The Perfect Practice Exam: The Skill of Legal Analysis is the ideal study tool because it provides maximum utility to the user.

The PPE includes 6 different subjects in one book and provides 8 questions for each subject. This is total of 48 practice exams. Law students nationwide are usually required to take Civil Procedure, Constitutional Law, Contracts, Criminal Law, Real Property, and Torts. This book covers it all and eliminates the need for multiple practice-exam books.

Students can also comfortably use The PPE throughout the semester because the book strategically pairs commonly-tested topics and presents the topics in the order they often appear on the syllabus. For example, the book tries to avoid combining topics taught in Week #1 with topics taught in Week #14. When students purchase single-subject supplements, they rarely complete all the questions because there are too many or the students did not learn enough content to answer the prompt. With The PPE, students do not need to wait until reading week to practice their exam-taking skills and can gradually improve their legal analysis.

But more importantly, The PPE provides concrete steps on how to improve legal analysis rather than briefly discussing an array of skills. The book does not simply tell students “analysis is important — you must improve it,” but teaches students how to execute the skill. The book includes legal-analysis templates that incorporate the three-step method of analysis and active-learning worksheets.
Finally, the sample answers in *The PPE* encourage students to write in a format that will help them pass the bar exam. The answers are not a mind drop, but use IRAC, headers, and paragraphs to mirror what students should strive to achieve on their exams. The questions also include suggested time limits to encourage students to simulate exam conditions.

Legal analysis is one of the most important skills in the legal profession and only improves through ample practice. *The PPE* teaches students the skill, models the skill, and provides several essay questions for students to practice the skill. The PPE is a great resource because its focused learning objectives can help students reach mastery of legal analysis at a faster rate.

---

**About the Author and Inspiration for The PPE**

**Christina S. Chong** graduated from Berkeley Law and is currently an Assistant Professor at the University of San Francisco, School of Law, where she also manages the Academic and Bar Exam Success Program.

Professor Chong created *The PPE* as a solution for low-income students who could not afford to buy multiple supplements. Everyone knows that practice is essential to success, but with increasing tuition fees and living expenses, many students cannot afford supplements for every class. At some schools, the number of free resources are limited because professors provide minimal or no practice exams with sample answers. As a result, students who cannot afford supplements tend to skip practicing and struggle during finals. Students can use released bar questions, but law school professors sometimes have a different focus than the authors of the bar. *The PPE* was created to resolve these problems and level the playing field for non-traditional law students.
Components of This Sample

Carolina Academic Press has provided a sample of Professor Chong’s book. The sample includes the three components below.

1. An excerpt from Chapter 1: Writing Effective Examinations that describes the recommended three-step method to improve legal analysis.

2. Three sample questions and answers (Contracts, Criminal Law, and Torts).

3. The Index and Table of Contents to help you understand the scope of the topics covered by The PPE.

How To Order Your Copy

Please contact your campus representative to get a copy of The PPE. You can also contact Professor Chong at cschong@usfca.edu with any additional questions.
Contents

WRITING EFFECTIVE EXAMINATIONS
A Three-Step Method 3
   Step 1: Include Key Words and Phrases from the Applicable Rule 4
   Step 2: Quote Relevant Facts 7
   Step 3: Explain Why 8
Facts as an Inference 11
Assumptions Within Common Sense 13
Factual Application Versus Factual Analysis 15
How to Use This Book 19

ESSAY QUESTIONS

Civil Procedure Questions
   Question 1 (Personal Jurisdiction) 21
   Question 2 (Removal, Subject Matter Jurisdiction) 22
   Question 3 (Erie Doctrine, Venue, Motion to Transfer) 23–24
   Question 4 (Pleadings) 25
   Question 5 (Pleadings, Joinder, Amendments, Sanctions) 26
   Question 6 (Discovery, Sanctions) 27
   Question 7 (Judgments on the Pleadings) 28
   Question 8 (Res Judicata, Collateral Estoppel, Appellate Review) 29

Constitutional Law Questions
   Question 1 (Judicial Review, Legislative Powers) 31–32
   Question 2 (Legislative Powers) 33
   Question 3 (11th Amendment, Executive Powers, Treaties) 34
   Question 4 (Legislative Powers) 35
   Question 5 (State Action, Privilege and Immunities Clauses) 36
   Question 6 (Due Process, Equal Protection) 37
   Question 7 (Due Process, Equal Protection) 38
   Question 8 (First Amendment Rights) 39
Contracts Questions
Question 1 (Defenses to Formation) 41
Question 2 (Formation: Mutual Assent) 42
Question 3 (Formation: Mutual Assent) 43
Question 4 (Consideration, Specific Performance) 44
Question 5 (Formation, Modification, Remedies) 45
Question 6 (Formation, Terms, Breach, Remedies) 46
Question 7 (Terms, Breach, Excuses, Promissory Estoppel, Remedies) 47
Question 8 (Terms, Breach, Remedies and its Limitations) 48

Criminal Law Questions
Question 1 (Elements of a Crime, Statutory Interpretation) 49–50
Question 2 (Homicide, Battery, Assault, Kidnapping) 51
Question 3 (Homicide, Causation, Concurrence) 52
Question 4 (Homicide, Causation, Concurrence, Theft) 53
Question 5 (Burglary, Attempt, Insanity) 54
Question 6 (Inchoate Crimes, Extended Liability, Defenses) 55
Question 7 (Robbery, Attempt, Accomplice Liability, Defenses) 56
Question 8 (Homicide, Attempt, Conspiracy, Defenses) 57

Real Property Questions
Question 1 (Estates, Discovery, Adverse Possession) 59
Question 2 (Estates, Waste, Co-Tenancies) 60–61
Question 3 (Co-Tenancies, Adverse Possession, Fixtures) 62
Question 4 (Leaseholds) 63
Question 5 (Easements, Licenses) 64
Question 6 (Easements, Real Covenants, Equitable Servitudes) 65
Question 7 (Zoning, Eminent Domain, Mortgages, Foreclosures) 66–67
Question 8 (Conveyances, Trespass, Nuisance, Recording Statutes) 68

Torts Questions
Question 1 (Battery, Assault, False Imprisonment, Defenses) 69
Question 2 (Trespass, IIED, Defenses) 70
Question 3 (Defamation, Invasion of Privacy) 71
Question 4 (Negligence, Duty, Breach) 72
Question 5 (Negligence, Duty, Breach, Causation, Injury) 73
Question 6 (Negligence, NIIED, Vicarious Liability, Defenses) 74
Question 7 (Vicarious, Products, and Joint and Several Liability) 75–76
Question 8 (Strict Liability, Nuisance) 77
CONTENTS ix

ESSAY ANSWERS

Civil Procedure Answers
Answer to Question 1 79–85
Answer to Question 2 86–89
Answer to Question 3 90–95
Answer to Question 4 96–99
Answer to Question 5 100–106
Answer to Question 6 107–113
Answer to Question 7 114–116
Answer to Question 8 117–121

Constitutional Law Answers
Answer to Question 1 123–127
Answer to Question 2 128–131
Answer to Question 3 132–135
Answer to Question 4 136–142
Answer to Question 5 143–145
Answer to Question 6 146–153
Answer to Question 7 154–160
Answer to Question 8 161–166

Contracts Answers
Answer to Question 1 167–170
Answer to Question 2 171–175
Answer to Question 3 176–180
Answer to Question 4 181–184
Answer to Question 5 185–188
Answer to Question 6 189–196
Answer to Question 7 197–203
Answer to Question 8 204–212

Criminal Law Answers
Answer to Question 1 213–219
Answer to Question 2 220–226
Answer to Question 3 227–231
Answer to Question 4 232–238
Answer to Question 5 239–243
Answer to Question 6 244–248
Answer to Question 7 249–256
Answer to Question 8 257–263
CONTENTS

Real Property Answers
Answer to Question 1  265–270
Answer to Question 2  271–276
Answer to Question 3  277–281
Answer to Question 4  282–287
Answer to Question 5  288–292
Answer to Question 6  293–297
Answer to Question 7  298–303
Answer to Question 8  304–308

Torts Answers
Answer to Question 1  309–314
Answer to Question 2  315–320
Answer to Question 3  321–327
Answer to Question 4  328–333
Answer to Question 5  334–340
Answer to Question 6  341–346
Answer to Question 7  347–352
Answer to Question 8  353–357

Index  359
Writing Effective Examinations

The Three-Step Method

Student: “How do I improve?”
Professor: “You need more analysis.”
Student: “What do you mean?”
Professor: “You are conclusory. You must explain your reasoning.”

