MARYLAND STATE BOARD OF LAW EXAMINERS
July 2013 Maryland Bar Examination Questions And Representative Good Answers

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

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

2. The Representative Good Answer(s) consists of one or more actual answers to the essay question. The Representative Good Answers are provided to illustrate how actual examinees responded to the question. The Representative Good Answers are not average passing answers nor are they necessarily answers which received a perfect score; they are responses which in the Board's view, illustrate successful answers to the particular question.

The Representative Good Answers are formatted for consistency of tabs and line spacing, but are not edited for content, grammar or spelling.

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

QUESTION 1

Kim Kare, a resident of Howard County Maryland, owns Kim Kares Beauty Salon in Baltimore City. Kim owns a brand new 2012 Luxor luxury car which she fully paid for in cash. Kim borrowed $150,000 for her business from Lender and entered into a written security agreement with Lender which provided a security interest in Kim's 2012 Luxor as collateral for the loan. The agreement contained a provision which read: "In the event of default, the parties agree to waive any breach of peace requirements." Six months later, due to the loss of business at Kim Kares Salon, Kim missed her last five (5) loan payments. Kim failed to make any payments after she received notice from Lender that she was in default on the loan.

Lender has hired Rick Rambo to take possession of Kim's vehicle without a court order. Rambo has a reputation of using aggressive tactics on his jobs—and has advised Lender that he intends to get the collateral by "any means necessary." Lender has instructed Rambo to take the car no later than August 1, 2013. Kim normally parks her 2012 Luxor on the street in front her home. After taking possession, Lender intends to send Kim a written notice addressed to her which reads: "As a result of your default on loan No. 1234 from Lender secured by the 2010 Kuxor VIN # ABCDE12345, we will sell the vehicle at the Baltimore City Car Auction at 456 Main Street, on September 15, 2013, at 2 p.m."

Lender intends to then auction the Luxor for no less than $80,000 which is the prevailing price for that type of 2012 Luxor in the Baltimore market, although there is a private buyer in Virginia who is willing to pay $90,000 for the vehicle. Lender hires you, a Maryland attorney, to advise on the appropriateness of Lender's proposed actions to take possession of the Luxor.

Discuss in detail whether or not Lender's proposed actions to take possession and sell the vehicle under Maryland Commercial Law are correct.

REPRESENTATIVE GOOD ANSWER 1

A. The first issue that I would advise my client about is the legality of repossessing the car at this point in time. Maryland law established certain rights for a secured party after default. Section 9-609 provides that, after default, a secured party may take possession of collateral and "without removal, may render the equipment unusable and dispose of collateral on a debtors premise." Such action may be taken without judicial process "if it proceeds without a breach of the peace."

Here, the debtor has defaulted on the obligation to pay a $150,000 loan for which she used her car as collateral by missing "her last five (5) loan payments" and because she "failed to make any payments after she received notice from Lender that she was in default on the loan".

After default, my client may be able to repossess the car. However, the law stipulates that if the collateral is repossessed without judicial process it cannot be with a breach of peace. Rambo should be instructed not to proceed in a way that breaches the peace; although the contract claims to waive the party's right as such, because this waiver is in violation of commercial law and not enforceable. Therefore, in order to proceed without judicial notice as my client intends to do, he cannot act in a way that would breach the peace (client would be responsible for actions of Rambo, who he was hired and is vicariously liable for under agency principles).

B. Notice of Sale

The permits that, after default, a secured party is permitted to sell the collateral in manner that is "commercially reasonable." (Section 9-610). Because this is not a consumer goods transaction (the obligation was not incurred for personal, family, or household purposes, as required by 9-102, but instead for business purposes), the secured party must give the debtor notice that "describes the debtor and the secured party describes the collateral, states the method of intended disposition," etc. The proposed notice by my client satisfies most of the requirements, although he will need to include language stating that the debtor "is entitled to an accounting of the unpaid indebtedness and stating the charge, if any, for accounting." Therefore, I will advise my client to ensure that the notice complies with the requirements of 9-613. Under 9-613(2), even if the notice did not have the accounting language, whether it is sufficient is a factual matter.

C. Sale

Finally, my client is under certain obligations regarding the sale of the car as collateral.

The sale must be commercially reasonable; it must be "in the usual manner on any recognized market; at the price current in any recognized market at the time of disposition; or otherwise in conformity with reasonable commercial practices among dealers in the type of property that was subject to disposition." Because the client is going to sell the car at auction for no less than $80,000, which is the prevailing price in the Baltimore market, the sale is likely commercially reasonable. Just because the goods could have been sold for more does not mean that the sale was not commercially reasonable, and therefore the fact that the client could go to a different market, namely Virginia, to get $10,000 more will not invalidate the sale.

REPRESENTATIVE GOOD ANSWER 2

Because this question involves repossession and sale of collateral pursuant a security agreement, it is governed by Maryland Commercial Law, Article 9.

Kim Kare (K) and Lender (L) entered into a written security agreement. A security interest is enforceable when it attaches, which occurs at the latest of the debtor gaining rights in

the collateral, the secured party giving value, and a security agreement (SA) granting attachment. Here, K "owns a brand new 2012 Luxor luxury car," L loaned K $150,000 for her business, and the SA "provided a security interest in K's 2012 Luxor as collateral for the loan."

Because it is unlikely that K's Luxor is used for business purposes for her "Beauty Salon," the Luxor is a consumer good, but as discussed later, the loan transaction is not a consumer goods transaction. A purchase money security interest occurs where a secured party loans money to finance all or part of the purchase of the collateral. Here, K "fully paid for" the Luxor "in cash," prior to the loan from L. Perfection of a security interest (SI) may occur through possession of the collateral.

POSSESSION

Under 5 9-609(a)(1), a secured party may, after default, "take possession of the collateral." Here, K has "missed her last five (5) loan payments," and "failed to make any payments after she received notice from L that she was in default on the loan," giving L a right of possession. Under § 9-609(b)(2), a secured party with a right to possession may proceed without judicial process, if it proceeds without a breach of the peace. Here, the SA states "In the event of default, the parties agree to waive any breach of the peace requirements." However, because 9-602(6) prohibits such a waiver, it is ineffective, and therefore L may proceed without judicial process only if it proceeds without a breach of the peace.

If a breach of the peace occurs in taking possession of collateral, the secured party's possession becomes wrongful, and may be liable for damages. A principal is liable for the actions of his agent where the agent acts within the scope of his authority and the agency in furtherance of the principal's interests. Here, L has hired "Rick Rambo [R] to take possession of K's vehicle without a court order," R "has a reputation of using aggressive tactics on his jobs, and has advised L that he intends to get the collateral by 'any means necessary,"' and L "has instructed R to take the car no later than August 1, 201 3." If R commits a breach of the peace while taking possession of K's car, L will be liable.

To avoid liability, L must avoid a breach of the peace, or pursue judicial process in taking possession. After default, a secured party may dispose of the collateral "following any commercially reasonable" process. Here, L intends to "auction the Luxor for no less than $80,000 which is the prevailing price for that type of 2012 Luxor in the Baltimore market." Under 9-627, conduct is commercially reasonable even where "a greater amount could have been obtained by" disposition in a different method "is not of itself sufficient to preclude" the disposition from being commercially reasonable. Here, the fact that "a private buyer in Virginia" is "willing to pay $90,000 for the vehicle" does not alter the commercial reasonableness of a public auction.

Under § 9-627(b), disposition is commercially reasonable where it is made "(1) in the usual manner on any recognized market; [or] (2) At the price current in any recognized Market

at the time of the disposition." Here, L intends to sell the car at the "Baltimore City Car Auction" at the prevailing price in the Baltimore market, in conformity with this requirement.

Before disposition, a secured party must give notice to the debtor. A consumer-goods transaction is a transaction in which the debtor incurs an obligation "primarily for personal, family, or household purposes." Here, although the SI was in K's car, a consumer good, the loan was obtained "for her business," and therefore, the transaction is not a consumer-goods transaction. In a non-consumer-goods transaction, the notice to the debtor must describe the debtor and secured party, describe the collateral, state the method of disposition, state that the debtor "is entitled to an accounting of the unpaid indebtedness," and state the time and place of a public disposition. Here, because L's intended notice does not fully describe the debtor, K, and does not state her entitlement to an accounting, it may be insufficient, even though it includes the date, time, and place of the public auction, and the information relevant to the particular loan and the collateral. Under § 9-61 3(2), "whether the contents of a notification that lacks any of the information specified . . . are nevertheless sufficient is a question of fact." Here, even though the information in L's notice may be sufficient to describe K, the debtor, it contains no information regarding her rights to an accounting and so I would advise L to modify his intended notice to include the missing information and to avoid a breach of the peace.

QUESTION 2

Tracy and Lisa entered into a business arrangement whereby Lisa agreed to sell Tracy's homemade cookies. Shortly thereafter, Lisa stopped selling the product. When Tracy found out, she was livid.

