

## CHECKLIST FOR BA, SOF, AND CONCLUSION

### I. ISSUE – The “I” in IR[Re]AC

- ✓ Reference the controlling jurisdiction.
- ✓ Include the general and specific legal principles at issue (e.g., name of cause of action and reference to particular element(s) at issue).
- ✓ Include a sufficient factual predicate to make the issue intelligible by identifying the relevant parties and their roles with respect to each other.
- ✓ Include the key legally significant facts.

#### FALL 2011 MEMO POSSIBLE EXAMPLE (83 words)

Under California law, a defendant has the requisite intent for battery if the plaintiff suffers injuries as a consequence of the defendant’s wrongful act. One of the Angels’ players, Jered Weaver (“Weaver”) angrily snapped a towel at his coach Mikey Hatcher (“Hatcher”), but hit his teammate Torii Hunter (“Hunter”) instead, resulting in Hunter falling to the ground and suffering serious injuries. Was Weaver engaged in a wrongful act so that he had the requisite intent for battery under the doctrine of transferred intent?

**Comment [BMO1]:** Jurisdiction and legal principles at issue – general (battery) and specific (intent)

**Comment [BMO2]:** LSFs

**Comment [BMO3]:** Specific legal issue in the form of a question

#### FALL 2008 MEMO POSSIBLE EXAMPLE (80 words)

Under Missouri law, to satisfy a claim of adverse possession, a claimant must show that her possession of the disputed property was not only actual, open and notorious, exclusive, and continuous for ten years, but also hostile. Betty Stewart (“Stewart”) established a tomato patch on her neighbors’ (the “Thompsons”) land, and cultivated and maintained it. Does Stewart have a viable claim for adverse possession against the Thompsons on the theory that her possession of the Thompsons’ deeded land was hostile?

**Comment [BMO4]:** Jurisdiction and legal principles at issue – general (adverse possession) and specific (intent)

**Comment [BMO5]:** LSFs

**Comment [BMO6]:** Specific legal issue in the form of a question

## II. BRIEF ANSWER

- ✓ Provide a short answer (almost always “probably” or “probably not”).
- ✓ Set out any elements or factors that are necessary to the conclusion and state whether they are met or satisfied.
- ✓ Provide a summary of your position (i.e., your Discussion section). This summary must focus on the legally significant facts upon which your conclusion is based and the legal principles and reasoning that are critical to the position.
- ✓ Briefly state your overall conclusion for the general and specific legal issues.

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Probably yes. To establish a battery claim against Weaver, Hunter must prove that the contact was intentional, unlawful, and harmful. Of these three elements, two are not at issue. The unlawful element of the battery claim is satisfied because Hunter did not consent to Weaver’s towel-snapping. Similarly, the element of harm is satisfied as Hunter suffered a concussion and can no longer play baseball. Therefore, the only element at issue is intent. It is probable that this element has been met as well. Through the doctrine of transferred intent, intent can be presumed when an individual aims at one person but hits another because, regardless of actual intent, the act is likely to prove injurious and is thus wrongful. Weaver acted deliberately and out of anger when he attempted to “snap” Hatcher with his towel. His action was wrongful as he aimed to hit a person in a manner likely to cause injury. Thus, Weaver’s intent can be presumed, and Hunter probably has a viable claim against Weaver for battery.

Comment [BMO7]: Short answer

Comment [BMO8]: Stating the elements necessary to the conclusion and stating they are satisfied

Comment [BMO9]: Legal reasoning

Comment [BMO10]: LSFs

Comment [BMO11]: Overall conclusion for the general and specific legal issues

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Most likely, yes. To satisfy a claim for adverse possession, Stewart must establish by a preponderance of evidence that she had possession that was (1) hostile, (2) actual, (3) open and notorious, (4) exclusive, and (5) continuous for a period of ten years. The second element is not at issue because Stewart cultivated and used the land as a normal farmer would. The third element is also not at issue because she was the only person to use or attempt to use the land. The fourth and fifth elements are not at issue either because the disputed parcel is and has been visible to others for a continuous period of more than ten years. Thus, the only element at issue is the hostile element. It is probable that Stewart has met this element because she operated under the belief that she owned the land when she established the disputed parcel as a tomato patch and continued to cultivate and maintain it. In addition, her acts of planting tomatoes on the disputed parcel, caring for the plants, building a decorative rock border around the patch, and maintaining the land throughout the winter were acts of dominion, which demonstrate the requisite intent to possess. Therefore, the hostile element is most likely satisfied and Stewart should have a viable claim for adverse possession.

**Comment [BMO12]:** Short answer

**Comment [BMO13]:** Stating the elements necessary to the conclusion and stating they are satisfied, with factual support

**Comment [BMO14]:** LSFs

**Comment [BMO15]:** Legal reasoning

**Comment [BMO16]:** Overall conclusion for the general and specific legal issues

### III. STATEMENT OF FACTS

- ✓ Include all the legally relevant facts.
- ✓ Provide necessary background and procedural facts.
- ✓ Provide important emotionally significant facts, but avoid overly persuasive tone.
- ✓ Avoid unnecessary/irrelevant facts.
- ✓ Avoid phrasing facts in terms that are legal conclusions.
- ✓ Present facts logically (e.g., chronologically, topically, or a mixture thereof).

### IV. CONCLUSION

- ✓ State in a conclusory fashion your predictive outcome with reference to the general and specific issues, and procedural posture, of the case.
- ✓ If space permits, summarize the key legal reasoning supporting your conclusion.
- ✓ If the memorandum calls for a recommendation, include one.

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#### CONCLUSION

Hunter **\*\*probably\*\*** has a viable battery claim because Weaver's intent can be presumed. Although Weaver did not attempt to hit Hunter, he aimed at Hatcher.

**Comment [BMO17]:** Statement of your predictive outcome with reference to the general and specific issue

Because he was engaged in a wrongful act, he is liable to Hunter under the doctrine of transferred intent. Should Hunter decide to file a complaint for battery against Weaver,

he has a significant chance of success.

**Comment [BMO18]:** Recommendation

#### ALTERNATIVE SHORT CONCLUSION – WITHOUT REASONING:

Hunter **\*\*probably\*\*** has a viable battery claim because Weaver's intent can be presumed and transferred to Hunter under the doctrine of transferred intent. Therefore, if Hunter decides to file a complaint for battery against Weaver, he has a significant chance of success.

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### CONCLUSION

Stewart **\*\*most likely\*\*** has a viable claim for adverse possession as she can establish she had the requisite intent. Her acts of dominion over the disputed parcel, including planting a tomato patch, maintaining it, and never asking for permission, demonstrate her intent to possess it. Furthermore, she believed the land was hers and acted as an owner would, with the intent to claim it as her own. Therefore, Stewart should be encouraged to pursue a claim for adverse possession because the hostile element is likely satisfied.

**Comment [BMO19]:** Statement of your predictive outcome with reference to the general and specific issue

**Comment [BMO20]:** Key legal reasoning

**Comment [BMO21]:** Recommendation

*\*\*Note that the wording in your conclusion should mirror the wording in your BA—if you said probably in the BA, say probably in the conclusion.*