

NextGen 
Bar Exam of the Future

Bar Exam Content Scope

FIRST ADMINISTRATION
JULY 2026

NCBE National Conference
of Bar Examiners

Building a competent, ethical, and diverse legal profession.

MAY 2023



National Conference
of Bar Examiners

Building a competent, ethical,
and diverse legal profession

The National Conference of Bar Examiners, founded in 1931, is a not-for-profit corporation that develops licensing tests for bar admission and provides character and fitness investigation services. NCBE also provides testing, research, and educational services to jurisdictions; provides services to bar applicants on behalf of jurisdictions; and acts as a national clearinghouse for information about the bar examination and bar admissions.

Our Mission





NCBE promotes fairness, integrity, and best practices in admission to the legal profession for the benefit and protection of the public. We serve admission authorities, courts, the legal education community, and candidates by providing high-quality

- assessment products, services, and research
- character investigations
- informational and educational resources and programs

Our Vision

A competent, ethical, and diverse legal profession.

nextgenbarexam.ncbex.org

 /ncbexaminers
 company/ncbex
 @ncbex
 /ncbexaminers

Copyright © 2023 National Conference
of Bar Examiners.

All rights reserved.

ncbex.org

NextGen
Bar Exam of the Future

Sign up for NextGen bar exam updates

nextgenbarexam.ncbex.org/subscribe/

Table of Contents

Foundational Skills	1
Foundational Concepts and Principles: Business Associations and Relationships	5
Foundational Concepts and Principles: Civil Procedure	8
Foundational Concepts and Principles: Constitutional Law	12
Foundational Concepts and Principles: Contracts	16
Foundational Concepts and Principles: Criminal Law and Constitutional Protections of Accused Persons	21
Foundational Concepts and Principles: Evidence	25
Foundational Concepts and Principles: Real Property	29
Foundational Concepts and Principles: Torts	35

Foundational Skills

Note: The task list below is **preliminary** and is expected to be finalized in 2024. NCBE is currently evaluating methods for assessing performance on tasks through pilot and field testing of questions. This performance will be assessed based on

- topics identified in the Foundational Concepts and Principles outlines; or
- other topics not identified in those outlines with relevant resources provided.

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

The purpose of Foundational Skills Group A is to assess the extent to which an examinee can apply fundamental legal principles and legal reasoning to analyze given fact patterns.

1. Identify which legal principles are likely to affect the outcome of a matter.

Note: Depending on the context of the question, a question assessing Task 1 may be classified as either an Issue Spotting and Analysis question (Group A) or a Legal Research question (Group C).

2. Identify which facts are likely to be relevant to or dispositive of a legal issue in a matter.

Note: Depending on the context of the question, a question assessing Task 2 may be classified as either an Issue Spotting and Analysis question (Group A) or a Legal Research question (Group C).

3. Identify the applicable standards of review and/or burdens of proof that will apply to legal issues in a matter.

4. Identify the strengths and weaknesses of a client's position or an opposing party's position based on the relevant legal rules and standards.

5. In a matter that requires additional factual development, identify which facts need to be investigated, or the best strategy for investigating or eliciting those facts, in order to be able to evaluate the strengths and weaknesses of a client's position or an opposing party's position based on the relevant legal rules and standards.

6. Assess the probable outcome of a claim, motion, discovery matter, or objection based on the relevant legal rules and standards.

7. Identify the applicable or dispositive language, standards, elements, or factors of a provided resource (such as a statute, contract, or judicial opinion).

Note: Depending on the context of the question, a question assessing Task 7 may be classified as either an Investigation and Evaluation question (Group A) or a Legal Research question (Group C).

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

The purpose of Foundational Skills Group B is to assess the extent to which an examinee can identify lawyering strategies within the lawyer-client relationship, based on the relevant rules and standards and consistent with a client’s objectives, interests, and constraints.

8. Identify which claims to recommend bringing, which remedies to recommend seeking, which evidence to present, which arguments or defenses to raise, or how to respond to arguments or defenses, based on the relevant legal rules and standards and consistent with a client’s objectives, interests, and constraints.
9. In a matter requiring review of a provided transcript of an interview, deposition, or examination of a client or fact witness, identify gaps in information obtained, suggestions for improvement, and/or grounds for objection (if applicable).

Note: Depending on the context, a question assessing Task 9 may be classified as either an Investigation and Evaluation question (Group A), a Client Counseling and Advising question (Group B), or a Client Relationship and Management question (Group B).
10. Identify two factors that favor a client’s position or two factors that favor an opposing party’s position in a matter.
11. Identify two benefits or two drawbacks of a proposed resolution of a dispute, consistent with a client’s objectives, interests, and constraints.
12. Identify potential terms of an agreement that could lead to a negotiated resolution of a dispute.
13. In a matter in which a client has multiple stated objectives, explain why a legal rule or principle, as applied to the client’s situation, may make one of those stated objectives unattainable.
14. Determine the best strategy for identifying a client’s needs and interests underlying the client’s stated objectives, in order to aid the client in setting goals in a matter.

Note: Issues related to the rules of professional responsibility listed below frequently arise in the context of Group B Foundational Skills (Client Counseling and Advising, Negotiation and Dispute Resolution, and Client Relationship and Management). Knowledge of the following American Bar Association Model Rules of Professional Conduct (MRPC) will not be assessed in stand-alone questions but may be assessed in the context of assessment of Group B Foundational Skills.

- MRPC Rule 1.1: Competence
- MRPC Rule 1.2(a) and (d): Scope of Representation and Allocation of Authority Between Client and Lawyer
- MRPC Rule 1.3: Diligence
- MRPC Rule 1.4: Communications
- MRPC Rule 1.6(a) and (c): Confidentiality of Information
- MRPC Rule 1.7: Conflict of Interest: Current Clients

- MRPC Rule 3.1: Meritorious Claims and Contentions
- MRPC Rule 3.3(a)(1)–(2): Candor Toward the Tribunal
- MRPC Rule 4.1: Truthfulness in Statements to Others
- MRPC Rule 4.2: Communication with Person Represented by Counsel
- MRPC Rule 4.3: Dealing with Unrepresented Persons

Foundational Skills Group C: Legal Research

The purpose of Foundational Skills Group C is to test the extent to which an examinee can identify and implement legal research strategies, including preliminary issue-spotting, working with provided resources, developing and refining a theory of the case, and reaching closure on research questions.

15. In a matter that requires legal research, identify the research questions that need to be answered.
16. Identify ambiguities in the language, standards, elements, or factors of a provided resource (such as a statute, contract, or judicial opinion).
17. Identify efficient legal research strategies (including appropriate search terms) that are likely to uncover other legal sources to assist in the interpretation of a provided resource (such as a statute, contract, or judicial opinion).
18. Given a collection of legal sources, identify the roles and characteristics of the sources, including their authoritative weight.
19. Given one or more judicial opinions, identify the facts in a matter that are analogous to and/or distinct from the dispositive facts in the opinions.

