TIPS FOR CLEAR STRUCTURE ON ESSAY ANSWERS

1. **Organize your answer before you write.** After you read the question, you must resist the urge to write your answer immediately. Instead, take time to collect your thoughts and **outline / sketch / jot down / plan / map out** the governing legal rules that will guide your analysis. Match/link facts from the hypo that are relevant to each rule or portion of the rule. Decide the order in which you’ll address each major topic. **Rule of thumb: spend 20% to 25% of total time planning/organizing.**

2. **Use Headings & “White Space.”** On exams, clarity is king. Simple headings (e.g. Tom v. Nancy: Battery) effectively and immediately tell your professor where you are (and where you are not) in your answer. Similarly, “hard returns” between paragraphs (“white space”) further separate discrete thoughts and reduce the risk of confusing your grader. **Use these visual organization cues liberally.** You can’t use too many.

3. **IRAC (or CRAC) insures you write what you think you’re writing.** IRAC allows the reader to logically learn from and follow a legal problem. Done properly, it (1) teaches the reader the law and (2) shows how that law applies to a particular set of facts. Think of your exam answer as educating an **uninformed** reader, **not** your professor (“who knows everything anyway”), which can result in you omitting key rules or other important information. Try these sentence templates to draft super-clear IRAC/CRAC exam answers:

   a. **Issue:** “The issue is **whether** [reference to law you’re about to write about] **when** [key fact(s) from hypo].” Examples:

      i. *The issue is whether* Tom committed burglary *when* he took the backpack from Jane’s home, mistakenly thinking it belonged to him.

      ii. *The issue is whether* Tom legally accepted Jane’s offer *when* he gave her a “thumbs up” but said nothing.

   b. **Rule:** State all the rules that are relevant to the discussion. **You must know the rules cold - either memorize them or have them perfectly drafted in your outline to copy on exam day.** No segue is necessary from the issue statement - just state the governing rule(s) (rule is just a generic term for law, and is sometimes referred to as a test or mode of analysis).

      i. **Start with “To”:** To prove negligence / To have personal jurisdiction / To establish murder...

      ii. **“Sub-Rules” (“rules about rules”)** A “subrule” defines, clarifies, or explains part of a broader rule (e.g. the “substantial certainty” rule is a rule about part of the definition (rule) of battery – it further clarifies the intent element). List subrules immediately after the primary rule.

   c. **Application:** Critical words: “Here” or “In this case” and **because** + fact(s) from hypothetical”

      i. In this case, the element of intent is satisfied **because** [fact from hypo]

      ii. Here, the first prong of the Lopez test is satisfied **because** [fact from hypo].

      iii. No fact(s) about an element? Here’s a trick: “The facts suggest that…” or “Nothing in the facts suggests [opposite of obvious presumption].” e.g. Nothing in the facts suggests that Tom did not intend to hit Jane with the chair.”

   d. **Conclusion:** Your conclusion is the least important part if you’ve written strong I, R, and A sections. When professors talk about “uncertainty,” they mean with the C (not with R!) – so don’t stress over your final answer. One sentence is plenty: “In conclusion, Jane probably can prevail on her battery claim.”
INSTRUCTIONS

1. **Review the Tips (p.1) carefully.** The only point of this exercise is to apply the Tips to what you write. It is *not* to test your substantive knowledge of a particular area of the law. Success on this exercise should be evaluated in terms of your ability to apply the Tips and create a clear structure in your practice essay answer.

2. **Read the “Practice Question” (p.3).** The subject matter happens to be Torts, but remember that you don’t need to know anything about Torts to answer the question – the focus here is *structure*. We have provided “Governing Legal Rules” (p.4) which you should use to draft your answer.

3. **Read the “Governing Legal Rules” (p.4).** Then re-read the Practice Question with these rules in mind.

4. **Complete the “Pre-Writing Exercise” (pp. 5-6).** Take your time and do this thoroughly. The point is to put the Tips – including the sentence templates – into practice. You can (should) use the sentences from this exercise in your answer.

5. **WRITE your answer.** Use the organizational framework and IRAC sentences that you created in the Pre-Writing exercise. Try to use the Tips at every opportunity. Spend anywhere from 30 to 60 minutes writing.

6. **Read the “Model Answer UNANNOTATED” (pp.7-8).** We learn to write by emulation. Read the Model Answer to see effective ways to apply the Tips and write a super-clear and well-structured exam answer. Compare your own answer.

