

## Professor Heilman's Predictions—July 2026

My predictions are educated guesses based on reviewing the California Bar Examination for more than 30 years. I don't have any special expertise or inside knowledge. I base my predictions on what the bar examination has looked like in the past. The past exams have certain commonalities. First, the exam usually has a balance of multistate and non-multistate subjects. Generally, three to four multistate subjects are tested along with one or two non-multistate subjects. Second, the exam usually includes at least one subject which requires you to address California-specific law. Third, Professional Responsibility is tested in some fashion on almost every exam. Fourth, there is usually at least one cross-over question. And, finally, the exam is intentionally designed to be unpredictable.

Please don't rely too heavily on these predictions or any other predictions. Based on the unpredictability of the exam, **you should study and be prepared to write about every subject—even the subject you hope won't appear on the exam.**

As you will see below, I've placed the subjects in three categories: (1) the subjects I think are most likely; (2) the subjects I think are possible; and, (3) the subjects I think are less likely. But as I've already said, any subject is possible, and you need to study every topic. You can use my predictions (and your own) to help you prioritize in the last days before the exam. For each subject, I try to highlight subtopics which you should consider as part of your final review.

Subjects just tested on a previous exam are slightly less likely to appear on this exam, but the Examiners often repeat one or more subjects. In fact, there are times when a subject is tested several times in a row. Professional Responsibility, of course, is the one subject you should always expect to see on the exam.

### Likely

Professional Responsibility  
Evidence  
Criminal Law and Procedure  
Torts  
Remedies

### Possible

Civil Procedure  
Constitutional Law  
Business Associations  
Wills and Trusts

### Less Likely

Real Property  
Contracts  
Community Property

## Here are the subjects tested on the last ten California Bar Examinations:

### Past Bar Topics

#### July 2021

1. Civil Procedure (Venue; Discovery-- Production of Documents, Motion to Compel; Claim and Issue Preclusion)
2. Professional Responsibility (Duty of Loyalty--Conflict of Interest, Shared Office Space; Inadvertent Disclosure of Document by Employee of Law Office; Duty to Supervise; Duty of Competence; Duty of Diligence)
3. Torts (Respondeat Superior; Independent Contractor; Duty of Care; Statutory Duty; Emergency; Proximate Cause)
4. Crimes/Criminal Procedure (Fifth Amendment—Miranda, Invocation of Right to Counsel; Search of Cell Phone Text Messages; Validity of Stop and Arrest; Automobile Exception; Search Incident to Arrest)
5. Wills/Community Property (Form Will; Will Executed in Another State; Quasi-CP; Omitted Spouse; Pretermitted Child and Omitted Child)

#### February 2022

1. Crimes/Criminal Procedure (Felony Murder; Attempted Murder; Stop and Frisk; Exclusionary Rule)
2. Community Property (Permanent Separation; Premarital Earnings; Disability Payments; Post-Separation Loan)
3. Real Property/Remedies (Nuisance; Trespass to Land; Damages; Injunctive Relief; Nominal Damages)
4. Evidence/Professional Responsibility (Hearsay—Admission of a Party, Declaration Against Interest; Attorney-Client Privilege; Multiple Hearsay; Duty of Confidentiality; Withdrawal)
5. Business Associations (Pre-incorporation contract; Liability of Directors for Breach of Contract; Piercing Corporate Veil; Breach of Fiduciary Duty; Fraud)

#### July 2022

1. Contracts (Sale of Goods; UCC 2-207; Remedies; FOB provision)
2. Constitutional Law (First Amendment; Symbolic Speech in School Setting; Procedural Due Process; Mootness)
3. Professional Responsibility (Amount of Fee; Contingency Fee Arrangement; Scope of Representation-Settlement; Commingling Client Funds; Release of Liability)
4. Business Associations (Closely-Held Corporation; Ultra Vires Acts; Shareholder Voting Agreement; Directors' Duties; Derivative Action)
5. Wills/Community Property (Formal Will; Form Will; Holographic Will; Omitted Child; Quasi-Community Property)

#### February 2023

1. Civil Procedure (Joinder; Discovery—Work Product; Physical Examination)

2. Constitutional Law (Tax and Spend Power; Equal Protection; Organizational Standing)
3. Real Property (Landlord-Tenant—Possession; Holdover Tenant; Quiet Enjoyment; Damages)
4. Professional Responsibility (Duty of Loyalty—Conflict with Former Client and Attorney’s Personal Views; Duty of Confidentiality; Duty of Honesty)
5. Evidence (Hearsay; Lay Opinion; Expert Opinion; Learned Treatise; Prior Inconsistent Statement)

#### July 2023

1. Business Associations (Partnership; Partnership Liability; Liability of Partners for Torts; Implied Partnership)
2. Torts (Products Liability—Strict Products Liability; Negligence; Implied Warranty; Express Warranty; Misrepresentation)
3. Professional Responsibility (Attorney for Organization; Duty of Confidentiality; Duty of Loyalty; Duty to Communicate; Withdrawal)
4. Criminal Law (Burglary; Larceny; Arson; Felony Murder; Involuntary Manslaughter; Necessity; Confessions—Miranda, Due Process, 6<sup>th</sup> Amendment)
5. Remedies (Breach of Contract; Fraud; Reformation; Rescission; Specific Performance; Constructive Trust; Equitable Lien; Lowest Intermediate Balance Rule)

#### February 2024

1. Community Property (Jointly-titled Property; Transmutation; Liability for Loan; Breach of Fiduciary Duty; Business; Permanent Separation; Post-Separation Earnings)
2. Constitutional Law (Dormant Commerce; Privileges and Immunities; Equal Protection)
3. Professional Responsibility (Soliciting Gifts from Client; Paying Lay and Expert Witnesses; Presenting False Evidence; Expressing Personal Views in a Closing Statement)
4. Evidence/Criminal Law & Procedure (6<sup>th</sup> Amendment and Identifications; Prop. 8; Hearsay—Prior Inconsistent Statements; Prior Statement of Identification; Prior Consistent Statement; Business Records; Confrontation Clause)
5. Contracts (UCC; Merchants; Statute of Frauds; Contract Formation; Battle of the Forms; Mistake; Expectation Damages; Consequential Damages)

#### July 2024

1. Business Associations (Duty of Loyalty; Usurping Corporate Opportunity; Duty of Care; Derivative Action)
2. Real Property (Fee Simple Subject to Executory Limitation; Rule Against Perpetuities; Easement)
3. Professional Responsibility (Communication with Represented Party; Duty to Report Misconduct; Fee Splitting; Duty of Loyalty; Duty to Communicate; Scope of Representation)
4. Civil Procedure (Excusing Juror for Cause; Directed Verdict; Motion for a New Trial Based on Newly-Discovered Evidence)
5. Remedies (Compensatory Damages; Punitive Damages; Rescission; Replevin; Constructive Trust; Equitable Lien)

