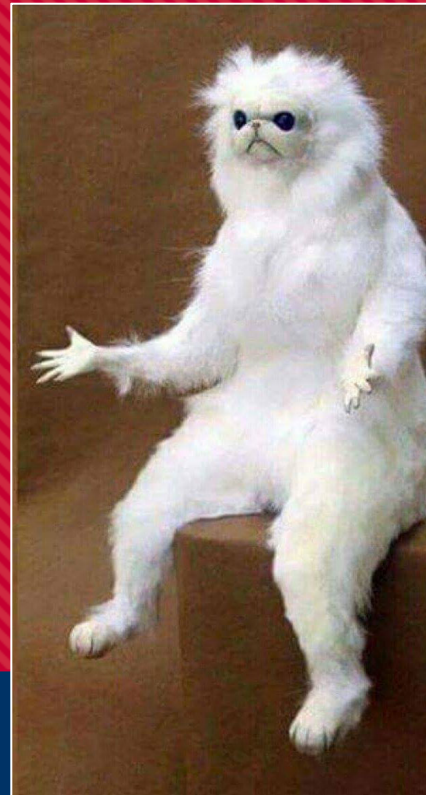


James E. Rogers College of Law Writing Center



Case Briefs



Notetaking



Outlining

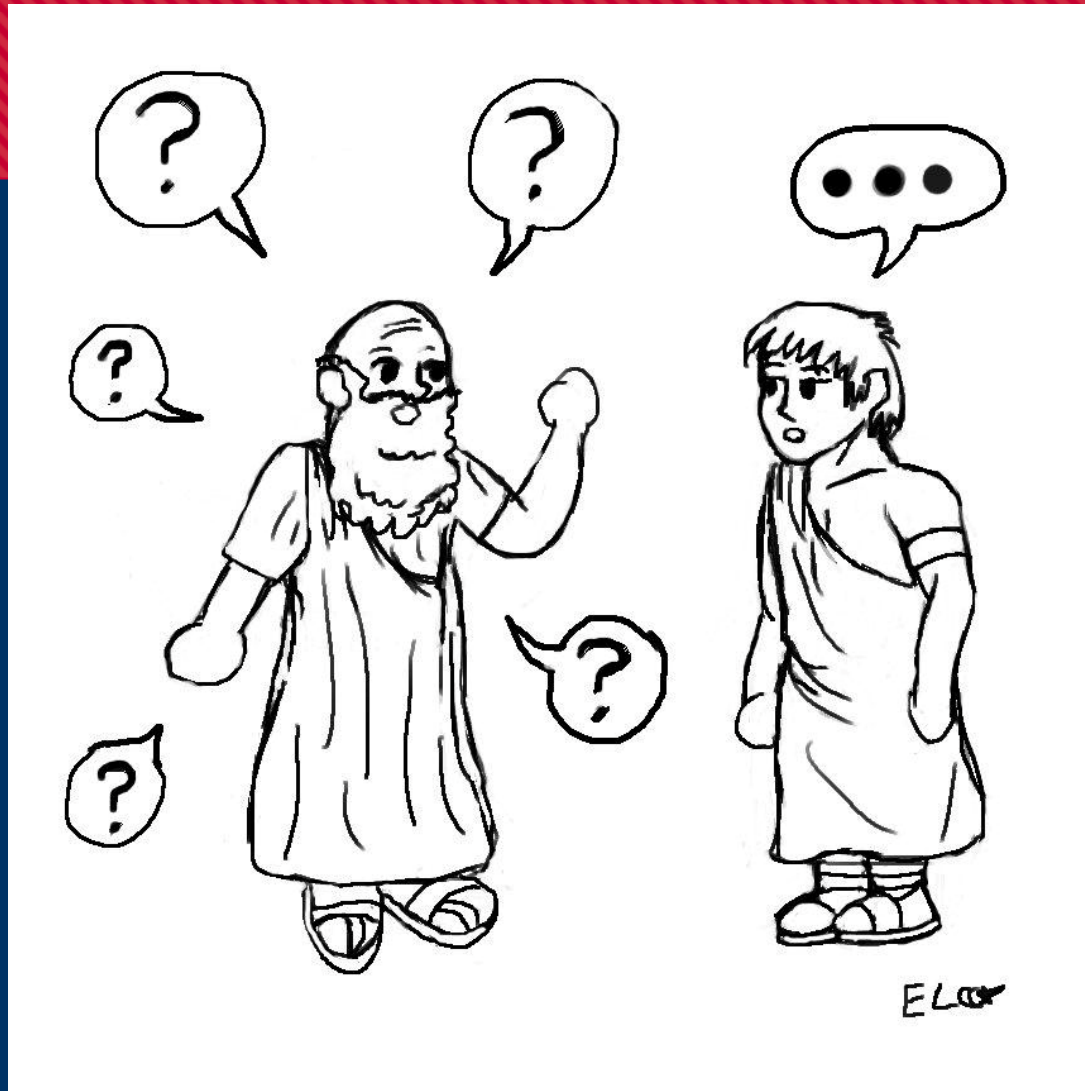
Introductions

What's the Writing Center?