Law students often encounter the above conversation because lack of analysis is the main reason professors deduct points on essay exams. But what is legal analysis and how do you write more? Analysis is defined as a detailed examination of the elements or structure of something. However, regurgitating more detail about the law is not explaining your reasoning.

Legal analysis requires: (1) key words from the rule, (2) relevant facts, and (3) an inference. Most students successfully state the rules and facts, but fail to make inferences or fail to combine the three parts into one comprehensible thought. If you struggle with analysis, then use the sample templates below.

These [facts] show this [rule] is met because [inference].
This [rule] is met because [of these facts], which means [inference].

The sample templates will help you coherently present your thoughts, but filling in the brackets can be challenging. It is difficult to apply abstract legal concepts to real-world situations. If you experience writer’s block, then use the following method. First, figure out what part of the applicable rule is at issue. Second, determine what facts are relevant to prove your argument. Third, explain why the facts you selected support your argument.

Before we breakdown the three steps in detail, you must learn where analysis belongs in an essay answer. Most law schools use IRAC to help students organize their responses. A definition of IRAC is below.

I: State the ISSUE raised by the facts.
R: Cite the applicable RULE.
A: ANALYZE the facts from both party’s point of view.
C: CONCLUDE based on the arguments presented.
This book teaches you how to master the “A” in IRAC by applying the three-step method to the Coffee Shop scenario. The Coffee Shop exercises will focus on how to write more analysis in a non-legal and legal context.

Coffee Shop

Sally welcomed Thomas with a wave when he entered the coffee shop, but he frowned and ignored her gesture. Thomas called his friend, Jenn, and said, “This annoying girl waved to me.” Thomas knew Jenn because they volunteer together at the Animal Shelter every Sunday. Thomas asked Jenn if she needed a ride to the shelter and Jenn said, “Yes.” Thomas hung up and mumbled, “She is such a pain.” Sally called Thomas’s name and placed a drink on the counter. Thomas looked at the drink and saw the word “Peter” written in large, black letters. Thomas was in a rush so he took the drink and exited the coffee shop.

(1) Non-Legal Question

Is Thomas a nice or mean person? A mean person has several characteristics but is usually unpleasant or cruel. Nice people are different but generally pleasant or have good character.

(2) Legal Question

Did Thomas possess the necessary intent to be liable for taking Peter’s coffee? Intentional interference requires a defendant to act with the desire to cause the consequences of his act or believe the consequences are substantially certain to result from his act.1

Step 1: Include the Key Words and Phrases from the Applicable Rule

First, identify the rule raised by the facts; this is called issue spotting. Next, identify the key words and phrases in the rule statement. A key word or phrase is an essential part of the applicable rule that you must explain using factual evidence to convince the judge or jury that your client should win.

1. Restatement (Second) of Torts § 8A (Am. Law Inst. 1965).
Let’s do the non-legal example in Coffee Shop. The issue is whether Thomas is nice or mean. What are the key words of the definitions below?

**Definitions**

- A mean person has several characteristics but is usually unpleasant or cruel.
- Nice people are different but generally pleasant or have good character.

**Key Words**

The words *unpleasant, cruel, pleasant,* and *good character* are key words because factual evidence is required to establish if Thomas is pleasant (nice) or cruel (mean). If you are unsure whether a word is essential, then select other words in the definition and try to use factual evidence to explain your arguments. If you cannot develop an argument, then the word is not a key word.

For example, if you selected *several characteristics* or *people are different,* you would struggle to explain how having *several characteristics* shows Thomas is mean or how *people being different* shows Thomas is nice. In contrast, you can easily argue that Thomas is *unpleasant* because he ignored Sally’s wave, which suggests he is mean. You can also argue that Thomas *has good character* because he volunteers at the Animal Shelter and agreed to give Jenn a ride, which suggests he is nice.

Let’s apply this skill to the legal example involving torts. The issue is whether Thomas acted with intent. What are the key phrases in the rule statement below?

**Applicable Rule**

Intentional interference requires a defendant to act with the desire to cause the consequences of his act or believe the consequences are substantially certain to result from his act.  


The key phrases include “acts with the *desire to cause* the consequences” and “acts with *substantial certainty* that the consequences will result.” Similar to the non-legal example, you can identify key phrases in a rule statement by eliminating unessential phrases. You cannot explain how requiring a defendant to
act or how the result from the defendant’s act shows Thomas’s intent. Your analysis would make no sense.

Another way to determine a key word or phrase is to examine the facts provided. In Coffee Shop, facts about Thomas’s internal thoughts were purposefully inserted for students to argue that Thomas desired to interfere or was substantially certain that taking the drink would interfere with Peter’s lawful possession of the drink. The facts do not discuss any requirements to act or the result of the act; this suggests these phrases are probably not essential to determine Thomas’s intent.

After you identify the key words and phrases in the rule statement, insert them into the brackets in the sample template. You may need to modify the sentence to follow the rules of grammar. Below are two examples.

**Template**

These [facts] show this [rule] is met because [inference].

This [rule] is met because of these [facts], which means [inference].

**Fill in the brackets**

These [facts] show Thomas is [unpleasant and cruel] because [inference].

Thomas [desired to interfere] because of these [facts], which means [inference].

When identifying key words and phrases, do not be afraid to divide the rule into multiple parts. The division of a rule is called imposing structure on a rule, which is advantageous because each key word or phrase can require different factual citations. If you divide the rule into parts, then it is easier to make accurate inferences. For example, if you analyzed (1) desired to interfere and (2) substantially certain his act would interfere in the same sentence, then your prose would be long and unclear. Desire to interfere analyzes whether Thomas wanted to take Peter’s drink. Substantially certain analyzes if Thomas took the drink knowing it was likely to interfere with Peter’s possession of the drink. The arguments are deceiving similar.

There are rare cases where you can address key words and phrases together. In the non-legal example, you can combine the key words because unpleasant and cruel have similar definitions. You can use the same facts and inferences to argue Thomas was unpleasant and cruel. However, as a default rule, take your analysis one key word or phrase at a time.

Although you cannot identify the applicable rule until you read the fact pattern, determining the key words and phrases of a rule prior to the exam
helps you avoid common mistakes, such as identifying the incorrect key words and phrases or addressing too many key words and phrases in one thought. You should complete Step #1 before your exam, include the information in your outline, and take practice exams using the key words and phrases you selected.

**Step 2: Quote Relevant Facts**

Students do not quote facts in their answers because they assume the professor is familiar with the story. Although the professor wrote the exam, the professor is testing to see if you can identify the relevant facts. If you regularly forget to cite facts that support your arguments, then pretend you are writing a motion for the court. In practice, a judge or jury is not intimately familiar with your client’s case. You must include the relevant facts to give your audience context.

A relevant fact is defined as evidence you need to prove your argument. A fact is relevant if you answer “YES” to any of the questions below.

1. Would my arguments or the outcome of the case change if this fact did not exist?
2. Does this fact support one party’s argument more than another party’s argument?
3. Is this fact ambiguous? If yes, can this fact be used by both parties to support their arguments?
4. Does this fact help explain any arguments related to the key words and phrases identified in Step #1?

Let’s practice using the non-legal example from Coffee Shop. The issue is whether Thomas is *mean (unpleasant or cruel)* or *nice (pleasant or has good character)*. Check the boxes next to the relevant facts.

- A. Thomas frowned and ignored Sally’s welcome.
- B. Thomas called Sally annoying because she waved to him.
- C. Thomas offered Jenn a ride to the Animal Shelter.
- D. Thomas volunteers at the Animal Shelter every Sunday.
- E. Thomas called Jenn a pain.
- F. Thomas took Peter’s drink.

All six facts are relevant. We will use the four questions above to confirm this answer is correct.

1. If facts C and D did not exist, then the outcome of the case would change because Thomas would definitely be considered *unpleasant* and *cruel*.
2. Facts A, B, and F support an argument that Thomas is *unpleasant*. 
3. Fact E is ambiguous because Thomas might be merely venting about a friend or actually believe Jenn is annoying. Reasonable people can differ on their interpretation of fact E.

4. All six facts relate to whether Thomas is unpleasant, cruel, pleasant, or has good character.

Let’s apply the same skill to the legal scenario from Coffee Shop. The issue is whether Thomas intended to interfere with Peter’s possession of the drink. Did Thomas act with the desire to interfere or substantial certainty that the consequences would result? Check the boxes next to the relevant facts.

☐ A. Sally called Thomas’s name and placed a drink on the counter.
☐ B. Thomas saw the word “Peter” written in large black letters.
☐ C. Thomas was in a rush so he took the drink and exited the shop.

