

**OUT-OF-STATE
ATTORNEY'S EXAMINATION
MARYLAND BAR EXAMINATION
TUESDAY, FEBRUARY 24, 2015
(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 total 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	20	36 minutes
Question 2	30	54 minutes
Question 3	10	18 minutes
Question 4	15	27 minutes
Question 5	25	45 minutes
TOTALS FOR EXAMINATION	100 POINTS	180 MINUTES (3 HOURS)

QUESTION ONE

(20 Points - 36 Minutes)

Adrien Ennis is a resident of Allegany County, Maryland, with a valid driver's license. She has properly retained you for a case in which she is the defendant, and that case has been filed in the Circuit Court for Allegany County, Maryland. It is a personal injury claim resulting from an automobile accident which occurred on July 15, 2012, and happened in West Virginia, which has a two year statute of limitations. The driver of the other car, and now plaintiff, is Patty Plaincoat, who is a West Virginia resident. Patty Plaincoat filed suit in West Virginia on November 20, 2014, and the West Virginia Court dismissed her case on January 23, 2015, as being barred by the statute of limitations. Patty then filed in the Circuit Court for Allegany County, Maryland, on January 30, 2015. Ms. Ennis has now come to you stating that she was served a Summons, a Complaint, and Discovery on February 1, 2015, by "certified mail", for which her mother signed the "green card". The discovery requests included 30 interrogatories, five of which had three subparts, and ten requests for production of documents.

- A. Is the action properly filed in Allegany County, Maryland? Discuss fully.**
- B. Is service proper on Ms. Ennis? Explain fully.**
- C. Assuming service is proper, please discuss the applicable rules including:**
 - (i) How should Ms. Ennis respond to the discovery?**
 - (ii) If Ms. Ennis does not object to the discovery, when is her response due?**
- D. Ennis serves Interrogatories on Plaincoat who fails to respond in a timely manner. What action may Ennis take?**

QUESTION TWO

(30 points - 54 Minutes)

Allen had a grand opening for his pub, located in Kent County, Maryland. He contracted with a Kent County company known as Lock Stock and Barrel (LSB) as his main supplier. LSB delivered coolers, furniture, beer, and other supplies to Allen for the grand opening. LSB did not receive payment as promised because Allen's checks were returned for insufficient funds. LSB claims Allen owes it \$35,000.

A. In what court(s) may LSB pursue its claim?

On October 28, 2014, LSB obtained entry of judgment against Allen for \$35,000. Allen did not appear for trial.

Allen, acting pro se, wishes to challenge the judgment.

B. What are Allen's post trial options other than appeal?

C. When must he file in order to be certain to protect his right to appeal?

Assume Allen files, pro se, to "change the judgment." His filing takes place on November 20, 2014, and is dismissed by the Court on December 15, 2014.

D. May he appeal the original judgment?

Assume Allen files to "change the judgment" on Friday, November 28, the day after Thanksgiving, which is 31 days from the date of judgment.

E. Is Allen's request timely?

F. Assume Allen took no action whatever until December 15, 2014. Is there any way for him to preserve his claim? Why or why not?

QUESTION THREE

(10 points - 18 Minutes)

Michael Gibbs was tried and convicted by a jury, in the Circuit Court for Garrett County, Maryland, on a charge of theft of \$70,000. During the course of the trial, Gibbs elected not to testify on his own behalf. However, his girlfriend, Elizabeth Mitchell, was called by Gibbs' counsel to testify. Mitchell, among other things, testified that she and Gibbs had cohabited continuously for a period of nine years.

The prosecutor asked Mitchell about a period of 243 days beginning in January 2010, when Gibbs had been incarcerated in California.

Prosecutor: You say you resided with him continuously for a period of nine years?

Mitchell: Yes.

Prosecutor: Were there any significant periods when you were apart?

Mitchell: Um. I think so.

Prosecutor: Which statement is true? Did you live together continuously or were there times when you were apart?

Mitchell: Well, I went on a trip so...

Prosecutor: Actually, wasn't it Mr. Gibbs who went on a trip?

Mitchell: Yeah.

Prosecutor: Where did he go?

Mitchell: Um...

Prosecutor: Wasn't his trip to jail for 243 days?

Mitchell: Yeah, I guess it was.

At the end of the case, the trial judge gave a curative instruction to the jury that testimony of Gibbs being incarcerated had nothing to do with the case against Gibbs but rather concerned the truthfulness of the witness who was testifying. The judge further instructed the jury that the questions only concerned the witness' (Mitchell) credibility.

On appeal, Gibbs raises the issue that the judge should not have allowed the introduction of Gibbs' criminal history through Mitchell.

A. On what should he rely to support his contention?

B. How should the court rule and why?

QUESTION FOUR

(15 points - 27 Minutes)

Ann and Bill own residential real estate in which they reside in the town of Washall. Their home property is located on the Washington and Allegany County lines and is partly within each county. The home is subject to a mortgage in favor of C-Bank. Ann and Bill made regular mortgage payments for approximately three years, but are now in default and haven't made payments for 11 months. C-Bank wishes to foreclose immediately under its power of sale.

A. What is the proper venue for the foreclosure action?

B. May C-Bank foreclose immediately?

C. Is personal service of process required?

Assume the property is ultimately sold to Delbert, who purchased at the foreclosure sale by making a 10% down payment, but has refused to go to closing.

D. Does C-Bank have a remedy?

QUESTION FIVE

(25 points - 45 Minutes)

Alice, a resident of Montgomery County, Maryland, is employed by the Montgomery County Police Department. She wishes to pursue a discrimination charge against her employer. She contacted Bill, a Maryland attorney. Bill requested a retainer fee of \$4,000 against which he agreed to charge an hourly rate of \$250. Later, because the case had not been resolved, Bill prepared another retainer agreement for the “hearing stage” of the representation in an Administrative Equal Employment Opportunity Hearing against the Department. A nonrefundable retainer fee of \$2,500 was requested and paid. An additional \$500 representing costs for a deposition transcript was also paid, although the transcript was never ordered.

The hearing did not take place because Alice settled her claim with the Police Department. Additional fees of \$3,500 were generated prior to settlement, and Alice promptly paid Bill the additional amount. Bill kept records of his times, but deposited none of the checks in the Trust Account.

Under the terms of the Settlement Agreement, the Police Department was to pay \$10,000 to Alice representing her attorney’s fees and costs. However, the check representing that amount was made payable only to Bill. The settlement check was seized before reaching Bill and applied by the Federal Government to reduce Bill’s student loan debt on which he had defaulted. Based upon Alice’s previous payments, Bill owed the entire \$10,000 to Alice.

Despite repeated phone call requests and emails, Bill did not respond to Alice’s inquiries regarding the disposition of the settlement funds.

He finally contacted Alice and told her he would try to recover the money and claimed he thought the settlement check would be payable jointly to Alice and himself. Because Alice heard nothing further from Bill, she filed suit in the District Court for Montgomery County and recovered a judgment against him. The judgment has not been satisfied. Alice also filed a complaint with the Attorney Grievance Commission. Bill has totally ignored letters of inquiry from the Commission to him. He also refused to meet with the Bar Counsel investigator, cancelling the interview he had previously scheduled.

What disciplinary charges might Bar Counsel bring against Bill?

(THIS PAGE INTENTIONALLY BLANK)

(THIS PAGE INTENTIONALLY BLANK)