

**MARYLAND BAR EXAMINATION
BOARD'S WRITTEN TEST
February 21, 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, COMMERCIAL LAW ARTICLE.

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

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 2-322. 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.

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CHAPTER 400. DISCOVERY

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Rule 2-403. Protective orders

(a) Motion. On motion of a party, a person from whom discovery is sought, or a person named or depicted in an item sought to be discovered, and for good cause shown, the court may enter any order that justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (1) that the discovery not be had, (2) that the discovery not be had until other designated discovery has been completed, a pretrial conference has taken place, or some other event or proceeding has occurred, (3) that the discovery may be had only on specified terms and conditions, including an allocation of the expenses or a designation of the time or place, (4) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery, (5) that certain matters not be inquired into or that the scope of the discovery be limited to certain matters, (6) that discovery be conducted with no one present except persons designated by the court, (7) that a deposition, after being sealed, be opened only by order of the court, (8) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way, (9) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court.

(b) Order. If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or person provide or permit discovery.

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Rule 2-411. Deposition -- Right to take

Any party to an action may cause the testimony of a person, whether or not a party, to be taken by deposition for the purpose of discovery or for use as evidence in the action or for both purposes. Leave of court must be obtained to take a deposition (a) before the earliest day on which any defendant's initial pleading or motion is required; (b) that is longer than one seven-hour day; (c) of an individual confined in prison; or (d) of an individual who has previously been deposed in the same action unless further deposition is permitted under Rule 2-415(i) because substantive changes have been made to the deposition transcript. Leave of court may be granted on such terms as the court prescribes.

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Rule 2-413. Deposition -- Place

(a) Nonparty.

(1) In this State. A resident of this State who is not a party may be required to attend a deposition in this State only in the county in which the person resides or is employed or engaged in business, or at any other convenient place fixed by order of court. A nonresident who is not a party may be required to attend a deposition in this State only in the county in which the nonresident is served with a subpoena or within 40 miles from the place of service, or at any other convenient place fixed by order of court.

(2) Out of State. A person who is not a party may be required to attend a deposition outside of this State in accordance with the law of the place where the deposition is held.

(b) Party. A party may be required to attend a deposition wherever a nonparty could be required to attend or in the county in which the action is pending.

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Rule 2-431. Certificate requirement

A dispute pertaining to discovery need not be considered by the court unless the attorney seeking action by the court has filed a certificate describing the good faith attempts to discuss with the opposing attorney the resolution of the dispute and certifying that they are unable to reach agreement on the disputed issues. The certificate shall include the date, time, and circumstances of each discussion or attempted discussion.

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CHAPTER 500. TRIAL

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Rule 2-533. Motion for new trial

(a) Time for filing. Any party may file a motion for new trial within ten days after entry of judgment. A party whose verdict has been set aside on a motion for judgment notwithstanding the verdict or a party whose judgment has been amended on a motion to amend the judgment may file a motion for new trial within ten days after entry of the judgment notwithstanding the verdict or the amended judgment. A motion for new trial 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.

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(b) Grounds. All grounds advanced in support of the motion shall be filed in writing within the time prescribed for the filing of the motion, and no other grounds shall thereafter be assigned without leave of court.

(c) Disposition. The court may set aside all or part of any judgment entered and grant a new trial to all or any of the parties and on all of the issues, or some of the issues if the issues are fairly severable. If a partial new trial is granted, the judge may direct the entry of judgment as to the remaining parties or issues or stay the entry of judgment until after the new trial. When a motion for new trial is joined with a motion for judgment notwithstanding the verdict and the 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 the judgment is thereafter reversed on appeal.

(d) Costs. If a trial or appellate court has ordered the payment of costs as a part of its action in granting a new trial, the trial court may order all further proceedings stayed until the costs have been paid.

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Rule 2-535. Revisory power

(a) Generally. On motion of any party filed within 30 days after entry of judgment, the court may exercise revisory power and control over the judgment and, if the action was tried before the court, may take any action that it could have taken under Rule 2-534. A motion 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.

(b) Fraud, mistake, irregularity. On motion of any party filed at any time, the court may exercise revisory power and control over the judgment in case of fraud, mistake, or irregularity.

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(c) Newly-discovered evidence. On motion of any party filed within 30 days after entry of judgment, the court may grant a new trial on the ground of newly-discovered evidence that could not have been discovered by due diligence in time to move for a new trial pursuant to Rule 2-533.

(d) Clerical mistakes. Clerical mistakes in judgments, orders, or other parts of the record may be corrected by the court at any time on its own initiative, or on motion of any party after such notice, if any, as the court orders. During the pendency of an appeal, such mistakes may be so corrected before the appeal is docketed by the appellate court, and thereafter with leave of the appellate court.

(END OF EXTRACT)