Note: Depending on the context of the question, a question assessing Task 19 may be classified as either an Issue Spotting and Analysis question (Group A) or a Legal Research question (Group C).

20. Given a collection of legal sources, identify other sources, search terms, or research strategies that might be used to update sources or find additional sources.
21. Given a collection of legal sources, identify which sources are relevant to or dispositive of a legal issue in the matter.
22. Given a collection of legal sources, identify whether the sources are sufficient to complete an assigned research or other lawyering task.

Foundational Skills Group D: Legal Writing and Drafting

The purpose of Foundational Skills Group D is to test the extent to which an examinee can complete a legal writing or drafting task based on the relevant rules and standards and consistent with a client’s objectives, interests, and constraints.

23. Draft or edit correspondence 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.
24. Given draft sections of a complaint or an answer to a complaint in a matter, identify language that should be changed, and make suggestions for how that language should change, consistent with the facts, the relevant legal rules and standards, and the client’s objectives, interests, and constraints.
25. Given draft sections of affidavits that must be submitted to a court or other tribunal in a matter, identify the best affiant and best language to support each element to be proved, consistent with the facts, the relevant legal rules and standards, and the client’s objectives, interests, and constraints.
26. Given draft provisions of a contract, identify language that should be changed, and make suggestions for how that language should change, consistent with the facts, the relevant legal rules and standards, and the client’s objectives, interests, and constraints.
27. Given a collection of legal sources, draft specified section(s) of a document, demonstrating skill at formulating an original legal analysis. This task may include
 - an objective memo;
 - a persuasive brief or letter; or
 - another common document, such as a mediation brief, an opinion letter, or a draft proposal for a contract.

Foundational Concepts and Principles: Business Associations and Relationships

Subject Matter Outline

Topics in this outline will be tested using tasks from the Foundational Skills outline. Questions may test topics from more than one subject area.

Examinees may expect that some questions will be presented with legal resources. When legal resources are provided within the test, the examinee will be expected to demonstrate their ability to efficiently analyze and apply the legal resources to answer the question or questions.

Within this outline, there are two types of topics:

Topics with a star symbol ★

Topics followed by a star symbol ★ require an examinee to rely solely on recalled knowledge and understanding of the topic; they will be tested without provision of legal resources.

Topics without a star symbol

Topics without a star symbol may be tested with or without provision of legal resources. When these topics are tested without legal resources, the examinee is expected to rely on recalled knowledge and understanding that will enable the examinee to demonstrate recognition that the topic is at issue in the fact scenario.

Where the applicable law is noted in this outline, that law is controlling. In all other cases, if specific statutory rights and remedies are tested, the applicable legal resources will be provided.

If a particular topic's scope is described in this outline, that does not indicate greater importance or testing frequency of the topic.

- I. Agency and authority
 - A. Creation ★
 - B. Agent's authority to bind principal
 1. Actual authority ★
 2. Apparent authority ★
 - C. Agent's fiduciary duties to principal
 1. Duty of care ★
 2. Duty of loyalty ★

Topics followed by a star symbol ★ require an examinee to rely solely on recalled knowledge and understanding of the topic; they will be tested without provision of legal resources. **Topics without a star symbol** may be tested with or without provision of legal resources. When these topics are tested without legal resources, the examinee is expected to rely on recalled knowledge and understanding that will enable the examinee to demonstrate recognition that the topic is at issue in the fact scenario.

D. Termination ★**II. Vicarious liability of principal for acts of agent ★**

This topic includes the doctrines of respondeat superior and vicarious liability, as well as joint venture liability. This topic also includes distinctions between employees and independent contractors. *See also* Torts II.F. Liability for acts of others.

III. Formation, management, and control of general partnerships

This topic includes the de facto treatment of improperly created corporations and limited liability companies as general partnerships, as well as the authority of general partners to manage the partnership.

IV. Formation of corporations and limited liability companies**A. Corporations**

1. Incorporation documents
2. Bylaws
3. Amendments to incorporation documents and bylaws

B. Limited liability companies

1. Certificate of organization
2. Operating agreement
3. Amendments to certificate of organization and operating agreement

V. Corporate promoters: pre-organization contracts and fiduciary duties**VI. Management and control of corporations and limited liability companies****A. Corporations****1. Powers and rights of shareholders**

This topic includes classes of shares (preferred and common) and the requirements for annual meetings (notice and quorum).

2. Powers and rights of directors

This topic includes the requirement for directors' meetings (notice and quorum) and action by committee.

3. Powers and rights of officers**B. Powers and rights of members and managers of limited liability companies**

Topics followed by a star symbol ★ require an examinee to rely solely on recalled knowledge and understanding of the topic; they will be tested without provision of legal resources. **Topics without a star symbol** may be tested with or without provision of legal resources. When these topics are tested without legal resources, the examinee is expected to rely on recalled knowledge and understanding that will enable the examinee to demonstrate recognition that the topic is at issue in the fact scenario.

VII. Fiduciary duties within business associations

- A. Fiduciary duties of general partners ★**
- B. Fiduciary duties of corporate officers and directors ★**
- C. Fiduciary duties of limited liability company members and managers ★**

VIII. Shareholder and member litigation

This topic includes understanding who is suing whom in direct and derivative litigation.

IX. Liability rules related to business associations

- A. Liability of general partners under the Revised Uniform Partnership Act (1997) ★**
- B. Liability of corporate officers and directors under the Model Business Corporation Act (2016) ★**
- C. Liability of limited liability company members and managers under the Uniform Limited Liability Company Act (2013) ★**
- D. Piercing the veil ★**

Foundational Concepts and Principles: Civil Procedure

Subject Matter Outline

Topics in this outline will be tested using tasks from the Foundational Skills outline. Questions may test topics from more than one subject area.

Examinees may expect that some questions will be presented with legal resources. When legal resources are provided within the test, the examinee will be expected to demonstrate their ability to efficiently analyze and apply the legal resources to answer the question or questions.

Within this outline, there are two types of topics:

Topics with a star symbol ★

Topics followed by a star symbol ★ require an examinee to rely solely on recalled knowledge and understanding of the topic; they will be tested without provision of legal resources.

Topics without a star symbol

Topics without a star symbol may be tested with or without provision of legal resources. When these topics are tested without legal resources, the examinee is expected to rely on recalled knowledge and understanding that will enable the examinee to demonstrate recognition that the topic is at issue in the fact scenario.

Examinees are to assume the application of (1) the Federal Rules of Civil Procedure and (2) the sections of Title 28 of the US Code pertaining to district court and appellate jurisdiction, venue, and transfer.

If a particular topic's scope is described in this outline, that does not indicate greater importance or testing frequency of the topic.

