

BOARD'S WRITTEN TEST

MARYLAND BAR EXAMINATION

Tuesday, February 26, 2019

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 Exemplify™ Header)
(25 minutes)

Benjamin advertised his 2013 Jeep for sale for the purchase price of \$20,000. Alex responded via text that he would purchase the car for \$18,000. Benjamin responded immediately via text message that he would accept \$18,000 for the Jeep. Benjamin sent Alex an email attaching a contract that outlined the payment terms. Benjamin asked Alex to print the agreement and bring a signed copy of the agreement with the \$18,000 to his house within 24 hours. The method of payment, cashiers' check, was specified in the contract.

Alex did not go to Benjamin's house for several days, but sent Benjamin random text messages saying he would come retrieve the Jeep "when he was available." After a week, Alex finally showed up unannounced to pick up the car. Benjamin took the envelope with the contract and the check inside. He handed Alex the keys and the signed title to the car. Later that day, Benjamin opened the envelope, which contained Alex's personal check for \$18,000 and the signed contract. The check was returned for insufficient funds after Benjamin deposited it. Benjamin texted Alex and said, "Either return the car or give me the money." Alex texted back a "devil emoji" with no words. Alex has never paid Benjamin the remaining amount owed and has not returned the car.

Benjamin comes to you, a licensed Maryland attorney, requesting assistance.

Explain the terms of any contract between Alex and Benjamin and what, if anything, Benjamin can recover from Alex.

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

Following a business dispute, Claire filed suit in the Circuit Court for Frederick County, Maryland against Patrick, Kirk, and Elise. Summonses were issued and properly served on the defendants, all of whom were served on the same day. Patrick was served in Montgomery County, Maryland; Kirk was served in Fairfax County, Virginia; and Elise was served in Montreal, Quebec, Canada. Patrick filed his Answer in the Circuit Court for Frederick County 27 days after being served. Kirk has yet to file an Answer. Elise filed her Answer in the Circuit Court for Frederick County 75 days after being served. Claire subsequently moved for the entry of an Order of Default against Kirk and Elise.

A. You are the law clerk for the Circuit Court Judge assigned to the case. How should the Court rule on the Motion for Order of Default?

Following the Court's ruling on her Motion for Order of Default, Defendants jointly filed a Motion to Dismiss Claire's case for failure to state a claim upon which relief could be granted. The Motion was filed along with supporting affidavits, alleging facts in contradiction of those alleged in Claire's Complaint and purporting to demonstrate why Claire would not be entitled to relief in her action. Claire's response to the Motion contained affidavits claiming to verify the facts alleged in her Complaint and an explanation of her position that she is entitled to relief in the matter.

B. How should the Court analyze and rule on the Motion?

QUESTION 6 (Red Answer Book/Red Exemplify™ Header)
(25 minutes)

Ike and Mike were college roommates who, after graduation, decided to go into business together. Mike was a computer whiz, and Ike had inherited a substantial trust fund. Mike pitched a business proposal to Ike to start a business creating video games for PCs and mobile devices. Ike liked the idea and agreed to go into business with Mike.

Ike and Mike set up a workshop in Ike's garage. Ike agreed to pay startup costs of the business for a period of two years. Mike's contribution to the business was to work full-time for the venture developing and selling the game in exchange for a monthly salary of \$5,000. Mike decided to lease six computer servers from Sweet Serve for the business at a total cost of \$60,000 per year. Ike was not in favor of this as he preferred to purchase servers from Bits and Bytes, a company owned by a friend of his.

Six months into the venture, Mike's designs were besieged with technical problems, and he had not been able to provide a single marketable product. Mike told Ike that it would take another year to deliver a finished product for sale. Ike believed that the business should have already been in production mode. Ike announced that he was finished with the business and that he would no longer pay for anything associated with the company, including Mike's salary.

Ike and Mike fought over the issue of Ike making further payments, and, after two months, Ike unilaterally sold his interest in the business to his cousin, Pat, for \$20,000. Mike and Pat didn't get along and Mike did not want to work with Pat. Three months after Pat became involved with the venture, he and Mike realized that Mike's designs would never work. The \$60,000 on the lease from Sweet Serve is now due and the company does not have the money to pay to Sweet Serve.

- A. Discuss whether Ike and Mike had a partnership.**
- B. What was the effect of Ike selling his interest in the business?**
- C. What liability, if any, do Ike, Mike, and Pat have to Sweet Serve for the lease payment?**

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

On the evening of May 5, 2018, Paul went to a bar in Allegany County, Maryland. During the next several hours, Paul consumed enough alcohol to fall asleep at the bar. At closing time, the manager of the bar instructed Dennis, the bartender, to escort Paul to his car. Several patrons assisted in the process and agreed to drive Paul home. Before the group reached the vehicle, Paul walked, unassisted, to a nearby fence, vomited, and walked back to his car.

