

**MARYLAND BAR EXAMINATION
BOARD'S WRITTEN TEST
February 25, 2014**

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 1 – GENERAL PROVISIONS; TITLE 3 – NEGOTIABLE INSTRUMENTS; TITLE 4. BANK DEPOSITS AND COLLECTIONS.

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

**ANNOTATED CODE OF MARYLAND
COMMERCIAL LAW
TITLE 1. GENERAL PROVISIONS**

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Subtitle 2. General Definitions and Principles of Interpretation

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§ 1-201. General definitions

(a) In general. – Unless the context otherwise requires, words or phrases defined in this section, or in the additional definitions contained in other titles of the Maryland Uniform Commercial Code that apply to particular titles or parts of titles of the Maryland Uniform Commercial Code, have the meanings stated.

(b) Defined terms. – Subject to definitions contained in other articles of the Maryland Uniform Commercial Code that apply to particular titles or parts of titles of the Maryland Uniform Commercial Code:

* * *

(20) “Good faith” means honesty in fact in the conduct or transaction concerned.

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COMMERCIAL LAW

TITLE 3. NEGOTIABLE INSTRUMENTS

Subtitle 1. General Provisions and Definitions

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§ 3-103. Definitions

(a) In this title:

* * *

(7) "Ordinary care" in the case of a person engaged in business means observance of reasonable commercial standards, prevailing in the area in which the person is located, with respect to the business in which the person is engaged. In the case of a bank that takes an instrument for processing for collection or payment by automated means, reasonable commercial standards do not require the bank to examine the instrument if the failure to examine does not violate the bank's prescribed procedures and the bank's procedures do not vary unreasonably from general banking usage not disapproved by this title or Title 4.

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§3-104. Negotiable instrument

* * *

(f) "Check" means (i) a draft, other than a documentary draft, payable on demand and drawn on a bank or (ii) a cashier's check or teller's check. An instrument may be a check even though it is described on its face by another term, such as "money order".

* * *

§ 3-201. Negotiation

(a) "Negotiation" means a transfer of possession, whether voluntary or involuntary, of an instrument by a person other than the issuer to a person who thereby becomes its holder.

(b) Except for negotiation by a remitter, if an instrument is payable to an identified person, negotiation requires transfer of possession of the instrument and its indorsement by the holder. If an instrument is payable to bearer, it may be negotiated by transfer of possession alone.

* * *

§ 3-202. Negotiation subject to rescission

(a) Negotiation is effective even if obtained (i) from an infant, a corporation exceeding its powers, or a person without capacity, (ii) by fraud, duress, or mistake, or (iii) in breach of duty or as part of an illegal transaction.

* * *

§ 3-204. Indorsement

(a) "Indorsement" means a signature, other than that of a signer as maker, drawer, or acceptor, that alone or accompanied by other words is made on an instrument for the purpose of (i) negotiating the instrument, (ii) restricting payment of the instrument, or (iii) incurring indorser's liability on the instrument, but regardless of the intent of the signer, a signature and its accompanying words is an indorsement unless the accompanying words, terms of the instrument, place of the signature, or other circumstances unambiguously indicate that the signature was made for a purpose other than indorsement. For the purpose of determining whether a signature is made on an instrument, a paper affixed to the instrument is a part of the instrument.

(b) "Indorser" means a person who makes an indorsement.

* * *

§ 3-301. Person entitled to enforce instrument

"Person entitled to enforce" an instrument means (i) the holder of the instrument, (ii) a nonholder in possession of the instrument who has the rights of a holder, or (iii) a person not in possession of the instrument who is entitled to enforce the instrument pursuant to § 3-309 or § 3-418(d). A person may be a person entitled to enforce the instrument even though the person is not the owner of the instrument or is in wrongful possession of the instrument.

§ 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).

