

Approosheets

Issue Checklists & Flowcharts - Samples

California Bar Exam / Uniform Bar Exam

Essays / MEE

MakeThisYourLastTime.com

Approsheets sample content

Click to jump to sample:

- ☞ [Welcome + How to Use](#) (orientation document included with full Approsheets CA version, UBE version will be similar)

- ☞ [Criminal Law](#)
- ☞ [Evidence](#) (CA version, with FRE version available)
- ☞ [CA Community Property](#)
- ☞ [UBE Secured Transactions](#)

Thank you for choosing Approsheets!

- Benefits of issue checklists/flowcharts
- Ways to use
- Step-by-step instructions (with example)
- Benchmark goals for you
- Essay-writing guidelines
- Additional supplemental resources (and promo codes)

Key insights highlighted

You flip open the essay question. Then you stare at the blank page.

The cursor blinks at you, urging you for words you don't seem to have. A cruel stillness. The timer continues to tick, and you're not sure what to write.

One moment, it felt like you're mostly grasping and becoming familiar with the material. But when you try a practice essay, it's like everything you know is out the window. Your words feel makeshift and random. You don't know which direction to go next, feeling your way through the fog as you go.

Has this frustrating and intimidating "blank page syndrome" ever happened to you?

That stops today. If you're not sure how to "spot issues," there's a more systematic way to get down the relevant issues and sub-issues so that you can collect points and set yourself up for passing essays.

Systematic means that—instead of a random, you'll-know-when-you-see-it "issue spotting" approach—you'll use a methodical, if-then, robotic "[issue checking](#)" approach that ensures that you've considered the finite possibilities.

Why such an emphasis on issues? **No issues = no IRAC = no points.**

You've probably been told that you need to focus on analysis or counterarguments. That's all well and good, but the most overlooked part of essay writing is issues. Like an inverted pyramid of this conventional advice, the issues are where everything begins. You must seed each argument (IRAC) with an issue.

Being fixated on rules and analysis is backward if you neglect to learn the corresponding issues. Like a joke you want to force into a conversation, if you can't wait to use the rules and concepts in your head, you may not know when they're relevant or appropriate to bring up. So you try to put them somewhere... anywhere.

A major pitfall of answering an essay is discussing some issues but not issues that are relevant. Flubbed rules may get you partial credit, but a missed issue will get you zero credit. Therefore, it's in your interest to identify as many *relevant* issues as possible in an essay answer, while avoiding a "kitchen sink" that is so overbroad as to be meaningless.

In an extreme example, let's say that you discussed *all* testable issues for a subject. How can the grader tell (as they skim) that you know how to determine the relevant issues? Of course, this is much better than an essay that discusses too few issues, even if it has a lot of "analysis." You might have seen essays with deep analyses which received low scores. That's a trap because graders want to see you discuss issues and sub-issues (like rule elements).

Benefits of Approsheets:

- No overthinking and trying to juggle issues you pull out of thin air. Check through issues using checklists (or flowcharts for a more visual approach). In the face of overwhelming information under pressure, a checklist or if-then approach protects against omitting related issues.
 - Approsheets users have reported being able to visualize these checklists and flowcharts on the exam. There are deliberately only 2 pages per subject.
- Start your essays with confidence. Calm your nerves knowing that the issues are *finite* so you can focus on structuring, organizing, and writing the essay. No more staring at the blank sheet or blinking cursor.
- Attack the essays more efficiently, and finish them (at least outline) on time.
- Stay on track and make sure you hit all the key issues and sub-issues so you maximize your points for each essay.
- Visualize the issues in a flowchart if you're a visual learner.

If you become bored from the predictability and repetition, that's a good sign.

Some ways to incorporate these issue checklists into your bar prep:

- Review them in the beginning of your studies to get the gist of how each subject can be tested on the essays.
 - Each essay has at least one main theme and approach, depending on what it's testing you on. The examiners, for the most part, don't test everything in a subject. Nevertheless, "kitchen sink" subjects to watch out for are Criminal Procedure (4th, 5th and 6th Amendments), Evidence (transcript Q&A style), and Remedies (can be a racehorse essay where you discuss what relief, if any, someone can receive).
- Use them as you practice an essay, as you read the essay question, or after you've read it.
 - I highly recommend outlining your answer first, whether as an "[essay cooking](#)" (outlining issues and rules only) exercise to save time, or as part of writing out a full answer.
- Use them as a key (perhaps supplementing a sample answer) to check for any issues you may have missed after having identified the issues yourself.
 - You can find past essays and sample answers here: <https://www.makethisyourlasttime.com/past-bar-exam-essays-pts/>
 - Which issues did you get? Review the sample answers and the checklist to see if you've included all relevant issues in your outline or answer.
- Repeat the same practice essays. Redoing the same question is an underrated strategy to solidify your understanding (of issue patterns).
- Quick last-minute review. Review the checklists and flowcharts as a refresher right before the exam (or a mock exam).

