Preparing for Contracts: Notetaking & Outlining

Please Read This Document Carefully

I. The Bar Passage Crisis

You may have heard that bar exam scores were alarmingly low the past couple of years. There has been much discussion of what is responsible for this widespread dip in bar passage rates. One theory that has been advanced is that students across the board have not developed the skills they need for "self-regulated" learning.

Below is an excerpt from a very compelling article discussing concept of self-regulated learning:

> Bar examination pass rates are plummeting. Many laws schools are searching urgently for some way to stem the tide of decline. Silver bullet cure-alls are attractive, all too often adopted, and almost never fruitful. So what should schools do? Should a school teach to the test? Induce less proficient students into not taking the bar exam? Reteach doctrine in a bar prep course? Begin bar prep in 1L year? Spoon-feed black letter law? Require faculty to use only multiple-choice questions in exams? Only essay questions? The answer to all these questions is "no," but the questions themselves miss the point—like asking a Mergers & Acquisitions lawyer whether her achievements were due to taking more depos.
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> The right questions do not focus on what *we* can do to change results but on what *students* can do for themselves. Although scholars have rightly focused on how to change curricula and pedagogy to meet the current crisis, there is far less research on changing what *students* do instead of what law schools do. My claim in this Essay is that proposals to change law schools, while certainly significant, tend to overlook the important fact that most students learn and study wrong; fixing that ailment is where the academy should focus its attention. …
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> To be fair, this problem is not just a law school problem. Since high school, students have been sold a false bill of goods: Diligent students supposedly read ahead and highlight furiously; good students allegedly acquire an outline and reread it over and over; top-achieving students purportedly game their professors by sticking solely to the study methods handed down by lore and anecdote; "studying" is the epicenter of grades.
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> Rowing against that tide is daunting. Convincing students of the efficacy of unorthodox methods faces the strong undercurrent of asking students to act differently than their peers and even run afoul of some professors' advice. But empirical studies demonstrate that the orthodox methods defy everything we know from science about how the brain acquires knowledge and develops analytical skills. Rereading is one of the worst ways to encode memory, yet tradition dictates that students study for exams and the bar by reading outlines endlessly. Following another person's dictates on learning outsources the regulation of that learning and kills the crucial skill of metacognition, yet students blindly follow syllabi and bar prep courses' one-size-fits-all programs. Relying solely on lectures prevents students from building their own cognitive schema, yet students spend weeks having their minds wired

> externally. Failing to leverage spaced repetition and forced recall practice makes learning far less effective and efficient, yet many students do not start testing themselves, if at all, until just days before finals or the bar exam. But, there are tools to correct all of this.
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> The problem is that these tools feel counterintuitive, and they are outside the norm of law student study methods. That is where the opportunity for reform comes in. Instead of controlling students' behavior by requiring more bar prep courses, teaching to the test, or artificially altering summative assessment methods, schools should work to rewire students' understanding of how learning works. Just as we rewire students' brains to think like a lawyer's, so too should we rewire their brains to be more absorbent. (Excerpt from *Using Science to Build Better Learners*).

You *must* read this article prior to the first day of school. Last year, students found it to be an illuminating read (not in a good way!).

Really, there are three "pieces" to academic success in law school. If you are missing one of the pieces, you will not be successful. Here are those pieces:

INPUTS	STUDYING	EXAM TAKING
(notes, outlines)	(memorization, practice)	(how to tackle exam questions)

If you have the wrong "inputs" (i.e. you are studying incorrect law, you have misunderstood the rules, you are missing pieces of the rule, etc.), you simply cannot do well in law school. There is an expression in the field of computer science that you may be familiar with: GIGO (Garbage In, Garbage Out). If your inputs are "garbage" then your results will be "garbage." At this point, it is a little early to be talking about the studying process or exam/test-taking, so I will save that for later. Instead, I will focus on inputs.

In law school, the primary tool that students use to study from is their "outline." The outline is a compilation of everything they have learned for a particular subject. It contains the rules, examples, cases, etc. It should literally be the only thing that a student needs in order to study. Many students fail to see how important outlining is. Accordingly, they use other students' outlines from years past, they download a commercial outline, they do their own haphazard outline, or they cobble together an outline at the last minute. These are recipes for failure. Doing your own outline, where you capture everything of importance in the course, is the key to success in law school and long-term learning.