On November 1, 2012, Tracy hired Attorney to file a $20,000 action in the appropriate District Court of Maryland against Lisa. Tracy paid a retainer of $5,000 and agreed to pay an additional 5% of any recovery. Attorney promised to forward the written retainer agreement to Tracy within a week. On November 2, 2012, Attorney placed the $5,000 in his trust account and immediately transferred $3,000 into his operating account.

On December 10, 2012, Lisa was present at the hearing in District Court but Attorney failed to appear and the Court dismissed the complaint. Tracy called Attorney several times in December and January asking about the status of the case. Attorney told Tracy that "all was well" and that she "would have her day in court" shortly. Attorney was subsequently notified on January 10, 2013, that the matter was dismissed for failure to appear.

On February 20, 2013, Attorney mailed Tracy a $2,000 check withdrawn from his trust account along with a note that it was "the settlement amount in her case against Lisa". The note advised that Attorney had "settled the matter to avoid the uncertainties of litigation." Attorney also mailed Tracy a copy of the written retainer.

On February 22, 2013, Lisa called Tracy and taunted her about losing the case. After hearing from Lisa, Tracy approached the Bar Counsel to see if any charges could be brought against Attorney for his handling of Tracy's case. Bar Counsel sent out certified letters to Attorney in an attempt to garner more information. Attorney never responded to any of the letters.

As Assistant Bar Counsel, you, a licensed Maryland Attorney, are asked to prepare a memo describing any rules that may have been violated. Discuss fully.

REPRESENTATIVE ANSWER 1

Invalid contingent fee. *In order for a contingent fee to be valid, it must be reasonable and in writing. The contingent fee in this case could be considered to be reasonable. Although it is unclear whether a $5,000 retainer fee along with the 5% of any recovery in a $20,000 claim would be considered reasonable.*

Terms of Contingent fee not in Writing. *A contingent fee must be in writing to be valid. The fee agreement must contain whether the fee will be paid before or after costs. Tracy and the attorney entered into a written agreement. The attorney promised to forward a written retainer agreement within a week but he failed to do so. The fact that he mailed Tracy a copy of the written retainer after the matter was settled is irrelevant because a contingent fee must be agreed upon in writing before the case.*

Placing Funds into General Operating Account. *Under the Maryland Rules, an attorney is required to place any funds paid up front into a client trust account until the attorney earns the fees. An attorney may not place the client's funds into an attorney's general operating account unless given express permission to do so. Tracy did not give such consent. Therefore, Attorney violated this rule by failing to place the entire $5,000 retainer fee into his trust account.*

Ineffective Assistance of Counsel. *An attorney must zealously advocate for his client. One requirement is to show up at all proper proceedings through the judicial process. In this case, Attorney failed to appear at the hearing in front of the District Court on December 10, 2012. As a result, the Court dismissed Tracy's claim.*

Lack of Communication with His Client. *A lawyer has the duty to communicate with his client with regards to all relevant matters of the case. The lawyer must keep the client updated as necessary as to status of the claim is proceedings. Attorney failed to do so. Tracy called several times in both December and January in regards to the status of her case. Each time Attorney told her that "all as well" and that she would have her day in court shortly.*

Misleading/Deceiving the Client. *An attorney must be truthful with his client in regards to his case. The facts are unclear as to whether Attorney in this case intentionally misrepresented facts of the case to Tracy. However the facts state that Tracy called Attorney several times in January asking about the status of the case. Attorney was notified on January 10, 2013 that Tracy's case was being dismissed on account of his failure to appear before the court. If Attorney told Tracy that she "would have her day in court" shortly , after already learning of the case being dismissed, then Attorney intentionally misled Tracy about the status of her case.*

Improper Settlement of the Case. *While an attorney has say over most tactical matters, an attorney does not have the ultimate say over whether or not to settle in a case. Therefore, Attorney did not have the right to settle the case. Attorney could argue this doesn't matter because he did not actually settle the case because the claim was actually dismissed.*

Lying to a Client. *An attorney must be truthful with his client when communicating with the client about the case. Attorney must be truthful with his client when communicating with the client about the case. Attorney lied to Tracy when he sent her the $2,000 check stating that it was the "settlement amount in her case against Lisa." Attorney also lied when he stated in that note that Attorney had "settled the matter to avoid the uncertainties of litigation. " Both of these statements were blatantly false since Attorney had already been notified that Tracy's case had been dismissed based on his failure to appear before the District Court on December 10th.*

Failure to Return Unearned Fees. *Under the Maryland Rules an attorney is required to return any unearned fees to the client. In this case, Attorney only sent Tracy a check for the $2,000 of the retainer that Attorney placed in his trust account. Attorney did not work in this*

case for Tracy. He failed to show up on time and her claim was dismissed because of this. Therefore, Attorney should have sent Tracy the $5,000 retainer fee that Tracy paid.

Failure to Comply with Requests from Bar Counsel. *An attorney is required to fully comply with requests for information sent out by Bar Counsel. Even if an attorney is not at fault, the attorney must disclose information necessary to resolve any matters brought before Bar Counsel. Attorney has not only failed to turn over information relating to the case, that Attorney has failed to comply with any of the requests of the Bar Counsel. There is nothing in the facts that indicates that Attorney intends to comply with any additional request. Therefore, Attorney may also be subject to discipline for this.*

REPRESENTATIVE ANSWER 2

The Maryland Rules of Professional Conduct control here, and the following rules may have been violated by Attorney:

Attorneys shall not file frivolous lawsuits. Here, Attorney file a "$20,000 action" regarding Lisa's cessation of selling Tracy's "homemade cookies", which seems like a ridiculously large sum of money for cookies that are baked at home by a regular person, making it appear that Attorney filed a frivolous lawsuit.

All fees charged by attorneys shall be reasonable, which means that they shall not be excessive, and any contingency fees should be agreed to in advance by the client, in a signed writing stating the contingency arrangement. Here, Attorney's client, Tracy "paid a retainer of $5,000 and agreed to in advance by the client, in a signed writing stating the contingency arrangement. Here, Attorney's client, Tracy "paid a retainer of $5,000 and agreed to pay an additional 5% of any recovery," with the 5% suggesting a contingency fee, but there is no evidence that Attorney provided Tracy with a signed writing.

Retainer agreements should be given to the client at the time the client provides the retainer money. Here, as noted above, Tracy paid the $5,000 retainer, but Attorney "promised to forward the written retainer agreement to Tracy within a week," which is improper, as it should have been given to her to sign when she provided the money.

Fees paid to attorneys shall remain in a separate account held in escrow. Here, although attorney "placed the $5,000 in his trust account," he "immediately transferred $3,000 into his operating account," which is improper and should not have been done.

Attorneys have a duty of diligence in representing their client, which means that they must communicate effectively with their clients, periodically give updates on their clients' cases, and provide their clients with relevant information about what's happening with their cases. Here, even though Tracy "called several times in December and January asking about the status of the case," Attorney only told Tracy that "all was well," even when it wasn't, since the case

had been dismissed, and failed to give any substantive update about what had happened and the Attorney's course of action, as Attorney should have done.

Attorneys have a duty of candor to their clients, must give full disclosure, and shall not lie. When Attorney told Tracy that "all was well" and that she would "have her day in court shortly", this was in fact a lie, since the case had been dismissed, and was an improper thing to tell Tracy. Furthermore, Attorney should have fully disclosed to Tracy that the matter was "dismissed for failure to appear."

Clients decide when to settle, not attorneys. Here, when Attorney sent Tracy a $2,000 check stating that it was "the settlement amount in her case against Lisa," and that Attorney had "settled the matter to avoid the uncertainties of litigation," not only were these statements lies (and thus improper – see above), but Attorney has no right to settle without the client's permission, because this is something that clients must decide upon after having been thoroughly advised by their attorneys.

Attorneys have the duties of diligence and candor to third parties. These are the same duties as stated above, except that the attorney owes them to third parties as well as to their clients. Here, though Bar Counsel sent out certified letters to Attorney to get more information, Attorney "never responded", thus violating these rules. Instead Attorney should have responded promptly to such an inquiry.

QUESTION 3

Peter was walking in a northerly direction on a sidewalk adjacent to a public highway in Prince George's County, Maryland. Peter stopped for an electronic "Do Not Walk" signal at a four-way intersection. When the pedestrian signal changed to "Walk," Peter lawfully entered the crosswalk. David was approaching the same intersection in a motor vehicle from the east at the same time. When the traffic light facing David turned red, David applied the brakes, but his vehicle skidded into the crosswalk and struck Peter. Peter was injured. A police officer who arrived at the scene after the accident issued two traffic citations to David, one charging negligent driving and one charging driving under the influence of alcohol. Peter filed suit against David in the Circuit Court for Prince George's County. Peter cannot identify David as the operator of the vehicle that struck him. David is not available to testify at trial.

