LAW SCHOOL 101

~~~ OUTLINING ~~~

These samples are provided as examples of different styles of outlining ONLY. Do not rely on them for content.

If you have questions or would like to discuss your outlining process, see Brandi Welch, Director of Academic Advising & Student Affairs, in the SAO (TNH 2.117).
INTENTIONAL TORTS

A. Intentional Torts

1. Battery

**RULE:** Battery occurs when the defendant's acts intentionally cause harmful or offensive contact with the victim's person.

- **Elements --**
  
  a. **Intentional**

  1. The act is done *for the purpose* or *with the desire* to cause the contact, or
     - **Hypo:** A has an enemy and a high-powered rifle; A sees his enemy 1000 yards away; A knows that there is a 1 in a 1000 chance that he will be able to hit his enemy, so he cannot be substantially certain the shot will be a success; it turns out to be A's lucky day and his shot is successful.
     - **Result:** A battery exists because the act [shooting the gun] was done *for the purpose* of causing the contact [bullet through enemy].
  
  2. The act is done *with substantial certainty* that the contact will occur.
     - **Hypo:** A is on the 12th floor of a high-rise building and drops a large book out of anger at the text; the book hits someone.
     - **Result:** The act was not done with the purpose of hitting someone; it could be said that it was substantially certain that it would hit someone depending on the density of the crowd of people at the time the book was dropped.
  
  3. **Transferred Intent:** An intent to cause a battery to A may be transferred to an intent to cause an assault or false imprisonment to A or to B.
     - **Person-to-Person Transferred Intent**
       - **Hypo:** A intends to punch B in the face; B ducks; C is standing directly behind B; A inadvertently punches C in the face; It was not A's purpose to punch C, nor was it substantially certain.
       - **Result:** A is liable to C for battery; A's intention to punch B (whether it was A’s purpose, or A was substantially certain) transfer to C.
     - **Tort-to-Tort Transferred Intent**
       - **Hypo:** A intends to fake a punch at B; A can't stop himself quickly enough and actually punches B.
       - **Result:** A is liable to B for battery, even though A only intended an assault.

  b. **Harmful Contact:** causes physical pain, injury or illness where the risk of harm is one a reasonable person would foresee.

  1. The harmful contact must change your body, or
     - **Hypo:** A goes to the doctor for a procedure requiring anesthesia; The doctor, during the procedure, decides to also remove an ugly wart from A.
     - **Result:** A battery still occurs. Although a reasonable person might be grateful to have the ugly wart removed, because the contact caused a change in A’s body, it can be said the contact was harmful.
  
  2. The harmful contact must cause substantial pain.
     - **Hypo:** A pulls a chair out from under B; B falls to the floor and breaks her hip.
     - **Result:** A is liable for battery (if the "intentional" element is met).

  c. **Offensive Contact:** offends a person's reasonable sense of personal dignity, as measured by the objective standard of community norms.

  1. If the contact would be offensive to a reasonable person, but was not offensive to the PI, then there was no battery.
4. Open for reasonable time (≤ 3 months).
   (c) Reliance (RSTM §87(2))
      1. Promise to hold open
      2. Offeror should expect reliance of substantial character
      3. Offeree does rely
      4. Injustice avoided only by enforcing

(2) §45 – Unilateral Contracts
   (a) Option (and only an option) created by
      1. Beginning performance
      2. Tendering performance
      3. Tendering a beginning of Performance
      4. PREPARATIONS TO PERFORM DON'T COUNT
   (b) Acceptance occurs after full performance

