

## **CL500: Fundamentals**

### **Strategies for Success: Outlining - Intentional Torts**

#### *Video Transcript*

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1. Welcome to the presentation on outlining. The purpose of this presentation is to give you an introduction to the process of pulling together the information you will learn in your first year from the various sources--readings, videos, live classes--and synthesizing that into something you can use to reinforce and deepen your understanding of the material and, ultimately, use for examination purposes. Getting a sense of this now will help you to hit the ground running in your first year.
2. By this point, you should have reviewed the materials for your Overview of the Introduction to Legal Analysis course about briefing cases--that is, creating one page summaries that distill the key facts, holding, and reasoning from judicial opinions you are assigned to read.

You will be reading a lot of cases and creating a lot of these case briefs during your first year and beyond. These are important, but they are just one source of information you will be using to learn the law.

You will be assigned other readings, including treatises, often known as "hornbooks," and will summarize key takeaways from those readings.

You will have notes from watching the video presentations which are embedded in the various modules.

And you will have notes from participating in the live classes, or at least watching archives for times you cannot attend live.

As you can already tell, that is going to be a lot of information. This may be many dozens of pages of notes over the course of a term. You need a workable method of pulling all this information together and distilling it to be usable to study for the types of assessments that the bulk of your course grade will ultimately be based on. Primarily, these will be the same types of assessments which you would encounter on the regulatory exams if you are on track to take them--the first year law student's exam and the bar exam--and that is essays and multiple choice

questions. For purposes of this presentation, we will be focusing on preparing for essay examinations.

So you have these case briefs, notes from readings, videos and classes. But on a timed essay exam, you likely won't be permitted to access all these materials. Even if you were, you wouldn't have nearly enough time to rifle through them when responding to an essay question. There may be multiple legal issues to address, which is why law school essay exams are often called "issue spotters." You need to have enough of an understanding of the legal principles that you can spot the issues that are raised by the facts, and know enough about those issues that you can properly discuss them.

What you need is a checklist of the key topics or issues that you could encounter, as well as the key items you need to think about and possibly address in connection with each issue. Your checklist would need to be concise enough that it would be useful to you in preparing for an exam.

There is an important intermediate step, and that is creating a course outline. In fact, the outline and checklist go hand-in-hand. Your outline distills the material from your cases briefs and your notes on readings, videos, and lectures. But it is still at a relatively high level of detail, because you want to be thorough.

From your outline, you will then develop your more concise checklist that will be more practical to use to prepare for an exam. And although it will not be a major focus of this presentation, you will also use your outline to extract rule statements of various claims, defenses, and legal theories, which you will try to start committing to memory, well before you ever start arranging an exam checklist.

This entire process is one of distillation, which means you must select what information and ideas are important, rather than try to memorize it all. And you must understand what you are reading and listening to in order to decide what is important enough to include in your outline and checklist, and how to properly state the information and ideas.

3. As we'll see, the process of creating a course outline is bigger than that for a checklist and, importantly, it comes before the process of creating a checklist. With that being said, we're going to start by illustrating how you might go about creating

and using a checklist, and then talk about how that relates to the broader outline you might create. So we are going to take things out of order, but we're doing it intentionally, and we're letting you know up front that that's what we're doing.

So we're going to illustrate how you would make and use a checklist, and we're going to do that by focusing on the topic of Torts. Tort law is basically the law of injuries--when a defendant does something which causes some sort of injury to me, or my property, and I want to be compensated for that injury, I would sue in tort. Tort law is probably the most common type of civil litigation, and although you are not expected to have any deep understanding of this area of law at this point, we use it as our example because it is the area that may be easiest for you to understand at this early stage. We all know about people getting in car accidents, for example. If someone hits your car and causes damage to your car, and you have to go to the doctor for whiplash, if you sued the driver, you'd sue in tort.

What you see here is a checklist for the first area of tort law, the intentional torts. Please understand that for now, this is the only example of an outline or checklist that we will provide to you. It is very important that you develop these documents on your own. It would do you no good for us to develop these outlines and checklists and hand them out to you, because the real understanding, the real learning, comes from the effort and analysis that goes into producing these documents yourself. That is how you will gain a deep understanding of the law and be well prepared for exams.

For the time being, you can ignore the introductory paragraph on the checklist. That will be something more important to you when you start learning more about the different areas of tort law--not just the intentional torts but the negligence torts, strict liability torts, and so on. We want to focus in now on the intentional torts.

