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TEACHING OUTLINING FOR EXAM PREPARATION AS PART OF THE FIRST-YEAR LEGAL RESEARCH AND WRITING CURRICULUM

BY JESSICA ELLIOTT

Jessica Elliott is the Director and Professor of Legal Methods at the Roger Williams University School of Law in Bristol, R.I.

Last November, my dean asked me to conduct a lecture for all first-year students on outlining in order to help prepare them for their first set of exams.¹ I first thought that this task had fallen upon me, as director of the Legal Research and Writing program, because at the time, we were without an academic support professional. I also wondered why a doctrinal professor who was teaching one of the first-year classes did not take on the task. However, as I prepared myself to conduct this talk, I realized that the type of outlining that I would be talking about—outlining as a preparation tool for taking an essay exam—fit neatly within the Legal Research and Writing curriculum. In fact, I realized that rather than teaching the students a skill or a study method, I was teaching them organization, logic, and analysis, the same things that they learn in my class. Because students will be expected to employ the same organizational structure (generally referred to as IRAC—Issue, Rule, Application, Conclusion) and analytical tools in answering an essay exam question as they use in writing a legal memorandum, I was teaching students to construct an outline that mirrored the structure and included the same components (e.g., rules, reasoning, important facts), as a legal memorandum. Accordingly, I conducted my lecture to the students in a question-and-answer format, proving students with the following answers to the most frequently asked questions.

¹ I would like to thank all of the members of the legal writing e-mail discussion list who so generously shared with me their insights and materials in preparing for this talk.

How Is Outlining for Exam Preparation Different from My Weekly Outlining?

There is a difference between the weekly outlining of your courses that you have been told you have been doing, and the type of outlining that is used for exam preparation. Most first-year students came to law school having heard about outlining. You were told that each week you should be outlining your classes as a way of consolidating your notes and solidifying your understanding of the topics covered that week. If you adhered to this system, by the end of the semester you would have an outline of the entire course, which likely covered somewhere in the neighborhood of 50 pages. While having engaged in this process probably has given you a better understanding of the substantive material than you would have, had you not completed this outline, this type of outline will not serve as a study aid for your exam. Outlining for exam preparation is a different process, and a process that I believe cannot begin until a student has gotten through a significant amount of class material. Depending on the class, this may happen at several times during the semester—at the end of each major topic, or may not happen until the last third of the semester, sometime in early or middle November. It should be noted that what I am advocating is not waiting until two weeks before the exam period to begin outlining; however, I do believe that the weekly outlining that is heralded by many as the key to law school success serves a different purpose and cannot, in most cases, replace the outlining study process that occurs nearer to the exam.

What Is Outlining?

Because we were talking about outlining as an exam preparation tool, the creation of the outline, or the process, is more important than the product. Once you have finished constructing your outline, you will have done most of the work toward preparing for your exam. Thus, it is not helpful to get an upperclass member's outline, rely on a commercial outline, or split up the work on an outline among the members of your study group. Each student must create his or her own outline. Your outline will be personal to you and must be constructed in a way that will be useful to you. That being said, the organization of the outline

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must focus on legal concepts and legal rules, rather than on particular cases. It is not a series of mini-case briefs or a chronological digest of class notes. Instead, it is a reorganization of all of the information that you have compiled in your class notes and your weekly outlines into a format that mirrors the process by which you answer an exam question on that topic.

When Should I Be Doing It?

The outlining process must begin now. You will need approximately one week per course to construct and learn your outline, and then you will need time to practice using it to answer exam questions. Thus, your outlines should be completed before the beginning of study week so that you can use the study week to take practice exams using your new outlines.

What Do I Need to Construct an Outline?

