

STARTING OFF RIGHT IN LAW SCHOOL *

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I. INTRODUCTION: THE IMPORTANCE OF THE FIRST SEMESTER

A. To Your Future

Seldom is poor first-semester performance a problem for undergraduate students. Since they usually don't look for professional jobs until the end of their senior year, there is plenty of time to compensate for poor first-semester grades and have hopes for honors by graduation. Therefore, undergraduate students often are not concerned that it may take them much of the first semester, or even the first year, to adjust to the demands of school.

Law school grants no such grace period. Law students usually want summer employment with a law firm after their first year in school. First-semester grades are for the potential employer the only available evidence of a student's ability to do legal work. Like law schools, law firms put great emphasis on numbers. Students' LSAT scores and their undergraduate grade point averages were very important in getting them into law school; their first-semester grades will be very important in getting them into their first legal job.

First-semester grades may also affect a student's chances of being chosen for law review. Being on law review opens doors to prestigious career opportunities. Although most schools have slots for people who can demonstrate skills required by law review membership, such as strong writing and analysis, half of the slots are reserved for those with the highest grades during their first year. Students with mediocre first-semester grades will find it difficult to

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improve enough during their second semester to be chosen based on grades.

B. To Your Self-Esteem

As a general rule, law school students have done well in previous academic endeavors, or, if aiming for a second career, they look back on other intellectual and professional success in their lives. The former are accustomed to educational programs made accessible by introductory courses and textbooks written as teaching tools. The latter are confident that they can rely on proven abilities to absorb the new and cope with the difficult. Neither are prepared for law school, where they take no introductory courses and they cope with textbooks composed of judicial opinions, which were never intended to be teaching tools.

First-year students become aware that they lack the basics needed to absorb and digest the many pages of casebook reading assigned for each class. They will try to tackle those assignments, usually by reading cases over and over leaving no time or energy to seek out and learn the basics. They begin to doubt their own competence. "It must be me. Others must be getting it. I'm the only one not getting it." What they may not realize is that almost all their classmates have the same self doubts.

Probably the biggest problem for the first-semester student is that there is very little feedback. Certainly, traditional Socratic Method professors provide little when they single out individual students to respond to a series of questions about their reading. At the end of this grilling, many students feel humiliated by the nature of the process. Most are at least uneasy because they do not know whether there was a right answer, and, if there was, they certainly don't know whether they gave it. This experience can add to their feelings of incompetence.

There is no written feedback either. In most courses, the only examination is at the end of the semester. Many professors do not give any helpful information about what students should be learning, and there is no way for students to know whether they are "getting it." Because there is no feedback, students cannot alter their approach to their studies.

It is not surprising, then, that for many law students, their

first-semester grades are the lowest they have ever received. For most, the first semester experience is a significant blow to their self-esteem.

There are members of the law school community who are convinced that the traditional first-semester experience is difficult and stressful.¹ Some schools have responded to such concerns by providing an orientation program or a helpful summer reading list. Some professors will provide opportunities for students to write practice exams. However, the best advice I can give students is to start taking responsibility for their law education before they start it. Some students have poor first-semester grades for reasons that have nothing to do with their preparation or abilities. Nothing can compensate for a personal tragedy during their first semester that leaves them unable to work effectively. Nobody can give students more hours in the day to study if they work full time and have family responsibilities. However, students can control their preparation and approach to law school. This Article outlines benchmarks for students to follow.

II. BENCHMARKS IN THE FIRST SEMESTER

A. Before Classes Start

Most law school professors are not trained to be teachers. Therefore, their teaching methods will be a combination of methods their professors used and of approaches by which they learn best. There is no guarantee that their teaching methods are the best for a student's learning, and no guarantee that the advice they give will work for every student. Before students start classes they should have some basic information about the legal system, understand the skills necessary for law school success, and determine how they learn best.

1. *Learn Some Basics About the Legal System*

Law students will spend much of their first year reading cases.

1. See, e.g., Ann L. Iijima, *Lessons Learned: Legal Education and Law School Dysfunction*, 48 J. LEGAL EDUC. 524 (1998); Lawrence Silver, Comment, *Anxiety and the First Semester of Law School*, 1968 WIS. L. REV. 1201.

To understand these cases they need to be familiar with some basic legal vocabulary and acquire general information about the legal system.

