Suppose the Class Began the Day the Case Walked in the Door . . .

Jennifer E Spreng, Arizona Summit Law School
I. INTRODUCTION

The established first-year, law school curriculum is remarkably similar to the one Dean Christopher Columbus Langdell’s at Harvard Law School one hundred forty years ago. Course names came from those scholars sorting the chaotic mass of American law gave their new classifications. Never mind that the fields of the common that law scholars christened “Contracts” and “Property” were never “fields” at all. Or that practitioners did not differentiate between pleading and causes of action for injuries to persons or property. Harvard was not a practitioner’s world. Most of today’s law schools, however, are.

Unlike law schools, other professional educators have tossed discipline-bound education into the ashheap of history and adopted integrated curricula and courses. “Integration” describes the extent to which the program of learning erases disciplinary boundaries (“horizontal integration”) or flows in a logical progression through increasingly sophisticated learning experiences that build on foundational matters and lead to ever more authentic

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1 Associate Professor of Law, Arizona Summit Law School.
learning experiences (“vertical integration”).

Medical and other health care professionals’ schools frequently deliver fundamental sciences via integrated problem-based learning experiences organized around particular disease states, rather than scientific disciplines, and add more clinical opportunities as the program of learning proceeds. The “Foundation Coalition” of engineering programs has implemented numerous integrated introductory curricula linking topics and active learning activities across multiple disciplines in a learning community setting. Northern Arizona University’s business program offers a team-taught integration of intermediate subjects with numerous integrated projects scheduled into several block class periods per week.

Integration has slipped into upper-class law school curricula, but not into first-year doctrinal courses. “Law and . . . courses” have been staples of many upper-class curricula since the 1960s. Some schools are responding to three recent groundbreaking studies of the past

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4 Della Fish & Colin Coles, Medical Education: Developing a Curriculum for Practice, at loc. 2049-94 (Kindle ed.2005).
8 Some legal writing courses have coordinate with doctrinal courses, see, e.g., Jamie R. Abrams, A Synergistic Pedagogical Approach to First-Year Teaching, 48 Duq. L. Rev. 423 (2010); Joseph W. Glannon et al., Coordinating Civil Procedure with Legal Research and Writing: A Field Experiment, 47 J. Leg. Educ. 246 (1997), and some first year professors have taught first year courses with a practice-oriented approach. See, e.g., Lloyd C. Anderson & Charles Kirkwood, Teaching Civil Procedure with the Aid of Local Tort Litigation, 37 J. Leg. Educ. 215 (1987).
twenty-five years that urge integrating authentic learning experiences into the doctrinal classroom. ¹⁰ Law schools abroad use problem-based learning activities¹¹ and common modules with practicum components across first-year courses.¹²

Many first-year doctrinal courses cling to what other educators recognize as rote learning of compartmentalized fragments of information.¹³ Students read the material. They memorize the formulae: briefs, elements and IRAC.¹⁴ On examination day, they identify the right formula, plug in the facts as if they were computing the area of a rectangle. Poof! There’s the answer! Then they tidy it all up into a nicely formatted series of little paragraphs (profs and bar examiners like that!)¹⁵ and hit “send” in Exam4.

Clever students may notice how matters from one course connect to another, but those students will have to be clever, because we rarely mention them, and the authors edited the analysis of “other issues” out of the casebook.¹⁶ So even high achieving students might struggle

¹⁴ Niedwiecki, supra note ____, at 33-34.
¹⁵ Susan Darrow-Kleinhaus, The Relationship Between Law School and the Bar Exam: A Look at Assessment and Student Success, 78 U. Colo. L. Rev. 69 (XXXX). So the study aids tell them. Kimm Alayne Walton & Lazar Emanuel, Strategies & Tactics for the First Year Law Student, 119 (2004) (sample answer rubric to 27-point question awards fewer than one-third for meaningful analytical work). Cf. John C. Dernbach, Writing Essay Exams to Succeed, Not Just to Survive 11 (2d ed. 2007) (“simply stating the rules, without more, will not get you very many points. Nor will drawing conclusions. The greatest opportunity to score points is in your analysis of each element.”). Even study aids by serious professors do not emphasize deep, nuanced analysis. See, e.g., Charles Calleros, Law School Exams: Preparing and Writing to Win 81 (2007) (“Adequate discussion of all the major issues will generally score more points than an unusually thorough discussion of only half of the issues raised by a question.”).
¹⁶ See infra text and notes at ____ - ____ (Erie v. Tompkins).
to solve problems that ignore doctrinal boundaries, and whether any of it would transfer to a practice setting remains to be seen.\textsuperscript{17}

In Fall 2013, Arizona Summit Law School unveiled its innovative “FIRSTClass” curriculum for entering students.\textsuperscript{18} It built on what had always been Arizona Summit’s faculty’s commitment to doctrinally sound, practice-oriented education.\textsuperscript{19} All of the new courses integrated doctrinal subjects with a formal practicum component constituting ten to twenty-five percent of a student’s grade. So faculty waved good-bye to “Civil Procedure,” “Contracts,” “Criminal Law,” “Lawyering Process,” “Property” and “Torts,” and after the intensive two-week Introduction to Legal Studies course, students took the following:

- Introduction to Civil Litigation (ten credits) – A survey of “the law, policy and procedure of litigation of disputes arising from harm to person or property.”

- Introduction to Transactional Practice (eight credits) – A survey of “the law, policy and practice of business transactions” focused exclusively on contracts topics in the first semester and then integrating property topics in the second.

- Introduction to Criminal Practice and Writing (five credits) – A survey of criminal law taught in the context of legal research and writing.

- Legal Writing and Advocacy (four credits) – “An introduction to persuasive written and oral advocacy in the context of” one of several topics of the student’s own choosing.


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\textsuperscript{17} See, e.g., Kissam, supra note ____, at 437 (the paradigm of “good paragraph thinking” that characterizes final examinations is “too reductionist and too fragmentary to serve the varied intellectual demands of most legal practices.”); Niedwieceki, supra note ____, at 33; Bruner, supra note ____, at 17


Introduction to Civil Litigation was different from the other first-trimester courses. It integrated two traditional first year subject matters, torts and procedure, as well as the practicum component. The class met in “block” periods of one hour and forty-five minutes on Mondays, Wednesdays and Fridays.\(^\text{20}\)

In the spring of 2013, a colleague of mine and I applied to teach a section of Introduction to Civil Litigation I together during the Fall rollout term. Our vision was a high-level learning experience rooted in a focused inquiry model that would inspire active learners serious about honing their intellectual and legal capacities and producing quality writing, high-level analysis and impeccable judgment. Top priorities: problem-solving, fact analysis, textual interpretation, other legal methods, and “us[ing] the rules to get things done.”

Then-Academic Dean Penny Willrich saw and supported the vision’s potential, and our proposal to teach the course was accepted!

This article argues that tightly integrated first-year course and curriculum designs that offer rigorous, authentic learning experiences are high-payoff pedagogical investments in students’ intellectual and professional capacities, achievement in doctrinal subjects, and future expertise and offers aspects of Introduction to Civil Litigation as an exemplar. Part II challenges the doctrinal foundations of the traditional curriculum and shows that joining subjects, such as tort and procedure law, is more faithful to past- and present practitioner’s experience of the

\(^{20}\) This is the traditional approach to scheduling integrated courses at the middle school level. Jaana Juvonen et al., Focus on the Wonder Years: Challenges Facing the American Middle School 6, 21-27, 133 (2004).
law and therefore better targeted to practice preparation. Part III introduces the pedagogical concepts of integration and spiral curricula. Part IV identifies “the rocket fuel of novice legal problem solving” and how to harness it in first year integrated courses. Part V is “how to” create an intellectually joyous, tightly horizontally integrated course that takes advantage of topical synergies to increase the depth and breadth of student achievement. Part VI introduces Lee Taylor, and her lawsuit, Taylor v. McDaniel, a diet-drug product liability simulated litigation experience case that as its vertically integrated component, animated Introduction to Civil Litigation. The article concludes that with committed investment of institutional and personal resources, well integrated first-year courses would be an effective tool for improving high-priority student outcomes: problem solving and higher-order thinking.21

Why so sure? Because Introduction to Civil Litigation did!

