

**Ameribrights**



# **HOW TO SUCCEED ON THE MBE 188 Q&A FROM AMERIBRIGHTS**

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# A NOTE FROM THE FOUNDER

Wishing you the absolute best as you begin (or continue) your bar exam studies.

Before you dive in, here's one thing I hope you carry with you:  
Know yourself. Accept yourself. Study your way.

Bar prep isn't about being perfect — it's about being intentional.  
Take time to understand how you learn best. Whether that's structure, visuals, repetition,  
or something else entirely — honor your learning style. Don't force yourself into someone  
else's system.

It doesn't matter who you were yesterday.  
Be who you want today.  
You get to decide who you're becoming.  
Your past does not define your present. This is your path — and you're allowed to rewrite  
it at any time.

I believe in you.  
And more importantly, I want *you* to believe in you.

We created Ameribrights to give you tools that meet you where you are — without fluff,  
without judgment, and without forgetting that you're human in the middle of all of this.

If you have questions, feedback, or just want to say hi — we'd love to hear from you:  
[support@ameribrights.com](mailto:support@ameribrights.com)

You've got this. ¡Azúcar!

Best,  
Alexandra "Alex" Espinosa  
Founder and CEO  
Ameribrights, LLC

# CIVIL PROCEDURE

**What is jurisdiction?** Refers to a court's authority to hear and decide cases. It involves the power to make legal decisions and enforce them.

**What are the two main types of jurisdiction?**

- Subject matter jurisdiction (SMJ), dealing with the type of cases a court can hear, and
- Personal jurisdiction (PJ), dealing with the court's authority over the parties involved.

**How does jurisdiction connect to federal courts?** Federal courts have limited jurisdiction, meaning they can only hear specific types of cases outlined in the Constitution and federal laws. Understanding jurisdiction is important to determining which court has the authority to hear a particular case.

**What is SMJ?** Refers to a court's authority to hear and decide cases based on the subject or nature of legal issues involved, defining the scope of cases a court can handle.

**What are the two main types of SMJ?**

- Federal-Question and
- Diversity.

**What is federal-question jurisdiction?**

Grants federal courts the authority to hear cases involving legal issues arising under the U.S. Constitution, federal laws, and treaties.

**What are the requirements for federal-question jurisdiction?** The case must involve a federal question, meaning that the subject matter of the case is based on federal law or constitutional issues.

**Is there a requirement regarding the amount in controversy under federal question jurisdiction?** No. This means that federal courts can hear cases involving federal law or constitutional issues without the need for a minimum threshold of monetary value in dispute.

**Can SMJ exist when the complaint only discusses state law?** It depends. If the plaintiff raises a substantial federal question, then yes.

**Does SMJ exist where the defendant's defenses or counterclaims involve federal law while the plaintiff's complaint raises only state law and no federal-question?** No, the federal issue must be in the well-pleaded complaint, not solely in the defendant's response.

**What is a well-pleaded complaint?** It contains specific factual allegations and legal elements to establish a valid legal claim, ensuring clarity and notice for both the defendant and the court.

**In what cases do federal courts have exclusive federal jurisdiction?** 1) Patent, 2) Bankruptcy, 3) Copyright, 4) Admiralty and maritime, and 5) Antitrust.

# CIVIL PROCEDURE

**What is diversity jurisdiction?** It enables federal courts to hear cases involving citizens of different states (diversity of citizenship).

**What are the requirements for diversity jurisdiction?**

- Complete diversity among parties and
- An amount in controversy exceeding \$75,000 determined at the time of filing, not when the claim arose.

**Is complete diversity required in diversity jurisdiction cases?** Yes, complete diversity is always required, meaning that plaintiff(s) and defendant(s) cannot be from the same state.

**Are there any exceptions for parties from the same state in diversity jurisdiction cases?** While the general rule is that plaintiffs (P) and defendants (D) cannot be from the same state, it is allowed for multiple plaintiffs to be from the same state, as well as for multiple defendants to be from the same state.

**Are there exceptions to diversity jurisdiction?** Typically arise b/c certain types of cases, such as domestic relations (e.g., child support, alimony, and child custody), probate matters (including wills, trusts, and estates), and estate matters, are governed by state law rather than federal law. As a result, they are handled in state courts rather than federal courts under DJ.

**How do you determine citizenship for diversity of citizenship purposes?**

Start by identifying the party type - natural person, corporation, or unincorporated business.

**How is the citizenship of a natural person determined?** Typically, by their state of legal domicile, where they maintain their primary residence and intend to remain indefinitely.

**How is the citizenship of a child determined?** The citizenship of a child is based on the child's legal domicile. This typically refers to the state where the child resides and intends to remain indefinitely, as determined by the child's parents or legal guardians.

**What factors help establish domicile?** Indicators include physical location at the time of the suit, voter registration, tax payment, and driver's license location.

**How is the citizenship of a corporation determined?** Corporations can be citizens of multiple states, including the state of incorporation and the state where it has its principal place of business. It may be incorporated in various states.

# CIVIL PROCEDURE

## **What if it's unclear where the principal place of business is?**

Courts often use the nerve center test, focusing on where the corporation:

- Makes its high-level management,
- Conducts substantial business activities, and
- Where key corporate decisions are made.

## **How is the citizenship of unincorporated businesses determined?**

It is determined by the citizenship of all its individual members or partners.

## **What does aggregation mean in the context of diversity jurisdiction?**

Aggregation refers to the combining or adding up of multiple claims or amounts in controversy to meet the threshold required for diversity jurisdiction in federal courts.

## **Can claims be aggregated for diversity jurisdiction?**

Yes, a single plaintiff can aggregate multiple claims against a single defendant to meet the \$75,000 amount-in-controversy requirement.

## **Can claims be aggregated when there is one plaintiff (P) versus multiple defendants (D)?**

Yes, if P has joint liability claims against multiple D. In other words, two or more D share responsibility for a single claim or cause of action.

