HOW TO WRITE ESSAY
ANSWERS FOR LAW SCHOOL
AND BAR EXAMS

The Essential Guide to
California Bar Exam Preparation

Torts, Evidence, Contracts, UCC, Remedies, Wills, Trusts, Corporations,
Business Organization, Crimes, Real Property, Civil Procedure,
Constitutional Law, Criminal Procedure, Community Property,
Professional Responsibility

WHAT to Say and HOW to Say It!

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Chapter 2: How the Bar Essays are Graded

Bear in mind that the California State Bar must grade approximately 50,000 essay answers in a limited period of time with consistent results. To do this, they employ a "team" of graders who operate from a grading "key". The Grading Key is the document that produces consistent grading from each member of the grading team.

If the Grading Key requires you to discuss an issue, you must discuss that issue or else points are deducted from your score. No amount of literary brilliance on your part will make up for your failure to list and discuss a required issue.

The Grading Key is a list of the ISSUES you are expected to recognize and address and the RULES of law you are expected to cite.

Certain FACTS are mentioned in the essay question, and the grading key lists those as the facts you should comment on in your ANALYSIS.

Finally, for each issue, you must state a CONCLUSION.

The Grading Key lists REQUIRED ISSUES. If your essay answer lists and analyzes all of the required issues, your essay is given a score of 70 points. For each required issue that you skip, your grade is reduced.

It is critical for you to recognize and state the proper area of law raised by the facts.

Generally the required issues are worth 5 points each. Your essay grade will be reduced (from 70) by 5 points for each required issue that you fail to discuss. Some issues, such as murder and negligence are worth 10 or more points, depending on the question.

Grader mentality. Bar graders are commonly portrayed as evil characters by bar-prep companies. The Bar grader is often portrayed as "Guido", a mean spirited, one-eyed drunk who hates law students in general, and you in particular. None of that is true, so don’t swallow this line.

The Bar graders are not "out to get you." They do not get a bonus for giving you low grades. You should never accept the idea that the Bar is a "rigged" contest that can only be won through luck. The fact is that the State Bar and the Bar graders are as disappointed as anyone else that Bar passage rates are so low.

To understand the Bar grader, remember they are government workers. They must

1) grade consistent with the Grading Key,
2) grade a huge number of exams in a relatively short time, and
3) finish all grading by the deadline.

The Bar grader does not think of you as an individual any more than a short-order cook thinks an egg is a baby chicken. She just looks at your essay as a piece of paper that has to be processed.

How Graders Look at your Essays. When the grader first picks up your essay answer, she (or he) first flips through it to get a feel for the quality of you answer based on its appearance. If your
Chapter 5: Issue Spotting

Since you lose points for every required issue you fail to discuss, it is CRITICAL TO SPOT all of the issues. BUT DON'T waste time discussing issues that do not really exist.

**What do they want to hear?** You should realize that the person writing an examination question starts with a list of issues for you, the student, to discuss. Then the question writer creates a fictional fact pattern that is intended to spur you, the student, to discuss those issues. Sometimes an entire paragraph is necessary to raise one issue, and sometimes a single sentence raises two or more issues. An exam question may have some irrelevant facts, but there is almost never a totally irrelevant paragraph. Therefore, consider every paragraph to be important, and usually there are at least as many issues as there are paragraphs.

**Subject area?** The issue you are to discuss depends on the subject area (contracts, evidence, remedies, etc.) So you must determine the subject area with certainty in order to determine the issues. For example, the Statute of Frauds is always a possible issue with respect to contracts. And the 4th Amendment is always a possible issue with respect to criminal procedure.

**Why is this fact presented?** Once the subject area is determined, go through the exam question fact by fact, line by line and paragraph by paragraph. For each, ask yourself, "What do they want me to talk about?" and "Why did they present that fact?"

