

MARYLAND BAR EXAMINATION

BOARD'S WRITTEN TEST

July 29, 2008

**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 ANNOTATED CODE OF MARYLAND, COMMERCIAL LAW ARTICLE, TITLE 1. GENERAL PROVISIONS AND TITLE 9. SECURED TRANSACTIONS.**

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

ANNOTATED CODE OF MARYLAND  
COMMERCIAL LAW ARTICLE

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TITLE 1 - GENERAL PROVISIONS

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2. GENERAL DEFINITIONS AND PRINCIPLES OF INTERPRETATION

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**§ 1-201. General definitions.**

Subject to additional definitions contained in the subsequent titles of this article which are applicable to specific titles or subtitles thereof, and unless the context otherwise requires, in Titles 1 through 10 of this article:

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(37) "Security interest" means an interest in personal property or fixtures which secures payment or performance of an obligation. The term also includes any interest of a consignor and a buyer of accounts, chattel paper, a payment intangible, or a promissory note in a transaction that is subject to Title 9. The special property interest of a buyer of goods on identification of such goods to a contract for sale under § 2-401 is not a "security interest", but a buyer may also acquire a "security interest" by complying with Title 9. Except as otherwise provided in § 2-205, the right of a seller or lessor of goods under Title 2 or Title 2A to retain or acquire possession of goods is not a "security interest", but a seller or lessor may also acquire a "security interest" by complying with Title 9. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer ( 2-401) is limited in effect to a reservation of a "security interest".

(a) Whether a transaction creates a lease or security interest is determined by the facts of each case; however, a transaction creates a security interest if the consideration the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease not subject to termination by the lessee, and

(i) The original term of the lease is equal to or greater than the remaining economic life of the goods,

(ii) The lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods,

(iii) The lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement, or

(iv) The lessee has an option to become the owner of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement.

(b) A transaction does not create a security interest merely because it provides that

(i) The present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal to or is greater than the fair market value of the goods at the time the lease is entered into,

(ii) The lessee assumes risk of loss of the goods or agrees to pay taxes, insurance, filing, recording, or registration fees, or service or maintenance costs with respect to the goods,

(iii) the lessee has an option to renew the lease or to become the owner of the goods,

(iv) The lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time the option is to be performed, or

(v) The lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed.

(c) For purposes of this subsection (37):

(i) Additional consideration is not nominal if (i) when the option to renew the lease is granted to the lessee the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed, or (ii) when the option to become the owner of the goods is granted to the lessee the price is stated to be the fair market value of

the goods determined at the time the option is to be performed. Additional consideration is nominal if it is less than the lessee's reasonably predictable cost of performing under the lease agreement if the option is not exercised;

(ii) "Reasonably predictable" and "remaining economic life of the goods" are to be determined with reference to the facts and circumstances at the time the transaction is entered into; and

(iii) "Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate is not manifestly unreasonable at the time the transaction is entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

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## **TITLE 9. SECURED TRANSACTIONS**

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### **Subtitle 6. Default**

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#### **§ 9-612. Timeliness of notification before disposition of collateral.**

(a) Except as otherwise provided in subsection (b), whether a notification is sent within a reasonable time is a question of fact.

(b) A notification of disposition sent after default and 10 days or more before the earliest time of disposition set forth in the notification is sent within a reasonable time before the disposition.

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#### **§ 9-623. Right to redeem collateral.**

(a) A debtor, any secondary obligor, or any other secured party or lienholder may redeem collateral.

(b) To redeem collateral, a person shall tender:

(1) Fulfillment of all obligations secured by the collateral; and

(2) The reasonable expenses and attorneys fees described in § 9-615(a)(1).

(c) A redemption may occur at any time before a secured party:

(1) Has collected collateral under § 9-607;

(2) Has disposed of collateral or entered into a contract for its disposition under § 9-610; or

(3) Has accepted collateral in full or partial satisfaction of the obligation it secures under § 9-622.

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**§ 9-625. Remedies for secured party's failure to comply with title.**

(a) If it is established that a secured party is not proceeding in accordance with this title, a court may order or restrain collection, enforcement, or disposition of collateral on appropriate terms and conditions.

(b) Subject to subsections (c) and (d), a person is liable for damages in the amount of any loss caused by a failure to comply with this title. Loss caused by a failure to comply may include loss resulting from the debtor's inability to obtain, or increased costs of, alternative financing.

