

Introduction to Outlining

September 26, 2014

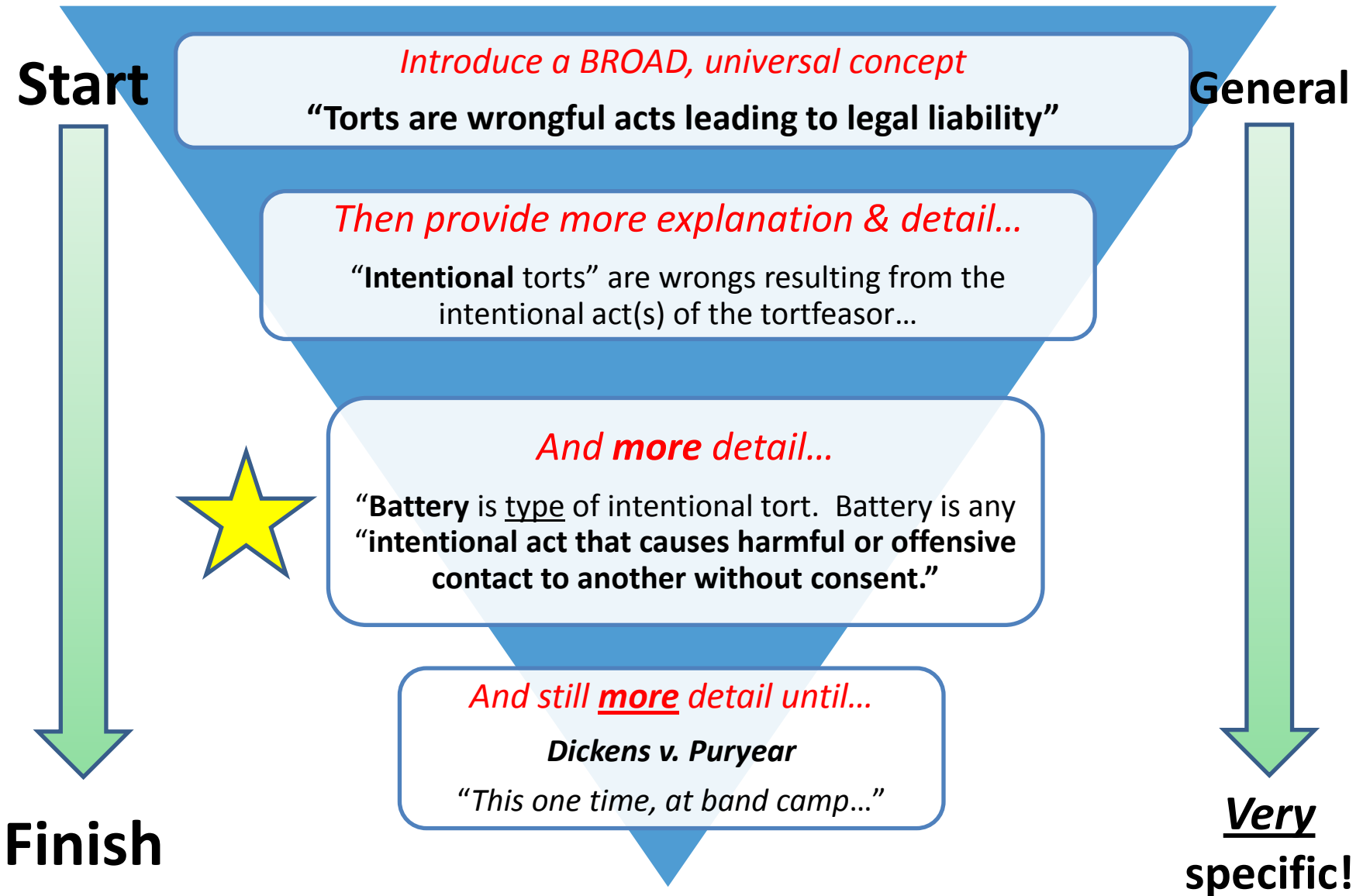
Session Overview

1. Theory: Teaching → Testing → Outlining
2. What *is* an outline
3. Step-by-step plan to get started (mechanics)
4. Tips & considerations for fine-tuning your outline destroy any law school exam