All three facts are relevant because they explain whether Thomas desired to interfere or was substantially certain that taking the drink would interfere with Peter’s lawful possession of the drink. Facts B and C support the argument that Thomas was substantially certain the drink did not belong to him. Fact A supports Thomas’s argument that he mistakenly believed the drink belonged to him. Unlike Step #1, where you usually do not combine key words or phrases, you can combine several relevant facts into one thought. However, if your sentence structure will suffer or the facts support different arguments, then do not include multiple facts. Below are two examples using the sample templates.

**Template**

These [facts] show this [rule] is met because [inference].

This [rule] is met because of these [facts], which means [inference].

**Fill in the brackets**

[Thomas taking the drink with Peter’s name on it] shows Thomas is [unpleasant and cruel] because [inference].

Thomas [desired to interfere] with Peter’s lawful possession because [Thomas saw the word “Peter” written in large, black letters on the drink], which means [inference].

**Step 3: Explain Why**

The best way to ensure you explain why the relevant facts support your arguments is to make an inference, which is a conclusion based on factual evidence and reasoning. Students fail to make inferences because they believe the
rule-fact connections are obvious. Although a professor can usually figure out your inference, the professor is testing your analysis skills and will not give points if your answer is missing the legal reasoning.

If you struggle with inferences, then pretend you are speaking to the judge or jury. In your closing statement, you would never state the key words of the rule and relevant facts without explaining the connections. You would explain how the facts support your argument and relate to the applicable rule. Explicitly stating the inference prevents the jury from developing alternative conclusions and encourages them to agree with your arguments. You do not skip inferences in practice; you should not skip inferences on your exams. Treat the professor like a layperson who struggles to understand the law and not a brilliant scholar.

If the concept of making an inference is still confusing, then consider the following scenario:

You are a licensed attorney. A client comes for a consultation and tells you the facts of the case. You take notes, figure out the possible legal issues, and ask your research assistant to look up the law. The client provided the relevant facts (Step #2) and the law is publicly available (Step #1). Why did the client hire you?

Clients hire attorneys for their legal reasoning (Step #3), which is the ability to present arguments that connect facts to the law. Inferences are rarely in your lecture notes and outline because inferences are ideas in your head. Although the underlying legal reasoning of your ideas might come from precedent cases, your exams usually deal with different factual scenarios that require new connections. Most missing inferences are conclusions you consciously made when analyzing the facts, but never wrote on your paper.

Let’s practice making inferences using the non-legal example in Coffee Shop. Fill in the blank below.

Thomas taking the drink with Peter’s name on it shows Thomas is unpleasant and cruel because ________________________________.

Several different inferences can correctly fill in the blank, such as “a nice person would clarify the drink belong to him before taking it,” or “a cruel person does not care if he inconveniences another person.” Even though the explanations are obvious, you must still explicitly state your internal thoughts. You cannot skip the inference because reasonable minds can differ on whether
taking a drink with another person’s name on it is cruel. This skill is also applicable to legal scenarios. Fill in the blank below.

Thomas desired to interfere with Peter’s lawful possession because Thomas saw the word “Peter” written in large black letters on the drink, which means ____________________________________________
______________________________________________________
_________________________________________________________.

A possible inference is “Thomas knew the drink did not belong to him, but took it anyway.” Your explanation is necessary because another person might assume Thomas’s actions were an accident. You want to limit your audience’s freedom to interpret the facts in a way that will conflict with your conclusion and hurt your case.

Law school exams test your ability to clearly make arguments because laypeople often struggle to comprehend implied inferences, and clients pay attorneys for their ability to develop explicit connections between laws and facts. Law school is not college. You do not receive As for repeating the professor’s lecture. Thus, when in doubt, re-read your sentence and ask yourself “Why?” after the period. If you can answer “Why?” then you are missing an inference. Let’s do another legal example.

Thomas taking a drink with Peter’s name on it shows Thomas was substantially certain his act would interfere with Peter’s lawful possession because ____________________________________________
_________________________________________________________.

If you are unsure how to fill in the blank, then ask yourself why taking a drink with another person’s name on it shows Thomas was substantially certain Peter would not receive his drink. A possible answer is “the drink obviously did not belong to Thomas and taking the drink means Peter would not receive his order.”

**Conclusion**

The three-step method is a starting point for your legal analysis, but your exam-writing strategies will evolve and change as you complete more practice exams. You will encounter other obstacles, such as situations where the facts are the inference or where you must make an assumption. But do not worry, this book addresses common obstacles associated with analysis.
Contracts Questions

Question 1
(45 minutes)

Farmer hired Agent to sell 500 acres of Farmer’s land and all the farming equipment on Farmer’s property. Agent told Farmer he was a real estate expert, even though Agent had never sold a single property and was unlicensed. Agent learned his skills from online videos.

Agent provided Farmer with a standard form agreement that charged Farmer twice the normal commission rate of an entry-level real estate agent. The contract stated “Agent’s duties are complete after the deal is closed.” Farmer asked the Agent to explain the contract because Farmer had limited literacy. Agent told Farmer, “Don’t worry. This form is just a formality.” Farmer signed the contract.

Agent posted Farmer’s land on the market. After six months, Agent arranged a meeting between Farmer and a potential buyer to discuss the terms of a purchase, but Buyer never showed up. Agent went to Buyer’s home. When Buyer opened the door, Agent said, “You better close this deal with Farmer or you’ll be sorry.” Agent shoved the contract in Buyer’s face and held out a pen. Buyer, who was only 17 years old, was scared by Agent’s threats and immediately signed the contract. Buyer never paid Farmer any money.

Three weeks later, Buyer called Farmer and said she no longer wanted the land. Farmer asked Agent to continue selling the land, but Agent told Farmer that he no longer did real estate and claimed the deal closed when Buyer signed the contract. Farmer called Agent a fraud because Farmer believed Agent’s duties were not completed until Farmer received the money from the sale.

(1) Farmer sued Buyer for breach of contract. What defenses can Buyer raise to defeat Farmer’s claim? Only discuss affirmative defenses to contract formation.

(2) Agent filed a counter suit against Farmer for Agent’s commission. What defenses can Farmer raise to defeat Agent’s claim? Only discuss affirmative defenses to contract formation.
Contracts Answers

Answer 1

(1) Buyer’s (B) Defenses

Governing Law

The Uniform Commercial Code (UCC) governs the sale of goods, which are tangible moveable objects, while common law governs all other contracts. For hybrid contracts, if the predominate purpose of the transaction is to sell goods, then the UCC applies. If not, then common law applies. Here, although the transaction included the Farmer’s (F) land and farming equipment, the sale was predominately for 500 acres of land. F hired a real estate agent because F likely cared more about selling the land than selling the farming equipment. Thus, common law governs the contract.

Duress

A contract is voidable if: (a) an improper threat is made to the promisor, (b) the threat induced the promise, and (c) the inducement is reasonable. A threat is improper if what is threatened is a crime or tort, or the threat is a breach of the duty of good faith and fair dealing.

Here, (a) Agent’s (A) threat was improper because A’s statement, “you’ll be sorry,” suggested A intended to harm B. Physically hurting someone or damaging their property is a crime and a tort. A’s threat also breached the duty of good faith and fair dealing because A used his authority to coerce B into the contract. (b) A’s threat induced B’s promise to purchase F’s land because B only signed the contract after A showed up to her home, threatened her, and shoved

---

337. Restatement (Second) of Contracts § 175 (1981).
the contract in her face. B was scared. (c) B’s inducement was reasonable because A did not threaten B over the phone. A was physically in B’s space. A will argue B could have closed the door or walked away, but this is a weak argument. B was a teenager and a teenager would be afraid if an adult showed up at her doorstep and threatened her. Thus, B can void the contract because she entered it under duress.

**Incapacity**

If a minor enters a contract, then the minor can disaffirm the contract anytime during minority or for a reasonable time after the minor turns 18 years old.339 Here, B was 17 years old when she entered the contract to buy F’s land. B was still 17 years old when she told F she did not want to purchase the land. Thus, B had the right to disaffirm the contract as a minor.

A will argue B is bound to the sale because minors cannot void contracts for necessities.340 A home is a necessity because it provides shelter. However, A’s argument is weak because A went to B’s home, which suggests B already lived in a house and probably did not need another one. Thus, B can void the contract.

(2) Farmer’s (F) Defenses

**Governing Law**

See rule above. (Buyer’s Defenses: Governing Law). Here, common law applies because the contract was for A’s services. F hired A to sell 500 acres of land and farm equipment.

