Study Skills Workshop II

OUTLINING

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Assoc. Prof. Natt Gantt
Director of Academic Success

STEP 2: ASSIMILATION

I. The purpose of outlining

Outlining is the key process in the second step of your overall study strategy. After you "distill" the core concepts from the various cases and statutes you have read, outlining is the process by which you "assimilate" these concepts and put them together into a format that will help you learn the material from the course. Cognitive psychology teaches that it is difficult to learn long, seemingly-unrelated lists of information. Outlining therefore serves as the primary method to "chunk" related pieces of information. This step incredibly enhances your ability to learn and memorize the relevant course material.

In this process, you are to take all the relevant information from your case briefs, class notes, class syllabus, and any other source and organize and summarize it into a document that contains the highlights of the course. Although the end product, your outline, is obviously important, the process of outlining is even more important; that process is a critical step in *active learning*.

Don't think of the process as "outlining" or summarizing as much as organizing and cataloguing the course material. SEE ATTACHMENT A.

II. Why should I do it?

- Outlining will significantly help you to learn the important information in a course.
- Outlining produces a document that will serve as an invaluable tool in your final exam preparation.
- Outlining forces you to identify the core concepts in a course in a way that case briefing, notetaking, or casebook reading cannot.
- Outlining serves as a powerful review technique that helps you identify your areas where you need additional review.
- Outlining will help you bring together and organize any disorganization inherent in the class presentation.
- Outlining enables you to create a document that is professor- and exam-specific.

III. When should I do it?

Although you need not worry about crafting the perfect outline early in the semester (which will be impossible!), you should at least begin the *process* early in the semester. A good time to work on the process is each time after your professor completes a major topical area in the course.

In terms of when during the week to outline, students have adopted two primary approaches. Some students concentrate on outlining on the weekends when they have larger blocks of time. Other students work on outlines daily adding to their outlines after almost every class. These students may see their "take home message" time after class as an opportunity to begin outlining the material just covered. These students may consequently push some class prep time to the weekends.

The primary advantage of the second approach is that it provides you with many "hits" at the material and therefore increases your ability to remember the information. The second approach also allows you to see your outlines as living documents that develop as you progress in the course. Despite these benefits, some students will find it difficult to adopt this approach. As noted in previous handouts, I recommend that you prepare for class soon before that class is to meet (i.e., not many days before). If you spend too much time on outlining during the week, you may have to push some class time to the weekends well in advance of class. That strategy may create some inefficiency; you may find that you have forgotten much of what you read for class if you're reading for it several days before the class actually meets.

Another process that some students adopt is to take their class notes in outline form so that they can more easily turn their notes in their full class outline. Although this approach has the purported benefit of providing those students with a skeletal framework, I don't recommend this approach for everyone because, at least in some classes, your class notes outline structure will look very different from your final course outline. Moreover, in taking class notes in outline form, some students may be more preoccupied with creating the form than with absorbing the class discussion.

IV. How should I do it?

Like so many other legal study skills, there is no one right way to outline that works for everyone. However, the following techniques certainly work well for most students.

1. Have all your source materials available as you work.

PRE-OUTLINE (STEP 1)

Goal: Panoramic View—Map out the big picture of the course; identify the major concepts in the course (e.g., intentional torts, negligence, etc.). This step helps you maintain a sense of the "forest" and not get lost in the "trees."

2. **Create a skeletal framework that organizes the <u>outline by concepts, not cases</u>.**
IRAC Note: Think of the concepts as the major "issues" in your course. You can begin by simply listing them. These concepts will become the topics of your outline. They will also, in turn, relate to the issues you will spot on an exam and will serve as the "I" in your IRAC framework. SEE ATTACHMENT A.

Because it is much easier to remember concepts when they are logically connected, it is important to group information in a course based on concepts that are so connected. For instance, you should place main rules and their respective exceptions together in your outline. Organizing your outline by cases, in contrast, will make it more difficult for you to remember the information because the logical connections between the cases will not be readily obvious. *For outlining purposes, the cases are unimportant in the abstract; their importance stems from their illustration of how the rules work.* SEE ATTACHMENT B.

An easy way for you to begin this process is to look at your syllabus or your casebook's table of contents to provide you with the framework for the major concepts. If these sources are not sufficiently detailed, you may benefit from looking at a commercial source that helps you determine which issues are the major ones and which ones fall under them. Next, you could add any legal terms or buzzwords that the book or your professor readily mentioned under those concepts.
SEE ATTACHMENT C (Step 1). SEE ATTACHMENT D for brainstorming about the big issues.

