

Starting off Right

in Law School

Carolyn J. Nygren

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Introduction

Why I Wrote This Book

1. To provide information about the legal system

Law schools do not require that their entering students have any specific knowledge of the law. Unfortunately, in order to understand their assignments for the first day of law school, students need to be familiar with fundamental legal principles and legal terminology as well as know information about the court systems and the trial and appellate processes. Students at most law schools must spend a great deal of time during the first semester trying to fill in the gaps in their basic knowledge at the same time that they are trying to cope with their course work. No wonder that most are exhausted and discouraged.

Students do not need in-depth knowledge of the legal system to be ready for the first day of law school. There are three years to learn the details. They just need the basics. The first reason I wrote this book is to provide those essential basics.

2. To provide information about the study skills necessary for success

When I first started working at law schools, I was hired to work in the Spring with students who had not done well on first semester exams. I soon realized that most of the students had worked very hard and had learned enough law to do well. What they hadn't learned was that law school exams are differ-

ent from any other exams they had taken and doing well requires some specific study and exam preparation techniques. Unless told otherwise, students who have had success in other academic settings have no reason to believe that they need to study differently in law school. Sometimes it is not until they do poorly on first semester exams that they understand that they need help.

Most students can be successful if they know what preparation is required. Therefore, the second reason for writing this book is to tell students about study and exam preparation techniques before their first exams. All students should know how to demonstrate what they have learned.

Why You Should Read This Book

First year success is more important to law students than to students in any other graduate program. Selection for law review is often dependent on grades. Law firms are usually conservative and often rely almost exclusively on grades to determine to whom to make an offer. Therefore, some very promising students are cut off from opportunities simply because they do not know how to succeed in law school. This book contains what you need to know so that you can do well enough in law school to achieve your goals.

What You Should Know About the Book

The “Voices”

This book is based on a course I taught for many years. The chapters that contain basic law related information rarely

include the word “I.” However, the chapters that contain study and exam preparation techniques are based on my experience in teaching and working with individual students. In these chapters I often refer to suggestions that have worked for me and others, and I also include samples from the course.

The Topic

When you read the book, you may be surprised by the fact that the events that resulted in the cases being tried are rather mundane. All of the cases you will read are about people who have been injured by something in food, either in their restaurant meals or in processed food. You will read about people who have been injured by a bone in fish chowder, a bone in a fish fillet, and even a pearl in canned oysters. The injured parties are all suing the merchants who sold them the food under one legal theory found in the Uniform Commercial Code called the implied warranty of merchantability.

You should know that the case at the heart of this book (*Webster v. Blue Ship Tea Room, Inc.*) created problems for generations of Massachusetts lawyers as you will see in Chapter One. In 1989 the Supreme Judicial Court decided a case which clarified the unresolved issues in *Webster*. However, this action by the court did not decrease the effectiveness of *Webster* as a teaching tool nor its appeal to law school teachers and students.

The reason I have chosen such an easy subject is that I want you to be able to concentrate on learning about the law. All of us have eaten in restaurants and consumed canned or frozen food from the supermarket. Although the subject matter is easy, the legal concepts in the cases are not, and there are many

scholarly articles written about what one such article calls “chicken bone law.”

The Simplified Explanations

Some legal concepts may seem clear in this book because they are introduced in only one area. In your first year courses, you may find that they are quite complex. However, it is impossible to understand the complexities at the beginning of your law school experience. Now you need a basic understanding of legal concepts and vocabulary so that you can have the foundation upon which to build a more sophisticated understanding. This book is meant to give you enough of an introduction to the law and law school so that you can begin speaking and writing like a member of the legal community immediately.

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Starting Off Right in Law School

The Sources of Law

Background for this Chapter

Most of this chapter is the story of the beginning stages of a law suit. This background section comes first so that the story can be told without interruptions to explain legal terms. In many instances the explanations of the terms are simplified, but they are sufficient for this introductory book and your first days in law school.

You will encounter many words in law school that are unfamiliar to you or are used in ways that are unfamiliar to you. Therefore, the purchase of a legal dictionary designed for law students is wise. Although you will later want to own the famous lawyers' dictionary, *Black's Law Dictionary*, many first year students are as confused by the definitions in *Black's* as they are by the terms they look up.

Court

1. Court can mean one of the institutions of our legal system. For example, "Oliver James is taking his former employee John Lewis to court because he believes that Mr. Lewis violated their non-competition agreement."

Most states have a three tier court system. The role of the judges of the first tier courts (the trial courts) is to apply existing law to the disputes they hear. The primary role of the judges of the second tier courts is to correct errors made by the judges in

the trial courts. The role of the judges of the third tier is to make law. The second and third tier courts are called appellate courts. This system of state courts will be described in more detail at the beginning of Chapter 2. The federal system (not described in the book) has a three tier structure.

