

WIDENER UNIVERSITY
DELAWARE LAW SCHOOL

ORIENTATION 2025

Reading Supplement

These materials should be read before Orientation starts. You will notice that some of the more difficult or important concepts and topics covered in JDEdge are also addressed here and will be discussed during Orientation.

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SECTION I

INTRODUCTION

For a number of reasons, law school likely will be a new and unique experience in professional education for you. You may not have heard of some of the subject matters you will address, and the vocabulary you will be asked to use may seem alien. For example, what is a *tort* if not a dessert? Or, what is *offensive, non-mutual collateral estoppel*, and -- more importantly -- why would anyone care about it? In addition, the workload in law school is heavy. A common assumption is a student should spend at least two to three hours preparing for each hour of class time. Even the testing and grading processes in law school are often different from such processes in other schools.

Given the singular aspects of a law school education, the Orientation program will do more than help you meet your colleagues, find important locations on campus, and learn how the school runs. Rather, a key objective of the Orientation program is to begin your development of the skills necessary to address the unique features of a law school education. The Orientation program provides a common body of knowledge for all students in the first semester. The program also provides opportunities to discuss and practice some of the skills essential to success as a law student and as a member of the legal profession.

You may get confused, frustrated, and intimidated in developing your understanding of the law. Don't give up! In fact, you are not permitted to give up, and here is the reason why. Every state has a professional code of ethics governing those admitted to the legal profession in the state. Those codes identify *diligence* and *competence* as fundamental traits of the profession.¹ Professional diligence requires a lawyer "to pursue a matter . . . despite opposition, obstruction, or personal inconvenience. . ."² Competence requires knowledge of the law and skill in using that knowledge. Orientation is your first step toward professional competence and diligence. You can do this!

¹ For example, Rule 1.1 of the American Bar Association's Model Rules of Professional Conduct provides: "A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation." Model Rule 1.3 provides: "A lawyer shall act with reasonable diligence and promptness in representing a client." Most States have used the ABA's Model Rules as a template.

² Model Rule of Prof'l Conduct R. 1.3, Comment 1 (2015).

SECTION II

CHARACTER & FITNESS REQUIREMENTS OF THE PROFESSION

a. Before Admission to the Bar

While you now know that professional codes of ethics regulate the professional conduct of lawyers, it may surprise you to learn that conduct when you are not acting as a lawyer also will be subject to professional regulation. Your conduct before law school and while in law school is subject to scrutiny by the profession. For example, you may recall the application for admission to Delaware Law includes this question:

13. Character & Fitness

Have you ever received an academic warning, been placed on probation, disciplined, suspended or dismissed by any learning institution or licensing board for any reason? If "Yes," you must use an electronic attachment to provide your detailed explanation. Your explanation must include the nature of the event/offense, the underlying facts, and all relevant dates. Without this information, your application will remain incomplete and ineligible for review and decision. Note: You have a continuing duty to update the information you provided in response to this question. You must notify Delaware Law of any academic or disciplinary actions occurring after submission of this application.

The application also provides:

Any false or misleading statement, incomplete or inaccurate information, omissions of required information or failure to update changes in information in this application may cause you to be denied admission; OR, if admitted, to be dismissed from the School of Law or cause your degree to be revoked by the dean, and may jeopardize licensure with the Boards of Bar Examiners.

Law schools inquire about "character and fitness" in part to prepare you for the review of your character and fitness that will occur again upon your successful completion of law school and before admission to practice. As you learned in *JDEdge*, not only must an applicant to a state bar pass a multi-day bar examination, the applicant also must pass a character and fitness review by the state's board of bar examiners. You also should note that boards of bar examiners often compare the responses a bar applicant gave to the character and fitness questions on law school applications with responses to similar questions on applications for admission to the bar. Any discrepancy in the two sets of responses may adversely affect an applicant's admission to practice.

The boards of bar examiners in most states have web sites with information about the requirements for admission to the profession in the particular state. We encourage you to familiarize yourself now with the standards for character and fitness published by the examiners of the states in which you may seek admission to practice.

Please also note the scope of the inquiry by a board of bar examiners may be broader than the

inquiries about character and fitness on a law school application. In particular, note that although Delaware Law School's application no longer asks applicants about any previous arrests or convictions, the boards of bar examiners generally will. Oftentimes even convictions that have been expunged or which occurred while the applicant was a juvenile will need to be reported on a bar application.

You will find that many states use similar language to describe the requirements of character and fitness. Below (in *italics*) you will find excerpts from the website of The Pennsylvania Board of Law Examiners that exemplify common concerns and objectives.

What are the character and fitness standards?

The character and fitness standards require that an applicant to the bar be one whose record of conduct justifies the trust of clients, adversaries, courts, and others. The hallmark of such a person is honesty, especially in connection with the application for admission to the bar. Persons with a record showing a deficiency in honesty, trustworthiness, diligence, or reliability may not be recommended for admission.

[The website for the Pennsylvania Board of Law Examiners contains the following examples of deficient conduct that will lead the Board to investigate an applicant before recommending an applicant's admission]:

- *unlawful conduct*
- *academic misconduct*
- *employment misconduct*
- *making false statement(s), including the omission of relevant facts*
- *acts involving dishonesty, fraud, deceit, or misrepresentation*
- *abuse of the legal process*
- *neglect of financial responsibilities, especially failure to repay student loans*
- *neglect of professional obligations*
- *violation of an order of a court*
- *evidence of mental or emotional instability, as it relates to the ability to practice law*
- *evidence of current or recent dependency on a substance such as alcohol, a narcotic, an illicit drug, or a mood-altering substance, or evidence of current or recent abuse of such a substance or a prescription drug*
- *denial of admission to the bar in another jurisdiction on character and fitness grounds*
- *disciplinary action by a lawyer disciplinary agency or other professional disciplinary agency*

What is the most common reason for denial of a bar applicant?

A pattern of dishonesty in dealings with employers, schools, and authorities, including the Board, is a common reason for denial of bar applicants. Giving false information on the application or failing to be completely candid in the application process is a serious issue, which will have negative consequences for an applicant. The failure to be fully responsive to application questions, or any other lack of candor in an application, involves unsworn statements made to an agency of the Supreme Court. Since this dishonesty would be both current and ongoing, the applicant charged would have a difficult time demonstrating rehabilitation.

Do I have to disclose [criminal] incidents from when I was a juvenile or those that were expunged?

You must disclose each criminal incident where you were arrested, charged, cited, accused, or prosecuted for any crime, even if: the charges were dismissed; or you were acquitted or pardoned; or adjudication was withheld; or a conviction was reversed, set aside, or vacated; or the record was sealed or expunged; or you entered some type of diversionary program, such as A.R.D. You must disclose each incident, regardless of whether you believe or were told that you need not disclose it.

Why does the Board inquire about misdemeanor or felony arrests, which did not result in convictions?

There are many reasons why arrests do not result in convictions, many of which have no bearing on guilt or innocence. Applicants are required to report all incidents, and to provide evidence of rehabilitation and current good character. The occurrence of an acquittal or dismissal is relevant but not dispositive of the issue. This is not to suggest that the Board will assume that any arrest was due to guilty conduct on the part of the applicant. The applicant's obligation is to be completely candid regarding all matters about which the Board inquires.

b. After Admission to the Bar

Even after admission to a bar, certain rules of professional ethics apply to a lawyer's personal life. So, for example, Rule 8.4 of the Rules of Professional Conduct adopted by the Delaware Supreme Court provides, in part:

Maintaining the Integrity of the Profession

Rule 8.4 Misconduct

It is professional misconduct for a lawyer to:

** * **

(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects;

(c) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation;

(d) engage in conduct that is prejudicial to the administration of justice;

* * *

COMMENT [to Model Rule of Professional Conduct 8.4]

* * *

[2] [With regard to (b) above] Many kinds of illegal conduct reflect adversely on fitness to practice law, such as offenses involving fraud and the offense of willful failure to file an income tax return.....Offenses involving violence, dishonesty, breach of trust, or serious interference with the administration of justice are in that category. A pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation.

*[3] A lawyer who, in the course of representing a client, knowingly manifests by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, violates paragraph (d) when such actions are prejudicial to the administration of justice. Legitimate advocacy respecting the foregoing factors does not violate paragraph (d). * * **

[5] Lawyers holding public office assume legal responsibilities going beyond those of other citizens. A lawyer's abuse of public office can suggest an inability to fulfill the professional role of lawyers. The same is true of abuse of positions of private trust such as trustee, executor, administrator, guardian, agent and officer, director or manager of a corporation or other organization.