(c) Except as otherwise provided in § 9-628:

(1) A person that, at the time of the failure, was a debtor, was an obligor, or held a security interest in or other lien on the collateral may recover damages under subsection (b) for its loss; and

(2) If the collateral is consumer goods, a person that was a debtor or a secondary obligor at the time a secured party failed to comply with this part may recover for that failure in any event an amount not less than the credit service charge plus 10 percent of the principal amount of the obligation or the time-price differential plus 10 percent of the cash price.

(d) A debtor whose deficiency is eliminated under § 9-626 may recover damages for the loss of any surplus. However, a debtor or secondary obligor whose deficiency is eliminated or reduced under § 9-626 may not otherwise recover under subsection (b) for noncompliance with the provisions of this part relating to collection, enforcement, disposition, or acceptance.

(e) If a secured party fails to comply with a request regarding a list of collateral or a statement of account under § 9-210, the secured party may claim a security interest only as shown in the list or statement included in the request as against a person that is reasonably misled by the failure.

**(END OF EXTRACT)**

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**EXTRACT for QUESTION 8**

**THIS EXTRACT IS TO BE USED FOR QUESTION 8 . THIS EXTRACT CONTAINS SELECTED PROVISIONS OF THE ANNOTATED CODE OF MARYLAND, CORPORATIONS AND ASSOCIATIONS ARTICLE, TITLE 2. CORPORATIONS IN GENERAL - FORMATION, ORGANIZATION, AND OPERATION, AND TITLE 3. CORPORATIONS IN GENERAL - EXTRAORDINARY ACTIONS.**

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

ANNOTATED CODE OF MARYLAND

CORPORATIONS AND ASSOCIATIONS ARTICLE

TITLE 2. CORPORATIONS IN GENERAL - FORMATION, ORGANIZATION,  
AND OPERATION.

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SUBTITLE 4. DIRECTORS AND OFFICERS

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**§ 2-405.1. Liability of directors, standard of care.**

(a) A director shall perform his duties as a director . . . :

(1) In good faith;

(2) In a manner he reasonably believes to be in the best interests of the corporation; and

(3) With the care that an ordinarily prudent person in a like position would use under similar circumstances.

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(e) An act of a director of a corporation is presumed to satisfy the standards of subsection (a) of this section.

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**§ 2-419. Interested director; disclosure and vote.**

(a) [A] contract or other transaction between a corporation and any of its directors . . . is not void or voidable solely because of any one or more of the following:

(1) The common directorship or interest;

(2) The presence of the director at the meeting of the board or a committee of the board which authorizes, approves, or ratifies the contract or transaction; or

(3) The counting of the vote of the director for the authorization, approval, or ratification of the contract or transaction.

(b) Subsection (a) of this section applies if:

(1) The fact of the common directorship or interest is disclosed or known to:

(i) The board of directors . . . , and the board . . . authorizes, approves, or ratifies the contract or transaction by the affirmative vote of a majority of disinterested directors, even if the disinterested directors constitute less than a quorum; or

(ii) The stockholders entitled to vote, and the contract or transaction is authorized, approved, or ratified by a majority of the votes cast by the stockholders entitled to vote other than the votes of shares owned of record or beneficially by the interested director . . . ; or

(2) The contract or transaction is fair and reasonable to the corporation.

\* \* \* \*

(d)(1) If a contract or transaction is not authorized, approved, or ratified in one of the ways provided for in subsection (b)(1) of this section, the person asserting the validity of the contract or transaction bears the burden of proving that the contract or transaction was fair and reasonable to the corporation at the time it was authorized, approved, or ratified.

(2) This subsection does not apply to the fixing by the board of directors of reasonable compensation for a director, whether as a director or in any other capacity.

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**TITLE 3. - CORPORATIONS IN GENERAL - EXTRAORDINARY ACTIONS.**

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**SUBTITLE 4. DISSOLUTION.**

**§ 3-413. Petition for dissolution.**

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(b) Any stockholder entitled to vote in the election of directors of a corporation may petition a court of equity to dissolve the corporation on grounds that:

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(2) The acts of the directors or those in control of the corporation are illegal, oppressive, or fraudulent.

**(END OF EXTRACT)**

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