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haynesBoone

LAW SCHOOL 101 | Outlining
SO, WHAT IS OUTLINING?

1. Outlining is the process of synthesizing rules learned into a set of rules that encompass a body of law.

2. “Outlining” can be any method you use to construct a summary of the course.

WHY OUTLINE?

- Learn. Synthesis.
- Early ID system
- Prepare.
OUTLINING CONSIDERATIONS

- When to start?
- Group Outlines
- Commercial Outlines
- That amazing outline you got from the law review editor/Circuit Court Clerk/journal outline bank
- How long?
- Should I outline at all?
COMMON 1L OUTLINING MISTAKES

- Waiting.
- Including absolutely everything.
- Leaning too much on others’ outlines.
- Believing you’ll have time to look up in your outline anything you might need during the exam.
- Making the outline a thing of beauty.
- Believing that the outline is the end goal.
HOW TO START

- Create a schedule.

- Gather your text, syllabus, case briefs, class notes and handouts, and commercial aids or hornbooks.

- Start with your syllabus or the TOC—organization of your outline is the first step in understanding the course
  - Think concepts, not cases (with exceptions)
  - Create a list of topics, logically organize the list, and insert the rule of law
    - Begin with the broadest rule of law and work your way down to specifics
    - Include the rule of law, cases (if necessary), hypos, any quirks of your prof and policy.

- Overwhelmed?
WORKING WITH RULES

Simple rules
- If A, then B
- Think strict liability
  - If you sell alcohol to a minor, you’re guilty a crime. Doesn’t matter if they presented fake ID or looked 40.

Elemental Rules (most common)
- Example: Battery
  - (1) intent, (2) touching, (3) touching must be harmful or offensive, and (4) must be done to another.
  - Make sure you know the rule for each element.
  - Elements often have sub-elements (i.e. what’s harmful or offensive? Transferred intent?)

Factor Rules
- If A, B and C weighed together justify Z, then Z.
- A, B and C are factors. Unlike elements, you need not satisfy each one, but weighed together they get you to Z.
- Example: Material Breach in contract law. Consider (1) Extent to which injured party will be deprived of expectation, (2) Extent to which injured party can be adequately compensated (3) Extent to which party failing to perform will suffer forfeiture, (4) Likelihood party failing to perform will cure his failure, and (5) Extent to which behavior of party failing to perform comports with duty of good faith and fair dealing.
Rules with Exceptions

- If A, then B, unless Z.
- Look for “unless,” “except,” “but,” and “but if.”
- Example: Recovery of Property taken via fraud – a person who has been induced by fraudulent misrepresentations to transfer title may recover the property **UNLESS** the person in possession was a bona-fide purchaser of the property. (You’ll then have to go over what makes someone a BFP.)

Alternative Rules

- If A or B, then Z.
- Look for “either” and “or.”
- Example: Punitive damages may be awarded if the defendant exhibits fraud or malice.
TYPES OF OUTLINES — CHOOSING YOUR FORMAT

Traditional

- Start here. You can often move from your traditional outline into other formats to increase your understanding.
Example: Torts

- Intentional Torts and Negligence
  - Intentional Torts
    - Battery
    - Assault
    - False Imprisonment
    - Intentional Infliction of Emotional Distress
  - Defenses
- Negligence
  - Duty
  - Breach
  - Cause in Fact
  - Proximate / Legal Cause
  - Damages
  - Defenses
Intentional Torts

- Battery
  - Defendant’s acts intentionally cause harmful or offensive contact with the victim’s person.
    - **Harmful contact**: contact which causes physical pain, injury or illness where the risk of harm is one a reasonable person would foresee.
    - **Offensive contact**: contact which offends a person’s reasonable sense of personal dignity, as measure by the objective standard of community norms.
    - **Person**: putting into motion anything that touches another person or putting into motion anything that touches something connected with or in contact with another person.
    - **Causation**: the Δ’s actions must be the direct or indirect cause of the harmful or offensive contact.
    - **Rationale**: Protection from unwanted contact is fundamental; allowing suits for trivial contact prevents self-help measures; legal redress deters wrongful conduct.

