

BOARD'S WRITTEN TEST

MARYLAND BAR EXAMINATION

Tuesday, July 26, 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. If you are hand writing, 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 or type each answer in the book or answer field 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/answer field for each numbered question. One team of graders scores all of the answers to a single 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 or answer field.
- 3. Allocate the suggested writing time as you desire. Each numbered essay question is intended to carry equal weight in the final grade.** The suggested time to answer each essay question is 25 minutes. **Although these suggested times 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. Handwriters 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 or type in the wrong answer field.** 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 or field may not be graded.**
- 7. You must turn in all test answer booklets and scratch workbooks.**
- 8. You may keep the Board's essay test questions and statutory extract when testing ends.**

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

(25 minutes)

Owner undertook a major renovation of his home in Baltimore County, Maryland. The renovation included a recessed lighting fixture in the ceiling of a hallway which was supplied and installed by Gencon, the general contractor for the renovation. The fixture was manufactured by Lightco. After the fixture was installed, Insulateco, an insulation installer hired as a subcontractor by Gencon, blew cellulose insulation into the space above the hallway ceiling.

The fixture included a thermal protector (TP) device which was designed to interrupt electrical current to the fixture when its temperature exceeded a safe limit. The TP was designed to allow current to flow again once the temperature fell below the limit. In the event the temperature of the fixture exceeded its safe limit, the fixture was supposed to blink as the TP interrupted, and then restored, current as the temperature fluctuated around the safe limit.

These two warnings appeared in the manual and on two sides of the fixture in bold red lettering:

“NOTICE – THERMALLY PROTECTED FIXTURE; BLINKING LIGHT MAY INDICATE INSULATION TOO CLOSE TO FIXTURE.”

“WARNING – RISK OF FIRE. DO NOT INSTALL INSULATION WITHIN 3 INCHES OF FIXTURE SIDES NOR ABOVE FIXTURE IN SUCH A MANNER TO ENTRAP HEAT.”

A week after the insulation was installed in the hallway, a fire broke out at Owner’s house causing substantial damage. The fire marshal who investigated the fire concluded that it originated in the light fixture because the flammable cellulose insulation was placed too close to the fixture, trapping heat, which ignited the insulation. Owner had not seen any blinking in the fixture prior to the fire.

Prior to filing suit, Owner engaged a lighting engineer as an expert witness who will opine and produce evidence that the location of the TP in the fixture was a defective design which allowed the fixture to overheat without any warning blinking.

Lightco has engaged a lighting engineer as an expert witness who will opine that the TP failed to blink a warning because the improperly installed insulation by Insulateco prevented the TP from detecting the true temperature of the fixture.

Assume that all the facts recited above can be introduced at trial by competent and admissible evidence.

- A. On what theory(ies) can Owner seek recovery for its fire damage from Lightco, Insulateco, and Genco?**
- B. What defense(s) is each defendant likely to argue?**

Explain your answers fully. Do not discuss contract theories or warranties, express or implied.

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

(25 minutes)

Ronald Burgandy, a Baltimore County resident, who prefers to be called “the Ronald,” was a second-year law student at Northern Maryland University located in Baltimore City. He aspired to be President of the Student Government Association. His main rival for the post was Millary Corningstone, a Howard County resident. Ronald launched an aggressive campaign, but had fallen significantly behind Millary in the polls.

Following a debate between the two contestants in NMU’s new auditorium, Ronald intended to embarrass Millary by squeezing her hand when they shook hands, coupled with a hushed snide remark about her choice of attire. Unfortunately, his plan backfired, as Millary had the stronger grip, which broke several bones in Ronald’s hand. Ronald cried out in pain and attempted to free his hand from Millary’s grip, but she did not relent. Several of Ronald’s campaign staff raced onto the stage to aid him, but the weight of everyone caused the stage to collapse resulting in serious multiple injuries and hospitalization of all involved in the fracas.

Ronald filed a lawsuit against Millary in the Circuit Court for Montgomery County, Maryland. The civil complaint was a jumble of campaign catchphrases and personal attacks on Millary’s character and poor fashion taste. The complaint vaguely alluded to “an assault on my person in the form of an excessive handgrip by Candidate Millary Corningstone, and grievous emotional and physical harm,” but otherwise was not very clear or precise as to what happened. Assume that the complaint was filed within the applicable statute of limitations and that service of process was valid.

A. What pleadings and or motions should Millary file in response to the civil complaint?

Later, Ronald served Millary with a set of interrogatories, request for production of documents, and requests for admission. Millary retains you as her attorney. She reports to you that she sent Ronald a timely formal response to the interrogatories and document requests. In turn, Ronald sent her a terse email, stating that he was not pleased with her responses. He then immediately filed a motion for sanctions against Millary. Millary asks whether she should be concerned.

