FEBRUARY 2010 MARYLAND BAR EXAMINATION
QUESTIONS AND REPRESENTATIVE GOOD ANSWERS

In order to assist persons wishing to prepare for the essay portion of the Maryland Bar Examination or to review their examinations, the State Board of Law Examiners prepares a Board's Analysis and selects Representative Good Answers for each essay question given in each examination. The Board's Analysis and the Representative Good Answers are intended to illustrate to potential examinees ways in which essay questions are analyzed by the Board and answered by persons actually taking the examination. This material consists of three parts.

1. The Essay Question is a reprint of the question as it appeared on the examination. Extracts of statutory material and rules are not included.

2. The Representative Good Answer(s) consist of one or more actual answers to the essay question. They are reproduced without any changes or corrections by the Board, other than spelling. The Representative Good Answers are provided to illustrate how actual examinees responded to the question. The Representative Good Answers are not average passing answers nor are they necessarily answers which received a perfect score; they are responses which, in the Board's view, illustrate successful answers.

3. The Board's Analysis consists of a discussion of the principal legal and factual issues raised by a question. It is prepared by the Board. The Board's Analysis is not a model answer, nor is it an exhaustive listing of all possible legal issues suggested by the facts of the question.

QUESTION 1

July 2009 was an unsettling time for the residents of Caroline County, Maryland because of seven brutal murders in which the victims, apparently randomly selected, were kidnapped, murdered and dumped in front of the County Courthouse with a handwritten note stating "Res Ipsa Loquitor!"

After a month long manhunt and constant national media coverage, the Caroline County Police Department arrested retired law professor Oscar Brown and charged him with seven counts of kidnapping and murder. Professor Brown hired an experienced attorney to represent him at trial. The States' Attorney is seeking the death penalty.

A jury trial was properly and timely scheduled before the Circuit Court for Caroline County. The State provided Professor Brown's counsel with all discoverable information as required by Maryland Rule 4-263 and was preparing for trial. Professor Brown refused to allow his attorney to provide the States' Attorney any information regarding his defense, including alibi witnesses.

PART A

Two weeks before trial, Professor Brown sought to discharge his attorney and represent himself. Furthermore, because of all the publicity, he filed a motion, in proper form, to have the trial removed to Garrett County, Maryland.

a. At a pretrial hearing, what issues must the Court determine before ruling on his requests? Explain your answer.

PART B

At trial, and after the conclusion of the State's case, Professor Brown attempts to present Fredericka Prosser as a witness to testify that at the time of the murders, she and Professor Brown were together editing the new edition of their text book on "Torts." The State objects and moves to prevent Prosser from testifying.

b. How should the Court rule? What options are available to the Court short of refusing to allow the witness testimony? Explain your answers.

REPRESENTATIVE ANSWER 1

PART A

Professor Brown seeks to discharge his attorney. The court must determine whether Professor Brown is competent to proceed *pro se*. First, Professor Brown must knowingly waive his sixth amendment right to counsel. The court can look at whether Brown understands the seriousness of the charges brought against him and whether he

knows of the maximum and minimum sentences. It is likely that a retired law professor would understand his charges and be able to comprehend the possible sentences.

Second, the professor must intelligently waive his sixth amendment right to counsel. He must be aware of his right, and know of the possible risks of proceeding *pro se*. Once again, it is likely that a retired professor of law could make an intelligent decision to waive counsel. Brown would likely know all the risks of proceeding *pro se*.

The last standard is voluntariness. Since Brown is requesting to proceed without counsel and there is no evidence of coercion by the prosecution. Brown should be allowed to proceed with his case without counsel.

Furthermore, the professor's request to have the case transferred to Garrett County should be permitted. The facts state that this is a high-profile case. There has been "constant media coverage" and it would be difficult to find an impartial jury. The judge should weigh the inconvenience that this may cause against the defendant's sixth amendment right to an impartial jury. Due to the constant media coverage, the defendant may be unduly prejudiced. The trial is in the same state and witnesses and evidence will probably not have to travel far. Expense should also be considered, but ultimately, defendant's sixth amendment right to an impartial jury should trump, especially in a death penalty case.

PART B

The Court could exclude the evidence. Brown has a duty to tell the prosecution of the intent to use an alibi as a defense. In addition, Brown was supposed to inform the prosecution of any alibi witnesses.

On the other hand, due to the seriousness of the charges, the court, in its discretion, could allow a recess and give the prosecution time to investigate the defendant's claim and secure rebuttal witnesses.

REPRESENTATIVE ANSWER 2

PART A

Motion for change of Venue

Venue is proper in county where crimes occurred. A motion for change of venue can be filed when defendant will be unduly prejudiced, jury pool contaminated or other reasons why a fair trial cannot be held in that venue. Here this is a high profile case with "constant media coverage and a month long manhunt". Also the character of crime is particularly heinous. Surely it will be hard to find an unbiased jury among the residents of Caroline County. Also because of

media coverage, the jury pool will be contaminated. It will be almost impossible to find enough people who have not already been widely exposed to all the facts surrounding the murders. Judge will likely grant motion.

Self-Representation

Defendants have a right to be represented by attorney at all stages of trial but cannot be compelled to be represented.

Any decision to be pro se must be a knowing and informed decision. Judge will have to inquire into defendant's education, mental state. Here, defense attorney may bring his mental state into issue because of his refusal to allow her to provide any evidence of alibi witnesses. A reasonable and competent person would not do that. However, he is a retired professor, so well educated, waiver would be knowing absent any mental defect. Also because this is a death penalty case- court less likely to let him proceed pro se.

Prejudice to trial

The motions being filed so close to trial date will be extremely prejudicial and cause untimely delay. Here discovery has already been had and state is prepared for trial.

PART B

Normally Prosser testimony would be disallowed because outside discovery time. But Court will be loath to disallow any exculpatory evidence in a death penalty case, regardless of the fact that discovery has already been had and new evidence at this late hour will cause delay in proceeding with trial. Considering the extremely serious nature of the offenses and possible punishment, court should allow this new evidence. Court can allow the state additional time to prepare for trial by researching the witness and acquiring additional discovery. However, the defense will have to waive any rights associated with untimely delay in trial as the fault for delay is on defense.

QUESTION 2

Mothers For Use of Medical Marijuana ("MUMM") is a charitable organization whose mission is to educate the public about the benefits of marijuana for medical purposes. MUMM retained a for-profit professional fundraising firm to provide information about the medical benefits of marijuana in relieving pain and other symptoms of illnesses. These telephone solicitors contact millions of potential contributors each year. Approximately 50% of all funds obtained through telephone solicitations are used to pay the fundraisers. The balance is used to pay for printed material that MUMM mails to contributors, providing written information about the medical benefits of marijuana and soliciting additional contributions. The use of marijuana for medical purposes is a criminal offense under the laws of the State of Maryland.

The State of Maryland recently has enacted a law which provides:

"(a) In any solicitation to the public for a charitable organization by a professional fundraiser, the person solicited shall be promptly informed by a clear disclosure that the solicitation is being made by a paid professional fundraiser.

(b) Contracts for professional fundraising campaigns in Maryland must be filed with the Secretary of State. Those contracts must disclose all fundraiser fees, including any percentage of the gross amount raised to be retained by the fundraisers. All such filings are open for public inspection and copying.

(c) No charitable organization may solicit funds in Maryland which promotes or tends to encourage activity which is illegal under the criminal laws of this State.

