Maryland State Board of Law Examiners

FEBRUARY 2017 MARYLAND GENERAL BAR EXAM – REPRESENTATIVE GOOD ANSWERS FOR THE BOARD'S WRITTEN TEST

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MARYLAND ESSAY QUESTION NO. 1

Representative Good Answer No. 1

Question # 1

Part A

There are two contracts found within the fact pattern of part A; sale of home and contract for personal service (painting of house).

1) The first deals with the sale of the home. Here the question is whether or not David is bound by the real property contract orally agreed upon with Owner. Real Property (home in Queen Anne's County) contracts must satisfy the statute of frauds requirement; in that it must be in writing, it must have specific facts as to what is being sold (the property, its location, etc...), value of sale, and it must be signed by both parties. Here the facts show that we do have a written agreement but rather an oral agreement. The agreement does list a price of $200,000 but it is not in writing. David has not taken possession of the property. However, David has requested a substantial change to the property. He has requested painting of the house in a unique color picked by David. Note that part performance does not apply here, even though there is a substantial improvement (so-called) by alleged buyer (painting of house), because there was no payment, and no possession of property by Buyer - David.

However, the owner could argue promissory estoppel, in that the owner detrimentally relied upon the oral agreement. Here the facts show that David promised Owner he would buy the house - orally. Unfortunately, for Owner, her attorney was away for two weeks. Owner must show that she detrimentally relied on David's oral agreement to buy the property by following David's request to paint the house. The owner contracted with a painter at the cost of $5,000. David met with the painter and David picked a unique color. The owner can state that she would never have painted the house a unique purple if she did not believe she was bound by this contract for sale of the house. If no contract is found for the sale of the house because of a statute for frauds argument, owner may be able to recover damages (incidental) for the painting of the house and the repainting of the house - house according to brokers won't sell because of the house's unique color purple.

2) The personal contract between Owner and Painter. Here the question is whether the owner will be bound by the contract between the painter and herself. Here the facts show that the owner signed an agreement for the painter to paint the house. The agreement was for $5,000. The facts do not state but it can be implied that the agreement consisted of David, a third party, selecting the paint for the house. David selects the Paint for the house. The painter painted the house per the wishes of David. There is no breach in contract here. There is valid offer (will you paint my house), acceptance (yes I will paint your house and I did paint the house), and consideration (value for completed job: $5,000). This contract is valid and the owner must try to recover from David and not the painter for the loss of $5,000.

Part B

The question here concerns whether or not owner will be bound to pay the Painter the full contract price. Here the facts show that the owner in GOOD FAITH, states that the painting of the house was not done properly by the painter. The owner then refuses to pay the painter the full price. Painter demands the full value ($5,000) of his work to be paid immediately. Owner mails a check to Painter for $3,000, with a letter stating, "the $5,000 is disputed, and enclosed is $3,000 for full payment for our painting contract." Painter needs money and therefore cashes the check. Here an accord and satisfaction has occurred. There is a good faith dispute to the contract and the work done. The accord is that the owner, based on a good faith dispute, does not believe the job was done correctly, and is now as a result of the "non-perfect work" will only pay $3,000. The painter's satisfaction is that he takes the $3,000 for the work. The painter should have disputed and rejected the $3,000 payment, demanding the $5,000 in full. Unfortunately, the painter is out of luck and will be left with the $3,000 payment.

Representative Good Answer No. 2

PART A

Common Law

This dispute involves the sale of a house and the painting of a house. The common law applies to this dispute.

Sale of House

No writing under the Statute of Frauds

Under the common law, the statute of frauds must be satisfied for the sale of real property. For the statute of frauds to be met, the agreement between the contracting parties must be in writing, be signed by the party to be charged, and identify the land and price.

Here, the statute of frauds is not satisfied because the two parties never placed their agreement in writing.

No partial performance

In Maryland, even if there is no writing that meets the requirements of the statute of frauds, a court may still hold there is a valid contract if the purported buyer is in possession of the house, paid all or part of the purchased price, and/or has made improvements to the property. Two of these requirements must be met.

Here, David did not pay any of the purchase price. David did not take possession of the house. Even if Owner successfully argues that the painting of the house amounts to an improvement, this is only one factor satisfied. Thus, there was no partial performance.

Owner may argue that the $5,000 payment was evidence of payment of part of the purchase price. This argument will fail because Owner made the payment to Painter, not David.

Detrimental Reliance

Under detrimental reliance, a party may argue that they reasonably relied on an agreement, they detrimentally relied on the promise, and the other party should have released that their promise would induce detrimental reliance.

Here, Owner will argue that she only painted her home an unusual color of purple because this is the color David selected. Owner can assert that but for the agreement between herself and David, she never would have selected to paint her house such an odd color. However, a court is probably not going to uphold the existence of a contract for real property on these facts alone. Owner did not suffer a significant harm by painting her house for $5,000. A court will not uphold the oral contract for the sale of real property on this basis.

Paint Job

Contract

A contract exists when there is an offer, agreement, and consideration.

Here, Owner and Painter entered into a valid contract to paint Owners house. Although the contract involves real property, a house, the contract is for painting the house, so common law applies. Painter was obligated to paint Owners house in exchange for $5,000.

David will argue that he was not a party to the contract, so he is not liable. This argument will fail because there was an implied-in-fact contract between himself and Owner to have the house painted. David said that he would not buy the house unless it was painted an odd purple color. Owner had the house painted the color of David's selection. Thus, even if there was no formal agreement between Owner and David that David would reimburse Owner for the paint-job, Owner acted in reasonable reliance and did so. David should have known his action would induce the reliance.

Owner can recover the $5,000 for the paint job.

PART B

Accord and Satisfaction

Usually, an agreement to accept a lower payment after performance is unenforceable. An accord and satisfaction agreement is an exception.

Here, the original contract was for Painter to paint Owner's house for $5,000. Although Painter performed, there was an honest disagreement over whether Painter performed it properly. In an accord agreement, Owner offered to pay $3,000 for the poor paint job. The check clearly stated that it was payment in full. Painter accepted this accord agreement. Thus, there was an accord and satisfaction. Painter cannot sure Owner for the remaining $2,000.

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MARYLAND ESSAY QUESTION NO. 2

Representative Good Answer No. 1

Part A

Under MD Rule 2-322, a motion to dismiss for improper venue is a mandatory motion that must be filed before an answer is filed. Because Donna answered on June 28, 2014, she has waived her right to file this motion on September 1, 2016.

Part B

Under MD Rule 2-403(a), any party to an action may depose a party (though they need not be a party), for discovery purposes and or to use as evidence in the action. Donna is the defendant and may be deposed.

Under MD Rules 2-413(b), a party may be required to attend a deposition where the action is pending or wherever a nonparty is required to attend. Under subpart (a), a nonparty resident of Maryland is required to attend a deposition in their residence county, place of employment or business. Donna is a resident of Maryland, and more specifically, Harford County. She is employed in Harford County as well. Further, the action is pending in Baltimore County. As such, she cannot be compelled to attend a deposition in Carrol County.

Donna must have filed a certificate describing the dispute and the good faith efforts to resolve the dispute with Paula's attorneys, and the inability to reach a conclusion. If she does this, the court may consider the issue under 2-431.

Under 2-403 (a), as applicable to the case at hand, any party from whom discovery is sought may file a a Motion for Protective Order asking, after showing good cause, that the court protect the party from oppression, annoyance, or under burden by ordering that discovery not be had, or discovery may be had only by a different method, or in a designated time or place. Here, Donna can argues discovery cannot be had in Carroll County as discussed above. They tried to resolve the dispute in good faith and could not conclude it. The court should rule in favor of Donna that discovery not occur in this manner, and instead, in accordance with the rules.

Part C

Donna's Motion

Under 2-533(a), any party may file a motion for new trial within 10 days after entry of judgement. Here Donna filed the motion on December 10, 2016, within ten days of the judgement being entered on December 1, 2016.

Under subpart(c), the motion must contain any and all grounds for the motion being granted and the judge may grant it as to some or all issues. There appears to be no restriction on the grounds or a new trial if filed within the time period in Rule 2-533. This code section does not appear to have a restriction on evidence introduced that could have been discovered by due diligence, similar to that of Rule 2-535(c) discussed below. This means that Donna's lack of due diligence will not impact the motion. The standard for granting a new trial is "on the weight of the evidence" and the court may grant the motion based on the new evidence's value and other considerations entertained by the court.

If a new trial is not granted under 2-533, a motion for a new trial may be granted on the grounds of newly discovered evidence that could not have been discovered by due diligence, within 30 days of judgement under 2-535. Under 2-535 this allows the court revisory power of the judgement and power to grant a new trial. This

grounds will not apply to Donna as she could have easily discovered the evidence with due diligence if she simply looked at her own files.