Do not assume facts that are missing from the fact pattern. Rather, recognize that facts will be left out on purpose so that you will discuss the impact of the absence of that fact. For example, the facts often fail to state a defendant's intent. Discuss the implications that the presented facts have on the missing facts. For example, if the defendant stabs the murder victim 47 times, there is an implication the defendant intended to kill (duh!).

**Review mnemonics.** Go through the mnemonics you have memorized for that subject area, considering each issue that calls for discussion. Don't forget to consider the defendant's defenses and the weaknesses in the case presented by the plaintiff or prosecutor. Weaknesses are intentionally created for you to discuss!

**Issue order.** Usually the best order for you to discuss the issues is the order in which the issues are raised in the fact pattern. Why? Because all of your classmates are following that order, and that will be the order of the Grading Key. It never benefits you to be an "odd ball" that follows a weird order in discussing the issues.

**Watch out for "lawyers" and "attorneys" on the Bar Exam.** Almost every time there is a lawyer or attorney on the Bar Exam they want you to discuss professional responsibility.

The Bar spends weeks perfecting the essay questions, and certain key words and fact patterns are used to raise the issues that you are intended to discuss.
TORTS
629. Intentional torts: Punitive damages appropriate?
630. Indigent tortfeasor: Injunction?
631. Determined tortfeasor: Injunction?
632. Nuisance and repeated trespass: Injunction -- otherwise repeated
633. Lost profits caused by negligence: Privity between parties? Foreseeable result?
634. Keepsakes, trophies, mementos: Objective sentimental value? Repair costs?

RECOVERY OF TITLE
635. Title obtained by false pretenses: Equitable replevin?
636. Title transferred by tortfeasor: Good faith purchaser for value w/o notice?
637. Property taken by false pretenses: Constructive trust? Equitable lien?

ENCROACHMENT, EJECTMENT, ZONING
638. "Knew": Did defendant knowingly act to encroach?

ESTOPPEL
639. Behavior intended to induce action: Did silence imply a representation of fact?
640. Promise to pay: Promissory estoppel.

INJUNCTIONS
641. Immediate needs: TRO and preliminary injunction?
642. Violence, stalking, threats: TRO?
643. Restraint on speech: TRO appealable?
644. Defamation, trade slander: Inadequacy of legal remedies?
645. Removal of person/property: Unlawful Detainer inadequate?
646. Complex transactions: Feasible for court to supervise?
647. Ecology, health, safety: Balance of public interest?
648. Poor people: Balance of interests?
649. Trivial claims: Balance of interests? Likelihood of success?
650. Political issues: Public interest? Likelihood of success?

EQUITABLE DEFENSES
651. Illegal/wrongful acts by movant: Defense of unclean hands?
652. Delay, passage of time: Defense of laches? Resulting prejudice?
653. Subsequent transfer of title: Bone fide purchaser for value without notice?
654. "without knowing": Bone fide purchaser for value without notice?
655. Commingled funds: Defense to claim of constructive trust?

DEFENSES TO CONTEMPT ORDER
656. "Unknowingly": Lack of notice? No personal jurisdiction?
657. "Next day": Lack of time to appeal order?
658. Vague terms of order: Impermissibly vague court order?

ATTORNEY FEES
659. Fee claims: American rule? English rule? Loadstar?
661. Civil rights claims: Statutory fee provisions?
Chapter 7: A WARNING about Example Answers

The Bar selects and distributes exemplary answers. These are answers that the Bar has given high scores. This is a very misleading and counterproductive practice that produces unfortunate results.

The "example" answers selected for distribution by the Bar are actually very bad answers because they are too long, too erudite, too complex and took the applicant too much time to write. Sometimes the statements of law in these answers are even wrong. If you try to emulate these answers, you are making a big, big mistake.

It is quite possible that some of the "exemplary" answers distributed by the Bar were, in fact, written by people who actually flunked the Bar because they wasted too much time on that particular answer. It does you absolutely no good to produce one essay answer that gets a score of 85 if it causes you to get low scores on your other essays.