(d) Any person who solicits funds in violation of this statute is subject to imprisonment for a mandatory term of five (5) years.

(e) In the event any part of this subtitle is declared invalid, the remainder shall remain valid and enforceable."

MUMM consults you, a Maryland attorney, to advise on whether it may successfully challenge all or any part of the Maryland statute.

What is your advice? Explain your reasons.

REPRESENTATIVE ANSWER 1

For the ease of answering this question, I will address the statute by each subpart.

Subpart (a)

MUMM has a valid challenge to (a). Freedom of speech includes the right for a non-profit organization to raise awareness and funds. MUMM has the right to provide information to the public. The facts indicate that the firm retained provides information to the public about MUMM's goals, etc.; the fundraising is ancillary. Disclosure that a professional fundraising is being used is off putting and will chill MUMM's ability to inform the public of its goals. The manner of speech targeted here is constitutionally valid, in the statute unconstitutional.

Subpart (b)

MUMM does not have a valid challenge to (b). The state has a right to protect the public from false charitable organizations and is entitled to collect information regarding the ratio of expenses to charitable use, as well as other similar accounting, in an effort to prevent swindling of its citizenry. Here, the statute is entirely valid.

Subpart (c)

MUMM has a valid challenge to (c). Freedom of speech includes the right to challenge the legal status quo through the promotion of criminal activity. The exception to the rule is that the advocacy can not incite imminent violence, such as mob hysteria. Here, MUMM is merely advocating a change to a statutorily prohibited activity, which is a valid right under freedom of speech. MUMM's activities are constitutionally protected, and the law is unconstitutional, as such, in regard to subpart (c). Subpart (c) is poorly worded.

Subpart (d)

MUMM has a valid challenge to subpart (d). Imprisonment for any violation of this statute is excessive. The statute covers three distinct areas: disclosure of fundraiser status, state awareness of contracts, and solicitation for promotion of illegal activity. In no event does imprisonment for five years fit the statutorily created crimes. This provision is outrageous and severely chills MUMM's rights to free speech.

Subpart (e)

MUMM has no challenge to (e). Statutes are allowed to be drafted so that invalid sections can be excised later. (e) merely provides this allowable severability.

REPRESENTATIVE ANSWER 2

First, MUMM should have standing to sue. Standing requires injury-in-fact, causation, and redressibility. Here MUMM hired a private fundraiser within the statute and would fall under the reporting provisions and prohibition provision (not allowing encouragement of illegal

activity). The statute was recently enacted so it is enforceable. The threat of enforcement is enough to amount to injury, even if the statute has not yet been enforced. The statute would be the direct cause of the organization ceasing activity and a change or revocation of the law would redress the injury.

Regarding the provisions, there are potential arguments that the statute violates the 14th amendment equal protection and due process rights of MUMM, the 1st amendment right to free speech (also applied through the 14th amend), and possible the 8th amendment prohibition of cruel and unusual punishment.

Provision (a) and (b) which require disclosure and contracts to be filed with the State are likely by themselves valid. The state can require under its police power licensing and disclosure of certain activities they feel need to be monitored for the public good. Constitutionally the court would review these on a rational basis review standard, to ensure the provisions were rationally based on a legitimate government interest, since they do not effect a suspect class. Here it is likely that the government interest in ensuring fundraising is legitimate and legal is a valid interest and this law is rationally related to the interest. It would be the plaintiff's burden to prove the state's interest was not valid.

Provision (c) is arguably a restriction on the organization's 1st amendment right to free speech (applied to the states through the 14th), since here the government is telling the organization what they can or can not promote to the public and solicit funds for. What review basis the court would use would be based on whether this fundraising activity was considered commercial speech or not. A non-commercial right to free speech is usually subjected to strict scrutiny by the court (the state must prove the law substantially related to a compelling government interest) and commercial speech is usually reviewed on a test similar to interminate scrutiny (related to a legitimate government interest). Here ft is likely since the speech is to raise money and is for- profit fundraising but for a non-profit purpose that the strict scrutiny test would apply. In either test, the burden would be on the government to prove that the standard was met. It is likely if the court would hold the state doesn't have a compelling interest to overcome the 1st amendment protections in this case.

Provision (d) has due process (5th amend through the 14th) and possible 8th amendment concerns (also through the 14th). The 5th amendment requires due process of the law before guilt and notice and hearing. Here the language states that there is a mandatory 5 year sentence for violators of this provision and does not provide for a finding of guilt or notice or hearing, which could violate the 5th amendment. Finally, the provision provides a 5 year sentence for soliciting funds which could be seen as cruel and unusual punishment since it is disproportionate and excessive.

Since some arguments do have merit and MUMM has standing (and the issue is ripe), I would advise MUMM to file a suit in state or federal court challenging the constitutionality.

QUESTION 3

While stopped in his automobile at a red light on Route 450 in Crofton, Anne Arundel County, Maryland, Driver was rear-ended by a truck owned and operated by Trucker. As a result of the impact, Driver was knocked unconscious and taken from the scene of the collision to the nearest hospital. His automobile was extensively damaged. The front of the truck was also damaged. A Policeman responded to a 911 call regarding the collision. At the accident scene, Trucker made statements to the Policeman about the collision.

Driver brought suit against Trucker and demanded a jury trial in the Circuit Court for Anne Arundel County, Maryland. Driver called three witnesses in his case at trial.

Driver's first witness was the Policeman. On direct examination, the Policeman was asked to state what Trucker had said to him at the accident scene. A timely objection was made to the question by Trucker's attorney. A proffer was made by Driver's attorney that the Policeman's testimony would set forth Trucker's explanation of the collision to the Policeman which was given immediately upon the Policeman's arrival at the scene of the collision.

On his own behalf, Driver testified in pertinent part as follows: "I was traveling east on Route 450 in Crofton. As I approached the traffic light at the intersection of Route 450 and Crofton Way, it turned red and I stopped for it. I had no warning of the truck or of the impending collision. I was knocked unconscious and never saw the truck or driver."

Driver called Trucker as a witness. Trucker testified that when he first applied the brakes the truck started to slow down. When he applied the brakes the second time, he had no brakes and had no way to swerve away from the automobile and hit the automobile. No objection was taken to this testimony. On cross examination by his counsel, Trucker explained that the truck had two brake systems, both of the air type. One air hose was used as part of the normal breaking operation. The other air hose was used as part of the back-up, emergency braking operation. He testified that in the morning, prior to the accident, he had been driving through traffic and had stopped at five other traffic lights without any problems. He also testified that after the collision during maintenance of the truck's engine, either he or his mechanic had taken a defective piece of hose off the truck and it was thrown away.

a. How will the Court rule on the objection to the policeman's testimony? Discuss in detail.

b. Based on the given facts, will the doctrine of *res ipsa loquitur* be a successful argument for Driver in the case? Discuss in detail.

c. Based on the given facts, will Trucker be successful in a motion for judgment at the close of Driver's case? Discuss in detail.

d. Based on the given facts, is it relevant in the trial that, as part of the maintenance of the engine after the collision, a defective piece of hose was found and it was thrown away? Discuss in detail.

REPRESENTATIVE ANSWER 1

Policeman's Testimony

Evidence must be relevant to be permissible. Here, the Policeman testifying to what Trucker said would be relevant to understanding what went on in the accident.

