GUIDE TO MAKING GOOD GRADES IN LAW SCHOOL

by Rhett G. Campbell (c) (1997, rev. 2001, 2014, 2020)

Preface

Midway through my first semester in law school, I had a revelation of two fundamental truths: first, you cannot learn all the law there is during three years of law school; and second, making good grades is the key to getting a good job after graduation. These facts will seem self-apparent to many. In fact, to those who begin law school with a thorough understanding of the legal education system, they are second nature. The fact that these two truths appeared as revelation to me is a sad comment on my lack of sophistication. The direction my law school career took for two and one-half years following this epiphany was predicated upon these facts: you can't learn it all, but you ***must*** make good grades. Once I recognized these facts, I achieved a fair amount of success, but it was due to trial and error rather than any systematic approach to the problem. Because I wanted to make good grades and succeed, I tried to figure out how and what follows is what I learned.

The beginning of law school is one of the times in life that a person remembers well, not with fondness but with clarity. I remember how little I understood about what we were doing. My friends and classmates were generally as lost as I. During the first year and later, when looking back, I remember thinking "How I wish someone had explained this all to me in the beginning." Periodically, then and over the years, I have occasionally thought that I would try to explain this for the benefit of others. This is that attempt. This is not a guide to learning law, though there are parts of this paper that will help in that goal. It is primarily a guide to making good grades in law school. It would be hard to make good grades and avoid learning at least some law; but it would be impossible to make good grades and avoid learning to "think like a lawyer." The legal analytical process is what law school is about, with the jurisprudence tagged on for good measure.

Making good grades was the primary goal of law school. Here are my thoughts on how to make good grades. After all, you can learn the law any time, but the time to make good grades will be gone forever once you have taken the final exam.

Learning how to "think" like a lawyer

One of the major goals of law school is to teach you to "think" like a lawyer. If you are not told this expressly (and you will be), you need to take time now to understand it. The casebook method is intended to teach analytical skills and a way of thinking about the world that is unlike most other disciplines. This is not a useless exercise. There is value in learning to "think" like a lawyer. Other lawyers think this way and you should too.

Many students will approach law school as they did undergraduate and believe that if they read the casebook and learn the cases in it then they can take the final and do well. They will be shocked and chagrined to learn that this is not necessarily so. There is a relationship between hard

work and good grades, but it is not the direct relationship to which students are accustomed. Law school is not regurgitation; it is not learning the principles and spewing them back. You must learn to analyze a problem in a legal way; not necessarily the best way, but in a legal way.

There is more to reading the casebook than just learning the cases. You are also learning the method of analytical reasoning used by great judges and other lawyers. (You also want to learn principles of law. These are well hidden and not well articulated in casebooks. I will discuss this more later.)

The goals of your first year in law school

The goals of your first year are two: to make good grades and to lay the foundation for doing well over the next two years.

(a) Good grades your first year.

Good grades require high scores on the final exams. Thus, everything you do during the first year of law school is designed to achieve good grades on the final exams.

The finals are graded by your law professors. In order to get them to give you a good grade, your final exam must demonstrate: (a) recognition of legal issues; (b) a knowledge of the applicable principles of law; and (c) an ability to articulate and apply the principles to a fact situation, reason through it properly, and reach a reasonable conclusion. I call these the three "cardinal skills" because if you learn them well, you will almost certainly be one of the top students in your class. (A remarkable oddity about law school exams is that the answer does not have to be right if you satisfy all the foregoing and reach a "reasonable" albeit wrong conclusion.) Remember the three cardinal skills you must master in order to make good grades on the final: issue recognition, knowledge of legal principles, and legal reasoning.

It is useful to realize that you are learning issue recognition and legal reasoning in all your classes. The "legal principles" you learn will vary from subject to subject, but the other two remain constant all through law school.

(b) Laying the foundation for future learning.

Another goal of your first year, and somewhat distinct from making good grades, is that of laying a good foundation of legal principles. Do not confuse this with learning the law. We are talking here about the legal system, the procedural context in which cases arise, the system of precedent, also known as *stare decisis*, and vocabulary.

There are several things that make the first year in law school more difficult than subsequent ones. For example, the vocabulary is both different and difficult. There is a fair amount of Latin and some law-French, which is a sort of corrupted Norman French. In order to understand the cases you read, it is necessary to learn the vocabulary. Thus, reading cases your first year necessarily goes much slower than in subsequent years.

The same is true of procedure. Your casebook will have almost 98% excerpts from appellate decisions. When you read appellate decisions, you will slowly learn that you must recognize the procedural status of the case in order to understand the meaning of the decision. The appellate court's discussion is meaningful only in the procedural context of that particular appeal.

When reading an appellate decision, you are always looking for the "issue" and the "rule." This requires figuring out who was the plaintiff below, what he wanted, what he got, the same questions for the defendant, and who is complaining on appeal. The court will generally tell you, because it is important to an understanding of the decision, whether the case reached the appellate court on a general demurrer,[1] a summary judgment,[2] or a jury verdict.[3] The test for factual sufficiency is different for each procedural situation. After a few months (or years) you will learn to quickly recognize the procedural format of a case when you read the decision and you will quickly understand what the court is talking about. In the beginning of your first year, this will be rather murky and difficult to discern.

