FEBRUARY 2010 MARYLAND BAR EXAMINATION
BOARD'S ANALYSIS

QUESTION 1

A. The Sixth Amendment to the United States Constitution guarantees every criminally accused person of the right to assistance of counsel. However, the right to assistance of counsel can be waived if the Defendant makes a knowing and intelligent waiver of this right. The State, no matter how motivated, may not compel a Defendant to accept a lawyer he does not want.

The Court must conduct an Inquiry to ensure that a decision to waive the right to counsel is made knowingly and intelligently. In this hearing, the Court shall inform the Defendant of his right to counsel and the importance of the assistance of counsel. The Court must also advise the Defendant of the nature of the charges in the charging document and the allowable penalties from the charges. Maryland Rule 4-2l5. The Court must also determine whether the Defendant is competent to make the decision.

That, however, does not require that the Defendant have the skill of an attorney but rather only that he is competent to make decisions and to stand trial. The Defendant's legal skills are irrelevant to this consideration.

Whether to transfer the case to another jurisdiction does not rest in the discretion of the Trial Judge. Art. 4, § 8 of the Maryland Constitution states that in indictments for offenses punishable by death, removal for trial to some other court having jurisdiction is mandatory. Md. Rule 4-254 prescribes that the Defendant may file a suggestion under personal oath that he cannot have a fair and impartial trial in the court on which the action is pending. The Court Administrative Judge designates the county to which the case is removed, so that Brown may not require removal to Garrett County.

B. The Court should deny the witness testimony as it was not disclosed as required pursuant to Maryland Rule 4-263. This Rule imposes the duty on the Defendant to present alibi witnesses in discovery.

Short of refusing to allow the witness testimony, the Court can grant a short continuance to allow the State to interview the witness and conduct further investigation based upon the disclosure.

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QUESTION 2

The Answer should recognize that the case is based on the First Amendment, which protects speech related to charitable fundraising, but does not prohibit the State from requiring public financial disclosure about the fundraising activities.

U.S. Supreme Court decisions "have repeatedly recognized the legitimacy of government efforts to enable donors to make informed choices about their charitable contributions. *Illinois Ex Rel. Madigan v. Telemarketing Associates, Inc.*, 538 U.S. 600 (2003). The State may require professional fundraisers to file "detailed financial disclosure forms" and may communicate that information to the public. *Schaumberg v. Citizens for a Better Environment*, 444 U.S. 620 (1980); *Secretary of State of Maryland v. Joseph H. Munson Co.*, 467 U.S. 947 (1984). Based on the decisions, subparagraph (b) of the Maryland Statute does not infringe on MUMM's First Amendment Rights and, therefore, are valid and enforceable.

However, subparagraphs (a) and (c) violate First Amendment rights under *Madigan*, supra. The State may not require up front telephone disclosure of the fundraiser's fee, as this might end as well as begin the conversation. *Riley v. National Federation of the Blind of N.C., Inc.*, 487 U.S. 781 (1988). Such up front disclosure is "unduly burdensome." *Id*. Moreover, the First Amendment protects the right to educate and promote activities which are illegal so long as the speech does not promote "imminent lawless action." *Brandenburg v. Ohio*, 395 U.S. 444 (1969).

Subsection (d) of the statute, imposing a mandatory 5-year prison term on any person who unlawfully solicits funds, may be subject to attack as a cruel and unusual punishment under Amendment VIII of the U.S. Constitution and Article 16 of the Maryland Declaration of Rights. In determining whether a sentence is a cruel and unusual punishment, courts apply the "grossly disproportionate" standard, i.e., whether a threshold comparison of the crime committed and the sentence imposed leads to an inference of gross disproportionality. *Ewing v. California*, 538 U.S. 11 (2003), *Lockyer v. Androde*, 538 U.S. 63 (2003).

Subsection (e) is a severability clause that would save subparagraphs (a) and (c), but would leave the statute without a penalty provision if it is violated.

QUESTION 3

A. Trucker's statements to the Policeman were statements by a party opponent. They are not excluded by the hearsay rule. There is no requirement that the declarant be unavailable as a witness. Maryland Rule 5-803 (a) (1). The Trucker's statements could also be admissions. The Court will overrule the objection and allow the Policeman to testify to Trucker's statements made to him.

