Creating a Course Outline

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What Is An Outline?

No later than the first week of law school, every first-year student has learned that an outline is essential if one expects to do well on exams. Students hear about them everywhere. Professors remind them that they should have already started outlining; the bookstores are full of commercial outlines; and upper class students talk knowingly about the "killer" outline that they used last year to ace contracts. Unfortunately, students receive little guidance on the "do's and don'ts" of outlining. Hopefully, I'm about to change that.

So, what is an outline? An outline is an attempt to reduce the often chaotic mix of materials a student possesses for any one class into a more logical order and a more manageable length. When created correctly, an outline will become a student's primary, and possibly only, study aid for exams. While students create outlines in order to have an aid from which to study, it is the creation process that is actually the most important reason to spend valuable time writing an outline.

It is through the process of creating an outline that students actually learn the law. Obviously, professors do teach the law in class. It is while creating an outline, however, that students place the bits and pieces that they learn in class into a larger framework. For example, a student will learn about consideration over one or more contracts classes, but the student must integrate this single concept into a framework that includes topics such as offer, counter-offer, acceptance, part performance, breach, etc. Thus, when the outline is complete, the student should understand how the various pieces of the puzzle fit together.

It's the Journey, Not the Destination

Outlining is a process that should begin fairly early in the semester and one that should continue until the end of the year. Classes in law school tend build upon each other. Therefore, a thorough understanding of topics raised early during the first few weeks of the semester is essential if one is to understand concepts covered later in the year. Creating your outline on a rolling basis can help. For example, reviewing and outlining a week's worth of class notes over the weekend forces you to reconsider that week's topics. In order to create the outline, you will be forced to consider how various topics fit together, and you may even need to engage in additional research regarding certain ideas. By the end of the weekend, you should have a thorough understanding of the prior week's material. Seeing as the next week's class material will likely build on the prior week's topics, you will be in a much better position to comprehend the new material on a much deeper level. In fact, as the year progresses, you may even be able to anticipate the focus for next week's classes based on what you have already covered.

When Should I Begin Outlining?

The short answer to this question is "start early." Because outlining is a process that continues throughout the year, you need to begin at some point during the first month of classes. While I cannot pick an exact date for you, keep the following points in mind. An outline is intended to be your own understanding of how the various aspects of a class fit together. Importantly, it should provide context, indicating how the rules of law you learned on the first day of class

might relate to the rules you learned months later. Because courses tend to move somewhat slowly during the first week or two of law school, it may be a few weeks before you have enough material to begin your formal outline.

Some of you may be planning on spending a great deal of time on your outlines near the end of the semester, completing them as exams are about to begin. This is a recipe for disaster. By now you are aware that law school is extremely time consuming. If you wait to work on your outlines until the end of the semester, it is unlikely that you will have enough time to complete them prior to exams. If you do complete them before exams, it means that other things, such as attending class or your writing assignments, have suffered. Also, an outline is only effective as a study aid when you have time to read it through several times prior to the exams. If you wait too long, you will not have this time. As you are scrambling at the end of the semester, your goal will become completing the outline as opposed to studying from it. While completing your outline on time is certainly a good reason to begin early, there are even more compelling reasons for being process rather than result oriented.

Preliminary Steps

Outlining is merely one step on the path towards law school success. Several of the other steps on this path can be viewed expansively as a part of what I have been referring to as the outlining process. Importantly from the student's standpoint, you can take some of these early steps in the outlining process near the beginning of the semester.

- **Read Your Cases Twice** – A thorough understanding of your first-year classes begins with a thorough understanding of the assigned cases. While many first-year cases are fairly short, they are also quite dense. Therefore, multiple readings are often necessary. Read the case the first time without a pen, pencil, or highlighter in your hand. Avoid the compulsion to take notes or highlight in any way. Instead, read a case for the first time as you would a short story. Do this in order to get a general sense about the case, which in turn will make for a much more focused second read. This time, feel free to highlight and take notes. Your highlighting will be much more focused because you will have a clearer idea about which aspects of the case are truly important.

