



NextGen[®]
Bar Exam of the Future

Content Scope Outlines

For Public Comment

NCBE National Conference
of Bar Examiners

Building a competent, ethical, and diverse legal profession.



National Conference
of Bar Examiners

Building a competent, ethical,
and diverse legal profession

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Building a competent, ethical, and diverse legal profession.



About the Next Gen Bar Exam Content Scope Outlines

The Content Scope Outlines are intended to inform stakeholders of the scope of the topics to be assessed in the eight Foundational Concepts and Principles and the scope of the lawyering tasks to be assessed in the seven Foundational Skills on the next generation of the bar exam. These topics and tasks have been identified as those that are most essential for newly licensed lawyers. Through the public comment process, we seek stakeholder input on whether there are any significant oversights in the outlines of topics and lawyering tasks identified for assessment.

Process that Produced the Content Scope Outlines

In January 2021, NCBE completed a three-year study to ensure that the bar exam continues to test the knowledge, skills, and abilities required for competent entry-level legal practice. Input from stakeholders was gathered at each step, with qualitative and quantitative research conducted by external expert consultants, including a nationwide practice analysis survey. Reports from each phase of the work are available at nextgenbarexam.ncbex.org/reports. The study resulted in a set of recommendations for the redesign of the bar exam.

Last year, NCBE appointed a Content Scope Committee to make recommendations regarding the breadth and depth of the Foundational Concepts and Principles (subjects) and the Foundational Skills to be tested on the new exam. A list of the members of the Content Scope Committee can be found at nextgenbarexam.ncbex.org/announcing-ncbes-content-scope-committee/.

In considering the *breadth* of topics to be covered within each subject, the Content Scope Committee primarily considered the following three factors:

Frequency: How often is a newly licensed lawyer (defined as one who has practiced for fewer than three years) likely to encounter the topic in general entry-level practice (loosely defined as solo practice or working at a full-service law firm)?

Universality: How likely is a newly licensed lawyer to encounter the topic in more specialized types of entry-level practice?

Risk: How likely is it that there will be serious consequences if a newly licensed lawyer does NOT have any knowledge of the topic when it arises?

In considering at what *depth* the topics should be tested, the Content Scope Committee focused on how much detail a newly licensed lawyer should recall about each topic, without research, to provide minimally competent legal services, primarily considering the following three factors:

Complexity: How complex or nuanced is the legal doctrine in this topic?

Context: How quickly must a lawyer act when this topic arises (i.e., would a newly licensed lawyer typically have time to conduct research before providing counsel)?

Stability/Universality: Is the doctrine relatively stable or in flux? Is there a clear majority approach among the states (or circuits)? (These questions sometimes overlapped in the Content Scope Committee's discussions.)

In addition to the factors listed above, for the subject of Constitutional Law the Content Scope Committee also considered lawyers' roles as custodians of the Constitution when evaluating the scope of topics to be tested.

Finally, in considering the specific lawyering tasks that examinees should be able to perform on the new exam to demonstrate the Foundational Skills, the Content Scope Committee considered the following three factors:

Practice Analysis Continuity: What examinee tasks will align best to the lawyering tasks identified in the practice analysis as being important to newly licensed lawyers?

Universality/Balance: What examinee tasks are related to the greatest number of lawyering tasks from the practice analysis? What examinee tasks will best balance different kinds of practice (e.g., transactional work vs. litigation)? (These questions sometimes overlapped in the Content Scope Committee's discussions.)

Cost/Practicality: Given NCBE's commitment to affordability, what aspects of the Foundational Skills can be realistically tested in a written exam?

The Content Scope Committee produced voluminous reports setting forth the rationale for its recommendations for the scope of each of the eight Foundational Concepts and Principle and the seven Foundational Skills. Those reports were reviewed and discussed at length by the Implementation Steering Committee, resulting in the preliminary Content Scope Outlines published for stakeholder feedback. To optimize the stakeholder comment process and focus the feedback we receive, the Content Scope Outlines identify what will be tested but do not provide all the details contained in the reports.

At this time, the focus is on the scope of the topics and skills to be included in next generation of the bar exam. The Content Scope Outlines are just the first step in preparing the Test Content Specifications—the “blueprint” for the new exam—which will be published in late 2024. The Test Content Specifications will provide more details, such as the sources of law for the topics being tested, the weighting or emphasis of the subjects/topics and skills, and sample test questions illustrating how the knowledge and skills may be tested in an integrated design. Additional annotations about what is covered within subjects/topics may also be added. Finally, the organization and structure of the Test Content Specifications may be different than the organization and structure of the Content Scope Outlines.

During pilot and field testing, NCBE plans to study the impact of providing legal resources (e.g., Federal Rules of Evidence) during the exam to reduce the amount of legal doctrine that candidates must commit to memory and more closely reflect how lawyers practice. During pilot and field testing, which will take place over several months in 2022 and 2023, NCBE will be evaluating the optimal way to provide legal resources in a way that is fair to all and enables candidates to use the resources efficiently in the time allotted.

We welcome your comments about the Content Scope Outlines. The public comment period is open until April 18, 2022. To submit comments by that date, visit ncbex.nextgenbarexam.org/csopc-register.

Foundational Skills and Associated Lawyering Tasks

A. Foundational Skills Group 1: Issue Spotting and Analysis, Investigation and Evaluation

1. In a client matter, identify which Foundational Concepts and Principles are likely to affect the outcome of the matter.
2. In a client matter, identify which facts implicate which Foundational Concepts and Principles.
3. In a client matter, identify the applicable standards of review and/or burdens of proof that will apply to legal issues in the matter.
4. In a client matter, identify the strengths and weaknesses of the client's position and the opposing parties' positions based on the relevant legal rules and standards.
5. In a client matter that requires additional factual development, identify which facts need to be explored, and/or the best strategy for exploring those facts, in order to be able to evaluate the strengths and weaknesses of the client's position and the opposing parties' positions based on the relevant legal rules and standards.
6. In a client matter, identify gaps in information obtained, suggestions for improvement, and/or grounds for objection (if applicable) based on a transcript of another lawyer's interview, deposition, or examination of a fact witness.
7. Assess the probable outcome of a claim, motion, discovery matter, or objection based on the relevant legal rules and standards.

B. Foundational Skills Group 2: Client Counseling and Advising, Negotiation and Dispute Resolution, Client Relationship and Management

8. In a client matter, identify which claims to recommend bringing, which remedies to recommend seeking, which evidence to present, which arguments to make, and/or how to respond to arguments, based on the relevant legal rules and standards, and consistent with the client's objectives.
9. Given a transcript of another lawyer's interaction with a client, identify gaps in information obtained and/or suggestions for improving the lawyer's effectiveness.
10. In a client matter, list 2–3 points that favor your client's position and 2–3 points that favor the opposing party's position.
11. In a client matter, list 2–3 benefits and 2–3 drawbacks of two approaches to settling disputed issues, consistent with the client's objectives.
12. In a client matter, list 2–3 resolutions in which both sides of the dispute could potentially be satisfied.
13. In a client matter in which your client has 3–5 objectives, but where your experience suggests that only one of them is attainable, identify the one objective that you would recommend as the top priority.

