QUESTION 1

Pursuant to Section 9-609, when a debtor defaults, the UCC allows self-help possession of collateral, but only if he does not breach the peace in the process. Here, Kim, after failing to make several payments, was advised that she was in default on her loan, therefore, Lender was entitled to take possession of the Luxor collateral. Pursuant to Section 9-602 a party's obligation to take possession of collateral without breach of the peace is not waivable by agreement. Thus, the agreement term purporting to waive breach of peace requirements is not enforceable, and Lender cannot avail itself of the UCC's self-help provisions if it breaches the peace in obtaining the Luxor as collateral for the defaulted business loan debt. In considering whether a secured party has engaged in a breach of the peace, courts will likely hold the secured party responsible for the actions of others taken on the secured party's behalf, including independent contractors engaged by the secured party to take possession of collateral, particularly where the secured party is aware of the agents propensity to breach the peace. Therefore, Lender must be sure that it takes appropriate steps to assure that Rambo does not breach the peace in taking possession of the vehicle, or seek a repo company with less aggressive tactics, or obtain possession through judicial process.

In a transaction other than a consumer-goods transaction, a notification of sale must provide: (a) a description of the debtor and the secured party; (b) the collateral that is the subject of the intended disposition; (c) the method of intended disposition; (d) that the debtor is entitled to an accounting of the unpaid indebtedness and states the charge, if any, for an accounting; and (e) the time and place of a public disposition or the time after which any other disposition is to be made. Here, Lender's proposed notice may be insufficient because it does not contain the accounting information and may also inadequately describe the debtor and secured party. These errors might likely be considered minor enough not to affect the sufficiency of the notice under Section 9-613 (3) because they don't appear to be intentionally misleading. Ultimately, under 9-613(2), whether the notice is deemed sufficient is a factual matter. Lender should, however, provide the specified information and correct the notice before sending it to Kim. The additional requirements under 9-614 are not necessary because even if the Luxor was a personal vehicle (a consumer good), this is not a "consumer-good transaction" as defined under 9-102(a)(24), because Kim did not incur the loan primarily for personal purposes. Rather, Kim incurred the obligation "for her business."

The validity of the sale depends on the commercial reasonableness as to the method, manner, time, place, and terms of the sale. The mere fact that a better price could have been obtained from a sale at a different time or in a different manner is not sufficient to establish that the sale was not commercially reasonable. Pursuant to Section 9-627, a sale is in a commercially reasonable manner if it is in the usual manner in a recognized market or at the market price in such a market at the time of sale. A sale is also commercially reasonable if it is in conformity with reasonable commercial standards among dealers in the kind of good sold. The auction of the 2012 Luxor at no less than the $80,000 prevailing price for that type of vehicle in the

Baltimore market appears to be commercially reasonable, despite the ability to get more elsewhere because it is being sold in a usual manner (a public auction) in a recognized market (Baltimore) at the market price for that type of vehicle.

QUESTION 2

The answer should address the following Maryland Lawyers' Rules of Professional Conduct and Maryland Rule:

Maryland Rules of Professional Conduct

Rule 1.2 – Scope of Representation – An Attorney shall abide by a client's decisions concerning the objectives of the representation and as to whether to settle a matter. Although Attorney repeatedly advised Tracy that she "would have her day in court" he chose not to appeal the dismissal and instead pretended to settle the matter to mask the fact that he failed to appear at the hearing. Accordingly, his actions violated this Rule.

Rule 1.3 – Diligence – An Attorney shall act with reasonable diligence and promptness. Attorney failed to appear in court on Tracy's behalf and did nothing to rectify such failure. Attorney also failed to send his client the retainer agreement for over three months. His failure to zealously represent his client is a violation of this Rule.

Rule 1.4 – Communication - An Attorney shall keep the client reasonably informed about the status of a matter. Attorney was notified on January 10, 2013, that the matter was dismissed due to his failure to appear, but he failed to advise Tracy. Indeed, he did not contact her until a month later, and at that time told her a complete falsehood. As a result, Attorney violated this Rule.

