

NEW YORK STATE  
BOARD OF LAW EXAMINERS



CONTENT OUTLINE FOR THE PROPOSED  
NEW YORK STATE SPECIFIC LAW EXAMINATION:  
SIGNIFICANT DISTINCTIONS, LAWS AND RULES

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## INTRODUCTION

The New York State Specific Law Examination consists of 50 multiple choice questions. The general subject areas that may be tested are as follows:

- (1) administrative law;
- (2) business relationships, including, business corporations, limited liability companies, and partnerships;
- (3) civil practice and procedure;
- (4) conflict of laws;
- (5) contracts and contract remedies;
- (6) criminal law and procedure;
- (7) evidence;
- (8) matrimonial and family law;
- (9) professional responsibility;
- (10) real property;
- (11) torts and tort damages; and
- (12) trusts, wills and estates.

The New York State Board of Law Examiners has created this content outline in an effort to provide information regarding the subject matter tested on the New York State Specific Law Examination to law school students and bar candidates. This outline is intended to indicate, in summary fashion, the examination's potential scope of coverage. It is our hope that this outline will assist candidates in their preparation.

Some citations to statutes and court decisions are included to assist a user of this outline, but the inclusion of a citation with any particular entry does not mean that the cited statute or court rule includes all of the relevant legal principles regarding that entry.

This outline will be modified periodically, as appropriate. The Board invites comments from legal educators, the practicing bar, bar associations and candidates regarding this outline and regarding the scope and coverage of the examination generally. Comments may be sent to John McAlary, Executive Director, New York State Board of Law Examiners, **Corporate Plaza - Building 3, 254 Washington Avenue Extension, Albany, NY 12203-5195**, or to our dedicated email address - [Outline.Comments@nybarexam.org](mailto:Outline.Comments@nybarexam.org).

The Uniform Bar Examination (UBE) is also administered in New York. Information about and subject matter outlines for the UBE are available on the website of the National Conference of Bar Examiners at: <http://www.ncbex.org/about-ncbe-exams/ube>.

## GLOSSARY OF STATE STATUTES AND RULES

Banking Law	New York Code Rules and Regulations (NYCRR)
Business Corporation Law (BCL)	New York Constitution (NY Const)
Civil Practice Law and Rules (CPLR)	Partnership Law
Civil Rights Law	Penal Law
Criminal Procedure Law (CPL)	Public Health Law
Domestic Relations Law (DRL)	Public Officers Law
Estates, Powers and Trusts Law (EPTL)	Real Property Actions and Proceedings Law (RPAPL)
Family Court Act (FCA)	Real Property Law (RPL)
General Business Law	Rules of Professional Conduct (RPC)
General Municipal Law	Social Services Law
General Obligations Law (GOL)	State Administrative Procedure Act (SAPA)
Insurance Law	Surrogate's Court Procedure Act (SCPA)
Judiciary Law	Uniform Rules for Trial Courts
Labor Law	Vehicle and Traffic Law
Limited Liability Company Law	Workers Compensation Law

## ADMINISTRATIVE LAW

- I. Publication of Rules
  - A. New York Code Rules and Regulations
  - B. The State Register
  
- II. Adjudication
  - A. Statutory authority: SAPA art 3, 301, 302, 303, 304, 305, 306, 307
  - B. Required process
    - 1. Due process requirements: SAPA 301
    - 2. Discovery: SAPA 305
    - 3. Hearing rules of evidence and right to counsel: SAPA 306, 501
  - C. Res judicata and collateral estoppel effect
  - D. Agency power to acquire information
    - 1. Administrative investigations/searches: *Levin v Murawki*, 59 NY2d 35 (1983); Civil Rights Law § 73
    - 2. Administrative subpoenas: CPLR 2302
  
- III. Judicial Review
  - A. Preconditions to judicial review
    - 1. Standing
    - 2. Exhaustion of administrative remedies
    - 3. Ripeness
    - 4. Finality
  - B. Review of agency actions
    - 1. Procedural basis of review: CPLR art 78, Declaratory Judgment Action
    - 2. Adjudications
      - a. Determinations of law
      - b. Determinations of fact
      - c. Substantial evidence
    - 3. Discretionary decisions
    - 4. Rules and policy determinations
  
- IV. Public Disclosure
  - A. Freedom of Information Law: Public Officers Law § 87
  - B. Open Meetings Law: Public Officers Law § 103
  - C. Reporting and recordkeeping requirements: Public Officers Law § 106

