

**MARYLAND BAR EXAMINATION  
BOARD'S WRITTEN TEST**

**February 27, 2018**

**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 Annotated Code has been omitted from this extract.**

**ANNOTATED CODE OF MARYLAND**

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**COMMERCIAL LAW**

**TITLE 1. GENERAL PROVISIONS**

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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:

(1) "Action", in the sense of a judicial proceeding, includes recoupment, counterclaim, set-off, suit in equity, and any other proceeding in which rights are determined.

(2) "Aggrieved party" means a party entitled to pursue a remedy.

(3) "Agreement", as distinguished from "contract", means the bargain of the parties in fact, as found in their language or inferred from other circumstances, including course of performance, course of dealing, or usage of trade as provided in § 1-303 of this title.

(4) "Bank" means a person engaged in the business of banking and includes a savings bank, savings and loan association, credit union, and trust company.

(5) "Bearer" means a person in possession of a negotiable instrument, document of title, or certificated security that is payable to bearer or endorsed in blank.

(6) "Bill of lading" means a document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods.

(7) "Branch" includes a separately incorporated foreign branch of a bank.

(8) "Burden of establishing" a fact means the burden of persuading the trier of fact that the existence of the fact is more probable than its nonexistence.

(9) “Buyer in ordinary course of business” means a person that buys goods in good faith, without knowledge that the sale violates the rights of another person in the goods, and in the ordinary course from a person, other than a pawnbroker, in the business of selling goods of that kind. A person buys goods in the ordinary course if the sale to the person comports with the usual or customary practices in the kind of business in which the seller is engaged or with the seller’s own usual or customary practices. A person that sells oil, gas, or other minerals at the wellhead or minehead is a person in the business of selling goods of that kind. A buyer in ordinary course of business may buy for cash, by exchange of other property, or on secured or unsecured credit, and may acquire goods or documents of title under a preexisting contract for sale. Only a buyer that takes possession of the goods or has a right to recover the goods from the seller under Title 2 of this article may be a buyer in ordinary course of business. “Buyer in ordinary course of business” does not include a person that acquires goods in a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(10) “Conspicuous”, with reference to a term, means so written, displayed, or presented that a reasonable person against which it is to operate ought to have noticed it. Whether a term is “conspicuous” or not is a decision for the court. Conspicuous terms include the following:

(i) A heading in capitals equal to or greater in size than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same or lesser size; and

(ii) Language in the body of a record or display in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set off from surrounding text of the same size by symbols or other marks that call attention to the language.

(11) “Consumer” means an individual who enters into a transaction primarily for personal, family, or household purposes.

(12) “Contract”, as distinguished from “agreement”, means the total legal obligation that results from the parties’ agreement as determined by the Maryland Uniform Commercial Code as supplemented by any other applicable laws.

(13) “Creditor” includes a general creditor, a secured creditor, a lien creditor, and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity, and an executor or administrator of an insolvent debtor’s or assignor’s estate.

(14) “Defendant” includes a person in the position of defendant in a counterclaim, cross-claim, or third-party claim.

(15) “Delivery”, with respect to an instrument, document of title, or chattel paper, means voluntary transfer of possession.

(16) “Document of title” includes a bill of lading, dock warrant, dock receipt, warehouse receipt or order for the delivery of goods, and also any other document which in the regular course of business or financing is treated as adequately evidencing that the person in possession of the document is entitled to receive, hold, and dispose of the document and the goods it covers. To be a document of title, a document must purport to be issued by or addressed to a bailee and purport to cover goods in the bailee’s possession which are either identified or are fungible portions of an identified mass.

(17) “Fault” means a default, breach, or wrongful act or omission.

(18) “Fungible goods” means:

(i) Goods of which any unit, by nature or usage of trade, is the equivalent of any other like unit; or

(ii) Goods that by agreement are treated as equivalent.

(19) “Genuine” means free of forgery or counterfeiting.

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

(21) “Holder” means:

(i) The person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession; or

(ii) The person in possession of a document of title if the goods are deliverable either to bearer or to the order of the person in possession.