Hearsay is generally inadmissible. Hearsay is an out of court statement made for the truth of the matter asserted. A statement by a party opponent is admissible and is an exception to the hearsay rule. The statement be against the party's interests at the time of trial. Here, Trucker is a party to the action. Additionally, what he said about the accident to the Policeman could very well be against his interests at the time of trial. As such, this would be a statement of a party opponent and would be permitted. Any objection would be overruled.

Res Ipsa Loquitor

To recover for negligence, one must prove duty, breach, causation, and damages. Negligence can be proven through res ipsa loquitor. The plaintiff will show that absent a negligent act, the incident and damages would not have occurred, the defendant was in control of the thing which caused the damage, and that no other intervening act occurred. Here, the facts indicate that the driver was unconscious at the time of the accident, so he would not have first knowledge of exactly what happened and did not see the truck or the driver. However, Driver could show that absent a negligent driver, an accident would not have occurred, as the facts indicate that his light was red and he stopped for it.

Moreover, Driver would then show that the Trucker was in control of the truck. The facts also indicate that both Driver's car and Trucker's truck were damaged.

Driver would then also have to show that no other intervening act occurred. This could prove difficult, as the facts indicate that Trucker had an alleged brake malfunction which could be considered an intervening act. The Trucker even said that he had driven through 5 other lights and nothing happened. As such, the res ipsa loquitor argument may not be successful for Driver.

Defective Piece of Hose

Subsequent remedial measures are not admissible as evidence of liability. The fact that Trucker had his engine worked on and that a piece of hose was found AFTER the accident is not admissible to prove what happened before the accident.

Motion for Judgment

A motion for judgment is made at the close of a party's case when there is insufficient evidence to prove the elements of a claim. Courts are reluctant to grant motions for judgment. Here,

although Driver probably cannot prove his case through res ipsa loquitor or personal knowledge, he could prove it through testimony given to Policeman by Trucker about the accident. As such, the court would probably not grant a motion for judgment at the close of Driver's case.

REPRESENTATIVE ANSWER 2

Part A.

The objection made by counsel is for hearsay. Hearsay is an out of court statement offered to prove the matter asserted. Here Driver is trying to offer testimony of the police officers about a prior statement that was told by the Trucker offered to show the truckers explanation of the collision at the time of the accident. This would be considered hearsay and needs an exception in order to be admissible.

The statement by party opponent exception to the hearsay rule allows hearsay evidence to be admissible if made by the party opponent and is adverse to the interest of the opponent at the time of trial. Here the driver can get the truckers statement into evidence because it was made by the trucker to the police officer.

The driver may also get the evidence in on a excited utterance exception. Excited utterance exception allows hearsay evidence to come in if the statement was made in mere excitement or shock at the time it was made regarding an event that was happening or just happened. Considering the severity of the accident, the trucker may have given the description to the police officer in a shocked and surprised state of mind. Therefore, this evidence may be admissible under excited utterance exception.

The court will overrule the objection and allow the evidence to come in under the statement by party opponent exception.

Part B.

Negligence is measured under the reasonable person standard of care. The elements of negligence are duty, breach, causation and damage. One form of negligence is the res ipsa liquitor doctrine.

Res Ipsa Liquitor states that a defendant in a case will be held liable if the injury would not have happened in the absent of negligence on behalf of the defendant. The court will look at three things, first being whether or not the defendants negligence caused the accident, second, whether or not the defendant had exclusive control, and third whether or not the plaintiff contributed to the accident in any way. In simple, the injury to the driver could not have occurred in any other way except for the breach of the trucker.

Here Drivers testimony state that he was at a traffic light at the intersection of Route 450 and he was stopped at the traffic light. He had no warning of the truck or collision and was knocked unconscious before he say any truck or driver and therefore did not contribute to the

accident. Here we see that the truck driver had full control of the vehicle but there is no evidence that he was acting in negligence. Further, truckers testimony stated that applied the breaks and

tried to slow down but that the breaks failed and therefore he couldn’t control the vehicle. He further testified that he had stopped at 5 other traffic lights with no problem further showing that the trucker was not negligent. Therefore, the defendants claim for res ipsa will likely fail, because there is no evidence that the trucker was negligent.

Part C.

In order to pass relevance, the evidence offered must show that an action is more likely or less likely with the submission of the evidence. Here, the fact that the defective piece was taken off the truck and thrown away is relevant to the cause of action under res ipsa because it offers to show why the accident occurred. Therefore, the defective piece of hose is relevant to the case. Although the hose is relevant to the cause of action. A court will not allow evidence of remedial measures to show liability. Here the fact that the trucker took the mechanics piece off and can not be offered to show that the trucker was liable for the tort. However, the court may allow the evidence in to show that there was a piece of the truck could have been defective at the time of the accident.

Part D.

a motion of directed verdict can be asked for by the defendant after the plaintiffs case in chief. A motion for directed verdict will be granted if the plaintiff has not provided no information in which there is a question for the trier of fact to decide. Here, the plaintiff has offered no evidence that the trucker was negligent in any way apart from the breaks. The trucker will be successful in directed verdict because the plaintiff has provided no evidence stating that the trucker himself was liable for negligence. The res ipsa argument will fail because the failure of the breaks was not in the exclusive control of the trucker and no evidence of negligence has been provided.

QUESTION 4

On December 31, 1995, Al and Beth, both then 30 years of age, were married to each other in a religious ceremony in Baltimore County, Maryland, where they have continued to reside. One child, Charles, was born of the marriage in 1999. Charles is both mentally and physically disabled, has special needs and will be unable to be gainfully employed. The parties jointly own their home that is specially equipped to address Charles' living requirements. The house is subject to a modest monthly mortgage payment of $1,000.00 per month. Al is a successful businessman with offices in Montgomery County, Maryland. He earns $300,000 annually and works long hours. Beth had been a chef earning $40,000 annually, but has not worked since Charles' birth.

In November 2009, Beth learned for the first time that Al had been previously married, and that his divorce from his first wife had never been finalized. Outraged at her discovery, Beth comes to you for advice concerning her domestic situation. **She wants to end the marriage, obtain custody of, and provide a home for her child, and get all economic family support to which she is legally entitled.**

You are a Maryland attorney experienced in handling family law matters. **How would you advise Beth to proceed to obtain her stated goals?**

REPRESENTATIVE ANSWER 1

I would tell Beth that she should seek Anullment, child custody, alimony, child support, and a division of marital property (and declaration of the marital home) all in once action. The grounds for such relief follow.

<u>Annullment</u>

As grounds for limited and absolute divorce are time consuming (or not satisfied), I would advise Beth that the best approach would be to file for annulment. Anullment may be filed when the marriage is void or voidable. One such ground that makes a marriage void is bigamy. As Al is married and has never been properly divorced, the marriage is void and Beth can seek a Circuit Court declaration that such marriage is void.

<u>Child Custody</u>

Child custody, both physical and legal (i.e., who makes major decisions on behalf of the child) is adjudged under the "best interests of the child" standard. Courts consider a number of factors in making this decision. Particularly noteworthy for present purposes, the court would consider Charles' disability and the fact that the home is particularly equipped to deal with Charles' disability. It is likely, therefore, that whoever is awarded the marital home would also be awarded the physical custody of Charles, as it would be easier for him to stay at his current

home with his limitations. Further, court's consider fault of the parties. There is no indication that Beth has been anything but a faithful and loving wife, and she was ignorant of the fact that Al had previously married. Therefore, there is no fault on her part. If the child is of a proper age, the court may consider his or her wishes. Seeing as how Charles is relatively young (about 10), and depending on how his mental disability would effect his decision, the court may not seek input from Charles. Although Al is at fault, he may be given joint custody where Charles stays at home, Al contributes in decision making, and Al is permitted lenient visitation. This is because, despite Al's marriage, he is Charles' biological father and after 10 years he may have a very close relationship with his son despite his long working hours. The court would weigh the factors and make a decision as to both legal and physical custody. It is likely that Charles would stay at the marital home which is well equipped to deal with his disability, that the parent granted the marital home would have primary physical custody of Charles (with the other having lenient visitation), and that the parents would have joint legal custody whereby they both make major life decisions on behalf of Charles.

