

# Integrating Bar Exam Preparation Into Upper- Division Doctrinal Courses

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Many law teachers are reluctant to consider the bar exam in their courses. This workshop seeks to show how integrating bar examination preparation into an upper-division law school course actually supports the broader learning objectives for the course. In this interactive workshop, participants will engage in abbreviated portions of in-class or out-of-class writing exercises based on actual or mock state bar exam essay questions. These practice exercises are designed to promote better mastery of course content, improve students' legal analytical and writing skills, and enhance students' bar exam performance.

## Workshop Agenda

### I. Opening Discussion

Question: Why do law professors so often ignore the bar exam when teaching courses related to the bar exam?

### II. Brief Lecture: A Little Learning About Learning

A brief overview of some of the research-based principles of adult learning that support incorporating bar exam-related practice exercises into upper-division bar exam-related courses.

### III. Exercise 1 – Answer Sorting

### IV. Exercise 2 – Peer Review/Reader Response

### V. Concluding Discussion

Question: What are the benefits of incorporating bar exam-related exercises in upper-division law school courses, the impediments to doing so, and are there strategies for overcoming those obstacles?

# **SAMPLE PROBLEM AND SUPPORTING MATERIALS**

TWO WORKSHOP EXERCISES WILL BE BASED ON THE FOLLOWING SAMPLE PROBLEM AND THE HELPFUL LEGAL PRINCIPLES. WORKSHOP PARTICIPANTS WILL FIND IT HELPFUL TO BE FAMILIAR WITH THE FACTS OF THE FOLLOWING PROBLEM AND WITH THE ACCOMPANYING STATUTORY PROVISION BEFORE THE WORKSHOP BEGINS.

## QUESTION NO. 1

Monarch Brewing Co., Inc. (Monarch) is a Houston microbrewery organized as a closely-held Texas corporation. Monarch conducts all of its banking business with Lone Star State Bank (Lone Star), and Laura Landers is the bank vice-president who handles all of Monarch's business.

In the spring of 2007, Monarch's brew master recommended replacing two copper brewing vats, so Monarch's board of directors authorized Manny Agosto, the company's chief financial officer, to borrow \$50,000 on behalf of the brewery and to use the money to purchase the new vats. On behalf of Monarch, Agosto applied to Landers for the loan, and she approved it. Landers then prepared a promissory note on which she accidentally failed to include the name of Monarch as borrower. The body of the note contained the following provisions:

I/We, the undersigned borrower(s), promise to pay the sum of \$ 50,000 Fifty Thousand and No/100 Dollars to the order of Lone Star State Bank within one year of June 1, 2007, together with interest thereon at the annual rate of 3.25%.

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The undersigned and any secondarily liable parties expressly waive presentment, demand, notice, protest, and all other demands and notices in connection with this Note.

On June 1, 2007, Agosto signed only his name at the bottom of the note.

In January 2008, Lone Star sold a group of its promissory notes, including the \$50,000 note signed by Agosto, to Temple Financial Group (Temple). Landers delivered the group of promissory notes being sold to Temple along with a document – labeled “Assignment” – providing as follows: “FOR VALUE RECEIVED, Lone Star State Bank hereby bargains, assigns, transfers, and negotiates to Temple Financial Group all its right, title, and interest in and to all the promissory notes described on the attached Exhibit A.” Exhibit A attached to the Assignment precisely described the group of promissory notes, including the \$50,000 note signed by Agosto. Landers signed the Assignment as vice-president on behalf of Lone Star, but that was the only document in the transaction between Lone Star and Temple containing Landers's signature. Lone Star did not write on or attach anything to any of the promissory notes described in Exhibit A.

Temple misplaced the \$50,000 promissory note signed by Agosto and did not discover it until July 1, 2012. No demands for payment ever were made on the promissory note. It is now February 14, 2013.

- 1. Is Temple Financial Group entitled to recover from Agosto on the promissory note? Explain fully.**
  
- 2. Does Temple Financial Group have the right to recover on the promissory note from any party other than Agosto? Explain fully.**

## **Helpful Legal Principles for Sample Problem (Part 1)**

### **UNIFORM COMMERCIAL CODE § 3-402(b):**

(b) If a representative signs the name of the representative to an instrument and the signature is an authorized of the represented person, the following rules apply:

(1) If the form of the signature shows unambiguously that the signature is made on behalf of the represented person who is identified in the instrument, the representative is not liable on the instrument.

(2) Subject to subsection (c), if (i) the form of the signature does not show unambiguously that the signature is made in a representative capacity or (ii) the represented person is not identified in the instrument, the representative is liable on the instrument to a holder in due course that took the instrument without notice that the representative was not intended to be liable on the instrument. With respect to any other person, the representative is liable on the instrument unless the representative proves that the original parties did not intend the representative to be liable on the instrument.

