CHAPTER FOURTEEN

PREPARING FOR THE (LAW SCHOOL) EXAM[1]

If you've grasped that *the essential objective on exams is identifying and analyzing premises (and presenting that analysis in concise paragraphs),* it should be apparent that successful preparation for *any* exam entails 1) gathering premises that may be relevant on the exam, 2) knowing them well and how to apply them, 3) organizing them in an outline for speedy reference. (And *mastering* LEEWS!)

No longer should one experience bewilderment of purpose and misdirection of energy and effort, as term progresses and a mountainous volume of law cascades from casebooks, articles, class discussion in several courses. Premises have been termed "tools," course outlines "toolboxes." As described previously, one's task is to 1) (day-by-day in preparation for each course) <u>fashion law encountered into tools and begin to master use of those tools,</u> 2) (weekly) <u>synthesize tools into a well-organized toolbox for speedy reference,</u> 3) (periodically throughout the term, especially in days leading up to exams) <u>write practice paragraphs of analysis, practice The Blender, test utility of toolboxes on old exams.</u>

Practice paragraphs of analysis instruct that not only must one know rules, principles, statutes, but one must know *elements* thereof. (And if need be, elements of elements—sub-elements.) You must know, for example, what constitutes "breaking," also "entering," respecting the "breaking and entering" element of burglary.[2] You must know the liability difference between "general" and "limited" partners. Such concepts as "strict scrutiny," "limited review," "transitory action" (p. 156), "holder in due course" must not only ring a bell, but translate into specific definitions and tests, divisible into elements and sub-elements. (Thereby making them capable of application to facts.) This presupposes very precise knowledge of law.

The question then arises, "How can one know law with such precision?" [Partial answer—*not* by memorizing, memorizing… E.g., with flash cards.] The answer is <u>use the law!</u> Get to know it (and recall it) by using it! As a carpenter knows tools intimately via *use*—their feel, heft—, so, REQUISITE PRECISE KNOWLEDGE OF LAW COMES ONLY FROM USE. You must <u>practice applying legal precepts to facts</u>... in every assigned case!

Cases assigned in courses are akin to blocks of wood a carpenter might address with a chisel (thereby becoming adept with that tool's use).[3] MOST LAW LIKELY TO BE RELEVANT ON EXAMS DERIVES FROM CASES. You become familiar with this law—how to use/apply it—by applying it *in the very cases in which it is found*. In so doing you get to know law intimately and recall it. You gain skill at precisely the nitpicking, element-by-element, "lawyerlike" analysis all professors want to see.

Finding/Mastering Law via (Proper) Preparation of Cases

Imagine the following case—*Used Auto Sale* (UAS)—has been assigned in first term Contracts: (Party) A offers jalopy (old car) to B for $2,500. B expresses interest, doesn't get back to A for two weeks, whereupon he tenders (offers) $2,500. A, meantime, has discovered online that others will pay $5,000 for the car as is. She informs B, "Sorry. You waited too long. The price is now $3,500. Still a good deal!" B insists on $2,500 to no avail. B sues in small claims court for specific performance. Court [judge/magistrate] decides the issue is whether A's $2,500 offer is valid two weeks later, or has lapsed. Rule to be applied is that offers lapse after a reasonable period of time. Two weeks held to be reasonable for $2,500 offer to stay open. Judgment for B.

[Note. UAS is an abbreviated, simple case. Normal assigned cases will be longer, more complex. UAS is representative, however. Lessons and approaches respecting UAS will apply to *all* cases!]

What may be termed "*<u>conventional [case] brief</u>*" (CB) is instructed at *all* law schools, by nearly all professors, and by virtually all study/exam-writing aids apart from LEEWS.[4] CBs require that students summarize facts, issue, rule (of law), holding (outcome), and rationale (the *why*) of assigned cases. Some professors in addition want "procedure" included in a CB, especially early on first term. (E.g., "How did the case come to occupy this posture [on appeal]?")

[Note. Almost without exception, cases assigned in law school are "appellate," meaning appeal has been taken from a lower court judgment. "Procedure" is the path whence a case arrives at the posture in which encountered. (E.g., "on appeal from judgment of X Superior Court.") Unless a course title contains "procedure"—"Civil Procedure," "Criminal Proce-

dure"—procedural aspects of cases have *zero* relevance to exams!]

A CB of UAS would be as follows:

FACTS—A offers car to B for $2,500, wants $3,500 two weeks later. ISSUE—Is the $2,500 offer valid two weeks later? RULE—Offers lapse after a reasonable period of time. HOLDING—Two weeks reasonable for offer to remain valid. Judgment for B. RATIONALE (reasoning)—B should have a reasonable time to think things over. Two weeks isn't long respecting an auto purchase. PROCEDURE—First impression lawsuit in small claims court.

[Note. This is a fairly complete CB. If called upon in class to respond respecting UAS, one would feel "prepared." However, it is not enough in terms of properly preparing a case and preparing for (all-important) final exams. It's *not nearly* enough!]

Here is extreme irony. AS MUCH WORK AS PREPARING A CONVENTIONAL BRIEF ENTAILS, IT IS NOT ENOUGH RESPECTING PREPARATION FOR THE FINAL EXAM. Not near enough!

However, back up a moment. It has been advised that cases are sources of law (premises!) one is likely to be responsible for on exams. Mindful of the importance of exams (not class participation) and the importance of gathering and mastering premises, the [per usual unique, innovative, revolutionary] LEEWS approach is to FLIP NORMAL "BRIEF THE CASE" FOCUS TO FIRST (FOREMOST) SEEK LAW INTRODUCED IN THE CASE! Thus, respecting UAS, immediately upon opening the [contracts] casebook to UAS (or any case!) your initial, *only* thought is, *"What law is introduced by this case? Where is it?"*

Thus, *skim* the entire case *solely* to find law, to pinpoint any/all legal precepts—rules, statutes, parts thereof introduced! You seek all law that might be relevant on an exam weeks, possibly months distant.

[Exercise: Do this for UAS before continuing. What law is introduced?]

There are *two* potentially relevant legal precepts—"specific performance," also "offer lapses after reasonable period of time." This is the only information wanted in a first (skim!) read of the case. No reading/studying facts! Issue, holding, rationale, procedure is irrelevant at this juncture. Just *single-minded focus on finding law!* (I.e., *Elephant* here is law. [Remember elephant?]) The same discipline applied to addressing exams here also comes into play.

Next, temporarily leave the case altogether. Look up law you've pinpointed in the case in your commercial outline (CO). [You should have a CO for *every* course (in addition to casebook, etc.). Correct—the very CO law professors sometimes (often!) caution students not to get. Get one! ASAP if in school.][5]

[Note. UAS has to do with contracts law. Given the (two) legal precepts found, what sections of a contracts CO seem relevant? (If you haven't started law school, you likely have no idea. However, you would survey the table of contents for what seems *colorable.* Here you would likely turn to sections having to do with performance element of contract, also offer and acceptance.)]

CASES CANNOT BE SOLE SOURCES OF (BLACK, LETTER) LAW! Appellate cases in particular often present but parts of legal precepts relevant to resolving issues in the case. (E.g., UAS posits only portions of the larger contract precepts—performance of contracts, offer and acceptance. [Themselves elements of contract overall.]) One's purpose in (immediately) referring to a CO is to view the law discovered in its larger context. (I.e., see complete rule/statute/etc. fleshed out.)

