

MARYLAND BAR EXAMINATION
BOARD'S WRITTEN TEST

July 30, 2013

EXTRACT FOR QUESTION 1

THIS EXTRACT IS TO BE USED FOR QUESTION 1 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

Subtitle 1. General Provisions

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§ 9-102. Definitions and index of definitions.

(a) In this title:

* * *

(12) "Collateral" means the property subject to a security interest or agricultural lien. The term includes:

(A) Proceeds to which a security interest attaches;

(B) Accounts, chattel paper, payment intangibles, and promissory notes that have been sold; and

(C) Goods that are the subject of a consignment.

* * *

(23) "Consumer goods" means goods that are used or bought for use primarily for personal, family, or household purposes.

(24) "Consumer-goods transaction" means a consumer transaction in which:

(A) An individual incurs an obligation primarily for personal, family, or household purposes; and

(B) A security interest in consumer goods secures the obligation.

(25) "Consumer obligor" means an obligor who is an individual and who incurred the obligation as part of a transaction entered into primarily for personal, family, or household purposes.

(26) "Consumer transaction" means a transaction in which (i) an individual incurs an obligation primarily for personal, family, or household purposes, (ii) a security interest secures the obligation,

and (iii) the collateral is held or acquired primarily for personal, family, or household purposes. The term includes consumer-goods transactions.

* * *

(73) "Secured party" means:

(A) A person in whose favor a security interest is created or provided for under a security agreement, whether or not any obligation to be secured is outstanding;

(B) A person that holds an agricultural lien;

(C) A consignor;

(D) A person to which accounts, chattel paper, payment intangibles, or promissory notes have been sold;

(E) A trustee, indenture trustee, agent, collateral agent, or other representative in whose favor a security interest or agricultural lien is created or provided for; or

(F) A person that holds a security interest arising under § 2-401, § 2-505, § 2-711(3), § 2A-508(5), § 4-210, or § 5-118 of this article.

(74) "Security agreement" means an agreement that creates or provides for a security interest.

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Subtitle 6. Default

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§ 9-602. Waiver and variance of rights and duties.

Except as otherwise provided in § 9-624, to the extent that they give rights to a debtor or obligor and impose duties on a secured party, the debtor or obligor may not waive or vary the rules stated in the following listed sections:

(1) § 9-207 (b) (4) (C), which deals with use and operation of the collateral by the secured party;

(2) § 9-210, which deals with requests for an accounting and requests concerning a list of collateral and statement of account;

(3) § 9-607 (c), which deals with collection and enforcement of collateral;

(4) §§ 9-608 (a) and 9-615 (c) to the extent that they deal with application or payment of noncash proceeds of collection, enforcement, or disposition;

(5) §§ 9-608 (a) and 9-615 (d) to the extent that they require accounting for or payment of surplus proceeds of collateral;

(6) § 9-609 to the extent that it imposes upon a secured party that takes possession of collateral without judicial process the duty to do so without breach of the peace;

(7) §§ 9-610 (b), 9-611, 9-613, and 9-614, which deal with disposition of collateral;

(8) § 9-615 (f), which deals with calculation of a deficiency or surplus when a disposition is made to the secured party, a person related to the secured party, or a secondary obligor;

(9) § 9-616, which deals with explanation of the calculation of a surplus or deficiency;

* * *

§ 9-609. Secured party's right to take possession after default.

(a) After default, a secured party:

(1) May take possession of the collateral; and

(2) Without removal, may render equipment unusable and dispose of collateral on a debtor's premises under § 9-610.

(b) A secured party may proceed under subsection (a):

(1) Pursuant to judicial process; or

(2) Without judicial process, if it proceeds without breach of the peace.

(c) If so agreed, and in any event after default, a secured party may require the debtor to assemble the collateral and make it available to the secured party at a place to be designated by the secured party which is reasonably convenient to both parties.

§ 9-610. Disposition of collateral after default.

(a) After default, a secured party may sell, lease, license, or otherwise dispose of any or all of the collateral in its present condition or following any commercially reasonable preparation or processing.

(b) Every aspect of a disposition of collateral, including the method, manner, time, place, and other terms, must be commercially reasonable. If commercially reasonable, a secured party may dispose of collateral by public or private proceedings, by one or more contracts, as a unit or in parcels, and at any time and place and on any terms.

* * *

§ 9-613. Contents and form of notification before disposition of collateral: general.