## BUSINESS RELATIONSHIPS

Business Corporations, Limited Liability Companies and Partnerships

### Business Corporations

- I. Formation and Nature
  - A. Certificate of incorporation: BCL 402
  - B. Bylaws: BCL 601
  - C. Purposes and powers: BCL 201–203
  
- II. Management and Control
  - A. Shareholders
    - 1. Inspection of books and records: BCL 624
    - 2. Derivative actions: BCL 626

- 3. Right to dissent and be paid for shares: BCL 806, 623
- 4. Minority shareholder's right to petition for judicial dissolution: BCL 1104-a
- B. Directors
  - 1. Number, election and removal: BCL 614, 702, 706
  - 2. Interested directors: BCL 713
  - 3. Loans to directors: BCL 714
- C. Officers
  - 1. Election and removal: BCL 715, 716
  - 2. Authority
- D. Duties and liabilities of officers and directors
  - 1. Statutory liabilities of officers and directors: BCL 719, 720
  - 2. Fiduciary duties and business judgment rule: BCL 715, 717
- III. Professional Service Corporations
  - A. Requirements: BCL 1503, 1504
  - B. Professional relationships and liabilities: BCL 1505

### Limited Liability Companies

- I. Formation - Articles of organization: Limit Liability Company Law § 203
- II. Management
  - A. By members or managers: Limit Liability Company Law §§ 401, 408, 412
  - B. Operating agreement: Limit Liability Company Law § 417
  - C. Liability of members, managers and agents: Limit Liability Company Law § 609
- III. Professional Service Limited Liability Companies
  - A. Requirements: Limit Liability Company Law § 1203
  - B. Professional relationships and liabilities: Limit Liability Company Law § 1205

### Partnerships

- I. Formation and Nature of Partnerships
  - A. General partnerships: Partnership Law §§ 10, 11
  - B. Limited partnerships: Partnership Law (Revised Limited Partnership Act) § 121-201
  - C. Registered Limited Liability Partnership: Partnership Law § 121-1500
- II. The Authority, Liability and Interests of Partners
  - A. Authority to bind partnership and other partners: Partnership Law §§ 20, 24, 25
  - B. Liability of partners: Partnership Law §§ 26, 28
  - C. Partner's fiduciary responsibilities: *Drucker v Mige Assoc. II*, 225 AD2d 427 (1<sup>st</sup> Dept 1996), *lv denied* 88 NY2d 807 (1996)
  - D. Assignment of partnership interests: Partnership Law § 53

## **CIVIL PRACTICE AND PROCEDURE**

- I. Organization of New York's Court System and Subject Matter Jurisdiction of New York Courts
  - A. Principal appellate courts
    - 1. Court of Appeals: NY Const art VI § 3
    - 2. Appellate Division of Supreme Court (First, Second, Third and Fourth Judicial Departments): NY Const art VI. § 4
  - B. Principal trial courts
    - 1. Supreme Court: NY Const art VI. § 7

2. Court of Claims: NY Const art VI. § 9
  3. Family Court: NY Const art VI. § 13
  4. Surrogate's Court: NY Const art VI. § 12
  5. County Court: NY Const art VI. § 11
- II. Commencement of Action and Service of Process
    - A. Commencement by filing: CPLR 304
    - B. Service of process: CPLR 306-b, 308
    - C. Service outside New York: CPLR 313
  - III. Long-Arm Jurisdiction: CPLR 302
  - IV. Venue and Forum Non Conveniens
    - A. Proper venue for various types of actions: CPLR 503, 504, 507
    - B. Change of venue: CPLR 510
    - C. Forum non conveniens: CPLR 327
  - V. Limitations of Time
    - A. Statutes of limitations for various types of actions: CPLR 202, 213, 214, 214-a, 215, 217, 217-a; EPTL 5-4.1
    - B. Claims against municipalities: General Municipal Law §§ 50-e, 50-i
    - C. Tolling: CPLR 207, 208, 210
    - D. New action following termination: CPLR 205
  - VI. Appearances and Pleadings
    - A. Defendant's appearance: CPLR 320
    - B. Change or withdrawal of attorney: CPLR 321(b)
    - C. Kinds of pleadings: CPLR 3011
    - D. Responsive pleadings: CPLR 3018
    - E. Cross-claims and counterclaims: CPLR 3019
    - F. Verification of pleadings: CPLR 3020
    - G. Amended and supplemental pleadings: CPLR 3025
    - H. Bill of particulars: CPLR 3041, 3042, 3043, 3044
  - VII. Parties
    - A. Necessary and proper parties: CPLR 1001, 1002, 1003
    - B. Third-party practice: CPLR 1007, 1008, 1009
  - VIII. Provisional Remedies
    - A. Attachment: CPLR 6201, 6212, 6213
    - B. Injunction: CPLR 6301, 6311, 6312, 6313
    - C. Notice of pendency: CPLR 6501, 6512
  - IX. Motions
    - A. Motion to dismiss: CPLR 3211
    - B. Motion for summary judgment: CPLR 3212
    - C. Motion practice: Request for judicial intervention, Uniform Rules for Trial Courts (22 NYCRR) § 202.6; Affirmation of good faith, Uniform Rules for Trial Courts (22 NYCRR) § 202.7
  - X. Disclosure
    - A. Scope of disclosure: CPLR 3101

