

# **NEW YORK STATE BOARD OF LAW EXAMINERS**



## **CONTENT OUTLINE FOR THE NEW YORK STATE BAR EXAMINATION**

**AUGUST 2008**

*Note: The Professional Responsibility section of this outline is currently being updated to reflect the new Rules of Professional Conduct, effective April 1, 2009. Candidates should refer to the new rules, available at <http://www.courts.state.ny.us/attorneys/clientattorneyrel.shtml>, when preparing for the July 2009 bar examination*

## INTRODUCTION

The New York portion of the bar examination consists of five essay questions and 50 multiple choice questions. The general subject areas that may be tested are as follows:

- (1) business relationships including agency, business corporations, limited liability companies, partnerships and joint ventures;
- (2) conflict of laws;
- (3) New York and federal constitutional law;
- (4) contracts and contract remedies;
- (5) criminal law and procedure;
- (6) evidence;
- (7) matrimonial and family law;
- (8) New York and federal civil jurisdiction and procedure;
- (9) professional responsibility;
- (10) real property;
- (11) torts and tort damages;
- (12) trusts, wills and estates; and
- (13) UCC Articles 2, 3 and 9.

The New York State Board of Law Examiners has created this content outline in an effort to provide information regarding the subject matter tested on the New York bar examination to law school students and bar candidates. This outline is intended to indicate, in summary fashion, the bar examination's potential scope of coverage. It is our hope that this outline will assist candidates in their preparation.

This outline will be modified periodically, as appropriate. The Board invites comments from legal educators, the practicing bar, bar associations and candidates regarding this outline and regarding the scope and coverage of the bar examination generally.

Comments may be sent to John McAlary, Executive Director, New York State Board of Law Examiners, Corporate Plaza - Building 3, 254 Washington Avenue Extension, Albany, NY 12203-5195, or to our dedicated email address - [Outline.Comments@nybarexam.org](mailto:Outline.Comments@nybarexam.org).

The Multistate Bar Examination (MBE) is also administered as part of the New York bar examination. Subject matter outlines for the MBE are available on the website of the National Conference of Bar Examiners at <http://www.ncbex.org/multistate-tests/mbe/>.

## BUSINESS RELATIONSHIPS

Agency, Business Corporations, Limited Liability Companies, Partnerships and Joint Ventures

### Agency

- I. Creation
  - A. Capacity of parties including minors, incompetents and license requirements
  - B. Formalities including consent, consideration and writing
- II. Special types
  - A. Real estate brokers
  - B. Employer/employee
- III. Authority of Agent
  - A. Express
  - B. Implied
  - C. Apparent
  - D. Inherent
  - E. Ratification
- IV. Fiduciary Duties of Agent
  - A. Reasonable care
  - B. Loyalty
  - C. Obedience
- V. Duties of Principal
  - A. Compensation/reimbursement
  - B. Contractual
  - C. Cooperation
- VI. Remedies for Breach of Duty
  - A. Contractual
  - B. Tort
  - C. Accounting
  - D. Withholding of compensation
- VII. Liability of Principal and Agent to Third Parties
  - A. Disclosed principal
  - B. Undisclosed principal
- VIII. Term and Termination
  - A. Expiration of time and accomplishment of purpose
  - B. Revocation, renunciation and cancellation
  - C. Operation of law
  - D. Irrevocable agencies

## Business Corporations

- I. Pre-incorporation Transactions
  - A. Promoters/Incorporators
  - B. Subscriptions for shares
  - C. Contracts with third parties
  
- II. Formation and Nature
  - A. Certificate of incorporation
  - B. Bylaws
  - C. Purposes and powers
  - D. Defense of ultra vires
  - E. Limited liability of shareholders including exception regarding wages of employees of corporation not publicly traded
  - F. Piercing the veil
  - G. De facto corporations
  
- III. Corporate Finance
  - A. Shares including par value, consideration and preferences
  - B. Dividends
  
