

BOARD'S WRITTEN TEST

MARYLAND BAR EXAMINATION

Tuesday, February 27, 2018

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 and statutory extract when testing ends.**

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

(25 minutes)

Sam and Marta were married in 2006 and purchased a house in Charles County, Maryland. Nine months later, Marta gave birth to Son. On March 15, 2009, they were blessed with the birth of Daughter. Alas, the strain of Marta's job as an FBI agent and Sam's decision to be a stay-at-home dad became too much for the couple. On December 20, 2015, they separated. Pursuant to the written Separation Agreement, Marta would pay Sam alimony in the amount of \$7,000 per month for a period of five years; they would share joint legal custody of Son and Daughter; and Son and Daughter would reside with Sam from Sunday evening to Thursday evening and Marta from 8:00 pm on Thursday evening each week until 6:00 pm on Sunday evening.

Sam and Marta were divorced on December 8, 2016, by decree of the Circuit Court for Charles County, Maryland. The provisions of the separation agreement were incorporated, but not merged into the decree. On January 15, 2017, Marta married Guy, Sam's college roommate and nemesis. After her marriage to Guy, Marta only made sporadic alimony payments to Sam and had no contact with her children until August 2017. Upon resuming occasional visitation, Marta and Guy constantly disparaged Sam whenever the children were with them.

On January 5, 2018, Marta informed Sam that Guy's job required that they relocate to Los Angeles, California, by the summer, and that she would be resigning from the FBI at that point. Marta said she would no longer make alimony payments, and would seek sole physical custody of Son and Daughter.

Sam comes to you, a licensed Maryland attorney, and asks:

A. What arguments must Sam raise to gain sole physical custody of the children?

B. What argument must Sam raise to compel enforcement of the alimony agreement?

How would you respond? Discuss fully.

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)

Business, a company headquartered in Frederick County, Maryland, and Construction Co., headquartered in Carroll County, Maryland, entered into a written agreement for Construction Co. to construct a Wacillater at Business's Worcester County, Maryland site. Construction Co. has previously conducted construction work in Montgomery County, Maryland, and Prince George's County, Maryland. During the construction of the Wacillater, Construction Co. hired Subcontractor to perform welding for the critical joints of the Wacillater. Subcontractor, a Virginia company, has one office, which is located in Ashburn, Virginia.

Following the completion of Construction Co.'s work, Business and Construction Co. got into a dispute over the quality of Construction Co.'s work on the job. Business contended that the costs were too high and that the work had not been done in a workmanlike manner. Part of the dispute centered on leaks from the critical joints of the Wacillater. Business seeks to file a civil lawsuit against Construction Co. for \$30,000 claiming breach of contract. Construction Co. seeks to file a suit against Business to recover the remaining \$25,000 due on the work it completed and for declaratory and injunctive relief. Business also wants to file a separate suit against Subcontractor for negligence seeking \$35,000 in damages.

A. Construction Co. and Subcontractor come to you, a Maryland lawyer, to discuss their legal rights. What would you advise?

B. What Maryland court(s), if any, would have subject matter jurisdiction over each party's action and why?

C. In what venue(s), if any, can each party be sued and why?

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

(25 minutes)

Abe owns a townhouse in Baltimore, Maryland, in which he has a home office. He entered into a written contract with Roofer, Inc. to replace the roof on his townhouse.

Abe permitted his friend, Sara Jane, to store two of her computers in the upstairs office.

Roofer, Inc. subcontracted with Will to replace the roof as it had done on similar jobs in the past. Will provided the equipment and set his own hours and began the work promptly. On the evening of the first day at work, Will left at 7:30 pm. At 9:00 pm one of Abe's neighbors called the fire department to report smoke on the roof of Abe's townhouse. The fire department arrived and put out the fire. The fire investigator said Will had used a torch to heat tar paper and that the flame from the torch had ignited the roof trusses.

Upon inspection of the premises, the two computers owned by Sara Jane were found sitting in water that had come into the townhouse when the fire department was putting out the fire. The computers with the hardware and software could not be salvaged.

Sara Jane has retained you, a Maryland attorney. She wants to recover damages for the loss of her computers and her software.

Discuss and evaluate:

- A. Sara Jane's potential cause(s) of action.**
- B. Her claim for damages.**
- C. Potential defenses to her claims.**

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

(25 minutes)

Parents enrolled Student in School, a private school in Anne Arundel County, Maryland, for the academic year September 2017 - June 2018. As part of the enrollment process, Parents executed an enrollment Agreement in March 2017, which was executed by School personnel at the same time.

The significant portions of the Agreement are as follows:

- (1) The tuition cost for the academic year is \$60,000, payable in installments. Tuition must be paid in full not later than June 30, 2017.
- (2) Student's parents may cancel Student's enrollment by providing a written cancellation notice by registered mail to School's Headmaster on or before June 15, 2017. Upon timely receipt of cancellation, all tuition paid will be refunded.
- (3) Absent a timely receipt of cancellation, Parents are obligated to pay the full tuition for the academic year. No exceptions to this obligation are permitted.
- (4) **NO CHANGES TO THIS AGREEMENT ARE PERMITTED.**

Parents made tuition payments of \$20,000 in April 2017 and \$20,000 in May 2017. Parents did not make any other tuition payments. On July 30, 2017, Parents emailed Headmaster a cancellation notice and demanded a full refund of the tuition payments they had made, and provided an explanation for the demand. School denied the demand for refund because Parents failed to timely provide the cancellation notice to Headmaster. Parents refused to make any further payments. Parents then enrolled Student in another private school. Subsequently, just prior to the start of the academic year, School obtained full enrollment.