**Unconscionability**

If a contract or term is unconscionable at the time the contract was created, then the court may refuse to enforce the contract or may enforce the contract without the unconscionable term.341 For a contract or term to be invalid there must be both (a) procedural unconscionability and (b) substantive unconscionability. Courts use a sliding-scale approach that allows for a greater degree of one type of unconscionability and a lesser degree of the other.342

Procedural Unconscionability (PU)

PU exists when there is a gross inequality of bargaining power; a mere disparity is not enough. Here, F will argue he had no bargaining power because A presented a standard form agreement that F could not read. F had limited literacy, which means F could not understand or change the terms of A’s adhesion contract. However, A will argue F could have refused to sign the contract or waited for someone to read the terms to him. A’s argument is weak because F asked A to explain the contract, but A refused. Instead, A told F not to worry about the terms. Reasonable people in F’s position would trust a professional real estate agent and sign the contract.

Substantive Unconscionability (SU)

SU exists when the contract terms are unreasonably favorable to one party; imbalance in values is not enough. Here, F will argue the terms are unreasonably favorable to A because A had no experience, but charged twice the normal commission rate of an entry-level real estate agent. A should have charged F the regular market rate of an entry-level agent or a lower rate because A never sold a single property, was unlicensed, and learned about real estate through online videos. In conclusion, the contract is likely void because PU and SU are both present.

Fraud

A contract is voidable if: (a) the manifestation of assent was induced (b) by a fraudulent or material misrepresentation, and (c) the recipient was justified in relying on the material misrepresentation.

(a) A misrepresentation induces a party’s assent if it substantially contributes to the party’s decision to enter the contract. Although F’s subjective thoughts are unknown, F will argue he wanted a qualified agent to sell his farmland and only signed the agreement because A claimed to be an expert in real estate.

(b) A misrepresentation is fraudulent if the maker knows the assertion is not in accord with the facts or does not have the confidence that he states the truth. Here, F will argue A knowingly misrepresented his experience level.

343. R.2d of Contracts § 208, supra note 341.
344. Id.
because A never sold a single property and was unlicensed. A knew he did not qualify as an expert, but lied to obtain F’s business. However, A will argue he was confident in his abilities because watching online videos is similar to attending class. A’s argument is weak because reasonable people know that online videos cannot replace actual experiences.

(c) A recipient’s fault in not discovering the facts before making the contract does not make his reliance unjustified unless it amounts to a failure to act in good faith or is outside the scope of reasonable standards of fair dealings.348 Here, A will argue F’s reliance was unjustified because A should have conducted a background check before signing the contract, such as verifying A’s real estate license. F did nothing and relied solely on A’s sales pitch. However, F will argue that a reasonable person would trust a professional to accurately represent his qualifications. F’s reliance is likely justified because the court has a strong interest to protect consumers from fraud, especially when a fiduciary relationship is involved. In conclusion, F can void the contract because A misrepresented his expertise.

**Mutual Mistake**

A contract is voidable if, at the time of formation, the parties were mistaken about a basic assumption on which the contract was made and that assumption had a material effect on the agreed upon terms.349 If neither party knew or had reason to know the meaning attached by the other, then there is no mutual assent.350 Here, F and A had no idea that the other attached a different meaning to the term “Agent’s duties are complete after the deal is closed.” Both parties’ interpretations are reasonable because “deal is closed” could be interpreted to mean after the contract was signed or after the money was received. Moreover, neither party bore the risk of mistake. There was no language about mistake in the contract and the court did not allocate the risk to either party.351 Thus, F can void the contract because the parties were mistaken about the meaning of a material term.

---

Question 2
(45 minutes)

Greg lost his job, which caused extreme financial hardship. If Greg did not figure out how to pay the bills, then his wife intended to leave him. Greg decided to kidnap and hold someone for ransom. Greg asked Jared for help. Jared refused because he did not want anyone to get hurt. Jared knew Greg’s temper was out of control. However, after Greg promised that he only wanted the money and would not hurt anyone, Jared agreed to help.

Greg and Jared grabbed a teenage boy at the mall, put him in the van, drove him to an abandoned warehouse, and locked him in a room. Greg and Jared could not send a ransom note to the boy’s parents because the boy refused to share his contact information. After a week of unsuccessfully trying to get the boy to speak, Greg saw a missing persons report about the boy on the news. Greg panicked.

Greg told the boy, “You better tell me the information or I’m going to kill you.” The boy refused and spit in Greg’s face. Greg was frustrated. He grabbed his pocketknife and stabbed the boy in the stomach. The boy screamed and passed out from the pain. Greg told Jared they needed to leave the boy at the mall because the boy needed medical attention.

Jared and Greg left the boy in the parking structure and called 911. The paramedics arrived and took the boy to the hospital. The boy died because he lost too much blood.

(1) Are Jared and Greg guilty of battery, assault, and kidnapping? Do not discuss conspiracy liability or accomplice liability.
(2) Is Greg guilty of murder? Do not address causation or concurrence.
(3) Jared is charged with homicide. Is he guilty under the felony murder rule? Do not address causation or concurrence.
Answer 2

(1) Jared (J) and Greg’s (G) Crimes

Battery

Battery is the unlawful application of force or offensive touching to the person of another. Battery is a general intent crime, which means the intent to apply force is enough. Here, G unlawfully applied force because he stabbed the boy in the stomach. G’s statement, “You better tell me the information or I’m going to kill you,” before the stabbing suggests G intended to use physical force to extract information from the boy. G is guilty of battery.

J committed an offensive touching because he grabbed the boy, put him in the trunk, and locked him in the warehouse. No reasonable person wants to be kidnapped. J intended to apply force because he agreed with G to kidnap the boy. J is also guilty of battery.

Assault

Assault is an attempt to commit a battery or an intentional creation of reasonable apprehension of imminent bodily harm in the mind of the victim; mere words are not enough. Here, assault is the lesser-included offense of battery because all the elements of assault are included in the greater crime of battery. Double jeopardy forbids excessive prosecutions and cumulative punishments for greater and lesser-included offenses. Thus, J and G cannot be guilty of assault because assault will merge with battery. However, if the prosecution charged G with assault with a dangerous weapon, then battery and assault would not merge because assault with a dangerous weapon includes an element not required in battery.

Kidnapping

A person is guilty of kidnapping if he unlawfully moves another person a substantial distance from where he is found, or if he unlawfully confines another

---

569. United States v. Delis, 558 F.3d 177, 180 (2d Cir. 2009).
570. Id.
575. U.S. v. Cantrell, 92 F.3d 1194 (9th Cir. 1996).
for a substantial period in a place of isolation.\textsuperscript{576} The extent of the movement is not material and generally secrecy is not required; kidnapping focuses on the confinement.\textsuperscript{577}

Here, J and G moved the boy from his original location, the mall, because they put him in the van and drove him to the warehouse. J and G also confined the boy in a location of isolation because the warehouse was abandoned, which means people probably did not visit the area. The boy was also confined in the room for a week, which was long enough for the news to mention the boy in a missing persons report; news stations usually do not feature disappearances unless the person was missing for a substantial amount of time.

In most jurisdictions, kidnapping is a general intent crime,\textsuperscript{578} which means J and G only needed intent to complete the actus reus.\textsuperscript{579} Here, G and J actually wanted to kidnap and hold the boy for ransom. Thus, they intended the acts and are guilty of kidnapping.

\textbf{(2) Greg’s (G) Crimes}

\textit{Homicide}

Homicide is the killing of a human being.\textsuperscript{580} Here, the actus reus is met because the boy died from loss of blood. The issue is whether the appropriate mens rea for murder was met.

\textit{Mens Rea}

Murder is an unlawful killing with malice aforethought.\textsuperscript{581} There are four types of common law murder: (a) intent to kill, (b) intent to inflict great bodily harm, (c) depraved heart murder, and (d) felony murder.\textsuperscript{582} Intent to kill is a form of express malice and the remaining murders are forms of implied malice.\textsuperscript{583}
(a) Intent to Kill

The use of a deadly weapon authorizes a permissive inference of intent to kill.\(^5\) A deadly weapon is any instrument used in a manner likely to produce death or serious bodily injury.\(^6\) Here, the prosecution will argue G intended to kill because G said, “I am going to kill you” before he stabbed the boy in the stomach with a knife. G’s actions and words are strong circumstantial evidence of his intent to kill.

G will argue he did not want to kill the boy. G wanted to compel the boy to share his contact information, which is why G did not stab the boy in a vital body part, such as the head or heart. G called 911 after leaving the boy at the mall because he wanted the boy to get medical attention and not die at the warehouse. Even though G felt subsequent regret, G’s argument will likely fail because evidence suggests G intended to kill at the time he stabbed the boy.