4. First of all, you have a Roman numeral one. In a full outline, if you had a Roman numeral one, you would also have at least a Roman numeral two if not three and beyond. But this is only an excerpt.

Roman numeral one is a general statement which is applicable to all intentional torts. It says: "Every intentional tort requires a volitional act done with the requisite intent which is the cause of the resulting harm suffered by the plaintiff." That is

something all the intentional torts you will be studying have in common.

5. You will then notice that there are three major groupings of intentional torts. The capital A, B, and C, that you see printed on the checklist. Grouping A- potential torts when the plaintiff suffers injury to his or her body. Grouping B- potential torts when the plaintiff suffers injury to his or her emotions. And Grouping C- potential torts when the plaintiff suffers injury to his or her property. You see these three groupings are based upon the type of injury suffered by the plaintiff. If it's personal injury suffered by the plaintiff, you're thinking about the first grouping. If it's some sort of emotional injury as opposed to a personal injury, you're thinking about the second grouping. If it's property damage that the plaintiff has suffered, you're thinking about the third grouping.
6. Let's focus in on the first grouping, potential torts when the plaintiff suffers injury to his or her body. You see that there are three torts that fit within this area. #1- assault, #2- battery, #3- false imprisonment. These are the three potential intentional torts which may apply when the plaintiff has suffered some sort of personal injury.
7. Now let's focus in more specifically on that first intentional tort of assault.

What you see printed under the assault, the lower case a, b, c, and d, are the four elements of that tort of assault.

Now let's talk for a few moments about elements. Elements are those things that a plaintiff must prove in order to establish the existence of that particular tort. But this does not apply only to torts. You may have heard the statement before that in a criminal context, a defendant is presumed to be innocent until proven guilty. In a criminal case, it would be up to the prosecution to prove the elements of a crime before the defendant would be found guilty. The defendant doesn't have to say a thing. The defendant doesn't have to prove that he or she is innocent; he is presumed to be innocent. The prosecution has to prove the guilt of the defendant by establishing all of the elements, or component pieces, of the crime with which the defendant has been charged.

We have a similar situation in torts. The burden of proof may be different--the prosecution in a criminal case must prove the elements beyond a reasonable

doubt, whereas the plaintiff in a civil case generally need only prove the elements by a preponderance of the evidence, and you'll learn about those different standards later. But the plaintiff must prove the existence of the tort before the plaintiff is entitled to recover a thing. The defendant doesn't have to put on a defense. If the plaintiff doesn't satisfy his or her burden of proof by proving the elements of the tort, then the plaintiff will lose regardless of whether the defendant says anything at all.

Now look at elements of assault. There are four of them: a- Did the defendant engage in a volitional act? b- Did the defendant intend to place the plaintiff in apprehension of an immediate battery? c- Did the actions of the defendant cause the harm to the plaintiff and d- did the plaintiff suffer reasonable apprehension of an immediate battery?

Those are the four elements of an assault. Now look back at that introductory general statement for intentional torts. Each intentional tort requires a volitional act, done with a requisite intent, which is the cause of the resulting harm suffered by the plaintiff. That introductory statement tells you that each intentional tort must have four components. 1- The volitional act of the defendant 2- the requisite intent 3- causation, what the defendant did had to cause the harm to the plaintiff. And 4- the plaintiff suffering the resulting harm.

Well notice that the four elements of the assault reflect those four points.

A- Did the defendant engage in a volitional act? This is the first point.

B- Did the defendant intend to place the plaintiff in apprehension of an immediate battery? This is the requisite intent specifically for assault.

C- Did the action of the defendant cause the harm to the plaintiff? This is the causation component.

And D- did the plaintiff suffer reasonable apprehension of an immediate battery? This is the resulting harm required for assault. So you see how we have that general statement and then we have the specific statement of those components for assault.

8. Now how does this relate to creating an outline? Remember, this is just a skeleton

overall approach for exams. Throughout the course, you're going to be reading cases, reading other source materials, watching your lectures, and participating in or watching the live classes.

And from all of this, you will see that these elements are not the end of the line. Each of them may, in turn, have their own principles, definitions, or tests you may need to apply to determine whether the element arguably is or isn't met. For example, we know that for the defendant to have committed assault, he must have acted volitionally. But what goes into determining whether or not a defendant acted volitionally? What do we have to consider in deciding whether or not the defendant had intent to place the plaintiff in apprehension of immediate battery? What do we need to consider to determine whether or not the causation step has been met? And what are the components in deciding whether or not the plaintiff suffered a reasonable apprehension of an immediate battery?

