

BUSINESS: AGENCY

Agency: A is voluntary fiduciary relationship where two parties manifest the intention that the agent will act on principal's behalf and subject to principal's control. A requires capacity of principal only (not agent) and consent of both. NO writing is required, except agreements involving real estate agents who receive commission.

Authority and Liability: If P holds out another as A and 3rd party relies, P is bound/estopped to 3rd parties based on P's actual statements (express), or based on reasonable inference from P's statements or conduct (implied), or based on what 3rd party reasonably believed (apparent), or through P's approval after the fact (ratification).

Agent acting without authority is liable to P for damages caused. If 3rd party did not know regarding agency or identity of P, A may be liable personally liable for created obligations (e.g. contract) and P will not be bound by it.

A's Duties to P: D of Loyalty: to avoid secret profits and conflict of interest, to disclose all material facts, to get P's consent. D of Care: to act with competence, diligence, obedience, and to maintain separate records.

P's Duties A: To pay reasonable compensation to A, to reimburse expenses, to cooperate, and to indemnify A.

Respondeat Superior: Employers are vicariously liable (VL) for torts committed by employees (not independent contractors) acting within the scope of employment. Minor deviations from an employer's direction (detours) are within the scope of employment while major deviations (frolics) are not. One is an employee if employer has the right to control time, place, manner of performance. Tip: if VL fails, try negligent hiring/dangerous activity.

Law Against Discrimination: NO discrimination! Must pay minimum wage; at will employment is presumed.

BUSINESS: PARTNERSHIP

Governing Law: The Revised Uniform Partnership Act (RUPA) governs partnerships in Washington.

Partnership: P is association of 2 or more people coming as co-owners to carry on a biz for profit. Agreements (incl. oral) to provide capital or share profits (unless as repayment of debt) create a presumption of partnership. No actual contribution is required, but intent to share profit/loss/expenses is, or extensive activity (name/office).

Duration: P are classified as at will or for a term. Caveat: sometimes, SOF may apply for term partnership (1 yr).

Partners: Unless agreed otherwise, all partners have equal rights in management and shares of profits and losses. All partners are agents of each other. By default, any partner has an apparent authority to bind the partnership and other partners personally by acts in the ordinary course of business, unless 3rd party had notice that the partner lacked authority. Additional partners are admitted upon consent of all existing partners.

Duty of Loyalty: D of L means to promote best interests of P, disclose prospective business opportunities, permit partner participation, avoid hidden profits and use partnership property and powers solely for its benefit.

Duty of Care: D of C requires to 1) avoid knowing violations of the law, 2) avoid intentional, grossly negligent, or reckless misconduct, and 3) act in good faith and fair dealing.

Liability: Partners are jointly and severally liable. Creditors recover from the partnership first before going after individual partners. Partners who paid more than their shares can seek contributions from others.

Expenses: P must reimburse partners for reasonable expenses incurred in carrying on the business.

Partnership Property: Property contributed to partnership for its purposes is partnership property. If intent is unclear, courts may look to the partnership's use, improvement, relationship with, acquisition of property.

Dissolution: Unless fixed term specified, each partner has the power to end P at will, but remaining partners may continue P business. For term P, dissolution decision must be made within 90 days of dissociation. A partner dissociated by will/expulsion/bankruptcy/death have a right to his interest in P. In wrongful dissociation (breaching clause in P agreement) wronged partner can recover damages and is no longer liable for P's liabilities.

Asset Distribution: At dissolution, P's assets go first to pay debts of outside creditors, then to pay inside debts (P owes to partners), then to return partner's capital. Remaining profits/losses are divided among the partners.

Limited Partnership: Formation certificate must be filed with GP's signature, with the name including "Limited Partnership" or "LP." General partners (not limited partners) manage and are personally liable for LP liabilities, but profits are allocated based on value of partners' contributions. Named partner in LP is liable for LP's debt.

Dissolution of LP: LP is dissolved after an agreed time/event, unanimous consent, or through judicial dissolution.

Limited Liability Partnership: Formation rules are identical as in LP. Words "LLP" must be present. LL partners are not liable for LLP's debts but only liable for personal debts/torts. Exception: in a medicine, law, accounting LLP partners are personally liable for LLP's torts, unless there is a malpractice insurance.

BUSINESS: LIMITED LIABILITY COMPANY

Formation: Under LLC statute, LLCs Cert of Formation must be filed with SoS, with name including "Limited Liability Company" or "LLC." Optional LLC's Operating Agreement with rules for governance also can be filed.

Management: By default LLC is member-managed (members are agents) unless Cert of Form specifies that LLC is manager-managed where managers are agents/ have no management power/ only vote to elect managers.

Resolutions passed by majority vote according to ownership share. Admission of new and withdrawal of existing members is only allowed after acquiescence by all members. After assignment of interest, assignor immediately loses his member status; assignee cannot participate in management unless all members agree.

Dissolution: D happens on unanimous consent, upon event specified in the agreement, or 90 days after last member dissociates, unless assignees vote to admit a new member. Withdrawal of a member automatically dissolves LLC unless all remaining members agree to continue LLC.

Liability: Personal L of members is limited to their shares determined by contributions of tangible/intangible assets, cash, or services. WA courts may PCV of law/medical practice to recover up to \$1mln uninsured L.

BUSINESS: CORPORATIONS: BASICS

Governing Law: WA Biz Corp Act (WBCA) governs for-profit C in WA. C may exist for any lawful purpose.

Ultra Vires: UV activities are those outside the scope of business purposes that are limited by the Articles.

Directors are liable for authorizing UV activities and shareholders may sue to enjoin the activity.

Promoters: P is one taking initiative to organize C. Ps owe fiduciary duties to each other, to C, and to investors of good faith/full disclosure/loyalty and must not secretly pursue personal gain at investors' expense.

Pre-Formation: Promoters are personally jointly and severally liable for any obligations/debts they create acting on behalf of C, unless they show that the other party knew that C did not exist yet and agreed to collect them from C. Subsequent adoption/ratification by C does not relieve individual liability except in case of novation.

Formation: (1) Art of Inc is filed with SoS and must include name + one of "incorporated/corporation/company/limited," address, incorporators, registered agent, authorized shares, number of directors + paying fees. (2) Agent must act voluntarily. (3) Filing is complete by stamp "filed." If SoS doesn't notice error and returns a conformed copy to incorporators, it becomes evidence of incorporation to 3rd parties. If Art of Inc returned for correction, C does not exist yet. (4) Corporate existence begins at the close of business on the day of proper filing.

Organizational Meeting: Incorporators (initial directors, if named in Articles) must hold an OM within 120 days of incorporation at which they must elect directors/officers and adopt bylaws, and must deliver Initial Report to SoS.

Officers: Officers are not necessary, but at least one must be responsible for minutes and authenticating records.

Duties: C must maintain minutes, keep copies of docs, prepare annual financial reports, hold annual meetings.

Shares: C cannot issue more shares than authorized in Articles, unauthorized shares are void when issued. Bd by resolution and in good faith must authorize issuance of shares. Shares sold at the same time must be sold at the same price (but no par value requirement). Bd acting in good faith determines sufficiency of consideration.

Share Repurchase and Dividends: When C cannot pay its debts and its assets exceed its liability, C may, at the Bd discretion, repurchase shares back from existing shareholders or pay dividends. Bd pays dividends at its own discretion. Shareholders cannot compel Bd to pay dividends unless Bd withheld them in bad faith.

BUSINESS: CORPORATIONS: GOVERNANCE

Board Meetings: Articles or bylaws set forth size of Bd. All corporate powers vested in the Bd but it may delegate some responsib to committees and elect/remove officers. Directors may act (1) by unanimous written consent without a meeting or (2) at meetings. Special meetings require 2 days notice to all directors.

Board Voting: Quorum is a majority of directors present physically/virtually (via phone/camera). Action is taken by a maj of dircts present. 1 director = 1 vote. Presence presumes a yes vote, but dissent must be on record and followed by written notice of dissent. Action without a meeting requires unanimous written consent.

Shareholder Meetings: Bd must give notice of annual shareholder meeting to SHs specifying date/time/place of the annual meeting. Board, court, or 10% of shareholders may call a special SH meeting, which requires written notice of the date/time/place/purpose between 10 and 60 days ahead of time, but at least 20 days if fundamental matters are to be discussed. Improper notice may be waived by attendance or in writing.

Shareholder Voting: Quorum is a majority of outstanding shares present physically, virtually, or by proxy. Voting without a meeting is allowed by almost unanimous written consent. Directors elected by cumulative vote, plurality prevails. Amends to the Articles or fundamental changes require 2/3 majority, unless Articles reduced it to 1/2. Conflict of interest deals must be approved/ratified by majority of disinterested SHs.

Voting Agreements: Voting Trusts: SHs put shares into a trust to be voted according to voting agreement.

Voting Pools: enforceable agreements among SHs to vote all pooled shares as majority of pooled shares.

Inspection Rights: SHs may inspect and copy the principle office records (Articles/Bylaws/Fin and Annual Reports) with 5 business days written notice. Copying fee is allowed. Inspection rights cannot be alienated or limited. SHs may inspect upon showing a proper purpose, e.g., meeting on outside action/ notice to other SHs of impropriety.

Dissenter's Rights: SHs have a right to vote NO on fundamental corp changes and be paid FMV of their shares, provided that they follow statutory notice and demand procedure. SHs may challenge FMV determination.

Preemptive Rights: To maintain equivalent of ownership percentage SHs have a right to buy add'l shares, except when issued as compensation or sold for non-cash. Unless prohibited in Articles, the right can be waived.

BUSINESS: CORPORATIONS: LIABILITY

Corporate Liability: Corporations are liable for the negligent acts of agents performing their duties in good faith.

Directors Duties: Directors owe to C the fiduciary D of Loyalty = action in the best interests of C (no self-dealing; C's interest is above personal) and D of Care = acting in GF as a rsnbl dir would under similar circumstances.

Director Resignation: A director may resign at any time by delivering a written notice to the corporation.

Directors Liability: Directors are personally liable for losses suffered by C as direct and proximate cause of breach of fiduciary duty. DEFENSES: (1) Absence from Bd meeting, (2) Dissent from Bd action, (3) Unanimous ratification by SHs of Bd action, (4) GF reliance on expert advice, (5) Articles may limit/eliminate directors personal liability for breach of duty of CARE, (6) Biz Judgement Rule protection: Rebuttable presumption that directors acted in the best interest of the corporation and in conformance with their duties.

Conflict of interest: When director stands on both sides of the transaction and derives personal benefit from it full disclosure is required. If disclosed, majority of disinterested SHs/directors may ratify. If the director failed to disclose, the transaction may be rescinded and profit recovered, unless the director proves it was fair to the C.

Corporate Opportunity Doctrine: When director takes or otherwise diverts opportunity in the same line of biz in which C may be reasonably interested, director breaches duty of loyalty to C by action in conflict of interest.

Officers Liability: Duties and liabilities of officers derive from Agency relationship. C is principle, officer is agent.

Direct Action: SH sues C/director/officer to recover damages for personal harm (voting/disclosure/inspection).

Derivative Action: SHs sues the board or a director on behalf of the corporation for breach of fiduciary duties, but often BJR shields directors who acted in GF. SHs must first demand the board take action. Demand must be futile.

Limited Shareholder Liability: Liability is limited to the amount of investments but when fairness so requires court may pierce the corporate veil and hold SHs personally liable where (1) formalities were not followed, (2) C is grossly undercapitalized, (3) 3rd party is injured by C (tort or K action), or (4) injustice otherwise results.

BUSINESS: CORPORATIONS: MERGER AND DISSOLUTION

Merger: M is approved by boards and by 2/3 of voting shares in both Cs. SH meetings require 20 to 60 day notice that includes merger plan and notice of dissenter's rights. In share exchange, only disappearing C must approve.

Sale of Assets: Sale/transfer of all or almost all C's assets is a fundamental change (requires 2/3 votes + 20-60 day notice + notice of dissenter's right) and must be approved by both Bds and SHs of the seller C only.

Transferability of Shares: Share of stock are freely transferable unless the certificate states otherwise.

Voluntary Dissolution: Before any shares are issued majority of promoters or initial directors vote to dissolve C.

After shares are issued D must be recommended by Bd and approved by 2/3 of shares entitled to vote (unless the Articles reduce it to 1/2). Dissolution is complete by delivering articles of dissolution to Secretary of State.

Involuntary Dissolution: Secretary of State, upon 60 days notice to cure, may administratively dissolve C for failure to pay fees, deliver reports when due, no registered agent, or upon expiration of the stated period of duration. If not cured, C has 5 years to seek reinstatement by curing the cause of administrative dissolution.

Judicial Dissolution: Court may dissolve C if it must find that grounds of D exists and D is appropriate remedy.

Then Ct enters dissolution decree with effective date of D and delivers it to SoS. Action for D can be instituted by (1) AG for fraud or abuse of legal authority by C; (2) SH for director/SH deadlock, or to stop wasting of C's assets; (3) Creditor if claim reduced to judgment, claim is unpaid, and C is insolvent.

Corporate Action After Dissolution: Upon dissolution, corporations may only liquidate assets and wind up affairs.

CIVIL PROCEDURE: JURISDICTION AND VENUE

Subject Matter Jurisdiction: Ct must have SMJ, to lack of which each party object at any time. Supr Ct has SMJ over any crim/civ claim. Distr Ct may hear claims with amount in controversy < \$75K (NO probate/family) and misdm.

Personal Jurisdiction: PJ must comply with procedural DP Δ must have notice and opp. to be heard. Δ must have *domicile* in WA, *consent* to WA JDX, OR have *minimum contacts* with WA by *purposefully* directing activities to and *availing* himself of WA protections/privileges. PJ must not offend traditional notions of *fair play and substantial justice*, taking the burden of WA litigation, interest of π&WA. Cts have no JDX over non-WA property.

Community suit: Service on one spouse is presumed valid, but can be challenged. Say: Preferable to serve both.

Long Arm Statute: WA LAS authorizes JDX over nonresident Δ who has transacted substantial business in WA, e.g. store/advertisement/website, committed a tort, insured risk, owned a property (also in rem JDX works).

Stream of Commerce: A manufacturer who can rsnblly foresee that its products will be distributed in WA is subject to suit here when a defective product causes injury, even absent continuous/systematic activity in WA.

Venue: For any action against an individual V is proper in the county where personal injury or property damage

occurred. In local action against resident – where Δ resides/property is located (strict for title actions); transitory action (not against property) – where any Δ resides. In action against nonresident – where service was made or where act creating long arm JDX occurred. In action against county/city V is proper in that county; against State – where π resides. In transitory action against corporation – where C does biz, agent resides, event/tort happened. Change of Venue: Ct may grant motion for CoV for improper original V (filed by mistake), judge disqualification, witnesses convenience, in the interests of justice (fair trial/jury pool), must grant upon consent of parties. Challenges to Change of Venue are waived if not raised in the pre-answer motion or in the answer.

Forum Non Conveniens: WA Ct with proper PJ, SMJ, & V may still dismiss a case for which a more appropriate forum exists, by balancing (test) between parties/witnesses/evidence location vs WA interest in the litigation.

CIVIL PROCEDURE: SERVICE OF PROCESS

Service of Process: SOP must be reasonably calculated under all circumstances to give actual notice of the suit.

Summons and Complaint: S&C must be delivered in person (even outside WA by anyone except π himself) OR left with one of suitable age/discretion at usual abode/primary residence. If that is impossible after reasonable diligence then, after court's authorization, π sends a copy to a mailing address (NOT P.O. Box!) by 1st class mail.

Service on entity is made in person to registered agent, officer, manager (his secretary), proprietor (not employee). Absent registered agent, service is on SoS (not for foreign C). Any service must strictly follow statute!

Service on Government: State – on any AG's office. County/City/Town – mayor, city clerk, appointed service receiver, or other so designated officer. School Districts – superintendent or his assistant, business manager.

Constructive Service by Publication: π must submit an affidavit that Δ is hiding (for residents), owns WA property (for nonresidents), cannot be found (corporate agent); mail service to last known address; and publish 6 weekly consecutive notices in a paper of general circulation where address/property is, then Δ has 60 days to respond.

Out-of-State Service must be personal and with an affidavit that service could not be made within WA.

Nonresident Motorists must be served personally/to abode; when impossible, to SoS + mail to last known address.

CIVIL PROCEDURE: JOINDER AND CLASS ACTION

Permissive Joinder: The joinder of multiple parties is proper if the claim arises out of the same transaction or occurrence and if there is a common question of law or fact between them. Judge has discretion.

Compulsory Joinder: Ct will join a necessary party who 1) enables complete relief, 2) would be impaired if not joined, or 3) relieves risk of double jeopardy, inconsistent obligations, OR prejudice of an existing party.

Indispensable Party: Ct will dismiss the case absent IP: a party who, if not joined, would unavoidably prejudice existing parties, preclude an effective judgment, AND an alternate forum exists where all parties could be joined.

Intervention: A non-party has a right to become a party if the claim will impair a related interest that no other party adequately represents, OR by statute. When no intervention right exists, Ct still has discretion to permit intervention for common questions of law or fact that would not result in undue delay, confusion, or prejudice.

Impleader: I is used for indemnity or contribution by an impleading Δ who may assert a claim against a 3rd party. Δ must allege that the 3rd party would be liable for all or part of the Δ liability to the π .

Joinder of Claims: In one suit π can assert multiple, even unrelated, claims against Δ . Compulsory counterclaims arise out of the same T or O as π 's claim, as opposed to permissive that do not. Δ must allege compulsory and may allege permissive counterclaims in the same suit. Cross-claims are claims against co-party (usually Δ to Δ) arising out of the same T or O; Ct has broad discretion to sever claims and parties to try them separately.

Consolidation: Judge has discretion to join separate actions for reasons of efficiency, convenience and economy.

Proper Class Certification: 1) Joinder is impracticable (40 π s) and all members have common question of law or fact. 2) Representative parties have typical claims/defenses and can fairly and adequately protect class interests.

Class Action: Ct must decide whether CA is appropriate by considering 1) balance convenience of CA vs individual actions, 2) need of control for individuals π s, 3) desirability of the forum, and 4) difficulty of managing CA suit.

CIVIL PROCEDURE: PLEADINGS

Notice Pleading: In WA, a short and plain statement showing entitlement to relief, JDX+V, is usually sufficient; fraud must be pleaded w/particularity. Answer must include denials, affirmative defenses, counterclaims.

Statement of Claim: In all pleadings π 's allegations must state a claim upon which relief may be granted.