B. What would you advise Millary?

Millary also informs you that she has not responded to Ronald’s requests for admission because the questions he posed were so vulgar, offensive, and called for her disclosure of confidential medical facts. More than thirty days have passed since she received his requests for admissions. Millary asks you whether that is a problem.

C. What would you advise Millary?

Explain your reasoning fully.

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

(25 minutes)

In 1984, Al acquired a 6-acre parcel of vacant land at the intersection of Washington Avenue and Charles Street in Charles County, Maryland. In 1985, Al subdivided the parcel into two rectangular 3-acre lots. Lot 1 fronted on Charles Street (Charles Street Lot) and Lot 2 fronted on Washington Avenue (Washington Avenue Lot). In July 1985, Al sold the Washington Avenue Lot to Bill, and Al retained the Charles Street Lot. In the deed of conveyance of the Washington Avenue Lot to Bill, Al included a general unlocated 25-foot-wide easement from the Washington Avenue Lot over the Charles Street Lot.

In August 1985, Al leased the Charles Street Lot to Carl who operated a commercial trucking business on it. During the time of the lease, Carl erected a fence along the entire boundary line between the Charles Street Lot and the Washington Avenue Lot. In July 1990, Carl purchased the Charles Street Lot from Al. In December 1990, Carl constructed a building on the Charles Street Lot and planted a row of Leyland Cypress trees on his property to conceal the back of his building and improve the appearance of his Charles Street Lot.

In January 2016, Bill sold the Washington Avenue Lot to David. The Washington Avenue Lot had remained unimproved, and the easement had never been used during Bill's ownership of the property.

David informed Carl that he intends to improve the Washington Avenue Lot and use his 25-foot easement granted to him in his deed over the Charles Street Lot. Carl does not want David to have the use of the 25-foot easement over the Charles Street Lot.

Carl seeks your advice as a Maryland attorney competent in real estate matters to determine what arguments can be raised to prevent David's use of the 25-foot easement.

What potential arguments could be raised on Carl's behalf? Explain fully.

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

(25 minutes)

Abel, a resident of Howard County, Maryland, is the sole owner of "Better Widgets," a manufacturing business located in Howard County that sells Widgets to the United States government. Baker tells Abel that he intends to open "Best Widgets" to compete with Abel's company. Abel and Baker enter into negotiations to sell Baker the company during which Baker gives Abel a personal financial statement stating that Baker's net worth is \$2 million. In fact, Baker is nearly bankrupt. Abel and Baker orally agree that Abel will sell "Better Widgets" to Baker for \$1 million in 30 days and, at Baker's insistence, Abel will continue to manage "Better Widgets" for two years after the sale. Baker tells Abel he will not open "Best Widgets" in light of the agreement. In addition, Abel immediately signs a covenant not to manufacture widgets anywhere in the United States for an additional 20 years. In fact, "Better Widgets" is worth \$1.5 million, and \$2 million with continued management by Abel for two years.

Abel is unaware that the Pentagon has decided to order five million widgets, which would increase the value of "Better Widgets" to \$3 million. If Abel had known about the Pentagon's decision, he would never have agreed to sell the business to Baker for \$1 million. Baker knows about the Pentagon's decision. However, neither Abel nor Baker know that a third party is about to open "Amazing Widgets." A new competitor will dramatically affect the value of "Better Widgets," but neither Abel nor Baker can determine what the effect will be.

After learning of the Pentagon's decision, Abel notifies Baker that he will not sell "Better Widgets" to Baker, and will continue to manufacture widgets. Baker is preparing to file an action for breach of contract against Abel in the Circuit Court for Howard County, Maryland.

- A. What remedies can Baker seek for Abel's refusal to proceed?**
- B. What substantive defenses (or counterclaims), if any, can Abel raise?**
- C. What is the significance, if any, of the prospective new competitor?**

Explain your reasoning fully.

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

(25 minutes)

On November 22, 2013, Victor was shot. The incident took place in Cambridge, Dorchester County, Maryland. The bullet entered Victor's neck and severed his spine. As a result, Victor lost the ability to speak and became a quadriplegic. Two days later, in the hospital, Victor was told by doctors that he had 24 hours to live, and his eyes filled with tears.

On November 26, 2013, two detectives from the Dorchester County Sheriff's Office showed Victor a photo array that included Defendant's photograph. Victor was told to "blink hard" – that is, to blink his eyes and then hold them tightly closed to make an affirmative response. In response to questions from the detectives Victor identified Defendant as the person who shot him. At the time, Victor was restrained in a hospital bed and was on life support, including a ventilator. Victor was released from Shock Trauma in 2014 and died in November 2015 as a result of complications from his gunshot wound. Defendant was charged with first-degree murder and other crimes.