B. The doctrine of *res ipsa loquitur* will not be a successful argument for Driver. The elements of *res ipsa loquitur* are that the following circumstances are more probable than not: the event would not have happened without negligence; the cause of the event was within the defendant's control; and no action by any one or any thing else, including the plaintiff, was a cause of the event. *Dover Elevator Co. v. Swann*, 334 Md. 231, 236-237, 638 A.2d 762 (1994) (internal citations omitted). *See also* MPJI-Cv 19:8. Trucker admitted hitting Driver while Driver was stopped for a red light. Trucker would ordinarily then have the burden to defend his actions or have the inference of negligence before the fact finder. In this case, Trucker testified in Driver's case as an adverse witness that there was an independent cause of the collision and damages - the sudden brake failure. Therefore, Driver would not meet the elements for the *res ipsa loquitur* doctrine as sudden brake failure could occur without negligence on Trucker's part and not be within Trucker's control.

C. Trucker will be successful in a motion for judgment in the case.

(1) As plaintiff, it is Driver's burden to prove that Trucker was negligent and that Trucker's negligence was the proximate cause of the collision and damages.

(2) Driver had the right to call Trucker as an adverse witness in the case. Court and Judicial Proceedings Article, Annotated Code of Maryland (as amended), section 9-113. However, Driver then became bound by that testimony, unless he contradicted or discredited the testimony. *Coffey v. Derby Steel Co., Inc.*, 291 Md. 241, 434 A.2d 564 (1981). Trucker testified without objection that the cause of the collision was sudden brake failure.

(3) There was an inference of negligence as Trucker admitted that he could not stop and he hit the automobile, but the testimony of Trucker in Driver's case also set forth another cause for which there may have been no negligence, that is, sudden brake failure. Based on the given facts, Trucker's rendition of the facts as he testified as an adverse witness in Driver's case were not contradicted or discredited. Driver testified that he was knocked unconscious and never saw the driver of the truck. Therefore, Driver can not recover in negligence because he did not meet his burden of proving that Trucker's negligence was the proximate cause of the collision and damages. *Strasburger v. Vogel*, 103 Md. 85, 91, 63 A. 202 (1906).

D. Based on the facts, the discarding of the hose is not relevant. A presumption arising from the spoliation of evidence by not retaining the defective truck hose, but that presumption does not cure Driver's failure to meet his burden of proving negligence in his case in chief. *See* Maryland Rule 5-401 (relevant evidence). Driver produced evidence in his own case through the testimony of Trucker that tends to disprove the presumption of negligence. *See* Maryland Rule 5-301 (a) (presumption in civil cases).

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QUESTION 4

1. Bigamy- not a ground for divorce (Family Law Article §§ 7-102 and 7-103); ground for annulment. Marriage is void *ab initio* meaning against one's will. *See Ledvinka v. Ledvinka*, 154 Md.App. 420, 840 A.2d 173 (2003). She should file for an annulment.

2. With respect to child custody, depending on ability of parties to communicate, the award may be joint legal custody with Beth having primary residential custody. Al has a demanding work schedule, and a child with special needs suggests physical custody probably would not be shared.

3. Beth has a claim for child support-will continue beyond age 18 due to the child's permanent disability (Duty of parent to support destitute adult child) Family Law Article § 13-102 (b).

4. Income level of parties suggests this is an above guidelines child support case. Al earns $300,000.00. Beth may have potential of $40,000.00. Court could look at actual expenses of the child, or project a guidelines application above $10,000.00 per month ($28,000.00 per month). Court has discretion in above guidelines case in setting child support. Family Law Article § 12-204 (d).

5. Beth may be entitled to use and possession of the family home. *See* Family Law Article §§ 8-203, 8-206, 8-207and 8-208. The Maryland Marital Property Act applies to annulments. If so entitled, having primary residential custody of the child, Beth could get use and possession of the family home for a maximum period of three years from the date of the annulment and Al could be required to contribute to the mortgage on the family home and the utilities during the period of use and possession in addition to child support.

6. Beth has a claim for alimony; 14 year union; significant disparity in income of parties; permanent versus rehabilitative alimony. *See* Family Law Article § 11-106 (c).