Civil Rule 12(b): By motion Δ may raise: (1) lack of SMJ (at any time), (2) lack of PJ, (3) improper V, (4) insufficiency of process, (5) insufficient service of process (waived unless raised in the answer or preanswer motion), (6) failure to state a claim upon which relief can be granted, (7) failure to join a necessary party (any time, even in trial).

Timing and Amendments: Δ s served personally in WA have 20 days to answer. Δ s served outside WA, by publication, nonresident motorists have 60 days. Δ s served by mail have 90 days. π may amended once before receiving answer, Δ may amend once within 20 days of answer. Additional As require court's permission.

Relation Back: Amendments must relate back to the complaint. New parties should not be included, except for Δ who had notice of pleader's mistake as to their identity, and joinder rules must be followed.

Default Judgment: Upon failure to answer, defend, or appear after 5 days notice, Ct may enter DJ against the Δ .

Statute of Limitations: Period is tolled by filing but π must perfect commencement by proper service w/n 90 days.

Civil Rule 11: Upon signing complaint and answer parties/attorneys warrant that they have done reasonable research, believe the facts are true, and claims are warranted by existing law or a good faith argument can be made to change it. Party who violated CR 11 may be subjected to reasonable sanctions: expenses and atty's fees.

CIVIL PROCEDURE: DISCOVERY

Discovery: Scope of discovery is broad with regards to any matter relevant to the case that is not privileged. In case non-cooperation Ct may, upon request, 1) issue Protective Order (from harassment), 2) compel discovery of discoverable information, 3) compel a meeting if a party refuses to talk, 4) impose sanction: hold in contempt, exclude evidence, grant costs & atty's fees, or ultimately 5) enter default judgment. Confer->Compel->Sanction!

Fisons Guideline: In determining sanctions for discovery abuse, the court must 1) relate the penalty to deterrence, punishment, compensation purpose; 2) judge the party's excuse against an objective standard; 3) use statewide (not local) standards; 4) weigh all circumstances (importance of ev) and 5) use the least severe sanction necessary.

Deposition is a proper discovery device for parties to the case made upon leave of Ct within 30 days after service.

Deponent must have written notice and must answer all unprivileged questions, even on objection. During D counsel can instruct not to answer except for privileged info. No client coaching allowed! At trial D can come in as admissible non-hearsay (801) for a party deponent or declarant unavailable exception (804) for non-party.

Non-Party Subpoena is required to depose non-party or compel document production (subpoena duces tecum).

Interrogatories are Q&As between parties, in writing, under oath. Parties must answer within 30 days.

Requests for Admission ask to admit stipulations, not facts as in interrogatories, e.g. "Do you agree the light was green?" Parties must admit or affirmatively deny within 30 days, or request will be deemed admitted.

Production of Documents request must be directed to a party w/rsnbl particularity. Response due within 30 days.

Records: Health/Insurance records are discoverable upon 14 days notice, but party can apply for protection order.

Examination: When physical/mental condition of party is in controversy, Ct may order E, upon good cause shown.

Experts: Testifying E may be deposed by opposing party. Consulting E (only consults one party) – no discovery right, the other party may not even know about him. Fact or Occurrence E (qualifies to be an expert, but comes as a fact witness, e.g. treating doctor who saw an injury occur) is subject to full discovery.

Work Product: WP is any tangible thing (photo, writing) prepared by a party or atty in anticipation of litigation. WP may be discoverable if the requesting party shows a substantial need and has no other means to obtain it.

CIVIL PROCEDURE: TRIAL

Jury Trial: Demand for JT must be made in writing prior to trial. Jury of 6 will be used unless a party asks for 12. Right to jury trial do not exist for equitable Qs. Judge will decide whether question is legal or equitable.

Peremptory Challenge: Each party has 3 PC, but they cannot be used to strike jurors on the basis of race/gender.

Challenge For Cause: Parties have unlimited number of challenges for cause: bias (was convicted for the same offense), personal interest, partiality, close relationship, under 18 yrs old, not a U.S. citizen or resident of county, do not speak English. Erroneous denial is harmless error if the juror is removed later by a peremptory challenge.

Jury Instructions: WA Cts require submission of proposed instructions when a case is called. Failure to object to erroneous or insufficient instructions will result in waiver, except errors based on constitutional rights.

Verdict: V is valid when 5 jurors agree in the jury of 6 (10 in 12). Jurors cannot use/refer to outside material.

Judge Disqualification: Judge must recuse himself for personal bias. A party may file an affidavit of prejudice.

Summary Judgment: Before trial begins, a party can move for SJ when there is no genuine issue of material fact, unless other party rebut. The judge must view evidence in the light most favorable to the nonmoving party.

Judgment as a Matter of Law: The motion must be made at trial or within 10 days after judgment. If there is no legally sufficient evidentiary basis for a rsnbl jury to find for the nonmoving party, the court may grant a motion for judgment as a matter of law. Ct must view evidence in the light most favorable to the nonmoving party.

Dismissal: Voluntary D by π or by both parties. Involuntary D by failure to comply with order/rule or by motion.

Civil Standard of Proof: The standard of proof in civil cases is by the preponderance of the evidence.

During Trial: During trial attys may not comment on evidence, vouch, put jurors in Δ shoes, misstate the law.

CIVIL PROCEDURE: NEW TRIAL AND APPEAL

New Trial Grounds: Errors in trial, mistrial, jury misconduct, error in law, insufficient evidence to justify the verdict.

Timing: Motions for New Trial (MNT) must be filed within 10 days (30 days for appeals) of entry of judgment.

New Evidence: MNT may be made based on new evidence that couldn't have been discovered w/rsnbl diligence.

Additur/Remittitur: Insufficient evidence to justify the excessive verdict may be grounds for new trial, unless π agrees to a lesser amount (remittitur); for low verdict files MNT, unless Δ agrees to a larger verdict (additur).

Jury Misconduct includes lie on voir dire, being intoxicated, discussing case outside jury room, use of unauthorized extrinsic evidence, or making statements about facts not in evidence in the jury room.

Relief from judgment due to newly discovered evidence that could not have been discovered with due diligence, or due to a mistake, excusable neglect, errors in law may be sought within 1 year of entry of judgment.

Appeal: A timely and specific objection must be made to preserve an issue for appeal, except for lack of SMJ or errors affecting constitutional rights. An error must substantially affect the outcome (not harmless).

Claim Preclusion: Once a final judgment has been rendered on a claim π is barred from refile by res judicata.

Full Faith and Credit must be given to final judgments from another state, if on merits and with proper PJ&SMJ.

COMMERCIAL PAPER: NEGOTIABLE INSTRUMENTS

Governing Law: UCC Article 3 as adopted in WA governs NI – note, certificate of deposits, draft, and check. If bank is involved UCC Article 4 also controls. HDC of NI is only subject to real, not personal, defenses and claims.

Negotiable instrument: “NUTSS be delivered.” For NI to be negotiable it must be in writing with (N)egotiable words (“pay the order of”) containing (U)nclassified promise to pay w/o unauthorized promises or undertakings (except statement of consideration, collateral, source) at certain (T)ime or on demand (if time of payment is absent>of presentment>of acceptance>of issue) fixed (S)um (in any currency but not in commodity, taxes, insurance) and (S)igned by the maker or drawer.

NI Negotiated: NI is negotiated when transferred to a subsequent party who becomes a holder with both possession and good title. Check negotiated by indorsement and delivery. Blank indorsement creates bearer paper negotiated by delivery. Special indorsement create order paper. If not negotiable, CL of contracts applies.

Defective negotiation: If payee designation is incomplete, maker/drawer is not liable for theft, but liable to subsequent HDC if he qualifies; original payee cannot recover after maker paid to HDC. If check is lost, stolen, or destroyed, payee still recovers. Sworn declaration by payee is required. Maker/drawer can protect himself against claims of enforcement by any reasonable means.

COMMERCIAL PAPER: HOLDER IN DUE COURSE

HDC: is a holder who took NI in good faith for value (not promise) with no knowledge of problems or defenses.

Shelter Rule: Assignee who failed to meet HDC definition, however becomes HDC if transferor was HDC.

Real defenses: HDC is subject only to real defenses. FRAUD IN FACTUM – signing believing it to be something else than promise to pay (not fraud in inducement, e.g., misrepresentation about goods to induce buyer to write a check). ILLEGALITY of transaction – principal must be reduced by usurious interest charged (over 12%, except credit cards and retail sales), costs, and attorney fees. DISCHARGE in bankruptcy. Extreme DURESS – holding a gun to get maker sign. SOL – action must be commenced within 6 years from due date or demand. INCAPACITY – insanity or infancy. FORGERY – material alteration of amount (HDC still collects the original sum), signature, etc. except if maker or indorser substantially contributed to the forgery, including dummy vendor or fictitious payee.

Federal Trade Commission: Consumer who via contract, not check alone, purchased/leased goods (or services) on credit has the right to raise all defenses (including personal). This right must be stated in the contract.

Negligent supervision: HDC will prevail when maker of check failed to control signature stamp, left signature or amount blank, mailed check to wrong person. Defenses become personal. FORGERY BRAKES CHAIN OF TITLE!

COMMERCIAL PAPER: LIABILITIES

Underlying Obligation: Issuance of a check merely suspends the underlying obligation to pay. Suspension is lifted upon dishonor and payee can sue. Obligation is discharged when check is paid.

Conversion: Substantial interference with the rights in personal property, checks, notes, etc., is conversion.

Contract/Signature Liability: By virtue of signing NI endorser becomes liable. Endorsers/drawers after receiving notice of dishonor become secondarily liable. No liability when indorsement is “without recourse.”

Presentment Warranty: Presentor of check for payment (and all prior transferors) warrant to drawee/bank at presentment that presentor has good title, check is not forged/altered, presentor has no knowledge of defenses (unauthorized signature, insolvency proceeding). Bank can sue presentor and prior transferors to recover sum.

Transfer Warranty: Transferor of NI for consideration makes five transfer warranties to all subsequent transferees: good title, all signatures genuine/authorized, no alterations, no defenses, and no knowledge of insolvency.

COMMERCIAL PAPER: BANKS

Properly Payable Rule: A drawee bank must pay properly payable checks, otherwise it is wrongful dishonor; and must not pay checks that are not, otherwise wrongful honor. Forged or altered checks are not properly payable, if paid, bank generally bears risk of loss. If bank certifies a check, bank becomes solely liable.

Bank is not liable if (1) check was written out to an imposter (fraudulent impersonator who induced maker to issue a check), (2) customer was contributory negligent in the fraud, including if his employee committed fraud, customer signed a blank check, or failed to notify bank about alteration/forgery within 1 year, (3) customer failed to properly review bank statements for 60 days for businesses and for 1 year for individual customers.

Stop Payment Orders: Stop payment orders must be made with certainty (identify check) and before bank honors the check. SPOs are valid for 14 days (oral) or 6 months (written).

Stale checks is at least 90 days old; bank may refuse to pay. Overdrafts are allowed as a line of credit.

Death of drawer: Bank may pay check after drawer's death until death is discovered by bank.

Indorsement instruction: Banks must pay NI consistently with indorsement instruction, e.g., "for deposit only."

CONSTITUTIONAL LAW: JUDICIAL REVIEW AND DUE PROCESS

Standing: π must have an injury in fact caused by Δ that can be redressed by the requested relief. Case is ripe, not moot. NO generalized grievances; NO 3rd party S except in close relationship or special need (unions/doctors).

State Action is required including by officials or private individuals with significant state involvement.

Strict Scrutiny: Law/regulation/action is upheld only if it is **narrowly tailored** to achieve **compelling** interest.

Intermediate Scrutiny: State law, regulation, action will be upheld only if the state proves it is **substantially related** to an **important** governmental interest. SS = presumption of invalidity, RB = presumption of validity.

Rational Basis Review: State law, regulation, or action will be upheld if it is **rationally related** to a **legitimate** state interest. In WA a π must prove irrationality or arbitrariness beyond a reasonable doubt.

Substantive Due Process: 14th Am (by Bill of Rights incorporated) prohibits govt interference with const rights. Ct will apply strict scrutiny to state actions that limit fundamental rights and rational basis test – non-fundamental.

Takings: Under US Constitution, govts cannot take private property for public use without just compensation.

Under WA Constitution govt must prove that taking was necessary for a public interest. Under WRLTA, if govt condemns leased property, LL has to pay the T the higher of \$2000 or 3x monthly rent for relocation.

Fundamental rights = **VIP** treatment. (V)oting, (I)nterstate Travel & (P)rivacy **CAMPPER** rights (C)ontraception, (A)ortion, (M)arriage, (M)edical Autonomy – right to refuse medical care, (P)rocreation, (E)ducation – parents' right to direct kids' education (WA Const: right to "ample education"), (R)elations – family's right to live together.

Contract Clause Doctrine: State and local governmental regulations cannot substantially interfere with the obligations of existing private contracts (intermediate-level scrutiny) or public contracts (strict scrutiny).

Procedural Due Process: The DP Clause of the 14th Am provides that a state may not deprive person of life, liberty, or property without DP of law, i.e., rsnbl notice and opportunity to be heard before an impartial tribunal.

Deprivation of liberty includes impairment of the freedom to exercise fundamental rights. Deprivation of property requires a legitimate expectation of continuation of existing rights to enjoy specific benefits under the law.

Timing of Review: Under *Mathews*, to determine whether DP must be pre-deprivation, courts will balance availability of safeguards against the risk of erroneous deprivation of important individual interest VS the government's cost and administrative burden in providing those safeguards.

CONSTITUTIONAL LAW: EQUAL PROTECTION/RELIGION/DCC/PIC

Washington Constitution: Under *Gunwall*, WA constitution provides greater protections of personal rights.

Equal Protection Clause of 14th Am prohibits discrimination against similarly situated persons. Discrimination based on a suspect classification or discriminatory restrictions on fundamental rights must meet strict scrutiny.

Suspect Class: Race, alienage, national origin, citizenship (StrS – WA, RB – Fed), illegitimacy (IntS). All else – RB.

Gender Discrimination: Under federal law, intentional gender discrimination is reviewed under intermediate-level scrutiny. Under WA law, gender is a suspect class, so state and local action must meet strict scrutiny.

Free Exercise: Govt cannot prohibit or interfere with religious beliefs, except burden is created by neutral laws of general applicability. In WA, any action that has a coercive effect on religious practices must meet strict scrutiny.

Establishment Clause: Constitution forbids discrimination against religion. The law must meet the *Lemon* test: serve secular purpose, not advance nor inhibit religion, do not have excessive government entanglement with it.

Dormant Commerce Clause: State may regulate interstate commerce if not discriminatory or unduly burdensome.

A state or local regulation that intentionally discriminates (on its face, as applied, or by motive) against out of state economic actors or activities must meet strict scrutiny. A non-discriminatory regulation is invalid if its burden on interstate commerce outweighs its benefits that further a legitimate government interest.

Privileges and Immunities Clause: A state and local regulation cannot explicitly discriminate (on its face, as applied, or by motive) against out of state citizens as to fundamental rights and essential activities.

Sovereign Immunity: The 11th Am prohibits actions against a state for damages, injunctive or declaratory relief, but not actions against state officers for injunctive relief or damages to be paid out of pocket by individuals.

CONSTITUTIONAL LAW: FIRST AMENDMENT

Freedom of Speech and Association: 1Am (incorporated in 14th Am) prohibits states from abridging freedom of speech and association. WA Constitution provides that persons may speak, write, and publish on all subjects. Content Based Restrictions on the subject matter or the viewpoint of protected speech must meet strict scrutiny. Content Neutral Restrictions that burden expressive conduct (time, place, manner) need only meet rational basis. Unprotected Speech includes incitements, true threats, fighting words, obscenity, child pornography. Obscenity: Material that taken as a whole by an average person appeals to the prurient interest and depicts sexual conduct in a patently offensive way, and lacks serious literary, artistic, political, or scientific value. Commercial Speech can be regulated if it is commercially illegal or misleading, or violates community standards, otherwise, commercial speech is protected and regulations must meet intermediate scrutiny. Symbolic Conduct: Speech includes conduct (flag burning) that a viewer reasonably understands as a message. Speech by Public Employee: A public employee cannot be disciplined for speaking on matters of public interest, except for speech made in an official capacity or that disrupts the employer's authority, efficacy, or policies. Prior Restraints on speech (before it occurs) are highly suspect. License/permit schemes must be narrowly drawn, not vague/overbroad, with clear standards leaving almost no discretion, and provide for prompt judicial review. Vagueness: A regulation is void if a reasonable person cannot tell from the reading what is prohibited, what permitted. Overbreadth: A regulation is void if it affects much more speech than is necessary to serve legit govt purpose. Public Forum Regulations of time/place/manner of speech must be content neutral, narrowly tailored to serve an important government interest, and leave open alternative avenues of communication. In WA, strict scrutiny. Non-Public Forum Regulations of time, place, or manner of speech must be viewpoint neutral and meet RB.

CONSTITUTIONAL LAW: ADMINISTRATIVE

Governing Law: The WA Administrative Procedures Act applies governs all state agencies, except AG office and Dept of Corrections. APA only applies to local agencies that perform state functions or apply state law. **4 STEPS**: **STEP1**: Is agency/actor acting within its legislatively delegated authority? Enabling **statute** required, otherwise it's beyond the scope (ultra vires). Delegation of power must include adequate standards and procedural protection. Rule: A generally applied directive or regulation which establishes/modifies/revokes a procedure or requirement. **STEP2**: Did agency/actor comply with APA rulemaking actions? APA requires **notice and comments**. Rule with its date proposal is published in the State Register 20 days before the hearing, comments and responses recorded. Emergency Exceptions: When public health, safety, welfare is in immediate danger a rule takes immediate effect, but automatically expires in 120 days. Petition for repeal can be filed in 7 days. Agency must respond in 7 days. Petition for adoption, amendment, repeal must be denied or acted upon (rulemaking) by agency within 60 days. **STEP3**: Did the agency/actor comply with APA in any adjudicative action? APA DP requires **notice** of right to petition 20 days before deadline and 7 days notice of **hearing** (with an opportunity to present evidence, examine witnesses) before an unbiased officer who must write a decision with findings of fact and conclusions of law. Hearing Rules are alike to Civ Pro: discovery, disclosure, no ex-parte, transcript, open to public, sworn testimony. Final Order enforces the rule. Within 10 days petition for stay or reconsideration of O may be filed. SOL tolled. **STEP4**: Is an aggrieved entitled to judicial review of the agency/actor's actions? Ct will **invalidate** agency rules or orders that are unconstitutional, ultra vires, arbitrary&capricious; or for errors of law (de novo); or if fact findings are not supported by substantial evidence. Forum is in Thurston County (or claimant's county) Superior Court. (S)tanding: One aggrieved by agency action has standing under the APA. YOU SERF TO THE COURT (E)xhaustion: Judicial review of agency action is available only after administrative remedies have been exhausted. (R)ipeness/Mootness: The question must not be premature (ripeness) or too late (mootness) to raise. (F)inality: The agency must say that the decision is final. If it is still thinking, only internal appeals are available.

