

MARYLAND BAR EXAMINATION
BOARD'S WRITTEN TEST

July 24, 2007

EXTRACT for QUESTION 4

THIS EXTRACT IS TO BE USED FOR QUESTION 4 OF THE BOARD'S WRITTEN TEST. THIS EXTRACT CONTAINS SELECTED PROVISIONS OF THE THE ANNOTATED CODE OF MARYLAND, COMMERCIAL LAW ARTICLE, TITLE 2, SALES.

Note: Asterisks (*) indicate places where material contained in the Annotated Code has been omitted from this extract.**

ANNOTATED CODE OF MARYLAND
COMMERCIAL LAW

TITLE 2. SALES

SUBTITLE 3. GENERAL OBLIGATION AND CONSTRUCTION OF CONTRACT.

§ 2-313. Express warranties by affirmation, promise, description, sample.

(1) Express warranties by the seller are created as follows:

(a) Any affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods shall conform to the affirmation or promise.

(2) It is not necessary to the creation of an express warranty that the seller use formal words such as "warrant" or "guarantee" or that he have a specific intention to make a warranty, but an affirmation merely of the value of the goods or a statement purporting to be merely the seller's opinion or commendation of the goods does not create a warranty.

§ 2-314. Implied warranty; merchantability; usage of trade.

(1) . . . [A] warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Notwithstanding any other provisions of this title

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(2) Goods to be merchantable must be at least such as

* * *

(c) Are fit for the ordinary purposes for which such goods are used . . .

* * *

(3) . . . [O]ther implied warranties may arise from course of dealing or usage of trade.

* * *

Subtitle 6. Breach, Repudiation and Excuse.

§ 2-601. Buyer's rights on improper delivery.

. . . [U]nless otherwise agreed . . . , if the goods . . . fail in any respect to conform to the contract, the buyer may

(a) Reject the whole; or

(b) Accept the whole; or

* * *

§ 2-602. Manner and effect of rightful rejection.

(1) Rejection of goods must be within a reasonable time after their delivery or tender. It is ineffective unless the buyer seasonably notifies the seller.

* * *

(a) After rejection any exercise of ownership by the buyer with respect to any commercial unit is wrongful as against the seller; and

(b) If the buyer has before rejection taken physical possession of goods . . . he is under a duty after rejection to hold them with reasonable care at the seller's disposition for a time sufficient to permit the seller to remove them; but

(c) The buyer has no further obligations with regard to goods rightfully rejected.

* * *

§ 2-606. What constitutes acceptance of goods.

(1) Acceptance of goods occurs when the buyer:

(a) After a reasonable opportunity to inspect the goods signifies to the seller that the goods are conforming or that he will take or retain them in spite of their nonconformity; or

(b) Fails to make an effective rejection (subsection (1) of § 2-602), but such acceptance does not occur until the buyer has had a reasonable opportunity to inspect them; or

(c) Does any act inconsistent with the seller's ownership; but if such act is wrongful as against the seller it is an acceptance only if ratified by him.

* * *

§ 2-607. Effect of acceptance; notice of breach

(1) The buyer must pay at the contract rate for any goods accepted.

(2) Acceptance of goods by the buyer precludes rejection of the goods accepted and if made with knowledge of a nonconformity cannot be revoked because of it unless the acceptance was on the reasonable assumption that the nonconformity would be seasonably cured but acceptance does not of itself impair any other remedy provided by this title for nonconformity.

(3) Where a tender has been accepted

(a) The buyer must within a reasonable time after he discovers or should have discovered any breach notify the seller of breach or be barred from any remedy

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§ 2-608. Revocation of acceptance

(1) The buyer may revoke his acceptance of a . . . commercial unit whose nonconformity substantially impairs its value to him if he has accepted it

* * *

(b) Without discovery of . . . nonconformity if his acceptance was reasonably induced either by the difficulty of discovery before acceptance or by the seller's assurances.

(2) Revocation of acceptance must occur within a reasonable time after the buyer discovers or should have discovered the ground for it and before any substantial change in condition of the goods which is not caused by their own defects. It is not effective until the buyer notifies the seller of it.

(3) A buyer who so revokes has the same rights and duties with regard to the goods involved as if he had rejected them.

Subtitle 7. Remedies.

