

**OUT-OF-STATE
ATTORNEY'S EXAMINATION
MARYLAND BAR EXAMINATION
TUESDAY, JULY 29, 2014
(100 POINTS – 3 HOURS)**

IMPORTANT

1. **Sit in your assigned seat.** Be sure you are occupying the place marked with your assigned seat number. Check your answer book at once to be sure that it does bear the same number. If it does not, contact a Proctor at once.
2. **Allocate the suggested writing time as you desire.** The questions will indicate the number of points allotted and the time estimated to answer each one. The total score for the examination is 100 points. The estimate of time on each question is merely suggested.
3. **Use one answer book for the entire test.** Begin each answer at the top of a page. Do not copy the questions. Use one side of page only until you have filled the book. Then turn the book over and write from back to front if you need more pages. **Do not tear pages from your book. You may use the test questions for scratch work.**
4. **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.
5. **Cite the applicable rules and statutes.** Since this is an open-book examination you will be expected to make a reference in your answer to the Rule(s) or statutory source upon which your answer is based.

YOU MAY KEEP THIS PAPER.

Point Values and Suggested Time for Questions

	<i>Point Values</i>	<i>Suggested Time</i>
Question 1	15	27 minutes
Question 2	10	18 minutes
Question 3	5	9 minutes
Question 4	10	18 minutes
Question 5	15	27 minutes
Question 6	10	18 minutes
Question 7	10	18 minutes
Question 8	5	9 minutes
Question 9	10	18 minutes
Question 10	10	18 minutes
TOTALS FOR EXAMINATION	100 POINTS	180 MINUTES (3 HOURS)

PRELIMINARY FACTS FOR QUESTIONS 1 THROUGH 5

On New Years' Eve 2013, George's Gun Shop in Rockville, Montgomery County, Maryland, was robbed by three masked individuals. A large number of firearms and all the cash on hand, which totaled approximately \$3,000, were stolen. George, who was uninjured in the robbery, immediately reported this incident to the police. He described the car in which the assailants fled as "small and blue."

Early the next morning, Officer John of the Montgomery County Police responded to a call of gunshots having been fired at a party in Poolesville, Maryland. Upon arriving at the scene, Officer John encountered two individuals with non-fatal gunshot wounds, a number of highly intoxicated witnesses, and two men sitting in a small, blue car outside the house where the party had taken place. None of the intoxicated witnesses, nor the gunshot victims, who were also highly intoxicated, could provide a coherent statement as to what had occurred.

The individuals seated in the car refused to speak to Officer John and refused his request to search their vehicle. Officer John placed the two men under arrest. A search of their persons indicated that the driver/owner of the car was named James, and the passenger Thomas. A search of the vehicle produced four shotguns in the trunk, along with \$1,000 in cash.

Both men appeared the next morning in the District Court of Maryland for Montgomery County for a bond review. That same day, James hired Martin as his attorney. Counsel immediately entered his appearance and filed a request for a preliminary hearing and demand for a jury trial.

QUESTION 1

(15 Points - 27 Minutes)

- a. **By what procedural means would you challenge the validity of the arrest and search of James and the vehicle and in what timeframe should this be done?**
- b. **How should the court rule on the request for a preliminary hearing?**
- c. **What could the State do in order to frustrate the request for preliminary hearing?**

QUESTION 2

(10 Points - 18 Minutes)

Following the dismissal of all charges related to the incident in Poolesville against Thomas, James' criminal trial commenced in the Circuit Court for Montgomery County.

The State sought to introduce the testimony of Dolly, James' ex-wife, and proffered upon Attorney Martin's objection that her testimony would show that while they were still married, James had told her of his plan to "settle some scores while ringing in the New Year." The State's Attorney also proffered that no one else was present when this conversation took place between James and Dolly.