At trial, Peter's attorney attempted to offer the following evidence through the testimony of witnesses:

(1) At the scene of the accident Peter heard David say, "Don't worry! I'll pay any hospital bill!";

(2) The week after the accident the brakes were replaced in the vehicle that struck Peter;

(3) A policy of automobile liability insurance insuring the vehicle that struck Peter at the time of the accident named David as the insured;

(4) A month after the accident and a week before the trial of the traffic charges, David's attorney offered Peter $5,000 in cash to drop the civil case;

(5) David paid the pre-set fine on the citation charging negligent driving; and

(6) After a trial in the District Court of Maryland, David was found guilty of driving under the influence.

David's attorney objected to the testimony of each witness.

At trial, David's attorney attempted to offer the testimony of an accident reconstruction specialist, for whom notice was given, stating that the speed of the vehicle operated by David at the time of the accident was too slow to cause the injuries Peter claimed. Peter's attorney objected to the testimony.

How should the court rule on each objection? Discuss the basis for each ruling.

REPRESENTATIVE ANSWER 1

(1) Testimony (1) is not admissible as evidence of an offer to pay medical expenses. In Maryland, an offer to pay medical expenses is not admissible based on policy grounds of encouraging this behavior. However, other statements of fact made in connection with an offer to pay medical expenses may be admissible. Here, David's statement to "pay any hospital bill" constitutes an offer to pay medical expenses." Therefore, this statement must be excluded.

The Court might examine testimony (1) as an excited utterance, but as it is an offer to pay medical expenses, it must be excluded. In Maryland, hearsay is generally inadmissible. Hearsay includes statements that are made by a human declarant, at a time other than when under oath and in the presence of the factfinder, and are offered for their truth. One exception to the hearsay rule is an excited utterance. An excited utterance is a statement about a starling event, made while the declarant is still under the stress of it. Here, Peter wants to offer a statement made by David, at a time other than when under oath and in the presence of the factfinder. Therefore, it appears that the statement is hearsay. The statement, however, might be an excited utterance as it was made about a starling event – the traffic accident – and at the scene of the accident. Still, because the statement is an offer to pay medical expenses, it is not proper for the court to admit the statement as an excited utterance.

(2) Testimony (2) is not admissible as evidence of a subsequent remedial measure. In Maryland, subsequent remedial measures made by a defendant are not admissible as proof of the defendant's negligence. Therefore, if Peter endeavor to introduce testimony (2) to show David's negligence, the testimony must not be admitted.

Testimony (2) could, however, be admitted as evidence of David's identity, if this issue is disputed. In Maryland, evidence of a subsequent remedial measure might be admissible as evidence of the defendant's identity, but only if this issue is disputed. Thus if David contests that he was the person who it Peter, evidence of the subsequent remedial measure may be admitted.

(3) Testimony (3) is not admissible as evidence of liability insurance. In Maryland, evidence of liability insurance is generally not admissible as evidence of the defendant's negligence. Here, if Peter endeavors to introduce the liability insurance to show David was negligent, the testimony is not admissible.

Testimony (3) could, however, be admitted as evidence of David's identity, if this issue is disputed. In Maryland, evidence of liability insurance might be admissible as evidence of the defendant's identity, but only if this issue is disputed. Thus, if David denies that he was the person who hit Peter, the testimony may be admitted.

(4) Testimony (4) is not admissible as evidence of an offer to settle. In Maryland, offers to settle a civil case are inadmissible. They do not qualify as admissions of a party opponent. Thus, the court must not admit testimony (4), which constitutes David's offer to settle the civil case.

(5) Testimony (5) is not admissible because it is not an admission of a party opponent. In Maryland, when an individual pays a traffic citation, he does not admit his guilt.

Therefore, payment of a traffic citation does not constitute an admission by a party opponent of the persons' guilt. Therefore, evidence that David paid the traffic citation is not admissible in the subsequent civil litigation by Peter, based on the same facts.

(6) Testimony (5) is not admissible, as a criminal conviction is generally not appropriate evidence in a subsequent civil case based on the same facts. In Maryland, the court must weigh the probative value of evidence against its potential for unfair prejudice. Here, admitting David's criminal conviction would unfairly prejudice David's defense, and this prejudice outweighs its probative value. Therefore, the court must not admit the criminal conviction.

Testimony (5) does not constitute as admission by a party opponent. Here, the facts do not indicate that David pleaded guilty, but rather that he was found guilty. Therefore, testimony (5) is not admissible as an admission by David.

(7) The court may allow David's witness to testify, if it determines that the witness is qualified, based on experience and education, to serve as an expert witness. In Maryland, the judge determines whether an expert witness is qualified to testify. The judge examines the witness' relevant experience and education, and whether his testimony is based on the kind of information reasonably relied on by others in his field. The judge must determine that the expert witness' testimony would be helpful before allowing the expert to testify. The judge may allow a witness to testify, even if the testimony reflects an ultimate issue in a case. Here, David would like to introduce an accident reconstruction specialist, who might be able to provide helpful information about whether David acted negligently or whether his conduct was not the factual cause of Peter's injuries. If the judge determines that the specialist has the appropriate education and experience in accident and reconstruction, he may decide the witness is qualified and allow him to testify.

REPRESENTATIVE ANSWER 2

The evidence offered by both parties' present problems under the Maryland Rules of Evidence.

I. Evidence Offered by Peter

(1) An offer to pay medical expenses is inadmissible to prove that the person making it was at fault. Had David made other accompanying statements, these might have been admissible, but the offer alone is not.

(2) Subsequent remedial measures are also generally inadmissible. Fixing the brakes is one such measure. This type of evidence is admissible for the limited purpose of showing that repairs were feasible, if this is disputed, but it does not appear that David disputes that it is possible to fix brakes. This type of evidence is also admissible for the limited purpose of showing ownership or control, if this is disputed. If the evidence included information that it was David who fixed the brakes, and if David argues that he was not the drive, it should be permitted. A limiting instruction would be appropriate. Otherwise, it should not be allowed.

(3) Similarly, the fact that the defendant carried insurance, as here, is generally inadmissible. But it is admissible for the limited purpose of demonstrating ownership or control. The fact that David was named as the insured is circumstantial evidence tending to show that it was David who owned the car, and therefore may have been driving the car. If David argues that he was not the drive, this evidence should be permitted with a limiting instruction. Otherwise, it should not be allowed.

(4) An offer to settle a claim that is disputed as to validity or amount is inadmissible. David's offer through his attorney to settle an existing lawsuit is within this prohibition.

(5) In Maryland, a guilty plea to a crime is treated as an admission by that party in a subsequent case. However, paying the pre-set fine for a traffic citation without a court appearance is not considered equivalent to a guilty plea. Therefore, this evidence should not be allowed.

(6) A conviction without a guilty plea is not a party admission and is not admissible as substantive evidence. A conviction might be used to impeach a witness' credibility, but it must either be an infamous crime, generally a common-law felony, or else a crime involving falsehoods. Driving under the influence fits neither category. Additionally, David is not testifying, and there appear to be no out-of-court statements by David that are being introduced and could be impeached. Therefore, this evidence should not be allowed.

II. Evidence Offered by David

Expert testimony is admissible if the expert has adequate minimum qualifications; if the testimony would be helpful to the jury in understanding the facts; and if it has a sufficient basis. In the case of scientific testimony, it has a sufficient basis if it reflects the generally accepted methodology of experts in the field. For non-scientific testimony, the court must determine that the method is reliable.

Here, the latter two requirements seem to be potentially satisfied. It is likely that understanding a discrepancy between the speed of the accident and the injuries would be helpful to the jury. If accident reconstruction is considered a science, it is possible that the expert is using a method accepted in the scientific community. Otherwise, the court could evaluate its reliability. These would depend on specific facts.

However, the qualifications of the expert present an issue. Maryland only permits physicians to testify as to the nature of physical injuries. There might be facts related to the accident that the specialist could testify to, such as the likely speed of the cars. But the specialist should not be allowed to give a medical opinion about the injuries.

QUESTION 4

Addell hosted a birthday party for Ben, her disabled, wheelchair-bound boyfriend, at her apartment on Lombard Street in Baltimore, Maryland. The apartment only had one entrance. Charlie, a convicted felon, was invited to the party and was in attendance as a guest. He arrived at about 9:00 p.m. Shortly after midnight, there was a disturbance outside of the apartment and Drexel, attempting to crash the party, tried to enter the apartment but was stopped by Addell who closed and locked the door. Drexel, drunk and belligerent, threatened to beat down the door, breaking a piece of glass in the door in the process. Addell called the police to assist in quelling the disturbance. Meanwhile, Drexel, assisted by his friends, tried to break down the door and hollered, "I'll kill you."

Ben, being in fear, gave Charlie a handgun that Ben had on his person. Charlie was also afraid. Charlie stepped outside the apartment, fired three shots into the air, and warned the intruders to leave and that the police had been called. At that moment the police arrived and Charlie promptly gave the gun to the police.

Charlie was arrested and charged with illegal possession of a handgun by a felon, carrying a handgun without a permit, second degree assault and reckless endangerment.

You have been assigned by the Public Defender to represent Charlie. Please discuss salient defenses or arguments potentially available to Charlie under the recited facts.