- IV. Management and Control
  - A. Shareholders
    - 1. Meetings including notices and quorum
    - 2. Voting including eligibility, proxies, majority or more, action without meeting, cumulative and voting trusts or agreements
    - 3. Preemptive rights
    - 4. Inspection of books and records
    - 5. Derivative actions
  - B. Directors
    - 1. Number, election and removal
    - 2. Meetings including notices, quorum and phone participation
    - 3. Voting including majority or more and action without meeting
    - 4. Interested directors
    - 5. Loans to directors
  - C. Officers
    - 1. Election and removal
    - 2. Authority
  - D. Duties and liabilities of officers and directors
    - 1. Statutory liabilities of directors
    - 2. Liability on corporate obligations
    - 3. Fiduciary duties
      - a. Generally
      - b. Interested directors
      - c. Business judgment rule
      - d. Corporate opportunity doctrine
    - 4. Indemnification

- V. Close Corporations
  - A. Share transfer restrictions
  - B. Shareholder agreements
  - C. 20% or more minority shareholder rights
  
- VI. Structural and Other Major Changes
  - A. Amendment or change of certificate of incorporation
  - B. Mergers and consolidations
  - C. Corporate guarantees
  - D. Sale or other disposition of assets
  
- VII. Dissolution
  - A. Judicial
  - B. Voluntary
  - C. Effect
  - D. Distribution of assets
  
- VIII. Professional Service Corporations
  - A. Requirements
  - B. Professional relationships and liabilities

#### Limited Liability Companies

- I. Formation
  - A. Articles of organization
  - B. Conversion from partnership
  - C. Publication requirement
  
- II. Management
  - A. By members or managers
  - B. Operating agreement
  - C. Liability of members, managers and agents
  
- III. Members and Membership
  - A. Contributions
  - B. Distributions
  - C. Nature of membership interest
  - D. Transfers of membership interest
  - E. Withdrawal
  
- IV. Dissolution
  - A. Events causing dissolution
  - B. Judicial dissolution
  - C. Winding up and distribution of assets
  
- V. Mergers
  - A. With other limited liability companies
  - B. With other entities

- VI. Professional Service Limited Liability Companies
  - A. Requirements
  - B. Professional relationships and liabilities

### Partnerships

- I. Creation of Partnerships
  - A. General partnerships
  - B. Limited partnerships
  - C. Limited liability partnerships
- II. The Authority, Liability and Interests of Partners
  - A. Authority to bind partnership and other partners
  - B. Liability of partners and procedural requirements
  - C. Liability of partnership and procedural requirements
  - D. Partner's fiduciary responsibilities
  - E. Assignment of partnership interests
  - F. Rights of successors, assignees and creditors of partnership
  - G. Partnership profits and losses
  - H. Management and control
- III. Dissolution
  - A. General partnerships, limited partnerships and limited liability partnerships
  - B. How dissolution is accomplished
  - C. Post dissolution operations, including winding up and termination
  - D. Rights of successors
  - E. Continuing liability of partners

### Joint Ventures

- I. Creation
- II. Rights and Liabilities of Participants
- III. Distinguished from Partnerships
- IV. Termination

## CIVIL PRACTICE AND PROCEDURE (New York, except as noted)

- I. Organization of New York's Court System and Subject Matter Jurisdiction of New York Courts
- II. Commencement of Action and Service of Process
  - A. Commencement by filing
  - B. Service of process
  - C. Amended and supplemental summons
  - D. Extension of time to serve

- III. Jurisdiction
  - A. Personal jurisdiction including long-arm jurisdiction
  - B. Subject matter jurisdiction
  - C. In rem jurisdiction
  
- IV. Venue and Forum Non Conveniens
  - A. Proper venue for various types of actions
  - B. Change of venue
  - C. Forum non conveniens
  
- V. Statute of Limitations
  - A. Statutes of limitations for various types of actions
  - B. Claims against municipalities (General Municipal Law §§ 50-e, 50-i)
  - C. Accrual of claims
  - D. Tolling
  - E. Contractual limitations provisions
  
- VI. Appearances and Pleadings
  - A. Demand for complaint
  - B. Notice of appearance
  - C. Complaint
  - D. Answer and affirmative defenses
  - E. Cross-claim and counterclaim
  - F. Reply
  - G. Bill of particulars
  - H. Amended and supplemental pleadings
  - I. Verification of pleadings
  
- VII. Parties
  - A. Joinder, non-joinder and misjoinder
  - B. Interpleader
  - C. Impleader/third-party practice
  - D. Infants, incompetents and decedents
  