Alimony

Beth would want to file for alimony. See Md. Code Ann., Family 11-106(a)(2). In making its determination, the court would consider Al's ability to pay, which appears to be great given his large salary. See Md. Code Ann., Family 11-106(b). The court would also consider the parties standard of living, which despite Al's big salary, appears to be "modest." see id. The court would consider the almost 15 years Beth and Al have been married. See id. The court would consider the non-monetary contributions Beth made. See id. Meaning, although she has a lower salary, she apparently worked less and contributed to Charles' care and the upkeep of the marital home more than Al. Maryland has a preference for rehabilitative alimony, i.e., Al paying alimony for a sufficient time until Beth gets the education/experience she needs to earn a living and support herself. Nonetheless, the court could award temporary (pendente lite) alimony or permanent alimony.

Child Support

The court will follow a statutory formula for arriving at the support obligations after the parties' income is determined. Beth would want to establish with clarity the needs of Charles' due to his disability and the fact that he will never be able to be gainfully employed, as this can extend child support for the life of the child as well as increase the amount of child support. See generally Md. Code Ann., Family 12-204.

Marital Property

Beth would also want to petition the Circuit court for a division of marital assets at the time of fling of annulment. See Md. Code Ann., Family 8-203. This can be waived, so its important to include this in the pleading. The court would consider a number of factors including the duration of the marriage, the contributions of each party, the value of the property, the age, and how it was acquired. See Md. Code Ann., Family 8-205. It is not clear whether the home is

marital property, i.e., whether they bought it as husband and wife after the marriage.

Nonetheless, Beth would want to petition the court under Md. Code Ann., Family 8-206 (2) as she has a child that has a special need for the home. It is likely that since the home is particularly equipped for Charles, whoever is given custody of Charles will be granted use of the family home under Sections 8-206 through 8-208. Al could still be required to make the mortgage payments under 8-208.

CONCLUSION

Beth should file in the Circuit Court for annulment, custody, and child support, and a division of the marital property and use of the home.

REPRESENTATIVE ANSWER 2

Divorce:

The first question here is whether Al and Beth are actually legally married since Al's divorce with his first wife was never finalized. Technically, Beth could not marry Al because of this other still existing marriage.

Since there is no common-law-marriage in Maryland either, their marriage could not be considered such, even through they have lived together as husband and wife for the last 14 years.

Therefore Beth should possibly try to get an annulment of the marriage based on the fact that Al was already married. Questions as far as alimony and child support, etc. could still be based on the same rules as for a limited or absolute divorce. In fact if this was a "proper" marriage Beth could actually not file for divorce at this point because Al and Beth have not been separated for the appropriate time which would be 2 years for an absolute divorce and a voluntary separation with no reasonable expectation of reconciliation in case of a limited divorce.

Also there seems to be no other reasons that could be considered grounds under absolute or limited divorce.

Custody:

Beth can ask the Court for both legal and physical custody or she could agree to joint custody with Al, either for both legal and physical custody or either of the two. The easiest in this case might be to ask for joint legal custody, meaning that decisions for school, medical care, would still be done together, while Beth gets physical custody alone, meaning she gets to decide where Charles is. In deciding on this question the Court will look at the child's best interest, specifically who is the primary caregiver already, and how much time parents can or did spend with their child. Since Al is working late hours everyday and has not been the primary care giver before and since Beth has stayed home with Charles since he was born, the Court most likely

would decide in her favor.

Provide home for child:

Beth and Al own the house together and it would be considered "marital property" and family home. Normally, as primary care giver for Charles, Beth could ask the Court to give her the right to live in the house for up to three years before it must be sold and the proceeds divided. Because of Charles' mental and physical handicaps and the fact that the house is specially equipped to meet Charles' needs, Beth could request that the family home should be awarded to her for good if she is the one to take care of Charles in the future.

Al may also be told by the Court that he has to continue paying the mortgage on the house since it is relatively modest and based on his income, he can afford to pay it while Beth has no income and is staying home with Charles.

Alimony & Child Support:

During the process of the annulment, Beth may petition the Court for alimony pendente lite since she has no income of her own and is caring for Charles. After the annulment the Court would usually award only so much alimony that the spouse that has not been working can be "rehabilitated" meaning can find work again. The Court can also award alimony for a longer period or for good (as long as spouse doesn't get married again) if it is necessary. In Beth's case, she has not worked for the last 10 years and it is not for sure that she would be able to get back in the working market easily. Also she would probably not be expected to make more than $40,000, while she was used to a life standard where Al would make $300,000 a year.

Last but not least, Beth is the primary caregiver for Charles who is not expected to get better in the future, meaning he will need continuous care and since this has been Beth's job, the Court would probably award her alimony indefinitely. If the situation should change, significantly late, Al could bring this to the Court's attention at that point.

Beth would also be entitled to child support for Charles. The support obligation is determined by the Court based on the parent's income. The Court would look at Al's income and since Beth does not have an income based on the alimony she would get.

QUESTION 5

Seller owned a ten-acre parcel of waterfront property along the Nanticoke River in Wicomico count, Maryland, which he wished to sell to a builder-developer. Seller applied for and received approval from the County to subdivide his ten-acre parcel into nine separate lots. Under the County code, this approval runs with the land. Seller then wrote and published the following advertisement for the property:

**TEN-ACRE WATERFRONT PARCEL WITH APPROVAL
TO SUBDIVIDE AND SELL AS TEN SEPARATE LOTS
$3,000,000 OR BEST OFFER**

Buyer saw this advertisement and informed Seller of his intention to utilize the approval Seller had obtained, subdivide the land, and build and sell ten different houses, each on their own lot. Buyer offered Seller $2,700,000 for the property and seller accepted buyer's offer.

A contract of sale was prepared and executed describing the property as a "ten-acre parcel." The contract also contained the following language. "all representations and warranties made herein are intended to survive closing and shall not be merged in the deed." Settlement occurred three weeks later and Seller deeded the property to Buyer after having been paid the contract price.

While preparing to develop the property with ten houses on ten separate lots, Buyer was informed by the county that Seller had only received permission to subdivide his parcel into nine separate lots, not ten.

Buyer immediately contacted his attorney, Davis. Davis informed Buyer that she specializes in this type of case and that her law partner has represented Seller with respect to all real estate matters, including the subdivision of this particular parcel, for a number of years. Davis advised Buyer that she would take the case and immediately contacted seller via telephone, advised him that Buyer planned to file suit against him and demanded a settlement offer.

a. What cause(s) of action does Buyer have against Seller? Discuss fully.

b. What ethical considerations does Davis face in her representation of Buyer?

REPRESENTATIVE ANSWER 1

Part A

This is a sale of real property and is governed by common law.

The contract was not merged with the deed upon closing, thus, seller has a cause of action regarding the statement in the contract that the land was subdivisible into 10 lots.

