

**OUT-OF-STATE  
ATTORNEY'S EXAMINATION  
MARYLAND BAR EXAMINATION  
TUESDAY, FEBRUARY 26, 2019  
(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	10 points	18 minutes
Question 2	10 points	18 minutes
Question 3	10 points	18 minutes
Question 4	10 points	18 minutes
Question 5	10 points	18 minutes
Question 6	10 points	18 minutes
Question 7	10 points	18 minutes
Question 8	10 points	18 minutes
Question 9	10 points	18 minutes
Question 10	10 points	18 minutes
<b>TOTALS FOR EXAMINATION</b>	<b>100 POINTS</b>	<b>180 MINUTES (3 HOURS)</b>

## **PRELIMINARY FACTS FOR QUESTIONS 1 AND 2**

On March 1, 2017, Borrower, a resident of Baltimore County, borrowed \$30,000 from Lender in order to finance Borrower's new business venture, which was owning and operating a health food store in Queen Anne's County. Borrower executed and delivered to Lender a promissory note for \$30,000 with interest to be paid monthly at an annual interest rate of 10%. The note stated that the principal balance was to be paid on January 2, 2018. The note also provided, among other things, that in the event of default, Borrower would pay Lender's attorney's fees in an amount equal to 15% of the amount due. Borrower's business did not prosper and he fell behind on his monthly interest payments. On January 2, 2018, he failed to make the principal payment.

Borrower maintains a checking account at the Queen Anne Bank (the "Bank"). Lender is aware of the account's existence. To her knowledge, Borrower has no other assets in Maryland other than those connected with the business.

Lender demanded payment of the loan from Borrower who replied that he was going on a three-week vacation to Mexico and would attend to the matter when he returned. Lender has learned that Borrower has started a "Going Out of Business" sale at his health food store.

Lender desires to sue Borrower for the money due her under the note and to ensure that there are assets available to satisfy a judgment in her favor. Assume that the principal due under the note is \$30,000 and the interest due is \$1,500. Attorney's fees are \$4,725. Lender wants to file a lawsuit for the full amount owed, including prejudgment interest and attorney's fees. She does not want a jury trial.

### **QUESTION 1**

(10 points - 18 minutes)

**In which Maryland Court(s) may Lender file suit? For what amount? Explain your reasoning fully.**

### **QUESTION 2**

(10 points - 18 minutes)

**A. What legal options are available to Lender to assure that the Borrower's assets will be available to satisfy a judgment?**

**B. What pleadings and other documents must Lender file to obtain a court's order to accomplish this?**

**Explain your reasoning fully.**

### **PRELIMINARY FACTS FOR QUESTIONS 3 AND 4**

On June 1, 2017, Borrower borrowed \$400,000 from Bank. In support of his loan application, he submitted a financial statement showing a net worth more than \$1,000,000. Borrower defaulted on the loan and Bank has filed a collection action against him. During discovery, Bank learned that Borrower was recently involved in an action with his former wife relating to child support. In a hearing in that action, Borrower called June, who was and is his accountant, as a witness. June testified that as of March 2017, Borrower's net worth was less than \$25,000. Because of this information, Bank has amended its lawsuit to include a claim for fraud and punitive damages and has summoned June to testify at trial about Borrower's former and current financial status. However, June has married Borrower since she gave her earlier testimony.

#### **QUESTION 3**

(10 points - 18 minutes)

**A. Can Bank's attorney seek testimony from June as to: (1) Borrower's financial status as of March 2017 and (2) his current financial status?**

**B. What grounds can be raised to prevent her from testifying?**

**C. How should the Court rule?**

**Explain your answers fully.**

### **ADDITIONAL FACTS FOR QUESTION 4**

Assume that you are Bank's attorney and that you have obtained a transcript of June's prior testimony. Also assume that the prior testimony is relevant to the current case.

#### **QUESTION 4**

(10 points - 18 minutes)

**Can June's prior testimony be used at trial? Explain your answer fully.**

## **PRELIMINARY FACTS FOR QUESTIONS 5 THROUGH 7**

Tom Pullings had just arrived home from his first semester at college when he went to the Big Store, a large store in Talbot County, Maryland to buy groceries for his mother. While at the store, Pullings was observed by John Lawman, an off-duty Talbot County Police Department officer, who was working as a security guard at the store. Lawman believed that Pullings was attempting to steal some items from the store and grabbed Pullings by the jacket as Pullings left the store. Pullings resisted, and in the resulting scuffle both men staggered into, and knocked down, Anne Elderly, another shopper. Elderly was injured as a result. At the time of the incident, Lawman was wearing his Talbot County Police Department uniform and was working at the store with the express permission of his supervisor at the police department according to a written County policy. The incident took place on December 23, 2016.

