A Lawyer Writes - Outlining

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Charting and Outlining Presentation

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Organizing Your Legal Authority

Chart the Cases
- Chart the Governing Rule
- Chart Individual Elements or Factors

Outlining
- Why Outline?
- How to Outline

Give Your Audience What it Needs

After determining the rule that governs your client's question and identifying its conditions, you will then have to organize the relevant authorities around those conditions. Although it is tempting at this stage to just jump into writing, that approach is not efficient. Since you will discuss your client's legal question element by element or factor by factor, organizing your research in the same way is an efficient way to evaluate each distinct piece of your discussion.

Organizing your research around elements or factors helps you to synthesis law. As we have explained before, "synthesizing" means combining or blending parts to create a whole. For each element or factor, you need to synthesize a variety of authorities into a seamless explanation of the law about that element or factor. Typically, a single case cannot tell that you will need to know about an element or factor. Each case may put a slightly different spin on the legal rules relevant to that condition. And each case will certainly have a different fact pattern from previous cases. In fact, much of an attorney's legal analysis about an element or factor comes from synthesizing the law about that element or factor.

To synthesize the law, lawyers look at a series of legal authorities and ask questions:

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1 © Christine Coughlin, et al, A Lawyer Writes, chap. 5. Carolina Academic Press. (2008). The majority of these materials come from the referenced source however, some of the graphics were created and added by Professor Timothy D. Blevins. Where references were made to other materials from the same book appeared, minor edits were made.

Organizing Your Legal Authorities: Charting and Outlining
• What is the law that governs this condition and where does it come from? (A statute? cases? both?)
• How are the cases that address this condition alike or different factually?
• How are the cases addressing this condition alike or different in the courts' explanation or application of the law?
• Are the courts establishing a trend with their decisions regarding this condition?

Try not to read any one authority in isolation. Instead, read the authorities asking how all the authorities fit together.

I. Chart the Cases

Some legal writers find that organizing cases on a chart helps them understand the relationships among the cases and discern how authorities fit together. Charting cases can help you notice the similarities among and differences between cases and see patterns emerging in the law. Seeing patterns emerge will allow you to more accurately predict how those cases will affect the outcome of your issue. Further, because your research may yield more cases than you can include in your analysis, charting can help you select the best cases to use in your memo.

Case charting is a tool you should use during the research process to help you critically think about the legal authorities you are gathering. As you research, write the key points on your chart. Notice the emerging patterns, and notice the gaps in the law your research has not covered. Noting these points as you go along will help focus your research and simultaneously make you more efficient.

Examples 5-A and 5-B show two different charts. Each of the examples shows information from a variety of cases and allows you to synthesize and evaluate the law element by element or factor by factor.
A. Chart the Governing Rule

One way to chart cases is to use the governing rule as a guide. By listing the elements in the governing rule along one axis and the relevant authorities along the other, the chart will show you how each case addresses each element in the governing rule.

Example 5-A shows what that chart may look like if the question is whether a client has committed a burglary. The rule governing the crime of burglary can be broken down into the following elements:

- Enters
  - Knowingly and
  - Without authority
- The dwelling place of another
- With intent to a commit therein a
  - Felony or
  - Theft

Imagine that your client was arrested and charged with burglary after he crept into another person’s tent at an adventure camp outing and took the friend's camera. Your client wanted to delete embarrassing photographs from the camera and prevent the other person from taking more photographs. You are researching whether your client's conduct meets the elements of the burglary statute.

The case chart reflects each element at issue in your client's case and allows you to see how prior cases have addressed those elements.

This chart has several important components.

1. Citations

The burglary chart in Example 5-A provides citations for each legal authority that will be analyzed. The citation information includes the court that decided the case and the
year in which the case was decided, allowing you to assess the weight of the authority.