You need your casebook, your class notes, your syllabus, and possibly any useful study aids, hornbooks, or commercial outlines. I depart from some others in conceding that there is a place for commercially prepared study aids and outlines. Commercial products may be used in the creation of your own outline by helping you to understand the material that your professor covered in class. A commercial outline may also suggest an organizational structure for you. However, a commercial outline cannot replace an outline prepared by you, first, because the commercial outline will not be tailored to your particular course or the particular professor teaching your class, and second, because it is the process of constructing the outline that is vital to your exam preparation. Where you come across a legal issue on which a commercial product and your professor seem to be in conflict, the first step is to check with the professor. Often this apparent conflict in fact reflects some misunderstanding with the legal concept. Meeting with the professor will generally clear up what appeared to be, but in fact was not, a conflict. If, however, the professor confirms that there is indeed a difference, you must be guided by your professor's interpretation. After all, it is he or she who will be grading your exam.

How Do I Organize the Outline?

How to organize this outline is the most important piece of information in this lecture. It is the organizational aspect that distinguishes outlining for exam preparation from weekly outlining and it is this organizational structure that marries an outlining discussion with the legal research and writing curriculum. The failure to construct and organize the outline topically is the biggest problem that students have. Such failure will render the outlining process as well as the final product useless to the student in preparing for and taking a law school essay exam.

Teaching Tips:

At this point in the lecture, I ask students to consider not what a law school essay exam asks but rather, what one doesn't ask. I explain that they will never be asked simply "what happened in Smith v. Jones?" Nor will they be asked "what did we discuss in class on October 11?" In considering this, students are able to see that organizing an outline by case will not help them answer an exam question. Also, organizing an outline chronologically, meaning organizing topics in the order that you covered them in class, will not help them answer an exam question. Unlike an undergraduate class, where students are expected merely to memorize material and regurgitate it on an exam, a law school exam is fundamentally different. A law school exam question will ask you to predict the outcome or analyze the legal ramifications of a totally new and unfamiliar fact pattern.

How Will I Do This?

To do this, you will need to do more than regurgitate the rules (although you will have to be able to do this), but more importantly you will have to understand which rules apply to the new situation and how to apply the rules to the new facts. For instance, if an exam question fact pattern clearly asks about the sale of goods, you must know that you have to analyze the question under the Uniform Commercial Code (UCC), not under ordinary contract law. You need to have the steps for the legal analysis of a UCC case separate in your outline from the steps for analyzing an ordinary contract problem. This is where we get into the first major concept, which is organized by topic, not by case.

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1. Identify broad legal concepts/topics and subtopics

You need to start the organizational process by identifying the large legal concepts that you covered in your class. To do this you may look to your syllabus, the table of contents or chapter headings in your casebook, and your class notes. Once you have identified the broad topics, list them.

Teaching Tips:

In my lecture, I asked the students to tell me what topics they covered in their torts class that year. On an overhead, we constructed the following list.

Assault

Trespass

False imprisonment

Battery

Wrongful conversion

Negligence

Interference with property

Intentional infliction of emotional distress

Trespass

2. Organize topics and subtopics

The next step is to organize the topics and subtopics. There are two issues important to this organization. First, you must consider whether there is any particular order in which the major topics need to go. In other words, do the major topics stand alone, or will you have to analyze several of them in a particular order on an exam question. Second, how do the subtopics fit under the topics? To organize the torts topics we identified we came up with the following sample framework for our outline.

Sample organization:

- I. Intentional torts
 - A. Assault
 - B. Battery
 - C. False imprisonment
 - D. Intentional infliction of emotional distress
- II. Interference with property
 - A. Wrongful conversion
 - B. Trespass
- III. Negligence

3. Identify rules and/or elements for each topic and subtopic

For each topic, you will need to identify:

1. The legal rule that governs
2. The rationale behind the rule

3. The extent of the rule's application

4. The elements of the rule

5. The major cases and any in-class hypos that

apply the rule—this is the illustration of the rule

6. Any exceptions to the rule or defenses

As you consider the rules that relate to each legal concept, ask yourself whether your professor has presented you with several different types of rules that might apply. You may be required to know more than just the majority rule. Perhaps you will need to know the minority rule, a statutory and a common law rule, an old or abandoned rule, or a Restatement or Model Code rule.

Teaching Tips:

At this point, students can begin to see how the analytical process involved in outlining is similar to the process they use in drafting a legal memorandum. I explain that their outline will contain all of the information that would be used to compile an IRAC discussion, with the exception of the application. The application of the new facts to the law is the main task they will have when answering an exam question. The question will provide the new facts to which the legal rule and reasoning will be applied.

