WHAT LAWYERS DO

• Hear client stories
• View through prism of law
• Give Advice
  – What legal consequences
  – How decision-makers (judge) likely to respond
THE PINBALL THEORY OF EXAM-TAKING
IRAC

- ISSUE
- RULE
- ANALYSIS
- CONCLUSION
MATCHING

COW       NEIGH

HORSE     OINK

PIG       MOO
MATCHING

COW

NEIGH

HORSE

OINK

PIG

MOO
ISSUE SPOTTING

FACTS
IN
FACT PATTERN

YOUR
OUTLINE
COMMON MISTAKES

• FACT → LAW
• LAW ESSAY
• MISSING ISSUES
• NOT ARGUING BOTH SIDES
• NOT FORKING
• SHOT GUNNING
OUTLINING
Basic Outlining Tips

1. Give thought to outline structure before you start.

2. Start early and be ready to start over.

3. Outlining is a learning process not a race.

4. You are making a “cheat-sheet” not a horn book.

5. Flip cases and principle.

6. Think about: (a) Basic principles (b) Conditions and limits (c) Examples (d) Policy

7. Multiple Passes and Attack Outlines
Outline Example

I. **Right to Jury Trial By Peers:** [6th Amendment]

*Principle:* Δ has right to impartial jury trial by peers.

*Peers:* Venire of prospective jurors must reflect fair cross section of community. [Taylor]

*Race:* Cannot be used to exclude juror based on race. [Batson v. Kentucky]

*States:* Right to jury applies to states. [Duncan v. Louisiana] [14th Amend.]

*Size:* Size of jury (12) and unanimous decision are not constitutional requirements.

*Petty:* Petty offenses (less than 6 month) do not require right to jury. [Baldwin v. NY]

*Actual Jury:* Actual jury need not reflect fair cross section.

**Advantages of Right to Jury:**
1. Ensure impartiality and prevent government oppression.
2. Individualized Justice: juries use common sense, make allowances for individual circumstances, and allow use to be governed by spirit not letter of law.
3. Public Value: important civic experience, community participation, education.
4. Gives sense of individual fairness to convicted Δ.

**Problems with Right to Jury:**
1. High Cost: expensive for gov., takes lots of time from judge and jury members.
2. Bad Decision: no special training; no way to police ignorance, bias, discrimination.

(1) Where is the power to take this action granted in the Constitution?
   - Implied power: “necessary and proper”
   - Commerce Clause:
     • Use of Channels: highways, rivers, etc.
     • Instrumentalities in i/s commerce: things/people that move in i/s commerce
     • Activities that have a substantial relation to i/s commerce:
       - Must be economic activity (Lopez, Morrison), OR
       - Part of a broad regulatory scheme (Wickard, Raich)
   - Taxing and Spending: 4 conditions (South Dakota v. Dole)
     • In pursuit of general welfare
     • Conditions on federal grants are unambiguous
     • Money being withheld is reasonably related to the conditions
     • No other Constitutional bars
   - 14th Amendment, Section 5: Congress shall have the power to enforce...
     • Congress can remedy or prevent 14th Amendment violations
     • BUT: means must be “congruent and proportional” to goal (Boerne)
       - It is NEVER c&p to have remedies ag private actors (Morrison)
       - Also: not c&p to give heightened protection (statutorily) to a non-suspect class

(2) Does this action violate a prohibition?
   - 10th Amendment:
     • “Traditionally local areas” (Kennedy: Lopez; Rehnquist: Lopez/Morrison)
     • No commandeering of state legs (New York v. U.S.) or agencies (Printz)
   - 11th Amendment: Citizen cannot sue his own state (or any state) in any court
   - Individual Rights:
     • 5th Amendment (SDP and EPC through reverse incorporation) (see separate EPC and SDP sections)
     • Bill of Rights
In Personam Jurisdiction:

(1) Does that territory where the forum is located have a long-arm statute?
   • If YES, proceed to (2)
   • If NO, STOP: there is no jurisdiction.