Having located and focusing on larger CO context, think about the law! Notice elements, subelements of larger precept(s) [related to law found in the case]. (When you return to the case, you'll notice what parts/elements, if any, are missing in the case.) Think about *why* such law exists, whether it makes sense (rationale). Familiarize yourself with the *complete* law. Query whether/how law from the case is corollary to larger precepts? (E.g., "lapse of offer" as sub-category of "offer," itself a sub-category—element—of "contract".) At this juncture (of addressing a case) FOCUS IS STRICTLY/SOLELY ON LAW FOUND IN THE CASE IN ITS LARGER CONTEXT.

[Note. More on construction, use of the CO is explored later in the chapter.]

Returning to the case (still disregarding CB aspects!), focus on how the (now better understood) precept(s)—tool(s)—were applied. Are any elements missing? Which are contested? [As suggested, uncontested aspects of legal precepts often are not mentioned in cases on appeal when guiding rules and statutes are set forth.] What facts were pivotal in making arguments for and against establishment of (contested) element(s)? What facts/arguments

were persuasive to the majority? Did a dissenting or concurring judge see things differently? (How, why, with what result?) ONE'S FOCUS IS *NOT* ON FACTS, *per se* (e.g., memorization for a CB or in the event one is called on in class to "give the facts of UAS."), nor issue, holding, etc., but on *how relevant law was applied in arriving at the outcome*.

[Note. What you are doing at this point is making use of the assigned case as grist for practice *using* your new tools! (Much as a carpenter would practice on a block of wood with a chisel.) In this way you gain familiarity with the tools—their individual elements. *The only writing to this point is notes relating to law found in the case and (possibly) related law in the CO!* All else is mental—*thinking!*]

When you feel you have a handle on the law, how it was applied in the case—E.g., respecting UAS you've thought about the meaning of "specific performance," where it fits in the overall scheme of performance of contracts, how "offers lapse after a reasonable period of time" is a sub-element of "offer and acceptance," itself an element of contract overall, and how these two precepts were applied in UAS —, the case [UAS and any other case] is not properly prepared until *three additional tasks* are performed.

First, having performed the thinking just described *(for any case!),* which should bring you to an understanding of the result arrived at (e.g., judgment for B in UAS), think about, ask *why? Why* was two weeks adjudged reasonable for the offer of $2,500 to remain valid? Apply common sense and life experience. (E.g., time to raise $2,500; time to consider such additional costs as insurance, garaging; time to comparison shop, bring in a mechanic, etc.)

Second, alter facts (to enhance practice with and use of new tools). Meaning, if certain facts were changed, how might the outcome be altered? E.g., when might *less than two weeks* be reasonable for an offer to stay open? What if the item offered in UAS was something simpler—a whiteboard marker, say, or used toy or clothing item?… For a far lesser amount—50 cents, several dollars? What then would be a reasonable time for the offer to stay open? (Minutes, an hour?)… What if the item offered were more complex—a house, for instance, or a business? For a far greater sum of money? What then might be a *reasonable* time for an offer to stay open? (A month, several months?) Such changes in facts that may alter a case outcome are called "*what-ifs*."

In this way (posing what-ifs) you focus on, become conversant with the key precept—"*reasonable* period of time." (E.g., what is *reasonable?*) Imprint precepts in memory via *use*. Prepare for the task on exams—application of legal tools to new, different facts.

[Note. *(Precise) facts of assigned cases*—e.g., two-week auto sale—*are unlikely ever to be seen again!* Apart from in class, the instruction, "give me the facts of [assigned case]" will never be given. What-ifs "liberate" understanding of and ability to apply tools introduced by cases. For example, what if a used bicycle is offered at a yard sale for $75, someone offers $75 but doesn't have the cash, comes back hours later and tenders the $75, the price has been raised to $100, or the bicycle was sold to another? (Similar to Combination Law Hypo scenario.) What result?][6]

YOU MUST NOT MARRY COMPREHENSION OF LAW TO FACTS WHEREIN ENCOUNTERED! GRASP/UNDERSTANDING OF LEGAL TOOLS MUST BE SUCH AS TO BE ABLE TO APPLY TOOLS TO *NEW* FACTS (as will be encountered in an exam hypo).

Third [Fifth task overall!], having [*first* task] located (in the case) and (using CO) become familiar with legal tools, having [*second*] thought about their application in the case, having [*third*] posed the question *why?* (respecting understanding the decision), having [*fourth*] altered facts (created what-ifs) for additional practice and to free understanding and use of tools from specific facts of the case, [*fifth*] step back and mull the case overall. E.g., establishment/disestablishment of which element(s) [of controlling legal precept(s)] was persuasive to the judge or majority [of judges] in the determination (ruling)? [Note. (Appellate) cases one reads in law school are often decided by a panel of judges.] If there was dissent or concurrence, *why*? What elements or facts were interpreted differently and/or deemed more persuasive? What change in facts might persuade the dissent to go with the majority, and vice-versa?

At this point [part and parcel of remaining (*third*-actually-fifth!) task described above] consider and think about so-called "food for thought" questions (typically posed by the casebook author at the end of cases).

[Note. Apart from jotting down notes respecting law

(tools) discovered in a case, your preparation of the case—the various steps of approach set forth—has consisted largely of *thinking exercises!*]

We shall see that one now goes to class with (in depth) understanding of cases that not only enables confident, competent response if called upon to "Tell us about the case of [UAS, etc.]," but ability to respond confidently, competently to such questions as, "What do you suppose the thinking is underlying this particular ruling?", "What if facts of this case were changed as follows,...?" [What-ifs posed by the professor.]

Moreover—most important!—, YOU'LL BRING INTO CLASS 2-4 LINE (EXAM-FOCUSED) CASE BRIEFS, AND TAKE NO MORE THAN 1/2 TO ONE PAGE OF NOTES PER CLASS HOUR!, which you will incorporate weekly into your 30—50 page (total!) toolbox (i.e., course outline). Clueless classmates, meanwhile, typically take 3-4 pages of notes per class hour. (Because they can't understand and follow what is going on. They think, "I'll make sense of this later." However, there is no *later* in law school! Information keeps coming; class notes [first term in particular] soar into the hundreds [for each course!], and in the end are cold, and there is no time to wade through them. [They're useless! A reflection of old habits and lack of grasp of the game afoot. A busywork waste of time!])

[Note. NEVER GO TO CLASS EXPECTING TO HAVE LAW EXPLAINED! A mistake first-term 1Ls make (almost universally) is thinking the professor is going to set forth and clarify black letter law. They almost never do! Law professors do not regard instructing rules to be their role. "This is not a bar review course," is a sentiment heard. The dismissive assumption seems to be, "anyone can memorize legal rules." If you do not already have the kind of understanding suggested—complete, relevant legal tools clearly in mind, which tools are known (relatively) intimately via (mental) use, practice in application—, then you'll be lost or playing catchup during class discussion. Therefore, if, after researching it in a CO, law in a case is unclear, look up the precept in a "hornbook."][7]

The (Exam-Focused) 2-4 Line Alternative to CBs and "Book Briefs"

Respecting the conventional case brief (CB), advocated and instructed almost without exception by law school administrators, professors, other study aids, sundry "experts," LEEWS' reaction is simple, unequivocal—unproductive, superficial busywork, emblematic of ineffective case method instruction!

If one grasps that extracting law (from cases) that may be relevant on the final exam, knowing it intimately, and knowing how to apply it (to new facts) is the paramount objective (vs. the shallow, non-lawyering exercise contemplated by CBs), then the very different approach described in the foregoing segment not only makes sense, but is imperative. It also makes possible a far more condensed case brief, that not only enables more-than-competent class performance and (as we shall see) getting more from class discussion, but points directly toward the only thing that counts in law school—the final exam! This brief will be no more than *2-4 lines!* It is another unique, revolutionary, proven-effective aspect of the LEEWS science. It also reflects (and requires) acquisition of skills that likely still need practicing.