Keep adding content. Add hypos and examples. Cases if helpful. Professor’s theories, ideas, etc. Policy if appropriate.
TRADITIONAL OUTLINE WITH HYPOS

INTENTIONAL TORTS

A. Intentional Tort

1. Battery

   a. Elements
   i. Intentional contact
   ii. Force
   iii. Unlawful intent

   b. Consent

   c. Premeditation

2. False Imprisonment

   a. Elements
   i. Restriction of personal liberty
   ii. Intent to cause confinement
   iii. Without lawful authority

   b. Premeditation

3. Malicious Interference with Contractual Relations

   a. Elements
   i. Interference
   ii. Unlawful intent
   iii. Justifiable reliance

   b. Premeditation

4. Malicious Prosecution

   a. Elements
   i. Prosecution
   ii. Unlawful intent
   iii. Injury

   b. Premeditation

5. Trademark Infringement

   a. Elements
   i. Use of trademark
   ii. Likeness
   iii. Likelihood of confusion

   b. Premeditation

6. Trademark Dilution

   a. Elements
   i. Likeness
   ii. Likelihood of confusion

   b. Premeditation

7. Trademark Infringement

   a. Elements
   i. Use of trademark
   ii. Likeness
   iii. Likelihood of confusion

   b. Premeditation
ANOTHER EXAMPLE

Example: Contracts
  ▪ Offer, Acceptance, Consideration
    ▪ Acceptance
      ▪ By the person intended
    ▪ Means
    ▪ Terms
    ▪ Medium
    ▪ Timing

TRADITIONAL CONTRACTS EXAMPLE
TYPES OF OUTLINES

Traditional

- Start here. You can often move from your traditional outline into other formats to increase your understanding.

Spatial Organization
SPATIAL ORGANIZATION EXAMPLES
Sale of Goods

Seller’s remedies

Resale
- UCC 76 Details: Sale for difference between contract and market.
- Goods must be in good faith and commercially reasonable.
- Also get incidental damages.

Action for Price
- UCC 709
- Goods have no market value.
- Action for Price: Must try to resell, but if cannot, recover contract price, sell goods to buyer.

No resale trial
- UCC 708
- Could have resold, but didn’t. Get contract price minus market price at time and place of tender.

Cover
- UCC 712 Cover:
  - Good faith, reasonable time to substitute goods.
  - Also get incidental and consequential damages (lost profits).
- Cover is not mandatory.
- Formula:
  - Contract price
  - Market price
  - Incidental damages
  - Consequential
  = Recovery
- Market price at time buyer learned of breach. Also as of the place of tender, or in case of rejection after arrival, place of arrival.

Buyer’s Remedies

No cover
- UCC 713 Non delivery or repudiation.
- Choosing not to cover
- Formula:
  - Contract price
  - Market price
  = Recovery
- Specific performance or replevin
  - UCC 71b
- If goods are unique or in other proper circumstances.

Unacceptable goods
- UCC 714
- Breach of warranty entitlement buyer to difference in value at time of acceptance and promised value.
- Incidental and consequential, damages recoverable.

Lost volume rule
- If P sells items to another, but has large stock of items, P can get profit (consequential damages) because he was deprived of extra profit that was foreclosed.
SPATIAL

lucidchart.com/education
TYPES OF OUTLINES

Traditional
- Start here. You can often move from your traditional outline into other formats to increase your understanding.

