

# 30+ YRS—PROVEN SCIENCE OF PREPARING FOR/WRITING THE “A” LAW ESSAY EXAM

(Accomplishes [where law school does not!] the critical transition from academic thinker/learner to [reasonable facsimile of] practicing lawyer thinker/learner.)

*There is a system for handling the law school essay exam well. It's the single most important key to law school success. Its creator is Wentworth Miller, founder of "LEEWS."* —PLANET LAW SCHOOL

*It's not often that advice is easy—especially advice on a subject as endlessly distressing as law exams. Here it is easy. (The advice anyway.) The answer? In a word—LEEWS.*

— LAW SCHOOL: GETTING IN, GETTING GOOD, GETTING THE GOLD

# LEEWS

(Law Essay Exam Writing/Preparation Science/System)

# PRIMER

(Tenth Edition)

## Features:

- The best instruction (by far!) on how to perform the balanced, nitpicking (“lawyerlike”) analysis that impresses and earns A’s;
- Three unique (revolutionary!), proven-effective (30+ years!) systems:
  - 1) Issue Identification: Disciplined, 3-step approach to breaking *any* “hypothetical” down into manageable components that reveal issues—all of them—, law school or bar. (No more haphazard “spotting!”)
  - 2) Analysis/Presentation: Innovative format instructs both analysis and concise presentation (roughly one paragraph per issue). Makes a “poor writer” good enough, a “good writer” much better.
  - 3) Effective! (exam, not class-focused) Preparation: Day-to-day, week-to-week (2-4 line!) case briefing and (30-50 page!) course outlining pointing to all-important final exams enables implementation of issue identification system.

## Plus:

- ABC’s of effective study strategy, environmental/emotional/physical preparation for any bar exam
- Eight practice essay exercises with model (step-by-step) LEEWS planning/issue identification approach and paragraphed responses (roughly one per “premise”/issue)
- And much, much more—a proven effective (30+ years!), comprehensive, true science of law exam writing and preparation that goes far beyond “IRAC” and standard advice.

LEEWS.COM

by

Wentworth Miller



"If 100 points are possible on my [final] exam, I expect scores in the range of 25 to 35."

— University of Georgia law professor to first year torts class, circa 2006.

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*“You don’t have to write a great exam to get a rare law school A. [Or be a “genius of the law,” or even be one of the smartest, hardest working students in the class.] The hypothetical-type, law essay exercise is so confusing and intimidating... Most exam responses are so mediocre, even at Yale, Harvard, Stanford, that a reasonably ‘lawyerlike’ effort will impress and compete for an A.”*

—Wentworth Miller, LEEWS founder/instructor

LEEWS Primer 1

## Preface to Tenth Edition

LEEWS (Wentworth Miller’s Law Essay Exam Writing System) was founded over three decades ago.<sup>1</sup> Well over 100,000 law students representing all (200+) American law schools and many law schools abroad have been instructed. Many “LEEWS grads” are law professors, as well as lawyers and judges. Your author—Wentworth Miller, LEEWS founder/instructor—has to smile when someone asks whether LEEWS works. In particular, why LEEWS is so much more effective than all other law study aids, including advice offered by law schools and law professors.

The reasons are several, but one in particular. Successfully addressing the “hypothetical-type” essay exam format featured on state bar exams and in all law schools, especially first-year survey courses,<sup>2</sup> requires—this should be no surprise—approaching the exercise with a mindset approximating that of a practicing lawyer. American law schools, including Yale, Harvard, Stanford—all of them!—, fail for the most part to effectively transition academic thinkers/learners (virtually all entering law students—“1Ls”) to anything approaching the mindset of a practicing lawyer. Not even close.<sup>3</sup>

LEEWS alone focuses on and accomplishes this critical, elusive transition. In addition, LEEWS instructs unique, innovative, proven effective systems for addressing an exercise that typically confuses and intimidates the smartest, most diligent academic thinker/learner. This Primer contains this proven effective (30+ years!) instruction.<sup>4</sup>

Exam skills needed for a chance at rare law school A’s, in particular ability to “analyze as a lawyer,” are very different from what brought success in college and elsewhere. Writing ability, college GPA, LSAT score are largely irrelevant in predicting who does well on law essay exams (and therefore succeeds in law school). As almost all law students lack one or more necessary skills, and LEEWS imparts these skills so well (adding important new insights), it is inevitable that LEEWS grads compete for the highest grades. As is said in the law, “res ipsa loquitur”—the thing speaks for itself. The question after these many,

many years is not whether LEEWS works, only how well LEEWS is grasped and implemented.

Here is welcome news indeed. As indicated in the quote of a University of Georgia law professor above the Table of Contents, the bar in terms of performance expected on law school exams is extremely low. (35-45 points out of a possible 100 competes for an A!) One who has properly grasped and implemented what is contained herein should easily exceed that bar.<sup>5</sup>

Although an honors graduate of Yale College, my own efforts at addressing law essay exams at Yale Law School (YLS) in January 1970, doubtless similar to those of classmates (most of whom had a lower LSAT score,<sup>6</sup> nine of whom clerked on the United States Supreme Court [!!], one of whom is Hillary Clinton!), were decidedly lackluster. Laughable actually in retrospect. Whatever strategy/intentions I had going into exams (based largely on diligent preparation in the vein that had brought me success in college) quickly gave way to fevered, haphazard, rambling response. I floundered badly. Page after page was filled with irrelevant, quasi legal discourse. [Exams then were written in “bluebooks.” Computers did not exist.] “Issues” (whatever that meant) were missed altogether or addressed superficially. “Analysis” lacked rigor and focus. Response was academic—loose, opinionated thought, hit-and-miss regurgitation of memorized legal precepts. It bore scant resemblance to what a minimally competent practicing lawyer might produce.

However, as is true for most law students, I did enough to get by. As is also true for the great majority of law students (typically 85 percent and more, despite significant grade inflation since 2000), no matter the lower bar of expectation and performance than might have been supposed, I did not come close to producing an “A” effort.<sup>7</sup>

A smart, experienced lawyer would have significant difficulty translating the swirl of knowledge law students bring into exams into a concise, organized,

“lawyerlike” presentation within typically severe time constraints. Never mind academically-oriented law students. LEEWS corrects and takes advantage of this situation. Simply put, LEEWS produces a reasonable facsimile of practicing attorney (in mindset), armed with disciplined, proven effective approaches to pulling apart and handling confusing essays under severe time pressure. LEEWS instructs the only true science of preparing for/taking law essay exams ever devised!

The student who comes off the exam page “as a lawyer” enjoys a significant advantage. She will compete for a top grade, and rather easily.

*The Law Essay Exam Writing System Primer (Primer)* presents in chief a unique, comprehensive, true science of preparing for, taking, exhibiting mastery of *any* essay exam exercise in *any* subject. What is envisioned is the aforesaid facsimile of practicing lawyer in mindset, knowledgeable in subject matter tested, armed with approaches (systems) for taking immediate control of and handling *any* exam. (Any subject, any professor, all exam exercises [!], especially the essay variety.) What will unfold is nothing less than a precise, evolved (over 30+ years!), proven effective, true science of taking and preparing for any law exam, especially problematic essay exercises.

Nothing remotely compares with LEEWS. No other study aid or advice, for example, has bothered to critique current law school instruction in depth, and thereby take advantage of its severe failings. None other has evolved much beyond “IRAC” and standard advice and prescriptions that have been around for many decades, and that have never proven more than merely helpful.

If “A” grades are not guaranteed,<sup>8</sup> it is only because control over the extent to which LEEWS is imbibed, practiced, and mastered is lacking. However, no question but A’s become not only possible, but probable. This is so, not because LEEWS makes one a “genius of the law.” (Although often such is ascribed to LEEWS grads.) It is so, because, as evidenced by the quote at the outset, law essay exams so lower the bar for demonstrating proficiency.

The (very) good news is that skills/systems for successfully addressing law exams can be taught and learned. “Thinking as a lawyer” can be instructed much in advance of the traditional tutelage afforded by actual law practice. Confused, certainly on exams, law students assume the problem lies with them. Despite

intelligence, diligence, and past exam success, generations of law students quietly find fault with themselves when best efforts produce mediocre results. They assume they haven’t got the “Right Stuff”—innate lawyering ability that “case method” instruction fails to convey —, end of story. In fact, it is law school and law professors who are most at fault.<sup>9</sup>

Once mastered, LEEWS assures concise, effective responses to any legal problem-solving exercise. A professor/bar grader will be gratified to see that rarity in a law exam response—a lawyer (reasonable facsimile thereof) coming off the page. The *Primer* further describes the “bar exam,” and emotional, physical, environmental considerations to be aware of in preparing for a bar exam. Section One sets forth a model bar study strategy and routine. Section Three briefly addresses the problem of multiple choice, short answer, and true/false “objective” exam formats. The *Primer* addresses relevant corollary matters, such as use of secondary source materials—“hornbooks,” “restatements,” commercial law summaries, etc.

Instruction in exam writing approach and preparation occupies the bulk of the *Primer (Section Two)*. Although this Tenth Edition (greatly expanded over previous 136 page editions) is by far the best effort to make every aspect of LEEWS comprehensible, as noted (fn. 4), well over thirty years of experience instruct that it is difficult to master content with a book alone. The conceptual scheme is unfamiliar, with many facets. Self-help with mere written instruction and practice exercises is tedious. At the outset, a reader will likely lack sufficient confidence that effort and time necessary to grasp all that LEEWS entails is worth it. (Especially if one is busy with classes—briefing, taking notes. [Busywork!])

Thus, it is strongly recommended that the *Primer* be used only as a supplement to the live or audio LEEWS program. Visit [leews.com](http://leews.com), or call 1-800-SO-LUCHN for information on these programs.

Insights and techniques herein were acquired and developed over a period of years following your author’s graduation from (Yale) law school in 1977. While practicing law, initially as an assistant district attorney in Brooklyn, later as an assistant United States attorney (civil division—EDNY), and also tutoring prospective bar examinees, I grappled first hand with the problem of bar exam preparation, especially how to address my old bugaboo—the essay hypothetical-type

exercise. The combination of law practice + wrestling with how to help law graduates cope with impending essay exams prompted a breakthrough insight circa 1981. LEEWS soon evolved. Some readers may want to look up an old (ancient now), but still useful article on my (successful) experience taking the challenging New York bar exam, and especially my thoughts respecting special problems of attitude and psychology minority law graduates often must overcome, if success on a bar exam is to be achieved.<sup>10</sup>

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The First Edition of the *Primer* appeared in 1981. The Second followed two years later. Bottom line, a common denominator underlying *any and all* legal problem solving provided the key to a one-size-fits-all approach to understanding and handling all legal problem-solving exercises. This includes reading/briefing cases, law school or bar essay exercises, writing a legal paper, interviewing a prospective client, evaluating a new case, preparing a moot court argument. All can be addressed and made comprehensible in exactly the same way. The approach is at once precise enough to provide concrete, step-by-step guidance during an actual exam, yet flexible enough to be applied to any and all legal problem solving.

LEEWS proved its worth in the field. Thousands improved exam performance. Hundreds earned membership on law reviews. Very few took advantage of the money back guarantee.<sup>11</sup> Nevertheless, room for improvement existed.

The Third Edition of the *Primer* (1986) reflected modifications evolved over another three years, and interaction with and feedback from thousands more students. Principally, Step Three (p. 80) was modified. The innovative “Ugly But Effective” (UBE) format for both instructing and concisely presenting analysis, first introduced in 1985 in live programs, was incorporated. By popular demand, a civil procedure exercise was added. Model responses for other sample hypotheticals were modified to reflect the change in Step Three and the more concise writing format. In addition, instruction on developing the course outline and handling other exam formats (e.g., multiple choice) was enhanced.

In 1990, as LEEWS began a tenth year of national operation, a two-page update was added to the Third Edition. The bulk of this Update, itself updated, follows below. It reflects insights gained during an

additional four years instructing many thousands more law students from over 125 law schools (of over 200 nationwide) in the vicinity of 28 cities. No significant changes to the Third Edition were indicated. The approach and instruction set forth in the *Primer* continued to be on the mark across the spectrum of law school and bar offerings. [The Lawyering Art is a constant!]

LEEWS worked marvelously well. Nevertheless, your author is obsessive, perfection driven. Improvements in communicating aspects of LEEWS and the approach/science itself inevitably evolved during live presentations and interactions with countless more law students. (Students described their professors, different exam exercises, etc.)

The 1993 Fourth Edition brought page-by-page, chapter-by-chapter instruction in line with appropriate emphasis on the focal LEEWS concept of “premise.” Grasping “premise” and its central role is germinal in understanding/implementing all aspects of the integrated LEEWS approach to day-to-day preparation for class, week-by-week development of course outlines, and, especially, the three-step system for breaking down and identifying issues in *any and all* fact patterns.

Moving into the new century, more and more sources—professors, bar review programs, books, individuals—offered law exam-writing/preparation advice. The glut of offerings then and now is bewildering. However, none apart from LEEWS among the many offerings—none!—recognizes, much less challenges the foundation problem of failure of (case method) law school instruction to transition academic thinker/learners to something resembling lawyer thinker/learners. No other advice offers more than variations on, additions to “IRAC”<sup>12</sup> and conventional wisdom that has been around for decades. (See pp. 24-27, *infra*.) LEEWS is far and away nonpareil in comprehensiveness, innovation, effectiveness.<sup>13</sup>

The Fifth (1997), Sixth (2003), and subsequent *Primer* editions continued polishing, tweaking, refining. LEEWS became somewhat new age. Three mantras were introduced. They are to be literally chanted during exams (under one’s breath, of course). These proved amusing as well as instructive in live programs.

Experience, careful attention to a problem, and desire to improve produces additional insight. The Eighth Edition (2009) was actually a ninth edition,

as minor changes had been made to the Seventh prior to a reprint order. However, there was no retitling. (Hence, the Eighth was actually the Ninth Edition.) The Eighth Edition introduced a crucial realization that came very late in the game to your author. (A measure of my own law school brainwashing.) Namely, “A” grades are never the result of “innate lawyering aptitude”—so-called “Right Stuff.” Rather, *everyone*—the smartest, most diligent law student—is confused by essay exercises. Those deemed “geniuses of the law,” “can’t miss, future great lawyers,” are merely somewhat less confused than equally smart, equally diligent classmates. (As indicated by 35, 45, 55 points out of a possible 100 competes for A! Hardly genius level performance.)<sup>14</sup>

LEEWS therefore necessarily provides edge and advantage. LEEWS inevitably elevates one above the level of clueless—academic thinking/learning—classmates.<sup>15</sup>

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It bears repeating that use of *Primer* alone is not so effective in grasping LEEWS and gaining mastery as a combination of live or audio program + *Primer*. Nevertheless, what is contained herein, properly grasped and applied, should engender confidence and enthusiasm in even the casual reader (whether law student or prospective bar examinee). The catch is that there are no tricks, no shortcuts to mastery. The consistent admission elicited from law students for whom LEEWS has not produced improvement [such, admittedly, exist] is that they did not devote sufficient time, such that what is contained herein becomes reflexive, second nature. They did not, for example, take time to write practice paragraphs of analysis, comparing efforts with models provided in the Appendix.

Such practice can be tedious, but is essential. As exams approach, one is particularly loathe to set aside 20-30 minutes to write out analysis of a premise or two in concise paragraphs. However, if LEEWS is to prove a useful tool, not a mere collection of helpful do’s and don’ts during stress and confusion of an exam, then not only must one practice with exercises in the Appendix (p. 134 *et seq.*), but one must move on to practice LEEWS approaches on old exams, samples of which may be found online or in one’s law library.

Wentworth Miller

### Overall Perspective—1990 Update (updated 2009, reaffirmed 2016)

There are five interrelated components of exam writing success: 1—[in depth] knowledge of relevant “black letter law;”<sup>16</sup> 2—[skill at] issue identification; 3—[skill at] “lawyerlike analysis;” 4—concise presentation [of analysis] on paper; 5—an effective course outline. KEY TO MASTERY OF ALL FIVE AND MASTERY OF LEEWS IS COMPREHENDING WHAT SHALL BE TERMED “PREMISE” OR “LEGAL TOOL.”

The exam in law school is all that really matters!<sup>17</sup> Everything a law student does (especially first year) should point to final exams (not class!). Every aspect of this focus should be geared to pinpointing, understanding, organizing for speedy reference—weekly in course outlines—premises/legal tools. Premises constitute kernels of legal knowledge needed on exams. Premises (not issues) will be identified in implementing the LEEWS issue identification approach. Generally, *each paragraph of an exam response presents analysis of a premise*. The key to LEEWS mastery, therefore, to success in both preparing for/executing the exam response, is a firm grasp of what is meant by “premise” and/or “legal tool.”

Respecting exam response, abandon any notion that an effective response requires that one be a “good writer.” (Often heard in law school.) *What must be reflected in concise paragraphs is balanced, concise, logical, nitpicking thinking*—reasonably competent, “lawyerlike” analysis. Mastery of “UBE” format for presenting analysis concisely and effectively solves the problem of good (exam) writing/typing!

Once the unique LEEWS issue-analysis (UBE) paragraphing format is mastered (via practice), instructions of a particular professor—e.g., “place conclusion before discussion,” “omit conclusion,” “paragraph responses,” “paragraph frequently,” “no statements of law (!!),” etc.—become mere cosmetic variations on a fundamental building block—the (concise) paragraph of analysis. They are easily incorporated into the response presentation scheme. (See Chapters Ten, Eleven, Twelve, Thirteen, *infra.*)

In this regard the LEEWS focus is not on how to “write/type exams,” but how, applying the stepped issue identification approach (with discipline) to identify premises, one crafts a series of concise paragraphs, each roughly presenting analysis of a premise. Precise form is finally given to the broad, heretofore ambiguous concept—“how to write an exam.”

For *each* “hypothetical” (fact pattern essay exercise) in *every* exam, relevant premises will be identified. Premises reveal issues professors (and bar graders) want identified and discussed. Premises are analyzed in a series of concise paragraphs. In every instance, therefore, “writing an exam” implies crafting one concise paragraph after another, each roughly presenting analysis of a relevant premise/issue.

A disciplined, step-by-step approach to a situation that threatens to devolve into chaotic confusion—time-pressured law essay exams—is envisioned. BECOME ADEPT AT SYSTEMATICALLY IDENTIFYING PREMISES AND CRAFTING CONCISE, EFFECTIVE PARAGRAPHS OF ANALYSIS, AND THE PROBLEM OF LAW ESSAY EXAMS IS SOLVED!

Of course, much effort and many skills are implied in comprehending/implementing the foregoing. It is important in terms of preview/overview of what follows that the objective overall be defined. It is nothing less than *completely demystifying the law school process/experience, respecting both preparing for and taking any exam*. It is to *make all law school exams predictable, manageable*. Likewise, day-to-day, week-to-week preparation for exams. When mired in the attempt to grasp Step One, Step Two, or one of many facets of LEEWS, it will prove useful to call to mind this overall objective.

Respecting problematic Step Three of the exam planning/outlining approach, it is unlikely this step can be either comprehended or performed with facility until one becomes skilled at “lawyerlike analysis.” In other words, doing Step Three well, efficiently, presupposes skill at lawyerlike analysis. Therefore, first practice Preliminary Overview, Steps One and Two—“The Blender”—on “hypos” herein (Appendix), then hypos in exams found online or on file in the library, etc. Practice analyzing, presenting analysis of premises as instructed (in concise paragraphs). Now come back to Step Three.

### Practice Makes perfect!

Respecting practice of the many LEEWS facets, such is essential if full benefit of LEEWS is to be realized. In this regard, set aside 20 minutes two, three times a week, isolate a single premise from one of the eight practice hypos in the Appendix, analyze and present in accordance with the paragraphing format.

Begin with “Ugly, But Effective” (UBE, p. 94,

*infra*). Then rewrite in standard (more concise as a result) sentences. Compare with the model in the Appendix. Never assay to write out an entire response to a hypothetical. (Boring, unnecessary.) Become adept at analyzing, presenting analysis of a single premise! Overall response will be but a series of premises/paragraphs, each roughly corresponding to analysis of an issue the grader wants discussed.

The goal is for LEEWS systems/science to be automatic, a disciplined [Yes, somewhat robotic] approach to *any and all* legal problem-solving exercises—law school, bar, practice (!!). Addressing a research paper, moot court assignments, client interviews, trial preparation, oral argument, as well as exams, day-to-day case briefing, course outlining—all are encompassed. LEEWS enables making sense of any and all legal problem-solving exercises, including and especially the daunting task of preparing for and addressing the hypothetical-type law essay exercise—in piecemeal fashion. The person taking the exam is in control, not the exam!

Many precepts in this Update are unlikely to be understood at this juncture. Thus, **re-read the Update after completing indoctrination in LEEWS.**

## PREFACE FOOTNOTES

<sup>1</sup> A more rudimentary version of LEEWS (with basic pioneering precepts in place) was first offered as a live, one-day program in New York City in 1981.

<sup>2</sup> **“Hypothetical-type” law essay exercise.** Refer to Appendix herein if you’ve never looked at a law essay “hypothetical.” Look at several. Think about them, especially the confusing jumble of hypothetical (made up) facts. However, do not at this early juncture assay to attempt a response. Do not look at model responses or law provided. Differences in format and requirements between the typical essay exams featured in law school and those on bar examinations will be pointed out, as appropriate.

<sup>3</sup> **A moment of truth.** (Faith required?) LEEWS—what is said, instructed—is sometimes jarring. LEEWS poses nothing less than a revolution in law school instruction. LEEWS is the link long (always!) missing in American law school education. LEEWS merges standard, oft-criticized, overly theoretical, “case method” instruction—reading, “briefing,” dissecting appellate law cases—into the framework and perspective of one actually practicing law. Imagine for a moment an individual corralling, harnessing legal precepts, substantive and procedural, and employing those precepts, much as a plumber or carpenter might use tools of those professions, to achieve client ends. LEEWS inculcates that practical, goal-oriented perspective, along with innovative, proven effective (for 30+ years!) A-Z systems and skills for handling the only thing that really counts in *any* law school—final exams.