Your outline is where you would flesh out the detail; it will have a similar structure as what you will ultimately have in your checklist, because the logic of the law dictates its structure.

But although we started with the checklist in this presentation, as you go through your law school courses, the process of outlining will precede the process of creating checklists. The outline comes first.

It is from your outline that you will distill down the most important questions to ask yourself to see if an issue applies or if the elements of a tort have been met. The outline will be too detailed to be your primary study aid by the time you get close to your final exams, but it is a crucial step that cannot be skipped if you want to get to the point where your checklist is a useful tool that will jog your memory about those additional details.

9. For example, you're going to learn about the different ways of proving that the defendant acted with the requisite intent. Certainly, if the facts of a question were to tell you the defendant, intending to frighten the plaintiff, raised his arm as if he was about to hit the plaintiff, then the requisite intent to place the plaintiff in reasonable apprehension of an immediate battery has been established because they tell you the defendant had such intent.

But suppose the facts of the question were to tell you that defendant was sitting in

his home, and there were a bunch of people outside of his home on the sidewalk making a lot of noise, keeping him up. He really wanted to go to sleep. So, not intending to directly frighten anyone of them, he pulled out his gun and shot it off in the general direction of these people. Well, the facts tell us that he did not actually intend to frighten anybody. But you will learn that the law recognizes a concept known as “substantial certainty.” What that says is that if you do an action and would be substantially certain that something will result from that action, then we will view you as having had the intent to cause that result.

When that guy fires his gun in the general direction of those people, any normal person would have been substantially certain that by firing the gun, those people would be apprehensive that they were about to be shot. They were about to be harmed or touched offensively, which is a battery. So we can say that the defendant acted with the intent to place those people in apprehension of an immediate battery because he was substantially certain that they would be apprehensive.

So you might put an entry in your outline under that second heading, did the defendant intend to place the plaintiff in apprehension of an immediate battery? And you might put that knowledge with substantial certainty that a result will occur will suffice for intent. That’s a sub-rule to the element of intent that may or may not be relevant on an essay depending on the facts of the case. But because it relates to the element of intent, that’s where it would make sense to make a note of that sub-rule.

Let’s say the place you learned about this idea of substantial certainty was a case you were assigned to read, an appellate opinion, let’s call it the “Smith v. Jones” case, in which the defendant appealed because he was found liable for assault after having shot a gun to make his neighbors stop making noise, and claimed he lacked the requisite intent, but the court found that knowledge with substantial certainty that he would place them in apprehension of battery would suffice. You would prepare a brief of this case, as you learned about. For purposes of your outline, you might also include a succinct entry under “substantial certainty” to remind you about the Smith case and the key take away from that case, or the key facts that will jog your memory about what was involved in that case. Note that you wouldn’t want to organize your entire outline around cases or the facts of cases, because what you need to do on an essay is apply legal principles to new fact patterns. But including references to cases at appropriate places within your

outline may be helpful to you to understand the principles and relate them to what you have learned. Obviously, your outline could be much more detailed than this.

10. Once again, please don't worry if you do not fully understand the concept of substantial certainty. The point of this is not to teach you the law in depth, you will have plenty of time for that. We are just using a particular doctrine to illustrate the skill of outlining and creating checklists.
11. So we've seen the elements for assault. Let's look at battery. A- Did the defendant engage in a volitional act? B- Did the defendant intend to touch the plaintiff? C- Did the actions of the defendant cause the harm to the plaintiff? And D- did the plaintiff suffer a harmful or offensive touching? Once again those four elements reflect that general statement applicable to all intentional torts. The volitional act first, the requisite intent second, the causation element third, and the harm suffered by the plaintiff fourth. For battery the requisite intent has to be an intent to touch or to cause a touching of the plaintiff. The requisite harm has to be that the plaintiff must suffer a harmful or offensive touching. So the law that you will learn applicable to each of those points, whether it's from cases, or other readings, or videos, or classes, would be then entered onto your outline under that particular heading.
12. Now let's talk about a couple of the other categories so you'll understand this overall checklist. We've talked about the potential torts when the plaintiff suffers injury to his or her body. They are assault, battery, and false imprisonment. Suppose, instead, the facts indicate the plaintiff suffers injury to his or her emotion. You would want to look to the second grouping, the B on the checklist. You see point 1 says, "Was the emotional distress associated with a separate tortious injury to the plaintiff's body? If so then recovery awarded under the separate tort." This is obviously not an element of a tort itself, but it is a strategy for identifying and prioritizing which torts to discuss under what circumstances.