Who are we?

WHY ARE WE SO COOL?

Case Briefs – why?



Different classes
may need different
approaches.

Use what works for
you.

Key features of a case brief

- **Case name**
- Dispositive facts
 - Who is the P, the D, appellant/appellee?
 - Without these facts, the case outcome would change
- Procedural Posture
 - Who is suing who and for what?
- What step in the case?
- Issue
- **Rule**
 - **Elements or factors**
- Analysis
 - Arguments on both sides
 - Why the court ruled the way it did
- **Conclusion/Holding**

Optional parts of a case brief

- Colorful facts to help you remember (e.g. “hairy hand case”)
- Case citation
- Hypos
- Jurisdictional splits/competing approaches
- Ambiguities
- Buzzwords
- Judge/justice names
 - Conlaw – Supreme Court Justices
- Concurring/dissenting opinions and key language

Briefing time-saver tips

- **Use templates**
 - Keep a blank template in a different page or file so it can be easily pasted in and filled out
- **Read the end of the case early (or first)**
 - Knowing how the court ruled and their conclusion will help identify and focus on the issue, rule, and key parts of the analysis

Ex. Case brief notes

Palsgraf (Π) v. Long Island R. Co. (Δ) 1928 -- (Legal / Proximate Cause)

Facts: Two men catching a train on Δ's platform - Δ's guards helped 2nd man onto train, but dislodged a nondescript package man was carrying. Package contained fireworks, which went off and caused scales on other end of platform to fall and injure Π.

Issue: Is Δ liable for Π's injuries due to negligence of Δ's guard, who caused the package to fall?

Rule: Foreseeability test - a reasonable person must foresee the harm caused by an act in order to be held liable.

Holding: Δ's actions were not a proximate (legal) cause of Π's injury. Δ wins because a reasonable person would not foresee that the dropped package would subsequently cause the injury to Π.

Analysis: "The risk reasonably to be perceived defines the duty to be obeyed." Since nothing alerted Δ's employee to the potential danger of fireworks and falling scales, he could not reasonably foresee the chain of events that caused the injury and therefore Δ cannot be held liable. Duty only to foreseeable Π's.
Dissent - liability should be based on the wrongfulness of the act, not the foreseeable consequences

Wellborn says wacky facts
- original complaint said
Stampede caused scales to
fall, not fireworks

to this particular
Π
Freeze frame process -
if you took a picture at moment of
push, would they have stopped
him boarding?
- a reasonable person would
not look + say that package
is a bomb

Focus on foreseeability of
Π, rather than of event
itself

Distinguish Wagon Mound - chain of events in Palsgraf
far less likely than chain of events in Wagon Mound.
- Why? What's the threshold of foreseeability?

Example templates

Generic case template

Name/Citation
Facts
Posture
Issue
Rule
Analysis
Conclusion
Dissent/comments
<ul style="list-style-type: none">• Hypos• Competing approaches/jurisdictional splits• Ambiguities• Elements/factors• Buzzwords and difficult terms

CivPro Rule brief template

Rule XX brief
Purpose
Scope
Who
What (command)
Consequences
Process
Hypos

Notetaking – are these good or bad notes?

alleged express oral

(b) all costs and expenses for living during the time services were rendered.
(c) pay "within a reasonable time" an amount sufficient to pay for all his costs and expenses for living the rest of his life

IT also contends he fully performed the agreement and Δ only party. (around b) but fails and refuses to pay c.

Δ moves for summary judgment and argues the suit is without merit and that the purported agreement is too vague & indefinite.

For the current purpose the agreement is true

The question is whether an express agreement can be regarded as enforceable.

- This case isn't like Marone v. Maron where there was an explicit partnership agreement, the specific amount just wasn't specified --- there is no means of arithmetic calculation.

Basic premise of contract law (pg 31)
"It is a necessary requirement in the nature of things that an agreement in order to be binding must be sufficiently definite to enable a court to give it an exact meaning"

→ whether an alleged agreement by Δ to pay an amount sufficient to take care of all π costs and expenses for sumptuous living and maintenance

for the remainder of his life" is "sufficiently definite" for the court to award π a judgment in a specific sum.

