

**MARYLAND BAR EXAMINATION
BOARD'S WRITTEN TEST
July 25, 2017**

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.

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

ANNOTATED CODE OF MARYLAND

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COURTS AND JUDICIAL PROCEEDINGS ARTICLE

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TITLE 4. DISTRICT COURT - 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 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;

(5) A grantee suit brought under §14-109 of the Real Property Article;

(6) A petition for injunction relating to the use, disposition, encumbrances, or preservation of property that is:

(i) Claimed in a replevin action, until seizure under the writ; or

(ii) Sought to be levied upon in an action of distress, until levy and any removal;

(7) A petition of injunction filed by:

(i) A tenant in an action under §8-211 of the Real Property Article or a local rent escrow law; or

(ii) A person who brings an action under §14-120, §14-125.1, or §14-125.2 of the Real Property Article;

(8) A petition filed by a county or municipality, including Baltimore City, for enforcement of local health, housing, fire, building, electric, licenses and permits, plumbing, animal control, consumer protection, and zoning codes for which equitable relief is provided;

(9) Proceedings under Title 12 or Title 13 of the Criminal Procedure Article for the forfeiture or return of money involved in a gambling or controlled dangerous substances seizure where the amount involved, excluding any interest and attorney's fees, if attorney's fees are recoverable by law or contract, does not exceed \$20,000;

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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 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.

(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. In a replevin action, if a party is entitled to and files a timely demand for a jury trial, the District Court may conduct a hearing on the show-cause order prior to issuing the writ, enforce an injunction issued by it in the action, and issue, renew, and receive returns upon the writ of replevin. The action shall be transmitted to the appropriate court only after the writ has been returned, stating that the property sought has been seized or elogned, and the time for filing a notice of intention to defend has expired.

(f) Dishonored check or other instrument. -- If the amount in controversy in an action for damages for a dishonored check or other instrument under §4-401(17) of this subtitle exceeds \$25,000, the defendant is entitled to transfer the action from the District Court to an appropriate circuit court by filing a timely demand as prescribed under the Maryland Rules.

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TITLE 6. PERSONAL JURISDICTION, VENUE, PROCESS AND PRACTICE

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SUBTITLE 2. VENUE

§6-201. General rule

(a) Civil actions. -- Subject to the provisions of §§6-202 and 6-203 of this subtitle and unless otherwise provided by law, a civil action shall be brought in a county where the defendant resides, carries on a regular business, is employed, or habitually engages in a vocation. In addition, a corporation also may be sued where it maintains its principal offices in the State.

(b) Multiple defendants. -- If there is more than one defendant, and there is no single venue applicable to all defendants, under subsection (a) of this section, all may be sued in a county in which any one of them could be sued, or in the county where the cause of action arose.

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MARYLAND RULES

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TITLE 2. CIVIL PROCEDURE -- CIRCUIT COURT

CHAPTER 100. COMMENCEMENT OF ACTION AND PROCESS

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Rule 2-124. Process - Service - Persons to be served

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(b) Individual. Service is made upon an individual by serving the individual or an agent authorized by appointment or by law to receive service of process for the individual.

(c) Individual under disability. Service is made upon an individual under disability by serving the individual and, in addition, by serving the parent, guardian, or other person having care or custody of the person or estate of the individual under disability.

(d) Corporation. Service is made upon a corporation, incorporated association, or joint stock company by serving its resident agent, president, secretary, or treasurer. If the corporation, incorporated association, or joint stock company has no resident agent or if a good faith attempt to serve the resident agent, president, secretary, or treasurer has failed, service may be made by serving the manager, any director, vice president, assistant secretary, assistant treasurer, or other person expressly or impliedly authorized to receive service of process.

(e) General partnership. Service made upon a general partnership sued in its group name in an action pursuant to Code, Courts Article, §6-406 by serving any general partner.

(f) Limited partnership. Service is made upon a limited partnership by serving its resident agent. If the limited partnership has no resident agent or if a good faith attempt to serve the resident agent has failed, service may be made upon any general partner or other person expressly or impliedly authorized to receive service of process.

(g) Limited liability partnership. Service is made upon a limited liability partnership by serving its resident agent. If the limited liability partnership has no resident agent or if a good faith attempt to serve the resident agent has failed, service may be made upon any other person expressly or impliedly authorized to receive service of process.

(h) Limited liability company. Service is made upon a limited liability company by serving its resident agent. If the limited liability company has no resident agent or if a good faith attempt to serve the resident agent has failed, service may be made upon any member or other person expressly or impliedly authorized to receive service of process.

(i) Unincorporated association. Service is made upon an unincorporated association sued in its group name pursuant to Code, Courts Article, §6-406 by serving any officer or member of its governing board. If there are no officers or if the association has no governing board, service may be made upon any member of the association.

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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.