- VIII. Joinder of Claims, Consolidation and Severance
  
- IX. Contribution, Indemnification and Limitations on Joint and Several Liability
  - A. Procedure for claiming contribution or indemnification
  - B. Entitlement to contribution and amount of contribution
  - C. Limitation on claims for contribution in workers' compensation context
  - D. Effect of release (General Obligations Law § 15-108)
  - E. Implied indemnification
  - F. Contractual indemnification
  - G. Limitation on liability of joint and several tortfeasors for non-economic loss
  
- X. Provisional Remedies
  - A. Temporary restraining order, preliminary injunction, attachment, receivership and notice of pendency

- B. Grounds for each including notice and undertaking requirements
  - C. Who can obtain
- XI. Motions
- A. Pre-trial motions including motions addressed to face of pleadings, motions to dismiss and summary judgment motions
  - B. Trial motions including motions for judgment during trial, mistrial and new trial
  - C. Post-trial motions including motions for judgment and new trial
  - D. Standards for granting or denying motions
- XII. Disclosure
- A. Scope of disclosure
  - B. Discovery devices
  - C. Protective orders
  - D. Compelling disclosure and sanctions
  - E. Disclosure from nonparties
  - F. Pre-action disclosure
- XIII. Special Actions and Proceedings
- A. CPLR Article 4
  - B. CPLR Article 78
- XIV. Alternative Dispute Resolution
- A. Arbitration (CPLR Article 75)
  - B. Mediation
  - C. Other forms of alternative dispute resolution
- XV. Trials
- A. Jury and non-jury
  - B. Trial preference
  - C. Requests for jury charges
- XVI. Judgments
- A. Interest
  - B. Periodic payment
  - C. Reduction of awards due to recovery from collateral sources
  - D. Enforcement
  - E. Full faith and credit
  - F. Collateral estoppel and res judicata
  - G. Default
- XVII. Appeals
- A. Taking an appeal
  - B. As of right
  - C. By permission
  - D. Stay of proceedings to enforce order/judgment

## XVIII. Federal Practice and Procedure

- A. Original jurisdiction including federal question and diversity of citizenship
- B. Supplemental jurisdiction
- C. Removal and remand
- D. Venue
- E. Interpleader
- F. Habeas Corpus

## CONFLICT OF LAWS

### I. Choice of Law Theories

- A. Traditional vested rights/territorial approach
- B. Contemporary policy approaches including the governmental interest analysis approach and the center of gravity approach

### II. Application in Specific Areas

- A. Torts
- B. Contracts
- C. Property
- D. Family law
- E. Estates

### III. Defenses against Application of Foreign Law

- A. Substantive and procedural dichotomies
- B. Local public policy
- C. Penal laws

### IV. Federal-State Conflicts

- A. Federal supremacy
- B. *Erie* doctrine

### V. Recognition and Enforcement of Sister State Judgments and Foreign Judgments

- A. Full faith and credit
- B. Comity

## CONSTITUTIONAL LAW\*

### I. Article I

- A. Speech and debate clause
- B. Ex post facto laws
- C. Commerce clause

### II. First Amendment - Freedom of Religion, Press, Expression and Right of Assembly

### III. Fourth Amendment - Search and Seizure

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\* Constitutional provisions in addition to the ones listed may be implicated by topics listed in other portions of this outline.

- IV. Fifth Amendment
  - A. Double jeopardy
  - B. Takings clause
  - C. Due process
  - D. Grand jury
  - E. Prohibition against self-incrimination
  
- V. Sixth Amendment
  - A. Speedy and public trial
  - B. Right to confront witnesses
  - C. Other jury trial issues
  
- VI. Eighth Amendment - Prohibition against Cruel and Unusual Punishment
  
- VII. Fourteenth Amendment
  - A. Equal protection
  - B. Due process
  - C. Privileges and immunities

