

MARYLAND BAR EXAMINATION
BOARD'S WRITTEN TEST
Tuesday, July 26, 2011

EXTRACT for QUESTION 2

THIS EXTRACT IS TO BE USED FOR QUESTION 2 OF THE BOARD'S WRITTEN TEST. THIS EXTRACT CONTAINS SELECTED PROVISIONS OF THE ANNOTATED CODE OF MARYLAND, COMMERCIAL LAW ARTICLE, TITLE 3.NEGOTIABLE INSTRUMENTS.

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

ANNOTATED CODE OF MARYLAND

COMMERCIAL LAW

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TITLE 3. NEGOTIABLE INSTRUMENTS

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Subtitle 3. Enforcement of Instruments

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§ 3-302. Holder in due course.

(a) Subject to subsection (c) and § 3-106(d), "holder in due course" means the holder of an instrument if:

(1) The instrument when issued or negotiated to the holder does not bear such apparent evidence of forgery or alteration or is not otherwise so irregular or incomplete as to call into question its authenticity; and

(2) The holder took the instrument (i) for value, (ii) in good faith, (iii) without notice that the instrument is overdue or has been dishonored or that there is an uncured default with respect to payment of another instrument issued as part of the same series, (iv) without notice that the instrument contains an unauthorized signature or has been altered, (v) without notice of any claim to the instrument described in § 3-306, and (vi) without notice that any party has a defense or claim in recoupment described in § 3-305(a).

(b) Notice of discharge of a party, other than discharge in an insolvency pro-

ceeding, is not notice of a defense under subsection (a), but discharge is effective against a person who became a holder in due course with notice of the discharge. Public filing or recording of a document does not of itself constitute notice of a defense, claim in recoupment, or claim to the instrument.

(c) Except to the extent a transferor or predecessor in interest has rights as a holder in due course, a person does not acquire rights of a holder in due course of an instrument taken (i) by legal process or by purchase in an execution, bankruptcy, or creditor's sale or similar proceeding, (ii) by purchase as part of a bulk transaction not in ordinary course of business of the transferor, or (iii) as the successor in interest to an estate or other organization.

(d) If, under § 3-303(a)(1), the promise of performance that is the consideration for an instrument has been partially performed, the holder may assert rights as a holder in due course of the instrument only to the fraction of the amount payable under the instrument equal to the value of the partial performance divided by the value of the promised performance.

(e) If (i) the person entitled to enforce an instrument has only a security interest in the instrument and (ii) the person obliged to pay the instrument has a defense, claim in recoupment, or claim to the instrument that may be asserted against the person who granted the security interest, the person entitled to enforce the instrument may assert rights as a holder in due course only to an amount payable under the instrument which, at the time of enforcement of the instrument, does not exceed the amount of the unpaid obligation secured.

(f) To be effective, notice must be received at a time and in a manner that gives a reasonable opportunity to act on it.

(g) This section is subject to any law limiting status as a holder in due course in particular classes of transactions.

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§ 3-306. Claims to an instrument.

A person taking an instrument, other than a person having rights of a holder in due course, is subject to a claim of a property or possessory right in the instrument or its proceeds, including a claim to rescind a negotiation and to recover the instrument or its proceeds. A person having rights of a holder in due course takes free of the claim to the instrument.

§ 3-307. Notice of breach of fiduciary duty.

(a) In this section:

(1) "Fiduciary" means an agent, trustee, partner, corporate officer or director, or other representative owing a fiduciary duty with respect to an instrument.

(2) "Represented person" means the principal, beneficiary, partnership, corporation, or other person to whom the duty stated in paragraph (1) is owed.

(b) If (i) an instrument is taken from a fiduciary for payment or collection or for value, (ii) the taker has knowledge of the fiduciary status of the fiduciary, and (iii) the represented person makes a claim to the instrument or its proceeds on the basis that the transaction of the fiduciary is a breach of fiduciary duty, the following rules apply:

(1) Notice of breach of fiduciary duty by the fiduciary is notice of the claim of the represented person.

(2) In the case of an instrument payable to the represented person or the fiduciary as such, the taker has notice of the breach of fiduciary duty if the instrument is (i) taken in payment of or as security for a debt known by the taker to be the personal debt of the fiduciary, (ii) taken in a transaction known by the taker to be for the personal benefit of the fiduciary, or (iii) deposited to an account other than an account of the fiduciary, as such, or an account of the represented person.

(3) If an instrument is issued by the represented person or the fiduciary as such, and made payable to the fiduciary personally, the taker does not have notice of the breach of fiduciary duty.

(4) If an instrument is issued by the represented person or the fiduciary as such, to the taker as payee, the taker has notice of the breach of fiduciary duty if the instrument is (i) taken in payment of or as security for a debt known by the taker to be the personal debt of the fiduciary, (ii) taken in a transaction known by the taker to be for the personal benefit of the fiduciary, or (iii) deposited to an account other than an account of the fiduciary, as such, or an account of the represented person.

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Subtitle 4. Liability of Parties.

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§ 3-402. Signature by representative.

(a) If a person acting, or purporting to act, as a representative signs an instrument by signing either the name of the represented person or the name of the signer, the represented person is bound by the signature to the same extent the

represented person would be bound if the signature were on a simple contract. If the represented person is bound, the signature of the representative is the “authorized signature of the represented person” and the represented person is liable on the instrument, whether or not identified in the instrument.

