

MARYLAND BAR EXAMINATION

BOARD'S WRITTEN TEST

February 24, 2009

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, MARYLAND RULES, TITLE 3. DISTRICT COURT.

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

ANNOTATED CODE OF MARYLAND
MARYLAND RULES

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TITLE 3. DISTRICT COURT
CHAPTER 100 COMMENCEMENT OF ACTION AND PROCESS

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Rule 3-121. Process - Service - In personam

(a) Generally. Service of process may be made within this State or, when authorized by the law of this State, outside of this State (1) by delivering to the person to be served a copy of the summons, complaint, and all other papers filed with it; (2) if the person to be served is an individual, by leaving a copy of the summons, complaint, and all other papers filed with it at the individual's dwelling house or usual place of abode with a resident of suitable age and discretion. . . .

(b) Evasion of Service. When proof is made by affidavit that a defendant has acted to evade service, the court may order that service be made by mailing a copy of the summons, complaint, and all other papers filed with it to the defendant at the defendant's last known residence and delivering a copy of each to a person of suitable age and discretion at the place of business of the defendant.

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Rule 3-123. Process--by Whom Served

(a) Generally. Service of process may be made by a sheriff or, except as otherwise provided in this Rule, by a competent private person, 18 years of age or older, including an attorney of record, but not by a party to the action.

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Rule 3-126. Process-Return

(a) Service by Delivery or Mail. An individual making service of process by delivery or mailing shall file proof of the service with the court promptly and in any event within the time during which the person served must respond to the process.

(1) If service is by delivery, the proof shall set forth the name of the person served, the date, and the particular place and manner of service. If service is made under Rule 3-121 (a)(2), the proof also shall set forth a description of the individual served and the facts upon which the individual making service concluded that the individual served is of suitable age and discretion.

(2) If service is made by an individual other than a sheriff or clerk, the individual shall file proof under affidavit that includes the name, address, and telephone number of the affiant and a statement that the affiant is of the age of 18 or over. If service by certified mail is made by a person other than the clerk, the proof shall include the original return receipt.

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Chapter 300. Pleadings 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.

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Rule 3-311. Motions

(a) Generally. An application to the court for an order shall be by motion which, unless made during a hearing or trial, shall be made in writing, and shall set forth the relief or order sought.

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(c) Statement of Grounds; Exhibits. A written motion and a response to a motion shall state with particularity the grounds. A party shall attach as an exhibit to a written motion or response any document that the party wishes the court to consider in ruling on the motion or response unless the document is adopted by reference as permitted by Rule 3-303 (d) or set forth as permitted by Rule 3-421 (g).

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Chapter 500. Trial.

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Rule 3-534. Motion to Alter or Amend a Judgment

On motion of any party filed within ten days after entry of judgment, the court may open the judgment to receive additional evidence, may amend its findings or its statement of reasons for the decision, may set forth additional findings or reasons, may enter new findings or new reasons, may amend the judgment, or may enter a new judgment. A motion to alter or amend a judgment may be joined with a motion for new trial.

Rule 3-535. Revisory Power

(a) Generally. On motion of any party filed within 30 days after entry of judgment, the court may exercise revisory power and control over the judgment and may take any action that it could have taken under Rule 3-534.

(b) Fraud, Mistake, Irregularity. On motion of any party filed at any time, the court may exercise revisory power and control over the judgment in case of fraud, mistake, or irregularity.

(c) Newly-discovered Evidence. On motion of any party filed within 30 days after entry of judgment, the court may grant a new trial on the ground of newly-discovered evidence that could not have been discovered by due diligence in time to move for a new trial pursuant to Rule 3-533.

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Chapter 600. Judgment.

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Rule 3-611. Confessed Judgment

(a) Entry of Judgment. Judgment by confession shall be entered by the clerk upon the filing of a complaint, the original or a photocopy of the written instrument authorizing the confession of judgment for a liquidated amount, and an affidavit specifying the amount due and stating the address of the defendant or that the whereabouts of the defendant are unknown to the plaintiff.

(b) Notice. Promptly upon entry of a judgment by confession, the clerk, instead of a summons, shall issue a notice informing the defendant of entry of judgment and of the latest time for filing a motion to open, modify, or vacate the judgment. If the address of the defendant is stated in the affidavit, the notice and copies of the original pleadings shall be served on the defendant in accordance with Rule 3-121. If the court is satisfied from an affidavit filed by the plaintiff that despite reasonable efforts the defendant cannot be served or the whereabouts of the defendant cannot be determined, the court shall provide for notice to the defendant in accordance with Rule 2-122.