[Note. **One rarely hears the words “lawyer,” “attorney” in a law school classroom.** Client objectives, even the lawyer’s function of *achieving client goals by means of legal strategies* (!), are rarely, if ever discussed. Moreover, such should not surprise, given that law professors, certainly at so-called “top tier” law schools, are mostly PhD’s with limited practical experience as lawyers. Yet exams, for reasons set forth elsewhere, are at base a practical exercise in what lawyers do every day, albeit highly compressed. (On steroids as it were.) It may be noted that this, too, is a perspective/insight absent in (all) law schools.]

**Were LEEWS to be incorporated into law school curricula, law school instruction would change dramatically.** (Students would feel from the outset they were becoming lawyers, which at present they do not.)

All this to make the point that making the modest investment of time and expense to do LEEWS requires suspending skepticism that there is nothing new under the law school sun. [Note. YOU DON’T KNOW WHAT LEEWS IS OR ENTAILS. Nor can you (or any law professor) guess. LEEWS is too much the product of accident, years of trial and error, years of obsession with a seeming intractable problem—how to take control of and manage an exercise that in the main befuddles the smartest, most diligent law student. (Including your author when he was a law student at Yale... The smart part, if not, admittedly, so much the diligent part.)]

**DON’T BE ANGERED IF LEEWS SEEMS CRITICAL OF LAW SCHOOLS,** including the one you are pleased to have been admitted to. (It deserves criticism!) Appreciate the truth of what follows. Get hold of LEEWS and, as have well over 100,000 law students before you, take advantage of the current problematic state of American legal education.

Law schools, professors, and students recognize the need to think/analyze “as a lawyer” to be successful on all-important final exams. “Lawyerlike thinking” is a lodestar set for law students. However, curiously, while such thinking is easily recognizable and, indeed, is habitual among seasoned attorneys, who among law students will manifest such thinking on exams remains unpredictable. The few who do and earn A’s are deemed “geniuses of the law,” possessors of a seeming “innate,” “born-with-it” quality of thought that cannot be taught. “You either have it, or you don’t,” and “It will click” is heard. As explored in your author’s 2012 book—*Gaming Emperor Law School: 30+ years taking advantage of the failure of American law schools—all 200+ of them!—to train lawyers, 30+ years of LEEWS—(GELS), the prevalent assumption* (in all law schools) **that lawyers are born, not made, and lawyerlike thought is an elusive habit of mind that cannot precisely be instructed is nonsense!** The problem goes back to the founding and initial purposes of American law schools (explored in *GELS*).

Note. The foundational idea of American law schools was never to train the legal practitioner, but something more academic. (Perhaps it was/is to train future law professors!) The bottom line is that reviewing appellate opinions in an academic way in an academic setting (current “case method” MO) is wholly ineffective in training the (recognizable) close, nitpicking, analytic way of thinking that is characteristic of the law practitioner, and that is necessary to exhibit mastery of what at base are legal problem-solving exercises. **Those few deemed, by birth or accident, to have “The Right Stuff,” an (imagined) aptitude for lawyerlike thought, normally acquired their desirable habit of thought (approximating that of a practicing lawyer) owing to mental training**—in math, physics, other hard sciences, philosophy, Talmudic examination; anything that inculcates nitpicking analytic thought—*prior to entering law school.* At the heart of LEEWS is recognition that anyone of reasonable intelligence—anyone admitted to a law school—can acquire the lawyerlike mindset via proper instruction.

<sup>4</sup> **Learning LEEWS from the Primer.** No question, but LEEWS—ins and outs, techniques, etc.—is contained herein (more so than in previous editions). This edition substantially adds to previous 136 page editions. However, can one learn to ride a horse or drive a car from a book, however carefully written?—doubtful! There are critical subtleties, nuances that would be overlooked. **THE PROBLEM IS THERE IS SIMPLY TOO MUCH COMPLEX, NEW INSTRUCTION/DETAIL HEREIN!** Failing confidence that the (considerable) effort in learning LEEWS will pay off—very hard to gain from a book that has so much that is new and needs digesting—, one is unlikely to make the effort necessary from a book alone to grasp LEEWS. Therefore, pay for the accompanying audio instruction by your author, with explanatory diagrams, etc. It, too, has been polished to be better and better. By all accounts, the cost of LEEWS remains a great bargain. (E.g., what is a single “A” grade first year in law school worth?... Much more than a prelaw can imagine.)

<sup>5</sup> It has not been uncommon these several decades plus for professors to advise LEEWS grads that, “I cannot post your grade. It is too far above the class mean and might upset some students.” It is a commonplace that perfectly “average” students, as judged by college GPA and LSAT score, often score the highest grade in classes after taking LEEWS.

<sup>6</sup> A graph plotting college GPA and LSAT scores of the 230 students entering YLS in the fall of 1969 was published. My 750 (of a possible 800) was one of the highest scores.

<sup>7</sup> **Law school grading.** See footnotes, pp. 27, 87, etc. *infra*, for a brief discussion of how grades have inflated in law school and possible reasons why. At Harvard, Stanford, Duke, NYU, U. Penn., University of Virginia, etc. the average grade is now B+ (and higher!). A-’s (the new B+) are awarded to satisfy curves calling for 20-30 percent A’s (accounting for a 35/100 competing for an A). However, relatively few solid A’s are awarded. I may note that I did much better—got Honors [Yale A equivalent]—in upper level, smaller classes, where the grade was dependent upon a paper, and I had time to compose my thoughts. As is true for many law students, only later in actual law practice was the depressing verdict conveyed by time-pressured essay exams respecting aptitude as a lawyer reversed. Thoroughly reversed, I am

pleased to boast.

<sup>8</sup> **LEEWS guarantees.** From its inception in 1981, LEEWS guaranteed “Better Grades, or Your Money Back” to those attending live programs *only* (as completion of instruction was assured). For over a decade only students with prior (essay exam) grades could take advantage of the guarantee. Some 1 in 25 did. Advances in LEEWS (see fn. 11 following) reduced refund requests to 1 in 50. LEEWS began guaranteeing “B’s Minimum,” “Top 1/3 Finish” (for first term students). These guarantees continued to cessation of live programs in 2014, as well as an option to “leave at the first break [75 min.] and receive a full refund, no questions asked.” Again, this applied only to live program attendees. However, every indication these several decades plus has been that those who *complete* the audio version of LEEWS, if anything, do better than those attending live programs. (See leews.com re, e.g., free trial of audio program.)

<sup>9</sup> **Failure of law schools to train lawyers.** Numerous articles, blogs, pronouncements decry the failure of American law schools to prepare students for the profession. Recognition of a problem goes back, for example, to “The Trouble With America’s Law Schools,” *New York Times Magazine*, May 22, 1983, p. 20. See discussion at the LEEWS website—www.LEEWS.com—, and in particular the aforementioned book—*GELS* (fn. 3, *supra*)—for in depth discussion of problems with law school instruction respecting preparing students for both exams and law practice. (Even and especially at such elite schools as Yale, Harvard, Stanford, etc.)

<sup>10</sup> See Miller, Wentworth E., “Taking the Bar Exam: My Experience as a Black Law Graduate,” *New York State Bar Journal*, November, 1978; reprinted in *Case and Comment*, June, 1979.

<sup>11</sup> Consistently from 1981-1993, fewer than one in twenty-five law students taking LEEWS (with prior grades) took advantage of the “better grades, or your money back” guarantee. Following changes in 1993, principally a sharpened focus on the concept of “premise,” despite adding the guarantee of a (then meaningful) minimum 2.7 GPA, the refund request ratio improved to one in fifty!

<sup>12</sup> **“IRAC”** is an acronym for **I**ssue, **R**ule [of law], **A**pplication [of rule to facts—i.e., analysis], **C**onclusion. “Follow IRAC,” and “IRAC the exam” are standard instructions respecting how to organize exam responses. IRAC is deemed by many a “system,” “all you need to succeed.” However, while useful, indeed, a revelation to the neophyte law student, IRAC is no more than a formula broadly indicating **WHAT** to do, not precisely **HOW**. IRAC does not address *how*, methodically, efficiently, under severe time constraint, to identify (relevant) issues lurking in a complex fact pattern, *how* to perform analysis that impresses and earns A’s, *how* to present analysis concisely, *how* to prepare, day-by-day, week-by-week, etc. Indeed, what is an “issue?” (See Section 2, Chapter 11 for more thorough exploration of IRAC [and its shortcomings].)

<sup>13</sup> **LEEWS versus all other advice.** From the very beginning, owing to the breakthrough recognition of a denominator common to *all* legal problem solving noted, LEEWS departed radically from conventional, IRAC-centered advice. Such “conventional wisdom” (“CW”—see pp.24-27) was the gist of “what one needed to know” when your author entered law school. With but modest additions, CW continues to be the sum of what *all* others offering advice on “how to succeed in law school” advise—ALL!—, and it has never been particularly effective. While CW instructs **WHAT** to do—e.g., “analyze as a lawyer;” “paragraph frequently;” “support conclusions”—, it falls far short on the precise **HOW**. Here is one example: Professors and all others advise that students “spot issues.” This is supplemented by “employ a checklist,” “read facts carefully,” “pay attention to key words, transactions,” “make notes in the margin,” etc. However, “spotting” presupposes something artful, haphazard, even accidental. A student proceeds in hit-and-miss fashion, and, typically, remains anxious, confused. (And misses issues.) It is not imagined that issues can be identified via a more precise, predictable science of approach. (*It is not imagined that addressing essay exams can be reduced to a science! Therefore no science has ever been sought.*) **LEEWS introduces the science that cannot be imagined by others** (that is not imagined possible). LEEWS introduces a true science of approach to issue identification, learning how to “analyze as a lawyer,” concise presentation of analysis, and day-to-day, week-to-week preparation (including a radically different, more effective approach to briefing cases). See, e.g., “Preliminary Overview” and “Steps One and Two” herein.

This, at base, is the difference between LEEWS and CW—all other exam writing/preparation advice. **LEEWS is an evolved, exact, proven effective science. All else is mere hints and (somewhat) helpful advice.** The law school and law study aid establishment simply doesn’t know (or apparently want to know or understand) what we know and instruct.

<sup>14</sup> Your author admits to himself subscribing (for over 25 years while instructing LEEWS) to the notion that some few—perhaps 5 percent of law students—really do have it figured out, have some sort of “gift for the law” (and don’t need LEEWS). The quote of the U. Georgia law professor re his expectations (passed along by a former student who went from no A’s first term to [after LEEWS] all A’s second term) began to reveal my own self-deception. (Born of confusion during law school, and the seeming clarity exhibited by some classmates.) The notion of “genius” and “inner gift” being required to master law essay exams is universally subscribed to by law professors and law students. (The former typically got A’s and, of course, want to think themselves geniuses.) It is debilitating. Indeed, it is an excuse for the failure of law schools and professors to properly instruct skills and approaches needed. (See aforementioned book—*GELS*—at LEEWS.com.) Shucking this myth has proved liberating. Countless “average” law students, once LEEWS is grasped, have scored not just 35 or 45 out of 100, but much higher. LEEWS grads have exceeded 100! (Issues were noted that professors were unaware of in their own exams, for which credit was given.)

<sup>15</sup> As suggested in the footnote preceding, LEEWS grads rather easily exceed low-bar professor expectations. Armed with LEEWS, a facsimile of a practicing lawyer (in thinking/learning) should have no difficulty achieving 45, 65, and better out of a possible 100.

<sup>16</sup> **“Black letter law”** means legal rules, principles, statutes. E.g., see “Relevant Legal Principles” following hypos in Appendix.

<sup>17</sup> **Exams in law school are EVERYTHING, particularly first year.** This is difficult for prospective and beginning law students (1Ls) to grasp and accept, particularly the logical consequence thereof. It is a lesson typically learned the hard way and too late. As, naturally, they want students to attend and participate in class (and for other reasons that will become clear, especially a startling disconnect between class and exams), law professors in first year survey classes tend to pooh-pooh concern about final exams. “Don’t worry about exams,” they will say. Further, “Brief all cases, pay attention in class, take good notes. Everything will be fine.” Meaning, if you have a certain small edge that enables 35 points out of 100 (versus the class average of 25), which earns a rare “A” grade (and confirms one as possessed of “The Right Stuff”), everything will be fine. (If you don’t have this edge, which some few acquire prior to law school [and that LEEWS will more than compensate for, so don’t worry about it!], the professor’s assumption is “There is little I can do for you [but no matter, as I’ll give you a B anyway].”) Re-read fn. 3 preceding. **DO READ GELS** (free at leews.com), **so as to understand the why/wherefore of these truths one needs to know about American law schools.** (That one can and should take advantage of!)

First year law classes in particular (excepting legal writing) feature no papers, no quizzes, rarely a midterm—only a 3-4 hour (or

longer) final exam, upon which one's entire grade will depend. Class participation counts only to bump one's grade by (at most) half a letter. Bumbling, mumbling, even saying, "not prepared" (no more than once!) rarely, if ever occasions a lower grade.

<sup>18</sup> **"Knowing the law."** Following mediocre exam performance, students typically say, "I knew the law." What is meant is that they rote memorized legal rules—academic learning/knowledge! "Knowing the law," so as to apply it to facts as a lawyer (in the analytic process we'll term "the lawyering dialectic"), requires a far more intimate knowing than an academic thinker/learner can imagine. One must "use the law" in tool-like fashion (as a lawyer would) to know it (as a lawyer must) in its nuances. One must first acquire a semblance of the (practicing) lawyer mind, and skill at her (analytic) craft.

Thus, it is easy to advise (as professors and others do), "know the law." It is easy for students using flash-card study aids to memorize rules and think, "I know the law." However, until transition to something approximating practicing lawyer/thinker is made, one cannot possibly "know the law" as needed. Thus, virtually all taking exams sans LEEWS are necessarily deficient "knowing law."

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## Notes

## SECTION TWO

### PREPARING FOR / EXECUTING THE “A” LAW ESSAY EXAM RESPONSE<sup>1</sup>

(PROVEN EFFECTIVE [30+YEARS!], A-Z SCIENCE OF ISSUE IDENTIFICATION, ANALYSIS, CONCISE PRESENTATION, AND PREPARATION THAT MAKES ADDRESSING ANY ESSAY EXERCISE IN ANY SUBJECT ON ANY EXAM PREDICTABLE, MANAGEABLE)<sup>2</sup>

#### CHAPTER ONE

##### THE PROBLEM DISSECTED

###### Introduction

There is much more to be said about tackling the hypothetical-type law essay exercise featured in law school and on bar exams than the typical law graduate (with, perhaps, twenty such exams under her belt) will have heard. (Hereinafter “hypothetical,” “hypo,” “essay,” “fact pattern.”) Certainly, the novice law student will be completely in the dark regarding this omnipresent exam format. In January of her first year, this likely lifelong “A” student will become a “B” student! Moreover, so confused and floundering was performance on December exams, she’ll likely be relieved to get B’s. Fewer than ten percent of 1Ls will get more than one “A” grade. Most will get no A’s, not a single one (even at top law schools).<sup>3</sup>

Despite eagerness to do well, intelligence, and exhaustive study efforts, the typical law student achieves B’s, B+’s, the occasional C. Many law students receive their first ever D. (Even F, although such are few.) They have run afoul of an examination format unlike any encountered before, for which they are wholly unprepared to exhibit mastery. The vast majority of first, second, third year students (1Ls, 2Ls, 3Ls), have much to learn if they are to have any possibility of achieving an A on a time-pressured essay exam.<sup>4</sup>

###### Failure of Law Schools and Law Professors

It is not the normal province of a “how-to” book to decry the institution, circumstances, etc. that give rise to or perpetuate a problem needing solution. A kernel aspect of the problem of preparing for and handling law essay exams, however, is that the hypothetical-type format, in particular the response all professors are looking for, bears at best a misleading relationship to what is instructed in law school classrooms, especially how it is instructed.

In short, omnipresent “case method” instruction is wholly ineffective in transitioning entering 1Ls—academic thinker/learners in the main—to something approaching the (client) goal-oriented, nitpicking thinking/learning approach of the practicing attorney.<sup>5</sup> LAW ESSAY EXAMS, it will become evident, not surprisingly, ARE AT BASE EXERCISES IN WHAT LAWYERS DO. They test ability to problem solve—identify and resolve legal “issues”—much as a lawyer competent in the subject tested might. To this task, normally, is added severe time pressure. ONE WHO HAS NOT ACQUIRED IN REASONABLE MEASURE THE REQUISITE LAWYER MINDSET (who remains academic in thought and approach) HAS NO CHANCE OF COMPETING FOR AN “A” GRADE. None!

However a professor may describe what he/she is looking for in an exam response, AT BASE EVERY PROFESSOR WANTS EXACTLY THE SAME THING—IDENTIFY RELEVANT ISSUES; RESOLVE THEM AS A LAWYER COMPETENT IN MY SUBJECT WOULD. Indeed, examinees are often instructed to “imagine you are a law clerk” or “party A’s attorney.”

It is, of course, supposed that briefing/discussing (appellate) law cases—“case method” instruction—will prepare students for such an exercise. Such, presumably, will accomplish the necessary transition from academic thinker/learner to reasonable facsimile of (practicing) lawyer thinker/learner. However, for reasons set forth in footnotes 4 and 5 of this chapter and elsewhere, the instruction fails. It fails abysmally.

The academic tenor of law school classrooms does little to shift students, accustomed to theoretical, academic perspective, toward the goal-oriented, application-of-legal-tools-to-facts perspective of the practicing attorney. Case method instruction is especially ineffective in instructing the nitpicking dialectic of so-called “lawyerlike thinking.”<sup>6</sup> Thus, NO ONE EMERGES FROM FIRST YEAR AMERICAN LAW SCHOOL CLASSROOMS PREPARED TO FUNCTION EVEN REMOTELY AS A COMPETENT LAWYER WHEN CONFRONTED WITH COMPLEX SETS OF FACTS—hy-

potheticals—ON EXAMS. For a bare handful, analytic skills and mindset akin to that of lawyers, acquired prior to law school, is enhanced somewhat. It is these few students who out-perform equally smart, equally diligent classmates—35, 45 points out of 100—, and receive scarce A's.

The classroom-exam disconnect contributes to and is exacerbated by mystique surrounding law, lawyers, law school, law professors. Confusion about what is wanted—in class, on exams—, coupled with mediocre exam performance (despite doing everything thought necessary to succeed), adds to the perception there is a mysterious, innate “lawyering aptitude” afoot that only a select few possess. Frustration and a sense of resignation sets in. Professors and law schools, subscribing to the self-serving idea that few have “The (necessary) Right Stuff” (of which great lawyers are made), seem scarcely to recognize the problem.

Not that efforts to allay law student unease have not been forthcoming. Responding to student complaints, possibly spurred by commercial efforts to address the problem, certainly sensitive to the escalating financial burden of student-consumers, most law schools offer some form of hands-on exam writing instruction. 1L orientation, greatly expanded from the hour-long welcome talk your author's class received upon entering law school (by a 3L), typically includes sessions on case briefing [the impractical, ineffective conventional mode is invariably instructed], studying, and exam writing. A professor or student organization may offer a program on how to prepare for and write law exams. Practice mini exams may be given and dissected (but usually not graded).

Although initially reassuring to new law students, such efforts do little to allay confusion resulting from making little progress in becoming a lawyer as term progresses. Preparation and exam-taking advice from various sources (excepting LEEWS!) offers standard do's and don'ts that have been around for decades, mere variations on “IRAC.” (See footnote, p.7.) Such advice, what will be termed “conventional wisdom” (CW), is summarized at the end of this chapter. It has never been effective in enabling law students to exhibit reasonable competence, much less mastery respecting law essay exams.

By inadvertence or no, fundamental terms and concepts such as “issue” and “lawyerlike analysis” are never adequately defined or explored in depth in law

school classrooms. (Students are embarrassed and/or afraid to ask.) Never even is what, exactly, lawyers do spelled out. (Revisit fn. 5.) Certainly, the essay hypothetical format itself is never seriously questioned. For all her smarts, diligence, and preparation, following the first set of exams the typical law student, whether at Harvard or Internet Law, realizes she did not really “get it” respecting how, competently, to go about addressing time-pressured, hypothetical-type exam exercises.

### **Why the Hypothetical-type Essay Format Persists (and is Omnipresent) in Law School**

The fundamental problem with law school instruction has been noted—failure to transition academic thinker/learners to something approximating a practicing lawyer thinker/learner. Reasons for this trace back to influential, nineteenth century professor/lawyer/judge/jurist/author, William Blackstone's desire that lawyers have more university education, that they not be “mere craftsmen.” Ever since law school supplanted apprenticeship as the primary route to becoming a lawyer, instruction for admittance to the profession has largely been in classrooms. It has been more academic than practical. An academic thrust and overlay is evidenced most recently by the seeming requirement of a PhD (in whatever subject) in addition to JD (plus superior law school grades and prestigious judicial clerkship) as prerequisite to being hired at benchmark law schools.

[Note. This subject is explored at length in your author's aforementioned 2012 GELS book. Also to some extent in footnote 5 of this chapter.]

Academic inclinations notwithstanding [“interdisciplinary legal education” is a current fad], respecting exams, law professors bow to custom (what they did [and were successful at!] as law students) and need to prepare students to pass a bar exam. Hypothetical-type essay exams remain the staple, especially first year.

[Note. Class-exam disconnect appears to be recognized by law professors. They seem embarrassed to give exams ending with an instruction of the order, “Imagine you are a lawyer.” Often they are reluctant to discuss exams. One frequently hears, “Don't worry about exams.” However, the hypothetical-type essay format—dense fact patterns to be sorted out under severe time pressure—is never seriously challenged.]