IT asserted Δ agreed "to provide and set up for him, either by giving him a block of stock or cash, or both, which would take care of all his living expenses in the same expensive style for the rest of his life"

The agreement is readily unenforceable

- too vague to be enforceable.
- no means for payment set forth
- no further specificity to satisfy π from

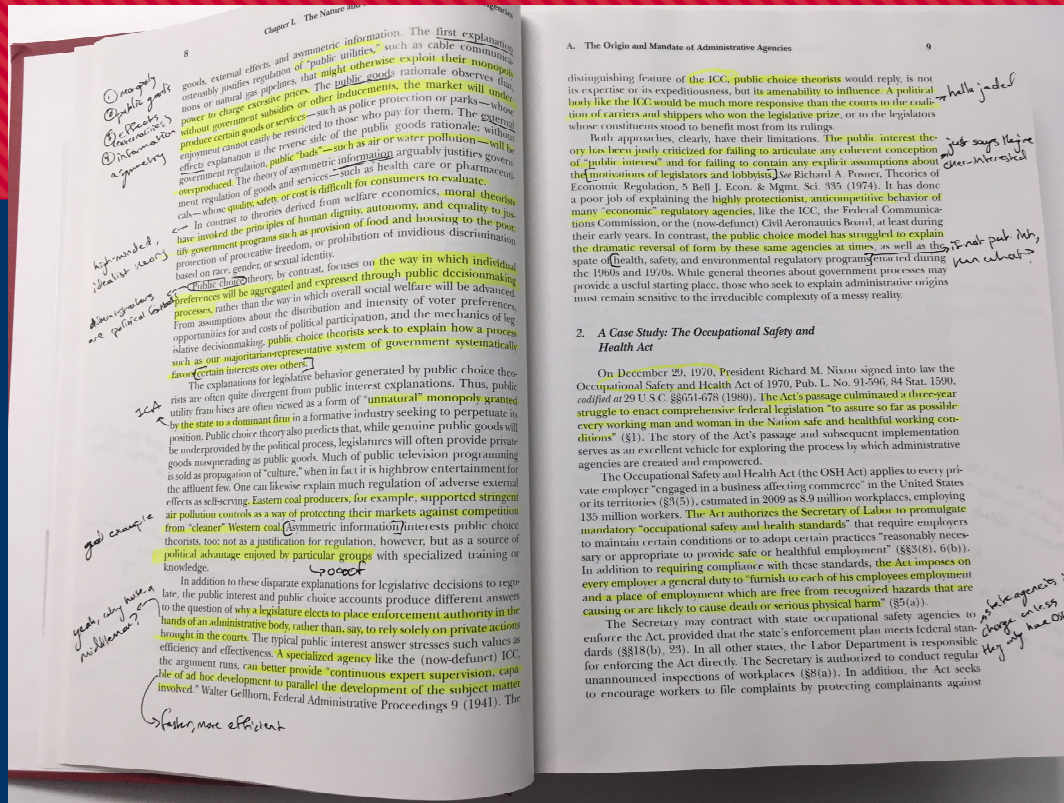
→ The court says because an express agreement is governed by the law applicable in all contracts, it is instructive to compare this agreement to contracts that were more detailed but still not found to be enforceable.

- Brause v. Goldman - negotiation were at much more detail, and there was a memorandum of agreement prepared
- no indication of date when the agreement would begin.
- no method of payment mentioned
- nothing re. the rights of the parties in the event of issues arising.

→ This relationship was terminable @ will and it did come to an end → Not legal basis

IT DEPENDS

How about these?



Admin Law
 8-17-2021

biology food, seatbelts, baby food, cribs, car seats, ingredients, drugs,

- what is admin law?
 - agencies (part of executive branch) promulgate rules + regulations, they adjudicate disputes (social security judges), and they enforce laws (watch dogs)
 - Administrative Procedures Act → which doesn't apply to the President
 - part of creation of admin state was fear of private industry
 - but, did we give gov't too much power?
 - agencies distribute benefits, grant licenses, protect

- First, history
 - commission in exec branch created to adjudicate specific conflicts
 - 1887 → FCC created to break up railroad monopoly
 - 1934 → FCC created to regulate air waves
 - then TONS of New Deal agencies created for subject matter: securities, labor, social security
 - 60's + 70's → environmental + safety regulation
 - 70's to today → push back against administrative state (Nixon admin.)
 k - Trump! ~~in~~ in, & out...

- Spread of private industry + whole of governmental power: we are Jesse E.

