Outline of Subjects Tested on Essay Portion of Ohio Bar Examination

NOVEMBER 2002
OUTLINE OF SUBJECTS TESTED ON ESSAY PORTION OF OHIO BAR EXAMINATION

Introduction

In accordance with Gov. Bar R. I, Sec. 5, the essay portion of the Ohio bar examination tests on the following 11 subjects:

- Business Associations
- Civil Procedure
- Commercial Transactions
- Constitutional Law
- Contracts
- Criminal Law
- Evidence
- Legal Ethics
- Property
- Torts
- Wills

The outline in this booklet expands upon 10 of the 11 subjects listed above. The primary purpose of the outline is to provide a guide to the bar examiners in drafting essay questions for the exam. Citations to legal authorities are for the convenience of the bar examiners and are merely suggestions as to sources. The bar examiners are not restricted to the sources listed and, as case and statutory law develop and change, bar examiners will rely on more current legal authorities and issues in preparing their essay questions.

The subject of legal ethics is not included in this outline. In drafting essay questions on this topic, bar examiners refer to the Ohio Rules of Professional Conduct, the Code of Judicial Conduct, and the Supreme Court Rules for the Government of the Bar of Ohio.

The essay subject outline was first developed in 1937 and has been revised several times over the years. The most recent set of revisions to the outline, effective November 2002, were carried out with the assistance of law professors from the nine Ohio law schools. The Board of Bar Examiners owes a special thanks to these law professors and their law schools for their help and support.

Ohio Board of Bar Examiners
November 2002
### TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Business Associations</th>
<th>Civil Procedure</th>
<th>Commercial Transactions</th>
<th>Constitutional Law</th>
<th>Contracts</th>
<th>Criminal Law and Criminal Procedure</th>
<th>Evidence</th>
<th>Property</th>
<th>Torts</th>
<th>Wills and Intestate Succession</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>Part A:</strong> Agency</td>
<td><strong>Part A:</strong> Jurisdiction and Venue</td>
<td><strong>Part A:</strong> Article 4A Funds Transfers</td>
<td><strong>Part A:</strong> Real Property</td>
<td><strong>Part B:</strong> Partnership</td>
<td><strong>Part A:</strong> Pleading</td>
<td><strong>Part A:</strong> Commercial Paper</td>
<td><strong>Part B:</strong> Personal Property</td>
<td><strong>Part A:</strong> Torts</td>
<td><strong>Part A:</strong> Wills and Intestate Succession</td>
</tr>
<tr>
<td></td>
<td>1</td>
<td>12</td>
<td>22</td>
<td>35</td>
<td>52</td>
<td>60</td>
<td>65</td>
<td>78</td>
<td>90</td>
<td>96</td>
</tr>
<tr>
<td></td>
<td><strong>Part B:</strong> Partnership</td>
<td><strong>Part B:</strong> Pleading</td>
<td><strong>Part B:</strong> Commercial Paper</td>
<td><strong>Part B:</strong> Property</td>
<td><strong>Part C:</strong> Corporations</td>
<td><strong>Part B:</strong> Discovery</td>
<td><strong>Part B:</strong> Secured Transactions</td>
<td><strong>Part A:</strong> Real Property</td>
<td><strong>Part B:</strong> Torts</td>
<td><strong>Part B:</strong> Wills and Intestate Succession</td>
</tr>
<tr>
<td></td>
<td>4</td>
<td>14</td>
<td>25</td>
<td>78</td>
<td>89</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>Part C:</strong> Corporations</td>
<td><strong>Part C:</strong> Joinder</td>
<td><strong>Part C:</strong> Secured Transactions</td>
<td><strong>Part C:</strong> Property</td>
<td><strong>Part D:</strong> Discovery</td>
<td><strong>Part C:</strong> Pre-Trial Matters</td>
<td><strong>Part B:</strong> Personal Property</td>
<td><strong>Part B:</strong> Torts</td>
<td><strong>Part B:</strong> Wills and Intestate Succession</td>
<td></td>
</tr>
<tr>
<td></td>
<td>7</td>
<td>15</td>
<td>32</td>
<td>89</td>
<td>90</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>6</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>7</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>8</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>9</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>10</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Chapter 1
Business Associations

PART A. AGENCY

References
Seavey, Law of Agency (1964)
Sell, Agency (2d ed. 1974)
Reuschlein and Gregory, The Law of Agency and Partnership (2d ed. 1990) (R&G)

I. Agency in General

A. Agency and Related Terms Defined
   Seavey §§1-3
   Sell §§1-2
   R&G §§2, 6-7

B. Agency Distinguished from Other Relationships
   Seavey §§10, 11
   Sell §§22-33
   R&G §§2, 10

II. Principal and Agent - Actual Authority

A. Types of Actual Authority
   1. Express Authority
      Seavey §8(C)
      Sell §4
      R&G §14
   2. Implied Authority
      Seavey §8(C)
      Sell §§4, 40-46
      R&G §15

B. Instances of Actual Authority

III. Principal and Agent - Apparent Authority, Inherent Agency Power, and Power of Agent Because of Possession

A. Nature of Apparent Authority
   Seavey §8(D)
   Sell §§5, 35
   R&G §23(A)-(B)

B. Types of Apparent Authority
   Sell §47
   R&G §23(C)

C. Inherent Agency Power
   Seavey §8F
   Sell §6
   R&G §26

D. Power of Agent Who Has Possession or Other Indicia of Ownership
   Seavey §§64-66
Sell §112
R&G §24

E. Estoppel
R&G §25
Seavey §8(E)

IV. Principal and Agent - Misrepresentation by the Agent
Seavey §§60, 91, 92, 94
Sell §102
R&G §§97, 119

V. Principal and Agent - Partially Disclosed and Undisclosed Principals

A. Nature of the Undisclosed Principal's Liability
Seavey §§62, 79-81, 59
Sell §§80, 84
R&G §6, 105

B. Undisclosed Principal's Rights To Enforce Contract
Seavey §§111-113
Sell §§81-83
R&G §109

C. Set-Off and Other Defenses
Seavey §114
Sell §85

D. The Partially Disclosed Principal
Seavey §§70-76, 108-110
Sell §13
R&G §102

VI. Principal and Agent - Ratification

A. Nature of Ratification
Seavey §§32-34, 39
Sell §§61-67
R&G §§27-31, 36

B. Express Ratification

VII. Principal and Agent - Termination of the Relation

A. Termination by Act of Parties
Seavey §§46, 47
Sell §§213-219
R&G §§39-44

B. Termination by Operation of Law or by Events
Seavey §§42-45, 48-53
Sell §§220-228
R&G §45

C. Irrevocable Authority (Power Coupled with an Interest)
Seavey §11(C)
Sell §229
R&G §47

VIII. Principal and Agent - Liability of the Agent to the Other Party

A. Liability of Agent Where Agent Is Authorized
Seavey §§123,125
Sell §§190, 192
R&G §118

B. Liability of Agent Where Agent Is Not Authorized
Seavey §§124, 126
Sell §§191, 192
R&G §119

IX. Master and Servant

A. Respondeat Superior in General
Seavey §§82-83
Sell §§94, 95
R&G §52

B. Scope of Employment
Seavey §§87-89
Sell §§96-100
R&G §52

C. Is the Tortfeasor a Servant?
Seavey §§84-86, 90
Sell §95
R&G §§50-51

X. Relations Between Principal and Agent or Master and Servant

A. Agent's Duties to Principal
Seavey §§140-154
Sell §§124-138
R&G §§65-81

B. Principal's Duties to Agent
Seavey §§164-181
Sell §§160-168
R&G §§55, 82-93
PART B. PARTNERSHIP

References

Bromberg & Ribstein, Bromberg and Ribstein on Partnership (2002) (B&R)
Reuschlein and Gregory, The Law of Agency and Partnership (2d ed. 1990) (R&G)
Henn & Alexander, Laws of Corporations (3d ed. 1983) (H&A)
Ohio Uniform Partnership Law (O.R.C. Chapter 1775)
Gevurtz, Corporation Law (2000)
Cox, Hazen & O’Neal, Corporations (1997)(C,H&O)

I. The Partnership Relation

A. Origins of Partnership
   B&R, §1.02
   R&G §174

B. Effect and Scope of Uniform Partnership Act
   B&R, §1.02
   R&G §§174, 181
   O.R.C. §§1775.01-1775.04

II. Nature and Existence of Partnership

A. Nature and Definition of Partnership
   B&R, §§1.03(b), 2.01
   R&G §§175, 182-183
   O.R.C. §1775.05

B. Factors in Determining the Existence of a Partnership
   B&R, §§2.01, 2.05-2.08, 2.14
   R&G §§175, 176, 178
   O.R.C. §775.06

C. Partnership by Estoppel
   B&R, §2.12
   R&G §198
   O.R.C. §1775.15

III. Partnership Property

A. Definition - Distinguished from Separate Property
   B&R, §§3.01-3.02
   R&G §§208-226
   O.R.C. §§1775.07, 1775.23

B. Partner's Interest in Partnership Property
   B&R, §§3.04-3.05
   O.R.C. §1775.24

C. Partner's Interest in the Partnership
   B&R, §§3.04-3.05
   O.R.C. §1775.25

D. Rights of Creditors Against Partner on Non-Partnership Obligations - Charging Orders
   B&R, §§3.04-3.05
   R&G §207A
   O.R.C. §§1775.24(B)(3),1775.25-1775.27

IV. Powers of Partners to Bind Partnership

A. Agency Liability - Contracts and Conveyances
   B&R, §§4.01-4.04
   R&G §§194-198
   O.R.C. §§1775.08-1775.09
B. **Respondeat Superior and Tort Liability**
   B&R, §4.07
   R&G §§202, 203, 205
   O.R.C. §§1775.12-1775.13

V. **Enforcement of Partnership Rights and Obligations**

A. **By the Firm Against the Outsider**
   B&R, §5.01
   R&G §207

B. **By the Outsider Against the Firm and Against the Partners**
   B&R, §§5.08-5.12
   R&G §§206, 207
   O.R.C. §1775.14

VI. **Relations Between Partners**

A. **Rights and Duties**
   B&R, §§6.01-6.07
   R&G §§184-191
   O.R.C. §§1775.17-1775.19

B. **Enforcement of Rights and Duties**
   B&R §§5.03, 6.08
   R&G §192
   O.R.C. §§1775.20-1775.22

VII. **Dissolution of Partnership**

A. **In General**

   1. **Definition; Winding Up Distinguished**
      B&R, §7.01
      R&G §227
      O.R.C. §§1775.28-1775.29

   2. **Causes of Dissolution**

      a. Not in Violation of Agreement of Partners
VIII. Special Kinds of Partnerships and Related Unincorporated Organizations

A. Choice of Organizational Form
   B&R, §1.01
   H&A §§16, 17
   R&G §§183, 261
   C,H&O, §§1.4-1.5, 1.9
   Gevurtz §§1.1.1-1.1.2

B. Joint Ventures
   H&A §49
   R&G §266
   C,H&O, §1.7

C. Limited Partnership
   B&R, §§11.01-11.03
   H&A §§28-36
   R&G §264
   O.R.C. Chapter 1782
   C,H&O, §1.8

D. Statutory Partnership Association
   H&A §§41-48
   R&G §265
   O.R.C. Chapter 1783

E. Common Law Joint Stock Companies
   H&A §§50-57
   R&G §§282-287
   C,H&O, §1.12

F. Business Trusts
   H&A §§58-67
   R&G §§288-298
   C,H&O, §1.13

G. Professional Association or Professional Corporation
   H&A §77
   R&G §§299-303
   C,H&O, §1.17
   O.R.C. Chapter 1785

H. Limited Liability Companies (LLC's)
   C,H&O, §1.10
   Gevurtz §1.1.1e
   O.R.C. Chapter 1705

I. Registered Limited Liability Partnerships (LLP's)
   Gevurtz §1.1.1e
   O.R.C. §§1775.61-1775.63
PART C. CORPORATIONS

References

Henn & Alexander, Laws of Corporations (3d ed. 1983) (H&A)
Clark, Corporate Law (1986)
Ohio Revised Code, Chapter 1701 (O.R.C.)
Gevurtz, Corporation Law (2000)
Cox, Hazen & O’Neal, Corporations (1997)(C,H&O)

I. The Corporation as a Separate Entity

A. In General
   H&A §138
   C,H&O §7.1
   Clark, §§1.1, 1.2

B. Defective Incorporation
   H&A §§139-145
   C,H&O §§6.1-6.7
   Gevurtz §§1.4.2-1.4.3

C. Disregard of Corporateness
   H&A §§146-153
   C,H&O §§7.3-7.9
   Clark, §2.4
   Gevurtz §§1.5.1-.10
   O.R.C., §1701.591(J)

II. Preincorporation Activity

A. Rights and Duties of Promoters

1. In General
   H&A §102
   C,H&O §5.1
   Gevurtz §1.3

2. Among Themselves
   H&A §103
   Gevurtz §1.3.3

B. Rights and Liabilities on Preincorporation Contracts
   H&A §107-115
   Gevurtz §§1.3, 1.3.1-2
   C,H&O §§5.3-5.8

III. Creation and Organization of the Corporation

A. The Mechanics of Incorporation
   H&A §116-117
   Clark, §1.2
   Gevurtz §1.4.1
   C,H&O §§3.1-3.5
   O.R.C. §§1701.04-1701.08

B. Corporate Purposes, Powers and the Ultra Vires Problem
   H&A §§181-184
   Clark, §16.1
   Gevurtz §3.1.4
   C,H&O §§4.1-4.5
   O.R.C. §§1701.03, 1701.13

C. Organizational Matters
   H&A §§134-135
O.R.C. §1701.10

D. Adoption of Regulations (By-Laws)
   H&A §§133, 193
   O.R.C. §1701.11
   C,H&O §3.12

IV. The Financial Structure of the Corporation

A. Relation Between Debt and Equity
   H&A §§154-156, 162-166
   Clark, §§2.1-2.3
   Gevirtz §§2.2, 2.2.1
   C,H&O §§18.1-18.3

B. The Issue of Shares - Types of Shares
   H&A §§157-161
   Gevirtz §2.1.1
   C,H&O §§18.4-18.10
   O.R.C. §1701.06

C. Share Subscriptions
   H&A §169
   Clark, §17.1.1
   C,H&O §§16.1-16.3
   O.R.C. §1701.09

D. Consideration for Shares and the "Watered Stock" Problem
   H&A §§167-168, 171
   Clark, §17.1.2
   Gevirtz §2.1.2
   C,H&O §§16.10-16.11, 17.1-17.11
   O.R.C. §1701.18

C,H&O §§3.10-3.15
   O.R.C. §1701.39-1701.54

B. Shareholders' Election and Removal of Directors
   H&A §§189, 192, 205
   Clark, §3.21
   Gevirtz §3.1.2(a)
   O.R.C. §§1701.55-1701.58

C. Role of Cumulative Voting in Elections or Removal of Directors
   H&A §189
   Clark, §9.1.3
   Gevirtz §§5.1.2(a), 5.2.1(a)
   C,H&O §13.17
   O.R.C. §§1701.04(C), 1701.55, 1701.58(C), 1701.69(B)(10), 1701.71(A)

D. Other Shareholder Participation in Management
   H&A §§188, 193-195
   Clark, §9.3
   C,H&O §9.10

E. Powers of Directors
   H&A §§206-207, 211-217
   Clark, §3.2.1
   Gevirtz §3.1.2(a)
   C,H&O §§9.1-9.5
   O.R.C. §§1701.59(A), 1701.63

F. Meetings of Directors
   H&A §§208-209
   Clark, §3.2.2
   Gevirtz §3.1.2(b)
   C,H&O §§9.6-9.9
   O.R.C. §§1701.61, 1701.54

G. Selection, Removal, and Powers of Officers
   H&A §§210, 219-229
   Clark, §3.3
   Gevirtz §3.1.1

V. The Management Structure of the Corporation

A. Shareholder Voting Rights and Meetings
   H&A §§188, 193-197
   Clark, §§3.1.1, 9.1
   Gevirtz §3.1.3(b)
VI. Management Duties - Under State Common Law

A. In General
   H&A §§218, 230-232

B. The Duty to Act Intra Vires
   H&A §233
   O.R.C. §1701.13(H)

C. The Duty of Care
   H&A §§234, 242
   Clark, §§3.4-3.5
   Gevurtz §§4.1, 4.1.1-.7
   C,H&O §§10.1-10.11
   O.R.C. §1701.59

D. The Duty of Loyalty to the Corporation and to All of the Shareholders
   1. In General
      H&A §§235, 240
      Clark, §§12.1-12.4
      C,H&O §10.1
   2. Competing with the Corporation
      H&A §236
      Gevurtz §4.2.9(b)
      C,H&O §11.9
   3. Usurpation of Corporate Opportunities
      H&A §237
      Clark, §§7.1-7.9
      Gevurtz §4.2.7
      C,H&O §§11.7-11.8
   4. Transactions Where Interests Are Adverse
      H&A §238
      Clark, §§5.1-5.4

VII. Management Duties - Under State or Federal Securities Laws

A. General Scope of Securities Legislation
   H&A §§292-294
   C,H&O §§27.1, 27.4
   Hazen §§1.0, 1.2

B. Regulation of the Issuance and Sale of Securities
   H&A §§292, 295, 305-307
   Clark, §§17.2-17.4
   C,H&O §§27.1-27.10
   Gevurtz §§6.2, 6.2.1-2
   Hazen Chs. 3-4, 7-8

C. Use of "Inside Information" in the Purchase or Sale of Securities
   1. Sec. 10(b) and Rule 10b-5 of the Securities Exchange Act of 1934
      H&A §298
      Clark, §§8.5-8.11
      Gevurtz §6.3.2(a-d)
2. Section 16 of the Securities Exchange Act of 1934
   H&A §298
   Clark, §§8.6-8.7
   Gevurtz §6.4.1
   C,H&O §12.8
   Hazen Ch. 13

D. Regulation of Solicitation of Proxies
   H&A §297
   Clark, §§9.2-9.4
   Gevurtz §§3.2, 3.2.1-3
   C,H&O §§13.22-13.25
   Hazen Ch. 10

E. Takeover Bids and
   H&A §306
   Clark, §§13.3-13.6
   Gevurtz §§7.3, 7.3.1-4
   C,H&O Ch. 24
   Hazen Ch. 11
   O.R.C. §§1701.831-1701.832

VIII. Shareholder Rights

A. Information, Inspection, and Voting List Rights
   H&A §199
   Clark, §3.1.3
   Gevurtz §3.1.3 (c)
   C,H&O §§13.2-13.9
   O.R.C. §§1701.37-1701.38

B. Shareholder Control Over Management - Pooling Agreements, Voting Trusts, and Contracts Restricting Director Discretion
   H&A §§197-198, 263-280
   Clark, §18.3
   Gevurtz §§5.2.1(c), 5.2.2(a-b)
   C,H&O §§13.20, 14.5

C. Shareholder's Right to Sell Shares - Restrictions on Share Transfer
   H&A §§176-177, 281-282
   Clark, §18.2
   Gevurtz §§5.3, 5.3.1-5.3.2
   C,H&O §§14.8-14.9
   O.R.C. §1701.25

D. Protection of Shareholder's Proportionate Interest in the Corporation - Preemptive Rights
   H&A §§172-175
   Clark, §17.1.4
   Gevurtz §2.1.3
   C,H&O §16.4
   O.R.C. §1701.15

E. Shareholder's Derivative Actions
   H&A §§358-380
   Clark, §§15.1-15.9
   Gevurtz §§4.3, 4.3.1-8
   C,H&O §§15.1-15.18