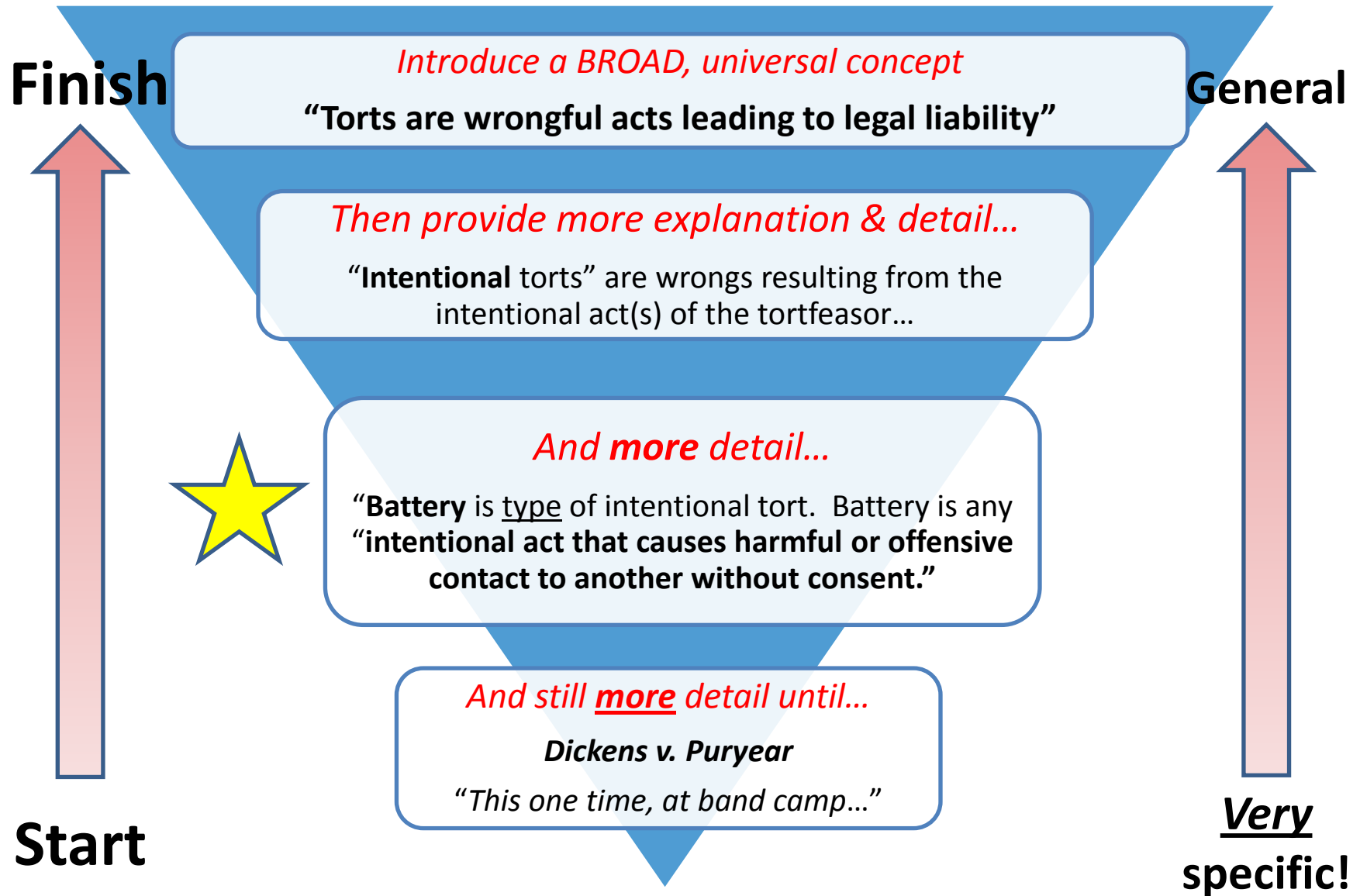
Learning v. Testing

- How do you learn in law school?
 - *Case, case, case, statute, case, case, case...*
- Test? Your exams **will not ask you to...**
 - Compare Follet v. Jones to Lancaster
 - Recite the facts of Piner
 - Evaluate the reasoning of Pennoyer v. Neff
- Exam = **Apply** legal rules to a hypothetical fact pattern

Traditional Teaching Approach



Law School Teaching Approach



Your Prof's *pièce de résistance* (exam) = ***Your Starting Point for outlining***

Nurse worked at a hospital that treated many Alzheimer's patients. Alzheimer's sufferers are often violent, and Nurse knew that her job involved working with violent, combative patients. Nurse also knew about past incidents in which patients attacked hospital employees. On previous occasions, a patient named Patient had attacked and hit hospital employees, and his admitting diagnosis noted his aggressiveness and the high risk that he could cause injury. One day, Nurse saw Patient being aggressive with another hospital employee who was trying to move Patient from a chair to his bed. Nurse entered the room to help because she was afraid Patient would fall. While she was helping, Patient hit Nurse several times on the head, causing serious injuries.