## CONTRACTS AND CONTRACT REMEDIES

- I. Formation and Enforceability of Contracts
  - A. Offer and acceptance including meeting of the minds
  - B. Mutual mistake versus unilateral mistake
  - C. Indefiniteness including unenforceable agreements to agree
  - D. Impossibility
  - E. Fraud and misrepresentation
  - F. Undue influence and duress, confidential relationship of parties and ratification
  - G. Inability to consent including infancy and capacity
  - H. Unconscionability and illegality
  - I. Public policy limitations on enforceability of contracts (General Obligations Law §§ 5-322.1, 5-326)
  - J. Consideration including types and sufficiency
  - K. General Obligations Law provisions addressing consideration (§§ 5-1105, 5-1107, 5-1109, 5-1113, 5-1115)
  - L. Statutes of Frauds requiring a writing (General Obligations Law §§ 5-701[a][1], 5-703)
  - M. Third-party beneficiary contracts including intended versus incidental beneficiaries
  - N. Implied or quasi-contracts, unjust enrichment and detrimental reliance
  - O. Constructive trusts
  
- II. Interpretation of Contracts
  - A. Clear versus ambiguous language
  - B. Extrinsic/parol evidence including when considered
  - C. Interpretation for court or jury
  - D. Custom and usage
  - E. Construe against drafter
  
- III. Breach
  - A. Non-performance of contractual obligation

- B. Excuses for non-performance including waiver and impossibility
- C. Whether non-breaching party must tender
- D. Anticipatory repudiation

IV. Remedies

- A. Damages within contemplation of parties
- B. Causation, certainty and foreseeability of damages
- C. Requirements for specific performance
- D. Requirements for rescission or reformation
- E. Equitable defenses
- F. Liquidated damages
- G. Restitution
- H. Mitigation
- I. Punitive damages

## CRIMINAL LAW AND PROCEDURE

I. General Principles

- A. Acts and omissions (Penal Law Article 15)
- B. Mental culpability (Penal Law Article 15)
- C. Defenses related to mental culpability
- D. Affirmative and ordinary defenses
- E. Effect of age and accessorial conduct on liability
- F. Sufficiency of evidence including burdens of proof and persuasion

II. Crimes

- A. Assault and related offenses (Penal Law Article 120)
- B. Homicide (Penal Law Article 125)
  - 1. Intentional murder
  - 2. Depraved indifference murder
  - 3. Felony murder
  - 4. Manslaughter
- C. Rape and sexual assault (Penal Law Article 130)
- D. Kidnapping (Penal Law Article 135)
- E. Burglary (Penal Law Article 140)
- F. Arson (Penal Law Article 150)
- G. Larceny (Penal Law Article 155)
- H. Robbery (Penal Law Article 160)
- I. Criminal possession of stolen property (Penal Law Article 165)
- J. Forgery and related offenses (Penal Law Article 170)
- K. Criminal sale/possession of a controlled substance (Penal Law Article 220)
- L. Eavesdropping (Penal Law Article 250)
- M. Offenses against children, the disabled and the elderly (Penal Law Article 260)
- N. Criminal possession of a weapon (Penal Law Article 265)
- O. Vehicular offenses (Penal Law Articles 120, 125; Vehicle and Traffic Law Article 31)
- P. Anticipatory offenses
  - 1. Criminal solicitation (Penal Law Article 100)
  - 2. Conspiracy (Penal Law Article 105)

3. Attempt to commit a crime (Penal Law Article 110)
  4. Criminal facilitation (Penal Law Article 115)
- Q. Lesser included offenses (Criminal Procedure Law §§ 1.20[37], 300.50)

III. United States and New York Constitutional Protections

- A. Street encounters
- B. Search and seizure
- C. Warrants
- D. Right to counsel
- E. Confessions and privilege against self-incrimination
- F. Police-arranged identification procedures
- G. Speedy trial guarantees
- H. Due process

IV. Proceedings upon the Filing of an Accusatory Instrument

- A. Grand jury proceedings
- B. Pre-trial proceedings
- C. Motions and hearings
- D. Guilty pleas
- E. Trial
- F. Post-trial proceedings

## EVIDENCE

I. Presentation of Evidence

- A. Introduction of evidence
  1. Requirement of personal knowledge
  2. Refreshing recollection
  3. Objections and offers of proof
  4. Lay opinions versus expert opinions
  5. Competency of witnesses; Dead Man's Statute
  6. Judicial notice
  7. Roles of judge and jury
  8. Limited admissibility
- B. Presumptions
- C. Impeachment, Contradiction and Rehabilitation
  1. Inconsistent statements and conduct
  2. Bias and interest
  3. Conviction of crime
  4. Specific instances of conduct
  5. Character for truthfulness
  6. Ability to observe, remember or relate accurately
- D. Proceedings to which evidence rules apply