F. Shareholder's Right to Protection in the Event of Fundamental Corporate Changes - Appraisal and Purchase of Shares - Dissenter's Rights
   H&A §§340, 349
   Clark, §10.6
   Gevurtz §7.4.1(c)
   C,H&O §§22.17-22.21
   O.R.C. §§1701.74, 1701.76, 1701.84, 1701.85

IX. Dividends and Redemptions

A. Director Discretion - Forcing Dividend Declaration
   H&A §327-328
   Clark, §§14.1-14.2
   Gevurtz §2.3.1
   C,H&O §20.2
B. Legality of Dividends
H&A §§318-323
Clark, §§2.5, 14.3
Gevurtz §§2.3.2(a-d)
C,H&O §§2.6-2.15
O.R.C. §§1701.30-1701.33

C. Declaration and Payment of Dividends
H&A §§331-332
C,H&O §§2.3-2.5
O.R.C. §1701.33

D. Preferred Shares
H&A §§324-326
Gevurtz §2.1.1
C,H&O §§18.6-18.7
O.R.C. §1701.06

E. Share Dividends and Share Splits
H&A §§329-330
Gevurtz §2.3.4
C,H&O §§20.16-20.17
O.R.C. §1701.33

F. Redemption or Repurchase of Stock by Corporation
H&A §§335-338
Clark, §§14.4-14.6
Gevurtz §§2.3.3(a-b)
C,H&O §§21.1-21.6
O.R.C. §§1701.23, 1701.35-1701.36

G. Liability for Wrongful Distributions
H&A §323
Clark, §§2.5, 14.3

Gevurtz §2.3.2(e)
C,H&O §§20.18-20.19
O.R.C. §§1701.95

X. Fundamental Corporate Changes

A. Amendment of Articles of Incorporation
H&A §§345, 349
Clark, §3.1.1
C,H&O §§25.1-25.5
O.R.C. §1701.69-1701.74

B. Transfers of All or Substantially All Assets
H&A §§341, 349
Clark, §§10.1-10.3, 10.5-10.7
Gevurtz §§7.2.2(a-d)
C,H&O §§22.3-22.8
O.R.C. §§1701.76, 1701.85

C. Mergers
H&A §§346, 349
Clark, §§10.1-10.2, 10.4-10.6
Gevurtz §§7.2.1(a-c)
C,H&O §§22.9-22.16
O.R.C. §§1701.78-1701.85

D. Dissolution and Liquidation
H&A §348
Clark, §§1.2, 18.4
Gevurtz §7.2.2(b)
C,H&O §26.1-26.8
O.R.C. §§1701.86-1701.91
Chapter 2
Civil Procedure

References

Ohio Revised Code (O.R.C.)
Ohio Rules of Civil Procedure (ORCP)
Ohio Constitution
United States Constitution
Federal Rules of Civil Procedure (FRCP)
United States Code (USC)
Anderson's Ohio Civil Practice, volumes four, five and six

PART A: JURISDICTION AND VENUE

I. Personal Jurisdiction

A. Circumstances Justifying Service of Process

1. In-State Service
   ORCP 4.6

2. Voluntary Appearance/Consent
   Hess v. Pawloski, 274 U.S. 352 (1927)
   Burnham v. Superior Court, 495 U.S. 604 (1990)
   Kennecorp Mtg. Brokers, Inc. v. County Club
   Convalescent Hosp., Inc., 66 Ohio St.3d 173, 610 N.E.2d 987 (1993)

3. Residency
   Milliken v. Meyer, 311 U.S. 457 (1940)

4. Minimum Contacts (specific jurisdiction)
   ORCP 4.3
   International Shoe Co. v. Washington, 326 U.S. 310 (1945)
   Burger King Corp. v. Rudzewicz, 471 U.S. 462 (1985)
   Kentucky Oaks Mall Co. v. Mitchell's Formal Wear, Inc., 53 Ohio St.3d 73, 559 N.E.2d 477 (1990)
   Goldstein v. Christiansen, 70 Ohio St.3d 232, 638 N.E.2d 541 (1994)

5. Substantial Contacts (general jurisdiction)
   Perkins v. Banquet Consolidated Mining Co., 342 U.S. 437 (1952)

6. Property
II. Subject-Matter Jurisdiction

A. Federal District Courts
28 USC §§1331, 1367

B. Ohio Common Pleas Courts
Ohio Constitution, Art. IV, §(B)

B. Manner of Making Service of Process

1. Certified Mail and Express Mail
   ORCP 4.1(1), 4.3(B)(1)
   Regional Airport Authority v. Swinehart, 62 Ohio St.2d 403, 406 N.E.2d 811 (1980)

2. Personal Service
   ORCP 4.1(2), 4.3(B)(2)

3. Residence Service
   ORCP 4.1(3)

4. Who May Be Served
   ORCP 4.2

5. Publication
   ORCP 4.4

6. Service in a Foreign Country
   ORCP 4.5

III. Venue

A. Federal District Courts
28 USC §1391

B. Ohio Common Pleas and Other Trial Courts
ORCP 3

C. Change of Venue
28 USC §§1404, 1406
ORCP 3(C)

D. Forum Non Conveniens
   Chambers v. Merrell-Dow Pharmaceuticals, Inc., 35 Ohio St.3d 123, 519 N.E.2d 370 (1988)
PART B: PLEADING

I. Initial Pleadings
A. Complaint
   ORCP 8(A), 9
   Illinois Controls, Inc. v. Langham, 70 Ohio St.3d 512, 639 N.E.2d 771 (1994)
B. Answer
   1. Defenses
      ORCP 8(B), 8(C), 9, 12
   2. Counterclaim
      ORCP 13(A), 13(B)
      Retting Enterprises, Inc. v. Koehler, 68 Ohio St.3d 274, 626 N.E.2d 99 (1994)
   3. Cross-claim
      ORCP 13(G)
   4. Reply
      ORCP 7(A)

II. Other Pleadings of Claims or Defenses
    ORCP 7(A), 9, 12

III. Amendments
    ORCP 15, 54(C)

IV. Supplemental Pleading
    ORCP 15(E)

V. Form
    ORCP 10, 11
    O.R.C. §2323.51
    FRCP 11

VI. Proper Parties
A. Capacity
   ORCP 9(A), 17(A)
B. Justiciability
   Ohio Constitution, Art. IV, §4(B)
   Flast v. Cohen, 392 U.S. 83 (1968)
   Warth v. Seldin, 422 U.S. 490 (1975)
C. Real Party in Interest
   ORCP 17(A)

Peterson v. Teodosio, 34 Ohio St.2d 161, 297 N.E.2d 113 (1973)
Hoover v. Suslin, 12 Ohio St.3d 1, 465 N.E.2d 377 (1984)
Cecil v. Cottrill, 67 Ohio St.3d 367, 618 N.E.2d 133 (1993)
PART C: JOINDER

I. **Permissive Claims and Remedies Against One or More Parties**
   ORCP 18, 20(A), 13(G)

II. **Persons Needed for Just Adjudication**
   A. **Feasible Parties**
      ORCP 19(A)
   B. **Indispensable Parties**
      ORCP 19(B)

III. **Compulsory Joinder**
    ORCP 19.1, 13(A)

IV. **Third-Party Claims**
    ORCP 14

V. **Class Actions**
   ORCP 23
   *Planned Parenthood Assn. of Cincinnati, Inc. v. Project Jericho*, 52 Ohio St.3d 56, 556 N.E.2d 157 (1990)

VI. **Intervention**
   A. **Of Right**
      ORCP 24(A)
      *State ex rel. Smith v. Frost*, 74 Ohio St.3d 107, 656 N.E.2d 673 (1995)
   B. **Permissive**
      ORCP 24(B)

PART D: DISCOVERY

I. Scope

A. Relevance
ORCP 26(B)(1)

B. Not Privileged
ORCP 26(B)(1)

C. Calculated to Lead to Admissible Evidence
ORCP 26(B)(1)

D. Insurance Agreements
ORCP 26(B)(2)

E. Work Product
ORCP 26(B)(3)
Hickman v. Taylor, 329 U.S. 495 (1947)

F. Experts
ORCP 26(B)(4)

II. Methods

A. Deposition Upon Oral Examination

1. Before Action Commenced
ORCP 27

2. After Action Commenced
ORCP 30

B. Written Interrogatories
ORCP 33

C. Production of Documents or Things
ORCP 34

D. Physical or Mental Examinations
ORCP 35

E. Requests for Admission
ORCP 36

F. Required Disclosures
FRCP 26(a)(1)-(2)

III. Sequence, Timing, and Supplementation
ORCP 26(D), 26(E), 29

IV. Protective Orders
ORCP 26(C)

V. Sanctions
ORCP 37
O.R.C. §2323.51
PART E: PRE-TRIAL MATTERS

I. Pre-trial Conference and Procedure
   ORCP 16

II. Motion to Dismiss
    ORCP 12(B)
    York v. Ohio State Highway Patrol, 60 Ohio St.3d 143, 573 N.E.2d 1063 (1991)
    Nemazee v. Mt. Sinai Medical Ctr., 56 Ohio St.3d 109, 564 N.E.2d 477 (1990)
    Fahnbulleh v. Straham, 73 Ohio St.3d 666, 653 N.E.2d 1186 (1995)

III. Judgment on the Pleadings
     ORCP 12(C)
     Peterson v. Teodosio, 34 Ohio St.2d 161, 297 N.E.2d 113 (1973)
     State ex rel. Midwest Pride IV, Inc. v. Pontious, 75 Ohio St.3d 565, 664 N.E.2d 931 (1996)

IV. Summary Judgment
    ORCP 56
    Wing v. Anchor Media, Ltd. of Texas, 59 Ohio St.3d 108, 570 N.E.2d 1095 (1991)
    Murphy v. Reynoldsburg, 65 Ohio St.3d 356, 604 N.E.2d 138 (1992)
    Dresher v. Burt, 75 Ohio St.3d 280, 662 N.E.2d 264 (1996)

V. Dismissal

A. Voluntary
   FRCP 41(a)
   ORCP 41(A)

B. Involuntary
   ORCP 41(B)
   Jones v. Hartranft, 78 Ohio St.3d 368, 678 N.E.2d 530 (1997)
   Hillabrand v. Drypers Corp., 87 Ohio St.3d 517, 721 N.E.2d 1029 (2000)

VI. Provisional Remedies

A. Seizure of Person or Property
   ORCP 64

B. Injunctions
   ORCP 65
PART F: TRIAL

I. By Court

A. Findings of Fact and Conclusions of Law
   ORCP 52

II. By Jury

A. Right to Trial by Jury: Federal Practice
   U.S. Constitution, Seventh Amendment
   Teamsters v. Terry, 494 U.S. 558 (1990)

B. Right to Trial by Jury: Ohio Practice
   Ohio Constitution, Art. I, § 5
   Hoops v. United Tel. Co. of Ohio, 50 Ohio St.3d 97, 553 N.E.2d 252 (1992)
   Zoppo v. Homestead Ins. Co., 71 Ohio St.3d 552, 644 N.E.2d 397 (1994)

C. Demand
   ORCP 38(B)-(C), 39(B)
   Soler v. Evans, St. Clair & Kelsey, 94 Ohio St.3d 432, 763 N.E.2d 1169 (2002)

D. Voir Dire and Challenges
   ORCP 47
   Hicks v. Westinghouse Materials Co., 78 Ohio St.3d 95, 676 N.E.2d 872 (1997)

E. Instructions
   ORCP 51

F. Forms of Verdict
   ORCP 49
   Ramage v. Central Ohio Emergency Serv., Inc., 64 Ohio St.3d 97, 592 N.E.2d 828 (1992)

III. Dismissal During Trial

A. Non-Jury Action
   ORCP 41(B)(2)

B. Jury Action/Directed Verdict
   ORCP 50(A)
   O'Day v. Webb, 29 Ohio St.2d 215, 280 N.E.2d 896 (1972)
PART G: POST-TRIAL MATTERS

I. Motion for Judgment

   Notwithstanding the Verdict
   ORCP 50(B)
   Chemical Bank of New York v. Neman, 52 Ohio St.3d 204, 556 N.E.2d 490 (1990)
   Wagner v. Roche Laboratories, 77 Ohio St.3d 116, 671 N.E.2d 252 (1996)

II. Motion for a New Trial
   ORCP 59

III. Judgment

   A. By Default
      ORCP 55

   B. Manner of Entry
      ORCP 54(A), 58

   C. Relief From Judgment
      ORCP 60
      GTE Automatic Elec. v. ARC Industries, 47 Ohio St.2d 146, 351 N.E.2d 113 (1976)
      Strack v. Pelton, 70 Ohio St.3d 172, 637 N.E.2d 914 (1994)
      Kay v. Marc Glassman, Inc., 76 Ohio St.3d 18, 665 N.E.2d 1102 (1996)
PART H: APPEAL

I. Preserving Issues for Appeal

II. Appealability
   Ohio Constitution, Art. IV, § 3(B)(2)
   O.R.C. §2505.02
   *Polikoff v. Adam*, 67 Ohio St.3d 100, 616 N.E.2d 213 (1993)

III. Exceptions to Final Order Rule
   A. Partial Judgments
      ORCP 54(B)
   B. Extraordinary Writs
      Ohio Constitution, Art. IV, §3(B)(1)
      O.R.C. §2731
PART I: COLLATERAL EFFECTS

I. Res Judicata/Claim Preclusion
   Grava v. Parkman Twp., 73 Ohio St.3d 379,

II. Collateral Estoppel/Issue
    Preclusion
    Parklane Hosiery Co., Inc. v. Shore, 439
    U.S. 322 (1979)
    Goodson v. McDonough Power Equipment,
    Inc., 2 Ohio St.3d 193, 443 N.E.2d 978
    (1983)
    Kelly v. Georgia-Pacific Corp., 46 Ohio
    St.3d 134, 545 N.E.2d 1244 (1989)
    Broz v. Winland, 68 Ohio St.3d 521, 629
    N.E.2d 395 (1994)
Chapter 3
Commercial Transactions

PART A: ARTICLE 4A FUNDS TRANSFERS

References

Treatises
Lawrence, An Introduction to Payment Systems (1997) (L)

Statutes
Uniform Commercial Code, 1989 Official Text, Article 4A (UCC)
Ohio Revised Code Title 1304 (specific sections as cited below) (O.R.C.)

I. Scope of Article 4A and Relationship to Federal Law

A. Scope of Article 4A
   UCC §§4A-101 thru 4A-104, 4A-108
   O.R.C. §§1304.51, 1304.52, 1304.55
   M&H §10.04[7]
   W&S §19-1
   L Ch. 7 Pt. A

B. Relationship to Federal Reserve Regulations and Federal Law
   UCC §§4A-107, 4A-108
   O.R.C. §§1304.54, 1304.55
   W&S §19-1
   L Ch. 7 Pt. A

C. Variation by Agreement and Funds-Transfer System Rule
   UCC §4A-501
   O.R.C. §1304.79
   M&H §10.04[2]
   L Ch. 7 Pt. A(8)

II. Key Definitions

III. Essential Nature of a Payment Order and Roles of Receiving and Beneficiary Banks
A. Nature of a Payment Order
UCC §§4A-209, 4A-212, 4A-210
O.R.C. §§1304.64, 1304.67, 1304.65
M&H §10.04[4]
W&S §19-1

B. Acceptance by and Duties of Receiving Banks
UCC §§4A-209(a), 4-301(a), 4A-212, 4A-210(b), 4A-302, 4A-402(c),
4A-303, 4A-304, 4A-402
O.R.C. §§1304.64(A), 1304.68(A),
1304.67, 1304.65(B), 1304.69,
1304.74(C), 1304.70, 1304.71,
1304.74
M&H §10.04[5]
W&S §19-2
L Ch. 7 Pt. C

C. Acceptance by and Duties of Beneficiary's Bank
UCC §§4-209(b), 4A-402 thru 4A-406
O.R.C. §§1304.64(B), 1304.74 thru
1304.78
M&H §10.04[6]
W&S §19-2
L Ch. 7 Pt. D

IV. Issuance Issues

A. Authorized and Verified Payment Orders
UCC §§4A-201 thru 4A-203
O.R.C. §§1304.56 thru 1304.58
M&H §10.04[8][a]
W&S §19-3
L Ch. 7 Pt. F(1)

B. Unauthorized Payment Orders
UCC §§4A-201 thru 4A-204
O.R.C. §§1304.56 thru 1304.59
M&H §10.04[8][a]
W&S §19-3
L Ch. 7 Pt. F

C. Erroneous Instruction by the Sender
UCC §§4A-205, 4A-402, 4A-201,
4A-206
O.R.C. §§1304.60, 1304.74,
1304.56, 1304.61
M&H §10.04[8][b]
L Ch. 7 Pt. G(1)

D. Erroneous Execution of Sender Instruction
UCC §§4A-303, 4A-304
O.R.C. §§1304.70, 1304.71
M&H §10.04[8][b]
L Ch. 7 Pt. C(2)

E. Misdescription of Beneficiary
UCC §§4A-207, 4A-402
O.R.C. §§1304.62, 1304.74
M&H §10.04[8][c]
W&S §19-3
L Ch. 7 Pt. G(2)(a) & (b)

F. Misdescription of Intermediary Bank or Beneficiary's Bank
UCC §4A-208
O.R.C. §1304.63
M&H §10.04[8][c]
L Ch. 7 Pt. G(2)(c)

G. Cancellation or Amendment of Payment Order
UCC §4A-211
O.R.C. §1304.66
M&H §10.04[8][d]
W&S Part Two, §2-3
L Ch. 7 Pt. E

H. Consequential Damage Issues
UCC §4A-305
O.R.C. §1304.72
M&H §10.04[9]
L Ch. 7 Pt. C(1)(h)

V. Finality of Payment
UCC §§4A-209, 4A-404 thru 4A-406
O.R.C. §§ 1304.64, 1304.76 thru 1304.78
M&H §10.04[10]
W&S §19-2
L Ch. 7 Pt. E(2) & (3)
PART B: COMMERCIAL PAPER

References

Treatises
Lawrence, An Introduction to Payment Systems (1997) (L)

Statutes and Regulations
Uniform Commercial Code, Revised 1990 Official Text, Articles 3 and 4 (UCC)
Ohio Revised Code, Titles 1303 and 1304 (specific sections as cited below) (O.R.C.)

