

§tudicata

Attack Outline

Uniform Bar Exam / Multistate Essay Exam

February 2020



Studicata UBE/MEE Attack Outline

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INTRODUCTION

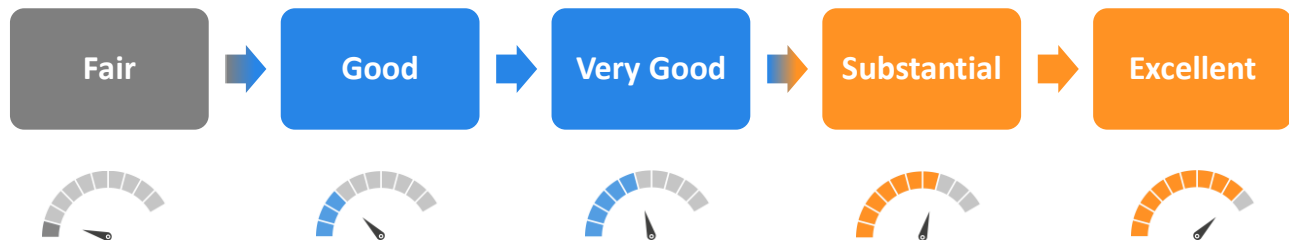
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RULE APPEARANCE RATES

Our outline includes an appearance rate (%) for each rule. This percentage represents the percent of prior exams that the featured rule has appeared on. For example, if a rule has a 2.0% appearance rate, it has appeared on approximately 2.0% of previously administered MEEs (over the last 20+ years). Rule appearance rates are a main factor in how we determine the priorities in the following section.

PRIORITY LEGEND

Grey meters represent a fair chance of the rule being tested on the Feb 2020 MEE; blue meters represent a good to very good chance of the rule being tested on the Feb 2020 MEE; and orange meters represent a substantial to excellent chance of the rule being tested on the Feb 2020 MEE. While this is handy, **ALL** rules featured in this outline are notable and none should be neglected.



BUSINESS ASSOCIATIONS

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Agency and Partnership

NOTE: The MEE classifies Agency and Partnership as one subject. Essay questions may contain agency or partnership issues, or elements of both. Be prepared to identify agency issues that may appear as sub-parts of questions testing other subjects.

I. Agency Relationships

A. Creation



1. Creation of Agency

8.2% Appearance Rate

- a) Agency is the **fiduciary relationship** that exists between an **agent** and **principal** where the agent acts on the principal's behalf and is subject to the principal's control.
- b) An agency relationship is created when:
 - (1) The parties voluntarily **consent** (express or implied) to enter into an agency relationship; **AND**
 - (2) The agent is subject to the principal's **control** (e.g., supervision is sufficient – the amount of control may be limited).

B. Termination



1. Termination of Agency

6.1% Appearance Rate

- a) The agency relationship may be terminated by the parties or by operation of law.
 - (1) The agency relationship may be **terminated by the parties** if:
 - (a) The agent or principal manifests to the other the desire to cease the agency relationship (termination is effective when the other party receives notice of the termination);
 - (b) The express terms of the agency expire (e.g., principal expressly hires agent for 6 months); **OR**
 - (c) The purpose of the agency relationship is fulfilled.
 - (2) The agency relationship may be **terminated by operation of law** if:
 - (a) The agent or principal dies (some jurisdictions require that the party receive notice of the other's death);
 - (b) The agent or principal loses capacity (some jurisdictions require that the party receive notice of the other's incapacity); **OR**
 - (c) The agent materially breaches a fiduciary duty owed to the principal.

II. Power of Agent to Bind Principal

A. Authority



1. Authority of Agent to Bind Principal

24.5% Appearance Rate

- a) An agent may bind a principal to a contract if the agent is acting within his **actual** or **apparent authority**, or **inherent agency power**. Once a principal is validly bound to a contract by his agent, the principal is liable under the terms of the contract.



2. Actual Authority

10.2% Appearance Rate

- a) An agent acts with **actual authority** when, at the time of taking action that has legal consequences for the principal, the agent **reasonably believes**, in accordance with the principal's manifestations to the agent, that the principal wishes him (the agent) to act.
- b) Actual authority can be **express** or **implied**:
 - (1) **Actual express authority** exists when the principal directs the agent to engage in the precise task in question.
 - (2) **Actual implied authority** exists when the agent believes, based on a **reasonable interpretation** of the principal's words or conduct, that the principal wishes him (the agent) to act on the principal's behalf.
 - (a) **Incidental authority.** The agent's authority to conduct a transaction includes the authority to engage in actions that are incidental to it, usually accompany it, or are reasonably necessary to accomplish it.
 - (b) **For Example:** Principal tells Agent, "Sell my car." Agent has the authority to take actions that are reasonably necessary to sell the car (e.g., placing advertisements in the newspaper, listing the car for sale on auto trader websites, etc.).