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[1]Parties seldom use general demurrers in modern practice, though they used to be fairly common. It means that the demurring party is willing to assume that the other party's pleadings are factually true, and assert that he cannot prevail even if his factual allegations are true. In early pleading practice, the demurring party had to be willing to lose if he was wrong, so that a general demurrer was a substantial risk. In later times, it came to mean simply a plea that the plaintiff cannot win even if he is right on the facts. This is a Rule 12(b)(6) motion in current federal practice. In Texas state practice it is either a plea in abatement, a motion for summary judgment or a special exception.

[2]Summary judgments are increasingly common. It is proper when there is no genuine issue of any material fact. You must understand what the material facts are, and then review the pleadings and affidavits to see if there is any genuine dispute. If not, or if the parties are in essential agreement on the material facts, then it is solely a question of law. The difference between a summary judgment and a general demurrer is that the demurring party assumes the pleadings of the opponent are all true. The court reviewing a summary judgment reviews the allegations and affidavits of both sides to see if there is a genuine dispute of material fact.

[3]In reviewing a judgment arising from a trial by jury, the issue focuses on whether there is some evidence from either side sufficient to support the jury's verdict. It does not matter whether there is contrary evidence because a jury can disregard evidence or disbelieve witnesses. But they cannot make things up. So there must be some probative and competent evidence supporting the jury's verdict. If there is, it stands.

Another factor is the need to learn about the system of precedent, *stare decisis*, *ratio decidendi*, and so forth, that are the underpinning of all Anglo-American law.[4] The reason we read reported decisions to learn the law is because of *stare decisis*. These terms are foreign to many who come to law school. You cannot adequately learn your first year material unless you simultaneously learn this part of our legal system.

Thus, you see that you need to learn the vocabulary, the nature of the legal system, and basic procedure in order to lay a good foundation for upper level courses. This should also be a goal of your first year. Although it would be hard to get good grades without doing this well, it really is a separate goal. You must master the fundamentals of law in order to do well in later courses and later in the practice of law.

If you lay a good foundation your first year, then you will have an easier time in the second and third years because you will already know the vocabulary, the procedure, and the system.

The casebook: its uses, benefits and limitations

At this point we consider what is, in my opinion, yet another of the remarkable oddities of law school *i.e.,* the casebook. The principal tool given you by the school (or assigned by the professor) in order to assist you in learning the three cardinal skills is (almost exclusively) the casebook. This is a dramatic change from undergraduate school. In college courses, you are assigned a textbook (one or more) and the implicit assumption is that if you master the materials in the text, you will do well in the course. In law school, this is not so (at least in my experience).

The casebook method is useful for teaching you (a) skills of reasoning, and (b) methods of application and articulation of legal principles to factual situations. But it does not teach you these skills simply by your reading the cases. Rather you learn them by reading the cases, thinking them through, and then engaging in the Socratic dialog inherent in the case method. This dialog occurs principally in class and in your discussions with other students. The casebook method may or may not be well suited for teaching "issue recognition," depending, in my experience, upon your professor. It certainly does not teach issue recognition except insofar as you learn this in class by listening to the professor and thinking through the case.

The casebook also is not well suited to teaching legal principles of law, because they must be distilled through many cases, some inartfully written, and many without precisely stated rules.

You need to learn the principles of law in an organized fashion, in a way that makes sense. This is "study" and "outlining." The outline is the most important part of your method of learning the law for final exams. For this you need the casebook, the briefs of cases, class notes, texts, treatises, good commercial outlines (if any), and law review articles.

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[4]Incidentally, an excellent little book for learning about such things is Rupert Cross' PRECEDENT IN ENGLISH LAW (Oxford 1961). There are chapters on precedent, *stare decisis*, *ratio decidendi*, and legal reasoning generally. I highly recommend it.

Consider a casebook on contracts. The casebook is simply a collection of reported appellate decisions (and other related materials) dealing with contract law. The casebook does not really teach you the fundamental principles of contract law. At least, it does not do so in straightforward terms.

This leads to my later point regarding hornbooks. Hornbooks, textbooks, treatises and law review articles are the places you can really find good authors explaining in clear English the applicable principles of law. In the case of contracts, these are basically Corbin, Williston, Calamari & Perillo, and possibly Conway (though Conway is more of an outline study guide).

Think for a minute about the implications of what I just said. If the casebook does not contain the "text" of the legal principles you are supposed to learn, then reading the book the night before the final (a common occurrence in undergraduate school) simply will not work. Also, think of the three cardinal skills: issue recognition, knowledge of legal principles, and legal reasoning. Reading the casebook cover to cover will not teach you anything about issue recognition and it will teach you knowledge of the law and legal reasoning only with difficulty. Thus, you should immediately realize that the casebook is simply a tool that is part of the bigger process by which you learn the three cardinal skills. The casebook alone will not do the job!

