JAIL CONDITIONS: WHAT ARE THE LEGAL STANDARDS FOR HUMANE CONFINEMENT?

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CHAPTER 17

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What protection is afforded to individuals confined to a state jail? It is a well-settled constitutional principle that the state has an affirmative duty to tend to the basic human needs of convicted prisoners and pretrial detainees by providing them with essential care and protection.[1] This duty arises from the fact that the state has the power to restrain the liberty of these individuals, thereby depriving them of the ability to tend to their own basic needs.[2] When the state takes a person into its custody, a duty is imposed by the United States Constitution to assume some responsibility for the person's safety and general well-being.[3] "The affirmative duty to protect arises not from the state's knowledge of the individual's predicament or from its expressions of intent to help him, but from the limitation which it has imposed on his freedom to act on his own behalf."[4] The state's duty to ensure that convicted prisoners and detainees are provided humane confinement includes providing adequate shelter, clothing, food, and medical care.[5]

The status of an individual held in confinement-either as a convicted prisoner or pretrial detainee-determines what constitutional provisions guarantee humane confinement. Convicted prisoners are afforded humane confinement under the Cruel and Unusual Punishment Clause of the Eighth Amendment.[6] Pretrial detainees, on the other hand, are afforded humane confinement under the Due Process Clause of the Fourteenth Amendment.[7] The Eighth Amendment does not apply to pretrial detainees because "Eighth Amendment scrutiny is appropriate only after the State has complied with the constitutional guarantees traditionally associated with criminal prosecutions."[8] However, where "the State seeks to impose punishment without [an adjudication of guilt], the pertinent constitutional guarantee is the Due Process Clause of the Fourteenth Amendment."[9]

Whether convicted prisoner or pretrial detainee, the Constitution guarantees all individuals in custody humane confinement. Because the constitutional rights of individuals in this country, including both convicted prisoners and pretrial detainees, are of great importance, the issue of humane jail

confinement has developed into a large and fairly well-defined body of case law. This paper will discuss the legal standards that govern cases alleging constitutional violations based on inhumane jail confinement.

I. Making the Constitutional Claim

A. Bringing a Claim Under 42 U.S.C. § 1983

A claim of a constitutional violation by an inmate can be brought under 42 U.S.C. § 1983, which states:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. . .

The language of section 1983, by itself, creates no substantive rights.[10] It merely provides for derivations of rights established elsewhere.[11] To successfully make a claim under section 1983, the person must allege a violation of a constitutional right and must also demonstrate that the alleged deprivation was committed by a person acting under the color of state law.[12] If both prongs of this test are not met, a constitutional claim under section 1983 cannot succeed.

Once a plaintiff has alleged inhumane confinement under 42 U.S.C. § 1983, it becomes necessary to determine what standard of review should be used in the case. This determination depends on two things: 1.) the status of the inmate, either as pretrial detainee or convicted prisoner; and 2.) the underlying nature of the alleged violation, either as unconstitutional jail conditions or unconstitutional acts and omissions.

II. The Status of the Individual Determines the Standard of Review

The first inquiry to make when determining the proper standard of review in a jail case is whether the individual alleging a constitutional violation was categorized as a pretrial detainee or convicted prisoner during the period of confinement. This is an important inquiry because the standard of review may differ depending on the classification of the individual. The standard of review for pretrial detainees will be discussed first.

A. The Standard of Review for Pretrial Detainee Claims

When a pretrial detainee brings a constitutional claim under section 1983 alleging that prison officials failed to protect him from potential injury, the standard of review depends upon the underlying nature of the alleged constitutional violation. A pretrial detainee can bring a constitutional claim based on "jail conditions" or based on the "episodic acts or omissions" of jail officials.[13] The distinction between jail conditions and episodic acts or omissions of jail officials is important because a different standard of review is employed for each.

