

Casebooks and the Future of Contracts Pedagogy

CAROL L. CHOMSKY*

Contracts teachers have long relied on the casebooks they adopt to help them build and shape both the content and the pedagogy of their contracts classes. The Knapp, Crystal, & Prince casebook has been particularly noteworthy in this regard, helping generations of new and experienced law teachers learn and explore contracts doctrine under the guidance of Chuck Knapp and his co-authors. As casebook authors take seriously the forces and trends in academic publishing, the casebooks are bound to change in significant ways, leading to innovation and even transformation of the course itself. Driving the change are at least six developments and concerns: (1) recognition that the course must include more attention to the concepts and skills that matter to practicing lawyers; (2) new accreditation standards that require identification of learning outcomes expected from our courses; (3) the need (if not yet the reality) to have the bar exam be focused less on knowledge and more on skills; (4) perhaps most importantly, increasing knowledge about what good learning practice requires in the classroom; (5) availability of new technologies to deliver more dynamic content; and (6) changing demands from publishers and students, partly as a result of the other forces mentioned. Our teaching is already adapting to the new law school environment, and visionary casebooks, in contracts as elsewhere in the curriculum, can and should lead the way.

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The role and even the existence of contracts as a first-year course has been questioned in recent times,¹ so it would be sensible to think that an inquiry about the role of casebooks in the future of contract law should begin with an exploration of the value of contract law itself as a foundational set of concepts worth imparting to first-year law students. Whither goes contract law, so go the casebooks in that formulation. But I think that gets the matter backwards. Reimagining contracts casebooks is the first step in reshaping contracts as a course, and maybe even contract law as a field. What the course looks like, and therefore whether the course survives, depends on what the casebooks look like.

That claim—that contracts teaching follows the casebooks rather than the other way around—is based on my own experience becoming a teacher of contracts almost thirty years ago. I landed in that role not because I was already a contracts expert as a practitioner or scholar, but because my school needed another contracts section to fill out the first-year schedule. After looking through a casebook or two, I thought the course would be an interesting and even fun topic, one that students could appreciate with reference to their own lives. (I knew that making my dean happy by teaching the course was a plus as well, even in my second year in the academy.) So I picked a casebook and taught the course—and learned the law from teaching the book. More precisely, and of more relevance, I learned the law from the Knapp & Crystal casebook. The book offered, and still offers, an incredibly rich instruction in the broad array of topics covered in the typical contracts course, and its extensive notes and comments were a blessing to the professors who used the book. (Students, on the other hand, sometimes saw these notes and comments as more of a mixed blessing!)

I believe, and conversations with a sample of colleagues confirm, that my experience is not unusual. Many enter the teaching of contracts as relative novices and learn the subject matter of the course from the books we choose (often Knapp, Crystal, and Prince, given the widespread adoption of that book). The existence and popularity of the teaching manuals for casebooks—indeed, the necessity of providing a good manual

1. See Franklin G. Snyder & Ann M. Mirabito, *The Death of Contracts*, 52 DUQ. L. REV. 345, 348 (2014).

to make a book marketable—reinforces the sense that many contracts teachers are learning the course from teaching the book. We may become contract law experts and scholars; we may over time reorganize the course and supplement the materials; we may shape the experience of our students with our own emergent and evolving understanding of the law; and we may even write and publish our own casebooks to offer our vision of contracts to our students and colleagues. But all of that is built on the conceptual framework we learned from the casebook (or casebooks) we used in our early years of teaching the course.

This dynamic still prevails, with the content of contracts courses shaped by the content of the contracts casebooks. But the picture is not a static one. Casebooks are already beginning to change and, as casebook authors take seriously the forces and trends already visible in academic publishing, the contracts casebooks of the future may well transform the teaching of contracts and, indirectly, the nature of contract law itself.

Stated briefly here and amplified below, I see the change in casebooks being driven by six developments and concerns:

(1) Increasing appreciation of and attention to how lawyers work with contracts and contract law, and what that means about what we teach our students. This is part of a larger trend toward teaching with an eye to helping our students learn how to do the work of lawyers, not just (or primarily) how to think like lawyers.²

(2) The recent change in the American Bar Association (“ABA”) accreditation standards that will require us to be more mindful of, and explicit about, the learning outcomes we believe are appropriate for our students, both for law school as a whole and in each of our courses.

(3) Efforts to change the nature and content of bar examinations, which still test traditional first-year subjects and remain focused primarily on testing knowledge of the law, but may (and I suggest ought to) evolve to test lawyering skills.³

(4) What we already know and what we can and must learn about good pedagogy (perhaps the most compelling force, and one already leading to change in the books we see).⁴

(5) The availability and development of new technology that will allow us to deliver more interactive and dynamic course materials.⁵

(6) What will “sell”⁶—what students want, what faculty think students want, and what the publishers think faculty and students want, which may not all be the same thing.

2. See *infra* text accompanying notes 7–8.

3. See *infra* text accompanying notes 16–22.

4. See *infra* text accompanying notes 23–43.

5. See *infra* text accompanying notes 47–53.

6. Literally sell, or be demanded and used in the case of freeware. See *infra* text accompanying note 51.

I. LAWYERING AND SUBJECT MATTER CONTENT

One of the major criticisms of contracts as a course (indeed, of much of what we teach in the first year of law school) is that it is not relevant to what lawyers do. Contracts courses, and the casebooks, typically spend much time and space on contract formation (particularly offer, acceptance, and consideration), a range of contracts defenses (including infancy, mental capacity, duress and undue influence, mistake, and impossibility), and the theory of contract remedies. In contrast, lawyers dealing with contract matters typically spend their time and effort on drafting, negotiating, interpreting, and applying contracts, on measuring and proving the amount of contract damages—and on writing their contracts to avoid the application of many of the rules most studied in first-year courses.⁷ Contracts cases frequently (and perhaps most often) turn on interpretations of contract language, not primarily on deciding questions of law,⁸ while contracts courses and casebooks focus on discussions of legal principles not often at issue. Contract doctrine, as taught in first-year courses, reflects the marketplace of yesterday, not the commercial realities of today.⁹ And casebooks and courses focus too little attention on the validity of arbitration clauses and the more fact-specific decisionmaking in arbitration claims, given the prevalent existence and invocation of mandatory arbitration clauses in contracts¹⁰ and the reduced importance of legal doctrine in arbitration decisions.¹¹

7. On the latter point, see Snyder & Mirabito, *supra* note 1, at 348 (“Because sophisticated commercial parties are always free to opt out of contract regimes they do not find helpful, much of the current law school contracts course, in our view, is likely to become almost entirely irrelevant to practicing lawyers and their clients.”); see also Robert E. Scott, *The Death of Contract Law*, 54 U. TORONTO L.J. 369, 377–80 (2004).

