); *Nationwide Mut. Ins. Co. v. Stroh*, 314 Md. 176, 550 A.2d 373 (1988) Donald was present, he owned the vehicle, and he advised Will to speed up. If Will was negligent in speeding and failing to stop and that negligence is deemed to be the cause of the accident, Donald will also be found negligent under this theory, absent proof of facts that exonerate him.

Donald may also be found negligent under principles of agency. Agency may be shown since the purpose for the journey benefitted Donald and Donald requested that Will drive. See, *Slutter v. Homer*, 244 Md. 131, 223 A.2d 141 (1966). Moreover, "the doctrine is not limited to an employer-employee relationship, but covers any agency relationship, paid or voluntary." *Edwards v. Mayor & City Council*, 176 Md. App. 446, 462, 933 A.2d 495 (2007)

Will could attempt to sue Donald for contributory negligence as a result of Donald's commanding him to "speed up". As owner of the vehicle Donald had a duty to see that it was driven in a safe manner, and breached the duty by encouraging a sleepy, inexperienced driver to speed.

Maryland State Board of Law Examiners
BOARD'S ANALYSES FOR THE JULY 2014 MARYLAND GENERAL BAR EXAM

(2) What defenses may Donald raise in response?

The facts do not provide any defense for Donald to claims brought by Lillian. Thus, if Will is found liable for negligence, and Donald is liable for any of the claims noted, *supra*, Donald will be liable to Lillian.

However, Donald may have a defense to any claim brought by Maya. A passenger, such as Maya, may be found to have assumed the risk of injury. The defense of assumption of the risk rests upon plaintiff's consent to the conduct and "[w]hen the plaintiff enters voluntarily into a relation or situation involving obvious danger, he may be taken to assume the risk, and to relieve the defendant of responsibility. The court will look at the totality of the facts (Maya voluntarily chose to ride with a driver such as Will – one who speeds often, has had his license for a relatively short period, and is sleepy) and could find that Maya assumed the risk of the accident. It is unlikely that Maya was contributorily negligent for her injuries, however, since she was not the owner of the vehicle and was not in control thereof. *See, Gellerson v. Rasins*, 248 Md. 75, 234 A.2d 758 (1968).

Finally, if Will is successful in showing negligence on Donald's part, any lawsuit brought by him should fail since Will had the last clear chance to avoid the accident. *See, Kassama v. Magat*, 368 Md. 113, 792 A.2d 1102 (2002)

(3) May Donald bring any claim against Will?

If he is determined to have any liability for the car accident and injury to Maya and/or Lillian, Donald could bring an action against Will requesting indemnification or contribution. If Donald is found negligent solely under an agency theory, Will must indemnify him for any damages imposed, since Will is the person that drove in an unsafe manner that was the proximate cause of Lillian and Maya's injury. *Pulte Home Corp. v. Parex, Inc.*, 403 Md. 367, 942 A.2d 722 (2008) If Donald is found negligent for his actions, he can seek contribution from Will.

Maryland State Board of Law Examiners
BOARD'S ANALYSES FOR THE JULY 2014 MARYLAND GENERAL BAR EXAM

