

CONTENTS

<i>Acknowledgments</i>	xix
<i>Introduction</i>	xxi
PART ONE SUCCESS IN THE STUDY OF LAW	1
Chapter 1	
Preparing for Law School	3
I. Anatomy of a 1L Course	3
II. Attitude: A Mindset for Success	4
A. Reflect on Your Goals for Law School and the Practice of Law	5
B. Maintain Your Motivation for Success While Maintaining Collegiality	5
C. Commit Now to Taking Your Studies Seriously	6
1. Reasons to Put Forth Your Best Efforts	6
2. Avoid the Pitfall of Creating an Excuse to Do Less Than Your Best	7
3. But Put a Positive Spin on It	7
D. Adopt a Growth Mindset	9
E. Be Prepared to Seek Critical Feedback and Learn from It	10
F. Be Prepared to Seek Assistance and Benefit from It	10
G. Gain Comfort with Uncertainty	11
III. Practical Steps for Succeeding in Law School	11
A. Commit to Engaging in Active Learning	11
B. Pace Yourself While Maintaining Well-Being	12
C. Maintain Your Machine: Exercise, Diet, and Sleep	13
D. Mindfulness, Meditation, and Metacognition	14
E. Time Management	16
1. Hit the Ground Running	16
2. Prepare a Weekly Schedule	17
3. Prepare a Semester Calendar	18
IV. The Next Step	19
	xi

Chapter 2	
The Case Method: Focus on Judicial Opinions	21
I. Introduction to the Legal System	21
A. Branches of Government	21
B. Legislation	21
C. Common Law	22
II. Case Law and Cases	24
III. Court Structure and Stare Decisis	27
A. State and Federal Court Systems	27
B. Precedent and Stare Decisis	28
1. Binding Precedent	28
2. Overruling a Court’s Own Precedent in Special Circumstances	28
3. Precedent from Other Court Systems May Be Persuasive but Not Binding	28
4. Precedent from a Reviewing Court May Be Distinguishable, and Thus Nonbinding, Although Still Potentially Useful	29
C. Summary of Terms and Concepts	30
IV. The Next Step	31
Chapter 3	
Briefing Cases	33
I. Reading a Judicial Opinion	33
A. Your Location of Study	33
B. Strategies for Reading a Judicial Opinion with Active Engagement	34
1. Do Your Own Work	35
2. Identify Context	35
3. Successive Readings of the Opinion	36
4. Gain a Concrete Understanding of the Facts	36
5. Adopt a Role and Purpose	36
6. Actively Engage with the Opinion	37
7. Reflect on the Case	38
8. Residual Questions or Confusion Can Be Constructive	38
II. Elements of a Case Brief	39
A. A Popular Format for a Case Brief	39
1. Identify the Case	39
2. Summarize the Facts	39
3. Summarize the Procedural History	40
4. State the Issues	40

5. State the Holdings	41
6. Discuss the Court’s Reasoning	41
7. Evaluate the Case	42
8. Synthesize the Case with Other Cases That Address the Same Issue	42
B. A Sample Case Brief	43
III. Class Discussion	44
A. The Socratic Method	44
B. Fielding Questions with Uncertain Answers	46
1. When the Answer Is Uncertain, Develop Arguments	46
2. An Illustration in a Nonlegal Context	47
3. An Illustration in a Legal Context: Warrantless Search of a Motor Home	52
<i>Exercise: Case Brief for a Course in Torts</i>	54
IV. The Next Step	59
Chapter 4	
Taking and Reviewing Class Notes	61
I. Reviewing Your Notes Before Class	61
II. Taking Class Notes	62
A. Stay Engaged During Class	62
B. Don’t Transcribe—Think, Process Information, and Note Essential Points	63
C. Use Class Time to Your Advantage	64
III. Refine Your Notes Immediately After Class	65
IV. Back Up Your Notes and Projects	66
V. Periodic Quizzing on Course Material Throughout the Semester	66
A. Forced Retrieval	67
B. Spaced Repetition	68
C. Interleaving	72
VI. Fitting It All into Your Schedule and Doing It Well	73
A. Make the Most of Your Time	74
B. Avoid Procrastination	74
VII. The Next Step	76
Chapter 5	
Synthesizing Cases	77
I. Case Synthesis	77
A. Backing Up to See the Whole Forest	78
B. Taking Your Legal Writing Course Seriously	79