II. Relevancy and Reasons for Excluding Relevant Evidence

- A. Probative value
  1. Relevancy
  2. Exclusion for unfair prejudice, confusion or waste of time
- B. Authentication and identification

- C. Character and related concepts
    - 1. Admissibility of character
    - 2. Methods of proving character
    - 3. Habit and routine practice
    - 4. Other crimes, acts, transactions and events
  - D. Expert testimony and scientific evidence
  - E. Real or demonstrative evidence including experimental evidence
  - F. Writings, recordings and photographs
- III. Privileges and Other Policy Exclusions
- A. Spousal immunity and marital communications
  - B. Attorney-client and work product
  - C. Physician/psychologist-patient
  - D. Self-incrimination
  - E. Clergy and other privileges
  - F. Insurance coverage
  - G. Remedial measures
  - H. Compromise, payment of medical expenses, plea negotiations and payment by joint tortfeasors
- IV. Hearsay and Circumstances of its Admissibility
- A. Definition of hearsay
  - B. Present sense impressions and excited utterances
  - C. Statements of mental, emotional or physical condition
  - D. Statements for purposes of medical diagnosis and treatment
  - E. Past recollection recorded
  - F. Business records
  - G. Public records and reports
  - H. Former testimony including depositions
  - I. Statements against interest
  - J. Dying declarations
  - K. Other exceptions to the hearsay rule

## MATRIMONIAL AND FAMILY LAW

- I. Getting Married
  - A. Limitations on who may marry
  - B. Recognition of common law marriage and same sex marriage
  - C. Antenuptual and postnuptual contracts (Domestic Relations Law § 236; General Obligations Law § 3-303)
- II. Filiation Proceedings
  - A. Presumption of legitimacy
  - B. Establishing paternity
  - C. Doctrine of equitable estoppel in paternity
- III. Abuse and Neglect
  - A. Family offenses and child protective proceedings
  - B. Termination of parental rights by reason of permanent neglect
  - C. Juvenile delinquency and persons in need of supervision

- IV. Adoption
  - A. Who may adopt
  - B. Who may be adopted
  - C. Required consents including revocation
  
- V. Matrimonial Actions
  - A. Separation agreements (Domestic Relations Law § 236)
  - B. Grounds and defenses (Domestic Relations Law §§ 170, 200)
  - C. Jurisdiction over defendant (CPLR 301)
  - D. Durational residency requirements (Domestic Relations Law § 230)
  - E. Pleadings and service of process
  - F. Mediation and other alternative means of dispute resolution
  
- VI. Child Custody (Domestic Relations Law § 240)
  - A. Best interest of child standard
  - B. Visitation rights of parents and others
  - C. Types of custodial arrangements
  - D. Enforcement
  - E. Modification of custody
  
- VII. Equitable Distribution (Domestic Relations Law § 236)
  - A. Separate property
  - B. Marital property including pension and retirement benefits
  
- VIII. Support
  - A. Spousal maintenance (Domestic Relations Law § 236)
  - B. Child Support Standards Act (Domestic Relations Law § 240)
  - C. Modification and enforcement of awards and agreements

## PROFESSIONAL RESPONSIBILITY

*Note: The Professional Responsibility section of this outline is currently being updated to reflect the new Rules of Professional Conduct, effective April 1, 2009. Candidates should refer to the new rules, available at <http://www.courts.state.ny.us/attorneys/clientattorneyrel.shtml>, when preparing for the July 2009 bar examination*

- I. Regulation of the Legal Profession
  - A. Inherent powers of courts to regulate lawyers
  - B. Admission to the profession (Code of Professional Responsibility DR 1-101)
  - C. Regulation after admission (DR 1-102 [Misconduct Generally]; DR 1-105)
  - D. Maintaining professional standards including peer responsibility (DR 1-103)
  - E. Unauthorized practice of law (DR 3-101)
  - F. Fee division with a non-lawyer (DR 3-102, DR 3-103)
  - G. Law firm and other forms of practice (DR 1-104)
  - H. Contractual restrictions on practice (DR 2-108)
  - I. Responsibilities and contractual relationships regarding non-legal services (DR 1-106, DR 1-107; 22 NYCRR Part 1205)
  