- **Write a Case Brief and Then Correct It** – Good case briefs are one of the important ingredients that go into your outline. That is why it is so important that they are accurate. Most students write a case brief prior to class but then forget to correct it based on the professor's lecture.

- **Take Complete Notes** – Every law students takes notes, but some of these notes are surprisingly incomplete. For example, class hypotheticals are often left out. Do not make this mistake. Hypotheticals are examples of legal analysis, and poor analytical skills are often cited by professors as the reason why a student performed poorly on an exam. Also, some form of the hypotheticals used in class can find their way into your exams.

- **Review and Type Your Notes Within 48 Hours of Class** – Reviewing your notes accomplishes several things. First, it is a great way to prepare for the next day's class because it forces you to more carefully consider the prior day's material. Second, it gives you an opportunity to fill in any gaps in your notes. Why would there be gaps? No one writes down everything the professor has to say, and the tendency is to exclude material that seemed obvious during the professor's lecture. The "obvious" material will remain in your head for a day or two, but will not be there a week later, creating gaps in your notes.

  I urge students to type their notes into their computers as they review the material. Typing your notes is the first step in the memorization process. When you later review the typed version of your notes, you will be amazed at how much of the material has already been committed to memory. Typing notes is the grunt work of creating an outline, and will save you time on the weekends when you transform the notes into your actual outline. Remember, outlining is a process, and the process proceeds more smoothly if you spread the work out over the entire semester. On the weekends, you will take these notes and start transforming them into your outline. For those of you with poor typing skills, you can accomplish much of what I am suggesting by rewriting rather than retyping your notes. You will still be forced to reconsider the material more thoughtfully and you will still begin memorizing the important ideas contained within your notes. The one drawback is that the computer allows you to move, cut, and reorder material much more easily.

  Keep one thing in mind as you are typing the notes; never type anything into the computer that you do not understand. If the hypothetical that was crystal clear while you were sitting in class no longer makes sense now that you are rereading it, ask the professor about it the next day. Better still, see if you can figure it out on your own using other source material like a hornbook[1]. Once you have discovered the answer to your problem through additional research, it will never leave you.

  If you are one of the growing number of students who types notes into a computer during class, you still must review your notes no later than 48 hours after class is over. Your review will be a bit different. Instead of typing your notes, print them out and go through them carefully. Avoid simply reading your notes on the computer screen. Everything looks good on the computer screen, making it less likely that you will add or change anything. Going through the notes in this fashion still allows you to consider the material in a setting that is less harried than the classroom. Still, you will not commit as much of the material to memory as you would if you typed the material at home from your handwritten class notes.

Should I Buy Commercial Outlines?

Should students use a commercial outline in place of their own outlines? The answer to this one is easy – NO! As I have already mentioned, students will develop a much deeper understanding

[1] A hornbook is a single volume treatise on an area of the law. Oftentimes, hornbooks are available that correspond to specific casebooks.

of the law through the process of creating an outline. If the idea of developing of deeper understanding of the law does not convince you, then consider the following reasons for creating your own outline. Commercial outlines tend to be extremely long, with 300 and 400 page outlines not uncommon. This makes sense when one considers that the authors must take into account the variations in what professors from across the country cover in their courses. For the student, this means wading through dozens of pages of irrelevant material, and no one can afford to waste time in law school. Also, a 300-400 page "outline" is not helpful as a primary study aid. While you may be able to finish reading the commercial outline once by the end of the year, multiple readings are necessary in order to commit key concepts to memory.

If you still plan on using a commercial outline in place of your own outline, keep the following in mind. In your contracts class, for example, you are not learning all there is to know about contract law. Instead, your professor is emphasizing some concepts and deemphasizing or even excluding others. In a sense, you are learning the law of contracts according to your professor. Therefore, an outline geared toward how your professor taught the class is essential.

So, do commercial outlines have any role in preparing for examinations? I think that they do. Reference material is often extremely helpful when creating an outline. It can be used to confirm your own understanding of a topic, to provide additional examples of how a rule of law might be applied, or to note how different jurisdictions might treat the same principle. While many students will use a hornbook for this purpose, outlines can be used in the same role. In addition, commercial outlines can be helpful in providing an example of how to organize your own outline.