REPRESENTATIVE ANSWER 1

Charlie can argue that his possession of the handgun, carrying of the handgun, and second degree assault and reckless endangerment are privileged by necessity and defense of self and others. In Maryland, necessity is an appropriate defense when the convict is afraid for his life, the handgun is not present through ulterior design, and he relinquishes the handgun as soon as the police arrive. Here, Charlie's possession of the handgun was necessary because there was a disturbance outside of the apartment by Drexel, who then tried to enter the apartment. Drexel was threatening to beat down the door, and broke a piece of glass in the door in the process. Because of his physical action, in addition to the physical act of breaking the glass on the door, and his drunkenness and belligerence, both Charles and Ben reasonably feared for their life. The gun was not Charlie's gun, and he was given possession of the gun by Ben, who was also afraid for his life. Because both Ben and Charlie were afraid, and Charlie did not bring the gun himself, Charlie should be protected by necessity. Furthermore, "[a]t the moment the police arrived, . . . Charlie promptly gave the gun to the police." Here, by his voluntary relinquishment of the gun after the necessity was over, Charlie was privileged to be in possession of the gun, and carrying the gun without a permit for the brief period when the necessity was present.

Furthermore, Charlie is protected by defense of self and others. Here, Charlie reasonably believed that his life, and the life of the others at the party, was in immediate danger. The privilege of defense of self and others is a defense to both the second degree assault and reckless endangerment. As explained above, Charlie was afraid for his life and Ben's life, and that fear was reasonable because of the belligerent manner that Drexel was engaging in, as well as Drexel's physically intimidating acts and demeanor. There were both verbal threats and physical threats since Drexel broke a piece of glass on the door. Because of this imminent threat of bodily harm, Charlie is permitted to respond in an equal manner to repel the force.

Additionally, Charlie did not shoot Drexel, but merely fired a warning shot in the air, and warned the intruders to leave. Furthermore, he was not putting Drexel in reasonable apprehension of an immediate battery when he fired the gun into the air. Charlie did not aim the gun at Drexel, nor did he say that he was going to shoot Drexel. Thus, he has not committed an assault on Drexel, which is the creation of apprehension about an immediate batter, or a failed battery. Here, Charlie did not fail at battering Drexel, nor did he create apprehension that a battery was imminent. As such, he should not be found guilty of second degree assault.

Finally, Charlie is not guilty of reckless endangerment because he did not act in a reckless manner with disregard for the possible injury of another party. Charlie was careful here not to fire at Drexel, or to risk hitting him with the bullets. As such, he should not be found guilty of reckless endangerment.

REPRESENTATIVE ANSWER 2

In response to the second-degree assault charges, I would argue that Charlie had no intention of causing imminent apprehension of harmful contact, did not cause a battery, and did not attempt a battery. These are the three types of assault in Maryland. Charlie did not shoot at Drexel and his friends, and he did not cause any harmful or offensive contact with their person. In addition, Charlie made no intent to cause imminent apprehension of harmful contact. He fired the gun into the air to startle Drexel and his friends and tell them that the police were coming. He did not want them to fear he was going to shoot them, and he shot the gun nowhere near them. However, because he shot three bullets, instead of just three, a court will likely find that Charlie was intending for Drexel and his friends to fear imminent bodily harm with the gun.

Charlie may argue self-defense and defense of others. Drexel and others (his "friends") were beating down the door and threatening to "kill" those inside. Force may be used to defend self and others. Deadly force may be used to defend one's self and others against serious bodily harm or death. Because of the threats, the fact that Drexel and his friends were "drunk and belligerent" and had already broken a piece of glass in the door, it was clear they intended to do serious harm to those inside, including Charlie. Accordingly, the defense of self-defense of self-defense and defense of others would likely succeed here – whether or not firing a gun into the air is considered "deadly" force.

One can also use force in order to defense the property of themselves or others. That force must be reasonable under the circumstances, and deadly force is not allowed to defend property. Here, Charlie fired three shots into the air as a warning to the intruders that the police are coming. I would argue that this is not deadly force because Charlie made no attempt to hurt anyone, never pointed a gun at anyone and merely shot into the air to get the intruders attention. Quick action was necessary because of the threats by Drexel and his friends to "kill" those inside. However, Maryland courts have held that wielding a deadly weapon in a threatening manner and firing it – even not directly at the threat – constitutes use of deadly force. Thus, defense of property would fail here as a defense.

In defense of the charge of possession of handgun by a felon and carrying a handgun without a permit, I would argue the defense of necessity. The apartment only had one entrance and there was no other escape. Ben was disabled and it would have been difficult for him to wield a handgun while also using his wheelchair. Drexel and his friends were threatening to kill and were very violent. Charlie had no other choice but to use the handgun to protect the others in the home from the impending threats of serious bodily harm posed by a drunk and belligerent Drexel and friends. In addition, he did not possess or carry the handgun for any longer than he needed to. At the exact moment the police arrived, he handed the gun over to them.

In response to the charge of reckless endangerment, in addition to the above defenses, I would argue that Charlie was not reckless and did not endanger anyone with his actions. He merely shot a handgun in the air. He did not direct the gun towards any singular or multiple individuals, and he was not careless or wanton in his actions. He was very deliberate and careful in his point the gun in the air and immediately handing the gun over to the police when they arrived.

QUESTION 5

As of July 2013, Harold Homeowner is the fee simple owner of real estate and improvements located in Cumberland, Maryland. Harold and his fiancée, Greta, have been together for nine years, and she has lived with him in the home for the past eight years. Greta and Harold both work and they share in the expenses of living together. Harold has an 18 year-old son, named Thomas. Neither party has any other children.

Originally, the home had a carport under which Harold told Greta she could park her car. Greta wanted a garage so that her car would be better protected. Harold did not care whether there was a garage but knew the garage would add to the value of his home. In April 2013, assuming that Harold would eventually add her name to the deed for the house, Greta contacted a contractor and had the carport enclosed. She also had a garage door and opener installed. While she never asked Harold specifically about the "improvements," the work was obviously done with his knowledge. Greta paid for the improvements and continued to use the garage. The garage cost approximately $6,500.

In June 2013, Harold fell in love with another woman and asked Greta to move out. Greta moved out, but Thomas remained with his father.

1. What ownership interest, if any, does Greta have in the real property? Explain the current ownership status of the house.

2. What right, if any, does Greta have to compensation from Harold for the improvements to the carport/garage?

Based only on the facts above, if Harold died prior to Greta moving out of the house, would Greta have any interest in the home? If Harold and Greta held the house as tenants in common, would that change anything and, if so, how? Explain.

REPRESENTATIVE ANSWER 1

1. Greta has no ownership interest in the real property. Harold was a fee simple owner, which means he had all the rights of the possible available spectrum to home owners. He chose, however, not to transfer any portion of the title to Greta, thus remaining the sole owner of the property. It can be argued that Greta's living in the home was conditional on their staying together. Further, although some states recognize common law marriage, Maryland is not one of them. This means that neither the home itself nor the improvements are joint marital property, despite Harold and Greta sharing expenses and living as an economic unit (and, under these bare facts, title probably would not have passed even in a common law marriage).

2. Pre improvements are most likely a gift. Although Greta could argue that Harold consented to them by silence, and that she made them in reliance on Harold adding her name to

the house, Harold did not care whether Greta added improvements (especially since she added them for her own use and needs, not his needs, not joint needs). Harold did not solicit her improvements, and (under these facts) did not even know about her reliance. Therefore, also Greta can likely not claim that they were joint property, or that she had reasonable expectation of any interest in them (especially as it is not her house).

3. If Harold died prior, Greta's interest would not change under these facts. Harold would die intestate, thus leaving everything to his son (who is not Greta's son).

4. If Harold and Greta held as tenants in common, this would change things. If Harold died then, his interest would pass to his son, but Greta's would remain intact. She would have access to the property and keep her rights.

REPRESENTATIVE ANSWER 2

1. Greta has not ownership interest in the property. Greta is not married to Harold and does not have her name on the title to the house. Even though she made improvements to the property, she does not thereby gain any claim of interest in the property. Harold has sole title to the house in fee simple. Greta simply lives there as a gratuitous licensee, and as such must vacate the property when Harold asks.

2. Greta has a claim of unjust enrichment against Harold. For an action to lie in unjust enrichment, which is an equity action, Greta must show that she conferred a material benefit on Harold, who accepted the benefit, and that not remunerating Greta would cause Harold to be unjustly rewarded. According to the facts, Greta did confer a material benefit on Harold by enclosing the carport and spending $6,500 in the process. The enclosure raised the price of the property, which is solely owned by Harold. Harold knew of the enclosure and did not at any point object to the enclosure before, during or after construction. Harold therefore accepted the benefits Greta conferred on him by failing to object. Greta must also show that it would be unjust for her to not be remunerated by Harold. Greta believed that Harold would add her to the house's title and she expended her money expecting that would occur. Instead, Harold turned her out after many years of living together and knew or should have known that she had expended a considerable sum of money with the expectations that Greta's name would be placed on the title. It therefore seems that Harold was unjustly enriched by Greta, who is entitled to be remunerated for her expenses in enclosing the carport. It should be noted that an action of unjust enrichment is an equity action, which is granted in the sole discretion of the court. Greta, under this theory, does not have a legal entitlement to remuneration under unjust enrichment.