Upon reaching the car, Paul became visibly irritated and began yelling at Dennis. Paul stated, “I don’t want anyone forcing me into the car!” and “Get your hands off me!” Paul also insisted that he could drive himself home. When Dennis and the other patrons tried to push Paul into the back seat of his car, Paul resisted and continued to shout obscenities and threats. As Dennis attempted to put Paul’s legs in the car, Paul kicked Dennis in the face. As a result, Dennis lost a tooth, broke his nose, and incurred \$35,000 in medical bills.

A. What civil cause(s) of action could Dennis pursue and what should he allege? Explain fully.

B. What defenses, if any, could Paul have to Dennis’s cause of action? Explain fully.

C. Who should prevail? Explain fully.

Paul retained an attorney, Aisha, for a civil suit against Dennis for false imprisonment based on the events at the bar on May 5, 2018. Aisha met with Paul in her office twice. Three months after she was retained by Paul, Aisha met with Dennis regarding his case against Paul. Aisha decided to take Dennis’s case against Paul because she was already familiar with the facts and thought she would receive a higher fee from Dennis’s case. She conducted no work on Paul’s case against Dennis other than meeting with Paul on two occasions in her office.

At the time Dennis retained Aisha, she disclosed her representation of Paul. Because no pleadings had yet been filed in Paul’s case, Dennis signed a written waiver of conflict that Aisha drafted. Aisha then sent a letter to Paul terminating her representation of him.

D. Did Aisha violate the Maryland Rules of Professional Conduct? Why or why not? Explain fully.

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

The County of Suburbia Springs, Maryland, has experienced an influx of new residents. On October 2, 2018, the County introduced and enacted an emergency ordinance in order “to prevent a sudden surge in County population” and noted in the legislative history that it found the influx to be due to an increase in the cost of housing in neighboring jurisdictions. The ordinance states:

Effective immediately, there shall be a 3-year moratorium on the issuance of building and grading permits for residential dwellings on lots of two acres or less; and an annual impact fee of \$300 shall be imposed on each single-family home on lots of two acres or less wherein a family of five or more resides.

George and Jane Jet, a newly-married couple with 8-month old twins (and another on the way), come to you seeking to challenge the ordinance because Jane’s parents recently gave them a one-acre parcel in the County to allow them to build their own home.

What challenges would you bring on their behalf? Discuss fully.

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

(25 minutes)

Abigail was driving her car in a high crime area with her boyfriend, Bernard, in the passenger seat. A police officer had been following Abigail and Bernard and believed they fit the profile of drug dealers. Abigail's left tail light was broken and the police officer turned on his lights and siren to pull them over.

While Abigail was in the process of slowly pulling over, Bernard unbuckled his seat belt and climbed into the back seat. Bernard pulled from his pants pocket a nylon bag containing 10 packages of heroin and \$1000 cash in small denominations. Looking for a hiding place, he found Abigail's backpack and proceeded to stuff the drugs and money inside.

Abigail finally stopped the car. The officer saw all the movement in the car and called for additional police and a drug detection dog. The police officer walked up to Abigail's car window and asked for her drivers' license and registration. He returned to his cruiser. While in his cruiser, he saw Bernard continue to move around in the front seat and toss something out of the passenger side window. The police officer returned to Abigail's car and returned her license and registration. The officer then asked Bernard to step out of the car, but Bernard refused. The police broke the car window and pulled Bernard out. After restraining Bernard in handcuffs and placing him face down on the ground, the police searched Bernard and found a large knife. The police then asked Abigail to step out of the car, which she did. The police searched the car without asking Abigail for consent. The police found and opened the backpack where they then found Bernard's drugs and cash.

The police asked Abigail and Bernard who owned the drugs and cash. Abigail refused to answer any questions and asked to speak to her lawyer. Bernard said the drugs belonged to Abigail. Bernard said the money was proceeds from Abigail selling drugs, but that Abigail owed him the money. The drug detection dog finally arrived and indicated the presence of drugs in the car. Abigail was arrested and charged with crimes related to possession and sale of heroin.

Abigail contacts you, a licensed Maryland attorney, and asks if her constitutional rights were violated. She also asks you how any possible constitutional violations would affect the case against her.

A. Discuss how Abigail might prevent the drugs and money from being introduced against her at trial.

B. Discuss the arguments the State will make to the Court to introduce the drugs and money seized from Abigail's car.

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

(25 minutes)

As a licensed Maryland Attorney, you represent Arthur who is awaiting trial in the Circuit Court for Frederick County, Maryland on the charge of possession with intent to distribute cocaine. The Assistant State's Attorney prosecuting Arthur is your brother-in-law. At trial, the prosecutor proffers the following evidence to the court as admissible:

(1) In his case in-chief, lawfully seized photographs of Arthur with expensive cars and a stack of cash just days prior to his arrest on January 2, 2019.

(2) Arthur's silence at the time of his arrest by the police and refusal thereafter to answer any questions.

(3) In his cross examination of Arthur who has taken the stand in his defense:

(a) that he has a prior conviction for attempted second degree murder in 2007;

(b) that he has a prior conviction for possession of cocaine in 2010.

A. State the prosecutor's suggested basis for admissibility as to each item of evidence and the defense's basis for objection.

B. Does Arthur have a right to know that the prosecutor is your brother-in-law? Discuss why or why not.