

Charts

APPENDIX B

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CIVIL PROCEDURE—SUBJECT MATTER JURISDICTION

| | Federal Question | Diversity | Supplemental |
|------------------------------|---|---|--|
| Subject Matter | <p>Generally, in order for federal question jurisdiction to exist, the cause of action must arise under federal law.</p> <p>Merely asserting a defense that arises under federal law does not satisfy federal question jurisdiction.</p> | <p>Does not matter.</p> | <p>Must be substantially related to the original claim.</p> <p>The supplemental claim must be part of the same transaction and occurrence as the original claim.</p> |
| Parties | <p>Does not matter.</p> | <p>Parties must be completely diverse from one another, meaning that no plaintiff shares a state of citizenship with any defendant.</p> <p>Citizenship means where the party “intends to remain permanently.”</p> | <p>Does not matter.</p> |
| Amount in Controversy | <p>Not applicable.</p> | <p>Greater than \$75,000.</p> | <p>Does not matter.</p> |
| Exam Note | <p>Look for the question to tell you that the claim is based on a federal question—meaning, the question has to name the exact law, and it has to be labeled as U.S.C. or arise under the U.S. Constitution, such as a First Amendment or equal protection claim.</p> | <p>Citizenship and “domicile” can be used interchangeably.</p> <p>Don’t be tricked by someone moving from state to state, or going to a school or temporary job in another state. They have not changed their citizenship until they “intend to remain” in that state. This also means that you can’t change your domicile until you physically arrive in that state.</p> | <p>Supplemental jurisdiction applies to federal question, not diversity jurisdiction.</p> |

CONSTITUTIONAL LAW — EQUAL PROTECTION AND DUE PROCESS

| Strict Scrutiny | Intermediate Scrutiny | Rational Basis |
|---|---|---|
| <p>BURDEN on STATE</p> | <p>BURDEN on STATE</p> | <p>BURDEN on PLAINTIFF</p> |
| <p>To show that the challenged measure is necessary to further a <i>compelling state interest</i></p> | <p>To show that the statute is <i>substantially related to an important governmental objective</i></p> | <p>To show the statute is not <i>rationaly related to a legitimate state interest</i></p> |
| <p>Covers three areas: EQUAL PROTECTION (1) Suspect Classifications: Race Alienage National origin SUBSTANTIVE DUE PROCESS (2) Fundamental Rights: Right to vote Right to travel (interstate) Right to privacy (includes): (a) Contraception (b) Abortion* (c) Marriage (d) Procreation (e) Family relations * Abortion uses the undue burden test. (3) Procedural Due Process Rights: <i>Life, liberty, property.</i> When any of these are denied without notice and the opportunity to be heard, apply strict scrutiny.</p> | <p>Covers: EQUAL PROTECTION (1) Gender (2) Illegitimacy (3) Children of illegal aliens</p> | <p>Everything else! Examples: (1) Social or economic measures (e.g., welfare benefits) (2) Education (3) Housing (4) Unrelated people living together (5) Bankruptcy (6) Age (7) Poverty (8) Wealth (9) Developmental disabilities (10) Necessities of life (e.g., food, shelter, clothing, and medical care) BASICALLY, EVERYTHING ELSE NOT IN THE FIRST TWO BOXES!</p> |

CONTRACTS—BIG PICTURE OVERVIEW

When assessing contracts, follow the order below.
This will help you to stay organized and to avoid missing important issues.

