Evaluation Approach

To learn the most from your experience of writing this essay, use the **Performance, Evaluation, Adjustment** (PEA) three-step self-assessment and improvement process when reviewing the model answer. This will enable you to maximize what you learn from writing this essay, and to improve both your essay-writing skills and your knowledge of the relevant substantive law.

You completed the **Performance** step when you wrote your essay.

To help you with your **Evaluation** of your performance, find the score the essay received in the grading rubric (below) and note the description of why an essay would receive that score. The score tells you in general terms how the essay correlates to the expectations for the assignment. Note that when taken by themselves, some parts of the essay might be of higher or lower quality; the score received is the overall score for the essay taken as a whole.

Next, compare your answer to the model answer. In doing so, you must not merely look for what you got right or wrong. It is important for you to critically examine why you got things right or wrong. The issues that affected your performance this time will likely affect your next essay—unless you take steps to correct them.

This is the point of the **Adjustments** step, and the reason why we ask you to use the **SELF-ASSESSMENT FORM** that follows: to take what you have discovered during your evaluation and determine how to use it to improve on your next essay (or rewrite).

To be clear, you will need to self-assess for each IRAC in the essay—both the "big" IRACs that form the structure of the entire essay, and the "mini" IRACs that you used to develop the major points in your analysis within one of the big IRACs—so please make multiple copies of the form. Doing this will give you an understanding of what you need to do, on the level of detail needed to make the impact on your next essay. (Of course, once you identify corrective steps, you must then actually implement them, evaluate your next essay to see if they helped, and make further adjustments as needed.) If after completing this process you still have questions, please feel free to email me.
## Grading Rubric

<table>
<thead>
<tr>
<th>Score</th>
<th>Description</th>
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<tr>
<td>50</td>
<td>- Essay identifies the subject area and makes some attempt at answering the question.</td>
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| 55    | - Essay identifies at least one major issue.  
     |   - Essay does not articulate most rules of law correctly.  
     |   - Essay does not provide analysis.  
     |   - Essay does not provide a conclusion. |
| 60    | - Essay identifies some issues.  
     |   - Essay articulates some rules of law correctly.  
     |   - Essay attempts to provide analysis but merely repeats facts instead of explaining which facts meet which elements of the rules.  
     |   - Essay does not provide a conclusion for each issue presented. |
| 65    | - Essay identifies several but not all major issues.  
     |   - Essay articulates most rules correctly.  
     |   - Essay provides some analysis by explaining how some of the facts meet the elements of the rules but misses some important facts or inferences.  
     |   - Essay provides conclusions that are not supported by the analysis for each issue. |
| 70    | - Essay identifies all major issues.  
     |   - Essay articulates all rules correctly.  
     |   - Essay provides analysis by explaining how each fact meets each element of the rules.  
     |   - Essay provides conclusions supported by the analysis for each issue. |
| 75    | - Essay identifies all major issues.  
     |   - Essay articulates all rules correctly.  
     |   - Essay provides depth of analysis in explaining how each fact meets each element of the rules.  
     |   - Essay provides conclusions supported by the analysis for each issue.  
     |   - Essay is generally well-written. |
**SELF-ASSESSMENT FORM**

**ISSUE:** Did I identify and prioritize all key issues and frame each in the form of a question? If not, why not? (Select all that apply; note which are most important.)

___ I did not read the facts closely enough to notice that an issue was raised.
___ I did not understand the law so I did not see that the issue was raised.
___ I saw the issue but didn’t think it was important enough to discuss.
___ I saw the issue, but simply forgot to write about it.
___ I saw the issue, but didn’t have enough time to write about it.
___ Other ______________________

What can I do to improve my performance in this category in the future? (Be specific, such as: reviewing particular topics, doing practice problems, refining my outline of potential issues, taking the time to better organize my answer, etc.)

____________________________________________________________________________
____________________________________________________________________________

**RULE:** Did I succinctly and accurately state the rules of law relevant to the issues? If not, why not? (Select all that apply; note which are most important.)

___ I did not have the rule of law memorized.
___ I did not understand the elements of/exceptions to the applicable rule.
___ I did not understand the facts to see how they implicated the rule.
___ I knew and understood the rule, but simply forgot to write about it.
___ Other ______________________

What can I do to improve my performance in this category in the future?

____________________________________________________________________________

**ANALYSIS:** Did I link each relevant fact to the element of law at issue? If not, why not? (Select all that apply; note which are most important.)

___ I did not read the facts closely enough to see how they related to an issue.
___ I did not understand the facts to see how they related to an issue.
___ I merely repeated the facts but did not go further to explain how the facts showed why an element of an issue was or wasn’t met.
___ I failed to identify and/or write about what each party might assert.
___ Other ______________________

What can I do to improve my performance in this category in the future?