At the trial of the matter, the State proffered testimony from Victor's Girlfriend that in October 2013, she witnessed a gunman aim and fire one shot at Victor, which missed. Girlfriend was only able to provide a general description of the gunman from the October shooting. Girlfriend would testify, however, that Victor knew Defendant, and that Defendant had on several occasions prior to the October shooting argued with Victor over a debt. Defense counsel objected to admission of the proffered testimony.

Also at trial, the State offered expert ballistics evidence that a bullet casing recovered at the scene of the October shooting matched a bullet casing recovered from the scene of the November 22, 2013 shooting, indicating that both were fired from the same gun. Defense counsel objected to admission of the ballistics evidence.

Also at trial, the State attempted to introduce Victor's identification of Defendant made in the hospital. Defense counsel objected.

Explain fully how and why the court should rule as to each of the three objections raised by defense counsel.

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

(25 minutes)

The State of Maryland regularly taxes the income of professional athletes under the following statute (“Law”):

Maryland shall have the right to tax all wages earned by nonresidents of Maryland in the pursuit of sports activities for work done or services performed or rendered within or attributable to Maryland. The rate of tax shall be three percent (3%) (“Tax”), and it shall be applied to the income that is allocable to the number of games played in Maryland in proportion to all of the games played annually by the sports team in which the nonresident taxpayer participates.

Don Evans (“Evans”) is a resident of the State of North Carolina, and he is a forward on the Blues Professional Soccer Team (“Team”) that is located in North Carolina. Evans was the captain of his Team, and in connection with that position, he provided many services to the Team in addition to playing in the soccer games. For example, he: (1) helped recruit new players; (2) attended internal marketing meetings; (3) participated in community service projects sponsored by the Team; (4) gave media interviews; and (5) attended practices. All services described above were performed outside of Maryland. The wages he receives from the Team are for all services and games played in 2015. There were 20 games played in 2015, and only one of those games was played in Maryland.

Maryland taxed the number of games Evans played in Maryland in 2015, in proportion to the total number of games the Team played that year. Consequently, Maryland allocated one-twentieth or five percent (5%) of Evans’ income to Maryland, and then Maryland applied the rate of Tax to the allocated Maryland income.

Evans wants to challenge Maryland’s Law.

As counsel for Evans, evaluate the grounds for the challenge to the Law under the United States Constitution, specifically:

- A. The Equal Protection Clause of the Fourteenth Amendment.**
- B. The Due Process Clause of the Fourteenth Amendment.**
- C. The Commerce Clause of Article I, Section 8, Clause 3.**

Explain your reasoning fully as to each.

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

(25 minutes)

Officer Curly was on routine patrol when she saw Larry huddled together with unknown individuals in a known high-drug area in Garrett County, Maryland. Larry then glanced over his shoulder at Officer Curly, quickly jumped on his bicycle, and started to ride away as the other individuals quickly dispersed.

As Officer Curly drove behind Larry, she believed that Larry appeared nervous because he repeatedly looked over his shoulder at her and he began traveling faster and faster on his bicycle. He made repeated turns including three left turns in a row.

After Officer Curly saw Larry reach into his jacket pocket as if trying to dig something out, she activated her lights and sirens and attempted to pull him over. However, Larry jumped off his bicycle and ran down an alley. Officer Curly gave chase on foot and saw Larry throw something into the window of an apartment owned by Moe.

Officer Curly shortly caught up to Larry, and yelled “Stop, stop or I’ll taze you!” Larry then stopped, got on the ground and put his hands behind his head at Officer Curly’s demand.

Officer Curly then asked Larry if he had any weapons on him. When Larry denied having any weapons, Officer Curly patted Larry down for weapons anyway. Although she did not find any weapons, Officer Curly went deep into Larry’s jacket pocket and pulled out a couple loose vials of suspected heroin. Officer Curly then told Larry that he was under arrest for possession of heroin.

After Larry was taken down to the precinct, Officer Curly went back to Moe’s apartment. Officer Curly decided to climb through the open window because no one was home. Once inside, she saw a bag with numerous vials similar to those found earlier on Larry. She removed the bag from Moe’s apartment and took it back to the lab for testing which confirmed that the vials also contained heroin.

While in lockup, but before Larry was read his Miranda warnings, Larry was visited by Moe. Larry told Moe to say that the drugs belonged to a former tenant of Moe’s.

As Moe was leaving the jail, Officer Curly stopped him and asked him what Larry had told him. At first Moe declined to speak until Officer Curly warned him that he could be charged with the distribution of the heroin found in his apartment. Moe then reluctantly told Officer Curly what Larry had told him. Larry was then charged with both possession, and possession with the intent to distribute the heroin found on his person and in Moe’s apartment.

- A. Discuss what you anticipate will be the basis of Larry’s motion to suppress the evidence and statements obtained against him.**
- B. How should the court rule on the motion regarding the admissibility of the evidence and statements used against Larry?**

Explain your answers fully.