Fraud in the Inducement

Buyer may bring an action for Fraud in the Inducement, which is a misrepresentation regarding the quality of the object for sale. Seller knew that the land could only be subdivided into 9 lots, but intentionally published an ad stating that it could be divided into 10 lots. Buyer will prevail if he can prove that Seller's actions were intentional and that Seller's fraudulent representations induced the Buyer to enter into the contract.

Misrepresentation

Misrepresentation is a defense to a contract when the misrepresentation is material or fraudulent. Seller may not have intentionally misrepresented the fact that the land could only be subdivided into 9 lots. Nevertheless, the misrepresentation was material because seller knew that Buyer intended to subdivide the land into 10 separate lots, and now is unable to do so. Even if Seller was negligent in making the misrepresentation, buyer is entitled to rescind the contract because the misrepresentation was material.

Part B:

Specialization

The MD rules of professional conduct prohibit a lawyer from holding himself out as a specialist. Here, Davis informed Buyer that she "specializes in this type of case."

REPRESENTATIVE ANSWER 2

(a)

One cause of action is negligent misrepresentation. For negligent misrepresentation, buyer must show that there was a representation, negligence, that caused harm to buyer. Here, the representation was that the seller had a plot of land which could be divided into 10 lots. He was negligent when he was not careful that his ad was for a plot which could split into 10 lots and not 9. This caused harm to the buyer because he relied upon this ad when he bought the land.

There may also be fraud action for buyer against seller. To show fraud, buyer would have to show that the representation was intentional. There do not appear to be any facts which show that seller intentionally mispresented the divisibility of the land.

Seller may also be able to rescind the contract based upon mistake. Here the mistake was that seller only had approval to split the land into 9 parcels, but he advertised that it could be split into 10 parcels. This is a unilateral mistake which would not allow the seller to rescind the

contract, but would allow the party who relied upon the mistake to rescind. Here, seller may be entitled to damages based upon the mistake or specific performance since this contract deals with land.

The fact that the contract said that the deed would include all representations and warranties is important for the above situation s because once a deed is executed it is the overriding document in the land transfer. The fact that it included all the representations and warranties that the seller made strengthens buyer's case.

(b)

An attorney in Maryland cannot hold himself out as a specialist. Here, Davis said he specialized in this type of case. This is an ethical violation.

In Maryland, if one lawyer is conflicted from representation a client in case, that conflict is imputed to his partners. Here, Davis's partner represented seller in real estate matters, including the division of this parcel. Presumably the partner has confidential information regarding this deal and others. Because of those conflicts, the partner would be unable to represent the buyer without conflicting with the interests of the seller. The conflict that the partner would have would be imputed to Davis and it would be an ethical violation to represent buyer.

Davis contacted seller directly without going through his counsel. In Maryland, a lawyer cannot contact a person who is represented by a lawyer. If seller was not represented, then Davis should have advised him to seek counsel instead of demanding a settlement offer.

Also, there was no discussion of fees between Davis and buyer. All fee agreements should be fully disclosed in writing and signed by the client. That does not appear to have happened here.

QUESTION 6

Green purchased a piece of property in an industrial park in an unincorporated area of Somerset County, Maryland, with the intention of converting an existing facility into a cold-storage warehouse for frozen seafood. A County permit is required to operate the warehouse. Pursuant to the County Code, absent an agreement between the County and the applicant to the contrary, such permits are issued 90 days from the date of application. Green informed the appropriate county official that Hall was his authorized agent, made it clear to Hall that he needed his permit as soon as possible, and entrusted and authorized Hall to take all necessary steps to secure the permit from the County within the statutory 90-day period.

Upon completing the permit application and meeting with the appropriate county official, Hall was informed that due to pending necessary infrastructure improvements, the County wished to delay issuing the permit beyond the statutory 90-day period, and consequently sought to enter into a contract with Green that would grant the permit exactly 180 days from the date of application, and in exchange the County would pay Green a $50,000 one-time economic-development incentive payment. Hall immediately signed this agreement on Green's behalf, the County official acted within the proper scope of his authority and executed the agreement on the County's behalf, and Hall was presented with a $50,000 check made payable to Green. With the deal executed, the County proceeded to plan its obligations associated with the infrastructure improvements accordingly.

Hall informed Green of this sequence of events and delivered the check. Green was upset because the six-month delay would result in business losses totaling $75,000. However, he accepted and cashed the $50,000 check. The bank teller present when Green cashed the check heard Green say, "I might as well get something out of waiting for six months."

Green approaches you, a licensed Maryland attorney, and tells you that he wants to either:

a. File suit against Hall for damages caused by the delay; or

b. Return the $50,000 to the County and have no further liability under the contract.

What would you advise? Explain fully.

REPRESENTATIVE ANSWER 1

Green will recover under neither option because he has constructively ratified Hall's contract with the County and it is too late to protest under contract theory.

<u>Agency Relationship</u>

Hall exceeded the scope of his agency relationship with Green. Hall was hired as Green's agent. The scope of Hall's agency was to "take all necessary steps" to secure the County permit with the statutory 90-day period. Hall agreed to a contact that would grant the permit in 180 days instead of 90 and therefore acted outside the scope of his agency agreement. Hall might argue in defense that the "take all necessary steps" language in his agency agreement gave him the license to negotiate the terms of the license being awarded, but this defense will fail because the 90-day period was an express condition of the agreement and Green separately informed Hall that he "needed his permit as soon as possible."

Green can recover any damages he suffered as a result of Hall's actions in excess of his agency scope. Green will have to show that he has suffered actual damages as a result of Hall's actions. By waiting for 180 days instead of 90, Green has suffered business losses totaling $75,000. Because he has already obtained $50,000 from the County as payment for the delayed permit, Green's damages are only $25,000.

In defense, Hall may defend that Green ratified his contract with the County and therefore is not liable for any damages. When an agent acts outside the scope of his agency agreement, the principal can nevertheless be held to the terms of the offending contract if he ratifies the deal. Here, Green accepted and cashed the $50,000 check and in so doing constructively ratified Hall's contract. As a result, Green will be barred from any recovery against Hall. Green's statement of protest--"I might as well get something out of waiting for six months"—was not communicated to either Hall or the County and therefore could not be considered a limited acceptance. Moreover, acceptance under duress is not a consideration here since only economic damages were at stake.

Contract Liability

In order for Green to not have any further contract liability, he needed to object to the $50,000 check when it was first presented to him and inform the County that Hall was acting outside the scope of his agency agreement when he signed on behalf of Green. Green's failure to disavow the contract and instead accept and cash the $50,000 check, coupled with his constructive ratification of the contract with the County (see above) will make any recovery under contract theory difficult.

As before, it will be difficult for Green to establish any defenses to contract formation. Hall acted as Green's agent and the agency relationship was disclosed to the County. Thus, Green is liable as a disclosed principal under the contract. Moreover, to the extent he has ratified Hall's behavior, Green will not be able to assert the defense that Hall acted without his authorization and outside the scope of his agency agreement. There is no duress here, and there is no indication that any party to the contract suffered from any incapacity, infancy, or other capacity defense. Green is also unlikely to be able to assert the real defense of illegality, because although 90 days is the normal statutory period of permits, the law contains an express provision for other contrary agreements between the County and the applicant.

Moreover, to the extent that the County has relied upon its contract with Green/Hall,

Green may be estopped from asserting any defenses to the extent the County's reliance is reasonable and anticipated.

