Maryland State Board of Law Examiners

FEBRUARY 2018 MARYLAND GENERAL BAR EXAM – REPRESENTATIVE GOOD ANSWERS FOR THE BOARD'S WRITTEN TEST

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MARYLAND ESSAY QUESTION NO. 1

Representative Good Answer No. 1

Here we have a valid contract between B and S. In order to have a valid contract there must be an offer, acceptance, and consideration. S offered to sell building lots on Cold Creek to B. B accepted by signing a land sale contract for $20k down payment and $500k/$20k was the consideration. Common law applies because is not the sale of goods. The contract satisfies the Statute of Frauds. Contracts for the sale of land must be in writing. The fact that the real estate broker prepared the writing creates a presumption that a writing exists.

A. Brenda(B) should pursue the remedy of rescission so that she can rescind the contract and have the $20k refunded to her. Rescission allows for an adversely affected party to not complete performance and rescind the contract when the other party fails to uphold their end of the contract. Up rescinding the contract, the party rescinding the contract is entitled to no longer perform what is owed under the contract and have any consideration returned to her that she already paid. Under a land-sale contract title must be marketable upon closing. Failure to make title marketable may allow the buyer to rescind the contract.

Here, B contracted with S for 50k sq. feet for $500k. The real estate broker indicated to B that S couldn't provide the entire 50k square feet. The 1,000 square feet that she couldn't provide to B, reduces that amount of parking lots on the property which in turn reduces the size of the building she can build and the value of her property becomes far less valuable. The fact that less than what was contracted for, 49K square feet instead of $50k, makes the title unmarketable. Since the title is unmarketable, she may rescind the contract and it entitled to have the $20k down payment she made returned to her.

B. Sandra(S) should pursue the remedy of specific performance in order to get what is owed to her under the land sale contract. Under the doctrine of equitable conversion, equity regards the purchaser as owner of the real property. The seller will retain bare legal title to the land and will keep it until the buy gives the seller the debt that is owed to her. Buyers in a land sale contract are entitled to specific performance. Assuming there are no defects in the title upon closing, the seller is entitled to the full contract amount. Specific performance requires that both parties tender performance owed under the contract.

Here, S has bare legal title in the building lots under the doctrine of equitable conversion. She should allege that upon closing, B has failed to tender what is owed to her($500K), as agreed upon in the land sale contract. She should also argue that failure to convey the last 1k square footage owed to B, is but a minor defect that doesn't make the title unmarketable.

C. B should prevail because the failure to convey the additional 1k square footage owed to B is a material defect making title unmarketable. Typically, minor defects, like a shortage in conveyance of sq. footage doesn't make title unmarketable. Here, however, the additional 1k square footage that S is unable to convey completely dimities the value for B contracted for. Making the property non-profitable is a material defect to the title. since S can't convey marketable title at closing, B should be entitled to rescind the contract.

Representative Good Answer No. 2

The statute of frauds requires agreements for the sale of land to be in writing. Here, Brenda and Sandra properly executed a contract of sale on August 1, 2017. The agreement required closing by November 1, 2017 with a $20,000 down payment due upon execution of the contract and the balance, $480,000 due at closing.

The sales contract requires a sufficient description of the property. Here, the agreement, with attached hand drawn plat described the property as 50,000 square feet consisting of 5 lots but contained no survey.

Brenda would seek rescission of the contract and return of her deposit. Rescission will allow for Brenda to put back in the position she was in prior to the agreement. She will no longer be bound by the agreement and she will be able to recover the deposit. Per the contract for sale, Brenda was to receive 50,000 square feet, not 49,000. Upon the September 15th notification that the conveyance would be 1,000 square feet less than agreed, Brenda promptly requested her architect to determine the effect the square foot shortage would have on the building she proposed to erect on the property. The October 1st report revealed that the building would no longer be profitable. there was no unreasonable delay in determining the effect, if any, the shortage in square footage would have on Brenda's plans for the land. Thus, the reduction in square footage frustrates Brenda's economic expectations. Since, by ordinance, the shortage would cause her to lose parking spaces which would require her to decrease the size of her building, Brenda should be excused from performance.

Additionally, the hand drawn sketch with 50,000 square feet written at the bottom is arguably sufficient to put all parties on notice as to what Sandra is selling.

Sandra would seek specific performance. Specific performance will require Brenda to continue with the purchase of the land. Sandra will allege that Brenda first breached the sales agreement by presenting a check that had been dishonored. Further, Sandra will allege that Brenda agreed to accept the modification by furnishing the broker with a cashier's check for $20,000 to replace the previously dishonored check. On September 15th, Brenda could have, at that time, sought rescission of the agreement; however, she ratified the modifications when she provided the payment.

Brenda should prevail as the original agreement was for the sale of 50,000 square feet and the reduction in square footage frustrates the purpose for which Brenda would like to purchase the land. Brenda should be able to realize her full economic expectations.

MARYLAND ESSAY QUESTION NO. 2

Representative Good Answer No. 1

First of all, security transactions, which are consensual security interests in personalty and fixtures, are governed by Article 9 of the UCC.

A. As between Beta Bank and Consumer

The first question is whether and when Beta Bank attached its secured interest, and whether/ when Bank perfected its interest. Attachment secures the interest as against the debtor, and perfection puts the world on notice of a creditor's claim, securing its interest as against competing claims.

Attachment occurs when collateral is given for value, pursuant to a written agreement detailing the interest and collateral, and rights in the collateral. Clearly, the Bank gave value, as they lent Widgets $100,000. On August 5, they filed the financing statement in the appropriate office, and detailed the collateral as inventory, which satisfies the second and third requirements. Therefore, the Bank's interest attached. The Bank's interest was also properly perfected, as it properly recorded its interest.

Even though secured parties who perfect their interests and attach their interests, called perfected attached creditors, have good interest in the collateral, buyers in the ordinary course of business still defeat their interest, generally. Under Maryland law, if a buyer gives value and receives delivery of the collateral without knowledge of the security interest and before it is perfected, then a security interest is subordinate to the rights of the buyer. Pursuant to Md. Law 9-320, a buyer in the ordinary course of business, generally takes free of a security interest created by the buyer's seller, even if the security interest is perfected and the buyer knows of its existence. Here, consumer did not know of Bank's interest. Consumer therefore has a superior claim to their new widget bought from Alpha.

B. Utility would qualify as an attached lien creditor. Generally, per Maryland Law, priority is ranked according to priority in time of filing or perfection. Since Beta Bank, a perfected attached creditor in the future inventory held by Alpha, perfected and attached first, they would argue superior claim to Utility, which is a lien creditor. Bank attached and perfected in August, whereas Utility did not obtain a judgment lien until September 29.

C. The widget accessories would likely qualify as equipment, which guides the analysis to determine priority for the secured parties.

As mentioned, Beta Bank is a perfected attached creditor, as they satisfied the necessary requirements for perfection and attachment. Since they attached and perfected back in August, according to the principles of Maryland law that recognize the first to file or perfect has superior claim, Beta Bank has the superior claim.

Manufacturer, however, did not attach their interest, as no financing statement was filed detailing their interest. As mentioned, a written statement detailing the rights and collateral is required for an interest to attach. Manufacturer is therefore an unattached creditor. Manufacturer would therefore have the lowest priority in their interest.

Utility attached their interest in September by a judgment lien, which gives them second interest compared to Beta Bank.

Representative Good Answer No. 2

The question involves a security interest and is controlled by UCC 9.

A security interest exists when there is an agreement between a debtor and secured party for value, in exchange for an interest in collateral to ensure that a secured party is paid for the money it lends. Here, A security agreement was formed between Alpha Widgets, a debtor, and Beta Bank, a secured party, for $100,000. Alpha gave Beta a "security interest in all inventory of Alpha Widgets, whether now owned or hereafter acquired." A security interest exists.

Attachment occurs when there is value conferred in exchange for interest in collateral, and the debtor has possession of the item. Here, Alpha gave the $100,000 in exchange for the Alpha widgets as collateral, and the debtor, has possession of the widgets. Attachment occurred.

Collateral. Here the collateral is Alpha Widgets. The widgets are inventory, as widgets sells widgets and widget equipment.

Perfection occurs by filing, control or possession. Beta perfected on August 5 by filing a financing statement in the appropriate state office, and listed Alpha as a debtor and inventory as collateral.

Beta bank is a perfected secured party and became on on August 5, 2017.

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Part A.

A buyer in the ordinary course of business takes free a security interest even if it is perfected and the buyer knows. Here, the consumer bought Alpha widgets on August 10. The sale was made in accord with usual business practice of Alpha and both acted honestly and in accord with reasonable commercial standards. Further, Alpha sells new and used widgets, which consumer bought unaware of the financial relationship between the Alpha and Beta. Consumer is a buyer in ordinary course and has a superior claim to the widget sold then Beta bank.

Beta can recoup its funds through the sale of proceeds conferred by consumer to Alpha.

Part B.

First in time, first in right wins. Here, Bank has greater interest because it perfected on August 5 in inventory. Utility obtained the lien on September 9, 2017. Bank has superior claim.

Part C.

Here, a perfected security interest or agricultural lien, meaning a lien secured against a debtor through court, has great priority than an unperfected secured party. Here, Beta bank perfected and has a perfected interest, as it perfected august 5. Then Utility has the second interest, as the judgement against Alpha was obtained on September 29 for $2,500. Manufacture has the last interest because it failed to perfect. Additionally, it failed to put Beta Bank on notice and file in order to perfect at August 31, 2017. Thus, given the above, Beta, then Utility then Manufacture have interest in this order.

MARYLAND ESSAY QUESTION NO. 3

Representative Good Answer No. 1

A. The court should overrule the objection because the prosecution may enter in evidence that shows the defendant had motive. In criminal cases, the prosecution may introduce evidence that shows the defendant had motive, intent, conduct, etc. The court will admit such evidence so long as it is relevant and the probative value(relevancy) outweighs the prejudice it may have on the defendant or how it may cause confusion among the jurors.

