



# Navigating the First Year of Law School





# Navigating the First Year of Law School

*A Practical Guide to Studying Law*

G. Nicholas Herman  
Melissa A. Essary  
Zachary C. Bolitho

Contributor  
Brady N. Herman



CAROLINA ACADEMIC PRESS  
Durham, North Carolina

Copyright © 2016  
Carolina Academic Press, LLC  
All Rights Reserved

Library of Congress Cataloging-in-Publication Data

Names: Herman, G. Nicholas, author. | Essary, Melissa A., author. | Bolitho, Zachary C., author.

Title: Navigating the first year of law school : a practical guide to studying law / G. Nicholas Herman, Melissa A. Essary, and Zachary C. Bolitho.

Description: Durham, North Carolina : Carolina Academic Press, 2016. |

Includes bibliographical references and index.

Identifiers: LCCN 2016019812 (print) | LCCN 2016020780 (ebook) | ISBN 9781611639575 (alk. paper) | ISBN 9781531001346 (ebook)

Subjects: LCSH: Law--Study and teaching--United States. | Law students--United States--Handbooks, manuals, etc.

Classification: LCC KF283 .H47 2016 (print) | LCC KF283 (ebook) | DDC 340.071/173--dc23

LC record available at <https://lccn.loc.gov/2016019812>

Carolina Academic Press, LLC  
700 Kent Street  
Durham, NC 27701  
Telephone (919) 489-7486  
Fax (919) 493-5668  
[www.cap-press.com](http://www.cap-press.com)

Printed in the United States of America



This book is dedicated to:

My law students who taught me what to say in this book.

—GNH

My parents, Delwin and Barbara Webb, who taught me by example.

—MAE

My grandparents, Don and Helen Wright, for all of their  
love and encouragement.

—ZCB





## Contents

|   |           |
|---|-----------|
| Preface   | xi        |
| Acknowledgments   | xii       |
| <b>Chapter 1 · How to Read This Book</b>                                  | <b>3</b>  |
| <b>Chapter 2 · How Lawyers Use the Law</b>                                | <b>7</b>  |
| 2.01 What Lawyers Do  | 8         |
| 2.02 Sources of the Law   | 9         |
| <b>Chapter 3 · How the Legal System Works</b>                             | <b>13</b> |
| 3.01 The Distinction Between Civil and Criminal Cases                     | 14        |
| [1] Civil Cases   | 14        |
| [2] Criminal Cases  | 15        |
| 3.02 The Federal and State Court Systems                                  | 16        |
| [1] The Federal Court System  | 17        |
| [2] The State Court System  | 20        |
| [3] Diagram Summarizing Appeals in the<br>Federal and State Court Systems | 20        |
| 3.03 Pretrial and Trial Procedures for Civil and<br>Criminal Cases        | 21        |
| [1] Civil Cases   | 22        |
| (a) The Filing of Pleadings   | 22        |
| (b) Pretrial Motions to Dismiss   | 22        |
| (c) The Discovery Stage   | 23        |
| (d) Motion for Summary Judgment   | 24        |
| (e) The Jury Trial  | 25        |
| [2] Criminal Cases  | 29        |
| (a) Pretrial Proceedings  | 29        |
| (b) Pretrial Motions  | 30        |

|   |           |
|---|-----------|
| (c) The Limited Discovery Process                             | 31        |
| (d) The Jury Trial  | 31        |
| (e) The Sentencing Process                                    | 32        |
| (f) Appeals   | 32        |
| [3] Diagram Summarizing Pretrial and Trial<br>Procedures      | 33        |
| <b>Chapter 4 · How to Study Law—The Basics</b>                | <b>35</b> |
| 4.01 Reading Slowly   | 36        |
| 4.02 What Law School Teaches                                  | 37        |
| 4.03 The Case-Law Method of Learning the Law                  | 38        |
| 4.04 Preparing a Detailed Course Outline of the Law           | 42        |
| 4.05 Handwriting or Typing Course Outlines and<br>Class Notes | 45        |
| 4.06 Legal Research and Writing                               | 46        |
| 4.07 Grades   | 48        |
| 4.08 Collaboration in Learning the Law and<br>Study Groups    | 50        |
| <b>Chapter 5 · How to Read Case Decisions</b>                 | <b>53</b> |
| 5.01 Reading Case Decisions Effectively                       | 53        |
| 5.02 Examples of Reading Case Decisions                       | 57        |
| [1] <i>Garratt v. Dailey</i>                                  | 57        |
| [2] <i>Masters v. Becker</i>                                  | 63        |
| <b>Chapter 6 · How to Write a Case Brief</b>                  | <b>67</b> |
| 6.01 The Facts and Procedural History                         | 68        |
| 6.02 The Issue and Holding                                    | 70        |
| 6.03 The Rules of Law   | 72        |
| 6.04 The Application of the Law to the Facts                  | 73        |
| 6.05 The Result in the Case                                   | 74        |
| 6.06 Example of a Case Brief in <i>Masters v. Becker</i>      | 74        |
| <b>Chapter 7 · How to Participate in Class</b>                | <b>77</b> |
| 7.01 Class Objectives and the Socratic Method                 | 78        |
| 7.02 Pointers for Effective Class Participation               | 79        |
| 7.03 Taking Notes in Class                                    | 81        |



