



1/2L Assessment Review

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Test Taking Tips

- ▶ Read the call of the question first
- ▶ Try to predict the outcome as you're reading the facts
- ▶ Read the facts very carefully – one word can completely change the outcome
- ▶ Read ALL the answer choices, don't stop when you think you found the correct answer
- ▶ You should be able to eliminate at least 2 wrong answers



Test Taking Tips Continued...

- ▶ If you know the right answer, choose it and move on.
- ▶ Eliminate any answers you know are wrong, and then concentrate on the remaining answers. Don't bother to look a second time at answers you KNOW are wrong.
- ▶ Remember many answers will focus on the same issue. So, if there is a single answer that seems very different from the other three it is usually not the best answer.
- ▶ Analyze ways in which a particular answer can be wrong.
 - It misapplies a rule of law to the facts.
 - It misstates a rule.
 - It misstates or deliberately confuses the facts.



Test Taking Tips Continued...

TRAP: The “Hmmm, that sounds familiar” trap

You will fall into this trap EVERY time if you study the rules to remember them by rote. If you don't bother to analyze until you truly understand the rule, then you can't apply it in the exam.

So, Since examiners know that most law students will just try to memorize they will construct answers that seem correct because it states part of a rule EXCEPT the rule they state does not apply to the facts.



Test Taking Tips Continued...

TRAP: Focusing on an issue that wasn't part of the call of the question.

Sometimes when you read the fact pattern an issue will jump out at you and you immediately assume (or worse, stop reading) that is the issue tested. Don't let yourself be distracted. Focus ONLY on what is asked in the "call" of the question. On the bar exam, the call of the question is, almost all the time, specific.

Should the company prevail? What is the best argument for the constitutionality of the statute? What's the best argument to support a motion to dismiss?



Test Taking Tips Continued...

TIP: If the m/c question provides yes/no in terms of the result then PAY ATTENTION TO MODIFIERS: Modifiers can lead you to the best response.

The first word in the answer is the result. Yes/No. what follows is the modifier. The remainder of the answer is the reasoning.

Intuitively, you would think that the reasoning is the most important part of the answer option. But, frequently, that one word modifier “if”, “unless”, “Because”, is more important than the reasoning itself.

If “Because” is used as a modifier it is your FRIEND. The word “because” is a definite as opposed to a conditional response. WHEN BECAUSE IS THE MODIFIER IT MUST BE NECESSARILY TRUE THAT THE REASONING LEADS TO THE RESULT.

EXAMPLE (CONTRACTS)

During an ice storm, a man's car slipped down an embankment and became lodged against a large tree. The man called a towing company and told the company's manager that the car was 100 feet down the embankment. The manager said, "that's lucky because our winch only goes 100 feet". After the manager and the man agreed to a price, an employee of the company attempted to reach the car but could not because the car turned out to be 120 feet down.

Is the towing company's performance excused on the grounds of mistake?

- A) No, because both parties were uncertain about the distance.
- B) No, because the towing company assumed the risk by the manager's failure to examine the distance itself.
- C) Yes, because at the time of contracting, both parties were mistaken about a basic assumption upon which the contract was based.
- D) Yes, because the agreement did not allocate the risk of mistake to either party.



Test Taking Tips Continued...

▶ **When “if” and “unless” are used as Modifiers:**

These are conditional responses, because the rule is conditioned on the reason. So, these types of modifiers will either clarify ambiguous facts in the fact pattern; or add facts to resolve a central issue.

- ▶ For example, if the call is: Will the defendant be relieved of negligence?
 - ▶ Yes, If the bird is determined to be a superseding intervening cause.

▶ **When “if” is used it can only be the “best option” if it overcomes 3 hurdles.**

1. The reasoning must be plausible based on the facts. IE: if facts say attorney neglected client's case for 3 months because he was on a drunken binge. In a question that says “is attorney subject to discipline?” Further assume that the facts unquestionably show the representation was incompetent. So, an answer choice that says “Yes, if he rendered incompetent representation” would be wrong even though the rule on competency is stated correctly because the statement isn't plausibly correct because there is NO WAY to deem the service competent.
2. The reasoning must address a central issue.
3. There must be agreement between result and reasoning. So, again, think about the result in terms of the question and make sure the reasoning logically supports that result.