Harold cannot claim that it was an inter-spousal gift, as they were not married at the time. Furthermore, it is not a gift at all to Harold because the enclosure of the carport was not for the use of Harold, even though it formed a benefit. The enclosure of the car port was for the purpose of better protecting Greta's care, not to gratuitously give a gift.

3. If Harold died before Greta moved out, Greta would still not have any interest in the house. She is still not married to Harold nor has her name on the deed. Thomas would have sole legal rights to the house as he is the sole legal heir of Harold. It may be possible to raise the issue of unjust enrichment upon Harold's estate for all the reasons listed above.

4. If Harold and Greta held the property as tenants in common, Greta would have a right to stay in the house even if Harold asked her to leave. Tenants in common have an equal, undivided interest in the use and possession of the whole of the property. Greta, like Harold, would have a right to the use and possession of the house and the land even if Harold did not want her to be there anymore. Any action that Harold took to block her from entering the property would an ouster, giving Greta legal remedy to sue for ouster.

QUESTION 6

John Brown ("Brown"), a real estate broker, was president and part-owner of Real Estate Investment Team, Inc. ("REIT"). REIT's practice was to hold title to undeveloped property while arranging construction financing. Once financing was secured, REIT would transfer title to a corporation or a limited liability company. After the transfer of the title, development of the property would begin.

REIT purchased four parcels in Cecil County, Maryland, and arranged construction financing. Title to the lots was then transferred to a wholly-owned subsidiary known as Cloverdale, Inc. In July of 2011, the Marley Neighborhood Coalition ("Marley"), a non-profit corporation dedicated to the construction of low cost housing, purchased a 51% interest in Cloverdale for $300,000 and construction began on the four parcels that REIT conveyed to Cloverdale.

Marley had purchased the majority interest in Cloverdale, based in part on discussions Brown had with Marley's Director, Ann Atkins. During these discussions, Brown advised Atkins that REIT had purchased an additional 15 acre parcel of land in Cecil County which adjoined the initial four lots. Thus, Marley believed it would be able to participate in the development of the 15 acre parcel at some time in the future.

In January of 2012, Brown formed Cloverdale Development Phase II, LLC ("Phase II") and transferred the 15 acre parcel to it. Because Cloverdale did not have sufficient funding to complete development of the initial four parcels, Brown, in March 2012 caused Cloverdale and Phase II to enter an agreement by which Bank extended a $2,000,000 line of credit to the two entities so that the Cloverdale project could be completed and development of the 15 acre parcel could take place. Cloverdale and Phase II gave Bank deeds of trusts to their properties to secure the $2,000,000 loan.

Although Marley held a majority interest in Cloverdale, neither Atkins, nor any of the other members that Marley placed on Cloverdale's board of directors, attended the March 2012 meeting at which the agreement with Bank securing the financing for Phase II was placed to a vote. Proper notice was given to all directors. The security agreement with Bank was approved by Brown and other directors associated with REIT.

In July of 2013, Marley and Cloverdale filed suit against Brown, REIT, and Phase II. Marley claimed that these entities had usurped a corporate opportunity belonging to Cloverdale.

Brown testified that the deed of trust was necessary in order for Cloverdale to complete its construction. He further testified that Cloverdale could not borrow money on its own because the Bank required the majority owner to guarantee the loan and Marley, as a non-profit, could not do so. Brown argued that Cloverdale's ability to draw on the line of credit benefited Marley,

as it allowed Cloverdale to complete construction of its property even though it required its property to serve as partial collateral for the loan.

Marley alleges in its suit that the other parties breached their fiduciary duties by failing to disclose the new real estate transaction that transferred the 15 acres to Phase II, a new entity solely owned by Brown rather than to Cloverdale. Marley argues that the collectively established deeds of trusts and security agreement with Bank establishes a corporate opportunity for Cloverdale.

You are the judge who will hear the above case. How would you rule as to whether the development of the 15 acre parcel by Brown and Phase II was a corporate opportunity of Cloverdale? Discuss fully.

REPRESENTATIVE ANSWER 1

In Maryland, a director of a corporation breaches his or her fiduciary duties to a corporation by failing to act in good faith, with a reasonable belief that the act is in the best interests of the corporation, and by failing to act with the care of an ordinarily prudent person acting under the circumstances. This standard constitutes the duty of loyalty and the duty of care that the director owes to the corporation. A director can breach his duty of loyalty to the corporation by improperly taking a corporate opportunity from the corporation. A usurpation of a corporate opportunity occurs when a director takes a business opportunity for his own personal benefit without giving the corporation an opportunity to take the opportunity for itself. For the reasons below, the court should rule that the development of the 15 acre parcel by Brown and Phase II was not an improper usurpation of a corporate opportunity of Cloverdale.

Generally, if a director discovers a corporate opportunity as a result of his service as a director, he must present the opportunity to the Board and give the Board an opportunity to act on the opportunity. If the Board declines to act, the director may then pursue the opportunity for himself. Here, the Cloverdale Board consented to the acquisition of the 15 acre parcel by Phase II when it voted to enter into the $2 million loan agreement. Board action that takes place at a meeting, properly noticed, and with a quorum of directors present is valid. Here, even though the Marley board members didn't show up for the meeting, they had valid notice that a meeting would take place. In their absence, as long as the remaining members in attendance constituted a quorum, the Board could validly enter into an agreement with the bank via a majority vote of the directors present. Thus, the Board had notice of the corporate opportunity and validly entered the agreement with Phase II to provide financing.

In addition, in order for a corporation or its shareholders to bring a valid derivative law suit as a result of a breach of a director's fiduciary duties, it must be able to show that there was

harm done to the corporation. Here, no harm can be shown because Cloverdale lacked the capacity to act on the opportunity. Not only did Cloverdale lack sufficient funds to purchase the 15 acre parcel, it even lacked funds to finish development of the initial four acre parcel. Brown's testimony also suggests that because Marley, Cloverdale's majority owner, was a non-profit, Cloverdale would not have been able to obtain financing to purchase the 15 acre tract either. Consequently, there was no usurpation of a corporate opportunity because Cloverdale lacked the means to act on its own.

For these reasons, that Court should rule that Brown did not breach his duty of loyalty to Cloverdale by transferring 15 acre parcel to Phase II.

REPRESENTATIVE ANSWER 2

The development of the 15 acre parcel by Brown and Phase II was not a corporate opportunity of Cloverdale because Cloverdale could not have secured funding to develop it on its own.

As a judge in this case, I would rule that Phase II was not a corporate opportunity of Cloverdale because they had little means to get the funding to develop the site and ability to take advantage of the development opportunity because they were a non-profit.

Brown was a promoter of both projects; the President and shareholder of Cloverdale. Therefore he had knowledge of the plans of both entities. Marley purchased the majority interest in Cloverdale based in part on discussions with Brown, that informed Ann the REIT had purchased the additional land adjoining the 4 original lots. Thus, Marley believed it would be able to participate in the development of the 15 acre parcel at some time in the future. However, Brown was only able to leverage the value of REIT acres to obtain a $2m loan from the bank in exchange for a deed of trust on the combined property of REIT II and Cloverdale. Fifty one percent of Cloverdale was purchased for $300,000 indicating it was probably worth around $600,000 in total. The remaining value would have to come from the bank's perceived value of REIT II, meaning it was worth at least $1.4 m. The opportunity to develop on both pieces of property would have enhanced the value of Cloverdale but it did not have the funds to complete development, and REIT II was the only way to garner the additional funding.

Additionally, as a non-profit, Cloverdale could not have gotten a loan significant enough to develop the property. Even though the opportunity was taken without other members present, and was approved by only Brown and representative from REIT does not mean that the opportunity was a corporate opportunity of Cloverdale. Should they have been present and voted against using Cloverdale as collateral, that would not have caused REIT to become a corporate opportunity for Cloverdale.

Brown may have breached his fiduciary duty to Cloverdale, but doing so did not create a corporate opportunity for Cloverdale, but rather a cause of action against Brown and possible REIT II.

QUESTION 7

The Town of Happy, Maryland, is a small municipality consisting primarily of single-family dwellings located in residential districts and a two-block business district. The Town Council has asked you, the Town Attorney, to review the legality of drafting new laws that would address the following:

1. A revised sign ordinance that would only allow one attached building sign per building in the business district. The signs are limited to a maximum of 2 feet by 3 feet in size. This limitation would not apply to churches, daycare centers or any signs located in residential districts. The purpose of the ordinance is to reduce blight.

2. An anti-loitering ordinance that would prohibit any person under the age of thirty from standing on the Town sidewalks for longer than ten (10) minutes between the hours of 6:00 p.m. and 6:00 a.m. The purpose of the ordinance is to reduce crime. The penalty for a first infraction would be a $500 civil fine for those over the age of 18. Unemancipated minors would be detained for a period up to 24 hours until their parent obtains their release.

