

BOARD'S WRITTEN TEST

MARYLAND BAR EXAMINATION

Tuesday, February 21, 2017

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)

Liz and her friend, Red, went to the ABC Mall in Annapolis, Maryland. ABC Mall is maintained by Maintenance Company. As Liz and Red walked through ABC Mall's food court to Subs-R-Us to purchase a sandwich and a drink, Liz slipped on soda and ice that a Subs-R-Us customer had just spilled. The wet floor was not marked, and Liz did not see the spill before she fell. As a result of the fall, Liz fractured her right hip, requiring surgery.

Subs-R-Us' employee, Samar, who had been a model employee for seven years at this location, was working the counter that afternoon. Just before Liz's fall, Samar had waited on Customer, who had carried her take-out order, including three or four sodas in a cup carrier, away from the counter. As Customer headed for the food court seating area, Samar began to do something else. Shortly after leaving the counter, Customer came back to the counter and told Samar, "I spilled my drinks." Samar looked out over the counter and saw a large brown spill not far from the Subs-R-Us service counter. Samar then immediately turned around to tell another employee in the back of the store to notify Maintenance Company of the spill. As Samar was relaying that information to the other employee, Liz slipped and fell on the soda that had flowed from the spill. Upset about Liz's fall, Red angrily approached Samar and began yelling insults at her. Samar, who did not take kindly to Red's insults, jumped over the counter and kicked Red in the stomach, injuring him.

The agreement between Subs-R-Us and Maintenance Company required Maintenance Company to maintain the food court area where Liz fell. It was Samar's understanding that when there was a spill on the floor outside the counter area, the Subs-R-Us employees were to call Maintenance Company maintenance on their pagers. Maintenance Company maintenance would then put up yellow warning signs around the spill site.

Both Red and Liz have indicated they plan to bring civil suits against Subs-R-Us and Maintenance Company for their injuries.

Maintenance Company and Subs-R-Us have asked you, a Maryland attorney, to identify all potential civil claims that can be brought against Subs-R-Us and Maintenance Company as a result of the injuries to Liz and to Red, and any defenses to such claims.

How would you advise them? Discuss your answer fully.

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

(25 minutes)

Abe and Mary have lived together for two years. They have discussed getting married. Abe earns \$100,000 a year as an account executive. Mary is his secretary earning \$40,000 annually. Abe has assets approaching \$1 million in value in his own name. Mary's assets in her own name total \$100,000.

Abe comes to you, a Maryland attorney. He wants an impregnable prenuptial agreement that would:

1. Allow Abe and Mary to each retain sole title to any property acquired prior to their marriage.
2. Provide that each would remain solely liable for any debt incurred prior to or during their marriage.
3. Provide that each would mutually waive alimony and marital property rights.
4. Require that each waive any ability to seek a divorce on the grounds of either parties' future adultery.

Abe has also indicated to you that Mary is not inclined to seek independent legal advice and wants you to answer any questions for both of them.

Abe has asked you to answer fully the following questions:

A. What steps do you recommend to assure that Mary cannot successfully challenge the Prenuptial Agreement?

B. What potential defenses might Mary have as to enforceability?

C. Can you answer Mary's questions about the proposed Prenuptial Agreement?

AN EXTRACT HAS BEEN PREPARED FOR YOUR USE IN ANSWERING QUESTION 6. 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 6 (Red Answer Book/Red SofTest™ Header)
(25 minutes)

Truck, LLC ("Truck"), a Maryland limited liability company, with its principal office in Calvert County, Maryland, sought to acquire eight messenger units ("units") for installation in its trucks so it could communicate with its drivers making deliveries. The units were manufactured by Transit Messages, Inc. ("Transit").

Truck intended to lease the units from Transit, but Transit did not do leasing transactions. Transit referred Truck to Alpha Finance Company ("Alpha") to lease finance the purchase of the units. Truck provided its executed Credit Application to Alpha which set forth the stated purposes that Alpha would purchase the units and Truck would lease them from Alpha for 60 months and pay installments of \$500 per month during that time. On August 22, 2016, Alpha acquired the units, notified Truck, and provided Truck with a copy of the contract by which the units were acquired.