I. Scope of Articles 3 and 4 and Relation to Other Law

A. Scope of Articles 3 and 4
   UCC §§3-102, 3-104, 4-102, 4-104(a)(9)
   O.R.C. §§1303.02, 1303.03, 1304.02, 1304.01(A)(9)
   W&S §§13-1, 18-1
   M&H §§1.02[1], 1.04[1], 8.01[1][a]
   L Ch. 1 Pt. B

B. Relations between Articles 3 and 4
   UCC §§3-102, 4-102
   O.R.C. §§1303.02, 1304.02
   M&H §1.04[1]
   L Ch. 1 Pt. B

C. Variation by Agreement
   UCC §§1-102, 4-103
   O.R.C. §§1301.02, 1304.03
   W&S §18-2
   M&H §8.01[2]
   L Ch. 5 Pt. C

D. Relationship to the Common Law
   UCC §1-103
   O.R.C. §1301.03

II. Formal Requisites of Negotiability

M&H §1.04[5]

III. Types of Negotiable Instruments

IV. Transfer and Negotiation

A. Transfer
   UCC §3-203
   O.R.C. §1303.22
   M&H §§3.01[3][b], 3.02[1]
   L Ch. 2 Pt. G(1)

B. Negotiation
   UCC §3-201
   O.R.C. §1303.21
C. Special and Blank Indorsements
   UCC §§3-204, 3-205
   O.R.C. §§1303.24, 1303.25
   W&S §13-6(c)
   M&H §3.02[3][c][i] & [ii]
   L Ch. 2 Pt. A(1)(c)

D. Restrictive Indorsements
   UCC §§3-204, 3-206
   O.R.C. §§1303.24, 1303.26
   W&S §13-7
   M&H §3.02[3][c][iii][A] & [B]
   L Ch. 4 Pt. D(1)

V. Parties Entitled to Enforce Instruments - Basic Definitions

A. Person Entitled to Enforce Instrument
   UCC §3-301
   O.R.C. §1303.31
   W&S §13-6
   L Ch. 2 Pt. A, Ch. 3 Pt. H

B. Holder
   UCC §§1-201(20), 3-201
   O.R.C. §§1301.01(T)(1), 1303.21
   W&S §14-3
   M&H §3.01[1] & [2]
   L Ch. 2 Pt. A

C. Holder in Due Course
   UCC §3-302
   O.R.C. §1303.32
   W&S §14-2
   M&H §3.03[1]
   L Ch. 2 Introduction

D. Transferees and Shelter Doctrine
   UCC §3-203
   O.R.C. §1303.22

VI. Holders in Due Course

A. Requisites of Holder in Due Course Status
   1. General
      UCC §3-302
      O.R.C. §1303.32
      W&S §§14-2,14-3,14-4
      M&H §3.03[1]
      L Ch. 1 Pt. D, Ch. 2 Pt. A
   2. Value
      UCC §§3-303, 4-211, 4-210
      O.R.C. §§1303.33, 1304.21, 1304.20
      W&S §14-5
      M&H §3.03[2][a]
      L Ch. 2 Pt. B
   3. Good Faith
      UCC §3-103(a)(4)
      O.R.C. §1303.01(A)(4)
      W&S §14-6
      M&H §3.03[2][b][i] thru [iii]
      L Ch. 2 Pt. C(1)
   4. Without Notice
      UCC §§1-201(25) thru (27), 3-302, 3-304
      O.R.C. §§1301.01(Y) thru (AA), 1303.32, 1303.34
      W&S §14-7
      M&H §3.03[2][b][i], [iv], [v]
      L Ch. 2 Pt. C(2) & (3)

B. Rights of a Holder in Due Course
   1. Claims to Instrument
      UCC §3-306
      O.R.C. §1303.36(C)
      W&S §14-10
      M&H §3.03[3][a][iii]
2. **Personal Defenses and Claims in Recoupment**
   - UCC §3-305
   - O.R.C. §1303.35
   - W&S §14-10
   - M&H §6.03
   - L Ch. 2 Pt. E(2)(a) thru (c)

3. **Real Defenses**
   - UCC §3-305(a)(1)
   - O.R.C. §1303.35(A)(1)
   - W&S §14-10
   - M&H §6.02
   - L Ch. 2 Pt. E(1)(b)

C. **Comparative Rights of One Not a Holder in Due Course**
   - UCC §§3-305, 3-306
   - O.R.C. §§1303.35, 1303.36(C)
   - W&S §§13-6, 14-3
   - L Ch. 2 Pt. E

D. **Special Consumer Issues**

1. **Close Connection Doctrine** (Case Law Doctrine)
   - UCC §§3-305
   - O.R.C. §§1303.35, 1303.36(C)
   - W&S §§13-6, 14-3
   - M&H §3.04[2]

2. **FTC Holder in Due Course Rule**
   - UCC §3-106(d)
   - O.R.C. §1303.05(D)
   - 16 C.F.R. §433.2
   - W&S §14-9
   - M&H §3.04[4]
   - L Ch. 2 Pt. D(4)(a)

VII. **Contractual Liability of Parties on the Instrument**

A. **Need for a Signature**
   - UCC §§1-201(39), 3-401

B. **Obligations of Issuer of Note/Maker**
   - UCC §3-412
   - O.R.C. §1303.52
   - W&S §13-6(a)
   - M&H §4.05
   - L Ch. 3 Pt. A(1)

C. **Obligations of Issuer of Cashier's Check**
   - UCC §§3-104(g), 3-412, 3-411
   - O.R.C. §§1303.03(G), 1303.52, 1303.51
   - W&S §13-6
   - M&H §§4.05, 9.01[4][d]
   - L Ch. 3 Pt. A(1)

D. **Obligations of Drawer**
   - UCC §3-414
   - O.R.C. §1303.54
   - W&S §13-6(a)
   - M&H §4.03
   - L Ch. 3 Pt. A(2)
E. **Obligations of Indorser**
   UCC §3-415
   O.R.C. §1303.55
   W&S §13-6(c) & (d)
   M&H §4.06
   L Ch. 3 Pt. A(4)

F. **Obligations of Drawee**
   1. **Generally not Liable**
      UCC §3-408
      O.R.C. §1303.45
      W&S §13-6(b)
      M&H §4.04[1]
      L Ch. 3 Pt. A(3)(a)
   2. **Acceptance and Certification**
      UCC §§3-409, 3-413
      O.R.C. §§1303.46, 1303.53
      W&S §13-6(b)
      M&H §4.04[2]
      L Ch. 3 Pt. A(3)(b)

G. **Accommodation Parties**
   UCC §3-419
   O.R.C. §1303.59
   W&S §13-8
   M&H §§5.01, 5.02
   L Ch. 3 Pt. D(1)

H. **Discharge of Indorsers and Accommodation Parties**
   (Suretyship Defenses)
   UCC §3-605
   O.R.C. §1303.70
   W&S §13-9
   M&H §6.03[6]
   L Ch. 3 Pt. D(4)

VIII. **Warranty Liability - Transfer and Presentment Warranties**
   UCC §§3-416, 4-207, 3-417, 4-208
   O.R.C. §§1303.56, 1304.17, 1303.57, 1304.18
   W&S §15-6

IX. **Negligence, Preclusion and Related Doctrines**
   A. **Generalized Lack of Ordinary Care**
      UCC §§3-406, 3-103 (a)(7)
      O.R.C. §§1303.49, 1303.01(A)(9)
      W&S §§16-3, 16-7
      M&H §4.02[2][a]
      L Ch. 4 Pt. C(3)
   B. **Customer's Duty to Discover and Report Unauthorized Signatures and Alterations**
      UCC §4-406
      O.R.C. §1304.35
      W&S §§16-6, 16-7
      M&H §9.03[4]
      L Ch. 4 Pt. C(5)
   C. **Impostors and "Fictitious Payees"**
      UCC §3-404
      O.R.C. §1303.44
      W&S §16-4
      M&H §7.03[3][c][ii]
      L Ch. 4 Pt. C(4)
   D. **Fraudulent Indorsements by Employees**
      UCC §3-405
      O.R.C. §1303.47
      W&S §16-4
      M&H §7.03[3][c][ii]
      L Ch. 4 Pt. C(4)(i)
   E. **Breach of Fiduciary Duty**
      UCC §§3-306, 3-307
      O.R.C. §§1303.36(C), 1303.37
      W&S §16-5
      M&H §3.03[2][b][v]
      L C. 2 Pt. C (3)(c)

X. **Other Issues**
A. Effect of Instrument on Underlying Obligation
   UCC §3-310
   O.R.C. §1303.39
   M&H §7.01
   L Ch. 3 Pt. F

B. Lost or Stolen Instruments
   UCC §§3-309, 3-312
   O.R.C. §§1303.38, 1303.401
   W&S §15-2
   M&H §9.01[4][d][v]
   L. Ch. 3 Pt. I

C. Altered and Incomplete Instruments
   UCC §§3-115, 3-407, 4-401(d)
   O.R.C. §§1303.11, 1303.50, 1304.30(D)
   M&H §§2.05, 6.02[7], 6.03[2] & [3]
   L Ch. 4 Pt. B

D. Procedures and Burden of Establishing Signatures and Holder in Due Course Status
   UCC §3-308
   O.R.C. §1303.36
   W&S §13-4
   M&H §6.01[1][a]
   L Ch. 3 Pt. H

E. Discharge of Parties
   UCC §§3-601, 3-602, 3-603, 3-604
   O.R.C. §§1303.66, 1303.67, 1303.68, 1303.69
   M&H §6.03[6]
   L Ch. 2 Pt. E(2)(e)

F. Presentment and Dishonor
   1. Presentment
      UCC §3-501
      O.R.C. §1303.61
      W&S §13-6
      M&H §4.03[2][a]
   2. Dishonor and Notice of Dishonor
      UCC §§3-502, 3-503
      O.R.C. §§1303.62, 1303.63
      W&S §13-6
      M&H §4.03[2][a] & [b]
      L Ch. 3 Pt. B(2) & (3)

G. Conversion
   UCC §3-420
   O.R.C. §1303.60
   W&S §§15-4, 15-5
   M&H §7.03[3]
   L Ch. 3 Pt. A(5)

H. Accord and Satisfaction
   UCC §3-311
   O.R.C. §1303.40
   W&S §13-10
   M&H §7.01[3]
   L Ch. 3 Pt. G

I. Statutes of Limitation and Time/Notice Bar
   UCC §§3-118, 4-111, 4-406(f)
   O.R.C. §§1303.16, 1304.09, 1304.35(F)
   W&S §§13-11, 15-3, 16-6
   M&H §§6.03[7], 9.03[4][d]
   L Ch. 3 Pt. H(6), Ch. 4 Pt. C(5)(i)
XI. Drawee Bank-Customer Relationships

A. Customer's Rights to Stop Payment
   UCC §§4-403, 4-407
   O.R.C. §§1304.32, 1304.36
   W&S §§18-5, 18-6
   M&H §§9.01[4], 9.02[3]
   L Ch. 6 Pt. C

   UCC §§4-402
   O.R.C. §1304.31
   W&S §18-4
   M&H §9.02[2]
   L Ch. 6 Pt. B

   1. General
      UCC §4-401
      O.R.C. §1304.30
      W&S §18-3
      M&H §9.01[1]
      L Ch. 6 Pt. A

   2. Overdrafts
      UCC §4-401
      O.R.C. §1304.30
      W&S §18-3
      M&H §9.01[2], [3]
      L Ch. 6 Pt. A(1)

   3. Post-dated Checks
      UCC §4-401(c)
      O.R.C. §1304.30(C)
      W&S §18-3(b)
      M&H §9.02[4]
      L Ch. 6 Pt. A(2)

   4. "Stale" Checks
      UCC §4-404
      O.R.C. §1304.33

B. Drawee Liability for Wrongful Dishonor
   UCC §4-402
   O.R.C. §1304.31
   W&S §18-4
   M&H §9.02[2]
   L Ch. 6 Pt. B

   UCC §4-405
   O.R.C. §1304.34
   W&S §18-3(e)
   M&H §9.01[6]
   L Ch. 6 Pt. A(5)

C. Bank's Rights to Charge Customer's Account
   1. General
      UCC §4-401
      O.R.C. §1304.30
      W&S §18-3
      M&H §9.01[1]
      L Ch. 6 Pt. A

   2. Overdrafts
      UCC §4-401
      O.R.C. §1304.30
      W&S §18-3
      M&H §9.01[2], [3]
      L Ch. 6 Pt. A(1)

   3. Post-dated Checks
      UCC §4-401(c)
      O.R.C. §1304.30(C)
      W&S §18-3(b)
      M&H §9.02[4]
      L Ch. 6 Pt. A(2)

   4. "Stale" Checks
      UCC §4-404
      O.R.C. §1304.33

D. Check Collection Process
   1. Right of Charge-Back or Refund
      UCC §§4-214
      O.R.C. §§1304.24
      W&S §17-6
      M&H §8.03
      L Ch. 5 Pt. F(2)

   2. Duty of Collecting Bank
      UCC §§4-202, 4-103(a) & (e)
      O.R.C. §§1304.12, 1304.03(A) & (E)
      W&S §17-6
      M&H §8.03
      L Ch. 5 Pt. F(3)

   3. Finality of Payment and Midnight Deadline
      UCC §§3-418, 4-215, 4-301, 4-302, 4-303, 4-104(a)(10), 4-108, 4-109
      O.R.C. §§1303.58, 1304.25, 1304.27, 1304.28, 1304.29, 1304.01(A)(10), 1304.06, 1304.07
      Fed. Res. Regulation CC, 12 C.F.R. §229.30(c)
      W&S §§17-1 thru 17-6
      M&H §§8.02, 8.03, 9.01[7]
      L Ch. 5 Pt. E(1)

E. Expedited Funds Availability
1. **$100 Availability Rule**  
Fed. Res. Regulation CC, 12 C.F.R. §229.10(c)(1)(vii)  
M&H §8.04[2][a]  
L Ch. 5 Pt. G(2)(a)

2. **Local Checks Rule**  
M&H §8.04  
L Ch. 5 Pt. E(2)(b) & Pt. G(2)(b)

3. **Non-Local Checks Rule**  
M&H §8.04  
L Ch. 5 Pt. E(2)(b) & Pt. G(2)(b)

F. **Collection of Checks - Expeditious Return by Paying Bank**

1. **Two-day/Four-day Test**  
Fed. Res. Regulation CC, 12 C.F.R. §229.30(a)(1)  
M&H §8.04  
W&S §17-5  
L Ch. 5 Pt. E(2)(b)

2. **Forward Collection Test**  
Fed. Res. Regulation CC, 12 C.F.R. §229.30(a)(2)  
M&H §8.04  
W&S §17-5  
L Ch. 5 Pt. E(2)(c)
PART C: SECURED TRANSACTIONS

References

Treatise

Statutes and Regulations
Uniform Commercial Code, 2000 Official Text, Article 9 (UCC)
Ohio Revised Code, Title 1309 (specific sections as cited below) (O.R.C.)

I. Scope of Article 9

A. Generally
UCC §§1-201(37), 9-109
O.R.C. §1309.109
W&S, Ch. 21

B. Determining Whether Security Interest or Lease
UCC §1-201(37)
O.R.C. §1301.01(KK)
W&S §21-3

C. Consignments
UCC §§2-326, 9-102(a)(20), 9-103, 9-109, 9-324,
O.R.C. §§1302.39, 1309.103, 1309.109,
1309.324, 1309.326
W&S §§21-4, 21-5

D. Sales of Accounts and Chattel Paper, Payment Intangibles, Promissory Notes
UCC §9-109 (a)(3)
O.R.C. §1309.109(A)(3)
W&S §21-6

E. Agricultural Liens
UCC §9-109(d)(2)
O.R.C. §1309.109(A)(2)
W&S §21-8

F. Transactions Excluded from Article 9

II. Creation of Enforceable and Perfected Security Interests

A. General Validity
UCC §9-201
O.R.C. §1309.201

B. Attachment, Enforceability and Statute of Frauds
UCC §§9-201, 9-203
O.R.C. §§1309.201, 1309.203
W&S §§22-2, 22-3

C. Future Advances and After Acquired Property Clauses
UCC §9-204
O.R.C. §1309.204

D. Perfection

1. General Requirements for Perfection
UCC §9-308
O.R.C. §1309.308
W&S §22-4

2. Automatic Perfection
UCC §§9-309, 9-310, 9-312
O.R.C. §§1309.309, 1309.310, 1309.312
III. Priorities

A. Rights of the Secured Creditor Against Unsecured Creditors
   UCC §§9-201, 9-317
   O.R.C. §§1309.201, 1309.317
   W&S §24-2

B. Priority over Other Security Interests

1. Priority over Unperfected Security Interests
   UCC §9-322
   O.R.C. §1309.322
   W&S §24-2

2. General Priority Rule: First to File or Perfect
   UCC §§9-322, 9-323
   O.R.C. §§1309.322, 1309.323
   W&S §24-3

3. Purchase Money Security Interests
   UCC §9-324
   O.R.C. §1309.324
   W&S §24-4

C. Rights of Secured Creditor Against Selected Purchasers

1. Buyers in the Ordinary Course
   UCC §§9-320(a), 1-201(19), 9-317
   O.R.C. §§1309.320(A), 1301.01(I), 1309.317
   W&S §24-8

2. Buyers of Consumer Goods
   UCC §9-320(b)
   O.R.C. §1309.320(B)
   W&S §24-8

3. Purchasers of Chattel Paper & Instruments
   UCC §9-330
   O.R.C. §1309.330
   W&S §24-10

4. Buyers of Motor Vehicles
   UCC §§9-311, 9-337
IV. Default

A. Definition of Default in Security Agreement
   W&S §§25-1 through 25-3

B. Collection Rights of Secured Party
   UCC §§9-606, 9-607
   O.R.C. §§1309.606, 1309.607
   W&S §§25-4, 25-5

C. Secured Party's Rights to Take Possession after Default
   UCC §9-609
   O.R.C. §§1309.46, 1309.44(D)
   W&S §§25-6 through 25-8

D. Secured Party's Rights of Disposition of Collateral

   1. Generally
      UCC §9-610
      O.R.C. §§1309.610, supplemented by 1371.16 (Retail Installment Sales Act)
      W&S §25-10

   2. Manner of Disposition and Notice of Disposition
      UCC §§9-611 through 9-615
      O.R.C. §§1309.611 through 1309.615, supplemented by 1317.16 (Retail Installment Sales Act)
      W&S §§25-10, 25-11

   3. Application of Proceeds
      UCC §9-615
      O.R.C. §1309.615
      W&S §25-12

   4. Consequences of Failure to Comply
      UCC §§9-625, 9-626
      O.R.C. §§1309.625, 1309.626
      W&S §25-13

E. Compulsory Disposition of Collateral and Strict Foreclosures
   UCC §§9-620, 9-621, 9-622
   O.R.C. §§1309.620, 1309.621, 1309.622
   W&S §25-9

F. Debtor's Right to Redeem Collateral
   UCC §9-623
   O.R.C. §§1309.623, supplemented by 1317.12 (Retail Installment Sales Act)

G. Creditor's Right to Deficiency and Debtor’s Right to Surplus
   UCC §§9-615, 9-626
   O.R.C. §§1309.615, 1309.626
   W&S §25-13
Chapter 4
Constitutional Law

The Constitution of the United States of America has survived for over 200 years as the fundamental law of this nation. Over that period, different approaches to judicial interpretation developed as courts addressed constitutional issues. Major approaches have been a process of logical deduction from the language of the Constitution, an historical focus on the Framers’ original intent, a structural understanding of allocation of powers among branches and between the federal and state governments, and a functional effort to implement underlying values.

Constitutional litigation typically involves choosing an approach to judicial interpretation, and lawyers must persuade judges by analysis of the provision, its background, and precedent that a particular approach is preferable. Changed factual situations and contrasting views of public policy fuel that effort and may provide a convincing reason to adopt a new approach or modify a conclusion already reached under a settled approach. Consequently, while this outline sets forth the leading cases in constitutional law for the topic headings, judicial interpretation is dynamic, and these cases, often consisting of majority or plurality, concurring, and dissenting opinions, are building blocks rather than conclusive authority.