For example let's say I am standing next to you and I raise my hand as if I'm about to hit you. Now, I'm just joking, although you had no reason to know it. You become reasonably apprehensive that I am about to hit you. And you become so apprehensive that I almost hit you that you lose sleep for several nights thereafter. Well, you've suffered emotional distress when you couldn't sleep because of the fact that you were so emotionally distraught. But when I raised my hand, even though I was intending to joke with you, I should have been substantially certain



that you would think I was about to hit you. So we've established the intent to place you in apprehension of an imminent battery, or a touching. And you were reasonably apprehensive that I was going to hit you. So we've got a volitional act, my act of raising my hand to hit you. And what I did caused your injuries, so we've established all of the elements for an assault--volitional act, intent, causation and harm. Since an assault is there, you can recover for your emotional distress as a result of that assault. This strategic note in your checklist is telling you that on such facts, you can address one of the torts for physical harm under grouping A.

But suppose I come up to you one day and tell you, "You know something? Sometime in the next month, when you least expect it, I'm going to beat the hell out of you." Because of your concern, your worry that at some point, I'm going to beat you, you become so emotionally distraught that that you lose sleep for several nights thereafter. Well now let's think about it. I made a volitional act of threatening you, and it's credible that I would have been substantially certain that you would feel threatened by what I said.

But look back at the second element of assault on the checklist and the fourth element of assault. The B and the D under assault. B- Did the defendant intend to place the plaintiff in apprehension of an *immediate* battery? D- Did the plaintiff suffer reasonable apprehension of an *immediate* battery? Did I intend to place you in apprehension of an *immediate* battery? Would I have been substantially certain that you would be apprehension of an *immediate* battery? No. I'm telling you some time in the future when you least expect it. Not now. Not immediately. Sometime in the future. Were you apprehensive of an immediate battery? No, because this isn't going to happen now, it's going to happen sometime in the future.

So some of the elements of assault would be met, but not all of them. And one of the critical features of an elemental structure in the law is that for a tort or crime or other element-based legal claim to apply, *all* of the elements must be met. If there are ten required elements and the plaintiff fails to prove even one of them, the claim has not been proven. So in our current example about the future threat, the elements of assault cannot all be met. If the plaintiff wants to recover for the emotional distress they suffered, we would need some other legal theory, some other tort, to do so.

So now we look to note 2, the special tort of intentional infliction of emotional

distress, which involves the four elements that mirror our general statement applicable to all intentional torts. A- Did the defendant engage in a volitional act? B- Did the defendant intend to cause severe emotional distress or recklessly disregard that severe emotional distress might occur? There's the requisite intent statement. C- Did the actions of the plaintiff cause the harm? There's the causation statement. And D- did the plaintiff suffer severe emotional level of stress. That's the resulting harm suffered by the plaintiff. You're starting to see the flow of this, which is important because this is what you're going to use to pull all of this information together.

13. Let's talk quickly about the rest of this checklist. Category C is potential torts when the plaintiff suffers injury to his or her property. Well, property is of two types, real property and personal property. Real property is land and anything attached to it. Personal property would be tangible moveable property. Your car would be personal property. Your house would be real property, because your house is attached to the land.

It makes sense, then, that when we're talking about potential torts when the plaintiff suffered injury to his or her property, it is further broken down into 1- injury to real property, and 2- injury to personal property.

If it is injury to real property there are two potential torts, trespass to land and nuisance. They are very similar torts. They both involve an entry on to the land of another an interference with the use or enjoyment of the land of another.

The difference between the two is that trespass to land involves a physical entry, whereas nuisance involves a non-physical entry. If I walk onto your land, that's a physical entry; it's a potential trespass to land if I don't have permission to be there. But suppose I don't physically enter your land. What could be a non-physical entry? Let's say I'm your neighbor and I have huge speakers from my speaker system set up on my property but right next to your bedroom. And late at night, I play those speakers, blasting my industrial polka music. What invades your land? The sound waves. That's not a physical entry; that would be a potential nuisance. So as you build your outline, you would include important sub-rules, definitions, tests, and examples at the appropriate places within the structure, to maximize your understanding of the law and your ability to recall it.