#### February 2025

1. Criminal Law/Criminal Procedure (Arrest; Miranda; 4<sup>th</sup> Amendment-Search and Seizure)
2. Wills and Trusts (Revocation; Codicil; Dependent Relative Revocation; Incorporation by Reference; Charitable Trust—Cy Pres)
3. Real Property (Race-Notice Recording Statute; General Warranty Deed; Fixtures)
4. Contracts/Remedies (Employment Contract; Parol Evidence Rule; Expectation Damages; Reliance Damages)
5. Professional Responsibility (Duty of Loyalty—Third Party Payment; Duty of Confidentiality; Sexual Relations with Client; Business Transaction with Client)

#### February 2025 (Retest)

1. Evidence (California Law; Spousal Testimonial Privilege; Marital Communication Privilege; Hearsay—Statement of a Party; Impeachment; Character Evidence)
2. Community Property (Prenuptial agreement; Pereira/Van Camp; Transmutation—Interspousal Gift)
3. Constitutional Law (Equal Protection; Due Process; First Amendment)
4. Professional Responsibility (Client Trust Fund; Personal Relationship with Opposing Counsel; Frivolous Claim; Withdrawal; Duty of Confidentiality; Duty of Loyalty)
5. Remedies (Preliminary Injunction; Permanent Injunction; Damages)

#### July 2025

1. Wills and Trusts (Testamentary Trust; Charitable Trust; Cy Pres; Trustee's Duties)
2. Torts (Negligence—Landowner's Duties; Negligence; Battery; Self-Defense; Joint Tortfeasors)
3. Business Associations (Partnership; Corporation; Pre-incorporation Contract; Piercing Corporate Veil; Authority)
4. Constitutional Law (Due Process; Equal Protection; Privileges and Immunities)
5. Professional Responsibility/Criminal Law (Duty of Competence; Scope of Representation; Withdrawal; Prosecutor's Duty to Disclose Evidence; Guilty Plea)

#### February 2026

1. Real Property (Waste by Life Tenant; Covenant; Termination of Covenant)
2. Contracts (UCC; Statute of Frauds; Parol Evidence Rule; Mistake; Perfect Tender; As-Is Clause)
3. Professional Responsibility (Attorney's Duty to Report Own Misconduct; Duty to Report Another Attorney's Misconduct; Unauthorized Practice; Advertising)
4. Civil Procedure (Subject Matter Jurisdiction; Personal Jurisdiction; Service of Process; Discovery)
5. Community Property (Inheritance; Transmutation; Van Camp/Pereira; Property purchased with SP and CP)

## **LIKELY SUBJECTS ON THE UPCOMING BAR EXAM:**

### **Professional Responsibility**

Professional Responsibility is tested on almost every single exam. And, the subject is usually tested as a full question. Last July, however, Professional Responsibility was crossed over with Criminal Law/Criminal Procedure. The question involved a criminal matter where a prosecutor asserted a charge which wasn't supported by the facts and later failed to disclose exculpatory evidence. Most of the other Professional Responsibility questions in the last ten exams have involved a civil setting, not a criminal law setting. Don't be surprised by another question involving criminal representation. Be prepared to discuss joint representation of two criminal defendants. This issue hasn't been raised since July 2018. Usually, the attorney begins the joint representation only to discover that the clients' interests are in conflict. This requires the attorney to withdraw from representing both clients because the attorney cannot continue to represent one client whose interests are adverse to a former client. Plus, the attorney may want to use information they learned from representing their former client to help the remaining client. The scenario provides the Examiners with an opportunity to simultaneously raise the duty of loyalty and the duty of confidentiality.

Be prepared for a question where a criminal defense attorney comes into possession of evidence. Make sure you understand the attorney's obligation to turn over the evidence to authorities without disclosing any confidential information. The Examiners occasionally raise issues regarding the types of statements prosecutors and defense attorneys are permitted to make regarding a criminal case.

The duty of confidentiality is raised in almost every Professional Responsibility question. Make sure you understand the differences between the duty of confidentiality and the attorney-client privilege. You should also review the exceptions to the duty of confidentiality and the differences between the ABA and California rules in this regard.

Another frequently tested issue is the duty of loyalty. The Examiners like to ascertain if you know the different ways conflicts of interest can arise. Make sure you are prepared to analyze a fact pattern where there is a conflict between a current client and a former client or where there is a conflict between the attorney's personal interests or business interests and representation of a client.

Another favorite topic of the Examiners is the issue of attorneys' fees, including the amount an attorney can charge. When a question involves the amount of fees, remember that the ABA Rules require fees to be reasonable. Under California law, fees can't be unconscionable. In evaluating fees, courts typically look at the skill and effort needed to do the work, the experience and education of the attorney, and what is customary in the area for the type of work. Review the specific requirements for contingency fees, especially the differences between the ABA and California requirements. You need to understand the rules regarding advancing legal expenses and advancing personal expenses to the client. Remember that the ABA and California rules are different. You should also review the issues raised when a third party pays the client's legal fees, although this topic was tested fairly recently.

Don't be surprised by a question involving an attorney who represents an organization. Remember that the attorney's duty of loyalty is to the organization, not to the individuals who make up the organization. Also, make sure you understand who holds the attorney-client

privilege. The Examiners tested this topic in July 2023. The question involved misconduct by employees of the organization. The question triggered the issue of whether the attorney should “report up” the corporate command chain and whether the attorney was permitted to “report out” the misconduct.

Attorney advertising was recently tested. Remember that an attorney can advertise to the general public or to those in need of specific legal services, but advertising must be truthful and not misleading. Advertising cannot guarantee a result. Make sure you understand the difference between advertising and solicitation.

The Examiners have also tested the issue of sexual relations with a client on numerous occasions, but it seems less likely because it was tested last February.

Make sure you understand when an attorney has an obligation to report misconduct by another attorney. You should also be prepared to discuss the unauthorized practice of law. The fact pattern usually involves an attorney allowing an employee to engage in activities which require the skill and experience of an attorney.

When answering a Professional Responsibility question, you should ordinarily organize your discussion around the various actions or inactions by the attorney. For each action the attorney has taken or failed to take, identify what rules of professional responsibility are triggered by the attorney’s conduct. Also, don’t focus solely on the attorney’s misconduct. If the attorney has done something which is consistent with the rules, you should include that in your answer. However, in many Professional Responsibility questions, most of the attorney’s actions are in violation of the rules. In some essays, you should describe not only how the attorney violated the rules, but also what the attorney should have done in the situation. Where there are differences between the ABA Rules and California law, make sure you clearly explain the differences. Finally, pay close attention to the facts in a Professional Responsibility question and incorporate the facts into your answer. For instance, if there is a conflict of interest, use the facts to show how the interests of the client diverge from the interests of another client or former client.

### **Evidence**

Evidence wasn’t tested on the last two exams. Evidence was last tested in February 2025, but only on the Retest which was only taken by a small number of applicants. Evidence was tested on the previous two February exams in 2023 and 2024. Both the 2024 exam question and the 2025 Retest question involved California law. If Evidence is tested, it will more likely be a question involving the Federal Rules of Evidence.

Hearsay is the most heavily tested topic in Evidence. You should always be prepared for a question testing hearsay and its exceptions. Make sure you understand when an out-of-court statement isn’t hearsay because it isn’t offered for its truth. Watch out for out-of-court statements which are offered to show the effect on the listener and out-of-court statements which are offered as circumstantial evidence of the declarant’s mental state. Don’t be surprised if you encounter an out-of-court statement which isn’t hearsay because it is a legally-operative statement where the proponent is trying to prove that the statement was made, not that it was truthful.