* * * *

SECTION III

REVIEW: COMMON ELEMENTS OF A CIVIL LAWSUIT

Much of the assigned reading in your first semester will describe issues arising in the context of civil litigation. It is useful to have a basic understanding of key common elements of a civil lawsuit so that you can more easily focus your understanding on the substance of the case. Below are brief descriptions of those elements and a summary in two charts.³

a. Investigation

Courts seek to provide just resolutions of disputes, but courts do not want to waste resources on frivolous litigation. More than a good story is necessary to begin a lawsuit. There must be a factual basis for the story and the facts must be relevant to a right or obligation arising from some law.

Lawyers representing potential claimants must reasonably investigate the facts and the law before filing suit on behalf of a client. The same practical duties of investigation apply to defendants before responding to a claim.

³ In your Civil Procedure course next spring you will discuss in greater detail how a civil lawsuit begins and may progress.

b. Pleadings

To begin a civil lawsuit in federal court and in many state courts, the *plaintiff* files a document called a *complaint* with the court and *serves* a copy of the complaint on the person or entity against which the plaintiff is making the claim – the *defendant*. The complaint sets forth the bases for subject matter jurisdiction, describes the plaintiff's loss, explains how the defendant caused the loss, and asks the court to order a *remedy*. A plaintiff may ask a court to order a variety of remedies, such as money from the defendant to compensate for the plaintiff's loss or a prohibition on the defendant's conduct causing the plaintiff's loss. The court also may order other types of relief, such as a declaration of the legal rights of the plaintiff in a particular situation.

After being served with the complaint, a defendant has an opportunity to respond to the complaint. A defendant can file a *motion* (a request for a court to issue an order) asking the court to dismiss the plaintiff's claims for a variety of reasons, such as lack of jurisdiction over the defendant or over the subject matter. A defendant also may choose to respond directly to the specific allegations in the complaint by filing a pleading in which the defendant admits or denies the plaintiff's allegations and asserts other reasons for which the plaintiff would not recover under the applicable law. If a defendant fails to respond to the complaint – or responds in a manner deemed inadequate by the court – a *default judgment* can be entered in favor of the plaintiff.

c. Discovery

Discovery is an important phase in the progression of a lawsuit. The discovery period (which may last months or even years) provides an opportunity for parties to a lawsuit to collect information relevant to the claims and defenses raised in the suit. Rules of procedure provide several different methods for collecting the information, such as depositions, document requests, interrogatories, physical examinations, and requests for admissions. Courts have authority to sanction parties and non-parties who fail to comply with proper discovery requests.

d. Dispositive Motions Later in the Pretrial Process

Trials do not occur in most civil litigation, because settlements negotiated by the parties or dispositive pretrial motions resolve most lawsuits. A motion for *summary judgment* is one such pretrial motion. The party making the motion asserts that the court has enough information to conclude there cannot be a rational dispute about the facts giving rise to a claim (or defense) in the lawsuit and the applicable law entitles the moving party (the party making the motion) to a judgment in its favor given those facts. The moving party seeks to convince the court there is no need to proceed further with a claim.

e. Trial

If a trial is necessary to resolve civil litigation, constitutions and statutes may afford the right to a jury trial for some claims. At trial, the parties must address the *burden(s) of proof* applicable at trial. The plaintiff presents evidence of its version of the facts supporting its claims, and the defendant presents evidence rebutting the plaintiff's evidence or supporting its own version of the facts. From the evidence presented, the jury must decide what happened (the underlying facts) and render a verdict after applying to the facts the applicable law as described by the judge. The judge will enter a judgment after the jury's verdict. If there is no right to a jury trial for a particular claim or if a party waives its right to a jury trial, then the judge becomes the fact finder and applies the applicable law to the facts.

During trial and after entry of judgment, a party may make a motion for a judgment as a matter of law. The motion for a judgment as a matter of law and the pretrial motion for summary judgment described above are similar in that the party making the motion asserts a rational decision maker must find in the moving party's favor based on the information available to the court at the time of the motion. The motion for judgment as a matter of law and the motion for summary judgment differ, however, in two significant ways. First, a motion for judgment as a matter of law can be made only after the non-moving party has had its opportunity to be heard at trial. Second, the motion for judgment as a matter of law focuses on what a rational decision maker could conclude from the information admitted into evidence at trial before a party makes the motion.

A party dissatisfied with a trial judgment also can make a motion in the trial court for a new trial. There are a variety of reasons for which a trial court could grant a new trial. What is important to understand at this point is how a motion for a new trial differs from a motion for judgment as a matter of law. The latter motion requests the court to enter judgment in favor of the moving party, i.e., to pick a winner. The motion for a new trial requests only another chance at a trial.

f. Appeal

A party that is dissatisfied with an outcome in the court in which a suit commences -- often called the *trial court* or *court of original jurisdiction* -- may ask a *court of appeals* to review trial court proceedings for errors. An appellate court may be an *intermediate appellate court* with the authority to review trial court proceedings, but which also is subject to review by a *final or highest* appellate court in the particular court system. The jurisdiction of appellate courts to review the proceedings in the lower courts of a court system may be either mandatory or discretionary.

Appellate courts apply different *standards of review* in determining how closely to scrutinize the proceedings in a lower court in the particular court system.

OVERVIEW OF CIVIL LITIGATION – INVESTIGATION THROUGH TRIAL

EVENT	INVESTIGATION	PLEADINGS & INITIAL MOTIONS	DISCOVERY OF INFORMATION RELEVANT TO CLAIM OR DEFENSE	LATER DISPOSITIVE PRETRIAL MOTIONS
Action by Plaintiff (Π)	1. Find reasonable (objective) bases in fact and law for legal remedy	2. Complaint (Petition) Π files with court and has complaint served on Δ.	3. (a) Use of Interrogatories, Requests for Documents (Data sets), Requests for Admission, Witness Interviews, and Witness Depositions	4. (a) Motion for Summary Judgment
Action by Defendant (Δ)	[Before step 2. →, Δ must find reasonable (objective) bases in fact and law for defenses, counterclaims, and crossclaims.	2. (a) Motions (e.g., to dismiss for lack of jurisdiction or failure to state a claim upon which relief can be granted) 2. (b) Answer 2. (c) Default	3. (b) Use of Interrogatories, Requests for Documents (Data sets), Requests for Admission, Witness Interviews, and Witness Depositions	4. (b) Motion for Summary Judgment

OVERVIEW OF CIVIL LITIGATION – TRIAL THROUGH APPEAL

EVENT	TRIAL	DISPOSITIVE TRIAL MOTIONS	VERDICT & ENTRY OF JUDGMENT	POST-TRIAL MOTIONS	APPEAL
Action by Plaintiff (Π)	5. (a) Π's Case in Chief (Plaintiff's direct evidence presented through witnesses and exhibits. Defendant cross-examines.)	6. (a) Motion for Judgment as a Matter of Law (Directed Verdict)	7. Verdict rendered by jury if jury trial has been appropriately requested, or Verdict rendered by trial judge if a non-Jury Trial ("Bench Trial.") and then Entry of Judgment	8. (a) Options Motion for Judgment as a Matter of Law (Judgment Not Withstanding the Verdict) Motion for a New Trial Petition to Open the judgment	9. (a) File Notice of Appeal addressing errors in trial court. Submit briefs arguing merits of appeal. Oral argument before court of appeals might occur.
Action by Defendant (Δ)	5. (b) Δ's Case in Chief (Defendant's direct evidence presented through witnesses and exhibits. Plaintiff cross-examines.)	6. (b) Motions for Judgment as a Matter of Law (Directed Verdict)	(See 7 above)	8. (b) Options Motion for Judgment as a Matter of Law (Judgment Not Withstanding the Verdict) Motion for a New Trial Petition to Open the judgment	9. (b) File Notice of Appeal addressing errors in trial court. Submit briefs arguing merits of appeal. Oral argument before court of appeals might occur.

SECTION IV

EXPERT LEARNING IN LAW SCHOOL: ACTIVE READING (CASE BRIEFING AND ANALYSIS)

Many new law students approach reading in law school as they have approached reading all their lives—as if reading a narrative—which is to say passively. *Active reading* skills, however, are necessary for successful performance in law school. Studies have shown that active reading strategies correlate to better grades in law school.⁴ In a variety of ways, active readers engage with the readings more deeply than passive readers.