“Nurse wishes to sue Patient to recover for her medical bills. What claims might she bring, and will she prevail on each?”

75 minutes
(42 points)

Macy's was putting the finishing touches on its annual Thanksgiving parade in New York City. The day before the parade, Macy's began to blow up the gigantic balloons of cartoon characters that are the hallmark of the annual parade. The weather report indicated strong winds anywhere from 15-30 mph. When Macy's parade manager, Orville Woodenburgher, received this report he approached Macy's Vice President in Charge of Public Relations, Mary Carver, about increasing the number of tow lines and employees on the balloons. Ordinarily, Macy's has hired extra employees and purchased extra tow lines if weather required it. A team of employees, each holding a tow line, carefully guides the balloons down the parade route. After a recent accident, Macy's was stopped for each Christmas balloon run the order of the day. Mary

“Nurse wishes to sue Patient to
recover for her medical bills.

What claims might she bring, and
will she prevail on each?”

Cynthia Bowen, was eight months pregnant and suffered a miscarriage. Her husband, John, who was on the other side of the street, witnessed the incident and tried desperately to come to her aid, but he was unable to get through the crowd.

Meanwhile, the police, rusher and ambulances arrived to take Robert Little and Cynthia Bowen to the hospital. On the way to the hospital, Jake Garm ran a red light and collided with the ambulance, seriously injuring Robert and Cynthia and Pam Samuelson, the ambulance driver.

At the hospital, all received immediate attention and survived but Cynthia lost her baby and contracted Hepatitis B from a blood transfusion. Her husband, John, is in therapy and is unable to work. What will happen if all of the relevant parties sue?

Ultimately, what do law school exams test?

- Your ability to:
 1. Recognize legal **issues** in a hypothetical (“issue spotting”)
 2. Recall legal **rules** (from memory or an outline)
 3. **Apply the rules** to new sets of facts
- Skills you need:
 - Memorization (Rules)
 - Organization / Planning
 - Time management
 - **Writing (IRAC)**

So how can an outline help?

Outlines
mainly
help here

- I**ssue (15%) “The issue is whether [law] when [fact].”
- R**ule (30%) Get rules, sub rules and clarifying rules from outline
- A**pplication/Analysis (50%) “Here, the rule applies (or does not apply) *because* [reference fact / policy reason / case].
- C**onclusion (5%)

What is an outline?

An **outline** is just a document,
created **by you**, containing
legal rules that you think (know)
you'll be tested on during **exams**.

Why do law students make Outlines?

Three main **purposes**:

1. **Review** (**learn** 😊) course material that has already been covered (and memorize)
2. **Organize** material in a way that allows you to make **connections** among legal **concepts**
3. **Use** it in answering a **law exam question!**
 - *Whether open or closed book*

And how will you be expected answer
on your exams?

IRAC

IRAC is not just for Legal Writing memos –
It is also for essay exam answers.

To be clear: What isn't an outline?

An outline is not a list of cases.

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Message?

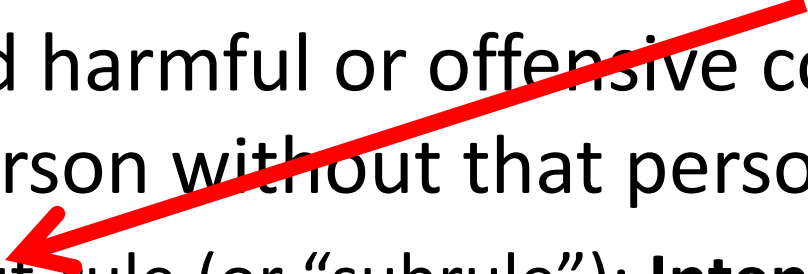
When creating an outline, do so in a way that will help you pinpoint and apply **LEGAL RULES** to a **FACTAL** situation [i.e. your exam]

Think: “RULE based, not CASE based”

Before we get too far, what do we mean by “Rules”?