Rule 1.5 (a) and (c)– an Attorney's fee shall be reasonable, and a contingent fee shall be in writing and signed by the client, and at the conclusion of the matter the lawyer shall provide the client with a written statement stating the outcome of the matter. Attorney charged $5,000 plus 5% of any recovery for a small claim action only worth $20,000 at best. Attorney doesn't appear to have expended much time or labor on the case, and the results obtained were that the matter was dismissed due to his actions. The contingent fee agreement was not immediately reduced to writing and signed by the client, and Attorney did not provide Tracy with a written statement stating the outcome of the case. Accordingly these Rules were violated.

R**ule 1.15(c)** – Unless the client gives informed consent, in writing, to a different arrangement, a lawyer shall deposit legal fees and expenses that have been paid in advance into a client trust account and may withdraw the funds for the lawyer's own benefit only as fees are earned or expenses incurred. Attorney immediately withdrew$3,000 from the trust account and deposited it into his operating account. There is no indication that he had done anything to earn the moneys at this point (or at any point thereafter) thereby violating this Rule.

Rule 1.16(d) – Upon termination of representation a lawyer shall refund any advance payment of fee or expense that has not been earned or incurred. Attorney only returned $2,000 of the $5,000

paid by Tracy. He doesn't appear to have done anything to have earned the remaining $3,000 and is, therefore, in violation of this Rule.

Rule 8.1(b) – An Attorney may not knowingly fail to respond to Bar Counsel. The facts indicate that Attorney never responded to Bar Counsel's certified letters, in violation of this Rule.

Rule 8.4(a) and (c) – It is professional misconduct to violate the Rules of Professional Conduct or engage in conduct involving dishonesty, deceit or misrepresentation. Attorney violated this Rule when he unilaterally settled the matter with Lisa and lied about his actions to his client by stating that he "settled the matter to avoid the uncertainties of litigation, and when he violated all of the aforementioned Rules."

Maryland Rules

Rule 16-607 (b)(2). An attorney may withdraw moneys from the trust account "promptly when the attorney or law firm becomes entitled to the funds…." Under the facts, Attorney "immediately transferred $3,000 into his operating account." He had not earned the fee at that point and, therefore, violated this rule.

QUESTION 3

Although a statement by a party-opponent may be offered against that party and is not excluded by the hearsay rule even though the declarant is available as a witness, Rule 5-803, evidence of offering to pay medical, hospital, or similar expenses occasioned by an injury is not admissible to prove civil or criminal liability for the injury. Rule 5-409. David's statement, "Don't worry! I'll pay any hospital bill!" is not admissible. The Court should sustain the objection to this testimony.

When measures are taken after an event, which, if in effect at the time of the event, would have made the event less likely to occur, evidence of the subsequent measures is not admissible to prove negligence or culpable conduct in connection with the event. However, the rule does not require the exclusion of evidence of subsequent measures when offered for another purpose, such as impeachment of a witness or proof of ownership or control of a vehicle, if controverted, Rule 5-407. Evidence of the repairs might be admissible for the limited purpose of identifying David as the operator of the vehicle at the time for the accident if David has denied being the operator and the subsequent repairs were made at David's direction, it is within the discretion of the court to admit the evidence for this limited purpose, but otherwise the court should sustain the objection to this testimony.

Evidence that a person was or was not insured against liability is not admissible upon the issue whether the person acted negligently or otherwise wrongfully. However, the rule does not require the exclusion of evidence of insurance against liability when offered for another purpose, such as proof of ownership or control of a vehicle. Rule 5-411. Evidence of the insurance might be admissible for the limited purpose of identifying David as the operator at the time of the accident if David has denied being the operator. It is within the discretion of the court to admit the evidence for this limited purpose after weighing its prejudicial effect, but otherwise the court should sustain the objection to this testimony.

Offering or promising to furnish valuable consideration for the purpose of compromising or attempting to compromise a claim is not admissible to prove the validity or amount of a civil claim in dispute. Rule 5-408. The offer by David's attorney of $5,000 "in cash" to drop the civil case is not admissible. The court should sustain the objection to this testimony.