(22) “Insolvency proceeding” includes an assignment for the benefit of creditors or other proceeding intended to liquidate or rehabilitate the estate of the person involved.

(23) “Insolvent” means:

(i) Having generally ceased to pay debts in the ordinary course of business other than as a result of bona fide dispute;

(ii) Being unable to pay debts as they become due; or

(iii) Being insolvent within the meaning of federal bankruptcy law.

(24) “Money” means a medium of exchange currently authorized or adopted by a domestic or foreign government. The term includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more countries.

(25) “Organization” means a person other than an individual.

(26) “Party”, as distinguished from “third party”, means a person that has engaged in a transaction or made an agreement subject to the Maryland Uniform Commercial Code.

(27) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.

(28) “Present value” means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain by use of either an interest rate specified by the parties if that rate is not manifestly unreasonable at the time the transaction is entered into or, if an interest rate is not so specified, a commercially reasonable rate that takes into account the facts and circumstances at the time the transaction is entered into.

(29) “Purchase” means taking by sale, lease, discount, negotiation, mortgage, pledge, lien, security interest, issue or reissue, gift, or any other voluntary transaction creating an interest in property.

(30) “Purchaser” means a person that takes by purchase.

(31) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(32) “Remedy” means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

(33) “Representative” means a person empowered to act for another, including an agent, an officer of a corporation or association, and a trustee, executor, or administrator of an estate.

(34) “Right” includes remedy.

(35) “Security interest” means an interest in personal property or fixtures that secures payment or performance of an obligation. “Security interest” includes any interest of a consignor and a buyer of accounts, chattel paper, a payment intangible, or a promissory note in a transaction that is subject to Title 9 of this article. “Security interest” does not include the special property interest of a buyer of goods on identification of those goods to a contract for sale under § 2-401 of this article, but a buyer may also acquire a “security interest” by complying with Title 9 of this article. Except as otherwise provided in § 2-505 of this article, the right of a seller or lessor of goods under Title 2 or Title 2A of this article to retain or acquire possession of the goods is not a “security interest”, but a seller or lessor may also acquire a “security interest” by complying with Title 9 of this article. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer under § 2-401 of this article is limited in effect to a reservation of a “security interest”. Whether a transaction in the form of a lease creates a “security interest” is determined pursuant to § 1-203 of this subtitle.

(36) “Send” in connection with a writing, record, or notice means:

(i) To deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and, in the case of an instrument, to an address specified thereon or otherwise agreed or, if there be none, to any address reasonable under the circumstances; or

(ii) In any other way to cause to be received any record or notice within the time it would have arrived if properly sent.

(37) “Signed” includes using any symbol executed or adopted with present intention to adopt or accept a writing.

(38) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(39) “Surety” includes a guarantor or other secondary obligor.

(40) “Term” means a portion of an agreement that relates to a particular matter.

(41) “Unauthorized signature” means a signature made without actual, implied, or apparent authority. The term includes a forgery.

(42) “Warehouse receipt” means a receipt issued by a person engaged in the business of storing goods for hire.

(43) “Writing” includes printing, typewriting, or any other intentional reduction to tangible form. “Written” has a corresponding meaning.

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## TITLE 9. SECURED TRANSACTIONS

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### **§ 9-308. When security interest or agricultural lien is perfected; continuity of perfection**

(a) Except as otherwise provided in this section and § 9-309, a security interest is perfected if it has attached and all of the applicable requirements for perfection in §§ 9-310 through 9-316 have been satisfied. A security interest is perfected when it attaches if the applicable requirements are satisfied before the security interest attaches.

(b) An agricultural lien is perfected if it has become effective and all of the applicable requirements for perfection in § 9-310 have been satisfied. An agricultural lien is perfected when it becomes effective if the applicable requirements are satisfied before the agricultural lien becomes effective.

(c) A security interest or agricultural lien is perfected continuously if it is originally perfected by one method under this article and is later perfected by another method under this article, without an intermediate period when it was unperfected.

(d) Perfection of a security interest in collateral also perfects a security interest in a supporting obligation for the collateral.

(e) Perfection of a security interest in a right to payment or performance also perfects a security interest in a security interest, mortgage, or other lien on personal or real property securing the right.