One problem with legal vocabulary is that it often seems like ordinary vocabulary. Students will assume they know the meaning of words, but they don't know them in a legal context. Let me give a few examples. Six weeks into the first semester this year a student came to me and said, "Thank you so much for explaining 'enforceable contract' in class. I've been reading contracts cases all this time thinking that enforceable contract meant that the winning party in a case had the right to insist that the contract be performed. Now I know that all it means is that the winning party has the right to a remedy." For the first few weeks of my own first semester of law school, I thought that the word "court" in a case meant a courthouse.

Another problem with legal vocabulary is that it is nothing like ordinary vocabulary. In a case students read the first day of law school they will encounter something like the following:

This negligence, warranty, and strict liability action comes before the court on a motion for partial summary judgment by defendant, Marina Associates d/b/a Harrah's Marina Hotel Casino, against plaintiffs, Robert and Loretta Levondosky. Defendant maintains that there is no genuine issue of fact regarding plaintiffs' warranty and strict liability claims, and that they are entitled to partial summary judgment as to these claims.²

Most law schools suggest that students buy a legal dictionary to look up the many unfamiliar terms they will encounter in reading cases. However, definitions of unfamiliar terms in this paragraph will not be much help since understanding the paragraph's meaning requires an understanding of the functioning of our legal system (trial court, motion for summary judgment), legal theories and how they may relate to one another (negligence, warranty, and strict liability), and whether this information is important to the reason for which they are reading the case (very important in legal research and writing classes, not very important in torts or contracts).

Being able to read cases efficiently and productively takes practice. One study on the effect of instruction in case reading skills

2. *Levondosky v. Marina Assocs.*, 731 F. Supp. 1210, 1211 (D.N.J. 1990).

tested people with no law school experience, two weeks of law school experience, two months, and one to two years.³ It was found that even second-year students benefitted from direct instruction in case reading strategies.⁴ Learning how to read cases before they begin law school will save students considerable time and anguish.⁵

2. Find Out How Best You Learn

a. Deductive and Inductive Learners

Perhaps it is most important for students to know whether they are deductive or inductive learners.⁶ Deductive learners need to know the big picture before understanding the details. Inductive learners get to the big picture by understanding the details. Unfortunately for all law students, the traditional casebook does not facilitate the learning of either deductive or inductive learners.

Casebooks don't work well for deductive learners because they rarely provide the necessary big picture before they introduce the cases. I am a deductive learner and had no idea what was going on during my first few weeks of law school because I could not understand cases in isolation. My solution was to read a whole chapter or section of a chapter at one time so that I could get the big picture before I took any notes or thought about the facts of any case. By the time I reached the end of my reading, I had my big picture. I knew the basic law on the topic. I often knew a general statement of the rule for the topic and what the issues were concerning the elements of the rule. I had a sense if there were some states that had different versions of the rule than most other states, and in some instances I

3. See Mary A. Lundenberg, *Metacognitive Aspects of Reading Comprehension: Studying Understanding in Legal Case Analysis*, 22 *READING RES. Q.* 407, 407-32 (1987).

4. See *id.* at 425-26.

5. See generally STEVEN J. BURTON, *AN INTRODUCTION TO LAW AND LEGAL REASONING* (2d ed. 1995); CAROLYN J. NYGREN, *STARTING OFF RIGHT IN LAW SCHOOL* (1997); HELENE SHAPO & MARSHALL SHAPO, *LAW SCHOOL WITHOUT FEAR: STRATEGIES FOR SUCCESS* (1996).

6. I use the Myers-Briggs Type Indicator (MBTI) as a tool for focusing on learning style. Many students have taken the MBTI as part of career counseling. People who identify themselves as Intuitives on the MBTI are usually deductive learners: Sensors are usually inductive learners. Two publications helpful for those who have taken the MBTI are JUDITH A. PROVOST, *STRATEGIES FOR SUCCESS: USING TYPE TO EXCEL IN HIGH SCHOOL AND COLLEGE* (1992), and GORDON LAWRENCE, *LOOKING AT TYPE AND LEARNING STYLES* (1997).

found out that the law had changed dramatically at some point. Then I read each case again and took notes. This time my reading was very focused. I knew what I was looking for in each case, and I took few but very targeted notes. Often it took me less time to read the cases twice than it took my classmates to read them once. This method worked for me because I can skim looking only for the major point in each case.