Here, testimony that Harry had arguments with Wilma regarding Wilma's cheating will go to show that Harry may had a motive to kill his wife. The court must then decide that it is relevant, which it is, and then must determine if the probative value outweighs the unfair prejudice it will have on Harry. Whether the probative value is greater than the unfair prejudice it may have on Harry will be up to the discretion of the court.

B. The court should overrule the objection by the defense counsel and rule the testimony from Harry's pastor admissible if he wishes to testify. Under the MD rules of evidence, MD recognizes the clergy-penitent privilege. Under this privilege, anything said to a clergy member while acting in his/her capacity as a clergy member is privileged. However, this privilege can only be invoked by the clergy member. Here, the statement Harry made to his pastor was presumably made while the pastor was acting in his capacity as a clergy member. If the pastor wishes to testify then he may do so assuming the court finds his testimony to be relevant - that probative value is not outweighed by the unfair prejudice it may have on the defendant. The statement that "she is at peace" is relevant to whether Harry knew about the murder before the police found him at his church. Objection overruled.

C. Harry's conviction for assault will be inadmissible and the court should sustain the objection. Evidence of a conviction of a crime is generally inadmissible to show that a defendant acted in accordance with his character. The prosecution may attempt to impeach the defendant using a conviction of an infamous crime where the date

of conviction is less than 15 years ago, but may only do so after the defendant has "opened the door" to providing evidence of his good character. Misdemeanors regarding one's propensity for untruthfulness is one of the few exceptions to this rule.

Here, Harry's conviction is within 15 years because the conviction occurred three days before this trial, however, the conviction is for assault in the second degree and is therefore not an infamous crime. Additionally, there is no indication that Harry has "opened the door" to his character. The prosecution will attempt to argue that Harry's assault is evidence of his character and show's a propensity to commit murder, but the court will sustain the objection because it is character evidence.

Representative Good Answer No. 2

a. Generally, evidence that is relevant and not barred by one of the rules of evidence or excluded on public policy grounds is admissible. Evidence is relevant if it makes a fact in issue either more or less likely. The neighbor's testimony that he overheard constant arguments between Harry and Wilma regarding Wilma's cheating could be admissible as relevant to motive. However, the murder took place in November 2017 and the fights took place in 2014. A court has discretion to exclude evidence when its probative value is substantially outweighed by danger of unfair prejudice, waste of time, confusion of the jury. Here, this evidence should be admitted over a relevance objection because it does tend to show that Harry had a potential motive for killing his wife.

The evidence also should be admitted over a hearsay objection. Hearsay is any out of court statement offered for the truth of the matter asserted. Out of court statements not offered for the truth are considered non-hearsay. Here, this testimony is not being offered for the truth of whether Wilma was cheating. It is being offered for its impact on the defendant and as evidence of his state of mind. If Harry believed that Wilma was cheating on him, he would have had a motive to kill her. Therefore, the evidence is non-hearsay.

b. Maryland recognizes a clergy-penitent privilege which protects information shared in the confidence of a religious counseling-type relationship. However, the privilege is held by the clergy member who could decide to waive it and testify. Therefore, that privilege would not bar this testimony.

This testimony is also not barred by the hearsay rule. A statement by a party opponent offered against him is considered an admission and non-hearsay. Therefore, Harry's statements are admissible as non-hearsay admissions.

However, these statements are probably objectionable on relevance grounds. The statements might show that Wilma was dead but they do not appear to make it any more or less likely that Harry murdered her, which is the relevant inquiry in the case. Therefore, without more statements to put these in a different context, the judge should sustain a relevance objection.

c. Character evidence is inadmissible in a criminal trial in the prosecutor's case-in-chief to prove that the defendant acted in accordance with the particular character trait. This prior conviction would not be admissible to prove that Harry had a propensity for violence. Character evidence can be admitted for a non-propensity purpose such as showing motive, identity, absence of mistake, intent, or common scheme or plan. There are no facts to show that the prosecutor is attempting to introduce this conviction for one of those purposes. It appears to be an impermissible use of character evidence for propensity purposes.

Convictions can also be used for impeachment purposes, on the theory that some criminal convictions are probative of a witness's truthfulness. Here, the prosecution is attempting to use this conviction in its case-in-chief and not to impeach defendant's testimony. If he does testify later in the trial, this conviction may be admissible to impeach him. Felonies and misdemeanors that involve an element of dishonesty and happened within the past 15 years are admissible to impeach. Here, the defense's objection should be sustained.

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MARYLAND ESSAY QUESTION NO. 4

Representative Good Answer No. 1

A. Physical Custody of children

When there is a separation or divorce, in general, if the court finds both parents fit, it can award joint custody. The court can award different custody arrangement for legal custody (who is legally responsible for the child) and physical custody (who the child lives with). The test the court will use is what is in the best interests of the children. Here, the court has already determined that joint legal custody, and there is no evidence that Sam wants to change this (although as his attorney it would be important to note to him the difference between legal and physical custody).

The factors that support that it is in the best interest for Sam to gain sole physical custody (and the arguments he should raise) are the following:

-The children were born and raised (12 years for Son and 9 years for Daughter) in Maryland, have their family home in Maryland, and most likely are in the middle of school and have friends in Maryland so would be best to keep their lives consistent. A parent, here Marta, has rights to move with children but when there are joint custody arrangements the Court should take into account how reasonable the move is as well as how far it is from the other custodian parent and rest of children's families.

-If the children are old enough (may be debatable with Daughter but Son should be deemed old enough) and want to stay with Sam, this will not be a determining factor but Courts should take their preference strongly into account (this could hurt Sam if they would rather go to California and live with Marta).

-How much support each parent gives to the children. It will help Sam that he was the primary non-economical supporter as the stay-at-home dad and probably has a close relationship with them.

-Marta has not been a responsible parent in recent years with only making sporadic alimony payments (not paying money owed to someone regardless of who it is shows irresponsibility) and it is even worse that she has had no contact with her children between January 15, 2017 and August 2017, a six month break of contact.

-That per the joint custody arrangement from 2015, he had the children for the majority of the time during the week and Marta only had the children for weekends, so that he was the primary parent for the primary functions of parenting (helping the children on a daily basis and with school). It is unclear from the facts, but he may have also of been the primary parent when Marta was unavailable between Jan-Aug of 2017.

The factors that will hurt him if Marta protests (these are not arguments he should make but he should be aware Marta may bring them up) are the following:

-That they had initially agreed to joint custody and Marta- although this should not neutralize the fact that he had the children for more time during the joint custody arrangement.

-Marta has equal rights to custody with her children as their mother and can move where she wants with them (see above regarding California as unreasonable location).

-Marta can argue that she has been financially supporting the children- It is unclear from the facts if this is the case or if Sam has gone back to work or has other income but regardless Sam can argue that now that she has quit her job at the FBI she will no longer be having a steady income.

Looking at the above factors both for and against Sam getting sole physical custody, it seems the court is likely to decide that it is in the best interests of the children for him to have sole physical custody.

B. Compel Alimony Agreement

Alimony is payments made to help rehabilitate a spouse after a divorce or separation. A court can declare that there are substantially changed circumstances and either end alimony payments early or extend them. The Court here incorporated the separation agreement, which was already a contractual obligation of Marta, into the divorce decree, thus Sam should argue that not only has Marta breached her contract obligations to him to pay but she is also in contempt of court and the court should compel her to pay these payments. This was a five-year legal obligation that Marta had, and she should be paying Sam alimony for $7k each month until Dec. 20, 2020. Even if the amount of alimony cannot aggregate until the present moment, five years, with $7k each month is not only the agreed upon amount but it is also reasonable and there has been no substantial change in circumstances that warrant the court to end the alimony payments. So, I would recommend that Sam argue to get the past payments owed to him satisfied such as a debt owed to a creditor, and if the court does not allow him these aggregate payments, he should still try and get the future amounts owed to him paid. If the Court does find that Sam is able to get a job and has not yet and that Marta not working is a substantial change in her circumstances, he should still argue that as per the settlement agreement alimony payments should be due but maybe try and settle for a lesser monthly amount. As his attorney, in addition to enforcing the alimony payments, if he gets full physical custody of his children he should also request that the court mandate that Marta pay child support since each parent has a duty to help pay for children and this is according to the statutory formula.

Representative Good Answer No. 2

A. Sam's arguments to gain sole custody

The issue is what arguments may Sam raise to gain sole physical custody of the children.

Despite a custody agreement made between parties in a separation agreement, the court has the power to modify such arrangements when necessary in the interests of the children involved. In fact, an agreement prohibiting such modification has no legal force. When determining custody placement of a child, the court's primary focus is the well-being of the child. A court may grant joint or sole legal and/or physical custody of a child to a parent or both parents depending on the best interests and welfare of the child. In determining whether to award joint or sole physical custody, the court considers the following factors: (a) the opportunity for a parent to visit the child; (b) the child's preference if old enough to possess rational judgement; (c) the geographical distance between the parents' residences; and (d) the ability of the parents to make parental decisions together. If the court is to grant sole custody of the child to a parent, the court considers more factors to determine which home is in the best interests of the child. The court considers several factors in determining whether a child should be placed. The following factors are considered: (1) the fitness of each parent; (2) whether the parent has previously abandoned or voluntarily relinquished rights of the child; (3) the opportunities of the child that affect his or her future; (4) the time constraints on each parent by work or other commitments, and (4) whether the child has formed bonds in the home, neighborhood, school, and social community.

