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QUESTION 1

Establishment of paternity

Arthur must first establish paternity of Baby, once she/he is born. Paternity is established in several ways; the method most likely under the facts is that Arthur "has acknowledged himself, orally or in writing, to be the child's father and the mother agrees" or genetic testing reveals him to be the father. Maryland Annotated Code, Family Law, Section 5-3B-05. Once paternity is established, he may challenge Carol's right to custody of Baby.

Custody of Baby

The legal parent has a constitutional right (under the Due Process Clause of the Fourteenth Amendment) to determine the care and custody of their child. *Janice M. v. Margaret K.*, 404 Md. 661, 948 A.2d 73 (2008); *McDermott v. Dougherty*, 385 Md. 320, 869 A.2d 751 (2004). Moreover, the best interests of the child standard does not apply in determining whether a natural parent or a third-party should be awarded custody unless the parent is found to be unfit "or there is a finding of extraordinary, exceptional, or compelling circumstances" that requires a court to award custody to the third party.

Accordingly, Carol will not be able to maintain custody over Arthur's objection unless she can show that Arthur is unfit, or there is some other exceptional circumstance that would render custody detrimental to the child

If the Court agrees with Arthur, and does not grant custody to Carol, Maryland law does not presume that either parent has a superior right to custody of the baby. (Maryland Annotated Code, Family Law, Section 5-203) Thus the court may grant Arthur sole legal and physical custody of Baby or joint legal custody with Judy. The former entails the right to make long range decisions concerning Baby's education, manner of discipline and any other decision affecting the child's life and welfare. Physical custody entails the right to provide a home for Baby and make the day to day decisions about his/her welfare.

In determining which parent should be awarded custody, the paramount concern will be the best interests of the child. *Ross v. Hoffman*, 280 Md. 172, 372 A. 2d 582 (1977). Under the facts, Arthur has a strong chance of being granted custody since Judy does not appear to have any interest in Baby's upbringing.

Child Support

Should the court award physical custody to Arthur, it may also order Judy to share the support of Baby since parents "are jointly and severally responsible for the child's support, care, nurture, welfare, and education … and have the same powers and duties in relation to the child." Maryland Family Law Code Annotated, Section 5-203; *Kerr v. Kerr*_, 287 Md. 363, 412 A. 2d 1001 (1980).

The court will apply the child support guidelines set forth in Maryland Code Annotated, Family Law, Section 12-204 of the to determine the basic child support obligation of both parents. This obligation is divided between Judy and Arthur "in proportion to their adjusted actual incomes." If their combined adjusted actual incomes exceed those in the guidelines, the court may use its discretion in setting the amount. The cost of work-related daycare and the medical insurance premium cost for the child and possible entitlement to shared custody rates are relevant factors in computing child support under the guidelines.

QUESTION 2

At issue is whether City is the holder in due course of the Check. A party is a holder in due course of an instrument if (1) the instrument when issued or negotiated to the holder does not bear such apparent evidence of forgery or alteration or is not otherwise so irregular or incomplete as to call into question its authenticity; and (2) the holder took the instrument (i) for value, (ii) in good faith, (iii) without notice that the instrument is overdue or has been dishonored. *Md. Code Ann,. Comm. Law* § *3- 302(a).*

The holder in due course doctrine is designed to encourage the transfer and usage of checks and to facilitate the flow of capital by allowing the holder to avoid claims and defenses of the original parties to the instrument. One may qualify as a holder in due course even if the instrument at issue may have passed through the hand of a thief. *Hand v. Mfrs.* & *Traders Trust Co.,* 405 Md. 375, 952 A.2d 240 (2008). Homeowner must concede that the instrument was not forged, altered, irregular or incomplete. Likewise, City took the Check for value and without notice that it had been dishonored.

The only disputed issue here is whether City acted in "good faith" pursuant to § 3-302(a)(1)(ii). Good faith is defined as honesty in fact and the observance of reasonable commercial standards of fair dealing. *Md. Code, Com. Law Art.* § *3-103; State Security Check Cashing, Inc. v. American General Financial Services,* 409 Md. 81, 972 A.2d 882 (2009). Good faith does not require general conformity to reasonable commercial standards but only to reasonable commercial standards of fair dealing, *State Security, citing* 2 *James J. White* & *Robert* S. *Summers, Uniform Commercial Code* § 17-6, *at* 191-92 (5th ed. 2008).

