

BOARD'S WRITTEN TEST

MARYLAND BAR EXAMINATION

Tuesday, July 24, 2018

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. 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 afternoon session of the Board's Written Test has seven essay questions numbered four through ten.** There is a separate answer booklet/answer field for 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 suggested time to answer each essay question is 25 minutes. **Although these suggested times 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. 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 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 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 or field may not be graded.**
- 7. You must turn in all test answer booklets and scratch workbooks.**
- 8. You may keep the Board's essay test questions and statutory extract when testing ends.**

QUESTION 4 (Orange Answer Book/Orange SofTest™ Header)

(25 minutes)

Al, a college graduate, and Barb, a high school graduate, were both 21-years-old when they married each other 25 years ago. They have no minor children.

Al is currently in good health, employed as a civil engineer, and earns \$125,000 annually. Throughout the marriage Barb has suffered with Multiple Sclerosis. She has been employed at the county library for many years and currently earns \$30,000 a year with little chance of advancement.

On January 1, 2017, Al moved out of his wife's bedroom against her wishes and into the guest room and ceased having marital relations with her. When Barb's efforts to revive intimate contact were continually rejected by Al, she became suspicious.

Barb started snooping around and found flirtatious cards, e-mails, and texts sent to her husband from her best friend. She also found pills and supplements associated with male sexual performance. Finally, she found evidence of a flight itinerary where her husband and her best friend were listed as passengers, and reservations at a spa resort where one room with a king-size bed was reserved for both parties for November 1, 2017.

Barb confronted Al with her suspicions, and he said, "I take the Fifth."

Barb comes to you, a Maryland Attorney, on January 1, 2018. She relates the above information to you and wants to know if she can obtain an Absolute Divorce from her husband and indefinite alimony.

Evaluate:

- A. Barb's cause(s) of action for absolute divorce.**
- B. Al's potential defenses.**
- C. Barb's claim for indefinite alimony.**

QUESTION 5 (Pink Answer Book/Pink SofTest™ Header)

(25 minutes)

In 2005, Irma gave birth to a child. Irma believes that Harvey is her child's father.

In 2007, Irma applied to the State of Maryland for welfare benefits. As a condition of receiving welfare benefits, Irma assigned to the State of Maryland her rights to receive child support. Upon receiving the assignment, the State filed a paternity and child support action against Harvey in an appropriate Maryland Circuit Court. Harvey answered the Complaint, and in discovery requested a paternity blood test, but Irma refused to cooperate. As a result of Irma's refusal, the State terminated Irma's assistance payments and the court entered an order stating, "The action is dismissed without prejudice."

In 2014, Irma again applied for welfare benefits and again assigned to the State of Maryland her rights to receive child support. The State filed a new paternity and child support action against Harvey in the appropriate Maryland Circuit Court. Harvey again answered the Complaint, and requested in discovery a paternity blood test. Irma again refused to cooperate. The State again terminated Irma's assistance payments and the Court entered an Order stating only, "The action is dismissed."

The State of Maryland filed a third paternity and support action on Irma's behalf against Harvey in 2017. Harvey moved to dismiss on procedural grounds, arguing that two prior paternity and support actions, brought on behalf of Irma, had been voluntarily dismissed.

Should the Circuit Court decide in favor of Harvey or the State of Maryland? Explain.

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

(25 minutes)

Danny and Lucky walked up to a liquor store in Annapolis in Anne Arundel County, Maryland. Danny entered the store. Lucky remained outside next to the door looking up and down the street. After determining that there were no other customers in the store, Danny approached the counter where the cash register was located and said to Charlie, the cashier, “You know why I’m here.” Charlie immediately opened the cash register and put all the cash on the counter. Danny picked up the cash and exited the store. Danny and Lucky walked away.

Charlie called the police. Irving, the responding investigator, who knew Danny was a suspect in similar occurrences, showed Charlie a picture of Danny. Charlie said, “That’s the guy. I’ve seen him around before.” Irving included this in his report.

Danny was indicted for robbery by a Grand Jury in Anne Arundel County. Irving’s report was not provided to Danny’s attorney by the State’s Attorney’s office. Immediately prior to Charlie’s testimony at Danny’s jury trial in the Circuit Court, the prosecutor handed Danny’s attorney a copy of Irving’s report. During Charlie’s testimony, the prosecutor asked Charlie, “Do you see the man who took the cash in the courtroom?” Danny’s attorney immediately said, “I object. This testimony is inadmissible.” The trial judge immediately responded, “Overruled.” Charlie identified Danny. Danny’s attorney immediately moved to strike Charlie’s testimony identifying Danny. The motion was denied.

There was no other evidence that tied Danny to the alleged crime.

Danny’s attorney moved for judgment, stating all available grounds, at the conclusion of the State’s case, and again at the conclusion of all the evidence. The Court denied both motions. The jury returned a verdict of guilty. Danny’s attorney filed a timely notice of appeal.

Based on these facts, what grounds for appeal, if any, does Danny have?

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

(25 minutes)

Alice and Bonnie are adjoining property owners in Washington County, Maryland. Alice acquired her property, described as “180 acres more-or-less,” by a deed in 1976. Alice does not live on her property but visits it five to seven times per year. Bonnie acquired her property, described as “130 acres,” in 1958. Bonnie, and various members of her family, have farmed her property for years. There is an old fence line generally separating the properties. Alice’s property lies east of the fence line. Bonnie’s property lies west of the fence line.

