ARKANSAS BAR EXAMINATION
JULY, 2005

2 Pages
TORTS

Fast Eddie and his best friend Family Sam finally had it made. They both were promoted (on the same day, no less!) to vice presidents of their respective divisions within Giant Corporation. Eddie, who didn't have any family responsibilities, celebrated his success by buying himself a new BMW convertible, loaded, that very afternoon. What a great car for picking up chicks! Sam, who had a wife and two kids to consider, planned to shop for a new SUV over the weekend. In the meantime, he agreed to a little joyride with Eddie after a couple of celebratory cold ones.

You can already predict what happened. With Eddie driving a little too fast, and having had a little too much to drink, the Beemer went off the outside edge of the highway. Eddie – unused to the car's fantastically responsive steering mechanism – overcorrected. In an instant, he crossed the center line and hit an oncoming car head on.

The paramedics found an ugly scene. The passenger's seat belt assembly had failed in the crash – or perhaps the seat belt hadn't been fully fastened, it was difficult to tell from the wreckage – and Sam was ejected through the windshield. Eddie's chest was crushed by the steering wheel. Both men were dead when the paramedics arrived. The oncoming driver, Joe Laidback, was headed home from his job at the local battery factory in his beat-up Ford pick-up truck, singing along with Jimmy Buffett on the FM radio, drinking an Orange Crush, and smoking a joint. He was seriously injured – he will live, but he may never work again, and he's probably going to need some help around the house. Good thing his kids are grown. Too bad his wife left him years ago.

Imagine yourself – by turns – as the lawyer for each potential plaintiff to the ensuing lawsuit(s). Who is (are) your client(s); what will you advise about who to sue; what causes of action should be asserted; what potential problems might arise with the case(s); and, what types of damages can each client expect to recover?

ARKANSAS ESSAY
ANSWER
TORTS

July, 2005

Fast Eddie - Eddie might have a possible claim for strict liability for defective products manufactured by BMW, the car manufacturer, and also against the manufactures and/or suppliers of the seat belts and the air bag system of the car. The elements to prove in strict liability are that: a commercial dealer, supplier, manufacturer, or seller has put a product into the stream of commerce that is defective and unreasonably dangerous. Arkansas uses the consumer expectation test. This is dangerous defect in the product that is beyond the expectation or contemplation of the ordinary consumer. Here Eddie might have a showing that the seatbelt did not perform as it should have in the accident. Eddie would have to prove that the belt was defective when it left the manufacturer. The same analysis would apply for the air bag system which obviously did not deploy upon impact. Eddie (Eddie's estate, actually under the survival statute) would have to show the malfunctioning air bag was cause of Eddie's chest being crushed against the steering wheel causing the fatal injury and death. The defendant's in such a suit, especially in the case of the seatbelt, would probably try to offset their liability by showing comparative fault. In Arkansas, if a plaintiff is 50% or more at fault any recovery is barred. In strict liability cases, the defendant has to prove that any misuse was not foreseeable or that the product was somehow altered. Here, it might be shown that the seatbelt was not fastened properly, however, this is probably just foreseeable non-use rather than foreseeable misuse. As the car was brand new there probably wasn't any alteration in the air bag system.

Even though Eddie doesn't have a wife and kids, his parents could file a suit for wrongful death. In Arkansas, you can recover for mental anguish and ordinary grief. The parents might also be able to recover any pecuniary damages they have suffered as a result of Eddie's death.

In Eddie's case, there could also be a claim of negligence for the same defective products mentioned above. To prove negligence, a plaintiff must show that there was a duty, the relative standard of care, breach of that duty, cause in fact, proximate cause, and actual damages. Here Eddie's estate would have to show that there was some sort of negligence in the assembly of the car by the manufacturer that caused the wreck or contributed to the injuries. Again, Eddie's comparative fault will be applied to the estate's claim. Here, he was driving intoxicated, too fast, in a car he was not used to, and he overcorrected and crashed into the oncoming car.

