

BOARD'S WRITTEN TEST

MARYLAND BAR EXAMINATION

Tuesday, July 28, 2015

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)

George and Debra were married in Prince George's County in January 2010. They had two children, Fern, who was born in January 2011, and Alan, who was born in January 2013. Debra passed away in January 2014. In March 2014, George began dating Whitney, and they married in July 2014. Whitney has not adopted the children.

Debra was Tom and Susan's only child. Prior to Debra's death, Tom and Susan saw the children frequently. Susan babysat the children every Monday afternoon. About once a month, the children would spend the weekend at Tom and Susan's home. On Mondays prior to Debra's death, Susan would pick Fern up from preschool and had a good relationship with the preschool teachers. Alan also began attending this preschool in January 2015, following his second birthday.

After Debra's death, Tom and Susan continued to see the children until March 2014. After George started dating Whitney, he refused to allow Tom and Susan to see the children, telling them that the children needed to forget Debra and accept Whitney as their mother. Susan has sent presents to the children for birthdays and holidays. She has tried to call several times in the past year, but George and Whitney never take or return her calls.

Susan recently spoke with the preschool teachers. They told her that George was doing a very good job parenting the children. Alan's teacher told Susan that he never talks about his grandparents and does not seem to remember Debra. Fern's teacher told Susan that Fern talks about Grandma Susan on occasion, and that Fern cried recently when the school had a grandparents' day and told her teacher she was sad because her Grandma Susan was not there.

Tom and Susan are extremely upset by this situation and have come to you, a licensed Maryland attorney, and asked if anything can be done in order to secure visitation with the children.

What would you advise Tom and Susan?

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)

Alpha Corp is a manufacturer of widgets. Kappa Corp is a wholesaler of widgets which has contracted with Alpha Corp for the past three years to supply Kappa Corp with widgets. During that period, all the widgets Kappa Corp purchased from Alpha Corp were all acceptable and performed within industry standards. All the widget contracts between the two companies state, “Shipments are deemed accepted unless notice to the contrary is provided within 10 days of delivery,” and that “Payment is due within one month of delivery.” All of the contracts were negotiated in Maryland and are expressly governed by Maryland commercial law.

In its most recent order between the companies, Kappa Corp contracted with Alpha Corp to produce 200 widgets. Alpha Corp produced the 200 widgets to Kappa Corp within the time required by the contract. The widgets were shipped in 20 boxes, each with 10 widgets. Upon delivery, Kappa Corp’s shipment supervisor visually inspected one box of widgets and signed off on the shipment receipt for the entire delivery. Kappa Corp then started selling the widgets to customers. One month later, customers began returning the widgets to Kappa Corp complaining that the widgets would unexpectedly stop working during operation which posed a significant safety risk. Upon further investigation, Kappa Corp discovered that the widgets had an internal defect that caused the problem. Because the problems were significant deviations from industry standards, Kappa Corp’s president promptly wrote a letter to Alpha Corp refusing to pay the invoice for the widgets and stating that the shipped widgets were being rejected as not salable because they did not conform to industry standards and posed a significant safety risk.

Alpha Corp’s president contacts you, a Maryland lawyer, regarding whether or not it is entitled to payment for the shipped widgets under the contract with Kappa Corp.

Analyze and discuss the legal positions you anticipate each side will take under the applicable Uniform Commercial Code regarding the widgets shipped by Alpha Corp to Kappa Corp.

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

David and Linda were married in June 2009. Their son, Matt, was born in November 2011. After Matt's birth, their marriage became quite contentious. The couple divorced in 2012 and David was awarded sole legal and physical custody of Matt, while Linda had visitation rights every other weekend. After the divorce, both continued to reside in Howard County, Maryland.

On September 1, 2014, David allowed Matt to go on a weekend camping trip in Western Maryland with Linda. On September 5, 2014, David's boss saw a post by Linda on her Facebook page, which included a picture of David and Matt and the following words:

My dad is a jerk. He doesn't love me and he abuses me. That's why I prefer my mom. If you see my dad, tell him he's a no-account deadbeat!