- **Torts:** To prove battery, a plaintiff must prove that the defendant made an intentional act that caused harmful or offensive contact to another person without that person’s consent.
- **Civ Pro:** Subject-matter jurisdiction is the requirement that the court have power to hear the specific kind of claim that is brought to that court. **Federal courts have SMJ based on diversity where a plaintiff’s claim exceeds \$75,000 and the P and D are citizens of different states.**

Rules *about* rules

- Rule: To prove battery, a plaintiff must prove that the defendant made an **intentional** act that caused harmful or offensive contact to another person without that person's consent.
 - Rule-about-rule (or “subrule”): **Intent** may be shown where the defendant is *substantially certain* that contact will result
 - Many ways to write the same rule
- 

Example of “rule based” outline

Goal: Write “R”
part of IRAC
answer

“Sub-rules”/
Explanatory
Rules

Sample Contracts Outline

Formation of Contract – the Agreement Process

- I. Intent ...
- II. Capacity ...
- III. Offer ...
- IV. Acceptance ...
- V. **Consideration**
 - A. [**BROAD / PRIMARY RULE**] A contract is only enforceable if it is supported by consideration.
 - B. [**Definitional Rule**] Consideration can be demonstrated by (1) bargained-for exchange AND (2) detriment
 - 1. Exchange: promisor “bargains”: makes promise in exchange for promisee giving up something
 - 2. Detriment: promisee must give up something of value
 - C. Various Rules Concerning Consideration
 - 1. Gifts: A promise to make a gift is unenforceable (e.g. Dad to son, “When you turn 18, I will give you \$1M.” Not enforceable)
 - 2. Nominal consideration (1 penny) not generally enforceable
 - 3. Detriment need not be economic – it can also be a *forbearance* (e.g. can be abstaining from alcohol)
 - 4. As long as the promisee suffers some detriment – no matter how small – courts will usually find consideration. Courts do not evaluate the “adequacy” of the detriment.
 - 5. Pre-Existing Duty Rule: Doing something (or promising to do something) that one is already legally obligated to do does not constitute a “detriment” for consideration purposes.

Promissory Estoppel

Contract Interpretation

- I. Parole Evidence Rule ...
- II. Principles of Contract Interpretation ...

Getting Started: Materials

1. Syllabus
2. Casebook
3. Class notes
4. Case briefs
5. ***Short summary notes created after class***
6. Commercial outlines / supplements
7. [Other students' outlines]

Step-by-step Overview

1. Gather materials

- Syllabus, Casebook, Notes, Case Briefs, Class summaries, Commercial Outlines, Peer outlines

2. Make a “frame” or “skeleton” based on major topics you covered in class by copying/ modifying/ synthesizing various TOCs & your syllabus.

3. Fill in your “frame” with **legal rules**, with cases as *examples*.

4. Every week or so fill in “frame” with what you covered since your last update.

Example of semi-complete “Frame”

I. INTENTIONAL TORTS=invasion of another person’s personal interests

- **Battery=intent to inflict harmful or offensive contact**
 - Physical contact not necessary—contact may be made to person’s autonomy or object in contact with person.
 - Actor must have intent as well as substantial certainty that contact will result.
 - “Offensive” is determined by reasonable person standard
 - *Garrett v. Dailey*: whether B. Dailey had substantial certainty of his actions
 - *Fisher v. Carousel Motor Hotel, Inc.*: Forceful dispossession of plate in an offensive manner constitutes assault. Personal dignity the essence of action for battery.
- **Assault=psychological tort; ; intentionally putting someone in reasonable apprehension of immediate harmful or offensive contact.**
 - *Vetter v. Morgan*: Words constitute assault if, together with acts or circumstances, they put another in reasonable apprehension of imminent harmful or offensive contact.
- **False imprisonment=defendant intentionally and unlawfully confines or restrains the plaintiff within a bounded area.**
 - Intention is subjective
 - Definition of bounded area differs by jurisdiction but usually refers to inability to escape
 - Categories of confinement: physical barrier, physical force, submission, taking custody under false identification of law enforcement officer; economic barrier
 - Plaintiff must be aware of imprisonment
 - Prosecution wants to show defendant’s actions were implausible/intended and defense wants to show that intent was accidental.
 - *Herbst v. Wuenneburg*: Essence of false imprisonment is the intentional, unlawful, and unconsented restraint by one person of the physical liberty of another. Plaintiffs were not required to obtain freedom through steps dangerous to themselves or offensive to a reasonable sense of decency or personal dignity.
- **Intentional Infliction of Emotional Distress (IIED)= Intentionally causing someone severe mental distress by extreme and/or outrageous contact.**
 - Severe mental distress=mental or emotional anguish that persists continuously over significant period of time (months-years).