Family Sam - Sam has the same claims as analyzed above in regard to any defect in the air bags or seatbelts.

(Sam's estate)

Sam also has a claim against Eddie's estate for negligence resulting in his death. Arkansas used to have a guest statute which protected the driver of a vehicle against injuries to his passenger but it has been abolished. Sam's estate can sue under the elements of negligence as listed above.

A possible defense to be used by Eddie's estate is that Sam assumed the risk. He knew that Eddie had been drinking because he was drinking with him. Arkansas uses a "total transaction" approach when determining assumption of risk. The estate might also claim the two were on a joint venture and somehow offset liability. Under the wrongful death statute, Sam's family member can sue for pecuniary losses, mental anguish and ordinary grief. Sam's wife can specifically recover for loss of consortium. The estate can also recover for any pain and suffering experienced by Sam after the accident but before he died.

Joe Laidback - Joe has a suit for negligence, under the above described elements, against Eddie's estate. Eddie had a duty of ordinary care to other drivers on the road. He breached that duty when he crossed the centerline and crashed into Joe's truck. Eddie's actions were both the legal and proximate cause of Joe's injuries. Joe can also show actual injuries here. General damages will be recovered for pain and suffering. Special damages will have to be pled and will probably be recovered for Joe's medical bills, lost wages, loss of future earnings as he will never work again. The future earnings will be reduced to reflect present day value. Joe will also be able to recover for the property damage done to his truck. Of course, Eddie's estate will try to show that Joe was somehow comparatively at fault because he was smoking a joint and paying more attention to the radio than he was the road. The estate probably won't be able to show that as 50% or more at fault so recovery will not be barred. This recovery could be reduced, however, by whatever percent he might potentially be at fault for.

Joe should also plead other special damage to make sure he is able to pay for some live-in assistance. This would be in addition to his other medical bills and would have to be applied prospectively and with a reasonable amount of certainty as to how much it is going to take to cover these future expenses. Damages, especially special ones, cannot be based on speculation or conjecture.

Lastly, I would advise all my clients that the statutes of limitations for these claims is 3 years in Arkansas. Also, that joint and several liability has been abolished in Arkansas and there has been a cap on punitive damages for wrongful death, personal injury, medical injury and property damage claims. For punitive, it would have to be proved that Eddie's actions or the actions of the car manufacturer(s) were at least grossly negligent. Punitives are capped at $250,000 or 3 times compensatory, whichever is greater.

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2 Pages
PROPERTY

Billy Bob Thornton owns Blackacre, a 500 acre farm in Jackson County, Arkansas. Billy Bob had purchased Blackacre in 1972. When Billy Bob purchased the land it was completely wooded, as was the adjoining land to the east, which now belongs to Benjamin Bradley, III. When Billy Bob bought his land in 1972, Benjamin Bradley, III's farm belonged to his father, Benjamin Bradley, Jr. At the time of Billy Bob's purchase, the land directly to the north of his land and Benjamin Bradley, Jr.'s land had been cleared, and was divided into two fields separated by a north-south fence, which intersected the north line of Billy Bob's tract and Benjamin, Jr.'s tract. Billy Bob decided to clear his land shortly after he purchased it, and he and Benjamin, Jr. entered into an agreement that the common boundary line between their lands was a southerly extension of the north-south line dividing the field directly north of their lands. Billy Bob cleared the property to the west of the new line.

Benjamin, Jr. died in 1985, and his son, Benjamin Bradley, III inherited his land. Benjamin Bradley, III cleared his land shortly after his father's death.

Benjamin Bradley, III decided to have constructed a raised farm road along the western boundary of his property, between his land and Billy Bob's farm. The road was built in 1999.