REPRESENTATIVE ANSWER 2

I would advise Green that he has limited options, and is best to retain the $50,000.

a. Suit against Hall

The first issue is whether Hall breached his warranty of authority. In Maryland, an agent may bind his principal to contracts if vested with express or implied authority. Here, Green expressly authorized Hall to pursue the permit as soon as possible, though he advised that he wanted this achieved within the statutory 90-day period. Green also informed the County of his authorization of Hall to act on his behalf. Thus, Hall had express authority to pursue the permit under the circumstances then existing and known to Green; and the County otherwise believed Hall had apparent authority to act on Green's behalf.

However, Hall likely breached his warranty of authority by entering the contract with the County without Green's permission. Hall knew that Green wanted the permit within the statutory period of 90 days, yet bound Green to a 180-day contract. Although Hall obtained $50,000 in exchange for Green, Hall should have informed Green of the new circumstances prior to binding him to a contract.

Nevertheless, Green <u>ratified</u> the contract by accepting and cashing the $50,000 check. This act - paired with his comment to the bank teller that he "might as well get something out of waiting for six months" – demonstrates that he chose to accept the contract entered into by Hall. Thus, Hall is not liable for the contract even if initially achieved in breach of his warranty of authority.

b. Return the $50,000?

The issue is whether Green has grounds for rescission. A party to a contract may rescind only if there is a substantial impairment to the consideration received and the promise could not have discovered the infirmity until a later time. Here, however, there is no substantial impairment because there is not even a suggestion of a breach by the County under the "180-day" contract. That Green has second doubts about his acceptance of the agreement does not vest him with a right to reject or rescind. Green unequivocally accepted the benefits of the contract when he cashed the $50,000 check.

Further, the County has already relied on the contract by proceeding to plan the infrastructure improvements. Thus, even had Green not accepted the contract, the County could have a claim for detrimental reliance. In Maryland, a claim for detrimental reliance arises when there is a clear and definite promise; an expectation that the promise will rely; reasonable reliance by the promise; and resulting damages arising from that reliance. Here, even if the contract was rescinded or concealed, Hall clearly and definitely promise to perform, under the

cloak of apparent authority from Green, expecting that the County rely by preparing to grant the permit in 180 days; the County did in fact rely by beginning its infrastructure improvements; and the County would be consequently damaged by the breach of this promise.

Thus I would advise Green to stand pat and retain the $50,000.

QUESTION 7

Owner hired her neighbor, Employee, to work as a dish washer at her store the Burger Shack located in Towson, Maryland. Owner knew that Employee had a habit of taking the company van out for personal use, and had repeatedly warned her not to use company vehicles for personal use because it was against the written company policy. Employee had a valid drivers' license and did not have a prior history of driving infractions. Owner is also aware that Employee has recently exhibited a sometimes violent and delusionary nature and has attacked persons in their neighborhood. Medication that can control Employee's behavior has been prescribed, but without Owner's knowledge, Employee has stopped taking it.

A week after Employee stopped taking her medication, she approached a store vendor, Supplier, and without provocation, gestured threateningly and screamed, "I know you're out to get me and I'm going to get you first."

Supplier, who had no knowledge of Employee's behavior issues, phoned Owner about the incident. Owner told Supplier that "Employee has sometimes made threats to others, but I do not think she will try to hurt you and I assure you that this will not happen again." Supplier believed Owner's assurances and, for that reason, continued going to the Burger Shack.

Owner questioned Employee about the incident, suspended her for a week without pay, and asked if she was taking her medication. Employee stated that she had been taking her medication. When Employee returned, Owner again asked if Employee was taking her medication, to which Employee stated she had.

Two days after Employee returned from suspension, she was driving the company van to pick up her medication from the local pharmacy, when she saw Supplier crossing the street. Employee drove her car directly at Supplier. Supplier reacted by diving out of the way which caused him to sprain his wrist. Employee frustrated at missing Supplier continued down the street and then struck Paul Pedestrian who was crossing against the traffic light.

Owner comes to you, a Maryland attorney, seeking advice about any potential claims that can be brought against Owner and any defenses to such claims. Discuss fully.

REPRESENTATIVE ANSWER 1

<u>Seller (S) v. Owner (O)</u>

Under respondent superior an employer is liable for the acts of their employees done within the scope of employment. Here S can bring an action against O for the assault by Employee (EE) and the resulting sprained wrist. This will likely fail because EE was likely not in the scope of her employment as a dish washer at the time EE was driving the company car. Instead it appears from the facts that EE was on her way to get her medicine which has nothing to do with her job.

Seller may also sue O directly for negligent supervision and negligently entrusting the car to EE. Negligence requires a duty that was owed and then breached. Here O had a duty to make sure that Employee (EE) did not act violently to others. O knew that EE had acted violently before and specifically to S. I think, however, that O acted reasonably in asking EE whether she was taking her medication and in suspending EE. O could have done more to prevent EE from getting the car because she knew EE had used it in the past. However, EE had a valid driver's license and had a clean driving record. Also, EE's behavior was under control when she was taking her medication and O did not know that EE had stopped taking her medication until EE acted aggressively toward S, at which time O suspended EE and warned her to take her medicine. Finally, Seller's injuries were the result of EE's intentional actions not in the scope of her employment. So any failings by O to keep EE from the car or supervise EE's behavior at the job were not the proximate cause of O's injuries.

<u>Paul Pedestrian (PP) v. (O)</u>

PP can bring an action of negligence under respondent superior against O just as S could. However, O's defense will be that PP was contributorily negligent by crossing against the traffic light. Contributory negligence is a complete bar to recovery if the plaintiff's own negligence contributed to plaintiff's injury. PP will counter that EE had the last clear chance to avoid the accident because EE drove directly at PP. While last clear chance will work to prevent the bar to recovery, as with S, the assault by EE was not in the scope of EE's employment and O's failures were not the proximate cause of PP's injuries.

REPRESENTATIVE ANSWER 2

Owner may be liable for his own negligence, as well as vicariously liable for those torts committed by his servant (agent) within the scope of his duties.

<u>Supplier's or Paul Pedestrian's claim of Negligent Supervision</u> (S or P): S or P may bring a claim against Owner directly for negligent supervision of Employee. S or P would have to show that the owner owed a duty of reasonable care in supervising his employees, that he breached that duty, that the breach was the actual and proximate cause of Supplier's injury (sprain his wrist) and Paul's injury (death or serious injury). S and P will argue that Owner did not act reasonably when Owner suspended Employee. Sand P will argue that O should have fired Employee because she exhibited violent behavior in the past and

then recently against S. Owner may defend that even if he owed a duty of care and an injury occurred, that Owner's breach was not the actual and proximate cause of the injury. Owner may argue that his breach was not the actual or proximate cause of Supplier's injury, but rather the injury was caused by Employee's own intentional will (an intervening cause).
Owner may also assert any defenses that Employee could. Maryland follows the theory of contributory negligence. Paul can be completely barred from recovery if Paul is shown to be contributory negligent by crossing the street on the red light. Paul would argue successfully that Employee had the last clear chance to avoid the accident by not diving directly at him.

Supplier's or Paul's Claim of Negligent entrustment: Similarly, S and P can bring claims for negligent entrustment, claiming that Owner breached his duty of car in entrusting the company car to Employee, and that the breach was the actual and proximate cause of S and P's injuries. Owner should use same defenses as above (for negligent supervision) of no breach of duty and no proximate cause because Employee had a valid driver's license and did not have any infractions. Nothing Owner did caused S or P's injuries.