I. Jurisdiction and venue

A. Federal subject-matter jurisdiction

1. Federal question jurisdiction ★

This topic includes the well-pleaded complaint rule and the general requirement that the case involve interpretation of the Constitution or laws of the United States or “arise under” the federal law that creates the cause of action.

2. Diversity jurisdiction ★

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

Topics followed by a star symbol ★ require an examinee to rely solely on recalled knowledge and understanding of the topic; they will be tested without provision of legal resources. **Topics without a star symbol** may be tested with or without provision of legal resources. When these topics are tested without legal resources, the examinee is expected to rely on recalled knowledge and understanding that will enable the examinee to demonstrate recognition that the topic is at issue in the fact scenario.

3. Concurrent and removal jurisdiction ★

This topic includes the types of cases that are removable (cases that can 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

This topic includes the “same case or controversy” requirement and discretionary factors permitting the court to decline jurisdiction.

B. Personal jurisdiction ★

This topic includes the constitutional standards for specific in personam jurisdiction (minimum contacts, “arising out of,” reasonableness) and general in personam jurisdiction (“at home”). 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, consent, and waiver.

C. Service of process and notice

This topic includes the constitutional requirement of notice, the different ways to serve individuals and corporations, and waiver of service of process.

D. Venue, forum non conveniens, and transfer

This topic includes the two basic circumstances in which venue is proper: where the defendant (individual or corporation) resides or where a “substantial part of” the events occurred. This topic also includes remedies when venue is improper and rules governing transfer of venue on the basis of forum non conveniens.

II. State law in federal court

This topic includes the Erie doctrine as related to the basic difference between substance and procedure and when state law, including state choice-of-law rules, displaces federal procedural rules.

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 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 timing and procedures for Rule 11 sanctions.

D. Joinder of parties and claims

1. **Joinder of multiple claims, joinder of parties, counterclaims, crossclaims, third-party practice, and the court's overriding power to sever** ★
2. **Intervention under Rule 24**

E. Disclosures and discovery

1. **Scope and limits of discovery** ★
2. **Rule 26(f) conference and planning for discovery** ★
This topic includes a general understanding of the parties' obligation to confer to develop a proposed discovery plan.
3. **Discovery tools and mechanisms, including e-discovery** ★
This topic includes depositions (including corporate representative discovery), interrogatories, requests for production and inspection, and physical and mental examination. This topic also includes how to handle electronically stored information, including metadata and large volumes of e-discovery material.
4. **Discovery motions**
This topic includes motions for protective orders, the process for claiming privilege, and motions to compel disclosure or response. This topic also includes understanding that a party may be subject to sanctions for failure to comply with discovery rules, but not the particulars of which types of sanctions are appropriate.

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. Dispositive motions

- A. **Motion to dismiss for failure to state a claim** ★
- B. **Summary judgment motion** ★
- C. **Motion for judgment as a matter of law (directed verdict and judgment notwithstanding the verdict)**

VI. Judgments

- A. **Default judgment** ★
- B. **Effect of judgment** ★
This topic includes the elements of claim and issue preclusion.

Topics followed by a star symbol ★ require an examinee to rely solely on recalled knowledge and understanding of the topic; they will be tested without provision of legal resources. Topics without a star symbol may be tested with or without provision of legal resources. When these topics are tested without legal resources, the examinee is expected to rely on recalled knowledge and understanding that will enable the examinee to demonstrate recognition that the topic is at issue in the fact scenario.

VII. Appealability and review

A. Final judgment rule

B. Availability of interlocutory review

C. Standard of review 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, plain error, and harmless error).

Foundational Concepts and Principles: Constitutional Law

Subject Matter Outline

Topics in this outline will be tested using tasks from the Foundational Skills outline. Questions may test topics from more than one subject area.

Examinees may expect that some questions will be presented with legal resources. When legal resources are provided within the test, the examinee will be expected to demonstrate their ability to efficiently analyze and apply the legal resources to answer the question or questions.

Within this outline, there are two types of topics:

Topics with a star symbol ★

Topics followed by a star symbol ★ require an examinee to rely solely on recalled knowledge and understanding of the topic; they will be tested without provision of legal resources.

Topics without a star symbol

Topics without a star symbol may be tested with or without provision of legal resources. When these topics are tested without legal resources, the examinee is expected to rely on recalled knowledge and understanding that will enable the examinee to demonstrate recognition that the topic is at issue in the fact scenario.

If a particular topic's scope is described in this outline, that does not indicate greater importance or testing frequency of the topic.

I. Federal judicial power

A. Justiciability requirements: case or controversy and standing ★

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

B. Other justiciability doctrines: ripeness, mootness, and advisory opinions ★

C. The Eleventh Amendment and state sovereign immunity

This topic includes distinctions between suits against states and suits against local governments, litigation between state and federal governments, claims against government officials, suits for damages and for injunctive relief, state law claims and federal law claims, consent to be sued, and congressional power to abrogate state immunity.

D. Judicial authority to interpret the Constitution and laws

Topics followed by a star symbol ★ require an examinee to rely solely on recalled knowledge and understanding of the topic; they will be tested without provision of legal resources. **Topics without a star symbol** may be tested with or without provision of legal resources. When these topics are tested without legal resources, the examinee is expected to rely on recalled knowledge and understanding that will enable the examinee to demonstrate recognition that the topic is at issue in the fact scenario.

II. Legislative powers

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

This topic includes the requirement of a “substantial effect” on interstate commerce, regulation of economic and noneconomic activity, 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 the president’s appointment and removal power regarding executive branch officials and Congress’s authority to limit the president’s appointment and removal powers.

C. The powers of federal administrative agencies

This topic includes the roles of administrative agencies as executive enforcers of laws and regulations, as “legislators” with rule-making authority, 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. Supremacy clause and preemption ★

This topic includes the presumption against federal preemption and the distinction between express and implied preemption.

2. Dormant commerce clause, including congressional authorization of otherwise invalid state action, and the market participant doctrine

V. Individual rights

A. State action requirement and the exception for exclusive government functions

B. Substantive due process

1. The right to privacy

This topic includes the right to reject unwanted medical care, the right to educate one’s children, the right to live with whomever one chooses, the right to marriage, the right to contraception, and standards of review.

2. The right to vote

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

3. The right to travel, including standards of review**4. The right to bear arms, including standards of review****C. Procedural due process, including the constitutional right to process in administrative hearings ★**

This topic includes entitlement to due process, the requirements of notice and the right to be heard, 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.

D. Equal protection**1. Classifications subject to strict scrutiny ★**

This topic includes suspect classifications (i.e., race, ethnicity, national origin, and alienage) and classifications affecting fundamental rights.

2. Classifications subject to intermediate scrutiny ★

This topic includes quasi-suspect classifications (i.e., gender and nonmarital children).

3. Classifications subject to rational basis review ★

This topic includes classifications that are neither suspect nor quasi-suspect, as well as the deference given to the legislature.