7. Beth will be entitled to claim an interest in all marital property. The Court should start with the proposition that she is entitled to one-half of all marital assets (Family Law Article §§ 8-204 and 205) and the Court can give a monetary award to adjust the inequity created by title.

8. The Court has authority to order Al to transfer ownership of the residence to Beth under Section 8-205 (a)(2) of the Family Law Article.

9. Under Family Law Article § 11-110 (c) the Court has the discretion to award Beth suit money, counsel fees and costs.

QUESTION 5

Contract

Contracts may be subject to rescission on a finding of fraud in their making. *Hale v. Hale*, 66 Md. App. 228, 503 A.2d 271 (1986). Fraudulent inducement into a contract means that one has been led by any form of deceit to enter into an agreement to his or her detriment, and arises where a person is induced by some fraudulent representation or pretense to execute the very instrument intended to be executed but under a misrepresentation as to the contents thereof. *Meyers v. Murphy*, 181 Md. 98, 28 A.2d 861 (1942); *Security Const. Co v. Maietta*, 25 Md. App. 303, 334 A.2d 133 (1975). Under these facts, Buyer will have an action for rescission due to his reliance on the advertisement and the expectation of his ability to subdivide the parcel into ten separate lots.

Misrepresentation constituting grounds for the avoidance of a contract must relate to material facts, and in order to enable a party to avoid a contract on the grounds of fraud and misrepresentation(s), the representation(s) alleged to be false must have been relied on in entering into the contract. *Carozza v. Peacock Land Corp.*, 231 Md. 112, 188 A.2d 917 (1963); *Ryan v. Brady*, 34 Md. App. 41, 366 A.2d 745 (1976); *Snyder v. Herbert Greenbaum and Associates, Inc.*, 38 Md. App. 144, 380 A.2d 618 (1977). Whether a misrepresented fact is material is a matter of whether a reasonable person would attach importance to it in determining his or her choice of action in the transaction, or the maker of the misrepresentation knows that its recipient is likely to regard the fact as important although a reasonable person might not do so. *Carozza v. Peacock Land Corp.*, 231 Md. 112, 188 A.2d 917 (1963). Obviously, the number of lots to be obtained through subdivision is a material fact under virtually any set of circumstances, particularly when Seller was aware of Buyer's intentions.

Because there is no real or free consent to a contract when such consent is obtained through fraud, fraud vitiates all contracts. *Hall v. Hall*, 147 Md. 184, 127 A.2d 858 (1925). Generally, a contract induced by fraud is voidable and not void as against the party practicing the fraud. *Faller v. Faller*, 247 Md. 631, 233 A.2d 807 (1967). The rescission of a contract is the abrogation or unmaking of the agreement *ab initio* and the placing of the involved parties in status quo ante. *Glen Alden Corp. v. Duvall*, 240 Md. 405, 215 A.2d 155 (1965); *Ryan v. Brady*, 34 Md. App. 41, 366 A.2d 745 (1976); *Dialist Co. v. Pulford*, 42 Md. App. 173, 399 A.2d 1374 (1979).

A plaintiff is generally required to disaffirm the contract and restore to the defendant whatever the plaintiff received under the bargain, or at least offer in good faith to restore it, before the defendant is required to restore what the defendant received from the plaintiff. *Consumer Protection Division Office of Atty. Gen. v. Consumer Pub. Co.*, Inc., 304 Md. 731, 501 A.2d 48 (1985). When a party to a contract discovers fraud, he or she is put to a prompt election to rescind the contract or to ratify it and claim damages. *Creamer v. Helferstay*, 294 Md. 107, 448 A.2d 332 (1982), appeal after remand, 58 Md.

App. 263 (1984). Acts of acquiescence, ratification, or estoppel will preclude the remedy of rescission. *Merritt v. Craig*, 130 Md. App. 350, 746 A.2d 923 (2000), *reconsideration denied* (Mar 28, 2000), *cert. denied*, 359 Md. 29, 753 A.2d 2 (2000). In order for the extraordinary relief of rescission of a contract to be granted, there must be proof of justifiable reliance on a material misrepresentation is sufficient for such a purpose and has the same effect as fraud in rendering a contract voidable . *Creamer v. Helferstay*, 294 Md. 107, 448 A.2d 332 (1982), appeal after remand, 58 Md. App. 263, 473 A.2d 47 (1984). Given the misrepresentations found in the advertisement which formed the basis of Buyer's willingness to enter into the contract, as well as Seller's knowledge thereof, Buyer has an action for rescission or, if he so elects, damages on the basis of only obtaining nine lots when he reasonably expected ten lots.

