

Outlining

1 of 2 Handouts on Outlining

Chapter VI – Creating A Course Outline¹

What Is An Outline?

No later than the first week of law school, every first-year student has learned that an outline is essential if one expects to do well on exams. Students hear about them everywhere. Professors remind them that they should have already started outlining, the bookstores are full of commercial outlines, and upper class students talk knowingly about the “killer” outline that they used last year to ace contracts. Unfortunately, students receive little guidance on the “do’s and don’ts” of outlining. Hopefully, I am about to change that.

So, what is an outline? An outline is an attempt to reduce the often chaotic mix of materials a student possesses for any one class into a cogent and organized study aid of reasonable length. . . . When created correctly, an outline will become a student’s primary, and possibly only, study aid for exams. While a course outline is an important study aid come exam time, the process of creating an outline is actually more important than the end product.

Students truly learn the law through the process of creating an outline. Obviously professors teach the law in class. It is while creating an outline, however, that students place the bits and pieces that they learn in class into a larger framework. For example, a student will learn about consideration over one or more contracts classes, but the student must integrate this single concept into a framework that includes topics such as offer, counter-offer, acceptance, part performance, breach, etc. Thus, a completed outline represents the “big picture” view that students crave for every class.

Outlining and Active Participation

The concept of outlining, better than anything else, illustrates the need to approach law school differently than college. Up until this point, many of my recommendations about preparing for law school classes have their corollaries in preparing for college. You read your text book and take notes in college, and you read your casebook and brief cases in law school. The concept of course outlining, however, is fairly unique to law school.

When you create a course outline, you are in essence teaching yourself the intricacies of a specific course. Until you create an outline, you merely understand how individual legal concepts operate. Once you have completed your outline, you will understand how these individual concepts operate together within the context of an entire area of the law. No one will be there to tell you whether your outline is absolutely right or wrong. No one can. Your outlines are your own personal distillation of your law school classes. They are written by you, for you, and will never help anyone else understand their classes in the same way they will help you.

It’s the Journey, Not the Destination

¹ This material is excerpted from Chapter VI, *Succeeding in Law School*, by Professor Herbert N. Ramo (Carolina Academic Press).

Outlining is a process that should begin fairly early in the semester and should continue until the end of the year. Classes in law school tend to build upon each other. Therefore, a thorough understanding of topics raised during the first few weeks of the semester is essential if one is to understand concepts covered later in the year. Creating your outline on a rolling basis can help. For example, reviewing and outlining a week's worth of class notes over the weekend forces you to reconsider that week's topics. In order to create the outline, you will be forced to consider how various topics fit together, and you may even need to engage in additional research regarding certain ideas. By the end of the weekend, you should have a thorough understanding of the prior week's material. Seeing as the next week's class material will likely build on the prior week's topics, you will be in a much better position to comprehend the new material on a much deeper level. In fact, as the year progresses, you may even be able to anticipate the focus for next week's classes based on what you have already covered.

When Should I Begin Outlining?

The short answer to this question is "start early." Because outlining is a process that continues throughout the year, you need to begin at some point during the first month of classes. While I cannot pick an exact date for you, keep the following points in mind. An outline is intended to be your own understanding of how the various aspects of a class fit together. Importantly, it should provide context, indicating how the rules of law you learned on the first day of class might relate to the rules you learned months later. Because courses tend to move somewhat slowly during the first week or two of law school, it may be a few weeks before you have enough material to begin your formal outline.

Some of you may be planning on spending a great deal of time on your outlines near the end of the semester, completing them as exams are about to begin. This is not a plan of for success. By now you are aware that law school is extremely time consuming. If you wait to work on your outlines until the end of the semester, it is unlikely that you will have enough time to complete them prior to exams. If you do complete them before exams, it means that other aspects of your studies have suffered. Also, an outline is only effective as a study aid when you have time to read it several times prior to the exams. If you wait too long, you will not have this time. As you are scrambling at the end of the semester, your goal will become completing the outline as opposed to studying from it. Not only that, but rushing to complete the outline means you are not benefiting from the process of creating it.