It is imperative, therefore, that you understand the limitations of the casebook, which is that it contains the principles of law you need to know, but hidden within obscure text of reported appellate decisions. In order to learn "legal reasoning" you must go to class, read law review articles or legal texts, and train your mind to reason like Holmes and Cardozo.

Even for a quick, brief, well stated rule of law, the casebook is the last place to look. The best source is a hornbook or treatise.

The limitations of the "case method" in learning the "law"

The "case method" emphasizes learning to reason, analyze and "think" like a lawyer much more than it does learning the "law" of, say, contracts, torts, property or procedure. For this reason, you must learn to supplement your case briefs and incorporate these "supplemental materials" into a study outline.

The case briefs you prepare and your class notes are extremely important because they are the basic road map for what your professor wants you to learn. But the cases studied bring out the "principles" of the legal issue being studied only in a most round-about way. This is called "hiding the ball" and can be extremely frustrating.

There is a basic truism that is apparent once you focus on it: The law of contracts, torts, property or procedure is much broader and more complicated than what you learn in one or two semesters. Corbin, for example, has written a ten volume treatise on the law of contracts. Clearly there is more to contract law than you will learn in two semesters and one casebook. (Remarkably, however, you should, at the end of two semesters, expect to have a working understanding of the table of contents of Corbin's ten volume treatise.) Thus, the cases you read, and the class notes you

take on those occasions when the professor lectures, are the "guidelines" for what you are expected to learn out of the vast material available. You must "read between the lines" to figure out what the professor expects you to learn.

The best way to break down the subject matter of the course, whether contracts, torts, property, or procedure, is to focus on the table of contents of the casebook, as modified by the approach of the particular professor. Always try to understand where the day's cases fit into the table of contents, and from that, try to understand where it all fits into the broad scheme of the existing jurisprudence of that area of law.

Use of the "casebook." (Or learning to read, brief, and understand the "holding" of reported decisions.)

The casebook approach teaches analytical skills that are superior to any other method of reasoning. It will enable you to learn the law on your own, if you ever have the time and the desire to do so. You should therefore read, brief, and understand the "holding" of each case contained in the assigned casebook reading. As you do so, look for rules of reasoning, such as (a) analogy, (b) induction and deduction, (c) extrapolation, and (d) interpolation. Lawyers reason by analogy, by legislative history, by rules such as "*reductio ad absurdam*." These are the methods of reasoning that you should learn, and spew back on a final exam. This is what you get out of studying the casebook.

You should also recognize another of the limitations of the casebook method. When it comes to memorizing principles of law (which you must do for the final exam), the casebook is not the place to go. Instead, these principles are best found in treatises, textbooks and law review articles as described hereafter.

The benefit of your basic courses

The three cardinal skills are issue recognition, knowledge of the law, and legal reasoning. Knowledge of the law is the fundamental underpinning of everything you do and almost all the rest is based upon it. For example, you cannot recognize legal issues (*e.g.,* whether or not there is sufficient consideration to support a contract) if you do not know what the basic rule of law is (that consideration is required for there to be a valid contract). You need to learn the "law" of certain subjects covered in your basic courses. This means learning rules, rules, and lots of rules.

The courses typically covered in your first year of law school are contracts, torts, property, procedure, and criminal law. Constitutional law must be thrown in either first or second year and is also one of the basic courses.

There is a tendency among some students to take a light load their first year and avoid one or more of these courses. Be wary of this. Each of these courses is a foundation upon which all other areas of law are built. You need to have a firm grasp of the fundamentals of each of these courses in order to learn the upper level courses. For example, you cannot understand any of the cases that you read unless you understand procedure. Also, contract and property law are fundamental to every area

of law. Although I emphasize issue recognition and legal reasoning, there is no substitute for knowing the law.

Learn how to read, understand, and brief cases for class

The reading and briefing of cases for class remains the fundamental core of law school. This is the primary daily grind that takes up the majority of your time. It is the "guts" of the course, but it has inherent limitations. The limitations are not immediately apparent to students who are accustomed, in undergraduate school, to believing that the course book contains the answers. In law school it does not. This will come as a shock to those who do not understand this fact and will be frustrating to those who cannot cope with it. A casebook does not contain the answers (or at least they are well hidden) and because of the "case method," *i.e.*, it is not intended to do so.

HINT: Do not use "canned" briefs of cases prepared commercially. There are essentially three problems with these: first, they are not well done; second, they deprive you of the learning experience of briefing the case yourself, which is how you learn issue recognition and legal reasoning; and third, your professor knows a "canned" answer from a commercial brief and will NOT be impressed. If you do not believe me, then brief a few cases yourself, sit through class and listen to the professor's comments on the cases. Then read the "canned" briefs. You will see that what your professor believes are the essential and important points are well hidden in the canned briefs, if they are present at all.