- B. Use of interrogatories: CPLR 3130
  
- XI. Special Proceedings
  - A. Generally: CPLR 401, 402, 404, 408
  - B. Proceeding against body or officer: CPLR 7801, 7803, 7804
  
- XII. Alternative Dispute Resolution
  - A. Arbitration: CPLR 7501, 7502, 7503, 7506, 7511
  - B. Mediation
  - C. Other forms of alternative dispute resolution
  
- XIII. Appeals
  - A. Scope of review: CPLR 5501
  - B. Time to take appeal: CPLR 5513
  - C. Taking an appeal: CPLR 5515
  - D. Appeals to the Court of Appeals: CPLR 5601, 5602
  - E. Appeals to the Appellate Division: CPLR 5701

### CONFLICT OF LAWS

- I. Application in Specific Areas
  - A. Torts: *Neumeier v Huehner*, 31 NY2d 121 (1972); *Padula v Lilarn Props. Corp.*, 84 NY2d 519 (1994)
  - B. Contracts: *Auten v Auten*, 308 NY 155 (1954); *Matter of Allstate Ins. Co. [Stolarz-New Jersey Mfrs. Ins. Co.]*, 81 NY2d 219 (1993)
  - C. Property: *Lowe v Plainfield Trust Co.*, 216 App Div 72 (1<sup>st</sup> Dept 1926); *Matter of Buloval*, 14 AD2d 249 (1<sup>st</sup> Dept 1961)
  - D. Estates: EPTL 3-5.1
  
- II. Defenses against Application of Foreign Law
  - A. Substantive/procedural dichotomies: *Tanges v Heidelberg No. Am.*, 93 NY2d 48 (1999)
  - B. Local public policy: *Sachs v Adeli*, 26 AD3d 52 (1<sup>st</sup> Dept 2005)

### CONTRACTS AND CONTRACT REMEDIES

- I. Formation and Enforceability of Contracts
  - A. Offer and acceptance, including meeting of the minds: *Silber v New York Life Ins. Co.*, 92 AD3d 436 (1<sup>st</sup> Dept 2012); *Matter of Express Indus. & Term. Corp. v New York State Dept. of Transp.*, 93 NY2d 584 (1999)
  - B. Mutual mistake vs. unilateral mistake: *Simkin v Blank*, 19 NY3d 46 (2012); *Matter of Gould v Board of Educ. of Sewanhaka Cent. High School Dist.*, 81 NY2d 446 (1993)
  - C. Inability to consent, including infancy: GOL 3-101
  - D. Unconscionability and illegality: *Gillman v Chase Manhattan Bank*, 73 NY2d 1 (1988)  
General Business Law § 349; GOL 5-401, 5-501, 5-322.1, 5-323, 5-325, 5-326
  - E. Consideration: GOL 5-1103, 5-1105, 5-1107, 5-1109
  - F. Statutes of Frauds: GOL 5-701, 5-703
  - G. Third-party beneficiary contracts, including intended vs. incidental beneficiaries: *Mendel v Henry Phipps Plaza W., Inc.* 6 NY3d 783 (2006); *Fourth Ocean Putnam Corp. v Interstate Wrecking Co.* 66 NY2d 38 (1985); *Logan-Baldwin v L.S.M. Gen. Contrs.*, 94 AD3d 1466 (4<sup>th</sup> Dept 2012)