Should I Buy Commercial Outlines?

Should students use a commercial outline in place of their own outlines? The answer to this one is easy – NO! As I have already mentioned, students will develop a much deeper understanding of the law through the process of creating an outline. If the idea of developing a deeper understanding of the law does not convince you, then consider the following reasons for creating your own outline. Commercial outlines tend to be extremely long; 300 and 400 page outlines are not uncommon. They tend to be this long because the authors must take into account the variations in what professors from across the country cover in their courses. For the student, this means wading through dozens of pages of irrelevant material, and no one can afford to waste time in law school. Also, a 300-400 page "outline" is not helpful as a primary study aid. While

you may be able to finish reading the commercial outline once by the end of the year, multiple readings are necessary in order to commit key concepts to memory.

If you still plan on using a commercial outline in place of your own outline, keep the following in mind. In your contracts class, for example, you are not learning all there is to know about contract law. Instead, your professor is emphasizing some concepts and deemphasizing or even excluding others. In a sense, you are learning the law of contracts according to your professor. Therefore, an outline geared toward how your professor taught the class is essential.

So, do commercial outlines have any role in preparing for examinations? They may. Reference material is often extremely helpful when creating an outline. It can be used to confirm your own understanding of a topic, to provide additional examples of how a rule of law might be applied, or to note how different jurisdictions might treat the same principle. While many students will use a **hornbook** for this purpose, commercial outlines can serve the same purpose. Do not, however, fall into the trap of following the commercial outline's organization when creating your own outline. First, this is only a small step away from using the commercial outline in place of your own. Second, struggling with the organization of your own outline is an important step in understanding how an area of the law operates. If you figure out a solid structure on your own, even if it differs from other sources, you will understand each of your first year courses much more completely than if you simply adopted another outline's structure.

Can I Use Someone Else's Outline?

If you are considering using a classmate's outline, I have one piece of advice for you – DON'T! This is true whether you plan on sharing outlines with members of your study group or getting your hands on the outline written by last year's valedictorian. Any time saved through using another's outline will be more than made up for by the low grades that will result. So why shouldn't you use another's outline?

- **You Learn the Law When Writing an Outline** – If you use someone else's outline, you will not understand the topic nearly as well as you would if you wrote your own outline. Remember, outlining is a part of a process that leads to a deeper understanding of your courses. Another student's outline would be fine if your exams emphasized memorizing a long list of rules, but they do not. Since exams are about identifying problems and then analyzing them, the outlining process, which requires synthesizing rules and organizing them logically, is an integral part of mastering the art of legal analysis.
- **Your Outline Must Be a Reflection of Your Professor's Class** – During their first year, most students take the same courses regardless of the law school. The content of those courses, however, differs greatly depending on who is doing the teaching. Therefore, an outline based on a different professor's property class, for example, will be useless to you when studying for your property exam.
- **Outlines Are Unique to Their Authors** – Without necessarily intending to do so, each student writes a somewhat unique outline. For example, a student struggling with the concept of causation in a products liability action may spend a great deal of time in the

outline laying out the concept. The student who “got” the concept immediately is unlikely to devote much outlining time to it. Your outline will not be helpful as a study tool unless it is written based on your own strengths and weaknesses.

- **Another Student’s Outline May Contain Mistakes** – When you consider how expensive law school can be, why would you rely on material written by another student when preparing for exams? No first-year student, regardless of aptitude, is an expert on any area of the law. Also, why rely on another student’s understanding of a concept when your professors will be grading you?