"[A]n admission of guilt in the traffic court is admissible in evidence in a subsequent civil proceeding arising out of the same accident.' (Emphasis added.) *Campfield v. Crowther,* 252 Md. 88, 100, (1969) (citing *Miller v. Hall,* 161 Md. 1111, 113-14, 155 A. 327, 329 (1931)). The submission of payment personally or by mail in satisfaction of a traffic fine, however, is not the evidentiary equivalent of a guilty plea in open court." *Briggeman v. Albert,* 322 Md. 133, 586 A.2d 15 (1991). Payment by David of the pre-set fine on the citation charging negligent driving is not admissible. The court should sustain the objection to this testimony.

Expert testimony may be admitted, in the form of an opinion or otherwise, if the court determines that the testimony will assist the trier of fact to understand the evidence or to determine a fact in issue. In making that determination, the court shall determine (1) whether the witness is qualified as an expert by knowledge, skill, experience, training, or education, (2) the appropriateness of the expert testimony on the particular subject, and (3) whether a sufficient factual basis exists to support the expert testimony. Rule 5-702.

"[T]he admissibility of expert testimony is a matter largely within the discretion of the trial court and its action will seldom constitute a ground for reversal,…" An accident reconstruction specialist with no special training in another field, and whose training and work experience did not qualify the witness as an expert in that other field, may not testify as an expert in the other field. *Montgomery Cablevision Limited Partnership v. Beynon*, 116 Md. App.363, 696 A.2d 491 (1997). While the accident reconstruction specialist may testify as to the speed of the vehicle, there is no indication that this specialist has training or experience in the field of medicine. The testimony as to the cause of the injuries claimed by Peter is not admissible. The court should sustain the objection to this portion of the testimony.

QUESTION 4

Potential salient defenses and arguments:

1. Necessity can be a valid defense to all of the charges when four elements are present:

(a) Charlie must be in present imminent and impending peril of death or serious bodily injury or reasonably believe himself or others to be in such danger (here, drunken Drexel and his cohorts posed a serious threat to him and to disabled Ben).

(b) Charlie must not have intentionally or recklessly placed himself in a situation in which it was probable that he would be forced to choose the criminal conduct. (Charlie was a guest at the party).

(c) Charlie must not have any reasonable, legal alternative to possessing the handgun. (Police had been called and had not arrived and the party crashers were attempting to knock in the door).

(d) The handgun must be made available to Charlie without pre-conceived design. (Disabled Ben gave it to him as he was afraid.)

(e) Charlie must give up possession of the handgun as soon as the necessity or apparent necessity ends. (Charlie gave gun to police promptly). See *Crawford v. State* 308 Md 683, 521A 2d. 1193 (1987).

2. Charlie can argue he was reasonably acting in the defense of others, female, Addell, and disabled Ben, against the party crashers. See *Dishman v. State* 118 Md App. 360, 702 A2d. 949 (1997).

3. Charlie can argue he was acting in self-defense. Facts suggest he was afraid and waiting for police who had not shown up.

4. Charlie can argue he did not fire the handgun at anyone but only warning shots in the air and therefore not guilty of assault.

5. In defense to charge of reckless endangerment, he could claim as he fired warning shots in the air there was not substantial risk of death or serious bodily harm. He could also argue he was trying to stop a crime of violence (burglary). See generally Criminal Law Section 3-204(a)(1). Also that his conduct did not amount to a gross and wanton deviation from reasonable conduct. The fact that it is a populated residential area and that Charlie did not have to come outside negate these defenses. It would have been more reckless to fire the weapon inside the house.

6. Charlie may also be able to argue, if convicted, that the two handgun charges merge. The unit of prosecution for the offense is the handgun itself and not the uses that are

made of it. See Generally *Colkley and Fields v. State*, 204 Md App 593, 42 A3rd 646 (2010) (Extra credit – not truly a defense).

QUESTION 5

1. Harold owns the house in fee simple. This means that he owns the house solely and completely. Greta does not have an ownership interest in the house merely by living there. As there is no common law marriage in Maryland, she does not have a spousal interest in the home. She is a guest.

