

# *The First Month*

*Nothing concentrates the military mind so much as the discovery that you have walked into an ambush.*

—Thomas Pakenham, British historian

### 1. Finding the Right “Advisors”

As we said before in Chapter 2, you will have all sorts of advice to sift through (including our advice in this book). You’ll probably have an upperclass mentor assigned to you, and you’ve probably met other upperclass students as well. In addition, by now you’ve gravitated toward some initial friendships with some of your classmates. You might have asked some of your professors for advice, and you might have spoken with your academic support dean. You can also find great advisors in law alumni, other professors, and all sorts of other smart folks in the law school community.<sup>1</sup> How will you sort through all of these differing points of view?

The good news about law school is that it does not *actually* destroy bits of your brain, although you might feel that it has. You came into law school smart; that hasn’t changed. You know that you gravitate toward certain ways of learning material (remember our discussion about what type of learner you are, in Chapter 1?). As you sift through advice, then, start by looking for advice that fits with your learning style. Are you a visual learner? Then you might want to think about making some flowcharts. Are you a kinesthetic learner? Then you’re going to want to create something new—an

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<sup>1</sup> Especially in a difficult economy, having more points of view (and more mentors’ advice) to sort through can be a very good thing. Your mentors will see the world differently from the way you see it, which will give you more information on which to base your decisions. See Elizabeth Garone, *Pile on Mentors in Tough Times*, Wall St. J., Oct. 9, 2009, available at <http://online.wsj.com/article/SB10001424052748703298004574455172409504420.html>.

outline, a flowchart, flash cards, or all of these—that will force you to do something physical to learn your new skills.

The answer, then, to the question of how to find the right advisors is, in part, to know what kind of advice you need for the type of learner that *you* are.

While we're on the topic of advisors, though, we want to remind you that your non-law-school friends are there to keep you from becoming so self-absorbed that you lose some of what makes you human. They have needs, too, and their needs shouldn't always have to take a back seat to your needs. It's very easy, especially in that first month of law school, to focus on immersing yourself in the study of law to the exclusion of all else: friends, family, eating, sleeping, and so on. For both of us, the first month of law school was a lot like living overseas in a new country. We could figure out the language, with the help of a dictionary, but it took time. We could figure out the customs, through trial and error, but that took time, too. There wasn't anyone holding our hands and walking us through all of the new experiences in the new country. Every single thing we did—making phone calls, buying groceries—was needlessly complex in our new world until we got the hang of how the new country worked. That's why law school can be so all-consuming the first month. And it's okay to be absorbed in it, as long as you remember to break away long enough to get your bearings now and then.

## 2. Why Outline Now?

Your professors might have already referred to “making outlines” in some of your classes, and what they're describing is a way of organizing and condensing your notes so that, at the end of the semester, you'll be able to study for finals more efficiently. By the end of your first month, you might not believe that you know enough to begin outlining, but you actually do. By now, you've probably covered some subunits of material in each of your courses. For example, you might have covered what constitutes an offer in your Contracts class. You've read cases about offers and acceptance, and you might have read some Restatements or Uniform Commercial Code sections about offers. You might even have worked some problems in class about offers. And your

professor has certainly discussed some hypotheticals about offers during class. Not only do you have enough material about offers, but you actually have too much material. You'll need to condense it, and now's the time. If you outline at the end of every subunit of material, you won't have to panic in those few days between the end of classes and the beginning of the final exam period.

### 3. A Better Type of Outline

#### 3.1. *The Garden-Variety Outline, and Why It's Worthless*

Most law students "outline" along the following lines, and we'll use "offer" as an example.

##### I. Offer

- A. Must be definite. Must create a power of acceptance in the offeree.
- B. *Lucy v. Zehmer*. Selling farm on back of napkin. Joke? Objective manifestation or subjective intent?
- C. *Leonard v. PepsiCo, Inc.* Harrier jet case. Reasonable or joke?
- D. *Loneragan v. Scolnick*. [incessant list of cases continues]