14. What about if we're dealing with injury to personal property?

Well there are two torts as you see on the checklist, conversion and trespass to chattels. They are very similar.

The difference between the two really rests with the fourth element of each. The fourth element for conversion is: Did the plaintiff suffer a destruction of or serious and substantial interference with his or her chattel? For trespass to chattel, the fourth element reads did the plaintiff suffer and interference with his or her chattel?

You see the difference? They both involve some interference with chattel, which is legal speak for personal property--one of those terms you won't believe how quickly you start using. If it is a serious interference, a substantial interference, then you're looking at conversion. But if it's a more minor interference, then you're looking at trespass to chattels.

For example I'm leaving the parking lot and I back into your car and cause a minor dent. There's an interference with your chattel, in that there's damage to your car, but its only minor damage, so that would be trespass to chattel.

But suppose I'm speeding down the highway and I crash into your car and cause several thousand dollars' worth of damage to your car. That's a more substantial interference with your ownership interest, so that would be a conversion. Again, we're only scratching the surface so you get an overview of the types of topics you will be covering in a checklist and fleshing out in far more detail in your outline.

15. There are two other main components to the checklist. Subsection D is Damages. Notice this is not an element of the tort; it's a topic that addresses the question, if a tort is established, what could the plaintiff recover from the defendant? What would we give to the plaintiff to compensate them for the injury that they suffered? If you were to fully address a claim brought by a plaintiff, damages are one of the things you would want to consider.

And then lastly E, privileges and defenses to the intentional torts. Even if the plaintiff can establish the elements to the tort, the defendant still might not be liable if he or she can raise one of the privileges or defenses. You see there are four general categories of defenses. 1. Consent 2. Defenses (of self or others). 3. Authority; and 4. Necessity.

Consent: let's say I tackled you and knocked you to the ground and you sued me for a battery. Well, it looks like all of the elements would be there. But suppose I'm the defendant and I prove that we were both voluntarily participating in a tackle football game. By participating in a tackle football game voluntarily, each of us is consenting to being touched as part of the tackling process. In that situation, I could raise a defense to a battery cause of action.

As for defenses, the three defenses are self-defense, defense of others, defense of property. If I punch in the face to stop you from hitting me, I may be able to claim that I punched you in self-defense. If I punch you to stop you from beating up another person, I may be able to claim that I punched you in defense of others. If I tripped you to stop you from setting fire to my home, I may be able to claim that I committed a battery in defense of property. If I can successfully assert a defense, then I will not be liable for the tort, even if the elements of the plaintiff's claim are otherwise met.

Authority. Well, police officers can often arrest people, and in so doing they may actual batter or assault a particular person, but they may be entitled to do so by virtue of their role. Similarly, even private individuals can have authority to commit torts in certain circumstances. For example, under the shopkeeper's privilege, an owner or employee of a store may have authority to detain and physically restrain, if necessary, someone they reasonably believe has shoplifted items from their store, even if that means committing what would otherwise be battery or false imprisonment.

And the last is necessity- sometimes, you're allowed to damage someone's property in order to prevent bigger injuries, bigger harm, bigger damage. You're trying to escape an oncoming avalanche and so you trespass into someone's cabin. That would be a necessity defense, and the defendant wouldn't be liable notwithstanding that all the elements of the plaintiff's claim may be met. Once again, don't worry if you don't grasp all the substance, this is just an extremely brief overview to give you a sense of what might be contained in a checklist on intentional torts.

16. Because we discussed checklists before outlines, and because we have spent so much time discussing checklists, it's worth re-emphasizing one more time that this does not necessarily reflect the order or prioritization that you will be following as you proceed through your law school classes.

Your outline is something that you are going to start building early in the semester, and will continue to add to it and refine it throughout the semester. So, too, early in the semester you will start developing rule statements that you will then try to commit to memory so that you can quickly and easily recall them on essay exams, and this process will continue throughout the semester as you learn about new legal theories.

Developing checklists, however, is something you will do relatively late in the process. It doesn't make sense to develop a checklist, which is really a game plan for taking all the law you have learned and boiling it down to an approach for exam taking, until you have a substantial amount of law under your belt, and have digested it and synthesized it through your outline and rule statements.