2. Greta would not be entitled to any reimbursement for the improvements she has made to the house. She knows she is not the owner of the property and did not get permission from Harold to do the improvements. *Sommerman v. Sommerman*, 217 Md. 151 (1958). Any improvements she added to the house are made at her peril.

If she believed she was a bona fide owner, she might be entitled to compensation for the increased value to the house. *Bradley v. Cornwell*, 203 Md. 28 (1953).

Greta could make a claim for unjust enrichment. A claim for unjust enrichment is established when (1) the plaintiff confers a benefit on the defendant; (2) the defendant knows or appreciates the benefit; and (3) defendant's acceptance or retention of the benefit under such circumstances is such that it would be inequitable to allow the defendant to retain the benefit without paying value in return. *Balto. City Bd. Of School Commissioners v. Koba Institute Inc*. 194 Md. App. 400 (2010).

The theory of unjust enrichment, in this case, would be that Harold is obliged by the ties of natural justice and equity to refund a portion of the acquisitions price for the improvements. Unjust enrichment is a restitutionary remedy which has as its purpose to deprive the defendant of benefits that in equity and good conscience he or she ought not to keep, even though the benefits might have been received honestly in the first instance. The measure of the recovery is said to be the gain to the defendant and not the loss by the plaintiff. *Mass Transit Administration v. Granit Construction Company* 57 Md. App. 766 (1984).

3. If Harold dies while owning the home in fee simple, Greta would have no interest in the home. The home would ultimately go to Thomas as the sole heir of Harold, since Harold was not married and had no other children.

If Harold and Greta owned the house as tenants in common, each would have a one-half, undivided interest in the real estate. Thus, upon the death of Harold, Harold's interest would pass to his heirs and Greta would retain her one-half undivided interest in the real property.

QUESTION 6

The development of the 15 acres parcel did not constitute a corporate opportunity of Cloverdale. Although there was financial self-dealing on the part of Brown and REIT, the collective security agreement does not *ipso facto* establish a corporate opportunity for Marley. The financial self-dealing is not the equivalent of the usurpation of a corporate opportunity.

If the defendants had been sued for self-dealing, which would have been a violation of their fiduciary duty of loyalty because they benefited at Marley's expense, it would not matter for what purpose the defendants used the funds, the self-dealing itself would have been a violation of its fiduciary duty of loyalty. The question here is not whether there was self-dealing but whether the financial arrangement was a usurpation of a corporate opportunity.

A corporate interest or expectancy requires more than a mere opportunity to develop a neighboring parcel of land. A fiduciary does not owe its principals a general duty to disclose or offer participation in other business opportunities. A corporate opportunity requires more than a similarity between the projects. Although Cloverdale, and Phase were similar projects, i.e., real estate development, the security agreement benefited the Cloverdale project and was merely a financial consolidation.

In Maryland whether an opportunity is a corporate opportunity that can be usurped is measured by whether the corporation (Marley) could realistically expect to seize and develop the opportunity. If that is the case a director (Brown) cannot appropriate and frustrate the corporate purpose. Cloverdale and Marley did not have the financial wherewithal to complete the project. It is therefore not realistic to believe that Marley and Cloverdale could have made the purchase and finance Phase II.

Shapiro. v. Greenfield, 136 Md. App 1 (2000); Ebenezer United Methodist Church v. Riverwalk Development Phase II, LLC.,205 Md. App. 496 (2012)

QUESTION 7

Pursuant to the Fourteenth Amendment to the Constitution "[n]o state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." Thus, as the Town's Attorney, I would advise that the proposed ordinances raise the following constitutional concerns, and that the laws may be challenged since the Town is an instrumentality of the State.

Sign Ordinance

Freedom of Speech:

The government's right to enact reasonable regulations for signs is beyond cavil, given that signs can be distracting and take up space. City of Ladue v. Gilleo, 512 U.S. 43, 114 S.Ct. 2038 (1994). However, signs are considered a form of speech. Any regulations thereof must satisfy the First Amendment made applicable to the states pursuant to the Fourteenth Amendment.

