

The Best Kept Secret for Success for Law Students:

[Represent Yourself in Court: How to Prepare & Try a Winning Case](#)

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Years ago, we wrote a book called [Represent Yourself in Court: How to Prepare & Try a Winning Case](#) for pro se litigants. We have since received so many notes from law students saying that they found the book helpful in preparing them for the law school, the bar exam, externships, and law practice that we decided to write this short guide for law students on how to get the most out of the book.

1. How Represent Yourself in Court helps you as a law student

If you are a law student or plan to be a law student, [Represent Yourself in Court](#) will give you the basics of civil litigation, from initial pleadings and discovery to appeal. The knowledge of general court procedures and fluency with legal terminology that you will gain from reading [Represent Yourself in Court](#) will help you:

- Successfully transition to law school as a 1L, (“1L” is a common shorthand reference meaning either a first year law student or the first year of law school itself. [One L](#) is also an excellent book by Scott Turow that all law students will find fascinating), enhance your understanding of 1L reading, and improve exam-taking skills;
- Interview for and integrate well into summer jobs and clerkships; and
- Pass the bar exam.

Throughout this guide you will find Test Yourself quizzes, each tied to information that is important for you to know as a law student, bar exam applicant, and as a beginning lawyer. You may want to read this entire chapter first, then read the rest of the book from the beginning, or consult corresponding chapters as you complete test yourself quizzes in this chapter.

Transitioning to law school.

Chapter 1 of [Represent Yourself in Court](#) describes the feeling non-lawyers have of being “strangers in a strange land” as they navigate their way through the court system. Almost every first year law student feels a similar sense of alienation. Law schools today are generally more nurturing, or try to be, than you may have seen in TV shows and movies in which humorless professors deliberately humiliate students in order to toughen them for law practice. Nonetheless, law school remains highly competitive. Grades matter a great deal in terms of finding employment (especially one’s first law job), and, let’s face it, many lawyer types love to argue!

Law school typically starts with an orientation that provides logistical information and basic skills training. Students describe orientation alternately as either a few more days of fun to make new friends before school begins or the start of a competitive race. Class rankings are generally not established until after grades are published at the end of 1L, but many still try from day one to jockey for position in the first year class. Whatever orientation brings, classes will bring mountains of reading.

You will read a lot in law school, mostly from “casebooks.” Casebooks differ from college textbooks. Instead of setting forth explanations of legal rules, they contain passages from court opinions. Usually these are decisions of appellate (higher) courts that summarize the facts found by a judge or jury in a trial (lower) court and set forth the legal reasoning and holding (ruling) of the appellate judge or judges. Many find the reading difficult, especially at first and when reading older cases.

Books similar to college texts that explain the law do exist. They are called “treatises” or “hornbooks.” Usually they are not assigned reading in law schools. But just as *Represent Yourself in Court* will put civil litigation into context, a treatise may help explain an area of law you do not understand and illustrate how the cases you are studying fit into the subject as a whole. Do not let treatises intimidate you if they are lengthy or detailed. (The index and table of cases, will help you find the parts you need.) Chapter 23 of [Represent Yourself in Court](#), “Help Beyond the Book: People, Places, and Publications” describes many resources you might consult during and after law school.

Just as law school reading differs from college reading so too do law school classes differ from college classes. Most law professors do not lecture. They lead guided discussions and call on students to answer questions about the cases you have read as homework. (And, don’t be surprised if there are many more questions than answers!)

Especially in first year classes, you will be expected to struggle through the reading on your own and come to class prepared to compare and contrast how different courts (in different states and in different time periods) treated similar situations. You will also play a lot of “what if” games –discussing and analyzing whether or not a different outcome should result if one or more facts in a case were changed. Try not to get frustrated when you come prepared to discuss one set of facts and the professors swaps out a key fact for another and expects you to adapt your reasoning accordingly.

We said you might feel like a stranger in a strange land when you start law school. When you begin your casebook readings, you may feel like you are not only in a strange land but in a foreign country, one that speaks another language. Some legal terms are actually in another language –Latin! Others just include a lot of legal jargon and terminology. [Represent Yourself in Court](#) can help you learn many key terms. You will also want to have a legal dictionary (or online dictionary app) handy whenever you read cases.

Test Yourself: Legal Terminology Quiz

Without looking at the Glossary in the back of the book, how many of the following terms can you define?

- Affirmative defense _____.
- Circumstantial evidence _____.
- Default Judgment _____.
- Equitable Relief _____.
- Venue _____.

Now look in the Glossary of [Represent Yourself in Court](#). You will see a straightforward definition for each bolded term, including the five above. The definitions are simplified. You may have to learn more detailed definitions and many other terms beyond those in the Glossary. But you will have a solid base to begin understanding law school reading if you are familiar with all the Glossary terms. Have a friend test you or test yourself to see which of the terms you can define. If there are any you are unfamiliar with, learn them now.

To fully understand a case, you also need to know the “procedural history” (essentially what happened to the parties before the matter reached the appellate court writing the opinion you are reading). Your professors may call on you to answer procedural questions. Reading [Represent Yourself in Court](#) and understanding the flow of a case as it proceeds from pretrial discovery to appeal will help to understand the procedural history of cases.

Test Yourself: Procedural History.

1) When you are asked to include the “procedural history” in a case brief, what does that mean?