2. **The parties**

Next, the chart in Example 5-A lists the parties in the case and, importantly, their relationship to each other. Whenever possible, in addition to identifying a party as the plaintiff or defendant, you should also identify their "player" status- that is, identify the role the person played in the underlying factual events. In a criminal case, you could identify the perpetrator as “defendant” since he is the one accused, as the chart in Example 5-A did. In a civil case, however, identifying the parties only as "plaintiff" or "defendant" can be too vague. Instead, identify the person by the role that person plays. For instance, in a premises liability case, you might identify the parties as landlord" and "tenant;' and in an employment discrimination case, you might identify the parties as "employer" and "employee."

3. **Legal arguments**

The remaining columns are devoted to the various elements or factors that are relevant to the applicable governing rule. These columns will help you identify the factual similarities and differences that led to the varying results in the cases, which in turn will help you make an informed prediction as to how the governing rule will apply to your client's fact pattern.

Understand, though, that this chart examines several elements. When you outline your written analysis, you will write about one element at a time.

4. **Comparison to client's case**

Finally, many legal writers will include a column for the facts in their client’s case. In that column, you can note how your client's facts are like or unlike the precedential case. Considering the similarities and differences between your client's case and the precedential case(s) when you are thinking about a case can be a great time saver when you begin outlining and writing.

B. **Chart Individual Elements or Factors**

A second way to chart cases is to examine one legal point at a time, whether an element or factor. Chart 5-B shows how you might construct this second kind of chart.
Imagine that your clients, the Neros, have for over twenty years believed that a piece of land belonged to them. As a result, during all of that time, they gardened and maintained it. They have recently learned that they never had legal title to it. You are researching whether they can gain title to it through a claim for adverse possession. To win, the Neros will need to establish all five elements in the common law claim for adverse possession.

*Chart 5-B* shows how you might organize the authorities relevant to the first element, "actual possession." Because a claim for adverse possession must address five elements, the actual possession chart would be first of five charts you would create.

**1. Citation**

Like the burglary chart in *Example 5-A*, the actual possession chart identifies the citation for each authority.

**2. Rules**

Next, the actual possession chart in *Example 5-B* provides a column for rules relevant to the element. Typically, a court will describe the rules it used to reach a determination about each element or factor, and those rules are listed in the second column.

You can review the column to determine whether courts are explaining rules relevant to an element or factor in a consistent way. Thanks to stare decisis, courts generally explain the law in a consistent way, as they do in the actual possession chart in Example 5-B.
### Chart 1: Burglary