(b) Permissive. The following defenses may be made by motion to dismiss filed before the answer, if an answer is required: (1) lack of jurisdiction over the subject matter, (2) failure to state a claim upon which relief can be granted, (3) failure to join a party under Rule 2-211, (4) discharge in bankruptcy, and (5) governmental immunity. If not so made, these defenses and objections may be made in the answer, or in any other appropriate manner after answer is filed.

(c) Disposition. A motion under sections (a) and (b) of this Rule shall be determined before trial, except that a court may defer the determination of the defense of failure to state a claim upon which relief can be granted until the trial. In disposing of the motion, the court may dismiss the action or grant such lesser or different relief as may be appropriate. If the court orders dismissal, an amended complaint may be filed only if the court expressly grants leave to amend. The amended complaint shall be filed within 30 days after entry of the order or within such other time as the court may fix. If leave to amend is granted and the plaintiff fails to file an amended complaint within the time prescribed, the court, on motion, may enter an order dismissing the action. If, on a motion to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 2-501, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 2-501.

(d) Motion for more definite statement. If a pleading to which an answer is permitted is so vague or ambiguous that a party cannot reasonably frame an answer, the party may move for a more definite statement before answering. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the court is not obeyed within 15 days after entry of the order or within such other time as the court may fix, the court may strike the pleading to which the motion was directed or make such order as it deems just.

(e) Motion to strike. On motion made by a party before responding to a pleading or, if no responsive pleading is required by these rules, on motion made by a party within 15 days after the service of the pleading or on the court's own initiative at any time, the court may order any insufficient defense or any improper, immaterial, impertinent, or scandalous matter stricken from any pleading or may order any pleading that is late or otherwise not in compliance with these rules stricken in its entirety.

(f) Consolidation of defenses in motion. A party who makes a motion under this Rule may join with it any other motions then available to the party. No defense or objection raised pursuant to this Rule is waived by being joined with one or more other such defenses or objections in a motion under this Rule. If a party makes a motion under this Rule but omits any defense or objection then available to the party that this Rule permits to be raised by motion, the party shall not thereafter make a motion based on the defenses or objections so omitted except as provided in Rule 2-324.

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, counterclaim, cross-claim, or third-party claim shall be asserted in an answer, except as provided by Rule 2-322. If a pleading setting forth a claim for relief does not require a responsive pleading, the adverse party may assert at the trial any defense of law or fact to that claim for relief. The answer shall be stated in short and plain terms and shall contain the following: (1) the defenses permitted by Rule 2-322 (b) that have not been raised by motion, (2) answers to the averments of the claim for relief pursuant to section (c) or (d) of this Rule, and (3) the defenses enumerated in sections (f) and (g) of this Rule.

(b) Preliminary determination. The defenses of lack of jurisdiction over the subject matter, failure to state a claim upon which relief can be granted, failure to join a party under Rule 2-211, and governmental immunity shall be determined before trial on application of any party, except that the court may defer the determination of the defense of failure to state a claim upon which relief can be granted until the trial.

(c) Specific admissions or denials. Except as permitted by section (d) of this Rule, a party shall admit or deny the averments upon which the adverse party relies. A party without knowledge or information sufficient to form a belief as to the truth of an averment shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. A party may deny designated averments or paragraphs or may generally deny all the averments except averments or paragraphs that are specifically admitted.

(d) General denials in specified causes. When the action in any count is for breach of contract, debt, or tort and the claim for relief is for money only, a party may answer that count by a general denial of liability.

(e) Effect of failure to deny. Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damages, are admitted unless denied in the responsive pleading or covered by a general denial. Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided. When appropriate, a party may claim the inability to admit, deny, or explain an averment on the ground that to do so would tend to incriminate the party, and such statement shall not amount to an admission of the averment.

(f) Negative defenses. Whether proceeding under section (c) or section (d) of this Rule, when a party desires to raise an issue as to (1) the legal existence of a party, including a partnership or a corporation, (2) the capacity of a party to sue or be sued, (3) the authority of a party to sue or be sued in a representative capacity, (4) the averment of the execution of a written instrument, or (5) the averment of the ownership of a motor vehicle, the party shall do so by negative averment, which shall include such supporting particulars as are peculiarly within the pleader's knowledge. If not raised by negative averment, these matters are admitted for the purpose of the pending action. Notwithstanding an admission under this section, the court may require proof of any of these matters upon such terms and conditions, including continuance and allocation of costs, as the court deems proper.

(g) Affirmative defenses. Whether proceeding under section (c) or section (d) of this Rule, a party shall set forth by separate defenses: (1) accord and satisfaction, (2) merger of a claim by arbitration into an award, (3) assumption of risk, (4) collateral estoppel as a defense to a claim, (5) contributory negligence, (6) duress, (7) estoppel, (8) fraud, (9) illegality, (10) laches, (11) payment, (12) release, (13) res judicata, (14) statute of frauds, (15) statute of limitations, (16) ultra vires, (17) usury, (18) waiver, (19) privilege, and (20) total or partial charitable immunity.

