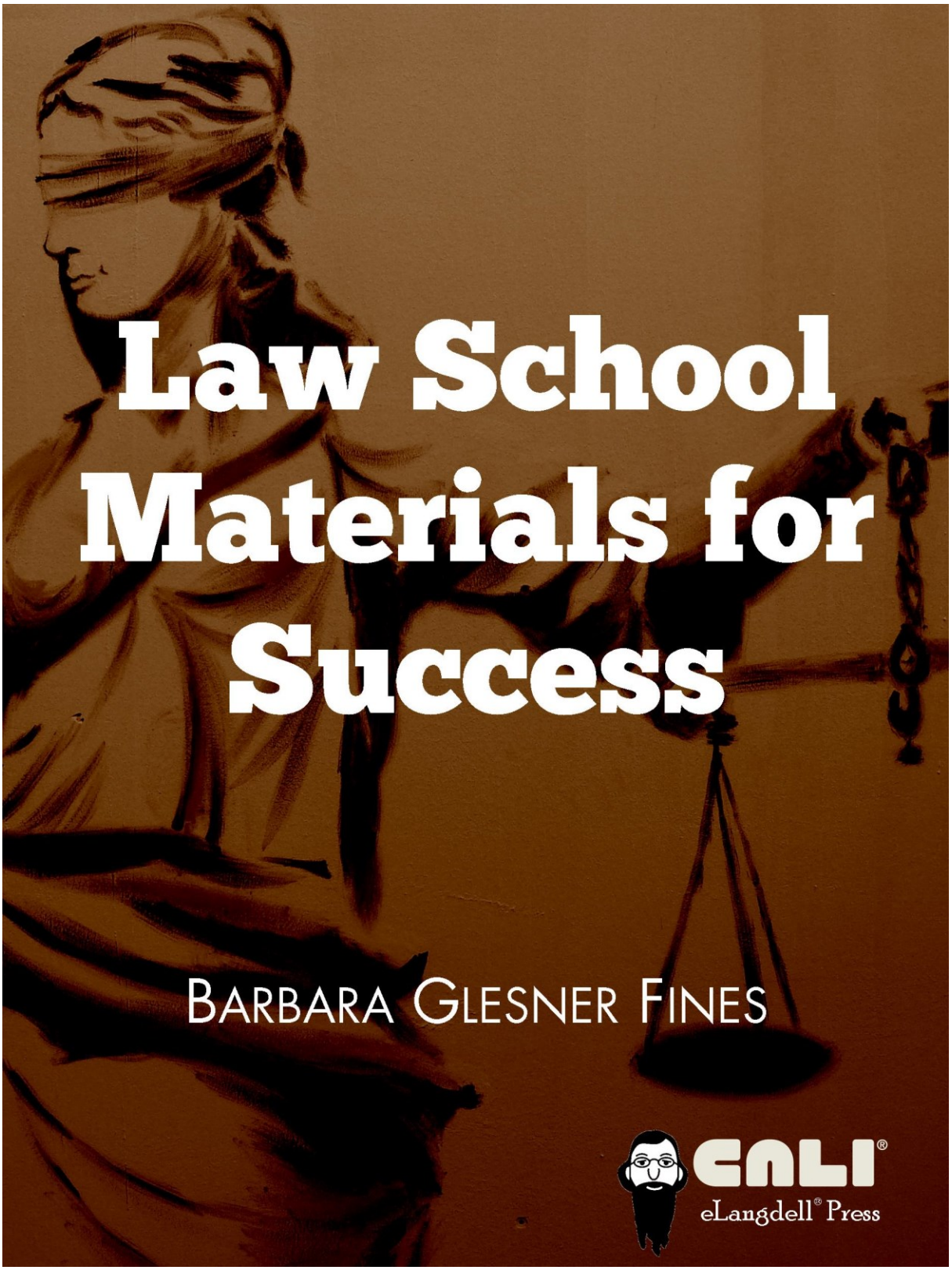
Law School Materials for Success
Barbara Glesner Fines
CALI®
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About the Author

Barbara Glesner Fines is the Ruby M. Hulen Professor of Law and Associate Dean for Faculty at the University of Missouri - Kansas City, where she has taught since 1986. Professor Glesner received her law degree from the University of Wisconsin at Madison and her masters of law degree from Yale Law School. She teaches Professional Responsibility, Family Violence, Divorce Process, and a Seminar in Ethical Issues in the Representation of Families and Children.

Her recent publications include *Ethical Issues in Family Representation* (Carolina Academic Press 2010); *Professional Responsibility: Collaborative Approach* (Context and Skills Series) (Carolina Academic Press 2012); Fifty Years of Family Law Practice - The Evolving Role of The Family Law Attorney, 24 J. AMER. ACAD. MATRIM. L. 601 (2011); Lessons Learned About Classroom Teaching from Authoring Computer-assisted Instruction Lessons, 38 WM. MITCHELL L. REV. 1094 (2012).

Professor Glesner has held leadership positions in many organizations devoted to legal education, including the AALS Section on Teaching Methods (Chair 2012-13); the AALS section on Professional Responsibility (Secretary 2012-13); the Center for Computer Assisted Legal Instruction (Board of Directors, 1998-2005; President 2002-2005; Editorial Board 1998- current); and the Institute for Law School Teaching and Learning (Advisory Board 2003-date, Acting President 2006-2008).

Notices

This is the first version of the first edition of this chapter, updated June 11, 2012. Visit http://elangdell.cali.org/ for the latest version and for revision history.

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Table of Contents

Preface

Dear Law Student,

The first year of law school is, for many people, one of the most significant transitions of their adult life. Law school demands a lot as it helps you make the transition from your prior identity as student (or as some other occupational role) to your new identity as an attorney. To meet the demands of law school, it is often helpful to have the big picture before you begin – a sense of what it is you are trying to do as you prepare for classes, participate in those classes, review and prepare for exams, take exams, and then begin the cycle once again.

Law School Materials for Success is designed to give you the essentials of that process. It is purposefully brief – most law students do not have the time for an extensive examination of the study of law school. Rather, they need a source for some basic, critical advice and some pointers on where to go for more if necessary. That is what this book and the accompanying podcasts are designed to provide.

Each chapter of the book focuses on a different aspect of law school learning. I have observed that many students who have not performed as well as they would like in law school are missing some key academic rung on the ladder of academic skills. For example, they are preparing for and participating in class very well, but they haven't learned how to effectively translate that learning into the review necessary to perform well on exams. Or they do quite well in all the stages of law school learning up to the crucial exams – where they are missing some fundamental skill or understanding of what is being asked of them. By working through each of these chapters and comparing your approach to law school learning to the suggestions presented here, you can master law school learning and achieve success.

I hope that you find these materials helpful as an overview of law school method before you begin your first year, or as a refresher resource you can consult quickly and easily as you proceed through

law school. I am always interested in your ideas and feedback. My email is glesnerb@umkc.edu.

Peace,

Barb Glesner Fines

A Note from CALI:

Professor Glesner Fines has created several podcasts to accompany the material in this book. The Lawdibles, Your Audio Law Professor, are available from lawdibles.classcaster.net

Titles related to material in this book include:

- Factors that Influence Law School Success
- Exam Writing and Briefing Cases
- Outlining for Law School Exams
- Improving Exam Taking Skills by Reviewing Last Semester's Exams
- The Relationship Between Law School and Jobs

Chapter One: Assessing your Resources

To succeed in law school, you must use all of your resources: physical, psychological, emotional, social, financial, and educational. Planning for law school requires a careful assessment of your available resources and plans to use those resources most efficiently. This chapter is designed to assist you in that planning. This chapter covers four basic topics: Resource Priorities, Survival Resources, Time Management, and The Non-cognitive Resources: Self-knowledge and Self-esteem.

Resource Priorities

Some resources are more critical than others to success in law school. One way of assessing the importance of a resource is by reference to psychological theory. Listed below are five categories of need identified by Abraham Maslow.[1] Often, students who are dismissed for academic deficiency reveal that they were unable to study well because they lacked sufficient resources for the necessities of life. Consider this need hierarchy and look for potential problems you may face in law school

Maslow's Need Hierarchy

I. **Physiological Needs** - Food, Water, Sex, Sleep, Rest, and Exercise

II. **Safety Needs** - Shelter, Protection from immediate or future physical harm, and Protection from immediate or future threat to physical, psychological or economic well-being

III. **Social needs** - Love and affection, Friendship, Association with others, Affiliation

IV. **Self-esteem needs** - Self-confidence, Independence, Achievement, Competence, Knowledge, Status, Personal recognition, Respect, Influence with others

V. **Self-actualization needs** - Realization of one's own potential, Self-development activities, Creative behavior, Problem-centered orientation toward life, Identification with the problems of humanity, Acceptance of self and others

The Survival Resources

As the need hierarchy demonstrates, if one is to attend to the higher-level need to realize one's own potential, the basic resources of survival must not be threatened. Think about your timing as you begin law school. I believe that a major reason many students do not succeed in law school is that they started at the wrong time: Don't start law school on the same day you are also beginning major medical treatment, a divorce, or have just had a new baby. Don't start law school without a decent plan for financial support. Do not - unless you are in a part-time program - try to "work your way through law school." There is little room for a second chance in law school. Even if you do manage to get through in these extraordinary circumstances, your education will not be the fulfilling, exciting, and truly successful experience it could be if you would just wait one more year and sort out your problems first.

Financial pressures, in particular, can play a critical role in law school success. As you are painfully aware, law school is extraordinarily expensive and many students arrive at law school with large debt burdens from prior education. These financial pressures can interfere with the ability to succeed in law school - diverting needed time and energies. Some students do not plan sufficiently to avoid financial emergencies. Every student needs to prepare a budget for their law school year. (If you have never prepared a budget, you may benefit from the resources available at a non-profit credit counseling service.)

If your budget reflects financial threats, identify sources of additional assistance. One source of assistance some students look to is part-time employment. However, unless you are in a part-time law program, you should not be working during your first semester of law school. Not only is this a violation of law school rules and American Bar Association accreditation standards, it is a short-

sighted solution. Why threaten your long-term learning and earning by working during the first semester of law school?

Even if they do not interfere with your ability to succeed in law school, financial issues can pose a threat to your bar admission as well. If you have current debt problems, beware of simply ignoring obligations while in law school. As part of the bar admission process, you will need to disclose your debts and the bar examiners will investigate your credit record. Large, unmanaged debt is a red flag on bar applications. Address your debt problems before you come to law school and do not ignore debt issues while in law school.

For assistance, you may wish to work with your local consumer credit counseling service. The CCCS is a non-profit agency that counsels people on debt managements, budgeting, and other principles of personal finance. You can find your local member agency at the website of the National Foundation for Credit Counseling, where you can also find useful financial education resources.

Health and personal resources are the second set of resources you need to address before coming to law school. Few of us are in the kind of physical shape that we would like to be -- imagine the results of a diet consisting heavily of coffees, donuts and Wednesday pizza, and a workout program that consists entirely of carrying 100 pounds of law books from locker to library. (It's not pretty.) The stress of law school causes many students to neglect their health. However, saving time by neglecting meals, rest, and exercise will not pay off in the long run. Follow the advice your mother gave you (or should have given you). Pack a nutritious lunch -- don't make breakfast three cups of coffee and two chocolate doo-wahs out of the vending machines -- eat your veggies. Get enough sleep -- especially during the times you think you can least afford it. Get some exercise -- the Law Book Bench Press is not enough. Take twenty minutes a day to go for a walk at least.

Some students try to cope with the stress of law school through chemistry: caffeine (or stronger) to keep them up; alcohol and other substances to help them down. Not only is this strategy guaranteed to interfere with your studies, but it is a sure-fire way to guarantee that

the Board of Bar Examiners will refuse your application for admission to the bar. Substance abuse and criminal records are major red flags on any application -- and yes, that little DUI ticket counts, even if you went through a diversion program and were told that your record was "clean." You need more than a "clean" record to be a lawyer -- you need a "clean" brain.

If you think you may have a problem with substance abuse already, don't begin law school until you are in recovery. If you are in recovery, set up a strong network of support to keep you there. Every state has a lawyer's assistance program (LAP), which provides confidential, professional assistance to law students and members of the bar. Find the LAP program in your state at the website of the ABA Commission on Lawyer Assistance Programs. ABA also runs a listserv for law students in recovery that you can locate there, along with useful resources on stress, depression, substance abuse, and other mental health issues.

Equally important to your success in law school is your social support system. Who is your "family"? What demands do they make upon your resources? How do they feel about you going to law school? Are there resources, supports, or limitations you need to address with them? You will have less time and energy for your family and friends -- but be sure not to neglect these important people in your life. They are your buffer against stress -- your link to the rest of your life and self. And for heaven's sake, when you are spending time with them, don't "lawyer" them. Watching a football game with your friends is not a good time to review your knowledge of the tort doctrine of assumption of risk. Don't use a discussion with your spouse as an opportunity to practice rephrasing the issue. Instead, keep track of yourself and nurture the relationships that will nurture you.

The Most Limited Resource

Time is a most precious resource in the law. Lawyers charge for their time, often billing clients in six-minute increments at rates averaging over $100 an hour. In law school, as in the profession, you will need to make every minute count. There is always more to do -- more

than can possibly be done -- in learning to practice law. Thus, effective time and study goal management is essential.

To complicate matters further, time management is a very individualized process. Some people work best in the morning, others in the evening. Some people can concentrate best on tasks by shifting back and forth between tasks for variety; others require sustained blocks of time to concentrate on one subject. Some of us require more sleep than others; some have family or community responsibilities. The bottom line is that you have to manage your time according to your needs in a way that will allow you to accomplish your goals.

You must be realistic about the intensive time demands of law school. You must recognize that you simply will not have time for many of the activities or responsibilities that you were able to carry before law school. If you fail to recognize the time demands of law school, you will set unrealistic goals and have unrealistic expectations about what you can accomplish. You will end up being unhappy, harried, sick, and you will not be able to reach your goals. Probably one of the most common reasons for student dismissal from law school is time: students who continued to work or continued to engage in extensive outside activities during law school -- especially in the first year. That is not to say that you will have no time for family, community, or other important outside commitments. Indeed, these outside commitments are important in reducing the overall stress caused by the time demands of law school. But outside time demands are a double-edged sword. It is not uncommon to feel as though you are walking, talking, and thinking nothing but law during the first year. If you are highly motivated to achieve academic success, you will neglect "off time." The inevitable result for all but a few students is burn out -- often just at the crucial exam time. However, if you view law school as "off time" -- scheduling law school around your outside activities rather than vice versa -- you are unlikely to be using your most productive time for study and learning.