Board's Analysis for Maryland Essay No. 2

Jerry's duties, as a warehouse account manager do not include the duties listed in Section 3-405(a)(3) such as, to sign or indorse instruments on behalf of the Widgets, depositing company checks, or posting the amounts of checks payable to Widgets to the accounts of the drawers of the checks. Here, Jerry duties involved tracking and taking inventory of widget supplies and placing orders for more supplies through the company's requisition unit. Accordingly, he will not be deemed entrusted with "responsibility" regarding the check under Section 3-405(a)(3), and Section 3-405(b) does not apply as the item is not properly chargeable against Widgets. As a result, Widgets could assert that the indorsement was forged and bring an action for conversion against Alpha Bank as the depository under Section 3-420 if its account is not re-credited. However, Section 3-406 might still apply to this case. The issue would be whether Widgets was negligent in safeguarding the check. If Widgets was negligent in safeguarding the check, then it will be precluded under 3-406(a) from asserting the alteration or the forgery against Alpha Bank. However, under 3-406(b), if Alpha itself failed to exercise ordinary care in depositing or paying the instrument and that failure substantially contributed to Widget's loss, the loss is allocated between Widgets and the bank to the extent to which the failure of each to exercise ordinary care contributed to the loss. Under Section 3-404(c), deposits in a depository bank in an account in a name substantially similar to that of the employer is the equivalent of an indorsement in the name of an employer. This, however, should lead to a discussion regarding whether Alpha Bank's failures led to Widgets Inc.'s damages. Here, Alpha Bank opened an account in the name "Widgets Co." without any documentation, to deposit checks payable to "Widgets Inc.," a nationally known company. The failure to exercise ordinary care as defined in Section 3-103(a)(7) is to be determined in the context of all the facts by a trier of fact. The burden of proving Widget's failure to exercise ordinary care under 3-406(a) is on the person asserting the preclusion, the bank. Under 3-406(b), the burden of proving failure of the bank to exercise ordinary care is on the person precluded, Widgets.

Maryland State Board of Law Examiners
BOARD'S ANALYSES FOR THE JULY 2014 MARYLAND GENERAL BAR EXAM

Board's Analysis for Maryland Essay No. 3

A. The evidence of the two prior fires is admissible to show notice of the clogging and its dangerous nature. *Southern Management Corporation v. Mariner*, 144 Md. App. 188 (2002). The Court of Appeals has held that "...evidence of prior accidents or defects [is] admissible, not only to show notice, but as bearing on the dangerous nature or tendency of the place or appliance involved in the current accident." *Locke v. Sonnenleiter*, 208 Md. 443 at 451 (1955). See J. Murphy, *Maryland Evidence Handbook* §508(A)(3)(4th ed. 2010).

In order to present "...evidence as to past accidents, tendencies or defects," there must be a "...similarity of time, place and circumstance" and, in the discretion of the trial court, the evidence must not "...cause an unfair surprise or confusion by raising collateral issues." *Locke*, 208 Md. At 447-48. The requisite similarities existed: all three fires occurred in a four-month period in the same apartment and arguably due to the same circumstance. The prior fire evidence went directly to the point that the clogging was dangerous in nature. Paula argued that the clogging was the ultimate cause of the fires. Therefore, that different drying units were attached to the clogged hose is of no consequence because Paula is not asserting that the drying unit was in *any* way defective, but rather that any drying unit attached to the exhaust hose in 2B was a hazard.

B. Evidence of the replacement of dryers is also admissible. It is relevant and suggests another cause. A subsequent remedial measure is one "which, if in effect at the time of the event, would have made the event less likely to occur," and evidence of a subsequent remedial measure is "not admissible to prove negligence or culpable conduct in connection with the event." Md. Rule 5-407(a). In this case, replacement of a dryer after a fire on each of two previous occasions was a measure in effect at the time of the fire that injured Paula and not a subsequent remedial measure. It was the clogged *hose* that was the alleged cause of that fire.

C. Evidence that no fire had occurred in other apartments may be admissible. The fact that no fire has occurred in any of the apartments who have used identical appliance during the five years since the appliances were installed would not in itself be conclusive as against the theory of Dependable's negligence, but it may properly be considered unless its relevancy is outweighed by other factors. *Carlin v. Krout*, 142 Md. 140 (1923). See, J. Murphy, *Maryland Evidence Handbook* §508(A)(4)(4th ed. 2010).

D. The missing witness instruction is only applicable to situations in which the testimony is material, noncumulative, and the witness is "peculiarly available." *Bing Fa Yuen v. State*, 43 MD. App. 109 at 114 (1979). "The missing witness instruction is not appropriate where the witness is equally available to the other side." *Hayes v. State*, 57 MD. App. 489 at 494-95 (1984). For the instruction to be warranted, the missing witness must be in the "peculiar control" of one party. *Id.* A witness will be presumed "equally available" unless the complaining party has exhausted the available avenues to produce the witness. *Bing Fa Yuen v. State*, 43 Md. App. 109 at 112 (1979). Dependable deposed the second expert, was in possession of the witness' contact information, and could have subpoenaed the witness, or if unavailable, could have used his deposition. See Md. Rule 2-419(a)(3).

