

BOARD'S WRITTEN TEST

MARYLAND BAR EXAMINATION

Tuesday, February 23, 2016

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)

James and Donald formed a Maryland partnership, J & D Consulting (J & D). J & D provided management services to the Littleton Recreation Council, Inc. (LRC), a non-profit corporation that oversaw recreation programs in the Littleton area of Allegany County, Maryland. J & D provided the day-to-day management of the recreation programs overseen by LRC. In 2014, J & D hired Debra Johnson to work in a preschool program that LRC offered for the 2014-2015 school year. The contract indicated that Debra's term of employment was to run from August 18, 2014, until the end of the school year, which ended in May 2015; however, Debra would receive monthly payments from August 18, 2014, through August 17, 2015.

In March 2015, LRC gave J & D notice that their contract would terminate at the end of the 2014-2015 school year. As a result of LRC's action, J & D terminated Debra's contract at the end of the 2014-2015 school year and failed to tender payments to her for June, July, and August of 2015. Debra sued J & D to recover the payments owed to her.

The matter proceeds in a court trial before a judge for whom you are working as a law-clerk. In preparing a memorandum for your judge, you are asked to consider the following issues:

- A. If Debra obtains a judgment against J & D and the partners individually, from what sources can she satisfy that judgment?**
- B. What potential liability do James and Donald have to each other if Debra succeeds in a suit for her unpaid wages claiming an unlawful termination of her contract?**

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)

Husband and Wife were granted an absolute divorce in Harford County, Maryland, in 2015. Prior to the divorce, the parties entered into a Voluntary Separation and Property Settlement Agreement that was incorporated, but not merged, into the judgment of divorce. As part of the agreement, Husband was required to pay Wife \$5,000 per month temporary rehabilitative alimony for a period of six years. The agreement further provided that the amount of alimony was subject to further order of the court and could be modified as to amount only.

Several months after the divorce was finalized, Husband sent a letter to Wife stating his income had been reduced by one-half and that, as a result, he was going to reduce the alimony payments to \$2,500 per month. He paid \$2,500 per month for two months and then filed a Motion for Modification of Alimony. Wife filed a Motion for Contempt requesting the alimony arrearage in the amount of \$5,000.

The Circuit Court for Harford County properly referred the case to a standing magistrate (formerly “master”) for hearing. At the conclusion of the hearing, the magistrate advised the parties of the proposed findings and recommendation denying Wife’s request for the \$5,000 arrearage.

- A. The day after the hearing, Wife comes to you, a Maryland attorney, seeking to contest the magistrate’s findings and recommendation. Fully advise Wife of what needs to be done.**
- B. Assume the Circuit Court upholds the magistrate’s recommendation and issues an order denying Wife’s request for the alimony arrearage. What procedures are available to Wife to obtain review of the Circuit Court order?**

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

(25 minutes)

Daughter and Mother, reside together in Wicomico, Maryland. Mother's health has failed to the point that Daughter can no longer care for her. As a result, Daughter contacts Nursing Home for her mother to reside there. Mother's hands are very arthritic, and she is not able to sign her name anymore. Upon admission to Nursing Home, there are many documents to be signed including the "Billing Agreement." Mother makes an "X" in the space for her signature on the billing agreement, and Daughter signs her name and the word "Agent" behind it. There are two witnesses to each signature. The admissions officer asks Mother if she has a "Durable Power of Attorney Document," and she replies that she does not.

The billing agreement between Mother and Nursing Home states that Nursing Home will provide room, board, and nursing care to Mother in return for \$8,000 per month.

Daughter writes a check from her personal account to pay for the first month's stay. Daughter writes and signs a check from Mother's checking account, for which she is a signatory, in each of the next three months. After that, the payments stop. Nursing Home sends multiple letters to Daughter inquiring about payment.

Mother lives at Nursing Home for an additional six months and then passes away. Her balance owed to Nursing Home at the time of her death was \$53,450 for care, costs, and various items. Nursing Home sends multiple bills to Daughter, who does not pay them.

After three months of no response from Daughter, Nursing Home files suit for payment in the Circuit Court for Wicomico County and names Mother and Daughter, each individually, as defendants.

Daughter retains you as her attorney to defend the suit. The paperwork signed by Mother and Daughter at Nursing Home is silent as to whether an Agent is liable for costs and expenses of the principal.

A. What advice would you give Daughter as to the claim against her mother?

B. Is there a valid contract between:

(1) Nursing Home and Mother?

(2) Nursing Home and Daughter?

Explain fully.

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

Maryland recently enacted new legislation in an effort to prevent witness intimidation in criminal trials. The law provides that when a request is made by the State's Attorney, the court may order that a witness be permitted to testify via closed-circuit television with their identity concealed. Although the defense may question the witness during the trial, this is the limit of defense contact with that particular witness when the law is invoked by the State.

Furthermore, the new law provides that anyone who allegedly committed the offense of witness intimidation within the three years immediately preceding the enactment of the legislation is able to be charged with a crime. If convicted, the defendant can be sentenced to up to 15 years in prison and fined up to \$500,000. The mandatory minimum sentence imposed by the law is seven years in prison without the possibility of parole.

You are an Assistant Attorney General tasked with analyzing the constitutionality of the new law. What would you advise?

