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## Introduction

The courses in the First Year of Law School are giant puzzles that you must put together piece by piece without first looking at the picture on the front of each box. The images start to take shape towards the middle of the course but do not become completely clear until you take a step back and review each course in its entirety.

This book is not a complete study of Contracts, Torts, or Criminal Law. You've paid your law school tuition for that. It is also not a comprehensive outline. Rather, it is a book that will help you understand how each piece of the puzzle fits together. It will also help you to translate your knowledge when tested. Students often know the law, just not in an organized enough way to write a solid essay. Mastering essays also takes practice. Therefore, this book includes several practice essays on each subject.

Students who perform poorly on multiple choice tests also often know the law, but need to better understand how the law is tested before mastering the method. Therefore, this book also contains a chapter on multiple choice testing strategy.

Having said that, I've come across many students that perform poorly on both essay and multiple-choice exams because they simply do not know the law well enough. If you find yourself in this category, I strongly encourage you to review the substance of your courses before attempting any of the practice exercises in this book. Commercial outlines and flashcards may also help.

If you have done everything you can to learn and memorize the law on your own and still don't fully understand the concepts, you may need a tutor. I personally established [PassTheFYLSE.com](http://PassTheFYLSE.com) to help in this regard. You can use it to schedule some time with a tutor or to submit the practice essays found in this book for individual review. The site is located at [PassTheFYLSE.com](http://PassTheFYLSE.com).

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# Contracts Overview & Formation

Let's get down to business and focus on the first puzzle: Contracts. To make sure you fully understand how each piece fits together, we will follow handy flowcharts. I suggest memorizing them if you do not already have a good organizational understanding of the subject.

Contracts is divided into three main areas: **Formation**, **Performance**, and **Remedies**. Later, we will cover the topics of Third Party Beneficiaries, Assignments and Delegation.

For now, just know that anytime you see a contracts problem, you should make sure it is properly **Formed**. If it is not, it is not valid and no performance is due.

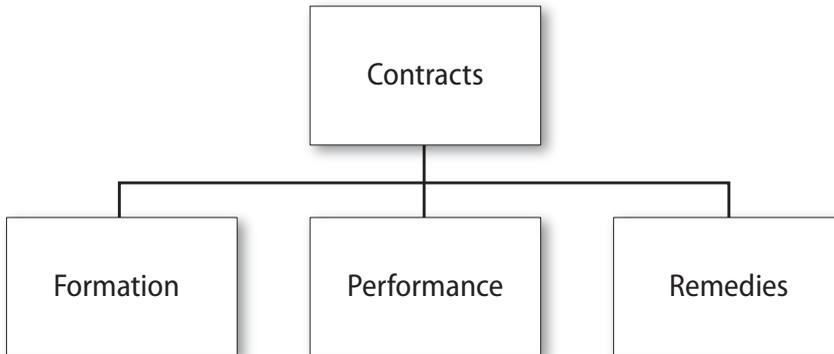
If it is properly formed, then look to see if performance is waived or excused. If it is not waived or excused, then **Performance** is due. If one of the parties fails to perform or performs poorly, then he is in breach of contract.

If there is a breach of contract, then you would determine what **Remedies** are available to the non-breaching party in order to compensate him for the breach.

Sounds simple, right? It can get pretty complicated, but having this general structure in your mind will help when you sit down to confront a fact pattern.

This first look shows the picture on the outside of the puzzle box. When analyzing a contracts problem that raises the issue of formation, use this flowchart as a sort of mental checklist to help you spot issues in the fact pattern. This does not mean that you will discuss every contract formation issue in every essay. Rather, it just means that you are less likely to miss an issue that is raised by the facts if you are prepared for it.