- a. **On what basis(es) should Attorney Martin argue for the exclusion of this testimony?**
- b. **How should the Court rule?**

QUESTION 3
(5 Points - 9 Minutes)

The State called William, who hosted the New Years' party at which the shooting incident occurred, as a witness. The following colloquy occurred while William was on the witness stand:

- The State: Were you interviewed by Officer John about any discussions you had with James on the night of the party?
- William: No, he just asked some general questions about who was there and what happened.
- The State: You didn't tell the Officer that James had told you he was ready to "help ring in the New Year with a bang"?
- Attorney Martin: Objection, your Honor, the State is impeaching its own witness.
- The Court: Overruled.
- William: I never said anything like that.

Was the court's ruling on the objection correct? Explain your answer.

QUESTION 4
(10 Points - 18 Minutes)

James' sole witness was Zachary. Zachary testified that he had been at the party with James and that, late in the evening, an unidentified individual had burst into the room, fired two shotgun blasts, and fled the scene on foot.

On cross-examination, and based upon a search of appropriate public records, the State asked Zachary whether he had been convicted of malicious destruction of property in July 2011, whether he had been convicted of possession with intent to distribute methamphetamine in September 2003, and, assuming he had been convicted in both instances, whether he had been represented by counsel, or waived his right to counsel, in each proceeding. Attorney Martin objected on relevance and foundation grounds and the State proffered that Zachary had pleaded nolo contendere to malicious destruction of property, a misdemeanor, in 2011, and was convicted following a bench trial of possession with intent to distribute methamphetamine, a felony, in 2003. The State also proffered that in each proceeding, Zachary was represented by counsel.

How should the court rule on Martin's objection? Explain your answer.

QUESTION 5

(15 Points - 27 Minutes)

James was found guilty of first degree assault and sentenced to ten years' incarceration.

- a. **What options does James possess to either overturn his conviction or reduce his sentence, and under what timeframe(s) must he act?**
- b. **How would James' options change if he pleaded guilty to the charges at hand?**

ADDITIONAL PRELIMINARY FACTS FOR QUESTIONS 6 THROUGH 10

During the course of the investigation into the Poolesville shooting, it was discovered that the gun which had been used was one of the firearms stolen from George's Gun Shop in Rockville earlier that same day. One of the victims, Millard, filed suit against George seeking \$250,000 in damages. Millard hired Abraham as his attorney. George lives in Prince George's County, Maryland and Millard lives in Montgomery County, Maryland. Millard filed both a Complaint and a Motion for Summary Judgment in the court of proper jurisdiction and venue. The Complaint, Summons, and Motion for Summary Judgment were all served on George in a proper and timely fashion.

QUESTION 6

(10 Points - 18 Minutes)

- a. **In what county(ies) and which court(s) may Millard file his Complaint against George?**
- b. **Within what timeframe must George respond to the Complaint and the Motion for Summary Judgment?**

QUESTION 7

(10 Points - 18 Minutes)

Summary judgment was denied and discovery commenced.

Millard seeks to depose Franklin, a business associate of George, who is currently incarcerated in a Maryland State Prison on an unrelated charge.

- a. **What should Millard do in order to secure Franklin's deposition?**

Despite multiple and varied attempts, Franklin refuses to answer virtually all of Abraham's questions posed at the deposition for no legitimate reason.

- b. **What should Millard do in order to compel discovery responses from Franklin?**

QUESTION 8

(5 Points - 9 Minutes)

At trial, Abraham attempts to introduce the deposition testimony of Franklin into evidence. George's attorney objects, stating that Franklin should have been subpoenaed to personally appear at the proceeding. Franklin is still incarcerated.

How should the Court rule and why?

QUESTION 9

(10 Points - 18 Minutes)

At the conclusion of the trial, George makes a motion for judgment, which is denied. The jury finds in favor of Millard and awards him \$100,000 in damages.

- a. What can George file in an effort to overturn the result?**
- b. Are there any restrictions on George's ability to make such motions?**

QUESTION 10

(10 Points - 18 Minutes)

The \$100,000 jury verdict stands. Abraham, pursuant to his verbal agreement with Millard for a three-quarters contingency fee, keeps \$75,000. Millard is very frustrated by this result.

a. What potential professional conduct complaints might Millard raise with the Attorney Grievance Commission? Explain fully.

Abraham feels the complaints against him are baseless and a waste of time.

b. Must he respond to a related investigative inquiry from the Attorney Grievance Commission?

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