The Examiners frequently test on statements of a party opponent. You should review the different statements which are admissible against the party: the party’s own statement; the adoptive admission; the vicarious admission; and, statements of a co-conspirator. If you see a

statement of a co-conspirator offered against a defendant in a criminal case, make sure you discuss the Confrontation Clause as well as hearsay. Make sure you understand the major hearsay exceptions. If an Evidence question involves a criminal case, watch out for the former testimony exception, the excited utterance exception and the dying declaration exception. Review the other exceptions to the hearsay rule: present sense impressions; statements made for purposes of diagnosis and treatment; statements of the declarant's present state of mind; business records; official records; and, declarations against interest. Review multiple hearsay. This often arises when a party introduces a document such as a report, which contains a statement by someone other than the author of the report.

Be prepared for a question involving character evidence. The topic is usually raised in a question involving a criminal case. Review when character evidence is admissible in criminal versus civil cases. If character evidence is admissible, you should understand how the party offering the character evidence is permitted to prove it—through reputation, opinion or specific acts.

Impeachment is tested frequently. You should review when convictions are admissible for impeachment, the limits on the admission of remote convictions and the way that convictions are proven for impeachment purposes. When a conviction is offered for impeachment purposes you should also note that the record of conviction is hearsay, but it fits within the official records exception. You may also need to address the Best Evidence Rule if the party offers a copy of the conviction. In addition to convictions, a witness can also be impeached by being asked about prior bad acts involving dishonesty, but no extrinsic evidence is permitted. Make sure you understand how a witness can be impeached with evidence of bias or prejudice and how a witness can also be asked about a prior inconsistent statement. Impeachment is one of the areas where there are significant differences between the Federal Rules and California Law, so you need to review the California distinctions.

The Examiners can easily test on either lay or expert opinion testimony. Opinion testimony was last tested in February 2023. Make sure you know those topics on which lay opinion is permitted. Review the requirements for expert opinion testimony, especially the Daubert test used in federal courts.

Review the topic of judicial notice. Make sure you understand the two types of facts which can be judicially noticed: 1. Facts of common knowledge within the community; and, 2. Facts capable of verification by reference to a source of unquestioned authority. Also, review the different treatment of a judicially noticed fact in a criminal case versus a civil case.

The Examiners have frequently tested extrinsic policy exclusions such as proof of liability insurance, subsequent remedial measures, offers to settle, and offers to pay medical and other similar expenses. You should also be prepared to discuss problems with the form of questions, such as leading questions, compound questions and questions which assume facts not in evidence. Form problems are not usually the major thrust of a question, but they can be raised in almost any Evidence question.

Be prepared to discuss the Best Evidence Rule, especially if the Examiners give you an Evidence question involving a civil dispute. Remember that whenever a party is trying to prove the contents of a writing, recording or photograph, the Best Evidence Rule requires the introduction of the original unless there is a satisfactory explanation for the unavailability of the original. Keep in mind that the Federal Rules allow for liberal introduction of duplicates. The

Best Evidence Rule is often tested along with the business records exception in a civil dispute. The Best Evidence Rule is triggered whenever you see a copy being introduced or a witness testifying regarding the contents of a document.

Don't forget the easily-overlooked issue of authentication. Whenever a party is introducing something tangible or evidence of a telephone conversation, authentication is an issue.

Review privileges, especially the psychotherapist-patient privilege, the attorney-client privilege, the spousal privilege and the clergy-penitent privilege. The spousal testimonial privilege and the marital communication privilege were tested on the February Retest, so those topics are somewhat less likely to appear.

Evidence questions always tend to be racehorse questions. Budget your time and don't worry about being conclusory in places.

### **Criminal Law/Criminal Procedure**

Criminal Law/Criminal Procedure seems likely on this exam. The subject wasn't tested in February. The July 2025 exam tested guilty pleas and homicide as a cross-over with Professional Responsibility. Criminal Law/Criminal Procedure was also tested on the exam last February. Although Criminal Law/Criminal Procedure was tested on four of the last six exams two of those questions were cross-over questions. In addition, most of the questions have focused primarily on Criminal Procedure issues.

Be prepared for a question involving accomplice liability or conspiracy. Review the requirements for each and the scope of liability for accomplices and co-conspirators. Make sure you understand the defense of withdrawal if conspiracy is tested. When accomplice liability is tested, the fact pattern usually involves two or three different people who have different mental states. One defendant is acting with intent, another defendant may have suspicions, and the final defendant may be unaware of the criminal activity. The Examiners expect you to analyze which defendants have the requisite mens rea to be convicted of conspiracy or to be held liable as accomplices.

Don't be surprised by a question testing on the inchoate crimes of attempt and solicitation. Remember that attempt is a specific intent crime. Review the potential defense of impossibility and the traditional distinction between factual and legal impossibility. You should also review the merger doctrine with respect to attempt and solicitation.

The Examiners like to test defenses to criminal liability. Review the difference between voluntary and involuntary intoxication. The Examiners haven't tested the insanity defense for a while. Make sure you understand the different tests. Don't forget to review the defenses of duress and necessity. Watch out for a question involving defense of others. Make sure you understand the split in authority on this issue. Most jurisdictions provide a defense as long as the defendant reasonably believes the third party is facing unlawful force. Other jurisdictions provide that the defendant steps into the shoes of the third party and is only permitted to use force if the third party was permitted to use force in self-defense. If the Examiners raise the issue of self-defense, you will also likely need to discuss the split in authority as to whether the defendant has a duty to retreat before using deadly force.

Homicide was tested recently, but a question involving murder or manslaughter is always fair game on the bar exam. Pay particular attention to voluntary manslaughter. Homicide

questions sometimes raise proximate cause issues with various intervening acts occurring after the defendant's actions.

Theft and other property-related crimes have been tested frequently. Review robbery, burglary, larceny and embezzlement and the modern statutory modifications to these crimes.

When Criminal Procedure is tested, you should discuss the Exclusionary Rule even if you conclude that evidence was lawfully seized. You might start your answer by highlighting what the defendant will argue: "Defendant will argue that the knife has to be excluded under the Exclusionary Rule because it was seized in violation of his 4th Amendment rights." Or, "Defendant will argue that his statement has to be excluded under the Exclusionary Rule because it was taken in violation of his 5th Amendment right to be free from compelled self-incrimination and his 6th Amendment right to counsel." Review the exceptions to the Exclusionary Rule: independent source, inevitable discovery, impeachment, good faith and attenuation.

The 4th Amendment is raised in almost every Criminal Procedure question. Review the prerequisites for the 4th Amendment to apply: government conduct which intrudes into a defendant's reasonable expectation of privacy. Watch out for situations where the 4th Amendment does not apply because the defendant knowingly exposed items to public view or because the search occurred in the open fields.