[Note. Although much is mental (*thinking*), the (5-step?) approach described in the foregoing segment is admittedly somewhat *more* work prior to class. However, it is necessary work. Moreover, as just suggested (somewhat a catch-22), it is possible *only* if one possesses analytic skill and perspective implicit in a grounding in LEEWS.]

The approach described pays the immediate dividend of enabling one to get *much more* out of class, while taking far fewer notes. Indeed, your 2-4 line case brief will reflect far greater understanding and information than page-long (and more) CBs of first term classmates (often carefully typed). (Which briefs will be abandoned as cumbersome and too time-consuming several weeks into law school in favor of the expedient of "book briefs.")

[Note. "Book briefing" means, simply, highlighting CB aspects of cases in the casebook itself—e.g., yellow for facts, green for holding—, augmented by notes in margins. Suspend from the ceiling of a law school classroom, and one looks down on a rainbow of color in opened casebooks. (See also fn. 4.)]

How is a 2-4 line brief possible? Mention "2-4 line case brief" to any not versed in LEEWS and reaction is dismissive. "Not possible!", "gim-

mick!" many might say. However, think about this a moment. A practicing lawyer, focused on what can assist a client, can digest a case, reflect this in just a few notes, and easily describe CB aspects of the case! If you've focused on and thought about *just* the law introduced in a case, then thought about its application, its elements, use of facts in argument and counterargument, asked *why* re the outcome, altered facts to create what-ifs, thought about why a judge concurred or dissented, and how changes in facts or law might cause that judge to join the majority, won't facts, issue(s), holding, law (in spades!), rationale, procedure (if such is wanted) *be in your head as a byproduct* of such preparation?! (Associative learning and memorization!) How much needs to be recorded on paper?

Inevitably, as byproduct of the described (proper!) preparation of a case, virtually *all CB information is in your head!* All that need be reflected on paper is a few words—ten words or less?—to trigger recall of what is in your head. In addition, law (premises!) that may be relevant on the exam must be noted. (And *all will be transferred to the growing course outline at week's end.)* Thus, the following 2-4 line (exam-focused) brief of UAS:

> [UAS, p.__] Offers lapse after reasonable period of time. Specific performance is [definition]. Two weeks reasonable for 'jalopy' offered at $2,500. *[Eight word memory trigger!]*

That's it!—complete brief! And it reflects far more understanding and grasp of law and facts than the UAS conventional brief (CB).

[Note. It may well be that more set forth in a brief would enable smoother response if called upon to "give the facts of (UAS)." However, the point has been made that class participation is generally a non-factor in grading. You will surely not be "unprepared." If a half grade point may be gained for contribution to class discussion, it will not come from reciting facts of cases, but from insightful comments and participation in discussion, which you will be well-poised to offer. Note also that in addition to abbreviated name of the case is the page on which it is found. (In case you need to refer back to it.)]

[Note. Briefs and class notes will, of course, be set forth in computer or handwritten. If the latter (far more manageable given 2-4 line briefs and far fewer class notes), suggestion: acquire a notepad with margin 1/3 across the page. (Or simply put a margin 1/3 across.) <u>Put briefs in the left margin, class notes opposite.</u> As briefs and class notes will be "<u>*synthesized*</u>" into course outlines (an ongoing [weekly!] process described presently), ONE SHOULD HAVE FEW OR NO CLASS NOTES AT TERM'S END!]

Precisely! Having incorporated briefs and class notes into the growing course outline [toolbox], literally <u>delete and/or throw briefs and class notes into the trash—weekly!</u>)

Is such—2-4 line briefs—possible for all cases? As noted, far more work in the form of researching and thinking about law is implied than the (non-lawyerly) effort required to produce a CB. However, it is only work that *should* be done. Moreover, the benefit on the back end in terms of abbreviated, but more effective briefs, fewer notes in class (as will presently be described), and construction of more concise, effective course outlines (also explored presently) is enormous! So, Yes!—2-4 LINE CASE BRIEFS ARE POSSIBLE FOR ALL ASSIGNED CASES!

Taking Far Fewer Class Notes (Reflecting Proper Class Preparation)

Having performed what is necessary to produce 2-4 line briefs, ONE'S PERSPECTIVE COMING TO CLASS SHOULD BE, "HAVE I GOT IT RIGHT (RESPECTING LAW)? IS THERE ANYTHING I MISSED?" (I.e., *new.*) And, of course, what is my professor's take on things? What is she interested in? [<u>Know the professor!</u>] Most important, *what is likely to be on the final exam?!*

[Note. Relationship of class content and focus to all-important final exams (therefore grades) will vary. *(Relationship of class to exam is something to ascertain in researching a professor.)* What is discussed in class is sometimes relevant, sometimes not, sometimes even misleading. Most discussion falls somewhere in between. What is near certain is that in the best of classes there is considerable wasted motion—blah-blah that can be ignored. (E.g., pontificating by "gunners," show-offs, know-nothings.) There is probably *at most 15-20 minutes of useful discussion in a 50 minute class* (!!). How can one zero in on the critical 15-20 minutes? What does one want to take away from discussion? (The answer to the former is to *be properly prepared going into class*. [Mission now accomplished!] The answer to the latter is con-

firmation you have gathered relevant [legal] tools and understand how to use them. Also, as suggested above, insight into what the professor is interested in.)]

[Note. It is an unfortunate, but typical circumstance that law professors are hired more for scholastic/publishing potential than teaching ability.[8] It is the case that some law students do well despite not attending certain classes. Rather than be confused by abysmal instruction,[9] one may be better off working at home with a commercial outline. (Some professors give the same lecture year after year. A good set of notes may be available.[10] Former students will be the best source of advice in this regard.)]

A student grounded in LEEWS—you!—, who has prepared for class as described, should easily be able to follow the train of class discussion. Responses by classmates should largely confirm *thinking one has already done*. At most, they add in small measure to one's grasp of law and how to apply it. (A question by a classmate may suggest a new line of thought. Perhaps you note the question down.) What-ifs posed by the professor (in effect mini-hypos, thought [erroneously] to instruct "lawyerlike thinking") can now be followed, understood, appreciated! (Anything added you may want to note? Did you miss an insight or argument?) *You shouldn't have to write down professor what-ifs!* Rather, merely think through them. (They should reinforce grasp of law and how to apply it, provide insight into the professor's thinking, interests.) Naturally, additions to and/or adjustments in the law, policy considerations and aspects given emphasis by the professor, the mention of an "interesting" law review article, etc. may be fit items to note.

This contrasts with classmates, who, unskilled at "analyzing as lawyers," ignorant of specifics of law [and larger context], much less how to apply law, will stare quizzically when what-ifs are posed, then type/scribble the what-if, succeeding discussion, etc., racking up copious notes! The aim is *not* to scribble all and sundry down. MORE THINKING, LESS SCRIBBLING!

ALWAYS STUDY THE PROFESSOR! Think! Reflect! Keep uppermost the perspective—*what is likely to be on the final exam?* Smile (with self-satisfaction?), perhaps nod when knowledge and thinking is confirmed. Occasionally take notes, but very few![11] COPIUS NOTE-TAKING REFLECTS INADEQUATE PREPARATION *PRIOR* TO CLASS, AND CONSEQUENT CONFUSION DURING CLASS.

It has been suggested that note-taking be reduced to *1/2 to (at most) one page of notes per class hour.* Such dramatic reduction in note-taking is regularly confirmed by LEEWS grads.