(1) City should have contacted Homeowner prior to cashing the Check.

Homeowner claims that City was under an obligation to contact him before cashing the Check to confirm its issuance and validity. However, City is under no obligation to make sure Homeowner was not the victim of a scam. *State Security,* 409 Md. at 100-101, 972 A.2d at 893-894. Furthermore, even if City contacted Homeowner at the time the Check was cashed, he would have notified City that the Check was valid. Thus, even if City was under some obligation to further investigate the check and contact Homeowner, which they were not, the fact that Homeowner was not contacted is irrelevant. Homeowner ignores the long-standing rule that the Drawer of a check (Homeowner) is the one in the position to avoid the fraud and thus, should incur the loss. *State Security,* 409 Md. at 117, 972 A.2d at 903.

(2) City should have been on notice of a defect in the Check by cashing the Replacement Check.

Holder in due course status is determined at the time of the taking of the instrument. *Weast v. Arnold,* 299 Md. 540, 474 A.2d 904 (1984). Thus, the fact that Shady, the next day, presented the Replacement Check is not relevant to determining whether City was a holder in due course of the Check. City was under no obligation to go back and investigate a check it had already cashed and bore no defects.

There are no such circumstances here, in the course of dealing with Shady with similar checks, including an $8,000.00 check written by Homeowner that gave City any reason to investigate whether the Check was valid. Even though Homeowner claims the amount of the Check was "suspicious," courts have long held that mere suspicion, or the knowledge of circumstances tending to incite suspicion in the mind of a prudent person or put him on inquiry, does not amount to bad faith. *See also Maze v. Austin,* 135 Okl. 71, 273 P. 994 (1929); *Sharp v. Dunlap,* 176 Okl. 329, 55 P.2d 71 (1936); *and McMahon v. Carribbean Mills, Inc.*, 332 F.2d 641 (10th Cir. 1964).

(3) City was not operating in a commercially reasonable manner by extending immediate credit for the Check and the Replacement Check.

State Security, in applying good faith issues, held the practice of extending immediate credit against checks is consistent with reasonable commercial standards. Thus, the fact that City gave immediate credit to Shady is not a lack of good faith. *See also Mid-Wisconsin Bank v. Forsgard Trading, Inc. et al.*, 266 Wis.2d 685; 668 W.2d 830 (2003)*; Shaller v. Marine Nat'l Bank,* 131 Wis.2d 389, 402, 388 NW.2d 645 (Ct. App. 1986); *Citizens National Bank v. Fort Lee Savings* & *Loan Assoc.*, 218 A.2d 315 (N.J. Super. Ct. Law Div. 1965) (Bank, notwithstanding the fact that account was routinely overdrawn and subject to substantial overdrafts, gave obligee immediate credit and was still a holder in due course against a stop payment.)

(4) There is nothing about the Check that raised any "red flags" to question its validity.

Homeowner also argues that there are various "red flags" in the Check that show City was not acting in good faith. However, there was nothing inherently wrong with the Check that would place City on notice of any defect or rise to bad faith. The Check, at the time it was cashed by City, was indisputably valid, with no defect that would arouse any suspicion to require City to conduct any further investigation.

In addition, Homeowner further argued issues such as the 2% fee charged by City to cash the Check, coupled with the amount of the Check and the fact it was drawn from a personal account, should have raised additional "red flags." Unfortunately, the facts of this case do not bear out those "red flags." Circumstances such as the size of the check as related to the business, whether the customer was unknown to the holder and the nature of the underlying transaction might be sufficient red flags, however, none of those factors are present here. Shady was a known customer and there was nothing unusual about the Check. A 2% check-cashing fee is "customary" and there is no evidence to show that the fee is not commercially reasonable for City to charge in exchange for immediate access to funds. Businesses routinely pay 2% to credit card companies for the ability to accept credit card payments. Furthermore, there is no statutory authority that check cashers must adhere to a higher standard than banks and what the UCC requires to achieve holder in due course status. In addition, Homeowner, as the party who was in the best position to prevent the fraud, is seeking to improperly shift the loss of a holder in due course to City, the exact opposite of the doctrine's intent. Therefore, unfortunately for Homeowner, he is still liable on the Check to City as a holder in due course. Homeowner, of course, has right against Shady to recover the funds he must pay to City

