ORGANIZATIONAL AND SYNTHESIS STRATEGIES

Rules: Where we get them, what we do with them, and what they look like.

Purpose: Taking what you learn from your readings and class notes and making it useful.

Rule Formulation: One of the most important parts of your legal education is learning to formulate and synthesize rules. Sometimes it’s easy—you read a case and the case tells you the rule. Sometimes it takes more work and requires you to combine or reconcile the express or implied rules of numerous cases. The point is to use all your materials (casebook, class notes, and briefs) to formulate a correct, complete, and concise statement of the law.

When it's easy the opinion sets forth a perfectly stated rule (or sub rule) that you can include in your outline. This is rare in law school but not unheard of. Consider the selection from the court’s decision in Heath v. Swift Wings, Inc. This case involves the tort of negligence and focuses in particular on the appropriate standard of care—objective or subjective—for professional negligence cases. See if you can spot the rule:

The trial court improperly introduced a subjective standard of care into the definition of negligence by referring to the “ordinary care and caution, which an ordinary prudent pilot having the same training and experience as Fred Heath, would have used in the same or similar circumstances.” . . . We are aware of the authorities which support the application of a greater standard of care than that of the ordinary prudent man for persons showing to possess special skill in a particular endeavor. Indeed, our courts have long recognized that one who engaged in a business, occupation, or profession must exercise the requisite degree of learning, skill, and ability of that calling with a reasonable and ordinary care.

Looking at the above selection, the court comes right out and tells you that the trial court was wrong and the correct standard is objective, not subjective. Indeed, it formulates the general standard of care for professional negligence for you: one who engaged in a business, occupation, or profession must exercise the requisite degree of learning, skill, and ability of that calling with a reasonable and ordinary care. Easy right?

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1 Express rules are pretty easy to spot. The court in its analysis states the rule of law that it is applying and—boom!—there is your express rule. Implied rules are exactly what they sound like—rules that the court does not come out and state but are apparent given the context of the decision. These, unlike express rules, can be really tricky to spot. You will have to read the opinion carefully and understand what the court is really doing in its analysis to spot these rules. For an example, look at the summarized holding of Case Two below. There the court held that the slamming of a plate held in Plaintiff’s hand was a “contact to his person.” It is, therefore, implied that the touching of something closely associated with the Plaintiff’s person, such as his dinner plate, is considered a touching to his person for purposes of battery.


3 Negligence is a tort, or civil wrong, that provides a means of recovery for injuries resulting from a defendant’s lack of care. You will have a lot of fun this Fall diving into it.
Some helpful hints in spotting a rule—look for phrases like: (1) this court holds… or we hold that …; (2) in this jurisdiction . . . ; (3) the modern rule is …; or (4) it is well settled that . . .. These phrases generally signal that the rule follows.

Complex Rule Syntheses and Formulation: Most of the time in law school you have to read a couple of cases and the case notes before you can formulate a complete statement of the law. Consider the summarized holdings in the following cases. (We are going to use the intentional tort of battery⁴ for now as we are just starting our foray into the law of adverse possession).

Case One: This court holds that battery is an intentional tort. In order to state a prima facie case for battery the plaintiff must allege that the defendant’s conduct was intentional.

Case Two: A battery is defined under the law of this jurisdiction as a harmful or offensive touching to the person of another. Defendant committed a touching when he grabbed a plate that Plaintiff was holding in his hand.

Case Three: A plaintiff seeking to recover for an intentional tort must allege that the defendant was the direct or indirect cause of the injury alleged.

Case Four: Battery is a tort that seeks to protect the personal dignity and bodily integrity of the plaintiff. For that reason, proof of monetary damages is not required of the Plaintiff, only violation of his or her dignity or integrity for which nominal damages will always be awarded.

Case Five: In regards to battery, a harmful touching is one that causes physical impairment of the condition of the body or physical pain or illness. An offensive touching is one that would offend an ordinary person, not unduly sensitive to personal dignity.

None of the cases above states a complete rule for battery. Therefore, in order to come up with a complete, correct, and concise rule for your outline you have to look at each holding and figure out what it adds to the general discussion of battery. For instance, Case One tells us what kind of tort we are dealing with—which is only somewhat helpful. Case Two defines what kind of act amounts to a battery; while Case Three and Case Four indicate that causation and injury are requirements of the prima facie case for battery. Case Four also tells us that injury is an element though monetary damages are not required. Finally, Case Five tells us what kind of touching is considered harmful or offensive.