<table>
<thead>
<tr>
<th>CASE NAME</th>
<th>FACTS</th>
<th>KNOWINGLY</th>
<th>ENTERS WITHOUT AUTHORITY</th>
<th>DWELLING</th>
<th>INTENT</th>
<th>HOLDING</th>
<th>LIKE OR UNLIKE OUR CASE</th>
</tr>
</thead>
<tbody>
<tr>
<td><em>State v. Smith,</em> 201 N.E.2d 673 (Ohio Ct. App. 1973).</td>
<td>Two unarmed teenagers entered the home of one of their friends.</td>
<td>Yes. Knew it was dwelling of another; they knew it was the friend's house.</td>
<td>No authority to enter.</td>
<td>Yes, &quot;a dwelling of another:&quot; Residential home was family's permanent home.</td>
<td>No. Intent to commit crime therein not established. Boys were trying to play practical joke by putting friend's prize pet boa in his book bag.</td>
<td>No burglary Intent element not met. Although other elements were met, boys did not enter tent with intent to commit a felony or theft.</td>
<td>Dwelling was a tent. Client knew it was tent of another. Client wanted to take camera to delete photographs and prevent friend from taking additional photos.</td>
</tr>
<tr>
<td>----------------------</td>
<td>----------------------------------------------------------------------</td>
<td>---------------------------------------------------------------------------</td>
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<td>--------------------------------------------------------------------------</td>
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<td>----------------------------------------------</td>
<td>---------------------------------------------</td>
</tr>
<tr>
<td><em>State v. Jones,</em> 518 N.E.2d 333 (Ohio 1985).</td>
<td>Armed men entered vacation home of their acquaintances.</td>
<td>Yes. Knew it was dwelling of another: they knew home belonged to acquaintances and they often stayed there for long periods of time.</td>
<td>No authority to enter.</td>
<td>No authority to enter. Although they often stayed there, on this occasion acquaintances had not given permission.</td>
<td>Yes, &quot;a dwelling of another: Vacation home. Although couple not staying there at time of alleged crime, they often stayed there for as long as three months at a time. Home was fully furnished.</td>
<td>Yes. Intent to commit a crime therein. Intruder was armed; evidence showed he had staked out the house to determine specific items to take.</td>
<td>Burglary. Even though victims were not currently in vacation home, D knew the victims frequented the home, often for long periods of time, and D planned to take valuables.</td>
</tr>
<tr>
<td><em>State v. Green,</em> 988 N.E.2d 901 (Ohio Ct. App. 2000).</td>
<td>Unarmed man entered home; did not know whose home it was.</td>
<td>No. Did not know if it was dwelling of another: he thought home was abandoned (no one appeared to have lived there for 8 months).</td>
<td>No authority to enter.</td>
<td>Yes, &quot;a dwelling of another: Residential dwelling but unoccupied for 8 months.</td>
<td>No intent to commit a crime therein. Man not armed. Just wanted a place to sleep for the night. Thought items that he took had been abandoned.</td>
<td>No burglary. Even though another person owned the home, no one had lived there in 8 months, and D thought it was abandoned. D also wanted to sleep, not commit theft or felony.</td>
<td>Green case is least like client's case. Green def. thought house was abandoned, so no burglary. Here, accused knew that someone was staying in tent and wanted to take item from him.</td>
</tr>
</tbody>
</table>
Sometimes, however, differences exist. Charting allows you to see and reconcile those differences before you begin writing.

3. Facts

This column will allow you to identify the facts in prior cases that were relevant to each element. Although at the outset of its decision a court explains the entire story of the case, when the court analyzes an individual element or factor it draws on only those facts. This column allows you to see the particular facts that caused a court to reach its conclusion about an element.

By reviewing this column, you can determine whether any commonalities exist in the facts that will lead a court to reach a conclusion about a given element of factor.

4. Holding

The holding column allows you to see the holding the court reached after it considered the rules and facts.

Although both the burglary and actual possession charts in Examples 5-A and 5-B have columns labeled "holding," the columns describe different kinds of holdings. In the burglary chart, Example 5-A, the "holding" is a court's holding regarding the entire legal question of burglary. By contrast, the holding in the actual possession chart, Example 5-B is the court's holding with respect to a single element.

5. Reasoning

The final column in the actual possession chart, Example 5-B, describes any additional reasoning a court provided to explain how it moved from the specific facts in a case to its holding about the element. When this column is complete, you can review it for any commonalities or differences that exist in the courts' reasoning.

6. Comparison to client's case

Although not shown in Example 5-B, you can add a final column that would list the facts from your client's case relevant to each element or factor. Doing so will allow you to see relevant similarities or differences between your client's case and the prior case described in that row.
**Example 5-B • Chart 2: Actual possession (one element in an adverse possession claim)**