Paula's Motion

Under 2-535, a court may revise a judgement. Under subpart (d) a clerical mistake in judgements or other parts of the record may be corrected by the court upon motion of any party. On January 14, 2017, Paula moved to have the $10,000 Error fixed to reflect the real judgement of $100,000. This is after the usual 30 days allowed for general court revisory power, but because it is a clerical mistake, the motion should be granted.

Representative Good Answer No. 2

PART A

Donna's Motion to Dismiss based on Improper Venue

Mandatory defenses per Md. R. 2-322(a)(2) the defense of improper venue shall be made by motion to dismiss filed before the answer, if the answer is required, or else the defense is waived. Here, Donna filed an answer to her breach of contract suit on June 28, 2014, then filed a motion to dismiss for improper venue on September 1, 2016. The motion to dismiss was not filed prior to the answer, therefore the defense of improper venue is waived. This motion should be *DENIED* by the Court.

PART B

Donna's Motion for a Protective Order

Protective Orders per Md. R. 2-403(a) allows a person from whom discovery is sought, or person named in an item sought to be discovered, and for good cause shown, the court may enter any order that justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense. Here, Donna wishes to have a protective order granted because she refuses to appear for the deposition in Carrol County and insists that the deposition must occur in Harford County because she resides in Harford County, both parties' attorneys have made efforts to resolve this issue and have been unable to do so.

Place of Deposition per Md. R. 2-413(a)(1) non-parties to a suit may be required to attend a deposition in this state only in the county in which the person resides or is employed or is in business, or at any other convenient place fixed by order of court, or within 40 miles of service. Here, Donna is a party to the suit and is covered by subsection (b) of this rule.

Md. R. 2-413(b) states a party may be required to attend a deposition wherever a nonparty could be required to attend or in the county in which the action is pending. Here, there is an action pending in Baltimore County, and Donna lives and works in Harford County, and this is Donna's only grounds for the protective order.

The court should grant Donna's motion and require the deposition either occur in Baltimore County or in Harford County because Donna is a party to the suit and has not shown any undue burden or expense

PART C

Donna's Motion for New Trial

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A motion for a new trial is timely if made within ten days after entry of judgment. Here, the Court entered judgment against Donna on December 1, and Donna made her request on December 10, 2016. The filing is timely.

Grounds for new trial must be stated in the motion. Here, Donna wants to introduce evidence that she had in her possession at the time of trial and failed to provide to her attorney.

Newly discovered evidence may be presented on a motion of any party filed within 30 days after the entry of judgment and the court may grant the new trial along this ground if the evidence could not have been discovered by due diligence in time to move for a new trial pursuant to 2-533. Here, Donna's timely new trial motion has been filed, Donna has possession of evidence that would have completely exonerated her during trial but failed to provide the information to her attorney.

The Court should deny Donna's motion.

Paula's Motion to Modify the Judgment

Clerical mistakes per Md. R. 2-535(d) may be corrected at any time by motion of a party after notice. Here, the judgment for $100,000 was entered on December 1 and on January 14 the error is discovered, Paula files on January 18, 2017. The filing is done in a reasonable time and the error should be corrected by the court.

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MARYLAND ESSAY NO. 3

Representative Good Answer No. 1

Easement

A prescriptive easement to property is granted by one owner to the property of another when it is open, continuous, adverse, and meets the statutory requirement of 20 years in Maryland.

Open/Continuous

Two of the requirements of a prescriptive easement is that the land owner must use it openly and continuously.

Here, Ed crossed the land of Tom as a shortcut to get to his home for approximately twenty two years. It was open and continuous during his time of ownership.

Adverse

A prescriptive easement must meet the requirement of adversity, meaning that the actual owner has not given permission to access the land.

Here, Ed asked Tom if he could cut across his land shortly after purchasing his property. Tom waved at him and said nothing. The silence would constitute permission for Ed to use the land give that Tom had an opportunity as any reasonable person would to be able to object to his use of the land. Ed used this shortcut for approximately twenty years.

This element would NOT be met because Tom waved giving Ed permission to cross the land.

Statutory period

Ed meets the statutory requirement of 20 years given that he asked Tom approximately twenty-two years ago.

However, the courts would find that Ed did not have a prescriptive easement since he cut across the property with the permission of Tom for all these years.

Therefore, I would advise Larry that he does not have the rights of a prescriptive easement after purchasing the property.

Ed did not have any other type of easement by implication or easement by necessity. Here, Ed had another route to his home where he could drive down a long and winding driveway.

License

A license is permission by a landowner granting access to another individual in order to access the land. Licenses can be revoked by a landowner at any time unless it is clear that it was intended to bind subsequent owners.

Here, Tom waved at Ed approximately twenty two years ago granting him permission to cut across his land. Once Larry purchased the property and attempted to utilize the shortcut, Tom immediately stopped him. Tom also indicated that he would be putting up a fence.

Therefore, Tom has revoked the license and Larry has no rights to cutting across the path.

I would advise Larry that he would be unable to cut across the path given that there is no easement by necessity, implication, nor prescription and Tom has revoked the license previously given to Ed.

Therefore, Tom has revoked the license.

Therefore, the courts would determine that Tom had given Ed a license to use his land.

Representative Good Answer No. 2

Does Larry have a right to utilize the shortcut?

The issue is whether Larry has a right to utilize the shortcut. Larry's best argument is that Tom granted Ed an easement which Larry received a right to under the deed conveying the property from Ed to Larry. Tom's best argument is that he granted a license to for Ed to use his property which Tom can revoke at any time.

A court of law will likely not rule that Tom gave Ed an easement to use the shortcut, and thus will not grant Larry a right to use the shortcut.

An easement is a property right where there is a dominant and servient estate. The dominant estate has all the property rights in its own property but also has a right to use the servient estate. The dominant estate receives a benefit. The servient estate is burdened because part of its property right is given to the dominant estate. There are four types of easements. (1) An express easement is one in which the agreement between the dominant and servient estate as to the scope of use of the servient estate's land is in writing. This writing must be recorded.

Both types of easement by implication require that the dominant and servient estates were once owned by a common owner. These are often cases where a lot is divided into two lots. (2) The easement by implication of prior use requires that back when the common owner owned both parcels, the right of way or cut across the other's land already existed and was in use. The easement is implied to later owners although the easement is not written or recorded. (3) The easement of implication by necessity requires that the dominant estate, is in a way, landlocked, that is, the owner of the dominant estate cannot access a major road without cutting through servient estate. For the case on point, the dominant estate owner had access to water channels but not to a road or highway, and the court ruled that an easement by necessity existed.

(4) An easement by prescription is the easement equivalent of adverse possession. The dominant estate must be in open, actual, notorious and hostile possession of the easement for 20 years. Because of the nature of an easement, there is not a requirement for exclusive possession.

The defense to an easement is consent.

Here, Larry and Ed do not have an express easement because there was never any agreement written down or recorded. There is no indication in the facts that the two lots were held by a common owner. There is no indication of prior use. Therefore, an easement by prior use does not apply. Further there is no easement by necessity because there was never a common owner of the parcels and Ed and Larry have access to the street. The court does not look at whether it is more efficient to take the shortcut. Larry is not completely landlocked. He has another, albeit longer, way to access the main road, so the necessity element is not met. There is no easement by prescription because Ed had consent to use the road. Although Ed used the shortcut openly and notoriously for 20 years, the statutory period in Maryland, his use was not hostile. Tom's consent destroys any claim to an easement by prescription. Further, Ed never built or paved a roadway relying on the shortcut, so he has not

detrimentally relied on using the shortcut. Thus, Larry does not have a right to an easement to use the shortcut across Tom's land. Tom can revoke the consent at any time, and he has revoked such consent.

Does Larry have an action against Ed for misrepresenting Larry's right to use this driveway easement or for breach of a covenant of title?

Ed's promise to Larry may be a misrepresentation. However, Ed's promise merged into the deed. Larry can only sue on the deed. He cannot argue tacking because Ed did not have a right to use the shortcut beyond Tom's consent. Ed never had an easement. Thus, Larry may sue Ed for the easement Larry thought he was receiving as part of the purchase price. Larry can try to obtain the amount that the easement was worth. However, because the easement was not explicitly mentioned in the deed (which the contract was merged into) Larry will only receive whatever right Ed had in the shortcut, which was just revocable consent to use the property.

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MARYLAND ESSAY QUESTION NO. 4

Representative Good Answer No. 1

First, I would advise Maintenance Company ("M") and Subs-R-Us ('S" or "Subs") that they may want to seek separate counsel because their interests seem to be adverse, and under the Rules of Professional Responsibility, I cannot represent two entities with materially adverse interests. Specifically, Subs may want to argue that M was responsible for the area of the spill, not Subs, and M will argue that it is not liable for the torts of Subs's employees.

