The Legal Essay Writing Workshop
Introduction to law school

Welcome to legal writing. We will be learning how to improve your analytical skills and a new way of writing in an analytical manner. How does a student do well in law school?

The Only Way To Succeed In Law School And On The Baby Bar Exam Is To Work With Practice Examinations

Most law students make the mistake of believing if they know the law then they will do well on their examinations. While some students recognize the need to practice exams, most feel they still need to learn and memorize all their black letter law first before starting to work with practice examinations. This is a mistake. Although memorizing law and reading outlines is informative, it does not prepare students to write essay examination answers. Once you learn a few concepts you need to start issue spotting and writing practice exams.

All Law school professors and Baby Bar exam readers assume the student knows the black letter law. The student who recognizes the tested issues by applying the law to the exam, writing an organized and responsive answer with strong analysis and finishing the exam within the allotted time is going to pass. And only that student!

Once you have reviewed a major subject area, you should begin to issue spot and write several examinations on that subject. Example:

If you just learned about an offer, acceptance and consideration in your contracts class you are ready to write. Although there are many more concepts to learn, by practicing you will reinforce what you have learned and see how the issue/issues arises on an essay examination. When the next major area of the subject is learned, again do more issue spotting and writing several examinations with the previous and new concepts learned. You must continue this process until all major areas of the subject have been studied and mastered. This will enable you to learn the law through application, while giving the student confidence, as he will be developing approaches on how to write on issues that he will be tested on.

The Fear of Not Knowing Enough Law Prevents Students From Taking Practice Examinations

Practice examinations enable you to start applying the legal theories that you have been studying. The fear of not knowing enough law should not prevent you from taking practice examinations.

Working with practice exams will expose you to the black letter law and will allow you to learn how the issues are tested on an essay examination.
If an issue is missed in a practice examination, you can review the facts of the question, review the model answer and determine why the issue was missed. Chances are if you miss an issue in practice and understand why it was missed, you will not miss that issue on your final or Baby Bar examination.

A student’s fear is realized when they take an examination and do poorly because they miss issues. Although some issues may have been raised, if the student does not identify all key issues, they receive a poor score. The grader does not reward the student for what issues were identified but rather penalizes the student for those issues that were not identified. The earlier this examination process is understood, the more efficient a student will become from working with practice exams.

A better use of a student’s time is to obtain a handle on the law and then start applying it to as many practice examinations as soon as possible. Practice examinations can be found on Taft’s website and are available from the state bar, or in bookstores. The best way to prepare for essay examinations is to *practice, practice and practice* with as many actual essay examinations as possible.

The benefits of practicing essay examinations are numerous. You will become a better issue spotter which will always earn a higher grade. Becoming familiar with many fact patterns allows you to see how certain issues are tested. Eventually you will gain confidence as this process becomes routine.

The key to good issue spotting is to practice with as many essay questions as possible and understand how issues are tested. The more practice you have in writing essay examinations the better understanding of the issues and how those issues arise based on certain key facts. The act of practicing and writing essay examinations is the only way to be successful on examinations.

The lectures you will be reviewing will cover many concepts from how to write an essay, to how to brief a case, how to write a memorandum and more.

The first concept that will be covered and most important is to learn how to take a law school essay examination.

In this video session you will learn how to take an essay examination: How to take a legal essay examination in a nutshell. There are 5 basic steps on how to take an essay examination.

**Overview on how to take an essay question:**

**5 steps on how to take an essay examination**

1. **Reading and understand the call of the question:**
*You will need to learn how to read the call of the question in an essay examination.

**How to read the call of the question in an essay examination**
The call of the question is generally located either in the last paragraph of the essay or in a numbered format at the end of the essay. The call of the question can help you determine what issue/issues or subject matter is being tested.

The first step in an essay examination is to read the call of the question. The call will dictate the direction you need to take in order to answer the question. It is important to understand the call of the question because if you do not answer the call you will not do well on the examination. If the call of the question is not understood, the call must be read and reread. If the call of the question is still not understood, the student should proceed to read the facts of the examination and then revisit the call.

Students who do not follow the call of the question in the examination will not do well on their exams. Most students do not know how to break down the call of the question or even understand what is being asked.

*You will need to identifying the type of call that is in the question.

**Identifying the call of the question**
Once the call of the question is read, there needs to be a determination as to whether the call is a general call or a specific call. This is a very important step that we will cover. A general call in a nut shell is a call that does not give you the issues. You will need to read the essay and based on the facts determine the issues. However, a specific call will give you the issues. Although the specific call does give you the issue, most students do not do well with this type of call. A specific call gives you the issue and or issues, which makes the analysis of that issue critical.

2. Timing of the exam:
*You will need to learn how to manage your time while answering the essay question.

Time must be allocated for preparing an outline of the spotted issues and supporting facts from the essay exam while reserving time for writing the examination answer.

3. How to read the essay question:
* Reading the essay sentence by sentence versus paragraph by paragraph.

Read the examination fact pattern once for content before beginning your issue spotting process. This will allow you to get an understanding of the facts and enable you to think about the facts in the examination. Once you have read the facts, re-read the facts again.
However, this time you are breaking apart the facts sentence by sentence and marking up the fact pattern.

The facts will dictate what is at issue. Students must be able to comprehend the facts and understand their meaning. The facts are what raise the issues and without facts there are no issues. If there are facts that raise an issue but based on those same set of facts the issue fails, the issue still needs to be discussed with supportive legal analysis as to why the issue has no merit.

Once you have marked up the fact pattern, set up an IRAC outline that can be followed when writing your answer. Carry over the noted issues written on the question onto your outline and support all elements of the issues with facts in the examination.

**In order to take an essay question you need to learn how to read an essay examination by breaking apart the facts**

The facts will determine the issues. Look to the facts and see how they relate to issues you have been learning. The facts need to relate to the elements of your rule of law. If the facts raise an issue of battery, you need to see how all of the elements of battery are supported based on the facts. Battery is the intentional harmful or offensive touching of another. If this issue is seen in the facts you need to pull out the facts that show the intent, and then facts that support the harmful or offensive touching and finally facts to support of another. In other words each element of your theory of battery will be discussed. You will have facts that will support or negate each element of the battery issue. Scrutinize the facts. Although most facts have legal significance, if you remove a fact, how does it change your analysis? If it changes things, then you know it's an important fact.

4. **How to properly outline the essay question:**

*How to set up your outline in the IRAC format.*

**Issue-** The Issue should be placed in a headnote or statement format.

**Rule-** State the applicable rule based on the issue raised by the facts.

**Analysis –** Apply the elements of the rule of law to the facts. Make sure that you break apart your rule and show how each element of the rule is supported by the facts.

**Conclusion-** State a conclusion tying in the points you have made during your analysis.

5. **How to write an essay answer in the IRAC format**

How to write your answer:
*Understanding the facts that raise the issue/issues.*

Without the facts there is no issue. You need to see a relationship between the facts and the rule of law.

*Presenting your written exam answer in an IRAC format.*

The IRAC method allows you to first state the issue in either a head note or an issue statement. Then define the rule of law for that particular issue that is being discussed. Next, you can apply the facts to each element of the issue for solid analysis. Finally, the overall conclusion can be stated.

Keep your sentences short. Use straightforward and active words. When writing your answer assume you are writing to a reader that is not familiar with the examination or the subject.

These are 5 basic steps on how to take an essay examination. Let’s look at each step and break it down in further detail for a complete understanding of what is required in order to write a successful essay examination in law school.