## CONTENTS

ix

|  |     |
|--|-----|
| <b>Chapter 8 · How to Prepare a Detailed Course Outline of the Law</b>                 | 83  |
| 8.01 The Process of Preparing a Detailed Course Outline and the Content of the Outline | 84  |
| 8.02 Summary of Steps for Preparing a Detailed Course Outline                          | 87  |
| <b>Chapter 9 · How to Use Common Sense When Thinking About the Law</b>                 | 89  |
| 9.01 Common Sense and Public Policies of the Law                                       | 90  |
| 9.02 Reading the Law Through the Lens of Common Sense and Public Policies              | 91  |
| <b>Chapter 10 · How to Research and Write a Memorandum of Law</b>                      | 93  |
| 10.01 Overview of Legal Research and Writing   | 94  |
| <b>Part I</b>  |     |
| <b>A Practical System for Legal Research</b>   | 95  |
| 10.02 Legal Research in General  | 95  |
| 10.03 Getting Started and Identifying the Issues                                       | 96  |
| 10.04 General Points for Preserving and Conducting Research                            | 98  |
| 10.05 Researching State Law  | 100 |
| [1] Statutory Law  | 100 |
| [2] Case Law   | 101 |
| [3] Other Sources  | 102 |
| 10.06 Researching Federal Law  | 102 |
| [1] Statutory and Administrative Law   | 102 |
| [2] Case Law   | 104 |
| [3] Other Sources  | 104 |
| 10.07 Weight of Authority  | 105 |
| [1] In General   | 105 |
| [2] State Law Hierarchy & Federal Law Hierarchy  | 106 |
| 10.08 What to Look for in Cases  | 107 |
| [1] Cases that State the Applicable Legal Principles                                   | 107 |

|   |     |
|---|-----|
| [2] Cases that Clarify Statutes or<br>Administrative Regulations                | 108 |
| [3] Cases that are Analogous or<br>Distinguishable                              | 108 |
| [4] Authorities in Support of Changing the<br>Law or Dealing with Unsettled Law | 108 |
| 10.09 Finalizing Your Research Notes  | 109 |
| <b>Part II.</b>   |     |
| <b>Practical Tips for Legal Writing</b>   |     |
| 10.10 Legal Writing in General  | 110 |
| 10.11 Stating the Law and Applying the Law to the Facts                         | 111 |
| 10.12 Writing the Memorandum of Law   | 115 |
| 10.13 Concentrating on Substance and Clarity                                    | 116 |
| <b>Chapter 11 · How to Study for Exams and Write</b>                            |     |
| <b>Essay Exam Answers</b>   |     |
| 11.01 Studying for Exams  | 121 |
| 11.02 Steps to Follow When Writing an Essay Exam<br>Answer                      | 123 |
| 11.03 Sample Essay Questions and Answers  | 126 |
| [1] Sample Essay Question and Answer No. 1                                      | 127 |
| [2] Sample Essay Question and Answer No. 2                                      | 130 |
| <b>Chapter 12 · How to Make the Most of Your First Year</b>                     |     |
| <b>Index</b>  | 137 |

## Preface

If you are an entering law student, this book is for you. It provides you with what you will need to know in order to be successful in law school. More specifically, it covers:

- How lawyers use the law
- How the legal system works
- The basics of how to study
- How to read case decisions
- How to write case briefs
- How to participate in class
- How to prepare detailed course outlines
- How to use common sense when thinking about the law
- How to study for exams and write essay exam answers
- How to make the most of your first year

In addition, the book contains a chapter with some pointers about how to research and write a memorandum of law. This chapter will be useful to you only *after* you have first learned the basic mechanics of legal research. The subject is included because of the difficulty and importance of research and writing in the first-year curriculum.

This book is also designed to be read in advance of, or in connection with, a law school orientation program that introduces you to the study of law. It covers the conventional topics and instruction given by law professors about studying law. In this way, the book is intended to complement and enhance the tutelage

that you are given in an orientation program about how to approach your studies and what to expect during your first year.

—GNH; MAE; ZCB

## Acknowledgments

The authors gratefully acknowledge the following individuals for their review and contributions to this book: Andrew Ackley, Esq.; Professor Nim Batchelor; Matthew Bissette; Olivia Bouffard; Professor Lance Burke; Professor Patti Bynum; Tripp Choate; Brennan Cumalander; Professor Shelly DeAdder; Professor Catherine Dunham; Sarah Fishel; Spencer Fritts; Professor Brenda Gibson; Reggie Gillespie, Esq.; Kevin Hornik; Nancy Hornik, Esq.; Karl Lockhart; Allison Long; T.C. Morphis, Esq.; Professor Mark Morris; Claudia Mundy; Hathaway Pendergrass, Esq.; Cody Porter; Dr. Tom Porter, Ph.D.