

Law Professor's Desk Reference



# Law Professor's Desk Reference

A Handbook for Work and Life  
in the Legal Academy

Jon M. Garon



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*For my family*

*Avery, Alec Sasha (z"l), Noah,  
and Stacy Blumberg Garon*



# Contents

Preface	xv
Introduction Law Schools within Higher Education	xvii
<b>PART I TEACHING</b>	
<b>1 The Law School Curriculum, the Practice of Law, and the Bar Exam</b>	<b>5</b>
A. Background	5
B. Competition for Curricular Focus	7
C. The Law School Curriculum: 1L, 2L, and 3L	12
<b>2 Course Objectives and Instructional Learning Outcomes</b>	<b>17</b>
A. Institutional Course Objectives	17
B. Individual Course Objectives	19
C. Assessing Course Objectives	23
<b>3 Designing a Law School Course</b>	<b>29</b>
A. Start with Learning Objectives	29
B. Skills Training	30
C. Law School Training	33
D. Course Coverage and Domain Knowledge	37
E. Assessment Planning	40
F. Lesson Plans	43

<b>4</b>	<b>Effective Teaching and Learning in the Classroom</b>	<b>45</b>
	A. Utilizing Learning Research	45
	B. Learning Theory in Practice	53
	C. Sequencing and Scaffolding Learning	57
	D. Reinforcing Deeper Learning through Spaced Repetition, Consolidation, and Reflection	58
	E. Cognitive and Implicit Bias	61
	F. Negative Impact of Cold Calls in the Socratic Dialogue	64
<b>5</b>	<b>Effective Online Learning</b>	<b>67</b>
	A. Design is Everything	68
	B. Course Components	71
	C. Engagement	75
	D. Completing the Cycle—Continuous Improvement	77
<b>6</b>	<b>Progress Monitoring aka Formative Assessment</b>	<b>79</b>
	A. Formative Assessment in Legal Education	79
	B. Lessons from Legal Research and Writing	82
	C. Building Learning Competence	83
	D. Formative Assessment in Practice	85
	E. Rubrics	90
<b>7</b>	<b>Summative Assessment</b>	<b>95</b>
	A. The Varied Roles for Law School Examinations	95
	B. Validity—Content, Conduct, and Instruction	99
	C. Use Validity—the LSAT Example	102
	D. Reliability	104
	E. Equity and Fairness	105
	F. Improving Assessments	106
	G. Creating a Philosophy of Assessment	110
<b>8</b>	<b>Engaging Students in Teaching and Learning</b>	<b>113</b>
	A. The Framework for Considering Engagement	113
	B. Personality Preferences	115
	C. Teaching Styles	118
	D. The Mechanics of Effective Engagement	121



<b>9 Engaging Students Outside the Classroom</b>	<b>127</b>
A. Understanding the Student Financial Concerns— Tuition, Discounts, and Earnings	127
B. Addressing Mental Health and Effective Learning through Collaboration, Peer-Education, and the Importance of Classmates in Success	130
C. Mentoring and Advising	135
D. Addressing Cultural Competence and Proficiency	137
<b>10 Basics and Mechanics: Syllabi, Attendance, Tardiness, and Classroom Decorum</b>	<b>141</b>
A. Building Blocks for Effective Course Design	141
B. Syllabus	142
C. Attendance and Attendance Policies	145
D. Tardiness	148
E. Coverage and Changing Course Plans	149
F. Classroom Environment and Decorum	150
G. Teaching Evaluations	155
<b>11 Classroom Materials: Publishers, TWEN, and CALI</b>	<b>159</b>
A. Sources for Materials	159
B. Selecting Casebooks and other Required Materials	161
C. The Casebook Critique	164
D. How Students use Required and Recommended Materials	169
<b>12 Starting Out—First Week Survival Guide</b>	<b>173</b>
A. Before the Students Arrive (two weeks before class)	173
B. Orientation and OCI (one week before class)	175
C. Before Class—Class Preparation (week of classes)	177
D. The First Five Minutes of Class and the First Session	180
E. Additional Thoughts	183