How Do Cases Fit into My Outline?

To illustrate exactly how cases fit into the outline, we will take one sub-issue, for instance, battery, and fill in the rest of the outline for one of the elements. Notice how the elements are numbered under the sub-issue, the legal rule for each element gets listed under the element, and the cases provide the illustration of the legal rule. For example:

B. Battery

1. Intentional
2. Act by the defendant that brings about a harmful or offensive touching
 - a. Rule: Whether a contact is harmful or offensive is judged by a reasonable person standard. The touching need not be person to person but can result from any intentional act of the plaintiff.
 1. *Smith v. Jones*: Boy hit neighbor with a ball leaving a large bruise on the neighbor's arm. Court held that hitting a person with a ball constitutes a touching even though the boy's person never

touched the victim's. Court also held that evidence that the neighbor was injured by the ball and that he did not ask for the ball to be thrown to him established that touching was harmful or offensive.

3. Without consent

Teachers have found that the biggest mistake students typically make is to organize the outline by case. Cases should be present only as they illustrate legal rules or elements to legal rules. Any case description should be no more than four sentences including the holding, important facts, and relevant reasoning. In any case discussions you include, focus on the illustration the case provides of how the rule has been applied. You will need the rule that the court applied, the rationale that the court considered, the holding of the case, and the relevant facts (meaning the facts on which the court relied on in reaching its decision). You need to have this information because when you go to answer an exam question, you will be asked to consider a new set of facts and predict how a court will decide a legal question based on those facts. This prediction will be made by looking at what courts in other cases with similar facts did, and making comparisons to how similar or dissimilar the new facts are to the decided cases.

How Does Public Policy Fit In?

You may also need to know policy considerations or arguments for reform of the rule. This will depend on what your professor covered in class. Everything that you have covered in class will appear in your outline somewhere. If you are having trouble understanding where a particular concept fits in, you probably don't have a good understanding of the legal concept and you should go speak with your professor to clear it up. The outlining process can be a good tool to help you identify areas of confusion or misunderstanding. It is also important that you not include material that you did not cover in class. If you see a topic in a study aid, but your professor did not cover it, it does not belong in your outline.

Be Sure to Order Your Major Topics So That the Order Reflects the Process You Will Have to Go Through to Answer an Exam Question

A good way to illustrate this concept is by looking at your first-year contracts class. Some professors begin by teaching remedies. You would not, however, want to begin your outline with remedies. This is because ordinarily, a question on a contracts exam will provide you with a set of facts and ask you "Does person A have a cause of action against person B?" Unless the question tells you that you may presume liability and discuss only potential remedies, you will first have to determine whether there is liability before you can determine what the remedies will be. For example, a question might read:

A man hires a neighbor to clean and paint his boat in exchange for use of the boat on three weekends during the summer and \$100. After the neighbor finishes cleaning and painting the boat, he uses the boat one weekend and leaves it a mess. The man refuses to pay him the \$100 and says that he cannot use his boat again. The neighbor sues. Analyze.

In order to answer this question, you first must consider whether a valid contract has been formed. Thus, Formation might be your first major heading. Under Formation you would need to include subheadings for each of the components of contract formation (offer, acceptance, and consideration). For example:

1. Formation
 - a. Offer
 - b. Acceptance
 - c. Consideration

Next you will have to consider how a court would interpret the contract between the parties. Thus, your next heading may be Construction. Under that heading you would have to include each of the rules of contract construction that you learned in your course. For example:

2. Construction
 - a. Parole evidence rule
 - b. Conditions
 - c. Statute of frauds

“Everything that you have covered in class will appear in your outline somewhere.”

“In general, it is best to write your outline in short but complete sentences.”

Next you would have to consider whether there has been a breach of the contract, whether any defenses are available to the breaching party, and, finally what remedies are available. The rest of the contracts outline may look like the following:

3. Breach
4. Defenses
5. Remedies
 - a. Compensatory
 - b. Punitive
 - c. Liquidated
 - d. Specific performance

Teaching Tips:

As we walk through how we might use an outline organized in this manner to answer the question posed above, most students can see the logic behind the organizational structure. I try to stress to the students that the process of organizing an outline in the manner in which you would answer an exam question is itself an analytical exercise that is an important part of their exam preparation.