## **Can multiple plaintiffs (P) aggregate their claims in diversity jurisdiction?**

Yes, if multiple P seek to enforce a single title or right in which they have a common undivided interest, they can aggregate their claims to satisfy the requirements for diversity jurisdiction.

## **What are some of the reasons for aggregating claims?**

Aggregation is a tool that streamlines the legal process, simplifies complex cases, improves efficiency, and consolidates related claims.

## **What if the amount eventually recovered is below \$75,000 in a diversity case?**

It generally doesn't matter, as long as the amount in controversy met the jurisdictional requirement at the time of filing. Once diversity jurisdiction is properly established, subsequent changes in the amount recovered do not affect the court's jurisdiction.

## **Is it permissible to implead non-diverse parties in diversity cases?**

Yes, in diversity cases, courts are generally more permissive in allowing defendants (D) to implead non-diverse parties. Implead means to bring in a third party into a lawsuit. However, caution is exercised when plaintiffs (P) seek to implead non-diverse parties to prevent manipulation of diversity jurisdiction requirements.

# CONSTITUTIONAL LAW

**What is the principle of equal protection under the law?** It's a principle derived from the Fourteenth Amendment, requiring that similarly situated individuals or groups be treated similarly by the government and that laws should not discriminate against certain groups without a proper basis.

**If tasked with analyzing a discriminatory law, what is your first step?** Identify whether discrimination is occurring. If discrimination is present, determine if it arises through disparate treatment or impact. Disparate treatment involves intentional discrimination based on protected characteristics like race, gender, or ethnicity. Alternatively, discrimination may arise through disparate impact, which involves unintentional discrimination with a disproportionate effect on certain groups.

**What does disparate treatment mean?** Refers to intentional discrimination where individuals or groups are treated differently based on a protected characteristic, such as race, gender, or ethnicity.

**What are indicators of disparate treatment?** On its face discrimination, discriminatory application or a discriminatory motive.

***On its face discrimination:*** When a policy or action explicitly treats individuals differently based on a protected characteristic such as race, gender, or national origin.

***Discriminatory application:*** When a policy or action, while appearing neutral on its face, is applied in a discriminatory manner against individuals based on a protected characteristic.

***Discriminatory motive:*** When there is evidence to suggest that the policy or action was implemented with the intention of treating individuals differently based on a protected characteristic, even if it is not explicitly stated.

**What does disparate impact mean?** Refers to discrimination that may not be intentional but still has a discriminatory effect on individuals or groups with protected characteristics.

**If the examiner has tasked you with analyzing a discriminatory law, what is your second step?** Determine whether substantive due process or equal protection applies. If the discrimination is applied universally to all people, substantive due process may be more appropriate, while the equal protection framework is typically employed when the law discriminates against particular groups.



# CONSTITUTIONAL LAW

## How is a classification associated with the level of scrutiny in equal protection analysis?

In equal protection analysis, the level of scrutiny applied to a classification is determined by the characteristics or groups being treated differently by a law. **Suspect classifications**, like race, receive **strict scrutiny**. **Quasi-suspect classifications**, like gender, receive **intermediate scrutiny**. **Non-suspect** or non-quasi-suspect classifications receive **rational basis scrutiny**.

## What is a suspect classification and thus subject to strict scrutiny?

- Race,
- Alienage (except illegal aliens), and
- National origin.

## What is a quasi-suspect and thus subject to intermediate scrutiny?

- Gender and
- Illegitimate kids (i.e. non-marital kids).

## What is a non-suspect classification and thus subject to rational basis review?

- Alienage, but only if connected to democratic process or immigration, and
- Everything else (e.g., age, disability, wealth and economic situation).

## Are illegal aliens (e.g., undocumented aliens) subject to same protections afforded to legal aliens under strict scrutiny? No.

## What are the three levels of scrutiny in equal protection analysis and what do they entail?

- Strict,
- Intermediate, and
- Rational Basis.

**Strict Scrutiny:** Applied to laws involving suspect classifications (e.g., race). To pass, the government must demonstrate a compelling state interest and show that the law is necessary to achieve that interest.

**Intermediate Scrutiny:** Triggered by quasi-suspect classifications (e.g., gender). To pass, the government must show that the classification serves an important government interest and is substantially related to that interest.

**Rational Basis Scrutiny:** Applied to laws involving non-suspect classifications. To pass, the government must show that the classification is rationally related to a legitimate government interest.

**How many levels of scrutiny apply to equal protection analysis and due process analysis?** Three levels of scrutiny apply (i.e. strict, intermediate, and rational). Two levels of scrutiny apply to due process (i.e. strict and rational). These levels are used to assess whether government actions comply with the reqmts of procedural and substantive due process under the Fifth and Fourteenth Amendments.



# CONSTITUTIONAL LAW

## **How is the level of scrutiny determined in equal protection cases?**

The level of scrutiny is determined based on the characteristics of the classification, legal history, and context of the issue. Courts consider whether the classification is suspect, quasi-suspect, or involves a fundamental right, and legal precedent plays a crucial role in this determination.

**What is the next step after identifying that an equal protection analysis is appropriate?** After identifying the need for an equal protection analysis, the next step is to examine the highlighted classification (e.g., race or gender) and decide which level of scrutiny to apply—whether strict, intermediate, or rational. Then, analyze under the proper scrutiny

## **In connection with the right to travel, which undergoes strict scrutiny, are residency requirements permissible?**

Depends on the situation. In certain contexts, residency requirements can be deemed permissible. It is crucial to distinguish between valid and invalid residency requirements when assessing their impact on the right to travel.

**What if a state discriminates against all the out-of-state people?** Do not conduct an equal protection analysis. Instead, analyze under privileges and immunities.

**A woman sues the state because of a policy concerning age, what scrutiny do you apply?** Rational basis scrutiny. Beware of fact patterns that merge together different characteristics (e.g., age and gender).

**What are economic rights and what scrutiny is applied?** Involve the protection of individual economic liberties, such as the right to engage in business, earn a living, and enter into contracts. Typically, economic regulations are subject to rational basis review.