[As noted, there is no *later* in law school respecting making sense of what transpires in class. Notes for most first-term 1Ls accumulate to hundreds of pages for each course, become stale, in the end must be set aside (as it is realized that limited time before exams must be spent cramming poorly grasped legal precepts into hastily compiled [(extensive] course outlines). Meantime, "book briefs" (a/k/a "rainbow briefs"), presumed to be (even touted as) an efficient alternative after 2-3 weeks attempting lengthy CBs, ultimately prove inefficient. Students realize (while compiling course outlines) they have to go back to each case to find relevant law!]

GET WHAT IS NEEDED FROM CASES THE FIRST TIME! Get complete (black letter) law (fleshed out with the help of a CO), master/memorize law via practice applying it *mentally* (to the case in which it is encountered, to one's own what-ifs, to professor what-ifs during class), tuck it (weekly) into appropriate categories of your growing course outline. "Synthesize" the 2-3 pages [at most!] of [2-4 line] briefs and class notes accumulated for the [entire] week in a course into the growing outline for that course. More succinctly, as noted, at the end of each week literally *toss all class notes in the trash!*—gone! Forever! No longer needed!)

[Note. Instruction on compilation of 30-50 page course outlines follows. Suffice, ideally, that you *come to the end of term with no class notes!*—nada! *All that may be relevant on the final exam is in your head (!!), and/or has been synthesized into a 30-50 page outline for each course*. (Organized topically into categories and sub-categories of [reasonably well grasped] premises.) Time between final class and the exam is spent (ideally) practicing The Blender on old exams in the subject to be tested, testing utility of the course outline (toolbox) in Step Two—Does it enable you to efficiently identify/throw down premises?!—, fine-tuning the outline. Perhaps at this time compare outlines with those of classmates. Anything missing? Does someone have a better topical,

categorical scheme? However, YOU MUST COMPILE YOUR OWN OUTLINE![12] Also, resist the urge to tutor classmates re aspects of LEEWS! (Too much effort! Too much to convey!)]

Hornbooks, Restatements

See footnote 7.

Role of Commercial Outlines

Professors typically advise against use of commercial outlines—e.g., *Gilbert's, Emanuels, Legal Lines, Glannon, Sum and Substance,* etc. (on Contracts, Torts, Evidence, Agency, Bankruptcy, etc.). In general, they discourage use of *all* study aids. Yet, should one visit a professor's office, one would likely see a CO on the bookshelf. They admonish against use of such outlines largely owing to concern lest students substitute a CO for reading (and purchasing) casebooks (as some upperclassmen do).

For reasons foregoing—identifying relevant tools, practice in their use, etc.—your author surely does not advocate *not* reading casebooks and cases. However, as noted, CASES CANNOT BE THE ONLY SOURCE OF BLACK LETTER LAW.

[Note. It is not the purpose of (ubiquitous) "case method" instruction to teach law, *per se*. Case method seeks to instruct (via judicial opinions, lawyer arguments, classroom what-ifs) how to think/analyze "as a lawyer." (I.e., art/skill of "applying law to facts.") It doesn't work! Certainly, not well.[13] (Note. This is now the problem of those untutored in LEEWS.)]

As advised, cases characteristically do not investigate, nor even present all elements of legal precepts they introduce. Almost always appellate opinions, cases only explore *real* issues—those aspects (elements) of legal rule(s) deemed determinative, contested beyond the trial level.

For example, an element of defamation (whether written [libel], or spoken [slander]) is "communication to a third party." Should facts of a case purporting to introduce defamation describe a defendant "in front of an audience" when uttering alleged defamatory remarks, it is unlikely communication to a third party will be discussed in an opinion on appeal. This necessary element will have been "*stipulated*" at trial. (I.e., conceded as fact [lest defendant risk arousing a judge's ire by contesting an obvious non-issue].) Very likely there will be no mention whatever of this element. Therefore, should one rely solely on a case introducing the precept, one's knowledge of what constitutes defamation would be incomplete.

This is where the CO comes into play. Quality of judicial opinions varies. At times you may find yourself wondering, "What the heck is the law?" This is avoided by first skimming the case for law, then looking it up in a CO! [There it is!—clear, complete.] Now you have perspective. You see *all* elements. You perhaps become aware of an exception not mentioned in the case (because not relevant). You perhaps note that a precept introduced by the case is corollary to a larger general rule. You place law in its larger, more complete context. This assists in better understanding and remembering law.

The purpose of the CO, then, is to provide a source of *complete* black letter law, clearly set forth in context. [Note. COs are 200-300 pages long. You will not be responsible for their entire content. (No more than a quarter to a third is likely relevant.)] If cases (abetted by class discussion) are a guide to law likely relevant on the exam, COs FLESH OUT LAW CASES POINT TO. They act as a check on whether law extracted from cases is correct, complete. COs further assist in framing, building the course outline/toolbox. (See following.)

More on Developing the Course Outline—Synthesizing, Content, Form, Length, Etc.

The course outline has been described as a "toolbox." CONSTRUCTION OF COURSE OUTLINES (ideally) SHOULD BE AN ONGOING PROCESS FROM WEEK ONE OF TERM. This is called "*synthesizing*." In other words, weekly (at most bi-weekly) sit down with any/all class notes, briefing notes, etc. generated in a given course. (Minimized, of course, via instruction of this chapter.) Transfer that information to a new source—your growing course outline!—, at the same time synthesizing, winnowing down to essentials. (Tools, what you need to be reminded of respecting use of those tools.) As advised previously, graphically—at week's end literally throw all class notes, briefing notes, etc. into a waste basket! Naturally, you won't do this until whatever is essential from notes/briefs has been extracted and put elsewhere—in the growing course outline.

The process of synthesizing, "*loading the toolbox*," will be much simplified if you've prepared for class as instructed herein. If you have extracted and fleshed out legal tools (premises!) from cases,

endeavored to understand their application in cases (querying *why* outcomes occurred, creating what-ifs—so as to produce 2-4 line case briefs), then made notes in class only on what is *new*, you should accumulate *no more than 2-3 pages of material in a given course per week*. In other words, you are already far along respecting synthesizing. Building the course outline becomes as simple as bringing it up on your computer, deciding what categories to place various tools and related information in. Perhaps you start a new category.

Developing categories (compartments) of toolboxes for grouping legal precepts is a somewhat arbitrary process. You may want to follow chapter, subchapter headings of a casebook. If these prove too broad, subdivide them. [A CO may provide useful organizing headings.] You may want to look at a friend's outline headings. THE IMPORTANT THING IS TO BE ABLE TO FIND RELEVANT LAW QUICKLY, EASILY. When located, precepts—premises!—should be clear, comprehensible, *familiar, usable tools!*

Within categories of course outlines, all precepts should, of course, relate back to the topic heading of the category. Thus, "Intentional Tort, Defenses" describes relevant law for the Torts Hypo. "Objections to Admission" in an evidence law outline might contain "Assumes facts not in evidence," "Arguing with witness," "Hearsay," "Irrelevance," etc. Such complex, pithy subtopics as hearsay, due process, First Amendment, Fourth Amendment, etc., however, likely deserve their own separate category. Certainly, *most elements of contract*—e.g., agreement, consideration, promise, offer (also acceptance), possibly "two persons," etc.—*will deserve separate categories*. (Also warranties of fitness, anticipatory breach, "unequal bargaining position," etc.) Within such more narrowly focused categories (all information relating back to the topic heading in close, interrelated, organic fashion), the conceptual scheme of *trunk, branch, sub-branch* (sub-sub-branch?) becomes useful in constructing the category.[14]

Respecting *course outline length* and how much information they should contain, no hard and fast advice is offered. This will vary among individuals. Suffice that an outline be *long enough!* [Students have reported outlines of 75 pages and more. Others have said *all* was boiled down to 10-12 pages (!!). (See discussion following for how "trigger" information can make this possible.)] A COURSE OUTLINE SHOULD PRESENT/PROMPT ALL LAW YOU THINK MAY BE RELEVANT ON THE EXAM. To the extent information is in one's head, it needn't be recorded. *30-50 pages* seems a reasonable target. The operative inquiry is how much must be recorded to bring needed information to mind with reasonable precision?