Review the requirements for a valid search warrant: 1. Probable cause; 2. Neutral and detached magistrate; 3. Name with particularity the places to be searched and items to be seized; and, 4. Proper execution. Almost every 4th Amendment question will require you to discuss one or more exceptions to the warrant requirement. Review all of the exceptions, especially search incident to a lawful arrest and consent. Be prepared for a situation where one joint occupant of a home consents to a search. Also, watch out for a situation where a person might have the apparent authority to consent to a search. Don't be surprised by a question involving either the vehicle exception or the inventory exception or both. You should also review the plain view doctrine, exigent circumstances and border searches.

The stop and frisk doctrine hasn't been tested lately. Make sure you understand the distinction between reasonable suspicion and probable cause.

In addition to the 4th Amendment, the other big topic on Criminal Procedure question is the constitutional limitations on interrogation. The Examiners frequently give questions involving Miranda. Make sure you review what custody means for purposes of Miranda. Also, make sure you understand the concept of interrogation—it includes direct questioning as well as any words or conduct designed to elicit an incriminating statement. Review the requirements for a defendant to waive his Miranda rights. Understand what happens when a defendant invokes their right to silence versus their right to counsel under Miranda. Don't forget the public safety exception to Miranda.

Remember that a defendant's statements can also be excluded under the Due Process Clause and the 6th Amendment. Make sure you understand that the 6th Amendment right to counsel is only triggered after the defendant is formally charged by the filing of a criminal complaint or the return of a grand jury indictment.

The Examiners recently tested the Confrontation Clause in the context of an Evidence question. You should review how the Confrontation Clause applies when two defendants are tried jointly and one defendant's out-of-court confession is offered against the other at trial. In

this instance, there is a conflict between one defendant's right to confront and cross examine his accuser and the other defendant's 5th Amendment privilege not to testify.

Make sure you understand when a criminal defendant has a right to jury trial and when the defendant has a right to counsel. These issues haven't been tested for some time. The requirements for a valid guilty plea were tested recently, so this topic is not likely.

The issue of identifications was also recently tested on a cross-over question, so the topic is also unlikely to appear on this exam.

It is unlikely that the death penalty will appear on an essay question. You should still know these basic rules regarding the death penalty: 1. The death penalty cannot be "automatic"; any statute must allow the defendant to put on all mitigating evidence; 2. The death penalty can only be imposed in murder cases and only on a defendant who killed, intended to kill, or participated in a felony in a significant way and death resulted; 3. The death penalty cannot be imposed upon someone who was a minor when the crime was committed.

### **Torts**

Torts wasn't tested on the last exam, but it was on the July 2025 exam. Even though Torts is a favorite topic for the Bar Examiners, it has been tested only a few times in the last ten exams. You should be prepared for a Torts question.

Defamation and invasion of privacy haven't been tested by the Examiners since February 2020. Review the elements of defamation. Review the constitutional limitations on defamation, especially for public officials and public figures, as well as the limitations when a defamatory statement involves a matter of public concern. You should review the different invasion of privacy torts: 1. Intrusion into seclusion; 2. Publication of private facts; 3. Commercial appropriation of name or likeness; and, 4. False light.

Don't be surprised by a products liability question. Review the different theories plaintiffs can assert when they have been injured by a defective product, including strict products liability, negligence, breach of implied warranty and breach of express warranty. Make sure you understand the difference between a strict liability claim which focuses on the product and a negligence claim which focuses more on the conduct of the defendant.

You should also be prepared for a question involving strict liability for abnormally dangerous activities or for maintaining wild animals. These topics aren't raised often, but when they are raised you need to be able to discuss the elements of a strict liability claim.

Negligence was tested last July, but it's such a broad topic it could easily be tested again. Make sure you understand the standard of care for children and when children are held to the adult standard of care. Also, review the situations where a defendant has an affirmative duty to act. You should also understand the standard of care for professionals like doctors or lawyers. Review the standard of care for those with physical disabilities. The Examiners tested the duties of landowners last July so this topic seems less likely. Negligence per se was last tested in July 2021. Make sure you understand the requirements for negligence per se. You should also review the doctrine of *res ipsa loquitur*.

Be prepared to discuss both actual and proximate cause, although causation is usually fairly straightforward. When the Examiners test on proximate cause they typically want you to discuss whether an intervening force is sufficient to cut off the original tortfeasor's responsibility.

Review the intentional tort to the person, especially false imprisonment, assault and battery. Make sure you know the elements of trespass to land, trespass to chattels and conversion. Don't forget the transferred intent doctrine. Be prepared to discuss defenses to intentional torts, such as the shopkeeper's privilege, consent, self-defense, defense of others, duress and necessity. Watch out for a situation where a tortfeasor is mentally ill or a minor.

Malicious prosecution and abuse of process are rarely tested, but don't ignore them. When those topics arise, they may account for one fourth to one third of the points for that question. You should at least know the elements of these torts.

Don't forget to review the elements of fraud and negligent misrepresentation. These topics have been tested on several occasions, including on the Remedies question in July 2023.

Finally, make sure you understand vicarious liability, especially respondeat superior.

### **Remedies**

Although Remedies didn't appear as a full question on the February exam, there were Remedies issues in both the Real Property and Contract questions. Remedies is tested frequently because it is so easy to add a Remedies issue to a Torts, Contracts or Real Property essay. But Remedies is also tested separately. Don't be surprised by a full Remedies question.

Make sure you review the requirements for damages. They need to be: 1. foreseeable, 2. caused by the defendant's conduct, 3. reasonably certain and 4. unavoidable. The certainty requirement means that damages cannot be speculative. On several occasions, the Examiners have raised situations where a plaintiff suffers lost profits from a competition or a new venture. Damages in these situations are generally not recoverable because they are too speculative. Also, remember that damages have to be unavoidable. This requires the injured party to take reasonable steps to mitigate his or her losses.

The Examiners frequently test on the remedies available when a wrongdoer acquires property through conversion, larceny, embezzlement or fraud. This type of question was given in October 2020, July 2023 and July 2024. When the Examiners give a question like this, you need to discuss the requirements for a constructive trust and an equitable lien. Make sure you understand tracing. You should also review what happens when the wrongdoer commingles funds acquired from his wrongdoing with his personal funds. In this context, you may need to discuss the lowest intermediate balance rule.

Even though the Examiners have recently tested the issue of injunctive relief, the topic is a frequently tested one. Make sure you understand the differences between a TRO and a preliminary injunction, including the time limits for TROs. Also, review the requirements for a permanent injunction. When equitable remedies like injunction are tested, the Examiners often raise defenses to equitable relief such as laches or unclean hands.

Contract remedies seem like a less likely subject because the Examiners have tested this topic so frequently. Nevertheless, you should always be prepared for a question involving specific performance. Make sure you understand the difference between expectation damages and consequential damages. You should also be able to recognize incidental damages. Review the test for liquidated damages. Reformation and rescission are tested occasionally. Rescission was tested fairly recently, so it seems less likely to appear on this exam. Reformation is usually tested in the context of a contract or deed which contains typographical errors.

## POSSIBLE SUBJECTS

### Civil Procedure

Civil Procedure was tested on the last exam. Prior to that the subject was tested in July 2024, but that was an unusual question which didn't test core Civil Procedure issues. I wouldn't be surprised if the Examiners repeated Civil Procedure on this exam.