CONTRACTS: FORMATION AND TERMS

Governing Law: Contracts for services/intangibles/land are governed by the common law of contracts. In mixed K (goods+services) predominant reason controls the nature of K (buy laptop+service->goods K->UCC controls). Valid Contract: A valid K requires mutual assent (usually offer&acceptance), consideration, and no valid defenses. Offer: A manifested willingness to bargain seeking offeree's assent to certain/definite terms to be bound. Offeree must create power of acceptance. Tip: not O: puffing,teasing, request for bid/quote; objective standard applies. Acceptance Under Mirror Image Rule, A must conform to an offer exactly, or else it is a rejection and counteroffer. A may be implied in fact, e.g., patient silently accepts a doctor's services without knowing full price, or implied in law the under quantum meruit theory (quasi K), e.g. while owner is out plumber fixes emergency, then bills for it. Consideration is a bargained-for exchange of something of legal value; Ct will not inquire into adequacy of cons. Unilateral K: In a unilateral K a promise is exchanged for performance; in bilateral K – promise for promise.

Promissory Estoppel: K is valid if promisee detrimentally relies on the promisor's promise, even without cons.

Battle of Forms: Last written communication is deemed to be an offer and performance is acceptance.

Mail Box Rule: A (done by the same mode/not slower) is effective upon dispatch, unless offer says "upon receipt."

Certainty of Terms: At common law certainty is satisfied by QTIPP: (Q)uantity, (I)tems, (T)ime, (P)arties, (P)rice.

Preexisting Legal Duty: A promise to perform a preexisting legal duty is not consideration.

Illusory Promise: Promises that do not actually bind a party are invalid, e.g. "I'll sell you when I feel like it."

Modification of K requires accord and satisfaction (mutual assent and consideration). Novation = change parties.

Interpretation: The intent of parties controls the interpretation. Under the *Berg* Rule, extrinsic ev is admissible to ascertain the intent of the parties (not merely subjective beliefs). Ct interpret patent ambiguity against the drafter.

Parol Evidence Rule, written complete, final, unambiguous K may not be contradicted by ev of prior agreement.

CONTRACTS: FORMATION DEFENSES

Mutual Mistake: K is voidable if there is a mutual mistake about a basic assumption of K that had a material effect.

Unilateral Mistake: K is valid if one party is mistaken unless the other party knew/should have known of mistake.

Incapacity: Persons who are under 18, proven insane, or so intoxicated that are incapable of understanding legal consequences of the transaction, lack capacity to contract. One under 18 is liable for past/future "necessaries," e.g. food, shelter, clothes, medical aid, insurance, to a non-parent, but not for luxuries (e.g. cars); K becomes valid after turning 18, unless disclaimed within a rsnbl time. A minor can bind community property if married to adult.

Illegality: K w/illegal subject matter is invalid, unless 1) illegal provision is ancillary, then Ct may sever it enforcing the rest of K, 2) a party who tries to invoke illegality is egregiously at fault while the other is at de minimus fault.

Public Policy Violation: Consumer Protection Act violations by unfair or deceptive business practices (e.g. false advertisement, antitrust violations); and unreasonable waiver of liability; which affect the public may invalidate K.

Misrepresentation: K is voidable if a party made an innocent or negligent false assertion about a material fact, or failed to mention it, and induced detrimental reliance. Intentional misrepresentation is fraud.

Fraud: Deliberate or intentional false assertions, or omissions, that induced detrimental reliance, may invalidate K.

Duress: Physical D (holding a gun to make a party agree) or economic D (extreme terms) can invalidate K.

Unconscionability: A contract is voidable if a party had no meaningful choice in bargaining (procedural) or contract contains unreasonably harsh terms, that shock the conscience of the court (substantive).

Ambiguity: A contract is voidable if both or neither party had reason to know of a latent ambiguity.

Non-Competition Employment Agreement is valid if subject protected, time, and geographic area are reasonable.

Statute of Frauds: Property interest transfer, marriage/suretyship/service K that cannot be performed within a year is void unless in writing, contains all terms, and signed; except: divisible part performance, promissory estoppel, quasi K. Tip: Watch for 1 year service "agreed" today to begin tomorrow. If term is indefinite oral K is still valid.

CONTRACTS: PERFORMANCE AND BREACH

Impossibility: An obligation may be discharged if performance is objectively impossible due to an unforeseeable event, e.g. death of a party, natural disaster, destruction of a subject matter (no new roof if house burned down).

Impracticability/Frustration: An obligation may be discharged if performance becomes unreasonably difficult, expensive, or burdensome due to an unforeseeable and unavoidable event OR if the central purpose of the contract is frustrated (undermined) due to an unforeseeable event that is not the fault of the promisor.

Waiver: A party may waive the right to sue for non-performance, but it has to be express and unambiguous.

Satisfaction Clause must be performed in good faith, not based on taste or fancy judgment (objective standard).

Conditions: C precedent must occur before performance; In C concurrent parties must perform at the same time.

Time of the Essence clause will only be valid if there is an explicit or clearly implied deadline written in the K.

Breach: Breach is any deviation from the contract. In material breach, substantial benefit of the bargain is undermined. In minor breach, substantial benefit of the bargain is received, but performance was defective.

Substantial Performance: Injured party may seek damages but not suspend performance for minor breach, when the other party substantially performed. Confer: In UCC perfect tender rule requires full performance.

Anticipatory Repudiation is material breach: a party states that he will not perform when performance is due.

CONTRACTS: REMEDIES

Cancellation: Non-breaching party may wait to see if breaching party retracts material breach OR cancel K.

Statute of Limitations: A party can start an action within 6 yrs (written K) or 3 yrs (oral) from the time of breach.

SOL is tolled by party incapacity or absence from WA. K may limit SOL (6 months limit was upheld).

Equitable Estoppel: A party is estopped by own inconsistent with the suit previous act that created reliance. In breach parties may be awarded reliance damages (placed in same position as before contract occurred).

Damages: Injured parties may suspend performance and seek damages for a material breach. If liquidated D are

not specified in the contract, the injured party is entitled to compensatory (general) D (placed in same position as if no breach occurred) = expectation, consequential, and incidental damages. Expectation D must be reasonably certain, foreseeable, and unavoidable. There are no punitive damages in WA law of contracts.

Consequential Damages: Foreseeable and reasonably certain amounts that were the proximate result of breach. Consequential damages are foreseeable if one party informed the other how much he will lose if K is breached. Specific Performance is only awarded when money is an inadequate remedy, it would not create undue burden on the Ct to administer, and the K terms are definitely certain. Usually SP is limited to land and unique goods K. Quasi-Contract occurs when good faith benefits were conferred upon Δ, and there is no remedy available at law. In fairness and equity Ct may award the amount of unjust enrichment. Laches: Δ can no longer defend effectively. Restitution: To prevent unjust enrichment, restitution is available for benefits that were conferred with reasonable expectation of performance (down payment). Replevin action may be instituted to compel a party to return item.

CRIMINAL LAW: REQUIREMENTS FOR CRIMINAL LIABILITY

Jurisdiction: WA has criminal JDX if any part of crime occurred in WA, unless Fed or Tribal Court has crim JDX.

Children: Under 8 = irrefutable pres of being incapable of committing crimes. 8 to 12 presumed incapable unless clear & convincing evidence proves the child understood the act and knew it was wrong. Over 12 have capacity.

Juvenile Court: In WA, JuvCt may decline JDX and try a juvenile as an adult if in the best interests of the juvenile or the public. If 16 or 17, juv may be tried as adult if charged with a serious violent offense or violent offense with a criminal history. 18 at the time of trial is tried as an adult. There is no right to a jury in a juvenile court.

S.O.L. (Crimes): 3 yrs by default for crimes. Except: Indefinite for crimes where death is involved; 2 yrs for gross misdemeanor; 1 yr for misdemeanor. The statute is tolled for time spent out of state. Tip: summarize S.O.L.

Elements: Beyond a Reasonable Doubt Prosec must prove (1) *actus reus*/Culpable Act or Omission: voluntary muscular contraction / NO sleep walkers; (2) *mens rea*/Culpable Mental State: with intent/purpose/knowledge/recklessness/negligence (may transfer), except for strict liability crimes (speeding); (3) causation & concurrence.

Merger: Smaller crime, that includes ALL elements of larger one, merges into larger, except murder and burglary.

CRIMINAL LAW: COMPLICITY

Complicity: Accomplice is one who knowingly (enough for *mens rea*) agrees to aid/aids/commands/induces/encourages/solicits another to commit a crime. Mere approval is not enough! All accomplices are equally culpable for acts of each other, even for unknown/undesired acts but that are still in the realm of belief on the original crime. Before the fact: Withdrawal defense: A withdraws and warns about his back out and must alert the police. Otherwise, no defense. After the fact: To tamper with physical evidence; to harbor, conceal, or give money, transportation, disguise, or weapons to a known criminal with intent to prevent, hinder, or delay his arrest.

CRIMINAL LAW: ANTICIPATORY OFFENSES

Attempt: requires intent and a substantial step taken to commit a specific crime. Mere preparation is not enough. Factual impossibility is no defense, e.g. attempt to kill a dead person. Legal impossibility is a defense.

Solicitation: Giving and offering value (anything, like sex with hitman) with intent to promote or facilitate a crime.

Conspiracy: requires intent AND agreement with 1 or more people to commit a crime + a substantial step (e.g. plan) by ANY conspirator in furtherance of the agreement. NO Pinkerton rule in WA: so co-conspirators are not culpable for the crimes of other co-conspirators, though may be charged as accessories. Wharton rule: if a crime requires 2 people (bigamy, dueling) conspiracy cannot be charged separately when 2 people commit the crime.

CRIMINAL LAW: SUBSTANTIVE CRIMES

HOMICIDAL BREAKFAST <substantive crimes> hom+burg+rob+ext+asslt+kidn+forg+ars+sex+theft ON DRUGS.

HOMICIDE: Killing or causing death of a human being by act or omission, with death occurring at any time.

Aggravated Murder 1°: Premeditated intent + an aggravating factor including murder for hire (both hirer and hitman are culpable of AM1°) domestic violence, felony murder, drive-by shooting, OR **victim** is a judge, juror, witness, police, OR **criminal** is a prisoner/escapee/parolee. If 18y.o. sentence may be to life w/o parole or death.

Murder 1°: Premeditated intent (plan) OR extreme indifference to human life (100mph at kids playground).

Murder 2°: Intent to cause death w/o premeditation or during non-dangerous felony. NO merger into M1°.

Felony Murder: Killing during the crime, in the furtherance of it, or during the flight from it. For Murder 1°: Burglary (1°), or Arson, Robbery, Rape, or Kidnapping (1° or 2°); For Murder 2°: any other felony, not BARRK.

Manslaughter: Causing death (incl. unborn) through recklessness for Mansl 1°; criminal negligence for Mansl 2°.

Homicide by Abuse: Causing death with NO intent of child or elderly person + a history of previous abuse.

Vehicular Homicide: Proximately causing death by reckless conduct during or through intoxicated driving.

Controlled Substances Homicide: Causing death of another by unlawful delivery of drugs to the person.

Defenses: Death caused by accident. In FM, no1 involved in felony was armed and no1 committed reckless acts.

BURGLARY: Entering or remaining unlawfully in a building with intent to commit a crime therein against person or property. Being armed with a deadly weapon or assaulting a person = Burglary 1°, otherwise = Burglary 2°.

Residential Burglary: To enter/remain unlawfully in a dwelling with intent to commit a crime against person/property. No weapon necessary. *Burglary charges do not merge*.

Criminal Trespass: With NO intent to commit a crime, entering/remaining unlawfully in a building = CT1°/msdm OR on premises of another = CT2°/msdm. Computer T: Access w/o authorization govt. HDD=1°/crime. Other=2°.

Vehicle Prowling: To knowingly enter/remain unlawfully WITH intent to commit a crime IN a car/boat/motor home with sleeping quarters = 1°/felony, w/o sleeping quarters = 2°/misdemeanor.

Making/Possession of Burglar Tools: Make/possess a tool with intent to use it in a burglary. Gross Misdemeanor.

ROBBERY: (All felonies) Forcible taking of personal property by force or threat of force from a person in his presence or against his will. If robber inflicts bodily harm OR is armed with deadly weapon OR displays what appears to be deadly weapon OR in bank = Rob1°/felony. If NO weapon or actual injury, just force = Rob2°/felony.

EXTORTION: knowingly obtain or attempting to obtain property/services by threat of future of bodily injury, physical damage to property, or physical confinement/restraint = Ext1°; Other wrongful threats = Ext2°.

ASSAULT: Intentional battery (unlawful application of force), attempted battery, or the apprehension of battery.

Assault 1°: Intent to inflict great bodily harm, where death or permanent disfigurement is likely to result, and either use of deadly weapons OR actual infliction of the great bodily harm OR transmission of AIDS.

Assault 2°: Intentional and reckless infliction of substantial bodily harm or use of a deadly weapon.

Assault 3°: Negligent or reckless infliction of bodily harm or substantial pain, or making contact w/ govt. official.

Assault 4°: (misdemeanor) Offensive contact, pushing, shoving, slapping etc. of one who is not a govt. official.

Vehicular Assault: Causing substantial bodily harm by reckless/DUI driving or with disregard of safety of others.

Watercraft Assault: Causing substantial bodily harm by reckless/DUI boat driving. Skier behind - driver not guilty.

Drive-by Shooting: Reckless firearm discharge from or near a car with substantial risk of death or serious injury.

Resisting Arrest: Intentionally preventing or attempting to prevent a lawful arrest.

Reckless Endangerment: Recklessly creating substantial risk of death or serious bodily injury. Directing a laser at bus driver/pilot/firefighter and causing service interruption = 1°, with no interruption of service = 2°/msdm.

KIDNAPPING: Intentional abduction and holding in a secret place or where he is unlikely to be found. If with intent to collect ransom/reward, facilitate a felony, inflict bodily injury or extreme mental distress, or to interfere with govt. function, then = 1°/felony. Otherwise = 2°/felony (rare). Sexual motivation elevates to a higher crime.

Unlawful Imprisonment: Knowing restraint of another person's freedom/movements without his consent (without abduction). Or restrain of a person who cannot consent, that is, under 16 years old, elderly, or disabled.

Harassment: Communicating threats with intent to cause fear of injury. Objective standard applies.

Custodial Interference: Depriving of custodial parent of having the child, with risk of illness/injury = 1°, else = 2°.

FORGERY: 1) Falsely making, completing, or altering a written instrument with intent to defraud or injure, OR 2) knowingly presenting as true a forged written instrument with intent to defraud or injure.

ARSON: Knowingly and maliciously causing a fire or explosion. Intent goes to setting the fire.

Arson 1°: The fire is manifestly dangerous to human life, fire damages a dwelling, fire is in a building with a 3rd person inside, or fire is part of insurance scam for \$10K; other damage to real or personal property is Arson 2°.

Reckless Burning: Fire recklessly damages property =1°/felony; fire places property in danger = 2°/misdemeanor.

Malicious Mischief: To knowingly and maliciously cause damage to the property of another. Damages > \$5000 OR impairing of public services / aircraft = 1°/felony. Damages of \$750-\$5000 or causing substantial risk of public service interruption = 2°/felony; otherwise, including graffiti = 3°/misdemeanor.

SEX CRIMES: Rape is sexual penetrative intercourse without consent. If rapist uses forcible compulsion and threatens with, or what appear to be, a deadly weapon, or kidnaps the victim, inflicts physical injury, or enters a building by felony = Rape 1°; if by forcible compulsion without force or with intoxicated/disabled/elderly/patient and other vulnerable victim = Rape 2°; otherwise, NO consent (V says "no") or by threats to property = Rape 3°.

Rape of a Child: Felony: V < 12 and 2 yr gap =1°. V =12-14 and 3 yr gap =2°. V 14-16 and 4 yr gap =3°. Possible defense = V's age declaration (includes driver's license). Child Molestation: Felony: sexual contact, no penetration.

Sexual Misconduct: V = 16-18 y.o. and 5 yr gap + abuse of power = SM with a minor; Intercourse with a prisoner by an officer = Custodial SM 1°, no penetration = Custodial SM 2°. Defense: compulsion by 3rd person.

Sexual Exploitation: Inducing minor to sexual conduct for photography or life performance (felony).

Registration for Sexual/Kidnapping Offenders: Failure to register for felony = felony. For non-felony = msdm.

THEFT: Wrongful acquisition/retention/control of the property/services/ID of another with the intent (need not

be permanent) to deprive owner of it. Value > \$5000 or taken from a person = T1°/felony. Value = \$750-\$5000, or public record, or access device/card = T2°/felony. Value < \$750 = 3°/misdemeanor. Theft of multiple items from the same V may be combined as one charge to extent S.O.L. Firearm/vehicle (even \$1 worth) is at least T2°/felony. Taking a Motor Vehicle: Voluntarily joyriding in a known stolen car = TMV2°. Altering, exporting, intending to sell, removing parts, or engaging in conspiracy to steal cars for profit = TMV1°, in addition to T1°/2°.

Possession of Stolen Property: Receiving, retaining, possessing, concealing, or disposing of a known stolen property and withholding it from the true owner. Value > \$5000 or taken from a person = T1°/felony. Value = \$750-\$5000, or public record, or access device/card = T2°/felony. Value < \$750 = 3°/misdemeanor.

DRUGS: Delivery, manufacturing or possession with intent to deliver, of any controlled substance. Except medical drugs, every pass of marijuana joint equals one delivery, of < 40 grams = misdemeanor, of >40 grams = felony.

CRIMINAL LAW: DEFENSES

Affirmative Defenses: Affirmative defenses of Insanity/Duress/Entrapment/Necessity/Invol. Intoxic. def must prove by preponderance of evidence. For others, Δ only has burden of production, then prosecution must disprove it.