II. IN THE BEGINNING . . . THERE WAS A CASE OR CONTROVERSY

Classification the substantive law for purposes of American legal education was chaotic and unprincipled, with very little rhyme and inspiring even less reason for loyalty now.22 During the 1870s, Harvard Law School led by Dean Christopher Columbus Langdell prescribed the first-

21 “Higher-order thinking” includes “problem solving, critical thinking, creative thinking, and decisionmaking and it “occurs when a person takes new information and information stored in memory and interrelates and/or rearranges and extends this information to achieve a purpose or find possible answers in perplexing situations.” Arthur Lewis & David Smith, Defining Higher Order Thinking, Theory into Pract., Summer 1993, at 131, 36.
year curriculum we know today: Property, Civil Procedure, Contracts, Torts and Criminal Law.\textsuperscript{23}

Within a few decades, virtually every other school had followed suit.\textsuperscript{24}

But plausible alternatives to the traditional first year curriculum had strong roots in the actual practice of law at the time, and an alternate narrative integrating torts and procedure is doctrinally and practically compelling. The traditional curriculum may not be “wrong,” but it is neither doctrinally or pedagogically \textit{superior}.

A. Doctrinal Foundations of the Traditional First-Year Curriculum

Prior to the Federal Rules, procedural law was a local affair, attracting little interest from university law schools focused on educating future leaders, not future practitioners.\textsuperscript{25} Before the Civil War, university law schools usually just integrated relevant procedural topics into substantive law courses,\textsuperscript{26} and much of what proprietary law schools taught about procedure actually turned out to be unhelpful their students’ future practices.\textsuperscript{27} To its credit, Dean Langdell’s Harvard catalog included at least three procedure courses, but they were also relevance-challenged.\textsuperscript{28} In the early twentieth century, University of Michigan blazed a lonely

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\textsuperscript{24} McManamon, supra note \textsection, at 40-41.
\textsuperscript{25} See Paul D. Carrington, Teaching Civil Procedure: A Retrospective View, 49 J. Legal Educ. 311, 315-16, 319-21 (1999).
\textsuperscript{27} Carrington, supra note \textsection, at 316-17
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trail with its coherent program of practical procedure courses, but what we recognize as “Civil Procedure” today, emerged only in the 1950s.

Torts was also late to the curricular party. Harvard did not offer a course in Torts until 1870, partly because until it did so – and Dean Ames produced a casebook – the “field” of torts did not exist. Or rather, it did exist outside of academia, but respectable lawyers such as Harvard graduates did not practice it. And it was an adolescent field at best. Doctrines long ago laid to rest, such as “last clear chance,” had not yet been clarified. But until Oliver Wendell Holmes produced “A Theory of Torts,” there wasn’t one of those, either.

“Why do torts need a field?” scholars and practitioners no doubt wondered. “The Romans had one” persuaded many practitioners while states were adopting code pleading.

Industrialization accelerated the demand for legal theories to justify recovery for personal

29 Charles W. Joiner, Teaching Civil Procedure: The Michigan Plan, 5 J. Legal Educ. 459, 462 (1952-1953). 30 See McManamon, supra note ____, at 435-36; Carrington, supra note ____., at 327. 31 G. Edward White, The Intellectual Origins of Torts in America, 86 Yale L.J. 671, 671 (1977). 32 G. Edward White, The Impact of Legal Science on Tort Law, 1880-1910, 78 Colum. L. Rev. 213, 233, 235-45 (1978). See also White, Intellectual Origins, supra note ____, at 671, 678-79, 682-84. 33 See, e.g., Gary T. Schwartz, The Character of Early American Tort Law, 36 UCLA L. Rev. 641 (1989); Jones, supra note ____., at 1067-68 (describing proprietary schools’ torts curricula). 34 Jerold S. Auerbach, Unequal Justice: Lawyers and Social Change in Modern America 18-53, 93-101 (1976). 35 White, Impact of Legal Science, supra note ____., at 242. 36 Grey, supra note ____., at ____. 37 See Thomas C. Grey, Accidental Torts, 54 Vand L. Rev. 1225, 1242-52, 1258 (2001). One might have added that “The Cajuns still do.” See 12 William E. Crawford, Louisiana Civil Law Treatise, Tort Law § 1:1 (2d ed. 2014). See Grey, supra note _____, at 1258. The Roman law concept of “obligations” was divided into those that were ex contractu and quasi ex contractu, which were either contractual or equitable obligations as well as those that were ex delicto and quasi ex delicto, which together were loosely what we call “torts” today. 5 Ronald J. Scalise, Jr. 5 Louisiana Civil Law Treatise, Law of Obligations § 1:6 (2d ed. 2014). The Louisiana Civil Code retained the essential Roman architecture, categorizing acts causing personal injuries as “Offenses and Quasi Offenses,” which are obligations that arise without agreement. See La. Civ. Code art. 2315 et seq. But Louisiana’s theory of obligations makes no fundamental distinction between delict and other obligations; as in the common law, the most important practical implications of classifying obligations as contract or delict were procedural, such as prescriptive periods and available remedies. Scalise, supra note _____, at §§ 1:6, 1:9. 38 Perhaps they were influenced by Blackstone, who pondered ordering the common law on civil code lines. See Grey, supra note _____, at 1234-37, 1246-51; Jones, supra note ____., at 1069-95.
injuries, and scholars fell behind these practice exigencies: multiple practice-targeted torts treatises were on the market in the 1860s, but Langdell and Ames were not their authors. From the legal scientists’ perspectives, torts was the doctrinal garbage left on the cutting board after they finished organizing the law of contracts and property. They might have taken a cue from the civilians and created a meta-field of “Civil Obligations,” a practice-friendly doctrinal structure based on unifying rhythms in the law. But that would have required developing a true theory of torts, and as far as many could see, there wasn’t one.

The intellectual conundrum boiled down to this:

Aren’t “torts” really just clever pleading?

The answer? Well . . . yes!

Until states adopted Fieldian pleading codes in the second half of the nineteenth century, there was no clear distinction in litigation between “substantive” tort doctrine and “procedural” pleading law. Torts were manipulations of the writs of trespass and trespass on the case, procedural vehicles for obtaining remedies for a mixed bag of otherwise unclassifiable