The Clyde Emery Method

Clyde Emery taught law at SMU years ago (before I went to law school) but I met him and he was a remarkable guy. The Clyde Emery method of briefing cases remains the best. I highly recommend it. The ABA published two versions in 1970, one entitled "A Streamlined Briefing Technique for all States Except California, Florida, Illinois, Indiana, New York, Ohio, Pennsylvania, Texas, Virginia, and West Virginia," and the other entitled "A Streamlined Briefing Technique for the States of California, Florida, Illinois, Indiana, New York, Ohio, Pennsylvania, Texas, Virginia, and West Virginia." An earlier version covering all states entitled "A Streamlined Briefing Technique" was published by Bancroft-Whitney. Neither is in print at this time. There are copies at the Underwood Law Library at SMU, St. Mary's University Law Library in San Antonio, the University of Houston Law Library, and the Texas Tech University Law Library in Lubbock. I presume there is a copy at the UT Law Library but I do not know this for certain. I will try to get a copy for you. Whether I do or not, I can show you the highlights of it.

Benjamin Cardozo and O.W. Holmes, Jr. opinions

You will learn early to recognize some of the "big names" of the law. Cardozo (author of the "Palsgraf" decision) is well known for stating the facts of a case in such a way that the outcome is almost foretold. Holmes' reasoning is impeccable. Mansfield, Coke (pronounced "Cook"), Blackstone, and other English justices and Chancellors decided many of the early cases that blazed the trail of the common law and equity. Learn to note the famous names and look for their trademarks. You should study these decisions with special care. They are the historical

underpinning of the law. They also represent the epitome of legal reasoning. If you can reason through a legal problem and sound like Cardozo or Holmes, you will do well on the final.

Use of Black's Law Dictionary

You must keep this handy and use it. This is especially true in property law and in procedure, but it is also true in all courses. There are many terms in the law that will be new and difficult to grasp. I remember that I could not get through a case in procedure (in the early weeks) without looking up every other word. A vocabulary list might be a good idea, though I never did this. In retrospect, it might have helped. Eventually you will learn the words and use them properly. This is, of course, the goal.

PREPARE A SYSTEM OF PERIODIC REVIEW

The amount of material you must learn in law school is overwhelming. Medical school may be the only field of education that comes close to the vast amount of written material that must be absorbed in short periods of time. In order to absorb the material and have it at your fingertips, periodic review and outlining is essential.

There is too much law to learn by rote. You must learn all the principles of law in an organized fashion, in a way that makes sense. This requires "study" and "outlining." The outline is the most important part of your studying for final exams. However, it cannot wait until the week before finals.

If you have five courses, set aside one day each week (probably Saturday or Sunday, or both) to review and outline one course, up to that date. Review each course, sequentially, on a Saturday or Sunday for 8 hours (or more). *E.g.*, review contracts on the 1st, 6th, and 11th Saturdays; review property on the 2nd, 7th, and 12th Saturdays. Every five Saturdays, you will start over with the first course again. In this manner, you will update your review for each course once every five weeks. (If you can do one on Saturday and one on Sunday, all the better. Then you can update every 3 weeks.)

In this way, you will be reviewing and outlining each course thoroughly at least once every five weeks. That means you will have this method of review at least 3 and possibly 4 times for each course during the semester, and 6 to 8 times during the first year. I guarantee that if you follow this system, final exams will not be so overwhelming. Indeed, compared to your classmates who are accustomed to "cramming" for finals, yours will be a cakewalk. Periodic review is one of the most important methods of absorbing and learning the material. There is such a vast amount of material to learn, that anything other than periodic updating, outlining and review is almost surely doomed to failure.

THE COURSE OUTLINE: THE KEY TO SUCCESS

During the weekly periodic reviews, outline the course material for that course covered to date. Supplement class notes and case briefs with other materials as noted below. You must create

your own outline for each course. It should integrate all the materials you have at hand. By creating and writing the outline, you will learn the material. Conversely, do not use anyone else's outline. The reason is simple: the creation of the outline itself (not reading it but creating it) is the most integral part of the learning process. The basic outline you create should be structured according to the materials taught by the professor. This will generally be a modified form of the table of contents of the casebook. (Few courses start at page one of the casebook and few courses cover all the materials.) REMEMBER that the outline is not completed until the night before the final exam. All through the semester you are updating it, expanding it, and adding materials to it. You are also accumulating materials to be added to it later, in the form of additional cases and law review articles.

For example, on Wednesday afternoon you may come across a great law review article on promissory estoppel. Make a xerox copy, stick it into your folder on contracts and then your next periodic review day, *i.e.*, two Saturdays hence, study it and fit it into the master outline you are creating. See if it adds anything to, explains, or supplements what your professor or casebook has explained. Look for a new twist on a rule, or an unusual exception. These are the things that make the difference between an 85 and a 95 on the final.