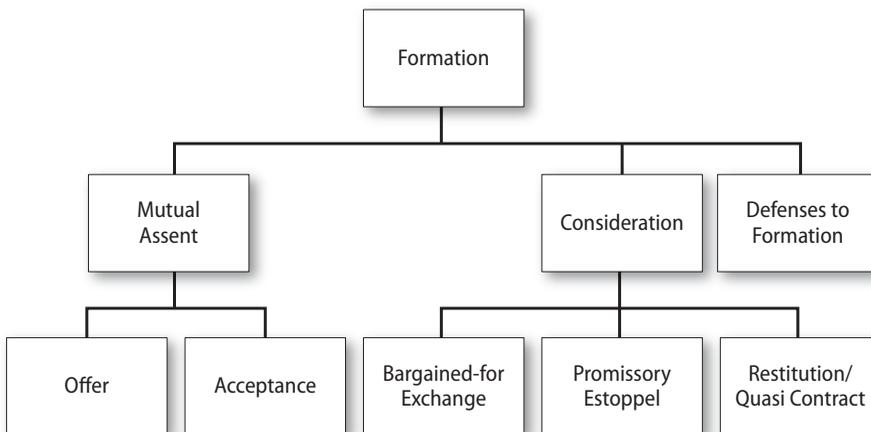
Figure 2.1 Contracts



From here, we'll take the first topic, **Formation**, and break it down further.

In order to properly form a contract, there must be mutual assent, which is established through offer and acceptance. There must also be consideration, which is established through a bargained for exchange, promissory estoppel, restitution or quasi-contractual theory. Finally, there must be no defenses to formation present.

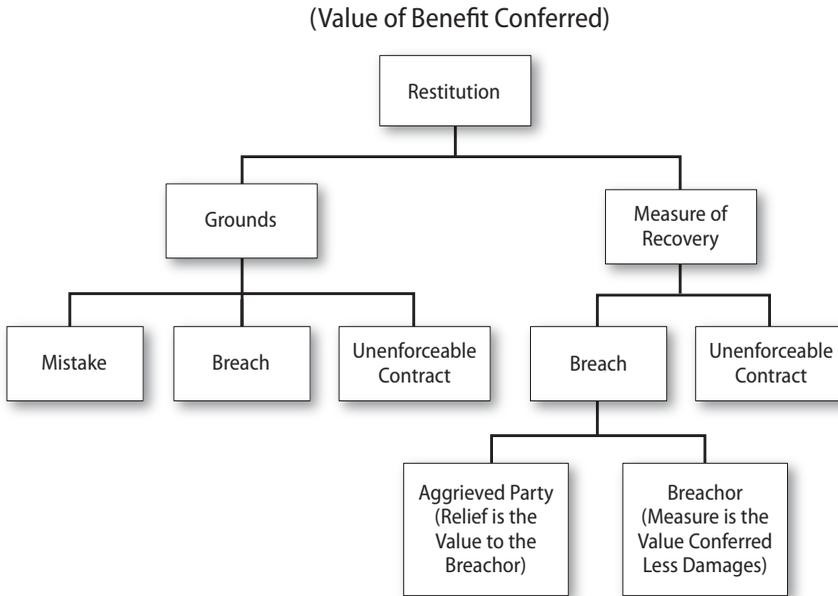
Figure 2.2 Contract Formation



From here, we “unpack” the element of mutual assent. The issues we look for are 1) whether a valid offer was made and communicated to an identified offeree that manifests an objective intent to be bound and contains all material terms; 2) whether that offer is still open, in which case revocation, rejection, or UCC 2-205 may be an issue; and 3) whether a valid acceptance was made that either mirrored the offer or contained additional terms, and whether non-conforming goods were shipped.

With Restitution, you'll need to determine what grounds entitle you to restitution, as well of what measure of recovery is warranted. The grounds include Mistake, Breach, and Unenforceable Contract.

Figure 3.7 Restitution



Finally, we may have to deal with equitable remedies including Injunction, Rescission, and Reformation. Rescission and Reformation are pretty self-explanatory, but if you are dealing with an injunction, you need to make sure you know the requirements for the grant of specific performance. There must be a definite and certain contract, an inadequate remedy at law, feasibility of enforcement, mutuality of remedy, and lack of defenses.