40 See Grey, supra note ____, at 1260; White, Intellectual Origins, supra note ____, at 681-84, 689.
41 See Grey, supra note ____, at 1253-54, 1258 (“The conduct giving rise to negligence suits . . . a domain of ‘wrongs’ that could be separated conceptually from breaches of contract, that did not involve invasions of property rights, and that were distinct from the more serious forms of wrongdoing that formed the primary focus of the criminal law.”).
42 See generally Ronald Chester & Scott E. Alumbaugh, Functionalizing First-Year Legal Education: Toward a New Pedagogical Jurisprudence, 25 U.C. Davis L. Rev. 21 (1991). The unifying rhythms are why the common law triumvirate were so difficult to separate. Many injuries give rise to claims sounding in two and sometimes all three, Grey, supra note ____, at 1243-44 (trespass to land), but indistinguishable injuries give rise only to one action. See Joseph Lavitt, Leaving Contemporary Legal Taxonomy, 90 Denv. L. Rev. 213, 219-21 (2012) (medical malpractice).
43 White, Intellectual Origins, supra note ____ at 678-79; Grey, supra note ____, at 1242-43. Oliver Wendell Holmes published his Theory of Torts in 1873, but in practice – in the emerging world of industrial accidents and new technologies – it was all but obsolete. Compare Witt, supra note ____, at 701-03 (observing that Holmes’ paradigm case ignored actual developments in injury law).
45 See Grey, supra note ____, at 1240-41.
injuries, and the elements of proof the plaintiff pled to request a remedy were what the plaintiff had to prove to get one.\(^{46}\) While a contract had legal significance outside of litigation – a breach of contract was not even a legal wrong in itself\(^{47}\) – a tort remained a cause of action, indistinct from pursuit of a remedy.\(^{48}\) Were it otherwise, \textit{Gray v. American Radiator} and much of personal jurisdiction doctrine would have turned out very differently.\(^{49}\)

So the Erie doctrine be damned: the substance of torts and procedural forms and modes that facilitate dispensation of justice in tort cases are not merely integrable: they are inseparable.\(^{50}\) As Justice Holmes put it, “the law of procedure is, in Truth, handmaiden to substance.”\(^{51}\) The substance of which that is most quintessentially true is tort law.\(^{52}\)

**B. A Narrative for a New Curriculum**

The mere fact that fields of law were once integrated does not necessarily mean they have a pedagogically salutary relationship. Over the past sixty years, first-year procedure professors have framed a pedagogical narrative of civil procedure based on the progress of litigation through the federal courts.\(^{53}\) First-year torts professors also have pedagogical

\(^{46}\) Handbook on Pleading, supra note ____, at 187-188 (“Case lies where no other theory or Form of Action is available.”); White, Intellectual Origins, supra note ____ at 680 (discussing 1 Francis Hilliard, The Law of Torts v (Boston 1859)).

\(^{47}\) E.g., Lavitt, supra note ____, at ___ (citing E. Allan Farnsworth, Legal Remedies for Breach of Contract, 70 Colum. L. Rev. 1145, 1147 (1970)).

\(^{48}\) See Grey, supra note ____, at 1242-44

\(^{49}\) See Gray v. American Radiator, 176 N.E.2d 761, 762-63 (1961) (holding a “tortious act” in a long-arm statute occurs where the last event necessary to impose liability, the injury, takes place and not where the defendant performed the act that caused the injury). But while the tort alone permitted Illinois to exercise personal jurisdiction over the defendant in Gray, a contract with an out-of-state party in that party’s home forum alone “clearly” did not. Burger King v. Rudzewicz, 471 U.S. 462, 479 (1985).

\(^{50}\) See Dobbs et al., supra note ____, at § 9.

\(^{51}\) DID HOLMES OR SOMEONE BEFORE HIM SAY THAT???

\(^{52}\) See Dobbs et al., supra note ____, at § 9 (calling torts “litigation law”).

\(^{53}\) See McManamon, supra note ____, at 434-37.
narratives, one based loosely on a continuum of degrees of fault resulting in injury. But these are not the only possible narratives. The narrative below is plausible, would integrate torts and procedure, and would support a richer and more authentic course.

In the beginning, there was a case or controversy: a set of facts constituting a legal wrong for which the law provides a remedy and that empowers a federal court in particular to enter a judgment against a particular defendant. Choice of forum depends on the claims plaintiff has a colorable basis to assert and the identity of the potential defendants. A federal court has power to decide a case when federal law creates the cause of action, as determined from the factual allegations of plaintiff’s complaint that if true would show entitlement to recovery. A federal court also has power to decide a controversy if all plaintiffs are citizens of different states than all of the defendants who may be liable under substantive law to plaintiff. A plaintiff with claims against potential in-state and out-of-state defendants has a wider range of forum choices, depending on the risk of incomplete recovery under the forum jurisdiction’s apportionment rules.

The availability of a federal forum has an impact on the choice of law to be applied to disputes during the litigation. Disputes over the applicability of federal or state law have

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55 Cf. generally Chester, supra note ____.
59 See, e.g., Block v. Toyota Motor Corp., 665 F.3d 944, 948-49 (2011) (dismissal not mandated by “seller’s exception” statute based on fraudulent joinder even where plaintiff is able to recover against manufacturer).
sometimes been high stakes clashes over the level of defendant fault necessary to establish premises liability$^{61}$ and the temporal viability of a claim.$^{62}$ States proscribing product liability claims against “innocent” local sellers accept that most will be heard in federal court.$^{63}$ The litigants receive whatever are the comparative merits of federal court procedure,$^{64}$ but state lose the control over the development of their state’s personal injury law that federalism would otherwise protect.$^{65}$

The personal injury explosion has also shaped our understanding of a court’s power to hale a non-resident defendant into court and enter a judgment against him.$^{66}$ Personal jurisdiction depends on the quality and nature of the defendant’s contacts with the state.$^{67}$ One of the most determinant is “causing tortuous injury in the state,” which occurs when all of the elements of the tort have occurred.$^{68}$ Therefore, a state’s court may have jurisdiction over a seller that places a defective product into the stream of commerce that causes an injury in the state,$^{69}$ by virtue of little more than the plaintiff having been able to state the claim at all.$^{70}$

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$^{64}$ See Steelvest, Inc. v. Scansteel Service Center, Inc., 807 S.W.2d 476 (1991) (Kentucky will not adopt the federal “trilogy” standard for summary judgment).
$^{65}$ Cf. Ronald W. Eades, Kentucky Products Liability Law §§ 1.7, 1.8 (2014-15) (collecting cases providing “a good discussion of the Products Liability Act in federal court” versus Kentucky state court cases interpreting the Act).
$^{69}$ E.g., Golonka v. General Motors Corp., 65 P.3d 956, 968 (Ariz. 2003).
$^{70}$ E.g., Gray v. American Radiator & Standard Sanitary Corp., 176 N.E.2d 761 (1961). The seller’s duty is to place only safe products into the stream of commerce. See, e.g, 63A Am. Jur. 2d § 1013 (2014); Rest. 3d Torts (Products Liability) § 1. Personal jurisdiction adds one more element: defendant must have done so “with the expectation
Plaintiffs may struggle to prove the court’s jurisdiction over an upstream part manufacturer, members of a corporate group that individually has few contacts with the forum state, and international corporations, joining the many other defendants against whom plaintiff has viable claims may still produce a full recovery and shift the onus to defendants to seek contribution from the others.\textsuperscript{72}

To assert one’s right to the power of a court to order a remedy, the plaintiff must file a complaint with factual allegations that state a plausible claim for relief.\textsuperscript{73} Plausibility depends on whether the allegations support the elements and sub-elements of the claim.\textsuperscript{74} If a defendant answers the complaint, he must deny enough allegations to avoid liability,\textsuperscript{75} state procedural or substantive defenses that could justify dismissal or absolve him of liability with sufficient factual specificity,\textsuperscript{76} assert his own claims against the plaintiff,\textsuperscript{77} and/or add claims against others.\textsuperscript{78} Some additional claims the parties may seek to join must have a factual connection to another claim.\textsuperscript{79} Existence of that connection depends on the facts forming the initial case or controversy from which the parties’ claims arose.\textsuperscript{80}


\textsuperscript{72} See Rest. Of Torts 2d §§ 875, 886A; Charles W. Adams, World-Wide Volkswagen – The Rest of the Story, 72 Neb. L. Rev. 1122 (1993) (describing defendants’ effort to have some of their number dismissed for lack of the state court’s personal jurisdiction so the case could be removed to federal district court).