(b) Intent to Cause Serious Bodily Injury

Here, G will argue he used a pocketknife instead of a large knife or gun because he only wanted to scare the boy and not cause serious bodily injury. However, this is a weak argument because G could have punched the boy. G intended to cause serious bodily injury because he used a dangerous weapon.

(c) Depraved Heart

A defendant is guilty of murder if the defendant shows an indifference to an unjustifiably high risk to human life.\(^7\) Here, G knew his actions caused a high risk of death because G said the boy would die if the boy did not receive medical attention, and it is common knowledge that stabbing can cause death. G showed an indifference to the boy’s life by leaving the boy at the mall instead of taking him to the hospital. G’s actions were not justified risks because the boy did nothing to threaten or harm G. Thus, G is guilty of depraved heart murder.

(d) Felony Murder

For felony murder to apply the defendant must commit or attempt to commit the underlying felony.\(^8\) Here, because the underlying felony requirement

---

is met, G is guilty of kidnapping. See analysis above (Jared and Greg’s Crimes: Kidnapping). The scope of liability under the felony murder rule is broad, but there are limitations.588

Res Gestae

The killing must be during the commission of a felony, which means the felons have not reached a place of temporary safety.589 G will argue the boy died after the felony was completed because he died in the hospital, which was after G and J reached a point of safety. They left the boy in the parking structure and no facts suggest the police pursued them. However, this is a weak argument because the stabbing occurred during the kidnapping in the warehouse. Thus, because the stabbing caused the boy’s death and the death occurred shortly after the stabbing, this limitation does not apply.

Merger

The felony must be independent of the killing, which means manslaughter or aggravated battery cannot qualify as the underlying felony.590 Here, although battery and assault cannot be used as the underlying felony, the merger limitation will not apply because G is guilty of kidnapping. See analysis above. (Jared and Greg’s Crimes: Kidnapping).

Agency

Under the majority view, a defendant is not liable for a co-felon’s death.591 Here, the boy was not a co-felon. Thus, the agency limitation does not apply.

Foreseeability

The death must be a foreseeable result of the felony.592 Here, the boy’s death was foreseeable because victims of kidnapping are likely to resist or refuse to cooperate, which could agitate a co-felon and create a struggle that results in death.

Conclusion

G is guilty of felony murder because the boy died during the commission of the kidnapping. G is also guilty under the other three types of common law

588. Id.
murder. Today, modern statutes divide murders into two degrees: (a) first degree and (b) second degree.

**First Degree Murder**

Most jurisdictions have two types of first-degree murder: (i) first degree felony murder and (ii) intent to kill with premeditation and deliberation.593

**First-Degree Felony Murder**

G is guilty of first-degree felony murder because the boy’s death occurred during the commission of a felony that is inherently dangerous to human life.594 Felonies that are commonly enumerated as inherently dangerous to human life are burglary, arson, rape, robbery, and kidnapping.595

**Intent to Kill**

G likely intended to kill the boy. See rules and analysis above. (Greg’s Crimes: Intent to Kill).

**Premeditation**

Premeditation requires that the defendant reflected on the idea of killing; mere seconds is enough.596 Here, G will argue he did not reflect on the killing because G instinctively reacted to the boy’s bad attitude. G grabbed his pocketknife in a moment of frustration. G did not come to the warehouse with a weapon to kill the boy. However, the prosecution will argue G threatened to kill the boy before the boy spit in G’s face, which means G considered killing the boy before being provoked. Moreover, even if G was provoked, G took time to consciously grab the knife rather than leaving the boy alone. G likely premeditated the killing.

**Deliberation**

Deliberation requires that the defendant made the decision to kill in a cool and dispassionate manner.597 Here, G will argue he did not act with a cool head because he panicked after seeing the news report featuring the boy and was frustrated after the boy spit in his face. G’s reaction was clouded and an

595. *Id.*
impulsive reaction to the boy’s failure to cooperate. Thus, G is not guilty of first-degree murder because there was no deliberation.

2nd Degree

All other killings at common law and killings during non-enumerated felonies are considered second-degree murder.\(^{598}\) If the court finds there was no intent to kill with premeditation or deliberation or that felony murder did not apply, then G would be guilty of second-degree murder under intent to cause serious bodily harm or depraved heart murder. But G will argue his second-degree murder charge should be mitigated to voluntary manslaughter.

Voluntary Manslaughter

Voluntary manslaughter is a killing in the heat of passion.\(^{599}\) For the defendant to reduce murder to voluntary manslaughter, (a) there must be reasonable provocation, (b) the defendant must have been provoked, (c) a reasonable person would not have cooled off between the time of provocation and delivery of the fatal blow, and (d) the defendant must not have cooled off during that interval.\(^{600}\) Reasonable provocation is most frequently recognized as being subjected to a serious battery or threat of deadly force, or discovering one’s spouse in bed with another person; mere words are usually not enough to constitute reasonable provocation.\(^{601}\)

Cooling Off

(c) A reasonable person would not cool off because there was a short period of time between the altercation and the killing, the spitting and stabbing occurred within minutes. (d) G did not cool off because G took the pocket-knife and stabbed the boy immediately after the boy frustrated him.

Provocation

(b) Here, G was provoked because the boy spit in his face after refusing to give the contact information, which frustrated G. (a) Here, G will argue an ordinary person dealing with financial crisis, martial problems, a missing person’s search, and a failed ransom plan would have a short temper. Thus, disrespectful acts, such as spitting, would reasonably frustrate the person and cause them to react violently. However, the prosecution will argue the boy never

---

threatened to harm G. The boy stayed in the warehouse for a week and merely refused to cooperate with G’s kidnapping plans. A simple spit in the face is not deadly and does not warrant a stabbing reaction. Thus, G cannot mitigate his second-degree charge to voluntary manslaughter.

(3) Jared’s (J) Crimes

Felony Murder

As a member of the conspiracy to kidnap the boy, J is guilty of murder under the felony murder rule if the death was in furtherance of the conspiracy and a foreseeable consequence of the conspiracy.602

Here, J will argue G’s actions were unpredictable and not within the scope of the felony because J specifically told G that he did not want anyone to get hurt and G promised that he only wanted money. However, the boy’s death was likely foreseeable because J knew G’s temper was out of control, which means G was unpredictable; and kidnapping is a dangerous felony because the victim might resist.

J will argue the death was not in furtherance of the conspiracy, kidnapping for ransom, because killing the boy did not help them discover the boy’s contact information to request money from his parents. However, the prosecution will argue that G’s extra force was necessary to extract information from the boy to further the conspiracy.

In conclusion, J is liable for felony murder because he knew about G’s temper and still decided to work with G. J should not have trusted G.

Question 4
(50 minutes)

Albert and Belle converted their home into a bed and breakfast. Their business was popular among families because there was a giant trampoline in the backyard for children. The couple successfully ran the business for years until Albert passed away.

After Albert’s death, Belle closed the bed and breakfast and only allowed close family and friends to stay overnight in her home. Belle refused occupants under 18 years old because she wanted children, but never had any with Albert. For the next five years, Belle never stepped into the backyard. The trampoline started to deteriorate. Belle put a small sign on the back door that said “Off Limits.”

Wilder, a nine-year old boy who lived down the street, climbed the fence and used the trampoline on a daily basis. Belle never saw Wilder in the backyard because he always played in afternoon while she was grocery shopping. Wilder played unnoticed for two weeks until he accidentally left his jacket and notebook near the trampoline. Belle saw the items and thought it was strange, but never investigated further.

Demi, Belle’s cousin, visited Belle for a couple days as a guest. During her visit, Demi saw Wilder on the trampoline. Demi did not see Belle’s sign and went outside to watch Wilder. When Demi sat on a lawn chair, it broke because the screws were loose. Demi fell back and hit her head. Demi suffered a concussion. At the same time, the trampoline ripped and Wilder fell. Wilder scratched his legs on the rocky terrain under the trampoline. A state statute requires the use of rubber tile under any structures built for children.

(1) Demi sued Belle for negligence. Will she prevail? Do not discuss causation, damages, or affirmative defenses.