The fact that the person relying on a misrepresentation as to the tenor or contents of a writing may have been wanting in ordinary prudence in so doing does not prevent the misrepresentation from constituting fraud. *Sainsbury v. Pennsylvania Greyhound Lines*, 183 F.2d 548 (4th Cir. 1950) (applying Maryland law). Whether one had the right to rely on representations in any particular case will depend on the circumstances involved, such as the form of the representation, the relations of the parties, and their respective means of knowledge. *See also* C.J.S. Contracts § 169. These facts would indicate that Buyer was rational to rely on Seller's representations; however, the argument could certainly be made that someone purchasing a piece of waterfront property for nearly three million dollars should have verified any claims as to zoning matters.

Professional Conduct

Maryland Rules of Professional Conduct "MRPC" 7.4(a) prohibits an attorney from stating that he or she "specializes" in a particular field of law. Davis stated that she specializes in this particular type of case.

MRPC 4.2 prohibits communication with another individual the lawyer knows is represented by counsel with respect to the subject of the representation without the consent of that person's attorney. Davis is aware that her partner represents Seller with respect to real estate transactions, and represented Seller throughout the subdivision proceedings for the parcel at issue, and contacted Seller directly.

MRPC 1.7(a) states that a lawyer shall not represent a client if the representation involves a conflict of interest, and such a conflict of interest exists if the representation of one client will be directly adverse to another client or there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client or a former client. MRPC 1.10(a) imputes any such conflict from one lawyer in a firm to all other lawyers in the firm. Obviously Buyer's interests are adverse to seller's and any knowledge Davis' partner might possess, which is imputed to Davis, with respect to the facts and circumstances of the property, any applicable approvals, the advertisement, the contract itself, Seller's financial position, view of litigation, willingness to settle, etc. would certainly be adverse to Seller.

This conflict is not waivable as this scenario directly involves the assertion of a claim by one client against another client. MRPC 1.7(b)(3). There is no option.

QUESTION 6

A

An agency is the fiduciary relation which results from the manifestation of consent by one person to another that the other shall act on his behalf and subject to his control, and consent by the other to act accordingly. *Insurance Co. of North America v. Miller*, 362 Md. 361, 765 A.2d 587 (2001). The main duty of an agent is loyalty to the interests of the principal. *King v. Bankerd*, 303 Md. 98, 492 A.2d 608 (1985).

An agent's function is to represent the rights of the principal. The agent's authority is limited by the instructions, restrictions, and needs of the principal. *Walton v. Mariner Health of Maryland, Inc.,* 391 Md. 643, 894 A.2d 584 (2006). Actual authority is that which is actually granted by the principal to the agent and it may be express or implied where the principal knowingly permits the agent to exercise the authority or holds out the agent as possessing it, and consists of the agent to affect the legal relations of the principal's manifestations of consent to him. *Hill v. State*, 86 Md. App. 30, 585 A.2d 252 (1991); *Homa v. Friendly Mobile Manor, Inc.,* 93 Md. App. 337, 612 A.2d 322 (1992); *Integrated Consulting Services, Inc. v. LDDS Communications, Inc.,* 996 F. Supp. 470 (D. Md. 1998), *aff'd*, 176 F.3d 475 (4th Cir. 1999) (applying Maryland law). Apparent authority is not actually granted by a principal, but the principal knowingly permits the agent to exercise the authority or holds out the agent as possessing it. *Id*. An act of an agent within the actual or apparent scope of his authority will bind a principal. *Garfinkel v. Schwartzmann,* 253 Md. 710, 254 A.2d 667 (1969).