2. Court also can mean the judges who make the decisions about the disputes. For example, “The court found that a bone in a bowl of fish chowder did not make the chowder unmerchanted,” means that in the document written to issue a decision, the judges or judge stated that a bone in fish chowder did not make the chowder unmerchanted. This is the most frequent use of the term “court” in this book.

Statute _____

A statute is a law made by a legislature. Statutes are enacted in order to regulate people’s future conduct. Although most law school courses allot little time to statutes, many of the problems of a lawyer’s clients are addressed in statutes.

Judge-Made Law _____

Although many people think of the “law” as statutes only, decisions of judges about disputes are also law. Judge-made law results from a decision rendered by a court in a particular case. Even when the source of law is a statute, parties often must go to court to obtain clarification of the meaning of a word in the statute.

Case _____

1. Case can mean the controversy that has brought the parties to the legal system. (Attorney Smith is working on a difficult case.)

2. Case also can mean the document that a judge writes to record the outcome of a trial and to state the reasons for the outcome. (I just read a difficult case.) The word “opinion” is often used interchangeably with “case.”

Stare Decisis and Precedent _____

Cases are so important because of two related concepts of our legal system: stare decisis and precedent. Stare decisis (Latin for “stand by the decision”) means that the decision of a court in one case provides a precedent (a standard) for how future cases are decided. If a later case has like facts and issues to the earlier one, it must be decided in the same way as the earlier one if it is in the same court or lower courts. Cases decided in one state are binding precedent only in that state.

Plaintiff and Defendant _____

The party first bringing a case is called the “plaintiff,” and the party being sued is called the “defendant.” However, you may not be able to determine which is which in an appellate case. Many states use the name of the plaintiff as the first name in the title of the case at all levels. Others order the names so that the name of the party appealing is first. The party appealing is the “appellant,” and the other party is the “appellee.”

Cause of Action _____

The alleged facts of any dispute must satisfy the requirements of some cause of action (legal theory) before the dispute can be resolved by a court. For example, in most states a cause of action for battery requires that someone (1) intentionally (2) touch another person (3) in a hostile or offensive manner (4) without permission and (5) with no defense. If any one of these elements does not exist, there is no cause of action in battery.

The reason people bring disputes into the legal system is to obtain a remedy for a wrong. The most common remedy the legal system provides is “damages” (money). Damages are awarded when the defendant is found responsible for the wrong and therefore “liable” to the plaintiff under some cause of action.

Defense _____

1. Defense can mean any fact or legal argument which would make the defendant not liable (or guilty in a criminal trial) even if all the facts alleged by the plaintiff were true. (Assumption of the risk is a defense in a warranty case.)

2. Defense also can mean the conduct of trial on behalf of the defendant. (The defense rests.)

Jurisdiction _____

1. Jurisdiction can mean a particular legal system—usually based on geography. (Ohio and Maine are different jurisdictions.)

2. Jurisdiction also can mean the power to hear a case. (Ohio, not Maine, has jurisdiction in this case.)

Reporter _____

Reporters are books in which the cases of a jurisdiction are printed in chronological order. One state reporter is the official document published by the state. However, few lawyers use this reporter because it contains only the official language of the opinion. Most lawyers use one of the unofficial reporters published by the West Publishing Company because the West editors use an indexing system which is extremely helpful to lawyers.

Each state has a reporter in which the opinions of the highest state are published. Some reporters contain the opinions of the second tier courts as well. West also publishes regional reporters

including the major cases from several states. The regional reporter referred to later in this chapter is the *North Eastern Reporter* which contains cases from Illinois, Indiana, Massachusetts, New York and Ohio. The reporter system will be explained in detail in every law school's course in legal research and writing, and you should not be concerned with the details now.

Uniform Commercial Code (UCC) _____

The UCC is a proposal for legislation drafted by national experts in commercial law. The legislatures of all states have incorporated the UCC into their statutes (Louisiana partially). Because the basic law is the same in all states, courts often cite cases from other states in their opinions as “persuasive” precedent. The state statutes retain the section number of the original document so cross referencing cases is easy.

The Filet of Flounder with Lobster Sauce

Telling the Story

Nelson Palmer was eating his tuna fish sandwich and studying a client's file when a distraught Margaret Fox called.

“Nelson, I want to sue that Fearless Flounder restaurant,” she said in a voice that Mr. Palmer recognized as being raspy and softer than usual.

“Okay Margaret, tell me all about it,” Mr. Palmer replied. Ms. Fox had been his client for five years, and he knew she sometimes had a temper.

“I just bought the first new car I've ever owned, and Paul took me to The Fearless Flounder last night to celebrate. I've