



Podcast Episode 84: Using Rules in Law School (with Guest Jason Jones)

Alison Monahan: Welcome to the Law School Toolbox podcast. Today we're talking with Jason Jones, a former law professor who is one of our Law School Toolbox tutors, and we are talking about a very important topic which is how to use rules on your exam. Your Law School Toolbox host today is Alison Monahan, and typically I'm here with my co-host Lee Burgess. We're here to demystify the law school and early legal career experience so that you'll be the best law student and lawyer you can be. We're the co-creators of the Law School Toolbox, the Bar Exam Toolbox, and the Catapult Career Conference. I also run the Girls Guide to Law School.

If you enjoy the show, please leave a review on iTunes or your favorite app. If you have any questions, don't hesitate to reach out to us. You can always reach us via the contact form on LawSchoolToolbox.com, and we would love to hear from you. With that, let's get started. Welcome back. Today we're talking with Law School Toolbox tutor and former law professor Jason Jones, about a very important aspect of law school exam success, using legal rules. Now, some of you might be thinking, "Duh, of course I now how to use legal rules. It's all we talk about in class. I have them all in my outline. Do you think I'm stupid?"

But, I have to say we see a lot of exam answers where students absolutely swear to me that they knew the rules backwards and forwards going in, and they don't really include the rules at all. Jason, why do you think this happens? Where are students going wrong?

Jason Jones: Well, thank you for having me today, Alison. I appreciate the opportunity to be on the Law School Toolbox podcast.

Alison Monahan: Oh, we're thrilled you're here. I should have said that in advance.

Jason Jones: Thank you. I think this happens because of a couple of reasons. In my experience, I think that students struggle with firstly not recognizing the role and the importance of legal rules in exam writing. That's not to say that I think that students don't understand the importance of legal rules, because I think absolutely they do. It's that they don't really appreciate the role that the rule plays in their legal writing and specifically here, their exam writing. Then, secondly, I think the problem is, and I think it stems from the first one, is that the rules that they do include are typically not thorough enough to accomplish what the rule is supposed to accomplish in exam writing. I think that ... Go ahead.

Alison Monahan: I want to unpack both of this. I think there's a lot of stuff going on there. What is the rule supposed to accomplish?

Jason Jones: From my perspective as a professor grading an exam, I'm looking for a couple of things with the rule statement. The first sort of initial check that I'm looking for is does the student understand the rule and why they're using it in this particular context and to address this particular issue. Then, secondly the rule when properly laid out and explained will then lead to the analysis portion of the essay. The big struggle there is students want to and have a desire to what I like to say "answer the question," and that's kind of how we've been trained prior to coming to law school. Some people, their undergraduate degrees are focused entirely on just answering the question and the thought process and all of the backstory that leads up to the answer has always been irrelevant.

What I think students struggle with from a transitional point, from undergrad to law school or from non-legal writing to legal writing is making sure to have the rule in there that answers the question of, "Why am I using this rule? How does it apply to this issue?" and then teeing it up then for the analysis.

Alison Monahan: Yeah. I think that's interesting. I mean, I think definitely a lot of people struggle with, "Well, I just need the answer. What's the answer? That's what they're looking for, right? I need the right answer. That's what we do as lawyers," and I think excusing yourself of that notion is actually one of the most difficult parts of law school. I remember being really frustrated because I had worked as a programmer before I went to law school so I was fine with logic and all of that, but when you're a programmer, there's a right answer. Either it works or it doesn't work, and so you might spend a lot of time and energy getting to that point but you get a really clear answer which is like, "Yes, this code accomplishes the task it is supposed to accomplish. You can now move on with your life." But I feel like we never get that kind of closure as lawyers.

Jason Jones: Yeah, and I think that there's sort of the famous book out there that's called, "Getting To Maybe." It's trying to remove that temptation to have that answer. In fact, I was just yesterday working with a student on the parol evidence rule, and the biggest hurdle that students have with the parol evidence rule in contracts, for example, is that they don't want to commit to the notion that intrinsic evidence is now going to be a part of the contract. What I tried to say to her was, "You're not saying that. What you're saying is that the court can admit the intrinsic evidence, and then it's up to the fact finder to make the determination as to whether it's part of the contract." It's a little less of a commitment than you think it is.