## Exercise 1 – Answer Sorting

### INSTRUCTIONS:

1. **Individually:** Please read the following samples of student answers to one issue raised in the Sample Problem, a question based on an essay problem recently given on the Texas Bar Examination. Rank these answers from most successful to least successful.
2. **In your small groups:** Compare your rankings with your fellow workshop participants and attempt to arrive at a consensus by discussing the relative strengths and weaknesses of each answer.
3. **In the whole group:** Be prepared to share the results of your small group deliberations with the whole group and to identify the characteristics of the most successful bar exam essay answer and to distinguish the various ways an answer might fall short of that goal.

### **Sample Answer 1**

In order to determine if Agosto may be held personally liable for the note, we must evaluate whether or not Agosto was acting on behalf of Monarch as an authorized agent for the corporation. The note does not explicitly represent that Agosto signed in agent capacity for his principle, Monarch, as a borrower. The rule states that the represented person is held liable on the instrument to a holder in due course that took the instrument without notice that the representative was not intended to be liable on the instrument. When Temple took the note from Lone Star, there was no indication by anyone to provide notice that Agosto was acting as an authorized agent, and therefore [he] will be liable on the note. Agosto will be personally liable on the instrument unless he proves that the original party (Monarch) did not intend for him to be liable on the instrument. (Section 3-402(b)(2)). Therefore, it is likely Temple can recover from Agosto on the promissory note.

### **Sample Answer 2**

Now we can determine whether or not Agosto is liable on the promissory note. According to § 3-402(b), if a representative signs his name to an instrument and the signature is an authorized signature of the represented person we must look to the form of the signature to determine liability. If the form of the signature shows unambiguously that it is made on behalf of the represented person who is identified in the instrument the representative is not liable. However, if the form of the signature does not show unambiguously that it is made in a representative capacity or if the represented person is not identified in the instrument, the representative is liable on the instrument to a holder in due course that took the instrument

without notice that the representative was not intended to be liable. With respect to any other person, the representative is liable on the instrument unless he proves that the original parties did not intend him to be liable on the instrument. According to the problem, Agosto was authorized to sign on Monarch's behalf. However, the name Monarch did not appear on the note. Therefore, according to § 3-402(b)(2)(ii), Agosto is liable on the instrument. If Temple were a holder in due course, Agosto would not be able to raise a defense. However, as we established earlier, Temple is only a PETE (it is not a holder, much less a holder in due course). Therefore, Agosto is liable on the instrument but has the opportunity to prove, as his defense, that the original parties did not intend for him to be liable on the instrument.

### **Sample Answer 3**

Also, although the facts support the belief that Agosto was acting as an agent for Monarch, based on the signature by Manny Agosto on the promissory note, the principal (Monarch) was never specified, and also Agosto signed in his individual capacity, and did not specify on the note that he was signing as an agent. Therefore, he is liable unless it is proven that the original parties did not intend the representative to be liable on the instrument. (§ 3-402(b)) To avoid liability, Agosto must have named the principal (Monarch) and indicate that he was signing in a representative capacity only acting as the Chief Financial Officer.

### **Sample Answer 4**

Under § 3-401, a person is not liable on an instrument unless the person signed the instrument, or the person is represented by an agent or representative who signed the instrument

and the signature is binding on the represented person. If an agent makes an authorized signature and either the instrument does not unambiguously illustrate that the signature was made as a representative or the instrument does not identify the agent then the represented person is liable to a holder in due course without notice. Against all other parties, the individual will be liable unless he can prove that the original intent of the parties to the instrument did not intend for him to have liability. In this case, Agosto signed the instrument on behalf of Monarch Brewing, but failed to unambiguously illustrate that he was doing so as an authorized agent, so he will be personally liable. Because the shelter rule applies on these facts, this allows Temple to enforce his right on the instrument, so that he may recover from the maker of the instrument. Therefore, Temple is entitled to recover from Agosto on the promissory note.

### **Sample Answer 5**

Temple Financial Group (TFG) is not entitled to recover against Agosto on the promissory note. According to 3-402(b)(2) of the UCC, if a representative signs his/her name to an instrument and the signature is an authorized signature of the represented person, the representative could be liable if the signature does not show unambiguously that the signature is made in a representative capacity or if the represented person is not identified in the instrument. If either of those is true, the representative is liable on the instrument to a holder in due course that took the instrument without notice that the representative was not intended to be liable on the instrument. The representative is also liable to any other person on the instrument unless the representative proves that the original parties did not intend the representative to be liable on the instrument.

