

# BOARD'S WRITTEN TEST

## MARYLAND BAR EXAMINATION

Tuesday, July 25, 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 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 when testing ends.**

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

*(25 minutes)*

Victor was assaulted in the lobby of his apartment building in Baltimore City, Maryland (the “Assault”). Shortly thereafter, Officers of the Baltimore City Police Department lawfully arrested Charles, who witnesses identified as the assailant (the “Arrest”). In a search incident to the Arrest, the Police Officer found a cellular telephone in Charles’ pocket (the “Phone”). While the Phone was in the Police Officer’s hand, the Phone received an incoming call causing the Phone’s screen to show a photograph of Charles kicking Victor (the “Photo”). After viewing the Photo, the Police Officer searched through the apps on the Phone and found a video made moments after the Assault where Charles recorded himself bragging about attacking Victor (the “Video”).

Charles was charged with the crime of Assault and appeared for trial, with counsel, before the District Court of Maryland for Baltimore City (the “Trial”). Charles testified at the Trial admitting, among other things, that he struck Victor in self-defense the evening of the Assault. The District Court Judge found Charles guilty and sentenced him to six months incarceration.

Dissatisfied with the outcome of the Trial, Charles timely noted an appeal to the Circuit Court for Baltimore City so he could receive a new trial, de novo (the “Appeal”). Before the Appeal, Charles learns that the State plans to introduce at the de novo trial a certified transcript of Charles’ Trial testimony, the Photo, and the Video. Charles seeks to prevent the State’s Attorney from presenting this evidence at the Appeal.

**What arguments will Charles raise in his Motion to exclude this evidence and how should the Judge rule?**

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

Amanda recently purchased a new power drill, which included a drill bit set, at the manufacturer's store in Frederick County, Maryland. During the course of her conversation with the salesperson, she made it clear precisely what she needed the drill for and what she intended to do with it. The sales person assured her that the drill would be ideal for any use she might require.

Following repeated attempts to use the drill, Amanda discovered it was completely inadequate for her needs. In addition to damaging every surface she attempted to use it on, the drill bits were constantly breaking. Upon attempting to return the drill to the store, she was directed to language on her sales receipt, which was much smaller than the text of all other writing on the receipt, disclaiming "any and all applicable warranties."

Amanda has approached you, a licensed Maryland attorney, and asked if she has any potential warranty-related measures of recourse against the manufacturer/seller.

**What would you advise? Explain your answer fully.**

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

*(25 minutes)*

Jack and Jane met while attending Towson University. Following graduation, they married on July 8, 2006. At first, Jack and Jane focused on their careers. Jane worked as a real estate agent earning around \$45,000 per year. Jack started a business that became very successful, and he currently earns around \$400,000 per year. Jack and Jane have one child, Matthew. As Jack's business became more and more successful, Jack and Jane decided that Jane would give up her career and stay at home to care for Matthew. In 2013, Jane was diagnosed with cancer. She underwent chemotherapy, and her cancer went into remission. She continued as the primary caregiver for Matthew.

The stress of building a business, Jack's long hours at the office, and Jane's health issues, took a toll, and Jack and Jane began fighting more and more often. In 2014, Jane had an affair with Jack's business partner. She felt guilty and told Jack about it. She said she wanted to work on their marriage. At first Jack was angry, and Jane left their home, but in time Jack forgave Jane, and she moved back in. Unfortunately, they continued to fight, and Jane again moved out in June 2016. They have not lived together since that time and have worked out a shared custody arrangement for Matthew, now age nine. Jack comes to you, a Maryland attorney, seeking advice.

**A. What do you advise Jack as to whether or not he can file for divorce? If he can file for divorce, on what grounds and why? Will the court award Jane alimony? If so, what factors will it consider?**

As part of your representation of Jack, you retain an investigator to obtain information regarding the case. As part of that investigation, you receive information that a potential witness, Katie, is adamant that she has been having an affair with Jack for the past six months. She gives the investigator evidence in the form of text messages and emails. In the course of the divorce case Jack appears for deposition. During the deposition, he is asked whether or not he has committed adultery, and he denies it.

**B. In what ways are the Maryland Rules of Professional Responsibility implicated in this situation? Discuss fully.**

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

Landlord, owner of an office building in Washington County, Maryland, leased separate units to tenants Ben and Jerry. Ben operated a medical dialysis center, and Jerry operated a medical urgent care center.

The leases for Ben and Jerry had the same non-compete clause specifying that each would not compete with any other business in the office building. Each lease also included a clause that allowed the Landlord the right to terminate upon written notice of the violation of any provision of the lease.

Ben had full-time doctors and nurses on staff and, as patients were receiving dialysis treatment, Ben began addressing additional medical needs of his patients. He often prescribed medicine unrelated to the dialysis treatment, ostensibly under the umbrella of “dialysis treatment.”

