

FEBRUARY 2004 BAR EXAMINATION

BOARD'S ANALYSIS

QUESTION 1

The facts suggest several causes of action on behalf of BigCo and Large.

BigCo has possible causes of action for tortious interference with an economic relationship. The elements of this cause of action are:

“(1) intentional and willful acts; (2) calculated to cause damage to the plaintiff[] in [his] lawful business; (3) done with the unlawful purpose to cause such damage and loss, without right or justifiable cause on the part of the defendants (which constitutes malice); and (4) actual damage and loss resulting.” *Kramer v. Mayor of Baltimore*, 124 Md. App. 616, 637 (1999).

Here, the acts of Smith and Attorney were intentional and calculated to cause BigCo to lose the contract. Since the contract would have been profitable, BigCo was damaged. The issue is whether they have satisfied the third element. The Court of Appeals has defined this element as follows:

“[W]rongful or malicious interference with economic relations is interference by conduct that is independently wrongful or unlawful, quite apart from its effect on the plaintiff's business relationships. Wrongful or unlawful acts include common law torts and "violence or intimidation, defamation, injurious falsehood or other fraud, violations of criminal law, and the institution or threat of groundless civil suits or criminal prosecutions in bad faith." *Alexander & Alexander, Inc. v. B. Dixon Evander Assocs., Inc.*, 336 Md. 635, 657 (1994) (citing *K & K Management v. Lee*, 316 Md. 137, 166 (1989) (quoting Prosser, *Law of Torts* §§ 130, 952-953 (4th Ed. 1971)).

Attorney's conduct does not meet this standard. She asked the County Council to award the contract to a local contractor and persuaded the newspaper to publish an editorial with the same message. These statements were not “independently wrongful or unlawful.” But if Smith's statements to the individual Council members, however, put both Large and BigCo in a false light or were otherwise tortious, then he would be liable.

The statements made by Smith as to BigCo's civil litigation and Large's criminal record were not, strictly speaking, untrue, but they present both the business and the individual in a false light. Maryland has recognized the tort of invasion of privacy, which includes the unreasonable placing of another in false light before the public through the media. R. Gilbert, *Maryland Tort Law Handbook* 184; 191 - 193 (3rd ed., 2000). To be actionable, the statement must have been published and the information must be false or untrue, at least to the extent that it placed the plaintiff in a false or

objectionable light. Smith's statements meet this standard.

In a personal capacity, Large has an action for invasion of privacy - false light against Smith as well.

b. Attorney's conduct in contacting the newspaper and public officials without disclosing her attorney/client relationship with Smith raises issues of professional ethics. Maryland Rule of Professional Conduct 4.1 governs a lawyer's duty to be truthful to persons other than clients. It prohibits false statements of material facts to a non-client. The fact that Attorney was representing Smith was material. Her statement to the County Council and the newspaper that she was acting on behalf of the Chamber of Commerce was false. She has violated MRPC 4.1.

QUESTION 2

1. The transfer to Bulldozer was not valid for two reasons. First, once articles of incorporation are revoked by the State, the corporation's ability to conduct business is curtailed. In particular, Maryland Anno. Code Corporations and Associations Article ("Code") § 3-514(a) prohibits any person from transacting business on behalf of the corporation. Able no longer has the authority as president to sign a contract; instead, title to the property of the corporation (and the power to convey it) devolves upon the directors of the corporation acting as trustees for the shareholders and creditors. Code § 3-515; *Cloverfields Imp. v. Seabreeze Prop.*, 32 Md. App. 421 (1976), *aff'd* 280 Md. 382 (1977). Second, the Board did not approve the contract, thus, Able's act was *ultra vires*. Third, even if the corporation were still *in esse*, the proposed transfer would have to be accomplished by the adoption of articles of sale and transfer, which must be approved by both the by the board and a majority of the shareholders as a transfer involving all or substantially all of the assets of the corporation, Code § 3-105, and recorded with the State Department of Assessments and Taxation. This procedure is intend to assure that board of director and shareholder consent is obtained for such transfers. Recordation of articles of sale and transfer is the exclusive manner for transferring title to real estate of a corporation in Maryland when the real estate is all or substantially all of the assets of the transferor, as here. *Clerk of Circuit Court v. Chesapeake Bay Shores, Inc.*, 271 Md. 627 (1974).