8. This claim—that cases turn on interpretation of contract language as much or more than on doctrinal decisionmaking—is based on anecdotal evidence rather than on any scientific study of recent court cases. I rely in part on a comment to this effect made to me by a federal district court judge about the way in which he sees contracts appear in his courtroom, and on the number of times I find digest descriptions of recent cases highlighting the application of law to fact rather than focusing on significant statements of legal principles. Appellate decisions are somewhat more likely to be about legal principles, but I suspect that the vast majority of contract disputes are resolved in trial rather than appellate court and turn on interpretation and application of contract language rather than on explorations of the meaning of contract law principles.

9. Snyder & Mirabito, *supra* note 1, at 381.

10. See Linda J. Demaine & Deborah R. Hensler, “Volunteering” to Arbitrate Through Predispute Arbitration Clauses: The Average Consumer’s Experience, 67 LAW & CONTEMP. PROBS. 55, 62 (2004); Theodore Eisenberg et al., *Arbitration’s Summer Soldiers: An Empirical Study of Arbitration Clauses in Consumer and Nonconsumer Contracts*, 41 U. MICH. J.L. REFORM 871, 876 (2008) (“The results are striking. Over three-quarters of the studied companies’ consumer agreements provided for mandatory arbitration of disputes. Yet less than 10% of their negotiated nonconsumer, non-employment contracts included arbitration clauses. The absence of arbitration provisions in the great majority of negotiated business contracts suggests that companies value, even prefer, litigation as the means for resolving disputes with peers.”); Yvette Ostolaza, *Overview of Arbitration Clauses in Consumer Financial Services Contracts*, 40 TEX. TECH L. REV. 37, 66 (2007).

11. Arbitrators are often not required to abide by legal principles, so resolution turns on determinations of fact. 27 AM. JUR. 3D PROOF OF FACTS § 103 (1994) (“In nonjudicial arbitration,

I agree that we ought to include more contract drafting, negotiation, interpretation, and remedies application in our courses and therefore in our casebooks; that we need to teach in light of the commercial world in which our students will practice; and that issues related to arbitration of disputes must be given more attention. But there are reasons to be cautious about too quickly jettisoning the traditional core of contracts courses, even if that core is not expressly discussed, applied, or even considered in normal lawyering activity related to contracts.

First, foundational concepts about what it means to agree and what kinds of agreements ought to be enforceable—the underlying aspects of offer and acceptance, consideration, and defenses—are of ongoing importance, especially as the modern context for contracting changes. The issues raised, frequently and repeatedly, by compelled arbitration clauses, online purchasing, and boilerplate contracts, and by events like the request that Dallas healthcare workers sign legal documents “voluntarily” agreeing to self-monitor and restrict travel after treating an Ebola patient,¹² are all directly connected to those fundamental principles. Students should learn to do the day-to-day work of lawyers handling contracts, but they should also learn the underlying policies that are relevant to, and ought to be invoked in, the context in which that day-to-day work is done. Those fundamental principles are also the most likely to remain with students after the course ends and ones they will see again and again in other courses¹³ and contexts. Learning about what it means to understand and agree to what someone else has said, why and when reliance matters, and the tension between letting people do what they want and controlling behavior for reasons of fairness and justice in a world of inequality may not help students draft contract clauses, but it will help them be better lawyers.¹⁴

arbitrators are given tremendous discretion in rendering their decisions. Unless specified in the arbitration agreement, arbitrators do not have to explain their decisions, nor are they required to make findings of fact and law. In fact, unless stated in the contract, they are not even required to follow existing law, and can virtually render their decisions for any reason they please. As a matter of law and policy, courts will not review an arbitrator’s decision for errors of law or adequacy of evidence, even when such errors appear on the face of the award.” (citing *Hamilton Metals, Inc. v. Blue Valley Metal Prods. Co.* 763 S.W.2d 225 (Mo. Ct. App. 1988); *Moncharsh v. Heily & Blase*, 832 P.2d 899 (Cal. 1992)).

12. See Eric Aasen & Krystina Martinez, *Dallas County Tells 75 Presbyterian Workers to Stay Home*, KERA NEWS (Oct. 16, 2014, 5:55 PM), <http://keranews.org/post/dallas-county-tells-75-presbyterian-workers-stay-home>.

13. Many commercial law courses invoke or touch upon agreements, of course, but so do courses in consumer law, family law, property law, intellectual property, health care law, and even criminal law, to name a few. Contract law doctrine itself may not apply directly, but the principles related to finding contractual agreement provide a foundation for understanding the doctrines related more specifically to other kinds of agreements.

14. It will also help them be better judges, if they take that path, countering the trend that has arguably (and unfortunately) made contract law less relevant to modern judicial responses to challenging new contracts circumstances. See generally Nancy S. Kim, *Two Alternate Visions of Contract Law in 2025*, 52 DUQ. L. REV. 303 (2014).

I'm also old-school enough to still believe that to be good lawyers and good public citizens, students need to understand more generally how the law works (or sometimes does not) and how it evolves, and that means teaching them something of the history of settled doctrine and even some obscure corners of the law. For example, one of the doctrines traditionally included in contracts casebooks is enforcement of promises made for benefit received, memorialized in Restatement (Second) of Contracts section 86. Looking for cases to update the presentation of that issue in the second edition of my casebook, written with Christina Kunz,¹⁵ I found virtually none addressing this issue, under the Restatement or otherwise, since the old classic opinions that appear in most of the casebooks (*Mills v. Wyman* and *Webb v. McGowin*).¹⁶ Lawyers do not need to know this doctrine in order to practice contract law; it rarely, if ever, comes up as a mechanism for enforcement in the “real world” of contracts, and certainly not in drafting contracts, because the doctrine fills a gap that exists precisely when there is no agreement, express or implied. We could have decided to remove the topic from the book and therefore the course. But the development and application of the rule in Restatement (Second) of Contracts section 86 is nonetheless a worthwhile story about how judges worked their way to a solution when faced with circumstances that seemed to warrant a remedy, but existing doctrine did not produce one. Considering how and why judges decide that such a development is necessary, how they move the law forward (or sideways), whether the newly crafted rule is a good one, and even why the rule is rarely or maybe never invoked—that is a worthwhile conversation.