Can I Use Someone Else's Outline?

If you are considering using a classmate's outline, I have one piece of advice for you – DON'T! This is true whether you plan on sharing outlines with members of your study group or getting your hands on the outline written by last year's valedictorian. Any time saved through using another's outline will be more than made up for by the low grades that will result. So why shouldn't you use another's outline? For a number of reasons.

- **You Learn the Law When Writing an Outline** – If you use someone else's outline, you will not understand the topic nearly as well as you would if you wrote your own outline. Remember, outlining is a part of a process that leads to a deeper understanding of your courses. Another student's outline would be fine if your exams emphasized memorizing a long list of rules, but they do not. Instead, exams are about identifying problems and then analyzing them. The outlining process, which requires synthesizing rules and organizing them logically, is an integral part of mastering the art of legal analysis.

- **Your Outline Must Be a Reflection of Your Professor's Class** – During their first year, most students take the same courses regardless of the law school. The content of those courses, however, differs greatly depending on who is doing the teaching. Therefore, an outline based on a different professor's property class, for example, will be useless to you when studying for your property exam.

- **Outlines Are Unique to Their Authors** – Without necessarily intending to do so, each student writes a somewhat unique outline. For example, a student struggling with the concept of causation in a product liability action may spend a great deal of time in the outline laying out the concept. The student who "got" the concept immediately is unlikely to devote much outlining time to it. Your outline will not be helpful as a study tool unless it is written based on your own strengths and weaknesses.

- **Another's Outline May Contain Mistakes** – When you consider how expensive law school can be, why would you rely on material written by another student when preparing for exams? No first-year student, regardless of aptitude, is an expert on any area of the law. Also, why rely on another student's understanding of a concept when your professors will be grading you?

Now You Are Ready to Outline

Now that the preliminaries are out of the way, you are ready to start outlining. When creating your outline, you will do the following:

- **Organize your ideas around concepts and rules rather than cases**

- **Display the proper relationship between concepts**

- **Classify/synthesize cases into groups**

- **Use cases and hypotheticals to help define concepts and rules**

Organizing Your Ideas Around Concepts and Rules

While organizing an outline around ideas may seem simple, it is often the aspect of outlining with which students have the greatest amount of difficulty. Instead, students tend to organize around cases and end up with an outline that reads like a series of case briefs. This mistake is understandable when one considers how much time students spend dissecting cases in class. Professors, however, rarely expect you to memorize cases for a law school examination. Instead, they expect you to have learned the various rules of law and how those rules are applied through a discussion of cases in class. With that in mind, the idea of organizing your outline around legal concepts, using the cases and hypos for illustrative purposes, should make more sense.

Now that you have a general idea of why you should be organizing your outline around legal concepts, your next question should be, "So where do I find these concepts?" The good news is that you already have them. They can be found in four places: your class notes; your case briefs; your case book; and your course syllabus. Start with your case book, focusing on the table of contents. The table of contents is likely broken down into topics that should be included in your outline. Once you have listed all the topics from the table of contents, move on to your syllabus. The syllabus will help you find additional concepts that the professor has focused on during the year. Next, review your case notes and case briefs. Scan them, looking for additional ideas you may have missed. Now you should have a fairly lengthy list of concepts from which to work.

Remember, your goal at this point in the process is to create a long list of ideas. Do not worry about organizing the ideas yet. That is the next step. Also, do not worry about whether a word or phrase is actually a legal concept worthy of inclusion in your outline. You will revise your outline throughout this process, so you have plenty of time to fine tune it. Below is sample list of topics that one might create based on the first weeks of a torts class.