Figure 3.8 Injunction, Rescission, and Reformation

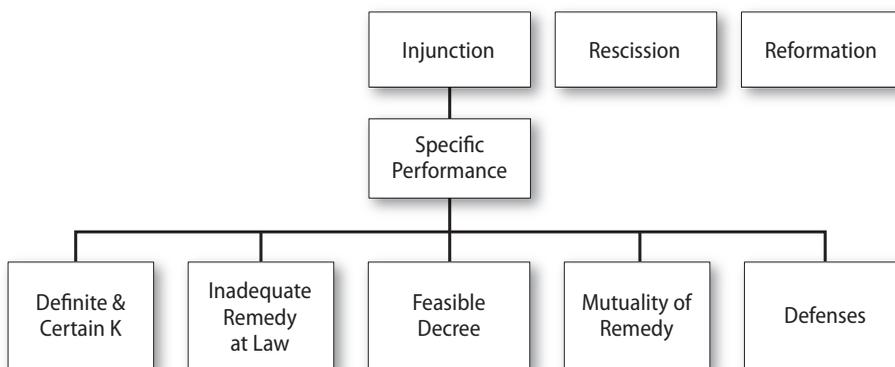
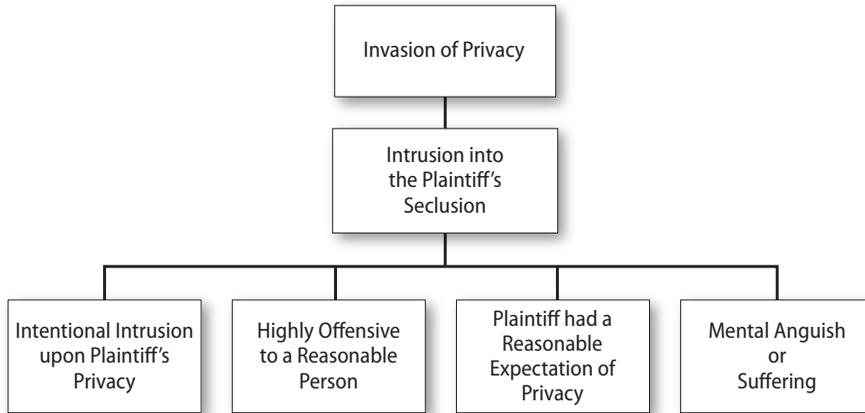
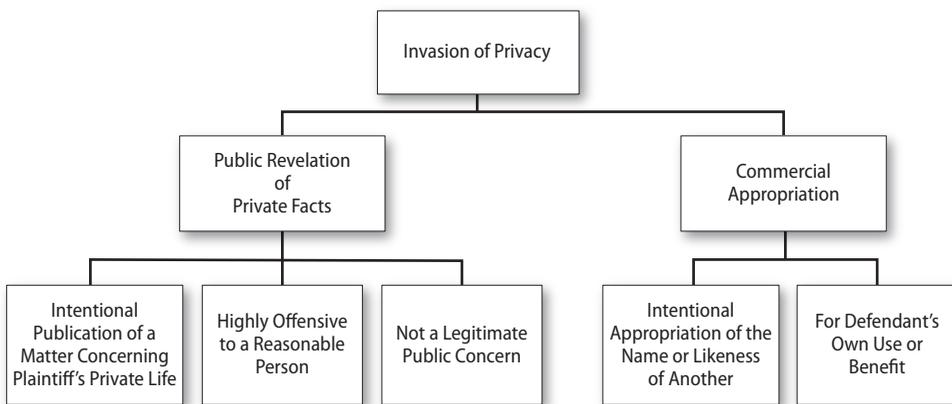


Figure 5.9 Intrusion into Plaintiff’s Seclusion



The next two privacy torts are Public Revelation of Private Facts and Commercial Appropriation. Public Revelation of Private Facts requires proof that Defendant intentionally publicized (to the public at large) a matter concerning Plaintiff’s private life. It also has to be highly offensive to a reasonable person and cannot be a matter of legitimate public concern. Commercial Appropriation requires Defendant to intentionally misappropriate the name or likeness of another for his own use or benefit.