2) Define the following terms:

- Appellee _____.
- Appellant _____.
- Petitioner _____.
- Respondent _____.
- Vacate judgment _____.
- Court of last resort _____.

Answers: 1) Basically you will summarize what happened (and why) in the courts between the time that the plaintiff initially filed the case at the trial level and the time the court whose opinion you are reading received the case. 2) For help defining and understanding these terms, review Chapter 20, “When Your Trial Ends: Judgments and Appeals.”

Help Beyond Your Civil Procedure Course

Read [Represent Yourself in Court](#) as a law student to see *why* you are spending time learning rules of civil procedure and evidence; the book shows you how and where they generally apply. The chapter on the Basic Rules of Evidence will give you more specifics. Read that

chapter, if possible, before taking your evidence course. Your course will include much more detail, but the chapter's big picture overview will prepare you and make the class easier. If you have already taken evidence, test yourself by making sure every concept in the chapter is familiar. Evidence comes alive with realistic scenarios in that chapter and the chapters on "Exhibits" and "Making and Responding to Objections."

Test Yourself Evidence Quiz re: Relevance

- 1) Define relevance: _____.
- 2) In each of the following scenarios, state whether the evidence is relevant or not and why:
 - a) Evidence that your client was late for an important meeting to prove that your client was speeding.
 - b) Evidence that your client was wearing her favorite green suit while driving to prove that your client was speeding.
 - c) Evidence that one week before your co-worker physically assaulted your client, the co-worker allegedly told your client Clint to "watch out," and texted another co-worker, "I'm going to get Clint next chance I have."
 - d) Evidence that two years before your co-worker physically assaulted your client, the co-worker allegedly told your client Clint that he was a "big shot" and the co-worker said, "I don't like big shots."
 - e) To prove that your client was speeding on March 1st while driving on Elm Street, the opposing party introduces evidence that your client was seen speeding on Palm Street on January 2d.

Find the answers to whether these examples and many others are or are not relevant and why in Chapter 16, "Basic Rules of Evidence" in the section on "Relevance."

Try another Test Yourself, below.

SIDE BAR: Test Yourself Evidence Quiz re: Prejudice Outweighs Probative Value

- 1) True or False: Evidence where evidence is relevant, a judge may exclude that evidence as unfairly prejudicial if it is likely to inflame the emotions of the judge or jury.
- 2) Consider the following scenario: your client is sued for fraud by Homeowner for intentionally concealing a dangerous condition in a house that your client sold to Homeowner. Homeowner claims that she suffered head injuries as a result of the dangerous substance in the home. Your client denies there was any such condition at the time of sale. Homeowner testifies about her injuries and then offers into evidence a series of photographs depicting her bloody head wounds before and during her medical treatment. State whether the evidence is relevant and whether or not it will likely be admissible, and why.

Find the answers to these questions in Chapter 16, Basic Rules of Evidence, in the section "Excluding Relevant but Unfairly Prejudicial Evidence."

Try another Test Yourself quiz below, this one on opinion evidence.

Test Yourself Evidence Quiz re: Opinions

1) True or false: Parties and ordinary lay witnesses are generally supposed to testify to specific opinions and not to their factual observations.

2) In each of the following scenarios, state whether the judge will likely allow a witness to testify about his/her opinion on the following:

- a) The red sports car was driving too fast.
- b) The red sports car was driving carelessly.
- c) A man the witness observed for 30 minutes seemed drunk.
- d) A man the witness observed for 30 minutes who then tripped and fell, tripped and fell because he was drunk.
- e) Having been family friends and watching little Bobby with his parents, Bobby always seemed more comfortable with his father than his mother.
- f) It would be in Bobby's best interests to live with his father rather than his mother.

Read Chapter 16, "Basic Rules of Evidence" in the section on "The Rule Against Opinions" to see if you know when the examples above of lay testimony (as opposed to expert testimony discussed in Chapter 19) will or will not be admitted.

The Chapter on "Proving Your Case at Trial: The Plaintiff's Perspective" is a must read for law students. As the chapter states, most legal claims consist of separate elements, component parts of a cause of action that all must be proven in order to prevail. Using examples of simple negligence, professional negligence (or malpractice), and breach of contract, this chapter walks through the elements of legal claims.

Few professors sit down and clearly explain element-based analysis as this chapter does, yet that is precisely the type of analysis you are expected to perform in writing law school essays, bar exam essays, and in litigating cases in practice. Read this chapter before and as you study Torts and Contracts in your first year, and again when you prepare for the bar exam.

[Represent Yourself in Court](#), and bar review, will simplify the elements of relevant causes of action. For example, Chapter 8 of [Represent Yourself in Court](#) simplifies "causation," one of the four elements of a negligence claim. Your law school torts class may spend weeks on causation, first on what will likely be called "actual causation" (including "but for" causation and "substantial factor" causation) and second on what will likely be called "proximate causation" or "legal cause."

There is good reason your class will spend so long on these concepts. Your professor will expect you to understand the area in detail and may be using the material as a vehicle to train legal reasoning skills. But, it is easy to get mired in the details. And, come exam time, especially on a bar exam essay, you may be given a relatively straightforward fact pattern. Your job will not be to dissect the intricacies of only one element (as in class) but to simply and logically show how the facts prove or disprove every element of the plaintiff's claims and analyze every potential defense claim. Chapters 8 and 9 on proving a case from the plaintiff's and defendant's perspectives show you simple element-based analysis.

