

**OUT-OF-STATE  
ATTORNEY'S EXAMINATION  
MARYLAND BAR EXAMINATION  
TUESDAY, FEBRUARY 23, 2016  
(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 maximum 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(s) 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	30	54 minutes
Question 2	30	54 minutes
Question 3	15	27 minutes
Question 4	15	27 minutes
Question 5	10	18 minutes
<b>TOTALS FOR EXAMINATION</b>	<b>100 POINTS</b>	<b>180 MINUTES (3 HOURS)</b>

## QUESTION 1

*(30 points – 54 minutes)*

Allen, an adult male, lived at home with his parents in Charles County, Maryland. His driver's license had been suspended for a prior conviction for driving a motor vehicle while under the influence of a controlled dangerous substance.

Without his parents' knowledge or permission, after ingesting PCP, he took the family automobile. While driving on a County road, he hit another vehicle, disabling both vehicles.

Police arrived at the scene of the accident. They attempted to question Allen who was irrational, confrontational, and maintained he was "The Chosen One." The police searched Allen and found the keys to the family auto. They searched the vehicle and found a bag of PCP in the glove box. The driver of the other car identified Allen as the driver of, and only occupant of, the car the police searched. Assume the above facts can be proved at trial.

The police charged Allen with driving while suspended, driving under the influence of a controlled dangerous substance, unauthorized use of a motor vehicle, and possession of PCP. All are misdemeanors, but the latter two charges carry a four year sentencing exposure upon conviction.

### **A. In what court(s) can Allen be charged?**

You are the Public Defender assigned to represent Allen and are aware of the provable facts. Upon your initial interview of Allen in the County Jail, he continued to maintain that he is "The Chosen One," and that his only concern is that you get him out of jail. He is generally unresponsive to your efforts to determine the facts concerning his access to and operation of the vehicle.

### **B. What pleadings should you file on Allen's behalf?**

Assume that Allen is ultimately tried in the appropriate Court. Allen has told you he was high on PCP at the time of the accident and had no permission to use the vehicle. He has also told you he intends to take the stand in his defense, deny use of or knowledge of the PCP, and that his father had given him the keys to the car.

### **C. What is your responsibility as Allen's attorney in this situation?**

Assume Allen has been convicted of driving under the influence of a controlled dangerous substance.

### **D. What can the State's Attorney do, if anything, to seek enhanced penalties against Allen? Explain your answer.**

## QUESTION 2

*(30 points – 54 minutes)*

On January 15, 2016, Fred was lawfully operating his motor vehicle in the southbound lane of Maryland Route 4 in Calvert County, Maryland. Fred's wife, Wilma, was a passenger in the vehicle. David, a resident of Anne Arundel County, operating his own vehicle, ran through a red light at the intersection of Routes 2 and 4, and collided with Fred's vehicle. Fred and Wilma were both dead when the first person arrived on the scene. Fred's vehicle, valued at \$50,000, was a total loss. Fred and Wilma were survived by their daughter, Laura, who was 14 years old at the time of the accident.

Paul has been appointed as Personal Representative of the estates of both Fred and Wilma as there is no conflict of interest.

(a) Paul has found a promissory note from Bob, dated January 15, 2010, and payable on demand to Fred and Wilma, as tenants by the entireties, in the principal amount of \$25,000. Bob resides in Charles County, Maryland.

(b) Paul has also located a judgment recorded and indexed among the records of the Clerk of the Circuit Court for Calvert County, Maryland, on March 1, 2004, in favor of Fred against Larry.

(c) An examination of the land records of Calvert County, Maryland, and an asset investigation disclose:

- (1) a deed executed by Larry after the date of the judgment and reciting adequate consideration, which conveyed one acre titled in Larry's name to Tom;
- (2) a deed executed by Larry after the date of the judgment and reciting adequate consideration, which conveyed two acres titled in the names of Larry and his brother as joint tenants to Harry;
- (3) a joint savings account at a local bank in the name of Larry and his wife. Larry currently has no other assets.

On February 1, 2016, Paul asks to retain you to be the attorney for both estates. You agree since there is no conflict of interest.