- II. The Lawyer-Client Relationship
  - A. Acceptance or rejection of clients (DR 2-109)

- B. Scope, objective and means of the representation (DR 7-101, DR 7-105)
  - C. Within the bounds of the law (DR 7-102)
  - D. Withdrawal (DR 2-110)
  - E. Statement of client's rights, engagement letters and retainer agreements (22 NYCRR Parts 1210, 1215 and 1400)
  - F. Fees (DR 2-106, DR 2-107)
  - G. Mediation of lawyer-client disputes (22 NYCRR Part 1220)
  - H. Fee arbitration (22 NYCRR Parts 136 and 137)
  - I. Sale of law practice (DR 2-111)
- III. Privilege and Confidentiality (DR 4-101)
- A. Lawyer-client privilege and the work product doctrine
  - B. Professional obligation of confidentiality
  - C. Client authorized disclosure
  - D. Exceptions to confidentiality
- IV. Independent Professional Judgment and Conflicts of Interest
- A. As affected by lawyer's personal interest (DR 5-101)
  - B. Lawyer as witness (DR 5-102)
  - C. Acquiring an interest in litigation (DR 5-103)
  - D. Entering into business transactions with client (DR 5-104)
  - E. Conflicting interests including prospective clients, current clients and former clients (DR 5-105, DR 5-106, DR 5-108, DR 9-101)
  - F. Influence by persons other than client (DR 5-107)
  - G. Imputed disqualification (DR 5-105[D])
  - H. Lawyer's service as arbitrator, mediator or judge
  - I. Organization as client (DR 5-109)
  - J. Legal services organization (DR 5-110)
  - K. Sexual relations with clients (DR 5-111)
- V. Competence, Legal Malpractice and Other Civil Liability
- A. Civil liability including malpractice
  - B. Maintaining competence (22 NYCRR Part 1500 [Continuing Legal Education])
  - C. Acceptance of employment (DR 6-101[A])
  - D. Exercise of diligence and care (DR 6-101[B], [C])
  - E. Limiting liability for malpractice (DR 6-102)
- VI. Litigation and Other Forms of Advocacy
- A. Authority to act for client
  - B. Civility, courtesy and decorum (DR 7-106; 22 NYCRR Part 1200)
  - C. Conduct in the course of litigation claims, defenses, testimony and evidence (DR 7-102, DR 7-106)
  - D. Client fraud and perjury by a client or witness (DR 7-102)
  - E. Communications in course of representation (DR 7-104, DR 7-108, DR 7-109, DR 7-110)
  - F. Trial publicity (DR 7-107)
  - G. Statements concerning judges and adjudicatory officers (DR 8-102)
- VII. Different Roles of the Lawyer
- A. Special obligations of the lawyer in public service (DR 7-103, DR 8-101)

- B. Candidates for judicial office (DR 8-103)
  - C. Qualified legal assistance organization (DR 5-110)
- VIII. Safekeeping Property and Funds of Clients and Others (DR 9-102)
- A. Lawyer as trustee of funds of client or third persons
  - B. Lawyer as custodian of property of client or third persons
  - C. Disputed claims
  - D. Interest on Lawyers' Accounts (Judiciary Law § 497)
  - E. Dishonored check reporting (22 NYCRR Part 1300)
- IX. Communication about Legal Services
- A. Public communications about services including advertising (DR 201, DR 2-102)
  - B. Referrals (DR 2-103, DR 2-104)
  - C. Direct contact with prospective clients including solicitation (DR 2-103, DR 7-111)
  - D. Fields of practice, limitations of practice and specialization (DR 1-105)

## REAL PROPERTY

- I. Ownership
- A. Present estates including fee simple and life estates
  - B. Cotenancies including tenancy in common, joint tenancy, tenancy by the entirety and partition
  - C. Future interests including possibility of reverter, reversion, right of reacquisition and remainder
  - D. Landlord and tenant including types of tenancies, assignment, sublease, warranty of habitability, holdovers, breach, remedies and summary proceedings
  - E. Rule against perpetuities and restraints on alienation
- II. Rights in Land
- A. Easements by grant, prescription or implication
  - B. Licenses
  - C. Restrictive covenants
  - D. Riparian rights
- III. Real Property Contracts including Purchase Contracts, Land Contracts, Options and First Refusals
- A. Creation and construction including Statute of Frauds, essential terms and implied terms
  - B. Performance including fitness and suitability of premises, marketable title and risk of loss
  - C. Breach and remedies
- IV. Real Property Mortgages
- A. Transfer by mortgagor
  - B. Assignment by mortgagee
  - C. Foreclosure
- V. Title
- A. Conveyance by deed including warranties
  - B. Adverse possession
  - C. Priorities and recording act
- VI. Adjoining Owners
- A. Support