Obviously, then, the key is balance and planning. If you have never spent any time thinking about how to manage your time, you should do so now. There are hosts of self-help tools for time management, but the essential principles are relatively simple. First, plan your time. That means more than just making a to-do list or a schedule but having a clear sense of priorities, a realistic sense of how much you can accomplish, and the knowledge of what works for and against your time management. If you have been plagued by procrastination in the past, now is the time to address the circumstances that feed that tendency: whether perfectionism, fear, or simply the thrill of pulling off a last-minute save.

Time management is an integral part of effective law practice. Most lawyers keep records of their time. Even for attorneys who do not charge on an hourly basis, there are important reasons to keep track of the time spent in representing clients. The practice of keeping time records is an important management tool for monitoring efficiencies, comparing productivity, and justifying fees determined on other bases. Good timekeeping is a skill that must be mastered with practice and can be an effective exercise in learning how to manage your time in law school. The essentials of good timekeeping are:

Timekeeping—waiting until the end of the day and trying to reconstruct the time spent on a particular matter will inevitably result in inaccurate—and thus unethical—billing. You can keep time using a simple paper-and-pencil method, an electronic notepad on your computer, phone, or other electronic device, or timekeeping software. Regardless of the method, the key task is the same—note down the beginning and ending time for each task you perform.

"Billable time" —not every minute of every day of legal practice is spent in work for a particular client; yet, it is important to know how those additional hours are actually spent—whether it is attending a CLE or other professional development activity, client development and networking, or simply managing the practice. These hours are part of your overhead, which go into the determination of your hourly rate. You may not charge a particular client for these general overhead tasks, but you should nonetheless record your time on

these tasks. Getting into the habit of recording all your time allows you to see why an eight-hour day gave you only five billable hours.

Itemized task records—Even if you spend an entire day working on one case, you may have completed several different tasks—investigating, consulting, researching, and writing for example. A record that reads "7.2 hours—interviewed client, researched legal issue, phoned records department, drafted motion" is simply no longer acceptable to most courts and clients. Rather, you should describe each separate task and the time spent on that task.

Billing increments—while you could simply charge on a per-minutes basis, most attorneys keep their time in larger increments, with one-tenth of an hour being the most common. In this approach, if you spend three minutes on a phone call for a client, you would round that time up to six minutes. Attorneys who use increments of larger than one-tenth of an hour may be significantly overcharging their clients.

To have a taste of how you will likely be required to manage your time in practice, and to gain insights into your own time management practices, try keeping your time spent on law school for one week. Consider each class, office or activity, a separate "client" and record your time for one week. At the end of the week, stop and reflect on the experience. Did you find it difficult to keep track of your time? Did the process of keeping time affect the way you worked? How? Were you tempted to "cheat" and inflate or estimate your time?

In addition to time keeping, essential tools for time management in practice that you will need to use in law school are a calendar with due dates and a weekly schedule.

Obviously, then, the key is balance and planning. If you have never spent any time thinking about how to manage your time, you may find the following article useful in thinking about time management and planning.

A Calendar

Fill in the calendar for the semester now. When do your classes begin and end? When are exams? When are significant assignments due

(mid-term exams, if any; legal writing papers, etc.) To get you started, check the law school's master calendar and fill in the dates there. Consider that the last three weeks of the semester are generally extremely time pressured, as you struggle to maintain your class preparation and also prepare for exams. Plan now for the most intensive time demands during that period. If you have children or other family responsibilities, plan for additional child-care or other alternative arrangements now. Next, fill in significant dates of other responsibilities. Is your cousin's wedding during the last week of classes? Do you have medical appointments during the middle of the semester? Is your child's school play during exams? Decide now how to balance or rearrange these responsibilities.

A Weekly Schedule

Now that you have an overview of the entire semester, look at the law school schedule. When are your classes and workshops? Block out these inflexible times. Next consider your study times. Study time should be allocated for three separate tasks: preparing for class, reviewing class, and preparing for exams. You should set aside time each week for each of these tasks for each of your classes. As a general rule, you should plan on studying at a minimum three hours for every class hour. THIS IS NOT AN EXAGGERATION. What about outside responsibilities? Block out time for church, community, or family commitments. What about yourself? Block out time to sleep, to relax, and to play.

Consider that you will have fifteen hours of class time each week. Add your four to one study time ratio. That's sixty hours a week. How will you allocate that time? Consider that there are 24 hours in a day; that most people need about 8 hours to sleep and another two hours for eating, bathing, and other basic human functions. That leaves 14 hours a day (98 hours a week) to allocate between law school and life. What choices will you make? Can you work ten hours a day, six days a week so that you can have a free day? Or would your style be better served with seven days a week of eight hours? Or how about fourteen hours a day Monday thru Thursday, and five hours on Friday? These are not easy choices and perhaps you may be saying to yourself that these are choices you can avoid. But you are risking a

great deal if you proceed with any other than these assumptions about the time required during the first year.

While you are at it, think about where you will study as well. The library at school? The public library near your home? Your home? Where will you honestly be the most efficient and the least subject to distractions? Where will you have the resources at hand to study well?

The Non-cognitive Resources: Self-knowledge and Self-esteem

One fundamental resource for success is what might be termed "spirit." This resource is more than self-knowledge and self-confidence; it also involves high motivation and the ability to act as part of a community. Overall, one's attitude toward law school can be as important in success as one's aptitude. What are the necessary attitudes you need to instill in yourself and look for in your study partners?

The successful law student is highly motivated to learn. The first aspect of this "spirit of success" is self-knowledge and the ability to maintain your motivation. To be effective in learning, you must be motivated to learn and must have effective study habits. This is especially so when, as in law school, the demands are so rigorous and the feedback or reward so delayed. Sometimes students excel in law school simply because of extraordinarily high motivation; others fail because their motivation was lacking or insufficient to carry them through the process.

There will be points in law school when you will lose your motivation: either because you are bored, or tired or simply do not see any reward for your efforts. You will need to have ready some techniques to keep your motivation strong. What has worked for you in the past can work for you here. How have you maintained your motivation in other long-term, high-demand tasks? You might challenge yourself: for example, volunteer to participate in class discussions so that you will have an incentive to prepare more fully, or set goals for outlining subject matters by certain dates. Break your work down into small parts and give yourself rewards for completing

each part. Make a visible reminder of your progress -- keep all your briefs and class notes in one notebook and watch it grow, or make lists of assignments and cross them off as you complete them. Remind yourself of the importance of sustained effort to long-term learning. Remind yourself of the importance of long-term learning to your goals of completing law school and pursuing whatever career in law or elsewhere you have set as a goal. Turn to your support system for support and encouragement.

The successful law student is connected and cooperative. Ironically, one of the least effective methods of motivation may be one that seems most predominant in the law school environment: that is, motivating yourself by measuring yourself against your peers. Ironically, those students who are most motivated by the desire to "come out on top" or "earn all A's" -- that is, students with a competitive orientation toward study -- are less likely to "win" than are those students whose motivation comes from the pursuit of more intrinsic rewards, like the enjoyment of learning, accomplishment, or improvement. This is true, in part, because motivating yourself by focusing on grades tends to lead you to focus on strategies for short-term learning, and on finding short cuts to success. Research indicates that this approach to study is unlikely to be effective in creating long-term learning.

Because law school success depends in large part on long-term learning of skills that require daily practice and deep mastery, there are no "short cuts" to success. Moreover, very competitive students also tend to isolate themselves in their learning. Research into law school success demonstrates that a feeling of social isolation is a fundamental variable in predicting success in law school. Even if you generally prefer to work alone, you should at least try to work with study partners for purposes of review and exam preparation. One of the skills that law schools develop is the skill of generating alternative interpretations or solutions. For this skill, two (or more) heads are definitely better than one. Study partners can be important sources for insight into the process of law school learning and support for flagging confidence. When choosing study partners and working with

them, look for positive, directed people with a sense of humor and beware the student who takes him or herself too seriously.

The successful law student is confident and positive Just as isolation is a variable in law school success, so is self-confidence. As Maslow's need hierarchy demonstrates, one cannot realize one's potential until one has fulfilled the need for confidence. Self-confidence is a complex amalgam of prior experience, personality, and setting. You may come into law school with prior experiences of success and a personality geared toward confidence. Unfortunately, the law school setting can shake the confidence of all but the most secure. Throughout a semester, you will receive very little specific, evaluative feedback. Most faculty in the first year give mid-term exams, but few (outside of perhaps your legal writing instructors) provide the type of weekly, graded homework that you might have received in undergraduate education. The classroom process, designed to challenge and expand your learning, will not necessarily provide positive feedback or bolster your confidence.

Some students are especially adept at trying to undermine the confidence of their peers. The first grades you receive in law school are very likely to be the lowest grades you have ever received in your life. And those grades count for so much -- becoming a source of considerable stress as you engage in a more competitive, explicit ranking process than many of you have faced since junior high. Law students are all highly talented and intelligent people, used to achievement. But all law students cannot graduate with a 4.00 grade point average. (You can all graduate, but 90% of you will not graduate in the top 10% of the class). How can one maintain confidence in the face of such a situation? Focus on the positive. Remind yourself of the successes you have had. Re-frame your disappointments in positive directions. If you get a poor grade on your first legal writing assignment, for example, you might frame this as "Better now than later - at least I have a chance to find out how to improve." Be careful about re-framing in ways that undermine your overall motivation (e.g., "The Professor must not like me -- there's nothing I can do to improve). Many people find affirmations or giving themselves pep talks to be effective in boosting confidence.

Try using some of these techniques when you feel your confidence flagging.

The successful law student is an active, independent learner. Successful law students are enthusiastic about their learning rather than viewing learning as an imposition. These students take personal responsibility for their learning and do not expect to be "taught." They are active in their reading and listening. To be an active learner, you must create your own organization of the materials -- not rely on the casebook, outlines, or syllabus to organize the materials for you. Law school casebooks are rarely written in the style of most undergraduate textbooks -- building from simple to complex, containing all the materials needed to master the course, or explaining concepts or organizing materials. The same can be said for many law school classes. Students can become frustrated with questions that have no answers, or no rhyme or reason for being posed. Or students can take charge of their own learning and save the time wasted in blaming the book, professor or law school.

The successful law student has a tolerance for ambiguity. Most undergraduate learning is based on a dualistic mode of thinking. There are "right" and "wrong" answers and the student's task is to memorize as much materials as possible in order to be able to recognize or provide the "right" answer. Having found and provided that answer, no further explanation of the process is required. Law schools are based on a multiplistic and relativistic mode of thinking. Questions, interpretations, explanations and arguments are far more important to most exam performance than providing the correct conclusion. (For more insight into this aspect of law study, see the section on "the right answer" in the next chapter.) If you expect that you will be learning "THE LAW" during law school -- as a set of formula into which you can plug some client facts and get an answer -- you will not succeed. You need to recognize that attorneys are not sought for their knowledge of the law nearly so much as their ability to research, analyze, and use the law.

The successful law student knows how he or she learns best. Just as everyone has different study habits and attitudes, everyone uses different approaches to study. There are several ways that you can

categorize your learning style. They key here is to use these tools, not to label yourself or others, or to predict success or failure. These assessments are simply ways of understanding your own preferences and strengths, so you can devise the most effective methods of study.

For example, one useful way to assess learning style is to consider your preferred mode of perception: how do you take in information about the world? The way people perceive reality can be broken into two categories -- sensing and intuition. Persons who prefer to take in information about their world through sensing use sight, smell, sound, touch and taste. They prefer concrete information and notice what is. In comparison, persons who prefer intuition gather information more often in terms of feelings, thoughts and emotions. They prefer abstractions and notice what might be. The following chart provides some key vocabularies preferred by each of these types. Try to identify which approach to perception you prefer. (Remember, there is no "better" preference).

Sensing (75% of Population)	**Intuition (25% of Population)**
experience	hunches
past	future
realistic	speculative
perspiration	inspiration
actual	possible
fact	fiction
utility	fantasy
practicality	ingenuity
sensible	imaginative

How do these preferences impact your learning? Each preference brings strengths and weakness. For example, often persons with a sensing preference are able to learn step by step, without the "big picture"; whereas a person who prefers intuition learns better with a global scheme in mind. Since law school rarely provides a "big picture" up front, intuitive learners may have to work at finding that model or develop greater patience. On the other hand, intuitive learners are often much more tolerant of ambiguity and complicated situations, qualities that abound in law, whereas sensing types will

need to become more patient with complicated details or problems for which no standard solution exists.

Sensing types are better at learning applications -- they would learn rules of law best by developing factual settings for those rules, for example. Intuitive types are strong in developing theory -- they would learn rules of law best by relating them to a conceptual model. Sensing types often work more steadily, with a realistic idea of how long things take. Intuitive types work in bursts of energy powered by enthusiasm, with slack periods in between. Neither approach is necessarily superior. Intuitive types do need to be aware of the dangers of their preferences to procrastinate and flitter from project to project. Likewise, however, sensing types need to be able to extend themselves for flexibility in their schedules as the situation calls for.

For more information, try the taking the Solomon & Felder Index of Learning Styles, or, for a resource specifically geared to law school learning, read Don Peters & Martha Peters, JURIS TYPES: LEARNING LAW THROUGH SELF-UNDERSTANDING (2007). The point here is to be aware of what works best for you and to build on your strengths and minimize your weaknesses.

Chapter Two: Preparing for Class

Class preparation requires more than simply reading the material. You will need to re-read and work with the materials -- writing notes, re-writing notes, practicing applications and preparing outlines. In this chapter, we will review the critical thinking, reading and writing skills you will use as you prepare for class.

Critical, Active Reading Skills

Law school requires that you read large quantities of dense material. You must have efficient reading habits to simply complete your assignments. You must have critical, active reading habits to be effective in learning from what you read. The following is a suggested method for reading your assignments. It is an elaboration of the classic SQ3R method developed by Professor Frank Robinson at The Ohio State University in the 1940s.[2] That method suggested that you approach each assignment by

- Surveying
- Questioning
- Reading
- Reciting
- Reviewing

This text suggests three more "R"s - Reflecting, Writing, and Research. The SQ3R method is sufficient if what you are trying to learn is rote knowledge. But in law school, you are learning to develop the skills of written and oral analysis. This requires a critical engagement with the ideas you encounter when you read, not merely memorization of those rules. Reflection is central to this critical engagement – stopping and thinking about what you are learning, its possible applications, and the limits of your learning.

