

subject matter. This discussion, however, tends to focus on preparation for “traditional” law school examinations, the kind that most students will continue to face in many subjects. As you get a feel for the requirements of particular courses, in some cases you will want to modify the techniques that we suggest here.

Law school examinations typically feature hypothetical problems, often invented by the professor, that seek to test the student’s developed ability to analyze the material presented in a particular course. Your task in reviewing is to prepare yourself to deal with those problems, or indeed any questions designed to test your command of the subject.

1. The Outline

The function of a review sheet, or outline, is to establish a framework of analysis for legal problems. You may find that you did not really understand the material in a course and the relationships among topics until you have worked on an outline. Your goal in making an outline is to deal with two interlinked bodies of knowledge and ability that professors will try to test: (1) Your knowledge of rules at a level from which you can apply those rules logically to particular problems (2) Your ability to apply the rules you have learned to problems involving new sets of facts, and to resolve the ambiguities and analyze the probable outcomes of such problems. As we will emphasize in the next chapter, competence in the second skill distinguishes a good exam.

You should organize your outline by topics, not by cases. One good way to choose your topic headings is to use the titles of the casebook chapters and their sections and subsections. The casebook author typically will have created a logical outline of the course in her organization of those sections. The information you include under each topic will come primarily from the cases and statutes in each section, but will also include material from the notes and comments in your casebook and from class discussions, as well as your own comments and questions. Other ways to organize your outline are by the topics in your professor’s syllabus, or by the categories you personally develop after you review the material. The length of your outline depends on the course. Many outlines are as long as 30 or 40 pages. But as you get close to your exam, you may want to condense your outline to the main points that you can remember. By the time of the exam,

you should further condense your outline to a checklist of topics, cases, and key words.

The course in civil procedure provides a good illustration of how to construct an outline. Almost certainly, a significant part of an examination in that course will test your understanding of the principal procedural checkpoints in litigation, which may be dealt with in separate chapters in your book. Thus, for example, your outline ought to include the highlights of what you have learned about the motion to dismiss. It should refer to the Federal Rule of Civil Procedure, Rule 12(b)(6), which provides for that motion. It should include short summaries (sometimes in just a few words, if you can boil them down that far) of cases that help to define the issues involved in the question of when a court should, and should not, grant a motion to dismiss.

Your professor or your coursebook may discuss competing interpretations of the law and the policy bases of specific legal rules; you will want to note such discussions in your outline. If there are cases in the coursebook that present differing points of view on the same question—that is, two opposed decisions, or majority and dissenting opinions in the same case, or two cases with different analyses of the issue—it would be useful to summarize the disagreement between opposing judges. A principal reason for this is that, often, controversial questions present an excellent opportunity for a professor to write an exam problem. Exactly because they are controversial, they help the professor to give you an opportunity to show your understanding of the difficulties of a problem, to weigh competing views, and to present a persuasive answer.

Besides summarizing cases, statutory provisions, and rules like the Rules of Civil Procedure, you should include in an outline anything that you think might be helpful in preparing you to show your relevant knowledge and your ability to resolve legal controversies. Perhaps the most obvious sources of outline material are questions that your professor asked in class and questions posed (or answers given) in the coursebook. It is only common sense that you should be careful to take notes on the professor's questions in class, since it is the professor who makes up and grades the exam. In fact, some of your most important notes may be those questions. They sometimes will reveal what the professor thinks are the most interesting issues in the course, which have a way of winding up on exams.

By the way, you shouldn't ignore the questions you have posed to yourself during class or in reviewing your class notes. The very fact that you have formulated those questions should carry you forward in your exam preparation. Often the first thing you have to do in solving a legal problem is to see what the problem is—to state the issue. Once you can do that, you can begin to apply the legal rules and principles you have gleaned from the course.

It also would be prudent to note in your outline particular ideas or phrases—for example, “buzz words”—that seem especially important or that appear to appeal to your professor. As one student said to one of us recently, “You have to walk the walk *and* talk the talk.” That's your professor's walk and talk. He or she will grade your examination.