1. Unconstitutional Jail Conditions

A jail conditions case challenges the constitutionality of general conditions, rules, or practices of the confinement.[14] When a court is deciding the constitutionality of a condition of pretrial detention, it must decide whether the condition which is the subject of complaint amounts to punishment.[15] Under the Due Process Clause of the Fourteenth Amendment, a pretrial detainee may not be punished by the state prior to adjudication of guilt.[16] According to the Supreme Court in *Bell v. Wolfish*,

> "[a] person lawfully committed to pretrial detention has not been adjudged guilty of any crime. He has had only a 'judicial determination of probable cause as a prerequisite to [the] extended restraint of [his] liberty. . . Under such circumstances, the Government concededly may detain him to ensure his presence at trial and may subject him to restrictions and conditions of the detention facility so long as those conditions and restrictions do not amount to punishment, or otherwise violate the Constitution."[17]

Not every disability imposed upon a detainee amounts to punishment.[18] Loss of freedom and confinement are obviously a result of pretrial detention.[19] The loss of freedom by itself does not make the confinement unconstitutional.[20] Therefore, in order to decide whether a condition of confinement is unconstitutional, the law requires the court to determine whether the disability imposed on the detainees is for the purpose of punishment.[21] Absent an express intent of the jail officials to punish the detainees, this determination will turn on whether the disability is reasonably related to some legitimate governmental purpose.[22] If a particular condition causing the disability is reasonably related to a legitimate governmental purpose, the condition does not amount to punishment.[23] If the disability is not reasonably related to a legitimate governmental purpose, then it does amount to punishment and is in violation of the detainees' constitutional rights.[24] This reasonable relationship test, which was articulated by the Supreme Court of the United States in *Bell v. Wolfish*,[25] starts with the assumption that the state intended to cause the alleged

constitutional violation.[26] Rather than delving into the intent of the state, the test merely requires a court to ask whether the challenged policy or practice is reasonably related to a legitimate governmental objective.[27] The courts will generally accept the expertise of policy makers involved in the operation of custodial facilities on issues of security and administration.

The Supreme Court has recognized a distinction between punitive measures that may not constitutionally be imposed prior to a determination of guilt and regulatory measures that may be imposed.[28] In *Kennedy v. Mendoza-Martinez,* the Court listed various considerations that can be used in making this distinction, such as "whether the sanction involves an affirmative disability or restraint, whether it has historically been regarded as a punishment, whether it comes into play only on a finding of *scienter*, whether its operation will promote the traditional aims of punishment—retribution and deterrence, whether the behavior to which it applies is already a crime, whether an alternative purpose to which it may rationally be connected is assignable for it, and whether it appears excessive in relation to the alternative purpose assigned."[29] Case law holds that legitimate governmental purposes include not only confining an individual to ensure his presence at trial, but also safety and maintenance of the facility.[30] Legitimate governmental purposes may require administrative measures designed to maintain order in the jail.[31]

For example, in *Bell v. Wolfish*, the Supreme Court upheld the constitutionality of the practice of double-bunking detainees (a practice of putting more than one detainee in a cell originally designed for one person) despite the detainees' decreased privacy.[32] The Court found that the practice of double-bunking was reasonably related to the legitimate governmental purpose of coping with an increasing inmate population.[33] The Court found the double-bunking to be reasonable because the detainees were only required to spend seven to eight hours each day in their cell, and most of that time was spent sleeping. The remainder of the time, the detainees were allowed to move freely between their rooms and a common area.[34] Further, the Court found that the detainees only spent an average of sixty days in the facility and that sleeping in the same cell and sharing toilet facilities with another detainee for that amount of time was reasonable.[35] The Court in *Bell* also found that both a "publisher-only" rule (a rule prohibiting inmate's access to outside reading materials unless mailed directly from the publisher) and a rule prohibiting outside

packages containing food or personal items were constitutional because they were reasonably related to legitimate security concerns.[36] Corrections officers had determined that allowing outside materials would increase the risks of smuggled contraband, gambling, fights, and theft.[37] It is important to note that the Supreme Court in *Bell v. Wolfish* deferred to the expert opinion of the jail officials regarding what measures were necessary to maintain order and safety in the jail. It held that the determination of whether a jail practice is reasonably related to the governmental interest in maintaining order and safety in a jail is within the expertise of the jail officials.[38] In the absence of "substantial evidence in the record to indicate that the officials have exaggerated their response to these consideration of order and safety, courts should defer to the expert opinion of the jail officials.[39]