**What is the difference between a public and private contract?** A public contract involves agreements between a government entity (state, local, or federal) and a private party for goods, services, or construction. In contrast, a private contract is an agreement between private individuals or entities not involving government agencies.

**Can states impair contracts?** States are generally restricted from impairing the obligation of contracts under the Contracts Clause of the U.S. Constitution.

**Does the Contracts Clause also apply to the federal government?** No, the Contracts Clause doesn't restrict federal government action with respect to contracts.

# CONTRACTS

## **How can an offer be terminated through the offeree's conduct?** 1)

Counteroffer, 2) Conditional acceptance, 3) Additional terms 4) Express rejection, and 5) Indirect rejection.

**What is a counteroffer?** A response by the offeree to the original offer, proposing different terms and conditions.

**Is there an express contract when a counteroffer is made?** No express contract exists unless the counteroffer itself is accepted.

**Can counteroffers terminate options?** Counteroffers do not terminate options.

**How can we distinguish counteroffers from bargaining?** Bargaining, which does not terminate the offer, occurs when the response to an offer is a question.

**What is conditional acceptance?** A response to an offer that includes terms or conditions different from those in the original offer.

**What happens when an offeree issues a conditional acceptance?** Conditional acceptance terminates the offer.

**Do common law and UCC treat conditional acceptance differently?** In common law, it becomes a counteroffer. In the UCC, it is considered a rejection.

**What words or phrases indicate conditional acceptance?** Words such as "accept if," "only if," "provided," "so long as," "but," or "on condition that" suggest conditional acceptance.

**What does additional terms refer to?** Provisions or conditions introduced in a response to an offer that were not part of the original offer.

**How is the mirror image rule applied to additional terms in common law?** Additional terms that do not mirror the original offer create a counteroffer.

**How does the UCC handle additional terms?** The UCC specifically allows for the inclusion of additional terms in an acceptance, even if they differ from the original offer. However, certain requirements must be met.

**What does seasonal expression of acceptance refer to in connection with the UCC?** It allows additional terms to be included in the acceptance even if they differ from the offer, as long as both parties are merchants and the additional terms don't materially alter the offer.

# CONTRACTS

## **What are the requirements for a seasonal expression of acceptance?**

1) Both parties are merchants, and 2) The additional terms don't materially alter the offer.

**What is an express rejection?** The offeree explicitly communicates their unwillingness to accept the offer through clear and unambiguous statements.

## **What is indirect rejection, and how does it differ from express rejection?**

It occurs when the offeree's conduct or response to the offer implies refusal but may not be as explicit as express rejection.

**If an offeree rejects, can they later accept?** No, if the offeror was aware of the rejection.

## **Are there any other reasons an offer might be considered terminated?**

Yes. 1) Destruction of the contract's subject matter, 2) Death or incapacity of a party, and 3) Supervening illegality.

**How does the destruction of the contract's subject matter terminate an offer?** If it is destroyed or becomes impossible to perform before acceptance, the offer is terminated. The subject matter is a crucial element of the contract, and its destruction makes performance impossible.

**How does the death or incapacity of a party affect an offer?** It terminates the offer if it occurs after the offer but before acceptance.

**Are there any exceptions to the general rule regarding the death of a party and offer termination?** Yes, there is an exception for irrevocable offers. If an offer is irrevocable, the death of a party does not terminate the offer.

**What types of offers are considered irrevocable?** Option contracts, UCC firm offers, situations where there was detrimental reliance, and unilateral contracts where performance is underway.

**What is supervening illegality, and how does it terminate an offer?** Occurs when a law or regulation is enacted, making the proposed contract illegal, terminating the offer.

**Can a minor provide valid consideration in a contract while still a minor?** Yes, although the contract's enforceability may be subject to the minor's right to disaffirm.

**Can an adult ratify a contract they entered into while underage?** Yes. A person who entered into a contract as a minor can ratify it after reaching the age of majority, as long as the ratification is voluntary, informed, and not coerced.

# CONTRACTS

## **What are some ways to accept an offer?**

- Performance (e.g., someone taking action in connection with a unilateral offer),
- Words committing to being bound (e.g., explicit words), and
- Responding via mail.

**Why is the mailbox rule important?** It's crucial for determining the specific moment when an offer is accepted and a contract is formed, especially in situations involving the use of mail or similar means of communication.

**What does the mailbox rule entail?** An offer becomes effective upon receipt by the offeree, unless the offer explicitly specifies otherwise. Conversely, a revocation of the offer is effective upon receipt by the offeree.

**How does the mailbox rule impact the timing of acceptance?** Acceptance is effective upon dispatch, meaning the moment the offeree puts the acceptance in the mail or transmits it by other authorized means.

**Can parties choose to opt-out of the mailbox rule?** Yes, by explicitly stating in the offer or acceptance that it is not effective until received. This choice means that the acceptance or offer is effective only when it reaches the other party.

**When is a revocation of an offer effective under the mailbox rule?** It is effective upon receipt by the offeree. The offeree must actually receive the revocation for it to be valid, and the timing of when the offeror sent the revocation doesn't matter.

**When is acceptance generally effective?** Acceptance is generally effective when sent, following the mailbox rule.

**Are there exceptions to the mailbox rule for acceptance?** Yes, exceptions include: 1) In an option contract, acceptance is effective upon receipt, not when dispatched, and 2) If a rejection is mailed first, followed by an acceptance, the one received first controls.

**Can you clarify the relationship between option contracts and the mailbox rule?** In an option contract, where the offeror promises to keep an offer open for a specified period, the acceptance to exercise the option is considered effective only when received by the offeror. The mailbox rule does not apply to meet an option deadline.

# CRIM LAW & PRO

**At what point is someone considered in custody?** When they reasonably believe they are not free to leave, typically due to the actions or authority of law enforcement. It often involves a significant restraint on an individual's freedom of movement (i.e., location), such as an arrest.

**What is an interrogation?** Involves deliberate questioning or statements made by police or authorities to elicit responses, information, or confessions from the person being questioned, constituting a systematic effort to obtain information or admissions from a suspect or witness.