Insanity: WA follows M'Naghten rule: that defendant acted out of a mental disease or defect that made the defendant unable to 1) perceive the nature and quality of the act, or 2) tell right from wrong.

Duress: One who was threatened, and committed an offense only because of a reasonable apprehension of immediate death or bodily injury of self or other, acted under duress and is not guilty. Not available for murder.

Entrapment: Δ had no predisposition (past convct) to commit crime AND was induced by a police officer.

Necessity/Choice of Evils: Harm caused was less than the harm avoided AND no alternative existed.

Diminished Capacity: Diminished mental capacity from involuntary intoxication or mental illness may negate *mens rea*. NOT voluntarily intoxication, including Δ mistaken about the dose but not about the substance.

Lawful Use of Force: One may use proportional force to defend himself/others if he reasonably fears for imminent death or great bodily harm to self/others. There is no duty to retreat, but must not be first aggressor. Deadly force may be used to defend property in burglary, even when burglar is fleeing. A police officer may use deadly force to arrest a felon/escapee/armed rioter who threatened him or who committed a violent crime.

Consent: Consent is NO defense to a felony, except only where it is an element of a crime (rape and theft).

CRIMINAL PROCEDURE: SEARCHES AND SEIZURES

Exclusionary Rule: The 4th Am prohibits unreasonabl searches and seizures. Evidence obtained illegally, in violation of 4th, 5th, 6th are inadmissible as fruit of the poisonous tree because govt cannot profit from own wrongdoings.

State Action: 4thAm only protects against state (not private) action/rs, unless state directs/controls the private act.

Reasonable Expectation of Privacy: WA may not violate REP. NO REP is in public places, high school lockers, jail cells, exposed objects (cocaine bag/knife handle), exposed areas (in cars/1st floor windows), in appearance, smell, handwriting, voice recorded by a friend, in bank statements, electric bills, car movement on public street. WA REP is in electronic surveillance and garbage. Absent RAS, NO racial profiling, sobriety checkpoint, or full car search.

Arrest: Probable cause (PC) is required for A and in case of A in a home (not front porch) + warrant OR exig.cir.

Probable Cause: PC = rsnbl police officer would have a strong suspicion. Mere refusal to cooperate is insufficient.

Warrantless Arrest: Police may arrest without W upon PC to believe suspect committed felony or violent msdm.

Warrant: W must be (1) issued by a neutral and detached magistrate (can be over the phone in response to a telephone affidavit) (2) upon showing a PC (suspect inside or crime/msdm was committed), (3) be precise on its face (watch for multiple dwellings). W must be executed without unreasonable delay, after knock and announce (unless exig.cir. exists), and within the scope of W. While W is being executed police may detain people inside or in police car, limit entering/exiting, but cannot frisk. Stale (old) warrants still require PC at the time of execution.

Affidavit: WA follows *Aguliar-Spinelli* test which requires (1) confidential informant's firsthand knowledge and (2) evidence that the informant is reliable or independent investigation supports that. Affidavit can be challenged by a false material fact knowingly/recklessly included, but court can validate affidavit as to the rest of the facts.

Temporary Detention: D is a situation when a reasonable person would not feel free to leave. Police must have a reasonable and articulable suspicion (RAS) of criminal activity, they may briefly detain a suspect on the scene.

Terry Stop and Frisk: Upon RAS, police may stop a person or a car, question driver/passengers, and, upon RAS, frisk (pat down over the clothing) anyone who can be rsnblly believed to be armed and presently dangerous.

Detention must stop when initial grounds seize. In *Terry* stops police may question without mirandizing.

Warrantless Searches are unconstitutional unless there **IS A SPACE** for one of the **8 exceptions**:

Inventory Search: Police may search during booking if pursuant to lawful arrest and regular inventory procedures. Intrusive bodily searches may not exceed reasonable safety and security purposes, nor shock the conscience.

Search Incident to Lawful Arrest: Police may SILA within the suspect area of immediate control (wingspan), under

the clothes, in the inside of his car (while suspect is near the car), room he is in (but not adjacent rooms).

Administrative Search: Administrative inspections (e.g. building code inspection, etc.) OR customs/border patrol/immigration inspections, including intrusive search if necessary, of people and things entering the United States.

Stop and Frisk: Police may pat down detainees reasonably believed to be armed and presently dangerous, and may seize anything immediately perceived to be a weapon or contraband. Only RAS is required (less than a PC).

Plain View Rule: Police who is lawfully on the premises may seize immediately recognizable evidence/contraband in plain view/feel/smell. Moving a stereo to see a serial number, opening a jar to release the smell is NOT allowed.

Automobile Search: Upon PC, police may search a car for contraband, NOT in compartments! Locked containers require a separate PC, including impounded cars. Driver arrested: his friend must be reasonably able to remove them.

Consent Search: Consent must be knowing (one spouse object = consent is invalid), voluntary, and intelligent (by one reasonably believed with control, not kid) and within the scope (can anywhere but the basement). In WA, police must notify the suspect of the right to refuse consent. Consent can be revoked at any time and search must seize.

Exigent Circumstances: Police may enter if police/3rd party is in danger, a suspect can escape, evid. is evanescent (blood sample) or may be destroyed (e.g. flushed), or in hot pursuit suspect flees and hides inside his home.

CRIMINAL PROCEDURE: CONFESSIONS

Confession Suppressed: C may be suppressed on the following grounds: (1) 4th Am, C is fruit of unlawful arrest; (2) 14th DP, coerced C; (3) *Miranda*; (4) 6th Am, talking to Δ without attorney; (5) No charges filed within 48 hrs.

Coercion: C violates 14th due process. Police MAY lie ("your accomplice blamed you") or warn ("we'll seek death penalty"), but NOT threaten ("you'll fry"). Coercion by private citizen is lawful, e.g., neighbor beats a confession out of a suspect, and drags him into the police station. Confession of mentally ill suspect may not be valid.

Custodial Interrogation: The state can only use statements which are the product of CI, i.e., when a reasonable person would not be free to leave (not a *Terry* stop, not when Δ comes to the station voluntarily). *Miranda* warnings of his rights are first given and suspect knowingly, voluntarily, and intelligently waives these rights.

***Miranda* Warnings:** inform the suspect 1) of right to remain silent, 2) statements may be used against him, 3) of the right to an atty, and 4) atty will be appointed if indigent. Signed confession doesn't mean *Miranda* was given.

Spontaneous Statements: SS volunteered to police not in response to questioning are not subject to *Miranda*.

Confessions in Violation of *Miranda* cannot be used in the prosecution case in chief, may be used as fruit of C or to impeach. When 1st confession is w/o *Miranda*, then valid *Miranda* given, then 2nd confession - 2nd is lawful.

Repeated *Miranda* isn't required after a short break, but IS required if time passed or Qs about different crime.

Right to Silence: Once R to S invoked, all questioning must stop, except Qs re another charge after new *Miranda*.

Request for Counsel: Once a suspect unambiguously and unequivocally requests an attorney all questioning must stop until an attorney is present, unless the suspect himself initiates further communication.

Right to Counsel: Once charges filed by prosecution (arraignment/indictment/complaint), 6th Am bars all Qs without attorney present (even by an undercover jail mate), unless Δ must give clear waiver (NOT "I think"). Δ is entitled to effective counsel at every stage (pretrial/trial/post-trial/appeal), but not to counsel of choice.

CRIMINAL PROCEDURE: PRETRIAL

***Gerstein* Hearing:** Warrantless arrest requires PC hearing within 48 hours. Past-48hr-confessions are inadmissible.

Bail Hearing: Before the close of the next judicial day, initial appearance must be made before a magistrate judge, to set bail, appoint counsel if needed, and advise them about their rights and charges. Except for capital crimes, bail cannot be denied. 8th Am and WA Constitution prohibit excessive bail. Conditions of bail can be set to prevent the risk of nonappearance, violent crime, or interference with witnesses or process of justice.

Lineup: ID may be suppressed based on violation of 4th: illegal arrest/detention; 6th: Δ has the right to have atty present at lineup occurring after formal charges; DP: ID unreliable or suggestive (show-up instead of lineup). Ct can order fingerprints, writing/voice sample, lineup, DNA, because 5th Am applies only to statements.

Discovery: Prosecutor's failure to disclose all evidence that might affect guilt is reversible error only if there was a reasonable probability of a different outcome, e.g., reduced charge/sentence. Prosecutor's use of false/perjured statements will invalidate the verdict without retrial due to double jeopardy. Defense counsel must give notice of defenses (e.g. insanity) and disclose all alibi witnesses. Neither side may tamper with or destroy evidence.

Arraignment: A must be held within 14 days of filing or first appearance. Δ has right to atty and have atty present.

Guilty Plea: The judge must allow plea bargain and advise, in person, of charges, maximum/minimum penalty, right to not plead guilty, and waiver by GP of rights jury trial/burden of proof/right to not testify. GP must be knowing, voluntary, and intelligent. Δ must acknowledge these rights in writing and give a narrative of the crime OR may give *Alford* plea, that Δ believes he is innocent, but takes the plea just to reduce another sentence.

Speedy Trial: After arraignment, Rule 3.3 requires trial be held within 60 days if Δ is in custody or 90 days if not. If not arraigned in 14 days, the excess days are subtracted from the 60/90 days. If time is up and there was no trial, case will be dismissed with prejudice, unless time clock waived by Δ or extension for necessity (atty not ready).
Motions to Suppress: Evidence obtained in violation of 14th, 4th, 5th, 6th must be excluded at trial, unless taint is attenuated by remoteness in time or by long chain of links. Exceptions, impeachment after Δ opens the door by bringing up the ev; ev was obtained twice and 2nd time lawfully independently. NO inevitable discovery in WA.
Pro Se: Δ may represent himself if he is mentally competent, waived atty, Ct may ask/appoint stand by counsel.
Joint Representation: Counsel may represent co-Δs if representation of their conflicting interests comply with 6th.

CRIMINAL PROCEDURE: TRIAL

Joinder and Severance: Joined co-Δs may be severed if joinder would result in prejudice or the confession of one implicates the other. Joined counts may be severed if one would prejudice the others. Δs request severed trials.
Jury Trial: 6th Am right to public jury trial applies when jail sentence is possible. 12 jurors in Superior Ct (unless parties reduce to 6), 6 in District Ct (misdM). Δ has right to be present. Trial begins when 1st witness (for bench) or jury is sworn, DP is violated when Δ was significantly prejudiced. Prosecutor can't tell the jury to infer anything from Δ's failure to testify or Δ's refusal to talk to the police. Verdict must be unanimous in criminal cases.
Jurors: The jury pool must be a fair cross section of the community. Each side has unlimited number of challenges *for cause*, i.e. bias, under 18, non-citizen, non-WA resident, related to a party, suffered a similar crime. Each side has 6 peremptory challenges *for no cause*, which may not be based on race or gender that other party may infer.
Sentencing: Judge tabulates the charge and prior (including juvenile) convictions to come up with a statutory sentencing range. If judge imposes over the range sentence defense can appeal, lower - prosecution can appeal. Judge must justify deviation in writing, by e.g. aggravating factors, 3 strikes, excessive force on self-defense.
Ineffective Assistance of Counsel must be objectively ineffective & reasonable probability of different outcome.
Double Jeopardy: Δ may not be tried twice for the same offense. Except: hung jury, manifest necessity (witness has a heart attack), mistrial accepted by either side, retrial after successful appeal, or by separate sovereign (Fed).
Juvenile Court: In JC all rights attach except right to jury trial. If under 18 when trial commences, Δ is presumed to be tried as juvenile, but may be tried as an adult. Defense can decline adult trial by showing jury will not help Δ. Once first tried as an adult, Δ is always tried such. Juvenile convictions are inadmissible but may be used for sentencing considerations. Convictions from 10+ years ago (from the date of conviction/release) are inadmissible.

EVIDENCE: PROCEDURE

Objections: Timely and specific objection must be made to preserve an issue for appeal. O must be made as soon as the basis becomes apparent (usually before W answers) and should include rule number or heading.
Leading Questions: LQ are prohibited on direct but allowed on cross, to establish preliminary facts, to lay foundation, to question person w/diminished capacity (child/mental/language) or expert, to refresh recollection.
Narrative Questions: Qs that call for narrative/compound answer are generally not allowed.
Limiting Instruction: Ev admissible for a limited purpose or parties are introduced with a limiting instruction.
Offer of Proof: When evidence is excluded, offer of proof must be made (outside jury) to preserve the issue for appeal. It must have description of the ev, why it is admissible, and why exclusion is not harmless error.
Judicial Comment: WA judges must not make comments on evidence, although they may question a witness.
Judicial Notice: The court may take JN of facts not subject to reasonable dispute as they are generally known or capable of accurate and ready determination by reference to authoritative sources (like dictionary/phone book).

EVIDENCE: RELEVANCE-POLICY EXCLUSIONS

Relevance: Relevant evidence has any tendency to make any material fact more or less likely than it would be without ev. Relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, misleading of a jury, or undue delay.
Policy Based Exclusions: Offers to pay medical bills/settle/compromise/pleas/insurance are inadmissible to show recognition of liability/fault/culpable conduct, but may be admitted for other purposes (ownership/control/bias/ or to impeach) with a limiting instruction. Subsequent remedial measures are inadmissible to prove liability/fault but may be used to rebut claims of lack of feasibility of precautionary measures, ownership, or control.

EVIDENCE: PRIVILEGES

Privilege: Statements made in confidential communication to attorney/physician/psychologist/clergy/spouses/ mediator/interpreter/journalist/public officer are secured by P when P is not waived (disclosed to 3rd person). Exceptions: to defend against malpractice suit, to prevent crime/fraud, or to establish ID or fact of relationship.
Spousal Privilege: A spouse cannot testify against spouse if married at time of trial (or indictment in criminal case). Spouse against whom testimony is being offered (P-keeper) may assert P to any communications (may be

oral or conduct) made while in marriage, even if divorced at time of trial, except in spousal or child abuse case.
Physician-Patient: When confidential info is obtained while diagnosing/treating/giving medical advice, privilege is waived when patient puts her physical condition in issue or 90 days after filing a personal injury claim. Privilege is automatically waived in insanity/diminished capacity case of involuntary civil commitment hearings.

EVIDENCE: CHARACTER

Admissibility: Ev of character is NOT admissible to show def acted in conformity therewith on a particular occasion. In civil cases, character ev is adm only if it is directly in issue (e.g. defamation/child custody/negligent hiring/entrustment). Criminal defendant may admit reputation/opinion (not acts) ev of his good character and prosecution may so rebut. Ev of other crimes/wrongs/acts may be admitted for other purposes, i.e., res gestae/motive/opportunity/intent/doctrine of chances/plan/knowledge/absence of mistake/ "signature" crime.

Habit/Routine Practice: Regular response to repeated stimulus is adm to show conformity habit/routine practice.

Sex Offenses: In crim sex offense action ev of commission (not necessarily conviction) of sex offense is admbl.

Character of Victim: Crim def may introduce ev of bad character of victim to show that victim was first aggressor.

Rape Shield Statute: Ev of prior sex acts w/victim is inadmb, except to show that victim consented.

Character of Witness: W's truthfulness may be challenged by rep/opinion/acts (at court discretion), and rebutted by similar means. W may be impeached by crime of dishonesty – theft(not burglary)/fraud/perjury. W cannot be impeached by crime punishable by death or >1y committed more than 10 years ago, unless it is very probative.

EVIDENCE: WITNESSES

Competency: Anyone with personal knowledge capable of accurately perceiving facts is competent (including mentally disabled); with no minimum age, but the court will assess a child's individual ability to testify. Attorney on either side can be a witness but no judge/juror who serve in that case. Oath to testify truthfully is required.

Expert's Competency: Any W may qualify as expert if he has knowledge, skill, expertise, training, or education.

Dead Man's Statute: Representative of estate w/ interest may not testify in his own affect about decedent's stmt.

Lay Opinion: Lay testimony is admbl if it is rationally based on personal perception, but not on scientific or specialized knowledge, helpful to determination of fact by the fact finder (drunk, but not alcoholic).

Expert Opinion: E may testify if subject matter is beyond understanding of average juror and may base his opinion on personal knowledge/hypothetical question/inadmissible evidence; so long as that type of evidence, scientific principle/device, is generally accepted in that scientific field (*Frye* test).

EVIDENCE: AUTHENTICATON

Foundation: Ev must be sufficient to support a finding that the matter in question is what its proponent claims.

Authentication: W who placed a mark/stamp/seal on a real or demonstrative ev may confirm/recognize it in the beginning of his testimony which should help a reasonable juror to assess its authenticity or identification.

Chain of custody: Physical ev may be authenticated by testimony of W who knows about its chain of custody.

Handwriting: Handwriting must be identified by expert or compared to a known sample by jury.

Voice: V must be recognized by W who knows the speaker, or self-authenticated when speaker says "This is Sam", or in case of business call, the call must be during and related to the business activity.

Ancient Document: Doc is deemed authentic if it is >20 y.o. and is found in a place where it is normally found.

Best Evidence Rule: To prove the content of writing/recording/photograph original is required, except original is unavailable/lost/destroyed and the offering party has no fault in it. A duplicate is admbl, unless there is genuine Q of authenticity or it is unfair (B&W picture). Summary or voluminous record is OK if properly authenticated.

Self-Authentication: Ev that are unlikely to be forged are public docs under seal or certified copies, notarized docs, official publications, signed checks, newspapers, items w/ trade inscriptions/labels showing ownership.

ER 904: Documents must be presented to other side and are deemed admitted if not objected within 30 days.

EVIDENCE: HEARSAY

Hearsay: Out-of-court statement offered for the truth of the matter asserted. Statements must be an intentional assertion (oral/written/by conduct), as opposed to non-assertive conduct (opening umbrella when it rains) or stmt made to show affect on the listener, e.g., command/duress/state of mind (not for its truth).

Non-Hearsay: Declarant is available for cross (W is on the stand). Stmt is non-H if it was made/adopted by W as (1) prior inconsistent stmt under oath at trial/hearing/proceeding (not in affidavit), (2) prior consistent stmt (even not sworn, usually offered to rebut charge of influence/fabrication), (3) prior identification made after perceiving.

Admissions: Declarant is available. Stmt is non-H if it is a stmt of a party (or authorized representative/agent within scope of employment and while at work) offered against him by his opponent. Co-conspirator admission is non-H if made during the course and in the furtherance of the conspiracy.