Example (Torts)

A sporting good shop was burglarized by an escaped inmate from a nearby prison. The inmate stole a rifle and bullets from a locked cabinet. The burglar alarm at the sporting goods store did not go off because the shop owner had negligently forgot to activate the alarm's motion detector.

Shortly thereafter, the inmate used the rifle and ammunition stolen from the shop in a shooting spree that caused injury to a victim.

If the victim sues the shop owner for the injury she suffered, will the victim prevail?

- (A) Yes, if the victim's injury would have been prevented had the motion detector been activated.
- (B) Yes, because the owner was negligent in failing to activate the motion detector.
- (C) No, because the storage and sale of firearms is not an abnormally dangerous activity.
- (D) No, unless there is evidence of circumstances suggesting a high risk of theft and criminal use of firearms stocked by the shop owner.



Test Taking Tips Continued...

- ▶ Look for incorrect statements of law
 - ▶ ALWAYS be cautious with absolute statements of law: *never, must, always, etc.*
 - ▶ The court *must*..
 - ▶ ABC is *never* a defense to...
- ▶ Don't change your answer!!
- ▶ You aren't penalized for wrong answers so, answer all the questions (even if you are bubbling random answers at the end)



Evidence – General Strategies

- ▶ Hearsay
 - ▶ Apply entire definition to each question
 - ▶ Know the elements for the common exceptions
 - ▶ Look for ‘hearsay within hearsay’
- ▶ Understand character evidence

Common Detractors

- ▶ “Inadmissible because it’s not the best evidence” (rarely the right answer)
- ▶ “Inadmissible because it’s self-serving” (never the right answer)
- ▶ “Inadmissible because it’s hearsay not within any exception” (eliminate all other choices first!)
- ▶ Inadmissible because irrelevant or incompetent (rarely correct answer because these are **VERY** low standards)



Evidence - Hearsay (Unavailability Exceptions)

Exceptions

- ▶ Declaration Against Interest
- ▶ Dying Declaration
- ▶ Family History
- ▶ Forfeiture by flight of a witness
- ▶ Former Testimony

Declarant MUST be:

- ▶ Dead
- ▶ Exercising a privilege
- ▶ Beyond subpoena power
- ▶ Incapacitated

ALWAYS make sure the declarant is unavailable before relying on these



Evidence - Hearsay (Other Common Exceptions)

- ▶ Then existing physical condition
- ▶ Then existing mental state (Hillman Doctrine)
- ▶ Statement for treatment of medical diagnosis
- ▶ Excited utterance
- ▶ Present sense impression
- ▶ Past recollection recorded
- ▶ Business Records



Civ Pro – General Strategies

- ▶ You need to know the law
- ▶ Chart out the question (e.g. Steve_A v. Mary_B)
- ▶ Always check if court has SMJ and PJ, especially when:
 - ▶ Question gives you the parties' residence information
 - ▶ Where D lives in a different state from the suit
- ▶ Pay attention to dates & time restrictions
- ▶ Understand the mandatory requirements (e.g. disclosures under Rule 26)



Contracts – General Strategies

- ▶ Understand differences (UCC vs. Common Law Contracts)
- ▶ Always consider Statute of Frauds (MYLEGS)
- ▶ Pay attention to dates
- ▶ Consider if the seller is a merchant (seller of goods of the kind)
- ▶ Remember your acronyms
- ▶ Try answering the call of the question before looking at the answer choices
- ▶ Don't overthink – sometimes the question are just that easy!



Contracts – Acronyms

Offer Termination (DOLLARR)

- ▶ Destruction of subject matter
- ▶ Operation of law
- ▶ Lapse of time
- ▶ Legal prohibition
- ▶ Acceptance
- ▶ Revocation
- ▶ Rejection

Irrevocable Offer (FOUR)

- ▶ Merchant's Firm offer
- ▶ Options Contract
- ▶ Unilateral contract once performance started
- ▶ Reasonably foreseeable reliance on the offer



Contracts – Acronyms

SoF exceptions on goods (SPAM)

- ▶ Specially manufactured Goods
- ▶ Part performance
- ▶ Admission (sworn)
- ▶ Merchant's 10-day rule

SoF (MYLEGS)