I. Powers of Government

A. Federal Judicial Power

1. Supreme Court - Original Jurisdiction

2. Supreme Court - Appellate and Certiorari Jurisdiction
   a. Power of Judicial Review.
      Marbury v. Madison, 5 U.S. 137 (1803)
      Cooper v. Aaron, 358 U.S. 1 (1958)
   b. Congressional Power to Define and Limit
      Ex Parte McCullough, 74 v. U.S. 506 (1869)
   c. Appeal and Certiorari Review
      Maryland v. Baltimore Radio Show, Inc., 338

3. Limitations on Judicial Review
   a. Case or Controversy
      Nashville, C & St. L. Ry. v. Wallace, 288 U.S. 249 (1933)
   b. Congressional Power to Define and Limit
      Ex Parte McCullough, 74 v. U.S. 506 (1869)
   c. Direct Standing
      Flast v. Cohen, 392 U.S. 83 (1968)
U.S. v. SCRAP, 412 U.S. 669 (1973)
Warth v. Seldin, 422 U.S. 490 (1975)
Friends of the Earth v. Laidlaw, 528 U.S 167 (2001)

d. Third-party Standing
Barrows v. Jackson, 346 U.S. 249 (1953)

e. Ripeness
Laird v. Tatum, 408 U.S. 1 (1972)

f. Mootness
Roe v. Wade, 410 U.S. 113 (1973)
City News v. City of Wauseska, 531 U.S. 278 (2001)
g. Political Questions
h. Abstention
Railroad Comm'n v. Pullman Co., 312 U.S. 496 (1941)
Younger v. Harris, 401 U.S. 37 (1971)
Ankenbrandt v. Richards, 504 U.S. 689 (1992)
i. Self-Restraint
Ashwander v. TVA, 297 U.S. 288 (1936)
Rescue Army v. Municipal Court of Los Angeles, 331 U.S. 549 (1947)

j. Facial or As-Applied Challenge
Broadrick v. Oklahoma, 413 U.S. 601 (1973)
k. Speech or Debate Clause
Hutchinson v. Proxmire, 443 U.S. 111 (1979)

B. Federal Legislative Power

1. Implied Powers - The Necessary and Proper Clause
McCulloch v. Maryland, 17 U.S. 316 (1819)
2. **The Interstate Commerce Clause**

   a. Use of Interstate Commerce
   
   *Gibbons v. Ogden*, 22 U.S. 1 (1824)
   
   *U.S. v. Darby*, 312 U.S. 100 (1941)
   
   *Heart of Atlanta Motel, Inc. v. U.S.*, 379 U.S. 241 (1964)

   b. Instrumentality of Interstate Commerce
   
   
   *Stafford v. Wallace*, 258 U.S. 495 (1922)

   c. Substantially Affecting Interstate Commerce
   
   *NLRB v. Jones & Laughlin Steel Corp.*, 301 U.S. 1 (1937)
   
   *Wickard v. Filburn*, 317 U.S. 111 (1942)
   
   
   

   d. Federalism Constraints
   
   *Katzenbach v. McClung*, 379 U.S. 294 (1964)
   
   

2. **Powers in Domestic Affairs**

   a. Appointment and Removal
   
   
   

   b. Pardoning Power
   
   *Ex Parte Garland*, 71 U.S. 333 (1867)
   

   c. Veto Power
   
   
   

   d. Discretionary Power
   
   *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952)
   

   e. Executive Privilege
   

   f. Executive Immunity

3. **Dormant Commerce Clause**

C. **Federal Executive Power**

1. **Foreign Affairs Power**

   a. Relationship to Congress
   
   *U.S. v. Curtiss-Wright Export Corp.*, 299 U.S. 304 (1936)
   
   *U.S. v. Belmont*, 301 U.S. 324 (1937)
g. Executive Autonomy

D. Federal Regulatory Power

1. Non-Delegation Doctrine

2. Deference to Administrative Agency

E. State Power in Areas of Federal Authority

1. State Regulation of Foreign and Interstate Commerce

a. National Uniformity and Local Diversity
Cooley v. Board of Wardens, 53 U.S. 299 (1851)
South Carolina State Highway Dep't v. Barnwell Bros., Inc., 303 U.S. 177 (1938)

b. Balancing Benefits of and Burdens from Local Regulation
Southern Pacific Co. v. Arizona, 325 U.S. 761 (1945)

2. Congressional Reordering of State Power

a. Consent to State Regulation
Wilkerson v. Rahrer, 140 U.S. 545 (1891)
Prudential Ins. Co. v. Benjamin, 328 U.S. 408 (1946)

b. Preemption
Medtronic, Inc. v. Lohr, 135 L.Ed. 2d 700


c. Imposing Duties on States and Eleventh Amendment

F. Intergovernmental Relations

1. Federal-State Relations

a. Taxation
Helvering v. Gerhardt, 304 U.S. 405 (1938)

b. Regulation of State Government

2. Relations Between States

a. Interstate Compact Clause

b. Full Faith and Credit

II. Fourteenth Amendment and Related Matters

A. State or Governmental Action

1. "Under Color of Law"
Screws v. U.S., 325 U.S. 91 (1945)

2. Governmental Function Theory
Smith v. Allwright, 321 U.S. 649 (1944)
Hudgens v. NLRB, 424 U.S. 507 (1976)
Morse v. Republican Party of Virginia, 134 L.Ed. 2d 347 (1996)
Correctional Services Corp. v. Malesko, 534 U.S. 61 (2001)

3. **Private and Public “Symbiotic Relationships”**

4. **Government Licensing and Regulation**
   - Moose Lodge No. 107 v. Irvis, 407 U.S. 163 (1972)

5. **State Encouragement of Private Action**
   - Reitman v. Mulkey, 387 U.S. 369 (1967)

6. **Judicial Enforcement of Private Action**
   - Shelley v. Kraemer, 334 U.S. 1 (1948)

B. **Privileges and Immunities of National Citizenship**
   - Slaughter-House Cases, 83 U.S. 36 (1873)

C. **Substantive Due Process**

1. **Property and Economic Regulation**
   - Lochner v. New York, 198 U.S. 45 (1905)

2. **Retroactive Legislation**

3. **Incorporation from Bill of Rights**
   - Adamson v. California, 332 U.S. 46 (1947)
   - Duncan v. Louisiana, 391 U.S. 145 (1968)
   - Burch v. Louisiana, 441 U.S. 130 (1979)

4. **Personal, Fundamental, or Penumbral Rights**
   - Griswold v. Connecticut, 381 U.S. 479 (1965)
   - Roe v. Wade, 410 U.S. 113 (1973)
Moore v. City of East Cleveland, 431 U.S. 494 (1977)
Cruzan v. Director, Missouri Dept. of Health, 497 U.S. 261 (1990)

D. The Takings Clause
Dolan v. City of Tigard, 512 U.S. 374 (1994)
Bennis v. Michigan, 134 L.Ed. 2d 68 (1996)
Palazzolo v. R.I., 533 U.S. 606 (2001)

E. The Contract Clause
Home Building & Loan Ass’n v. Blaisdell, 290 U.S. 398 (1934)
City of El Paso v. Simmons, 379 U.S. 497 (1965)

F. Procedural Due Process

1. Protected "Liberty" or "Property" Interests
   Board of Regents v. Roth, 408 U.S. 564 (1972)

2. What Process Is Due

3. Conclusive Presumptions
   Vlandis v. Kline, 412 U.S. 441 (1973)
   Weinberger v. Salfi, 422 U.S. 749 (1975)

4. Void for Vagueness

G. Equal Protection

1. Economic Regulation and Taxation
   Lindsley v. Natural Carbonic
Gas Co., 220 U.S. 61 (1911)
General Motors Corp. v. Tracy, 136 L.Ed. 2d 761 (1997)
FCC v. Beach
Central State University v. AAUP, 119 S.Ct. 1162 (1999)

2. Discriminatory Purpose or Effect
Yick Wo v. Hopkins, 118 U.S. 356 (1886)
Personnel Adm’t of Massachusetts v. Feeney, 442 U.S. 256 (1979)

3. Affirmative Action or Set-asides
Adarand Constructors, Inc. v.

4. Nature of Classification
a. Race
(1) Suspect Classification
Strauder v. West Virginia, 100 U.S. 303 (1880)
Korematsu v. U.S., 323 U.S. 214 (1944)
Loving v. Virginia, 388 U.S. 1 (1967)
(2) School Desegregation
Keyes v. School District No. 1, 413 U.S. 189 (1973)
Columbus Board of Education v. Penick, 443 U.S. 449 (1979)
Freeman v. Pitts, 503 U.S. 467 (1992)
(3) Voting
Rice v. Cayetaus, 528 U.S.
b. Alienage

(1) Suspect Classification
   *Graham v. Richardson*, 403 U.S. 365 (1971)
   *In re Griffiths*, 413 U.S. 717 (1973)

(2) Deference to Federal Regulation

(3) Government Position Exception

c. Gender

d. Illegitimacy

e. Wealth

f. Age

g. Mental Disability
   *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432 (1985)

h. Sexual Orientation

i. Class of One

5. Impact on Rights, Privileges, or Interests

a. The Right to Vote

(1) One-Person, One-Vote
   *Reynolds v. Sims*, 377 U.S. 533 (1964)

(2) Poll Taxes and Property Qualifications
   *Salyer Land Co. v. Tulare*
Lake Basin Water Storage District, 410 U.S. 719 (1973)
Quinn v. Millsap, 491 U.S. 95 (1989)

(3) Ballot Access and Party Switching [also First Amendment]
Williams v. Rhodes, 393 U.S. 23 (1968)
Jenness v. Fortson, 403 U.S. 431 (1971)
Timmons v. Twin Cities, 137 L.Ed. 2d 834 (1997)

b. The Right to Travel
Dunn v. Blumstein, 405 U.S. 330 (1972)

(4) The Right of Privacy
Harris v. McRae, 448 U.S. 297 (1980)
Vaco v. Quill, 138 L.Ed. 2d 834 (1997)

H. Congressional Enforcement of 13th, 14th, and 15th Amendments

1. Thirteenth Amendment
Patterson v. McLean Credit Union, 491 U.S. 164 (1989)

2. Fourteenth Amendment
City of Boerne v. Flores, 138 L.Ed. 2d 624 (1997)

3. Fifteenth Amendment
South Carolina v. Katzenbach, 383 U.S. 301 (1966)
III. First Amendment Freedoms

A. Freedom of Speech in General

1. Protecting Communicative Element
   Cohen v. California, 403 U.S. 15 (1971)

2. Symbolic Speech

3. Content Neutrality
   Police Dep’t of Chicago v. Mosley, 408 U.S. 92 (1972)

4. Viewpoint Neutrality

5. Procedural Protection of Speech
   Freedman v. Maryland, 380 U.S. 51 (1965)
   Carroll v. President & Cm’rs of Princess Anne, 393 U.S. 175 (1968)

6. Overbreadth
B. Freedom of Association

1. Organizational Membership
   NAACP v. Alabama, 357 U.S. 449 (1958)
   Roberts v. United States

2. Political Activities of Public Employees
   Broadrick v. Oklahoma, 413 U.S. 601 (1973)
   O’Hare v. City, 135 L.Ed. 2d 874 (1996)

3. Loyalty and Security

C. Freedom of the Press

1. Prior Restraints
   Near v. Minnesota ex rel. Olson, 283 U.S. 697 (1931)
   Nebraska Press Ass’n v. Stuart, 427 U.S. 539 (1976)
   Snepp v. U.S., 444 U.S. 507

    Requirements
   Aptheker v. Secretary of State, 378 U.S. 500 (1964)
   Cole v. Richardson, 405 U.S. 676 (1972)

2. Speech in Cyberspace
   Reno v. ACLU, 138 L.Ed. 2d 874 (1997)
   Ascherft v. ACLU, 122 S.Ct. 1700 (2002)

3. Loyalty and Security

4. Political Campaigns:
   Spending, Reporting, and Disclosing
   Colorado Republican v. FEC, 533 U.S. 431 (2001)

5. Group Boycott
2. **Required Access**

3. **Access to News**
   Branzburg v. Hayes, 408 U.S. 665 (1972)

D. **Corporate Speech**

E. **Commercial Speech**
   Linmark Assoc., Inc. v. Township of Willingboro, 431 U.S. 85 (1977)
   Board of Trustees v. Fox, 492 U.S. 469 (1989)
   Glickman v. Wideman Brothers, 138 L.Ed. 2d 585 (1997)
   Lorrillard Tobacco Co v. Reilly, 121 S.Ct. 2404 (2001)
   Thompson v. Western States Medical Center, 122 S.Ct. 1497 (2002)

F. **Solicitation**

G. **Unprotected Expression**
1. Defamation, Invasion of Privacy, and Infliction of Distress
   Time, Inc. v. Firestone, 424 U.S. 448 (1976)

2. Obscenity
   Miller v. California, 413 U.S. 15 (1973)
   Paris Adult Theatre I v. Slaton, 413 U.S. 49 (1973)
   Sable Communications of California, Inc. v. FCC, 492 U.S. 115 (1989)
   Osborne v. Ohio, 495 U.S. 103 (1990)

3. Captive Audience

4. Speech Used as a Criminal Instrumentality

5. Speech Advocating or Inciting Unlawful Action
   Dennis v. U.S., 341 U.S. 494 (1951)

6. "Fighting Words" and Hostile Audience
   Cantwell v. Connecticut, 310 U.S. 296 (1940)
   Chaplinsky v. New Hampshire, 315 U.S. 568 (1942)
   Feiner v. New York, 340 U.S. 315 (1951)

7. Publication of Private Communications
H. Time, Place and Manner Regulation

1. *Flat Bans*
   Schneider v. State, 308 U.S. 147 (1939)
   Kovacs v. Cooper, 336 U.S. 77 (1949)

2. *Advance Notice and Permits*
   Lovell v. City of Griffin, 303 U.S. 444 (1938)
   Cox v. New Hampshire, 312 U.S. 569 (1941)
   Kunz v. New York, 340 U.S. 290 (1951)

3. *Injunctions*
   Schenck v. Pro-Choice, 137

4. *Public Forums*

   a. Streets, Sidewalks, and Parks
      Hague v. CIO, 307 U.S. 496 (1939)
      Coates v. Cincinnati, 402 U.S. 611 (1971)

   b. Limited Public Forums
      Cox v. Louisiana, 379 U.S. 559 (1965)
      Grayned v. City of Rockford, 408 U.S. 104 (1972)
      Burson v. Freeman, 504 U.S. 191 (1992)

   c. Non-Public Forums
      Perry Education Ass'n v. Perry Local Educators' Ass'n, 460 U.S. 37 (1983)

   d. Private Property
      Hudgens v. NLRB, 424
U.S. 507 (1976)

5. Public Employees’ Speech to Employers

6. Deference to Congress
Turner Broadcasting System, Inc. v. FCC, 137 L.Ed. 2d 369 (1997)

7. Subsidy Restrictions

I. Freedom of Religion

1. The Establishment Clause

   a. Accommodating Religion in Public Schools
      Zorach v. Clauson, 343 U.S. 306 (1952)
      Lee v. Weisman, 505 U.S. 577 (1992)

   b. Aid to Religious Institutions
      Board of Education v. Allen, 392 U.S. 236 (1968)
      Lemon v. Kurtzman, 403 U.S. 602 (1971)
      Agostini v. Felton, 138 L.Ed. 2d 391 (1997)

   c. Endorsement of Religion
      County of Allegheny v. ACLU Greater Pittsburgh Chapter, 492 U.S. 573 (1989)
      Kiryas Joel Village School

Good News Club v. Mitford, 121 S.Ct. 2093 (2001)
2. The Free Exercise Clause

a. Religious Beliefs or Practices
   - Corporation of the Presiding Bishop v. Amos, 483 U.S. 327 (1987)

b. Exemption from General Duty
   - Sherbert v. Verner, 374 U.S. 398 (1963)
   - Wisconsin v. Yoder, 406 U.S. 205 (1972)

J. Petition for Redress
   - McDonald v. Smith, 472 U.S. 479 (1985)
Chapter 5
Contracts

References

E. Allan Farnsworth, Contracts (3d ed. 1999)
Ohio Revised Code (O.R.C.)
Restatement (Second) of Contracts (1981)
Uniform Commercial Code (UCC)

I. Formation

A. Mutual Assent
   Restatement (Second) §§18-23
   Farnsworth §3.1

1. Offer
   a. Nature of
      Restatement (Second) §§24, 29, 31, 33
      Farnsworth §3.10
   b. Necessity of
      Communication
      Restatement (Second) §23
      Farnsworth §3.10
   c. Preliminary Negotiations
      Restatement (Second) §26
      Farnsworth §3.8
   d. To Whom Made
      Restatement (Second) §29
      Farnsworth §3.11
   e. Auctions
      Restatement (Second) §28
      Farnsworth §3.11
   f. Termination
      Restatement (Second)
      §§35, 36
      Farnsworth §3.16

(1) Rejection and Counter-offer

2. Acceptance

Restatement (Second)
§§38-40
Farnsworth §3.20

(2) Lapse of Time
Restatement (Second) §41
Farnsworth §3.19

(3) Revocation
Restatement (Second)
§§42-44, 46-47
Farnsworth §3.17

(4) Death or Incapacity of Offeror
Restatement (Second) §48
Farnsworth §3.18

(1) Under Option Contract
Restatement (Second)
§§25, 37
Farnsworth §3.23

(2) Firm Offer by Merchant
UCC §2-205
O.R.C. §1302.08
Farnsworth §3.23
W&S §1-4

(3) Effect of Part Performance or Tender
Restatement (Second)
§§45, 62
Farnsworth §3.24

(4) Reliance
Restatement (Second)
§§87(2)
Farnsworth §3.25, 3.26
II. Third Party Beneficiary Contracts

A. Intended Beneficiaries

Restatement, Second §§302, 304-305, 308
Farnsworth §§10.1-10.3
1. **Beneficiary’s Rights**
   Restatement (Second) §§304, 307, 310
   Farnsworth §10.7

2. **Variation of Rights**
   Restatement (Second) §311
   Farnsworth §10.8

B. **Incidental**
   Restatement (Second) §302
   Farnsworth §§10.1-10.3

C. **Defenses of Promisor**
   Restatement (Second) §309
   Farnsworth §§10.8-10.9

D. **Rights of Promisee**
   Restatement (Second) §305
   Farnsworth §10.7

III. **Assignment and Delegation**
    Restatement (Second) §316
    UCC §2-210
    O.R.C. §1302.13
    Farnsworth §11.1

A. **Of Rights**

1. **Form**
   Restatement (Second) §324
   Farnsworth §§1.2, 11.3

2. **Effect of**
   Restatement (Second) §§317, 327-332
   Farnsworth §11.3

3. **Which May Be Assigned**
   Restatement (Second) §§317, 320, 322
   UCC §2-210(2)
   O.R.C. §1302.13
   Farnsworth §§11.4, 11.5

4. **Interpretation**

5. **Partial**
   Restatement (Second) §326
   Farnsworth §11.3

6. **Defenses Against Assignee**
   Restatement (Second) §§336-338
   Farnsworth §11.8

7. **Warrantees of Assignor**
   Restatement (Second) §333
   Farnsworth §§11.7-11.9

B. **Delegation of Duties**
   Restatement (Second) §318
   Farnsworth §11.10

C. **Impact of Code: Prohibition Against Assignments Ineffective**
   UCC §9-406
   O.R.C. §§1309.404-1309.406
   Farnsworth §11.2

IV. **Statute of Frauds**
    Restatement (Second) §110
    Farnsworth §§6.1, 6.2

A. **Executor to Pay From His Own Estate**
   Farnsworth §§6.1, 6.2, 6.3

B. **Answer for Debt of Another**
   Restatement (Second) §§112-114, 116-123
   Farnsworth §6.3

C. **On Consideration of Marriage**
   Restatement (Second) §124
   Farnsworth §§6.1, 6.2

D. **Sale of Interest in Land**
   Restatement (Second) §§125-128
   Farnsworth §6.5
E. **Not to be Performed Within a Year**  
Restatement (Second) §130  
Farnsworth §6.4

F. **Sale or Lease of Goods**  
UCC §§1-206, 2-201, 2A-201, 8-319  
O.R.C. §§1301.12, 1302.04, 1310.08  
Farnsworth §6.6  
W&S §§2-2, 2-3

G. **Sufficiency of Memorandum**  
Restatement (Second) §§131-137  
Farnsworth §§6.7, 6.8  
W&S §2-4

H. **Part Performance and the Statute of Frauds**  
Restatement (Second) §129  
Farnsworth §6.9

I. **Estoppel to Assert Statute of Frauds as a Defense**  
Restatement (Second) §§129, 139  
UCC §2-201(3)  
O.R.C. §1302.04  
Farnsworth §6.12  
W&S §§2-5, 2-6