Spatial Organization

Chart
<table>
<thead>
<tr>
<th>Offense</th>
<th>CL</th>
<th>MPC</th>
<th>TPC</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Must Be</strong></td>
<td></td>
<td>§ 2.01(21) Not voluntary:</td>
<td>§ 5.01(a)</td>
</tr>
<tr>
<td>Voluntary</td>
<td></td>
<td>Reflex or conviction:</td>
<td>Voluntarily</td>
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<td></td>
<td></td>
<td>Healthy movement while unconscious or</td>
<td>Engage in contact</td>
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<td></td>
<td></td>
<td>asleep.</td>
<td>Including sex, masturbation, possession</td>
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<td></td>
<td></td>
<td>Acts while hypnotized</td>
<td>No definition of voluntary</td>
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<td></td>
<td></td>
<td>Not product of effort of the actor</td>
<td></td>
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<tr>
<td><strong>Possession</strong></td>
<td></td>
<td>§ 2.01</td>
<td></td>
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<td></td>
<td></td>
<td>Knowingly MR</td>
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<td></td>
<td></td>
<td>Procured or received AR</td>
<td></td>
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<td></td>
<td>In time to terminate possession AC</td>
<td></td>
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<tr>
<td><strong>Omission</strong></td>
<td></td>
<td>§ 2.01(11)</td>
<td></td>
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<td></td>
<td>Omission to perform AR</td>
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<td></td>
<td>Act AR</td>
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<td></td>
<td>Of which he is physically capable AC</td>
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<tr>
<td><strong>DWI</strong></td>
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<td>Strict Liability Crime</td>
<td></td>
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<tr>
<td><strong>Larceny</strong></td>
<td></td>
<td>§ 223.2</td>
<td>§ 49.04</td>
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<td></td>
<td>Unlawfully AC</td>
<td></td>
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<td></td>
<td></td>
<td>Takes AR</td>
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<td></td>
<td></td>
<td>Movable property AC</td>
<td></td>
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<td></td>
<td></td>
<td>Of another AC</td>
<td></td>
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<tr>
<td></td>
<td></td>
<td>With purpose to deprive him thereof MR</td>
<td></td>
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<td></td>
<td></td>
<td>Penalty — 1st degree felony. If over $500 or gun, car, place, motorcycle, boat, motor vehicle, receive in business of stolen property, Anything else misdemeanor. If under $50, petty misdemeanor.</td>
<td></td>
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<tr>
<td><strong>Chart</strong></td>
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</tbody>
</table>

**Statute:** See STATUTE, Very specific
**CHART (USING FACTOR RULES)**

### Determining Whether a Breach is Material (§208, R 821)

<table>
<thead>
<tr>
<th>Factor</th>
<th>Materiality More Likely</th>
<th>Materiality Less Likely</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Amount of benefit lost</td>
<td>Breach depicts non-breaching party's failure to substantially meet its obligations</td>
<td>Mutually beneficial to overall benefit</td>
</tr>
<tr>
<td>(2) Adequacy of compensation</td>
<td>Damages cannot compensate for loss</td>
<td>Damages can compensate for loss</td>
</tr>
<tr>
<td>(3) Amount of replacement by breaching party</td>
<td>Breaching party's need is more than current - this is why a causal basis may be</td>
<td>Breaching party has relied significantly on expansion of termination may prejudice</td>
</tr>
<tr>
<td></td>
<td>present or current - this is why need for causal basis may be</td>
<td>the non-breaching party's interest</td>
</tr>
<tr>
<td>(4) Freeness of cure</td>
<td>Cure is uncertain</td>
<td>Cure is likely to certain</td>
</tr>
<tr>
<td>(5) Breaching party's good faith</td>
<td>Cured party's good faith and fair dealing</td>
<td>Cured party's good faith and fair dealing</td>
</tr>
<tr>
<td></td>
<td>Breaching party's good faith and fair dealing</td>
<td>Breaching party's good faith and fair dealing</td>
</tr>
</tbody>
</table>

### Determining Whether Time for Cure Is Up (§209, R 824)

<table>
<thead>
<tr>
<th>Factor</th>
<th>Discharge Soon</th>
<th>Discharge Later</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Amount of benefit lost</td>
<td>If benefit last</td>
<td></td>
</tr>
<tr>
<td>(2) Adequacy of compensation</td>
<td>If compensable adequate</td>
<td></td>
</tr>
<tr>
<td>(3) Amount of cost for failure to breaching party</td>
<td>If training needed</td>
<td></td>
</tr>
<tr>
<td>(4) Freeness of cure</td>
<td>Cure likely</td>
<td></td>
</tr>
<tr>
<td>(5) Breaching party's good faith</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(6) Amount or harm from delaying substitute arrangements</td>
<td>When delay will prevent or substantially affect the non-breaching party's operations.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(7) Agreement that time is off the</td>
<td></td>
<td></td>
</tr>
<tr>
<td>disaffirmance</td>
<td></td>
<td></td>
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<td></td>
</tr>
</tbody>
</table>
TYPES OF OUTLINES

Traditional
- Start here. You can often move from your traditional outline into other formats to increase your understanding.