<table>
<thead>
<tr>
<th>Case name</th>
<th>RULES about Actual Possession</th>
<th>FACTS about Actual Possession</th>
<th>Court's HOLDING about Actual Possession</th>
<th>Additional REASONING about Actual Possession</th>
</tr>
</thead>
<tbody>
<tr>
<td><em>Davis v. Parke</em>, 898 P.2d 804 (Or. Ct. App. 1995).*</td>
<td>Requires &quot;occupation or use of the land that would be made by an owner of the same type of land, taking into account the uses for which the land is suitable.&quot; p. 805.</td>
<td>Claimants bought cattle and turned it loose on the property. Fence was in some disrepair, but plaintiff had repaired it. Fence intended to keep cattle on disputed property. pp. 805-06. Claimants grazed cattle on their actual property and the disputed property. p. 806.</td>
<td>Yes. Actual Possession because plaintiffs maintained the fence pp.806-07</td>
<td>Claimants &quot;used the disputed property the same way they used their adjoining land.&quot; p. 806. Claimants &quot;maintained a fence to keep cattle in, although they were not always successful in keeping their cattle inside it.&quot; p. 806.</td>
</tr>
<tr>
<td><em>Hoffman v. Freeman</em>, 994 P.2d 106 (Or. Ct. 1999).*</td>
<td>Claimant must establish &quot;a use of the land that would be made by an owner of the same type of land, taking into account the uses for which the land is suited.&quot; p. 110.</td>
<td>Claimants used disputed property for occasional grazing of cattle. Testimony at trial was &quot;undisputed&quot; that land unsuitable for most other uses. pp. 110-11.</td>
<td>Yes. Actual Possession because cattle occasionally grazed on land. pp. 110-11</td>
<td>Occasional pasturing or grazing of livestock may be sufficient to prove actual use. p. 110. The lot in dispute was unsuitable for other purposes and grazing is one use an owner would make of the land. pp. 110-111.</td>
</tr>
<tr>
<td><em>Zambrotto v. Superior</em>, 4 P.3d 62 (Or. Ct. App. 2000).*</td>
<td>Requires &quot;use of the land that would be made by an owner of the same type of land, taking into account the uses for which the land is suited.&quot; p. 65. &quot;The requirement of 'actual' use is a qualitative one, determined by reference to the type of use that would be made by an owner.&quot; P.65.</td>
<td>Property was rural, mostly forested. Claimants used land to hike and hunt for rattlesnakes. Repaired fence that ran along southern boundary. p. 65.</td>
<td>Yes. Actual Possession. &quot;Given the nature of the land, we conclude that hiking, rattlesnake hunting, and the like, constitute actual use:&quot; p. 65.</td>
<td>&quot;[T]here is evidence of actual use, not much use, to be sure, but actual use nonetheless.&quot; p. 65.</td>
</tr>
</tbody>
</table>
Attorneys choose different ways to organize information as they research and prepare to write. You should try different organizational methods to find the one that works well for you. The goal, however, remains the same: to see the themes in the law element by element or factor by factor. By seeing these themes and understanding how the cases fit together at this stage of the writing process, you will more accurately predict how those cases will affect your issue, more easily select the best cases to use in your memo, and get through your writing project more efficiently.

II. Outlining

After charting, you are ready to outline. Outlining is an important step because it requires you to evaluate your discussion of your client's legal question before you begin writing. Most experienced legal writers cannot draft a logical or effective argument without first developing a clear outline of the issues and the authorities they need to address.

A. Why Outline?

Outlining has a different purpose than charting. Charting allows you to see the legal authorities that are possibly relevant to each part of your discussion. By contrast, an outline does not include all the possibly relevant legal authorities. Rather, it includes the legal authorities that seem relevant to reaching conclusions in your client's case at this point in your thinking. When outlining you will organize those authorities around different points of law and consider how those authorities will apply to the facts in your client's case. This process allows you to consider the depth of discussion necessary for each point of law. It also allows you to think through the development of the answer to your client's legal question.

If you have never used an outline before, consider using one now to think through your legal discussion and to guide you as you write. Remember that legal writing is likely
a different kind of writing than you have done before. Legal writing is structured writing. An outline can help you develop the structured writing that other attorneys will expect to see in your work product.

Finally, if you think that skipping outlining will save you time, remember that if you have not thought about an effective organization and the specific legal authorities you will use before you begin drafting, you will still have to do so as you write. Delaying your thinking may mean that you waste time laboring over specific language that you ultimately do not need.