II. DEFENSES....

- **Consent**
- **Self-Defense**
- **Necessity**

III. NEGLIGENCE...

IV. VICARIOUS LIABILITY...

Getting started: “I. ? ”

You aren't reinventing the wheel here...

Thoroughly read & reflect on existing outlines:

1. Entirety of your **textbook Table(s) of Contents**
2. Entirety of your **syllabus (if you have one)**
3. Entirety of **commercial outline TOC(s)**

Real-Life Excerpt (Torts)

NOTICE: This student failed to include consent...

I. INTENTIONAL TORTS=invasion of another person's personal interests

– **Battery**=intent to inflict harmful or offensive contact

- Physical contact not necessary—contact may be made to person's autonomy or object in contact with person.
- Intent can be shown where actor is substantially certain that contact will result.
- “Offensive” is determined by reasonable person standard
- *Garrett v. Dailey*: whether B. Dailey had substantial certainty of his actions
- *Fisher v. Carousel Motor Hotel, Inc.*: Forceful dispossession of plate in an offensive manner constitutes battery. Personal dignity the essence of action for battery.



What if I don't do it this way?

- *Griffin v. IL* (56) Access to Courts (Judicial Process): Illinois requires Δ 's who want to appeal to pay for transcript from trial court. **Δ is unable to pay** (providing EqP and DP claims). There is no federal const. right, based on ability to pay \rightarrow apply SS
- *Douglas v. California* (63) Δ has been denied state-appointed attorney upon appeal. Hold: for initial appeal, the state must provide counsel
- *Boddie v. CT* (71) Marriage is a fund. right and this infringes on the right to leave the marriage. Hold: The state created the necessity to go through state courts to leave a marriage, they cannot create the restriction and then deny people who cannot pay
- *Harper v. Va.* (66) Access to Vote (Political Process) **if the state makes "x" available to those who can pay, can't deny others based on ability to pay.** Imposition of a poll tax as a prerequisite to vote violates EP and is unconst.
- *Kramer v. Union Free School Dist.* (69) Anomaly case Limiting voting for school board elections to parents of school children and/or property owners is uncont. Over-Under-
- *Ball v. James* (1981) Voting can be limited to landowners for a special purpose "h2o-storage dist." Which cannot enact laws or perform gov't functions.
- *Shapiro v. Thompson* (69) Access to "Fund. Interests" (Necessities of Life Coupled with "Right to Travel") Right to travel case. If court reduces welfare to new residents, they are infringing on the right to freely travel among the states. If a state provides welfare benefits to residents, they can't deny newcomers. Adds welfare benefits to fund. rights. Mentions Police and fire protection **3 legs from Shapiro case: (1) Right to move to a fresh start/relocate (2) Access to fund. necessities of life: shelter and food (3) Only impacts the poor**

Why do it this way?

I: The **issue** is whether Ms. Scarlett committed battery when she swung the candlestick at Professor Plum but hit Colonel Mustard. *So how must we “answer” the issue? Not with opinion – with legal rules...*

R: *If your outline is structured as discussed, it “pre-writes” the “R” section of your IRAC exam answer!*

(Definition) Battery is an intentional act that causes harmful or offensive contact with another.

(Elements) To prove battery, plaintiff must show (1) an act which results in contact, (2) that defendant had intent to perform the act, and (3) contact that was harmful or offensive. (Sub-rule re element)

Regarding intent, under the doctrine of transferred intent, if a person intentionally swings at person A and accidentally hits person B, the intent to hit person A “transfers” to person B for liability purposes.

A: *This structure helps with “A” too.* Here, Ms. Scarlett satisfies all of the elements of battery. The facts make clear that an act occurred because she swung the candlestick. The facts also make clear that the contact was harmful because Col. Mustard died from the blow in the Conservatory. As to her intent, the facts do not state that Ms. Scarlet intended to cause any contact or harm to Col. Mustard. However, she probably did intend to hit Prof. Plum because the facts state that she shouted “*I’m going to kill you!*” and “*Take that!*” at him. Under the doctrine of transferred intent, the intent to hit Prof. Plum transfers to Col. Mustard. **The facts here are similar to Prince v. Revolution, where Prince intended to flash a bus of kindergarteners, but instead flashed a bus carrying the families of The Revolution.**

C: Therefore, the facts show that all of the elements of battery are satisfied, and Ms. Scarlett is probably liable for battery

Now that you know the basic idea...