Below under “How [Represent Yourself in Court](#) Helps Law Students Pass the Essay Portion of the Bar Exam,” you will find more information on element-based analysis along with examples of how learning to marshal or organize facts that prove or disprove elements of legal rules will help you excel on law school and bar exam essays.

Test Yourself: Plaintiff's Burden of Proof

Not only is it typically critical for law students to know the burden of proof in each case you read to understand the outcome of each case, but this key threshold issue is essential to effectively answering law school exam questions. Further, as discussed below, on the bar exam, you may have to draft a closing argument to a jury. When this has been tested in the past, points were given for clearly explaining the burden of proof in words and imagery that help lay jurors understand the burden and how it affects their jobs as decision makers.

Quiz:

- 1) *What is the plaintiff's burden of proof in most civil cases?*
- 2) *What is the plaintiff's burden of proof in some civil cases?*
- 3) *What is the prosecutor's burden of proof in criminal cases?*

For each question above, state the term that indicates the burden of proof and sketch a scale that illustrates the weight of the evidence required to meet each respective burden. You will find the answers to these and additional questions in the section called “Your Burden of Proof” in Chapter 8 of [Represent Yourself in Court](#), “Proving Your Case at Trial: The Plaintiff's Perspective.”

Help Preparing for internships, externships, clerkships, and summer law jobs

Lawyers you will interview with and work for may forget what law students know and do not know. They may assume that you have at least some practical knowledge. Reading [Represent Yourself in Court](#) will help you to quickly get up to speed on the basics of civil litigation. Further, it will help you avoid embarrassing yourself by not knowing routine practical points that another lawyer may expect you to know.

Test Yourself: Going to Court

Let's say a partner in the law firm you are clerking for asks you to meet him in court for a 9am hearing.

- 1) *List three reasons why you should make every effort to get to court early that day.*
- 2) *List one thing you want to bring with you and one thing you must avoid bringing with you, and why.*
- 3) *The partner says she will check in when you both get to the courtroom and sends you to run an errand at the clerk's office. Do you know where and why the partner is “checking in.” Where will you go to complete the task you were assigned? Do you know the difference between and roles of all of the following: the general clerk's office and the court clerk? What about the judge's law clerk, the judge's staff attorney, the bailiff?*

Answers: 1) First, a 9am hearing means you are likely going to the courthouse during rush hour and depending on where you live and how far away the courthouse is, there may be traffic or problems with public

transportation, and you don't want to be late. Second, you will need to go through security at the courthouse and depending on the court there could be long lines and delays. Third, the partner may want to discuss matters before the hearing. 2) Bring a pen and something to write on. You may have to put your cell phone away in the courtroom so do not assume you can take notes on your phone. Avoid bringing any metal objects that may be confused with weapons such as scissors or a pocket knife. Just as at the airport, you will have to go through a metal detector.

3) Chapter 2, "The Courthouse and the Courtroom" answers these "lay of the land" questions and many others.

Having some real world context, even if it is general, will help you feel more equipped to fit in and hit the ground running. Tasks students may be asked to complete in the first days of a job may depend on a holistic understanding of civil litigation, in addition to learning specifics about particular cases. [Represent Yourself in Court](#), as a quick read before starting one's job, can help fill in knowledge gaps and give you confidence and fluency.

Quick Test re: Expert Witnesses

Question: When would your client need an expert witness?

Answer: If understanding the subject matter of a claim required specialized knowledge that is beyond the everyday experience of the average judge or juror, you will probably need an expert. (See chapter on "Expert Witnesses").

If the senior partner asks you to work on issues regarding hiring an expert witness for your client, are you fluent enough in general rules about expert witnesses to discuss the matter. Do you know about special rules for expert witnesses? Do you know that you will likely have to provide the opposing party with disclosures regarding each expert you intend to call as a witness? If an attorney asks you to help plan the questions you will ask your expert witness at trial, would you be thrown? Not if you read [Represent Yourself in Court](#).

Depending on the type of case and what is being asked of you, you may need to also read more sophisticated practice guides or conduct further research to provide the information your law firm needs, but reading the "Expert Witnesses" chapter and the chapter on "Basic Rules of Evidence" will provide a solid. This material will also help prepare you if you have to draft a witness examination plan on your bar exam performance test. More on bar exams below.

Test Yourself: For each situation below, state "Yes" where an expert would be needed and "No" where an expert would not be needed:

- A. To help your client (the plaintiff) prove that the defendant drove negligently by driving 50 m.p.h. in a residential area.
- B. To help your client prove his claim that injuries he suffered as the result of an accident are likely to be permanent.
- C. To help your client claim that a landlord's failure to fix heating and plumbing problems in his apartment rendered it.

- D. To help your client prove her claim that a piece of jewelry sold to her as a valuable “flawless” diamond is actually an inexpensive imitation.
- E. To help your client prove that a witness who testified against him should not be believed because the witness is biased and has made inconsistent statements.
- F. To help your client prove that a new home you purchased was built on improperly compacted landfill.

Answer Key: A=No, B=Yes, C=No, D=Yes, E=No, F=Yes.

For more examples and more thorough explanations of these and other concepts relating to expert witnesses, see the chapter on “Expert Witnesses” in [Represent Yourself in Court](#).