The Town seeks to impose restrictions on signs within the business district. If drafted as proposed the size and number of signs within the business district will be restricted regardless of whether the wordings on any such signs will be commercial or noncommercial in nature. Thus, the ordinance may be viewed as a time, place or manner restriction on speech rather than a regulation of commercial speech. A time, place or manner restriction will satisfy the First Amendment if the restriction is content-neutral, narrowly tailored to serve a significant governmental interest, and leaves open ample alternative channels for communication. Sorrell v. IMS Health, Inc., 131 S.Ct. 2653 (2011); Ward v. Rock Against Racism, 491 U.S. 781, 109 S.Ct. 2746 (1989)

Under the facts the goal of the proposed legislation is reduction of blight. The Supreme Court has held that a municipality's interest in aesthetics may be the basis for regulation of signs. Metromedia, Inc. v. City of San Diego, 453 U.S. 490, 101 S.Ct. 2882 (1981). However, the Town (which consists primarily of residences) has essentially allowed any and all types of signs within the residential districts, as well as any sign erected by a church or daycare center *regardless* of its location within the Town. This goal cannot be met by imposing draconian measures on the business district since it makes up such a small portion of the Town. The court should strike the law because it is not narrowly tailored to serve the purported interest.

Due Process:

For similar reasons the legislation also runs afoul of the Fourteenth Amendment's Due Process Clause. Again, the Town's interest in reducing blight is a legitimate governmental interest. However, due process also requires that the law be drafted in a way that is reasonable and substantially furthers that interest. The businesses may successfully argue the

unreasonableness of drastically reducing the opportunity to advertise their services or provide any noncommercial message (by limiting the size and placement of signs) while allowing any and all types of signs free reign everywhere else in the Town.

Establishment Clause:

Since the sign ordinance expressly exempts "churches" from the sign restriction, one may argue that it violates the First Amendment's prohibition against the establishment of religion. In Lemon v. Kurtzman, 403 U.S. 602, 91 S.Ct. 2105 (1971), the Supreme Court articulated a 3-part test to evaluate whether a law violates the Establishment Clause:

1. Does the law have a secular legislative purpose?
2. Is its primary effect one that does not advance nor inhibit religion?
3. Does it foster excessive government entanglement with religion?

Under the facts, there is a secular purpose of reducing blight, and there is no excessive government entanglement with religion. However, a primary effect advances churches since they are free to enact any sign for any reason within the business district while almost every other use is limited to one very small attached building sign. The court would, therefore, overturn the law.

Anti-Loitering Ordinance

Equal Protection:

The proposed legislation may be challenged as a violation of the Fourteenth Amendment's Equal Protection Clause since it prohibits all individuals of a certain age from standing on a public sidewalk. No suspect classification is being targeted (such as race, national origin, alienage or gender). Accordingly, the law would generally only have to survive the rational basis test, but since the law infringes on the recognized right to freedom of association and/or assembly (implied under the First Amendment right to freedom of speech, etc.), it will be given strict scrutiny. See, Doe v. Dept. of Public Safety & Correctional Services, 185 Md. App. 625, 971 A.2d 975 (2009). The law is clearly over-inclusive (treating all those under 30 as possible criminals) – and there is no reason to suppose that it is the least restrictive means available to reduce crime. It is unlikely to withstand an Equal Protection challenge.

Due Process:

The court should rule that the suggested penalties also run afoul of the due process clause, procedurally and substantively. Minors are subject to immediate detention without benefit of any hearing. Those who have reached the age of emancipation must pay a substantial fine without benefit of a hearing. The law violates substantive due process tenets for the same reason noted above – the law does not have a reasonable relation to a proper legislative purpose. It presumes that all individuals are under 30 years of age and are intent on a life of crime – an irrational assumption. Moreover, it is not the least intrusive law that could address the legitimate

legislative goal of crime reduction. There is no exemption for workers, students attending school functions, minors accompanying their guardians or other responsible adult, persons practicing their religious beliefs, etc.