## PART II SCHOLARSHIP AND PUBLICATIONS

<b>13</b>	<b>Developing a Scholarly Agenda</b>	<b>187</b>
	A. The Case for Scholarship	187
	B. The Narrow Approach to Scholarship for Tenure	190
	C. The Big Question—Developing a Research Agenda	192
	D. Selecting a Community	195
	E. Establishing Scholarship in a Particular Field or Discipline	196
<b>14</b>	<b>The Writing Process</b>	<b>199</b>
	A. Producing a Work of Scholarship	199
	B. Committing to the Process	202
	C. The Outline and the Research Process	202
	D. Writing Drafts	204
	E. Overcoming Barriers to Writing	207
	F. Writing Events, Workshops, and Symposia	210
	G. Developing Readers	212
<b>15</b>	<b>The Publication Process</b>	<b>215</b>
	A. Where to Publish Law Review Articles	215
	B. How to Publish Law Review Articles	217
	C. Symposium Publications	221
	D. SSRN and Pre-Publication Distribution	221
	E. Publishing Monographs and Books	223
<b>16</b>	<b>The Public Scholar</b>	<b>227</b>
	A. One Work, Many Audiences	227
	B. Websites, Blogs, and Social Media	228
	C. Programs, Panels, and Public Speaking	229
	D. Amicus Briefs and the Community Scholar	230

## PART III INSTITUTIONAL GOVERNANCE AND SERVICE

<b>17</b>	<b>Faculty Governance</b>	<b>233</b>
	A. Sources of Shared Governance Authority	233
	B. Governance in Structure— Standing and Ad Hoc Committees	237
	C. Governance in Practice— Who Does the Work	240
	D. Governance in Conflict— AAUP Sanctions and the Role for Protection of Position	244
<b>18</b>	<b>Academic Freedom</b>	<b>249</b>
	A. Sources of Academic Freedom in Legal Education	249
	B. Academic Freedom as an Institutional Protection	251
	C. Academic Freedom as an Individual Freedom	254
	D. Academic Freedom within the Academy	257
<b>19</b>	<b>Tenure and Status</b>	<b>261</b>
	A. Sources of Tenure in Legal Education and its Context within the University	261
	B. Reinforcing Hierarchies through Institutional Structures	263
	C. Standard 405(c) and 405(d)	265
	D. Universal Tenure and Alternative Considerations	267
	E. The Process of Tenure and Long-Term Contracts	271
	F. The Tenure Portfolio	273
<b>20</b>	<b>Hiring</b>	<b>277</b>
	A. Stages of a Faculty Hiring Search	277
	B. Considerations for Non-Tenured Searches	280
	C. Legal Constraints on the Hiring Process	281
	D. The Candidate's Approach to Hiring and Lateral Movement	283
<b>21</b>	<b>Hiring and Retaining Adjuncts</b>	<b>287</b>
	A. The Context for Adjunct Employment	287
	B. Integrating Adjuncts into the Law School's Teaching and Pedagogy	288
	C. Evaluating Adjuncts	289
	D. Engaging Adjuncts	294

## PART IV ADMINISTRATION AND REGULATION

<b>22</b>	<b>Law School Administration</b>	<b>301</b>
	A. The Structure of Law School Administration	301
	B. The Role of the Dean	303
	C. Academic Affairs	306
	D. Student Services	307
	E. Other Administrative Departments	308
<b>23</b>	<b>Legal Rights of Students</b>	<b>311</b>
	A. Title IX	311
	B. Clery Act	315
	C. FERPA	316
	D. Accessibility and Accommodation — Rehabilitation Act and Related Regulations	319
<b>24</b>	<b>Accreditation</b>	<b>323</b>
	A. University Accreditation and Financial Aid Eligibility	323
	B. Statutory Obligations of an Accreditor	325
	C. The Council as Accreditor	327
	D. The Accreditation Process and Decennial Review	329
	E. Provisional and Full Accreditation — The Process of Creating a Law School	334
<b>25</b>	<b>Bar Examinations and Licensure of Graduates</b>	<b>337</b>
	A. Eligibility for Law School Graduates to Sit for State Bar Exams	337
	B. Undergraduate and Professional Law School Eligibility Requirements	338
	C. The Bar Exam	340
	D. The Multistate Professional Responsibility Examination	343
	E. Character and Fitness	343