Step-by-step instructions for using Approsheets:

1. In general, proceed from top down, as efforts have been made to arrange the topics in a logical sequence.
2. Check the "first things to check" heading, and address anything raised.
3. Check the **bold underlined headings** to initially point you in the general direction.

4. Under each bold heading is a list of questions, considerations, or actions to further pinpoint the discussable issues. Issues are triggered when certain facts are present. Start at a box, issue, or question, and follow the answers to see which issues you may want to discuss next.
 - a. *“Slam dunk” issues are italicized. Mention them to grab quick points, but don’t spend much time discussing them.*
 - b. Issues to consider discussing are underlined and are strong candidates to write out as headings in your answer or outline. Include the issue unless it’s clearly not applicable.
 - c. Some issues call for a rule statement that generally doesn’t vary regardless of the question. These template rule statements are boxed, so you can just copy them into your answer where appropriate.
 - d. I’ve also included links to exemplary CA essay questions of interest that test certain topics; they’re labeled [See YEAR MONTH Q].
5. Repeat steps 3-4 after you finish noting the set of issues associated with the triggering condition you identified in the essay. The essay or outline is finished after you exhaust the relevant issues in the checklist/flowchart.

Here’s an issue checking walkthrough using an example Corporations essay:

<https://www.youtube.com/watch?v=Nfxc82DU36M>

The checklists and flowcharts don’t overlap completely—there may be extra info in flowcharts and vice versa—but I suggest being familiar with at least the checklists.

Be careful not to get mired in the Approsheets so much that you lose track of time, at least as you move on from the early stages of study.

If you have the Approsheets-only package, I’ve also included relevant [Magicsheets](#) outline supplements for Crim Pro and Remedies for your reference because there are some acronyms for rule elements that may be unclear.

Benchmark goals for you:

- **At least 1 month away from the exam:** Be careful not to get mired in the Approsheets so much that you lose track of time.

- **By the final month:** Wean yourself and be able to tackle an essay quickly without referring to the checklists/flowcharts. There are only so many ways they can test you. After seeing similar fact patterns, you'll start to remember issue patterns. This is part of developing a "bar intuition" that will come in handy, where you get a sense of the important (actually and frequently tested) issues over time through repetition of practice and feedback. These sheets should eventually make themselves redundant and become mere review material in your hotel room or outside the exam hall.
- **Timing:** 5-10 minutes to cook the essay (outline the issues and rules). Also get a rough idea of how much time you'll spend on each issue so that you can at least have some discussion for every issue. At most 15-20 minutes to cook. Use the rest of the hour to write your answer.

Essay-writing guidelines:

- How much analysis do I need?

Check first whether the call of the question is broad or specific.

A broad call of the question asks you to identify the issues. For example, "What may D be guilty of?" "What ethical obligations did L breach?" For a broad call of the question, consider emphasizing *issue identification over deep analysis*.

A narrow call of the question already identifies the issue for you. For example, "Did the court rule correctly on motion to dismiss based on lack of personal jurisdiction?" For a narrow call of the question, consider paying attention to *sub-issues and ensuring fact analysis for each* (deeper analysis warranted).

- What about ping-pong counterarguments?

Again, counterarguments are well and good—when appropriate.

No need to argue "alternative facts": "P may argue based on X fact... D may hypothetically argue not-X because that's what people do in court... But P will win because X." Who cares about D then?

Instead, counterargue with the issues where available. Here's a rough summary of what to write out:

"Heading for X theory

P may argue X theory because Y fact...

Separate heading for Z defense

D may assert Z defense because of W fact... However, W fact does not meet the elements of Z because...

Conclusion

Overall, P has a stronger argument and is likely to win because Y fact is more dispositive."

Now you have arguments based on legal issues, not opinion.