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

Sam Jones (Jones) owns, in fee simple, 400 acres of unimproved real property in Harford County, Maryland, known as “Development Parcel.” On May 3, 1987, a deed was properly executed and acknowledged by Jones conveying the Development Parcel to Prestige College (Buyer). The deed was properly recorded in the Land Records of Harford County, Maryland. The deed (Deed) provided as follows:

Jones does hereby grant and convey, in fee simple, unto Buyer, its successors and assigns, subject to the terms, conditions, and covenants hereinafter set forth, all that parcel of land described on Exhibit “A” attached hereto and made a part of this deed and known as the Development Parcel.

* * * * *

Subject, however to the following covenants and conditions, which shall bind and run with the Development Parcel, which the said Buyer for itself, its successors and assigns, does hereby covenant and agree that the Development Parcel shall be used for agricultural, academic, research and development, and the delivery of health and medical care and services, which uses may specifically include, but not be limited to, the development of a research campus (Covenant).

Buyer obtained all required permits to develop academic and medical research buildings in a campus style setting. The buildings were large, and the development was dense.

Jones was upset with Buyer because he believed that the Covenant was breached by Buyer due to the density and scale of the approved plan. He files suit in the Circuit Court for Harford County, Maryland, seeking a declaratory judgment precluding the Buyer from implementing the approved plan. Buyer filed Motions to Dismiss and for Summary Judgment (Motions) on the grounds that there were no disputed facts and that the plain language of the Deed precluded consideration of any other evidence.

- A. How should the Circuit Court rule on the Motions? Explain your reasoning fully.**
- B. Assume that, ten years after completion of construction on the Development Parcel in accordance with the permits, Buyer transferred two acres of the Development Parcel to Smith for use as a convenience store. The Covenant was omitted from the deed of conveyance to Smith. Is Smith bound by the Covenant contained in the deed to Buyer? Explain the reasons in support of your answer.**

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

(25 minutes)

Electrician was employed by Electrical Company as a master electrician. Electrician drove his own pickup truck to Electrical Company's headquarters at the beginning of each work day and obtained a company van to travel to job sites. At the end of each work day, Electrician returned to company headquarters and retrieved his pickup to drive home.

At the end of the work day, on December 15, 2015, Electrician fell asleep at the wheel of his pickup truck while driving home from work through downtown Baltimore, crossed the marked center line, and collided head-on with Driver's car, which was proceeding in the opposite direction. Electrician suffered minor injuries, but Driver, the sole occupant of the car, was severely injured by the collision. Flames erupted from the engine compartment of the car immediately after the collision.

The accident happened near Hospital, and Nurse, who was walking toward Hospital to begin his night shift on Hospital's general surgery recovery unit, witnessed the accident and rushed to give aid to Driver. Nurse found Driver unresponsive, not breathing, and slumped at the steering wheel of his car. Nurse, fearful that the engine fire would engulf the car, pulled the driver out of the car. In doing so, Nurse, at one point, lost his grip on Driver, and Driver's head struck the pavement forcefully. Driver died at the scene of the accident. An autopsy revealed that Driver's death was the result of a skull fracture caused by his head striking the pavement. Driver could have survived his other injuries from the accident had he not suffered the skull fracture.

Lawyer, a Maryland attorney, read about the accident in the local newspaper the day after the accident. Two days later, after the identity of Driver had been made public, Lawyer sent a letter to Driver's wife offering to represent her in legal action to recover appropriate damages arising from the accident.

Driver's wife, who was Driver's only surviving family member and the Personal Representative of Driver's estate, hired Lawyer to represent her in connection with the accident. On behalf of Driver's wife, Lawyer properly filed a wrongful death and survival action naming as defendants Electrician, Electrical Company, Nurse, and Hospital. Assume that all of the facts as stated above can be proven at trial with competent and admissible evidence.

A. What defense(s) should each of the defendants raise to this suit?

B. Evaluate the propriety of Lawyer's contact with Driver's wife.

Fully explain your reasoning.

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

Tina and Joan are female pediatric doctors who met shortly after medical school. They were validly married in California in December 2012. They adopted a four-year-old son, Tom, in March 2014 and agreed that Joan would quit her practice and become the stay-at-home mom to care for Tom.

On March 15, 2015, Tina and Joan relocated from California to St. Mary's County, Maryland, and purchased a home there as tenants by the entirety. Shortly thereafter, Tina became more aloof and started to go on more out-of-state business trips. While away on one of these trips, Joan looked at Tina's emails on the home computer and discovered that Tina was having an affair with John, a former flame living in California.

Joan was worried that Tina intended to leave her and Tom, so she began to transfer \$40,000 of the \$50,000 from their joint checking account with marital earnings therein, into an account in her name alone. She also called her sister in New York and asked if she could stay with her while she figured out what was happening in her marriage. Joan took Tom to New York on December 3, 2015, leaving Tina a note that she might return when her head cleared.

Joan comes to you, a licensed Maryland attorney, and asks the following:

- A. May Joan sue for absolute divorce on the grounds of adultery?**
- B. If the divorce is granted, how will the court determine legal and physical custody of Tom?**
- C. If the divorce is granted, will Joan be entitled to the home and the contents?**
- D. Will Joan be entitled to keep the \$40,000?**
- E. Does the fact that this couple was married before Maryland recognized same-sex marriage affect your analysis?**

How would you advise Joan as to each of her questions? Discuss fully.