3. Was there ACCEPTANCE?

   a. Person (RSTM §52)
      * Offer can only be accepted by person whom it invites

   b. Means (RSTM §50)
      (1) By promise (RSTM §56)
         (a) Must complete every requirement of K (or be in Breach)
         (b) Reasonable diligence to notify offeror, or
         (c) Offeror receive acceptance reasonably
      (2) By performance (RSTM §§ 53, 54, 62)
         (a) §62 – Bilateral Contracts
            1. Acceptance occurs when offeree begins performance
            2. Failure to finish = breach
            (b) If begin, but want to reject, notice must be given
      (3) By silence (RSTM §69)
         (a) Silence or Inaction = Acceptance if
            1. Takes benefit of services with reasonable opportunity to
               reject and reason to know they were offered with
               expectation of compensation
            2. Offorer stated or gave reason to know assent could be
               manifested by silence and offeree remains silent intending
               to accept
            3. Previous dealings make it reasonable that offeree should
               notify offeror if not intending to accept
         (b) Inconsistent act (if agreed to by offeror) = acceptance unless terms
               manifestly unreasonable

   c. Terms
      (1) Mirror Image Rule (RSTM §§ 58, 60, 61)
         (a) Any change in terms makes purported acceptance a counteroffer
         (b) If conditional language independent, then valid acceptance
         (c) If conditional language dependent, then no acceptance
      (2) Standardized Forms (RSTM §211)
         (a) Party who signs thinks terms used for other transactions, then
            acceptance
         (b) Interpreted to treat all those similarly situated alike
         (c) If drafter has reason to believe offeree wouldn't accept if knew
            about term, then no acceptance
      (3) U.C.C. §2-207 (“Battle of the Forms”)
         (a) Second Set of Terms operates as an acceptance unless acceptance
            “expressly made conditional” to acceptance by offeror of new
### III. COMMON LAW INTERESTS IN LAND

#### NON-FREEHOLD ESTATES

<table>
<thead>
<tr>
<th>Tenancy for Years</th>
<th>Periodic Tenancy</th>
<th>Tenancy at Will</th>
<th>Tenancy at Sufferance</th>
</tr>
</thead>
<tbody>
<tr>
<td>- A lease that has a stated maximum duration. There are fixed periods marking the beginning and end of the lease.</td>
<td>- A tenancy that automatically continues for successive periods (typically month-to-month, or year-to-year), unless terminated at the end of a period by notice.</td>
<td>- A tenancy in which the tenant holds possession with the landlord’s consent but without fixed terms.</td>
<td>- A tenancy arising when a person who has been in lawful possession of property wrongfully remains over as a holdover tenant after his interest has expired.</td>
</tr>
<tr>
<td>- Neither the landlord nor the tenant must notify the other party of the termination of the lease.</td>
<td>- Notice must be given before termination.</td>
<td>- The lease can be terminated by either party upon fair notice.</td>
<td></td>
</tr>
<tr>
<td>- Ex. Commercial leases, Retail, Upscale Apartments.</td>
<td>- If tenancy is month-to-month, notice must be given before the next month starts (e.g., on 10/15 give notice of leaving at the end of November).</td>
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<td>- Ex. Low-income leases.</td>
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</tbody>
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#### EVICTIONS AND WARRANTIES OF HABITABILITY

- **Initial Rule** - Tenant’s covenant to pay rent independent to the Landlord’s covenants.
- **Constructive Eviction** - Tenant could abandon the premises and withhold rent if the landlord breach a covenant of habitability. Problem: required abandonment.
- **Constructive Eviction without Abandonment** - A commercial tenant’s covenant to pay rent is dependent on the landlord’s performance of covenants that were a significant inducement into the lease.
  - RATIONALE: (1) don’t have to completely abandon the premises; (2) allows courts to focus on the essential elements of the bargain; and (3) more fair and realistic.
  - A residential tenant’s covenant to pay rent is dependent on the landlord’s compliance with the implied warranty of habitability.