____________________________________________________________________________

**CONCLUSION:** Did my analysis lead to a clear, well-reasoned conclusion? If not, why not?

___ I did not provide a clear and concise conclusion for each issue.
___ My conclusion was not supported by my analysis.

What can I do to improve my performance in this category in the future?
Some other questions to consider in order to improve your answer for next time:

1. Did I organize my time well? Did I use my time appropriately to read the call of the question, read the fact pattern, organize my response, and write my answer?

2. Did I organize my answer well? Did I follow the road map I created?

3. Did I utilize the IRAC format? Did I use a separate IRAC format for each issue?

4. Did I make any grammatical mistakes? Typos? Misspelled words?
I. Art v. Charlie

**[ISSUE]** Is Charlie liable for assaulting Art?

**[RULE]**

A. Assault. An assault is a volitional act by the defendant which intentionally causes the plaintiff to suffer an apprehension of an immediate harmful or offensive contact. [After setting out the Rule, the best place to begin with the Analysis is by unpacking each of the major elements or components of the Rule and determining whether it is sufficiently supported by the facts. The Analysis that follows shows what this looks like in practice, as each of the elements of assault becomes one of the major discussion points.]

**[ANALYSIS]**

1. **Volitional act.** An act is volitional if the defendant voluntarily commits it. Here, Charlie clearly acted volitionally when he aimed the gun at Art and threatened to kill him.

2. **Intent.** The intent required for assault is satisfied if the defendant either desired the consequences of his act or knows to a substantial certainty those consequences will occur. Here, it would seem clear that, by pointing the gun at Art and threatening to kill him, Charlie intended to place Art in apprehension of being shot. At the very least, Charlie should have been substantially certain that Art would be apprehensive. Therefore, this element also exists. [Assault is different from all of the other intentional torts, in that it has two mental states: the defendant’s and the plaintiff’s. Both need to be addressed whenever you analyze assault.]
3. **Plaintiff’s apprehension.** The apprehension element is satisfied if a reasonable person in Art’s position would have suffered an apprehension of an immediate harmful (or offensive) contact. Here, Art was facing a stranger pointing a gun at him from ten feet away who said he was going to kill Art. A reasonable person in Art’s position would have also suffered an apprehension of immediate contact (being shot). Therefore, an assault can be established. **[CONCLUSION]** Since there do not appear to be any applicable defenses, Art would be entitled to recover from Charlie for assault.

**[ISSUE]** Is Charlie liable for the battery of Art?

**[RULE]**

**B. Battery.** A battery is a volitional act by the defendant which intentionally causes the plaintiff to suffer a harmful or offensive contact.

**[ANALYSIS]**

1. **Volitional act.** Charlie volitionally fired the gun at Art, causing the bullet to strike Art. *The idea here is that there was a decision to act (Charlie meant to do it), and that decision was Charlie’s alone. Charlie didn’t trip or stumble, causing the gun to fire at Art; no one threatened Charlie’s life if he didn’t fire the gun at Art.]*

2. **Intent.** Again, it would seem clear that, by firing the gun at Art, Charlie intended to cause Art to suffer a touching. *[Note that this is the standard for the defendant’s intent in battery: the defendant has to intend to touch or contact the plaintiff (it cannot be an accidental touching). The question of whether that touching was harmful or offensive is a completely separate question. Of course, if the defendant intended a harmful touching or an offensive touching, that would be more than sufficient for the defendant’s intent. But the actual standard is simply an intent to touch.]*

3. **Harmful or Offensive contact.** This element was clearly met when Art was struck in the arm by the bullet; this is clearly both harmful and offensive (although one or the other would be sufficient). **[CONCLUSION]** Therefore, since there do not appear to be any defenses Charlie could raise, Art would be entitled to recover from Charlie for battery.

II. **Bill v. Charlie**

**[ISSUE]** Is Charlie liable for assaulting Bill?

**[RULE]**
A. **Assault.** Defined above. Bill’s assault claim against Charlie would be virtually identical to Art’s claim, with the following difference. 

*This is a great example of how to use incorporation by reference: refer to what you have previously discuss which is unchanged in the later analysis (such as the elements of the intentional tort of assault), and spend your time discussing what is different in this instance (in this instance, transferred intent which factually applies here but not in the earlier analysis of assault).*

[ANALYSIS]

1. **Transferred Intent.** Charlie’s intentional actions were directed at Art, not Bill. However, under the doctrine of transferred intent when a defendant acts intentionally toward one person but a tort against another person results the intent can be transferred from the first person to the second to establish the tort. [CONCLUSION] Therefore, Charlie’s intent to place Art in apprehension of receiving an immediate battery can be transferred to Bill, establishing this element. [Note that transferred intent applies only to battery, assault, false imprisonment, trespass to chattel, and trespass to land; it cannot be used if one of the torts in question is conversion or intentional infliction of emotional distress.]