Spatial Organization

Chart

Checklist
- Almost all classes lend themselves to this method. Creating a checklist can be a fantastic way to make sure you don’t miss any issues. It forces you to consider all topics when looking at a fact pattern.
1) Ask: is there an enforceable promise?
   A) Assent
      1) Offer (24) terminated 35
      ☐ Revocation 42, 43, 46
      ☐ Leave of time 47
      ☐ Rejection 38 / counteroffer 30, 40
      ☐ Death or incapacity 48
      (a) Offer extended, create an option
      ☐ UCC 2-203 and § 87
      ☐ § 77(2) reliance exception
      ☐ Unilateral contract
      (a) Tendering performance § 45
      (b) create an option
      ☐ beginning performance is bilateral creates contract
   2) Acceptance
      ☐ Offeror must accept 52
      ☐ Means
      (1) Performance §3, §4, 62, reliance 68, promise 56
      ☐ Terms
      L. 39. 39 = mirror image rule
      L. UCC 2-207 - battle of the forms
      ☐ Standardized forms
        (articulation § 211)
      ☐ Minimum
      ☐ T-Commerce
      ☐ Timing
      ☐ Mailbox rule 62 acceptance is effective in mail, rejection ineffective in possession
   B) Exceptions to consideration
      ☐ Past consideration 42, 83
      ☐ Moral obligation 86
      ☐ Pre-existing duty 75
      ☐ Promissory estoppel 60
      ☐ Settlement of claims 74
      ☐ Modification 69
   C) Defectiveness
      ☐ § 18, 14, 2-204 terms to be reasonably certain, determine existence of breach and remedy

11) Are there any defenses?
   ☐ Dupree 175, 176
   ☐ Mistake 12, 26
   ☐ Misrepresentation 164
   ☐ Exculpation 137
   ☐ Incompetency 12, 13, 14, 15
   ☐ Unconscionability 2-302, 268
   ☐ Public policy 178, 179
   ☐ Statute of frauds 3-201, 157
   1) M.Y.E.G.S. (circumvent)
      (a) Sufficient writing
      (b) Exceptions
         ☐ Partial/full perf 2-201(2)(c)
         ☐ Reliance 187
         ☐ Land/Spec. Perf 172
         ☐ Specially made goods 2-301(3)(b)
         ☐ Admit contract 2-201(3)(a)
         ☐ Acceptance, etc 2-201
   ☐ Misunderstanding 29
   11) Is it time for performance?
      ☐ Conditions - Events, not certain to occur, that must occur before contract 224, 225, 229, 237
      ☐ Waiver, revocation 84
      ☐ Modification (consideration for waiver)
      ☐ Frustration (relieves)
      ☐ Disperformance (failure)
   III) Is there any unperformed non-performance
      ☐ Material breach 241, 242, 2-601—2-608
      ☐ Cure 242, 2-601—2-608
      ☐ Inconscionability 2-615
      ☐ Reputation 2-610—2-612
   IV) What remedy, if any?*
      ☐ Damages
      ☐ Specific performance
      ☐ Restitution
      ☐ Reliance
      ☐ Expectation
   Interpretation 261
      ☐ Vagueness, ambiguous terms
      ☐ Gap-filling
      ☐ Output Contracts, etc 2-306, best efforts 2-306(2)
      ☐ Illusory promises
      ☐ Parole evidence rule 211
      ☐ Duty of Good Faith and Fair Dealing
      ☐ § 205
      ☐ 1-204
<table>
<thead>
<tr>
<th>Defendant Property Crimes</th>
<th>True Defenses</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Defense</td>
</tr>
<tr>
<td></td>
<td>Death</td>
</tr>
<tr>
<td></td>
<td>Self-defense</td>
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<tr>
<td></td>
<td>Deadly force and defense</td>
</tr>
<tr>
<td></td>
<td>Mistake of Fact Type II (legal insanity)</td>
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<td></td>
<td>Defense of Others</td>
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<tr>
<td></td>
<td>Defense of Property</td>
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<td></td>
<td>Defense of Habitation</td>
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<tr>
<td></td>
<td>Justification</td>
</tr>
<tr>
<td></td>
<td>Intoxication</td>
</tr>
</tbody>
</table>

**Internal Defenses (regale M.R.)**
- Mistake of Fact
- Mistake of Law Type I
- Voluntary Intoxication
- Voluntary Intoxication
- Intoxication
- Intoxication

**Property Offenses**
- Burglary
- Arson

**Crimes Against Persons**
- Assault and Battery
- Robbery
- Theft
- Battery
- Aggravated assault
- Burglary
- Arson
- Intentional, 1st degree murder
- Theft, armed
- Felony Murder
- Voluntary Manslaughter
- Involuntary Manslaughter
TYPES OF OUTLINES

Traditional

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Spatial Organization

Chart

Checklist

Flowchart
Restitution – Preventing Unjust Enrichment

Start here

Has the contract been fully performed?