I think that taking that kind of less committal approach to legal writing is actually a successful way to write on an exam. Instead of trying to have the answer and then having your entire essay reach that conclusion that you've

already predetermined, it should be less commitment to that answer and more of an exploration of what the possible outcomes could be.

Alison Monahan: Right, I think that's absolutely right. I sometimes think of it as a ball of silly putty or something that you're kind of stretching in these different directions, and how far can you stretch an argument before it just breaks, and it's clearly just not even worth discussing. There's a lot of give in a lot of this stuff. I mean, you see this in the real world where judges come to different conclusions about the law and that kind of thing. I think that point about not deciding, "Okay, Jill is going to win," and then making sure that your discussion makes sure that Jill wins. That's not really the goal of I would say pretty much any law school exam. Sometimes your students can get confused if they're told to advocate for a certain position or whatnot, but even then, the professor's really ... Well, you're the professor, you tell me. They're really looking for a full discussion of all the different aspects of this, right?

Jason Jones: Yeah, and it's jumping the why Jill wins causes students frequently to skip over the important step of laying out the thorough rule. Again, it's not appreciating the role that rule plays in an exam answer or in legal writing because they want to start off with, "Jill owed a duty to the plaintiff," and then they jump forward with the essay and they think in their mind the statement of, "Jill owed the duty to a plaintiff" is the rule statement because it lays out that duty.

Alison Monahan: Right. Jason, can you give us an example of when students think they're using a rule but they're not really using a rule?

Jason Jones: Yeah, and so the "Jill owes a duty to the plaintiff," there's a bit of using the word "duty" that might suggest that they're using the rule, or often times they'll say, in contracts for example, "So and so made an offer to" ... "Jill made an offer to Jack," and the use of the word alone, because of all of that comes with the word "offer," often times seems sufficient, or they'll say, "Jill made an offer to Jack when Jill said, 'I'll sell you my car for \$1000'" ...

Alison Monahan: Right, and that sounds sort of rule-ish.

Jason Jones: ... Because the ... It does sound sort of rule-ish, and what it does is it shows that they know what an offer is.

Alison Monahan: Or that the concept of an offer exists.

Jason Jones: Exactly. It's, "I know that I need an offer in order to have a contract. I know what an offer is, and here I'm showing that an offer exists because Jill promises to sell her car for \$100 to Jack." All of that is true, and that's the difficulty, is when we're talking about legal writing, we're not talking about, "Do you know the rules?" It's, "How are you communicating those rules?" I think that before I said that students don't appreciate the role and the importance of legal rules in

exam writing, and I think that's really the fault of us, myself, and other professors as legal educators, because I don't think we do a good enough job explaining the necessity to unpack the rule and lay it all out there when we say, "Put the rule in there," and they say, "There's an offer," that translation actually makes sense.

But what professors are really looking for is not only that you acknowledge the need to put the role of an offer in there, but that you actually lay out the full manifestation of the willingness to enter into a contract, et cetera, et cetera, et cetera.

Alison Monahan: Give me the et cetera. What would a better statement of, "Okay, I recognize there's an issue here?" I mean, this is first, step one. You have to recognize there's an issue about, "Is there an offer? Is there not an offer?" We can talk in a minute about how we do that, but I recognize there's an issue, Jill needs to have made an offer. What does a decent rule statement for that look like?

Jason Jones: Well, the concern is that it needs to be verbatim and it doesn't.

Alison Monahan: Okay, so I don't have to have it memorized ...

Jason Jones: So, that's not ...

Alison Monahan: ... Like, "In order to make an offer" ...

Jason Jones: Yeah, you don't have to have it memorized.

Alison Monahan: ... "You must do whatever, blah, blah, blah." Straight out of restatement.

Jason Jones: If we're going with the restatement, right? Then we're talking about the offer being a manifestation of willingness to enter into a bargain so made as to justify another person and understanding that his ascent to that bargain is invited and will conclude it. That's I think roughly, I haven't looked at the restatement in a few months but roughly that's ...

Alison Monahan: Yeah, you lost me around somewhere like "ascent." It sounds good, I don't know.

Jason Jones: Yeah. Roughly that's the definition of an offer under a restatement, right?

Alison Monahan: Right.