Jerry noticed a slight drop in the number of his patients. He learned of Ben’s practice and informed the Landlord that Ben’s business was operating beyond the scope of dialysis treatment and, in fact, competed with Jerry’s business. On January 25, 2017, Landlord sent Ben a letter indicating that Ben was in breach of the lease and that he must stop practicing medicine unrelated to dialysis. Ben continued the practice after speaking with Landlord’s office manager who informed Ben that “it was standard to send such letters if any tenant complains” and that “he shouldn’t worry about it.” Landlord continued accepting Ben’s rent.

Jerry’s business continued to decrease, possibly due to Ben’s expanded business. On March 6, 2017, one year prior to the end of his lease, Jerry ceased operating his business and moved out, with the intent to remove the remainder of his office furnishings later in the week.

Landlord learned of Jerry’s actions on March 7 and immediately padlocked both Ben’s and Jerry’s offices, telling his office manager that he was “through with the quarreling bums and would find better tenants ASAP.”

Office Manager cautioned Landlord that he should immediately contact you, his lawyer, and ask whether Ben or Jerry could file suit against him for his actions, and whether he could successfully defend against any suit.

**What would you advise? Discuss fully.**

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

*(25 minutes)*

At the end of April 2017, Mr. Beta noticed that his new neighbor, Mr. Alpha, had not mowed his one-acre lawn since moving into his house next door at the end of March 2017. Alpha and Beta reside in a subdivision in Baltimore County, Maryland.

Beta, who owns and operates a lawn and garden care company in Baltimore County, Maryland, approached Alpha and offered to weekly mow Alpha's lawn during the spring and summer 2017 growing season (May through October 2017). Beta said he would charge Alpha a seasonal price of \$2,400, which Beta said was ten percent less than the market rate in the neighborhood. Beta told Alpha if he didn't want to pay the entire seasonal price up front, he could pay \$100 following each mowing, which would total \$2,600 for the season. Alpha told Beta he'd think about it.

At the end of the first week in May, having received no response from Alpha, Beta mowed Alpha's lawn. As Beta was completing the mowing, Alpha arrived home. Alpha did not speak to Beta, but gave him a thumbs-up sign as he pulled his car into his garage. Later that evening, Alpha slipped his personal check for \$100 into Beta's mailbox.

Beta continued to mow Alpha's lawn weekly through the end of June, and Alpha paid \$100 by check within a day of each mowing. After the mowing at the end of June, Beta left a note in Alpha's mailbox offering to trim and shape Alpha's shrubbery for \$350, which Beta indicated was ten percent less than the market rate. A day later, Alpha put a note in Beta's mailbox which read, "Can you do the shrubbery in August after the blooming has ended? Thanks, Alpha."

Beta mowed Alpha's lawn and trimmed and shaped Alpha's shrubbery at the end of the first week of July. Beta mowed Alpha's lawn at the end of the second and third weeks in July. Alpha refused to pay Beta for any of the work Beta had done in July. Assume that all of the above facts can be proven at trial by competent and admissible evidence. Beta files suit in the appropriate court to collect the money he believes Alpha owes him.

**A. What argument(s) can Beta make to collect? What defense(s) might Alpha argue in response?**

**B. Assume Beta's suit is successful. How will his damages be calculated?**

**Fully explain the factual analysis and legal reasoning that is the basis for your answers.**

**QUESTION 9** (Green Answer Book/Green SofTest™ Header)  
(25 minutes)

Early in the morning after an unexpected ice storm, Owner, who owned the “Little Town Shopping Center” (“LTSC”), called his tenant, Henrietta, owner of the Hair Academy, to clear and sand the sidewalks before they opened.

Henrietta arrived late to the salon. She opened for business, but didn’t bother to check her voicemail. She did not clear or sand the sidewalk. Cassie, a customer of the Hair Academy, parked her car in front of the Hair Academy.

Tina, an 18-year-old student at the Hair Academy, is Harriet’s unpaid intern. While parking her car, she slid on the ice and hit Cassie’s car in the next space. Tina does not have car insurance.

Henrietta told Tina to start working on Cassie’s hair, and Henrietta would be out in a moment to supervise. While straightening Cassie’s hair, Tina talked about hitting a pink Cadillac in the parking lot. Cassie, realizing it was her car, jumped up in anger, causing Tina to drop the straightener, which burned Cassie’s cashmere sweater and arm. Cassie stormed out of the hair salon, where she slipped and fell on the icy sidewalk, breaking her leg.

**You are a licensed Maryland attorney to whom Cassie was referred. Please review for Cassie who she can sue, the causes of action she may pursue, and potential damages she can recover. Explain your answer fully.**

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

The Maryland General Assembly, in a stated effort to protect coastal resources, recently enacted legislation, which was signed by the Governor, preventing the construction of any new structure on Atlantic beachfront property or any real property within one half-mile of the Chesapeake Bay. However, aquaculture may be engaged in on Atlantic beachfront property. “Aquaculture” is defined as “the raising of crabs, oysters, or clams for commercial or individual use.”

Owners of real property on both the Atlantic Ocean and the Chesapeake Bay have approached you, a licensed Maryland attorney, and asked if they have any recourse against the State, as they wish to build waterfront residences on their property, all of which was purchased before the legislation was enacted.

**What would you advise? Explain your answer fully.**