- H. Constructive trusts: *Bankers Sec. Life Ins. Socy. v Shakerdge*, 49 NY2d 939 (1980); *Simonds v Simonds*, 45 NY2d 233 (1978); *Sharp v Kosmalski*, 40 NY2d 119 (1976)
  - I. Employment Contracts: *Cruz v HSBC Bank, USA, N.A.*, \_\_\_ F Supp 2d \_\_\_, 2014 WL 950066 (ED NY 2014); *Murphy v American Home Prods. Corp.*, 58 NY2d 293 (1983); *Weiner v McGraw–Hill, Inc.*, 57 NY2d 458 (1982)
  - J. Agreements not to compete: *American Broadcasting Cos. v Wolf*, 52 NY2 394 (1981); *BDO Seidman v Hirshberg*, 93 NY2d 382 (1999); *Reed, Roberts Assoc.v Strauman*, 40 NY2d 303 (1976)
- II. Remedies
- A. Damages within contemplation of parties, foreseeability of damages: *Biotronik A.G. v Conor Medsystems Ireland, Ltd.*, 22 NY3d 799 (2014); *Ashland Mgt.v Janien*, 82 NY2d 395 (1993); *Goodstein Constr. Corp. v City of New York*, 80 NY2d 366 (1992)
  - B. Requirements for specific performance: *Van Wagner Adv .Corp. v S & M Enters.*, 67 NY2d 186 (1986)
  - C. Requirements for rescission or reformation: *Chimart Assoc. v Paul*, 66 NY2d 570 (1986)
  - D. Liquidated damages: *BDO Seidman v Hirshberg*, 93 NY2d 382 (1999); *Truck Rent-A-Ctr. v Puritan Farms 2nd*, 41 NY2d 420 (1977)
  - E. Mitigation: *Wilmot v State of New York*, 32 NY2d 164 (1973)
  - F. Punitive damages: *Ross v Louise Wise Servs., Inc.*, 8 NY3d 478 (2007); *Rocanova v Equitable Life Assur. Socy. of U.S.*, 83 NY2d 603 (1994)

## CRIMINAL LAW AND PROCEDURE

- I. General Principles
- A. Mental culpability
    - 1. Culpable mental states: Penal Law § 15.05
    - 2. Mistake of fact or law: Penal Law § 15.20
  - B. Defenses related to mental culpability
    - 1. Mental disease or defect: Penal Law § 40.15
    - 2. Extreme emotional disturbance: Penal Law § 125.25 (1) (a)
    - 3. Intoxication: Penal Law § 15.25
  - C. Affirmative and ordinary defenses
    - 1. Alibi: *People v Victor*, 62 NY2d 374 (1984)
    - 2. Entrapment: Penal Law § 40.05
    - 3. Duress: Penal Law § 40.00
    - 4. Justification; defense of self or another: Penal Law art 35
    - 5. Renunciation: Penal Law § 40.10
- II. Crimes
- A. Assault and related offenses: Penal Law art 120
  - B. Homicide: Penal Law art 125
    - 1. Intentional murder
    - 2. Depraved indifference murder
    - 3. Felony murder
    - 4. Manslaughter
    - 5. Criminally negligent homicide
  - C. Sex Offenses: Penal Law art 130
  - D. Burglary and related offenses: Penal Law art 140
  - E. Larceny: Penal Law art 155
  - F. Robbery: Penal Law art 160
  - G. Anticipatory offenses

1. Criminal solicitation: Penal Law art 100
2. Conspiracy: Penal Law art 105
3. Attempt to commit a crime: Penal Law art 110
4. Criminal facilitation: Penal Law art 115