Furthermore, once we have discussed how cases are used in the outline only to illustrate legal rules and concepts, most students can see how closely an exam answer mirrors the IRAC-style legal memorandum writing that they have been doing in their legal writing class.

How Should I Format My Outline?

Although there is no one set way to format your outline, it is best to use standard outlining conventions. You will need your outline to be well organized and easy to read. Be consistent. For example, if you are putting the rule of law in boldface and case names in italics, keep that format consistent throughout your outline. Where there are several elements necessary to a cause of action, number them. It will be vital that you remember that there are, for instance, three elements to battery or four elements to false imprisonment. If you always think of the elements in an ordered, numbered list, you will be less likely to forget to analyze one on the exam. In general, it is best to write your outline in short but complete sentences. This will ensure that you have a clear understanding of the concepts and, after all, you will have to answer the exam question in complete sentences.

How Will I Use My Outline Once It Is Done?

Once your outline is complete, you will use only your outline to study for your exam. You will no longer refer to your casebook or your notes because all of the relevant information is in your outline. You will want all of your outlines to be completed before study week. During study week, you will practice answering sample exam questions based on the information you compiled in your outline. See whether your professor has practice exams on file—many do. If your professor does not, see if you can get some practice exams from a study guide. The length of your outlines will depend on your style and, to some degree, on the type of exam that you will be taking. Students will commonly ask whether they have to memorize their outline. The answer is generally yes. This is true whether your exam is closed or open book.

How Will My Preparation Differ for an Open Book Rather Than a Closed Book Exam?

The outline that you will prepare for an open book exam will not differ significantly from that prepared for a closed book exam. For an open book exam, the professor will expect your answers to be more detailed. The exam will probably have a greater number of or more detailed questions because the professor knows that you can reference your notes. However, you will not have the time to look up specific answers. You will have time to reference your notes only. You must have a good understanding of the law without rummaging through notes. Thus, for an open book exam, you may have slightly more detail in your outline and you will want to tab your outline so that you can easily refer to the section that you need. Finally, even for a closed book exam, your professor will expect you to cite to specific cases, statutes, and rules.

Teaching Tips:

To emphasize the importance of knowing case names, I e-mailed each of the first-year professors at our school and asked them whether they will expect students to refer to specific cases and statutes by name on their examination. Each one answered yes. I pulled out those e-mails and read quotes such as “I expect my torts students to cite to specific cases, by name, the more the better,” and “it will be important

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for students to know applicable sections of the code and cases,” to a room full of gaping jaws. Students were shocked by the specificity with which they would be expected to know the material from their courses.

In short, the type of outlining that I presented to my students is aimed at preparing students to write an IRAC-style answer to an exam question. My goal was to get students to engage in the process of organizing the substantive material from each of their classes in a logical framework that will assist them in analyzing an exam question. The outlining process is meant to train them to present material in an analytically logical manner, assist them in identifying areas of confusion within the material, and force them to know, understand, and even memorize the material. I emphasized for the students that their legal methods class had prepared them well for this type of analytical and organizational exercise. Writing a predictive memorandum, where they were charged with proving to their reader, through careful and well-supported analysis, that their prediction was legally correct, helped them develop key skills. Their exam answer must prove to their professor that their well-written analysis supports their answer to the exam question.

I close by telling students that in order to succeed on their first-year exams, they will need to memorize a lot of law. They will need to know this material cold and be able to access it from their minds and apply it quickly. I don't apologize for this. I tell them that as a professional, there is a certain amount of information basic to their profession that they will need to know. To end with a laugh, I remind them that if they were to have surgery on their appendix, they would hope that the doctor had memorized where the liver, kidneys, and other vital organs are. Just knowing the appendix would probably not be enough. And most students are willing to agree that they would not want the doctor looking it all up in the medical book while they are on the operating table.

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