- ▶ Marriage
- ▶ Year
- ▶ Land
- ▶ Executor
- ▶ Goods \$500 or more
- ▶ Suretyship



Contracts – Acronyms

TPB Rights Vest (SAM)

- ▶ Sues
- ▶ Assents in a manner requested
- ▶ Materially relies on the promised benefit

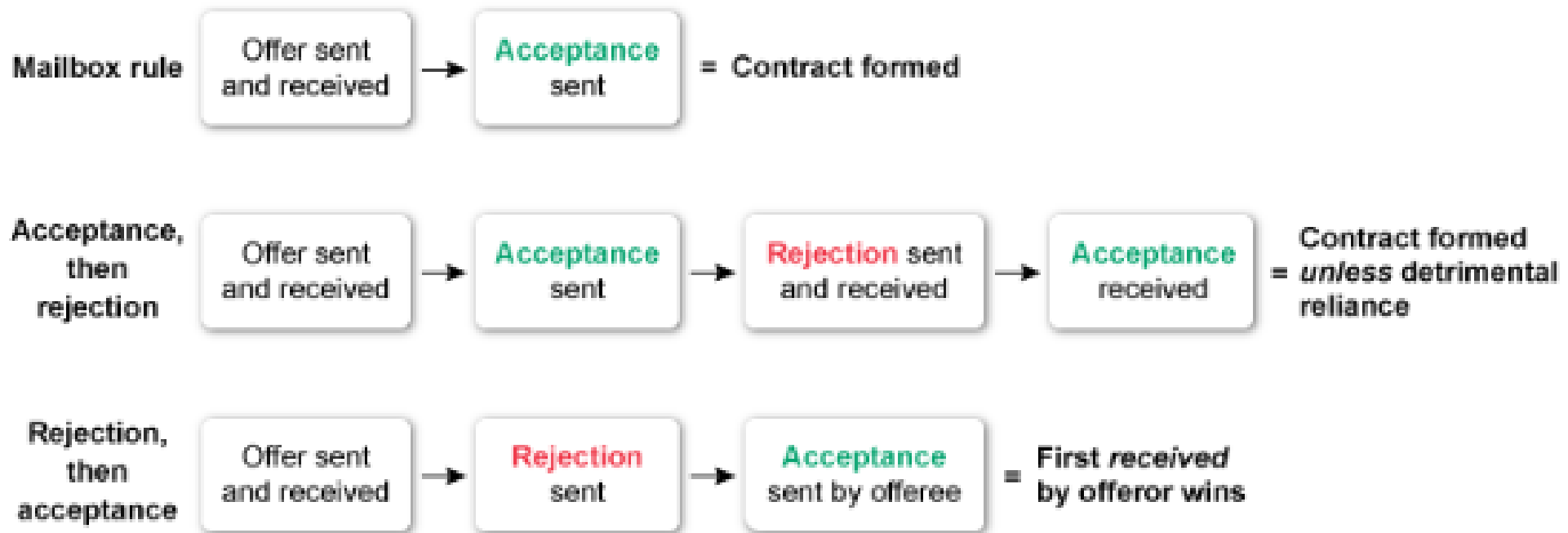
Parol Evidence Exceptions (SAD FAM)

- ▶ Subsequent Agreements
- ▶ Duress
- ▶ Fraud
- ▶ Absence of consideration
- ▶ Mutual mistake



Contracts – Mailbox Rule

Operation of the Mailbox Rule





Torts – General Strategies

▶ **Know the Elements of each Tort**

- ▶ Make Flash Cards
- ▶ Make Charts or Diagrams

▶ **Methodology**

- ▶ Identify the Tort (intentional torts, negligence, strict liability)
- ▶ Identify a particular sub-issue if any (e.g. for Defamation, is P a public figure?)
 - ▶ Identify elements of the appropriate torts or defenses
- ▶ Underline/highlight each element of the tort & defense in the fact pattern



Torts - General Strategies

- ▶ Detractors
 - ▶ Res Ipsa Loquitur (when there is direct evidence of negligence or reasonable care)
 - ▶ Negligence Per Se (unless its type of harm, class of people, causation)
 - ▶ Strict liability (ONLY applies to wild animals, products, abnormally dangerous activities)
 - ▶ Intervening causes [ONLY negate (supersede) liability if they were unforeseeable]
- ▶ Comparative Negligence is the standard
 - ▶ Look for exceptions (e.g. contributory negligence / last clear chance)
- ▶ Look for 'reasonable behavior' – if D acted reasonably, then D can't be negligent