Writing makes your critical reflection very precise. Moreover, writing is a key legal skill. The best way to improve your writing is to write a lot. Thus, your note-taking and case-briefing are not only important to your learning legal doctrine, but are important to mastering the skills of written legal analysis. In addition, written summaries of your learning enables your review. The review you must conduct in learning law is an iterative review: that is, you review today's assignment today; then you review this same material again at the end of the chapter or unit, when you have learned more context that deepens your understanding; then you review again at the end of the course, when you must integrate all of your understanding of course doctrine in a manner that you can apply to new problems. If you have written notes to review, you will be able to improve this review each iteration.

Finally, there is a role for research in your law study. At a minimum, you will need to research vocabulary by regularly using a legal dictionary to decipher the language of the law. At times, you may wish to research concepts or cases to clarify or extend your understanding. You will soon learn that there is rarely time for elaborate research of each class assignment; however, you must not overlook the essential research called for to engage your understanding.

With this modified SQ6R method in mind, consider the following guidelines for reading for class.

1. Know your assignment and actually read it.

Before you can read efficiently or effectively, you have to know what to read. Check the syllabus and listen in class for instructor guidance on your reading assignment. If neither the syllabus nor the instructor provides guidance, adopt a rule of thumb that reflects the pace at which you actually cover materials in the class - 20 pages a class, for example - and read at least that much, regardless of whether you are expressly assigned materials or not.

Do read what is assigned. Even if the instructor doesn't cover the material in class. Even if you won't get to the material in class for a week. Be sure to read everything that you are assigned. If you are

given an assignment to read pages 20-34 of your textbook, read those pages of the textbook. Some students read a lot of material, but never really read their assignments. They skim pages 20-34, or they read the cases contained on pages 20-25 and 29-33 but skip the notes, comments, problems, footnotes, or article excerpts in between. Other students actually move their eyes over all the pages, but mostly for the purposes of following their highlighter as they color their books. Then there are the students who read other materials instead of the assignment: canned briefs (the Cliff notes of law school) or outlines, or hornbooks. Sometimes extra reading is a good idea (remember the "Research" R); but first, read your assignment.

2. Prepare to read.

Put yourself in the right place and time for reading. You know what works for you. If reading in your easy chair is really a signal for a nap, find less soporific surroundings. If reading in the library is really an opportunity for socializing, find some isolation. Set aside a place and time that works for you and stick to it.

Put yourself in the right frame of mind as well. Know that cases, in particular, are not easy readers. There is much you will need to learn in order to understand what you are reading and there is even more you will need to infer or interpret. Judges are not necessarily selected for the bench because they are clear writers. Even clear writers sometimes may prefer to create some ambiguity in their opinion. So be prepared.

3. Prepare to learn as you read.

Most law students know that they need to have an outline for their exams. Successful law students know that they need to start their assignments with an outline for their reading. The best sources for such an outline are the table of contents for the textbook or the course syllabus. Before you read any particular assignment or case, look over your reading outline, paying particular attention to the overall topics and "themes." Identify where, in this organization, the materials to be studied fit. Skim through the entire reading assignment (This is the first of several reads). How many pages? How many cases?

Begin to wonder about what you will be reading. Ask yourself some motivational questions about the material. For example, why might I want to know this material? Have I ever had experiences with this subject area? Ask some questions to help identify what you are looking for. For example, read some of the questions in the notes following cases or ask yourself what rules or concepts might you be exploring and guess what they might mean.

4. Read thoroughly.

Read the entire assignment, trying to get a sense of what's going on. This will take a long time at the beginning because you will likely have to stop often to look up unfamiliar words or to re-read confusing passages. Do be sure to use references as you read. Look up unfamiliar terms in the dictionary (standard and legal). Get background on concepts from secondary sources. Re-read each portion of the assignment (each case, for example) looking for key ideas and reasoning.

5. Reflect as you Read.

Engage your critical mind as you read. Be sure that you are not just passively taking in the information, but are searching, questioning, comparing and otherwise thinking as you read. Some students do this by reading out loud if their mind wanders. Many students find it useful to highlight, underline and annotate the text as they read. Argue with the text as you read. Compare what you are reading to what you already know. Whatever technique you use -- keep thinking.

and *Re-read.*

Once is rarely enough. On each subsequent read, have a different purpose and read for that purpose. You might want to re-read to understand simply what happened in the case, for example. Or you might want to re-read in order to compare how what you have read today fits with what you read yesterday.

6. Write.

Briefing the cases assigned is only one aspect of writing as you read. Take notes on other aspects of your reading. Keep a vocabulary list and write out definitions for yourself. If you read statutes or rules,

diagram them or write them in your own words. If there are articles or commentary accompanying a case, be sure you summarize the main points in your notes. If you have questions about your readings, write them down and look for answers.

7. Review.

Throughout the semester, you will need to review everything you have read. Review your readings after you have completed your notes, by comparing them with others or inventing and discussing problems raised by the readings. Review with a purpose of discovering what you know and -- perhaps even more important -- what you don't know. Generate more questions and then try to answer them.

As part of your review, go back to materials that you have read for prior classes and review those materials in comparison to the materials that you have most recently read. Look for connections and themes. Write these ideas down. Review all your notes immediately before class, skimming through the textbook to be sure that you are familiar with where to find important points.

Critical Writing Skills: An Introduction to Briefing

One of the most important aspects of writing as you read is "briefing" the cases in your text. It is the process of preparing the brief that provides the primary benefit, not the brief itself. The process of briefing helps you concentrate on key ideas, compare one case with another, organize your analysis, and review your materials. Remember that your purpose in reading cases is NOT TO LEARN ABOUT THE CASE -- the case is simply one fact situation to which one court has responded. MUCH OF WHAT YOU NEED TO GET OUT OF A CASE IS NOT TO BE FOUND IN THE EXPRESS WORDS OF THE CASE.

You study cases because they provide:

RULES & DOCTRINES -- You must learn to identify the legal concepts and rules that are applied in cases. Learning the rules is the easy part. Interpreting the rules is the difficulty. Remember that RULES ARE TOOLS to solve problems --they are not formulae to

provide answers. So identify and memorize the language of the rules, yes, but also work on identifying all the different uses that could be made of the rule.

ARGUMENTS -- Cases provide examples of techniques of argumentation that can be applied to all kinds of situations. They also provide fact situations to which you can apply your own argumentation skills, creating arguments that are different from or more carefully crafted than those provided by the court.

POLICIES -- Cases implicate public policy considerations that the judges may or may not expressly discuss but which you need to explore.

STRATEGIES AND OUTCOMES -- Cases provide examples of choices and outcomes that affect clients. You need to think about whether the choices made were wise and about what options were available. These are matters rarely discussed explicitly in the case.

Especially during the first month of classes, you will need to read the cases several times before you can produce a final brief. The "policy analysis" and "personal analysis" sections may be rather thin as you concentrate on describing opinion itself. After several weeks, you will be able to brief the cases with less effort and fewer readings. Now, the time saved should be spent thinking about analysis. The focus of your study will shift from the top sections of the briefing format to the bottom.

A Sample Briefing Format

Citation: Name of the case, date decided, court

Statement of the Case: "Who is suing whom for what remedy on what basis?" (from viewpoint of trial court)

Statement of Facts: Chronological summary of all relevant facts (sometimes drawing a diagram helps)

Procedure Below: What happened in the lower court? Who won?

Result on Appeal: Was the trial court reversed or affirmed?

What is the issue? There are usually two kinds of issues: "what is the law? (e.g., which rule should the court apply? or which interpretation of the rule should the court adopt?)" or "how does the law apply to these facts? (e.g., should these facts be characterized in such a way as to fit within the rule or outside the rule?)". A third issue: "what are the facts" is equally important in practice, but we will not usually be addressing those issues in this course. Note that one case may contain several issues.

Arguments and Analysis of Appellant: Why is the trial court wrong and what legal theory or interpretation should have been applied?

Arguments and Analysis of Appellee: What is the trial court's legal theory or application and why is that correct?

What is the Holding? One way to think of a holding is: "Under this doctrine of law, if these facts occur, then this condition of the law has been fulfilled."

Policy Analysis: What public policies or goals are furthered by the court's choice? What would be the effect if the court has chosen an alternative rule or application of the rule? How does this opinion fit in with others you have read on the same topic? How does the law applied in this case fit into the overall scheme?

Personal Analysis: Do you agree with the holding? How far do you think the next court would be willing to extend the holding? Do you agree with the results? Is it fair? Do you agree with the analysis? Is it logical and consistent? What's likely to happen now to the people and the property involved? What would you have done differently if you had represented one of the parties or had been the judge? Why is this case in the book? Why did the professor assign it? How might it be tested?

Holdings and "What's the Answer"

Students often have the most difficulty in arriving at a 'holding' in their brief. This is often the point at which students approach their professors and ask "Did I get the holding right?" or "What's the answer?" The "answer" to all legal questions is the same: IT

DEPENDS. What the holding of a case is depends on how you interpret the result of the case in light of the facts and the court's reasoning. Students must understand that a holding is not the same as a 'rule', which is the law the court applies to the facts in the case to reach the holding. It is also different than the court's 'rationale' for why it chose to apply the rule in the way it did. Over time, a series of 'holdings' in related cases, crystallize into 'rules'. Even when the court says "We hold..." the statement they make may not be what develops into the "holding" of the case as other courts apply that case.

So, there is no "right or wrong" holding -- only interpretations of cases that are more strongly supported and better reasoned that others -- and when is a particular interpretation "better reasoned"? IT DEPENDS on the use you wish to make of the holding. If you are defending someone for whom the interpretation of a holding will be favorable precedent and you can make a good argument that that interpretation is correct, then that is the better holding. If you are trying to predict how a future court will apply a case, the interpretation that results in a holding that best predicts the future is the "better" holding -- at least until the future changes.

Here is one way of looking at a holding that can help to reflect the complexity of this concept.

> Suppose a court has a case in which A discovers that B has a son who requires a special operation. Out of the goodness of A's heart, A pays for the operation. B discovers A's generosity and then promises to pay for A's education. B later reneges on the promise, just as A is about to finish the degree program and begin a teaching job. The court finds that B has no legal obligation to pay for A's education (the result). The holding might be phrased as follows:

Functional Result:

The Court will not grant restitution to a Plaintiff who performs a Defendant's obligation...

Facts Tending to Lead to Result

AT LEAST IF:

1) Defendant has not requested Plaintiff to perform the obligation
2) Plaintiff and Defendant have not entered into a contract under which Defendant agreed to reimburse Plaintiff
3) There existed an alternative remedy through which someone could have required Defendant to perform its obligation itself

Facts Tending to Lead to Opposite Result

EVEN THOUGH:

1) Defendant did have the obligation
2) Performance of the obligation was of great public importance
3) Plaintiff performed Defendant's obligation
4) Plaintiff's performance of the obligation conferred a benefit on Defendant.
5) Plaintiff had an obligation (e.g. teaching contract) which could not be performed unless Defendant's obligation was performed

Facts Tending to Mitigate the Effect of the "Even Though" Facts

AT LEAST SO LONG AS:

1) Plaintiff was not an intended beneficiary of the statute or contract (or other source) creating Defendant's obligation
2) Plaintiff has some other remedy for any damage Plaintiff suffered by reason of his inability to perform his obligation (e.g. teaching contract)

The Importance of Vocabulary

It is tempting for students to gloss over words that they don't understand. Many professional schools' students have developed their vocabulary to the point that, when faced with unfamiliar words, they simply guess their meanings from context and let it go at that. They have gotten out of the dictionary habit. In law school, while

guessing meaning from context is not a bad first step, the dictionary habit is critical. Every word that you pass over (whether legal or not) creates a hole in your understanding that has a cumulative effect on your ability to master the material.

The study of law revolves around the learning of a whole new language. Some legal words are foreign looking and sounding (for example, "res judicata" "mens rea"); others look like words that you think you know (judgment, reasonableness, intent) but have peculiar and complex legal meaning. Often, the meaning of these terms is the key issue in interpreting cases and statutes. Having the vocabulary of the law at hand is essential to being able to research the law. The fact that separate (very voluminous) dictionaries exist for legal terms should indicate to you the importance of acquiring and mastering a legal vocabulary.

Thus, part of your daily class preparation should include looking up and striving to understand the definitions for every unfamiliar word. At first, this will mean that you will be stopping to look up words nearly every other sentence. Take heart. As the semester progresses and your legal vocabulary expands, however, you will be find fewer and fewer unfamiliar words. You can use a classic legal dictionary such as Black's or Ballentine's, which courts cite as authoritative sources of legal definitions; however, if you find online legal dictionaries more convenient, these are fine for class preparation. Just be sure that your online sources are from a reliable source – learning your vocabulary from the notes of another 1L student posted to the web is not necessarily the best route to accurate understanding.

The task of becoming skillful in case analysis is indeed difficult and time consuming. It may take hours to comprehend a single opinion. If you apply yourself diligently, however, and if you have a realistic outlook of what must be done, you will find that the time needed to handle opinions will tend to decrease. What will increase from this approach will be your satisfaction in being able to use case law effectively in the resolution of legal problems and effectively research law in order to learn more.

Guided Reading of a Case

Let's try applying the SQ6R principles with a simple case involving a lost animal. On the left side of the page is an opinion in an actual case. On the right side of the page is a guide to what you should be getting out of the case as you read it. Remember, it may take more than one reading.

What you read…	What you may think…	What you should do…
(Front of the Book) Property: Cases & Materials	*I am studying Property*	RESEARCH the term: *"n. anything that is owned by a person or entity."*
(Table of Contents) I. Basic Concepts of Ownership A. Acquisition 1. Discovery, Capture	*The point of my study is to learn about how a person acquires ownership rights to property.*	REFLECT "what do I know about how I acquire ownership?" "What is the significance of discovering property? Capturing property? When in my practice might I encounter these ideas?"
Edward CONTI, Plaintiff, *v.* *ASPCA and Diana Henley, Defendants*	*Who is suing whom? This looks like a civil lawsuit because it is between private individuals rather than the state prosecuting a criminal case*	READ: learn who the persons are involved in the dispute. WRITE: "who is suing whom" in terms of their status in the lawsuit (here, e.g., "A person who found a parrot is suing the organization that claims that they were the true owners of the parrot")
Civil Court, City of New York, Queens County, Part 10.	*This is a trial-level court, not the typical appellate opinion. I wonder why a trial court opinion is included in the textbook?*	READ the opinion recognizing that the trial court has to find both facts and law.
Jan. 30, 1974. MARTIN RODELL, Judge.	*Is there anything particularly significant about this year? Have I heard of this judge before?*	READ and keep your eyes and ears open for any information that makes it particularly important when and by whom the opinion was written.