Here, Sam has a strong argument that the court should award him sole custody of the son and daughter. Sam will argue that the court should not award joint custody for several reasons. First, Marta intends to relocate to Los Angeles, California, which is in a completely different region of the country from where Sam and the children currently live. The distance is so great, that it would be impractical for Sam and Marta to share physical custody of the children. Second, the expected geographical distance also would affect either parents' ability to visit the children. Third, Marta and Sam are unlikely to get along well enough to make decisions concerning the children together. Marta, along with her new husband Guy, have a tendency to disparage Sam. Such confrontation will

make it difficult for the parents to cooperate, as necessary for joint custody. Thus, Sam will argue that under these circumstances, it is not in the best interests of the child that the court award joint custody of the children.

Further, Sam will argue that the court should award him sole custody of the children. He will argue that it is in the best interests of the children that he gains sole custody. First, the children have strong community ties in Maryland, as they have been there from birth. The facts indicate that the children have lived in Maryland for approximately 9 and 6 years, respectively. There are likely opportunities that the children have and are developing within the State of Maryland that will impact their future, and that will be affected if custody is awarded to Marta, resulting in their relocation. Furthermore, Sam will argue that Marta is not a fit parent. She has once abandoned the children: from January 15, 2017 to August 2017 she abandoned the children. This occurred upon her remarriage to Guy. Sam will argue that while he has been a stay at home father during the marriage to Marta, he has potential to gain employment to care for them. In fact, Sam will argue that he has a strong bond with the children due to having stayed at home to care for them.

Thus, Sam will argue that the court should award him sole physical custody of the children because it is in their best interests.

B. Sam's arguments to compel enforcement of alimony agreement

The issue is what arguments Sam may raise to compel enforcement of the alimony agreement.

The court may adjust an alimony agreement when justice requires, unless the agreement forbids adjustment. A separation agreement may be incorporated or merged into a divorce decree. If incorporated, the court may enforce the agreement independent of the divorce decree. The court may also enforce a merged separation agreement, but its enforcement is through enforcement of the divorce decree. Once a Maryland court has issued a divorce decree, the court has authority to enforce or modify the decree unless it is determined that it is more preferable and appropriate for another State to exercise authority.

Sam and Marta got divorced in Maryland in December 8, 2016 in Maryland. The separation agreement the two had entered into prior to the divorce was incorporated into the divorce decree. Sam and Marta have remained in Maryland since the divorce, along with the marital property. Sam will therefore argue that the Maryland court has continuing authority to enforce the separation agreement. The court has not lost jurisdiction over the matter. Thus, Sam will argue that the court may enforce the agreement independent of the divorce decree, as it was incorporated into it.

Sam will argue the court has continuing jurisdiction to enforce the alimony agreement.

C. How would I respond?

The issue is whether the court should enforce the alimony agreement.

Rule: A court may modify an alimony award as justice sees fit to avoid inequities. The court considers several factors when making this determination, including (1) the ability of the former spouse against whom alimony is sought to provide for both themselves and the other former spouse's needs; (2) the resources of each party; (3) the income of the parties, including the potential income of a party if voluntarily impoverished; (4) the standard of living enjoyed during the marriage;

Short Answer: The alimony agreement should be modified at best, or terminated completely.

Facts: Two years remain on the alimony agreement. Sam had the past three years to obtain employment to support himself. Marta will be resigning from the FBI to move to Los Angeles, California, and may not be able to support both herself and Sam.

MARYLAND ESSAY QUESTION NO. 5

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Representative Good Answer No. 1

A. The rules of professional responsibility limit the ability to represent multiple parties with conflicting interests. Here, even though neither CC nor Subcontractor is seeking to initiate a claim against the other, the parties may nonetheless have causes of action against each other for contribution or indemnification. For this reason, their interests are materially adverse and the conflict cannot be waived, even if there is informed consent, confirmed in writing. Therefore, I would inform the parties that I would not be able to represent both and would inform them that one party would need to seek independent counsel.

Notwithstanding above, I advise each of the parties that, in order to recover the damages being sought, we will need to file a Complaint with the appropriate court (see below) and then follow the rules of civil procedure to effectuate proper service on each defendant.

B.

Business v. Construction Co.

Business can bring a civil suit against Construction Co in a Maryland District Court because Maryland District Courts have jurisdiction over a contract action claim which does not exceed $30,000. As such, Business can bring a civil suit against Construction Co, a Maryland corporation in District Court. (4-401(1)).

Maryland Circuit courts have concurrent jurisdiction over the cause of action under 4-402(d)(1)(i) since the amount in controversy is $5,000.

Business v. Subcontractor

Circuit court has exclusive jurisdiction because the amount in controversy exceeds $30,000 (assessed by the amount pled in Plaintiff's complaint).

CC v. Business

Circuit court has exclusive jurisdiction because even though the amount in controversy is only $25,000, CC is seeking declaratory and injunctive relief which the District Court does not have jurisdiction to render (4-402(c).

C. The parties may be sued in the following venues:

Construction Co.(CC): venue is proper in Carroll County, where construction co is headquartered, Montgomery County or Prince George's County, where CC has previously conducted construction work, or Worcester, where the Wacillater was built pursuant to the parties' contract. (Rule 6-201(a)). However, if subcontractor is joined as a defendant, venue is only proper in Worcester (see below).

Business: venue is proper in Frederick County, where they are headquartered, or Worcester (see above).

Subcontractor: venue is proper in Worcester (see above) (Rule 6-201(a)); however, if subcontractor is joined as a defendant in the same cause of action as CC, then venue would only be proper in Worcester since that would be the only common venue (6-201(b)).

Representative Good Answer No. 2

A. LEGAL RIGHTS

Business v. Construction Co.

Construction Co. has several options as to how it could proceed against Business. At issue is a party's recourse when there is a dispute under a construction contract. One option for Construction Co. is to wait to file a compulsory counterclaim against Business in the event Business brings its breach of contract claim for $30,000 worth of damages. This a claim would be compulsory because it arises out of the same transaction or

occurrence, which, in this case, is the contract to construct a Wacillater. Construction Co. might also consider bringing an indemnity action against Subcontractor in the event Business brings its breach of contract claim. An indemnity action is where a defendant brings a third-party claim because the defendant believes the third party should be held derivatively responsible for any damages paid to the plaintiff. This is appropriate in this case, where Construction Co. could potentially be held liable for $30,000 in damages, but would want to hold Subcontractor accountable. The facts indicate that the welding, the task for which Subcontractor was procured, was not done in a "workmanlike manner." Another option, and perhaps the more proactive one, is to sue Business under breach of contract theory for damages and declaratory and injunctive relief, the implications of which are further addressed below.

Note: Pursuant to the RPC, I would advise both Construction Co. and Subcontractor that I would be representing adverse interests in the case of an indemnity action, and would have to either withdraw or obtain the informed, written consent of each party.

Business v. Subcontractor

The facts do not seem to indicate that Subcontractor has any claim against Business. Subcontractor would have to defend the negligence care and argue that it did not breach its duty of care in performing the welding.

B. SUBJECT MATTER JURISDICTION

Business v. Construction Co.

The District Court or the Circuit Court would have subject matter jurisdiction over the Business v. Construction Co. breach of contract claim. This is an action in contract, and damages do not exceed $30,000, so the District Court has exclusive original jurisdiction. [MD Code 4-401]. However, because this mater involves an amount in controversy that exceeds $5,000, it could also be brought before a trial court of general jurisdiction, which would be a Maryland circuit court. [MD Code 4-402(d)].

Business v. Subcontractor

Only the circuit court would have subject matter jurisdiction over a claim by the Business against the Subcontractor for $35,000, because this claim exceeds the $30,000 threshold limiting the District Court's jurisdiction. [MD Code 4-401].

Construction Co. v. Business

If Construction Co. brings a breach of contract claim seeking $25,000 and declaratory and injunctive relief, then only the circuit court would have subject matter jurisdiction. Under MD Code 4-402, the District Court does not have jurisdiction to render a declaratory judgment. If Construction Co. drops its claim for declaratory relief, it could bring the action in District Court or Circuit Court, for the reasons stated above.

C. VENUE

At issue is where venue is appropriate where a claim involves multiple defendants that reside in different localities. Maryland law provides that a civil action shall be brought in a county where the defendant resides, carries on a regular business, is employed, or habitually engages in a vocation. In addition, a corporation also may be sued where it maintains its principal offices in the State. [MD Code 6-201]. In this case, Business is headquartered in Frederick County, Construction Co. in Worcester County, and Subcontractor has one office in Ashburn, Virginia. If Construction Co. is the defendant, venue would be appropriate in Frederick County or Worcester because this is where the cause of action arose. Venue for Subcontractor would only be appropriate in Worcester County because this is where the cause of action arose, or Frederick County, because this where

the plaintiff resides. [MD Rule 6-202(3) (Action against a corporation which has no principal place of business in the state)]. Business could be sued in Frederick County or Worcester County.

MARYLAND ESSAY QUESTION NO. 6

Representative Good Answer No. 1

Sara Jane's potential cause(s) of action

Sara could be a negligence claim against Abe.

Negligence requires a duty, breach, causation, and damages.

As a friend of Abe, Sara was a licensee. Although Abe did not have the duty to inspect the premises, Abe owed Sara the duty to warn her of known dangers, aka the fact that the roof needed to be replaced. Abe breached this duty by failing to warn her when she decided to store two computers, which are delicate in nature, in his townhouse. But for his failure to warn her about the need of repairs for the roof, Sara's computers would not have been damaged.

Her claim for damages

Sara could ask for the replacement of the two computers as the fair market value of the two computers could be calculatable. However, the loss of her software may or may not be recoverable depending on whether there is a fair market value to put on them (are they softwares that she created so they're unique or are they softwares one can purchase at a store). Maryland has damage caps for non-economic damages and this may or may not apply to the software.

Potential defenses to her claims

Abe could use the potential defense it was not his fault but in fact Roofer's Inc.'s fault as Roofer's Inc. was the one hired to fix the roof. Even though Roofer, Inc. hired Will to replace the roof, under Respondeat Superior, Roofer, Inc. could be found liable for the damages caused by Will if he is found to be an employee of Roofer's Inc.

