



GONZAGA UNIVERSITY

# THE LAW TEACHER

Institute for Law School Teaching

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## Adventures in PowerPoint

Teach with punched-up visual aids and see the difference

By Alison Sulentic

One day last semester, a student who had witnessed my struggle to get the PowerPoint projector, laptop computer, and remote control unit to work at the same time gently observed, "You're pretty new to computers, aren't you?" Yet just a few moments earlier, I had been congratulating myself as a pathfinder forging hardily into a new technological frontier. These different perspectives illustrate the gap between the experience of many law students, who were born to the computer age, and that of their professors, who until recently found an electric typewriter to be an excellent example of technological wizardry. Using PowerPoint can be an adventure, especially if terms like Java turn your students' thoughts to computers, while you contemplate beverages.

Last semester, I decided to use PowerPoint slides in my three-credit Sales course. I decided to do so for several reasons. First, Sales is a course that requires constant in-class attention to statutory language. A visual aid, such as PowerPoint, enables the class to examine the statutory language on a common visual field, rather than look exclusively at individual Code books (a practice, by the way, that I had no intention of discouraging and indeed hoped to actively encourage). Second, I prefer to teach Sales through the detailed analysis of hypotheticals. I planned to project the basic elements of the hypotheticals on the PowerPoint screen in order to help my students (and me) remember the basic fact patterns I set out. In addition, the PowerPoint projector would enable me to highlight changes in the hypothetical fact patterns as the class progressed, something that I thought would be helpful. Finally, I hoped that PowerPoint would help me add a little pizzazz to what can be a hypertechnical subject.

Now, a few months later and a semester wiser, I have emerged from my first adventure with PowerPoint with an increased enthusiasm for the medium. I also have a few words to share with those who might be considering the pros and cons of using this new technology in the classroom.

### PowerPoint and Class Participation

Many professors fear, with good reason, that the use of PowerPoint will dull class participation. Students who are

equipped with PowerPoint printouts will simply gaze at the screen and forego note-taking, thinking, legal analysis, etc. This is a realistic concern, and professors who opt to use PowerPoint must consider both their expectations of class participation and the means they use to stimulate class discussion.

Class participation is a necessary component of any course that utilizes the problem method. The point, after all, is to get the students to do the problems. I found that the effect that PowerPoint had on class discussion depended on the way that I structured the slides. If I presented a slide that flashed the solution to a problem on the screen, students had little incentive to discuss the problem. On the other hand, if I used the slides to state the facts of a hypothetical or to project a portion of the statute, I found that I could continue to question the students in much the same manner that I would have employed had I been working without visual aids.

Using PowerPoint may indeed cause a professor to subordinate the desire for classroom spontaneity to the need for advance preparation of a slideshow that follows a particular lesson plan. My own approach to a class like Sales is very methodical, and I keep a tight rein on the class's progress in order to cover all of the necessary doctrinal material. This approach slotted in easily with the kind of preparation necessary for a successful PowerPoint class. In other classes, where I am interested in probing a subject in a more open-ended manner or in soliciting student input concerning the direction the class is taking, I would find it harder to prepare and use PowerPoint slides effectively. While it is possible to back up or go forward in the slide

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# PowerPoint

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show to reach a slide that addresses a point raised unexpectedly, I found that in practical terms it was cumbersome to do so.

In the post-Langdellian world, it is perhaps a heresy to suggest that some professors may find that class participation is not of critical importance. In this case, PowerPoint slides will pose no threat. A class that is taught on a lecture basis can effectively use PowerPoint slides to break up the pace of the lecture and to emphasize key points. A word to the wise is pertinent here *hatred* would not be too strong a word to describe the emotion inspired by someone who reads slides aloud. If you are going to use PowerPoint to supplement your lectures, it is best to use the slides to highlight rather than to replicate the spoken word.

## *PowerPoint and the Power Nap*

Don't do it! As soon as the lights go down and the PowerPoint slides go up, eyes start to droop. You'll be sorry. PowerPoint skeptics were not shy about their misgivings. Forewarned is forearmed, so I went into my first PowerPoint session prepared to see the students drift off into the Land of Nod. As a mother who has never really succeeded in persuading her 2-year-old that a nap is definitely a good thing, the task of actually having to prevent 100 students from napping during class seemed decidedly novel. After a few classes, I determined that there are two tricks to ensuring a nap-free PowerPoint class.

First, resist the temptation to turn the PowerPoint slides into the focus of the classroom. After hours of preparing and refining slides, I was often so enamored of my creation that I wanted to flash it on the screen and invite the students to admire my handiwork. The temptation was even greater when one of my colleagues showed me how to animate the slides. Even with the modest graphics and sound effects available in the standard PowerPoint software, I was entranced. As I cut and pasted my clip-arts and colored my fonts, I was having the best time I had had doing arts and crafts since kindergarten.

For better or worse, having fun with arts and crafts is not the way to run a successful PowerPoint class. PowerPoint is only a *tool*. The subject matter itself must remain the focus of the classroom experience, and the voices of the teacher and the students must remain the central focus of dialogue. PowerPoint should never become anything other than the means of delivering, communicating, and teaching a message. Through clip art and sound effects, PowerPoint can actually compete with the professor for the students' attention.

In order to counteract this tendency, teachers who use PowerPoint need to make sure that they take all steps necessary to overpower PowerPoint. I gradually learned to use PowerPoint as a prop to illustrate a point or to provide a way of focusing the students' attention on the statutory text. In some cases, I changed my own position in the classroom in order to draw the students' attention away from the slides in order to emphasize a new point. Ironically, PowerPoint

itself gave me the means of walking away from the podium, where my carefully worded notes and drafts of hypotheticals rested in peace. Knowing that the PowerPoint slides would prompt me with the facts of the hypotheticals I had planned, I could walk around the classroom with confidence. In this way, I was able to help the students focus on my words and on my efforts to draw them into class discussion in a way that would have been impossible had I stayed with my notes at the podium.