Because many law school subjects are taught through reading and discussing judicial opinions (“cases”), we will introduce you to active reading strategies and techniques as means for reading cases effectively. To begin to develop your competence in analyzing cases for meaning and utility, we will apply active reading skills to a few cases and some notes addressing issues in Torts.⁵ In particular, we will highlight the process of creating a *case brief*, an active reading process students will continue to develop throughout the first year of law school.

a. Active Reading Strategies

A basic process for active reading includes: (1) pre-reading strategies, (2) strategies while reading, and (3) post-reading strategies. Each step is summarized below.⁶

1. Pre-Reading Strategies

First, before reading a text, an active reader has a *purpose* for reading. To set a purpose, active readers use *prediction* and *goal setting*.

An active reader takes a moment to predict what the reader might get from reading certain materials. You can use *context clues* such as headings on a course syllabus, a book’s table of contents, or notes and questions preceding or following a case⁷ in a course text as context clues

⁴ See, e.g., Leah M. Christensen, Legal Reading and Success in Law School: An Empirical Study, 30 Seattle U. L. Rev 603 (2007)

⁵ Torts is one of the courses you will take during your first semester.

⁶ For more detailed descriptions and analyses of expert learning strategies summarized in this text, see Michael Hunter Schwartz, Expert Learning for Law Students 29-123 (2008).

⁷ In many law school textbooks, a judicial opinion often is followed by notes and questions providing additional information about the issues addressed in the opinion and raising concerns about the opinion. No rule of law, physics or good nutrition prohibits you from scanning the notes and questions before reading the court opinion.

for prediction. For example, one might predict that a case assigned under the following syllabus heading:

I. Intentional Torts
a. False Imprisonment

will set forth the elements of the intentional tort of false imprisonment as distinguished from other intentional torts addressed during the semester, such as battery. If more than one case is assigned on a single topic, one might predict that the second case provides a different explanation of the law than the first case provides or the second case provides a new example of a relevant set of facts. Given context clues, you should try to predict what a case is about and why your professor has assigned the reading. During the semester, you also might consider how a new reading fits with material previously assigned and discussed.

Before reading, you also should set a goal for reading based on the predictions made. For example, “When I am finished reading this case, I will know all of the elements of a claim of false imprisonment and have a better understanding of the element of confinement.”

2. Strategies While Reading

While reading a court’s opinion, you should read with your “purpose(s)” in mind. You are not just reading the court’s words; you are searching for certain types of information to fulfill your purposes. For example, you are looking for the court’s words describing the necessary elements of the tort of false imprisonment. (Many of your professors will refer to such wording as “rule material.”) You should look up vocabulary that is new to you. You should also work to understand parts of the opinion you initially find confusing before continuing with your reading. If a particular part of an opinion remains indecipherable on first reading, you could try reading the remainder of the opinion to see if the context of the whole helps to understand how the difficult part fits.

Briefing a court opinion also is a critical active reading strategy for new law students. Creating a written “brief” of a court opinion provides a framework for understanding the new information in an opinion by helping to sort the information into categories useful to a competent lawyer. The sorting will not only help you absorb and recall new information, it also will help you understand how you might competently use the new information. Much of class time during the first year will be devoted to refining your ability to construct such frameworks necessary for professional competence.

3. Post-Reading Assessment

When you finish reading a court opinion, you should assess whether your predictions for the case were correct and whether you accomplished your purposes for the reading. For example, did the second opinion provide new factual examples of false imprisonment? Am I able to set forth

accurate and complete statements of the elements of the tort of false imprisonment? Am I able to identify the material facts the court identified in its opinion for purposes of assessing the precedential value of the opinion?

Experts also recommend *evaluating* a court's decision as a means of engaging deeply with the material. For example, you might consider whether the court would have decided the case differently if a certain fact were changed, or you might decide that you do not agree with the court's decision. Studies show that evaluating a case this way helps with understanding and remembering the important material from the opinion.

b. Implementing Active Reading Strategies in Analyzing Precedent

In reading the court opinions that follow, you will engage in one of the essential skills of a competent lawyer, i.e., "the analysis of precedent."⁸ Use the active reading strategies described above, including the creation of case briefs for each opinion. Your professors will ask you in class to explain your use of active reading strategies and the contents of your case briefs. Please remember that thorough preparation and diligence are hallmarks of competent lawyers.

The following three pages contain an annotated template for constructing a case brief. There are more case briefing formats than this; however, this template provides a nice starting point for your case briefing work.

⁸ Model Rule of Prof'l Conduct R. 1.1, Comment 2 (2014).

COURT OPINION (AND POSSIBLE BRIEF) COMPONENTS

CASE COMPONENT	DESCRIPTION	SAMPLE BRIEF FOR (E.G. <u>McCann v. Wal-Mart Stores, Inc.</u>)
1. Case Title, Court & Year	Title of the case, court, and date	[Fill in]
2. Parties Names, Procedural Designation	Brief description of who is suing whom and role of each in the litigation	
3. Procedural History a.k.a. Procedural Facts (includes Procedural Posture)	<p>Brief description of what has happened in the case <i>since the lawsuit was filed</i>; should be distinguished from the substantive facts of the case (see #4 below).</p> <p>Procedural posture: where the case is now in the litigation process, e.g., on appeal.</p>	
4. Facts	Brief description of what happened to cause one party to sue the other and the facts affecting the court's decision. Sometimes these are called the <i>substantive facts</i> or <i>determinative facts</i> (as distinguished from the <i>procedural facts</i>). (As with all components of a brief, you also should be guided by what your professor likes to discuss in class.)	.
5. Issue(s)	The legal question or questions the court must decide. Typically includes substantive facts <i>plus</i> reference to a rule of law. There will always be at least one issue, and often there are multiple issues in a case.	

CASE COMPONENT	DESCRIPTION	SAMPLE BRIEF FOR (E. G. <u>McCann v. Wal-Mart Stores, Inc.</u>)
6. Holding & Disposition	<p>Holding is the answer to the issue and primary legal conclusion in the case.</p> <p>Disposition is the legal result for the particular case, e.g., “Affirmed” or “Granted.” Often found at the end of the opinion.</p>	
7. Rules (a.k.a. the law)	<p>Rules or laws existing prior to the case at hand, and which are used to decide the case; can include statutes, regulations, rules of procedure, common law, etc. The case law existing prior to the instant case being decided is referred to as “precedent.”</p> <p>Courts also will often announce new rules or interpretations of precedent.</p> <p>The holding(s) in a case are also a form of law or rule upon which future litigants can rely.</p> <p>Some professors consider the rules discussed in a case to be part of the court’s reasoning (see #9 below).</p>	
8. Arguments	<p>Occasionally professors will ask in class about the arguments made by one side or the other in the cases you study, which the court may sometimes explicitly delineate, e.g. “The defendant argues that...” If your professor asks about the arguments that were made in the cases you review in class, consider summarizing them in your brief, along with the court’s answer to those arguments.</p>	

CASE COMPONENT	DESCRIPTION	SAMPLE BRIEF FOR (E. G. <u>McCann v. Wal-Mart Stores, Inc.</u>)
9. Reasoning	<p>Description of <i>why</i> the court ruled as it did. Can include precedent (see #7 above), policy considerations, etc.</p> <p>Keep in mind that the court's reasoning is not always apparent.</p>	
10. Miscellaneous a. Concurring and dissenting opinions, if any. b. Dictum c. Your own comments, questions, etc.	<p>a. Concurring and dissenting opinions are not law, but they are often the subject of class discussions and can help you understand the main opinion.</p> <p>b. Dictum likewise is not law but may be useful to include in a brief for the same reasons you might include concurring and dissenting opinions.</p> <p>c. You might include in your briefs your own questions and comments to focus your class participation and case understanding.</p>	

**United States Court of Appeals
First Circuit**

**Debra McCann, Personally, and as Mother and Next Friend of Jillian McCann and
Jonathan McCann, Plaintiffs, Appellees/Cross-Appellants,**

v.

WAL-MART STORES, INC., Defendant, Appellant/Cross-Appellee,

210 F.3d 51 (2000)

Before Boudin, Circuit Judge, Bowens, Senior Circuit Judge, and Lynch, Circuit Judge.

BOUDIN, Circuit Judge.

This case involves a claim for false imprisonment. On December 11, 1996, Debra McCann and two of her children-Jillian, then 16, and Jonathan, then 12-were shopping at the Wal-Mart store in Bangor, Maine. After they returned a Christmas tree and exchanged a CD player, Jonathan went to the toy section and Jillian and Debra McCann went to shop in other areas of the store. After approximately an hour and a half, the McCanns went to a register and paid for their purchases. One of their receipts was time stamped at 10:10 p.m.

As the McCanns were leaving the store, two Wal-Mart employees, Jean Taylor and Karla Hughes, stepped out in front of the McCanns' shopping cart, blocking their path to the exit. Taylor may have actually put her hand on the cart. The employees told Debra McCann that the children were not allowed in the store because they had been caught stealing on a prior occasion. In fact, the employees were mistaken; the son of a *different* family had been caught shoplifting in the store about two weeks before, and Taylor and Hughes confused the two families.