**Is every question the police ask someone considered an interrogation?** No. The nature of the question matters, and not every inquiry qualifies as an interrogation. For example, asking for basic information like "What is your name and address" is not considered an interrogation. Contrasting this with questions designed to elicit an incriminating response, such as "Did you kill your neighbor," helps determine if it falls under the Miranda requirements.

**Is the D's conduct (e.g., crying) considered a compelled communication or testimonial?** No. If the police ask a Q and the D responds by crying, it is generally considered non-testimonial and admissible in court without violating the D's Miranda rights.

**What are Miranda Rights, and when do they apply?** Applies when someone is in custody and being interrogated (custodial interrogation). These rights include the right to remain silent, the warning that anything said can be used against them, the right to an attorney with the option of one being provided if unable to afford one, the right to stop questioning at any time, and understanding and waiving these rights voluntarily.

**What are the elements of a valid Miranda warning?** Law enforcement officers do not need to recite these exact words verbatim. The elements are:

- Right to remain silent,
- Anything you say can and will be used against you,
- Right to an attorney and if you can't afford one, one will be provided for you,
- Right to stop questioning - "you can decide at any time to exercise these rights and not answer any questions or make any statements," and
- Understanding and waiver which means the person must understand the rights and voluntarily choose to waive them.

**How does law enforcement identify whether the accused has elected to exercise their Miranda rights?** The accused makes a statement that is explicit, unambiguous, and unequivocal, clearly indicating their intention to invoke their Miranda rights.

# CRIM LAW & PRO

**If the individual invokes their Miranda rights, what must the law enforcement officers do?** Stop questioning the individual.

**What is the exception?** Even though the defendant has invoked their Miranda rights, law enforcement can ask about an unrelated crime, meaning a crime that the defendant was not charged with.

**How long after release from prison does the accused's prior invocation of the right to counsel under Miranda remain valid?** If the accused invoked their right to counsel while in prison, the validity of that invocation extends for 14 days after their release.

**Can a person terminate an interrogation at any time?** Yes, even if they previously agreed to answer the questions, they can invoke their right to remain silent and request counsel.

**Is it possible for someone to waive their Miranda warning?** Yes, individuals have the option to waive their Miranda rights but it must meet certain requirements to be valid.

**What does a voluntary waiver of Miranda rights entail?** It occurs when a suspect willingly agrees to speak with law enforcement after being informed of their Miranda rights. For a waiver to be valid, it must be voluntary, knowing, and intelligent. If a suspect agrees to waive their rights, any subsequent statements may be admissible.

**If someone is pulled over during a routine traffic stop, such as for speeding, are they considered to be in custodial custody?** No, generally individuals are not considered to be in custodial custody during a routine traffic stop for infractions like speeding.

**Are there exceptions to Miranda warnings?** Yes.

- Public safety exception,
- Unsolicited statements,
- Routine booking questions, and
- Voluntary waivers.

**What is the public safety exception?** Allows law enforcement to question a suspect without providing Miranda warnings if there is an imminent threat to public safety. This exception is narrow and typically applies in emergency situations where immediate action is required to address potential harm.



# CRIM LAW & PRO

**What does unsolicited statements refer to?** Self-incriminating remarks made voluntarily and without prompting from law enforcement or other government agents. If such statements are made willingly, they may be admissible in court.

**Are statements made to a cellmate considered private?** The expectation of privacy in a jail or prison cell is generally lower than in other settings. Conversations with cellmates may not be considered private, and individuals should be aware that their cellmates could potentially share information with law enforcement.

**What issues can arise if a cellmate acts as a government informant or agent?** If a cellmate acts as a government informant or agent and deliberately elicits incriminating statements from the person in custody at the direction of law enforcement, it can raise issues of coercion and entrapment. Courts may scrutinize the circumstances to determine whether the person's statements were obtained in violation of their rights.

**When are routine booking Qs exempt from Miranda reqmts?** Routine booking questions, such as obtaining personal information for admin purposes, are generally exempt from Miranda requirements. These Qs focus on the booking process and are not part of a custodial interrogation.

**What does the voluntariness exception refer to?** Courts will also consider whether the statements were made voluntarily. Coerced or involuntary statements, even if not in response to police questioning, may be excluded from evidence.

**If an accused asks for counsel, can the police later question the accused?** Yes, the police can question the accused, but the questioning is limited to unrelated matters, such as a distinct crime.

**What does coercion refer to in the context of law enforcement and statements?** Involves the use of force, threats, intimidation, or other undue pressure to compel an individual to take a particular action against their will. In the context of law enforcement and the admissibility of statements, coercion can lead to statements being deemed involuntary and, therefore, inadmissible in court.

**In the cellmate example, what would coercion look like?** If the cellmate used threats, intimidation, or any form of force to extract self-incriminating information from the individual in custody, a court may view the statements as the product of coercion.



# EVIDENCE

**What is a statement?** A person's oral assertion, written assertion, or nonverbal conduct, provided the person intended it as an assertion.

**Who is a declarant?** The person who made the statement.

**What does hearsay mean?** A statement made by the declarant outside the current trial or hearing, offered by a party to prove the truth of the matter asserted in the statement. Why is hearsay introduced? To establish the truth of the matter asserted in the statement.

**Is a statement admissible if it serves a purpose other than proving its truth?** Depends. While hearsay grounds may not exclude it, other relevant evidence rules, such as relevance and fairness, will still apply.

**What are the five common types of non-hearsay statements?**

- Verbal acts or legally operative language, Effect on the listener,
- State of mind,
- Impeachment, and
- Speaker's knowledge.

***Verbal Acts or Legally Operative***

***Language:*** Statements considered legally operative acts, like making a contract or giving notice, are admissible to show the statement was made, not to prove its truth.

***Effect on the Listener:*** Statements may be introduced to illustrate their impact on the listener, demonstrating why a person took a specific action based on what they heard, irrespective of the statement's truth.

***State of Mind:*** Statements can be introduced to demonstrate the declarant's state of mind at the time of making the statement, which is relevant in cases involving intent, motive, or knowledge.