V. **Parol Evidence Rule**  
Restatement (Second) §§209-218  
UCC §2-202  
O.R.C. §1302.05  
Farnsworth §§7.2-7.5  
W&S §§2-10 to 2-12

VI. **Performance**

A. **Conditions**

1. **Nature of Conditions**  
Restatement (Second) §§224-226  
Farnsworth §8.2

2. **Express**

a. **When Found**  
Restatement (Second) §§227-228  
Farnsworth §8.4

b. **On Satisfaction of Promisor**  
Restatement (Second) §228  
Farnsworth §8.4

c. **Subject to Third Party Approval**  
Farnsworth §8.4

3. **Performance and Non-Performance**  
Restatement (Second) §§231-249  
Farnsworth §8.8

a. **Constructive Conditions**  
Restatement (Second) §§237, 238  
Farnsworth §8.9

(1) **Bilateral Contract**  
Restatement (Second) §231  
Farnsworth §8.1

(2) **Concurrent Conditions**  
Restatement (Second) §234  
Farnsworth §8.10

(3) **Performance Not Due Simultaneously**  
Restatement (Second) §§234, 237  
Farnsworth §8.11

(4) **Divisible Contracts**  
Restatement (Second) §240  
Farnsworth §8.13

b. **Materiality and Substantial Performance**  
Restatement (Second) §§237-243  
Farnsworth §§8.12, 8.15, 8.16

(1) **Nature of Material Breach**  
Restatement (Second) §§241, 242  
Farnsworth §8.16

(2) **Effect of Breach**  
Restatement (Second) §§236, 237-238, 241-243
Farnsworth §§8.15, 8.16, 8-18
(3) Effect of Subsequent Events on Existing Right of Action
Restatement (Second) §244
Farnsworth §§8.17, 8.18

c. Prospective Non-performance
Restatement (Second) §§250, 252-257
UCC §2-610
O.R.C. §1302.68
Farnsworth §§8.20-8.22
W&S §§6-2, 6-7

d. Right to assurance of performance
Restatement (Second) §251
UCC §2-609
O.R.C. §1302.67
Farnsworth §8.23
W&S §6-2

4. **Aleatory Promise**
Farnsworth §8.19

5. **Excuse of Condition**

a. Effect of Excuse of Condition
Restatement (Second) §225
Farnsworth §§8.5-8.7

b. Reasons for Excuse of Condition
(Acceptance, Waiver, Impracticability, Forfeiture, Insufficient Reason, Repudiation, Breach)
Restatement (Second) §§229, 245 - 248, 255, 271, 284
Farnsworth §§8.5-8.7

**VII. Breach of Contract and Remedies**

A. **What Constitutes Breach**
Restatement (Second) §235
Farnsworth §§8.1, 8.8

B. **Total or Partial Breach**

C. **Remedies**
Restatement (Second) §§344-345

1. **Damages**
Restatement (Second) §§346-356
Farnsworth §12.8

a. Expectation Interest
Restatement (Second) §§347-348
Farnsworth §§12.9-12.11

b. Reliance Interest
Restatement (Second) §§347, 349
Farnsworth §12.16

2. **Liquidated Damages and Limitation of Remedies**
Restatement (Second) §356
UCC §§2-718, 2-719(1)
O.R.C. §§1302.92-1302.93
Farnsworth §12.18
W&S §12-9

3. **Restitution in General**
Restatement (Second) §§370-377
Farnsworth §§12.19, 12.20

D. **Specific Performance of Contracts Involving Land and Interests in Land**
Farnsworth §12.6

E. **Specific Performance of Contracts Involving Personal Property**
Farnsworth §12.6

F. **Specific Performance of Contracts to Build or Repair**
Restatement (Second) §366
Farnsworth §12.7
G. Specific Performance of Contracts Involving Personal Services
Restatement (Second) §367
Farnsworth §12.7

H. Code Approach to Specific Performance
UCC §2-716
O.R.C. §1302.90
Farnsworth §12.6
W&S §6-6

I. Code Remedies
1. Seller’s Remedies
   UCC §2-703
   O.R.C. §1302.77
   W&S §§7-1 to 7-16

2. Buyer’s Remedies
   UCC §2-711
   O.R.C. §1302.85
   W&S §§6-1 to 6-7

VIII. Discharge of Contracts

A. Release or Contract Not to Sue
   Restatement (Second) §§284, 285
   Farnsworth §4.24

B. Substituted Performance, Substituted Contract, and Accord and Satisfaction,
   Payment in Full Checks
   Restatement (Second) §§278-279, 281
   UCC §3-310
   O.R.C. §1303.40
   Farnsworth §4.24

C. Code: Performance or Acceptance Under Reservation of Rights
   UCC §1-207
   O.R.C. §1301.13

D. Novation

IX. Impracticability of Performance and Frustration of Purpose

A. Impracticability

1. Supervening Impracticability
   a. In General
      Restatement (Second) §261
      Farnsworth §§9.5, 9.6
   b. Traditional Causes
      (1) Prevention by Law
          Restatement (Second) §264
          Farnsworth §9.5
      (2) Death or Illness
          Restatement (Second) §262
          Farnsworth §9.5
      (3) Non-existence of Subject-Matter
          Restatement (Second) §263
          Farnsworth §9.5
          UCC §2-613
          O.R.C. §1302.71
   c. Temporary or Partial
      Restatement (Second)
      §§269, 270
      Farnsworth §9.9

2. Existing Impracticability
   Restatement (Second) §266
   Farnsworth §9.8

B. Code: Excuse by Failure of Presupposed Conditions
   UCC §2-615
   O.R.C. §1302.73
   W&S §3-10

C. Frustration of Purpose
   Restatement (Second) §§265, 266
   Farnsworth §§9.7-9.9

X. Unenforceability on Grounds of Public Policy (Illegal Contracts)
A. **In General**
Restatement (Second) §§178-185
Farnsworth §5.1

B. **Grounds**

1. **Restraint of Trade**
   Restatement (Second) §§186-188
   Farnsworth §5.3

2. **Incapacity**
   Restatement (Second) §§12-16
   Farnsworth §§4.2-4.8

XI. **Considerations of Fairness, Good Faith, and the Public Interest**

A. **Duty of Good Faith and Fair Dealing**
   Restatement (Second) §205
   UCC §1-203
   O.R.C. §1301.09
   Farnsworth §7.17
   W&S §1-6

B. **Interpretation Against the Draftsman**
   Restatement (Second) §206
   Farnsworth §7.11

C. **Interpretation Favoring the Public Interest**
   Restatement (Second) §207
   Farnsworth §7.11

D. **Unconscionable Contract or Term**
   Restatement (Second) §208
   UCC §2-302
   O.R.C. §1302.15
   UCC §2A-108
   O.R.C. §1310.06
   Farnsworth §§4.27, 4.28
   W&S §§4-1 to 4-9

XII. **Uniform Commercial Code, Article 1, Part 1**

A. **Purposes: Rules of Construction: Variation by Agreement**
   UCC §1-102
   O.R.C. §1301.02
   W&S §3-2

B. **Supplementary General Principles of Law Applicable**
   UCC §1-103
   O.R.C. §1301.03

C. **Remedies to Be Liberally Administered**
   UCC §1-106
   O.R.C. §1301.06
   W&S §7-16

XIII. **Uniform Commercial Code, Article 1, Part 2, General Definitions and Principles of Interpretation**

A. **General Definitions**
   UCC §1-201
   O.R.C. §1301.01

B. **Obligation of Good Faith**
   UCC §1-203
   O.R.C. §1301.09

C. **Course of Dealing and Usage of Trade**
   UCC §1-205
   O.R.C. §1301.11
   W&S §3-3

D. **Statute of Frauds for Kinds of Property Not Otherwise Covered**
   UCC §1-206
   O.R.C. §1301.12
   W&S §2-2
E. Performance or Acceptance under Reservation of Rights
   UCC §1-207
   O.R.C. §1301.13

XIV. Article 2, Uniform Commercial Code

   A. Offer, Acceptance, and Consideration
      W&S, Ch. 1

   B. Statute of Frauds and Parol Evidence Rule
      W&S, Ch. 2

   C. Terms of the Contract
      W&S, Ch. 3

   D. Unconscionability
      W&S, Ch. 4

   E. Risk of Loss
      W&S, Ch. 5

   F. Buyer’s Remedies
      W&S, Ch. 6

   G. Seller’s Remedies
      W&S, Ch. 7

   H. Rejection, Revocation of Acceptance, Cure and Acceptance
      W&S, Ch. 8

   I. Various Types of Warranties
      W&S, Ch. 9

   J. Damages for Breach of Warranty
      W&S, Ch. 10

   K. Defenses to Warranty Actions
      W&S, Ch. 11

   L. Disclaimers of Warranty
      W&S, Ch. 12

XV. Following Sections of Article 9, Uniform Commercial Code Insofar as They Deal with the Assignment of Accounts Receivable and Contract Rights:

   UCC §§9-102(A)(55), (68), (73); 9-109; 9-201(A), (B), (D); 9-203; 9-205; 9-403; 9-317; 9-309-311; 9-322; 9-324; 9-404-9-406
   O.R.C. §§1309.102(A)(55), (68), (73); 1309.109; 1309.201(A), (B), (D); 1309.203; 1309.205; 1309.403; 1309.317; 1309.309-1309.311; 1309.322; 1309.324; 1309.404-1309.406
Chapter 6
Criminal Law and Criminal Procedure

This outline covers Criminal Law and Criminal Procedure as those courses are usually taught in law schools.


I. Criminal Law, Elements of Criminal Liability

A. Purposes of Punishment
   LaFave, §1.5
   Dressler, Ch. 2
   O.R.C. §2929.11
   Dressler, §2.02

B. Actus Reus
   LaFave, §§3.2-3.3
   Dressler, Ch. 9
   Johnson, Ch. 1

C. Mens Rea
   LaFave, §§3.4-3.11, 5.1
   O.R.C. §§2901. 21-2901.22
   Dressler, Ch. 10
   Johnson, Ch. 1

D. Causation
   LaFave, §3.12
   Dressler, Ch. 14

E. Legality
   LaFave, §§2.1, 2.3-2.5
   Dressler, §5.01
   Johnson, Ch. 2A

F. Punishment

II. Justification and Excuse

A. Defense of Self or Others
   LaFave, §§5.7-5.8
   Dressler, Ch. 18-19
   Johnson, Ch. 5B

B. Defense of Property
   LaFave, §5.9
   Dressler, Ch. 20
   Johnson, Ch. 5C

C. Law Enforcement
   LaFave, §5.10
   Dressler, Ch. 21

D. Necessity
   LaFave, §5.4
   Dressler, Ch. 22
E. **Duress**  
LaFave, §5.3  
Dressler, Ch. 23  
Johnson, Ch. 5A

F. **Insanity**  
LaFave, §§4.1-4.3, 4.6, 4.9  
Dressler, Ch. 25  
Johnson, Ch. 4  
O.R.C. §2901.01 (A)(14)

G. **Diminished Capacity**  
LaFave, §4.7  
Dressler, Ch. 26  
Johnson, Ch. 4

H. **Intoxication**  
LaFave, §4.10  
Dressler, Ch. 24  
Johnson, Ch. 1

I. **Entrapment**  
LaFave, §5.2  
Whitebread, Ch. 19  
Johnson, Ch. 5E

III. **Anticipatory Offenses and Group Criminality**

A. **Attempt and Solicitation**  
LaFave, §§6.1-6.3  
O.R.C. §2923.02  
Dressler, Ch. 27-28  
Johnson, Ch. 7B

B. **Accomplice Liability**  
LaFave, §§6.7-6.9  
O.R.C. §2923.03  
Dressler, Ch. 30  
Johnson, Ch. 7D

C. **Conspiracy**  
LaFave, §§6.4-6.5  
O.R.C. §2923.01  
Dressler, Ch. 29  
Johnson, Ch. 7C

D. **Liability in Corporations**  
LaFave, §3.10  
O.R.C. §§2901.23-2901.24

IV. **Crimes Against People**

A. **Homicide**  
LaFave, §§7.1-7.13  
O.R.C. §§2903.01-2903.09  
Dressler, Ch. 31  
Johnson, Ch. 3

B. **Rape and Sexual Battery**  
Dressler, Ch. 33  
O.R.C. §§2907.02-2907.03

C. **Robbery**  
Johnson, Ch. 8B

D. **Assault and Battery**  
LaFave, §§7.14-7.16  
O.R.C. §§2903.11-2903.14

E. **Kidnapping**  
O.R.C. §2905.01

V. **Crimes Against Property**

A. **Trespass**  
O.R.C. §§2911.21-2911.211

B. **Theft**  
LaFave, §§8.1-8.12  
O.R.C. §2913.02  
Dressler, Ch. 32  
Johnson, Ch. 8

C. **Burglary**  
LaFave, §8.13  
O.R.C. §§2911.11-2911.13  
Dressler, §27.02

D. **Arson**  
O.R.C. §§2909.02-2909.03
E. **Vandalism**
   O.R.C. §2909.05

VI. **Burden of Proof and Sentencing**

A. **Burden of Proof**
   LaFave, §1.8
   O.R.C. §2901.05
   Dressler, Ch. 7
   Johnson, Ch. 6D

B. **Proportionality**
   Dressler, Ch. 6

C. **Sentencing**
   LaFave, §1.2(d)
   Johnson, Ch. 2B
   O.R.C. §2929

D. **Death Penalty**
   LaFave, §2.14(f)
   Johnson, Ch. 2C
   O.R.C. §§2929.02-2929.06

VII. **Other Limitations on Criminal Prosecution**

A. **Double Jeopardy**
   Whitebread, Ch. 30
   O.R.C. §§2943.05-2943.10
   LaFave & Israel, Ch. 25

B. **Ex Post Facto Laws**
   LaFave §2.4(a)-2.4(c)
   Dressler, §5.01 (C)(1)

C. **Bills of Attainder**
   LaFave §2.4(d)
   Dressler, §5.01 (C)(1)

VIII. **Criminal Procedure Overview and Introduction**
   Whitebread, Ch. 1
   LaFave & Israel, Ch. 1-2

IX. **The Exclusionary Rule and Other Remedies**
   Whitebread, §§2.04, 16.05

X. **Fourth Amendment: Searches and Seizures**

A. **Scope of Protection from Search and Seizure**
   1. *Governmental Action*
      Whitebread §4.02
   2. *Areas and Things Subject to Protection*
      Whitebread §4.03
   3. *Standing*
      Whitebread §4.04
      LaFave & Israel, §§9.1-9.2

B. **Arrest**
   Whitebread, Ch. 3

C. **Probable Cause**
   Whitebread, §3.03

D. **Search Warrants**
   Whitebread, Ch. 5

E. **Emergency Warrantless Searches**
   1. *Searching Incident to Arrest*
      Whitebread, Ch. 6
   2. *“Automobile Exception”*
      Whitebread, Ch. 7
   3. *“Hot Pursuit”*
      Whitebread, Ch. 8
   4. *Other Exigent Circumstances*
      Whitebread, Ch. 9

F. **Other Warrantless Searches**
1. Plain View and Plain Feel
   Whitebread, Ch. 10

2. Consent
   Whitebread, Ch. 12

3. Administrative and Regulatory Searches
   Whitebread, Ch. 13

4. Good Faith
   Whitebread, §2.03

G. Stop and Frisk

1. What Constitutes a Seizure
   Whitebread, §§11.01-11.02, 11.06(a)

2. Grounds for Temporary Seizures
   Whitebread, §§11.03-11.04

3. Scope of Temporary Seizures
   Whitebread, §11.05

XI. Fifth Amendment: Interrogation and Self-Incrimination
   Whitebread, Ch. 15-16
   Johnson, Ch. 6F

XII. Right to Counsel

A. In General
   Whitebread, Ch. 31
   LaFave & Israel, §11
   Johnson, Ch. 6

B. Effective Assistance of Counsel
   Whitebread, Ch. 32
   LaFave & Israel, §§11.7-11.10

XIII. Identification Procedures: Lineups, Showups, and Photos

XIV. Pretrial Rights and Procedures

A. Bail and Pretrial Detention
   Whitebread, Ch. 20

B. Limits on Prosecutorial Discretion in Charging
   Whitebread, §§21.01-21.03
   Johnson, Ch. 6B

C. Joinder of Offenses and Defendants
   Whitebread, §21.04
   O.R.C. §2945.13

D. Grand Jury
   Whitebread, Ch. 23
   LaFave & Israel, Ch. 15

E. Discovery
   Whitebread, Ch. 24

F. Speedy Trial
   Whitebread, Ch. 25
   O.R.C. §§2945.71-2945.73
   LaFave & Israel, Ch. 18

XV. Adjudication

A. Guilty and No Contest Pleas

1. Plea Negotiations
   Whitebread, §§26.01-26.02
   LaFave & Israel, §21.1

2. Requirements for a Guilty Plea
   Whitebread, §26.04
   LaFave & Israel, §21.4
   Crim. R. 11

3. Effects of a Guilty Plea
   Whitebread, §26.03
B. Impartial Judge and Jury

1. Right to Jury Trial
   LaFave & Israel, §22.1
   Whitebread, §§27.01-27.02
   Dressler, §1.02(A)
   Johnson, Ch. 6C

2. Jury Selection
   LaFave & Israel, §22.2
   Whitebread, §§27.03-27.04

3. Impartial Judge
   LaFave & Israel, §22.4
   Whitebread, §27.05

4. Media Access and Effects of Publicity
   LaFave & Israel, Ch. 23
   Whitebread, §27.06

C. Adversarial Rights

1. Presence of the Defendant
   Whitebread, §28.03
   LaFave & Israel, §24.2

2. Presenting and Challenging Evidence
   Whitebread, §§28.04-28.06
   LaFave & Israel, §§24.3-24.6
   Johnson, Ch. 6E

XVI. Appeal

Whitebread, Ch. 29
LaFave & Israel, Ch. 27

A. Notice and Matters Raised or Not Raised in the Trial Court
Chapter 7  
Evidence

References

Federal Rules of Evidence and Advisory Committee Notes (as amended through December 1, 2000)
Ohio Rules of Evidence and Staff Notes
Ohio Revised Code §§ 2317.01, 2317.02, 2317.06, 2317.07, 2317.36, 2317.40, 2317.41, 2317.42, 2317.422, 2317.52, 2311.14, 2307.60, 2945.41, 2945.42, 2945.49, 2945.55, 2945.56, 2945.59, 2739.04, 2739.12, 2907.26, 2907.41 (O.R.C.)
Weissenberger’s Ohio Evidence Treatise (one volume) (Anderson Publishing Co. 2002) (hereinafter, Weissenberger)
42-44 O.Jur.3d, Evidence and Witnesses (1983)
89-90 O.Jur.3d, Trial (1989)
67 O.Jur.3d, Malpractice (1986)

Both Saltzburg's manual and Weissenberger's treatise are generally sectioned according to rule number. For subjects not covered by the rules, you must use the indexes.