So for example, over the course of a 15-module term, you might start developing your outline after the first few modules, once you start getting a feel for law school and you have covered a decent chunk of substantive material. This process will continue up until you are almost at exams. Once you are very near to taking exams, it may not be the best use of your time trying to refine and perfect your outline, rather you may be better served by trying to boil down and reinforce what you already know.

Similarly, as you learn about legal claims, defenses, or theories, you are going to want to develop rule statements shortly thereafter while they are fresh in your mind. And because you will learn about new claims, defenses and theories throughout the semester, you will be working on rule statements throughout the semester.

But your checklists, by contrast, are something that you would only want to start on relatively late in the process, once you already have a substantial amount of content in your outlines and a substantial number of rule statements that you can use to develop into a checklist.

Of course, this illustration is keyed to final exams at the end of the semester. If you have an interim essay exam during the semester, you obviously wouldn't wait until the end of the semester to develop a checklist for it, as that would be too late. But even if the overall timetable were compressed, the relatively amount of time and attention you spend on the different components would not be.

So while you may be tempted to jump to the checklist early on in the process, as it may feel like a “security blanket,” you would be short changing your learning and not ultimately benefitting yourself.

17. As was noted before, although you have been provided with this example of a checklist for intentional torts, you are going to need to create your own outlines and your own checklists, for the rest of Torts and for all your other subjects, not just in your first year but in each of your courses in law school.

The point of all of this is to force you to think carefully about the law you learn, understand how it all fits together, and be able to apply it to new fact patterns, which is generally how you will be tested in law school and on regulatory exams.

An important aspect of this is that your outline and checklist not be a mere laundry list of dozens of issues or elements. They have to be arranged in an order that appropriately reflects the structure of the law. Structure matters a lot. For example, if you were creating an outline or checklist for intentional torts, and listed trespass to chattel as a tort involving personal injury, that would reflect a fundamental misunderstanding of what is required to prove that tort. That would lead you astray when you faced a fact pattern on an essay exam involving personal injury. You might discuss trespass to chattels, which no professor or exam grader is going to give you credit for discussing in light of those facts.

Similarly, if you listed the defense of necessity as an element of a plaintiff's trespass to chattels claim, that would lead you astray when it's time to analyze a fact pattern. If the facts proved a volitional act, intent, and causation of harm, but not necessity, you might wrongly conclude that a tort hasn't been established, when in fact the plaintiff has proved all the elements they need to.

Your checklists will be critical to help you spot issues on an essay, because you will be given a fact pattern, often with no clues about what legal claims or defenses you should be discussing. Let's say you're presented with an essay fact pattern in your torts class, and you've got your checklist. What do you do?

Well you're going to first ask yourself what type of injury the plaintiff arguably suffered. Did the plaintiff suffer personal injury? Did the plaintiff suffer emotional distress? Or did the plaintiff suffer property damage? Let's say you determine that the plaintiff suffered personal injury, now you're going to ask yourself, well, was

the plaintiff touched in a harmful or offensive matter? If so I'm going to think about a battery. Or was the defendant placed in an apprehension of being touched? If so, I'm going to think about assault. Or was the defendant confined? If so, I'm going to think about false imprisonment.

Your checklist will also help you apply the law to the facts once you have identified what tort or torts you want to discuss. You're going to run the elements of that particular tort in your mind to see which ones are open for debate under these facts, and that's what you're going to be spending most of your time writing about. If the fact pattern tells you the defendant intentionally did something, but it's not clear if it caused the plaintiff harm, there's not much to discuss regarding intent, and the facts relevant to harm will be the focus of your analysis. Conversely, if the facts make it clear that the defendant did an act that harmed the plaintiff, but it's not clear from the facts whether he did so intentionally or not, then the facts relevant to whether the element of intent was satisfied will be your focus.

Once you've addressed all of the elements, if there's a plausible argument that they have all been met, then you're going to ask, are there any defenses that the defendant could raise? And if the facts fairly raise any defenses, you would discuss the elements of those defenses, again focusing most heavily on the facts relevant to any elements that are in dispute. That's how a checklist has to be used to unwind a fact pattern.

Hopefully, this has been a helpful introduction to the important skills of outlining and creating checklists. In a separate presentation, we'll look at how you would actually go about drafting an answer to an essay exam using the tools of legal analysis that are central to the study and practice of law.