<b>26</b>	<b>Rankings, Tiers, and Informal Hierarchies</b>	<b>347</b>
	A. U.S. News and World Report—What the Rankings Measure	347
	B. The Impact of Rankings on Law School Admissions, Placement, and More	349
	C. Alternative Rankings Systems	353
<b>27</b>	<b>Teaching Contracts, Outside Work, Summer Terms, and Intellectual Property</b>	<b>357</b>
	A. Contractual Terms of Faculty Employment	357
	B. Outside Work, Conflicts of Interest, and Summer Projects	359
	C. Intellectual Property in the Work of the Faculty	361
	D. TEACH Act and Online Course Fair Use	363
<b>28</b>	<b>Conclusion</b>	<b>369</b>
	Key Legal Educational Organizations	371
	Publishers and Websites	373
	Selected Bibliography	381
	Acknowledgments	387
	About the Author	389
	Index	391



## Preface

Legal education is undergoing a fundamental reconceptualization, fueled by external social and economic pressures and legal education's regulatory changes. Law school faculty members are expected to be legal scholars, effective teachers, and engaged institutional partners, but the information essential to develop these fundamental skills and acquire the core knowledge has not been published in one single source, until now.

LAW PROFESSOR'S DESK REFERENCE serves as a how-to guide for faculty members, most of whom are hungry for training on their role in the legal academy. The book is organized into four sections. The first three sections are teaching, scholarship, and service — reflecting the three core areas of faculty assessment and university organization. The fourth section focuses on the regulation of legal education, an area of increasing importance for individual faculty.

Part I provides a foundation for student learning and effective teaching. The chapters encourage faculty to use the best practices for student learning and engagement. The chapters provide an important summary of learning outcomes, formative assessment, summative assessment, and the operational mechanics needed to be an effective classroom teacher. The chapters offer strategies for teaching in various modalities, including face-to-face instruction, on-line courses, and blended education.

Part II offers faculty members a roadmap to develop meaningful scholarship to help the professor make a difference in their scholarly field and their law school. The chapters review the debate over legal scholarship, emphasizing the practical needs for scholarship as well as providing guidance on the mechanics of scholarly production.

Part III explores the role that faculty play in shared governance of their institutions, including such topics as academic freedom, hiring, and tenure. The chapters provide something of a user manual for faculty, helping to explain the

often mysterious choices made by university and law school administrations. Among these guides, the chapter on hiring and promotion offers a clear set of explanations on how hiring committees must operate to avoid violating state and federal discrimination laws.

Part IV concludes the reference guide with an introduction to the regulatory environment in which law schools operate. The chapters cover accreditation, statutes, and Department of Education regulations on accessibility and accommodations, compliance with Title IX, and employment basics on issues such as work-for-hire, plagiarism, and the employment provisions of a faculty contract.

Each chapter provides explanations, legal context, and policy discussions that help illustrate and explore the particular concepts and how those concepts apply across legal education.



# Introduction

## Law Schools within Higher Education

*The glory of justice and the majesty of law are created not just by the Constitution — nor by the courts — nor by the officers of the law — nor by the lawyers — but by the men and women who constitute our society — who are the protectors of the law as they are themselves protected by the law.*

*Lawyers have their duties as citizens, but they also have special duties as lawyers. Their obligations go far deeper than earning a living as specialists in corporation or tax law. They have a continuing responsibility to uphold the fundamental principles of justice from which the law cannot depart.*

— Robert F. Kennedy

*We don't accomplish anything in this world alone . . . and whatever happens is the result of the whole tapestry of one's life and all the weavings of individual threads from one to another that creates something.*

— Justice Sandra Day O'Connor

U.S. law schools play a pivotal role in shaping the global society and economy. They serve as gatekeepers to the judiciary, the courts, and the justice system. There are 203 law schools approved by the American Bar Association (ABA). There are also state-accredited law schools in California and a smattering of Southern states. Admission to sit for the bar examination is governed by the rules of each state's high court. These generally defer to the standards of the ABA and allow any graduate of an ABA-approved law school to sit for the bar, though recent tensions over the transition to online education and the scope of clinical education have added some caveats to that blanket statement. Virtually all sitting judges and many U.S. presidents, governors, senators, and representatives have been graduates of ABA law schools, as are many of the leading

corporate and philanthropic leaders. The legal education offered by U.S. law schools play an outsized role in the political, economic, and social life of the nation, and, indirectly, on world finance and politics.

This book provides an overview of the regulations, best practices, and minimum requirements for teachers and administrators of ABA law schools. The book is written for anyone involved with the provision of legal education with a special emphasis on the faculty members. The book has been divided into four parts — teaching, scholarship, service, and regulation. The first three sections should be familiar to anyone involved in higher education. Teaching, scholarship, and service make up the three core obligations of all faculty members.