David's boss promptly informed David, and David immediately called Linda. Linda assured him that Matt would be home by Monday and that the post must have been the work of a sick hacker. Matt did not return on Monday, and David saw a similar post on Linda's Facebook page on September 10, 2014. David tried to reach Linda and Matt over the following days, but to no avail.

David informed the proper police department and a hunt ensued for Matt. As the days dragged on with no news, David was unable to sleep or eat properly. He sank into a serious depression and was hospitalized. On October 14, 2014, he lost his job.

In March of 2015, the police finally located Linda and Matt living in Ocean City, Maryland. Linda was arrested and Matt was returned to David. The appropriate State's Attorney filed various criminal charges against Linda.

On June 1, 2015, David comes to your office and asks you what, if any, civil actions he could bring against Linda. What would you, a licensed Maryland attorney, advise? Discuss fully.

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

(25 Minutes)

Alex was a known drug dealer. He had been the subject of a video surveillance by Deputy Brady, a seasoned narcotics officer, of the Montgomery County Police Department on June 1, 2015. He was videotaped selling heroin in a Rubbermaid sandwich container to Chuck, who he met on a public street in Gaithersburg, Montgomery County, Maryland. Deputy Brady subsequently legally arrested Chuck and found heroin in the container on him.

On June 15, 2015, Deputy Brady again had Alex under surveillance. Alex met with Drew in a public park in Rockville, Montgomery County, Maryland. Alex had a briefcase in his hand. Alex got into Drew's vehicle, and they rode around the block and returned to the same spot. Alex, with the briefcase, got out of Drew's vehicle and walked away. Drew drove away in his car. Deputy Brady followed Drew, and, with the assistance of another officer, stopped Drew's vehicle. Deputy Brady asked Drew to get out of the vehicle and identify himself, which he did. Deputy Brady then searched the vehicle and located a Rubbermaid container with a large amount of heroin inside. Drew was arrested and properly charged with possession with intent to distribute heroin and possession of heroin in the Circuit Court for Montgomery County, Maryland.

You have been asked by the senior partner in your law firm, who has been retained by Drew to defend him, to evaluate the legality of the recovery of the heroin from Drew's vehicle and what initial steps should be taken to address this issue.

Please set out your evaluation of the issue explaining your answer in detail.

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

Andrew wants to purchase 40 dog houses for his newly-opened dog shelter, located in the town of Crisfield, Maryland.

Samuel builds dog houses and sells them from a small storefront in town. He has 80 dog houses built that he would like to sell. He is asking \$100 for each assembled, insulated dog house. Andrew writes Samuel a letter dated October 23, 2014, telling him that he intends to purchase 60 dog houses from him as soon as he can secure financing. Andrew mails the letter to Samuel on October 24, 2014, and begins meeting with bankers about getting a loan.

In the meantime, Buyer Bob comes to town on October 27, 2014, and wants to purchase 60 dog houses. He meets with Samuel and offers to pay him \$150 per house because he needs the houses urgently. Samuel turns down the offer stating that he only has 20 left to sell since the rest are under contract. However, Buyer Bob comes back later when Samuel's part-time helper, Walter, is working and repeats the offer to Walter. Walter finds the deal too good to be true and with a backslap and a handshake agrees to sell the dog houses to Bob who intends to pick them up in three days.

On the third day, Bob comes to pick up the dog houses, and Samuel refuses to sell him more than 20, stating that Walter was a part-time helper and not a salesperson. Bob says, "It's all or nothing ..." and tells Samuel he intends to retain an attorney and file suit.

One week later, Samuel finds out that Andrew purchased cheaper dog houses somewhere else and will not be buying any from Samuel. Samuel calls Bob who has already purchased dog houses at \$300 a piece. Samuel retains an attorney to file suit against Andrew.

A) Will Bob prevail in his suit against Samuel? Discuss fully.

B) Will Samuel prevail in his suit against Andrew? Discuss fully.