Of course we should be mindful of how often and for how long we have such conversations in the contracts course and throughout the first year. If the point about historical development and obsolescence is made in studying consideration, for instance, then perhaps any discussion of Restatement (Second) of Contracts section 86 can be omitted or mentioned only in passing. The critical point is that there are reasons other than direct usefulness to lawyers to consider when deciding what goes in a contracts course and in a contracts casebook.

The overall message is that we should pay attention to why we are including subjects in the course and in the casebooks. Tradition—that the subject has been covered for decades or even since the first Langdell

15. CHRISTINA L. KUNZ & CAROL L. CHOMSKY, *CONTRACTS: A CONTEMPORARY APPROACH* 343 (2d ed. 2012).

16. *Mills v. Wyman*, 20 Mass. 207 (1825); *Webb v. McGowin*, 168 So. 196 (Ala. Ct. App. 1935). I did, however, find another old case with the facts I often used to illustrate the concept but previously thought were apocryphal—a worker accidentally fixing the wrong house. See *Drake v. Bell*, 55 N.Y.S. 945 (Sup. Ct. 1899).

casebook¹⁷—is certainly not enough to warrant its inclusion. We should consider the enduring value of each doctrine we include, and probably also be more transparent about the choices and the reasoning, not only to adopters of the book, but to students as well. Such consideration may lead casebook authors to remove at least some of the subject areas traditionally included, leaving room in the books and the courses for new topics and approaches.

II. TEACHING CONTRACT-LAWYERING SKILLS

In addition to changing the content of contracts courses and casebooks to avoid teaching doctrines that lawyers do not use, contracts casebooks will likely be shaped in the future by the call to incorporate more experiential learning in law school, in the first year as well as in the rest of the curriculum.¹⁸ Law school graduates need to know, and therefore law students need to learn, not only how to perform the skill of legal analysis, but also the myriad other skills that lawyers exercise in law practice.¹⁹ In contracts, that skill set surely includes reading and interpreting contracts, planning and drafting what should go into contracts, and negotiating their formation and performance.

The requirements of the recently adopted amendments to the ABA accreditation standards will help ensure that law school teaching, and therefore law school casebooks, move substantially in the direction of incorporating more experiential learning throughout the curriculum. Standard 303(a)(3) requires at least six credits of experiential coursework for each graduate starting with the class entering in Fall 2016,²⁰ but it is the articulation of learning outcomes required by Standard 302 that is

17. See W. Burette Carter, *Reconstructing Langdell*, 32 GA. L. REV. 1, 59 (1997) (citing C. C. LANGDELL, A SELECTION OF CASES ON THE LAW OF CONTRACTS ix (1871) (“It begins the subject of Contracts, and embraces the important topics of Mutual Consent, Consideration, and Conditional Contracts.”); Bruce A. Kimball, “Warn Students That I Entertain Heretical Opinions, Which They Are Not to Take As Law”: The Inception of Case Method Teaching in the Classrooms of the Early C. C. Langdell, 1870–1883, 17 LAW & HIST. REV. 57, 108 (1999) (discussing Langdell pedagogy and casebook development); Douglas W. Lind, *An Economic Analysis of Early Casebook Publishing*, 96 LAW LIBR. J. 95, 96 (2004).

18. See, e.g., AM. BAR ASS’N, SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM, REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP (1992), available at http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/2013_legal_education_and_professional_development_maccrate_report.authcheckdam.pdf; WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (2007); John Fisher, Dean’s Column, *The Changing Nature of Legal Education Continued*, W. VA. LAW., May/June 2006, at 12; David H. Getches, *What’s New in Legal Education—Experiential Learning*, 38 COLO. LAW., Apr. 2009, at 13, 16 (2009).

19. See, e.g., David A. Binder & Paul Bergman, *Taking Lawyering Skills Training Seriously*, 10 CLINICAL L. REV. 191, 196 (2003) (listing case preparation, interviewing, case theory, legal writing, client counseling, negotiation, decisionmaking, oral argument, discovery practice, proof of facts, drafting, strategic planning, fact investigation, trial advocacy, informal advocacy, and witness preparation).

20. AM. BAR ASS’N, SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, 2014–2015 ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 16 (2014) [hereinafter ABA STANDARDS].

more likely to affect the contracts course.²¹ While law schools are charged with defining for themselves which professional skills are needed for “competent and ethical participation as a member of the legal profession,”²² Interpretation 302-1 identifies a range of foundational skills that seem particularly suitable for inclusion in the first-year contracts course: interviewing, counseling, negotiation, fact development and analysis, document drafting, conflict resolution, collaboration, cultural competency, and self-evaluation.²³

Changes in bar exam content and methodology being proposed or considered²⁴ may also fuel the move towards more experiential learning in the classroom. The bar exam given in most jurisdictions still tilts heavily towards testing knowledge, including knowledge of common law contract doctrine and Uniform Commercial Code (“U.C.C.”) Article 2, but proposed reforms could expand testing of lawyering skills, which would create additional incentives to support experiential learning even in the first year.

The move toward experiential education and incorporation of lawyering skills is not new, but it has emerged with new vigor in recent years. As a result, some law faculty, in contracts as in other subjects, have begun to supplement the casebooks they use with experiential exercises or have created their own experiential-focused course materials. Professors looking to expand their experiential focus can find discussions of such supplemental material in published materials,²⁵ but to make the move to experiential teaching more pervasive, the casebooks must lead by offering contracts professors an immediately available source for ideas to help them change their courses.

21. Experiential coursework satisfying Standard 303 must be a simulation course, clinic, or externship that is “primarily experiential in nature,” so first-year courses focused primarily on teaching legal analysis and reasoning will not qualify even if they incorporate some experiential exercises. *Id.* Standard 303 is not limited to upper-level courses but most qualifying courses are likely to be taught to upper-level students.

22. *Id.* at 15.

23. *See id.* at 16.