Second, constant attention must be given to the students' visual experience. While it is tempting to transform your classroom into something akin to a darkened cineplex, it simply is not necessary. I found (with no scientific analysis other than polling my students) that I could conduct a class with almost all of the classroom lights blazing if I colored my slides with a dark background (usually blue) and a light, bright lettering (usually white or yellow). The contrast was sufficient to ensure that the students could easily read the screens without sitting in a darkened room.

## *PowerPoint and Class Preparation*

My own greatest reservation about PowerPoint was its capacity to print out the slides in a handout format. I initially resisted the students' request for me to do so, because I feared that they would substitute the handout for a deeply analytical approach to class. Yet I knew that some PowerPoint aficionados reported a successful integration of the handouts into their management of the classroom experience. After some time, I came to agree. Without handouts, students often struggle to transcribe the material on the slides into their notebooks, leaving little room for attention to class discussion. I am now teaching the course for the second time and have decided to post the PowerPoint slides on a password-protected website. Students who wish to have handouts may download them and print them. In general, I think this has enabled students to focus on class discussion and on taking notes of important analytical concepts, rather than copying down slides.

PowerPoint is not for everyone, nor is it for every class. I plan to continue using PowerPoint in Sales, because I have found the ability to project statutory provisions and hypotheticals to be helpful in my effort to encourage students to engage in a detailed reading of the statute. I do not plan to use it on a regular basis, however, in my classes on health law, where I encourage students to engage in a lively discussion of policy concerns. As the saying goes, it takes the right tool to do the job right. Like most tools, PowerPoint does a great job when it is the right tool.

Sad to say, it doesn't add pizzazz. That's still up to you.

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# Law teaching book offers broad range of teaching ideas

**T**ECHNIQUES FOR TEACHING LAW, a new book on law teaching and learning, has close ties to the Institute for Law School Teaching. Gerry Hess, the Institute's director and a professor at Gonzaga, is an author/editor. His co-author/editor is Steve Friedland, a professor at Nova Southeastern University, who has presented at two Institute conferences and contributed an article to this edition of *The Law Teacher*. Many of the book's contributors have written for *The Law Teacher* or participated in Institute conferences.

The book addresses a broad range of pedagogical issues in the context of legal education: the teaching and learning environment, course and class planning, questioning and discussion techniques, visual tools, experiential learning, computers, simulations, collaborative learning, writing exercises, feedback to teachers, and evaluation of students. The first chapter describes three models of learning and three conceptions of effective teaching. The subsequent eleven chapters each address a particular pedagogical issue, beginning with a summary of the applicable educational principles, followed by teaching ideas and techniques contributed by experienced legal educators.

The heart of this monograph is the collection of teaching ideas. These 137 teaching and learning tips are innovative and classroom tested. The collection covers all types of law school courses: first-year (Negotiation and Drafting in Contracts by Karen Harwood, Gonzaga), upper-level (Wills and Trusts Projects by Robert Whitman, Connecticut), writing (Reading Aloud

to Illustrate Excellent Writing by Kate O Neil, Washington), and clinical (Mooting for Clinical Teachers by Jean Koh Peters, Yale). Some of the ideas introduce fresh approaches to basic classroom planning and management matters: Using Video to Learn Students Names (Howard Chapman, Kent), The Ten Commandments of [the First-Year Course of Your Choice] (Andrew McClurg, Arkansas-Little Rock), and Family Day (Karen Gross, New York). Many of the methods involve active learning: Student-Created Graphics (Stephen Sepinuck, Gonzaga), Simulation Led by Practicing Lawyers (Elizabeth Reilly, Akron), and Structuring Collaborative Exercises (Paula Lustbader, Seattle). Others offer tips for using technology in teaching law: Electronic Classroom (Stephen Sowle and Richard Warner, Kent) and The Video Bite (Lee Stuesser, Manitoba). Finally, the contributors offer insight about creative ways to give students feedback and to evaluate student performance: Practice Exams, Practice Exercises, and Practical Advice (Eric Mills Holmes, Appalachian), Evaluation of Oral Lawyering Skills through a Video Exam (Larry Grosberg, New York), and Practicing What We Preach and Testing What We Teach (Greg Sergienko, Southern Illinois).

**(An excerpt from one of the 137 ideas appears on page 8.)**

TECHNIQUES FOR TEACHING LAW is available from Carolina Academic Press, 700 Kent Street, Durham, NC, 27701, (919) 489-7486, [www.cap-press.com](http://www.cap-press.com).

## Bibliography on law teaching coming

*Articles needed to fill out special edition for spring publication*

**T**he Institute for Law School Teaching and the Gonzaga Law Review are collaborating to publish a special edition of the GONZAGA LAW REVIEW devoted to teaching and learning law. The special edition will contain an annotated bibliography of articles on pedagogy in law school and a review of books that focus on teaching and learning in higher education, including legal education. Publication is planned for the spring of 2000.

This publication will update one of the Institute's first projects a special edition of the GONZAGA LAW REVIEW on current methods for law teaching, published in 1994. That special edition contained two articles. Arturo L. Torres and Karen E. Harwood wrote *Moving Beyond Langdell: An Annotated Bibliography of Current Methods for Law Teaching*, which annotated articles published between 1985 and 1993. Paul T. Wangerin contributed *Teaching and Learning in Law School: An Alternative Bookshelf for*

*Law School Teachers*, which introduced legal educators to periodicals and monographs from the higher education literature. The Institute has distributed more than 10,000 copies of the 1994 publication to law teachers in the United States, Canada, Australia, United Kingdom, South Africa, and Nepal.