2. Both as trustees and directors, neither Baker nor Carla is personally liable to Bank or any other creditor of the corporation. Once the charter is forfeited, they become trustees of the assets of the corporation for the benefit of its creditors and shareholders. They are not personally liable for corporate liabilities in that capacity. The Bank's only other means of recourse against Baker and Carla would be to attempt to "pierce the corporate veil", i.e. to convince a court to disregard the existence of the corporation to make shareholders personally liable. In Maryland, this remedy is rarely employed and is used "only when necessary to prevent fraud or to enforce a paramount equity." *Dixon v. Process Corp.*, 38 Md. App. 644, 654 (1978). There is no basis for a claim of fraud based on the facts. A "paramount equity" is one which is more important than the ordinary expectation of limited liability on the part of the stockholder, *Starfish Condominium Ass'n. v. Yorkridge Service Corp.*, 295 Md. 693, 714 ((1983). Maryland courts typically hold shareholders liable in the context of enforcing a paramount equity when shareholder wrongdoing is combined with a pervasive disregard for corporate formalities and duties. Here Baker and Carla are victims, not the perpetrators, of Able's wrongdoing. A court will not find them liable under these circumstances. *See* J. Hanks *Maryland Corporation Law* §4.18 (1994, 2003 Supplement).

3. As trustees, they have the power to transfer assets as part of the process of paying debts and distributing assets. Code 3-515. *Cloverfields Imp. v. Seabreeze Prop.*, *supra*. Since they constitute a majority of the Board, they do not need Able's consent to transfer title. Alternatively, as the majority of the trustees, they can file articles of revival to reinstate the corporation's good standing status. Code § 3-507.

QUESTION 3

Tom could be prosecuted for the first rape of Georgia as a principal in the first degree. Tom was the actual perpetrator of the criminal act and it was his voluntary act. It is a first degree rape, as opposed to a second degree rape due to Debbie's assistance in subduing Georgia.

Although Tom took no part in Harry's rape of Debbie he would be guilty as an accessory after the fact due to his participation with Harry and Debbie in attempting to obscure Harry's rape of Georgia.

Tom could be prosecuted on the attempted rape of Georgia because his intent could be shown from the circumstances immediately preceding his attempt at intercourse. His physical incapacity is not a defense to attempted rape.

Debbie could assert with regard to both of the charges of rape that she, as a female, was physically incapable of committing the rape of another female and therefore this was a legal impossibility. This asserted defense should not be successful as her criminal liability is based upon accomplice liability as an aider or abettor of both Tom and Harry in their criminal acts.

Debbie can also assert that she was intoxicated during the time when all contact with Georgia took place and that due to her level of intoxication she was unable to formulate any criminal intent with regard to these offenses.

Voluntary intoxication is the substantial impairment of mental capabilities as a result of voluntary consumption of alcohol and/or drugs. In Maryland voluntary intoxication can negate the *mens rea* by creating an inability to form the requisite mental state for a specific intent crime. This defense would fail as to the two charges of rape, as rape is a general intent crime, not a specific intent crime under Maryland law. With regard to the attempted rape this defense could be successful as an attempted rape requires a specific intent.

With regard to the charge of attempted rape Debbie could argue that she took no part in the attempted rape of Georgia and that she was intoxicated during all of her contact with Georgia. Her defense to this offense should succeed for several reasons:

1. Factually she did not take any part in Tom's attempted rape of Georgia and therefore would not have had any liability as an aider or abettor;
2. Debbie's voluntary intoxication could be a successful defense to the attempted rape if she were found to have participated in the attempted rape as the attempt is a specific intent offense; and
3. Debbie's lack of actual physical contact with Georgia during Tom's attempt would mean that she was not an aider or abettor in this act and although after the fact she acted with Tom and Harry to cover up all of the crimes, liability as an accessory after the fact applies only to felony offenses.

The two counts of first degree rape were felonies. The attempted rape would only be a misdemeanor and, therefore, Debbie would have a successful defense to that offense.