**B. How to Outline**

An outline should be a flexible tool. You should not feel constrained to use the traditional Roman numeral outline, shown in Example 5-C. No one but you will ever see or use the outlines you create. With each memo you write, you are free to develop the kind of outline that best helps you analyze the legal issue.

**Example 5-C • A traditional outline that uses Roman numerals**

I. The Neros can establish adverse possession.
   A. The Neros can establish "actual possession" because they used the land as an owner would.
   B. The Neros can show they possessed the land "openly and notoriously" because the owner had constructive, if not actual, notice.
      1. The true owner did not have actual notice of the claim because she lived in Wisconsin.
      2. The true owner did have constructive notice of the claim sufficient to satisfy the "open and notorious" element.

II. [Next issue being litigated]

Although outlines come in different forms, effective outlines share some basic properties. To create an effective outline, organize it around points of law, such as elements or factors, not individual authorities. Then for each element or factor in the governing rule, sketch the law that will be relevant to your client's case. Finally, sketch the
facts from your client's case that would be relevant to determining whether that condition exists in your client's case. This explanation of the law and the relevant facts from your client's case will form the basis of a single legal argument.

The adverse possession outline in Example 5-D and the burglary outline in Example 5-E show two effective outlines, formatted in different ways but with the same properties. The adverse possession outline in Example 5-D is not overly detailed but gives a clear picture of how the writer plans to develop the discussion. Such an outline format would probably work well for people who are linear thinkers.

Example 5-D • Adverse possession outline

Introduction

• Nero's will prove AP.
• Background
  o Governing rule – actual, open, and notorious, exclusive, hostile, continuous, for 10 years
  o Statute not applicable.
    • Statute: applies only to claims that vest and are filed after 1/1/90
    • Nero’s claim vested before 1/1/90

1. Actual Possession

• Law
  o Use land as an owner would. Zambrotto at 65.
    • Fence & plant vegetation. Slak at 518-19.
    • Same as adjoining land. Davis at 806.
    • Hunting and rattlesnakes. Davis at 806-07.

• Nero’s case
  o Can show actual possession

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2 These guidelines assume that your client's legal question raises only one legal claim, such as a claim to take title to land through adverse possession. As you gain experience, clients’ questions may raise multiple claims (such as trespass and unjust enrichment), which your outline would also reflect.
Like Slak: Claimant in Slak built fence and planted. Nero built fence, planted garden, orchard.

Like Davis: Used adjoining land in same way: both contained garden and orchard.

2. Open and Notorious

- Owners must have actual or constructive notice. Slak at 518-19.
  - Element splits into two parts.

- Actual Notice
  - Law
    - Only when owner actually knows about claim. Slak at 519.
  - Nero's case
    - Nero can't claim actual notice. Cramer did not actually know about the claim. Lived in Wisconsin.

- Constructive Notice
  - Law
  - Nero's case
  - Opposing Argument

3. Exclusive

- Law
- Nero's case

For people who are more visual thinkers, other formats might be more helpful. One such format is a "whirlybird." In a whirlybird, various discussions are represented as spokes coming out of a wheel. The example shows the burglary question (from Example 5-A) outlined in the whirlybird style.
If the whirlybird seems too odd, try a flow chart or a graphic of connecting bubbles. The point is, no matter how "odd" your visual representation might look to an outside observer, if it helps you organize your discussion logically and effectively, use it.

Once you start drafting, use your outline-in whatever form- to guide your writing. Typically, having spent the time to think through your organization and the relevant law and facts, the writing will proceed more smoothly.

If you are in the midst of drafting your discussion and you realize that your organizational plan is not working, stop writing. Sometimes we are unable to see the gaps in our own logic until we actually put our thoughts onto paper. When that happens, stop writing. Revise your organizational plan. Then, try again.

Do not skip outlining. Your organization will be clearer to the reader; you can more easily cull the information you don't need; and best of all, organizing before you write can help you write more efficiently.