Class-exam disconnect notwithstanding, law professors, law school administrators, and law students (not so much lawyers) believe, near universally, that qualities and aptitude predictive of ability as a lawyer are ably tested by the time-pressured essay format. It is universally believed that one must have certain innate qualities of aptitude—The Right Stuff—to do well.<sup>8</sup> Thus, although indeed challenging, such exams are deemed appropriate, even fair.

It is believed that apart from following IRAC and standard exam-writing advice (again, set forth at chapter's end), a capable student need only “prepare for and attend class”—i.e., brief cases; take “good notes”—, “learn the law” (which students take to mean memorize rules), and “study hard.”

Despite stellar qualifications of most students, law professors would likely be surprised if more than a handful were to exhibit exam proficiency meriting an A. The notion is afoot that even at Yale, Harvard, Stanford, only a very select few deserve the mantle, “genius of the law.”

### **Sad Denouement for First Year Also-rans**

Where does existence of an exam for which they are ill-prepared leave the great majority of smart, hard-working law students after a single term of law school? These students—80+ percent of the class—studied harder than ever before in their lives, yet managed nary an A. Moreover, they no longer believe themselves capable of A's, owing to (as demonstrated by exam performance) absence of The Right Stuff.

The answer, sadly, is summed up in “also ran.” Following first term, certainly following first year in all American law schools—no exceptions!—the great majority of students are also-rans. Most in a law school class, all able, industrious, intelligent types, no longer have a shot at Law Review (top ten percent) and prestigious judicial clerkships. Apart from the top fifteen law schools, so-called “Big Law” jobs (high-paying jobs with large law firms) are out of reach.

Realizing they can achieve the same B's with far less effort, such students no longer work so hard. They slog through remaining years of law school bored, often cynical. For the first time in very successful academic lives, ego sustenance must be sought apart from grades—in lesser journals and extra-curricular pursuits. (E.g., prisoner's rights clinic.) The dream of being a great lawyer is much diminished, if not extinguished.<sup>9</sup>

The worst part is that also-rans blame themselves. They buy into the myth of The Right Stuff as be-all, end-all. They are persuaded they lack this elusive (mythical!) quality.

Despite ample evidence that time-pressured essay exams are a suspect indicator of future ability as a lawyer,<sup>10</sup> none (save LEEWS) seriously question the omnipresent essay exam format or, in particular, inappropriateness of case method instruction in preparing students to take such exams. The relatively few students who do well suffice to fill needs for “top-notch” research assistants (to professors), judicial clerkships and associate openings at large law firms, and highly sought after spots with prestigious government and non-profit legal bodies. Given the intensely competitive, ego-threatening, hierarchical atmosphere of law school, can one imagine a student or group of students with mediocre grades complaining to professors that the exam format does not provide a fair opportunity to demonstrate knowledge and ability?

In general, law student also-rans suffer silently. Perniciousness of the problem of essay exams and ill preparedness prompts rumblings of discontent. However, it is a low, self-conscious rumble sounding of sour grapes, and is largely unheeded. The idea there is a serious problem respecting essay exams and how students are prepared to address an exam that says, in effect, “Be a lawyer!”, rarely surfaces.<sup>11</sup> Most also-rans accept the verdict they lack The Right Stuff. (Until success in actual law practice corrects this canard.)

### **Reluctance to Train the Practitioner as Impediment**

Even were the problem of exam-classroom disconnect and failure to transition academic to lawyer generally recognized, the solution (such as LEEWS) must embrace the practical world of lawyering. Thus, law schools would likely shy away from changes in instructional format such a solution would dictate.

Here is fine irony. As will become apparent, the *essay hypothetical is omnipresent precisely because it is a useful device for both measuring and abetting a law student's progress in becoming a lawyer.* Therein its *raison d'être*. Moreover, is the primary purpose of law schools not training lawyers?

Law schools can surely be faulted if they have not endeavored to train students to competently, ethically perform the lawyer's function. Yet law schools are loathe to think of themselves as a “trade school,” as

but a training ground for the practical how-to of actual law practice. Hence, there is resistance to introducing clinical (“hands-on”) programs to the curriculum. Instructors of clinical programs (often practicing lawyers from the community) are invariably second class faculty members. They are not given tenure. Their voices carry little weight.

### Academic, Scholarly Focus as Impediment

By definition more teacher/scholars than lawyer/practitioners, law professors tend to be enamored with new trends and possibilities in jurisprudential thought. A factor in all-important US News yearly law school rankings is reputation for scholarship. As a result, law professors (more and more at benchmark schools possessed of PhDs) are encouraged in their allegiance to scholarly aspects of legal education. As a result, even experienced practitioners and judges, turned law professor late in careers (typically at lower-tier law schools)<sup>12</sup> are encouraged to introduce “policy issues” and shifting “rationale” into class discussion.

Nuts and bolts of “black letter law” (statutes, rules, principles), and how in straightforward fashion to apply it to facts—something akin to actual law practice—, tends to bore law professors. They overlook that mastery of a legal precept is prerequisite to inquiry into what that precept could or should be—so-called “policy.” (E.g., how can a student think usefully about what law could or should be [policy aspects] until that student knows what, precisely, the law is?)

Frequently, classrooms are rife with conceptualizing and probing of the jurisprudential frontier—a comfortable atmosphere, to be sure, for academic thinker/learners. However, this is misleading respecting skills and thinking required to master an essay exercise. Again, the classroom-exam disconnect.

[Note. STUDENTS ARE SURELY EXPECTED TO KNOW BLACK LETTER LAW ON EXAMS—COLD! What a first term 1L fails to realize is that YOU MUST LEARN LAW ON YOUR OWN!]<sup>13</sup>

Only belatedly, doubtless reluctantly, perhaps forced by realization that students are soon to go forth, supposedly competent in the subject matter, professors seem to recognize a responsibility to train legal practitioners. On the typical final exam, a student’s ability to untangle and make legal sense of a morass of facts, parties, and circumstances, much as a practicing lawyer would, is tested. Unexpectedly,

an abstract, academically-slanted course culminates in a complex, but eminently practical exercise in lawyering. NOT PHILOSOPHY OR POLICY, BUT NUTS AND BOLTS KNOWLEDGE OF BLACK LETTER LAW AND HOW TO APPLY IT WILL BE THE FOUNDATION OF A SUCCESSFUL RESPONSE.

Significantly, it is an observation reinforced by many students that precisely the professor who conducts a relaxed, policy-centered, academically appetizing type of course, will give a “spot-the-issue-give-me-the-black-letter-law,” traditional exam. His counterpart, the intense, “Kingsfield type” [of *Paper Chase* movie fame], who is forever challenging (but ineffectively teaching!) students to “think like a lawyer,” may surprise with a question calling for “your view as a matter of policy.”

However, do not ask either of these professors (or school administration) to instruct how to analyze a problem as a “real lawyer” would. That would be rubbing a nose in something it wishes to avoid. Leave the practical world of lawyers (and how they think!) to second-class (non-tenured) faculty (brought in in response to student and bar association pressure). The latter are “adjunct” instructors of clinical programs. (E.g., trial technique, prisoners’ legal rights clinics.)

Adjunct professors, typically local practicing attorneys, are of the real world. Unlike “real professors,” they likely had more difficulty with essay hypotheticals in law school. They tend to be sympathetic to the plight of law students. Unfortunately, they don’t normally give essay exams. Nor do they have clout necessary to broach to administration with any effect the problem of disconnect between class and what is required to handle exams “as a lawyer.”

[Note. The problem of disconnect between law school classroom instruction and essay exams, certainly what, if anything, to do about such a problem, is far beyond the ken (or interest) of judges and lawyers. Moreover, they, same as adjunct professors and most everyone else, tend to believe in the time-pressured essay exercise as a fair measure of legal thinking aptitude (although they have suspicions).]

### Study and Exam-writing Advice Law Professors Impart

The foregoing notwithstanding, law professors are aware their exams are problematic and provoke discontent. Moreover, they are sympathetic (to a

point), and not unwilling to offer assistance. The point is that by virtue of background, inclination, and commitment—to both essay format, and belief that special, innate qualities are necessary to handle such exams—, they are not up to the task of meaningfully addressing the problem. Typically, when professors offer advice about how to prepare for and address the upcoming exam, or exams in general (invariably late in the term, reflecting afore-noted reluctance to address exams), it is in the nature of the following [LEEWS additions in brackets.]:

- An emphasis [naturally] that one “attend every class,” “read every case,” “know the law;”
- Provision of model “A” responses to old exams and recommendation that one respond in similar fashion;
- Admonition to “follow IRAC,” or “IRAC the exam.” [Meaning state Issue, then applicable Rule [of law]; Apply rule to facts [analysis]; state a Conclusion.];
- [Proper] emphasis that the point is not to demonstrate memorization of rules of law, but to “spot” [identify] and resolve relevant—to facts, to legal subject area—legal issues;
- Insistence they don’t want, merely, to see bald statements of law and conclusions. Rather, “lawyerlike” [Aha!] analysis of issues is wanted. [However, “lawyerlike” is never adequately instructed.];
- Observation [correct] that conclusion [outcome, who prevails] is unimportant. Far more important are steps of analysis in arriving at a conclusion;
- Admonition that one spend up to 1/2 time allotted for a given “question” [meaning hypo] “planning” one’s response. [To ensure that one plan (thereby, hopefully, produce less verbiage to be waded through), some (few) professors withhold access to software (how the response will be expressed) for the first hour of the exam.];
- Imposition of word limit on responses to promote concision and planning;
- More do’s, don’ts, other general advice. [All of which is helpful, reassuring, but hardly a science of approach. None of it approaches LEEWS in depth or effectiveness.]

All of which is ultimately ineffective in raising anyone much above a remarkably low bar of exam performance. (Again, imagine 35, 45 out of a possible 100 points meriting an A. [50+ = A+?!])

The point is that even when law professors deign (or design) to offer advice on exam writing, they do

so fitfully, cryptically. *They haven’t really given the subject much thought, because they don’t believe that effective response to exams can be reduced to a science.* [Such—a true science of approach—would diminish the mystique of their own typically superior (relative to classmates) law school exam achievements.]

For reasons given, law professors persist in feeling that exam-writing advice is largely unnecessary, even beneath them. [Many have the view that such will be largely unavailing, absent The Right Stuff.] Students perceive the latter in pained expressions and posture of professors as they (briefly) expound on this nuisance subject. Then, without fully satisfying students’ needs, there is a terse: “Let’s get back to more important matters.” Topic closed!

[Query. Thinking about the foregoing advice, although helpful—manna from Heaven for clueless 1Ls!—, does it offer more than a general notion of what to do, or not do, but not exactly how?]

Although questions about exams abound, few dare raise more questions. One might query, for example, how, exactly, one goes about “spotting” an issue?<sup>14</sup> (See footnote for typical advice.) For that matter, what precisely *is* an “issue?” What, exactly, is “lawyerlike analysis?” Such, the impression students get, are questions of persons lacking The Right Stuff.

### **Conventional Wisdom of Essay Exam Writing/Preparation (It isn’t enough.)**

Simple fact—law professors cannot provide meaningful assistance coping with essay exams without challenging, significantly altering overly academic bent of current law school teaching! Which they are unlikely to do. Nevertheless, it has been noted that some professors are sympathetic, even troubled by the problem students experience with exams.

There follows advice on the subject of preparing for and taking law essay exams, compiled by no less than a Harvard law professor, the now deceased, Derrick Bell.<sup>15</sup> To this very day your author possesses stapled, mimeographed sheets containing Professor Bell’s prescriptions. These were given to me as a 1L by an upperclassmen, and have my original blue and yellow highlighting. This advice is reproduced at length and almost verbatim, because it represents a law professor’s best effort at addressing what was obviously deemed an important problem—to Harvard students!

Professor Bell's advice is useful as reflection of what a law professor at a preeminent law school expects and wants to see in an essay exam response. Should one attend an exam-writing/study session offered by any law professor, any law school administrator, any law school organization, any commercial enterprise (excepting LEEWS!), or any and all of the bewildering array of law exam writing/study preparation offerings online and elsewhere, one is unlikely to encounter advice more thorough than that compiled by Professor Bell over forty years ago. Most offer far less.<sup>16</sup> Professor Bell's is a near-complete distillation of "conventional wisdom" (CW) of law essay exam writing and study advice.

And it is not enough! Not nearly enough!

Your author perused Professor Bell's advice eagerly and carefully. For me, the same as most confused, intimidated 1Ls when they first learn of IRAC, such advice (from a Harvard professor, no less) was indeed manna from Heaven. I felt I now knew what I needed to know. Put one's nose to the grindstone, follow this roadmap, success assured!

No! Same as all 1Ls, I immediately got confused and began to flounder when confronted with the first exercise featuring a bewildering morass of facts, followed by "Discuss rights and liabilities ..."

The reason, of course, was 1) I was still an academic thinker/learner [Being told to "think as a lawyer," coupled with case method instruction, did not get the job done.]; 2) being told what one should do does not resolve how, exactly, to do something so complex or foreign as addressing several law essays under severe time pressure. (Or how, for the first time, to ride a horse, drive a car, surf, ski, hang glide, or merely walk [if infants could grasp instruction].)

More than merely told what to do, in instances of new and difficult challenges, one must be carefully shown how to address them.

In a nutshell, this is the problem with all CW. It is the problem with all advice that does not first question, dissect, and remedy a system of instruction—case method—that fails to adequately transition academic thinker/learner to something approaching (practicing) lawyer thinker/learner; and is, moreover, undergirded by the belief that how, exactly, to gain mastery of something so daunting as a law essay exam cannot really be taught, but requires innate aptitude, an undefined "genius for the law."

Professor Bell's prescriptions follow. Additions by your author are added in brackets.

[Note. Essay exams—hypothetical fact pattern exercises—were the only exam format extant in Professor Bell's time. Only following 1978 introduction of the uniform bar exam multiple choice component did multiple choice, short answer, true/false, and other "objective" formats begin to appear on law school exams.]

Respecting preparation for the [essay] exam:

—Know the subject area thoroughly (i.e., study the subject matter diligently).<sup>17</sup> [That's it!]

Respecting actual writing [now typing] of the exam:

—There is no single correct way to answer a law essay exam. If your answer demonstrates knowledge of the law and sound reasoning ability, it will favorably impress the grader. [More *what* to do.]

—In form a good answer will be the following:

- easy to read;
- clearly expressed;
- well organized.

—A poor answer, by contrast, will:

- be vague, rambling, and disorganized;
- miss major issues;
- give erroneous law on basic points;
- resolve issues by merely stating conclusions unsupported by law.

—Be aware of the time limits as you begin your answer.

—Spend no less than 1/3 of the allotted time, and preferably 1/2 of the time reading the question [Meaning the fact pattern, not the question/instruction typically at the end of the "question."] and organizing.

- Read the question [fact pattern] twice;
- Note all the issues on scratch paper;
- Note what rules are applicable to your facts, and how you will use them;
- Arrange a logical sequence for presenting your discussion. In this regard a chronological sequence may be effective, unless the rights of several parties must be given.

—Regarding the actual writing [now mostly typing]:

- Make use of all the facts. Rarely do the facts contain red herrings;
- Don't assume facts (i.e., don't assume "agreement" means "contract");

- Divide the discussion into separate issues, and cover one at a time;
- For each major issue:
  - Begin with a statement of the conclusion
- [I]** —State the specific legal issue involved;
- [R]** —State the legal rules applicable to the factual issues;
- [A]** —Set forth your reasoning, demonstrating why, in the context of given facts, a particular rule or rules should be determinant of the legal issue. If there is another view, indicate recognition of it, and why you reject it;
- [C!]** —Resolve the issue;
  - Write clearly;
  - Use short sentences for clarity;
  - Paragraph frequently. This will make your answer easier to read;
  - Avoid expressions like “I feel,” or “I believe,” which may be substitutes for reasons. Use instead a third person expression, such as “plaintiff may contend;” [Note. In LEEWS parlance it is never “plaintiff.” Rather, “movant!”]
  - Avoid dogmatic expressions such as “certainly” and “undoubtedly.” The point in most cases is arguable;
  - Avoid abbreviations. At least limit them to those in common usage.

Dear reader. The what, as in what to do, what an “A” response is like, what a good response is and is not, is certainly contained in the foregoing. It is a thoughtful, well-intentioned effort at assisting law students. Excepting “state the conclusion first,” your author, following 30+ years instructing this vexing subject, finds little to gainsay. Again, this is an excellent window into the mind of a law professor respecting what is wanted in an exam response. Re-read the foregoing before continuing.

Then ask yourself, “Having read the above (having studied it carefully), do I know how to implement it?” Confronted with a fact pattern and the task of addressing it “as a lawyer” (under significant time pressure), do I grasp in even small measure anything approaching a precise how of implementing the foregoing?

The answer must be an emphatic “No!” In a nutshell, however, enabling precisely such implemen-

tation is what instruction that follows will accomplish (!!). How to implement and reflect Professor Derrick Bell’s advice—all of it!—will be integrated into systems, skills training, and instruction that follows. (Including whether to state a conclusion at the beginning [of analysis of an issue], the end, not at all; how and why.)

As suggested, current or updated CW offers scant more in the way of practical advice than the foregoing. [Not much changes in the law school exam writing firmament.] In the typical commercial, exam-writing offering, one receives such additional admonitions as “read through the hypothetical line by line to spot issue-generating words and phrases.” By “attacking” various exams (segments thereof) one gains a better feel for what is and is not “lawyerlike” in problem analysis and resolution.

[Note. See leews.com (especially Standard Advice and How LEEWS is Different), for additional discussion of conventional exam writing/study advice and what it lacks. There are comparisons with some competitor offerings. (E.g., BAR-BRI; Flemings Fundamentals; the book, *Getting to Maybe*, etc.)]<sup>18</sup>

Shortcomings of CW become apparent as soon as a student faces a new hypo exercise. There is immediate tentativeness, uncertainty how to begin to make sense of the tangle of facts.<sup>19</sup>

In sum, conventional wisdom and standard modes of approach provide little more than a foundation for surviving an essay exam. They fall far short of affording smart, hard-working students the prospect of not being stymied from doing their best by (needless) confusion/uncertainty respecting how, exactly, to address the challenge presented by law school and law exams.<sup>20</sup>

Advice and methods that follow build upon CW, ignore or contradict it as appropriate, ultimately go far beyond. What is put in place is a disciplined, systematic science of preparing for and addressing any essay hypothetical-type exam; indeed, skills and approaches for addressing any legal problem-solving exercise. Addressing any and all exams becomes predictable. At all times YOU are in *control of the exam (!)*, not *the other way around*.

*Mastery* of what follows eliminates confusion about what one is doing, how one should proceed—whether in class, studying, taking an exam. There are no shortcuts, no tricks. One *does* have to know

law. However, how, as a practical matter, must law be known? However, how, as a practical matter, does one systematically identify *all* issues? How does one perform “lawyerlike analysis?” How does one present analysis concisely, effectively? (How does one brief any and all cases in 2-4 lines, while understanding them far better?!)

What follows enables exam results commensurate with ability and effort. What follows is no less than—finally!—a proven effective, true science of

law essay exam response technique and preparation. What follows are rules, insights, a methodology, and a grounding in skills—analysis; concise presentation; 2-4 line, exam-focused case briefing; etc.—, that, with practice (essential!), enables a competent, even enthusiastic player in a most challenging game—preparing for and taking law school exams.

There is much to learn! Carry on!

## SECTION TWO CHAPTER 1 FOOTNOTES

<sup>1</sup> Most law school and bar exams are now typed into internet-blocking software. Law students are usually still given a choice of writing or typing exams. (Sometimes computer systems crash, and all must write exams.) Here and there a law professor still insists that exams be written long hand in “bluebooks.” It has been noted that given a choice, one should type. (It’s faster for most, neater.) A LEEWS grad will have nothing to hide or obscure. (A reason some might choose to write exams longhand.)

<sup>2</sup> **A true science of exam writing/preparation.** By “science” is meant a body of knowledge acquired via study and practice. One might add tested empirically. Science is distinct from ignorance and misunderstanding. It is not myth and supposition. It is in-depth “systematized knowledge.” It is systems, general laws, knowledge perceived and tested via principles of scientific method. At best it is ultimate truth and clarity in a subject area.

In the instance of LEEWS, one will perceive a thoroughly integrated, logical progression that causes many to say, admiringly, “This just makes [common] sense,” and “Why has no one thought of this?” (Latter question addressed below.) Suffice that many facets of LEEWS, tested, polished, proven effective over three decades, indeed seem common sense. Many are articulated by others. However, LEEWS near seamlessly integrates these along with important *new* facets and insights into a whole constituting several *systems*. LEEWS introduces unique, revolutionary foundational precepts and insights that unify the many facets, that make them comprehensible individually, but extremely sophisticated in their entirety. LEEWS is both broadly applicable—to *every facet* of *every essay* in *every subject* in *every exam*, no matter question/instruction posed—, while at the same time providing precise guidance in all phases of exam taking and preparing. This sets LEEWS far apart, and makes it *the only true science extant in the field*.

Proof, however, is in the pudding, not the blah blah. One must bend to the task of comprehending, progressing all the way through—ideally, the live or audio program, supplemented by this book. (As noted more than once, learning from book alone, while possible, is difficult, owing to effort required, coupled with uncertainty the effort is worth it.) This latest, likely final edition, is the very best effort at making comprehension possible (and palatable).