<table>
<thead>
<tr>
<th>Implied Warranty of Habitability</th>
<th>Implied Covenant of Quiet Enjoyment</th>
</tr>
</thead>
<tbody>
<tr>
<td>- A warranty from the landlord to the tenant that the leased property is fit to live in and that it will remain so during the term of the lease.</td>
<td>- The landlord ensures that no action will deprive the tenant of quiet enjoyment of the premises during the lease.</td>
</tr>
<tr>
<td>- Breach occurs when: (1) landlord has notice of the defect; (2) defect is substantial; and (3) the landlord had reasonable time to repair, but didn’t.</td>
<td>- Ex. Failure to make repairs, failure to provide essential services, failure to maintain heating or air-conditioning services, failure to control vermin, insects, etc.</td>
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<td></td>
<td>- Provides a contractual remedy if the lessor does not have an unencumbered fee simple title.</td>
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<td></td>
<td>- Condemnation of land pursuant to eminent domain is not a breach.</td>
</tr>
</tbody>
</table>

#### Lessor’s Remedies

1. **Termination of the Lease**
   - In order to terminate a lease for breach of the lease, the breach must be “material,” “substantial,” or “serious.”

2. **Evasion**
   - **ELEMENTS OF RETALIATORY EVICTION**
     - The enactment of an applicable housing code statute or ordinance, embodying the objective of insuring safe and decent housing conditions.
     - The landlord’s business being leasing residential housing
     - The tenant at the time of the reporting of the code violation not being otherwise in material default on the lease
     - The landlord’s motive for eviction being the tenant’s reporting the code violation
     - The tenant’s report being made in good faith and with cause.

3. **Damages**
   - Lessor has a duty to make a reasonable effort to mitigate damages by finding a substitute tenant;
   - The tenant, by abandoning the leased premises, remains liable for damages for breach of contract;
   - The tenant remains liable for the difference between the agreed price (stipulated rent) and the fair rental value of the premises;
   - The tenant remains liable for the entire amount of the rent, at the agreed rate, for such period of time that the lessor is unable to relet the premises;
   - The tenant remains responsible for the rent for the remainder of the term, if the second tenant fails to pay.
Spatial

**Sale of Goods**

**Seller's remedies**
- **Resale**
  UCC 706 Sue for difference between contract and resale. Resale must be in good faith and commercially reasonable. Also get incidental damages.
- **Action for Price**
  UCC 709 If goods have no market value, Action for Price. Must try to resell, but if can't, recover for contract price, give goods to buyer.
- **No resale tried**
  UCC 708 Could have resold, but didn't, get contract price minus market price at time and place of tender.

**Cover**
- **UCC 712 Cover**
  Good faith, reasonable time substitute goods. Also get incidental and consequential damages (lost profits) Cover is not mandatory. Formula: payments made + cover price - contract price - savings + incidental damages + consequential = recovery

**Buyer's Remedies**
- **No cover**
  UCC 713 Non delivery or reputation. Choosing not to cover. Formula: contract price - market price + incidental damages + consequential = recovery
  Market price at time buyer learned of breach. Also as of the place of tender, or in cases of rejection after arrival, place of arrival.
- **Unacceptable goods**
  UCC 714 Breach of warranty. Entitles buyer to difference in value at time/place of acceptance and promised value. Incidental and cons. damages recoverable.
- **Specific perf or replevin**
  UCC 716 If goods are unique or in other proper circumstances.

Lost volume rule. If P sells item to another, but has large stock of items, P can get profit (consequential damages) because he was deprived the extra profit that was breached.