QUESTION 4

- A. These facts suggest a conflict of interest for the attorney. Rule 1.7 of the Maryland Rules of Professional Conduct prohibits representation of a client if it will be directly adverse to another client. Here, Adam is a potential defendant in the suit brought by Ben and the attorney should decline dual representation. If the consultation with Adam and Ben results in the attorney obtaining information that would work to the disadvantage of either Adam or Ben he should decline to represent either of them per Rule 1.9.
- B. No mandatory motions required under Rule 2-322 are suggested by these facts. Permissive motion to dismiss for failure to state a claim upon which relief can be granted is optional as a preliminary motion or it may be filed in the Answer to the Complaint. Rule 2-322(b).
- Adam will be required to file an Answer in accordance with Rule 2-321 and Rule 2-323. The Answer should include the affirmative defense of contributory negligence on these facts in accordance with Rule 2-323(g)(6). Adam should file a counterclaim against Carl for Rule 2-331 in conjunction with his Answer, although a separate suit filed beyond 30 days from the date his Answer is due is permissible. A counterclaim filed beyond the time for answering the Complaint is open to a Motion to Strike for late filing. Rule 2-332(b).
- C. Answers to Interrogatories filed with a Complaint are due within 15 days after the date on which Defendant's initial pleading or motion is required, whichever is later per Rule 2-421. In this case within 45 days of service of the Complaint.
- D. The new information should prompt Carl's attorney to file an Amended Complaint bringing in Ben as a co-defendant. This information indicates that Adam was the agent of Ben at the time of the accident. Amendments are permitted per Rule 3-341(a) and (c)(6) to add a party without the consent of the defendant. Carl may add a party without the consent of Adam or leave of court under these facts.
- E. Is Adam entitled to any of the documents sought? Explain your reasons.
- i. Yes. Per Rule 2-402(b).
 - ii. Yes, but only on showing that the material is discoverable under Rule 2-402(a).
 - iii. Yes, under Rule 2-402(b).
 - iv. Only experts expected to be called at trial without meeting 2-402(c) requirements.

EXTRACT SECTIONS FOR QUESTION 4

Annotated Code of Maryland, Maryland Rules

TITLE 2. CIVIL PROCEDURE – CIRCUIT COURT: §2-321, 2-322, 2-323, 2-331, 2-332, 2-341, 2-402, 2-421

QUESTION 5

(A) Eligibility for divorce.

Under the facts presented, neither party has a ground for absolute divorce at this time. One or the other may have grounds for a limited divorce.

(1) Al could maintain there is a voluntary separation as of January 1, 2003, but Barbara could maintain she only acquiesced in the move as she could not prevent it.

(2) Barbara could maintain a voluntary separation or that there was a desertion on the part of Al. a further concern under either scenario is whether the parties are, in fact, living separate and apart or are still considered living under the same roof. If Al is living in an apartment above a detached garage, they may be living separate and apart.

* See *Mount v. Mount*, 59 Md App 538, 4764 2nd, 1175 (1984).

(B) Al's Work Ethic

If the parties continue to live separate and apart and an action for child custody and child support is brought by Barbara, the Court will determine the gross income of each parent under the Maryland Child Support Guidelines formula. If Al had a history of earning \$75,000 and now maintains he can only earn \$50,000, Barbara could assert Al is voluntarily impoverishing himself to reduce his exposure to child support. If the Court made a finding that Al had voluntarily impoverished himself for Child Support Guidelines purposes, he could have imputed to him his potential for income of \$75,000 even though he allegedly was only earning \$50,000. In the context of a divorce proceeding, the term "voluntarily impoverished" means freely or by an act of choice and not compelled by factors beyond his control to reduce oneself to poverty or to deprive oneself of resources or to render oneself without adequate means (see generally *Stull v. Stull*, 144 Md App 237, 797 A 2nd 809 (2002)). Whether a Court would determine Al is voluntarily impoverished (such that he will be imputed the higher income, whether he earns it or not) will require a consideration of several factors:

- (1) Current physical condition of Al.
- (2) His level of education.
- (3) The timing of his change in employment income or financial circumstances.
- (4) Relationship of Al and Barbara prior to the divorce proceeding.
- (5) Al's efforts to find and retain employment or secure retraining if needed.
- (6) Whether Al has ever withheld support.
- (7) Al's past work history.
- (8) Area where parties live and status of job market.

