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Letter From Dean J. Clay Smith, Jr., to The First Year Class

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OFFICE OF THE DEAN
SCHOOL OF LAW

1.

September 29, 1987

Letter From Dean J. Clay Smith, Jr., to
The First Year Class

I hope that this letter finds you and the study of law well. By now you are aware of the rigor of law school and the diversity of your professors' personalities and approaches to the study of law.

Hopefully, by now you are beginning to see the importance of case precedent -- how one case relies on other similar cases in the formulation of the rule of the case. You probably now see how important facts are in the ultimate resolve of any case. I am still a great believer in knowing the procedural posture of the case in attempting to determine the narrow holding of a case, and so should you. A case has much in it. Some parts are relevant to the ultimate understanding of a case and yet other parts of it are not. That is why you must try to distinguish between that which is holding and that which is not. Let's call that which is not, dictum.

Should dictum be dismissed by the student? Absolutely not. Dictum often provides you with good note taking material. Indeed, dictum in one case may influence the decision of the court in another case. However, dictum remains dictum until it reaches higher ground.

By now all first year students should know and understand the importance of synthesis. Synthesis is more than a word, it is a process of connecting cases in such a manner that a legal picture emerges. Unless you have briefed the cases and separated law from fact, synthesis is very difficult, if not impossible, to do. Synthesis requires that you ask yourself several questions: Why is case 1 different from case 2? What is the black letter law in case 1? Is it the same as in case 2? If so, then why was case 2, 3, 4, etc. resolved differently from case 1? Here is where the study of law begins to challenge you.

Quoting rules would help you. A parrot of rules that cannot analyze the "why" of the rule just won't fly. The outcome of the case may turn on the fact that the plaintiff failed to plead properly, or failed to introduce or could not prove an essential element at trial. The outcome may depend on whether the trial judge erred in the instruction to the jury. Hence, the rule usually relates to some human conduct, or a procedural flaw.

(over)

Your course outlines should be getting easier to put together by now. You are encouraged to outline by sections within a chapter. For example, you should know bailments and gifts cold. What are the elements of a bailment? What is the value of the bailed item? What is the obligation of a finder as against the true owner? Your course outlines are your ticket to tracking these and other questions that may even overlap in contracts. Is a bailment a contract? Is torts relevant? The answers to these questions may be found in recent cases assigned to you by your teachers, or in law review articles either cited in the note materials or, referred to by your instructors during their lectures, or in the course syllabus distributed to you by your instructors.

The reason the law reviews are so important to consult is that they themselves may provide you with an excellent explanation of the entire section of the case book. You should copy the language from the law review article and include it in your outline. That same holds true with language from hornbooks such as Prosser, On Torts, Brown, On Personal Property and Corbin, On Contracts. You can also get excellent hypothetical questions worthy of review for final examination from the "comments" in the Restatements. The Restatements are really good. There are Restatements on Torts, on Contracts, on Property; indeed, on most major areas of law. The Restatements can be found in the library. Don't forget to read the "comments" in the Uniform Commercial Code. It will help you in contracts and property. There are good notes to be found in the comments to the various provisions in the UCC.

There is no substitute for study. Hang in there.

J. Clay Smith, Jr.

J. Clay Smith, Jr.
Dean