Y
No restitution. Move to expectation interest.

N

Is the breaching party asking for restitution?

Y

1. Restitution §374 Party in breach receives either fair market value (amount it would cost to have another do the job) of benefit bestowed or output to which other party’s property has increased in value. FMV can be either at time of contracting or throughout contract. Course tend to go with time of contracting.

2. Is FMV MORE than contract price?

N

6773 When other party is in breach, victim gets value of any benefits bestowed – fair market value of benefit received or amount of increase in value of TP’s wealth or property.

Example: Rush v. Confield. Paid $3000 deposit for floor. Never received. Would have increased $2000 less or tale of floor, but gets entire $3000 back from D as is unfair to let D keep $3000 for breaching. Exemption is not enough here.

N

Breaching party will probably get the lesser of the two amounts. If FMV is lower than contract, he’ll get that.

Example: Bintin v. Turner. Employee got FMV of his services for the amount of time he worked.
Flowchart

What kind of interest

- Present
- Future

Who holds it?

- Grantor
- Grantee

Under what circumstances is it activated?

- Reversion
- Possibility of Reverter
- Right of Re-Entry

Does it immediately follow a life estate?

- No
- Yes

- Executory Interest
- Remainder

Will it inevitably happen?

- Vested
- Contingent

Vested

- Vested indefeasibly
- Vested subject to open
- Vested subject to divestment
WHAT AN OUTLINE SHOULD NOT BE:

What's wrong with this?

1. Rules are buried.
2. Focus on case summary without saying why it's important or what rule it illustrates.
3. It's hard to read. What's important on this page? Who knows.

• obscure in motion – intangible property (rent, receipts, right, potential)
• fixture – once a chattel, but now part of the land.

II. The Importance of Possession in Establishing Rights in Property

A. Abandoned Lost and Mislaid Property

• abandoned property – property that has not been recovered, and there is no intention to recover it. Can't abandon land.
• reasonable time to recover depends on the facts.
• giving clear circumstances, would a reasonable person assume that the owner intends to recover property.
• 3 types of property:
  1. abandoned
  2. lost (true owner has no knowledge of where the property is, but he did not lose it)
  3. mislaid – voluntarily left with an intent to recover it later
• distinction between lost and mislaid rests on the assumption that the owner can show he was lost or mislaid.
  a. Thirlby v. Broadway – Ownership of lost or abandoned property depends on an actual taking of the property with the intent to exclude it to possession.
  b. Merry v. DeMolice – the finder of lost property has a right to keep the property against all but the rightful owner.

B. Statute Property: Unoccupied Property

a. O’Keefe v. Snyder – O’Keefe is still the rightful owner because the statute of limitations does not begin until discovery of the statutor property

b. Purpose of Adverse Possession

   o Encourage development of land
   o Protection of long-continued claims
OPEN BOOK V. CLOSED BOOK

Closed Book
- Still outline. Remember, it’s the process.
- Focus on concepts.
- Scale it back dramatically before the exam. Read it over and over.
- Make flashcards from your outline.
- Practice exams WITHOUT your outline.

Open Book
- Create a table of contents.
- Tab it carefully.
- Do many practice exams using your outline to get familiar with it.
- You probably won’t have time to look up a lot of info during the exam.
AT THE END...

Ask yourself:
- What are likely issues for the exam? Have I covered them?
- Do I understand the key problems and issues?
- Do I understand which rules apply when and the policy behind them?
- Are rules clearly stated and usable?
- Can I apply the rule of law to hypos?

Think you’re done?
- Review it
- Distill it down.
- Check for accuracy (professor; study group)

Do practice exams using the outline

Remember that your outline should constantly be evolving as you learn the law.

If you have one, use your study group. Test out your rule statements on the group to check for accuracy. Suggest a study group meeting devoted to things members don’t understand.
How should you outline?

Do you know how you learn best?

Go to http://vark-learn.com/the-vark-questionnaire/ and answer the questionnaire.

- The website will tell you what kind of learner you are and offers strategies to help you study.
HELPFUL SOURCES

MICHAEL HUNTER SCHWARTZ, EXPERT LEARNING FOR LAW STUDENTS (2008).


HERBERT N. RAMY, SUCCEEDING IN LAW SCHOOL (2010).