Chester is a parrot. He is fourteen inches tall, with a green coat, yellow head and an orange streak on his wings. Red splashes cover his left shoulder. Chester is a show parrot, used by the defendant ASPCA in various educational exhibitions presented to groups of children. On July 5th, 1973, the plaintiff, who resides in Belle Harbor, Queens County, had the occasion to see a green-hued parrot with a yellow head and red splashes seated in his backyard. His offer of food was eagerly accepted by the bird. This was repeated on three occasions each day for a period of two weeks. This display of human kindness was rewarded by the parrot's finally entering the plaintiff's home, where he was placed in a cage.	*These are facts.* *For class, I need to be able to explain what happened. For the final exam, I may have to be able to compare these facts and the outcome to a different set of facts.*	READ: Get the story clear in your mind WRITE or diagram that story. For example, ASPCA has a parrot that is trains. Parrot flies away and ASPCA tries to recover all day. Conti finds the bird, lures it into a cage after a lot of effort and wants to keep it. He contacts the ASPCA for advice about keeping it. The ASPCA claims that the parrot is theirs and takes it. Conti files this suit to get back the parrot. RECITE the story to someone else.
The next day, the plaintiff phoned the defendant, ASPCA, and requested advice as to the care of a parrot he had found. Thereupon the defendant sent two representatives to the plaintiff's home. Upon examination, they claimed that it was the missing parrot, Chester, and removed it from the plaintiff's home. Upon refusal of the defendant, ASPCA, to return the bird, the plaintiff now brings this action in replevin.	*I need to pay attention to which of these facts were especially important to the outcome of the case.* *Conti sues in "replevin" – I wonder what that means? I wonder what he wants?*	RESEARCH – look up Replevin in the dictionary: "*An action in which the owner or one who has a general or special property in a thing taken or detained by another seeks to recover possession in specie, and sometimes the recovery of damages as an incident of the cause.*" Look up words in the definition: "in specie" = *the thing itself* REFLECT – What difference does it make that Conti wants the parrot returned rather than money damages? WRITE the definition in your own words.

The issues presented to the Court are twofold: One, is the parrot in question truly Chester, the missing bird? Two, if it is in fact Chester, who is entitled to its ownership?	*Great! The court identifies the issues for me!* {BEWARE! What the court says the issue is and how your professor wants you to recite the issue or what your analysis may require as the issue to be framed can be quite different. So don't stop thinking for yourself!}	WRITE a list of the issues: Is this Chester? (fact issue) Who owns Chester? (mixed issue of fact and law) Re-READ the facts REFLECT - try to decide for yourself what the resolution of these issues should be.
The plaintiff presented witnesses who testified that a parrot similar to the one in question was seen in the neighborhood prior to July 5, 1973. He further contended that a parrot could not fly the distance between Kings Point and Belle Harbor in so short a period of time, and therefore the bird in question was not in fact Chester. The representatives of the defendant, ASPCA, were categorical in their testimony that the parrot was indeed Chester, that he was unique because of his size, color and habits. They claimed that Chester said 'hello' and could dangle by his legs. During the entire trial the Court had the parrot under close scrutiny, but at no time did it exhibit any of these characteristics. The Court called upon the parrot to indicate by name or other mannerism an affinity to either of the claimed owners. Alas, the parrot stood mute. Upon all the credible evidence the Court does find as a fact that the parrot in question is indeed Chester and is the same parrot which escaped from the possession of the ASPCA on June 28, 1973.	*This is the court's analysis of the fact issue.* *Do I agree?* *How might I have represented Conti differently?*	READ and note what the court decided. Factual issues are rarely important in most 1L classes. Rather, because cases are on appeal, the factual issues have been resolved. If the court recites the factual dispute, the important thing to note is what the court is required to believe and not argue with that conclusion.

The Court must now deal with the plaintiff's position, that the ownership of the defendant was a qualified one and upon the parrot's escape, ownership passed to the first individual who captured it and placed it under his control.	*What does it mean that the ownership was "qualified"?*	RESEARCH - Look up "Qualified" – find a definition that has to do with Qualification (as in fitness). (You will likely decide that can't be the meaning the court has in mind here). Look at all the definitions of terms with "qualified" for one that seems relevant. RESEARCH the definition of "qualified owner" = *"The owner of a qualified interest in a thing."* Read the definition of "Qualified interest" = *"An interest in property under which control falls short of the absolute, the property not being objectively and lawfully appropriated to one's use in exclusion of all other persons."* REFLECT – Does this definition help you understand the concept? If you still feel like you don't understand, mark your notes for later REVIEW to see if you understand it better later.

The law is well settled that the true owner of lost property is entitled to the return thereof as against any person finding same. (In *re Wright's Estate*, 15 Misc.2d 225, 177 N.Y.S.2d 410 (1958) (36A C.J.S. Finding Lost Goods s 3). This general rule is not applicable when the property lost is an animal. In such cases, the Court must inquire as to whether the animal was domesticated or ferae naturae (wild). Where an animal is wild, its owner can only acquire a qualified right of property, which is wholly lost when it escapes from its captor with no intention of returning.	*Ok, now we're getting to some LAW – and it's written in a really old-fashioned style. And animals have their own rule and it's in Latin much less! This must be how lawyers are supposed to write.* {BEWARE! This is the kind of thinking that gets you into trouble – many opinions are written very badly and opinions that were written decades ago, even by as famous a legal writer as Judge Rodell, reflect a style of their time, not current best legal usage. The broader point here – be CRITICAL in your reading!}	READ the statement of the rules that the court may apply in this case. REFLECT on where the rule comes from (e.g., here, a prior case and a C.J.S. article – you will learn that C.J.S. is the abbreviation for a legal encyclopedia. If you are reading a case and see an unfamiliar source, stop and ask what that source might be and why the court uses it). RESEARCH Latin terms (even when the text defines them as it does here), not only so you can better understand the term, but so you are comfortable being able to pronounce the term. RECITE - Explain the rule(s) in your own words. REFLECT - What parts of the rule are clear? What parts seem subject to some differing interpretations?

Thus, in *Mullett v. Bradley*, 24 Misc. 695, 53 N.Y.S. 781 (1898), an untrained and undomesticated sea lion escaped after being shipped from the West to the East Coast. The sea lion escaped and was again captured in a fish pond off the New Jersey Coast. The original owner sued the finder for its return. The court held that the sea lion was a wild animal (ferae naturae), and when it returned to its wild state, the original owner's property rights were extinguished. In *Amory v. Flyn*, 10 Johns. (N.Y.) 102 (1813), plaintiff sought to recover geese of the wild variety which had strayed from the owner. In granting judgment to the plaintiff, the court pointed out that the geese had been tamed by the plaintiff and therefore were unable to regain their natural liberty. This important distinction was also demonstrated in *Manning v. Mitcherson*, 69 Ga. 447, 450--451, 52 A.L.R. 1063 (1882), where the plaintiff sought the return of a pet canary. In holding for the plaintiff, the court stated, 'To say that if one has a canary bird, mocking bird, parrot, or any other bird so kept, and it should accidentally escape from its cage to the street, or to a neighboring house, that the first person who caught it would be its owner is wholly at variance with all our views of right and justice.'	*The court is explaining the rule with examples.*	READ and REFLECT - Identify the elements or factors to consider in learning the rules. First, read what the court says is important: Here for example, the court says that being "unable to regain their natural liberty" is an "important distinction" between tame and wild animals. (Think: the sea lion returned to its natural state but the geese and the canary didn't). Second, try to identify other differences and similarities from the language of the case that explains the difference in category: Here, for example, the court calls the sea lion "untrained and undomesticated" but points out that the geese were "tamed" and the canary was a "pet" WRITE – list the key factors or elements you have identified REFLECT - Think of these differences and try to explain the differences in your own words – what makes an animal "tame"? "domesticated"? a "pet"? What is an animal's "natural liberty"?

The Court finds that Chester was a domesticated animal, subject to training and discipline. Thus the rule of ferae naturae does not prevail and the defendant, as true owner, is entitled to regain possession.	This is the court's decision –but it doesn't really explain its decision much. This isn't the court's holding because it isn't stated as a rule for future cases, using the facts and law of this case.	READ the court's reasoning. REFLECT - If the court's reasoning is conclusory (as this is) or confused or simply unsatisfactory, try to explain how the court could have reasoned its way to this conclusion. WRITE out or RECITE to someone else that reasoning.
The Court wishes to commend the plaintiff for his acts of kindness and compassion to the parrot during the period that it was lost and was gratified to receive the defendant's assurance that the first parrot available would be offered to the plaintiff for adoption.	Isn't that nice? I wonder if it is legally significant.	REFLECT on some of the ways in which the dispute may have been resolved without trial? Why do you suppose this case didn't settle? Consider the practical aspects of the type of dispute you are reading about.
Judgment for defendant dismissing the complaint without costs.	So this means ASPCA wins.	REFLECT – does the outcome surprise you?

Case #2

Here is a more typical law school case. Footnotes point out how you should be reading this case.

Thomas and wife v. Winchester[3]

Court of Appeals of New York [4]

Decided July 1852 [5]

6 NY 397

RUGGLES, Ch. J.[6] delivered the opinion of the court.

This is an action brought to recover damages from the defendant for negligently[7] putting up, labeling and selling as and for the extract of dandelion, which is a simple and harmless medicine, a jar of the extract of belladonna[8], which is a deadly poison; by means of which the plaintiff Mary Ann Thomas, to whom, being sick, a dose of dandelion was prescribed by a

physician, and a portion of the contents of the jar, was administered as and for the extract of dandelion, was greatly injured.

The facts proved were briefly these: Mrs. Thomas being in ill health, her physician prescribed for her a dose of dandelion. Her husband purchased what was believed to be the medicine prescribed, at the store of Dr. Foord, a physician and druggist in Cazenovia, Madison county, where the plaintiffs reside.

A small quantity of the medicine thus purchased was administered to Mrs. Thomas, on whom it produced very alarming effects; such as coldness of the surface and extremities, feebleness of circulation, spasms of the muscles, giddiness of the head, dilation of the pupils of the eyes, and derangement of mind. She recovered however, after some time, from its effects, although for a short time her life was thought to be in great danger. The medicine administered was belladonna, and not dandelion. The jar from which it was taken was labeled "1/2 lb. dandelion, prepared by A. Gilbert, No. 108, John-street, N. Y. Jar 8 oz." It was sold for and believed by Dr. Foord to be the extract of dandelion as labeled. Dr. Foord purchased the article as the extract of dandelion from Jas. S. Aspinwall, a druggist at New-York. Aspinwall bought it of the defendant as extract of dandelion, believing it to be such. The defendant was engaged at No. 108 John-street, New-York, in the manufacture and sale of certain vegetable extracts for medicinal purposes, and in the purchase and sale of others. The extracts manufactured by him were put up in jars for sale, and those which he purchased were put up by him in like manner. The jars containing extracts manufactured by himself and those containing extracts purchased by him from others, were labeled alike. Both were labeled like the jar in question, as "prepared by A. Gilbert." Gilbert was a person employed by the defendant at a salary, as an assistant in his business. The jars were labeled in Gilbert's name because he had been previously engaged in the same business on his own account at No. 108 John-street, and probably because Gilbert's labels rendered the articles more salable. The extract contained in the jar sold to Aspinwall, and by him to Foord, was not manufactured by the defendant, but

was purchased by him from another manufacturer or dealer. The extract of dandelion and the extract of belladonna resemble each other in color, consistence, smell and taste; but may on careful examination be distinguished the one from the other by those who are well acquainted with these articles. Gilbert's labels were paid for by Winchester and used in his business with his knowledge and assent. [9]

The defendants' counsel moved for a nonsuit[10] on the following grounds:

That the action could not be sustained, as the defendant was the remote vendor of the article in question: and there was no connection, transaction or privity[11] between him and the plaintiffs, or either of them.

* * * *[12]

The judge overruled the motion for a nonsuit, and the defendant's counsel excepted.

The case depends on the first point taken by the defendant on his motion for a nonsuit; and the question is, whether the defendant, being a remote vendor of the medicine, and there being no privity or connection between him and the plaintiffs, the action can be maintained.[13]

If, in labeling a poisonous drug with the name of a harmless medicine, for public market, no duty was violated by the defendant, excepting that which he owed to Aspinwall, his immediate vendee, in virtue of his contract of sale, this action cannot be maintained.[14] If A build a wagon and sell it to B, who sells it to C, and C hires it to D, who in consequence of the gross negligence of A in building the wagon is overturned and injured, D cannot recover damages against A, the builder. A's obligation to build the wagon faithfully, arises solely out of his contract with B. The public have nothing to do with it. Misfortune to third persons, not parties to the contract, would not be a natural and necessary consequence of the builder's negligence; and such negligence is not an act imminently dangerous to human life.

So, for the same reason, if a horse be defectively shod by a smith, and a person hiring the horse from the owner is thrown and injured in consequence of the smith's negligence in shoeing; the smith is not liable for the injury. The smith's duty in such case grows exclusively out of his contract with the owner of the horse; it was a duty which the smith owed to him alone, and to no one else. And although the injury to the rider may have happened in consequence of the negligence of the smith, the latter was not bound, either by his contract or by any considerations of public policy or safety, to respond for his breach of duty to any one except the person he contracted with.

