

# True North: Navigating for the Transfer of Learning in Legal Education

*Tonya Kowalski*<sup>†</sup>

## I. INTRODUCTION

There is no more important topic in the whole psychology of learning than transfer of learning . . . practically all educational and training programs are built upon the fundamental premise that human beings have the ability to transfer what they have learned from one situation to another.

—James Desse<sup>1</sup>

As lifelong learners, we all know the feelings of discomfort and bewilderment that can come from being asked to apply existing skills in a completely new situation. As legal educators, we have also experienced the frustration that comes from our students' struggles to identify and transfer skills from one learning environment to another.<sup>2</sup> For example, a law student who learns to analogize case law to a fact pattern in a legal writing problem typically will not see the applications for those skills in a law school essay exam several weeks later. She may only learn that the same skills apply through an experience of trial, error, grade anxiety, and triage. Similarly, when law students learn how an

---

<sup>†</sup> Associate Professor of Law, Washburn University School of Law. J.D., Duke University School of Law; B.A., University of Florida. I thank the many people who provided their valuable feedback on early drafts, particularly my colleagues, Michael Hunter Schwartz and Myrl Duncan, and my husband, Kent Corkum. I am also grateful for the insights and suggestions offered by Robert Iff, Lead Article Editor, and the rest of the editorial team at the *Seattle University Law Review*. Washburn Law Library's Nancy Gray expertly located and managed an extraordinary number of crucial interlibrary loan materials. My students, past and present, stimulated my thinking about transfer and inspired my search for new answers. Finally, my research was guided in large part by the indispensable bibliographies in SARAH LEBERMAN, LEX MACDONALD & STEPHANIE DOYLE, *THE TRANSFER OF LEARNING: PARTICIPANTS' PERSPECTIVES OF ADULT EDUCATION AND TRAINING* (Gower Publ'g Co. 2006), *infra* note 14. All opinions and errors are my own.

1. JAMES DESSE, *TRANSFER OF TRAINING: THE PSYCHOLOGY OF LEARNING* 213 (McGraw Hill 1958) (quoted in ROBERT E. HASKELL, *TRANSFER OF LEARNING: COGNITION, INSTRUCTION AND REASONING* 3 (Academic Press 2001)).

2. See generally, e.g., Laurel Currie Oates, *I Know That I Taught Them How to Do That*, 7 *LEGAL WRITING: J. LEGAL WRITING INST.* 1 (2001).

equitable doctrine like unclean hands applies to a particular torts problem in one class, only the smallest percentage will then see the connection and potential application for the doctrine in a contracts course with another professor.

“Transfer of learning” is at the very essence of what lawyers do every day. The most classic example comes from formal legal analysis, where attorneys take both concrete rules and analogies from precedent and apply them to new legal problems. Of course, lawyers do learn to “transfer” these skills into practice over time. Unfortunately, that period of time is a long one, and economic pressures demand that students leave law school better able to segue to the profession with a much shorter learning curve in core skills.<sup>3</sup> Law students would benefit greatly if, when arriving from their undergraduate coursework, they were able to access and recontextualize the reasoning, writing, and communication skills they learned there. While in law school, they would further benefit from a greater understanding about how to translate knowledge and skills to other courses and, eventually, to practice.

Fortunately, we are in an era of legal-education renaissance. In the decades since the civil rights era,<sup>4</sup> law schools and educators have slowly continued to answer the call to produce new lawyers who are proficient in core lawyering skills.<sup>5</sup> Law schools are no longer purely pragmatic apprenticeship-model trade schools, as they were in previous centuries.<sup>6</sup> Nor do they inhabit the other, more recent end of the spectrum, as purely theoretical disciplines seeking validation as legitimate courses of academic study.<sup>7</sup> The ongoing dialectic between theory and skills is settling into a still uneasy hybrid of doctrinal and applied education. In order to nurture new lawyers who are “smart with[] a purpose,”<sup>8</sup> the time has come for doctrinal and skills curricula to be coordinated to a greater degree. The need for greater integration of skills and doctrine within legal education has resulted in many calls to teach core lawyering skills across

---

3. Cf. ROY STUCKEY AND OTHERS, BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROADMAP 16–18 (Clinical Legal Educ. Ass’n 2007) [hereinafter BEST PRACTICES] (discussing legal education’s mandate to better prepare lawyers for practice).

4. John C. Dubin, *Clinical Design for Social Justice Imperatives*, 51 SMU L. REV. 1461, 1465 (1998); see also WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 92 (John Wiley & Sons, Inc. 2007) [hereinafter EDUCATING LAWYERS] (also known as the Carnegie Report).

5. See generally BEST PRACTICES, *supra* note 3.

6. See EDUCATING LAWYERS, *supra* note 4, at 25.

7. See *id.* at 25 (inferring the generally-accepted notion that the move to purely doctrinal law study was a largely reactionary movement away from the stigma of trade school status).

8. See *id.* at 142.

the curriculum.<sup>9</sup> This integration will create a tremendous need for educational tools designed to help students transfer their learning from doctrine to practice and back again. Fortunately, an entire subfield of education and cognitive psychology called “transfer of learning” has insights and tools to offer legal education.

This Article is the first to comprehensively examine transfer theory as a method to integrate the larger law curriculum.<sup>10</sup> It proposes that law schools should employ “mental maps” based on schema theory to help students encode knowledge for future transfer and to conceptually integrate their courses.<sup>11</sup> This approach uses meta-schema based on core lawyering skills in order to help students attain a basic sense of orientation and know how particular skills will manifest, depending on the contexts in which they are used. The Core Skills Approach proposed by this Article explains how to teach and encourage students to create maps and use specific maneuvers to transfer learning between contexts, thereby bridging the gaps both among courses and between law school and practice. The remainder of this Introduction gives a brief overview of how transfer theory addresses evolving issues in legal education and introduces the Core Skills Approach as the next step in that evolution. Part II then examines the evolutionary development of transfer theory and is followed by a discussion in Part III of how legal education has incorporated transfer theory to date. Part IV discusses the Core Skills Approach and how to put it to work for one’s own students. Finally, following a brief conclusion in Part V, the Appendix contains sample schemas, guides, and modules that professors and students can adapt to suit their

---

9. E.g., Alice M. Noble-Allgire, *Desegregating the Law School Curriculum: How to Integrate More of the Skills and Values Identified by the MacCrate Report into a Doctrinal Course*, 3 NEV. L.J. 32 (2002).

10. Michael Hunter Schwartz has examined transfer as one of the three core concepts underlying learning theory, of which the other two are learning and instruction. See generally Michael Hunter Schwartz, *Teaching Law by Design: How Theory and Instructional Design Can Inform and Reform Law Teaching*, 38 SAN DIEGO L. REV. 347, 366 (2001). Several articles address transfer within specific sub-disciplines: See David A. Binder, Albert J. Moore & Paul Bergman, *A Depositions Course: Tackling the Challenge of Teaching for Professional Skills Transfer*, 13 CLINICAL L. REV. 871, 872, 882–88, 896–98 (2007); Susan E. Provenzano & Lesley S. Kagan, *Teaching in Reverse: a Positive Approach to Analytical Errors in IL Writing*, 39 LOY. U. CHI. L.J. 123, 158–59, 173–75 (2007); see generally David A. Binder & Paul Bergman, *Taking Lawyering Skills Training Seriously*, 10 CLINICAL L. REV. 191 (2003); Sandra Ratcliff Daffron, *Lessons Learned from Palestinian Professors about Transfer of Learning*, 55 J. LEGAL EDUC. 571 (2005); Oates, *supra* note 2.

11. The reasons for integrating any curriculum are manifold, and the process requires a good deal of thought about the philosophy behind the particular institution’s curricular design. J.A. BEANE, *TOWARD A COHERENT CURRICULUM* 6–13 (Alexandria, Va. ASCD 1995). For example, while one school might decide that the unifying principle behind its curriculum is to promote social justice, another might prefer a solid foundation in the doctrines or a pragmatic skills education. See *id.* at 15. The model offered in this Article uses lawyering skills, but attempts to fold the other concerns within its four categories.

own needs and tastes, all in the process of designing their own cartographies of legal education.

The problem of skills transfer is not unique to professional schools; it has stymied educators and students all the way from preschool to the workplace. Somewhat maddeningly, the “double paradox” is that transfer is the ultimate goal of education, yet the hardest one to achieve.<sup>12</sup> That paradox has not been lost on psychologists and learning theorists: “[M]ost researchers and educational practitioners, whether ‘liberal’ or ‘conservative,’ agree—a rare event, indeed—that meaningful transfer of learning is among the most—if not *the* most fundamental issue in all of education. They also agree that transfer of learning seldom occurs.”<sup>13</sup>

Transfer theory, which comes to us under many names and from numerous disciplines, shows that students tend to acquire knowledge by storing and encoding it in schematics<sup>14</sup>—also called cognitive maps<sup>15</sup> or mental models<sup>16</sup>—that are tied to the subject and the learning environment.<sup>17</sup> These, in turn, act as original examples with which to evaluate future learning environments and to reason by similarity.<sup>18</sup> Colleagues from a university can pass each other completely unnoticed in the supermarket because their schemas do not have a place for each other outside of the academic environment. In a cross-cultural example, indigenous speakers and writers have explained that many First Peoples tie their stories and knowledge to physical locations in the sacred cosmology of the land.<sup>19</sup>

Although normally knowledge is highly bound to specific patterns, people can learn to create more freedom of access between stored areas of knowledge by using broader, intersecting schematics.<sup>20</sup> Research

---

12. HASKELL, *supra* note 1, at 9–17.

13. *See id.* at 3–4; *see also id.* at 13 (quoting Anthony Marini & Randy Genereaux, *The Challenge of Teaching for Transfer*, in ANNE MCKEOUGH, JUDY LUPART & ANTHONY MARINI, *TEACHING FOR TRANSFER: FOSTERING GENERALIZATION IN LEARNING* 7 (Lawrence Erlbaum Assocs. 1995) (“Unfortunately, achieving significant transfer of learning has proven to be a difficult chore. Dating back to the beginning of this century, the research literature on transfer is replete with reports of failure.”)).

14. SARAH LEBERMAN, LEX MACDONALD & STEPHANIE DOYLE, *THE TRANSFER OF LEARNING: PARTICIPANTS’ PERSPECTIVES OF ADULT EDUCATION AND TRAINING* 14–15 (Gower Publ’g Co. 2006).

15. Gary W. Evans, Don G. Marrero & Patricia A. Butler, *Environmental Learning and Cognitive Mapping*, 13 ENV’T & BEHAV. 83, 83–104 (1981).

16. LEBERMAN ET AL., *supra* note 14, at 15.

17. *Id.* at 15.

18. HASKELL, *supra* note 1, at 58.

19. *See, e.g.*, Frank Pommersheim, *The Reservation as Place*, in BRAID OF FEATHERS: AMERICAN INDIAN LAW AND CONTEMPORARY TRIBAL LIFE 11, 13–14 (Univ. of Cal. Press 1997); JUSTIN RICHLAND & SARAH DEER, *INTRODUCTION TO TRIBAL LEGAL STUDIES* 19–30 (Altamira Press 2004).

20. LEBERMAN ET AL., *supra* note 14, at 14–15.

shows that humans store information in schema according to the similarities between patterns in situations they experience.<sup>21</sup> Yet they retrieve information according to the differences between situation patterns.<sup>22</sup> The more schemas a person has available for comparison, the better a pervasive schematic can illuminate the differences between patterns in situations, training the brain to search for knowledge that can be generalized and applied to solve a new problem.<sup>23</sup> Therefore, because human beings tie their learning to very specific patterns, any solution to the transfer problem in law school must involve the search for highly inclusive meta-schematics that can span multiple contexts, as well as stimulate students to access those cognitive maps through learner motivation<sup>24</sup> and metacognitive strategies.<sup>25</sup> For example, imagine how helpful it would be to discover cognitive templates that could help students bridge analytical skills from first-year legal writing to writing for clinic; doctrinal knowledge from classroom discussion in Constitutional Law to the final examination; and doctrinal knowledge from first-year Torts and Contracts to a tortious interference suit encountered five years later in practice.

When law students are asked to carry discrete, locally-bound knowledge and skills into uncharted waters, they can feel lost at sea. When oceangoing explorers are lost at sea, they navigate according to maps based on a set of thematic constants, like the Big Dipper or the North Star, that provide them with a basic sense of orientation. Law students and their instructors can do the same. This Article offers a method of orientation called the Core Skills Approach, which is expressed within three broad categories: Maps, Maneuvers, and Motivation. Maps refer to schematics that allow students to orient themselves within the larger field of knowledge in which they are working (Where am I? Where will I use this information in the future?). Maneuvers are strategies for recognizing when and how to transfer skills from one context to another (What skills or information have I already learned that can help me to solve this problem? How can I use this new material in my future work?). Motivation involves ensuring that students recognize their greater goals and keep them in mind when engaging in seemingly discrete tasks (Why do I need to learn and retain this information beyond the exam?). In law school, the stars that shine throughout every aspect of law study and practice are

---

21. DAVID A. SOUSA, *HOW THE BRAIN LEARNS* 142 (3d ed. 2006).

22. *Id.* at 142–43.

23. LEBERMAN ET AL., *supra* note 14, at 14–15.

24. HASKELL, *supra* note 1, at 117.

25. Robin A. Boyle, *Employing Active-Learning Techniques and Metacognition in Law School: Shifting Energy from Professor to Student*, 81 U. DET. MERCY L. REV. 1, 7 (2003); LEBERMAN ET AL., *supra* note 14, at 15.

the various categories of core lawyering skills, for example: formal analysis, critical reasoning, advocacy, and professionalism. These broad categories of skills are needed for even the most basic level of functioning throughout almost every practice area.

Thus, core lawyering skills provide ideal thematic constants, or “constellations,” upon which to base pervasive cognitive maps. Although the process of identifying them is relatively simple, it is crucial in that it provides the basic sense of orientation necessary to engage in the more detailed transfer navigation found later in the sequence. For example, if students can train themselves to see that all of their courses, as well as law practice, call for them to be good advocates, to apply formal legal analysis to problems they face, and so on, they are more likely to anticipate applications for their learning and to draw from past experience in new situations.

These many skills constellations form a familiar, comprehensive, and highly relevant horizon against which to effect transfer.<sup>26</sup> This Article provides a map called the “Core Skills Compass,” which is based on core lawyering skills in their fixed, abstract forms. The Core Skills Compass can act as one component of an overall approach to transfer, with the capacity to transform the perception of law school from a collection of disparate courses to a continuum of thematically-related elements. Students can then obtain the power to view the legal curriculum holistically. This simple insight, however humble it initially appears to be, provides the basic sense of orientation necessary to pursue sequential, increasingly specific methods for achieving transfer, as well as for making the methods progressively more instinctive.

From this core foundation, more detailed transfer is enabled through more specific maps, called “Applied Skills Guides,” which are oriented toward core lawyering skills as they manifest within applied and highly contextualized settings such as the classroom, exams, and practice. For example, extremely different areas of *formal analysis* and *critical reasoning* are emphasized depending on whether the applied environment has to do with a formal exam, a take-home exam, an informal memo, or classroom discussion. Very different aspects of *advocacy* are emphasized depending on whether they are being expressed in an objective, holistic, or persuasive setting. *Professionalism* takes many different

---

26. In terms of maps, the skill sets can also be thought of as lines of orientation similar to latitude and longitude, by which we orient according to a basic sense of relatedness and similarity across different learning contexts. In yet another analogy, these general categories could be thought of as elemental threads whose interaction and clustering form the warp and weft underlying the fabric of the entire law school curriculum, and out of which more specific applications are embroidered.

forms depending on whether it is expressed in student life, client representation, courtroom advocacy, or community-leadership settings. Using the applied skills guides enables students to move beyond abstractions by providing comforting familiarity and detailed knowledge about where they are going; in this way, their learning can be stored and encoded for easier and more effective retrieval within those future settings. To illustrate, a student might recognize that she is being asked to undertake formal analysis in both her legal writing class and her doctrinal exams, but she needs the help of applied skills guides for each core skills cluster, like those in the Appendix, to see how that analysis should be expressed in somewhat different forms.

Like oceangoing explorers, law student-navigators and their teacher-guides can also find their way by becoming expert sailors and learning the *maneuvers* necessary to consciously identify and take advantage of the conditions most favorable for quick and successful travel. In addition to the cognitive maps involving core lawyering skills, law schools can encourage transfer through the skillful maneuvers found in the form of several transfer techniques, such as metacognitive exercises that are specially designed to bridge between contexts. The research of top transfer theorist David Perkins and others offers strategies that help students tackle new contexts,<sup>27</sup> depending on how they are similar to or different from the original learning environment. For example, in a similar, or *near* context, a Contracts course might teach the parol evidence rule along with an exercise to draft an integration clause. In a *far*, disparate context, a clinician might design a metacognitive reflection exercise to help a student write her first motion based on the essential structures and techniques she learned for persuasive appellate briefing in her first-year analysis course. In addition, students and professors can create fair weather for transfer by emphasizing student *motivations* based on mastery, growth, service, and professional identity over motivations based on punishment and reward.<sup>28</sup>

Again, the Core Skills Approach expresses itself through the three main categories of maps, maneuvers, and motivation, all centered on the concept of lawyering skills. As explored in the later section on applications, newer law students can use this approach to help them identify what skills or knowledge are called for in a given situation, to judge what form they should take based on changing contexts, to mindfully approach transfer using a matrix for accessing their existing skills and information,

---

27. See generally David N. Perkins & Gavriel Salomon, *Teaching for Transfer*, 46 EDUC. LEADERSHIP 22 (1988); ROBIN FOGARTY, DAVID N. PERKINS & JOHN BARELL, HOW TO TEACH FOR TRANSFER (THE MINDFUL SCHOOL) (IRI/Skylight Training & Publ'g 1991).

28. E.g., HASKELL, *supra* note 1, at 116–18, 125–32.

and to link generalized skills and knowledge to a new assignment by using a metacognitive reflection exercise tailored to that assignment. Ideally, this approach will help students to create bridges between their prior learning and the endless variety of applications in which they find themselves involved. For example, such bridges could traverse the distance between learning how to cross-examine a witness, then taking a deposition; learning how to apply the canons of construction to statutory interpretation, then evaluating the similarities and differences when applying a different set of canons to the interpretation of contracts; or learning how to read a Supreme Court case for racial context, then articulating a culturally based narrative for an asylum applicant.

A baseline metacognitive exercise provided in the Appendix prompts the student to use more transfer tools like anticipation, generalization, and analogy, as well as to identify holistic motivators to activate brain centers that promote both learning and performance.<sup>29</sup> For example, when a student undertakes any new task, whether it is outlining, case briefing, or writing a paper, the exercise will ask her to determine what skills are called for and in what form, to consider what resources are available, and to think about what generalized information from this or other courses might aid her inquiry.<sup>30</sup> It will also remind her that it will be easier to perform the task well if she can activate the parts of her brain that respond to altruistic, humanistic motives,<sup>31</sup> such as helping a client to overcome crisis, serving justice, or becoming a better professional. Up to this point, students can use the tools with little professor intervention—perhaps with an orientation model at the beginning and mid-point of the first year, along with occasional class discussion.

Finally, professors can help their students by designing tailored reflective exercises that are matched to the goals and requirements of a specific assignment. Questions will cue students to look for useful knowledge from the current module, previous modules, and even prior coursework. They can prompt reflection on certain topics that the professor finds are often overlooked, as well as a search for creative analogies and distinctions. The questions can also connect the material to

---

29. See Appendix, *infra*.

30. At least from the Western viewpoint, “inquiry” is used here to suggest a type of learning characterized by a Socratic/Platonic spirit of free truth-seeking and discovery. Cf. Jeffrey Pyle, *Socrates, the Schools, and Civility: The Continuing War Between Incultation and Inquiry*, 26 J.L. & EDUC. 65, 65–67 (1997). From an Eastern perspective, inquiry similarly implies the non-dogmatic exploration of reality. See Ian Johnson, *The Application of Buddhist Principles to Lifelong Learning*, 21 INT’L J. LIFELONG EDUC. 99, 102–03 (2002).

31. ORI BRAFMAN & ROM BRAFMAN, SWAY: THE IRRESISTIBLE PULL OF IRRATIONAL BEHAVIOR 140–41 (Broadway Bus. 2008) (citing Dharol Tankersley, Jill Stowe, & Scott A. Huettel, *Altruism is Associated with an Increased Neural Response to Agency*, 10 NATURE NEUROSCIENCE 150, 150–51 (2007)).



real-life stories in order to increase internal motivation. Although the previous steps can stand alone, the customized reflective exercises promise to unify the entire approach, bringing the student's broader insights about the curriculum and learning goals down into the narrow application at hand, and encoding them with the very particular material being learned. To take advantage of the various transfer strategies promoted in the literature, professors can adapt their tailored transfer exercises from the all-purpose transfer exercise provided in the Appendix. Examples for a clinic motion assignment and casebook essay examination are provided. Although educators will make an investment of time up front, roughly the same tailored reflection exercise can be used for similar assignments, year after year. Maps, maneuvers, and motivations work synergistically within the carefully thought-out sequence of the Core Skills Approach, taking on strength in combination that they might not have had before.

It is crucial to note that I am presenting these methods within my own highly sequenced application as just one specific example, in order to inspire educators to draw upon the principles involved to craft approaches suitable to their own unique circumstances and responsibilities. For example, this format is based on an ideal where the model is used across the entire curriculum, but it can easily be scaled down to facilitate transfer between a few targeted courses such as Federal Indian Law and Tribal Court Clinic, Civil Procedure and Civil Clinic, or first-year Property and upper-level Real Estate Transactions.

## II. THE EVOLUTION OF TRANSFER THEORY

Transfer theory has been with us for decades, and it reached a peak of popularity and fashion in the 1980s and early 1990s.<sup>32</sup> Still, it remains a relatively small field in education and learning psychology, often viewed as anything from a utopian ideal to an abject failure.<sup>33</sup> As with most things, the truth probably lies somewhere in between: we cannot perfect transfer, but we can make it faster and more effective. To date, no legal scholarship presents a comprehensive overview of transfer theory. Because this Article is intended to contribute some of the theoretical underpinnings for future discussions about how transfer can benefit legal education, it will begin with a survey of transfer models. First, it will look at the types of transferrable knowledge and levels of transfer. Second, because transfer studies teach us that it is important to under-

---

32. See HASKELL, *supra* note 1, at 78.

33. See *id.* at xiii–xiv.

stand the history of our primary field of study,<sup>34</sup> this section will also look at the historical evolution of transfer theory from earlier schools, such as the formal-disciplines approach and behavioralism, to more recent schools, which emphasize cognition. In the next Part, this Article will synthesize and adapt transfer theory for use by the legal academy, including very specific tools that can be used in orientation programs, academic support programs, casebook courses, and skills courses. Whenever possible, I have condensed and simplified terms and concepts to suit an audience of end-users who, like me, are not themselves learning theorists.