1. What law applies?
 - a. Does UCC or common law apply?
2. Is there a contract?
 - a. Offer and acceptance (mutual assent) and consideration
 - b. Were there any issues with rejection or revocation? Remember the mirror image rule for common law and battle of the forms for UCC.
3. Is the contract enforceable?
 - a. Is there an issue of Statute of Frauds?
 - b. Is there a minor involved? Or another issue of capacity?
 - c. What about illegality?
 - d. Mistake? (remember mutual and unilateral are different)
4. What are the terms?
 - a. Has there been a modification?
 - b. Do we need to assess parol evidence? Or an ambiguity?
5. Is there an excuse for non-performance?
 - a. Impossibility or commercial impracticability
 - b. Frustration of purpose
 - c. A condition not occurring
6. Is there a third-party consideration?
 - a. Has the contract been assigned or delegated?
 - b. Is there a third-party beneficiary?
7. Was the breach major or minor?
 - a. Don't forget that UCC = perfect tender.
 - b. Common law = look to whether there is substantial performance.
8. What is the appropriate remedy?
 - a. Remember that expectation damages are the default (can also include incidental and consequential).
 - b. Specific performance only for goods that are sufficiently unique, NEVER performance.
 - c. Don't forget that liquidated damages are predetermined.
 - d. Reliance and restitution = off contract theories.

CRIMINAL LAW — HOMICIDE

*First thing: YOU NEED A DEATH!!!! No homicide without death!
In addition, the deceased needs to be human, and born.*

| Murder | Manslaughter | |
|--|---|---|
| <p><i>Unlawful Killing of Another HUMAN with Malice Aforethought</i></p> <ol style="list-style-type: none"> 1. Premeditated and Deliberated: Only need ONE second of planning. <i>Example:</i> Planning to buy a gun and kill someone. 2. Intent to Cause Serious Bodily Harm <i>Example:</i> Beating someone over the head with a bat. 3. Felony Murder: Killing in conjunction with the commission of an inherently dangerous felony. Has to be inherently dangerous—BARRK (burglary, arson, rape, robbery, kidnapping). <i>Example:</i> Robbing a bank and shooting the teller. 4. Depraved Heart Murder: Unintentional killing that results from defendant's extremely negligent (or reckless) conduct. Essentially, recklessness that shows indifference to who lives and dies. <i>Example:</i> Firing a gun into a crowded theater; Russian roulette. | <p><i>Voluntary Manslaughter</i></p> <ol style="list-style-type: none"> 1. Adequate Provocation: The conduct or circumstances are sufficient to deprive a reasonable person of self-control. Think failed self-defense and mere words are generally not enough. 2. Heat of Passion: Finding your spouse in bed with another. Can NOT plan for even a second. | <p><i>Involuntary Manslaughter</i></p> <ol style="list-style-type: none"> 1. Misdemeanor Manslaughter: Killing in conjunction with a misdemeanor. 2. Gross/Criminal Negligence: Different than mere negligence. It's GROSS negligence. <i>Example:</i> Drunk driving (note, this and depraved heart murder are on a spectrum). |

CRIMINAL PROCEDURE — SEARCH WARRANT EXCEPTIONS

When working through fact patterns, note that exceptions can build on each other. Focus on the officer's actions.

| Exception | Explanation | What Is Required |
|------------------------------------|---|----------------------------------|
| No Expectation of Privacy | Not really an exception | |
| Plain View | If the officer is lawfully in a place and sees something that is OBVIOUSLY illegal, they may seize it. | N/A |
| Consent | If an individual consents to a search, no warrant is required. However, the individual consenting must have authority to consent. <i>Note: The authority to consent is judged by what a reasonable officer would think.</i> | N/A |
| Safety Exceptions | An exception because of officer, or society, safety | |
| Stop and Frisk | If an officer has reasonable suspicion to believe that a person is carrying a concealed weapon, they may "pat down" or stop and frisk, searching for weapons (however, if they find something other than weapons, apply plain feel doctrine). | Reasonable suspicion of a crime |
| Search Incident to a Lawful Arrest | When a party is lawfully arrested, the arresting officer may search the person's wingspan. <i>Note: If arrested in a car, the wingspan is the entire car.</i> <i>Note: If arrest is lawful, so is the search.</i> | Probable cause for lawful arrest |
| Evidence Might Disappear | | |
| Automobile Exception | If there is probable cause to believe there is illegal contraband in an automobile, the officer may search the entire auto, including the trunk. | Probable cause |
| Hot Pursuit | If an officer is in pursuit of an individual | Probable cause |
| Exigent Circumstances | If an officer believes the evidence will be moved, or if it is easy to make disappear, e.g., flushing drugs down the toilet. An emergency can also be an exigent circumstance. | Probable cause |

EVIDENCE—OVERVIEW

Step 1: WHAT is the evidence coming in? (Be specific—isolate the actual piece of evidence. Don't be afraid to draw silly diagrams of cartoon police reports on chairs.)