* * *

§ 3-303. Value and consideration

(a) An instrument is issued or transferred for value if:

(1) The instrument is issued or transferred for a promise of performance, to the extent the promise has been performed;

(2) The transferee acquires a security interest or other lien in the instrument other than a lien obtained by judicial proceeding;

(3) The instrument is issued or transferred as payment of, or as security for, an antecedent claim against any person, whether or not the claim is due;

(4) The instrument is issued or transferred in exchange for a negotiable instrument; or

(5) The instrument is issued or transferred in exchange for the incurring of an irrevocable obligation to a third party by the person taking the instrument.

(b) "Consideration" means any consideration sufficient to support a simple contract. The drawer or maker of an instrument has a defense if the instrument is issued without consideration. If an instrument is issued for a promise of performance, the issuer has a defense to the extent performance of the promise is due and the promise has not been performed. If an instrument is issued for value as stated in subsection (a), the instrument is also issued for consideration.

* * *

§ 3-305. Defenses and claims in recoupment

(a) Except as stated in subsection (b), the right to enforce the obligation of a party to pay an instrument is subject to the following:

(1) A defense of the obligor based on (i) infancy of the obligor to the extent it is a defense to a simple contract, (ii) duress, lack of legal capacity, or illegality of the transaction which, under other law, nullifies the obligation of the obligor, (iii) fraud that induced the obligor to sign the instrument with neither knowledge nor reasonable opportunity to learn of its character or its essential terms, or (iv) discharge of the obligor in insolvency proceedings;

(2) A defense of the obligor stated in another section of this title or a defense of the obligor that would be available if the person entitled to enforce the instrument were enforcing a right to payment under a simple contract; and

(3) A claim in recoupment of the obligor against the original payee of the instrument if the claim arose from the transaction that gave rise to the instrument; but the claim of the obligor may be asserted against a transferee of the instrument only to reduce the amount owing on the instrument at the time the action is brought.

(b) The right of a holder in due course to enforce the obligation of a party to pay the instrument is subject to defenses of the obligor stated in subsection (a)(1), but is not subject to defenses of the obligor stated in subsection (a)(2) or claims in recoupment stated in subsection (a)(3) against a person other than the holder.

(c) Except as stated in subsection (d), in an action to enforce the obligation of a party to pay the instrument, the obligor may not assert against the person entitled to enforce the instrument a defense, claim in recoupment, or claim to the instrument (§ 3-306) of another person, but the other person's claim to the instrument may be asserted by the obligor if the other person is joined in the action and personally asserts the claim against the person entitled to enforce the instrument. An obligor is not obliged to pay the instrument if the person seeking enforcement of the instrument does not have rights of a holder in due course and the obligor proves that the instrument is a lost or stolen instrument.

* * *

§ 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.

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COMMERCIAL LAW

TITLE 4. BANK DEPOSITS AND COLLECTIONS

Subtitle 4. Relationship between Payor Bank and its Customer

* * *

§ 4-403. Customer's right to stop payment; burden of proof of loss

(a) Any person authorized to draw on the account, if there is more than one person, may stop payment of any item drawn on the customer's account or close the account by an order to the bank describing the item or account with reasonable certainty received at a time and in a manner that affords the bank a reasonable opportunity to act on it before any action by the bank with respect to the item described in § 4-303. If the signature of more than one person is required to draw on an account, any of these persons may stop payment or close the account.

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**MARYLAND BAR EXAMINATION
BOARD'S WRITTEN TEST
February 25, 2014**

EXTRACT FOR QUESTION 5

THIS EXTRACT IS TO BE USED FOR QUESTION 5 OF THE BOARD'S WRITTEN TEST. THIS EXTRACT CONTAINS SELECTED PROVISIONS OF THE MARYLAND RULES, TITLE 2. CIVIL PROCEDURE – CIRCUIT COURT.

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

**ANNOTATED CODE OF MARYLAND
MARYLAND RULES**

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TITLE 2. CIVIL PROCEDURE -- CIRCUIT COURT

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CHAPTER 300. PLEADINGS AND MOTIONS

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Rule 2-327. Transfer of action.

(a) Transfer to District Court.

(1) If circuit court lacks jurisdiction. If an action within the exclusive jurisdiction of the District Court is filed in the circuit court but the court determines that in the interest of justice the action should not be dismissed, the court may transfer the action to the District Court sitting in the same county.