Now You Are Ready to Outline

Now that the preliminaries are out of the way, you are ready to start outlining. When creating your outline, you will do the following:

- **Organize your ideas around concepts and rules rather than merely listing cases**
- **Display the proper relationship between concepts**
- **Classify/synthesize cases into groups**
- **Use cases and hypotheticals to help define concepts and illustrate rules**

Organizing Your Ideas Around Concepts and Rules

While organizing an outline around ideas may seem simple, this aspect of outlining often causes students the greatest amount of difficulty. Instead, students tend to organize around cases and end up with an outline that reads like a series of case briefs. This mistake is understandable when one considers how much time students spend dissecting cases in class. Professors, however, rarely expect you to memorize cases for a law school examination. Instead, they expect you to have learned the various rules of law and how those rules are applied through a discussion of cases in class. Then, it is your job to organize these individual ideas in a way that enhances your understanding of the entire course. You are creating a logical approach to an area of the law that you will later use to logically organize your examination answers. With these concepts in mind, the idea of organizing your outline around legal concepts, should make more sense.

Now that you have a general idea of why you should be organizing your outline around legal concepts, your next question should be, “so where do I find these concepts?” The good news is that you already have them. They can be found in four places: your class notes; your case briefs; your case book; and your course syllabus. Start with your case book, focusing on the table of contents. The table of contents is likely broken down into topics that should be included in your outline. Once you have listed all the topics from the table of contents, move on to your syllabus. The syllabus will help you find additional concepts that the professor has focused on during the year. Next, review your case notes and case briefs. Scan them, looking for additional ideas you may have missed. For example, the review of your notes and brief on Garratt v. Dailey will

remind you to include “knowledge to a substantial certainty” as part of your definition of intent. Now, you should have a fairly lengthy list of concepts from which to work.

Remember, your goal at this point in the process is to create a long list of ideas. Do not worry about organizing the ideas yet. That is the next step. Also, do not worry about whether a word or phrase is actually a legal concept worthy of inclusion in your outline. You will revise your outline throughout this process, so you have plenty of time to fine tune it. Below is sample list of topics that one might create based on the first weeks of a torts class. I have chosen the time frame based on when most students will begin writing their outlines.

Torts Topic List

intent	volitional act
reckless conduct	negligent conduct
intent to harm	assault
battery	false imprisonment
trespass to land	trespass to chattels
malice	transferred intent
mental illness/intent	transferred intent, different tort
touching	transferred intent, different person
implied consent	express consent
objective reasonable person	offensiveness
unanticipated harm	item closely associated with victim
eggshell skull	

Keep a few things in mind as you go through this list.

- This is not meant as a topic list for a year long torts class. By the end of the year, your torts outline may end up containing hundreds of topics.
- I have not tried to organize the concepts yet. That is the next step.
- I created this list of topics based on the first few weeks of my torts class. You may encounter some of these concepts later in the year, or not at all.
- Remember, do not worry about creating a “perfect” list. The list should be the product of your own brainstorming session, and as such will contain ideas that you may later decide to exclude.
- You will be updating your outline weekly throughout the semester, so you will have to create a new list of topics each week. Simply review your notes since the last time you updated your outline to find the newest topics that you will incorporate into your existing outline.

Display the Proper Relationship Among Topics

Now that the list is in place, your next task is to organize it and insert the rules of law. While you should attempt to organize the material on your own, your casebook or a course syllabus can help. Be sure that your organization proceeds logically, and that you begin with the broadest ideas. For example, most torts classes begin with the intentional torts, and one might be naturally inclined to begin with the tort of battery because it is often the first intentional tort discussed. The organization for such an outline might start out looking something like this:

- I. Intentional torts
 - A. Battery
 - 1. Requires intentional contact
 - a. Transferred intent

Initially, this sort of organization is a good way to begin because it moves from general to specific. The broadest level of organization is “Intentional torts,” which sets up your next level of division. Thus, letter “A” will be battery, letter “B” assault, and so on through all of the intentional torts.