E. Takings

This topic includes the meaning of “taking” and “just compensation,” the “public use” limitation, and the distinction between regulatory taking and regulation that is not a taking.

F. Ex post facto laws

This topic includes the two ex post facto clauses (Article I, §§ 9–10) and due process requirements.

G. First Amendment freedoms: the religion clauses**1. The establishment clause ★**

This topic includes the applicability of this doctrine to the states, religious displays on public property, government discrimination among religions, 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.

Topics followed by a star symbol ★ require an examinee to rely solely on recalled knowledge and understanding of the topic; they will be tested without provision of legal resources. Topics without a star symbol may be tested with or without provision of legal resources. When these topics are tested without legal resources, the examinee is expected to rely on recalled knowledge and understanding that will enable the examinee to demonstrate recognition that the topic is at issue in the fact scenario.

2. **The free-exercise clause** ★

This topic includes the applicability of this doctrine to the states, the meaning of “religious belief,” the right not to work on the Sabbath, exemptions from antidiscrimination and other laws, and punishment of religious conduct because it is religious.

H. **First Amendment freedoms: the free-speech clause**

1. **Content-based regulation of protected expression** ★

This topic includes regulation of expression based on its content and the applicable standards of review.

2. **Content-neutral regulation of protected expression and forum designations** ★

This topic includes regulation of expression that is not based on its content and the applicable standards of review. This topic also includes time, place, and manner restrictions, as well as distinctions among public forums, limited public forums, and nonpublic forums.

3. **Regulation of expressive conduct** ★

This topic includes regulation of conduct that is tantamount to speech, including the use of symbols as expression.

4. **Regulation of unprotected expression** ★

This topic includes regulation of “fighting words,” obscenity, incitement of illegal activity, and defamatory speech.

5. **Regulation of commercial speech** ★

This topic includes regulation of commercial signs and commercial advertising.

6. **Regulation of, or impositions upon, public school students and public employees, 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 and speech by such employees not pursuant to their official duties; government employees’ participation in political campaigns; and issuance of permits.

7. **Prior restraint, vagueness, and overbreadth**

This topic includes facial invalidity, as-applied invalidity, procedural safeguards, the amount of discretion given to officials, and the sufficiency of the government interest.

I. **Freedom of the press**

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

J. **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), bar membership, and laws prohibiting or punishing membership in associations.

Foundational Concepts and Principles: Contracts

Subject Matter Outline

Topics in this outline will be tested using tasks from the Foundational Skills outline. Questions may test topics from more than one subject area.

Examinees may expect that some questions will be presented with legal resources. When legal resources are provided within the test, the examinee will be expected to demonstrate their ability to efficiently analyze and apply the legal resources to answer the question or questions.

Within this outline, there are two types of topics:

Topics with a star symbol ★

Topics followed by a star symbol ★ require an examinee to rely solely on recalled knowledge and understanding of the topic; they will be tested without provision of legal resources.

Topics without a star symbol

Topics without a star symbol may be tested with or without provision of legal resources. When these topics are tested without legal resources, the examinee is expected to rely on recalled knowledge and understanding that will enable the examinee to demonstrate recognition that the topic is at issue in the fact scenario.

If a particular topic's scope is described in this outline, that does not indicate greater importance or testing frequency of the topic.

I. Identification of governing law ★

This topic includes understanding whether a transaction at issue in a test question raises issues governed by the common law or the Uniform Commercial Code Article 2 (UCC), or whether it is a hybrid transaction.

II. Formation of contracts

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

This topic includes what constitutes an offer and an acceptance, how an offeror can control the manner of acceptance, when the offer and acceptance establish mutual assent, and when an offer terminates (e.g., revocation, lapse, rejection, death, counteroffer). This topic also includes the mirror image rule, limitations on the offeror's power to revoke (e.g., option contracts, firm offers, reliance), and when an offer can be accepted only by a return promise, only by performance, or by either a promise or performance. This topic also includes sale advertisements and offers made to the public (e.g., offers of reward money).

Topics followed by a star symbol ★ require an examinee to rely solely on recalled knowledge and understanding of the topic; they will be tested without provision of legal resources. **Topics without a star symbol** may be tested with or without provision of legal resources. When these topics are tested without legal resources, the examinee is expected to rely on recalled knowledge and understanding that will enable the examinee to demonstrate recognition that the topic is at issue in the fact scenario.

1. **Manifestation of assent** ★
2. **Offers** ★
3. **Limitations on the power of acceptance** ★
4. **Acceptance** ★

B. Consideration (bargained-for exchange) ★

This topic includes what constitutes a bargained-for exchange and adequacy of consideration, past consideration, and moral obligation. This topic also includes the preexisting duty rule and forbearance to sue as consideration.

C. Obligations enforceable without a bargained-for exchange ★

This topic includes promissory estoppel and restitution.

D. Modification of contracts ★

This topic includes requirements for modification; distinctions between modification, waiver, and course of performance; and the effect of no-oral-modification clauses.

E. Contract formation and modification under the UCC

This topic includes contract formation and modification principles under UCC Article 2 and the use of default rules to fill gaps in contract terms.

III. Defenses to enforceability

A. Incapacity to contract

This topic includes contracts entered into by minors or individuals who are impaired, under guardianship, or under the influence of drugs or alcohol.

B. Duress and undue influence

C. Mistake and misunderstanding ★

This topic includes mutual mistake and unilateral mistake, including when a party bears the risk of the mistake. This topic also includes misunderstanding in meaning and scrivener's error (leading to reformation).

D. Fraud, misrepresentation, and nondisclosure ★

This topic includes fraudulent misrepresentation, material misrepresentation, concealment, and nondisclosure, as well as the different remedies available for each.

E. Illegality and public policy

F. Unconscionability under the common law

G. Unconscionability under the UCC

H. Statute of frauds

1. Contracts covered by the statute of frauds ★**2. Satisfaction of the statute of frauds ★****3. Exceptions to the writing requirement ★****4. Statute of frauds under the UCC ★**

This topic includes the UCC's statute-of-frauds requirements, including the exceptions that remove the statute of frauds as a bar to enforcement of a contract (e.g., part performance and specially manufactured goods).

5. Electronic transactions

This topic includes the scope of the Uniform Electronic Transactions Act and when an electronic signature or an electronic record is effective.

IV. Contract content and meaning**A. Parol evidence rule ★**

This topic includes the meaning and application of the parol evidence rule, including the effect of a partially or completely integrated agreement on the admissibility of evidence, and exceptions to the parol evidence rule (e.g., interpretation, fraud, mistake, conditions). This topic also includes differences in application of the rule depending on whether evidence is proffered to supplement, explain, or contradict a written agreement.

B. Parol evidence under the UCC**C. Interpretation ★**

This topic includes the basic rules of contract interpretation and their relative priority with respect to contract language and ambiguities.