<table>
<thead>
<tr>
<th>Offense</th>
<th>CL</th>
<th>MPC</th>
<th>TPC</th>
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<tbody>
<tr>
<td>Must Be Voluntary</td>
<td></td>
<td>§ 2.01(2) Not voluntary;</td>
<td>§ 6.01(a)</td>
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<td>Reflex or convulsion</td>
<td>Voluntarily</td>
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<td>Bodily movement while unconscious or asleep</td>
<td>Engages in conduct</td>
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<td>Acts while hypnotized</td>
<td>Including act, omission, possession</td>
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<td>Not product of effort of the actor</td>
<td>No definition of voluntary</td>
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<td>Possession</td>
<td>§ 6.01(b)</td>
<td>§ 2.01</td>
<td>§ 6.01(b)</td>
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<td></td>
<td>Knowingly MR</td>
<td>Knowingly MR</td>
<td>Knowingly MR</td>
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<td></td>
<td>Procured or received AR</td>
<td>Obtains or receives MR</td>
<td>Obtains or receives MR</td>
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<td>In time to terminate possession AC</td>
<td>Thing possessed AC</td>
<td>Thing possessed AC</td>
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<td>OR is aware of control for a sufficient</td>
<td>OR is aware of control for a sufficient</td>
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<td>time to permit him to terminate his</td>
<td>time to permit him to terminate his</td>
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<td>control AC</td>
<td>control AC</td>
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<tr>
<td>Omission</td>
<td>§ 6.01(c)</td>
<td>§ 2.01(1)</td>
<td>§ 6.01(c)</td>
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<tr>
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<td>American bystander rule:</td>
<td>Omission to perform AR</td>
<td>Law provides that omission is offense Or</td>
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<td>Duty exists IF</td>
<td>Act AR</td>
<td>Provides D has a duty to act</td>
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<td>Special relationship</td>
<td>Of which he is physically capable AC</td>
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<td>Statute</td>
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<td>Contract</td>
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<td>Voluntary assumption of care</td>
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<td>Creation of peril</td>
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<td>DWI</td>
<td>§ 49.04</td>
<td>Strict Liability Crime</td>
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<td>Intoxicated AC</td>
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<td>While operating AR</td>
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<td>Motor vehicle in a public place AC</td>
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<td>Penalty – Class B misdemeanor, more</td>
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<td>time for open container. §49.09</td>
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<td>Enhanced Offenses and Penalties</td>
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<tr>
<td>Larceny</td>
<td>§ 31.03</td>
<td>Trespassory AC</td>
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<td></td>
<td>Unlawfully AC</td>
<td>Taking AR</td>
<td>§ 31.03</td>
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<tr>
<td></td>
<td>Takes AR</td>
<td>Asportion AR</td>
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<td></td>
<td>Movable property AC</td>
<td>TPP of another AC</td>
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<td></td>
<td>Of another AC</td>
<td>With intent to permanently deprive MR</td>
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<td></td>
<td>With purpose to deprive him thereof MR</td>
<td>§ 223.2</td>
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<td>Penalty – 3rd degree felony if over</td>
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<td>$500 or gun, car, plane, motorcycle,</td>
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<td>boat, motor-vehicle, receiver in</td>
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<td>business of stolen property. Anything</td>
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<td>else misdemeanor. Less than $50,</td>
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<td>petty misdemeanor.</td>
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<td>§ 223.2</td>
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<tr>
<td>FACTOR</td>
<td>MATERIALITY MORE LIKELY</td>
<td>MATERIALITY LESS LIKELY</td>
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<tr>
<td>(1) Amount of benefit lost</td>
<td>- Breach deprives nonbreaching party of substantial party of benefit expected</td>
<td>- Modest impact on overall benefit</td>
<td></td>
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<tr>
<td>(2) Adequacy of compensation</td>
<td>- Damages cannot compensate for loss</td>
<td>- Damages can compensate for loss</td>
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<td></td>