Maryland State Board of Law Examiners
BOARD'S ANALYSES FOR THE JULY 2014 MARYLAND GENERAL BAR EXAM

Board's Analysis for Maryland Essay No. 4

The answer should address the possibility that the neighbors have acquired an easement over the path.

An easement is the right to access another's land for a limited purpose, and generally arises either by express grant or implication. *Rogers v. P- M Hunter's Ridge, LLC*, 407 Md. 712, 967 A. 2d 807 (2009). An express easement is one set forth in a written conveyance. An easement by implication arises when a tract of land is divided into two or more lots and an easement is created to benefit one (the dominant estate).

The facts do not state that Joe Smith expressly conveyed an easement to the neighbors. Therefore the answer should address whether the neighbors have an easement by implication arising from necessity, estoppel or prescription.

Easement by necessity:

An easement by necessity may arise when a tract of land is conveyed and it lacks access to a public right-of-way, except over the grantor's land. *USA Cartage Leasing, LLC. V. Baer*, 429 Md. 199, 55 A.2d 510 (2012), citing *Stansbury v. MDR Development, LLC.*, 390 Md. 476, 487, 889 A. 2d 403 (2006) The facts indicated that the neighbors had access via Second Street, thereby negating a finding of necessity.

Easement by estoppel:

An easement by estoppel may occur when the owner of the property "stands by and sees another making expenditures for improvements to property to which he has some claim or title, and does not give any notice or objection...." *Greenwalt v. McCardell*, 178 Md. 132, 138, 12 A. 2d 522 (1940). The facts do not indicate that the neighbors made any improvements to the path. Accordingly, a court may not find that an easement by estoppel exists.

Easement by prescription:

The neighbors most likely acquired an easement by prescription. When the public claims a right over private land, it must show an adverse, exclusive and uninterrupted use for the statutory period of twenty years. *Clickner v. Magothy River Ass'n.*, 424 Md. 253, 278 (2012); *Mt. Sinai Nursing Home, Inc. v. Pleasant Manor Corporation*, 254 Md. 1, 253 A.2d 915 (1969).

The use by prescription must be adverse. A use is adverse if it is the same use the owner would exercise over the land without permission. *Clayton v. Jensen*, 240 Md. 337, 214 A.2d 154 (1965). Adversity may be presumed (but is rebuttable), so long as the easement is not over wild or unoccupied land. *Leekley v. Dewing*, 217 Md. 54, 141 A. 2d 696 (1958). If permission is granted, the use cannot be considered adverse.

It does not appear from the facts that Joe Smith permitted use of the path. It is clear that for 18 years of his ownership the path was used openly by the neighbors and was traversed by a few vehicles. Given this use it is unlikely that the path was wild or unoccupied. Thus, the presumption would be that the use of the path during this period was adverse.

When the property was sold to the church the use of the path continued. If the use had also remained adverse for two more years this time could be "tacked" onto the 18 years to fulfill the statutory period of twenty years of use. *Clayton v. Jensen*, 240 Md. 337, 214 A. 2d 154 (1965). However, the facts go against

Maryland State Board of Law Examiners
BOARD'S ANALYSES FOR THE JULY 2014 MARYLAND GENERAL BAR EXAM

the neighbors at this point since an agent of the Church (the new owner) granted permission for use of the path.

Since the use of the path was not adverse for the full 20 years, the neighbors may not be successful in their attempt to prove the existence of an easement by prescription.

Conclusion

Once the neighbors were given permission to use the path, they acquired a license to do so. A license is revocable at the pleasure of the grantor. *Clickner v. Magothy River Ass'n., Inc.*, 424 Md. 253, 35 A. 3d 464 (2012). Father Jones clearly revoked the neighbors' license. The neighbors should be advised that if they continue to use the path they would be trespassers.