So, putting this all together, we know that battery is a tort that requires the following: An intentional, harmful or offensive touching to the person of plaintiff causing injury, directly or indirectly, to his or her personal dignity or bodily integrity. BAM! Now you have a complete, correct, and concise statement for the prima facie elements of a battery cause of action. (That feels good doesn’t it?)

Are you done? Nope, you have to define what each of these elements mean. Case Five does a good job of detailing what the “harmful or offensive” portion of the rule mean. There are other terms that you will have

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⁴ Battery is a tort that compensates plaintiffs for invasion to their personal dignity or bodily integrity. It requires that the defendant intentionally touched the plaintiff’s person. This is not to be confused with assault which does not require a touching, but rather only a reasonable apprehension of a touching.
to define, like for example: “intent” and “to the person”, before you can truly say you have a complete understanding of battery. This process has to be an ongoing in nature.

**Deconstructing Rules**: This process involves translating the rule into a list of parts so that a judge, jury or law student will be able to apply each part of the rule, in turn, to the facts at hand. This is an important process. It allows for methodical application of deductive or rule based reasoning. (We will discuss deductive reasoning in depth later on when we introduce the concept of IRAC).

Let’s consider again the tort of battery:

Battery is an intentional, harmful or offensive touching to the person of plaintiff causing an invasion to his bodily integrity or personal dignity.

*Deconstructed, Battery looks like this:*

A battery is an (1) intentional, (2) (a) harmful touching or (b) offensive touching (3) to the person of plaintiff (4) causing (5) an invasion to his bodily integrity or personal dignity.  

Thus, you know you will have to establish or discuss at least five separate elements to fully analyze a battery fact pattern. Note, the touching portion of the rule is a disjunctive rule in that it requires you establish only one of its constituent parts. That is you only have to establish a harmful or offensive touching—not both.

Let’s try the rule for contract formation:

To establish a contract, a party must demonstrate mutual assent including an offer, acceptance of that offer, and consideration.

*Deconstructed, the rule for formation of a contract looks like this:*

To establish a contract, a party must demonstrate (1) mutual assent including a valid (a) offer, (b) acceptance of that offer, and (2) consideration.

Thus, you will have at least three separate elements to establish for your formation analysis, two for mutual assent, which encompasses both offer and acceptance, and one for consideration. Note—the mutual assent portion of the rule is conjunctive rule in that it requires both offer and acceptance to be shown.

**Types of Rules**: Generally speaking there are five types of legal rule: (1) simple; (2) elemental; (3) factor; (4) alternative/disjunctive; and (5) rule with exceptions

1. **Simple rules**: Pattern: If A, then Z.

   Example: Speed limits. If you exceed 55 miles per hour, you have committed a misdemeanor.

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5 This is one formulation of battery. Your professor may use a slightly different one. Remember, always follow your professor’s lead.
(2) **Elemental**: Pattern: If A and B and C, then Z.

Example: Battery (really all intentional torts and negligence).

Negligence: To establish a prima facie case for negligence plaintiff must show: (1) duty, (2) breach of duty, (3) cause in fact and (4) proximate cause, and (5) damages.

If plaintiff shows all the elements of negligence then defendant is liable.

Look for key words: and, with, all.

(3) **Factor / Balancing Test**: Pattern: If A and B and C weighed together justify Z, then Z.

Example: If a statute / rule / ordinance meets the requirements for negligence per se, a court may still decide not to adopt the statute as the standard of care if upon consideration of the factors below it is unwarranted:

- Whether duty derives from statute solely;
- Whether statute puts public on notice by clearly defining required conduct;
- Whether statute imposes liability without fault;
- Whether negligence per se would result in ruinous damages;
- Whether the plaintiff’s injury is the direct or indirect result of the violation of the statute.

Key words, considering, in light of, weighing, totality of circumstances . . .

(4) **Alternative (or disjunctive)**: Pattern: If either A or B, then Z.

Example: Trespass to chattels is an intentional (a) dispossession or (b) intermeddling with the personal property of another.

Look for key words: or, either.

(5) **Rules with exceptions**: Pattern: If A then Z, unless B.

