

## Workshop 6B

Herding Cats: How to Achieve Faculty  
Cooperation In Teaching Lawyering  
Skills Across The 1L Curriculum  
(Without Infringing on Academic Freedom)

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## PRODUCING PRACTICE READY PROFESSIONALS PASSPORT TO PRACTICE

**Goals.** As a primary objective, the SIU faculty wishes to ensure that first-year law students have a solid foundation in the basic principles of the law and the basic skills of legal analysis, research and writing. The faculty's secondary, but more practically stated, goal is to ensure that students are adequately prepared to work during their first summer as law clerks for judges, law firms, or government agencies, and to competently perform the tasks normally undertaken by those law clerks.

**Competencies.** In pursuit of those over-arching goals, the faculty expects students to achieve specific competencies during their first year of law school. During the first semester, the faculty expects students to develop a fundamental knowledge of:

- The state and federal court systems and the common law underpinnings of the American legal system;
- The lawyer's role within the legal system and the fundamental values and ethical norms of the legal profession, with an emphasis on the core values of competence, diligence, loyalty, confidentiality, and civility;
- The basic principles of torts and crime, as well as introductory principles of contracts and property; and
- The learning styles, skills, and strategies for being an "expert learner";

as well as a minimum level of competence in the following skills:

- Basic legal analysis and problem-solving, including analysis and synthesis of judicial opinions, application of the law to new facts, and predicting outcomes;
- Basic skills of legal research and writing, with an emphasis on drafting objective legal memoranda;
- Interviewing clients to identify legal issues and gather relevant facts; and
- Organizing and managing law-related work, including multiple assignments with concurrent due dates.

During the second semester of law school, the faculty expects students to develop a fundamental knowledge of:

- The process through which statutory and administrative law is developed;
- The interrelationship between courts, legislatures, and administrative agencies;
- Introductory principles of the procedural rules governing civil litigation;
- Additional principles of contract and property law; and
- Legal careers and career development strategies;

as well as a minimum level of competence in the following skills:

- Written and oral advocacy skills, with an emphasis on drafting persuasive trial and appellate briefs and making effective oral arguments;
- Basic interpretation and analysis of statutes and regulations;
- Basic negotiation skills; and
- Basic career development strategies, including drafting effective resumes and cover letters.

**Lawyering Exercise**  
**(Single Issue Legal Analysis)**

**BACKGROUND:** To help clients solve legal problems, lawyers engage in a process of legal analysis in which the lawyer identifies relevant legal principles and then determines how those principles apply to the client's particular situation.

In performing this analysis and explaining it on paper, law students often find it helpful to use a simple form of logic known as IRAC, which stands for: Issue (what is the legal question you are trying to resolve?); Rule (what is the applicable rule of law?); Application (how does the rule apply to the facts of your case?); and Conclusion (what is the legal result?). The basic formula can be illustrated by an easy traffic case:

Issue—Whether Motorist violated the speed limit by driving 46 miles per hour past the Lincoln Elementary School.

Rule (and Rule Explanation)—Under the state's Traffic Code, the speed limit on streets adjoining elementary schools is 20 miles per hour. State Revised Code tit. 24, § 223 (2007).

Application—Motorist was driving 46 miles per hour in front of the Lincoln Elementary School. That speed is 26 miles per hour faster than the 20 miles per hour speed limit.

Conclusion—Motorist violated the school zone speed limit.

Few cases, however, are this simple. Most cases will require more explanation of the rule and/or a more extensive discussion of how the rule applies to the facts of a particular case.

In attempting to state a rule, for example, you may encounter a case of first impression, where there is no clear precedent to guide you. In that case, your statement of the rule may require a lengthy analysis of what you think the law should be, based upon analogous precedents or an analysis of the social policies that will be served or disserved by adopting one rule versus another. [Compare that with the very simple "rule explanation" above, which consists only of a cite to the applicable statute.]

In many cases, you might find that there are two potentially applicable rules (e.g., a traditional view and a modern view) and you do not yet know which rule your jurisdiction will apply. Thus, you will need to explain both rules and examine their underlying policies to make a prediction about which rule your jurisdiction will apply. In addition, because you cannot guarantee that you have predicted correctly, you must proceed to analyze the facts under both rules so that you are prepared for the outcome either way.