**The first step in learning how to take an essay examination is to understand the call of the question.**

**How to take an essay question:**

1. **Reading The Call Of The Question**

   The call of the question is located generally in either the last paragraph of the essay questions, or indicated by a number laying out the call of the question.

   The first step in doing well on an essay examination is to read the call of the question first. The call will dictate the direction you need to take in order to answer the question. It is important to understand the call of the question because it may help you determine what subject matter is being tested. In law school, a student is usually tested in one subject while a baby bar candidate could be tested in several subjects on one exam.

   If the call of the question is not understood, the call must be read and reread. If it is still not understood, the student should proceed to read the facts of the examination and then revisit the call.

   Once the call of the question is read, there needs to be a determination as to whether the call is a general call or a specific call. This is a very important step. The type of call will clue you in to
where the point allocation is and direct you how to spend your time in setting up and writing the exam answer.

If there is a general call, the point value is on issue spotting and your analysis of the issues. An example of a general call is as follows:

**On what theory or theories might Judge Bright recover damages from Lee and what defenses may reasonably be raised? Discuss.**

From this call one cannot determine what issues are being tested. Therefore, students have to review the facts in order to recognize the tested issues. However, the call does tell you something. What?

If there is a specific call, the point value given is not for issue spotting but awarded for the depth of your analysis and for identifying what elements of the issue are being tested. An example of a specific call is as follows:

**Lee's statements about Judge Bright were defamatory; that, in any event, both Lee's statements and Reporter's publication of the statements were privileged; and that, as a matter of law, Judge Bright did not suffer any damage? Discuss.**

From this call, it is easy to identify the tested issues from the call of the question. A specific call will usually narrow down the issues that are being tested. Therefore, no point value will be given for identifying the above issues of defamation, privileges and damages. The point value will be awarded for the analysis of defamation, privileges and damages and for identifying what elements of defamation, privileges and damages have been put at issue.

Therefore, the call of the question is very important. Students who do not follow the call of the question in the examination will not do well on their exams. The reason students do not do well on their exams is they either do not answer the question being asked or they answer the question in an order different than what was being asked.

Most students do not know how to break down the call of the question or even understand what is being asked. By working with practice exams, a student can develop this necessary skill.

**Writing Down Your Issue Spotting Checklists**

After reading the call of the question, the next step in the approach is to identify the subject(s) being tested and write down your pre-developed issue spotting checklist(s) on the scratch paper for easy reference. Although most law school examinations test only one subject at a time, Baby Bar examinations may test more than one subject on an exam. Thus, Baby Bar candidates may have to write down more than one checklist.
Once you have read and issue spotted the exam, run the examination facts through the issue spotting checklist and possibly identify yet another issue or two that may not have been seen in the fact pattern. Since good issue spotting is essential, checklist development is a must.

With all the black letter law knowledge required for law school, students must develop individual subject matter checklists for each subject.

By reviewing each syllabus, casebook table of contents and/or commercial outline table of contents, students can prepare their own issue spotting checklists which should be comprised of all the required major subject headings for that particular area of law, i.e., Torts, Contracts, Criminal Law, etc.

An example of the Issue Spotting Checklist:

**Torts Checklist**

1. Intentional
2. Negligence
3. Strict Liability
4. Vicarious Liability
5. Product liability
6. Nuisance
7. Defamation
8. Invasion of Privacy
9. Business Torts
10. Improper Litigation Torts
11. Misrepresentation

In applying the issue spotting checklist(s) you must first completely issue spot the examination and develop your own IRAC outline. Then, run the examination facts through your issue spotting checklist(s).

Ask yourself the following questions when working with your Torts Issue Spotting Checklist. Could there be any Intentional Torts, could there be any Negligence issues, could there be any Negligent Infliction of Emotional Distress here, and so forth. This process will help you identify issues that were initially missed during the issue spotting phase of taking an examination under the pressures of the examination.

You must practice writing your checklists over and over until they become rote. In time you will be able to develop a predetermined form of shorthand when writing out each checklist in order to conserve time. You could write down “I” on the scratch paper and instinctively know that the “I” stands for Intentional Torts and Defenses.
Additionally, students are also required to learn and create inner checklists (see exhibit A) that support each major subject heading of the subject in order to identify the inner issues. An example of an Inner Issue Spotting Checklist for Intentional Torts is as follows:

**Intentional Torts**
- Assault
- Battery
- False imprisonment
- Trespass to chattels
- Trespass to land
- Conversion
- Intentional infliction of emotional distress

The inner issue spotting checklist not only will help you to see more issues on your examination, it may also serve to act as an approach on how to write that particular issue. So, when you think of Intentional Torts, you will have memorized all the inner issues that arise under the Intentional Tort heading as well as the Defenses. Mnemonics can be a big help!

**2. The Importance Of Timing:**

The next step after identifying the call of the question and the subject(s) being tested is to properly manage your time while answering the question.

In a one hour examination, time has to be divided into two areas. Time must be allocated to preparing an outline that must contain the spotted issues and supporting facts while reserving time for writing or lap topping the examination answer.

In determining the time split, students must read the call of the question of the examination and make an educated guess as to what type of question is being tested. And, of course, there are two types of questions, a “thinkum” question and a “racehorse” question.

The first type of question, similar to the specific call, is known as a thinkum question. With a thinkum question, the issues are few and not always easily identifiable for everyone to see. Point value is awarded to those who see the issue and write strong analysis using the facts from the examination.

Students must determine how to best analyze the issues with the facts. With this type of examination, twenty (20) to twenty five (25) minutes should be allotted for the outlining process and thirty five (35) to forty (40) minutes allowed for the writing of the exam answer. Contract questions often appear as thinkum questions.
The second type of question similar to the general call is known as a racehorse question. Issues are usually numerous and not easily identifiable from the call of the question. With so many testable issues, the required analysis is not expected to be lengthy and most points will be allocated for good issue spotting.

Because of the number of tested issues and to ensure students finish the question, fifteen (15) to twenty (20) minutes should be allotted for the outlining process and forty (40) to forty five (45) minutes allowed for the writing portion. Torts and Criminal Law questions often appear as racehorse questions.

Students should consistently monitor themselves to be sure they are staying within the allotted times as time does fly during examinations.

*How to manage your time while answering the essay question*

In order to learn how to manage your time you need to practice under exam conditions. Take an essay exam and sit down and practice a simulated final exam. Have a time piece next to you in order to watch your time. Allocate one hour and divide your time as we have discussed with your outlining and the writing of the exam.

3. Read The Examination Fact Pattern For Content Before Beginning The Issue Spotting Process

In order to take an essay question you need to learn how to read an essay examination by breaking apart the facts. Most students are under the misconception that you need to know all the law before you write a law school essay exam. Why do students not pass their midterm or final exams? Most students do not practice writing any exams before taking their final. The key to success in writing essay exams is mastering the fundamentals of essay writing. However, you first need to master how to read an essay exam.

Many students read an exam as if they were reading a newspaper article. In general how to read an essay examination is sentence by sentence. You need to read the exam and focus on the words that are being used. What are the words conveying and their meaning. By focusing on the language that is being conveyed this will help you see the issue/issues that are being raised and tested in the exam. Pay close attention to verbs, adjectives, adverbs, dates, commas, descriptive words and quotation marks. Break apart each sentence word by word and look for the key language in order to find the hidden issues. If students fail to understand the facts, they most likely will miss issues. That is why the issue spotting process during the outlining phase is the most important skill students should practice in order to do well in taking any essay examination.