The new bibliography will annotate articles on legal pedagogy published between 1993 and 1999. Professors Kay Lundwall and Arturo Torres are doing an exhaustive search for articles to include in the bibliography. They invite readers of *The Law Teacher* to nominate applicable articles by December 10, 1999. To nominate an article (written by someone else or by you), contact Arturo Torres at Gonzaga University School of Law, P.O. Box 3528, Spokane, WA 99220-3528; phone (509) 323-3782; [atorres@lawschool.gonzaga.edu](mailto:atorres@lawschool.gonzaga.edu).

# Teaching law, McLuhan-style

## *The medium and message of law school*

By Stephen M. Wexler

Marshall McLuhan, the great Canadian intellectual philosopher, said the medium is the message. He meant that if you tell someone you love her while beating her up, the message is in the beating, not in the meaning of the words. McLuhan thought the meaning of a poem was the meat the robber brought to distract the rational watchdog while the poem, the medium, delivered its message to the reader. Books and TV are different media, and the difference between them as media is more significant than their content. What is on TV matters far less than the fact that it is on TV.

Duncan Kennedy once explained the medium of law school in an article called *Legal Education as Training for Hierarchy* (in *THE POLITICS OF LAW: A PROGRESSIVE CRITIQUE* (D. Kairys ed., 1982)). I agree with everything he said, but he is negative about law school, and I refuse to be negative about my work. So I begin my description of the medium of law school by pointing out the obvious, non-political, non-moral fact that in law school a student is given far more to read than anyone could.

One message of law school, therefore, is don't read what you are given to read. Don't even think about reading it twice. You must mine the material, targeting the important bits that must be extracted from a mountain of sand. It's like digesting food or breathing air. You need only a tiny bit of what's there. You take in a tremendous amount of stuff, cull the little bit you need, and expel the rest.

This is a hard lesson to teach people who have, for 15 years, been schooled to read everything that has been assigned. Most schooling involves not only reading all you are given to read, but reading things more than once. The medium of law school makes that impossible and, hence, the message is don't do it. Could anyone read Plato or Shakespeare or the description of a scientific procedure the way law students must read cases? If you read the *Tetis* or *Hamlet* or the method for separating platelets from blood the way law students read cases, and you thought you could then answer questions on them, you'd be a fool. But that's exactly what students have to do in law school. Not only do they have to read more than they can read with comprehension, they have to retain it and answer complicated questions about it.

Law school teaches students to do this because, when they practice law, someone can walk in to the office late Thursday evening, put a foot-high stack of papers on the desk, and say, Mary, Bob's got to take his kids to the dentist tomorrow morning. You have to go in for him at 10 o'clock on this

file.

If you want to be a lawyer, you cannot say, Ten o'clock? Tomorrow?! I can't read all that by 10 o'clock! You have to be able to read it by 10 o'clock, and it is in law school that you learn, first, how *not* to read the foot-high pile of papers and, second, having not read it, how, at 10 o'clock the next morning (or at 9 o'clock or 8 o'clock, if that's how long you have) to *act as if* you had read it at least 20 times. In law school, we teach our students not to freeze up when they do not know everything they need to answer a legal question.

We teach them to be satisfied with the best work they can do under the pressure of the situation. And to feel confident. A lawyer must be able to stand up in front of a judge, knowing almost nothing, and act as if he or she knew everything. As a lawyer you must know and you must know this deep in your body

and soul that the position you argue need not make ultimate sense or be fully coherent or reflect all that could be said on the subject. All it must be is your client's position, put forward, when it is called for, as well as you can put it forward given the time and resources available to you.

To be satisfied with this is what students learn in law school. It's what they learn in their first set of exams and integrate for two and a half years, getting it into their bodies and souls.

Another important lesson in law school is never to ask yourself what you personally think about a legal issue. We all have an interest, a stake, a personal view about the law. As Thomas Aquinas said, law is the business of the whole people. But when you act as a lawyer, nobody cares what you *personally* think about the law. People care what you think professionally, and the pressure of law school teaches you to think professionally by teaching you to treat your personal views about the law as a distraction. You can't be dumb and be a lawyer, but you can't be introspective either. You can't ponder things and try to get down to the bottom of them. In law, you have to work at the surface. As a lawyer, you never know everything you would need to know to seriously address the questions you must address. But you cannot admit that to yourself, and you must never admit it to anyone else.

A colleague caught me in the hall one morning as I was coming into school.

Oh! Steve! Good, I was looking for you. You wrote a comment on *B.G. Checo*. What does it say? I have to be in class in 10 minutes.

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*We teach students not to freeze up when they do not know everything they need to answer a legal question.*

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# Teaching

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I froze. I can recite the ratios of a great many cases off the top of my head, but *B.G. Checo* is not one of them. I wrote about the case four years ago, and even then I was interested only in a particular aspect of it. Luckily, my colleague added:

Does it say that you can have an action in tort even when you have an action in contract?

That s it, I said.

My colleague left. I walked into my office and asked myself, Is that really what *B.G. Checo* says? I wasn t sure and I had to check. I remembered seeing the proposition that you could have an action in tort even when you had an action in contract in an article I had been reading with my torts class about Chief Justice Dixon and stare decisis. So I flipped the pages of it, looking for a citation to *B.G. Checo*. It wasn t there, but there was a citation to *Rafuse* and suddenly SNAP! I realized that the ratio I had approved as a statement of *B.G. Checo* was actually a statement of *Rafuse*.