Torts Topic List

intent	volitional act
reckless conduct	negligent conduct
intent to harm	assault
battery	false imprisonment
trespass to land	trespass to chattels
malice	transferred intent
mental illness/intent	transferred intent, different tort
battery	transferred intent, different person
touching	express consent
implied consent	offensiveness
objective reasonable person	item closely associated with victim
unanticipated harm	eggshell skull

Display the Proper Relationship Between Topics

Now that the list is in place, your next task is to organize it and insert the rules of law. While you should attempt to organize the material on your own, your casebook or a commercial outline can help. Be sure that your organization proceeds logically, and that you begin with the broadest ideas. For example, most torts classes begin with the intentional torts, and one might be naturally inclined to begin with the tort of battery. The organization for such an outline might start out looking something like this:

I. Intentional torts

A. Battery

1. Requires intentional or harmful offensive contact

a. Transferred intent

Can you see that this outline already has a problem? Consider the concept of transferred intent. Is transferred intent an idea that is applicable to battery? Of course it is, and as such it can appear where I have placed it. The better question, however, is whether the concept of

transferred intent is applicable elsewhere. Again, the answer is "of course." The concept of transferred intent is applicable to other intentional torts. So, a little reorganization is in order. Now, the organized list of the above topics, with accompanying rules, would look as follows:

Torts Topic List, Organized and Including Rules

I. Intent – Either must desire to cause some mental or physical effect or must act with substantial certainty that tortious event would follow. Reckless/negligent acts generally insufficient.

A. Volitional act – harm must result from volitional act. Movement while sleeping or involuntary body movements insufficient

B. Malice or intent to harm unnecessary – all that is necessary is intent to affect plaintiff. Normally, party intends harm, but intent to harm not required.

C. Transferred intent –three different types of transferred intent, all suffice

1. **Intent to commit tort on different person** – when act with intent to commit tort on party A but actually commit tort on party B, intent is transferred from A to B and D still liable.

2. **Intent to commit different tort on same person** – D still liable

3. **Intent to commit different tort on different person** – If have intent to commit 5 most common intentional torts on party A, but act causes another tort to party B, D still liable. Torts included:

a. Assault
b. Battery
c. False imprisonment
d. Trespass to land
e. Trespass to chattels

D. Mental illness and intent – D with mental illness can still form intent.

Notice a few things about the above example. I have underlined or placed in bold certain concepts. I did so because I wanted these concepts to stand out when I was reading the outline. Another person would likely highlight different parts of the outline. Also, resist the urge to highlight large sections of the outline. The more you highlight, the less the most important concepts will stand out.

Adding Cases and Hypos to Illustrate the Rules

Once you have reached this point in the outlining process, you may be inclined to leave well enough alone. The concepts are well organized and the rules of law that you have derived from classroom discussion and case synthesis are all in place. If you were going to use your outline to prepare for a college examination, I might agree with you. You could simply memorize the rules, parrot them back to your college professor, and wait for your good grade to arrive in the mail. The problem is that you are no longer in college. In law school, your professors expect you to apply the rules of law to fact patterns you have never seen before. In order to do this effectively, you need to understand how the rules have been applied in the past. If you have multiple examples of how a court or professor applied the rule, even better. The more examples you have, the more fleshed out the rule becomes. In a sense, the cases and hypotheticals define the rule. Consider the following example.

Battery Example

Rule - Unpermitted and harmful or offensive touching of another by an act intended to result in such contact is a battery.

Fact Pattern – Defendant intentionally brushes against the plaintiff subway passenger in order to get by him and to a seat on the train. The plaintiff suffers from the rare disorder ifyoutouchmeIscream, and immediately starts yelling. He later testified as to being extremely offended by the contact. A psychiatrist also testified that those suffering from this order detest physical contact and would suffer mental anguish if touched.

Issue – Is this a battery?

If you use only the provided rule, what would your answer to this question be? Using only this rule of law, the answer would be that this is a battery. There was a touching of another. The defendant intended to touch the plaintiff in order to get to his seat and both the plaintiff and a psychiatrist testified that the touching offended this plaintiff. Before I focused you on the rule, however, you probably answered that the defendant did not commit a battery. Why the discrepancy?

What we need is a hypo that further defines the rule. A class hypo illustrating that we judge what is offensive based on a reasonable person standard would have made things a lot clearer. It is likely that you remembered such a hypo from class and that it made this concept much easier to understand. With so much material to retain, you cannot always trust that you will remember the cases and hypos you covered in class. That is why you should add them to your outline.