Exceptions: Although classified as H, statement can be admitted (because it is likely to be true) as:

- (1) Present sense impression describing the event/condition made during the event or immediately thereafter.
- (2) Excited utterances made under the stress of significant excitement/agitation/pain and about the event.
- (3) Statements offered to show declarant's present mental state (I'm going), emotion, or physical condition (pain).
- (4) Statements of past/present physical condition made to doctor/nurse for purpose of treatment or diagnosis.
- (5) Past recorded recollection that declarant once wrote (accurate back then) and now has insufficient memory.
- (6) Business records made in the 1) ordinary course of business 2) by the custodian of records with a duty to record 3) soon after the event (not in anticipation of litigation, not by bystander). Police testify from own reports.
- (7) Certified copies of public records under the seal (also self-authenticating). Absence of record is also admsbl.
- (8) Vital statistics (death/birth), religious records (baptismal), family records (tomb stone, family bible/portray).
- (9) Ancient document (>20 years and found where it was supposed to be). (10) Market data/publication.
- (11) Learned treatise found to be authoritative by expert and relied on it during testimony (exhibits are no good).
- (12) Stmts by children under 10 yrs old in abuse cases must be show to be reliable or corroborated by other ev.

Unavailable Exceptions: If declarant is unavailable, i.e., is absent from JDX, is dead/sick/injured, refuses to testify, asserts privilege, lacks memory, stmt can be admitted as either (1) former testimony given under oath for similar motive and offering party had opp to cross examine for the same reasons, (2) dying declaration made under belief of imminent death (but only in homicide or any civil case/not other crim), (3) declaration against interest (pecuniary/penal/property) by non-party and must be against interest when made.

Hearsay within Hearsay: In HwH (nurse told doctor what patient told her) each layer of H must separately qualify.

FAMILY LAW: MARRIAGE

Marriage: M is created through ceremony performed by an authorized person, in the presence of 2 witnesses, and filing marriage license. WA does not have common law marriage statue but will recognize CL marriage that was valid in another state (but only for heterosexuals).

Invalidity: M in WA requires capacity and consent of both parties. Declaration of Invalidity can be sought based on incapacity, force, fraud, prior undissolved marriage, or age. If either party is 17, M is voidable. If either under 17 – M is void. Parties will ratify M by voluntarily staying together after invalidity grounds cease.

Committed Intimate Relationship: CIR is evidenced by continuous cohabitation, joint resources, intent of parties, purpose and duration. If terminated, court will make just and equitable division of property (no maintenance).

Prenuptial Agreement: Voluntary prenuptial agreement is valid if it was made in good faith, with fair dealing, with full disclosure of material facts, and with opportunity to seek advice of independent counsel.

FAMILY LAW: DISSOLUTION

Decree of Dissolution: WA is a no fault state and only requires assertion that the marriage is irretrievably broken for DOD. Decree is entered 90 day after petition is filed & served (waiting period).

Dissolution Procedure: WA has personal JDX over a spouse who resided in WA during marriage. Temporary relief pending final DOD for parenting plan, child support, maintenance, and division of debt.

Division of Property: At dissolution, all property, both community and separate, is brought before the court to be divided in just and equitable manner (marital misconduct has not bearing). Factors be considered are character of the property, the length of the marriage, and economic circumstances of the parties. Modification not allowed.

Community Property: CP not divided will be owned by ex-spouses as tenants in common. Special damages awarded during marriage is community property. General damages (pain and suffering) is separate property.

Rights of Creditors: Creditor may sue after dissolution, one ex-spouse my recover contribution from the other.

Educational Expectancy: WA courts may order reimbursement education/degree promised, but not received.

Maintenance: M is determined by what is just based on need and the ability of one spouse to pay of the other, without regard to marital misconduct. Factors: age, duration of M, standard of living while in M, financial resources, ability to find employment, and physical/emotional conditions of parties. WA courts favor "rehabilitative maintenance" for a time to allow a spouse to obtain adequate education or employment skills.

Tax Implications, Fees: Division of assets, allocation of liabilities are not taxable events. Maintenance is deductible by the payor and taxable income to the payee. Attorney fees are based on ability to pay and fair outcome.

FAMILY LAW: CHILD SUPPORT AND CUSTODY

Child Support: WA has adopted mandatory child support schedules based on income of each parent and ages of children. Deviations from mandatory schedule are allowed depending on 1) time spent with the children, 2) extraordinary debt, 3) significant disparity in living costs beyond the parent's control, or 4) child's special needs.

Step-parent Obligation: SP must pay while DOD is pending. Once DOD is entered into, obligation ceases.

Duration and Enforcement: Obligation ends when child turns 18 or lives home but may continue through higher

education based on child's abilities, resources available, standard of living of parties. One way to enforce payments is automatic wage assignment. One who willfully avoids payment will be found in contempt.

Parenting Plan: Best interest of the child governs. PPs must include 1) dispute resolution process, 2) allocation of decision making authority, 3) residential schedule with time for each parent, 4) designation of custodial parent, and 5) any limitations on contact. Mandatory limitations apply in abuse and neglect case (e.g. no contact order).

Modifications: PPs may be modified if a substantial change of circumstances exists. WA does not favor change in PP, only upon showing of adequate cause that failure to change would be more harmful than proposed changes.

Rights of Non-Parents: Children will not be placed with a non-parent unless both parents are unfit (standard hard to meet). Visitation petitions may only be brought as part of ongoing legal action between the parents.

Relocation of Child: While an action is pending, WA courts may enter a restraining order to prevent removal of a child from the JDX. A parent may relocate 60 days after notice to other parent, and no objections within 30 days.

Uniform Child Custody Jurisdiction and Enforcement Act: If child is taken across state line, custody is decided by home state rule. Home state is (1) where child has resided for at least 6 months prior petitioning, OR (2) state with most significant connections with the child.

FAMILY LAW: PATERNITY AND ADOPTION

Paternity: The parent-child relationship is governed by the Uniform Parentage Act. Paternity is presumed if child is born during or within 300 days after dissolution. Genetic testing will determine paternity, affecting PP/support.

Adoption: Adopted children will retain all of the rights of biological children. WA focuses on finality and stable home. Final Adoption Decree cannot be challenged based on lack of notice or other procedural defect. Consent to adoption may be revoked based on fraud, duress, lack of mental capacity, and only within one year of entry.

FAMILY LAW: COMMUNITY PROPERTY

Character of Property: Property that spouses had before marriage is separate property (SP). Property acquired during marriage (but not after the marriage is defunct) is presumed to be community property (CP). Presumption may be rebutted if a spouse can trace the source of payment to a SP asset. Income earned during marriage is CP.

Source Rule: SP will remain separate as long as it is not commingled with CP that it is no longer traceable.

Date of Acquisition: Acquisition date characterizes property. Asset earned during marriage, but paid in full after dissolution, is still CP. Income (salary, retirement, Social Security, or from income-producing property) earned during the marriage is CP, even if paid after the marriage is defunct, but CP if earned after marriage is defunct.

Gifts and Inheritances: Gifts and inheritances are SP unless given to both spouses jointly. Inter-spousal gift is SP.

Mixed Character: Character can be divided between SP and CP based on the pro rata share of the funding source.

Improvements: Under *Elam*, improvement made to SP with CP funds creates CP interest equal to increased value.

Goodwill: The value of a professional practice built while in marriage is CP, as determined by an expert witness.

Life insurance: If premium paid while in marriage, LI is CP, otherwise SP. Upon dissolution LI becomes SP.

Out-of-state SP: Any property brought into WA from another state will remain SP of spouse who owned it before. Quasi-CP is property (not real) acquired while living out-of-state that would have been CP in WA. Property located outside WA or brought into WA is governed by the law of the state where it came from / located now.

Joinder of Spouses: Joinder of both spouses is required for acquisition, purchase, sale, conveyance, or encumbrance of CP assets, i.e. real property, household goods, furniture, appliances, or business (if both spouses participate in it). Either spouse have complete control over his/her SP, no joinder necessary.

Marital Debts: All debts incurred during the marriage are CP debts. One spouse cannot bind SP of another, unless for child support. When coming to a marriage in bankruptcy, creditors cannot go after new CP, EXCEPT (1) maintenance, child support; (2) federal tax lien; (3) statutory CP liability.

Tort Liability and Damages: Torts committed while managing CP (or acting for its benefit) create community liability. If not, π still recovers against the tortfeasor's one-half community interest, but the non-tortfeasor spouse is entitled to an equitable lien. In personal injury action or in interspousal tort, general damages are SP of injured spouse, special damages are CP (or community losses).

Cohabitation: Cohabitation in meretricious relationship (evidenced by duration, purpose, joint resources and intent) does not create CP. Upon dissolution the court will administer just and equitable division.

INDIAN LAW: GENERAL

Indian: Member of a federally recognized Indian tribe and/or has Indian ancestry measured by "blood quantum."

Indian Tribe: Recognized the Dept of the Interior in an annually released a list of all tribes with special status.

Indian Country: Reservation OR Dependent Indian Community OR Restricted Fee Allotments (allotment trusts).

Reservation: Reservations include all land within its exterior boundaries, including fee simple land owned by non-Indians or the state. Indian reservations may only be extinguished with unmistakably clear congressional intent.

Dependent Indian Community: Land set aside for Indians under fed authority, neither reservation nor allotment.
Allotments: Allotments are non-extinguished Indian titles to land. Trust allotments are held in trust by the US for an individual; restricted fee allotments is fee simple held by Indian but subject to federal restraints on alienation.

INDIAN LAW: JURISDICTION

Governing Law: Federal law applies and governs. Indians have tribal sovereignty, rights to govern their civil affairs.

Tribal Immunity: Tribes and tribal corporations have sovereign immunity from suit, even outside tribal territory, unless unequivocally waived by the tribe or expressly allowed by Congress.

Federal Jurisdiction: Fed Ct have JDX over MAJOR crimes by any Indian on Indian or non-Indian. General laws regarding punishment for crimes extend to Indian country. NO federal JDX: 1) If an offense committed by one Indian against person or property of another Indian, 2) Over Indian who committed an offense in Indian country and has been punished by the local law of the tribe 3) If, by treaty, Indian tribe has exclusive jurisdiction.

Tribal Exhaustion: Challenges to tribal JDX must be exhausted in tribal court before being brought in fed court.

WA Jurisdiction: States generally do not have JDX over Indian country. Tribe cannot consent to state JDX, but Indian Civil Rights Act of 1968 allowed tribes to consent to state JDX (to have a fair trial) by a majority vote of the enrolled Indians within the effective area of Indian country. WA assumed concurrent crim/civ JDX on reservations over compulsory school attendance, public assistance, domestic relations, mental illness, juvenile delinquency, adoption proceedings, dependent children, and operation of motor vehicles on public streets/alleys/highways.

Double Jeopardy: Double Jeopardy Clause applies only to the same sovereign - federal and Indian are different.

Tribal Jurisdiction over Non-Indians: Absent federal authorization of tribal JDX, tribes do not have JDX over non-Indians, EXCEPT 1) a tribe may regulate the activities of nonmembers who enter consensual relationships with the tribe or its members; and (2) a tribe may regulate conduct of non-Indians within its reservation when it threatens or has direct effect on the tribe's political integrity, economic security, health or welfare. - *Montana* test -

Tribal Criminal Jurisdiction: TCJ is over Indian defendants (including non-members) in Indian Country. Indian Civil Rights Act limits punishment to no more than one year in jail and/or a fine of \$5,000 per criminal offense.

Indian Child Welfare Act: Tribe has a right to notice and to intervene in WA court actions for child custody/foster care/pre-adoption/adoption/termination of parental rights involving an Indian child (unmarried, <18) in WA.

PROPERTY: TYPES/OWNER RIGHTS/GIFTS/BAILMENTS

Real-Personal: Real=land/buildings/minerals. Personal =chattels, tangible or intangible (money). Fixtures = began as chattel->became real prop, when was affixed (water heater). Emblements = 1st real->chattel (trees to be cut).

Wild Animals: State of WA owns wild animals. One can become an owner of it by capturing or killing with full compliance with WA laws. If animal later escapes and becomes wild again, ownership reverts back to state of WA.

Owner Rights: Possession/enjoyment, R to exclude entering/encroaching trespassers, R to have lateral/subjacent support (to sue a neighbor who excavates or mines, but can sever it for money), R in air (for power line), water: Dept of Ecology governs surface & subsurface (for farming) water access, minerals: comes w/FSA if not severed.

Finders: Owner accidentally and involuntarily parts with **lost property** which is still titled to the owner; finder is bailee, who must report, authority publishes ad, if owner not found 60 days then finder get title. Landowner may be awarded possession if finder was his employee, or trespasser, or place is highly private, or property was concealed in soil (trove). Owner unintentionally parts with **mislaid property** and doesn't know its whereabouts; finder is bailee with no title. Owner voluntarily parts with **abandoned property** which finder gets title to. Tip: look for reasonable objective manifestation of intent. Nobody may obtain title to **stolen property** regardless of chain of control (not if thief abandons, not a bona fide purchaser, nobody). Replevin will be granted.

Gifts: G requires donative intent, delivery (actual, constructive=keys/control, symbolic=deed/paper), acceptance. G *causa mortis* requires donor's contemplation of imminent death; title passes upon death; no death, G revoked.

Bailment: A bailment is legal possession (control) by one person of personal property owned by another. Duties: see Neg in Torts. Professional bailees (storages) cannot contract away neg. Entrustment: Lombard can sell by K.

Confusion: When property gets commingled (e.g. wheat), owners become pro rata tenants-in-common.

PROPERTY: ESTATES/RAP/COTENANCY

Future Interests: LE->Reversion. FS Detrmnbl->Possib of Reverter (in grantor), FS subj to cond subs->Right of Re-entry (in grantor who must re-enter). FS subj to exec lim->Executory Interest shifting/springing (in 3rd person).

Restraints on Alienation: Restraints based on sex, race, familial status are VOID in WA, except right of first refusal. Rule in Shelley's Case and Doctrine of Worthier Title were abolished in 1995. Distinguish Pre- and Post-1995 law.

Life Estates: LE is good for a life of grantee ("O->A for life") or 3rd person/pur autre vie ("O->A for life of B"). Life tenant must pay taxes/mortgage, not commit waste. Future interest holders can sue for damages/enjoin waste.

The Rule Against Perpetuities reads "no interest in property is good unless it must vest, or forever fail to vest, no later than 21 years after some life in being at the creation of the interest." RAP applies to contingent remainders, executory interests, class gifts (subject to open). RAP does NOT apply: 1) options to buy land and 2) right of first refusal must be exercised within reasonable time, 3) transfer to charity, 4) interest held in trust: 150 yr. wait and see rule. Joint Tenancy With Right of Survivorship requires TTIP unities of Time, Title (in the same instrument), Interest (of the same type), and Possession (with identical rights). Upon death, share passes co-tenants, not to heirs/devisees. Right of survivorship overrides will. If one JT severs, assignee becomes TIC. Tip: If only JT appear, assume JTWRoS. Joint Tenants Duties: Fair dealing (at FMV), share profits with other expense paying co-tenants, contribute share of expenses, but making unauthorized improvements does not entitle to reimbursement from other co-tenants. Partitioning: Any JT can bring a suit for partition (including in case of ouster or constructive ouster: property too small for both spouses to possess). Partition in kind: Ct will draw lines on property, by sale: proceeds are divided. Tenancy in Common only requires unity of Possession (identical rights). Interest passes to heirs/devisees. Condo owner has FSA in it and TIC in common areas. In cooperative, everybody is TIC in entire complex, no one has FSA.

PROPERTY: EASEMENT/PROFIT/LICENCE

Easement: E is a generally assignable non-possessory right to use land of another for a specific purpose. Affirmative E is to use other's land; Negative E is to refrain from use on own land; E Appurtenant benefits the owner of adjoining dominant tenement by the use of servient tenement and usually terminates upon transfer. E in Gross is a use by a company/government of land (e.g. for power/cable/water lines) which transfers with the land. Easement Creation: 1) Express grant in writing (SOF applies), usually deed, stating location, scope, and duration; 2) By implication, where a common owner splits land with an obvious and reasonably necessary quasi-easement; 3) By prescription, like by AP: Continuous use (every summer for cabin near a lake), Open/Notorious (not hidden or secretive), Hostile (against owner's will/intent), for 10 yrs by default or 7 yrs under color of title (faulty deed); 4) By necessity, where common owner creates landlocked parcel that reasonably needs access, may pay FMV. 5) By reservation of grantor right of way in a deed. 6) Cross-easements in support walls/common driveways. Easement Termination: REMAP 'N' terminate E: 1) Release: E holder conveys E back to servient owner in writing; 2) Estoppel: servient parcel owner relied on oral release (SOF get around) to his detriment (i.e. spend money); 3) Merger of dominant and servient parcels; 4) Abandonment: objective manifestation of intent to abandon; 5) Prescription: blockage by servient landowner of E for 10 years. 6) No more necessity. Tip: BFP of servient parcel without notice of E is rare. Notice may be actual, inquiry, or constructive. Constructive means published or in some public record. Inquiry notice = "any idiot would know" provided that the party inspected the land first. Easement Scope: Scope limited in the grant, but implies reasonable changes in technology of use, not in nature. Profit: Non-possessory interest to extract resources. Injunction/damages can be granted if property loses value. License: Mere permission (oral/written, always revocable) to be on the land for limited purpose (hunting/fishing).

NUISANCE public/private/remedies see TORTS: NUISANCE

PROPERTY: COVENANTS/USE RESTRAINTS/ZONING

Real Covenants: A promise to restrict use of property (do or not to do something), 1) in writing (SOF), 2) given for consideration, 3) signed/ notarized, 4) with an intent to bind "heirs, assigns, devisees", 5) must touch and concern the land, be intended to run with it, + 6) be in privity of estate (horizontal: grantor-grantee, vertical: successors). Covenant Termination: Merger: same owner buys all lots. Release/waiver: permission from all owners. Laches: unreasonable delay when asserting equitable remedy. Estoppel/Abandonment: nobody sues or cares for years. Subdivision Plots: Lot owners can enforce subdivision covenants based on estoppel. New owners have notice by neighborhood appearance. Covenants may be implied by notice if a common scheme or plot exists. Equitable Servitude: Granted in injunction or specific performance suit where there is no privity. Covenant will qualify as ES if transferee of burdened land had actual/inquiry/constructive notice of it. Defenses: unclean hands (the enforcing party may not violate the covenant); neighborhood changed, a few owners violated the covenant. Government Restraints: WA constitution and laws give the power to regulate public health/safety/morals/welfare. Under GMA (Growth Management Act) 12 big counties must have community plans. SMA (Shoreline Management Act) requires permit for substantial developments on shoreline, within 200ft of high water mark/lake/river/ocean. SEPA (State Environmental Policy Act) requires EIS (Environmental Impact Statement) submitted with a zoning application for development plots with 5+ parcels (1-4 family residences < 4K sq ft are exempt). Zoning: Landowners may request rezoning, special use permits, variances to authorize a change in land use. Issuance is quasi-judicial that must be fair and comply with procedural DP (notice and hearing). The right to build vests upon filing for permit otherwise owner can use estoppel based on government acts/assurances. Rezoning must be based on change in use, e.g. down-zoning (commercial->residential), and cannot be "spot zoning" that

is arbitrary, i.e., unreasonable zoning of a small area inconsistent with a larger area. Special Use Permit is granted for sensitive uses, may be subject to conditions to protect neighboring land and public. Variance is permission to violate a zoning order; may not injure public/land. Owner must suffer hardship due to a non-self-inflicted change. Nonconforming Use: Preexisting nonconforming uses are usually allowed to continue after zoning changes, and may be intensified if there is no adverse affect, but cannot continue if enlarged, changed, or abandoned.