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QUESTION 3

One form of the intentional tort of invasion of privacy is publicity which unreasonably places another in a false light before the public (false light invasion of privacy). *Robinson v. Vitro Corp.*, 620 F. Supp. 1066 (D. Md. 1985). The tort requires publicity, which consists of communication to the public at large, or to so many persons that the matter must be regarded as substantially certain to become one of public knowledge, placing the plaintiff in a false light which a reasonable person would find highly offensive, and the tortfeasor must have had knowledge or acted in reckless disregard of the publicized matter placing the plaintiff in a false light. *Cambridge Title Co. v. Transamerica Title Ins. Co.*, 817 F. Supp. 1263 (D. Md. 1992), judgment affirmed, 989 F.2d 491 (4th Cir. 1993). Reasonableness is the key to the entire analysis. *Furman v. Sheppard*, 130 Md. App. 67, 744 A.2d 583 (2000).

Such a claim "may not stand unless the claim also meets the standards of defamation." *Piscatelli v. Smith*, 197 Md. App. 23, 38, 12 A.3d 164, 173 (2011) (citation omitted). "[T]he principles governing defamation and false light significantly overlap;" however, a major distinction is that defamation protects a party's interest in a good reputation "while false light protects interest in being let alone from adverse publicity." *Bagwell v. Peninsula Regional Medical Center*, 106 Md. App. 470, 507, 665 A.2d 297, 315 (1995). A reasonably prudent person would find Donna's descriptions highly offensive, and sufficiently broad public disclosure was achieved with the submission of the plat to the local government. However, invasion of privacy is an intentional tort requiring either a deliberate act or reckless disregard – unintended conduct amounting merely to a lack of due care does not cross this intent threshold. *McCauley v. Suls*, 123 Md. App. 179, 716 A.2d 1129 (1998); *Bailer v. Erie Ins. Exchange*, 344 Md. 515, 687 A.2d 1375 (1997); *Carr v. Watkins*, 227 Md. 578, 177 A.2d 841 (1962). Donna's lack of intent would be a successful defense against any such action. There is no evidence to suggest she possessed the required intent or reckless disregard with respect to either her initially making the informal labels on her draft plat or failing to delete them upon submission of the plat to the local government.

Under basic agency law, a principal is liable for torts committed by the agent if the agent acts with apparent authority. *Thomas v. Ross & Hardies*, 9 F. Supp. 2d 547 (D. Md. 1998). There would be no dispute under these facts that Donna was acting with the authority of ARG. Donna was acting within the scope of this authority in performing the survey and preparing and submitting the plat. *Salvatorian Mission House, Inc., v. Horn*, 210 Md. 475, 124 A.2d 268 (1956).

Donna's defense of a lack of the requisite intent or reckless disregard would inure to the benefit of ARG in this instance, so even though ARG would potentially be liable as the principal, there would be no effective cause of action against ARG. *See Howard Cleaners of Baltimore, Inc. v. Perman*, 227 Md. 291, 176 A. 2d 235 (1961).

QUESTION 4

I would advise the Judge to make the following rulings on Bette's objections:

(1) Pursuant to Maryland Annotated Code, Courts and Judicial Proceedings, Section 9-105, communications between spouses during marriage are privileged if given in confidence. The privilege belongs to whichever spouse made the communication at issue. *Brown v. State*, 359 Md. 180, 753 A. 2d. 84 (2000) Since the communication occurred after their marriage was dissolved it may be admissible, if deemed relevant. Although Mike's testimony would be hearsay, it is an exception since it is a statement by a party. Maryland Rule 5-803.

(2) A videotape is considered a photograph for purposes of admissibility. *See, Washington v. State,* 406 Md. 642 (2008) It will be admissible if authenticated by Joe in a manner prescribed in Maryland Rule 5-901(a) - that is "evidence sufficient to support a finding that the matter in question is what its proponent claims." The visual portion of the videotape is admissible. Any audio captured on the videotape Is inadmissible, pursuant to Maryland Annotated Code, Courts and Judicial Proceedings, Section 10-401, *et. seq.*, since all parties must consent to the recording of a conversation.

(3) The email must first be authenticated, in the manner noted above. It may come in even though it is downloaded from a computer, per Section 10-103 of the Courts and Judicial Proceedings Article, which states "if data is stored in a computer ... any printout or other output readable by sight that reflects the data accurately" shall be considered an original document.