\textsuperscript{74}Bell Atlantic, 550 U.S. at 556-58.

\textsuperscript{75}Bell Atlantic, 550 U.S. at 556-58.


\textsuperscript{77}See, e.g., 28 U.S.C. § 1367(a) (“form part of the same case or controversy under Article III”); Fed. R. Civ. P. 13(a) (“arises out of the transaction or occurrence that is the subject matter of the opposing party’s claim”);

\textsuperscript{78}See, e.g., Jones v. Ford Motor Credit, 358 F.3d 205, 210-14 (2d Cir.2004).
Standards analogous to that used to judge the sufficiency of a pleading will later be applied to the relevant evidence adduced during discovery to determine if any party is entitled to judgment without a trial.\textsuperscript{81} Sufficiency of the evidence partly defines the outer bounds of the substantive legal theory permitting recovery and depends on the substantive elements and sub-elements of the parties’ claims,\textsuperscript{82} including each link in the chain of causation between the defending party’s act or omission and the claimant’s injury.\textsuperscript{83} Planning and executing discovery to obtain relevant, admissible evidence necessary to support or undermine claims and defenses is vital . . . .\textsuperscript{84}

This incomplete narrative demonstrates the artificiality of the doctrinal boundaries legal educators insist on maintaining in the first year curriculum. Torts and procedure are plainly integrable and both make more sense in context. This narrative implies intriguing, potentially beneficial pedagogical opportunities from integration is possible, but that always depends on integration of “what,” precisely, and “how” to do it.

IV. THE WARP, WEAFT AND WHAT INTEGRATION CAN DO FOR YOU: THE ROCKET FUEL OF NOVICE LEGAL PROBLEM SOLVING

\textsuperscript{81} See Fed. R. Civ. P. 56(c), 50(a); see also Anderson v. Liberty Lobby, 477 U.S. 242, 249-52 (1986) (stating that the summary judgment standard “mirrors the standard for a directed verdict”); Blum v. Morgan Guar. Trust Co., 706 F.2d 1463, 1466 (11th Cir. 1983) (“A motion for summary judgment may be made solely on the basis of the complaint, in which case the motion is to be treated as the functional equivalent of a motion to dismiss for failure to state a claim under Fed. R. Civ. P. 12(b)(6).”).


\textsuperscript{83} See Rogers v. Missouri Pacific Railroad Co., (stating as to causation chain in FELA case, “[c]ommon experience teaches both that a passing train will fan the flames of a fire, and that a person suddenly enveloped in flames and smoke will instinctively react by retreating from the danger . . . .”); Kenneth S. Abraham, Self-Proving Causation, 99 Va. L. Rev. 1811, 1814-23, 1832-36 (2013).

\textsuperscript{84} See, e.g., Fed. R. Civ. P. 26(b).
Doubly integrated courses such as Introduction to Civil Litigation are a lot like Turkish carpets. A weaver starts with an upright loom strung with vertical cotton threads, called the warp. The weaver then integrates, or knots, bits of wool to every vertical thread, which will become the carpet’s pile. To hold the pile in place, the weaver “integrates” or runs horizontal threads called the weft through the warp threads to hold the knots in place. When the weaver finishes a row, she presses it tightly against the prior row. Then she starts another row of knots. Each of the warp, weft and pile are integrally related to the other two: remove one and the other two cannot perform their functions. Double integration!

Many Turkish carpets are works of art. From jewel-like kilims to massive floor and wall coverings with the bold colors to command a room, they certainly have presence.

The only two subject matter integrated course with practicum in the first year of law school has a certain presence as well. With all of the doctrinal and analytical sparks integration ignites, it is the most intense course of the first semester. Because it accounts for so many of the first-year credits, students will spend the more time in class with their Introduction to Civil Litigation professor(s) and that professor(s) will award the grade with the most impact on the student’s first year GPA. Bottom line: Introduction to Civil Litigation will define every student’s first year of law school.

But those to whom much has been given (professors), much is expected. Introduction to Civil Litigation is a golden opportunity to fill in any gaps entering-class wide, such as those from undergraduate preparation that is increasingly not an ideal for future law students. Part II

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85 See Jessica Muller et al., 780 (“All stakeholder groups characterised an integrated curriculum as the interweaving of disciplines to teach a subject from multiple perspectives.”).
explained why we need not fear first-year integrated courses. This Part will explain why we should embrace them.

A. What We Talk About When We Talk About Integration

In curriculum and course design, “integration” is a word of many meanings and a phenomenon that manifests itself in many ways. It is partly a matter of degree: a continuum representing the extent to which the program of education is ordered based on disciplinary or departmental boundaries instead of unifying themes or problems between total siloing and total transcendence.

Integration also implies a multi-dimensional shape: horizontal and vertical. Horizontal integration blurs subject matter boundaries, which facilitates richer problem solving and other authentic learning activities. An entire program of education is vertically integrated if “interlocking, mutually supporting” steps proceed over time to the program’s goal. So a vertically integrated law school curriculum might focus the first year on core doctrinal courses with some practice-oriented activities, connect with related second year courses emphasizing

87 See Robin Fogarty, Ten Ways to Integrate Curriculum, Educ. Leadership, Oct. 1991, at 61, 61 (describing continuum “[b]eginning with an exploration within single disciplines . . . and continuing with models that integrate across several disciplines . . . that operate within learners . . . and finally across networks of learners.”); see also Ronald M. Harden, Planning a Curriculum, in Dent, supra note ____, at 21, 25 (explaining SPICES model for medical education as multiple continua: problem-based to information-oriented, integrated or inter-professional to subject or discipline-based; community-based to hospital-based; elective-driven to uniform; and systematic to opportunistic).
90 Vertically integrated is also used to classify a doctrinal course with authentic learning activities. CITE.
more authentic learning activities for the purpose of preparing students for the third year and a consequential clinical or externship experience.\textsuperscript{91}

“Integration” can also be characterized by a utilitarian component: “Two activities are integrated for a learning objective when students produce behaviors and outcomes in both activities that indicate progress toward that objective.”\textsuperscript{92} Moreover, the two activities have to produce those behaviors and outcomes because of the integration, and they must produce more and better behaviors and outcomes than in siloed courses integration is merely another, complicated, time-consuming, and resource-draining teaching technique.\textsuperscript{93} “More integration” is not necessarily “better”: the marginal actual and net benefit of additional integration does eventually approach zero, and additional integration under the wrong circumstances or of the wrong kind may be counterproductive.\textsuperscript{94}

B. Spiraling Out of Control!!

\textsuperscript{92} Linder & Flowers, supra note \textup{____}, at 437.
\textsuperscript{93} See Aurand, supra note \textup{____}, at 256. Integrating courses requires extensive planning and coordination among faculty. See, e.g., Muller, supra note \textup{____}, at 782 (integration missed because faculty lacked context for their individual lectures). They require additional administrative resources and adjustments. E.g., Stull, supra note \textup{____}, at 409 (integration demanded new layer of management and lines of authority became confused). Integrated courses usually require new teaching methods and creating new materials from scratch; there is no textbooks and teacher’s manuals for guidance. Beichner, supra note \textup{____}, at S19-S20; Ghosh, supra note \textup{____}, at 7; Aurand, supra note \textup{____}, at 27-28. Truly integrated assessments are more difficult to create. See, e.g., Khalil, supra note \textup{____}, at 207; Westcott & Shircore, supra note \textup{____}, at 100. Faculty incentive systems discourage faculty from the time investment development and teach integrated classes. Scherpereel, supra note \textup{____}, 10-11. (focus on student evaluations in retention and promotion decisions as well as teaching credit that fails to take account of the time commitment acts as disincentive to team teaching integrated classes).
\textsuperscript{94} See generally Case, supra note \textup{____}. 
A program of learning that is both horizontally and vertically integrated is a “spiral curriculum,” which is so designed to facilitate students’ construction of knowledge and to promote higher-order and independent thinking. The quintessential characteristic of a spiral curriculum returns over and over again to concepts at increasingly higher levels of sophistication and depth. The orderly process of “spiraling back around” to prior concepts and at the same time, adding new and more sophisticated concepts, so that students can fit pieces of new knowledge into their existing framework is the manifestation of constructivism.