Given the importance of personal jurisdiction, you should be prepared for a question involving the topic, even though it was tested on the last exam. Make sure you understand the traditional methods of personal jurisdiction as well as the approach permitted under International Shoe. Review the difference between general jurisdiction and specific jurisdiction. You should also review how a defendant challenges personal jurisdiction in state court versus federal court. In a California state court, the defendant can make a special appearance to challenge personal jurisdiction. In federal court, a defendant can combine a challenge to personal jurisdiction with other challenges in a Rule 12 motion.

Subject matter jurisdiction in federal court is a frequently tested topic. Typically, the Examiners are testing some aspect of diversity jurisdiction. Make sure you understand how a court determines the citizenship of individuals and corporations. You should also review how the amount in controversy is determined. Courts look at the good faith allegations of the plaintiff's complaint; what the plaintiff ultimately recovers doesn't matter when determining the amount in controversy. Make sure you understand how a court determines the value of a claim when the plaintiff is seeking specific performance or injunctive relief. You should also review when a plaintiff is permitted to aggregate claims to meet the amount in controversy. But even when a case triggers diversity jurisdiction, it is a good idea to explain why the dispute doesn't satisfy federal question jurisdiction. Occasionally, the Examiners will test subject matter jurisdiction by giving you a fact pattern where the case is filed in state court, but the defendant removes it to federal court. A dispute can only be removed from state court to federal court if the dispute fits within the subject matter jurisdiction of the federal courts. Finally with respect to subject matter jurisdiction, remember that the issue can be raised at any time, even on appeal.

The Examiners have frequently tested venue in both federal and state courts. Make sure you know the rules for venue, especially in federal court. Remember to review how venue can be changed in federal court.

Review the requirements for a valid complaint in federal court. Don't be surprised by a question involving an amendment to a complaint and whether the amendment relates back to the filing of the original complaint. This has been tested on several occasions. Watch out for the situation where the amendment adds a new claim or a new defendant after the statute of limitations has run.

Collateral estoppel and res judicata have only been tested once in the last 10 years. Review the approach of federal courts with respect to res judicata versus the "primary rights" approach under California law. Make sure you understand the requirements for collateral estoppel. You should also understand non-mutual collateral estoppel and when it is permitted.

Review the different ways parties can be added to a lawsuit, particularly impleader. When impleader is tested, the Examiners frequently test on supplemental jurisdiction. Also, make sure you understand when a person can intervene in a lawsuit. Intervention is rarely

tested, but when it is, the Examiners expect you to know the difference between intervention as of right and permissive intervention. Compulsory joinder under Rule 19 was tested most recently in February 2023, but it is a topic which gets tested on a regular basis.

The Examiners have also frequently tested on issues involving appeals, especially the final judgment rule. Remember that a party cannot appeal until there is a final judgment unless one of the limited exceptions to the rule is triggered. Make sure you review the time limits for filing an appeal.

The topic of discovery has been tested on so many of the recent Civil Procedure questions that it seem unlikely to appear on the exam. Nevertheless, you should still review the broad scope of discovery. Make sure you understand the different discovery mechanisms, including their limitations. Review the different sanctions which can be imposed for noncompliance with discovery obligations. Although most discovery can be conducted without a court order, a mental or physical examination of a party requires a court order. When discovery is tested, the work product privilege is often raised by the Examiners.

Issues involving a civil jury were tested in July 2024, but the question involved when a juror should be excused for cause, not the more commonly tested issue of when does a party have a right to jury trial. Make sure you understand that the 7th Amendment guarantees a right to jury trial only for actions at law, and not actions in equity. Review the difference between a legal claim and an equitable claim. Also, remember the “clean up” doctrine does not apply in federal courts. In federal courts, legal claims must be tried first to preserve the right to a jury trial.

### **Constitutional Law**

Constitutional Law wasn't tested on the February exam, but it was tested last July. It was also tested in February 2023, February 2024 and on the Retest in February 2025. Because the subject has been heavily tested recently, it seems less likely on this exam. However, I'm putting Constitutional Law in the possible category because it's such an important topic and it wasn't on the last exam.

The most recent questions have focused on Equal Protection and Due Process. If Constitutional Law is tested, a question involving the First Amendment, especially freedom of expression, seems likely. Make sure you review those categories of speech which are not protected by the First Amendment, such as fighting words, obscenity and advocacy of imminent lawless action. You should also review the standard for regulating commercial speech, especially the standards for signs and billboards. Be ready for a question involving time, place and manner restrictions in a public forum or a limited public forum. You should also understand when the government can regulate conduct associated with free speech activities.

You should be prepared for a question involving the Free Exercise and Establishment Clauses. These topics have been tested heavily in the last 10 years.

The Commerce Clause is another frequently tested topic. The last time the topic was tested the Examiners gave a question involving the Dormant Commerce Clause. You should be prepared for a question involving the scope of federal power under the Commerce Clause. Remember that Congress has plenary power over interstate commerce. This gives Congress the power to regulate interstate commerce, the channels and instrumentalities of interstate commerce, and even intrastate activities which affect interstate commerce. Make sure you

understand the limitations on the broad scope of congressional power under the Commerce Clause.

Review the Supremacy Clause and the different ways federal law can preempt state law. You should also understand the prohibition on the federal government “commandeering” a state agency. The 10<sup>th</sup> Amendment is rarely the main focus of a question, but it has been tested on several occasions.

You should always be ready to discuss the justiciability requirements of ripeness, mootness and standing.

Equal protection has been tested frequently, including last July. Although the topic seems unlikely, you should always be prepared for a question raising equal protection. Make sure you understand the different classifications and the standards of review. When you are analyzing an equal protection issue, make sure you explain whether the challenger or the government has the burden. Be prepared for a question involving a gender classification or a classification based on national origin. Also, be ready for a question where the government has enacted a policy which is not discriminatory on its face, but the policy has a disproportionate impact on a protected class and it was enacted for a discriminatory reason. Remember to raise an equal protection issue whenever the government is classifying in some way, even though there is no suspect or quasi-suspect class. For example, if a state is discriminating based on income, you should still discuss equal protection and apply rational basis review.

The Due Process Clause was tested last July. The topic was also tested in July 2022 and in February 2025 on the Retest. I doubt that you will see a Due Process Clause question. You should still review the topic since it is so easy to raise a due process issue in a question focusing on other issues. You should be ready for a procedural due process issue. Review what interests are classified as liberty interests and what interests are classified as property interests. The Examiners usually give you a fact pattern where a person loses public education, government employment or government benefits without notice or a hearing.

Separation of powers hasn’t been tested recently, but it probably isn’t a likely topic. You should still be prepared for a question where Congress has delegated its legislative power to an Executive branch agency. Congress can delegate its legislative power provided Congress has provided an intelligible principle to guide the agency. The Examiners could also give you a question where the President has taken an executive action potentially in conflict with the views of Congress. The Examiners could ask a question involving the scope of the President’s power, for instance, where the President acts in the face of Congressional silence or disapproval especially in the realm of foreign affairs or the military. But if this type of question is asked, the facts will steer clear of current events.