**Why law professors, etc. have never discovered (or adopted) the LEEWS Science.** One may query why law schools, law professors, other sources never discovered or developed the LEEWS science (or anything approximating it). Why hasn’t LEEWS been incorporated into law school teaching after all these years? This subject is addressed more extensively in *GELS*, your author’s 2012 book. (Currently free download at [www.leews.com](http://www.leews.com).) Suffice, respecting discovery, one major reason is that law professors, law schools, law students, lawyers, etc. *cannot conceive/imagine the science LEEWS represents can exist*. Thus, none have sought to discover such a science. Nor do they want to! [Note. Your author happened upon the insight that put him on the path to evolving LEEWS by accident!] Developing LEEWS has required challenging not just assumptions and teaching methods that have existed for over 100 years that are at the heart of law schools’ failure to adequately train the [practicing] lawyer mind, but law school itself as presently constituted. Hence the failure to adopt or incorporate LEEWS. Incorporation IS possible. It *should* happen. [Your author certainly thought it would.] However, significant power would shift to students. LEEWS IS A REVOLUTION! Professors or law school deans who implement LEEWS into curricula (e.g., in first year orientation) would significantly rock the law school boat. The seamlessly integrated, proven-effective approach now offered evolved over years and decades of thinking, testing, adding, refining.

<sup>3</sup> **Law school grading.** Grade inflation isn’t nearly so great in law schools as in college (where often 50 percent and more of grades are A’s). However, the time when law professors awarded no more than 2-3 A’s in a class of 100 has gone the way of 1/3 of first year law classes routinely being flunked out of school (!!!). Mandated curves at some schools—U. Texas, U. Penn. etc.—require that 20-30 percent A’s be awarded. However, as has been and will be noted elsewhere, such is the (clear) standard of minimally competent performance “as a lawyer,” that no professors give 20-30 percent A’s! They satisfy the quota requirement by awarding A-’s (the new B+), which students are grateful to receive. Law professors continue to be stingy awarding solid A’s—typically fewer than ten percent. A+ is an exceedingly rare grade. (E.g., when Harvard Law awarded letter grades [until *circa* 2008], only two grades in a 1L section of 80 were reserved for A+. Often only one or none were given. This in a class of stellar LSAT scores and lifelong, straight-A, hard workers.) The average first year grade in top-tier law schools is now B+ and slightly higher.

<sup>4</sup> **Knack—aptitude, genius?—for writing law exams?** The point has been made that even those who get A’s in law school [w/out LEEWS assist] don’t come close to mastery of exams. Their efforts—35, 45 points out of 100?—are merely less incompetent than efforts of

classmates. However, what explains their seeming edge over equally smart, equally hard-working classmates? Are they not, after all, gifted in some way? Is there such a thing as “innate aptitude”, “innate gift,” “genius” for the law, The Right Stuff?

For over 25 years instructing LEEWS, your author subscribed to the notion of some few students having at least a knack. At this very point in eight (technically nine) previous editions of the *Primer* I wrote, “Save for those fortunate few with a knack for responding effectively to the essay hypothetical format (5-7 percent, and generally indistinguishable in college GPA, LSAT, and diligence from another 30-40 percent of their classmates)”... I had bought into the myth that some few indeed had something... innate, a special aptitude—The Right Stuff. Moreover, they did not need an assist from LEEWS. (I.e., they could compete with a LEEWS grad of equal intelligence and diligence.) I now realize this latter notion is incorrect. **If true mastery of law essay exams is to be achieved—75, 85, 110 points out of a possible 100—, especially given time pressure, it will only be achieved via LEEWS!**

The opening off-hand quote of the U. Georgia torts professor (again, courtesy of a former student) opened my eyes. What I have since realized is that some law students indeed have a leg up in terms of approximating on exams the rarely manifested (practicing) lawyer mindset that impresses. It has long been recognized that engineering, math, hard science majors tend to do better on law exams than “good writers”—e.g., English, journalism majors. To the list of those with an edge may be added any tutored in the close, mincing, nuancing thought processes of Talmudic study, computer science, some avenues of philosophy—anything that hones nitpicking thinking and holding a conclusion in abeyance. Such mental instruction occurs *prior* to starting law school. It enhances the benefit of “follow IRAC” and other exam-writing advice that is of but minimal assist to more academic thinker/learners.

<sup>5</sup> **Case method instruction—what’s wrong with it?** So-called “case method” instruction—reading/briefing *appellate* cases; discussing them in class via Socratic method—was popularized by the influential dean of Harvard Law School, Christopher Columbus Langdell, over 100 years ago. (For whom the main Harvard Law building—Langdell Hall—is named.) Academic alternatives to “apprenticeship,” the prevailing mode whereby lawyers once became lawyers, were tried elsewhere—e.g., NYU, Columbia, Yale. [It may be noted that apprenticeship, learning at the feet of lawyers and judges, which continues to be the primary way lawyers learn to be lawyers in Great Britain *and here as well!*, was not suited to the bottom line purpose of law schools—bringing instruction of lawyers (and revenue that implied) into the academic realm.] Langdell appropriated from the other instruction models, tinkered a bit, then promoted his case method model. Harvard was by far the largest law school at the time, sending graduates all over the nation. Case method became preeminent, *de rigueur* in virtually all American law schools. (Northeastern Law, which combines case method and practice internships, is one of few exceptions.) Here’s the problem.

Appellate cases (cases on appeal) do not determine facts. Facts are determined at the trial level. (Cases on appeal are remanded [sent back] if additional fact-finding is necessary.) Thus, **gathering of facts, especially the nitpicking, nuancing, back-and-forth arguing of facts that practicing attorneys routinely engage in a trial, even hearing, is wholly absent from law school classrooms.** Law professors *do* try to encourage thinking about facts by introducing hypothetical changes in facts of cases—so-called “what ifs.” This is supposed to instruct ability to “think as a lawyer.” However, it only succeeds for those with a propensity to such thinking acquired *prior* to entering law school. (Described in the previous footnote. Or LEEWS grads! [See Chapter 14 of this section.]) For most, such exercises fall flat. 1Ls in particular just take copious, largely useless notes.

There is little respecting what is discussed in appellate cases—(established) facts, holding (result), law applied, rationale (reasoning)—, and what goes on in an American law school classroom (typically amphitheater seating in large first year courses), especially with an overlay of socioeconomic, political, etc. “policy” woven into the discussion (comfortingly reminiscent of college and graduate school classrooms), to transition students away from the academic posture of thought/approach brought with them to law school. Again, **words such as “lawyer” and “attorney” are rarely if ever heard in law school classrooms (!)**. Discussion of clients, client outcomes, strategies—*what, essentially, lawyers do!* (Employ substantive/procedural legal strategies to achieve client goals)—... All such is missing in first year classrooms!

<sup>6</sup> **“Lawyering dialectic.”** By this is meant back-and-forth argumentation respecting law and facts that opposing lawyers engage in. In an exam context this is implied in the expression, “be objective [in analysis].” This, along with “think as a lawyer” and other aspects of solving the complex puzzle of law school exams, will only become understood as one works through the complete LEEWS science, in particular instruction and practice of analysis..

<sup>7</sup> **Why the hypothetical-type essay format is not questioned.** One reason is that law professors likely has such exams when they were in law school, and in general did well. [A typical hiring requirement at top law schools is that one have made Law Review (top ten percent), clerked for a federal or high-ranking state court judge, and of late have a PhD.] “Doing well on exams,” as has been noted, may only mean 35 or 45 points out a possible 100. Nonetheless, those professors happily accepted the verdict of their A’s in law school—“You have The Right Stuff!,” “You’re a genius of the law!” Having accepted this verdict on their worth, professors naturally believe in the essay format. They believe this not in spite of the format’s difficulty, but *precisely because of its difficulty!* This, notwithstanding studies showing that those who later in life make the biggest impact in law are not usually the exam high flyers! They believe the time-pressured essay format is a fair test and measure of potential worth, aptitude, etc. as a legal *thinker* (if not practicing lawyer).

<sup>8</sup> See, e.g., “Law School Examinations,” by professor Phillip C. Kissam, *Vanderbilt Law Review*, Vol. 42, No. 2 (March, 1989), in which, during a 70-page, somewhat abstruse treatise, the professor concludes, *inter alia* (among other things), “the exercise of examination productivity [meaning doing well on exams], especially in view of the speed required [time pressure], appears to involve a significant degree of natural talent.” (At page 459.)

<sup>9</sup> It may be noted that skill and success where it counts—practicing law—easily revives confidence and the ambition of being a fine lawyer. (It did for your author.) However, many are indeed (and unfairly) relegated to lower echelons of the profession in terms of job opportunities. This is especially so at law schools below the first tier in prestige. GRADES ARE EVERYTHING IN LAW SCHOOL!

<sup>10</sup> **Evidence essay exams are invalid indicators.** The best evidence, of course, is the complete turnaround LEEWS has produced for over three decades in performance of law students who had already taken essay exams and performed at a mediocre level. Countless students have gone from C’s to A’s. Your author recalls a woman from SMU Law in Dallas, who took a live LEEWS program in Austin following so-so grades first term. She wrote following winter/spring term to report that she had gotten A’s. So dramatic was her turnaround, that a professor she had both terms pulled her aside and demanded, “What happened to you?!”

Additional evidence lies in the circumstance that law professors are continually baffled when students they deem “brilliant,” based upon class participation, falter on the final exam, while someone who never said a word in class or was inarticulate gets an A. Of course,

the profession has numerous distinguished lawyers whose exam performance in law school was unremarkable. This topic, along with many others, is explored more fully in the aforementioned 2012 book—*GELS*. (Free download at leews.com.)

<sup>11</sup> It should be noted that some few professors and law school administrators do seem to recognize the problem. However, nothing meaningful emerges beyond providing additional ineffectual conventional study and exam-writing advice. (See end of chapter.)

<sup>12</sup> **Practitioners as law professors.** A 2009 study of 40 law schools in various tiers found that average practice experience of new professor hires at lower tier law schools was 7 ½ years, versus *less than 2 years at top-tier schools (!)* (which tend now to hire law grads with PhDs, fresh off prestigious judicial clerkships). Lower tier law schools—e.g., Thomas Cooley, Charlotte, Belmont, NCCU, U. Memphis, St. Louis U., Florida Coastal, John Marshall (Chicago and Atlanta), Georgia State, UNLV, and many others, including a host in California (e.g., Laverne, Humphreys, People’s College, Venture, Santa Barbara, Lincoln, Northwest)—draw largely from a local populace (unless internet-based). Most graduates practice locally. Thus, it behooves such schools to curry favor and develop ties to the local bar—judges, practitioners—in order to enhance job prospects for graduates. (It may be noted that many, decent-pay jobs are to be had as clerks to local judges, in courthouses, etc.) Newly opened law schools in Dallas and Fort Wayne, Indiana, for example, have, not surprisingly, chosen prominent local judges as their initial deans, and local practitioners (at handsome salaries) as professors.

**Do practitioner professors teach practical skills?** Generally, no! Judging from the recent experience of a friend—Harvard Law grad, former BigLaw partner, current practitioner, now teaching a course at U. Memphis Law—they are somewhat intimidated to be back in academe (where they often did not ace essay exams). They may amuse and regale students with war stories from practice. However, generally they toe the line in terms of teaching formal (versus clinical) legal subjects. They employ the same case method they experienced in law school. Gradually, they ease into Socratic mode. They do not rock the boat respecting how formal classes are conducted.

**An exception.** A professor comes to mind at NCCU Law (North Carolina State U.), a traditionally African-American, albeit state institution, now roughly half ‘n half black/white mix. Knowing most of his students would hang up shingles as solo practitioners, this former practicing lawyer has long felt it incumbent to instruct students about “the missing witness, Mr. Green.” The expression, “[If it please the court,] I request a postponement while the important witness, Mr. Green, is located,” is code between lawyer and court that the lawyer has yet to be paid, does not think payment will be forthcoming should the case conclude (e.g., client be let out of jail), and would appreciate the indulgence of the court—consent to a delay, etc.—in assisting in this important aspect of small-bore law practice.

Students in live LEEWS programs love this anecdote, as all (bored reading appellate cases) are eager for a sense of actual nuts and bolts of being a lawyer. However, this single instance of practical advice being delivered by a (full, tenured) law professor is the *only one* I can offer after over three decades of instructing countless law students, from 200+ American law schools (!). No others have been brought to my attention in countless interactions with students. None!

<sup>13</sup> **“This is not a bar review course!”** Such seems a prevailing attitude among professors at top-tier law schools. It reflects the scholar/practitioner divide, and reluctance to be seen as an enabler in a (mere) trade school.

<sup>14</sup> **Issue “spotting” advice.** First, note! The very concept—issue spotting—presumes a haphazard, hit/miss process. The idea that a disciplined, systematic, even scientific approach to identifying relevant issues might exist is altogether absent. In contrast with the unique, proven effective, *science* of issue identification presented herein, the answer given by law professors (and all others!) to the question, “How does one spot (identify) issues?,” will be of the following: “Read facts carefully,” “Make notes in margins,” “Circle ‘issue-generating’ words and phrases,” (???) “Follow the transactions;” “Follow a checklist.” Such advice is helpful. (Better than nothing.) However, it is far from a science. The impression that “issue spotting” is an art of sorts, something some (innately) will be better at than others, remains. An initial problem is that “issue” remains a concept never precisely defined. (As it surely will be herein. Of course, there are different kinds of “issues.” Some are major, others minor, others “real.”) (See also fn. 19 following.)

<sup>15</sup> A Pittsburgh native, first tenured African-American law professor at Harvard, one-time dean of U. Oregon Law, visiting law professor at Stanford and NYU, celebrated teacher, and prolific author, Professor Bell was an iconoclast and noted supporter of students, minorities, and women.

<sup>16</sup> Beyond variations on CW, what is often offered in such sessions that Professor Bell’s handout does not, is experience writing a practice exam or two, then going over the exam and having good and bad aspects pointed out. This is helpful, but hardly solves the problem. LEEWS, it will be seen, in stark contrast, takes an approach whereby “writing a response to an exam,” “writing [even] a response to a single hypo” is too broad an undertaking to be of practical, instructional value. It may be noted that writing practice exams, versus the LEEWS approach (essentially focusing on practice *paragraphs*, the sum of which constitute the response to either hypo or exam as a whole), has occasioned a minor difference of opinion with the pseudonymous author of a popular book (that highly tout LEEWS), *Planet Law School*.

<sup>17</sup> Meaning, “know the law,” the standard WHAT to do (vs. HOW) advice (plus “IRAC”) given by law professors.

<sup>18</sup> For contemporary examples of useful, far-from-a-science advice law professors offer, Google search “law exam” for leads to articles by various law professors. Virtually every professor, every law student has views on what works, what does not, respecting preparing for/addressing the problematic essay exam. The menu is bewildering. Who does one believe? Who does one trust?

There is a **simple dividing line, a simple test of whether an exam writing methodology offers anything new, useful.** (I.e., more than CW?) *Does it challenge and address—at all!—the disconnect of class and exam? Does it challenge, dissect, remedy failure of case method to transition academic thinker/learner to something approaching practicing lawyer thinker/learner? Does it fault law school?*

If not, what is offered is warmed over variation on CW, especially IRAC. In addition, one encounters extreme notions promulgated as solutions—e.g., “Course outlines should be 200 pages long, minimum;” “Take at least 50 practice exams.” Such overkill, *sui generis* approaches doubtless helped someone at some time do well—35, 45 of 100? However, they are person/situation specific, impracticable, far from a science of approach.

<sup>19</sup> **CW re “issue spotting.”** (Adding to fn. 14) CW advises, in effect, that one merely dive into fact patterns. Thus, “Read facts carefully [maybe twice];” “Pay attention to transactions;” “Develop a timeline;” “Circle issue-generating words and phrases” (i.e., words/phrases suggesting legal topics to discuss); “Follow a checklist” (of legal topics). Well and good, IF one has a talent (knack?) for remaining calm in a tense, time-pressured situation; IF one has a methodical cast of mind that holds firm amid chaos. No reliable system, much less science is implied. Rather, as noted—fn. 14—, such approaches suggest haphazard approach. Art, knack, innate traits seem requisite. Some will be more adept. Sink or swim. [Is this of more than superficial relevance to future ability as a lawyer?]

It will be seen that simply plunging into a fact pattern, attempting to discern issues in the midst of all that a complexity of facts contains, is an initial major error (made by most). The foregoing CW approaches are fraught with potential for being overwhelmed, confused, intimidated. The most calm and methodical will miss issues. At best, results will be in the 35-45 range (out of a possible 100).

**LEEWS**, in sharp contrast, **instructs that one never dive into a fact pattern**. LEEWS cautions that hypos are a morass, a quagmire. Only in segmented, piecemeal fashion should they be addressed. Always there is a limited, piecemeal focus. In *disciplined fashion* the whole—a fact pattern—is systematically dissected, components are addressed, then they are put back together. Such management—control of the hypo vs. vice-versa—is accomplished *every time* by a true science of approach, applicable to *any and all* essay exercises.

<sup>20</sup> **Advice of supposed experts.** It is noteworthy that exam writing advice of a supposed “expert,” published by *The National Jurist* magazine in Spring, 1992 (magazine distributed free to most law schools), in a special issue entitled “Surviving the Bar Exam,” offered far less than the generalities expressed by Professor Bell. The same can be said of similar articles by law professors, administrators, and others that appear every fall in this publication in its “law school survival” issue. As noted, not much changes in the law exam writing firmament. The essay exam format persists. CW remains merely helpful, ultimately ineffective for most. With but the rarest of exceptions, **no one masters a law essay exam**—85, 95, 110 points of a possible 100—, **except that they have mastered the LEEWS Science!**

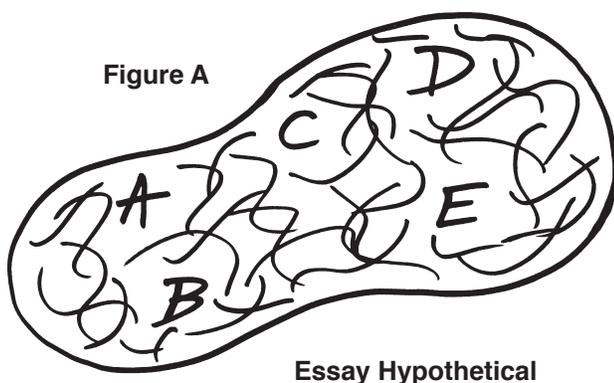
## CHAPTER TWO

### PERSPECTIVE ON THE EXAM, THE PROBLEM, THE PATH TO A SOLUTION

#### Nature of the Beast

The Appendix herein contains eight hypotheticals in various legal subjects. Each is followed by legal precepts necessary to address the exercise, also model planning and response, executed per LEEWS. All but the so-called “Combination Law Hypo” (p. 146) are representative of exercises one might encounter on a law school exam. The Combination Hypo is representative of an essay format sometimes found on bar exams—several legal subjects combined in a single hypo. If you have never taken or looked at a law essay exam, refer to the Table of Contents before continuing. Look at a few of the hypos in the Appendix. Think about the questions/instructions following the fact patterns, and how one might go about responding. However, do not at this time try to make sense of either model planning or responses.

Consider the following figure:



Imagine squiggles inside Figure A represent *facts*—dates, places, circumstances, events, other information. Imagine the (5) letters represent *parties*—persons, groups, corporate entities, government agencies, etc. Such constitutes your author’s (the LEEWS) figurative representation of any and all essay hypotheticals, whether encountered in law school or on the bar, whether three lines or 5-10 pages in length.

Typically, in passages varying in length from a few lines to several pages, a hodge-podge of facts is presented. Lurking within this factual chaos, we shall see, will be *at least two*, often more parties. In its most troubling specie (because SO little guidance is provided) the exercise concludes with a terse question or instruction (“question/instruction” [Q/I]) such as the following: “Discuss rights and liabilities of all parties,” “Draft a memorandum addressing all relevant legal issues,” or, simply, “What result?”

The task of an examinee is to identify (“spot”) all legal issues prompted by the fact pattern, then resolve those issues, applying relevant legal precepts—rules, statutes, etc.—and logic in a penetrating (“lawyer-like”) analysis. Typically, such must be accomplished under severe time constraint—15, 20, 30, 60, 75, 90 minutes.

The exam format is different from any encountered in high school, college, graduate school. As noted, a problematic difference is that topics to be addressed—issues—must first be discerned/located amid the factual hodge-podge. Imagine a math exam presenting mere data, and instructing, “Figure out the questions. Then answer them!”

Understandably, there is confusion over what is expected. Being laymen (academic thinker/learners!),

not lawyers, law students, particularly 1Ls, have difficulty grasping the import of “rights and liabilities,” “resolution of issues,” “application of rules of law,” “interweaving of law and fact” (analysis). Law professors, accustomed to thinking in such terms, perhaps for reasons previously noted, neglect to define such concepts. (Intimidated law students do not ask.)

Left to their own devices, examinees naturally fall back upon habits of exam taking that for many years have brought success. The following illustration of the difference between what is required on a law school exam, and what was expected on exams previous, demonstrates the degree of adjustment necessary if success is now to be attained.

### Key Difference Between Law Essay and (All) Other Exams

Prior (non-law essay) exams for the most part call, merely, for regurgitation of information and ideas gleaned from assigned reading and class discussion. For example, a question on a history exam might ask for “Root causes of pilgrim migration to the New World.” An examinee on top of assigned reading now perhaps recalls a religious motive, an economic motive, a political motive, a social motive, a moral imperative, etc. The task in successfully responding to the question is to but present and explore those various motives, as they were presented in assigned readings and elaborated on in class discussion. *Memorization and regurgitation* is key! Addition of new, original insight earns bonus credit.