D. Usage, course of dealing, and course of performance ★**E. Usage, course of dealing, and course of performance under the UCC****F. Omitted and implied terms****V. Performance****A. Conditions ★**

This topic includes distinctions between promises and conditions. This topic also includes the nonoccurrence and excuse of conditions, as well as conditions of satisfaction.

B. Obligation of good faith and fair dealing ★**C. Performance under the UCC**

This topic includes tender, risk of loss, title, rejection, cure, acceptance, and revocation of acceptance.

Topics followed by a star symbol ★ require an examinee to rely solely on recalled knowledge and understanding of the topic; they will be tested without provision of legal resources. **Topics without a star symbol** may be tested with or without provision of legal resources. When these topics are tested without legal resources, the examinee is expected to rely on recalled knowledge and understanding that will enable the examinee to demonstrate recognition that the topic is at issue in the fact scenario.

D. Warranties and disclaimers under the UCC ★

This topic includes creation and breach of express warranties, warranties of title and against infringement, implied warranties of merchantability and fitness for a particular purpose, what constitutes a breach of warranty, and sellers' defenses to breach of warranty, including warranty disclaimers and failure to provide notice.

VI. Breach and discharge**A. Material breach, partial breach, and substantial performance ★****B. Anticipatory repudiation ★**

This topic includes anticipatory repudiation, retraction of repudiation, and demand for adequate assurance.

C. Anticipatory repudiation under the UCC**D. Impossibility, impracticability, frustration of purpose, and risk of loss ★**

This topic includes the requirements for establishing impracticability or frustration of purpose, the appropriate uses of these defenses, and their effect on each party's performance obligations. This topic also includes the effects of partial and temporary excuse and force majeure provisions.

E. Impossibility, impracticability, frustration of purpose, and risk of loss under the UCC**F. Discharge of duties: accord and satisfaction, substituted contract, novation, rescission, and release ★****G. Breach of employment contracts**

This topic includes the distinction between at-will contracts and contracts for a definite term.

VII. Remedies**A. Expectation interest: direct, incidental, and consequential damages ★**

This topic includes the standard measure of expectation damages and the categories of expectation damages (i.e., direct, incidental, consequential) and when lost profits are recoverable.

B. Causation, certainty, and foreseeability ★

This topic includes causation and certainty requirements for all expectation damages, the foreseeability requirement for consequential damages, and recognition of different ways to calculate an appropriate damages award.

C. Liquidated damages and penalties ★

This topic includes how to distinguish between liquidated damages clauses and penalties, as well as when the parties' agreed-to limitation of remedies is enforceable, and when disclaimers of consequential damages are unenforceable.

D. Avoidable consequences and mitigation of damages ★

E. Reformation

This topic includes the requirements for obtaining reformation of a contract (and equitable defenses) when the parties inadvertently omit an agreed-upon term from the writing.

F. Specific performance and injunction ★

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

G. Reliance and restitution interests

This topic includes reliance damages and restitution as alternatives to expectation damages, restitution for the party in breach, and other circumstances where restitutionary recovery is appropriate to prevent unjust enrichment.

H. Remedies under the UCC**VIII. Third-party rights and obligations****A. Third-party beneficiaries**

This topic includes distinctions between intended and incidental third-party beneficiaries, as well as defenses against claims asserted by intended beneficiaries.

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 or delegation, and the effect of assignment or delegation on who can enforce the underlying contractual obligations against whom (including available defenses). This topic also includes the effect of clauses prohibiting assignment or delegation and the requirements for revocation of gratuitous assignments.

C. Assignment of rights and delegation of duties under the UCC

Foundational Concepts and Principles: Criminal Law and Constitutional Protections of Accused Persons

Subject Matter Outline

Topics in this outline will be tested using tasks from the Foundational Skills outline. Questions may test topics from more than one subject area.

Examinees may expect that some questions will be presented with legal resources. When legal resources are provided within the test, the examinee will be expected to demonstrate their ability to efficiently analyze and apply the legal resources to answer the question or questions.

Within this outline, there are two types of topics:

Topics with a star symbol ★

Topics followed by a star symbol ★ require an examinee to rely solely on recalled knowledge and understanding of the topic; they will be tested without provision of legal resources.

Topics without a star symbol

Topics without a star symbol may be tested with or without provision of legal resources. When these topics are tested without legal resources, the examinee is expected to rely on recalled knowledge and understanding that will enable the examinee to demonstrate recognition that the topic is at issue in the fact scenario.

Elements of crimes and defenses will be tested on the basis of provided statutes.

If a particular topic's scope is described in this outline, that does not indicate greater importance or testing frequency of the topic.

I. General principles

A. Acts and omissions

This topic includes voluntariness, omission as an act, and possession as 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 culpability for the listed subtopics. Examinees should understand different mental states and recognize them when they are presented in the language of specific statutes.

1. Intent or purpose

2. Knowledge

Topics followed by a star symbol ★ require an examinee to rely solely on recalled knowledge and understanding of the topic; they will be tested without provision of legal resources. **Topics without a star symbol** may be tested with or without provision of legal resources. When these topics are tested without legal resources, the examinee is expected to rely on recalled knowledge and understanding that will enable the examinee to demonstrate recognition that the topic is at issue in the fact scenario.

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 and state criminal jurisdiction as specified by statute.

E. Burdens of proof and persuasion ★

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

II. Statutory crimes

A. Homicide (including felony murder)

This topic includes the distinctions in levels of intent (described in section I) for homicide charges, felony murder, and vehicular manslaughter. This topic also includes distinctions in homicide offenses, including between intentional murder (premeditated and impulsive killings) and manslaughter (provocation or extreme emotional disturbance doctrine), unintentional murder and manslaughter (depraved indifference, recklessness, and criminal negligence), and felony murder and vehicular manslaughter.

B. Theft

This topic includes statutory theft, aggravated theft, and defenses to these crimes.

C. Burglary

This topic includes statutory burglary, aggravated burglary, and defenses to these crimes.

D. Robbery

This topic includes statutory robbery, aggravated robbery, and defenses to these crimes.

E. Assault and battery

This topic includes statutory assault and battery, aggravated assault and battery, and defenses to these crimes.

Topics followed by a star symbol ★ require an examinee to rely solely on recalled knowledge and understanding of the topic; they will be tested without provision of legal resources. Topics without a star symbol may be tested with or without provision of legal resources. When these topics are tested without legal resources, the examinee is expected to rely on recalled knowledge and understanding that will enable the examinee to demonstrate recognition that the topic is at issue in the fact scenario.

F. Possession and trafficking offenses

This topic includes statutory possession crimes (e.g., possession of drugs, guns, or contraband), possession with intent to distribute, contraband trafficking crimes, 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, vehicular manslaughter, and defenses to these crimes.

III. Inchoate crimes and parties to a crime**A. Attempt**

This topic includes the elements of attempt, defenses to attempt, different formulations of the actus reus requirement (including the “substantial step” test), and general vs. specific intent, as well as lesser included offenses and the merger doctrine.