The outline should contain each area of law, breaking it down into topics, sub-topics and sub-sub-topics. *E.g.*, Contracts, as a course, would include the basic areas of, *inter alia*, offer and acceptance, consideration, breach, and damages. Under contracts, the element of "consideration" would include sub-topics such as, for example, promissory estoppel (which is a legally sufficient substitute for consideration). The sub-topic of "promissory estoppel" would contain each of the elements required and then you would have cases and rules explaining when the elements are satisfied and when not. Continuing with the example of promissory estoppel, this requires something like (by recollection) a promise by the promisor, reliance upon the promise by the promisee, and that the promisee rely TO HIS DETRIMENT upon the promise. In other words, detrimental reliance is the key to promissory estoppel. Then supplement your outline with factual examples of when detrimental reliance is sufficiently found and when not. As sub-sub-topics, you then will learn about estoppel "in pais" and "quasi estoppel" which do not require detrimental reliance. These are, technically speaking, not substitutes for consideration but can sometimes apply as alternatives. This is the way you would think about the subject of contracts and how your outline would be constructed.

<u>Guide to Outlining</u>

Generally speaking, an outline should look something like this:

. General rule of law: "Consideration is required to have a valid contract."

. Elements of Consideration: anything of value flowing from promisor to promisee. (Note: consideration must flow both ways.)

Exceptions to requirement of mutual consideration.

One exception is promissory estoppel.

Elements of promissory estoppel.

Fact situations when this is satisfied.

Element A (promise).

Element B (made by the promisor).

Element C (relied upon by the promisee).

Element D (to his detriment).

Note: Detrimental reliance is key to promissory estoppel.

Examples of fact situations when Element D is not satisfied.

No detrimental reliance.

[Here you would insert cases as examples of this.]

Examples of fact situation when detrimental reliance is not necessary.

Estoppel in pais. [Insert cases]

Quasi-estoppel. [Insert cases]

Another exception is suretyship (consideration not required).

Reasons why: [Explain.]

Cases and fact examples.

Element 2 to consideration [and so forth, as applicable].

Exception, when this rule (requirement of consideration) does not apply.

Insert exceptions.

Promise under seal.

Suretyship or guaranties.

Suit to enforce action for partial performance.

Put the cases you have studied into the outline in the place where they fit. As you add to the outline, you will begin to modify it and thus begin to understand how the law fits together.

Supplemental materials to be incorporated into the outline and covered by the review sessions

The broad outline will be created by the cases you study in class, together with lecture notes. But when you outline the materials, initially you will be uncertain how they fit together. (See "Inherent limitations of the case method" above.) This is where the supplemental materials fit in. These kinds of materials fall into generally the following categories:

Additional materials suggested by the professor

This is a good source of material, but you must keep in mind that it is the product of your professor's mind. Law school is often a "mind" game. These materials are necessarily one of two kinds: either (a) materials tending to provoke and stimulate thought, but still "hiding the ball" and not suggesting any rules of law, or (b) historical or explanatory materials that actually explain the rule of law being studied.

It is a good idea to look them all up and determine if they are (a) or (b). The (b) materials should be copied and kept for study prior to the exam. The (a) materials should be discarded. [Note the assumption that you can tell the difference between (a) and (b) materials. This may be an unwarranted assumption early in the year.]

Also keep in mind that your professor writes the final exam. You should always be looking for "keys" to his thinking. Anything that the professor says or does can be a key to the final. This is especially true in the form of "offhand" comments during class as to important or unimportant areas of law. The supplemental materials suggested by your professor also tell you something about his thinking. [More about the subject of final exams later.]

Additional reading suggested by the casebook

At the end of each section, case, chapter, or topic, the casebook will have additional suggested materials. These can be either provocative or informative or both. For your purposes, the provocative may suggest final exam questions, but for now, focus on the informative. The informative materials explain the rules of law that you are supposed to get (and often don't) from reading the cases.

As a note, if you find "provocative" supplemental materials that coincide with something

your teacher has said or recommended, then you may be hot on the trail of a final exam question. Follow these up tenaciously.

Each one of these is a "key" to a hot topic for a final exam question and if you find multiple "keys" to the same topic, then you are getting closer to the ultimate objective: a final exam question.

Commercial outlines

Commercial outlines (Gilbert's was big when I was in school) are useful only in providing additional ideas on how to organize an area of law. These outlines are overly simplistic and are designed to help you "pass" a law school exam. They are not designed to assist you to achieve Order of the Coif status (top ten percent). If you read a commercial outline on a subject the night before the final and cannot find at least two mistakes per page, then you are in trouble.

Specialized treatises

Legal publishing is a growth industry. As a result, there are multi-volume treatises on almost everything and the quality varies as widely as the subject matter. There are some basic treatises that are good. On civil procedure, there are Fleming James on Procedure (excellent), James & Hazard on Civil Procedure (also good), Moore on Federal Practice, and Wright & Miller on Federal Practice and Procedure. These are among the best. Moore is a multi-volume treatise that also comes in a 3 volume student edition. I personally prefer Wright & Miller. There is no student edition to Wright & Miller other than Charles Alan Wright's Federal Procedure which is "the standard" single volume treatise in its field. Moore and Wright & Miller cover only federal procedure, though they include some constitutional law. For Texas procedure, McDonald's Texas Practice is the Bible, but it has not been seriously updated in some years. For what it covers, McDonald's is outstanding. For extended issues not covered by McDonald's, Dorsaneo's Texas practice is probably the best available at present. Both Corbin and Williston have multi-volume treatises on contracts; Pomeroy on Equity, and Palmer on Restitution. There is Collier's on Bankruptcy, Sutherland on Statutory Construction, Couch on Insurance Law, Williams & Meyers on Oil and Gas, Wigmore on Evidence, and many, many others. There are more treatises on specialized subjects than you will ever consult. You will not be using them much your first year, but if you have a specific question on a specialized issue of law, this is the place to go. For example if you are confused about consideration and promissory estoppel (a subset of the law of contracts) then look it up in Corbin. The discussion there is outstanding. If confused about specific performance (a subset of contracts but actually part of equity) then look that up in either Corbin or Pomeroy's Equity Jurisprudence. As a general matter, these treatises deal with subjects that you will take in later years.