If the call of the question is narrow (and focused on an issue that has been identified), feel free to bring in more facts.

Additional supplemental resources (and promo codes):

Essays

- [Past questions and sample answers for essays and PTs for the California Bar Exam, going back to 2001](#)
- [BarEssays](#), a bank of California essay and PT answers with real grader scores
 - See my [Essay Answer Bank](#) for more actual essay and PT answers with real grader scores that are exclusive to MTYLT (not found on BarEssays)
- [California essay subject frequency and issue charts](#) (editable)

Essays & MBE

- [Magicsheets](#), companion outlines with succinct rules and issues organized for efficient practice and memorization

MBE

- [AdaptiBar](#), an online platform for MBE questions with over 1,750 past exam questions that adapt to your skill level, analyze your performance, and create customized practice exams
 - Popular add-on lectures available
- [Strategies & Tactics for the MBE](#) (Volume 1), a workbook with primers for each MBE subject including Civ Pro, questions selected from a broad range of testable issues, a full-length practice exam, and OPE question sets not available from the NCBE
 - Add [Volume 2](#) if you need more questions and pointed practice

[You can find up-to-date promo codes at this link.](#)

Use another email address if you've used a discount code on that account before.

First things to check!

- If the call wants you to discuss broadly: "What crimes, if any, have D, E and F committed?"
 - 1) Organize answer by each defendant's crimes and defenses, e.g., D's Crimes
 - Someone dies after D's action → check for homicide
 - D hurts, touches or scares someone → check for other personal crimes
 - D takes something away from someone else or intends to → check for property crimes
 - D takes steps to do the above but doesn't complete → check for solicitation, attempt
 - D and at least E interact at any time → check for conspiracy, accomplice liability
 - 2) Discuss affirmative defenses (excuses, justifications) for each defendant
- Otherwise, answer the call; don't stray from the issue and defendant it focuses on
- **Check for available EXCEPTIONS and DEFENSES for EACH issue! There are plenty in criminal law**

Inchoate crime: Did a crime stop at an early stage before completion?

Asking?	More than mere prep?	Agreeing with another?	Helping another?
<u>Solicitation</u>	<u>Attempt</u>	<u>Conspiracy</u> <u>Pinkerton? Wharton?</u>	<u>Accomplice liability</u> <u>Principal or accessory?</u>

- D can be convicted of the inchoate crime **or** the completed ("merged") crime, except conspiracy (separate)

Homicide: Did someone die? Analyze each (likely "right" answer first); include key words in answer

- Was D involved in a felony, regardless of whether he killed? Felony murder (1° if BARRK, 2° otherwise)
 - Was there more than one person committing the felony? Co-felon liability
- Express malice (premeditation and deliberation) or defined by statute (if in the facts)? Murder, 1°
 - Alcohol involved? Could mitigate to 2° murder (but not manslaughter)
 - DEFENSES (mitigate to voluntary manslaughter): imperfect self-defense, reasonable mistake of fact
- Implied malice (where there is at least one of the four types of intent)? Murder, 2° (common law)
- Heat of passion or adequate provocation? Voluntary manslaughter (mitigated intentional killing)
- Reckless or gross negligence? Involuntary manslaughter
- Did D fail to act under a legal duty? Murder or manslaughter may arise under misfeasance

Personal crime: Was there otherwise a person-to-person offense?