Supplier's or Paul's Claim of Battery: Supplier or Paul may bring a claim against owner for Employee's intentional tort of battery (sprain wrist, any injuries suffered by P) under the theory of vicarious liability. In an employer-employee relationship, an employer may be liable for the intentional torts of his employees committed within the scope of his duties. S and P will argue that Employee committed an intentional reckless harmful or offensive contact (sprain wrist, Paul's injury) to their person. S and P will argue that Owner is liable because Employee was his servant and acting in scope of his duties because she was on the job and driving the company van.

Owner should defend that Employee was not acting within the scope of his duties because she was not doing a job for the company. Even though she was in the company van, she was picking up her medication from the local pharmacy so that was not within the scope of her duties.

Finally, Owner should bring claims against Employee and seek indemnification or contribution if Owner is found liable for any of the above claims.

QUESTION 8

On January 10, 2006, seller entered into a written contract to sell to Andy and Brent a 100-acre tract of land and improvements thereon located in Calvert County, Maryland, for $100,000.

Andy and Brent made a $2,000 down payment toward the stated purchase price with an additional payment of $50,000 due within five years from the date of contract at which time seller agreed to convey title and hold Andy and Brent's purchase money mortgage for the balance due of $48,000. The contract was recorded in Calvert County on June 14, 2006

Brent sold his one-half interest in the property to Andy on September 9, 2007, and a supplemental written agreement was executed by Seller, Andy and Brent, reflecting this change. This agreement was not recorded.

On June 7, 2008, Paul obtained a judgment against Brent in Calvert County for $10,000.

On December 31, 2008, $52,000 had been paid pursuant to the contract and Andy requested conveyance of the land subject to a purchase money mortgage for the balance of $48,000.

Seller refused to convey the property on the ground that the judgment against Brent would be a lien on Seller's title as mortgagee.

In April 2009 Andy filed a complaint in the Calvert County Circuit Court against Seller and the judgment creditor, Paul, seeking specific performance of the sales contract and a binding declaratory judgment that Paul's judgment was not a lien on the property.

How should the court rule on the issues presented? Explain fully.

REPRESENTATIVE ANSWER 1

Specific Performance of Sales Contract:

A Purchase Money Mortgage is created when a lender loans money to a buyer for the purchase of real estate. The lender retains a right to title of the property in the event the buyer defaults on the loan. Here, the Seller is the lender and holds Andy and Brent's purchase Money Mortgage for the balance. By holding the purchase Money Mortgage, Seller retains a right to title of the property in the event Andy and Brent default on the loan.

A Purchase Money mortgage perfects upon delivery of the value (in this case the money) and the purchase. Perfection of interest determines priority of creditors in collateral. Here, the recordation of the contract occurred on June 14, 2006. The recordation of the contract puts other would be creditors on notice of Seller's right to possess title to the property.

A co-tenancy is created when one or more persons have a joint interest in the same property. Here, Andy and Brent are co-tenants in the property because they entered into a written contract [with Seller to buy] a 100 acre tract of land.

A co-tenancy can be terminated by a unilateral act of a party. Here, when Brent sold his one-half interest in the property to Andy the co-tenancy was terminated on September 9, 2007.

A lien is a party's interest in another individual's property. Typically, a lien attaches to the property of another by filing a Writ of Execution, whereby the sheriff either seizes or levies the goods, and has the right to sell the goods/property and collect the proceeds for satisfaction of the lien. Here, Paul obtained a judgment against Brent in Calvert County for $10,000.

Specific performance of a contract is a remedy for breach of contract when the goods are unique. The courts frequently consider real estate to be unique good, and will sometimes order specific performance of a real estate contract as a remedy for breach of contract. Here, the contract between Adam, Brent and Seller is a contract for the purchase of real estate, and the court should rule in favor of the plaintiff, ordering specific performance.

Here, the purchase Money Mortgage perfected upon acceptance of the money and the purchase of the property. Plaintiff's judgment against Brent will not be a lien on the property because Brent did not own an interest in the property at the time Paul obtained his judgment against Brent. The Purchase Money Mortgage will have priority over any general creditor regardless.

REPRESENTATIVE ANSWER 2

Issues: On June 14, 2006 with Andy and Brent's down payment on the land, Andy and Brent became joint tenants upon Brent's conveyance of his interest in the land to Adam. Joint tenancy between Adam and Brent was destroyed by this signing of the contract with Seller. Brent has no further interest in the 100 acre tract of land upon Brent's conveyance of his interest to Adam with the Seller's knowledge and consent. Adam's interest in the 100 acre tract became a fee simple interest.

Paul obtained the judgment against Brent after the contract of conveyance of the 100 acres from Brent to Adam.

Upon that conveyance from Brent to Adam, Brent retained no interest in the land as such. Paul's judgment cannot offset the Seller's title as mortgagee. Paul's judgment is also not a lien on Seller's property because Brent had no further interest in the land for Paul to attach his judgment.

Adam will be able to obtain specific performance for the title from Seller as he is the fee simple interest holder of the 100 acres after the sale of Brent's interest to Adam from Brent. Adam can also obtain specific performance by Seller because the seller ratified the transaction

between Brent and Adam. By signing the new written agreement, Adam will be able to obtain the declaratory judgment because he is the fee simple owner of the 100 acres. Brent no longer has any interest in the land to which Paul would be able to attach a lien.

QUESTION 9

On March 3, 2006, Owner entered into a written agreement with Builder to construct an addition to Owner's home located in Prince George's County, Maryland. Builder's principal office is located in Howard County, Maryland although Builder has conducted improvement projects in Montgomery and Charles Counties. As part of the repairs to Owner's home, Builder used High Stress floor joists Builder purchased from Supply Co. Builder uses High Stress floor joists from Supply Co. in all of Builder's improvement projects. Supply Co., a North Carolina corporation, has one office which is located in High Point, North Carolina.

Following the completion of Builder's work on January 3, 2007, Owner and Builder got into a bitter dispute over Builder's work. Owner contended that the costs were too high and that the work had not been done in a workmanlike manner. Part of the dispute centered on Owner's reading of an internet article describing High Stress floor joists as inferior in quality.

Owner filed a civil lawsuit against Builder on January 3, 2009, for $30,000 claiming breach of contract and negligence. On February 3, 2009, Builder in turn filed a suit against Owner to recover the remaining $25,000 due on the work he completed and for declaratory and injunctive relief. Builder also filed a separate suit against Supply Co. for negligence seeking $35,000 in damages.

a. What Maryland court(s) if any has subject matter jurisdiction over each parties' action and why?

b. In what venue(s) if any can each party be sued and why?

REPRESENTATIVE ANSWER 1

1. Owner v. Builder

The district and circuit courts have concurrent jurisdiction according to section 4-402 to hear civil matter over $5k but not over $30k exclusive of costs and attorney's fees. Here, Owner's suit against Builder is exactly $30k so it is within the jurisdiction of both the circuit and the district court. Builder can be sued in where the tort occurred, where it resides or where it has maintained a regular business. Here, Builder the work was done in PG so the courts there can here the case. Also the courts in Howard could hear the case because Builder has its office there. Finally, if it is shown that Builder regularly does work in Montgomery or Charles Countys', then suit could be brought there as well.