Break apart the “and’s” and the “or’s” in the sentence and look to see if you can separate the sentence to find two or more issues that are being tested. Descriptive words generally create an issue, or a counter argument to an issue. Look at the punctuation and how it is being used. You
need to comprehend the exam and what the author (examiner) is trying to communicate to you by the use of the punctuation and grammar. When reading an essay exam you need to read the exam two or three times in order to understand the facts. You must have a complete understanding of what is happening in the fact pattern. The facts are what raise the issues. If you have a tendency to ignore facts or gloss over them you will miss issues. I would recommend that you read the essay fact pattern once for an over view. Then once you have an idea what is going on in the fact pattern, read the facts again issue spotting the essay. Remember you are looking at the facts in order to determine what issues are being raised. If you see an issue and it is not supported based on the facts, then there is no issue. If the facts raise an issue and only one element is supported based on the facts, most likely the issue is being tested. You would discuss the issue and show how only one element is supported by the facts and the remaining elements are not supported on the facts presented in the essay.

Once you have read the essay two or three times, run the facts through your checklist to make sure that you have not left out any issues. (a checklist is a list of issues related to the subject matter and will be discussed later in the series) When reading the essay exam some issues will pop out at you. Get the easy points with the obvious issues, but watch for those underlying, less obvious issues. These issues will score you the points needed to get your test score above the average.

In order to take an essay question you need to learn how to read an essay examination by breaking apart the facts.

The facts will determine the issues. Look to the facts and see how they relate to issues you have been learning. The facts need to relate to the elements of your rule of law. If the facts raise an issue of battery, you need to see how all of the elements of battery are supported based on the facts. Battery is the intentional harmful or offensive touching of another. If this issue is seen in the facts you need to pull out the facts that show the intent, and then facts that support the harmful or offensive touching and finally facts to support of another. In other words each element of your theory of battery will be discussed. You will have facts that will support or negate each element of the battery issue. Scrutinize the facts. Although most facts have legal significance, if you remove a fact, how does it change your analysis? If it changes things, then you know it's an important fact.

Creating Your Outline

Many people think as they write. However, in order to write a strong answer you will need to plan and outline your exam answer before you begin writing. If you do not learn how to properly outline an exam you will generally miss many issues that are being tested in the exam.

Once a student marks up the examination with issue spotted notations, those notations must then be carried over to scratch paper and written into an outline. In developing an outline, you must analyze each element of each rule and extract the supporting facts from the examination. This
process allows students to decipher whether or not the raised issue is correct based upon the facts from the examination. I will break down the outlining process in session 2.

In reducing the outline into a written answer, the IRAC method is the preferred method.

**Session #2 - How To Outline Your Examination Answer:**

**4. How to properly outline the essay question:**

We will be reviewing how to properly outline an essay question. The key to writing a well written essay is to outline and organize your thoughts. Outline the issues before you begin writing. You will be taught to set up your outline in an IRAC format. IRAC stands for Issue, Rule Analysis, and Conclusion.

**Issue-** The Issue should be placed in a headnote or statement format.

**Rule-** State the applicable rule based on the issue raised by the facts.

**Analysis –** Apply the elements of the rule of law to the facts. Make sure that you break apart your rule and show how each element of the rule is supported by the facts.

**Conclusion-** State a conclusion tying in the points you have made during your analysis.

You have learned about how to read the essay examination and marking up the fact pattern with issue spotted notations, but what do you do with your notations? You need to learn how to take your notations and create an outline that will allow you to lay out your issues and the facts that support those issues. The IRAC method is the preferred method. The IRAC method allows you to first state the issue in either a headnote or an issue statement. Then define the rule of law for that particular issue that is being discussed. Next, you can apply the facts to each element of the issue for solid analysis. Finally, the overall conclusion can be stated.

Set up your outline paper vertically into four columns. The IRAC method should be used for organization purposes. IRAC stands for Issue, Rule, Analysis and Conclusion. Following the IRAC method, the first column should be marked “I” for issue. The second column should be marked “R” for rule. The third column should be marked “A” for Analysis and the last column should be marked “C” for conclusion.

In carrying over an issue into the essay outline, it should be placed in the Issue column. The next step is to “break apart” the elements of the rule and place them in the Rule column next to the issue. Like building blocks, in essay outlining each element should be stacked one on top of the other and not written out in a sentence form. Next, place facts in the Analysis column to support each element of the rule in the “R” column. Lastly, based on the number of supporting facts, a conclusion must be written in the “C” column.

In some instances, a student’s answer may differ from the model answer. Since graders are more interested in how one arrives at a conclusion, point value will not be lost if the differing
The conclusion is well supported with facts from the examination. Remember to abbreviate wherever possible in order to conserve time.

The following is an example of how to outline from fact excerpts of an examination:

**Joe telephones Mary and asks if she wants to buy his car for $5,000 before March 1.**

**The issue that is being tested is offer. The outline to support these facts is as follows:**

<table>
<thead>
<tr>
<th>ISSUE</th>
<th>RULE</th>
<th>ANALYSIS</th>
<th>CONCLUSION</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Offer</strong></td>
<td>Present contractual Intent</td>
<td>Joe’s telephone call to Mary asking if she wants to buy his car</td>
<td>Yes</td>
</tr>
<tr>
<td></td>
<td>Definite &amp; Certain Terms</td>
<td>Quantity- 1 car Time- before March 1 Identity of Parties-Joe &amp; Mary</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Communication to Offeree</td>
<td>Price-$5000 Subject matter- car</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Mary receiving Joe’s telephone call</td>
<td></td>
</tr>
</tbody>
</table>
understand without having an “R” for the rule. This also applies to the writing of the analysis and conclusion.

Improper outline

<table>
<thead>
<tr>
<th>ISSUE</th>
<th>RULE</th>
<th>ANALYSIS</th>
<th>CONCLUSION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Offer</td>
<td>Present contractual Intent Definite &amp; Certain Terms Communicated to Offeree</td>
<td>Joe telephones Mary asking if she wants to buy his car before March first</td>
<td>Yes</td>
</tr>
</tbody>
</table>

This is not a proper outline because the elements are not broken apart with a showing of how the facts support each element. Each element in the rule should have facts listed in the analysis column. When done correctly you will be able to show the examiner how the facts support the elements since you have laid out the relationship between the facts and the elements in the outline.

Outlining The Examination Is Critical

A well developed essay outline is a guaranteed roadmap to your success. It will in turn become a well-written answer. The need to outline the examination prior to writing the answer cannot be stressed enough. The process will allow for discovering the tested issues, sub-issues that are being tested, and the eliminating of non-issues. Further, outlining the essay will help you to organize your written answer.
Students Who Are Quick To Rush Into Writing The Answer Versus Outlining The Answer Often Tend To Fail The Examination

Students who are quick to rush into writing the answer often tend to miss issues and missing issues is what costs students the entire examination. Taking full advantage of the allocated outlining time is a must. Even if a student finishes issue spotting the exam and has a few minutes remaining, do not begin writing your answer yet, use whatever outlining time is left. Go back and read the facts one more time. Were all the facts used? Read the call of the question again. Did you answer the call? Run the facts through your checklist(s). Seeing even one additional issue can make a huge difference in your grade.

Session #3 - Writing The Answer:

5. How to write your answer:

The IRAC method allows you to first state the issue in either a head note or an issue statement. Then define the rule of law for that particular issue that is being discussed. Next, you can apply the facts to each element of the issue for solid analysis. Finally, the overall conclusion can be stated.