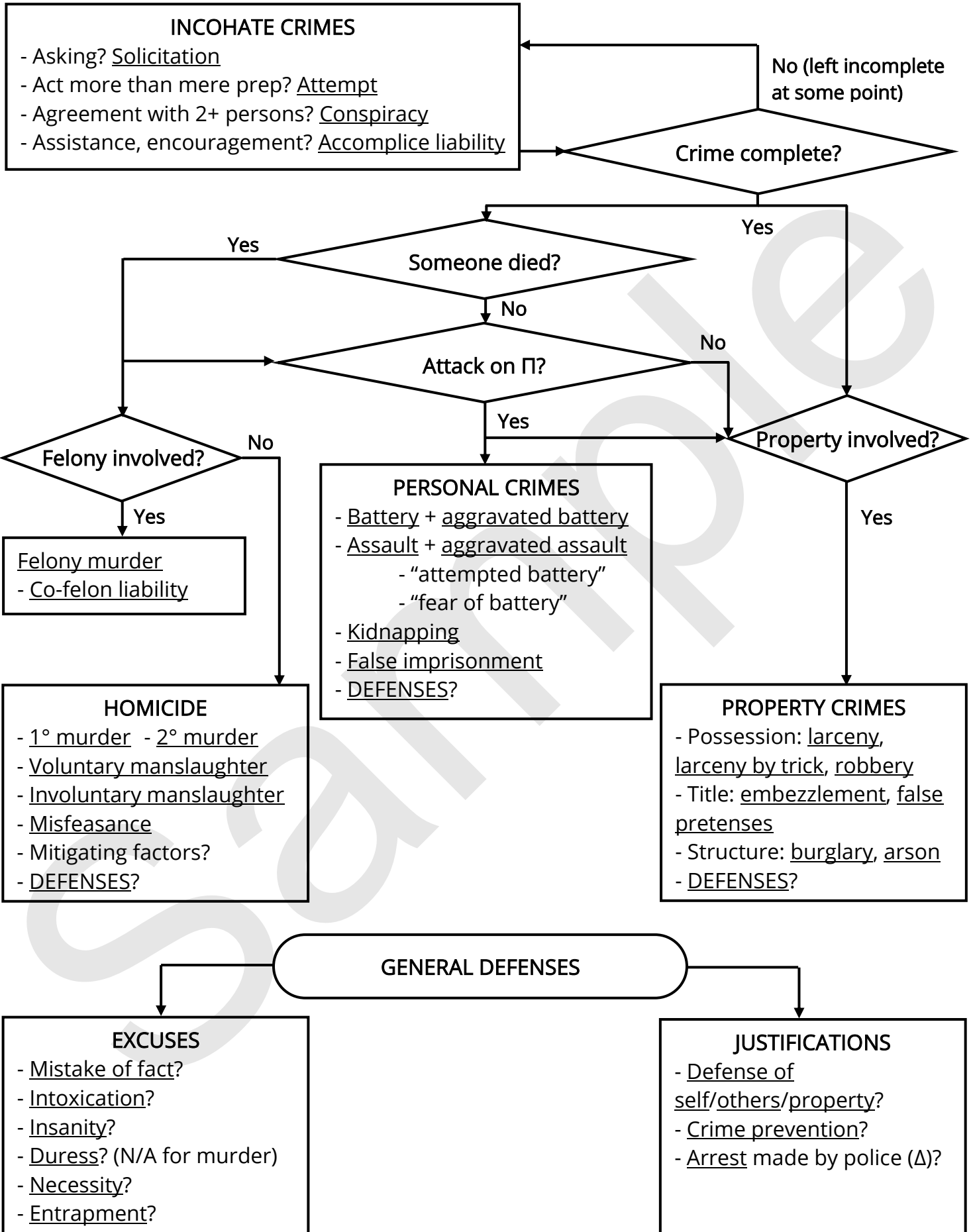
- Physical contact involved (direct or indirectly)? Battery or aggravated battery
- Assault: 2 types (check to see if either rises to aggravated assault)
 - D intended to commit battery? "Attempted battery" assault (majority)
 - D put another in apprehension? "Fear of battery" assault (minority)
- Transferred intent between potential victims?
- Moving / preventing movement of a person against will? Kidnapping / false imprisonment

Property crime: Did someone try to take something or be somewhere they weren't entitled to?

- Taking possession (physical control)? Larceny or larceny by trick
 - Knew or should have known the property was stolen? Receipt of stolen property
- Taking title (actual ownership)? Embezzlement (already in possession) or false pretenses
- Violence or intimidation involved? Robbery ("larceny+")
- Trying to or actually getting into a structure to take something or commit another felony? Burglary, robbery

DEFENSES: Don't forget to discuss for EACH crime discussed!

- Check available defenses particular to each crime before below general defenses
- Know whether the crime is classified as general intent (to act) and specific intent (to act and get a result)
 - GI? Possible defenses: involuntary intoxication, reasonable mistake of fact
 - SI? involuntary and voluntary intoxication, reasonable and unreasonable mistake of fact
- Some evidence of insanity at time of offense? Check the four rules for insanity
- D needed to act to avoid harm? Duress (from human forces), necessity (if non-human source of harm)
- D needed to use force to avoid harm? Self-defense, defense of others, defense of property



APPROSHEETS | EVIDENCE

If California criminal case: Set up Proposition 8 preamble before anything else

Proposition 8 is part of the CA Constitution. Prop 8 makes all relevant evidence in a criminal case admissible, even though objectionable under the California Evidence Code, unless it falls under certain exceptions.