Roofer's Inc in return might come back with the defense that it was Will's negligent decision to torch heat tar paper which subsequently ignited the roof trusses and should not be held liable as Will was not an employee but in fact an independent contractor.

Courts will look at various factors to determine whether an individual, like Will, is an employee or an independent contractor. Under the Respondeat Superior theory, employers will be liable for the actions of their employees and NOT independent contractors.

Here, the Court will most likely find that Will is an independent contractor. Unlike an employee, independent contractors provide for their own tools and set their own hours, like Will did here.

Will left at his own will at 7:30pm which was shortly before Abe's neighbors called for the fire.

Will in turn might argue that but for the firefighter's actions of using excessive water to put out the fire, Sara's computers might not have been damaged. Although this might be a stretch, in Maryland, as a contributory negligence state, a party cannot recover if the other party was at fault as well. However, last clear chance doctrine states that if one party could have prevented the accident from happening, then the other party is at fault. Here, Will could have prevented the fire from occurring at all as it is unreasonable to suspect firefighters to take care of surrounding personal objects to be free from water when a fire is burning the roof.

The Court will most likely agree that Will is in fact an independent contractor which would free both Abe and Roofer's Inc. from paying any damages to Sara.

Sarah in turn will be able to recover for the damages sustained on her computer/software from Will.

Representative Good Answer No. 2

A. There do not seem to be any intentional tort claims here. No one intended any interference or contact with Sara's computers. (Maybe there is a tenuous claim to trespass to chattels for the firefighters -- they did not need to intend that Sara's computers get hurt, just the contact. They intentionally doused the area with water, which ended up contacting Sara's computers. And her computers were harmed by that intentional contact. But as discussed next, MD has the policy of protecting firefighters and rescue workers from tort liability in the line of duty. So, this will be a likely defense to any trespass with chattel -- or possibly, even a conversion claim since the computers appear to have been completely destroyed.) But Sara likely will try to bring negligence claims. She may try to sue Abe, Will, the Roofer as the principal who hired Will, and the firefighter--although under MD law, it seems this claim would easily be rejected. These suits will each meet with varying likely degrees of success with the firefighter claim being the least likely to succeed. As an initial matter under MD law rescuers are given some protection for acting in their rescue duties. Here the firefighter was trying to stop a fire. Sara could say the water from the firefighter's efforts harmed her computer so there was causation between what the firefighters did and the harm to her computers. But there is no evidence the firefighter violated any standard of care in his firefighting rescue efforts. And under the exception for rescue personnel acting immediately in the scope of rescue duties, the firefighter should be protected from having to justify his efforts to put out a fire by defending a negligence claim.

Sara will also try to sue Will for the damage to her computers. Negligence requires showing a breach of a standard of care, with direct ("but for") and proximate causation, that caused damages. Here she has clear damage to her computers. Also, there seems to be a breach of a standard of care. Presumably a subcontractor would know either not to use a torch inside to heat tar paper or how some typical procedures that he uses to prevent fire. In MD standard of care will be evaluated based on the national standard of what looks like ordinary care. Here Will likely has not followed a typical standard of care for a subcontractor in his position. After establishing breach of a duty and damages, Sara would need to establish both direct and proximate causation. Direct causation means showing that but for Will's action, there would not have been water damage to her computer. That is true --but for Will's fire, the firefighters would not have come and doused Sara's computers inadvertently with water while they were trying to put out the fire. There are two causes here -- Will's action and the firefighters. The test is that Will's actions needed to be a substantial factor --they appear to have been; they set the chain in motion. The somewhat tougher causation might be proximate causation. But unlike in cases like Palsgraff, here the harm to Sara's computer is more foreseeable. When there is a fire, it is foreseeable that firefighters will have to come extinguish it and may use water to do so. So, the water damage here from the firefighters is not a totally unanticipated development. Also, the firefighters were not intentional culpable bad actors interfering with the line of causation from Will's negligence to the harm to Sara. She should have a good claim here.

Sara may also try to bring a negligence claim against the Roofer for being the principal who authorized Will's actions. There will be two issues -- (i) was Will acting as an agent here? Yes, he likely was. The roofer subcontracted with Will. The roofer may not have expressly authorized this particular action of heating the tar paper. But as long as heating tar paper was a typically thing to do in fixing roofs, there would be implied authority here for Will's work. (So the Roofer assented to have will act for him by hiring Will to fix the roof; Will knew he

was supposed to fix the roof and seems to have been acting w/in the scope of agency when he acted here -- even though he did it negligently.) (ii) And if so, were his actions sufficiently w/in the scope of employment that the Roofer should be liable? Here he was engaged in an act related to replacing the roof, it seems. It seems likely he was heating tar paper to replace the roof. Therefore, he was within the scope of employment and we don't have a "detour" situation where he's on his own time in such a way that would make the Roofer non-liable. Also, because this is negligent rather than an intentional tort, it seems more likely that the liability here can be traced back to the Roofer in some way, too.

So, the theory above would be respondeat superior for the Roofer. Could the Roofer also be directly liable? Perhaps. Sara would have to raise the theory that the Roofer was directly negligent in his supervision of Will. This would be evaluated based on whether the Roofer gave a normal, typical amount of supervision and instruction in how he wanted Will to fix the roof. Because they've worked together in the past and not had problems, though, maybe the Roofer has not breached. He may not have reason to know that Will's behavior would cause a problem.

Finally, Sara might try to sue Abe but this likely will not work. She's not an invitee to whom he owes the typical negligence standards of care because she was not invited onto the premises for purposes of Abe's own economic gain. She's also not a social guest. She's a more limited licensee who just came on the property for her own requested purposes--subject to a lower duty under Maryland law. Abe does not owe Sara any special care. The one issue might be whether by engaging in this action on the property he created a hidden hazard that she should have known about. Maybe if she had no idea the roof would be replace and all this work would be going on, Abe had a duty to tell her--especially since the computers were stored upstairs which would presumably be close to the roofing work. But this seems unlikely to prevail. Abe is doing her a favor. Plus, the water damage did not come from the roof being replaced, specifically. This harm did not come from something typically associated with a missing/damaged roof like rain coming in the upstairs. This harm from the fire caused by the negligent contractor would have bene an intervening unforeseeable cause of harm, most likely. The best counter-argument for Sara is that Abe should have told her about the known hazard and water damage could happen from a missing roof. But this particular water damage came from the firefighters so I don't think Abe will ultimately be on the hook.

B. Sara's claim for damages cannot be for punitive damages because malice is required for that under MD law. NO malice here to touch her computers. She will claim the damage based on the loss of the hardware and software. Perhaps if she needs the computers for work she'll claim an economic harm for that, too, but the facts don't say.

C. Defenses will be the missing elements in the various negligence claims discussed above. Also, Abe may try to claim consent -- Sara consented to her computer being there. That said, she did not consent to the collateral consequence of the roof work so consent will not work.

Maryland State Board of Law Examiners

FEBRUARY 2018 MARYLAND GENERAL BAR EXAM –
REPRESENTATIVE GOOD ANSWERS FOR THE BOARD'S WRITTEN TEST

MARYLAND ESSAY QUESTION NO. 7

Representative Good Answer No. 1

School's Cause of Action

Valid Contract

The school will argue that there was a valid contract for the upcoming school year that requires performance. Valid contracts must have offer, acceptance and consideration. Here, this was an installment contract for the price of the private school tuition. As such, the school will argue that the parents freely entered into the contract with the school and signed the contract which gave specific directions as to how to cancel their child's enrollment for the upcoming year. Parents, well informed and acknowledging the warning "NO CHANGES TO THIS AGREEMENT ARE PERMITTED", willingly signed the agreement and paid two of three installment payments timely. Thus, as a result of the parents not paying the third installment and not informing the school by registered mail by or before June 15, 2017 this resulted in a breach of contract. As such, the school will be entitled to payment of the remaining $20,000 outstanding on the contract.

Liquidated Damages Provision

The School will likely argue that the contract that the parents entered into willfully and voluntarily contained a liquidated damages provision. Liquidated damages are contractual agreements made for money damages in the event of a breach of contract and are presumed to be reasonable. Section (3) of the contract states, "Absent a timely receipt of cancellation, Parents are obligated to pay the full tuition for the academic year. No exceptions to this obligation are permitted." Here, the School will likely argue that this is a liquidated damages clause and that it is reasonable as the school is private and relies on the enrollment and tuition of individual students for its proceeds and operation.

Parents Defenses

Contract of Adhesion

The parents will likely argue that the contract was a contract of adhesion. A contract of adhesion is a contract that gives one party severely limited bargaining power. Here, the facts show that the contract does now allow for any bargaining between the parties and indicates in bold writing that, "NO CHANGES TO THIS AGREEMENT ARE PERMITTED." The facts indicate that the parents did supply the school with a reason as to why their child would not be attending the school when they e-mailed school officials on July 30, 2017. The Parents will likely argue that they had a nonexistent bargaining position in regards to the contract.

School had a duty to mitigate damages

The parents will likely argue that the school, upon learning that they would be losing a student and potentially $60,000 in tuition or the upcoming school year had a duty to mitigate their damages, and did not do so. The School did nothing to attempt to recruit additional students, but did in fact reach full enrollment for the up and coming school year. As a result, Parents will likely argue that the school did nothing to mitigate any damages that they may have suffered and that the school in fact reached full capacity for that academic year.

School cannot prove any damages

The school reached full capacity for the academic year and as a result of the parents purported breach, there were no damages. Here, the parents will argue that the school actually cannot prove any damages from the

breach of contract. As a result of no damages, the parents will argue that they should not be forced to pay the remaining amount of money to be paid in tuition.