Tips for making a **good (rule-based, not case-based) outline a **great** one (truly helpful on exams).**

How to craft an outline that will actually help with “R” on your exam

GOAL: You must be able to state the relevant rule **clearly, accurately, and quickly** on an exam.

What does that look like?

I. Negligence =

1. Duty
2. Breach
3. Cause in fact
4. Proximate cause
5. Damages

OK, great, but....

This is much, MUCH better...

I. NEGLIGENCE

- RULE: To prove negligence, a plaintiff must prove that the defendant had a **duty**, that the duty was **breached**, that the breach was the **cause in fact** of plaintiff's injuries, that the breach was the **proximate cause** of the plaintiff's injuries, and that the plaintiff indeed suffered an injury of some kind (**damages**).

And better still...

I. NEGLIGENCE

- RULE: To prove negligence, a plaintiff must prove (1) that the defendant had a **duty**, (2) that the duty was **breached**, (3) that the breach was the **cause in fact** of plaintiff's injuries, (4) that the breach was the **proximate cause** of the plaintiff's injuries, and (5) that the plaintiff indeed suffered an injury of some kind (**damages**).

Think about it:

If you WILL have to write the rule of negligence on your exam (and *of course* you will)....

Then there is NO REASON not to have it perfectly articulated in your outline, clearly, thoroughly, etc., instead of *struggling* to translate a bullet-list into complete sentences for the 1st time on your time-limited exam!

Open book: Copy / Closed book: Practice

What about cases?

How do they fit in?

Sample Contracts Outline

I. Consideration

- A. [PRIMARY RULE] A contract is only enforceable if it is supported by consideration.
- B. [Definitional rule] Consideration can be demonstrated by (1) bargained-for exchange AND (2) detriment
 1. Exchange: promisor “bargains”: makes promise in exchange for promisee giving up something
 2. Detriment: promisee must give up something of value
- C. Various Rules Concerning Consideration
 1. Gifts: A promise to make a gift is unenforceable (e.g. Dad to son, “When you turn 18, I will give you \$1M.” Not enforceable)
 - **Kim v. Son (2009):** where Son promised (in blood) to pay back Kim millions Kim lost when he invested in Son’s company, court held agreement lacked consideration b/c it was a “gratuitous promise” – i.e. not the result of bargained-for exchange
 - **Kirsey (1845):** where plaintiff’s husband died & defendant (brother) promised plaintiff she could raise her family in his house if she sold her house in the country & came to live with him, and sister did so but after 2 years brother kicked her off, court found no consideration because the deal was a gift – brother didn’t *want* sister to sell her land, that was a precondition to a “mere gratuity.”
 2. Nominal consideration (1 penny) not generally enforceable
 3. Detriment need not be economic – it can also be a *forbearance* (e.g. can be abstaining from alcohol)
 - **Forbearance to sue for a lawful claim is consideration *if* the party forbearing had honest intention to prosecute *and* suit is not frivolous. *Feige v. Boehm* (1956) (in case where man promised to pay child support if woman didn’t file paternity suit against him, woman’s promise not to sue constituted adequate consideration)**
 - **BUT, forbearance from asserting an unfounded or frivolous suit is *not* adequate consideration. *Feige*.**
 4. As long as the promisee suffers some detriment – no matter how small –courts will usually find consideration. Courts do not evaluate the “adequacy” of the detriment.
 5. Pre-Existing Duty Rule: Doing something (or promising to do something) that one is already legally obligated to do does not constitute a “detriment” for consideration purposes.

When you read them for class, cases were the **source** of the rule...

On the exam, cases are often used as **examples** of how a rule applied in a particular fact scenario (“analogy”)

Using cases as examples of rules on exams...