14. In a client matter, identify or describe your client's BATNA (Best Alternative to a Negotiated Agreement) and a realistic "best case" outcome you would advise seeking through negotiation and/or "worst case" outcome you would advise accepting, consistent with the BATNA and the client's objectives.

Note: Issues related to the rules of professional responsibility listed below frequently arise in the context of the Foundational Skills Group 2 (Client Counseling and Advising, Negotiation and Dispute Resolution, Client Relationship and Management). To more fully capture the scope of these foundational skills, knowledge of these rules of professional responsibility will not be assessed in stand-alone questions but may be assessed in the context of assessment of Foundational Skills Group 2.

- MRPC 1.1 (Competence)
- MRPC 1.2(a) & (d) (Scope of representation and allocation of authority between client and lawyer)
- MRPC 1.3 (Diligence)
- MRPC 1.4 (Communications)
- MRPC 1.6(a) & (c) (Confidentiality of Information)
- MRPC 3.3(a)(1)–(2) (Candor to the Tribunal)
- MRPC 4.1 (Truthfulness in Statements to Others)
- MRPC 4.2 (Communication with Person Represented by Counsel)
- MRPC 4.3 (Dealing with Unrepresented Person)
- MRPC 1.7 (Conflict of Interest: Current Clients)

C. Legal Research

Note: NCBE continues to explore appropriate research tasks and may add to the two tasks listed below. Comments identifying additional research tasks that can be assessed in the context of a written bar exam are appreciated.

15. In a client matter that requires interpretation of a statute, rule, or constitutional provision, identify which words or elements in a provided excerpt seem legally significant and/or potentially ambiguous.
16. Given a collection of legal resources and excerpts from a client file, identify the most important legal and factual issues to be resolved and the relative weight that will likely be given to different resources/file materials by the court or other tribunal.

D. Legal Writing and Drafting

17. Draft the specified sections of a complaint or an answer to a complaint.
18. Draft the specified sections of an affidavit.
19. Draft or edit selected specified provisions of a contract.

20. Draft an email to a client, explaining the legal implications of a course of action, updating the client on the status of the client's matter, and/or providing advice on the next steps to be taken in the matter. *(Note: This task will most often relate to a transactional matter.)*
21. Draft the analysis section of an objective memorandum. *(Note: This task will most often relate to a transactional or compliance matter.)*
22. Draft the specified sections of a motion or brief.
23. Draft the specified sections of a mediation brief.

Business Associations and Relationships

Questions may be multidisciplinary, testing knowledge of Foundational Concepts and Principles from more than one subject area.

* Topics followed by an asterisk will be tested in a way that assumes examinees **know the details of the relevant doctrine without consulting legal resources**. All other topics will be tested in a way that assumes examinees **have general familiarity with the topics** for purposes of issue-spotting or working efficiently with legal resources provided during the exam.

This outline includes annotations describing the scope of selected topics.

[Agency]

- I. Agency and authority
 - A. Creation*
 - B. Actual authority*
 - C. Apparent authority*
 - D. Termination*
- II. Vicarious liability of principal for acts of agent
This topic includes distinctions between employees and independent contractors. This topic also includes delegable/nondelegable duties.
- III. Fiduciary duties between principal and agent
 - A. Duty of care
 - B. Duty of loyalty

[Partnerships]

- IV. Nature of general partnerships
 - A. Formation*
This topic includes the de facto treatment of improperly created incorporated entities as general partnerships.
 - B. As distinguished from limited partnerships and limited liability partnerships*
- V. Power and liability of general partners*
This topic includes joint and several liability.
- VI. Rights of general partners among themselves
 - A. Management and control
 - B. Duty of loyalty
This topic includes the consequences of a partner acting outside the scope of the partner's authority to bind the partnership.

[Corporations and Limited Liability Companies]**VII. Formation and operation****A. Corporations**

1. Articles of incorporation*
2. Bylaws*
3. Amendments

B. Limited liability companies

1. Articles of organization; certificates of formation*
2. Operating or members agreements*
3. Amendments

VIII. Corporate promoters: pre-organization contracts and fiduciary duties***IX. Piercing the corporate veil*****X. Management and control****A. Corporations**

1. Shareholders
 - a. Classes of shares
 1. Common
 2. Preferred
 - b. Meetings: annual, notice, and quorum
 - c. Voting eligibility
2. Directors
 - a. Meetings: quorum and notice
 - b. Action by written consent
 - c. Action by committee
 - d. Director's objections to actions
3. Officers
 - a. Authority*
 - b. Officer's liability on corporate obligations*

B. Limited liability companies**1. Members and managers****a. Authority*****b. Liability*****c. Powers*****XI. Fiduciary duties****A. Corporate directors, officers, and shareholders****B. Limited liability company managers and members****XII. Shareholder and member litigation: direct and derivative litigation**

This topic includes direct and derivative litigation. Newly licensed lawyers should understand who is suing whom; that is, whether the suit is being brought on behalf of an individual or on behalf of the entity.

Civil Procedure

Questions may be multidisciplinary, testing knowledge of Foundational Concepts and Principles from more than one subject area.

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This outline includes annotations describing the scope of selected topics.

I. Jurisdiction and venue

A. State subject-matter jurisdiction

Examinees should have a general understanding of state courts' general jurisdiction, as distinct from federal courts' limited jurisdiction, as well as the existence of specialty state courts such as probate courts.

B. Federal subject-matter jurisdiction

1. Diversity jurisdiction under 28 U.S.C. § 1332*

This topic includes citizenship of individuals, the complete diversity rule, citizenship of entities, the amount-in-controversy requirement, and aggregation of claims.

2. Federal question jurisdiction under 28 U.S.C. § 1331*

This topic includes the well-pleaded complaint rule and the *Holmes* test.

3. Concurrent and removal jurisdiction*

This topic includes the types of cases that can/can't be removed (cases that could be brought originally in federal court and cases where the defendant is a citizen of the forum state), as well as the district to which a case must be removed.

4. Supplemental jurisdiction under 28 U.S.C. §§ 1367(a) & (c)

This topic includes § 1367(a) ("same case or controversy" analysis) and § 1367(c) (discretionary factors as applied to § 1367(a) cases).

C. Personal jurisdiction*

This topic includes the constitutional standards for specific (minimum contacts, "arising out of," reasonableness) and general ("at home") in personam jurisdiction. Specific jurisdiction includes application in a variety of contexts, such as intentional torts, contracts, "stream of commerce," and e-commerce claims. General jurisdiction includes application to both individuals and corporations. This topic also includes the application of long-arm statutes and consent and waiver.

D. Service of process and notice

This topic includes the constitutional requirement of notice and the different ways to serve individuals and corporations under FRCP 4.

E. Venue, forum non conveniens, and transfer

This topic includes the two basic ways to get proper venue under § 1391: where the defendant (individual or corporation) resides and/or where a “substantial part of” the events occurred. This topic also includes the doctrine of forum non conveniens and transfers under §§ 1404 and 1406.

II. State law in federal court: *Erie* doctrine basics*

This topic includes the *Erie* doctrine related to the basic difference between substance and procedure, as well as general choice-of-law rules (federal courts and state courts apply the choice-of-law rules of the states where they sit).

III. Pretrial procedures**A. Preliminary injunctions and temporary restraining orders**

This topic includes familiarity with the purpose of temporary restraining orders and preliminary injunctions as tools to maintain the status quo pending adjudication of a case. This topic also includes the understanding that preliminary injunctions can become permanent injunctions.