Bette may argue that the email is hearsay, but it is admissible as a statement made by a party under Maryland Rule 5-803. Of course, Bette may also object on grounds of relevancy. After all, even if Bette does not love Joe, it does not follow that she was involved in an adulterous relationship with someone else.

(4) Maryland Annotated Code, Courts and Judicial Proceedings, Section 9-109, provides a psychologist/psychiatrist privilege which is the patient's privilege to waive. *Ali v. State*, 199 Md. App. 204 (2011) Accordingly, this testimony from Bette's psychologist is admissible.

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QUESTION 5

PART A

(1) Dismissal is not appropriate for Able. Able voluntarily dismissed his claim against Baker in Anne Arundel County and then, after a change of attorneys with a more extensive statement of his claim, filed the case against Baker and DDF in Prince George's County, Maryland. His attorney now plans to file the case in Howard County, Maryland. Rule 2-506(c) states in pertinent part: "a notice of dismissal operates as an adjudication upon the merits when filed by a party who has previously dismissed in any court of any state . . . an action based on or including the same claim." Able's claim against Baker that he was rear-ended by a truck owned and operated by Baker has not changed. If Able were to voluntarily file a notice of dismissal in his Prince George's County case against Baker and then file the case in Howard County, the effect of the filing of the two notices of dismissal (one in the Anne Arundel County case and the other in the Prince George's County case) would operate as an adjudication on the merits of his claim against Baker.

As to DDF, Able had not previously dismissed his claim against DDF. Able would have an argument that the effect of the filing of a notice of voluntary dismissal in the Prince George's County case would not operate as an adjudication of his claim under Maryland Rule 2-506(c) against DDF.

(2) As Able and Baker reside in Howard County; DDF does business there; and that is the county where the accident occurred, Able can request a transfer of the case to Howard County under Maryland Rule 2-327(c) "for the convenience of the parties and witnesses as it serves the interests of justice".

PART B

(1) Maryland Rule 2-519(a) provides that "[a] party may move for judgment . . . in a jury trial at the close of all the evidence." Maryland Rule 2-532(a) provides that Baker can move for a JNOV only if he made a motion for judgment at the close of all the evidence which would include the rebuttal testimony presented by Able. On the given facts, Able and Baker presented their evidence, Able presented rebuttal evidence, and the case went to the jury. Baker did not make a motion for judgment at the close of the rebuttal testimony offered by Able nor did Baker attempt to renew his motion for judgment made at the close of the evidence offered by Able in his case in chief. Maryland requires strict compliance with Maryland Rule 2-532 (a). *General Motors Corporation, et al. v. Seay*, 388 Md. 341, 361, 879 A.2d 1049 (2005): "General Motors neglected to renew its motion for judgment at the close of all the evidence as Rule 2-519 (a) specifies. Pursuant to Maryland Rules of Procedure [Maryland Rule 2-532], GM's failure to renew the motion resulted in the loss of its right to file a motion for JNOV. * * * "

(2) Able will be successful in reversing the JNOV.

PART C

On the given facts, Able should have asserted any claim he had against Correct Installation, LLC when Correct Installation, LLC was impleaded by DDF in the *Able v. Baker and DDF* case. Able cannot now assert his claim against Correct Installation, LLC in a separate action against that LLC. Maryland Rule 2-332(c). *Harbin v. H.E.W.S, Inc.*, 56 Md. App. 72, 75, 466 A.2d 879 (1983).

Maryland Rule 2-506(c) - Voluntary dismissal.
Maryland Rule 2-327(c) - Transfer of action - convenience of parties
Maryland Rule 2-519(a) - Motion for judgment.
Maryland Rule 2-532(a) - Motion for judgment notwithstanding the verdict.
Maryland Rule 2-532(d) - Motion for judgment notwithstanding the verdict.
Maryland Rule 2-332(c) - Third party practice.

General Motors Corporation, et al. v. Seay, 388 Md. 341, 361, 879 A.2d 1049 (2005)

Harbin v. H.E.W.S., Inc., 56 Md. App. 72, 75, 466 A.2d 879 (1983)

New Jersey v. Strazzella, 331 Md. 270, 281, 627 A.2d 1055 (1993)

QUESTION 6

A) Bob would have standing to challenge the supplemental property tax. Bob's challenge would be under the Establishment Clause of the First Amendment to the U.S. Constitution, as in the case of *Flast v. Cohen,* 392 U.S. 83 (1968). As in *Flast*, Bob's challenge is to the specific taking of money from a taxpayer to spend in aid of religion.