What possible legal challenges would you anticipate if the law is enacted as proposed? How should the Court rule on each challenge? Explain your reasons.

REPRESENTATIVE ANSWER 1

Sign Ordinance:

The sign ordinance has several issues, but the most concerning is that it provides an explicit exemption to churches from the ordinance. This could mean the ordinance could run afoul of the Establishment Clause. The test to determine if a law violates the Establishment Clause is a three part test (the "Lemon Test"). For the law to be valid it must be secular on its face, it must not advance or inhibit religion in its application, and it must not involve an excessive entanglement with religion. There is no excessive entanglement here. It appears on first glance that the ordinance fails the test because it explicitly exempts churches. This would make the law not facially secular. However, a court may view the exemption as a carve out for all non-manufacturing/retailing businesses within the business districts. If the court accepts this argument it will then look at the second prong, whether religion is advanced by the law. This is a tougher question that will require more facts to know if the ability to have larger and more signs advances religion. However, I believe a court is likely to find that the ability to have more signage than other establishments will advance religion.

The law also will likely be challenged under the equal protection clause on the basis that the residential district and business district are being treated differently and that businesses are being treated differently than churches and daycare centers. Both of these arguments will be

reviewed under the rational basis review standard. Any plaintiffs will have to show that the distinctions are arbitrary or irrational for the ordinance to be declared invalid. In the case of business vs. residential district, there is likely a good argument that the distinction is rationally related to a legitimate governmental purpose. The reduction of blight is a legitimate government purpose and there is likely no need to reduce blight within residential areas so there is no need for the restriction there. Signage attached to buildings is common place within business areas and uncommon in residential areas. The distinction between business and churches/daycare centers will be more difficult. Blight can come from any type of signage and there does not seem to be a rational argument for why some signs produce blight and others do not. A plaintiff will be likely to show that this distinction is arbitrary.

The regulation will also be challenged as a restriction on the fundamental right of speech. More information is needed to determine exactly what test will apply. If only businesses are located within the business district then the ordinance may be found to be a restriction on commercial speech. There is less constitutional protection of commercial speech. A court will analyze whether the restriction is narrowly tailored to serve an important government interest. If the church/daycare exception is removed the ordinance would likely pass this test. If there are non-businesses in the district the speech might be analyzed more generally. Assuming the church provision is removed to avoid an argument that the law is not content neutral the law will be permitted if it is narrowly tailored to serve a substantial government interest and leaves ample opportunity for speech in other avenues. More facts are needed here. If the church provision is not removed there may be a challenge that the limitation on speech is not content neutral. Non-content neutral restrictions are analyzed using strict scrutiny, meaning the town will have to show that the law is necessary to serve a compelling government interest. Blight is unlikely to be considered a compelling government interest.

Anti-loitering Ordinance:

The anti-loitering law would likely first be challenged as a violation of due process because it is vague and overbroad. The law is vague because it is not clear what is meant by "standing". Is a person standing if they have moved a few inches, a foot, 5 feet? Will a person only be found guilty if they have not moved at all for 10 minutes? The law's vagueness will allow police to discriminately enforce the statute. Laws that give police this power are unconstitutional when vague. The law is overbroad because it limits all loitering. Some standing on sidewalks may be necessary for several reasons, such as night events, night political rallies, and street festivals.

The law can also be challenged on two equal protection grounds. First, the distinction between 18-30 year olds and all other adults and the distinction between minors and adults. Both will be challenged using rational basis review. The distinction between 18-30 year olds is likely to be found arbitrary because there is no legitimate distinction between 20 year olds and 30 year olds. The distinction between minors and adults is likely to be upheld.

The law will also be challenged on substantive due process grounds as a violation of liberty. The law is likely to be struck down as arbitrary. A reduction in crime is likely a legitimate governmental purpose, but there had been no showing that the ordinance would reduce crime. 6p.m. is perhaps not the appropriate time for the ordinance to begin.

The law may also violate the 8th Amendment as an unreasonable punishment. A $500 fine is high, and being detained for 24 hours is significant.

REPRESENTATIVE ANSWER 2

The ordinances in question would both face likely challenges on constitutional grounds. At the outset it is worth noting that a number of individual rights that originally were enacted as protection from the federal government have been incorporated against the states (and state municipalities) via the Due Process Clause of the Fourteenth Amendment.

The Revised Sign Ordinance

The revised sign ordinance could likely face challenges under the First Amendment's Free Speech and Freedom from Establishment clauses. It may also face a challenge under the 14th Amendment's Equal Protection Clause. The first challenge would be a violation of the right to free speech. The ordinance is not content neutral. Although the ordinance does not directly state that certain messages are forbidden, it allows exceptions for certain types of signs – those on churches, daycare centers and in residential districts. This seems akin to the Supreme Court case where signs were forbidden for the stated purpose of reducing blight but aimed at political campaign signs as opposed to other types of signs. There, because the court determined that the law was aimed at suppressing certain types of speech, and therefore was not content neutral, strict scrutiny would apply. The Court held that the government was required to show that the law is promoting a compelling government interest, and that the law is narrowly tailored to achieve that interest. Here, it is unlikely that this law would withstand strict scrutiny, and the court would likely strike it down. The government may argue that it is content-neutral, and contains reasonable time, place and manner restrictions, but because it allows some messages, i.e. those from churches and daycare centers, to be more prevalent than others, it will likely be found not to be content neutral, and therefore struck down.

The revised sign ordinance would also face an Establishment Clause challenge. The First Amendment's Establishment Clause protects against the government endorsing a particular religion, or endorsing religion over non-religion. The Supreme Court's Lemon test is used to determine whether the Establishment Clause has been violated. The Lemon test requires that the law have a secular purpose, that its primary effect is not to enhance or prohibit religion, and that it does not involve excessive entanglement between the government and religion. Here the law would likely be struck down because it specifically singles out churches. Even though the law seemingly has a secular purpose (preventing blight), it may be found that the primary effect advances religion. Although the law also has exemptions for daycare and residential areas, the

fact that it exempts churches, as opposed to mosques, temples, or other religious dwellings, suggests that it advances one religion over others. Even if that was not found to be the "primary effect" of the law, objectors could argue that the law creates excessive entanglement where the government singles out churches as opposed to other religious places.

The law may also face an Equal Protection argument from business owners other than daycare centers. Under the Fourteenth Amendment's Equal Protection Clause, the government cannot favor one class of people over another. Here, business owners can argue that they are being unfairly singled out as opposed to residential owners, etc. However, because business owners are not a suspect class, the court would apply rational scrutiny (the law must be rationally related to a legitimate interest), and the law will not be struck down.

The Anti-Loitering Ordinance

The Anti-Loitering Ordinance would face challenges under the Equal Protection Clause and Due Process Clause of the Fourteenth Amendment, as well as possible challenges under the Eighth Amendment's Cruel and Unusual Punishment Clause. As discussed above, the Equal Protection Clause results in rational scrutiny when the party objecting to the law is not a suspect class. Here, the party likely objecting to the law would be people under the age of 30 (they would be the only people with standing to challenge the law). Age is not a suspect class, so rational scrutiny would be applied, and the government will likely succeed in arguing that reducing crime is a legitimate interest, and this law is rationally related to that interest (assuming there is some showing that people under the age of 30 are involved in a significant amount of crime).

The ordinance is also likely to be challenged under the Fourteenth Amendment's Due Process clause, which, like the Fifth Amendment's Due Process clause, requires notice and a hearing before (or at some point closely after) deprivation of life, liberty or property. Here, people over the age of 18 would be deprived of property (money paid in a fine) and people under 18 who are unemancipated of liberty (detained) without any provision in the law for a hearing. It is unlikely that any notice other than the publishing of the law would be necessary, but here there is no provision for a hearing. Thus, the law would likely be struck down.

The law may also face a cruel and unusual punishment challenge, but such a challenge is not likely to prevail. A "civil fine" that acts as a criminal punishment can be considered under the Eighth Amendment's protections, but it is unlikely that $500 is so high to meet the standard.

QUESTION 8

Bob Builder and Harry Holmes entered into a written agreement for Bob to construct an addition to Harry's home located in St. Mary's County, Maryland at a cost of $60,000.00. While doing the final walk through of the work done by Bob, Harry fell through a weak floor joist and was injured in the new addition. The accident led to a dispute between the two over the completeness of some of Bob's work. Harry refused to pay the remaining $35,000 in connection with the disputed portion of Bob's work. Unable to resolve the dispute with Bob, Harry hired three subcontractors to complete the work at a total cost of $50,000.

Harry filed a civil lawsuit in the District Court for St. Mary's County against Bob to recover the $10,000 in medical expenses that resulted from his fall and $15,000 for the additional costs associated with the completion of the construction on his home. Twenty days after being served with Harry's lawsuit, Bob filed a counter-claim for the $35,000 he contended was due and owing him for his work on Harry's home, along with a separate request for a jury trial. The matter was transferred to the Circuit Court for St. Mary's County. Harry timely filed a motion to strike the jury trial request.