(c) Motion by Defendant. The defendant may move to open, modify, or vacate the judgment within 30 days after service of the notice. The motion shall state the legal and factual basis for the defense to the claim.

(d) Disposition of Motion. If the court finds that there is a substantial and sufficient basis for an actual controversy as to the merits of the action, the court shall order the judgment by confession opened, modified, or vacated and permit the defendant to file a responsive pleading.

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(END OF EXTRACT)

MARYLAND BAR EXAMINATION

BOARD'S WRITTEN TEST

February 24, 2009

EXTRACT for QUESTION 9

THIS EXTRACT IS TO BE USED FOR QUESTION 9 OF THE BOARD'S WRITTEN TEST. THIS EXTRACT CONTAINS SELECTED PROVISIONS OF THE ANNOTATED CODE OF MARYLAND, COMMERCIAL LAW ARTICLE, 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 9. SECURED TRANSACTIONS

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SUBTITLE 1 . GENERAL PROVISIONS

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§ 9-102. Definitions and index of definitions.

(a) In this title:

(2) "Account", except as used in "account for", means a right to payment of a monetary obligation, whether or not earned by performance, (i) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (ii) for services rendered or to be rendered, (iii) for a policy of insurance issued or to be issued, (iv) for a secondary obligation incurred or to be incurred, (v) for energy provided or to be provided, (vi) for the use or hire of a vessel under a charter or other contract, (vii) arising out of the use of a credit or charge card or information contained on or for use with the card, or (viii) as winnings in a lottery or other game of chance operated or sponsored by a state, governmental unit of a state, or person licensed or authorized to operate the game by a state or governmental unit of a state. The term includes health-care-insurance receivables. The term does not include (i) rights to payment evidenced by chattel paper or an instrument, (ii) commercial tort claims, (iii) deposit accounts, (iv) investment property, (v) letter-of-credit rights or letters of credit, or (vi) rights to payment for money or funds advanced or sold, other than rights arising out of the use of a credit or charge card or information contained on or for use with the card.

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(10) "Certificate of title" means a certificate of title with respect to which a statute provides for the security interest in question to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral.

(11) "Chattel paper" means a record or records that evidence both a monetary obligation and a security interest in specific goods, a security interest in specific goods and software used in the goods, a security interest in specific goods and license of software used in the goods, a lease of specific goods, or a lease of specific goods and license of software used in the goods. In this paragraph, "monetary obligation" means a monetary obligation secured by the goods or owed under a lease of the goods and includes a monetary obligation with respect to software used in the goods. The term does not include (i) charters or other contracts involving the use or hire of a vessel or (ii) records that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card. If a transaction is evidenced by records that include an instrument or series of instruments, the group of records taken together constitutes chattel paper.

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(33) "Equipment" means goods other than inventory, farm products, or consumer goods.

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(39) "Financing statement" means a record or records composed of an initial financing statement and any filed record relating to the initial financing statement.

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(41) "Fixtures" means goods that have become so related to particular real property that an interest in them arises under real property law.

(42) "General intangible" means any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money, and oil, gas, or other minerals before extraction. The term includes payment intangibles and software.

* * * *

(44) "Goods" means all things that are movable when a security interest attaches. The term includes (i) fixtures, (ii) standing timber that is to be cut and removed under a conveyance or contract for sale, (iii) the unborn young of animals, (iv) crops grown, growing, or to be grown, even if the crops are produced on trees, vines, or bushes, and (v) manufactured homes. The term also includes a computer program embedded in goods and any supporting information provided in connection with a transaction relating to the program if (i) the program is associated with the goods in such a manner that it customarily is considered part of the goods, or (ii) by becoming the owner of the goods, a person acquires a right to use the program in connection with the goods. The term does not include a computer program embedded in goods that consist solely of the medium in which the program is embedded. The term also does not include accounts, chattel paper, commercial tort claims, deposit accounts, documents, general intangibles, instruments, investment property, letter-of-credit rights, letters of credit, money, or oil, gas, or other minerals before extraction.

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(48) "Inventory" means goods, other than farm products, which:

(A) Are leased by a person as lessor;

(B) Are held by a person for sale or lease or to be furnished under a contract of service;

(C) Are furnished by a person under a contract of service; or

(D) Consist of raw materials, work in process, or materials used or consumed in a business.

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(56) "Mortgage" means a consensual interest in real property, including fixtures, which secures payment or performance of an obligation.

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§ 9-109. Scope.