§ 2-711. Buyer's remedies in general

(1) Where . . . the buyer rightfully rejects or justifiably revokes acceptance . . . , the buyer may cancel and . . . recover so much of the price as has been paid

END OF EXTRACT

MARYLAND BAR EXAMINATION

BOARD'S WRITTEN TEST

July 24, 2007

EXTRACT for QUESTION 9

THIS EXTRACT IS TO BE USED FOR QUESTION 9. THIS EXTRACT CONTAINS SELECTED PROVISIONS OF THE ANNOTATED CODE OF MARYLAND, COURTS AND JUDICIAL PROCEEDING ARTICLE, TITLE 4. DISTRICT COURT - JURISDICTION, AND TITLE 6. PERSONAL JURISDICTION, VENUE, PROCESS AND PRACTICE, AND MARYLAND RULES, TITLE 1. GENERAL PROVISIONS, TITLE 2. CIVIL PROCEDURE - CIRCUIT COURT, AND TITLE 3. CIVIL PROCEDURE - DISTRICT COURT

Note: Asterisks (* * *) indicate places where material contained in the Annotated Code has been omitted from this extract.

ANNOTATED CODE OF MARYLAND
COURTS AND JUDICIAL PROCEEDINGS ARTICLE
TITLE 4. DISTRICT COURT - JURISDICTION

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SUBTITLE 4. CIVIL JURISDICTION.

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§ 4-402. Exceptions.

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(e) *Jury trial.*-

(1) In a civil action in which the amount in controversy does not exceed \$10,000, exclusive of attorney's fees if attorney's fees are recoverable by law or contract, a party may not demand a jury trial pursuant to the Maryland Rules.

(2) Except in a replevin action, if a party is entitled to and files a timely demand, in accordance with the Maryland Rules, for a jury trial, jurisdiction is transferred forthwith and the record of the proceeding shall be transmitted to the appropriate court.

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TITLE 6. PERSONAL JURISDICTION, VENUE, PROCESS AND PRACTICE

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SUBTITLE 2. VENUE

§ 6-201. General rule.

(a) *Civil actions.* - Subject to the provisions of §§ 6-202 and 6-203 of this subtitle and unless otherwise provided by law, a civil action shall be brought in a county where the defendant resides, carries on a regular business, is employed, or habitually engages in a vocation. In addition, a corporation also may be sued where it maintains its principal offices in the State.

(b) *Multiple defendants.* - If there is more than one defendant, and there is no single venue applicable to all defendants, under subsection (a), all may be sued in a county in which any one of them could be sued, or in the county where the cause of action arose.

§ 6-202. Additional venue permitted.

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(8) Tort action based on negligence - Where the cause of action arose;

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(11) Action for damages against a nonresident individual - Any county in the State;

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ANNOTATED CODE OF MARYLAND

MARYLAND RULES

TITLE 1. GENERAL PROVISIONS

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CHAPTER 300. GENERAL PROVISIONS.

* * *

Rule 1-311. Signing of pleadings and other papers.

(a) *Requirement.* - Every pleading and paper of a party represented by an attorney shall be signed by at least one attorney who has been admitted to practice law in this State and who complies with Rule 1-312. Every pleading and paper of a party who is not represented by an attorney shall be signed by the party. Every pleading or paper filed shall contain the address and telephone number of the person by whom it is signed. It also may contain that person's business electronic mail address and business facsimile number.

(b) *Effect of signature.* - The signature of an attorney on a pleading or paper constitutes a certification that the attorney has read the pleading or paper; that to the best of the attorney's knowledge, information, and belief there is good ground to support it; and that it is not interposed for improper purpose or delay.

(c) *Sanctions.*- If a pleading or paper is not signed as required (except inadvertent omission to sign, if promptly corrected) or is signed with intent to defeat the purpose of this Rule, it may be stricken and the action may proceed as though the pleading had not been filed. For a wilful violation of this Rule, an attorney is subject to appropriate disciplinary action.

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TITLE 2. CIVIL PROCEDURE - CIRCUIT COURT

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CHAPTER 300. PLEADINGS AND MOTIONS.

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Rule 2-323. Answer.

(a) *Content.* - A claim for relief is brought to issue by filing an answer. Every defense of law or fact to a claim for relief in a complaint, counterclaim, cross-claim, or third-party claim shall be asserted in an answer, except as provided by Rule 2-322. If a pleading setting forth a claim for relief does not require a responsive pleading, the adverse party may assert at the trial any defense of law or fact to that claim for relief. The answer shall be stated in short and plain terms and shall contain the following: (1) the defenses permitted by Rule 2-322 (b) that have not been raised by motion, (2) answers to the averments of the claim for relief pursuant to section (c) or (d) of this Rule, and (3) the defenses enumerated in sections (f) and (g) of this Rule.

* * *

(e) *Effect of failure to deny.* - Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damages, are admitted unless denied in the responsive pleading or covered by a general denial. Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided. When appropriate, a party may claim the inability to admit, deny, or explain an averment on the ground that to do so would tend to incriminate the party, and such statement shall not amount to an admission of the averment.