OUTLINE (STEP 2)
Goal: Telephoto view: Understand the details and nuances of the concepts and the factual situations in which they usually arise.

Step 2—Generally

3. **Throughout this step, continue to fine-tine the logical organization of your outline.**
IRAC note: Ask yourself how the major concepts and sub-concepts need to arranged. Is there any particular order in which the major concepts should go? How do the sub-concepts fit under the concepts? (See § 10 below.)
Remember that you learn better when information is organized logically. The class syllabus and casebook table of contents may only get you so far. Continue to subdivide and reorganize your concepts until like concepts are grouped together and are arranged hierarchically. Avoid simply listing related concepts together without showing how they are related. SEE OVERHEAD EXAMPLE.

Step 2A—Rules

4. **Complete your skeletal framework by inserting the relevant rules under the concepts. Sort the rule material into "sub-issues" as determined by:**
   - **the elements of a prima facie case;**
   - **the elements of the rule;**
   - **the sections of the relevant statute;**
   - **the factors relevant to the rule;**
   - **majority/minority rules and when they apply; and/or**
   - **the exceptions to the rule.**

SEE ATTACHMENT E for different types of rules.

IRAC Note: Think of completing these sections as completing the "rule" sections for the "issues" that are your headings and subheadings.

Once you have organized the major concepts, the next step is to insert the relevant rules and elements under each heading. Here, you should use your case briefs and class notes to help you organize your outline. (Your briefs are most helpful in this regard if you have completed the "concept" and "connections" sections of your briefs.) Don't simply cut and paste long rule sections from your cases or briefs; try to write the rules in a way that you could actually see yourself composing them on an exam.

Rule Synthesis

Grouping the relevant rules and elements may not be as straightforward as it first appears. Specifically, the syllabus and table of contents may only get you so far; you may have rules from several cases that all come under the same headings. The following are some tips when you are struggling how to "fuse" or "synthesize" cases and organize relevant rules:

1) Group together all the cases you have read on a particular issue.

2) Start with the general premise that cases usually illustrate one of the following: (1) the general rule of a concept; (2) the nuances of a particular element of that rule; (3) an exception to the rule or element; or (4) a case that was wrongly decided.

3) If possible, divide the cases by element under the general rule.

If your general rule for a concept includes several elements or tests, each case may highlight one aspect of a particular element. (Remember that most cases in a casebook are edited so that they focus on only one issue.) List the rule from each case under the respective element; you need not "synthesize" the rules from cases covering different elements.

4) If cases cover the same element in a general rule, analyze the similarities and differences among the cases. Pay particular attention to differences in the result.

After understanding the similarities and differences, you will then see a pattern among the cases that represents the specific rule. Is one case a limitation or expansion to the rule in the other? Is one case another way of satisfying an element to a rule?

Sample Synthesis Example (SEE ATTACHMENT C (Step 2)):
Intent Element for Battery
Vosburg v. Putney: intent=intent to do act and act must be unlawful
Garratt v. Dailey: intent=substantial certainty that a harmful or offensive contact would result
From these cases, there thus are two different ways to prove intent.

5) If you are still unclear on how to fuse the rules from cases, consider crafting a chart that compares the language of the relevant rules. Because a court decides only the controversy before it, courts often discuss only the portions of the rule relevant to that controversy. Other cases on the same general topic may discuss other aspects of the rule. Moreover, courts may adjust the elements stated in previous cases without overturning the previously stated rule, or they may alter the phrasing of the rule without intending to change the meaning (Schedemann & Kunz).

Textual fusion of the rules involves a word-by-word analysis of the similarities and differences between or among two or more rules drawn from cases to be synthesized. To do this, you should separate the language from the rules into four categories: "(1) material that is identical in all rules; (2) material that is similar in all rules; (3) material that appears in only some rules; and (4) material that differs from rule to rule." Then, synthesize the rules by determining whether the differences are important and if so, how a final rule can be drafted to incorporate both rule statements. (Schedemann & Kunz). When you finalize the rule, consider using the "if/then" format discussed in Workshop I. SEE ATTACHMENTS F & F-1.

Step 2B—Application

5. **Use class hypotheticals and case illustrations to provide examples and support your discussion of the key concepts (Step 2B). Remember that the cases are secondary in that they support the rule material in your outline.**
IRAC Note: Think of completing these sections as providing you with information that will relate to your "analysis/application" section on an exam. In a sense, your outline contains all the information you use to compile an IRAC discussion on exam except the application to the facts of the questions. Adding hypos and case illustration helps you anticipate those facts in exam questions.

