

The Academic Achievement Program Seminar Series

THE STRUGGLE CONTINUES: INTRODUCTION TO OUTLINING (ALSO KNOWN AS “SOPHISTICATED STUDYING”)

THE TRUE VALUE OF THE OUTLINE IS IN ITS PREPARATION... To some students, “outlining” implies that studying for an exam cannot commence until one produces a polished document that can be declared an outline and memorized. Fellow students reinforce this view by eagerly exclaiming that they have finished their outlines. Do not be misled. The real value of the outline is in the **PROCESS OF PRODUCING IT**, as this is the best form of preparation you can undertake for a law school exam. Thus, instead of calling the process outlining, think of it as “sophisticated studying.”

WHY “SOPHISTICATED STUDYING”? Because law school exams do not simply require you to memorize and then regurgitate the material covered in the course, but instead require you to 1) **KNOW** the rules, and 2) **APPLY** the rules to facts you have never seen. Most students can memorize the rules, but your studying must become more sophisticated so that you can then use those rules to analyze a legal problem. Outlining as a learning process, instead of a document-creation exercise, will help you do this.

TO OUTLINE EFFECTIVELY, YOU WILL NEED:

1. Time. Outlining, if done properly, is not quick or easy. Your goal is not to rush the process so that you can say you finished the outline, but to allow enough time so that you can fully understand the material you are working with, and then have some time before the exam to review your final product. Only you can decide where that comfort zone will be. Keep in mind that quality outlining can only be done in **significant blocks of time**. Therefore, look at a calendar now and start planning your time in a way that allows you to properly prepare and study your outlines before each exam.

2. Your Class Materials. To produce a thorough outline, you will need the following: your casebook, syllabus, case briefs, and class notes. Trying to outline without one or more of these materials will simply waste time, because you will have to go back and check whatever you did to ensure it is complete. Also, make sure that you are looking at your materials closely to find information that will be helpful in your outline – for instance, do not overlook notes in your case book margins and on your case briefs.

3. You Do Not Need Commercial Outlines. Since the process of outlining is in itself studying, if you simply purchase an outline, you are skipping the most important step in your exam preparation. Moreover, since the commercial outline drafter did not sit in on your particular course, he or she may be outlining things you do not need to know, or in a way that conflicts with how your professor taught the subject.

HOW TO MAKE AN OUTLINE THAT FACILITATES MORE SOPHISTICATED STUDYING...

The following are some tips to help ensure that you are outlining for a deeper understanding of the material, and not simply outlining for the sake of outlining:

#1: Understand the Principles of Good Outlining Technique. Your outline **MUST** make the transition from an analysis of individual cases to a document that is organized around issues and legal principles or rules. Accordingly, your outline should not be a listing of each case you went over in the course. Cases should instead be used to illustrate how the rules worked in particular situations. For example:

BAD OUTLINING TECHNIQUE (organization around cases):

1. *Smith v. Jones*: Plaintiff sued for breach of contract where employer fired him after two days of work, but had orally promised a three year term. Holding: no cause of action.
2. *Johnson v. Allen*: Plaintiff sought damages for breach of contract where Defendant promised payment if plaintiff crossed bridge, and plaintiff performed as promised, but defendant changed mind. Holding: cause of action for promissory estoppel, but only restitution permitted.
3. *Gifford v. Van Alstine*: Plaintiff sought relief under theory of equitable estoppel, where defendant promised to stop teaching contracts, but never intended to do so. Holding: Equitable estoppel claim cannot be brought.

GOOD OUTLINING TECHNIQUE (organization around issues or principles):

Note: This is NOT what a finished outline would look like. This is an example of the skeleton, or beginning framework, for more sophisticated organization.

Intentional Torts

1. Battery

a. Intent

Cases where court found that there was intent

Cases where court found there was not intent

b. Harmful or offensive contact

c. With the Person of Another

#2: Make Sure You Understand the Big Picture. Once you understand that the outline is organized around concepts, and not cases, you can make your framework. To get a feel for the big picture, and make it your framework, review all of the topics covered in class by looking at your syllabus and the table of contents in your case book. See which topics are **main issues** and which are **sub-issues**. Make sure you understand how the topics fit together. For instance, your outline should **NOT** be organized as follows:

I. Intentional Torts

II. Battery

III. Intent

Instead, you must understand that Battery is a sub-issue under the bigger heading of Intentional Torts, and Intent is one element of Battery, so Intent would then be a sub-issue under Battery. As a result, your skeletal framework would be better constructed as follows:

I. Intentional Torts

A. Battery

1. Intent

2. Harmful or Offensive Contact

II. Negligence

III. Strict Liability

#3: Synthesize the Rules and Insert them Into the Framework. Once you are certain you have established the correct framework, you can build on it by inserting the rules. However, you do not simply list the rules from each case. Your cases must be synthesized first. This means combining all of the rules learned from your cases in a particular area to develop one rule or set of rules that encompasses that body of law. Here's how you do it:

First, have your framework nearby so that you clearly understand the elements of the particular issue you are outlining. Next, pull together all of the cases you have studied on that particular issue. For example, pull together all cases on Battery. If you are not sure what cases were covered in a particular area, consult your syllabus or table of contents in the casebook.