Example: Defendant is subject to liability if s/he acts (1) intending to (2) (a) confine another within (b) boundaries fixed by the actor, (3) her / his act directly or indirectly results in such confinement and (4) plaintiff is conscious of the confinement. Notwithstanding the existence of the foregoing elements, a police officer acting within the scope of his lawful duties may confine an actor when doing so pursuant to a valid arrest warrant or upon probable cause (i.e. reasonable suspicious that a crime is afoot).

Key words: except, unless, notwithstanding, but if.
OUTLINING

Types: Traditional and Graphic Outlines

Importance of Outlining: This is when you really learn the material and draw connections between the macro and micro level topics in the course.

- The point is not only to know rules, but also, to understand what the words in the rules mean and how they apply.

- There are commercial outlines, such as Black Letter’s, Emmanuel's, Gilbert’s, etc. These have their uses; however, if you rely on them solely you will be in big trouble.

Do your own outline: The process of making an outline will be one of the best means for you to understand the material and commit it to memory.

It takes a lot of time but the time you spend in preparing your outline is time well spent. DO NOT SKIMP HERE!!! Try dedicating 2-3 hours every weekend to outlining and synthesis.

What is in an outline? Outlines are a summary of the legal principals you have studied organized by topic. AN OUTLINE IS NOT A CONDENSED LIST OF CASE BRIEFS.

What should outlines include?

- Legal Rules (includes definition, identification of all elements and sub-rules and explanation of all elements and sub-rules.
- Exceptions.
- Defenses
- Policy considerations.
- Important cases (blurbs on facts and holding).
- Examples / short illustrative hypos.

When should I start? Generally as soon as you finish a topic in class, you should start synthesizing the material and creating your outline. The goal is to be done by “reading week,” which is the week prior to exams.

Where do I get my info?

- Casebook
- Briefs
- Class Notes
- Lecture Slides
- Secondary Sources (where you need a little help or are missing something)

Remember, your professor is the judge in your jurisdiction. What s/he says the law is—the law is! So, you should frame rules using the professor’s terminology and general view point.
**Format:** Outlines can be in the traditional format or they can be graphical. **However you decide to format** your outline, a good place to start is your syllabus and casebook table of contents. Every topic listed in your syllabus should be listed and covered in your outline. If your syllabus doesn’t have titles or topics listed—go to the corresponding portion of your casebook's TOC. These should give you a pretty good idea of what each reading assignment is covering at a particular time.

**Examples outlines:** Traditional Outline (Figure 1), Mind-Maps (Figure 2) / Flow-Charts (pg. figure 3) / Comparison Charts (Figure 4).

**Golden Rule of Law School:** Whatever method you use—graphic or traditional—your outlines, like your essay answers, should be:
- Correct
- Complete, and
- Concise.

**How complete? How concise?** It’s a balance. A 100 plus page outline is not a true synthesis and will not be of much help. Likewise, a 1 page outline of all your tort materials will not have enough detail.

Rule of thumb: (1) rules, (2) elements, (3) exceptions or limitations; (4) sub-rules, and (5) policies. Less than that and you are in serious trouble. Remember—it is not enough just to list the above, you have to define them and give context. You will do this by adding case blurbs, short hypos and definitions where needs be.
Figure 1
Traditional Outline Format

Example 1
(IOutlined How to Outline)

1. **Identify Topics, Organize Material, and Introduce Concepts.**
   a. **I.D. Topics:** Start with your course Syllabus and Casebook’s Table of Contents. This should give you a good indication of what topics you need to understand, and in what order those topics should be addressed.
   b. **Summary:** Try to summarize the basics of the doctrine you are outlining. Include its origin, purpose, and some context. This will help you see the big picture!

2. **Formulate Rule:** The foundation of any legal analysis is a rule. Thus, this is the real focus of your outline. When forming rules, use language your professor gives you or points out in your casebook. Avoid rule formulations obtained from sources outside of class, such as commercial outlines, especially where they depart from what you professor has given you. Remember, your professor is the judge in the jurisdiction. Defer to your judge!
   a. **Synthesis:** You may need to go to multiple sources to fully state the rule. (See my handout on Rule Synthesis).
   b. **Starting Point Rules and Sub Rules:** Some legal doctrines are more complex than others. Start with formulating the general rule and be on the lookout for sub-rules and exceptions. Starting point rules are rules that set forth the basic requirements and provide an analytical framework. As an example, think of the elements of a prima facie case of an intentional tort.

