

BOARD'S WRITTEN TEST

MARYLAND BAR EXAMINATION

Tuesday, February 24, 2015

Afternoon Session - 3 Hours

Questions 4, 5, 6, 7, 8, 9, and 10

IMPORTANT PROCEDURES

- 1. Sit in your assigned seat.** Occupy the place marked with the seat number assigned to you by the State Board of Law Examiners. Scores will be assigned by seat number, and no names shall appear on the answer booklets. Check each of your answer booklets at once to be sure that each bears your seat number. If you find a discrepancy, immediately contact a proctor for assistance.
- 2. Write each answer in the book designated for the question.** The afternoon session of the Board's Written Test has seven essay questions numbered four through ten. There is a separate answer booklet for each numbered question. Write your answer to question 4 in the booklet for question 4, the answer for question 5 in the booklet for question 5, etc. One team of graders scores all of the answers to a single numbered question. Hence, your answer to a question will not be seen by the grading team and will not be graded unless it appears in the proper booklet.
- 3. Allocate the suggested writing time as you desire.** Each essay question is intended to carry equal weight in the final grade. The suggested time to answer each essay question is 25 minutes. **Although the suggested times to answer the questions total 2 hours 55 minutes, you will have 3 hours to work on the afternoon session. You may allocate the difference (5 minutes) in any manner you deem appropriate.**
- 4. You will be allowed one answer booklet for each question.** Begin each answer at the top of a page. Do not copy the questions. Use one side of the page only until you have filled the booklet. Then turn the booklet over and write from back to front if you need more pages. **Do not tear pages from your booklets.** You also may use your test questions and statutory extract for scratch work.
- 5. Develop your reasoning fully and write legibly.** The Board will not grade an illegible answer. Print your answers if your handwriting is difficult to read.
- 6. Obtain Board Staff assistance at the end of the test session if you write an answer in the wrong booklet.** Do not waste testing time trying to fix the administrative mistake. **When the afternoon test session concludes, you will be given an opportunity to have the Board's Staff assist you in correcting the problem. Thereafter, any answer appearing in the wrong booklet will not be graded.**
- 7. You must turn in all test answer booklets to your proctor.**
- 8. You may keep the essay test questions and statutory extract when testing ends.**

QUESTION 4 (Orange Answer Book/Orange SofTest™ Header)

(25 Minutes)

Karen was stopped for speeding by the Maryland State Police in the vicinity of Salisbury, Maryland. Karen owned and was driving the car at 82 miles per hour in a 65 mile-per-hour zone while Daniel was sitting in the passenger seat. While Karen was interacting with the police officer and being issued a citation for speeding, Daniel exited the car and attempted to walk away. He was quickly apprehended and placed under arrest for fleeing and eluding. The officer then searched the car and found twenty pounds of marijuana in the trunk of the vehicle. Karen and Daniel were both subsequently charged with possession with intent to distribute marijuana. Karen was also charged with speeding, and Daniel with fleeing and eluding the police.

Daniel has retained you, a Maryland lawyer, to defend him.

Karen and Daniel each move to suppress the evidence seized. How and why should the court rule as to each? Evaluate the likelihood of either defendant being convicted of any crime.

AN EXTRACT HAS BEEN PREPARED FOR YOUR USE IN ANSWERING QUESTION 5. IT HAS BEEN PRINTED SEPARATELY. IF YOU DID NOT RECEIVE A COPY OF THE EXTRACT, PLEASE CONTACT YOUR PROCTOR AND OBTAIN A COPY BEFORE ANSWERING THE QUESTION.

QUESTION 5 (Pink Answer Book/Pink SofTest™ Header)
(25 Minutes)

John Adams, President of Adams Construction, LLC, filed a complaint in the District Court of Maryland for Baltimore County against Burr for breach of a construction contract in the amount of \$15,000. The complaint was signed by Adams on behalf of the LLC and included a demand for judgment on affidavit in proper form. Adams is not an attorney. Burr was properly served and failed to file a notice of intention to defend.

Burr lives and works in Cecil County, the contract was entered into in Cecil County, and the work was done in Cecil County. Burr owns property in Cecil County.

Adams and Burr do not appear at the scheduled trial date, and judgment is entered on February 1, 2015, for Adams Construction, LLC against Burr in the amount of \$15,000 plus costs with interest to accrue at the legal rate.