Help preparing for success on the bar exam

Traditionally, law schools taught more theory than practice. That is changing. You will be expected to be more “practice ready” when you graduate than law students in prior generations. And, you will face a bar exam that likely includes a practical component called a performance test (PT). The PT requires that you jump into the role of a beginning lawyer and draft legal documents, advise clients and/or co-counsel, strategize about cases, and complete other practical assignments.

Bar graders generally expect your work in these tasks to be presented in precisely the kind of clear, simple communication style we have modeled and advised throughout [Represent Yourself in Court](#). Generally, no fancy jargon is needed.

Most law students who have completed even the first semester of 1L would be comfortable if we told you to sit down now, read some relevant facts and law, and draft a memo to a supervising attorney. First year legal writing classes typically require law students to draft legal memoranda. But, what if we asked you to draft a closing argument to a jury or to draft a cross-examination plan to question a witness? You might be less comfortable. Even many 3L students would panic, especially if they did not take a trial advocacy class in law school. But, no need to stress. Reading [Represent Yourself in Court](#) will show you how to draft many of the litigation-related documents that have been tested on past performance tests.

What are Performance Tests and How [Represent Yourself](#) can help you pass them.

Performance Tests are exams based on simulated case files. Some students think of them as the “closed universe” versions of writing problems in first year legal research and writing courses.

PTs include the facts and law you need to draft the required tasks. You will typically be given: 1) Instructions for the assigned task; 2) Facts, usually in the form of original source documents such as transcripts of interviews, police reports, letters, and contract excerpts (rather than the pre-set hypothetical fact patterns that are typical of law school and bar exam essay questions); and 3) Law, most often in the form of cases and statutes that you must

read, brief, analyze, and incorporate the rules you have distilled from them in drafting your assigned task.

Your job will be to pull together these instructions, facts, and law, as if they were pieces of a puzzle, and use them to produce whatever document you are directed to write.

The Competencies Tested on the PT

In the reading, analysis, and writing requirements of PTs, bar examiners are looking to see that you have demonstrated proficiency in four main lawyering competencies: 1) legal analysis, 2) factual analysis, 3) awareness of professional responsibility, and 4) problem solving. To effectively complete a PT drafting task in a timely fashion, you must also possess good reading comprehension, clear writing, and great time management skills. (PTs would be easy if you had two days to complete them, but you usually only have 90 minutes!)

In a typical PT, you role-play a junior lawyer in a private law firm, though you might be asked to assume the role of an attorney in a government office, nonprofit organization or to act as a clerk to a judge or legislator. You usually have a client. Just as in practice, you must understand your client's wants and needs and help your client achieve your client's objectives. You must be aware of or predict and help your client avoid obstacles that may hinder your client's ability to achieve desired outcomes.

Professional Responsibility

Awareness of professional responsibility is one of the competencies tested on the PTs. Bar examiners use the bar exam generally as a consumer protection tool, to protect the public against unethical and incompetent lawyers. And, PTs were designed in part as a vehicle to test ethical rules. Some examples of the types of ethical issues that have been tested on past PTs include:

- The client seeking to pursue an unlawful or unethical objective (such as filing a frivolous lawsuit or engaging in deliberate delaying tactics);
- Representation of more than one client in a potentially conflicting situation;
- Breaching of client confidentiality; and
- Breaking or failing to comply with rules regarding fee arrangements.

PTs may include issues regarding civility and complying with rules and other practical aspects of lawyering discussed in [Represent Yourself in Court](#) that are often not discussed in most (more theoretical) law school classes. Even Professional Responsibility courses, which certainly cover rules of professional conduct, may not discuss actions that are simply "bad behavior" (as opposed to actual ethical violations). But lawyers get bad reputations from routine bad behavior probably even more frequently than from egregious violations. Many PTs are written to include issues where applicants receive points for raising concerns such as making clients feel comfortable, listening carefully to clients, and promptly returning client phone calls.

Test Yourself: Ethical violation vs. lack of civility

In Chapter 1 of [Represent Yourself in Court](#), you will find a section on “Civility” that lists of a number of examples of actions that demonstrate a lack of civility including the following:

- Refusing a reasonable request to postpone a hearing,
- Intentionally misconstruing the meaning of a simple and clear discovery request and/or responding with irrelevant information, an invalid objection, or an inappropriate claim of privilege,
- Using rude language,
- Using delaying tactics to maximize the inconvenience and cost of litigation.
- Litigants and attorneys yelling at each other, the court clerks, and/or at the judge.

Which of the behaviors in the list above are “simply” bad behavior that you should avoid to protect your reputation and to best serve your clients, and which potential violations rules of professional conduct that you will be bound by once you are licensed to practice law?

On your PT, if you see an ethical issue or a civility concern, you should comment on it, and then move on. The examiners will not give you an issue that will “write you out of the exam.” Meaning, they will not include an obstacle that will prevent you from completing the task. For example, if there is a potential conflict of interest, flag it and recommend that before the case goes any further your firm seek informed written consent from all potentially conflicting parties. Do not stop writing your assignment and say that you cannot continue the representation. (Even if that were your thought, finish the problem and suggest that the person you are drafting your document for consider whether effective representation can continue in light of the conflict. Note that when we say “the person you are drafting your document for,” that means whoever the fictitious person is in the PT role play who is giving you your assignment, not the bar grader.)