2. Builder v. Owner

Although Builder's suit against Owner is only for $25k and hence could be in either the jurisdiction of the district or circuit courts, according to section 4-402 the District Court does not have jurisdiction to hear equity matters. Therefore, because declaratory and injunctive matters are equity matters, Builder must bring the whole suit in the circuit court which can hear his entire

claim including the declaratory and injunctive matters. According to section 6-201, the only place where Owner can be sued is where he resides and where the tort happened—PG County.

3. Builder v. Supply Co.

As stated above, district court does not have jurisdiction over matters over $30k. Thus, because Builder's is seeking $35k in damages against Supply Co., that claim must be brought in the circuit court.

In order to sue Supply Co. the court must first determine whether there are sufficient contacts with MD not to offend notions of fair play. Here, the facts state that Builder used all Supply Co. joist in all its work—which is in MD. Therefore, according to 6-103 Supply co. "contracts to supply goods, food, services, or manufactured products in the State" and can be subject to suit here. Because Supply Co does not have an office in MD, it can be sued where Builder resides which is in Howard County.

REPRESENTATIVE ANSWER 2

A.

O v. B

Because O is suing for $30k he can bring suit in either the district court or the circuit court because pursuant to 4-402 the district court and circuit court have concurrent jurisdiction over matters greater than $5k but not more than $30k, which is the amount that O is suing B for. Builder can be sued wherever the tort occurred, where it resides or where it has maintained a regular business. Here, the work at issue was done by Builder in PG so the courts there can hear the case. Also the courts in Howard could hear the case because Builder has its office there. Finally, if it is shown that Builder regularly does work in Montgomery or Charles Cntys, then suit could be brought there as well.

B v. O

B can only sue O in circuit court because 4-402 states that declaratory actions and equity actions cannot be brought in district court. The circuit court (trial court) has jurisdiction over declaratory and equity actions even if the suit is only for $25k as here. Thus, B must file his suit against O in circuit court.

B. v. S

B is seeking more than $30k against S ($35k). 4-402 states that the district court does not

have jurisdiction over matters over $30k. Thus, B must file his suit against S for $35k in the circuit court.

B.

O can sue B where the tort occurred (PG Co) or where B resides (Howard Co). O may also sue B in Mont Co. or Charles Co because B "has conducted improvement projects in Montgomery and Charles Counties".

O, however, can only be sued in PG Co, because 6-201 states that a defendant can be sued where he resides and where the tort happened. Both are in PG Co.

Suit can be brought against S in MD because B uses High Stress floor joists from S in all of B's improvement projects. According to 6-103 because supply is supplying goods in MD it can be subject to MD jurisdiction. 6-202 states that if a corporation does not have any office in MD, it can be sued where the plaintiff resides. Since S does not have any office in MD it can be sued in Howard Co where B has its main office.

QUESTION 10

On March 1, 1998, Adam and Bill, both experienced auto mechanics, decided to open their own auto repair shop in Fredrick County, Maryland. No formal written partnership agreement was ever signed by Adam and Bill.

On May 10, 1998, Adam and bill purchased a lot improved by a garage and office building. The property was titled in the names of Adam and bill as tenants in common. Adam and bill together with their spouses, executed a purchase money mortgage in favor of Local Bank to secure a loan to acquire the property.

The business began operations on September 4, 1998, as A & B Garage. Their bank account, county business licenses, and state and federal tax returns were filed by A & B Garage.

On April 3, 2001, they purchased a separate adjacent unimproved lot primarily to prevent its sale to potential competitors, but it is also used to park vehicles. Title was conveyed to Adam and Bill as tenants in common.

On August 10, 2009, Adam and bill contracted to sell the vacant lot to Carl, and on September 15, 2009, in Adam's absence due to illness, Bill executed a deed in proper form from A & B Garage, Grantor, to Carl, Grantee. Carl is unwilling to accept the deed without Adam's signature.

a. Was Carl justified in rejecting the deed based on these facts? Explain fully.

b. Adam died intestate on September 28, 2009, survived only by his wife, Beth. What interest in the partnership passes to her? Explain fully.

REPRESENTATIVE ANSWER 1

A general partnership is formed when two or more people agree to go into business together. Here, Adam and Bill formed a partnership on March 1, 1998 when they decided to open an auto repair shop even though no formal partnership papers were signed. They are not required.

On April 3, 2001 real property was conveyed to Adam and Bill as tenants in common.

Partners are agents of one another who have the authority to bind the partnership. Here, Adam and Bill contracted to sell the land to Carl on August 10, 2009. On September 15, 2009, in Adam's absence, bill executed a deed in proper form from A & B Garage to Carl, grantee. Since the deed was proper, bill has the authority to sign on behalf of the partnership. Carl cannot reject the deed on these facts.

A general partnership dissolves when, as her, only one partner survives. If the property is

part of the partnership it would go into assets of the partnership. The property is part of the partnership because its bank account, business licenses and tax returns as filed by A & B Garage, clearly indicate a partnership. That Adam and Bill considered the garage to be partnership property is further supported by the deed transferred to Carl by A & B Garage (not the partners individually)

As partnership property, the property is part of the partnership assets.

After payment of partnership debts, Adam's share of asset value would pass through Adam's Personal Representative to Adam's wife.

The deed tendered to Carl is not improper and does not create a cloud on title.

REPRESENTATIVE ANSWER 2

A partnership is an association of two or more people working in a business for profit. Partnerships do not have any formal requirements for formation but who hold themselves out as a partnership. Here, Adam and bill do appear to have a partnership because they have opened an auto repair shop together (a business for profit) and title the garage and office building in their names jointly. There is also a joint bank account for A & b Garage, as well as business licenses and state and federal tax returns, all filed in the name of A & B Garage. These facts are all evidence that partnership has formed. The fact that Adam and Bill's spouses signed the purchase money mortgage makes the spouses creditors of the partnership at the very least. They may also be partners but more facts are needed.

The sale of partnership assets is a decision requiring unanimous consent by all partners. There does appear to be unanimous consent because both bill and Adam signed the contract of sale.

However, it is not clear whether the vacant was partnership property or the separate property of bill and Adam. Partnership property that is titled in the names of individual partners can still be considered property of the partnership if it is being used for the business or was paid for out of the partnership funds, or if it is being improve/maintained by partnership funds. Here, it appears that the purchase use of the vacant lot was for the business and not for Adam and Bill's individual use. They purchased the lot to stop a competitor from moving in and they used the lot to park cars that they were not currently working on in the shop. There are no facts to suggest that Adam and Bill intended the lot for nonbusiness purposes.

Given that there is a partnership and the vacant lot was partnership property, did Bill have the power to execute the deed? Under partnership law, partners are agents of the partnership and can act singly on behalf of the partnership as long as they have the authority to do so. Here, bill is an agent of A & B Garage. Bill certainly has the implied authority, if not express authority, to see the land sale deal through to closing because both Adam and Bill signed the contract to sell the vacant lot. Even though Adam was not able to be present at the closing because of illness,

his agreement that the property sold is clear by his having signed the contract.

Partnership interests are transferable, devisable, and descendible, but the interest that passes is only an interest in the profits of the partnership, not the managerial interest in the partnership. Therefore, Beth can inherit Adam's interest in collecting the profits of A & B Garage but she may not assert any rights to control, run, or manage the business. There is an additional wrinkle, however, in the fact that Adam's death means that there are no longer two people in the partnership – there is only one, Bill. Partnerships need two people to be able to operate as such under the law. Therefore, with Adam dying and bill the sole partner in the business, Bill will probably have to dissolve the partnership or else take on a new partner.