In 2004, Billy Bob decided to have his farm surveyed so that the boundary lines of his farm could be accurately located on the ground. The survey confirmed that the southerly extension of the old north-south fence line used by Billy Bob and Benjamin, Jr. in 1972 as the boundary line between

their lands was accurate, but it also revealed that the road built by Benjamin, III in 1999 was not on the surveyed line, but lay somewhat to the west of it, wholly on Billy Bob's farm. Billy Bob asked Benjamin to move the road and Benjamin refused. In January of 2005, Billy Bob filed suit in Jackson County Circuit Court seeking a declaration of the Court that the line resulting from the 2004 survey between Blackacre and the lands belonging to Benjamin, III was the true and accurate boundary line between the tracts, and seeking an injunction ordering Benjamin, III to remove his road from Billy Bob's property.

At the time the road was built in 1999, there were no discussions as to the location of the common boundary line between Billy Bob and Benjamin, III. Billy Bob assumed that the new road was on the boundary line, and said nothing to Benjamin about it.

Under the facts as given, who wins the lawsuit? Please state the three ways in which a boundary line other than the surveyed line can be established by a Court. State what facts are necessary in order for a Court to establish a boundary line by each of the three methods. Discuss whether Benjamin Bradley, III can succeed in having the Court find that the roadway has become the true boundary line under any of the three legal theories you have listed.

ARKANSAS ESSAY
ANSWER
PROPERTY

July, 2005

In Arkansas, the three ways to establish a boundary line, other than the surveyed line are boundary by agreement, boundary by acquiescence, and adverse possession. Boundary by agreement generally requires a dispute, question, or uncertainty as to the true boundary, followed by an agreement to adhere to a certain defined boundary. On the other hand, boundary by acquiescence does not require a previous dispute or uncertainty, but does require an acquiescence (no protest) of the parties to a certain boundary for a long period of time. Finally, boundary lines can be changed by adverse possession. In Arkansas, adverse possession (or a prescriptive easement for a portion of the property) requires: (1) exclusive possession by the adverse possessor (exclusive of the record owner), (2) lasting possession for at least 7 years, (3) hostile possession (not with the owner's consent), (4), uninterrupted possession, (5) actual, physical possession, and (6) visible possession. In addition, Arkansas requires the adverse possessor to be acting under color of title and to pay taxes for the 7 year period on either the land adversely possessed or adjacent land. Also, Arkansas allows for adverse possession of unenclosed and unimproved land on which one pays taxes under color of title for 7 years or on which one simply pays taxes for 15 years.

In this case, boundary by agreement or by acquiescence would have probably applied to the agreement to make the southern extension of the fenceline the boundary, had that not actually been the boundary. However, our concern is with whether the 1999 road built by Bradley III (Bradley) has changed the boundaries. Initially, it does not appear that Bradley has acquired title by adverse possession. The road appears to be exclusively used by him; he appears to have had actual physical possession of the land on which the road was built; the road was visible; and his possession was without express permission. However, the possession was interrupted when Billy Bob asked Bradley to remove the road and Bradley did not have possession for the requisite 7 year period.

Furthermore, it is somewhat unlikely that there was a boundary by agreement for the roadway, as there was no articulated mutual question or uncertainty about the boundaries and there was no express agreement between Bradley and Billy Bob.

Still, a boundary by acquiescence claim could have merit. Billy Bob did not object to the location of the road. Billy Bob and Bradley presumably both use their properties up to the road, respecting it as the line for 5 years (brush-hogging one side on both sides and other maintenance). It has been held in Arkansas that boundary by acquiescence does not necessarily require possession for the 7 year statutory adverse possession term (although most of the case law involves over 15-20 years of acquiescence). The road was only "somewhat" west of the true boundary line, and would not be a major invasion onto Billy Bob's land. Billy also observed Bradley's building of the road and did not object at the time of the building of the road or even within 5 years thereafter, bringing in laches estoppel arguments. Finally, it would be very expensive and destructive to move the road, bringing in economic efficiency and justice considerations. (This is an equitable action and the court will look at Billy Bob's possible laches, estoppel and any unclean hands arguments before granting such extraordinary relief.) Accordingly, a court could easily find a boundary by acquiescence existed and would not likely force Bradley to move the road. (For a recent application of these factors, please see Cummings v. Shults, Ark. Ct. App. 2005).