If the bad economy is the primary source of the reduction of income and not Al's work ethic, a finding that he is voluntarily impoverished is unlikely.

(C) Family Economic Assistance

If Barbara files a divorce action and has custody of the children, she can:

(1) Get child support payable by Al through the Bureau of Support Enforcement by wage lien for David beyond age 18 until he graduates from private high school (Article 1, Section 24, Constitutional Code of Maryland): she can receive child support for Tony beyond the age of 18 as a disabled adult under Section 13-101 & 102 of the Family Law Article; she can get child support for Mary until age 18.

(2) She can make a claim for alimony, though recovery is unlikely under the facts given.

(3) She can ask for use and possession of the family home and family use personal property for a maximum of three years following the granting of an absolute divorce.

(4) She can ask the Court to require Al to contribute to the mortgage and utility expenses of maintaining the family home during the period of use and possession.

(5) She can ask the Court to require Al to contribute to her attorney's fees.

(6) Medical insurance is available to the family as a fringe benefit without cost through Barbara's employment and therefore she would not be successful in maintaining that claim against Al.

(D) Contribution to Private School Tuition

In *Witt v. Listadaeio*, 118 Md App 155, 701 A2d 1227 (1997), the Court interpreted the meaning of the words "particular education needs" as utilized in Section 12-204(i)(1) of the Family Law Article to allow the Court to require the cost of private school tuition as subject to guidelines consideration. The Court tells us that consideration should be given:

(1) A child's educational history, that is, how long the child may have been at a particular private school.

(2) The child's need for stability and continuity during domestic turmoil.

(3) The child's performance while in the private school.

(4) The family history (tradition of attending private school/ religiously oriented institution).

(5) Had parents made private school decision prior to separation?

(6) The parents' ability to pay for the schooling.

Considering these factors, David's tuition expense, who has been at Private High School for three years and is doing well academically, should be part of the Child Support Guidelines formula establishing his child support. Likewise, Mary's tuition probably should be allowed as a part of the child support formula establishing her child support also.

QUESTION 6

Marvin may challenge the law as violative of the 14th Amendment's Due Process Clause and Equal Protection Clause, the 1st Amendment's prohibition against the establishment of religion, and the 5th

Amendment's prohibition against the taking of private property without just compensation. Marvin has standing to bring an action since he will suffer an injury in fact if the law is enforced.

Substantive Due Process

Land use controls such as the one at issue are subject to the Due Process Clause and must, therefore, be rationally related to legitimate governmental interests in furtherance of the public health, safety, morals and general welfare. The law was enacted in furtherance of what appears to be a legitimate governmental interest in furtherance of the public health and welfare. However, due process also requires that the law also be drafted in a way that is reasonable and substantially furthers said interest. Accordingly, Marvin may be successful in his attempt to challenge the law on this ground since the law unreasonably allows a blanket exemption for churches and lots less than 2 acres in size.

Equal Protection

The Equal Protection Clause also requires a showing that the law advances a legitimate purpose and does not unreasonably discriminate. Since no fundamental right is involved, the County's law will be reviewed under the rational basis test. Even under this more lenient test Marvin should be successful since there is no rational basis for the assumption that smaller parcels located as close to the river as Marvin's will not equally affect it. Similarly, there is no reason to assume that properties owned by churches will not adversely impact the river.

Establishment Clause

Marvin may also be successful in arguing that the law is violative of the 1st Amendment because it advances religion by exempting churches from its reach. As noted by the Supreme Court in Larkin v. Grendel's Den, Inc., 459 U.S. 116, 122 (1982), "[t]he purposes of the First Amendment guarantees relating to religion were twofold: to foreclose state interference with the practice of religious acts, and to foreclose the establishment of a state religion" Courts apply a 3-prong test articulated in Lemon v. Kurtzman, 403 U.S. 602 (1971) to determine whether an establishment has occurred - (1) whether the law has a secular purpose; (2) whether its primary effect is the advancement of religion; and (3) whether there is excessive government entanglement. As noted above, there is no rational basis in concluding that a church will not negatively impact the river, so such an exclusion may be an unconstitutional advancement of religion.