The supplemental property tax is available to religious organizations and to hospitals. For the tax exemption to be constitutional under the Establishment Clause, it must be part of a broad scheme of tax exemptions available to a variety of charitable, religious, nonprofit, and quasi-public property owners as allowed in *Walz v. Tax Commissioner of New York City,* 397 U.S. 664 (1970). The supplemental property tax may, or may not be part of a sufficiently broad scheme of tax exemptions, as in *Walz.* Candidates who discuss the need for the exemption to be part of a broad scheme may receive full credit regardless of whether they believe the tax exemption is constitutional.

B) Bob, as a business owner not entitled to exemption from the 1% sales tax, would have standing to challenge the tax exemption for sales of religious materials by religious organizations. In *Texas Monthly, Inc. v. Bullock*, 489 U.S. 1 (1989), the court addressed the issue of standing in a similar circumstance. In that case Texas Monthly, Inc. published a non-religious periodical and not entitled to an exemption that existed for the sales of religious materials by religious organizations. The Court ruled that not allowing Texas Monthly, Inc. to challenge the exemption would "effectively and impermissibly insulate an under-inclusive statute from constitutional challenge." *Texas Monthly, Inc, supra.*

The tax exemption that only applies to the sale of religious materials by religious organizations is not broad enough to pass scrutiny under the Establishment Clause. There is no overriding secular purpose for providing the favorable treatment to religious organizations. *Lemon v. Kurzman*, 413 U.S. 602 (1971) ("the *Lemon* Test").

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C) Bob as a resident and taxpayer would lack standing to challenge a tax credit . He will be unable to establish an "injury in fact." *Schlesinger v. Reservists Comm. To Stop the War,* 418 U.S. 208, 217. Because Bob would be challenging a tax credit and not a governmental expenditure, he would lack standing under *Flast, supra*, as stated in *Arizona Christian School Tuition Organization v. Winn*, 131 S. Ct. 1436 (2011). In *Winn*, the Court held that payment of taxes does not give a resident the right to challenge a state tax credit arguing the credit is an unconstitutional subsidy of religion in violation of the Establishment Clause.

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QUESTION 7

Landowner entered into a lease for a term of 5 years with Natural Gas Company after Landowner terminated its contract with Developer. The facts do not indicate that Natural Gas Company had prior notice of Landowner's contract with Developer when it signed the lease. In order to enforce its rights, Developer had two options: it could have filed an action against Landowner for breach of contract and obtained a judgment for its damages, or, alternatively, it could have sought specific performance and obtained record title to the property. If Developer had successfully obtained specific performance, it would have taken title subject to the lease of Natural Gas Company. Developer's intentions to immediately develop the property would have been frustrated for the duration of the lease. Hence, Developer was better served by a suit for damages rather than a suit for specific performance.

Developer will be able to recover the $1,000,000 in lost profits Developer had to forego because of the delay in opening the resort. By virtue of the MOU, Landowner was aware of the plan for developer to lease the resort to Operator. The contract between Developer and Operator predated Landowner's repudiation of the contract to sell the farm to Developer. Developer's losses during the delay were proximately attributable to Landowner's breach, and the amount of the losses can be proven with reasonable certainty. Consequential lost profits are calculated with reference to what the parties can reasonably be said to have anticipated when they entered the contract. *Hoang v. Hewitt Avenue Associates*, LLC, 177 Md App 562, 936 A.2d 915 (2007); *CR-RSC Tower I, LLC v. RSC Tower I, LLC*, 429 Md 387, 56 A.3d 170 (2012).

Developer will not recover the claimed $6,500,000 in lost profits attributable to the other projects it had to defer. Because Landowner had no knowledge of these other projects, Landowner could not reasonably have foreseen these losses as a result of her breach of the land sale contract. The amount of those lost profits is likely to be extremely speculative and difficult to prove.

In order to sue Landowner, Operator would have to establish that it was a third-party beneficiary of the contract between Landowner and the Developer. Operator could argue that the memorandum of understanding signed by all three parties put Landowner on notice that Developer was buying Landowner's farm for the purpose of constructing a resort to be leased to and operated by Operator. *District Moving & Storage Co., Inc. v. Gardiner & Gardner, Inc.*, 63 Md App 96, 492 A.2d 319 (1984).