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1 Page
WILLS, ESTATES AND TRUSTS

Tom and Jane were married in 1975, and during the next five years three children were born of that union: Mike, Mary, and Mick. In 1985 Tom and Jane executed valid wills distributing their estates first to the surviving spouse and then to Mike, Mary, and Mick, equally, share and share alike, and Mike was named as the executor. In 1990, another child, Martha, was born to Tom and Jane. Sadly, Jane died in 1995. Tom and Jane owned all of their property jointly so that all of Jane's property passed by operation of law to Tom. In 2000 Tom executed a valid will revoking all previous wills, but, after mentioning his four children, he gave his entire estate to various charities. In 2002 Mike was convicted in Circuit Court of felony theft of property from one of those charities. Thereafter, Tom had a change of heart and destroyed the 2000 will and all copies by shredding them. Tom died in 2004 without having taken any other action regarding his estate.

1) Did Tom die testate or intestate? Explain.

2) Assuming the 1985 will is probated as the valid last will of Tom:

   a) Who gets Tom's property and in what proportion?

   b) May Mike serve as the executor of Tom's estate? Explain.

ARKANSAS ESSAY
ANSWER
WILLS, ESTATES AND TRUSTS

July, 2005

1) Tom died intestate. The issue is whether the 2000 will revoked the 1985 will and whether the destruction of the 2000 will was valid. A subsequent will may revoke a previously executed will as long as the subsequent will follows the formalities required for execution and it is the testator's intent to revoke any previously executed wills. Here, the facts state that the 2000 will was validly executed and that Tom intended to revoke the 1985 will. Therefore, the 1985 will executed by Tom was validly revoked by the 2000 will.

A will may also be revoked by a testator's physical act. The physical act must clearly show the testator's intent to revoke the will. The testator may burn the will, tear up the will, write on the will to indicate revocation. Here, Tom clearly had the intent to revoke his 2000 will because he shredded the original and all copies. The act of shredding the document and all copies is sufficient for a court to conclude that the will was revoked and Tom had the intent to revoke it. Since the 1985 will and the 2000 will were both validly revoked, a court would conclude that Tom died intestate and his estate would pass to his descendants under the intestacy laws.

2a) Assuming the 1985 will is probated as the valid last will of Tom, the court would first have to determine whether Martha is a pretermitted child. A pretermitted child is a child that has been left out of a will because the testator either forgot to include the child or the child was born after the execution of the will and the testator did not change the will to include the child. The court would also examine the testator's intent to determine whether the testator intentionally left out the child. The court would examine whether the testator specifically included a provision in the will that mentioned the child and whether the child would or would not receive a share of the estate. If the court determines that the testator intended to exclude the child, the child will not receive any share of the estate. If the court concludes that the testator mistakenly excluded the child, the court will award the child her intestate share as if the testator had died without a will. Here, Martha was born after the execution of the 1985 will. The court would probably determine that Tom mistakenly forgot to change his will because the 1985 will included all of his children as heirs to his estate. The inclusion of his children in the 1985 will is a strong factor that shows Tom's intent to give his children a share of the estate. The court would probably find that Martha is a pretermitted child and the court would divide the shares between Martha, Mike, Mary, and Mick into equal quarter portions of Tom's estate.

2b) The executor of an estate is the person named by the testator who distributes and supervises the testator's property after the death. A probate court would give strong weight to the testator's decision about who his executor would be. However, the court would not determine that the testator's named executor is absolute beyond review. If a court decides that the executor is not fit to as an executor and assume the fiduciary responsibilities, the court has the power to relieve the executor and appoint an administrator to supervise and distribute the property. Here, the court would probably determine that Mike was unfit to assume the role as executor. Although the court gives the testator's intent deferential weight, the court must also consider the rights of the other parties included in the will. The court would examine Mike's conviction for felony theft of property from a charity. The court would probably conclude that Mike was unfit to serve as executor and the court would appoint an administrator.