Liz ("L") will likely bring a claim of negligence against M and Subs. To show negligence, she must show that M and/or S had a duty, they breached that duty, and the breach caused her damages. It appears that the spill occurred near Subs in the ABC Mall maintained by M, and M and Subs each have a duty to maintain their areas: M maintains the food court area and Subs maintains the areas near the Subs restaurant. Thus, both S and M had a duty of reasonable care to maintain a safe environment for their business invitees and to clean spills and remove dangers that could potentially injure customers. Liz's fall was caused by the spilled soda that was purchased from Subs and that was spilled in front of Subs, and she was injured, requiring surgery. The spilled soda was the cause in fact and proximately caused the spill. Liz slipped on the liquid, causing her to fall, and that kind of injury is foreseeable to Subs, a restaurant serving food and beverages, and to M, who maintains the food court for the Mall. It is not clear, however, that either entity breached its duty to Liz because the spill had just occurred when Liz fell. Sumar, the employee of Subs, did not see the spill occur because after he served the Customer who spilled, he started to do something else. He is not obligated to constantly watch the floor of the food court; his job is to take orders and serve customers at Subs. Moreover, Sumar immediately told another employee to notify M. M may have a duty to have someone constantly scanning the floor of the food court for these types of accidents, and Liz could argue that M was negligent in this manner, but it is still unlikely that M would have been able to prevent the fall, which occurred immediately after the spill. Thus, it is unlikely that a court would find M and/or Subs negligent for L's injuries.

If Subs or M are found to be negligent, they can argue that Liz was not watching where she was going (e.g. she was talking to Red), therefore Liz was contributorily negligent. If they show that L was contributorily negligent, it would completely bar Liz's recovery in Maryland.

Subs could also argue that it was M's duty to maintain the food court area where Liz fell, not S's. Liz may argue that the duty was not delegable to M because it was in front of Subs.

Red may bring a claim against Subs for Sumar's battery against Red. Employers are liable for the torts of their employees that occur during the scope of their employee's employment. Battery is intentional touching that is offensive to the average person. To state a claim for battery against Sumar, Red must show that Samar intentionally kicked him and that injured Red. It appears that Red can show that Samar committed battery against her. Samar can argue self-defense, but Red's yelled insults were not threats of imminent harm, so he will lose -- it would be unreasonable for Samar to think that Red was about to hit him, especially since he was behind the counter. Subs should argue that it is not vicariously liable for Samar's tort because, although his action occurred while he was working, his behavior was not negligent, but rather, and intentional tort that was beyond the scope of his employment. This contrasts with similar behavior by a bouncer who is hired specifically to remove people from clubs and whose work involves intentional touching. A bouncer would likely be liable for similar conduct. Thus, Subs would likely not be liable for Samar's intentional tort. Subs could also be liable for negligent hiring if it new about Sumar's violent propensities and hired him anyway, or for negligent supervision, if it could have prevented him from jumping the counter and kicking Red with proper supervision. There is no evidence to suggest

either. Therefore, it is likely that Subs will not be liable for Sumar's battery. M appears to have a contractual relationship with Subs (an agreement regarding handling of spills depending on the location), but not an employee relationship, so M would not be vicariously liable for Sumar's conduct either.

Representative Good Answer No. 2

PROFESSIONAL RESPONSIBILITY ISSUES

Conflicts of Interest

Lawyers should be wary of representing multiple clients in a matter because a conflict of interests may arise. Here, Subs and Maintenance Company work hand in hand with one another and could be sued by Liz and Red, it is also possible that Subs could sue Maintenance Co. because of a potential underlying duty to respond to spills. I would advise each party that there is direct conflict of interest.

Direct Conflict of interest requires a lawyer to not take representation of multiple clients when that representation is based on substantially the same matter and facts and representation would be materially adverse to the parties. Here, if M were to sue S, it would be based on the same matter and facts if Red and Liz sue both parties, there is also a possibility that S could sue M. I would not be able to represent both parties in this matter and should advise both S and M.

TORT LAW ISSUES

Liz v Subs

Negligence requires duty, breach, causation and injury to occur. Here, Liz will state that Subs had a duty to business invitees.

Duty to business invitees means that a business for profit accepting customers business have a duty to keep their premises safe for their customers. Here, Subs is a food vendor in the mall and a previous customer has spilled soda on the floor shortly after purchase, Liz has slipped in the soda. There is a duty owed to Liz to keep the premises safe.

Breach means that the business failed to keep the business safe for their invitees. Here, Samar (an employee of Subs) was notified about the spill shortly thereafter, because he was unaware the spill occurred on the floor, Samar immediately notified an employee to contact M as was the established protocol, then Liz's fall occurred.

Subs will argue that they acted in a prudent and reasonable manner upon notification of the spill and that the actions of Samar by promptly notifying M of the spill and there was not a reasonable time for Subs to rectify the situation and these actions did not constitute a breach of their duty to their business invitees.

Causation means that but for the breach of duty the injury would not have occurred. Here, the soda and ice being spilled, traceable back to Subs is highly likely Subs are the cause of the injury.

Injury Sustained. Liz sustained a fractured hip and required surgery.

It is unlikely that L would prevail over S because S acted promptly to the situation and did not have time to rectify the problem once notified of its existence.

L v Maintenance Co.

Negligence see above. Here, Maintenance Co. has a duty to respond to spills in a prompt manner when notified, they did not have adequate time to respond to the spill because as soon as Samar was notified he made an employee contact Maint. Co. and Liz's fall occurred.

Maint. Co. will argue they did not cause the injuries because the soda was purchased from Subs and Subs did not contact them fast enough to rectify the spill.

It is unlikely that Liz would be able to sustain a claim against M.

R v Subs Co

Battery is the intentional offensive touching of another. Here, Samar, an employee of Subs, jumped over the counter after a verbal argument when R was hurling insults at Samar and kicked R in the stomach without her consent. R will argue that Subs is liable because of vicarious liability.

Vicarious liability will hold employers liable for the tortious actions of their employees unless the act is done outside the scope of employment. Here, Samar is an employee of Subs and Subs controls the work of Samar. However, Subs will contest vicarious liability by stating Samar was acting outside the scope of employment

Scope of Employment means that the employee was acting within the parameters of their job. Here, Samar was verbally assaulted while standing behind the counter, it is not likely that jumping the counter to kick a customer is within the scope of Samar's employment.

R is unlikely to recover from Subs but should be able to recover personally from Samar unless there is evidence of negligent hiring or supervision which does not seem to be the case here.

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MARYLAND ESSAY QUESTION NO. 5

Representative Good Answer No. 1

A. Steps to assure Mary cannot successfully challenge Prenup Agreement

Prenuptial agreements are permissible in Maryland, as a contract. They can deal with up front issues as to how matters will be resolved between a couple if they divorce later. They can speak to alimony and property distribution. To avoid Mary successfully challenging the agreement, I would advise several things.

Of utmost importance, I would recommend Mary obtaining separate independent legal counsel. Per the Maryland Rule of Professional Conduct, there could be a conflict of interest in my representing both Abe and Mary's interests. They may be as one unit now; however, in planning an agreement that would become effective upon separation, there interests would then diverge. It would not be proper to draft an agreement that would have an impact on their legal rights, as counsel for both individuals. It would be a current client conflict of interest, because their interests could be directly adverse, or at least materially limited by my duties to both. It would be best if Mary sought outside counsel to review and approve of any prenup agreement, so she cannot later challenge its validity by way of lack of counsel.

Next, I would clearly lay out what is meant by each of the terms Abe has represented. Contracts must be clear as to their essential terms, or they can be found to be unenforceable. The terms state sole title to property acquired prior to marriage, sole liability for debt incurred prior to or during marriage, waiver of alimony and marital property rights, and waiver of adultery grounds for divorce. I would very clearly flesh out each term to include descriptions of what precise properties we are referring to, explaining what constitutes before marriage and what constitutes after. I would explain the natural presumption that any property or debts acquired during the course of marriage are presumed to be marital, so this agreement would be contrary to that legal presumption. I would also be sure to address in appreciation or depreciation in value of all property, and account for how that will handled between the couple.

I would be sure to highlight the different situations of Abe and Mary, considering their drastically different income earnings and assets. It is possible to waive rights to alimony and property, but it would be worth being very clear what that means, and explaining the purposes behind alimony to be sure the couple understands what is being waived. Alimony is spousal support sought to assist the less economically privileged partner to help transition out of the marriage and become economically independent. Maryland prefers rehabilitative alimony, rather than permanent, and also allows for pendente lite alimony during divorce proceedings.