Your outline also might include ideas you have gleaned from treatises and hornbooks, as well as from law review articles that your coursebook cites, that your professor mentions, or that you have found yourself. As a practical matter, you may find it particularly helpful to read books or articles your professor has written. Many students find useful explanations in commercially published outlines. Some commercial outlines can be helpful, especially for topics you feel that you don't have a good grasp of. We recognize that some students rely solely on these outlines. However, we strongly caution against sole, or even principal, reliance on them. The reason, which we amplify below, is that the value of an outline comes from making it yourself.

At least the ideal of an outline is that it will be your own little treatise or hornbook on the subject of a course. The reason you fashion this little treatise is to prepare you, under the conditions of an examination, to analyze an unfamiliar problem case and discuss it in light of the principles and concepts that you have learned.

Many people do their reviewing literally in outline form because an outline enables them to place course material in an orderly framework and to see how different topics of the course relate to one another. The function of an outline is, after all, to help you to organize the material so that you will be able to see the issues in examination problems and discuss those issues with both knowledge and understanding. That is one reason why outlines that you write yourself are the most valuable. In fact, a few days before an examination, you can use your outline to take a dry-run exam based on one of your professor's prior exams or

on a sample exam in a commercial prep guide. (Chapter 15 treats techniques for writing exams.)

2. Illustrations of Outlines

Here are two examples of outlines, offered purely for illustration of format. One uses material that is likely to be familiar in first-year curriculums, the subject of torts. The other example is from Estates and Trusts, a course that is typically an upper-year course. Both examples illustrate, in an abbreviated way, a form that identifies particular elements of the course, using specific applications and giving information about where the maker of the outline found the material.

a. Battery

Here is an example of an outline of the tort of battery. The material in parentheses provides examples of the source of the point discussed.

I. BATTERY: Definition—An intentional contact with the person of another that is harmful or offensive and is unconsented and unprivileged.

A. Contact—An act that results in a physical touching of the person; can be indirect touching—it may be sufficient if the defendant touches an object closely connected to the plaintiff's body.

1. Examples, including indirect contact

—Plaintiff hits the ground after the defendant pulls a chair from under her (*Garratt v. Dailey*, casebook p. 33).

—Defendant yanks a plate from the plaintiff's hand; this might be deemed a battery because the object is so closely connected with the plaintiff's body (class hypothetical).

2. Rationale for allowing suit for an intentional, indirect touching: Battery emphasizes dignitary interest; in the plate case, yanking the plate violates that interest.

B. Intent

1. Meaning of intent

A purpose to contact the plaintiff's body (ordinary meaning of intent for lawyers as well as non-lawyers); or

Knowledge with substantial certainty that there will be a harmful or offensive contact (*Garratt v. Dailey*, p. 33, five-year-old defendant).

2. Rationales for standard that requires at least knowledge with substantial certainty:

—Differentiates intentional torts from the negligence standard, which at a minimum requires that a defendant should have known of harmful consequences, whereas this standard requires knowledge with substantial certainty of at least offensive contact.

—Requires compensation from persons, even those who cannot foresee actual harm, “who violate social norms and injure innocent people.”

—Standard even applies to children.

- C. Intended contact must be harmful or offensive

1. Examples

Harmful—Actual physical injury (*Kelly v. Grimsky*, p. 42); or offensive—a breach of social norms concerning personal dignity; a less demanding test for the plaintiff than “harmful”: It is a battery to kick a schoolmate in the shin, even without intending actual harm, when class has been called to order (*Vosburg v. Putney*, p. 27).

2. Explanation and rationale for lesser requirement of “offensive”:

—Violation of a social norm—for example, the decorum of the classroom—justifies the imposition of tort damages even if the person who did the act did not intend actual physical injury;

—Discourages people from disobeying society’s rules; moreover, as between a completely innocent person and someone who violated a rule even though he did not intend injury, it is fair that the rule violator should have to pay for the loss.

