

PREPARING FOR THE LAW SCHOOL CLASSROOM
by Professor John Delaney

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1. Why is the first year of law school formidable?

It's like being immersed suddenly in another country, say China, India, Russia, and struggling with a strange and difficult language. In law school, you have to learn a new vocabulary (legal terms), a new grammar (skills in legal reasoning), and a new conversation (fashioning legal arguments). To say the least, some confusion and awkwardness are inevitable.

More concretely: Many of the words in cases are purely legal, and you must learn their meanings one by one (e.g., *res ipsa loquitur*, *sua sponte*, *demurrer*, *mandamus*, *certiorari*, *mens rea*, *actus reus*) . Other terms used in cases that have an ordinary meaning in English also have a technical legal meaning which is the meaning intended in the cases (e.g., motion, answer, malice, provocation, the reasonable man, intent, trespass, equitable). When you begin, you can spot words in the first category, but you won't know immediately which ordinary English words have a special legal meaning (second category).

In addition, many of the words in the first two categories have multiple legal meanings. While a legal dictionary may be helpful, you will have difficulty selecting which of the multiple meanings that are defined is the particular meaning intended in a specific case. If you keep at it, however, you will gradually learn these meanings one by one, and the mist will transform into clear categories.

Since law is legal reasoning for decision-making with an emphasis on issue spotting and making an advocacy argument to resolve each issue, it isn't enough to understand the basic skills listed below in an abstract way, as simply knowledge or even understanding alone. Remember that a skill is a capacity for performance of your understanding, and not simply an abstract understanding or plain knowledge as in many college programs. For numerous students, these skills can only be developed by practice over weeks or months, sometimes many months. The path is from knowledge to understanding to the critical task of performing your understanding.

2. Is there law school complicity in aggravating the complexity?

Sadly, there is another important reason why the first year of law school can be perplexing. The entrenched pedagogic tradition in law school, especially in the first year, is not to teach in a building-block, basics-to-complexities manner that aids many students. That is regarded as "spoon feeding." For example, the appellate cases you decode in class are definitely not written to enlighten first-year law students. The judges in these cases do not systematically present the relevant background of doctrine and modes of reasoning that underlies their reasoning in cases. All of that is assumed so that the appellate court can concentrate on and decide the usually advanced issues that are at issue on appeals.

Professors could elucidate the relevant foundational doctrine and modes of reasoning in building-block presentations, and some surely do, but such basics-to-complexities teaching is unhappily regarded by many as the vice of "spoon feeding." Rather than simply excoriating this indefensible and abominable pedagogy, I suggest you arm yourself as in "to be forewarned is to be forearmed." Atticus Falcon, the author of *Planet Law School II*, has studied all the "primers" and other materials that do aid you, step-by-step, to learn the doctrine and skills you must acquire to do well. He also, in my experience, has excellent judgment in his numerous recommendations (including my books).

3. What then are the basic skills that are essential for legal reasoning?

They *include* the skills specified below for law exams (that are also writ large for Practice). They are:

- Extricating the key facts from an often dense fact pattern
- Spotting issues raised by the key facts
- Selecting relevant rules (and principles) raised by the facts and issues
- Applying rules, especially by interweaving of key facts with elements of rules, to demonstrate that the rules apply
- Adroitly using policy as appropriate

- Writing out all of the above in a lawyerly argument, and sometimes writing out two or three arguments arising from identical facts.

Legal reasoning is circular. The essential skills are like strands in a tapestry: they interconnect and overlap. Hence, while these skills can be individually identified and analyzed, they must be practiced and learned as a configuration. In addition to these skills, legal reasoning also requires an array of skills for decoding the appellate cases you discuss in class.

4. Do these basic skills of legal reasoning apply to other legal tasks?

Yes. They apply in class discussion; law school and bar exams; written and oral argument for motions, trials, and appeals; and everyday legal practice, including assessing the merit of cases, writing legal memoranda, investigating and marshalling facts, etc.