Digging deeper into the concept of battery, you would begin listing the elements for this intentional tort. As you can see from this example, the first element discussed is intent, and this element contains the sub-category “transferred intent.” What you may not realize, however, is that the concept of transferred intent is going to cause problems if placed at this spot in the outline.

You will soon learn that the concept of transferred intent is applicable to the other intentional torts. By placing it at this point in the outline, you are indicating that its applicability is limited to the intentional tort of battery. Does that mean you would have been wrong to initially organize your outline in this fashion? The answer is “no.”

Course outlines are constantly evolving until the moment you incorporate the material from your last day of class. You add new ideas each time you work on the outline, and you may have to reorganize existing portions of the outline as well. Remember, an outline is intended to illustrate how the various ideas you have learned in class interact with one another. Seeing as you learn more during each of your classes, it only makes sense that your outline will evolve as does your understanding of the law. On some occasions, you may simply add new material to the end of your existing outline. On other occasions, however, you may have to fit the new material into several different locations, or even reorganize the outline entirely. While reorganizing your outline can be time consuming, do not give up! Each reorganization is enhancing your understanding of how the course operates.

Adding the Rules

Once you have completed the basic organization of your outline, the next step is to add rules of law to the topics. For example, the topic “intent” would now include the definition of this term. How detailed should your definition be? That is entirely up to you. As we have already discussed, each outline is unique to its author. Therefore, your definition of intent will depend on your understanding of the topic, how it was covered in class, and which cases were used to illustrate the concept.

Torts Topic List, Organized and Including Rules

- I. Intent – Either must desire to cause some mental or physical effect or must act with **substantial certainty** that tortious event would follow. Reckless/negligent acts generally insufficient.
 - A. Volitional act – harm must result from volitional act. Movement while sleeping or involuntary body movements insufficient
 - B. Malice or intent to harm unnecessary – all that is necessary is intent to affect plaintiff. Normally, party intends harm, but intent to harm not required.
 - C. Transferred intent –three different types of transferred intent, all suffice
 1. **Intent to commit tort on different person** – when defendant acts with intent to commit tort on party A but commits tort on party B, intent is transferred from A to B and D still liable.
 2. **Intent to commit different tort on same person** – D still liable
 3. **Intent to commit different tort on different person** – If have intent to commit 5 most common intentional torts on party A, but act causes another tort to party B, D still liable. Torts included:
 - a. Assault
 - b. Battery
 - c. False imprisonment
 - d. Trespass to land
 - e. Trespass to chattels
 - D. Mental illness and intent – D with mental illness can still form intent.

Notice a few things about the above example. First, I have underlined or placed in bold certain concepts. I did so because I wanted these concepts to stand out when I was reading the outline. Another person would likely highlight different parts of the outline. However, resist the urge to highlight large sections of the outline. You should highlight in order to emphasize, and when you highlight too much you are actually emphasizing less.

Next, note that I have dealt with the concept of intent independently from each intentional tort. Why? As I alluded to above, certain aspects of the concept of intent are applicable to all of the intentional torts. Therefore, it made sense to treat the concept like an introductory idea in my outline. This does not mean that the concept will not be addressed elsewhere in my outline. For example, it is possible that there is a unique aspect to intent within each of the intentional torts.

Finally, keep in mind that this is my outline, and certain aspects of the organization will be unique to me and my understanding of my course. It is true that your outline will bear some resemblance to the ones created by other students in your class, but do not be concerned if there are significant differences as well. And remember, do not worry if you feel the need to change the structure of your outline over time. As your understanding of a topic evolves, so will your outline

The rules to be incorporated into your outline will come from a few different sources. Primarily, you will obtain the rules from the cases you read. This does not mean, however, that you will necessarily have the rule you need once you finish reading a single case. Instead, you will need to consider the following additional sources when constructing your rules.