Many medical schools organize their curricula around “problem-based learning,” a teaching method oft-used in spiral programs of learning. Introductory training begins with small groups of students exploring semi-realistic problems requiring that they independently access key principles from multiple disciplines. The curriculum continuously builds on those principles – and thus facilitates students building on them – by revisiting them in later with more sophisticated principles in more complex, clinical settings.

C. Schemes . . . err, Schemas . . .

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95 Jerome A. Bruner, The Process of Education, viii-ix, 52-54 (Kindle ed. 1960); see also Peter Jarvis, Adult Education and Lifelong Learning: Theory and Practice 68, 78-82 (Kindle ed. ____ (describing the learning process as a spiral experience of life and learning).

96 Bruner, supra note ____, at 12-13, 52-53; Gordon Wells, Dialogic Inquiry in Education: Building on the Legacy of Vygotsky, in Vygotskian Perspectives on Literacy Research 51, 73-74 (C.D. Lee & P. Smagorinsky, eds. XXXX).

97 Bruner, supra note ____, ____.


100 See Andrew K. Husband et al., Integrating Science and Practice in Pharmacy Curricula, 78 Am. J. Pharm. Educ. art 63, at 4 (2014); Ronald M. Harden, Planning a Curriculum, in A Practical Guide for Medical Teachers 13, 16-17 (John A. Dent & Ronald M. Harden, eds., 2001); cf. MICHAEL HUNTER SCHWARTZ, SOPHIE SPARROW & GERALD HESS, TEACHING LAW BY DESIGN: ENGAGING STUDENTS FROM THE SYLLABUS TO THE FINAL EXAM 30, 41 (2009)(observing that “higher level skills implicate lower level skills in legal education”)
From countless professional and personal situations during a career, a lawyer amasses a huge collection of “schemas”: little models of “prototypical expectations about objects, situations and actions.” Problem-solving is the manifestation of a lawyer’s expertise, but “acquisition of a large repertoire of knowledge in schematic form is the lawyer’s expertise.” A lawyer solving a problem sifts through her schemas, scripts, mental models and other cognitive tools; schema found and adapted; solution, or the first step of one . . . discovered! The differences between novices and experts are that novices have far fewer, less complex schemas, and experts have more sophisticated devices and perspectives that help them understand the problem and produce a solution.

Schemas for legal problem solving are like intellectual rocket fuel or a pedagogical investment with ever increasing returns: the process of organizing schemas leads to bigger and more complex schemas and then even more sophisticated cognitive tools! One purpose of law school from Day One is to scaffold students identifying, collecting, constructing and using as many schemas and other cognitive tools as possible. When students connect concepts between topics and subjects they are incorporated into existing schemas that grow into a tightly integrated, sophisticated and ever more useful system over time.

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102 Blasi, supra note ____, at 343.
103 Blasi, supra note ____, at 338.
104 Blasi, supra note ____, at 342-48.
105 Blasi, supra note ____, at 338-39; Lustbader, supra note ____, at 322-23, 335-36.
107 Lustbader, supra note ____, at n.15.
Schemas are not necessarily profound but the course designs and teaching methods that nurture their growth probably are. The schema that solves the problem, “I don’t know what a writ of prohibition is” may be as simple as “LOOK IT UP!!!” But did your teacher bring that big blue Black’s Law Dictionary the day you covered World-Wide Volkswagen v. Woodson, hand it to someone in the class, and tell that someone to look it up – no doubt now not wanting to ask if the word is “rit” or “writ” – while everyone else waited? (and put on their respective to-do lists: “buy pocket copy of Black’s so I can save myself this fate in future . . .”). Or did he just tell you? Tsk, tsk. Connection not made between “phrase I don’t know” and “Black’s.” It matters: you just missed the first step in the process of liberation from intellectual bondage.\footnote{Cf. Freire, supra note \(\_\_\_\), at 65.} Clearly, you were not in the team-taught, Kennedy section Introduction to Civil Litigation. Fortunately, there are many more schemas where that came from, especially in an integrated course bursting with cross-disciplinary connections, methodological tools, and unorthodox learning opportunities: the harvest is plenty, so the laborers need to get a move on.

D. The Methods to the Madness

broader context of multiple subjects or activities.\(^{110}\) Therefore, integration is well-matched with inquiry learning, which ranges as widely across disciplines and as deeply as students’ imaginations can take them.

Inquiry learning, is a well-established constructivist pedagogy,\(^{111}\) with a strong communitarian orientation.\(^{112}\) The quintessential inquiry course proceeds based primarily on students’ agendas.\(^ {113}\) Students form those agendas with broad intellectual exploration that produces “inquiries” about a potentially broad range of possible subject matters.\(^ {114}\) Teachers facilitate the exploration and eventual process of focusing students’ inquiry.\(^ {115}\) Eventually

\(^{110}\) Lung, supra note _____, at 743-49. See, e.g., id. at 94-95 (relying on schema theory and students’ constant development of schemas over time); Asha K. Jitendra et al., Improving Seventh Grade Students’ Learning of Ratio and Proportion: The Role of Schema-Based Instruction 31-32 (use of direct instruction modified to add schema-based instruction in order “to move students beyond rote memorization to developing deeper understanding of the mathematical problem structure and flexible solution strategies enhanced the problem solving performance of students”).


\(^{113}\) See FREIRE, supra note _____, at 80-81.


students do research to answer their questions.\textsuperscript{116} From that “pure” model, the flavors of inquiry courses range widely based on the extent of teacher guidance and process of inquiry.\textsuperscript{117}

Inquiry is a sharp tool for honing law students’ intellectual and professional capacities for solving problems in future.\textsuperscript{118} The professor can focus the inquiry, but even routine student questions become fertile for investigation.\textsuperscript{119} The process of investigation is rooted in rigorous legal methods, whether applied to what may be a tiny locus of texts present in the room (assigned cases, Federal Rules of Civil Procedure, Black’s Law Dictionary); more independent preparation or research done prior to the next class; or pure thought.\textsuperscript{120} The professor actually should not answer questions but instead guide students through the process of exploiting their own intellectual capacities to answer the question themselves, thereby liberating them to do so independently in future.\textsuperscript{121}