B. Notice pleadings and amended pleadings*

This topic includes notice pleadings and amended pleadings, including the relation-back doctrine.

C. Rule 11*

This topic includes the requirements of reasonable inquiry, good faith arguments for changes in the law, and proper purpose, as well as the procedures for Rule 11 sanctions. This topic will likely be used in testing skills as part of performance-type questions.

D. Joinder of parties and claims**1. Joinder of multiple claims, joinder of parties to the original action, counterclaims, crossclaims, FRCP 14 impleader, and assertion of additional claims*****2. Intervention under FRCP 24****E. Disclosures and discovery****1. Purpose and scope of discovery***

Examinees should understand the purpose and scope of discovery, including what is discoverable, what can be requested and what must be produced. This topic includes an awareness that a party may be subject to sanctions for failure to comply with discovery rules, but the particulars of which types of sanctions are appropriate are not tested.

2. FRCP 26(f) conference and initial disclosures*

Examinees should understand the purpose and general requirements of the Rule 26(f) conference, including initial and expert disclosures under FRCP 26(a)(1) and (2), as well as the requirements associated with corporate representative discovery. This topic should not include timing requirements (e.g., the number of days a party has to produce initial disclosures).

3. Discovery tools and mechanisms, including e-discovery*

This topic covers depositions, interrogatories, requests for production and inspection, and physical and mental examinations. This topic will also cover how to handle electronic information, including metadata and large volumes of e-discovery material.

4. Discovery motions*

This topic covers discovery motions available under FRCP 37 when a party fails to disclose or cooperate in the discovery process. This topic also includes motions for protective orders under FRCP 26(c).

IV. Preserving the right to a jury trial

This topic includes the need to preserve the right to a jury trial in the complaint and the consequences of failing to do so (waiver).

V. Motions**A. Motions to dismiss for failure to state a claim*****B. Summary judgment motions*****C. Motions for judgments as a matter of law (directed verdicts and judgments notwithstanding the verdict)****VI. Verdicts and judgments****A. Default judgments*****B. Effect; claim and issue preclusion***

This topic includes the elements of claim preclusion and nonparty preclusion. This topic also includes the elements of nonmutual defensive and offensive issue preclusion and inter-system preclusion (interstate and state/federal).

VII. Appealability and review**A. Availability of interlocutory review**

This topic includes the existence of interlocutory appeals for certain types of issues as an exception to the final judgment rule.

B. Final judgment rule

This topic includes the general existence and meaning of the final judgment rule.

C. Scope of review of legal and factual determinations on appeal

This topic includes the distinctions between levels of discretion given to the appeals courts in reviewing trial court findings (de novo, clearly erroneous, abuse of discretion).

Constitutional Law

Note: Constitutional protections impacting criminal proceedings are covered under the subject of Criminal Law.

Questions may be multidisciplinary, testing knowledge of Foundational Concepts and Principles from more than one subject area.

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This outline includes annotations describing the scope of selected topics.

I. The nature of judicial review

A. The Eleventh Amendment and state sovereign immunity

This topic includes distinctions between suits against states vs. suits against local governments, suits for damages vs. suits for injunctive relief, suits against states vs. suits against state officials, and state-law claims (Eleventh Amendment) vs. federal claims (sovereign immunity). This topic also includes the power of Congress to abrogate state immunity under the Fourteenth Amendment (also covered in section II).

B. Judicial review in operation

1. The “case or controversy” requirement, including the prohibition on advisory opinions, standing, ripeness, and mootness*

This topic includes an understanding of the named doctrines and broad prohibitions on citizen and taxpayer standing, as well as aspects of the “case or controversy” requirement related to claims brought against the government to enforce statutes.

2. Political questions and justiciability*

C. Judicial authority to interpret the Constitution and laws and to apply that interpretation to controversies before the court

II. Legislative powers

A. Congress’s commerce, taxing, and spending powers

This topic includes an understanding of the named powers, the “substantial economic effect” requirement of commerce clause doctrine, and regulation through spending (conditional grants).

B. Congress’s power to enforce the Thirteenth, Fourteenth, and Fifteenth Amendments

III. Executive powers

A. The president's power as commander in chief

B. The president's power to appoint and remove officials

This topic includes a basic understanding of the president's appointment power and Congress's ability to remove executive-branch officials or limit the president's power to do so.

C. The powers of administrative agencies

This topic includes a general understanding of the roles of administrative agencies: as executive enforcers of law and regulations, as "legislators" with rule-making authority (including *Chevron* and the nondelegation doctrine), and as "judges" conducting hearings and issuing decisions.

IV. The relation of nation and states in a federal system

A. Intergovernmental immunities

1. Prohibition on state taxation of federal entities

2. Prohibition on federal commandeering of state legislation and enforcement

B. Federalism-based limits on state authority

1. Dormant commerce clause

a. Negative implications of the commerce clause

This topic includes the dormant commerce clause's relationship with interstate privileges and immunities and equal protection. This topic also includes dormant commerce clause distinctions between state power to impose discriminatory taxes vs. nondiscriminatory taxes and the market participant doctrine.

b. Authorization of otherwise invalid state action

2. Supremacy clause and preemption*

This topic includes exclusive federal powers, exclusive state powers, the distinction between express vs. implied preemption, the presumption against preemption, and litigation between state and federal governments (including consent to be sued and claims brought against government officials).

3. Article IV privileges and immunities

C. Full faith and credit

This topic includes limitations on forum shopping and moving to avoid judgments, and petitions to enforce a judgment in another state. This topic also includes the requirements for when a state must take jurisdiction for a claim that arose in another state and/or apply the law of another state, and the rules related to the Supreme Court's determination of which law to apply in suits involving multiple states.

V. Individual rights

A. State action

This topic includes exclusive government functions.

B. Due process

1. Substantive due process

a. Substantive due process and privacy*

The right to privacy includes the right to abortion, the right to marry, the right to use contraceptives, the right to reject unwanted medical care, the right to educate one's children, and the right to live with those with whom one wishes to live. This topic includes standards of review for laws implicating privacy rights. This topic also includes pre- and post-viability rules related to abortion rights and abortion restrictions such as informed consent, waiting period, parental consent, spousal consent, partial-birth abortion bans, ultrasound requirements, and physician/clinic requirements.

b. Other individual rights: the right to travel, the right to vote, and the Second Amendment right to bear arms

This topic includes standards of review and burdens of proof, voting restrictions (including residency requirements, property ownership, poll taxes, and regulations related to party primaries), and dilution of the right to vote (including the one-person, one-vote principle and gerrymandering).

2. Procedural due process, including the right to process in administrative hearings*

This topic includes notice requirements, waiver of procedural due process rights, and access to courts (e.g., for indigent plaintiffs). This topic also includes welfare and disability benefits, creditors' remedies, and civil forfeiture.

C. Equal protection

1. Fundamental rights*

This topic includes facial discrimination, discrimination "as applied," standards of review and burdens of proof, suspect classifications (i.e., race, national origin, and alienage), and affirmative action.

2. Classifications subject to heightened scrutiny*

This topic includes standards of review and burdens of proof, quasi-suspect classifications (i.e., gender, legitimacy), intentional discrimination against women and against men, and affirmative action.