On August 28, 2016, Truck and Alpha entered into the Master Lease Agreement ("Lease") for the units. Under the Lease terms, Truck was not permitted to terminate its monthly installment payment obligation of \$500 per month for 60 months. A purchase obligation clause in the Lease stated: "Lessee, Truck LLC, irrevocably and unconditionally agrees to purchase all of the units, "AS IS," "WHERE IS," without representation or warranty of any kind from Lessor, Alpha Finance Company, for the purchase amount of \$1 upon the expiration of the initial term of this Lease." One of the terms of the Lease provided: "Lessee, Truck, LLC, acknowledges that this Lease is intended to be a finance lease."

Another term of that Lease set forth that "Lessor, Alpha Finance Company, is not the manufacturer or supplier of the units and is not responsible for any delivery, installation, repair, maintenance, or servicing thereof, and Lessor, Alpha Finance Company, has no obligations or liabilities of any kind whatsoever concerning or relating to the units." There was also the following provision in the Lease: "Notwithstanding any claim or defect or any other reason whatsoever, all rentals and other payments under this Lease shall be paid by Lessee, Truck, LLC, to Lessor, Alpha Finance Company, or its assigns, absolutely and unconditionally, without any defense, setoff, claim or counterclaim of any nature." In the Lease, Truck was always designated and referenced as the lessee, and Alpha was always designated and referenced as the lessor. When delivered, Truck accepted the units without reservation or objection.

The units functioned for one month and then completely failed to operate. Transit could not correct the problems. Truck had made one monthly payment, but refused to make any additional payments because the units did not work. Truck revoked its acceptance of the units.

In December 2016, Alpha sued Truck in the Circuit Court for Calvert County, Maryland, for the unpaid balance due properly accelerated under the Lease. Alpha alleged among other contentions in its Complaint that the Lease constituted a finance lease in Maryland.

As part of its response to the Complaint, Truck alleged that the Lease constituted a contract for the sale of goods with a security interest and asserted a right to revoke its acceptance of the units.

Based on the given facts, state in detail the arguments you would make as a Maryland attorney that the lease constituted:

- A. A finance lease in Maryland.**
- B. A contract for the sale of goods with a security interest in Maryland.**

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

(25 minutes)

The Town of College Heights, Maryland, has received numerous complaints over the years from residents who are fed up with rowdy college kids who attend the local University. On November 23, 2016, the day before Thanksgiving, the Town Council enacted the following legislation:

Effective immediately, no owner, lessee, or occupier of a residential dwelling may hold events at the residence with more than 15 attendees, defined as University students who are non-residents of the dwelling (“Events”). Prior advertisement of events, via social media or otherwise, shall be a misdemeanor subject to a penalty of \$5,000 per event and/or six months in jail and repayment of Town’s costs for police enforcement of this law.

Plaintiff resides in the Town with her husband and two daughters who attend the University. Plaintiff also sells "Silver Jewelry" from her home. She threw a "Silver Jewelry" party on December 13, 2016, and invited 20 of her daughters' sorority sisters who attend the University. The next day, the Town Police Officer served Plaintiff with a criminal citation for violating the Events law.

Plaintiff is outraged that she has been charged for violating the new law. She hires you, a Maryland attorney, to represent her in challenging the validity of the law.

What challenges would you raise against the Town’s legislation? Discuss fully.

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

(25 minutes)

Plaintiff is a member of the Mayberry Town Council in Maryland. During a Town meeting on its budget, Plaintiff questioned whether it was proper for the Town to cut funds for a recreation center where many of the less affluent residents participate in various sporting activities. Councilmember Taylor interrupted Plaintiff and told her she was “unqualified to be on the Council,” “is a stupid slut,” and should just “shut her mouth.” Plaintiff, clearly upset by Taylor’s comment, asked the Council to continue the matter to another date and to publicly sanction Taylor, but it failed to do so.

Plaintiff saw an advertisement for Larry Lawyer (“Lawyer”) wherein he “promises to get results” and “will not charge a fee unless we win.” The next week, Plaintiff met with Lawyer in his Takoma Park office. Lawyer agreed to represent Plaintiff, and said Plaintiff will pay Lawyer one-third of any award. Lawyer also asked for \$5,000 to cover expenses and filing fees, and stated that he would prepare an action against Taylor alleging defamation. Later that day, Lawyer deposited \$3,500 in his trust account and the remainder in his personal account. Two weeks later, Lawyer filed a defamation suit against Councilmember Taylor on Plaintiff’s behalf.