2. Episodic Acts or Omissions

Inadequate jail conditions are only one category of pretrial detention claims. Claims can also be brought for specific unconstitutional acts and/or omissions of jail officials. Claims based on episodic acts or omissions, as opposed to claims based on jail conditions, allege that a jail official breached his constitutional duty to tend to the pretrial detainees basic human needs.[40] Episodic acts or omissions cases are reviewed under an entirely different standard than jail condition cases. Episodic acts and omissions are analyzed under the deliberate indifference test as set out in *Farmer v. Brennan*.[41] This standard does not allow for the same assumption of intent as seen in the *Bell* test. The *Farmer* test requires the plaintiff to show deliberate indifference on the part of jail official who allegedly committed the constitutional violation.[42] However, if the plaintiff is seeking to impose liability not only on the jail official, but also the governmental entity employing the jail official, be mindful that the doctrine of respondeat superior does not apply.[43] A pretrial detainee seeking to impose liability on the jail official and also the governmental entity that employs the jail official must to satisfy a two-pronged deliberate indifference test: 1.) whether the jail official acts or omissions were carried out with deliberate indifference; and 2.) whether the acts or omissions were the result of a policy or custom maintained by the governmental entity with deliberate indifference.[44]

Deliberate indifference is a stringent standard.[45] To satisfy the deliberate indifference standard, more than mere negligence is required.[46] Deliberate indifference is basically the equivalent of acting recklessly.[47] However, the term "recklessness" is not self defining and can take either a subjective or an objective form.[48] This is best illustrated by looking at the two-pronged deliberate indifference test for episodic acts and omissions set out above. To satisfy the first prong of the test, (that a jail official acted with deliberate indifference), requires finding that the jail official acted with *subjective* deliberate indifference.[49] Subjective deliberate indifference is found when an excessive risk to inmate health or safety is known, but disregarded.[50] Not only must the jail official be aware of facts from which the inference could be drawn that a substantial risk of serious harm existed, he also must have drawn the inference.[51] To satisfy the second prong of the test-that the acts or omissions were the result of a policy or custom maintained by the governmental entity with deliberate indifference, there must be a finding that the governmental entity acted with *objective* deliberate indifference.[52] In order to show objective deliberate indifference on the part of governmental entity, the plaintiff must provide evidence that the governmental entity knew or should have known of the risk of harm to the inmates at the jail, yet either adopted or maintained the policy or custom, or failed to have an appropriate policy when the potential risk of harm for failing to have a policy was known. [53]

3. How to Classify- Jail Conditions or Episodic Act or Omissions?

How does one determine whether the pretrial detention claim is one of jail conditions or one of episodic acts or omissions? Generally, claims of inadequate staffing, inadequate food, lack of reasonable access to medical care, unsanitary conditions, revocation of telephone, television and cigarette privileges, denial of visitation privileges, disciplinary segregation, overcrowding, excessive confinement to one's cell, and inadequate sleeping arrangements are categorized as jail conditions cases.[54] In contrast, claims of episodic acts and omissions are generally ones where the "detainee complains first of a particular act of, or omission by, the actor and then points derivatively to a policy, custom, or rule (or lack thereof) of the municipality that permitted or caused the act or omission."[55] For example, jail suicide cases have routinely been held to be cases of episodic acts and omissions.[56] Jail suicide cases are often classified as episodic

acts and omissions cases because they are thought to be based on the failure of particular jail officials to provide care and safety for those in their custody.[57]

The determination of whether the case is one of jail conditions or one of episodic acts and omissions is not always clear cut. It requires a detailed analysis of the underlying facts. A good example is the court's decision in *Scott v. Moore*, 114 F.3d 51, 54 (5th Cir. 1997). In *Scott v. Moore*, the plaintiff, a female pretrial detainee, brought suit after a jailer sexually assaulted her while she was confined to the city jail.[58] The plaintiff's petition complained of inadequate staffing because there was only one jail official on duty and/or there was not a female jail official on duty when the female detainees were confined.[59] However, the court found that "the actual *harm* of which she complains is the sexual assaults committed by [the jailer] during the one eight-hour shift--an episodic event perpetrated by an actor interposed between Scott and the city."[60] Because "Scott did not suffer from the mere existence of the alleged inadequate staffing, but only from [the jailer's] specific sexual assaults committed on but one occasion," the court found that this was an episodic acts case rather than a jail conditions case.[61]

