



Outline of Subjects Tested on Essay Portion of Ohio Bar Examination

NOVEMBER 2002

OUTLINE OF SUBJECTS TESTED ON ESSAY PORTION OF OHIO BAR EXAMINATION

Introduction

In accordance with Gov. Bar R. I, Sec. 5, the essay portion of the Ohio bar examination tests on the following 11 subjects:

- Business Associations
- Civil Procedure
- Commercial Transactions
- Constitutional Law
- Contracts
- Criminal Law
- Evidence
- Legal Ethics
- Property
- Torts
- Wills

The outline in this booklet expands upon 10 of the 11 subjects listed above. The primary purpose of the outline is to provide a guide to the bar examiners in drafting essay questions for the exam. Citations to legal authorities are for the convenience of the bar examiners and are merely suggestions as to sources. The bar examiners are not restricted to the sources listed and, as case and statutory law develop and change, bar examiners will rely on more current legal authorities and issues in preparing their essay questions.

The subject of legal ethics is not included in this outline. In drafting essay questions on this topic, bar examiners refer to the Ohio Rules of Professional Conduct, the Code of Judicial Conduct, and the Supreme Court Rules for the Government of the Bar of Ohio.

The essay subject outline was first developed in 1937 and has been revised several times over the years. The most recent set of revisions to the outline, effective November 2002, were carried out with the assistance of law professors from the nine Ohio law schools. The Board of Bar Examiners owes a special thanks to these law professors and their law schools for their help and support.

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Chapter 1

Business Associations

PART A. AGENCY

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Sell, Agency (2d ed. 1974)

Reuschlein and Gregory, The Law of Agency and Partnership (2d ed. 1990) (R&G)

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Bromberg & Ribstein, Bromberg and Ribstein on Partnership (2002) (B&R)
Reuschlein and Gregory, The Law of Agency and Partnership (2d ed. 1990) (R&G)
Henn & Alexander, Laws of Corporations (3d ed. 1983) (H&A)
Ohio Uniform Partnership Law (O.R.C. Chapter 1775)
Gevurtz, Corporation Law (2000)
Cox, Hazen & O'Neal, Corporations (1997)(C,H&O)

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Henn & Alexander, *Laws of Corporations* (3d ed. 1983) (H&A)
Clark, *Corporate Law* (1986)
Ohio Revised Code, Chapter 1701 (O.R.C.)
Gevurtz, *Corporation Law* (2000)
Cox, Hazen & O'Neal, *Corporations* (1997)(C,H&O)
Hazen, *The Law of Securities Regulation* (4th ed. 2002)

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Chapter 2

Civil Procedure

References

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Ohio Constitution
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Charles Alan Wright & Mary Kay Kane, *Law of Federal Courts* (6th ed. 2002)
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Anderson's Ohio Civil Practice, volumes four, five and six

PART A: JURISDICTION AND VENUE

I. Personal Jurisdiction

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- VII. Contractual Liability of Parties on the Instrument**
- A. **Need for a Signature**
UCC §§1-201(39), 3-401

E. **Obligations of Indorser**

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F. **Obligations of Drawee**

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2. *Acceptance and Certification*
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UCC §§3-416, 4-207, 3-417, 4-208
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M&H §7.02
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D. **Fraudulent Indorsements by Employees**

UCC §3-405
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E. **Breach of Fiduciary Duty**

UCC §§3-306, 3-307
O.R.C. §§1303.36(C), 1303.37
W&S §16-5
M&H §3.03[2][b][v]
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X. Other Issues

- L Ch. 3 Pt. B(1)
- A. **Effect of Instrument on Underlying Obligation**
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- B. **Lost or Stolen Instruments**
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- C. **Altered and Incomplete Instruments**
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- D. **Procedures and Burden of Establishing Signatures and Holder in Due Course Status**
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 O.R.C. §1303.36
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- I. **Statutes of Limitation and Time/Notice Bar**
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XI. Drawee Bank-Customer Relationships

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5. Death or Incompetence of Customer

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1. Right of Charge-Back or Refund

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1. General

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W&S §§17-1 thru 17-6
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3. Post-dated Checks

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1. **\$100 Availability Rule**
Fed. Res. Regulation CC, 12 C.F.R.
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2. **Local Checks Rule**
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§229.12(b)(1)
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§229.30(a)(1)
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W&S §17-5
L Ch. 5 Pt. E(2)(b)

2. **Forward Collection Test**
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§229.30(a)(2)
M&H §8.04
W&S §17-5
L Ch. 5 Pt. E(2)(c)

PART C: SECURED TRANSACTIONS

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White & Summers, *Uniform Commercial Code* (5th ed. 2000) (W&S)

Statutes and Regulations

Uniform Commercial Code, 2000 Official Text, Article 9 (UCC)

Ohio Revised Code, Title 1309 (specific sections as cited below) (O.R.C.)