Jason Jones: Obviously if I, having taught first year contracts for 10 years, am not going to be able to roll the verbatim definition for offer off the top of my head, my expectation as a professor is not, of course, to assume the student can. But my expectation is that the student understands that there's some sort of

manifestation of a willingness to enter into a bargain or manifestation of a willingness to enter into a contract and that they are inviting the ascent of the offeree. Laying that out just with a little bit more depth shows that you understand not only that an offer is needed, but what the concept and the rule of an offer is.

Alison Monahan: Right, and what you said gives people a roadmap, too, to how to do that analysis because it's like, "Well" ... They're different pieces in that rule, right? It's not just like, "Oh, this is one thing." It's like we can break that down and look at those pieces individually and really analyze them.

Jason Jones: Yeah, exactly, and that really is why legal rules in legal writing are so important. I mean, before I said it kind of shows me that the student knows why they're talking about this specific issue, what the rule is going to do to address the issue, but it also lays out your analysis. In that rule itself it gives you the things you need to talk about. When Jill says, she says to Jack in a conversation, "I will sell you my car for \$100," that is the manifestation of the willingness to enter into the bargain. Then, we can take a look at it and say, "When Jack receives that communication, is he justified or is it reasonable for him to believe that all he has to do is say 'Yes' and a contract has been formed?" Now you've got analysis.

Alison Monahan: Right, because you can see a fact pattern where she says, "I'll sell you my car for \$100," and he's like, "Okay, great," or a different fact pattern where it says, "I'll sell you my car for a kiss." Is that a real offer? Well, it sounds the same but there's probably more to talk about.

Jason Jones: Exactly, and I think that the role of the legal rule is to give you something to talk about when it comes to the analysis and to show that there is a legal rule that's applied universally when discussing this particular issue. It gives structure to the essay.

Alison Monahan: Right, and I think it can also help you identify those sub-issues and things that probably make the difference between the A answer and the B answer, because if you just say, "Oh, well there's an offer because she said this," you're not really unpacking ... Like, maybe this is a slam dunk issue and it's like, "Yeah, okay, she said she'd sell the car for \$10,000. The value of the car is \$10,000. You don't need to spend a lot of time on this," but there might be other stuff going on, and I think having those more detailed, I mean, often like element by element statements can really trigger you to think about on an exam, "Oh, is there something I need to talk about here or is this a slam dunk issue?"

Jason Jones: Exactly, and what you're saying with the unpacking makes sense because the biggest issue that students are running into in this area is too many decisions are being made in their head, and not enough of those decisions are being made on the paper.

Alison Monahan: Yes. I talked to a number of people in the last few weeks who are like, "I feel like I know everything, I'm just not getting it on the paper," and ultimately what you get down on paper is what you're going to be graded for.

Jason Jones: Exactly, and the tendency to put on paper is the answer to the decision, and what we're really looking for and what legal writing really asks is, "What are all the questions and rules and answers that led to this ultimate decision?"

Alison Monahan: Right, so I mean what you referenced earlier, if you say, "Jill made an offer because," I think what students don't really realize is that's actually a conclusion. That's not a starting point.

Jason Jones: Yeah, exactly, and one of the things I wanted to talk about today was exactly that, the tendency to bury the rule in the conclusion statement as opposed to breaking it out itself. Like you said, the answer would be, "Jill made an offer because she promised to sell her car for \$100." Well, in there is some of the elements of the rule, but it's just a conclusion statement and the rule is buried inside of it.

Alison Monahan: Right. Before we really dive into that, what are some other issues that you commonly see with regard to rules? I mean, some people just leave them out, but what do other people do?

Jason Jones: Yeah, so the opposite of leaving them out is the rule dump, or the rule block. That's the other tendency. The other tendency is to, when the proctor says "Go" to basically take everything in your outline that you've committed to memory and regurgitate it onto the page. Then, believing that's sufficient, then you go into a standard problematic exam answer which just becomes a narrative of what's going to happen and why you think that's going to happen.

Alison Monahan: Can you give us an example of that?

Jason Jones: For example, I could say ... As soon as the exam starts, I write out, "All personal manifestation of a willingness to enter into a bargain, so made as to justify it."

Alison Monahan: They write about acceptance, they write about consideration, they write about whatever.

Jason Jones: Exactly. Acceptance, consideration, promissory estoppel, unilateral contract offers, bilateral contract offers.