(b) If a representative signs the name of the representative to an instrument and the signature is an authorized signature of the represented person, the following rules apply:

(1) If the form of the signature shows unambiguously that the signature is made on behalf of the represented person who is identified in the instrument, the representative is not liable on the instrument.

(2) Subject to subsection (c), if (i) the form of the signature does not show unambiguously that the signature is made in a representative capacity or (ii) the represented person is not identified in the instrument, the representative is liable on the instrument to a holder in due course that took the instrument without notice that the representative was not intended to be liable on the instrument. With respect to any other person, the representative is liable on the instrument unless the representative proves that the original parties did not intend the representative to be liable on the instrument.

(c) If a representative signs the name of the representative as drawer of a check without indication of the representative status and the check is payable from an account of the represented person who is identified on the check, the signer is not liable on the check if the signature is an authorized signature of the represented person.

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END OF EXTRACT

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EXTRACT for QUESTION 8

THIS EXTRACT IS TO BE USED FOR QUESTION 8 OF THE BOARD'S WRITTEN TEST. THIS EXTRACT CONTAINS SELECTED PROVISIONS OF THE ANNOTATED CODE OF MARYLAND, COURTS AND JUDICIAL PROCEEDINGS ARTICLE, TITLE 1. COURT STRUCTURE AND ORGANIZATION; TITLE 4. DISTRICT COURT - JURISDICTION AND TITLE 5. LIMITATIONS, PROHIBITED ACTS, AND IMMUNITIES.

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**

TITLE 1. TRIAL COURTS OF GENERAL JURISDICTION.

Subtitle 5. Trial Courts of General Jurisdiction.

§ 1-501. Jurisdiction and powers in general.

The circuit courts are the highest common-law and equity courts of record exercising original jurisdiction within the State. Each has full common-law and equity powers and jurisdiction in all civil and criminal cases within its county, and all the additional powers and jurisdiction conferred by the Constitution and by law, except where by law jurisdiction has been limited or conferred exclusively upon another tribunal.

TITLE 4. DISTRICT COURT — JURISDICTION.

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Subtitle 2. Jurisdiction in General.

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§ 4-201. Extent of jurisdiction.

The jurisdiction of the District Court extends to every case which arises within the State or is subject to the State's judicial power, and which is within the limitations imposed by this title or elsewhere by law. Exercise of this jurisdiction is subject to the restrictions of venue established by law.

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Subtitle 4. Civil Jurisdiction.

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§ 4-401. Exclusive original jurisdiction.

Except as provided in § 4-402 of this subtitle, and subject to the venue provisions of Title 6 of this article, the District Court has exclusive original civil jurisdiction in:

(1) An action in contract or tort, if the debt or damages claimed do not exceed \$30,000, exclusive of prejudgment or post judgment interest, costs, and attorney's fees if attorney's fees are recoverable by law or contract;

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§ 4-402. Exceptions.

(a) Equity cases. -- Except as provided in §§ 4-401 and 4-404 of this subtitle, the District Court does not have equity jurisdiction.

(b) Land title cases. -- Except as provided in § 4-401 of this subtitle, the District Court does not have jurisdiction to decide the ownership of real property or of an interest in real property.

(c) Declaratory judgment cases. -- The District Court does not have jurisdiction to render a declaratory judgment.

(d) Concurrent jurisdiction cases. -- (1)(i) Except in a case under paragraph (2), (4), (5), or (6) of § 4-401 of this subtitle, the plaintiff may elect to file suit in the District Court or in a trial court of general jurisdiction, if the amount in controversy exceeds \$5,000, exclusive of prejudgment or post judgment interest, costs, and attorney's fees if attorney's fees are recoverable by law or contract.

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(e) Jury trial. -- (1) In a civil action in which the amount in controversy does not exceed \$15,000, 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 5. LIMITATIONS, PROHIBITED ACTIONS, AND IMMUNITIES

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Subtitle 3. Local Government Tort Claims Act.

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§ 5-304. Actions for unliquidated damages.

(a) Scope. -- This section does not apply to an action against a nonprofit corporation described in § 5-301(d)(23), (24), (25), (26), or (28) of this subtitle or its employees.

(b) Notice required. -- (1) Except as provided in subsections (a) and (d) of this section, an action for unliquidated damages may not be brought against a local government or its employees unless the notice of the claim required by this section is given within 180 days after the injury.

(2) The notice shall be in writing and shall state the time, place, and cause of the injury.

(c)(1) The notice required under this section shall be given in person or by certified mail, return receipt requested, bearing a postmark from the United States Postal Service, by the claimant or the representative of the claimant.

(2) Except as otherwise provided, if the defendant local government is a county, the notice required under this section shall be given to the county commissioners or county council of the defendant local government.

(3) If the defendant local government is:

(i) Baltimore City, the notice shall be given to the City Solicitor;

(ii) Howard County or Montgomery County, the notice shall be given to the County Executive; and

(iii) Anne Arundel County, Baltimore County, Harford County, or Prince George's County, the notice shall be given to the county solicitor or county attorney.

(4) For any other local government, the notice shall be given to the corporate authorities of the defendant local government.

(d) Waiver of notice requirement. -- Notwithstanding the other provisions of this section, unless the defendant can affirmatively show that its defense has been prejudiced by lack of required notice, upon motion and for good cause shown the court may entertain the suit even though the required notice was not given.

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(END OF EXTRACT)