Hornbooks and "textbooks" as opposed to case books

The following are Hornbooks and textbooks that recommend themselves to supplement your study. If nothing else, they are useful summaries of what someone thinks you should have learned in class. To the maximum extent financially possible, I suggest you purchase at least one text or Hornbook in each area and keep it in your room or place of study. (There is nothing worse than having a question while sitting in your room studying and not having a book available to look up the

answer. Law school is mostly about time management. Money for books and copies of law review articles is the trade-off for time. In my judgment, you are well-advised to spend the money, get the books, and save the time.)

Contracts

Conway. (My choice as an example of a good way to outline and study.)

Corbin. (My choice for first place. This is great literature.)

Williston. (Historically the professors' choice for first.)

Grismore.

Calamari & Perillo. (Many students prefer this. I think it is because it is in the law bookstores.)

D. Dobbs, Handbook of the Law of Remedies. This is very useful on contract law issues such as specific performance, damages, restitution, and similar contract issues.

McCormick on Damages. This is older but is still an excellent treatise. It is probably better written than Dobbs.

(I recommend purchasing Conway and the single volume Corbin.)

Criminal law

Perkins on Criminal Law. This is excellent.

Property

Brown on Personal Property.

Simpson on Real Property.

I suggest purchasing both. They do not overlap.

Procedure

Fleming James, Jr on Civil Procedure.

Geoffrey Hazard, same.

Torts

Prosser remains the king.

Equity

McClintock on Equity is the standard hornbook. As of this writing, I have been unable to find it other than in older, out of print editions. It is the best reference for explanation of equitable remedies such as injunctions, specific performance and restitution. The newer publications (such as Dobbs) place these sections in generic categories such as Remedies. I prefer McClintock because it explains these "equitable" remedies in true "equity" style. There are old copies of McClintock around.

Story's Equity Jurisprudence is a wonderful work. I do not recommend it for law students except as deep background but it explains equity in a way that no one else has before or since. It is also wonderful literature and delightful reading.

Pomeroy's Equity Jurisprudence is the best multi-volume work in the field. The other two described above are single volumes.

Mortgages

G. Osborne, Handbook on the Law of Mortgages.

Uniform Commercial Code

White & Summers is wonderful.

Partnership

Crane & Bromberg (or its current sequel) on Partnership is excellent. I believe that Alan Bromberg has now updated it with a new edition that omits Crane and adds someone else.

Corporate law

Henn is the standard student text, I believe. I never read it.

General

O.W. Holmes, Jr., The Common Law. This book is both great literature and an excellent explanation of the theory of Anglo-American common law of crimes, torts, contracts, bailments, and property. Unfortunately (for the student), Holmes spends much time discussing European philosophers of law (Kant, Savigny et al.), Roman and continental (i.e., European) law that is interesting to some, but largely irrelevant to you. If you can skim these sections quickly, then elsewhere you will find gems of "exposition." When Holmes explains a rule of the common law, its logic, theory and limitations, it is generally the best explanation there has ever been. If you can find these sections and mark them for later study, you will help yourself gain points on a final exam. If you can learn to reason and write like Holmes, you will be setting the curves in all your classes.

Caution: This book has been revered and studied by generations of lawyers. You can get bogged down in it. It really is good reading (in some ways) but you mustn't let yourself get mired in reading it and let other things go.

Always be focused on the ultimate goal: learning the rules of law, the reason for the rule, the limitations on the rule (and thus when it does not apply), and exceptions to the rule. Theories of jurisprudence can (and must, due to limitations of time) wait.

Use of old tests

At SMU, the professors collated and bound the old tests at the end of each year. The teachers liked to boast that you could study the old tests but they would not help you with the ones yet to come. The reason is, of course, because the professors are not looking for the right answer. Instead, they are looking for your demonstration of the three cardinal skills: recognition of issues, explication of the rules of law, and legal reasoning. All the teachers have to do is change the facts each time and then read your answer. However, it is also true that (like the SAT and the LSAT) the nature of the exam seldom changes. The kinds of fact situations tend to remain the same. Of course, having the exams does not mean you have examples of answers that got good grades. You have to work through that yourself. At a minimum, you ought to be able to list all the issues and recite all the principles of law applicable to each question on an old exam. Passing them around to fellow students and listing issues to each other is good practice. It is also useful to take old exam questions and prepare detailed answers. It is good practice. Take your notes, case briefs, texts, and articles, and then prepare an answer to an old exam. It helps you to practice what you ultimately do on a final exam.