For example, as you know, in the Appendix a number of tort principles are presented/defined under the heading, "Intentional Torts, Defenses Thereto." [Other headings in a torts outline might be "Unintentional Torts," "Torts Against the Land," "Defamation," "Negligence," etc.] Should one flesh out law (definitions) as fully as in the Appendix, a torts outline overall might exceed 100 pages—not so different from a CO. However, after you have explored battery in the context of working through PN v. DH, thereby becoming intimately acquainted with its elements and their application, it would likely suffice to put far less information in an outline. Perhaps you could get away with the following:

> Batt. ["B?"]—1) intent. act, 2) offensive (to reasonable or known unusually sensitive person), 3) unpriv. (no actual or implied consent), 4) contact. (E.g., DH kissing PN)

Over ten lines (including definition of consent) are reduced to less than two. Parenthetic reference to DH kissing PN is an "associative trigger" for recalling remaining aspects (and understanding) of the tool. Depending upon powers of memory and how much one has practiced using a tool, this might be reduced even further (with no loss of recall) by expressing elements in an acronym, buttressed by a brief factual reference—e.g.:

> B—i[ntent] o[ffensive] u[nprivileged] c[ontact] [DH kisses PN]. Or B—iouc DH kisses PN].

Likewise, after thoroughly exploring intentional infliction of emotional distress in the context of Ms. N v. DH, the twelve lines on page 135 (including transferred intent)[15] might be reduced to:

> IIED—1) conduct (intent. or R-S-O), 2) calc., 3) SED (tests = intensity, duration, reasonable person; more than hurt feelings, humil., etc.) Can't estab. w/ trans. intent. (E.g., DH flashing Mrs. N)...

Or, possibly, simply [As some few have great memories.]...

> IIED—(DH flashes Mrs. N)

The point is that BY USING LEGAL TOOLS—by

applying them (within facts of a case, by changing facts)—, ONE IMPRINTS THEM INTIMATELY (via association). Less need be reflected in the course outline.

In addition to synthesizing weekly, periodically test course outlines on old exams. (Sit down with an old exam. Apply The Blender.) IF AN OUTLINE ENABLES EFFICIENT IDENTIFICATION OF PREMISES, IT'S WORKING. If not, perhaps the outline contains insufficient law, or categories are too broad to permit easy reference, or you have presented law in such loose, disjointed fashion (e.g., rambling, imprecise definition of "negligence"), that concise black letter tools cannot easily be identified and stated. Testing outlines on old exams is an excellent, ongoing check of efficacy, completeness of outlines. It further builds familiarity with and confidence in outlines as exams approach. [Note. Implicit in the foregoing is you must not wait too late in the term to begin outlining.][16]

[Note. The notion is often promoted amid grumbling and confusion first term that "things will come clear (at the end)." One hears such professor comments as, "There comes a point when it clicks," and, "It will all work out. You'll see."[17] Temporarily lulled, placated, 1Ls focus on briefing and taking class notes. The result as exams approach is *not* time spent refining outlines, practicing on old exams (as should occur), but feverish attempts to assimilate/organize (synthesize!) the mountainous information that has accumulated. (Too late!)]

A 100+ page "outline" completed—"pant, pant"—at the last minute cannot be a well-organized toolbox. Much less will it be intimately known and a proven-efficient reference. It is, as your author says to classes, more "Uncle Harry's tool *sack*." Tools are there. However, they are jumbled, disorganized, not easily located. Moreover, if a tool is located, one lacks experience using it. Hence, the plaintive thought of so many law students upon belatedly completing a course outline—"I wish I had a couple more days!" (In which to organize and practice with the outline, and get to know it.)

The *"couple more days" (and more) must be squeezed out during term*. They are the extra minutes devoted to proper preparation that 2-4 line briefing requires. They are time devoted weekends to working on outlines. Get what needs to be done *done!*—day-by-day, week-by-week *during* term. DAYS IMMEDIATELY PRECEDING EXAMS ARE FOR PRACTICING WITH OLD EXAMS! Such practice reveals gaps in outlines, precepts needing to be better understood. Which raises an obvious question—what if, as you read this, you are well into the term, exams approach rapidly (days away!), and you have accumulated a pile of class and briefing notes?

What to Do When It's Late in the Game (I.e., exams a couple weeks, even days away)

ONE NEEDS THREE THINGS GOING INTO EXAMS. 1—*Skill* implementing The Blender, and skill at analysis and (UBE) paragraphing presentation. Thus, whether months, weeks, or mere days before exams, start practicing. (Begin with hypos in the Appendix.) 2—*Tools* at one's fingertips in Step Two. Therefore, immediately frame out and begin loading toolboxes. In this regard, BETTER TO KNOW 8-10 PREMISES COLD, THAN 35 SORT OF.[18]

If you don't already have a CO for each course, get one! (Used, if possible. [Cheaper!])[19] Compare class notes (or someone else's), voluminous though they may be, to the CO to get a fix on black letter law one is likely to be responsible for on the exam. Frame out the course outline with categories in the CO, and/or, as suggested by notes and casebook. Once you have topic headings in place, start loading in tools. Again, take your lead from class notes. (As notes likely won't contain clear, complete statements of black letter law, take law itself from the CO [once class notes have directed you to it].) You needn't copy *all* law in a CO. Lift only what class notes and casebook indicate a professor is likely to be interested in. Add anything by way of policy, new developments, etc. indicated by notes. Compare your outline with those of classmates. (Anything more to add?)

3—You need as much specific information about the likely nature/content of a given professor's exam as possible. Even a day is enough time for research. In this regard, follow preceding advice respecting "Know Your Professor."

[Note. A key problem will likely be not having time to go back to cases to practice applying law to facts therein. (So as to become as familiar with law as one would like.) In other words, one will have many tools one doesn't know very well under various categories. Get hold of old exams. Practice Step Two with your new toolbox(es). This builds familiarity with categories, suggests new ones, indicates where

and what additional tools are needed. Pressed as one is for time, nevertheless—key!—take time to actually write out paragraphs of analysis for some of the premises identified. This builds skill at analysis, one's knowledge of at least those premises, and confidence responding. In addition, key cases to go back and work through may be suggested.]

Obviously, the more time before exams the better. However, *much can be accomplished in a week, even days*. (DON'T FORGET HOW WOEFULLY UNPREPARED MOST OF THE COMPETITION IS! Classmates are clueless respecting law as "tools;" how, systematically, to find issues [premises] in fact patterns [even what "issues" are!]; how to analyze and present concisely, etc. Moreover, YOU ARE BETTER THAN YOU WERE! [If the foregoing doesn't engender confidence, what will?]) Given one's (now) knowledgeable perspective on exams and what is important, give some thought to not preparing for or even attending certain classes as a means of gaining extra time. You can perhaps rely on a friend's notes.

"Open Book" versus "Closed Book" Exams

Pre computers, virtually all law school exams were *"closed book,"* meaning take nothing into the exam beyond pen, pencil, possibly a technical reference—e.g., IRS Code, Federal Rules of Evidence or Civil Procedure, the UCC. Perhaps at your school they still are. [Something to ascertain for each professor.] However, in order to make (essay) exams seem more fair, less intimidating (and to ward off complaints), *"open book"* exams seem more and more the norm. This generally means one can bring any reference materials one chooses into the exam room (short of a tutor). [No online sources, of course. Online information access will be blocked.]

