law school ***exam*** *hacker*

an e-book on how to **dominate** on your law school **exams**
a companion to the online course
law school ***exam*** *hacker*

by Mansfield J. Park of
law-school-hacker.com

Dear Reader,

Hi there! You have in your hands almost **seventy pages** of **valuable** and **specific** tips on how to get **good grades** in law school.

My tutoring clients pay $140/hour for this advice.

You are getting this advice for **free** (if you signed up for my ezine law school hacker or the waitlist for my premium online course *law school **exam** hacker*) or for **very cheap** (if you bought this through your Kindle).

Either way, **thank you**! Please take this e-book and pay it forward! You may email it to friends, print it out and decorate your apartment, or print it and cut sexy holes for a Halloween costume! (Send pics!)

All I ask is that you and any friends who you send this to sign up for my ezine at **http://law-school-hacker.com**.

Subscribers get **free updates** to this ebook and other free, valuable tips not available anywhere else – not on my site or in this ebook.

And please do email me with comments or gripes about the ebook. You will help me make the book better, and get one-on-one advice from me.

Meanwhile, I'll wait here for you, pointing at my chest until you need me.

Love and many thanks,
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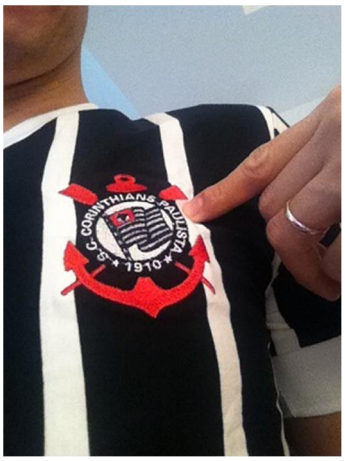

Testimonials from real law students about Mansfield as a Law Tutor:

In their efforts to explain the law, my professors made it more confusing. Their lectures hid a case's takeaway in policy considerations, alternative interpretations, and their own theories. What's worse, their tests covered black letter concepts: I was not surprised that my 1L GPA was the lowest it has ever been. Despite hundreds of hours of studying, I simply was not prepared.

Meeting with Manny turned my 1L year around. *His approach showed me what to listen for in lectures, how to read cases, and how to prepare for class. His theory to law school is straight-forward but transformative, and, now a 2L, I continue to rely on the skill set he taught me.*

Most importantly, Manny was there for me whenever I needed him. I remember emailing him model answers from past exams at all hours of the day and night and receiving substantive comments soon after; I remember calling him the day of exams with last minute questions.

He can show you how to succeed in law school and loves doing it.

-- M.B., N.Y.U. Law School, Class of 2013

* * *

Manny is a great law tutor. He does not simply give you the correct answers or read your casebook for you. He helps with the most important part of law school, learning to prepare and take law school exams. I know I'm a lazy student and Manny was able to help me organize and prepare for law school tests since he provided feedback on my progress, which very few law professors do. Every time I took practice tests, ***I was able to learn how to delve deeper into legal analysis which leads to better grades, thanks to Manny's help.***

There is no doubt that without his help I would have done significantly worse because i would not have been prepared for the unique challenge of taking a law school exam. *Manny possesses knowledge that allows a*

student to try to think about how a law school professor would grade an exam, allowing you to maximize your points. Overall, i was very happy with my performance and learned a great deal from Manny.

--A.B., Hofstra University School of Law, Class of 2014

* * *

After working in the legal and entertainment industries for three years after college, I applied to law school at age 25. Currently, I am a 2nd year law school student at Florida Coastal School of Law in Jacksonville, Florida.

Prior to starting school, I consulted with Manny (or Law School Hacker) on how to go about being a successful law school student. During our meetings, Manny provided me with very important points and strategies about class preparation, final exams, and when to begin outlining/studying.

Although we discussed many strategies, one of the most important was Manny's take on class preparation. Most students know that the first semester is always the toughest out of the three years spent in law school. As a result, time management on preparing for classes is crucial. Manny advised me not to brief cases because it is very time consuming. After my first semester, I see why briefing cases is not the smartest way to spend on class preparation. Manny instead advised me in reading the cases and marking up the casebook with the important parts of the cases: the issues, rule, procedural history, and analysis. The time that I could have spent on thoroughly briefing each case was instead spent on practice essay questions which are more important for exam preparation.

I highly recommend Manny's services and as a result of his advice, my grade point average has increased every single semester since I started law school.

--E.H., Florida Coastal School of Law, Class of 2013

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Introduction:
A Non-Sucky Guide on How to Study Law

Why This Guide To Law School Sucketh Not

There are many terrible guides out there on how to prepare for law school.

This is the best free guide to law school success out there.

Consider: Most guides are written by lawyers or professors who

- never did well in law school themselves,
- provide totally generic advice on doing well that is not tailored to law school or
- offer specific theories of exam success but no proof that their law students got good grades using these methods.

This guide, written by me, doesn't have these problems.

- **I did well in law school**. At NYU Law School, a top-five law school, I was Order of the Coif, Magna Cum Laude and on the Executive Board of Law Review.)
- **My advice is specific and step-by-step**. Flip the pages and check for yourself if I am offering stupid generalities or real nitty-gritty advice.
- And, finally, **I have had successful students, ones who got As or improved their grades significantly using my methods**. Look at my testimonials!

Of course, the advice I offer is not fool-proof. You can't be stupid, and you can't be a terrible writer and do well in law school.

Anyone who claims he or she has fool-proof rules on how to succeed in law school is, frankly, a fraud.

This guide is a necessary but not sufficient condition for law school success.

Why?

You have to master the law on your own. You have to master exam taking skills on your own. You have to read the professor on your own.

No written guide make you do these things, or do them for you.

Think of this as a diet book.

A diet book can't make you not eat French fries dipped in ice-cream.

A diet book can't make you go running three times a week for you.

But it can give you specific advice on how to lose weight. But it is up to you to take the advice and act on it.

(And, just as with bad diet books, a bad guide can cause you active harm by recommending that you direct your efforts at ineffective things that won't help you get A-grades on your law school exams.)

So take this guide. Review other ones and compare. I don't mind competition because by comparing you will learn that (1) the other guides suck and (2) if they don't suck, you'll have other perspective that can help you.

I think, after a taste test, you'll agree that this is the **best free (or super-cheap), concise guide** on **how to prepare to get good grades in law school** that you find anywhere.

If it isn't, **I will eat a shoe.**

That's how much I care about you and hate my stomach.

(Fuck you, Manny's stomach!)

Anyway, the advice here is, to paraphrase Oliver Wendell Holmes, based not on logic but on experience.

This book is a collection of tips based on experience.

I am only telling you what has worked for me, my successful peers, and my successful law students.

Some other thoughts:

- I got good grades and even my 1L year drank heavily, worked out (I had abs then; not so much now), dated, and did many extra-curricular activities.

  This is not to brag, but to tell you that you don't have to work every hour to get good, and even very good, grades.

- I am not (merely) a grade-grubbing, asshole prestige obsessed grind. There are many kinds of success, and that many extremely successful practicing lawyers who did not graduate from top law schools or get top grades.

  All I can say is that no matter what you want to do after law school -- corporate law, government service, public interest – it will be much easier if you get very good grades in law school.

Law School Is A Giant Bait And Switch

Before I tell you how to prepare for law school the right way, you have to really understand what law school is really about.

Law school is a game. It's a game where **no one tells you the rules** before or during the game.

And the people who do well "get it" before everyone else does. And most people eventually "get it."

In other words, law school is a giant bait and switch.

More specifically, what you read in your case books and what you discuss in class has nothing to do with what you end up being graded on.

You spend most of your time outside of class (less if you follow my advice below) reading cases and all of your time in class listening to a professor grill a student about these cases.

What are the facts of the case? Was this decided correctly in light of previous cases? Does judge's internal reasoning make sense? Is the judge's decision principled or driven by a desire to reach a certain result? Does the case accomplish the policy purpose of the law that it is interpreting? How would you decide the case if you were the judge? And so on.

Of course, none of these questions have anything to do with what you're tested on. You get none of these questions on your final exam.

Instead, your given a fact pattern full of strange occurrences like this:

> *Cain drinks five pints of scotch, gets in a car with a gun, and starts shooting at what looks like Abel, but is really his mother, and then hits a dog, narrowly missing a pedestrian who dies of a heart attack.*

Then you are asked a short question, like: "Identify all of the potential crimes and defenses raised."

Huh? you ask yourself after your finals are over. *What just happened? Did I not take this class?* I did everything that the professor said: read all the cases, go to class, outline. Why did I get straight Bs? I tried to prepare for law school, what did I do wrong?

Here is the key: Law school is *not* like college or undergrad (if you studied the humanities or social sciences).