Institutions vary considerably, however, on the relative importance of these three factors. The regulations covered in the fourth part of the book define the outer boundaries of how an institution may operationalize its teaching, scholarship, and service. Although many of the practices apply to other educational programs, the text focuses on the operations reflected in the nation's ABA law schools.

Faculty members often change their roles during their careers. Many first entered legal education as adjunct faculty before receiving their first full-time position. Some focus on clinical education, legal writing, library service, or academic support. Others join the academy straight from a judicial clerkship and enter directly onto a tenure-track appointment, while some serve as visiting assistant professors (VAPs) for many years before finding their first permanent home.

The 203 ABA-approved law schools represent a cross-section of higher education. Many are part of the public university systems, and others are part of private, nonprofit institutions. There are three for-profit ABA-approved law schools in operation and slightly more than one dozen freestanding law schools that are unaffiliated with universities. In comparison, there are over 4,000 colleges and universities in the nation.

Law schools, like all other universities, will vary considerably in their emphasis on teaching, scholarship, and service. Unlike the diversity found in other graduate and professional programs, however, the demands of the bar exam and state licensure requirements drive a much more standardized approach to legal education than may be found in other fields. The accreditation process further reinforces the widespread standardization among law schools.

The ABA serves as the professional accrediting body for law schools under appointment by the Department of Education. As the accreditor, it enables

freestanding law schools to receive Title IV student loan funds. The ABA does not have the responsibility or authority to accredit degrees other than the J.D., such as the LL.M. or M.S. degree. Nonetheless, the ABA does review the non-J.D. offerings to confirm that the other activities of the law school do not interfere with the school's J.D. program.

For all but the freestanding law schools, the authority to be eligible for federal financial aid comes from the university's regional accreditor, such as the Higher Learning Commission, the Southern Association of Colleges and Schools Commission on Colleges, or the Western Association of Schools and Colleges. Freestanding law schools offering financial aid for an M.S. or LL.M. must also have a regional accreditor to approve the program to allow the students to be eligible for federal student loans.

In addition to regulatory accreditation, law schools are strongly influenced by their membership associations. Since 1900, 179 law schools from across the country have become members of the Association of American Law Schools (AALS), with its mission to promote the "core values of excellence in teaching and scholarship, academic freedom, and diversity, including diversity of backgrounds and viewpoints." An additional 19 law schools are fee-paying non-members.

While AALS is the oldest body, with the strongest institutional influence, it is not alone. For more than 40 years, the Society of American Law Teachers (SALT) has advanced "teaching excellence, social justice and diversity... to improve the legal profession, the law academy and expand the power of law to under-served communities." The Southeastern Association of Law Schools (SEALS) has more than 100 law school member or affiliate member schools. Together, the ABA, AALS, SALT, and SEALS provide a framework for the development and training of new law school faculty, promotion of teaching excellence, and explorations of the role of the law school in the provision of justice.

Faculty members joining the legal academy may find that they have much more in common with faculty at other law schools than they have with faculty members in other colleges at their home institution. Teaching obligations, course outcomes, attendance policies, academic support, bar preparation, and many other elements of the law school experience are shaped by the regulations, procedures, and common practices shared among the law schools. While some of these elements are common across all of higher education, the methods commonly adopted for implementation in law schools are significantly different than their application elsewhere in the same university.

This book serves as an introduction and reference tool for the basic elements that comprise the core components of legal education. It is not a hornbook or treatise. Every topic included has been written about voluminously elsewhere. Instead, it offers a concise introduction to all of the topics important to a legal educator. The book also attempts to offer a normative approach to legal education. It does not offer an indictment of current legal education, but the text does capture some of the prevailing sentiments regarding opportunities for improvement in legal education. The book also highlights practices used elsewhere in higher education that would benefit law faculty and their students.

The book is shaped by the scholarship, leadership, and camaraderie of many faculty members who have studied legal education. The acknowledgement includes the names of the legal academics who strongly influenced the thoughts and approaches to this book. Nonetheless, the book's approach to legal education reflects the experiences and understanding of the author, and all the errors are the author's alone.

To keep the volume a reasonable size, footnote citations are limited to direct references, although a bibliography provides additional guidance and supporting references. The goal of the volume is to provide a useful, if introductory, guide for faculty members and law schools across all four critical aspects of the legal education enterprise.