- 1) Does Councilmember Taylor have a preliminary defense to the defamation claim?**
- 2) If the matter proceeds to trial, how should the Court rule on Council Member Taylor’s objections to the following testimony:**
 - a) Testimony from the Town’s Clerk that she had accepted a small amount of money offered by Taylor to drop a similar action she had filed against him in 2009; and**
 - b) Testimony from a female administrative aide for the Town that she had been warned by a co-worker to avoid Taylor because he’s known to be demeaning and to make obscene “jokes” around women?**
- 3) What charges could Bar Counsel file based on these facts?**

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

(25 minutes)

AWF, LLC, a custom-flooring business located in Chevy Chase, Montgomery County, Maryland, had been in business for several decades, but fell on hard times. Nothing remained other than a good reputation, a very small amount of inventory, and several hundred thousand dollars of debt.

Recently, JEM Enterprises, Inc., a successful lumber and building materials business, purchased AWF, LLC's remaining inventory at fair-market value, assumed AWF, LLC's existing indebtedness to trade creditors, and replaced AWF, LLC's management structure. In order to take advantage of AWF, LLC's stellar reputation in the remodeling and contracting fields, JEM Enterprises, Inc. continued to operate the flooring business under the "AWF" trade name for a period of one year, after which it began to operate the business under the JEM Enterprises, Inc. name.

Arthur, a former manager at AWF, LLC, sued AWF, LLC for an alleged breach of his employment contract. Arthur obtained a default judgment against AWF, LLC in the amount of \$50,000, and now seeks to enforce this judgment against JEM Enterprises, Inc. on the theory of successor liability. JEM Enterprises, Inc. has moved for summary judgment in its favor.

As law clerk to the Circuit Court judge assigned to hear the case, what would you advise the court with respect to the legal issues involved in ruling on the Motion for Summary Judgment?

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

(25 minutes)

Amy, a 16-year-old student at a Dorchester County, Maryland high school, decided to throw a party for her school friends. She asked her 21-year-old boyfriend, Blake, to assist her in planning the party at her parent's beach condo because her parents would be away for the weekend. Blake agreed to assist with the party, but warned her not to have any alcohol at the party because he would be at work.

Many more students than Amy had expected showed up, and the party got out of hand. The music got loud, and students were all over the condo dancing and jumping around. Officer Curly received an anonymous tip that drugs and alcohol were being sold by minors at the condo. Officer Curly obtained a valid search warrant for the beach condo. Officer Curly and two other officers entered the condo pursuant to the search warrant. When the officers entered the condo, they observed a chaotic scene. They immediately ordered everyone to sit on the ground and placed everyone in flex cuffs while they searched the house. Blake, who had just arrived from work, walked into the condo and was also ordered to sit on the ground and placed into flex cuffs.

Officer Curly then went into the kitchen where she saw a bag of suspected cocaine. As she walked by the students, she shook the bag and her head saying "someone is going to jail tonight." Blake, believing that Amy would be charged with a crime, shouted "that bag belongs to me!" Officer Curly then told Blake he was under arrest. Officer Curly then searched Blake's pockets where she obtained his driver's license and a photograph of Blake and Amy in a compromising pose. She then asked Blake for Amy's age. Blake refused to answer. She then demanded that Amy provide her age, to which Amy responded correctly. Officer Curly then told Amy that she would be arrested if she did not truthfully tell the officer whether she and Blake were in a sexual relationship. Amy responded by saying, "Yes, he's my boyfriend, and I love him."

While searching a bedroom in the condo, the officers also saw Dillan and Erika having sexual relations. The officers asked Dillan and Erika for ID, and the couple produced ID showing that Dillan was a 14-year-old freshman on the high school football team, and Erika was a senior who had just turned 18. As a result of this information, the officers then arrest Erika.

Both Erika and Blake are taken down to the station for processing. Officer Curly presents all of the stated facts to you, a Maryland Assistant State's Attorney, for a review of charges against Erika and Blake respectively. Assume that the white substance found at the house tested positive for cocaine.

A. Discuss what you anticipate will be the basis of any motion(s) to suppress the above evidence and statements used against Blake or Erika.

B. How should the court rule on the motion regarding the admissibility of the evidence and statements used against Blake or Erika? Explain your answers fully.

C. Discuss what if any charges could be brought against Blake or Erika based upon the above facts, and any reasonable defenses that you might anticipate. Explain your answers fully.