This was the ground on which the case of *Winterbottom v. Wright*, (10 Mees. & Welsb. 109,) was decided. A contracted with the postmaster general to provide a coach to convey the mail bags along a certain line of road, and B. and others, also contracted to horse the coach along the same line. B and his co-contractors hired C, who was the plaintiff, to drive the coach. The coach, in consequence of some latent defect, broke down; the plaintiff was thrown from his seat and lamed. It was held that C could not maintain an action against A for the injury thus sustained. The reason of the decision is best stated by Baron Rolfe. A's duty to keep the coach in good condition, was a duty to the postmaster general, with whom he made his contract, and not a duty to the driver employed by the owners of the horses. [15]

But the case in hand stands on a different ground. The defendant was a dealer in poisonous drugs. Gilbert was his agent in preparing them for market. The death or great bodily harm of some person was the natural and almost inevitable consequence of the sale of belladonna by means of the false label. [16]

Gilbert, the defendant's agent[17], would have been punishable for manslaughter[18] if Mrs. Thomas had died in consequence of taking the falsely labeled medicine. Every man who, by his culpable negligence, causes the death of another, although without intent to kill, is guilty of manslaughter. (2 R. S. 662, § 19.) A chemist who negligently sells laudanum in a phial labeled as paregoric, and thereby causes the death of a person to whom it is administered, is guilty of manslaughter. (Tessymond's case,

1 Lewin's Crown Cases, 169.) "So highly does the law value human life, that it admits of no justification wherever life has been lost and the carelessness or negligence of one person has contributed to the death of another. (*Regina v. Swindall*, 2 Car. & Kir. 232-3.) And this rule applies not only where the death of one is occasioned by the negligent act of another, but where it is caused by the negligent omission of a duty of that other. (2 Car. & Kir. 368, 371.) Although the defendant Winchester may not be answerable criminally for the negligence of his agent, there can be no doubt of his liability in a civil action, in which the act of the agent is to be regarded as the act of the principal.

In respect to the wrongful and criminal character of the negligence complained of, this case differs widely from those put by the defendant's counsel. No such imminent danger existed in those cases. In the present case the sale of the poisonous article was made to a dealer in drugs, and not to a consumer. The injury therefore was not likely to fall on him, or on his vendee who was also a dealer; but much more likely to be visited on a remote purchaser, as actually happened.[19] The defendant's negligence put human life in imminent danger. Can it be said that there was no duty on the part of the defendant, to avoid the creation of that danger by the exercise of greater caution?[20] or that the exercise of that caution was a duty only to his immediate vendee, whose life was not endangered? The defendant's duty arose out of the nature of his business and the danger to others incident to its mismanagement. Nothing but mischief like that which actually happened could have been expected from sending the poison falsely labeled into the market; and the defendant is justly responsible for the probable consequences of the act. The duty of exercising caution in this respect did not arise out of the defendant's contract of sale to Aspinwall. The wrong done by the defendant was in putting the poison, mislabeled, into the hands of Aspinwall as an article of merchandise to be sold and afterwards used as the extract of dandelion, by some person then unknown. The owner of a horse and cart who leaves them unattended in the street is liable for any damage which may result from his negligence. (*Lynch v. Nurdin*, 1 Ad. & Ellis, N. S. 29; *Illidge v. Goodwin*, 5 Car. & Payne,

190.) The owner of a loaded gun who puts it into the hands of a child by whose indiscretion it is discharged, is liable for the damage occasioned by the discharge. (5 Maule & Sel. 198.)[21] The defendant's contract of sale to Aspinwall does not excuse the wrong done to the plaintiffs. It was a part of the means by which the wrong was effected. The plaintiffs' injury and their remedy would have stood on the same principle, if the defendant had given the belladonna to Dr. Foord without price, or if he had put it in his shop without his knowledge, under circumstances which would probably have led to its sale on the faith of the label.

In *Longmeid v. Holliday*, (6 Law and Eq. Rep. 562,) the distinction is recognized between an act of negligence imminently dangerous to the lives of others, and one that is not so. In the former case, the party guilty of the negligence is liable to the party injured, whether there be a contract between them or not; [22]in the latter, the negligent party is liable only to the party with whom he contracted, and on the ground that negligence is a breach of the contract.

Judgment affirmed.

Reading the Law from a Series of Cases

Not only do you need to be able to "brief" each case, you must be able to read the cases together. Sometimes casebooks provide two cases with very similar facts but opposite outcomes. Your task in preparing for class is to explain ("distinguish" or "reconcile") why each case came out the way it did. Sometimes, the two cases simply represent majority and minority approaches to the same rule. Other times, one case represents the general rule and subsequent cases represent extensions, modifications, exceptions, or reversals. You need to be able to read these cases together to identify what the law has become.

For example, assume that you have read two cases on products liability, similar to *Thomas v. Winchester*, in your torts class: *Adams v. Burns* involving a gun and *Appleton v. Butler* involving a kerosene lamp. The plaintiff won in one case and lost in the other. You have now

been presented with a hypothetical and asked to predict or argue for a result. One way to learn to identify rules and analogize cases is to create a chart of the relevant cases and generalize the facts broadly or narrowly to fit your case. Complete the chart below to practice this skill.

Assume that you have a client, Alberts, who is suing Berg for injuries that resulted when he ate some rat poison labeled aspirin. There are two cases in your jurisdiction that you think might apply as precedent. As you read those cases, you will be:

- choosing facts that are important to the outcome
- characterizing those facts in a generic way that allows ...
- comparing the facts of those cases to the facts of your case to either
    - making analogies from the case (argue that your facts are the same) to your facts if the outcome is the same as the outcome you desire OR
    - distinguishing the case (your facts are different) from your facts if the outcome is not favorable
- explaining WHY the similarities or differences you have identified are important (this requires some rule and theory building).

	Client Situation	Case #1	Case #2
Fact Characterization	Alberts Seller	Adams Seller-Manufacturer	Appleton Seller-Manufacturer
Fact Characterization	Bottle of pills	Gun	Kerosene Lamp
Fact Characterization	Labeled by Alberts	A told B gun was safe	A said nothing about safety
Fact Characterization	Alberts not aware of poison	A knew of defect	A didn't know of defect
Fact Characterization	Berg took pill, became ill	Burns fired gun, hurt	Butler lit lantern, hurt
Results	???	Adams liable	Appleton not liable

How do you decide what facts are important to compare or what explanations can be used to justify your comparisons? The opinions themselves may provide some clues, but you need to learn to read beyond what the court says and look to what it does. By examining facts, and asking "So what" repeatedly about each difference and similarity in facts, you will soon discover several possible reasons beyond the court's reasons. This is the route to true understanding.

Chapter Three: Getting the Most from Class

While class time actually is a very small percentage of the time you spend on learning in law school, it is critical time nonetheless. Research establishes that class attendance is one of the most influential performance factors in predicting law school performance. (Kimball, Farmer & Monson, Ability, *Effort, and Performance Among First-Year Law Students at Brigham Young University*, 1981 AM. B. FOUND. RES. J. 671, 689-92). For class time to extend your learning, however, you must be deliberate about making the most of that time.

Most law school classes are very different from traditional undergraduate classes. They are not passive exercises, and are not intended to tie the material into a neat package. Instead, many law school classes (and certainly those in the first year) are designed to build on the basic understandings obtained from your careful preparation, answer some of your questions, and raise many new questions. The materials in this chapter are designed to help you get the most from those classes.

What to Expect in Class (and Why)

Instruction in first-year law school classes around the country is remarkably similar, regardless of the subject, professor, students, location or school "rank." (Steven I. Friedland, *How We Teach: A Survey of Teaching Techniques in American Law Schools*, 20 SEATTLE U. L. REV. 1, 28 (1996)). In most law school classes, your professor will ask questions and students will answer. This has been characterized the "Socratic" method. Some professors are masters of the method. For others, you may need to work harder to understand their questioning method.

Professors differ in the methods used to select students for participation in this exchange. Some professors call on students randomly, others will ask for volunteers. In some classes, only two or three students will be "on the hot seat" during class; in others, a

larger number of students will be asked to speak. The most important thing for you to remember is, even if you are "off the hook" for answering a question, stay as attentive and focused as if the questions were being directed to you.

Students often dread the moment at which they are asked to speak in class. For some, any public speaking is difficult, not to mention the stress of debate with the professor in the classroom. Other students seem to thrive on the opportunity to contribute to class discussion or challenge ideas presented. Why do we have this interaction in the classroom in the first place? What is the point of all this grilling by the professors? Professors have many goals in their questioning methods. Questions might be used simply as a method of keeping students honest in their class preparation. They may serve the purpose of assessing student understanding of basic rules and doctrines before moving to more advanced analysis of those rules. Primarily though, questions in the law school classroom go beyond recitation of rules, doctrines and theory, but also to develop skills of critical, independent reading and thinking, and confident articulation of ideas, arguments and analysis. The "Socratic" method can help you develop these skills if you prepare and participate. You can better prepare yourself for the moment when you are called upon (or volunteer) to speak by recognizing the kinds of questions your professor typically asks.

Often professors merely ask students to "state the case": which basically consists of reciting the key elements of your case brief. Fine tuning your brief to meet the format expected by each professor can make responding to these questions quite straightforward. Other forms of questions are a bit more daunting. For example, the professor may ask you to speculate about the facts ("Why do you think the plaintiff rejected the goods rather than accept and sue for the difference in value?" "Why didn't the attorney raise that issue?"). You may be asked to respond to or analyze the arguments and reasoning in a case or to provide your own arguments and analysis. ("What do you think of the X rule?" "Why was the court so concerned about Y?" "How could plaintiff have strengthened that argument?" "What is the response to that position?"). A classic of law

school Socratic dialogue requires you to reconcile a series of cases. You may be asked to do that directly. ("How would you distinguish this case from the *Roe* decision?")

Or, the professor may invent a hypothetical in which the facts fall squarely between two cases that you have read and your task is to analyze the boundaries of each case by predicting or arguing for the outcome in the hypothetical. Sometimes these hypotheticals are designed to point out the individual injustice that can result from strict, formal rules. Sometimes they are designed to point out the lack of predictability in very open-textured rules. Sometimes they are simply designed to test your ability to apply the rules in a straightforward fashion.

Whatever the variation on these questioning themes, don't be afraid to pause and think before you respond. When you are thinking, be sure you are thinking about the question, rather than trying to figure out what the professor would view as the correct answer. Many students preface their response with "I'm not sure if this is what you are looking for, but..." If you truly do not understand the question, you can ask for clarification. Rather than simply say "I don't understand" indicate how it is you understand the question ("Did you want the rationale Justice X goes through, or my own rationale"?) Don't waste your time trying to figure out what the professor thinks is the answer though. In the vast majority of cases, the professor wants a well-reasoned, well-supported answer -- ANY well-reasoned, well-supported answer.

The key to participating successfully in class is thinking as much as possible about the assigned material before entering the classroom and taking notes that allow you to efficiently and effectively recall and extend your thinking when called upon. Whether you choose to volunteer to answer questions or not, always choose to ask questions. If you are confused about a subject, you are likely not alone. You will quickly get a clear sense if you are the only one asking for clarification.

For most students, participating in class is beneficial because it forces them to pay closer attention, listen more attentively, and receive

some feedback on their thinking. A few students, however, use the opportunity to speak or ask questions in ways that interfere with learning. You know that you are talking too much if your contributions generally begin with "I knew this person who... " "What would happen if..." Leave the story telling and hypothetical construction to the professor in class, and share your stories with your classmates or the professor outside of class.

Making and Using Class Notes

For most students, it takes a long time to learn how to take good notes. Do not simply write down what the professor says. The question and answer dialogue between the professor and class is designed to open the way to deeper understanding (and further questions). Listen carefully to the discussion; the comments of your fellow students will often be important and worth writing down.

Many law students find it difficult to take concise, organized relevant notes during class. Note taking is an important skill because it helps you get the most out of class and gives you a critical resource in preparing for exams. Use a note book with relatively fixed pages -- one for each class -- with space to include handouts. Wide margined (legal ruled) paper is especially helpful for using a key and summary method based on the Cornell Note Taking Method (Record, Reduce, Recite, Reflect, Review).

Note Taking Skills, Problems and Solutions

What do you need in order to take good notes in class?

1. You must listen. Problems that can block listening are:
    a. Can't hear the teacher. Solution: move your seat or ask the professor to speak up.
    b. Can't understand the teacher's speech. Solution: tape the class and listen more slowly; share notes with others; ask the professor to enunciate.
    c. Become bored; daydream; fall asleep. Solution: maintain body posture of attentiveness -- sit up, look at the teacher, give non-verbal feedback to the teacher. Get enough sleep at

night. Write down five questions to which you want the answers and listen for the answers. Be sure to listen to your classmates and note their analysis, arguments and questions as well as the teachers.

2. You must think about what you hear. Problems involved that block thinking are:
    a. You are expecting "answers." Solution: listen critically -- consider questions posed as equally important as answers given.
    b. What the teacher says is confusing. Solution: change your class preparation, do more background reading, be sure you understand the vocabulary being used, ask for further clarification after class.
3. You must be able to write. Problems here are:
    a. Can't read your notes. Solution: slow down, use a lap top computer.
    b. Can't write fast enough. Solution: ask teacher to repeat or slow down; use abbreviations; do more note preparation before class; consider that you may be trying to write too much.
4. You must be organized. Problems here are:
    a. Teacher is disorganized. Solutions: organize the materials before coming to class and fit the professor's analysis into your own organization; ask questions for connections that seem vague.
    b. Papers get disorganized. Solutions: use tabs, cross references, and relatively fixed page notebooks for notes. Be sure to number pages of notes or indicate dates on each page so if pages fall out, you can put them back in order.
    c. Can't see the organization. Solution: more class preparation -- especially use of table of contents of text; professor's syllabus; or course outlines to provide a structure.

Tips for Active Listening

1. Be prepared! Prepare good case briefs and notes for class with room for making comments and notes during class. Review your text readings and your notes just before going to class.
2. Concentrate on the ideas, not the delivery. Don't allow yourself to be distracted by mannerisms or delivery of the professor or of other students. Concentrate on the WHAT, not the HOW. Close your eyes now and then if you must (but don't fall asleep), or move your seat.
3. Listen with an open mind. Don't come to class with firm expectations of what the materials mean or how they will be approached.
4. Keep physically alert. Sit up straight. Look at the teacher. Sit in a spot in the classroom that keeps you alert and in the instructor's view.
5. Keep mentally alert. Talk. Listen critically. Keep trying to guess how the material might be tested (or used in law practice).
6. Use a listen-think-write process. Don't be a scrivener, trying to write down everything that is said. Train yourself to listen attentively to what is said, evaluate its relevance and importance, and the select what is important and write it in your own words.
7. Note the questions. Be especially careful to write down questions, hypotheticals, and theories noted by the professor and by other students. These are the seeds from which understanding (and exam questions) grow in your after class review.
8. Note your next steps: Write down any assignments noted. Compare to your syllabus and ask about discrepancies. Keep a list of questions you have so that, immediately after class, you can ask the instructor, do your research, or compare with your study partners.
9. If the instructor writes it, you should too. Even in today's technology-rich environment, most professors do not use many audio-visual devices in their teaching. Those that do, most

commonly use the chalk board. Never fail to copy anything the professor writes on the board, even drawings or symbols can give important insights into a formulation of a rule or method of analysis. For faculty who use overhead projectors or computerized presentations, the same rule applies, unless you find yourself mindlessly transcribing from wall to notes without thinking. Many professors now post or photocopy their computer presentation slides so that students can listen, think, and discuss during class without fear of losing important points.