Hypotheticals and case illustrations can exemplify factual scenarios that give rise to the need to apply the rule in question. Case illustrations can also provide you with critical insight into the "policy" rationale behind the rules. These bits of information can help you, in turn, spot and analyze issues on an exam.

Moreover, hypotheticals and cases can serve as key memory triggers to help you remember how a rule is applied. Therefore, when a particular concept is unclear on its face, use a case and/or hypothetical illustration to illuminate for you how the relevant rule is applied.

Some people suggest that you should mention case names only sparsely in your outline. *Although you do not want your outline to be a recitation of your briefs*, you should mention cases to the extent they help you understand and remember the context of the rule you are referencing. You therefore should concentrate on including a very brief summary that explains how the rule or element was applied. Be sure to include the key facts that triggered the rule or element. SEE ATTACHMENT C (Step 2).

The extent to which you mention case names (or rule numbers) depends on what works for you, but here are some suggestions:

- *Cite case names in parentheses after the respective rule or exception*; use trigger words to help you remember the details of the case.

- *Cite case names in a section labeled "Application" at the end of the topical section for the respective rule or element.* Provide important information about how a case applied a rule and then cite its name in parenthesis. Some experts recommend always including a short statement of the factual context in which the rule arises (Deaver). Although this will certainly help you understand the rule, it may be unnecessary if the factual context is clear from the rule itself. Including more detail may be important depending on the complexity of the rule.

- *Cite case names when the name has come to represent the substantive doctrine (like the "Erie" doctrine).*
  You should similarly include statutory citations in your outline if the statute best encapsulates the rule at issue (such as Restatement § 90).

- *Cite case names when the professor has indicated that the names may be important.*
  This principle also applies to rule and statutory numbers; some professors expect students to cite numbers on their exam but most do not.

Step 2C—Analysis/Application

6. **Include "background" or theoretical information that will help you analyze issues on your exam (Step 2C).**

IRAC Note: Think of completing these sections as providing you with additional information that will relate to your "analysis/application" section.

In presenting material, professors often discuss background or theoretical information, such as the history of the subject matter or alternative theories to an accepted rule of law. Different professors assign a different amount of import to such information, and it should not be categorically omitted from your outline. Your responsibility is to determine what information will help you answer an exam question in a manner that meets (or exceeds!) the professor's expectations. Thus, if a professor devotes a lot of time to, for instance, scriptural references, public policy, or law and economics, he or she may expect at least a limited discussion of those principles on your exam; and you should include a summary of such information in your outline. In addition, if the information significantly aids you in understanding other, more relevant concepts, include it as well.

You may include it in a separate section if the information pertains to the course as a whole. *However, if the information relates to specific issues/concepts in the course, include that background information within the respective section.* If the information concentrates on non-legal arguments in favor of a particular position (such as public policy), insert the information in a section after the legal arguments because you would address the legal arguments first in answering a related question on an exam.

NUTS AND BOLTS

7. **Don't overly abbreviate the information in your outline.**

Your outline should be concise and present the information in a straightforward format; and you should therefore settle on a list of common abbreviations, such as "K" for contract, and use them consistently throughout your outline. At the same time, however, you should avoid confusing abbreviations or shorthand that may be difficult to decipher later. *You may, in fact, benefit from writing certain sections of your outline in short, complete sentences.* For instance, writing the rule statements in complete sentences forces you to express the complete rules in your own words, much like you would do on an exam. In addition, writing certain sections in sentences may benefit you because many students find it easier to read outlines that contain some narrative sentences than outlines that consist solely of incomplete phrases. An indicator as to which style will work for you is whether, for instance, you learn better by reading a Nutshell (in narrative format) or reading Gilberts (in outline format).

8. Don't assume that there is one ideal length for every outline.

Students often express concern about the length of their outlines. How long is too long? How short is too short? Unfortunately, there are no definitive answers to these questions, but here are some general guidelines:

- *Avoid incorporating verbatim information from cases, statutes, or hornbooks into your outline; such incorporation can make your outline unnecessarily long.*
  In addition, remember that studying must be *active* such that each studying technique helps you add to the information you have already learned. Paraphrasing and condensing information in your own words therefore not only makes your outline more manageable, it also helps you understand the information you are outlining. Students who include statements directly from their casebook often are not "learning" that information in the process.

- *Don't be afraid of making your outline rather long if you are consciously learning the information as you are outlining.*
  Some students learn best by writing. If you are one of these students, don't be too concerned about the length of your initial outline. You should always avoid including irrelevant information, but the length of your initial outline is not crucial as long as you leave enough time at the end of the semester to compose a mini-outline (or "issue spotter checklist") (SEE ATTACHMENT C (Step 3)).