Takings Claim

The Takings Clause of the 5th Amendment provides that private property shall not be taken for public use without just compensation. It has been held that a subdivision dedication is an exaction that may result in a taking. In determining whether it is, standards discussed in Dolan v. City of Tigard, 512 U.S. 374 (1994) are considered – that is, whether there is an essential nexus, and whether the property interest taken is roughly proportional with the demand on public services created by the development. The exaction of ½ acre may reasonably be found to be an unconstitutional taking of Marvin's property since it precludes him from building the number of homes he could build but for the law,

and the law does not bear a rational nexus to its stated purpose since those with less acreage and churches are allowed to develop. Assuming a rational nexus between the regulation and its purpose, a taking could still be found to have occurred if it can be shown that Marvin's investment-backed expectation of constructing two additional homes was reasonable and was thwarted by the law. Eastern Enterprises v. Apfel, 524 U.S. 498 (1998)

QUESTION 7

Part I

The basic fact pattern arises out of *Gussin v Shockey*, 725 F.Supp 271, *aff'd*. 933 F.2d 1001 (4th Cir. 1991). The crux of the case involves Dave's duty as an agent of Paul to provide accurate

information and avoid self-dealing.

The issue will turn on whether Dave is an agent of Paul for the purchase of the vehicles. A good answer will discuss the requirements and scope of agency relationships.

“Agency is the fiduciary relationship which results from the manifestation of consent by one person [the principal] to another [the agent] that the other shall act on his behalf and be subject to his control and consent by the other to so act.” Restatement (second) of Agency § 1. The duties an agent owes to his or her principal are well established. An agent has “a duty to his principal to act solely for the benefit of the principal in all matters connected with this agency.” RESTATEMENT (SECOND) OF AGENCY § 387. The powers of the agent are to be exercised for the benefit of the principal only, and not of the agent or of third parties. *Insurance Company of North America v. Miller*, II, 362 Md. 361 (2001). Thus, agents must avoid placing themselves in a position where his or her own interests or those of a third party may conflict with the interest of their client or other principal.

Dave would argue he was only an employee for the purpose of repairing and maintaining the cars and had no duty as an agent regarding their purchase. He would claim he was not an agent as he had no authority to bind Paul to any agreement or undertake any transactions on his behalf.

Paul will claim Dave was his agent and as such had a duty to act as a fiduciary and with absolute loyalty to him. He took advantage of his position as an agent and engaged in self-dealing to Paul’s detriment. Dave clearly violated his fiduciary relationship and furthermore committed fraud. One of the primary obligations of an agent is to disclose any information the principal may reasonably want to know. Certainly, Paul would want to know the best price for which he could purchase the vehicles.

Dave also breached his fiduciary duty by not acting with loyalty to his principal and placing his interest in direct conflict with Paul’s.

Furthermore, an agent has a duty to disclose to the principal any information he may reasonably want to know, particularly when Dave receives a direct benefit from the transaction from a third party.

When an agent breaches a fiduciary duty, the principal may receive compensatory damages proximately caused by the breach -- in this case, \$20,000. Punitive damages for fraud are not recoverable in Maryland absent a showing of actual malice, and therefore, recovering punitive damages is unlikely.

Part II

A. Dave’s objection to Paul’s testimony should be overruled. A statement by Dave, a party opponent is not excluded by the hearsay rule. Rule 5-803(a). The Seller’s statement, “he won’t take anything less”, is not hearsay, because it is not offered in evidence to prove the truth of the

matter asserted. Rule 5-801.

B. Paul's objection to Dave's testimony should be sustained. There has been no foundation laid that Dave is an expert in the value of antique automobiles. Unless qualified as an expert in the value of antique cars, Dave is a lay witness and is not qualified to express an opinion as to the value of these automobiles because such evidence is speculative. Rule 5-702.

Moreover, the trial court may consider that the value of the automobiles is not relevant to Paul's claims, unless he is seeking to recover compensatory damages in excess of the fee paid by the Seller to Paul. If Dave were found to breach his fiduciary duty by obtaining a fee from the Seller, the amount of the fee may be recovered by Paul regardless of the value of the cars.

"Relevant evidence" means evidence having any tendency to prove the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence. Evidence that is not relevant is not admissible. Rules 5-401 and 5-402.