Oh! Oh! I picked up the book where I keep everything I ve published, found the comment on *B.G. Checo*, and read the first two sentences of it:

*B.G. Checo says that a party that suffers a loss because it was induced by a negligent misrepresentation to enter into a contract may proceed in tort against the party that made the misrepresentation, even if the representor is the other party to the contract and the misrepresentation was included as a term of the contract. The fact that the representee has an action in contract against the representor does not necessarily deprive the representee of its action in tort.*

I ran with this to my colleague s office. Mercifully, he had not yet left for class. Here, I said. Read the first two sentences. He did. Then he read them again, obviously impressing their meaning on his brain.

Thanks, he said, and went of f to teach. He was 100 percent satisfied, and I glowed with pride. Being able to give someone a concrete answer to a legal question under pressure gave me a great deal of pleasure. I d have preferred to know the answer cold, but I was satisfied to know that I could find it quickly.

We are teaching our students a great many things. Among them are caution, conservatism, and a measured approach to things. But the three biggest lessons, the three distinctive messages embedded in the medium of law school are as follows:

1. Don t read things;
2. Don t think too deeply about things;
3. Feel pleased and grateful when you know a little law.

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## Institute resources available

**W**ant to find new ways to improve your teaching? Try the following Institute resources:

### [New! 1999 Conference Materials](#)

*Fresh Looks at Teaching and Learning Law* contains information from 30 workshops on diverse topics, including methods and ideas for first-year courses, upper-level courses, clinical courses, skills and writing courses, and academic support. 250 pages. \$60

### [Other Resources](#)

*Teach to the Whole Class: Barriers and Pathways to Learning* by Laurie Zimet, Paula Lustbader, and Gerald Hess: This faculty development kit contains a 32-minute videotape and 73-page facilitator s workbook. \$199

*A Day in the Life of Law School Teaching* by Larry Dubin: This 35-minute videotape features in-class demonstrations of five teaching methods and includes interviews with the teachers and students. \$20

GETTING GRAPHIC 2<sup>o</sup> by Corinne Cooper: This 64-page book covers the why and how of using graphics in law school classrooms. \$20

*Bibliography*: This publication annotates articles about law school teaching methods and describes higher education publications that focus on teaching. No cost.

[Conference Materials](#). Teaching tools and ideas from Institute conferences. \$60 each

*1995 Conference* Covers (1) the why and how of multiple-choice exams, (2)° discussion techniques, (3)° how to introduce and teach skills in the classroom, (4)° cooperative learning techniques, (5)° course planning, and (6)° the use of verbal and nonverbal communication. 390 pages.

*1996 Conference* Covers (1) research on adult learning theory; (2)° ways to use graphics to help illustrate, explain, and organize legal concepts; (3)° basic aspects of student assessment-as-learning; (4)° teaching diverse students and how to discuss issues such as race, gender, class, sexual orientation, and disability; (5)° using computers as teaching and learning aids; and (6)° how to teach law in a way that fosters moral development. 220 pages.

*1997 Conference* Provides information on effective teaching methods for a diverse student body and includes an annotated bibliography; articles on diversity in the classroom, learning theory, and teaching methods; and teaching tips from conference participants. 260 pages.

To obtain any of these resources, contact the Institute for Law School Teaching.

# Test Builder

## *Construct better tests with selected-response questions*

By Steven Friedland

Perhaps the high and low points of a semester for a law teacher coincide. It is the last day of classes, when the culmination of all the professor has tried to accomplish often produces a burst of goodwill and nostalgia on the part of both teacher and students. But the goodwill too often subsides as students anxiously look ahead to the exam, and the teacher realizes that an exam must be produced and, even worse, graded. For teachers, the river of satisfaction has hit the dam of understanding: We teach for free and grade for pay.

In most American law schools, the evaluation of students occurs in the form of a single, end-of-the-semester, multiple-hour, essay exam. The current essay orthodoxy can be augmented, however, by alternative evaluations. In fact, legal academe discovered other evaluation forms long ago. The alternatives range from the time-consuming midterm exams and papers to the ephemeral quizzes and short writing exercises.

One staple in the alternative evaluation constellation is the selected-response question, better known as multiple-choice. These questions present particular problems: They offer credit only for a best answer, and they encourage guessing.

On the other hand, such questions offer great versatility, both on a final examination and as part of the in-class learning process. As a testing tool, these questions provide uniform grading and the opportunity for expansive coverage. As a learning tool, multiple-choice questions can be used as a feedback mechanism to facilitate students self-assessment and promote active interest in the subject matter.

### *Building Selected-Response Questions*

A blueprint of selected-response questions appears as follows:

*Facts* the body of the question;

*Call* the stem of the question;

*Answer choices* the selected responses.

Two recurring raw materials stand at the core of most selected-response questions: (1) the element of a legal rule or principle and (2) a related fact or facts. The element of mens rea required for depraved heart murder, for example, may combine with the fact that a driver who accidentally killed a pedestrian was drunk at the time. The relationship between legal elements and facts is dissected every day in class in the form of hypothetical questions and appellate case reports. In the context of legal problem solving, the element-fact relationship is central to the outcome.

### *Step 1: Combine Element and Fact*

The first step in the process of constructing selected-response questions is to combine a legal element and a fact. The combination of law and fact is not only important for the body of the question (the fact pattern) but also imperative for the selected responses (answer choices). Illustrations include:

<u>Element</u>	<u>Fact</u>
Mental state for arson	Falling asleep with a lit cigarette in someone else's house.
Termination of a joint tenancy	Secretly selling a share of a joint tenancy
Freedom of Religion	State law regulating the size of religious symbols in public burial grounds.
Impeachment of a witness	Questioning a witness on whether she had been charged with perjury.