Three buckets of stuff:
 ① who creates, controls, regulates agencies (external controls)
 ② what rules govern how agencies work (internal procedures)
 ③ how do courts police agencies (judicial review of agency behavior)

- Public Interest / Public Choice Theories
 ↳ lets fix some problems ↳ agencies are market actors who want power
 - discussion of "expertise" on the public interest theory
 - regulation is just a "legislative prize" for the best lobbyist, under public choice

Handwritten vs. Typed Class Notes

Handwritten

- **Less distraction**
- **Better retention and conceptual mastery**
(Mueller & Oppenheimer 2014)
- **Drawing!**

Typed

- **Formatting and hyperlinks!**
- **Transferrable to outline**
(more on this later)
- **Shareable**
- **Faster**

Notetaking Apps

- **Microsoft OneNote**
- **Evernote**
- **Notion**
- **Roam Research**
- **Apple Notes**
- **Slite**
- **Typora**

Use abbreviations!

- □ / P - plaintiff
- △ / D - defendant
- § - section
- K - contract
- Jdx - jurisdiction
- S.Ct. / USSC - Supreme Court
- M2D - mtn. to dismiss
- MSJ - mtn. for summary jmt.
- R, R2 - Restatement (2d)
- FRCP - Fed. R. of Civ.Pro.
- Aff'd - affirmed
- Rev'd - reversed

Notetaking tips

- **Your notetaking shouldn't distract you from content!**
- **Bullet-point lists, diagrams**
- **Abbreviations, short sentences**
- **Case briefs and class notes in one place can work**
- **Review regularly**
- **LISTEN to your instructors**
- **Things to emphasize:**
 - **Hypos**
 - **Competing approaches/jurisdictional splits (single/dual intent)**
 - **Ambiguities (on concepts or rules)**
 - **Elements/factors**
 - **Buzzwords and difficult terms**

What's an outline?

An outline is a commonly used study tool for law school exams because they help students synthesize and review the material



Types of Outlines

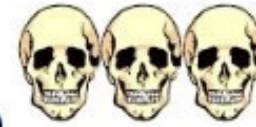
- **Commercial Outline**
- **Attack Sheet/Skeleton Answers**
- **Flowchart**
- **Outline w/ Index**
- **Flashcards**
- **No Outline**

Commercial Outlines

- Often 100+ pages long
- Cost money
- Don't always explicitly mention cases, and some profs like cases mentioned in rule statements