3. **Breaking Down and Explain Rules:** A good outline should identify and explain the starting point or general rule, as well as those sub-rules covered in class or the assigned readings.
   a. **Elemental Rules:** If a rule has elements you will need to identify each element and provide explanation. Sometimes it’s also good to briefly provide examples of how to apply each element. This is where case blurbs come in handy (see below).
   b. **Factors:** If a rule has factors that must be weighed it is imperative that you understand what each factor means and how courts apply it.
   c. **Kinds of Rules:** There are many types of legal rules – look at my synthesis handout to learn more.

4. **Cases and Class Examples:** Some professors requires you to know case names and facts on exams, others don’t. This may mean they may expect analogical reasoning on your exam (comparing cases in your casebook to the hypo on the exam to determine if the legal result in the hypo should be the same or different from the case). It may also mean your professor might want you to cite the correct authority. You need to know this prior to your exam — so ask your professor! Your professor’s preference will determine how many cases and in how much detail you will include in your outlines.
   a. **Brief Note on the Point of Cases:** Cases are read for four reasons: (1) to provide a legal rule; (2) to add to, explain an portion of, or provide an exception or defense to a legal rule; (3) to identify examples of correct or incorrect application of a legal rules; or, (4) to provide context
or historical development of a legal doctrine. Knowing why you are reading a case is important to understanding what your professor is trying to teach you. It also helps you understand whether and how a particular case should be used in an outline.

b. **Where and When to Use Cases in an Outline**: An outline is not just a summary of the cases you have read. It is an organization and explanation of the course and the legal doctrines covered therein. The focus ought to be on rules. To that end, cases should serve some point of clarification and explanation in an outline. They should also be discussed in the specific portion of the legal doctrine that they pertain to. For example, if a case provides an exception to a legal rule, it should be discussed in terms of that specific exception, not just generally.

c. **Case Blurbs**: Outlining is done to fully understand the rules and organization of material – not for cataloging cases. You already should have a brief of the case, therefore, it is unnecessary to include the full detail of a case in your outline. Some key words on facts and the important take-away is all you need. Example: [Palsgraph: firecrackers / train platform. Andrews – duty owed to all. Cordozo—duty owed to foreseeable plaintiffs only]. Try creating a table of cases if you have trouble remembering cases and facts and append it to your outline.

### Example 2

(This is small portion of a Constitutional Law Outline)

I. **Limits on jurisdiction of Federal Courts**
   a. **Justicability Doctrine**: determines which matters federal courts can hear and decide, and which must be dismissed; justicability includes prohibitions of advisory opinions, standing, mootness and ripeness, and the political question doctrine.
   b. **Constitutional v. Prudential Requirements**: the Court has declared some of the justicability doctrines are a result of interpretations of Art III § 2 “cases and controversies” and that others are merely prudential
      i. Cases and Controversies decisions: imposes constitutional limits on Fed Judicial power: thus congress cannot overrule them.
      ii. Prudential requirements: not derived from the constitution and are thus susceptible to being overruled by congress
   c. **Advisory Opinions**: the Court will not render an advisory opinion to congress or to the president on constitutionality of some contemplated action or legislation because such an opinion does not involve a “case or controversy.” (Art. III).
      i. Criteria to avoid being an advisory opinion: 1) must be an actual dispute between adverse litigants; 2) likelihood that a favorable judgment will have some effect or bring about some change.
      ii. Declaratory Judgments: the court has allowed declaratory judgments so long as it is based on real dispute and will have an effect.
   d. **Standing**: Whether a specific person or group is the proper party to bring a matter to the court for adjudications.
i. Policy justifications for limiting standing: 1) separations of powers, 2) judicial efficiency, 3) ensure judicial decision making is good, 4) fairness

ii. **Constitutional Requirements for Standing**: 1) injury, 2) Causation, 3) Redressability.

1. **Injury**: Π must allege that she suffered injury, or will imminently suffer injury.
   
   [Lujan: endeared species act, intent to visit in future but no present plans]
   
   a. Π must allege an actual and particularized, not conjectural or hypothetical
   
   b. Injury must be personal to Π, associations may have standing but they must allege that the its members were injured

2. **Causation**: Π must allege that Δ caused the harm, or the harm is fairly traceable to Δ conduct.