QUESTION 8

Brown and Sam signed a written contract for a price in excess of \$500, which complies with the Statute of Frauds. §2-201, Commercial Law Act. Sam sold the tractor upon the express statement that it is "a 2001 Everfarm tractor." This statement constituted an express warranty that the tractor was a 2001 model. §2-213. The "As Is" term does not negate an express warranty. §2-

316(a)

Two weeks after taking delivery and after using the tractor several times, Brown wants to rescind the contract and reject the tractor (or revoke his acceptance, if he accepted the goods).

Under §2-608, a buyer may revoke his acceptance if his acceptance of non-conforming goods was reasonably induced either by the difficulty of discovery before acceptance or by the seller's assurances. The facts support Brown's revocation on these grounds. Further, as required by §2-608(2), Brown's revocation of acceptance occurred within a reasonable time after he discovered the non-conformity and before any substantial change in the condition of the tractor.

Section 2-711, Commercial Law Article makes clear that when a buyer justifiably revokes acceptance of goods he may cancel (rescind) the contract in addition to recovering so much of the price as had been paid.

If Brown were found to have lost his right to revoke acceptance, he would be limited to damages for breach of Sam's express warranty. The measure of difference would be the difference at the time and place of acceptance between the value of the tractor (\$15,000) and the value it would have had if it had been as warranted (\$20,000). §2-714. These damages equal the \$5,000 price reduction offered by Sam. The damages could be deducted from the unpaid balance due. §2-717.

Analysis under these provisions of the UCC mirror traditional legal principles governing rescission of contracts. In a rescission action, Brown will need to show he entered into the contract as the result of fraud, negligent misrepresentation, undue influence or duress, material breach or mutual mistake of fact.

In rescission actions resulting from claims of fraud, negligent misrepresentation, undue influence or duress, in making the contract the Plaintiff must prove the underlying ground in addition to the elements for rescission.

Brown's claim would be for rescission of the contract on the ground of negligent misrepresentation or mutual mistake. Based on the facts, there is no evidence of fraud, undue influence or duress practiced by Sam.

To obtain rescission on the grounds of negligent representation, Brown must show:

1. The negligent assertion of a false statement by a Defendant owing a duty of care to the Plaintiff;
 2. The intention of the Defendant for the Plaintiff to act or rely upon the negligent assertion;
 3. The knowledge of the Defendant that the Plaintiff will probably rely upon the negligent assertion or statements which, if erroneous, will cause damage;
 4. Justifiable action by Plaintiff in reliance upon the statement or assertion; and
 5. The incurring of damages caused by Defendant's negligence.
- Flaherty v. Weinberg, 303 Md. 116, 135 (1985).

Sam did not know the tractor was a year 2001 model. Nevertheless, the assertion of an easily discernable false statement (2001 model) by Sam and the reasonable reliance on these statements by

Brown along with the difference in value between a 1999 and 2001 tractor may satisfy the elements of negligent misrepresentation. Expert testimony on the duty of a farm equipment dealer to verify model years may be required to establish the standard of care.

Even were Sam not negligent, the facts indicate that Sam and Bob made a mutual mistake of material fact in believing this was a 2001 model. Rescission is granted where a mutual error or mistake defeats the real intention of the contracting parties. C.J.S., Contracts, §149. To obtain rescission under either theory, Brown needs to show he returned or was unconditionally willing to return the consideration and any benefits received under the contract to Sam. Lazorcak v. Feuerstein, 273 Md. 69. Brown took the tractor back and Sam refused. This would show Brown's unconditional willingness to return the consideration received under the contract.

Also, Brown must show that he invoked the right to rescind promptly and did not treat the contract as a continuing obligation. Billmyre v. Sacred Heart Hosp., 273 Md. 638. Brown attempted to return the tractor the next day after he found out the tractor was a 1999. Brown has made no installment payments.

Brown is entitled to rescind the contract, return the tractor, and have his \$5,000.00 down payment returned. The fact that Sam is willing to reduce the price of the tractor to eliminate a monetary loss to Bob does not bar Bob's right to rescind.

QUESTION 9

Danny's attorney will attempt to suppress both Danny's statement and the evidence seized from Danny as a result of the search.

