

BAR EXAM KICK OFF

Session 2: MBE

WORKBOOK

VINCO

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Weekly MBE Tracker

Week Number:

Subject	# of Questions Completed	% Correct	Best Subtopics	Worst Subtopics	Reason I am Getting Questions Wrong	What I Need to Do to Improve
Torts						
Contracts						
Civ Pro						
Property						
Con Law						
Crim/ Crim Pro						
Evidence						

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

Note: This was made by Kerriann during her own bar exam preparation and reflects her strengths, weaknesses and short hand. Kerriann does not guarantee the accuracy of the law provided. This is meant to be an example of how you should break down material yourself.

INTENTIONAL TORTS

Elements of intentional torts: voluntary act, intent, causation, harm, lack of privilege or defense

Intent: desire that the act will cause harmful result described by tort OR knows that is substantially certain that such a result will occur.

Transferred intent: if D acts with the necessary intent to inflict certain intentional torts but for some reason causes injury to a different victim the intent is transferred.

Battery: an intentional act that causes harmful or offensive contact with the P or something closely connected to the P. Something that a reasonable person would regard as harmful or offensive. (P does not have to be aware for a battery to occur)

Assault: intentional act that causes the P to experience a reasonable apprehension of an immediate harmful or offensive contact (has to be aware)

False Imprisonment: intentional act that causes a P to be confined or restrained to a bounded area against the P's will and the P KNOWS of the confinement or is injured thereby (no time frame required)

IIED: intentional or reckless act amounting to extreme and outrageous conduct that causes the P severe mental distress.

Offensive language not considered outrageous unless the P is particularly vulnerable (old, kid, preggo). The distress

MUST be severe. 3rd party bystander: immediate family member or close relative is nearby and aware of P's presence.

Trespass to land: is an intentional act that causes a physical invasion on the P's land. D need only action with the intention to cause a physical invasion of a particular piece of land – not specific intent. Nominal damages awarded if no actual damage is done.

Trespass to Chattels: intentional act by the D that interferes with the P's chattel, causing harm. Chattel: tangible personal property. The interference isn't long term and there has to be actual damages to the chattel. Mistake is a defense. D only liable for the extent of the damage.

Conversion: intentional act by a D that causes the destruction of or a serious and substantial interference with the P's chattel. Mistake is no defense. Longer time, D liable for full value. Bring an action for replevin to get it back.

Defenses: Privilege, Defense of Others, Defense of Property, Consent, Authority (shopkeeper's privilege), Necessity, Self-Defense

NEGLIGENCE

Duty: obligation requiring D to conform to a certain standard of conduct to protect others from unreasonable risk. Foreseeable Ps. Duty to act vs nonfeasance v. duty to rescue. Special relationships and heightened standards of care. Duty to control 3rd parties (parents, negligent hiring, respondeat superior)

Breach: obligation to act as a reasonably prudent person. Statutory: neg per se (type of harm type of person) and heightened standards of care for professionals. Res Ipsa (control)

Injury Causation: but for (actual) foreseeable (proximate). Superseding (cuts off liability) intervening (does not)

IIED		
Elements Required for P Recovery when Conduct Directed at 3rd Party		
Theory 1 1. P must be present when conduct occurs to 3rd party/ victim 2. P must be a close relative of the 3rd party/ victim 3. D is aware of P's presence and 4. P suffers severe emotional distress (whether or not it results in bodily harm)	OR	Theory 2 1. P must be present when conduct occurs 2. P suffers actual bodily harm (a physical manifestation of the emotional distress) and 3. D is aware of P's presence

NIED		
Elements Required for Recovery		
Theory 1 1. P is within the zone of danger and 2. P suffers emotional distress and some accompanying physical manifestation of the emotional distress	OR	Theory 2 1. P is present at the scene AND witnesses the event. 2. P is a close relative of the 3rd party/ victim AND 3. P suffers severe emotional distress due to witnessing event.

Land possessor liability

Invitee –business purpose

Licensee – social guest

Trespasser/ known/unknown distinction

Defenses

Contributory negligence: complete bar. Pure comparative fault: tracks apportionment perfect. Modified comparative fault: D can't recover if he is more than 50% liable.

ECONOMIC TORTS

Intentional Misrepresentation (Fraud): made with scienter, which is material and justifiably relied upon by a P and which causes damages to the P, is actionable. Misrepresentation is an assertion of a false past or present fact.

Negligent Misrepresentation: NOT ACTIONABLE

Interference w/ contractual relations: K has to be in force and effect, be legal, not opposed by public policy

Interference w/ prospective advantage: about expectancy issues

Injurious falsehood: a false statement made to another by the D that causes economic injury to the P.

OTHER TORT CONCEPTS

Vicarious Liability: liability imposed on D b/c of his relationship w/ actual wrongdoer that directly caused injury to the P.

Respondeat Superior: in the scope of employment

Joint & Several Liability: 2 or more Ds acting in concert to injure the P. Can recover from any and all Ds

Contribution: can get \$ from other negligent Ds

Indemnity: first D can recover money from a second D

Satisfaction & Release: when more than one D liable but P recovers fully from one.

STRICT LIABILITY AND PRODUCTS LIABILITY

Animals: wild animals (has to be the type of harm anticipated)

Abnormally Dangerous Activities: think REALLY dangerous not just run of the mill dangerous

Products liability: could be under a theory of negligence OR strict products liability OR Warranty T

Strict Products Liability: proper P, proper D, Defect (design, manufacturing or warning) , actual cause, proximate cause.

Defenses: misuse, contributory negligence, comparative negligence.

NUISANCE

Public Nuisance: Unreasonable interference with a right common to the general public.

Private Nuisance: A thing or activity that substantially and unreasonably interferes with P's use and enjoyment of his land. à watch out for when they come to the nuisance.

DEFAMATION AND INVASION OF PRIVACY

Defamation: defamatory message, certain pleading problems, publication of the message, the type of defamation, damages, common law defenses and constitutional issues.

Libel per quod: libel not apparent on its face

Slander: a defamatory statement NOT preserved in permanent form

Slander per se: 1.) infamous crime, 2.) loathsome disease, 3) sluttiness, 4) profession.

Damages: pecuniary, general damages, punitive

Defenses: truth, absolute privilege (D may not be held liable for otherwise defamatory message as a matter of law), Qualified privilege (a D is not held liable for otherwise defamatory message he utters unless he loses the protection of the privilege)

Inclusion into seclusion : D unreasonably intrudes into the P's seclusion. D 's intrusion must be one that would be highly objectionable to a reasonable person.

Appropriation of identity or likeness: unauthorized use of the P's identity or likeness for D's commercial advantage

Public Disclosure of Private Facts: a public display of private facts is present when a D unreasonably discloses private facts about a P to the public.

Portrayal in a False Light: attributing to the P views he does not hold or attributing actions to him that he did not take, must be such that a reasonable person would find it highly offensive.

Defenses: Truth, Consent, Privilege

A. General

B. Torts

C. Contracts

D. Property

E. Con Law

F. Crim/Crim Pro

G. Evidence

H. Civil Procedure

I. Guessing

MBE

Practice Questions

Please print out these MBE questions as we will review a few of them in our session.

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