Sources Not Cited


I. General Rules of Applicability and Construction

A. Scope of Rules and Construction
Fed. Evid. Rules 101, 102, 1101
Ohio Evid. Rules 101, 102
O.R.C. §2945.41
Saltzburg
Weissenberger §§ 101 and 102

B. Preliminary Questions
Fed. Evid. Rule 104
Ohio Evid. Rule 104
Saltzburg
Weissenberger §104
II. Judicial Notice

A. Judicial Notice of Adjudicative Facts

1. When and How Taken
   Fed. Evid. Rule 201
   (a)(e)(d)(e)(f)(g)
   Ohio Evid. Rule 201
   Saltzburg
   Weissenberger §201
   42 O.Jur.3d, Evidence and Witnesses §§19-29

2. Kinds of Facts Noticed
   Fed. Evid. Rule 201(b)
   Ohio Evid. Rule 201(B)
   Saltzburg
   Weissenberger §§201.2-201.3
   42 O.Jur.3d, Evidence and Witnesses §§30-94

III. Burden of Production

IV. Relevancy

A. Relevancy Defined; Direct and Circumstantial Evidence
   Fed. Evid. Rule 401, 402
   Ohio Evid. Rule 401, 402
   Saltzburg
   Weissenberger §§401-402
   42 O.Jur.3d, Evidence and Witnesses §§172-182

B. Exclusion of Relevant Evidence (Prejudicial, Confusing, Cumulative, etc.)
   Fed. Evid. Rule 403
   Ohio Evid. Rule 403
   Saltzburg
   Weissenberger §403
   42 O.Jur.3d, Evidence and Witnesses §188
   89 O.Jur.3d, Trial §§129-130

C. Character Evidence

1. Character Placed at Issue in a Criminal Case
   Fed. Evid. Rule 404(a)
   Ohio Evid. Rule 404(A)
   O.R.C. §2945.56
   Saltzburg
   Weissenberger §404.1
   42 O.Jur.3d, Evidence and Witnesses §§227-228
2. **Character as Circumstantial Proof of an Issue Other than to Show General Propensity**
   Fed. Evid. Rule 404(b), 412
   Ohio Evid. Rule 404(B)
   Saltzburg
   Weissenberger §404.21
   42 O.Jur.3d, Evidence and Witnesses §§227, 237, 242

3. **Methods of Proof**
   a. Reputation and Opinion
      Fed. Evid. Rule 405(a)
      Ohio Evid. Rule 405(A)
      O.R.C. §2945.56
      Saltzburg
      Weissenberger §405.1
      42 O.Jur.3d, Evidence and Witnesses §229
   b. Specific Instances of Conduct if Character Is an Element of a Charge, Claim or Defense
      Fed. Evid. Rule 405(b)
      Ohio Evid. Rule 405(B)
      O.R.C. §2945.59
      Saltsburg
      Weissenberger §405.6
      42 O.Jur.3d, Evidence and Witnesses §229

4. **Custom and Habit**
   Fed. Evid. Rule 406
   Ohio Evid. Rule 406
   Saltzburg
   Weissenberger §406
   42 O.Jur.3d, Evidence and Witnesses §§234-236

D. **Similar Transactions or Conditions**
   No Fed. Evid. Rule
   No Ohio Evid. Rule
   Saltzburg

E. **Compromise, Medical Payments, Insurance, and Pleas in Criminal Cases**
   Fed. Evid. Rules 408,409,410,411
   Ohio Evid. Rules 408,409,410,411
   Saltzburg
   Weissenberger §§408-411
   42 O.Jur.3d, Evidence and Witnesses §§296-298, 325, 252, 253

F. **Subsequent Remedial Measures**
   Ohio Evid. Rule 407
   Saltzburg
   Weissenberger §407
   42 O.Jur.3d, Evidence and Witnesses §§203, 204

G. **Sex Offense Cases, Relevance of Victim's Past Sexual Behavior or Alleged Sexual Predisposition**
   Fed. Evid. Rule 412
   Ohio Evid. Rule 404(A)(1) & (2); O.R.C. §§2907.02(D), 2907.05(D), 2907.26
   Saltzburg
   Weissenberger §§404.7-404.8, 608.11

H. **Evidence of Similar Crimes in Sexual Assault Cases**
   Fed. Evid. Rule 413
   No Ohio Evid. Rule, See O.R.C. §§2907.02(D) and 2907.05(D)
   Saltzburg
   Weissenberger §404.21
   42 O.Jur.3d, Evidence and Witnesses §§206-207, 227, 229
   44 O.Jur.3d, Evidence and Witnesses §922
I. Evidence of Similar Crimes in Child Molestation Cases
Fed. Evid. Rule 414
No Ohio Evid. Rule
Saltzburg
Weissenberger §404.21

J. Evidence of Similar Acts in Civil Cases Concerning Sexual Assault or Child Molestation
Fed. Evid. Rule 415
No Ohio Evid. Rule
Saltzburg
Weissenberger §404.30

V. Privileged Communications
A. General
Fed. Evid. Rule 501
Ohio Evid. Rule 501
O.R.C. §§2317.01, 2739.04, 2739.12, 2945.42
Saltzburg
Weissenberger §501.1
44 O.Jur.3d, Evidence and Witnesses §784

B. Attorney-Client
No Fed. Evid. Rule
No Ohio Evid. Rule
O.R.C. §§2317.02(A), 2317.021
Saltzburg
Weissenberger §§501.5-501.9
44 O.Jur.3d, Evidence and Witnesses §§824-847

C. Physician-Patient
No Fed. Evid. Rule
No Ohio Evid. Rule
O.R.C. §2317.02(B)
Saltzburg
Weissenberger §§501.10-501.12
44 O.Jur.3d, Evidence and Witnesses §§809-823

D. Cleric-Penitent

VI. Witnesses, Competency and Examination of Witnesses
A. Competency
1. General Rule of Competency
   Fed. Evid. Rules 601
   Ohio Evid. Rules 601(A)-(E)
   O.R.C. §§2945.42, 2317.01
   Saltzburg
   Weissenberger §601.1
   44 O.Jur.3d, Evidence and Witnesses §§746-752, 767-768

2. Personal Knowledge Requirement
   Fed. Evid. Rule 602
   Ohio Evid. Rule 602
   Saltzburg
   Weissenberger §602.1
   44 O.Jur.3d, Evidence and Witnesses §765

3. Children
   No Fed. Evid. Rule
   Ohio Evid. Rule 601(A)
   Saltzburg
   Weissenberger §601.3
4. **Persons of Unsound Mind**
No Fed. Evid. Rule
Ohio Evid. Rule 601(A)
Saltzburg
Weissenberger §601.3
44 O.Jur.3d, Evidence and Witnesses §766

5. **Spouse Testifying Against Other Spouse**
No Fed. Evid. Rule
Ohio Evid. Rule 601(B)
Saltzburg
Weissenberger §601.4
44 O.Jur.3d, Evidence and Witnesses §§782-783, 790-808

6. **Law Enforcement Officer**
No Fed. Evid. Rule
Ohio Evid. Rule 601(C)
Saltzburg
Weissenberger §601.5

7. **Expert in Medical Malpractice Actions**
No Fed. Evid. Rule
Ohio Evid. Rule 601(D)
O.R.C. §2305.11(D)(3)
Saltzburg
Weissenberger §601.6
67 O.Jur.3d, Malpractice §§95-99

8. **Jurors as Witnesses**
Fed. Evid. Rule 606
Ohio Evid. Rule 606
Saltzburg
Weissenberger §606.1
44 O.Jur.3d, Evidence and Witnesses §761

9. **Competency of Judge as Witness**
Fed. Evid. Rule 605
Ohio Evid. Rule 605
Saltzburg
Weissenberger §605.1
44 O.Jur.3d, Evidence and Witnesses §759

10. **Interpreters**
Fed. Evid. Rule 604
Ohio Evid. Rule 604
O.R.C. §2311.14
Saltzburg
Weissenberger §604.1
4 O.Jur.3d, Evidence and Witnesses §§763, 769, 849
89 O.Jur.3d, Trial §112

11. **Oath or Affirmation**
Fed. Evid. Rule 603
Ohio Evid. Rule 603
Saltzburg
Weissenberger §603.1
44 O.Jur.3d, Evidence and Witnesses §§849-851

**B. Examination of Witnesses**

1. **Direct Examination of Witnesses; Leading Questions**
Fed. Evid. Rule 611(c)
Ohio Evid. Rule 611(C)
O.R.C. §2317.07
Saltzburg §611.6
Weissenberger §611.6
44 O.Jur.3d, Evidence and Witnesses §§862-871
89 O.Jur.3d, Trial §§13-18

2. **Cross Examination**
   a. Right to Conduct, Mode, Limitations
Fed. Evid. Rule 611(a)
Ohio Evid. Rule 611(A)
O.R.C. §2317.52
Saltzburg
Weissenberger §§611.2-611.4
44 O.Jur.3d, Evidence and Witnesses §§873-881
89 O.Jur.3d, Trial §§140-145

b. Scope and Order of Presentation
Fed. Evid. Rule 611(b)
Ohio Evid. Rule 611(B)
Saltzburg
Weissenberger §§611.3-611.5
44 O.Jur.3d, Evidence and Witnesses §§852-853, 882-889
89 O.Jur.3d, Trial §§98-102

3. Calling and Interrogation of Witnesses by the Court
Fed. Evid. Rule 614
Ohio Evid. Rule 614
Saltzburg
Weissenberger §614.1
89 O.Jur.3d, Trial §§18-22

4. Exclusion of Witnesses
Fed. Evid. Rule 615
Ohio Evid. Rule 615
Saltzburg
Weissenberger §615.1
89 O.Jur.3d, Trials §§136-139

C. Impeachment and Rehabilitation

1. Who May Impeach
Fed. Evid. Rule 607
Ohio Evid. Rule 607
Saltzburg
Weissenberger §607.1
44 O.Jur.3d, Evidence and Witnesses §§913, 942, 943, 947

2. Character
a. Reputation and Opinion
Fed. Evid. Rule 608
Ohio Evid. Rule 608
Saltzburg
Weissenberger §§608.1-608.6
44 O.Jur.3d, Evidence and Witnesses §§922-938, 974, 1000-1001

b. Conviction of Crime
Fed. Evid. Rule 609
Ohio Evid. Rule 609
Saltzburg
Weissenberger §609.1
44 O.Jur.3d, Evidence and Witnesses §§906, 924-929, 1002-1003

c. Specific Acts
Fed. Evid. Rule 608(b)
Ohio Evid. Rule 608(B)
Saltzburg
Weissenberger §§608.7-608.9
44 O.Jur.3d, Evidence and Witnesses §§923, 944

3. Bias, Prejudice or Hostility and Interest in the Litigation
Fed. Evid. Rule 611(b) and (c)
Ohio Evid. Rules 611(B) and (C), 616
Saltzburg
Weissenberger §§611.3-611.6; 616.1-616.4
44 O.Jur.3d, Evidence and Witnesses §§778-781, 918-921

4. Prior Inconsistent Statements and Prior Consistent Statements
Ohio Evid. Rules
613.801(D)(1)(a),
801(D)(1)(b)
Saltzburg
Weissenberger §§613.1,
616.1, 801.9
44 O.Jur.3d, Evidence and
Witnesses §§946-957, 970-
972, 975-976

5. Religious Beliefs or Opinions
Fed. Evid. Rule 610
Ohio Evid. Rule 610
Saltzburg
Weissenberger §610.1
44 O.Jur.3d, Evidence and
Witnesses §§774-777, 916,
997-999

D. Refreshing Recollection
Fed. Evid. Rule 612
Ohio Evid. Rule 612
Saltzburg
Weissenberger §612.1
44 O.Jur.3d, Evidence and Witnesses
§§856-861

VII. Opinions and Expert Witnesses

A. Lay Opinions
Fed. Evid. Rule 701
Ohio Evid. Rule 701
Saltzburg
Weissenberger §701.1
43 O.Jur.3d, Evidence and Witnesses
§§592-597

B. Testimony by Experts
Fed. Evid. Rule 702
Ohio Evid. Rule 702, 601(D)
O.R.C. §2317.36
Saltzburg
Weissenberger §§601.6; 702.1
43 O.Jur.3d, Evidence and Witnesses
§§598-611

1. Bases of Opinion Testimony
by Experts
Fed. Evid. Rule 703
Ohio Evid. Rule 703
Saltzburg
Weissenberger §703.1
43 O.Jur.3d, Evidence and Witnesses §§612-615

2. Opinion on Ultimate Issue
Fed. Evid. Rule 704
Ohio Evid. Rule 704
Saltzburg
Weissenberger §704.1
43 O.Jur.3d, Evidence and Witnesses §§602-603

3. Disclosure of Facts or Data
Underlying Expert Opinion
Fed. Evid. Rule 705
Ohio Evid. Rule 705
Saltzburg
Weissenberger §705.1
43 O.Jur.3d, Evidence and Witnesses §§606, 612-615

4. Court Appointed Experts
Fed. Evid. Rule 706
No Ohio Evid. Rule
Saltzburg
Weissenberger

VIII. The Hearsay Rule and Its Exceptions

A. General Nature of Hearsay and Definitions
Fed. Evid. Rule 801(a)(b)(c)
Ohio Evid. Rule 801(A)(B)(C)
Saltzburg
Weissenberger §§801.1-801.11
43 O.Jur.3d, Evidence and Witnesses §§260-273

B. Statements Which Are Not Hearsay--Prior Statement by
Witness and Admission by Party-Opponent
Fed. Evid. Rule 801(d)(1) & (2)
Ohio Evid. Rule 801(d)(1) & (2)
Saltzburg
Weissenberger
43 O.Jur.3d, Evidence and Witnesses §§279-308

1. **Prior Inconsistent Statement by Witness**
   Fed. Evid. Rule 801(d)(1)(A)
   Ohio Evid. Rule 801(D)(1)(a)
   Saltzburg
   Weissenberger §§801.19-801.20
   44 O.Jur.3d, Evidence and Witnesses §§946-951

2. **Prior Consistent Statement of Witness**
   Ohio Evid. Rule 801(D)(1)(b)
   Saltzburg
   Weissenberger §801.21
   44 O.Jur.3d, Evidence and Witnesses §§975-976

3. **Prior Statement of Identification by Witness**
   Fed. Evid. Rule 801(d)(1)(C)
   Ohio Evid. Rule 801(D)(1)(C)
   O.R.C. §2945.55
   Saltzburg
   Weissenberger §801.22

4. **Admission of Party-Opponent in Individual or Representative Capacity**
   Ohio Evid. Rule 801(D)(2)(a)
   Saltzburg
   Weissenberger §§801.32-801.33

5. **Statements Adopted by Party-Opponent**
   Ohio Evid. Rule 801(D)(2)(b)
   Saltzburg
   Weissenberger §801.34
   43 O.Jur.3d, Evidence and Witnesses §294

6. **Statements Authorized by Party-Opponent**
   Fed. Evid. Rule 801(d)(2)(C)
   Ohio Evid. Rule 801(D)(2)(C)
   Saltzburg
   Weissenberger §801.35
   43 O.Jur.3d, Evidence and Witnesses §§301-308

7. **Statements by Party-Opponent's Agents or Employees**
   Ohio Evid. Rule 801(D)(2)(d)
   Saltzburg
   Weissenberger §801.35
   43 O.Jur.3d, Evidence and Witnesses §§271, 301-308

8. **Statement by a Co-Conspirator of Party-Opponent**
   Ohio Evid. Rule 801(D)(2)(e)
   Saltzburg
   Weissenberger §§801.36-801.40
   27 O.Jur.3d, Criminal Law §§1863-1870

43 O.Jur.3d, Evidence and Witnesses §§299-308, 312, 320-325
C. **Hearsay Rule**
Fed. Evid. Rule 802
Ohio Evid. Rule 802
Saltzburg
Weissenberger §802.1
43 O.Jur.3d, Evidence and Witnesses §§260-265

D. **Hearsay Exceptions - Unavailability of Witness**
**Immaterial**

1. **Present Sense Impression**
Fed. Evid. Rule 803(1)
Ohio Evid. Rule 803(1)
Saltzburg
Weissenberger §803.1
43 O.Jur.3d, Evidence and Witnesses §§328-329

2. **Excited Utterance**
Fed. Evid. Rule 803(2)
Ohio Evid. Rule 803(2)
Saltzburg
Weissenberger §803.15
43 O.Jur.3d, Evidence and Witnesses §§334-355

3. **Then Existing Mental, Emotional or Physical Condition**
Fed. Evid. Rule 803(3)
Ohio Evid. Rule 803(3)
Saltzburg
Weissenberger §803.30
43 O.Jur.3d, Evidence and Witnesses §§328-329

4. **Statements for Purposes of Medical Diagnosis or Treatment**
Fed. Evid. Rule 803(4)
Ohio Evid. Rule 803(4)
Saltzburg
Weissenberger §803.45
43 O.Jur.3d, Evidence and Witnesses §§330-332

5. **Past Recollection Recorded**
Fed. Evid. Rule 803(5)
Ohio Evid. Rule 803(5)
Saltzburg
Weissenberger §803.58
43 O.Jur.3d, Evidence and Witnesses §327, 406

6. **Records of Regularly Conducted Activity; Entries and Absence of Entries**
Fed. Evid. Rule 803(6-7)
Ohio Evid. Rule 803(6-7)
O.R.C. §2317.40
Saltzburg
Weissenberger §§803.73-803.92
43 O.Jur.3d, Evidence and Witnesses §§414-427, 433-439

7. **Public Records and Reports; Records of Vital Statistics; and Absence of Public Record or Entry**
Fed. Evid. Rule 803(8), (9) & (10)
Ohio Evid. Rule 803(8), (9) & (10)
O.R.C. §2317.42
Saltzburg
Weissenberger §§803.102-803.143
43 O.Jur.3d, Evidence and Witnesses §§440-452

8. **Records of Religious Organizations; Marriage, Baptismal and Similar Certificates; and Family Records**
Fed. Evid. Rule 803(11), (12) & (13)
9. **Records and Statements in Documents Affecting an Interest in Property**
Fed. Evid. Rule 803(14) & (15)
Ohio Evid. Rule 803(14) & (15)
Saltzburg
Weissenberger §§803.174-803.187
43 O.Jur.3d, Evidence and Witnesses §§352, 397

10. **Statements in Ancient Documents**
Fed. Evid. Rule 803(16)
Ohio Evid. Rule 803(16)
Saltzburg
Weissenberger §803.197
43 O.Jur.3d, Evidence and Witnesses §§440, 471-475

11. **Learned Treatises**
Fed. Evid. Rule 803(18)
Ohio Evid. Rule 706
Saltzburg
Weissenberger §706.1
43 O.Jur.3d, Evidence and Witnesses §409

12. **Market Reports**
Fed. Evid. Rule 803(17)
Ohio Evid. Rule 803(17)
Saltzburg
Weissenberger §803.209
43 O.Jur.3d, Evidence and Witnesses §413

13. **Reputation Concerning Personal or Family History, Boundaires or General History; and Reputation as to Character**
Fed. Evid. Rule 803(19), (20), (21)
Ohio Evid. Rule 803(18), (19) & (20)
Saltzburg
Weissenberger §§803.232-803.244
43 O.Jur.3d, Evidence and Witnesses §§276, 333, 397-398

14. **Prior Felony Convictions and Judgments as to Personal, Family, General History, or Boundaries**
Ohio Evid. Rule 803(21) and (22)
O.R.C. §2307.60
Saltzburg
Weissenberger §§803.254-803.272
43 O.Jur.3d, Evidence and Witnesses §§441-444

15. **Other Exceptions**
Fed. Evid. Rule 807
No Ohio Evid. Rule
Saltzburg
Weissenberger

E. **Exceptions - Declarant Unavailable**

1. **Definition of Unavailability**
Fed. Evid. Rule 804(a)
Ohio Evid. Rule 804(A)
Saltzburg
Weissenberger §§804.01-804.08
2. **Former Testimony**
Fed. Evid. Rule 804(b)(1)
Ohio Evid. Rule 804(B)(1)
O.R.C. §§2317.06, 2945.49
Saltzburg
Weissenberger §804.11
43 O.Jur.3d, Evidence and Witnesses §§356-370

3. **Dying Declaration**
Fed. Evid. Rule 804(b)(2)
Ohio Evid. Rule 804(B)(2)
O.R.C. §2945.49
Saltzburg
Weissenberger §804.21
43 O.Jur.3d, Evidence and Witnesses §313