In order for a warrantless search or arrest to be legal it must be based upon probable cause. In terms of quantifiable probability, the probable cause for a search is the same as the probable cause for a warrantless arrest. Pursuant to Md. Code Ann., Crim. Pro. §2-202, a police officer can arrest

an accused without a warrant if the officer has probable cause to believe a crime has been or is being committed by an alleged offender in the officer's presence. In *Carroll v. United States*, 267 U.S. 132 (1925), the Supreme Court first recognized an "automobile exception" to the Fourth Amendment's warrant requirements. The exception allows vehicles to be searched without a warrant provided that the officer has probable cause to believe that a crime – item is within the car. Following *Carroll*, the Supreme Court has held that during a lawful traffic stop, officers can compel the driver and passengers to exit the vehicle. The Supreme Court has gone on to hold that a passenger's property left within a vehicle, when occupants are ordered out of a car, falls within the permissible scope of the automobile exception to a warrantless search. The law in Maryland is settled that when a properly trained K-9 alerts to a vehicle indicating the likelihood of contraband, sufficient probable cause exists to conduct a warrantless "*Carroll*" search of the vehicle.

While under Maryland law the alert by a drug dog, undisputedly, gives a police officer probable cause to believe that there is contraband somewhere in the car or on the person of someone in the car, the K-9 sniff of the vehicle alone does not amount to probable cause to then search each of the passengers. Without additional information that Officer Blair had to establish Danny's knowledge and dominion or control over the contraband before his search, the K-9 sniff of the car was insufficient to establish probable cause for a search of a non-owner, non-driver for possession of CDS. Merely sitting in the back seat of a car does not amount to probable cause, under the facts of this case, to search and subsequently arrest Danny. If Officer Blair had independent constitutional justification to detain Danny and the K-9 officer had sniffed Danny, and specifically alerted to him, before Officer Blair searched him, probable cause for the search might have existed. Instead, Danny was searched merely based upon the fact that probable cause existed to search Earl's vehicle based upon a general K-9 scan of the car, and nothing more. The Court will most likely suppress the physical evidence obtained from Danny. See, *State of Maryland v. Wallace*, 379 Md. 137 (2002).

The Fifth Amendment protects against compelled self incrimination. Accordingly, in order to assure that defendants have voluntarily waived their right to silence during a custodial interrogation, they must first be advised of their *Miranda* warnings. The Fifth Amendment, however, does not protect against non-compelled or voluntary admissions or utterances. Although Danny was most likely in custody at the time he was handcuffed by Officer Blair --despite Officer Blair's disclaimer, Officer Blair did not elicit any statements from Danny. Danny simply blurted that he did not know anything about the CDS without any further encouragement. Notwithstanding this, because Danny was probably under arrest at the time he made the statement, and that arrest was without probable cause, it was unlawful. Thus, Danny's attorney may argue that Danny's statement which was subject to the unlawful arrest should also be excluded as a fruit of that unlawful arrest.

QUESTION 10

The issues presented here are what rights Pratt has to recover as a secured party to the Dollar Note pledged by Ms. Logan.

Title 9 of the Commercial Law Article sets forth a secured party's right to dispose of collateral after a default. Although Pratt does not have possession of the note by filing the finance statement, it has a valid security interest in the note under 9-312.

Pratt may take possession of the note pursuant to the lawful measures under 9-609. Pratt has the right to take possession of the collateral since Ms. Logan defaulted. Section 9-609.

Pratt has the right to dispose of the Dollar Note in a commercially reasonable manner. 9-610. Ms. Logan owed \$150,000 to Pratt on the loan from Pratt. If Pratt receives more than that amount upon selling or collecting on the Dollar note, after it has accounted for all of its fees and expenses, it must pay off other secured creditors on the note, if any, and return the remainder to Ms. Logan. 9-608.