**SITUATION:** It was the last day of the regular season at Pacific Bell baseball stadium. The air was charged with excitement as San Francisco Giants slugger Barry Bonds took the plate. Bonds had set a new Major League Baseball record two days earlier by hitting his 71st and 72nd home runs in the season; today he would try to push that record further.

Dozens of fans had stationed themselves in the right-field walkway, hoping for a chance to catch the last home run that Bonds would hit that year. They speculated that the ball would be worth millions – like the \$3.2 million paid for Mark McGwire’s record-setting 70th home run ball in 1998.

After carefully studying where Bonds had hit most of his earlier home runs at the stadium, Alex Popov, 38, a health food restaurateur, had traded in his regular seats for a standing room-only ticket to the right-field walkway. Popov brought his softball mitt and was wearing a Sony Sports Walkman tuned to an AM broadcast of the game. Also standing in the walkway, a short distance away, was Patrick Hayashi, 37, a software engineer with Cisco Systems, wearing his own baseball glove.

In his first trip to the plate, Bonds hit a smash to right field. Popov thrust his glove up and felt the ball hit the pocket. Less than a second later, he was knocked down in a swarm of fans and felt kicking, punching and grabbing. He testified that the ball was still nestled in his glove and pressed against his ribs as he lay on the ground, but in the midst of a "one-armed mini-pushup" to extricate himself from the pile, Popov realized the ball was gone.

Hayashi emerged from the pile with the ball in hand. He testified that he spotted the ball when he fell to the ground with the rest of the crowd. "I was on the ground of the arcade walkway," he said. "The ball was there. To me it was available. I put it right in my glove."

The scramble was recorded by local television cameraman, Josh Keppel. His video shows Popov’s glove thrusting upward through a forest of outstretched arms to snare the ball and then falling into a pile of fans. What the video does not show, however, is what happened inside the pile in the moments before Hayashi emerged with the ball in his hand.

Several witnesses testified they saw Popov snare the ball firmly from the air and never saw it leave his glove. Another witness, however, said the ball he later saw in Popov’s glove was a "sucker" ball – one of many decoys bearing the word "sucker" that had been thrown into the pile by other fans to cause confusion. A major league umpire who viewed the video opined that Popov never controlled the ball, as necessary for a complete catch.

Popov has sued Hayashi for the ball, claiming that he caught the ball and Hayashi stripped it from his glove. Hayashi claims the ball belongs to him, asserting that "[i]t's not a catch if you drop the ball."

**TASK:** Popov’s lawsuit turns on the "rule of capture" established in *Pierson v. Post*. Assume that you are the judge assigned to decide the case. Using the facts above, write a short IRAC answer to explain your decision as follows:

**Issue:** Is Popov entitled to the baseball under the rule of capture?

**Rule:** [State/describe the rule of capture]

**Application:** Apply the rule to the facts given above. [Which facts support Popov’s claim that he wins? What facts support Hayashi’s claim that he wins?]

