

# BOARD'S WRITTEN TEST

## MARYLAND BAR EXAMINATION

Tuesday, February 21, 2017

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. 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 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/answer field for the MPT and 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 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. 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 (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 or type in the wrong answer field.** 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 or field may not be graded.**
- 7. You must turn in all test answer booklets, scratch workbooks, and the MPT Question Book to your proctor.**
- 8. You may keep the Board's essay test questions and statutory extract when testing ends.**

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

PART A

Owner advertised her home in Queen Anne’s County, Maryland, for sale at an asking price of \$200,000. David came to see the house and expressed an interest in buying it at the asking price if Owner would paint the exterior in a color of David’s choosing. Owner agreed, but told David that Owner’s attorney was out of town for two weeks and couldn’t draw up an agreement of sale immediately. Owner said she would contract to have the house painted in the meantime.

Owner signed a contract to pay \$5,000 to Painter. The next day, David met the painting contractor and chose an unusual purple color for the paint. Ten days later, when Painter was nearly finished painting the house, David received a termination notice from his employer. David immediately informed Owner that he was no longer interested in buying the house because he lost his job, and would not sign an agreement of sale.

Owner approached several real estate brokers regarding the listing of her home, but the brokers informed her that she would need to have the exterior repainted since the color David had chosen was highly unattractive to most buyers.

Owner seeks advice from a Maryland attorney. Owner wants to compel David to purchase the house for \$200,000, or, at least, recover Owner’s costs for repainting the house in the original color.

**What advice does attorney give Owner? Explain your reasoning fully.**

PART B

Owner, contending in good faith that the paint job was not done properly, refused to pay Painter anything. On June 15, Painter mailed a “Final Invoice” demanding immediate payment of \$5,000. On June 18, Owner mailed a check to Painter for \$3,000 with a letter stating, “Your invoice for \$5,000 is disputed. Enclosed is \$3,000 in full payment for our painting contract.” Painter received the check on June 21. Because he badly needed the money, Painter cashed the check without objection and spent the proceeds.

Painter has now filed a timely lawsuit in the appropriate Maryland court for \$2,000.

**Will Painter succeed? Explain your reasoning fully.**

**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)

Part A

Paula filed a lawsuit against Donna in the Circuit Court for Baltimore County alleging damages arising from a breach of contract (the “Lawsuit”). On June 1, 2014, the Lawsuit was served on Donna. On June 28, 2014, Donna, through counsel, filed a timely Answer, with a general denial of liability.

On September 1, 2016, Donna filed a Motion to Dismiss the Lawsuit alleging improper venue.

**How should the Circuit Court rule on Donna’s Motion to Dismiss? Explain your answer fully.**

Part B

Paula’s attorney schedules Donna’s Deposition to be held at Paula’s attorney’s office in Carroll County, Maryland. Donna refuses to appear for the Deposition arguing the Deposition must be held in Harford County, where she resides and is employed. Counsel for the parties had numerous communications in an attempt to resolve this issue, but were unable to reach an agreement and Paula’s attorney insisted the Deposition go forward as scheduled.

Donna, through counsel, files a Motion for a Protective Order to prevent her appearance at her Deposition in Carroll County.

**How should the Court rule on the Motion? Explain your answer fully.**

Part C

On December 1, 2016, the Circuit Court Judge, after a bench trial, entered judgment against Donna in the amount of \$100,000 (the “Judgment”).

On December 8, 2016, Donna discovers documents in her own files that would have completely exonerated her in the Lawsuit had she given them to her attorney during the litigation (the “Newly Discovered Evidence”). On December 10, 2016, Donna files a Motion for a New Trial based upon the Newly Discovered Evidence.

On January 14, 2017, Paula discovers that the Judgment was mistakenly entered in the Court records as \$10,000 (the “Error”). On January 18, 2017, Paula files a Motion to Modify the Judgment to correct the Error.

**How should the Court rule on both Motions? Explain your answer fully.**

**QUESTION 3** (Yellow Answer Book/Yellow SofTest™ Header)

*(25 minutes)*

Tom and Ed each own an improved parcel of real property in Prince George's County, Maryland, and their parcels share a common boundary line. For Ed to get to his house, he can either drive down his long and winding driveway, or take a much shorter and more direct route across Tom's property. One day, approximately twenty-two years ago, shortly after Ed purchased his piece of property, he stopped his vehicle at the edge of Tom's property while Tom was outside and asked Tom if he could cut across his land. Tom said nothing, but waved him through. Ed thanked him, and, from that point forward, often utilized the shortcut.

Ed recently sold his property to Larry. The first time Larry attempted to utilize the shortcut to reach his recently-acquired house, Tom stopped him and told him he would have to use the driveway, as Tom would be putting up a new fence around his entire parcel.

Larry has come to you, a licensed Maryland attorney, and asked for an opinion as to his right to utilize the shortcut, as Ed had indicated during their purchase negotiations that he would be able to, and the deed language stated that Ed conveyed "all of his right, title, and interest in the property."

**What would you advise Larry? Explain your answer fully.**