Test this for yourself. Select one of the longer answers released by the Bar and try to physically copy it in written form in a time of 45 minutes. People have tried this and physically it often cannot be done. And you know that if you cannot even blindly copy the answer in 45 minutes, the original applicant certainly did not read, outline, compose and write that answer in the allotted time.

Writing ONE excellent essay answer SHOULD NOT be your goal. One excellent essay will NOT get you past the Bar. RATHER your goal should be to write SIX essay answers that are each "good enough" to get a score of 65 or 70. That is what it takes to pass the Bar, and that should be your goal.

Why does the Bar do this? The reason the Bar releases example answers that are actually misleading is that it doesn't have much of a choice. The Bar is a government agency and it cannot refuse to provide examples of good answers, because they are demanded by the public. Government agencies cannot ignore public demand.

Since the Bar must release "exemplary" answers, it must release some of the very best ones written. This simply means answers that have the highest scores.

Since the Bar must release answers with the highest scores, it naturally follows it must often release very bad essay answers in the sense they are often those that used far too much time on that one particular answer and perhaps they even ran out of time on their other essays.

The best answers are those that 1) state all required issues, 2) give correct rules of law for each, 3) give a straightforward analysis, 4) match the stated facts to the elements, and 5) state a simple conclusion, all within one hour. The Bar will seldom release that kind of an answer, because it will often be given a score of 70 or 75, not 85.
Chapter 16: Bar Answer Formats – WHAT to Say and HOW to Say It

Before you walk into the Bar Exam, you must be able to recite, verbatim, prepared responses to a wide variety of potential questions. If you don't have some prepared responses memorized, you are dead. You will not have enough time to think up a good answer on the spot. You will get "brain lock", run out of time on your essay answers, panic and your goose will be cooked.

For example, you KNOW that there will be professional responsibility questions on the Bar Exam. Since you know this, you better be prepared to recite a response to any such question.

For example, there are only five (count them - 5!) significant issues in the whole study of Constitutional Law and they are "case intensive." If there is a Constitutional Law question, it will require a statement of one of those five rules of law and mention of the case law. The Constitutional Law issues are

1) EQUAL PROTECTION,
2) SUBSTANTIVE DUE PROCESS,
3) PROCEDURAL DUE PROCESS,
4) FIRST AMENDMENT and
5) COMMERCE CLAUSE.

So if you don't have something to say about Miller, Brandenburg, Central Hudson, Mullane, Matthews v. Eldridge, Smith, Lopez, etc. you are not prepared for the Bar.

How? You must develop this ability by repetition and practice. You must memorize and be prepared to recite a significant portion of the material presented in the following chapters if you are to succeed in passing the Bar.

The following chapters provide you with the ISSUES, AUTHORITIES and RULES of law you need to be prepared for all possible Bar questions.

Important Stuff. As you read through the following answer formats, you may be overwhelmed with the feeling that, "There ain't no way in Hell I can memorize all of this." This is a natural reaction. But some of the following is more important than the rest, and the important portions will be identified and marked for you like this → Important! As for the rest, you should at least be able to fake it.

How to Memorize. The way to memorize the important portions of the following is like memorizing the Gettysburg Address -- read it, recite into a tape recorder, and play it back against the text.

The Text Format Used Here. In the following answer formats, the text you should MEMORIZE and be prepared to recite verbatim is presented in italics. Additional information, comments and notes are presented in plain text.
Chapter 19: Civil Procedure Answer Formats

In the past the California Bar Exam only tested the **FEDERAL RULES OF CIVIL PROCEDURE**. But beginning in 2007 the scope of the exam will be extended to include some State civil procedure rules. It is not clear at this time how important this change will be. The main differences between federal and State rules probably are:

1. Federal Courts have LIMITED JURISDICTION while State Courts have GENERAL (unlimited) JURISDICTION.
2. Federal rules provide for AUTOMATIC DISCOVERY (each party has an affirmative duty to reveal all relevant evidence) while State rules do not.
3. Federal Rule 11 REQUIRES COURT SANCTIONS against attorneys that file pleadings found to be false or frivolous because the attorney failed to conduct a reasonable investigation. State rules allow but do not require sanctions.
4. Federal rules strictly hold that allegations that are not specifically denied in ANSWERS are fully admitted to be true. State rules are looser and allow “general denials”.

