



Materials
for
Law School Unmasked

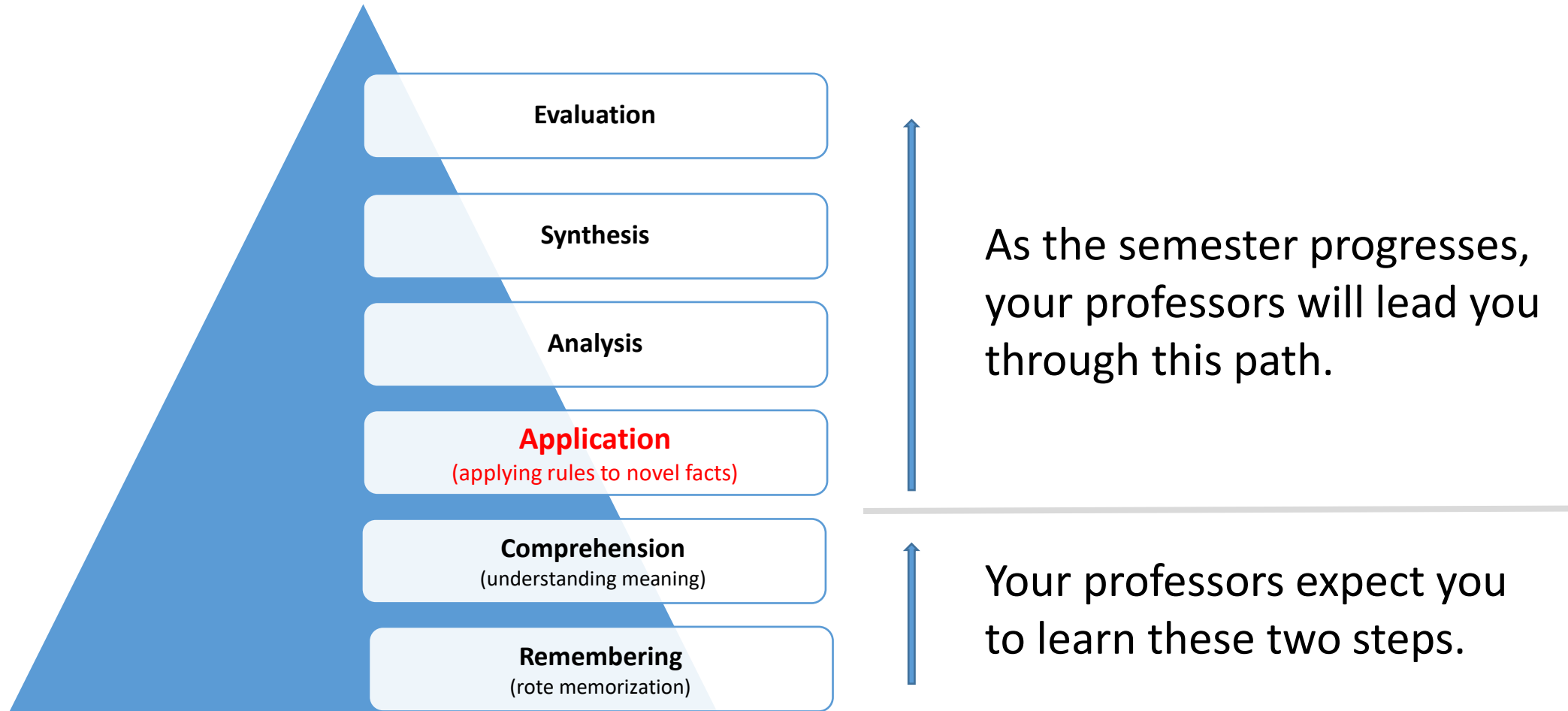
Session
on
Critical Thinking



Question #1

What do you anticipate learning in law school?

Bloom's Taxonomy or “How well do we understand a subject?”





Exercise: Where are “legal analysis and reasoning and critical thinking” listed?

