

## HOW TO USE THIS BOOK

### FOR LAW STUDENTS

#### IF YOU ARE NOT YET IN LAW SCHOOL

If you are preparing to go to law school, you do not *now* know the criminal law topics that your professor will cover in her course. It is important to understand that *comprehensiveness is not an ideal* or even practical in the typical three-credit, one-semester, criminal-law course with forty-two or so class hours. In criminal law, as in all courses, your professors exercise their academic freedom and pick and choose which topics they will present and which they will omit. Nevertheless, there is a popular national pattern in topics that many criminal law professors follow in their teaching. It includes varying levels of attention to the purposes of the criminal law, its constitutional framework, and especially the fundamental principles of liability. What often then follows is detailing of these principles through coverage of common-law larceny, and probably robbery since it generally underpins felony murder. Frequently, criminal homicide is then detailed at length, including the complex set of murders and manslaughters and related complicity. What then may follow is attempt, conspiracy (but not RICO), rape, and justification and excuse (some of the array of defenses). Of course, your professor may well present additional topics or fewer. Nevertheless, much of this list is commonly taught with *sharply different weight given to the different topics*.

Thus, even though there is *no* guarantee at all as to what she'll actually do, the probability is that she'll analyze many of these topics. Hence, you can study them using this book with reasonable assurance that you are imperfectly preparing yourself for her course. Indeed, you may well experience far greater scope and depth of coverage in this book in at least some areas than she is able to present given strict time pressures. That should not hurt you as long as you later concentrate on *her* priorities. If you need an overview to learn more efficiently as in top-down learning, you could initially read each section straight through and only then meticulously study it. You should emulate the lawyerly arguments in the chapters and write out your own fact-driven arguments in response to as many of the questions as you can. Start with the basic examples, utilizing the writing formats that are explained and abundantly illustrated. Use them as a guide. Remember the relevant test for all law school subjects: *you only "know" a topic if you can spot the core issues and write out fact-driven advocacy arguments*. If you cannot do this, *you definitely do not know the topic*. This writing out is a real challenge since you have not yet started law school. Do not be discouraged by your initial forgettable efforts. Keep at it! Be kind to yourself. Perseverance has rich rewards: deeper understanding can trail, as well as precede, your written emulation of strong arguments.

#### IF YOU ARE CURRENTLY STUDYING CRIMINAL LAW OR ABOUT TO BEGIN

Your professor's syllabus tells you exactly which topics she intends to cover and which she'll omit, *i.e.* all others. It also tells you how many course hours she is dedicating to each topic and the assigned materials. Exercise discipline: *study only what she is presenting with her weighting*. Later, perhaps during the summer, you can study other topics that trigger your interests. Avoid the beginner's *blunder* of trying to learn it all and drowning in materials not necessary for your professor's usually carefully crafted course that in many cases has emerged from her teaching it many times. Remember that all these first-year courses are *only introductions* (to criminal law, torts, contracts, property, etc.). You definitely do *not* master the materials in an introductory one-semester course. Not at all.

Before studying a particular set of assigned cases on a topic, read and study the *corresponding coverage* in this book. Use your professor's syllabus to determine the topic that she is about to present, *e.g.*, intentional murder and extreme reckless murder. The corresponding coverage in this book will give you an overview of the two related topics, a detailed focus on the pattern of leading issues raised by these criminal homicides, as well as the set of often-contrasting, fact-driven advocacy arguments utilized by prosecutors and defense lawyers in resolving these issues. As you proceed, expect a sharp difference in the number and complexity of each pattern of issues and arguments in each assigned area. For example, the felony-murder presentation is inescapably complex both in your professor's presentation and in this book for a compelling reason: the pattern of embedded issues and related arguments is laden with such complexity. In sharp contrast, the presentation of intentional murder is much simpler because the corresponding embedded pattern of issues and related arguments is simpler.

Writing out your answers using fact-driven advocacy arguments imprints them in both your conscious and unconscious mind. Your preparation for the exam *matches* what you must do on the exams. Your *semester-long practice in writing them out* means that some of these issues and arguments can quickly flow from your mind on the exam when triggered by relevant facts. Of course they will, since *it isn't the first time* you've written them out, though the exact exam fact pattern that triggers them is probably new. Resourceful professors, including me, can endlessly create new, even startling and bizarre, fact patterns to test whether you can spot some of the *entrenched and well-identified leading issues*, and then resolve them with fact-driven advocacy argument. While the facts are new, the issues are mostly very old. Thus, while you cannot anticipate the exam facts, you can anticipate the *repertoire of core issues from which she will select her exam issues*. Her demonstrated priorities in her old exams and current syllabus, as well as her course materials and class presentations, provide the framework for your exam decoding.