- B. Party walls
- C. Encroachments
  
- D. Light, air and view
- E. Boundaries

## TORTS AND TORT DAMAGES

- I. Intentional Torts
  - A. Prima facie case including act, intent, causation, actual damages and whether or not actual damages are required
  - B. Harms to the person including assault, battery, false imprisonment and intentional infliction of emotional distress
  - C. Harms to property interests including trespass to land and chattels and conversion
  - D. Defenses to claims for physical harm including consent, privileges and immunities
  
- II. Negligence
  - A. Prima facie case including duty, breach, causation and damages
  - B. Duty including failure to act, unforeseeable plaintiffs and obligations to control the conduct of third parties
  - C. Standard of care including the reasonably prudent person and statutory rules
  - D. Problems relating to proof of fault including *res ipsa loquitur*
  - E. Problems relating to causation including substantial factor, remote or superseding causation, multiple causation and apportionment of responsibility among multiple tortfeasors including joint and several liability
  - F. Limitations on liability and special rules of liability including claims against owners and occupiers of land, workers' compensation claims, claims for mental distress, pure economic loss and wrongful death
  - G. Liability for acts of others including employees and other agents, *respondeat superior*, independent contractors and non-delegable duties
  - H. Defenses including comparative negligence and assumption of risk
  
- III. Strict Liability including Claims Arising from Abnormally Dangerous Activities and Claims by Construction Workers against Owners and Contractors (Labor Law § 240) and Defenses
  
- IV. Products Liability including Claims against Manufacturers and Others Based on Defects in Manufacture, Design and Warning and Defenses
  
- V. Other Torts
  - A. Premises liability including duty of reasonable care
  - B. Attractive nuisance and defenses
  - C. Defamation and invasion of privacy including defenses and constitutional limitations
  - D. Misrepresentations and defenses
  - E. Intentional interference with business relations and defenses
  - F. Prima facie tort
  - G. Liability under the Dram Shop Act
  
- VI. Statutory "No-Fault" (Insurance Law §§ 5101-5109)
  - A. Purpose

- B. Basic economic loss
- C. Serious injury determination
- D. Entitlement to and exclusions from coverage for first-party benefits
- E. Availability of action for non-economic loss
- F. Availability of action for economic loss in excess of basic economic loss

VII. Municipal Tort Liability

- A. Proprietary versus governmental functions
- B. Special relationship/special duty
- C. Notice of claim requirement (General Municipal Law § 50-e)

## TRUSTS, WILLS AND ESTATES

### Decedents' Estates

I. Intestate Succession (Estates, Powers and Trusts Law § 4-1.1)

- A. Share of the surviving spouse
- B. Share of adopted children, step-children, children born out of wedlock (EPTL 4-1.2) and remote descendants
- C. Share of ancestors and collaterals

II. Wills

- A. Execution requirements (EPTL 3-2.1, 3-2.2)
- B. Joint wills
- C. Codicils (EPTL 3-2.1)
- D. Proof of lost or destroyed will (Surrogate's Court Procedure Act § 1407)
- E. Incorporation by reference
- F. Facts of independent significance
- G. Revocation (EPTL 3-4.1)
  - 1. Dependent relative revocation (EPTL 3-4.6)
  - 2. Revocation due to changed circumstances including marriage, divorce and after-born children (EPTL 5-1.3, 5-1.4, 5-3.2)
  - 3. Revocation by physical act
  - 4. Partial revocation
- H. Revival (EPTL 3-4.6)
- I. Contractual wills
- J. Construction problems
  - 1. Lapsed legacies (EPTL 3-3.3)
  - 2. Ademption (EPTL 3-4.3, 3-4.5)
  - 3. Accretions
  - 4. Advancement (EPTL 2-1.5)
  - 5. Exoneration clause (EPTL 11-1.7)
  - 6. Competency of attesting witness-beneficiary (EPTL 3-3.2)
  - 7. Disclaimers (EPTL 2-1.11)
  - 8. Simultaneous death (EPTL 2-1.6)
  - 9. Abatement
  - 10. Classification of legacies and devises
  - 11. Antilapse (EPTL 3-3.3)
  - 12. Gifts to classes, children and issue (EPTL 2-1.2, 2-1.3, 3-3.3)