3. Rational basis review*

This topic includes standards of review and burdens of proof, as well as the deference given to the legislature.

D. Takings

This topic includes just compensation, the "public use" limitation, and the distinction between taking and regulation.

E. Ex post facto laws

This topic includes the two ex post facto clauses, due process requirements, and the types of laws that might violate ex post facto clauses.

F. First Amendment freedoms**1. Freedom of religion and separation of church and state****a. Free exercise***

This topic includes the meaning of “religious belief” and the applicability of this doctrine to the states. This topic also includes exemption requirements and punishment of religious conduct because it is religious.

b. Establishment*

This topic includes the applicability of this doctrine to the states. This topic also includes an understanding of the doctrine related to religious displays on public property, the right not to work on the Sabbath, exemptions from antidiscrimination laws, financial benefits to religious entities (e.g., aid to colleges, hospitals, K–12 schools), tax exemptions, curriculum controls, accommodations for religious students, and religious activities in public schools and at school activities off school property (e.g., prayer, Bible reading, Ten Commandments displays).

2. Freedom of expression**a. Content-based regulation of protected expression***

This topic includes distinctions between regulation of content and regulation of conduct, as well as standards of review and the use of symbols as expression.

b. Content-neutral regulation of protected expression*

This topic includes distinctions between regulation of content and regulation of conduct, as well as standards of review. This topic also includes time, place, and manner restrictions; and distinctions among public forums, limited public forums, and nonpublic forums.

c. Regulation of unprotected expression*

This topic includes aspects of the law related to “clear and present dangers” and “fighting words,” obscenity, and defamatory speech.

d. Regulation of commercial speech*

This topic includes commercial signs and commercial advertising.

e. Regulation of, or impositions upon, public school students, public employment, licenses, or benefits based upon exercise of expressive or associational rights*

This topic includes distinctions between speech by government employees pursuant to their official duties vs. speech by such employees not pursuant to their official duties. This topic includes participation of government employees in political campaigns. This topic also includes issuance of permits.

f. Regulation of expressive conduct*

This topic includes time, place, and manner restrictions, as well as distinctions among public forums, limited public forums, and nonpublic forums.

g. Prior restraint, vagueness, and overbreadth*

This topic includes distinctions between laws that are facially void and those that are facially valid. This topic also includes obscenity, procedural safeguards, distinctions between reasonableness and unreasonableness, the amount of discretion given to officials, burdens of proof, and the sufficiency of the government interest.

h. Freedom of the press

This topic includes publication of truthful information, press access to trials (including pretrial proceedings, the need to protect children, and protective orders for discovery materials), and press access to prisons to interview prisoners.

i. Freedom of association

This topic includes aspects of freedom of association related to the electoral process (e.g., ballot regulation, party regulation, limits on contributions, limits on expenditures) and bar membership.

Contracts

Questions may be multidisciplinary, testing knowledge of Foundational Concepts and Principles from more than one subject area.

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This outline includes annotations describing the scope of selected topics.

I. Formation of Contracts

A. Mutual assent (including offer and acceptance, and unilateral, bilateral, and implied-in-fact contracts)*

This topic includes what constitutes an offer, what constitutes an acceptance, how an offer can control the manner of acceptance, and when the offer and acceptance must occur to establish mutual assent (e.g., the acceptance must happen before revocation, lapse, rejection, or other termination of the offer). This topic includes counteroffers, limitations on the offeror's power to revoke, illusory promises, conditional promises, voidable promises, the mailbox rule, and the mirror image rule. This topic includes sale advertisements and other offers made to the public (e.g., help-wanted ads, offers of reward money). This topic also includes suretyship contracts, option contracts, and contracts formed by a series of emails.

B. Indefiniteness and absence of terms*

This topic includes definiteness of the subject-matter of the contract and the offeree, vague and missing terms in the offer, uncertain terms in the offer, ways of curing vague, missing, or uncertain terms, and required terms for real estate contracts.

C. Consideration (bargained-for exchange)*

This topic includes the distinction between a gift and a bargained-for exchange, the adequacy of consideration, and past or moral consideration and when it is sufficient to support a contract. This topic includes preexisting legal duties and when circumstances allow such duties to constitute consideration. This topic also includes forbearance to sue as consideration and knowledge that stipulations do not require consideration.

D. Obligations enforceable without a bargained-for exchange (including reliance and restitution)*

This topic includes promissory estoppel and restitution as alternative ways to enforce an agreement.

E. Modification of contracts*

This topic includes requirements for modification (e.g., consideration), the effect of anti-modification clauses, and the impact of a modification on the parol evidence analysis.

II. Defenses to enforceability

A. Incapacity to contract

This topic includes contracts with minors, mentally impaired individuals, and intoxicated individuals.

B. Duress and undue influence

This topic includes the elements of the named defenses and the types of situations that do not qualify for these defenses (e.g., economic duress, pressure in an arms-length transaction with equal bargaining power).

C. Mistake and misunderstanding*

This topic includes mutual and unilateral mistakes, distinctions in outcomes based on which party bore the risk of the mistake, distinctions in outcomes based on which party (if either) was aware of the mistake, and distinctions in outcomes based on whether the language in the contract is ambiguous.

D. Fraud, misrepresentation, and nondisclosure*

This topic includes the elements of misrepresentation (fraudulent and nonfraudulent), concealment, and nondisclosure, and distinctions among these defenses in available remedies.

E. Illegality, unconscionability, and public policy

This topic includes different types of illegalities/public policies that might void a contract and limitations on illegality as a defense.

F. Statute of frauds*

This topic includes when the statute of frauds applies, how the statute of frauds may be satisfied (including how the writing requirement pertains to electronic records and electronic signatures), exceptions that may save a contract that violates the statute of frauds (e.g., performance, estoppel, specially manufactured goods), and remedies for violation of the statute of frauds.

III. Contract content and meaning

A. Subject-matter distinctions: UCC, common law, and mixed contracts (including UCC §§ 2-102-107 and the predominant purpose test)*

B. Parol evidence

This topic includes complete and partial integration, merger clauses, and distinctions in admissibility of evidence based on whether the proponent seeks to explain, supplement, or contradict written terms.

C. Interpretation*

This topic should include the general rules of contract interpretation and their relative priority with respect to contract language and ambiguities.

D. Omitted and implied terms*

This topic includes the general rules of contract interpretation and their relative priority with respect to omitted and implied terms.

IV. Performance, breach, and discharge

A. Conditions (express and constructive)*

This topic includes distinctions between promises and conditions, and between express and implied conditions, and among conditions precedent, concurrent, and subsequent. This topic also includes satisfaction as a condition and how such a condition is interpreted.

B. Excuse of conditions*

This topic includes distinctions among excuses of conditions (e.g., breach, anticipatory repudiation, inability or unwillingness to perform, substantial performance, divisibility, waiver, estoppel, impracticability, frustration of purpose).

C. Breach of common law contracts (including material and partial breach, and anticipatory repudiation)*

This topic includes what constitutes a material breach (including substantial performance where breach is minor and not willful), what constitutes an anticipatory repudiation (including the right to request assurances), and when time is of the essence. This topic also includes the impact of different kinds of breaches on the nonbreaching party's obligations.