### III. New York Constitutional Protections

- A. Detention and Warrantless arrest: *People v Hollman*, 79 NY2d 181 (1992); *People v Johnson*, 66 NY2d 398 (1985); CPL 140.10
- B. Search and seizure
  1. With a warrant: *People v Griminger*, 71 NY2d 635 (1988); *People v Bigelow*, 66NY2d 417 (1985); CPL 690.05, 690.10, 690.15, 690.35
  2. Without a warrant: *People v Brown*, 96 NY2d 80 (2001); *People v Rodriguez*, 77AD3d 280 (2010), *lv denied* 15 NY3d 955 (2010); *People v Belton*, 55 NY2d 49 (1982); *People v Gokey*, 60 NY2d 309 (1983)
- C. Confessions and privilege against self-incrimination
  1. Right to counsel; indelible attachment: *People v Arthur*, 22 NY2d 325 (1968); *People v Hobson*, 39 NY2d 479 (1976); *People v Bing*, 76 NY2d 331 (1990)
  2. Voluntariness: *People v Huntley*, 15 NY2d 72 (1965)
- D. Police-arranged identification procedures
  1. Photographic identification: *People v Lindsay*, 42 NY2d 9 (1977)
  2. Corporeal identification: *People v Ward*, 116 AD3d 989 (2014), *lv denied* 23 NY3d 1069 (2014); *People v Jackson*, 98 NY2d 555 (2002)
  3. In-court identification: CPL 60.25, 60.30
- E. Speedy trial guarantees: CPL 30.20 (1), 30.30; *People v Singer*, 44 NY2d 241 (1978); *People v Staley*, 41 NY2d 789 (1977)
- F. Double jeopardy: CPL 40.10, 40.20, 40.30; NY Const., art 1, § 6; *Matter of Polito v Walsh*, 8 NY3d 683 (2007)
- G. Grand jury testimony/immunity: CPL 50.10, 190.40, 190.45, 190.50
- H. Accomplice testimony: CPL 60.22

## EVIDENCE

- I. Judicial Notice
  - A. Judicial notice of law: CPLR 4511
  - B. Judicial notice of adjudicative facts: *Ptasznik v Schultz*, 247 AD2d 197 (2d Dept 1998)
- II. Relevancy
  - A. Character evidence: *Fanelli v diLorenzo*, 187 AD2d 1004 (4<sup>th</sup> Dept 1992); *Kravitz v Long Island Jewish-Hillside Med. Ctr.*, 113 AD2d 577 (2d Dept 1985); *People v Barber*, 74 NY2d 653 (1989) (dissenting opinion)
  - B. Uncharged crimes: *People v Molineaux*, 168 NY 264 (1901); *People v Rojas*, 97 NY2d 32 (2001)
  - C. Habit: *Rivera v Anilesh*, 8 NY3d 627 (2007)
- III. Witnesses
  - A. Competency of witnesses: CPLR 4512, 4513, 4519; CPL 60.22; FCA 343.1 (2); *People v Nisoff*, 36 NY2d 560 (1975)
  - B. Impeachment

1. Inconsistent statements: CPLR 3117 (a) (1); 4514, 4517; CPL 60.35; *People v Wise*, 46 NY2d 321 (1978)
  2. Conviction of crime: CPLR 4513; *People v Sandoval*, 34 NY2d 371 (1974)
  3. Specific instances of conduct: *People v Schwartzman*, 24 NY2d 241 (1969)
  4. Character for truthfulness: *People v Pavao*, 59 NY2d 282 (1983)
- C. Expert testimony
1. Expert opinions: *People v Cronin*, 60 NY2d 430 (1983)
  2. Scientific evidence: *Parker v Mobil Oil Corp.*, 7 NY3d 434 (2006); *Frye v United States.*, 293 F 1013 (DC Cir 1923)
- IV. Privileges
- A. Spousal immunity and marital communications: CPLR 4502, 4512
  - B. Attorney-client: CPLR 4503; *Rossi v Blue Cross & Blue Shield of Greater N.Y.*, 73 NY2d 588 (1989)
  - C. Physician/psychologist-patient: CPLR 4504, 4507
  - D. Self-incrimination: CPLR 4501
- V. Hearsay and Circumstances of its Admissibility
- A. Definition of hearsay: *Nucci v Proper*, 95 NY2d 597 (2001)
  - B. Admissions: *Reed v McCord*, 160 NY 330 (1899); *Loschiavo v Port Auth. of NY & NJ*, 58 NY2d 1040 (1983)
  - C. Present sense impressions: *People v Vasquez*, 88 NY2d 561 (1996)
  - D. Statements for purposes of medical diagnosis and treatment: *People v Ortega*, 15 NY3d 610 (2010)
  - E. Business records: CPLR 4518, 4539, 3122-a; CPL 60.10; *Johnson v Lutz*, 253 NY 124 (1930)
  - F. Former testimony, including depositions: CPLR 4517, CPL 670.10