Except in a consumer-goods transaction, the following rules apply:

(1) The contents of a notification of disposition are sufficient if the notification:

(A) Describes the debtor and the secured party;

(B) Describes the collateral that is the subject of the intended disposition;

(C) States the method of intended disposition;

(D) States that the debtor is entitled to an accounting of the unpaid indebtedness and states the charge, if any, for an accounting; and

(E) States the time and place of a public disposition or the time after which any other disposition is to be made.

(2) Whether the contents of a notification that lacks any of the information specified in paragraph (1) are nevertheless sufficient is a question of fact.

(3) The contents of a notification providing substantially the information specified in paragraph (1) are sufficient, even if the notification includes:

(A) Information not specified by that paragraph; or

(B) Minor errors that are not seriously misleading.

(4) A particular phrasing of the notification is not required.

§ 9-614. Contents and form of notification before disposition of collateral: consumer-goods transaction.

In a consumer-goods transaction, the following rules apply:

(1) A notification of disposition must provide the following information:

(A) The information specified in § 9-613 (1);

(B) A description of any liability for a deficiency of the person to which the notification is sent;

(C) A telephone number from which the amount that must be paid to the secured party to redeem the collateral under § 9-623 is available; and

(D) A telephone number or mailing address from which additional information concerning the disposition and the obligation secured is available.

* * *

§ 9-627. Determination of whether conduct was commercially reasonable.

(a) The fact that a greater amount could have been obtained by a collection, enforcement, disposition, or acceptance at a different time or in a different method from that selected by the secured party is not of itself sufficient to preclude the secured party from establishing that the collection, enforcement, disposition, or acceptance was made in a commercially reasonable manner.

(b) A disposition of collateral is made in a commercially reasonable manner if the disposition is made:

(1) In the usual manner on any recognized market;

(2) At the price current in any recognized market at the time of the disposition; or

(3) Otherwise in conformity with reasonable commercial practices among dealers in the type of property that was the subject of the disposition.

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(END OF EXTRACT)

MARYLAND BAR EXAMINATION

BOARD'S WRITTEN TEST

July 30, 2013

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 MARYLAND RULES, TITLE 3. CIVIL PROCEDURE - DISTRICT COURT, AND THE ANNOTATED CODE OF MARYLAND, COURTS AND JUDICIAL PROCEEDINGS ARTICLE, TITLE 1. COURT STRUCTURE AND ORGANIZATION, TITLE 4 DISTRICT COURT - JURISDICTION, AND TITLE 10. EVIDENCE.

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. CIVIL PROCEDURE -- DISTRICT COURT

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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.

* * *

Rule 3-325. Jury trial.

(a) Demand -- Time for filing.

(1) By plaintiff. A plaintiff whose claim is within the exclusive jurisdiction of the District Court may elect a trial by jury of any action triable of right by a jury by filing with the complaint a separate written demand therefor.

(2) By defendant. A defendant, counter-defendant, cross-defendant, or third-party defendant may elect a trial by jury of any action triable of right by a jury by filing a separate written demand therefor within ten days after the time for filing a notice of intention to defend.

(b) Waiver. The failure of a party to file the demand as provided in section (a) of this Rule constitutes a waiver of trial by jury of the action for all purposes, including trial on appeal.

(c) Transmittal of record to circuit court. When a timely demand for jury trial is filed, the clerk shall transmit the record to the circuit court within 15 days. At any time before the record is transmitted pursuant to this section, the District Court may determine, on motion or on its own initiative, that the demand for jury trial was not timely filed or that the action is not triable of right by a jury.

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

TITLE 1. COURT STRUCTURE AND ORGANIZATION

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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.

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TITLE 4. DISTRICT COURT – JURISDICTION

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Subtitle 4. Civil Jurisdiction

§ 4-401. Exclusive original jurisdiction [Effective until October 1, 2013].

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 postjudgment interest, costs, and attorney's fees if attorney's fees are recoverable by law or contract;

(2) An action of replevin, regardless of the value of the thing in controversy;

(3) A matter of attachment before judgment, if the sum claimed does not exceed \$30,000, exclusive of prejudgment or postjudgment interest, costs, and attorney's fees if attorney's fees are recoverable by law or contract;

(4) An action involving landlord and tenant, distraint, or wrongful detainer, regardless of the amount involved;

* * *

§ 4-402. Exceptions.

(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 postjudgment interest, costs, and attorney's fees if attorney's fees are recoverable by law or contract.

(ii) In the case of a class action, the separate claims of the proposed members of the class may be aggregated to meet the minimum amount in controversy required under subparagraph (i) of this paragraph.

(2) In a case under § 4-401(7) or (8) of this subtitle, the plaintiff may elect to file a petition for injunctive relief either in the District Court or the circuit court.