Despite Debra McCann's protestations, Taylor said that they had the records, that the police were being called, and that the McCanns "had to go with her." Debra McCann testified that she did not resist Taylor's direction because she believed that she had to go with Taylor and that the police were coming. Taylor and Hughes then brought the McCanns past the registers in the store to an area near the store exit. Taylor stood near the McCanns while Hughes purportedly went to call the police. During this time, Debra McCann tried to show Taylor her identification, but Taylor refused to look at it.

After a few minutes, Hughes returned and switched places with Taylor. Debra McCann told Hughes that she had proof of her identity and that there must be some proof about the identity of the children who had been caught stealing. Hughes then went up to Jonathan, pointed her finger at him, and said that he had been caught stealing two weeks earlier. Jonathan began to cry and denied the accusation. At some point around this time Jonathan said that he needed to use the bathroom and Hughes told him he could not go. At no time during this initial hour or so did the Wal-Mart employees tell the McCanns that they could leave.

Although Wal-Mart's employees had said they were calling the police, they actually called a store security officer who would be able to identify the earlier shoplifter. Eventually, the security officer, Rhonda Bickmore, arrived at the store and informed Hughes that the McCanns were not the family whose son had been caught shoplifting. Hughes then acknowledged her mistake to the McCanns, and the McCanns left the store at approximately 11:15 p.m. In due course, the McCanns brought suit against Wal-Mart for false imprisonment. . . .

The jury awarded the McCanns \$20,000 in compensatory damages on their claim that they were falsely imprisoned in the Wal-Mart store by Wal-Mart employees. Wal-Mart has now appealed the district court's denial of its post-judgment motions for judgment as a matter of law and for a new trial pursuant to Fed.R.Civ.P. 50(b) and 59, respectively, arguing that the McCanns did not prove false imprisonment under Maine law and that the court's jury instructions on false imprisonment were in error. * * *

Both of Wal-Mart's claims of error depend on the proper elements of the tort of false imprisonment. Although nuances vary from state to state, the gist of the common law tort is conduct by the actor which is intended to, and does in fact, "confine" another "within boundaries fixed by the actor" where, in addition, the victim is either "conscious of the confinement or is harmed by it." Restatement (Second), Torts § 35 (1965). The few Maine cases on point contain no comprehensive definition, *see Knowlton v. Ross*, 114 Me. 18, 95 A. 281 (1915); *Whittaker v. Sandford*, 110 Me. 77, 85 A. 399 (1912), and the district court's instructions (to which we will return) seem to have been drawn from the *Restatement*.

While "confinement" can be imposed by physical barriers or physical force, much less will do-although how much less becomes cloudy at the margins. It is generally settled that mere threats of physical force can suffice, Restatement, *supra*, § 40; and it is also settled-although there is no Maine case on point-that the threats may be implicit as well as explicit, *see id.* cmt. a; 32 Am.Jur.2d *False Imprisonment* § 18 (1995) (collecting cases), and that confinement can also be based on a false assertion of legal authority to confine.

Restatement, *supra*, § 41. Indeed, the *Restatement* provides that confinement may occur by other unspecified means of "duress." *Id.* § 40A.

Against this background, we examine Wal-Mart's claim that the evidence was insufficient. [W]e think that a reasonable jury could conclude that Wal-Mart's employees intended to "confine" the McCanns "within boundaries fixed by" Wal-Mart, that the employees' acts did result in such a confinement, and that the McCanns were conscious of the confinement.

The evidence, taken favorably to the McCanns, showed that Wal-Mart employees stopped the McCanns as they were seeking to exit the store, said that the children

were not allowed in the store, told the McCanns that they had to come with the Wal-Mart employees and that Wal-Mart was calling the police, and then stood guard over the McCanns while waiting for a security guard to arrive. The direction to the McCanns, the reference to the police, and the continued presence of the Wal-Mart employees (who at one point told Jonathan McCann that he could not leave to go to the bathroom) were enough to induce reasonable people to believe either that they would be restrained physically if they sought to leave, or that the store was claiming lawful authority to confine them until the police arrived, or both.

Wal-Mart asserts that under Maine law, the jury had to find “actual, physical restraint,” a phrase it takes from Knowlton, 95 A. at 283; *see also* Whittaker, 85 A. at 402. While there is no complete definition of false imprisonment by Maine's highest court, this is a good example of taking language out of context. In Knowlton, the wife of a man who owed a hotel for past bills entered the hotel office and was allegedly told that she would go to jail if she did not pay the bill; after discussion, she gave the hotel a diamond ring as security for the bill. She later won a verdict for false imprisonment against the hotel, which the Maine Supreme Judicial Court then overturned on the ground that the evidence was insufficient.

While a police officer was in the room and Mrs. Knowlton said she thought that the door was locked, the SJC found that the plaintiff had not been confined by the defendants. The court noted that the defendants did not ask Mrs. Knowlton into the room (another guest had sent for her), did not touch her, and did not tell her she could not leave. The court also said that any threat of jail to Mrs. Knowlton was only “evidence of an intention to imprison at some future time.” Knowlton, 95 A. at 283.¹⁴ In context, the reference to the necessity of “actual, physical restraint” is best understood as a reminder that a plaintiff must be actually confined-which Mrs. Knowlton was not.

Taking too literally the phrase “actual, physical restraint” would put Maine law broadly at odds with not only the Restatement but with a practically uniform body of common law in other states that accepts the mere threat of physical force, or a claim of lawful authority to restrain, as enough to satisfy the confinement requirement for false imprisonment (assuming always that the victim submits). It is true that in a diversity case, we are bound by Maine law, as Wal-Mart reminds us; but we are not required to treat a descriptive phrase as a general rule or attribute to elderly Maine cases an entirely improbable breadth.

* * *

Affirmed.

¹⁴ Although the distinction may seem a fine one, it is well settled that a threat to confine at a future time, even if one to extract payment, is not itself false imprisonment. *See* Restatement, *supra*, § 41 cmt. e.

1. Notes & Questions

2. The case brief template begins with the title of the case, a description of the court issuing the opinion, and the date of the opinion. Of what practical value is such information for a competent lawyer? Consider the following. The United States Court of Appeals for the First Circuit issued the opinion in McCann in 2000. Imagine that the Texas Supreme Court is deciding a false imprisonment case in 2004. Is the opinion in McCann binding precedent for the Texas Supreme Court?

3. What are the rules of law regarding a claim for false imprisonment described and applied by the court in McCann? Where would you describe those rules of law in your case brief?

4. What are the sources of the laws related to false imprisonment as described and applied by the court in McCann? What is the *common law*? What is the Restatement (Second) of Torts?

5. False imprisonment is an *intentional* tort – one of many intentional torts you will discuss in your Torts course. The word *intent* is used throughout the Restatement (Second) of Torts “to denote that the actor desires to cause consequences of his act, or that he believes that the consequences are substantially certain to result from it.” Restatement (Second) Torts § 8(A) (1965).

6. The Comments to Section 8(A) of the Restatement provide the following explanation of intent:

a. "Intent," as it is used throughout the Restatement of Torts, has reference to the consequences of an act rather than the act itself. When an actor fires a gun in the midst of the Mojave Desert, he intends to pull the trigger; but when the bullet hits a person who is present in the desert without the actor's knowledge, he does not intend that result. "Intent" is limited, wherever it is used, to the consequences of the act.

*b. All consequences which the actor desires to bring about are intended, as the word is used in this Restatement. Intent is not, however, limited to consequences which are desired. If the actor knows that the consequences are certain, or substantially certain, to result from his act, and still goes ahead, he is treated by the law as if he had in fact desired to produce the result. * * **

Illustration:

1. A throws a bomb into B's office for the purpose of killing B. A knows that C, B's stenographer, is in the office. A has no desire to injure C, but knows that his act is substantially certain to do so. C is injured by the explosion. A is subject to liability to C for an intentional tort.

6. Which facts would you include in the Facts section of your case briefs? For example, would you include the fact that the McCanns had returned a CD player and a Christmas tree to the store before the false imprisonment? Would you include the facts that the register receipt generated before the false imprisonment had a time stamp of 10:10 PM and the McCanns left the store at 11:15 PM?

7. The court in McCann describes the facts and holding in the Knowlton opinion. Why did the McCann court do so? Would you use the discussion of Knowlton in your case brief for McCann? If you would, where would you place the discussion of Knowlton in the brief?