In order to be effective, and to conquer the "forgetting curve" (see article!!), you must outline shortly after each class. If you wait too long to outline, your memory of the material will simply vanish. To demonstrate my point, answer this question: Do you remember everything you did last Monday? Probably not in a lot of detail. The problem, sometimes, is that outlining falls by the wayside because you have so many other things to do in law school. If you commit to outlining on a regular basis (after each class!), and commit to outlining *correctly*, you will see your efforts pay off. Because of the "forgetting curve," I highly recommend that you outline on the *day of class*. Ideally, you will want to outline and review the material right after class if your schedule allows. This will enable you to figure out what you know and don't know and get help with respect to the latter *while it is still fresh in everyone's mind*.

II. OUTLINING

The outline that *I* think you should create may or may not coincide with *your* notion of an outline. What *I* mean by "outline" is an organized document that contains ALL the information we have learned about contracts and that is a self-contained, comprehensive study tool. Someone who is unfamiliar with the subject matter should be able to pick up your outline and be able to understand legal rules/doctrine from it without resort to extraneous material.

I want to suggest that you view the process of outlining as a *means in and of itself* – not simply as a means to an end. What do I mean by this? Being able to outline is really just another way of saying that you are able to conceptualize/organize a vast amount of information in a clear and cohesive manner. *Every single aspect of law practice involves this skill.* Consider the following:

- If you are a trial attorney, you need to present logical, easy-to-follow, opening and closing arguments for the judge/jury. You also need to conduct direct or cross-examination in a way that the trier of fact will be able to understand. You can't randomly jump from one topic to the next.

- If you are a corporate attorney, drafting contracts, the contracts need to be precise, comprehensive, and logical. You can't randomly throw in a severability clause into the middle of a document.

- If you are preparing a will, you need to think through exactly how the estate will be distributed – e.g. specific gifts first, then estate division (with survivorship provisions), then residue.

I cannot overstate how important macro-conceptualization and organization is to being a lawyer. It is the basis for all of law practice.

The outlining process is intended to be more than simply a way to obtain a study tool so that you learn Contracts. Obviously, I want you to learn Contracts, and an outline is a way to accomplish that. However, I am equally trying to teach you something bigger than Contracts, a skill that will be transferrable to everything you do. This is perhaps more important to me (or at least equally important) to teaching you the doctrinal material.

What the Outline Should Contain

- Fulsome, narrative descriptions of all the legal rules and doctrines we cover. There should be no "short-hand."
- Examples from class and/or other examples. You should have examples for every concept we cover (sometimes multiple examples).
- Cases. Briefs should be done *after* class, not before. Do not include briefs with irrelevant information we did not cover.
- *Everything* of significance we discuss in class (e.g. policy, arguments, counter-arguments, student questions, hypotheticals, etc.)
- Everything you need to study – i.e., there is only one outline (this one)
- Tips, suggestions and traps – often I will say in class "look out for X". This needs to be in your outline.

What the Outline Should Not Contain

- Things we did not cover
- Extra material from outside sources (though you may use outside sources in order to better understand the material)
- Irrelevant material from the cases

What an outline should enable you to do is to conceptually organize a large amount of information in a way that is understandable to an outside reader and easy to follow. Please note that organizing does *not* mean simply putting headings on things and numbering or bulleting them. Organizing means that you have thought about the materials and that you have put them together in a way that is logical, comprehensive, and is easy to follow. It is like taking all the puzzle pieces and putting them together in your own way.

In organizing your outline, you may find the following "rules" helpful:

- Start new topics on new pages
- Include appropriate amounts of white space
- Do not over-use bullets
- Do not over-use numbers, letters, etc. (if you have things like "section A)1)a)(iii)" you're doing it wrong)
- Do not use any sort of automated template
- There is no need to get overly fancy with colors, effects, etc. If you choose to do this, do it sparingly and consistently
- Be consistent with spacing, formatting, and especially abbreviations
- Choose an attractive and appropriate font (my personal favorite is Garamond).[1]

I want to be explicit about why I am recommending certain things in outlining. I am recommending them because they reflect basic organizational principles, take advantage of visual memory, and prepare your "future self" for the exam. For instance:

[1] Garamond is considered one of the most classic and readable fonts. *See* https://designforhackers.com /blog/garamond/("Amongst designers – especially print designers – Garamond is considered one of the best fonts in existence. It's timeless, and very readable."). It has been reported that if the U.S. Government switched over the Garamond, it would save hundreds of millions a year. *See* https://www.theatlantic.com/national/archive/2014/03/14-year-old-figures-out-that-bad-fonts-cost-the-government-hundreds-of-millions-of-dollars/359842/. Note that Times New Roman has recently been dubbed the "sweatpants of fonts." *See* https://www.huffpost.com/entry/times-new-roman-resume-best-worst-fonts_n_7167390 (using Times New Roman in a resume "is akin to putting on sweatpants" for an interview). For some other font options, see https://www.businessnewsdaily.com/5331-best-resume-fonts.html. As you can see, I am serious about my fonts!