Overall, the Parents should win the case brought against them in the Circuit Court for Anne Arundel County. The school cannot prove any consequential damages, as there were no damages that flowed from the breach because the school was to capacity for the academic year. Additionally, while the parents did breach the contract by informing the school late that their child would not be attending, they breached with an excuse, presumably in good faith. This is tantamount to a contract of adhesion as there is no alternate way to get out of the contract - you either pay or pay which is fundamentally unfair. Further, if the Court was to deem the clause in Section (3) a liquidated damages amount, the Court would not find that it was reasonable and would likely strike it. This amount would be too high, and would be equal to the amount of the full years tuition. The court would likely see this as punitive, rather than liquidated damages. Based on the reasons above, the parents would prevail against the school.

Representative Good Answer No. 2

This question is governed by common law because it deals with an enrollment agreement.

A contract of adhesion is one that does not permit changes and is essentially an "as is" agreement. Courts have generally held these agreements to be valid, so long as they provide an avenue for a party to cancel the contract at some point.

Here, parents enrolled student in a private school which had an enrollment agreement that provided that the tuition cost for the academic year is $60,000, payable in installments. The agreement stated that tuition must be paid in full not later than June 30, 2017. The agreement also stated that in order to cancel, a written cancellation notice had to be sent by registered mail to School's Headmaster on or before June 15, 2017. The agreement stated that parents would be fully refunded tuition once timely, proper cancellation was provided. Lastly, the agreement stated that absent a timely receipt of cancellation, parents are obligated to pay full tuition for the academic year. No exceptions to this obligation are permitted. This agreement is a contract of adhesion.

Knowing these terms, parents accepted them and entered into the enrollment agreement with school. In this situation, parents were provided with a way to get out of the contract. The parents cancelled on July 30, 2017 via an e-mail to the headmaster. The agreement provided that cancellation had to occur on or before June 15, 2017 by registered mail. The parents' cancellation was improper and was not timely. The parents and school were in agreement on when the cancellation was supposed to take place (if there was to be a cancellation at all), and the parents breached the agreement.

In addition, courts have held that such clauses requiring parents to pay a full academic year of tuition if cancellation was not given in a timely manner, to be proper. Such clauses constitute a proper liquidated damages clause because of the known financial impact that an improper cancellation will have on a school. The parents would be incorrect to establish that the school suffered no loss, and that school made no efforts to lessen the loss. Having one less student enrolled is a loss. The school required the parents to cancel by a certain date because the school needed to plan financially how the student's tuition money would be allocated among their expenses. The CFO of the school indicated that "school's budgeting process requires ongoing revenue for school operations throughout the year and that a date when all tuition is to be paid is necessary to finalize staff salaries and department budgets". This is proper, and requiring parents to cancel timely and properly is not punitive, but a proper liquidated damages clause.

As a result of the above, the school should prevail.

MARYLAND ESSAY QUESTION NO. 8

Representative Good Answer No. 1

A partnership is an association of two or more persons to carry on a business for profit as co-owners. Here, J entered into a partnership agreement with L & A. Although the parties did not agree to share the profits and losses equally (which is the usual hallmark of a general partnership), their execution of a partnership agreement likely evinces the necessary intent to form a partnership (here a general partnership, absent any evidence of registration with SDAT, and absent an indication that any of the partners were limited partners).

A.

The surviving partners were not required to liquidate the partnership. Even though the partnership agreement did not expressly provide for the continuation of the partnership, a partnership is presumed to continue perpetually unless certain events happen, i.e. an event specified in the agreement, a forfeiture action by the AG, or voluntary or involuntary dissolution. Here, J was dissociated from the partnership upon his death, but that did not automatically dissolve the partnership. The surviving partners retained an equal right to manage the partnership. But the surviving partners were required to make an appropriate payment to J's Estate upon his dissociation.

B.

Upon winding up of a partnership, the following process should occur. First, creditors should be paid off. Here, we do not know if there are any creditors, but they should receive first priority. Second, the partners should receive their initial contributions to the partnership. Here, J contributed his previous inventory of 15K to the partnership. Accordingly, his Estate is entitled to that previous contribution. And with respect to the remaining debts or profits, the parties have modified the typical presumption: that debts and profits are shared equally. Based on cl 7 of the Termination Agreement, the remaining debts or profits are to be distributed according to the percentages established in the partnership agreement. We do not have those percentages available, but they would govern the ultimate outcome. If those percentages are based on total contributions to the partnership, J's Estate would be entitled to 2/3 of the profits and liable for 2/3 of the debts, given that he contributed 2/3rd of the money that funded the partnership.

C.

The Estate is not entitled to a share of the partnership profits generated after J's death, as J was dissociated as a partner by his death. From that point on, his personal liability (and entitlement to profits) ceased, and he was no longer entitled to a share of the profits.

Representative Good Answer No. 2

The surviving partners need not liquidate the partnership. While absent some other clause the death or dissociation of the partners is grounds to liquidate the partnership, should all remaining partners decide to continue the partnership they may do so even if there is no clause specifically claiming the right to do so. Linda cannot claim to be a partner in this regard, as the death dissociated the estate. The estate is not a partner, so Linda's vote is not counted in the matter, and all remaining partners have chosen to continue with the partnership.

The payment to the estate should be calculated as 50% of all profits and assets, minus any liabilities as Julius provided half the value of the partnership in accordance with the agreement.

Whether or not estate is entitled to a share after Julius is death is a matter of when termination occurred. They should have to pay for profits during the period to determine accurate inventory, ascertain debts and profits according to agreement. But after this is complete Julius would have terminated the partnership, and should not be able to gain further profits, even if the partnership is continued after his dissociation as it appears to be the most reasonable way to interpret the agreement.

MARYLAND ESSAY QUESTION NO. 9

Representative Good Answer No. 1

PART A - CHARGES AGAINST JOHN

Contempt. Contempt involves violation of a valid court order. Here, John violated the court's Final Protective Order by returning to the home and having contact with Lisa.

Burglary. Burglary is the breaking and entering of dwelling house of another with the intent to commit a felony within. The "at night" element of common law burglary has been eliminated. Here, John broke into Lisa's house with the intent to murder her. However, because John and Lisa are still married, a defense to this crime is that John did not break into the dwelling of another.

Assault - 2nd Degree. The common law crime of battery is merged into the 2nd degree assault statute in Maryland. Here, John "struck" Lisa upon entering the home. At a minimum, breaking down the door and grabbing a steak knife would create actual apprehension of imminent physical harm.

Assault - 1st Degree. First degree assault in Maryland involves 2nd degree assault with a deadly weapon or use of force causing serious bodily harm. Here, John's use of the steak knife, a deadly weapon, to cut Lisa is at least 1st degree assault.

Attempted Felony Murder. Attempt requires taking a substantial step toward the commission of a crime. Maryland's Felony Murder statute is murder during the commission of a felony. The same defense applies as to Robbery wherein the felony was not completed because it lacked the element of being a dwelling of another.

Attempted 1st Degree Intentional Murder. Maryland's 1st degree intentional murder statute requires the intentional killing of another with premeditation and deliberation. As defined above, John took a substantial step toward killing his wife; however, the facts are silent as to whether he did so with the requisite intent or with any sort of premeditation or deliberation. Insanity/Not Criminally Responsible. A defense, technically an excuse, to the required intent element is that John was guilty, but not criminally responsible for the crime. Maryland has adopted the MPC test for insanity, which requires that John either lack knowledge of the criminality of his actions or, in the alternative, he knew of the criminality of his actions, but could not control himself.

Attempted 2nd Degree Intentional Murder. Maryland's 2nd degree intentional murder statute requires the intentional killing of another without premeditation or deliberation. As defined above, John took a substantial step toward killing his wife; however, the facts are silent as to whether he did so with the requisite intent. Whether his actions were premeditated or deliberate are irrelevant for this crime. As indicated above, Not Criminally Responsible may be an excuse for the intent element of this crime.

PART B - POTENTIAL ETHICAL ISSUES

This part of the question is governed by the Maryland Rules of Professional Conduct.

Conflict of Interest. A lawyer owes a duty to avoid conflicts of interest. Where a conflict arises, a lawyer must take reasonable steps to avoid it and, under certain circumstances, not applicable here, may proceed with informed written consent, signed by both parties. A lawyer may not represent two parties whose interests are materially adverse. Here, John and Lisa's interests are materially adverse, as established by the Final Protective Order and facts available to the lawyer regarding John's domestic violence toward Lisa. Assuming the lawyer advises John on the potential criminality of his actions and possible defenses, he may not also advise Lisa.

When conflict exists between two parties that is materially adverse resulting in the inability of the lawyer to represent both parties, the lawyer has a duty to explain to the party not represented that she obtain competent, independent counsel. The lawyer has a further duty not to communicate with her about the matter, except to advise she retain competent, independent counsel. Here, assuming the lawyer represents John through his actions above in advising on his potential criminality, he may not also represent Lisa.

Candor. A lawyer owes a duty of candor to his client, third parties, and to the tribunal. He may not knowingly make false statements or assist in the commission of a fraud or furtherance of a crime. Here, a lawyer may not assist John or Lisa in perjury before the tribunal, i.e., he may not offer the false testimony purported by John that he didn't stab Lisa, nor (assuming he represents Lisa), offer her testimony that her wounds were self-inflicted. First, the lawyer should advise his client against such a matter. Assuming that is ineffective, a lawyer may decline to put the person on the witness stand or seek to withdraw with leave of the court and give the client a reasonable opportunity to find suitable replacement counsel. This final option, in practice, is often difficult to achieve. As a final recourse, a lawyer may seek ex parte communication with the judge to attempt to avoid the situation without disclosing the specifics of the confidential communications he is required to protect with his client.

Objectives. A client has the right to determine the objectives of the counsel. Should John not wish to plead Not Criminally Responsible, that is ultimately his prerogative; however, the lawyer should advise him of his legal options and, under his duty of candor and to disclose information, should inform the client of his best legal options.

NO Spousal Immunity. Note that Spousal Immunity does not apply in situations involving domestic violence.

Representative Good Answer No. 2

A.1. John may be charged with Attempted Murder and First-Degree Assault.