Alison Monahan: Mailbox rule, like everything.

Jason Jones: Mailbox rule, offer termination, rejection, all that kind of stuff. Every rule is on the page, right?

Alison Monahan: Yeah.

Jason Jones: The entire issue is just whether there was a contract. Then they jump into, "Here, Jill said she would sell the car for \$100, Jack said he would buy the car for \$100, Jill then" ...

Alison Monahan: And as a professor you're thinking, "Well, I already wrote this out, why are you telling me this?"

Jason Jones: Yes, exactly. This is the fact pattern. I don't think something along the lines of, "There obviously is a contract here, Jack might also be able to get" ...

Alison Monahan: Yeah, clearly there is a contract.

Jason Jones: Yeah. The word "clearly" is always an indication. "Clearly there's a contract here, Jack could also win under promissory estoppel as mentioned above, therefore".

Alison Monahan: Sorry, I shouldn't be laughing ever at these.

Jason Jones: "There's an enforceable contract." Yeah, I read them every semester and it's the answer to the question is what it is, and the thought of, "Well" ... And then I sit down in the meeting and I say, "Okay, here's why you scored where you scored," and always the question is, "Well, I put every rule in there."

Alison Monahan: You're like, "Gr, thanks for that."

Jason Jones: It's true, and I was like, "Well that's true, and what you've shown is that you can memorize, and that you have the ability to memorize rules," but if we're looking at the Bloom's taxonomy, the pyramid of learning and all of these other sorts of things, knowledge is at the bottom. Application and analysis is where you start climbing that ladder, and to regurgitate the rules upfront doesn't show to me that you know which rules apply to which situation and that you're able to work through those rules in an application of the facts to reach the conclusion that you ultimately reached.

Alison Monahan: Right, ultimately what you're really testing is legal judgment and if you walked ... I was a litigator. If you walked in a courtroom and said, "Your honor, there's a bunch of rules that might or might not apply to this situation," they're going to be like, "What are you doing?"

Jason Jones: Exactly. That's exactly right. Well, the testing ...

Alison Monahan: "Cut to the chase. What do I need to know here?"

Jason Jones: Exactly. We're not testing the ability to memorize all of the various rules in contracts or property or torts or whatever the first-year class may be, what

we're testing is do you know which rules to use and can you do a legal analysis? What you just said with the litigation example is great. You're not going to walk into a court, give the litany of rules of first year contracts and then at the end say ...

Alison Monahan: Like, "Your honor" ...

Jason Jones: ... "Jill has a contract."

Alison Monahan: "The definition of summary judgment is this. The rule that governs it is civil" ... It's just like, "I know what summary judgment is, could you please get to the point?"

Jason Jones: Exactly. You only got to the summary judgment part after you walked through supplemental jurisdiction and all these other nonapplicable rules, just as part of showing the judge that you knew all of the rules, so the procedure. I think that legal educators don't do a good enough job of communicating the value of rules and why we're asking for them in that fashion.

Alison Monahan: Right. Well, let's talk about that. What's really the goal here? What should students be trying to do with these rules on an exam beyond just writing them down so they can get points?

Jason Jones: I think the goal of using rules is to lay out the structure of your exam essay and to say, "I'm going to talk about offer first. I'm going to give a thorough rule for offer. It's going to give the elements of an offer, then I'm going to apply the facts to those elements and reach my conclusion. Then I'm going to jump over to the definition of an acceptance, then I'm going to lay out the rule for an acceptance, and then I'm going to go through the elements of acceptance, and then I'm going to apply the facts, and then I'm going to reach my conclusion as to whether there was an acceptance." What you start to see as you organize it in that fashion is your essay becomes a series of IRAC paragraphs where ...

Alison Monahan: Right. I feel like it almost makes it easier. It's like, "Don't over complicate things. Just write down the rule and apply it."

Jason Jones: Exactly. It's almost kind of mechanical in nature where you're just sort of saying, "I'm going to write down the rule as it applies to this issue," talk about why it applies to this issue. Maybe explain the rule a little bit, and then, "I'm going to apply the facts, I'm going to reach the conclusion and then I'm going to move onto the next thing, and move onto the next thing." The question of whether there is a contract ends up being instead of one giant paragraph that lasts three pages or maybe a rule dump that lasts two pages and then a conclusion, it ends up being five or six IRAC paragraphs in a consecutive form that has a well-organized legal analysis.