***Impeachment:*** Statements may be used to impeach a witness's credibility rather than establish the truth of the statement, such as using prior inconsistent statements to challenge current testimony.

***Speaker's knowledge:*** Statements demonstrating the speaker's knowledge at the time of making the statement are valid non-hearsay, establishing what the speaker knew rather than the truth of the statement.

**Explain what verbal acts are:** Refers to actions or deeds that are carried out using words, whether spoken or written. These actions can have legal significance when the consequences are based on the words spoken or written.

# EVIDENCE

**Is hearsay admissible in a trial or hearing?** Hearsay evidence generally is inadmissible unless it falls within an exception or exemption set out in the rules of evidence, a federal statute, or a Supreme Court rule.

**In connection with hearsay, what amendment comes to mind?** The Sixth Amendment addresses various rights related to criminal prosecutions, ensuring a fair trial, including the right to confront witnesses (e.g., cross-examination).

**Does a defendant in a criminal case have a right to confront witnesses and victims "face-to-face" in court?** Yes, this stems from the Sixth Amendment. Note, however, this right is not outright and there are exceptions (e.g., a child testifying through alternative means and use of video conferencing).

**Under what circumstances is an out of court statement inadmissible?**

- Declarant is not available for cross-examination,
- Statement is testimonial in nature, and
- No opportunity to cross-examine.

***The Declarant is Not Available for Cross-Examination:*** If the person making the out-of-court statement is unavailable for cross-examination at trial, the stmt may be excluded unless it falls within a recognized exception.

***The Statement is "Testimonial" in Nature:*** Testimonial statements, made with the primary purpose of establishing facts for legal proceedings, may be inadmissible if the declarant is unavailable for cross-examination.

***No Opportunity to Cross-Examine:*** If the defendant lacked a prior opportunity to cross-examine the declarant when the statement was made, its admission at trial might violate the Confrontation Clause.

**What are the two common exceptions in connection with testimonial statements?**

- Forfeiture by wrongdoing, and
- Ongoing emergency.

***Forfeiture by Wrongdoing:*** Allows admission of testimonial hearsay from an unavailable declarant if the offering party's wrongdoing intended and caused the declarant's unavailability.

***Ongoing Emergency:*** Permits admissibility of statements made by a declarant during an ongoing emergency, even without the declarant's availability for cross-examination.

**What are the exemptions to hearsay?**

- Declarant-witness's prior statement, and
- Opposing party's statement.

# EVIDENCE

**What constitutes a declarant-witness's prior statement as an exemption to hearsay?** It meets conditions like being:

- ***Prior Inconsistent Statement:***  
Inconsistent with the declarant's testimony, given under penalty of perjury, or
- ***Prior Consistent Statement:***  
Consistent with the declarant's testimony for specific purposes, or
- ***Prior Statement of Identification After Perception***

**To fall under the declarant-witness' prior statement exemption what must occur?** The declarant must be present at trial (unavailability not an option).

**Is a declarant's testimony about a prior identification considered hearsay?** No, it's admissible as non-hearsay.

**What is the rule regarding the admissibility of a witness's prior inconsistent statement given under oath?** Allows a prior statement by a witness that is inconsistent with their current testimony to be admissible as substantive evidence if given under oath and subject to cross-examination.

**In what situation can a prior consistent statement by a witness be admitted?** To rebut a charge of recent fabrication or improper influence.

**When can a prior statement of identification after perception be admitted as substantive evidence?**

The rule allows admissibility if the witness testifies and undergoes cross-examination.

**To summarize how can prior statements be used?** Prior inconsistent statements can be used as impeachment evidence and substantive evidence. Prior consistent statements can be used as impeachment evidence (e.g., to rebut). Prior identification statements can be used as substantive evidence.

**What characterizes an opposing party's statement as an exemption to hearsay?** It is not hearsay when offered against the party, encompassing statements made in an individual or representative capacity, those reflecting the party's belief, or statements by authorized persons, agents, employees, or co-conspirators.

**What are the types of admissions identified in the rule concerning opposing party's statements?**

- Admissions by a party opponent,
- Adoptive admissions,
- Vicarious admissions,
- Co-conspirator liability, and
- Judicial admissions.

# REAL PROPERTY

## **What is the default common law rule concerning recording acts?**

"First-in-time, first-in-right." This means that the first person to establish and record their interest in a property generally holds the superior claim.

## **Is recording always necessary to establish legal title to a property?**

No, recording is not always necessary to establish legal title. If someone legally acquires an interest in a property, they may have a valid claim even if they haven't recorded that interest.

**How do recording acts contribute to property rights protection?** Recording acts, which vary by jurisdiction, provide legal mechanisms for protecting property rights. They establish a public record of property ownership, offering a structured way to document and prioritize interests in real property.

**Who is a bona fide purchaser for value?** An individual or entity who acquires real property without knowledge of any competing claims or interests in the property and provides valuable consideration (typically money) in exchange for the property.

**Who isn't a BFP for value?** Creditors and individuals who acquire property as a gift generally do not qualify as BFPs for value.

**If someone receives a gift, do they pay value?** No, they don't and that means they aren't a BFP.

**What protection does a judgment creditor have under recording acts regarding prior unrecorded conveyances?** A judgment creditor is not protected by recording acts if the defendant made a prior unrecorded conveyance to another party who is not a BFP.

**What is the shelter rule?** States that a person who acquires property rights from a BFP for value can "shelter" under the same protections and rights as the original BFP, even if the subsequent purchaser did not meet all the criteria of a BFP.

**Who typically prevails under the shelter rule?** A subsequent purchaser who takes property from a BFP for value will prevail and be protected under the shelter rule.

**Does it matter that a BFP for value under the shelter rule has notice?** The shelter rule generally applies regardless of whether the subsequent purchaser has notice of any defects or adverse claims related to the property's title. So, even if the subsequent purchaser has actual or constructive notice, they can still claim the protections of the shelter rule.