5. What do you not do in the first year of law school?

To better understand what you actually do in the beginning of law school, it may clarify to know what you are very *unlikely* to do. With few exceptions, you will *not* participate in lengthy class explorations of:

- Justice and the requirements of a just society
- Abstract philosophical and ethical questions
- Sociological and anthropological theories
- Social science research methods, reports and data
- Political issues

Indeed, many of your professors will react negatively to student responses that embody these "frequencies" of knowledge and analysis. The reason is that they want *first* to orient you to a legal frequency of vocabulary, concepts and analysis. Most therefore initially seek to have you read, think, talk and write like a lawyer, not like a philosopher, ethicist, sociologist, researcher or politician. Since your teachers are not fools, however, at least some of them may later stress how law, of course, is forged in a maelstrom of history, politics, economics, culture, etc. At first, however, most will insist on a *technical* legal formulation and analysis.

6. You don't emphasize knowledge. I thought going to law school meant "learning the law"?

Not true. Not in the sense of defining the learning of law as mostly a series of rules, principles and policies to be memorized and regurgitated upon proper factual cue. Not in the sense of seeing a law student and a lawyer as human computers to be programmed (stuffed) with thousands of statutes and cases in thirty or more areas of law.

The knowledge and understanding that will help you is that which empowers you to extricate the key facts, spot issues, select rules, interweave, use policy as appropriate, and make lawyerly oral and written arguments. Thus, it is not isolated knowledge in itself that will help you, but rather knowledge and understanding that is filtered through these core skills. Knowledge and understanding are not ends in themselves but rather a means to the end of *performing your understanding* in arguments to resolve issues. Thus, they are absolutely necessary *threshold* requirements but also insufficient. The false and misleading idea that law and its learning is primarily a matter of memorizing and regurgitating as in many college programs is a classic, first-year blunder. Avoid it.

7. I know that I understand the cases and other materials because I can talk well about them. Do you agree?

Not necessarily. Talking can be quite useful but also misleading about what you actually know and understand. The word "know" masks many meanings. For example, you can know in the sense of only being able to recognize. The meaning of "know," however, that is critical for exams is being able to spot issues and resolve each one with a concise advocacy argument. If you can't do this, you definitely do *not* know the materials since you can't perform your knowledge and understanding.

8. I find some of the cases confusing and inconsistent. What should I do?

There are at least three possibilities. The *first* is that, as a beginner, you are confused, not the cases. As you learn more, you will "see" more in the relevant chain of cases, and they will become clear. Review your class notes too for your professor's comments and read the relevant hornbook sections. Discuss your confusion with other students. Work at clarification. The *second* possibility is that the confusion is not with you, but rather is in the case itself. Some cases are a model of lawyerly analysis; some are well argued; some are distinctly routine or mediocre; others are confusing with poor issue articulation matched by hard-to-defend rule application, and compounded by obscure or aberrational reasoning.

This reality of sharply different case quality is surprising only if someone has a beginner's false expectation about the legal process. Once you realize that cases are decided and argued by judges with varying legal perspectives and competence who must exercise judgment about facts, issues, and rules, it should be apparent that a wide range of human reactions is possible. The *third* possibility is that your professor is *inept* in teaching some or more of the cases. What is needed is the *beginning of a critical perspective* towards cases and professors: a lawyer's pleasure at the well-crafted, well-reasoned case and insightful class presentation, and at the other end of the spectrum, a lawyer's displeasure at the badly crafted, poorly reasoned case or teaching. With the gradual emergence of this critical perspective, you'll be better able to spot aberrational, misleading, confusing cases or teaching, and you will not rely on them. You'll not allow them to confuse you. You'll find as much clarity as possible in other materials

9. Should I prepare for the first year before actually beginning?

Definitely. Do as much as you can, but do it *smart*. You'll be pleased later. As noted above, see Planet Law School II by Atticus Falcon for numerous specific recommendations as to how to do this most efficiently and effectively. Very impressively, he has ploughed through the great mass of materials for beginning students and evaluated their sharply varying levels of usefulness. Follow the detailed schedule that is appropriate for you.

John Delaney is the author of:
Learning Legal Reasoning, Briefing, Analysis and Theory;
How to Do Your Best on Law School Exams; and
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