## MATRIMONIAL AND FAMILY LAW

- I. Getting Married
- A. Recognition of common law marriage: *Godfrey v Spano*, 13 NY3d 358 (2009) (concurring opinion)
  - B. Prenuptial and post-nuptial contracts: DRL 236 (B) (3); GOL 5-701 (a) (3); *Galetta v Galetta*, 21 NY3d 186 (2013)
- II. Matrimonial Actions
- A. Separation agreements: DRL 236 (B) (3); *Levine v Levine*, 56 NY2d 42 (1982)
  - B. Grounds and defenses: DRL 170, 171, 210
  - C. Jurisdiction over defendant: CPLR 302 (b)
  - D. Durational residency requirements: DRL 230
  - E. Pleadings and service of process: DRL 211, 232, 236 (B) (2) (b)
- III. Equitable Distribution: DRL 236 (B) (4), DRL 236 (B) (5)
- A. Separate property: DRL 236 (B) (1) (d)
  - B. Marital property: DRL 236 (B) (1) (c); *Majauskas v Majauskas*, 61 NY2d 481 (1984); *O'Brien v O'Brien*, 66 NY2d 576 (1985); *Price v Price*, 69 NY2d 8 (1986)
- IV. Support
- A. Spousal maintenance: DRL 236 (B) (5-a), DRL 236 (B) (6)
  - B. Child Support Standards Act: DRL 240 (1-b); FCA 413
  - C. Modification and enforcement: DRL 236 (B) (9) (b) (1), (2), DRL 241, 248; FCA 413; *Bast v Rossoff*, 91 NY2d 723 (1998); *Cassano v Cassano*, 85 NY2d 649 (1995); *Matter of Brescia v Fitts*, 56 NY2d 132 (1982); *Matter of Boden v Boden*, 42 NY2d 210 (1977)

- V. Filiation Proceedings:
  - A. Presumption of legitimacy: FCA 417, DRL 24, 73, 175
  - B. Establishing paternity: FCA 418, 532
  - C. Doctrine of equitable estoppel in paternity: FCA 418 (a), 532 (a); *Matter of Juanita A. v Kenneth Mark N.*, 15 NY3d 1 (2010); *Matter of Shondel J. v Mark D.*, 7 NY3d 320 (2006)
  
- VI. Abuse and Neglect
  - A. Family offenses and child protective proceedings: FCA 812, 1011, 1012; DRL 240 (3)
  - B. Termination of parental rights: FCA 611; Social Services Law § 384-b
  - C. Juvenile delinquency and persons in need of supervision: FCA 301.1, 301.2, 711, 712
  
- VII. Adoption: FCA 641; DRL 112-a, 114, 117, 122
  - A. Who may adopt: DRL110
  - B. Who may be adopted: DRL 110
  - C. Required consent: DRL 111; *Matter of Raquel Marie X.*, 76 NY2d 387 (1990)
  
- VIII. Child Custody: DRL 240 (1); 25 USC §§ 1901, 1911 (Indian Child Welfare Act)
  - A. Best interest of child standard: DRL 240 (1)
  - B. Visitation rights of parents and others: DRL 72, 240 (1); *Weiss v Weiss*, 52 NY2d 170 (1981)
  - C. Types of custodial arrangements: *Braiman v Braiman*, 44 NY2d 584 (1978)
  - D. Enforcement: DRL art 5-A (UCCJEA)
  - E. Modification of custody: FCA 467, 652; *Matter of Tropea v Tropea*, 87 NY2d 727 (1996); *Eschbach v Eschbach*, 56 NY2d 167 (1982); *Friederwitzer v Friederwitzer*, 55 NY2d 89 (1982)

## **PROFESSIONAL RESPONSIBILITY**

- I. The Lawyer-Client Relationship
  - A. Scope of representation and allocation of authority between client and lawyer: 22 NYCRR part 1200.0, RPC Rule 1.2 (e) – (g)
  - B. Communication with client: RPC Rule 1.4 (a) (1)
  - C. Declining relationship: RPC Rule 1.16 (a)
  - D. Withdrawal: RPC Rule 1.16 (b); CPLR 321 (b)
  
- II. Privilege and Confidentiality
  - A. Lawyer-client privilege and the work product doctrine: CPLR 4503, 3101 (c), (d) (2)
  - B. Professional obligation of confidentiality: RPC Rule 1.6 (a)
  - C. Exceptions to confidentiality: RPC Rule 1.6 (b), (c)
  - D. Duties to prospective clients: RPC Rule 1.18
  
- III. Conflicts of Interest
  - A. Current clients: RPC Rule 1.7
  - B. Business transactions with clients: RPC Rule 1.8 (a)
  - C. Sexual relations with clients: RPC Rule 1.8 (j)
  - D. Imputed disqualification: RPC Rule 1.10
  