Law review articles

This is the MAJOR SECRET I learned in law school. It goes like this. Professors write a new exam each year. Professors don't like to be boring, any more than anyone else, so they tend to write exams on topics of current interest. Topics of current interest also tend to be those that are the subject of law review articles.

There is admittedly a tension here. Professors also tend to be slightly lazy or in a hurry. So they may tend to use questions similar (almost identical?) to previous exams. You cover this base by preparing answers to the prior exam questions, if they are available. The universe of exams we are addressing in this section are those taught by professors who are not lazy and who try to be on the "cutting edge" of the law. This is especially true of those who publish and speak often.

Professors typically write on current topics for law review articles, books, and seminars. If not writing, they are reading them. Thus, professors are generally aware of the latest ("hot") issues in any given area.

Most law school exams have predictable questions. This is espcially true of first year courses. In fact, the exam questions could be predicted to a large degree by reading the table of contents of the casebook. A contracts exam will always have issues on offer, acceptance,

consideration, breach, measure of damages, specific performance, partial performance, estoppel, and related issues.

Many of the questions will be fairly straightforward because, after all, you are only first year law students. But professors cannot help putting questions on the exam that are interesting to themselves. This means the "hot" topics of the day may often be included.

The "hot" topics of the day are also the same topics about which professors like to write law review articles. And, to top it off, professors actually strive to be clear in their articles. Professors know that those who write articles that are difficult to understand are not asked to write again; whereas those who write clearly are in most demand. Professors try hard to write articles clearly and concisely. (This is also true of textbooks and hornbooks.)

Your goal, therefore, is to find some areas of your course where there are hot topics in the current literature, and track down some law review articles about them. Typically you will know it is "hot" if it involves a conflict in the courts, an unresolved issue among the circuits, or competing tension in conflicting legislation. If it is unresolved, then it is "hot." If it is "hot," then you simply learn the two competing sides of the argument [there are always two sides to every legal argument] and conclude that one or the other is right based upon analogy, history, or policy [it does not matter much which]. You can make a good grade if you can work it into your final exam.

In upper level courses, you will often find specific questions on the final dealing with these hot topics. The professors think it is clever to ask you (the student) to resolve an issue that the courts and Congress cannot resolve. If you can give a law review type answer to a question like this, you will make a 98. (I did.)

Study groups

Study groups are informal groups of students who band together in an effort to spread the work. A study group can divide up extra reading, copying law review articles, or getting together to review, or study for finals. I never found a study group that was helpful to me. That does not mean that there could not be one, but I never experienced it.

Initially, we should distinguish between two kinds of study groups: first, the kind that allocates responsibility for outside study and research (as, for example, reading the extra cases suggested by the professor) and reporting this information back to the group; second, the kind that gets together and studies old exams and trades thoughts on what an answer might be.

My objection is to the first type, *i.e.*, the one that divides responsibility among various members of the group. A "division" of responsibility necessarily means a "divestment" of responsibility. My father taught me that "No one looks after my business quite as well as I do." I suggest that you do not place a lot of reliance on this kind of study group. While other study groups may be helpful, the kind that divests the responsibility for outside reading and research to someone else is not worth the effort. If nothing else it requires a dedication of a large portion of your study hours, which are a scarce resource.

There are several reasons why these are generally poor ideas.

First, you may or may not have bright people in your group. There's a risk you may be relying on someone who does not know what he/she is doing. (Do not be lured into thinking that this is not a risk. There is a very real risk that someone may tell you something wrong and you will never know. Unless you look it up yourself you will never know you learned it wrong. If you think it is right, you have no reason to look it up. On the other hand, if you feel you must check everything everyone does, then you might as well do it yourself!)

Second, the reading and studying of the materials is the way you learn. You will not learn it if someone else reads the material. Remember the three cardinal skills: issue recognition, knowledge of law, and legal reasoning. If someone else looks it up and reads the case or article, you may receive from them a correct statement of law, but you have not learned issue recognition or legal reasoning. You need to read it, study it, and outline it yourself. In law school, the process is a large part of the method of learning. You must do it yourself. There is no such thing as vicarious or surrogate learning. No one wants to believe this, but it is true.

The second type of study group (*i.e.*, trading thoughts on old exams) is acceptable and low risk but of limited value, in my opinion. My experience is that people don't want to hear you tell them that they are wrong and you gain nothing by hearing them tell you things that you already know, whether they explain it correctly or not. If you follow the rest of this guide and learn the materials yourself, there is little to be gained from such sessions, other than a certain amount of reassurance that you have thought through all the relevant issues. Admittedly, that reassurance can be comforting. But remember that every hour spent in such a group is an hour taken away from review or study of additional outside material.

Time is the scarcest resource in law school. You must allocate your hours carefully. They are precious. Use them wisely and you will be rewarded. Waste them on ineffective study and you will be penalized.