7. **Read the “Model Answer ANNOTATED” (pp.9-10).** This version of the model answer has each sentence labeled (*Issue / Rule / Application / Conclusion*) to drive home the point that structuring a clear and thorough exam answer can be achieved simply by using one sentence template from the Tips after the other.
Practice Question (Torts)

Dennis and Margaret are children who live in the same neighborhood. One day after school, Dennis noticed Margaret walking ahead of him on the sidewalk. The two were near a large apple tree with dozens of fallen apples surrounding it on the ground. Dennis called out to Margaret, and yelled, “Hey Margaret, I’m gonna hit you with an apple!” But before Dennis could move to pick up an apple, Margaret quickly grabbed one off the ground and threw it at Dennis, but missed. After that, Dennis pulled a squirt gun out of his pocket and pointed it at Margaret. Dennis knew that the squirt gun was unloaded, but he wanted to scare Margaret. When Margaret saw Dennis pointing the squirt gun at her, she recoiled and put her hands over her face, shouting, “A little water isn't going to scare me!” Dennis pulled the trigger then said, “Ha, it wasn’t even loaded.”

Discuss the claims that Dennis and Margaret might bring against each other, and whether each claim is likely to succeed and why (or why not). Assume that there is no age minimum for liability.
Governing Legal Rules

Battery

- A battery is an affirmative act by the defendant against the plaintiff made with the intent to bring about a harmful or offensive contact and that actually causes such a contact.

- The absence of intent to injure does not absolve defendant of liability for battery. Intent can be demonstrated where defendant had sufficient knowledge to foresee the harmful or offensive contact with “substantial certainty.”

Assault

- An assault is an affirmative act by the defendant with the intent to place the plaintiff in apprehension of an imminent harmful or offensive contact to his person and that actually causes the plaintiff apprehension.

- The act requirement is generally not satisfied by words alone—there usually has to be some volitional movement of the body for there to be a reasonable apprehension of imminent contact.

- The apparent ability to inflict contact is all that is needed to demonstrate actual apprehension of contact – the fact that the contact cannot actually be carried out is irrelevant.

- The plaintiff does not need to experience actual fear; an apprehension of contact that is offensive (i.e., not consented to) is sufficient.

- Under the doctrine of transferred intent, the intent to inflict a battery satisfies the intent requirement for assault.
Pre-Writing Exercise

1) The following headers can provide visual organizational cues for your reader. Read them all, then circle whether each heading should be either a major header or a subheader (a header that is part of but under a major header).

- Assault: *Pointing the empty squirt gun* (major heading / subheading)
- Dennis v. Margaret (major heading / subheading)
- Assault: *Threatening to Throw the Apple* (major heading / subheading)
- Battery: *Throwing the Apple* (major heading / subheading)
- Assault: *Throwing the Apple* (major heading / subheading)
- Margaret v. Dennis (major heading / subheading)

2) In the space below arrange the headers & subheaders (from question 1) in the order that makes best sense for a clear answer. Be sure to use these headers in this order when you write your answer!

____________________________________________________
____________________________________________________
____________________________________________________
____________________________________________________
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____________________________________________________

3) Choose (then use) the best IRAC Issue statement regarding Dennis’ possible assault against Margaret:

   a) The issue is whether Dennis is liable to Margaret for assault.
   b) The issue is whether Dennis caused Margaret to suffer actual apprehension.
   c) The issue is whether Dennis committed an assault when he pointed the empty squirt gun at Margaret and pulled the trigger.
   d) The issue is that whether Margaret can establish the prima facie elements of assault against Dennis.

4) Choose (then use) the best IRAC Issue statement regarding Margaret’s possible battery against Dennis:

   a) The issue is whether Margaret committed battery when she threw an apple at Dennis but missed.
   b) The issue is whether Margaret committed battery when she threw an apple at Dennis.
   c) The issue is that whether Dennis can establish the prima facie elements of battery against Margaret.
   d) The issue is whether the facts demonstrate that Margaret actually intended to hit Dennis with an apple.
5) **Complete the following IRAC Application statements:**

a) Here, it is likely that Dennis had the requisite intent for assault when he pointed the squirt gun *because* [what fact?] …

b) Here, it is likely that Dennis’ act of pointing the squirt gun at Margaret satisfies the element of assault *requiring actual apprehension of contact because* …

c) Here, Margaret’s act of throwing the apple at Dennis would not meet the “offensive contact” element of a battery case …

d) Here (regarding Dennis’ threat to throw the apple) it is unlikely that Dennis demonstrated the required element of ______________________________ because the facts suggest that Dennis never moved to pick up an apple.

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**NOW WRITE**

Remember that the point is to try out as many of the Tips from page 1 as you can. To that end, be sure to **actually use** the organizational framework (headers) and IRAC sentences you selected as “best” in this exercise.
Model Answer: UNANNOTATED

Margaret v. Dennis

Assault: Threatening to Throw the Apple

The issue is whether Dennis committed assault when he threatened to throw an apple at Margaret. An assault is an affirmative act by the defendant with the intent to place the plaintiff in apprehension of an imminent harmful or offensive contact to his person and that actually causes the plaintiff apprehension. The act requirement is generally not satisfied by words alone – there usually has to be some volitional movement of the body for there to be a reasonable apprehension of imminent contact.