4. **Statement Against Interest**
Fed. Evid. Rule 804(b)(3)
Ohio Evid. Rule 804(B)(3)
Saltzburg
Weissenberger §804.31
43 O.Jur.3d, Evidence and Witnesses §§289-292

5. **Statement of Personal or Family History**
Fed. Evid. Rule 804(b)(4)
Ohio Evid. Rule 804(B)(4)
Saltzburg
Weissenberger §804.41
43 O.Jur.3d, Evidence and Witnesses §333

6. **Statement by a Deceased or Incompetent Person**
No Fed. Evid. Rule
Ohio Evid. Rule 804(B)(5)
O.R.C. §2945.49
Saltzburg
Weissenberger §804.51

7. **Forfeiture by Wrongdoing**
Fed. Evid. Rule 804(B)(6)
Ohio Evid. Rule 804(B)(6)
Saltzburg
Weissenberger §804.61

8. **Other Exceptions**
Fed. Evid. Rule 807
No Ohio Evid. Rule
Saltzburg
Weissenberger

F. **Hearsay Within Hearsay**
Fed. Evid. Rule 805
Ohio Evid. Rule 805
Saltzburg
Weissenberger §805.1
43 O.Jur.3d, Evidence and Witnesses §274

G. **Attacking and Supporting Credibility of Declarant**
Fed. Evid. Rule 806
Ohio Evid. Rule 806
Saltzburg
Weissenberger §806.1
43 O.Jur.3d, Evidence and Witnesses §278

H. **Hearsay Exceptions: Statements by Children in Physical and Sexual Abuse Cases**
No Fed. Evid. Rule
Ohio Evid. Rule 807
O.R.C. §2907.41
Saltzburg
Weissenberger §807.1

IX. **Authentication and Identification**

A. **Authentication by Extrinsic Evidence**
Fed. Evid. Rule 901
Ohio Evid. Rule 901
O.R.C. §2317.41
Saltzburg
Weissenberger §901.1
43 O.Jur.3d, Evidence and Witnesses §§456-477

B. **Self Authentication**
Fed. Evid. Rule 902
Ohio Evid. Rule 902
Saltzburg
Weissenberger §902.1
43 O.Jur.3d, Evidence and Witnesses §§478-488

C. **Subscribing Witness’ Testimony Unnecessary**
Fed. Evid. Rule 903
Ohio Evid. Rule 903
Saltzburg
Weissenberger §903.1
43 O.Jur.3d, Evidence and Witnesses §461

X. **Best Evidence Rule and Demonstrative Evidence**

A. **“Best Evidence Rule”**

1. **General Rule and Definitions: Requirement of Original**
Fed. Evid. Rule 1001, 1002
Ohio Evid. Rule 1001, 1002
Saltzburg
Weissenberger §§1001.1 and 1002.1
43 O.Jur.3d, Evidence and Witnesses §§489-495

B. **Demonstrative Evidence, Scientific Evidence and Experiments**
No Fed. Evid. Rules
No Ohio Evid. Rules
Saltzburg §§401.2, 401.6, 401.7, 401.943

2. **Admissibility of Duplicates and Other Evidence of Content**
Fed. Evid. Rule 1003, 1004
Ohio Evid. Rule 1003, 1004
Saltzburg
Weissenberger §§1003.1 and 1004.1
43 O.Jur.3d, Evidence and Witnesses §§496-506

3. **Public Records and Summaries**
Fed. Evid. Rule 1005 & 1006
Ohio Evid. Rule 1005 & 1006
Saltzburg
Weissenberger §§1005.1 and 1006.1
43 O.Jur.3d, Evidence and Witnesses §§499, 501, 509, 511

4. **Testimony or Written Admission of Party**
Fed. Evid. Rule 1007
Ohio Evid. Rule 1007
Saltzburg
Weissenberger §1007.1
43 O.Jur.3d, Evidence and Witnesses §495

5. **Functions of Court and Jury**
Fed. Evid. Rule 1008
Ohio Evid. Rule 1008
Saltzburg
Weissenberger §1008.1
43 O.Jur.3d, Evidence and Witnesses §518
O.Jur.3d, Evidence and Witnesses §§371-388
Chapter 8
Property

References

American Jurisprudence 2d ed. (Revised) (Am. Jur. 2d)
American Law of Property (1952) with 1977 Supplement (Am. L. Prop)
Brown on Personal Property 3d ed. (1975) (Brown 3d ed.)
Corpus Juris Secundum (C.J.S.)
Juergensmeyer and Roberts, Land Use Planning and Control Law (West 1998)
Powell on Real Property (Powell)
Schoshinski, American Law of Landlord and Tenant (1980 with cumulative Supplements) (Schoshinski)

PART A. REAL PROPERTY

Subpart One: Estates & Future Interests

I. Freehold Estates

A. Fee Simple Absolute

1. Nature and Incidents
Stoebuck §2.2
1 Powell §§13.03, 13.04[8]
28 Am. Jur. 2d, Estates, §§12-14

2. Creation
I Am. L. Prop §§2.3-2.5
Stoebuck §2.2
O.R.C. §5301.02

B. Fee Simple Determinable

1. Nature and Incidents
I Am. L. Prop §2.6

Stoebuck §§2.3-2.4, 2.7, 2.9
1 Powell §§13.05[1], 13.06
28 Am. Jur. 2d, Estates, §§26-30, 32

C. Fee Simple Subject to Condition Subsequent

1. Nature and Incidents
I Am. L. Prop §2.9
Stoebuck §§2.3, 2.5, 2.7
1 Powell §§13.05[2], 13.06
28 Am. Jur. 2d, Estates, §§175-181, 189-196

78
D. Fee Simple Subject to Executory Limitation

1. Nature and Incidents
   Stoebuck §§2.3, 2.8
   1 Powell §13.06

2. Creation
   Stoebuck §§2.3, 2.8
   1 Powell §13.05[3]

E. Fee Tail - Present Day Form

I Am. L. Prop §§2.13-2.14
Stoebuck §2.10
2 Powell §14.07
28 Am. Jur. 2d, Estates, §§57-58
O.R.C. §§2131.08 & 5303.21
Pollock v. Speidel, 27 Ohio St. 86 (1875)
Long v. Long, 45 Ohio St.2d 165 (1976)
17 Ohio St. L.J. 335 (1956)

F. Life Estates

1. Conventional Life Estates
   a. Creation and Nature
      I Am. L. Prop §2.15
      Stoebuck §§2.11-2.12, 2.15
      2 Powell §§15.01-15.03
      78 Am. Jur. 2d, Waste §§1-26
   b. Waste
      I Am. L. Prop §216e
      Stoebuck §§4.1-4.9
      8 Powell §§60.01-66.12

II. Non-Freehold Estates

A. Creation and Nature

1. Term for Years
   I Am. L. Prop §§3.13-3.22
   Stoebuck §§6.13-6.15, 6.73
   2 Powell §16.03
   49 Am. Jur. 2d, Landlord & Tenant, §§124-129
   Schoshinski §§2.3-2.9

2. Periodic Tenancy
   I Am. L. Prop §§3.23-3.27
   Stoebuck §§6.13, 6.16-6.17, 6.74
   2 Powell §16.04
   49 Am. Jur. 2d, Landlord & Tenant, §§130-132
   O.R.C. §5321.17
   Schoshinski §§2.10-2.15

3. Tenancy at Will
   I Am. L. Prop §§3.28-3.31
   Stoebuck §§6.13, 6.18-6.19, 6.75
   2 Powell §16.05
   49 Am. Jur. 2d, Landlord & Tenant, §§133-139
   Schoshinski §§2.16-2.19

4. Tenancy at Sufferance
B. Rights and Duties of Landlord and Tenant

1. Rent
   I Am. L. Prop §§3.64
   Stoebuck §§6.50-6.53
   2 Powell §16A.01
   49 Am. Jur. 2d, Landlord & Tenant, §§676-680, 683-684
   O.R.C. §§5321.03, 5321.06
   Schoshinski §§5.34-5.50

2. Security Deposit
   I Am. L. Prop §3.73
   Stoebuck §6.59
   2 Powell §17.03
   49 Am. Jur. 2d, Landlord & Tenant, §119
   O.R.C. §5321.16
   Schoshinski §§6.27-6.44

3. Forfeiture and Acceleration
   I Am. L. Prop §§3.74, 3.94-3.95
   2 Powell, §17.02
   Stoebuck §§6.54, 6.78-6.80
   49 Am. Jur. 2d, Landlord & Tenant, §§289-298
   O.R.C. §§5321.03, 5321.06
   Schoshinski §§6.1-6.20

4. Preservation from Waste
   I Am. L. Prop §3.39
   Stoebuck §§4.1-4.9, 6.23-6.24
   8 Powell §§56.04-56.05
   49 Am. Jur. 2d, Landlord & Tenant, §§831-832, 836-838, 847-848

   O.R.C. §§5301.11, 5321.05, 5321.11

5. Right of Possession
   I Am. L. Prop §§3.37-3.44
   2 Powell §168.02
   49 Am. Jur. 2d, Landlord & Tenant, §§492-495, 543, 547-548, 550, 552-553
   Schoshinski §§3.1-3.2

6. Landlord's Duty to Repair
   I Am. L. Prop §§3.78-3.81
   2 Powell §§16B.04[4][a], 16B.08[2][c]
   49 Am. Jur. 2d, Landlord & Tenant, §§568-574, 580
   O.R.C. §§5321.04, 5321.13
   Schoshinski §§3.10-3.14

7. Implied Warranty of Habitability
   I Am. L. Prop §3.45
   Stoebuck §§6.38-6.45
   2 Powell §§16B.04[1]-16B.04[3]
   49 Am. Jur. 2d, Landlord & Tenant, §§551, 564
   O.R.C. §§5321.04, 5321.13
   Schoshinski §§3.16-3.29

8. Retaliatory Eviction
   Stoebuck §6.81
   2 Powell §16B.05[1]
   O.R.C. §5321.02
   Schoshinski §§12.6-12.13

C. Abandonment and Surrender by Tenant
   I Am. L. Prop §3.99
   Stoebuck §6.82
   49 Am. Jur. 2d, Landlord & Tenant, §§779-785
   O.R.C. §§5321.03, 5321.06
   Schoshinski §§10.10-10.16
D. **Holdover Tenant**
I Am. L. Prop §§3.33 and 3.36
Stoebuck §§6.20, 6.76
O.R.C. §5321.03
Schoshinski §§2.23-2.24

E. **Transfer of Interest**
I Am. L. Prop §§3.56-3.63
Stoebuck §§6.67-6.72
2 Powell §17.04
49 Am. Jur. 2d, Landlord & Tenant, §§1076-1185
Schoshinski §§8.1-8.14

III. **Future Interests**

A. **Reversions**
I Am. L. Prop §§4.16-4.24
Stoebuck §3.3
3 Powell §20.02
28 Am. Jur. 2d, Estates, §§197-206

B. **Remainders and Executory Interests**
I Am. L. Prop §§4.25-4.58
Stoebuck §§3.6-3.13
3 Powell §§20.04-20.05

C. **Possibilities of Reverter & Rights of Re-entry**
I Am. L. Prop §§4.12-4.15
Stoebuck §§2.6-2.7, 3.4-3.5
3 Powell §§20.02-20.03
28 Am. Jur. 2d, Estates, §§207, 212
18 Ohio St. L.J. 120 (1957)

D. **Transferability of Future Interests**
I Am. L. Prop §§4.65-4.75
Stoebuck §§3.23-3.25
3 Powell §§21.01-21.05
28 Am. Jur. 2d, Estates, §§207-210, 212-216

O.R.C. §2131.04

IV. **Concurrent Estates (in Land)**

A. **Joint Tenancy**
II Am. L. Prop §§6.1-6.4
Stoebuck §§5.3-5.4
7 Powell ¶¶615-618
20 Am. Jur. 2d, Cotenancy & Joint Ownership, §§3-30
*In re Hutchison's Estate*, 120 Ohio St. 542 (1929)

B. **Tenancy in Common**
II Am. L. Prop §6.5
Stoebuck §5.2
7 Powell §§50.01-50.09
20 Am. Jur. 2d, Cotenancy & Joint Ownership, §§31-40
O.R.C. §5302.19

C. **Tenancy by the Entireties**
II Am. L. Prop §6.6
Stoebuck §5.5
7 Powell ¶¶620-624
41 Am. Jur. 2d, Husband & Wife, §§28-51, 58
O.R.C. §§5302.17, 5302.20-5302.21
*Central Natl. Bank v. Fitzwilliam*, 12 Ohio St.3d 51 (1984)
*Cent. Benefits Mut. Ins. v. RIS, Inc.*, 70 Ohio St.3d 68 (1994)

D. **Incidents of Ownership**
II Am. L. Prop §§6.10-6.18
Stoebuck §§5.8-5.10
7 Powell §§50.01-50.09

V. **Restraints on Transferring Interests in Land**

81
A. **Types of Restraints**  
VI Am. L. Prop §§26.6-26.12  
10 Powell ¶839  
61 Am. Jur. 2d, Perpetuities and Restraints on Alienation, §90  

B. **Restraints on Alienation of Legal Fee Simple**  
Stoebuck §2.2  
10 Powell ¶840-843

C. **Restraints on Alienation of Legal Life Estates and Terms of Years**  
VI Am. L. Prop §§26.48-26.51  
Stoebuck §§2.15, 6.71  
10 Powell ¶844  
61 Am. Jur. 2d, Perpetuities and Restraints on Alienation, §§103, 107

### Subpart Two: Rights in Land

#### I. Running at Law of Covenants

A. **Running at Law of Covenants between Landlord and Tenant**  
II Am. L. Prop §§9.1-9.7  
Stoebuck §8.18  
2 Powell §17.02  
49 Am. Jur. 2d, Landlord & Tenant, §§80, 82

B. **Running at Law of Covenants between Owners in fee**  
II Am. L. Prop §§9.8-9.23  
Stoebuck §§8.13-8.21  
9 Powell §§60.01-60.10  

C. **Running of Covenants in Equity**  
II Am. L. Prop §§9.24-9.40  
Stoebuck §§8.22-8.32  
9 Powell §§60.01-60.10  
20 Am. Jur. 2d, Covenants, Conditions and Restrictions, §§43, 251-252, 254-273

#### II. Incorporeal Interests

A. **Definitions and Classifications**  
II Am. L. Prop §§8.6-8.14, 8.109-8.111  
Stoebuck §6.2  
4 Powell §§34.02, 34.24  
25 Am. Jur. 2d, Easements & Licenses, §§1-12

B. **Easements**

1. **Creation by Grant**  
   II Am. L. Prop §§8.15-8.29  
   Stoebuck §8.3  
   4 Powell §34.04  

2. **Creation by Implication**  
   II Am. L. Prop §§8.31-8.43  
   Stoebuck §§8.4-8.6  
   4 Powell §§34.06-34.08  
   25 Am. Jur. 2d, Easements & Licenses, §§9, 23-30, 32-44

3. **Creation by Prescription**  
   II Am. L. Prop §§8.44-8.63  
   Stoebuck §8.7  
   4 Powell §34.10

4. **Scope**
   - II Am. L. Prop §§8.64-8.70
   - Stoebuck §8.9
   - 4 Powell §§34.12-34.14
   - 25 Am. Jur. 2d, Easements & Licenses, §§81-84, 91-93

2. **Agricultural Fixtures**
   - Brown 3d ed., §16.9
   - 35A Am. Jur. 2d, Fixtures, §90
   - 36A C.J.S., Fixtures, §39

3. **Domestic and Ornamental Fixtures**
   - Brown 3d ed., §16.10
   - 35A Am. Jur. 2d, Fixtures, §§74-79, 100-104, 125
   - 36A C.J.S., Fixtures, §40

4. **Annexation by Licensor or Trespasser**
   - 35A Am. Jur. 2d, Fixtures, §§8-9, 115
   - 36A C.J.S., Fixtures, §25

5. **Rights of Third Parties Claiming an Interest in Land**
   - Brown 3d ed., §16.16

C. **Licenses**
   - II Am. L. Prop §§8.109-8.125
   - 4 Powell §§34.24-34.27
   - 25 Am. Jur. 2d, Easements & Licenses, §§137-141, 143-151

III. **Fixtures**

A. **Annexor Owns Both the Chattel and the Land**
   - 35A Am. Jur. 2d, Fixtures, §§1, 3-12, 14-15, 34-35, 89, 115, 137
   - 36A C.J.S., Fixtures, §§1-11
   - Teaff v. Hewitt, 1 Ohio St. 511 (1853)
   - Schoshinski §§5.29-5.33

B. **Annexor Owns the Chattel but Not the Land in Fee**
   - 1. **Trade Fixtures**

C. **Annexor Does Not Own the Chattel**
   - 1. **Annexation without Consent of the Owner of the Chattel**
      - Brown 3d ed., §16.17
      - 36A C.J.S., Fixtures, §24

D. **Security Interests in Fixtures - Effect of Uniform Commercial Code**
   - Brown 3d ed., §16.19
IV. Support

A. Lateral support

1. Common Law
   VI-A Am. L. Prop §§28.39-28.40
   Stoebuck §7.3
   9 Powell §§699-700
   1 Am. Jur. 2d, Adjoining Landowners, §§40-44, 47-57

2. Modern Statutes and Ordinances
   VI-A Am. L. Prop §28.41
   1 Am. Jur. 2d, Adjoining Landowners, §62
   O.R.C. §§723.49-723.50

3. Remedies
   VI-A Am. L. Prop §§28.47-28.53
   9 Powell §§701-702
   1 Am. Jur. 2d, Adjoining Landowners, §§51, 61, 70-75

B. Subjacent Support
   VI-A Am. L. Prop §§28.44-28.46
   9 Powell §703
   1 Am. Jur. 2d, Adjoining Landowners, §§80-89

V. Water Rights

9 Powell §§65.02-65.14

A. Watercourses - Exclusive of Appropriation

1. Streams and Lakes
   VI-A Am. L. Prop §§28.55-28.57
   Stoebuck §7.4

2. Surface Waters
   VI-A Am. L. Prop §§28.61-28.64
   Stoebuck §7.6
   78 Am. Jur. 2d, Waters, §§174-184, 197

3. Percolating Waters
   VI-A Am. L. Prop §§28.65-28.66, 28.68
   Stoebuck §7.5
   78 Am. Jur. 2d, Waters, §§212-219

4. Subordination of Private Rights to Public Uses
   VI-A Am. L. Prop §28.59

B. Watercourses and Groundwaters - Appropriation
   VI-A Am. L. Prop §§28.58, 28.67
   Stoebuck §§7.4-7.5
   78 Am. Jur. 2d, Waters, §§341-351, 360

Subpart Three: Vendor and Purchaser

I. Contracts for the Sale of Land

A. Marketable Title
B. Statute of Frauds

1. Requirements
   III Am. L. Prop §§11.2-11.5
   Stoebuck §10.1
   14 Powell §81.02[1]
   77 Am. Jur. 2d, Vendor & Purchaser, §§6, 21
   O.R.C. §1335.05

2. Doctrine of Part Performance
   III Am. L. Prop §§11.7-11.12
   Stoebuck §10.2
   14 Powell §81.02[2]
   73 Am. Jur. 2d, Statute of Frauds, §§311-325

C. Risk of Loss
   III Am. L. Prop §§11.22, 11.30
   Stoebuck §10.13
   14 Powell §81.03[2]
   77 Am. Jur. 2d, Vendor & Purchaser, §§358, 366-369