24. *See* Andrea A. Curcio, *A Better Bar: Why and How the Existing Bar Exam Should Change*, 81 NEB. L. REV. 363, 394 (2002) (discussing use of computer simulations to assess a wider range of lawyering skills); Andrea A. Curcio et al., *Testing, Diversity, and Merit: A Reply to Dan Subotnik and Others*, 9 U. MASS. L. REV. 206, 244–52 (2014) (discussing already adopted and proposed or possible alternatives to current bar examinations); John Burwell Garvey, “*Making Law Students Client-Ready*” — *The Daniel Webster Scholar Honors Program: A Performance-Based Variant of the Bar Exam*, N.Y. ST. B.A. J., Sept. 2013, at 44, 46; Kristin Booth Glen, *Thinking Out of the Bar Exam Box: A Proposal to “MacCrate” Entry to the Profession*, 23 PACE L. REV. 343 (2003); William M. Sullivan, *Align Preparation and Assessment with Practice: A New Direction for the Bar Examination*, N.Y. ST. B.A. J., Sept. 2013, at 41, 41.

25. *See, e.g.*, Robert C. Illig, *Teaching Transactional Skills Through Simulations in Upper-Level Courses: Three Exemplars*, 2009 TRANSACTIONS: TENN. J. BUS. L. 15; Michael Hunter Schwartz et al., *All About the First Year of Law School*, 12 TRANSACTIONS: TENN. J. BUS. L. 77 (2011).

III. CONTRACTS COURSES AND PEDAGOGY

Perhaps the most important of the forces that will shape all of our casebooks, not only for the contracts course but also throughout the law school curriculum, is what we already know and will come to know about how students learn. Law schools tend to lag behind the rest of the teaching and learning community in understanding and applying insights into good pedagogy.²⁶ We are finally beginning to catch up, however, and what we are learning is beginning to, and will continue to, transform casebooks, including contracts casebooks.

Here are some of the things we know (at least collectively, though not yet universally) about learning theory and practice (but mostly practice) that is driving change in the way we teach and the materials we use for teaching:

- Learning is deeper and more durable when it is effortful²⁷ and when it is active.²⁸
- Students learn better when new facts and concepts are connected to what they already know and experience.²⁹
- To learn effectively, students need to identify what they do not yet know or have not yet mastered.³⁰
- Testing helps students learn because it interrupts forgetting.³¹ It forces information retrieval, which results in more durable memory (and also tells students what they have and have not yet learned). Repeated testing reinforces learning, especially if time elapses between learning and testing, and between first testing and later testing, so that retrieval is from long-term rather than short-term memory.³² The effort

26. I vividly remember a moment at the 1995 Association of American Law Schools conference, “New Ideas for Experienced Teachers,” when one of the participants noted the very recent discovery by law teachers of the overhead projector, apparently having forgotten our elementary school experience with the device!

27. See, e.g., PETER C. BROWN ET AL., *MAKE IT STICK: THE SCIENCE OF SUCCESSFUL LEARNING* 3 (2014); Aimee A. Callender & Mark A. McDaniel, *The Limited Benefits of Rereading Educational Texts*, 34 *CONTEMP. EDUC. PSYCHOL.* 30, 30–41 (2009); Charles P. Thomson et al., *How Recall Facilitates Subsequent Recall: A Reappraisal*, 4 *J. EXPERIMENTAL PSYCHOL.: HUM. LEARNING & MEMORY* 210, 219 (1978). For example, making text difficult to read by leaving out letters or using unusual typography slows reading, but improves memory. Connor Diemand-Yauman et al., *Fortune Favors the Bold (and the Italicized): Effects of Disfluency on Educational Outcomes*, 118 *COGNITION* 111, 114 (2010); Mark A. McDaniel et al., *Encoding Difficulty and Memory: Toward a Unifying Theory*, 25 *J. MEMORY & LANGUAGE* 645, 654–55 (1986).

28. BROWN ET AL., *supra* note 27, at 33–35; Karla J. Gingerich et al., *Active Processing via Write-to-Learn Assignments: Learning and Retention Benefits in Introductory Psychology*, 41 *TEACHING PSYCHOL.* 303, 306–07 (2014).

29. BROWN ET AL., *supra* note 27, at 123–31.

30. *Id.* at 3.

31. *Id.*; see also Henry L. Roediger III et al., *Test-Enhanced Learning in the Classroom: Long-Term Improvements from Quizzing*, 17 *J. EXPERIMENTAL PSYCHOL.: APPLIED* 382, 382–93 (2011); Mark A. Wheeler & Henry L. Roediger, III, *Disparate Effects of Repeated Testing: Reconciling Ballard’s (1913) and Bartlett’s (1932) Results*, 3 *PSYCHOL. SCI.* 240, 240, 242 (1992).

32. BROWN ET AL., *supra* note 27, at 85–90; Monica S. Birnbaum et al., *Why Interleaving Enhances Inductive Learning: The Roles of Discrimination and Retrieval*, 41 *MEMORY & COGNITION* 392, 398 (2013)

from testing later is greater, and the failure rate is temporarily higher, but the gains are greater over time.³³

- Students learn better if multiple topics are interwoven in presentation, and students retain more of their learning if they “jump around” through multiple concepts as they practice or apply their knowledge. That strategy improves their ability to transfer their understanding from one situation to another and to create a larger structure to hold the knowledge being learned.³⁴ For example, learning how to hit a baseball by practicing hitting fifteen fastballs, then fifteen curveballs, then fifteen change-ups produces more immediate gain in handling the various pitches, but practicing hitting forty-five pitches randomly mixed among curveballs, fastballs, and change-ups produces better long-term gains.³⁵ A student who handles varied pieces of knowledge and tries varied kinds of analysis will learn not only to apply the varying concepts, but also how to tell the difference between the concepts.

- “[T]he kind of retrieval practice that proves most effective is one that reflects what you’ll be doing with the knowledge later.”³⁶ For example, in medical education, seeing a standardized patient is a more effective way for a student to learn patient-handling skills (no surprise there), but is also a more effective way for the student to learn the fundamental facts that underlie diagnoses.³⁷

- Self-reflection—after attempting to solve a problem, considering what went right, what went wrong, and what to do differently next time—

(“That is, delay allows time for forgetting, making retrieval of previous exemplars from memory more difficult, but thereby enhancing learning when such retrievals are successful.”)