THE LAW ESSAY FORMAT TAKES MEMORIZATION OF RELEVANT (NECESSARY) LEGAL INFORMATION AS A GIVEN. It is assumed any law student/graduate can memorize legal rules and precepts. Thus, respecting the above pilgrim example, it is assumed root causes for migration are known. What is tested is not memorization/regurgitation, but ability to *apply* known information in problem-solving fashion to facts and circumstances not seen before, arriving at resolution. In no small measure, the exercise is math-like!—apply known principles (akin to theorems/formulas), but first discern the problems (issues) needing resolution. No wonder non-math/science—liberal arts—types have a problem (a lump in the throat), and math/hard science/engineering types have something of an advantage.<sup>1</sup>

The pilgrim example in law school (or on a bar exam) becomes the following exercise (fact pattern followed by instruction):

You’re in the land of OZ. The political situation is as follows.... [A scenario is described.] Economic conditions are as follows.... The religious situation is as follows.... Social conditions are as follows.... (Additional facts are introduced.) [Societal] groups A, B, C, D, and E reside in OZ. These groups have the following respective characteristics, beliefs, hopes, circumstances....

[Figure A, preceding, figuratively represents this tangle of parties and facts.]

[Instruction:] Predict which, if any, of the above-named groups will migrate to the New World. Defend your positions.

Knowledge of reasons that would motivate a group to migrate is taken for granted. [Learned via reading/briefing a series of pilgrim cases.]<sup>2</sup> What is tested is ability to apply correct reasons/rules to relevant facts in an interweaving called (lawyerlike) “analysis,” so as to predict whether group A, B, C, D, E will migrate or no, and why? Whether A, B, C, D, E will migrate—conclusion—typically is not nearly so important as the analytic process in arriving at the determination. (This differs on bar essay exercises.)<sup>3</sup>

Regurgitation of memorized reasons/rules (governing migration) is but the starting point. What counts is analysis—ability to think and reason (as a lawyer). THE HYPOTHETICAL-TYPE EXERCISE PRIMARILY TESTS ABILITY TO EXPLORE RELEVANT, IDENTIFIED LEGAL PROBLEMS (ISSUES) IN A THOUGHTFUL, BALANCED WAY—as a lawyer competent in the subject matter (reasonable facsimile thereof) might. (Easy to describe; not so easy to do!) Issues (legal problems), must first, however, be identified (“spotted”).

### Description of Typical Law School Exam

Bar exams were described in the preceding Section. The *typical law school exam* is 3–4 hours,<sup>4</sup> and will entail several hypotheticals (a/k/a “questions”).<sup>5</sup> Some exams include a multiple choice segment, similar to what is encountered on a bar exam. (Often questions from past bar exams.) Infrequently, true/false and short answer formats are encountered.

In rare instances *no fact pattern is provided*, only a question or instruction. (E.g., on a property law exam: “Who owns the moon?” [1/3 of the exam!]) Such an exercise seeks to probe not just knowledge of property law principles, but exploration of why and wherefore of such principles—“policy emphasis.”

(Advice respecting this specie of exercise is provided in due course.)

However, in the main there are characteristically complex, fanciful fact scenarios, often populated by entities with amusing names. (E.g., “Mr. Whodunit;” “Mr. Contract Complete;” “Paul Polluter;” etc.)<sup>6</sup>

“Hypotheticals” are normally assigned time limits. (*Which should be observed*, as responses will be weighted accordingly.) Limits vary from 10-90 minutes or more, depending upon the grader’s assessment (never precise) of a hypo’s relative complexity.

Very rarely, an examinee is offered a choice of hypotheticals. E.g., “Choose 3 of 5,”... “5 of 7.” This option, thought to be progressive, is designed to mitigate penalty owing to gaps in knowledge that cripple performance on a given hypo. (Thus, choose another.) However, it also entails far more work in grading. Thus, the (extreme) rarity of the option. TIME PRESSURE ON ALL LAW EXAMS IS NORMALLY SEVERE.

The salient difference between law school and bar essay exercises is that the former normally test knowledge and application of but a single area of law (from the course in question), while a bar hypo often requires drawing from knowledge of several areas of law — e.g., criminal law, evidence, procedure. (Rarely more than three or four areas of law, which areas typically are segregated by question and/or paragraphs. See *Combination Law Hypo*, p. 146.)

### **Response of Typical Law Essay Examinee (Exercise in survival, not mastery)**

During 30+ years, countless LEEWS attendees who’ve taken even a one-hour midterm have snickered, nodded knowingly, approvingly at the following description of how most law students react to hypothetical format exams. Effective address of the exam, much less mastery, seems highly improbable:

You enter the exam room nervous, but confident.<sup>7</sup> Considerable law has been committed to memory. Indeed, your brain is bursting with legal precepts. So is your course outline, likely completed the night before. (Assuming an “open book” exam.)<sup>8</sup>

You select a seat, perhaps nod to a fellow student, force a smile of confidence. (Again assuming “open book,”) <sup>9</sup> out of roller bag/book bag is pulled computer, course outline, casebook, perhaps a commercial outline. These are arranged around the (typical) hard copy of the exam, picked up coming in, or already on the desk. Per instructions (on chalkboard

or announced), you do not open it. You also grabbed several sheets of scratch paper coming in.<sup>10</sup>

A couple more days to polish, master the course outline would have been helpful. There was a law review article you didn’t get around to reading. However, a little luck... You’re reasonably confident. YOU KNOW A LOT OF LAW!

Told to begin, you open the exam [hard copy or software] and skim a paragraph or more of—“cover sheet” general instructions. (E.g., “Pay attention to time limits;” “Unless otherwise instructed, assume that state [federal] law applies;” “Read questions [meaning fact patterns. Sic!] carefully, preferably twice;” “Do not assume facts;” “Support conclusions;” “Do not merely restate facts, as I [grader] already know them;” etc.) [Advice! Read cover instructions on lots of old exams. This enables you to skim and pinpoint what, if anything, is new/unique to instructions for the exam you’re confronting.]

You’re still unsure what “apply law to facts” means.

Having read the cover instructions (hopefully 2min., not 5...10?), you plunge into the first hypo, “reading carefully” (as instructed by professor, upperclassman, all offerings but LEEWS). You seek to “spot” “issues, which you correctly take to mean legal topics meriting discussion. You know to “circle issue-generating words and phrases,” “make notes in the margin,” pay attention to parties, transactions,” etc.

15-20 seconds into the first hypo, you perhaps peripherally notice a few heads popping up. Maybe yours does as well. What’s going on?... Some have not yet found anything reminiscent of the course! Perhaps they/(you) have the thought, “Am I in the wrong room?!”... They/(you?) scan nearby faces... Okay. Familiar. This is the correct room.

What a crazy fact pattern! ... [Head raised or no, you agree in this regard.]

[Advice! Along with earplugs to screen out incessant tapping on keyboards, bring hat or cap to create personal space shielded from distracting glare of surrounding computer screens.]

You reach the end of the first hypo. Minutes have ticked off the clock. Although the room is chilly, you perspire slightly. Also palpitate. Confidence rapidly ebbs. Impossibly, given the amount of law digested, you’re drawing a blank. “I DON’T SEE ANY ISSUES!” is the paralyzing thought. [What, exactly, is an “issue,” anyway?!]

Sudden furious tapping on a nearby keyboard is heard. (If no earplugs.) A quick glance, an anxiety pang. What could that person be discussing so soon? Got to get going! However, the first hypo seems tough... Perhaps peek at the next. Advice of a professor provides comfort. She said, "Read through the entire exam before beginning your response."

You quickly scan the second hypo. Principles surge in your brain. Must calm down! However, focusing on anything in particular is elusive. The end of hypo #2 is reached.

A few things to discuss have emerged—issues? You hastily scribble some notes. As instructed, you're "planning" your response. On to the next hypo....

Fifteen minutes down! [TIME IS FLYING!!] You've surveyed the entire exam. However, you've yet to begin your response. Fatigue of recent late nights settles over you like a blanket. Your heart pounds. A sense of panic rises. You're confused, way beyond nervous.

[Note. Occasionally (not often) a law student is seen to leave the room... Just gets up, gathers materials, leaves... Perhaps gets a medical excuse and retakes the exam... Perhaps does not return to school... Most law students are tough, accustomed to success. They persevere.]

You're also tough, accustomed to success. You persevere as well.

Deep breath. Back to first hypo. Time to dig in. But what is there to discuss for three, four hours?

[Note. Most law students are frustrated at this juncture—20 minutes into an exam. The exercise doesn't seem to provide fair opportunity to demonstrate knowledge of law. Questions/instructions are confusing—e.g., "Pretend you are a judge," "Imagine you are a law clerk." (???) There is no opportunity to... Pour out (regurgitate) all one has committed to memory?! Which one expects to do.]

With bated breath, you call upon exam-writing advice you've encountered—e.g., "Read facts carefully," "Every word, every phrase may have issue-generating significance," "Outline the response."

[Note. Does any of this offer guidance much beyond, "Go in and find and discuss issues?!" ]

You move through the first hypo again, concentrating. Aha! You're reminded of a case, a principle. Surely this is an ISSUE!

Gratitude, relief floods your body. Fingers tap the keyboard furiously. You fill the computer screen with anything and everything tangentially relevant that pops into your head. Major issue, deserving of much attention and discussion, or minor issue?... You could care less. At this juncture you're literally in survival mode... *HELP!!*

Fingers slow, as nothing more on one topic is forthcoming... But then something else legal pops into your head—another topic, issue! Off you go!... Then something else to discuss,... Something else.

Law and discussion are flowing. Everything that pops into your frontal lobe the professor might remotely be interested in,... You tap, tap it onto the computer screen—furiously!

It's uncertain where one discussion ends, the next begins. Thus, few paragraph stops. Few, if any, labels. [Hard to label when not sure what something is, where it's going.] Response is fugue-like, nonstop, rambling—a rule half stated, a snatch at facts, a conclusion, something else,... So long as the discussion has a legal feel, couched in the subject area, so long as it is something the professor *may* be interested in,... Express it!

And you feel better, much better. You actually feel pretty good! Because, similar to classmates, you're engaged, you're busy.

Are you mastering the exercise?...The answer would have to be "FAR FROM IT!"... Too haphazard, too disorganized! Any notion of mastery left the building long ago. However, enough, surely, is being produced... to pass. At least on this hypo.

[Note. From the outset the law essay exam, not the student is in control. Students are immediately put on the defensive by unfamiliarity of the exercise, uncertainty re what is wanted. Accordingly, THERE IS NO POSSIBILITY OF MASTERY, SCANT POSSIBILITY OF AN "A" GRADE! The advice of not a few "experts" is, "Start writing (typing) from the outset. Toss in the kitchen sink! The name of the game is scoring points." It bears reiterating that no one believes law essay hypotes (under severe time pressure) are subject to disciplined, scientific approach and management. 25-35 points out of a possible 100 is the expectation!]

A glance at the time. Whoa! Suggested time on the first hypo is 45 minutes! Over an hour has passed.

More hypos to address. Where has the time gone? Pang of anxiety. More to say, but must move on. ...

So it goes. Fast, furious. Chance, haphazard identification of topics. Rambling outpouring of law. “Analysis” is superficial, conclusory...

[Note. The effort described in the foregoing is about survival. Approach is too hit-and-miss for all, even most issues to be identified. Much discussion is irrelevant. “Lawyerlike analysis” (whatever that is) is largely absent. The skill was never acquired. Mastery, “A” grades, the exam taker now readily agrees, requires something innate, a genius aptitude for the law—The Right Stuff! A passing grade would be welcome. A “B” would occasion tears of gratitude.]

Eventually, much sooner than would have been expected, the command to “STOP” is heard. One taps a few more words, pauses, exhales, presses “send.”

With more time more could have said more, one could have done a little better. However, no matter. You yawn, stretch. You’ve produced so much response... You’re pretty confident a passing grade has been achieved. You’ve heard most students get B’s. You’re even somewhat pleased with yourself. The ordeal is over. The predominant sentiment is, “I survived!”

A passing classmate asks if a particular point was discussed— “Did you see the issue about ...?”

A pang of anxiety is suppressed. Perhaps amid the outpouring of content you *did* discuss the point, you did spot that issue. Hard to recall. And you have no desire to rehash, to revisit... the ordeal.

You don’t try. You grin, ignore the question....”Too late to worry about that,” you say.

One-up-man-ship nonsense! You did your best.... What’s for lunch?

Later, exhausted, you take a nap. You’ll resume studying in the evening. Tomorrow brings another exam.

Satisfied with surviving, passing? Hoping for a B? As much as law students study, as important as grades are to job prospects, this is not just a curious, but a pitiable reaction. However, it is an altogether typical. IT IS THE NORM AT YALE, HARVARD, STANFORD—ALL LAW SCHOOLS!

Such is the confusion and anxiety engendered by the essay hypothetical-type exercise that virtu-

ally all law students are reduced to variations on the response described above. Such an effort—25 points out of 100, 30?—deserves a “C” and worse. Failing fully one-third of entering classes was once the law school norm.<sup>11</sup> However, inflated grading curves at most law schools will now award a B, even a B+ for sub-mediocrity.

However, good news! “A” grades—35, 45 out of 100?—are not so far out of reach as law students imagine. [The “A” standard is not something students research, nor professors readily divulge (U. Georgia example excepted).] Given the difficulty of exams, A’s indeed seem out of reach. Students know full well they haven’t exhibited anything close to mastery, and don’t deserve an A. (Or a B!) As noted, they fault themselves. They surmise they lack what is necessary for mastery—The Right Stuff.

### Getting a Leg Up on the Problem—Breaking the Hypo (any hypo!) Down into Manageable Units

If one considers various essay exam exercises, it will be realized that those concluding with a series of pointed inquiries—e.g., following a civil procedure hypo: a) Was service proper?; b) Was the venue ruling correct?; c) Was party Y’s answer timely?—are less daunting than ones concluding with an ambiguous “Discuss rights and liabilities of all parties.”

[If one has taken no essay exams, or only a couple, contrast at this point the questions/instructions following the Torts and Corporations hypos. Appendix, pp. 134, 166.]

The reason the prior question format is preferable is it provides specific guidance respecting what to do. It focuses attention, question by question, on finite portions of the fact pattern—i.e., facts relating to, respectively, service, venue, timeliness. These facts will constitute but limited portions of the hypo overall—segments thereof. Moreover, pointed questions suggest what portion of the swirl of law in one’s brain to focus on—respectively, principles having to do with proper service, proper venue, timely answers.

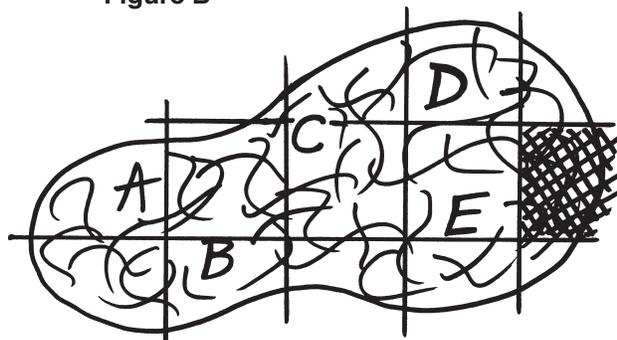
The latter format—”Discuss rights and liabilities of all parties”—, what may be termed an “*open-ended inquiry*” (question/instruction [Q/I]), leaves one confused. (E.g., “Where do I begin? What are the issues? What facts should be considered? What law, and in what order?”) Open-ended inquiries (Q/I’s) require that specific questions to be addressed first be deter-

mined. (I.e., one must first identify — “spot” — specific issues.) Only then can response commence.

Clearly, having a specific, focused legal inquiry to address is a leg up on having first to determine what the legal inquiries are. The more specific and focused the inquiry — issue! —, the better. The question arises then: *is there a consistent method for reducing confusing tangles of facts, parties, circumstances (the typical essay hypothetical) to a series of specific, relevant (to facts and Q/I, whatever the latter’s form), focused inquiries?* If so, such a technique would go far toward lessening anxiety and improving exam performance.

Consider the following figure:

**Figure B**



**Manageable Component**

Perhaps the most innovative aspect of LEEWS is development of the method suggested above the figure. Figure B represents its figurative imposition on the hypo represented by Figure A (p. 30), or *any* essay hypo. In effect, the fact pattern is subdivided into the units or components represented by blocks of the grid. *Each component corresponds to that finite portion of the fact pattern to which a narrowly focused inquiry would direct attention—several words, a sentence, at most a paragraph—, the inquiry itself, and the law that such an inquiry would require to be applied (which will also be finite in scope.)*

Addressing a hypothetical as a whole poses a confusing, daunting prospect. Addressing but a single component posits a task capable of orderly resolution. The component may be said to be “*manageable.*”

The approach system to which you will now be introduced will enable you in disciplined, step-by-step fashion, to break *any* fact scenario down to manage-

able components. Confronted with the jumbled chaos of a hypo, open-ended inquiry or no, one can consistently generate a series of narrowly focused, relevant legal inquiries (corresponding to narrowly focused, relevant *issues!*). These allow you to focus attention on a *limited* amount of legal knowledge, a *limited* portion of facts. THE TASK IS *NEVER* TO ADDRESS A HYPO AS A WHOLE (confusing, daunting!). RATHER, MANAGEABLE COMPONENTS THEREOF.

What must be grasped at this point, the mindset with which one must at all times approach the problem of exam writing, is that HOW ONE ORGANIZES/WITES AN ESSAY EXAM (OVERALL) IS *NOTA* RELEVANT, USEFUL INQUIRY. [“Who knows?,” “How confusing?” seem appropriate responses to this black hole.]

THE RELEVANT INQUIRY IS HOW, CONSISTENTLY, TO BREAK ANY AND ALL HYPOTHETICAL-TYPE ESSAY EXERCISES DOWN INTO MANAGEABLE COMPONENTS, EACH COMPONENT REVEALING A RELEVANT ISSUE. (I.e., narrowly focused legal inquiry?) If you can do this *efficiently*, if you can analyze and present analysis of each such component (issue!) concisely, effectively (in roughly a single paragraph), the problem of law essay exams is solved!

THE SUM OF EFFECTIVE HANDLING OF EACH COMPONENT (EACH ISSUE), ONE AFTER ANOTHER — as we shall see, a series of concise paragraphs (roughly one per issue)—WILL BE EFFECTIVE HANDLING OF A HYPOTHETICAL OVERALL! It will be a far more impressive effort than the confused, hit-miss, typical approach described. Unlike the norm described, the test taker—YOU!—will be in control, not the exam.

The idea is to make addressing any and all hypothetical-type essay exercises predictable, manageable. The approach that follows accomplishes this. It provides confidence, even eagerness as one acquires a proven-effective handle on the problem, a genuine science of approach.

Processed via the (three-step) LEEWS issue identification system, response to any and all hypos becomes, essentially, a series of concise paragraphs, each presenting analysis of an issue a professor (or bar grader) wants discussed. If most issues are addressed and analysis impresses, top grades result.<sup>12</sup>

As noted, possessed of a system that makes such predictability possible, one feels confident. Confidence is a key success factor on any exam.

## SECTION TWO CHAPTER 2 FOOTNOTES

<sup>1</sup> **Advantage of math/science majors.** That math/hard science/engineering types tend to perform better on law essay exams than liberal arts/"good writer" types is recognized (Why this is, is not!). Similar to law essay exercises, math, physics, chemistry, engineering, and other "hard science" problem solving requires application of rules, theorems, principles to facts (data), plus steps of analysis to resolution. However, *on a law exam problems to be addressed must first be discerned in a hodge-podge of facts*. The greater kinship of format and expectation to law exams likely accounts in some measure for seeming greater success of math/science types. However, more important, such persons are likely accustomed to presenting their thought process more concisely, a big plus on time-pressured exams. (Lawyerlike expression, we shall see, properly presented, is concise. LEEWS paragraphing instruction ensures concision.) Nonetheless, that problems/issues to be resolved must first be discerned in a factual hodge-podge adds a layer of difficulty for all students needing a more scientific address.

<sup>2</sup> We shall see that cases and casebooks are insufficient sources of ("black letter") law one must know.

<sup>3</sup> **Bar exam versus law school exam.** Generally, one's conclusion (resolution of an issue) is relatively unimportant on a law school exam, but important on bar essay exercises. The latter is reflected in the standard bar admonition that conclusions be stated at the outset of analysis (of issues)—so-called "CIRAC" (conclusion before issue, sometimes stated again after analysis). Mindful of this, perhaps seeking to prep students for the bar, many law professors insist upon CIRA or CIRAC, rather than IRAC format. Given students propensity to seek/arrive at "the answer" (thought on law exams to mean who wins), this distracts from the main event—analysis! The problem will be discussed in Chapter 12. Distinctions between law school and bar exam exercises will be pointed out as needed.

<sup>4</sup> **Take-home exams.** Particularly at so-called "top tier" law schools, often a longer, "take home" exam format—8 hours, 24 hours, even longer—will be encountered. First term exams at Duke Law in fall 2008 (also Harvard) were reportedly all 8-hour take homes. The idea is to eliminate time pressure, thought to be a primary reason otherwise smart, hard-working students flounder. (Also student complaints.) Last forty page responses (and longer) be submitted after 8 hours, such exams are invariably subject to length restrictions. (Discussed, Chapter 14.)

<sup>5</sup> **Fact pattern as [sic!] "question."** Characteristic of inattention to detail and misleading nature of conventional exam-writing advice, professors, commercial purveyors of law exam-writing advice, law students (following professors lead), and *all* others refer to hypos or fact patterns as "questions," as in "call of the question." "Call" actually refers to the literal question or instruction (Q/I) typically found at the end of... Of what? Both hypo (fact pattern) and literal Q/I at the end (of a hypo) are being referred to as "question," which is both confusing and inaccurate. It is careless, sloppy use of language, unworthy of a lawyer's characteristic attention to precise language use. **A key aspect of LEEWS instruction** (not achieved by case method) **is inculcation of such nitpicking, nuanced thinking.**

Note. When the term "question" is used herein, the literal question or instruction, typically at the end of the fact pattern, is meant, *never* the fact pattern itself. Lest this seem nitpicky, it will be seen that such nitpicking is the very essence of lawyerly thinking

<sup>6</sup> The intent of amusing names, references to current events and the like, seems to be to lighten the mood of an otherwise, for most, grim ordeal. Occasionally, however, as in the instance of the Torts Hypo that will be a primary vehicle of instruction herein, names are diversionary red herrings. (E.g., "Direct Hit," "Pucker Nicely," "Ruthless Nicely.") They contribute to testing such (lawyerly) analytic qualities as "**objectivity**" (earnestly making arguments that both sides of an issue would advance).