School brought an action against Parents in the Circuit Court for Anne Arundel County for the unpaid tuition balance of \$20,000. Parents denied liability in their answer and counterclaimed against School for the return of the \$40,000 they had paid in tuition.

School intends to call its Chief Financial Officer (CFO) as a witness. CFO is expected to explain that School's budgeting process requires ongoing revenue for School operations throughout the year and that a date when all tuition is to be paid is necessary to finalize staff salaries and department budgets.

Parents are expected to establish that School suffered no loss and, if there was a loss, that School made no efforts to lessen the loss.

Based on the given facts, who should prevail and why? Explain your answer fully.

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

(25 minutes)

Julius began a business of selling automotive parts in January 2013. He later decided to raise capital from partners in order to expand his business. On September 20, 2014, Julius entered a partnership agreement with Leonard and Arthur. The partnership had the following language as to the termination of the business:

7. TERMINATION:

That, at the termination of this partnership, a full and accurate inventory shall be prepared, and the assets, liabilities, and net income, shall be ascertained: the remaining debts or profits will be distributed according to the percentages established in this partnership agreement.

Julius contributed his previous inventory, which was valued at \$15,000, to the partnership. Leonard and Arthur contributed a total of \$7,500 to the partnership. The funds were placed in a partnership account. Julius died on June 14, 2015, and his wife, Linda, was appointed Personal Representative of his Estate.

The partnership agreement did not expressly provide for the continuation of the partnership. However, Leonard and Arthur notified Linda that they intended to continue to operate the business, despite the death of Julius. Linda, as Personal Representative, did not agree to continuation of the partnership and requested that the remaining partners liquidate the business. Leonard and Arthur made a good faith “winding up” of the partnership and made appropriate payment to the Estate, but thereafter continued to operate the business and made a profit.

Linda filed suit, claiming that the partnership must be liquidated and that the Estate was entitled to a share of the profits generated by the surviving partners’ alleged use of the partnership assets.

A. Must the surviving partners liquidate the partnership?

B. How should the payment to the Estate be calculated?

C. Is the Estate entitled to a share of the partnership profits generated after Julius’ death?

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

(25 minutes)

John and Lisa are married and have three children. John was previously convicted for second degree assault on Lisa and was sentenced to ninety days in jail. While he was in jail, Lisa obtained a Final Protective Order, which did not allow John to contact her and the children or come to their home.

When John was released from jail for assault, he went to their home, still dressed in his prison jumpsuit, broke down the door, went to the kitchen, and struck Lisa. He grabbed a steak knife and stabbed Lisa in the head, hands, and chest area. The steak knife broke, and he went to get a larger knife. Lisa and the children ran out of the house. Lisa was bleeding profusely and knocked on doors, but no one answered. Several neighbors called 911 to report the incident. When the police and ambulance arrived, John was in his prison jumpsuit sitting on the steps of his house, crying, rocking back and forth, and mumbling about his mother. John was arrested. Upon being taken to the station and advised of his Miranda rights, John made a statement that he loves his wife and children.

The police seize his jumpsuit covered in blood and the two knives as evidence. If called to testify, the doctors at the hospital will testify that the wounds to Lisa's hands indicate that she raised her hands to protect herself and that she was stabbed seventy-five times. She will suffer permanent nerve damage to her hands.

John and Lisa come into your office and request that you, a licensed Maryland attorney, represent John in his criminal trial. Lisa says that she will testify that her wounds were self-inflicted and that she has always been suicidal. John says he will not pursue a "Not Criminally Responsible" defense and will testify that he didn't stab Lisa. John wants to know what charges he faces and what defenses exist against these charges.

A. Explain any and all charges for which John can be indicted and any defenses that can be raised against those charges.

B. Discuss any ethical issues that may arise as to having John and Lisa testify at trial.

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

(25 minutes)

Mark, a Muslim student at Stoneville Public High School, prays three times a day in school pursuant to the dictates of his religion. For his noon prayer, Mark prays in the lunchroom. As time went on, other Muslim students joined Mark for his lunchtime prayer. One teacher, a Muslim, joins the prayer group on occasion. Jack, one of Mark's fellow students, is offended by Mark praying on school property and reported to the school administration that Mark was "recruiting Muslims."

One day, Jack, in a fury, screamed anti-Muslim epithets at Mark the entire time he was praying. The administration came to the lunch room and suspended Jack for the rest of the day. The administration also told Mark he was no longer allowed to pray on school property.

Jack's parents wrote a letter to the administration demanding that it remove the suspension from Jack's record. Mark demands that he be permitted to resume praying on school property, including in the lunchroom.

The school administration comes to you, a licensed Maryland attorney, for legal advice.

How would you advise that the administration respond to each student's demands? Explain the basis for your advice.