### *Step 2: Build a story around the element-fact pairing.*

The story provides the context for the basic element-fact combination. A question without a fleshed-out story is less realistic and far less interesting. Story lines from books, movies, television shows, or everyday incidents are popular. The story commences in the body of the question and may continue in the answer choices. Continuations are reflected by facts in the answer choices added through such statements as *If X occurred, then . . . or T will win if . . .*

Thus, if a law-fact combination is impeachment cross-

examination of the witness about a perjury charge, a story may be created about a trial involving two youths from New York charged with murder in Alabama. A witness for the defense testifies that he saw the youths near the murder scene while making his morning grits. Can the witness be asked on cross-examination whether he had been charged with perjury before? In the answer choices, the story can be embellished with different facts, such as the perjury charge was three years old, the witness had been tried and acquitted on the perjury charges, and so on.

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# Test Builder

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## Step 3: Select an Objective for the Question

The objective of a question is crucial to how it is analyzed. The differing objectives give multiple-choice questions versatility. Objectives include:

- (1) the best solution to the problem;
- (2) the best/worst argument by a party to the dispute;
- (3) the legal and/or policy rationale for the best answer.

When the objective of the question is communicated to the test-taker, it becomes the call (or stem) of the question. A call of the question should be a complete or nearly complete sentence that has the test-taker resolve an issue (who is most likely to prevail?), evaluate an argument (what is the most effective argument for *X*?), or explain an underlying rationale (what policy supports the court's conclusion?). Underline or italicize the call to make it stand out.

## Step 4: Create Answer Choices

The construction of short-answer or essay questions effectively ends after Step 3. Selected-response questions require an additional step—the creation of answer choices. Usually four choices will do; additional choices do not significantly reduce the odds of guessing and make questions more difficult to construct.

Answer choices usually contain an element-fact pairing, although sometimes the answer contains only facts or law. The contents of the answer choices depend on the call of the question. Thus, a call asking for the most likely type of crime that has been committed in the fact pattern may yield answers with only a choice of crimes. A call asking for the best argument by a party will likely focus on the law combined with facts. A call asking for which situation is most likely negligence may have only facts in the answer choices.

Incorrect answer choices can be created by describing (1) correct but irrelevant rules of law, (2) correct but incomplete rules of law, and (3) incorrect rules of law. An answer choice can be overruled precedent, the minority view of a rule, or an inapplicable rule.

When creating answer choices, create one answer choice that is definitely preferable to the others, not one that is marginally better. The distractors incorrect choices should be of a similar length and construction to the best answer choice and plausible to the weaker test-takers. Avoid none of the above answer choices.

## An Example

In property law, a form of multiple ownership is the joint tenancy, which is distinguished by how it is created and its right of survivorship. One issue that arises in joint tenancy doctrine is how a secret sale affects a joint tenancy. Essentially, such a sale destroys the joint tenancy as to the transferring party. Further, a judicial partition may sever the joint tenancy, but the mere initiation of partition proceedings does not.

**Step 1: The Element-Fact Pair:** Terminating a joint tenancy a secret sale of a joint tenant's share.

**Step 2: The Story Line:** Siblings Alice, Bonnie, and Charles (*A*, *B*, and *C*) were deeded the Palace estate by their parents as joint tenants with the right of survivorship. Months later, after watching Melrose Place, the siblings began to argue and Alice initiated partition proceedings. At about the same time, Bonnie secretly conveyed her share of the property to Dana (*D*). Charles did nothing. When Charles learned about the partition proceedings, which were still pending, he drove in a furious state to see Alice. On the way, Charles died in an auto accident.

**Step 3: The Objective:** Which of the following is the most likely outcome?

**Step 4: The Answer Choices:**

A. Dana and Alice now own the property as tenants in common because the secret conveyance severed the joint tenancy only as to Bonnie. (**Best Answer**)

B. Bonnie owns all of the property because the secret conveyance was invalid and Alice lost her share of the property by initiating partition proceedings. (**Incorrect conclusion and incorrect statement of law**)

C. Bonnie still owns part of the property because a tenancy by the entirety cannot be destroyed by a secret conveyance. (**Incorrect conclusion and irrelevant statement of law**)

D. Dana and Alice own the property as tenants in common because the four unities are required at common law to create the joint tenancy. (**Correct conclusion but irrelevant statement of law**)

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## Exam bank closes

The multiple-choice exam bank that the Institute for Law School Teaching has administered since 1995 is now closed. We have decided to cease collecting and distributing exams because we lack the resources to maintain the bank at a sufficiently high level of quality and responsiveness. Over 650 law teachers have contributed or received exams from the bank.

The Institute is committed to helping legal educators with the critical area of evaluation and assessment. Consequently, we will publish a series of articles in *The Law Teacher* that address evaluation and assessment issues. In this issue of *The Law Teacher*, Steve Friedland offers information on constructing multiple-choice exam questions (see story on page 6).

# Visual imagery and law teaching

By Karen Gross

One of the challenges facing those teaching first-year students is how to help students learn to compare and contrast cases. The task involves multiple skills, including the ability to think critically about what one is reading. For many students, this is a very difficult task and takes considerable time (and many frustrating moments). In thinking about the difficulty of the task, it struck me that today's students are very visually oriented and fully capable of making comparisons of visual imagery. Indeed, visual comparisons are much easier for some students than word and concept comparisons. This led me to use fine-art imagery in my first-year class.

I do this exercise about a month or so into the semester long enough to have dealt with a small repertoire of cases and short enough to still be able to capture lost students. I show the students two portraits, one by Picasso of Marie Therese (1937) and one by Dante Gabriel Rossetti called La Ghirlandata (1973)....