**What are the types of recording acts?** Recording acts govern the recording and priority of real property documents and are typically classified as race-notice, race, or notice recording acts.

# REAL PROPERTY

**How do notice jurisdictions operate?** A later buyer who acquires property for value and without notice of existing claims can prevail over earlier claims.

**What are purchasers with notice in the context of property transactions?**

Purchasers with notice are individuals or entities who acquire property with awareness or notice of existing claims, interests, or conditions related to that property.

**What are purchasers without notice in the context of property transactions?**

Individuals or entities who acquire property for value without actual, constructive, or inquiry notice of existing claims, interests, or conditions related to that property.

**What types of notice are associated with purchasers with notice?** There are different types of notice, including

- ***Actual notice:*** Refers to direct knowledge,
- ***Constructive/record notice:*** When notice is given through proper recording of a prior interest, and
- ***Inquiry notice:*** Arises from circumstances that would prompt a reasonable person to inquire further.

**What does chain of title refer to?** The chain of title is a historical record of a property's ownership, created by tracing the transfers of ownership through recorded documents.

**What is a wild deed?** A deed or transfer document that is not properly recorded or documented in the public records where it should be.

**What is the impact of a wild deed?** It may not provide notice to third parties about the transfer of property ownership, leading to disputes and various challenges.

**How does the race-notice recording statute impact property transactions?**

The race-notice recording statute dictates that a subsequent bona fide purchaser, acquiring property without notice of a prior unrecorded interest and recording their interest first, takes priority.

**What is the primary rule established by the race-notice recording statute?**

The primary rule set by the race-notice recording statute is that the subsequent bona fide purchaser gains priority by recording their interest first, provided they had no notice of a prior unrecorded interest.

**How does the race recording statute impact property priority?**

Priority is given to the party who records their interest first, irrespective of their awareness of prior unrecorded interests.



# REAL PROPERTY

**Provide an example illustrating the impact of the race recording statute on property priority:** Seller A conveyed property to Buyer B. Buyer B did not record the deed. Seller A then conveyed the same property to Buyer C, who recorded the deed. Despite Buyer C's knowledge of Seller A's prior conveyance to Buyer B, Buyer C will likely prevail due to recording the deed first, following the race recording statute.

**Explain how the notice recording statute prioritizes property purchasers:** The notice recording statute prioritizes subsequent bona fide purchasers who acquire property without notice of prior unrecorded interests. This priority is maintained irrespective of when the subsequent purchaser records their interest.

**Provide an example illustrating the operation of a notice recording statute:** A received property as a gift from C and moved in. Later, A sold the property to B. B recorded the deed. However, B may lose the property because C's occupancy was open and notorious, giving B inquiry notice.

**In a jurisdiction with a race statute, does being a bona fide purchaser affect one's priority in recording?** No. In a race jurisdiction, a purchaser that is not a bona fide purchaser but that records first will prevail over a bona fide purchaser.

**What are examples of language in a statute that would indicate their approach to recording acts?**

***Notice:*** "No interest in real property shall be valid against subsequent bona fide purchasers for value and without notice unless the interest is recorded."

***Race-Notice:*** "Priority shall be given to the party who records first, provided they are a subsequent bona fide purchaser without notice of a prior unrecorded interest." "No unrecorded conveyance or mortgage shall be good against subsequent purchases for value without notice, who record first."

***Race Act:*** "The first party to record their interest, regardless of notice, shall take priority over any subsequent interests, whether recorded or not."

**Which recording act does not consider notice in determining priority?** Race.

**What are some potential issues related to chain of title and recording statutes?** 1) Estoppel by deed, 2) Estoppel by judgement, and 3) Tax liens.

***Estoppel by Deed:*** Prevents a grantor from denying the truth of statements made in a deed after conveying the property, making the grantor's statements binding.

# TORTS

**What is strict liability?** It imposes an absolute duty on certain parties to make their activities safe. Individuals may be held responsible for harm caused, regardless of their level of care, if engaged in inherently dangerous activities or if their products are defective and cause harm. It applies in limited situations.

**In a strict liability case, does the plaintiff need to show that the defendant breached a duty?** No.

**In what situations does strict liability apply?** 1) Ultrahazardous and/or abnormally dangerous activities or conditions, 2) Animal conduct, and 3) Product defects.

**What are the elements of a strict liability prima facie case?**

- The nature of defendant's activity imposes an absolute duty to make it safe,
- Causation (both actual and proximate cause), and
- Damages to plaintiff's person or property.

**Can assumption of risk serve as a defense to a strict liability claim?** Yes, it can serve as a complete defense in certain situations involving strict liability. However, it's important to note that this approach differs from that of intentional torts, where assumption of risk is never considered a defense.

**What are the requirements for abnormally dangerous conditions or activities?** 1) Imposes a severe risk of harm, 2) Can't be made reasonably safe, and 3) It's uncommon in the community.

**What are some examples of abnormally dangerous conditions or activities?** Storing explosives, nuclear energy operations, toxic chemical handling, fireworks manufacturing, and biohazardous material management.

**If an explosion following all safety protocols occurs without causing harm, can the plaintiff succeed in a strict liability case?** No. Strict liability typically requires harm resulting directly from the abnormally dangerous activity.

**If a train carrying fireworks crashes into a vehicle and harms plaintiff's (P) vehicle, will P succeed under strict liability theory?** No, because the abnormally dangerous condition (i.e., the fireworks) didn't harm the P; the harm was caused by the train. Strict liability typically requires harm directly resulting from the abnormally dangerous activity itself.

**What are some defenses to strict liability claims in connection with an abnormally dangerous activity?**

Defenses include assumption of risk, contributory negligence, and comparative negligence.



# TORTS

**Does strict liability arise when trespassing animals cause property damage?** Yes, animal owners are strictly liable for reasonably foreseeable damage caused by their animals trespassing on another's property.

**When are owners strictly liable for personal injuries from wild animals?** Owners are strictly liable to licensees and invitees for unprovoked injuries caused by their wild animals.

