

BOARD'S WRITTEN TEST

MARYLAND BAR EXAMINATION

Tuesday, July 29, 2014

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. 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 each answer in the book 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 for each numbered question. Write your answer to question 4 in the booklet for question 4, the answer for question 5 in the booklet for question 5, etc. One team of graders scores all of the answers to a single numbered 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.
- 3. Allocate the suggested writing time as you desire.** Each essay question is intended to carry equal weight in the final grade. The suggested time to answer each essay question is 25 minutes. **Although the suggested times to answer the questions 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. You 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.** 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 will not be graded.**
- 7. You must turn in all test answer booklets to your proctor.**
- 8. You may keep the essay test questions and statutory extract when testing ends.**

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

Joe is the owner of a large house on 25 acres of residentially zoned land in the rural section of the town of Mulberry, in Howard County, Maryland. Joe's property fronts on First Street, which is the primary public road in Mulberry.

In January 1994, Joe decided to subdivide his property and sell the back 20 acres to a developer so that the developer could create a separate residential subdivision. A 20 home residential development was created with the residents having internal pedestrian and vehicular access solely by way of Second Street, which was a newly created public street.

During construction of the homes, the neighbors from the newly created subdivision began to use an unpaved path across a portion of Joe Smith's remaining five (5) acres in order to access First Street. The path was at the far end of the property and not visible from Joe's house. Neighbors referred to it as "the neighborhood path". Residents of the subdivision regularly used the neighborhood path to walk to school or to the general store in downtown Mulberry. Sometimes a few of them traversed the path via dirt bike or car.

In January 2012, Joe sold his remaining five (5) acres to a seminary and several priests moved into Joe's former house. The priests noticed the neighbors using the path and told them it was okay to do so, but also posted a sign saying "Foot traffic only – no motorized vehicles". Father Jones became the head of the seminary and moved into Joe's former house on February 1, 2014. He is an avid gardener and decided to plant a garden in the rear of the property. Since he didn't want the neighbors stomping through his garden, he installed a locked gate and fence to bring a halt to the foot traffic.

A few neighbors immediately come to you, a licensed Maryland attorney, and ask if they have any right to continue using the neighborhood path.

What would you advise? Explain fully.

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

(25 Minutes)

Joe Worker lives in the town of Elation and is employed as a quality control officer for the Sanitation Evacuation Service which is an agency of the State of Maryland. Mr. Worker holds one of eight data input positions. He is assigned to desk number 5 which is situated in a large common room where the other data input operators also work. The desks are arranged in a large rectangle with no dividers or walls between them. His work station is a small desk with two drawers and his computer. He is allowed to keep pictures of his family in his work area. Once or twice each month, another employee is assigned to desk number 5 at a time when Joe has the day off. This allows for maximum employee production. In general, the work area is frequented, throughout the day, by both employees and the public.

Each employee at the Sanitation Evacuation Service is also assigned a locker in an adjacent room in which the workers can store their coats, purses, lunches, etc. The workers are required to store materials from current work projects in their lockers. This includes incoming reports and laboratory information, flow sheets, work-issued calculators and files for the project. Each worker is allowed to bring in a lock from home to secure his/her belongings in the locker.

The employer received a reliable report that an employee has brought a gun, drugs and drug paraphernalia to the work place with the intent of trafficking the drugs. The employer called local law enforcement which conducted a warrantless search of everyone's desk and locker. A small amount of drugs and drug paraphernalia were found in desk number 5 in a lunch bag with Joe Worker's name on it. A gun and additional drugs were found in Joe's locker inside his backpack which had all compartments zipped closed.

Joe was appropriately charged and his attorney has made a preliminary Motion to Suppress the items found in the desk and the locker.

- a. Prepare a memorandum to discuss the standard to be applied in ruling on the Motion to Suppress.**
- b. What are Joe's rights pertaining to the search of the desk and the items found therein? Discuss fully and explain how the Judge should rule.**
- c. What are Joe's rights pertaining to the search of the locker and the items found therein? Fully explain and discuss how the Judge should rule.**

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)

In January of 2008, Dr. Adler (“Adler”), a licensed psychologist and therapist, became associated with the Calvert Counseling Center, LLC (“the Center”) located in Calvert County, Maryland. The Center is an association of mental health professionals that provides outpatient services. Adler’s affiliation with the Center was governed by an agreement in which she agreed to pay the Center an hourly fee for the use of the Center’s facilities to treat patients. Under the agreement reached in 2008, the Center’s staff processed Adler’s patient insurance claims and remitted the payments to Adler.