* * *

(2) If circuit court has jurisdiction -- Generally. Except as otherwise provided in subsection (a)(3) of this Rule, the court may transfer an action within its jurisdiction to the District Court sitting in the same county if all parties to the action (A) consent to the transfer, (B) waive any right to a jury trial they currently may have and any right they may have to a jury trial following transfer to the District Court, including on appeal from any judgment entered, and (C) make any amendments to the pleadings necessary to bring the action within the jurisdiction of the District Court.

(3) If circuit court has jurisdiction -- Domestic violence actions.

(A) In an action under Code, Family Law Article, Title 4, Subtitle 5, after entering a temporary protective order, a circuit court, on motion or on its own initiative, may transfer the action to the District Court for the final protective order hearing if, after inquiry, the court finds that (i) there is no other action between the parties pending in the circuit court, (ii) the respondent has sought relief under Code, Family Law Article, Title 4, Subtitle 5, in the District Court, and (iii) in the interests of justice, the action should be heard in the District Court.

(B) In determining whether a hearing in the District Court is in the interests of justice, the court shall consider (i) the safety of each person eligible for relief, (ii) the convenience of the parties, (iii) the pendency of other actions involving the parties or children of the parties in one of the courts, (iv) whether a transfer will result in undue delay, (v) the services that may be available in or through each court, and (vi) the efficient operation of the courts.

(C) The consent of the parties is not required for a transfer under this subsection.

(D) After the action is transferred, the District Court has jurisdiction for the purposes of enforcing and extending the temporary protective order as allowed by law.

* * *

(b) Improper venue. If a court sustains a defense of improper venue but determines that in the interest of justice the action should not be dismissed, it may transfer the action to any county in which it could have been brought.

(c) Convenience of the parties and witnesses. On motion of any party, the court may transfer any action to any other circuit court where the action might have been brought if the transfer is for the convenience of the parties and witnesses and serves the interests of justice.

(d) Actions involving common questions of law or fact.

(1) If civil actions involving one or more common questions of law or fact are pending in more than one judicial circuit, the actions or any claims or issues in the actions may be transferred in accordance with this section for consolidated pretrial proceedings or trial to a circuit court in which (A) the actions to be transferred might have been brought, and (B) similar actions are pending.

(2) A transfer under this section may be made on motion of a party or on the transferor court's own initiative. When transfer is being considered on the court's own initiative, the circuit administrative judge having administrative authority over the court shall enter an order directing the parties to show cause on or before a date specified in the order why the action, claim, or issue should not be transferred for consolidated proceedings. Whether the issue arises from a motion or a show cause order, on the written request of any party the circuit administrative judge shall conduct a hearing.

(3) A transfer under this section shall not be made except upon (A) a finding by the circuit administrative judge having administrative authority over the transferor court that the requirements of subsection (d) (1) of this Rule are satisfied and that the transfer will promote the just and efficient conduct of the actions to be consolidated and not unduly inconvenience

the parties and witnesses in the actions subject to the proposed transfer; and (B) acceptance of the transfer by the circuit administrative judge having administrative authority over the court to which the actions, claims, or issues will be transferred.

(4) The transfer shall be pursuant to an order entered by the circuit administrative judge having administrative authority over the transferor court. The order shall specify (A) the basis for the judge's finding under subsection (d) (3) of this Rule, (B) the actions subject to the order, (C) whether the entire action is transferred, and if not, which claims or issues are being transferred, (D) the effective date of the transfer, (E) the nature of the proceedings to be conducted by the transferee court, (F) the papers, or copies thereof, to be transferred, and (G) any other provisions deemed necessary or desirable to implement the transfer. The transferor court may amend the order from time to time as justice requires.

(5) (A) If, at the conclusion of proceedings in the transferee court pursuant to the order of transfer, the transferred action has been terminated by entry of judgment, it shall not be remanded but the clerk of the transferee court shall notify the clerk of the transferor court of the entry of the judgment.