Maryland State Board of Law Examiners
BOARD'S ANALYSES FOR THE JULY 2014 MARYLAND GENERAL BAR EXAM

Board's Analysis for Maryland Essay No. 5

A. A warrant is presumed to be valid. With a warrant the burden of production of evidence is on the State and the burden of persuasion on the Defendant. In a warrantless search, the Defendant enjoys a presumption as to its invalidity and the State has the burden to show that the search was justified. To show that the search was justified, it must fall within a recognized exception for a warrantless search. The standard of proof is a "preponderance of the evidence."

Workplace search and seizure situations are heavily fact-based in reaching a final determination. The reasonableness of the search requires the Court to examine "the totality of the circumstances." To be successful in a warrantless search situation, Joe must show that he has 1.) an actual and subjective expectation of privacy and 2.) he must prove that the expectation is one that society is prepared to recognize as reasonable. *Corbin v. State*, 428 Md. 488 (2012).

(NOTE - An applicant who addressed the expectation of privacy in calls B and C rather than in A received the same credit as if the response appeared in call A.)

B. Here, there was a search and seizure by a government agent because local law enforcement conducted the search. The facts indicate that Joe's desk is in a public, well-traveled area of the workplace. In fact, employees and non-employees have access to this area. Additionally, another worker is assigned at least once each month and sometimes twice to use this desk. Also, as a quality control officer for the State of Maryland, one could argue that Joe has a lower expectation of privacy at his job. Thus, Joe does not have an actual or subjective expectation of privacy, as the desk is in an open and exposed area and additionally, he does not use the desk solely as his own. The State agency would have the right search the desk with or without the police present. The question becomes whether Joe has an actual or subjective expectation of privacy in the lunch bag with his name on it. Regardless of their conclusion as to the privacy issue, the applicants are expected to support their conclusion based on their view of the "lunch bag." For example, if the contents of the lunch bag are visible, or if the lunch bag was simply open, it would offer support for a conclusion that there is no reasonable expectation of privacy. However, if the lunch bag were sealed and the contents could not be viewed without unsealing it, it would offer support for a conclusion that there was a reasonable expectation of privacy. Thus, an applicant may draw either conclusion provided that there is a rational basis for it.

C. The facts indicate Joe stores personal items and work items in his locker and the locker is owned by the employer and located at the workplace. The Supreme Court has said that the reasonableness of a search is determined by assessing, on the one hand, the degree to which it intrudes upon an individual's privacy and, on the other, the degree to which it is needed for the promotion of legitimate government interests. (*Corbin, supra*, page 7.) Thus, he probably does not have an actual or subjective expectation of privacy as to the locker even though he has his own lock on the locker. However, he does have a reasonable expectation of privacy as to his backpack and the contents inside. *O'Connor v. Ortega*, 480 US 709 (1987). This especially so, since the backpack was zipped closed.

As to the evidence found in the backpack, the Motion should be granted.

Maryland State Board of Law Examiners
BOARD'S ANALYSES FOR THE JULY 2014 MARYLAND GENERAL BAR EXAM

Board's Analysis for Maryland Essay No. 6

A. The Court should deny Center's objection. Adler's request for production of documents to preserve evidence was not premature. The purpose of Rule 2-404(a)'s purpose is limited to allowing for the preservation of evidence where the evidence is in danger of loss or destruction prior to the actual filing date of a civil action. The preservation of the evidence is clearly done in anticipation of an action to be filed later, not an action that becomes a precondition of seeking to invoke the rule.

B-1. The Center should raise the statute of limitations with regard to both Adler's claims of contract and conversion, and also to her claim or unjust enrichment.

The contract and conversion claims are governed by §5-101 of the Courts and Judicial Proceedings Article, which provides that a civil action shall be filed within three years from the date that it accrues. Adler's contract and conversion claims therefore accrued no later than January of 2008. The unjust enrichment claim is an equitable claim but as it is analogous to the legal remedies of breach of contract and conversion it is similarly barred if not brought within the applicable statute of limitations period.