[ISSUE] Can Bill recover from Charlie for intentional infliction of emotional distress?

[RULE]

B. **Intentional Infliction of Emotional Distress.** To establish this tort it must be shown that the defendant’s extreme and outrageous conduct intentionally causes the plaintiff to suffer severe emotional distress.

[ANALYSIS]

1. **Extreme and outrageous.** Conduct is classified as extreme and outrageous if beyond the bounds of what a reasonable person would expect to have to tolerate. Being confronted on the street with a loaded weapon and the holder of the weapon threatening to kill is likely beyond the bounds of reasonable toleration. Charlie’s action of pointing and firing the gun in the direction of Art and Bill could possibly be deemed to be extreme and outrageous.

2. **Intent to cause distress?** Charlie’s actions were primarily directed toward Art, not Bill. Since the doctrine of transferred intent does not apply to this tort, it would seem that this element is lacking. However, the intent element for this tort can be established by either intentional or reckless conduct. When Charlie fired the gun in the direction of Art while Art was holding Bill in front of him as a shield it can be concluded that Charlie was acting recklessly as to Bill.

3. **Severe emotional distress.** The distress required for intentional infliction of emotional distress must be more than minor or transitory. No physical injury was suffered by Bill, but he was “horrified” and did incur $5,000 in counseling bills to deal with the stress caused by Art’s conduct. Thus, the facts indicate that Bill suffered severe
emotional distress as a result of almost being shot by Charlie. [CONCLUSION] Therefore, Bill will most likely recover for intentional infliction of emotional distress. [For all of the other intentional torts, the level or degree of injury caused impacts the amount of damages that will be awarded to the plaintiff, but is not otherwise part of the prima facie case that the plaintiff must prove. That is, with the other intentional torts, the plaintiff simply has to prove that he or she suffered damages as a part of proving the case. With intentional infliction of emotional distress, the plaintiff must prove not only that he or she suffered damages in the form of emotional distress, but that the emotional distress suffered was severe as a part of proving the prima facie case.]

III. Bill v. Art.

[ISSUE] Is Art liable for the battery of Bill?

[RULE]

A. Battery. Defined above. [ANALYSIS & CONCLUSION] It would seem clear that when Art grabbed Bill and used him as a shield Art volitionally and intentionally caused a harmful and offensive touching of Bill. [When the rule has previously been stated, and the facts are very clear and are very closely linked to something previously discussed in detail, this sort of incorporation by reference followed by a summary analysis is an effective way of addressing the issues.]

[ISSUE] Is Art liable for assaulted Bill?

[RULE]

B. Assault. Defined above. [ANALYSIS & CONCLUSION] It would also seem clear that when Art held Bill in front of Charlie, who was point a gun at Art, Art volitionally and intentionally caused Bill to be in apprehension of being shot.

[ISSUE] Can Bill recover from Art for intentional infliction of emotional distress?

[RULE]

C. Intentional Infliction of Emotional Distress. Defined above. [ANALYSIS & CONCLUSION] Lastly, Art at the very least acted recklessly, and Art’s actions clearly caused Bill to suffer severe emotional distress.

D. Defenses. [Typically, a discussion of applicable defenses for given tort would follow after the analysis of the elements (i.e., the prima facie case) for that tort, to make your job of writing the analysis easier and to make it easier for the grader to follow your thoughts. However, in a situation such as this, where the same defenses apply to a group of torts, there is nothing wrong with writing a common or shared discussion of potentially applicable defenses.]

1. Necessity. Art may try to claim that he acted out of necessity because his own life was endangered. This defense would fail because one may not sacrifice another’s life
to save his own. The harm sought to be avoided must be greater than the harm caused by the person relying on the defense.

2. **Self-defense.** Art might try to claim the privilege of self-defense. This privilege would entitle him to use reasonable force to protect himself against his attacker (Charlie), but not an innocent third party like Bill. Therefore, this defense will fail.

IV. **Charlie v. Art.**

**[ISSUE]** Is Art liable for the battery of Charlie?

**[RULE]**

A. **Battery.** Defined above. **[ANALYSIS]** When Art shot at Charlie, hitting him in the leg, Art clearly committed a battery.

B. **Self-defense.** As stated above, the privilege of self-defense allows the use of reasonable force to defend against an imminent unprivileged attack. When Art shot Charlie he (Charlie) was running away from the scene, meaning he no longer posed a threat of imminent harm to Art. Art acted more out of retaliation then to protect himself. **[CONCLUSION]** Therefore, Art would have no defense that could be asserted, and Art would be liable for battery.