- **Classroom discussion** – Even after you have become proficient at reading and briefing cases, you should not rely solely on your own individual understanding of what the case stands for. You and your classmates will thoroughly discuss most of your cases in class with your professor. Allow the classroom discussion and your professor’s guidance and insight help you extract the rules from the cases.
- **Conduct Additional Research Using Treatises** – Even after you have discussed a case or concept in class, you may still be confused. That is to be expected, and might even be a blessing in disguise. Actively engage the topic by conducting some independent research. Your additional research on a topic will help cement the idea in your memory, and may even disclose additional concepts that need review. Do not worry about finding a treatise that would be easily understood by a first year law student. Multiple **hornbooks** are available for every first-year course and are written with students in mind. Hornbooks are relatively expensive, so be sure to check your law school library before rushing out to purchase them for each class.
- **Read Additional Cases** – Many of your casebooks will list additional cases at the end of each chapter as suggested reading. Similarly, your professors may end class with a list of cases that can be read for those looking for additional treatment of a particular issue. If you are struggling with a concept, then these additional cases are a must read. Sometimes, a different judge’s way of writing about a topic will “click” for you, making the additional reading worth your time. Even if you are not struggling with a topic, you may still want to find and read suggested cases. Not only will this additional reading enhance your understanding of the topic, the cases may be used as source material by your professors as they are writing their exams!

Adding Cases and Hypos to Illustrate the Rules

Once you have reached this point in the outlining process, you may be inclined to leave well enough alone. The concepts are well organized and the rules of law that you have derived from classroom discussion and case synthesis are all in place. If you were going to use your outline to prepare for a college examination, I might agree with you. You could simply memorize the rules, parrot them back to your college professor, and wait for your good grade to arrive in the mail. The problem is that you are no longer in college. In law school, your professors expect you to apply the rules of law to fact patterns you have never seen before. In order to do this effectively, you need to understand how the rules have been applied in the past. Multiple examples of how your professor applied the rule will help you better understand the principle involved, but do not take this idea to an extreme level. While two or three hypos might better illustrate a principle, a tenth hypo is unlikely to add much to the discussion and will lead to an extremely long outline. When done correctly, the cases and hypotheticals help define the rule. Consider the following example.

Battery Example

Rule - Unpermitted and harmful or offensive touching of another by an act intended to result in such contact is a battery.

Fact Pattern – Defendant intentionally brushes against the plaintiff subway passenger in order to get by him and to a seat on the train. The plaintiff suffers from the rare disorder ifyoutouchmeIscream, and immediately starts yelling. He later testified as to being extremely offended by the contact. A psychiatrist also testified that those suffering from this disorder detest physical contact and would suffer mental anguish if touched.

Issue – Is this a battery?

If you use only the provided rule, what would your answer to this question be? Using only this rule of law, the answer would be that this is a battery. There was a touching of another. The defendant intended to touch the plaintiff in order to get to his seat and both the plaintiff and a psychiatrist testified that the touching offended this plaintiff. Before I focused you on the rule, however, you probably answered that the defendant did not commit a battery. Why the discrepancy?

What we need is a hypo that further defines the rule. A class hypo illustrating that we judge what is offensive based on a reasonable person standard would have made things a lot clearer. It is likely that you remembered such a hypo from class and that it made this concept much easier to understand. With so much material to retain, you cannot always trust that you will remember the cases and hypos you covered in class. That is why you should add them to your outline.

Editing Your Work

Until exams begin, your outline will always be a work in progress. Therefore, do not be afraid to add, delete, and move material. This is particularly true during the early stages of the outlining process. For example, many contracts classes begin with the concept of damages. While there are many good reasons to begin teaching the course with the concept of damages, you may want to begin your outline with other topics. Remember that contract damages only become an issue when a contract has been created and then breached. So, you may want to begin your outline with contract formation as opposed to damages.