B-2. The advice to the trial should be to grant Center's motion to dismiss due to the statute of limitations defect noted in B-1., above.

B-3. The filing of a notice of deposition to preserve evidence should not have any effect on the court's ruling. Adler's filing under Rule 2-404 placed the Center on notice of her claims and that she intended to file claims against it. Her Rule 2-404 notice is not, however, a complaint pursuant to Rule 2-404 or other rules under the Maryland Rules.

Rule 2-404(a)(2) requires that the notices required under Rule 2-412 and by Rule 2-243 shall include "a description of the subject matter of the expected action, a description of the person's interest in the expected action." Further, this subsection of the Rule says that the notice, request or motion shall include a statement that the information sought may be used in a later action.

The term's "expected" and "later" actions are not consistent with a contention that the filing of a notice under Rule 2-404 constitutes filing an action.

Under Rule 2-101(a) "a civil action is commenced by filing a complaint with a court." The notice under Rule 2-404 is not a complaint in that it does not seek a judgment against the Center but the issuance of a subpoena duces tecum. Adler's filing of the Notice under Rule 2-404 is therefore not a complaint timely filed.

Rule 2-404(a)'s purpose is limited to allowing for the preservation of evidence where the evidence is in danger of loss or destruction prior to the actual filing of a civil action. Permitting the request to preserve evidence to toll the statute of limitations would not be consistent with the purposes of statutes of limitations. Statutes of limitations allow individuals the ability to plan for the future without the indefinite threat of potential liability. Statutes of limitations avoid problems associated with extended delays in bringing a suit, including missing witnesses and the loss of evidence.

Maryland State Board of Law Examiners
BOARD'S ANALYSES FOR THE JULY 2014 MARYLAND GENERAL BAR EXAM

Board's Analysis for Maryland Essay No. 7

A. BILL'S INTEREST IN THE THREE-ACRE LOT:

The property was deeded to Amy by her father one-month after the parties' marriage. It was a gift from father to daughter and as such it is initially excluded as a marital asset. Although acquired during the marriage, its genesis was a gift from a third party and therefor initially excluded as a marital asset (See Family Law Article Section 8-201(e)(3)(ii)). Although Amy kept the property in her name during the marriage, marital earnings were used to certify the property as a building lot, which under the facts improved the property's value.

Since the lot is in Amy's name alone, Bill cannot force its sale and the Court cannot order it sold in a contested divorce. However, Bill can claim that it is partially marital property because it was improved with marital earnings and seek a monetary award due to the inequity created by title being in Amy's name alone. The amount the monetary award generated by Amy's sole ownership would be governed by the Court's assessment of the factors set out in Family Law Article Section 8-205(b). It would appear that Bill could argue for a \$2,000.00 monetary award reflecting one-half of the cost of the marital funds expended in certifying the property or possibly for \$5,000.00 representing one-half of the increase in value due to the marital effort at certifying the property. (See generally, *Innerbichler v. Innerbichler* 132 Md. App. 207, 752 A2d. 291 (2000)). The initial value of the gift (\$10,000.00) would be non-marital.

B. THE ISSUE IS WHETHER THE COST OF PRIVATE SCHOOL TUITION FOR SHILOH SHOULD BE INCLUDED IN ANY CHILD SUPPORT AWARD THE COURT MIGHT MAKE IN THIS SITUATION.

The facts suggest that the child is in the physical custody of Amy and that Amy earns \$40,000.00 and Bill earns \$60,000.00 annually. Bill, under the Maryland Child Support Guidelines, would generally be responsible for 60% of the monthly child support obligation. If the tuition is included in the child support obligation, Bill would generally be responsible for \$600.00 of the monthly amount and Amy would be responsible for \$400.00 of the monthly amount. There generally would not be a circumstance where the Court would require Bill to bear the entire burden of the tuition.