33. BROWN ET AL., *supra* note 27, at 3; Henry L. Roediger, III & Jeffrey D. Karpicke, *Test-Enhanced Learning: Taking Memory Tests Improves Long-Term Retention*, 17 PSYCHOL. SCI. 249, 254 (2006); Endel Tulving, *The Effects of Presentation and Recall of Material in Free-Recall Learning*, 6 J. VERBAL LEARNING & VERBAL BEHAV. 175, 175–84 (1967); see HERMANN EBBINGHAUS, *MEMORY: A CONTRIBUTION TO EXPERIMENTAL PSYCHOLOGY* 34–45 (1964). It is also significant that while any kind of test produces benefits, tests that require the learner to supply the answer (short answer, essay tests, even flashcards) are better than “recognition” tests (multiple choice, true-false). BROWN ET AL., *supra* note 27, at 3.

34. Suzanne M. Mannes & Walter Kintsch, *Knowledge Organization and Text Organization*, 4 COGNITION & INSTRUCTION 91, 92 (1987) (“These observations suggest that *not* providing readers with a suitable schema and thereby forcing them to create their own, or encouraging them to structure information in multiple ways might make learning from texts more efficient.”)

35. Kellie Green Hall et al., *Contextual Interference Effects with Skilled Baseball Players*, 78 PERCEPTUAL & MOTOR SKILLS 835, 837–39 (1994); BROWN ET AL., *supra* note 27, at 79–82.

36. BROWN ET AL., *supra* note 27, at 57, 148–50; see, e.g., Terezinha Nuñez Carraher et al., *Mathematics in the Streets and in Schools*, 3 BRIT. J. DEV. PSYCHOL. 21, 21 (1985) (“Performance on mathematical problems embedded in real-life contexts was superior to that on school-type word problems and context-free computational problems . . .”).

37. See Douglas P. Larsen et al., *The Importance of Seeing the Patient: Test-Enhanced Learning with Standardized Patients and Written Tests Improves Clinical Application of Knowledge*, 18 ADVANCES HEALTH SCI. EDUC. 409, 419 (2012); Douglas P. Larsen et al., *Repeated Testing Improves Long-Term Retention Relative to Repeated Study: A Randomised Controlled Trial*, 43 MED. EDUC. 1174, 1179 (2009); BROWN ET AL., *supra* note 27, at 57.

is a form of information retrieval that reinforces learning the facts and concepts, in addition to helping develop analytical skill.³⁸

- Students learn better by trying to solve a problem before knowing the solution and then filling in the knowledge necessary to solve it. They also learn better if they sometimes fail to find the right answer, as long as they understand that failure is part of learning.³⁹

- Students learn better when both visual and verbal channels are accessed together (that is, from words and pictures, not just words alone). Learning is more effective when the combination of words and pictures follows good design principles (a topic worthy of separate consideration with respect to the development of presentation materials such as PowerPoint slides and videos).⁴⁰

- Reading anything, and particularly reading legal materials (cases, statutes, Restatements, and contract documents), is a skill that can be taught through attention to and articulation of the often unspoken methods experts use to read.⁴¹

- Students need to progress through increasingly demanding and complex stages of learning, often described by reference to Bloom's *Taxonomy*, which specifies that mastery of a subject requires accessible knowledge, comprehension, and the ability to apply, analyze, synthesize, and evaluate.⁴²

- And, finally, students need to understand these principles and research results so that they will appreciate what is asked of them and

38. BROWN ET AL., *supra* note 27, at 26–27, 89–90, 210, 232; Karla J. Gingerich et al., *Active Processing via Write-to-Learn Assignments: Learning and Retention Benefits in Introductory Psychology*, 41 TEACHING PSYCHOL. 303, 306 (2014).

39. BROWN ET AL., *supra* note 27, at 62–69, 266 n.12 (“Psychologists interested in learning have long distinguished between momentary performance and underlying learning (as measured after a delay with intervening reminders).”). See generally Nicholas C. Soderstrom & Robert A. Bjork, *Learning Versus Performance: An Integrative Review*, 10 PERSP. ON PSYCHOL. SCI., Mar. 2015, at 176; Barbie J. Huelser & Janet Metcalfe, *Making Related Errors Facilitates Learning, but Learners Do Not Know It*, 40 MEMORY & COGNITION 514, 520 (2012) (demonstrating that errorless learning does not seem important for non-memory-impaired individuals; errors do not harm learning provided that the learner receives feedback).

40. See generally RICHARD E. MAYER, MULTIMEDIA LEARNING (2001) (explaining principles that shape the design and organization of multimedia presentation: coherence, signaling, redundancy, spatial and temporal contiguity, segmenting, pre-training, modality, multimedia, personalization, voice, and image).

41. See RUTH ANN MCKINNEY, READING LIKE A LAWYER: TIME-SAVING STRATEGIES FOR READING LAW LIKE AN EXPERT 51–58 (2005); Leah M. Christensen, *Legal Reading and Success in Law School: An Empirical Study*, 30 SEATTLE U. L. REV. 603, 608 (2007); Peter Dewitz, *Legal Education: A Problem of Learning from Text*, 23 N.Y.U. REV. L. & SOC. CHANGE 225, 228 (1997); Morton Ann Gernsbacher et al., *Investigating Differences in General Comprehension Skill*, 16 J. EXPERIMENTAL PSYCHOL.: LEARNING, MEMORY, & COGNITION 430, 430 (1990); Mary A. Lundeberg, *Metacognitive Aspects of Reading Comprehension: Studying Understanding in Legal Case Analysis*, 22 READING RES. Q. 407, 417 (1987); Laurel Currie Oates, *Beating the Odds: Reading Strategies of Law Students Admitted Through Alternative Admissions Programs*, 83 IOWA L. REV. 139, 140–41 (1997).

42. BROWN ET AL., *supra* note 27, at 228–29; see 1 BENJAMIN S. BLOOM ET AL., TAXONOMY OF EDUCATIONAL OBJECTIVES: COGNITIVE DOMAIN (1956); Michael T. Gibson, *A Critique of Best Practices in Legal Education: Five Things All Law Professors Should Know*, 42 U. BALT. L. REV. 1, 6–21 (2012) (explaining how Bloom's *Taxonomy* should be applied to law school teaching).

approach their own studying in a way designed to produce effective results.⁴³

Law faculty have long taught based on what we ourselves found effective as learners or, more often, based on the teaching methods we were familiar with as students, regardless of whether they were particularly effective. To be effective teachers, however, we can no longer afford to ignore the research on effective learning.⁴⁴ Our casebooks must change in order to provide the resources law teachers need to apply the methods that have been shown to work.