10. Review your notes within twenty-four hours of class. Highlight key terms with colored pens or by summarizing key terms in the margins. This helps you retain what you are learning (we forget about 60% of what we learn within the first 24 hours if we do not review it).

The Relationship Between Classes and Exams

Students are understandably upset that the questions that they have been asked in class all semester will not appear on the final exam in most classes. As one commentator observed: "Most importantly, as many authors report, it has become apparent on several levels that professors do not test what they teach, as often during the first year curriculum they "teach by the case method and actually test by the problem method." Typically, first-year law students are greeted in the first weeks of school with massive reading assignments of appellate court opinions (the standard Case Method) followed by class periods which engage in some form of Socratic dialogue regarding those cases. At the end of the semester, although taught by the Case Method system, typically they are presented with the standard three-hour exam with loaded fact patterns providing complicated legal problems for which they have received little or no explicit training."

Does this mean that attending class is worthless? On the contrary, class attendance and participation can be excellent preparation for the final exam. What this observation does mean, however, is that you need to understand what it is that you are trying to get out of class. You are trying to understand the rules of law in the cases -- not the cases themselves-- and learn how you might use these rules. (Think

"tools of law" not "rules of law" and you will be further ahead). Organize your class notes and your thinking around these rules, doctrines, elements, issues and arguments rather than around the cases. Look for connections among the cases to discover further doctrines, policies, exceptions and the like. Think of each case as a sample exam question. The facts of the case are like the hypotheticals you will receive on a final exam question. The rules developed in the case are the rules you will be applying on a final exam. Critically observe the court's "answer" to the "question." Beware: some opinions would not earn high grades as exam answers.

While you can do all of this analysis in class without ever speaking a word, I do encourage you - and urge you to encourage each other - to actively participate. Participating in class forces you to listen more closely, improving your comprehension. It is also crucial job training. As a lawyer, you must frequently speak before other people and you will always need to be able to listen to others. Now is the time to develop and refine these skills. If you make mistakes now, only your ego suffers; errors later may cost you clients, cases, or your job.

Thinking like a Lawyer -- Applying the Law to Facts

Much of what you are asked to do in class is present an analysis of the law -- its application to new factual hypotheticals. Practice this skill, particularly in writing, as often as possible. It is critical to your success.

Identifying Issues

STEP ONE: Read the facts. This is the DESCRIPTIVE phase of your analysis. Be sure you know your client's case (the facts of the problem). Read closely and carefully. Draw inferences from the facts (most matters of motivation, causation, or alternative choices are inferential). Think about alternative inferences that can be drawn. Be aware that vague, conflicting and incomplete facts are normal in the real world. Identify your client's goals. Be sure you have asked the six basic questions about the facts presented: What? Where? When? How? Why? Who?

STEP TWO: Next comes the critical questions for identifying issues: So what? Survey your checklist of rules that might possibly apply to resolving your client's problem consistent with his or her goals. Brainstorm as to all possibly applicable rules... Don't eliminate potential rules too quickly.

STEP THREE: Analyze how the applicable rules apply to your client's facts. Identify those rules or aspects of rules that provide a clear outcome or solution and note these briefly but do not spend time engaging in extensive analysis of "givens." Identify those rule or aspects that are, after analysis, irrelevant because they will not affect the outcome significantly.

STEP FOUR: Identify those rules or aspects of rules that create issues when applied to your client's facts. AN ISSUE IS SOMETHING TO ARGUE ABOUT. Recall from case briefing that there are three kinds of issues: "what are the facts", "what is the law?" and "how does the law apply to these facts?" To find these issues, look for gaps or conflicts in the law.

A. Sometimes more than one rule might apply. For example, in determining the specificity with which to require pleading a statutory action for securities fraud, does one apply rule 9 of the Federal Rules of Civil Procedure ("fraud must be pled with particularity") or only the general standards of rule 8 ("pleadings shall contain a short and plain statement of the case")?

B. Sometimes there may not be a rule. For example, there is no guidance in the Federal Rules of Civil Procedure regarding whether a complaint must be typewritten. (There may be local rules on this, however.)

C. Sometimes the rule provides only general guidance. Many rules in the law are stated in general terms such as "reasonable" or "timely" -- interpretation of these terms is left to individual cases.

D. Sometimes there are conflicting judicial interpretations of the same rule.

STEP FIVE: Separate issues and sub-issues and organize them in a logical progression. For example, you may determine that there are

two main issues. The first question is which rule applies. Having resolved that issue, however, you still may have an issue about how one or the other of those rules applies to the facts.

STEP SIX: Create arguments about what the rule means and how it should be applied to these facts.

A. Purposive Interpretation vs. Formalist Interpretation

1. Formalist: Define the term at issue without reference to context or purpose. Some sources for definition of a word include: grammatical arguments about the meaning in context; dictionaries ("plain meaning"); legal dictionaries; the statutes or rules; the legislative history of drafter's advisory notes; the use of the word in other rules or other areas of law. When the source of law is common law, a formalist interpretation of a case looks at the legally significant facts of the precedential cases and compares the client's facts to identify differences or similarities.

2. Purposive: Conceive the purposes behind a rule and define your term in light of those purpose(s) (There are ordinarily several, often conflicting, purposes that one can conceive for any given rule). Some sources for deriving purposes include: the rule or statute; the legislative history (advisory committee notes); judicial statements of the purpose; or your own imagination.

B. B. Broad Rule vs. Narrow Rule

1. Narrow rule: If a rule, read the language of the rule to apply to as narrow a fact situation as possible (using one of the interpretation techniques in A), then argue that your facts fall outside that narrow interpretation. If a judicial precedent interprets the rule, read the interpretation of the rule as necessarily and narrowly connected to the facts of that precedent.

2. Broad rule: If a rule, read the language of the rule to apply to as broad a fact situation as possible (using one of the interpretation techniques in A), then argue that your facts

fall squarely within that broad interpretation. If a judicial precedent interprets the rule, generalize each of the facts in the case as broadly or generally as possible.

STEP SEVEN: Create arguments about how the rule should be applied in this case.

A. Five Types of "Policy" Argument

1. Arguments about judicial administration: Categorize the interpretation that you are advancing as one that is firm and predictable or flexible and open-ended. Then create arguments as to why the firm or the flexible rule is needed for the purposes of future application of the rule (often stated in terms of predictability or fairness)

2. Arguments about institutional competence: Argue that the application or interpretation of the rule at issue is or is not best decided by a particular institution (e.g., courts, the legislature, the executive, etc.). A good example of this argument is Chief Justice Rehnquist's opinion in the *Leatherman* case. Courts are not competent institutions to create new categories of specificity requirements. That task is best left to the Congress because they have the greater (ability, legal or political authority, resources, etc.) to address this task. An equally powerful argument could have been made that courts are especially well suited to the task of interpreting the applicability of Rule 9. For example, courts see the cases that are most often brought for improper purposes, in vague general language, that have especially detrimental impacts merely by the filing of the complaint. Congress has allocated rule making authority to the courts (the Rules Enabling Act) thus recognizing this superior competence and authority.

3. Moral arguments: These are the arguments we often make in everyday argument or in political discussions. Morality can encompass a broad variety of value-based judgments, whose sources can vary from religion, culture, history, etc. One example: Form v. Substance Making moral decisions

on the "formal" classification of the dispute (two "disputing parties") vs. Making moral decisions on the "substantive" relative social power of the "people" involved (a pro se, civil rights plaintiff and the government). For example, in *Conley v. Gibson*, the United States Supreme Court said that the pro se prisoner bringing the civil rights claim should not have his complaint dismissed unless it could not state a legally enforceable claim, regardless of the clarity or simplicity of the complaint.

Morality as Form: Why should a pro se litigant be given a special rule regarding the interpretation of his or her complaint under rule 12(b)(6)? Pro se litigants can choose to have attorneys assist them (pro bono or contingent fee attorneys are available for those who cannot afford representation). If they choose to clog up the legal system by forgoing this representation, they should not be given any greater advantages than others.

Morality as Substance: Why should a pro se litigant suing the government (who may view attorneys as part of the "system" and thus not trust them, even if they could afford them) be held to the same standards of pleading as those who have the benefit of expensive, well trained lawyers. Especially in actions against the government, individuals should have the right to address their grievances individually and not be foreclosed by strict procedural rules.

4. Deterrence or social utility arguments: These arguments are based on the effect of the rule on behavior.

5. Economic arguments: Phrase the argument for application of the rule in terms of a cost - benefit analysis (factoring in whatever you wish to characterize as a "cost" or a "benefit") and argue that the rule to be applied should be one that in its application over the course of time should mirror the same decisions that individuals or

institutions would make were they to engage in this analysis. If you find this listing of forms of argumentation useful to your understanding of law, you may want to read Richard Michael Fischl & Jeremy Paul, GETTING TO MAYBE: HOW TO EXCEL ON LAW SCHOOL EXAMS (Carolina Academic Press, 1999).

Chapter Four: After Class Review

After class review is perhaps the most important, and often overlooked, aspect of study. If you take time to synthesize each day's material with the rest of the course, you will have a much easier time studying for finals. Immediately after class, most faculty members remain in the classroom to continue discussions begun during the class hour, to hear where students are confused so they can clarify the next day, and to answer questions on side issues. It is an extra opportunity for you to get to know the professor informally, and often sparks interesting debates. Join in (especially those of you who are initially reluctant to talk in class). In the hours and days after class you should try to synthesize the material, and put it all into perspective with what was previously studied. Go over your class notes, try to fill in gaps or clarify issues by talking with classmates and continuing debates or discussions.

Why review?

Information learned can be recalled most effectively 10 minutes after that learning has stopped. After this, information is lost rapidly, so that after a few months only a tiny percentage can be recalled. By spending a few minutes reviewing material after the learning session, you can quickly refresh your memory, and significantly reduce the time needed to relearn the knowledge when you need it, ensure that you have a reasonable basis of knowledge all the time, and allow you to improve the quality of future learning, by building on a well-remembered foundation. This allows you to make connections that you would not otherwise make.

The aim of frequently reviewing information is to end up storing it in memory for the long term.

- Review immediately after class: This can take the form of re-reading or re-writing your notes

- Review after one day - take a few minutes to jot down everything remembered and compare this with your notes.
- Review each week to synthesize the materials
- Review at the end of each section to outline the materials

By reviewing frequently, information should be fresh in your mind, should be clearly structured, and easily accessible when you need it.

Group Study

Study groups are invaluable learning experiences and support systems. The structured study group program in particular can help you learn efficient and effective techniques for mastering law school study. There are many useful activities a study group can pursue -- for example, sharing case briefs, reviewing class notes, or preparing group outlines -- however, group problem solving is perhaps the most useful activity.

Group problem solving is an activity that provides a practical element to the study of law. Oftentimes, lawyers use other lawyers as aides in solving many legal problems. In fact, it is rare that any one lawyer has the ability or resources to address all the legal issues in any given case. Therefore, the strategy of group problem solving attempts to emulate the legal environment by allowing students to bounce issues, ideas and solutions with other students in an organized fashion.

The main objective in group problem solving is communication between the students. It is essential that all students, as would all lawyers, communicate their ideas to each other, no matter how trivial. Even the "silliest" of ideas can sometimes contribute to, at a minimum, the outer limits of a problem. Another goal is to use all of the information uncovered to arrive at a group answer. The group answer should consist of a synthesis of "possible answers" derived from the session and reflect a solution that most plausibly meets the objective. Included in the group answer should also be reasons why other arguments were not chosen. This is an important step, since it is by revealing what is not the "right answer" that we can more readily see what is the right answer.

Procedure

1. Someone introduces a specific problem or issue. It may come from class discussion, the students' textbook, or a self-made hypothetical. Problems that deal with multiple issues are ideal since your group can then work together to synthesize the many concepts that you have learned.
2. Appoint a scrivener to write down all of the ideas and solutions, and a leader to help keep everyone participating and focused.
3. Start the group problem solving session by identifying possible issues relating to the particular problem that you are trying to solve. Before any solutions are discussed, make sure everyone has the problem and sees the issues.
4. After you have identified the issues (or problems) begin formulating possible answers/arguments/analysis and allowing the scrivener to record them in an organized manner on a sheet of paper.
5. Use the resources available to you -- your text and class notes, supplementary material, your professor -- to develop your analysis as completely as possible and to resolve disagreements.
6. Organize and summarize what you have learned. Predict how and when it might be tested.

Supplementary Resources

Your after-class efforts to clarify questions and increase the level of understanding may often lead to outside reading. Most students find, at some point during law school, that some supplemental resources are helpful in studying for a particular course. Your text books often cite relevant supplemental materials following the cases. Some of these citations are to law review articles or additional cases on the course topics. Others are drawn from the treatises (hornbooks) described below. Additionally, your intellectual curiosity may lead you

to consult the Index to Legal Periodicals for additional articles on the class subject matter.

Hornbooks (single or multiple-volume treatises on areas of law) are the best overall resources for reference and study for your law school classes. Ask your professor for suggestions as to which treatises are the most useful for the subject matter that you are studying.

Besides these scholarly resources, you will quickly discover an abundance of commercial study aids (in hard copy or on the web) intended to make digestion of "the law" as fast, painless, and easy as possible. Though these resources may be useful in "checking up" on understanding gained through your original analysis, or for pre-exam review, or merely for a "security blanket", reliance on these materials is dangerous.

First, the materials necessarily provide only a superficial view of legal concepts. Many of the "course outline" resources, such as Legalines or Casenotes legal Briefs, are written by publishing company employees: neither practicing attorneys nor scholars.