As an addendum at the end of this article, I have included the first few pages of a torts outline. Please keep in mind that the sample is not meant to take the place of your own outline. Also, be sure to defer to your professor if anything in my sample differs from what you hear in class.

Editing Your Work

Until exams begin, your outline will always be a work in progress. Therefore, do not be afraid to add, delete, and move material. This is particularly true during the early stages of the outlining process. For example, many contracts classes begin with the concept of damages. While there are many good reasons to begin teaching the course with the concept of damages, you may want to begin your outline with other topics. Remember that contract damages only become an issue when a contract has been created and then breached. So, you may want to begin your outline with contract formation as opposed to damages.

Policy Considerations

Depending on your professor, you may need to include policy considerations in your outline. In some classes, public policy plays a very important role. In others, the professors rarely mention policy issues. Policy considerations form the underpinnings of why certain rules of law have been created or adopted within a jurisdiction. For example, punitive damages are rarely awarded for a breach of contract. That is the rule. The underlying policy behind this rule focuses on economics. The breach of a private contract is unlikely to injure the community, and may actually benefit the community by permitting a more productive allocation of resources. Further, compensatory damages allows for the reallocation of resources while making the victim whole. If your professor class discussed this concept in class, it should be in your outline because it will be fair game on an examination.

The Outline as a Study Tool

As I have noted throughout this article, it is the outlining process and not necessarily the final product that is valuable when trying to make sense of your classes. Still, most students intend to use their outline as their primary or only study tool, and well they should. Consider the following when viewing your outline as your primary study aid.

- **Outline length** – There is no magic length for an outline, but it should be short enough that you can read it through from beginning to end multiple times in a single day. Also, if your outline is so long that you cannot commit much of it to memory, then it is likely too long. Remember, your outline is supposed to represent how the various rules that you discussed in class fit together. It is not supposed to be a treatise.

- **Condensing your outline** – When you first start studying from your outline, you should be reading the entire document. As you get closer to examination, however, make your outline shorter and see whether you still remember the key concepts. As a first step, remove the case references and hypotheticals. Once you have studied from this version for a day or so, remove the rules next. This should leave you with a list of topics. Once you studied from this version, remove most of the topics so that you are left with only the broadest organizational concepts, likely only those represented by a roman numeral.

- **Memorize a skeletal outline** – I refer to the final condensed version of an outline as a skeletal outline. Consider committing this entire version of your outline to memory. It

should not be too difficult to do as this version should be no longer than 1-2 pages. Then, when you walk into your examination, write down your skeletal outline onto scrap paper (if provided), the sheet containing the question, or the inside cover of your blue book. Doing so accomplishes two things. First, it forces you to write something with which you are very familiar, thereby relieving pent up stress. More importantly, this skeletal outline will act like a checklist. Consult it during your examination. If the parol evidence rule was listed on your contracts skeletal outline and you never referenced it in your answer, then you may want to go back and look at the question to see if you have missed something.

Summary

We have covered quite a bit, but when you look back on what we have discussed, the following ideas are the most important.

- An outline represents your understanding of how the various aspects of a course fit together, so you must create your own outline.

- Outlining is a process that takes place throughout the semester. Cramming to create an outline at the end of the semester does not work.

- Your outline should be built logically around legal concepts, not cases.

- Use cases and hypotheticals to illustrate those concepts.

Addendum 1, Sample Torts Outline Structure

The following is a sample of a few pages from a torts outline. It is intended to illustrate the structure of an outline. Notice how the broadest aspects of the outline naturally lead into more specific ideas that provide further explanation. Also, notice that the hypos and cases provide further explanation. ***DO NOT*** *use this in place of your own outline or as a substitute for anything you have discussed in your classes.*

I. Intent - Either must desire to cause some mental or physical effect on plaintiff or must act with substantial certainty that tortious event would follow. Generally, reckless or negligent actions are not enough for intent.

A. **Volitional act** - Tort must result from volitional act on part of Defendant. Movements while sleeping or involuntary body movements do not satisfy requirement

B. **Malice or an intent to hurt not necessary** - All that is required is an intent to affect the plaintiff. Normally, defendant does intend to harm, but this is not necessary.