D. Obligation of good faith and fair dealing*

This topic includes the common law obligation of good faith and fair dealing, including interfering with or failing to cooperate with the other party's performance.

E. Impossibility, impracticability, frustration of purpose, and risk of loss*

This topic includes the requirements for establishing impossibility, impracticability, or frustration of purpose, and distinctions in the appropriate uses of these defenses. This topic includes the effects of partial impossibility/impracticability, temporary impossibility/impracticability, and part performance before full performance becomes impossible/impracticable. This topic includes the possible outcomes of these defenses when they are raised (e.g., risk of loss, discharge, quasi-contract remedies). This topic includes force majeure and may include pandemic-related fact patterns.

F. Discharge of duties (including accord and satisfaction, substituted contract, novation, rescission, and release)*

This topic includes the requirements for establishing the named grounds for discharge.

V. Remedies

A. Expectation interest (including direct, incidental, and consequential damages)*

This topic includes the standard measure of expectation damages (i.e., cost of "benefit of the bargain": compensatory damages plus incidental and consequential damages, less costs saved by not having to perform). This topic includes recognition of different types of costs and calculation of an appropriate damages award.

B. Causation, certainty, and foreseeability*

This topic includes consequential damages and when they are available as an alternative to expectation damages, including distinctions between foreseeable and unforeseeable damages and distinctions between certain and speculative damages. This topic includes recognition of different types of costs and calculation of an appropriate damages award.

C. Liquidated damages and penalties, and limitation of remedies*

This topic includes the requirements for enforcing liquidated damages clauses and calculation of an appropriate damages award.

D. Avoidable consequences and mitigation of damages*

This topic includes when a party has a duty to mitigate damages and the effect (reduction in damages award) of failing to do so.

E. Rescission and reformation

This topic includes the requirements for obtaining rescission or reformation of a contract and equitable defenses.

F. Specific performance and injunction*

This topic includes when the specific performance remedy is available (e.g., land, unique goods) and when a court might issue an injunction instead.

G. Reliance and restitution interests

This topic includes reliance damages elected where expectation damages cannot be proved with sufficient certainty, as well as damages for implied-in-law contracts based on preventing unjust enrichment (both when the parties' agreement was unenforceable and when there was no agreement).

H. Remedial rights of breaching parties

This topic includes aspects of the above remedies topics that are affected when the breaching party, instead of or in addition to the nonbreaching party, has suffered a loss.

VI. Third-party rights**A. Third-party beneficiaries***

This topic includes distinctions between intended and incidental third-party beneficiaries, as well as between creditor and donee beneficiaries. This topic includes when (and against whom) such third-party beneficiaries can enforce a contract.

B. Assignment of rights and delegation of duties*

This topic includes the types of contractual rights that can be assigned and the types of contractual duties that can be delegated, requirements for assignment/delegation, and the effect of assignment/delegation on who can enforce the underlying contractual obligations against whom (including available defenses). This topic also includes requirements for revocation of assignments.

VII. Article 2 of the Uniform Commercial Code

A. Formation

B. Defenses to enforceability, including statute of frauds*

C. Interpretation of warranties and disclaimers*

This topic includes interpretation issues related to warranty of title, warranty of merchantability, implied warranty of fitness for a particular purpose, express warranty (as distinct from “puffery”), and interpretation of warranty disclaimers under the UCC.

D. Breach of express and implied warranties

This topic includes what constitutes a breach of warranty and the potential remedies for breach of warranty.

Criminal Law and Constitutional Protections of Accused Persons

Questions may be multidisciplinary, testing knowledge of Foundational Concepts and Principles from more than one subject area.

* Topics followed by an asterisk will be tested in a way that assumes examinees **know the details of the relevant doctrine without consulting legal resources**. All other topics will be tested in a way that assumes examinees **have general familiarity with the topics** for purposes of issue-spotting or working efficiently with legal resources provided during the exam.

This outline includes annotations describing the scope of selected topics.

Note: Common law crimes will not be assessed, and examinees will be expected to interpret statutory definitions of crimes (provided during the exam) for purposes of sections I-III below. The number of crimes to be assessed has been reduced to reflect this emphasis on statutory interpretation.

I. General principles

A. Acts and omissions

This topic includes voluntariness, when an omission counts as an “act,” and when possession is an “act.”

B. State of mind

This topic includes the distinction between specific and general intent, the distinction between motive and intent, and the different levels of intent for the listed subtopics. Examinees should understand different mental states and recognize them when presented in the language of specific statutes.

1. Intent (including premeditation and deliberation)

2. Knowledge

3. Recklessness

4. Criminal negligence

5. Mistake of fact or law

C. Defenses

1. Provocation

2. Intoxication

3. Self-defense

4. Defense of others

5. Defense of property

D. Jurisdiction

This topic includes federal criminal jurisdiction (e.g., over federally owned territory or over conduct occurring within a state, both as specified by a provided statute). This topic also includes state criminal jurisdiction (again, as specified by a provided statute).

E. Burdens of proof and persuasion

This topic includes the differences between reasonable suspicion, probable cause, and proof beyond a reasonable doubt. This topic also includes a defendant's right to present evidence.

II. Statutory crimes**A. Homicide (including felony murder)**

This topic is primarily assessed through understanding of distinctions in levels of intent for homicide charges (described in section I) and through the felony-murder rule and vehicular manslaughter.

B. Theft

This topic includes statutory theft crimes and defenses to such crimes.

C. Burglary

This topic includes statutory burglary crimes, aggravated versions of such crimes, and defenses to such crimes.

D. Robbery

This topic includes statutory robbery, aggravated versions of robbery, and defenses.

E. Assault and battery

This topic includes statutory assault and battery crimes, the distinctions some states draw between the two crimes, aggravated versions of such crimes, and defenses to such crimes.

F. Possession offenses

This topic includes statutory possession crimes (including possession of drugs, guns, and contraband) and possession with intent to distribute, and defenses to these crimes.

G. Operating a motor vehicle while impaired or under the influence, and vehicular manslaughter

This topic includes driving while impaired or under the influence and vehicular manslaughter, and defenses to these crimes.

III. Inchoate crimes; parties**A. Inchoate offenses****1. Attempts**

This topic includes the prima facie case of attempt and defenses to this crime. This topic includes different types of the "substantial step" requirement, general intent vs. specific intent, and an understanding of lesser included offenses and the merger doctrine.

2. Conspiracy

This topic includes the prima facie case of conspiracy and defenses to this crime. This topic includes the *Pinkerton* rule (each member of a conspiracy liable for crimes that other members commit to further their joint criminal design). This topic includes the agreement as the relevant actus reus rather than participation. This topic includes gangs and drug conspiracies, and the requirements for backing out of a conspiracy. This topic also includes lesser included offenses and the merger doctrine.

B. Parties to crime

This topic includes accomplices and accessories after the fact (e.g., someone who hides the suspect and lies to police about it). This topic includes the exclusion of parties from liability where they are members of the “protected class” under the criminal statute.

IV. Constitutional protection of accused persons

Note: Examinees should answer questions based on protections provided by the US Constitution and should disregard state constitutional protections.