(f) *Negative defenses.* - Whether proceeding under section (c) or section (d) of this Rule, when a party desires to raise an issue as to (1) the legal existence of a party, including a partnership or a corporation, (2) the capacity of a party to sue or be sued, (3) the authority of a party to sue or be sued in a representative capacity, (4) the averment of the execution of a written instrument, or (5) the averment of the ownership of a motor vehicle, the party shall do so by negative averment, which shall include such supporting particulars as are peculiarly within the pleader's knowledge. If not raised by negative averment, these matters are admitted for the purpose of the pending action. Notwithstanding an admission under this section, the court may require proof of any of these matters upon such terms and conditions, including continuance and allocation of costs, as the court deems proper.

(g) *Affirmative defenses.* - Whether proceeding under section (c) or section (d) of this Rule, a party shall set forth by separate defenses: (1) accord and satisfaction, (2) merger of a claim by arbitration into an award, (3) assumption of risk, (4) collateral estoppel as a defense to a claim, (5) contributory negligence, (6) duress, (7) estoppel, (8) fraud, (9) illegality, (10) laches, (11) payment, (12) release, (13) res judicata, (14) statute of frauds, (15) statute of limitations, (16) ultra vires, (17) usury, (18) waiver, (19) privilege, and (20) total or partial charitable immunity.

In addition, a party may include by separate defense any other matter constituting an avoidance or affirmative defense on legal or equitable grounds. When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court shall treat the pleading as if there had been a proper designation, if justice so requires.

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Rule 2-326. Certain transfers from District Court.

(a) *Notice.*- Upon entry on the docket of an action transferred from the District Court pursuant to a demand for jury trial or a demand for transfer pursuant to section (d) of Rule 3-326, the clerk shall send to the plaintiff and each party who has been served in the District Court action a notice that states the date of entry and the assigned docket reference and includes a "Notice to Defendant" in substantially the following form:

Notice to Defendant

If you are a "defendant," "counter-defendant," "cross defendant," or "third-party defendant" in this action and you wish to contest the case against you, you must file in this court an answer or other response to the complaint, counterclaim, cross-claim, or third-party claim within 30 days after the date of this notice, regardless of whether you filed a notice of intention to defend or other response in the District Court.

(b) *Answer or other response; subsequent proceedings.*- Regardless of whether a notice of intention to defend or other response was filed in the District Court, a defendant, counter-defendant, cross defendant, or third-party defendant shall file an answer or other response to the complaint, counterclaim, cross-claim, or third-party claim within 30 days after the clerk sends the notice required by section (a) of this Rule. Following the expiration of the 30-day period, the action shall thereafter proceed as if originally filed in the circuit court.

Rule 2-327. Transfer of action.

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(b) *Improper venue.* - If a court sustains a defense of improper venue but determines that in the interest of justice the action should not be dismissed, it may transfer the action to any county in which it could have been brought.

(c) *Convenience of the parties and witnesses.* - On motion of any party, the court may transfer any action to any other circuit court where the action might have been brought if the transfer is for the convenience of the parties and witnesses and serves the interests of justice.

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CHAPTER 400. DISCOVERY.

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Rule 2-421. Interrogatories to parties.

(a) *Availability; number.* - Any party may serve written interrogatories directed to any other party. Unless the court orders otherwise, a party may serve one or more sets having a cumulative total of not more than 30 interrogatories to be answered by the same party. Interrogatories, however grouped, combined, or arranged and even though subsidiary or incidental to or dependent upon other interrogatories, shall be counted separately. Each form interrogatory contained in the Appendix to these Rules shall count as a single interrogatory.

(b) *Response.* - The party to whom the interrogatories are directed shall serve a response within 30 days after service of the interrogatories or within 15 days after the date on which that party's initial pleading or motion is required, whichever is later. The response shall answer each interrogatory separately and fully in writing under oath, or shall state fully the grounds for refusal to answer any interrogatory. The response shall set forth each interrogatory followed by its answer. An answer shall include all information available to the party directly or through agents, representatives, or attorneys. The response shall be signed by the party making it.

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Rule 2-424. Admission of facts and genuineness of documents.

(a) *Request for admission.* - A party may serve one or more written requests to any other party for the admission of (1) the genuineness of any relevant documents described in or exhibited with the request, or (2) the truth of any relevant matters of fact set forth in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. Each matter of which an admission is requested shall be separately set forth.