How To Write Your Examination Answer:

After completing your outline the final step is to write the examination in the allocated time. Issues should be easily identifiable and legible and the entire answer should be well structured and easy to follow. Underlining and bolding issue headnotes when writing the answer are helpful to the grader. If the issues are not present or the student does not use head notes the reader of the exam may become lost and not understand the concept you are discussing. Complex writing by students is not necessary. Keep your answer simple by following the IRAC method.

Keep your sentences short. Use straight forward and active words. When writing your answer assume you are writing to a reader that is not familiar with the examination or the subject. Stay focused on what you are trying to prove and once you have met that burden go to the next element that needs to be discussed. Simplicity is the key.

Proper writing format:

Joe telephones Mary and asks if she wants to buy his car for $5,000 before March 1.

The call of the question is: Was There A Valid Offer? Discuss.
Offer

An offer is an outward manifestation of present contractual intent to be bound by an agreement with definite and certain terms communicated to the offeree.

Joe’s telephone call to Mary where he asked her if she wanted to buy his car demonstrated an outward manifestation of present contractual intent to be bound by an agreement.

By Joe offering to sell his car (quantity), on March 1 (time period), between himself and Mary (identity of the parties), for $5,000 (certain price) to sell the car (subject matter), the terms are definite and certain.

Because Joe telephoned Mary and communicated his intent to sell his car to her, it showed his intent was communicated to Mary, the offeree.

Therefore, a valid offer exists.

From this example the issue was stated in a bolded headnote fashion allowing the grader to easily see the issue in the answer. Each element of the issue was supported with facts from the examination. It must be demonstrated to the grader that one understands how to apply the facts to the rule of law.

If a student merely repeats facts, then little or no credit will be given for the issue. Notice that a line is skipped between each part of the IRAC which makes it easier for the grader to grade. Although subjective, a proper presentation tends to increase a student’s grade.

Using the same facts, an example of an incorrect analysis, is as follows:

Joe telephones Mary and asks if she wants to buy his car for $5,000 before March 1.

Was There A Valid Offer? Discuss.

Offer

An offer is an outward manifestation of present contractual intent to be bound by an agreement with definite and certain terms communicated to the offeree.

Joe telephones Mary and asks if she wants to buy his car for $5,000 before March 1. Thus, Joe’s telephone call demonstrated an outward manifestation of present contractual intent to be bound by an agreement with definite and certain terms communicated to the offeree.
Therefore, a valid offer exists.

With this example, the elements of the issue were not “broken down” nor were the facts applied to each and every element of the rule. Only one element was analyzed. There is great point value lost for doing this. Good analysis requires all elements to be addressed even if they are not at issue. If you do not use the facts in order to support or negate the elements of the issue you are addressing you will not get full credit for the issue based on your analysis. This is called writing in a conclusionary manner and is awarded little or no credit.

The key to writing a successful exam is based on these five steps that we have reviewed:

1. Reading and understand the call of the question
2. The importance of timing
3. How to read the essay question
4. How to properly outline the essay question
5. How to write an essay answer in the IRAC format
Session # 4 Briefing a case

How to brief a case:
In order to become a good lawyer you must learn how to read a case and understand what the court’s ruling is and why. In a nutshell a case brief is a statement of facts, a statement of the issue, the rule of law, the holding, the reasoning behind the holding, and the decision (conclusion).

In order to do well in preparing a case brief here are some suggestions for you to follow. First read the case through once in order to get an understanding of what is going on. You may want to highlight pertinent facts, the issue and the courts holding in your first reading. Then read the case again and pull out the citation for the case, statement of facts, procedural history, issue(s), and applicable rule of law, the holding, and the reasoning for the holding.

Citation of the case:
The citation is found at the beginning of the case. The case will state the parties’ names and below the parties will be the citation.

An example:

Mohr v. Williams
Supreme Court of Minnesota, 1905.
95 Minn.261, 104 N.W. 12.

The citation is important in order for you to exam other cases in the same jurisdiction.

Judicial History:
The judicial history of the case is the litigation process the case has been through. If the case is on appeal you would need to include the procedural status of the trial court decision and how it is up on appeal.

Statement of facts:
The statement of facts is a statement in your own words describing the facts of the case. Only place pertinent facts that relate to the legal issue in your brief. For example if the case is about revocation of an offer, you do not need to bring up the facts show an offer. You would only focus on those facts that relate to show the existence or non-existence of the issue revocation.

Issue(s):
The issue is the legal question before the court. It is the principal of law the court is considering. An example of an issue would be - Was there a valid offer created by Mary’s to sale the car? The principal of law that will be considered is offer. In order to determine the outcome of the issue the court will review the facts of the case. In presenting your issue in your brief you can either state the issue in a question format or a phrase. The above example was presented in a question format.
Holding:
The holding is any ruling or decision of a court. The holding answers the legal issue before the court based on the principle of law raised.
For example - The issue before the court is whether there was a valid offer?
The rule for an offer is -- An offer is an outward manifestation of present contractual intent with definite and certain terms which was communicated to the offeree. The test before the court is to determine each element of the above rule and make sure that the facts support each element in order to conclude that there is an offer. The conclusion and how they arrive to the ultimate conclusion is the holding.

Reasoning:
The reasoning is the court’s decision based on the facts and the application of the rule of law and the explanation of why the court reached the holding that they did.

The reasoning is the court’s decision on the legal issue based on the relevant facts and how those facts relate to the legal principle.

The facts are what make the result behind the reasoning. The reasoning is different than the statement of the rule of law.

Decision:
The decision is the outcome of who prevails in the case. It is where the judge will grant a judgment in favor of either the plaintiff or defendant. If the case was won on appeal then the judge would either reverse and remand the previous courts decision or uphold the previous verdict.

Concurring opinion (if any)
These are opinions of the majority of judges that heard the issue and agree with the outcome of the case. However, it does not mean they agree with how the decision was arrived at. The judges may not agree with either the rule of law use, the holding, or the rationale used to determine the outcome.

Dissenting opinion (if any)
A dissenting opinion is one that disagrees with the decision of the case. A dissenting opinion is where a judge will write an opinion based on why they disagree to the majority decision. A dissenting opinion may add to the understanding of the problem and show the weakness in the majority decision.

Remember as the word implies- brief. Your brief should be concise. It is a short outline of the court’s decision.
Session 5- How to write a Memorandum

Legal Memorandum
A legal memorandum (memo) is a document used to analyze legal issues and evaluate the strength and weaknesses of a given case. A memo of points and authorities is a persuasive adversary document. A memo can be written in preparation for a meeting with a client, negotiation, settlement or other situations. The purpose is to convince the reader to see the case in your favor. However, you should not mislead the reader. You write persuasively emphasizing your strong points while neutralizing your opponents strengths. The reader should be persuaded based on your argument, not mislead.

A memorandum should include questions presented, statement of the case, statement of the facts, summary of arguments, (a brief answer to the questions presented) arguments and a conclusion.

Questions presented
Questions presented should directly raise the legal issue and briefly describe the law upon which your answer is based. The purpose is to persuade the trier of fact. Thus, your questions presented should be phrased in a way that engenders sympathy, or guides the reader to the result sought after.

Statement of facts
The statement of facts should have only the facts that have a bearing on and relate to the issue or issues before the court. Emotional facts can be very effective in persuasion. The facts should favor your client and tell the story. You must have a complete and accurate statement of facts. Your statement of facts must include all the facts you will be discussing in your argument(s). However, the statement of facts should be as brief as possible.