Taking by Zoning: Regulatory stripping of all economic benefit of land is a taking under the 5th Am. But Ct may balance economic impact and reasonable expectation of landowner against importance of government interest. Remedy is compensation; not invalidation of the ordinance. At least 3 year transition in land use must be allowed.

Judicial Review: Standard of review is rational basis. SOL: 21 days. SERF: **Standing** – direct or community injury; **Exhaustion of administrative remedies** at all levels within agency; **Ripeness** – not a future injury; **Finality** – agency must give final decision (no appeals). Judicial attack on zoning can be based on violation of application process/ conditions/Fair Housing Act, spot zoning, injury to public, undue burden on owners, city violated own ordinance.

PROPERTY: CONTRACTS/DEEDS/SECURITIES/AP

Realty Contract: (Say: Earnest Money Receipt & Agreement) must be in writing (SOF), 1) identify parties, agent, conveyance method, 2) provide an unambiguous, accurate description of the land with closed boundaries (Ct may correct scrivener's errors, otherwise buyer has color of title), 3) words of sale, price, earnest money <5%, stipulation that the deposit is the sole remedy for buyer breach, 4) terms (financing/contingencies) 5) be signed by the charged party. Under RCW, seller must complete/deliver disclosure Form 17, non-completion gives rise to breach of K and fraud cause of action. Seller's Remedies: liquidated damages: earnest money; compensatory damages: K price – FMV, when sold to a 3rd party. Buyer's remedies: return of deposit, specific performance.

Time of Performance: By default time is NOT of the essence, unless parties otherwise agreed, and time is rsnbl.

Title Warranties: A buyer may rescind before closing for title defects (less than FSA), unmentioned easements, encroachments, non-discharged encumbrances, e.g., mortgage, lien, lease (unless discharged at closing).

Oral Contract: Buyer under oral K may receive damages or specific performance if he made part performance, which means at least two of the three: 1) taking possession, 2) making improvements 3) paying part of the price.

Equitable Conversion is not adopted in WA. A purchaser is not bound by a contract for sale of land until closing.

Deed: D must be in writing (SOF) containing description of land (unambiguous/accurate/legal), evidence intent to transfer (conduct/words of intent – OK). D must be signed by grantor and delivered. Consideration not required.

Types of Deed: Statutory Warranty D transfers title of seisin (in FSA) with warranties/covenants of title that grantor has right to convey, land isn't and won't be encumbered, buyer will have quiet enjoyment, and future assurance to defend buyer against adverse *future* claims by 3rd parties. Bargain and Sale D is like Warranty D, but does not provide future assurances. Quitclaim D transfers whatever rights the grantor has (without warranties).

Recording: WA is a race-notice state. Bona fide purchaser, who in good faith, without notice of the prior transfer, paid value and recorded, prevails over prior *non-recorded* conveyances, but not over adverse possessors.

Real Estate Securities: WA follows title theory (title remains in a trust until land is paid in full). Mortgage is a security device through which, upon default of M-ee/debtor, M-or/lender may foreclose (via judicial foreclosure, facilitated by sheriff) and recover debt/costs. If \$\$ not enough, M-or may obtain deficiency judgment to recover the rest. If surplus, it goes back to M-ee. WA gives M-ee statutory redemption right for 12 mo after sale. Transfer of M is subject to rules and lender's consent. Deed of Trust is instrument that secures title in a trust (until loan is paid); it gives trustee power of sale upon default with non-judicial foreclosure (preferred in WA). "Power of Sale" clause must be in the deed and trustee must give "Notice of Sale." Installment K allows the seller to assist the buyer financially by giving him installment options. Upon breach by the buyer (not making payments) the seller may serve "Notice of Intent to Forfeit" and, if buyer does not cure in 90 days, record "Declaration of Forfeiture." If buyer has substantial equity in the property, he may demand judicial sale or reinstatement of K (upon substantial payment). M/DoT/InstK must be in writing (SOF) w/ proper description/disclosures/terms and be delivered.

Adverse Possession: AP occurs with CHEANOS: Continuous (tacking is OK w/privity, time tolled for incapacitated/ infants/imprisoned), Hostile (in boundary disputes met by fence), Exclusive (co-sharing TIC cannot take each other's share by AP), Actual, Notorious, Open possession Statutory period of 10 years or 7 years if the possessor has color of title (faulty deed) and pays the taxes. One cannot get future interest by AP. For life estates, AP time count restarts when next future interest begins. Govt cannot take land by AP. Severed mineral right or mineral L does not give rise to AP (only for surface). If AP is defeated, encroachment/trespass cause of action arises.

Remedies: If the cost of eviction is prohibitive (structure tear down), the trespasser may be held to pay damages.

Boundary Change by Acquiescence: Court will change a boundary line if one party marked the new boundary line, that the other party agreed to, and there has been acquiescence by both landowners for 10 years.

PROPERTY: LANDLORD/TENANT

Governing Law: The Washington Residential Landlord-Tenant Act governs all residential leases in Washington. Common Law governs commercial leases but Ct may apply WRLTA by analogy (e.g. to fill a missing term in K).

Types of Lease: Fixed term L (time agreed in the L, no notice needed), Periodic L auto renews itself, NOTICE must be given by LL in 20 days, by residential TT in 20 days, by commercial TT in 30 days. At will tenancy lasts until LL/TT terminates. L for >1 yr must be in writing (SOF), for >2 yrs must be recorded (under Recording Act). Absent writing, L deemed to be mo-to-mo. At sufferance tenancy exists when tenant does not move out when he must.

Security Deposit: Under WRLTA, SD must be put in a trust account under written terms/conditions, LL&TT signed. SD must be fully refunded upon 14 days of termination or written explanation for withholding must be provided by LL to TT. Otherwise, TT may recover damages and attorney's fees; double damages if withholding was willful.

Sublease/Assignment: Sublessee TT is liable for rent if they assumed entire L or released TT1 in writing. Assignee tenants are fully liable for rent and covenants. Covenants prohibiting subL/assignment without LL consent must be strictly construed. LL doesn't have to be reasonable in withholding consent, unless for mobile homes or if the L so specifies. If LL is changed (e.g. property sold), TT is liable to new LL. LL's covenants run with property.

Fixtures: Chattel attached with intent of permanent improvement of real property becomes fixture (passes w/it). TT may only remove fixtures installed before expiration of L if he repairs damage caused by removal.

Commercial Tenant Duties: CTT must pay rent, abide by L terms (utilities/insurance/tax/ordinary repairs), not commit nuisance/waste, return premises in the same condition less wear and tear. TT liable for intentional torts.

Residential Tenant Duties: Under WRLTA, RTT must pay rent, keep rsnbl rules (smoking, pets, loud music; Tip: LL waives rule change if accepts rent knowing of violation), keep premises sanitary, dispose of garbage, not remove fixtures, pay damages for int/neg torts beyond normal wear and tear, consent to LL's entry upon 2 days notice.

Warranty of Habitability: LL must keep residences habitable in compliance with housing code. TT must give written notice of defects and time count begins. If LL fails to repair within 24 hrs-hot&cold/electricity/hazards to life, or 72 hrs-refrigerator/range/oven/major plumbing, or 10 days-other, TT may 1) terminate L upon written notice, 2) seek abatement of rent (pay reduced rent as Ct allows), 3) repair and deduct from rent (if self-repair, up to 1/2 rent once or 1 rent per 12 months; if by contractor, 1 mo rent once or 2 rents per 12 months).

Implied Covenant of Quiet Enjoyment: LL may breach ICQE by fraud, by permitting nuisance, not removing prior tenant, by forcible entry, actual or constructive eviction (partial too). TT may recover damages while paying rent.

Personal Injuries: LL is not liable for personal injuries, unless caused by latent inside defects or all common area defects (for residential L), non-repair/negligent repair or if TT's client (for commercial L) injured due to non-/neg r.

Lease Termination: Residential LL/TT gives 20 days (30 com) notice, delivered in person, left with an adult, mailed.

Premature Termination: TT is liable for premature termination of a L due to abandonment or breach of duty. LL must mitigate damages and seek for new TT, but may recover damages and rent while seeking new TT.

Termination by Operation of Law: TT's bankruptcy/illegality/abandonment; LL's violation of a term; or by constr eviction (no heat), merger, foreclosure (if mortgage existed before L), eminent domain. NOT by LL/TT death.

Unlawful Detainer Eviction: Commercial: LL gives 10 days notice for non-payment, 30 all other. Residential: 3 days. Holdover TT (at sufferance) stays wrongfully, becomes a trespasser when UDE action starts, but still must pay rent.

Constructive Eviction: When due to LL fault property becomes unsuitable for use, TT may terminate the L and seek damages for constructive eviction, provided TT first gave notice to LL and moved out in a reasonable time.

Retaliatory Eviction: Under WRLTA, if mo-to-mo TT reports housing code violation and within 90 days LL gives TT 20 days notice of termination, this is presumed to be RE and is void, but LL may show non-retaliatory grounds.

Forcible Entry: Under WRLTA, LL may not commit FE and remove residential TT without a judicial proceeding, w/o 3 day notice, except if TT creates a defect that could substantially affect health/safety. LL may enter/repair/bill TT.

Landlord's Lien: WRLTA abolished LL's lien for residential tenancies, penalty is \$50/day (up to \$1,000 max). ComLL may foreclose lien w/n 2 mo of default. LL=bailee of abandoned chattel; may sell/dispose upon 45 days notice.

SALES: GENERAL

Governing Law: UCC Article 2, as adopted in WA, governs contracts for sale of goods. If Art 2 is silent com. law applies. While gap filling Ct may look into course of perform/past dealings/industry standard. In goods+services K, if goods are a predominant purpose, apply UCC, otherwise apply common law, and analyze separately.

Goods: Movable goods at the time of sale including crops/minerals/timber/unborn animals before detachment.

Merchant: One who regularly sells goods of the type or engages in a business or profession, or holds himself as an expert. Wholesalers, distributors, retailers, etc. are generally held to be M (with higher good faith standard).

Mention: a school having a third bakery may well be seen as M. If one party is M - Art 2 applies, if both are Ms - higher standards apply e.g. for assurances/modifications/firm offers/warranties/higher breach standards.

Statute of Frauds: Contracts for the sale of goods for \$500 or lease for \$1000 must be in writing that includes quantity (offeror controls), signed (including initials/e-signature or on letterhead) by the charged party;
SOF Exceptions: (1) Between Ms, authenticated written confirmation, absent objections within 10 days, will bind both parties even to non-material terms different from prior oral agreement. (2) Ac satisfies SOF but only to the quantity accepted or paid for. (3) Specially Manufactured Goods, not suitable for sale to others in the ordinary course of business, as to which seller has made a substantial beginning of performance. Not limited to \$500.
Parol Evidence Rule: Pre-integration contradictory written/oral terms or contemporaneous oral terms are inadmiss, but WA Ct can do fill gaps by looking into CPU (C)ourse of performance/(P)ast dealing/trade (U)sage.

SALES: FORMATION

Duties: Sellers must tender conforming goods. Buyers must inspect, accept, and pay for conforming goods.
Valid Contract: K requires Of+Ac+Co. Ac may be made by communication, conduct, delivery, or payment. Btw Ms additional terms in Ac merge into K, unless objected to w/in rsnbl time or the term causes hardship/surprise.
Offer: Of must include reasonable description of goods and quantity (except output K). Missing terms under *Berg* rule: price=rsnbl price at the time of delivery, place=Seller's place, time=rsnbl time, payment due=on delivery.
Firm Offer: By M, in writing, no Co required, for less than 3 months, or over 3 months with Co. Offeror controls Of.
Inspection: Buyer may inspect before paying, unless COD. Buyer must give seller notice and opportunity to cure.
Acceptance of Goods: Ac works expressly, by failure to object within rsnbl time, or by any act inconsistent with seller's ownership. To revoke Ac material defect must have been difficult to discover + goods must be returnable.
Rejection: R requires notice+reasonable care of goods. Absent answer from Seller goods may be resold.
Revocation of Acceptance: Valid Revoc=induced by latent substantial defect that impairs value+must give notice.
Modification: Art 2 allows M by words/conduct, does not require consideration, but does require good faith.
Battle of the Forms: Additional terms are proposals to modify. Conflicting terms cancel each other out or Ct will do gap filling, except quantity where offeror controls. Between Ms – no Mirror Image Rule!
Mailbox Rule: Art 2 has expanded MR: Ac is valid upon dispatch even if sent by slower means than Of.
Auctions: Bid=Of. Last hammer=Ac. W/res=can withdraw goods before bidding ends. NO res=highest bid binds.

SALES: WARRANTIES/LOSSES

Express Warranty: A seller's affirmation/promise/description/model, beyond mere puffing, that is basic assumption of the bargain creates EW. Disclaimer of EW is ineffective: e.g. "all warranties, express or implied..."
Warranty of Merchantability: Merchant who deals in the type of goods sold warrants that goods are merchantable and good for ordinary purpose, that is, non-defective and work.
Warranty of Fitness for Particular Purpose: Warranty of fitness is implied when seller has reason to know Buyer has a particular purpose and is relying on the seller's skill and judgment to select suitable goods for that purpose.
Warranty of Title and Against Infringement: M impliedly warrants that he has good title: free of undisclosed security interests, liens, encumbrances, etc. Also, M impliedly warrants against patent/copyright infringement.
Magnuson-Moss Act: A warranty has to be either full or limited. Full can't limit merchantability. A subsequent purchaser can enforce the warranty. If a warranty doesn't meet the Act's requirements, it must be clearly labeled "limited". If under "repair or replace" provision seller can't fix the item, buyer is protected by lemon laws.
Risk of Loss: Unless otherwise agreed, between Ms, RoL passes when buyer takes possession. RoL under FOB K passes when goods are placed with carrier. RoL for non-conforming goods while being cured RoL is with Seller.
Destruction of Goods: Both parties are excused from K performance if goods are lost/destroyed+not their fault.
Impossibility, Impracticability, and Frustration of Purpose works in Sales as in Contracts.

SALES: BREACH/REMEDIES

Breach: A party who refuses to perform can be immediately sued for breach. In single delivery K, Perfect Tender Rule allows buyer to reject a tender of delivery and sue for failing to conform in any respect to the K.
Breach (Installments): In installment contracts, an installment may be rejected only for incurable nonconformity that substantially impairs its value. Entire K can be canceled only when installment(s) substantially impair value.
Return of Rejected/Non-conforming Goods: Seller owns rejected goods. Buyer has to reasonably care/return/discard at seller's request. Absent instructions Buyer must resell goods that lose value and so recover losses.
Anticipatory Repudiation: Repudiation of performance not yet due allows the injured party to suspend her own performance and await, or stop performance and seek damages for breach.
Assurance of Insecurity: If one party is in rsnbl doubt about other party's performance, the party may demand assurances and suspend her own performance; if no assurance given within 30 days, may cancel+sue for breach.
Buyer's Remedies: If Buyer covers, (1) cover damages = cost of cover – K price; plus (2) incidental damages, i.e., inspection/storage/transportation/other expenses and (3) consequential damages, i.e., lost profits/physical harm.

If Buyer does not cover, market price – K price + incidental and consequential damages + return of any price already paid. If goods are undelivered or rejected, cover damages = cost of cover – K price – savings. If accepted non-conforming goods, warranty damages = value as warranted – value as delivered – savings + incidental and consequential damages (no recovery of paid price). If unique goods, specific performance may be obtained by Buyer. If seller repudiates/fails to cure or breach materially affect value, cancellation to Buyer. Seller's Remedies: For accepted goods (even non-conforming), K price. For wrongfully rejected goods that seller cannot resell, Market Formula: K price – market price + incidental damages – savings. Or through resale and upon notice to Buyer seller makes commercially reasonable resale and recovers: K price – resale price + incidental dam.

SECURED TRANSACTIONS: COLLATERAL/ATTACHMENT

Governing Law: UCC Article 9, as adopted in WA, governs transactions involving security interest in personal property and fixtures. Creditor gets SI in a designated collateral to secure payment of debt upon debtor's default. Collateral: (1) Farm Products: crops/livestock/farming supplies. (2) Inventory: goods held for sale/biz supplies/raw materials/work in progress. (3) Consumer goods: for personal/family use. (4) Equipment: durable goods used for production in biz. If collateral fits into >1 cat, debtor's primary intended use at the time of attachment controls. Intangible Collateral: Check/Title/Chattel Paper (SI in my SI)/Receivable/Account/Investment/Letter of Credit/Insurance/IP. After-Acquired Property: Article 9 permits debtor to grant SI in after-acquired property through AAP clause in a SA only. SI automatically attaches when debtor acquires the described items. No clause = no SI in AAP. Description: SA must reasonably identify collat. All inventory/equipment – OK. All assets, consumer goods – NOT OK! Attachment: requires 1) creditor give value, 2) debtor has rights in the collateral, 3) creditor takes possession of collateral upon oral SA or debtor signs SA granting creditor SI and describing the collateral by item/type.

