

**MARYLAND BAR EXAMINATION
BOARD'S WRITTEN TEST
February 23, 2016**

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 MARYLAND ANNOTATED CODE, COMMERCIAL LAW ARTICLE.

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

ANNOTATED CODE OF MARYLAND

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COMMERCIAL LAW

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TITLE 2. SALES

SUBTITLE 1. SHORT TITLE, GENERAL CONSTRUCTION AND SUBJECT MATTER

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§ 2-104. Definitions: "Merchant"; "financing agency"; "between merchants"

(1) "Merchant" means a person who deals in goods of the kind or otherwise by his occupation holds himself out as having knowledge or skill peculiar to the practice or goods involved in the transaction or to whom such knowledge or skill may be attributed by his employment of an agent or broker or other intermediary who by his occupation holds himself out as having such knowledge or skill.

(2) "Financing agency" means a bank, finance company or other person who in the ordinary course of business makes advances against goods or documents of title or who by arrangement with either the seller or the buyer intervenes in ordinary course to make or collect payment due or claimed under the contract for sale, as by purchasing or paying the seller's draft or making advances against it or by merely taking it for collection whether or not documents of title accompany or are associated with the draft. "Financing agency" includes also a bank or other person who similarly intervenes between persons who are in the position of seller and buyer in respect to the goods (§ 2-707).

(3) "Between merchants" means in any transaction with respect to which both parties are chargeable with the knowledge or skill of merchants.

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

(1) Unless excluded or modified (§ 2-316), 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. Under this section the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale. Notwithstanding any other provisions of this title

(a) In §§ 2-314 through 2-318 of this title, "seller" includes the manufacturer, distributor, dealer, wholesaler or other middleman or the retailer; and

(b) Any previous requirement of privity is abolished as between the buyer and the seller in any action brought by the buyer.

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

(a) Pass without objection in the trade under the contract description; and

(b) In the case of fungible goods, are of fair average quality within the description; and

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

(d) Run, within the variations permitted by the agreement, of even kind, quality and quantity within each unit and among all units involved; and

(e) Are adequately contained, packaged, and labeled as the agreement may require; and

(f) Conform to the promises or affirmations of fact made on the container or label if any.

(3) Unless excluded or modified (§ 2-316) other implied warranties may arise from course of dealing or usage of trade.

(4) Subsections (1) and (2) of this section apply to a lease of goods and a bailment for hire of goods that pass through the physical possession of and are maintained by the lessor, sublessor, or bailor.

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§ 2-714. Buyer's damages for breach in regard to accepted goods

(1) Where the buyer has accepted goods and given notification (subsection (3) of § 2-607) he may recover as damages for any nonconformity of tender the loss resulting in the ordinary course of events from the seller's breach as determined in any manner which is reasonable.

(2) The measure of damages for breach of warranty is the difference at the time and place of acceptance between the value of the goods accepted and the value they would have had if they had been as warranted, unless special circumstances show proximate damages of a different amount.

(3) In a proper case any incidental and consequential damages under the next section may also be recovered.

§ 2-715. Buyer's incidental and consequential damages

(1) Incidental damages resulting from the seller's breach include expenses reasonably incurred in inspection, receipt, transportation and care and custody of goods rightfully rejected, any commercially reasonable charges, expenses or commissions in connection with effecting cover and any other reasonable expense incident to the delay or other breach.

(2) Consequential damages resulting from the seller's breach include

(a) Any loss resulting from general or particular requirements and needs of which the seller at the time of contracting had reason to know and which could not reasonably be prevented by cover or otherwise; and

(b) Injury to person or property proximately resulting from any breach of warranty.

(END OF EXTRACT)