Whether the Court should include the cost of Shiloh's private school tuition in calculating child support, is the real issue. Under Family Law Section 12-204(i)(1) in determining child support a trial Judge may order payment for any expenses for attending private school to meet the particular educational needs of a child. In deciding whether to do so, the Court is supposed to look at the following non-exclusive factors:

1. The child's educational history (here she has attended kindergarten, first and second grade in private school and that is the only exposure she has had).
2. The child's performance in private school (here an average student).
3. Family history (no comparable family history as there are no other children).
4. Whether the parents had made the choice to send the child to private school prior to the divorce (here a three year history of that decision).
5. Any particular factor that may exist in a specific case that might impact upon the child's best interest (none suggested under the facts).

Maryland State Board of Law Examiners
BOARD'S ANALYSES FOR THE JULY 2014 MARYLAND GENERAL BAR EXAM

6. The parent's ability to pay for the schooling (the family unit has income of \$100,000.00) (*See generally, Fuge v. Fuge*, 146 Md. App. 148 at 178 (2002); *Witt v. Ristaino*, 118 Md. App. 155, 170-171 (1997)).

In this case the Court would not generally address the need to attend private school as she had been attending for three years. The issue for the Court would be to determine the need to continue to attend private school. The parties had agreed to send Shiloh to private school and the Court could infer they had done so because of her particular educational needs. She was an average student. With a family income of \$100,000.00 and only one child to educate, it is likely that Bill would be responsible for 60% of the private school tuition in the calculation of child support under the Maryland Child Support Guidelines formula.

Maryland State Board of Law Examiners
BOARD'S ANALYSES FOR THE JULY 2014 MARYLAND GENERAL BAR EXAM

Board's Analysis for Maryland Essay No. 8

a. The best argument for Widow is that the contract she signed is void because she signed it under physical duress. She can assert that Grandson's firm hand on her shoulder and threatening words compelled her to sign the contract despite her clearly expressed opposition to dealing with Energy. In *U.S. for Use of Trane Co. v. Bond*, Chief Judge Murphy, on behalf of the Court of Appeals of Maryland, declared "To the extent that the second Restatement suggests in §174 that only physically applied force to directly compel the victim to execute the document will suffice to vitiate a contract as to innocent third parties, we reject such an inflexible rule. Rather, we think it is presently the law in Maryland that a contract may be held void where, in addition to actual physical compulsion, a threat of imminent physical violence is exerted upon the victim of such magnitude as to cause a reasonable person, in the circumstances, to fear loss of life, or serious physical injury, or actual imprisonment for refusal to sign the document. In other words, duress sufficient to render a contract void consists of the actual application of physical force that is sufficient to, and does, cause the person unwillingly to execute the document; as well as the threat of application of immediate physical force sufficient to place a person in the position of the signer in actual, reasonable, and imminent fear of death, serious personal injury, or actual imprisonment." *U.S. for Use of Trane Co. v. Bond*, 322 Md. 170, 586 A.2d 734 (1990).

Energy can argue that neither Grandson's firm hand on Widow's shoulder nor Grandson's words were sufficient to cause a reasonable person, in the circumstances, to fear loss of life or serious physical injury for refusal to sign the contract. In that case, the contract, at most, may be voidable rather than void. If the contract is not void, but at most only voidable, it may not be "vitiating as against an innocent third party." *Id.* at 183, 586 A.2d 734.

Energy can argue that it is an innocent third party because it was not involved in the infliction of the alleged duress and had no knowledge of it. Energy's representative, having left the Widow's home prior to her signing, did not have any reason to believe that Widow was under a physical compulsion or threat when she signed the contract. Energy had no involvement in the coercion exercised by Grandson. Therefore, if the fact finder determines that the contract is merely voidable, Widow will not be able to avoid the contract with Energy.

b. Widow can argue that the incorrect up-front payment resulted from a mutual mistake of fact and that she, therefore, is entitled to reformation of the contract to reflect an upfront payment of \$100,000.