Otherwise the most important issues in Civil Procedure are whether actions have been brought in the right court, with proper jurisdiction, with proper notice, the proper law to apply, the preclusion of claims and issues that have already been decided, and the rules for removal of cases from State to federal court. Commonly tested issues include subject matter jurisdiction, personal jurisdiction based on minimum contacts, and the correct State law to apply under the **Erie Doctrine**.

**CIVIL PROCEDURE vs. CONSTITUTIONAL LAW.** Do not confuse a CIVIL PROCEDURE question with a CONSTITUTIONAL LAW question (But your professor might, and you have to deal with that.)

Constitutional law deals with the provisions of the **CONSTITUTION** whether there is an actual controversy, the powers of Congress over commerce, and the powers and protections established by the 1st, 5th, 11th and 14th Amendments. The most important issues of Constitutional Law are First Amendment rights, Equal Protection and Due Process guarantees.

**Tangential Issues.** Civil Procedure necessarily touches on peripheral issues that are more closely regarded in classes on EVIDENCE, REMEDIES and CONSTITUTIONAL LAW. There is no bright line that divides one subject area from another.

For example, the 14th Amendment guarantees due process and in *Mullane* it was held that reasonable notice that would afford an individual an opportunity to be heard is a jurisdictional requirement. Therefore, *Mullane* is a case that impacts both Civil Procedure issues (jurisdiction) and Constitutional Law issues (due process).

**Be Prepared.** You MUST be prepared to give a good recitation of rules for 1) the SUBJECT MATTER JURISDICTION, 2) PERSONAL JURISDICTION, 3) the ERIE DOCTRINE, 4) ISSUE PRECLUSION (collateral estoppel) and 5) CLAIM PRECLUSION (res judicata).

**Mnemonics.** Minimum contacts may be shown if there is a **Forum Related Cause of Action** [FRCA = "fur-kah"] or Continuous And Systematic Activities [CASA = "ka-suh"].
Chapter 21: Criminal Procedure Answer Formats

Preliminary Considerations. There are 4 basic types of criminal procedure issues:

1) Unreasonable SEARCH AND SEIZURE of evidence -- 4th Amendment
2) Evidence from forced SELF-INCRIMINATION / MIRANDA -- 5th Amendment
3) Evidence without RIGHT TO COUNSEL / MIRANDA-MASSIAH -- 6th Amendment
4) Prosecution in DOUBLE JEOPARDY -- 5th Amendment

If the question involves EVIDENCE, the application of the EXCLUSIONARY RULE will always be the LAST ISSUE because you first decide the legality of the evidence then how the court will react.

**COMMON CRIMINAL PROCEDURE ISSUES AND ANSWERS:**

Always follow the CALL of the question. But for a general CALL like “Discuss” follow the following order:

1) **Was the WARRANT INVALID?**

   Under the 4th Amendment, extended to the states by the 14th Amendment, government is prohibited from unreasonable search and seizure and must properly execute a search warrant particularizing the place to be searched and the evidence sought upon issue by a neutral magistrate based on a showing of probable cause. Probable cause means there is a REASONABLE SUSPICION that a crime has been committed and that the defendant committed it. [Important!]

   [Define probable cause the first time the term is used.]

   Here the search at issue was by the government because [search was by police.] And there was no probable cause because [no evidence a crime had been committed -- no evidence the defendant had committed a crime.] Also the magistrate was not neutral because [some bias on her part.] Further the warrant was OVERBROAD and did not clearly specify the place to be searched or the evidence sought.

   Therefore the warrant used in this case was invalid.

2) **Was the WARRANT IMPROPERLY EXECUTED?**

   Under the 4th Amendment, extended to the states by the 14th Amendment, the government is restricted to a search of the place and evidence particularized in the search warrant.