(B) If, at the conclusion of proceedings in the transferee court pursuant to the order of transfer, the transferred action has not been terminated by entry of judgment and further proceedings are necessary,

(i) within 30 days after the entry of an order concluding the proceeding, any party may file in the transferee court a motion to reconsider or revise any order or ruling entered by the transferee court,

(ii) if such a motion is filed, the transferee court shall consider and decide the motion, and

(iii) following the expiration of the 30-day period or, if a timely motion for reconsideration is filed, upon disposition of the motion, the circuit administrative judge having administrative authority over the transferee court shall enter an order remanding the action to the transferor court. Notwithstanding any other Rule or law, the rulings, decisions, and orders made or entered by the transferee court shall be binding upon the transferor and the transferee courts.

* * *

Rule 2-332. Third-party practice.

(a) Defendant's claim against third party. A defendant, as a third-party plaintiff, may cause a summons and complaint, together with a copy of all pleadings, scheduling notices, court orders, and other papers previously filed in the action, to be served upon a person not a party to the action who is or may be liable to the defendant for all or part of a plaintiff's claim against the defendant. A person so served becomes a third-party defendant.

(b) Response by third party. A third-party defendant shall assert defenses to the third-party plaintiff's claim as provided by Rules 2-322 and 2-323 and may assert counterclaims against the third-party plaintiff and cross-claims against other third-party defendants as provided by Rule 2-331. The third-party defendant may assert against the plaintiff any defenses that the third-party plaintiff has to the plaintiff's claim. The third-party defendant may also assert any claim against

the plaintiff arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff.

(c) Plaintiff's claim against third party. The plaintiff shall assert any claim against the third-party defendant arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff, and the third-party defendant thereupon shall assert defenses as provided by Rules 2-322 and 2-323 and may assert counterclaims and cross-claims as provided by Rule 2-331. If the plaintiff fails to assert any such claim against the third-party defendant, the plaintiff may not thereafter assert that claim in a separate action instituted after the third-party defendant has been impleaded. This section does not apply when a third-party claim has been stricken pursuant to section (e) of this Rule.

(d) Additional parties. A third-party defendant may proceed under this Rule against any person who is or may be liable to the third-party defendant for all or part of the claim made in the pending action. When a counterclaim is asserted against a plaintiff, the plaintiff may cause a third party to be brought in under circumstances that would entitle a defendant to do so under this Rule.

(e) Time for filing. If a party files a third-party claim more than 30 days after the time for filing that party's answer, any other party may file, within 15 days of service of the third-party claim, a motion to strike it or to sever it for separate trial. When such a motion is filed, the time for responding to the third-party claim is extended without special order to 15 days after entry of the court's order on the motion. The court shall grant the motion unless there is a showing that the late filing of the third-party claim does not prejudice other parties to the action.

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MARYLAND RULES

TITLE 2. CIVIL PROCEDURE -- CIRCUIT COURT

CHAPTER 500. TRIAL

* * *

Rule 2-506. Voluntary Dismissal.

(a) By notice of dismissal or stipulation. Except as otherwise provided in these rules or by statute, a party who has filed a complaint, counterclaim, cross-claim, or third-party claim may dismiss all or part of the claim without leave of court by filing (1) a notice of dismissal at any time before the adverse party files an answer or (2) by filing a stipulation of dismissal signed by all parties to the claim being dismissed.

(b) By order of court. Except as provided in section (a) of this Rule, a party who has filed a complaint, counterclaim, cross-claim, or third-party claim may dismiss the claim only by order of court and upon such terms and conditions as the court deems proper. If a counterclaim has been filed before the filing of a plaintiff's motion for voluntary dismissal, the action shall not be dismissed over the objection of the party who filed the counterclaim unless the counterclaim can remain pending for independent adjudication by the court.

(c) Effect. Unless otherwise specified in the notice of dismissal, stipulation, or order of court, a dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon

the merits when filed by a party who has previously dismissed in any court of any state or in any court of the United States an action based on or including the same claim.