Policy Considerations

Depending on your professor, you may need to include policy considerations in your outline. In some classes, public policy plays a very important role. In others, the professors rarely mention policy issues. Policy considerations form the underpinnings of why certain rules of law have been created or adopted within a jurisdiction. For example, punitive damages are rarely awarded for a breach of contract. That is the rule. The underlying policy behind this rule focuses on economics. The breach of a private contract is unlikely to injure the community, and may actually benefit the community by permitting a more productive allocation of resources. Further, compensatory damages allow for the reallocation of resources while making the victim whole. If your professor discussed this concept in class, it should be in your outline because it will be fair game on an examination.

The Outline as a Study Tool

As I have noted throughout this chapter, it is the outlining process and not necessarily the final product that is valuable when trying to make sense of your classes. Still, most students intend to use their outline as their primary or only study tool, and well they should. Consider the following when viewing your outline as your primary study aid.

- **Outline length** – There is no magic length for an outline, but it should be short enough that you can read it through from beginning to end multiple times in a single day. It needs to be long enough, however, to fully explain ideas that you may not have reviewed for several months.
- **Condensing your outline** – When you first start studying from your outline, you should be reading the entire document. As you get closer to examination, however, make your outline shorter and see whether you still remember the key concepts. As a first step, remove the case references and hypotheticals. Once you have studied from this version for a day or so, remove the rules next. This should leave you with a list of topics. Once you have studied from this version, remove most of the topics so that you are left with only the broadest organizational concepts, likely only those represented by a roman numeral.
- **Memorize a skeletal outline** – I refer to the final condensed version of an outline as a skeletal outline. Consider committing this entire version of your outline to memory. It should not be too difficult to do as this version should be no longer than 1-2 pages. Then, when you walk into your examination, write down your skeletal outline onto scrap paper

(if provided), the sheet containing the question, or the inside cover of your blue book. Doing so accomplishes two things. First, it forces you to write something with which you are very familiar, thereby relieving pent up anxiety. More importantly, this skeletal outline will act like a checklist. Consult it during your examination. If the parol evidence rule was listed on your contracts skeletal outline and you never referenced it in your answer, then you may want to go back and look at the question to see if you have missed something.

Summary

We have covered quite a bit, but when you look back on what we have discussed, the following ideas are the most important.

- An outline represents your understanding of how the various aspects of a course fit together, so you must create your own outline.
- Outlining is a process that takes place throughout the semester. Cramming to create an outline at the end of the semester does not work.
- Your outline should be built logically around legal concepts, not cases.
- Use cases and hypotheticals to illustrate those concepts.

Sample Torts Outline Structure

*The following is a sample of a few pages from a torts outline. It is intended to illustrate the structure of an outline. Notice how the broadest aspects of the outline naturally lead into more specific ideas that provide further explanation. Also, notice that the hypos and cases provide further explanation, but are relatively short. I have included as much of the case as I felt necessary to illustrate the relevant point. The word “text” appears several times in parentheses. These are intended as a quick reference to the case’s location in the textbook, allowing me to quickly find and reread the case if necessary. **DO NOT** use this in place of your own outline or as a substitute for anything you have discussed in your classes.*

- I. Intent – Defendant must desire to cause some harmful or offensive effect on plaintiff or must act with substantial certainty that tortious event would follow. Generally, reckless or negligent actions are not enough for intent.
 - A. **Volitional act** - Tort must result from volitional act on part of Defendant. Movements while sleeping or involuntary body movements do not satisfy requirement.
 - B. **Malice or an intent to hurt not necessary** - All that is required is an intent to affect the plaintiff. Normally, defendant does intend to harm, but this is not necessary.
 1. EXP - Garratt v. Dailey (text 10) - Child pulled chair away and plaintiff fell to ground when tried to sit. Trial court found no liability because child did not intend to hurt P. Appeals court remands and states that child liable if acted with substantial certainty that prohibited contact would result.
 - a. Note to self – Focus of case is defining intent as knowledge to a substantial certainty. Secondarily, children may form intent and commit intentional torts.
 2. HYPO 1 - D shoots gun into crowd and hopes that bullet will miss everyone. Intended battery because acted with substantial certainty that bullet would hit someone. Hope that shot would miss irrelevant.
 3. HYPO 2 - D hunting and shoots at deer. Shot misses deer and hits hiker who hunter never saw. No intent. Never saw hunter, so cannot say acted with substantial certainty that harm would result. Also, no transferred intent because shooting a deer is not a battery.
 - C. **Transferred intent** - Three different types of transferred intent.