Although some view the evolution of cognitive and allied theories as a linear improvement from earlier models,<sup>35</sup> the theories can instead be viewed as a continuum that allows the learning community to draw from each school of thought. For example, some stimulus/response methods associated with a behavioral approach could work well for simple transfer tasks, whereas more complex transfers require emphasis on the cognitive process.

It is essential to begin with some elemental, working definitions of transfer. Anthony Marini and Randy Genereaux broadly define transfer as involving “prior learning affecting new learning or performance.”<sup>36</sup> Others describe it as a situation in which “information learned at one time comes to influence learning and performance at a later time.”<sup>37</sup> Transfer is also referred to as the “carrying over” of learning from one domain to another.<sup>38</sup> Similarly, Gagne, Vekovich, and Vekovich define it as “the application of knowledge learned in one setting or for one purpose to another setting and/or purpose.”<sup>39</sup> Finally, Robert E. Haskell, who developed one of the most comprehensive theories of learning transfer, defines the phenomenon as:

[T]he basis of mental abstraction, analogical relations, classification, generalization, generic thinking, induction, invariance, isomorphic relations, logical inference, metaphor, and constructing mental models. . . . Indeed, transfer is so fundamental that to explain it is to repeat the same thing over and over, using different

---

34. *Id.* at 101–09.

35. LEBERMAN ET AL., *supra* note 14, at 13.

36. MCKEOUGH ET AL., *supra* note 13, at 2.

37. James M. Royer, Jose P. Mestre & Robert J. Dufresne, *Introduction: Framing the Transfer Problem*, in TRANSFER OF LEARNING FROM A MODERN MULTIDISCIPLINARY PERSPECTIVE, viii (Jose P. Mestre, ed., Info. Age Publ'g 2005).

38. HASKELL, *supra* note 1, at 26.

39. ELLEN D. GAGNE, CAROL WALKER VEKOVICH, & FRANK R. VEKOVICH, *THE COGNITIVE PSYCHOLOGY OF SCHOOL LEARNING* 35 (2d ed. 1997).

terms from different fields, in different contexts, on different levels of abstraction, and in different orders of magnitude.<sup>40</sup>

As Haskell suggests, transfer theory potentially intersects countless fields of study, including education, behavioral psychology, cognitive psychology, vocational training, and corporate training. This Part will present transfer theories along a loosely chronological trajectory, from the “classical” through the behavioral, cognitive, and socio-cultural perspectives.<sup>41</sup>

#### A. Introduction: Types and Levels of Transfer

Transfer gets harder as it moves up the hierarchy from general to applied and contextual transfers.<sup>42</sup> First, *general transfer*<sup>43</sup> is occurring all the time in our everyday lives. It happens almost instinctively whenever we build upon our previous general knowledge and learn new information or skills.<sup>44</sup> For example, our ability to learn a new language builds upon many of the same skills used to learn our native tongue.<sup>45</sup> For those of us that grew up before personal computers became commonplace, our ability to perform searches in Westlaw or Google builds upon the skills we learned when we became proficient with indexes and card catalogues. Next, *applied transfer* happens when a student uses general knowledge in a practical setting. For example, a student might learn about West’s Key Number system<sup>46</sup> and West’s “outline of the law”<sup>47</sup> in his legal writing class and then use those tools to complete a research exercise. Finally, *contextual transfer* occurs when the student crosses into a new problem or discipline,<sup>48</sup> such as when learning to break down a burglary statute into elements in Criminal Law and then drafting the elements of a constructive eviction complaint for a live-client case in poverty law clinic.

While legal education is concerned with all three types of transfer, contextual transfer is predictably the most vexing for students and

---

40. HASKELL, *supra* note 1, at 26.

41. See LEBERMAN ET AL., *supra* note 14, at 9–35 & Table 2.1.

42. HASKELL, *supra* note 1, at 29–30.

43. *Id.* at 29. Haskell also refers to general transfer as “non-specific” transfer. *Id.*

44. *Id.*

45. FOGARTY ET AL., *supra* note 27, at ix.

46. For non-legal readers, West Publishing’s Key Number system is a topical indexing system for rules and holdings announced in judicial opinions.

47. The “outline of the law” is the primary West categorization system for legal topics, which appears inside the front cover of any digest volume.

48. HASKELL, *supra* note 1, at 29.

teachers alike.<sup>49</sup> For this reason, transfer theorists break contextual transfer into a few different levels. Haskell identifies three: near, far, and creative. The first two, near and far transfer, come from the work of David Perkins and Gavriel Salomon. According to their theory, the instructor guides and nurtures the student's learning by using specific teaching strategies designed along a continuum, depending on how close or attenuated the new context feels from the student's experience.<sup>50</sup> A classic example of *near transfer* is learning first to drive a car and then a truck.<sup>51</sup> The required skills are not exactly the same, but most apply very clearly, such as steering, shifting gears, and using mirrors to survey one's surroundings.<sup>52</sup> An example from law studies might be learning to brief cases for a doctrinal class. Learning to brief just a few case decisions leads to general case-briefing skills that can be used to dissect any opinion. With a little bit of practice, the student quickly learns that for each case, she must identify the facts, holding, rationale, and policy considerations.

Transfer is a critical event for law instruction. Near transfer, which, in the law context, involves simple application of rules and case holdings to facts, is considered a basic level skill. Because law professors frequently require students to apply rules and case holdings to new fact patterns, near transfer regularly occurs in legal education. To facilitate greater near transfer, instructors teaching contracts principles could encourage students to connect those principles to the common contexts in which they arise.<sup>53</sup>

When moving across the curriculum, it is probably easier to identify examples of *far transfer*, as these tend to be the most troubling. The very essence of law practice is the ability to draw upon a set of core lawyering skills when faced with diverse facts and legal disciplines. A novice attorney faces a far transfer problem when she has experience writing a motion and brief on summary judgment in a tortious-interference-with-contract case, but then must write an appellate brief in a consumer-protection matter. As former novices ourselves, most lawyers can remember a time when they struggled with a new type of work product or a new area of law, desperately searching for what they hoped would be the perfect treatise, form, or sample brief to save the day. Most learned through trial and error that what worked best was to

---

49. *Id.* at 13. Here, the word "contextual" is used differently than in Haskell's typology, and carries with it the connotation of using similar tasks across far-reaching learning domains.

50. *Id.* at 30; *see also* Perkins & Salomon, *supra* note 27, at 25–26.

51. FOGARTY ET AL., *supra* note 27, at ix.

52. *See id.*

53. Schwartz, *supra* note 10, at 419.

reflect upon their general knowledge base and core skills like reading critically and identifying creative analogies.

Far transfer is a mark of excellence for practicing lawyers. Trial and appellate lawyers who are able to persuade courts to shift the application of principles beyond their initially apparent application to a previously unencountered problem are considered experts. Transactional lawyers demonstrate their expertise by transferring principles of law from cases and statutes into their drafting implications. Far transfer occurs much less frequently in legal education. To facilitate far transfer, instructors can encourage students to brainstorm broader applications of new contracts learning or to consider the contract drafting implications of that learning.<sup>54</sup>

The third type, *creative transfer*, happens when the learner envisions applications in uncharted areas or identifies a new concept.<sup>55</sup> Many such examples come from interdisciplinary studies, such as applying psychology to jury selection, or critical cultural and racial studies to litigation involving school desegregation. As shown below, these creative leaps become increasingly likely when the learner is well-versed in both disciplines.

When pioneering transfer theorists David N. Perkins and Gavriel Salomon identified near and far transfer in 1988,<sup>56</sup> they called for a set of teaching strategies or maneuvers for each. Combined, they are often referred to as “teaching for transfer.”<sup>57</sup> “Hugging” strategies help call the student’s attention to the close relationships between contexts and identify opportunities for transfer.<sup>58</sup> Simply put, when people hug, there is very little distance between them. Hugging strategies include *setting expectations*<sup>59</sup> for the students, *matching*<sup>60</sup> the lesson design to the desired outcome, *simulating*<sup>61</sup> the applied setting, *modeling*<sup>62</sup> the desired outcome, and providing *problem-based learning*<sup>63</sup> opportunities. These strategies will be explored further in the section on applications. For farther-removed contexts, Perkins and Salomon identified the need for “bridging” methods to help the student cross the gap between contexts.<sup>64</sup>

---

54. *Id.*

55. HASKELL, *supra* note 1, at 30 (also referring to this concept as “displacement” transfer).

56. See generally Perkins & Salomon, *supra* note 27.

57. See generally FOGARTY ET AL., *supra* note 27.

58. Perkins & Salomon, *supra* note 27, at 25–26.

59. FOGARTY ET AL., *supra* note 27, at 33.

60. *Id.* at 39.

61. *Id.* at 45.

62. *Id.* at 51.

63. *Id.* at 57.

64. Perkins & Salomon, *supra* note 27, at 25–26.

Bridges provide safe passage between two places, even though those places may remain far apart. Bridging asks us to *anticipate applications*<sup>65</sup> for the methods and knowledge being learned; to train in abstracting and *generalizing concepts*<sup>66</sup> from one context that may have broad application in others; to learn to skillfully and creatively find and *use analogies*;<sup>67</sup> to practice *parallel problem-solving*<sup>68</sup> so that students can see how what they are learning can be used in a myriad of new situations; and to guide students in *metacognitive reflection*<sup>69</sup> about their own learning, thinking, planning, and analytical processes. As with hugging, these maneuvers will be explored later in this Article.

### 1. Types of Transferrable Knowledge

Haskell's model identifies several varieties of transferrable knowledge, including content (substantive law), skills, strategy, conditions, and theory.<sup>70</sup> Law schools are good at teaching substance and theory in the abstract, and are improving at teaching skills. They have been criticized for their ability to teach real-world problem-solving,<sup>71</sup> which would tend to require greater abstractions, such as knowing which strategies to apply and when to use them. While legal education is primarily concerned with encouraging students to transfer blackletter rules and basic analytical techniques, everyone can benefit from seeing the kinds of transferrable knowledge that are often overlooked but make us more well-rounded lawyers. In fact, studies like *Best Practices* argue that much more than analysis and subject-matter competence go into the toolbox sometimes called the core lawyering skills.<sup>72</sup> That toolbox should also include value-driven skills like professionalism and cultural literacy.<sup>73</sup> Strategic and conditional knowledge also apply to knowledge about one's own learning, and about how to improve one's own transfer. As with other studies supporting the use of metacognition, research shows that transfer improves when students become aware of what learning strategies worked for them in

---

65. FOGARTY ET AL., *supra* note 27, at 67.

66. *Id.* at 73.

67. *Id.* at 79.

68. *Id.* at 85.

69. *Id.* at 91.

70. HASKELL, *supra* note 1, at 31–32.

71. See BEST PRACTICES, *supra* note 3, at 18–29.

72. *Id.* at 52–54.

73. See Rennard Strickland & Gloria Valencia-Weber, *Observations on the Evolution of Indian Law in the Law Schools*, 26 N.M. L. REV. 153, 161 (1996); Carwina Weng, *Multicultural Lawyering: Teaching Psychology to Develop Cultural Self-Awareness*, 11 CLINICAL L. REV. 369, 401 (2005).

the past, as well as what kinds of knowledge are appropriate to use in a new context.<sup>74</sup>

Similarly, in the *Mindful School* model, Fogarty, Perkins, and Barell cast the different kinds of transferrable knowledge into six categories: knowledge (again, substantive law), skills, concepts, attitudes, principles, and dispositions.<sup>75</sup> They define *concepts* as “umbrella themes” that span a discipline or even a larger universe.<sup>76</sup> *Attitudes* involve a student’s emotions and affect toward learning, while *dispositions* tend to involve more habitual behaviors and tendencies.<sup>77</sup> Under this model, attitudes and dispositions probably dovetail well with professionalism, legal ethics, and student motivation.<sup>78</sup>

For legal educators, I propose grouping these concepts into a hybrid model in order to include the all-important skill set commonly called professionalism. In this hybrid model, *substance* becomes the student’s grounding in the content of a legal discipline, such as knowing the elements of the various crimes for Criminal Law, different types of jurisdiction in Civil Procedure, and different levels of scrutiny in Constitutional Law. *Process-driven skills* include both learning and lawyering skills that have a discernible methodology, such as outlining a brief, using IRAC to answer an exam problem, or engaging in metacognitive reflection when approaching a new assignment. *Problem-solving strategy* is harder to pin down. As Haskell described strategic transfer, it might involve learning strategies themselves,<sup>79</sup> such as remembering that completing extra practice exams enhanced performance in one class and remembering to use the same approach the following year. For legal education, it should also involve lawyering strategy, such as when to introduce an alternative argument in a brief, and how to address a difficult counterargument, among other things. I prefer to group all kinds of self-awareness of one’s learning process together into one category, as seen in the graphic below. Thus *attitudes and orientations* could (and should) include professionalism concepts such as commitment to public service, an orientation toward ethical practice, and so on. *Theoretical and critical understanding* are the deeper kinds of reflective, thoughtful insight into the material that come with good learning skills and a high degree of student motivation and self-direction.<sup>80</sup> They might also include analog-

---

74. HASKELL, *supra* note 1, at 31.

75. FOGARTY ET AL., *supra* note 27, at 5.

76. *Id.*

77. *Id.*

78. *Id.*

79. HASKELL, *supra* note 1, at 31.

80. *See id.* at 115–32.

ical reasoning, which Fogarty, Perkins, and Barell define as a core bridging tool for far-flung contexts.<sup>81</sup>

## 2. Types of Transfer

Haskell breaks down different kinds of transfer into approximately eight varieties, depending upon factors like whether they use prerequisite knowledge in a higher-order discipline or simply move laterally, and whether the knowledge or skills transfer literally to the new context or first require some degree of abstraction and generalization in order to apply.<sup>82</sup> These fine distinctions between transfer species are helpful to social scientists, who engage in empirical research and measure causal factors and outcomes. But for our purposes in teaching and curricular design, a much more general scheme proposed by Fogarty, Perkins, and Barell is probably more suitable. They call these the “somewheres of transfer,” and the three categories are (1) within content, (2) across disciplines, and (3) into life.<sup>83</sup> In law school, which for most students will represent their final field of study, educators are most concerned with the ability to transfer skills within the law school experience and into ecological learning environments like clinic, externship, and ultimately, law practice. Thus Perkins’s three “somewheres” likely would translate for us into transfer (1) within the same course, (2) across the law curriculum, and (3) into law practice.

### *B. A Brief History of Transfer Theories: From Formal Disciplines to Metacognition*

Depending on one’s needs, there are a few different ways to categorize the various transfer schools. First, *chronological* exploration shows how the more comprehensive, contemporary models evolved from early schools of thought, and will appear in greater detail in the next section. Second, transfer theories also tend to divide into two camps, depending on whether they place the *locus* of responsibility for transfer on the learning environment or on the student himself.<sup>84</sup> Those that favor the environment tend to focus their energies on improving things like curriculum and teaching methods.<sup>85</sup> Those that put the onus on the student emphasize the learner’s motivation or cognitive process.<sup>86</sup> A third way to categorize transfer theories is by their emphasis on one of three

---

81. FOGARTY ET AL., *supra* note 27, at 63–79.

82. HASKELL, *supra* note 1, at 31–32.

83. FOGARTY ET AL., *supra* note 27, at 97–99.

84. ROYER ET AL., *supra* note 37, at xii–xvi.

85. *Id.*

86. *Id.*



major causal factors for successful transfer:<sup>87</sup> (1) conceptual/content knowledge; (2) procedural/strategic knowledge; or (3) the student's disposition toward learning.<sup>88</sup> According to Marini and Genereaux, those that emphasize *content knowledge*, including basic facts, core concepts, and schematic relationships, posit that mastering a subject will spontaneously stimulate the student to use effective transfer strategies.<sup>89</sup> In contrast, scientists who stress *procedural knowledge* as the most important cause for transfer tend to focus on the learner's awareness of the specific steps within a task, as well as metacognitive strategies for monitoring and evaluating one's own thinking.<sup>90</sup> Finally, the third group stresses the centrality of learner *dispositions*, such as "perseverance, openness to new experiences, willingness to take risks, self-confidence, and desire to perform optimally."<sup>91</sup>

For now, these classification systems serve as a wide-angle lens for understanding how the various transfer theories developed. They can help the reader to see how law schools have followed—or overlooked—important developments in education over the years, as well as to envision how these approaches might work in law school classrooms today.

This section presents an overview of the evolutionary history of transfer theory and a critique of each of the stages. It may surprise most law-trained readers to see that traditional legal education relies almost exclusively on the nineteenth century model. The Langdellian model has relied on the tacit assumption that as long as students immerse themselves in the "formal disciplines" of Contracts, Torts, and Criminal Procedure, they will later intuit how to apply that knowledge to solve complex problems in practice. The Core Skills Approach uses the most effective techniques developed throughout the evolution of transfer theory and applies them to the specific context of legal education.

One can also see how the more recent cognitive and socio-cultural approaches have influenced the current push for skills training. This push has even resulted in occasional calls to move to the other extreme in the form of a more purely clinical law school,<sup>92</sup> although it is not clear from the literature that the model's proponents want to abandon formal

---

87. Marini & Genereaux, *supra* note 13, at 7.

88. *Id.* at 7.

89. *Id.* at 7, 9.

90. *Id.* at 7.

91. *Id.*

92. See Michael Coper, *Law Reform and Legal Education: Uniting Separate Worlds*, 39 U. TOL. L. REV. 233, 235 (2008) (noting that some proponents advocated what essentially amounted to a return to apprenticeships) (citing Jerome Frank, *Why Not a Clinical Law School?*, 81 U. PA. L. REV. 907, 914–23 (1933)); Karl Llewellyn, *On What Is Wrong with So-Called Legal Education*, 35 COLUM. L. REV. 651, 675–76 (1935).

training in the doctrinal subject areas.<sup>93</sup> Recent models have also influenced the humanizing legal-education movement, which, among other things, invites us to pay better attention to learner motivation. Later, when exploring specific applications for transfer theory within law school, the three divisions will become less important. This Article proposes that each approach has something to offer, and that content, skills, and learner motivation are equally central to the transfer process.

### 1. The Formal-Disciplines Model: A “Classical” Approach

The formal discipline theory is the point of departure in our chronology of transfer theories. The formal-disciplines approach emerged from classical education in general, and from Aristotle’s faculty psychology in particular.<sup>94</sup> The approach presumed that transfer would happen automatically when learning a well-chosen curriculum of formal arts and sciences<sup>95</sup> because the learner’s intellectual faculties such as “memory, attention, and judgment” would be enhanced in the process.<sup>96</sup> It was not the inherent content of the topics being taught that made them useful, but rather their value in training these faculties of the mind necessary for transfer.<sup>97</sup> Content was still considered very important to formal-disciplines proponents, however, albeit indirectly: only a carefully-chosen core curriculum, such as “astronomy, grammar, logic, and mathematics” could train the mental faculties.<sup>98</sup> In the classical curriculum, the primary methods for developing the student’s faculties were rote memorization and imitation.<sup>99</sup>

Later, the formal-disciplines approach came under critique by pragmatists like John Dewey<sup>100</sup> and legal realists like Jerome Frank<sup>101</sup> and Karl Llewellyn.<sup>102</sup> More recent research has shown that despite the careful selection of a classical core curriculum, those particular subjects are no more likely to enhance mental faculties in general, and transfer in

---

93. See Philip C. Kissam, *Lurching Towards the Millennium: The Law School, the Research University, and the Professional Reforms of Legal Education*, 60 OHIO ST. L.J. 1965, 2014 (1999) (“[I]n a ‘quasi-clinical’ law school, fewer class hours would be devoted to case method analysis in doctrinal courses and class hours might be reduced to permit more professorial attention to providing feedback on writing projects—through in-class comments, individual conferences, and brief written comments on a student’s writing or outlines for a writing project.”).

94. LEBERMAN ET AL., *supra* note 14, at 9.

95. HASKELL, *supra* note 1, at 79.

96. LEBERMAN ET AL., *supra* note 14, at 9.

97. *Id.*

98. *Id.*

99. *Id.*

100. See generally JOHN DEWEY, *DEMOCRACY AND EDUCATION* (Free Press 1997).

101. See generally Frank, *supra* note 92.

102. See generally Llewellyn, *supra* note 92.

particular, than are most others.<sup>103</sup> As a result of this kind of critique, the formal-disciplines approach has been largely set aside in many educational settings.<sup>104</sup> Nevertheless, the formal-disciplines approach seems to form the genesis for the Langdellian model, which has represented the default design for legal education since the late 1800s.<sup>105</sup> Although the doctrinal-subject approach in law school certainly has its critics, it turns out that adherence to the formal legal disciplines may not necessarily be a bad thing for transfer. While modern research shows that the disciplines cannot hope to achieve transfer in a vacuum—students still need to adopt some conscious transfer strategies—they do provide the core knowledge base necessary to foster general knowledge that can be transferred to new situations.<sup>106</sup>

## 2. The Behavioral Approach

Many readers will recall studying the behavioral schools, often famously epitomized by stimulus generalization theory and Pavlov's dogs. In one example, a dog was classically conditioned to salivate at a 500 Hz tone, and then further conditioned to salivate proportionally and symmetrically when it heard tones above and below 500 Hz.<sup>107</sup> The rate of salivation was strongest at 500 Hz, the original learning tone, and decreased proportionately when the dog heard tones above and below the original tone by increments of 25 Hz.<sup>108</sup> This research led to the *associationism* explanation<sup>109</sup> for transfer of learning, such as the *identical elements* model. In that model, Thorndike and Woodworth posited that transfer happens only when the primary and secondary learning domains share concrete, similar elements.<sup>110</sup> According to this view, if the number of shared elements between learning contexts increases, so does the amount and likelihood of transfer.<sup>111</sup> Critics point out that because scientists only produced this stimulus gradient in an isolated, laboratory setting, the theory fails to address many other dimensions vital to transfer, and has little value in an applied classroom setting.<sup>112</sup>

---

103. Cathlin Macaulay, *Transfer of Learning*, in TRANSFER OF LEARNING IN PROFESSIONAL AND VOCATIONAL EDUCATION 2 (Vivienne E. Cree & Cathlin Macaulay eds., Routledge 2000) (citing E.L. Thorndyke & R.S. Woodworth, *The Influence of Improvement in One Mental Function upon the Efficiency of Other Functions*, 8 PSYCHOL. REV. 247–61 (1901)).