Sample Course Syllabus #1

Objectives and Goals:

- a. To provide a systematic and analytical approach to learning basic concepts in Tort Law:
 1. Learning the doctrinal and substantive law of Torts
 2. Teaching legal strategies and approaches for analyzing Tort Law issues and for raising legally recognized defenses
 3. Developing critical reading skills when deconstructing judicial opinions and statutes
 4. Helping students determine and consider the over-arching public policy concerns behind Tort Law principles when appropriate and available
 5. Providing problems sets and several small quizzes to assist students in assessing their understanding of Tort Law concepts and applications

- b. To create a challenging and exciting environment for learning Tort Law concepts:
 1. Requiring and challenging students to be active participants in the learning process
 2. Incorporating discussions of current events when appropriate to demonstrate the relevance of Tort Law to our daily experiences

Sample Course Syllabus #2

Learning Objectives:

By the end of the semester, students should:

1. Understand of the general principles of acquisition of property rights by operation of law, ownership possession, transfer, and regulation of personal and real property;
2. Know how to apply rules of adverse possession, lost property, mislaid property, abandoned property and gifts; estates in land and future interests; concurrent estates; landlord-tenant law; conveyances of real property; easements, covenants, and servitudes; zoning law; and constitutional principles applicable to land use law;
3. Demonstrate well-developed case analysis and argument skills, including breaking cases down into components and extracting rules and holdings from cases;
4. Demonstrate well-developed critical thinking and problem solving skills, including distinguishing between relevant and irrelevant facts, and recognizing arguments and reasoning;
5. Demonstrate well-developed problem-solving skills by being able to apply black-letter rules to new fact patterns;
6. Understand your ethical and professional responsibilities.



Question #2

Where do you learn how to think like a lawyer?

Question #3

How many hours do you anticipate studying each week?

Sample Case from a Casebook – Prosser, Wade and Schwartz on Torts

3. ASSAULT

I de S et ux. v. W de S

At the Assizes, 1348.

Y.B.Lib.Ass. folio 99, placitum 60.

I de S and M, his wife, complain of W de S concerning this, that the said W, in the year, etc., with force and arms did make an assault upon the said M de S and beat her. And W pleaded not guilty. And it was found by the verdict of the inquest that the said W came at night to the house of the said I and sought to buy of his wine, but the door of the tavern was shut and he beat upon the door with a hatchet which he had in his hand, and the wife of the plaintiff put her head out of the window and commanded him to stop, and he saw and he struck with the hatchet but did not hit the woman. Whereupon the inquest said that it seemed to them that there was no trespass since no harm was done.

THORPE, C.J. There is harm done and a trespass for which he shall recover damages since he made an assault upon the woman, as has been found, although he did no other harm. Wherefore tax the damages, etc. And they taxed the damages at half a mark. Thorpe awarded that they should recover their damages, etc., and that the other should be taken. And so note that for an assault a man shall recover damages, etc.

NOTES AND QUESTIONS

1. This is the great-grandparent of all assault cases. Why allow the action if “no harm was done”?



Western Union Telegraph Co. v. Hill

Court of Appeals of Alabama, 1933.

25 Ala.App. 540, 150 So. 709.

Action for damages for assault by J.B. Hill against the Western Union Telegraph Company. From a judgment for plaintiff, defendant appeals.

SAMFORD, JUDGE. The action in this case is based upon an alleged assault on the person of plaintiff's wife by one Sapp, an agent of defendant in charge of its office in Huntsville, Ala. The assault complained of consisted of an attempt on the part of Sapp to put his hand on the person of plaintiff's wife coupled with a request that she come behind the counter in defendant's office, and that, if she would come and allow Sapp to love and pet her, he "would fix her clock."

The first question that addresses itself to us is, Was there such an assault as will justify an action for damages? * * *

While every battery includes an assault, an assault does not necessarily require a battery to complete it. What it does take to constitute an assault is an unlawful attempt to commit a battery, incomplete by reason of some intervening cause; or, to state it differently, to constitute an actionable assault there must be an intentional, unlawful, offer to touch the person of another in a rude or angry manner under such circumstances as to create in the mind of the party alleging the assault a well-founded fear of an imminent battery, coupled with the apparent present ability to effectuate the attempt, if not prevented. * * *