Regarding the adultery divorce grounds, I would say that is the weakest term of the proposed agreement, and most at risk of not being enforceable in a court. This is limited a possible future remedy that based on possible facts not yet known. The nature of this term differs significantly from the others regarding property and alimony. Adultery is a sensitive topic, and there could be a scenario in which only that ground exists, and a court may not want to obligate the victim party to remain married to the adulterous party. However, it is possible to try to secure and enforce this term. Again, the odds are better if Mary has separate legal counsel. It may be better to say that if there exist non-fault based grounds for divorce, the parties agree to first pursue that instead of a fault based theory. Adultery, being fault based, could also affect monetary and property distributions a court would grant in a divorce.

B. Mary's potential defenses to enforceability

The biggest defense Mary could raise is lack of independent legal counsel. Even though she is not inclined to seek it, I would seriously stress that she do. I'd explain what I have above regarding a conflict of interest, and my ethical duty to make sure I am fairly and reasonably representing a client. Abe's best interests upon divorce, may not be the same as Mary's.

Mary could also claim unconscionability. This defense is based on the time of contract execution, and the surrounding circumstances. She can argue procedural and/or substantive unconscionability. Procedural would mean the bargaining circumstances were imbalanced or coercive. Mary not having independent legal counsel fuels into this. Substantive would mean that the actual content of the prenup agreement are so imbalanced and unfair. One can see how Abe and Mary are not exactly equals. Abe is Mary's boss and makes quite a bit more money than her, and also has more assets. He could be pressuring her into this agreement, and a court would be very cautious of that.

Mary could also claim duress or undue influence, if it seems like Abe was pressuring her to enter the prenup, or me as the advising attorney. Mary having independent legal counsel protects against this.

C. Answering Mary's questions about the Prenup Agreement

It would be best for me not to answer Mary's questions, since she does not have independent legal counsel. Per Maryland Rules of Professional Conduct, when speaking with an unrepresented pro se individual, an attorney should not represent they are interested (especially if I'm already consulting with Abe), and the extent of the legal advice should be to recommend that the individual secure independent legal counsel. I could not do anything to jeopardize Mary's legal rights or treat her unfairly to the advantage of Abe. I would owe duty of candor and not misrepresent anything.

Representative Good Answer No. 2

A prenuptial agreement is a contract between two people who plan to marry. Generally, this agreement details what will occur economically in the future if the marriage fails. This agreement, however, does not have to be limited to economic concerns. The general rule is that a party seeking to attack the agreement can do so by showing any of the grounds that would defeat a traditional contract (i.e., fraud, duress, mistake, incompetence, undue influence).

Conversely, a party attempting to defend the agreement must show that they made full disclosure of financial assets or that the other party had knowledge of their financial assets; that the terms of the agreement are not disproportionately unfair; and there was no overreach due to unequal bargaining power (e.g., both parties were represented by counsel and understood their rights). Finally, any provision regarding children can be modified in the future, and adultery cannot be allowed pursuant to a prenuptial agreement.

A. Steps prevent Mary from successfully challenging PA

Perhaps the most important step that I would recommend to avoid future challenge of the prenuptial agreement by Mary, is to ensure that she has adequate and independent legal representation to protect her interest. As noted above, any sort of disparity in understanding or lack of transparency in the process makes the prenuptial agreement susceptible to future challenge.

As related to the four conditions suggested by Abe, I would suggest that point number three be modified so as not to waive alimony, but to limited in some cognizable way. Alimony is generally awarded as rehabilitative-usually

determined by factors including each spouse's income and ability to maintain or increase their income. The provision is written would likely be unenforceable.

In addition, I would advise that Abe strike his fourth proposed provision. Adultery is a crime in Maryland and a PA cannot condition future behavior on acceptance of future philandering.

B. Mary's Defenses

As stated above, an individual typically can defend against a prenuptial agreement enforcement if there is a lack of transparency, or if one individual was not represented by counsel prior to entering into the agreement. Any provisions of the prenuptial agreement that our prima facie unfair or against public policy can also be defended against.

C. Professional Ethical Obligations

The Maryland Rules of Professional Conduct require that a lawyer not represent a client if such representation would create a conflict of interest. A conflict of interest exists if the representation of one client will be directly adverse to 'another client or if there is significant risk that representation of one or more clients will be materially limited by the lawyer's responsibilities to another client. Here, both .individuals should seek independent legal counsel prior to entering into any prenuptial agreements.

I would advise Abe that I am ethically barred from providing legal advice to Mary regarding this prenuptial agreement because I represent Abe. Mary would have to seek independent counsel. Again, it would be in both parties best interest to ensure that Mary has independent counsel and the PA would be less likely susceptible to future challenge.

Maryland State Board of Law Examiners

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MARYLAND ESSAY QUESTION NO. 6

Representative Good Answer No. 1

Part A

Whether the Master Lease Agreement constitutes a finance lease in Maryland.

A finance lease is a lease with respect to which: "(i) the lessor does not select, manufacture, or supply the goods; (ii) the lessor acquires the goods or the right to possession and use of the goods in connection with the lease; and (iii) One of the following occurs: (A) the lessee receives a copy of the contract by which the lessor acquired the goods or the right to possession and use of the goods before signing the lease contract; ... "Md. Code, Commercial Law, §2A-103(g).

First, under the Master Lease Agreement, Alpha does not select, manufacture or supply the goods pursuant to Md. Code, Commercial Law, §2A-103(g)(i). Truck decided which goods it wanted and those goods were under the ownership of Transit. Second, Alpha acquired the goods in connection with the lease, pursuant to §2A-103(g)(iii)because Truck needed to finance the purchase of the units and Transit would not finance the goods for Truck. Alpha agreed to finance the goods and came into possession of the goods immediately prior to leasing them to Truck. Finally, the Master Lease Agreement satisfy the third prong of what is required to make an agreement a finance lease because Alpha acquired the units on August 22, 2016 and provided Truck with a copy of the contract by which the units were acquired and six days later, August 28, 2016, Truck signed the contract.

Therefore, the Master Lease Agreement is a finance lease because it satisfies the requirements of Md. Code, Commercial Law, §2A-103.

Part B

Whether the Master Lease Agreement constitutes a contract for the sale of goods with a security interest in Maryland.

"A transaction in the form of a lease creates a security interest if the consideration that the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease and is not subject to termination by the lessee; and ... (2) the lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods ..."

The Master agreement satisfies § 1-203(b) because Truck is paying Alpha to acquire eight messenger units and the Master Agreement specifically said that "Truck was not permitted to terminate its monthly installment payment obligation per month for 60 months." 60 months is the term of the lease. Thus, pursuant to §1-203(b), Truck's obligation to pay Alpha is for the entire term of the lease and is not subject to termination by Truck. Furthermore, at the "expiration of the initial term of this Lease" Truck agrees to "irrevocably and unconditionally purchase all of the units." Thus, Truck is bound to become the owner of the goods pursuant to §1-203(b)(2). The culmination of the aforementioned lease terms makes this a contract for the sale of goods with a security interest in Maryland.

Therefore, the Master Lease Agreement constitutes a contract for the sale of goods with a security interest in Maryland.

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Representative Good Answer No. 2

Question 6

A) One of the clauses in the lease specifies that it is intended that this be a finance lease. This is relevant when the court explores all relevant facts about the lease. Maryland §2A-103(g) lays out the requirements of a finance lease. 1) The lessor does not select, manufacture or supply the good. This is clearly the case here. Alpha is merely a credit agency that bought the goods from the merchant that Truck specified. (Transit) The Lease agreement reiterated that point by laying out explicitly that they held out no warranty over the goods because they were not the manufacturer. 2) The lessor acquires the goods in connection with the lease. Again this is surely the case here because Alpha has no interest in these truck units before being applied to by Truck for the purpose of acquiring them. 3) The requirement is more complicated because it allows for multiple avenues to meet the requirement. In this case subsubsection (A) applies which states that the lessee receives a copy of the contract by which the lessor acquired the goods before signing the lease contract. The facts state that on August 22, 2016 Alpha acquired the units and notified Truck and provided them with a copy if the contract. This was 6 days before the lease was signed. Therefore, all requirements being met the lease is a finance lease under Maryland law and is not subject to revocation.

B) Maryland §1-203(a) states importantly that "whether a transaction in the form of a lease creates a lease or security interest is determined by facts of the case." This is important for Truck because otherwise the name "lease" could be binding. However, this still requires us to take a look at the facts to determine if it could be a security interest. Subsection (b) begins to lay out the requirements of a security interest. First it is required that lessee is to pay the lessor for the right to possess and use the goods for the whole term of the lease and that is not subject to termination by the lessee. This is certainly the case here. Alpha specified in the lease that Truck was to pay them every month for 60 months and could not cancel the lease. Again there are multiple routes that could be taken. Subsubsection (2) is relevant to this case which states that the lessee is bound to become the owner of the goods. This is exactly what the lease says. After the conclusion of the lease Truck is obligated to buy the messenger units from Alpha for $1 to which they are bound. Because of these reasons and the lease is actually a contract for the sale of goods with a security interest.