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(d) This title does not apply to:

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(11) The creation or transfer of an interest in or lien on real property, including a lease or rents thereunder, except to the extent that provision is made for:

- (a) Liens on real property in §§ 9-203 and 9-308;
- (b) Fixtures in § 9-334;
- (c) Fixture filings in §§ 9-501, 9-502, 9-512, 9-516, and 9-519; and
- (d) Security agreements covering personal and real property in § 9-604;

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**SUBTITLE 2 . EFFECTIVENESS OF SECURITY AGREEMENT;
ATTACHMENT OF SECURITY AGREEMENT; RIGHTS OF PARTIES TO
SECURITY AGREEMENT.**

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9-203. Attachment and enforceability of security interest; proceeds; supporting obligations; formal requisites.

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(f) The attachment of a security interest in collateral gives the secured party the rights to proceeds provided by § 9-315 and is also attachment of a security interest in a supporting obligation for the collateral.

(g) The attachment of a security interest in a right to payment or performance secured by a security interest or other lien on personal or real property is also attachment of a security interest in the security interest, mortgage, or other lien.

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SUBTITLE 3 . PERFECTION AND PRIORITY.

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§ 9-303. Law governing perfection and priority of security interests in goods covered by certificate of title.

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(b) Goods become covered by a certificate of title when a valid application for the certificate of title and the applicable fee are delivered to the appropriate authority. Goods cease to be covered by a certificate of title at the earlier of the time the certificate of title ceases to be effective under the law of the issuing jurisdiction or the time the goods become covered subsequently by a certificate of title issued by another jurisdiction.

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§ 9-311. Perfection of security interests in property subject to certain statutes, regulations, and treaties.

(a) Except as otherwise provided in subsection (d), the filing of a financing statement is not necessary or effective to perfect a security interest in property subject to:

(1) A statute, regulation, or treaty of the United States whose requirements for a security interest's obtaining priority over the rights of a lien creditor with respect to the property preempt § 9-310(a);

(2) Any certificate-of-title statute of this State which provides for a security interest to be indicated on the certificate as a condition or result of perfection; or

(3) A certificate-of-title statute of another jurisdiction which provides for a security interest to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the property.

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§ 9-312. Perfection of security interests in chattel paper, deposit accounts, documents, goods covered by documents, instruments, investment property, letter-of-credit rights, and money; perfection by permissive filing; temporary perfection without filing or transfer of possession.

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(b) Except as otherwise provided in § 9-315(c) and (d) for proceeds:

(3) A security interest in money may be perfected only by the secured party's taking possession under § 9-313.

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§ 9-313. When possession by or delivery to secured party perfects security interest without filing.

(a) Except as otherwise provided in subsection (b), a secured party may perfect a security interest in tangible negotiable documents, goods, instruments, money, or tangible chattel paper by taking possession of the collateral. A secured party may perfect a security interest in certificated securities by taking delivery of the certificated securities under § 8-301 of this article.

(b) With respect to goods covered by a certificate of title issued by this State, a secured party may perfect a security interest in the goods by taking possession of the goods only in the circumstances described in § 9- 316(d).

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(d) If perfection of a security interest depends upon possession of the collateral by a secured party, perfection occurs no earlier than the time the secured party takes possession and continues only while the secured party retains possession.

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§ 9-315. Secured party's rights on disposition of collateral and in proceeds.

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(c) A security interest in proceeds is a perfected security interest if the security interest in the original collateral was perfected.

(d) A perfected security interest in proceeds becomes unperfected on the 21st day after the security interest attaches to the proceeds unless:

(1) The following conditions are satisfied:

(A) A filed financing statement covers the original collateral;

(B) The proceeds are collateral in which a security interest may be perfected by filing in the office in which the financing statement has been filed; and

(C) The proceeds are not acquired with cash proceeds;

(2) The proceeds are identifiable cash proceeds; or

(3) The security interest in the proceeds is perfected other than under subsection (c) when the security interest attaches to the proceeds or within 20 days thereafter.

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SUBTITLE 5 . FILING.

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§ 9-501. Filing office.

(a) Except as otherwise provided in subsection (b), if the local law of this State governs perfection of a security interest or agricultural lien, the office in which to file a financing statement to perfect the security interest or agricultural lien is:

(1) The office designated for the filing or recording of a record of a mortgage on the related real property, if:

(A) The collateral is as-extracted collateral or timber to be cut; or

(B) The financing statement is filed as a fixture filing and the collateral is goods that are or are to become fixtures; or

(2) The Maryland State Department of Assessments and Taxation ("Department"), in all other cases, including a case in which the collateral is goods that are or are to become fixtures and the financing statement is not filed as a fixture filing.

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(END OF EXTRACT)