Summary of argument
A summary of the argument is designed to provide the reader with a quick review of the points and arguments that you will be making in your memo. It is important the summary of argument depicts your argument. Generally the summary of argument is written after you have drafted your argument(s) for your memo. (See the section below)

Argument
An argument is a persuasive discussion of your position. The argument is the main body of a memo. It must clearly apply the statutes, regulations, and/or case law you have researched to the facts. Your argument must include proper citations whenever you refer to case law or legal authority, such as statutes and regulations. You need to have good sound analysis supporting your position. You need to state clearly how the authority supports your position. Make sure you support your reasoning based on the rule of law. You will need to show how the authority is supported based on the facts and the relationship between the authority and the facts.

Conclusion
A statement of your conclusion is a brief statement of the outcome of the issue. Further, your conclusion should include your request for relief that you are asking for from the trier of fact.
Sample

MEMORANDUM

To: Larry Craig
From: Student
Re: Express Assumption of Risk

Question presented

1. Whether the release of liability is enforceable in order to show Adair expressly assumed the risk.

Statement of facts

William Oldfield got into a habit of meeting on Wednesday night to rock climb. He, and others whom just showed up, would climb Handley rock. Oldfield would supply the ropes and other gear needed for himself and other climbers. After several years of climbers meeting and climbing, Oldfield was approached by a climber who was an attorney. He told Oldfield that he should have any climbers sign a release of liability form. The attorney prepared a release form and brought it to Oldfield and he started having climbers sign the release. Greg Adair was seriously injured in a rock climbing fall at a weekly climbing session that was operated by Oldfield. Adair has sued Oldfield for damages based on a theory of negligence. Adair did sign a release of liability prior to his climb in which he sustained injuries.

Summary of arguments

Whether our defense of express assumption of risk will prevail against Adair's claim of negligence will turn upon the enforceability of the Release of Liability form signed by Adair. If the release is effective, then Adair will have been deemed to assume the risks set forth in the release. In order to be effective, a release must meet several requirements. I believe the release given to Adair by Oldfield satisfies these requirements, and therefore our defense of express assumption of risk will be successful, and Adair will not prevail.

Argument

A. THE RELEASE DID NOT INVOLVE THE PUBLIC INTEREST

Pursuant to the case of Buchan v. U.S., a release of liability is only effective if it does not involve the public interest. The court stated in order to determine if an activity is of public interest turns on two factors. The first factor is whether the activity involves the public interest when the party seeking exculpation is engaged in performing service of great importance and practical necessity to the public. The second is whether the party seeking exculpation has a decisive advantage of bargaining strength against the members. As to the first factor, Oldfield was not engaged in performing a service of great public importance. He was simply the leader of a loosely organized rock climbing association. Generally, the sports and recreational events are not matters of great public importance. (Buchan). Releases of liability for injury have been upheld in activities
such as driving racecars, white water rafting, bicycle racing, and skydiving. Rock climbing is a recreational activity analogous to these activities, and therefore also would not be considered to be a service of great public importance. As to the second factor, Oldfield did not have a decisive advantage in bargaining strength over Adair. According to Adair's deposition, Oldfield did not force Adair to sign the release of liability. He admitted that nobody told him that if he did not sign the release, then he would not be allowed to participate in the rock climbing activities of the group. The deposition of Oldfield confirms that he did not force participants in the group to sign the releases, but merely requested that they do so. Therefore, Adair's signing of the release form was totally voluntary. He was not pressured to do so, and his signing of the release was not the result of any disparity in bargaining power. Thus, pursuant to Buchan, the release is enforceable.

B. THE TECHNICAL REQUIREMENT FOR A WRITTEN RELEASE WAS MET

To be effective, the release need not be perfect. Instead, it need only clearly express an intent on the part of the releasor not to hold the released party liable for the consequences of his own negligence. (Buchan). To allow claims arising from hazardous recreational pursuits when valid releases have been signed would defeat the very purpose of having participants sign the releases, and therefore courts are willing to enforce them, as previously mentioned. To be effective, the release must meet several technical requirements. The court in Leon v. Family Fitness Center provided a thorough analysis of the requirements a release must meet. First, a release will not be enforceable unless it is easily readable. The release given to Adair satisfied this requirement. It was written in normal font and contained on a single sheet of paper. It was not excessive in length, and was clearly identified as a release of liability. Adair had ample time to review the release. Although Adair said he did not actually read the release, this should not matter. The release was clear as to its terms, and Adair signed it. Second, operative language of the release should be prominently distinguished from other language. The release signed by Adair satisfies this requirement. The particularly important provisions of the release are written in bold, capital letters. These provisions include the ones stating that Adair releases Oldfield from liability caused by the negligence of Oldfield or another participant, that the release applies to all risks and causes of injury or death, and that the signer of the release accepts full responsibility for all risks associated with rock climbing. Third, a release that alleges to release a party from the consequences of his own negligence must clearly express such an intent. Here, the release does allege to release Oldfield from any injuries his own negligence may cause to the participants who sign the release. However, the provision is clearly presented in bold, capital letters.

In Leon, the court found that the release of liability signed by the plaintiff was not valid. However, that release is readily distinguishable from the one signed by Adair. First, the release in Leon was only one part of a larger contract. Here, the Release was a free standing document. Second, the release in Leon was written in text undifferentiated as to size, with no paragraphs or highlighting. In contrast, the release signed by Adair contained distinct paragraphs and contained bolded portions. In conclusion, the release signed by Adair met all of the technical requirements required in order for a release of liability to be considered valid.

**Conclusion**

In conclusion, the release signed by Adair did not involve the public interest, and has met all of the technical requirements and therefore is enforceable.
ESSAY SECTIONS AND MODEL ANSWERS REVIEWED ON VIDEO
TORTS

Senior "Prank Day" is a long standing, tradition at Westside High School. Over the years, on Senior Prank Day, seniors have set off stink bombs, lit firecrackers and tossed water-filled balloons in the school building. The school administration opposes Prank Day activities and regularly issues stern warnings that any student caught perpetrating pranks will be expelled and denied the right to graduate. However, no student has ever been caught. The school administration does not provide any extra supervision of the building on Prank Day. There had never been any serious injury as a result of Senior Prank Day activities.

On "Prank Day" 2000, Jack, a 17-year-old senior, spread a small quantity of “itching” powder on the lockers of the building hallway. Jack has stated he had no desire or plan to cause physical injury to anyone. He admits, however, that he knew the powder would cause some irritation to the lungs, nose, eyes and skin of persons who came in contact with it. He says, however, that he believed that the powder would not have any serious or lasting effects.

Carrie, a student at Westside High, got some of the powder on herself and, for a few hours, suffered from eye, nose and lung irritation. She also developed a skin problem that her physician believes is permanent. Her physician also believes it is reasonably likely that these problems are a result of an exposure to the powder even though there is no prior medical information from which such a reaction could have been predicted and no other student has complained of similar symptoms. Carrie is very depressed because she fears that the disfiguring skin condition may continue and, if it does, will prevent her from winning the Miss Westside High beauty competition she had entered.

On what theory or theories might Carrie recover damages and what kinds of damages might she recover, in an action against:

A. Jack? Discuss.

B. Westside High School? Discuss.
TORTS MODEL ANSWER

A. Carrie v. Jack

Battery

Battery is the intentional, harmful or offensive touching of another.

On “Prank Day” 2000, seventeen-year-old Jack spread a small quantity of itching powder on the lockers in the hallway at Westside High. Although Jack stated he had no desire or plan to cause injury to anyone, he knew the powder would cause some irritation to lungs, nose, eyes and skin of persons who come in contact with it. Thus, Jack’s conduct was intentional.