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MARYLAND ESSAY QUESTION NO. 7

Representative Good Answer No. 1

This fact pattern is governed by constitutional law. In order to bring an action under constitutional law, a plaintiff must have standing to bring a claim against state action. Standing requires that the plaintiff suffer an actual imminent injury, such that it is ripe for review, that the state's action caused this injury, and that the court has the ability to redress, or provide relief, for this action. Here, Plaintiff has standing against Town, who enacted the Events Law, constituting state action. She suffered imminent injury as she was charged by the Town Police Officer for violating this law. This violation was caused by the enactment of the Events Law and she can seek relief from the court to find this law unconstitutional. This law can be challenged under the Equal Protections Clause, Substantive Due Process, Freedom of Association, Freedom of Expression, the doctrine of ex-post facto law and the Eighth Amendment, which protects against cruel and unusual punishment.

1. Equal Protection Clause

This law discrimination against university students. To bring an action under violation of equal protection, the Plaintiff must show that the state intentionally discriminated against a class of people. Discrimination based on race, ethnicity, and national origin triggers strict scrutiny. Discrimination based on gender and legitimacy triggers intermediate scrutiny. Discrimination based on age, wealth, health, and other classes not protected by strict and intermediate scrutiny triggers rational basis. Rational basis requires the Plaintiff to prove that the law is not rationally related to a legitimate government interest. Here, the government interest is to minimize complaints of "rowdy" college kids who attend the local university. Plaintiff can assert that prohibiting events at a residence with more than 15 university students (who are not residents of the dwelling) is not rationally related to minimizing complaints because it generalizes all the students into one category of "rowdy college kids." There is no evidence that events of 15 or more college students is what is causing such disruption in the Town. However, the standard of rational basis is low, so it will be difficult to prove that this law violates the equal protection clause under this standard.

2. Substantive Due Process

Substantive Due Process is implicated when the state infringes on an individual's fundamental rights or other rights to engage in activities. Fundamental rights include the right to vote, privacy, second amendment right to bear arms, and the right to interstate travel. When these rights are violated, the court will analyze the law under strict scrutiny. None of these rights are implicated here. When a right to engage in another activity is implicated, such as events in this case, the rational basis standard will be used in determining its validity. Plaintiff must prove that prohibiting parties with 15 or more university students is not rationally related to minimizing disruption among residents in the Town. Based on the same analysis under the equal protection clause, Plaintiff can assert that its right to hold parties is being infringed upon by this statute. However, it will be difficult to show that regulating the number of university of students at a party is not rationally related to minimizing disruption.

3. Violation of Freedom of Association

An individual has the right to associate with whomever he or she chooses to associate with. Plaintiff can argue that the Events law violates this right because it infringes on her and her daughters' rights to associate with other university students. A parent of a student who has suffered injury from a school action can bring a claim on his child's behalf. A violation of this right is analyzed under a strict scrutiny standard. Strict scrutiny requires that the law is necessary to achieve a compelling government interest. The law must be the least restrictive means possible

to achieve the interest. The state bears the burden of showing that is withstands strict scrutiny. Here, Plaintiff will likely be successful in asserting that this law violates the freedom of association, and that it is not the least restrictive way to minimize disruption in the Town. Disruption could be minimized by university regulations, or students could be encouraged to keep noise level to a minimum when holding parties. Therefore, it is unlikely that this law will withstand a strict scrutiny analysis.

4. Violation of Freedom of Expression and Ex Post Facto Law

This law also violates freedom of expression as to its advertisement clause. Advertisements are considered commercial speech, which must be truthful in nature. To uphold a law regulating commercial speech, the state must prove that it satisfies intermediate scrutiny. Intermediate scrutiny requires that the law is substantially related to an important governmental interest, and is narrowly tailored to achieve that interest. Here, this clause is not substantially related to minimizing the governmental interest of minimizing disruption in the Town. This is because it is not narrowly tailored. There are other means to minimize disruption rather than criminalizing advertisements. Further, this clause is considered an ex-post facto law, which is unconstitutional. An ex-post facto law criminalizes past behavior. This law criminalizes prior advertisements, and is therefore an ex-post facto law, which renders it unconstitutional.

5. Cruel and Unusual Punishment - Eighth Amendment

Lastly, the clause punishing prior advertisements also violates the eight amendment because it constitutes a disproportionate punishment for the crime charged. A penalty of $5,000 per event and/or six months in jail and repayment of Town's costs for police enforcement is substantially disproportionate punishment for an advertisement. Therefore, this clause/law is also deemed unconstitutional under the eighth amendment.

In conclusion, Plaintiff can assert many challenges against this law as being unconstitutional. It violates the equal protections clause, substantive due process, freedom of association, freedom of expression, is an ex post facto law, and also violates the eighth amendment.

Representative Good Answer No. 2

All Constitutional Amendments discussed below should be considered to have been incorporated to the State of Maryland through the 14th Amendment.

Standing to challenge a law is established when a person shows that she has suffered or will suffer imminent harm fairly traceable to enforcement of the law. Here, Plaintiff is a resident of Town and has been charged with violating the new law, so she may suffer the penalties listed in the new law and has standing to challenge the Law.

1. First Amendment Issues

Assembly is a fundamental right protected by the First amendment, which the government may not inhibit unless it can show that its restriction of assembly rights meets the strict scrutiny test of being the narrowest possible method of meeting a necessary or compelling government interest. Here, however, Town's reason for the Law is based in restricting the activities of "rowdy college kids," which is a valid, but not vital, government interest, and the law only specifically restricts assembly of university students in residences, which is not the most effective method of curbing rowdiness.

Government may not broadly restrict speech based solely on its content, and if specific content is restricted, the government may not restrict speech which supports a particular viewpoint without meeting the strict scrutiny test

described above. Here, Town's law prohibits advertisements of Events banned in a previous section of the same law, and the police cited Plaintiff for holding the Event to which she invited her daughter's friends, which is restriction of an advertisement's subject content as well as the promotion of Events - which is one viewpoint - so the advertisement restriction violates the free speech clause.

Public forum - social media advertisements. Government may not restrict content-based speech in a forum traditionally designed for spreading protected speech. Here, social media, though not widely adjudicated, exists for the purpose of spreading information and the advertisements as described may not be restricted in that forum.

2. Fourteenth Amendment Issues

Substantive due process prohibits undue government restrictions on fundamental liberty interests, such as the right to work, unless the government can show that the restriction meets the strict scrutiny requirement of being the narrowest possible method of achieving a compelling government interest. As described above, Town enacted the law to curb rowdy students, but Plaintiff was cited because she held a "Silver Jewelry Party" for the sole purpose of selling jewelry - which, being work, may not be restricted just to prevent disruptive college student behavior.

Procedural due process prohibits government restrictions of the above liberty interests without providing a method to those potentially affected to challenge citations and the law. Here, the law became effective "immediately," and offers no recourse for challenging the misdemeanor charges and possible penalties resulting from those charges, which gave Plaintiff no method of explaining herself before the government limited her ability to sell Silver Jewelry from her home.

The Equal Protection Clause prohibits the government from distinguishing in its treatment of particular groups of people. If the party challenging the law bases its challenge on differential treatment based on any factor other than race, gender, national origin, or religion, then the government must pass the rational basis test and show that its differential treatment is rationally related to a legitimate government interest.

Here, the law restricts owners/occupiers/lessees of "residential dwellings" from holding events at that residence with more than 15 "attendees" who are defined as "University students" who do not live at that residence. The law differentiates twice: first, residential dwellers are treated differently than commercial owners/occupiers/lessees/occupiers, who themselves may still hold events which may lead to the very rowdiness the law seeks to prevent. For this reason, the law is related to a legitimate interest in noise reduction and public safety, but is not a rational method of meeting this interest.

Second, the law only restricts attendance by university students, which already violates those students' freedom of assembly as described above, and is similarly not a rational and reasonable way of meeting the government goal of restricting rowdy college students.

3. Eighth Amendment issues

Cruel or unusual punishment prohibited - the law's penalty for advertisement of $5,000 and/or 6 months in jail, which, coupled with the due process issues discussed above, is extremely excessive for advertising a social gathering of university students.

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MARYLAND ESSAY QUESTION NO. 8

Representative Good Answer No. 1

(1) Preliminary Defense

Councilmember Taylor can make a preliminary defense to the plaintiff's defamation claim. He can defend on the basis of governmental immunity. In Maryland, a legislator is afforded absolute immunity for statements made in his legislative capacity during the course of legislative deliberation, including town meetings.