However, many students who are deductive learners tell me that they are not fast readers and cannot skim cases looking for the major point. I suggest that these students read some short introduction to the material before they read the cases so that they have a context for their reading. The purpose in reading cases is to analyze why they are decided a certain way. Students should not have to waste time figuring out the basic law. Their law school bookstore should have several books in each subject area that would be good choices for context reading.

Casebooks don't work well for inductive learners either. They may be able to understand every case in isolation, but I know of no casebook that will easily allow the inductive learner to get to the big picture. Inductive learners ideally would get to the big picture by adding the rule from one case to the rule synthesized from the cases they have read before. However, many books group inconsistent cases together with no explanation, perhaps a majority rule case followed by a minority rule case. Casebook editors may also place what they feel are poorly decided cases next to cases they feel are correctly decided. It is very difficult for the inductive learner to figure out the big picture.

Some inductive learners get to the big picture by taking the time to review their notes at the end of a section. Others find that they are having trouble just keeping up with the amount of reading with no time left at the end to pull it all together. For this reason, some inductive learners read context material at the end of the section. Others decide to read it at the beginning so that they know when they encounter areas of disagreement in the law.

One of my former students, diagnosed with Attention Deficit Disorder while in law school, determined that he could do well only if he read an entire book about a course topic before he took the course. He also memorized as many legal rules as he could before the course began. Although this is an extreme approach, it worked for him. His grades improved with each semester. All students will

have to find out what approach enables them to be successful. No one can do it for them.

b. Auditory and Visual Learners

Once students have decided the basic aspect of how they learn, they should consider whether they are visual or auditory learners. Do they think they learn more from reading than from listening? I learn from reading and often cannot follow a lecture without a hand-out. When I tried in law school to take down any complicated material a professor was talking about, my letters trailed off into scrawls by the end of the first line and I lost track of the point. I quickly learned that all I could do in class was to listen, take down a few words, and hope that I would remember the point later.

Auditory learners are usually good note-takers. During the first week of law school I happened to look at the notes of the person sitting next to me in Contracts. His notes were astounding. They were in outline form with Roman numerals, capital and small letters. There are many people like my classmate who say they can take down everything a professor says even when they don't understand it and think about it later. Although this will give them helpful insights, auditory learners need to be aware that they will not be able to learn the course material just from class attendance. Students who have thrived in prior educational programs by taking very good notes in class and then memorizing their notes, should be prepared that this will not work in law school. Professors assume that students are learning the basic rules of the subject on their own and that their responsibility is to teach students how to think about the ambiguities and subtleties involved in applying the rules or even to suggest that the rules should be changed.

If students know whether they are auditory or visual learners, they can plan how they will get the most out of their reading and classes.

c. Morning and Evening Learners

Law students should also determine at what time of day they can learn best. When I went to graduate school, almost all my classes were scheduled for the afternoon. I was in the library when it opened in the morning and could get a large portion of my difficult reading or thinking done before classes started. However, most of

my classmates were sleeping while I was working. They came alive at night and began work when I was winding down. In law school I found that I could read cases only in the morning. My first-year schedule contained some morning classes so I did most of my reading on weekends. During my second and third years, I tried to schedule my classes in the afternoon so that I had my mornings free to read. My grades depended more on the number of mornings I had free in any semester than on the difficulty of the courses I had taken.

First-year students do not have much control over when they take classes. However, they may have some control over when they study. Timing is especially important for students who work full time and go to school at night. One woman in my class this year is clearly a morning person. She works during the day and drives an hour after class at night to get home. She told me that the only way she survived was to devote Saturdays until 4 p.m. to school work. Only then would she start thinking about the other demands of life. She had been doing errands on Saturday mornings and could not concentrate on her work when she got to it later in the day. Students should think early on about how they will structure their time.

Students may want to think about how to use the occasional hour between classes. Many people cannot use short periods of time to read because it takes them some time to get immersed in any subject. The temptation is to sit and chat with other students. A better use of these breaks may be study group meetings, short research projects in the library, or review of the material covered in the previous class.