I begin by asking students what *similarities* there are between the portraits, and I put their findings up on the board. Students make the following kinds of observations: both portraits are of women; both are in color; both women are seated; both women are looking to the side; both women look distant and detached; both women have their arms near their faces. Then I ask students to identify the *differences* between the portraits. They make the following kinds of observations: the styles are distinct the Picasso is modern and cubist while the Rossetti is more realistic and old-fashioned; the colors used by Picasso are primary and vibrant; Rossetti uses softer, natural color; Picasso's portrait seems harsh and hard; Rossetti's seems almost tender and appealing; Picasso uses straight lines and edges; Rossetti uses curves and shading....

I then talk to the students about what they have just done. (I deconstruct, in essence, the art comparisons.) At the simplistic level, they have found in art what I want them to find in cases. In comparing the portraits, they have compared cases and have identified what in law we call fact similarities and differences. I emphasize that cases, like paintings, tell a story, and each story is different. Reading cases, then, is searching for similarities and differences in a

story expressed in words, not paint.

I then move the analysis to another level. First, I talk about the artists. Both were painting women they knew; both had complex relationships with these women....Picasso drew in the 20th century; Rossetti drew in the 19th century. I then ask the significance of these added observations.

From this added material, I talk about the importance of recognizing when cases were decided (like when paintings were painted). Many legal decisions are products of their era and can be explained or justified based on the then-existing state of the law. I then discuss the idea of legal evolution, how the cases we read show movement (some would say progress). I alert students to think about cases as having a time and a place and to identify their context.

I then talk about the painters and their styles and approaches. I analogize this to judicial styles. I introduce students to the idea that judges bring to their decision-making certain judicial approaches. I talk about judicial activism and judicial restraint. I talk about judicial philosophy. I keep returning to the differences (visual) between Picasso and Rossetti. I ask students to pay attention to who wrote the decisions as they read cases.

I then explain that cases operate at many levels like a multi-layered cake. They tell a story; they represent a particular time in legal development; they reflect a judicial philosophy. So when reading cases, one needs to work at all of these levels. We then put the exercise into action by comparing and contrasting two cases and applying same to a hypothetical.

...[T]he value of the exercise is that it has a lasting benefit....The use of art gives some students an ability to see what is happening in the law school classroom for the first time. While there are students for whom the art is largely meaningless or for whom the exercise does not work, for those who suddenly can see, the exercise is well worth the time and effort.

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*This is excerpted from TECHNIQUES FOR TEACHING LAW (pages 91-93).*

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*Cases, like paintings, tell a story, and each story is different.*

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## Submit articles on practical teaching skills to *The Law Teacher*

**T**he *Law Teacher* encourages readers to submit brief articles explaining interesting and practical ideas to help law teachers become better classroom teachers. Articles should be 500 to 1,500 words long. Footnotes are neither necessary nor desired. The deadline for articles to be considered for the spring issue is February 4, 2000. You may submit an article on paper. If you have composed your manuscript on a word processor, please also include a copy of your work on floppy disk. Submissions

through electronic mail also are welcome. After review, all accepted manuscripts will become property of the Institute for Law School Teaching.

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# Teaching with small groups

By Barbara Glesner Fines

Law teachers are increasingly recognizing the value of cooperative student learning in the classroom. Educational research explains why this approach to learning can be so effective.

When student-peers interact in learning, their cognitive approach differs from their learning in a teacher-centered classroom. Rather than view the relationship as one in which knowledge is given from teacher to student, the peer learners are more likely to view themselves as engaged in a cooperative process in which both participants are actively learning. Even more significantly, each peer is also teaching teaching in a way that is cognitively different from that of a faculty member. Since the peer has only recently learned (or is currently learning) the material, the peer teacher is more likely to think through the steps of the learning process consciously than one who has greater expertise. Thus, the learning that occurs in peer groups is a cooperative, active process of constructing knowledge.

The affective dimension of the small-group process also affects student learning. Peers working in small groups are less exposed to the risk of public error and competitive pressures than when called upon individually to recite before the full class. Thus, the nature of the discussion that occurs in these small groups differs from the dialogue with the professor in the larger class. In small groups, students are more likely to explore possibilities, ask questions, take risks, and learn from their mistakes.

There are many ways to structure cooperative learning in the classroom, but the easiest may be to allow students to work in pairs or teams to discuss questions or problems posed in class. For faculty first beginning to use this technique, some basic guidelines can help avoid problems.

## Plan carefully your small-group assignments.

Tasks requiring mere recall of information will rarely sustain discussion and may convey an unintended message that individualized preparation of materials is unnecessary. Conversely, if you are asking for a very carefully phrased response (e.g., draft the legislation) rather than ideas, solutions, or arguments, in-class cooperative groups are less likely to work effectively. Writing is essentially an individual activity, and cooperative work with written assignments is better left to cooperative critique and editing, rather than drafting.

Cooperative learning is most effective for tasks requiring critical analysis. Questions that work very well in small-group settings include those requiring the students to generate or choose among solutions to a problem presented by the case or problems assigned for class. Some questions we ordinarily pose in Socratic dialogue make good candidates for group work. For example: Which rule/

approach is better and why? How might the attorneys have avoided this problem? How is this rule likely to affect people's actions in the future? What are the arguments for and against this approach? If a problem or question would require students to absorb any significant additional facts before discussion, these problems should ordinarily be provided to students ahead of class.

## Be sure students are prepared for cooperative tasks.

Unless you are asking students to share personal experiences or observations, be sure that you have provided them with sufficient background to effectively address the in-class work. In-class group work can become an exercise in pooled ignorance if students have not mastered the basic materials for the class (either because the assigned materials were not sufficient or because the students have not prepared). Also students may also need some preparation for the cooperative work itself.