Here, Taylor, a councilmember, made the defamatory statements regarding plaintiff during the course of a town meeting while deliberating the whether to cut funds for particular town items. As such, Taylor can claim a defense of legislative immunity against plaintiff's defamation suit.

(2) Objections to Testimony

(2a)

Hearsay is an out of court statement offered to prove the truth of the matter asserted. Hearsay statements are not permitted in testimony. However, if a hearsay exception exists, then the statement will be permitted into testimony. Settlement offers are one type of hearsay statement that are not permitted. A settlement offer cannot be used by the offeror to show guilt. The public policy underlying this rule is that we want to encourage settlements because they reduce litigation.

Here, testimony by the town clerk that she accepted a small amount of money from Taylor to settle a similar action, will likely be inadmissible.

(2b)

Hearsay is an out of court statement offered to prove the truth of the matter asserted. Hearsay statements are not permitted in testimony. However, if a hearsay exception exists, then the statement will be permitted into testimony. Additionally, character evidence may not be introduced to show conformity therewith.

Here, the statement is being introduced to show that Taylor is demeaning and makes obscene jokes around women; i.e., to prove the truth of the matter asserted. As such, it will be inadmissible at trial. However, it may be arguable that the evidence is being submitted to establish a pattern of distasteful behavior. For this purpose, it may be admissible.

(3) Bar Counsel's Charges

Under the Maryland Rules of Professional Conduct (MRPC), attorneys owe their clients many duties. One such duty is the duty to communicate truthfully and without misrepresentation. Additionally, with regard to advertisements, a lawyer may not promise winning results. Here, Larry Lawyer violated the rules by stating in his advertisement that he "promises to get results" and "will not charge fees unless we win." This may induce a client to think that Lawyer will do anything, even illegal, to get the results promised, which is impermissible.

Under the MRPC, a lawyer's fees must be reasonable. Contingent fees are those fees that are gained as part of a prior written agreement based on the outcome of the case. Here, Lawyer is seeking to recover one third of any award. The fee is likely unreasonable and impermissible for not being in a written, signed agreement.

Under the MRPC, a lawyer must keep the client's property (including any fee advancements) separate from the lawyer's property. This requires, for example, that a lawyer place fee advancements into a client account until the fee is earned. Here, plaintiff advanced $5000 in fees, of which Lawyer placed $1500 immediately into his operating account. It is highly unlikely that he had earned the $1500 and warranted the money be placed into the operating account.

Finally, a lawyer must act with prompt attention to a client's matter and communicate truthfully with his client. Here, Lawyer told plaintiff he would prepare the action for defamation. However, he did not actually prepare the action until two weeks later. Lawyer's failure to act promptly may also be considered a violation of the MRPC.

Representative Good Answer No. 2

(1) Councilmember Taylor can assert that the statement was absolutely privileged. The speaker a defamatory statement has an absolute defense to a claim of defamation where the statement was made by a legislative official during a legislative session. Here, as a Councilmember, Councilmember Taylor is a legislative official and the statement was made during a town meeting, which the court would likely find constitutes a legislative session. Accordingly, the statement is absolutely privileged, so Councilmember Taylor is not subject to defamation for the statement.

(2)

(a) The testimony would be inadmissible. In Maryland, evidence that Defendant has settled a claim is generally inadmissible absent exceptions that are not present in these circumstances. In addition, to be admissible, evidence must be relevant, and its probative value cannot be substantially outweighed by the danger of unfair prejudice or confusion of the issues. Here, Plaintiff would be seeking to admit the fact that Defendant settled a claim, seemingly for the purpose of establishing that because Councilmember Taylor made defamatory statements in the past that were settled, Councilmember Taylor likely made the defamatory statement alleged by Plaintiff. First, the fact of the settlement is inadmissible pursuant to the specific rule about settlements noted above. Moreover, this prior settlement would likely be excluded, because it has little probative value in demonstrating that Councilmember Taylor made a defamatory statement about Plaintiff, and has a high potential to confuse the jury about this other defamation claim. Accordingly, it would likely be excluded on those grounds as well.

(b)

In civil cases, evidence that a party has committed previous behavior is inadmissible to prove that the party likely acted in conformity with that behavior ("propensity evidence"). However, such behavior may be admissible to show the intent of the Defendant in committing the conduct at issue in the current litigation. Here, the testimony would be inadmissible to show that, because Councilmember Taylor made these previous demeaning jokes to the administrative aide, Councilmember Taylor made the defamatory statement to Plaintiff, because this would be inadmissible propensity evidence. To establish a claim of defamation against a public official, a Plaintiff must show that the Defendant made a defamatory statement about Plaintiff that was false, caused him Plaintiff to suffer damages, and that the Defendant made the statement with reckless disregard to its truth or falsity ("actual malice"). Plaintiff could argue that the statement would be admissible because it shows the intent of the Defendant in making the statements about Plaintiff.

However, this statement would be excluded as inadmissible hearsay. Unless an exception applies, an out of court statement may not be offered to prove the truth of the matter asserted in the statement. Here, the aide is testifying as to what a co-worker told her about Councilmember Taylor's previous demeaning jokes, to prove that Councilmember Taylor made the jokes. Although the underlying jokes would be admissible as a statement by an opposing party used against them, this is a hearsay statement because the outer level of hearsay- what the aide said- does not fall within an exception. Accordingly, it is inadmissible.

(3)

Commingling Funds: The RPC prohibit attorneys from commingling client funds with their own funds. Any advances paid by the client for unperformed legal services must go into a separate trust account. Here, Lawyer put $1500 of the unearned $5000 advance into his personal account. This commingling violated the RPC.

Misleading Advertisement: The RPC prohibit attorneys from making advertisements for their services that are misleading, which includes creating unjustified expectations from the client. In particular, advertisements of contingent fees (fee arrangements where the lawyer's fee is based on a percentage of the client's recovery) are misleading unless they clearly describe how the fee is calculated, including who pays the cost of expenses. Here, Lawyer's advertisement that he "promises to get results" is likely misleading because it creates an unjustified expectation that the client will prevail regardless of the underlying merits of the case. In addition, the statement "will not charge a fee unless we win" describes a contingent fee agreement, but fails to specify whether the Lawyer or client will bear the cost of expenses. Accordingly, this misleading advertisement likely violates the RPC.

Contingent Fee Agreement: The RPC require contingent fee agreements to be in writing, clearly specify whether the lawyer or client will cover the cost of expenses, and describe how the fee is calculated. Here, it is unclear if the fee agreement was ever reduced to writing, and the fact that the client was to cover the costs of expenses appears to be outside the agreement. Accordingly, this agreement may violate the RPC.

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MARYLAND ESSAY QUESTION NO. 9

Representative Good Answer No. 1

Under the theory of successor liability, a defendant will be liable to the plaintiff if the defendant intends to remain under the name of the predecessor and reasonably holds this reputation out to the public, causing the public to believe that the new company is nothing more than an extenuation of the prior company with no changes.

Here, JEM purchased AWF's remaining inventory, assumed AWF's existing indebtedness to trade creditors, and replaced AWF's management structure. In order to take advantage of AWF's stellar reputation in the remodeling and contracting fields, JEM continued to operate under the AWF trade name for one year, after which it began to operate under its own name. The facts indicate that JEM did not intend to remain under the name of the predecessor and hold such reputation out to the public or those that it conducted business with. In fact, JEM completely replaced the management structure of the company, setting itself apart from the previous AWF business. Additionally, JEM only continued operating under the AWF name to take advantage of the reputation during the time in which is first began operating the business. This was only done to ensure the continuance of business profits until JEM could ensure the public and those with which it conducted business that JEM could provide similar if not better services.

While Arthur obtained a judgment against AWF, this judgment did not extend to JEM. AWF did not have the capital to remain in business, and JEM took the business over, operating separately from AWF. However, Arthur may argue that JEM took over the business and assumed AWF's existing debts, thereby making JEM liable for Arthur's claim. However, JEM assumed AWF's existing indebtedness to trade creditors, not employees of the business not considered creditors.

Therefore, JEM should not be held liable to Arthur under the successor liability theory. AWF should be held solely liable for Arthur's claim.

A motion for summary judgment may be successful if the proponent can prove that there are no remaining questions as to any material issues of the case.

Here, since there are no remaining valid questions as to any material issues of the case, JEM's motion for summary judgment should be granted.

Therefore, the court should grant JEM's motion for summary judgment.

Representative Good Answer No. 2

It must be determined whether Jem Enterprises (Jem), in acquiring AWF, LLC (AWF) sufficiently maintained the identity of the acquired identity to justify liability as a successor.