B. Conspiracy

This topic includes the elements of conspiracy, defenses to conspiracy, and liability of coconspirators for a substantive crime.

C. Parties to crime

This topic includes accomplices and accessories before and after the fact.

IV. Constitutional protections of accused persons

Note: Examinees should answer questions based on protections provided by the US Constitution only.

A. Arrest, search, and seizure [Fourth Amendment]**1. Search ★**

This topic includes the concept of a reasonable expectation of privacy as applied to certain circumstances, including open fields, surveillance, technological information gathering, false friends, dog sniffs, and curtilage.

2. Reasonable suspicion and probable cause ★**3. Search warrant and exceptions ★**

This topic includes 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, community caretaking), and requirements for proper execution of a search warrant (e.g., “knock and announce” and exceptions, proper scope of search, methods that “shock the conscience”).

4. Seizure of persons (Terry stop and arrest) ★

5. **Administrative and suspicionless searches**
This topic includes border searches, inventory searches, airport searches, checkpoints, searches of government offices, and searches in public schools.
 6. **Exclusionary rule and exceptions** ★
This topic includes application of the exclusionary rule and exceptions to the rule (e.g., fruits doctrine, independent source, inevitable discovery, good-faith doctrine, “knock and announce” exception, use of evidence for impeachment).
 7. **Standing to object, including coconspirators and third parties, and state action doctrine**
- B. Confession and privilege against self-incrimination [Fifth Amendment]**
1. **Triggering the Fifth Amendment privilege against self-incrimination (including “testimonial” versus “nontestimonial” standard and incrimination standard)** ★
 2. **Triggering Miranda rights** ★
This topic includes custody, interrogation, and custodial statements.
 3. **Adequacy of Miranda warnings** ★
 4. **Invoking and waiving Miranda rights** ★
This topic includes the differences between the Fifth Amendment right to counsel and the Sixth Amendment right to counsel, how a person must assert Miranda rights, when the rights are properly waived, and what types of subsequent law-enforcement conduct are allowed (e.g., resuming questioning after a lapse of time, questioning about other crimes, questioning after custody has ended, questioning by informants).
 5. **Involuntariness under the Fifth and Fourteenth Amendments** ★
 6. **Exclusionary rule and exceptions** ★
- C. Right to counsel (including ineffective assistance of counsel) [Sixth Amendment]**
1. **When the right attaches** ★
 2. **Waiver of the right to counsel** ★
 3. **Ineffective assistance of counsel** ★
 4. **Right to counsel of one’s choice**
 5. **Exclusionary rule**
- D. Right to disclosure of exculpatory and impeachment evidence**
- E. Due process implications related to identification**
This topic includes the due process implications of lineups, showups, voice exemplars, and photo arrays.
- F. Right to trial by jury**

Topics followed by a star symbol ★ require an examinee to rely solely on recalled knowledge and understanding of the topic; they will be tested without provision of legal resources. Topics without a star symbol may be tested with or without provision of legal resources. When these topics are tested without legal resources, the examinee is expected to rely on recalled knowledge and understanding that will enable the examinee to demonstrate recognition that the topic is at issue in the fact scenario.

Foundational Concepts and Principles: Evidence

Subject Matter Outline

Topics in this outline will be tested using tasks from the Foundational Skills outline. Questions may test topics from more than one subject area.

Examinees may expect that some questions will be presented with legal resources. When legal resources are provided within the test, the examinee will be expected to demonstrate their ability to efficiently analyze and apply the legal resources to answer the question or questions.

Within this outline, there are two types of topics:

Topics with a star symbol ★

Topics followed by a star symbol ★ require an examinee to rely solely on recalled knowledge and understanding of the topic; they will be tested without provision of legal resources.

Topics without a star symbol

Topics without a star symbol may be tested with or without provision of legal resources. When these topics are tested without legal resources, the examinee is expected to rely on recalled knowledge and understanding that will enable the examinee to demonstrate recognition that the topic is at issue in the fact scenario.

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

If a particular topic's scope is described in this outline, that does not indicate greater importance or testing frequency of the topic.

I. Relevance and reasons for excluding relevant evidence

A. Probative value

1. Relevance ★

This topic includes understanding that evidence remains relevant and may be admitted even if an opposing party offers to stipulate to it. However, a court may consider an offer to stipulate when judging the evidence's probative value.

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

B. Character and related concepts

1. Admissibility of character evidence

2. Crimes, wrongs, or other acts ★

Topics followed by a star symbol ★ require an examinee to rely solely on recalled knowledge and understanding of the topic; they will be tested without provision of legal resources. **Topics without a star symbol** may be tested with or without provision of legal resources. When these topics are tested without legal resources, the examinee is expected to rely on recalled knowledge and understanding that will enable the examinee to demonstrate recognition that the topic is at issue in the fact scenario.

3. Methods of proving character
 4. Habit and routine practice
- C. Opinions and expert testimony
1. Lay opinion ★
 2. Qualification of expert witness
 3. Proper subject matter for expert testimony ★
 4. Reliability of expert testimony ★
 5. Bases of expert opinion testimony
 6. Ultimate issue rule
- II. Presentation of evidence
- A. Foundation, authentication, and identification, including the best evidence rule ★
 This topic includes understanding that evidence needs to be authenticated and familiarity with the four primary examples set out in FRE 901(b)(1)-(4) of evidence that meets the authentication requirement. This topic also includes what it means to “prove the content” of a writing, as well as understanding how the rules define “writing” and the rules with respect to duplicates.
- B. Competency of witness
- C. Juror’s competency as a witness
- D. Refreshing recollection
- E. Objections and offers of proof
- F. Judicial notice
- G. Limited admissibility
- 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. Subsequent remedial measures
- F. Compromise and payment of medical expenses

Topics followed by a star symbol ★ require an examinee to rely solely on recalled knowledge and understanding of the topic; they will be tested without provision of legal resources. Topics without a star symbol may be tested with or without provision of legal resources. When these topics are tested without legal resources, the examinee is expected to rely on recalled knowledge and understanding that will enable the examinee to demonstrate recognition that the topic is at issue in the fact scenario.

IV. Hearsay and circumstances of its admissibility

A. Definition of hearsay ★

B. Statements that are not hearsay

1. Declarant-witness’s prior statement ★
2. Opposing party’s statement ★

C. Right to confront witnesses

This topic includes the right to confront witnesses and limitations on testimonial hearsay pursuant to the confrontation clause of the Sixth Amendment in criminal cases.