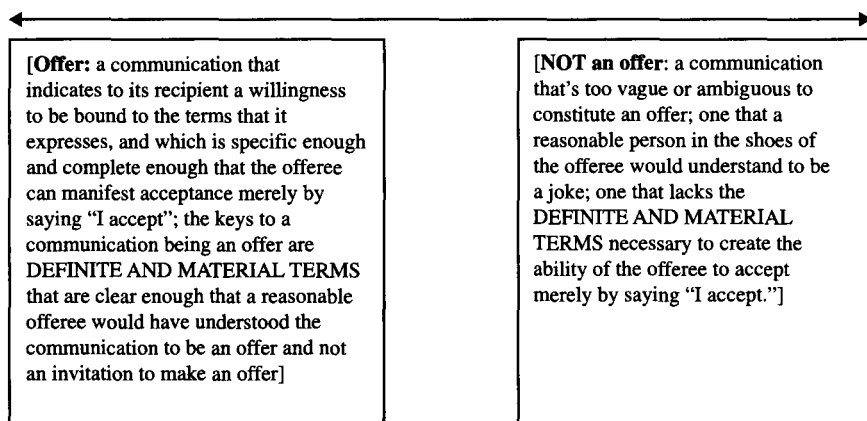
The problem with this outline isn't that it's inaccurate. It's perfectly accurate, if a bit boring. The problem with this outline is that it's, at best, regurgitating everything that the student has learned about offers, without giving the student any help at all in applying what he's learned to any new hypothetical. And being able to apply what you've learned is key.

Law school exams are not about the regurgitation of what you've been told in class, which is very bad news if you're a regurgitation expert. (And many of you were regurgitation experts as undergraduates.) Law school exams are all about taking rules of law, exceptions to those rules, exceptions to the exceptions, and policy considerations, and applying those rules, exceptions, exceptions-to-exceptions, and policies to factual scenarios that you've never seen before. So if you're going to build an outline, for goodness' sake, make it something that you can use in answering law school exam questions.

### 3.2. A Better Outline

#### 3.2.1. Option 1: An outline as a set of continuums

One way to think about what your law professor is doing in class when she's asking you about a case is that she's trying to locate that case along a continuum, where one end of the continuum represents the perfect application of a rule and the opposite end represents circumstances under which the rule would never apply. So, for an offer, you might think of a continuum this way:

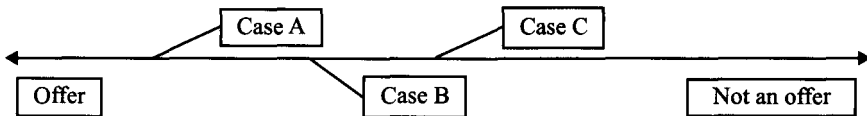


Now that you have a continuum, you could locate cases along that continuum as a way of figuring out which facts might lead a finder of fact to conclude that a communication was more likely to be an offer or more likely not to be an offer. For example, there's a great case<sup>2</sup> involving a kid who saw a Pepsi commercial offering a Harrier fighter jet for 7 million "Pepsi Points." (You can see two of the commercials at issue at <http://www.youtube.com/watch?v=ZdackF2H7Qc> and <http://www.youtube.com/watch?v=Ln0VSA9UJ-w>.) He saved up some points and raised cash to purchase the equivalent of the remainder of the points to get a Harrier, but Pepsi (surprise, surprise) refused to give him the jet.

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<sup>2</sup> *Leonard v. PepsiCo, Inc.*, 88 F.Supp.2d 116 (S.D.N.Y. 1999), *aff'd*, 210 F.3d 88 (2d Cir. 2000).

Although no court (and, other than Nancy, no law professor of whom she's aware) actively refers to working along a continuum when analyzing a legal issue, in fact, that's what both Mr. Leonard and PepsiCo were doing, right? Leonard was arguing that the commercials put the Harrier squarely on the "offer" side of the continuum, and PepsiCo was arguing that no reasonable person would think that PepsiCo could be offering a Harrier for "Pepsi Points" (in other words, PepsiCo was placing the communication on the opposite side of the continuum). We'll leave it to you to look up where along the continuum the court put the communication. The point is that, for offers, you could organize your class notes and briefs into a series of continuums:<sup>3</sup>



Now, when it's time to answer a hypothetical in class, or to do a practice exam, or even to answer the real exam, you can ask yourself how the new fact situation compares to the cases in your continuum. That's one way to organize the material, and it's far more useful than regurgitating the material that you've already covered with the professor. But that's only one option.