   Here the warrant specified the place to be searched as [place stated in warrant] and the evidence sought as [evidence stated in warrant]. But the police [searched somewhere else.]

   Therefore, the search here exceeded the authority established by the warrant and was actually a search without a warrant.
Chapter 22: Real Property Answer Formats

Interests in land can be 1) estates, 2) easements, 3) covenants, 4) equitable servitudes, 5) options or 6) security interests.

Real property questions on Bar exams usually involve all of these except for options which are usually more the subject of contract questions than real property questions. Real property questions usually involve one of the following fact patterns:

- **Title Questions.** An estate ("Blackacre") was conveyed to someone, and a series of events has created uncertainty about who holds the title. The question raised is, "Who now holds title to an estate?" This is the most common real property question.
- **Covenants and Servitudes.** Land subject to obligations or use restrictions is conveyed and the question raised is, "Does a covenant bind current owners?" Or, "Does an equitable servitude now restrict land use?"
- **Easement Questions.** An easement is claimed or suggested. The question raised is, "Was an easement created, and does it still exist?"
- **Landlord-Tenant Disputes.** A dispute arises between a landlord and tenants and the question is, "What are the rights and duties of the parties?"
- **Liability Claims.** Claims for payment or damages to land raise the question of, "What are the legal liabilities of the parties?"

**Estates.** Estates are the right to exclusive possession of land by one or more parties jointly, and are classified by: following fact patterns:

- The **means** by which possession terminates and
- The **immediacy** with which possession begins.

**Means of Termination of Possession.** An estate is a **FREEHOLD** estate if possession is granted in perpetuity or is terminable only by occurrence of a natural event other than the passage of time. This includes acts by the party in possession that violate a condition. If possession terminates after a fixed period of time or is terminable at will (of the grantor) the estate is a **NON-FREEHOLD** estate (often a **LEASEHOLD** estate.) Typical leasehold estates are estates for years and periodic estates (e.g. month to month.)

**Immediacy of Possession.** If an estate allows immediate possession at the time of creation, it is a **possessory** estate. If possession is to be conveyed in the future from the time of creation, the estate is a **future** estate.

**Freehold Estates.** There are 10 types of freehold estates. Three are possessory freehold estates and seven are future freehold estates.
Chapter 23: Community Property Answer Formats

For the California Bar Exam all community property questions are to be answered using the provisions of the California Family Code.

Characterizing Property Held in Joint Title. Perhaps the most complicated community property rules involve the characterization of property held in joint title. You should approach these situations with a two step process:

- FIRST ISSUE -- “What was the character of the asset when it was FIRST ACQUIRED?”
- SECOND ISSUE -- “Did the parties do something to TRANSMUTE the character of the asset later?”

When it comes to characterization of assets when first acquired, there are SIX POSSIBILITIES and they should be addressed in this order:

1. IS IT A JOINTLY-HELD ASSET IN A DISSOLUTION? If so, the answer is simple.
   a. IN DISSOLUTION jointly held property is presumed to be CP under the SPECIAL JOINT TITLE presumption of FC §2581 regardless of when they got the asset, how they got it, or how title is held, UNLESS there is a clear statement of contrary intent on the deed itself or in some other written agreement that the property is to be considered separate property of one or both spouses.
   b. OTHERWISE, if there is such a clear statement on the deed or in some other written agreement the property is to be considered whatever that written statement or agreement states.

If it is not a dissolution the characterization must either be to distribute property at the death of a spouse or else to determine character during the marriage, perhaps to determine which assets a creditor can reach. So in this case go on to consider the other possibilities as follows:

2. Was the asset ACQUIRED DURING MARRIAGE? If not, the asset was obviously acquired as jointly-held SP interests since only property acquired during marriage can be CP. This would be a situation where H and W buy an asset as “joint tenants” or “tenants in common” before they get married or after they separate.