(f) Perfection of a security interest in a securities account also perfects a security interest in the security entitlements carried in the securities account.

(g) Perfection of a security interest in a commodity account also perfects a security interest in the commodity contracts carried in the commodity account.

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### **§ 9-310. When filing required to perfect security interest or agricultural lien; security interests and agricultural liens to which filing provisions do not apply**

(a) Except as otherwise provided in subsection (b) and § 9-312(b), a financing statement must be filed to perfect all security interests and agricultural liens.

(b) The filing of a financing statement is not necessary to perfect a security interest:

- (1) That is perfected under § 9-308(d), (e), (f), or (g);
- (2) That is perfected under § 9-309 when it attaches;
- (3) In property subject to a statute, regulation, or treaty described in § 9-311(a);
- (4) In goods in possession of a bailee which is perfected under § 9-312(d)(1) or (2);
- (5) In certificated securities, documents, goods, or instruments which is perfected without filing, control, or possession under § 9-312(e), (f), or (g);
- (6) In collateral in the secured party's possession under § 9-313;
- (7) In a certificated security which is perfected by delivery of the security certificate to the secured party under § 9-313;
- (8) In deposit accounts, electronic chattel paper, electronic documents, investment property, or letter-of-credit rights which is perfected by control under § 9-314;
- (9) In proceeds which is perfected under § 9-315; or

(10) That is perfected under § 9-316.

(c) If a secured party assigns a perfected security interest or agricultural lien, a filing under this article is not required to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

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**§ 9-315. Secured party's rights on disposition of collateral and in proceeds**

(a) Except as otherwise provided in this title and in § 2-403 (2) of this article:

(1) A security interest or agricultural lien continues in collateral notwithstanding sale, lease, license, exchange, or other disposition thereof unless the secured party authorized the disposition free of the security interest or agricultural lien; and

(2) A security interest attaches to any identifiable proceeds of collateral.

(b) Proceeds that are commingled with other property are identifiable proceeds:

(1) If the proceeds are goods, to the extent provided by § 9-336; and

(2) If the proceeds are not goods, to the extent that the secured party identifies the proceeds by a method of tracing, including application of equitable principles, that is permitted under law other than this article with respect to commingled property of the type involved.

(c) A security interest in proceeds is a perfected security interest if the security interest in the original collateral was perfected.

(d) A perfected security interest in proceeds becomes unperfected on the 21<sup>st</sup> day after the security interest attaches to the proceeds unless:

(1) The following conditions are satisfied:

(A) A filed financing statement covers the original collateral;

(B) The proceeds are collateral in which a security interest may be perfected by filing in the office in which the financing statement has been filed; and

(C) The proceeds are not acquired with cash proceeds;

(2) The proceeds are identifiable cash proceeds; or

(3) The security interest in the proceeds is perfected other than under subsection (c) when the security interest attaches to the proceeds or within 20 days thereafter.

(e) If a filed financing statement covers the original collateral, a security interest in proceeds which remains perfected under subsection (d)(1) becomes unperfected at the later of:

(1) When the effectiveness of the filed financing statement lapses under § 9-515 or is terminated under § 9-513; or

(2) The 21<sup>st</sup> day after the security interest attaches to the proceeds.

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**§ 9-317. Interests that take priority over or take free of unperfected security interest or agricultural lien**

(a) A security interest or agricultural lien is subordinate to the rights of:

(1) A person entitled to priority under § 9-322; and

(2) Except as provided in subsection (e), a person that becomes a lien creditor before the earlier of the time:

(A) The security interest or agricultural lien is perfected; or

(B) One of the conditions specified in § 9-203(b)(3) is met and a financing statement covering the collateral is filed.

(b) Except as otherwise provided in subsection (e), a buyer, other than a secured party, of tangible chattel paper, tangible documents, goods, instruments, or a certificated security takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(c) Except as otherwise provided in subsection (e), a lessee of goods takes free of a security interest or agricultural lien if the lessee gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(d) A licensee of a general intangible or a buyer, other than a secured party, of collateral other than tangible chattel paper, tangible documents, goods, instruments, or a certificated security takes free of a security interest if the licensee or buyer gives value without knowledge of the security interest and before it is perfected.

