

A META-FRAMEWORK FOR MASTERY LEARNING OF LAW

Recent insightful language about “meta-elements” and a “meta-framework” from Atticus Falcon, the author of *Planet Law School II*, provides direction for students in the mastery learning of law and further illuminates the HATRI method for practicing issue spotting:

“Remember: what I call the ‘meta-elements.’ No matter what the subject is, it always is a matter of someone claiming that he or she has suffered HARM [of some sort], that the harm was CAUSED by someone else (both as to cause in fact and ‘legal cause’ a.k.a. proximate cause), that the someone else had a DUTY not to do what caused the harm (or a duty to do something that would have prevented the harm), and that the person breached the duty to act or not to act. Then you look for any possible AFFIRMATIVE DEFENSE. You interweave facts with the applicable rule/s, as to whether or not each element was established. If even one element is not established (or the affirmative defense trumps even where ALL the elements are established), plaintiff [or prosecutor] loses....”

The main utility of this meta-framework approach may well be in realizing that *all* legal subjects have this structure. They are not all completely separate and independent entities, and you can therefore begin to frame and learn any subject and its issues by asking a common set of questions. (1) What is the set of *harms* addressed by this subject and its different topics (e.g., in torts, intentional torts, negligence, product liability, defamation)? (2) What is the entrenched repertoire of harm producing *acts* that typically *cause* these varied harms? (3) What are the relevant *duties* embodied in rules (if any) that are breached by these harm producing acts? In each instance of a claim of harm and a breach of a duty caused by a party, are there facts that prove each element of the relevant rule by a preponderance of the evidence (civil law standard) or beyond a reasonable doubt (criminal law standard)? (4) And lastly, are there facts that establish an *affirmative defense*, even if all elements of the rule are proved?

1. Some harms shout out at you; in criminal law, for example, death from different types of murder and manslaughter, or loss of property in larceny, or prevalent corporate-fraud, or Wall Street predation. In torts, harms include death, injury or property damage from intentional acts as well as from negligent or reckless behavior or defective products. In contracts, harms include failure to pay the agreed amount for goods or receiving different goods than agreed.

But other harms do not always shout out, and must be learned. In corporate law, there is a type of *corporate* harm if a member of the Board of Directors of one corporation aids another corporation to compete with it. In Constitutional law, harms are illustrated by the failure of the police to administer the Miranda warnings, or police squelching of a protest rooted in First Amendment rights of free speech, assembly and association. In civil procedure, there may be a *procedural* harm if downstream communities and farmers who use a waterway for drinking water and irrigation cannot get jurisdiction over upstream polluters.

2. In each topic within any subject, there is an entrenched repertoire of harm producing acts spelled out in the relevant cases and elsewhere, i.e., recurring iconic fact examples, which *cause* the recognized *harms*. Such repertoires can, of course, be learned and mastered. To illustrate, the ancient intentional torts of assault and battery have a well-etched repertoire of harms (including threats of imminent battery, actual battery, transferred intent, etc.) Depraved-heart murder pivots on bizarrely dangerous acts (shooting into or above the heads of a crowd, shooting into an apparently occupied house, car, train or bus). Breach-of-contract claims usually pose often-repeated acts that establish, or fail to establish, the core elements of offer,

acceptance, consideration, performance, and damages. And so on. Indeed, one experienced law professor said that causes-of-action were just legal labels that “summarize” well known and recurring iconic fact patterns that embody harms caused by one party against another. I call such fact patterns iconic examples of one or another cause-of-action, crime or defense (*Exam*, pp. 19-22). You can also learn this entrenched repertoire of acts (though they are not exhaustive) in each subject from relevant hornbooks and primers.* On exams, you may actually see some of these iconic examples, but you will definitely see *similar* examples invented by each professor in her fact patterns. Again, you don’t need to know all of these acts; just the slice of acts emphasized by each professor and the assigned materials.

3. In addition to learning and understanding the (a) “set of harms addressed by each subject and its different topics” and (b) the “entrenched repertoire of iconic acts that cause these varied harms,” there must also be (c) relevant legal duties from statutory or case-based rules that are breached by these harm producing acts. To illustrate, intentional killings breach a duty imposed by the murder statute; negligent and reckless behavior that causes harm breach duties imposed by case-based negligence rules. But remember that the duties must be *legal* in nature. To illustrate, if one is rude to another, a rule of etiquette, but not a legal duty, may well be breached; Or moral rules, but again not legal duties, may be breached by acts animated by envy, jealousy or disrespect. While breaches of duties usually involve positive acts (e.g., corporate fraud), sometimes a failure to act breaches a legal duty (e.g., a lifeguard whose music-listening distracts her from seeing a drowning swimmer).

Yet again, you don’t need to know all the duties detailed in each subject, just those specified in class and in assigned materials. That’s a lot you don’t have to know for the exams. Indeed, if you also practice hypotheticals with each such “set of harms,” “repertoire of iconic acts,” “duties,” and “breaches,” and also mine each professor’s old exams, you should know all, or almost all, the iconic issues that will appear on your exams before you enter the exam room.

4. Finally, imagine that as a prosecutor you have proof beyond a reasonable doubt that A intentionally shot and killed B. A is still not liable for intentional murder of B if A’s act causing the death of B fits within the rule of self/defense or other affirmative defense. The point in all subjects: affirmative defenses trump — they defeat even claims of liability that are proved.

Conclusion

It’s revealing that this illuminating meta-framework for mastery learning and understanding of any legal subject and its set of issues is, to the best of my knowledge, not taught in law school, perhaps because many professors tend to be Lone Rangers with subject blinders. They are smart and usually know what they teach but most do not focus on similarities and differences with other subjects. Some are also not interested in pedagogic illumination for students. Yet the benefit of knowing and practicing this meta-framework for mastery learning, for knowing and working with the likely and recurring iconic fact patterns and resulting set of iconic issues *before* you enter the exam room, is clear.

A ton of learning remains, but you have a coherent way to make sense of it.

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* I can think of an exception: if civil liability depends on a status, liability may be *derivative* and *not* require a separate act. To illustrate, employers are strictly liable in tort for the negligence of their employees that is performed in the ordinary course of their duties. Thus, for example, an ambulance company is strictly liable, *without* any separate act by the employer, for the negligent driving of one of its ambulance drivers that causes harm to another while carrying out her duties.