3. **Redressability**: Π must allege that a favorable decision is likely to remedy the injury [wrath].
Figure 2
Mindmaps

Mind Map
Guidelines

Clarity
Center

Style

Keywords

Use

Colors

Emphasis

Images

Connection

Hierachy

Order

Outlines

Start

Image

Colors

of topic

At least 3

Personal

Develop

Print

Case

UPPER and lower

Central

More important

Thicker

Outer

Less important

Thinner

Free

Flowing

Length

Same as

Organic

Word

Image

for each

Connect

Organised

Style

Lines

Word

Image

Alone

Center

Radiate out

Dimensions

A

Codes

B

Print
Figure 3
Flow Charts

Whether the Court has Personal Jurisdiction?

Step One - Due Process

Does the Party reside within the State?

YES!

General Jurisdiction:
• Resides in State
• Substantial and Continuous contacts

NO!

Served in State?

YES!

CONGRATULATIONS! Your Personal Jurisdiction comports with Due Process, go to Step Two!

NO!

Consent?

YES!

CONGRATS! Your Personal Jurisdiction comports with Due Process, go to Step Two!

NO!

Can you satisfy the Minimum Contacts test?

YES!

CONGRATS! Your Personal Jurisdiction comports with Due Process, go to Step Two!

NO!

Go Home, you have no Personal Jurisdiction

Move on to a Specific Personal Jurisdiction Evaluation

Step Two: Long-Arm Statutes

Is Personal Jurisdiction authorized by the Long-Arm Statute?

YES!

Congratulations! You have successfully found Personal Jurisdiction!

NO!

Go Home, You do not have Personal Jurisdiction
<table>
<thead>
<tr>
<th></th>
<th>TRADEMARK</th>
<th>COPYRIGHT</th>
<th>PATENT</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Constitutional and Statutory Basis</strong></td>
<td>Commerce clause, Lanham Act. (There are also state trademarks.)</td>
<td>IP Clause, Copyright Act</td>
<td>IP clause, Patent Act</td>
</tr>
<tr>
<td><strong>Subject Matter</strong></td>
<td>Word, phrase, symbol, logo, design etc. used in commerce to identify the source of goods and services</td>
<td>Creative works—for example, books, songs, music, photos, movies, computer programs</td>
<td>Inventions—new and useful processes, machines, manufactured articles, compositions of matter. Not abstract ideas or products/laws of nature</td>
</tr>
<tr>
<td><strong>Requirements for Eligibility</strong></td>
<td>Not generic (or merely descriptive without secondary meaning), identifies source of product or service, used in commerce</td>
<td>Original and creative expression, fixed in material form</td>
<td>Useful, novel and non-obvious to a person having ordinary skill in the art (PHOSITA)</td>
</tr>
<tr>
<td><strong>Rights</strong></td>
<td>Basic trademark right only vis a vis a particular good or service. Bass for beer, not ownership of word “Bass.” Prevents others from using confusingly similar trademarks; for famous marks, prevents others from “diluting” the mark. Also prohibitions against false or misleading advertising.</td>
<td>Exclusive rights to copy, distribute, make “derivative works”, publicly perform and publicly display. Possibly new right to stop circumvention of digital ‘fence’ protected © works.</td>
<td>Exclude others from making, using, selling or importing invention</td>
</tr>
<tr>
<td><strong>Duration</strong></td>
<td>If renewed and continually used in commerce, can be perpetual.</td>
<td>Life plus 70 years; 95 years after publication for corporate works</td>
<td>20 years for utility patents</td>
</tr>
<tr>
<td><strong>How Rights are Procured</strong></td>
<td>USPTO trademark registration process for ® status, though common law rights are recognized absent registration</td>
<td>Creation and fixation in a tangible medium; registration is not required to get copyright (but is required for suit to enforce)</td>
<td>USPTO patent application process</td>
</tr>
</tbody>
</table>

**Figure 4**
Comparison Chart
| **Examples of Limitations and Exceptions** | Genericity, nominative fair use, parodic use | Idea and fact/expression distinction, scenes a faire, fair use, first sale | Abstract knowledge in patent application disclosed freely. Subsequent inventors can “build on” patented invention and patent result without permission. Both inventors must consent to market resulting compound invention. |