Providing students some basic guidelines for brainstorming techniques, active listening, and allocation of responsibilities in the group can enhance the effectiveness of the group's work.

## Preface group tasks with individual tasks.

Unless you have asked students to prepare a problem or question ahead of time, when you pose the question for group discussion you should provide a moment to think before beginning discussion. One minute is ordinarily sufficient. It allows students who are more introverted to work within their preferred learning mode. Also, providing students a moment to gather their thoughts reinforces a more general message that glib responses are not necessarily preferable to thoughtful responses. At least occasionally, preface group work with techniques to ensure individual accountability (short quizzes, random questioning on basic materials, written assignments, etc.). Students understand well that group work presents free-rider risks and will quickly come to resent regular group work if the instructor does not design the classes to minimize this risk.

## Listen and learn.

As the students begin discussion, walk around the classroom and listen. Work with students who seem stuck or reluctant to engage in this type of work. For professors who feel like this technique is too much out of control (How do I know they are learning it right? How can I be sure they aren't just socializing?), walking around and listening to the discussion will demonstrate fairly quickly that this technique

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# Writing research papers: 10 top tips

By Marshall B. Kapp

Virtually all law students write at least one legal research paper during their law school career, besides composing the usual array of briefs, memos, and legal instruments. In the experience of grading hundreds of legal research papers, I have accumulated an assortment of pet peeves and compiled a list of tips that other law teachers may find useful to share with their students at the outset of the writing endeavor. Most of these suggestions fall in the category of common sense, which is precisely why they need to be set forth explicitly. Here, I present my top ten list.

## 1. Analyze and synthesize; don't just paraphrase.

Don't thankfully latch onto one article directly on your topic, wish that you had written that very article, and then spend 25 pages just paraphrasing it, even with proper attribution (i.e., many footnotes, but most of them being *id s*). In real legal practice, you will rarely be lucky enough to find one unassailable authority that conclusively and unarguably resolves your issue.

If you can find incontrovertible authority on all fours with your case, by all means rely on it.

Most of the time, however, the law has to progress by analysis that synthesizes, mainly through analogy and distinction, different pieces of a puzzle. Research papers should reflect that complex process.

## 2. Avoid sweeping generalizations unless you can back them up with authority.

Legal writing involves argument and persuasion based on a reasoning process beginning with supportable premises, not the mere assertion of a proposition. Statements such as

Congress should repeal the ERISA preemption because all HMO executives care only about the bottom line may be a hit on the political campaign trail but detract markedly from credibility in legal writing, unless supporting sources can be cited.

## 3. Avoid the obvious.

Unless you are making a really unassailable proposition, such as The earth revolves around the sun, using terms such as obviously, clearly, of course, unarguable, simply, certainly, and well known raise enormous red flags for the reader.

If you have authority for a proposition, cite it. If you don't have any authority, perhaps the proposition is not as obvious as you thought.

Besides, if your point is really that obvious to everyone, why waste time and space restating it? And, how can you be so sure that another lawyer won't come along and disagree with the proposition that you thought was so clear?

## 4. Name one.

Similarly, terms such as many, several, numerous, some, and widely held raise flags unless there is citation to examples. Think about how you would respond to a reader who sees such a term used, questions your accuracy, and demands, Name one! If you cannot, your bluff has been successfully called.

## 5. Don't apologize for your positions.

You rarely need to preface your statements with introductory quasi-apologies or such equivocations as In my opinion, I think, I believe, or I feel.

First, the reader of legal writing really doesn't care what the author thinks, believes, or feels. In this genre, the only things that matter are what you can prove or logically support through reasoned analysis and argument.

Second, the reader automatically assumes that any proposition for which you do not cite authority must be your own opinion, so there is no need for the reminder. Just make your points and let them be evaluated for what they're worth.

## 6. Any particular law in mind?

Avoid making broad statements such as doing *X* is illegal unless you can explain which specific statute, regulation, or common law rule is being violated, and why. Be especially cautious about making the claim that doing *X* is unconstitutional unless you can back up that claim with one or more constitutional clause(s).

## 7. Cite primary sources.

In a legitimate legal discussion, even the least strict constructionists at least begin by examining and citing the relevant law itself. Constitutional clauses, statutes, regulations, and judicial decisions are the primary building blocks of legal analysis; everything else is, literally, commentary. You can't write a good legal research paper based solely on citations to secondary sources such as law review articles and textbooks. You have to begin with the actual law. Then, you can argue about interpretation. Legal readers, in the first instance, want to know what the law itself says, rather than what some law professor has to say.

## 8. No gratuitous comments.

Legal writing is not the place for gratuitous comments (e.g., We should not forget that . . . or Unfortunately, the court disagreed . . .) or throwaway lines. Words are the

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*Most of these suggestions fall in the category of common sense.*

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# Writing

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attorney's only tool, so law students must learn to write as though every statement counts. In the same vein, use of rhetorical questions (e.g., Why, you might ask . . .) should be minimized in legal writing, in favor of declarative statements. The reader wants to know your position on the issues, and providing your position as an answer to a rhetorical question may strike many readers as a bit condescending or patronizing.

## 9. Keep the tone serious.

Legal writing does not have to be somber and boring. Indeed, it ought to be creative and interesting. Creativity and provocation must take place, however, within a serious tone. Certain techniques that may fit well into certain other forms of writing (e.g., humor, rhetorical questions, a whiz bang!! feel) detract from the purpose of a legal research paper, which is to persuade the reader to agree with and ultimately to act upon your argument. The worst criticism that can be leveled against an attorney is He/she is dishonest, but the next most devastating is He/she's a joke. An attorney is of little value to the client if others won't take the attorney seriously, and law students should learn how to begin to earn that respect through their writing style.