1. EXP - Garratt v. Dailey (text 10) - Child pulled chair away and plaintiff fell to ground when tried to sit. Trial court found no liability because child did not intend to hurt P. Appeals court remands and states that child liable if acted with substantial certainty that prohibited contact would result.

2. HYPO 1 - D shoots gun into crowd and hopes that bullet will miss everyone. Intended battery because acted with substantial certainty that bullet would hit someone. Hope that shot would miss irrelevant.

3. HYPO 2 - D hunting and shoots at deer. Shot misses deer and hits hiker who hunter never saw. No intent. Never saw hunter, so cannot say acted with substantial certainty that harm would result. Also, no transferred intent because shooting a deer is not a battery.

C. **Transferred intent** - Three different types of transferred intent.

1. **Intent to commit tort on different person** - When act with intent to commit intentional tort with regard to party A, but actually commit tort on party B, intent transferred and Defendant still liable.

a. EXP - Talmage v. Smith (Text - 15) - Defendant throws stick at boy who was with friends on roof. Stick misses intended target and hits another boy whom Defendant never saw. Defendant still liable because intent to hit one person in crowd transferred to actual victim.

2. **Intent to commit different tort on same person**

3. **Intent to commit different tort on different person** - If have intent to commit 5 most common intentional torts on party A, but act causes another tort to party B, defendant still liable. Torts included are:

a. assault

b. battery

c. false imprisonment

d. trespass to land

e. trespass to chattels

D. **Mental illness and intent** - Party with mental illness can still form intent necessary for intentional torts.

1. McGuire v. Almy (text - 20) - Mentally ill defendant struck plaintiff with leg from piece of furniture.

a. Held - Mental illness does not preclude finding of intent even if attack would not have occurred without illness

b. Rationale - Practical solution to difficult issues. As between injured party and defendant, loss should be borne by wrongdoer

II. Intentional torts

A. Battery - Unpermitted and harmful or offensive touching of another by an act intended to result in such contact

1. Unpermitted - If party consents to touching, there can be no liability for battery.

a. Express consent - Actual consent by plaintiff. Consent to surgery.

i. Mohr v. Williams (Text 22) - Defendant doctor operated on right ear, but had only obtained consent to surgery on left ear. Held: battery. Today, consent forms are written to cover additional necessary procedures.

b. Implied consent - People must accept certain touching in society.

i. Hypo 1- Gently nudge by someone to get on subway. Implied consent to this touching.

ii. Hypo 2 - Push someone out of the way because the person is blocking the door, and defendant pushes hard enough that plaintiff hits the ground. No implied consent to this level of touching. Goes beyond what is expected in society

2. Offensive - Courts apply **objective standard of offensiveness**. Person of peculiar sensitivity cannot recover based on touching unless would be offensive under societal standard.

   a. Objective standard may not apply if defendant is aware of plaintiff's sensitivity.

3. Touching items **closely associated** with plaintiff's body - If defendant touches item that is associated with plaintiff's person, touching element satisfied.

   a. EXP - Fisher v. Carousel Motor Hotel (Text - 30) - Defendant grabs plate from plaintiff's hand while plaintiff in buffet line because establishment doesn't serve black customers. This action satisfied touching element because plate was closely associated with person when it was grabbed. In this context, also offensive.

   b. Note to self - seems that item touched must be in contact with plaintiff's person, but that no special personal attachment to item is required.

4. Unanticipated harm - As a general rule, when defendant's actions constitute a battery, then the defendant will be liable for any harm that results from the battery. Plaintiff will be compensated for unanticipated or unintended harm.

   a. HYPO - Defendant decides to play joke on friend and grabs him around the throat from behind and pretends to choke him. Startled, the friend turns his neck quickly and suffers a serious neck injury.

      i. Here, D liable for this unintended harm as long as this was a battery.

      ii. Consent - Possible, but unlikely, that plaintiff might have consented to touching if this was the kind of joke that they played on each other on a regular basis. However, facts are silent on this point.