When Westside High student Carrie got some powder on herself, there was a touching. After coming in contact with the powder, Carrie, for a few hours, suffered from eye, nose and lung irritation and developed a potentially permanent skin problem. Thus, the contact was harmful.

Therefore, Jack committed a battery on Carrie.

Damages

General Damages

General damages are damages that reasonably or naturally flow from the tort and they do not need to be specifically pleaded. General damages allow recovery of compensation for items that include physical injury, past, present and future pain and suffering, temporary and permanent disability, and disfigurement.

Due to Jack putting itching powder on the lockers, Carrie suffered from eye, nose and lung irritation for a few hours and now suffers from a potentially permanent skin disfiguring condition. Therefore, her injuries reasonably flowed from Jack’s tortious conduct. As such, Carrie’s injuries include physical injury, pain and suffering, and a permanent skin problem.

Thus, Carrie is entitled to general damages.

Special Damages

Special damages are those damages unique to Plaintiff and (they) must be specifically pleaded and proved. Further, special damages must be foreseeable, reasonable in amount and not too remote.
Carrie is depressed because she fears that the disfiguring skin condition may continue which will prevent her from winning the Miss Westside high beauty competition that she entered. In addition, Carrie will lose any favorable publicity that she would have received had she won the contest. As such, Carrie’s damages are unique.

Jack could argue even though Carrie claims that she would have won, there was no guarantee of such result. Moreover, any claim that she was damaged because she had to withdraw from the contest is purely speculative since she cannot show to any degree of probability that she would have won the contest had she not been injured. Further, the loss of a beauty contest was not a foreseeable result of Jack's breach, making Carrie’s damages too remote.

However, since Carrie incurred medical expenses and may continue to incur them since her doctor believes the disfiguring skin condition will become permanent; she is entitled to reimbursement for her present and future medical bills. Carrie can also be compensated for any expenses for future medical treatment related to her injuries since her doctor believes the resulting skin condition is permanent.

Therefore, Carrie will be able to recover special damages.

**Punitive Damages**

Where Defendant’s conduct was motivated by an intention to harm or cause injury to Plaintiff, an award of punitive damages may be awarded against Defendant.

Jack placed itching powder on the lockers of the school building which caused Carrie skin disfigurement. Since Jack’s conduct constituted a battery, he was motivated by an intention to harm Carrie.

Jack will argue that his conduct was a prank, since it was Senior “Prank Day,” and that he had no intention of causing any harm to Carrie. However, Carrie was harmed and a battery resulted.

Therefore, Carrie is entitled to punitive damages.

**Intentional Infliction of Emotional Distress**

Intentional infliction of emotional distress is the intentional conduct of an extreme and outrageous nature which is calculated to cause, and which does cause, severe emotional distress.
Jack’s act of placing itching powder onto the student lockers on Senior “Prank Day” knowing that it could cause eye, nose and lung irritation was intentional, outrageous conduct calculated to cause Carrie’s emotional distress.

Jack will argue that his conduct was part of a long tradition of playing pranks on Senior “Prank Day” such that his actions were not outrageous. However, the school administration warned the students that if any one was caught doing pranks they would be expelled and denied the right to graduate. Since Jack was warned not to pull any pranks, his conduct was extreme and outrageous. While the facts indicate that Carrie was very depressed, such depression does not rise to the level of severe emotional distress, as a result of Jack’s conduct.

Therefore, Jack will not be liable for intentional infliction of emotional distress.

**Negligence**

Negligence requires a showing that a duty was owed from Defendant to Plaintiff, that the duty was breached by Defendant and that the breach was the actual and proximate cause of Plaintiff’s damages.

**Duty**

A Defendant owes a duty to others to act as a reasonable, prudent person would under the same or similar circumstances.

Since Jack and Carrie are both students at Westside High, Jack owed Carrie a duty towards Carrie to act as a reasonable, prudent person under the same or similar circumstances.

Jack owes Carrie a duty of care.

**Breach**

A breach is a failure to act as a reasonable, prudent person under the same or similar circumstances. A Defendant breaches a duty through an act or omission that exposes others to an unreasonable risk of harm.

When Jack placed the itching powder onto the lockers such that Carrie came into contact with the powder, Jack did not act as a reasonable, prudent person under the same or similar circumstances. Further, by Jack placing the itching powder on the lockers, his actions created an unreasonable risk of harm to Carrie.

Therefore, Jack breached his duty of due care owed to Carrie.
**Actual Cause**

But for the Defendant’s negligent act, Plaintiff would not have been injured.

But for Jack placing itching powder on the lockers, Carrie would not have been exposed to the powder and experienced irritation and a permanent skin condition. Therefore, Jack’s actions were the actual cause of Carrie’s injuries.

**Proximate Cause**

A Defendant’s negligent act is the proximate cause of Plaintiffs’ injuries and damages if the manner and result of Defendant’s acts are foreseeable. Moreover, where the extent of Plaintiff’s injury is unforeseeable, under the thin-skulled Plaintiff doctrine a Defendant is liable for injury to an unusually sensitive Plaintiff.

It is foreseeable that by Jack placing itching powder on student lockers that a student would come into contact with the powder and suffer injury.

Jack will contend that it was not foreseeable that the itching powder would cause anything beyond mere irritation. Jack will further argue since Carrie is suffering from a permanent skin condition for which there is no medical information and that no other student had complained of similar symptoms, the permanent skin condition was not foreseeable.

However, under the thin-skull Plaintiff doctrine, one takes the Plaintiff as one finds her. Thus, Carrie’s reaction to the itching powder would be foreseeable.

Therefore, Jack’s actions were the proximate cause of Carrie’s damages.

**Damages**

**General Damages**

Defined and discussed supra.

**Special Damages**

Defined and discussed supra.

**B. Carrie v. Westside High School**

**Vicarious Liability**

An employer or principal is vicariously liable for any tortious acts committed by his
employee or agent that occur within the scope of the employment or agency. Further, a school generally is not vicariously liable for the tortious conduct of a student.

Westside High School is in the business of educating students. By Westside High warning its seniors not to pull any pranks on Senior “Prank Day” or they would be expelled and not be able to graduate, it showed that the school administration opposed the prank day activities.

Therefore, Westside High School will not be vicariously liable for the tortious acts of Jack.

**Negligence**

Defined supra.

**Special Duty-Invitee**

An invitee is one who comes upon the land with the owner’s permission for the purpose for which the land is maintained. A landowner has a special duty to an invitee to reasonably inspect and correct or warn of any dangers.

Westside High owned the school where Carrie attended, and thus establishing a landowner/occupier relationship. Carrie was a student at Westside High, and would be considered an invitee. Thus, Westside High owed a duty to inspect, correct or warn Carrie of any dangers.

Therefore, Westside High owed a special duty to Carrie.

**Breach**

Defined supra.

Even though no students had ever been caught playing pranks in the past and no serious injuries ever resulted on previous prank days, by the school not having enough security in place on Senior Prank Day was a failure to act as a reasonable, prudent school under the same or similar circumstances so as not exposes others to an unreasonable risk of harm.

Furthermore, the school had the knowledge of past pranks including stink bombs, lit firecrackers and tossed water filled balloons taking place in the school building. It was only a matter of time before someone really became injured as Carrie was. Therefore, by the school administration not proving any extra supervision of the building on prank day, the school did not act as reasonable school officials in order to protect its students.
Thus, Westside High breached its duty to Carrie.

**Actual Cause**

Defined supra.

But for the school administration of Westside High not providing any extra supervision of the building on Senior “Prank Day,” Carrie would not have come into contact with the itching powder and suffered injuries.

Therefore, the Westside High’s omissions were the actual cause of Carrie’s injuries.