3. Was the asset acquired during marriage by a MARRIED WOMAN in her OWN NAME (e.g. not “Mr. and Mrs. John Doe”) by a WRITTEN INSTRUMENT BEFORE 1975? If so the Married Woman Presumption applies as follows:
   c. The asset was acquired as SP of the wife if acquired by the WIFE ALONE;
   d. The spouses acquired jointly-held SP interests if the property is conveyed to them (and any other parties as well) as “JOINT TENANCY” or “TENANCY IN COMMON”;
   e. The spouses acquired CP if their interest in the property was conveyed to them as “COMMUNITY PROPERTY”;
   f. The spouses acquired CP if it was conveyed to THEM ALONE (no other parties) AND they were DESCRIBED IN THE CONVEYANCE AS “HUSBAND AND WIFE”;
Chapter 24: The Constitutional Law Answer Formats

More than perhaps any other subject in law school, Constitutional Law essays demand that you memorize prepared statements of the law. There are only a limited number of issues, so issue spotting is seldom difficult. But the rules of law are long and complex. You need to MEMORIZE in advance what you are going to say for rule statements and explanations of the law.

**Due Process Guarantees** primarily protect individuals (rather than a class) from arbitrary treatment and especially denial of fundamental rights. If a fundamental right is involved that is not a first amendment right (e.g. marriage, sex, abortion) and a suspect class is not involved, consider a due process analysis. If the fundamental right is guaranteed by the First Amendment (e.g. freedom of expression, religion, association) discuss it as a First Amendment issue, not a due process issue.

**Know Your Fundamental Rights.** The fundamental rights focused on in Constitutional Law essays are the 1st Amendment rights (speech, religion, travel, and association) and the rights to vote, privacy, and personal autonomy.

The focus of questions is the balancing of the rights of the individual with the needs of society and the historical involvement and role of government.

Essay questions involving freedom of speech, religion, travel and association usually focus on behavior that is disruptive or injurious to others. For example, shouting "fire" in a crowded theater, using illegal drugs (e.g. peyote) or killing animals as part of religious services, or associating with groups that engage in criminal activity as an extension of political beliefs (e.g. IRA).

The rights of privacy and personal autonomy usually focus on sex (e.g. abortion, contraception, homosexuality) and family issues (e.g. right to marry, discipline and education of children).

Other fundamental rights (right to jury trial, prohibition of excessive fines and cruel punishments and criminal protections) are usually not the focus of Constitutional Law essays because they are more the parvenu of Civil Procedure and Criminal Procedure classes.

**Non-Fundamental Rights.** The rights to weapons, education, employment, housing, profit, rent, use of property and welfare are not fundamental.

**Equal Protection** protects classes, especially traditionally oppressed groups, from unequal treatment and the arbitrary assignment of individuals into groups for disparate treatment. If a suspect class (e.g. Arabs, Mexicans, foreigners, non-citizens) or quasi-suspect class (e.g. women, illegitimate children) is involved focus on an Equal Protection analysis. If no suspect or quasi-suspect class is involved (e.g. the disabled, mentally retarded, aged, unmarried people) consider whether the classification is overbroad or under-inclusive, because an equal protection analysis may still be appropriate. But if the classification is not overbroad, not under-inclusive, and not based on a suspect or quasi-suspect class equal protection usually provides a fatally weak argument.

**Immunities and Privileges.** The "Immunities and Privileges" clause of the 14th Amendment is totally unimportant and should never be discussed. It is never going to be the “right” answer on a multiple-choice question either.
Chapter 25: The Business Organization Answer Formats

Applicable Law. In the past the California Bar Exam only tested students on “Corporation Law” and not on agency law or general business organization law (e.g. partnership law). But beginning in 2007 the Bar will broaden the subject matter to include agency and general business organization law. This is not a major change.

The terms "Business Law", "Business Organization" and "Corporations Law" are used in the issues and answers below to represent the common law concepts of partnership and agency, generally accepted concepts of "corporation law", specific provisions of the Securities Exchange Act, and the provisions of the Internal Revenue Code related to taxation of corporations. The issues and suggested answers presented below should be supplemented as appropriate by reference to statutes specific to your particular State.