A. Arrest, search and seizure*

This topic includes reasonable suspicion, probable cause, and warrant requirements for arrest and other types of detention, as well as the allowed scope of detention. This topic includes knowledge of when the Fourth Amendment is triggered (i.e., was there a search or seizure by government personnel? was the object at issue easily visible to the public?), standing of defendants to object (e.g., third-party visitors on premises, coconspirators), requirements for obtaining a valid search warrant, exceptions to the warrant requirement (e.g., search incident to lawful arrest, automobile exception, plain view, consent, stop-and-frisk, hot pursuit, exigent circumstances), requirements for proper execution of a search warrant (e.g., “knock and announce” and exceptions, proper scope of search, methods that “shock the conscience”), and application of the exclusionary rule and exceptions (e.g., independent source, inevitable discovery, good faith reliance on warrant, use of evidence for impeachment). This topic includes administrative searches at the US border (e.g., less privacy at the border), inventory searches, checkpoint searches, searches of airport travelers, and searches in public schools and government offices. This topic also includes the right to a hearing on a motion to suppress for violation of Fourth Amendment rights.

B. Confessions and privilege against self-incrimination*

This topic includes the requirement of voluntariness under the Fourteenth Amendment in addition to Fifth Amendment and *Miranda* requirements. This topic includes when *Miranda* rights are triggered (e.g., custody, interrogation, testimonial statement), what those rights are, how the *Miranda* right to counsel differs from the Sixth Amendment right to counsel, how a person must assert *Miranda* rights, when the rights are properly waived, what subsequent law enforcement conduct is allowed/prohibited (e.g., resuming questioning after lapse of time, questioning about other crimes, questioning after custody has ended, questioning by informants), and the application of the exclusionary rule and exceptions (e.g., harmless error, use of evidence for impeachment). This topic also includes the right to a hearing on a motion to suppress for violation of the right against self-incrimination.

C. Right to counsel (including effective assistance of counsel)*

This topic includes when the Sixth Amendment right to counsel attaches (e.g., distinctions related to misdemeanors vs. felonies, jail time, which hearings are significant enough), what competency of counsel means (i.e., effective vs. ineffective assistance of counsel), the right to counsel of one's choice and waiver of the right to counsel (including self-representation), and appointment of counsel to indigents. This topic also includes the right-to-counsel aspect of *Padilla v. Kentucky* (obligation to inform noncitizen defendant of deportation implications of a guilty plea).

D. Right to disclosure of exculpatory and impeachment evidence*

E. Due process implications of lineups and other forms of identification*

Evidence

Note: Examinees should assume that the Federal Rules of Evidence (“FRE”) are in effect.

Questions may be multidisciplinary, testing knowledge of Foundational Concepts and Principles from more than one subject area.

During pilot and field testing preceding the launch of the future exam, NCBE will be using the subject of Evidence to conduct research on the level and length of legal resources, such as a redacted version of the Federal Rules of Evidence, to be provided during the exam. Accordingly, in contrast to the outlines for other subjects, no distinctions are indicated in this outline concerning which topics require knowledge of doctrinal details and which topics require only general familiarity for purposes of issue-spotting or working efficiently with legal resources provided during the exam.

This outline includes annotations describing the scope of selected topics.

I. Presentation of evidence

A. Introduction of evidence

- 1. Requirement of personal knowledge**
- 2. Refreshing recollection**
- 3. Objections and offers of proof**
- 4. Lay opinions**
- 5. Competency of witness**
- 6. Judicial notice**
- 7. Roles of judge and jury**
- 8. Limited admissibility**

B. Impeachment, contradiction, and rehabilitation

- 1. Inconsistent statements and conduct**
- 2. Bias and interest**
- 3. Conviction of crime**
- 4. Specific instances of conduct**
- 5. Character for truthfulness**
- 6. Ability to observe, remember, or relate accurately**
- 7. Impeachment of hearsay declarants**
- 8. Rehabilitation of impeached witnesses**
- 9. Contradiction**

II. Relevancy and reasons for excluding relevant evidence

A. Probative value

1. Relevancy

2. Exclusion for unfair prejudice, confusion, or waste of time

This topic includes an understanding that evidence is relevant even if the fact of consequence is undisputed (i.e., in general, parties may prove their cases through the evidence of their choice rather than accepting an opponent's stipulation). However, courts will consider offers to stipulate when judging probative value. For example, in felon-in-possession criminal cases, the courts will exclude evidence of the underlying felony if the defendant stipulates that they have been convicted of a qualifying felony.

B. Foundation, authentication, and identification

This topic includes an understanding that evidence needs to be authenticated, familiarity with the four examples for authenticating evidence set out in FRE 901(b)(1)-(4), and that other means of authentication may need to be researched. This topic also includes what it means to "prove the content" of a writing, as well as to understand how the rules define "writing" and the rules with respect to duplicates.

C. Character and related concepts

1. Admissibility of character

2. Methods of proving character

3. Habit and routine practice

4. Other crimes, acts, transactions, and events

D. Expert testimony

1. Qualifications of witnesses

2. Bases of testimony

3. Ultimate issue rule

4. Reliability and relevancy

5. Proper subject matter for expert testimony

III. Privileges and other policy exclusions

A. Spousal immunity and marital communications

B. Attorney-client and work product

C. Physician/psychotherapist-patient

D. Insurance coverage

E. Remedial measures

F. Compromise and payment of medical expenses

IV. Hearsay and circumstances of its admissibility

A. Definition of hearsay

B. Statements that are not hearsay

1. **Prior statements by witness**
2. **Statements attributable to party-opponent**

C. Testimonial hearsay/right to confront witnesses

This topic includes understanding that the confrontation clause of the Sixth Amendment limits admission of some hearsay statements in both state and federal courts. The clause gives criminal defendants, not other litigants, a right to confront witnesses against them. Thus, the clause primarily limits hearsay offered by the prosecution in criminal cases. It does not limit evidence offered by a defendant against the state or any evidence in civil cases. (The clause also limits evidence that one defendant offers against a co-defendant, but the exam will not test that specialized application.)

This topic also includes understanding that evidence subject to the confrontation clause must also satisfy the rules of evidence. In other words, some out-of-court statements that satisfy the confrontation clause may still be barred by the rule against hearsay.

This topic also includes understanding that “testimonial statements” may include formal statements made during litigation, statements made to law enforcement personnel in connection with a criminal investigation, and statements made to government agents to establish facts related to a crime, but do not include statements offered for a purpose other than to prove the truth of the matter asserted, opposing party statements, or co-conspirator statements.

Finally, this topic includes understanding that a prosecutor can introduce statements over confrontation clause objections where the defendant has an opportunity to cross-examine the declarant or the declarant is unavailable but the defendant had a prior opportunity to cross-examine that declarant.

D. Hearsay within hearsay**E. Exceptions to the rule against hearsay**

1. **Present sense impressions and excited utterances**
2. **Statements of mental, emotional, or physical condition**
3. **Statements for purposes of medical diagnosis and treatment**
4. **Past recollection recorded**
5. **Business records; absence of business records**
6. **Public records and reports; absence of public records**
This topic includes an understanding that when a record or statement of a public office is offered to prove “factual findings” from a legally authorized investigation, in a civil case or against the government in a criminal case, “factual findings” include conclusions and opinions.
7. **Learned treatises**
8. **Former testimony; depositions**
9. **Statements against interest**
10. **Dying declarations**
11. **Statements offered against a party that wrongfully caused the declarant’s unavailability**

Real Property

Questions may be multidisciplinary, testing knowledge of Foundational Concepts and Principles from more than one subject area.