Alison Monahan: Yeah. I mean, I remember I hated contracts my first semester. I just didn't like the class, I thought I was going to do really poorly in it, and I ended up doing really well. I think the reason for that was I actually made a flowchart that on two pages, basically captured the entire course and I literally had questions, it was basically like, "Is there an offer? Well, what are the sources we would look to? Here's what the restatement says about it, here's what this case says about it. Is there an acceptance? Where do we look for that?" Even though I didn't feel that ... It was an open book exam, thank goodness, but even though I didn't feel so confident with the material, it actually enabled me to do that type of very structured analysis that I think paid off in the end against people who probably knew way more about the subject matter and liked it, more confident, but they were just droning on and on about things that weren't as relevant so they weren't getting those points.

Jason Jones: Yeah and that's a great point. I've got an older brother who's about 10 years older than me, and I was complaining about a grade in a particular law school class to him in a phone conversation, and he has an engineering degree, and he said to me and it's stuck with me for 15 years now, he said to me, he goes, "Sometimes the classes where you know the material the best are not the classes where you do the best on the exam."

Alison Monahan: Oh, for sure.

Jason Jones: The reason why that is, and engineering's kind of similar to law in this regard is a "show your work" sort of scenario. Sometimes you know the material so well and you've got the rules so memorized in your outline that you get to the exam and you're able to answer the questions easily, not recognizing that the professor doesn't really care if you know the answer to the question. They want you to show your work, and part of showing your work is putting the rule up there. I use math as a frequent analogy. If you're going to do $A^2 + B^2 = C^2$, you're going to lay that formula out first and then you're going to put the numbers in and then you're going to work through the formula, and the rule works the same way in legal writing.

Alison Monahan: Yeah. I mean, I think being a programmer kind of helped with law school because you do have this like, "Well, okay, if this then this, if this then this, if this then this, if not then this." It's not like ... I think sometimes people really try to, they just really over complicate things.

Jason Jones: Yes, whereas I was a business undergrad and we were told never to exceed more than one page and that we only cared about the conclusion, so it was kind of the opposite sort of dynamic, but yeah, I mean, the goal with rules is to lay out the showing of your work on the exam so you can show to the professor the legal analysis that got you to the conclusions.

Alison Monahan: Yeah. I always wonder with people who say, "I knew everything, I studied, I went to class, I did my outlines, I took practice tests," and then you see their answer and you're like, "Um, what happened here?" I mean, do you think people just sort of panic when they get in there or do they just not realize what they're doing? I mean, what's going on?

Jason Jones: Well, I do think that there are some panic issues, some anxiety issues, your brain kind of shuts down a little bit. Often times if it's one of the first couple of exams that you've taken, you're not yet comfortable with the experience. I remember distinctly my ConLaw exam, the first semester of law school where I knew every single thing about everything that I need to know for ConLaw and I just had not seen a fact pattern delivered to me in that manner, and it threw me off. Same thing civil procedure. Civil procedure was a class I got an A minus in law school, and I went in to the professor afterwards and I said, "Why did I get an A minus? I knew everything." He says to me, he says, "You got" ...

Alison Monahan: Wait, let me back up a second. You were complaining about an A minus?

Jason Jones: Yeah, I was, because I was a little bit competitive and my study partner had gotten an A, and I was slightly frustrated with that, and I said, "What happened here?" He says to me, he says, "You got every single multiple choice question right which has never happened to me in my entire career." He said, "Your essay was one of the worst essays I've ever read in my entire life."

Alison Monahan: So, you were lucky to get the A minus basically?

Jason Jones: Exactly, and it was totally because when the fact pattern was delivered to me, I was totally baffled by it and the way it was delivered to me in that fashion. It was just a simple question, "Does the court have personal jurisdiction or does the court have subject matter jurisdiction?" My answer was, "Yes."

Alison Monahan: "Great, moving on."

Jason Jones: Yeah, like, "Why am I supposed to spend an hour and a half on this? The answer's yes." I think that there's some anxiety, some sort of not seeing it, not being comfortable with it and that sort of initial brain shut down of, "I'm just going to answer the question."