Here is how most people treat college: you do all of the assigned reading, you write down everything the professor says, and if you memorize all of this, you'll get an A on the final exam. The exam tests precisely what you were asked to read and listen to during the semester.

This does not work in law school.

You need to prepare for law school exams differently than you would for college exams.

A **law school final exam** is like nothing you've ever seen during the year because the professor wants you to apply the law to a set of facts that will not be known to you before. You can memorize all of the cases and all of the professor's lectures, and this alone won't help you on the exam.

So what are you supposed to do?

Not read?

Not listen to the professor?

Just keep reading this ebook.

What To Do: A Hacker's Guide On Law School Exam Success

What follow is a list, which is highly generalized roadmap to how to study in law school.

This list does not correspond to the rest of the book, which just focuses on some of the following. But mainly I talk about three periods.

1. Before law school.

2. During the semester.

3. The weeks before final exams.

Again, what I write is based on experience and testing. These techniques got people As or, at least, better grades than they might have otherwise gotten.

(1) *Before law school*: Act like you are studying for the bar exam.

This is the single most important piece of advice I have, and it's taken me years to boil it down to one line.

I know, I know, you're thinking that I put my pants on the wrong way.

You need to graduate from law school before studying taking the bar exam, right?

Well, yes, technically, according to the ABA, this is right.

But if you want to get good grades in law school, start acting like you've graduated and start preparing for the bar exam. In a very specific way.

What do you do studying for the bar?

Just two things: Master the law; master exam-taking.

That's it. That's what you focus on. More specifically:

- **<u>Master the law</u> by studying commercial outlines to learn every element of every cause of action and defense (or doctrine) for each first-year subject (Contracts, Torts, Civ Pro, Criminal Law, Constitutional Law, Property).**

  To understand what your professor is talking about and what you need to write down, since he or she will not be clear about it, you need to be somewhat familiar with the basic rules of each substantive area of law **before** you start law school.

  You don't need to be an expert, but you do need to have read a short treatise or commercial outline. At http://law-school-hacker.com/law-school-books,html, I point you to some of the better materials to buy to study for all of the first-year subjects.

  In any case, go out and buy or borrow commercial outlines or hornbooks for each of your classes before you start law school. Read them all during the summer before you start classes.

  One quick and cheaper way to do this is to go on Craigslist and check for "BarBRI." People might be selling their review outlines (in particular the "BarBRI Conviser Mini Review") which summarize all of the first-year subjects (and others; ignore the upper class topics).

  FYI, I did this – a friend gave me his old BarBRI Conviser Mini Review, and I studied it during a 2 week vacation in Spain just before I started law school. Worst vacation ever! But it worked.

- **<u>Master exam-taking</u> by doing as many practice exams in each of these subjects after you have studied them; continue this during the school year.**

  Think of the ability to take a law school issue spotting final exam as a muscle.

  It is a muscle you almost certainly don't have before law school.

  It is a muscle that professors want you to think you either have or don't have.

  The reality is that this muscle can be developed and be made strong by deliberate practice. Before and during law school.

  That is, once you have studied the law – learned all of the elements of the causes of actions and defenses for a given area of the law, you must learn how to apply the law to new sets of facts you have never seen.

  You do this by using your legal knowledge in an area of law (say torts or contracts) and repeatedly taking old final exams in that subject.

  For instance, say you reviewed the Emanuel or Gilbert's for Contracts. You would then find old final exams for a contracts professor at Columbia, Chicago, and Texas (if you are not going to any of those three schools).

  You then take the exams – using your commercial outlines as a guide – under timed exam conditions.

  Ideally you would find exams online where the professor has also posted a model answer to see what issues you spotted and what

issues you missed. I have posted links to some in Chapter 6. (*Note*: for my premium digital course, *law school* ***exam*** *hacker*, I will have an area with even more links to such exams.)

(2) *During* the semester (well, both semesters of your first year).

So before you start law school, you should focus on mastering the law and mastering exam-taking.

During the semester, you continue to work on mastering exam taking and add one more task:

Mastering the professor.

Basically, you want to spend your semester getting into your professor's head. You want not only to be good at exam-taking generally, but you want to become good at writing good exams for your specific professors.

What follows then is a guide to how to get into your professor's head.

- **Look at old final exams for your profs.**

The first week of law school or even earlier, find a copy of previous final exams given by each of your actual professors in the subjects they are teaching you. Glance at them. Begin to get a sense of your profs then.

- **Start outlining early. Make them right.**

  Don't wait until the month before classes end like everyone else.

  Start at the beginning of the semester.
  Why? Most people will tell you (and I used to tell people, frankly) that if you start outlining too early, that outlining loses its

"crystalizing/studying" function.

But if you have prepared for law school the right way – by mastering the law and mastering exam taking skills – much has already crystalized.

You will know, better than your classmates, what to include in your outline – the elements of all causes of action, defenses and other doctrines, but also those few other facts that will help you what facts from cases are interesting and which are unimportant for purposes of taking a final exam.

In any case, if you're in doubt, there is more advice on outlining later in this ebook.

- **Study your professor: take careful (but not necessarily voluminous) class notes and incorporate them in your outline.**

  So hopefully you actually looked at the old exams handed out in class to begin to learn where your professors would likely go. Great. Now that you are in class, follow the conversation closely to root out the professor's stated and unstated preferences, interests and biases.

  For instance, I had a crim law professor my 1L year who insisted that students use the phrase "Leningrad drunk" as short hand for "incapacitation because of an excess of alcohol sufficient to negate specific intent for specific intent crimes."

  You would have been stupid not to simply say "Leningrad drunk" because that is just what the professor wanted.

  Also, this professor had a literary bent, so I wrote one of the policy

essays as a dialogue between myself and Stalin. A huge risk for any other professor or class, but not with him – a flat A for yours truly.

A corollary: Do not volunteer to talk much in class. Talk if you have something great to say. Otherwise, remember that when you talk, you don't listen well – before you are mentally composing a comment instead of reading your professor, and after you are reflecting on what you said ("Was that stupid?" or "I am sooooo awesome!").

In short: Zip it, tune in, take notes, and get As.

- **Get a study group and meet for just 2-3 hours a week.**

  You should have a study group of 3-4 other people to discuss three things and three things only:

  (1) specific concepts one or more of you did not understand in class;

  (2) your outlines, when you create them; and

  (3) your answers to practice exams just before finals.

  Anything more and you risk becoming a coffee klatch or talking shop that wastes time. Don't get me wrong – some of your best friendships may come from your 1L study group. Just make sure you do the three things above.

Also, while spending the time *mastering exam-taking* and *mastering your professor*, during the semester, you need to avoid doing two things that will rob you of all of your valuable time and will kill your semester: briefing cases and overpreparing for the socratic method.

- **Do NOT brief cases!!!!!**

You may not know what this is yet, but if anyone tells you to do it, run away screaming. In short, briefing cases is pure busy work that does not help you master the law – the elements of claims and defenses – or master exam taking.

Basically, it involves playing anatomy with every case you read: Oh, there is the factual background! That's the holding! That's a dangling participle!

Do not waste time writing a case brief for each case that you read. You could literally ruin your semester if you obsessively brief every case. I have students who did not so well on their exams and, not only that, felt stressed and unhappy and knew they were going to do badly on their exams as they take them. More on this further into the ebook, but please: ***don't brief cases***.

- **Do not over-prepare for the Socratic method in class.**

Kind of related to the point above on not briefing cases.

In short, do not obsess about sounding stupid in class.

Even if you say you forgot to do the reading, nothing will happen. Maybe the professor looks disappointed or even says that he or she is, but who cares? Won't affect your grade.

But people who do over-prepare, they suffer. Students who do will read and re-read cases, and often brief them, so they can recite a bunch of facts in class while the professor, utilizing the so-called Socratic method on them, asks a bunch of stupid questions of particular students just to fill the time.

I am not saying not to do assigned reading. I am saying: do it only once, do it the night before, and do no more than underline or write in your book to make key points stand out. Do **not** brief cases, do not re-read cases, and do not stress too much about sounding stupid in class.

(If it makes you feel better, I almost always sounded dumb in class.)

(3) ***The weeks before final exams*****.**

- **Finish draft outlines and trade with members of your study group.**

  Again, if you followed my advice as to what you should do before law school, you have already mastered the law.

  Now you need – forgive the S&M overtones – master your professor.

  The best and only way to do that is to compare your outline with your peers, the members of your study group.

  Make sure that you are not missing anything that they have, and that you heard and understood your professors correctly in all of the classes you are in.

- **Take practice exams (again) and compare the results with your study group.**

  Before law school, and hopefully during the semester, you have been exercising your exam-taking muscles. Mainly by taking exams from hornbooks (like the E&Es) or old final exams from other professors at other schools.