COMMON BUSINESS ORGANIZATION ISSUES AND ANSWERS:

Always follow the CALL of the question. But for a general CALL like “Discuss” follow the following order:

1. What was the FORM of business relationship?

Under BUSINESS LAW the RELATIONSHIP between two or more people engaged in a business for profit can be a GENERAL or LIMITED PARTNERSHIP, a CORPORATION, or a simple AGENCY RELATIONSHIP. The DEFAULT form of business whenever two or more people JOIN together for a business profit is the GENERAL PARTNERSHIP.

LIMITED PARTNERSHIPS and CORPORATIONS require filing and approval by the government. A corporation requires the filing of ARTICLES OF INCORPORATION.

An AGENCY RELATIONSHIP exists where one party, the AGENT, is authorized to act and agrees to act for another party, the PRINCIPAL.

Here ... because ... Therefore...

[This is often a good way to start a business organization essay. It immediately creates a focus on the rules of law that apply. Abbreviate the rule statement as appropriate.

Sole Proprietorships are ignored here because law-school essays seldom involve them.

Note that not everything casually described as "partners" creates a partnership. If Tom and Dick agree to be "partners" in forming a corporation, the form of the business relationship is a corporation, not a partnership.

The only important distinction between a partnership and a joint venture is that the latter has an expressly limited scope.]
Chapter 26: The Evidence Answer Formats

Federal Rules versus State Rules. In the past the California State Bar has tested law students based on knowledge of the Federal Rules of Evidence. Beginning in 2007 it has been announced the Bar will begin testing based on knowledge of both federal rules and State rules. There are thousands of differences, but generally they are rather minor. Where there are important differences they will be pointed out below.

Spell "hearsay" right. Do not ever write "heresay"! It is "hear" like with the EAR and "say" like with the MOUTH. If a person "hears" something is true and is asked to "say" it in court to prove it is true, that is "hearsay".

Follow The Call of the Question! If the call of the evidence question asks for the "objection, response and ruling," you MUST structure your answer by giving the objection with an explanation of the evidence rule, the response with explanation of the exception to the rule (if any) and the ruling of the court. This would be as shown in this example:

1. OBJECTION - HEARSAY. Hearsay is ... (give rule). Here this is an out-of-court statement because... And it is offered for proof of the matter asserted because... Therefore it would be hearsay.

RESPONSE - EXCITED UTTERANCE. An excited utterance is an exception where (give rule)... Here the declarant was excited because... Therefore the excited utterance exception may apply.

RULING - OVERRULED. Here the court would find the excited utterance exception applies because....

Chronological Considerations: Evidence issues should be considered (not necessarily written about and discussed) in this chronological order:

1. WITNESS QUALIFIED?
   - Personal KNOWLEDGE?
   - MEMORY of events?
   - Ability to COMMUNICATE?
   - Testifying under OATH?

2. PROPER FORM OF QUESTION?
   - LEADING question?
   - Calls for NARRATIVE answer?
   - Compound, CONFUSING, or vague question?
   - LACK OF FOUNDATION / Assumes facts unsupported by other evidence?
   - NON-RESPONSIVE answer?

3. RELEVANT EVIDENCE?
   - Does the evidence sought tend to prove a MATERIAL FACT?
   - Does the risk of UNFAIR PREJUDICE outweigh the probative value?
Chapter 28: The Will Answer Formats

Applicable Law. The issues presented in this section are likely to arise in every law school class on WILLS and every Bar Exam with questions in this area of law. The essay approach presented here is generally applicable to every State. However the California Bar Exam tests specifically on the provisions of the California Probate Code and California case law. So that is the law reflected here. If you are not studying California law you will need to modify the rules of law to match your situation as appropriate. Even though your State may follow a different rule of law, the issues to be analyzed are always the same no matter what State you are in.