Inquiry is the essence of critical reading of texts,\textsuperscript{122} but students do not necessarily bring that capacity with them when they matriculate, so it must be taught. Statements or omissions that should raise red flags: a crucial sentence with no citation; the anticipated co-defendant dismissed early; an established principle missing from the roadmap of the law; the “obvious”

\begin{enumerate}{}
\item \textsuperscript{116} See, e.g., Justice, supra note \_\_\_, at 844-46; Short & Armstrong, supra note \_\_\_, at 85, 90-91; Sarah Nell Rusche & Kendra Jason, “You Have to Absorb Yourself in It”: Using Inquiry and Reflection to Promote Student Learning and Self-knowledge, 39 TEACHING SOC. SCIENCE 338 (2011).
\item \textsuperscript{117} Alan Colburn, An Inquiry Primer, SCIENCE SCOPE, March 2000, at 42.
\item \textsuperscript{118} Compare the “Socratic method,” which often is not an of open-ended dialogue and barely resembles “focused inquiry.” Peter Dewitz, Legal Education: A Problem of Learning from Text, 23 N.Y.U. REV. L. & SOC. CHANGE 225, 243-44 (1997).
\item \textsuperscript{119} Cf. Wells, Dialogic Inquiry in Education, supra note \_\_\_, at 64 (“Although for a question to be real the student must really care about making an answer to it, it does not follow that the only real questions are ones that are first asked by students. Teachers’ questions or questions suggested in texts that students are reading can become equally real, if they correspond to or awaken wondering on the part of the student.”).
\item \textsuperscript{120} Cf. Rusche & Jason, supra note \_\_\_, at 341-47.
\item \textsuperscript{121} See Wells, Dialogic Inquiry in Education, supra note \_\_\_, at 64 (emphasizing the importance of student “owning” the question); FREIRE, supra note \_\_\_, at 70-86 (describing the liberating features of inquiry).
argument the court waves away. Then the next tasks: building a synthesized roadmap of a
discrete area of law or ferreting out the deeper structure and construction of the Federal Rules
of Civil Procedure.\textsuperscript{123}

Students have no idea just how long an expert lawyer focuses on the early parts of the
case. Or just the facts, let alone how to think deeply about the facts.\textsuperscript{124} Just what is a FOPS or a
ROPs?\textsuperscript{125} Where did the second pilot lose the Skyways plane over Admiralty Island – and how
far from False Bay was it when it went down?\textsuperscript{126} When you are a new student, every word
raises an “inquiry” – or should, which is why they must be taught, beginning the first day of
class:

- “‘1924’ – why would we be reading such an old case to learn the law of today?
- ‘Supreme Judicial Court of Massachusetts’ – is that the highest court that can hear the
case?

[Skip the headnotes; the judge didn’t write those.\textsuperscript{127}]

- An action of tort’ – what is an “action?”

\textsuperscript{123} Cf. Richard B. Cappalli, The Disappearance of Legal Method, 70 TEMP. L. REV. 393, 399-404 (1997). See also
\textsuperscript{124} Dewitz, supra note ____ , at 230-42.
\textsuperscript{125} See Caterpillar Tractor Co. v. Beck, 593 P.2d 871 (Alaska 1979). Sometimes a picture tells you all you need to
\textsuperscript{126} See Widmyer v. Southeast Skyways, Inc., 584 P.2d 1 (Alaska 1978) (applying res ipsa loquitur where no
witnesses could explain what happened or why small passenger plane crashed on the Chichagof side of the
Chatham Strait).
\textsuperscript{127} There are times students really should read full cases. Cf. Michael Jordan, Law Teachers and the Educational
Continuum, 5 CAL. INTERDISC. L.J. 41, 61-64 (1996) (arguing that “[r]ather than being a process involving students and
a teacher learning from and stimulating each other [class time] tends to be a series of lectures by the professor on
material covered in the casebook. These lectures are combined with casebooks that already reduce or eliminate
much of the intellectual editing that should be done by students.”).
• ‘[A] resident of Worcester within this Commonwealth’ – why not ‘citizen’ or ‘who lives in?’ Why does it matter that this plaintiff is a ‘resident’ of Massachusetts at all? Oh, look, he apparently received these injuries in Massachusetts also.

• ‘The defendant is a resident of Pennsylvania’ – Oh, the same word! Could that be significant?

• ‘Service has been made upon the defendant by delivery of a precept in hand’ – ‘Precept in hand?’ Who has Black’s Law Dictionary and can look that up?

• So this defendant is ‘commanded’ to do something. Wait! Look at this: ‘delivery of a precept in hand to the registrar of motor vehicles of this commonwealth’ – that seems strange, doesn’t it? What seems strange to you? Why? Yes, why would you send a ‘command’ that a person in Pennsylvania do something to the ‘registrar of motor vehicles’ of Massachusetts.”

On to the second half of the first paragraph!

E. What Makes It Good and Why?

A reasonable benchmark for a successful integrated course or curriculum is that the integration itself achieves its goals better than siloed courses. Education theory says integration would facilitate two high-priority goals for legal education, developing students’ problem-solving capacities and facility with higher-order thinking in authentic settings. Well implemented integration has the potential to achieve those goals because it offers more

128 Practitioners and legal educators recommend analogous approaches to teaching critical reading of cases. E.g., Richard B. Cappalli, The Disappearance of Legal Method, 70 TEMP. L. REV. 393, 399-404 (1997); Leah Christensen, Show Me, Don’t Tell Me! Teaching Case Analysis by “Thinking Aloud,” 15 PERSP: TEACHING LEG. RES. & WRITING, Winter 2007, at 142; Derwitz, supra note _____, at 240-44
opportunities to present connections between concepts in context so that students build more realistic and practical knowledge constructs. The twin devils, of course, are implementation and actual efficacy.

Anecdotal accounts support the conclusion that integration meets those goals. They report that students do develop superior problem-solving capacities; engage in higher-order thinking; and make more and better connections between concepts. They also claim that students perform better on examinations; work better in teams; and emerge with more highly sought after professional competencies. One school with integrated introductory courses reported improved student retention rates.

If anecdotes are reality, they imply that integration would make major contributions to high pedagogical priorities in legal education. The hoped for processes of integrative learning and legal reasoning are quite congruent. The best of integration is student centered, an active learning experience, and authentic, which are all linked to

\[\text{References}\]

129 E.g., David DiBiasio et al., Evaluation of a Spiral Curriculum for Engineering, 29th ASEE/IEEE Frontiers in Education Conference 3-4 (1999); Beichner, supra note ____, at S20-S21.
130 E.g., Pearson, supra note ____ , at 3. BETTER NEEDED
131 E.g., Westcott & Shirecore, supra note ____ , at 99-100 (Australian first-year law school curriculum).
132 E.g., Beichner, supra note ____ , at S20-S21.
133 E.g., O’Neill, supra note ____ , at 229; DiBiasio et al., supra text and notes, at 3-4.
135 Morgan, supra note ____ , at 3.
136 See, e.g., MacCrate Report, supra note ____ , at 138-41.
137 See, e.g., Pearson, supra note ____ , at 3-4 (recommending the following as benchmarks: “Connections between content across disciplines,” “transference of skills, abilities, theories, or methods gained in one context to new contexts, “connections between academic knowledge and life experiences,” “Communication in ways that enhance meaning,” and “reflections on learning and self-assessing.”).
138 Lowry, supra note ____ , at 1482.
139 See, e.g., Beichner, supra note ____ , at S16-S17; Morgan, supra note ____ , at 2.
140 Lowry, supra note ____ , at 1482, 84; Stull, supra note ____ , at 408 (integrated courses show how disease states are viewed by multiple disciplines and why information is important in pharmacy practice); Muller, supra note ____ , at 781.
developing higher-order thinking capacities. Coverage efficiencies from eliminating redundancies may provide room for additional topical breadth and depth, never unwelcome when students’ prior education may not have prepared them adequately for law school. An integration of torts and civil procedure could achieve many of these objectives, because it presents richer conceptual connections than the traditional narratives separately, therefore must offer more opportunities to model, scaffold and finally make the connections needed to solve ill-structured problems and develop professional judgment.

Controlled studies assessing integrated versus traditional courses present a murkier picture, but it is not necessarily discouraging. Problem-based learners demonstrate a bias for deep learning strategies and “independent, self-directed learning” behaviors, both of which are associated with development of higher order thinking and problem-solving capacities. Those inputs then are rewarded in output measures, as one meta-analysis concluded:

- “[S]tudents’ path toward expertise has been accelerated.”