<td>- Damages are difficult to prove</td>
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<td>- Preventing loss (termination &amp; cover) is significantly better than compensating for it later</td>
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<tr>
<td>(3) Amount of (net) forfeiture by breaching party</td>
<td>- Breaching party can resale or cover - this is why is sales of goods any nonconformity is a material breach</td>
<td>- If breaching party has refied significantly, suspension or termination may produce significant waste</td>
<td></td>
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<tr>
<td>(4) Likelihood of cure</td>
<td>- Cure is uncertain</td>
<td>- Cure is likely or certain</td>
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<td></td>
<td>- Nonbreaching party has a great need to seek substitute performance</td>
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<td>(5) Breaching party’s good faith</td>
<td>- Lack of good faith and fair dealing</td>
<td>- Party breaches despite good faith efforts poses less risk of future breaches</td>
<td></td>
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<tr>
<td></td>
<td>- Breaching party willfully did not perform</td>
<td>- Breach party strove to perform</td>
<td></td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>FACTOR</th>
<th>DISCHARGE SOONER</th>
<th>DISCHARGE LATER</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Amount of benefit lost</td>
<td>- If benefit lost</td>
<td></td>
</tr>
<tr>
<td>(2) Adequacy of compensation</td>
<td></td>
<td>- If compensation adequate</td>
</tr>
<tr>
<td>(3) Amount of (net) forfeiture by breaching party</td>
<td></td>
<td>- If forfeiture great</td>
</tr>
<tr>
<td>(4) Likelihood of cure</td>
<td></td>
<td>- Cure likely</td>
</tr>
<tr>
<td>(5) Breaching party’s good faith</td>
<td></td>
<td>- Good faith present</td>
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<tr>
<td>(6) Amount of harm from delaying substitute arrangements</td>
<td>- When delay will prevent or hinder efforts to make substitute arrangements (cover)</td>
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<td>- Remedial rules encourage minimizing consequential losses</td>
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<td>- Fluctuations in price cannot be recovered</td>
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<tr>
<td>(7) Agreement that time is of the essence</td>
<td>- Agent states that timely performance is important</td>
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<td></td>
<td>- Substance</td>
<td></td>
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<td>- Timely performance is an express condition</td>
<td>- Only specifies when performance should occur</td>
</tr>
</tbody>
</table>
I) Ask: is there an enforceable promise?
   A) Assent
      1) Offer (24) terminated 36
         □ Revocation 42,43,46
         □ Lapse of time 41
         □ Rejection 38 / counteroffer 39,40
         □ Death or incapacity 48
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         □ 87(2) reliance exception
         □ Unilateral contracts
            □ Tendering beginning §45 creates an option
            □ beginning perform in bilateral creates contract
   2) Acceptance
      □ Offeree must accept 52
      □ Means
         (1) Performance 53,54,62, silence 69, promise 56
      □ Terms
         □ R2d 58 – mirror image rule
         □ UCC 2-207 – battle of the forms
         □ Standardized forms (adhesion §211)
      □ Medium
         □ E-commerce
      □ Timing
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   1) M Y L E G S (circle one)
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         □ Land / Spec. Perf. 129
         □ Specially mfd goods 2-201(3)(b)
         □ Admit contract 2-201(3)(b)
         □ Acceptance, etc 2-201
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      □ Estoppel (reliance)
      □ Disproportionate forfeiture
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      □ Restitution
      □ Reliance
      □ Expectation
   Interpretation 201
   □ Vagueness, ambiguous terms
   □ Gap-filling
   □ Output Contracts, etc. 2-306, best efforts 2-306(2)
   □ Illusory promises
   □ Parole evidence rule 213
   Duty of Good Faith and Fair Dealing
      □ §205
      □ 1-304

Checklist
Defendant

Possible offenses:

- ☑ Omission (while in control)
- ☐ Possession
- ☐ Strict Liability (DWI)

Property Offenses:

- ☑ Larceny of Valium
- ☐ Larceny under False Pretenses
- ☐ Embezzlement
- ☐ Robbery
- ☐ Aggravated Robbery
- ☐ Extortion

Crimes Against Habitation

- ☐ Burglary
- ☐ Arson

Crimes Against Persons

- ☐ Assault and Battery
- ☐ Kidnapping
- ☐ Sexual assault
- ☐ Rape
- ☐ Aggravated sexual assault
- ☐ Statutory rape
- ☐ Intentional, 1st degree murder
- ☐ Depraved Heart Murder
- ☐ Felony Murder
- ☐ Voluntary Manslaughter
- ☐ Involuntary Manslaughter

True Defenses

- ☐ Necessity
- ☐ Duress
- ☐ Self-defense
- ☐ Deadly force self defense
- ☐ Mistake of Law Type II (legal info)
- ☐ Defense of Others
- ☐ Defense of Property
- ☐ Defense of Habitation
- ☐ Entrapment

Internal Defenses (negate MR)

- ☐ Mistake of fact
- ☐ Mistake of Law Type I
- ☐ Voluntary Intoxication
- ☐ Involuntary Intoxication
- ☑ Automatism / unconscious
- ☐ I didn’t do it.