In connection with Harry's case, his counsel provided Bob's counsel with notice 65 days before the trial that he intended to introduce six invoices Harry received from the subcontractors he hired to complete the work on his house without the testimony of those subcontractors. The notice contained a list of each invoice along with a copy of the invoices. Harry had already paid four of the invoices but two of the remaining invoices were several months overdue.

Harry's counsel provided Bob's lawyer with notice 45 days before trial that he intended to introduce medical records from Harry's treating doctors regarding causation and costs associated with Harry's alleged injuries. The notice listed and contained a copy of the medical records.

Bob's lawyer responded by providing Harry's lawyer with notice and a copy of an independent doctor's report, 35 days prior to the trial, regarding the lack of causation of Harry's alleged injuries, which he intended to introduce into evidence. Along with the notice of his doctor's report, Bob's lawyer also served Harry's counsel with notice in connection with Bob's counter-claim that he intended to introduce two invoices from Bob's subcontractors which Bob paid for work that was done on Harry's home, without calling the subcontractors at trial.

Each party timely moved to preclude the use of each other's attempt to use the medical records and invoices without calling the actual witnesses associated with them.

How should the court rule on each of the procedural/evidentiary motions before it? Explain your answers fully?

REPRESENTATIVE GOOD ANSWER 1

I. Bob's Request For Jury Was Timely Filed

Rule 3-325(a)(2) provides that a defendant may submit a separate written demand for a trial by jury within 10 days after the time for filing a notice of intention to defend. Bob filed his request for a jury at the same time as his counterclaim, 20 days after being served. The period of time for filing a notice of intention to defend is 15 days, so Bob would have had 25 days from service to file his request for a jury. He filed in 20 days, and the amount in controversy is over $15k, so his request was proper.

II. Only Some Of The invoices Harry Wants To Introduce Are Admissible.

10-105 provides for the admissibility of bills for goods or services, such as the invoices that Harry wants to introduce from the subcontractors who had to finish the work on his house. He would be able to introduce those invoices without the testimony of the subcontractors to support them as long as he served notice on the other party that he intended to do so at least 60 days before the trial. Harry filed his notice, which properly identifies each invoice and provides a copy of each invoice, 65 days before the trial, but he faces one major problem. 10-105 only provides for the admission of paid bills. Two of the bills Harry wants to introduce are not paid, and so they may not be admitted without witness testimony regardless of when notice is given.

III. Bob's Invoices Are Inadmissible

Bob also wants to introduce invoices at trial without calling witnesses. But even though the two invoices he wants to introduce were paid, and even assuming he properly filed a list of the invoices that included a copy (it is unclear whether or not Bob filed copies of the invoices with his notice) Bob's invoices are inadmissible because they are connected with his counterclaim for more $35k. Bob can only use 10-105 if the amount is $30k or less. In addition, he only served notice on Harry that he intended to use these invoices 35 days before trial. 10-105 requires that notice be given at least 60 days before trial.

IV. Harry's Medical Records Are Inadmissible Because Notice Was Served Too Late

Mary also sought to admit medical records relating to his injuries at trial without calling the associated doctors. 10-104 governs the admissibility of medical records without witnesses. Though Harry properly served notice that included a list and copies of the medical records to Bob, he served it only 45 days before trial. 10-104(c)(l)(ii) requires that such service be done at least 60 days before trial. Harry's medical records are therefore inadmissible without the testimony of doctors.

V. Bob's Independent Medical Records Are Admissible Because Proper Notice Was Timely Served

In response to the medical records Harry sought to introduce, Bob also filed notice that he intended to introduce an independent doctor's testimony at trial without testimony. Assuming that the notice properly included a copy and description of the medical record (it is again unclear whether Bob's notice included a copy of the testimony) Bob's medical testimony would be admissible without witnesses. Although he only filed his notice 35 days before trial, 10-104(c)(2) allows a party to file such notice at least 30 days before trial, but only if the party has already been served with a notice that the other party intends to introduce medical records without witnesses under 31 0-104(c)(l). Even though Harry's filing was done too late, notice was still served on Bob, which allows him to take advantage of 910-104(c)(2).

REPRESENTATIVE GOOD ANSWER 2

MOTION TO STRIKE JURY TRIAL

A jury trial may be requested by a defendant within ten days after the time for filing a notice of intention to defend provided that the amount in controversy is above $15,000. Here, Harry requested a jury trial 20 days after being served, which is within ten days after the 15-day requirement for a filing a notice of intention to defend. His request is therefore timely and the amount in controversy is above $15,000. Therefore, the court should grant the jury trial request.

MOTION TO PRECLUDE HARRY'S USE OF MEDICAL RECORDS

A medical record is admissible if notice is severed at least 60 days before trial. Here, Harry is trying to introduce medical records 45 days before trial, which is too late. The motion to preclude should be granted.

MOTION TO PRECLUDE HARRY'S USE OF INVOICES

A paid bill for goods or services is admissible without the testimony of the provider of the serves as evidence of the authenticity of the bills for services, and must be provided 60 days before trial. Also, a list of the bills, in addition to a copy of each bill, and files notice with the court. Here, Harry is trying to introduce six invoices Harry received from subcontractors without testimony, but only paid for four of them, and is trying to do so 65 days before trial. His notice is timely and he provided a list of invoices and a copy of the invoices. The court should rule, however, that only the paid invoices are admissible, provided that Harry's counsel filed notice with the court as well.

MOTION TO PRECLUDE BOB'S USE OF MEDICAL RECORDS AND INVOICES

Because Bob's attempts to introduce the counter medical records 35 days before trial. 10-104 allows the use of medical records without calling the associated doctors if notice is provided within 30 days of trial. So Bob's notice is timely. However, because Harry has not properly served Bob with notice under 10-104, the court should rule that Bob will not be allowed to use his counter records without the doctors. Bob also wants to introduce invoices from his subcontractors without needing to call them. He provided notice 35 days before trial. Bob will not be able to use the invoices without the witnesses because his claim is over the limit for 10-105 and because his notice was untimely because it was required to be served 60 days before trial.

QUESTION 9

Candy Cane was a candidate for election to the Harford County, Maryland Council. One week before the election, Candy visited the local office of Printing Company, and spoke with Tammy, an employee in the sales department, about printing 10,000 election flyers to distribute at the polls. Tammy told Candy that the deadline for placing the order was 5:00 p.m. the following day and that the cost was $2,500. At Tammy's suggestion, Candy paid in advance for the printing. Along with the payment receipt, Tammy gave Candy a copy of the Printing Company's "Policies for Printing Objectionable Material" ("Policy"), which stated that it was against the company's policy to print inflammatory or derogatory material for public distribution. Candy said she would return the next day with her copy for the flyer.

The next morning, Candy brought the copy for her flyer to Printing Company and reviewed the content with Tammy. The flyer had a photo of Candy's opponent with an "X" superimposed on it. The copy said, "Get Rid of the Crook! Elect Candy Cane!" Tammy told Candy she could come back that afternoon and look at a proof of her flyer. After Candy left, Tammy became concerned that the flyer violated the Policy. Tammy took the flyer to Boss, who had the final authority to accept or reject printing copy. In Boss's reasonable judgment, Candy's flyer contained derogatory and inflammatory content. Boss immediately emailed Candy and told her Printing Company would not print her flyer unless it was modified to remove the inflammatory and derogatory content. Boss offered to refund Candy's payment if she did not want to change the flyer. Candy angrily replied, "No way! You'll hear from my lawyer!" Candy had the 10,000 flyers printed by another vendor at a cost of $5,000.

Candy promptly filed a Complaint against Printing Company in the proper court claiming $2,500 damages.

Based on the facts stated, what arguments will counsel for Printing Company make against the substance of Candy's Complaint? How should the court rule on the substantive law issues?

REPRESENTATIVE GOOD ANSWER 1

Under Maryland Contract Law, the contract entered into between Candy and Tammy was for services; as such it is governed by common law. Common Law States to have a valid contract there must be an offer of acceptance and consideration. By placing the order with Tammy of 10,000 flyers at the deadline of 5 p.m. Candy made an offer. Candy then provided the cost of the print order constituting consideration as it is value for the basis of the bargain. The problem here is whether there was a valid acceptance by Printing Company in which they would liable. Printing Company will argue that there was not valid acceptance.

Here, Printing Company will argue that there was no valid acceptance as Candy was aware that the services contract was conditional upon the approval by Printing Company of the content for which they were to print. However, this argument will likely fail as before Candy left the printer Tammy after viewing the language on the flyer about Candy's opponent being a

crook told Candy that they would proceed with the agreement. This constitutes an acceptance upon which Candy relied to her detriment.

Printing Company will argue further that Tammy's statements did not constitute acceptance as her Boss had the final call as to the content. However, this will again lose as Tammy in her capacity as an employee is an agent of Boss and although she had no actual authority to bind the company, Candy reasonably believed she had the authority to enter Printing Company into the contract under the agency principal of apparent authority; since apparent authority is based upon the belief of a third party.