In addition, a party may include by separate defense any other matter constituting an avoidance or affirmative defense on legal or equitable grounds. When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court shall treat the pleading as if there had been a proper designation, if justice so requires.

(h) Defendant's information report. The defendant shall file with the answer an information report substantially in the form included with the summons if (1) the plaintiff has failed to file an information report required by Rule 2-111(a), (2) the defendant disagrees with anything contained in an information report filed by the plaintiff, (3) the defendant disagrees with a differentiated case management track previously selected by the court, or (4) the defendant has filed or expects to file a counterclaim, cross-claim, or third-party claim. If the defendant fails to file a required information report with the answer, the court may proceed without the defendant's information to assign the action to any track within the court's differentiated case management system or may continue the action on any track previously assigned.

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TITLE 3. CIVIL PROCEDURE -- DISTRICT COURT

CHAPTER 100. COMMENCEMENT OF ACTION AND PROCESS

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Rule 3-124. Process -- Persons to be served

(a) Statutes not abrogated. The provisions of this Rule do not abrogate any statute permitting or requiring service on a person.

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(b) Individual. Service is made upon an individual by serving the individual or an agent authorized by appointment or by law to receive service of process for the individual.

(c) Individual under disability. Service is made upon an individual under disability by serving the individual and, in addition, by serving the parent, guardian, or other person having care or custody of the person or estate of the individual under disability.

(d) Corporation. Service is made upon a corporation, incorporated association, or joint stock company by serving its resident agent, president, secretary, or treasurer. If the corporation, incorporated association, or joint stock company has no resident agent or if a good faith attempt to serve the resident agent, president, secretary, or treasurer has failed, service may be made by serving the manager, any director, vice president, assistant secretary, assistant treasurer, or other person expressly or impliedly authorized to receive service of process.

(e) General partnership. Service made upon a general partnership sued in its group name in an action pursuant to Code, Courts Article, §6-406 by serving any general partner.

(f) Limited partnership. Service is made upon a limited partnership by serving its resident agent. If the limited partnership has no resident agent or if a good faith attempt to serve the resident agent has failed, service may be made upon any general partner or other person expressly or impliedly authorized to receive service of process.

(g) Limited liability partnership. Service is made upon a limited liability partnership by serving its resident agent. If the limited liability partnership has no resident agent or if a good faith attempt to serve the resident agent has failed, service may be made upon any other person expressly or impliedly authorized to receive service of process.

(h) Limited liability company. Service is made upon a limited liability company by serving its resident agent. If the limited liability company has no resident agent or if a good faith attempt to serve the resident agent has failed, service may be made upon any member or other person expressly or impliedly authorized to receive service of process.

(i) Unincorporated association. Service is made upon an unincorporated association sued in its group name pursuant to Code, Courts Article, §6-406 by serving any officer or member of its governing board. If there are no officers or if the association has no governing board, service may be made upon any member of the association.

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(o) Substituted service upon State Department of Assessments and Taxation. Service may be made upon a corporation, limited partnership, limited liability partnership, limited liability company, or other entity required by statute of this State to have a resident agent by serving two copies of the summons, complaint, and all other papers filed with it, together with the requisite fee, upon the State Department of Assessments and Taxation if (i) the entity has no resident agent; (ii) the resident agent is dead or is no longer at the address for service of process maintained with the State Department of Assessments and Taxation; or (iii) two good faith attempts on separate days to serve the resident agent have failed.

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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.

(2) Exceptions. A defendant shall file the notice within 60 days after being served if the defendant is:

(A) served outside of the State;

(B) a person who is required by statute of this State to have a resident agent and who is served by service upon the State Department of Assessments and Taxation, the Insurance Commissioner, or some other agency of the State authorized by statute to receive process; or

(C) the United States or an officer or agency of the United States served pursuant to Rule 3-124 (m) or (n).

(c) Identity of attorney. If the defendant is represented by an attorney, the notice shall contain the attorney's name, office address and telephone number.

(d) Notice to parties. When the defendant files a notice pursuant to this Rule, the clerk promptly shall mail notice of the filing to other parties.

(e) Effect of failure to file notice. If a defendant fails to file a timely notice of intention to defend pursuant to this Rule, the court, on the date set for trial, may determine liability and assess damages based on ex parte proof by the plaintiff, unless the defendant appears and the court is satisfied that the defendant may have a defense to the claim. In that event, the court shall proceed with trial or, upon request of the plaintiff, may grant a continuance for a time sufficient to allow the plaintiff to prepare for trial on the merits.

(END OF EXTRACT)