**If the invitee/licensee provoked the wild animal, will the owner be held strictly liable?** No, because the invitee/licensee provoked the wild animal. Strict liability often requires unprovoked injuries caused by the wild animal for the owner to be held responsible.

**Is there strict liability for personal injuries from domestic animals?** No, unless the owner is aware of their animal's dangerous propensities.

**Is the defendant strictly liable if their tabby cat, while hunting mice on the plaintiff's land, brutally scratches the plaintiff?** No, the defendant is not strictly liable because they were unaware of their domestic animal's dangerous propensity. Strict liability requires knowledge of the potential harm.

**Is the defendant strictly liable if an invited guest is bitten by their arctic wolf during tea?** Yes, the defendant is strictly liable since the arctic wolf's attack was unprovoked, and the guest was a licensee.

**In connection with animal conduct, can trespassers recover under strict liability?** Generally, trespassers are not entitled to recovery under strict liability.

**What is the essence of strict liability in the context of products liability?** It imposes an absolute duty on commercial suppliers to provide safe goods, irrespective of their level of care.

**Who qualifies as a commercial supplier under strict liability for products?** Someone who routinely deals in the product sold, participating in the stream of commerce. Casual sellers and service providers generally do not qualify as suppliers.

**To establish a strict liability claim in connection with a product, what must be proved?**

- Defendant is a commercial supplier,
- Defective product,
- Causation,
- Foreseeable use (the product was being used as intended), and
- Damages.

# TORTS

**What is defamation?** The act of making a false statement made to a third party that harms the reputation of an individual by disseminating the information to others.

**What are the key elements of defamation?**

- A false statement of fact,
- Publication to a third party,
- Fault or negligence in making the statement, and
- Resulting harm to the reputation of the person or entity.

**Can a statement be considered defamatory if it is true?** No, for a statement to be defamatory, it must be false. Truth serves as a complete defense against a defamation claim.

**In defamation cases related to matters of public concern, what must be shown?** It must be shown that the statement is false.

**How does publication to a third party arise?** Making the statement to a third party, regardless of whether it was intentional or negligent. This includes the act of republication, where an existing defamatory statement is shared or repeated to another individual or group.

**Is it necessary that the harm be financial?** Only in certain situations. While financial harm is a consideration, defamation claims may encompass harm to one's reputation beyond solely financial implications.

**In connection with defamation what determines the appropriate standard to apply?** It is determined by identifying the subject of the potentially defamatory statement (i.e., private individual, public official, or public figure). Additionally, if it is a private individual then it is necessary to consider whether the statement involves a matter of public concern.

**Who qualifies as a public figure in defamation cases?** An individual who has achieved a certain level of fame or notoriety and has voluntarily entered into the public eye. This can include celebrities, politicians, and individuals involved in public controversies.

**What distinguishes a public official from a public figure?** A public official is a subset of public figures and specifically refers to individuals holding a government position or office. This includes elected officials, government employees, and those with significant responsibilities in public office.

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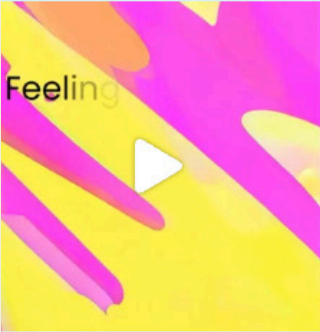
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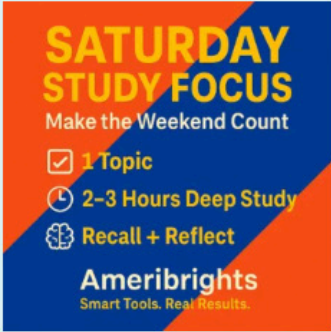
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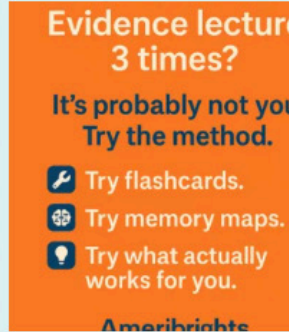
**SATURDAY STUDY FOCUS**  
Make the Weekend Count

- 1 Topic
- 2-3 Hours Deep Study
- Recall + Reflect

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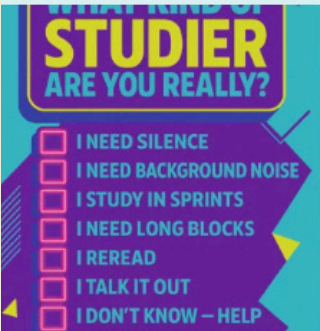
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**Evidence lecture 3 times?**  
It's probably not you. Try the method.


- Try flashcards.
- Try memory maps.
- Try what actually works for you.

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**WHAT KIND OF STUDIER ARE YOU REALLY?**

- ☐ I NEED SILENCE
- ☐ I NEED BACKGROUND NOISE
- ☐ I STUDY IN SPRINTS
- ☐ I NEED LONG BLOCKS
- ☐ I REREAD
- ☐ I TALK IT OUT
- ☐ I DON'T KNOW — HELP



**Dying Declarations**  
Florida v. Federal

Belief of imminent death required

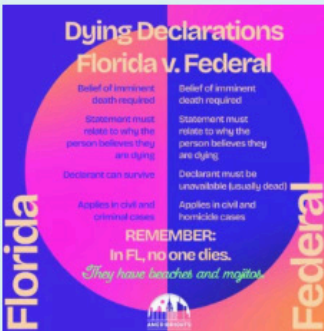
Statement must relate to why the person believes they are dying

Dependant can survive

Applies in civil and criminal cases

**REMEMBER:**  
In FL, no one dies.

They have laches and motifs



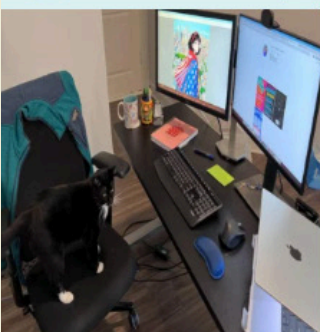
**FL CHARACTER EVIDENCE**

- ✓ Reputation
- ✓ Specific Acts (when essential)
- ✗ Opinion testimony (almost never allowed)

**FEDERAL RULE:**

- ✓ Reputation
- ✓ Opinion
- ✓ Specific Acts


**REMEMBER:** Florida says no to opinion



**DON'T JUST REVIEW. RETRIEVE. THEN TEACH IT.**

Teach it like you're explaining it to someone who's confused.