- A. What cause(s) of action, if any, arose from the accident?**
- B. In which estate, if either, should Bob's promissory note be inventoried as an asset?**
- C. What action, if any, can Paul take to collect the judgment?**
- D. In what court(s) can any action(s) be commenced?**

### QUESTION 3

*(15 points – 27 minutes)*

In 2013, Mary purchased 300 acres of land in Anne Arundel County, Maryland, from Jane for \$2 million. A deferred purchase money promissory note, a deed of trust, and a security agreement were executed by Mary. The terms of the deferred purchase money promissory note included the promise to pay interest upon maturity of the promissory note or upon sale of the property by Mary. The promissory note included a provision for payment of additional interest to Jane based on a specific percentage of the gross sale proceeds of the property if Mary sold the property before the maturity of the promissory note.

Before the maturity of the promissory note, Mary sold the property for \$4 million to Anne Arundel County for the purpose of open space conservation. Mary received charitable tax deductions from the sale. A dispute arose between Mary and Jane on whether the amount of the charitable tax deductions received by Mary from the sale was to be included in the gross sale proceeds in determining the amount of additional interest due to Jane. Mary and Jane were unable to resolve that dispute.

Jane brought suit against Mary in Anne Arundel County, Maryland. Count I alleged Mary's breach of the payment of the note and deed of trust for failure to pay the full amount of interest due on the sale of the property. Count II alleged breach of the note and deed of trust by Mary for her failure to pay the full amount of interest on all compensation received by Mary from the sale of the property, including Mary's use of the charitable tax deductions. In response to the suit, Mary filed a Motion to Dismiss Count II, an Answer generally denying liability as to Count I, and a Counterclaim against Jane. Jane filed her Opposition to the Motion to Dismiss Count II and an Answer to the Counterclaim.

A hearing was held on Mary's Motion to Dismiss Count II. By written Opinion and Order, the Circuit Court granted the Motion to Dismiss Count II with the finding that the amount of the charitable tax deductions from the sale of the property was not to be included in the gross sale proceeds of the property. The docket entry of that ruling set forth that the case was not closed based on the partial judgment.

Mary and Jane then filed a Joint Stipulation of Dismissal whereby Jane dismissed Count I "with prejudice" and Mary dismissed her Counterclaim "with prejudice." The Joint Stipulation of Dismissal also included a statement that such dismissals were "without prejudice to the extent that the Court's Opinion and Order dismissing Count II is vacated or reversed on appeal and remanded to the Circuit Court."

Jane filed a timely Notice of Appeal of the Circuit Court's Order dismissing Count II of her claim stating that the Order became a final judgment upon the filing of the Stipulation of Dismissal of all then pending claims and of the Counterclaim.

- A. What arguments would you make that the Joint Stipulation of Dismissal created a final judgment in the case? State your analysis in specific detail.**
- B. What arguments would you make that the Joint Stipulation of Dismissal did not create a final judgment in the case? State your analysis in specific detail.**

## QUESTION 4

*(15 points – 27 minutes)*

A Complaint was filed in the Circuit Court for Baltimore County, Maryland, over a boundary dispute. Defendant responded to the suit and filed a Counterclaim. Both parties were represented by counsel. Extensive discovery was undertaken by both parties. Both parties failed to respond to the interrogatories propounded by the opposing party, and each party only provided to the other party those documents they wanted to provide without regard to the documents requested by the opposing party. The discovery responses by both parties were inadequate, incomplete, and information requested had been withheld without any reasonable basis.

**What procedural steps may be taken by counsel to obtain the discovery properly served but not provided by opposing counsel?**

## QUESTION 5

*(10 points – 18 minutes)*

Early in the course of the boundary dispute litigation, the Circuit Court for Baltimore County, Maryland, issued a Scheduling Order and an order for a mandatory pre-trial conference pursuant to Maryland Rule 2-504.1(c)(2). Among those orders were the requirements that (a) the parties cooperate in the preparation of a joint pre-trial statement to be filed with the Court two weeks before the pre-trial conference and that (b) the parties meet and confer at least three weeks before the pre-trial conference to prepare the joint statement at which time the parties would exchange their respective witness lists and exhibits. The attorneys for the parties met to confer on the preparation of the joint pre-trial statement. The meeting was brief as arguments occurred between the opposing counsel regarding outstanding discovery not produced and whether or not that outstanding discovery was needed to prepare the joint pre-trial statement. Defendant's counsel failed to bring a witness list or exhibits to the meeting. Plaintiff's counsel took the position that Plaintiff would not provide a witness list or exhibits until Defendant's counsel provided a witness list and exhibits. Unkind accusations were made by counsel to each other. Defendant's counsel stated that "nothing can be accomplished here" and left the meeting.

**Have counsel violated any provision(s) of the Maryland Lawyers' Rules of Professional Conduct? Discuss in specific detail.**

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