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141 Pearson, supra note ____, at 2-3.
142 See, e.g., Richards, supra note ____, at 16; Morgan, supra note ____, at 4 (students complete courses at a faster rate than traditional program); Stull, supra note ____, at 4 (integration eliminates curricular redundancy).
144 Lustbader, supra note ____, at 326, 328, 338, 346; Gant, supra note ____, at 441-443; Renee E. Weiss, 95 New Dir. Teaching & Learning 26-27 (2003); Colin Coles, Developing Professional Judgment, 22 J. Continuing Educ. 3, 7-9 (2002); Weiss, 26-28.
145 It is simply very difficult to design and implement controls and an assessment that leaves no footprints in a study of the effects curricular approaches have on student learning and attitudes, especially over time. See Henk G. Schmidt et al., Comparing the Effects of Problem-Based and Conventional Curricula in an International Sample, 62 J. Med. Educ. 305, 314 (1987); David Gijbels, Effects of Problem-Based Learning: A Meta-Analysis from the Angle of Assessment, 75 Rev. Educ. Res. 27, 32-36, 44-45, 47 (2005); Weiss, supra note ____, at 734-749; Henk G. Schmidt et al., Comparing the Effects of Problem-Based and Conventional Curricula in an International Sample, 62 J. Med. Educ. 305, 314 (1987). Independent learning “Incorporates six key principles: Students learn on their own. Students have a measure of control over their own learning. They may choose: where to learn, what to learn, how to learn, when to learn. . . . Independent learning is based on discovery-guided mentoring rather than on the transmission of information.” R.M. Harden, Independent Learning in Dent, supra note ____, at 147, 148.
• Students taught with problem-based methods “seem to possess a highly structured network of concepts and principles.” 148

• Students educated with problem-based methods are “equally competent at recalling specific items of information.” 149

• When assessment tools are targeted to measure ability to apply knowledge, the positive effect of problem-based learning is greater. 150

Performance assessments, including those requiring both knowledge and skills, favor problem-based learning. 151

F. Studies of Problem Based Learning in Legal Education

Studies of law school students in problem-based learning environments in the second and third years are disappointing in this context and may reveal dysfunctional teaching and learning strategies in the first year. 152 Substantial minorities at the participant schools lack a coherent learning strategy: they rejected both deep and superficial learning behaviors, a combination usually characteristic of novices or disordered learners. 153 Worst, upper class students have already made big investments in their foundational schemas and learning behaviors; they will be very resistant to change and perhaps unable to do so. 154

148 Id. at 46.
149 Id. at 46. See also Johannes Strobel & Angela van Barneveld, 3 Interdiscip. J. Prob.-Based Learning 44, 53 (2009); Mark Newman, A Pilot Systematic Review and Meta-Analysis on the Effectiveness of Problem Based Learning 25-26 (XXXX).
150 Gijbels et al., Effects of Problem-Based Learning, supra note ___, at 45
151 See, e.g., Strobel, supra note ___, 54.
153 Gijbels et al., supra note ___, at 332.
American law students might not do better. Leave aside the well-known social, behavioral and systemic pathologies law school seem to foster and the inevitable fallout – depression, binge partying, family difficulties, stress, boredom – that American law students adopt incoherent learning approaches is not surprising. First, many had an undergraduate experience where study was “memorize” and “regurgitate” in what are so often not a very intellectually taxing circumstances.155 Second, they do not see work or enthusiasm translating into higher grades. Third, professors say one thing156; the way they conduct class says a second157; and the way they test says something else – and sometimes two things!158 Self-directed, independent learning is not known to correlate with any of these.

Two other unpleasant hints about the traditional American first-year curriculum lurk in those study results. First, suppose some students gather bad schemas on a monumental scale, because they did not know what they were supposed to do.159 This phenomenon is beyond not knowing how to study. Law professors think students are supposed to glean a relational knowledge of the law and legal methods: knowing what to do to solve legal problems with

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156 Kissam, supra note ____, at 443 (stating that professors believe traditional final examinations test for “integrational ability, constructive thought and writing ability).
157 See Neidwiecki, supra note ____, at 33-34 (explaining that Socratic teaching is really teaching by rote practice).
158 Kissam, supra note ____, at 436-47, 445-46 (describing grading criteria shift from focusing on whether solved the problem awarding points for things on the rubric such as memorizing rules rather than “the richer learning and insights that can result from outlining, review and practice”), 464 (“[F]ragmentation enhances the substantial discontinuities that exist between a student's course work and her work for final exams.”). If students construct new knowledge based on what they already knew, then if students start with bad schemas, they could be in real trouble. Cf. A. Pollatsek et al., Concept or Computation: Students' Understanding of the Mean, 12 Educ. Stud. in Mathem. 191, 199 (1981) (relational understanding necessary for problem solving requires “an appropriate schema or set of conceptual structures”).
legal methods and why it all works.\textsuperscript{160} Many students’ understanding, however, is that law is instrumental: there is a set of compartmentalized rules and forms.\textsuperscript{161}

Consider the student who dutifully copies down the holding of a case as stated in a professor’s powerpoint (which the professor only wrote late last night when she was too tired to perfect the details and intends to distribute anyway because nothing in it is important enough to divert students’ attention from the hypotheticals!), and therefore seems just a tad excessively conscientious until she hops on Facebook during the discussion of a hypothetical problem. Of course she is tantalized to find out if she has any messages, and the hypothetical is one of those “hide the ball” things.\textsuperscript{162}

Or a third-year student who still asks, “Do you prefer that we write our examination answers in IRAC or CREAC or IREAC form?” to whom you admit you have no idea what that means, but part of what he should learn from the course is the best way to present an answer based on the demands of the analysis.\textsuperscript{163} (He feigns politeness but how could he not be irritated: he is a third-year student and you are still hiding the ball!) He believes law is about form, just as perhaps he believed physics was about formulas.\textsuperscript{164}

\textsuperscript{160} Cf. Skemp, supra note ____ , at 89 (defining “relational understanding” as “knowing both what to do and why.”).
\textsuperscript{161} An instrumental understanding of a subject would “consist of having available only a collection of isolated rules (presumably learned by rote) for arriving at the answers to a limited class of problems.”).
\textsuperscript{163} See Terrill Pollman & Judith M. Stinson, IRLARARC! Surveying the Language of Legal Writing, 56 Me. L. Rev. 239, 257, 259, 261-62 (2004); See Darrow-Kleinhaus, supra note ____ , at 124-25 (stating that at the end of one IRAC analysis of an issue, “you are ready to repeat the whole process for the next issue you identify where each issue and sub-issue forms the basis for a separate IRAC analysis.”).
\textsuperscript{164} See Hammer, supra note ____ , at 665.
Neither knows what he or she is supposed to be doing. And neither knows he or she doesn’t know.  

Second, suppose an average achieving student in the first year of law school knows that half of the points on the final examination in all of her classes will be awarded based on answers to multiple choice questions. It is the last week or so of the term. She has nailed down the individual principles but is struggling to impose order in outline form on a whole semester’s worth of material in her courses. She has skimmed a few practice questions and . . . Reality check: if she employs study strategies that will maximize her success on the multiple choice questions – she already knows the individual rules – she may be able to write mediocre-to-OK essay answers and still earn a C+ or whatever grade places her in approximately the middle of her school’s grade distribution. 