- *An outline that is too long will not be a good tool to help you with your final studying (a corollary to the preceding suggestion).*
  Unless you have a photographic memory, you will have a lot of difficulty memorizing all the information on an outline that is, for instance, 30 pages. Because simply reading information is not an effective studying technique for most students, reading over a 30-page outline the night before a final is a not a good idea. Therefore, if your outline is over 10 pages or so, devote some time to condensing that outline into a mini-outline that you use for final studying (SEE ATTACHMENT C (Step 3)).

- *Vary your outline length depending on when during the semester you are composing it (a corollary to the preceding suggestion).*
  If you are preparing your outline during the course of the semester, you may err on the side of being too long because you will likely have time at the end of the semester to condense it. If, however, you are drafting your outline just before the exam, make the outline short because you want to leave time after composing the outline to go over the material you have included. (In general,

unless you are really cramming for the final, I suggest erring on the side of being too long; it is usually easier to skim through overly detailed information than to add information at the last minute. Remember the outline should become "the course" for you.)

- *Avoid repetition of information; every section or example should add to your knowledge and cue your memory.*
  Repetition is particularly an issue when including illustrations in your outline. If you include several case illustrations, describe them only by their key facts; often, however, a single illustration will be sufficient.

- *Be sure that you are not going beyond the scope of the course.*
  Unless a professor says otherwise, you will be responsible for all that is included in the syllabus, regardless of what the professor focuses on in class. However, if a syllabus does not address information on a particular concept, don't study it, regardless of whether commercial sources mention it.

- *Your outline may be longer for an open-book, open-note exam.*
  Because you can use your outline in writing such an exam, you will want your outline to be detailed and address issues you might otherwise forget. In light of the open-book nature, your professor also might expect your answers to be more detailed. *For such a detailed outline, however, you must create a table of contents or use tabs to help you identify information quickly during the exam. Similarly, you should create a mini-outline to help you spot the issues while taking such an exam.*

9. **Be consistent in how you format items of similar weight.**
For instance, items of equal import should be aligned along the same margin. As another example, if you are including all major concepts in all caps, do so throughout your outline. This consistency helps you easily see the relationship among the items listed on your outline.

IMPROVING THE "BASIC" OUTLINE

10. **Use a visual format that helps you remember the information.**
Because an outline is to serve as a tool to aid you in your final studying, you should construct the outline visually in a way that will help most quickly learn the information. Few students therefore benefit from an outline with small fonts and long sections. Short outline sections with the use of various font styles (bold, underline, etc.) usually work best. Similarly, use the margins to help you highlight the most important material; the more important the material the closer to the left-hand margin it should be. These visual cues will help make studying easier on the nights before the exam.

11. **In drafting all your outlines (your initial and revised versions), organize the format in a way that helps you answer exam questions.** Good outlines are those that include all the relevant course information in a way that is organized by concept and includes illustrations (including case illustrations) to help explain confusing areas. Better outlines, however, are those that organize each concept area in a way that anticipates questions about that particular area. The best outlines are those that also connect concepts, if possible, to show the interrelationship of issues. For instance, the "best" Contracts outline would be one that organizes the major concepts in Contracts, such as consideration, promissory estoppel, and mutual assent, in a way that shows how those concepts relate to each other.

    Although you can prepare flow charts or diagrams for specific concepts as part of your final studying, you can also incorporate these elements into your initial, longer outline. Below are some specific suggestions in this regard:

    - Remember that each topic poses an "issue" that may be relevant on your exam. Under each issue, you will then be required on an exam to determine whether or not a rule or rule element is satisfied. You thus must first think about the questions you must answer before determining whether a particular concept rule is satisfied. As an example, regarding the issue of whether a federal court can hear the dispute at issue, you might first ask whether the court has subject matter jurisdiction over the matter. Then, you could address specific questions for each of the subissues under that primary question (diversity, federal question, etc.). Think about sub-subissues that only come up under certain subissues and group them accordingly.

    - Once you've identified the major questions, organize your outline in a way the leads you to the answer to those questions. You may even find it helpful to include "yes," "no," or the like in your headings underneath the question you've posed. Similarly, you may find it helpful to use the "is," "is not," and "maybe" technique. SEE ATTACHMENT G for how to phrase your issues as questions.

    - Identify the connections among major concepts. Specifically, look for what major concepts tend to occur together in the same fact patterns. Include sections in your outline where you highlight what differentiates the application of one concept versus another.