Pullings and Elderly reside in Talbot County, Maryland. Lawman is a resident of Caroline County. The Big Store is owned by Big Stores, Inc., a Virginia corporation with its principal office in that state; it has stores in all Maryland counties.

### **QUESTION 5**

(10 points - 18 minutes)

#### **PART A**

In April 2017, Elderly decided that she would like to file an action for damages. She consulted with Bob Barrister, a Maryland lawyer. After listening to Elderly's story, Barrister explained to Elderly that her case was a very difficult one and that success was not guaranteed. Barrister said he would represent Elderly for a contingency fee of 50% of the amount recovered from the defendants. Barrister also said that the case would require out-of-pocket expenditures for expert witnesses. Elderly agreed to pay Barrister \$5,000 for such purposes. Barrister and Elderly then shook hands and Elderly left. Two days later, Elderly mailed Barrister a check for \$5,000. Barrister deposited the check in his office checking account and promptly used a portion of the money for payroll purposes.

**What issues are raised by Barrister's agreement with Elderly and Barrister's handling of the check?**

#### **PART B**

After investigating the facts surrounding Elderly's claim, Barrister decided that there were colorable causes of action for negligence against Lawman, Pullings, Big Stores, Inc., and Talbot County.

**What procedural steps, if any, should Barrister take before filing suit?**

## QUESTION 6

(10 points - 18 minutes)

Barrister filed a complaint in the Circuit Court for Caroline County on behalf of Elderly against all the defendants. After reviewing the complaint, the lawyers for the various defendants decided that their clients' interests would be better served if the case were tried in Talbot County.

**How should the lawyers for the defendants attempt to transfer the case? How will the court rule on such a request? Explain your answer.**

## QUESTION 7

(10 points - 18 minutes)

### Part A

When Barrister filed the initial complaint, he neglected to include a request for a jury trial. Realizing his mistake, he filed a request for jury trial 10 days after the last answer was filed by the defendants. The defendants moved to strike the request for a jury trial on the basis that Elderly waived her right to a jury trial by failing to file a request with the initial complaint.

**How should the Court rule on the motion to strike? Explain your answer.**

### Part B

At trial, Barrister called the director of security services for Big Stores, Inc. to testify regarding Store's procedures for observing potential shoplifters. During her testimony, the director made a statement at variance with her prior deposition testimony. Barrister asked the director if she had ever made a statement contradicting her last answer. The attorney for Big Stores, Inc. objected to the question on the grounds that: (1) Barrister was attempting to impeach his own witness and (2) Barrister had to disclose the contents of any such prior statement prior to asking questions about it.

**How should the Court rule on the objection? Why?**

## **PRELIMINARY FACTS FOR QUESTIONS 8 THROUGH 10**

During the NCAA men's basketball tournament in March 2018, a fight involving patrons erupted at the "Rusty Rudder," a popular hangout in Baltimore County, Maryland. Ron Retriever and his cousin, Pete, were arrested and charged with committing assault in the second degree against Calvin Cavalier. On April 15, 2018, Ron was charged with three counts of theft from his employer, a local landscaping business.

Ron and Pete went to see Lois Lawyer, a duly-admitted Maryland attorney. They told Lawyer that Calvin started the altercation with Ron and that Pete had merely tried to break it up. They told Lawyer that they had decided to pool their money together to hire the best possible lawyer to represent them. They asked Lawyer to represent them on all pending charges.

### **QUESTION 8**

(10 points - 18 minutes)

**Can Lawyer represent Ron and Pete? Explain your answer.**

## **ADDITIONAL FACTS FOR QUESTION 9**

Ron timely requested a jury trial on all charges and his case was transferred to the Circuit Court. Ron's trial on the assault and the theft charges are scheduled together.

### **QUESTION 9**

(10 points - 18 minutes)

- A. How can Ron's lawyer prevent the assault and theft charges from being tried together?**
- B. When should the motion(s) be filed?**
- C. How should the court rule?**

**Explain your answers thoroughly.**

## **ADDITIONAL FACTS FOR QUESTION 10**

At Pete's trial on the assault charge in District Court, the State called Calvin Cavalier as a witness. Calvin testified that he had been quietly nursing a beer at the bar when he was shoved and punched by two men. He identified Pete as one of the assailants. On cross examination, Pete's lawyer asked Calvin whether he had been convicted of a crime. The State's Attorney objected. Pete's lawyer then proffered to the Court that Pete had been convicted of possession of dangerous weapons in 2006 and 2009 and of theft in 1995 and that the evidence was relevant to show Pete's violent character and lack of credibility. All of the convictions were misdemeanors.

### **QUESTION 10**

(10 points - 18 minutes)

**How should the Court rule on the objection? Explain your answer thoroughly.**

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