104. E.g., LEBERMAN ET AL., *supra* note 14, at 9; HASKELL, *supra* note 1, at 79.

105. See EDUCATING LAWYERS, *supra* note 4, at 4–7.

106. HASKELL, *supra* note 1, at 101–10.

107. ROYER ET AL., *supra* note 37, at xiii.

108. *Id.*

109. LEBERMAN ET AL., *supra* note 14, at 11.

110. ROYER ET AL., *supra* note 37, at xii–xiii.

111. *Id.* at xiii.

112. LEBERMAN ET AL., *supra* note 14, at 12.

One major flaw in the behavioral model is that it fails to take into account the importance of the need to *generalize* learning in order to apply it in new contexts. Charles Judd pointed out that transfer occurs “by way of understanding the abstract general principle underlying a phenomenon which can then be applied to situations that do not possess obvious identical elements.”<sup>113</sup> Bower and Hilgard said of the generalization approach that “one of the advantages of learning by understanding rather than by rote is that understanding is transposable to a wider range of situations, and less often leads to erroneous applications of old learning.”<sup>114</sup> The generalization approach also identifies meaning as an important cohesive force, whose presence is necessary to the comprehension and adaptability of general principles.<sup>115</sup> For this reason, stimulus generalization theory has some limited utility, mostly for explaining near transfer, where the new context is so close to the original learning domain that little generalization is required.<sup>116</sup>

I agree with these critics that the behaviorist theory is of limited use in law school because the most important transfer problems in legal education involve bridging knowledge and skills to far contexts, rather than near. Stimulus generalization theory requires both the former and new context to have a high degree of similar, concrete features.<sup>117</sup> For example, there is very little about an exam question involving a Fourth Amendment traffic stop that cues the student to use analytical strategies learned in the negligent infliction of emotional distress memo problem from her legal writing course. Solving even the most routine legal problems requires learners to generalize from the lessons and principles learned in one field, or in one clinical experience, and then to apply them to an entirely new legal problem.

### 3. The Cognitive Approaches

Cognitive research forms an umbrella category for several diverse transfer sub-theories. They all orbit around the central idea that transfer results from finding conceptual similarity between learning contexts, rather than the structural similarity emphasized by earlier approaches.<sup>118</sup> They also emphasize the importance of the professor’s role in facilitating, or “shepherding,”<sup>119</sup> the students in finding the conceptual similari-

---

113. HASKELL, *supra* note 1, at 81 (citing C.H. Judd, *The Relation of Special Training and General Intelligence*, 36 EDUC. REV. 42–48 (1908)).

114. LEBERMAN ET AL., *supra* note 14, at 12–13.

115. *Id.*

116. HASKELL, *supra* note 1, at 80.

117. LEBERMAN ET AL., *supra* note 14, at 11–12.

118. ROYER ET AL., *supra* note 37, at xvi.

119. LEBERMAN ET AL., *supra* note 14, at 17.

ties needed to connect their learning. This is true, whether talking about hugging or near transfer, or bridging, which refers to far transfer.<sup>120</sup> Out of the dozens of cognitive theories that touch upon transfer, this Article will focus on (1) schema theory, which studies how the brain organizes and stores knowledge,<sup>121</sup> (2) the information-processing model, which explores how the brain finds and retrieves knowledge,<sup>122</sup> and (3) meta-cognition, which examines how self-aware learning is used “to adapt existing schemas to new situations.”<sup>123</sup>

Because there is considerable overlap between schema theory and the information-processing model, they appear here together but with a varying emphasis. Both theories were born from the idea that the brain contains a cognitive system for encoding information for storage and retrieval. Initially, scientists described that system in terms of long-term semantic memory networks dotted by nodes. Semantic memory refers to stored general knowledge that is not tied to a specific experience, including, but not limited to, words and language.<sup>124</sup> The nodes contained conceptual representations of semantic information<sup>125</sup> and were connected by pathways along which activation could spread in chunks of semantically-related memories.<sup>126</sup> According to this framework, transfer happens when the presence of newly-learned information triggers the long-term memory networks, activating similar material that has relevance to the new topic.<sup>127</sup>

The earliest of the cognitive theories was the *information-processing theory*. Information processing posits that the brain encodes new information within the context of the original learning domain, but then also allows that information to be accessed for use in a new context when the brain recognizes similarities between the two.<sup>128</sup> The brain’s system for building, altering, and accessing information begins with a preconscious stage. In that stage, the brain selectively perceives environmental stimuli that cause it to consciously recognize similarities between old and new situations.<sup>129</sup> Once the similarities come into the conscious mind, the mind actively evaluates them in terms of prior learn-

---

120. *Id.*

121. Macaulay, *supra* note 103, at 6.

122. *Id.*

123. LEBERMAN ET AL., *supra* note 14, at 15.

124. See generally Alex Martin & Linda L. Chao, *Semantic Memory and the Brain: Structure and Processes*, 11 CURRENT OPINION IN NEUROBIOLOGY (2001).

125. ROYER ET AL., *supra* note 37, at xiv–xv.

126. *Id.*

127. *Id.* at xv.

128. LEBERMAN ET AL., *supra* note 14, at 14.

129. Macaulay, *supra* note 103, at 7 (quoting M.J. ATKINS, J. BEATTIE, & W.B. DOCKRELL, ASSESSMENT ISSUES IN HIGHER EDUCATION 50 (Univ. of Newcastle upon Tyne 1993)).

ing.<sup>130</sup> The cycle completes when the brain then encodes the new experience for retrieval<sup>131</sup> and adaptation in future learning environments.<sup>132</sup>

*Schema theory* grew out of the information-processing model, filling the need to describe the qualitative differences in how memory is encoded. Schema theorists posited that knowledge is encoded not just according to the frequency of contact, but also by narratives and associations.<sup>133</sup>

Schemata are coherent knowledge structures that are stored in memory. They arise from and mentally represent frequently experienced situations such as those pertaining to recognizing people, executing a tennis stroke, visiting the doctor, remembering the route to work, understanding the nature of a theory and reading a textbook. These contextually based mental entities profoundly influence all aspects of learning including perception, comprehension, memory, reasoning, and problem-solving.<sup>134</sup>

Schemas were thought of as “data structures” that enabled new information to be encoded according to its similarity with other frequently occurring events already embedded within existing memory, as well as filling in the narrative and “adding to” the information that was presented.<sup>135</sup> *Anticipatory schemas* help students to understand new learning in terms of what they already know.<sup>136</sup> These “mental models”<sup>137</sup> foster transfer by catalyzing the student to perceive similarities between existing knowledge and the newly-encountered context where that knowledge can be applied.<sup>138</sup>

*Metacognitive theories* focus on strategies that encourage students to consciously reflect upon their own learning in order to promote transfer.<sup>139</sup> John Flavell, who is thought to be the originator of the term, defines metacognition as “one’s knowledge concerning one’s own cognitive processes and products or anything related to them, e.g., the learning-relevant properties of information or data.”<sup>140</sup> Metacognitive theories hold that students will adapt their learning more effectively when

---

130. *Id.*

131. See HASKELL, *supra* note 1, at 83.

132. Macaulay, *supra* note 103, at 7 (quoting M.J. ATKINS ET AL., *supra* note 129, at 50).

133. ROYER ET AL., *supra* note 37, at xvi.

134. Macaulay, *supra* note 103, at 7 (quoting J. Cust, *Recent Cognitive Perspectives on Learning-Implications for Nurse Education*, 15 NURSE EDUC. TODAY 280, 283 (1995)).

135. ROYER ET AL., *supra* note 37, at xvi.

136. LEBERMAN ET AL., *supra* note 14, at 15.

137. HASKELL, *supra* note 1, at 82.

138. LEBERMAN ET AL., *supra* note 14, at 15.

139. HASKELL, *supra* note 1, at 83.

140. Boyle, *supra* note 25, at 7 (citing John H. Flavell, *Metacognitive Aspects of Problem Solving*, in *THE NATURE OF INTELLIGENCE* 231 (Lauren B. Resnick ed., 1976)).

they understand the inner workings of their own cognitive learning processes.<sup>141</sup> It makes sense, then, that metacognition is often presented as synonymous with, or as a subset of, active learning.<sup>142</sup> When teachers include students in the rationale behind their teaching methods, they empower students to become active, rather than passive participants in the learning process, shifting the energetic locus of learning and transfer from professor to student.<sup>143</sup>

In the metacognitive approach, a strong emphasis is also placed on further empowering students to discover their own learning styles. Learning styles are a sub-class of active learning theory.<sup>144</sup> Because the legal-education literature has given much more attention to learning styles than to the larger transfer picture, readers may already be well-versed in the various types. The current model states that students tend to favor one or more modes for receiving information: visual, auditory, or kinesthetic, and that they tend to conceptualize information either globally or sequentially.<sup>145</sup> When students can compensate for their learning styles, and when professors teach to multiple styles, transfer tends to improve.<sup>146</sup> By taking learning styles, cognitive structures, and self-reflective learning strategies into account, professors can avoid creating a “one-size-fits-all” approach to the classroom and help to create contexts in which students are able to “construct their own meaning.”<sup>147</sup> In law school, active learning directly aids the transfer of learning because it goes beyond the rote memorization of rules and promotes analogical reasoning with case decisions.<sup>148</sup>

Metacognition requires a “deliberate effort” on the part of students to connect new knowledge to already-familiar concepts.<sup>149</sup> The primary “self-monitoring” strategy used in this approach is to answer self-reflective questions. Professors design the questions to direct students’ attention to procedures, conceptual connections within the material, and even to the psychological states that the students experience during an initial learning task.<sup>150</sup> The idea is that this heightened awareness will help the brain to encode new knowledge within the full spectrum of

---

141. Boyle, *supra* note 25, at 7–8.

142. *Id.*

143. Boyle, *supra* note 25, at 13–14 (2003) (citing Paula Lustbader, *From Dreams to Reality: The Emerging Role of Law School Academic Support Programs*, 31 U.S.F. L. REV. 839, 855 (1997)).

144. Boyle, *supra* note 25, at 2–3.

145. *Id.* at 2.

146. *Cf. id.* at 4–5; *cf.* Schwartz, *Teaching Law by Design*, *supra* note 10, at 386–92.

147. Boyle, *supra* note 25, at 1–3.

148. *Id.* at 4 (noting that metacognition “helps students to learn the holding and the reasoning of cases and to apply the cases to different factual situations.”).

149. Macaulay, *supra* note 103, at 8.

150. HASKELL, *supra* note 1, at 81.

classroom, conceptual, and emotional experiences, making it easier to recall and adapt the information later. Theorists also believe that this mindfulness during the learning process will help the learner to see similarities between contexts, allowing her existing schema to evolve and encompass new information.<sup>151</sup> When a person's schema adapts to include new information and patterns, it becomes much easier to "connect the dots," cueing latent learning that might be useful to solve a new problem. When educators present material with these strategies, they encourage their students to mindfully encode material in useful patterns or schema, making it easier to recall and use the information later.<sup>152</sup>

#### 4. Socio-Cultural Theories of Transfer

In the late 1990s, an amalgam of approaches matured under the broad heading of socio-cultural transfer theories. One of their key, underlying assumptions is that social context is a key element of learning and transfer, an idea championed by psychologist Lev Vygotsky.<sup>153</sup> When observing children, socio-cultural theorists saw that the majority of what they know comes not from formal education, but from "informal apprenticeships in everyday settings."<sup>154</sup> These observations led to the insight that some benefits of informal childhood apprenticeships could be re-created in a formal, adult educational setting.<sup>155</sup> This model came to be called the cognitive-apprenticeship model.<sup>156</sup> As this model developed, it borrowed some aspects from the traditional craft apprenticeship model,<sup>157</sup> which also served as the birthplace of legal education. This common heritage may be why we already see many aspects of the cognitive-apprenticeship model in legal education, particularly in courses that contain a strong skills component. One method from this school is scaffolding, the process by which an expert trains a student by starting with a high degree of input, only to fade away over time in order to allow the student to function independently.<sup>158</sup> The ultimate goal is to facilitate exploration and independence when confronted with new and challenging contexts.<sup>159</sup>

---

151. LEBERMAN ET AL., *supra* note 14, at 15 (citing Vivienne E. Cree & Ralph Davidson, *A Model for Transferring Learning*, in TRANSFER OF LEARNING IN PROFESSIONAL AND VOCATIONAL TRAINING, *supra* note 103, at 98).

152. *Id.* at 15.

153. Marini & Genereaux, *supra* note 13, at 4.

154. *Id.*

155. *Id.*

156. *Id.* at 4–5.

157. LEBERMAN ET AL., *supra* note 14, at 16.

158. *Id.* at 16.

159. *Id.* at 26.



The belief that carefully thought-out socio-cultural contexts are key to effecting transfer within formal education is not limited to the cognitive-apprenticeship model. Culture, taken in its wider sense to include race, ethnicity, gender, economic status, sexual identity, and other characteristics, can greatly affect the success or failure of transfer.<sup>160</sup> Full exploration of socio-cultural influences on learning exceeds the scope of this Article; instead, a few basic points are presented here. Hofstede identified four key elements that characterize learning relationships.<sup>161</sup> The first element is the power differential between teacher and student.<sup>162</sup> The second is one's ability to deal with uncertainty, such as being either spontaneous or procedure-oriented.<sup>163</sup> The third element involves an orientation toward either individualism or collectivism, a dimension that is being increasingly considered, for example, in trade relationships with countries like China.<sup>164</sup> The fourth element concerns a posture of either assertiveness or passivity, which, for example, can be intertwined with cultural constructs surrounding gender.<sup>165</sup>

In addition to the dichotomies identified by Hofstede, many other cultural elements can contribute to the educational mix. First, in terms of active learning strategies, culture can play a role in whether students process information globally or analytically, as well as whether they tend to process information better verbally or in writing.<sup>166</sup> Even anthropological research may contain much unexplored material relevant to transfer.<sup>167</sup> For example, indigenous scholars like Gregory Cajete show that the classificatory language and schemas arising out of the socio-cultural matrix of many indigenous peoples were (and are) part of an intricate, incredibly sophisticated, and practical system of logic that is the equal of (and arguably an improvement upon) the classificatory logic of the West in every way.<sup>168</sup> They are also surprisingly adaptable and continue to operate and serve those peoples even after being subjected to colonization, globalization, and urbanization.<sup>169</sup> Exploring culture and transfer

---

160. *Id.*

161. *Id.*

162. *Id.*

163. *Id.*

164. *Id.*

165. *Id.*

166. Boyle, *supra* note 25, at 2, (citing Paula Lustbader, *supra* note 143, and RITA DUNN & KENNETH DUNN, *THE COMPLETE GUIDE TO THE LEARNING STYLES INSERVICE SYSTEM* (1999)).

167. LEBERMAN ET AL., *supra* note 14, at 25.

168. See generally GREGORY CAJETE, *NATIVE SCIENCE: NATURAL LAWS OF INTERDEPENDENCE* (Clear Light Books 1999).

169. LEBERMAN ET AL., *supra* note 14, at 26. For one example of a Native American classification schema in the natural sciences, written by an indigenous author, see generally CAJETE, *supra* note 168.

within legal education is a delicate balancing act. To embrace it risks the pitfalls of stereotype and determinism; to ignore it fails the student.<sup>170</sup> To the extent that educators and students can achieve congruence by respectfully handling these issues, they are more likely to develop effective learning relationships, and thus, to enhance transfer.<sup>171</sup>

### 5. Unified Approaches

In recent years, a few theorists have attempted to draw from the best of each school of thought in order to arrive at a more balanced and comprehensive model for transfer. In a legal academy dominated for so many decades by a vexing tug-of-war between skills and doctrine, a model that recognizes the contribution of each is most likely to be successful, and perhaps even to bridge the skills-doctrine divide. Unified theories hold great potential for legal education because they draw upon the best of disciplinary immersion, metacognition, skills apprenticeships, and cultural diversity.

For example, Haskell's general theory of transfer is remarkable because it harmonizes fragmented schools of thought and varied psychological theories into a pragmatic whole.<sup>172</sup> Haskell developed an eleven-point model<sup>173</sup> that places equal emphasis roughly on the three conditions for transfer favored by earlier schools: knowledge, skill, and disposition. Rather than adopting a polar position between the formal disciplines and contextual learning, he recognizes that each offers a piece of the transfer puzzle.<sup>174</sup> Haskell used current research in cognitive psychology, neurochemistry, and educational theory to show that (1) transfer requires a large knowledge base in several areas of study, including both rote and

---

170. See LEBERMAN ET AL., *supra* note 14, at 26.

171. *Id.*

172. See generally HASKELL, *supra* note 1, at xix.

173. *Id.* at 45–46. Haskell's eleven requirements for transfer are:

1. Acquire a large primary knowledge base in the area in which transfer is required.
2. Acquire some level of knowledge base in subjects outside the primary area.
3. Understand the history in the area(s) that transfer is wanted.
4. Acquire motivation, or more specifically, a "spirit of transfer."
5. Understand what transfer of learning is and how it works.
6. Develop an orientation to think and encode learning in transfer terms.
7. Create cultures of transfer or support systems.
8. Understand the theory underlying the area(s) in which we want to transfer.
9. Engage in hours of practice and drill.
10. Allow time for the learning to incubate.
11. Observe and read the works of people who are exemplars and masters of transfer thinking.

*Id.* at xv. The first theme, related to knowledge, is intended to incorporate items 1, 2, 4, and 8. The transfer-oriented cluster includes items 3, 5, 6, 7, and 11. Finally, the third cluster, related to repetition and time, incorporates items 9 and 10.

174. *Id.* at 45–46.

deep understanding; (2) students need practice, drill, and time to incubate in order to build their ability to transfer; and (3) successful transfer is largely dependent on the student's own motivations and attitudes toward learning, as well as metacognition about his own learning process and how it works.<sup>175</sup>

Although his approach is often considered among the most comprehensive of the unified theories, Haskell downplays the importance of the more concrete metacognitive tools and strategies, such as Perkins and Salomon's work on hugging and bridging tools for near and far transfer.<sup>176</sup> Haskell's position seems to be that although a learner should be empowered with understanding about how learning takes place, the rest depends on whether she is a surface learner, motivated by mostly external pressures, or a deep learner, invested in self-actualization.<sup>177</sup> I do not think it is necessary to downplay metacognitive strategies in this manner. I see them as another useful set of pieces in the transfer puzzle. In the application section to come, I will propose a four-step model that builds upon Haskell's three clusters of conditions but reintroduces the idea of "teaching for transfer" using techniques like hugging and bridging. Rather than further the doctrine-skills divide, this method recognizes their equal importance and their underlying, mutually reinforcing relationship.

### III. HOW LEGAL EDUCATION HAS—AND HAS NOT—EVOLVED TO TEACH FOR TRANSFER

Most readers will already be familiar with legal education's basic evolution from trade apprenticeships, to formal disciplines, to recent attempts to bridge the skills/doctrine divide. This section explores how that history reflects the prevailing transfer theories of each period. Furthermore, because our present models are a result of the dialectic between historical apprenticeship and classicism, each of those extremes is still with us, and this Part will explore how each aspect can continue to contribute crucial components of the transfer puzzle.

#### A. *The First Renaissance: From Apprenticeships to Legal "Science"*

Contemporary law schools are the product of a centuries-long dialectic between practical apprenticeships and legal doctrine. Until the end of the seventeenth century, many generations of lawyers learned their craft in the apprenticeship model, partnering with a mature practitioner and learning ecologically, in the ultimate practice environment.<sup>178</sup>

---

175. *Id.* at 45–47.

176. See generally Perkins & Salomon, *supra* note 27; FOGARTY ET AL., *supra* note 27.

177. HASKELL, *supra* note 1, at 125–26.

178. EDUCATING LAWYERS, *supra* note 4, at 25.

The apprenticeship model had its problems, including a lack of regular curriculum and methods for ensuring quality.<sup>179</sup> At the end of the seventeenth century, the study of law was experiencing an identity crisis. The first formal law schools, most notably Harvard, were eager to distance themselves from the stigma of the trade school,<sup>180</sup> so epitomized by industrial-age economist Thorstein Veblen's<sup>181</sup> memorable barb, "the law school belongs in the modern university no more than a school of fencing or dancing."<sup>182</sup>

In addition to seeking greater status for legal studies, those leading the movement toward formalized instruction were eager to cast law among the emerging social "science" disciplines.<sup>183</sup> Accordingly, in the 1870s, Dean Langdell envisioned Harvard Law School as a temple of knowledge.<sup>184</sup> The development of the modern university was at its peak, and the movement to base knowledge on pure, decontextualized, empirical science led to the advent of the Langdellian model still used in large part today.<sup>185</sup> Empiricism, formalism, and positivism were the philosophical fashion, and the curriculum thus developed to focus on the blackletter law, the formal components and application of legal rules, and the study of doctrines within the sub-disciplines.<sup>186</sup> Langdell and his contemporaries developed the case method of instruction based on the premise that the development of the common law through judicial precedent could be analyzed, understood, and predicted as a scientific process.<sup>187</sup> Social context, morality, and relationships were greatly deemphasized because knowledge was seen as an end in itself.<sup>188</sup> This idea still holds some currency in our discipline; for example, Professor Stanley Fish recently rejected the academy's duty to promote core values<sup>189</sup> like social justice.

In terms of curriculum, what resulted from this movement was a fragmented, non-holistic presentation of legal disciplines. The resulting

---

179. *Id.* at 25.

180. *See id.* at 91–93 (discussing law schools' efforts to distance themselves from the stigma of trade school status).

181. *See generally* JOSEPH DORFMAN, *THORSTEIN VEBLEN AND HIS AMERICA* (Harvard Univ. Press 1934).

182. *Id.* at 97 (citing Byron D. Cooper, *The Integration of Theory, Doctrine, and Practice in Legal Education*, 1 J. ASS'N LEGAL WRITING DIRS. 51, 62–63 (2002)).

183. *Id.* at 25.

184. *See id.* at 4–7.

185. *Id.*

186. *Id.*

187. *See id.*

188. *Id.* at 5.