- Does an EXCEPTION (CHOP SUR) apply? If yes (likely), analyze admissibility per ordinary CA rules

First things to check for each item of evidence

- Describe logical relevance for admissibility (not judicial notice or jury instructions) of each item:

Evidence must be relevant for it to be admissible. It is relevant if it tends to prove or disprove a material fact ([CA]: "a material fact *in dispute*").

- Describe legal relevance (FRE 403 / CEC 352): *Probative value vs. unfair prejudice*
 - Exclusions based on public policy: subsequent remedial measure, offers to settle, pay medical, etc.
- Documentary evidence? Must meet authentication and best evidence rule ([CA] secondary evidence rule)

Did someone testify?

- Who spoke? Judge & jurors are not competent to testify. Judge may provide proper judicial notice
- Did the witness have competency (personal knowledge)?
- Did the witness have an opinion? Lay witness vs. expert witness
- Was there an examination of a witness (transcript, question & answer)? [See [2009 FEB 3](#)]
 - If so, analyze both the question and the statement as one item of evidence
 - Discuss any objections to form of question/answer: leading, nonresponsive, speculative...
 - If a part of an answer is improper, note that counsel should assert motion to strike

Is the evidence a statement (he said... she said... out of court)?

Hearsay is an out-of-court statement made by the declarant offered to prove the truth of the matter asserted. It is inadmissible upon proper objection unless an exemption or exception applies.

- Multiple hearsay (double hearsay) (X said Y said Z)? Check admissibility for each level of hearsay
- Other purpose: Admissible if offered to show (instead of truth of the matter asserted): legally operative facts, effect on listener, knowledge of speaker, state of mind, non-human source
- Non-hearsay exemptions (party admission, prior inconsistent statement, prior consistent statement, prior ID) ([CA] These are still called "exceptions")
- Exceptions, applicable where declarant is unavailable (via PRISM: privilege, refusal, incapacity, someplace else, memory lacking)
- Exceptions, applicable where declarant is available or unavailable
- See if declarant can be impeached (discredited) based on: bias, motive to lie, defective memory or senses, prior inconsistent statement, prior bad act (dishonesty), poor reputation/opinion for truthfulness, convictions
- May also be character evidence, see below

