

How to “Issue Spot”

What is “issue spotting?”

One of the first steps in answering a hypothetical is to “issue spot.” This means that you have to find different causes of action between the parties. Said another way, you have to find events in the fact pattern that relate to the law that you learned throughout the semester. In one fact pattern, there can be many different issues to spot between all of the parties involved. It is your job on a law school exam to spot these issues so you can analyze them.

How do I issue spot?

The first thing that you should do when you open an exam is read the call of the question. This means that you want to go to the bottom of the fact pattern and read what the question is asking you to do. Some questions will ask you to find all issues within the hypothetical, while other questions will ask you something narrower. A broad question might say, “Discuss all torts present.” A narrower question could ask you to find all the issues that happened to one person or just pick out the intentional torts, such as “Analyze all causes of action Sally can raise against Bob.” This is why it is extremely important to read the call of the question first, as it gives you valuable insight into which issues your professor wants you to spot.

After you have read the call of the question, you will then read and annotate the entire hypothetical. You will want to take notes on any potential issues you spot. In the torts context, this would mean taking notes on any facts that could result in Person A suing Person B.

What should I look for when I issue spot?

In torts, you will want to look for any facts that would give rise to a lawsuit. For battery, you would want to look for facts that support intent, harmful or offensive, and contact. When you spot a fact, such as someone touching another person, you would want to make a note of this to use later in your answer.

You should also look for causes of action that might not be satisfied, but are still issues worth talking about. Professors not only want you to analyze issues that are satisfied but also issues that are not satisfied. For example, you should spot issues and plan to talk about issues on your exam even if an element or two of the tort may not be present. If you spot an assault and all elements are present except intent, you should still take note of the issue. On the exam, you would IRAC this assault issue, but when you got to the analyze of intent you would explain why intent is not satisfied.

You should also look for information that leads not necessarily to an issue but rather other topics to bring up on your exam. These topics could include information such as dual, single, or transferred intent. If you see information about transferred intent, you will want to make a note

of that. This is not necessarily an “issue” but a topic within a bigger issue, like battery, that you want to bring up on your exam when discussing that battery.

Issue Spotting Example

To illustrate issue spotting, let’s work through this hypothetical: *Alan got out of his car, holding his head. He started to scream at Penny, blaming her for the collision in a voice loud enough for her to hear through the storm. Penny grabbed a pistol (that she had a license to carry) from her glove compartment, got out of her car, and, waving the gun in front of her, shouted: ‘Shut up! I’m an attorney, and I’m in a hurry!’ Unfortunately, the rain was soaking Penny, and the water caused her to lose her grip on the pistol, sending it flying at Alan and hitting him in the forehead. Alan then yelled at Penny: ‘You stupid cow,’ and hit her in the jaw. She fell down at an awkward angle, breaking her right foot. Alan then got into his damaged car, and drove away into the night. Discuss all intentional torts present.*

This hypothetical has 4 issues in it, two assaults and two batteries. Even if all of these are not ultimately viable claims, we still want to analyze each of them and *prove* to our reader *why* they are not viable claims.

1. Alan v. Penny- Assault
 - a. Facts: *Penny grabbed a pistol (that she had a license to carry) from her glove compartment, got out of her car and, waiving the gun in front of her...*
2. Alan v. Penny- Battery
 - a. Facts: *Unfortunately, the rain was soaking Penny, and the water caused her to lose her grip on the pistol, sending it flying at Alan and hitting him in the forehead.*
3. Penny v. Alan- Battery
 - a. Facts: *Alan then yelled at Penny: ‘You stupid cow,’ and hit her in the jaw.*
4. Penny v. Alan- Assault
 - a. Facts: *Alan then yelled at Penny: ‘You stupid cow,’ and hit her in the jaw.*