Step 2: WHY is it coming in? What is the attorney trying to achieve? What is the attorney trying to prove? Pick one path: Is it coming in for substance or to impeach?

| Substance | Impeachment |
|---|---|
| 1. Relevant to underlying case (think about whether it “tips the scale”—this is also a good place to address competency, privilege, etc.) | 1. Relevant to credibility of witness (not underlying case) |
| 2. Hearsay—ALWAYS an issue if the evidence is an out-of-court statement. Look for exceptions | 2. Hearsay—NEVER an issue (because it's not coming in for the truth of the matter asserted) |
| 3. Character—never unless it is at issue, like defamation | 3. Character—check rules, but ALMOST always coming in |

Specific acts of misconduct or prior crimes allowed to prove MIMIC

(Motive, Intent, Mistake, Identity, or Common scheme or plan)

Not really substance, because not coming in for substance (i.e., absence of mistake is not something that is brought in to show propensity, it comes in to prove that the person on the stand is not making a mistake—so sort of like impeachment)

REAL PROPERTY—ESTATES AND FUTURE INTERESTS

| Fee | Conveying Language | Future Interest, If Any | Notes |
|--|--|--|--|
| <i>Fee Simple Absolute</i> | O to A and his heirs, O to A | None | HIGHEST interest you can have. This is the default if there is no “extra” language. |
| <i>Life Estate</i> | To A, for life | Remainder (if in third person) (can be vested or contingent), or Reversion (if in grantor) | Terminates at the end of A's life. MUST have the word life. *RAP applies if there is a contingent remainder. |
| <i>Fee Simple Determinable</i> | O to A so long as . . . O to A during . . . O to A until . . . O to A while | Possibility of Reverter | The estate exists until that specified event, then terminates automatically . |
| <i>Fee Simple Subject to Condition Subsequent</i> | O to A and his heirs, but if the land is not used as a shoe store, O may reenter the land. | Right of Reentry | Termination is not automatic—the right of entry must be exercised. *Please note the difference between this and FSD: With FSD termination is AUTOMATIC. |
| <i>Fee Simple Subject to Executory Interest</i> | To A and his heirs, so long as . . . THEN to B <i>YOUR examples:</i> | Executory Interest | This is created in a third party —think fee simple determinable but third party. *RAP applies. |

**TORTS—INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
VERSUS NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**

| | Intentional Infliction of Emotional Distress | Negligent Infliction of Emotional Distress | |
|--|--|---|--|
| Rule of Law | (1) Act by D amounting to extreme and outrageous conduct; (2) intent or recklessness; (3) causation; and (4) damages—severe emotional distress/actual damages required | D creates foreseeable risk of physical injury to P: (1) P must be within zone of danger and (2) P must suffer physical symptoms from distress (bystander outside zone of danger who sees D negligently injuring another can recover damage for their own distress as long as P and injured person are closely related, P was recently at scene, and P personally observed or perceived event); special relationship between P and D; P can also recover where D's negligence creates great likelihood of emotional distress | |
| Physical/ Bodily Harm | NO physical or bodily harm required | Some sort of physical or bodily harm required | |
| Third-Party Recovery | If D intentionally or recklessly directs extreme and outrageous conduct at someone other than P, and D KNOWS the third person is present, then P can still recover IF: | If P is a third party, i.e., not directly impacted, P can recover if: | |
| | <i>P and third person are close relatives/family member: physical harm NOT required.</i> | <i>P and third person are NOT close relatives/ family member: physical harm required.</i> | <i>P is a close relative/family member: P's presence required, but bodily harm NOT required.</i> |
| *Note that language such as family member/close family member, or bodily harm/physical harm may be used interchangeably. | | | |