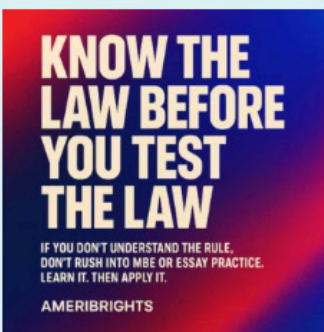
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**KNOW THE LAW BEFORE YOU TEST THE LAW**

IF YOU DON'T UNDERSTAND THE RULE, DON'T RUSH INTO MBE OR ESSAY PRACTICE. LEARN IT, THEN APPLY IT.


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**IF YOU CAN'T FLY THEN RUN, IF YOU CAN'T RUN THEN WALK, IF YOU CAN'T WALK THEN CRAWL, BUT WHATEVER YOU DO YOU HAVE TO KEEP MOVING FORWARD.**

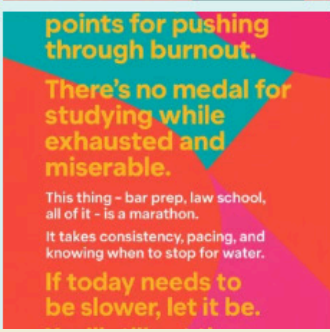
— MARTIN LUTHER KING JR.

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What's one thing you want to make progress on this week?

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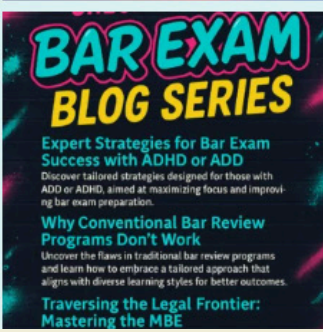


points for pushing through burnout.

There's no medal for studying while exhausted and miserable.

This thing — bar prep, law school, all of it — is a marathon. It takes consistency, pacing, and knowing when to stop for water.

If today needs to be slower, let it be.



**BAR EXAM BLOG SERIES**

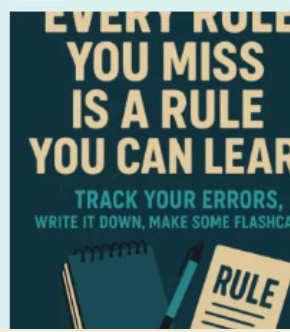
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TRACK YOUR ERRORS, WRITE IT DOWN, MAKE SOME FLASHCARDS

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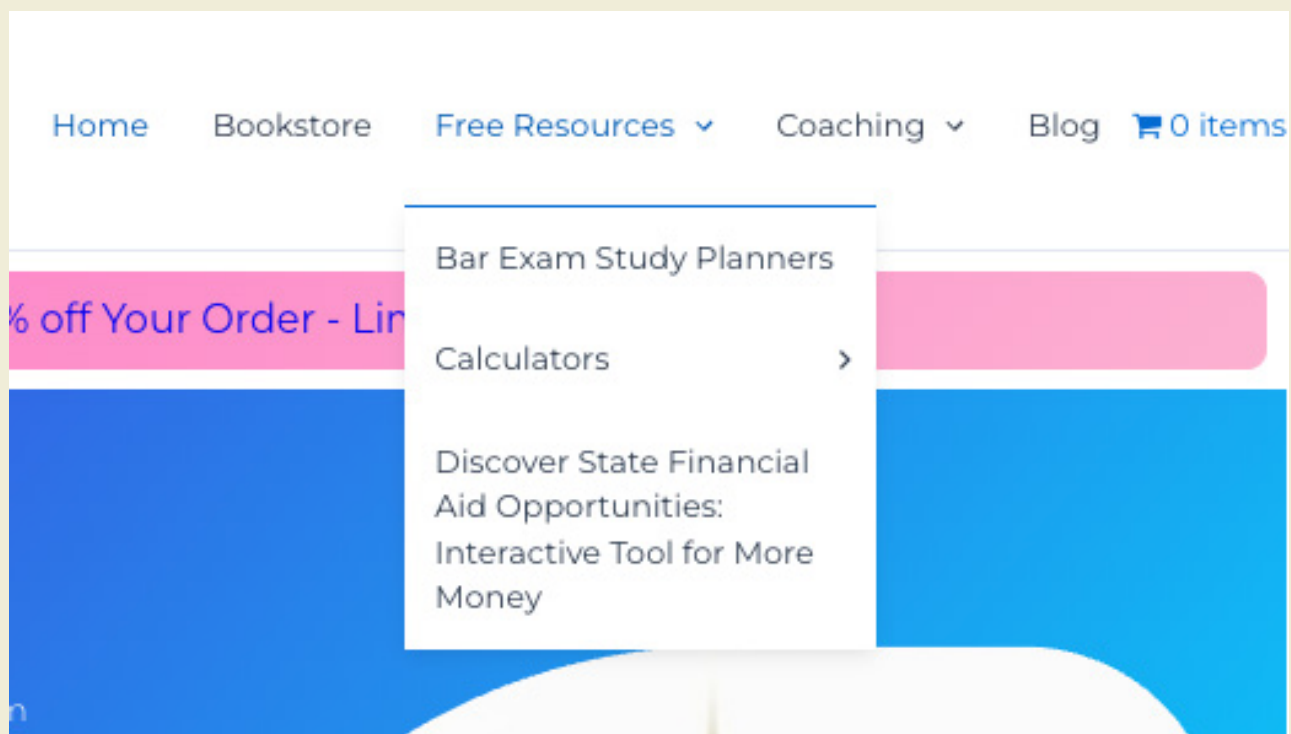
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