Equity has jurisdiction to reform a written instrument "where there has been a mutual mistake—that is, where there has been a meeting of the minds—and an agreement actually entered into, but the instrument, in its written form, does not express what was intended by the parties thereto." *Moyer v. Title Guarantee Company*, 227 Md. 499, 177 A.2d 714 (1962), cited in *Kishter v. Seven Courts Community Ass'n, Inc.*, 96 Md. App. 636 at 640, 626 A.2d 993 at 996 (1992). A party seeking reformation of a written instrument must meet a stringent burden of proof. A plaintiff must show clearly and beyond a reasonable doubt the original intent of the parties and the existence of a mistake in the written agreement. *Id.* at 640, 626 A.2d 996.

Widow can meet this high standard of proof. She can point to the contract's inclusion of the correct metes and bounds description to show that the contract is intended to cover the entire acreage of her farm. Furthermore, the contract cites the agreed per acre fee of \$50. Therefore, if Widow produces evidence that her farm in fact comprises 2,000 acres, she can show, "clearly and beyond a reasonable doubt", that

Maryland State Board of Law Examiners
BOARD'S ANALYSES FOR THE JULY 2014 MARYLAND GENERAL BAR EXAM

the correct up-front payment is \$100,000 and that the \$75,000 payment cited in the contract constitutes a mutual mistake of fact.

In effect, Widow will be showing that the written instrument memorializing the parties' agreement contains mutually inconsistent terms which can be reconciled only by reforming the term which does not reflect the parties' original intent. The metes and bound description of the farm is correct; the contract contains on its face the agreed price per acre (\$50) intended by the parties. The \$75,000 payment cited in the contract is inconsistent with these fundamental terms of the agreement, and it is in error because it is based on the Surveyor's incorrect calculation of the acreage of the farm.

Widow, therefore, is entitled to reformation of the written instrument to reflect the intent of the parties, namely an upfront payment of \$100,000.

Maryland State Board of Law Examiners
BOARD'S ANALYSES FOR THE JULY 2014 MARYLAND GENERAL BAR EXAM

Board's Analysis for Maryland Essay No. 9

A. The proclamation for the forfeiture of the charter of the Corporation occurred as a result of the Corporation's failure to file an annual report and to pay its taxes. Therefore, on October 5, 2013, the Corporation was dissolved and ceased to exist as a legal entity. All powers granted to the Corporation in its articles of incorporation or under Maryland law are extinguished, inoperative, null and void, including the power to sue and be sued. *Md. Code Ann., Corps. & Ass'ns* § 3-503; *Dual Inc. v. Lockheed Martin Corp.*, 383 Md. 151, 163, 857 A.2d 1095, 1101 (2004). Under Section 3-515, all assets of the Corporation are automatically transferred to the directors, who act as trustees for the Corporation, solely for the purpose of liquidating and winding-up the affairs of the Corporation. The corporate officers are devoid of authority to act for the Corporation.

The forfeited charter of the Corporation may be revived under *Md. Code Ann., Corps. & Ass'ns*, § 3-512 by filing articles of revival with SDAT under Section 3-507. SDAT may accept the articles of revival only if all annual reports have been filed and all taxes have been paid by the Corporation even for the period during forfeiture. Upon revival, all contracts or other acts done in the name of the Corporation while the charter was void are validated provided they were done within the scope of its charter, and the Corporation is liable for them, and all assets and rights of the Corporation are restored except those sold or divested during the forfeiture period.

B. The Corporation's officers cannot exercise their corporate powers to convey real property during a period when the Corporation's charter is forfeited. The Corporation's officers must take the necessary steps to revive its charter, or alternatively, the directors, acting as trustees for the Corporation, must undertake to liquidate and wind-up the affairs of the Corporation. Since the directors are authorized to carry out the contracts of the Corporation under Section 3-515, a deed should be prepared and executed by the directors, in their capacity as trustees for the Corporation

C. Unless the charter is revived by SDAT and the revived Corporation authorizes payment, John will be personally liable for the invoice signed by him for merchandise during the period of forfeiture. The general operations of the Corporation must cease except for the purpose of winding-up its affairs at the direction of the directors-trustees. Section 3-515, and see also, *Thomas v. Rowhouses, Inc.*, 206 Md. App. 53, 47 A.3d 625 (2012).