12. Don't feel obligated to stick to the traditional outline format; consider exploring creating flow charts, tables, or diagrams.

If a flow chart would help you to understand a particular concept, feel free to insert a flow chart at the relevant section of your outline. If a diagram helps you to nail down the distinctions between two similar concepts, craft one to insert in your outline. In fact, these tools may be particularly beneficial in your final studying.

For instance, a flow chart may provide you with a standard procedure you will follow in addressing a civil procedure question. You could create a chart that follows a case from initial questions about jurisdiction to final adjudication. Such a chart, whether graphic (best for visual learners) or text-based, can thus help you see the relationships among concepts, provide you with a roadmap to answering any question, and help you see the "big picture" of the course. Similarly, diagrams comparing related concepts, such as comparative and contributory negligence or the different types of present estates, can aid you in isolating the distinctions among similar concepts. SEE ATTACHMENT H (for a sample outline "table") and ATTACHMENT I (for information on flow-charting).

Select tips and examples in this handout come from a variety of sources, including:

1. Ruta K. Stropus and Charlotte D. Taylor, *Bridging the Gap Between College and Law School: Strategies for Success* (Durham, NC: Carolina Academic Press, 2001).
2. Kim Walton and Lazar Emanuel, *Strategies and Tactics for the First Year Law Student* (Larchmont, NY: Emanuel Publishing, 1997).
3. Dennis J. Tonsing. *1000 Days to the Bar—But the Practice of Law Begins Now* (Buffalo, NY: William S. Hein & Co., Inc., 2003).
4. Barbara Glesner Fines. *Law School—Materials for Success*, available at http://www.law.umkc.edu/faculty/profiles/glesnerfines/success-front.html © 2000.
5. Jeff Deaver. *The Complete Law School Companion: How to Excel at America's Most Demanding Post-Graduate Curriculum* (New York: John Wiley & Sons, Inc.) © 1992.
6. Deborah A. Schmedemann and Christina L. Kunz. *Synthesis: Legal Reading, Reasoning, and Writing* (New York: Aspen) © 1999.
7. Jessica Elliott, "Teaching Outlining for Exam Preparation as Part of the First-Year Legal Research and Writing Curriculum" in *Perspectives: Teaching Legal Research and Writing*. Winter 2003.

ATTACHMENT B

<u>Sample Framework for a Concept-Driven Outline</u>

I. Introduction (can title this as "History of . . . ," etc.)
(Optional—this section may be included if your professor discusses background information, general frameworks, or theoretical approaches that impact your analysis of the course.)

II. First Main Concept/Topic (or "<u>ISSUE</u>")
(If the first concept is really a group of related concepts, such as "intentional torts," or is a large concept with important sub-issues, such as "negligence" and "duty/breach/causation/damages," then you should break down this section. To do so, you may use a separate heading for a single concept, such as "battery," or you may make the major heading the group of concepts and then list each concept as a subheading.)

- **A. General Principles**
  (Optional—this may be included in its own section, but it might go best under specific elements if the policies/ principles are concept-specific. Also, be sure to organize this information in a way that will help you answer an exam question.)
- **B. <u>RULE</u> of Law: General Definition that lists the applicable** elements, tests, or rationales that must be analyzed to determine whether the rule is satisfied
  1. Element/Factor 1
     a. Explanation of Element (including definition of element and element-specific policies behind the development of the rule which are helpful in your <u>Analysis</u> of the element)
     b. <u>APPLICATION</u> (hypo/case illustration): Application of the element to particular fact patterns from cases or class. *Highlight the fact illustration, not the case name.*
        1) examples that satisfy the element ("Is")
        2) examples that do not satisfy the element ("Is not")
        3) examples that fall in between and can be argued either way ("Maybe") <u>HOT ISSUES</u>
  2. Element/Factor 2, etc.—repeat as above
     a. Explanation of Element
     b. Application (hypo/case illustration)
- **C. Exceptions/Defenses/Limitations of Rule**
  1. First Exception, etc.
     a. Explanation of Exception (including definition of exception and element-specific policies for the development of the exception which are helpful in your <u>Analysis</u> of the element)
     b. <u>APPLICATION</u> (hypo/case illustration): Application of the exception to particular fact patterns from cases or class. *Highlight the fact illustration, not the case name.*
        1) examples that satisfy the exception ("Is")
        2) examples that do not satisfy the exception ("Is not")
        3) examples that fall in between and can be argued either way ("Maybe")
- **D. Second <u>RULE</u> of Law (*if there is one*)**

III. New Concept, etc.