# Small groups

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really is effective teaching. At a minimum, group work provides an excellent assessment device for you to discover how and what students are learning.

## Diversify group tasks.

You needn't have all students work on the same question. Divide the class in half; have the small groups work on generating opposing arguments or different aspects of the problem. Or divide the students into groups to come up with questions, hypotheticals, or problems, rather than arguments, answers, or solutions.

## Bring them back together.

When the discussion begins to wane, or the time allotted for discussion ends, the instructor has several options. You may simply want to proceed with the lesson. Students, however, need and deserve some feedback on their discussion. A brief comment on their discussions may be sufficient (e.g., All the groups came up with some good solutions . . .). If students have been asked to record their ideas, you can collect their reports and provide written feedback. Another closure device would be to take a poll of groups (How many groups decided this was the correct approach?). You may also want to use the small-group discussions as the starting point for further exploration. Small groups can be asked to report back on their work. This is more effective if students are asked to engage in different tasks or the range of responses is very broad.

## 10. Proofread.

In Evidence and elsewhere in the curriculum, law students learn about presumptions and burdens of proof. When it comes to evaluating a law student's and eventually a practicing attorney's writing and the arguments being made in that writing, most readers start with a presumption that sloppy writing (e.g., misspellings, erroneous punctuation, noun-pronoun disagreement, grammatical mistakes) connotes sloppy thinking. Too many mechanical errors in a text can be so distracting that they obscure almost totally the argument the writer is trying to make. In today's word-processing age, there is no excuse for turning in a paper that has not been thoroughly reviewed. The student can catch up on sleep *after* the paper has been submitted.

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Otherwise, to avoid repetition, you may combine group reporting with polling (How many other groups agreed with this position?).

## Read more about it.

It is quite possible and effective to structure an entire class using a team-learning approach. A rich body of literature is available to those who wish to expand their use of cooperative work groups in class. The following bibliography provides some starting points:

- Neal A. Whitman, PEER TEACHING: TO TEACH IS TO LEARN TWICE 14 (ASHE-ERIC Higher Education Report No. 4 1988).
- John B. Mitchell, *Current Theories on Expert and Novice Thinking: A Full Faculty Considers the Implications for Legal Education*, 39 J. LEG. EDUC. 275, 283-5 (1989).
- David Johnson and Roger Johnson, *Instructional Goal Structure: Cooperative, Competitive, or Individualistic*, 44 REV. OF EDUC. RESEARCH 213, 228 (1974).

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# Review sessions: Proceed productively

*Traditional formats are terribly inefficient for teaching law*

By Louis J. Sirico, Jr.

Near the end of every semester, my Property students ask me if I plan to conduct a review session. I think they want me to deliver a performance beyond my ability. However, by thinking about teaching methodology, I have come upon a way to meet their needs.

First, it is helpful to review traditional review formats. Consider the method often used in liberal arts courses. If I were teaching such a course, perhaps my students would be satisfied if I touched on the main themes I covered and pulled it all together. However, while highlighting the themes of a course is certainly valuable, it is not enough. The students also need to understand the sophisticated technical and policy analysis that goes to the heart of a substantive legal course such as Property.

The alternative method is to focus only on the specific questions that are troubling the students. The difficulty here lies in determining which questions the students want me to answer. I could simply make an educated guess. I could ask students to submit questions in advance. I also could respond to questions that students raise during the session. Yet, in none of these scenarios could I be sure that I was addressing the topics that were bedeviling the majority of students.

These traditional formats are terribly inefficient for students. In each format, the student listens to the instructor discuss themes or respond to questions. If the student already understands the theme or knows the answer to a question under discussion, the student is wasting time. Even if the instructor answers a question that puzzles a student, the answer is designed for the entire class and not particularly tailored to the student's individual needs. If the instructor fails to reach questions on which the student needs help, the student loses a significant amount of valuable study time.

My alternative format seems to work better. It is more interactive than the traditional method and more tailored to the needs of the individual student. However, success depends on two requirements. First, the student must engage in some class review and bring questions to class. Second, students must be willing to help their colleagues.

This is how I describe the format to my students:

*Here is how it works. You come to class. I break you up into groups of about six. You take turns answering one another's questions. When you run into insurmountable disagreements, you ask me to come over to your group. I come over and do my best to straighten you out. Then, I move over to another group seeking my assistance. Of course, you are always more*

*than welcome to talk with me outside of class.*

This format has proven successful. About two-thirds of the students come. Presumably the remaining one-third either is insufficiently prepared to take part or does not believe that the session will benefit them. During the session, I am quite busy moving from one group to the next. The groups seem willing to wait until I can get to them. When a group deals with all the questions before it, its members quietly depart. The session usually takes one hour.

This format has four special benefits. First, the participating students get all their questions answered. Second, a student's questions get particularized attention either from other students or from me. Third, students learn to help one

another in groups. The experience may open them up to the possibility of engaging in team work and joining or revitalizing study groups. Fourth, because participating requires preparation, the format may motivate students to begin serious study of notes and outlines at an earlier stage.

This format satisfies the realistic goals of a review session. To condense the entire course into a one-hour lecture is an unrealistic goal. To conduct a session in which I intentionally drop hints about the contents of the forthcoming exam would be an inappropriate goal. The only realistic, appropriate goal is to deal with the questions that students have at a specific stage of their exam preparation. This review format deals with those questions in a way that is responsive and interactive.

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*This review format deals with student questions in a way that is responsive and interactive.*

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