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This outline includes annotations describing the scope of selected topics.

I. Ownership of real property

A. Present estates and future interests

1. Present estates

a. Fees simple*

This topic includes the language used in conveyance and the basic attributes of the fee simple absolute.

b. Defeasible fees

This topic includes the language used in conveyance and the basic attributes of the fee simple determinable, the fee simple subject to condition subsequent, and the fee simple subject to an executory interest.

c. Life estates

This topic includes the language used in conveyance, the rights and duties of life tenants, and the basic attributes of the life estate (for the life of the life tenant) and the life estate pur autre vie.

2. Future interests

a. Reversions

This topic includes the language used in conveyance and the basic attributes of reversions.

b. Remainders, vested and contingent

This topic includes the language used in conveyance and the basic attributes of an indefeasibly vested remainder, a vested remainder subject to open, a vested remainder subject to total divestment, and a contingent remainder (subject to condition precedent, unborn or unascertained person). This topic also includes the effect of remainders on the marketability of title and the transferability of remainders.

c. Executory interests

This topic includes the language used in conveyance. This topic also includes the effect of executory interests on the marketability of title and the transferability of executory interests.

d. Possibilities of reverter, powers of termination

This topic includes the basic attributes of possibilities of reverter/rights of entry.

e. Rules affecting these interests (including survivorship, class gifts, and waste)

This topic includes the language used in conveyance (children, heirs, issue); class members not yet born; when the class closes; conditions on disposition; contingency of survival (express and implied); and affirmative waste, permissive waste, and ameliorative waste (open mines doctrine, obligations to pay taxes, make repairs, apportionment of costs for special assessments).

B. Cotenancy

1. Types: tenancy in common, joint tenancy, and tenancy by the entirety*

This topic includes the language used in creation, the four unities, distinctions between tenancies in common vs. joint tenancy, and the right of survivorship.

2. Rights and obligations of cotenants

a. Partition*

This topic includes the remedy of partition, limitations on partition, and methods of partition.

b. Severance*

This topic includes aspects of severance related to judgment liens, mortgages, and leases.

c. Relations among cotenants

This topic includes possession, rent and profits, one cotenant's encumbrance on property, ouster, and contribution for expenses.

C. Landlord-tenant law

1. Types of tenancies*

This topic includes tenancies for years, breach of covenants, creation of leasehold (express vs. implied, by operation of law, tenant holdovers, invalid lease), tenancies at will, tenancies at sufferance, and periodic tenancies.

2. Possession and rent

This topic includes failure to pay rent, when rent accrues, rent deposits, forcible entry statutes, landlord's duty to deliver possession and tenant remedies for failure, quiet enjoyment, and actual and constructive eviction.

3. Transfers by landlord or tenant*

This topic includes assignment, covenants that run with the land, reassignment by an assignee, an original tenant's liability, assignments by landlords, sublease, liability of a sublessee for covenants, assumption of the lease by a sublessee, rights of a sublessee, covenants against assignment and sublease, waiver of covenants against assignment and sublease, and transfer in violation of a covenant.

4. Termination (including surrender, mitigation of damages, anticipatory breach, and security deposits)*

This topic includes surrender, acceptance of surrender, mitigation of damages, anticipatory breach, security deposits, and abandonment/repossession.

5. Habitability and suitability*

This topic includes independent and dependent lease covenants; tenant’s duty to repair; ordinary wear and tear; affirmative, permissive, and ameliorative waste; destruction of premises; implied warranty of habitability; condemnation; and concealed dangerous conditions.

D. Special problems

1. Alienability, descendibility, and devisability of present and future interests

This topic includes total vs. partial restraints, reasonableness of restraints, restraints on future interests, restrictions in commercial transactions, restraints on transfer of a lease, and options and rights of first refusal.

2. Fair housing/discrimination*

This topic includes discriminatory restraints (Fourteenth Amendment, Fair Housing Act), retaliatory eviction, discrimination in leasing, and racially restrictive covenants. This topic also includes an understanding of reasonable accommodations for tenants with disabilities.

II. Rights in real property

A. Restrictive covenants

1. Nature and type*

This topic includes affirmative covenants, negative covenants, and equitable servitudes.

2. Creation

This topic includes benefits/burdens running with the land (intent, notice, horizontal and vertical privity, touch and concern of the land, and that privity is not required for servitudes). This topic also includes servitudes implied from a common scheme.

3. Scope*

4. Transfer*

5. Termination*

This topic includes termination of covenants and equitable servitudes (and, for covenants, damages for breach). This topic also includes, for equitable servitudes, unclean hands, acquiescence, estoppel, and changed neighborhood conditions (“entering wedge”).

B. Easements and licenses

1. Nature and type*

This topic includes affirmative easements, negative easements, easements appurtenant (and judicial preference for this type), and easements in gross.

2. Methods of creation

a. Express*

This topic includes express grants and reservations.

b. Implied*

This topic includes easements implied from existing use (reasonable necessity; grant or reservation), subdivision plats, and easements by necessity.

c. Prescription*

This topic includes the elements for establishing prescriptive easements, acquisition of prescriptive easements, and creation of a license by failing to create an easement.

3. Scope and apportionment*

This topic includes rules of construction and the consequences flowing from a change in use, use of the servient estate, or use outside the scope of an easement. This topic also includes duties to repair and the consequences of subdivision of the dominant estate.

4. Transfer*

This topic includes transfer of dominant and servient estates and assignability of licenses.

5. Termination*

This topic includes termination by stated conditions, unity of ownership, release (and statute of frauds requirement), abandonment, estoppel, prescription, necessity, condemnation, destruction of the servient estate, revocation of licenses (public amusement cases, breach of contract), and irrevocable licenses (estoppel, license coupled with an interest).

C. Fixtures

This topic includes chattels incorporated into a structure; common ownership issues; constructive annexation; vendor-purchaser issues; mortgagor-mortgagee issues; fixture classifications in conveyances, mortgages, and agreements; and landlord-tenant issues (removal, duty to repair).

III. Real estate contracts

A. Creation and construction

1. Statute of frauds and exceptions*

2. Essential terms*

3. Time for performance*

This topic includes the presumption that time is not of the essence (and how the presumption can be overcome), as well as liability issues related to when time is/is not of the essence.

4. Remedies for breach*

This topic includes specific performance as a remedy for breach, the doctrine of part performance, when tender of performance is excused, liability for defects, damages (including liquidated damages), distinctions between negligence of builders vs. sellers of existing property (misrepresentation, fraud, active concealment, failure to disclose), and disclaimers of liability.

B. Marketability of title

This topic includes when a title is “reasonably free from doubt,” defects in the record chain of title, encumbrances, waiver, quitclaim deeds, timing of marketability requirement, and remedies (rescission, damages, specific performance, merger).

C. Equitable conversion (including risk of loss)

This topic includes risk of loss, insurance, and passage of title on the death of a seller or buyer.

D. Merger*

IV. Mortgages and Foreclosure**A. Mortgages and deeds of trust**

1. **Definition**
2. **Purchase money**
3. **Future advance**

B. Mortgage theories: title, lien, and intermediate**C. Foreclosure****1. Judicial and nonjudicial**

This topic includes defenses to foreclosure and possession before foreclosure for the different types of foreclosure.