In January of 2010, Adler discovered that the Center had failed to pay all of the money that was received from insurance companies for her services. Adler gave the Center proper notice that she wished to terminate their relationship, and the termination became effective on May 1, 2010. She also received the last payment under the agreement with the Center on May 1, 2010.

PART A

On August 1, 2012, Adler filed a Request for Production of Documents in the Circuit Court for Calvert County. In the request, Adler stated that she sought to preserve documents in the possession of the Center related to her claim that the Center had wrongfully withheld money due her. The Request for Production of Documents and a subpoena duces tecum were properly served on the Center. The Center promptly objects to the Request for Production of Documents on the ground that the request is premature.

How should the Court rule on this objection?

PART B

On January 15, 2014, Adler filed a complaint against the Center to recover the money withheld by the Center. The Complaint included counts alleging facts sufficient to establish breach of contract, unjust enrichment and conversion.

- 1. What defense(s) should the Center raise in a Motion to Dismiss? Explain fully.**
- 2. You are a law clerk for the Circuit Court Judge hearing the case. How would you advise your Judge to rule on the Center’s Motion to Dismiss Adler’s Complaint?**
- 3. What impact, if any, should the Request for Production of Documents have on the trial court’s ruling and why? Explain fully.**

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

Amy and Bill were married in Leonardtown, Maryland on April 1, 2006. Prior to their wedding, Amy's father announced that he was making a wedding gift to Amy of a three-acre lot on the family farm. The lot was valued at \$10,000. On May 1, 2006, Amy's father deeded the three-acre lot to Amy. Thereafter, Amy and Bill paid \$4,000 from their marital earnings to have the lot certified as a building lot. The value of the lot after the certification was \$20,000.

Amy and Bill had a child, Shiloh, who was born on June 1, 2007. She attended the same private school for three years for kindergarten and for first and second grade. The tuition averaged \$1,000 a month, which Bill paid. She was an average student.

Amy and Bill's relationship deteriorated, and eventually, on April 1, 2014, Amy told Bill that she wanted a divorce. At that time, Amy earned \$40,000 annually as a legal secretary, and Bill earned \$60,000 annually as a soft drink distributor. Amy told Bill that he had no claim to the three-acre lot, but she acknowledged it had a value of \$20,000. She also wanted him to continue to pay the private school tuition for Shiloh, whom they agreed would be in their joint legal custody and in the physical custody of Amy.

Bill has approached you, a licensed Maryland attorney primarily practicing family law, and asked for advice as to his interest in the three-acre lot and his exposure to pay the private school tuition for Shiloh to which expenditure he objects as unnecessary.

What advice would you give Bill and why?

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

Widow is an 89-year-old woman who became sole owner of a large farm in Allegany County, Maryland after her husband died. She intends to live on the farm until she dies. Widow allowed her grandson (“Grandson”) to come live with her on the farm in January 2013, after he finished serving five years in prison for theft and aggravated assault. The farm was no longer being actively cultivated. Needing money, Grandson was keenly interested when Energy Company (hereinafter, “Energy”) approached Widow in July 2013 with a proposal to lease the property for natural gas exploration. Energy proposed a lump sum, up-front payment of \$50 per acre for exploration rights as soon as Widow signed its lease, plus an annual royalties payment of 5% of net revenue from the sale of all natural gas produced from Widow’s land. While discussing the proposal, Grandson became angry when Widow told him that she was opposed to leasing the farm to Energy.

Without Widow’s knowledge, Grandson invited Energy to draw up a proposed lease for Widow’s signature. Energy hired Surveyor to obtain a current metes and bounds description of the farm for use in the lease. Surveyor prepared a report with an accurate metes and bounds description of the farm. However, because of an error in calculation by Surveyor, the report indicated that the farm was 1,500 acres, when in fact it was 2,000 acres. The lease drawn up by Energy relied on Surveyor’s report, but included only the metes and bounds description of the farm. However, the lease did state that the lump sum, up-front payment of \$75,000 was calculated at \$50 per acre.