Raising an Ethical Concern on a PT

One of the important parts of PTs is the role-play. If you are writing to the court or to an opposing attorney, you must advocate. It would not be appropriate to include an internal comment meant for the senior partner in your firm in a PT task that is a brief in support of a motion to the court, for example. So, how do you raise such a concern? You can place your comment about the possible ethical concern in brackets, as a note to the your senior partner at the beginning or end of your PT answer. For example, [*Dear Sr. Partner. Please find the brief you requested below. Before we file this, however, let’s be sure that the reason the client wants to file the motion is not simply as a delaying tactic. Her comments in the transcript of the interview made me question her motives. You may want to meet with or call her and will certainly want to resolve this before we file our brief.*]

Types of PT Tasks

PT instructions will direct you to perform tasks such as to analyze issues, advise clients or colleagues, or to persuade a court, jurors, or others such as legislators, to adopt your client's position. You may be called upon to investigate or negotiate. You may need to draft or edit documents. Below are some documents that have been tested in past PTs and how specific chapters in [Represent Yourself in Court](#) can help prepare if those tasks appear on your bar exam:

- Analyze the wisdom of going to court in a letter to a client or a memo to a senior partner; advise the firm's private investigator as to what information to pursue. See Chapter 3, "Starting Your Case" for information on factors that affect the wisdom of pursuing litigation.
- Draft briefs in support of motions to dismiss or motions for summary judgment, or draft memoranda to prepare for settlement conferences. Chapter 4 on "Pretrial Procedures" and Chapter 7 "Pretrial Motions" will help you learn to draft documents relating to pretrial matters.
- Prepare clients for depositions, or draft formal or informal discovery or investigation plans. Chapter 5 on "Investigating Your Case," and Chapters 8 and 9 on "Proving Your Case at Trial" from the Plaintiff's and Defendant's perspectives will help you learn what to investigate and how.
- Draft a direct or cross-examination of a lay or expert witness. Chapter 12 on "Direct Examination" and chapter 13 on "Cross-examination" will assist you in learning how to draft these documents. The sections on questioning your expert and your opponent's expert in Chapter 19 "Expert Witnesses" would also help you prepare for a task that relates to questioning an expert.
- Closing arguments to a jury or to judge in a bench trial. Chapter "Closing Argument" chapter is a must read as this has been tested on a number of past PTs.

The chapters on "Family Court" and "Bankruptcy" are also useful to get familiar with different legal fields. PTs are open book. They give you the law you need in the Library portion of the exam so they might be set in an area of law not otherwise tested on your bar exam. PTs have tested maritime law, sports law, environmental law, education law, and numerous other subjects not tested on other parts of the bar exam. Family law has been a particular favorite with examiners, and bankruptcy has been the subject of at least some past PTs. Just reading through these chapters will help you get a feel for the kinds of issues that arise and the kinds of documents litigants must draft in areas you may not have studied in law school.

Test Yourself: Summary Judgment Motions

- 1) What is the primary function of a summary judgment motion?
- 2) Do summary judgments occur after or instead of trial?

3) *When your adversary files a summary judgment motion that you oppose, are you typically seeking to preserve your right to go to trial or do you want to resolve the matter without a trial?*

4) *Does a party filing a summary judgment motion have to concede that the facts are not disputed regarding every issue in the case?*

The chapter on “Pretrial Motions” provides answers to these questions and related questions.

[Represent Yourself in Court](#) Helps You Pass the Essay Portion of the Bar Exam.

Earlier we noted that the book can help you in your law school courses, particularly in studying the chapters on “Proving Your Case at Trial: The Plaintiff’s Perspective,” and “Proving Your Case at Trial: The Defendant’s’s Perspective.” To illustrate how these chapters help with essay writing, let’s take one of the examples in the chapter on “Proving Your Case At Trial: The Plaintiff’s Perspective” and pretend it is a mini law school or bar exam essay exam. You will see that, although the formatting changes a bit, what you would need to include in the exam is substantially similar to what you would need to prove the case at trial, (as set forth in the chapter).

Test Yourself: A mini law school or bar exam essay question

(You may recognize this as the “story” of the self-represented litigant’s negligence claim.)

About 3 p.m. on March 31, Paul Plaintiff was standing on the corner of Elm and Main Streets, waiting to cross the street. When the light in Plaintiff’s direction turned green, Plaintiff stepped off the curb into the crosswalk. About one-third of the way across the street, Plaintiff suddenly saw a truck driven by the Defendant, a building contractor named Sarah Adams, bearing down on Plaintiff. Plaintiff tried to get out of the way, but the truck struck Plaintiff. Plaintiff suffered a broken leg, which took four months to heal and left Plaintiff with a permanent limp. An eyewitness will testify that Plaintiff was in the crosswalk when the truck made a left turn and struck Plaintiff, breaking P’s leg.

Defendant has admitted that her truck struck Plaintiff, and that just moments before the accident Defendant had gotten a call on her cell phone telling her about a missed inspection on a big job she was working on, and that she turned left to visit that job site. Defendant denies that she was driving carelessly. Plaintiff was out of work for two weeks after the accident and on crutches for four months. He suffered pain and embarrassment from a permanent limp and incurred some \$50,000 in medical expenses.

What rights and remedies may Paul Plaintiff be entitled to, and what defenses, if any, will Defendant raise? Discuss.