2. Acceleration**3. Parties to the process****4. Deficiency and surplus**

This topic includes priorities of senior and junior interests, the effect of foreclosure on junior interests, modification of priorities (e.g., for failure to record, by subordination agreement), distribution of the proceeds of sale, and deficiency judgments.

5. Redemption after foreclosure

This topic includes redemption in equity and statutory redemption.

V. Titles**A. Adverse possession**

This topic includes the elements of adverse possession and when the statutory period begins to run.

B. Transfer by deed**1. Requirements for deed***

This topic includes the rules of construction related to deeds, the statute of frauds requirement, the use of parol evidence (to resolve an ambiguity, to prove grantor's intent, but not to show conditional delivery), proper description of the land and parties, words of intent, the signature requirement, the fact that consideration not required, distinctions between void vs. voidable deeds, and delivery and acceptance issues (including conditional delivery and relation back of acceptance).

2. Types of deeds (including covenants for title)*

This topic includes general warranty deeds, covenants for title, breach of covenants (and damages), statutory special warranty deeds, and quitclaim deeds.

3. Persons authorized to execute documents*

C. Transfer-on-death deeds and transfer by will**1. In general****2. Ademption**

This topic includes distinctions between specific and general devises, issues related to land under executory contract, and issues related to incompetent decedents.

3. Exoneration**4. Lapse**

This topic includes lapse and anti-lapse statutes, application of lapse to class gifts, issues related to beneficiaries who are deceased when a will is executed, issues related to the degree of relationship between the beneficiary and testator, and issues related to conflicts between the will and an anti-lapse statute.

D. Recording acts**1. Types**

This topic includes notice statutes, race statutes, race-notice statutes, and who is protected (purchasers for value without notice).

2. Indexes

This topic includes title searches, grantor and grantee indexes, the effect of recordation, issues related to mistakes by the recorder, and issues related to recording an unacknowledged instrument.

3. Chain of title**4. Hidden risks**

Torts

Questions may be multidisciplinary, testing knowledge of Foundational Concepts and Principles from more than one subject area.

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This outline includes annotations describing the scope of selected topics.

I. Intentional torts

A. Harms to the person, including assault, battery, false imprisonment, and infliction of mental distress*

This topic includes all aspects of the prima facie case of each intentional tort, including the defendant's act, intent (including general intent, specific intent, and transferred intent, and the distinction between intent and motive), and causation, and damages when required. This topic also includes an understanding of who can form intent (e.g., minor children).

B. Harms to property interests, including trespass to land and chattels, and conversion*

C. Defenses to claims for physical harms

1. Consent*

This topic includes distinctions among different types of consent (e.g., actual vs. apparent), as well as when a defendant's action exceeds the scope of the consent.

2. Privileges and immunities: protection of self and others, protection of property interests, parental discipline, protection of public interests, necessity, incomplete privilege

This topic includes an understanding of self-defense, defense of others, defense of property, recapture of chattels (including the shopkeeper's privilege), public and private necessity, parental discipline, and privilege of arrest in the context of law enforcement activity.

II. Negligence

A. The duty question, including failure to act, unforeseeable plaintiffs, and obligations to control the conduct of third parties*

This topic includes the duty of care to foreseeable plaintiffs, including rescuers. This topic also includes duties to control third persons and affirmative duties to act arising out of special relationships and arising when the defendant's actions created or exacerbated a risk of harm (including "Good Samaritan" conduct).

B. The standard of care

1. The reasonably prudent person: including children, physically and mentally impaired individuals, professional people, and people acting in emergency situations*

This topic includes the general standard of reasonable care as well as changes to the general standard for the named categories of defendants.

2. Rules of conduct derived from statutes and custom*

This topic includes an understanding of the requirements for the use of negligence per se (e.g., the plaintiff is within the class of people the statute was designed to protect), as well as an understanding of how the use of negligence per se affects the plaintiff's case (e.g., the plaintiff can still establish negligence another way). This topic includes the use of a statute by the defendant to defend against a negligence claim and how this use affects the defendant's case. This topic also includes an understanding of how to establish a custom for purposes of establishing the standard of care, the weight to be given to statutes and customs when they are used to establish standards of care, and the use of rebuttal evidence by the opposing party.

C. The use of direct and circumstantial evidence to prove fault, including *res ipsa loquitur**

This topic includes slip-and-fall cases and the use of circumstantial evidence to infer negligence.

D. Problems relating to causation

1. But for causes*

2. Substantial causes

3. Traceable to multiple causes

This topic includes alternative causation but not enterprise liability, which is specialized.

4. Questions of apportionment of responsibility among multiple tortfeasors, including joint and several liability

This topic includes joint tortfeasors and methods of apportionment of damages among them. This topic also includes aspects of indemnity related to vicarious liability.

E. Limitations on liability and special rules of liability

1. Problems relating to remote or unforeseeable causes, legal or proximate cause, and superseding causes

This topic includes distinctions between foreseeable and unforeseeable causes and between direct and intervening/superseding causes.

2. Claims against owners and occupiers of land

This topic includes distinctions between natural and artificial conditions on land, duties owed to entrants and passersby (under both the traditional and trending approaches, including "attractive nuisances"), and duties of landlords for common areas and voluntary repairs.

3. Claims for mental distress not arising from physical harm

This topic includes "zone of danger" requirements and exceptions for observing injuries to others, requirements related to physical symptoms of distress, special relationships between the plaintiff and defendant, and negligent reporting of a family member's death.

F. Liability for acts of others

1. Employees and other agents*

This topic includes the doctrine of respondeat superior and vicarious liability of joint venturers. This topic also includes the distinction between vicarious liability for the negligence of a defendant's employee vs. liability for the defendant's own negligence. This topic also includes parental responsibility for negligence of minor children (as distinct from parents' own negligence).

2. Independent contractors and nondelegable duties*

This topic includes distinctions between employees and independent contractors, the general rule against liability for acts of independent contractors, and the exception for nondelegable duties.

G. Pure comparative negligence*

H. Modified comparative negligence

III. Common law strict liability for abnormally dangerous activities and defenses to such claims

This topic includes the common types of abnormally dangerous activities and who may sue, the use of comparative negligence as a defense, and the common test that the harm must arise from the risk that made the activity abnormally dangerous.

IV. Products liability claims against manufacturers and other defendants arising out of the manufacture and distribution of products, and defenses to such claims

This topic includes a general understanding of different theories of liability in products liability cases, different types of defects, who may sue, who might be sued, and the defenses of alteration and misuse (including the concept of a foreseeable misuse).

V. Claims based on nuisance and defenses

A. Private nuisance*

This topic includes the elements of the prima facie case of private nuisance and distinction of private nuisance from trespass and public nuisance.

B. Public nuisance

VI. Claims based on misrepresentation and defenses

A. Fraudulent misrepresentation

B. Negligent misrepresentation

VII. Damages in tort actions

This topic includes an understanding of the types of damages that are recoverable in tort actions and their proper roles, as well as common standards for obtaining them and potential limitations (i.e., tort reform). This topic includes punitive damages and compensatory damages (including medical expenses, pain and suffering, emotional distress, property damage, loss of enjoyment, and loss of consortium). This topic also includes unrecoverable harm (including attorney's fees and recovery for pure economic loss).