189. *See generally* STANLEY FISH, *SAVE THE WORLD ON YOUR OWN TIME* (Oxford Univ. Press 2008).

pedagogy<sup>190</sup> has been the vicarious learning/self-teaching model, in which the doctrinal professor typically engages only one student at a time, with the rest of the lecture hall expected to learn passively through observation.<sup>191</sup> The primarily Socratic, case-dialogue method represents the classic model. Modern instructors vary greatly along the unilateral lecture $\leftrightarrow$ Socratic dialogue continuum.<sup>192</sup> With few exceptions, instructors give the students little or no instruction in how to learn from the vicarious model, perform no classroom learning assessments, and do not test or provide feedback until the final exam.<sup>193</sup>

As mentioned in the earlier discussion of the formal-disciplines approach to transfer, the news for doctrinal learning is not all bad. First and foremost, Haskell recognizes that because analogical reasoning is the key to successful transfer across disciplines and contexts, students have to be *well-versed in the relevant doctrinal fields of learning*,<sup>194</sup> such as Contracts, Torts, and Civil Procedure. The more variegated bodies of knowledge and experience the student can acquire, the higher the chances are that she will be able to recognize differential problem patterns and recall the proper tools for a given problem's solution.<sup>195</sup> As discussed earlier, the cognitive overload that happens when a learner confronts a new context stems from locus-based learning. We tie our experiences to the contexts in which we learned them and have trouble seeing how to apply knowledge when the pattern changes:

Much of what we classify as learning, recognition and problem solving consists of becoming able to identify recurrent regularities in the environment. What makes such a task a problem is that the recurrent regularities—be they turns in a maze, elements in a temporal pattern, or a pattern in successive events—may either be masked by factors that are irrelevant to the regularity, or the regularity itself may be of such complexity that it exceeds the memory span that an observer brings to the task.<sup>196</sup>

Law schools should inculcate not just rote knowledge, but also critically reflective understanding. In other words, to transfer knowledge

---

190. Even though it is a misnomer, this Article uses the more popular term, pedagogy, instead of andragogy. When used correctly, pedagogy refers to child education rather than adult education. Schwartz, *Teaching Law by Design*, *supra* note 10, at 350 n.6.

191. *Id.* at 350–51.

192. EDUCATING LAWYERS, *supra* note 4, at 52.

193. Schwartz, *Teaching Law by Design*, *supra* note 10, at 351–52.

194. HASKELL, *supra* note 1, at 45–46.

195. *See id.* at 101–10.

196. Jerome S. Bruner, *Going Beyond the Information Given*, in GOING BEYOND THE INFORMATION GIVEN: STUDIES IN THE PSYCHOLOGY OF KNOWING 198 (J. Anglin ed., W.W. Norton 1973) (quoted in HASKELL, *supra* note 1, at 108).

and skills, the student needs some facility with the subject areas involved, and ideally, this should include the theory and history of that discipline.<sup>197</sup> Given that true proficiency in a topic can take years, pragmatically speaking, law students have to practice transfer while gaining proficiency in their given topics.

As law teachers, we implicitly recognize that some familiarity with the new topic is needed in order to meaningfully apply general legal skills. A good example might be the law student who retains novice-level proficiency in her first-year subjects and who must counsel a clinic client who has a matter involving mixed tort and criminal law. The clinic student draws upon, but also must increase, her subject-matter knowledge in those areas, while simultaneously increasing her process-based skills<sup>198</sup> as well. Of course, lawyers often are asked to transfer skills to doctrinal areas in which they have no previous training. When that happens, we teach our students to educate themselves about the field by reading secondary sources like treatises, in addition to key, binding, primary sources. Even then, they draw upon generalized knowledge gleaned from multiple areas of study in order to orient themselves to the new field. For example, a lawyer who knows that in criminal law, motive can be established by circumstantial evidence, can use that information to reason through a motivation requirement for persecution<sup>199</sup> in an asylum matter.

Transfer research shows that rote memorization of rules and their applications to precedent will not suffice. The adult learner must also have some understanding of the subject's deeper history and theoretical underpinnings.<sup>200</sup> Constitutional law cannot be divorced from the social movements that created it, such as the effect of racial desegregation on equal protection jurisprudence, or how the colonial doctrine of discovery shaped (and continues to shape) contemporary federal Indian law and policy. For these reasons, and because many cases call for holistic, client-centered practice, scholars like Professor Aliza Organick have called for an emphasis on cultural literacy not just in discrete courses, but across the curriculum.<sup>201</sup> This cultural literacy is not merely of the West-

---

197. HASKELL, *supra* note 1, at 45–46 (steps 1, 2, 3, and 8).

198. I use “process-based” here rather than the simpler word, procedural, in order to distinguish a type of knowledge from the rules of procedure for law practice.

199. To establish a claim for asylum, the applicant must prove, *inter alia*, that her persecutor was motivated by her “race, religion, national origin, membership in a particular social group, or political opinion.” 8 U.S.C. § 1158(a)(42)(A) (2006) (providing that persecution must be “on account of” one of these five stated grounds).

200. HASKELL, *supra* note 1, at 45–46.

201. See generally Aliza G. Organick, *Teaching Culture in the Classroom: Tribal Law and Best Practices in Legal Education*, Innovations in Tribal Governance, 13th Annual Tribal Law & Government Conference, University of Kansas, Lawrence, Kansas, February 13, 2009; Tonya Ko-

ern and Northern type advocated by E.D. Hirsch, Jr.<sup>202</sup> It must also include perspectives from the Eastern and Southern Hemispheres, as well as from indigenous peoples around the globe.

The required knowledge base includes not only rote and critically reflective understanding, but also other forms of knowledge, which Haskell identifies as procedural, strategic, and conditional.<sup>203</sup> Procedural knowledge is simply “how-to” knowledge.<sup>204</sup> Students learn how to formulate an IRAC analysis, how to file and serve a complaint, how to brief a case, and even how to outline and study for exams. Strategic knowledge focuses on understanding our own mental processes, such as how to acquire new information and skills.<sup>205</sup> For legal education, this can be expanded to include strategic thinking about research, reasoning, advocacy, negotiation, and client relations. Finally, conditional knowledge is the experience and understanding to know what types of knowledge are called for in varied contexts.<sup>206</sup> As seen in the applications below, a lawyer may need intense focus on narrative and human psychology when making an impassioned closing argument to a jury in a personal injury trial. On appeal to the state supreme court, the same lawyer could harm his case and his reputation by continuing to emphasize the same skills. In that context, while some emotion may be appropriate, the audience and task require greater focus on precedent, rules of law, and how they can be used to support the underlying narrative and policy.

With much of the renaissance in legal education discussing the integration of skills-based learning across the curriculum, many educators who teach in the traditional legal disciplines may understandably fear erosion of their time and resources to teach a topic comprehensively. In fact, the skills/doctrine debates have already caused a rift in legal education, and there is understandable fear about how far down the rabbit hole we wish to travel away from the traditional subject-specific fields of study exemplified by the Langdellian model, toward a model that might even be seen by some as a pendular reaction backward to a largely apprenticeship-based model. Haskell’s model seems to use the mixed approach, which avoids the polar extremes and draws from the best of each.

---

walski, *The Forgotten Sovereigns*, 36 FLA. STATE U. L. REV. 765 (2009); Strickland & Valencia-Weber, *supra* note 73; Weng, *supra* note 73.

202. See generally E.D. HIRSCH, JR., *THE NEW DICTIONARY OF CULTURAL LITERACY: WHAT EVERY AMERICAN NEEDS TO KNOW* (Houghton Mifflin Harcourt, rev. ed., 2002).

203. HASKELL, *supra* note 1, at 31.

204. *Id.* at 101.

205. *Id.*

206. *Id.*

*B. A “New Renaissance”: The Clinical and Humanizing Movements*

The legal-education renaissance arguably began in the Civil Rights Era, with the dawn of the clinical legal-education movement. Law schools began to develop live-client practice clinics, often imbued with a mission to inculcate social justice ideals<sup>207</sup> in their students. Looking back now, that tectonic shift had great implications for transfer of learning, beginning the shift from the pure, formal-disciplines model of Langdell to a more balanced curriculum with room for applied education. Moreover, the social justice mission offered students the chance to develop professional identities focused on altruistic (public interest) and mastery-based motivations, now proved to be essential for good transfer.

The “new renaissance” arrived in earnest in the early 1990s, when the American Bar Association, which accredits United States law schools, published its earth-shaking study, often referred to as the MacCrate Report or *Narrowing the Gap*.<sup>208</sup> The MacCrate Report stimulated a great deal of controversy and a great deal of discourse and scholarship on teaching, lawyering, professionalism, and core skills.<sup>209</sup> In 2007, two more long-awaited and pivotal reports proposed visions for educating law students holistically. They are the Clinical Legal Education Association’s (CLEA) *Best Practices for Legal Education*<sup>210</sup> and the Carnegie Foundation’s *Educating Lawyers*.<sup>211</sup> The MacCrate Report named the many shortcomings in law teaching and called for widespread change. The Carnegie Report signaled a fresh look at the value of apprenticeships in legal education.<sup>212</sup>

Many scholars have contributed to an explosion of fresh thinking about how to teach law for an effective and humane learning experience.

---

207. See ROBERT MACCRATE ET AL., FUNDAMENTAL VALUES OF THE PROFESSION, REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP (1992), available at <http://www.abanet.org/legaled/publications/onlinepubs/maccrate.html> [hereinafter THE MACCRATE REPORT] (identifying commitment to “justice, fairness, and morality,” pro bono service, and law reform as fundamental lawyering values); Antoinette Sedillo Lopez, *Learning Through Service in a Clinical Setting: The Effect of Specialization on Social Justice & Skills Training*, 7 CLINICAL L. REV. 307, 314 nn.50 & 51 (2001). Several roots gave rise to the philosophy that law schools have a duty to inculcate in students a commitment to bettering the public interest. They range from the inherent, historical values of the professional community to the inclusion of public service in the Model Rules of Professional Conduct. James L. Baillie & Judith Bernstein-Baker, *In the Spirit of Public Service: Model Rule 6.1, the Profession and Legal Education*, 13 LAW & INEQ. 51, 64–66 (1994). The social justice mission was heightened by the renaissance of clinical legal education during the Civil Rights Era. John C. Dubin, *Clinical Design for Social Justice Imperatives*, 51 SMU L. REV. 1461, 1465 (1998); see also EDUCATING LAWYERS, *supra* note 4, at 92.

208. THE MACCRATE REPORT, *supra* note 207.

209. See Schwartz, *Teaching Law by Design*, *supra* note 10, at 350.

210. BEST PRACTICES, *supra* note 3.

211. EDUCATING LAWYERS, *supra* note 4.

212. *Id.* at 25–29.



Familiar examples of these new approaches include promoting active learning, making our expectations more transparent, addressing different learning styles, teaching students *how* to learn, teaching collaboratively with students, and enabling contextual learning.<sup>213</sup> Because these methods are concerned with empowering students to guide their own learning and to build skills sets that are translatable into practice, they tacitly incorporate some aspects of transfer theory. But to date, very few legal scholars have expressly considered transfer theory and how it can be used to support both traditional and innovative law teaching.<sup>214</sup>

Most recently, the Humanizing Legal Education movement<sup>215</sup> has begun to build upon achievements in legal skills training and in student-centered teaching approaches that address active learning, learning styles, and other progressive techniques. While these achievements are important parts of the humanizing process, the movement has also begun to address important bases for student motivation, such as Krieger and Sheldon's study on law-student motivation and learner autonomy.<sup>216</sup>

### C. The State of Legal Education Today

Despite the many successes of the last few decades, most law schools today still are dominated by two competing curricula. One is the thematically separate doctrinal disciplines, and the other is the lawyering-skills curriculum, which consists of courses like legal writing, clinic, trial advocacy, client counseling, and negotiation.<sup>217</sup> In their most traditional forms, doctrinal courses focus on vicarious learning through intense Socratic dialogue with one student or lighter Socratic dialogue with several students.<sup>218</sup> They also offer few in-class exercises or active learning techniques and command one final exam at the end of the course,

---

213. For several of the seminal works on contemporary law teaching and curricular design, see generally THE MACCRATE REPORT, *supra* note 207; BEST PRACTICES, *supra* note 3; EDUCATING LAWYERS, *supra* note 4; Schwartz, *Teaching Law by Design*, *supra* note 10; and MICHAEL HUNTER SCHWARTZ, *EXPERT LEARNING FOR LAW STUDENTS* (Carolina Academic Press 2008).

214. See Schwartz, *supra* note 10.

215. See generally Symposium, *Humanizing Legal Education*, 48 WASHBURN L. J. (2008); Lawrence Krieger, *A Humanizing Dimension for Legal Education*, [http://www.law.fsu.edu/academic\\_programs/humanizing\\_lawschool/images/readinglist.pdf](http://www.law.fsu.edu/academic_programs/humanizing_lawschool/images/readinglist.pdf) (bibliography); INSTITUTE FOR LAW TEACHING AND LEARNING, <http://www.law.gonzaga.edu/About-Gonzaga-Law/Institute-for-Law-School-Teaching/default.asp>.

216. See generally Lawrence Krieger & Kennon M. Sheldon, *Understanding the Negative Effects of Legal Education on Law Students: A Longitudinal Test of Self-Determination Theory*, 33 PERS. SOC. PSYCHOL. BULL. 883 (2007); Leah M. Christensen, *Enhancing Law School Success: A Study of Goal Orientations, Academic Achievement and the Declining Self-Efficacy of Our Law Students*, 33 LAW & PSYCHOL. REV. 57 (2009).

217. See generally *Erasing Lines: Integrating the Law School Curriculum*, 1 J. ASS'N LEGAL WRITING DIRS. (2002) (conference proceedings).

218. Schwartz, *Teaching Law by Design*, *supra* note 10, at 351–60.

with little or no feedback beforehand.<sup>219</sup> In many doctrinal classes today, the courses and casebooks have evolved to provide for problems and activities, which is a welcome achievement. Nevertheless, they still tend to focus on the pure subject matter, enhancing the idea that each subject and skill is unique to that course. The courses involve large amounts of content-based reading and typically do not provide the hypotheticals for classroom discussion in advance, which prevents time for reflection.<sup>220</sup> Oddly, classroom discussion tends to emphasize deep critical thinking, delving into complex hypotheticals that test the boundaries of legal rules, policy, and even morals, but the same instructors and courses seem to unwittingly send a totally contradictory message about priorities to their students on law school exams, which almost always focus nearly entirely on rote knowledge rather than deep knowledge.<sup>221</sup>

From a curricular design perspective, most law schools offer little to no discussion of common themes across the law school experience, or even disclose to their students that law schools want them to learn to generalize knowledge for application in their other courses, regardless of whether they involve skills or doctrine. As far as learner motivation is concerned, law school problems usually do not offer a community-oriented context and often involve wild fact scenarios that are far removed from life experience. Similarly, exam problems are often byzantine in focus and construction, using the “kitchen-sink” approach to test for issue-spotting ability based on rote. Accordingly, students usually gain little understanding of what law practice involves until they seek out an upper-level, environmental learning experience like clinic, externship, or a summer clerkship. Finally, although many law professors are increasingly careful to avoid cultural stereotyping, problems and readings are nevertheless based on experiences important to the dominant culture.<sup>222</sup>

The good news is that many schools are growing and changing, and this is actually a very exciting and positive time for legal education. Academic support programs have appeared in many schools. We now also have access to programs like Michael Hunter Schwartz’s Expert

---

219. *Id.* at 351–53.

220. *See id.*

221. *Cf. id.* at 365 n.56 (“It seems unlikely that the narrow skill set preferenced by law school exams defines what makes for effective lawyers. Thus, although law school exams do not test cooperative skills, listening skills, speaking skills, and sensitivity to others’ needs, such skills are crucial to many lawyers’ practices.”).

222. *Cf.* Charles Calleros, *In the Spirit of Regina Austin’s Contextual Analysis: Exploring Racial Context in Legal Method, Writing Assignments and Scholarship*, 34 J. MARSHALL L. REV. 281, 284 (Fall 2000).

Learning for Law Students (Ex-L),<sup>223</sup> which are designed to train and empower the entire student body, not just to remediate students who are already in academic crisis. Some schools now require skills-based courses for three or more semesters, and may even require an immersion experience like clinic or externship.<sup>224</sup> Legal educators are increasingly exploring ways to collaborate, especially within the skills curriculum.<sup>225</sup> A few legal methods courses even partner with legal aid organizations to obtain real problems, or use real problems from cases already filed in state or federal court.<sup>226</sup> With this groundwork in place, many law schools are finally ready to start thinking about designing curricula, courses, and teaching methods for transfer into the profession.

---

223. The Ex-L system trains students in how to use the self-regulated learning cycle (SRL) to improve not just their performance in school, but their overall ability to learn. The SRL cycle includes three phases: planning, monitoring and implementation, and evaluation. At Washburn, Professor Schwartz implements Ex-L as a first-year program, beginning with a weeklong orientation program and following through with weekly, structured study groups led by trained, upper-division students.

224. See generally BEST PRACTICES, *supra* note 3; *LRW Program Design*, ASS'N LEGAL WRITING DIRS., [http://www.alwd.org/publications/program\\_design.html](http://www.alwd.org/publications/program_design.html).

225. Darby Dickerson, *Building Bridges: A Call for Greater Collaboration Between Legal Writing and Clinical Professors*, 4 J. ASS'N LEGAL WRITING DIRS. 45 (2007); Phyllis Goldfarb, *So Near and Yet So Far: Dreams of Collaboration Between Clinical and Legal Writing Programs*, 4 J. ASS'N LEGAL WRITING DIRS. 35 (2007); Philip N. Meyer, *When Worlds Collide: Exploring Intersections Between Legal Writing and Clinical Pedagogy, Scholarship, and Practice*, 4 J. ASS'N LEGAL WRITING DIRS. 1 (2007); Margaret M. Russell, *Beginner's Resolve: An Essay on Collaboration, Clinical Innovation, and the First-Year Core Curriculum*, 1 CLINICAL L. REV. 135 (1994); Sarah O'Rourke Schrup, *The Clinical Divide: Overcoming Barriers to Collaboration Between Clinics and Legal Writing Programs*, 14 CLINICAL L. REV. 301 (2007).

226. See generally Elizabeth L. Inglehart & Martha Kanter, *"The Real World": Creating a Compelling Appellate Brief Assignment Based on a Real-World Case*, 17 PERSPS.: TEACHING LEGAL RES. & WRITING 128 (2009).

#### IV. THE CORE SKILLS APPROACH: A UNIFYING SEQUENCE OF TRANSFER TOOLS

I would argue that the best lawyers are those who are good at transfer thinking.

—Dr. Robert E. Haskell<sup>227</sup>

Law students can more effectively transfer their knowledge and skills to new contexts when they can (1) integrate the curriculum using a meta-schema; (2) adopt narrower, more specialized sets of schematics that anticipate how to apply skills across different contexts; (3) understand and use the hugging and bridging strategies advocated by the *Mindful School*<sup>228</sup> method; and (4) consciously cultivate holistic motivations for learning and for lawyering. These transfer factors can be thought of as the three Ms: mapping, maneuvers, and motivation. Each is addressed in greater detail below.

Based on these insights, this Article proposes a carefully coordinated, unified four-step method for transfer called the Core Skills Approach. This proposal is not to suggest that it is the best or only way to integrate the curriculum. Each institution will have to decide for itself what philosophy and principles guide its curriculum and choose an integrative method that suits its vision. Accordingly, the Core Skills Approach serves as an example and guide to institutions thinking about how to develop their own integrative schema.

In the Core Skills Approach, the first step is to integrate the curriculum. Students can use an original meta-schema called the Core Skills Compass. The Core Skills Compass has the power to connect the curriculum by helping students to recognize the pervasive presence of core lawyering skills as navigational constants. Virtually every course and practice environment calls for some form of skills in analysis, critical reasoning, advocacy, and professionalism, and the skills learned in one context can be adapted and transferred to others.<sup>229</sup>

Second, once students learn to orient according to fixed constants in the form of core lawyering skills “constellations,” they can rely on another original set of anticipatory schematics called the applied skills guides. The applied skills guides act as navigational charts that cope

---

227. HASKELL, *supra* note 1, at 63.

228. See generally FOGARTY ET AL., *supra* note 27.

229. This is not to suggest that lawyering skills are the only connective tissue within the curriculum, or that they are more important than other values or skills the academy may wish to impart. For that reason, the skills are very broadly defined to include moral and cultural considerations. Cf. generally Sameer M. Ashar, *Law Clinics and Collective Mobilization*, 14 CLINICAL L. REV. 355 (2008) (critiquing a skills-based approach to clinical pedagogy as missing opportunities for community-based cause lawyering).

with what we might call variable constants. While abstract lawyering skills can provide good “connective tissue,” in real life, they often express themselves in variable ways depending on the changing context. For example, advocacy skills in a personal injury jury trial can look very different from advocacy in a complex business negotiation. If students can anticipate those differences, they can more successfully transfer generalized skills into new situations.

Third, students can learn to recognize and use hugging, bridging, and motivational strategies by relying upon a general metacognitive exercise, provided later in this section. This core skills exercise is designed to walk them through helpful strategies and to cultivate “transfer thinking” and internal motivation. The exercise works in tandem with the Core Skills Compass and applied skills guides. Although these strategies work well on their own, they get a potent boost from the connectivity provided by the meta-schema and anticipatory schema.

Fourth, and finally, professors and students can use more narrowly-tailored metacognitive reflection exercises to transfer previous knowledge and skills to specific assignments. Although the first three steps can stand on their own, with only a small level of intervention and maintenance on the part of the professor, the fourth step encourages educators to prepare a simple exercise to accompany major assignments, designed to cue previous learning and resources that might help the student to successfully complete the task. Examples are provided.

As the following sections work through each of the three foundations for the Core Skills Approach—mapping, maneuvers, and motivation—it is important to recognize that none of these tools is a panacea. Transfer always will be a difficult and imperfect process, and some ordinary failure is an important part of the growth curve for both teacher and student. These tools can *ease* transfer, avoiding the lost time and gross-level failures that happen when students must struggle inordinately to understand the very basics of how to learn and how to integrate the material for later application.

Although students can use this transfer approach largely on their own, it will work best if introduced in an orientation or other academic support program directed at incoming first-year students. And it can work even better in those classrooms where the learning community occasionally engages in dialogue about the transfer process. Educational researchers debate whether it is better to teach generalized critical reasoning and transfer thinking separately or across the curriculum.<sup>230</sup>

---

230. Robert H. Ennis, *The Degree to Which Critical Thinking is Subject-Specific: Clarification and Needed Research*, in *THE GENERALIZABILITY OF CRITICAL THINKING: MULTIPLE PERSPECTIVES ON AN EDUCATIONAL IDEAL* 22–24 (Stephen P. Norris ed., Teachers Coll. Press 1992).