III. Give Your Audience What It Needs

As you organize, remember what your audience needs. You will be writing for a particular reader who needs to make a legal decision based on the analysis you have done. Your audience needs to see a cogent, well-organized analysis that accurately predicts how the relevant law will apply to your client’s facts.

Your audience does not need to retrace the thought process you went through to get to the answer. Organizing the memo in the same way you came to understand the information may not yield a clear organization that the attorney relying on your work product can understand. Writing and getting thoughts down onto paper without charting and outlining can be a great way to overcome writer’s block or to help you understand
complex issue, but doing that should not be the final work product you provide to the attorney.

Your reader wants your argument ordered and developed around the legal points—the elements or factors—contained in the governing rule. Breaking down the governing rule into its elements or factors, charting cases to synthesize the law about each element or factor, and then outlining your argument according to those elements or factors will allow you to produce what your reader needs—a clear prediction of how the current law will apply to your client's facts. Remember, this process of finding and organizing your argument is really about good legal thinking. Without good legal thinking, your writing will not be clear.

After organizing the legal authorities, you are ready to write.

**Practice Points**

- Organizing your legal authorities while you research is a critical step to producing a cogent work product.

- Organize your ideas around the working parts of the governing rule, not around individual cases or a description of the evolution of the governing rule.

- Chart cases as you go through the research process. Charting can help you see the relationships among the various authorities you found while researching and the patterns emerging in past cases. Charting also helps you decide the best cases to select for your memo or see holes in your research.

- Always take time to outline before you write. Whether you use a traditional or non-traditional format, outlining will help you produce an analytically stronger memorandum in less time because it helps you see how the pieces of your legal puzzle will fit together.

- Give your audience what it needs. Attorneys want to see an argument arranged around the governing rule and its component parts; therefore, follow the structure the governing rule dictates. Do not simply memorialize the way you thought through the issues.
Relationship chart

Torts

Intentional Torts

Torts Against Persons
  - IIED
  - False Imprisonment

Torts Against Property
  - Trespass to Chattel
  - Trespass to Land

Negligence
  - NIED

Other
  - 1. Duty
  - 2. Breach
  - 3. Causation
  - 4. Damages

Assault

Battery

Conversion
Developing a timeline

- Contract is signed, 1965
- Project begins, May 1966
- Complaint filed, December 1966
- Motion for SJ granted, June 1967
- Appeal granted, August 1967
- Party attempts to cancel, April 1966
- Demand for initial payment, June 1966
- Motion for SJ March 1967
- Appeal timely filed, June 1967
Simple Outline: Torts

Develop or create a mnemonic (an acronym, rhyme, or other easy to remember clue).

When it comes to Torts, there are two basic categories: intentional and negligent acts.

The intentional torts can be recalled using a simple mnemonic: ABC FITT.

A- Assault  
B- Battery  
C- Conversion  
F- False imprisonment  
I- Intentional infliction of emotional distress  
T- Trespass to chattels  
T- Trespass to land

The intentional torts fall into one of two major divisions: persons or property.

Persons
a. Assault  
b. Battery  
c. False imprisonment  
d. Intentional infliction of emotional distress

Property
a. Conversion  
b. Trespass to chattels  
c. Trespass to land

Once the intentional torts are identified, all that is left are negligent acts in which you must prove four things:

1. Duty existed  
2. Duty was breached  
3. Causation  
4. Damages
ATTRACTION NUISANCE DOCTRINE EXCEPTION TO THE GENERAL RULE
Case name references are to cases listed in Chapter 3, Legal Writing and Analysis by Linda Edwards.

GENERAL RULE: Landowners owe no duty to trespassers except to not willfully injure.


liability attaches.

- landowner knows or should know Newcomb v. Roberts
- child cannot ascertain danger Newcomb v. Roberts
- youth
- artificial condition Bell v. Gracklin Newcomb v. Roberts
- fails to take action to protect McDaniel v. Lanier

actual and compelling Andersonville v. Goodden

Overridden by Newcomb v. Roberts