B. The Standard of Review for Convicted Prisoner Claims

Cases brought by those classified as convicted prisoners during their time of confinement are at times subject to a different standard of review than those brought by pretrial detainees. The constitutional right to humane confinement is guaranteed to convicted prisoners by the Eighth Amendment. Eighth Amendment claims alleged by convicted prisoners, regardless of classification as either a jail conditions case or episodic acts and omissions case, are evaluated under the *Farmer* standard discussed above.[62] Deliberate indifference is the standard in both conditions and episodic acts and omissions cases for convicted prisoners because it has been held that in order to violate the Cruel and Unusual Punishment Clause of the Eighth Amendment, a prison official must have a culpable state of mind.[63] The Supreme Court adopted the deliberate indifference test even for claims of inhumane jail conditions by convicted prisoners when it stated:

> "It is obduracy and wantonness, not inadvertence or error in good faith, that characterize the conduct prohibited by the Cruel and Unusual Punishments Clause, whether that conduct occurs in connection with establishing conditions of confinement, supplying medical needs, or restoring official control over a tumultuous cellblock."[64]

Therefore, when dealing with a constitutional claim of only a convicted prisoner, there is not the issue of how to classify the claim since a deliberate indifference standard is employed regardless of the classification. If, however, the status of the inmate either as convicted prisoner or pretrial detainee is unclear and the claim asserted is episodic in nature, the proper standard is the deliberate indifference standard set out in *Farmer*.[65]

III. The Prison Litigation Reform Act Creates Additional Hurdles to Plaintiffs in Federal Court

In addition to understanding the different legal standards outlined in Section II, above, a practitioner involved in suing or defending jail cases should be aware of the Prison Litigation Reform Act ("PLRA"), which was adopted by Congress in 1996. This Act was enacted with the goal of reducing prison litigation and limiting the involvement of federal courts in state prisons, although the problems that have come with the PLRA make the Act's efficacy questionable.[66] The PLRA creates additional hurdles which must be overcome for an aggrieved inmate wishing to file suit in federal court. In particular, it requires an aggrieved inmate who is confined at the time the suit is filed to have exhausted administrative remedies, such as using the jail's grievance procedure, and to pay filing fees up front and in full.

A. Exhaustion of Administrative Remedies

Section 1997e(a) of the PLRA states: "No action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted."[67] This statutory provision requires an inmate who is still in confinement at the time he wishes to file suit to: (1) file a grievance according to internal grievance procedure; and (2) file any available administrative appeals.[68] Every claim that the plaintiff wishes to bring in the lawsuit must be exhausted.[69] The PLRA's exhaustion requirement "applies to all inmate suits about prison life, whether they involve general circumstances or particular episodes."[70] Even when an inmate seeks relief that cannot be obtained through the grievance process, such as monetary damages, he must still exhaust his administrative remedies before filing suit in federal court.[71] Exhaustion of administrative remedies requires more than just talking to a warden or even filling out a kite; it requires going through the formal grievance process.

The Supreme Court has recently affirmed the majority rule that the failure to exhaust administrative remedies is an affirmative defense.[72] If the prisoner fails to exhaust administrative remedies for a particular claim, the claim may be dismissed. This does not mean that the entire suit must be dismissed; the claims for which administrative remedies were exhausted may proceed in federal court.[73] The claims that are dismissed for failure to exhaust are to be dismissed without prejudice.[74] The inmate then has a chance, provided that the statute of limitations has not run, to exhaust administrative remedies for those claims that have been dismissed and to re-file suit.[75]