The Examiners will probably not test on the right of privacy. If they do, the question will likely focus on something like household size, rather than on contraception, marriage or abortion.

Constitutional Law questions frequently involve a limited number of issues. Sometimes you will need to discuss the same topic several times. For instance, you might have an Equal Protection Clause question with different parties challenging different classifications. Don’t be surprised if the same claim is raised several times within an essay.

## **Business Associations (Corporations, Partnership, Agency)**

Business Associations has been tested on the last three July bar examinations, but I don't suspect this pattern will continue. The subject seems somewhat less likely because of how frequently it has been tested.

Even though Business Associations seems less likely, you should be ready for a cross-over question involving Agency. The Examiners could easily give a Torts question involving the liability of someone who was hired as an independent contractor. The Examiners have also given several cross-over questions involving Agency and Professional Responsibility.

Make sure you review the basic requirements for the establishment of an agency relationship, including who can be a principal and who can serve as an agent.

You should also be prepared for a question involving whether a business partner or corporate director has authority to enter into contracts on behalf of the partnership or corporation. Make sure you understand the issue of lingering authority where an agency is terminated but third parties are unaware of the termination.

Partnership has been tested on two of the last three Business Association questions. Be prepared for a question asking you about how partnerships can be established. You should always be ready for a question involving the obligations partners owed to one another, such as the obligation to make the books and records available for inspection. The Examiners also like to test on the liability of a partnership for a contract entered into by a partner or for a tort committed by a partner.

Occasionally, Partnership questions require you to understand the differences between types of partnerships and how partnerships are different from corporations. Review the difference between a limited partnership and a general partnership. Also, make sure you understand the requirements for establishing each type of partnership entity. Don't forget to review the issues involved when one partner wishes to withdraw from the partnership.

If Corporations is tested, you should be ready for a question involving the requirements for corporate formation. Be prepared to explain the requirements for a valid de jure corporation as well as the related issues of a de facto corporation and corporation by estoppel. With this type of question, the Examiners frequently raise the issue of pre-incorporation contracts, but that issue is less likely since it was tested last July.

You should always be prepared for a question involving the duties of officers and directors of the corporation. This topic was tested on the July 2024 Business Associations question, but the topic is tested repeatedly. Review the duty of loyalty and the duty of care. Remember the different ways a director or officer can breach the duty of loyalty: the director could usurp a corporate opportunity; engage in an interested director transaction; or compete with the corporation. Make sure you understand the business judgment rule and how it acts as a defense when a director is accused of breaching the duty of care.

You should understand the rules regarding indemnification of officers and directors, specifically when the corporation must indemnify, when the corporation may indemnify and when the corporation is prohibited from indemnifying a director or officer.

Review the basics of corporate governance. Remember that the governing documents of a corporation are the Articles of Incorporation and the Bylaws. Review who has the authority to call a special meeting of the board. Make sure you understand the rules regarding fundamental corporate changes. You should also review the issues involving the dissolution of a corporation.

The issue of when creditors can pierce the corporate veil was tested recently, but you should still review the typical situations where shareholders can be held personally liable. Also, be prepared to explain the requirements for a derivative suit. The Examiners recently tested the issue of ultra vires acts. You should review it, but it isn't a likely topic on this exam.

### **Wills/Trusts**

Wills and Trusts wasn't tested on the last exam, but it still seems somewhat unlikely because it was tested on both exams in 2025. If Wills and Trusts is tested, a question involving Wills seems more likely because both exams in 2025 tested Trusts as well as Will.

You should always be prepared for a question involving the requirements for a valid will. Make sure you know the requirements for witnesses, especially the issue of the interested witness. Make sure you understand the different ways undue influence can arise. Also, remember that even when all the formalities for a will are not satisfied, a will can still be admitted to probate if there is clear and convincing evidence that the testator intended for the document to be his will. Review the requirements for a valid holographic will and the requirements for a form will, although both of these issues were recently tested. You should also review the rules regarding wills executed in another jurisdiction even though that issue was also recently tested.

Review the difference between a general bequest and a specific bequest. This is usually raised when the testator leaves stock or a vehicle to someone in the will. If the will refers to "my" shares of stock or "my" vehicle, this would traditionally make the gift a specific bequest. If the stock or vehicle is not in the testator's estate at death, the gift would be adeemed by extinction. Modernly, courts often try to save a specific gift from ademption by focusing on the testator's intent or by characterizing the gift as a general bequest.

The Examiners frequently test the issues of lapse and anti-lapse. You should be able to explain when gifts are saved by the anti-lapse statute. Advancement and satisfaction are testable topics, but they are rarely raised.

Make sure you review the rules regarding pretermitted children, omitted children and omitted spouses.

Review the basics of intestate succession. You might be faced with a fact pattern where there is a valid will, but the residual beneficiary predeceases the testator. If the residuary gift isn't saved by the anti-lapse statute, the residuary passes through intestacy. Or, you might be faced with a will which doesn't cover the testator's entire estate. The rules of intestacy are also relevant with respect to pretermitted children who are entitled to their intestate share.

Revocation and Dependent Relative Revocation (DRR) were tested last February so these topics are somewhat less likely. You should still understand that DRR is utilized when the testator revokes a will under a mistaken belief that a new testamentary disposition is valid. If the new disposition is invalid, the revoked will or revoked provision is restored so long as that is consistent with the testator's intent. DRR is usually raised in a fact pattern where a testator crosses out a provision in a will and attempts to increase the gift by interlineation. This was the exact scenario raised in the Wills/Trusts question last February.

Revival isn't tested as frequently as DRR. Revival arises when the testator's first will is revoked by a second will. The testator then revokes the second will. The issue is whether the first will is revived. Once again, a court will focus on ascertaining the testator's intent. A court

will revive the first will if it appears that the testator intended to revive the first will by revoking the second will.

If Trusts is tested, be prepared to discuss the requirements for a valid trust. A trust requires a settlor, identifiable beneficiaries, a trustee, intent to create a trust, a trust res, and a valid trust purpose. Note that the settlor can also be the beneficiary and the trustee for a trust. This is typically the case where a settlor creates an inter vivos trust for his or her own benefit. The Examiners have occasionally tested the use of “precatory language” and when that is sufficient to establish a valid trust.

The Examiners frequently test on the powers and duties of Trustees as they did on the most recent Wills and Trusts question. Review the duty of loyalty and issues involving self-dealing. Unlike Corporations where some interested director transactions are permitted, in the Trusts context, all self-dealing is prohibited even when it appears to be beneficial to the trust. You should also understand when a trust creates mandatory duties for the trustee and when the trustee has discretion. Review the specific obligations of trustees to account, to make the trust property productive, and to earmark trust property. Make sure you understand the types of investments trustees are permitted to make including the use of statutory lists in some states. Review the trustee’s obligation to diversify the trust assets. Watch out for the commonly-tested situation where a trustee invests most of the trust assets in some new or risky venture. Make sure you review the trustee’s duty to personally perform. This is usually raised where there are multiple trustees, and one improperly delegates all responsibility to the other trustees. Also, review the powers that trustees have and the limitation on those powers.