- IV. Client's Rights, Retainer Agreements, and Fees
  - A. Statement of client's rights, engagement letters and retainer agreements: 22 NYCRR Parts 1210, 1215, 1400
  - B. Contingent fees: RPC Rule 1.5 (c); 22 NYCRR 603.7, 691.20, 806.13, 1022.31
  - C. Compromise of infant claims: 22 NYCRR 603.8

- D. Prohibited fees: RPC Rule 1.5 (d)
  - E. Fee disputes: RPC Rule 1.5 (f); 22 NYCRR Parts 137 and 1230
  - F. Division of fees between lawyers: RPC Rule 1.5 (g), (h)
- V. Safeguarding Property and Funds of Clients and Others
- A. Prohibition against commingling and misappropriation: RPC Rule 1.15 (a)
  - B. Separate accounts: RPC Rule 1.15 (b); Judiciary Law § 497; 22 NYCRR Part 1300
  - C. Notifying of receipt of property; safekeeping: RPC Rule 1.15 (c)
  - D. Bookkeeping and authorized signatories: RPC Rule 1.15 (d), (e), (h)-(j)
- VI. Communication about Legal Services
- A. Advertising: RPC Rule 7.1
  - B. Referrals: RPC Rule 7.2
  - C. Solicitation: RPC Rules 7.3, 4.5
  - D. Identification of practice and specialty: RPC Rule 7.4
  - E. Professional notices, letterhead and signs: RPC Rule 7.5
- VII. Interaction with Third-Persons
- A. Truthfulness: RPC Rule 4.1
  - B. Communication with represented person: RPC Rule 4.2
- VIII. Litigation
- A. Non-meritorious claims and contentions: RPC Rule 3.1, CPLR 8303-a
  - B. Delay of litigation: RPC Rule 3.2
  - C. Fairness to opposing party and counsel: RPC Rule 3.4
  - D. Maintaining impartiality of tribunal and jurors: RPC Rule 3.5
- IX. Regulation and Responsibilities of the Legal Profession
- A. Admission to the profession: Judiciary Law § 90; RPC Rule 8.1
  - B. Registration of attorneys: Judiciary Law § 468; 22 NYCRR Part 118
  - C. Continuing Legal Education: 22 NYCRR Part 1500
  - D. Misconduct and discipline generally: Judiciary Law § 90; RPC Rules 8.4, 8.5
  - E. Responsibilities of a subordinate lawyer: RPC Rule 5.2
  - F. Responsibility for conduct of non-lawyer: RPC Rule 5.3
  - G. Unauthorized practice of law: RPC Rule 5.5
  - H. Nonlegal services and cooperative business arrangements: RPC Rules 5.7, 5.8, 5.4 (b), (d); 22 NYCRR Part 1205
  - I. Competence: RPC Rule 1.1
  - J. Pro bono services: RPC Rules 6.1, 6.5
  - K. Prosecutors and other government lawyers: RPC Rule 3.8

## **REAL PROPERTY**

- I. Ownership and Possessory Interests
- A. Tenancy in common, joint tenancy, tenancy by the entirety, and partition: EPTL 6-2.2, RPL 240-c; Banking Law § 675; *Goldman v Goldman*, 95 NY2d 120 (2000); *V.R.W. Inc. v Klein*, 68 NY2d 560 (1986); RPAPL 901; *Ripp v Ripp*, 38 AD2d 65 (2d Dept 1971), *affd* 32 NY2d 755 (1973)
  - B. Landlord and tenant, including types of tenancies, assignment and sublease, warranty of habitability, holdovers, breach and remedies, and summary proceedings: RPL 226-b, 232-c, 235-

b; *Holy Properties Ltd., L.P. v Kenneth Cole Prods*, 87 NY2d 130 (1995); *Rios v Carrillo*, 53 AD3d 111 (2d Dept 2008); RPAPL 711

II. Rights in Land

- A. Easements by grant, prescription or implication: *Simone v Heidelberg*, 9 NY3d 177 (2007)
- C. Restrictive Covenants: *Witter v Taggart*, 78 NY2d 234 (1991)