Alison Monahan: Right, when you tell me that, I was a TA so when the question is, "Is there a personal jurisdiction?" I immediately basically go to the attack plan that's in my head of, "Okay, we need to look at International Shoe, is there this? Is that general jurisdiction? Is there specific jurisdiction? Is this a corporation? Is it a person? Where are they based? Where are they" ... I have that entire flowchart basically in my brain so if you ask me that question, I would basically be like, "Okay, start calculating, if this, if this, if this, if this," and I think that's what sometimes people don't understand is like you don't have to know ... It's not

just that you need to know the law. You have to be prepared to apply that law in a structured, logical way that hopefully you've thought about before you get the, "Is there personal jurisdiction?" question, because I guarantee if you're talking about it, that's probably going to be on your exam.

Jason Jones: You're getting that question, yeah, exactly.

Alison Monahan: If you don't have a framework for doing that analysis before the exam, I can pretty much guarantee you it's not going to go well.

Jason Jones: Yeah, and so that's one of the communication barriers I was talking about with legal educators to students is we say, "You have to know the rules," and so the students spend all of their time just memorizing the rules, and we don't say kind of like ...

Alison Monahan: Like, "International Shoe says," or, "World Wide Volkswagen says." It's like ...

Jason Jones: Exactly. Then you get to a fact pattern and it's just laying out this crazy scenario and you're like, "Well, where do my rules go?" Because there's not an obvious place for your rules you just abandon them and go to the answer of the question.

Alison Monahan: You go with your gut, I think a lot of people do.

Jason Jones: Yeah, exactly.

Alison Monahan: Like, ah the sense that probably there would be jurisdiction or not. It's like, we don't really care about your sense until you ...

Jason Jones: Exactly.

Alison Monahan: ... Can back that up.

Jason Jones: Exactly, and I think it's about students understanding that rules are a part of the process, or you used the word attack plan, right? What you should be studying for when you're studying the rules is how they fit within a process that you're going to apply to an essay, whether that process is an attack plan or flowchart or whatever the case may be, it's understanding the rules and how they fit into that and what ultimately comes from that is more thorough rule statements because you know that if you see personal jurisdiction or if you see offer, if you see negligence, that there is a formula that you're going to apply and it's going to include all of these rule elements and you're going to work through them to get to the ultimate answer.

Alison Monahan: Yeah, and I think that's like personal jurisdiction, like often times people jump into the case based analysis but then they forget this other element. Yeah, I

think the more you can do in advance to remind yourself like, "Oh, every time I see personal jurisdiction I have to discuss two different aspects of it. There's the fairness and then there's this other stuff," however your professor frames it. They might frame it slightly differently, but that's going to help you not forget like a whole section of the analysis.

Jason Jones: Yes, I agree totally.

Alison Monahan: I think that's true in basically every case, right?

Jason Jones: Yeah.

Alison Monahan: All right. Beyond having these elements, these attack plans down, what are some other things, kind of advanced level stuff that people can do to improve their rule statements on an exam?

Jason Jones: Well, to me there's what we've been talking about is kind of moving up the ladder a little bit from lesser good grades, a middle of the road type grade, and of course there are the ways to get the A and to me, that comes a lot from rule explanation. Are you able to explain what the rule means? Maybe explain a little bit about where it came from. Certain subjects I think lend themselves to a little bit more rule discussion than others. Civil Procedure, which is kind of a doctrine, personal jurisdiction which is a doctrine that's evolved over time, the more you can work through that evolution and explain that out I think is beneficial. ConLaw's kind of similar in this where doctrines have developed over time through different cases.

Alison Monahan: Yeah, or sometimes they'll have competing rules like Criminal Law, common law versus the Model Penal Code, things like that. These are going to enrich your discussion.

Jason Jones: Exactly, and so the professor might say, "Apply the Model Penal Code," and if you can do it and say, "Here's why this fact is particularly important under the Model Penal Code versus common law rule for murder is because the Model Penal Code lessened or increased the decision here." If you can have that robust discussion, then absolutely you're going to elevate your answer and show the professor a mastery of the subject, right? I mean, there's kind of the ability to understand it, there's the ability to apply it, and then there's the mastery level which is being able to explain it all out.