II. Examples of Case Synthesis	80
A. Warm-Up: Example in a Nonlegal Context	80
B. Example in a Legal Context: Punitive Damages for Breach of Contract?	84
C. Example: Damages for Emotional Distress for Breach of Contract	86
D. Crossing the Bridge	87
<i>Exercises: Synthesis</i>	90
III. The Next Step	106
Chapter 6	
Preparing Outlines and Flowcharts	107
I. Why Outline?	107
II. The Outlining Process: Getting Started	108
A. Previous Examples in This Book	109
B. Stocking the Candy Shelves	112
C. Example: Misrepresentation and Nondisclosure in Contract Formation	115
III. Stating Rules and Illustrating Them with Examples	120
<i>Exercise 1: Finding and Stating a Multifaceted Rule</i>	122
<i>Exercise 2: Synthesizing Two Cases and Outlining Ads as Offers</i>	125
<i>Exercise 3: Following Up on a Synthesis Exercise</i>	129
<i>Exercise 4: Advanced Exercise: Outlining Consideration</i>	129
IV. Flowcharts and Other Graphics	131
A. An Illustration from International Sales Law	131
B. An Illustration from First-Year Contracts	134
C. Don't Force a Flexible Analysis into a Mechanical Flowchart	138
V. The Next Step	140
PART TWO SUCCESS IN TAKING LAW SCHOOL EXAMS	141
Chapter 7	
Learning What to Expect on Each Professor's Exam	143
I. Find and Study Past Exams	143
II. Ask Your Professor About the Exam	144
III. Take Practice Exams and Assess Your Performance	145
A. Practice to Improve	145
B. Solicit Feedback on Your Performance	146
C. Pose Your Own Exam Questions	147
IV. Do Not Commit to a Prediction of the Exam Issues	148

V. Modify Your Outline Shortly Before the Exam	149
A. Learn Through the Process of Outlining	149
B. Create Spin-Offs from Your Main Outline	149
1. Highlight the Main Headings	150
2. Compose a Checklist of Issues	152
3. Prepare a Strategic Guide for Problem Solving	152
VI. The Next Step	154
Chapter 8	
Getting Primed for the Task	155
I. Adopt a Winning Attitude	155
II. Maintain Your Machine	156
III. Facing Exam Day	157
IV. The Next Step	158
Chapter 9	
Techniques Common to All Essay Questions	159
I. Effective Use of Time	159
A. Expect Time Pressure	159
B. Logical Allocation, Not Gambling	160
C. Objective Questions	160
D. Essay Questions	161
1. An Illustration in a Nonlegal Setting	161
2. Application to the Legal Setting	163
3. Allocating Your Time Among Essay Questions	165
E. Never Give Up	166
II. Reading and Analyzing Essay Questions	167
A. Mastering the Question	167
1. A Plan of Action	167
2. An Illustration	168
B. Plan Your Answer	170
C. Reacting to Apparent Mistakes in an Exam Question	172
1. State Your Assumption About an Error or Omission	172
2. Do Not Lightly Alter the Facts of an Exam	172
III. Writing the Answer	173
A. Production Rather Than Perfection	173
B. Express All the Links in Your Chain of Logic	174
C. Depth of Analysis	175
1. Sample Office Memorandum	176
2. Sample Exam Answers on Same Issue	180
a. In-Depth Answer	180