Figure 5.10 Public Revelation of Private Facts and Commercial Appropriation



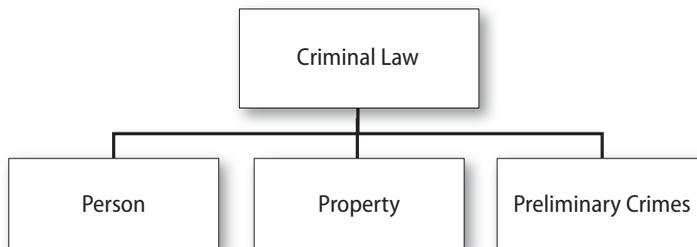
Finally, Portraying Plaintiff in a False Light is very similar to Defamation, which we’ll discuss in detail later. False light is proven by showing the Defendant gave publicity to a private matter concerning Plaintiff, placing Plaintiff in a publicly false light. That light must be highly offensive to a reasonable person, and Defendant must have acted with knowledge or reckless disregard of the falsity of the claim.

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## Criminal Law Overview

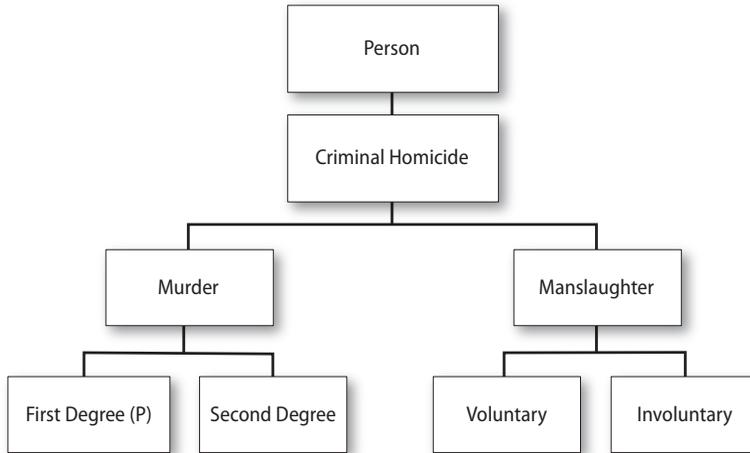
It's now time to turn our attention to Criminal Law. In a nutshell, in Criminal Law, we address three main areas: Crimes against a Person, Crimes against Property, and Preliminary Crimes.

Figure 9.1 Criminal Law



The Crimes Against a Person puzzle begins with Criminal Homicide, which will either result in Murder or Manslaughter. We'll talk about murder in more detail, but for now, just know that it comes in two forms, first and second degree. You'll noticed that there is a (P) next to first degree. This is there to let you know that you may find yourself dealing with Preliminary Crimes when you discuss first degree murder. This will not be an issue with second degree murder or manslaughter. Manslaughter will either be voluntary or involuntary.

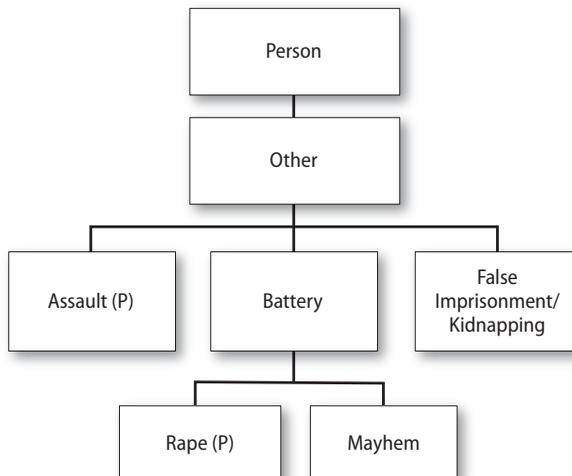
Figure 9.2 Crimes against a Person: Criminal Homicide



\*(P) reminds you to consider Preliminary Crimes:  
Solicitation, Attempt, and Conspiracy.

From here, we move to the other crimes against a person. They include Assault, Battery, and False Imprisonment/Kidnapping. Battery includes Rape and Mayhem, and we may have to consider preliminary crimes when discussing Assault, Rape, and False Imprisonment/Kidnapping.