CIV. PRO.

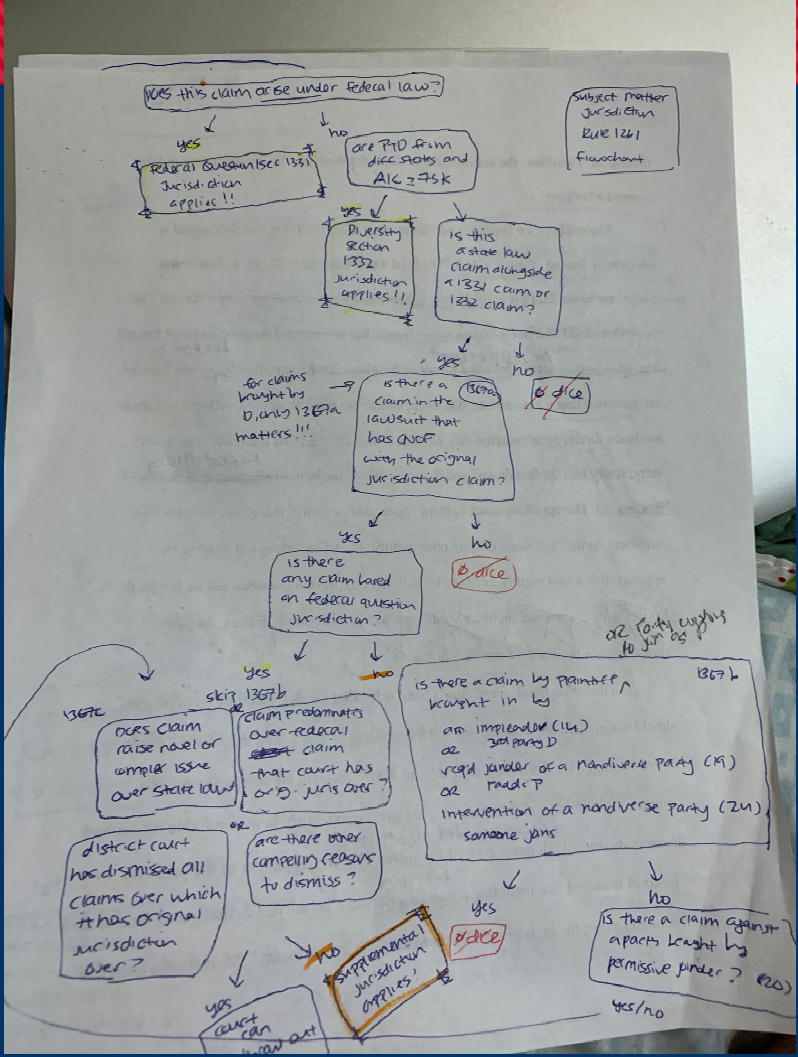
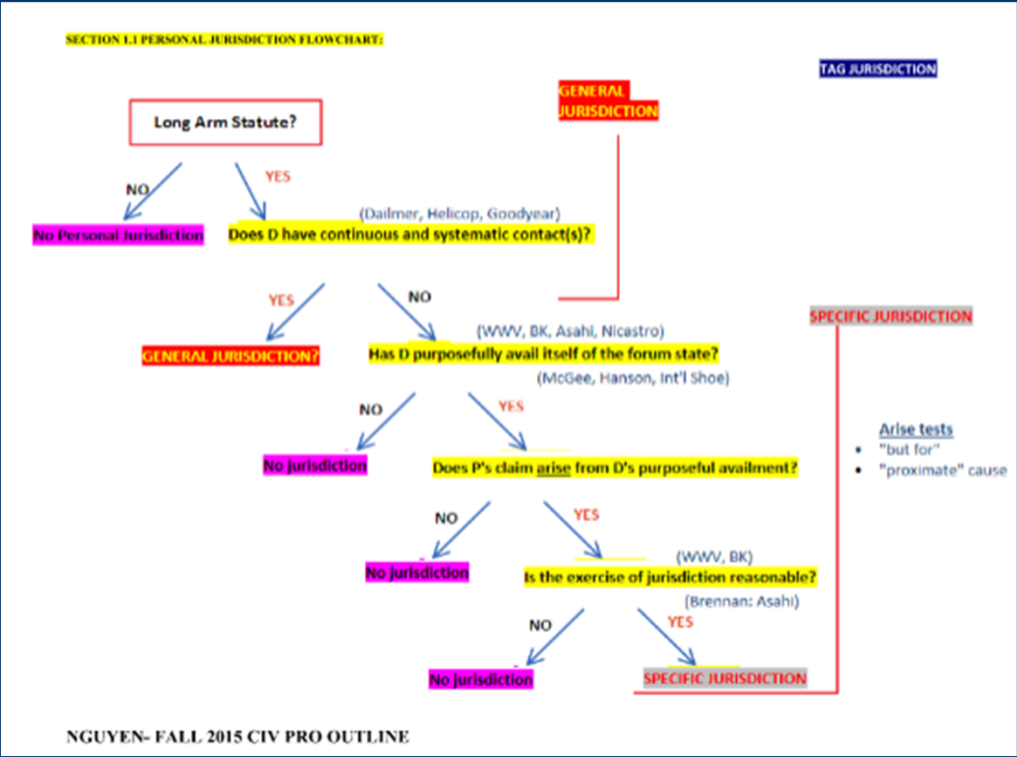


Rule 15 Essay

- **RULE** [general intro]
 - Rule 15 allows a party to change the legal theories or factual allegations in their pleadings. The thrust of Rule 15 follows the liberal standard of pleading within the rules which gives greater focus to the merits of the case than mere technicalities.
- **ISSUE** [15(a) starting problem]
 - The issue is whether the court will grant _____'s motion to amend her pleading. For the reasons that follow, the motion should be _____.
- **RULE** [15(a)]
 - FRCP 15(a) addresses two types of amendments: those filed "as a matter of course", and those filed with leave of court
 - An amendment may be filed once as a matter of course (meaning without leave of court or without permission of the other parties) any time before a responsive pleading is served. This usually applies to the plaintiff's complaint for which an answer must be filed within 20 days after service according to FRCP 12(a)(1)(A).
 - Conversely, if no responsive pleading is required, the party may amend its pleading within 20 days of its service. This usually applies to the defendant's answer as no reply is needed to an answer unless ordered by the court under FRCP 7(a).
 - Otherwise, a party can only amend its pleading by leave of court, which shall be granted freely when justice so requires or through written consent from the adverse party. Leave to amend is usually given unless the adverse party would be prejudiced or if the requesting party seeks amendment very late into litigation, or parties usually consent out of professional courtesy.
- **ANALYSIS** [15(a)]
 - Apply to the Facts
- **CONCLUSION** [15(a)]
 - Repeat conclusion

Ex.:
Skeleton
Answer

Ex.: Flowchart (works well for some classes)



Outline with Index

- Table of Contents feature in MS Word or Google Docs very helpful for open note exams
- Syllabus can be used as a rough guide

Rule of Capture - Who Ow...	
Pierson v. Post	
Popov v. Hayashi	
Rule of Capture in Oil, Gas...	
Elliff v. Texon Drilling	
State v. Grimes	
Law of Finders	
Armory	
Charrier v Bell	
Whose manure is it? - p....	
Adverse Possession	
Brown v. Gobble	
Hypos	
Nome 2000 v. Fagerstrom	
Acquisition by Discovery	
Johnson v. M'Intosh	
Right to Exclude	
State v. Shack	
Commonwealth v. Maga...	
Uston v. Resorts	