Second, it is far too easy to fall into relying on these materials to do your analysis for you -- superficial, often misleading, analysis at that -- when the entire purpose of your studies is to develop these analytical skills for yourself. In the short term, empirical studies have demonstrated that reliance on these commercial study aids is associated with decreased performance on law school examinations, while use of scholarly treatises as study references is associated with increased performance. So if you hear upper-level students gloating that they relied on a study aid to pass a course, that may be true; chances are, however, they would have done even better by doing the coursework (and of course you simply won't hear any gloating by those who relied on study aids and didn't pass).

Finally, in the long term, relying on "canned analysis" is a bad habit to develop for your future practice. As an attorney, you will be generating your own, creative analysis based on the original sources as well as evaluating the analysis provided by your opponents, or by journal articles on the subject matter of your cases. You will need to have firmly established by that time the habits of thorough analysis,

and, equally importantly, confidence in your analysis. You won't have time to develop those habits then: your clients and society will pay for your incompetence or vacillation -- and eventually you will lose clients, lawsuits, or your license to practice law.

That is not to say that commercial study guides do not have a role in successful study. Reliable, commercial study guides can be used as a source for comparative organization, as a "check" on your own study, even as a background resource to help you understand areas that you are struggling with (as long as you have really struggled first). The key here is to select reliable study guides. Check the author. If the study guide was written by your casebook author or a law professor, you can have greater confidence than if written by a publishing company employee or law student contractor. Be especially wary of the outlines available on the internet. Would you take advice from a complete stranger on the street about how to succeed in law school? Why would the fact that the advice comes in electronic form lead you to give it greater credence?

Chapter Five: Outlining and Exam Preparation

Whether writing an examination answer, counseling a client, or presenting an argument to a judge or jury, an attorney's first goal is to communicate effectively. The key to effective communication is preparation. What should you prepare? Regardless of the setting, effective communication requires that you know your goals, know your subject, and know your audience.

Knowing your goals

Your goal on most law school exams is to demonstrate your ability to use the law in analyzing hypothetical problems. The New York Bar Exam directions for essay answers are instructive in understanding what a good answer should include:

An answer should demonstrate your ability to analyze the facts presented by the question, to select the material from the immaterial facts, and to discern the points upon which the case turns. It should show your knowledge and understanding of the pertinent principles and theories of law, their relationship to each other, and their qualifications and limitations. It should evidence your ability to apply the law to the facts given and to reason logically in a lawyer-like manner to a sound conclusion from the premises adopted. Try to demonstrate your proficiency in using and applying legal principles rather than mere memory of them.

An answer containing only a statement of your conclusions will receive little credit. State fully the reasons that support them. All points should be thoroughly discussed. Although your answer should be complete, you should not volunteer information or discuss legal doctrines that are not necessary or pertinent to the solution of the problem.

You can see, then, that your goal on a law school exam is to demonstrate a variety of skills, only one of which is knowledge of the legal rules.

Knowing your subject

Given that demonstrating your skill is as important as demonstrating knowledge, part of your subject includes those legal skills. How do you learn those skills? By daily class preparation and class attendance, in which you regard each case not as a subject to be "learned", but as an exercise in problem solving with at least one suggested solution included.

But class is not the only place in which to hone your analytical skills. Practice analyzing hypotheticals with your study partners: invent hypotheticals and then test them out on one another. More importantly, practice writing out your analysis. Where can you find hypotheticals on which to practice?

Use the old exams on file in the library, look through your casebook for hypotheticals in the notes following cases, some commercial study guides provide hypotheticals with suggested answers, the restatements have illustrations following most principles that you can analyze for yourself, there are exams available on line, or you can ask your professor for guidance.

A second important aspect to knowing your subject is, of course, knowing the law. You must know the black-letter law that is covered in your courses. This means knowing the rules, the elements of these rules, the variations in the rules, and the policies underlying those rules. Part of your task throughout the semester is to study and learn this "law". You should know the rules thoroughly by semester's end. Making and reviewing flash cards is a tried-and-true method of memorized learning that may be useful in your studying.

Besides studying the course materials and your notes from class, you can get further help in learning the rules through (in order of reliability....) hornbooks, the restatements of the law, commercial study guides, outlines from other students and many other sources. Increasingly, you can access an entire library of student outlines on

line (though you have little perspective on their reliability). Your professor would be happy to suggest additional reading for course subjects.

If your school is a member of CALI, you can use computer assisted legal instruction programs to help you learn the law. These lessons are written by law professors, reviewed by an editorial board of experts, and keyed to the subject matter of your courses. Because they are interactive, they can provide important feedback and extend your learning. Additionally, you must synthesize these legal rules & policies into a comprehensive whole. During class we break down the cases, discuss possible interpretations and policies explaining the results, and project the scope of those interpretations and policies. We spend very little time on review. Yet review and synthesis is essential if your understanding is to move beyond the level of your day-to-day reading of discrete cases.

The best way to bring the class into a whole is to outline. And the most important thing to remember about outlines is that *preparing* an outline is just as important as *having* an outline. How do you go about outlining? It depends on how you learn best. Some people need to force their thoughts into a rigid organization (IA1a outlines); others need a visual outline (charts); still others need to write and re-write (essay outlines). It doesn't matter whether you type a grammatically correct, perfectly structured traditional outline or whether you make a massive multi-colored poster on your study wall. What matters is that you force the materials into some structure, so that you understand the elements of the law, the policies and theories necessary to identify facts relevant to those elements, and the relationship between areas of the law. Your focus should be on these elements, policies and relationships, rather than on the cases you have studied as examples.

The third aspect to knowing your subject is structuring your knowledge into a useable form. Now you may think that the outline serves that purpose. However, outlining is for the purpose of achieving a complete understanding. A review outline is rarely useful in preparing to use that knowledge. Rather, you need to take the additional step of condensing your outline into a list of the issues that you will be looking for in a hypothetical.

Once you have thoroughly and comprehensively reviewed your subject through some process of outlining, go back and make a "checklist": an outline of the outline. Try to limit this checklist to one page, containing only the major categories of the course (e.g., in property: ways of acquiring property, estates, etc.; in torts: battery, assault, negligence, etc.) and the elements of each of those categories. This "checklist" is a failsafe mechanism of sorts. It insures that you haven't overlooked crucial areas of the law that might present issues in a fact situation. If the exam is open-book, you want this checklist on the top of your outline or inside cover of your book. If the exam is closed book, you want to memorize the checklist, perhaps through some mnemonic devices. Be sure to "test drive" your checklist: project the type of exam and the subject matter that you expect for each class (you may be able to rely on past exams for the course) and practice using your checklist in writing a time-pressured answer to that exam. Review the results with your colleagues and with the professor. Revise your outline and checklist appropriately.

Knowing your audience

Each professor may stress one aspect of the law or one approach to legal analysis more than others. You should know that professors differ in their use of the classroom: some professors emphasize your ability to analyze a case to determine how and why a new legal rule was developed; others (using the same materials) will focus on the application of that rule to fact situations. Very often, the professor's approach to class will give you some clue to his or her likely approach to the exam as well. However, you should not rely on the professor's class approach to project how they are likely to test. You need to also practice taking exams used by that professor in the past. Another aspect to knowing the professor's preferences is reading the instructions on the exam. At least two or three people every year receive substantially lower grades than they might have, simply because they did not read and pay attention to instructions. Finally, ask the professor and your fellow upper-class students what skills, subjects or approaches to emphasize in a particular course's exam.

Chapter Six: Taking an Exam

The day has arrived. Your final exam sits on the desk in front of you. What do you do with it?

Remember your goals

The primary tasks in writing an exam answer are:

Analysis. Analysis includes spotting issues and creating arguments, alternatives and applications of the law to those issues. For many examinations, issue spotting constitutes the most important aspect of the test. You must be able to efficiently and accurately identify as many issues as time permits. Just as in identifying issues in preparing a case brief, spotting issues on an exam requires understanding what an issue is and knowing the course materials well enough to recognize the issues in a fact pattern. Some students readily identify issues of law, requiring a choice between different rules or different interpretations of a rule, but miss the issues requiring application of the rule to the facts.

Some students do poorly on examinations because they are too "bottom line" oriented. They will ignore possible issues because they simply identify what they see as the "most important" issue. Or they will see areas of conflict (issues) but perceive that one or the other side has a much stronger position and so will simply conclude that the issue is not worth extended discussion. Be sure to ask yourself, "but if that's doesn't resolve the issue, the next argument/issue is..."

Knowledge and Understanding. You must be able to demonstrate that you know not just the rule, but why it applies to the specific facts before you. This means that you must be able to work with the relationship between legal rules. For example, many hypotheticals ask about wrongs that can be characterized a number of different ways -- murder & manslaughter, for example. With these questions you should be able to demonstrate your understanding that the facts

present a number of possible "causes of action", using an organizational technique that demonstrates your understanding of the relationship between these wrongs (e.g., "at least -- at most" or "first claim -- fallback). Where several causes of action have an element in common, (intent, for example) deal with that element only once and simply refer back to that initial analysis for each subsequent claim (Note: use this internal reference only within a single question/hypothetical -- do not refer back to prior questions because many professors grade each question separately).

Applying the law to the facts. Students need to apply the rule(s) to as many of the facts as are legally relevant (which, on most exams, is just about all of them). Some common errors in fact application include: failure to use the facts (mere statements of the law are not enough); restatement of the facts (repeating the facts without drawing inferences from them in legal terms is not using the facts); mere juxtaposition of the facts without explaining analysis. Probably the most common error is making statements of conclusions only. Point out even painfully obvious steps in your analysis. It is equally important to make legal principles clear. Be sure to define all legal terms and list all elements of a claim. Do not assume that your reader will know either what A or B is or how you got from A to B. Be explicit, complete and clear.

Exam-taking techniques

Come prepared. Being prepared means, first, academic preparation. You need well-organized materials that reflect mastery of the subject, clear expectations of what is expected of you and a checklist of issues/subjects to look for on the exam. Beyond this obvious preparation, however, you need to be physically prepared. Be well rested. Cramming the night before the exam can never give you the edge that a clear, well-rested mind can. Have supplies in hand: enough pens, pencils, clock or watch, food, exam number, etc. Be sure to bring your textbooks, class notes and outline if the exam is open book. (Although you should never expect you will have time to use them). Finally, prepare yourself psychologically. Focus on the now. Try to focus on this exam only without thinking about how you

have performed in any other test-taking situation. Focus on you. Do not worry about how friends and other students are doing. Wear blinders and earplugs if need be. Be confident. Assume that you will do well and do not worry about the negative consequences of failure.

When you begin the exam, read the instructions on the exam carefully. Note how many questions there are and how much time you should allot to each one. STICK TO THAT SCHEDULE! Keep in mind that in a 20 point question, the first 5 points are a lot easier to get than the last 5. An extra 5 minutes spent on a question may not pay off, while unanswered questions will most certainly receive zero points.

Next, read the question. On your first read: read the question quickly, to identify: Who are the parties? What kind of question is this? (Analyze, argue, identify -- open ended or guided). Read the call of the question carefully. Read the exam a second time to extract the pertinent facts (some professors include only relevant facts, others include many irrelevancies to test your discernment) as you read each fact, ask yourself: "does this fact raise a legal issue?" Some facts will be relevant to several legal issues.

Identify the relevant law. Jot down the claims and defenses that will be made for each party. If the exam is open-book, simply rip out the relevant pages from your outline and note "A v. B" or "first sale" on the top to indicate which general facts apply. Refresh your memory of the elements of each cause of action (mentally or on your outline).

Read through the exam question one more time carefully. By color, number or brief note, indicate the legal relevance of each fact to the outline of issues you have constructed. Be sure to keep one eye on the clock. Relax and breathe deeply, because this step is the most important and you need a clear mind. You are not writing an answer here, only identifying the material that will go into your answer.

Organize and write your answer. Decide upon the logical relationships between the controversies and block out the controversies to deal with one at a time (you can organize according to parties -- A v. B, B v. C, C v. A -- or according to transactions -- first offer, written response, second offer. Use an organization scheme that identifies

the issue or controversy or position that you will focus on and then identifies that portion of the law relevant to that issue. Next analyze, argue, and generate alternatives for that rule's application to the facts creating the issue. Finally, draw a conclusion. This is sometimes called the IRAC (issue-rule-application-conclusion) formula, but it is really simply good organization and logical development of an argument. The key here is the "A" part -- providing lots of logical analysis and reasoning and "but if" "even so" "on the other hand" arguments. As one law school teacher has noted; "Analysis is key - give an A; get an A." Each paragraph of your answer should serve a purpose. Most answers should look like this:

A would argue that B's actions constituted (claim). (claim) is (defined). In order to prove (claim), A must show that (elements).

The first issue, then, is whether (element 1) exists. (Element 1) requires proof that (explanation of element 1). A would argue that (fact 1) is (element 1) because (explanation of reasoning). Another fact indicating that (element 1) is (fact 2) because (explanation of reasoning). B would counter that (facts 1 and 2) are irrelevant because (alternative analysis of element 1's requirements). Also B would argue that even if (element 1 is as A says), (facts 1 and 2) do not prove that element because (explanation of alternative inferences from facts). Finally, B would argue that applying (element 1) as suggested by A would undermine the purpose of (claim or element). That purpose is (policy or goal of law). By accepting A's analysis (explanation of reasoning of why policy wouldn't be served). Because (what you consider to be the most important factor in the analysis of this issue), (party) will likely prevail of this issue.

The second element that must be proved is… etc.

As you complete each section of the answer, quickly review the question to see if you left out any important facts, and review your outline to see if you covered all the legal elements. Does your answer make sense? Does it answer the question asked? Finally, proofread. Always leave at least two minutes. Proofread the last part of your answer first.

What do you do if you get stuck? First, RELAX! Do not let difficult questions or time pressure shake your confidence -- tell yourself "If this question is difficult for me, it is going to be difficult for everyone else." Take a deep breath, sigh, think a happy thought and smile, roll your shoulders and relax your jaw, say a little prayer, and dig back into your analysis. If you're not sure what's going on in the problem, try...

- Reading again, more carefully.
- Using a different part of the brain. Drawing a picture or diagram is often a good way to get going.
- Using some common sense. Try anything that makes sense to you. On occasion, professors may ask a question to test your general problem solving/ common sense solutions. Any analysis is generally better than a blank sheet of paper
- Rests (briefly--1-2 minutes) after you've been trying a while. Get up and stretch. Then try again.