The first issue is whether John may be charged with attempted murder and first-degree assault.

The crime of murder is the intentional killing of another with malice. Attempt occurs in MD when a person has the specific intent to commit an offense and takes an overt act in furtherance of the commission of that offense. Assault encompasses the common law crimes of assault, battery, and assault & battery. Common law assault is the threat of unlawful force to cause apprehension of imminent harmful touching. Battery is the unlawful use of force to cause harmful touching. An assault is in the first degree if it is committed with a firearm or intends to or actually causes severe physical harm. Maryland applies the "same evidence" test for double jeopardy purposes and if two crimes do not each require different evidence, then they merge.

John may be charged with attempted murder because he stabbed Lisa 75 times in the head, hands, and chest area. The amount of time it took to commit this offense, and the number of stabbings, clearly indicate malice and intent to kill or at least cause severe bodily harm. The same evidence would be used to prove that John committed first degree assault, and first-degree assault would be a lesser included offense of the attempted murder.

A.2. John may be charged with Second Degree Assault.

The second issue is whether John may be charged with second degree assault.

The definition of assault is above. John committed assault on Lisa when he struck her upon entering the kitchen. The facts are unclear, but it is unlikely that the strike would have caused or be intended to cause severe bodily injury.

Therefore, John may be charged with second degree assault.

A.3 John may be charged with Burglary

The third issue is whether John may be charged with burglary when he broke into his own home.

Burglary is breaking and entering a dwelling or structure of another with the intent to commit a felony. Maryland has done away with the requirement that it be committed at night. Further Maryland has several degrees of Burglary.

It is clear that John broke into the home and that he had the intention to commit a violent felony inside. However, John has the defense that he broke into his own home and was thus privileged to break and enter.

Because John broke into his own home, he has a strong defense to burglary.

A.4. John may be charged with violation of a Protective Order

The fourth issue is whether John can be charged with violation of a protective order.

A protective order can order a person to stay away from their home, place of work, person, or children, and to stop contacting and/or abusing them.

John violated the final protective order by going to the family home and approaching Lisa and the children. John could argue that he did not have notice of the final protective order as it was obtained while he was in jail, but it is unlikely that a final protective order would have been issued absent a hearing. However, as Lisa does not appear willing to pursue such a charge, it is possible the state's attorney will not charge John with the violation of protective order.

John may be charged with violation of a protective order.

B.1. Lisa's Presence

The first ethical issue is whether speaking to John with Lisa present will violate the duty of confidentiality as well as break the lawyer-client privilege.

A lawyer has a professional duty to protect his client's confidences and to protect the evidentiary client-lawyer privilege. A lawyer cannot have confidential or privileged communications with his client in front of non-clients, even if the client would like the third party to remain present. It would be improper and would very likely harm

the client's case to discuss confidential matters in front of a third party who is subject to be called as a witness by an opponent, and who may then be compelled to testify about such discussions.

I would not conduct an initial consultation with a criminal client in the presence of his alleged victim, or, in fact, any other family member or third party, unless I determined that it was necessary to his defense, such as a psychiatrist or another employee at my firm. To do so would put our communications at risk of disclosure to the state's attorney and would jeopardize trial strategy.

I would not conduct this conversation with Lisa in the room.

B.2. Lisa's Perjury

The second ethical issue is whether, by having Lisa testify at trial, I would be suborning perjury.

A lawyer has a duty of candor to the court and also an ethical obligation not to present evidence he or she knows to be false. Although she does not expressly state as much, Lisa's statement clearly indicates that she intends to lie on the stand. It is not credible for a lawyer to believe that Lisa stabbed herself 75 times, especially that given the evidence of defensive wounds.

I would not call Lisa to testify as a witness and to allow her to testify on John's behalf if I knew, as I do here, that she will lie.

B. 3. John's Perjury

The third ethical issue is how to deal with John's proposed perjury.

The lawyer's duty of candor and honesty must be balanced with the criminal defendant's right to testify on his own behalf. The lawyer cannot tell the court that their client has committed perjury, or that he intends to do so, but can inform the client that he or she will have to withdraw if the client testifies falsely on the stand. Withdrawal alone will be enough to signal the truth to the judge. Further, the lawyer would be obligated to inform the client that he faces new charges for perjury if he is caught. A lawyer cannot assist a client in committing a crime.

I would explain to John that I cannot allow him to commit perjury. I will not ask him on the stand whether he stabbed Lisa and will be forced to withdraw as counsel if he so testifies. Further, I would notify John that he could be subject to felony perjury charges if he testifies falsely.

B.4 John's decision to not pursue a Not Criminally Responsible defense

The fourth ethical issue is how to deal with John's decision not to plead not criminally responsible due to insanity.

A client has the right to choose how to plead and to whether to argue insanity. The lawyer should explain the implications of the pleading decisions to the client.

I would explain to John that he may have a strong case for Not Criminally Responsible, but ultimately, the decision is his.

Because the choice to plead insanity belongs to the client, an ethical issue does not truly exist here.

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MARYLAND ESSAY QUESTION NO. 10

Representative Good Answer No. 1

Jack's Demands

In order to bring a claim under constitutional law the plaintiff must have standing. Standing requires an injury, casually connected and fairly traceable to state action, and redressability. Here Jack sustained an injury as he was suspended from school (a state actor) and it can be redressed by removing the suspension from his school record.

Challenge under the first amendment

Jack could challenge his suspension under the First Amendment which is made applicable to the states through the 14th Amendment incorporation doctrine. The 1st amendment prohibits the government from restricting protected speech. Here the speech that Jack was suspended for was not protected speech it was hate speech. The government may restrict hate speech which is speech that is designed to promote hatred, hold the person up to scorn and in some cases, incite violence. Here Jack was screaming "anti- Muslim epithets at Mark the entire time that he was praying." This speech was target at Mark a Muslim and done while he was praying. This speech is not protected and the school did not violate Jack's First Amendment Rights.

Due process

Jack would next argue that his due process rights were violated because he has a fundamental right to go to public school. Here the facts are that Jack was merely suspended from school rather than denied his right to ever come back to school. Schools are permitted to restrict the behavior of its students with some limitations so that the school can function and run its business properly. The school did not violate Jack's due process rights in issuing the suspension.

Establishment Clause

Jack would argue that school violated the Establishment Clause by allowing Mark to pray at school. Generally, tax payers do not have standing to challenge laws but under the Establishment Clause tax payers may assert a claim that a law violates the Establishment Clause. Under the Lemon Test a restriction or action by the state must have a non-secular purpose, neither advance nor inhibit religion, and not promote excessive government entanglement with religion. Here Jack will argue that allowing Mark to pray had a non-secular purpose because prayer is inherently religious. He would argue that the law advances religion as it allows prayer, and that it promotes excessive government entanglement as other students and teachers were joining in with the prayer group.

The school must at some point allow Jack in school but its suspension of Jack for the hate speech was not improper.

Mark's Demands

In order to bring a claim under constitutional law the Mark must also have standing. Standing requires an injury, casually connected and fairly traceable to state action, and redressability. Mark was injured as he is no longer allowed to pray at school which is related to the school's action of telling Mark he is no longer permitted to pray at school. This could be redressed by allowing Mark to continue his prayer, therefore Mark has standing to challenge the school's action.

Free Exercise Clause

Mark would argue that not allowing him to pray at school is a violation of the Free Exercise Clause, which prohibits the government from enacting a law that restricts a person's freedom to practice religion. Mark is a devout Muslim as is evident by the fact that he prays up to three times a day at school. Because the school is telling Mark he can no longer pray at school he is being restricted in his right to practice his religion and the law violates the free exercise clause. Where the restriction of the right to religious freedom is not merely an incidental burden but rather one intended to punish it will be struck down. Here the facts indicate that prior to yelling anti-Muslim epithets at Mark, Jack told the school that he was "recruiting Muslims." If the school is now forbidding Mark to pray because of this it will violate the Free Exercise Clause.

Equal Protection

Mark will also claim that this restriction violates his Equal Protection Rights. Under the 14th Amendment Equal Protection clause the government must treat similarly situated persons similarly. When the government discriminates against a person based on their religion which is a fundamental right, the restriction must pass strict scrutiny. Strict Scrutiny requires that the law or restriction must be necessary to achieve a compelling government interest. Here the prohibiting Mark from praying at school is not necessary to achieve school safety. The school could give Mark time to pray in another room or area of the school away from other students if it continued to create problems.

Substantive Due Process

Under the Due Process Clause of the 5th Amendment the Government may not restrict a person's fundamental rights. Religion is a fundamental right and restricting that right would have to pass strict scrutiny. See above explanation.

The School should allow Mark to continue to pray in school but it might be a better idea to give him a private room and allow other students to use that room but not necessary have him do it in the lunch room where other students are exposed to the prayer and may be offended.

Representative Good Answer No. 2

In order to make a constitutional challenge a person must have standing, which means they personally experience harm fairly traceable to a state actor.

Mark

Standing- Mark has standing because his freedom to pray in school has been prohibited by the ruling of the administration (state)

Freedom of Association is granted under the 1st Amendment. Rules abridging this freedom are subject to strict scrutiny as they violate a fundamental right. Here, the school's prohibition of prayer must be necessary to serve a compelling government interest. Here, the rule prohibiting all prayer on school property may promote the important government interest of preventing fights, however, it is unlikely the court would find this interest so compelling as to allow the government to abridge a fundamental right. Additionally, this rule in not necessary as there are many other ways that the school could act to prevent fights without taking away the students' right to prayer.

Establishment Clause under the 1st Amendment, applicable to the states through 14th Amendment incorporation restricts the government's ability to establish a religion. The test of whether the rule is being violated is: 1) is the purpose of the rule secular; 2) does it have a beneficial or negative effect on a religious group and; 3) does it cause excessive entwinement between the state and religion. Here, the school rule is not provided, however, it seems to be that Mark is not permitted to practice Muslim prayer at school. If this is the case, the rule does have a secular purpose (anti-Muslim) and does have a negative effect on the Muslim student group. Therefore, it would be in violation of the Establishment Clause. If the school rule prohibits all prayer in school it would be permitted under the establishment clause but would be subject to the rules of overbreadth and vagueness as discussed below.