Operator also could sue Developer on the contract between Operator and Developer to recover any lost profits directly attributable to the delay in Developer's completion of the resort.

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QUESTION 8

The salient points for the two discussions by the applicant should include the following:

A.1. 2007 Deed is invalid as Jane and Henry held title to the Property as tenants by the entireties. One tenant by the entireties cannot sever title to the interest without the joint action of the other tenant. *Eastern Shore Bldg. & Loan Corp. v. Bank of Somerset*, 253 Md. 525, 253 A.2d 367 (1969).

A.2. 2012 Deed is valid as Henry owns solely the fee simple interest in the Property, and he can dispose of it as he wishes. Upon Jane's death, by operation of law, Henry is the surviving spouse, and he owns the entire fee interest in the Property. Upon Henry's death, his life estate is extinguished and the title vests in his and Jane's four children, as joint tenants. If one of the children predeceases Henry, the other surviving children will receive, by operation of law, equal shares of the deceased child's interest. *Alexander v. Boyer*, 253 Md. 511, 253 A.2d 359 (1969); *Roland v. Messersmith*, 208 Md.App.532, 56 A.3d 806 (2012)

B. Attorney Smith had a conflict of interest among Henry, Jane and Denise. MRPC Rule 1.7. He represented Henry and Jane, jointly, in their acquisition of the Property and throughout the years, in various legal matters. Attorney Smith could not perform services to deprive Henry of his interest in the Property without disclosure to Henry and without his informed written consent. Based upon the facts, it is doubtful that the conflict should be waived by Henry.

In addition, Attorney Smith should have informed Denise that he was not able to represent her interests, and that she should consider engaging independent counsel. MRPC Rule 1.7(a). By failing to make the disclosure, Denise may have a reasonable belief that she was represented by Attorney Smith. Paragraph [17] of the Scope to the Maryland Lawyers' Rules of Professional Conduct provides that whether an attorney-client relationship exists for a specific purpose can depend upon the circumstances and may be a question of fact. If it is determined that a client-lawyer relationship existed, then Attorney Smith should have responded to Denise's telephone calls because Attorney Smith was required to communicate with Denise in a manner reasonably necessary to enable her to make informed decisions. MRPC Rule 1.4. Attorney Smith's conduct may have violated Rules 1.1, 1.4 and 1.7, and Denise may file a complaint with the Attorney Grievance Commission.

Attorney Smith failed to provide competent advice on real estate matters to Jane, and to Denise, if the attorney-client relationship existed. He should have advised Jane and Denise that Jane's desire to convey her interest in the Property could not be accomplished without the consent of and the execution of a deed by Henry. MRPC Rule 1.1. As a result, Denise may have a cause of action against Attorney Smith for negligence in the practice of law.

QUESTION 9

Directors are elected at each annual meeting of stockholders, and each share of stock may be voted for as many individuals as there are directors to be elected and for whose election the share is entitled to be voted. *Md. Code Ann., Corp. & Assoc*. § 2-404(c). A plurality of all the votes cast at a meeting at which a quorum is present is sufficient to elect a director. *Id*. Unless the articles of incorporation provide otherwise, the stockholders of a corporation may remove any director, with or without cause, by the affirmative vote of a majority of the votes entitled to be cast. *Md. Code Ann., Corp. & Assoc*. § 2-406. The board of directors then elects the officers of the corporation, but the same individual may not serve as both president and vice president of a corporation. *Md. Code Ann., Corp. & Assoc*. §§ 2-413, 415. However, Tracey would be unable to demonstrate that the harm to the value of her shares was caused by Susan impermissibly occupying two offices simultaneously.

A regular meeting of the board of directors may be held anywhere in or out of Maryland, and notice must be given as provided in the bylaws. *Md. Code Ann., Corp. & Assoc*. § 2-409(a). Any objections with respect to notice are waived by being present at the meeting. *Id.* at § 2-409(c).

With both directors present, a 1-0-1 (refusal/abstention) vote constituted a majority. However, because the meeting was of the Board of Directors and not the shareholders generally, Susan could only be removed as an officer, not a director. Removing Susan as a director could only be done at a shareholder meeting. *Md. Code Ann., Corp. & Assoc*. § 2-406.