Law students relax somewhat given the prospect of an open book exam. They are comforted by the notion of having everything—casebook, commercial outline, course outline, class notes, possibly a hornbook—with them in the exam (brought in in roller bags). *This is a mistake!* [Note. Bar exams are strictly closed book.]

OPEN BOOK/CLOSED BOOK IS A MEANINGLESS DISTINCTION FOR THE STUDENT AIMING TO DO WELL ON (LAW SCHOOL) EXAMS. Only students seeking merely to survive benefit from poking into a hornbook, re-reading a case, referring to class notes. Anyone wanting to excel can spare little more time researching than it takes to refer to the course outline! Thus, apart from necessary, permitted technical references (e.g., IRS Code), normally take only your course outline into an open book exam!

IF AN EXAM IS CLOSED BOOK, YOU'LL STILL HAVE YOUR COURSE OUTLINE! You won't take it into the exam tucked in clothing or hidden in an electronic device! (Never!)[20] Rather, as (typically) you enter the exam room, grab a sheet of scratch paper, or tear a sheet or two out of a bluebook. [Ascertain in advance whether scratch paper is available. Normally it is.] Taking *no more than 5-7 minutes,*[21] reproduce a skeletal version of your course outline.

This doesn't mean reproducing 35, even 5 pages. Rather, as noted, *all law needed should be in your head (!!)*. It is difficult, however, given the adrenalin pump and swirl in one's brain at the start of an exam to find/focus on precepts (premises) needed, *when* needed. You merely want *enough (hurriedly scratched) on paper to assist in getting at what is in your head in systematic, orderly fashion*. Therefore, knowing in advance (as you should) an exam is closed book, practice recreating (abbreviated) category headings and mnemonics. (The latter to aid in recalling law within each category. E.g., "BAID" for battery, assault, IIED, damages.)

[Note. Furious recreation of a *"skeletal course outline"* during opening minutes of an exam is a great way to dissipate nervous energy, calm down, (and intimidate all around you). Now you have a security blanket, something to cling to as you apply The Blender. *(Be sure not to spend more than a few minutes at this!)* Skeletal outlines correspond to "checklists" (of legal topics) CW often advises creating.]

"Take Home" Exams,[22] Memorization Technique, Etc.

"Take-home exam" refers to final exams in law school (only) in which more than 3-4 hours are allotted for taking the exam, and students are allowed to take the exam at home, at a local eatery, in the library, etc. Such exams are typically 8-24 hours in duration, but may be more or less.[23]

Similar to open-book exam format superseding closed-book, take-home exams reflect concern that time pressure of traditional exams imposes an unfair burden. They seem more often encountered in (so-called) upper-tier law schools.[24] Traditional 3-4 hour, (more) time-pressured exams (seemingly) continue

to predominate at mid and lower–tier law schools.

Students, of course, nonetheless experience significant anxiety and time pressure respecting take-home exams. Lest students produce 40, 50, 60-page, treatise-like efforts during eight or more hours, limits on the number of words (usually five type characters) and pages (250 words) that one can turn in are normally mandated. [Yet another variable to be investigated in preparing for exams.]

Respecting *memorization,* it obviously helps to have a good memory when preparing for exams. The interactive process described in this chapter for extracting legal tools from cases and mastering their use should aid greatly in imprinting law in memory. Such learning via use in context is "*associative learning*," and is thought to be most effective in promoting long term retention. (E.g., weeks, months, years from now, association with DH flashing Mrs. Nicely may bring back content of IIED.) Merely reviewing a list of principles over and over is "*rote memorization.*" (E.g., using flashcards.) It may be effective for short term retention, but never mastery.

Another useful technique is to place law in a larger context. At the beginning of term (or now, as it is never too late to start doing things the right way) consider chapter and subchapter headings covered in the casebook. Think about the big picture. What is the common denominator of legal content of the course that distinguishes it from other courses? For example, tort law regulates *personally* injurious behavior between people, while contract law regulates *commercial* behavior. Why are a particular set of principles grouped together?[25] For example, why might a professor assign Sections 2 and 9 of the UCC in conjunction, rather than 2 and 4, or 8 and 9? Once posed, such questions and their answers provide perspective as term progresses and one explores cases.

Example/Approach to a Problematic Hypo Q/I

One of the more confusing instructions encountered on a law school exam (never on the bar) is of the order, "*Draft legislation* to resolve issues in the foregoing facts." What to do? [As always—discipline!—, do not attempt to address/answer Q/I's in the form encountered! You'll just get confused.]

"Issues in the foregoing facts" indicates one or more conflicts [Yes?], creating competing parties and objectives. [Legal problem solving *always* implies conflict!] "Legislation" one is to "draft" will be law relating to resolution of such conflict. Such law presumably does not at present exist. [The professor is testing ability to *think!* In this instance about creating a sensible precept that resolves (the conflict[s]).]

[Note. Legislation normally doesn't appear magically out of thin air. It derives from need (conflict[s], objectives of parties?!), and often derives from existing law, legislation, etc. that doesn't adequately address the problem. Does a plan going forward to address this cryptic instruction suggest itself?]

The solution, of course—*always!*—is (simply!) apply The Blender! [*Always* apply The Blender! It is one's go-to security blanket! It must become *how one rolls* respecting essay exercises.] The "legislation" the professor wants "drafted" will likely be but a variation on existing law that approximates (but doesn't quite fit) what is needed. "Foregoing facts" should suggest (in Step Two) a premise—rule, statute, policy ground, etc.—(perhaps more than one) that is *colorable* in terms of achieving movant party objective(s). Respecting given facts, this law doesn't adequately "resolve issues." However, if tinkered with, modified (so as to be fair, just, logical)—a thoughtful hammering out, appropriately addressing the situation given "foregoing facts" [*Thinking!*]—, one should arrive at ("draft") "legislation" (i.e., variation on existing law) the professor seeks.

You answer/address the professor's Q/I. However, always *on your terms!* (Via trusting, *always* applying The Blender.)

[Note. The professor here indeed *probably* wants to see policy thinking. Apart from what might naturally arise in the course of critiquing/modifying existing law, this seems an appropriate instance for adding the follow-up paragraph, "Policy considerations:"]

This concludes instruction on how to address, handle, and—day-by-day, week-by-week (or within days, if need be!)—prepare for *any* and *all* hypothetical-type law essay exams and exercises. A brief (3-page) section on multiple choice and other non-essay ("objective") exam exercise formats follows, and thereafter the Appendix.

Doubtless, at this juncture much advice seems blurred, disjointed, confusing. Understandable! Focus efforts at this point on practicing (the various facets of LEEWS). Bear in mind the key concept—*premise*. (Find premises! Analyze premises in con-

cise paragraphs!) Return to portions of text as needed for clarification. There is a fully integrated, proven effective approach, a true science herein. With practice (!!), and in less time than one may imagine, the many facets will fall into place.

SECTION TWO, CHAPTER 14 FOOTNOTES

[1] Preparation technique and strategy for the bar exam was offered in Section One. Much contained here will benefit the prospective bar examinee.