8. Section 892A of the Restatement (Second) of Torts provides:

Effect of Consent

(1) One who effectively consents to conduct of another intended to invade his interests cannot recover in an action of tort for the conduct or for harm resulting from it.

(2) To be effective, consent must be

(a) by one who has the capacity to consent or by a person empowered to consent for him, and

(b) to the particular conduct, or to substantially the same conduct.

(3) Conditional consent or consent restricted as to time, area or in other respects is effective only within the limits of the condition or restriction.

9. Reasonable Means of Escape. The victim is not confined for purposes of false imprisonment *if they are aware* that there is a reasonable means of escape. Note, for example, that having to jump out of a moving car would not be considered a “reasonable” means of escape, but leaving a room through an unlocked door likely would be.

**Court of Civil Appeals of Texas,
Waco**

**BIG TOWN NURSING HOME, INC., Appellant,
v.
Howard Terry NEWMAN, Appellee.**

461 S.W.2d 195 (1970)

OPINION

McDonald, Chief Justice.

This is an appeal by defendant nursing home from a judgment for plaintiff Newman for actual and exemplary damages in a false imprisonment case.

Plaintiff Newman sued defendant nursing home for actual and exemplary damages for falsely and wrongfully imprisoning him against his will.

* * *

The trial court entered judgment on the verdict for plaintiff for \$25,000.

* * *

Plaintiff is a retired printer 67 years of age, and lives on his social security and a retirement pension from his brother's printing company. He has not worked since 1959, is single, has Parkinson's disease, arthritis, heart trouble, a voice impediment, and a hiatal hernia. He has served in the army attaining the rank of Sergeant. He has never been in a mental hospital or treated by a psychiatrist. Plaintiff was taken to defendant nursing home on September 19, 1968 by his nephew who signed the admission papers and paid one month's care in advance. Plaintiff had been arrested for drunkenness and drunk driving in times past (the last time in 1966) and had been treated twice for alcoholism. Plaintiff testified he was not intoxicated and had nothing to drink during the week prior to admission to the nursing home. The admission papers provided that patient 'will not be forced to remain in the nursing home against his will for any length of time.' Plaintiff was not advised he would be kept at the nursing home against his will.

On September 22, 1968 plaintiff decided he wanted to leave and tried to telephone for a taxi. Defendant's employees advised plaintiff he could not use the phone, or have any visitors unless the manager knew them, and locked plaintiff's grip and clothes up. Plaintiff walked out of the home, but was caught by employees of defendant and brought back forcibly, and thereafter placed in Wing 3 and locked up. Defendant's Administrator testified Wing 3 contained senile patients, drug addicts, alcoholics, mentally disturbed, incorrigibles and uncontrollables, and that 'they were all in the same kettle of fish.' Plaintiff tried to escape from the nursing home five or six times but was caught and brought back each time against his will. He was carried back to Wing 3 and locked and taped in a 'restraint chair', for more than five hours. He was put back in the chair on subsequent

occasions. He was not seen by the home doctor for some 10 days after he was admitted, and for 7 days after being placed in Wing 3. The doctor wrote the social security office to change payment of plaintiff's social security checks without plaintiff's authorization.

Plaintiff made every effort to leave and repeatedly asked the manager and assistant manager to be permitted to leave. The home doctor is actually a resident studying pathology and has no patients other than those in two nursing homes. Finally on November 11, 1968 plaintiff escaped and caught a ride into Dallas, where he called a taxi and was taken to the home of a friend. During plaintiff's ordeal he lost 30 pounds. There was never any court proceeding to confine plaintiff. Defendant's assistant manager testified that plaintiff attempted to leave the home five or six times, and on each occasion was brought back against his will.

False imprisonment is the direct restraint of one person of the physical liberty of another without adequate legal justification. There is ample evidence to sustain [the] jury findings.

* * *

[The Court affirmed a "reformed" judgment for plaintiff, reducing damages from \$25,000 to \$13,000.]

1. Notes & Questions

1. What does Big Town Nursing Home add to our understanding of false imprisonment?

SECTION V

Outlining Basics

A few weeks into the semester, you will likely begin the process of “outlining” your doctrinal courses as an effective way to study the material you have been learning in class. The process of outlining the rules (law) covered in your courses helps you to understand and retain the material that you need to know and use on your law school exams. You are no doubt familiar with the concept of outlining from your previous academic career. That said, there are a few important tips to keep in mind as you approach this key step in your law school learning.

An effective course outline in law school will:

- a. have an organizational framework based on rules rather than cases and will clearly depict the relationships between the rules,
- b. present the rules accurately and thoroughly, and
- c. be visually accessible so that units of information are easily discernible.

Your class on “Mastering the Material” during Orientation will help you understand the outlining process more, and as your first year progresses you will become more adept at this important skill. To get you started, the following is a simple step-by-step approach to use when outlining your courses.

Step 1: Gather Materials.

Begin by gathering your class notes, case briefs, and any supplemental materials you may have (such as hornbooks, dictionaries, etc.). For courses during full semesters, you also will want to have your textbook and course syllabus with you.

Step 2: Create the Framework.

The next step will be to create the overall organizational framework for your outline. To complete this step, for most courses you will consult your course syllabus and your textbook’s table of contents.

The overall organizational framework for a course outline usually uses rules and concepts, and categories of rules and concepts. For example, a Torts outline might be organized around the main categories on the syllabus and in your books, such as “Intentional Torts,” “Negligence,” and the like.

Under the main headings and categories, you will then include subheadings based on material covered in class. Thus, under the topic of “Intentional Torts,” your subheadings will be each of the intentional torts covered in your Torts class, such as “Battery,” “Assault,” and “False Imprisonment,” like this:

- I. Intentional Torts
 - A. Battery
 - B. Assault
 - C. False Imprisonment

For our outlining class during Orientation, we will not yet have an overall structure because we are focusing on only one discrete tort.

An important thing to note is that except in rare instances – such as when you are studying important Supreme Court cases – you will not use case names as headings or subheadings. Therefore, for example, you would not use “McCann v. Wal-Mart” as a subheading in an outline of the material. The reason for this is that you generally do not need to know individual cases for your exams. You only need to know the rules and examples from those cases. Your headings, subheadings, and sub-subheadings should be brief words or phrases that accurately summarize the information indented under them.

Step 3: Flesh it Out.

Using your notes and other materials, fill in more details about each of your topics and subtopics. As you flesh out an outline, keep in mind the following:

- **Divide main rules into their component parts.** Oftentimes the component parts of a rule are referred to as “**elements**,” though not every rule has elements. (False imprisonment is an example of a rule that does have elements.) Within your outline, each part (element) of the rule would be its own sub-subheading. For example, under the subheading of “False Imprisonment,” you would include each separate element as described by your professor or course materials, perhaps like this:
 - A. **False Imprisonment**
 - 1. Intentional
 - 2. Confinement in a limited area
 - 3. of another
 - 4. without lawful privilege and against the other’s consent
 - 5. for any appreciable time, however short, AND
 - 6. P must have been aware of the confinement or actually harmed by it.

Complete this step carefully, so that you don’t break the rule up too much; be sure that you know exactly what each component or element is. If you are not sure, seek assistance from professors, reliable supplemental materials, and your peers.

- **Indent similar sub-concepts in a consistent manner**, using a simple hierarchical structure to accurately represent the relationship of the concepts. Note in the false

imprisonment example that the elements are indented together – they are equivalent in importance, so their positioning in the outline structure reflects that equivalence. Among other things, this helps you see immediately that the torts has six elements that you would need to memorize for your exam.

- Under each component part or element of the rule, further indent and include what is referred to as “**Rule Explanation**,” or helpful information about the element. This may include definitions or examples of the element (what is a “limited area?”), exceptions, etc. Rule explanation also includes examples of the element being met or not being met (e.g., can a town be a “limited area?”) The examples come from the cases and notes in your textbooks, as well as sample fact patterns or “hypotheticals” that your professor may discuss in class. The examples, definitions, and other types of rule explanation are essential to your full understanding of a rule and how it needs to be applied to an exam fact pattern.
- **Other items** you will want to put in your outlines include exceptions to rules, policy considerations, minority and majority rules, and the like. *Be sure to place these pieces of information at the appropriate locations within your outline’s framework.*
- Strive for **accuracy and thoroughness** in your presentation of the rules in your outlines. Keep in mind that on your exams, part of what you will need to be able to do will be to state relevant rules. You will earn points for how well you do this. You must be able to state the rule accurately, including key language and terms of art. Synonyms and paraphrasing should be used sparingly, if at all. Referring back to our false imprisonment example, a student who defines false imprisonment on an exam as “holding someone against their will” will get fewer points than a student who defines it more precisely. You will increase your chances of getting full credit for a rule statement on an exam if the rule is stated accurately and thoroughly in your outline.