What are the facts here? Sapp was the agent of defendant and the manager of its telegraph office in Huntsville. Defendant was under contract with plaintiff to keep in repair and regulated an electric clock in plaintiff's place of business. When the clock needed attention, that fact was to be reported to Sapp, and he in turn would report to a special man, whose duty it was to do the fixing. At 8:13 o'clock p.m. plaintiff's wife reported to Sapp over the phone that the clock needed attention, and, no one coming to attend the clock, plaintiff's wife went to the office of defendant about 8:30 p.m. There she found Sapp in charge and behind a desk or counter, separating the public from the part of the room in which defendant's operator worked. The counter is four feet and two inches high, and so wide that, Sapp standing on the floor, leaning against the counter and stretching his arm and hand to the full length, the end of his fingers reaches just to the outer edge of the counter. The photographs in evidence show that the counter was as high as Sapp's armpits. Sapp had had two or three drinks and was "still slightly feeling the effects of whisky; I felt all right; I felt good and amiable." When plaintiff's wife came into the office, Sapp came from towards the rear of the room and asked what he could do for her. She replied: "I asked him if he understood over the phone that my clock was out of order and when he was going to fix it. He stood there and looked at me a few minutes and said: 'If you will come back here and let me love and pet you, I will fix your clock.' This he repeated and reached for me with his hand, he extended his hand toward me, he did not put it on me; I jumped back. I was in his reach as I stood there. He reached for me right along here (indicating her left shoulder and arm)." The foregoing is the evidence offered by plaintiff tending to prove assault. Per contra, aside from the positive denial by Sapp of any effort to touch Mrs. Hill, the physical surroundings as evidenced by the photographs of the locus tend to rebut any evidence going to prove that Sapp



could have touched plaintiff's wife across that counter even if he had reached his hand in her direction unless she was leaning against the counter or Sapp should have stood upon something so as to elevate him and allow him to reach beyond the counter. However, there is testimony tending to prove that, notwithstanding the width of the counter and the height of Sapp, Sapp could have reached from six to eighteen inches beyond the desk in an effort to place his hand on Mrs. Hill. The evidence as a whole presents a question for the jury. This was the view taken by the trial judge, and in the several rulings bearing on this question there is no error. * * *

[Reversed on the ground that Sapp had not acted within the scope of his employment.]

NOTES AND QUESTIONS

1. Defendant, standing three or four feet from plaintiff, made a "kissing sign" at her by puckering his lips and smacking them. He did not touch her and made no effort to kiss her or to use any force. Is this an assault? *Fuller v. State*, 44 Tex.Crim. 463, 72 S.W. 184 (1903) (leering alone is not enough). Defendant Ku Klux Klan members dressed in KKK robes and carrying guns rode around in a shrimp boat on Galveston Bay from dock to dock frightening Vietnamese fishermen and their families. What would the family members have to prove to recover for assault? See, *Vietnamese Fishermen's Ass'n v. Knights of the K.K.K.*, 518 F.Supp. 993 (S.D.Tex.1981) (applying Texas law).
2. Defendant, a hundred yards from plaintiff, starts running toward him, throwing rocks as he runs. At what point does this become an assault? Cf. *State v. Davis*, 23 N.C. (1 Ired.) 125, 35 Am.Dec. 735 (1840) (at the point where defendant is close enough so that plaintiff's apprehension of imminent contact is reasonable).
3. What about mere preparation, such as bringing a gun along for an interview? *Penny v. State*, 114 Ga. 77, 39 S.E. 871 (1901).
4. What if the threat is not imminent? *Brower v. Ackerley*, 88 Wash.App. 87, 943 P.2d 1141, 1145 (1997) (threats of future action—"I'm going to find out where you live and kick your ass" and "you're finished; cut you in your sleep"—not imminent enough to state cause of action for assault.) Does a complaint state a cause of action for assault if one paragraph of the complaint asserts that the defendants threatened to strike the plaintiffs with blackjacks and that the threats placed the plaintiffs in fear that a battery will be committed against them and a subsequent paragraph asserts that the defendants showed the plaintiffs that the defendants were carrying blackjacks? *Cucinotti v. Ortmann*, 399 Pa. 26, 159 A.2d 216 (1960) ("words in themselves, no matter how threatening, do not constitute an assault").
5. Is there an assault if defendant threatens the plaintiff with an unloaded gun? See *Allen v. Hannaford*, 138 Wash. 423, 244 P. 700 (1926). Suppose the gun remains lying in defendant's lap? See *Castiglione v. Galpin*, 325 So.2d 725 (La.App.1976).
6. In *State v. Barry*, 45 Mont. 598, 124 P. 775 (1912), it was held that there was no assault where the plaintiff did not learn that a gun was aimed at him with intent to shoot him until it was all over. The Restatement (Second) of Torts § 22, has agreed. See also *Reynolds v. MacFarlane*,



322 P.3d 755, 758 (Utah App. 2014) (no assault where ten dollar bill was snatched from plaintiff's hand from behind because no evidence that plaintiff was aware of defendant's impending action to grab the bill before defendant completed the act of taking the bill).