D. Hearsay within hearsay

V. Exceptions to the rule against hearsay

A. Hearsay exceptions—regardless of whether the declarant is available as a witness

1. Present sense impression and excited utterance ★
2. Statement of then-existing mental, emotional, or physical condition
3. Statement made for medical diagnosis or treatment
4. Recorded recollection ★
5. Business records; absence of business record ★
6. Public records and reports; absence of public record
This topic includes 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. Statement in learned treatise, periodical, or pamphlet
8. Reputation concerning character

B. Hearsay exceptions—when the declarant is unavailable as a witness

1. Former testimony ★
2. Statement under the belief of imminent death
3. Statement against interest ★
4. Statement offered against a party that wrongfully caused the declarant’s unavailability

- VI. **Impeachment, contradiction, and rehabilitation**
 - A. **Ability to observe, remember, or relate accurately**
 - B. **Contradiction**
 - C. **Inconsistent statements and conduct**
 - D. **Bias and interest**
 - E. **Character for truthfulness or untruthfulness**
 - 1. **Impeachment with bad acts**
 - 2. **Impeachment with convictions**
 - F. **Religious belief or opinion**
 - G. **Rehabilitation of impeached witness**
 - H. **Impeachment of hearsay declarant**

Topics followed by a star symbol ★ require an examinee to rely solely on recalled knowledge and understanding of the topic; they will be tested without provision of legal resources. **Topics without a star symbol** may be tested with or without provision of legal resources. When these topics are tested without legal resources, the examinee is expected to rely on recalled knowledge and understanding that will enable the examinee to demonstrate recognition that the topic is at issue in the fact scenario.

Foundational Concepts and Principles: Real Property

Subject Matter Outline

Topics in this outline will be tested using tasks from the Foundational Skills outline. Questions may test topics from more than one subject area.

Examinees may expect that some questions will be presented with legal resources. When legal resources are provided within the test, the examinee will be expected to demonstrate their ability to efficiently analyze and apply the legal resources to answer the question or questions.

Within this outline, there are two types of topics:

Topics with a star symbol ★

Topics followed by a star symbol ★ require an examinee to rely solely on recalled knowledge and understanding of the topic; they will be tested without provision of legal resources.

Topics without a star symbol

Topics without a star symbol may be tested with or without provision of legal resources. When these topics are tested without legal resources, the examinee is expected to rely on recalled knowledge and understanding that will enable the examinee to demonstrate recognition that the topic is at issue in the fact scenario.

If a particular topic's scope is described in this outline, that does not indicate greater importance or testing frequency of the topic.

I. Ownership of real property

A. Present estates

1. Fee simple ★

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

2. Defeasible fee

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.

3. Life estate and life estate pur autre vie

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.

Topics followed by a star symbol ★ require an examinee to rely solely on recalled knowledge and understanding of the topic; they will be tested without provision of legal resources. **Topics without a star symbol** may be tested with or without provision of legal resources. When these topics are tested without legal resources, the examinee is expected to rely on recalled knowledge and understanding that will enable the examinee to demonstrate recognition that the topic is at issue in the fact scenario.

B. Future interests

1. Reversion

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

2. Remainder, 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, or unborn or unascertained person). This topic also includes the effect of remainders on the marketability of title and the transferability of remainders.

3. Executory interest

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

4. Possibility of reverter, right of entry, and power of termination

This topic includes the basic attributes of the future interests that can result when a defeasible fee fails: possibility of reverter, right of entry, and power of termination.

5. Rules affecting future interests: 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 (e.g., obligations to pay taxes and make repairs, apportionment of costs for special assessments).

C. Cotenancy

1. Tenancy in common, joint tenancy (the four unities), and tenancy by the entirety (the five unities) ★

This topic includes the language used in the creation of cotenancies, the unities required to create the various types of cotenancies, and distinctions among them.

2. Partition ★

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

3. Severance ★

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

4. Relations among cotenants

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

D. Landlord-tenant law

Topics followed by a star symbol ★ require an examinee to rely solely on recalled knowledge and understanding of the topic; they will be tested without provision of legal resources. Topics without a star symbol may be tested with or without provision of legal resources. When these topics are tested without legal resources, the examinee is expected to rely on recalled knowledge and understanding that will enable the examinee to demonstrate recognition that the topic is at issue in the fact scenario.

1. **Tenancy for years, periodic tenancy, tenancy at will, and tenancy at sufferance** ★
This topic includes distinctions among the various types of tenancies, breach of covenants, and creation of leasehold (e.g., express or implied, by operation of law, tenant holdover, invalid lease).
2. **Possession, rent, and actual and constructive eviction** ★
This topic includes failure to pay rent, when rent accrues, rent deposits, landlord’s duty to deliver possession, quiet enjoyment, and landlord and tenant remedies pursuant to a lease.
3. **Statutory remedies**
This topic includes forcible entry statutes.
4. **Assignment and sublease** ★
This topic includes assignment by landlord and tenant, covenants that run with the land, reassignment by assignee, original tenant’s liability, sublessee’s liability for covenants, sublessee’s assumption of the lease, sublessee’s rights, covenant against assignment and sublease, waiver of covenant against assignment and sublease, and transfer in violation of a covenant.
5. **Termination of lease** ★
This topic includes surrender, acceptance of surrender, mitigation of damages, anticipatory breach, security deposit, and abandonment/repossession.
6. **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; and concealed dangerous conditions.

E. 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. This topic does not include the rule against perpetuities.

F. Fair housing/discrimination ★
This topic includes discriminatory restraints in sales and leases (Fourteenth Amendment, Fair Housing Act), retaliatory eviction, discrimination in leasing, racially restrictive covenants, and a basic understanding of reasonable accommodations for tenants with disabilities.

II. Rights in real property

A. Easements and licenses

1. **Nature and type of easements and licenses** ★
This topic includes affirmative easement, negative easement, easement appurtenant (and judicial preference for this type), easement in gross, and the differences between an easement and a license.

2. **Creation of easements and licenses** ★

This topic includes easement expressly granted or reserved; easement implied from existing use (reasonable necessity arising in an implied grant or reservation) or by strict necessity; easement implied from subdivision plat; prescriptive easement; and easement arising by estoppel. This topic also includes license expressly created and license created by failing to create an easement.

3. **Scope and apportionment** ★

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

4. **Effect of transfer of the dominant or servient estate and the assignability of easements and licenses** ★

5. **Termination of easements and licenses** ★

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

B. **Restrictive covenants**

1. **Nature and type of restrictive covenants** ★

This topic includes affirmative covenant, negative covenant, and equitable servitude.

2. **Creation and enforceability of restrictive covenants and equitable servitudes**

This topic includes the requirements for covenants and servitudes to be enforceable between the original parties (statute of frauds) and the requirements for the benefit/burden to run with the land (e.g., intent, notice, “touch and concern” requirement, horizontal and vertical privity for covenant but not servitude). This topic also includes servitude implied from a common scheme.

3. **Transfer of restrictive covenants and equitable servitudes**

4. **Termination of restrictive covenants and equitable servitudes** ★

This topic includes termination of covenants and equitable servitudes, as well as remedies for breach. For equitable servitude, this topic also includes the defenses of unclean hands, acquiescence, estoppel, and changed neighborhood conditions.