To determine this, I would look at all of the facts and circumstances of the acquisition and the subsequent management of the AWC to see whether control and management resembled that of the prior entity, AWC, or that of new company JEM. I would advise the court that, even though JEM maintained the name of AWC for a year, that control was not of the kind and not to the extent that JEM could reasonably be considered a successor liability.

Independence of Two Management Teams

When JEM acquired AWC, all of the AWC's inventory was bought outright, instead of being told how to be directed. Moreover, the purchase was seemingly done at arms-length, without a special discount or premium, but at fair market value, suggesting that the relationships between AWC's old management and JEM's new management acted independently of each other.

Additionally, JEM did not seek to manage the debt of AWC, which would have amounted to a level of control going in Arthur's favor; JEM outright assumed AWF's debt for itself and replaced AWC's management structure. Simply managing an acquired company's debt and retaining the management structure while only changing the name of the ownership would have militated in Arthur's favor that AWC was still operating characteristically as AWC, but under a different name. Here, the only characteristic of AWC that remained the same was AWC's name.

Therefore, because AWC under the new ownership of JEM was not comporting itself under a characteristically similar structure, was not being managed by JEM in the same way that AWC was managed before its acquisition, and effectively acted independently from the way that JEM ultimately acted, Arthur will likely not be able to recover against JEM under the theory of successor liability.

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MARYLAND ESSAY QUESTION NO. 10

Representative Good Answer No. 1

PART A AND B - MOTION TO SUPPRESS AND RULING

The 4th Amendment Search and Seizure Clause, applicable to the states through the Incorporation Doctrine, prohibits the government from conducting warrantless searches and seizures, unless an exception applies. To challenge a search or seizure, there must have been state action, standing which requires a reasonable expectation of privacy, and an actual search and/or seizure occurred.

BLAKE

Blake has standing because he was ordered to sit and placed in flex cuffs, and was later arrested. A seizure of Blake occurred when the Officer ordered Blake to sit and placed him into flex cuffs. No reasonable person under the circumstances would believe that he/she was free to leave at that time. The Officer obtained a valid search warrant, therefore their presence in the condo was permitted. The Officer had an anonymous tip that drugs and alcohol were being sold by minors at the condo, and thus the warrant likely permitted the search for drugs and alcohol.

When the Officer ordered Blake to sit and put him in flex cuffs, Blake had just walked into the condo. However, the Officer had a valid reason to stop any person at the party and coming to the party in order in order to effectively act on the search warrant. Blake can argue that the placement of flex cuffs on him was unreasonable under the circumstances and a harsh police tactic.

Plain View

Under the plain view exception, admissible of evidence of a crime if admissible if found by the police in plain view and where a police had a valid right to be. Here, the Officer had a valid search warrant and thus was permitted to be in the condo. When she went into the kitchen, she saw a bag of suspected cocaine. A police can use their training and experience to determine if it is evidence of a crime or potential evidence of a crime.

Ruling: Therefore, under the plain view exception, any motion to suppress the bag of cocaine will be denied.

Statement of Confession

The 5th Amendment protects a person from self-incrimination, and requires Miranda warnings when custodial interrogation is present. Here, Blake confessed that the bag belonged to him because he was afraid that Amy would be charged with a crime. Blake has an argument that is was in custody of the police because he was placed in flex cuffs and ordered to sit and no reasonable person would be free to leave; however, Blake does not have a strong argument that he was under police interrogation. When the Officer Curly found the bag of cocaine, he stated "someone is going to jail tonight." This does not amount to police interrogation and is not police coercion. Blake voluntarily admitted that his was his bag.

Ruling: Therefore, Blake's Motion to Suppress his statement will be denied.

Search Incident to Lawful Arrest

When a defendant is properly arrested, the police may search his entire person. Here, after Blake was arrested, the Officer searched his pockets where she found a photograph of Blake and Amy in a compromising pose which made the Officer suspicious of an under aged sexual relationship.

Ruling: The search of Blake was lawful.

Amy's Statement

The Officer told Amy that if she did not answer truthfully, that she could be arrested which led to Amy telling the Officer that they were in a sexual relationship. This may be viewed as police coercion; however, the coercion was not towards Blake, and thus Blake cannot challenge the admissibility of Amy's statement.

Ruling: The Statement is admissible; motion to suppress denied.

ERIKA

Showing of IDs

Consent to a search or seizure is a valid exception to the warrant requirements. Here, the police asked for Erika's ID which she produced and thus her consent is valid. She could argue that a person in her circumstance would feel that they had to consent and thus making the consent not voluntary.

Ruling: Motion to Suppress the ID will be denied because police are permitted to ask for identification.

PART C - CHARGES AND DEFENSES

BLAKE

Blake may be charged with the following:

1. Possession of a controlled dangerous substance because he admitted the bag of cocaine was his.

2. Possession with the intent to distribute a controlled dangerous substance because the police received a tip that drugs were being sold to minors.

3. Sexual Contact with a minor because the picture shows him and Amy in a compromising pose.

4. Statutory Rape because Amy admitted that they were in a sexual relationship and Amy is underage (age 16).

Blake's Defenses:

He just walked into the party after the police arrived and thus, there is no way that the bag of cocaine could be his. He would also so proof that he was at work prior to coming to the condo so it could not be his.

Additionally, as to the rape and sexual contact charges, Blake will defense arguing that a photograph showing a compromising pose is not enough to prove beyond a reasonable doubt that he engaged in sexual intercourse with a minor or conducted sexual contact. Additionally, Amy's statement that they are in a sexual relationship is not also not enough evidence because she did not take what kind of sexual relationship (could just mean kissing, which is considered a sexual contact though)

ERIKA

Erika may be charged with statutory rape and sexual conduct, and sexual act since she was found in a sexual

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Representative Good Answer No. 2

Part A.

Blake will probably make the following motions to suppress:

1. Motion to suppress the compromising photograph due to unlawful search and seizure
2. Motion to suppress Amy's statement because she was not informed of her right to remain silent.

Erika will probably move to suppress testimony as to her sexual relations with Dillan and of her and Dillan's ages as shown on their ID's because of unlawful search and seizure.

Part B.

The Court should deny all of the motions above.

1. The cocaine, testimony of Erika and Dillan's sexual relations, and Erika and Dillan's I.D.'s are all admissible

In order to search a home, police must generally have a valid search warrant. A search warrant will be issued if police have probable cause to suspect that a crime or evidence of a crime is taking place inside one's home. Probable cause can be based off of an anonymous tip.

When executing a search warrant, police are entitled to search anywhere and for anything specified on the search warrant, including places in the home where the thing being searched for might reasonably be hidden. For example, a search warrant for drugs would allow police to search a bedroom drawer, while a search warrant for a stolen TV would not. During the execution of a search warrant, police may take custody of any evidence of a crime that is in plain view of the officers in a place they are lawfully allowed to search.

In general, a search warrant for drugs in a home also allows for the search of people present in that home while the search warrant is being executed.

When Curly and the other officers entered the beach condo, they were lawfully able to search the entire condo and its inhabitants for drugs. Any other evidence of a crime they saw in plain view during that search would be admissible.

Thus both the cocaine and evidence of Erika and Dillan's sexual relations are admissible. Additionally, because Erika and Dillan were in the house during the time of the search, the officers were allowed to search them and their belongings for drugs. If for whatever reason the court determines that asking Erika and Dillan for their I.D.s was improper, the court should hold that to be harmless error since the I.D.s would likely have been discovered incident to the search.

2. The photograph and Blake's I.D. are admissible

In addition to the ability to search the inhabitants of the condo, the officers had authority to search Blake incident to arrest. They had probable cause to arrest Blake due to his admission of possession of cocaine. When someone is lawfully arrested, the police have the right to search that person's person for reasons of officer safety.

3. Amy's statement is admissible against Blake.

Although Officer Curly's questioning of Amy likely violated her Miranda rights, Blake is unable to assert Amy's rights as a defense.

Part C.

Blake can be charged with possession of cocaine with intent to sell, but not any sexual offenses as Amy was above the age of consent.

Erika can be charged with fourth degree sexual assault because she was having sex with a 14 year old but was within 4 years of his age.

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MULTISTATE PERFORMANCE TEST

Representative Good Answer No. 1

To: The Honorable Judge

From: Associate at Sibley and Wallace Law Office, P.C.

Date: February 21, 2017

Re: Petitioner Ruth King Maxwell's Proposed Findings of Fact and Conclusions of Law

Findings of Fact

1) Henry King (Henry) is a 74 year old man who has suffered from symptoms associated with dementia since 2013. These symptoms were diagnosed by a neurologist and a psychiatrist, and a Court has declared him incompetent.