  Now it is time to really see if you are properly tuned for your professors.

That is, find the old exams for your class and take them under exam-like conditions. Follow any time and word limits for those exams.

This is what you prepare for: outline so you can take a practice exam and see how you do in spotting issues and organizing your thoughts in a limited amount of time.

After you finish, compare answers with your study group so you can see what issues you might have missed, with a special eye towards how your professor would see these issues.

- **The night before your exams: Exercise. Relax. Sleep. *Don't stress*.**

  If you did everything I mentioned above – and importantly avoided wasteful things like briefing cases – you are as prepared as you can be on your exams.

  So don't stress further. There isn't more you can do.

  You must rest to have an agile mind on your exams.

  If some disaster happened (like you discovered the day before exams that you, I don't know, were asleep all semester) and you really must cram at the last minute, then cram at the last minute.

  Do not sacrifice rest during the entire exam period.

  Rest to kick ass. Without rest, you will get your ass kicked.

One more "Thou Shalt Nots."

Let me repeat a couple of points above in a single place on what NOT to do. Again, please do not brief cases. It is a waste of time. And do not overprepare for the Socratic method. It doesn't matter, and the prep time is better spent working on your three key activities: mastering the law, mastering exam-taking, and mastering your professor.

Here are two more cardinal "thou shalt nots":

- **Do not let your study group turn into a waste of time.**

  Don't let your study group become a coffee klatch or knitting circle or MMA arena.

  Use your time effectively, and limit your time to 2 hours once a week during the semester and no more than twice that during the 6 weeks you spend outlining and taking practice exams.

  And change study groups if you must.

- **Above all, *do not panic.***

  A little stress is fine – it gives you energy. Too much stress and you may work hard and do badly.

  Don't lose energy with thoughtless worrying. Don't intimidate yourself.

  Worry only whether you are doing the right things to study.

  If you follow the advice here and on law-school-hacker.com, you

should be fine. You will know that you are following a tried and true method.

But if you don't do fine, life goes on: there are other ways to get to where you want to be, and I discuss them elsewhere.

For instance, if you don't get great grades your first year in law school, you can still get great jobs by writing on to law review or law journal.

Or you can drop out of law school for a while (shock!) and think about what to do.

But don’t panic. Life will go on.

Chapter 1:
Introduction to the Issue-Spotting Exam

Law school exams are like poisonous snakes or blind dates -- The more you know about them in advance, the less likely you are to be hurt by them.

(If you think the analogy sucked, you've never been on a truly bad blind date.)

So let's get to know the enemy. You need to understand three things:

1. What do law school final exams actually look like?

2. How do law school exams differ from your undergrad exams?

3. How to become comfortable taking law school final exams (hint: master the law and master exam-taking through practice, practice, practice).

(1) What do law school exams look like?

Law school exams are different from undergraduate or college exams in many ways that are surprising to first-year law students.

Imagine it: You spend all semester reading interesting criminal law cases, studying the philosophical underpinnings for criminal law.

You have memorized everything the professor has said and every word in the case book. You show up for your in-class exam and see this:

> **Question 1.** Larry, Moe and Curly drive to the movies. Larry carries a gun, unbeknownst to Moe but not Curly. Curly is high on LSD, which only he knows, and is an undercover police officer. Moe is driving and has had four beers. They spot a 7-

> Eleven, and quickly agree to rob the store to get money for popcorn. All three enter the store. Curly tells the cashier: "Give us all your money, now!" Moe notices a pretty girl in the corner and apes her. Larry suffers a flashback from the rape he suffered as a child by his uncle; he gets confused, believes Moe to be his uncle and shoots him. Larry misses Moe, instead hitting and killing the cashier. Moe runs away and flags down a police cruiser. He tells them that Larry and Curly attempted to rob the 7-Eleven and killed the cashier. He fails to mention any potential criminal acts he may have committed.

Instructions: Assess the potential criminal liability of Larry, Moe and Curly, including any defenses they may raise.

You finish reading this question and begin to sweat. How do I answer this? you think to yourself. How am I supposed to show the professor that I memorized all of the cases we studied? What is this?

Welcome to law school.

(2) How law school exams differ from college exams.

If it's not clear already, law school is simply a different beast. To do well on your law school exams, you need to consciously make note of the ways in which you may subconsciously believe law school to just be a continuation of college.

Here is a list of ways in which law school is different from college, and specifically how law school exams are different from college exams. If you understand these differences, you are half way to law school success; if you fail to take note of these differences, I believe you will have problems. So here we go:

College	Law School
The final isn't everything. In college, your grade maybe depended on a mid-term exam and a final exam, along with a final paper and perhaps some weekly assignments. While your final may be worth 25 to 50% of your grade, it isn't the be-all and end-all of your grade that semester.	The final is everything. For the most part, in law school exams are worth 100% of your grade; there usually are no midterms, just finals.
Memorize and regurgitate. In college or graduate school, your exams usually involved some form of regurgitation. You had to write well (in the humanities and social sciences), but generally you might be asked to compare, contrast or synthesize different theories or works. In the end, a professor wants proof that you did the reading and went to lectures.	Application of rules to new facts. In law school exams are different: there is no "regurgitation" of course material. You won't ever be asked to repeat the facts of any laws or cases, or even to synthesize or compare or contrast different cases. The key difference is that you will be required to apply laws and cases to new facts you have never seen before--this is the infamous "issue spotter" exam. To be even clearer, in law school, you can memorize every line in the case book and every word your professor says--and *still* not get an A on your final exams.
Usually no curve or a soft curve. In many colleges, especially in the humanities and social sciences,	Forced curve. But in law schools exams are graded on a forced curve, and honors are harder to come by.

there is rampant grade inflation. For instance, at the Ivy League college I attended (and was told a million times I was lucky to be at because I was grew up in the middle of nowhere), fully *one-third* of the class graduated with high honors, *magna cum laude*, and half of the class graduated with some kind of honors. Ridiculous. Was everyone really above average?	The professor *is required* to give out mainly Bs or B+s. Typically, depending on the class and the law school, somewhere between 3-5% of students or less will get a flat A; only 10-15% will get an A or A-. To get an A at all is an accomplishment. Where I went to law school, less than 10% graduated *magna cum laude*.
<u>You can recover from bad grades your first year</u>. In college, if you don't do well your first year (I did not) you have time to adapt and get better. Many students I know, including myself, had a rough first year in college grade-wise, and still got good jobs, got into good graduate programs, etc.	<u>Your first year is all that matters.</u> The grades you get on your law school exams your first year are disproportionately important to your legal career. They determine what summer job you get your second year in law school, which usually becomes your permanent job; whether you get on law review or law journal (another mark of prestige and unnecessary work); and whether you get a good clerkship after law school. Many students I know in law school got bad first-year grades and did not get any of these things. Perhaps first-year grades shouldn't matter so much, but the sad fact is that they do.

(3) So how do I do well on law school exams?

Given what I've said above, there are three simple (simple, but not necessarily easy) things you must focus on doing to excel in law school.

To get As in law school, you must:

(1) Master the law;

(2) Master exam-taking; and

(3) Master the professor.

That's it.

These are the necessary, if not sufficient, conditions for getting As in law school.

As to **mastering the law**, I provide tips on this elsewhere, but the best way to do this is to prepare for law school *before law school*.

And **mastering the professor** is something you can only really do after having mastered the law and by studying the professor by going to class and listening carefully.

Here are some important, though general, thoughts on **mastering exam-taking:**

- You cannot master exam-taking unless you ***master the law***. Exam-taking is about applying the law to new facts. You must know the law cold to practice exam-taking, and you must practice exam-taking far in advance of exams.

- Exam-taking is about **being a virtuoso**. A virtuoso – a musician, a figure skater, a soccer or basketball player, a law student – has a mastery of technical skill but also acts with creativity and flair.

- To get average grades, you need to apply the law correctly to the facts.

- To get top grades, you need to **stand out** by seeing more issues and identifying issues that other people don't.

- Law professors want to see **creativity**. Law professors did not become law professors by being good lawyers. They became law professors by writing articles that made interesting and creative arguments. Their advancement as law professors depends solely on their ability to develop novel, creative legal ideas. Not surprisingly, that is what they really want to see on exams. They want to see well-supported, interesting and even controversial arguments.

- Exam-taking is an exercise in **handling ambiguity.** Professors purposefully try to write exams with difficult, ambiguous facts for several reasons. There may be clearly wrong answers (mis-applications of the law to the facts; failures to spot certain basic issues, etc.), but there is not necessarily a right answer.

    - In part, real legal practice is about dealing ambiguous facts. That is rarely a professor's concerning, given that most professors, especially at the most prestigious law schools, have very little actual legal experience.