In the *immersion approach*, the philosophy closely follows the formal-disciplines model, positing that when skills are honed in a specific subject, the student builds intellectual muscle-power that will automatically transfer to other courses and tasks.<sup>231</sup> But as we know now, the research shows that complex and abstract transfers rarely happen automatically. On the other end of the spectrum, the *general approach* advocates for devoting some time to teaching transferrable skills like critical reasoning in a separate environment.<sup>232</sup> Separate instruction in transfer and learning is necessary and helpful. But because research shows that learners tend not to see how to apply skills even when told how to do so, completely isolated training is not well-advised. Instead, the *mixed approach* argues that critical thinking skills and transfer are best achieved when they are both taught in isolation and expressly discussed within the immersion environment.<sup>233</sup>

*A. Maps and Schema: Using the Core Skills Compass and Applied Skills Guides*

As discussed earlier, both learning theory and neuroscience show that students tend to acquire knowledge by storing and encoding it in schema, or cognitive “maps.” When students use various meta-schemas within a patterned sequence, they can enhance the speed and depth of their own transfer. Introducing a meta-schematic in the proposed pattern through a 1L orientation or academic support program has the capacity—over time—to help students to identify what generalized, transferrable skills their courses are trying to teach. Because most students lack any familiarity with what real-world lawyering entails, this concept often fails to fully take root in law students until well after graduation. Furthermore, these meta-schema eventually become innately embedded, which means that the student no longer needs to engage in so many conscious strategies to achieve that level of transfer. In the language of Perkins and Salomon, the student perceives the relationships between contexts, transmuting them to environments for *near* transfer instead of *far* transfer. With some practice, transfer eventually becomes easier or even instinctive, rather than a struggle requiring many conscious maneuvers. Thus, one of the beauties of this approach is that the tools are designed to fall away once they are no longer needed.

This section will introduce the two types of schema used in the four-step sequence, and then explain the basis for the four skills classifications.

---

231. *Id.*

232. *Id.*

233. *Id.*

### 1. Two Sets of Schema for Orienting by Lawyering Skills

Students need some kind of navigational constants that pervade the curriculum and help them to “connect the dots” between their various courses and between education and practice. I propose that those constants are the core lawyering skills identified by *Best Practices*, among other sources, in both their *abstract* and *applied* forms. Arguably, the broad array of core lawyering skills represents the ultimate learning goal for legal education, where we aim to nurture lawyers who can do everything from writing a technical and persuasive brief to reflecting on law reform:

The first of the educational values, therefore, in clinical education which needs to be exploited is the teaching of standards for the performance of the basic skills involved in service to a client and a cause by a lawyer. By this we mean such skills as interviewing, collecting facts, counseling, writing certain basic documents including pleadings, preparing for trial, and conducting trial matters. . . . Clinical legal education should help to make the future lawyer sensitive to the broad issues going beyond the immediate case. It should give him practice in how to act as a lawyer in making constructive change in justice in the course of his professional work.<sup>234</sup>

Although this quote concerns clinical pedagogy, the rest of the curriculum hopefully is meant to prepare lawyers for practice as well, at least indirectly. Yet most law schools fail to expressly disclose this goal to students, tending instead to speak in the abstract about good lawyering and professionalism. In the Core Skills Approach, students will first use the four abstract skills clusters to identify common themes across the curriculum, thus schematically integrating it. In keeping with the navigation metaphor, the four mutually reinforcing sets of abstract lawyering skills are presented in a wheel-shaped graphic called the “Core Skills Compass” (see Figure A, below).<sup>235</sup> The skills clusters or constellations are loosely grouped into the four overlapping categories of advocacy, professionalism, critical reasoning, and formal analysis. Although many

---

234. Binder & Bergman, *supra* note 10, at 193–94, (quoting William Pincus, *Educational Values in Clinical Experience for Law Students*, 2 CLEPR NEWSLETTER (Sept. 1969), reprinted in CLINICAL EDUCATION FOR LAW STUDENTS 78, 83–84 (Council on Legal Educ. for Prof. Resp. ed., 1980)).

235. The Core Skills Compass is presented again in its same circular form as a handout for students in the Appendix. The handout contains not only the compass, but a concentric Venn diagram showing how the range of contexts in which students will use these skills will grow from—and successively build upon—the classroom experience, supervised clinical and externship experiences, and ultimately, post-matriculation law practice itself.

of the skills defy such clear categorization, clustering helps students to recognize them through common themes.



Fig. A: The Core Skills Compass

In this simple graphic representation, core lawyering skills permeate law studies at a very high level of conceptualization and abstraction. It would be unrealistic to expect students to transfer abstract skills to new situations automatically,<sup>236</sup> nor would it be desirable for them to do so. *Reflexive* practice does not make for good lawyering, but thoughtful, deeply *reflective* practice does. The good news is that thoughtfulness, awareness, and reflection are the very tools that allow meaningful transfer to occur. Thus the Core Skills Compass works as only the first step within the four, mutually reinforcing stages of the Core Skills Approach.

In addition to the skills compass, the Core Skills Approach contains four navigational schematics called the applied skills guides—one for each quadrant of the skills compass. These charts are designed to help students use applied, rather than abstract, lawyering skills to orient themselves among various contexts. In other words, students can start to sense that skills may apply differently among the continuum of environments like doctrinal courses, simulated- skills courses, adversary litigation in clinic or practice, transactional practice, and holistic endeavors like mediation. For example, one can better see the broad relevance of an abstract skill like “the ability to question the legal system” when it is contextualized within the category of community and cause lawyering in

---

236. See Perkins & Salomon, *supra* note 27, at 25–26 (differentiating between skills that transfer easily because they operate at a more automatic or instinctive level, versus those that take much more cognitive reflection because they work at greater degrees of abstraction and in much different contexts).



the applied skills guide for critical reasoning. At the same time, one can see that although such questions may be highly relevant in practice and even in classroom debate, they are not highly prized on traditional law school examinations, and can actually harm one's grade if they overshadow formal analysis.

The four applied skills guides recognize that abstractions are not enough to encourage transfer. Transfer specialists note that bridging from one context to another requires some knowledge about where one has been and where one is going.<sup>237</sup> Students must also be able to envision future applications so that they are both (1) cued to recall and use the schema when faced with a baffling new context and (2) encouraged to engage in "forward-reaching transfer" by encoding general information now, for later use in *known* applications. From a motivational standpoint, anticipating possible contexts for application also can reduce anxiety, which further improves the environment needed for meaningful transfer. Finally, this process of envisioning also helps students to avoid *negative transfer*, which occurs when one tries to use prior learning in a new environment, but in the wrong way.<sup>238</sup>

Naturally, this process of orientation and anticipation is not perfect. Ultimately, students will need real-life experience in these environments before the information becomes truly useful. This is why reorientation to the schema should ideally be employed in the middle of the first-year, at minimum, perhaps through a reminder or module presented by the law school's academic support program. For contexts occurring outside the classroom, such as clinic or externship, it may be wise to address transfer, including the Core Skills Approach, in programmatic orientation programs and handbooks.

Each of the four applied skills guides presented in the Appendix is tailored to one quadrant of the Core Skills Compass. For example, a miniature, "nutshell" encapsulation of the concept for the formal analysis applied skills guide would look something like the representation in Figure B, below.

---

237. HASKELL, *supra* note 1, at xv; FOGARTY ET AL., *supra* note 27, at 96–99.

238. SOUSA, *supra* note 21, at 137.

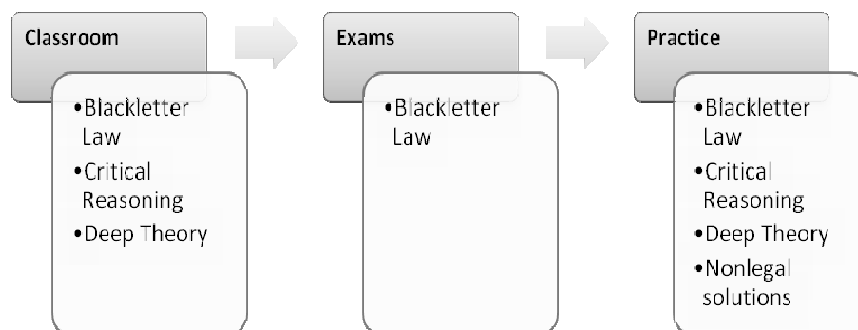


Fig. B: Micro-encapsulation of an applied skills guide

### 3. The Four Quadrants of the Core Skills Compass

The four categories used in the Core Skills Compass are mutually reinforcing rather than exclusive, and they often overlap. For example, high-quality formal legal analysis requires advocacy, critical reasoning, and professionalism in execution. Even the “purest” advocacy, such as an opening argument to a jury, contains elements of formal legal analysis, such as rules, facts, and proposed applications. It also often requires the honed ability to perceive cultural context and critical subtext in the law and in human psychology. Accordingly, the circular design, the four-fold division, and the categorization of the different skills are open to adaptation, innovation, and debate.

The core skills diagram appears in the form of a circle or wheel not only because of the compass metaphor, but also because schema theory is supported by the myriad world traditions that use circular schema—sometimes called mandalas—to encode worldviews. The core lawyering skills described here contain not just a set of abilities, but also the core values of the legal profession. In that sense, this schematic promotes a lawyering worldview or orientation to one’s professional calling. Similar wheel-like schemas are found in cultures worldwide, perhaps most visibly in eastern religious practices<sup>239</sup> and indigenous classification systems,<sup>240</sup> although one must be careful to distinguish between the sacred and the mundane. The four-part organization within the circular schema is also common around the world and across cultures.<sup>241</sup>

239. See, e.g., MARTIN BRAUEN, *THE MANDALA: SACRED CIRCLE IN TIBETAN BUDDHISM* (Martin Willson, trans., Shambhala 1998).

240. See, e.g., CAJETE, *supra* note 168.

241. I intend only to invoke cross-cultural aspects of circular schemas due to their universal appeal and not to co-opt any unique cultural expression.

The four quadrants of the skills compass include many different lawyering skills and values. Arguably, some of the skills could be classified in different categories. The categorizations are necessarily loose, and the educators using this or a similar schematic can easily adjust the tool to suit their own views and needs. Moreover, the core skills identified here contain within them aspects of the value systems belonging to various reforming forces within legal education, including various aspects of clinical pedagogy, community lawyering, therapeutic justice, and the humanizing movement. Law schools and individual educators should create schema that reflect the values consistent with their missions and which they hope to instill in their students.

*Formal Legal Analysis* connotes the traditional, syllogistic formula for legal analysis, which most of us learned as IRAC. The quasi-syllogistic<sup>242</sup> IRAC paradigm forms the basis for virtually all traditional legal analysis, whether written or oral, exam or practice, formal or even informal. More experienced law students usually make this connection during the second or third year, typically through a long period of trial and error that pervades at least their entire first year, and usually their first practice-based experience such as clinic or a summer clerkship. Students should not be left to make this connection—or other important transfers—through a process of trial and error, when it would be fairly simple for the curriculum and the faculty to point out and demonstrate how formal analysis skills pervade the curriculum and the “real world” of law practice. As shown in the appendix, this compass quadrant encourages students to see the “IRAC connection” along the continuum between casebook classes, skills classes, and a live-client setting.

Because part of successful learning transfer is identifying what previous knowledge is *appropriate* for the new context, this tool also illustrates how the IRAC formula adapts to suit the context. For example, the emphasis on IRAC “layers” changes according to whether the analysis is intended for exams, oral argument, or written analysis for law practice. Accordingly, law professors who specialize in legal analysis, research, and writing have developed numerous variations on the IRAC theme, such as CREAC, CRuPAC, and IRREAC,<sup>243</sup> in order to encourage students to expand and deepen rule proof and application for law practice. Newer law students sometimes fail to make the connection between IRAC and CREAC until second semester, even though they are variations of the same syllogistic formula. Even more subtly, the applied

---

242. Kristen K. Robbins, *Paradigm Lost: Recapturing Classical Rhetoric to Validate Legal Reasoning*, 27 VT. L. REV. 483, 485 (2003).

243. See Terrill Pollman & Judith M. Stinson, *IRLAFARC! Surveying the Language of Legal Writing*, 56 ME. L. REV. 239 (2004).

skills guide can help cue a student about the failings of IRAC. IRAC is based in a particular, Anglo-American cultural approach to rhetoric and reasoning and may fail to take into account cross-cultural reasoning.<sup>244</sup>

*Advocacy* involves both techniques that are proven successful to prevail on a client's behalf, such as argumentation strategy, cross-examination, and negotiation; and a gradually-developed intuition about what persuades a certain audience, when to emphasize certain facts, and when to rely on narrative over rule (or vice-versa). Many students might be inclined at first to see advocacy only in terms of trial work—in other words, the kind of advocacy conveyed in popular culture, like *Law & Order*, John Grisham novels, and even classics like *To Kill a Mockingbird*. It is important to convey early that advocacy skills are inculcated over time, have a strong intuitive component, and pervade legal work. Some students seem to be attracted to law studies because they are natural advocates, perhaps even former debaters. For those students, it is important to see that advocacy can take increasingly subtle forms, such as the fine art of diplomacy needed for delicate business negotiations; the compassion, tact, and patience needed to persuade a client from an imprudent course of action; and the cultural literacy necessary to perceive and address unwitting cultural biases held by jurors, judges, and other players in the justice system or even the business world.

*Critical Thinking* in legal education often means a person's ability to understand and perceive both context and subtext within legal authorities, as part of the process of formal legal analysis. It can also be expanded and overlapped with professionalism and advocacy to connote the resources needed to reflect critically on a client's unstated needs, on biases within the legal system, and on the many other subtleties of highly competent law practice:

1. Seeking out evidence and giving evidence when questioned;
2. Suspending [judgment] when there is insufficient evidence;
3. Logical reasoning abilities;
4. Recognizing ambiguity in reasoning;
5. Distinguishing reason and fact from opinion;
6. Distinguishing what is relevant from what is irrelevant;
7. Identifying contradictions in arguments;
8. Identifying and evaluating assumptions underlying beliefs, ideas, and values, including one's own;
9. Transferring ideas and concepts to new contexts and situations; and
10. Making interdisciplinary connections and using insights from one subject to illuminate other subjects.<sup>245</sup>

---

244. Cf. Jill J. Ramsfield, *Is "Logic" Culturally Based? A Contrastive, International Approach to the U.S. Law Classroom*, 47 J. LEGAL EDUC. 157, 171–72 (1997).

In the compass, critical thinking is extracted as a generalized, developed skill in reasoning, including the ability to look beyond formal law and to perceive ethno-socio-political-historical context. Critical thinking easily can blend here with the kind of cultural-literacy skills so often needed for effective advocacy, as described above.

*Professionalism* has generated much recent discussion in the academy as a core lawyering value to be conveyed to students through modeling and through the curriculum.<sup>246</sup> While not all agree as to what professionalism entails or whether it must be taught, the arguments in favor of a holistic approach are made rather strongly in influential reports like *Carnegie* and *Best Practices*.<sup>247</sup> Here, I envision professionalism as a set of life and interpersonal skills that incorporates and dovetails with the formal rules of professional responsibility, but expands into the kind of human credentials needed for a sustainable and effective practice. As demonstrated in Figure C, it can include everything from good trust accounting practices to effective listening skills. This quadrant adopts a rather expansive definition, encouraging students to recognize that professionalism is not limited to client interaction, even though that is the focus of the ethical rules, but instead extends into all other areas, from arguing to a jury, to proofreading a contract, to handling one's own financial affairs and mental health.

---

245. Pamela Edwards, *The Culture of Success: Improving the Academic Success Opportunities for Multicultural Students in Law School*, 31 NEW ENG. L. REV. 739, 765 (1997) (citing Dannye Holley & J. P. Ogilvy, *Critical Thinking and the Law*, 1 INT'L J. OF THE LEGAL PROF. 343, 344–45 (1994)).

246. See Donald L. Burnett, Jr., *Neither Mess Nor Menace: Legal Education and the Erudite Apprentice*, 18 PROF. LAW. 2, 22 (2008).

247. *Id.*

Professionalism & Ethics	Critical Reasoning	Analysis	Advocacy
<ul style="list-style-type: none"> <li>• Character</li> <li>• Familiarity with institutional environment</li> <li>• Awareness of non-legal environment</li> <li>• Good judgment</li> <li>• Autonomy</li> <li>• Cost-effective legal services</li> <li>• Preparedness</li> <li>• Competence</li> <li>• Cross-cultural communication skills</li> <li>• Listening skills</li> <li>• Law practice management skills</li> <li>• Dedication to justice and the public good</li> <li>• Practical and prudent wisdom</li> <li>• Economic temperance</li> <li>• Integrity</li> <li>• Deportment and civility</li> <li>• Subordination of personal interests</li> <li>• Capacity for self-scrutiny and self-betterment</li> <li>• Time and workload management</li> <li>• Empathy with detachment</li> <li>• Self-efficacy</li> <li>• Candor</li> <li>• Respect for the rule of law</li> <li>• Balance and quality of life</li> <li>• Commitment to social justice and law reform</li> <li>• Intellectual curiosity</li> </ul>	<ul style="list-style-type: none"> <li>• Perspective</li> <li>• Problem solving</li> <li>• Cross-cultural lawyering</li> <li>• Evaluate arguments and assumptions</li> <li>• Questioning the motives and policies behind laws and decisions</li> <li>• Deducing a court's reasoning when none is provided</li> <li>• Critical reflection</li> <li>• Questioning legal and social institutions</li> <li>• Interest in law reform</li> <li>• Creating good law/good precedent (considering the impact on others)</li> <li>• Envisioning non-legal solutions</li> <li>• Asserting narrative and other human and emotional elements</li> <li>• Capacity for moral dialogue</li> <li>• Considering the community</li> <li>• Finding points of connection for greater understanding</li> </ul>	<ul style="list-style-type: none"> <li>• Foundation of substantive knowledge</li> <li>• Investigating facts</li> <li>• Issue-spotting</li> <li>• Creative, discerning, and exhaustive research</li> <li>• Finding and using analogous sources and examples</li> <li>• Identifying applicable rules</li> <li>• Synthesizing rules and applications from multiple sources</li> <li>• Synthesizing data</li> <li>• Applying the law to factual contexts</li> <li>• Applying abstract concepts and data to new situations</li> <li>• Writing clearly</li> <li>• Identifying the risks and merits of the client's options</li> <li>• Practical judgment</li> <li>• Expanding applicable sources of law</li> <li>• Legal literacy</li> <li>• Structured reasoning, often in the form of a syllogism</li> <li>• Skepticism</li> <li>• Statutory and regulatory construction</li> </ul>	<ul style="list-style-type: none"> <li>• Zealousness</li> <li>• Drafting skills</li> <li>• Issue framing</li> <li>• Seeing and developing narrative</li> <li>• Identifying and arguing public policy</li> <li>• Pretrial and trial skills</li> <li>• Negotiation skills</li> <li>• Development of case theory</li> <li>• Oration</li> <li>• Addressing harmful law and facts</li> <li>• Addressing counter-arguments</li> <li>• Addressing judicial concerns about law-making, and administration</li> <li>• Strategy</li> <li>• Moot proceedings/practice</li> <li>• Arguing in the alternative</li> <li>• Understanding and using the procedural posture and standard of review</li> <li>• Structure and logical consistency</li> <li>• Proof of facts and law</li> <li>• Persuasion</li> <li>• Addressing bias</li> <li>• Demonstrating respect for institutions and participants</li> <li>• Maintaining professional credibility</li> <li>• Client-centered approach</li> </ul>

Fig. C: The Core Lawyering Skills<sup>248</sup>

248. For general discussions of what we should include in the concept of core lawyering skills, see BEST PRACTICES, *supra* note 3, at 52–54, and THE MACCRATE REPORT, *supra* note 207. As additional support for the argument that cross-cultural lawyering skills should be considered as central, see generally Susan Bryant, *The Five Habits: Building Cross-Cultural Competence in Lawyers*, 8 CLINICAL L. REV. 33 (2001); Susan Bryant & Jean Koh-Peters, *Five Habits for*

*B. Maneuvers: Teaching (and Learning) for Transfer in Law School*

Because the compass and accompanying “navigational charts” are designed to help formulate only the “big picture” about how lawyering skills permeate both law study and law practice, more tools are needed to aid transfer within courses and between more specific applications. For this reason, the Core Skills Approach goes beyond schema to encourage students to use more bridging and hugging tools, including modeling, problem solving, anticipation, generalization, analogizing, and metacognitive reflection, to name a few. These conscious strategies are designed to cue knowledge out of latency and into potency, not just in one context, but across learning domains, and at ever-higher levels of functioning. In combination with the schema, these hugging and bridging strategies take on strength that they might not have had before. The schematic maps and hugging and bridging maneuvers work together synergistically, along with the internal motivators discussed later.

In the Core Skills Approach advocated here, hugging and bridging tools enter by way of an all-purpose reflective exercise that students can use to consciously engage in transfer thinking. This exercise is presented in the Appendix. When resources allow, the approach also encourages professors to tailor the all-purpose exercise for specific assignments, so that students can become more independent in their work. These reflective exercises foster self-direction in students by cueing them to use different strategies. These strategies, such as generalization, identifying expectations, and analogizing to parallel problems, help students to recognize current and past coursework that applies to the assignment, and to reflect upon how to use that knowledge.

1. Hugging Strategies for Near Transfer

As introduced in the earlier section on the evolution of transfer theory, Fogarty et al. identified five hugging strategies for near transfer: setting expectations, matching, simulating, modeling, and problem-based learning.<sup>249</sup> Most of these strategies are used well in legal skills courses—even if subconsciously—but not in most doctrinal courses, or at least not as a complete, interlocking strategy. Perhaps more importantly, even when skills courses use hugging strategies, they occur inside one course and do not connect courses throughout the curriculum. The above schema can assist greatly with that problem, but law schools and

---

*Cross-Cultural Lawyering* (2000), ILL. PRO BONO, [http://www.illinoisprobono.org/index.cfm?fuseaction=home.dsp\\_content&contentID=5995](http://www.illinoisprobono.org/index.cfm?fuseaction=home.dsp_content&contentID=5995); Organick, *supra* note 201; and Weng, *supra* note 73.

249. FOGARTY ET AL., *supra* note 27, at 33, 36, 42, 48, 54, 60, 119.

curriculum subgroups, like certificate programs, may wish to consider spending some time consciously cultivating transfer with these tools.