7. A major distinction between a criminal assault and an assault in tort is that for criminal assault, a victim need not have an apprehension of contact. A criminal assault occurs if the defendant intends to injure the victim and has the ability to do so. *Commonwealth v. Slaney*, 345 Mass. 135, 185 N.E.2d 919 (1962). For the tort of assault, the victim must have an apprehension of contact, and it is not necessary that the defendant have the actual ability to carry out the threatened contact. Depending upon the jurisdiction, a defendant could be subject to either criminal prosecution or civil damages, or both.

8. Although the court uses the term "fear" of an imminent battery, assault requires only apprehension or anticipation. Suppose Hill had a black belt in karate and was contemptuous of Sapp? Assault? Cf. *Brady v. Schatzel*, [1911] Q.St.R. 206, 208 (police officer testified he was not afraid when defendant pulled a gun on him because he did not believe he would fire it). Why might a lawyer plead and try to prove fear if it is not a necessary element of the tort?

9. What if these words are accompanied by a threatening gesture? Assault?

A. With his hand upon his sword, "If it were not assize-time, I would not take such language from you." *Tuberville v. Savage*, 1 Modern Rep. 3 (1699).

B. "Were you not an old man, I would knock you down." *State v. Crow*, 23 N.C. (1 Ired.) 375 (1841).

C. "If it were not for your gray hairs, I would tear your heart out." *Commonwealth v. Eyre*, 1 Serg. & Rawle 347 (Pa.1815).

D. "I have a great mind to hit you." *State v. Hampton*, 63 N.C. 13 (1868).

E. "If you do not pay me my money, I will have your life"? *Keefe v. State*, 19 Ark. 190 (1857).



Sample Exam Question on Contracts

On Wednesday, Byer spotted a Craigslist ad for an estate sale in the neighborhood. Everything in the home and on the property would be for sale starting Saturday morning. Included in the listing was the following:

“Blue car. Small, but fun to drive. Needs some TLC. \$7,000 or best offer.”

Byer visited the home and walked around inside to look at the items for sale. He entered the garage through a door connected to the kitchen. Sitting in the garage, under a tarp and without wheels or an engine, was a navy blue 1976 Ferrari GTB. Andrew could not believe it. He knew the car was worth at least \$100,000 after fixing it up.

Byer immediately called the number on the Craigslist ad. The man who answered, Steve, said the home was his parents’ residence before they both passed away a few years ago. Steve lives out-of-state, and he was just now finding time to sell everything. He planned to travel to the home on Friday and finalize sales on Saturday.

Byer asked Steve if he had received any calls about the car, to which Steve responded, “a few lowball offers.” Byer then asked if \$10,000 was enough to “get the keys to the car and take it out of this garage.” Steve responded, “Compared to what I’ve heard so far, yes.” Byer told Steve that he would find some paper and leave contact information on the car’s windshield to coordinate a good pick-up time on Saturday. Byer hung up and wrote down his phone number, the date, and “Sold to Byer Wells - \$10,000” on the bottom of the paper.

On Friday morning, Steve arrived at his parents’ home and walked to the parking pad on the side of the garage. Sitting there was his father’s sky blue 2017 Fiat 500. However, there was no paper on the windshield. A few hours later, as Steve made his way through the garage, he saw the paper on the windshield of a Ferrari. Steve had no idea that his parents owned that car.

Steve called Byer and said he was not selling the Ferrari, he was selling a different little Italian car: the Fiat 500. Byer did not find the analogy humorous. In fact, he was furious. Byer never saw a Fiat and the only car he ever discussed was the one in the garage. Additionally, he had already ordered a flatbed truck for transport and he was the current high-bidder on an eBay auction for a Ferrari engine.

Byer contacted our law firm for help to sue Steve for the Ferrari. Will Byer win the lawsuit?



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