In this case, the requirement of an affirmative act is probably not satisfied because (as noted above) words alone are not enough, and because the facts suggest that Dennis never actually moved to pick up an apple. Therefore, Dennis’ mere verbal threat, apparently without any accompanying action, would fail to satisfy the requirement of an affirmative act. Even if Dennis intended to cause apprehension in Margaret with his threat, and even if she experienced actual apprehension because of it, without a volitional affirmative act, Margaret would not be able to establish a prima facie case for assault.

In conclusion, an assault claim based on Dennis’ threat to hit Margaret with an apple would probably fail.

Assault: The empty squirt gun

The next issue is whether Dennis committed an assault when he pointed the empty squirt gun at Margaret and pulled the trigger. The prima facie case for assault is stated above. Additionally, the fact that the contact cannot actually be carried out is irrelevant – the apparent ability to inflict contact is all that is needed to demonstrate actual apprehension of contact. Also, the plaintiff does not need to experience actual fear; an apprehension of contact that is offensive (i.e., not consented to) is sufficient.

In this case, the affirmative act element is probably met because Dennis pointed the empty gun at Margaret. Also, Dennis had the requisite intent to place Margaret in apprehension of an imminent harmful or offensive contact because the facts expressly state that “he wanted to scare Margaret.” The question of whether the last element is met – that the plaintiff actually experienced apprehension – is less clear. Margaret would argue that that Dennis’ act actually caused her apprehension because “she recoiled and put her hands over her face.” Dennis, however, would argue that she didn’t experience apprehension because she said she wasn’t scared by “A little water isn't going to scare me.” Assuming that a recoil is a reflexive action, her actions appear to indicate that Margaret did experience some apprehension despite what she said to Dennis. Dennis might argue that he is not liable because the squirt gun was not loaded. This argument would fail because, as noted above, the apparent ability to inflict contact is all that is needed to demonstrate actual apprehension of contact – the fact that the contact cannot actually be carried out is irrelevant. Therefore, this element is satisfied because even though Dennis knew that the squirt gun was unloaded, nothing in the facts suggest that Margaret had any way of knowing that fact. As far as Margaret was concerned, Dennis had the apparent ability to inflict the contact.

In conclusion, all of the elements of a prima facie case for assault are satisfied, and Margaret’s assault claim against Dennis would probably succeed
**Dennis v. Margaret**

**Battery: *Throwing the Apple***

The next issue is whether Margaret committed battery when she threw an apple at Dennis but missed. A battery is an affirmative act by the defendant against the plaintiff made with the intent to bring about a harmful or offensive contact and that actually causes such a contact.

In this case, Dennis will be able to prove the affirmative act element because Margaret picked up an apple and threw it at him. Dennis should be able to prove the intent element because nothing in the facts suggests that Margaret did not intend to hit him with the apple when she threw it. However, Dennis will not be able to prove the harmful or offensive contact element of battery because ultimately, Margaret missed – her apple never actually touched Dennis.

In conclusion, a battery claim brought by Dennis against Margaret would probably fail.

**Assault: *Throwing the Apple***

The final issue is whether Margaret committed assault when she threw the apple at Dennis but missed. The prima facie case for assault is stated above.

In this case, Dennis will be able to prove the affirmative act element because Margaret picked up an apple and threw it at him. Regarding Margaret’s intent, although the facts do not indicate that Margaret intended to cause apprehension in Dennis, her actions demonstrate that she actually intended to hit Dennis with the apple. Under the doctrine of transferred intent, the intent to inflict a battery on a person satisfies the intent requirement for assault. Therefore, because nothing in the facts suggests that Margaret did not intend to hit (batter) Dennis with her apple, under the doctrine of transferred intent, she also has the intent necessary for assault. Finally, regarding Dennis’ actual apprehension, that element is somewhat unclear, because nothing in the facts clearly indicates whether Dennis did or did not experience apprehension. On balance, given the lack of clear evidence in the facts of apprehension on Dennis's part, it is unlikely that Dennis would be able to prove the apprehension element.

As such, in conclusion, an assault claim brought by Dennis against Margaret based on her throwing an apple at him would probably fail.
Model Answer: ANNOTATED

Margaret v. Dennis

Assault: Threatening to Throw the Apple

[Issue] The issue is whether Dennis committed assault when he threatened to throw an apple at Margaret. [Rule] An assault is an affirmative act by the defendant with the intent to place the plaintiff in apprehension of an imminent harmful or offensive contact to his person and that actually causes the plaintiff apprehension. [Rule about rule] The act requirement is generally not satisfied by words alone – there usually has to be some volitional movement of the body for there to be a reasonable apprehension of imminent contact.