Rule of Capture - Who Owns It?
Pierson v. Post
Popov v. Hayashi
Rule of Capture in Oil, Gas, and Water
Elliff v. Texon Drilling
State v. Grimes
Law of Finders
Armory
Charrier v Bell
Whose manure is it? - p.163 #2
Adverse Possession
Brown v. Gobble
Hypos
Nome 2000 v. Fagerstrom
Acquisition by Discovery
Johnson v. M'Intosh
Right to Exclude
State v. Shack
Commonwealth v. Magadini
Uston v. Resorts

<i>Who owns it?</i>
1. Introduction to Property Law, Possession, & Law of Capture
2. Law of Capture: Oil, Gas, and Water
3. Subsequent Possession: Relativity of Title (Law of Finders)

Outlines should build on your notes!

Rule Statements CREAC/Case Briefs



Defense + Repossession of Property

Def. of Inv./chattel

66 Katko v. Briney (Iowa 1971)

→ Def. set up a shotgun booby trap in abandoned house to surprise next intruder. Bottle of lead broke in and had leg blown off

- Posture: Jury awarded P \$20K damages + \$10K punitive. D appeals (challenges jury instructions)

- Issue: Can owner defend prop. by means likely to cause phys. injury to intruder?

- Holding: No. (jury finding affirmed)

- Reasoning: Cites Restate § 65 - no privilege to use force likely to cause serious harm or death to protect prop. interests. Possessor can not do by mechanical device what he could not do in person.

§ 77 Not threatening death or serious harm

→ ...to prevent or terminate intrusion on his land or chattels, if:

- not privileged
- reasonable belief intrusion can only be stopped by force
- he first requests desist or if he reasonably believes request would be useless or damage will be done before req. can be made

§ 84 - Mechanical Device death or S.B.H.

→ NOT threatening death or serious Bod. Harm

→ if intrusion is such that actor would be privileged to prevent or terminate it by such means if present

67 Brown v. Marsh (N.H. 1961)

→ P is 15-year-old motorcycle stealer. In act of stealing motorcycles w/ friends, D caught them and fired a warning shot when they were running away. D

No privilege to use serious/deadly force in defense of property

DEFENSES TO PROP TORTS

LPs ENTITLED TO USE FORCE

No privilege to use serious/deadly force in defense of property. May permit reasonable force for "recapture of chattels"

Brown v. Martinez - LP shoots to scare off sandia thieves, hits one of them. Liable.

Gortarez v. Smitty's Super Value - Common law shopkeeper's rule. Employees patted down and put teen in chokehold (erroneously) suspecting theft. Not entitled to use unreasonable force. **Narrow shopkeeper's privilege depends on:**

- reasonable cause to detain
- for proper purpose (questioning or summoning LEO)
- for reasonable time and purpose (weighs gravity of theft)

See also McCann v. Walmart

INTRUDERS' DEFENSES

Surocco v. Geary - During fire, city can't be held liable for prop damage done in good faith during time of necessity.

Ploof v. Putnam - LP can't unmoor boat tied to his dock during storm

§ 77 Defense of property not threatening death or phys harm:

- Intrusion not privileged (e.g. not to find safe haven)
- Reasonable belief intrusion can only be stopped by force
- First requests intruder desist or if reasonably believes req will be useless or damage will occur before

§ 84 Use of mech device not threatening serious bod harm:

- Reasonably necessary to protect prop
- Use of device reasonable under circumstances
- Device customarily used for such purposes or care taken to make potential intruders aware.

§ 85 Use of mech device threatening death or serious harm:

- Only permitted when int'l infliction of such harm would be permitted (i.e. never to protect prop)
 - Katko v. Briney - shotgun booby trap. Liable.

§ 892 Consent, defined:

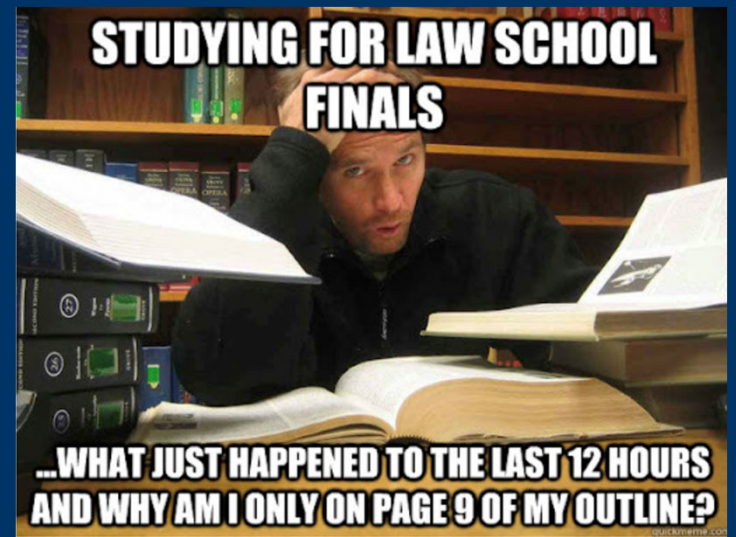
- "Willingness in fact" manifested by action or inaction, need not be actually comm'd to actor.
- Apparent consent: Words or acts that other would be justified in relying on. Even if no actual agmt.