    - In part, it is easier to separate good exams from bad exams when the facts are tough and super-ambiguous. If you are well-prepared, a hard exam is your friend. You can stand out more easily. If the exam is easily, there is more of a chance that a lazy professor may not see how much better you are.

- **Exam-taking is a skill that you must (and can only) develop through practice**!

- Which means: you must not only study the law and go to class, but **you must take practice exams**.

- In fact: **It is absolutely critical that you take as many practice exams as you can, as early as you can.**

  Can I say that again?

- **It is absolutely, positively, super critical that you take many practice exams as you can, as early as you can.**

Law school exams are really strange and foreign to everyone before they attend law school. How can you do well if the first time you encounter a law school exam is during finals?

On top of that, most students know to take some practice exams in the weeks before exams.

So get started even earlier.

But don't flail.

But before I give tips on how to take practice exams, I should tell you what I mean by "practice exams"? For your purposes, they will be one of three things:

1. Old exams given by your professor for a given class - these are the best practice exams if you can get your hands on them. (Some even provide model answers--study those like crazy)

2. Official practice exams offered by your professor - Some professors are nice and offer you the service of taking a practice exam to be graded by a teaching assistant. I did this twice in law school. If your professor offers one of these, please please take it! And get the feedback from the teaching assistant.

3. Fact patterns provided in treatises or commercial outlines that you read before law school starts - model problems given in such books are a decent way to study, but you should really only resort to these if you cannot get your hands on (1) or (2).

The funny thing about these tips is that they will mean even more to you if you actually take practice exams. But you have to start somewhere, so read these tips once before taking any practice exams, and then come back to these after you have taken some practice exams.

Chapter 2:
Prepare The Summer Before

So you're reading this the spring or summer before and wondering, "What sort of law school preparation should I do? Should I do any?"

Really, I think there are three courses of action.

1. Do nothing and relax.

2. Go to a law school “boot camp.”

3. Study by yourself.

To me, the third option is the best one, if you do it right things. It is also cheaper than paying for a thousand dollar boot camp.

Option 1: Do nothing and relax.

You can continue to do nothing--maybe just watch TV all day, travel the world, do everything fun you are going to do because all fun ends with law school. Or maybe you have been told that there is no pre- law school preparation that will help you.

Wrong, on both counts. Personally, I think it is a mistake to do nothing at all the summer before.

First, law school is a lot of work, but for many, it can be fun. Especially if you like to drink. To excess.

Even if you don’t drink, law school can still be fun (ask my Mormon roommate my 1L year – watching me drunk was amusing to him).

Second, preparing for law school the summer before can help you.

By gaining at least a rudimentary understanding of the all of your first-year subjects, you will take more effective notes and write better outlines simply because of repetition.

In short, follow this rule of thumb:

The first time you learn about a legal concept should not in class.

Why?

Because while your grades depend on your ability to apply black-letter legal rules to a fact pattern.

And ultimately, it will be up to you to teach yourself the law.

In class, your professor will do anything but tell you the black-letter law.

Harvard's Christopher Langdell helped start, over one hundred years ago, an official method for confusing first-year law students.

Watch *The Paper Chase,* or read *One-L* by Scott Turow. You'll see the Socratic method in action.

A skeptic, such as myself, would even go further and say: it's not just that the Socratic method doesn't lend itself to teaching the black letter law; law professors don't teach you black letter legal rules on purpose. That would be too easy.

This is professional school, and if what they did was easy, they couldn't consider themselves geniuses, now, could they? And they have to justify the enormous sums of money you are borrowing to pay for school.

Example: You read a case for your tort class. It's a simple case. A man drives while talking on his cell phone--not illegal in the state he was in--and hits and kills a pedestrian. The court finds that the man is liable to the pedestrian's family for negligence because he did not take the ordinary care a reasonable person would take while driving, even if talking and driving at the same time was not against the criminal law of that jurisdiction.

In class, your professor calls on you. What did the court decide, and was it right? You answer that it was rightly decided and explain why.

At this point, the professor will do one of two things, neither of which actually helps you learn the legal rule you need to know to do well on your final exam for that class.

(1) He (unfortunately, it's usually "he" still) may take the other side that the case was wrongly decided and debate you to get you to make your reasoning super clear. He will continue this for 10 or 15 minutes until you feel that you're wrong, and then he'll rehabilitate your position and show you arguments better than the ones you made.

OR

(2) He may given you hypothetical variants of the case, using the phrase, "what if?" to get you to think about how and whether the court would have reached a different result.

What if the call was from the man's pregnant wife? What if the man was Batman and he had received a call from the commissioner? What if it was the pedestrian calling him to say, "look out, you're about to run me over!" What if the pedestrian was brandishing a gun?

If knew nothing about negligence before that class, the professor's questions would seem difficult, even confusing, and you'd feel compelled to write everything down indiscriminately because you think it's all important.

But if you already read about the elements of the tort of negligence and defenses to it, you will know when the professor is saying something really important, something that you will be tested on.

So the way to hack the system here, and ultimately save yourself time an energy, is to **invest time up front** and begin your law school preparation before law school. Specifically, you must learn the substantive law of the six or seven areas that are always part of the first-year curriculum: contracts, property, torts, civil procedure, criminal law, and (sometimes) constitutional law.

The question is, how?

Option 2: Go to Law School Boot Camp.

You will see ads for law school preparation courses, otherwise known as boot camps.

Few of these boot camps are cheap; the ones I have seen cost a thousand dollars or moer, just for the course.

Some are taught by famous law professors from prestigious law schools.

Now, I did not take one of these courses, and I don't know anyone personally who has.

I have absolutely no idea if these courses work as advertised. One major law school prep course claims that its median student graduates in the top 20% of her class.

My thought is that if they are not teaching you patently bad habits or study strategies--such as writing case briefs, and you don't mind paying the money, more power to you.

If the course just provides a high-level overview of the major subjects of law you will study, then that's fine.

But if it just offers a preview without teaching you to make yourself master the law and master exam-taking, then it may be a waste of money.

Now, many people can't afford to pay over a thousand dollars. My sense is that you don't need to: there is means of law school preparation that you can do by yourself, without spending too much money. That would be . . .

Option 3: Study by yourself.

*****This is what I recommend.***** As I mentioned before, there are two critical things you must do before or early in law school: master the law and master exam-taking.

What you can do before you start law school – the summer before -- is to purchase or borrow several different products: commercial outlines, treatises or hornbooks devoted to first-year topics.

You could also simply print out free outlines from the internet. (Again, I will tell you where to find free outlines in my premium version of Law School Exam Hacker.)

What are these books?

These are all different from each other, but are similar in that they describe black letter legal rules--defining them, laying out their elements and defenses, and listing examples.

They are unlike the case books you read for class, which are full of confusing judicial opinions that force you to play hide-and-seek with the black letter rules that you are trying to understand.

You don't need to spend a fortune on them, and you can even ask to borrow them if you have a friend who is a couple of years ahead of you in law school.

Here are some more tips on how to "pre-study" for law school:

- **Study to understand and memorize the elements of all the causes of action, defenses or other doctrines that you can.**

  Your goal is to understand how to apply the legal rules that you learn.

  To do that you actually need to learn the legal rules themselves.

  Specifically your goal is to study and remember the elements of causes of action and defenses or other doctrines.

  Each cause of action – say for battery or assault or negligence – has elements that must be met. A defense to such causes of action – such as self-defense or insanity – also has elements that must be met.

  An element is a standard or requirement that must be met.

  For instance, you will learn in torts that a battery is when one person (1) intentionally (2) touches or makes contacts with another person (3) in an offensive or harmful way; (4) without consent.

  Each of these four elements must be present for a plaintiff to prevail on battery.

  Even though your final exam will be all about your ability to apply such elements to a set of facts you have never seen before, studying these elements is not what you will be spending your time doing.

- **But: don't worry about totally memorizing everything.**

  In doing some pre- law school preparation, you do not have to completely master all of the material you read.

That is what law school is for. Read with the aim of obtaining a general understanding of the subject so that the key legal concepts are familiar to you when your professor discusses them or you come across them in your case book reading.

Most importantly, make sure you understand the basic elements of each cause of action or defense in an area of law.

- **Do not overprepare – do read more than one book per law school subject (like contracts)**.

  Do not overdo it and purchase three books on contracts; this will either be repetitious or just make you confused.

  You want to shoot for gaining a basic understanding so that you can take practice exams over the summer and so that you will find your professor's lectures during the semester easier to understand than your peers will find them.

  To do this, you just need to read one (good) book on a given topic.

- **Try to buy one of the shorter books or outlines.**

  A Gilbert's or Emanuel outline or a "Nutshell" series book instead of a full treatise or hornbook. All you need is a basic familiarity with the key concepts or doctrines of law.