Assuming Julio's actions were not taken either fraudulently or in bad faith, and there is no evidence to indicate they were, his poor decisions are protected by the business judgment rule, which precludes liability for business errors of honest and reasoned (albeit flawed) judgment. *Tackney v. U.S. Naval Academy Alumni Association, Inc.*, 408 Md. 700, 971 A.2d 309 (2009); *Towson University v. Conte*, 384 Md. 68, 862 A.2d 941 (2004); *Black v. Fox Hills North Community Association, Inc.*, 90 Md. App. 75, 599 A.2d 1228 (1992).

Therefore, Susan has no recourse unless she has minority rights set forth in the articles of incorporation, which is not indicated under these facts.

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QUESTION 10

PART A

A. Defense arguments:

1. The Defendant has the right to be free of unreasonable searches and seizures under the Fourth Amendment to the U.S. Constitution.

2. The searches and seizures conducted without a search warrant issued by a neutral magistrate after finding probable cause are presumptively unreasonable *Payton v. New York,* 445 U.S. 573, 584 (1980).

3. An exception to the warrant requirement is "consent that is freely and voluntarily given." *Abeohuto v. State,* 391 Md. 289, 334 (2006).

4. But a landlord cannot consent to the search of his tenant's property when the lease is still valid. *Chapman v. U.S.*, 365 U.S. 610, 616 (1961). Landlord improperly assumed lease was no longer valid so consent by landlord not sufficient to legally search. Also the consent was not in writing.

B. Prosecutor arguments:

1. The consent of the owner of property searched may serve to validate a property search. *State v. Rowlett,* 159 Md.App. 389, 395 (2004).

2. The consent of a third party having either common or apparent authority over the property will serve to validate a property search. *State v. Rowlett,* 151 Md.App. 386, 395 (2004).

3. A valid consent to search can be oral. *Manzi v. State,* 56 S.W.3rd 710, 719 (Tex.) App. (2001).

4. The door to the property was open when the police officers arrived. The policemen could smell marijuana from outside the open door which would give them probable cause to enter even without consent.

5. The police acted reasonably in relying on Bill's representation that he had taken possession of the property and could give a valid consent. Therefore the consent of the landlord/property owner was an exception to the warrant requirement. Evidence is admissible against Charlie. *Frobouck v. State,* 212 Md.App. 262 (2013).

PART B

(1) From State's Perspective:

In Maryland, the primary objectives of sentencing are punishment, deterrence and rehabilitation. *State v. Dopkowski*, 335 Md 671, 679, 602 A2d, 1185, 1189 (1992)). A judge is given very broad latitude in the kinds of information the judge may consider in pursuing those objectives. Generally, the sentencing court is vested with virtually boundless discretion in deciding what factors to consider on the issue of punishment. Lack of remorse is an appropriate sentencing consideration in as much as acceptance of responsibility is the first step in rehabilitation, *Vogel v. State*, 76 Md. App, 56, 543 A2d 398 (1988).

The sentence was less than the maximum sentence allowed, and therefore, it was legal sentence; it was not cruel and unusual and was within the Maryland Sentencing Guidelines recommendation.

From Defense's Perspective:

Charlie should argue that the trial judge based his sentence on an impermissible consideration that Charlie did not plead guilty and protested his innocence. Charlie could further argue that forcing him to admit guilt at the sentencing proceeding violates his right to remain silent and, in general, his privilege against self- incrimination, a privilege which remains viable pending appeal or sentencing review. *Ellison v. State*, 310 Md. 244, 259, 528 A.2d 1271, 1278 (1987). The trial judge cannot punish the defendant for invoking his right to plead not guilty and putting the State to its burden of proof for protesting his innocence. It violates Charlie's due process rights. *Johnson v. State*, 274 Md. 536, 336 A.2d 113 (1975); *Jennings v. State* 339 Md. 675, 664 A2d 903 (1995).

It is clear that if the sentencing judge imposed a penalty on Charlie because he refused to state that he was guilty, a right constitutionally protected by the Fifth Amendment to the U.S. Constitution and Article 22 of the Maryland Declaration of Rights, then a new sentencing hearing would be required. The Court's comments about a more modest sentence suggest that result and reflect an abuse of discretion by the sentencing Judge. Charlie could be seen to have paid "a judicially imposed penalty for exercising his constitutionally guaranteed right" and he should be entitled to a new sentencing hearing.