- A basic organizational principle is that you put "like" things together. So, for example, if you are organizing your closet, you might do it in a variety of ways: by color; by item; by how often you wear stuff; by season; etc. You may even have organization within organization (e.g. organize by season and color). The same principles are true here – you need to figure out what is "like" and put it together. This will enable your brain to process all the relevant information for that topic, without having it be disjointed and popping up all over the outline.

- I recommend that you write out full narrative descriptions of the rule. If you don't, when it comes time to study, you will not remember what the actual rule is in some instances. Best case scenario, you go back and look it up (which wastes time); worst case scenario, you get it wrong. In either event, save yourself the trouble and write out full rules/examples to prepare your "future" self for studying.

- You should start new topics on new pages so you don't inadvertently blur doctrines together. You would be surprised, but seeing a heading at the top of a page reorients your brain to the new topic and separates it from the prior one.

III. NOTE TAKING

- Your outline is only as good as your notetaking. The goal of your note-taking should be to take down everything we talk about in class. This includes class discussion, examples, questions that students ask, incorrect answers with explanations as to why they are incorrect, discussions of policy, etc.
- You should be taking notes in a new document every class.
- While note-taking, you are not:
  - Toggling between different documents. Use one document.
  - Trying to organize. Organization comes later. It is impossible to organize your notes and listen/take notes in class.
  - Adding notes to your outline. You outline *after* class.

IV. SOME COUNTER-INTUITIVE ADVICE: HERESY FOR A LAW PROFESSOR TO SAY

1. *Individual Classes Are Not Important, The Exam Is*

No matter how many times I say this, students either don't believe me or don't listen to me: your focus should be on preparing for the final exam, not on preparing for individual classes. Too many students get underwater because they spend so much time focused on preparing for a certain day's class. They are scared they are going to get called on and embarrass themselves. This fear leads them to over-prepare for the class, and under-prepare for the exam (because there is no time left over). You must shift your mindset. Proportionally, you should spend far more time *after class* working with the material than *in class*.

For instance, see the numbers below for illustration:

Reading (2 hours)	Class Time (1.25 hours)	Outlining (3 hours) [this time doesn't include studying]

The reading is just intended to get you prepared for class, so that you can understand what is going on. The post-class time is meant to capitalize on all the work you've done in reading and taking notes in class, and memorialize it in an organized, easy-to-understand manner.

2. *Do Not Do Case Briefs Before Class*

I beg of you, don't! Even though every professor will tell you to. You can certainly take some notes on the cases, underline/highlight the book, write down the rule, etc. However, I do not think you should be doing a full case brief before class. Why? Several reasons.

a) First, it will be wrong, or largely wrong. No 1L law student will get the right take-away from a case entirely on his or her own.

b) Second, because of the time you invested in your case brief, you will feel committed to it, even though it is wrong or doesn't contain the full analysis that the professor wants you to get out of the case. This means that you will insert your inaccurate/incomplete case brief verbatim into your outline, rather than feel like you wasted all that time.

c) Law school exams don't reward case briefing. You are not going to be asked to case brief on an exam. You will be asked to apply black-letter law to a given fact pattern. A traditional case brief does not even remotely help with that exercise.

3. *Cases (at least in Contracts) Are Not Gospel*

You are led to believe that cases are the be-all-and-end-all of law school. They are not. In most courses, cases are a vehicle for teaching you the law. They explain the law and they apply that law to the facts of that particular case. There are hundreds of cases that the authors of the case book could have chosen to illustrate offer and acceptance. There is nothing magical about, say, *Normile v. Miller* or *Petterson v. Pattburg*.

This leads to my next observations:

a) You can—and should—critique cases. Judges don't always properly articulate or apply the law (gasp!)

b) In your outlines, you should treat each case as a mini-hypo. Given the facts of this case, how would you apply the law we have learned? That is how you use cases.