### 3.2.2. Option 2: An outline as a set of flowcharts

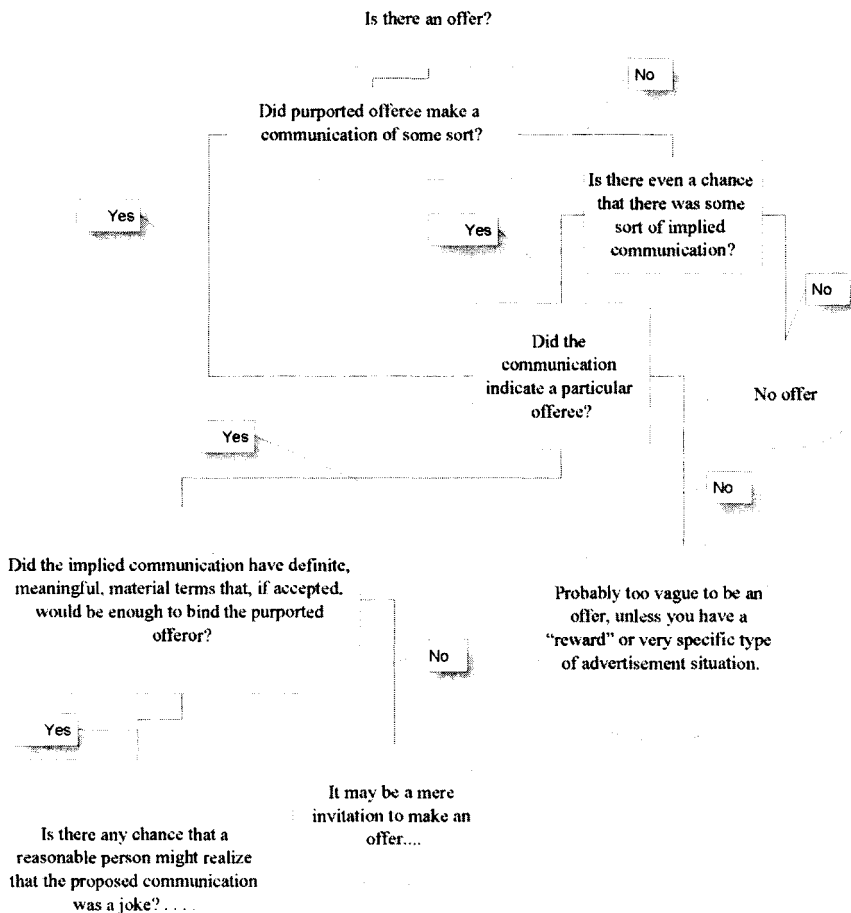
Another way to help yourself answer a hypothetical (or an exam question) is to create a flowchart that asks you a series of yes—no questions. The idea in parsing your way through a new set of facts is to proceed systematically with an application of a rule (or its exception) to the facts. Law professors don't get that excited if you know a rule, although they get marginally more excited if you're able to state the rule in your own words, rather than reading directly from a case. (After all, if you can't state the rule, you'd be in

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<sup>3</sup> We make no warranty that this continuum approach will work in all courses, including but not limited to such courses as Constitutional Law. But it's worth a try, isn't it?

big trouble on the exam, wouldn't you?) What gets them excited is your ability to *use* a rule, not merely to identify it.

So here we go with offers again. Let's say that young master Leonard comes to you whining about Pepsi not giving him a Harrier jet when he saved up enough Pepsi Points and raised enough cash to "pay" for one. How might a flowchart on offers help you analyze his problem? The following example can give you a feel for the usefulness of a flowchart.



What a flowchart does for you is force you to use the facts of the hypothetical. You're taking the rule (what constitutes an offer) and applying it to specific facts (for example, young master Leonard and his hankering for a Harrier). Both of us, if we used this flowchart, would have concluded that there was no offer because it was either a garden-variety advertisement ("invitation to make an offer") or, even more likely, it was an obvious joke (Pepsi doesn't have any Harriers to sell). But by using the flowchart, we would have proceeded step-by-step through the rules to the facts, back to the rules, and so on. Again, the step-by-step rules-into-facts-into-analysis process is far more useful to you than simple regurgitation of your notes, unless you're such a kinesthetic learner that you need to rewrite your notes before you can make any sort of outline.