II. Mortgages

A. Development of the Mortgage - Equity of Redemption

Subpart Four: Titles

I. Adverse Possession
A. **Elements - Application of Requirements**  
III Am. L. Prop §§15.3-15.11  
Stoebuck §11.7  
16 Powell §§91.01-91.10  
3 Am. Jur. 2d, Adverse Possession, §§1, 4-5, 8-11, 13-60, 62-101, 103-121, 123-155, 157-169, 310, 319  
O.R.C. §2305.04  
*Ewing v. Burnet*, 36 U.S. 41 (1837)

B. **Disabilities**  
III Am. L. Prop §15.12  
16 Powell §91.10[3]  
3 Am. Jur. 2d, Adverse Possession, §§171, 190-193, 195  
O.R.C. §2305.04

II. **Conveyancing - Deeds**

A. **Delivery and Acceptance**  
III Am. L. Prop §§12.64-12.70  
Stoebuck §§11.3-11.4  
14 Powell §81A.04[2]  
23 Am. Jur. 2d, Deeds, §§102-160

B. **Land Description**  
III Am. L. Prop §§12.99-12.123  
Stoebuck §11.2  
14 Powell §81A.05  
23 Am. Jur. 2d, Deeds, §§38-51, 247-263

C. **Covenants for Title**  
1. **Covenant of Seisin and Covenant of Right to Convey**  
III Am. L. Prop §12.124  
Stoebuck §11.13  
14 Powell §81A.06[2][a-b]  
20 Am. Jur. 2d, Covenants, Conditions and Restrictions, §§69-73  
O.R.C. §5302.06

2. **Covenant Against Encumbrances**  
III Am. L. Prop §12.128  
Stoebuck §11.13  
14 Powell §81A.06[2][c]  
20 Am. Jur. 2d, Covenants, Conditions and Restrictions, §§76-88  
O.R.C. §§5301.02, 5301.08

3. **Covenant of Warranty and Covenant of Quiet Enjoyment**  
III Am. L. Prop §12.129  
Stoebuck §11.13  
14 Powell §81A.06[2][d-e]  
20 Am. Jur. 2d, Covenants, Conditions and Restrictions, §§48-68, 90-99

4. **Running of Specific Covenants**  
III Am. L. Prop §§12.126, 12.131  
14 Powell §81A.06[5][d]  
20 Am. Jur. 2d, Covenants, Conditions and Restrictions, §46

D. **Construction**  
III Am. L. Prop §§12.89-12.91, 12.97  
Stoebuck §11.1  
14 Powell §81A.07  
23 Am. Jur. 2d, Deeds, §§192-269

E. **Estoppel by Deed**  
III Am. L. Prop §§15.18-15.24  
Stoebuck §11.5  
14 Powell §§81A.07[2], 84.02  
23 Am. Jur. 2d, Deeds, §§109, 158, 277-278

III. **Recording**

A. **Purposes and Effect of Recording**  
IV Am. L. Prop §17.5
Subpart Five: Public Land Use Control

I. Zoning

A. Constitutionality - General Considerations
   1 Anderson §§3.09-3.13, 3.24-3.36
   Juergensmeyer §§10.1-10.11
   12 Powell §§79C.01, 79C.03
   83 Am. Jur. 2d, Zoning and Planning, §§38, 40-43, 45
   Village of Euclid v. Ambler Realty, 272 U.S. 365 (1926)
   City of Eastlake v. Forest City Enterpr., 426 U.S. 668 (1976)
   Rispo Realty v. City of Parma, 55 Ohio St.3d 101 (1990)
   Bainbridge Twp. v. Funtime, Inc., 55 Ohio St.3d 106 (1990)
   Mandelker §§2.01-2.54

B. Constitutionality - Presumptions and Burden of Proof
   1 Anderson §§3.14-3.23
   12 Powell §§79C.03

C. Modern Urban Problems - Exclusionary Zoning
   2 Anderson §§8.01-8.39
   Stoebuck §§8.26-9.27
   Juergensmeyer §§6.1-6.10
   12 Powell §§79C.07

D. Nonconforming Uses
   1 Anderson §§6.01-6.79
   Stoebuck §9.17
   Juergensmeyer §§4.31-4.40
   12 Powell §§79C.06
   City of Akron v. Chapman, 160 Ohio St. 382 (1953)
   Northern Ohio Sign v. City of Lakewood, 32 Ohio St.3d 316 (1987)
   City of Dublin v. Finkes, 83 Ohio App.3d 687 (1992)
   Mandelker §§5.68-5.76

E. Variances
   3 Anderson §§20.01-20.86
   Stoebuck §9.29
   Juergensmeyer §§5.14-5.23
   12 Powell §§79C.16[1]
   O.R.C. §713.11
Zangara v. Trustees of Chester Twp.,
77 Ohio App.3d 56 (1991)
66 Ohio St.3d 452 (1993)
Mandelker §§6.39-6.52

II. Eminent Domain

A. Power of Eminent Domain
   Generally
   Stoebuck §9.4
   Juergensmeyer §§16.1-16.2
   26 Am. Jur. 2d, Eminent Domain,
     §§1-9
   Ohio Const. Art. I, §19

   Mandelker §4.37

B. Taking
   Stoebuck §§9.4-9.5
   Juergensmeyer §§16.4, 16.17
   26 Am. Jur. 2d, Eminent Domain,
     §§47-60
   Shopco Group v. Springdale, 66
   Ohio App.3d 702 (1990)
   Giambrone v. City of Aurora, 85
   Ohio App.3d 758 (1993)
   Mandelker §§2.01-2.38
PART B. PERSONAL PROPERTY

I. Finding Lost or Misplaced Articles

A. Rights of Finders of Lost Property
   Brown 3d ed., §§3.1-3.2
   1 Am. Jur. 2d., Abandoned, Lost, and Unclaimed Property, §§18, 23
   36A C.J.S., Finding Lost Goods, §§2, 3, 5

B. Rights of Finders of Misplaced Property
   Brown 3d ed., §3.4
   1 Am. Jur. 2d., Abandoned, Lost and Unclaimed Property, §§24-25
   36A C.J.S., Finding Lost Goods, §5c(1)

II. Bailments

A. Elements of a Bailment - Distinguished from Other Transactions
   Brown 3d ed., §§10.1-10.5
   8A Am. Jur. 2d., Bailments, §§1-5, 15-20
   8 C.J.S., Bailments, §§1-13

B. Rights and Duties of Bailee and Bailor in Relation to Each Other

C. Rights of Bailee in Relation to Third Persons
   Brown 3d ed., §11.11
   8A Am. Jur. 2d, Bailments, §§167, 169-174
   8 C.J.S., Bailments, §§93-96

III. Gifts

A. Elements of Gifts Inter Vivos
   38 Am. Jur. 2d, Gifts, §§17-34
   38A C.J.S., Gifts, §§11-45

B. Deposit of Funds in a Bank
   Brown 3d ed., §§8.6-8.8
   38A C.J.S., Gifts §§49-51

C. Elements of Gifts Causa Mortis
   Brown 3d ed., §§7.15-7.20
   38 Am. Jur. 2d., Gifts, §§7-12, 17-34
   38A C.J.S., Gifts, §§88-106
Chapter 9
Torts

References

Prosser & Keeton on the Law of Torts (5th ed. 1984) (Prosser)
American Jurisprudence 2d (rev. ed.) (Am. Jur. 2d)
Restatement (Second) of Torts (Rest. 2d)
Ohio Revised Code (O.R.C.)
Ohio Jurisprudence 3d (O.Jur.3d)

Sources Not Cited


I. Intentional Torts

A. Intent

Prosser §§5, 8, 17
74 Am. Jur. 2d, Torts §§17-23, 27
57A Am. Jur. 2d, Negligence §35
Rest. 2d, §§8A, 16, 28, 32
70 O.Jur. 3d, Negligence §7
88 O.Jur. 3d, Torts §10-12

B. Intentional Interference with the Person

1. Battery

Prosser §9
HJG §§3.1-3.3
6 Am. Jur. 2d, Assault & Battery §§109-25
Rest. 2d, §§13-20
6 O.Jur. 3d, Assault-Civil Aspects §§1-4

2. Assault

Prosser §10

3. False Imprisonment

Prosser §11
HJG §§3.6-3.9
32 Am. Jur. 2d, False Imprisonment §§1-20
Rest. 2d, §§35-45A
45 O.Jur. 3d, False Imprisonment §§1-10, 18, 33-37

4. Intentional Infliction of Emotional Distress

Prosser §12
HJG §§9.1-9.3
Rest. 2d, §§46-48

C. Intentional Interference with Property
1. **Trespass to Chattels**
   - Prosser §§14-15
   - HJG §§2.1-2.15
   - Rest. 2d, §§216-244
   - 18 O.Jur. 3d, Conversions
   - Replevin §§1-19, 37-41

2. **Conversion**

D. **Defenses**

1. **Consent**
   - Prosser §18
   - HJG §3.10
   - 6 Am. Jur. 2d, Assault & Battery §§156-157
   - Rest. 2d, §§49-62, 167-175, 892-892D
   - 6 O.Jur. 3d, Assault-Civil
   - Aspects §7

2. **Self Defense**
   - Prosser §§19-20
   - HJG §§3.11-3.12
   - 6 Am. Jur. 2d, Assault & Battery §§158-166
   - Rest. 2d, §§63-76
   - O.Jur. 3d, Assault-Civil
   - Aspects §§8-11

3. **Defense and Recapture of Property**
   - Prosser §§21-23
   - HJG §§3.13-3.16
   - 6 Am. Jur. 2d, Assault & Battery §§167-177
   - Rest. 2d, §§77-111
   - 6 O.Jur. 3d, Assault-Civil
   - Aspects §§12-13

4. **Privilege and Necessity**
   - Prosser §16, 24

II. **Negligence**

A. **Standards for Liability**

1. **Reasonable Person**
   - Prosser §§28-35
   - HJG §§16.1-16.13
   - Rest. 2d, §§281-284, 289-309
   - 70 O.Jur. 3d, Negligence §§19-35

2. **Statutes**
   - Prosser §36
   - HJG §§17.5-17.6
   - 57A Am. Jur. 2d, Negligence §§716-803
   - Rest. 2d, §§285-288C
   - 70 O.Jur. 3d, Negligence §§53-62

3. **Custom and Malpractice**
   - Prosser §§32-33
   - HJG §17.3
   - 57A Am. Jur. 2d, Negligence §§173-192
   - Rest. 2d, §§295A, 299-299A
   - O.R.C. §2307.42
   - 70 O.Jur. 3d, Negligence §23
   - 67 O.Jur. 3d, Malpractice §§1-2

4. **Proof of Negligence,**
   - Including Res Ipsa Loquitur
   - Prosser §§37-40
B. Duty

1. Affirmative Duties
   Prosser §§53, 56
   HJG §§18.6-18.7
   57A Am. Jur. 2d, Negligence
   §§89-141
   Rest. 2d, §§314-328
   70 O.Jur. 3d, Negligence
   §§13-18

2. Owners and Occupiers of Land
   a. Possessor’s Liability to Trespassers
   b. Possessor’s Liability to Licensees and Invitees
   c. Liability of Lessors to Persons on the Land
      Prosser §§57-62
      HJG §§27.1-27.14
      62 Am. Jur. 2d, Premises Liability §§29-41, 72-207
      Rest. 2d, §§328E-362
      76 O.Jur. 3d, Premises Liability §§1-21

D. Vicarious Liability

1. Employees and Respondeat Superior
   Prosser §§69-70
   HJG §§26.6-26.10
   57B Am. Jur. 2d, Negligence §§1752-1815
   Rest. (2d) of Agency, §§219-249
   39 O.Jur. 3d, Employment Relations §§380-398
   70 O.Jur. 3d, Negligence §110

2. Liability for Independent Contractors
   Prosser §71
3. **Imputed Contributory Negligence**

   Prosser §74
   HJG §§23.1-23.4
   57B Am. Jur. 2d, Negligence §§1777-1791
   Rest. 2d, §§485-494A

### III. Causation

A. **Cause in Fact**

   Prosser §41
   HJG §§20.1-20.3
   57A Am. Jur. 2d, Negligence §§424-452, 533-590
   Rest. 2d, §§430-434

B. **Proximate Cause**

   Prosser §§42-45
   HJG §§20.4-20.6
   57A Am. Jur. 2d, Negligence §§453-530, 591-715
   Rest. 2d, §§435-453
   70 O.Jur. 3d, Negligence §§36-52
   88 O.Jur. 3d, Torts §§7-9

C. **Intervening and Superseding Causes**

### IV. Allocation of Liability

A. **Joint and Several Liability**

   Prosser §§46-47
   HJG §10.1
   74 Am. Jur. 2d, Torts §§61-70
   Rest. 2d, §§875-884
   18 O.Jur. 3d, Contribution, Indemnity §§83-98

B. **Contribution, Indemnity, and Satisfaction**

   Prosser §§48-52
   HJG §10.2
   74 Am. Jur. 2d, Torts §§73-88
   18 Am. Jur. 2d, Contribution §§40-81
   57B Am. Jur. 2d, Negligence §§1230-1263
   Rest. 2d, §§885-886B
   O.R.C. §§2307.31-2307.32, 2315.19
   18 O.Jur. 3d, Contribution, Indemnity §§1-56

### V. Trespass, Nuisance, and Strict Liability

A. **Trespass to Land**

   Prosser §13
   HJG §§1.1-1.7
   75 Am. Jur. 2d, Trespass §§8-14, 25-64
   Rest. 2d, §§157-166
   88 O.Jur. 3d, Trespass §§1-17

B. **Nuisance**

   Prosser §§86-89
   HJG §§1.23-1.30
   Rest. 2d, §§821A-840E
   72 O.Jur. 3d, Nuisances §§1-25

C. **Abnormally Dangerous Activities**

   Prosser §§78-79
   HJG §§14.1-14.8
   57A Am. Jur. 2d, Negligence §§396-423
   Rest. 2d, §§519-524A

### VI. Products Liability
A. Liability for Defective Products: The Restatements
   Prosser §§95-99, 103
   63 Am. Jur. 2d, Products Liability §§164-565
   Rest. 2d, §§402A, 394-408
   Restatement of Products Liability (Tent. Draft) §§1-12
   76 O.Jur. 3d, Products Liability §§1-5, 52-65, 92-94

B. Proper Plaintiff and Defendant
   Prosser §§100-101, 103
   HJG §§28.28-28.31
   63 Am. Jur. 2d, Products Liability §§566-577
   Rest. 2d, §402A
   Restatement of Products Liability (Tent. Draft) §§4-5, 9
   76 O.Jur. 3d, Products and Liability §§70-77

C. Defenses
   Prosser §102
   HJG §28.14
   63 Am. Jur. 2d, Products Liability §§266-271, 380, 551-560
   Rest. 2d, §402A
   Restatement of Products Liability (Tent. Draft) §§7, 12
   76 O.Jur. 3d, Products Liability §§78, 82-84

VII. Interference with Relationships

A. Defamation
   Prosser §§111-116A
   HJG §§5.0-5.30
   50 Am. Jur. 2d, Libel & Slander §§1-411
   Rest. 2d, §§558-623
   35 O.Jur. 3d, Defamation and Privacy §§1-8, 43-59, 94-98

B. Privacy

C. Deceit and Negligent Misrepresentation
   Prosser §§63-64, 105-110
   HJG §§7.1-7.15
   37 Am. Jur. 2d, Fraud & Deceit §§12-282
   Rest. 2d, §§525-557A
   50 O.Jur. 3d, Fraud and Deceit §§5-7, 22-25

D. Disparagement and Interference with Economic Relationships
   Prosser §§128-130
   HJG §§6.1-6.13
   50 Am. Jur. 2d, Libel & Slander §§548-568
   Rest. 2d, §§762-774B
   35 O.Jur. 3d, Defamation and Privacy §§152-156

VIII. Misuse of Legal Process

A. Malicious Civil Prosecution

B. Abuse of Process

IX. Wrongful Death and Survival
   Prosser §§125A-127
   Rest. 2d, §§925-926
   30 O.Jur. 3d, Death §§24-119

X. Damages

A. Compensatory Damages
B. **Punitive Damages**

HJG §25.5A

Rest. 2d, §§901-932

30 O.Jur. 3d, Damages §§42-60

22 Am. Jur. 2d, Damages §§731-750, 771-777

Rest. 2d, §§908-909

30 O.Jur. 3d, Damages, §§147-163
Chapter 10
Wills and Intestate Succession

References
Andersen, Understanding Trusts & Estates, 2d ed. (Andersen)
Atkinson on Wills (Atkinson)
Page on Wills (Page)
Ohio Jurisprudence 3d. Volumes 31-34, Decedents’ Estates (O.Jur.3d)

I. Intestate Succession

A. Surviving Spouse
   Andersen §4
   O.Jur.3d, §§6, 9, 78, 115-122, 125
   Atkinson §§16-23
   O.Jur.3d, §§6, 79, 99-114

B. Other Heirs
   Andersen §5
   O.Jur.3d, §§6, 9, 78, 115-122, 125
   Atkinson §§16-23
   O.Jur.3d, §§6, 79, 99-114

C. Special Situations
   1. Simultaneous Death
      O.Jur.3d, §§43-46
   2. Advancements
      Andersen §24[A]
      O.Jur.3d, §§126, 159-177
   3. Adopted and Non-marital Children
      Andersen §5[A]
      O.Jur.3d, §§100, 112

II. Wills

A. Capacity
   Andersen §7[A][2]
   Atkinson §§50-53
   Page §12
   O.Jur.3d, §§240-260
   Atkinson §§63, 76-77
   Page §20
   O.Jur.3d, §§401-409

B. Undue Influence
   Andersen §7[A][3]
   O.Jur.3d, §§334-340
   Atkinson §55
   Page §15
   O.Jur.3d, §§240-260
   Atkinson §§16-23
   O.Jur.3d, §§6, 79, 99-114
   C. Fraud
      Andersen §7[A][4]
      O.Jur.3d, §§341-342
      Atkinson §56
      Page §14
      O.Jur.3d, §§341-342
   D. Proper Execution
      1. Testator’s Signature at End
         Andersen §7[B][2][b]
         Atkinson §64
         Page §19
         O.Jur.3d, §§297-309
      2. Attestation: Competence and Presence
         Andersen §7[B][2][d], [e]
         Atkinson §65-67
         Page §19
         O.Jur.3d, §§310-333
      3. Oral Wills
         Andersen §7[B][2][a]
         Atkinson §§63, 76-77
         Page §20
         O.Jur.3d, §§401-409
      4. Incorporation by Reference
         Andersen §8[B]
         Atkinson §80
5. Mistake in Execution
   Andersen §7[B][4]
   Page §13
   O.Jur.3d, §§343-346

E. Revocation

1. *By Writing*
   Andersen §9[A]
   Atkinson §87
   Page §21
   O.Jur.3d, §§362-372

2. *By Destructive Act*
   Andersen §9[B]
   Atkinson §86
   Page §21
   O.Jur.3d, §§373-381

3. *By Operation of Law*
   Andersen §§9[C], 45
   Atkinson §§84-85
   Page §21
   O.Jur.3d, §§382-392

4. *Dependent Relative Revocation*
   Andersen §9[E]
   Atkinson §88
   Page §21

F. Revival or Republication
   Andersen §9[D]
   Atkinson §§88-92
   Page §23
   O.Jur.3d, §§393-400

G. Ante-mortem Probate
   Andersen §7[A][5][a][iii]
   O.Jur.3d, §§449-456

H. Interpretation

I. Family Protection

1. *Spousal Election Rights*
   Andersen §28[C]
   Page §53
   O.Jur.3d, §§744-776

2. *Afterborn Children*
   Andersen §29
   Atkinson §20
   Page §§15, 21, 31, 43
O.Jur.3d, §§262, 533

III. Special Situations

A. Disclaimers/Releases
   Andersen §27
   O.Jur.3d, §§728-734

B. Killers
   Andersen §25
   O.Jur.3d, §264