B. Filing Fees

In addition to the requirement of exhaustion of administrative remedies, the PLRA provides that prisoners must pay their filing fees in full, including indigent prisoners. 28 U.S.C. 1915(b) states that "if a prisoner brings a civil action or files an appeal in forma pauperis, the prisoner shall be required to pay the full amount of a filing fee."[76] A complex statutory formula requires the indigent inmate to pay an initial fee of twenty percent of the greater of the inmate's average balance or the average deposits to the account for the preceding six months.[77] After the initial payment, the prisoner is to pay monthly installments of twenty percent of the income credited to the account in the previous month until the fee has been paid.[78] Under the PLRA, if an inmate filing in forma pauperis has three lawsuits or appeals dismissed as frivolous, malicious, or failing to state a claim, he cannot proceed in forma pauperis unless he can show imminent danger of serious injury.[79] This means that the inmate has to pay for any suits after the three up front or the suit will be dismissed. This is known as the "three strikes" provision.[80]

III. Conclusion

This paper discusses current legal standards in a complex area of the law. This paper does not discuss many of the procedural, legal, political and practical issues that surround the prosecution and/or defense of these suits. These are difficult and expensive cases to prosecute or defend. From the plaintiff's perspective these cases are subject to procedural and legal challenges, and immunities from an opponent that is usually very knowledgeable and well funded, and which enjoys many practical advantages. When bringing or defending a confinement case, you need to start with having as detailed knowledge as is

possible regarding the underlying facts, which will allow you to understand the legal standard of review for the alleged wrongful conduct or policy. Absent this, you will not understand the applicable legal standard to be employed, and it will be difficult to develop your case appropriately.

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[1] *Hare v. City of Corinth*, 74 F.3d 633, 639 (5th Cir. 1996) (en banc) (citing *DeShaney v. Winnebago County Dep't of Soc. Servs.*, 489 U.S. 189, 200 (1989)); *see also Estelle v. Gamble*, 429 U.S. 97, 103-104 (1976).
[2] *DeShaney*, 489 U.S. 189 at 199-200.
[3] *Id*.
[4] *Id*. at 200.
[5] *Stevenson v. Anderson*, No. 3:00-CV-2157-M, 2001 U.S. Dist. LEXIS 21478, at *9 (N.D. Tex. Dec. 26, 2001).
[6] *See Gamble*, 429 U.S. at 104; *cf. Bell v. Wolfish*, 441 U.S. 520, 537 (1979).
[7] *Bell*, 441 U.S. at 535-37.
[8] *Ingraham v. Wright*, 430 U.S. 651, 671-72, n.40 (1977).
[9] *Id*.
[10] *Oklahoma City v. Tuttle*, 471 U.S. 808, 816 (1985).
[11] *Id*.
[12] *Stevenson v. Anderson*, No. 3:00-CV-2157-M, 2001 U.S. Dist. LEXIS 21478, * at 6-7 (N.D. Tex. Dec. 26, 2001).
[13] *Hare*, 74 F.3d at 644-45.
[14] *Harris v. Gurski*, No. 3:00-CV-0673-BC, 2001 U.S. Dist. LEXIS 20651, at *8 (N.D. Tex. Dec. 11, 2001).
[15] *Bell*, 441 U.S. at 535.
[16] *Id*.
[17] *Id*. at 536 (citations omitted).
[18] *Id*. at 537.
[19] *Id*.
[20] *Id*.
[21] *Id*. at 538-39.
[22] *Id*.
[23] *Id*.
[24] *Id*.
[25] 441 U.S. 520 (1979).
[26] *Hare*, 74 F.3d 633 at 644-45.
[27] *Id*.; *see also Bell*, 441 U.S. 520 at 538-39.
[28] *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 168-69 (1963).
[29] *Id*.
[30] *Bell*, 441 U.S. at 540.
[31] *Id*.
[32] *Id*. at 541-43.
[33] *Id*. at 542.
[34] *Id*. at 543.
[35] *Id*.
[36] *Id*. at 561-62.
[37] *Id*. at 548-553.
[38] *Id*.
[39] *Id*.
[40] *Gurski*, 2001 U.S. Dist. LEXIS 20651, at *8.
[41] *Hare*, 74 F.3d at 643, *see also Farmer v. Brennan*, 511 U.S. 825 (1994).
[42] *Farmer*, 511 U.S. at 837-38.