III. Real Property Contracts, including Purchase Contracts, Options and First Refusals

- A. Creation and construction, including statute of frauds, essential and implied terms: RPL 461, 462; *Klafehn v Morrison*, 75 AD3d 808 (3d Dept 2010); GOL 5-703; General Business Law §§ 777, 777-a
- B. Marketable title and risk of loss: *Voorheesville Rod & Gun Club, Inc. v E.W. Tompkins Co.*, 82 NY2d 564 (1993); GOL 5-1311
- C. Breach and remedies: *White v Farrell*, 20 NY3d 487 (2013); *Donerail Corp. NV. v 405 Park LLC*, 100 AD3d 131 (1<sup>st</sup> Dept 2012)

IV. Real Property Mortgages: GOL 5-703

- A. Lien-theory: *Smith v Bank of America*, 103 AD3d 21 (2d Dept 2012)
- B. Priorities: RPL 291; *Washington Mut. Bank, FA v Peak Health Club*, 48 AD3d 793 (2d Dept 2008), *lv dismissed* 10 NY3d 911 (2008)
- C. Foreclosure: RPAPL 1301, 1341

V. Title

- A. Conveyance by deed, including warranties
- B. Adverse possession: RPAPL art 15; *Pritsiolas v Apple Bankcorp, Inc.*, 120 AD3d 647 (2d Dept 2014)
- C. Priorities and recording act: RPL 291

## TORTS AND TORT DAMAGES

I. Negligence and Related Tort Concepts

- A. Comparative negligence/assumption of risk: CPLR 1411, 1412
- B. Landowner liability: *Basso v Miller*, 40 NY2d 233 (1976); GOL 9-103
- C. Negligent supervision/entrustment: *Holodook v Spencer*, 36 NY2d 35 (1974); *Nolechek v Gesuale*, 46 NY2d 332 (1978)
- D. Negligent infliction of emotional distress: *Bovsun v Sanperi*, 61 NY2d 219 (1984); *Broadnax v Gonzalez*, 2 NY3d 148 (2004)
- E. Statutory standard of care owed to construction workers: Labor Law §§ 240, 241
- F. Vicarious liability: Dram Shop Act: GOL 11-101; permissive user: Vehicle and Traffic Law § 388; parent/child: GOL 3-112
- G. Wrongful death actions: EPTL 5-4.4; *Noseworthy v City of New York*, 298 NY 76 (1948)
- H. Negligent misrepresentation/duty to non-contractual party: *Credit Alliance Corp. v Arthur Andersen & Co.*, 65 NY2d 536 (1985)

II. Contribution, Indemnification and Limitations on Joint and Several Liability

- A. Entitlement to amount of contribution: CPLR 1401, 1402
- B. How contribution is claimed: CPLR 1403
- C. Limitation on claims for contribution in workers' compensation context: Workers Compensation Law § 11
- D. Effect of release: GOL 15-108

- E. Limitation on liability of joint and several tortfeasors for non-economic loss: CPLR art 16
- III. Other Torts
- A. *Per se* defamation: *Geraci v Probst*, 15 NY3d 336 (2010); *Lieberman v Gelstein*, 80 NY2d 429 (1992)
  - B. Invasion of privacy: Civil Rights Law §§ 50, 51
  - C. Prima facie tort: *ATI, Inc. v Ruder & Finn, Inc.*, 42 NY2d 454 (1977)
- IV. Statutory “No-Fault”: Insurance Law §§ 5101-5109
- A. Purpose
  - B. Basic economic loss
  - C. Serious injury determination
  - D. Entitlement to and exclusions from coverage for first-party benefits
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- V. Municipal Tort Liability
- A. Proprietary versus governmental functions: *Miller v State of New York*, 62 NY2d 506 (1984)
  - B. Special relationship/special duty: *Cuffy v City of NY*, 69 NY2d 255 (1987)
  - C. Notice of claim requirement: General Municipal Law § 50-e

## TRUSTS, WILLS AND ESTATES

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- I. Intestate Succession: EPTL 4-1.1
- II. Wills
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  - B. Codicils: EPTL 3-2.1
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  - E. Revocation: EPTL 3-4.1
    - 1. Dependent relative revocation, revival of revoked wills: EPTL 3-4.6; *Matter of Estate of Sharp*, 68 AD3d 1182 (3d Dept 2009)
    - 2. Revocation due to changed circumstances, including marriage, divorce and after-born children: EPTL 5-1.3, 5-1.4, 5-3.2
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- I. Trusts
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  - E. Rule against perpetuities: EPTL 9-1.1, 9-1.2., 9-1.3