ARKANSAS BAR EXAMINATION
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2 Pages
CRIMINAL LAW AND PROCEDURE

On December 4, 2004, an officer with the police department was traveling eastbound on Interstate 40, when he observed defendant High's car drive off the road three times. The officer pulled High over. After doing so, the officer talked to High through the passenger window and smelled a strong odor of air freshener. The officer asked for and obtained Mr. High's driver's license and vehicle paperwork, then asked Mr. High to accompany him to the patrol car. It was raining and the officer had decided to issue Mr. High a written warning. While in the patrol car, the officer ran the usual warrants checks and spoke with Mr. High, who told him he was on his way to Virginia to visit his mother, whom he had not seen in a few years. Mr. High told the officer that he was from California and that he worked as a farmer. The officer thought this was odd.

A one way car rental agreement from California to Virginia was among the paperwork that Mr. High had given to the officer. This agreement showed that the vehicle had been rented to Summer Bay, who was not present, but also listed Mr. High as an additional driver. Mr. High stated that he planned to return to California after a ten day vacation, and that the vehicle had been rented by Bay because Mr. High did not have a credit card. The officer then completed writing the warning ticket, and handed everything back to Mr. High.

Then, the officer asked Mr. High if he had any drugs in the vehicle. (The officer thought Mr. High was transporting drugs because of the smell of air freshener, which is used to mask odors, the fact that the renter of the rental car was not present, the one way travel, and Mr. High's nervousness).

Mr. High responded that he did not have any drugs in the vehicle. The officer requested permission to search the vehicle. Mr. High refused. The officer stated that he was going to run his drug dog around the vehicle. The dog had been in the back seat of the patrol car during the stop.

While running around the car, the dog alerted to Mr. High's trunk.

In assessing this case, please discuss the following issues:

1. Was there probable cause for a stop of the vehicle?

2. Which U.S. constitutional amendment is most applicable to Mr. High in this fact pattern?

3. Did the officer have reasonable suspicion to detain Mr. High after the traffic stop was completed?

4. Should Mr. High's motion to suppress the drugs be granted or denied?

ARKANSAS ESSAY
ANSWER
CRIMINAL LAW AND PROCEDURE

July, 2005

1) PROBABLE CAUSE

The officer did have probable cause to pull over defendant after observing him drive off the road three times. Probable cause requires that an officer have articulable and reasonable grounds to believe a person has committed an unlawful act. Here, the defendant violated traffic laws by failing to operate his vehicle in a requisite safe manner - which the officer observed - and therefore probable cause is satisfied.

This problem presents a fact situation that is basically the 2005 Arkansas case of Lilley v. State. In that case probable cause was similarly found to have been satisfied by erratic operation of the vehicle.

2) CONSTITUTIONAL IMPLICATIONS

The Fourth Amendment's prohibition against unreasonable search & seizures is the amendment most applicable to this fact pattern. The key issue is the detention after the traffic stop was over coupled with the question of reasonable suspicion to conduct a dog search of the vehicle.

The U.S. Supreme Court held in Illinois v. Caballes (Jan. 2005) that law enforcement officers, while in the process of a traffic stop, may conduct a dog "sniff" search of a vehicle without implicating the Fourth Amendment. The Court reaffirmed that dog sniff searches are not searches generally under the constitution, and as long as the search takes place while the traffic stop procedures are being performed it is also not a Fourth Amendment violation. In Illinois v. Caballes, a defendant was pulled over after a traffic violation, and while one officer processed the ticket a second officer arrived and lead a narcotics dog around the vehicle. There was no constitutional violation.