Figure 9.3 Crimes against a Person: Other



\*(P) reminds you to consider Preliminary Crimes:  
Solicitation, Attempt, and Conspiracy.

## Torts Essay 5: Jenny, Sarah & Courtney v. Restaurant

Jenny spent the evening enjoying drinks at a restaurant with her friends. While going into the restroom at the restaurant, Jenny slipped and fell on a puddle of water that was leaking from a broken pipe under the sink and injured her arm. The restaurant knew the pipe was leaking and had called a plumber in earlier that day to repair it. The plumber could not make the repair until the next day, so the restaurant attempted to turn the water off but was unable to do so. A restaurant employee was therefore sent in to mop the bathroom floor every 10 minutes. However, this did not prevent the floor from being slippery.

After Jenny's fall, an employee stood in front of the restroom to prevent others from entering for the remainder of the night. After closing, the manager placed multiple towels under the sink as well as a sign reading "Do Not Enter. Wet Floor."

Later that night, Pam, a waitress who had keys to the back door, broke into the restaurant to party with her friends, Sarah and Courtney. Pam had been previously convicted of burglary on several occasions, but the restaurant had never conducted a background check on her.

The girls attempted to locate some flashlights to help them see in the dark. All of the restaurant lights had been turned off, including the exit signs that were required by statute to be illuminated at all times. The restaurant had not replaced the bulbs in the signs, because some customers complained that they affected the overall ambiance of the restaurant.

As Pam, Sarah and Courtney worked their way towards the bar, Sarah tripped over a vacuum cord that was stretched across the floor. Brett, an independent cleaning contractor, had left the vacuum plugged in and was napping in the restaurant office. Sarah tripped over the cord, hit her head on the bar, and broke her nose.

Courtney slipped and fell on the wet in the restroom as she was running in to get Sarah some paper towels to stop the bleeding. It was dark, and she did not see the sign. As a result of the fall, Courtney broke her ankle.

Courtney's scream woke Brett, but by the time he made his way to the restroom, the girls were gone. He heard the door slam but decided not to say anything because he had been sleeping on the job.

1. Jenny wishes to sue the restaurant for its failure to maintain the bathroom in a safe condition. On what theory or theories, if any, can Jenny recover from the restaurant?
2. Sarah and Courtney want to sue the restaurant. On what theory or theories, if any, can Sarah and Courtney recover from the restaurant?

Discuss.

## **Torts Essay Answer 5: Jenny, Sarah & Courtney v. Restaurant**

### *Jenny v. Restaurant*

#### **Negligence**

Can Jenny sue the restaurant for negligence?

Negligence is shown when Defendant breaches a duty to the Plaintiff that causes damages to the plaintiff.

#### **Duty and Standard of Care**

The general rule is that you owe a duty of reasonable care to all foreseeable plaintiffs unless a special duty rule applies. Here, a special landowner duty rule applies. Jenny is an invitee, as she is there for the (commercial) benefit of the restaurant. As an invitee, the restaurant owed Jenny a duty to discover and avoid dangers by either warning of them or making the property safe for its patrons. The restaurant likely breached that duty by allowing water to puddle on the bathroom floor.

#### **Breach**

A breach of duty occurs when Defendant fails to meet the standard of care. The restaurant will argue that it met its duty of care, because it attempted to correct the issue by calling a plumber, trying to shut off the water, and sending in an employee to mop every 10 minutes. However, breach is likely to be found, as landowners owe a higher duty of care to invitees. The floor was still slippery despite the mopping. Therefore, since it was unable to make the property safe, it owed a duty to warn of the danger.

#### **Causation**

The breach must cause Plaintiff's damages. Here, the restaurant's breach actually and proximately caused Jenny to fall and hurt her arm. But for the restaurant failing to warn or keep the floor dry, Jenny would not have fallen. It is also foreseeable that someone would slip and fall on a wet bathroom floor.

#### **Damages**

Jenny suffered damages, as she broke her arm as a result of the fall.

Jenny can therefore recover from the restaurant on a Negligence theory.