2) Henry King's wife died in 2012, and his remaining family members are Ruth King Maxwell (Ruth), Henry's adult daughter, and Noah King (Noah), Henry's adult son.

3) On May 20, 2013, Henry validly granted Noah durable power of attorney for his financial matters, named Noah as his health-care agent under his advanced health care directive, and nominated Noah King as his prospective guardian.

4) At the time Henry made the aforementioned long-term care decisions, Noah lived locally in Franklin, while Ruth lived in a different state. Ruth has since returned to the area, eliminating any geographic advantage Noah's selection had at the time.

5) During Noah's term as financial and health-care manager, Henry's mental and physical condition has deteriorated, with Henry suffering multiple injuries, including a bruised right arm and a broken wrist that was caused by a slip and fall. When the slip and fall occurred, Noah did not take Henry to receive medical treatment until the following day.

6) During Noah's term as financial and health-care manager, Henry had limited access to food, with only skim milk, bread, and canned soup present in his cupboards.

7) During Noah's term as financial manager, Noah has missed payments on Henry's electricity and health care bills.

8) Henry receives approximately $2,500 per month. Henry's checking account reveals that Henry has been purchasing gifts for other people using this money, sometimes spending up to $1,200 in a given month. Over the time period between February 2016 and February 2017, Henry was able to spend more than $9,000 on such gifts.

9) Noah has discussed his father's spending with him, but has taken no affirmative steps to curtail this spending and has expressed frustration with his ability to control his father's spending.

10) Since returning to the area, Ruth has spent multiple nights per week with her father, had purchased food and cooked for her father, and has hired a personal shopper and cook to provide food to Henry.

Conclusions of Law

1) A guardian is a court-appointed individual who has the responsibility for managing the income and assets and to provide for the health, safety, and personal needs of an incompetent person. §400.

2) A guardian owes his ward a fiduciary duty, which obligates the guardian to act in the best interest of his ward. This duty can be breached by action or neglect that harms the ward, or "through mismanagement of finances, neglect of the ward's physical well-being, or similar action." *In re Guardianship of Martinez* (Fr. Ct. App. 2009).

3) "[T]he law recognizes and protects and individual's right to make decisions about her medical and financial affairs." *Matter of Selena J.* (Fr. Ct. App. 2011).

4) The Franklin Guardianship Code ranks guardianship preferences in the following order: the individual last nominated by the adult, the spouse of the adult, and an adult child of the adult. §401 (b).

5) "A trial court will rely on the Franklin Guardianship Code in concluding whom the incompetent party had named as his preferred guardian, but will not hold this preference to be binding in a later guardianship proceeding." *Matter of Selena J.* (Fr. Ct. App. 2011).

6) The court shall appoint as guardian that individual who will best serve the interest of the adult, and will disregard the ward's preference upon a showing of good cause. §401 (a).

7) Evidence of a nominee's neglect of the incompetent's financial affairs and medical care creates an issue of fact whether good cause exists to override the incompetent's valid nomination of a party. *Matter of Selena J.* (Fr. Ct. App. 2011).

8) "[A] court may refuse to appoint a proposed guardian when that person's previous actions would have constituted a breach of a fiduciary duty had the person been serving as a guardian. Such conduct is of special concern when that person has actually served as a fiduciary for the proposed ward under an advance directive or power of attorney." *Matter of Selena J.* (Fr. Ct. App. 2011).

9) Henry's nomination of Noah as his prospective guardian will be given deference, but will be overcome upon a showing of good cause. *Matter of Selena J.* (Fr. Ct. App. 2011).

10) Noah has a fiduciary duty to manage Henry's medical and financial matters, and mismanagement of these matters constitutes a breach of this duty. *In re Guardianship of Martinez* (Fr. Ct. App. 2009).

11) Noah's failure to manage Henry's medical and electricity bills constitute a breach of Noah's fiduciary duty. *Matter of Selena J.* (Fr. Ct. App. 2011).

12) Noah's failure to provide adequate food for Henry constitutes a breach of his duty to care for Henry. *Id.*

13) Noah's inability to manage Henry's spending constitutes financial mismanagement that amounts to a breach of his fiduciary duty. *Id.*

14) These breaches constitute good cause to remove Noah as prospective guardian and to hold a hearing regarding Ruth's petition. *Id.*

Representative Good Answer No. 2

Findings of Fact

1. Henry King [hereinafter, Henry] is a widowed 74-year-old man and a resident of the city of Dry Creek in the State of Franklin. He has been found incompetent to manage his affairs.

2. Henry has two children, Noah King [hereinafter Noah] and Ruth King Maxwell [hereinafter Ruth].

3. In 2013, Henry first began experiencing neurological difficulties and consulted with a doctor and psychiatrist.

4. Shortly after, Henry was diagnosed with early signs of dementia, and although still competent at the time, he began making arrangements for his declining mental health.

5. On May 20, 2013, Henry signed an advance directive and power of attorney, nominating Noah as his prospective guardian.

6. At that time, Noah lived in Dry Creek, Franklin and Ruth lived in another state.

7. Henry receives a fixed income of $2515 per month, from Social Security and his pension.

8. In 2015, during a visit with her father, Ruth discovered bruising on Henry's right arm from a fall in the shower. Noah was aware of the fall but did not seek medical attention for his father. A doctor's visit confirmed deep bruising, but no broken bones.

9. On June 22, 2016, Henry again fell in his bedroom and broke his wrist. Although he complained of being stiff to Noah, Henry did not receive medical attention until the following day, when he received a cast at the hospital. He is now healed. Noah did not disclose this information to Ruth.

10. In August 2016, Ruth's job transfer allowed her to move closer to her father and she began spending two to three evenings per week with her father.

11. Ruth had to hire a caretaker for her father to shop for groceries and cook for him, as he had little food in his home.

12. Noah has neglected to pay utility and medical bills, including bills from Henry's doctor and the electricity company for Henry's house.

13. Henry has spent over nine thousand dollars in online expenditures in the past year, including as much as $1200 in one month. Noah manages Henry's finances and is aware of these charges.

14. Henry states that these purchases were for his "friends" so they would come visit him.

15. Noah has not attempted to stop these purchases and stated that Henry "has enough money."

Conclusions of Law

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1. After an individual has been found incompetent, a court "shall appoint as guardian that individual who will best serve the interest of the adult." (Franklin Guardianship Code §401(a).) That guardian is to provide "for the essential requirements for health and safety and personal needs" of the individual found incompetent. (Id. § 400.)

2. The statutory preferences grant the highest preference to an individual previously nominated for appointment by the later incompetent. (Fr. Guard. Code § 401(b)(1).)

3. Although the Guardianship Code lists statutory preferences for the Court to consider, the Court may disregard those preferences "upon good cause shown." (Id. §401(b).)

4. It is reversible error to enter guardianship appointment as a matter of law by failing to consider other proffered evidence regarding good cause. (Matter of Selena J., Fr. Ct. of App. 2011.)

5. Good cause exists to override the statutory preferences when the proposed guardian's "previous actions would have constituted a breach of a fiduciary duty had the person been serving as a guardian." (Id.) This is of heightened import when the proposed guardian has actually served as a fiduciary for the proposed ward under advance directive or power of attorney. (Selena J.)

6. A breach of fiduciary duty to a ward occurs when the guardian through either action or neglect, harms the ward. (In re Guardianship of Martinez, Fr. Ct. of App. 2009.) "Harm can occur through mismanagement of finances, neglect of the ward's physical well-being, or similar actions." (Id.)

7. Noah King currently stands in a fiduciary role to his father, Henry King, as power of attorney and advance directive, and thus owes Henry a duty "to act in the best interest of the ward." (Id.) Thus, a court can look to his current role as fiduciary and determine if he has breached his duty; if so, that is good cause for overriding his proposed guardianship. (See Selena J.)

8. Noah has been neglectful of Henry's finances, in both allowing necessary bills such as his health care and electricity to go unpaid, and also in allowing him unfettered access to internet sites. This mismanagement of finances, particularly for someone who is not working, in declining health, and on a fixed income, breached Noah's fiduciary duty to Henry.

9. Henry has had several physical injuries that went untreated for some time. Although Henry has not suffered any lasting injuries from these instances, his age and mental health dictate that immediate medical attention is necessary whenever this occurs. Noah failed to do so, and this is another breach of fiduciary duty to Henry. (See Martinez.)

10. Applying the standard articulated by our Court of Appeal in Selena J., these breaches of fiduciary duty show good cause that the statutory preferences should be overridden and that Noah King not be appointed guardian of Henry King. (See Selena J.)

11. Following the statutory preferences, as Henry's wife is deceased, Ruth King Maxwell, as Henry's adult child, should be appointed guardian of Henry. (See Fr. Guard. Code § 401(b)(2-3).)