[2] **"Burglary" (as exemplar of the [extreme] nuancing of legal definitions):** Per *Wikipedia,* "common law burglary was defined (by Sir Matthew Hale) as 'the [1] breaking and [2] entering [3] of the house [4] of another [5] in the night time, with [6] intent to [7] commit a felony, [8] whether the felony be committed or not.' '*Breaking'* can be either actual, such as by forcing open a door, or constructive, such as by fraud or threats. Breaking does not require that anything be 'broken' in terms of physical damage occurring. A person who has permission to enter part of a house, but not another part, commits a breaking and entering when they use any means to enter a room where they are not permitted, so long as the room was not open to enter. *'Entering*' can involve either physical entry by a person, or the insertion of an instrument to remove property. Insertion of a tool to gain entry may not constitute entering by itself. Breaking without entry or entry without breaking is not sufficient for common law burglary."

Should the foregoing seem insufficiently precise, nuancing continues. To wit… "Although rarely listed as an element, the common law required that 'entry' occur as a consequence of the breaking. For example, if a wrongdoer partially opens a window with a pry bar—but then notices an open door, which he uses to enter the dwelling, there is no burglary under common law. The use of the pry bar would not constitute an entry even if a portion of the pry bar 'entered' the residence. Under the instrumentality rule the use of an instrument to effect a breaking would not constitute an entry. However, if any part of the perpetrator's body entered the residence in an attempt to gain entry, the instrumentality rule did not apply. Thus, if the perpetrator uses the pry bar to pry open the window the instrumentality rule did not apply. Thus, if the perpetrator uses the pry bar to pry open window and then used his hands to lift the partially opened window, an 'entry' would have taken place when he grasped the bottom of the window with his hands."

Further, there is definition of *"house"*—"includes a temporarily unoccupied dwelling, but not a building used only occasionally as a habitation," and *"night time,"*—defined as "hours between half an hour after sunset and half an hour before sunrise." And further, "Typically this [night time] element is expressed as the intent to commit a felony 'therein'. The use of the word 'therein' adds nothing and certainly does not limit the scope of burglary to those wrongdoers who break and enter a dwelling intending to commit a felony on the premises. The *situs* of the felony does not matter, and burglary occurs if the wrongdoer intended to commit a felony at the time he broke and entered."

[Indeed—whew! Note. Only use/application of the (burglary) "tool" (i.e., LEEWS premise!) enables one to set forth merely the opening definition, and then be ready to skillfully apply the tool to new facts.]

[3] **How to *really* know what a chisel or law is.** When the chisel analogy is made in live programs, your author inquires, "Who doesn't know what a chisel is?" (It may be noted that as decades passed, more and more hands raised.) I would ask, "Do you know what a screwdriver is?" (Adding [ho, ho, ho!],"not a drink!") "Yes," all knew what screwdrivers are. I'd say, "I can describe a chisel… It's similar to a screwdriver—handle, shaft, blade. But the blade of a chisel is normally wider, sharp! It's made to cut and shave wood." And they'd get it… I'd add, "Similarly, I can describe a legal tool, define it. You begin to understand it… But wouldn't you understand it *so much better* [motioning as if chisel in one hand, block of wood in the other], if you took the legal tool in hand and actually used it, applied it to facts?... Same as the carpenter, you'd get an intimate feel for it."

YOU MUST GET IN THE HABIT OF TAKING LEGAL TOOLS—PREMISES—IN HAND AND USING THEM, TRYING THEM OUT ON FACTS. In that way you become familiar with law, skilled at applying it, and (associatively!) you remember it.

[4] **Conventional case brief (CB).** CBs were instructed when your author started law school [Yale, fall 1969] and long before. Doubtless, you'll be taught to do CBs. [Little changes in the law school firmament. Computers and multiple choice questions on exams are the big changes in the last 40 years.] The only variation in CBs your author is aware of (apart from "procedure" or no) is an instruction by some "experts" to start off immediately with the supposed "short cut" and expedient of "book briefs." (Which most students start doing anyway mere weeks into first term.) See discussion of both (ineffective) options in main text.

[5] **Which commercial outline (CO)?** Students ask which CO I recommend. I offer no firm opinion in this regard. Once the concept of premise is grasped, which CO sets forth law completely, comprehensibly, in a way that appeals? [Note. COs CANNOT SUBSTITUTE FOR CASES AND CLASS. They may or may not offer fact patterns for practice in applying law. They normally don't offer policy aspects, recent developments, other insights that may be provided by a professor.] Try to purchase *used* outlines. (Locate the used book exchange at your school or bookstore.) Purchase used casebooks. (Sell casebooks purchased new as soon as you are finished with them. [I.e., before the next edition comes out.] You won't use them for the bar or in law practice.)

[6] **Bicycle offered for $75.** In facile fashion, the "B" student refers to UAS, recites the [offers lapse] rule, concludes, "As two weeks was held reasonable in [UAS], two days here should be reasonable. Judgment for buyer." The "A" student states the rule to begin a paragraph (case needn't be cited), perhaps explores the concept of *reasonableness* (to establish context), distinguishes UAS and two weeks from the much simpler situation of used bicycle, and likely concludes, *"Probably* [hedging!] judgment for seller." Both identify the issue, both know the law. However, only one focuses on the Lawyering Game—analysis (vs. reaching a [facile] conclusion). "A" students impress with nitpicking, adversary thinking, and intimate knowledge of law. (Gained via practice applying "tools.") Their response brings a smile to a professor's face. A lawyer going about her craft is perceived.

[7] **"Hornbooks"** are treatises (formal, systematic studies) on an area of law—e.g., *Williston, Farnsworth (Perelli?) on Contracts, Prosser on Torts, Wigmore, Weinstein on Evidence*. They trace historical evolution of certain concepts in the subject area. They review seminal cases, follow changes in the law, explore minority/majority views, offer the author's and others' learned opinions on how the law should be interpreted. Hornbooks tend to be easy reading compared with cases. (Up to 3/4 of a page is often footnotes one can ignore.) Generally, one needn't take notes. Merely read to enhance comprehension of difficult concepts. (E.g., parol evidence rule, rule against perpetuities.) Hornbooks should be a regular adjunct to preparation. However, one needn't buy them. Use library copies.

"Restatements" (of contracts, of torts, etc.) are a reference tool less often used. They are sets of volumes in certain areas of law in which groups of lawyers and legal scholars interpret, categorize, otherwise seek to make sense of so-called "common" or case law, also developments in statutory law. Legal precepts felt to need revision are addressed. Problems with existing law are illustrated via hypotheticals. Recommendations for change are made. The Uniform Commercial Code (UCC), for example, grew out of a restatement of common law of contracts effort in the early 1960's. Restatements can be helpful in prompting thinking about policy aspects of legal constructs. As with hornbooks, one need take few notes. Read to stimulate thinking and enhance understanding.

[8] This is certainly true of major (so-called "top tier") law schools and schools seeking to be "major." It is scholarly articles and textbooks authored by faculty (academic reputation), not faculty teaching prowess that brings repute to law schools.

[9] It may be, however, that with proper preparation—having black letter rules clearly in mind, having practiced with them going into class (creating your own what-ifs)—the professor who seemed confusing, etc., will now make more sense (!!).

[10] Check from time to time with someone who attends class to see if anything new has come up. (E.g., advice concerning the exam.) Perhaps you alternate attending class.

[11] **More on what (in fewer notes) you want to take away from class.** The advice offered (revolutionary 2-4 line LEEWS case briefing instruction in particular) makes clear that proper preparation *before class* is key in taking fewer notes. Having done what is needed to execute 2-4 line case briefs, ONE'S THOUGHT GOING INTO CLASS SHOULD BE, "IS THERE ANYTHING NEW?!" Did you miss or misinterpret parts of the law? Does a classmate's question prompt a new take on law and/or its use? (If so, note, perhaps simply digest the import of the question.) Does the professor have a different, unique take on a rule or part thereof? (Does she disagree with the law or parts thereof, and/or underpinning rationale [policy background]?) If so, take notes. On the exam you'll likely want to contrast results applying conventional application of law versus results applying the professor's [more enlightened, of course! Even brilliant?!] take.) [STROKE the PROFESSOR!] Is reference made to a law review article or other source that one should follow up on? Mostly, however, as described, listen, nod, confirm understanding, reinforce grasp of law likely relevant on the exam and how to apply it (to new facts). Such posture coming to and during class should result in far fewer notes. (1/2 to one page of notes per class hour!)