<sup>7</sup> **Exam setting/atmosphere, advice related thereto.** As noted, take-home exams (in first year) have become the norm at many elite law schools. A student downloads the exam at an appointed time. An honor code is normally in place (imposing restrictions, for example, on source material). The exam may be taken at a coffee shop. Most often, however, students gather in one of the large, amphitheater-style classrooms popular in law schools, and there is staggered, unassigned seating.

Your author's (UVA law grad) daughter, who took exams via computer (vs. longhand for your author), offered useful advice in this regard. Beyond pen, scratch paper, energy food, she suggested a hat/cap that one might pull down to create personal space. (E.g., helpful to shield glare from surrounding computer screens.) Also ear plugs against the distraction of incessant tapping on keyboards.

It goes without saying that nervous energy, tension, and anxiety in such a setting, whether at 9 a.m. or 6 p.m., is extreme.

<sup>8</sup> **"Open book"/"closed book" exams.** Bar exams are strictly "closed book," meaning absolutely no aids may be brought into the exam room. There was a time when most law school exams were closed book—meaning nothing beyond pen, watch, snack (possibly), and copy of the code in a "code course." (E.g. Federal Rules of Procedure, Tax Code.) Doubtless responding to student grumbling about unfairness, most exams are now "open book." Anything short of a tutor can be brought in. Students arrive with roller bags containing casebook, course outline, treatise/hornbook, etc. Exam software blocks Internet and other computer memory access.

We shall see that open book/closed book is largely a meaningless distinction for a LEEWS grad. There is insufficient time to conduct research during an exam. (Not if the objective is to do well, not merely survive.) Relevant legal precepts must largely be committed to memory. A code, if applicable, and one's course outline, either brought in or hastily recreated, will be the only ancillary assist needed. (See more complete discussion of both exam types in Chapter 14.)

One should investigate whether open book or no, and rules that will apply in advance of exams. Professors may be unwilling to commit one way or the other until a couple weeks prior to the exam.

<sup>9</sup> See fn. 8 preceding.

<sup>10</sup> Although response typically will be typed into software, and the exam likely can/will be downloaded, a hard copy of the exam is also normally handed out. Notes may be made on this. Scratch paper is also usually available. Along with any scratch paper used, this hard copy normally must be turned in at exam's end. Again, exam conditions and rules—what is or is not permitted—should be investigated in advance of the exam.

<sup>11</sup> "Look both ways. One of you will not be here next term," was at one time a standard remark by professors to new 1Ls. To your author's knowledge, Louisiana State U. School of Law was the last to abandon a policy of flunking a third of entering classes (*circa* late 1990's). Why? Perhaps the self-esteem movement, more likely economics. Why would one forego one third of the considerable revenue now represented by each law student?

<sup>12</sup> **Universality of mediocre exam response.** The quote of the U. Georgia torts professor has been featured, referred to. Given

intimidation/confusion engendered by the hypothetical-type exam format, coupled with relative cluelessness of law students respecting HOW, exactly, lawyers think and analyze (indeed, what, exactly, lawyers do [assist clients in achieving goals via legal stratagems!]), and, moreover, HOW, exactly, to present analysis concisely (IF capable of analysis), *virtually all law school exam responses are distinctly mediocre*. They are rather pathetic, slapdash efforts, even at the Harvards, Yales, Stanfords. (Law school teaching is that ineffective at transitioning the academic thinker/learner to something approximating the [practicing] lawyer thinker/learner!)

**The “A” or “brilliant” exam.** A truly lawyerlike effort on a law school exam is rare. However, such exams, earning “Am Jur” and “CALI” awards (for best exam in the class), are rather routinely produced by LEEWS grads.

Note. AN “A” EXAM IS NOT NECESSARILY A BRILLIANT EFFORT, BUT MERELY AN EFFORT RISING SOMEWHAT ABOVE OTHER, MEDIOCRE RESPONSES—35, 45 points out of 100! I.e., merely in contrast with mediocrity and given low expectations is it “brilliant.” Where a grade curve mandates more than ten percent A’s, professors fulfill this with A–’s. (The new B+.) An excellent, possibly brilliant effort will earn an A+. As noted in a previous footnote, professors at Harvard prior to institution of non-letter grades (*circa* 2008) typically reserved only two grades for A+ in a section of 80 1Ls. Often no A+’s were awarded, or only one.

## CHAPTER THREE

### FUNDAMENTALS OF APPROACH— PRELIMINARY DO’S & DON’TS

#### Preparing for Exams From Day One

Effective exam writing begins, ideally, Day One of term with 2-4 line (exam-focused, not class-focused) briefing of assigned cases.<sup>1</sup> As one grasps the how to of approach *during* an exam, things to be done in preparation in order to take maximum advantage of LEEWS will become apparent. These involve, principally, learning/gathering law—legal “tools”—that may be relevant on an exam, organizing this law for speedy reference in course outlines (worked on weekly), practicing facets of LEEWS (particularly paragraphs of analysis). Subsequent chapters offer specific guidance developing course outlines, preparing for class (especially 2-4 line, exam-focused case briefing), and use of sources beyond casebooks, such as law review articles, commercial outlines, hornbooks/treatises, “restatements.”

#### First Things First—Arrival at Exam/Getting Ready

Take-home exams have been noted and described. (See, e.g., fn. 8, preceding chapter.) Obviously, taking exams in a situation as free from distraction as possible is helpful. Advisability of ear plugs in the normal large gathering of students has been noted, also a hat to pull down to shield glare from surrounding computer screens. Being reasonably rested and healthy is normally a plus.<sup>2</sup>

If 9 a.m. is the start of an exam, arriving 30 to 45 minutes early may not be a good idea. Anxiety can build as one sits counting down to the start. Clearly, arriving at 8:55 will produce dislocations. TEN TO FIFTEEN MINUTES BEFORE THE START OF AN EXAM

SEEMS AN OPTIMUM ARRIVAL TIME. It is sufficient to find a seat and get organized. Then the exam begins.

Law school or bar, do not talk to anyone about the exam, one’s preparations, or anything legal as one awaits the start of the exam. (Unless it is believed that person can clarify a specific point, *and you initiate the conversation.*) It is too late to learn more law. It will not help to be reminded of what one does not know.

[Note. It is doubtful a law student would do the following maliciously. In order to reassure himself respecting his own preparedness, a student may seek to test knowledge he is already confident of against yours. E.g., “Is it your understanding that theft is an absolute defense against a holder in due course?” Such an exchange may well leave you feeling more confident as well. However, it may not. Best to avoid it altogether. A polite smile, followed by “too late to worry about that,” should do the trick.]

#### The First Ten Minutes of the Exam—Avoiding Major Mistake No. 1

Recall the description of the response of the typical examinee in the previous chapter. Or recall your own examination experience. *The first ten minutes are critical. As noted, now too often comes* perspiration on the brow, churning in the gut. The chief reason is failure to immediately identify topics (issues) for discussion—drawing an initial blank reading facts of the first hypo. Why does this occur? As described, issues (topics at any rate) later become apparent.

*Three major mistakes* likely to be made when addressing essay exams have been identified (plus many minor ones). The First Major Mistake occurs when, typically, one plunges into the first hypothetical (seeking to “spot” issues). Adrenalin flows. One’s brain pulsates with legal rules and principles. Following habits that have been successful on past (non-legal)

exams, misperceiving what is wanted, the objective, what one would really like to do, whether perceived consciously or no, is regurgitate knowledge (legal precepts) diligently stuffed into one's brain.

One simultaneously seeks a sense of control, a sense of whether the exercise can be handled. It will feel good if a couple topics pop out, if legal knowledge begins to flow and match with facts. However, often during this initial foray nothing emerges, the mind is a blank. Because you are too hyped, too much is going on. Nervousness, law pulsating in the brain, a kaleidoscope of facts. Nothing comes into focus.

For the typical examinee, it's as if he doesn't know any law. Mere minutes into the exam, anxiety rises, overwhelming ability to think clearly, methodically.

Another reason for drawing a blank is that one has set oneself a nigh impossible task. Namely, attempting to sort out in orderly fashion all that is prompted by a typical hypothetical fact pattern—in a minute or two, or three or four or five minutes.

Most hypothetical fact patterns trigger a myriad of possible issues to discuss. Some are obvious. However, many are not. As one scans facts, the brain *does* register some of the possibilities. The problem is seeking to do too much, too quickly. One attempts, *within minutes*, to sort out in the mind's eye the blur of legal discussions prompted by various words and phrases. However, the notion that relevant legal principles, much as obedient soldiers, will attach in orderly fashion to facts encountered creating issues is unrealistic.

Unless your brain is highly methodical, computer-like indeed (and a good computer at that), an attempt to, in effect, "psych out" the hypothetical (i.e., figure everything out) *in a minute or two or five* will backfire. Overwhelmed by the task assigned, the brain sends out confused signals. Connections between principles in one's head and facts to which they relate cross and tangle. Nothing comes into focus. Your confused, overwhelmed brain indeed seems blank.

One then, typically, compounds the problem by lurching off to subsequent hypotheticals, to which an increasingly frenzied (desperate), similar approach is applied. Eventually, when you breathe deep and begin to work more patiently through the first hypo and topics begin to emerge, considerable damage has been done. Whatever confidence and discipline was brought into the exam is largely vanished. The striving

now is merely to pass, to survive. Control has been ceded to the exam. Any chance at mastery is gone.

The foregoing illustrates Major Mistake No. 1—THE ATTEMPT TO COMPREHEND THE WHOLE. *Never think about an entire hypothetical, even a substantial segment of a hypothetical from the standpoint, "What is going on here legally?"* Such an overview (bird's eye) approach will merely confuse, as described.

Such is the complexity of typical essay exercises respecting legal implications, that lawyers (even the professor who authored a hypo) would be confused, if they attempted to sort out legal/factual relationships *in a minute or two (or three, or five)*. Far from you being able to psych out a hypo (or segment thereof), the hypo psyches you out!

Temptation to plunge into a fact pattern and make Major Mistake No. 1 is great. It is abetted by professors and others who typically instruct, "Read the facts (i.e., entire hypo!), before starting your response."<sup>3</sup>

Wrong!<sup>4</sup> Fact patterns must be approached piecemeal. MASTERY IS POSSIBLE ONLY VIA *PIECEMEAL* ENGAGEMENT. LEEWS contemplates systematic carving out of and addressing components of a whole.

The manner in which one reduces any and all hyps into (manageable) components will be methodical, disciplined. (It must be! Apologies to free-and-easy, loosey-goosey types.) NOTHING IS MORE FRUITLESS IN THE FIRST MINUTES OF AN EXAM THAN TRYING TO THINK CLEARLY ABOUT ANYTHING LEGAL. Having a consistent, formulaic, step-by-step approach that leads *piecemeal* to legal thinking is a security blanket. One can cling to the approach while calming down, while warming up. A daunting task is progressively engaged. Thus, at no point does it overwhelm. This makes any and all essay exams doable. Mastery (of components that add up to a whole) becomes possible.

Much practice and discipline is required to avoid Major Mistake No. 1.

### **First 2-3 Minutes of the Exam—Preliminary Overview**

What will be termed "*Preliminary Overview*" (PO) proceeds in two phases. Phase One commences immediately following reading cover instructions, if any.<sup>5</sup> It entails (happily) no legal thinking! Literally, flip (scroll, if not hard copy)<sup>6</sup> page by page through the entire exam to gain a sense of the overall format.

E.g., how many hypos must be addressed? How long are they? What are the time limits? Is a portion of the exam multiple choice, short answer, true/false? How many *pages* to the exam?<sup>7</sup>

[Note. As noted—footnote 5 herein—, looking at cover instructions of old exams (in any subject) aids in quickly reviewing, digesting such instructions on a new exam, saving precious seconds. Scan for “what’s new.”]

Do not during Phase One look at facts of any hypothetical! Repeat. Do not look at facts of any hypothetical! Avoid Major Mistake No. 1. This—not peeking at facts—will require extreme discipline. Temptation to glance at the fact pattern is almost irresistible. One wants to read the story (seeking issues).

Phase One contemplates *quickly reviewing* the entire exam to broadly preview what one is up against. As one does not look at facts, PHASE ONE SHOULD CONSUME NO MORE THAN 30-45 SECONDS.

Phase Two commences immediately upon completion of Phase One (30-45 seconds later). However, only for the first hypothetical! Go back to the beginning of the exam, the very first hypo. Skip over the fact pattern (entirely)—ignore facts altogether! Locate and focus on question(s)/instruction(s) (Q/I’s) associated with the hypo. (Such, typically, are at the end, following the fact pattern. However, not always.)

One’s task at this juncture is simple—locate Q/I’s relating to the hypo!

### Commencing Issue Identification / Response

As soon as one finds and focuses on Q/I’s (Phase Two of PO), perform Steps One, Two, Three (introduced presently) on the first hypo only. Performance of these Steps accomplishes breaking of the hypo—any hypo!—down into the components of Figure B (p. 35). Such components, we shall see, reveal issues a grader (professor/bar examiner) wants identified (“spotted”) and discussed. (Normally many more than others identify.)

Now commence response to the first hypo (only), roughly observing time limits. (A sequence of 10-12-15 minute planning segments, followed by response-execution segments, will be introduced presently.)

One will address (analyze) each component/unit (relevant issue) identified (and evaluated—i.e., major or minor issue, meriting more or less time) via the

Steps in roughly a paragraph. RESPONSE OVERALL (to a hypo)—*ALWAYS!*—WILL BE A SERIES OF CONCISE PARAGRAPHS OF ANALYSIS THAT IMPRESS.

### No Legal Thinking Required!

The law essay exam, as description of the typical examinee response perhaps suggests, is a kind of black hole, a vortex waiting to swallow examinees in a bewildering swirl of confusion and intimidation. Essay exams quite literally assert control over examinees from the outset. Far from taking charge and addressing an exam with confident purpose, students react defensively. The result is the floundering response described.

Although discussing legal cases and taking notes in class fails to transform academic thinker/learners to anything resembling practicing lawyers,<sup>8</sup> the intent when plunging into a hypothetical is surely to demonstrate ability to think and function “as a lawyer.” The typical examinee is eager to demonstrate he “knows law.”

However, neither review of cover instructions, nor Preliminary Overview in either of its two phases—what one does in the first 4-5 minutes of any exam addressed per LEEWS—requires *legal analysis/thinking*. As your author emphasizes to live and audio audiences, “ONLY GARDEN VARIETY LOGIC AND COMMON SENSE IS REQUIRED IN THE FIRST FEW MINUTES OF ANY EXAM. NO LEGAL THINKING!”<sup>9</sup>

Indeed, as we shall see, no legal thinking will be required to perform the next aspect of approach—Step One. Only in Step Two, 5-10 minutes into an exam, is legal knowledge and thinking required.

### Discipline Required!

It follows that if sudden coming together of student-eager-to-demonstrate-legal-knowledge-and-lawyerly-aptitude with exam-requiring-that-one-perform-as-a-lawyer is not to combust into the confused response described; if control is to be exercised over law essay exams, not the reverse; if one is to have any prospect of exerting mastery, then EXTREME DISCIPLINE MUST BE EXERCISED AND MAINTAINED!

Effective implementation of the (somewhat rigid, yes, even robotic) LEEWS stepped approach to addressing and taking control of (any and all!) law essay exams, to breaking complex fact patterns down into manageable units/components revealing relevant issues, requires extreme discipline.

Adrenalin pumps. Your brain is full-to-bursting with legal knowledge you are eager to display. Anxiety builds as classmates shift and groan, and tapping of fingers on keyboards is heard. [Once again—ear plugs, a hat to pull down.] Amid this brewing maelstrom one must keep it together. One must hew faithfully to a disciplined (proven effective for 30+ years!) regimen.

You must calmly, yet efficiently follow prescribed (LEEWS) steps of approach, secure in the knowledge that others are clueless, that your disciplined, regimented, proven effective method will, surely, inexorably, predictably, whittle the most challenging essay exercise down to manageable components/units, which components/units—narrowly focused inquiries, issues!—will be addressed in concise paragraphs that impress.

Only in such fashion—disciplined march, disciplined progression—can mastery over the complex challenge posed by law essay exams be attained. Only in this fashion can handling any and all essay exercises become predictable, manageable.

The LEEWS Science has been likened to a military campaign and plan of attack. Your author readily subscribes to this analogy. History is replete with evidence that the soldier and army with discipline is the soldier and army likely to prevail.

ACHIEVING, EXERCISING, MAINTAINING DISCIPLINE IS AN IMPERATIVE IN IMPLEMENTING LEEWS. It must become a lodestar, a necessary component of approach (the same as learning law [correctly!], and all other aspects of the LEEWS Science).

Here, as in all other facets of LEEWS, practice—on exercises herein, on old exams—will be key to consistent, effective implementation.

### **Beyond the Preliminary Overview**

Review of cover instructions should consume no more than 2-3 minutes. (Particularly if you have reviewed cover instructions of old exams [in any subject], and thus merely skim for new wrinkles.) No more than a minute or so should have elapsed upon completion of Phase One of the PO, and Phase Two for the first hypo. (Provided one has exercised discipline and first, avoided looking at facts, second, avoided thinking about law-related aspects.)

Thus, no more than 5 minutes into any exam, one should be focused on Q/I's for the first hypo. Now perform Steps One, Two, Three on that hypo (only!).

Execute the response, endeavoring to stay within or close to the suggested time allotment.

[Note. *Only following completion of response to the first hypo does one proceed to the next (second) hypo. Only then—20 minutes, 45 minutes, 90 minutes later?—does one complete Phase Two of the PO on this (second) exercise.* In other words, PHASE TWO OF THE PRELIMINARY OVERVIEW FOR A HYPO WILL ONLY BE COMPLETED (LATER!) WHEN ONE GETS TO SUCCESSIVE HYPOS. (You skip over facts to Q/I's, perform Steps, execute paragraphs of response.)]

### **Addressing Objective Exam Exercises**

No advice has yet been offered respecting what to do about, or the sequence of addressing objective exercises—multiple choice, true/false, etc.—noted in a Phase One (flipping, skimming, 30-45 second) review of the overall exam. Normally, such exercises will be addressed in the sequence encountered, observing time allotments. How to address such exercises is far less problematic than essay hypos, and will be discussed in Section Three herein. At this juncture focus is on the sequence of essay exercises and the approach to addressing them. .)

### **Proceed Chronologically or No?**

Implicit in the foregoing is the assumption that hypos are addressed in chronological order. Such, of course, is not necessarily the case. Assuming you clearly label what is being discussed (Chapter 14), it should not matter that exam segments are addressed out of order. However, *providing you have not looked (peeked) at facts—discipline!—, you should have no opinion respecting which hypo to address first.*

[Note. Choosing to address hypos in other than chronological order likely would be based upon a prediction that one hypo presents a less difficult challenge than another—i.e., is easier. Typically, what transpires is that a student identifies one or more issues he feels he can handle in the hypo he chooses to address first, versus none or fewer in another hypo. Of course, such determination can only be made by *looking at facts!*—i.e., by risking Major Mistake No. 1.]

Beginning with a more manageable exercise, warming up so to speak, makes sense. You may indeed form a notion of relative difficulty of hypos via quick inspection of facts. However, the likelihood is not. The likelihood is that in plunging into a fact pattern to (quickly) get a sense of things (i.e., discern issues), and thereby judge relative difficulty, one will make

Major Mistake No. 1. You will become confused and intimidated as described.

Moreover, the hypo that upon first inspection seems easier (because one or more obvious issues are identified), may yet prove the more troublesome, as less obvious issues emerge. Indeed, in one's eagerness to respond to obvious issues, one may overlook more subtle ones, identification of which latter issues the grader may deem the better test of lawyering aptitude (therefore awarding more credit).

The LEEWS issue identification approach is designed to avoid confusion and intimidation by making address of any and all hypos predictable, manageable. It enables recognition of issues only a facsimile of a lawyer would discern. **BEST TO AVOID MAJOR MISTAKE NO. 1. Proceed chronologically. Accord each hypo roughly the time allotted or suggested.**<sup>10</sup>

### Choice of Hypos Offered by Professor

It is unlikely there would (ever) be a choice of hypos on a bar exam. Should a professor offer a choice—e.g., “choose 3 of 5, 5 of 7”—, this is precisely invites Major Mistake No. 1. As it creates more work grading, such a choice option is extremely rare. Should it occur, LEEWS advice is twofold. In the first instance, ignore the choice. Do the first 3, the first 5.

Alternatively, should you elect to choose [given a choice, some feel they *must* choose], choose hypos that on first impression seem more problematic—because no issues are apparent, because the hypo seems more confusing. The reason is that classmates will tend to avoid hypos that seem tougher. Thus, there will be less competition. One may impress with one's daring.

[Note. Once LEEWS is mastered, effectively handling any and all hypos becomes predictable. Systematically reduced to manageable components/units (narrowly focused issues!), all hypos present a similar task. Thus, there is no advantage in choosing. Rather, one wastes time. One merely risks Major Mistake No. 1.]

### Planning (Outlining) the Response

Implicit in the foregoing is the thesis that EXAM RESPONSE PROCEEDS IN TWO PHASES—PLANNING/OUTLINING PRECEDING RESPONSE. As noted, some advice contradicts this.<sup>11</sup> However, the logic of such bifurcation is irresistible.

Law professors often keep model “A” exams on file. One can ask to see them. Such models are sometimes handed out toward end of term as examples of

what is sought in a response. (Once again, the what is shown, not the how.) Should you review such an “A” response, you will likely first be struck by its concision. THE NAME OF THE GAME IS *NOT* HOW MANY PAGES ONE CAN GENERATE.