There is an added bonus in framing your study of the assigned cases by first studying the corresponding presentation of leading issues and advocacy arguments presented here. You will learn more from the cases and the class discussion for two reasons. *First*, you deepen your understanding of those issues and arguments by placing them in the relevant fact-driven adversarial context. Remember, the cases present only the one or two usually advanced issues and related arguments raised by the litigants in each case, and do not ordinarily review the relevant foundational doctrine from which they arose. It's the old maxim at work: the more you know, the more you see.

*Second*, your struggle to acquire and refine your skills in briefing and decoding cases will be enhanced by a deeper advocacy understanding of the doctrine as you emulate the model prosecutorial and defense arguments that you apply on exams, and in practice. Specifically, this deeper understanding sharpens your performance of all of the vital case-decoding skills. These skills include: extricating the key facts in an opinion; understanding its procedural history; determining the principal issue upon which the decision pivots and the holding results; making sense of the justification for the holding in precedents and diverse reasons; and spotlighting the judgment. Keep in mind that while decoding appellate cases is an abysmal way to learn the doctrine in a basics-to-complexity manner, unpacking these cases is *a splendid way to learn core case skills*.<sup>\*</sup> Such skills are an impressive hallmark of the able lawyer, and their absence is a dismaying hallmark of the bad lawyer.

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<sup>\*</sup> For help in the briefing process and how gradually to save time by briefing right in your casebook, see my Learning Legal Reasoning, Briefing, Analysis and Theory, p. 108-109.

These skills are definitely not, however, direct preparation for the exams as you will come to understand from studying this book.

After class, and after each segment, review, by yourself and in your study group, the cases, issues and arguments highlighted during her teaching and often also detailed in this book. Why did she assign the cases she stressed? What do they add to what she has already stressed in prior classes? How do these cases comprise a link in a chain of issues, arguments, and case skills? Practice with many hypotheticals from her class, this book, wherever. Which issues and arguments presented in this book are relevant to her priorities? *Concentrate on them. Get into her mind.* Do not now spend time on issues and arguments that are *not* in her syllabus and classroom presentation. My impression is that many beginning law students and their study groups go far astray here by failing to so concentrate.

### **IF YOU ARE RETAKING CRIMINAL LAW**

The most important step is first to identify the *strengths and weaknesses* on your exam(s) that require you to retake the course. Improvement presupposes accurate diagnosis of those strengths and weaknesses. Thus, it is imperative that you marshal the courage to meticulously scrutinize your exam. Since self-assessment is difficult for all of us, bring a conscientious friend from the class who also took the exam. Ask your professor if you can also examine an “A” exam or two so that you can compare and learn what excellent performance requires in concrete form. Hypothesize that your weaknesses include doing poorly in the two critical tasks: *fact-driven issue spotting and advocacy argument to resolve the issues*. Do not assume that your poor performance is simply a matter of not knowing enough “law.” That’s often a misconception and evasion of what you must do. Aim for excellence in the new exam: if you fall short, you should be all right, whereas if you aim low, *e.g.*, to pass, and fall short . . . .

Once you have identified your strengths and weaknesses, proceed as specified in the immediately prior section. Good luck! And practice, practice, practice to make your own luck.

### **FOR LAW AND COLLEGE PROFESSORS**

For law professors, this book is intended to supplement, not to replace, the traditional use of a criminal law casebook in teaching the basic, first-year criminal-law course. The well-justified emphasis on teaching case-reasoning skills through decoding cases is then matched with a systematic presentation of the coin of the legal realm -- systematic fact-driven issue spotting and advocacy argument to resolve the issues in each topic.

For college professors, I assume, without really knowing, that this book presents many more criminal law issues at different levels and related advocacy argument than is typically covered in a college-level, criminal-law-or-criminal-justice course. Nevertheless, the mode of presentation, featuring systematic, fact-driven issue spotting and related advocacy argument may be a clear and effective building-block method of teaching for those professors who want their students to avoid a reductive and mechanistic memorize-the-rule pedagogy that will *not* serve them well in any criminal-law context.