Free Exercise Clause under the 1st Amendment, applicable to the states through 14th Amendment incorporation, applies strict scrutiny for any government actor taking away one's ability to freely practice religion. See the above strict scrutiny analysis.

Equal Protection Clause of the 14th Amendment prevents the government from treating two groups differently. Here, it is necessary to know what the school's rule is to decide if it is indeed treating Muslims and Non-Muslims differently.

Jack

Standing- Jack has standing because he was told that he was not permitted to speak in a certain way and was suspended for such expression.

Freedom of Speech under the 1st Amendment, applicable to the states through 14th Amendment incorporation restricts the government's ability to prohibit protected speech.

Unprotected speech is classified as fighting words or those which incite imminent violence, defamation, and obscenity. Here, the screaming "Anti-Muslim epithets" at a student while he was praying may be considered fighting words, and therefore unprotected under the 1st Amendment.

However, if the court were to find that the epithets were not imminently inciting violence, the court may consider them protected speech. If this is the case, it is necessary to look at the place where the speech is being restricted and whether there it is content based. Here, it seems that the speech is content based because based on the limited facts, only "anti-Muslim epithets" have been restricted. The place is a school, which is typically a non-public forum, as not anyone can walk in and express their views openly.

In a non-public forum whether there is content based restriction of speech, it is necessary to look to the purpose of the property. Schools are designed to be inclusive and promote acceptance of various groups of people. Here, John's anti-Muslim epithets were in direct conflict with the message and purpose of school, therefore the government is permitted to restrict speech in this forum. (see the "Bong Hits 4 Jesus" case)

Overbreadth and Vagueness- Without a school law in the question, it is impossible to know whether it is overbroad (restricting more speech than necessary) or too vague, as to not properly notify the students of what is prohibited. However, if there is not an actual rule on the books preventing John's actions, he did not have notice of this rule and his suspension should be removed.

Based on the above analysis, Mark should be permitted to peacefully pray in school and Jack should be prevented from inciting violence at school.

Maryland State Board of Law Examiners

FEBRUARY 2018 MARYLAND GENERAL BAR EXAM –
REPRESENTATIVE GOOD ANSWERS FOR THE BOARD'S WRITTEN TEST

MULTISTATE PERFORMANCE TEST

Representative Good Answer No. 1

To: Anna Pierce

From: Examinee

Date: February 27, 2018

Re; State of Franklin V. Clegane

Please find the Legal Argument section of the Persuasive Brief below;

III. Legal Argument

A. The court should consider Valerie Karth to be crime victim due to the fact that the harm Valerie suffered was directly and proximately harmed as a result of the commission of a Franklin criminal offense.

The Franklin Crime Victims Right Act (FCVRA) clearly states that a crime victim has the right to be reasonably heard at any public proceeding in the district court involving release, plea or sentencing. The statute defines a crime victim as a person directly and proximately harmed as a result of the commission of a Franklin criminal offense.

The commission of a crime in this case is not disputed. The defendant Greg Clegane has been convicted of the felony crime of unlawful sale of fireworks to a minor.

In order to prove that the crime victim meets the statute requirement of a crime victim the FCVRA states that the person needs to have been directly and proximately harmed as a result of the commission of a crime. The courts have defined the requirements as follows. In State V Jones the court first required that the defendant's conduct was a cause in fact of the victim's injury. In this case it is obvious that the injuries suffered by Valerie were the cause in fact by the commission of the crime. The crime of unlawful sale of fireworks to a minor is in order to prevent inappropriate use of a dangerous substance which can cause serious injuries to others. The minor who purchased the fireworks used these fireworks in an inappropriate venue and directly caused the injuries to Valerie.

The court in State v. Jones was skeptical of this prong where an abusive boyfriend caused injuries to his girlfriend after purchasing Cocaine. In that instance the use of drugs is not inherently known or identified to cause injury to others through abuse and therefore may fail that test. However, the sale of fireworks is known to cause serious injuries to others if used inappropriately and especially if sold to minors therefore the cause in fact of the crime is sufficient to deem Valerie a crime victim.

This is further proven in State v. Hackett where the court considered an individual a crime victim based on cause in fact in similar circumstances to our case here. The defendant in that case had procured supplies to a codefendant which ultimately created a fire. The court held that although there were multiple links in the causal chain it can be linked to the defendant. Similarly, in our case the defendant can be linked to Valerie the victim as a cause in fact victim.

The second test required per the statute is that the victim was proximately harmed as a result of the crime. The court in State v Jones. defines the concept of proximate harm as foreseeability. As long as it is foreseeable for the defendant to foresee that the victim would be hard the victim will be deemed a crime victim. In this case the defendant has sold a dangerous firework to a minor. It is extremely foreseeable that the minor will use the

fireworks invariably and in a dangerous method and therefore Valerie should be considered a crime victim based upon proximate causation as well.

This is further proven based on the court's reasoning in State v. Berg. The court in that case first identifies that the term Crime victim should be interpreted broadly allowing for the court here to have wide discretion for Valerie to be a crime victim. In addition, the court in Berg in defining the foreseeability of a crime instructs the court to look at if the resulting harm was within the zone of risks resulting from the defendant's conduct. An injury of a bystander to fireworks sold to a minor is certainly within the zone of risks and therefore an appropriate application of the crime victim status.

Although the court in State v Jones did not attribute foreseeability to the drug dealer for his buyer abuse the foreseeability in that scenario is in fact very speculative. As the court noted in that case the victim did not provide any proof as to the causation of the abuse and nor any proof as to the foreseeability. In this case the foreseeability is apparent. Selling dangerous called Little Devil Shards to a minor it is appropriate and foreseeable that a serious injury will occur.

Based on the arguments above the court should consider Valerie Karth a crime victim in this case.

B. The court should allow Sarah Karth to read the victim impact statement on behalf of her sister Sarah Karth due to the inspection of Sarah at the time of trial. victim-impact statements at the sentencing hearing on behalf of Valerie Karth's behalf because Valerie Karth is a crime victim and incapacitated at the time of trial.

The FFCVRA states that in case a victim is incapacitated the victim's estate, family member or any other person appointed by the court may assume the crime victims' rights.

In this case it is undisputed that Valerie the crime victim is incapacitated as a result of this crime. Valerie was seriously injured at the time of this crime; was in a coma for several months. She has just come out of the coma and is still incapacitate. It would therefore be appropriate for the court to allow Sarah to represent her sister as a family member and read the victims statements on her sister's behalf.

This is proven based on case law in State v. Humphrey where a mother was permitted to represent her two sons based on the statute listed above.

C. The court should consider Sarah Karth to be crime victim due to the injury suffered by Sarah's Sister Valerie. The injury to Sarah has directly and proximately harmed as a result of the commission of a Franklin criminal offense.

The test to be considered a crime victim is explained above.

It is undisputed that as a direct result to Valerie her sister Sarah has been extremely depressed and distraught about Valerie's future. She has needed to see a therapist twice a month and incurred expenses of her own for this treatment. The injuries to her mental state were the direct cause of the harm caused to Valerie. The Court in Berg has stated that the crime victim should be interpreted broadly. It is extremely foreseeable that if a minor is given dangerous fireworks it will cause serious injuries. These injured people have relatives who will be seriously affected as well with the need to take care of their loved ones and effect their emotional wellbeing. The mental injuries to Sarah are therefore the direct and proximate cause of the actions committed by Greg and Sarah as well should be considered to be a crime victim and allowed to read victim impact statements on her own behalf.

Although the court in Jones refused to extend the crime victim to an abused girlfriend it was only because there was no link between the abuse and the use of the drugs. In this case the mental injuries to close family members is entirely foreseeable when a loved one gets seriously and possibly permanently injured. The court should therefore deem Sarah a crime victim and permitted to read victim impact statements. In addition, the court in

Hackett has also stated that even if there are multiple links in the causal chain it can be linked to the defendant. The injury to Sarah should therefore be linked to Mr. Clegane.

D. The court should grant restitution to Crime Victim Valerie Karth from Greg Clegane for all of her losses sustained because of his actions.

It is undisputed that Valerie has suffered medical expenses of $$22,000, future medical expenses of at least $40,000, lost salary of $120,000 so far and a destroyed garage of $17,000.

Based on the FCVRA a crime victim is entitled to the full and timely restitution. As argued above Valerie should be considered a crime victim and therefore should be awarded restitution for all of her past and future damages. The court in State v Humphrey allowed for a mother claim restitution on behalf of her boys when their father was killed in a crash. The court agreed that the children should be entitled to all FUTURE losses and allowed for payments of child support.

The court in Humphrey however did require a test regarding the defendant's assets to allow for restitution payments. The court stated that public policy favors criminals to pay for their actions, the financial burden placed on the victim and caretakers, and the financial resources of the defendant. The court also held that the burden of proof is on the defendant to show an inability to pay.

In our case Mr. Clegane is a successful business man. He is the proprietor of Starburst Fireworks, and has three similar retail operations through the eastern part of the state. The defendant therefore has the burden to proof he does not have the means to pay the restitution request for past and future expenses caused by his crimes. Applying the court in Humphrey's three requirements would require such a payment. The court would consider the public policy to require the defendant to pay; and the financial burden of inability to work and medical expenses to both Valerie and her caretakers. In regards to the ability to pay the defendant would bear that burden and based on the businesses owned it should be assumed he has the means to pay.

E. The court should grant restitution to Crime Victim Valerie Sarah Karth from Greg Clegane for all of her losses sustained because of his actions.

As described above the court should consider Sarah Karth as a crime victim entitling her to restitution.