3. Apparent Authority

24.5% Appearance Rate

- a) An agent acts with **apparent authority** when:
 - (1) The principal **holds the agent out as having authority** to act on the principal's behalf; **AND**
 - (2) The principal's conduct, when **reasonably interpreted**, causes a third party to rely on the agent's appearance of authority when dealing with the agent.
- b) Apparent authority does **NOT** exist if the third party has knowledge that the agent does not have actual authority.

B. Inherent Agency Power



1. Inherent Agency Power

6.1% Appearance Rate

- a) Pursuant to equitable considerations, the **inherent agency power** allows courts to hold a principal liable for damages to third parties even when the principal's agent acted **WITHOUT** actual or apparent authority. Courts apply the inherent agency power when:
 - (1) An **agency relationship exists**; **AND**
 - (2) The **totality of the circumstances** weighs against forcing the third party to absorb all of the damages.
- b) **Undisclosed Principals.** Courts commonly apply the inherent agency power to hold a principal liable for his agent's unauthorized actions **when the principal is undisclosed to the third party** so long as the totality of the circumstances weighs against forcing the third party to absorb the damages.
- c) **NOTE.** An agent for an **undisclosed principal CANNOT** have apparent authority because the principal cannot hold the agent out as having authority to a third party if the third party is unaware of the principal.

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BUSINESS ASSOCIATIONS

AGENCY RELATIONSHIPS

CREATION: An agency relationship is created when:

1. The parties voluntarily consent to enter into an agency relationship; **AND**
2. The agent is subject to the principal's control.

TERMINATION: The agency relationship may be terminated by the parties if the:

1. Agent or principal manifests to the other the desire to cease the agency relationship;
2. Express terms of the agency expire; **OR**
3. Purpose of the agency relationship is fulfilled.

The agency relationship may be terminated by operation of law if the:

1. Agent or principal dies;
2. Agent or principal loses capacity; **OR**
3. Agent materially breaches a fiduciary duty owed to the principal.

AUTHORITY TO BIND PRINCIPAL: An agent may bind a principal to a contract if the agent is acting within his actual or apparent authority. Once a principal is validly bound to a contract by his agent, the principal is liable under the terms of the contract.

ACTUAL AUTHORITY: An agent acts with actual authority (express or implied) when the agent reasonably believes, in accordance with the principal's manifestations to the agent, that the principal wishes the agent to act.

Express Authority. Actual express authority exists when the principal directs the agent to engage in the precise task in question.

Implied Authority. Actual implied authority exists when the agent believes, based on a reasonable interpretation of the principal's words or conduct, that the principal wishes the agent to act on his behalf.

APPARENT AUTHORITY: An agent acts with apparent authority when:

1. The principal holds the agent out as having authority to act on the principal's behalf; **AND**
2. The principal's conduct, when reasonably interpreted, causes a third party to rely on the agent's appearance of authority when dealing with the agent.

PRINCIPAL/AGENT VICARIOUS LIABILITY

RESPONDEAT SUPERIOR: An employer (principal) may be liable for torts committed by an employee (agent) if:

1. An employer-employee relationship exists; **AND**
2. The employee's commission of the tort occurs within the scope of employment.

INDEPENDENT CONTRACTORS: Generally, a principal is not liable in tort for the unauthorized conduct of an independent contractor. The principal's amount of control over the agent is

the key factor in determining whether an agent is an independent contractor. Other relevant factors include:

1. The nature of the work
2. The skill required in the particular occupation;
3. Who supplies the equipment or tools to perform the work;
4. The method of payment (hourly, salary, etc.);
5. The length of the employment; **AND**
6. How the parties characterize the transaction.

PARTNERSHIP TYPES AND FORMATION

GENERAL PARTNERSHIP (GP): A GP is a type of partnership that has no limited personal liability. A GP is formed when:

1. Two or more person;
2. Associate as co-owners;
3. To carry on a business for profit.

LIMITED PARTNERSHIP (LP): An LP consists of one or more general partners and one or more limited partners. General partners remain personally, jointly and severally liable for all debts of the LP, while limited partners are personally liable for debts only to the extent of their investment in the LP.

Formation. An LP is formed when a written certificate of limited partnership is executed in substantial compliance with state law and filed with the secretary of state.

LIMITED LIABILITY PARTNERSHIP (LLP): An LLP limits a partner's potential liability for professional malpractice that is committed by another partner. Any partnership may become an LLP upon the:

1. Approval of the partners by vote; **AND**
2. Filing a statement of qualification with the secretary of state.

PARTNERSHIP LIABILITY

TORT LIABILITY: General partners are jointly and severally liable for all obligations of the partnership arising from any wrongful act or omission of any partner acting:

1. Within the ordinary course of business; **OR**
2. With the authority of all other partners.

Limited partners are not personally liable for obligations of the LP arising from the wrongful acts or omissions of other partners (they are always liable for their own misconduct).