Step 4: Edit for Visual Accessibility.

- The most effective outlines present information in smaller chunks that are easier to remember; for example, listing out the elements of a rule separately often will be easier to remember than stating the elements in a sentence or paragraph form.
- Many students find it helpful to leave plenty of white space on the page, with good-sized margins and breaks between concepts.
- Finally, use highlighting techniques such as **bolding** for key terms to help with memorization. Do not overuse highlighting techniques, though – they lose their effectiveness if overused, or if too many different techniques are used.

SECTION VI

SUCCESS ON LAW SCHOOL EXAMINATIONS

Examinations in law school and state bar examinations include questions in multiple-choice and essay formats. While you can find many books and articles about how to take law school exams, the following pages describe some strategies commonly identified for success on all exams and for essay questions in particular. At the end of this section, we have included a sample essay question raising issues addressed by the Torts readings in Section IV.

a. For All Examinations

1. Exam Structure

Law school exams often consist of multiple parts with questions in different formats, e.g., sections with essay questions and sections with multiple-choice questions. It may be helpful to review the entire exam briefly, when you first have the opportunity to do so. Unless your professor requires you to address the sections of the exam in a particular order, knowing the overall structure of an exam gives you the opportunity to build some confidence by addressing first a format or issues with which you feel most comfortable.

2. Directions

Carefully read the professor's directions for the exam. There may be directions applicable to multiple sections of the exam and there may be directions applicable only to a particular part of the exam. As an example of the first type of direction, you may be instructed to write answers to essay questions throughout the exam in double-space format if typing or on every other line if handwriting. As an example of the second type of direction, an essay question may have directions requiring you to address specific issues for that question and informing you not to address other issues. You do not want to lose points or adversely affect your professor's perception of your abilities by failing to follow directions.

3. Time Management

Law students frequently wish they had more time to complete an exam. And so, if you believe you have completed the exam with time remaining in the exam period, then you may be a 1L genius, but it is more likely you could have done more with the exam.

With respect to time dedicated to different sections of an exam, a professor may designate on the exam a recommended amount of time for a section, e.g., "Section A – Recommended Time: 40 Minutes." Follow your professor's recommendation until you become more familiar with law school exams. Even if your professor does not specifically recommend an amount of time for an exam section, there may be other guides for time management. For example, if your professor tells you that the entire exam is worth 100 points and Section A of the exam is worth 40 out of the 100

points, then it is reasonable to spend 40% of the exam period on section A. Ask your professor during the semester whether she or he will be recommending an amount of time or designating a relative weight for the sections of an exam.

b. Essay Questions - *IRAC*

What are commonly called “essay questions” require students to provide a written analysis of a fact pattern (story) through the lens of the law covered in the course. A successful analysis of the fact pattern demonstrates more than a student’s ability to recite accurately the rules of law learned during a semester. Instead, a successful analysis demonstrates that a student *understands* the law so well that the student can explain how the law learned during the semester could reasonably be applied to a fact pattern different – at least in part -- than the fact patterns of the cases the student prepared for or discussed in class during the semester.

As noted during your *JDEdge* instruction, traditional format for responding to essay questions is known by the abbreviation “IRAC.” As explained below, each letter of the abbreviation stands for a part of the response to an essay question. Professors typically award points for each element of the IRAC framework.

1. “I” (Issue)

Begin by identifying and stating the issue(s) to be addressed (sometimes referred to as issue spotting). Issue statements often take the form of a question as a matter of custom. An issue statement involves consideration of the professor’s directions for the question as well as facts in the fact pattern relevant to those directions.

For example, multiple legal theories often support claims for relief from the same set of facts. A fact pattern could support a claim of false imprisonment as well as a claim of negligence. If your Torts professor’s exam directions asked you to discuss all reasonable claims and defenses presented by the fact pattern, then you would create two “issue statements,” one for the claim of negligence and one for the claim of false imprisonment. If, however, your professor’s directions asked you only to discuss liability for false imprisonment, you would create only one issue statement.

Let’s assume your professor directed you to discuss only a claim of false imprisonment. Your issue statement should do more than merely repeat your professor’s directions. You must do more than state: “The issue is whether the defendant, X, is liable to plaintiff, Z, for false imprisonment.” Instead, your issue statement should reflect that you have spotted key facts and their significance. Accordingly, a better issue statement would read: “Is the defendant, X, civilly liable to plaintiff, Z for false imprisonment when [fill in the material facts from the fact pattern.]”

Professors differ on the amount of detail they want to see in an issue statement. Do not hesitate, therefore, to ask your professors about their preferences.

2. “R” (Rule)

Accurately state the rules of law you learned during the semester that correspond to your issue statement. For example, in the exam scenario described above, your rule statement would describe the legal standards and policies you synthesized from class during orientation week regarding the liability for false imprisonment. In particular, you should define the requirements for each one of the elements, and not just list the overall requirements or elements for false imprisonment. Some professors may award points for citing to the source of the rule, e.g., citation of court case or Restatement section. Other professors may award points only for an accurate statement of the applicable rule, and so citing to the source would be a waste of time. Also, please note that memorization of accurate rule statements before an exam is necessary preparation for providing accurate rule statements during an exam.⁹ A vague paraphrase of the law is not a sufficient substitute for an accurate rule statement.

You should provide a rule statement for each issue presented by a fact pattern in light of your professor’s directions regarding the fact pattern.

3. “A” (Analysis/Application/Argument)¹⁰

After accurately stating a rule, explain how the rule might be applied to the facts in the fact pattern. For example, identify and explain how specific facts could reasonably support each element of a cause of action for false imprisonment. And, to maximize the award of points, identify and explain how other facts in the fact pattern could be used to defeat such a claim (counter-analysis or counter-argument). Think of these as “yes facts,” which are facts that satisfy the requirements of the rule, and “no facts,” which are facts that tend to make you wonder or conclude that the rule’s requirements are not satisfied. An argument need not be a certain winner to be a reasonable part of your analysis. Also, note that most of us tend to favor one side of an argument or party the first time we read a fact pattern, and so you must plan to look for reasonable counter-arguments.¹¹ Please note that arguments and counter-arguments are often (but not only) generated in the fact application section of IRAC, based on “yes facts” and “no facts.” Another way of thinking about the “A” in IRAC is to consider it a necessary step in explaining to the reader of your answer the logic of how you went from the Rule stated before the “A” to the conclusion (“C”) stated after the “A.” Some have likened the “A” section to showing all the steps in solving a math problem, such as a proof in geometry.

⁹ Memorization of key words and phrases is helpful even for open-book exams. Please do not assume you will have much time during an open book exam to review the materials you are permitted to bring with you and use during the exam.

¹⁰ Some descriptions of “IRAC” describe the “A” as standing for “analysis” while others describe it as standing for “application” or “argument.”

¹¹ During your first semester you may hear about “short answer” and “long answer” essay questions. The former may be contrasted with the latter in that “short answer” fact patterns may focus on a single issue, simple rules, and/or may not contain facts sufficient to support analysis *and* counter-analysis of the facts.

What will not suffice for analysis is to state the applicable rules and then simply list a bunch of facts from the fact pattern that are relevant to the rules. Instead, you should craft paragraphs in which you *explicitly link* specific facts with particular parts of a rule (sub-issues). Consider using the word “because” to help with this linking.

For example, you might state the following when discussing the final element of false imprisonment on an exam: “We know Alex was aware they were confined in the bedroom because they attempted to escape through the window when they could not get the door open.” Notice that this sentence references the relevant rule language from the final element (“aware”) *and* the relevant facts that show Alex was aware. The word “because” helps to link the rule language and the relevant facts showing that part of the rule has been established.

Many students in their first semester fail to appreciate the importance of the “A” in IRAC. That is a *costly mistake*. The “A” is what differentiates the mere *memorization* of the law from a demonstrated *understanding* of the law. Accordingly, some professors award more points for the “A” than for other components of the IRAC framework.

You should provide analysis (“A”) for each part of each rule statement (“R”) contained in your essay answer.

4. “C” (Conclusion)

Many professors will award points for stating a conclusion as to which of the reasonable arguments presented in the “A” section is most likely to prevail. Do not, however, expect points for a conclusion that does not follow from “R” and “A” preceding the conclusion.

c. Essay Questions – Additional Practical Strategies

Read the fact pattern and directions more than once. Use the first reading to get a basic understanding of the story and the objectives of your professor. On the second – or third – reading, underline or mark in the margin of the exam where facts are described that you can use in the IRAC structure.