- A. What action(s) should Adams take with regard to obtaining a lien of judgment on the Cecil County property?**
- B. What discovery options are available to Adams for finding assets to satisfy the judgment? When and how can they be served?**
- C. Burr comes to you, a Maryland attorney, on February 14, 2015, and wants to have the judgment overturned and the case tried in Cecil County. How do you advise?**

Explain your reasoning fully.

QUESTION 6 (Red Answer Book/Red SofTest™ Header)
(25 Minutes)

In September 2005, Tom borrowed the principal amount of \$300,000 from Friendly Bank in order to purchase a 12-acre parcel of land known as Shady Place in Prince George's County, Maryland. He signed a promissory note and secured the loan by a purchase money deed of trust on the Shady Place property in the principal amount. The purchase money deed of trust was recorded in the Land Records of Prince George's County, Maryland, on September 23, 2005.

On July 21, 2007, Tom refinanced the purchase money deed of trust by borrowing the principal amount of \$350,000 from Patuxent Bank. At the closing of the refinance loan on July 21, 2007, Tom executed a promissory note, a refinance deed of trust on the Shady Place property in the principal amount, and a refinance affidavit which was attached to and became a part of the refinance deed of trust. From the proceeds of the refinance loan, the purchase money deed of trust securing Friendly Bank was paid off in the amount of \$255,000. A release was filed on August 20, 2007. Patuxent Bank was not aware and had no knowledge of any other liens on the Shady Place property and did not have a title search done on the Shady Place property. As the refinancing lender, Patuxent Bank intended to maintain for its refinance deed of trust the same first lien priority position on the Shady Place property as the purchase money deed of trust. Through inadvertence, the refinance deed of trust securing Patuxent Bank was not recorded in the Land Records for Prince George's County, Maryland, until April 1, 2011.

Unknown to Patuxent Bank, on July 28, 2007, Tom obtained a home equity line of credit loan in the amount of \$100,000 from County Bank secured by a deed of trust on Shady Place. The deed of trust securing County Bank for that loan was recorded in the Land Records of Prince George's County, Maryland, on July 31, 2007.

County Bank has claimed that its deed of trust is in first lien priority position on the Shady Place property. Patuxent Bank has claimed that its deed of trust on the Shady Side property is in first lien priority position. County Bank has commenced a suit in the Circuit Court for Prince George's County, Maryland, to have the Circuit Court determine the lien priority positions of County Bank and Patuxent Bank.

- A. As the attorney for County Bank, on the given facts, state in detail the argument(s) you would make to the Circuit Court that County Bank is in first lien priority position over Patuxent Bank on the Shady Place property.**
- B. As the attorney for Patuxent Bank, on the given facts, state in detail the argument(s) you would present to the Circuit Court that Patuxent Bank is entitled to be in first lien priority position over County Bank on the Shady Place property.**

QUESTION 7 (Blue Answer Book/Blue SofTest™ Header)

(25 Minutes)

T-Mart is a convenience store in Howard County, Maryland. Customer came into the store and told Manager that she saw two young men sitting in a car in the store parking lot with guns. Customer told Manager the location and description of the car and the men. Manager told Officer Friendly, an off-duty Howard County police officer who was employed by T-Mart to work security at the store, to check it out. As Officer Friendly approached the car, he saw two men, Tom and Jerry, sitting in the car with what appeared to be handguns. Officer Friendly ordered Tom and Jerry out of the car with his service weapon pointed at them. As Tom and Jerry exited the car, Tom took off running, upon which Officer Friendly tackled Tom and struck Tom twice in the face with his fist.

Hearing the commotion outside, Customer who was inside the store, ran to the front of the store to see what was going on when she slipped on some liquid that had spilled on the store floor. As a result of her fall, Customer injured her wrist. Customer regularly shops at T-Mart.

After putting Tom and Jerry in handcuffs, Friendly took them into the store for questioning. Upon questioning, Manager and Friendly discovered that Tom and Jerry did not have handguns but rather paintball pistols. They determined that Tom and Jerry were not doing anything wrong, but were just playing with the paintball pistols that Tom had recently received as a gift. Tom and Jerry were released, but Tom was transported to the hospital for the injuries to his face.

In addition, Customer needed medical attention for her injuries from her fall. As Customer was being taken to the ambulance, she shouted to the crowd of onlookers, “Jerry is a low-life thief; he tried to rob the store!” Reporter, who was one of the bystanders, overheard Customer’s comments, and later printed an article in the local newspaper regarding the comments. As a result of the story, Jerry was fired from his job.