For example, the validity of a Will is always the first issue to consider (but not necessarily to write about). In California a Will is not valid if it is not signed. Your State may allow an unsigned Will. But whether you are in California or elsewhere you should always consider discussing whether a Will is valid or not. If this is your issue, you should state the rule for your jurisdiction, apply the facts to the rule and conclude whether the Will was valid or not.

Mnemonics (that are often silly and may or may not be useful):

WIDOWS COPE: Will must be Written with Intent to give away at Death, Officially Witnessed and Signed. "Officially" refers to the Conscious Presence Doctrine.

If you don't have enough money, you might have to live in A BASEMENT:
ABATEMENT occurs if the estate doesn't have enough money to make all stated gifts.

STRIPEASE DEMI (Moore) GENERATED REAL INTEREST: Gifts by order of priority (reverse abatement) are Specific, Demonstrative, General, Residual, Intestate.

I got the EXXON STATION free of debt: EXONERATION means a gift is given free from all mortgage debts.

My DIM SUM is gone!: ADEMPTION means a specific gift lapses if missing from the estate.

DDRR: Doctrine of Dependent Relative Revocation.

COMMON WILLS ISSUES AND ANSWERS:

Always follow the CALL of the question. But for a general CALL like “Discuss” follow the following order:

1. Is the Will VALID? [Always consider this issue first if there is any Will at all unless the facts expressly state the Will is valid. Abbreviate as appropriate.]

Under the CALIFORNIA PROBATE CODE a Will is only valid at the death of the testator, and to be valid, Wills must be SIGNED by the testator and show TESTAMENTARY INTENT, the intent to distribute property at death. A SIGNED Will is PRESUMED VALID.
Chapter 30: The Remedy Answer Formats

“Remedies” is the most poorly formulated and taught of all law school subjects. The case books and hornbooks on this subject have so many inconsistent statements and terminology it is almost indecipherable. The Internal Revenue Code is easier to read and more logically consistent than much of what passes for the “Law of Remedies”.

A brief overview of “remedies” will be given here, but it is highly suggested that you get my “Simple Remedies Outline”. You can order it through any book store by giving the “ISBN” number (ISBN 978-1-879563-94-0).

A “Remedies” question, as that term is used in law school and Bar preparation, generally means the consideration of these few questions:

1. **WHY** should a moving party (movant) be provided any remedy at all? What is the “cause of action”?
   a. Do they have a **LEGAL RIGHT** to a remedy based on common law or statute? If so, they have a legal cause of action.
   b. If not, they have no legal cause of action, should a Court exercise discretion to provide a remedy in **EQUITY** anyway? If so, they have no legal cause of action, but do have an equitable cause of action.

2. If the Court should provide any remedy at all, either based on a legal cause of action or based on an equitable cause of action, **WHAT** actual remedies should it provide? What can the Court do?
   a. Is award of a money judgment an ADEQUATE remedy?
      i. If so, that should be the remedy, but just **HOW** should the amount of that money judgment be measured?
      ii. A Court of equity can grant a money judgment the same as a Court of law.
   b. If a money judgment is not an adequate remedy, then some equitable remedy is needed, but just **WHAT** would be an adequate remedy?

You must consider these questions chronologically when you are confronted with a “Remedies” question.

**Does the Movant have any LEGAL RIGHT to a REMEDY?**

Movants have a LEGAL RIGHT to a remedy if they can present a prima facie case supporting each element of a LEGAL CAUSE OF ACTION and the responding parties (respondents) have NO EFFECTIVE LEGAL DEFENSES. For example, non-breaching parties have a legal right to bring an action for breach of contract, and that action gives them a right to an award of damages or legal restitution.

**If the Movant has NO LEGAL RIGHT to a Remedy, Should EQUITY Provide a Remedy?**

Movants have no legal right to a remedy if they either have NO LEGAL CAUSE OF ACTION or else the defendant has an EFFECTIVE LEGAL DEFENSE.
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