### 3.2.3. Option 3: An outline as a series of questions

Another way to think of an outline is to think of it as a series of prompts that you have to answer as you proceed, step-by-step, through a set of facts. The point of an outline-as-a-series-of-questions approach is to remind you to search the facts of the hypothetical in front of you for answers to the questions.

Imagine that young master Leonard stalks into your office, slams down the Pepsi Points catalog and a copy of the Pepsi Harrier commercials on your desk, and shouts, "I know that Pepsi owes me a Harrier! I did everything that it asked me to do!" Before you answer him (or have your assistant show him the door), you take out your trusty outline-slash-checklist. Your answers would be the part that we put in italics.

1. A contract requires an offer, acceptance, and consideration to be binding.
  - A. Was there an offer?
    - i. Did the purported offer make any sort of communication to a specific offeree? *Well, no; not here. Pepsi simply broadcast a couple of commercials and put out a catalog.*
    - 1) If the answer is no, is there any chance that the purported offer is that rare type of communication to a nonspecific offeree that is either a reward or a

first-come, first-served advertisement for a specific good? No. *Pepsi* clearly didn't intend a reward for redeeming points, and it didn't offer "one *Pepsi*-painted Harrier jet." A reasonable person in the position of an offeree would naturally assume that *Pepsi* was just trying to drum up business by having people drink *Pepsi* and collect "frequent drinker" points for doing so. . . .

#### 3.2.4. Option 4: Combine all of those other three options, depending on what type of material you're covering

You know where we're heading here. Different types of material will lend themselves to different ways of "outlining." For example, statutes are particularly adaptable to flowcharting. Neither of us is particularly sure what would work in Constitutional Law, although we have a guess that making a historical timeline that indicates who's serving on the Court when particular decisions are handed down might be useful. No matter what method you choose, you want to make sure that you have a way of accessing the rules and exceptions *and* a way of accessing likely issues, for "issue-spotting." Our point is that, until and unless you're going to be a law professor who writes commercial outlines (see Section 5 below), resummarizing material without thinking about how to use it before your exams is a waste of your time. So figure out what methods are going to be the most useful for the type of learner that you are, and get cracking on developing outlines that are tailored to those methods.

#### 3.2.5. Timelines

Some courses (Constitutional Law comes to mind) really do make more sense when you build timelines of what rules are in place at a given time, when those rules have been reversed, and when the new rules (overruling the old rules) apply. If your professor is interested in policy issues—and most professors are—understanding the timeline for the development of certain rules of law might help you understand how the policy underlying the



rules has developed as well. For example, if the law of a subject moved from a strict formalism to something more relaxed, knowing a little about when the law started changing and what was going on in history at that time might help you understand the reasons for the change.

#### 4. What If You're Going to Have a Multiple-Choice or Closed-Book Exam at the End of the Semester?

The bad news is that neither Jeff nor Nancy is an expert in the psychology of closed-book or multiple-choice exams. (We doubt that most of the law professors who use multiple-choice exams are experts, either.) The good news is that we've both taken these types of exams, in law school and in that lovely hazing ritual called the bar exam. The bar exam involves several days of nothing *but* closed-book and multiple-choice exams.

In many ways, your approach to closed-book exams is going to be exactly the same as your approach to multiple-choice exams. Our advice for closed-book exams is simple. Memorize the rules and exceptions early in the semester—long before your exams will begin. Develop your own study aids and, if you work with a study group, quiz each other on such things as a rule's elements, the exceptions to the rule, and the exceptions to the exceptions. But, as you've already learned, memorization is necessary but not sufficient. You'll have to be able to apply what you're memorizing to the facts in the exam questions. We'll explain how to do that in Chapter 7.

As for multiple-choice exams, the main difference between that type of exam and an essay exam is that a multiple-choice exam lets the professor test more of the course's material in a shorter amount of time. Your studying for a multiple-choice exam will be no different, then, from your studying for an essay exam; how you *take* that exam will be slightly different, and we'll discuss that issue in Chapter 7 as well.<sup>4</sup>

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<sup>4</sup> Nancy swears by Steve Emanuel's *Strategies and Tactics* books for learning how to take multiple-choice exams.