SECURED TRANSACTIONS: PERFECTION/PRIORITY/PMSI

Perfection of Security Interest: Perfected SI is enforceable against subsequent secured parties, buyers, lien creditors. SI is perfected by possession, otherwise perfection is by filing of financial statement (FS) that 1) has correct name/address of debtor (no trade names!) and secured party + 2) indicate collateral + 3) is signed/authorized by debtor, 4) is filed with the Dept of Licensing for all collateral except for timber/oil/minerals on land. Post-perfection: Change in name of debtor/use of collateral does not affect perfection. FS is valid for 5 years. General Priority: Perfected wins over unperfected. Between two unperfected SIs, the first to attach wins. Between two perfected security interests the first to file or perfect has priority, unless one is PMSI, then PMSI wins. Priorities in Fixtures: Fixture filing will defeat subsequent buyer or mortgage of realty to which fixture is attached. PMSI in *fixture* collateral has superpriority if filed within 20 days of affixation, and will defeat prior mortgage. Purchase Money Security Interest: PMSI secures repayment of a loan or credit that was used by the debtor to buy the collat. PMSI is created when creditor sells collat OR gives credit solely for buying it and debtor must sign SA. Superpriority: PMSI in *consumer goods* is automatically perfected upon attachment. PMSI in *non-inventory* has S if perfected within 20 days of the debtor taking possession. PMSI in *inventory* has S if holder 1) files, 2) gives advanced notice to parties with prior perfected SI 3) before debtor takes possession of the inventory. Consignment: Consignor (one who gave goods to merchant) has PMSI with superpriority if he send written notice to *inventory* creditors and file. In *consumer goods*, the consignor is automatically given superpriority. Proceeds: When debtor sells/trades original collateral, creditor has SI in cash proceeds for 20 days. If creditor files FS in Olympia within 20 days he has SI until proceeds become untraceable or spent. Otherwise, creditor has SI in non-cash proceeds only. Transferee of cash takes free of SI unless in collusion with the debtor.

SECURED TRANSACTIONS: BUYERS/ENFORCEMENT

Subsequent Buyers: BFP takes subject to perfected security interests but free from unperfected security interests, except (1) BFP in the ordinary course of business (BIOC) take free of perfected security interests and (2) BFP who buys *equipment* within 20-day grace period from possession to filing. BIOC is one who buys in good faith + has no knowledge of SI + from one in ordinary course of business deals with goods of that kind (e.g. dealer, jeweler). Repossession: If a debtor defaults, without breaching the peace a secured creditor may repossess the collateral through self-help, or otherwise use replevin procedure, obtain a judgment, or foreclose. Sale: A secured party may sell the collateral if the sale is commercially reasonable as to method, manner, time, place, and terms, and reasonable notice (10 days) is given to the debtor of the time and place. Prior to the sale, debtor may redeem the collateral by paying a full amount of debt and expenses to the secured party. After the Sale: Proceeds first pay for costs of repossession and sale, then to the creditor, then to third-party security interests, and finally any remaining amount goes to the debtor. If debt is not extinguished, creditor may recover the remaining amount. Secured party is liable to debtor for any harm caused by failure to observe rules.

TORTS: INTENTIONAL TORTS

Intent: I is desire to commit a volitional act or knowledge with substantial certainty of the consequences of it.
Transferred Intent: I transfers between torts/parties in (T)respass 2l/(T)respass 2ch/(F)alse impr,(A)ssault,(B)attery.
(B)attery: B is harmful or offensive touching of another, including anything connected w/him, e.g. close/chair/car.
(A): A is intentionally causing a reasonable apprehension of an imminent harmful or offensive contact. BAF2SOL.
(F)alse Imprisonment: FI is intentional confinement of another in bounded area with no rsnl means of escape.
(I)IED: 1) Intentional or reckless 2) extreme and outrageous conduct 3) causing severe mental distress.
(T)TL: Trespass to land is intentional unauthorized entry unto land of another, even by reasonable mistaken.
(T)TC: Trespass to chattels is intentional interference with possessory rights in personal property. ITTC=3SOL.
(C)onversion: C is substantial interference with possessory rights (almost a taking). In TTC damages are limited to repair / rental costs / consequential damages. In C π may order a forced sale to recover FMV of the chattel.
Family Torts: Inter-spousal, CP related, or parent-child. Child can sue for abuse, but cannot for neg supervision.

TORTS: DEFENSES TO INTENTIONAL TORTS

Consent: Actual or apparent C is a defense to intentional torts only within its scope i.e. limited by subject-matter/degree/time/place **unless** withdrawn or induced by fraud/misrepresentation/non-disclosure of material facts.
Defense of Self or Others: S-D or D of others is only valid when reasonable (proportional) force is used to protect against the threat of bodily harm. Δ must actually/reasonably believe in threat, even rsnl mistake is allowed.
Defense of Property: Only reasonable, non-deadly, force is allowed to protect real/personal property from intrusion/seizure, eject trespassers if a request to leave is ineffective or ignored. Burglar identity mistake not OK!
Recapture of Chattels: Rsnbl, non-deadly, force is OK to recover personal property in hot pursuit. NO mistakes!
Shopkeeper's Privilege: Rsnbl force is OK to detain a suspected shoplifter rsnl time for rsnl investigation.
Private/Private Necessity: Private: Intrusion onto property of another to prevent greater loss to one's own personal property is privileged, but intruder must be paid damages for any harm caused to the property. Public: Intrusion – to prevent a greater loss to the public. No damages need to be paid unless intruder is negligent.
Authority of Law (Arrest): A police officer is privileged to use reasonable force, including deadly, to arrest a person who (officer reasonably believes) is committing a felony, or reasonable non-deadly force to arrest for a misdemeanor or breach of the peace committed in the officer's presence. If a private citizen, felony must occur.
Discipline: Parents may use rsnl force to discipline a child. Babysitters/teachers can apply less amount of force.
Justification: Tortfeasor can be justified if life/health/welfare protection of one he cared for was rsnl necessary.

TORTS: DEFAMATION/PRIVACY/NUISANCE

Defamation: D is publication of a false statement of fact concerning the defamed and damaging his reputation.
Per Se: DPS tends to expose π to hatred/contempt/ridicule, e.g. poor trade/business skills, imputation of major crimes or moral turpitude, loathsome diseases, unchastity of woman. π does not need to show special damages.
Fault: For public figures/public officials proof by clear and convincing evidence of actual malice (knowing or reckless disregard for the truth) and falsity is required. Private figure/public concern must prove negligence and actual injury and falsity is presumed, unless in case of media π must prove falsity.
Privileges: Absolute: judicial, legislative on the floor, executive duties, spousal, legally compelled. Qualified: public/common/recipient/defendant interest, reports of public proceedings, unless made with malice/irrelevant.
Invasion of Privacy: Unreasonable intrusion into private life is a tort, unless newsworthy/whistleblowing.
False Light: Falsely attributing acts or statements to another. For public interest matters, malice is required.
Public Disclosure of Private Facts: that a rsbl person would object to, unless they are of public interest/concern.
Misappropriation of Name/Likeness: Unauthorized use of a name or likeness for commercial advantage.
Private Nuisance: Substantial interference by Δ with π's use and enjoyment of π's land (cf trespass=invasion).
Public Nuisance: Unreasonable interference by Δ with public health, safety, or property and π has special injury that are not suffered by the public at large. Damage can be money or injunction if money is inadequate.
Defenses: 1) Coming into N, but only if π moved into it to file harassing lawsuits. 2) Statute, but not conclusive.

TORTS: BUSINESS TORTS

Misrepresentation and Fraud: π by C&C ev shows false stm of mat fact, beyond mere puffing, with scienter, which π rsnlly relied to his detriment. Neg M is M without scienter. Fraud: intentional concealment of potential harm.
Interference w/Prospective Business: Unless justified by competition, IPB is a tort which causes breach or termination of a known and valid contractual relationship or expectation between the π and a third party.
Consumer Protection Act: CPA is violated when unfair/deceptive act/practice in trade/commerce or antitrust action which affects the public interest and proximately causes injury to π's in business/property. SOL is 4 years.
Respondeat Superior: One is vicariously liable for torts committed by one's (1) employees acting within the scope of employment (authorized drivers on detours, not on frolic, are within the scope), (2) independent contractors

performing non-delegable duties (that are owed to the public), (3) agents under one's control, (4) partners.

TORTS: AUTOMOBILE LIABILITY/WRONGFUL DEATH

Auto Accident Liability: Liabilities in auto accidents arises through statute violation (NPS), e.g., right-of-way, cross-walks, DUI (other traffic violations are only probative), or through family purpose doctrine when kids are driving for family purpose. In rear-end-collision follower is presumed liable. Failure to wear safety belt is inadmissible to prove contributory neg. Also look into negligent entrustment or negligent repair/maintenance.

Wrongful Death Claim: Victim's estate may claim pecuniary dam and for loss of consortium, not for pain and suff.

TORTS: S.O.L./ABUSE OF LEGAL PROCESS

Medical Malpractice: 3 yrs after the harm was inflicted or 1 year after it was discovered.

Product Liability: 3 yrs from date harm was discovered or reasonably should have been discovered.

Consumer Protection Act: 4 yrs tolled during pendency of enforcement action brought by the Attorney General.

Intentional Torts: 2 yrs for assault, battery, false imprisonment, nuisance, defamation and 3 yrs for all other intentional torts, from date harm occurred or should have been reasonably discovered.

Abuse of Legal Process: Malicious civil (and criminal) prosecution is actionable in absence of probable cause and Δ acted with actual malice, i.e. knew that π was innocent. Absolute privilege exists for judges/prosecutors. E.g. Slander of Title: action to cloud title to real property to lower the price. Or legal action to slow/tie up competitor.

TORTS: NEGLIGENCE: DUTY AND BREACH

Negligence: To establish prima facie case of N π must prove by preponderance of ev that the def owed a duty to of care, breached that duty, def's actions or inaction was the actual and proximate cause of the pl's damages.

Duty of Care: Obligation recognized by law that a person owes to all foreseeable parties. Generally, a person has a duty to act as a rsnbl person would under the circumstances to protect others from foreseeable risk/harm.

Duty to Stop Another: No D to stop 3rd person from doing harm unless duty is imposed by agency/status/law.

Standard for Children: A child will be held to a standard behavior of a child of similar age, intelligence, maturity, education and experience, he is engaging in inherently dangerous or adult activities, then to a standard of an adult. Children of age <6 are incapable of contributory negligence as a matter of law; <4 incapable of negligence.

Standard for Disabled: Physical: A reasonable person standard of a person with the same disability. Mental: sane person standard. A sudden onset of mental illness of which def had no prior warning can mitigate liability.

Emergencies: What a reasonable person would do, unless def created the emergency, then he must help.

Good Samaritan Exception: If a rescuer is not compensated, he is privileged against ordinary negligence claims, unless he created the harm, then he cannot be a GS. GS is only liable for gross neg/willful/wanton behavior.

Professionals: What a professional of their specialty in that geographic area would do (sometimes via expert).

Custom and Practice: Industry customs or ordinary practice can be evidence of a reasonable standard of care.

Informed Consent: Medical providers must obtain informed consent for procedures, otherwise battery. Exception: for life-threatening emergencies where a patient is unable to give consent and a rsnb patient would under the cir.

Common Carriers and Innkeepers: They owe extraordinary care to their customers to guard their safety.

Liquor Provider Standard: Liquor store/bar owner is not liable to 3rd parties unless sees drinking/intoxication that would result in rsnbly forecbl injury. Social host not liable for drunk guest acts even if he encouraged drinking.

Standard for Bailees: High diligence when bailment is for bailee benefit only; slight-bailor only; ordinary neg-both.

Duty to Invitees: Owner of land owes a duty to warn of and repair dangers to invitees (there for owner's benefit).

Duty to Licensees: Owner/possessor of land owes a duty to warn of known dangers to licensees (just permission).

Duty to Trespassers: Owner/possessor must avoid intentional/recklessness harm to trespassers (w/o permission).

Attractive Nuisance: Owner/possessor of land must eliminate dangerous/artificial conditions alluring children.

Negligent Supervision: In WA parents are immune from neg acts of kids unless parent (S)upervised after knowing about kid's propensity, kid was (A)gent (driving on fam biz), (D)angerous instrumentalities (motorbike, chainsaw).

Negligent Entrustment and Hiring: employer or owner may not delegate to one without adequate skill or ability.

Statutory Standard: Breach of duty imposed by a statute is evidence of negligence (but not negligence per se), where π /harm is in the class the statute intended to protect. DUI and fires safety violation is negligence per se.

Breach: Δ 's conduct (action/inaction) fell below the standard of care when he breached a duty owed to the π .

Res Ipsa Loquitur: Breach can inferred by jury if 1) The type of accident could only occur in neg, 2) Δ exercised full control over instrumentalities, and 3) no other plausible explanation exists (including pl's own negligence).

TORTS: NEGLIGENCE: CAUSATION/DAMAGES/DEFENSES

Cause in Fact: The harm would not occur "but for" defendant's negligent actions or inactions.

Substantial Factor Test: When there are multiple causes (manufacturer/weather/driver) the court will use SF test.

Burden shifts to each Δ to prove that his negligence was not the cause, otherwise joint and several liability.

Proximate Cause: Δ is only liable for foreseeable harm even if magnitude of harm is unforeseeable (eggshell π). Reasonable person must foresee the harm resulting from this actions or this chain of events resulted in the harm.
Supervening Cause: Δ is still liable for intervening causes that are reasonably foreseeable and not liable for unforeseeable supervening causes. Harm increased by intervening cause does not excuse Δ 's negligence. Δ will bear full liability. Harm to rescuers and subsequent negligence of rescuers/doctors are generally foreseeable.
Tort Damages: An actual harm, not pure economic, is required. π in tort actions may recover special damages – medical/lost wages/impaired future earnings and general damages - limited amounts for pain and suffering. In WA, punitive damages are not allowed unless by statute. Damages are not reduced because of collateral recovery sources, but, if possible, π has a duty to mitigate damages.

Joint and Several Liability: If two or more negligent acts proximately caused an INDIVISIBLE injury each defendant will be JS-ly liable, unless the π is also at fault. Ds must act in concert or must be in chain man-dist-retailer.

Contribution: Any defendant under JSL rule must pay full amount of damages and then sue others for the contributions. If one party is immune (government actor by law or bankrupt party), then the amount is reduced by its % of neg and then paid by JSL Δ s according to their % of fault. If π fails to join a Δ , direct liability only.

NIED: π must be victim or close relative at the scene or who comes there later+signs in health of mental distress.

Comparative Fault: WA is a pure comparative fault state, π 's recovery is reduced by % of his own negligence.

Felony Defense: π is barred from recovery if he was committing a felony that was a proximate cause of the injury.

Intoxication Defense: π is barred if he was intoxicated+more than 50% at fault+intoxication was PC of the injury.

Assumption of Risk: When π voluntarily appreciates magnitude of risk, then implied AOR is evidence of contrb neg. Express AOR (release) completely bars recovery, if harm is within the release not against public policy.

Good Samaritan Defense: One who helps in emergency is relieved from ordinary neg liability, but not for gross.

TORTS: STRICT LIABILITY/PRODUCTS LIABILITY

Animals: An owner is strictly liable for harm cause by an animal, unless π is trespasser. WA Dog Statute: strict liability for bites if π is in a public place or invitee/licensee regardless of owner's prior knowledge of viciousness.

Abnormally Dangerous Activities: Δ is strictly liable for abnormally dangerous activities that are (1) unusual for the community, (2) involves a serious risk of harm regardless of precautions and (3) harm is within prox cause.

Defenses to Dangerous Activities: π 's negligence contributory/comparative, express/implied assumption of risk.

Products Liability: WA Products Liability Act (WPLA) governs when product injures person/property. UCC Art 2 (Sales) governs pure economic losses. ComLaw governs for products past their useful life (generally 12 years).

Liability of Manufacturers: Manufacturer is liable for harm proximately caused by unreasonably dangerous product due to (1) construction/design defects, (2) breach of implied warranty of marketability or fitness for particular purpose, (3) inadequate warnings/instructions. Otherwise, negligence liability applies.

Liability of Retailers: Retailers are liable for own negligence/breach of own warranty/fraud and strictly liable if SSSS 1) the product is (S)old under the seller's name, 2) the seller is controlled (S)ubsidiary of the manufacturer, 3) the seller provides (S)pecifications for the product, or 4) there is no (S)olvent manufacturer in WA jurisdiction.

Defenses to Products Liability: 1) compliance with government standard is absolute defense, 2) useful safe life of 12 years (rebuttable presumption), 3) industry standard (admissible but not conclusive evidence), 4) comparative fault (reduces damages) and assumption of risk when disclosed, 5) 2 years SOL on discovery of defects.

WILLS: CREATE/AMEND/REVOKE

Valid Will requires intent and testamentary capacity, be written, signed, attested to by two competent witnesses.

Will Types: NO Holographic, Oral, Negative Disinheritance Ws in WA. Ws from other states, Form Ws are valid.

Testator must be 18+ y.o. and understand nature and extent of property and testamentary significance of a will.

Signature of proxy is permitted, but at the direction and in the presence of the testator; and the proxy also signs.

Witnesses: The testator must sign in the presence of each witness. At the testator's request, each witness must attest to genuineness of testator's signature and proper execution the will (on the will or accompanying affidavit).

Interested Witness is still competent but creates a rebuttable presumption of duress, fraud, or undue influence.

Codicils are executed just as wills and supersede conflicting provisions of the original will, which remains valid.

Incorporation by Reference: If a separate writing is referred to in a will, it amends the will but only with respect to tangible property. If a new will has words "incorporates by reference" it replaces the old will.

Revocation by physical intentional destruction returns to intestacy. Codicil R returns to the original W.

Partial Revocation by physical act is allowed, unless new disposition attempted, then a formal execution required.

Dependent Relative Revocation validates revoked will1 if DDR was made under mistaken belief that will2 is valid.

WILLS: INTESTACY AND LIMITS

Intestacy occurs if there is no valid will, or a valid will was revoked, or will itself provide for intestacy.