1. **Intent to commit tort on different person** - When act with intent to commit intentional tort with regard to party A, but actually commit tort on party B, intent transferred and Defendant still liable.
 - a. EXP - Talmage v. Smith (Text - 15) - Defendant throws stick at boy who was with friends on roof. Stick misses intended target and hits another boy Defendant never saw. Defendant still liable because intent to hit one person in crowd transferred to actual victim.
2. **Intent to commit different tort on same person** – Defendant still liable.
3. **Intent to commit different tort on different person** - If have intent to commit 5 most common intentional torts on party A, but act causes another tort to party B, defendant still liable. Torts included are:
 - a. assault
 - b. battery
 - c. false imprisonment
 - d. trespass to land
 - e. trespass to chattels

D. **Mental illness and intent** - Party with mental illness can still form intent necessary for intentional torts.

1. McGuire v. Almy (text - 20) - Mentally ill defendant struck plaintiff with leg from piece of furniture. D guilty - Mental illness does not preclude finding of intent even if attack would not have occurred without illness. Practical solution to difficult issues. As between injured party and defendant, loss should be borne by wrongdoer

II. Intentional torts

A. Battery - Unpermitted and harmful or offensive touching of another by an act intended to result in such contact

1. Unpermitted - If party consents to touching, there can be no liability for battery.
 - a. Express consent - Actual consent by plaintiff. Consent to surgery.

- i. Mohr v. Williams (Text 22) - Defendant doctor operated on right ear, but had only obtained consent to surgery on left ear. Held: battery. Today, consent forms are written to cover additional necessary procedures.
 - b. Implied consent - People must accept certain touching in society.
 - i. Hypo 1- Gently nudge by someone to get on subway. Implied consent to this touching.
 - ii. Hypo 2 - Push someone out of the way because the person is blocking the door, and defendant pushes hard enough that plaintiff hits the ground. No implied consent to this level of touching. Goes beyond what is expected in society
2. Offensive touching - Courts apply **objective standard of offensiveness**. Person of peculiar sensitivity cannot recover unless touching would be offensive under societal standard.
 - a. Objective standard may not apply if defendant is aware of plaintiff's sensitivity.
3. Touching items **closely associated** with plaintiff's body - If defendant touches item that is associated with plaintiff's person, touching element satisfied.
 - a. EXP - Fisher v. Carousel Motor Hotel (Text - 30) - Defendant grabs plate from plaintiff's hand while plaintiff is in buffet line because establishment doesn't serve black customers. This action satisfied touching element because plate was closely associated with person when it was grabbed. In this context, also offensive.
 - b. Note to self - seems that item touched must be in contact with plaintiff's person, but that no special personal attachment to item is required.
 - c. Note to self #2 – Seems that this is also an example of an offensive, as opposed to harmful, touching.
4. Unanticipated harm - As a general rule, when defendant's actions constitute a battery, then the defendant will be liable for any harm that results from the battery. Plaintiff will be compensated for unanticipated or unintended harm.

- a. HYPO - Defendant decides to play joke on friend and grabs him around the throat from behind and pretends to choke him. Startled, the friend turns his neck quickly and suffers a serious neck injury.
 - i. Here, D liable for this unintended harm as long as this was a battery.
 - ii. Consent - Possible, but unlikely, that plaintiff might have consented to touching if this was the kind of joke that they played on each other on a regular basis. However, facts are silent on this point.