Freedom of Speech/Assembly:

The anti-loitering statute may also be attacked as a violation of the First Amendment's protection of speech. The regulation of speech/assembly in a public forum, such as the Town's sidewalks, must be a reasonable time, place or manner restriction that is content-neutral, narrowly tailored to serve a significant governmental interest, and must leave open ample alternative channels of communication. Clatterbuck v. City of Charlottesville, 708 F 3d 549 (2013); Snyder v. Phelps, 131 S.Ct. 1207 (2011). A law is not narrowly tailored if it burdens more speech than necessary to achieve the stated goal; it does not leave open ample channels of communication if there are other effective ways to achieve said goals. Cox v. City of Charleston, 416 F. 3d 281 (2005)

If the law is enacted as proposed it will not withstand a First Amendment challenge. Under the facts, all persons under the age of 30 will be barred from the public sidewalks for any period longer than 10 minutes. This is a significant burden on their rights with no proof (a) that only the young commit crime, and (b) that crime occurs after ten minutes on a public sidewalk. There may be other ways to reduce crime (such as increasing police presence) that would not result in such an infringement.

Cruel and Unusual Punishment:

Pursuant to the Eighth Amendment neither excessive fines nor cruel or unusual punishment may be imposed. Similar language is provided in Article 25 of the Maryland Constitution's Declaration of Rights. The Court of Appeals has held that Article 25 is in *pari materia* with the Eighth Amendment. Aravanis v. Somerset County, 339 Md. 644, 664 A.2d 888 (1995)

The Excessive Fines Clause of the Eighth Amendment usually applies to criminal fines but has been applied to civil fines that are designed, at least in part, to punish. Austin v. United States, 509 U. S. 602, 113 S.Ct. 2801 (1993). The court will review the proportionality between the offense and the fine, and will uphold the fine unless it is grossly disproportional. Wemhoff v. City of Baltimore, 591 F. Supp. 2d 804 (2008) Given the arguments against the Anti-Loitering law in general, the court should rule that the fine is an excessive punishment for standing on the streets of Happy between the hours of 6:00 p.m. and 6:00 a.m. if one is under 30 years old. A 24-hour detention would also be a cruel and unusual punishment for a hapless minor who stands on a public sidewalk in violation of the law.

[Note: The call of the question requires the Applicant to address how a court would rule on the challenges to the ordinances. Points are given for any court ruling if the Applicant provides argument and analysis in support thereof.]

QUESTION 8

Pursuant to Rule 3-325, a defendant, counter-defendant, cross-defendant, or third-party defendant may elect a trial by jury of any action triable of right by a jury by providing a request for a jury trial within 10 days "after the time for filing" a notice of intention to defend. Pursuant to Rule 3-307, the ***time for filing*** a notice of intention to defend is 15 days after service of the complaint. Thus, in connection with a matter originally filed in the District Courts, a defendant must file a request for a jury within 25 days of being served with the complaint (15 days for filing notice of intention to defend + 10 days to thereafter file request for jury). Here, notwithstanding Bob not filing a notice of intent to defend, he filed his request for a jury trial within 25 days (i.e., 20 days) of service of the complaint, so his request for a jury was timely by 5 days. Nevertheless, pursuant to Courts and Judicial Proceedings Article 4-402(e), a party can only make a jury trial request (to transfer jurisdiction to the circuit court) where the amount in controversy in the Plaintiff's complaint is $15,000 or more. Here, Harry's complaint seeks at least $15,000, therefore, jurisdiction was properly transferred forthwith to the circuit court. Note that Bob's counterclaim seeking more than $15,000 cannot confer the jurisdictional amount necessary for a jury trial. *See McDermott v. BB & T Bankcard Corp*., 185 Md. App. 156, 167 (2009) (holding that "counterclaims should not be considered in determining whether the amount in controversy requirement is satisfied"). Rather, a prerequisite for the transfer of jurisdiction from the District Court to the circuit court, upon the demand for a jury trial, is that the requester is entitled to a jury trial pursuant to CJP 4-402.[1]