The “A” effort typically reflects a patient, orderly approach. Relevant law is applied to relevant facts. Rambling, irrelevant discussion is rarely present. Overworking of minor points is avoided. More issues are identified. Analysis impresses with probing insight, thoughtful use of facts. (Again, the what.) Such, normally, only results from planning.

Some few individuals may indeed be able to plunge into a fact pattern and produce an orderly, thoughtful response. Possibly they avoid Major Mistake No. 1 owing to orderly, compartmentalizing habits of thought. They methodically isolate and focus on one component (issue) at a time. Intellectual curiosity (and training prior to law school!) leads to an appropriate emphasis on analysis rather than conclusion. However, such is a fortuitous, rare happenstance, unpredicted by class participation, LSAT score, hours in a library, college GPA. Moreover, such advantage is unlikely to push performance past 35, 45 points of a possible 100.

For most, planning is essential. The examinee who begins typing at first glimmer of an (apparent) issue will indeed fill panels. However, he likely will miss key points (and issues) while belaboring minor ones. The only way to consistently achieve a concise, orderly, relevant (“lawyerly”) discussion—the only path to mastery!—is to have *perspective before one responds, to follow a plan.*

[Note. Conventional wisdom (e.g., Bell advice, Chapter 1) suggests “up to one half” of allotted/suggested time be devoted to planning. However, 1/2 allotted time—e.g., 45 of 90 minutes—invariably leaves too little time for response. **NO MORE THAN 1/4 TO 1/3 OF TIME ALLOTTED A HYPO SHOULD BE SPENT PLANNING (OUTLINING) THE RESPONSE.**]

Allotted time (typically stated at the outset) is, of course, merely a guesstimate of time actually needed to address an exercise. (See fn. 10.) Actual time needed may be more or (very rarely) less. Therefore, *often one cannot finish within allotted time.* Nor is finishing necessary for a top grade. What must be accomplished is *enough*—enough to impress the professor, more than classmates. (35, 45 points out of 100!)

If 90 minutes is suggested time, some 22-30 minutes (1/4-1/3) should be spent planning. (60 minutes— 15-20 minutes, and so on.) Again, this modifies conventional wisdom, which recommends that 1/3 to 1/2 of allotted time be spent planning. HOWEVER, UNDER NO CIRCUMSTANCE SHOULD MORE THAN TEN (10), TWELVE (12), FIFTEEN (15) MINUTES (TOPS!!) BE SPENT PLANNING BEFORE COMMENCING RESPONSE. Reasons will be explored presently.

10, 12, 15 minute segments means planning allotments for anything over a suggested 45 minute time limit must be divided. For example, a 60 minute hypo prompts up to 20 minutes of planning, 90 minute hypo up to 30. 20 minutes, however, is 5 minutes over the 15 minute limit. (30— 15 minutes over.) (Again, reasoning will be provided presently.) [Yes... Simple math. Think it through!] Thus, break 20 minutes into two 10 minute segments. Break 30 minutes into three 10 minute, two and a half 12 minute, or, as an outside limit, two 15 minute segments. The idea is to plan for but a short burst— 10-12-15 minutes—, get part of the response completed. (Possibly analysis of two or three issues, expressed in two or three concise paragraphs.) Then comes another 10-12-15 minute planning segment. One completes more paragraphs. PLAN...RESPONSE! PLAN...RESPONSE! PLAN...RESPONSE!... Short bursts!

Limiting planning to 10-15 minute segments accomplishes two important, beneficial results. First, there is a natural tendency to put off committing oneself to a response. “I’m planning,” must not become an excuse to procrastinate. ONE MUST PRESS ON TO THE MORE DIFFICULT, ESSENTIAL BUSINESS OF COMMITTING TO A RESPONSE. *Arbitrarily* imposing 10-15 minute limits on planning, after which at least part of the response is executed, avoids procrastination. One is *forced to get going*, to get on with the daunting aspect of committing to something the grader will judge.

In effect, you force yourself to break the ice within a reasonable time.

The second benefit has to do with what may be termed “anxiety management.” It is not only natural to feel anxious at the start of any exam. It is productive! (Yes!) Anxiety generates adrenalin. It provides energy (for a sleep-deprived law student) to go strong for 3-4 hours. One must question the student who is overly calm and composed at the start of a law school exam. (Not fully aware of the importance of the exercise? Drugged?)

On the other hand, excessive anxiety can lead to panic, which must be avoided. As one plans, as students nearby shift, grunt, sigh, groan, type/scribble furiously, and time tick-ticks away, anxiety inevitably builds. Should one’s anxiety level become too great, panic and loss of concentration likely occur. Discipline and the programmatic LEEWS approach may go out the window. The (panicked) response described in the preceding chapter ensues.

*By limiting duration of planning segments, one limits anxiety buildup.* Completing part of the response—two or three paragraphs that impress—reassures. Anxiety abates. Useful nervous energy is managed. It does not overwhelm. Then begins another 10-15 minute planning segment, followed by response.

In other words, EVERY EXAM PROCEEDS AS A SERIES OF BRIEF PLANNING SEGMENTS, FOLLOWED BY RESPONSE—paragraphs of analysis (of issues) reflecting planning. Once again—plan...response!, plan...response! Intermittent, energetic, planning/response segments until time is called.

In no small measure, effective exam response reflects effective anxiety management. Anxious energy is harnessed. It does not get the best of one.

Once again, ONE NEED NOT FINISH—i.e., exhaust all possibilities— TO DO (VERY) WELL.

## SECTION TWO, CHAPTER 3 FOOTNOTES

<sup>1</sup> See “*What to Do When It’s Late in the Game*” (p. 125) for a summary of strategy when exams are fast approaching. What must be borne in mind is how clueless classmates are (however confident they may seem). Students have done LEEWS *during* the exam reading period and benefitted greatly.

<sup>2</sup> It may be noted that adrenalin driven by nervousness can compensate for and mask fatigue and minor ailments. Indeed, the “excuse” of a cold (and/or fatigue) can sometimes have a helpful, calming effect. One focuses on one’s misery rather than grow anxious.

<sup>3</sup> Some few [professors, other “experts”] instruct that one first read the Q/I (typically at the end of the hypo), the so-called “call of the [sic] question.” However, in that Q/I’s such as “Discuss rights and liabilities,” “What result?,” “Draft a memorandum,” etc. are unlikely to add clarity to the task, this detour suspends Major Mistake No. 1 only momentarily. One commences the plunge into facts with scant additional, helpful guidance.

<sup>4</sup> **Are professors wrong?** To assert, as often occurs in this book (also the LEEWS live or audio program—explicitly/implicitly) that law professors (and all others for that matter, where there is a contradiction) are wrong and LEEWS is right is jarring. It seems arrogant, even disrespectful. However, the point has been made that a fundamental premise upon which LEEWS rests is that law school case method instruction fails (utterly!) in the central task of transitioning academic thinker/learner to something approaching (a facsimile of) practicing lawyer thinker/learner. It is precisely upon this (and innovative insights and systems) that the considerable LEEWS advantage rests. LEEWS reflects not only revolutionary insights that caused it to come into being, but over 30 years of trial and error, and proven effectiveness. No law professor or other entity has devoted more thought and effort to the problem of instruction, as it relates to mastery of the law essay exercise. LEEWS is nothing less than a revolution.

Therefore, **one must get over the awe naturally accorded law school, law professors, the legal profession.** At least suspend it for purposes of digesting lessons herein. One must have a measure of faith (in LEEWS) initially. In the end, particularly after a term in law school, all doubts will have been erased. IF WE SAY LAW PROFESSORS (AND OTHERS) ARE WRONG, AND LEEWS IS RIGHT, one can, as is said, TAKE THAT TO THE BANK! We know what we know (after so very many years).

<sup>5</sup> **Cover instructions revisited.** As discussed in the previous chapter, an exam is typically prefaced by “cover” instructions or guidelines. One may, for example, be instructed to “Plan for an hour before responding,” or length of response may be limited. (A professor [re the latter] wants to impress that better responses are also more concise. He also wants to limit his grading task.) One may be instructed to place conclusions at the beginning or end of analysis, or in both places. (CIRAC.) One may be told to assume the grader is a Martian to whom all must be explained, or one is in a jurisdiction that follows federal law only. One may be instructed to address fewer than the number of hypos presented. (I.e., choice of hypos.) Look at lots of old exams to become familiar with such instructions. Thereby save precious time on actual exams by scanning cover instructions just for what’s new and unusual, something unique and/or peculiar to a professor. (E.g., “No statements of [black letter] law!”... Say what?!... This particular [very rare] curve ball and how to handle it is addressed elsewhere.)

<sup>6</sup> **Hard copy of exam, or no.** As noted (previous chapter), hard copies of exams are normally distributed. One will literally flip through this in Phase One of the Preliminary Overview. (Discussed this chapter.) Respecting take-home exams, it may be one picks up or can download a hard copy at a designated place/time. (If a download cannot be printed as a hard copy, one will scroll through panels in Phase One.) As always, ascertain particulars respecting exam rules, logistics, etc. in advance. You are learning the questions to ask!

<sup>7</sup> **How many pages to an exam?** Is that relevant? How? Eager to get going and gain a sense of control, law students plunge into a hypo (normally the first), get involved with it, and lose perspective on the overall task (and time). After spending too much time on the first hypo, one examinee lamented, “Belatedly, I realized there were eighteen more pages to the exam.” This examinee had blown time management. Quickly flipping through all pages helps avoid such an ostrich-like, head-in-the-sand oversight.

Some persons and programs (not professors) advise not to plan, but to plunge immediately into facts, addressing as many issues as possible. Apart from inviting Major Mistake No. 1, it seems no useful advice to offer respecting planning exists.

<sup>8</sup> **First term lack of progress in becoming lawyers.** As new 1Ls, reading, briefing, discussing law cases, students have the sense of gaining entry into the profession, of becoming lawyers. Learning how to do legal research and writing a memo in the (typically) one-hour credit, legal writing course helps. However, it has been noted that the words “lawyer” and “attorney” are rarely heard in law school classrooms. (Nor “client” or “client aims, objectives.”) Not much happens to suggest one is actually becoming a lawyer.

At Washington University School of Law in St. Louis a “negotiations” competition for 1Ls is held in October of first term. Not all participate. However, those who do don suits, and the finals of this lawyerly activity are eagerly attended and observed. One has the sense that 1Ls are hungry for concrete manifestations beyond the (academic) classroom that bespeak of becoming lawyers. Doubtless, there may now be first term activities of similar ilk in other of America’s 200+ law schools. There is a clamor in the profession for more practical training and experience in law schools. However, during 30+ years of interaction with students from all law schools, your author was not made aware of any such activities in first term other than the competition at Wash U. (Intern research assignments of Northeastern 1Ls don’t quite make the grade. 1L moot court and trial advocacy activities normally occur only in second term.)

<sup>9</sup> **Legal thinking vs. common sense.** As your author constantly remarks, “The most important thing one brings to an exam is common sense.” In point of fact, legal thinking and common sense are not distinct. “Legal thinking” is merely common sense applied to analyzing the relationship of law and fact. Steps Two and Three, and analysis of issues require such legal thinking. However, reading cover instructions, the Preliminary Overview, and Step One require common sense *without* a legal overlay.

We shall see that common sense implies a mediate, sound way of thinking and judging. It is more or less how *most folk* (of reasonable intelligence and similar [cultural] background) *might see or interpret things.* (The thinking of *most* is one handle on common sense.) Astute, creative individuals can lack common sense, tend to view things in a skewed or different way (albeit perhaps creative). Sort of through a hyper-individualized lens. For example, they might read more into something—e.g., fact patterns—than most people would, or not enough. Exercises in analysis will shed light here. Should one find that one’s insights and interpretations *consistently* are out of step with model responses, it may be an adjustment in perspective is warranted. As your author says to all groups, “**If it transpires you lack common sense, you must learn to fake it** [for purposes of addressing law exams].” (Also in practice before judges and juries! Weird and unusual, albeit creative, perspective is generally not appreciated in law practice. However, out-of-the-box thinking may indeed lead to creative arguments

and uses of law that benefit a client in achieving an objective.)

<sup>10</sup> **Time limits.** Keep in mind at all times that **suggested time limits are guesses on the part of professors** (to a lesser extent bar exercises). There likely has not been a control group. A professor merely *thinks*, say, a 60 minute allotment is sufficient. In point of fact, one may need 75 or 90 minutes to finish. Thus, *never expect to finish a law essay exam!* Finishing is not necessary to achieve A's. What one must do is enough!—enough to impress the professor, more than classmates.

Often, specific time limits are suggested at the outset of a hypo, as with exercises in the Appendix. However, sometimes rather than assign a specific time allotment, a professor assigns proportionate weight to each hypo or segment of an exam—e.g., 20% for hypos 1 and 2; 30% for #3; 30% for multiple choice section. In such instance appropriate time allotments for each exercise must be calculated.

<sup>11</sup> **No planning** (of response). As noted (fn. 7, *supra*), some (few) supposed experts counsel *not* to plan, but to immediately plunge into fact patterns, addressing “as many issues as one can spot.” Such an approach, typically addressed to time-pressured, not take-home exams, wholly jettisons the idea that planning and a measure of deliberation can make a difference. In a universe of relative mediocrity and grade inflation, such an approach, differing little from what many students do anyway, may well result in a B or B+. (25-35 points out of 100.) However, Major Mistake No. 1 is invited. The possibility that law essay exams can be mastered is abandoned. The possibility that law students can approximate the orderly, deliberative progression of a lawyer is abandoned.

In sum, such an approach gives up on the possibility of the science LEEWS represents. In only the rarest instances will an “A” grade be achieved, and this only by virtue of a response being, relatively, less incompetent.

## CHAPTER FOUR

### PLANNING PHASE—STEP ONE

Completion of Phase One of the Preliminary Overview—flipping/scrolling through exam (30-45 seconds)—brings one back to the first hypo to perform Phase Two (on that hypo only!). Mere seconds—Discipline! Skip over facts!—should bring one to consideration of Q/I's (normally at the end).<sup>1</sup> One now performs the first of two steps to identify “premises” (which in turn will reveal relevant issues). Discovery of this unique, innovative approach—“Step One”—inspired development of LEEWS (!!).

**STEP ONE**—IDENTIFY ALL CONFLICT PAIRINGS RELEVANT TO QUESTION(S)/INSTRUCTION(S) (TYPICALLY) AT THE CLOSE OF THE HYPO, AND OBJECTIVE(S) OF EACH PARTY TO EACH PAIRING.

Step One requires explanation. It builds upon a unique insight of your author's (prompted by law practice), that provides a key or denominator for understanding, resolving any and all legal problem-solving exercises.<sup>2</sup> At present, of course, the problem focused on is how to break essay hypotheticals down to manageable components/units that reveal relevant issues. Any and all essay hypotheticals! All relevant issues!

Step One, we shall see, can sometimes—often!—be performed merely by inspecting the Q/I.<sup>3</sup> In performing Step One, one wants to glean and be guided by any clues offered by a Q/I. Most often one will peruse facts for the first time. However, *quickly, with a limited objective* (which makes quickly possible)—*find relevant conflict pairs and party objectives*.

Relative to the Preliminary Overview, the going now gets a bit sticky. The strict discipline spoken of becomes an imperative. To better enable comprehension of this unique (revolutionary!) step, it is necessary to extricate from the academic mindset law school does little to correct, and re-orientate to the “real world” province of lawyers thinking about client problems. (Yes, the transition begins.) We'll take it in stages.

### Role of Conflict in Law, Legal Problem Solving, All Law Essay Exercises

If one but thinks about it, *the raison d'être of a system of law is orderly conflict resolution*, nothing more. Statutes, legal precedents, lawsuits, etc. are first, foremost concerned with resolution of present or (anticipated) future conflict. Why, for example, would Congress, federal regulatory bodies, various state and municipal legislative bodies concern themselves with drafting, enacting rules, regulations, ordinances—legislation!—, if not in response to problems (and resulting conflict) that had arisen (e.g., air pollution and those who favor and oppose certain emission restrictions, abortion, highway safety measures, etc.), or is anticipated to arise (e.g., proposed treaties regarding permissible uses, etc. to which nations may subject space and the ocean bottom)?

To put the proposition another way, if there were no problems, no conflict (if, suddenly, one was in Heaven?!), would laws, lawyers, judges, courts, legislatures, and the like be necessary? Would the very concept of law have meaning?

### Conflict and the Lawyer's Role

Lawyers do not have to wax philosophical to

comprehend the central role of conflict in the profession. They understand they are advocates for individuals, groups, institutions, etc. that seek to prevail in obtaining an objective. “Prevail” presupposes opposition or an obstacle to overcome. Whatever that opposition or obstacle—another person, entity (corporate, otherwise), rule, regulation, lack of finances, objection of opposing counsel in court, bureaucratic/legislative inertia, etc.—, it creates a conflict situation. A lawyer will seek to resolve the conflict in a manner favorable to a client’s interest. She will seek to overcome the opposition, best the adversary. (Hence, “adversary system.”)<sup>4</sup> Legal principles—substantive/procedural—, precedents, policy, facts, analysis, and persuasive argument are the lawyer’s tools and means to accomplishing this end.

### Examples of Conflicts, “Conflict Pairs/Pairings”

The conflicts a lawyer confronts on behalf of clients are myriad in nature and kind. Most obvious are lawsuits or potential lawsuits. Imagine, for example, hypothetical fact patterns depicting a buyer aggrieved because seller’s failure to deliver in timely fashion has cost him money; divorcing spouses in a custody dispute; a one-time beneficiary left out of the new will; an individual committing a crime; two persons claiming title to “Blackacre;”<sup>5</sup> an accident involving a failed mechanical safety device; a corporate shareholder unhappy with recent actions of the board of directors; a claimed infringement of patent or trademark.

From a legal standpoint, these and ten thousand other situations involving aggrieved *parties* have the potential to end up in a courtroom. *Each pairing of litigants that may be discerned in the above-referenced fact patterns—buyer v. seller, husband v. wife, beneficiary v. person taking under the new will, state v. defendant, claimant one v. claimant two, victim v. manufacturer and seller, shareholder v. board, patent holder v. alleged violator—, if relevant to a Q/I following a hypo, is a “conflict pair or pairing” to be identified in Step One.*

Far greater in number than the larger (umbrella) conflict implied by a lawsuit or potential lawsuit are innumerable jousts occurring within the ambit of each lawsuit. For example, consider what happens when a motion is made by one side or the other in litigation. (E.g., motion to dismiss, motion for change of venue, motion to strike a portion of the complaint [or answer, or interrogatories], motion to compel discovery, or

simple objection to testimony offered [in effect a motion to “strike” or preclude].) An intermediate conflict with parties on both sides is evident!

Frequently, Q/I’s at the close of hypothetical fact patterns in, for example, evidence and civil procedure law are framed in terms of motions, objections, (court) rulings. One is instructed to “Decide the motion,” “Evaluate the ruling.” Conflict and conflict pairs of Step One are whoever is for and against the motion/ruling (in the litigation context in which the motion/ruling occurs).

Often and more problematic, conflict is less apparent. E.g., the instruction is to “Draft a statute legitimating the status of certain heretofore illegal immigrants,” or “Evaluate entitlement of group A, claiming right to a broadcast or transmission license under [new technological developments].” Where is the conflict? What are the conflict pairs?

The answer is found in the certainty that some individual or entity will object to the aforesaid legitimization, and to conferring the broadcast/transmission license. (The latter perhaps impairing/impacting another’s license.) At the same time, certain groups and individuals surely will support both outcomes.

Providing one adopt the adversarial—who’s against whom?—mindset of a practicing attorney,<sup>6</sup> *every legal problem (every legal situation!), implies conflict or prospect of conflict, and, therefore, at least one “conflict pairing.”* One merely may have to dig a bit deeper, look harder to discern conflicts and parties.

### Perspective

[Note. (Discipline!) Implicit in Step One—you do not attempt immediately to address/respond to a Q/I in the (normal) mode of “How do I answer/respond to [the Q/I]?” (I.e., “What does the [professor/bar grader] want me to do?”) For example, thinking, “How do I respond to the [draft/evaluate] instructions just preceding?” (as virtually all students confronted with such would be wont to do), would clearly pose a daunting challenge. One likely would think, “What am I supposed to do?,” “How do I begin?” Confusion and ebbing of confidence would ensue.

[Note (bottom line). LEEWS SEEKS IN ESSENCE TO MAKE ADDRESSING ANY AND ALL LAW ESSAY EXAMS, ANY AND ALL HYPOS, ANY AND ALL LEGAL PROBLEM SOVING (!! ) PREDICTABLE AND MANAGEABLE. In the manner of sausage making, via disciplined application

of LEEWS Steps, any and all hypos, any and all Q/I's posed by professor or bar examiner, any and all exams, are processed in consistent, predictable fashion to a similar result—identification of relevant premises! (The sausage!)

One's approach to any and all exams becomes predictable (thereby inspiring/maintaining confidence). You are able to maintain control of any exam (not the typical reverse). We shall see (faith, confidence in LEEWS' 30+ years of experience/proven effectiveness is required!) that in the end the professor's (bar grader's) Q/I will be answered—correctly, impressively!—in the manner of a knowledgeable, competent, practicing attorney, not a rambling academic. Professors/bar graders will indeed be given what they want—consistently. However, on your terms, in predictable fashion. No flailing, no hit and miss, no confusion and uncertainty.]

LEEWS appreciates the folly of addressing a professor's Q/I's (to a lesser extent bar Q/I's)<sup>7</sup> as is, head on, in the form encountered. Professor Q/I's) come in myriad, unpredictable forms. They are often cryptic, confusing—e.g., “Draft a set of jury instructions to guide deliberations on the foregoing facts,” “Imagine you are the newly appointed executor of X's will,” “You are a prosecutor [a defense attorney, a judge, an arbitrator,]” etc. Attempting, upon first reading, a response to such Q/I's invites immediate confusion, uncertainty, intimidation.