'Scope of authority" generally includes not only the actual authorization conferred on an agent by the principal, but also that which has apparently or impliedly been delegated to the agent. *Department of Public Safety and Correctional Services v. ARA Health Services, Inc*., 344 Md. 85, 685 A.2d 435 (1996). The requisite control by a principal over the actions of the agent may be exercised by prescribing the agent's obligations or duties before or after the agency acts, or both. *Brooks v. Euclid Systems Corp*., 151 Md. App. 487, 827 A.2d 887 (2003), *cert. denied Brooks v. Euclid*, 377 Md. 276, 833 A.2d 31 (2003). An agent cannot enlarge actual principal. *P. Flanigan & Sons, Inc. v. Childs*, 251 Md. 646, 248 A.2d 473 (1968). The validity of an agent's act depends on his or her authorization to perform the act by the principal not on his or her subjective motivation for acting. *Citizens Bank of Maryland v. Maryland Industrial Finishing Co., Inc*. 338 Md. 448, 659 A.2d 313 (1995). Where an agent transcends their authority, departs from its provisions, or knowingly presumes to act without any authority, the principal is not liable, and the agent is not liable on the contract but is personally liable for breach of implied warranty. *Burkhouse v. Duke,* 190 Md. 44, 57 A.2d 333 (1948).

Obviously Green engaged Hall as his authorized agent and the scope of his authority was clear – take whatever steps were necessary to ensure receipt of the permit within ninety days. Hall did not honor these instructions.

Authorized agents may subject the principal and create binding rights and obligations on behalf of the principal. The ability of an authorized agent to bind the principal in a contractual relationship with a third party is limited to the extent to which the agent is authorized to act. However, the principal can become liable if the principal ratifies the agent's conduct. *Progressive Casualty Insurance Company v. Ehrhardt,* 69 Md. App. 431, 518 A.2d 151 (1986). Limits placed by the principal upon the agent's authority may be ineffective if, with knowledge of all facts, the principal either waives the act of the agent in exceeding his or her authority or adopts the act. *Hill v. State*, 86 Md. App. 30, 585 A.2d 252 (1991).

When the agent has no authority to act, the principal may later ratify the act giving it the same affect as if it had been originally authorized by a timely manifestation of an election to treat the act as authorized, or by conduct that is justifiable only if there were such election, and the principal will be bound by the unauthorized acts of the agent if the transaction is ratified in whole or in part. *Citizens Bank of Maryland v. Maryland Industrial Finishing Co., Inc*. 338 Md. 448, 659 A.2d 313 (1995); *Smith v. Merritt Savings and Loan, Inc.*, 266 Md. 526, 295 A.2d 474 (1972). The general rule of ratification of an agent's unauthorized act by acceptance of a benefit is not applicable if the circumstances surrounding receipt of the benefit do not reasonably tend to show intention to ratify either by words, conduct, or silence which reasonably indicate a desire to affirm the unauthorized act, or if circumstances indicate that receipt of benefits are as consistent with intent not to ratify as with intent to ratify an agent's act. *Huppman v.Tighe*, 100 Md. App. 655, 642 A.2d 309 (1994). However, a party cannot be found to have ratified absent knowledge of the material facts undergirding the transaction. *Huppman v. Tighe,* 100 Md. App. 655, 642 A.2d 309 (1994).

One way for a principal to ratify an agent's unauthorized act by conduct is to accept and retain a benefit that it would not have received but for the previously unauthorized act, and a failure to repudiate the unauthorized act. *Citizens Bank of Maryland v. Maryland Industrial Finishing Co., Inc*., 338 Md. 448, 659 A.2d 313 (1995); *Progressive Casualty Insurance Co. v. Ehrhardt,* 69 Md. App. 431, 518 A.2d 151 (1986). A repudiation must be made timely, and in a definite, positive, and unequivocal manner. The sufficiency of a repudiation is generally a question of fact that must be determined from the surrounding circumstances. *Huppman v. Tighe,* 100 Md. App. 655, 642 A.2d 309 (1994).

With the acceptance and cashing of the check, and his accompanying statement, it would appear the Green ratified Hall's act, preventing recovery against Hall. However, Green could argue that based upon the *Huppman* principle, ratification did not occur because his acceptance of the benefit was just as consistent with no intent to ratify as it would be with an intent to ratify and that the retention of the money was merely an effort to mitigate damages, not to ratify Hall's conduct. As a result, Green might have a viable claim against Hall for the $25,000 difference between his damages and mitigation.

B.

Under the doctrine of apparent authority, a crucial factor is reasonable reliance by a third party on a principal's conduct. Specifically the principal becomes responsible for the agent's actions when the principal's conduct, either affirmative acts or failure to take corrective steps, has clothed the agent with apparent authority, and thereby induces the third party to rely thereon to his or her detriment. *Johns Hopkins University v. Ritter*, 114 Md. App. 77, 689 A.2d 91 (1996).