Pursuant to Courts and Judicial Proceedings Article 10-105, so long as the amount in controversy in the litigation is not over the $30,000 jurisdictional limit of the District Court, a paid bill for goods or services is admissible without the testimony of the provider of the goods or services as evidence of the authenticity of the bill for goods or services provided and the fairness and reasonableness of the charges of the provider of the goods or services, if: (a) The bill is admitted on testimony by the party or any other person with personal knowledge, (b) the bills sought to be admitted are already paid by the admitting party, and (c) at least 60 days before trial, notice was served on the opposing party of the intent to introduce the bills without the support of the testimony of the provider of the goods or services that were billed, a list that identifies each bill, and a copy of the bill. Here, Harry's claims of $15,000 do not exceed the jurisdictional amount for District Court, and Harry timely provided the notice 65 days before trial. However, because only four of the bills were already paid, only those bills can be admitted without calling the subcontractors, if the notice was filed with the court as required. Harry must still testify that he received and paid the bills in order for them to be admitted. Harry cannot admit the two unpaid bills under 10-105. Even assuming that either Bob re-files his counterclaim in the circuit court or it is accepted by the circuit court as a result of the transfer of the matter due to the jury trial request, he cannot admit the two paid invoices from his subcontractors under CJP 10-105 in connection with his counterclaim because it is for $35,000, and therefore, above the jurisdictional limit for District Court, and additionally, because his notice served 35 days before the trial is untimely.

[1] Further, under Rule 3-331(f), a party cannot under normal circumstances file a counterclaim that exceeds the monetary jurisdiction of the District Court.

Pursuant to Courts and Judicial Proceedings Article 10-104 (c), so long as the amount in controversy in the litigation does not exceed the $30,000 jurisdictional limit of the District Court, a party may introduce a writing or record of a health care provider without the support of the health care provider's testimony, if notice is provided to the other side 60 days before the beginning of the trial. The notice must contain a list that identifies each writing or record, and a copy of the writing or record. Here, even though Harry's claim seeks less than $30,000, his notice regarding his intent to introduce his medical bills was only provided 45 days before trial and as a result will not be allowed without calling appropriate witnesses or certifications to admit the records. A party such as Bob who receives a notice pursuant to CJP 10-104 who intends to introduce an opposing writing or record of a health care provider without a health care provider's testimony shall serve a notice of intent, a list that identifies each writing or record, and a copy of the writing or record at least 30 days before the beginning of the trial. Bob's notice, provided 35 days before trial regarding his intent to use records by a medical provider discussing the lack of causation in connection with Harry's claim, is timely. However, whether or not the Court will allow it to be offered into evidence without the need of a testifying medical provider, will depend upon, among other factors, whether or not the Court considers Bob's rebuttal report to be in response to a notice properly received pursuant to 10-104 (c)(1) and/or whether Harry actually offers at trial any medical testimony for Bob to rebut.

QUESTION 9

A. Counsel for Printing Company will make the following arguments:

1. There was no acceptance of the flyer because the Boss promptly refused to publish the flyer.

2. There was not acceptance because Tammy lacked authority to accept the copy for the flyer.

3. If there was acceptance, the written Policy is part of the contract, thereby allowing Printing Company to reject the flyer as inflammatory and derogatory.

B. The Court will reject Printing Company's arguments:

1. Here there was an offer by Candy to publish her flyer, and consideration was paid. There was also an acceptance when Tammy reviewed the content of the flyer with Candy and told her she could return in the afternoon to review a proof. This conduct constitutes an overt act, communicated to Candy, without reservation that her flyer might be rejected on Policy grounds.

2. Although Tammy did not have final authority to accept or reject copy, she had apparent authority to bind Printing Company. The Company put Tammy in a position to review copy and accept printing jobs. Tammy told Candy to pay for the flyer, reviewed copy with her and told her to return for a proof. Candy was never told that publication of her flyer was subject to review of higher editorial authority. Tammy relied on Candy's apparent authority when she reviewed the copy with her and was told to return to look at a proof.

3. The Policy was given to Candy before she brought in the flyer copy. Therefore, she knew that her flyer could be rejected based on inflammatory or derogatory content. However, since Tammy had apparent authority to accept the ad, and reviewed its content, the court is likely to find that even if the Policy was part of the contract, the flyer had been approved and accepted. Since Tammy had been held out as possessing powers to approve copy, she is authorized to exercise such power. See *Fuller v. Horvath*, 42 Md.App. 671, 402 A.2d 134 (1974). Credit will be given for answers that reach the opposite conclusion on this issue.