[12] **Construct your own course outline!** Advice offered, for example, in Scott Turow's book describing his (successful) first term at Harvard Law—*One L*—, that members of a study group assign each to do the outline in one subject for all members, has appeal. Such outlines would indeed likely be polished. However, to know where premises are located, to build organically and weekly, you must construct each outline yourself! That said, comparing outlines at term's end for additions, new ideas would surely be useful.

[13] **Failure of case method instruction.** As evidenced by exam responses, case method (plus Socratic teaching) fails abysmally in transitioning academic thinkers/learners (most 1Ls) to something approaching a practical, legal problem-solving lawyer on time-pressured essay exams. Failure of law schools to inculcate practical lawyering skills is recognized in the profession, and more and more in law schools. (Hence, interest in and offering of more clinical and work study programs.) However, absent a prove,n worthy successor, given the circumstance that case method arguably succeeds for a few [If 35-40 points out of 100 may be viewed as succeeding], the widespread, specious notion that only a few have "The Right Stuff" persists. This notion buttresses a continued forced march of the vast majority of law students through three and more years of confusion and discouragement (and boredom!).

[14] **Template of trunk, branch, sub-branch in constructing categories.** (Also as aid in grouping/finding law, and understanding and recalling law.) Category headings, of course, should be a guide to legal precepts that "hang together." (E.g., "Intentional torts.") Such headings may be thought of as baseline, defining constructs or themes. They may be thought of as "*trunks*," as in trunk of a tree. Trunk headings in a constitutional law course outline would (naturally) be "First Amendment," "Commerce Clause," "Due Process," etc. Legal precepts *within* trunk categories may be thought of as "*branches off the trunk*." Organized beneath and as part of those branches will likely be *"sub-branch"* precepts. Thus, in a criminal law outline under category/trunk, "Fourth Amendment," would be placed the definition thereof (from the Constitution), then a litany of branch sub-headings—legal precepts—derived from cases, etc., all interpretive of the broad Fourth Amendment. (E.g., Peyton Rule respecting "lawful entry." See Appendix, p. 161.) Thereunder also would be Miranda's requirements (and sub-branches relating thereto), the Exclusionary Rule and its many sub-branch aspects (including "good faith exception"), Chimel Doctrine etc.

One must seek to understand law not in isolation, but in its larger context of originating trunk precept(s), and related branches, sub-branches. Such context of related law aids immeasurably not only in understanding law, but remembering it. Understanding whence/why law—derivation from trunk to branch to sub-branch—also enhances thinking respecting what law could or should be—policy aspects. Respecting recall, if one knows roughly where in a truck-branch-sub-branch continuum relevant law falls, and one knows what comes before and after in that continuum, one likely will recall a rule temporarily forgotten. If called upon, say, to "draft legislation" (Omg!), and one knows law that somewhat relates to facts at issue, but not precisely—rule, statute, branch, sub-branch—, one is in good position to craft law that fairly, equitably, appropriately resolves the conflict. (I.e., "draft legislation.") (See segment of this chapter just before footnotes!)

[15] **Core (kernel) premise vs. corollary aspects.** Note that although over seven lines on page 135 are devoted to explication of IIED, the basic black letter definition of the tort is contained in the *first two lines*. All else is corollary to this kernel concept—definitions, tests, explanations, etc. (Sub and sub-sub-elements!) It is important when attempting to pull the law from cases and commercial outlines to distinguish between kernel legal precept and that part of opinion, discussion, etc. that introduces aspects corollary/explanatory to that kernel and parts (elements) thereof. Here again, if clarity and retention respecting elements vs. sub-elements vs. sub-sub-elements is to be achieved, practice in applying the law to facts (use of the tool!) is essential.

[16] **First term postponement of looking at old exams.** Viewing old exams without much more plan of appraoch than "spot issues" intimidates most in first term (and beyond). Perhaps for this reason, many seem consciously or unconsciously to postpone thinking about, much less preparing for final exams until late in term. This includes—first term only!—constructing course outlines. Professors, likely embarrassed (if only subconsciously) by disconnect between class and exams, abet such delay by cautioning students "[not to] worry about exams." Also, "it's too soon to begin [course] outlines." Once LEEWS is grasped (even Step One), there is no reason to postpone looking at old exams.

[17] **"It will all come clear."** Unspoken behind such remarks is the thought, "assuming you have The Right Stuff." In other words, if you are one of the (assumed very rare) few with "innate genius for the law," "natural aptitude [for the law]," then, yes, things will come together, come clear at some point. However, if not—if you are part of the great majority lacking such aptitude (even at Harvard, Yale, Stanford!)—then (also unspoken) "There is really nothing I can do for you!" [However, you *will* pass! You *will* become a (mere) lawyer!] All of which is self-serving nonsense (!!). It is an excuse for failure to instruct insights and skills necessary to function (on exams) as at least a facsimile of competent, practicing attorney. As noted, even the very few who earn solid A's generally score far below a level of competence—35-45 points out of 100!—that would be acceptable in any other professional school (!!).

[18] **Better to know 8-10 premises cold, than 35 sort of.** In order to apply law to facts in analysis, one must be able to present a black letter tool precisely—I.e., clearly defined elements (if need be, sub-elements). If such is not yet grasped, it will be as soon as (essential!) practice paragraphs of analysis are attempted. If rules/statutes are not set forth with precision (clear elements), analysis rambles and ultimately falters. Checkmarks for identifying issues will be had. (Good!) However, analysis cannot impress.

[19] Re-read fn. 5 herein respecting ***which* CO?**

[20] **No cheating! Ever!** It is hoped such advice is wholly unnecessary. It is important to understand that along with significant power lawyers wield over others' lives and trust reposed in an "officer of the court" (e.g., in the form of client funds held in escrow accounts), comes being held to a high standard of probity. After the bar exam is passed, one must be approved by a state bar "committee on fitness and character." They will require references from all employers back to high school (!!). One cannot have an unpaid parking ticket! There cannot be a whiff of untoward conduct in law school. Don't even *think* of cheating! And no need!

[21] Any longer, one begins to put too much time pressure on oneself.

[22] **Take-home exams.** To avoid complaints (or because they recognize unfairness inherent in time-pressured exams), some professors give "take-home" exams. At some (so-called) top tier schools, most first term exams may be take-home. These can be 6-8 hours, 24 hours, or longer. The idea, however, is never to enable production of a lengthy thesis. Invariably, word/page limits will be imposed on the length of response. As ever, beyond knowledge of law, the professor wants to see lawyerly thinking. <u>Proceed as one would in a normal exam</u>—Blender, etc. You simply have more time. One loses a bit of the edge one has in a time-pressured exam. However, analytic skill can be better displayed. A well-constructed toolbox remains key.

[23] A two-week, torts take-home exam (given by a professor at U. Iowa Law) was brought to your author's attention years ago!

[24] 8-24 hour take-home exams seem the norm for first-term Harvard 1Ls. Ditto, for example, Duke 1Ls (as least in a recent year according to Duke 1Ls in a live Durham program). Policy/practice at your law school is easily ascertained.

[25] E.g., intentional vs. unintentional torts vs. torts against property, crimes against persons vs. crimes against property.