(2) Wilder sued Belle for negligence. Will he prevail? Do not discuss causation or damages, or affirmative defenses.
Answer 4

(1) Demi (D) v. Belle (B)

Negligence

To succeed on a claim for negligence, the plaintiff must prove the following elements: (a) the defendant owed a duty of care to the plaintiff; (b) the defendant breached that duty; (c) breach of that duty caused the plaintiff’s injury; and (d) the plaintiff suffered harm.1050

Duty

Under the majority rule, people owe a duty to everyone within the zone of danger.1051 A plaintiff is in the zone of danger if the plaintiff is someone who would reasonably be injured by the defendant’s conduct.1052 Under the minority rule, people owe a duty of reasonable care to the world at large.1053

Here, under the minority rule, D is a foreseeable plaintiff because D is a member of the world. Under the majority rule, D will argue she was within the zone of danger because she was a guest in B’s house; D could be hurt by dangerous conditions while roaming around the property. B will argue the zone of danger only included the inside of the house and not the backyard because B placed a sign on the back door that said “Off Limits.” However, D’s argument is likely stronger because B should have realized that, without an extra lock on the backyard door, her whole house was accessible to guests.

Standard of Care

If the defendant is a possessor of land, then the applicable standard of care depends on if the plaintiff is a trespasser, licensee, or invitee.

Status of Plaintiff

A trespasser enters or remains on the land without the consent from the possessor of the land1054 whereas a licensee has the possessor’s consent to enter or remain on the property.1055 An invitee is invited onto the land by the possessor

1050. Restatement (Second) of Torts § 281 (Am. Law Inst. 1965).
1052. Id.
1053. Id. at 350–51.
1054. Restatement (Second) of Torts § 329 (Am. Law Inst. 1965).
of the land for (a) a business purpose or (b) for the purpose on which the land is held open to the public.\textsuperscript{1056}

Here, D was not an invitee because B’s bed and breakfast was only accessible to B’s close family and friends. Members of the public were not allowed on the property. D will argue she was a licensee because D had B’s consent to stay overnight as a guest. However, B will argue D was a trespasser because D exceeded her privilege. B placed a sign on the back door that said, “Off Limits,” to notify D that she did not have permission to enter the backyard.

\textit{Duty to Licensees}

If D was a licensee, then B owed a duty of reasonable care to make undiscovered dangers on the property safe.\textsuperscript{1057} Here, D will argue B knew the chair was unsafe because it was not maintained for more than five years. Most people would have inspected the chair and fixed or discarded the chair. B will argue she used reasonable care to make the danger safe. B put a sign on the back door to prevent guests from using the equipment in the backyard. B cannot control guests who ignore her warnings. However, D will argue B unreasonably posted a small sign that guests would overlook. A reasonable landowner would make a large sign and verbally warn guests to avoid the backyard.

\textit{Duty to Trespassers}

If D was a trespasser, then B owed no duty of reasonable care.\textsuperscript{1058} However, if a landowner knew or should have known someone would trespass on the land, then the landowner must warn the trespasser of any artificial conditions on the land that are (a) created or maintained by the landowner, and (b) likely to cause death or seriously bodily harm to trespassers, and (c) unlikely to be discovered by trespassers.\textsuperscript{1059}

Here, D will argue B knew guests would access the backyard. If B believed people would stay inside the house or that the backyard was safe, then B would not have posted a warning sign. Thus, B likely had a duty to warn trespassers about dangerous artificial conditions, such as the lawn chair because (a) B was responsible for maintaining the furniture in the backyard. However, B will argue (b) a lawn chair cannot cause serious bodily injury or death and (c) any person could easily discover the screws were loose by checking the chair before sitting

\begin{flushleft}
\textsuperscript{1056} Restatement (Second) of Torts § 332 (Am. Law Inst. 1965).
\textsuperscript{1057} Restatement (Second) of Torts § 341 (Am. Law Inst. 1965).
\textsuperscript{1058} Restatement (Second) of Torts § 333 (Am. Law Inst. 1965).
\textsuperscript{1059} Restatement (Second) of Torts § 335 (Am. Law Inst. 1965).
\end{flushleft}
down. Moreover, even if B did have a duty to warn D about the chair, B will argue she used reasonable care by posting a sign.

**Learned Hand Formula**

The Learned Hand Formula determines whether B acted reasonably by posting a small sign on the back door. If the probability (P) and magnitude (M) of the harm resulting from the accident exceed the burden to prevent the harm, then the defendant likely breached her duty by not taking the proper precautions.\(^{1060}\) Here, the burden is low because B could have told D not to enter the backyard within seconds. The P is high because the chair remained outside without any maintenance for five years, which means the chair likely deteriorated. The M is unknown because people who fall off a chair could suffer mere bruises or a serious concussion. Thus, it is likely B had a duty to warn D about the broken chair.

**Breach**

Conduct is negligent if it falls below the standard of care.\(^{1061}\) Here, if D is a licensee or known trespasser, then B likely breached her duty of care by not verbally warning D about the chair. However, if D was an unknown trespasser, then B did not breach her duty because she owed no duty of care.

(2) Wilder (W) v. Belle (B)

**Negligence**

See rule above. (Demi v. Belle: Negligence).

**Duty**

See rules above. (Demi v. Belle: Duty). Here, under the minority rule, W is a foreseeable plaintiff because W is a member of the world. Under the majority rule, B will argue W was not within the zone of danger because he was not a guest in her home. However, W will argue that all children in the neighborhood are within the zone of danger because children are naturally attracted to trampolines. Whether B owed a duty to W depends on if a trampoline is an artificial condition highly dangerous to trespassing children.

---

\(^{1060}\) United States v. Carroll Towing Co., 159 F.2d 169, 173 (2d Cir. 1947).

\(^{1061}\) Restatement (Second) of Torts § 282 (Am. Law Inst. 1965).
**Child Trespassers**

If an artificial condition on the land causes a trespassing child physical harm, then a possessor of land is only liable if (a) the possessor knows or has reason to know that children are likely to trespass; (b) the possessor knows or has reason to know the condition involves an unreasonable risk of death or serious bodily harm to children; (c) the children are unable to discover the condition or realize the condition is dangerous; (d) the utility to the possessor or burden to eliminate the danger are slight compared to the risk involved; and (e) the possessor fails to exercise reasonable care to protect the children.1062

(a) W will argue B should have known children were trespassing in her backyard because B saw W’s jacket and notebook. A reasonable person, who previously operated a bed and breakfast that attracted children, would have realized that children might be trespassing to play on the trampoline. B should have investigated how the objects appeared on her property. However, B will argue she never saw W playing in her backyard because she was always grocery shopping. W went unnoticed for two weeks. Moreover, most children play in the front yard and do not break into their neighbor’s backyard. B cannot be expected to monitor every child in the neighborhood. Thus, whether B seeing a jacket and notebook in her backyard is sufficient notification of trespassing children is debatable.

(b) B will argue a trampoline does not cause death or serious bodily harm to children because it is a toy and not a dangerous object, such as a knife. However, W’s argument is stronger because trampolines are usually restricted to certain age groups. Retailers discourage young children from playing on trampolines without parental supervision because children may fall, break bones, or suffer serious injury. Moreover, B’s trampoline was damaged because it was not maintained for over five years. Thus, the trampoline is likely a dangerous condition.

(c) B will argue children should appreciate the risk of playing on an old trampoline because it was not maintained and was outside for five years. Thus, it was likely obviously rusted. However, B’s argument is weak because most nine year olds are unable to understand the risks of a trampoline ripping or falling apart. If a child finds something interesting, then the child will explore the structure.

1062. Restatement (Second) of Torts § 339 (Am. Law Inst. 1965).
(d) W will argue the trampoline has no utility because B did not use the trampoline for over five years and did not allow children on the property. B will argue the burden was high because it takes time and effort to disassemble the trampoline. But B’s argument is weak because the risk of children discovering the trampoline is higher. B’s bed and breakfast was popular because of the trampoline, which means children might learn about the trampoline, play on it, and get hurt. Thus, B likely needed to use reasonable care to make the trampoline safe.

(e) B will argue she used reasonable care because she put a sign on the back door that said “Off Limits” and enclosed her backyard using a fence. W climbed over the fence to play on the trampoline because B’s property was not easily accessible. W will argue B should have put a sign on the trampoline to warn children who played in the backyard. However, this argument is weak because it is unreasonable to require landowners to post warning signs to protect trespassers who illegally accessed their private property, especially if a fence surrounds the backyard.

In conclusion, if B had reason to know that children were trespassing and acted unreasonable by not posting a sign on the trampoline, then B owed a duty to W and breached her duty by not eliminating or making the trampoline safe.