  A full hornbook or treatise is meant to comprehensively catalog all relevant law on a given topic to help practicing lawyers do research.

  True hornbooks or treatises have ***way*** more information than you really need for solid law school exam prep.

- **Once the semester starts, try not to rely on these materials as the end-all and be all; read for understanding.**

> You want to be familiar with the law before you start to go to class and listen to the professor. But during the semester, you want to really capture the professor's voice in your notes. If you want to get good grades, your job is to understand the law and to apply it as *understood by your professor.*

Now, what books do I recommend to help you prepare for specific classes?

I have some recommendations at http://law-school-hacker.com/law-school-books.html.

But basically, anything will do that describes the black-letter law clearly. I myself used a one-volume BAR/BRI book my friend gave me to study the seven major areas of law while on vacation in Spain.

Chapter 3:
For the Love of God, Do Not Brief Cases!!

Could I give you some advice?

Come a little closer.

There, that's close. Let me talk in to your ear . . .

DO NOT BRIEF CASES.

EVER!!!!

NEVER EVER EVER!!!!!!

(Sorry for shouting.)

NEVER! NEEEEEVEEERRR!!!

(Couldn't help that last one.)

With the students I tutor, it is literally the first piece of advice I give.

I tutored 1L students starting in their second semester unhappy with their first semester grades.

My first question is always, "Did you spend the whole semester briefing cases?"

The answer is often a dejected "Yes."

Okay, let's take a step back.

You are thinking, "What the heck are law school case briefs? And why should I not write these things?"

Answered below in two parts.

Part 1: What the heck are law school case briefs?

Scott Turow (best-selling author, the most famous Harvard Law School graduate ever, and still-practicing lawyer) described reading the legal opinions in a law school casebook as like stirring cement with your eyelashes.

It really is. Cases are confusing text blocks that don't explain themselves.

A case brief is the law school version of a lab practical examination in high school biology. You dissect a (hopefully dead) frog and the teacher points to body parts as you name them: spleen, brain, liver, cloaca, etc. (Yum, right?)

In law school case briefs are a way of helping new law student play anatomy with cases – learning the various functional parts of cases helps students begin to understand what they are dealing with.

A case brief is a written guide, usually drafted by a law student as she does her case reading, that dissects a case and identifies various parts of the case, such as:

Parties: Identifying by name the plaintiffs, defendants, and any third-parties dragged in--or, since you mostly read appellate cases, appellant and appellee, or petitioner and respondent (in the U.S. Supreme Court).

Facts: Usually a short narrative that can include any or all of the journalistic 5Ws and H: Who, What, When, Where, Why and How. What happened?

Procedural Posture: In other words, what court wrote this opinion, and how did it reach that court? What did the lower courts (usually a trial court) decide?

Issue(s): Usually phrased as a question susceptible to a yes/no response, identifying what exactly the court was asked had to decide ("Was defendant liable for fraudulent misrepresentation when he claimed that the car was in good shape when the day before a mechanic told him the car should be sent to the junk yard?").

Holding(s): What did this court decide? What, in one line, was the court's answer to the legal question identified as "The Issue."

Reasoning: The court's means of justifying its holding, usually referring to previous case law, statutes, the Constitution, or whatever source provides the court the means of deciding the issue raised.

Rule: The more abstract formulation of the court's holding that might apply to other cases.

Dicta: Other interesting things the court may have said on its way to deciding the case.

Concurring/Dissenting Opinions: Other interesting things the court may have said on its way to deciding the case.

Part 2: Why should I not write law school case briefs again?

Reading the above, you might be thinking: "Wow, that sounds useful. I should totally do that?"

You should ***totally not do that***.

Don't even think about it.

You're thinking about it.

Don't. Do. It. Please. Seriously. Stop. Thinking. So. I. Don't. Have. To. Keep. Writing. One. Word. Sentences!!!

May I offer another analogy between **briefing cases** and the movie **The Karate Kid** (the original, not the crap remake with Will Smith's kid)?

Here is the analogy:

In law school case briefs are just like doing wax-on, wax-off.

What do I mean?

Mr. Miyagi promises to teach Daniel karate and starts by forcing Daniel-san into apparently pointless, manual labor: wax on, wax off on an endless series of cars, paint the fence (up, down, up, down), etc.

The work is endless. Daniel-san does everything he is told and is patient.

Until he isn't.

One day he snaps and yells, "When are you going to teach me karate?"

Mr. Miyagi says, "Show me 'Wax on, wax off.'"

Daniel-san starts doing wax-on, wax-off unenthusiastically.

Right then, Mr. Miyagi screams and throws a lethal volley of punches and kicks at him. Daniel-san blocks them all.

Amazed with his new-found skills, Daniel-san walks off into the warm, California night confident that . . . he's got a good start on learning karate.

But it's just a start. At that point, Daniel has no idea how to punch. To kick. To throw. And he certainly can't do that crane kick that has Johnny's face written all over it.

Briefing cases is wax-on, wax-off. It is a helpful tool but one that does not win karate tournaments or excel on law exams.

It is an initially helpful training to help the totally new law student develop one necessary skill: read cases and pick out the critical parts.

Wax-on, wax-off teaches Daniel just one skill – how not to get hit.

Daniel did not spend the whole movie only doing wax-on, wax-off.

He had to learn other skills--punching, kicking, and standing on one leg--in order to learn all of karate.

You need to learn more than briefing cases to do well in law school.

You need to learn other skills to actually win the tournament.

Turns out that punching and kicking are pretty critical skills to karate, letting alone winning a tournament.

Let me modify my statement above. Do the following instead:

Only write law school case briefs for the first week.

Then never, ever ever do it again.

In any case, you will learn to read cases by reading them, not by playing anatomy or wax-on, wax-off with every single one.

* * *

Now, maybe you are reading this and thinking: Well, I am super motivated. I will master the law and master exam-taking AND brief cases because that sounds super helpful. I can do it all!

No, you can't.

Indeed, some unfortunate law students brief every case they read the rest of the semester.

It is not harmless to brief cases. It is actively bad for you. You have a finite amount of time. Every hour you are briefing cases is an hour you are not taking practice exams and outlining.

You will lose time and energy doing something that does not directly translate into better exam performance.

Do you have any idea how much work it is to brief every case you read?

For every hour you spend in class, you have to read 3-5 cases.

You've got anywhere from 12 to 15 class hours per week.

Let's take the low end of this – you will have to write at least 36 case briefs per week. Briefing a single case might take you 15 minutes or more.

This is 9 hours of extra work per week.

Oh, well, spending 9 hours a week is not a big deal, right? It's time well spent, right?

Wrong.

Some students I have worked with spent so much time on case briefs that they did not have time to do two absolutely critical things in studying for their final exams: outline their courses and take practice exams.

Outlining and taking practice exams--to stretch this analogy beyond recognition--are like learning to punch and kick. You can't succeed in law school without doing these things.

Remember, my website is called law school hacker.

Not Kill Yourself With Pointless Work in Law School.

If in law school case briefs seem like something you want to do, because you heard from someone that you had to do them to get good grades, or because your classmates are writing them, or because it makes you feel like you're working hard, ask yourself:

After briefing cases, do I have sufficient time to outline well and take multiple practice exams for each of my classes?

If your answer is yes, think again. Be sure you are not deluding yourself, because you don't have much time.

Only if you are sure that the answer is "yes", then brief away.

Otherwise, **do not write case briefs**. At all.

Work smarter and skip them: you will already work hard enough.

And, honestly, are going to use most of the information you put in your law school case briefs?

Do you really think any exam will test you on the procedural posture or dissenting opinions of a particular case?

(Hint: Absolutely not.)

In short: Wax car, paint fence, brief case: helpful exercises that should be abandoned as soon as possible.

Unless you want Johnny and Cobra Kai to win.

Chapter 4:
What Socratic Method?

Do your best to ignore this time-honored, pointless, stupid part of law school.

(Except: kind of pay attention to what kinds of arguments the professor thinks are good ones.)

The **Socratic method** is perhaps one of the most famous, and pointless, aspects of the law school experience.

It works hand in hand with the case method. And even briefing cases.

You can't have one without the other.

That is, in most U.S. law schools, professors ask law students to read a number of cases from a gigantic casebook before class.

The case book only contains excerpts of cases and questions but very little explanation as to what is going on, or what the actual applicable legal rules are. You, Mr. or Ms. Law Student, are supposed to figure that out for yourself.

In class, the professors select certain students to answer questions about the cases:

- Sometimes you are asked simply to recite certain facts of the case. Famously in The Paper Chase, one of the early lines is: "Mr. Haaaart! Please give us the facts of *Hawkins v. McGeeeeee*...."