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b. Wills (an example of a shorter outline)

Part of an outline for a wills course could be:

I. REQUIREMENTS FOR EXECUTING A WILL

- A. Signature: every jurisdiction requires

1. Purposes of requirement: Gulliver article
 - Shows that testator adopted the writing as final; not a preliminary draft
 - Provides evidence of whose will
 - Prevents fraudulent wills
2. Jurisdictions that don't require signature at "foot or end":
 - a. *Estate of Wineburg* (casebook p. 86): testator wrote her name only in the opening paragraph of the will: "This is Opal Wineburg's will." Intended only as an identification, not as signature adopting the will as hers.
 - b. But, opening handwritten paragraph with the words, "This is my will, Joy Smith," shows signature intended to adopt the will. *Estate of Smith* (p. 97).
 - c. Problem of how can "adopt" a document that not written yet.
3. Jurisdictions that require at foot or end:
 - a. If there is writing below the testator's signature, the writing may invalidate the will if the writing was there when testator signed.

3. The Strategy of Reviewing

In an ideal world, you would start reviewing each course at about the sixth week of a semester, give or take a week, and you would squeeze out enough time to review each course each succeeding weekend. In the real world, most people will not do that. On a given Sunday afternoon when they "ought" to be reviewing, they may want to take a walk, or visit parents or friends, or watch television. And it's true that it's a good idea to take a break so that you don't burn out. But, you may have a legal memorandum due on Monday.

Having in mind that reality check, and the need to balance work and life (as well as to balance different kinds of work against one another) remember that the more you rework an outline, the more you will understand. This is because as you keep going over a body of material, you learn it more meaningfully. Your outline in the eleventh week of a semester will exhibit more understanding of material to which you originally were exposed in the fourth week than you derived when you initially

reviewed that material in the seventh week, because the later review provides a broader framework. But the initial review in the seventh week will plant some seeds in your mind that will provide fertilizer for your review in the eleventh week.

The operational lesson is that reviewing a law course is a lot like piano practice, or studying calculus, or learning how to cook. The more you do, on average, the more you will get out of the enterprise. It is true that some students say that they have done better on certain exams for which they studied lightly than exams for which they prepared diligently. But averages are important, and in general, the keys are commitment and effort.

A serious strategic question eventually arises late in any semester: How much more new work should you do on your outline? We do not have a pat answer for that question. We can say only that at some point, you will decide that you have no more time to learn more details about the intricacies of motions for judgment as a matter of law, or what it takes to create an offer in contracts, or the elements of adverse possession in property.

It is at that point that your thirst for learning must turn pragmatically to a thirst for internalizing. Many students will tell you that in the real world, this means "memorizing." We use the seemingly more idealistic word "internalizing" because if you do enough reviewing of material that you have prepared, or played a meaningful part in preparing, then you will begin to absorb the material. It will become part of you in a way that just memorizing-to-disgorge does not achieve. To nail down the point, the fact that you prepared an outline (or review sheet) will make it more meaningful, and thus more instructive, than trying to memorize a commercial outline done by someone else who has not taken your particular class with your particular teacher. Memorizing-to-disgorge from a commercial outline is not good exam-taking preparation.

As it gets late in the semester and even during reading period, many students tend to spend all or most of their time reviewing for their first exam, and then spend only one or two days reviewing for each of the next exams. We suggest that you apportion your time more equally. Of course, you want to feel prepared going into your first exam, but it is a good idea to spend time during the study and preparation period reviewing for all the exams to come. It makes sense, of course, to spend most of the last study day on the course for the first exam.

We conclude on a note that may sound sermonizing, but we believe it describes how to get the most out of courses, usually in terms of your actual knowledge and frequently even on the grade sheet. Whether the issue is how much work you do in any one semester, or in any one course, or for any one class period, the crucial personal choice is how much you want to put into the enterprise.



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