We can also learn something about good pedagogy by asking students what kinds of materials help them learn most effectively. While learners may themselves be misled into thinking that what makes learning easier also makes it more effective,⁴⁵ students are nonetheless perceptive consumers of law-teaching materials, and their comments can help us think more thoroughly about how to improve our casebooks.

In search of student commentary, I conducted an unscientific survey by engaging in a discussion about casebook materials with a group of University of Minnesota Law School second- and third-year students

43. BROWN ET AL., *supra* note 27, at 176–87; Gibson, *supra* note 42, at 15 (“[T]he purer our Socratic dialogue, the more we unintentionally camouflage what we want our students to learn. That does not improve learning.”); Heidi Grant & Carol S. Dweck, *Clarifying Achievement Goals and Their Impact*, 85 J. PERSONALITY & SOC. PSYCHOL. 541, 551–52 (2003); *see also* Marina Krakovsky, *The Effort Effect*, STANFORD MAG., Mar.–Apr. 2007, available at http://alumni.stanford.edu/get/page/magazine/article/?article_id=32124; Mark A. McDaniel et al., *Individual Differences in Learning and Transfer: Stable Tendencies for Learning Exemplars Versus Abstracting Rules*, 143 J. EXPERIMENTAL PSYCHOL.: GEN. 668 (2014) (studying differences in exemplar learners, who focus on memorization of specific examples to learn concepts, and abstractors, who focus on the rule itself which the examples illustrate); Thorsten Pachur & Henrik Olsson, *Type of Learning Task Impacts Performance and Strategy Selection in Decision Making*, 65 COGNITIVE PSYCHOL. 207 (2012) (examining cognition as a result of different learning conditions).

44. Incorporating more of the insights about effective learning will also help us respond to the new accreditation standards requiring that we not only identify learning outcomes, but also provide mechanisms for our students and our schools to determine how well students are achieving those outcomes. ABA STANDARDS, *supra* note 20, at 23.

45. Indeed, much of student studying is *not* effective, despite the fact that traditional wisdom would affirm hours immersed in rereading notes and other content. Jeffrey D. Karpicke et al., *Metacognitive Strategies in Student Learning: Do Students Practice Retrieval When They Study on Their Own?*, 17 MEMORY 471, 471–79 (2009) (showing that students tend to prefer a rereading study strategy); *see also* THOMAS GILOVICH, *HOW WE KNOW WHAT ISN'T SO: THE FALLIBILITY OF HUMAN REASON IN EVERYDAY LIFE* 151–55 (1991); NAT'L RESEARCH COUNCIL, *LEARNING, REMEMBERING, BELIEVING: ENHANCING HUMAN PERFORMANCE* 57–80 (Daniel Druckman & Robert A. Bjork eds., 1994) (discussing how people's assessment of their own knowledge and comprehension can influence their performance); Raymond S. Nickerson & Marilyn Jager Adams, *Long-Term Memory for a Common Object*, 11 COGNITIVE PSYCHOL. 287, 305–06 (1979) (showing the futility of mere repetition); *see also* Alan D. Castel et al., *Fire Drill: Inattention Blindness and Amnesia for the Location of Fire Extinguishers*, 74 ATTENTION, PERCEPTION & PSYCHOPHYSICS 1391, 1391 (2012) (showing the distinction between *seeing* and *noticing* in correlation with occurrence of inattentional amnesia); Nate Kornell & Robert A. Bjork, *Optimising Self-Regulated Study: The Benefits—and Costs—of Dropping Flashcards*, 16 MEMORY 125, 125 (2008) (showing tendency for students to drop or set aside items they think they know when studying with flashcards).

who serve as academic support instructors for our first-year students by leading “structured study groups” (“SSGs”),⁴⁶ in which they facilitate active learning by first-year students taking contracts, constitutional law, civil procedure, property, and criminal law. These SSG instructors are particularly observant users of teaching materials, since they engage with them from both the student and instructor perspective. I summarize below the most salient of their recommendations and observations:

- Students want to be able to focus on using the law they learn, not on having to expend great effort to figure out from opaque materials what the law is. They understand the need to rely on cases for learning the law (more than I thought they would), but they want to have some framing for why they are reading a particular case, and they want cases that present the law clearly. They particularly criticized use of those old “chestnuts” we cling to, which they described as being written in “impenetrable prose”—and you may be distressed to learn that “old” to them is before 1960 (which could translate into a rule that we include only cases decided since Chuck Knapp entered teaching!). At the same time, they recognize the value of older cases in showing the history of a legal rule and the development of the rule over time, if we make more transparent that understanding doctrinal history and development is the point of studying otherwise obscure or outdated cases. And they do like and remember the stories some of the old cases tell.
- They want problems they can use to check their understanding and their ability to apply the concepts, and they want answers to those problems in the back of the book (or somewhere accessible) so they are not left wondering whether they “got it.”
- They want what they called “middle ground” problems, accessible problems that can be done by someone who has not yet mastered the material.
- They want us to help them see the big picture as they learn, show them how the whole fits together and where they are in learning the pieces. They particularly praised books that contain visual representations of the course overview, repeated as necessary to help them see the pieces falling into place. Traditional wisdom says students will understand the whole, as well as the pieces, when they put it all together into their outlines of the course. While they understand the importance of that review process, they want a sense of place and context as they learn the pieces.
- They want the book to match the teaching, finding themselves confused and disoriented when the instructor disrupts the order of the book.
- Surprisingly, in this digital age, they were unanimous in wanting everything they needed to learn to be in the casebook, not connected to it through a web interface, and they wanted it to be a real hardcopy book, not an e-book (though they do appreciate multimedia

46. *Structured Study Groups*, U. MINN. L. SCH., <http://www.law.umn.edu/current/structuredstudy.html> (last visited May 10, 2015).

approaches, as long as the book is still self-contained). Being able to literally touch the resources still matters.

- They want the material to be limited to what they need—what is necessary to their learning—rather than including extensive related material in an attempt to give them a comprehensive view of the doctrine being studied, including aspects they have no reason (or we have given them no reason) to care about. The lengthy series of notes and comments with details and questions about the way the doctrine works or might work, which are so valuable to us as teachers and provide an enormously rich view of the legal concepts, are more confusing than helpful to them.