Surviving Spouse: Under WA intestacy rules, SP is entitled to all community property and 1/2 separate property. **Per Stirpes** distribution is adopted in WA. Surviving spouse gets 50% of SP, issues share remaining 50%. If no issue, spouse gets 75%, 25% goes per stirpes, to parents, then, if not alive, to their issues, then to grandparents. **Escheat:** If there is no spouse, issues, parents, parents' issues, grandparents and their issues, then to the State. **Eligible Relatives:** Spouse: by state law (separation does not cut off intestacy) and true relatives. **True Relatives** by blood (life=conception), adoption, not step children (only OK to avoid escheat), not in-laws. 1/2 blood=whole blood. If parental rights involuntarily terminated child can inherit from parent, not vice versa. **Undue Influence:** Force, coercion, or persuasion that destroys the free will of the testator will invalidate a will. **Omitted Spouse:** If the testator married after executing the will, the omitted spouse is presumptively entitled to all CP and 1/2 SP, unless waived or testator intentionally omitted but not due to duress or lack of disclosure. **Omitted Child:** If the testator has a child after executing the will, the omitted child is entitled to an intestate share, unless there is clear and convincing evidence to show that omission was intentional or estate is left to the parent. **Homestead Exemption:** Surviving spouse may get \$125K for land or \$15K for personal property used as home. **Conditional Inheritance:** The right to inheritance is conditioned on the existence of some future fact is allowed. **Lapse:** Lapsed gifts fall to residuary; if no residuary beneficiaries remain, the lapse creates partial intestacy. **Anti-Lapse:** Unless the will conditions a gift on survival of beneficiary, the AL statute allows the issue of deceased beneficiaries to inherit by right of representation, if the testator-issue kinship is lineal (not step-child).

WILLS: CHANGE IN CIRCUMSTANCES

Slayer Statute: Participation in intentional slaying of decedent bars inheritance (by preponderance of evidence). **Death of Spouse** will not affect the validity of a will, but bequests to the predeceased spouse will lapse. **Divorce:** Divorce automatically revokes provisions in favor of the former spouse, unless the will expressly provides otherwise. Gifts pass as if the former spouse predeceased the testator. **Marriage/Children:** Gifts to others revoked to accommodate inheritance rights of the omitted spouse or kids. **Encumbrance** of property does not revoke a will. Property passes subject to encumbrances. **Disclaimer:** Any intestate heir or will beneficiary may refuse to accept, in whole or in part, gifts from a decedent's estate by disclaimer. Unless anticipated by a will, disclaimed interest passes as if he predeceased the testator. **Contracts:** Law of wills generally overrides law of contracts; except: statutory CP agreements trump law of wills. **Will Substitutes:** Property passes by WS (not will) if it is distributed by trusts/life insurance K/sale/CP/legal rights. **Uniform Simultaneous Death Act:** When spouses died in the same event (within 120 hrs), it's presumed that each survivor intended the other beneficiary for purposes of own estate, but may be changed by contrary instruction.

WILLS: ADMINISTRATION AND DISTRIBUTION

Probate Venue: PV is proper in the county where the decedent resided, died, or owned property. **Will Contest:** The contestant bears the burden of proof and must have a direct, financial interest in the outcome. **Filing Time:** Contesting beneficiaries must file claims within 4 months SOL (120 days) of admission to probate. **Grounds:** SOL (120 days lapsed), standing (no direct financial interest), unfairness is a sole ground (not validity of will), no-contest clauses generally enforceable ("if you contest, I leave you nothing"), partial/entire invalidation. **Creditor Claims** must be served on PR within 4 months of notice and filed with Ct with an affidavit of amount. **Personal Representative:** PR must be 18+ y.o., not disabled/felon, with right to administer all SP. If a will doesn't designate, the surviving spouse (or children, there is no spouse) may petition to be appointed as PR. **Appointment Notice** is not required except for a surviving spouse petitioning to administer community property. **Nonintervention Powers** gives a PR power to administer and settle estate (\$60K max) without Ct's intervention. **Personal Representative Duties:** PR owes a fiduciary D of honesty/loyalty/care to the estate, its heirs, creditors, distributees. PR must settle estate ASAP without loss, not commingle, self-deal, derive personal gain except fees. **Joint Bank Accounts** with rights of survivorship require 4 unities (TTIP) and pass to surviving JTs regardless of the will, but are subject to creditor's claims. Account opened by a spouse is CP, 1/2->surviving spouse & 1/2->JTs. **Interpretation** guidelines apply in the following order: 1) plain meaning; 2) extrinsic evidence admissible only to resolve ambiguities; 3) words that uphold rather than defeat and intestate takers (vs. non-takers) are preferred. **Distribution:** First to creditors, then specific, then demonstrative, then general, then residuary gifts, last intestacy. **Expense/Claims Priority:** First atty's fees and probate costs, then funeral -> hospice-> dependents maintenance-> wages within 60 days-> federal estate taxes-> state taxes-> judgment debts-> unsecured debts. **Specific Gift:** A specific gift can only be satisfied by the delivery of the particular property described in the will. **Demonstrative Gift** is hybrid of specific/general gift, e.g., "I leave X \$10K to be satisfied by transfer of my Rolex." **General Gift:** A pecuniary gift in dollar amount or percentage of estate; no claim to a particular asset may arise. **Residuary Gift:** A residuary gift disposes of all property not otherwise disposed of in a will.

Ademption: Non-existing at death gifts adeem (fail completely). Gift sold, beneficiary gets uncollected proceeds.
Abatement: If estate cannot satisfy all claims and devises, gifts are reduced in the reverse order of distribution.
Life Insurance proceeds pass to beneficiary outside a will. For term LI where marriage is invalidated, character of proceeds (CP/SP) is determined by character of last premium payment. Paid by employer=CP, 1/2 to ex-spouse.
Retirement Plans: Proceeds from RP are not subject to probate, intestate, or creditors' claims; pass as designated.

WILLS: TRUSTS

Valid Trust require trustee, beneficiary, trust property, intention of settlor, purpose. Property passes w/o probate.
Settlor/Donor/Grantor must be 18 or older, of sound mind, with objective intent. Future interests must be vested.
Trustee must be capable of administering trust dispositions and owes duty of loyalty/care to the beneficiaries.
Inter Vivos Trust is created by transfer of property to a trustee who takes legal title upon delivery of deed or manually transferable property. IVT has less formalities than a will because it is not a testamentary disposition.
Intended Beneficiaries must be identified with specificity: definite class/selection, e.g., "to my children," "best students" etc. and remainder class ("then to"), if any, or to "surviving heirs" and wait till the latest time possible.
Restrictions on Distributions may be set, except to pay necessities/taxes, support minors or self. Trust payments are shielded from creditors until money is deposited to a bank account.

Wait and See Rule: For trusts with an effective date of 2002 or later, WA uses WSR: beneficial interest under a trust is valid if it vests within 150 years from the date the trust is created. WSR does not apply to charitable trusts.

Successor Trustee: Unless there was clear intention that the trust was conditioned on the survival of the original trustee, the trust will not fail due to his death, incapacity, resignation, or removal. ST is named or appointed by Ct.

Surviving Spouse has no right to be trustee of a trust, unless designated as any other trustee.

Trust Venue is proper in the county where the trustee resides, has PPB, or where the situs of the trust is located.

Duty of Loyalty: Trustee owes loyalty to beneficiaries. NO self-dealing, commingling, borrowing from trust! May not delegate decision making. Trustee must invest in quality investments with rsnbl diversification and avoid high risk (10% max interest). Trustee must keep beneficiaries fully informed, unless waived, of significant transactions.

Liability of Trustee: Any beneficiary has standing to sue for breach, court may remove and appoint a new trustee. Co-trustees are agents of each other and liable for each other's acts. Defenses: consent, SOL, laches.

Multiple Trustees: Co-trustees possess joint power of decision making and must exercise the power by majority. In case if no agreement can be reached, a court may decide an issue or appoint another trustee.

Trust Revocation/Modification: Trusts are not revocable unless the express power to revoke is in the original trust instrument, specifying method of revocation. Any instrument with the settlor's intent to revoke/modify is enough.

Trust Termination may be by settlor, may occur by 1) term expiration, preset by settlor, or 2) by consolidation with a trust with the same purpose/beneficiaries, or 3) by merger into direct ownership, if settlor becomes exclusive trustee and beneficiary with all legal and equitable rights. Beneficiaries' needs must be considered in distribution.

ETHICS: ATTORNERY-CLIENT RELATIONSHIP

Conflict of Interest: A shall not represent C if the representation will be directly adverse to another. If conflict arises after representation begins, L must withdraw or obtain the informed consent of C.

Consent Exception: Representation is permitted notwithstanding the conflict if L reasonably believes that he will be able to provide competent and diligent representation to both Cs and each C gives informed written consent.

Former Client Interest: L shall not represent another person in the same or substantially related matter that is adverse to a former C's interest, unless the former C give informed written consent.

Prospective Client: L shall not use info learned during PC consultation in representation of C with materially adverse interest in substantially related matter if that information could significantly harm PC, unless both agree.

Imputed Conflict: L cannot take a case that another L in the firm is prohibited from taking, unless the conflict is personal to the other L. A firm is allowed to represent C with adverse interest to clients of L who left the firm.

Screening: A firm may represent C with interest materially adverse to the former C of a hired L if the disqualified L is screened, the K does not share fee or transmit any information, and after the former C receives notice.

Public Service: L shall not participate in the same matter he was personally substantially involved before as public employee or private attorney, unless the appropriate agency gives informed written consent.

Negotiation for Employment: A public officer or employee participating personally and substantially in a matter shall not negotiate for private employment in that matter, except for law clerks after the judge is given notice.

Third-Party Neutral: L shall not represent anyone in a matter in which the L participated as a third party neutral (judge/arbitrator/mediator, except partisan arbitrators), unless all parties give informed written consent.

Business Transactions: Business transactions with Cs must be fair, reasonable, and fully disclosed in writing, and C must consent in writing. Client must be advised to seek independent counsel and must be given time for that.

Financial Assistance: L shall not give money to C, except to advance costs of litigation which must be repaid.
Payment By Other: L shall not accept compensation from 3rd party unless 1) representation is not compromised, 2) C gives informed consent, and 3) information relating to the representation is protected.
Aggregate Settlements require disclosure of informed written consent by each C, that is mailed to all other Cs.
Limiting Liability: Agreements limiting malpractice liability require C to have independent representation.
Unrepresented Party must be advised in writing to seek independent counsel and be given reasonable opportunity.
Sexual Relations: L shall not have SR with C unless a consensual SR existed before the attorney-client relationship.
Related Opposing Lawyers: L shall not represent C in a matter directly adverse to C represented by a related L, unless C gives informed written consent. Related L/SR conflicts is not imputed to other members of the firm.
Withdrawal: Once litigation started, Ct must permit W. In state Ct, 10 days notice must be given, W is automatic if there is no objection. If there is objection in state Ct and in Fed Ct, W requires a motion and Ct order.
Mandatory Withdrawal occurs when 1) the lawyer is discharged by client, 2) the representation results in a violation of the RPC, or 3) the lawyer's physical or mental condition unreasonably impairs the representation.
Permissive Withdrawal is allowed if C will not be hurt, C persists that he will or has committed crime or fraud involving L's services, C does not pay (but L must give warning first), representation created undue burden on L. L must take reasonable steps to prevent foreseeable prejudice to C and refund any unearned fees.

ETHICS: CONFIDENTIALITY

Confidentiality: L shall not reveal info learned before/during/after and related to representation unless C gives informed written consent and the disclosure permitted by the RPC. This duty continues after death.
Use of Information: L may never use confidential info to the former C detriment, unless permitted by the rules: to prevent commission of crime, death or serious bodily injury, for L's defense against malpractice, or by Ct order.
Fraud Exception: L may reveal confidence to prevent/mitigate substantial injury to financial or property interest of another that is reasonably certain to result or has resulted from C's crime or fraud where C used the L's services.
Corporate Clients: If L knows of a violation of law by an employee, L may report to management. If no action is taken, L may reveal confidential info if the violation is reasonably certain to result in substantial injury to the company.
Permitted Disclosure is to Ls in the firm, for administrative purposes, for expert evaluation. If L knows or should know that the info will materially and adversely affect C's interests, then C must give informed written consent.
Evidence of Crime: L must turn over physical evidence of crime in the condition it was received, protecting C's ID.
False Evidence: L shall not offer FE that L knows or later learns to be false, except permitted by RPC (Fraud Exception). If prohibited, L shall take reasonable steps to obtain C's consent. If L is unsuccessful, the L may withdraw.
Supervisor's Duties include reasonable effort to assure supervised L comply with RPC. A supervisor is responsible for violations if the supervisor orders or ratifies the violation, or fails to remedy or mitigate a known violation.
Subordinate Duties: L must comply w/RPC and w/supervisor's reasonable resolution of arguable question of prof duty.

ETHICS: ADVOCACY

Competence: L must be competent or become competent with no undue delay/expense, except in an emergency.
Duty to Clients: L has the duty to inform C of issues so C may make an informed decision. L shall not accept or reject a settlement offer without C's consent. Lawyers have a duty to expedite litigation and not to neglect cases.
Duty to Disabled Clients: L must maintain a relationship as normal as reasonably possible with a disabled C and seek the appointment of a guardian if the client cannot act in their own interest.
Zealous Representation: L has a duty to do everything within the bounds of law to advance C's cause.
Candor: L shall not knowingly make, or fail to correct a previously made a false statement of law or fact, or fail to reveal adverse controlling authority. L must make reasonably diligent inquiries to ascertain the truth.
Duty to Reveal: A lawyer has no duty to reveal adverse facts unless they are subject to a discovery request OR in an ex parte communication where all material facts must be disclosed to the tribunal OR under other RPC.
Prosecutors Duties: Ps must seek justice, not mere convictions, and may not prosecute but upon probable cause that the person is guilty. Ps must advise Δs of the need for counsel, disclose mitigating info, and avoid prejudice.
Fairness to Opposing Counsel: L should not hide or falsify evidence, make frivolous discovery requests, engage in ex parte communication, unless permitted by the party's L, or pay witnesses more than reasonable expenses.
Lawyer as Witness: L shall not act as an advocate in a trial where the lawyer is likely to be a witness. If L must testify, another L from the firm may act as an advocate unless it would create a conflict of interest.
Extrajudicial Statements: L shall not make improper statements to the media, but may make statements about routine procedures, or that are reasonably necessary to protect C from undue prejudice.

ETHICS: ADVERTISING AND PRACTICE

False Advertisement: L shall not make false or misleading communication about L or the L's services, including

truthful statements that would lead a reasonable person to form an unjustified expectation.

Forbidden Statements: A lawyer shall not make statements about the ability to improperly influence courts or about specialization, except statements limiting areas of practice.

Firm Name: Only actively practicing lawyers should be in the firm name, except for retired or deceased partners. Letterhead must include the admitted jurisdiction for any lawyer's name that appears.

Solicitation: Direct mail solicitation is allowed, but solicitation in person, by telephone, or by electronic communication is prohibited unless there is a pre-existing relationship between the lawyer and client.

Purchase of Practice is allowed if 1) entire practice or area of practice is sold, 2) seller gives notice to Cs of sale and right to obtain other L, 3) fees to current Cs aren't increased. Transfer is valid if C doesn't object w/n 90 days.

Non-Compete Agreements are prohibited for L to offer or sign, except when L retires or as part of practice sale.

Admission to Practice in WA requires a person must be of good moral character and a graduate of an ABA approved law school, a graduate of the WSBA clerkship program, or admitted to a reciprocal jurisdiction.

Non-Lawyer Practicing Law: L shall not aid a non-L in the unauthorized practice of law, nor form a partnership or share non-separated offices with a non-lawyer, nor share fee with non-lawyer, except for paying salary to staff.

Practice of Law includes L's judgment, negotiation, giving legal advice, drafting legal docs, and court appearance.

Out-of-State Lawyer: L admitted in other jurisdictions may not establish offices in WA, but may perform legal services in WA only if on a temporary basis with another WA L, services are rsnbly related to L's practice area, and are in a pending ADR or a proceeding where L is authorized to appear, OR L admitted as pro hac vice in the case.

ETHICS: FEES AND CLIENT'S PROPERTY

Fees: L's fees must be rsnbl, measured by customarily charged fees, novelty and difficulty of the job, amount vs. result of the case; time, labor, and skill required, the L's experience, reputation, and other job turned away.

Fee Splitting is only allowed with other lawyers if the split is proportional, each lawyer assumes joint responsibility, and the client gives informed written consent to what each lawyer receives.

Fee Agreement may be oral, but contingent fees, retainers, and flat fees must be in writing signed by C.

Contingency Fee is not allowed in crim and divorce cases. L must specify whether CF is calculated on gross or net.

Flat Fee Agreement must include the scope of services, total amount, that the fee is the lawyer's property and is not held in trust, that the client may terminate the lawyer's services and receive a refund for unperformed work.

Commingling of Funds is strictly prohibited. L must keep C's funds in a trust account with an insured institution, separate from the L's funds. Fees earned and undisputed (including retainers, flat fees) may be put in L's account.

Client Account: L must keep accurate record and C informed. Withdrawals must be signed by L and not in cash.

Client Property: When L receives C's property, the property must be identified, acknowledged with receipt, put in a safe place, and returned to C without delay upon C's request, including files, but not a work product.

Gifts: L shall not solicit a substantial gift from C or prepare an instrument giving L one, unless lawyer related to C.

Media Rights: L shall not negotiate for literary or media rights to a case prior to its conclusion.

Proprietary Interest: A lawyer shall not acquire a proprietary interest in a matter in which the lawyer is involved, but may acquire a lien to secure fees or expenses and contract for a reasonable contingent fee in civil cases.

ETHICS: MISCONDUCT

Professional Misconduct: L may not commit professional misconduct which includes the following:

- 1) Attempted or actual violation the RPC (or CJs if applicable), or knowingly assist or induce another to do so,
- 2) A crime that reflects poorly on lawyer's honesty, trustworthiness, or fitness to practice law,
- 3) Dishonesty, fraud, deceit, or misrepresentation, or assisting another in doing so,
- 4) Acts involving moral turpitude, corruption, physical assault, or that prejudice the administration of justice,
- 5) Willful disobedience to a court order, violation of the lawyer's oath, or sanction imposed under ELC,
- 6) Discriminate against Cs or potential Cs in WA on the basis of sex, age, religion, color, disability, marital status.

Duty to Report: L who knows that another L has violated RPC should inform WSBA/Judicial Conduct Commission.

Judicial Disqualification: Judge must disqualify himself when impartiality can be rsnbly questioned by personal bias, knowledge of disputed facts, his or his relative financial interest, or if J served as L or witness in the case.

Judicial Impropriety: Judge must avoid even appearance of impropriety, and must not 1) have ex parte contact, 2) take gifts, 3) make unnecessary comment on pending cases, 4) use confidential information obtained as a lawyer, or 5) admit court experts without notice and the right to respond.

Judicial Campaigning: Judges cannot 1) make pledges about how they will rule, other than faithful performance, 2) attend partisan events, other than for judicial campaigns, 3) personally solicit campaign donations, or 4) promote causes that could be construed as an abuse of office.

Pro Bono Work: L shall aspire to do 30 hours of pro bono publico work per year, but RPC do not mandate it.