## 5. Commercial Outlines<sup>5</sup>

Your law professors will tell you not to buy them. Your friends have all bought them. There seem to be a million of them. There's *Emanuel's*, *Gilbert's*, *Nutshells*, and countless other summaries and explanations of various law school courses—all of them written by very smart people, all of them designed to help you through understanding what you're reading outside class and discussing in class.

We have no real beef against using these extra study aids, as long as you don't use them instead of your assigned readings and instead of making your own outlines. Heck, Nancy could not have survived Property or Federal Income Tax without her study aids. But take what those study aids say with a grain of salt. Unless your professor has written your particular study aid, your professor's take on the course outranks whatever your study aid says about it.

As for commercial case briefs ("canned briefs"), we *suppose* that there might be a circumstance where someone else's reading and briefing of a case might help you in class or in preparing for your final exam, if you're particularly time-pressured, but frankly, we think that you'd be better off book-briefing the cases,<sup>6</sup> or even trading briefs with some of your friends in the class. At least that way, you'd be preparing the briefs in the manner most likely to help you when your professor calls on you.<sup>7</sup>

## 6. Hornbooks

Hornbooks are mini-treatises<sup>8</sup> written by law professors who have spent years and years thinking about particular subject areas.

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<sup>5</sup> There are other types of study aids, such as flash cards, law summaries, DVDs, and the like. Your learning style should guide you in your selection of the best study aids for you. All we ask is that you use study aids to, well, *aid* your studying, not to replace it entirely.

<sup>6</sup> "Book-briefing" is where you brief the case directly into your casebook. You color-code the facts of the case in one highlighter color; then you color-code the issues in a different highlighter color, the holding in yet another color, and the reasoning in still another color. Our advice? Read the case a few times first. Highlighters are difficult to erase, unless you buy the newfangled erasable kind.

<sup>7</sup> Apologies to any of Nancy's colleagues who write any canned briefs.

<sup>8</sup> Yep, treatises are large hornbooks. Many times, they're multi-volume hornbooks.

There are several different hornbooks for each first-year (and upperclass) course, and the beauty of these is that each of them is well thought-out. When Nancy was a confused first-year law student, she started with hornbooks to straighten out her confusion when she was making outlines. Her order of preparing outlines was as follows:

- Go to notes.
- Do first draft of outline.
- Figure out what parts were "fuzzy."
- Read hornbook to see if that helped.
- Read commercial outline to see if *that* helped.
- Redo draft of outline.

## 7. Test-Drive Your Outline

To make sure that you're on track after your first month of law school, try this trick: Get together with a small group of friends. Ask each friend to make up a hypothetical based on an area that you've already covered in class and that each of you has already outlined. Exchange hypotheticals and try to answer them, using your own outlines. The easiest way to test whether your outline is going to help you is to practice using it. If your outline's not helpful, change it based on what would make it more helpful to you. (Don't look now, but you've just created a study group.)

## 8. Student Organizations: Join Now or Wait?

By now, you've gotten more used to law school: Your studying's in a nice groove, you have a circle of friends, and you're used to feeling a bit lost (but you're not quite as panic-stricken by the feeling). Student organizations are putting signs up all over school, and you're wondering if you should join any of them now. Here's one way to look at the issue, and we apologize in advance if we sound a tad calculating: Your primary job in law school is to learn.

Every minute that you take away from your primary job should be a minute that's worthwhile to you. If you take some time away from your primary job to reduce your stress (perhaps by working out, seeking some quiet time, or hanging out with friends) or nurture those close to you, great. Reducing stress and maintaining your personal ties is important.

With this advice in mind, as you sort through the various student organizations, ask yourself if each organization that interests you will help with your primary job (for example, organizations that help their members study, that help you with career prospects, such as organizations that help their members network with practicing lawyers, or that help you relax for a while so that you can return, refreshed, to your primary job, like a sports club). Every school has various affinity clubs: clubs for people who share common interests. There are clubs for people who are interested in real estate law or public interest law, clubs for people who share the same religion or ethnicity, and clubs for older students. You might choose to join one or more organizations or to give all organizations a pass until your second year (or never). But whatever you do, don't forget that your primary job is to learn. Period.

## **9. Congratulations! You've Made It Through Your First Month of Law School!**

Do you still have friends and family? No unusual tics? Then you're doing fine.