B. During the First Few Weeks

1. Find Out How You Will Be Tested

It may seem strange that I should suggest that students think about their final exam during the first few weeks of law school. However, law school exams are different and require different methods of study and preparation, different from other or earlier educational experiences. Being prepared means making the right choices early about how to study, how to take notes in class, and how to organize what they are learning. There may be policy or other types of “think” questions for which students can use the same

techniques they used in undergraduate humanities exams for those questions.

More difficult for most first-semester law students are the “issue spotter” questions of which at least one will almost certainly be included in their final exams. The following is a short question and answer addressing one of the four instances of battery suggested by the fact pattern.

Question

John, the personnel manager, and Jim, a job candidate, walked onto the elevator at Widget Company at 9:00 a.m. Standing in the front away from everyone else was Robert, who, as all employees of the company knew, had an abnormal fear of germs and never shook hands with anyone. John was in a playful mood and suddenly reached out to shake Robert's hand. Although Robert recoiled in horror, John grabbed his hand and greeted him heartily. Jim had not paid much attention to John's seemingly harmless behavior and did not see Robert lash out at John with his umbrella. John ducked and Robert hit the unsuspecting Jim on the head. Jim was knocked unconscious and fell to the floor of the elevator. Bill grabbed Robert's umbrella to prevent him from now attacking John. Most of the other people on the elevator worked on the 5th floor so when the elevator stopped there, everyone pushed to get out. Sheila stepped on the unconscious Jim with her left foot. Who is liable to whom?

Answer

Jim v. Sheila

Liability for battery requires that the defendant commit an act which (1) was intended to and (2) did cause (3) a hostile or offensive (4) contact (5) for which there is no defense. Sheila clearly (2) caused a (4) contact with Jim in an (3) offensive manner (“stepped on Jim with her left foot”). There might be an issue about whether her action was (1) intentionally offensive. Although there is no evidence that Sheila had a conscious desire to step on Jim, the requisite intent might be found. Given the large number of people getting off at one floor and an unconscious man on the elevator floor, Sheila might have known with substantial certainty that she would step on Jim. Sheila might argue that courts usually hold that persons on a crowded elevator have impliedly consented to being touched. However, the scope of the consent would be limited to the occasional shove because of a lurching car or to pushing to get from the back of the car to the front. Most people would not think that

they had consented to being stepped on. Therefore, Sheila probably would be liable to Jim.

The first issue spotter can be a surprise. As a question type it doesn't seem to make sense. Students have been reading cases in which the applicable legal theory is identified. In those cases usually only one element of that legal theory is still at issue, and it is also identified. Students are used to being quizzed on specific information about a case, such as procedural history and detailed facts, and expect the exam to test their knowledge of the cases they have read.

Issue spotter exams turn all this upside down. Instead of being given the legal theory of the story, students must determine it from the facts given. Instead of being told what element of that legal theory is at issue, students must determine that from the facts of the story. Arguments learned from the course must then be used to decide whether the element is present or not.

In the issue spotter above, students must know the rule for battery, the elements of that rule, and that "intent" does not require a conscious desire to cause an offensive contact but only a knowledge to a substantial certainty that it will do so. It also requires that students know the defense of "consent" and what it means in situations like this one. Students may be surprised to notice that not only is there no specific information about any case in the answer above, there isn't even a mention of a case. Because particular cases are important only in the state in which they were decided, information about individual cases is not usually important on exams that are designed to test general knowledge of the law. It is the kind of issue raised in the cases and the arguments used by the lawyers that are important. Most professors expect an answer to an issue spotter to:

1. state the legal theory
2. give the rule for that legal theory
3. explain why the elements not at issue aren't at issue
4. discuss why the element at issue is at issue (ambiguous situation, exception, defense)
5. come to a conclusion.

Many students who have paid attention to what their professors seem to consider important feel betrayed by these questions if they see them for the first time on their final exams. They feel they have wasted valuable hours concentrating on information in cases that turns out to be irrelevant when they are asked to demonstrate what

they know. They have prepared for the exam by summarizing each case in the course and memorizing as much of that information as they can. Don't fall into that trap!

2. Outline Each Legal Theory

After finishing their study of each legal theory, students should draft an outline of that theory. Here is a sample outline for battery:

Draft Outline

Rule: Liability for battery requires that the defendant commit an act which (1) was intended to cause and (2) did cause (3) a hostile or offensive (4) contact (5) for which there is no defense.