Negligence Per Se

The requirements of a law become the standard of care if: (a) the plaintiff is within the class of persons the statute was created to protect, and (b) the plaintiff’s harm was the kind that the statute was enacted to prevent.1063 If both elements are met and a defendant fails to comply with the statute, then the defendant breached their duty.1064 However, compliance with the law does not prevent a finding of negligence if a reasonable man would take additional precautions.1065

Here, (a) W was within the class of persons the statute was created to protect because the statute required rubber tiles under any structures built for children. W is a child using a trampoline, which is a structure built for children and adults. B will argue a trampoline is not a structure because it is moveable and not bolted into the ground like playground equipment. (b) The statute aimed to eliminate the type of harm that resulted because if the ground was

---

1063. Restatement (Second) of Torts § 286 (Am. Law Inst. 1965).
1064. Id.
1065. Restatement (Second) of Torts § 288C (Am. Law Inst. 1965).
covered with rubber tile, then W would not have scratched his legs on the rocky terrain under the trampoline. In conclusion, unless an exception applies, B’s failure to use rubber tiles would be considered breach if the trampoline is considered a structure.

**Excused Violations**

An excused violation of a law is not negligence. A violation is excused if (a) the violation is reasonable because of the actor’s incapacity; (b) the actor neither knows nor should know of the occasion for compliance; (c) the actor is unable, after reasonable diligence or care, to comply; (d) the actor is confronted by an emergency not due to his own misconduct; or (e) compliance would involve a greater risk of harm to the actor or to others.1066

Here, B will argue she did not have reason to know the trampoline needed rubber tile because her bed and breakfast business was closed for several years, and B did not allow any children on her property; she refused all occupants under 18 years old. B could also not foresee W would trespass because W only played in the backyard while B was grocery shopping. Thus, placing rubber tile under an unused trampoline would be a waste of resources.

In conclusion, if B should have known W would trespass on her land, then there was an occasion for compliance and B breached her duty by violating the statute.

1066. Restatement (Second) of Torts § 288A (Am. Law Inst. 1965).
Index

Civil Procedure

Amendments to Pleadings [Q5], 26, 100–106
Appellate Review [Q8], 29, 117–121
Collateral Estoppel [Q8], 29, 117–121
Discovery [Q6], 27, 107–113
Depositions [Q6], 27, 107–113
Disclosures [Q6], 27, 107–113
Meet and Confer [Q6], 27, 107–113
Motion to Compel [Q6], 27, 107–113
Privileges [Q6], 27, 107–113
Protective Measures [Q6], 27, 107–113

Erie Doctrine [Q3], 23–24, 90–95
Forum Non Conveniens [Q3], 23–24, 90–95
Joinder [Q5], 26, 100–106
Intervention [Q5], 26, 100–106

Judgments on the Pleadings [Q7], 28, 114–116
Judgment as a Matter of Law [Q7], 28, 114–116
Judgment Non-Withstanding the Jury Verdict [Q7], 28, 114–116

Motion for a New Trial [Q7], 28, 114–116
Motion for Summary Judgment [Q7], 28, 114–116
Remittitur [Q7], 28, 114–116

Personal Jurisdiction [Q1], 21, 79–85

Pleadings [Q4], 25, 96–99
12(b)(6): Motion to Dismiss [Q4], 25, 96–99
Answer [Q4], 25, 96–99
Motion for a More Definite Statement [Q4], 25, 96–99
Motion to Strike [Q4], 25, 96–99

Rule 8: Notice-Pleading Standard [Q4], 25, 96–99
Rule 9: Heightened-Pleading Standard [Q4], 25, 96–99

Removal [Q2], 22, 86–89

Res Judicata [Q8], 29, 117–121
Sanctions [Q5], [Q6], 26–27, 100–113

Subject Matter Jurisdiction [Q2], 22, 86–89

Venue [Q3], 23–24, 90–95
Event Venue [Q3], 23–24, 90–95
Residence Venue [Q3], 23–24, 90–95
Motion to Transfer [Q3], 23–24, 90–95

**Constitutional Law**

Commerce Clause [Q4], 35, 136–142
Delegation [Q2], 33, 128–131
Dormant Commerce Clause [Q4], 35, 136–142
Eleventh Amendment [Q3], 34, 132–135
Equal Protection [Q6], [Q7], 37–38, 146–160
Age [Q6], 37, 146–153
Alienage [Q6], 37, 146–153
Education [Q6], 37, 146–153
Gender [Q6], [Q7], 37–38, 146–160
Race [Q6], 37, 146–153
Wealth [Q7], 38, 154–160
Executive Powers [Q3], 34, 132–135
Federalism [Q4], 35, 136–142
First Amendment [Q8], 39, 161–166
Content-Based Regulations [Q8], 39, 161–166
Content-Neutral Regulations [Q8], 39, 161–166
Establishment Clause [Q8], 39, 161–166
Free Exercise Clause [Q8], 39, 161–166
Obscene Speech [Q8], 39, 161–166
Overbroad and Vagueness Standards [Q8], 39, 161–166
Judicial Review [Q1], 31–32, 123–127
Necessary and Proper Clause [Q1], 31–32, 123–127
Political Questions [Q1], 31–32, 123–127
Preemption [Q4], 35, 136–142
Privilege and Immunities Clause of Article IV [Q5], 36, 143–145
Privilege and Immunities Clause of the Fourteenth Amendment [Q5], 36, 143–145
Procedural Due Process [Q7], 38, 154–160
Spending Clause [Q1], [Q2], 31–33, 123–131
Standing [Q1], 31–32, 123–127
State Action [Q5], 36, 143–145
Substantive Due Process [Q6], [Q7], 37–38, 146–160
Abortion [Q7], 38, 154–160
Family Rights [Q6], 37, 146–153
Marriage Rights [Q6], 37, 146–153
Parental Rights [Q6], 37, 146–153
T axing Clause [Q2], 33, 128–131
T enth Amendment [Q1], [Q2], 31–33, 123–131
T reaty Ratification [Q3], 34, 132–135

**Contracts**

Acceptance [Q2], [Q3], 42–43, 171–180
Conditional Acceptance [Q2], 42, 171–175
INDEX

Mailbox Rule [Q3], 43, 176–180
Silence as Acceptance [Q2], 42, 171–175
Unilateral and Bilateral Acceptance [Q3], 43, 176–180
Anticipatory Repudiation [Q8], 48, 204–212
Battle of the Forms [Q3], 43, 176–180
Breach [Q6], [Q7], [Q8], 46–48, 189–212
Cure [Q7], 47, 197–203
Material Breach [Q6], [Q7], [Q8], 46–48, 189–212
Perfect Tender [Q7], 47, 197–203
Compensatory Damages [Q5], [Q6], [Q7], [Q8], 45–48, 185–212
Cost of Repair [Q8], 48, 204–212
Diminution of Value [Q8], 48, 204–212
Expectancy Damages [Q5], [Q7], [Q8], 45, 47–48, 185–188, 197–212
Liquidated Damages [Q7], 47, 197–203
Reliance Damages [Q7], [Q8], 47–48, 197–212
Restitution Damages [Q6], [Q8], 46, 48, 189–196, 204–212
Conditions [Q6], [Q8], 46, 48, 189–196, 204–212
Consideration [Q4], 44, 181–184
Adequacy of Consideration [Q4], 44, 181–184
Gifts [Q4], 44, 181–184
Pre-Existing Duty [Q4], 44, 181–184
Defenses to Formation [Q1], [Q5], [Q6], 41, 45–46, 167–170, 185–196
Duress [Q1], 41, 167–170
Fraud [Q1], 41, 167–170
Illegal Contracts [Q5], 45, 185–188
Incacity [Q1], 41, 167–170
Mistake [Q1], 41, 167–170
Statute of Frauds [Q5], [Q6], 45–46, 185–196
Unconscionability [Q1], 41, 167–170
Definiteness [Q2], [Q5], 42, 45, 171–175, 185–188
Gap Fillers [Q2], [Q5], 42, 45, 171–175, 185–188
Output Contracts [Q2], 42, 171–175
Excuses for Non-Performance [Q7], 47, 197–203
Frustration of Purpose [Q7], 47, 197–203
Impossibility [Q7], 47, 197–203
Impracticability [Q7], 47, 197–203
Limitations on Damages [Q6], [Q8], 46, 48, 189–196, 204–212
Material Benefit (Quasi Contract) [Q4], 44, 181–184
Modification (UCC and Common Law) [Q5], 45, 185–188
Offer [Q2], [Q3], 42–43, 171–180
Advertisements [Q2], 42, 171–175
INDEX