- Sometimes they ask you if you think a case was rightly decided in light of previous cases that you also read.

- Sometimes you are asked hypothetical questions that alter one or more of the facts in a given case to determine whether you, as the judge, would have decided the case differently,

The theory, I guess, is that in this process, you will teach yourself the law and how to apply it.

I am skeptical that this is actually what happens in practice.

Let's take a step back and talk history. Just in case you think there is a good reason for the Socratic Method, there isn't. It was invented at Harvard Law School in the late 1800s and was quickly adopted by all other law schools in the U.S.

The book Planet Law School has an excellent history of the dubious background of this practice.

In short, a law professor who was a crappy lawyer and crappy professor managed to convince the President of Harvard University to adopt the Socratic Method, thus traumatizing generation after generation of American law students.

Apparently, law professors around the country thought that it was just too easy to tell law students what the laws actually were.

The U.S. – I think – is the only country in which the Socratic method is used in legal education.

In other countries--including the United Kingdom -- there are lectures in which the professors *actually explain laws and how they work.*

Imagine that!

At its best, the Socratic method is used by a professor to force her students to come up with good arguments on the spot both for and against a position.

This would be awesome legal training if you were forced to this every day in every class. You would just be this little ball of legal lightning shooting legal thunderbolts from every orifice if you did this for three years.

But you're not. You may got called on once or twice per class per semester.

Most of the time you sit passively as the professor grills some other poor soul about a case you will never deal with again.

At its worst, in the hands of other professors (most of them), it is a clumsy tool that the professor uses to simply pass the time, something akin to improvisational jazz.

Here Is What You Really Need to Know About the Socratic Method

- **The Socratic method and your in-class performance is almost meaningless.**

  So don't spend time worrying about it. Remember that how you do on your law school exam is usually 100% of your grade. So your time is best prepared spent pursuing activities that make it more likely that you will get an A. Reading and re-reading the cases in anticipation of being called on in class are not a good means to get an A."
- **So don't over-prepare for class because of it.**

  Really, it's not a big deal.

  This is super important advice: *please do not overprepare for class or read the cases more than once.*

  I know of many students, both my classmates and my tutoring students, who over-prepared for every class because they were afraid of looking stupid in class.

  No harm in being prepared, right? Wrong.

  Fear of the Socratic method caused these ill-fated students to lose

precious time by, for instance, writing law school case briefsand to reading and re-reading cases to master details that ultimately do not matter on the final exam. You only have so much time; and not every activity helps you do well on your exams equally.

So don't spend it over-reading or preparing your case work for class.

- **There is no relationship between how you do in class and how you do on your exam.**

  One of the funniest things about law school is that there is no relationship between how good your in-class, on-your-feet answers are and your ability to write a good law school exam. I actually had data on this. My whole first year, other than playing too much solitaire (this was just before all classrooms were wired for internet), I kept an Excel spreadsheet marking how many times people spoke in class. Some loudmouths did badly their first semester -- at least I believe so by the the fact that they stopped talking entirely second semesters. Yet others who talked too much did well, grade-wise. Some who were silent did well, and others who you never heard from did not.

  (By the way, I proved that some people spoke too much with statistical significance, in the sense that these two standard deviations from the class mean in terms of how often they spoke when not called on by the professor.

- **The Socratic method is not even a real Socratic dialogue.**

  In a true Socratic dialogue, the teacher never makes statements and only asks questions. Practically no law professor, thankfully, actually adopts this approach anymore.

  Usually you get mixed bits of lecture with mandatory Socratic method drilling, if for no other reason than it is somewhat a rite of passage in law school.

Or, simply, Tradition! as they say in *Fiddler on the Roof*.

- **Rare professors do give credit for good answers, but it isn't worth enough to kill yourself preparing for class every day.**

  Really, don't do it. At best, professors will bump your grade up half a grade (from a B to a B+, or a B+ to an A-) if your participation was good in class.

  But if you don't do pretty well on the exam in the first place (i.e., you should be at least in B+ territory), it isn't worth sacrificing time better spent on practice exams, outlining and other more effective things just to sound good in class.

- **You can't win at the Socratic Method.**

  Let's say you give the perfect answer right away, everything that the professor believed about the case he is asking you about.

  Think that he will just give up and stop asking questions?

  Nope.

  He is going to keep asking questions, coming up with new hypotheticals or asking you different questions, because that was his plan for the day. It is -- for many bad professors -- a way to simply fill the time.

  He is going to make this about the journey and not the destination. (Even though you will ultimately be tested on the destination and not the journey.)

- **Gunner bingo is played because of people who misunderstand the Socratic Method.**

> Gunner Bingo is a very old law school game in which people who talk to much become part of a "bingo" card of the vast, silent majority of law students.
>
> Once too many gunners, as they are known, talk too many time, a lucky winner will raise his or her hand and use a code word in a sentence that all other players recognize as "bingo."

In short: don't be that person who is the subject of Gunner Bingo. The advice to the submarine captain is also good advice for you, the law student: Run silent and run deep. Focus on the exam, and don't worry about sounding like a fool in class.

Chapter 5:
How to Make an Outline (and Why)

Law school outlines have existed since . . . well, it's not clear. Certainly they existed in 1973--the movie *The Paper Chase* mentions outlines repeatedly.

One character works relentlessly on his lengthy and "perfect" outline, calling students he doesn't like "pimp." Like that's a bad thing.

Outlining is a rite of passage for first-year law students; it's when they enter lock-down mode, where you see many men growing grotesque "exam beards." Creating law school outlines is one of many lemming like activities that law students in engage in. Every does it but no one knows why.

So, what are law school outlines good for? They are schematics or maps to the cases and laws of a subject that help guide law students through a final exam.

In law school outlines are necessary because you have to figure out the black letter law from the confusing Socratic dialogues that your professor leads in class and organize it in a way that helps you apply the law to facts you've never seen before.

Remember that law school final exams test a very specific ability: to apply the laws you have learned to new problems or facts. They almost never test pure recall of particular laws or cases.

In fact, many law schools dispense with memorization and make exams open book so students can focus on legal analysis: can you look at a set of facts and make a quick assessment of what kind of legal claims could be brought and the objections or counter arguments the other side could raise in response.

So many of your more confused classmates--treating law school like college--might just be creating 100 page monstrosities stuffed with every

obscure case and law that the professor discussed or didn't but was in the reading. Because Mr. Professor might ask *anything* and so you have to prepare for the obscure question. Is that what you should do?

No, absolutely not. The measure of quality for law school outlines is not how comprehensive it is; rather, it is how simply and clearly it presents and organizes the core cases and laws of a subject so you can most easily apply them on a law school exam.

This begs the question of what sort of outline is easy to use for an exam.

Here are my rules of thumb on law school outlines, how to make them, and how to use them.

- **Write your own outlines.** A law school outline is not just a product, it is a process. That is, it is a product that you use on a final exam, but also the process of creating it helps you study the material.

  You are forced to take an otherwise jumbled mass of cases, statutes, and other laws or provisions and impose some sort of order on it--by grouping cases, putting them in some order, creating easy-to-read charts and indexes, etc.

  It doesn't necessarily matter what kind of order so long as whatever system you adopt makes sense to you. Of course, this means that you have to make your own. Now, there are two corollaries to the principle that you should make your own outlines:

  - **There are no magical law school outlines.** There may be some kid in your class who just looks smart and even *smells* smart and has written an awesome outline she is willing to share.

    Or perhaps, from an upperclassman friend, you have inherited the Mother of All Outlines, written by a student who is clerking on the Supreme Court and got the highest GPA ever.

You won't get an A just because you have the perfect outline in your hands; you still have to make your own to truly understand the material.

The outline itself does not contain anything special, it just reflects the organization of the student who wrote it. But until you write your own, you won't really understand.

- **Start outlining early – from the beginning but no later than a month after school starts.**

  Outlining is generally something most people save towards the end of the semester, but to me that is a little late.

  If you simply outline too early (i.e., starting at the beginning of the semester) a subject right after you study it in class, you will simply see trees every week and miss the forest.

  When you outline and cover many cases or rules at once you finally begin to see a subject such as contracts and torts not as a mass of random cases and rules but as coherent networks or systems of inter-related rules.

  But it takes time to outline, so if you save for the week before finals, you will fail to create outlines in time to make them usable for your exams. I think as a rule of thumb, you should budget one week per outline (start while you still have class) and aim to finish two weeks before your first exam so you can take practice exams.