Final review and preparing for final exams

Prepare a master outline of the "law" to be learned, incorporating the cases studied, the principles of law covered, supplemental reading, law review articles, hornbooks, commercial outlines, and notes from class. This is the best preparation and study for a final exam.

A. Analogy, extrapolation, and trends in the law.

The single most important reasoning tool of the law student is that of analogy. If you know one rule of law and the policy behind it, then you can analogize whether it should apply in a similar but legally distinct fact situation.

A good explanation of this theory of reasoning in the case of statutes (which is, of course, analogous) is found in Freund, "Interpretation of Statutes," 65 Pa.L.Rev. 207, 224-28 (1917). [This

excerpt is found in J. Hall (ed.), Readings in Jurisprudence 561 (1938).] *See also* Kales, "Art of Interpreting Writings," 28 Yale L.J. 32, 49 (1918).

B. Law review articles by leading professors or jurists.

These are excellent sources of explication of rules of law. Try to find articles written by your particular professor. Books are even better. Get inside the mind of your professor and you will do well on the exam because you will better understand that for which he is looking.

C. The preparation of the complete "outline" is the essence of preparation for final exams.

As explained above, the creation and study of the outline is the essence of preparation and learning. Do it early and do it often. This is the single most important thing you do to prepare for final exams.

Answering final exam questions

The answering of final exam questions in law school is not like any other exam. As stated, the three things professors are looking for are issue recognition, statement of legal principles, and legal reasoning. If you demonstrate these three and get the wrong conclusion, you will still get a good grade. Thus, the following are some rules to keep in mind.

(1) Give both sides to every question

Law school exams do not ask yes or no questions. Therefore, do not give yes or no answers.

A good friend of mine made a 60+ (I forget exactly what number but it was below 70) on his final exam in property where a series of questions asked if a valid gift had occurred. He answer "no" to each one because he believed there was no delivery. He ignored every other element and every other issue relative to gift.

He focused on the requirement of delivery only, and having resolved that against a gift, ignored all other issues. He should have gone farther and said "Assuming that delivery had occurred, then there was/was not a valid gift because. . . ." If he had done just that much more, he would have done fine.

My friend's was a paradigm example of how NOT to answer a law school exam. It is acceptable to get the answer wrong if you recognize the issues and explain both sides of the question. You must demonstrate that you understand the principles of law involved.

(2) Recognize all the issues, even if they are not applicable. Explain why they are not applicable.

Issue recognition, statement of principles of law, and legal reasoning are the way to get a

high grade. The right answer is not necessary. (Indeed, there often is no right answer.)

(3) Focus on what the professor thinks is important.

I took a course from a professor one time who mentioned, as an aside, that he had always thought that footnotes were the most important part of any document, whether financial statement, law review article, or treatise. (He was a smart fellow, and I will tell you that over the last 20 years, I have concluded he was probably right.)

He had written a book on the subject of the course and I purchased it. The night before the exam, I read every footnote in his book. (I had already outlined the course, in the manner described above, so I had some free time.) On the exam, one of the questions was directly from one of the footnotes and dealt with an area of the law that was developing but not fully developed. In the footnote in the book, he gave his opinion of what the law ought to be and why. On the exam, I recited this "chapter and verse" and got a 98.

This is a good example of keeping your ears open and focusing on what the professor thinks is important. After all, he both writes and grades the final exam.

Staying motivated

This is the hardest part of the first year in law school. Remember that your first semester, and especially first year, grades will be the single most important factor that determine what professional opportunities you receive. If you want to be mercenary, it is a simple truth that the higher GPA at the end of your first year translates into thousands (maybe tens of thousands, and possibly hundreds of thousands) of dollars in the job offers you will receive. In the long run, this will mean a lot of money to you. If money does not keep you focused, then remember that grades are the single best objective criteria that firms, judges and others have of measuring how well you will do in the practice of law. As with all tests, grades are not a perfect indicator and students with mediocre (or poor) grades can be good lawyers. But when firms, judges and others have to pick whom to hire, the most important single criteria is grades.

Law school is a game. It is a game to see if you can succeed and make good grades within the structure created by the school. Other lawyers and judges know this because they have already played the game. If you can learn the rules of the law school game, master those rules, and work your way through to a successful GPA, then you have shown that you can do the same thing (win the game) with the projects given to you by law firms and judges. That is, your GPA may not be a true indicator of your worth or inherent ability, but it does demonstrate that you can be successful in a highly stressful and competitive milieu involving legal issues. This is the character trait that firms and judges look for. Your GPA in your first year of law school is also a measure of your determination, drive and dedication or work ethic. This is also something that law firms and judges seek out. There is no substitute for perseverance and hard work. A high GPA in law school will demonstrate these traits.

Conclusion

In conclusion I wish I could say something pithy and humorous but nothing appropriate comes to mind. Law school can be one of the best forms of education a person can receive. When you have finished, you will be pleased to have received it. Law school is also extremely trying, monotonous, and occasionally boring. While you are going through it, there is nothing humorous or fun about it. Just hang on, try to enjoy the ride, and remember that achieving the goal will make it all worthwhile.

Good luck!