EXTRACT SECTIONS FOR QUESTION 10

Annotated Code of Maryland, Commercial Law

TITLE 3. NEGOTIABLE INSTRUMENTS: § 3-301

TITLE 9. SECURED TRANSACTIONS: §9-310, §9-312, §9-313, §9-608, §9-609, §9-610

QUESTION 11

(A) At common law a joint tenancy required four unities – unity of time (interests vest at the same time), unity of title (interest acquired at the same time), unity of interest (interests of the same type and duration), and unity of possession. A tenancy by the entirety involved the same unities but could only be created when the grantees are husband and wife at the time of the conveyance. Since Bob and Carol were not married at the time of the conveyance the effect of the deed purporting to grant title to them as tenants by the entireties, absent fraud, was to create either a joint tenancy or a tenancy in common. Young v. Young, 37 Md. App. 211, 216 (1977) Pursuant to Section 2-117 of the Maryland Real Property Code Annotated “[n]o deed ... which affects land or personal property, creates an estate in joint tenancy, unless the deed ... expressly provides that the property granted is to be held in joint tenancy.” No particular words are required to create the joint tenancy, however. It has been held that “[t]he principal characteristic of a joint tenancy is the right of survivorship and the specific expression in a deed of such a right is ‘a clear indication of an intention to create a joint tenancy.’” Young v. Young, at 217, citing Gardner v. Gardner, 25 Md. App. 638, 642 (1975). The facts indicate that Bob and Carol intended a right of survivorship. If so, Bob’s estate would have no interest in the Frederick County property and it would vest in Carol. Carol’s grant of an option to Ted did not affect the joint tenancy. Alexander v. Boyer, 253 Md. 511 (1969)

(B) A tenancy in common is an estate that only requires the unity of possession and does not include a right of survivorship. If Carol had leased the property to Ted, said lease would have destroyed one or more of the four unities of interest, title, time and possession that a joint tenancy enjoys, thereby terminating the joint tenancy and creating a tenancy in common. Alexander v. Boyer, 253 Md. 511 (1969) Since there would no longer be a right of survivorship, Carol and Bob would each have a ½ interest in the property. Bob’s interest would pass to Alice as a result of the will.

(C) Similarly, if Bob had deeded his portion of the property to Alice in 1997 he would have terminated the joint tenancy with Carol and created a tenancy in common whereby Carol retained her ½ interest and Bob and Alice each had a ¼ interest in the property. Upon his death his ¼ interest would pass to his heirs (Alice under the terms of the will).

QUESTION 12

A. Eric's representation of Wanda.

- (1) MRPC 1.3: "A lawyer shall act with reasonable diligence and promptness in representing a client." Eric failed to respond to the motion for summary judgment.
- (2) MRPC 1.4 (a): "A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information."

MRPC 1.4 (b): "A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation." Eric failed to return Wanda's calls about the summary judgment motion or to advise her regarding the summary judgment motion.

B. Eric's association with Max.

- (1) MRPC 5.5: "A lawyer shall not: * * * (b) assist a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law." Eric allowed Max to assist in the case, attend a status conference in chambers in the case, included his name on the pleadings, did not request admission *pro hac vice* of Max in the case, and turned the case over to Max. Eric assisted Max, who is not a member of the Maryland Bar, in the unauthorized practice of law.
- (2) MRPC 7.5 (b): "A law firm with offices in more than one jurisdiction may use the same name in each jurisdiction, but identification of the lawyers in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located." Eric had only one office in Glen Burnie, Maryland. While Max was listed as an associate on the letterhead, there was no designation on the letterhead that Max was not licensed to practice law in Maryland.
- (3) MRPC 7.1: "A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it: (a) contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading * * *." The omission to designate that Max was only admitted in the District of Columbia was misleading as Wanda could have believed that she was receiving proper representation from both Eric and Max.

C. Eric's failure to respond to Bar Counsel.

- (1) MRPC 8.1: “. . . a lawyer . . . in connection with a disciplinary matter, shall not: * * * (b) fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by Rule 1.6.” Eric did not respond to the request for information from Bar Counsel. No confidentiality of information was involved in the request of Bar Counsel for information based on the given facts.

Attorney Grievance Commission v. Brown,
353 Md. 271, 725 A.2d 1069 (1999)

Maryland Rules of Professional Conduct:

- 1.3 - Diligence
- 1.4 (a) - Communication
- 1.4 (b) - Communication
- 5.5 (b) - Unauthorized practice of law
- 7.1 (a) - Communication concerning a lawyer's services
- 7.5 (b) - Firm names and letterheads
- 8.1 (b) - Bar admission and disciplinary matters