- **In outlining a case, always start with the statement of the law articulated by the case first, and then the case name or any additional information late; the case name is only important if it is well known and shorthand**

  What do I mean? In undergrad, if you studied a case--say *Brown v. Board of Education*--when you actually put the case in your notes,

the key fact about it would be its name, the year, then the facts, etc. In your outline, the actual rule articulated would go first,*then* all of these other details. Why? Because while Brown v. Board is famous, you have 100 other cases in your outline, and you can't even remember their names. That's perfectly fine, because on your exam, you will not be graded on whether you can remember case names. What you are graded on is (1) whether you recall the correct law that applies to a particular situation and (2) how well and thoroughly you analyze the facts with the law. You should get full points on a question if you apply the law correctly; the case name does not matter most of the time.

- **Keep your law school outlines short: generally half the size of your class notes or less.**

  There are exceptions, but generally Remember, all else equal, a short and sweet statement will

- **Don't just outline: create any work product that will make your exam taking easier.**

  I mean, create **anything** that will help you on your exam: issue checklists, flow-charts (especially for civil procedure), maps, spreadsheets, note cards--anything.

  On my outlines, even if I used the normal outline format, I tried to create "case spectrums" that showed a range of factual scenarios and the court's decision on them.

  Sometimes, I created two outlines for classes: one "black letter" outline and another "policy" outline for classes like Constitutional Law or Criminal Law that were certain to include a policy question as well.

- **Swap outlines with members of your study group.** You want to "crowd-source" your understanding of the black letter law as your

professor presented it.

Now, if you are the only one out of four people who thinks a professor said X was the law, and your other study group friends say Y, it is likely you misheard the professor.

But I would use other outlines for that limited purpose--to check your recall and get the law absolutely right.

Chapter 6:
Nitty-Gritty Exam-Taking Tips

So you want some nitty gritty exam tactics. You don't want generalizations, you want real tips that you can apply directly.

Here they are.

Make no mistake -- these are real tips and they are valuable.

I give them to my tutoring students who pay a lot of money for my advice.

I offer advice on three general topics.

1. General advice on taking practice exams.

2. Specific issue-spotting tactics.

3. General advice on taking actual exams.

Here we go . . .

(1) General practice exam advice:

- **Take practice exams under actual exams conditions**. That is, if you know your professor will give a three-hour in-class, closed-book final, then set aside three hours and take the exam without your outlines, books and notes.

  Now, you may not take a three-hour exam every day (it's too much in the beginning), so try to take, say a 90 minute section of an exam in 90 minutes and then the next day take the 60 minute section in 60 minutes.

  The point is getting used to working under time pressure.

- **Start taking practice exams early.** Don't wait until the end of the semester. Start at the beginning of the semester. Issue spotting is a skill that you have to practice. It is one that only comes well with practice, like golf, surfing and, I don't know, sex. And remember that there is a forced curve. If you start practicing when everyone else practices (generally the last month of the semester), then you will probably be as good as everyone else. If you get a head start, you have a better chance of being better at exam-taking than everyone else.

- **Take practice exams regularly, and during the entire semester.** Here's a rule of thumb: spend at least as much time taking practice exams as you would exercising (assuming you are reasonably healthy), at least *several times a week for several hours*. Ideally you would devote perhaps an hour a day to just taking practice exams – maybe finishing two to three full practice exams every week. Most important is to make this a habit as opposed to something special.

- **When practicing early in the semester, use any old exams practice except those by your professors.** That is, save "real" practice exams (those from previous years for the professors you have) for exam period. What you want to do is exercise your general issue-spotting muscles. At the end of the semester, when everyone is taking exams for the first time, you will be fine tuning your issue-spotting, calibrating your exam-taking for your specific professors.

  What kinds of exams can you take? Well, go to other schools websites, use the ones in the E&E books, or any other practice exams will do. You can also go to some of the following law school sites which have exam databases:

  http://www.law.berkeley.edu/library/dynamic/exams.php (Berkeley)

  http://www.law.columbia.edu/faculty/faculty_pages/Dorf/Conlaw/Old_exams (Con Law only for Michael Dorf; with model answers!)

http://law.ggu.edu/law-library/study-aids/past-exams (Golden Gate; all topics and includes model answers!)

http://digitalreserves.law.stanford.edu/ (all topics, some model answers included; you have to check by professor).

[Please feel free to write to me at larrythelawtutor@gmail.com with any others I should put here.]

- **Compare your "real" practice exam answers with others.** Find a "exam taking buddy" and maybe even a study group and get on the same schedule. Take practice exams at roughly the same time, then meet up afterward to compare answers.

  You will be surprised what other students see that you do not, and vice-versa. The key is to help identify your weaknesses – what issues did you not spot that your peers did see? Are you making any systematic mistakes?

(2) Specific issue-spotting tactics.

This is probably the most important section of the entire e-book.

Just so you know.

There are many moving parts to issue-spotting. Here are some of the tips that will help you the most.

- **What is an "issue" generally.** Generally speaking, an "issue" is a fact or set of facts that meets one or more elements of a legal cause of action (claim) or defense or other doctrine that it is worth spending the time to analyze all of the elements of the claim, defense or doctrine.
    - In other words: An "issue" is not simply whether you can say "yup, Mr. X has a claim/defense alright." It is whether or not

there is enough that you have to analyze whether Mr. X has a claim or defense.

- For example: You are taking a torts practice exam and read that "Smurfette, who is holding a beer glass, hits Papa Smurf, who is carrying a shotgun, in the face." Well, the punch in the face seems like a battery. The battery has several elements: you have to prove an (1) intentional (2) impermissible/offensive touching (3) without permission (4) that causes damage. Your fact pattern doesn't give you all the facts; you have an offensive touching (the punch), but you don't know for sure if there is intent, permission and damage. You could reasonably infer that the punch caused damage. But you don't know if there was intent, but nothing suggests that the punch was an accident. But was Smurfette drunk (the beer glass)? And can she claim self-defense (Papa Smurf's shotgun)?

- So here, you may or may not conclude that there was a battery. ***But there are enough facts that you should have at least analyzed whether or not there was a battery.*** So the analysis of a fact by going through the elements of a law is what is called "issue spotting."

- **Find issues by being a zealous but reasonable lawyer for one side, then doing the same for the other.** The best way to find the most issues is to first pretend to be the lawyer for one side in a given conflict within a fact pattern and try to find every (semi-decent) argument that you can make on behalf of your client. Then do the same thing for the other side.

  This isn't necessarily how you'd write up your exam. But at least mentally, or while outlining, this is how you would think about coming up with claims and defenses.

- **Creative exams that get As are full of "colorable" claims.** When lawyers bring claims or defenses, they don't bring only those that are clear winners. Sometimes you bring claims that are a bit of a stretch because you have no choice. A "colorable" claim is one that is not a winner but that has at least some chance of winning and isn't obviously defective.

  Honestly, colorable claims are the ones that will get you an A. Everyone else will find the more solid claims and defenses. But you must raise the claims that are less likely

  Warning: there is a fine balance between a colorable claim and a meritless claim. If you get too creative, or go out on too much of a limb, a professor may think that you just don't understand the law and will either ding you on the claim or think worse of your other claims because you were so wrong on this one. Use your judgment. There isn't an easy answer.

  A good exam takes some risks and goes out on a limb because that limb is where the extra points are.

  (This is advice is at least in part from my high school friend Eric. E. Johnson, a law professor and Harvard law grad who gave me unsolicited but absolutely critical advice before I went to law school.)

- **Law/fact, law/fact, law/fact: in performing your analysis, match facts or reasonable inferences to each element of the law.**

  - **Corollary 1:** Do not discuss the law at length without connecting it to a fact from the fact pattern. Remember that a law school exam is an exercise in application, not regurgitation. You will not get any extra points for showing how many laws or case you know. You need to identify the key elements of applicable laws and match facts to them.

- **Corollary 2:** Do not spend too much time discussing the facts without matching them to an element of the law. Another temptation is just to go on and on about the facts without connecting them to particular elements of an applicable law or case. I am not saying that you might not discuss the facts at length, but know why you are doing so.

- **Do not lead with a conclusion before you conduct your analysis.** Remember that you are getting points for spotting issues and analyzing the facts creatively. Law school exams are not about "right" answers (although you do have to avoid "wrong" answers – ones that misstate the law or misapply facts to the law). They are about how many issues

  As a result, you should not state a conclusion before conducting an analysis.

  The whole point of applying the facts to the elements of a claim or defense is to determine whether there is liability. How can you know what the answer is before you do the analysis? Now, very often you can have an intuition or idea before conducting your analysis, but wait to see if you are right.

  Also, what if your conclusion is wrong? If your analysis good and you come to a conclusion that your professor disagrees with, she might say "Well, the analysis was good, and you veered into a weird direction at the end," fine. You made a mistake at the end. But if your conclusion comes before your analysis and the professor thinks the conclusion is wrong, it may color the professor's view of your entire answer. You might not get credit for offering good analysis if the professor is just turned off by your pre-judgment of the issue.