1. Intended to cause
 - a) conscious desire
 - b) substantial certainly
2. Did cause
3. Hostile or offensive
4. Contact
5. Defenses
 - a) Self Defense
 - b) Defense of others
 - c) Consent
 - (1) Express consent
 - (2) Implied consent

This outline of battery starts with a rule for battery, with the elements of the rule clearly identified. Then each element is listed with relevant subheadings. After students reach the end of the hierarchy of rules, they should insert the information about the cases they have read under the relevant subheading.

C. By the End of the First Month

Practice Writing Answers to Simple Issue Spotters

After students have seen the type of questions they will be expected to answer on their final exam, it should be clear that they will never be able to write good answers without practice. A professor's final exam questions will cover the entire course. Stu-

dents do not know enough law to use them now. But they should start writing now.

The solution is to write answers to questions about individual legal theories. For example, if the torts class started with intentional torts, battery and assault at least will have been covered. If students can't find essay questions on individual theories, multiple choice questions in readily available books for bar exam preparation can be adapted.

Several of these books contain indexed questions. Students can go to the index and find all the questions that test battery. With their battery outlines at their sides, students should read each question and then the answer. Then, they should go back to the question and look for the words that relate to all the elements of battery in the outline, noting any tricky words in the question. Then it is time to write.

Students may wonder why I suggest that they know the answer before they write. The reason is that at this point in the semester they need to train themselves in writing, not test themselves in their knowledge of the law. Students will be pleasantly surprised at how much law they will learn by writing about it. Before they write they should memorize the rule statements from their draft outlines so that they will be able to write them automatically. The more of the mundane they commit to memory now, the better they can concentrate on the challenging parts of their exam later.

Training continues almost to the end of the course. Testing can wait until the end of the course. Students can train themselves to write about each legal theory thoroughly. Then it will be easy to combine legal theories later.

D. By the End of Classes

Complete Your Outline

The time between the last class and the first exam can be as much as a month or as little as two days. If students have been making rule based mini-outlines for each legal theory as they complete the study of it, they probably have ninety percent of their outline. Now that they have completed the course many things that were confusing when they first studied them are clearer. Students will need to change the mini-outlines to reflect their increased knowledge. After that they should begin writing answers to old exams.

E. During Reading Period

Reading period should really be called writing period. Students need all the time they can find to practice writing. If students have followed my suggestions so far, they are prepared to write. They cannot afford to be finishing their reading or starting an outline during reading period.

To students who have not done well on their first-semester exams, my first question is, "How many practice exams did you write out?" Some say, "I didn't have time because I was learning my outline." They failed to see that we can demonstrate what we know only as we have to apply it. If they have been writing out exam answers to short questions during the semester they will be well prepared to use their outline for answers to final exams given previously by their professor.

If students have not worked with a study group before, now is the time to become part of one. If students have an established group, they may find that the period just before exams will be their most productive. I strongly recommend that students work on each question in two stages. Every study group member should independently write out the list of legal theories that are suggested by the fact pattern, list the elements of those theories and then identify the words from the fact pattern that relate to each element. The group should then meet and decide on a common list. The discussion should focus on the order in which the topics should be addressed in a written answer. Then everyone should independently write out an answer. The next group meeting can focus on the effectiveness of the responses. Try to separate out the two components of the task, knowing the law and writing about it.

After students work on several questions they should find that there is an optimum order in which to discuss topics. For example, I order my discussion of formation of contract as (1) Was there an offer? (2) Is it an offer for an irrevocable contract? (3) If not an irrevocable contract, was the offer revoked? (4) If the offer was not revoked, was it accepted? If it was accepted, was there proper consideration or its substitute? Students probably did not learn option contracts and unilateral contracts at the same time. An effective way of analyzing a problem is to look for evidence of both at the same time (Is it an offer for an irrevocable contract?). There may be other topics

that students should reorder in their outlines to reflect the order needed for analysis.

Now is the time to start pruning the outline. As students become more confident about what they know, fewer words are needed to trigger their ability to analyze. As students learn the course material by writing out answers, they should concentrate on reducing the outline to no more than ten pages. At this point long outlines are useless. A semester course contains so much material that it is impossible to remember all the details. Finally, before the exam, students should prepare a one page checklist.

III. CONCLUSION

If law students manage to do even half of what I have suggested here, they will probably find themselves better prepared than most first-year law students anywhere.