Review the different types of trusts. Make sure you understand the difference between an inter vivos trust and a testamentary trust. Be prepared for the pour over situation where a testator drafts a will which leaves money or property to an existing trust. Be prepared for a spendthrift trust. Remember with a spendthrift trust, ordinary creditors cannot reach the principal, however, there are exceptions for creditors who have supplied necessities, government creditors who are seeking taxes, and creditors trying to enforce child or spousal support obligations.

Make sure you review the difference between a secret trust and a semi-secret trust. Remember that neither is a valid trust, but they trigger different remedies. The remedy for a secret trust is a constructive trust for the intended beneficiary, whereas the remedy for a semi-secret trust is a resulting trust for the settlor or settlor’s heirs.

The Examiners have rarely tested the issues of modification and termination of a trust. You should still review when and how a trust can be modified.

While more frequently raised in a Remedies question, you should have a good understanding of the different types of remedial trusts: constructive trusts and resulting trusts, especially the purchase money resulting trust.

## **LESS LIKELY SUBJECTS**

### **Real Property**

Real Property is unlikely. The subject was tested on the last exam. In fact, Real Property was tested on three of the last four exams. The recent questions were challenging. The question in July 2024 involved a fee simple subject to an executory limitation and the Rule Against

Perpetuities, topics we haven't seen tested before on the essay portion of the exam. The rest of the question was a fairly standard question involving easements. In February 2025, the question involved recording statutes and the covenants in a general warranty deed. In February 2026, the question was a more traditional question involving a life estate, waste and a covenant.

If Real Property is tested, don't be surprised by a basic landlord-tenant question. Make sure you review the different types of leases. Make sure you understand the commonly-tested issues of the implied warranty of habitability, the covenant of quiet enjoyment and the repair-and-deduct remedy. Be prepared for a question involving a sublease or an assignment. These topics haven't been tested for some time. Make sure you understand the concepts of privity of estate and privity of contract.

Another frequently-tested topic is concurrent estates. Be prepared for a question involving a concurrent estate, such as a joint tenancy or a tenancy in common. Make sure you understand the four unities needed for a joint tenancy. When the Examiners test concurrent estates, they frequently test on the rights and responsibilities of those who own as joint tenants or tenants in common. Make sure you understand whether a co-owner has responsibility for repairs, improvements, mortgages and taxes. Review the rights of co-owners to rental income derived from a co-owned property. You should also understand what happens when a joint tenant borrows against his or her interest in a joint tenancy. Most jurisdictions follow the "lien theory," which means that the loan does not sever the joint tenancy. Some jurisdictions, however, follow the "title theory," whereby a loan severs the joint tenancy. Remember that one co-tenant can't adversely possess against another co-tenant without evidence of an ouster. You should also review partition, and the difference between partition in kind and partition by sale.

Be ready to discuss adverse possession. Make sure you understand the requirements for adverse possession. If you see a statute of limitations in a Real Property question it is often a trigger for a discussion of adverse possession or the related topic of easement by prescription. When the Examiners don't provide a time period in an adverse possession question you should explain that the statutory period varies from jurisdiction to jurisdiction. Be prepared to discuss the details of adverse possessions such as tacking and tolling. You should also understand how courts deal with the issue of vacation or seasonal property.

Make sure you understand the Takings Clause. Review the different ways a taking can occur, especially the notion that a government regulation can be a taking if it deprives the owner of all reasonable economic value of the property. You should understand what exactions are and the Nollan-Dolan standard for determining whether they are takings of property. Also, make sure you have a basic understanding of zoning and what a non-conforming use is.

Be prepared for a question involving easements. Review the different ways easements can be created, especially easements by reservation, easements by prescription and easements by necessity. Make sure you understand the difference between an easement appurtenant and an easement in gross. The Examiners tested on covenants on the last exam, so this topic is unlikely.

The topic of nuisance is tested often. When nuisance is tested, it is usually a cross-over question with Remedies. Be prepared to discuss injunctive relief. Also, make sure you understand the difference between a public nuisance and a private nuisance.

Review the requirements for a valid conveyance, including the issue of delivery. The Examiners have recently tested issues relating to a general warranty deed, so that topic seems

unlikely. It's also unlikely that the Examiners will raise the issue of recording statutes on an essay because that topic was also tested recently.

The topic of mortgages was tested recently so it is also unlikely to appear on an essay. You should still review the topic, especially the order of priority when there are multiple mortgages.

Don't forget to review the rules regarding lateral and subjacent support. These issues aren't tested often, but when they appear on the exam they may be a significant part of your score.

### **Contracts**

Contracts was tested on the last exam. It was also tested on the February 2024 and February 2025 exams. Contracts seems unlikely on this exam. If it does appear, a common law question seems more likely because two of the three recent questions involved the UCC.

Issues involving contract formation are frequently tested. Review the requirements for a valid offer. Also, make sure you understand the different ways an offer can be terminated. Don't be surprised by a question involving an option contract or a merchant's firm offer. Watch out for a question involving an attempted revocation of the offer before the expiration of the option period. With formation questions, you should always be prepared for a question involving the mailbox rule or a question where there is an acceptance with an attempted revocation designed to overtake the acceptance. Make sure you understand the difference between acceptance under the common law (the mirror image rule) and the UCC (a reasonable assent). The Examiners frequently test on UCC 2-207 and the battle of the forms as they did in 2024. Make sure you are comfortable explaining UCC 2-207 and applying it to a set of facts.

Consideration is rarely the focus of an essay but watch out for promises which appear to be illusory. A question might involve someone who promises to purchase goods only if the party deems them suitable for the upcoming year or only if the party deems it desirable. Make sure you understand how this is different from situations where a party agrees to purchase all its requirements, or a party agrees to sell its entire output. In those situations, the promise is not illusory because the UCC imposes an obligation of good faith on the parties.

You should always be ready for a question involving the different ways contracts can be breached. Review the difference between anticipatory repudiation and prospective inability to perform. You should be able to discuss the options available to the non-breaching party in these circumstances. Make sure you understand the differences between a material breach and a minor breach. Review the perfect tender rule under the UCC and the options available when a seller breaches.

The Examiners frequently test on the defenses for nonperformance such as impossibility, impracticability and frustration of purpose. Although these doctrines can be raised in the same fact pattern, make sure you understand the differences between them.

Review the remedies for breach of contract. Make sure you understand the difference between expectation damages and consequential damages. You should also understand incidental damages. Review the requirements for liquidated damages to be enforceable. Specific performance is a frequently tested issue in a Contracts/Remedies question. If a question asks about remedies, make sure you discuss the duty to mitigate. Also, remember that damages can't be speculative; they must be reasonably certain.

The Parol Evidence Rule is often tested. The Parol Evidence Rule is one of those doctrines which you need to be able to clearly explain if it is raised in an essay question. The Parol Evidence Rule provides that when the parties reduce their agreement to writing and the writing is intended as the final integration of the deal, prior or contemporaneous statements are not admissible to alter the terms of the writing. Review the situations where Parol Evidence is admissible, for instance to interpret an ambiguous writing, to reform a writing where there is a typographical error, or where there is a collateral agreement.