It is undisputed that Sarah has been seeing a therapist due to her mental injuries and incurred costs of $1500. Based on the statutory and case law describe above Sarah should also be entitled for restitution of her medical expenses.

The Court should consider both Valerie and Sarah Karth crime victims. The court should therefore allow Sarah Karth to read victim impact statements at the sentencing hearing for Mr. Clegane. The court should also demand Mr. Clegane reimburse both Valerie and Sarah Karth for their restitution demands.

Maryland State Board of Law Examiners

FEBRUARY 2018 MARYLAND GENERAL BAR EXAM –
REPRESENTATIVE GOOD ANSWERS FOR THE BOARD'S WRITTEN TEST

Representative Good Answer No. 2

I. Captions

[Omitted]

II. Statement of Facts

[Omitted]

III. Legal Argument

Sarah and Valerie Karth (hereafter referred to as Sarah and Valerie respectively) were seriously injured as a direct and foreseeable result of Greg Clegane's (hereafter referred to as Defendant) illegal sale of fireworks to a minor, for which he has been convicted. As is their right under Franklin law, Sarah now seeks to read victim impact statements for herself and on behalf of her incapacitated sister Valerie. Additionally, as is their right under Franklin law, Sarah now seeks to receive restitution for the traumatic harm caused to them by the defendant. Under Section 55(a) of Franklin law a crime victim is entitled to be reasonably heard at any public proceeding involving sentencing. Additionally, under Section 56 of Franklin law, a crime victim is entitled to restitution for their physical, emotional, economic injuries, as well as for damage to their property. It is clear that under Franklin Crime Victims' Rights Act, that both Valerie and Sarah are crime victims, that Sarah is an appropriate representative for Valerie, and that both are entitled to restitution. Defendant's motion to exclude victim statements and deny restitution should therefore be denied in full and Sarah should be allowed to read victim-impact statements for herself and her incapacitated sister Valerie and both should receive restitution.

Due to the Heinous Injuries Valerie Suffered as Consequence of Defendant's Selling of Fireworks to a Minor, Valerie is a Crime Victim

Under the Franklin Crime Victims' Rights Act Section 55(b), a crime victim is defined as a person directly and proximately harmed as a result of the commission of a Franklin criminal offense. As discussed below, the illegal provision of fireworks to a minor creates an obvious risk that the minor may use those fireworks in a reckless manner and may injure himself or others. The Defendant's illegal provision of fireworks to a minor was the direct and proximate cause of Valerie's injuries.

Valerie's Injuries would not have Occurred if the Defendant had not Illegally Sold Fireworks to a Minor

In order to be considered a crime victim, an individual's injuries must have been directly caused by the commission of a criminal offense. Franklin courts have interpreted this requirement as meaning that the criminal offense was a "cause in fact" or the "but for" cause of the injuries to the crime victim. (Hackett and Berg). This requires that there be a "direct causal connection between [the defendant's] conduct and the [victim's injuries]." Berg. In State v. Berg, the Franklin Court of Appeals found that there was a direct causal link where the defendant provided an underage third party with alcohol and that third party then injured the victim in a drunk driving accident. Our case is extremely similar, like Berg, the Defendant illegally provided a third party with a substance that made the crime of the third party possible. While Berg supplied Alcohol and Defendant supplied fireworks the distinction is immaterial since but for the illegal provision of either, the victim would not have sustained injuries.

When the Defendant Illegally Sold the Fireworks to the Minor there was an Obvious Risk that the Minor Would use those Fireworks Recklessly and Injure Individuals Nearby

In order to be considered a crime victim, and individual's injuries must have been proximately caused as a result of the commission of a Franklin criminal offense. Franklin courts have interpreted proximate harm to mean that the "resulting harm was within the zone of risks resulting from the defendant's conduct for which the defendant

should be found liable." Berg. In Berg, facts described above, the court found that the illegal provision of alcohol to someone underage proximately caused the injuries to a victim who was harmed by the underaged person's reckless driving. The Berg court stressed that there was an "intuitive relationship" between the defendant's conduct and the resulting harm. Likewise, the Defendant in our case provided an illegal good to a minor and the risk that he may act recklessly with that illegal good, here fireworks was within the zone of risks created by defendant's conduct, similar to the underaged person in Berg. The Defendant should have been put on even further notice of the minor's likely reckless use of the fireworks as the minor told him that "I'm going to give everyone a big surprise." This clearly indicates that the minor would not be supervised during the use of the fireworks. The fact that the Defendant did not know the minor is immaterial. The law in Franklin puts the onus on the distributor of fireworks to check for the age of the purchaser for this exact reason. It is not always clear that an individual is underage. The Franklin lawmakers thought it was a foreseeable risk that some minors would look older than they were. Therefore, the same foresight should be applied to the distributor. The distributor made the decision not to check IDs. A foreseeable consequence of that was that some minors would slip through the cracks and would be allowed to acquire fireworks. Similarly, the fact that the minor used the fireworks contrary to their label is not a persuasive reason to excuse defendant's responsibility for resulting injuries. The purpose of the law prohibiting the sale of fireworks to minors is to prevent minors from having fireworks because they are likely to be reckless with the fireworks and not follow instructions. The defendant's conduct created the exact result that the lawmakers were worried about.

Because the defendant's actions were both the direct and proximate cause of the harm to Valerie, she is a crime victim for the purposes of Franklin's Crime Victims' Rights Act.

Sarah is a Crime Victim because the harm she suffered as a result of the foreseeable harm caused to her sister was a clear possibility when the Defendant illegally sold a minor fireworks.

Sarah's Injuries would not have Occurred if the Defendant had not Illegally Sold Fireworks to a Minor

In order to be considered a crime victim, an individual's injuries must have been directly caused by the commission of a criminal offense. Franklin courts have interpreted this requirement as meaning that the criminal offense was a "cause in fact" or the "but for" cause of the injuries to the crime victim. (Hackett and Berg). This requires that there be a "direct causal connection between [the defendant's] conduct and the [victim's injuries]." Berg. In State v. Hackett the Franklin Court of Appeals held that "even though there were multiple links in the casual chain" the defendant's conduct was the cause in fact of the victim's injuries. Sarah suffered significant emotional and economic harm that would not have occurred if not for the illegal provision of fireworks to a minor by the defendant. Simply because Sarah was not present at the Fourth of July party does not preclude her from recovering. In State v. Humphrey, the court of appeal found that the children of a victim of reckless driving were crime victims under the Franklin statute despite the fact that they were not present at the accident. Similarly, the court in State v. Jones found that the girlfriend of a drug user could be considered a victim of the drug user's drug dealer if she could prove that the injuries to her occurred because of the provision of drugs by the drug dealer to the drug user. Here it is clear that Sarah's emotion and economic injuries would not have occurred if the defendant did not provide the fireworks to a minor.

When the Defendant Illegally Sold the Fireworks to the Minor there was an Obvious Risk that the Minor Would use those Fireworks Recklessly and Injure Individuals Nearby Who Would have Family Members who would Incur Emotional and Economic Injuries as a Result

In order to be considered a crime victim, and individual's injuries must have been proximately caused as a result of the commission of a Franklin criminal offense. Franklin courts have interpreted proximate harm to mean that the "resulting harm was within the zone of risks resulting from the defendant's conduct for which the defendant should be found liable." Berg. It was clear to the court in State v. Humphrey, that harm to an individual creates

a foreseeable risk of injury to the loved ones of that individual. (Berg- Children of hit pedestrian are crime victims despite not being present at the scene). While the Jones court found against a third party attempting to be a crime victim because the defendant did not know of the impact that the sale of drugs to her boyfriend would have on her, this is inapplicable to our case. Our case is much more like Humphrey. The sale of fireworks to minors is made illegal because of the likelihood of their recklessness, similar to the texting while driving at issue in Humphry. Such reckless behavior is likely to lead to injuries to individuals and those individuals are likely to have people who care for them who are subsequently injured because of the harm to their loved ones. The sale of drugs at issue in Jones is not illegal because of its likely reckless ability to harm third parties but because of harm to the party sold to. Similar to the children in Humphrey, Sarah was a foreseeable victim of defendant's illegal provision of fireworks to a minor.

Additionally, Franklin courts have interpreted the Crime Victims Act to be interpreted broadly. (Berg). The purpose of the act was to allow the voices of crime victims to be heard (Jones). It would be in contravention of the purpose of the act to preclude Sarah from being considered a crime victim.

Because the defendant's actions were both the direct and proximate cause of the harm to Sarah, she is a crime victim for the purposes of Franklin's Crime Victims' Rights Act.

As Valerie's Loving Sister, Sarah is an appropriate representative for Valerie

Section 55(b) states that in the case of a crime victim incapacity, the family members of the victim may be appointed as an appropriate representative. Here Valerie is incapacitated. Valerie's mother is incapacity and her father is dead. Sarah therefore is the only family member who may provide adequate representation.

As Crime Victim's Both Sarah and Valerie are Entitled to Restitution for their physical, financial and psychological damages

Under Section 56, the court when sentencing a defendant convicted of an offense, shall order that the defendant make restitution to any victim of such offense. Such restitution under section 56 includes damage or loss to property and if the return of property is impractical, then the cost of repair to the property. Here the sisters seek the cost of repair to their garage. In Hackett, the defendant was made to pay restitution for the burning down of a neighboring structure caused by his drug making. Because of the nature of the product sold, fireworks, the defendant should have easily foreseen the possibility that reckless use by a minor would cause structural damage.

Similarly, physical and emotion harm of those around the use of the fireworks to the minor was an obvious and foreseeable result of the provision of fireworks to the minor. These kinds of damages are also provided for under section 56(b)(2). The damages at issue are not overly speculative as both sisters have doctors' bills and evidence to support their claims.

Finally, a defendant is presumed to have the ability to pay restitution unless he can establish the inability to pay by a preponderance of the evidence. There is no evidence that the defendant can carry this burden.