*Setting expectations* involves the seemingly simple act of discussing with students the practical “payoffs” for learning the material.<sup>250</sup> Discussing future applications “sets the stage for future use”<sup>251</sup> and alerts students to the simple fact that they are not acquiring this knowledge as an end unto itself, but to integrate it with other lessons and use it to solve problems.<sup>252</sup> This may seem so obvious to the professor that it often fails to be mentioned.

*Matching* relates primarily to exercise and problem design. It calls upon educators to design classroom experiences and problems that resemble the context in which the knowledge will eventually be applied. Presently, most law courses involve Socratic discussion and dissection of case decisions. Matching instead calls for greater use of skills-based exercises. For example, while studying “acts of God” as excuses for breach of contract, the professor might explain how such events can arise in ordinary practice environments and have students fill in sections of a sample complaint alleging force majeure, or draft a contractual clause dealing with the issue.

*Simulating* is already well-known in legal education and is a primary pedagogical tool in clinical instruction. Transfer theory suggests that all legal educators can enhance transfer by simulating practice environments through writing for transactional or litigation practice, mock negotiations, mock client interviews, and so on. To enhance transfer in law school, simulated problems should mimic an authentic law practice environment, including the shifting, evolving nature of the facts; the urgency for thoroughness; and the human context of the law-office environment.<sup>253</sup>

*Modeling* is another centerpiece of clinical and other skills instruction, often underused in traditional casebook courses. It involves demonstrating a skill or process within a “running monologue” that describes what is happening, but also reveals the instructor’s internal reasoning and decision-making matrix. It is also sometimes called a “cognitive think-aloud.”<sup>254</sup> In my classes, for example, I tend to teach students about drafting detailed, narrowly focused issue statements for memos and briefs by writing one myself in a Word document displayed on the class-

---

250. *Id.* at 33.

251. *Id.*

252. *See id.*

253. Provenzano & Kagan, *supra* note 10, at 173–75.

254. MICHAEL HUNTER SCHWARTZ, SOPHIE SPARROW & GERALD HESS, TEACHING LAW BY DESIGN: ENGAGING STUDENTS FROM THE SYLLABUS TO THE FINAL EXAM 48, 121 (Carolina Academic Press 2009).



room's overhead projector. I try sentences, erase them, critique them out loud, start over again, and describe why I am including each fact or legal term and the logic behind their order and phrasing. I then ask the students to break into small groups and craft another. We discuss the results as a group and arrive at a good working issue statement for one of the issues in their assignment. They then have to write the rest of the issue statements on their own, without assistance, until it is time for them to receive formal, written feedback with their grades. The "monologue" need not necessarily occur orally; it can also take the form of an annotated sample product. The annotations should not consist merely of labels, but should also provide insight into the writer's internal thought processes.

*Problem-based learning* calls for "immersing" students in the active use of knowledge by engaging them in problem-solving. Problem-based learning is the quintessence of skills-based law courses. Casebook courses also use problem-solving extensively in that they ask students to work through highly complex hypothetical legal scenarios. Where they often fall short is in making the problem-based learning active. This is exactly where active learning proponents argue we fail most students by instead encouraging them to be vicarious learners.<sup>255</sup>

## 2. Bridging Strategies for Far Transfer

Fogarty, Perkins, and Barell named five additional bridging strategies for far transfer: anticipating applications, analogizing, generalizing, parallel problem-solving, and metacognitive reflection.<sup>256</sup> Law schools already greatly exceed all other disciplines at training students in the skill of analogizing concepts, which is considered one of the most important "mental muscles" needed to become a good transfer thinker. This is probably why Haskell uses legal examples so often in his commentaries on how transfer works and why he feels that the best lawyers are skilled transfer thinkers.<sup>257</sup> We also do fairly well, compared with other academies, at parallel problem-solving, at least in the sense that our courses offer chances to apply knowledge in many different kinds of similar problems on practice exams, formal exams, and in legal writing and other simulated and live-client skills courses.

*Anticipating applications* is very similar to *setting expectations*. In the latter, the professor and students discuss how students can make more

---

255. Active learning strategies are becoming well-covered elsewhere in the legal literature and are not addressed here. For a useful summary of active learning techniques, see *id.* at 116–19, as well as the bibliographies cited at the end of the book.

256. FOGARTY ET AL., *supra* note 27, at xvii–xviii.

257. See HASKELL, *supra* note 1, at 63.

immediate use of the information in an upcoming examination or problem, or in an applied environment that relates directly to the topic at hand, for example, the use of force majeure clauses in contracts, while learning about them from the perspective of past litigation. Anticipating applications merely means setting expectations for applications farther into the future and in more remote contexts. In the previous example, this might involve asking students to brainstorm the kinds of situations in which a force majeure problem might arise in practice in their region of the country—tornadoes, flooding, and agriculture in the Midwest; hurricanes and tourism in the Southeast; or earthquakes, volcanoes, and shipping on the West Coast. When future applications are anticipated through metacognitive reflection, students should perform better at “forward-reaching” transfer, a form of far transfer in which they generalize concepts with the conscious intent to perform them in a new context at a later time.

*Generalizing concepts* means actively engaging students in the process of abstracting universal principles from specific material. For example, in discussing *Mrs. Palsgraf and the dreaded railroad scales*,<sup>258</sup> educators should disclose that one of the primary goals of the dialogue is to understand what the court’s holding and reasoning tell us about how the rules of proximate cause work, including their exceptions and limitations. Professors should also clarify that these extracted principles are meant to be used to compare to similar and dissimilar situations in legal problem solving. Arguably, most of the work in casebook courses involves the process of gleaning abstract rules from specific cases and then applying them to new situations. In that regard, law school teaches generalization well. Where it seems to falter is in making this goal clear, as well as in using the remaining bridging techniques to reinforce the generalizations and foster their transfer to new situations.

*Using analogies* is another bridging tool that law schools perform inordinately well. Generalization and analogy are two central components of any legal analysis. Students must understand how an “act of God” in one case is like or unlike an act of God in another case in order to predict the likely outcome. As with generalization, where many other disciplines’ pedagogies may fail, law excels. We do not need more instruction and opportunities to practice the art of analogy, but rather to support its transfer by incorporating the remaining hugging and bridging

---

258. *Palsgraf v. Long Island R.R. Co.*, 162 N.E. 99 (N.Y. 1928). Most readers will be familiar with this classic torts case, in which two railroad employees, attempting to save a man who appeared to be falling between the train and platform, caused him to drop a package containing fireworks. *Id.* at 99. The resulting fireworks explosion caused scales to fall on the hapless Mrs. Palsgraf, the plaintiff, giving rise to the rule of proximate cause. *Id.* at 99, 101.

strategies. Without them, students will still eventually master transfer, but the process arguably will take longer.

*Parallel problem-solving* extends the earlier *problem-based learning* strategy into more attenuated applications. Newer law students tend to struggle with increasing levels of abstraction between classroom hypotheticals and decided cases. While the students grow as skilled analogical reasoners, educators can ease the process somewhat by engaging them in the mindful practice of parallel problem-solving. In the force majeure example, problem-based learning for near transfer might involve analyzing a new shipping-based case from other cases involving transportation of goods. In parallel problem-solving, the assignment would challenge them to use “stereotypical” shipping or natural disaster cases to attack a fact pattern not encountered in the assigned cases, perhaps one involving a “ripped from the headlines” problem like a terrorist attack, global warming, or pandemic influenza. Happily, it seems that law schools also excel at providing parallel problem-solving opportunities. Most law school hypotheticals involve fact patterns well-removed from reality, and often even outrageous when compared to typical cases. The foil is that they tend to come at the very end of the course, during the examination, and also that they tend to arrive without any opportunity to practice problem solving with highly analogous hypotheticals, for example, a transportation-based scenario solved with opinions from shipping cases. Moreover, they tend to focus within only one discipline. This probably makes sense during the first-year curriculum, but transfer theory would support greater use of multidisciplinary problems in upper-level courses, so as to break through the firewalls between the formal legal disciplines.

*Metacognitive reflection* means “planning, monitoring, and evaluating one’s own thinking . . . [and] thinking about how to approach a task this time or to do better next time.”<sup>259</sup> This kind of critical evaluation through deep reflection is the gold standard of transfer tools.<sup>260</sup> Metacognitive strategies can include a host of exercises and techniques, some of which have already been explored in the legal literature. One of the most popular is journaling about clinical and externship experiences.<sup>261</sup> Another is the “private memo” to record struggles, inspirations, and decision making during the writing process, as a form of “in the moment”

---

259. FOGARTY ET AL., *supra* note 27, at 91.

260. See Perkins & Salomon, *supra* note 27, at 28–31.

261. See Leslie Larkin Cooney, *Giving Millennials a Leg-Up: How to Avoid the “If I Knew Then What I Know Now” Syndrome*, 96 KY. L.J. 505, 513–14 (2008). See generally J.P. Ogilvy, *The Use of Journals in Legal Education: A Tool for Reflection*, 3 CLINICAL L. REV. 55 (1996).

dialogue with one's legal writing professor or clinical supervisor.<sup>262</sup> Professor Schwartz's *Expert Learning for Law Students*<sup>263</sup> includes a workbook<sup>264</sup> with a wealth of reflective exercises designed to engage students in "thinking about thinking," as well as planning their time and understanding their own learning habits and styles. These exercises provide good inspiration and templates for designing one's own exercises. Because these forms of metacognitive reflection are well-addressed for law study by existing resources, this Article will focus on an underused form in law school: the reflective exercise for "backward-reaching" transfer.<sup>265</sup>

### *C. Motivation: Fostering Internal Incentives and Autonomy for More Effective Transfer*

As educators, we know from experience that the best-performing students are usually those who are highly self-motivated and inquisitive. It may not be surprising to learn then, that psychological research shows that strong internal motivation is one of the key factors in successful transfer of learning. It is known to enhance the ability to retain, access, and adapt information for later use within different contexts. To be sure, many students are sufficiently motivated by external factors, primarily grade performance and social standing, to perform well in a given course.<sup>266</sup> But it is unlikely that those students will be as able to recall and use that stored knowledge effectively in a future context without more trial and error, as well as external prompting. According to Haskell, an essential ingredient of the transfer equation must therefore be

---

262. See Provenzano & Kagan, *supra* note 10, at 170–73.

263. SCHWARTZ, *supra* note 213.

264. MICHAEL HUNTER SCHWARTZ, *EXPERT LEARNING FOR LAW STUDENTS WORKBOOK* (2d ed., Carolina Academic Press 2008).

265. For a simple illustration from K–12 education, see *Backward Reaching Transfer [Exercise]*, DEL. SOC. STUDIES EDUC. PROJECT (2006), <http://www.udel.edu/dssep/transfer/Backward%20Reaching%20Transfer.pdf>.

266. See HASKELL, *supra* note 1, at 125–26. John Biggs's research on medical students revealed three kinds of motivation, each tied to a different level of learning success: surface, achieving, and deep. *Id.* at 125–26 (citing and describing John Biggs, *Institutional Learning and the Integration of Knowledge*, in *LEARNING IN MEDICAL SCHOOL: A MODEL FOR THE CLINICAL PROFESSIONS* 25 (J. I. Balla, M. Gibson & A. M. Chang eds., H.K. Univ. Press 1989)). Surface learners had little current motivation and were moved instead by some other, longer term, external force, such as the need to obtain employment or to please one's parents. *Id.* Achievers are also moved by external forces, but they are more immediate, and tend to center around grades. *Id.* They gear their strategies for success toward the short-term goal of mastering an examination or a project according to the teacher's objective expectations. *Id.* Deep learners are the holy grail of students: they feel an internal motivation to learn, are stimulated by the subject matter, and find meaning in the topic and their own growth. *Id.* This self-driven motivation gives the student the energy to reflect, investigate, converse, and relate the learning to his greater world and life experience. *Id.* Deep learning thus correlates with the other key elements of transfer: critically reflective understanding of the topic and the ability to generalize and analogize to new contexts. *Id.*

both a “culture and spirit of transfer,” which involves both an institutional culture of collaboration and learning, as well as the student’s own cultivation of a holistic disposition toward professional growth and the learning process.<sup>267</sup> Haskell notes that much of what creates a highly self-motivated student has to do with cultural cues, family priorities, and past educational experiences.<sup>268</sup> Law schools probably cannot do much to alleviate pop-culture messages that eschew intellectual pursuits, family and employer pressure to achieve the highest grades, or peer pressure to maintain a high class standing.<sup>269</sup>

Fortunately, however, transfer and other learning research shows that there are still at least two main approaches that legal educators can use to instill transfer-friendly motivation in receptive students. First, they can emphasize mastery and human growth as the ultimate goal, to coexist with more external motivators like grade performance.<sup>270</sup> Even in a traditional grade-based evaluation system, educators can emphasize mastery through discussion, reflection, and messages embedded in curriculum and course design.<sup>271</sup> Second, law schools can motivate students to transfer their learning to new domains by teaching them about transfer—disclosing the challenges of our brains’ context-based approach to learning, and teaching the above tools for navigating those challenges.<sup>272</sup> In addition, Professors Schwartz, Sparrow, and Hess describe a number of very specific attitudes and techniques that educators can use to foster motivation in their students.<sup>273</sup>

In what may come as a surprise to many, studies seem to show overwhelmingly that internal goals based on *altruism and professional mastery* tend to lead to happier and more effective learners than external goals based on performance measures and rewards.<sup>274</sup> Larry Krieger has reported on the research that internal motivations are highly associated with professional well-being among law students and lawyers, while external motivations are highly associated with depression, anxiety, and

---

267. HASKELL, *supra* note 1, at 116–19.

268. *Id.* at 119–21.

269. *Cf. id.* at 146–47.

270. See J. Kevin Ford et al., *Relationships of Goal Orientation, Metacognitive Activity, and Practice Strategies with Learning Outcomes and Transfer*, 83 J. APPLIED PSYCH. 218, 227–31 (1998).

271. See generally Lawrence S. Krieger, *The Inseparability of Professionalism and Personal Satisfaction: Perspectives on Values, Integrity and Happiness*, 11 CLINICAL L. REV. 425 (2005) [hereinafter Krieger, *Inseparability*].

272. See HASKELL, *supra* note 1, at 116–30.

273. SCHWARTZ, SPARROW & HESS, *supra* note 254, at 87–105. The specific techniques include teacher attitudes, structured student autonomy, goal-setting, role-playing, attainable challenges, and positive reinforcement. *Id.*

274. See generally Krieger, *Inseparability*, *supra* note 271.

other indicia of professional malaise.<sup>275</sup> Law schools tend to fail their students by overlooking the fundamental importance of including internal motivation in both the pedagogy and curriculum. According to Professor Krieger's recent study with psychology professor Ken Sheldon, the results are devastating:

Well-being and life satisfaction fell very significantly during the first year. More fundamentally, the generally intrinsic values and motivations of the students shifted significantly towards more extrinsic orientations. These shifts have distinct negative implications for the students' future well-being. In the sample followed for the final two years of law school, these measures did not rebound. Instead, students experienced a further and troubling diminution of all of their valuing processes (both intrinsic and extrinsic) beginning in the second year, suggesting a sense of disinterest, disengagement, and loss of enthusiasm. This loss of valuing is a serious occurrence and a likely cause of the continued loss of well-being measured among these students. It may well mark the beginning of the destructive 'values-neutral' approach of many lawyers.<sup>276</sup>

What may surprise readers even more is that internal motivators not only lead to happier professionals, they also encourage students to encode learning in such a way that it is easier to recall and use in new situations.<sup>277</sup> In other words, internal motivators improve transfer.

Research on motivation and transfer seems to be closely linked to parallel studies on mood and transfer, in which researchers found that positive, happy moods boost the cognitive processes that enhance transfer, while negative, sad moods deteriorate them.<sup>278</sup> Accordingly, given the implications of proper motivation for both professionalism *and* transfer, this failure to inspire internal motivation is much more egregious than we may have realized. A recent empirical study of second- and sixth-grade children concluded that when lessons emphasized mastery over performance, the children—particularly the sixth-graders—were better able to transfer a skill to a new problem.<sup>279</sup> Children who internalized mixed motivations experienced decreased skills transfer.<sup>280</sup> The authors posit that the baser motivations centering on grades and status

---

275. *Id.* at 429–34.

276. *Id.* at 433.

277. Yoella Bereby-Meyer & Avi Kaplan, *Motivational Influences on Transfer of Problem-Solving Strategies*, 30 CONTEMP. EDUC. PSYCHOL. 1, 1–22 (2005).

278. Serge Brand, Torsten Reimer & Klaus Opwis, *How Do We Learn in a Negative Mood? Effects of a Negative Mood on Transfer and Learning*, 17 LEARNING & INSTRUCTION 1, 9–16 (2007).

279. Bereby-Meyer & Kaplan, *supra* note 277, at 11.

280. *Id.*

may simply take up too much cognitive energy, focusing the student's attention on social status and on discursive thoughts that interrupt cognitive processes that support transfer.<sup>281</sup> They also noted that according to earlier literature, adolescents are better able to handle mixed motivations without loss of transferability.<sup>282</sup> Interestingly, however, a recent brain-imaging study showed that the areas of the brain that correspond to happiness and fulfillment are activated when adults encounter an altruistic motivation, but the centers associated with greed and addiction are activated when confronted with performance and reward-based messages.<sup>283</sup> Even more significantly, scientists found that both areas of the brain could not be activated at the same time.<sup>284</sup> What this means for the possibility of a healthy, dual motivation in law school remains to be seen.

This research dovetails with a fascinating study from Switzerland. The Swiss government needed to find a community to house a nuclear-waste dump and set about to encourage the citizens of two small communities to agree to accept the site near their towns.<sup>285</sup> Researchers compared two test groups. One group was offered an annual cash payment to every person in the town as a sort of hazard pay.<sup>286</sup> A majority of the townspeople consistently refused, even when the cash offer was exponentially increased.<sup>287</sup> The other group was told that they would be doing a service to their country and that some town would have to volunteer for the good of the whole. No cash or other material benefit was offered.<sup>288</sup> A majority agreed to accept the waste site.<sup>289</sup>

The message for legal education may not be that we need to do away with grades and social pressure—which seems a rather tall order—but that we need to find ways to emphasize mastery over these other, sometimes destructive factors. One approach drawn from Professor Krieger's scholarship is to discuss matters frankly with our students.<sup>290</sup> In this context, we should talk to them openly and often about how mastery versus performance motivation can affect their ability to develop intellectually, as well as to effectively store and retrieve general know-

---

281. *Id.*

282. *Id.*

283. BRAFMAN & BRAFMAN, *supra* note 31, at 140–41 (citing Dharol Tankersley, Jill Stowe & Scott A. Huettel, *Altruism is Associated with an Increased Neural Response to Agency*, 10 NATURE NEUROSCIENCE 150, 150–51 (2007)).

284. BRAFMAN & BRAFMAN, *supra* note 31, at 141.

285. *Id.* at 133 (citing Bruno S. Frey & Felix Oberholzer-Gee, *The Cost of Price Incentives: An Empirical Analysis of Motivation Crowding Out*, 87 AM. ECON. REV. 746, 746–55 (1997)).

286. BRAFMAN & BRAFMAN, *supra* note 31, at 133–35.

287. *Id.*

288. *Id.* at 133–34.

289. *Id.*

290. Krieger, *Inseparability*, *supra* note 271, at 426–27.

ledge and skills for later use. This part of the approach relates to instruction in transfer skills, discussed further below.

Another approach to emphasizing mastery is to engage students in none other than the very metacognitive reflection exercises described earlier. Professor Krieger actually has students write their own eulogies, disclosing to them later that they have just identified many of their own core values.<sup>291</sup> The class engages in periodic reflection on these core human values in order to maintain perspective over time, while also acknowledging the benefits and natural inclination toward performance-based motivations like grades, class rank, and appearing capable when called upon in class or giving a presentation.<sup>292</sup> Finally, to connect the values-driven material to the curriculum, Professor Krieger has his class brainstorm the tasks required to perform some sort of lawyering task, such as conducting a trial.<sup>293</sup> The class actively works through which aspects of the lawyer's job are truly within her control and which are not. He reports that students are often surprised to see how little they can control and report a decrease in performance-based anxiety and an increased recognition of the benefits of mastery-based goals.<sup>294</sup>

Other approaches may also help to encourage motivation based on mastery over performance. For example, altruistic motivators that enhance transfer should be triggered by the ability to solve community-based problems with a real-world impact. Legal educators can gear more examples and problems around real stories and cases from surrounding communities, such as partnering with local legal service agencies<sup>295</sup> to write a complaint in the area under study, or designing a legal writing appellate brief problem to create sample work product that can be shared with the agency. In another example, professors might include more "moral dialogue" about the law in their discussions of legal problems and justice.<sup>296</sup> Many students come to law school with high ideals about achieving justice, and few understand the complexities of legal process, including non-legal drivers<sup>297</sup> like money, power, and dominant culture. Because many law school exams send the message that any moral dialo-

---

291. *Id.* at 435–38.

292. *Id.* at 437–38.

293. *Id.* at 439–40.

294. *Id.*

295. Mary Bowman, Making a Difference by Making it Real: Collaborating with Legal Services Organizations in Developing Legal Writing Problems, Academic Presentation at the Ninth Annual Rocky Mountain Legal Writing Conference, Sandra Day O'Connor College of Law, Arizona State University (Mar. 13–14, 2009).

296. See Laurie A. Morin, *Reflections on Teaching Law as Right Livelihood: Cultivating Ethics, Professionalism, and Commitment to Public Service from the Inside Out*, 35 TULSA L.J. 227, 227 (2000).

297. *Id.* at 248.



gue achieved in class is actually undesirable in the practice of law, and that only blackletter law matters, professors might also consider adding one exam problem that encourages policy analysis and more holistic, non-legal analysis alongside black letter IRAC.

Additionally, it can also be beneficial to help students identify mastery and growth-based motivators on an even more personal level. Ways to connect the learning material to causes or connections personally meaningful to the student are many, and may result from reflective exercises or even just from one-on-one dialogue. The motivations and meaning that drive students to excel and adapt within a wider variety of settings may not necessarily be only related to identifiable causes outside of themselves. They might revolve around personal interests, or deeply personal reasons for practicing law that go beyond the desire for status, and career stability. Some Native American law students study law with the hope of benefiting their home communities or indigenous peoples in general, and have been referred to as “legal warriors.”<sup>298</sup> I have seen several students choose to enter into family-law practice, driven by personal experiences and a drive to improve the lives of children, fathers, mothers, or other groups sometimes underserved by the system. I have also seen other students who were strongly motivated to learn the law because they wanted so much to practice in an area related to a deep personal interest or secondary vocation, such as professional sports or military service.