Outlining Tips

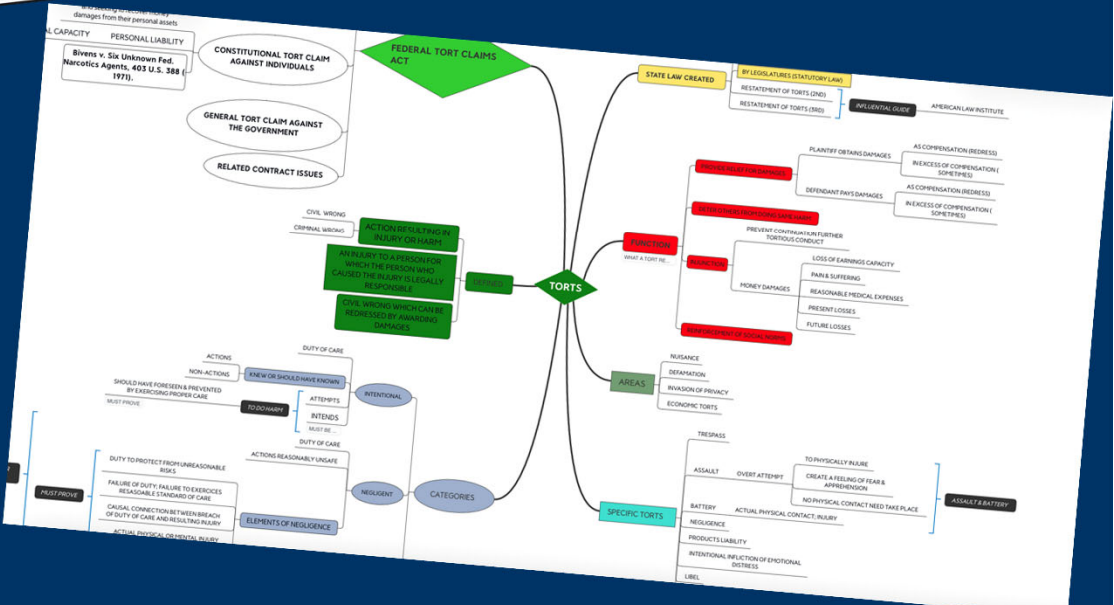
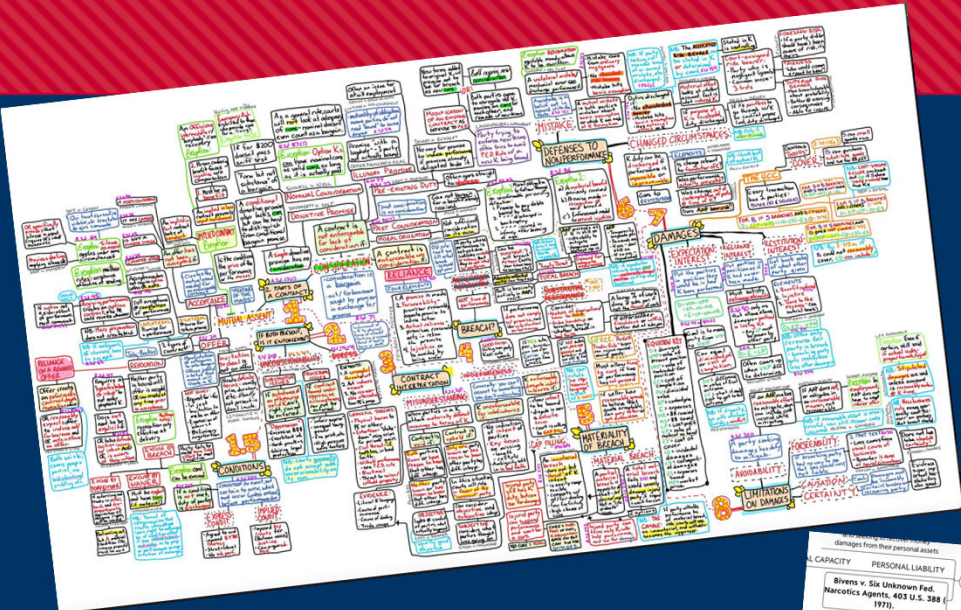
- **Study *with* your outline!**
 - **Highlight, revise, bind, tab**
 - **Do practice exams with a draft of your outline**
- ***Synthesize* the material**
 - **Highlight principles, rules, Jdx'l splits, policy**
 - **Outline won't have all the exam answers**
- **Listen to professor re: what's needed for exam**
- **Can check w/ friends' or upperclassmen's outlines**
- **Remember, 1L isn't about memorizing case details—it's about learning *methodology***
- **Doesn't have to look like everyone else's**

