



Sample Version

Attack Outline

Uniform Bar Exam / Multistate Essay Exam

studicata

Studicata UBE/MEE Attack Outline

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INTRODUCTION

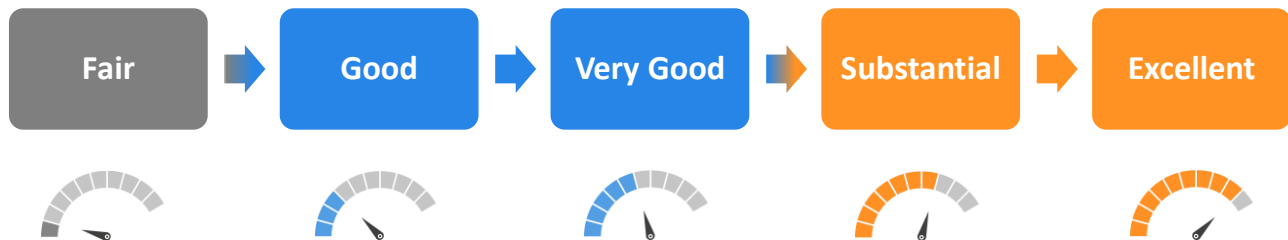
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RULE APPEARANCE RATES

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

PRIORITY LEGEND

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



BUSINESS ASSOCIATIONS

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Agency and Partnership

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

I. Agency Relationships

A. Creation



1. Creation of Agency 8.2% Appearance Rate

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

B. Termination



1. Termination of Agency 6.1% Appearance Rate

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

II. Power of Agent to Bind Principal

A. Authority



1. Authority of Agent to Bind Principal 24.5% Appearance Rate

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



2. Actual Authority

10.2% Appearance Rate

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



3. Apparent Authority

24.5% Appearance Rate

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

B. Inherent Agency Power



1. Inherent Agency Power

6.1% Appearance Rate

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