

MARYLAND BAR EXAMINATION

BOARD'S ESSAY TEST

July 25, 2006

EXTRACT for QUESTION 4

THIS EXTRACT IS TO BE USED FOR QUESTION 4 OF THE BOARD'S ESSAY TEST. THIS EXTRACT CONTAINS SELECTED PROVISIONS OF THE ANNOTATED CODE OF MARYLAND, THE MARYLAND RULES, TITLE 2. CIVIL PROCEDURE – CIRCUIT COURT; AND TITLE 8. APPELLATE REVIEW IN THE COURT OF APPEALS AND COURT OF SPECIAL APPEALS AND COURTS AND JUDICIAL PROCEEDINGS ARTICLE, TITLE 3. COURTS OF GENERAL JURISDICTION.

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

ANNOTATED CODE OF MARYLAND

MARYLAND RULES

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 200. PARTIES

RULE 2-211. REQUIRED JOINDER OF PARTIES

(a) Persons to Be Joined. Except as otherwise provided by law, a person who is subject to service of process shall be joined as a party in the action if in the person's absence

(1) complete relief cannot be accorded among those already parties, or

(2) disposition of the action may impair or impede the person's ability to protect a claimed interest relating to the subject of the action or may leave persons already parties subject to a substantial risk of incurring multiple or inconsistent obligations by reason of the person's claimed interest.

RULE 2-213. MISJOINDER AND NONJOINER OF PARTIES

Misjoinder of parties is not ground for dismissal of an action. So long as one of the original plaintiffs and one of the original defendants remain as parties to the action, parties may be dropped or added (a) by amendment to a pleading pursuant to Rule 2-341 or (b) by order of the court on motion of any party or on its own initiative at any stage of the action and on such terms as are just. Any claim against a party may be severed and proceeded with separately.

Chapter 300. Pleadings and Motions.

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RULE 2-322. PRELIMINARY MOTIONS

(a) **Mandatory.** The following defenses shall be made by motion to dismiss filed before the answer, if an answer is required: (1) lack of jurisdiction over the person, (2) improper venue, (3) insufficiency of process, and (4) insufficiency of service of process. If not so made and the answer is filed, these defenses are waived.

* * *

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 . . . shall be asserted in an answer, except as provided by Rule 2-322. . . .

* * *

RULE 2-324. PRESERVATION OF CERTAIN DEFENSES

(a) **Defenses Not Waived.** A defense of failure to state a claim upon which relief can be granted, a defense of failure to join a party under Rule 2-211, an objection of failure to state a legal defense to a claim, and a defense of governmental immunity may be made in any pleading or by motion for summary judgment under Rule 2-501 or at the trial on the merits.

(b) **Subject Matter Jurisdiction.** Whenever it appears that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.

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Chapter 500. Trial.

RULE 2-501. MOTION FOR SUMMARY JUDGMENT

(a) **Motion.** Any party may make a motion for summary judgment on all or part of an action on the ground that there is no genuine dispute as to any material fact and that the party is entitled to judgment as a matter of law. . . .

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(f) **Entry of Judgment.** The court shall enter judgment in favor of or against the moving party if the motion and response show that there is no genuine dispute as to any material fact and that the party in whose favor judgment is entered is entitled to judgment as a matter of law. . . .

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RULE 2-533. MOTION FOR NEW TRIAL

(a) **Time for Filing.** Any party may file a motion for new trial within ten days after entry of judgment. . . .

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(c) **Disposition.** The court may set aside all or part of any judgment entered and grant a new trial to all or any of the parties and on all of the issues, or some of the issues if the issues are fairly severable.

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RULE 2-534. MOTION TO ALTER OR AMEND A JUDGMENT — COURT DECISION

In an action decided by the court, 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.

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TITLE 8. APPELLATE REVIEW IN THE COURT OF APPEALS AND COURT OF SPECIAL APPEALS

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CHAPTER 200. OBTAINING REVIEW IN COURT OF SPECIAL APPEALS

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RULE 8-202. NOTICE OF APPEAL--TIMES FOR FILING

(a) Generally. Except as otherwise provided in this Rule or by law, the notice of appeal shall be filed within 30 days after entry of the judgment or order from which the appeal is taken. In this Rule, "judgment" includes a verdict or decision of a circuit court to which issues have been sent from an Orphans' Court.

* * *

(c) Civil Action--Post-Judgment Motions. In a civil action, when a timely motion is filed pursuant to Rule 2-532, 2-533, or 2-534, the notice of appeal shall be filed within 30 days after entry of (1) a notice withdrawing the motion or (2) an order denying a motion pursuant to Rule 2-533 or disposing of a motion pursuant to Rule 2-532 or 2-534. A notice of appeal filed before the withdrawal or disposition of any of these motions does not deprive the trial court of jurisdiction to dispose of the motion. If a notice of appeal is filed and thereafter a party files a timely motion pursuant to Rule 2-532, 2-533, or 2-534, the notice of appeal shall be treated as filed on the same day as, but after, the entry of a notice withdrawing the motion or an order disposing of it.