Torts - General Strategies

- ▶ Missing Element
 - ▶ The facts will be vague on 1 of the required elements & the answer will provide it
- ▶ What is a party's **best argument?**
 - ▶ ONLY 1 answer choice will result in success for that party, all others will result in a loss
- ▶ Modifiers in the answers
 - ▶ “IF” – look to see if this answer resolves a significant issue (e.g. missing element)
 - ▶ “BECAUSE” – look to see if the facts in the answer would make D (not) liable
 - ▶ “UNLESS” – this reasoning is the ONLY way P will win (all others = loss)



Crim Law - General Strategies

- ▶ **Know the elements** of the commonly tested crimes
 - ▶ A general idea of what each crime is NOT sufficient
- ▶ Understand the different types of common law murder
 - ▶ Intent to kill, felony, intent to do serious bodily injury, depraved heart
- ▶ Understand the voluntary manslaughter requirements
 - ▶ Heat of passion & adequate provocation
- ▶ Understand the different types of larceny
 - ▶ Larceny (theft), larceny by trick, larceny by false pretenses
- ▶ Know what crimes are general intent vs. specific intent
 - ▶ What defenses are available to each?
- ▶ Understand the inchoate crimes & merger
- ▶ Don't just jump conclusions – take a step-by-step approach



Crim Law - General Strategies

“What is the most serious crime Defendant may be charged with?”

- ▶ Crimes are ranked in order of seriousness (ascending or descending)
- ▶ Take the elements of each crime one by one

“If the jury believes the witness or Defendant, will Defendant be convicted?”

- ▶ ALWAYS treat the testimony as fact
 - ▶ Ignore any instinctual belief that the witness is lying

“Which of the following is an example of [a specific crime]?”

“Defendant moves to suppress the evidence, how should the court rule?”

- ▶ Take each piece of evidence independently



Con Law - General Strategies

- ▶ Read the answer choices BEFORE reading the fact pattern
- ▶ Understand Individual Rights
- ▶ Remember Con Law evolves – be careful of MBE sample questions involving recent headlines, like abortion.
- ▶ Think about real life experiences
- ▶ Know the Tests & Scrutinies
 - ▶ Strict / Intermediate– probably unconstitutional
 - ▶ Rational basis – probably constitutional



Con Law – Common Detractors

- ▶ General Welfare Clause
 - ▶ Only allows government to TAX & SPEND not legislate for General Welfare
- ▶ Necessary and Proper Clause
- ▶ Distinction between *Right* and *Privilege*
 - ▶ They're the same thing (in Con law)!
- ▶ 14th Amendment Privileges & Immunities Clause
 - ▶ Very narrow application; 14th Amend. Equal protection clause is stronger
- ▶ Answers suggesting constitutional right to food, shelter, clothing, health care, education, etc.



Con Law - General Strategies

**Know
who
can
violate
these
rights**

13th Amendment – can be violated by anyone (even private parties)

14th Amendment Equal Protection– can be violated **only** by a state or local government (not the Federal Government)

5th Amendment Due Process – can be violated **only** by the Federal Government (not state governments)



Con Law - General Strategies

Know the key words for each level of scrutiny:

- **Strict scrutiny** – narrowly tailored, necessary, least restrictive, compelling interest
- **Intermediate scrutiny** – substantially related to an important interest
- **Rational basis scrutiny** – rationally related, legitimate interest

Know who has the burden under each level of scrutiny:

- **Strict scrutiny** – burden on government (Usually struck down)
- **Intermediate scrutiny** – burden on government (Usually struck down)
- **Rational basis scrutiny** – burden on challenger (Usually upheld)



Con Law - General Strategies

**Restrictions
on
Freedom
of Speech
are:**

Content or Viewpoint Neutral – likely upheld
(intermediate Scrutiny)

Content-based or Viewpoint-based
restriction – likely struck down (Strict Scrutiny)

Non-misleading Commercial Speech
(Intermediate Scrutiny)