There are two elements necessary in order to establish an apparent agency. First, the principal must by its acts and conduct hold out the alleged agent as being authorized to act on the principal's behalf. Second, the third party must rely in good faith upon this representation. *B.P. Oil Corp. v. Mabe*, 279 Md. 632, 370 A.2d 554 (1977). Given the county's reasonable good-faith reliance on Hall's authority as represented by both Green and Hall, and its planning on the basis of the executed contract, the County should be able to successfully defend against any action to rescind the contract on the basis that Hall had the apparent authority to enter into the contract on green's behalf, Green did nothing to repudiate this good-faith belief and reliance, and the County modified its planning accordingly.

As a result, there is very little likelihood of success in any potential rescission action against the County.

QUESTION 7

In order for a plaintiff to state a *prima facie* claim in negligence, he or she must allege facts demonstrating "(1) that the defendant was under a duty to protect the plaintiff from injury, (2) that the defendant breached that duty, (3) that the plaintiff suffered actual injury or loss, and (4) that the loss or injury proximately resulted from the defendant's breach of the duty." *Muthukumarana v. Montgomery Co*., 370 Md. 447, 486, 805 A.2d 372, 395 (2002). Generally, the law imposes no duty to control the acts of another person. *See e.g*., *Remsburg v. Montgomery*, 376 Md. 568, 583 (2003). However, under certain circumstances, where a person has knowledge of the dangerous propensities of a person and also the means by which to control the person, then such a duty will arise. Here, Owner is Employee's employer. Owner has control over Employee's employment. Owner knows of Employee's sometimes violent and delusionary nature and that Employee has attacked persons in their neighborhood. Thus, a duty of control over Employee in the employment setting will run to all foreseeable plaintiffs. Supplier is a foreseeable plaintiff, particularly because he notified Owner of Employee's first threat to him.

There is an issue whether Owner acted reasonably in carrying out her duty under the circumstances in her control of Employee's actions towards Supplier while at work. There is also an issue whether any alleged breach of Owner's duty was the proximate cause of Supplier or Pedestrian's injuries. Although an injury might not have occurred "but for" an antecedent act of a defendant, liability may not be imposed if for example the negligence of one person is merely passive and potential, while the negligence of another is the moving and effective cause of the injury. *Bloom v. Good Humor Ice Cream Co.*, 179 Md. 384, 18 A.2d 592 (1941), or if the injury is so remote in time and space from a defendant's original negligence that another's negligence intervenes. *Dersookian v. Helmick*, 256 Md. 627, 261 A.2d 472 (1970); *Liberto v. Holfeldt*, 221 Md. 62, 155 A.2d 698 (1959).

The Applicant should discuss: the vicarious liability of the Burger Shack and Owner for the injuries to Supplier and Pedestrian as a result of Employee actions with the car; the direct negligence against the Burger Shack/Owner for negligent supervision of Employee and for negligent entrustment of the company car by Supplier and Pedestrian. The Applicant should discuss Owner's defenses of lack of causation between Employee's access to the company car and Employee's decision to intentionally hit Supplier or Pedestrian with the car outside of the work environment, contributory negligence on the part of Pedestrian for crossing the street against the light and whether Employee had the last clear chance to avoid striking Pedestrian. Finally, the Applicant should discuss for purposes of vicarious liability against Owner/Burger Shack whether or not Employee (a store "dish washer") was in scope of employment at time of accident.

QUESTION 8

A purchaser of land under a contract of sale acquires an equitable title and recording of the contract does not transform the equitable title into a legal title. However, recording of the contract gives constructive notice of the purchaser's equitable interest from the date of recording and effectively guards against a sale by the seller to a third party.

While the supplemental written agreement in which Brent sold his one-half interest to Andy was not recorded, it nevertheless effectively transferred Brent's equitable interest to Andy.

The validity of transfer of holder's equitable title under a recorded contract of sale is not dependent upon recording nor is recording of such transfers necessary to make them binding between the parties or to make them invulnerable to the lien of a subsequent judgment against the transferor (Brent).

Lien of a judgment attaches only upon that which is the debtor's property at the time it is entered and property thereafter acquired.