b. Full IRAC with Moderate Depth of Analysis	182
c. Hurried Analysis in an “Issue-Spotting” Exam	184
IV. The Next Step	186
Chapter 10	
Fact-Based Essay Questions with Uncertain Conclusions	187
I. Elements of the Answer—IRAC Realized	187
A. General Format	188
B. Issues	188
1. Debatable Questions of Law or Application to Facts	189
a. Competing Legal Rules	190
b. Questions About Application of Law to Facts	190
2. Identifying Issues	191
a. An Example from a Nonlegal Context	192
b. An Example from the Common Law of Burglary	193
3. Scope of Analysis	195
4. Expressing Your Identification of Issues	195
<i>Exercise: Issue Spotting</i>	197
C. Presentation of the Legal Rule	199
1. Stating and Defining Legal Elements	200
2. Stating Competing Legal Rules	200
3. Stating Policies Supporting a Rule	202
4. Depth and Formality of Analysis	203
D. Fact Analysis: Argumentative Application of Law to Facts	204
1. Depth and Formality of Fact Analysis	204
2. Presentation of Fact Analysis	205
3. Working with Specific Facts Rather Than Jumping to Factual Conclusions	207
E. The Conclusion	209
1. Taking a Position	209
2. Comprehensive Conclusions	210
3. Misplaced Rules or Arguments in a Conclusion	211
4. Do Not Cut Off Secondary Issues	211
II. Sample Essay Questions and Answers	214
A. Nonlegal Example	214
B. An Example Raising Issues in Quasi-Contract	216
<i>Exercises: Practice Exams</i>	218
III. The Next Step	230
Chapter 11	
Essay Questions of a Different Kind	231
I. Fact-Based Essay Question with a Certain Answer	231

A.	Explaining a Result Rather Than Arguing Both Sides	231
B.	Recognizing and Reacting to Questions with Certain Answers	232
C.	Example: The Battle of the Forms	233
	<i>Exercise: UCC § 2-207</i>	237
II.	Essay Questions Without Substantial Fact Analysis	238
A.	Explanation of the Legal Doctrine	238
	<i>Exercise: International Sale of Goods</i>	239
B.	Critique and Policy Analysis	241
III.	Take-Home and Performance Exams	242
A.	Easing the Time Pressure	242
B.	Performance Exams with Sophisticated Materials and Answers	244
IV.	The Next Step	245
Chapter 12		
Objective Questions: True–False and Multiple-Choice		
I.	Overview of Challenges Posed by Objective Questions	247
II.	True–False Questions	248
A.	Look for the Flaw in an Assertion That Is Mostly True	248
B.	But Recognize That the Assertion Might Be True in All Respects	249
C.	True–False Questions with Fact Patterns	249
1.	Most Elements of the Statement of Law Are Correct, but the Conclusion and at Least One Element of the Law Are Incorrect	251
2.	The Legal Rule Is Incorrect, Even Though the Conclusion May Be Correct	252
3.	A Correct Conclusion Is Purportedly Explained by Facts That Would Be Relevant Only Under an Inaccurate Implicit Legal Premise	253
4.	The Statement of the Law Is Correct in the Abstract, but Produces a Different Conclusion When Applied to the Facts	254
5.	An Accurate Statement of the Law Is Irrelevant to a Correct Conclusion and Thus Does Not Explain It	254
D.	Summary on True–False Questions	255
	<i>Exercise: Five True–False Questions Relating to Common Facts</i>	255
III.	Multiple-Choice Questions	257
A.	Relationship to True–False Questions	257
B.	Fundamental Strategies	257
C.	Choosing the <i>Best</i> Alternative Assertion in a Multiple-Choice Question	258
D.	Forms of Multiple-Choice Questions	259

1. Alternative Abstract Statements of the Law	259
2. Fact-Based Questions	259
3. Explain the Answer	262
IV. Ambiguity or Errors in Objective Questions	262
A. The Nature of the Problem	263
B. Reacting to Mistakes or Flaws in an Objective Question	263
V. Skipping a Question and Returning Later	264
A. Skip a Question Only if the Potential Benefit Outweighs the Costs	265
1. Questions Requiring You to Recall Legal Rules	265
2. Questions That Require Substantial Fact Analysis	265
B. Always Mark an Answer to Each Question When You First Encounter It	266
<i>Exercise: Multiple-Choice Questions</i>	268
VI. The Next Step	281
Appendix A Sample Case Brief for the Exercise at the End of Chapter 3	283
Appendix B Sample Syntheses in the Exercises at the End of Chapter 5	285
Appendix C Sample Answers to Outlining Exercises in Chapter 6, Section III	287
Appendix D Sample Answers to Exercises Relating to Fact-Based Essay Questions with Uncertain Conclusions in Chapter 10	295
Appendix E Sample Answers to Exercises Relating to Essay Questions of a Different Kind in Chapter 11	309
Appendix F Answers and Explanations for Exercises Relating to Objective Questions in Chapter 12	313