(b) *Response.* - Each matter of which an admission is requested shall be deemed admitted unless, within 30 days after service of the request or within 15 days after the date on which that party's initial pleading or motion is required, whichever is later, the party to whom the request is directed serves a response signed by the party or the party's attorney. As to each matter of which an admission is requested, the response shall set forth each request for admission and shall specify an objection, or shall admit or deny the matter, or shall set forth in detail the reason why the respondent cannot truthfully admit or deny it. The reasons for any objection shall be stated. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify an answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and deny or qualify the remainder. A respondent may not give lack of information or knowledge as a reason for failure to admit or deny unless the respondent states that after reasonable inquiry the information known or readily obtainable by the respondent is insufficient to enable the respondent to admit or deny. A party who considers that a matter of which an admission is requested presents a genuine issue for trial may not, on that ground alone, object to the request but the party may, subject to the provisions of section (e) of this Rule, deny the matter or set forth reasons for not being able to admit or deny it.

(c) *Determination of sufficiency of response.* - The party who has requested the admission may file a motion challenging the timeliness of the response or the sufficiency of any answer or objection. A motion challenging the sufficiency of an answer or objection shall set forth (1) the request, (2) the answer or objection, and (3) the reasons why the answer or objection is insufficient. Unless the court determines that an objection is justified, it shall order that an answer be served. If the court determines that an answer does not comply with the requirements of this Rule, it may order either that the matter is admitted or that an amended answer be served. If the court determines that the response was served late, it may order the response stricken. The court may, in place of these orders, determine that final disposition of the request be made at a pretrial conference or at a designated time prior to trial.

(d) *Effect of admission.* - Any matter admitted under this Rule is conclusively established unless the court on motion permits withdrawal or amendment. The court may permit withdrawal or amendment if the court finds that it would assist the presentation of the merits of the action and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice that party in maintaining the action or defense on the merits. Any admission made by a party under this Rule is for the purpose of the pending action only and is not an admission for any other purpose, nor may it be used against that party in any other proceeding.

(e) *Expenses of failure to admit.* - If a party fails to admit the genuineness of any document or the truth of any matter as requested under this Rule and if the party requesting the admissions later proves the genuineness of the document or the truth of the matter, the party may move for an order requiring the other party to pay the reasonable expenses incurred in making the proof, including reasonable attorney's fees.

The court shall enter the order unless it finds that (1) an objection to the request was sustained pursuant to section (c) of this Rule, or (2) the admission sought was of no substantial importance, or (3) the party failing to admit had reasonable ground to expect to prevail on the matter, or (4) there was other good reason for the failure to admit.

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TITLE 3. CIVIL PROCEDURE - DISTRICT COURT

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CHAPTER 300. PLEADING AND MOTIONS.

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RULE 3-307. Notice of intention to defend.

(a) To be Filed with Court - When Service Not Required. The defendant, including a counter-defendant, cross-defendant, and third-party defendant, shall file with the court a notice of intention to defend which may include any explanation or ground of defense. When the defendant is represented by an attorney, the notice shall be served in accordance with Rule 1-321. A defendant not represented by an attorney need not serve the notice on any party.

(b) Time for Filing.

(1) *Generally.* Except as provided by subsection (b)(2) of this Rule, the notice shall be filed within 15 days after service of the complaint, counterclaim, cross-claim, or third-party claim.

(2) *Exceptions.* A defendant shall file the notice within 60 days after being served if the defendant is:

(A) served outside of the State;

(B) a person who is required by statute of this State to have a resident agent and who is served by service upon the State Department of Assessments and Taxation, the Insurance Commissioner, or some other agency of the State authorized by statute to receive process; or

(C) the United States or an officer or agency of the United States served pursuant to Rule 3-124 (m) or (n).

Rule 3-325. Jury trial.

(a) *Demand - Time for filing.* -

(1) *By plaintiff.*- A plaintiff whose claim is within the exclusive jurisdiction of the District Court may elect a trial by jury of any action triable of right by a jury by filing with the complaint a separate written demand therefor.

(2) *By defendant.* - A defendant, counter-defendant, cross-defendant, or third-party defendant may elect a trial by jury of any action triable of right by a jury by filing a separate written demand therefor within ten days after the time for filing a notice of intention to defend.

(b) *Waiver.* - The failure of a party to file the demand as provided in section (a) of this Rule constitutes a waiver of trial by jury of the action for all purposes, including trial on appeal.

(c) *Transmittal of record to circuit court.* - When a timely demand for jury trial is filed, the clerk shall transmit the record to the circuit court within 15 days. At any time before the record is transmitted pursuant to this section, the District Court may determine, on motion or on its own initiative, that the demand for jury trial was not timely filed or that the action is not triable of right by a jury.

END OF EXTRACT