## EXERCISE 2 – Reader Response/Peer Review

**To the Reviewer:** The purpose of this peer review exercise is to provide targeted feedback to the writer about what is working well in the paper and what is not.

1. Please read the paper completely the first time without making any markings on the paper in order to familiarize yourself with the work product.
2. During your second reading of the paper, please do the following:
  - a. **Underline** each sentence where the writer has sought to identify a discrete legal issue.

b. **Draw a box** around each passage where the writer states a legal principle or set of related legal principles. Inside that box, label each element of the stated legal principle with a capital letter, beginning with “A.”

- c. Label the student writer’s analysis of each legal issue as follows: for each item of evidence cited as relevant to each element of the legal rule (as either supporting or negating proof of the element), place a lower-case letter corresponding to the capital letter given to label that element of the rule. If there is more than one, then add an appropriate numeral. So, for example identify each succeeding item of evidence discussed with respect to rule of law element labeled “A” as “a1,” “a2,” “a3,” and so on.
    - d. **Double underline** the passage stating the conclusion the student writer reaches with respect to each issue.
3. Once you have finished marking the paper, read the paper for a third and final time. Briefly respond to the following questions:
  - a. Does the writer identify each legal issue presented by the facts? Is each issue clearly stated in language reflecting the context in which it arises?
  - b. Does the writer explicitly state each relevant legal principle? Is each rule statement accurate and complete?
  - c. Does the writer apply *each element* of the law to the facts provided? Does that application show how the facts are relevant to legal rules? Does it recognize and address competing arguments, *i.e.* does it argue both sides of a question? Does it identify any gaps in the facts and explain why they are important?
  - d. Does the paper explicitly state a resolution of each issue, even if it is stated in qualified or probabilistic terms? Is each conclusion supported by the strands of the argument? If not, what is missing? Does each conclusion directly address the legal issue from which it follows?
  - e. Does the paper answer the question(s) posed by the Problem?
  - f. What is the best part of the student’s paper? Why?
  - g. What area(s) of the paper needs the most improvement – identifying issues, stating the applicable legal principles, applying the law to the facts, organization, sentence structure, or word choice? Be specific so that the writer know precisely where to focus his or her attention in making revisions.

### Peer Review Sample Answer

Next, we must consider whether Agosto will be personally liable on the note. Per 3-402, if a representative signs his own name to an instrument and the signature is an authorized signature of the represented person, then the representative will be liable to a holder in due course (HDC) without notice of the representative capacity if (1) the form of the signature does not unambiguously show that the signature is made in a representative capacity or (2) the represented person is not identified in the instrument. The representative also will be liable to any other party, unless he can prove the original parties to the instrument did not intend for the representative to be liable. This rule applies here, because the representative (Agosto) did sign the note using his name. Also, the represented person (Monarch) authorized his signing for it. As CFO, he may have implied authority to sign instruments. But the facts state that the board gave him actual authority to sign in this transaction when it authorized him to incur the debt and to buy the brewing vats on behalf of the company. Furthermore, the facts state that Monarch's name was left out of the note; it's not in the terms of the note or a part of the signature block. To make matters worse for Agosto, his signature does not show unambiguously that he was signing as a representative. He signed the note using his name only. There is nothing to indicate he was acting as an agent, like "By" before his signature or "Agent" or "CFO" after it. Since the note reads, "I/we the undersigned borrower(s) promise," it looks like he is signing in his individual capacity. As explained above, Temple cannot be a HDC, because it is not a holder. Therefore, Agosto will be liable to Temple, unless he can prove the parties did not intend him to be personally liable. Agosto should easily be able to prove this, because all the parties understood that Monarch was borrowing the money and that the loan was to finance purchase of the vats for Monarch's business. Therefore, Agosto will likely be able to avoid being held personally liable.

## **SOME SELECTED RESOURCES ON ADULT LEARNING AND HIGHER EDUCATION**

Ambrose, Susan A., et. al., HOW LEARNING WORKS: SEVEN RESEARCH-BASED PRINCIPLES FOR SMART TEACHING (John Wiley & Sons, Inc. 2010).

Fink, L. Dee, CREATING SIGNIFICANT LEARNING EXPERIENCES: AN INTEGRATED APPROACH TO DESIGNING COLLEGE COURSES (John Wiley & Sons, Inc. 2003).

Nilson, Linda B., TEACHING AT ITS BEST: A RESEARCH-BASED RESOURCE FOR COLLEGE INSTRUCTORS (John Wiley & Sons, Inc., 3<sup>rd</sup> ed., 2010).

Weimer, Maryellen, LEARNER-CENTERED TEACHING: FIVE KEY CHANGES TO PRACTICE (John Wiley & Sons, Inc. 2002).