(d) Costs. Unless otherwise provided by stipulation or order of court, the dismissing party is responsible for all costs of the action or the part dismissed.

* * *

Rule 2-519. Motion for judgment.

(a) Generally. A party may move for judgment on any or all of the issues in any action at the close of the evidence offered by an opposing party, and in a jury trial at the close of all the evidence. The moving party shall state with particularity all reasons why the motion should be granted. No objection to the motion for judgment shall be necessary. A party does not waive the right to make the motion by introducing evidence during the presentation of an opposing party's case.

(b) Disposition. When a defendant moves for judgment at the close of the evidence offered by the plaintiff in an action tried by the court, the court may proceed, as the trier of fact, to determine the facts and to render judgment against the plaintiff or may decline to render judgment until the close of all the evidence. When a motion for judgment is made under any other circumstances, the court shall consider all evidence and inferences in the light most favorable to the party against whom the motion is made.

(c) Effect of denial. A party who moves for judgment at the close of the evidence offered by an opposing party may offer evidence in the event the motion is not granted, without having reserved the right to do so and to the same extent as if the motion had not been made. In so doing, the party withdraws the motion.

(d) Reservation of decision in jury cases. In a jury trial, if a motion for judgment is made at the close of all the evidence, the court may submit the case to the jury and reserve its decision on the motion until after the verdict or discharge of the jury. For the purpose of appeal, the reservation constitutes a denial of the motion unless a judgment notwithstanding the verdict has been entered.

* * *

Rule 2-532. Motion for judgment notwithstanding the verdict.

(a) When permitted. In a jury trial, a party may move for judgment notwithstanding the verdict only if that party made a motion for judgment at the close of all the evidence and only on the grounds advanced in support of the earlier motion.

(b) Time for filing. The motion shall be filed within ten days after entry of judgment on the verdict or, if no verdict is returned, within ten days after the discharge of the jury. If the court reserves ruling on a motion for judgment made at the close of all the evidence, that motion becomes a motion for judgment notwithstanding the verdict if the verdict is against the moving party or if no verdict is returned. A motion for judgment notwithstanding the verdict filed after the announcement or signing by the trial court of a judgment or the return of a verdict but before entry of the judgment on the docket shall be treated as filed on the same day as, but after, the entry on the docket.

* * *

(c) Joinder with motion for new trial. A motion for judgment notwithstanding the verdict may be joined with a motion for a new trial.

(d) Effect of failure to make motion. Failure to move for a judgment notwithstanding the verdict under this Rule does not affect a party's right upon appeal to assign as error the denial of that party's motion for judgment.

(e) Disposition. If a verdict has been returned, the court may deny the motion, or it may grant the motion, set aside any judgment entered on the verdict, and direct the entry of a new judgment. If a verdict has not been returned, the court may grant the motion and direct the entry of judgment or order a new trial. If a party's motion for judgment notwithstanding the verdict is granted, the court at the same time shall decide whether to grant that party's motion for new trial, if any, should the judgment thereafter be reversed on appeal.

(f) Effect of reversal on appeal.

(1) When judgment notwithstanding the verdict granted. If a motion for judgment notwithstanding the verdict is granted and the appellate court reverses, it may (A) enter judgment on the original verdict, (B) remand the case for a new trial in accordance with a conditional order of the trial court, or (C) itself order a new trial. If the trial court has conditionally denied a motion for new trial, the appellee may assert error in that denial and, if the judgment notwithstanding the verdict is reversed, subsequent proceedings shall be in accordance with the order of the appellate court.

(2) When judgment notwithstanding the verdict denied. If a motion for judgment notwithstanding the verdict has been denied and the appellate court reverses, it may (A) enter judgment as if the motion had been granted or (B) itself order a new trial. If the motion for judgment notwithstanding the verdict has been denied, the prevailing party may, as appellee, assert grounds entitling that party to a new trial in the event the appellate court concludes that the trial court erred in denying the motion. If the appellate court reverses the judgment, nothing in this Rule precludes it from determining that the appellee is entitled to a new trial or from directing the trial court to determine whether a new trial should be granted.

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