Plan your response to an essay question before you write it. It would be reasonable to spend 10-20% of the time allotted to a question to read and plan your response. You can create an IRAC chart to create an outline for your answer and to use as a checklist as you complete your answer.

Make note of the facts in the fact pattern as you use them in issue spotting and analysis. If you find there is a fact that you have not used, consider again whether that fact gives rise to another issue or affects an issue you have already identified. While a professor may include some facts solely to make the story in the fact pattern flow better, it is reasonable to assume that most of the facts are relevant to some issue the professor wants you to address.

Do not introduce *new* facts into the fact pattern. (Don’t make up new facts!) Address only the facts your professor has provided in the exam. If, however, you conclude a critical fact is missing from

the fact pattern your professor wrote for the exam, then identify the missing fact and explain why it is critical.

Below you will find a sample essay question from a Torts exam. This question gives you the opportunity to practice writing a response to an essay question. Please prepare to discuss in class your responses.

Sample Torts Question

Frank's Ultimate Nursing home [FUN] located in Small Village, state of Widener, is an assisted care facility for senior citizens and others who need full-time care. Over the past few months, the following events have taken place at FUN.

On June 18, family members took Betty Banana to Local Hospital because she collapsed and could not walk. The doctor on duty determined that Betty needed knee replacement surgery and this surgery was scheduled for June 22. The doctor told Betty that she could stay at Frank's Ultimate Nursing Home until her scheduled surgery date. Because she was unable to walk, Betty went to FUN on June 18. After one night of FUN, Betty decided that she would rather wait at home until the surgery date. Betty told Nurse Nancy that she wanted to go home and would call her daughter to pick her up. Nurse Nancy said that Betty could go home, but, if she did, she would lose her surgery date of June 22. Betty asked for the next available date for knee replacement surgery and was told that it was August 3. Betty said she wanted to leave FUN, but that she could not wait until August 3 to have the surgery. Nurse Nancy said, "Oh well, what can I say? Knee surgery is very popular. Guess you'll just have to deal with it." Betty stayed at FUN and had her surgery on June 22.

Calvin, Debra, and Emerson are custodial workers at Frank's Ultimate Nursing Home. One day in July, as they were mopping the cafeteria floor, the three of them began clowning around. Debra and Emerson were teasing Calvin about his severe fear of enclosed spaces. "Calvin, you old claustrophobic, bet you can't mop out the pantry all by yourself," Debra said. Calvin replied, "Oh, yes I can. Bet you can't make me." At that, Debra and Emerson started throwing cleaning supplies at Calvin. The three of them were laughing as Debra and Emerson pushed Calvin into the pantry in the kitchen. The pantry is a small room, no bigger than a small closet. Calvin started yelling, "Hey! Cut it out, you guys. I was just joking." They laughed and pushed him into the pantry, turned out the lights, and pulled the door shut. Calvin began screaming for them to let him out. He eventually had a panic attack and passed out. Debra and Emerson opened the door and found Calvin unconscious on the floor. He had been locked in the pantry for five minutes.

Please analyze any false imprisonment claims for each potential party.

SECTION VII

DRAFTING YOUR RESUME AND COVER LETTER

The Career Development Office (CDO) at Delaware Law is committed to a single goal—helping you build a successful career. Through our individual counseling, workshops, panels, and other resources, you'll gain the tools necessary to polish your job searching skills and to stand out from the crowd. As you start your law school journey, we're here to help you identify and prepare for meaningful career opportunities. Get started by reviewing the attached Resume and Cover Letter Guide before Orientation.

Delaware Law School

Resume and Cover Letter Guide

Presented by the Career Development Office

DelawareLawCareers@widener.edu

(302) 477-2179

Tanea McDonald, Esq. | Assistant Dean | tmcdonald@widener.edu

Lauren Damiano, Esq. | Associate Director | ldamiano@widener.edu

Your Resume

Goal of Your Resume

Your resume is your written introduction to a potential employer—the first impression that an employer has of you. It is sometimes your one and only opportunity to highlight your skills, accomplishments, and qualifications for a particular position. Your resume must be both clear—providing specifics about your experience—and persuasive, steering the reader to you over other well-qualified applicants. It should entice the reader to want to learn more about you.

Your resume also serves as your first writing sample. It should highlight your ability to present information in an organized, clear, concise, and visually appealing manner. Increased **white space** is encouraged.

Your resume should also include “Action Words”—words that align with the actual work of a lawyer while steering clear of empty buzzwords. A list of appropriate words is attached.

It is imperative that you follow the “**1 PAGE RULE**” for law student legal resumes. Your resume must be 1 PAGE.

The primary goal of a legal resume is to get you an interview.

Nuts and Bolts of Your Resume

EDUCATION, EXPERIENCE, and INTERESTS are the nuts and bolts of your resume. You must highlight them with intentionality and specificity. Let's look at each section in turn:

EDUCATION

- List your education in reverse chronological order—start with law school and work your way backwards.
- Include all relevant information, such as:
 - Schools attended
 - Degrees received
 - Dates (month and year) of graduation (for law school *expected* date of graduation)
 - Majors and other concentrations of study
 - GPA and Class Rank
 - Most employers expect to see your GPA and Class Rank at the top of your resume, but it is up to you as to whether you include them or not. Make an informed decision on whether to include one, both, or neither. The decision is YOURS.
 - ***Option—If your GPA is lower than 3.0, you may want to include your Class Rank instead.***
 - Academic honors (summa, magna, or cum laude)
 - Certificate of Achievement awards (with an indication “highest grade in the class” in parentheses)—you do not need to include specific class grades.
 - Extracurricular activities of significance—select activities that demonstrate leadership, ability to collaborate with others, time management, and performance under pressure.
 - Associate degrees and high school education should be OMITTED—**remember this document must be one (1) page.**

EXPERIENCE

- All work experience should be listed with dates of service in reverse chronological order.
- Include the full name of the employer including city and state, as well as your specific title.
- For legal experiences, be specific. Include:
 - The type of practice/court—civil, criminal, commercial, etc.
 - Specific types of documents—pleadings, motions, demands, etc.
 - Specific types of cases, depositions, mediations, arbitrations, motions, trials, etc.

- The more you let the employer know about your experience level and familiarity with the practice of law, the better.
- Within experience descriptions, highlight the skills that you either learned or employed to accomplish a certain task, focusing on those skills that are also essential to the practice of law, such as:
 - Completing research
 - Writing
 - Drafting
 - Interacting with clients/customers
 - Negotiating
 - Managing people or projects
 - Collaborating
 - Translating
- Dig deep and draw the connections between the skills that you gained in your previous employment, whether legal or not, and bullet those transferable skills.

INTERESTS

- Though it may seem unnecessary, highlighting your interests at the bottom of your resume is a great way to connect with potential employers. Shared interests often serve as icebreakers during job interviews.
- Be specific about your interests; listing “reading mystery novels” is more of a conversation starter than simply saying “reading.” Don’t be afraid to stand out, as long as your interests are appropriate to discuss in a professional setting.
- If you are multilingual, you may highlight your language skills by changing the header for this section of your resume to “**SKILLS AND INTERESTS.**” Then, you can list your language skills as in the example below:
 - “Proficient in Spanish and French. Interests include watching horror movies, playing tennis, and skiing. Volunteer at the Children’s Hospital of Philadelphia NICU.”
 - Other skills that you may highlight are technical skills that are highly unusual for a law student to possess, such as proficiency in coding.
 - Do NOT list skills that employers expect law students to already be proficient in, such as proficiency with Microsoft Office, writing, researching, or other “soft” skills. If you must highlight these skills, incorporate them into job descriptions.