What is needed, what did not exist prior to LEEWS (and could not be imagined!),<sup>8</sup> WHAT LEEWS PROVIDES (and Step One contemplates/initiates) IS AN APPROACH, A SYSTEM, A PLAN OF ATTACK FOR ALL SEASONS, APPLICABLE TO ANY AND ALL Q/I's ONE MAY ENCOUNTER (no matter exam, legal subject, professor).

One of many unique, probing, LEEWS insights is that AT BOTTOM ALL PROFESSOR (AND BAR) Q/I's ARE EXACTLY THE SAME! ALL SEEK THE SAME RESPONSE! All, when it comes down to what is wanted, instruct, “Identify/discuss (all) relevant issues!” (I.e., identify/discuss legal topics relevant to facts provided, legal subject[s] tested, Q/I's posed [as a (practicing) lawyer would].)

The rigid, stepped, disciplined LEEWS approach posits, in effect, that one postpone thinking about the answer/response! (Discipline!) Rather, merely focus on and perform specific, limited, manageable tasks set forth by Step One, and later Steps Two and Three.

As noted above, *question(s)/instruction(s) will surely be answered*—efficiently, impressively, “as a lawyer.” However, they will be answered in systematic, predictable, programmatic fashion—*on one's own (the examinee's) terms!* Graders—professor/bar—will, in due course (predictably) be given what they want. Step One initiates the process of doing so.

DISCIPLINED IMPLEMENTATION OF STEP ONE INITIATES THE PROCESS OF AN EXAMINEE TAKING/MAINTAINING CONTROL OF EXAM AND HYPOS THEREIN, versus the reverse.

### “Objectives,” Examples

Implicit in any conflict are competing “*objectives*” of the opposing sides—parties! Such objectives are to be noted in a Step One analysis. However, in formulating “objectives” of Step One, (academically-oriented) law students are initially likely to miss the point.

Consider the conflicts posed earlier. What is it opposing sides want? For example, is the aggrieved buyer's objective to establish that seller *breached a contract?* (Normal student/professor focus.) Is the spouse's objective to establish that grounds favoring his/her custody exist? Is the victim's objective to establish that the safety device was negligently manufactured, or that an implied warranty of fitness was breached? Certainly, lawyers for these parties will have the objective of establishing these respective *legal* objectives. However, *legal* objectives must be distinguished from *client* or *party* objectives contemplated by Step One.

Clients, flesh and blood real life litigants [even corporations are personified in the vice president in charge of coordinating litigation], do not have *legal* objectives. Their objectives are more down to earth, more “bottom line.” The buyer above wants to be “made whole.” He wants money (damages)!<sup>9</sup> Each spouse wants custody. He/she doesn't particularly care about the legalities [leave that to the lawyers!], just the practical outcome. The victim wants compensation. He, too, is not concerned with legalities (except, perhaps, as a matter of curiosity). The “(counter) objectives” of opposing parties are likewise not to establish certain legalities, but, respectively, not to pay money, not to concede custody, etc.

IN SEEKING “OBJECTIVES” OF STEP ONE, therefore, ONE IS CONCERNED NOT WITH LAW, BUT WITH PRACTICAL, COMMON SENSE, END RESULTS—e.g.,

money (or not having to pay), ownership of (clear title to) property, putting a miscreant in jail (or miscreant staying out of jail), obtaining custody, reinstatement of a job, and more money. Welcome to the real world of lawyers and what lawyers do—seek to obtain client objectives (via legal processes).

Steeped in the academic side of the profession (possibly disdainful of “crass,” nuts and bolts trade aspects of the profession), law professors rarely touch upon such mundane, non-legal objectives. For example, where facts of a case describe woes of a town downstream from a toxic waste disposal site, the bottom line issue for class discussion is rarely the amount of money (damages) to which townspeople may be entitled. Rather, discussion typically focuses on whether liability at tort or otherwise exists, the role of law in shaping social policy, and/or whether an injunction is feasible. In such fashion is academic orientation encouraged at the expense of the practical, goal-oriented lawyer thinking required to master hypothetical-type essay exercises.

HIGH-FLYING ACADEMIC ORIENTATION, BIAS, AND THINKING MUST BE TABLED, IF ONE IS TO THINK AS A LAWYER AND IDENTIFY OBJECTIVES OF STEP ONE. You must role play in effect—imagine yourself a lawyer with a client. Actually, two clients (both sides to a conflict). “What (as a practical, common sense matter, given facts presented) does each side want?” is what one must think when a conflict pair is identified. [Note. Defining objectives of Step One does not require engaging in legal thinking. That comes later. Mere common sense is needed.]<sup>10</sup>

For example, where the question posed is how a court should rule on objection to an item offered in evidence, objectives of the conflicting pair [of opposing counsel, as agents of their clients] are not, respectively, to establish or disestablish that the item offered is “more probative than prejudicial,” or relevant or irrelevant, etc. Rather—practical vs. legal level of thinking—, it is to *get the item admitted into evidence* on the one hand; *keep it out* on the other. The importance of the distinction between *legal* and *practical* objectives will become manifest as Step Two is implemented.

### **What Lawyers Do in Advising Clients is What You Will Do on an Exam**

No one engages a lawyer, except that a problem, an objective is of sufficient magnitude to justify a

lawyer’s time and (normally considerable) expense. When a lawyer advises a client as to “rights and liabilities,” he is called upon to advise of the likelihood that the client (or whoever/whatever opposes the client in a conflict situation), will be successful in achieving that side’s objective(s), and/or to what extent. The manner in which a lawyer arrives at conclusions in this regard is analysis of feasibility/applicability of various legal theories, policy arguments, etc. that *each side* would logically advance in support of its position, given known and reasonably implied facts relating to the problem/conflict. In other words, he performs precisely the practical, goal-oriented, objective (two-sided) analysis called for in responding effectively to essay hypotheticals.

*What a law student is called upon to do in responding to a hypothetical fact pattern is little different from an exercise lawyers perform every day. The difference is that lawyers never [certainly rarely] have to cope with facts of such complexity under such severe time constraints. [On the other hand, lawyers are not such experts on relevant law as, presumably, a law student going into an exam.]*

By way of illustration, suppose a situation where six potential clients barge into a lawyer’s office at once. Rather than consult with each individually, the lawyer invites a collective story. Taking up yellow pad, she takes notes on a torrent of facts tumbling from six mouths. An intricate weave of problems emerges, some involving two or more of the six. At the end of the tale the six clamor in unison, “Advise us of our rights and liabilities!” Some pose more specific questions. E.g., “Am I entitled to take the house under the will?,” “Does Blackacre belong to me?,” “Can I be convicted of tax fraud?” If the lawyer has but 90 minutes in which to respond, providing legal reasoning in support of her conclusions, an essay hypothetical and the challenge it poses is precisely described.

Contrast this with the real-life response of a lawyer confronted with such a situation—“I’ll get back to you... This afternoon [tomorrow, a week from now].”

If one thinks, “the lawyer has it easier,” one is correct! Rarely do lawyers face the time pressure law students experience on exams. Whether in a hearing, midst of a trial, brief due the next day, a lawyer can often extend time to respond. Not so law students.<sup>11</sup>

[Note. No one said life is fair. The student who can organize and perform better under pressure than

classmates (as ably implementing LEEWS ensures!) will do just fine. 35, 45, 55 and more points out of 100 should not be a problem. The idea of LEEWS is not to carp about such unfairness, but take advantage of it!

If one can untangle facts, analyze their interaction with relevant law, and resolve issues pertinent to the six, *more or less as their lawyer would* (assuming a practitioner competent in the legal areas involved), *but faster*, then you have the wherewithal for effectively addressing *any* essay hypothetical. If that seems a tall order, it is. However, the solution is now unfolding.

The first thing the described hypothetical lawyer does (or should) corresponds to Step One. She reviews facts recorded—the hypothetical—to pinpoint practical objectives of each of the six clients. (I.e., what does each want her to achieve for him/her/[them]?) Almost simultaneously she considers who or what stands between client and objective—i.e., the opposition. In effect, she begins by defining conflict pairs and party objectives. *You will do the same!*<sup>12</sup>

## Exercises

Orientation to and grasp of Preliminary Overview and Step One will remain merely theoretical, unless one practices applying the approaches to actual hypos. Consider now the Torts, “Combination,” and Corporations exercises in the Appendix (pages 134, 146, 166, respectively). Never mind that you may not know law in these areas. Sufficient law to address all practice exercises is provided. Moreover, legal knowledge is not needed at this point. Imagine these three hypos comprise an actual 4-hour exam.

EXERCISE ONE: Simulate a Preliminary Overview (PO) for this (4-hour) exam. (Literally flip through the pages on which the three hypos are found, noting time allotted each, length of each, etc. Do not [of course] look at any facts!) Complete the PO by returning to the Torts hypo and ... Do you recall Phase Two (skip facts to locate...)? Return and continue when the exercise is completed. Take no more than 30 seconds!

Note the discipline required to not look at facts. Did you note that allotted times—90 min., 90 min., 50 min.—do not add up to four hours? Think about this a moment... What is evident?... [Math!]

Ten minutes is unaccounted for! This is the sort of logistical detail one should note in Phase One of the PO. It is not unimportant information. Pressed for

time during an exam (as you likely will be), knowing you have a ten minute cushion reduces pressure.

EXERCISE TWO: [Note. Instruction at the end of the Torts hypo—“Discuss rights, liabilities of all parties”—is open-ended (i.e., non-specific, broad in scope). Save for “all parties,” it provides no clues to assist in performing Step One. It will be necessary to review facts to find all parties and identify (common sense, practical) objectives of parties to conflict pairs. However—discipline!—, so long as focus is (solely) on identifying parties, conflict pairs, objectives, one can speed-read (skim) the fact pattern. Only look for “elephant!””<sup>13</sup>

Limit the scope/task in Step One to identifying parties in conflict, objectives of parties—WHO’S AGAINST WHOM? WHAT DOES EACH SIDE WANT? (Mantra No. 1.) As Step One is the first stage in the “response outline,” at this time label a sheet of paper “Torts.”

Do it! (I.e., label a sheet of paper “Torts.”)

Now, go back to the Torts hypo (only). Perform Step One! (On the sheet) list conflict pairs and competing party objectives, leaving space between listings. Take no more than 2-3 minutes.

EXERCISE THREE: Label separate sheets “Combination,” “Corporations.” Conflict pairs one discovers, along with party pairing objectives, will constitute the broad framework of the response outline. Again, leave space between each pairing listed.

Complete Phase Two of the PO for each of these hypos, and perform Step One. Take no more than 6-8 minutes (total for both) to complete the exercise!

[Note. Foregoing time limits are mere guides to emphasize Step One should consume very little time.]

The key to efficiency in performing the PO and Step One—indeed, all Steps, all facets of LEEWS—is to limit oneself to just the task at hand—elephant! In other words—discipline!—, respecting Step One, do not become involved with facts beyond what is necessary to identify conflict pairs and objectives. Do not, for example, think about legal aspects (issues!) relating to conflict pairs. That comes later (Step Two). At this point one will skim facts solely to perform a limited task—find relevant (to question/instruction) conflict pairs and objectives! ONE READS, BUT SELECTIVELY—WITH DISCIPLINE!

Facility performing Step One will indeed require discipline, and practice with lots of hypos. Upon opening an exam, performing PO, Step One [Two, Three, etc.] must be automatic. There can be no hesitation, no pause, thinking, “What was that first Step?” THE DISCIPLINED, STRUCTURED, STEPPED LEEWS APPROACH MUST BECOME SECOND NATURE—*HOW ONE ROLLS!* The result is a comforting sense of confidence and control (even, many LEEWS grads report, eagerness) going into any essay exam. (Whoa!)

When satisfied all relevant conflict pairs and appurtenant party objectives have been noted, compare

your effort with models of Step One for the (3) hypos in question. (Appendix, pp. 137, 150, 168) Did you miss any conflict pairs? Are any pairs unresponsive to the question(s)/instruction(s)? Are objectives listed realistically those of the party-client(s)? (I.e., are they legal, not practical, common sense [client] objectives?) Are objectives relevant to facts and question(s)/instruction(s)?

CONGRATULATIONS! IN SYSTEMATIC FASHION YOU’VE BEGUN THE RESPONSE OUTLINE FOR THE TORTS, COMBINATION, AND CORPORATIONS HYPOS.<sup>14</sup>

## SECTION TWO, CHAPTER 4 FOOTNOTES

<sup>1</sup> Note (again). You should not find yourself attempting to decide what hypothetical to address first. Such would imply peeking at facts, which one is to scrupulously avoid doing in performing the Preliminary Overview. Reasons for not plunging into a fact pattern and for not choosing among hypos were explored in the preceding chapter. Advice was also offered for the rare instance when a well-meaning professor (not wanting to penalize understandable gaps in knowledge) invites Major Mistake No. 1 by offering a choice of hypotheticals. (See following.) As previously advised (and implied by the Preliminary Overview), better to simply follow chronological ordering of exercises, giving each approximately the time suggested.

**Advice re choice of hypos.** As noted in the previous chapter, on rare occasions a professor offers a choice of hypos—e.g., “Address three of five.” This is thought to be progressive. A typical exam touches upon no more than 40-60 percent of material covered in a course. You will likely have gaps in knowledge (because absent, not paying attention, etc.). A choice of hypos presumably avoids the (unfair) possibility of a 5 percent gap in knowledge causing you to blank on a hypo worth, perhaps, 20 percent of an exam. You can elect a hypo you can (presumably) better handle. The problem is the unlikelihood of knowing whether you can “handle” an exercise until you are involved with it. Reading facts risks the frenzied attempt to identify issues of Major Mistake No. 1, with attendant confusion, intimidation.

Advice in this regard, as noted, is twofold. First, simply avoid the choice altogether. Address the first three (five?) hypos, whatever they may be, in chronological order. Second, if making a choice (as some feel they must), get involved with facts just long enough to get an idea of which hypos seem more problematic. Address these! Broken down via the stepped, LEEWS issue-identification approach, the most daunting hypo becomes manageable. Classmates, meantime, tend to avoid tougher seeming hypos. Thus, less competition on these. Moreover, as noted, a hypo that upon first reading seems easier may be sucker bait. Beyond an obvious issue or two that draws one to the hypo may lurk issues most will not discern.

<sup>2</sup> **Seminal LEEWS insight.** Description of when/how the insight underpinning Step One came to your author is found in the aforementioned book—*GELS*. (See fn.X, p.XXX.) LEEWS grads have acknowledged that this insight guides initial strategic thinking about cases encountered in law practice. It guides thinking in law school about moot court and trial advocacy problems, research assignments, papers, and understanding (2-4 line, exam-focused) case briefing. Here is a denominator enabling a structured approach to thinking about and resolving *all* legal problem solving (!!).

<sup>3</sup> An example is the Criminal Law hypo, Appendix, p. XXX. However, refer to it only after gaining a grasp of Step One.

<sup>4</sup> **“Adversary system”** also refers to the overall process of adversaries (presumed equally matched lawyers) ratcheting toward outcomes of conflicts in accordance with prescribed law and rules.

<sup>5</sup> **“Blackacre”** is the universal term for “real property” (“realty”) in property law—land, structures (e.g., houses). As opposed to “personal property” (“personalty”), meaning personal, movable property—not land or fixed structures—, including animals.

<sup>6</sup> **WHO’S AGAINST WHOM?!** At this juncture in a LEEWS program this first of three mantras is introduced. As students in live and audio programs are exhorted to do (and do!), repeat this mantra out loud. Indeed, say it three times. Do it!

<sup>7</sup> Questions following bar hypos are rarely open-ended. They tend to be straightforward, easily understood, narrow in focus. Steps One and Two can easily be applied. Always perform the Steps—process question[s]/instruction[s] via the Steps—, no matter the form (or seeming relative ease) of question(s)/instruction(s). (Discipline!)

<sup>8</sup> And to this day cannot be imagined by the great majority of law professors, law students, lawyers, *all* other exam-writing/ preparation study aids.

<sup>9</sup> **“Damages”** is a legal term of art. It is an objective that comes to the mind of a lawyer (or law student), but not a client, at least not initially. A client thinks, “Money.” *Objectives in Step One are to be couched in common sense language, not legal language.* STEP ONE REQUIRES NO LEGAL THINKING.

<sup>10</sup> The major failing in Major Mistake No. 1 is attempting to focus on and sort out legal ramifications of a hypo (and exam) too quickly. There is significant advantage in *not thinking about anything legal the first few minutes of an exam.* The disciplined LEEWS approach enables this. Indeed. *One needn’t know any law at all in order to read cover instructions and perform Preliminary Overview, Step One (!!).* The first 4-5 minutes of *any and all* exams are therefore now covered! (Without any studying!) How reassuring is that?!

<sup>11</sup> **Extra time on exams.** If one has cause to receive extra time on exams, by all means seek same. Investigate this possibility and requirements immediately.

<sup>12</sup> **Omnipresence of essay, hypothetical-type exams.** Noteworthy is the circumstance that the hypothetical-type essay exam format is featured at *all* of more than 200 law schools in the United States. The reason is that THE PURPOSE OF LAW SCHOOL, at bottom, all other pretensions notwithstanding, IS TO TRAIN LAWYERS. Such being the case, doesn't it make sense that law school exams should measure progress in becoming a lawyer? Wouldn't the best vehicle for this be something measuring performance in the typical task faced by lawyers each day? As one now begins to grasp, this is accomplished by the hypothetical-type essay exercise.

<sup>13</sup> **Looking for "elephant" (a remedy for "slow readers").** Students following the first (Step One) exercise in live programs often express frustration at not being able to "read fast enough" to perform the exercise in time allotted. The idea, they are reminded, is *not to read fast*, but *selectively*. Focus on the limited task at hand. For example, if instructed to find the word "ELEPHANT" on a page, even a "slow reader" can skim to find the word in a matter of seconds. Why?... Because you know *exactly* what you are looking for. You ignore all that is not the defined objective—ELEPHANT. Thus, in performing Steps, whenever you go into a fact pattern, in effect define, look only for ELEPHANT. At this juncture, look solely for *who is against whom?* (who is not happy with some other entity?), relevant to the question/instruction under consideration. And *what does each party* (in a common sense way) *want?* That's Step One!

Once again, DISCIPLINE IN PROGRESSIVELY BECOMING INVOLVED WITH BOTH EXAM AND EACH EXERCISE IS KEY!

<sup>14</sup> **Exam response outline.** Always keep in mind that *an exam response outline is but that, an outline. It is not a substitute for the response.* Contrary to advice given by some professors and others, never think in terms of turning in the exam outline should you run short of time. If you have a notion the professor (never bar grader) may read your outline, it will cease to be an outline. You will tend to make it more complete, more legible, more reflective of analysis. It begins to compete with the actual response. You thereby waste precious time.

**Short of time?** If running short of time, in the final few minutes at the end of the response recreate the portion of the exam outline not yet reflected in the response. As quickly as possible, flesh out (with brief analysis) and make legible just that portion. Such truncated addition to the exam response would be calculated to grab a few more points. However, unless specifically instructed to do so,...

Never turn in the outline itself. An outline is mere work product. Only *you* need be able to comprehend (read/decipher) it. Normally executed on scratch paper (typically made available—check!), the exam outline should be as brief and sketchy as possible—just enough to remind what is to be discussed, conflict by conflict, party objective by party objective.

We shall see that THE EXAM OUTLINE WILL CONSIST LARGELY OF A LISTING OF "PREMISES," arranged by conflict pairing, with some indication of what one previews will occur respecting analysis of each premise. (E.g., minor, major issue? More time, less time?) THE RESPONSE ITSELF MUST REMAIN THE MAIN EVENT, THE PRIMARY FOCUS OF ONE'S TIME AND ATTENTION. An example of an exam outline will be developed in pages that follow.

## CHAPTER FIVE

### MENTAL COMPONENTS OF AN EFFECTIVE APPROACH

Consider the following hypothetical (torts law):

A, driving his car with passenger B, approaches and enters an intersection with the green light. Although green for A, the light flickers yellow for C, approaching swiftly from A's right. The two cars collide in the intersection, injuring the occupants.

Simultaneously, D drives into the intersection from the direction opposite A. She swerves to avoid the collision between A and C, and in so doing strikes pedestrian E, who had just stepped off the curb with a "walk" signal.

B, meanwhile, leaps from A's car, and in a rage slugs C, breaking his nose.

— / —

Discuss rights and liabilities of all parties.

A "tort" is a non-contractual harm for which damages (money) can be sought. Examples of torts are assault, battery, false imprisonment. Another is

negligence. When one owes a duty of care to another, and negligently—carelessly, thoughtlessly—breaches that duty, which breach is the proximate cause of injury to that other, one is liable for reasonably foreseeable consequences of the breach.

**EXERCISE:** Take no more than 4 or 5 minutes. Identify as many conflict pairings as you can relevant to the instruction. (E.g., A v. C.) Don't worry about objectives. They're all the same—money/not pay money. *Just identify relevant conflict pairs.*

[Hint: It may assist to imagine you are *attorney for each party* encountered, posing the question, "Who can be sued?" Note that A v. B and B v. A (likewise B v. C, C v. B) constitute *one*, not two pairings, as *conflicts go both ways*. Another hint—a mediocre practicing attorney would likely identify *at least nineteen (19) pairs!*]

[Note. The foregoing exercise was given for 30+ years to mostly 1Ls (1st and 2nd term), numerous 2Ls, quite a few 3Ls, some recent law graduates, and in latter years more and more pre-laws. Results were consistent. Rarely did more than 10-20 percent of any student group identify nineteen conflict pairs. Often fewer than 10 percent. (On occasion up to 25 percent!)]

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