If this were a mini law school exam or a bar exam question and you had about 30 minutes to write your answer, any idea where you would start? You might want to start by

considering the potential theories for this Defendant's liability, i.e. thinking through what *might* be at issue. Typically, where a plaintiff is injured, the defendant's liability would be based on intentional tort, strict liability or negligence. Here, in these facts, nothing indicates that the Defendant acted intentionally toward the Plaintiff (it appears the Defendant did not even know the Plaintiff). There is also nothing that would raise a claim for strict liability (no hazardous activities or wild animals, and the Plaintiff was not injured as a result of a defective product). Therefore, you would analyze the potential liability for negligence in this situation. The chapter does just that.

Looking at the boxes in the chapter that highlight each element and the facts that prove each element will help you in framing the analysis you would write on an essay exam for each of the four elements. See if you can write your own sample answer, after reviewing the chapter. Likely it will look something like this below. Everything in italics is taken directly from the language in element boxes in the chapter.

Sample Answer:

Paul Plaintiff ("P") v. Defendant Sarah Adams ("D")

Here, P may raise a claim of negligence, and likely P will prevail.

Negligence

To prove negligence, P must prove that D owed P a legal duty, that D breached that duty, causing P's injuries, and that P was in fact injured.

Did D owe a Legal Duty to P?

Those driving on public roads generally owe a duty of due care to respect the rules of the road and to drive carefully, a duty extending to all foreseeable drivers and pedestrians. *Here, at the time of the accident, D was driving her truck in the immediate vicinity of where P was a pedestrian crossing the street.* The facts note that P was crossing the street in a crosswalk that would potentially create an even greater duty for D to stop for anyone crossing in a marked crosswalk. Thus, D owed P a duty to drive with due care.

Did D breach her Duty to P?

D must drive reasonably and with due care, as noted above. Here D denies that she drove carelessly, but it is likely that P will be able to establish that *D was driving unreasonably* because of evidence in the facts from which it may be inferred that *D was distracted*. First, *D had just received a cell phone call about a missed inspection on a "big job."* It is likely that someone who has just learned of a problem, especially on one of her *big* work jobs, would be thinking about that and perhaps not thinking as carefully about the road. Second, D did not see P in a marked crosswalk. This further bolsters the inference that D was distracted because of the cell phone call about a work problem and not giving her driving the care it required as most people who are driving carefully see people in crosswalks. Therefore, P will likely be able to prove that D breached her duty to P.

Did D's carelessness cause P's harm?

Causation typically requires proof of actual and proximate cause. Here P will likely be able to prove both.

Actual cause

D's careless driving will be deemed the actual cause of P's injuries because but for D's distracted driving, P would not have been hurt.

Proximate cause

Further, D will likely be deemed the proximate cause as there were no other intervening causes that led to P's harm, and *P's harm directly resulted from D's truck striking him.*

Did P Suffer Damages?

Lastly, P must prove that he suffered damages. Here P suffered personal injuries, and psychological distress as a result of a broken leg, constant pain, and embarrassment from a permanent limp caused by the injury. He also suffered economic losses from medical expenses of \$50,000.

Because P is able to establish duty, breach, causation and damages, (all the requisite elements of negligence) unless D raises a successful defense theory, P will likely prevail on his negligence claim.

Can D Raise any Plausible Defenses?

Typical defenses to negligence claims include contributory and comparative negligence, which both require some fault on the part of the plaintiff, and/or assumption of the risk whereby the plaintiff knows of and consents to the risks caused by D's actions. None are applicable here. P was crossing in a crosswalk and there is no indication that P in any way was negligent himself. Further, people do not generally assume the risk that a distracted driver will bear down on them while crossing in a crosswalk, and certainly there is no indication that Paul Plaintiff voluntarily assumed such a risk here.

Conclusion

For the reasons stated above, Paul Plaintiff will likely prevail in his negligence claim against Sarah Adams.

END OF SAMPLE ESSAY ANSWER

IRAC or IRPC?

Most law students are taught to use a logical writing template for essay exams known as IRAC (Issue, Rule, Analysis, Conclusion). After reading the chapters on proving your case in court from the plaintiff's and defendant's perspectives, you might try thinking about what you are writing in the "analysis" portion of essays as "proof" rather than "analysis." (Think: IRPC or Issue, Rule, Proof, Conclusion.) Some people hear the word "analysis" and think of the complex and varied wrinkles in legal theories and reasoning; they picture lengthy, detailed exchanges in law school classes, breaking apart and trying to understand case law. Others hear "analysis" and think of a layered literary analysis in a college English class, reflecting on the meaning, style, and value of a novel or poem. Really, what you must do in a law school essay is show how the facts prove or disprove the elements of the applicable rules of law. Consider the IRPC structure in the following excerpt from the sample essay answer above:

Did D owe a Legal Duty to P? [ISSUE]

Those driving on public roads generally owe a duty of due care to respect the rules of the road and to drive carefully, a duty extending to all foreseeable drivers and pedestrians.

[RULE] *Here, at the time of the accident, D was driving her truck in the immediate vicinity of where P was a pedestrian crossing the street.* [PROOF or what some call "analysis"] Thus, D owed P a duty to drive with due care. [CONCLUSION]

END SIDEBAR

Let's try another scenario, this time with a breach of contract issue (based on the story in Chapter 8), and use the same sort of IRAC (or IRPC) to break it down.