- They want to see how what they are studying connects to the world around them—to legal issues in the news and to what they will be doing, or hope to be doing, when they leave our hallways.

- They want to see the hand (or mind) of the casebook author in the selection of sources, so they can understand the choices the author has made.

- They want to have the material humanized—to see pictures of important people and places, and to know something about the stories behind the cases, whether about the parties, the lawyers, the judges, or the dispute.

- Finally, they want exercises that help them learn, not busywork or exercises that just take up time but do not move them effectively toward understanding.

The suggestions outlined here may not be comprehensive or statistically representative, but they are a valuable set of recommendations gleaned in a mere hour's discussion. All of us might consider having similar conversations with our own students to obtain needed feedback on the value of the materials we write and use in our classrooms.

IV. LAW TEACHING AND TECHNOLOGY

While principles of pedagogy and learning theory, not technology, should drive curricular and teaching innovation, developments in classroom technology provide tools and incentive to transform the content and presentation of course materials. Among the important changes we can already see or envision are:

- The availability of electronic versions of books on students' computers, tablets, and smart phones.

- The ability to produce and self-publish polished-looking materials for one's own students and the possibility of sharing them widely through open-source access.⁴⁷

- The ability to combine and teach from separate modules of material rather than being dependent on a single casebook.

47. Open-source access is being encouraged through the eLangdell Project of the Center for Computer-Assisted Legal Instruction ("CALI"). See *The eLangdell Bookstore*, CTR. FOR COMPUTER-ASSISTED LEGAL INSTRUCTION, <http://www.cali.org/the-elangdell-bookstore> (last visited May 10, 2015).

- The availability of electronically accessible supplemental materials, including videos for either flipping the classroom or for adding instruction in particular topics,⁴⁸ connected to a particular book or available independently.
- And the availability of online self-testing, operating together with a casebook⁴⁹ or independently.⁵⁰

The availability of platforms to deliver individually designed content could make those who create and use teaching materials less dependent on traditional casebook authors and publishers, but the time and resources needed to develop well-designed and dependable online materials will likely lead to continued dependence on casebooks published centrally and distributed nationally, as long as the casebooks change in content to reflect the needs of teachers and students.

V. THE MARKET FOR CASEBOOKS

What publishers and faculty adopters of casebooks demand will also help determine the shape of the books of the future. Publishers are moving towards making casebooks available, not only in print, but also on multiple digital platforms (computers, tablets, e-readers, and smartphones), though there does not yet seem to be robust student demand for e-casebooks. More significantly, and consistent with other forces of change described above, law school publishers have been looking for “value added” from an educational perspective—companion websites, exercises students can use on their own as well as for class, related case studies, review tools, and video enhancements. The publishers find adopters (faculty instructors) increasingly looking for “value added” as well, to help them incorporate more active and experiential learning in their classes without needing to start from scratch to develop new exercises of their own.⁵¹

VI. THE FUTURE OF CASEBOOKS

Taking into account all of these forces—pressures to change course content and incorporate more experiential learning, changes in technology,

48. *See, e.g.*, LEGALED, <http://legaledweb.com> (last visited May 10, 2015).

49. *See, e.g.*, CASEBOOK CONNECT, <https://www.casebookconnect.com> (last visited May 10, 2015).

50. *See* CTR. FOR COMPUTER-ASSISTED LEGAL INSTRUCTION, <http://www.cali.org> (last visited May 10, 2015) (providing exercises for core law school courses, developed by professors and law librarians).

51. In suggesting what publishers are looking for, and what they see adopters looking for, I rely on informal conversations with representatives from several of the major casebook publishers. The point is also supported by the marketing material of the various publishers, highlighting their digital content and supplemental resources available to both instructors and students. *See, e.g.*, Press Release, Wolters Kluwer Law & Bus., Wolters Kluwer’s Legal Educ. Group Launches Digital-First Textbook Model for Law Students for Fall Semester, PR NEWswire (Sept. 3, 2014), <http://www.prnewswire.com/news-releases/wolters-kluwers-legal-education-group-launches-digital-first-textbook-model-for-law-students-for-fall-semester-273725481.html>.

understanding of pedagogy, and the demands of our users (faculty and students) and providers (faculty and publishers)—I offer some conclusions about where contracts casebooks are and should be headed.

A fundamental question that appears to have elicited two competing answers is whether the future of the casebook format is electronic or hardcopy. The publishers are promoting e-books and electronic supplements. But those of us with e-editions of our books have not found student use to be high or rising, and my unscientific sample of students said decidedly that they want everything to be in the book—the hardcopy book. One explanation may be that we are at a moment of transition in student learning styles. Some researchers suggest that how individuals start to learn (with hardcopy books, e-books, or tablets; taking notes by hand or electronically) is what sticks with those individuals as the preferred method of learning.⁵² Today's law students are hardcopy-book learners and laptop note takers, because their early learning experiences were with books for studying and computers for writing. Our future students are more likely to be electronic learners, consistent with their own early learning experiences. The vendors may be predicting and planning for that trajectory based on their knowledge of the changing market of users,⁵³ and I suspect they are right. We are also in the early stages of developing effective delivery of material through digital platforms and the interweaving of print and electronic media. As the platforms improve, usage and demand will likely increase.

We may disagree on the exact mix of theory and skills that is most appropriate, but contracts courses and course materials will need to involve students more in reading contracts, writing contracts clauses, and addressing the problems that arise during contract performance. We cannot make students expert contract drafters in a semester as they simultaneously learn the basics of contract doctrine, but we need to start them down the path of learning to manipulate actual contracts, and then follow that introduction with upper-level courses with a primary focus on contract drafting.

We should be more flexible and creative in determining how best to deliver the knowledge to be conveyed in the materials and the course. We should not rely so exclusively on cases, with judges explaining contract rules case-by-case. Rather, at every point in the casebook, the authors should aim for the most effective approach to learning the particular concept—some combination of direct explanation, judicial opinions,

52. Emese Felvégi & Kathryn I. Matthew, *eBooks and Literacy in K–12 Schools*, 29 COMPUTERS SCHS.: INTERDISCIPLINARY J. PRAC., THEORY, & APPLIED RES. 40, 40 (2012) (“eBooks brought about changes in how students learn to read, and in how they read to learn.”).