**Conclusion:** [Who do you think has the better argument?]

## Capture Rule Exercise – Analysis Under the Majority Rule

<input type="checkbox"/>	<p><b>Issue</b></p> <p>Whether Popov is entitled to a home run baseball under the capture rule when the ball was in the webbing of his glove but popped loose when he fell into the crowd around him.</p>
<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<p><b>General Rule</b></p> <p>Under the capture rule, a hunter acquires a property interest in a wild animal by occupancy.</p> <p>In <i>Pierson v. Post</i>, the court's majority stated that capture requires more than mere pursuit.</p> <p>In dictum, the majority says that actual bodily seizure is not indispensable; mortal wounding, ensnaring, or otherwise depriving an animal of its natural liberty might suffice.</p>
<input type="checkbox"/> <input type="checkbox"/>	<p><b>Specific Rule for Baseballs</b></p> <p>To determine occupancy of a baseball, one might look to the formal rules of baseball, which provide that a catch is not completed until the player has the ball under control.</p> <p>This rule would be similar to the <i>Pierson</i> majority's requirement of actual bodily seizure of a wild animal or, at the very least, that an animal be deprived of its natural liberty.</p>
<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<p><b>Policy</b></p> <p><i>Pierson</i> majority says the occupancy rule should provide certainty and preserve the peace.</p> <p>It is questionable whether the baseball rule (requiring control) would preserve the peace or if it would promote brawls between fans, as occurred in this case.</p> <p>Nonetheless, the baseball/control rule is a bright-line test that provides certainty.</p>
<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<p><b>Application</b></p> <p>Popov could argue that he had control of the ball because:</p> <p>He felt the ball hit the pocket of his glove before he was knocked to the ground.</p> <p>The ball was still in his glove when he was on the ground but he realized it was gone when he tried to extricate himself from the pile.</p> <p>The news video showed the ball within the webbing of Popov's glove.</p> <p>Several other witnesses said the ball was in Popov's glove.</p> <p>Although Popov lost the ball after he hit the ground, he will argue that it was dislodged by the extreme conduct within the pile and not because he lacked sufficient control of the ball.</p> <p>While the umpire gave a contrary opinion, Popov will argue that the testimony of the other fans is more credible because they were physically present to observe the actual event.</p>
<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<p>Hayashi could argue that Popov did NOT have control of the ball because:</p> <p>Hayashi saw the ball loose when he fell to the ground with the rest of the crowd.</p> <p>Popov conceded that he lost the ball when he fell, which in itself suggests that Popov lacked the lack of control necessary to establish a catch under major league baseball rules.</p> <p>One witness said he saw a "sucker" ball in Popov's glove.</p> <p>The "sucker ball" testimony might suggest Popov never had the real ball in his glove.</p> <p>But that inference is inconsistent with the video showing the ball in Popov's glove.</p> <p>A major league umpire gave the opinion that Popov had not completed a catch according to the rules of major league baseball.</p> <p>Hayashi will argue that the umpire's testimony should carry the greatest weight if the court is applying baseball's formal rules for making a completed catch.</p>
<input type="checkbox"/>	<p><b>Conclusion</b></p> <p>Based upon the foregoing analysis, Popov [is/is not] entitled to the ball under the capture rule.</p>

## Criminal Law WAC Essay

Background Information. The incident in the fact pattern below took place in the State of Grace. The State of Grace's Criminal Code, which was adopted in 1965, is based on the Model Penal Code and uses Model Penal Code terms and definitions. The Code specifically notes that it has replaced all common-law crimes in the State of Grace.

Fact Pattern. On July 15 of this year, a jogger running along a pathway at the Grace and Rest Cemetery made a grisly discovery: a dog was chewing on a dismembered human arm, just next to an overgrown field (known locally as Weedy Acres) at the edge of the cemetery. The jogger grabbed her cellphone and called 911. Within minutes, state troopers from the Grace State Police arrived at the cemetery. They cordoned off the area and discovered a body in the overgrown field. The body had suffered considerable damage: it had been torn in half, and two limbs had been severed. A smashed coffin and a pile of dirt lay near the body.

State Police investigators conducted a thorough investigation that revealed the following facts.

- 1) On June 29 of this year, the manager of the Grace and Rest Cemetery gave the following instructions to a three-man work crew: "I'm oversold on grave spaces. Need to make room for a big funeral on July 1. Find a grave that looks like no one's been there to visit for awhile. Dig up the body and get rid of it over in Weedy Acres. Dig a hole or something and dump it in. Get rid of the coffin, the headstone, everything."
- 2) The crew consisted of Alvin, Bart, and Clint. Alvin and Bart were long-time employees of the cemetery, but Clint was a high-school dropout who had been hired part-time at the cemetery just one week earlier to mow lawns.
- 3) The three men took a backhoe (a tractor with a large, mechanical shovel attachment) and a dump truck to a run-down section of the cemetery. Alvin identified a grave and gave instructions to Bart and Clint: "Boss says we've got to dig up this grave and move the body to Weedy Acres. I'll point to where we'll dig. Clint, you can run the backhoe. Bart, you make sure Clint scoops the grave out and gets the stuff into the back of the dump truck."
- 4) Clint was not a licensed backhoe operator. In fact, this was his first time ever operating a backhoe. Alvin and Bart showed him how the controls worked just before he began excavating the grave.
- 5) As Clint began excavating the grave, he took extreme care. In fact, both Alvin and Bart were impressed by the clean lines of the hole he dug. At one point, Bart yelled over to Clint, "For a moron, you're doing a great job!" After a few minutes of digging, the coffin was exposed. Bart made a motion for Clint to scoop up the coffin with the backhoe, a tricky task that would have been difficult even for an expert backhoe operator. Clint nodded his head. Just as the backhoe scoop was making its final descent towards the coffin, Clint sneezed and convulsively pushed the scoop control handle all the way down. The scoop tore through the coffin, ripping the body in half.