Brent sold his interest in the property to Andy prior to Paul's judgment and no lien attached under these facts.

Kingsley v. Makay, 253 Md. 24, 251 A.2d 585 (1969).
Bourke v. Krick, 304 F. 2d 501 (4th Cir. 1962).
Westpark, Inc. V. Seaton Land Co. 225 Md. 433, 171 A.2d 736 (1961).

QUESTION 9

A.

Pursuant to Courts and Judicial Proceedings "CJP" Article § 4-401(1) and Article § 4-402(d)(1)(i), Owner's claims for breach of contract and negligence may be brought in either the District Court or Circuit Court because the $30,000 amount in controversy exceeds $5,000 exclusive of prejudgment or post judgment interest, costs and attorney's fees, but does not exceed $30,000.

Builder's suit against Owner which includes an action for declaratory and injunctive relief must be brought in the Circuit Court. Although Builder's claim for assumpsit (to recover the remaining $25,000 owed) could by itself have been brought in the District Court, pursuant to CJP Article § 4-402(a), (c) and (d)(2), the District Court lacks the equity jurisdiction to hear Builder's declaratory and injunctive matters as it relates to the facts of the given question.

Pursuant to CJP Article § 4-402(d)(1)(i), Builder's action for negligence against Supply Co can be brought only in the Circuit Court because the $35,000 amount in controversy exceeds $30,000.

Pursuant to CJP § 6-103(b) a Maryland court can exercise personal jurisdiction over any of the parties. This includes Supply Co. who, pursuant to CJP § 6-103(b)(2), (3) or (4) supplies goods or manufactured products to Builder for all Builder's projects in Maryland or because it has allegedly caused tortious damages in Maryland.

B.

Pursuant to CJP § 6-201(a), Builder can be sued in Prince George's County where the work was being performed, Howard County where it has a principal office or in Montgomery or Charles Counties where it carries on a regular business.

Owner can only be sued in Prince George's County where Owner resides and where the work was being performed CJP § 6-201(a).

Builder may bring an action against Supply Co pursuant to CJP § 6-202(3) in Howard County where Builder's resides (its principal place of business) because Supply Co is a corporation which has no principal place of business in the State.

QUESTION 10

Whether or not a partnership exists, when there is no express agreement, is to be gathered from the intention of the parties revealed by their conduct and the circumstances surrounding their relationship and the transactions between them.

Any conduct on the part of a person reasonably calculated to lead others to suppose that he is a partner in a particular business amounts to a "holding out" on his part.

Criteria for determining whether property not held in the partnership name is partnership property is the intention of the parties to devote it to partnership purposes to be deduced from the facts and circumstances surrounding the transaction considered in connection with the conduct of the parties in relation to the property.

All property originally brought into the partnership stock or subsequently acquired by purchase or otherwise on account of the partnership is partnership property. Facts: The partnership business was the operation of a garage for repair of autos. Title to the property used in the business, real and personal, was in the names of the two partners as tenants in common, each having an undivided one-half interest.

The interest of a partner in real estate owned by the partnership is personal property. Except in the case of a conveyance to a purchaser for value without notice, the legal title to partnership property cannot be conveyed, devised or inherited as the individual property of any of the partners. The partners interest in the partnership, which is a personal chose in action, is all that he may assign or bequeath and, upon his death, intestate, the interest passes to his Personal Representative as personal property and not to a devisee named in decedent's will his estate is entitled to receive the value of his interest in the partnership as a personal chose in action.

Adam and Bill were partners and, despite the record title, held the real estate as tenants in partnership so that the interest of the deceased partner at his death was personal property that passed to his Personal Representative.

Under these facts, because of Adam's death, the partnership ended. Bill the surviving partner, must dissolve the partnership, and wind up its affairs. After payment of partnership debts remaining assets would pass to the Personal Representative of Adam's Estate and ultimately distributed to Adam's wife.

Madison Nat'l Bank v. Newrath, 261 Md. 321, 275 A.2d 495 (1961).
Price v. McFee, 196 Md. 443, 77 A.2d 11 (1950).
Vlamis v. DeWeese, 216 Md. 384, 140 A.2d 665 (1958).
Southern Can Co. v. Sayler, 152 Md. 303, 136 A. 624 (1927).