

BOARD'S WRITTEN TEST

MARYLAND BAR EXAMINATION

Tuesday, February 24, 2015

Morning Session - 3 Hours

**The Multistate Performance Test is printed in a separate booklet.
Questions 1, 2, and 3 are printed in this booklet.**

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 morning session of the Board's Written Test has the Multistate Performance Test (MPT) and three essay questions numbered one through three. There is a separate answer booklet for the MPT and each numbered question. Write your answer for the MPT in the MPT answer booklet, your answer to question 1 in the booklet for question 1, the answer for question 2 in the booklet for question 2, and the answer to question 3 in the booklet for question 3. 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.
- 3. Allocate the suggested writing time as you desire.** Each numbered essay question is intended to carry equal weight in the final grade. The MPT carries one and a half times the weight of an essay question. The suggested time to answer each essay question is 25 minutes. The suggested time to answer the MPT is 90 minutes. **Although these suggested times total 2 hours 45 minutes, you will have 3 hours to work on the morning session. You may allocate the difference (15 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 (including the MPT) 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 morning 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. However, you must turn in the MPT question booklet.**

QUESTION 1 (Tan Answer Book/Tan SofTest™ Header)
(25 Minutes)

Al, a licensed Maryland attorney for three years, focuses on the practice of family law. He agreed to represent Bess in her defense to her husband's Complaint for Absolute Divorce filed in the Circuit Court for Montgomery County, Maryland. At Al's request, Bess paid a retainer of \$30,000 which he placed in the firm's operating account, the only bank account the firm maintained.

Al filed an Answer and a Counter Complaint on Bess' behalf and appeared at a Scheduling Conference. During the discovery phase of the case, arguments involving discovery resulted in Motions for Sanctions against Bess based on Al's failure to provide responses to written discovery. Al never filed any written opposition or response to the Motions for Sanctions.

Throughout his representation of Bess, Al told her he had everything under control. He ignored her request for status updates. He failed to appear at a scheduled mediation proceeding.

Bess, believing Al had abandoned her case, discharged Al, retained new counsel, and incurred additional attorney fees. Bess' new attorney asked Al to sign a Line withdrawing his appearance, and Al refused.

Bess asked Al for the return of the unearned retainer, and her request was ignored. She asked Al for a record of the receipt and deposit of her retainer and disbursements from her retainer. Al responded that he had no such records.

The Maryland Attorney Grievance Commission filed a Petition for Discipline against Al. Fully discuss the basis on which professional misconduct is charged.

AN EXTRACT HAS BEEN PREPARED FOR YOUR USE IN ANSWERING QUESTION 2. 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 2 (Green Answer Book/Green SofTest™ Header)
(25 Minutes)

Julie lives with her four hairy dogs in Montgomery County, Maryland. Tired of the constant vacuuming and mopping required for the upkeep of her home, Julie responded to an advertisement by Sharp's Appliance store ("Sharp's"). The advertisement stated, "No more vacuuming or mopping. Let the Robi do your house work!" Julie asked the manager of Sharp's, "Does the Robi really do what the ad states, and is it easy to operate?" The manager enthusiastically responded, "Yes, the Robi cleans any type of carpet and floor. They practically sell themselves." Julie was convinced, so she signed the sales agreement, paid \$999 for the Robi, received a copy of the operating manual, and requested same day delivery.

Later that day, Joe, Sharp's delivery person, assembled and tested the Robi at Julie's home. He asked if Julie wanted either to see him operate the Robi or to try the Robi with him present. She told him that she was too busy because she had to walk her dogs immediately. Before departing, Joe noted her refusal of a demonstration on the receipt that Julie signed, and he gave her a copy of the receipt and the remote control.

When she returned from walking her dogs, Julie read the operating manual, and began using the Robi to vacuum dog hair from the living room floor. When she was satisfied with the vacuuming, she pushed the "mop" button on the remote. Suddenly, the Robi started smoking and running uncontrollably across the floor. When the Robi finally came to a stop, it had struck and injured one of her dogs, and damaged the floor and some furnishings.

The next morning, Julie called and told the manager at Sharp's what had happened when she used the Robi and that Sharp's must take back the Robi, refund the purchase price, and pay for the damages caused by Robi. Three weeks passed without a response from Sharp's.

Julie consults with you, a Maryland lawyer, to seek your advice on whether she has a case against Sharp's for her damages in the aggregate amount of \$12,300.

What arguments will Julie make to support claims under the Uniform Commercial Code against Sharp's? Evaluate the likelihood of success of her arguments. Explain your reasoning fully.

QUESTION 3 (Yellow Answer Book/Yellow SofTest™ Header)
(25 Minutes)

In 2004, Able and Baker properly formed Able Limited Partnership (the “Partnership”) in accordance with Maryland law to engage in residential construction. Able was the general partner and Baker was a limited partner. The Partnership contracted to build homes for developers who acquired and provided the building sites and financed the construction.

Able had inherited a plot of land suitable for residential development in July 2012 and had sold that property to Douglas, LLC in July 2013. In December 2013, Able told Baker of his plan to contract with Douglas, LLC, a Maryland limited liability company owned by Able’s brother, Douglas, who was the sole and managing member of Douglas, LLC. Baker told Able that she objected to doing any business with Douglas, LLC. Baker had heard rumors that Douglas had skimmed profits from other businesses in which he was a part owner.

Able, in his capacity as general partner of the Partnership, signed a contract in February 2014 with Douglas, LLC for a project to build ten residences on the property Douglas, LLC had acquired from Able.

The Partnership began construction on the project in March 2014. The Partnership made progress draws on a bank account established and funded by Douglas, LLC for the purpose of financing the construction work. After completing each of the first five houses, the Partnership received a \$35,000 payment from the account, in accordance with the terms of its contract with Douglas, LLC. All payments that Douglas made to the Partnership were from the LLC account, and Douglas otherwise complied with the formalities of operating an LLC.

When the Partnership attempted to take a progress draw in August 2014, during construction of the sixth house in the project, the bank advised the Partnership that Douglas, LLC’s account had insufficient funds. Douglas refused to respond to all inquiries from the Partnership about payments due under the contract. Baker wants the Partnership to sue Douglas, LLC and Douglas in his personal capacity for breach of contract. Baker knows that Douglas, LLC is solvent. Able refuses to sue.

- A. Did Able’s sale of his inherited property to Douglas, LLC violate any obligation that Able had to the Partnership?**
- B. What steps must Baker take to pursue her rights and available remedies?**
- C. Can Douglas be held personally liable for the alleged breach of contract?**

Explain your reasoning fully.