Some General Tips

1. Use labels to organize your discussion. This can also help you double-check to make sure you've covered everything. For the same reason, you may want to underline key elements.

2. Unless you are told otherwise, write on only one side of the paper, reserving the left-hand side for issues or arguments that you think of later.

3. Watch your language use. Although no professor expects perfect writing on an exam, you should be careful to avoid slang terms and colloquialisms as well as unnecessary lawyer jargon. In particular, avoid too many abstractions - use concrete, specific language.

4. Avoid the interrogative trap - rhetorical questions that tend to be conclusory are dangerous on an exam. They often pose questions which introduce extraneous issues and invite unwanted responses from the reader. They never substitute for analysis -- which is how they are often used.

5. Avoid excessive abbreviation - define all abbreviations use, don't overuse.

6. Think before you write. Don't continue to write when you're befuddled. Stop, breathe, think, write.

7. Don't be funny. Don't try. Ever. Others will give you contrary advice. They are better wits and prefer more risk than I do.

8. Be legible. If your handwriting is poor, at least write large and in ink. Better yet, print or type.

9. Allocate your time.

Chapter Seven: The Next Semester

It's a brand new semester. Your grades are in. You are devastated, exhilarated, relieved, puzzled, or angry… or maybe all of these feelings and more. How do you continue to improve your performance in law school each semester? Few students take advantage of the awesome power of reflection on the past as a learning tool.

Of course, immediately after a semester's exams, you are best to simply try to forget the entire experience. The costs in anxiety, competition, and lost confidence from post-exam comparisons with others are rarely worth the gains. However, after the exams are graded, be sure to continue to learn from the process. Students often neglect to use this outstanding tool for improving their exam performance -- a review of their prior semester's work and exam performance.

Reviewing your past semester's learning

Look back over your past semester's work and inventory your learning. Don't automatically assume that your grades tell you what you've learned (they are a clue, but there's many a person who has gotten a bad grade on an exam in a subject they learned well and others who have gotten good grades on subjects they have retained only long enough to get the grade). Since one of your purposes in law school is to acquire the skills and knowledge necessary for a successful lifetime of lawyering, stop and reflect on what you have learned. Consider your past semester's study approaches in light of that reflection. Some questions to consider:

- Which subject matter do you feel you have retained the best? What factors contributed to that retention? Did you study harder, longer? Were you more interested in the subject matter? Were the learning materials you used different or better for that subject? How can you take those learning

advantages for that subject and apply them to this semester's study?

- How did you capitalize on your learning style strengths when studying for a subject? Do you want to reconsider some approaches (e.g., listening to taped lectures was a waste, typing all my notes really nailed the subject for me)?
- How about your study schedule? If you "burned out" at some point during last semester, when and why? Can you plan your semester to avoid (or at least accommodate) that need to catch your breath?
- How did you outline? Be sure to save your outlines so that you can compare them to your final exams and see what you had and what you didn't.
- Overall, how much time did you spend preparing for classes, in post exam review, in preparing for the final exam? Do you think it would be productive to reallocate some of that time this semester?
- Did you at any time study with anyone else? Will you reconsider that arrangement this semester or do you want to replicate it?
- Look forward to this semester's courses. How do they look as though they will be the same as last semester's classes (e.g., code courses require the same kind of close reading and "book juggling" regardless of the subject matter; courses with lots of history or theory as emphasis require another kind of attention)? Compare classes and make decisions about approaches to studying each of this semester's classes.

Reviewing your past semester's grades

Now, consider your exam performance. Get a copy of your final exam, if permitted, and read over the questions and your answer carefully. If the professor has a grading rubric or answer key for the exam, you should ask if you can review that as well. To the extent you can, answer these questions about your exam answer:

- What was your goal for the exam? Were you satisfied with your results?
- Did you spot all the issues? What types did you miss? (For example, are there issues that you saw, but considered unnecessary or superfluous because other issues "answered the question"?) For issues that you simply didn't see, why do you think you didn't see them (didn't read facts carefully enough? didn't understand the issue? didn't remember the issue?)
- Did you waste time? Look for places where you wrote a lot, but earned no points because you were restating facts; copying excessive quotes; reciting history, background or general policies of the law -- apart from using this to analyze an issue.
- Did you answer the question asked?
- Did you accurately state the law?
- Did you read the facts accurately?
- Did you make unwarranted assumptions?
- Did you organize your answer well?
- Did you analyze the application of the rule to the facts thoroughly?
- Did you analyze both sides of the issue?
- Did you complete the exam? Did you manage your time?
- Where did you miss most of your points? If you missed issues or stated the law inaccurately, was this because the material was inaccurate or omitted from your notes or because you had not sufficiently reviewed? (compare your exam with your outline and study materials) If you missed analysis, was this because you ran out of time, didn't see the need for the analysis, or didn't understand the material well enough to provide the analysis?

- What is your goal for the next exam?

Meeting with your professor

Make an appointment with all of your professors to talk about your exam performance (regardless of your grades). Prepare yourself for this meeting to get the most out of it. First, prepare your attitude. This is your opportunity to get some very specific feedback on your exam performance. You should approach this meeting with an attitude of detached curiosity. Think of yourself as an anthropologist, trying to understand some curious native ritual. This is NOT an opportunity to try to get your grade changed (it won't happen and if it does it won't be because you tried to make it happen). Nor is this a time to apologize for or defend your performance – the professor is not judging you as a person based on your exam. Professors know all too well that an exam is one brief period of time. They know people have good days and bad. They will not suddenly consider you brilliant or brainless depending on the grade that you got on the exam.

Second, decide what you need to learn. What kinds of questions might you ask that will help you improve your exam performance in the future? If the professor does not have a grading rubric nor has any written clues as to where you did well and where you did poorly, you will need to start by simply going through the exam and having the professor highlight the exam's hits and misses. If you have a pretty good idea from having reviewed the exam and any grading feedback the professor provided, you may still have questions about what more you could have done. If your preliminary review doesn't tell you what issues or analysis you missed, ask about the kinds of arguments that you could have made but didn't. Ask the professor to point out any areas where you wasted your time on the exam. If you are concerned that your writing or organization of an answer could be improved, try doing that. Re-write one question and ask the professor whether you have improved it. Be sure to let the professor know that you are not doing this to try to secure a grade change!

Meet with your colleagues

Perhaps one of the most powerful ways to learn from your past exam performance is to compare your exam answers with others. If you were disappointed in your exam performance, ask a colleague who did well whether you can compare your answer with theirs (assuming the professor allows this use of past exams). If you did well, be open to sharing your answer with your peers.

Plan your new semester

Don't assume that the learning tasks that you were presented with in the prior semester will be the same each semester. Each professor is different and each semester of law school presents new challenges. With each semester your professors are likely to expect your skills of judgment and precision to increase. A first semester exam might score very well by generating numerous arguments on either side of an issue - no matter how unlikely or impractical those arguments might be in practice. The same answer to the same question in an advanced course in your third year will be unlikely to be as successful. Your workloads will often increase each semester as well. Professors will assume more prior knowledge that you may or may not actually have. They will assume greater skill in reading and analyzing the law. They will have new skills and knowledge that may require new approaches to study. Even if the classes do not change one iota from the first semester, your own schedules will fill more – with the social life of the law school, with job searches or work, with bar preparation, with extracurricular learning activities, etc. Take these new and additional demands into account as you consider your study methods.

If you feel like you've failed

The experience of failure (real or perceived) is one that requires some separate attention. You may be feeling ashamed and hurt that your grades were not what you wanted. If your grades have placed you in academic jeopardy, you are likely feeling fearful or hopeless. Needless to say, these emotions will provide sufficient distraction to your learning that you must find a way to move past the last semester and

turn the experience in your favor. Here are a few thoughts to help you with that process.

First, remember that all is not lost. Some students take longer to "catch on" than others. It is not uncommon for a student's first semester to be their worst semester in law school. Have confidence that you can improve. Think of it this way. The law school has little incentive to retain students who will not be able to graduate and pass the bar examination. A faculty has a choice about the grade point at which it dismisses students and the number of semesters they will allow students to remedy deficient grades. If we did not believe that a student could raise their grades after falling below the required grade point, we would not give you that extra time. We would simply dismiss you and admit a transfer student to take your place. Our experience tells us that students can and do recover from a bad semester's grades. Some of us had a bad semester's grades.

Second, you don't have to change much to get ahead. Don't presume that your grades have accurately predicted your ability. Maybe you just had crummy luck this time. Maybe you had crummy teachers. Very likely, you just missed one piece of the puzzle that may be obvious to you when you take the time to look through your exams and work with your professors to find the problem. Often the difference between a C- and a B is really quite small. Sometimes all you have to do is learn to argue the other side of every issue and BINGO! You're in the game! For first semester students, a number simply didn't "get it" until they experienced exams. You might be one of those. Now that you know what you are preparing for because you've experienced it, you are in a position to better assess what works and what doesn't in your study habits. It's not uncommon, for example, for students to spend all semester thinking about the "big picture" of doctrines – what is intent? Why does the law favor predictability in this area? Etc. – and fail to memorize and master the details of the black-letter law. Sometimes students are so focused on the details (the individual cases they've read) that they don't pull back and learn the generalized doctrine. Well, you need the big picture and you need the cases, but you need the law too. On the other hand, sometimes students become so intent on memorizing the black-letter

law that they don't look for the grey areas and learn to make arguments in the grey areas. Exams in which all you do is recite the law are not passing exams (or just barely pass). So it may be some really basic part of the law school exam picture that you've simply missed to this point. Look for it. It's there. Once you find it, you're back in the game. Perhaps you had something happen in one or more exams that could explain your performance. Exam anxiety hit? Go to the counseling center and get tested and learn how to deal with this common but significant cause of poor grades.

Sometimes you've simply had a bad semester for non-academic reasons and you haven't really taken stock of the other pressures that are getting in your way. Maybe you are quite ambivalent about law school – it's what your family wants for you, but you really aren't sure it's what you want. (That doesn't mean you need to know what you want to do with the degree, but you do have to want to degree itself!) Address your issues outside of law school and you're back in the game!

Third, get some help. I don't know any student who has ever successfully completed law school alone. Get some effective study help through the academic support program and by finding effective study partners. If you suspect the study partners or social circle that you've been relying on up until now is part of the problem, move on. Of equal importance is getting some help with your confidence and motivation. That might require a couple of visits to the counseling center. No shame here – half of the clientele of any University's counseling center is likely to be law students (the other half is med students). Enlist all the cheerleaders in your life. Revisit your prior successes. They weren't flukes. This experience of academic failure was the fluke. Get some help to get past it, and you will once again experience success.

[1] Abraham Harold Maslow (1908-1970) was an American humanistic psychologist who developed a theory of motivation. The need hierarchy is a central premise of that theory. His writings include: TOWARD A PSYCHOLOGY OF BEING (1962) and FARTHER REACHES OF HUMAN NATURE (1971). They are arranged in terms of the priority of our needs (i.e., you can't effectively fulfill your need for knowledge if you are hungry).

[2] See, Frank Robinson, EFFECTIVE STUDY (4th ed. 1970). New York: Harper & Row.

[3] This case could appear in a basic torts casebook, a products liability text, or even in a contracts or civil procedure text. How you would read the case would depend on the course and topic for which you are studying the case. We will presume here that you are studying this case in a basic torts class, as part of your study of negligence.

[4] This case is from the New York Court of Appeals. In almost every other state, a "court of appeals" is an intermediate court of appeal, with the highest court being the supreme court. In New York, the Court of Appeals is the highest court in the state. These are the little tidbits about legal systems you pick up along the way in law school.

[5] Notice that this is a very old case. There are several reasons you may be reading a case from two centuries ago. One is that the case may represent a historically significant perspective: either as a representative of how the law used to be or as a representative of how the current law came to be. A second reason for very old cases to appear in your casebook is that old cases may still be very good law, especially in an area of law that may not have changed much over time (for example, notice the year of the cases cited in *Conti v. ASPCA*).

[6] Be curious. Did you know that Ch. J. stands for Chief Justice?

[7] Even words that you think you know the meaning of may have very distinct legal meanings. Look them up.

[8] Sometimes you might want to look up information about the facts in a case. If you don't know what belladonna is or how it might have been used, this might be useful to your understanding of the case.

[9] This is a very complicated transaction. You will be able to understand it much better if you find a way to translate it into a series of clear steps that you can restate without reference to the case.

[10] Procedural facts are often hard to master at first. You must be able to not only define nonsuit, but understand how these procedural facts affect the way this case was decided.

[11] This is a key term. Be sure you have looked it up and worked to understand it.

[12] Often your casebook cases will be heavily edited versions of the actual case. If the case doesn't make any sense to you, sometimes reading the original full-length version can help. Beware, however, often what is cut from the case can be distracting issues your professor does not want you to consider for the purposes of the course in which you reading this case.

[13] Is this a disagreement about what the law provides or how it should apply to this case? This is always an essential question in any case.

[14] This is slow-going. You will need to translate this into modern English before you can begin to understand it. This is an instance where working with another person can help. Avoid the temptation to simply give up and read a third-party description of the case (such as a commercial study guide or online case briefing service). Part of the skill you are learning is the ability to translate this kind of arcane language.

[15] Stop here and try to state the law as it existed before this case. When, if ever, would a remote seller be liable to a consumer for a defective product? Why was this the rule? Notice that you may have to come up with those reasons yourself rather than find them in the opinion.

[16] What is the "difference" that makes the difference here? Review the prior examples. Do they seem so clearly different to you?

[17] Another vocabulary word!

[18] Notice that would be under the criminal law. If you are studying torts, it is not important that you know what the law of manslaughter is. What is important is that you understand how the court draws by analogy to the criminal law in its reasoning.

[19] Isn't that true in many cases? Rarely does a manufacturer sell directly to a consumer. How important is this factor to the court's outcome?

[20] Here is a good example of reasoning that you don't want to mimic in your own legal writing. Rhetorical questions are rarely excellent methods for convincing a skeptical audience.

[21] Here is a perfect example to practice your ability to draw express analogies. How is a gun and a horse like a bottle of drugs.

[22] As you are trying to draw the holding out of this case remember the categories of IF X THEN Y, IF …, EVEN THOUGH… AT LEAST SO LONG AS…. Which of these categories does this paragraph seem to be filling in?