III. **Real estate contracts**

A. **Creation and construction of real estate contracts**

1. **Statute of frauds and exceptions** ★

2. **Essential terms** ★

Topics followed by a star symbol ★ require an examinee to rely solely on recalled knowledge and understanding of the topic; they will be tested without provision of legal resources. **Topics without a star symbol** may be tested with or without provision of legal resources. When these topics are tested without legal resources, the examinee is expected to rely on recalled knowledge and understanding that will enable the examinee to demonstrate recognition that the topic is at issue in the fact scenario.

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 and sellers of existing property as to misrepresentation, fraud, active concealment, and 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, timing of marketability requirement, merger, and remedies (e.g., rescission, damages, specific performance).

IV. Mortgages and foreclosure**A. Mortgages and deeds of trust****1. Definition of mortgage and deed of trust****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.

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**V. Titles****A. Adverse possession**

This topic includes the elements of adverse possession, issues affecting the running of the statutory period, and tacking.

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 (e.g., 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 is not required, distinctions between void and voidable deeds, and delivery and acceptance issues (including conditional delivery and relation back of acceptance).

2. Types of deeds ★

This topic includes general warranty deed, covenants of title (i.e., seisin, right to convey, against encumbrances, warranty, quiet enjoyment, and further assurances), breach of covenant (and damages), statutory special warranty deed, and quitclaim deed.

C. Recording acts

1. Types of recording acts

This topic includes notice statutes, race statutes, race-notice statutes, and who is protected (e.g., purchaser for value).

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. Undelivered and forged deeds

Foundational Concepts and Principles: Torts

Subject Matter Outline

Topics in this outline will be tested using tasks from the Foundational Skills outline. Questions may test topics from more than one subject area.

Examinees may expect that some questions will be presented with legal resources. When legal resources are provided within the test, the examinee will be expected to demonstrate their ability to efficiently analyze and apply the legal resources to answer the question or questions.

Within this outline, there are two types of topics:

Topics with a star symbol ★

Topics followed by a star symbol ★ require an examinee to rely solely on recalled knowledge and understanding of the topic; they will be tested without provision of legal resources.

Topics without a star symbol

Topics without a star symbol may be tested with or without provision of legal resources. When these topics are tested without legal resources, the examinee is expected to rely on recalled knowledge and understanding that will enable the examinee to demonstrate recognition that the topic is at issue in the fact scenario.

If a particular topic's scope is described in this outline, that does not indicate greater importance or testing frequency of the topic.

I. Intentional torts

A. Harms to the person

This topic includes all elements of each intentional tort, including the defendant's act, intent (including knowledge to a substantial certainty, transferred intent, the distinction between intent and motive, and who can form intent [e.g., minor children]), causation, and harm/damages (as required).

1. Assault ★
2. Battery ★
3. False imprisonment ★
4. Intentional infliction of emotional distress ★

B. Interference with property interests

1. **Trespass to land** ★
2. **Trespass to chattels** ★
3. **Conversion** ★

C. Defenses to intentional torts**1. Consent** ★

This topic includes distinctions among different types of consent (e.g., actual vs. apparent), when an action exceeds the scope of the consent, when consent is validly given, and when consent is unnecessary (e.g., life-saving surgery on an unconscious injured party with no available representative).

2. Other defenses to intentional torts

This topic includes 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. Duty of care to foreseeable and unforeseeable plaintiffs**

1. **Duty to control third persons** ★
2. **Duty to act when previous actions exacerbate a risk of harm** ★
3. **Duty of owners and occupiers of land**

This topic includes distinctions between natural and artificial conditions on land, as well as duties owed to entrants and passersby (under both the traditional and modern approaches).

4. Duty to avoid unreasonable risk of causing emotional distress

This topic includes “zone of danger” requirements and exceptions for “bystander” cases, requirements related to physical symptoms of distress, special relationships between the parties, and negligent reporting of a family member’s death.

B. Standard of care

1. **The reasonably prudent person and the standards applied to children, physically and mentally impaired individuals, professionals, and persons acting in emergency situations** ★

Topics followed by a star symbol ★ require an examinee to rely solely on recalled knowledge and understanding of the topic; they will be tested without provision of legal resources. **Topics without a star symbol** may be tested with or without provision of legal resources. When these topics are tested without legal resources, the examinee is expected to rely on recalled knowledge and understanding that will enable the examinee to demonstrate recognition that the topic is at issue in the fact scenario.

2. Rules of conduct derived from statutes; relevance of custom ★

This topic includes the requirements for negligence per se (e.g., the plaintiff is within the class of people the statute was designed to protect, the incident resulting in injury was the type of injury that the statute aimed to prevent), how the use of negligence per se affects the plaintiff's case, the defendant's use of a statute to defend against a negligence claim, and how this use of a statute affects the defendant's case. This topic also includes the relevance of custom in 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 the use of direct evidence, the use of circumstantial evidence, and the conditions for the use of res ipsa loquitur (e.g., the incident was the type of incident that does not ordinarily occur without someone having been negligent, the harm was caused by an instrumentality under the exclusive control of the defendant).

D. Actual causation ★

This topic includes the but-for test, the substantial factor test, multiple necessary causes, and multiple sufficient causes.

E. Proximate causation ★

This topic includes the "scope of the risk" test, as well as intervening and superseding causes.

F. Liability for acts of others

This topic includes parental responsibility for the negligence of minor children and the exception for nondelegable duties. *See also* Business Associations II. Vicarious liability of principal for acts of agents.

G. Pure and modified comparative negligence ★

H. Express assumption of risk

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 based on the design, manufacture, and distribution of products and defenses to such claims

This topic includes the different theories of liability in products liability cases, the different types of defects (manufacturing defect, design defect, and failure to warn), who may sue, who may be sued, the defenses of alteration and misuse, and foreseeable misuse.

V. Nuisance and defenses to such claims

A. Private nuisance ★

This topic includes the elements of private nuisance (e.g., unreasonable interference with another's use and enjoyment of land), the locality rule for determining when an interference is unreasonable, and the distinctions between private nuisance, trespass, and public nuisance.

B. Public nuisance**VI. Misrepresentation and defenses to such claims****A. Fraudulent misrepresentation****B. Negligent misrepresentation****VII. Damages****A. Apportionment of responsibility among multiple tortfeasors**

This topic includes joint and several liability and apportionment of responsibility and damages among tortfeasors.

B. Categories of damages recoverable in tort actions

This topic includes the availability and proper roles of compensatory damages (general and special, e.g., medical expenses, pain and suffering, emotional distress, property damage, loss of enjoyment, loss of consortium), punitive damages, and nominal damages in tort actions. This topic also includes the “thin skin” rule, failure to mitigate, attorney’s fees, and statutory limitations on recovery.