Professionalism Pointers

The **LEGAL RESUME FORMAT** is likely different from resumes used in other professions or resumes used for non-legal positions. Here are a few rules to follow:

- Choose a commonly used professional font such as **Garamond** or **Times New Roman**. The preferable font size is 11- or 12-point font.
- 1-inch margins all around is highly suggested.
- Do NOT include pictures or other visuals.
- Do NOT include colors or graphics.
- Legal resumes for law students do NOT include SUMMARY, OBJECTIVE, or SKILLS section.
- All information presented on your resume MUST be honest, accurate, and free from embellishment.
- Avoid including political and religious views/affiliations in your resume and cover letter.
- Scrub your social media. Background checks at most firms include thorough social media reviews.
- If you send your resume electronically, be sure to convert it to a PDF file first to avoid any formatting or conversion issues.
- Remember to name your document in a way that will allow employers to find it easily.
- PROOFREAD, PROOFREAD, PROOFREAD—Have at least 1 other person proofread your documents. Look for:
 - Typos
 - Proper tense
 - Correct spelling of firm names and firm contacts

Jace Winters

225 Clearwater Road, Fort Washington, PA 19034 • jacewinters@email.com • 215-123-1234

EDUCATION

Widener University Delaware Law School, Wilmington, DE J.D. expected May 2027

Juris Doctor Candidate

GPA: 3.0/4.0

Activities: First Gen Law Student Association, *Secretary*; Military Law Society, *Treasurer*

Drexel University, Philadelphia, PA

B.A. awarded May 2022

Communication; minor in Political Science

GPA: 3.2/4.0

Thesis: “Exploring the Effects of Social Media on Political Candidates’ Campaign Strategies”

EXPERIENCE

Harrison Book, PLLC., Philadelphia, PA

January 2024 – July 2024

Law Clerk

- Researched various commercial litigation issues including employment disputes, breaches of contract, and partnership disputes
- Drafted legal documents including motions, petitions, and memorandums
- Observed mediations, client meetings, and hearings

Harvest Grille, Ambler, PA

August 2022 – November 2023

Shift Manager and Server

- Managed evening wait staff of six
- Resolved customer service complaints
- Monitored and maintained safety and quality control measures to ensure customer and staff safety

Manufacturers Golf and Country Club, Fort Washington, PA

Summer 2021 and 2022

Camp Counselor/Swimming Instructor

- Supervised elementary-aged children for a sports-themed camp during multiple four-week sessions
- Encouraged development of campers’ leadership, teamwork, and communication skills by guiding campers through a major community service project for the unhoused
- Engaged in interactive team building exercises and active play

SKILLS AND INTERESTS

Proficient in French. Interests include golf, swimming, film appreciation, car maintenance, and volunteering.

Natalie Greene

2121 Fairfield Road, Apt 2A, Wilmington, DE 19803 • npgreene@email.com • 302-123-1234

EDUCATION

Widener University Delaware Law School, Wilmington, DE J.D. expected May 2025

Juris Doctor Candidate

GPA: 3.15/4.0

Rank: Top 33.3%

Journal:

Delaware Journal of Corporate Law, Assistant Articles Editor

Honor:

Abe Graham Intramural Mock Court Competition, *Best Speaker*

Leadership:

Dean's Advisory Committee, *President*

University of Malta, Valletta, Malta

Summer 2023

Courses in Admiralty Law and International Relations

Pennsylvania State University, University Park, PA

B.A. received May 2021

History; minor in Global Studies

Honor:

Recipient of Scholar-Athlete Scholarship, 2017 – 2021

EXPERIENCE

Davidson & Powell, LLP, Wilmington, DE

August 2024 – Present

Law Clerk

- Draft discovery request and motions including motions to compel
- Correspond with opposing counsel to ensure the submission and receipt of all discovery
- Attend hearings and assist attorneys in preparing trial notebooks
- Research legal and factual questions regarding patent, trademark, and unfair competition issues

Harrison Book, PLLC, Philadelphia, PA

May 2024 – August 2024

Law Clerk

- Researched commercial litigation issues such as partnership disputes and breaches of contract
- Drafted documents including motions, petitions, and memorandums
- Observed mediations, client meetings, and hearings

Professor Kat Reyes, Widener University Delaware Law School, Wilmington, DE January 2024 – May 2024

Research Assistant

- Researched federal promotion of home ownership through subsidies
- Proofread, cite-checked, and edited article on the potential risks of promoting homeownership

The Honorable Jane Clarke, 11th District Court, New Castle, DE

September 2023 – December 2023

Judicial Intern

- Reviewed caseload for upcoming civil dockets
- Observed guardianship and probate dockets and discussed proceedings with judge and staff attorneys
- Conducted research on LexisNexis to supplement Judge Clarke's paper on guardianship fees
- Accompanied court investigator to interview a proposed ward

INTERESTS

Yoga, running (2023 Philadelphia Trail Marathon finisher), science fiction, and gardening.

Your Cover Letter

- Your cover letter SHOULD NOT be a restatement of your resume—this is where you highlight additional information about yourself and your skills.
- Your cover letter is not a personal statement, but rather a formal business letter. Keep it professional, and do not delve into too many details about your personal life.
- When addressing a cover letter to a judge, be sure to say “The Honorable [Full Name]”
 - Example: The Honorable Sarah Graf
Clark County Court of Common Pleas
- Etiquette is crucial when greeting your recipient. Keep the following pointers in mind:
 - Greet attorneys using “Mr.” or “Ms.”: “Dear Mr. Jones” or “Dear Ms. Dennison”
 - Greet judges using “Judge”: “Dear Judge Smith” or “Dear Judge Gardner”
- Three paragraphs
 - *Paragraph 1*: where you talk about yourself as a law student
 - If you have a recommender, state that in your opening sentence: “On recommendation of ...”
 - The full name of your law school
 - Your classification
 - Involvement in moot court, journals, and other relevant details not included on your resume
 - *Paragraph 2*: where you talk about your work experience
 - Detail specific roles and skills learned/employed, focusing only on the skills that are essential to the practice of law.
 - Examples include research, writing, communication with clients, problem-solving, document review, etc.
 - *Paragraph 3*: where you state with specificity why you are excited about THIS employer
 - You want to be specific—no surface level reasons here.
 - Be sure to read the job description thoroughly and match your language in the final paragraph to it.
 - If you are applying to government entities, be sure that your language matches their mission and purpose.

Jace Winters

225 Clearwater Road, Fort Washington, PA 19034 • jacewinters@email.com • 215-123-1234

January 3, 2024

Lucy Knutson
ChildFirst Advocates
33 Birch Run Road, Suite 2A
Ardmore, PA 19003

Dear Ms. Knutson,

On the recommendation of my contracts professor, Professor Jane Levin, I am writing to apply for a summer law clerk position with ChildFirst Advocates. As a first-year law student at Widener University Delaware Law School, I have studied diligently to achieve a 3.0 GPA for my first semester, putting me in the top half of my class. I have also become an avid member of the First Generation Students' Association and the Military Law Society, taking on leadership roles in both during my first semester of law school.

Over the course of my undergraduate studies, I had the chance to develop strong research and analysis skills through my coursework, which culminated in my senior thesis on political campaign strategies. I further honed these research skills over my time as a law clerk with Harrison Book, where I not only researched various commercial litigation issues, but also had the chance to develop my writing and communication skills. Through my observations of client meetings and hearings, I learned the importance of clear and empathetic communication.

The law clerk position at ChildFirst Advocates is of great interest to me due to my commitment to equity and public service, as demonstrated through my extracurricular activities, as well as my experiences with youth mentorship and support. By joining the ChildFirst Advocates team, I hope to contribute to its mission of empowering youth in the Philadelphia area through legal advocacy, school-based resources, and community programs.

I look forward to discussing my qualifications and interests with you, and I am happy to provide additional materials upon request.

Very truly yours,

Jace Winters

Natalie Greene

2121 Fairfield Road, Apt. 2A, Wilmington, DE 19083 · npgreene@email.com · 302-123-1234

December 13, 2024

John Jones, Partner
Smith, Smith and Jones, LLC
1 Main Street, 5th Floor
Wilmington, DE 19801

Dear Mr. Jones,

I am writing to express my interest in the Summer Associate position at Smith, Smith and Jones beginning June 2025. I am a second-year student at Widener University Delaware Law School, where I am the Assistant Articles Editor of the *Delaware Journal of Corporate Law*. During my time in law school, I have had the opportunity to hone my writing and speaking skills, most recently through the Abe Graham Intramural Mock Court competition, where I received the honor of Best Speaker.

During my summer internship with Harrison Book, I worked on matters related to business litigation, such as partnership disputes and breaches of contracts. The position allowed me to draft motions, petitions, and memoranda, as well as conduct legal research on very technical legal issues. My time clerking for the Honorable Jane Clarke of the 11th District Court of Delaware allowed me to observe the law in action and taught me to prioritize competing tasks; the experience also strengthened my communication skills.

As someone who plans to take the Delaware Bar after graduation, I am particularly excited about the opportunity to join your office over the summer. From my conversations with attorneys at networking events, I am aware of the collegiality within the Delaware Bar, as well as the positive impact that such collegiality can have on your legal career. Smith, Smith and Jones' reputation for providing high-quality legal representation in the areas of business litigation, bankruptcy, and corporate restructuring further piqued my interest in this position and your firm.

I believe that my strong writing abilities, commitment to Delaware practice, and demonstrated interest in business litigation will allow me to make a positive contribution to your practice. I would be honored to meet with you to discuss my qualifications in further detail. Thank you for your consideration of my application.

Very truly yours,

Natalie Greene