(3) In a case under § 4-401(16) of this subtitle, the plaintiff may elect to file a claim for a replacement motor vehicle in either the District Court or the circuit court.

(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.

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TITLE 10. EVIDENCE

Subtitle 1. Proof of Accounts and Records

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§ 10-104. Admissibility of writings or records of health care providers.

(a) Definitions. --

(1) In this section the following terms have the meanings indicated.

(2) "Health care provider" means:

(i) A health care provider, as defined in § 3-2A-01 of this article;

(ii) An ambulatory surgical facility;

(iii) An inpatient facility that is organized primarily in the rehabilitation of disabled persons, through an integrated program of medical and other service provided under competent professional supervision;

(iv) A home health agency, as defined in § 19-401 of the Health - General Article;

(v) Any health institution, service, or program for which a certificate of need is required under Title 19 of the Health - General Article; or

(vi) A person who is:

1. Substantially similar to a health care provider described in items (i) through (v) of this paragraph; and

2. Regulated by another state to provide health care services.

(3) "State" means a state of the United States or the District of Columbia.

(b) Applicability. --

(1) The provisions of this section apply only to a claim for:

(i) Damages for personal injury;

(ii) Medical, hospital, or disability benefits under §§ 19-505 and 19-506 of the Insurance Article;

(iii) First party motor vehicle benefits under §§ 19-509 and 19-510 of the Insurance Article; and

(iv) First party health insurance benefits.

(2) This section does not apply to an action for damages filed under Title 3, Subtitle 2A of this article.

(3) Subject to the provisions of paragraphs (1) and (2) of this subsection, the provisions of this section apply to a proceeding in:

(i) The District Court; or

(ii) A circuit court if the amount in controversy in the action in the circuit court does not exceed the amount specified in § 4-401 of this article for that type of action.

(c) Admissibility in general. --

(1) A writing or record of a health care provider described in this section is admissible under this section if:

(i) The writing or record is offered in the trial of a civil action in the District Court or a circuit court;

(ii) At least 60 days, except as provided in paragraph (2) of this subsection, before the beginning of the trial, the party who intends to introduce the writing or record:

1. Serves notice of the party's intent to introduce the writing or record without the support of a health care provider's testimony, a list that identifies each writing or record, and a copy of the writing or record on all other parties as provided under Maryland Rule 1-321; and
2. Files notice of service and the list that identifies each writing or record with the court; and

(iii) The writing or record is otherwise admissible.

(2) A party who receives a notice under paragraph (1) of this subsection and intends to introduce another writing or record of a health care provider without a health care provider's testimony shall:

(i) Serve a notice of intent, a list that identifies each writing or record, and a copy of the writing or record at least 30 days before the beginning of the trial; and

(ii) File notice of service and the list that identifies each writing or record with the court.

(3) The list required under paragraphs (1) and (2) of this subsection shall include:

(i) The name of the health care provider for each writing or record; and

(ii) The date of each writing or record of the health care provider or each date of treatment by the health care provider.

* * *

§ 10-105. Admissibility of bills for goods or services.

(a) Applicability. -- The provisions of this section apply to a civil action in:

(1) The District Court; or

(2) A circuit court if the amount in controversy in the action in the circuit court does not exceed the amount specified in § 4-401 of this article for that type of action.

(b) In general. --

(1) (i) Subject to the provisions of this section, a paid bill for goods or services is admissible without the testimony of the provider of the goods or services as evidence of the authenticity of

the bill for goods or services provided and the fairness and reasonableness of the charges of the provider of the goods or services.

(ii) A finder of fact may attach whatever weight to a paid bill that the finder of fact deems appropriate.

(2) The bill shall be admitted on testimony, by the party or any other person with personal knowledge:

(i) Identifying the original bill or an authenticated copy; and

(ii) 1. Identifying the provider of the goods or services;

2. Explaining the circumstances surrounding the receipt of the bill;

3. Describing the goods or services provided;

4. Stating that the goods or services were provided in connection with the event giving rise to the action; and

5. Stating that the bill was paid.

(c) Notice and copy of bill. --

(1) Subsection (b) of this section applies only if, at least 60 days before the beginning of the trial, the party who intends to introduce the bill:

(i) Serves notice of the party's intent to introduce the bill without the support of the testimony of the provider of the goods or services that were billed, a list that identifies each bill, and a copy of the bill on all other parties as provided under Maryland Rule 1-321; and

(ii) Files notice of service and the list that identifies each bill with the court.

(2) The list required under paragraph (1) of this subsection shall include:

(i) The name of the provider of the goods and services for each bill; and

(ii) The date of each bill of the provider of the goods and services.

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(END OF EXTRACT)

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