Maryland State Board of Law Examiners
BOARD'S ANALYSES FOR THE JULY 2014 MARYLAND GENERAL BAR EXAM

Board's Analysis for Maryland Essay No. 10

Sam's counsel will likely file a motion to suppress the fingerprint and shoe evidence, claiming they were the fruits of an illegal detention in violation of the Fourth Amendment, made applicable to the states by the Fourteenth Amendment. The Fourth Amendment prohibits unreasonable searches and seizures. Here, Sam was approached by the officers well within the curtilage of his home—he was on his porch. See *United States v. Dunn*, 480 U.S. 294 (1987). There apparently was no probable cause to arrest Sam because “the investigators were acting only on a hunch” and they needed “to visit Sam’s home to obtain his fingerprints in order to tie him to the crime.”

In addition, although Sam exclaimed that he would rather go with the police rather than be arrested, such action was not consensual because it was under threat of arrest from the police—who did not have probable cause to arrest. *Hayes v. Florida*, 470 U.S. 811 (1985). Thus, there was no consent to the journey to the police station, and no prior judicial authorization for detaining Sam.

Because there was no probable cause to arrest Sam, no consent to the journey to the police station, and no prior judicial authorization for detaining Sam, the investigative detention at the station for fingerprinting purposes violated his rights under the Fourth Amendment; thus, the fingerprints, shoe, and statements by Sam regarding his shoe, taken at the station were the inadmissible fruits of an illegal detention. *Davis v. Mississippi*, 394 U.S. 721 (1969). The fact that Sam was Mirandized does not change the fact that the evidence was illegally obtained. *Id.* When the police, without probable cause or a warrant, forcibly remove a person from his home and transport him to the station, where he is detained, although briefly, for investigative purposes, such a seizure, at least where not under judicial supervision, is sufficiently like an arrest to invoke the traditional rule that arrests may constitutionally be made only on probable cause. Accordingly, the court should suppress all of the evidence obtained from Sam as a result of the illegal arrest as violative of the Fourth Amendment.

Although the evidence will be suppressed as obtained from Sam without probable cause, Sam's statements to his minister will likely be admissible against Sam. Sam's statements were voluntarily made. More importantly, the minister is not a state agent. The Fifth Amendment protects against compelled self-incrimination, not against voluntary statements and does not apply altogether to statements made to non-government agents not working for law enforcement. While CJP 9-111 prohibits the compulsion of testimony from a religious official, it does not prohibit a religious official from voluntarily providing testimony regarding admissions made to them.

Maryland State Board of Law Examiners
BOARD'S ANALYSES FOR THE JULY 2014 MARYLAND GENERAL BAR EXAM

July 2014 Multistate Performance Test

The MPT Question administered by the State Board of Law Examiners for the July 2014 Maryland General Bar Examination was *In re Linda Duram*. Two representative good answers selected by the Board are included in the July 2014 Maryland General Bar Exam – Representative Good Answers, beginning at page 24. The National Conference of Bar Examiners (NCBE) publishes the MPT Question and the “Point Sheet” describing the issues and the discussion expected in a successful response to the MPT Question. The “point sheet” is analogous to the Board’s Analysis prepared by the State Board of Law Examiners for each of the essay questions. The NCBE does not permit the Board to publish the MPT Question or the “point sheet” on the Board’s website. However, the NCBE does offer the MPT Question and “point sheet” for sale on its website.

An applicant who was **unsuccessful** on the July 2014 examination may obtain a copy of the MPT Question, his or her MPT answer, and the “point sheet” for the July 2014 MPT Question. This material is provided to each unsuccessful applicant who requests, in writing, a copy of their answers in accordance with instructions mailed with the results of the bar examination. The deadline for an unsuccessful applicant to request this material is Tuesday, December 30, 2014.

Anyone other than an unsuccessful applicant may obtain the MPT Question and the “point sheet” only by purchasing them at the NCBE Online Store. Use the following link to access the NCBE Online Store: www.ncbex2.org/catalog/.