3) REASONABLE SUSPICION TO DETAIN

Based on the previous Arkansas Supreme Court decisions in Sims v. State, the recent Lilley v. State and Arkansas Crim. R. 3.1 there was not reasonable suspicion to detain the defendant. Arkansas Crim. R. 3.1 allows for a law enforcement officer, lawfully present, to detain an individual based on reasonable suspicion for 15 minutes, or as reasonably necessary under the circumstances. Reasonable suspicion is a law enforcement officers belief that criminal activity has been engaged in, but does not rise to the level of probable cause that would allow an arrest. In Sims v. State, the Arkansas Supreme Court stated that reasonable suspicion in the context of a traffic stop must not only be supported by objective and reasonable factors that in their totality allow for reasonable suspicion – but, importantly here, the reasonable suspicion must be formed before the traffic stop was ended.

In the Sims case before the focus was on the "factors" that reasonable suspicion was based on to detain and conduct a dog sniff. The Arkansas Supreme Court rejected the objectivity of the

factors cited by the law enforcement officer and found there was no reasonable suspicion.

In the recent Lilley decision, the Arkansas Supreme Court focused on the fact that the traffic stop was ended before the officer could have determined there was reasonable suspicion to detain and conduct a dog sniff.

Here, the facts state that "the officer completed writing the warning ticket and handed everything back to Mr. High." Based on exactly the same fact pattern the Arkansas Supreme Court held in Lilley that at this point the traffic stop was over.

Based on Arkansas Crim. R. 3.1 requiring reasonable suspicion to detain and the fact that the Arkansas Supreme Court held in Sims that the reasonable suspicion must be formed before the traffic stop is over – there was no reasonable suspicion before the traffic stop ended.

It should be noted that the Lilley decision also rejected the proposition that the (1) air fresher odor, (2) farmer "oddity" (in Lilley the defendant said he worked in a farmers market, but the officer thought he said farmer), (3) car rental agreement with defendant as an additional driver, and (4) cross-country trip did not provide a basis for reasonable suspicion.

Therefore, under Arkansas Crim. R. 3.1 and Arkansas Supreme Court decisions in Lilley and Sims the officer did not have reasonable suspicion to detain the defendant after the traffic stop was completed.

4) MOTION TO SUPPRESS:

Again, based on the Lilley decision by the Arkansas Supreme Court, the evidence of drugs seized following a dog search after the completion of a traffic stop should be suppressed under the Exclusionary Rule.

Although the dog search on its own was not a constitutional violation accord to Illinois v. Caballes - and in the context here would not implicate the Fourth Amendment if it had been conducted during the traffic stop - because there was not reasonable suspicion formed before the completion of the traffic stop (Sims) the detention was unlawful and the drug evidence should be suppressed.

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1 Page
EQUITY AND DOMESTIC RELATIONS

John and Mary have come into your office for advice. Last year just after their eighteenth birthdays they obtained a marriage license, eloped to another county in Arkansas and got married by a Justice of the Peace. The Justice of the Peace signed the marriage license, but John and Mary never got around to filing it with the County Clerk. They announced the marriage to their friends and family on the night of their graduation from high school. It's been a little over a year now, and they both realize they made a mistake. There has been no abuse or infidelity. John has an opportunity to work overseas, and Mary wants to go to another state to attend college. They are both in agreement that they want to end the marriage. It is not a covenant marriage. Since the marriage they bought a mobile home on credit for which they are jointly obligated to a local bank. The mobile home is located on an acre of land that Mary's grandmother left to Mary in her will. You have represented both of their families over the years. John and Mary have come together to your office to ask you for advice. They have asked the following questions:

1. What are grounds for divorce in Arkansas? Do John and Mary have grounds?

2. What will happen to their property and debts upon divorce?

3. What is the law on annulment in Arkansas and can this marriage be annulled?

4. Since they never got around to filing their marriage license with the County Clerk, can they just tear up the marriage license and forget that the marriage happened?