When should I outline?

- Find a pace that works for you and how you retain information
- Weekly
- Monthly
- A month or so before finals (this worked well for me last semester)
- Don't be like this guy ----->



Alternatives to Outlines



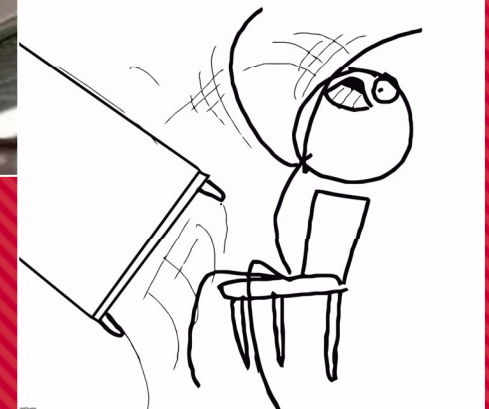
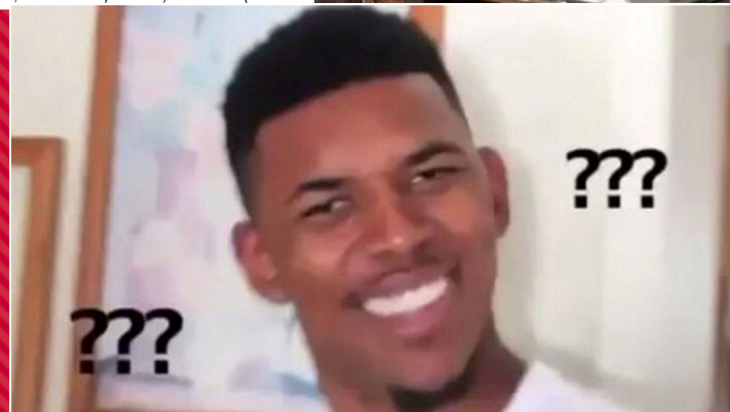
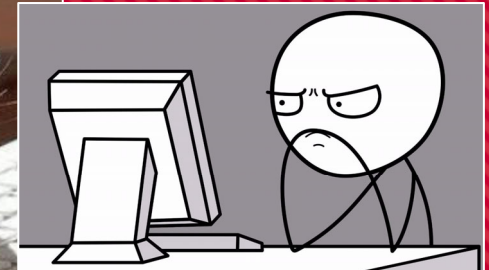
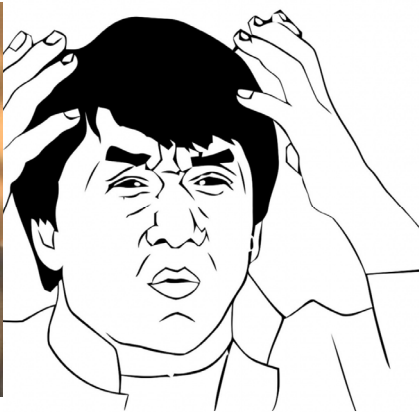
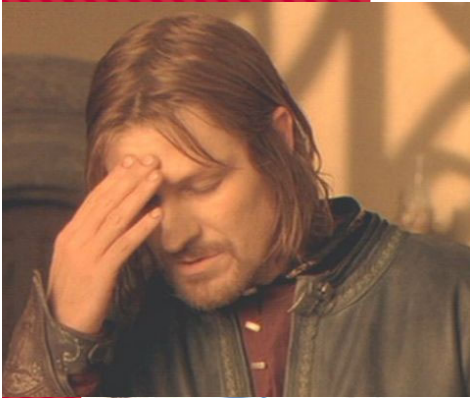
Note on Hornbooks/Supplements

- Not necessary to do well but can be helpful guide for the material, especially if you are struggling to understand legal jargon
- Practice problems



Questions? Confusions?

When legal writing makes you feel like this...



Visit Us at the Writing Center!

Drop-In Hours Monday, Tuesday, Wednesday, Friday

<https://arizonalawwritingcenter.arizona.edu/>

Arizona.law.writing.center@gmail.com (for off hours appointments)