QUESTION 10

PART A

The Court should deny Davis' Motion to Dismiss.

When considering a motion to dismiss, a trial court is required to assume the truth of all of the well-pled facts in the complaint and the reasonable inferences drawn from them in the light most favorable to the non-moving party. See, e.g., 120 West Fayette Street, LLLP v. Mayor and City Council of Baltimore, 407 Md. 253, 964 A.2d 682 (2009).

A member of an LLC generally is not liable for torts committed by, or contractual obligation undertaken by the LLC. See Md.Code (1975, 2007 Repl.Vol.), § 4A-301 of the Corporations & Associations Article (limiting liability of LLC members); Tedrow v. Deskin, 265 Md. 546, 550-51, 290 A.2d 799, 802-03 (1972) (explaining that if a corporate officer "takes no part in the commission of the tort committed by the corporation, he is not personally liable therefore unless he specifically directed the particular act to be done, or participated or cooperated therein"). An individual may be liable, however, "for torts he or she personally commits, or which he or she inspires or participates in, even though performed in the name of an artificial body." Metromedia v. WCBM Maryland, 327 Md. 514, 519-22, 610 A.2d 791, 794-95 (1992((quoting Tedrow, 265 Md. At 550, 290 A.2d at 802-03).

Turning to the allegations in the present case, all of which must be taken as true, Davis could be found personally liable for Paul's injuries. Davis solely managed LLC's business affairs, and knew the Lot was used as a dumping ground. It could be inferred that Davis personally committed, inspired, or participated in LLC's decisions regarding maintenance of the Lot, and owed a duty to the Plaintiff. Thus, Davis can be personally liable. Allen v. Dackman, 413 Md. 132, 991 A.2d 1216 (2010).

PART B

The Court should grant LLC's Motion for Summary Judgment.

1. Standard for Summary Judgment. Summary judgment is properly granted if the pleadings, depositions and admissions on file together with affidavits, if any, show there is no genuine dispute of any material fact and that the moving party is entitled to a judgment as a matter of law. Md. Rule 2-501(f). Here, the material facts are undisputed. Therefore, summary judgment is appropriate if, based on those undisputed facts, Defendant LLC is entitled to a judgment as a matter of law.

2. Legal Standard. In negligence actions the standard of care required of owners and occupiers of land with respect to an individual on their land is determined by "the individual's status while on the property, i.e., whether he is an invitee, licensee, or trespasser," Bramble v. Thompson, 264, Md. 518, 521, 287 A.2d 265, 267 (1972). Where the person is a "bare licensee"- one who enters the property for his own purpose or convenience and with the landowner's consent but not as a social guest – the law imposes only a minimal duty on the landowner: to refrain from willfully or wantonly injuring or entrapping the person "once his

presence is known." Id. The same standard applies to trespassers, defined as those who enter without privilege or consent of the landowner, 264 Md. At 522, 287 A.2d at 267. Here, Paul is either a Bare Licensee or trespasser. Thus, the only duty owed him was to refrain from willfully and wantonly injuring or entrapping the person. As Paul was either a bare licensee or trespasser on the Lot, he was owed no duty by either LLC (or Davis) other than to refrain from willfully or wantonly injuring or entrapping the person once his presence is known. Nothing in the undisputed facts indicates that the actions of Davis were willful or wanton. See, Mech v. Hearst Corp., 64 Md. App. 422, 496 A.2d 1099 (1985). The question of duty is a legal issue for the Court. Since there are no facts from which a jury could find or infer that a duty was owed to Paul by the Lot owner, summary judgment should be granted in favor of LLC.

Some applicants may discuss the "Attractive-Nuisance" doctrine, under which liability is imposed for injuries to children, even though they are technical trespassers. The attractive-nuisance doctrine has not been recognized in Maryland. Valentine v. On Target, Inc., 712 Md.App. 679,686 A.2d 636 (1996), cert. granted and judgment aff'd, 353 Md. 544, 727 A2d 947 (1999). In any event, the attractive-nuisance doctrine would not benefit Paul because he is an adult.