5. Can you represent both of them in a divorce or annulment case in order to save money?

ARKANSAS ESSAY
ANSWER
EQUITY AND DOMESTIC RELATIONS

July, 2005

1. What are the grounds for Divorce in Arkansas? Do John and Mary have grounds?

There are two types of divorce in Arkansas, fault and no fault. In order to have a no fault divorce, (1) the parties must be separated for 18 months, or (2) one party must be insane for 3 years. There are no facts that indicate that the parties have been separated for 18 months or that either party has suffered from insanity for three years. Thus, John and Mary are not entitled to a no fault divorce.

The grounds for a fault divorce in Arkansas are: (1) impotency, (2) felony conviction, (3) habitual drunkenness for one year, (4) cruelty - which requires an endangerment of life, (5) general indignities - which requires habitual and systematic neglect, contempt or hatred, (6) adultery, and (7) willful failure to support a spouse. None of these grounds apply to this case. The facts indicate only that there has been no abuse or infidelity.

2. What will happen to their property and debts upon divorce?

John and Mary's marital property will be distributed equally, unless equity requires otherwise. John and Mary's separate property will go back to the party who initially acquired it. The Arkansas rule for distribution of debts and assets upon divorce is that each spouse is entitled to1/2 of the marital property to each spouse unless equity requires otherwise. Marital property is property acquired during the marriage, aside from gifts or inheritance (which are considered separate property). John and Mary's mobile home will probably be sold in order to pay off the mortgage. The remaining debt, if any, will be distributed equally to John and Mary. If the trailer is worth more than the mortgage, then any proceeds after the debt is payed off will be split equally between Mary and John. The land on which the mobile home sits is Mary's separate property since she acquired it through inheritance. Thus, Mary will retain her separate property, unless equity requires that a portion of it be distributed to John.

3. What is the law on annulment in Arkansas and can this marriage be annulled?

In Arkansas, a marriage may be annulled if there are defects in the marriage at the time of its execution which make it void, or voidable. Examples of such defects are nonage, mistake, fraud, duress, incestuous, or religious differences. If the marriage is void, then anyone may seek to have the marriage avoided. If the marriage is voidable, then only the parties to the marriage may seek annulment.

In this case, the marriage may be annulled. Though the parties are old enough to properly be married, the parties were of such a young age (barely 18 years old) that they did not comprehend the nature of the commitment and the consequences of their actions, thus making the marriage voidable by the parties. John and Mary may seek an annulment.

4. Can the parties tear up the marriage license and forget that the marriage ever happened?

Although the marriage license was not properly filed with the County Clerk, the parties may not simply tear up license because a marriage license was never filed. The marriage was in existence in Arkansas despite it's invalidity due to failure to file. Arkansas has in rem jurisdiction over the status of the marriage, thus any action taken against the marriage must be done in an Arkansas court. In this case, John and Mary simply tearing up the marriage license does not destroy the status of the marriage in Arkansas. The parties are still married and still have marital property. The dissolution of such marriage and distribution of such marital property must be done by an Arkansas court.

5. Can you represent both of them in a divorce or annulment case in order to save money?

I could represent both parties to the divorce or annulment in order to save them money. However, it may be a violation of the Model Rules of Professional Conduct due to a conflict of interest. Dual representation in a divorce proceeding, though allowed in Arkansas however, is highly ill advised due to the potential violation of the Rules of Professional Conduct concerning a conflicts of interest. If both parties are informed of the potential conflict and consent to dual representation, then such a violation may be waived by the parties. Since John and Mary are not hostile to one another and have no children, dual representation could be possible; however, there is a nearly inevitable conflict of interest when it comes to the distribution of property. Once again, dual representation in a divorce proceeding is allowed in Arkansas. As a result of such a conflict, it would be ill advised to represent both of them in a divorce or annulment proceeding, because, a violation of a Model Rule of Professional Conduct gives the represented parties grounds for a legal malpractice lawsuit.