Second, categorize the cases so that you understand which cases relate to each element. In our example, you would categorize the cases based on whether they relate to intent, or harmful or offensive contact. **At this point you must be sure you understand the main point of each case.** If you do not, reread the case and/or ask someone for clarification. You should not synthesize cases that are talking about different things -- if one case talks about battery and another case talks about strict liability, they should not be synthesized.

Third, if two or more cases talk about the same element, you should categorize or divide the cases by the result. For example, if you have several cases on the intent element of battery, you would separate the cases that found intent from the ones that did not.

Once you have separated them, you need to understand the similarities and differences in the cases within each element. So, try to figure out what is the **same** in the cases where the court found that there was intent, and the similarities in the cases where the court found that there was not intent. Likewise, you must also understand the **differences** between the cases in the category where the courts found that there was intent and the category where the courts found there was not intent. Why did the

court find intent in some cases and not in others?

Finally, formulate the rule for all of the cases -- try to see the pattern in all of the cases, and formulate the rule from that.

Once you synthesize the material to develop a rule, put the rule into your outline under the appropriate heading or sub-heading.

IF YOUR OUTLINE ENDED WITH THE RULES, IT WOULD NOT BE SUFFICIENT. REMEMBER, KNOWING THE RULES IS EXPECTED, BUT IT IS NOT ENOUGH FOR EXAM SUCCESS.

#4: Insert Cases and Hypotheticals to Illustrate How Each Rule or Element is Applied.

Once you have the rules in your outline, you will need to illustrate how each rule or element is applied. You do this by adding brief summaries of the cases and class hypotheticals in a way that explains or makes clear how the rule or element was applied. Make sure that you include in your summaries the relevant facts of the case, so you can understand what triggered or did not trigger the rule or satisfy the element. This is a critical part of the outline, because it is what will help you to understand how to apply the rules to a new fact pattern on an exam.

#5: Insert Policy Rationales and Other Important Commentary from the Professor (Including Questions He/She Left Unanswered). After putting in all of the cases and class hypotheticals which illustrate the rules, you should add in -- wherever you can -- any policy rationales, theory, or other important point made about the rule by your professor or noted in the case book. Keep in mind, you may not have a policy rationale or theoretical point to add for every rule, but where such information was highlighted by your professor, it should be put into your outline.

#6: Note in Your Outline Areas where the Law is Unsettled or Where the Professor Highlighted Competing Interpretations of a Rule. Your outline can be very useful to you in pointing out areas where the rules are unsettled or subject to debate. Thinking ahead to the exam, you will want to have thought such issues through if you get a question in such an area, and you will want to note the issue in your response.

#7: Know Whether Your Exam is Closed or Open Book, and Adjust Your Outline Accordingly. Once you have completed your initial outline, you can then adjust it based upon the type of exam you will be taking. If you are taking an open book exam, you will want an outline that is easy to refer to during the exam, and one that will help you answer the questions asked. Thus, take your original outline and from it make an issue checklist that you can use to help spot issues during the exam. You may want to create a flow chart. Finally, consider tabbing key areas of your outline for easy reference.

If you will be taking a closed book exam, the key is to create an outline that will help you both remember the law and work through the analysis as you apply it. One way to do this is to take your initial outline and work to reduce it to something that you can actually visualize (for example, maybe 10-20 pages). It may take several drafts to reduce each area to its core pieces, but remember, this is part of your studying and it is not wasted time. Again, you may want to reduce your outline to a flowchart.

#8: There is no Right or Wrong Format for an Outline. Although your outline must be

correct from the perspective of the information it contains, you should keep in mind that there is not one correct format. Some students type their outlines with Roman Numerals and proper indentation. Some simply hand write the information on loose-leaf paper. Others create flowcharts. The key is not what the outline looks like, but the information it contains and the process you went through to create it. For this reason, there is no set number of pages an outline should have, or a set style it should take. Likewise, there is no set number of drafts of your outline that you should do. **You should keep working with the material in a format that helps you understand it for as long as you feel you need to do so.**

#9: Fill In Gaps. If done well, outlining will show you where you are not clear on an area or where you can develop an area further. Talk to your friends and see if they can help you, or go talk to your professor. Resist the temptation to simply use a commercial outline or one that was prepared by a friend (in whole or in part).

#10: Put Your Outline to Work. The best way to determine whether your outline is organized correctly and contains the information you need is to try some sample exam questions. If you find that your outline could be better in some places after doing this, revise it.

A GOOD OUTLINE...

Will enable you to learn your course material well enough so that you can respond confidently and creatively to new fact patterns presented on an exam;

Will go beyond just the legal rules you learned in the course, to include the areas where the rules do not settle all the issues, or leave important questions or gaps in the law;

Will help reveal to you areas where you are unclear on the rules or how they should be applied, or any other area where you have confusion;

Will go beyond definitions of rules or doctrines, and include an explanation of why you would choose one doctrine over another (e.g., promissory estoppel and equitable estoppel, and why you would choose one over the other in a given fact situation, or strict liability over a negligence analysis, etc.); and

Is one that is prepared by YOU.

The Academic Achievement Program: We Are Committed to Your Success

Professor Dionne L. Koller
Room 464; dkoller@law.umaryland.edu

410.706.3837

Office Hours by Appointment

Feel free to contact Professor Koller or any one of the AAP Teaching Fellows with any questions.