Boss and Printing Company can argue that they gave notice to Candy and as such should not be liable but again this would fail as time was of the essence and Candy relied on Tammy's acceptance. Thus Printing Company would be liable to candy for the cost incurred to her mitigating the printing contract.

Candy is able to receive expectation damages plus incidental and consequential damages. Therefore, to place Candy in the place she would have been but for Printing Company's breach, Candy is entitled to $2,500 under Maryland Common Law.

REPRESENTATIVE ANSWER 2

(1) First Printing Company will raise the defense that no contract was actually formed for the printing and therefore Printing Company is not liable on the contract. Printing Company will argue that Tammy had no authority to enter into the contract with Candy or any other customer, and that Boss has final say as to whether to accept or reject a printing copy. However, this argument is likely to fail.

A principal will be liable on the contracts entered into by his/her agent, if the principal was disclosed and if the agent had apparent authority to enter into agreements. As an employee in the sales department, third parties are likely and reasonable to think that Tammy has the authority to accept or reject printing copies and enter into agreements with customers. Candy was reasonable in believing that Tammy accepting the copy and telling her to come back later to look at a proof, that the copy was accepted and the agreement finalized.

Further, there was offer, acceptance and consideration paid on the part of Candy to hold both liable on the contract. At a minimum, Candy should be able to obtain her $2,500 back from Printing Company for their breach of their agreement.

(2) Printing Company will also raise the defense that the agreement contained a condition precedent that was not satisfied. Candy was on notice of the Policy and thus knew that her copy would be subject to review by Tammy and Printing Company. Boss did not accept the copy and asked Candy to change it around to fit within their policy. Candy refused, so the condition precedent, that the copy matches with Printing Company's policy, was not met. Therefore, Printing Company is not liable for nonperformance of their end of the agreement.

This argument is likely to be a loser, since the contract was already formed when Tammy brought the copy back to Boss for his review. Therefore any subsequent change in the agreement or limitations on the agreement must have been agreed to by both parties and in writing to satisfy the statute of frauds. This did not occur in this case and therefore the agreement remains in the form it was when Tammy and Candy entered into the agreement. Therefore, Printing Company may be liable for $5,000 in damages incurred by Candy as a result of the breach of contract.

Damages are measured by the benefit expected by the Plaintiff plus any other costs incurred in order to mitigate the damage done by the original breaching party. Therefore, Candy's measure of damages would be the $2,500 she paid to Printing Company for the flyers she never received, pus the $5,000 she spent mitigating her damage to get the flyers printed. However, candy expected to be out $2,500 for the cost of the flyers, so that amount will be subtracted from the total amount and Printing Company will be liable for the extra $5,000 she had to dish out to have the flyers printed.

QUESTION 10

Part A

On the evening of July 4, 2012, 19 year-old Paul met his friends at a vacant lot ("the Lot") in Baltimore City to watch a nearby fireworks display. Paul was seriously injured when he stepped on a sharp piece of rusty metal in debris that had been dumped on the Lot.

Paul properly filed a Complaint and request for jury trial in the Circuit Court for Baltimore City against the Lot owner, a Maryland limited liability company ("LLC"), and its sole member, Dave Davis ("Davis"), alleging that LLC, as the Lot owner, and Davis, as the sole member and manager of LLC, knew that neighborhood residents used and congregated on the Lot, that Defendants owed a duty to Paul and others to maintain the Lot in a safe condition, that Defendants negligently allowed others to dump debris on the Lot, and that their negligence was the proximate cause of Paul's injuries and damages.

Attorney for Davis files a Motion to Dismiss the Complaint on the grounds that it fails to state a cause of action against him individually.

How should the Court rule on Davis' Motion to Dismiss? Explain your Answer.

Part B

After completion of discovery, the pleadings, depositions and admissions of fact show that the following facts are undisputed:

1. LLC owns the Lot.

2. Davis is the sole member of LLC and the Lot is the sole asset of LLC.

3. Davis personally managed all the day-to-day affairs of LLC.

4. Davis regularly inspected the Lot and knew that it was used by people to illegally dump garbage.

5. Davis was aware that area teens regularly congregated on the Lot for recreational purposes.

6. Davis conspicuously posted signs on the Lot stating "No Trespassing" and "No Dumping."

7. Notwithstanding the signs, Davis knew area youths continued to meet on the Lot and debris was still being dumped on the Lot by others.

8. Davis did not remove the debris from the Lot.

9. Davis had no knowledge of the sharp metal object which injured Paul.

Attorney for LLC files a Motion for Summary Judgment based on the undisputed facts.

How should the Court rule on LLC's Motion for Summary Judgment? Explain

REPRESENTATIVE ANSWER 1

Part A

In order to establish a prima facie case for negligence, Paul has to show that Davis had a duty to make sure the Lot was maintained so it would be safe for Paul, that Davis breached that duty, that Paul suffered harm as a result of Davis's alleged nonfeasance, and that Davis' alleged nonfeasance in this case was the actual and proximate cause for Paul's injury. The elements of negligence are for a finder of fact to determine, although the harm element is established by the fact that Paul was seriously injured. As for the motion to dismiss, the court should deny the motion. A member of a limited liability company may be sued for their tortious conduct if the conduct occurred within the scope of business for the LLC. An analysis of whether or not the Lot was used in the scope of business is one for a finder of fact to determine. In a lawsuit against a limited liability corporation, the corporation and its members may be sued on a joint and several basis. Since Davis is the sole member of the LLC, Paul may sue him on joint and several liabilities. For this reason, Davis' Motion to Dismiss the Complaint for failure to state a cause of action against him individually should be denied.

Part B

The Court should grant LLC's Motion for Summary Judgment. In order to sustain a Motion for Summary Judgment, the Court would have to determine that based on the facts of the case, the case should be decided for the moving party as a matter of law. In determining whether or not to grant a Motion for Summary Judgment, the Court has to analyze the facts in favor of the non-moving party.

Although David posted signs in response to people trespassing and dumping on LLC's Lot, Davis knew that people were ignoring the signs and continued dumping and trespassing for recreational purposes. Even though Davis inspected the Lot, he did not remove debris from the Lot. Paul would likely argue that Davis had a duty to keep the Lot safe since he was aware of constant trespassing by teens and dumping.

In LLC's favor, Paul was a trespasser since he entered the Lot in spite of the "No Trespassing" signs. Normally, a landowner does not owe a duty to an unknown trespasser, but her, Davis knew that people were still trespassing, so Paul could make the argument that Davis and LLC owed a duty to him since Davis was aware that people trespassed on the Lot. In the case of a known trespasser, a landowner has a duty to inspect their property and take remedial measures to remove any dangerous conditions or to warn trespassers of any dangerous conditions. It is undisputed that Davis had no knowledge of the object that injured Paul and Paul was a trespasser, so Davis did not owe him a duty to inspect for unknown hazards. As such, since Paul was a trespasser and Davis inspected the property according to the standard required for trespassers, known and unknown, the Court should grant LLC's Motion for Summary Judgment.

REPRESENTATIVE ANSWER 2

Motion to Dismiss:

The Court should deny Davis' motion to dismiss the complaint on the grounds that it fails to state a cause of action against him individually. As a Limited Liability Corporation (LLC), the corporation has a right to sue and be sued. As an LLC can have one sole member, the main purpose of an LLC is that the member(s) are shielded from personal liability. While it is proper for the LLC to be a party to the action, Davis is also a manager of the LLC and managers may be sued in their individual capacity in tort liability. Moreover, the facts state that Davis (and the other defendants) owed a duty of care to plaintiffs as managers and owners of the Lot. The facts indicate as manager and owner, Davis was aware of these conditions, and the rest of the elements of a cause of action for negligence are set forth. The complaint filed alleges charges against the LLC, his management authority and him personally – which is proper to have all these plaintiffs in the suit and cause of action at issue. In addition, Davis has a duty to anticipated trespassers on the lot. The court should dismiss Davis' motion.

LLC's Motion for Summary Judgment:

The duty of care of defendant(s) is the duty to conform to a particular standard to protect plaintiff from risk of injury. In this case, the duty owed by defendant(s) is a duty to that of anticipated trespassers. In premises liability, a duty of care is owed by a land owner to warn of known artificial conditions that have a risk for unreasonably danger harm to others. Davis was diligent in anticipating trespassers by regularly inspecting the lot, knowing it was used by people to dump garbage. In addition, warning signs were put up; however the signs were not helpful regarding warning of the danger at issue. If defendants were regularly inspecting and knew that debris was everywhere, thereby cleaning it up, they would be on alert that there were possible artificial dangers lurking beneath it. While it is stated that Davis had no knowledge of the object, it is to be decided whether avoiding cleanup and exposing anticipated trespassers to

potential risks of harm. Also, whether the warning signs put the anticipated trespassers on notice of any artificial conditions is at issue.

While the facts are undisputed, the motion for summary judgment should be denied because the facts tend to show that at law there is a duty owed and a possible breach of that duty necessary for a fact finder to decide. Therefore, the motion will survive summary judgment, with issued necessary for a trier of fact to decide.