At the invitation of Grandson, a representative of Energy came to Widow’s home to present the lease to Widow for signature. At a meeting in Widow’s kitchen on September 15, 2013, Energy’s representative presented the lease, and Widow’s immediate response was that she had no interest in doing business with Energy. Energy’s representative left. When Grandson was alone with Widow, he put the contract and a pen in front of her and then stood behind her with his right hand resting firmly on her shoulder. He whispered to her, in an angry, belligerent tone, that the lease was in her best interests and that he would not permit her to pass on the opportunity. She then signed the lease. Grandson then took it to Energy’s representative, who executed it on behalf of Energy.

Assume that Widow can both prove all of the above facts and have them accepted into evidence by the appropriate court.

- a. **What argument(s) can Widow make in a suit to rescind the contract she signed with Energy? What argument(s) could Energy make in response?**
- b. **If Widow elected not to attempt to rescind the contract she signed with Energy, what argument(s) can she make in an action seeking to adjust the up-front payment to be \$100,000 to accurately reflect the true size of her farm?**

Fully explain your reasoning.

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

(25 Minutes)

Easton, Inc. is a Maryland corporation (“Corporation”) that has been operating a successful fishing gear store in Talbot County, Maryland. John, Billy, and Carey are the only shareholders and directors. John serves as the President, Billy as the Secretary, and Carey as the Treasurer.

In early 2011, Billy became very ill and subsequently was not active in the operation of the Corporation. John and Carey ran the business during Billy’s absence.

Business was so brisk that John and Carey could not keep up with the paperwork. The Corporation failed to file its annual report and to pay its taxes for 2012. On October 5, 2013, the State Department of Assessments and Taxation (“SDAT”) properly issued a proclamation declaring the charter of the Corporation forfeited. The Corporation timely received notice of the proclamation in accordance with Maryland law. John was so overwhelmed by the booming business that he threw the notice in a drawer to be addressed later.

After the holidays, in early January 2014, John consults with you, a Maryland lawyer, about several matters regarding the operation of the Corporation. Those matters are the following:

- a. What are the consequences of the proclamation and what remedies are available to the Corporation?**
- b. Pursuant to an enforceable contract, the Corporation is scheduled to close in two days on the sale of real property titled in its name. How can the property be validly conveyed?**
- c. The Corporation needed additional merchandise for the holiday season. John signed a purchase order for the Corporation, on December 3, 2013, for the purchase of fishing rods. Who will be liable for the payment of the purchase order?**

Advise John with respect to each of the above matters. Explain your advice fully.

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

(25 Minutes)

A series of burglary-rapes occurred in Frederick County, Maryland. Police found latent fingerprints on the doorknob of the bedroom of one of the victims which they believed belonged to the assailant. The police also found a herringbone pattern tennis shoe print near the same victim's front porch. After police interviewed Sam Suspect, along with 30 to 40 other men who generally fit the description of the assailant, the investigators came to consider Sam a principal suspect in the crimes. Because the investigators were acting only on a hunch, they decided to visit Sam's home to obtain his fingerprints in order to tie him to the crime.

Arriving at Sam's home, the officers spoke to him on his front porch. When Sam expressed reluctance to accompany the police to the station for fingerprinting, one of the police officers stated, "Well then, we'll just arrest you." Sam then quickly responded, "In that case, I would rather go with you guys to the station than be arrested!" While the officers were on the front porch, they also seized a pair of herringbone pattern tennis shoes located on Sam's porch under a chair.

Sam was then taken to the police station where he was fingerprinted. While Sam waited, one of the officers read him his Miranda warnings, and then asked him if the tennis shoes they had obtained were his. Sam replied that the shoes were his. When police determined that Sam's fingerprints and the shoe pattern matched those left at the scene of the crimes, Sam was placed under formal arrest for burglary and sexual assault. Later, while in lock-up, Sam confessed to his church minister, who was visiting Sam, that he had committed the crimes. The minister later informed the police what Sam told him regarding the crimes. Before trial, Sam's lawyer has filed a Motion to Suppress all the evidence obtained from Sam.

- a. Discuss what you anticipate will be the basis of Sam's Motion to Suppress the evidence and statements obtained against him.**
- b. How should the court rule on the motions regarding the admissibility of the evidence and statements used against Sam?**

Explain your answers fully.