## Professor's Guidance

Hopefully, you quickly recognized that negligence was the main issue that should be discussed in this essay. The tricky part was that a special standard of care applied to the Plaintiffs as either an invitee or trespasser. However, if you have the issue checklist memorized, you scanned the facts to see if a special duty rule could apply and discovered quickly that you would need to discuss landowner duty. Otherwise, we were able to follow the standard negligence template to determine whether negligence could be proven.

This essay also is a good way to show how you should organize an answer that includes more than one lawsuit. Notice that we treated each separately and completely. Had there been more theories of recovery, we would have addressed those as well for each lawsuit after discussing negligence as we did here.

There were a lot of facts here that needed to be used. Therefore, as you read through each sentence, ask yourself why it is included. Does it raise an issue? For example, why are we told that Brett was an independent contractor sleeping while at work? This fact should have immediately raised a red flag for you to discuss the doctrine of respondeat superior. While it needed to be mentioned, it was not necessary to discuss Brett's status as an independent contractor or whether he was acting in the scope of his employment in detail, because the girls were trespassing. Having said that, if you have time, you may be able to pick up a few points for including a more complete analysis.

This brings up a good point about race horse questions. Race horse questions are long and contain lots of discussable facts and test many issues. Just finishing on time is half the battle. When you find yourself in this situation, it is ok to quickly address each issue as well as you can. This means that your IRAC analysis may not be as formal in structure. You will still need to identify the issue and analyze the rule to reach your conclusion on each issue, but you may not have time to state the issues in the form of a question or to restate long rules before analyzing. Rather, you will make sure you make all of your required arguments for every issue and every element. The discussion of Brett's liability is a perfect example.

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## Multiple Choice Practice Questions

### Question 1

Jeff asked his neighbor Don to keep an eye on his house while he was away on vacation. While Jeff was away, Don's car broke down. Needing to get to work, he entered Jeff's garage using the keys that Don had given him. The keys to Jeff's car were on the same keychain. Don started Jeff's car and proceeded to drive it to work. On his way to work, Don ran a red light and crashed into a car driven by an elderly couple. The elderly driver suffered broken bones as a result of the crash. Jeff mistakenly believed that he was responsible for the damages, even though Don was driving at the time of the accident. Jeff told the elderly driver that he promised to pay for her medical bills and property damage.

If the driver sues Jeff in an effort to collect on the promise to pay for medical expenses and property damage, she will:

- (A) Succeed if Jeff's promise was also supported by consideration.
- (B) Not succeed because Jeff was mistaken with regard to his responsibility to pay for the damage caused by the accident.
- (C) Succeed if the contract is in writing and otherwise satisfies the statute of frauds.
- (D) Not succeed because Don engaged in criminal activity by stealing the car.

### Question 2

Dan and Paul were friends spending an afternoon boating on the lake. Dan drove the boat while Paul skied behind it. Dan made a fast, sharp turn with the boat, causing Paul to slam into a nearby dock. Paul sustained severe injuries. Dan and Paul would

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# Multiple Choice Answers

### Question 1 Answer

The correct answer is: (A) Succeed if Jeff's promise was also supported by consideration.

In order for a contract to be enforceable, it must be supported by consideration or a consideration substitute. Consideration is a bargained for exchange. Jeff made a gratuitous promise to pay for the damages without bargaining for anything in return. Therefore, his promise is unenforceable.

Answer choice (B) is incorrect because a unilateral mistake is not a defense to formation unless the other party knows or has reason to know about the mistake. (C) is incorrect because this contract is not required to be in writing. (Had the promise been to pay for the debt of another rather than a promise to pay for someone's losses, a writing would have been required.) Finally, answer choice (D) is incorrect because it is irrelevant that Don stole the car.

### Professor's Guidance

This question tests you on the rules regarding consideration, mistake, and the Statute of Frauds. It also teaches us the importance of reading the call of the question and answer choices first. Had we not done that, we may have mistakenly set our focus on Criminal Law rather than Contracts had we jumped right into the facts. Notice also that the correct answer includes an otherwise missing element by using the qualifier "if."