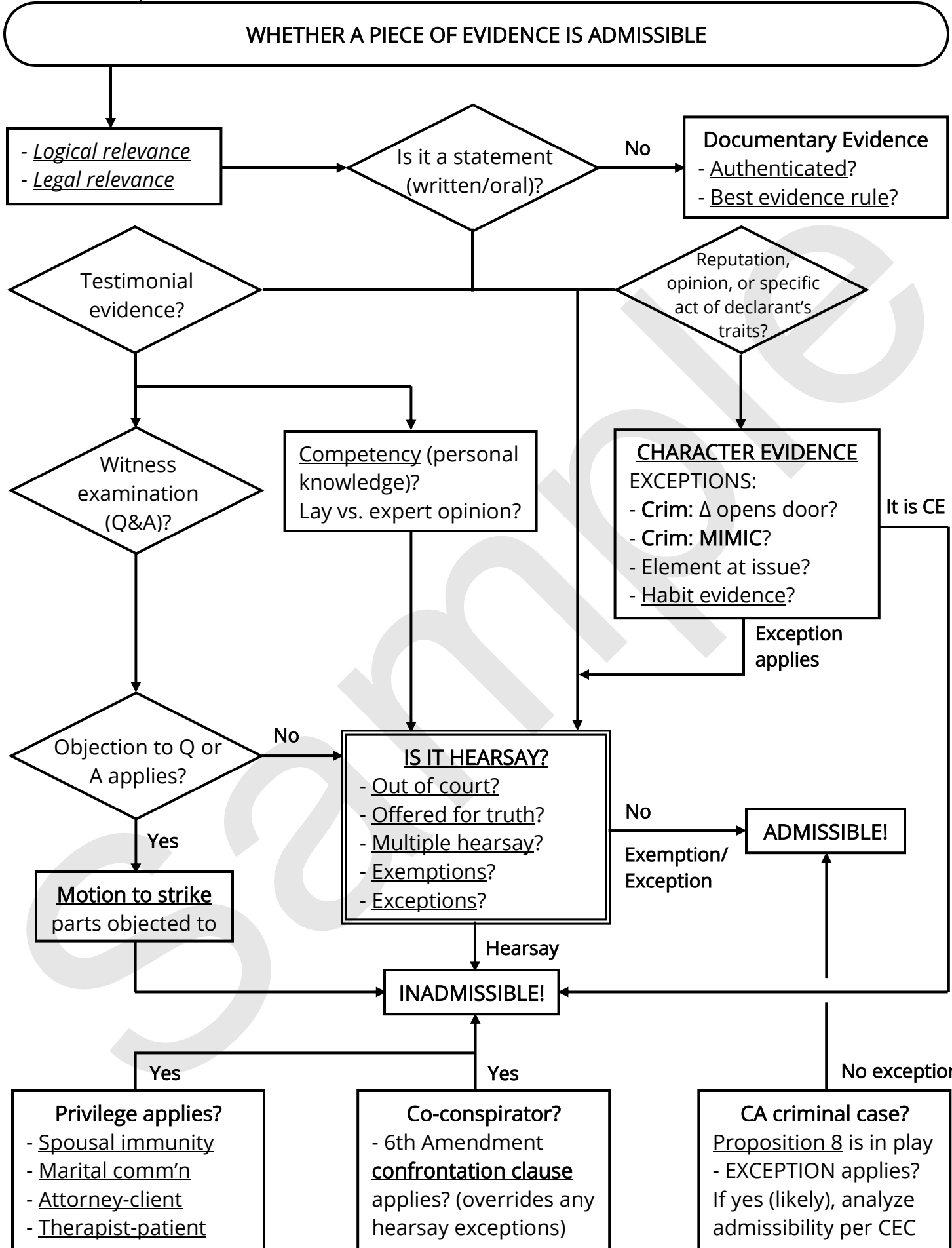
Does the evidence substantively (not to impeach) go to a person's traits (e.g., witness, defendant, victim)?

Character evidence: Character describes one's disposition with respect to general traits (good driver, trustworthy, etc.). Character evidence is inadmissible to prove conduct in conformity therewith. Just because [Δ] did [specific bad things showing similar character] before does not mean he did [charged act] in this case.

- Are there exceptions to introduce character evidence anyway (w/ reputation, opinion and/or specific acts)?
 - In a **criminal case** only:
 - After Δ opens the door (offers character evidence first)
 - MIMIC: to show other purpose (instead of to prove conduct in conformity)
 - Character is an element at issue (e.g., defamation, self-defense, child custody)
- Habit evidence? Look for words like "always," "every day" or "frequently"

Is there a special relationship between a declarant and another person?

- Check your privilege: attorney-client, spousal testimonial vs. marital communications, therapist-patient
- Co-defendant: Any coconspirator admissions? A6 confrontation clause (*overrides* hearsay exceptions)?



First things to check!

- Watch for crossover with WILLS or TRUSTS
- *Recite basic presumptions before anything else:*

California is a community property (CP) state. Property acquired during the marriage is presumptively CP. Property acquired before the marriage, by gift, will, or inheritance, or after termination of marriage, or income acquired from such property is presumptively separate property (SP). [If the facts mention another state outside CA: Quasi-CP (QCP) is property acquired by either spouse that would have been CP had the spouse been domiciled in California at the time of acquisition.] With these principles in mind, each item of property will be examined.

- Prerequisite to apply CP law: Determine whether parties were in a valid marriage or an alternative to marriage
 - Quasi-marital property (QMP) is property that would have been CP/QCP under a valid marriage
- Note any dates given (e.g., a timeline of events). Determine if any new rules apply...
 - From 1975: Married woman's special presumption no longer applies
 - From 1985: Transmutation and premarital agreement must be in writing to be enforceable
 - 1986–2002: Premarital agreements must be voluntary
 - From 1987: At divorce, SP is entitled to reimbursement for *joint property* purchased by spouses in/after 1987 (anti-Lucas)
 - From 2002: Presumption of involuntary premarital agreements unless 3 requirements met
- For each call (typically a particular asset or liability), consider the below topics based on what is asked for...

Characterization of asset: How much of the asset is CP, SP, QCP or QMP?

