

# **BOARD'S WRITTEN TEST**

## **MARYLAND BAR EXAMINATION**

**Tuesday, July 29, 2014**

**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)

Donald Smith, a workaholic sorely in need of a vacation, decided to book a cruise for himself and his 18-year-old daughter, Maya. Donald booked the cruise for the first week in June 2014, during Maya's summer break from college.

The day before they were to set sail, Donald asked Maya's 19-year-old boyfriend, Will, to drive them to the airport in Donald's car, so they wouldn't have to worry about parking. Will agreed to do so.

Will has had his driver's license for 14 months. His license has been suspended several times for failure to pay speeding tickets, a fact of which Donald and Maya are aware.

Donald and Maya's flight was at 7:00 a.m. The three left for the airport at 4:00 a.m. While driving, Will yawned several times, but informed Donald that he was "ok". As they approached the airport, Donald asked Will to "speed up". As Will increased speed, he did not see the car in front of him braking and he rear-ended the car driven by Lillian.

As a result of the accident, Maya and Lillian were hospitalized with various injuries.

**Donald comes to you, a licensed Maryland attorney, and asks:**

- 1. What claims can be raised against him as a result of the accident;**
- 2. What defenses may he have in response; and**
- 3. Whether he may bring any claim against Will?**

**What would you advise? Discuss 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)

Widgets Inc. is a major national widgets distribution company located in Prince George's County, Maryland. Jerry is employed by Widgets Inc. as a warehouse account manager where he is responsible for tracking and taking inventory of widget supplies and placing orders for more supplies through the company's requisition unit.

One day while on his way to the restroom at work, Jerry saw Teresa, the company CFO, place a check for \$980,000 in her desk drawer. The check was made payable to the order of Widgets Inc. Jerry watched as Teresa left her office and signed out for lunch. Believing that the company owed him for all his hard work over the years, Jerry opened the unlocked desk drawer, took the check, and placed it in his pocket. While in the restroom, Jerry forged Teresa's indorsement on the check because he knew that Teresa was authorized by the company to sign and indorse checks on its behalf.

Jerry then left for the day, and deposited the check in an account at Alpha Bank which he opened in the name of "Widgets Co." At the time of the deposit, Jerry told the Alpha Bank officer that he was a manager of a new office being opened by Widgets. Alpha Bank opened the account without requiring Jerry to produce any documents. Days later, Jerry withdrew all the money from the "Widgets Co." account at Alpha Bank, moved to Antigua, and never returned to Widgets Inc.

After quickly realizing what happened, Teresa promptly notified all appropriate banks but the money had already been withdrawn. Teresa now contacts you, a Maryland attorney, to advise Widgets Inc. on its courses of action under commercial law.

**Analyze and discuss the rights of Widget Inc. under the Uniform Commercial Code to recover its \$980,000 from Alpha Bank, and any defenses the bank may raise.**

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

On March 2, 2014, a fire occurred at the Comfortable Apartment complex in Lusby (Calvert County), Maryland. The complex is owned and operated by the Dependable Management Company. The fire originated in apartment 2B, leased to Terry, which was located on the second floor. The fire spread to the third floor of the building and into the residence of Paula Parsons. Paula was forced to jump from a third-story window, and sustained a fractured leg. Paula filed a complaint against Dependable in the Circuit Court for Calvert County, alleging negligence on the part of Dependable and seeking damages for her medical expenses and pain and suffering. Paula demanded a jury trial.

The issue at trial was whether the fire emanated from the oven in 2B due to Terry's misuse of the oven or from the clothes dryer in 2B. Paula claimed that a blocked exhaust hose caused the dryer to overheat, combusting residual lint and clothing that was cycling inside it. Dependable denied a clogged hose was the cause.

The parties agree that Dependable had a duty to maintain the clothes dryers and exhaust hoses at the apartment complex.

At trial, Paula sought to introduce evidence of two previous dryer fires in apartment 2B in a four-month period prior to the fire causing Paula's injury. Dependable objected. Paula also sought to introduce evidence that Dependable replaced the damaged machine with a new machine after each fire. Dependable objected. Dependable proffered evidence that there had been no fires associated with identical dryers or exhaust systems in any of the other eleven apartments in the complex during the five years since installation of the dryers. Paula objected.

At trial, Paula introduced expert testimony supporting her theory that the fire originated in the blocked exhaust hose. At the conclusion of all the evidence, Dependable requested a missing witness instruction because Paula had failed to call as a witness a second expert in the origin of electrical fires whom Paula had identified in discovery, and whom Dependable had deposed, on the grounds that the testimony of the second expert was withheld because it contradicted the testimony of the expert who did testify.

- A. How should the Court rule on the admissibility of Paula's evidence of other fires, and on what grounds?**
- B. How should the Court rule on the admissibility of Paula's evidence of replacement of dryers, and on what grounds?**
- C. How should the Court rule on the admissibility of Dependable's evidence that there had been no fires associated with the identical dryers, and on what grounds?**
- D. How should the Court rule on Dependable's request for a missing witness instruction, and why?**