53. See Matthew Bodie, *The Future of the Casebook: An Argument for an Open-Source Approach*, 57 J. LEGAL EDUC. 10, 11–14 (2007).

conceptual questions, fact-based problems, and exercises focused on sorting, categorizing, and analyzing the concepts.

Knowing that learning is improved through repeated and spaced testing, we should provide more quizzing tools for students to assess their progress, whether those are in the book or attached as a supplement, electronic or otherwise. Knowing that learning sticks better through combining multiple topics together, especially in testing, we need to design the quizzing tools to review earlier topics as well as moving forward to test on new material. And we must convince students that they need to use the quizzing tools provided, regardless of whether the instructor assigns them or reviews the answers.

Knowing that students may learn more effectively by trying to solve a problem before knowing the answer, a casebook could start some topics by having students address a case-based “hypothetical” before, rather than after, they are introduced to the legal rule as articulated by the court. Students would thus decide for themselves a sensible outcome and explanation, providing a context for understanding the court decision and a foundation for critiquing it.⁵⁴

Knowing that students learn best when they see how new pieces of knowledge fit into the larger context, we should provide better roadmaps (literally and figuratively) of the course so students can situate themselves.

Knowing that students need to see the structure of the legal rules that emerge from the cases—how the rules in successive cases fit together—and that they will be more successful in seeing that structure if offered some scaffolding to help them build, the casebooks should provide exercises that help with the construction work.⁵⁵

Knowing that law teachers are generally trained in legal substance but not in pedagogy, teaching manuals supporting casebooks should

54. At the University of Minnesota Law School, one of our adjunct instructors long ago crafted a course based on this methodology, taught now by a successor adjunct who found the course helpful as a student and now reproduces the experience for others. Called “Creative Legal Analysis,” the course asks students to decide from the facts of actual cases in a wide variety of subject areas what the law should be and why. After discussing and voting on the outcome, students receive a copy of the actual court decision, which they read and discuss in the subsequent class. As outlined in the course description, the students “use logic, instinct, experience, common sense, some unavoidable nonsense and all other mental and emotional processes that are the substance of the law and very much involved in its making” to decide the case for themselves. The goal is to help students learn to think on their feet and use their imagination in dealing with legal problems. Based on the research on how we learn, I suspect the students also effectively learn the substantive law involved in the cases themselves.

55. Exercises created by SSG instructors at the University of Minnesota for first-year students provide excellent examples: fill-in-the-blank charts asking students to identify a series of case holdings and how they relate one to the next; asking students to restate rules from U.C.C. or Restatement sections and add case and class elaborations; fill-in-the-box flowcharts; charts asking students to identify overarching policies, where the policy is raised in cases, and what questions the policy prompts in each instance; timelines of a contract dispute for students to complete; issue-spotting exercises asking students to find the words in a hypothetical that suggest the presence of a doctrinal issue to be resolved.

provide a variety of exercises based on what we know about learning—especially about active learning—that the instructors can adapt for their own use in the classroom. Some exercises may be subject specific (for example, hypothetical problems requiring application of substantive doctrine), suitable for in-class analysis, perhaps without students referring to books or notes in order to encourage and reinforce recall. Other suggested exercises may be more general, applicable in any course (for example, asking students to write weekly summaries of what they learned, starting class occasionally or often by asking students to write short statements from memory summarizing recent material covered in a text or class, or asking students to explain whatever concept or problem is being discussed as they would to a client or family member rather than as they would to a knowledgeable teacher or colleague).

Knowing that group work can ensure engagement by all students, not just the few otherwise called on in class, teaching materials can identify appropriate opportunities for using group work in the classroom and provide guidance on how to make the group work effective.

Knowing that learning occurs at various levels of complexity and depth helpfully described by Bloom's *Taxonomy*, the casebooks (and the supporting teaching materials) can explicitly associate questions and exercises with the appropriate category of learning to help students understand their progress.

Finally, knowing that students will learn better if they understand the purpose of their reading and the questions they are asked to answer, the casebooks, and the instructors, should make the pedagogy more transparent. We should select and arrange the course material for a reason, and those rationales should be explained both to the instructors and the students who use the books. And the casebooks can help students to learn new (and more effective) reading and studying strategies to apply as they prepare and review.

Casebooks are already changing in some of these ways. There are several new series of books from the major law school publishers that are part of that trend,⁵⁶ as is the E-Langdell project from CALI, but I think

56. For example, West Academic Publishing's Interactive Casebook Series features text boxes to alert students at the appropriate time to issues and questions they should address; to introduce them to the parties, judges, and historical context of cases; and to provide questions before cases, statutes, and Restatement provisions to help students learn how to read the material more like an expert. The West Experiencing Series supplements traditional materials with experiential exercises and the Learning Series focuses on pedagogy, using fewer judicial opinions and more alternative teaching materials, including many offered to instructors through the teachers' manuals. See *Interactive Casebook Series*, W. ACAD., <http://www.interactivecasebook.com> (last visited May 10, 2015). Carolina Academic Press offers its Context and Practice Series to help instructors incorporate insights from Roy Stuckey's *Best Practices for Legal Education* (2007) and the Carnegie Foundation's *Educating Lawyers: Preparation for the Practice of Law* (2007), and engage their students in more active learning as they build practice skills and develop professional identities. See *Context and Practice Series*, CAROLINA ACAD. PRESS,

we have only begun that journey. As noted at the outset of this Article, I was able to learn contracts from Chuck Knapp and his co-authors through their casebook because they designed the book to provide a path through the conceptual universe of contract doctrine (though a path perhaps more immediately visible to teachers than to students). I think the casebooks of the future will provide that kind of path through the universe of learning theory and practice. The books and their authors will not have all the answers—we will all continue to contribute to a collective conversation about how to bring understanding to our students. But the casebooks—or whatever we call them, because casebooks is no longer the right name for materials that will not be so case-centered and may not be in, or only in, a book—will lead the way.

<http://www.cap-press.com/p/CAP> (last visited May 10, 2015). Wolters Kluwer and West Academic Publishing have introduced new series, combining traditional casebooks with links to supplemental materials otherwise used by students only to review and study for exams outside of class rather than to help them reinforce their learning as they proceed through traditional course materials. *See* CASEBOOK CONNECT, <https://www.casebookconnect.com> (last visited May 10, 2015); CASEBOOKPLUS, <http://home.westacademic.com/casebookPlus/faculty> (last visited May 10, 2015).