What civil causes of action do you anticipate will be filed against whom? Analyze each claim and describe the likelihood of success of each claim.

QUESTION 8 (Tan Answer Book/Tan SofTest™ Header)
(25 Minutes)

The Maryland General Assembly, for the stated purpose of preserving the State's natural resources, recently enacted two pieces of legislation. The first quadruples the fees for non-Marylanders to obtain permits to hunt black bears in Maryland. The second piece of legislation bans the acquisition of real property in Washington, Allegany, and Garrett Counties by any individual who has not resided in Maryland for a period of at least 10 years.

A Pennsylvania resident, an avid hunter, has approached you, a licensed Maryland attorney, requesting assistance in seeking to invalidate these two provisions. He plans to purchase a bear-hunting permit in the upcoming season. Also, he contracted to purchase a piece of undeveloped real property in Garrett County prior to the enactment of the new legislation. Settlement on the property, however, has yet to occur.

What would you advise?

QUESTION 9 (Green Answer Book/Green SofTest™ Header)

(25 Minutes)

Jones and Smith were close friends. In 2004, Jones, who had recently sold her home and with \$100,000 from the proceeds, was looking for a new place to live. Smith, who owned a home (the “House”) in Manchester, Maryland, suggested Jones move into the House with her and share expenses related to the House. Realizing that the House was small and needed significant improvements, Smith orally agreed to make Jones a co-owner of the House if she would pay for the improvements needed to the House necessary for her to reside there (the “Improvements”). This agreement was never reduced to writing and Smith did not add Jones’ name as a co-owner of the House.

Jones spent \$100,000 on the Improvements to upgrade the kitchen and construct an addition to the House with an additional bedroom and bathroom. Jones recorded the cost of the Improvements and their shared expenses in a ledger.

In 2014, Jones and Smith were no longer on speaking terms. Smith decided to sell the House and move to Florida and notified Jones that she must vacate the House by the time the sale is completed.

Jones became very upset, claiming that in return for paying for the Improvements, Smith had promised to add her name to the title to the House and that, but for this agreement, she never would have spent \$100,000 on the Improvements.

Smith denies there is any enforceable agreement to add Jones’ name to the title, and only agreed that if Jones paid for the Improvements, she could reside in the House rent-free so long as Smith owned the House.

Jones consults you, a Maryland attorney, to pursue her rights against Smith.

Advise Jones about her potential causes of action and the likely defenses Smith could assert. Do not discuss any landlord/tenant issues.

QUESTION 10 (Yellow Answer Book/Yellow SofTest™ Header)
(25 Minutes)

Fred and Barney had a bitter business dispute. As a result, Barney brought suit against Fred in the Circuit Court for Harford County, Maryland, seeking the return of \$500,000 that Barney claimed Fred was hiding from him in a Swiss Bank account.

At the trial, Barney testified that: “Fred told me that he had taken some money because he thought that I did not do anything to earn the money.” Barney then called Wilma, Fred’s ex-wife. He proffered that she would testify that while Wilma and Fred were separated, Fred confided in her in the presence of their seven-year-old daughter that he had stashed \$500,000 in a Swiss Bank account.

Next, Barney called Slate who testified that his family and Fred’s family shared a doctor, Dr. Phyllis, and that Dr. Phyllis told Slate that “Fred had taken a bunch of Barney’s money and hid it in a Swiss Bank account.”

Next, Barney called Dr. Phyllis and Mr. Granite to testify about communications Fred made to each of them about his assets while they were providing professional services to Fred. Both witnesses were subpoenaed to testify. Dr. Phyllis is Fred’s primary care physician and Mr. Granite is Fred’s certified public accountant.

During Fred’s portion of the case, Betty, Fred’s current girlfriend and Barney’s ex-wife, testified that she was married to Barney until six months ago, and that she had been embarrassed because several people in their part of town considered Barney to have problems telling the truth. Betty further testified that Barney was “clearly just trying to get money from hard-working Fred because I left him for Fred.”

Finally, Betty testified that Barney had stolen money from others on numerous occasions and was given a Probation Before Judgment (“PBJ”) by the court for theft after the police caught him in “one of his scams.” PBJs are not convictions in Maryland.

Assume that timely objections have been made to all eight efforts to place the above testimony into evidence.

How should the court rule on each objection and why? Discuss fully.