**Proximate Cause**

Defined supra.

It is foreseeable that if in the past pranks were always played on Senior “Prank Day” that the tradition would continue and pranks would be played on Senior “Prank Day” 2000. While Westside High will argue that there has never been any serious injury as a result of Senior “Prank Day,” it is still foreseeable when a student plays a prank, one may be injured.

Therefore, Westside High is the proximate cause of Carrie’s damages.

**Damages**

**General Damages**

Defined and discussed supra.

**Special Damages**

Defined and discussed supra.
Contracts

Tommy owns and operates a house painting business. On July 1, he posted an undated flier on the notice board of a local laundry mat. The flier read:

TOMMY’S HOUSE PAINTING
One week special! Any house interior painted, up to four rooms, for $500.00.
   The best price in town!
   Call Tommy at 1 888-Paintme

Mary saw the flier last week. A laundry attendant at the laundry mat said he had heard a rumor that Tommy had gone out of business but did not recall where he had heard that. The rumor was, in fact false, but Mary did nothing to inquire into the truth or falsity of the rumor.

A week later, Mary mailed a letter to Tommy stating that she was hiring Tommy to paint her home at the rate he stated in the flier. Tommy received the letter two days later.

He immediately returned to the laundry mat and removed the flier. Mary has not heard from Tommy. Was a contract formed?
CONTRACTS MODEL ANSWER

Preliminary Negotiation

A Preliminary Negotiation is an invitation to deal rather than a contractual offer. As a general rule, an advertisement is an invitation to deal.

Tommy posted a flier on a notice board advertising his house painting business. Thus, the flier was an invitation to deal.

Therefore, the flier was a preliminary negotiation.

Offer

An Offer is an outward manifestation of present contractual intent to be bound by a contractual agreement with definite and certain terms communicated to the offeree.

By Tommy’s posting up the flier on the laundry mat’s notice board such conduct and use of language established an outward manifestation of present contractual intent to be bound by a contract.

The terms were four interior as the quantity, no time stated but the courts will look to a reasonable period of time, Tommy and the reader of the notice being the identified parties, $500.00 is the price and interior house painting is the subject matter. Since the terms are stated with particularity, the terms are definite and certain.

Tommy posted the flier and Mary saw the flier. Thus, Tommy’s offer was communicated to the offeree, Mary.

Therefore, a valid offer exists.

Indirect Revocation

An Indirect Revocation is knowledge by the offeree from a reliable source that the offeror acted inconsistent with the terms of the offer and can no longer perform.

The laundry attendant told Mary that he heard a rumor that Tommy had gone out of business. Thus, Mary, the offeree, had knowledge that Tommy can no longer perform.

However, Mary will argue that the attendant’s information about Tommy’s business was “false,” and not a fact. Thus, the attendant was not a reliable source. Further, upon hearing the rumor that Tommy had gone out of business, Mary did nothing to inquire into the truth or falsity of the rumor. In fact, the rumor was untrue. Hence, the offeror, Tommy, did not act inconsistent to the terms of the offer.
Therefore, no there was no indirect revocation of Tommy’s offer.

**Termination of Offer**

An offer can be terminated by lapse of time.

Mary sent her acceptance letter a week later after reading the notice. Since the flier stated “One week special”, Mary’s delay terminated the offer by lapse of time. Mary will counter that the flier was undated, thus, the “One week special” term had no legal effect.

Therefore, the offer was not terminated.

**Acceptance**

Acceptance is as unequivocal assent to the terms of the offer.

When Mary mailed a letter to Tommy, a week later after reading the notice and stating that she was hiring Tommy to paint her home at the stated price in the flier, there was an unequivocal assent to the terms of the offer. However, Tommy will contend that the flier stated to call him and since Mary sent a letter to Tommy that this was an improper mode of acceptance. Modernly, the method of acceptance can be by any reasonable mode.

Therefore, since communication by letter is a common method modernly, Mary’s acceptance via letter is reasonable.

**Revocation**

A Revocation is an express statement by the offeror to revoke prior to timely acceptance.

After receiving Mary’s acceptance, Tommy immediately went to the supermarket and removed the flier, thus, Tommy’s actions show an express revocation. Tommy removed the flier after he received the acceptance and not prior to the acceptance. Tommy will argue that Mary’s acceptance is not valid. However, to revoke a public offer, you must use the same mode that published the offer. Thus, Tommy must post a revocation notice on the notice board for the revocation to be effective.

Therefore, since the acceptance was effective there are contractual rights existing between Mary and Tommy.

**Consideration**

Consideration is a bargained for exchange of a legal detriment.
Mary bargained for her home to be painted for the return promise to pay Tommy $500.00 for four interior rooms which she was not previously obligated to do. This was a legal detriment incurred in exchange for the benefit of receiving four interior rooms painted.

Tommy obligated himself to paint four interior rooms in which he was not previously obligated to do. This was a detriment incurred in exchange for the benefit of receiving payment of $500.00.

Therefore, valid consideration exists.
Debbie and Jon met in college and dated each other for two years. Debbie loved Jon very much and wanted to marry him. Jon always told her that he loved only her, but he told her he thought they were too young and should not rush into marriage.

One day as Debbie was putting gasoline into her car at the gasoline station, she looked into the car parked next to hers. She was enraged to see her best friend Vickie passionately kissing Jon. Debbie walked over to the car, with the fuel dispenser in her hand, and started yelling at Vickie and Jon. Vickie said, “I’m sorry you had to find out this way. Jon and I love each other and are going to get married.”

Debbie was enraged and shouted, “You’re not going to marry anyone, you slime!” She then pointed the gasoline dispenser at Vickie and sprayed her with gasoline, soaking her hair and clothes. Jon pulled out his cell phone to try to call the police. The cell phone emitted a spark that ignited the gas fumes and the car erupted in flames. Jon was badly burned. Vickie died from her burns.

What offense or offenses has Debbie committed against Vickie and what defenses, if any, would she assert? Discuss.
STATE v. DEBBIE

Assault #1

Assault is the intent to cause imminent apprehension of a harmful and offensive touching.

Debbie upon seeing her boyfriend and her best friend passionately kissing, began yelling at Vickie and Jon, thus she had intent. Debbie, upon finding them kissing, went over to the car with the fuel dispenser in her hand and began yelling “You are not going to marry anyone, you slime”, establishing imminent apprehension of a harmful touching. However, words alone are not enough to create an imminent apprehension.

Thus, Debbie is not guilty of an assault.

Assault #2

Defined supra.

When Debbie became enraged and shouted, “You are not going to marry anyone, you slime,” and then pointed the gasoline dispenser at Vickie, she acted with intent to harm Vickie. By pointing the fuel dispenser at Vickie and spraying her with gasoline she created imminent apprehension of a harmful and offensive touching.

Thus, Debbie is guilty of an assault.

Battery

Battery is the unlawful touching of another.

Debbie pointed the gasoline dispenser at Vickie and then sprayed her, soaking her hair and clothes, thus, an unlawful touching. Debbie sprayed Vickie, thus of another.

Therefore, Debbie is guilty of Battery.

Homicide

Homicide is the killing of a human being by another.

The facts state that Vickie died as a result of her burns, thus a killing of a human being. Debbie soaked Vickie with gasoline which caused her to be burned when the cell phone ignited a spark causing a fire, thus by another.

A homicide occurred.
**Actual Cause**

“But for” Debbie’s act of spraying Vickie with gasoline, soaking her, she would not have caught fire and burned to death.

Debbie is the actual cause.