- K. Will contests (EPTL 3-3.5)
    - 1. Due execution and capacity
    - 2. Undue influence
    - 3. Fraud
    - 4. Mistake
    - 5. No-contest clauses (EPTL 3-3.5[b])
    - 6. Standing to contest (SCPA 1410)
  - L. Non-probate transfers
    - 1. Inter vivos gifts
    - 2. Joint tenancy (EPTL 6-2.1, 6-2.2)
    - 3. Totten Trust (EPTL 7-5.2)
    - 4. Life insurance and qualified employee benefit plans (EPTL 13-3.2)
- III. Family Protection
- A. Spouse's elective share and testamentary substitutes (EPTL 5-1.1-A, 5-1.2)
  - B. Share of after-born or pretermitted child (EPTL 5-3.2)
- IV. Living Wills, Durable Health Care Powers and Powers of Attorney (Public Health Law § 2980, et seq.; General Obligations Law § 1501, et seq.)
- A. Execution requirements
  - B. Revocation
  - C. Individuals eligible to be agent or attorney-in-fact
  - D. Authority of agent or attorney-in-fact

### Trusts and Future Interests

- I. Trusts
- A. Creation including trust res, beneficiary, trustee and execution requirements (EPTL 7-1.4, 7-1.17)
  - B. Types of trusts
    - 1. Revocable (EPTL 7-1.9)
    - 2. Irrevocable (EPTL 7-1.16)
    - 3. Testamentary (EPTL 3-3.7)
    - 4. Pourover (EPTL 3-3.7)
    - 5. Charitable including cy pres (EPTL 8-1.1)
    - 6. Life insurance
  - C. Alienability of trust interests and spendthrift trust provisions (EPTL 7-1.5, 7-1.6)
  - D. Powers of invasion
  - E. Amendment, revocation and termination (EPTL 7-1.9, 7-1.16, 7-1.17)
  - F. Powers and duties of trustees
- II. Future Interests (EPTL 6-3.2, 6-3.3, 6-3.4, 6-4.2)
- A. Classification of reversions, remainders and executory interests (EPTL 6-4.3, 6-4.4, 6-4.5)
  - B. Life estates and terms of years
  - C. Vested and contingent interests (EPTL 6-4.7, 6-4.8, 6-4.9, 6-4.10)
  - D. Powers of appointment (EPTL 6-5.2)
  - E. Rule against perpetuities (EPTL 9-1.1, 9-1.3)

- III. Construction Problems
  - A. Survivorship problems
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  - C. Death without issue
  - D. Gifts by implication

UNIFORM COMMERCIAL CODE  
Articles 2, 3 and 9

Article 2 – Sales

- I. General Provisions and Definitions
  - A. Scope of Article 2 (§ 2-102)
  - B. Definitions (§§ 2-103 – 2-106)
- II. Form, Formation and Readjustment of Contract
  - A. Formation
  - B. Parol evidence (§ 2-202)
  - C. Statute of frauds (§ 2-201)
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- III. General Obligations and Construction
  - A. Open terms (§§ 2-305, 2-308 - 2-310)
  - B. Warranties
    - 1. Express (§§ 2-312, 2-313)
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- IV. Performance
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  - F. Preserving evidence of goods in dispute (§ 2-215)
- V. Breach, Repudiation and Excuse
  - A. Acceptance of goods (§§ 2-206 – 2-208)
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- I. General Provisions and Definitions
  - A. Definitions (§ 3-102)
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  - A. Form and requirements (§§ 3-104 -3-111)
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- III. Negotiation, Transfer and Endorsement
  - A. Transfer, right to endorsement and negotiation (§§ 3-201, 3-202)
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- IV. Rights of Holders
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- V. Liability of Parties
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