- **Do not write this:** There is no consideration here because, under Kim v. Son, the promise that A made to B be was no more than a gratuitous promise.
- **Do write this:** A contract is only enforceable if it is supported by consideration [rule]. Consideration will be found where a party makes a promise in exchange for something, and that thing constitutes a detriment to the promisee [rule]. Generally, a promise to make a gift is not enforceable for lack of consideration, in that the promisee suffers no detriment [rule]. **Here**, there is no consideration because A simply promised B he would pay B \$100 when B turned 18 – but B suffered no detriment in exchange [application]. ***This case is similar to Kim v. Son, where Son promised Kim, in blood, that he would pay Kim back for all of Kim's investment losses.... [CASE]***

Alternative: Using cases as sources of rules on exams...

- **Do write this:** A contract is only enforceable if it is supported by consideration [rule]. Consideration will be found where a party makes a promise in exchange for something, and that thing constitutes a detriment to the promisee [rule]. **Generally, as we learned in *Kim v. Son***, a promise to make a gift is not enforceable for lack of consideration, in that the promisee suffers no detriment [rule]. Here, there is no consideration because A simply promised B he would pay B \$100 when B turned 18 – but B suffered no detriment in exchange [application]. ***This case is similar to Kim, where Son promised Kim, in blood, that he would pay Kim back for all of Kim's investment losses.... [CASE]***

What about “policy”?

On exams, use policy in a similar way that you used cases:

- Policy considerations are NOT replacements for rules. **After stating the rule, cases & policy can support (or attack) the application of a rule in a particular way. Example:**
 - “This is like/unlike *Son v. Kim* where...”
 - “From a policy perspective, this outcome makes sense because it does not create an incentive for landlords *not* to try to rent an vacant apartment just to increase damages...”

Practical Tip: Start with “To”

To write rules that set you up for easy transition to “Application” on exams (IRAC), try starting rules with the word “**To**.”

- “**To** prove battery, the plaintiff must prove...”
- “**To** exercise personal jurisdiction over a defendant, a court must show that...”
- “**To** prove murder, the prosecutor must show...”
- “**To** establish the defense of consent, the defendant must show...”

This allows you to transition naturally to “In this case, [character] probably *can/cannot* [**prove/ exercise jurisdiction**] **because** ...

Practical Tip: Create an “Issue Checklist” to help with issue spotting

- As you read the fact pattern, some issues will be obvious, but some will not...
- “Collapse” your full outline into headers only
 - one or 2 pages
- **What does this look like?**

Example of how to use outline as “issue checklist”

Issue Checklist for Contracts

I. Formation of a Contract - The Agreement Process

- A. Intent to contract (mutual assent)
- B. Capacity to contract
- C. Offer
 - a. Promise contained in offer (unilateral v. bilateral)
 - b. As distinguished from ads / opinions / jest / negotiations
 - c. Indefinite offers
- D. Acceptance
 - a. Mailbox rule
 - b. Counteroffers (Mirror Image Rule; Terms in the Box)
 - c. E-commerce
- E. Consideration
 - a. Bargains v. Gifts / Detriment
 - b. Pre-existing Duty Rule
 - c. In bi-lateral Contracts

I. Promissory Estoppel

II. Contract Interpretation

- A. Parole Evidence Rule
- B. Principles of Contract Interpretation

III. Remedies

- A. General principles
- B. Specific Performance
- C. Damages: Expectation , Reliance, Restitution

IV. Defective Formation

- A. Statute of Frauds
- B. Illegal contracts

Other Tips

1. Don't use anyone else's outline
 - The primary **value** of an outline is in creating it
2. There is no “one” way to make an outline
 - *Length, flowcharts, diagrams, flashcards*
3. Start now. Update about **every other week**
4. “What’s a legal rule?” Jot now, organize later
5. Don't obsess about “ROMAN NUMERALS”
 - Remember: “**Rule based not case based**”
6. OK to be “big” now – you can condense later
7. Commercial outlines: TOC = good; Content = ???

What next?

1. Between now & exams, **start & update outlines about every 2 weeks (stagger)**
2. **Gather info:** Open book or closed? MC or essay? How many questions? Equal weight? (calculate time per qq *before* exam if you can)
3. **Make it “battle tested.”** Whatever you come up with – practice using it BEFORE the exam. Remember, it’s a *tool*
4. Make time to **re-read key cases.**

In closing: ask yourself:

1. Have I started outlining?
2. Can I name one rule that I KNOW I you will have to write out on my Crim exam?
3. Do I know the rule? Is it in my outline?
4. If so, have I written it out in perfect English in my outline?
5. If not, *why not?*

Questions?