- Source of property? Characterize based on basic presumptions or special situations (see summary sheet)
 - Commingled property acquired with commingled funds (CP + SP)?
 - Determine CP and SP interests by apportioning
 - Proponent of SP wanting to claim SP can identify SP with tracing (two tracing methods)
- Presumptions? Check if any basic CP presumptions apply (can rebut by showing SP source or agreement)
- Actions taken to change the character of the property or to rebut CP presumptions?
 - Premarital agreement (agreement before marriage)
 - Transmutation (agreement during marriage)
 - Situational – assets characterized depending on various situations. Major ones include:
 - Personal injury award: Who is the tortfeasor?
 - SP business → Pereria vs. Van Camp
 - CP business → business goodwill is CP (two valuation methods)
 - Credit acquisition (property purchased with credit or loans) → lender's intent test
- Disposition? See below

Characterization of liability: What is the spouse's liability in the debt or liability?

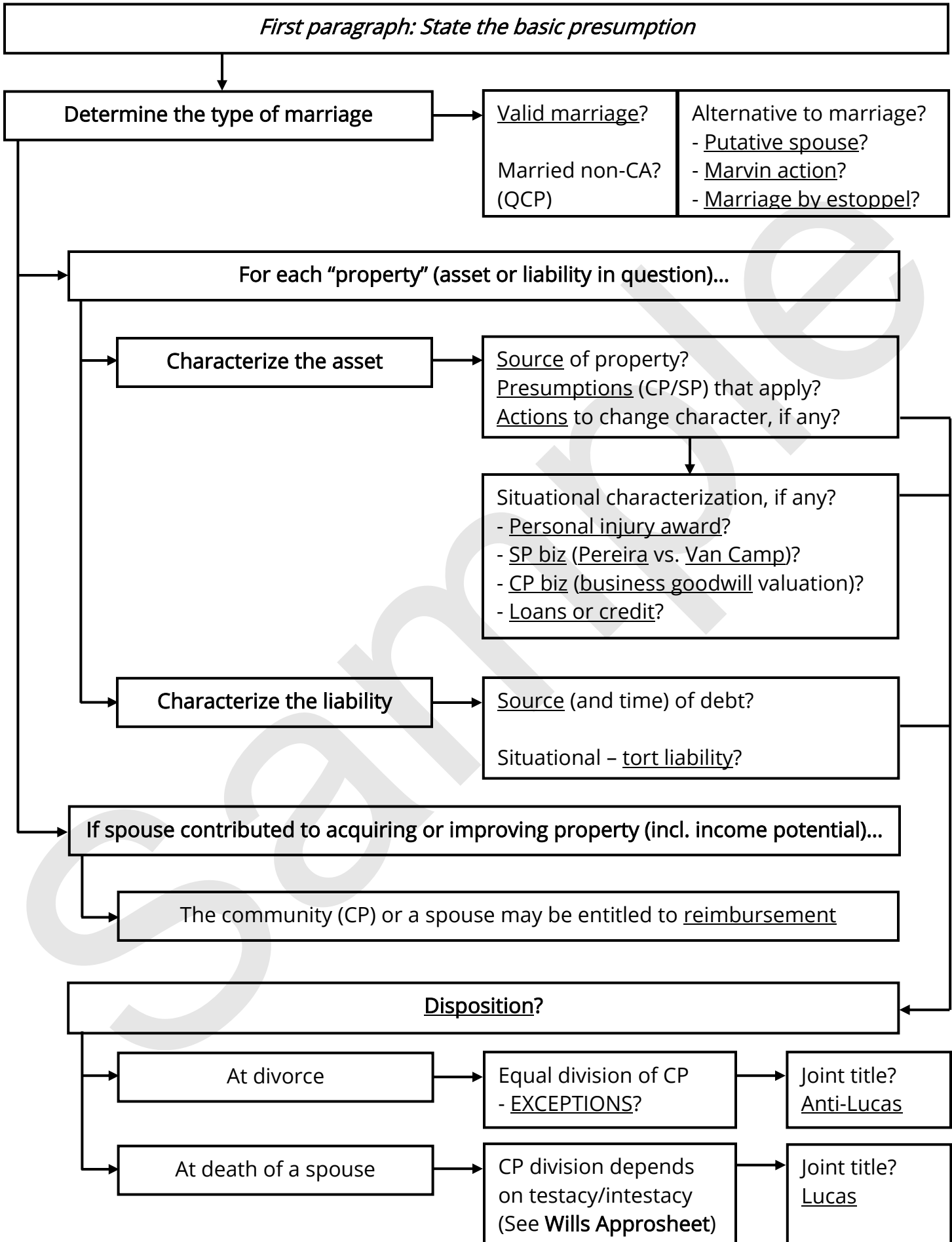
- For debt incurred before/during marriage (while not separated): CP is liable for such debts
- For debt incurred after dissolution of marriage: Did debtor spouse act for the **benefit of the community**?
- Tort liability: Did the tortious spouse act for the **benefit of the community**?
- Remember if joint title to property and **not** seeking distribution, each spouse still has ½ interest in SP