Alison Monahan: Yeah. I do have to caution students because some of them take that to mean like, "Oh, great. I can just write a policy essay on a fact pattern hypo and do awesome."

Jason Jones: No.

Alison Monahan: Don't do that. This is like an add-on. This is not the bulk of your essay.

Jason Jones: No, and I'm afraid to go down that path, too, because the majority of the time your student can get an A doing what we've talked about so far.

Alison Monahan: A thorough, complete, detailed analysis is absolutely sufficient.

Jason Jones: Yeah. If your rule is accurate and thorough and lays out elements, and if you take all of the appropriate facts and apply them to each element of the rule to reach your conclusion, you're going to get a top-notch grade. The policy, the rule development over time, like I said, certain subjects lend themselves to it more than others. Nobody really talks about the development of the offer over time. It's not exciting. There's nothing there.

Alison Monahan: Right, it's kind of obvious, "We need an offer."

Jason Jones: Yeah, just read the restatement, we don't really care where it came from. You want to caution against making that your focus. I think it's sort of like my contracts professor called it the blocking and tackling. Get the blocking and tackling done and you're going to be okay. You don't have to worry about something fancy on the other side.

Alison Monahan: Yeah. I mean, a lot of this is not very fancy. All right, well we're almost out of time. Let me ask you one more question.

Jason Jones: Sure.

Alison Monahan: Where are students going to get these rules? Like, is it okay to just go look them in a commercial outline, or maybe an old student outline? Assuming you did the reading, you went to class, you participated, can you just look them up?

Jason Jones: Well, yes and no. Like, they exist out there. The restatement exists out there. The Uniform Commercial Code exists, the property rules exist... I mean, they all exist out there and commercial outlines exist and previous student outlines exist. I am a little bit old school in this regard where I think the only things you need are the materials your professor requires and your lecture notes, and then from that, you build your outline. That includes your rules and your attack plans and whatnot. I think the reason why that is, even going back a few minutes ago when I rattled off the definition of an offer, that doesn't make any sense outside of the context of being able to explain it and understand it.

Unless you go through the process of building your attack plan and your outline yourself, if someone just hands you that Restatement of Second of Contracts, and you're just looking at the restatement rules, yeah, you could memorize them but you don't really know what they are, what elements are the rules, it should come out of your case book, your lecture notes, your reading notes, and

the development of your outline and your attack plan. If you're not feeling confident about certain rules or they're not making sense, I mean, your professor will help you through that so schedule a meeting with a professor, talk to them about the rule, ask them if you're approaching it the right way. That will do you more value than just picking up a commercial outline and flipping through it and being able to regurgitate what an offer is.

Alison Monahan: Yeah, I sometimes say it's the difference between reading a book and writing a book. Anyone can read a book, but writing a book's really hard. I mean, I could take a hybrid approach. I'm fine with people using commercial supplements. I think it can help clarify what you're learning, but absolutely, you can't just think that you're going to sit down and read that, and that's going to be your total, you're good to go. You can use that to clarify and help you figure out the structure, the big picture, but you have to really make that material your own one way or another, or you're just not going to have the depth of knowledge you need to really use that on an exam.

Jason Jones: You know, the difference between passive learning and active learning. Passive is just grabbing a commercial outline and memorizing it and going in before the exam. Active learning, building your own, and if you use supplements, and I'm not ... I don't mean to I guess knock supplements necessarily, because like you said, if they are supplemental to the development of your outline and attack plan and your materials, then they are great, but they are meant to be supplemental materials and not primary materials, and I think often times students fall victim to the attractiveness as these books as primary materials.

Alison Monahan: Like, "Oh, they just have the answer. We're good to go."

Jason Jones: Exactly.

Alison Monahan: All right. Well, unfortunately we are out of time. Thank you, Jason. I think that hopefully was very enlightening to people.

Jason Jones: Thank you for having me.

Alison Monahan: Oh, my pleasure. If you enjoyed this episode of the Law School Toolbox podcast, please take a second to leave a review and rating on iTunes or your favorite podcast app. We would really appreciate it, and be sure to subscribe so you don't miss anything. We typically release new episodes on Monday. If you have any questions or comments, please don't hesitate to reach out. You can find me at alison@lawschooltoolbox.com or you can always contact us via our website contact form at LawSchoolToolbox.com. Thanks for listening, we'll talk soon.