Teaching to motivation is difficult in that it is hard to balance the disparate interests that exist across a classroom. To help students anticipate future sources of motivation based on growth and mastery, orientation programs provide a good opportunity to connect students’ personal interests with “real world” outcomes.<sup>299</sup> One platform for achieving this might be a panel of community partners from a diverse range of practice environments, social backgrounds, and generations. For example, representatives from the practice of business law, family law, legislative law, criminal law, and practitioners involved in social justice issues, could be assembled to speak directly to the specific environments in which students will one day find themselves. On a practical level, a panel of community partners has “real-world” credibility that students do not always attribute to law professors. This can help students to understand the daily realities of the areas in which they hope to practice. This deepens the knowledge of secondary learning domains, a requirement for

---

298. See Gloria Valencia-Weber, *Law School Training of American Indians as Legal-Warriors*, 20 AM. INDIAN L. REV. 5, 18 (1996).

299. See Paula Lustbader, *You Are Not in Kansas Anymore: Orientation Programs Can Help Students Fly over the Rainbow*, 47 WASHBURN L.J. 327, 328–32 (2008).

transfer considered so crucial by Haskell and others. Even outside of a formal orientation program, law schools can call upon upper-division students,<sup>300</sup> community partners, and alumni from the public-service sector to speak to their students about how they will use their newfound knowledge to solve problems for clients in need. These “war stories” can center not just on how lawyers navigate courtroom and law-firm life, but on how they have used their law-school training to serve people in need.

Finally, it might be easy to overlook the need to instill in students the motivation to use transfer tools in the first place. Understanding “transfer thinking” is another key component of Haskell’s “culture and spirit of transfer.”<sup>301</sup> If students are not motivated to use instructional schema like the Core Skills Compass, or if they cannot see any importance behind metacognitive exercises, they may tend to see these deceptively simple devices as mere “fluff.” In the communities of practice that I envision, learning is enhanced because educators articulate the premises behind their instructional methods and curricular design. Experienced practitioners can assist newcomers to find “an opening, a way of gaining access to sources for understanding through growing involvement.”<sup>302</sup> The core-skills continuum is designed to cultivate within students a drive to master the dynamics of transfer. This sense of drive will most likely take the form of a circular feedback loop, in which the various schemas reveal the interconnectivity of the law-school curriculum, thereby reducing the stress-filled barriers that students feel when they view law school as a series of disjointed experiments. In this way, the world of law school is reduced to “manageable proportions.”<sup>303</sup> By seeing that successful navigation is possible, and reducing the appearance of discontinuity, students can become more strongly motivated, even if only in terms of lower, external motivators like grades and class rank. As a result of the reduced stress and increased familiarity that this viewpoint enables, students are more likely to “encode” their knowledge for storage and retrieval in terms of transfer.<sup>304</sup> These first tastes of success can also lead

---

300. See SCHWARTZ, SPARROW & HESS, *supra* note 254, at 99–100 (“Upper-division students can be effective role models because they have developed the desired skills in the same context in which the students need to develop the skills. Sequences in which the upper-division students quickly demonstrate how they continue to self-regulate their learning in their current courses and then supervise the students in using the skills are particularly effective. This approach addresses all three facets of attitude change and directly addresses the possibility that students might perceive that only law professors value self-regulation skills.”).

301. HASKELL, *supra* note 1, at 116–30.

302. See JEAN LAVE & ETIENNE WENGER, *SITUATED LEARNING: LEGITIMATE PERIPHERAL PARTICIPATION* 37 (Cambridge Univ. Press 1999).

303. HASKELL, *supra* note 1, at 25.

304. *Id.* at 119–21.

to an increased understanding of the immediate benefits of transfer theory to one's education, with the capacity to reveal deeper benefits for personal and professional growth.

## V. CONCLUSION

The material presented here is the first attempt to address a comprehensive method for improving transfer of learning in legal education by integrating the curriculum, relating it to core lawyering skills, and then relating those concepts to the assignment at hand. Hopefully, it will generate much additional scholarship and many new ideas, modules, and shared experiences.

The Core Skills Approach is meant to reflect an emphasis on the conscious cultivation of a deep, underlying motivation to achieve transfer and intentional maneuvers for accomplishing it. As learners, we desire to develop a steady, experienced hand with which to guide the ship of our inquiry. The steady hand, strong intent, and useful maneuvers necessary to guide the ship are no replacement for the deep-seated knowledge base required to use them. This approach steers directly to the center of the pendulum-like extremes of educational theory. It does not view metacognitive strategies as a replacement for a well-developed knowledge base, nor does it assume that transfer will happen automatically as a result of it. The ship in this example is the knowledge base itself. Motivation and maneuvers can only enhance its use. In our travels there are elements that must be taken into account that go beyond these themes. The tides and prevailing winds of subtle internal factors such as learning styles, situated power, pre-existing mental models, and psychological and cultural dispositions must be brought into conscious awareness, addressed, and used effectively in order for transfer to be successful.

Legal educators fill a number of important roles in this journey. As guides, they will inspire students to envision new destinations, or learning areas, in which to transfer their knowledge. They will orchestrate opportunities for students to gain basic exposure to the customs, procedures, landmarks, and activities that await them in their future destinations so that they experience a degree of familiarity when they arrive. As translators, they help create a common lexicon for the wide variety of disparate terms used to describe similar phenomena. As cartographers, they assist students to chart core pathways for transfer. They assist students to navigate sometimes difficult terrain, helping them to follow paths of connection, cueing their ability to function within a new learning domain, which is the essence of transfer itself.



## Appendix

### The Core Skills Approach: Sample Documents

- Core Skills Approach Overview
- Step 1: The Core Skills Compass
- Step 2: Applied Skills Charts
- Step 3: All-Purpose Transfer Exercise
- Step 4: Tailored Transfer Exercises

#### *Please Take Note:*

This proposed, sample system for enhancing transfer in legal education is premised on the use of a meta-schema based on core lawyering skills. Legal educators may wish to explore other possible bases for schema connecting the curriculum. Moreover, the core lawyering skills identified here contain within them aspects of the value systems belonging to various reforming forces within legal education, including various aspects of clinical pedagogy, community lawyering, therapeutic justice, and the humanizing movement. Law schools and individual educators should create schema that reflect values consistent with their missions, and that they hope to instill in their students.



## THE CORE SKILLS APPROACH OVERVIEW



### The Core Skills Approach:

Four Steps for Better Transfer of Learning in Law School

#### Overview

The Core Skills Approach draws upon the best transfer-of-learning research to help students (1) integrate the curriculum; (2) anticipate how skills will apply in new and different contexts; (3) identify helpful strategies to transfer skills and knowledge to *any* new assignment; and (4) draw upon concrete knowledge and skills suitable for a very *specific* assignment. The steps are sequenced from general to specific.

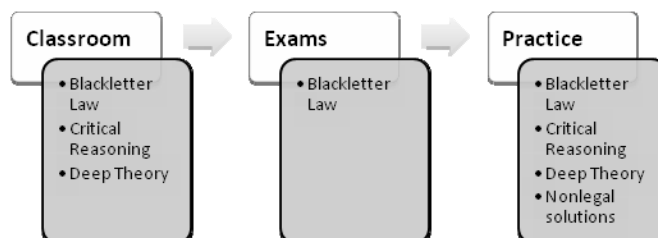
#### Step One

To newer law students, the law school curriculum usually seems disjointed. Even though their professors are trying to instill the same basic professional values and the same skills in analysis, critical thinking, and advocacy, students typically do not make this connection until much later in law school, or even until practice. Moreover, schema theory tells us that our brains encode information according to the environment we were in and the experiences we had when we learned it. Knowledge thus remains tied to particular courses, cases, exams, and professors and does not transfer easily. For these reasons, Step One is very simple: students use the compass and its accompanying list of core lawyering skills as a set of schema to view the curriculum as a continuum, unified by a set of constants in the form of the four core skills constellations.



#### Step Two

Even when students learn to view the curriculum holistically, unified by core lawyering skills, they soon discover that those skills are expressed in different ways, depending on the context. In Step Two, the applied skills guides serve as an anticipatory schema, designed to help students determine when and how they can practice their developing skills sets. Each quadrant on the core skills compass has its own applied skills guide.



### Step Three

In Steps One and Two, students first learn to unify the curriculum using abstract core lawyering skills as constants, and then learn to anticipate how to apply skills to real problems in different contexts. Step Three is a general, reflective exercise designed to encourage students to draw upon transfer strategies whenever they encounter a new problem in their courses or clerkships. Students can use this all-purpose exercise to analyze the expectations for the assignment, draw upon generalized knowledge from prior learning, explore analogous learning for creative solutions, identify the skills required for the assignment, find and explore new resources, locate and troubleshoot potential models, anticipate future applications for new knowledge and skills gained through the assignment, and tap into holistic motivations that facilitate deeper learning and transferability.

Expectations	Generalized Knowledge
Analogous Situations	Lawyering Skills
New Resources	Models
Future Applications	Motivation

Expectations	Issue-Oriented Knowledge
Analogous Situations	Particular Applied Skills
Tailored Resources	Existing Models
Future Applications	Motivation

### Step Four

Although Steps One through Three can stand alone as an effective approach to transfer, law professors can encourage even better transfer to the current assignment (and into practice) by tailoring a reflective exercise or checklist to the current problem in class. The exercise looks very much like that in Step Three but emphasizes the doctrinal area(s), issues, skills, and resources involved in completing the task.

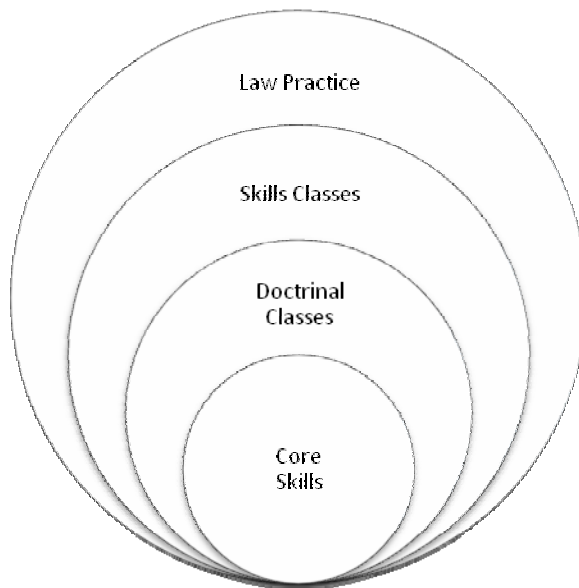


## THE CORE SKILLS APPROACH STEP 1



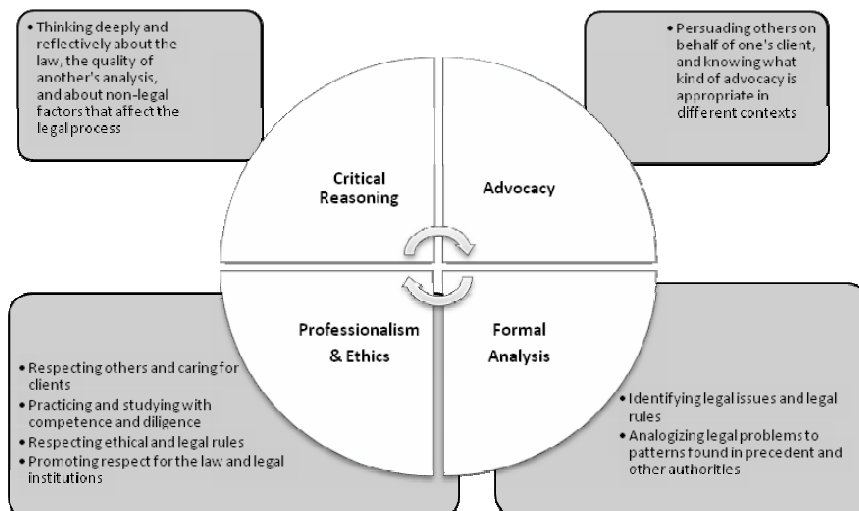
### The Core Skills Compass:

A Tool for Transferring Core Legal Skills throughout Law School and Practice



Roughly four clusters of core legal skills will govern your education and your law practice. The contexts in which you utilize these skills include your doctrinal law school classes, where you discuss law and policy at a deep, theoretical level; your skills classes, where you apply your new knowledge in a simulated practice environment; and your real-world law practice experiences, such as clinics, externships, clerkships, and your career after graduation. These skill clusters are mutually-reinforcing and overlapping, rather than mutually exclusive.

Even though the same core skills are used across all of these different environments, novice attorneys often struggle to recognize them or to identify the expectations of their professors and supervisors. By using the core skills compass and accompanying navigational charts, you can better anticipate when and how to develop and use these skills. When in doubt, clarify with your professor or supervising attorney.







THE CORE SKILLS APPROACH  
STEP 2



**Applied Skills Guides**

As seen in the Core Skills Compass, one way of seeing your law studies as a unified whole is to think of each course in terms of what core lawyering skills it aims to teach you. These charts can be used to help navigate your different courses, externships, clinical experiences, and clerkship experiences based on the skills represented by each of the four quadrants: Advocacy, Professionalism & Ethics, Critical Reasoning, and Formal Analysis.

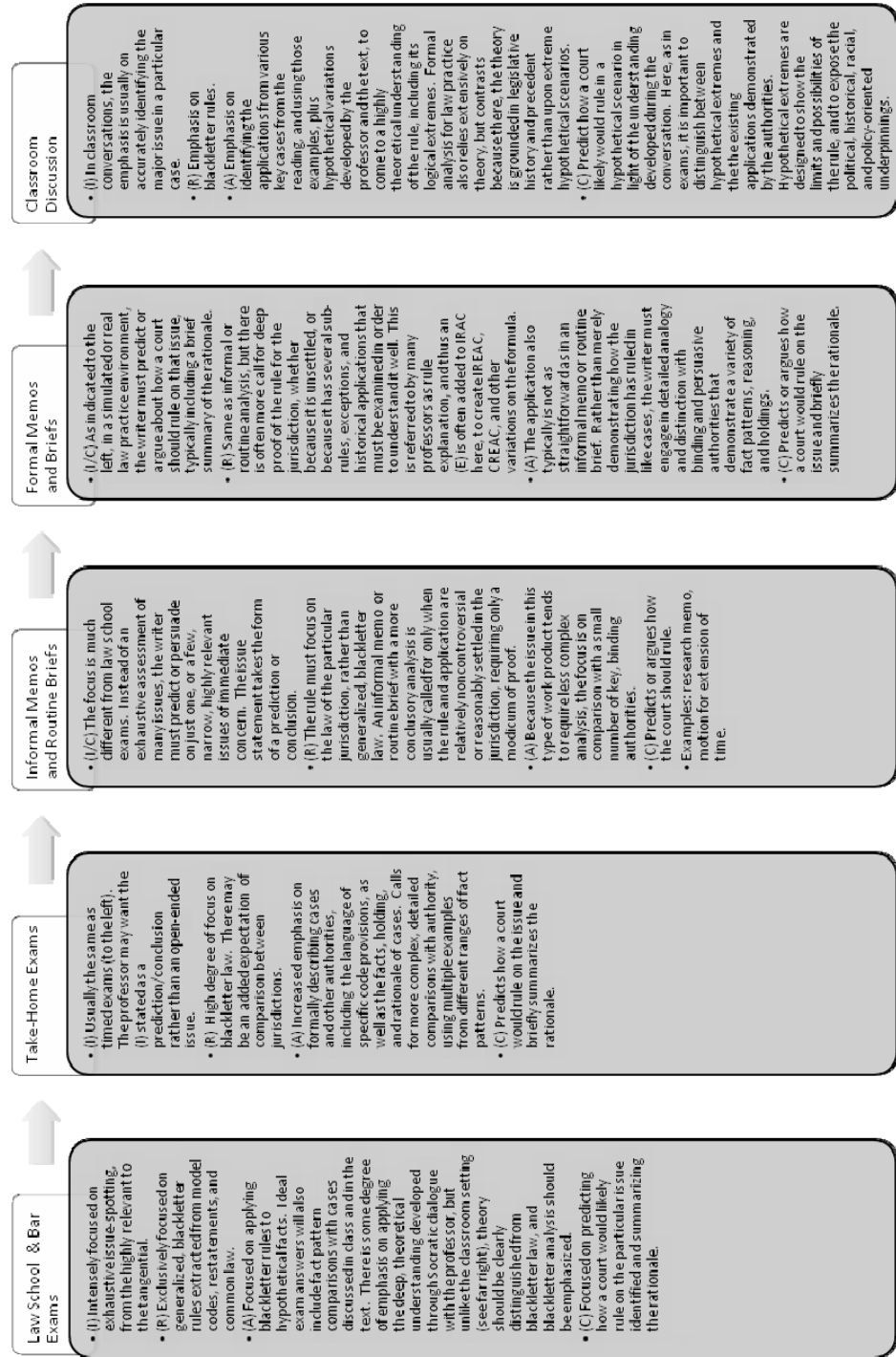
The charts follow on the next four pages and are followed by Steps 3 and 4 in the Core Skills Approach.