CONTRACT LIABILITY: Each partner is an agent of the partnership. Therefore, the actions of every partner that are made within the ordinary course of business to carry on the partnership's business bind the partnership, unless the partner taking the action:

1. Has no authority to act on behalf of the partnership; **AND**
2. The other side has knowledge or notice that the partner lacks authority.

DUTIES OF THE PARTNERS

DUTY OF CARE: Each partner owes a limited fiduciary duty of

care to the partnership and other partners, which requires that each partner refrain from engaging in:

1. Grossly negligent or reckless conduct;
2. Intentional misconduct; **OR**
3. A knowing violation of the law.

DUTY OF LOYALTY: Each partner owes a fiduciary duty of loyalty to the partnership and other partners, which requires that each partner:

1. Act in good faith and fairly toward the other partners;
2. Account for any property, profit, or benefit derived by the partner from the partnership business; **AND**
3. Refrain from:
 - a. Competing with the partnership; **AND**
 - b. Usurping a business opportunity that properly belongs to the partnership.

EFFECT OF BREACH: If a partner breaches the duty of care or loyalty, he may be held personally liable for damages.

PARTNERSHIP DISSOLUTION

DISSOLUTION: Dissolution of a partnership does not immediately terminate the partnership. Rather, the partnership enters a “winding up” phase, which continues until the winding up of the partnership’s affairs is completed.

CAUSES: There are three main causes of dissolution

1. Actions taken by the partners (e.g., dissociation);
2. Operation of law (e.g., the partnership’s business becomes illegal); **OR**
3. Court order (e.g., a judicial dissolution may be granted if it becomes impracticable to continue the partnership’s business).

UNIFORM PARTNERSHIP ACT (UPA): Under the UPA, any change in partner membership automatically triggers dissolution of the partnership unless there is an agreement to the contrary.

REVISED UNIFORM PARTNERSHIP ACT (RUPA): Under RUPA, absent an agreement to the contrary, the “disassociation” (occurs when a partner ceases his association with carrying on the partnership business) of a partner does not automatically trigger dissolution unless:

1. The partnership is an at-will partnership; **OR**
2. There is an occurrence of an event that the partners specified in the partnership agreement that would cause dissolution (e.g., term partnerships).

TERM PARTNERSHIPS: Under RUPA, a term partnership may be dissolved before its term expires if:

1. At least half of the partner’s express their will to wind up the business within 90 days after a partner’s disassociation by death, bankruptcy, becoming incapacitated, or wrongful disassociation; **OR**
2. All of the partners agree to amend the partnership agreement by expressly agreeing for dissolution.

CORPORATION FORMATION

ARTICLES OF INCORPORATION: Generally, a corporation is formed when the articles of incorporation are filed with the secretary of state (unless the articles specify a delayed effective date).

Amendments. The articles may be amended if there is a majority vote from the directors and shareholders. However, minor amendments may be made by the board of directors without shareholder approval.

CORPORATE BYLAWS: Corporate bylaws are written rules of conduct that must be initially adopted by the incorporators or board of directors. The bylaws may contain any provision for managing the business and regulating the affairs of the corporation to the extent that is consistent with the law and articles of incorporation. If there is a conflict between the articles and bylaws, the articles of incorporation govern.

Amendments. The bylaws may be amended or repealed by the corporation’s shareholders. The board of directors may also amend or repeal the bylaws unless the shareholders expressly specify otherwise.

PIERCING THE CORPORATE VEIL

GENERAL RULE: Generally, shareholders of a corporation are not personally liable for the debts of the corporation. However, the major exception to this rule is the doctrine of piercing the corporate veil.

PIERCING THE CORPORATE VEIL: Courts will allow a creditor to pierce the corporate veil and hold a shareholder personally liable for the debts of a corporation when:

1. The shareholder has dominated the corporation to the extent that the corporation may be considered the shareholder’s alter ego;
2. The shareholder failed to follow corporate formalities;
3. The corporation was undercapitalized; **OR**
4. There is fraud or illegality present.

EFFECT: Once the corporate veil has been pierced, courts generally hold all of the shareholders liable. However, some courts do not extend liability to passive investors.

SHAREHOLDER RIGHTS

MEETINGS: A corporation must hold an annual meeting of shareholders at a time that is fixed in accordance with the bylaws. Special meetings can be held in certain situations.

Notice. Generally, shareholders who are entitled to vote must be provided with sufficient notice of all annual and special meetings.

Quorum. A quorum must be present in order for the shareholders to take action at a meeting. Unless otherwise set forth in the articles, a quorum exists when at least a majority of the shares entitled to vote are present.

VOTING RIGHTS: The articles may provide that holders of certain types of shares cannot vote unless specific conditions