The Statute of Frauds is another frequently tested topic. Be prepared for a question which focuses on the exceptions to the Statute of Frauds, especially part performance and estoppel.

You should review the various doctrines which help courts interpret provisions in a contract such as the course of performance, the course of dealings and custom in the industry. The Examiners have asked several questions involving specific contractual provisions such as “time is of the essence,” or an “as is” clause. If there is a specific term in the contract making time of the essence, any delay is considered a material breach. Make sure you understand what an “as is” clause means.

The Examiners occasionally test third-party beneficiaries, assignment and delegation. When these topics are tested, the Examiners usually give you a separate interrogatory asking about the rights of the third party or asking whether the assignee can sue for breach. Make sure you are prepared to discuss these topics in an essay even though they are more frequently tested on the multiple choice portion of the exam.

### **Community Property**

Community Property seems somewhat less likely because it was just tested, but the Examiners are known for repeating a subject. Plus, Community Property gives the Examiners a way of testing California-specific law.

I wouldn't be surprised by a question involving various employment-related benefits, such as pensions, bonuses and stock options. Make sure you understand that pensions earned before marriage and during marriage will be apportioned between the SP and CP estates using the time rule. Remember that courts cannot divide Social Security benefits of a spouse due to preemption. You should also understand how California treats disability benefits even though that topic was tested fairly recently.

Make sure you know the rules regarding community-funded education and training. Make sure you understand the reimbursement remedy and the exceptions to reimbursement. When this topic is tested, it is usually tested in a fair amount of detail.

Review the rules regarding personal injury awards. If the cause of action arose during marriage, any settlement or recovery is community property, but it is treated differently than other community property at divorce. It is ordinarily assigned entirely to the injured spouse unless the interests of justice require otherwise. If the cause of action arose before marriage or after permanent separation, any recovery is separate property. Also, if one spouse sues the other spouse for personal injuries, any recovery is separate property.

The Examiners have tested creditors' rights in detail. Make sure you know the rules for different types of debts such as premarital debts, child and spousal support obligations and debts for necessities. Review the order of priority for satisfying tort liabilities. In addition to

creditors' rights during marriage, you should also review how outstanding debts are divided upon divorce.

Review the anti-Lucas rules. The recent questions testing this issue have involved jointly-titled property acquired after 1987 so the second version of the anti-Lucas statute applies. Any jointly-titled property acquired after 1987 is presumed community property at divorce. The separate property contributed to the purchase price is entitled to simple reimbursement unless reimbursement is waived in writing. The separate property gets a share of ownership only when there is a written agreement or clear indication in the deed of title. Of course, these rules only apply to assets which are jointly-titled. If an asset is acquired and title is taken in one spouse's name alone, the character of the asset is determined by the source of funds. If both community and separate funds were used, the asset will be characterized as CP and SP in proportion to their contributions.

The Examiners recently tested the fiduciary obligations of spouses, but you should always be ready for a question where a spouse makes an unauthorized gift of community property or where the spouse fails to disclose assets in a dissolution action. The Examiners sometimes present a fact pattern where a spouse has transferred or encumbered real property without the written consent of the other spouse.

The Examiners regularly test the requirements for antenuptial agreements. The topic appeared on the February Retest. Make sure you review the specific statutory requirements, especially the requirements for waiver of spousal support and the statutory voluntariness requirements. The Examiners also regularly test the issue of transmutations. Make sure you understand the writing requirement and the exception to the writing requirement for interspousal gifts of a personal nature which are relatively insubstantial in value.

Preemption hasn't been tested lately. Review the situations where California courts are preempted from treating certain assets as community property, especially U.S. Savings Bonds, Social Security benefits and military life insurance benefits.

Although Community Property questions typically involve divorce, in the last 10 years, the Examiners have given several cross-over questions with Wills. A Wills/Community Property cross-over question seems unlikely since Wills was tested on two of the last three exams. You should still understand what property a spouse can dispose of at death. You should also understand when the spousal election arises.

The Examiners have also tested the issue of quasi-community property numerous times. While this is an important topic for the Examiners, it seems less likely since it was recently tested on a cross-over questions involving Wills. You should still review how quasi-CP is treated at death, including the surviving spouse's ability to set aside one-half of certain pre-death transfers of quasi-community property.

The Examiners haven't tested the putative spouse doctrine and quasi-marital property for some time. This issue is usually tested when one of the parties thought their first marriage was terminated by divorce, but the person is mistaken and they are still legally married to their first spouse. Thus, their second and current "marriage" is actually a putative marriage.

The Examiners frequently test how business interests are treated in a marital dissolution action. Make sure you understand how courts treat business and professional goodwill at divorce. Remember that courts can use any legitimate method for calculating goodwill. The Pereira/Van Camp issue was raised on the last exam and it was also on the February 2025

Retest. This topic seems less likely to appear. Nevertheless, you should understand that the Pereira/Van Camp situation arises when CP labor is contributed to an SP business. The community is entitled to a share of any increase in value of a separate property business when community labor is contributed to the business. You should be able to explain how the community's share is calculated under both Pereira and Van Camp. Review when reverse-Pereira or reverse-Van Camp will be applied. This gets triggered when post-separation labor is contributed to a community property business.

## **Final Thoughts**

Congratulations on getting to this point in your academic career. Graduating from law school takes a lot of hard work and perseverance. As you prepare for the bar exam take a moment to appreciate and celebrate your achievement. What you've accomplished should give you confidence as you face the bar exam. And remember how fortunate you are. Despite all the challenges you are facing, despite all the problems and burdens you've been juggling, and despite how difficult it is to study for the bar exam, you are among the most highly-educated people in the world. In the United States, only a small percentage of the population earn a professional degree. Globally, your education puts you in a very rare group. Many people in the world do not have access to basic education because it isn't provided to them because of their ethnicity or because they are female. In some parts of the world, basic education is not available because parents cannot afford to pay required school fees. Because of this, an estimated 773 million people in the world are illiterate. That's right, 773,000,000 people cannot read or write. Most of them are women in the developing world. More than 100 million people would immediately be lifted out of poverty if they only had the ability to read and write.

Take a moment to be grateful for your abilities and the opportunities you've had. And remember to thank your family members and friends who have supported you in this journey. Like me, you may be the first person in your family to go to college and the first person to go to law school. You may have been helped along the way by strangers who provided scholarships and financial support to help you complete your education. Before you take the bar, thank the people in your life who have supported you and encouraged you to be the person you are today.

You have a long list of things to do: topics to review; practice essays to write; multiple choice questions to tackle. Before you jump into the ever-expanding list of things, take a moment to remind yourself that you can do this. You have a history of succeeding academically. You graduated from college. You successfully completed 3 or maybe 4 years of law school. You've always found a way to get over every academic hurdle. You can get over this one too.

To those of you who have been my students, thank you for your questions and your insights. I look forward to your success, not only on the bar exam, but in your future practice of law. To those of you I don't know personally, I hope we get an opportunity to meet at some point in the future. To all of you, best of luck on the exam!

If you find these predictions helpful, please share them with other people who are taking the bar exam.