## THE CORE SKILLS APPROACH STEP 2/GUIDE 1



### Applied Skills Guide: Formal Analysis (Concrete to Theoretical)

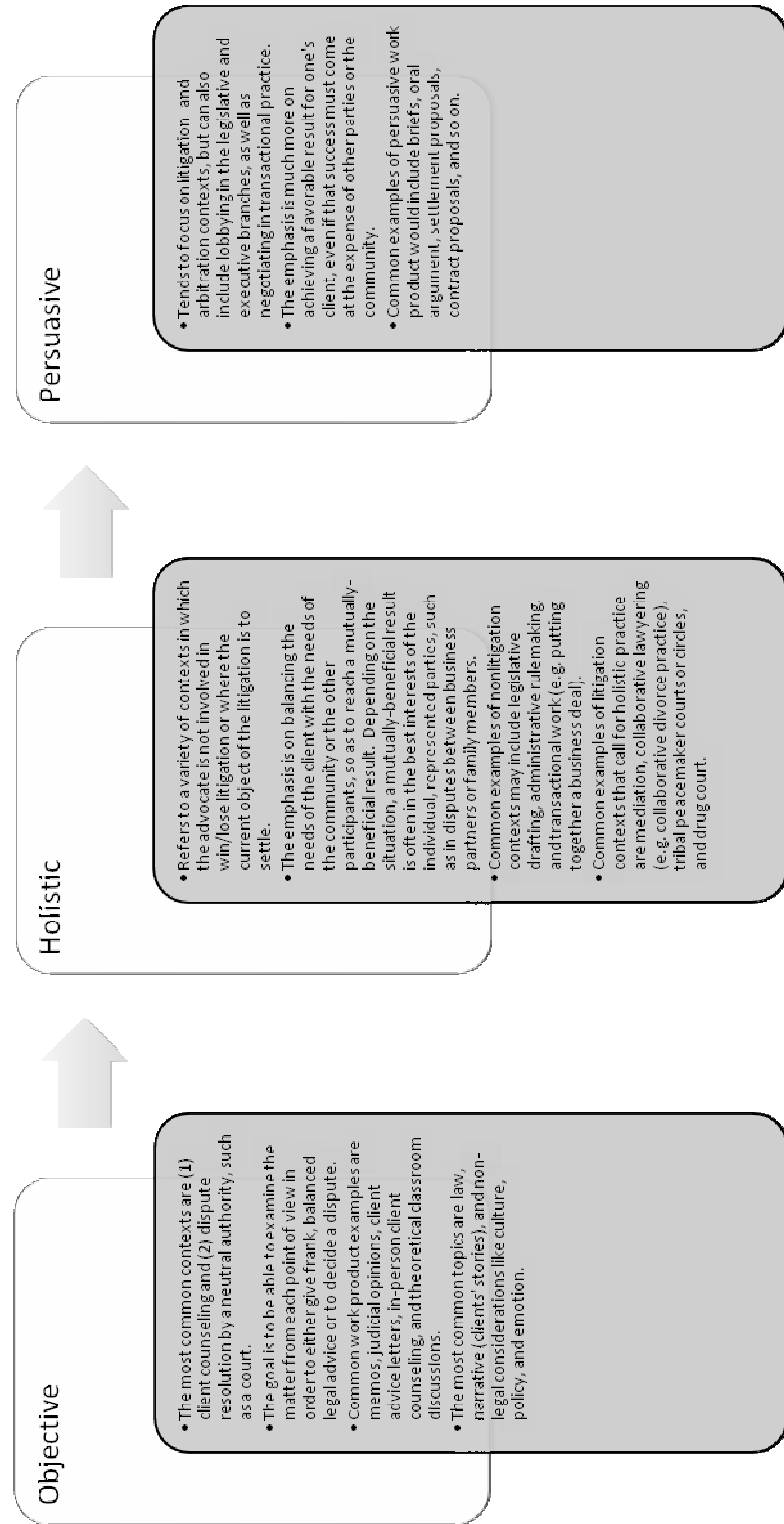




## THE CORE SKILLS APPROACH STEP 2/GUIDE 2



### Applied Skills Guide: Advocacy (Objective to Holistic to Persuasive)

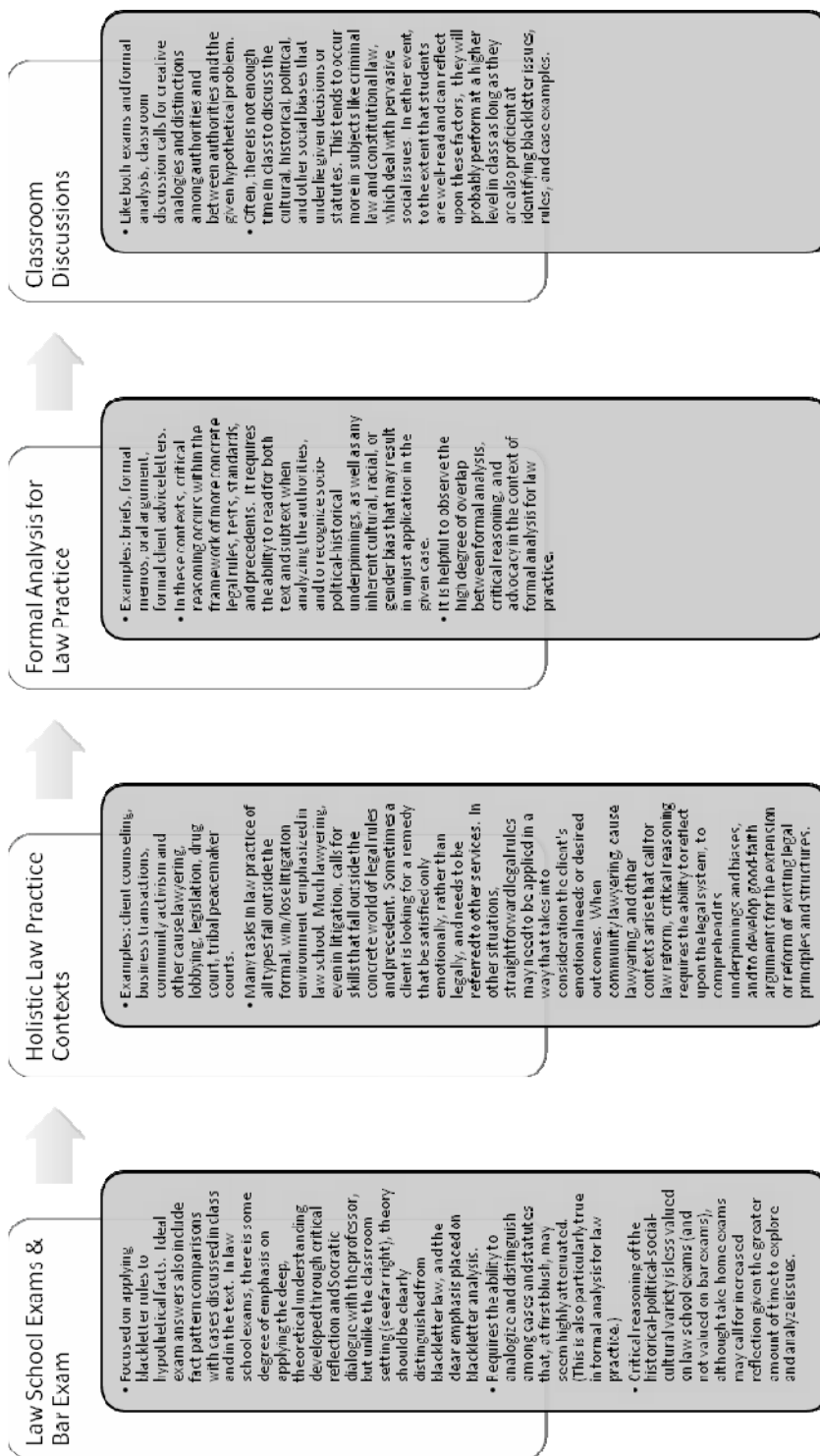




## THE CORE SKILLS APPROACH STEP 2/GUIDE 3



### Applied Skills Guide: Critical Reasoning (Law School to Law Practice) (Concrete/Emotional/Theoretical)

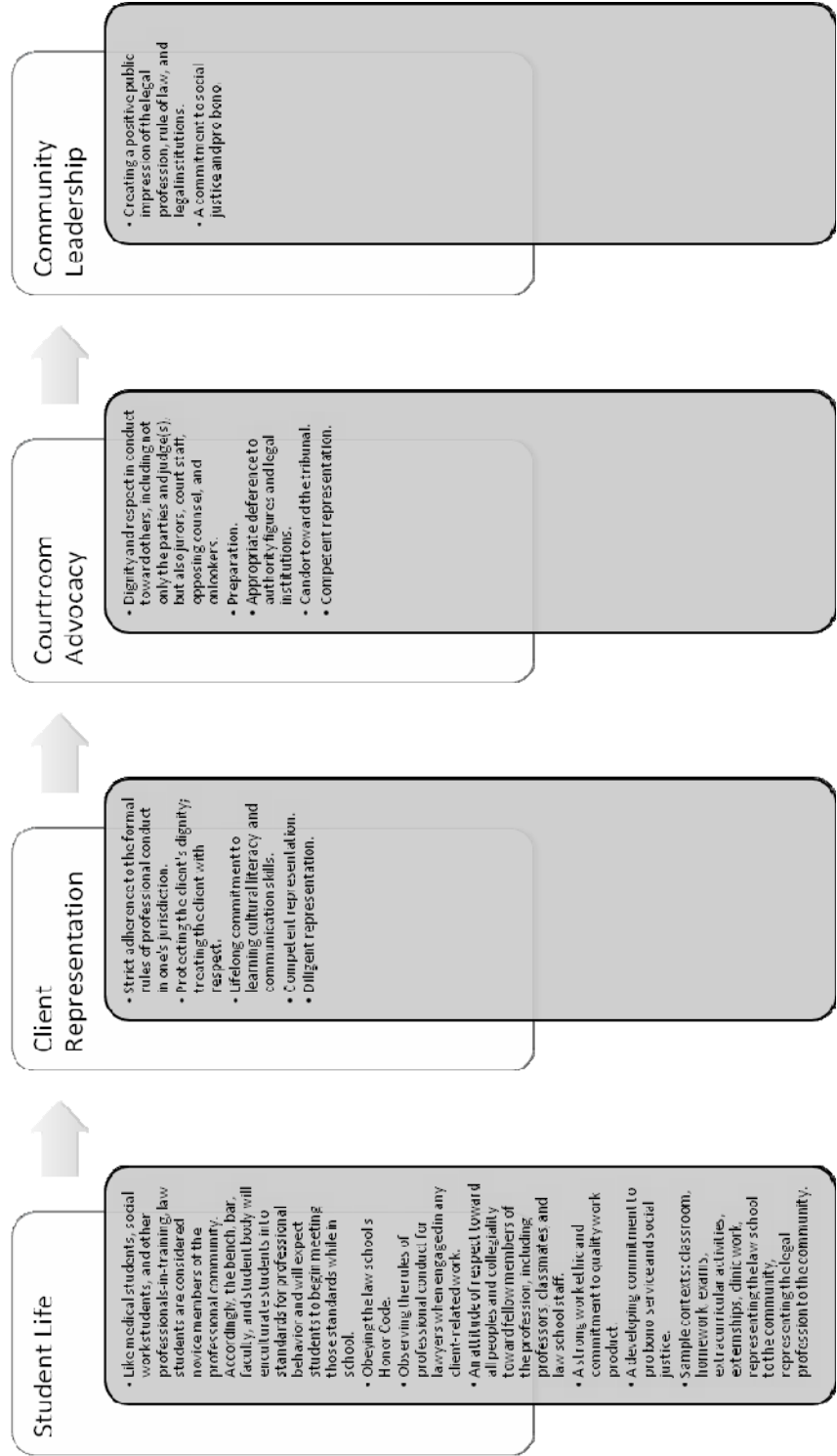




## THE CORE SKILLS APPROACH STEP 2/GUIDE 4



### Applied Skills Guide: Professionalism (Law School to Practice to Courtroom to Community)





## THE CORE SKILLS APPROACH STEP 3



### All-Purpose Transfer Exercise

#### Instructions

Sometimes it is difficult to digest all the different topics and assignments in law school in such a way that you can “encode” them for future use. This exercise draws upon research in the science of “transfer of learning” to help you use your work not just to succeed in law school, but also to develop into a prepared and engaged professional. The purpose of this exercise is to help you to draw upon previous instruction and experience in order to complete an assignment in law school, or perhaps even in a clerkship or externship. It is also designed to help you learn from the assignment in such a way that you can eventually transfer your experience to law practice. Finally, the exercise also encourages the development of motivation around “big picture” concerns beyond grades, in order to make the learning deeper and easier to access later, when you are practicing law. As you get used to using these methods for “transfer thinking,” eventually, you should no longer need to use this formal exercise every time. Instead, when you feel stuck, you can read it occasionally as a refresher.

#### Understanding Expectations

- ☐ What are the goals of this task or assignment? What instructions were provided? Is it clear what you are supposed to learn from it? If not, reflect on the content of the chapter you are reading or on the material you have discussed in class, and see if you can connect it to the task at hand.
- ☐ Take a moment to look at the Core Skills Compass and the list of skills it contains in each of the four quadrants. While you are in “big picture,” brainstorming mode, what kinds of skills seem to be called for in this task?

### **Drawing upon General Knowledge**

- ☐ Whatever type of project you are working on, it is designed to help you process and deepen your understanding of the topic you are studying in class. Whether you are taking a course or working in a practice environment, your current task likely also builds upon knowledge you learned earlier, perhaps even in other courses.
- ☐ What doctrinal area is implicated by your problem, and does it intersect with any other areas of law? Do you see any familiar legal concepts or terminology that you have also noticed in your other courses? Are you supposed to be looking at the law for a particular jurisdiction or the general blackletter law (note that the blackletter law is sometimes divided into majority and minority views)?
- ☐ Usually problems on exams, in books, or in law practice look different from the cases and materials studied in class. Every case is different, so working on problems that don't exactly fit with what you already know is great experience for new lawyers. Looking back over the material you have studied, what general rules or principles can you extract from the cases and statutes you studied? You probably studied cases and hypotheticals that applied those principles in varied situations. How is your current fact pattern similar to or different from those situations?

### **Drawing upon Lawyering Skills**

- ☐ Now take a look at the Applied Skills Guides for skills clusters on the Core Skills Compass. If the skills for one of the quadrants seem strongly implicated by the assignment, for example, a memo calling for mostly formal analysis, or a textbook exercise calling for critical reasoning about history and policy, how should you likely apply that skill in the given context?
- ☐ What past opportunities have you had in law school to practice these skills? For example, if you are doing a simulation for a depositions class, think about how your experience with formal analysis in legal writing and other classes have prepared you to think about problems in terms of the elements of a cause of action. If you are preparing for a simulated client counseling session, think not only about the elements of the claim, but about how professionalism and ethics are implicated by how you communicate with the client, and how critical thinking skills, like the ability to solve problems and see nonlegal solutions, play into your counseling approach.

**Finding and Working with Models**

- ☐ When faced with a new assignment, it is natural to want to see samples of a successful product, and perhaps even an unsuccessful product for comparison. Sometimes your professor will be able to provide models, but it is not always feasible. For some things, you can also find models in other places.
- ☐ What sample models are available from your professor or from secondary sources? Your library probably contains video tutorials of depositions and trial technique. Your professor may have old exams or briefs on reserve or on your course website. Large legal research databases like Westlaw and Lexis Nexis often contain sample complaints, briefs, and motions, as do litigation forms series like Moore's Federal Practice and American Jurisprudence Pleading and Practice. Similar series contain transactional forms for different practice areas.
- ☐ Both in law school and in practice, models are typically imperfect and rarely well-tailored to a new case or problem. Instead of searching in vain for the perfect model, try to adapt from the naturally flawed examples you find after a reasonable search. What are the potential pitfalls in the model you are using? Are there places where you could improve upon the technique, explain something better, or tailor it to your facts and jurisdiction? Is the language in a sample form archaic and in need of a plain-English overhaul?

**Drawing upon Analogous Experience**

- ☐ If this is the very first time you have done this kind of assignment, for example, your first memo, you can expect to struggle with it. But you can still draw upon your previous experiences. What writing habits, research habits, scheduling, and editing processes have worked well for you in the past? What classroom or textbook exercises helped you practice the components of the task you are doing now?
- ☐ What life experiences, moral and political questions, and other areas of law might come to bear on this problem? Be careful to make sure that your task calls for analysis outside of the blackletter law. Consult your assignment instructions, models, professor, and Applied Skills Guides to anticipate how to use your knowledge and skills appropriately for the given context.



**Anticipating Future Applications**

- ☐ The main goal of law school is to develop knowledge and skills that you can carry into any kind of practice. If you envision some likely future applications now, it is more likely that you will be able to “encode” your knowledge for access later.
- ☐ Can you envision a case in which you might use the type of legal knowledge you are studying? Even seemingly archaic rules like those in property come into play surprisingly often in certain kinds of practice. Consider talking to a lawyer-mentor. If you have trouble imagining a case, remember that any practice you get in legal problem-solving builds your repertoire for practice.

**Cultivating Internal Motivation**

- ☐ Research shows that relying solely on performance-based motivators, like grades and class rank, tends to inhibit the ability to transfer skills and knowledge to a new problem. On the other hand, emphasis on “mastery”-based motivations, like becoming a competent advocate and helping others, tends to enhance that ability.
- ☐ What was your primary motivation for coming to law school? If it was to get a secure job in an interesting field, how might you relate this assignment to that goal? If you like mathematical problems and issues with clear rules attached, does it help to think of your task as a puzzle to be solved? If your primary motivation centered on concerns like justice or a particular cause, how might you think of this assignment as a stepping stone toward your goal? Can you relate the particular skills and knowledge to part of your plan for becoming a lawyer competent to carry out that mission?



THE CORE SKILLS APPROACH  
STEP 4/EXERCISE 1



**Tailored Transfer Exercise 1:**

Legal Writing to Clinic (Client Advice Letter)

**Instructions**

The purpose of this exercise is to help you to recall legal analysis and letter-writing skills that you learned in your first-year legal writing class. Your supervising attorney may wish you to use it as a checklist, or if you are new to the clinic, you may be asked briefly to answer these questions and turn them in with your first draft letter. You may also have business letter writing experience in your employment history. If you did not work on client letters in your legal writing course, this exercise will ask you to locate and study instructional resources before undertaking this project.

**Locating Resources**

- ☐ What textbooks and legal writing guidebooks do you already own that could help you get started on this task? Are there any relevant instructions in the clinic manual?
- ☐ Using the law library catalog, are there any other legal writing textbooks or guides that would help you develop a good set of criteria for a client letter?
- ☐ What sample letters are available in the clinic bank or in previous client files? Are they good samples? From your research, what criteria should you use to evaluate the quality of a sample letter?

### Formal Components

- ☐ What style letterhead does your clinic use, and how do you locate it on the computer network? Should you try to incorporate the letterhead yourself, or does the clinic prefer that your support staff perform that function?
- ☐ What typographical formatting style does your clinic prefer, for example, margins and alignment? Does your clinic use block style, modified block style, or semi-block style (see <http://owl.english.purdue.edu/owl/resource/653/02/>)? What about the font type and size?
- ☐ Should anyone else other than the client file receive a copy of this letter? Normally, no one but the client gets a copy of the client letter due to ethical considerations for client confidentiality. But in a rare case, such as where the client has a guardian, those names should appear on the cc: line under the signature block. Does your clinic note copies to the client file on the cc: line?
- ☐ Who will sign the letter, you or your supervising attorney?

### Purpose

- ☐ What is the goal or purpose of this letter? Is it to provide advice in the form of a prediction, such as the likelihood of success on the merits? Or perhaps the advantages and disadvantages of taking a certain course of action? Will it require legal analysis or more of a pragmatic assessment, such as financial or emotional costs and time requirements? If unsure, you may need to talk to your supervising attorney again.
- ☐ Is the purpose of the letter clearly stated in the opening paragraph?
- ☐ Are there any secondary purposes to the letter, such as to create a record of attorney/client communication or even a series of difficult communications with the client? If so, be sure to include that information in a diplomatic way so as to protect yourself, your supervisor, and the clinic.

**Audience and Tone**

- ☐ What is the client's level of education or business experience?
- ☐ What is the client's level of familiarity with the legal process and legal terminology?
- ☐ If working with a child client, is he or she so young that the audience is truly an adult reader, such as a guardian? Should the letter be addressed to that person instead? Or is he or she old enough that the letter should be written with her education and developmental level in mind?
- ☐ Is there a language barrier?
- ☐ Is the client in emotional distress? If there is bad news, how can it be stated accurately but compassionately?
- ☐ Would this client benefit from statements of empathy? If so, what is an appropriate amount of empathetic tone and language given the client's age, emotional state, personality, and familiarity with you and the law clinic?
- ☐ If the client has experienced frustration due to delays in court proceedings, difficulties obtaining evidence, and so on, what kind of reassurance or sympathy can you provide without providing false hope?
- ☐ If the client is frustrated with the clinic's legal representation or likely to become frustrated with the nature of the advice rendered, what diplomacy might you exert in the letter to help assuage the situation?
- ☐ Have you taken into consideration this letter's future or unknown audience? If the client ever entered into a future dispute with the clinic, would you feel comfortable about an outside attorney or judge reading this letter?

**Factual Basis**

- ☐ What underlying assumptions does the legal advice make about the facts of the case?
- ☐ Would any additional information or clarity affect the analysis or advice given?
- ☐ Have you protected the clinic by asking the client to verify the facts, to identify inaccuracies, or to provide new information?

**Legal Analysis**

- ☐ Given the client's level of legal sophistication, should you cite authority in your explanation of the law? Even if your client would be overwhelmed by formal citations, should you identify your authorities for the future or unknown reader mentioned above? If not, are the authorities well-documented elsewhere in the client's file, such as in an internal memo?
- ☐ Does the analysis follow a basic IRAC structure for each issue, providing an issue-specific topic sentence, legal rule, comparison and contrast to authority, and a conclusion?
- ☐ Is enough information provided that the client could, without any further information, make a meaningful, potentially life-altering decision based on what he has read?

**Advice**

- ☐ Given the letter's purpose, identified above, is the advice to the client clearly stated? Is it stated both in the early paragraphs of the letter and then clarified and restated at the end?
- ☐ Does the letter state a clear position, rather than an open-ended "it depends" answer? If the advice centers on the likelihood of a certain outcome, is it phrased in terms of probability rather than possibility (almost anything is "possible," but is it likely to occur)? If an "it depends" answer is necessary, are the different variables and outcomes established in "if/then" form so that the client can assess the outcomes?
- ☐ Does the advice follow with an offer to clarify information or establish a time to meet and discuss it? If the letter's purpose is to memorialize a recent meeting on the same topic, does the opening paragraph establish the date of that meeting and what was discussed?
- ☐ Have you considered the nonlegal factors that should inform your advice, such as emotional or financial costs, or nonlegal solutions like public services?

**Submission and Filing**

- ☐ What is the deadline for this draft, and what is a reasonable amount of time to produce the final letter, given its purpose and the standards of professional conduct within the legal community?
- ☐ Should you print your draft on a special color of paper (see clinic manual)? Which versions need to be placed in the client file?
- ☐ Do you need to turn in a memo or checklist with your draft letter?
- ☐ What is your plan for seeing this letter through to completion and taking responsibility for meeting deadlines and making sure that the letter is carefully proofread, processed, and mailed in a timely manner?



## THE CORE SKILLS APPROACH STEP 4/EXERCISE 2



### **Tailored Transfer Exercise 2:**

Casebook topic to exam answer (generic)

### **Introduction**

The purpose of this exercise is to help you to focus what you have learned in this module on \_\_\_\_\_ [example: anticipatory repudiation] and apply it to your upcoming examination. Recall that classroom discussion is designed to develop not only blackletter rules and theoretical applications, but also critical thinking about the legal system, public policy, and even the moral implications of different legal rules and applications. In contrast, timed, in-class law school exams are designed to test almost exclusively the blackletter rules and their range of potential applications to different fact scenarios.

Sometimes, take-home exams ask for more policy-oriented discussion because of the greater time allowed. They typically do not call for advocacy because they require objective rather than persuasive analysis. For purposes of exams, professionalism comes into play in terms of your preparation and competence, quality of presentation (dependent on test conditions, of course), and adherence to honor code rules, including plagiarism concerns. Be sure to clarify these expectations with your professor.

### **Type of Exam and Expectations**

- ☐ Is the exam a timed, in-class exam or a take-home exam? Multiple-choice or essay? Open or closed-book?
- ☐ Depending on the length of time permitted and whether the exam allows notes or books to be open, does the professor expect citations to authority?
- ☐ If the exam is a longer one, such as an open-book, take-home exam, should you discuss policy and philosophical considerations in addition to the blackletter analysis?

**Compiling the Rules and Exceptions**

- ☐ What are the primary sources of law for this subtopic? Do they come from a uniform or model code, like the UCC? Are they further explained and modified by case law? Or are they exclusively from the common law? Does your professor rely on the Restatement in this area of law as a source of common-law rules? If so, how do the Restatement and case-law rules compare and contrast?
- ☐ Does your outline clearly list each major rule in this section and identify its exceptions? Have you drawn rules from the different sources identified above? Where they contrast, do you explore under what circumstances they apply or how changes in the rule can affect the outcome?
- ☐ Which cases provide examples of the application of each rule and exception? What are the basic facts, holdings, and rationale descriptions for each major case?
- ☐ Did your professor discuss cases that were not covered in the textbook? Are they woven into your outline? Do you need to download and read those cases to understand what was discussed in class?
- ☐ Does the textbook discuss cases that you did not cover in class? (Unless the professor states otherwise, assume that any material in the assigned reading will be covered on the exam.) If so, have you also digested those rules and applications for your outline?

**Spectrums of Application**

- ☐ For each rule, what are the various applications represented by the relevant cases (and possibly the model code or restatement comments)?
- ☐ Using a linear outline, flowchart, or a continuum line (spectrum line), mark cases that identify *positive* examples of [anticipatory repudiation] and cases that provide examples where a court or commentator felt the situation was *not* an example of [anticipatory repudiation]. What made the difference in each case? If the courts applied different rules, be sure to identify the split in authority and learn the difference (e.g., the Third Circuit approach versus the Restatement approach).
- ☐ Compare and contrast the positive outcomes versus negative outcomes. What were the determinative facts and rules that decided when [a party's actions] qualified as [an anticipatory repudiation]?
- ☐ Identify the hypothetical scenarios discussed in class and in the text. Given what you now know about how the rules have been applied in past factual contexts, how would they probably apply in these hypothetical situations? Where does the hypothetical scenario fall along the spectrum of applications between ["anticipatory repudiation"] and ["not anticipatory repudiation"]? Be sure to concretely compare and contrast to existing cases or commentary.



**Organization and Presentation for Essay Exams**

After considering the expectations above, complete some practice exam answers and consider how to make grading easier for your professor:

- ☐ Have you used IRAC formula?
- ☐ In a longer, take-home exam, have you clearly identified a topic sentence for each paragraph so that the issue (I) can be matched to the grading rubric? Does the professor want a conclusion/prediction or an open-ended issue statement?
- ☐ Have you clearly identified the rule (R) so that it can be matched to the rubric? If there are competing rules, have you identified them and their sources and analyzed each one? What about exceptions and sub-rules?
- ☐ Have you mentioned the names of key cases so that they also can be identified for grading?
- ☐ If permitted, have you underlined key legal terms of art and case names to make checklist-style grading easier?
- ☐ If your handwriting is terrible, is there an option to type? Can you use print-style handwriting efficiently?
- ☐ If typing, be sure to use an appropriate font type, font size, and margins, and determine whether your professor prefers double or single spacing.