Common Law Formation [Q3], 43, 176–180
Firm Offers [Q2], 42, 171–175
Option Contracts [Q2], 42, 171–175
Rewards [Q3], 43, 176–180
UCC Formation [Q2], [Q3], 42–43, 171–180
Unilateral and Bilateral Offers [Q2], 42, 171–175
Parol Evidence [Q6], [Q8], 46, 48, 189–196, 204–212
Promissory Estoppel [Q4], [Q7], 44, 47, 181–184, 197–203
Recession [Q8], 48, 204–212
Specific Performance [Q4], [Q6], 44, 46, 181–184, 189–196
Termination of an Offer [Q2], [Q3], [Q6] 42–43, 46, 171–180, 189–196
Counter-Offer [Q2], [Q3], [Q6] 42–43, 46, 171–180, 189–196
Death [Q2], 42, 171–175
Lapse of Time [Q2], 42, 171–175
Revocation [Q2], [Q3], 42–43, 171–180
Warranties [Q7], 47, 197–203
Concurrence [Q3], [Q4], 52–53, 227–238
Conspiracy [Q6], [Q8], 55, 57, 244–248, 257–263
Conspiracy Liability [Q6], 55, 244–248
Justifications [Q7], 56, 249–256
Defense of Habitation [Q7], 56, 249–256
Defense of Others [Q7], 56, 249–256
Defense of Property [Q7], 56, 249–256
Imperfect Self Defense [Q7], 56, 249–256
Self Defense [Q7], 56, 249–256
Defenses to Conspiracy [Q6], 55, 244–248
Mens Rea (Model Penal Code) [Q1] 49–50, 213–219
Mens Rea (Willful Blindness) [Q1] 49–50, 213–219
Excuses [Q5], [Q8], 54, 57, 239–243, 257–263
Insanity [Q5], 54, 239–243
Intoxication [Q8], 57, 257–263
Homicide [Q2], [Q3], [Q4], [Q8], 51–53, 57, 220–238, 257–263
Common Law Murder [Q2], [Q3], [Q4], [Q8], 51–53, 57, 220–238, 257–263
Felony Murder [Q2], [Q3], 51–52, 220–231

Criminal Law
Accomplice Liability [Q6], [Q7], 55–56, 244–256
Assault [Q2], 51, 220–226
Attempt [Q5], [Q7], [Q8], 54, 56–57, 239–243, 249–263
Battery [Q2], 51, 220–226
Burglary [Q5], 54, 239–243
Causation [Q3], [Q4], 52–53, 227–238

Terms are ordered alphabetically.
### First and Second Degree Murder
- [Q2], [Q3], [Q4], [Q8], 51–53, 57, 220–238, 257–263

### Manslaughter
- [Q2], [Q3], [Q4], [Q8], 51–53, 57, 220–238, 257–263

### Kidnapping
- [Q2], 51, 220–226

### Merger Doctrine
- [Q2], 51, 220–226

### Mistake of Fact
- [Q1], [Q7], [Q8], 49–50, 56–57, 213–219, 249–263

### Robbery
- [Q7], 56, 249–256

### Statutory Interpretation
- [Q1], 49–50, 213–219

### Strict Liability Crimes
- [Q1], 49–50, 213–219

### Theft
- [Q4], 53, 232–238
  - Embezzlement [Q4], 53, 232–238
  - Larceny [Q4], 53, 232–238

### Transferred Intent
- [Q2], 51, 220–226

### Real Property

#### Adverse Possession
- [Q1], [Q3], 59, 62, 265–270, 277–281

#### Co-Tenancies
- [Q2], [Q3], 60–62, 271–281
  - Joint Tenancy [Q2], 60–61, 271–276

#### Rights and Duties
- [Q2], [Q3], 60–62, 271–281

#### Tenancy by the Entirety
- [Q3], 62, 277–281

#### Tenants in Common
- [Q2], 60–61, 271–276

#### Discovery
- [Q1], 59, 265–270

### Easements
- [Q5], [Q6], 64–65, 288–297

### Eminent Domain (Takings)
- [Q7], 66–67, 298–303

### Equitable Servitudes
- [Q6], 65, 293–297

### Estates (Present and Future)
- [Q1], [Q2], 59–61, 265–276

### Foreclosures
- [Q7], 66–67, 298–303

### Implied Servitudes
- [Q6], 65, 293–297

### Land Conveyances
- [Q8], 68, 304–308

### Covenants for Title
- [Q8], 68, 304–308

### Equitable Conversion
- [Q8], 68, 304–308

### Marketable Title
- [Q8], 68, 304–308

### Leaseholds
- [Q4], 63, 282–287

### Assignments and Subleases
- [Q4], 63, 282–287

### Duties and Rights
- [Q4], 63, 282–287

### Evictions
- [Q4], 63, 282–287

### Implied Warranties
- [Q4], 63, 282–287

### Licenses
- [Q5], 64, 288–292

### Merger Rule
- [Q1], 59, 265–270

### Mortgages
- [Q7], 66–67, 298–303

### Nuisance
- [Q8], 68, 304–308

### Real Covenants
- [Q6], 65, 293–297

### Recording Statutes
- [Q8], 68, 304–308

### Restraints on Alienation
- [Q1], 59, 265–270
Rule Against Perpetuities [Q1], [Q2], 59–61, 265–276
Rule of Convenience [Q1], 59, 265–270
Rules of Shelley’s Case [Q1], 59, 265–270
Trespass [Q8], 68, 304–308
Waste [Q2], 60–61, 271–276
Zoning [Q7], 66–67, 298–303
Non-Conforming Uses [Q7], 66–67, 298–303
Use Variances [Q7], 66–67, 298–303

Torts
Assault [Q1], 69, 309–314
Battery [Q1], 69, 309–314
Conversion [Q2], 70, 315–320
Defamation [Q3], 71, 321–327
Defenses [Q1], [Q2], [Q6], 69–70, 74, 309–320, 341–346
Assumption of the Risk [Q6], 74, 341–346
Comparative Negligence [Q6], 74, 341–346
Consent [Q1], [Q2], 69–70, 309–320
Contributory Negligence [Q6], 74, 341–346
Defense of Land [Q2], 70, 315–320
Defense of Others [Q1], 69, 309–314
Self Defense [Q1], 69, 309–314
False Imprisonment [Q1], 69, 309–314
Intentional Infliction of Emotional Distress [Q2], 70, 315–320
Invasion of Privacy [Q3], 71, 321–327
Joint and Several Liability [Q7], 75–76, 347–352
Right to Contribution [Q7], 75–76, 347–352
Negligence [Q4], [Q5], [Q6], 72–74, 328–346
Actual Cause [Q5], [Q6], 73–74, 334–346
Breach: Learned Hand Formula [Q4], 72, 328–333
Breach: Reasonable Person [Q4], [Q5], 72–73, 328–340
Breach: Res Ipsa Loquitur [Q5], 73, 334–340
Duty: Attractive Nuisance Doctrine [Q4], 72, 328–333
Duty: Children [Q5], 73, 334–340
Duty: Duty to Act [Q5], 73, 334–340
Duty: Duty to Control a Third Party [Q5], 73, 334–340
Duty: Landowners [Q4], 72, 328–333
Duty: Physical Disabilities [Q5], 73, 334–340
Duty: Professionals [Q5], [Q6], 73–74, 334–346
Duty: Rescues and Emergencies [Q5], 73, 334–340
Duty: Zone of Danger [Q4], 72, 328–333
Injury [Q5], [Q6], 73–74, 334–346
Proximate Cause [Q5], [Q6], 73–74, 334–346
Superseding Acts of Third Parties [Q5], 73, 334–340
<table>
<thead>
<tr>
<th>Topic</th>
<th>Page(s)</th>
<th>Index(es)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Negligence Per Se [Q4]</td>
<td>72, 328–333</td>
<td></td>
</tr>
<tr>
<td>Nuisance [Q8]</td>
<td>77, 353–357</td>
<td></td>
</tr>
<tr>
<td>Privileges [Q3]</td>
<td>71, 321–327</td>
<td></td>
</tr>
<tr>
<td>Products Liability [Q7]</td>
<td>75–76, 347–352</td>
<td></td>
</tr>
<tr>
<td>Shopkeeper's Privileges [Q1]</td>
<td>69, 309–314</td>
<td></td>
</tr>
<tr>
<td>Strict Liability [Q8]</td>
<td>77, 353–357</td>
<td></td>
</tr>
<tr>
<td>Abnormally Dangerous Activities [Q8]</td>
<td>77, 353–357</td>
<td></td>
</tr>
<tr>
<td>Transferred Intent [Q1]</td>
<td>69, 309–314</td>
<td></td>
</tr>
<tr>
<td>Trespass to Chattels [Q2]</td>
<td>70, 315–320</td>
<td></td>
</tr>
<tr>
<td>Trespass to Land [Q2]</td>
<td>70, 315–320</td>
<td></td>
</tr>
<tr>
<td>Vicarious Liability [Q6], [Q7]</td>
<td>74–76, 341–352</td>
<td></td>
</tr>
</tbody>
</table>