Any entitlement to reimbursement for prior contribution to CP or SP?

- A spouse who contributed SP may be entitled to reimbursement
 - A spouse who contributed large SP would want SP reimbursement, while a spouse who contributed small SP would want CP reimbursement for bigger split later
- Major situations for reimbursement: acquisition of property, improvement by community or a spouse, education or training (rebuttable presumption), payment of debts

Disposition: What happens to the property at divorce or death?

- Distribution at divorce: CP divided "in kind" (entitled to one-half interest), with EXCEPTIONS to equal division rule
 - If joint asset, SP may be entitled to reimbursement for contribution to purchase (anti-Lucas)
- Distribution at death: CP of dying spouse distributed depending on whether he dies with will or without will



APPROSHEETS | SECURED TRANSACTIONS

First things to check!

- Identify parties involved: creditors/secured parties (with security interest in collateral), debtor, any obligors
- Define and classify **type of good** between each debtor-creditor pair involved
 - Any possible ambiguity? For example, PMSI in a computer could be used for home use or business use and be treated as *consumer goods* or *equipment* to be analyzed separately [2000 Feb MEE]
- Confirm type of interest. For example, is it actually a security interest or a lease? [2009 July MEE]
- Identify type of security interest held by each creditor: **Is it a PMSI?** (Special rules may apply)

Was there a complete creation of a security interest?

- PMSI (credit for purchasing collateral) in *consumer goods*? Automatically perfected upon attachment
- Attached? 3 requirements
 - After-acquired property? Interest attaches only when debtor gets right to collateral [2010 Feb MEE]
- Perfected?
 - Does the type of good and security interest qualify for automatic perfection (no filing required)?
 - PMSI in *consumer goods*? Automatic perfection upon attachment
 - Any statute that provides for a specific way to perfect interest (e.g., notation on certificate of title)?
 - Proper name and address of debtor in financing statement?

Multiple creditors with conflicting security interests in collateral? Determine priority & entitlement to payment

- Special considerations to check for:
 - Is the interest a PMSI in consumer goods?
 - Is debtor an “innocent customer” who bought in the ordinary course of business? Highest priority
- Determine priority dates for each collateral and each debtor-creditor pair:
 - Date of filing financing statement? (May determine perfection date)
 - Date of possession/control? (May determine perfection date)
 - Date of attachment? (May determine priority between unperfected secured parties)
- Consider specific cases:
 - Good (accession) installed to another good? Security interest in whole > accession [2008 July MEE]
 - PMSI in equipment? PMSI in equipment prevails if perfected when debtor receives possession
 - Mortgage interest vs. security interest in fixture?
- Priority order in general—check when making final determination of priority:
 - Buyer in the ordinary course of business (think innocent consumer) wins over creditor
 - Subsequent buyer? Shelter rule (also wins over creditor)
 - Perfected creditor
 - Multiple perfected creditors? First to *file* or *perfect* has priority
 - Lien creditor
 - Buyer not in ordinary course of business
 - Attached but unperfected creditor
 - Unsecured creditor

Debtor defaults on (fails to pay) obligation? Statutory remedies may (or may not) be available for secured party

- Secured party may take possession of collateral
 - Self-help (repossess collateral)
 - Breach of the peace?
 - Judicial process (obtain a writ)
 - Strict foreclosure
- Secured party may dispose of collateral
 - Sale of collateral
 - Commercially reasonable?
 - Any leftover proceeds? Junior interests (by third party) may be entitled
 - Deficiency judgment if sale insufficient
- Did secured party violate rule? Secured party may be liable for damages or not be entitled to deficiency