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**ANNOTATED CODE OF MARYLAND
COURTS AND JUDICIAL PROCEEDINGS ARTICLE**

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TITLE 3. - COURTS OF GENERAL JURISDICTION.

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Subtitle 4. - Declaratory Judgment.

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§ 3-403. JURISDICTION OF COURT

(a) Except for the District Court, a court of record within its jurisdiction may declare rights, status, and other legal relations whether or not further relief is or could be claimed. An action or proceeding is not open to objection on the ground that a declaratory judgment or decree is prayed for.

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§ 3-405. NECESSARY PARTIES

(a)(1) If declaratory relief is sought, a person who has or claims any interest which would be affected by the declaration, shall be made a party.

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§ 3-406. AUTHORITY TO INTERPRET

Any person interested under a deed, will, trust, land patent, written contract, or other writing constituting a contract, or whose rights, status, or other legal relations are affected by a . . . contract . . . may have determined any question of construction or validity arising under the instrument, . . . land patent, contract, or franchise and obtain a declaration of rights, status, or other legal relations under it.

§ 3-407. INTERPRETATION OF CONTRACTS; BREACH

A contract may be construed before or after a breach of the contract.

§ 3-408. DECLARATION OF RIGHTS; PERSONS ENTITLED

Any person interested as or through a personal representative, trustee, guardian or other fiduciary, creditor, devisee, legatee, heir, next of kin, or beneficiary of a trust, in the administration of a trust, or of the estate of a decedent, a minor, disabled person, or insolvent, may have a declaration of rights or legal relations in respect to the trust or the estate of a decedent in order to:

* * *

(2) Direct the personal representative, guardian, or other fiduciary or trustees to do or abstain from doing any particular act in their fiduciary capacity; or

(3) Determine any question arising in the administration of the estate or trust, including questions of construction of wills and other writings.

§ 3-409. RELIEF PROVIDED

(a) Except as provided in subsection (d), a court may grant a declaratory judgment or decree in a civil case, if it will serve to terminate the uncertainty or controversy giving rise to the proceeding, and if:

(1) An actual controversy exists between contending parties;

(2) Antagonistic claims are present between the parties involved which indicate imminent and inevitable litigation; or

(3) A party asserts a legal relation, status, right, or privilege and this is challenged or denied by an adversary party, who also has or asserts a concrete interest in it.

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(c) A party may obtain a declaratory judgment or decree notwithstanding a concurrent common-law, equitable, or extraordinary legal remedy, whether or not recognized or regulated by statute.

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(END OF EXTRACT)

MARYLAND BAR EXAMINATION

BOARD'S ESSAY TEST

July 25, 2006

EXTRACT for QUESTION 9

THIS EXTRACT IS TO BE USED FOR QUESTION 9 OF THE BOARD'S ESSAY 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

TITLE 3. NEGOTIABLE INSTRUMENTS.

SUBTITLE 4. LIABILITY OF PARTIES.

§ 3-401. Signature

(a) A person is not liable on an instrument unless (i) the person signed the instrument, or (ii) the person is represented by an agent or representative who signed the instrument and the signature is binding on the represented person under § 3-402.

(b) A signature may be made (i) manually or by means of a device or machine, and (ii) by the use of any name, including a trade or assumed name, or by a word, mark or symbol executed or adopted by a person with present intention to authenticate a writing.

§ 3-408. Drawee not liable on unaccepted draft.

A check or other draft does not of itself operate as an assignment of funds in the hands of the drawee available for its payment, and the drawee is not liable on the instrument until the drawee accepts it.

§ 3-409. Acceptance of draft; certified check.

(a) "Acceptance" means the drawee's signed agreement to pay a draft as presented. It must be written on the draft and may consist of the drawee's signature alone. Acceptance may be made at any time and becomes effective when notification pursuant to instructions is given or the accepted draft is delivered for the purpose of giving rights on the acceptance to any person.

* * *

(d) . . . Acceptance may be made as stated in subsection (a) or by a writing on the check which indicates that the check is certified. The drawee of a check has no obligation to certify the check, and refusal to certify is not dishonor of the check.

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§ 3-413. Obligation of acceptor.

(a) The acceptor of a draft is obliged to pay the draft (i) according to its terms at the time it was accepted, even though the acceptance states that the draft is payable "as originally drawn" or equivalent terms,

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(b) If the certification of a check or other acceptance of a draft states the amount certified or accepted, the obligation of the acceptor is that amount.

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§ 3-414. Obligation of drawers.

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(b) If an unaccepted draft is dishonored, the drawer is obliged to pay the draft (i) according to its terms at the time it was issued or, if not issued, at the time it first came into possession of a holder,

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(c) If a draft is accepted by a bank, the drawer is discharged, regardless of when or by whom acceptance was obtained.

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