- **Don't shy away from conclusions, however: be prepared to defend your answer.** Don't be evasive because you are afraid of being wrong. Again, many fact patterns are ambiguous and even if you can spot an issue, sometimes you might not be able to resolve it cleanly

in favor of one party or another. Do not just leave it at that and conclude that "this claim could go either way." Bad. Take a position using the phrase "While this is a close question, the better view is . . . ." and defend one side or the other on that issue. You acknowledge the difficulty of the issue without abdicating your responsibility to come to a conclusion.

- **He Said/She Said: Show you can be objective by analyzing both sides of (most) issues.** Do not make the mistake of bluntly applying the law to the facts by arguing "Charlie is liable for battery because . . . " and coming to simplistic conclusions.

- **Remember that the facts are made up of facts explicitly stated in the fact pattern and any reasonable or common sense inferences based on those facts you can make.** The facts are not the only facts. Understand? The facts are also inferences that you can make. Don't leave your brain at the exam room door. Use your experience to make creative inferences solidly based on the facts given.

  Example: Take the Smurfette battery facts above. Smurfette is holding a beer glass as she hits Papa Smurf. Does the beer glass suggest that she is drunk? The facts do not say explicitly that she was drunk when she hit Papa Smurf. And the facts do not say whether Smurfette hit Papa Smurf with the beer glass or with her fist. But both (that she was drunk, that she hit Papa Smurf with the beer glass) are reasonable inferences you could make based on the limited facts given. Make facts with no facts, as a judge I clerked for once said.

  - **But:** Do not simply make up facts that are not present in the fact pattern or don't have some basis in the facts. And for the love of God do not make inferences that are contrary to the facts as presented. Nothing will make your professor angry faster than taking his fact pattern into a new narrative direction. One that he will just regard as wrong.

- On any issue you've raised, present arguments on both sides and come to a reasonable conclusion. That is, for most issues you spot, you should make an argument one way, and then present the counter-argument. Usually, issues will not be easy on an exam.

  Remember: the best students, those who get As, are the ones who see all the issues and all the angles. They are not the ones who just come to the "right" conclusions on issues.

- **Apply the law to facts; really, *apply the law to facts***. You interweave the laws you learned to the facts before you. Never recite laws unless they clearly apply to some facts in the fact pattern. And never analyze facts unless it is in the context of a particular law or case.

- **Exploit ambiguity: nit-pick the living shit out of the facts.** Really read the facts closely and be as aggressive and zealous in fitting them to the elements of the claims and defenses.

  One student of mine followed this advice to As. This was a student I was truly worried would not do well. But he said this was the one piece of advice he followed through on.

- **Go ahead, use the IRAC format, at first.** IRAC stands for Issue, Rule, Application, and Conclusion. It is not really a method of answering an issue spotter, it is a framework. Many people make the mistake of assuming that IRAC is a form of analysis. It is not.

  But let's break up IRAC into its components:

  - **Issue.** This simply flags the thing you are about to analyze. More concretely it is a single, brief sentence identifying one or two facts that. One example would be, "Smurfette's hitting Papa Smurf may constitute a battery."

    A better way to do this is to present it as one of the parties

would. "Papa Smurf would argue that Smurfette's hitting him constituted a battery." This better plays into the more natural He Said/She Said format of presenting arguments in court.

- **Rule.** A clean, quick statement of the elements of the applicable law. Or, here, "A battery is an intentional, impermissible touching that causes harm." Boom, that's it. Number the elements for the sake of clarity if you want.

- **Analysis or Application.** This is where most IRAC is not a method of issue spotting, it is just a writing format.

  What "analysis" means is to apply facts to each element of the law you are analyzing. You do so using all of the techniques and tips I mention above and below. Most critically, you use both the He Said/She Said Approach (alternating between the parties arguments where it makes sense) and the law/fact, law/fact approach (i.e., not dwelling too much on either the law or the facts in isolation).

  Do not do a full He Said/She Said for elements that are easily met or that clearly favor one side or the other. For instance, there is no reason to have Smurfette dispute that she hit Papa Smurf. Given that the fact pattern says this explicitly, there is nothing for Smurfette to dispute here. So she shouldn't.

- **Conclusion.** This is the reasoned conclusion you come to based on the analysis above. Either the plaintiff is liable or he is not.

  However, you should include some judgment as to how strong your conclusion is. That is, be forthcoming about how certain you are about your answer. Does Papa Smurf have the better view by a lot? Say so and *explain why*. Is the question very close? Pick a side, say that it is a close one and *explain why*.

- **As you progress through an exam, you can slowly abandon the structure of IRAC to something more simplified.** IRAC is really cumbersome, frankly. IRAC is useful because if you follow it, you won't miss anything as to a particular issue (so long as you follow all of my additional tips above in the "analysis/application" section). But it is slow, painful reading for your professor if you analyze every claim and defense this way. So as you go through more and more claims, you can take several shortcuts, such as the following:

    - When you analyze the same cause of action again in the same fact pattern (say, Smurfette hits Handy Smurf), you don't have to repeat elements in stating the rule – you can say "the elements of battery are set forth above."

    - You can collapse Issue and Rule a bit: "Handy Smurf would argue that Smurfette's hitting him constituted negligence, the elements of which are (1) duty (2) breach (3) causation and (4) damages."

    - Sometimes you can skip Rule if you are careful to clearly label the elements in performing your Analysis/Application.

- **As you progress through an exam, you can slowly abandon the structure of IRAC to something more simplified.** IRAC is really cumbersome, frankly. IRAC is useful because if you follow it, you won't miss anything as to a particular issue (so long as you follow all of my additional tips above in the "analysis/application" section). But it is slow, painful reading for your professor if you analyze every claim and defense this way. So as you go through more and more claims, you can take several shortcuts.

- **Generally, only cite case names in passing.** Do not spend much time (except in Con law and civ pro maybe) actively analyzing how similar a set of facts is to an old case you read. This will smack of "read and regurgitate."

(3) General advice on taking actual exams.

What follows is advice for game day, and the day before.

- **The night before: eat well and sleep well.** If you have prepared fully, you should not even think about burning the midnight oil before an exam. Issue-spotting is a difficult and creative exercise. Your brain must work on full rest because you must see things and make connections.

  Do not cram all night. You need to be sharp and creative, and to be both, you need to have energy and be alert. An all-nighter will kill your creativity and put you out of contention for an A.

  Please, follow my advice and sleep. I had a couple of late-night crammers as students, and their lack of sleep and nervousness made them not perform optimally on their exams.

- **Read the instructions carefully**. Do exactly what the professor asks you to do. Write in the specific format and style that the professor asks you to. That is, the professor might ask you to write your answer as a judge on a given cases, or as a lawyer to one of the parties. Pay attention to these directions.

- **Read the fact-pattern carefully, several times**. Do not just start writing like an idiot. Read over the fact patterns completely before starting anything else. Do not create or assume new facts not mentioned by the professor.

- **Strictly plan your time in advance**. Do not just start writing like an idiot even after you've read the exam carefully. Set aside a set amount of time to brainstorm and outline your answer before writing the text of your answer. Organize those thoughts and then write your exam.

  To be clear, you should do this for every section, set aside about 20-

30 percent of your time for each section just for planning. So if a section is 90 minutes long, set aside 15-20 minutes just to plan your answer.

Don't let the immediate, frantic typing or scribbling of your classmates worry you. They are flailing.

- **Outline your answer during your planning period.** Write an outline on a piece of paper before typing up your answer. This serves two purposes.

  You don't have to follow the outline strictly; in fact, just by putting pen to paper (or typing something preliminary out), you will see better what issues you might be missing.

- **Use the "two-pass" method at finding claims and defenses, and plug them into the outline.** There are a number of ways of systematically collecting your thoughts as to what claims and defenses there are.

  - **The first pass is the "lightbulb/brainstorm" method.** Simply write down and collect any and all claims that pop into your mind as you read the fact pattern. These thoughts do not need to be in outline form, just write down all of the claims and defenses that pop into your head *without looking at your outline*.

  - **The second pass is the "flip the outline" method.** After the first pass, pick up your outline and flip through it to see if you can spot any other colorable claims that you hadn't thought of in the first pass.

- **Spot issues and make arguments; don't be concerned with "right" answers**. Issue spotting on law school exams is a matter of making judgments as to when a law or case *might* be applicable. If you can make a "colorable" argument (this is lawyer jargon for "passes the

laugh test") that a law applies to a given fact, then you have an issue on your hands.

- **Make your answer as easy to read as possible**. Do anything you need to do to make your answer really easy to read for a lazy law professor. Write clearly (if handwriting) and format clearly. Set out section headings, put lots of space between arguments, etc.

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