Test Yourself: Mini Contracts Exam

The plaintiff, Andrea, claims that after a series of negotiations, she asked the Defendant, Daniel, and Daniel orally agreed on September 22 to buy Andrea's stamp collection for \$15,000. Daniel claims that Andrea asked if wanted to buy her stamp collection, that he said he would buy her stamp collection for that price but only if Andrea also included her coin collection, and that Andrea said she would think about it and get back to Daniel. Do Andrea and Daniel have a binding contract? Discuss.

Test Yourself: First try to write your own answer to this question. Next, read the sample answer below and in each bracket note whether the text prior to that bracket represents an issue, rule, analysis (proof) or conclusion.

Sample answer

Valid Contract [_____]

A contract may be defined as a promise or set of promises for breach of which the law gives a remedy, or the performance of which the law in some way recognizes a duty. To find a valid contract exists there must be mutual assent (as evidenced by a valid offer and a valid acceptance) supported by valid consideration. Further there can be no defenses to the formation of a valid contract that would negate the validity of the contract in question.

Offer? [_____]

Did Andrea offer to sell the stamp collection? [_____] An offer is a promise to do or refrain from doing some specified thing in the future conditioned on the other party's acceptance. To be a valid offer, the offeror must demonstrate a commitment with sufficiently definite terms communicated to an identified offeree. [_____]

Yes, it would appear that Andrea did make a valid offer to sell the stamp collection. Both parties concur that she asked and there is a demonstration of a commitment in Andrea's asking. She asked Daniel (an identifiable offeree) if he wanted to buy a particular item (a specific stamp collection) for a definite price (\$15,000) thus with sufficiently definite terms. She has communicated definite terms. She is not simply inquiring or thinking about possibly offering later. [_____] Therefore, it appears that Andrea made a valid offer. [_____]

Acceptance? [_____]

Has Daniel accepted Andrea's offer? [_____] An acceptance is a voluntary act of the offeree whereby the offeree exercises the power conferred by the offeror and thereby creates the set of legal relations called a contract. [_____] Here, Daniel contends that he said he would only buy the stamp collection if she included her coin collection. [_____] This is not an acceptance. [_____]. Rather, Daniel's reply is a rejection and possibly a counter offer, see below.

Rejection and counter offer [_____]

If the offeree expresses to the offeror that he does not want to deal with the offeror, the offer will then be terminated. [_____] Daniel indicated that he would not accept Andrea's offer as proposed, thus he is rejecting her offer to sell stamps. [_____] Andrea's initial offer is dead and may not be reviewed. [_____]

Daniel however may have made a counter offer. Did Daniel make a valid counter offer? [_____] When an offeree's response to an offer communicates a promise to be bound but only on different terms, it will be construed as a rejection of the offer and a counter offer. [_____] Here, Daniel is promising to be bound but on the sale of both the stamps and coins, different terms. [_____] Daniel's request to buy the stamps and

coins for that price indicates definite and certain terms and is communicated to Andrea (again an identifiable offeree), and thus Daniel's is a valid counter offer. [_____]

Acceptance of Counter Offer?

What is necessary for a valid acceptance is noted above. Here, Andrea said she "would think about it and get back to" Daniel. These are not words that would indicate Andrea intends to exercise the power conferred by Daniel's offer. [_____] Andrea has thus not accepted Daniel's offer. [_____]

Consideration?

Here, thus there is no valid acceptance and no valid contract. If there were a valid acceptance, in order to prove a valid contract was formed, there would need to be consideration, a bargained-for exchange whereby each party promises to do what the person was not legally obligated to do, or refrain from doing what the person is legally privileged to do. [_____] Here, consideration would be present in the exchange of the stamp collection (and perhaps coin collection) for money, items of value, the giving of which neither party would be obligated to. [_____]

Defenses?

If there were a valid acceptance, because this agreement concerns the sale of goods (a stamp collection) being sold for \$15,000, the UCC would govern and the contract would need to be in writing under the statute of frauds to be enforceable. [_____] Here again, from the facts given, the offer appears to have been oral and there was no acceptance. If there had been an acceptance, in order to enforce performance of this contract, it would have had to have been in writing or fall within an exception to the statute of frauds. [_____]

Conclusion

Because Daniel rejected Andrea's offer and made a counter offer which Andrea has not accepted, Daniel and Andrea do not have a binding contract. [_____]

END OF CONTRACTS MINI EXAM

While the examples above seem simplistic, they are not unlike many bar exam questions. To do well on both the essay and PT portions of the bar exam, you must understand the basic rules that are relevant to the questions asked and how to reason using the element-based analysis set forth in the chapters on proving your case in court from the plaintiff's and defendant's perspectives. Law school essays require that same base but tend to be more layered and complex than bar exam essays. Bar exam essay fact patterns tend to be shorter, and the examiners more focused on critical reading and logical analytical writing. Your law professors with whom you studied for an entire semester often expect that you have mastered their subject. They may look for you to cite cases in your answers and to discuss policy concerns in addition to identifying and analyzing all the elements of the