Food Security Act of 1985, 7 U.S.C.A. §1631 (1985)

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UCC §1-201(37)
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- A. Rights of the Secured Creditor Against Unsecured Creditors**
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A. Definition of Default in Security Agreement

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B. Collection Rights of Secured Party

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F. Debtor's Right to Redeem Collateral

UCC §9-623
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G. Creditor's Right to Deficiency and Debtor's Right to Surplus

UCC §§9-615, 9-626
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Chapter 4

Constitutional Law

The Constitution of the United States of America has survived for over 200 years as the fundamental law of this nation. Over that period, different approaches to judicial interpretation developed as courts addressed constitutional issues. Major approaches have been a process of logical deduction from the language of the Constitution, an historical focus on the Framers' original intent, a structural understanding of allocation of powers among branches and between the federal and state governments, and a functional effort to implement underlying values.

Constitutional litigation typically involves choosing an approach to judicial interpretation, and lawyers must persuade judges by analysis of the provision, its background, and precedent that a particular approach is preferable. Changed factual situations and contrasting views of public policy fuel that effort and may provide a convincing reason to adopt a new approach or modify a conclusion already reached under a settled approach. Consequently, while this outline sets forth the leading cases in constitutional law for the topic headings, judicial interpretation is dynamic, and these cases, often consisting of majority or plurality, concurring, and dissenting opinions, are building blocks rather than conclusive authority.

I. Powers of Government

A. Federal Judicial Power

1. *Supreme Court - Original Jurisdiction*
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2. *Supreme Court - Appellate and Certiorari Jurisdiction*

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Cooper v. Aaron, 358 U.S. 1 (1958)
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a. Case or Controversy
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Nashville, C & St.L. Ry. v. Wallace, 288 U.S. 249 (1933)

b. Advisory Opinions
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c. Direct Standing
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- Raines v. Bynd*, 117 S.Ct. 2312, 138 L.Ed. 2d 849 (1997)
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- d. Third-party Standing
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- e. Ripeness
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- f. Mootness
Roe v. Wade, 410 U.S. 113 (1973)
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- g. Political Questions
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- h. Abstention
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- i. Self-Restraint
Ashwander v. TVA, 297 U.S. 288 (1936)
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- j. Facial or As-Applied Challenge
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- k. Speech or Debate Clause
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- B. Federal Legislative Power**
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- a. Use of Interstate Commerce
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 - b. Instrumentality of Interstate Commerce
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 - c. Substantially Affecting Interstate Commerce
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 - d. Federalism Constraints
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Printz v. U.S., 138 L.Ed. 2d 914 (1997)
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3. *Dormant Commerce Clause*
- C. Federal Executive Power**
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- a. Relationship to Congress
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 - b. Treaties and Executive Agreements
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- a. Appointment and Removal
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 - c. Veto Power
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 - d. Discretionary Power
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 - e. Executive Privilege
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 - f. Executive Immunity

- Nixon v. Fitzgerald*, 457 U.S. 731 (1982)
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- g. Executive Autonomy
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- D. Federal Regulatory Power**
1. *Non-Delegation Doctrine*
Schechter Poultry Corp. v. U.S., 295 U.S. 495 (1935)
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- E. State Power in Areas of Federal Authority**
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 - a. National Uniformity and Local Diversity
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 - b. Balancing Benefits of and Burdens from Local Regulation
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 - c. Discrimination Against Interstate Commerce
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 - d. Market Participant
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 - a. Consent to State Regulation
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 - b. Preemption
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- c. Imposing Duties on States
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7. *Subsidy Restrictions*
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- c. Endorsement of Religion
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Chapter 5

Contracts

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UCC §§9-102(A)(55), (68), (73); 9-109; 9-201(A), (B), (D); 9-203; 9-205; 9-403; 9-317; 9-309-311; 9-322; 9-324; 9-404-9-406
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Chapter 6

Criminal Law and Criminal Procedure

This outline covers Criminal Law and Criminal Procedure as those courses are usually taught in law schools.

The materials cited covering Criminal Law include the leading casebook Johnson, *Criminal Law* (6th ed. 2000) (Johnson) and leading hornbooks, LaFave and Scott, *Criminal Law* (2d ed. 1986 and 2002 pocket part) (“LaFave”), and Dressler, *Understanding Criminal Law* (2nd ed. 1995) (“Dressler”).

The materials cited covering Criminal Procedure include the leading casebook, LaFave, Israel and King, *Modern Criminal Procedure* (3rd ed. 2000) (“LaFave & Israel”), and a leading hornbook, Whitebread, *Criminal Procedure* (4th ed. 2000) (“Whitebread”).

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C. **Conspiracy**
LaFave, §§6.4-6.5
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Chapter 8

Property

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Chapter 9

Torts

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Chapter 10

Wills and Intestate Succession

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O.Jur.3d, §§728-734

B. Killers

Andersen §25

O.Jur.3d, §264