**Proximate Cause**

Debbie will argue that Jon’s act of using the cell phone that ignited a spark that caused the car to become engulfed in flames was an unforeseeable and an intervening act which caused Vickie’s death.

However, Jon was trying to call the police for help, and the negligent act of a third person is foreseeable. Further, it is foreseeable when Debbie soaked Vickie with gasoline, a spark or flame could ignite the gasoline causing her to ignite and burn to death.

Debbie was the proximate cause of Vickie’s death.

**Murder**

Murder is the unlawful killing of another with malice aforethought.

The State will argue Debbie’s act of shouting, “You are not going to marry anyone, you slime,” as she sprayed Vickie with gasoline showed a specific intent to kill. Further, Debbie’s act of spraying Vickie with gasoline and soaking her clothes and hair showed intent to cause great bodily harm. Spraying gasoline on Vickie was wanton and reckless conduct since gasoline is a dangerous product when used in this manner.

Therefore, Debbie has malice aforethought and will be found guilty of murder.

**Murder in the First Degree**

Murder in the first degree requires specific intent to kill with premeditation and deliberation.

Debbie, enraged by seeing her boyfriend with her best friend kissing, and Vickie telling Debbie “I’m sorry you had to find out this way. Jon and I love each other and are going to get married. Debbie then sprayed Vickie with gasoline soaking her and her clothing, thus she acted with the specific intent to kill. Debbie will counter that she was only spraying her because she became enraged based upon what she saw and Vickie saying Jon and her were going to get married. Further, she was not the one that caused the car to ignite and erupt into flames. Thus Debbie had no specific intent to kill.

Thus, no first degree murder.
**Murder in the Second Degree**

All other murder that is not first degree murder.

Debbie will be guilty of murder in the second degree.

**Mitigation - Voluntary Manslaughter – Heat of Passion**

A murder offense may be mitigated to voluntary manslaughter if it is found that the killing occurred as a result of an adequate provocation and an insufficient time to cool.

Debbie sprayed Vicki with gasoline; she was provoked since Vickie had just informed her that Vickie and Jon, the man who Debbie had spent the last two years with and loved very much, were in love and were going to be married. Thus, adequate provocation. Further, upon hearing that Jon and Vickie were going to be married she reacted, thus she had no time to cool.

Debbie is guilty of voluntary manslaughter.

**Involuntary Manslaughter**

Involuntary manslaughter is the unintentional killing of a human being without malice.

As stated above, Debbie enraged sprayed Vickie with gasoline. Thus, she had intent to get her wet, and no intent to kill. Debbie acted in a criminally negligent manner.

Further, Debbie committed an assault and battery when the killing of Vickie occurred. If the State cannot find malice, Debbie will be guilty of involuntary manslaughter.
CRIMINAL LAW

Debbie and Jon met in college and dated each other for two years. Debbie loved Jon very much and wanted to marry him. Jon always told her that he loved only her, but he told her he thought they were too young and should not rush into marriage.

One day as Debbie was putting gasoline into her car at the gasoline station, she looked into the car parked next to hers. She was enraged to see her best friend Vickie passionately kissing Jon. Debbie walked over to the car, with the fuel dispenser in her hand, and started yelling at Vickie and Jon. Vickie said, “I’m sorry you had to find out this way. Jon and I love each other and are going to get married.”

Debbie was enraged and shouted, “You’re not going to marry anyone, you slime!” She then pointed the gasoline dispenser at Vickie and sprayed her with gasoline, soaking her hair and clothes. Jon pulled out his cell phone to try to call the police. The cell phone emitted a spark that ignited the gas fumes and the car erupted in flames. Jon was badly burned. Vickie died from her burns.

What offense or offenses has Debbie committed and what defenses, if any, would she assert? Discuss.
STATE v. DEBBIE

Assault #1

Assault is the intent to cause imminent apprehension of a harmful and offensive touching.

Debbie upon seeing her boyfriend and her best friend passionately kissing, began yelling at Vickie and Jon, thus she had intent. Debbie upon finding them kissing went over to the car with the fuel dispenser in her hand and began yelling “You are not going to marry anyone, you slime” establishing imminent apprehension of a harmful touching. However, words alone are not enough to create an imminent apprehension.

Thus, Debbie is not guilty of an assault.

Assault #2

Defined supra.

When Debbie became enraged and shouted, “You are not going to marry anyone, you slime,” and then pointed the gasoline dispenser at Vickie, she acted with intent to harm Vickie. By pointing the fuel dispenser at Vickie and spraying her with gasoline she created imminent apprehension of a harmful and offensive touching.

Thus, Debbie is guilty of an assault.

Battery

Battery is the unlawful touching of another.

Debbie pointed the gasoline dispenser at Vickie and then sprayed her, soaking her hair and clothes, thus, an unlawful touching. Debbie sprayed Vickie, thus of another.

Therefore, Debbie is guilty of Battery.

Homicide

Homicide is the killing of a human being by another.

The facts state that Vickie died as a result of her burns, thus a killing of a human being. Debbie soaked Vickie with gasoline which caused her to be burned when the cell phone ignited a spark causing a fire, thus by another.
A homicide occurred.

**Actual Cause**

“But for” Debbie’s act of spraying Vickie with gasoline, soaking her, she would not have caught fire and burned to death.

Debbie is the actual cause.

**Proximate Cause**

Debbie will argue that Jon’s act of reaching using the cell phone that ignited a spark that cause the car to become engulfed in flames was an unforeseeable and an intervening act in which caused Vickie’s death.

However, Jon was trying to call the police for help, and the negligent act of a third person is foreseeable. Further, it is foreseeable when Debbie soaked Vickie with gasoline, a spark or flame could ignite the gasoline causing her to ignite and burn to death.

Debbie was the proximate cause of Vickie’s death.

**Murder**

Murder is the unlawful killing of another with malice aforethought.

The State will argue Debbie’s act of shouting, “You are not going to marry anyone, you slime,” as she sprayed Vickie with gasoline showed a specific intent to kill. Further, Debbie’s act of spraying Vickie with gasoline and soaking her clothes and hair showed intent to cause great bodily harm. Spraying gasoline on Vickie was wanton and reckless conduct since gasoline is a dangerous product when used in this manner.

Therefore, Debbie has malice aforethought and will be found guilty of murder.

**Murder in the First Degree**

Murder in the first degree requires specific intent to kill with premeditation and deliberation.

Debbie enraged by seeing her boyfriend with her best friend kissing, and Vickie telling Debbie “I’m sorry you had to find out this way. Jon and I love each other and are going to get married. Debbie then sprayed Vickie with gasoline soaking her and her clothing, thus she acted with the specific intent to kill. Debbie will counter that she was only spraying her because she became enraged based upon what she saw and Vickie saying Jon and her were going to get married. Further, she was not the one that caused the car to ignite and erupt into flames. Thus Debbie had no specific intent to kill.
Thus, no first degree murder.

**Murder in the Second Degree**

All other murder that is not first degree murder.

Debbie will be guilty of murder in the second degree.

**Mitigation - Voluntary Manslaughter – Heat of Passion**

A murder offense may be mitigated to voluntary manslaughter if it is found that the killing occurred as a result of an adequate provocation and an insufficient time to cool.

Debbie sprayed Vicki with gasoline; she was provoked since Vickie had just informed her that Vickie and Jon, the man who Debbie had spent the last two years with and loved very much, were in love and to be married. Thus, adequate provocation. Further, upon hearing that Jon and Vickie were going to be married she reacted, thus she had no time to cool.

Debbie is guilty of voluntary manslaughter.