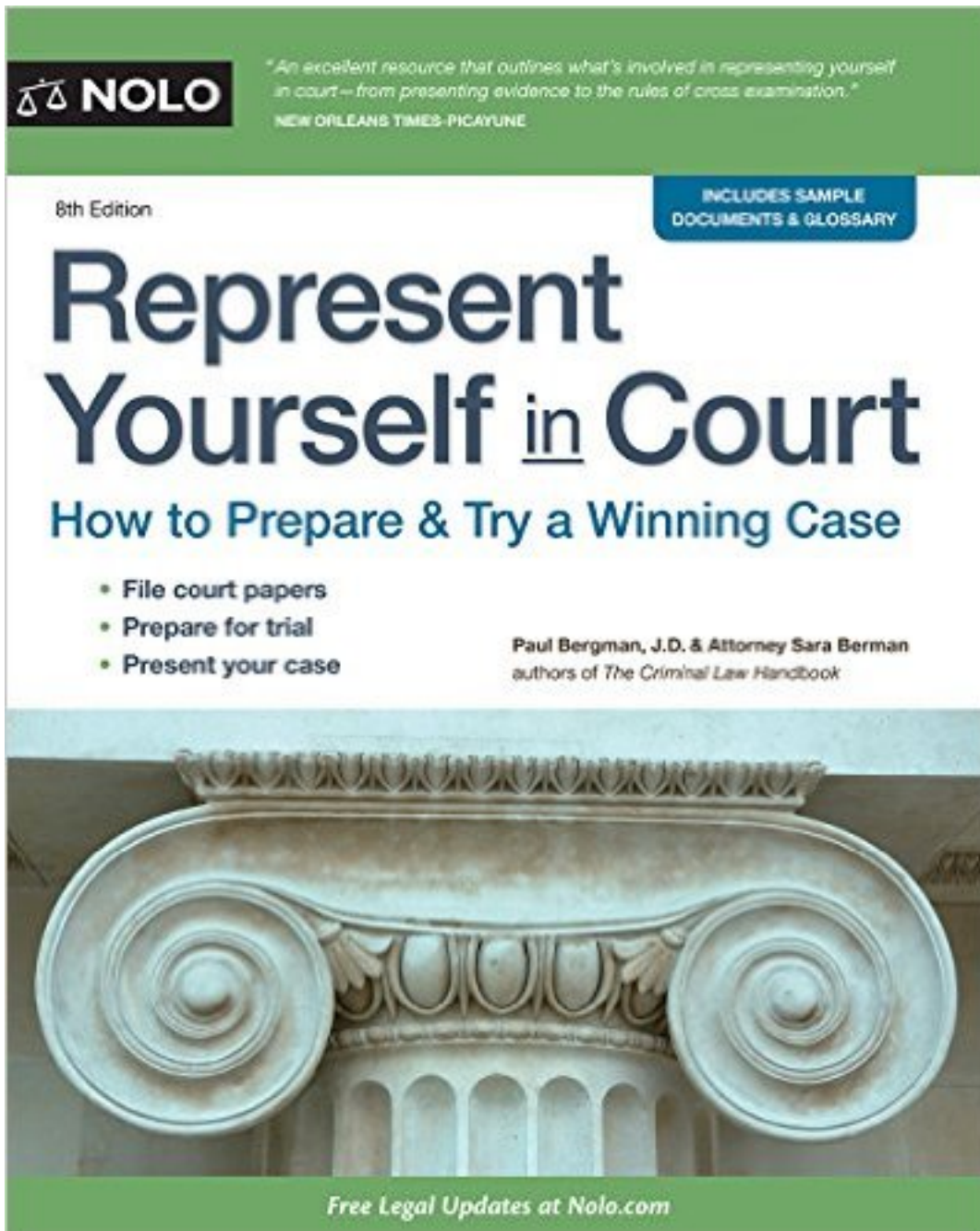
relevant causes of action. It surprises law students that bar exam essays are typically easier than law school essays. What makes bar exams so difficult is their cumulative nature; you must be able to answer questions from memory in dozens of subjects. It might seem like you need to be able to write like a Supreme Court justice to please certain law school professors, but to please most bar exam graders, the simple straightforward analysis in [Represent Yourself in Court](#) will be just what hits the passing mark.

Conclusion

We talked about how [Represent Yourself in Court](#) will help in law school, jobs, and on the bar exam. It also may help in law practice in a couple of ways. First, as we have discussed throughout this chapter, the book helps provide a basic understanding of civil litigation. The book also may help in another important way we have not yet discussed: how to deal with pro se litigants. Why write this to law students? The future seems to be a world in which many more people will be representing themselves. Already in some jurisdictions and some practice areas (such as in family courts) more than 80-90% of matters include at least one self-represented party. If you practice as a lawyer in one of those areas, you may well have to deal with pro se litigants. And law school does not teach much about how to deal with an opposing party who is self-represented. [Represent Yourself in Court](#) can give you empathy about their situations, and insights into the types of questions that they have and the types of mistakes they might make—all of which will help you help your client when the opposing side is self represented.

If you ask a dozen students what their favorite law school study aids were, you may get several dozen responses. Many would give you the name of their favorite real property or contracts outline. While those resources may be more obviously helpful, [Represent Yourself in Court](#) is the hidden gem. As a law student, you would not even know that the book is relevant to you at all. Geared for lay people, law students would not even think to pick up a book called [Represent Yourself](#). But law students who read [Represent Yourself in Court](#) come away with concrete help in understanding law school reading, coursework and exams, in summer jobs and internships, on the bar exam, and often in law practice following graduation.

If you haven't read the rest of the book yet, go ahead. What are you waiting for! [Represent Yourself in Court: How to Prepare & Try a Winning Case](#) by Paul Bergman and Sara J. Berman.



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