(e) Except as otherwise provided in §§ 9-320 and 9-321, if a person files a financing statement with respect to a purchase-money security interest before or within 20 days after the debtor receives delivery of the collateral, the security interest takes priority over the rights of a buyer, lessee, or lien creditor which arise between the time the security interest attaches and the time of filing.

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### **§ 9-320. Buyer of goods**

(a) Except as otherwise provided in subsection (e), a buyer in ordinary course of business, other than a person buying farm products from a person engaged in farming operations, takes free of a security interest created by the buyer's seller, even if the security interest is perfected and the buyer knows of its existence.

(b) Except as otherwise provided in subsection (e), a buyer of goods from a person who used or bought the goods for use primarily for personal, family, or household purposes takes free of a security interest, even if perfected, if the buyer buys:

(1) Without knowledge of the security interest;

(2) For value;

(3) Primarily for the buyer's personal, family, or household purposes; and

(4) Before the filing of a financing statement covering the goods.

(c) To the extent that it affects the priority of a security interest over a buyer of goods under subsection (b), the period of effectiveness of a filing made in the jurisdiction in which the seller is located is governed by § 9-316 (a) and (b).

(d) A buyer in ordinary course of business buying oil, gas, or other minerals at the wellhead or minehead or after extraction takes free of an interest arising out of an encumbrance.

(e) Subsections (a) and (b) do not affect a security interest in goods in the possession of the secured party under § 9-313.

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**§ 9-322. Priorities among conflicting security interests in and agricultural liens on same collateral**

(a) Except as otherwise provided in this section, priority among conflicting security interests and agricultural liens in the same collateral is determined according to the following rules:

(1) Conflicting perfected security interests and agricultural liens rank according to priority in time of filing or perfection. Priority dates from the earlier of the time a filing covering the collateral is first made or the security interest or agricultural lien is first perfected, if there is no period thereafter when there is neither filing nor perfection.

(2) A perfected security interest or agricultural lien has priority over a conflicting unperfected security interest or agricultural lien.

(3) The first security interest or agricultural lien to attach or become effective has priority if conflicting security interests and agricultural liens are unperfected.

(b) For the purposes of subsection (a)(1) of this section:

(1) The time of filing or perfection as to a security interest in collateral is also the time of filing or perfection as to a security interest in proceeds; and

(2) The time of filing or perfection as to a security interest in collateral supported by a supporting obligation is also the time of filing or perfection as to a security interest in the supporting obligation.

(c) Except as otherwise provided in subsection (f), a security interest in collateral which qualifies for priority over a conflicting security interest under § 9-327, § 9-328, § 9-329, § 9-330, or § 9-331 also has priority over a conflicting security interest in:

(1) Any supporting obligation for the collateral; and

(2) Proceeds of the collateral if:

(A) The security interest in proceeds is perfected;

(B) The proceeds are cash proceeds or of the same type as the collateral; and

(C) In the case of proceeds that are proceeds of proceeds, all intervening proceeds are cash proceeds, proceeds of the same type as the collateral, or an account relating to the collateral.

(d) Subject to subsection (e) and except as otherwise provided in subsection (f), if a security interest in chattel paper, deposit accounts, negotiable documents, instruments, investment property, or letter-of-credit rights is perfected by a method other than filing, conflicting perfected security interests in proceeds of the collateral rank according to priority in time of filing.

(e) Subsection (d) applies only if the proceeds of the collateral are not cash proceeds, chattel paper, negotiable documents, instruments, investment property, or letter-of-credit rights.

(f) Subsections (a) through (e) are subject to:

(1) Subsection (g) and the other provisions of this subtitle;

(2) § 4-210 of this article with respect to a security interest of a collecting bank;

(3) § 5-118 of this article with respect to a security interest of an issuer or nominated person; and

(4) § 9-110 with respect to a security interest arising under Title 2 or Title 2A of this article.

(g) A perfected agricultural lien on collateral has priority over a conflicting security interest in or agricultural lien on the same collateral if the statute creating the agricultural lien so provides.