[43] *Mathis v. Cotton*, No. 3:95-CV-2404-P, 1997 U.S. Dist. LEXIS 23411, at *8 (N.D. Tex. Aug. 6, 1997) (citing *Monell v. Dep't of Soc. Svs.*, 436 U.S. 658 (1978)).
[44] *Scott v. Moore*, 114 F.3d 51, 54 (5th Cir. 1997).
[45] *Id*. at 55.
[46] *Farmer,* 511 U.S. at 835-36.
[47] *Id*. at 824.
[48] *Id*. at 825.
[49] *Id*.
[50] *Id*.
[51] *Id*.
[52] *Moore*, 114 F.3d at 54.
[53] *Buffin v. Bowles*, No. 3:99-CV-1386-H, 2000 U.S. Dist. LEXIS 12899, *15 (N.D. Tex. Sept. 7, 2000).
[54] *Moore*, 114 F.3d at 53; *see also Murphy v. Walke*r, 51 F.3d 714 (7th Cir. 1995) (revocation of telephone, television, and cigarette privileges); *Collazo-Leon v. United States Bureau of Prisons*, 51 F.3d 315 (1st Cir. 1995) (disciplinary segregation and denial of telephone and visitation privileges); *United States v. Millan*, 4 F.3d 1038 (2d Cir. 1993) (length of pre-trial detention); *Hause v. Vaught*, 993 F.2d 1079 (4th Cir. 1993) (restriction on mail privileges); *Brogsdale v. Barry*, 288 U.S. App. D.C. 311, 926 F.2d 1184 (D.C. Cir. 1991) (overcrowding); *Lyons v. Powell*, 838 F.2d 28 (1st Cir. 1988) (22-23-hour confinement and placement of mattress on floor).
[55] *Moore*, 114 F.3d at 53.
[56] *Hare*, 74 F.3d at 633; *Flores v. County of Hardeman*, 124 F.3d 736 (5th Cir. 1997); *Posey v. Southwestern Bell Tel. L.P.*, 430 F. Supp. 2d 616 (N.D. Tex. 2006).
[57] *Posey*, 430 F. Supp. 2d at 622.
[58] *Moore*, 114 F.3d at 52.
[59] *Id*. at 53.
[60] *Id*.
[61] *Id*.; *see also Flores*, 124 F.3d at 736 (court found that jail suicide case was an episodic acts and omissions case despite plaintiff's pleadings of both jail conditions and episodic acts and omissions).
[62] *Gurski*, 2001 U.S. Dist. LEXIS 20651, at *7-8.
[63] *Farmer*, 511 U.S. at 834.
[64] *Whitley v. Albers*, 475 U.S. 312, 319 (1986) (emphasis added; citations omitted; internal quotation marks omitted).
[65] *Gurski*, 2001 U.S. Dist. LEXIS 20651, at *8.
[66] Barbara Belbot, *Report on the Prison Litigation Reform Act: What Have the Courts Decided So Far*?, 84 THE PRISON JOURNAL 290 (Sept. 2004); *see also* Margo Schlanger & Giovanna Shay, *Preserving the Rule of Law in America's Prisons: The Case for Amending the Prison Litigation Reform Act,* American Constitution Society for Law and Policy (Mar. 2007).
[67] 42 U.S.C. § 1997e(a).
[68] *Wendell v. Asher*, 162 F.3d 887, 891 (5th Cir. 1998).
[69] *See Jones v. Bock*, 127 S. Ct. 910 (2007).
[70] *Porter v. Nussle*, 534 U.S. 516, 532 (2002).
[71] *Booth v. Churner*, 532 U.S. 731, 741 (2001); *see also Fisher v. Simpson*, No. 3:04-CV-647-L, 2004 U.S. Dist. LEXIS 5727, at *3 (Apr. 5, 2004).
[72] *Bock*, 127 S. Ct. at 921.
[73] *See id*. at 925-26.
[74] *Id*.
[75] *Id*; *see also Asher*, 162 F.3d at 892.
[76] 28 U.S.C. § 1915(b).
[77] *Id*. at §1915(b)(1)
[78] Id. at § 1915(b)(2).
[79] 28 U.S.C. § 1915(g).
[80] 1 COLUM. HUM. RTS. L. REV., A JAILHOUSE LAWYER'S MANUAL 300. (6th ed. 2005).