

BOARD'S WRITTEN TEST

MARYLAND BAR EXAMINATION

Tuesday, July 24, 2018

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)

Nick was riding his bike in a dedicated bike lane on a public street in Montgomery County, Maryland. Upon approaching a slower moving bike, Nick moved into the normal traffic lane to pass the slower bike. Prior to moving from the bike lane, Nick observed a truck approaching in the lane he was about to enter. Nick determined he had adequate time and space to remain outside the truck's path while passing the slower bike, so he proceeded. The truck driver was distracted and did not apply the brakes in a timely manner. As a result, he was unable to stop the truck and struck Nick. Having sustained injuries, Nick has approached you, a Maryland lawyer, seeking advice as to his potential civil remedies against the driver of the truck.

What would you advise Nick?

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)

Kappa Co. is a supply company located in Baltimore City, Maryland. It sells widgets for both commercial and residential uses. Jewell Ivy purchased a packet of widgets from Kappa Co. for \$1,000. Upon realizing that the widgets she received were the wrong size for her needs, Jewell promptly requested a refund. Kappa Co.'s payment department issued a refund check in the amount of \$1,000 made payable to Jewell Ivy from Kappa Co.'s account at Maryland Bank. A week later, Kappa Co.'s payment department accidentally issued a second refund check for \$1,000 payable to Jewell Ivy. Realizing its mistake, Kappa Co. issued a written "stop payment" request to Maryland Bank on the second check, which took effect on the morning of July 10, 2018.

Upon receiving the second check from Kappa Co. on the evening of July 10, 2018, Jewell took the second check to QuickCash, a check cashing company. QuickCash took the check without knowledge of the first check or the stop payment order, and paid Jewell \$990 in cash in exchange for the check. QuickCash did not use its electronic check verification system because nothing about Jewell, the check, or the transaction appeared unusual to QuickCash.

QuickCash deposited the check in its account at Deposit Bank, which then timely presented the check to Maryland Bank for payment. Maryland Bank denied payment because of the "stop payment" on the check. Deposit Bank, pursuant to its banking account agreement with QuickCash, then in turn reversed the deposit to QuickCash's account and charged QuickCash a \$30 fee for the rejected check.

What rights or liabilities, if any, do Kappa Co., Jewell Ivy, QuickCash, and Maryland Bank have under the Maryland Code, Commercial Law Article, with respect to the second check? Discuss fully.

Question 3 (Yellow Answer Book/Yellow SofTest™ Header)

(25 minutes)

Peter was a successful young surgeon recruited by hospitals across the nation. In Spring 2017, Peter had several meetings with Donna, the Vice President of Human Resources at the very prestigious Central Maryland Medical Center (the “Hospital”). Most surgeons at the Hospital also held faculty positions at the Central Maryland University Medical School (the “University”). On May 1, 2017, Donna, on Hospital letterhead, wrote to Peter stating, in pertinent part:

We are pleased to extend you an offer to be the Deputy Chief Surgeon at the Hospital. Your new position, commencing on September 1, 2017, at a guaranteed salary of \$400,000 per year for the next five years . . . In addition, as you know, most of our surgeons hold faculty positions at the University. The Hospital will prepare the necessary paperwork on your behalf to provide you a tenured position at the University, which is awarded as a matter of course to all our experienced surgeons . . . Over the next few weeks you will receive confirmation from the University of your appointment to its faculty (the “Offer”).

Peter promptly accepted the Offer and was looking forward to his new positions at the Hospital and the University.

As September 1, 2017 approached, Peter had not received documents from the Hospital that were necessary for him to begin work. He contacted the Hospital and discovered Donna was no longer employed there and that Donna’s replacement knew nothing about the Offer. Donna’s replacement investigated the situation and discovered that Donna did not have the authority to present the Offer according to the Hospital’s policy. In fact, the Offer required prior approval by the Chief Surgeon and the Hospital’s Board of Directors, which had been refused. Furthermore, the Hospital had no authority to award faculty positions at the University, and any faculty positions at the University could only be awarded through the University’s own process, completely independent of the Hospital.

Peter was furious after hearing this. In reliance on the Offer, he had resigned his prior position and now will sustain substantial financial losses. Peter retains counsel to bring a lawsuit in the appropriate court seeking damages against both the Hospital and the University.

Discuss the likelihood of success as to each defendant and the damages he might recover.