There is a small portion of the two properties consisting of eight acres more or less, which is described in the metes and bounds description of the deeds held by both Alice and Bonnie. This parcel is generally situated west of the old fence line. This property, which is disputed between Alice and Bonnie, consists of undeveloped woodland, a spring, and stone deposits. Alice, through a survey and deed chain, has superior record title to the disputed parcel. However, Bonnie advised Alice that the old fence line was the boundary at the time of Alice’s purchase of the property.

In July 2016, Bonnie entered into a contract with Clarence to cut timber on the disputed parcel and received \$50,000 in payment for timber removed in July and August of 2016.

Alice visited her property in August of 2017. She observed that the timber had been removed from the disputed property and filed suit against Bonnie and Clarence for intentional and negligent trespass to timber. Bonnie filed a counterclaim for ownership of the property.

At trial, the following facts were undisputed:

1. The seller of Bonnie’s parcel identified an old fence as the eastern property line when Bonnie walked the property lines with the seller at the time of her purchase.
2. The disputed property is on the western side of this old fence.
3. Bonnie’s family cut firewood on the disputed property over the years and removed stones from it to maintain the roadway on the other parts of her property.
4. Bonnie gave a neighbor permission to hunt on the property for more than 15 years. The neighbor stated that he was told the old fence line was the boundary line, even though only a few fence posts remained.
5. Members of Bonnie’s family kept horses on the disputed parcel prior to Alice purchasing her property.
6. Bonnie’s now-deceased husband walked the property line with Alice who also expressed an interest in cutting timber. He showed Alice the fence line and said it was the boundary.
7. On Alice’s visits to the disputed parcel, she occasionally heard chain saws and gunshots, but never observed anyone on the disputed parcel.
8. Alice acknowledged that she had previously spoken with Bonnie, but denied that an actual boundary line was established.
9. Alice received a letter from Bonnie prior to the timber being cut, asking her to agree that the old fence line was the boundary. Alice states that she did not respond to the letter.
10. Alice paid the taxes on the property.
11. Alice said that she and Bonnie had never had an unfriendly word until the timber was cut.

Who should prevail and why? Explain.

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

The City of Carol, Maryland, recently enacted a sign ordinance to “prevent clutter and beautify the City.” The ordinance establishes limits on the size and display of certain types of signs, and outright bans on other types. Signs advertising real estate sales are unrestricted, while fundraising signs are banned outright. Political signs can be no larger than five-foot square and must be displayed only during certain times of year and in certain places. Signs advertising churches and/or religious functions may be displayed only on Sundays and within one thousand feet of a religious institution or facility. No sign of any type is permitted to be more than twenty feet tall. Violations of the ordinance are subject to confiscation of the allegedly offending sign(s) and civil penalties. You have been approached by a church which has recently purchased a new building and wishes to place signs throughout the City advertising its location and the times of its worship services, signs which it wishes to leave up every day of the week.

As a licensed Maryland attorney, what would you advise the church?

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

Newby, a newly admitted Maryland attorney, posted the following on several social media sites:

Experienced lawyer looking for injury victims. If you've been hurt, email Newby.
High recoveries. Low fees.

Victim, who had been left paralyzed after a botched back surgery in Maryland, responded to Newby's post, met with Newby, and orally agreed to representation based on a 20% contingency fee, plus reimbursement of expenses and costs. Newby also agreed to advance all expenses of Victim, including for medical bills and household expenses while Victim is out of work.

A. What, if anything, is wrong with what Newby has done under the Maryland Rules of Professional Conduct?

Newby contacts Grizzly, a Maryland attorney competent in medical malpractice cases. Grizzly offers to "take over the whole case," and pay Newby a "referral fee" of 25% of the legal fee. Newby wants to work with Grizzly on the case. Newby asks you, a knowledgeable Maryland lawyer, for advice.

B. Is Newby able to accept Grizzly's offer? Explain.

C. How can Newby and Grizzly move forward with representation of Victim under the Maryland Rules of Professional Conduct?

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

(25 minutes)

The Starks and the Lannisters have been in a bitter family squabble for some time. Recently, Suzy Lannister accused Edward Stark of stealing the Lannisters' prized possession, their golden lion bowling trophy. The trophy is worth \$15,000.

One night, Edward requested a private meeting with Suzy to discuss the accusation. At the meeting, Edward secretly recorded the conversation with a hidden audio-video camera on his lapel. The camera recorded Suzy holding the trophy in her hands and telling Edward that she knew the Starks did not steal the trophy because she had hidden the trophy herself. When Edward tried to grab the trophy, he was told to leave.

At the Maryland Circuit Court trial of a civil action by the Lannisters against the Starks over the missing trophy, the following evidence is attempted. In each instance, there is a timely objection:

1. The Lannisters' lawyer calls James Lannister to testify that two neighbors told him earlier in the week that they saw the lion trophy in the Starks' car on a hot afternoon.

2. During the Starks' case, their lawyer calls a neighbor, Bob Baratheon, to testify that while walking by the confession booths at a church, he overheard part of a conversation between Suzy Lannister and her pastor, Reverend Tully, where Reverend Tully gasped and said loudly, "What? Is that the missing trophy in your hands?"

3. During the cross-examination of Bob Baratheon, he is asked about a 12-year-old robbery charge against him for which he received a Probation Before Judgment sentence of five years of probation.

4. The Starks' lawyer subpoenas Reverend Tully to compel him to testify regarding the statements Suzy Lannister made to him during her religious confession session.

5. The Starks' lawyer then calls Edward Stark to testify to the matters on the recording, and offer the videotape into evidence.

6. On cross examination, Edward is asked about an 11-year-old felony theft conviction against him.

You are the judge presiding over the trial. What positions do you believe each party will take as to why each evidentiary matter should be admitted or not, and explain fully how you will rule on each matter.