(2) In-state service (if d wasn’t brought there against his/her will).
   • If YES, STOP: there is jurisdiction.
     (If d brought against his/her will: ans unclear. Scalia’s view: yes juris; Brennan’s view: no unless there are min contacts/fairness).
   • If NO, proceed to (3).

(3) Minimum Contacts/Purposeful Availment test.
   • If YES, proceed to (4).
   • If NO, STOP: there is no jurisdiction.

(4) Fundamental Fairness: Balancing test: (1) interest of P in proceeding; (2) burden on the defendant in having to defend in the forum; (3) interest of the forum state in the subject matter of the lawsuit; (4) overall interest in efficient res of the dispute in the chosen forum; (5) interests of other forums.
   • If it doesn’t violate fundamental fairness: there is jurisdiction.
   • If, on balance, it does violate fundamental fairness: no jurisdiction.

Key Cases:

• Pennoyer v. Neff: personal service, domiciliary, or consent
• Hess v. Pawloski: implied consent, driving in MA
• International Shoe v. Washington: minimum contacts
• Worldwide Volkswagen v. Woodsen: purposeful availment
• McGee v. International Life: one insurance policy = minimum contacts
• Gray v. American Radiator: stream of commerce
• Burger King v. Rudzewicz: purposeful availment
• Hanson v. Denckla: Woman moves to FL; no minimum contacts
• Asahi Metal Industry v. Superior Court: even if minimum contacts, must be fair
• Helicopteros Nacionales de Colombia: no general jurisdiction
• Harris v. Balk: contingent debt
• Rush v. Savchuk: can’t attach insurance policy to get quasi-in-rem jurisdiction
• Shaffer v. Heitner: no more quasi-in-rem jurisdiction: need minimum contacts
• Burnham v. Superior Court: physical presence is enough for jurisdiction
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<tr>
<th>Causes of Action:</th>
<th>Defenses:</th>
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<td><strong>Battery</strong></td>
<td>· Consent: Boxer cases: <em>Hudson v. Craft</em>, <em>Hart</em></td>
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<td>· <em>Mohr v. Williams</em> (operates on left ear, not right ear)</td>
<td>· Force to Protect Property: proportional rule: <em>Bird v. Holbrook</em>, <em>Katko v. Briney</em></td>
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<td><strong>Intentional Infliction of Emotional Distress</strong>: <em>Wilkinson v. Downton</em>, <em>Bouillon v. Laclede Gaslight Co.</em>, <em>State Rubbish Assn v. Siliznoff</em></td>
<td>· Must be Actual Contact: <em>Leichtman</em>: smoking in someone’s face = contact</td>
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<td>· Probable Cause: <em>Coblyn v. Kennedy’s, Inc.</em> (ascot, no probable cause)</td>
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<td>· Not extreme, outrageous (people need to toughen up)</td>
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<td>· Racial insults/sexual harassment: <em>Patterson v. McLean Credit Union</em> (race)</td>
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Attack Outline Example – Criminal Procedure – Executing the Warrant

Was the warrant executed reasonably?
  Severity of crime
  Danger to community
  Availability of other evidence

Invasive Medical Procedures: Winston v. Lee

Is the Warrant Stale?

Knock-and-Announce Requirement:
  Required but not constitutionally mandated: Wilson v. Arkansas
  NO type of case exceptions to K&A: Richards v. Wisconsin
  No-knock and destruction of evidence (OK if reasonable): US v. Ramirez
  Exigency after knocking: US v. Banks
  NO Exclusion for violation of K&A: Hudson v. Michigan


Scope of the Search

Presence of the Occupant NOT Required

Unnecessarily Intrusive Searches (e.g. time, media ride-along)

Seizure of Occupants OK while Executing the Search Warrant: Michigan v. Summers
  Detention of non-residents on the premises OK: US v. Fountain (2d Cir.)
  Use of reasonable force to detain OK: Muehler v. Mena
  Questioning during detention OK: Muehler v. Mena
  Mistaken Detention OK: LA County v. Rettele

Destruction of Property OK if reasonable.

Enlisting Private Citizens to Help Search OK.

Magistrate must be Neutral and Detached.