Restitution – Preventing Unjust Enrichment

1. RTSM §374 Party in breach receives either fair market value (amount it would cost to have another do the job) of benefit bestowed OR extent to which other party’s property has increased in value. FMV can be either at time of contracting or throughout contract. Cts tend to go with time of contracting.
2. Is FMV MORE than contract price?

Y

Breaching party only gets the LESSER. Can either get contract or FMV, whichever is lesser. Can never get better than contract.

N

§373 – When other party is in breach, victim gets value of any benefit bestowed – fair market value of benefit received or amount of increase in value of D’s wealth or property. Example: Bush v. Canfield. Paid $5000 deposit for flour. Never received. Would have incurred $2000 loss on sale of flour, but gets entire $5000 back from D as is unjust to let D keep $3000 for breaching. Expectation is not enough here.

Y

Breaching party will probably get the lesser of the two amounts. If FMV is lesser than contract, he’ll get that. Example: Britton v. Turner. Employee got FMV of his services for the amount of time he worked.

N

Has the contract been fully performed?

N

Is the breaching party asking for restitution?

Y

No restitution. Move to expectation interest.

Start here
BAD EXAMPLE

- Choses in action – intangible property (bank accounts, debt, patents)
- Fixture – once a chattel, but now part of the land.

II. The Importance of Possession in Establishing Rights in Property

A. Abandoned Lost and Misplaced Property

- Abandoned property – property that has not been recovered, and there is an intent to not recover it. Can't abandon land.
- Reasonable time to recover depends on the facts.
- Giving these circumstances, could a reasonable person assume that the owner intended to recover property.
- 3 types of property
  1. abandoned
  2. lost – true owner has no knowledge of where the property is
  3. mislaid – voluntarily left with an intent to recover it later

- Distinction between lost and mislaid rests on the assumption that the location can show if it was lost or mislaid.
  a. Eads v. Brazelton – Ownership of lost or abandoned property depends on an actual taking of the property with the intent to reduce it to possession.
  b. Armory v. Delamirie – the finder of lost property has a right to keep the property against all but the rightful owner.
    - First at time, first at right.
  c. Bridges v. Hawkesworth – P found money in a shop and gave it to shop owner to return to rightful owner. When no one claimed money, court said that the finder of the article was entitled to it as against all parties except the real owner.
    - Not found within the protection of D’s house.
    - In the public part of the shop.
  d. South Staffordshire Water Co. v. Sharman – No matter who finds an article on another person’s land, the owner of the locus in quo has possession of that article.
  e. McAvoy v. Medina – the finder of an article intentionally placed somewhere in the shop and left has no claim to the property. The owner of the shop should keep it until the rightful owner calls for it.

B. Stolen Property; Unoccupied Property

a. O’Keeffe v. Snyder – O’Keeffe is still the rightful owner because the statute of limitations does not begin until discovery of the stolen property
  - or by exercise of reasonable diligence and intelligence should have discovered
  - Because of the nature of many chattels including art, the adverse possession rule is not a fair or reasonable means of resolving this kind of dispute.
  - The meaning of due diligence will vary with the facts of each case, including the nature and value of the personal property.

b. Adverse Possession

- Purpose of Adverse Possession
  - To encourage development of land
  - Protection of long-continued claims