[Application & Analysis] [Application of element 1] In this case, the requirement of an affirmative act is probably not satisfied because (as noted above) words alone are not enough, and because the facts suggest that Dennis never actually moved to pick up an apple. Therefore, Dennis’ mere verbal threat, apparently without any accompanying action, would fail to satisfy the requirement of an affirmative act. [Application of elements 2&3] Even if Dennis intended to cause apprehension in Margaret with his threat, and even if she experienced actual apprehension because of it, without a volitional affirmative act, Margaret would not be able to establish a prima facie case for assault.

[Conclusion] In conclusion, an assault claim based on Dennis’ threat to hit Margaret with an apple would probably fail.

Assault: The empty squirt gun

[Issue] The next issue is whether Dennis committed an assault when he pointed the empty squirt gun at Margaret and pulled the trigger. [Rule – note how you can save time if you’ve already stated a rule completely and accurately →] The prima facie case for assault is stated above. [Rule about rule #1] Additionally, the fact that the contact cannot actually be carried out is irrelevant – the apparent ability to inflict contact is all that is needed to demonstrate actual apprehension of contact. [Rule about rule #2] Also, the plaintiff does not need to experience actual fear; an apprehension of contact that is offensive (i.e., not consented to) is sufficient.

[Application & Analysis] [Application of element 1] In this case, the affirmative act element is probably met because Dennis pointed the empty gun at Margaret. [Application of element 2] Also, Dennis had the requisite intent to place Margaret in apprehension of an imminent harmful or offensive contact because the facts expressly state that “he wanted to scare Margaret.” [Application of element 3] The question of whether the last element is met – that the plaintiff actually experienced apprehension – is less clear. [One possible application of element 3] Margaret would argue that that Dennis’ act actually caused her apprehension because “she recoiled and put her hands over her face.” [Opposing application of element 3] Dennis, however, would argue that she didn’t experience apprehension because she said she wasn’t scared by “A little water isn't going to scare me.” Assuming that a recoil is a reflexive action, her actions appear to indicate that Margaret did experience some apprehension despite what she said to Dennis. Dennis might argue that he is not liable because the squirt gun was not loaded. [Analysis based on rule about rule #1] This argument would fail because, as noted above, the apparent ability to inflict contact is all that is needed to demonstrate actual apprehension of contact – the fact that the contact cannot actually be carried out is irrelevant. [Application of rule about rule #1] Therefore, this element is satisfied because even though Dennis knew that the squirt gun
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was unloaded, nothing in the facts suggest that Margaret had any way of knowing that fact. As far as Margaret was concerned, Dennis had the apparent ability to inflict the contact.

[Conclusion] In conclusion, all of the elements of a prima facie case for assault are satisfied, and Margaret’s assault claim against Dennis would probably succeed.

Dennis v. Margaret

Battery: Throwing the Apple

[Issue] The next issue is whether Margaret committed battery when she threw an apple at Dennis but missed.

[Rule] A battery is an affirmative act by the defendant against the plaintiff made with the intent to bring about a harmful or offensive contact and that actually causes such a contact.

[Application & Analysis] [Application of element 1] In this case, Dennis will be able to prove the affirmative act element because Margaret picked up an apple and threw it at him. [Application of element 2] Dennis should be able to prove the intent element because nothing in the facts suggests that Margaret did not intend to hit him with the apple when she threw it. [Application of element 3] However, Dennis will not be able to prove the harmful or offensive contact element of battery because ultimately, Margaret missed – her apple never actually touched Dennis.

[Conclusion] In conclusion, a battery claim brought by Dennis against Margaret would probably fail.

Assault: Throwing the Apple

[Issue] The final issue is whether Margaret committed assault when she threw the apple at Dennis but missed.

[Rule] The prima facie case for assault is stated above in the Margaret v. Dennis section.

[Application & Analysis] [Application of element 1] In this case, Dennis will be able to prove the affirmative act element because Margaret picked up an apple and threw it at him. [Application of element 2] Regarding Margaret’s intent, although the facts do not indicate that Margaret intended to cause apprehension in Dennis, her actions demonstrate that she actually intended to hit Dennis with the apple. [Rule about rule #1] Under the doctrine of transferred intent, the intent to inflict a battery on a person satisfies the intent requirement for assault. [Application of rule about rule #1] Therefore, because nothing in the facts suggests that Margaret did not intend to hit (batter) Dennis with her apple, under the doctrine of transferred intent, she also has the intent necessary for assault. [Application of element 3] Finally, regarding Dennis’ actual apprehension, that element is somewhat unclear, because nothing in the facts clearly indicates whether Dennis did or did not experience apprehension. On balance, given the lack of clear evidence in the facts of apprehension on Dennis's part, it is unlikely that Dennis would be able to prove the apprehension element.

[Conclusion] As such, in conclusion, an assault claim brought by Dennis against Margaret based on her throwing an apple at him would probably fail.