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

The CLUB, LLC (the “CLUB”) promotes itself as a “social group that offers expressive entertainment for those with discriminating taste.” CLUB currently operates in Virginia and Washington, D.C., and offers nude or semi-nude adult entertainment by male and female dancers. The Town Council of the Town of Nimby, Maryland, recently learned that the CLUB intends to purchase property in the Town and qualify to do business therein. As a result, the Town Council enacts the following law in furtherance of the public safety and welfare of its residents:

Any business that intends to offer or provide performances by individuals who are nude or partially dressed or dressed in a manner designed to titillate must first provide a floor plan, a safety plan, and a parking plan, to the Zoning Administrator for her review and approval. The business must pay a \$5,000 fee to cover the costs of the Zoning Administrator’s review. If the plans are approved, the business must employ a chief of security to execute the safety plan, and said chief must have a degree in Criminal Justice from a school of higher learning accredited by and located within the State of Maryland.

The CLUB purchased property in the Town of Nimby and intends to offer its expressive adult entertainment for a fee. It submitted a floor plan, a safety plan, and a parking plan, to the Zoning Administrator on March 15, 2015. On June 20, 2015, the plans were rejected by the Administrator. Subsequently, the manager of the CLUB met with the Zoning Administrator to determine what revisions were needed. At that time, the Zoning Administrator told him that the CLUB is not the type of business needed in Nimby, and the plans did not sufficiently protect the citizens of the Town. After the meeting, the CLUB researched the Town laws and learned that no other business within Nimby is required to submit all three plans to the Zoning Administrator.

The CLUB comes to you, a licensed Maryland attorney, and asks if there are any grounds to successfully challenge the Town’s new law. What would you advise?

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

Victor, who was wearing a suit and tie, had just gotten off from work at Third Bank located in Calvert County, Maryland. As he walked to his car, he was approached by Lex and Sue. At first, they asked Victor for the time, but when he looked down at his watch, Lex pointed a gun at him and then demanded Victor's wallet. After taking Victor's wallet, Lex spit on Victor and yelled, "That's what you get, capitalist swine!"

After a thorough investigation by the police, Lex and Sue were arrested and charged with armed robbery, assault, and conspiracy to commit armed robbery.

At Lex's criminal trial, Victor testified to all the stated facts regarding his robbery. There were no objections to Victor's recount of the alleged incident.

Sue then testified for the State that before the robbery, she and Lex were at their apartment when Lex said, "Let's go hawking, I want to go get some money." Sue then testified that she understood Lex to mean, "Let's go out and find someone to rob."

The State then called Bystander as a witness, who testified that she was in the park across the street recording birds on her mobile device, when she inadvertently recorded Lex saying to Sue, "We got that loser!" The video recording also shows spit leaving Lex's mouth and striking Victor. Bystander testified that she became scared so she turned off her device and hid behind a tree. Finally, Bystander testified that it was clear that Lex was unaware that she had captured his statement on her device. The State then attempted to introduce the tape into evidence.

The State also called Jerry as a witness. Jerry testified that Sue handed him Victor's credit card and said that, "Lex said he wanted to know how to get cash from this."

The State then called Rev. Ray, who testified that Lex confessed to him that he was a drug addict and had robbed a man wearing a suit to get money for drugs on the same date and time that Victor was robbed.

Lex properly waived his Fifth Amendment rights and testified in his own defense. During his testimony, he denied the robbery, but (now knowing he was caught on tape) testified that although he did spit on Victor, that it was accidently done while asking Victor for the time.

After the defense rested, the State called Matthew as a rebuttal witness, to testify that two months before the robbery of Victor, he was leaving work in Harford County wearing a suit and tie when Lex asked him for the time and then robbed him at gun point. Matthew further testified that after Lex took his wallet, he spat on him and then said, "That's what you get capitalist pig!" At the time of the trial, Lex was facing charges on that robbery in Harford County, Maryland.

Assume that timely objections have been made to all six of the above testimony and proposed evidence.

How should the court rule on each objection and why? Discuss fully.