6) The crew members paused for a moment and looked at the body lying torn in two at the bottom of the grave. "Well, nothing to do but get back to work and clean up the mess," said Alvin. "Clint, can you handle it?" Clint nodded his head and climbed on the backhoe. He carefully scooped up the pieces of coffin and body with the backhoe and deposited them in the back of the dump truck. Despite his best efforts, the backhoe shovel tore two limbs off the body and further smashed the coffin. Clint then scooped up the dirt he had removed from the grave and put it on top of the body and coffin. Somewhat shaken by the experience, the three men climbed in the dump truck cab. With Bart at the wheel, they drove to Weedy Acres and dumped their grisly load in a stand of overgrown weeds.

Based on these facts, the prosecutor has charged Clint with two counts of violating section 12-20 of the Grace Criminal Code, Dismembering a Body. The first count is for the initial scoop that tore the body in half. The additional count is for the subsequent scoop that tore two limbs off the body. The statute reads as follows:

*A person commits the offense of dismembering a human body when he or she purposely, knowingly or recklessly dismembers, severs, separates, dissects, or mutilates any body part of a deceased's body.*

Evaluate Clint's criminal liability under section 12-20 of the Grace Criminal Code.

### Grading Rubric: Criminal Law WAC Essay

Item	Points Available
Issue 1: Dismembered human body	1
• Rule: quote statute	1
• Application: apply statute	1
• Conclusion: dismembered body	1
Issue 2: Culpability of Clint	1
• Subissue (1): Mens Rea for first scoop	1
<ul style="list-style-type: none"> <li>○ Rule: Purpose</li> <li>○ Rule: Knowledge</li> <li>○ Rule: Reckless</li> <li>○ Rule: Negligence</li> </ul>	4
<ul style="list-style-type: none"> <li>○ Application: <ul style="list-style-type: none"> <li>▪ No evidence of purpose (1)</li> <li>▪ No evidence of knowledge (1)</li> <li>▪ Discussion of recklessness v. negligence (2)</li> <li>▪ Factors <ul style="list-style-type: none"> <li>• No license or experience (1)</li> <li>• No evidence of subjective awareness of risk (1)</li> </ul> </li> <li>▪ Gross deviation of standard of care (1)</li> </ul> </li> <li>○ Policy points available: <ul style="list-style-type: none"> <li>▪ Discussion of why mens rea is important in a criminal case (2)</li> <li>▪ How to prove mens rea (usu. Circumstantial evidence) (1)</li> </ul> </li> </ul>	10
<ul style="list-style-type: none"> <li>○ Conclusion: Probably Negligent, not Reckless</li> </ul>	1
• Subissue (2): Mens Rea for subsequent scoops	1
<ul style="list-style-type: none"> <li>○ Rule: recklessness (I don't give points for repeating a rule)</li> <li>○ Rule: knowledge</li> <li>○ Rule: negligence</li> </ul>	0
<ul style="list-style-type: none"> <li>○ Application: <ul style="list-style-type: none"> <li>▪ Knew what would/could happen after first time (2)</li> <li>▪ Tried to be careful, but knew he had no license or training (1)</li> <li>▪ Task difficult for trained operator (1)</li> <li>▪ Additional limbs severed (1)</li> <li>▪ Subjective awareness of risk and acted anyway (1)</li> </ul> </li> </ul>	6
<ul style="list-style-type: none"> <li>○ Conclusion: most likely reckless</li> </ul>	1

Item	Points Available
• Subissue 2: Actus Reus	1
○ Rule: voluntary acts & presumption of intent	2
○ Rule: no criminal liability for involuntary acts	1
○ Application: <ul style="list-style-type: none"> <li>▪ Meant to dig hole (1)</li> <li>▪ Didn't mean to sneeze (1)</li> <li>▪ Sneeze results in dismemberment for first scoop (1)</li> <li>▪ Additional scoops: actions were voluntary (1)</li> </ul>	8
○ Policy points available <ul style="list-style-type: none"> <li>▪ What actus reus is (voluntary movement/result contrary to law) (2)</li> <li>▪ Why no criminal liability for involuntary acts (2)</li> </ul>	
○ Conclusion: actus reus exists	1
• Overall conclusions: <ul style="list-style-type: none"> <li>○ Clint not liable (actus reus but no mens rea) for first scoop (2)</li> <li>○ Clint liable for (actus reus and mens rea) for subsequent scoops (2)</li> </ul>	4
Total	46