And she would never have invested meaningful effort to ordering, much less understanding torts as a field, how its unifying themes provide structure and coherence. She never crafted a roadmap describing the legal principles and therefore the steps for solving torts problems. Unless her learning methods improve and she organizes the law into a coherent structure in future classes, her ability to make connections between doctrinal fields will remain limited. 

\[165\] Cf. Bloom, supra note [__], at 344 (first semester students do not know they did not know the material until they receive exam grades). 

\[166\] Bloom, supra note [__], at 345 (students who do not do well in the first semester did not outline or started too late). 

\[167\] Gary A. Munnecke, How to Succeed in Law School 88 (XXXX) (“[m]ultiple choice tests place much greater emphasis on the ‘black letter law’ and less on the ‘big picture’ than essay tests.”). Schemas assist in ordering the law and giving it shape. We know this student’s are insufficient because she cannot put the pieces together. 

\[168\] Lustbader, supra note [__], at 335-36. 

\[169\] See Gantt, supra note [__], at 442-43. 

\[169\] See Bloom, supra note [__], at 345. 

\[170\] Lung, supra note [__], at 729-30, 740-54, 758-59.
She will graduate with a reasonable expectation of passing the bar exam on her first try.

But how can that be?171

Rightly or wrongly, students believe multiple choice examinations do not require the same rigorous effort to construct an ordered vision of the course as essay questions do.172 Some colleagues know how to write multiple choice items that test analytical methods and application of higher order thinking, but what law students perceive, not what professors can achieve is what influences learning strategies.173 Students have all-too-much experience with “memorize and regurgitate” undergraduate examinations to expect anything else from objective questions.174 Then, because they did not develop deep learning strategies, they will leave law school with discrete, disconnected packages of knowledge that will be insufficient when must construct the precise, coherent roadmaps bar examiners will demand and solve their clients’ complex problems.175

Challenging upper class courses cannot repair the damage; by then it is too late. The student’s investment in what he thinks he should be doing required such a psychological investment to construct that jettisoning will not come easily, if it is possible.176 Students often resist methods and expectations outside their basic experience; this is the outward

171 See Darrow-Kleinhaus, supra note ____, at 443.
173 Id. at 3.
174 See GARY A. MUNNECKE, HOW TO SUCCEED IN LAW SCHOOL 88 (XXXX) (“Multiple choice tests place much greater emphasis on the ‘black letter law’ and less on the ‘big picture’ than essay tests.”).
175 See Kissam, supra note ____, at 443 (describing “good paragraph thinking”); Gantt, supra note ____, at 732-34 (describing “scripts” that are characteristic of expertise).
176 Pesek & Kirshner, supra note ____, at XXXX (finding that once taught instrumentally, a student may not adapt to relational instruction); see also Saunders, supra note ____, at 136-38; Niedwieki, supra note ____, at 45.
manifestation of metacognitive interference that is really stone cold fear. High performing
students can eventually overcome their misconceptions about legal education, and some do.
For lower achieving students, however, this “cognitive reconstruction” may be a bridge too far
by the second year.

Perhaps there is a silver lining to the rude break law school imposes on the student’s past educational experiences. Perhaps legal educators can give it such focused intensity that the student all but must let cognitive reconstruction adjustments “happen.” Perhaps the doctrinal first-year curriculum can affirmatively teach the student what to do and how to do it: to hone higher order thinking, analytical and problem-solving capacities and give students a setting to do it in a meaningfully authentic way. But regardless of motive, the first year experience at all schools and for all students should emphasize relational instruction that focuses on identifying larger structures and relationships between concepts, building both legal and non-legal intellectual capacities, applying both legal and non-legal analytical methods, and engaging in independent learning and group inquiry, because it is better education.

Methods

177 See Pesek & Kirshner, supra note ____, at 537-38 (discussing attitudinal and metacognitive interference); Mark Newman, Nursing, 154-65 (finding significantly more dissatisfaction with problem-based learning in nursing professionals’ continuing education program than with a conventional program).
178 See Pesek & Kirshner, supra note ____, at 538
179 Paula Lustbader, supra note ____, at 324-29, 338, 340 (at lowest level of analytical development, students apply schema by rote).
180 Saunders, supra note ____, at 137-38.
182 See Richard B. Cappalli, The Disappearance of Legal Method, 70 Temp. L. Rev. 393, 399-404 (1997) (legal methods); Gantt, supra note ____, at 733, 743-46 (script development, “solution paths,” reasoning and cognitive flexibility); Dewitz, supra note ____, at 225-29 (reading with care, critical reading, and constructing meaning from text).
matter: “show,” don’t “tell” must be the order of the day so students see what is expected and how to do it.\textsuperscript{183}

It must start on Day One.\textsuperscript{184} Everyone must do it. It must rank higher than doctrinal knowledge on the pedagogical priority list; there can be no way out that rewards students with C+s.\textsuperscript{185} Professors must have the tools to do it, including “presence” to students. They must remain relentlessly firm about students’ active engagement and participation. And it must be the doctrinal professor’s responsibility.\textsuperscript{186}

Lest this sound too much like “The Miracle Worker,” building a strong sense of community and shared purpose at the same time is doable.\textsuperscript{187} But developing deep learning strategies, correct professional expectations, and higher-order thinking and problem solving capacities should be the hallmark of a good legal education.\textsuperscript{188}

It can be done. I know. We did it.

\textbf{IV. INTEGRATING SUBJECTS: “THE SPINE”}\textsuperscript{189}

\textsuperscript{183} Gantt, supra note ____, at 753; Niedwiecki, supra note ____, at 57-58; Linder, supra note ____, at (observing that students rarely have the opportunity to see an expert solve a problem for the first time)
\textsuperscript{184} Even students in an educational psychology class relied on past methods when they encountered difficulties that indicated they should change study strategies. Gantt, supra note ____, at 753.
\textsuperscript{185} Lindner – (desire for “highly accomplished” crowds out teaching relevant to authentic learning activities)
\textsuperscript{186} See Gantt, supra note ____, at ____ (students need considerable doctrinal knowledge to connect concepts and solve ill structured problems).
\textsuperscript{187} See Article III, supra note ____-, _____. See infra text and notes at ____-____.
\textsuperscript{188} See Pesek & Kirshner, supra note ____, at 537-38; Skemp, supra note ____, at 93 (“To make an informed choice of this kind implies awareness of the situation . . .”). A. Pollatsek et al., Concept or Computation: students’ Understanding of the Mean, 12 Educ. Stud. in Mathem. 191, 202 (1981) (“In many introductory courses, students are taught to use formulas in a rote manner with the justification that thorough understanding of the material can wait until the second course (or later). While it is undeniably true that students can solve some problems with this approach, our data suggest that the range of problems that can be solved with only instrumental knowledge is vanishingly small.”).
\textsuperscript{189} See Oliver, supra note ____, at 77 (“Curriculum structure is like the skeleton of a body: strong and in balance, giving direction and support to activities and determining the outline of what it represents . . . . It may also be helpful to consider one theme of the curriculum, such as dentistry, at the spin around which other themes are
Integrated courses are very difficult to design. Unlike building a boxed thousand-piece puzzle, every available piece may not be part of the final design; there are multiple ways the pieces may fit together; some are better than others; no one truly knows which those are; and choosing to fit a piece a certain way is an implicit choice to reject or limit the way others can be used, before knowing how they could be used\textsuperscript{190}. Subject matter experts fear dismemberment of their specialties.\textsuperscript{191} No casebook shows clearly how the subjects fit together or provides road-tested subject-subject integrated practice-oriented activities.\textsuperscript{192} Students resent playing guinea pig.\textsuperscript{193} There are a dizzying number of moving parts: constructing a syllabus so one case can serve specific torts and procedure topics, with all of the foundational material covered at appropriate times, so the practicum, which is proceeding on a completely different timetable, can proceed the next week with another activity can be maddeningly complicated! Designing any course from scratch is not a linear process or a series of choices: it is the manipulation of a large set of both independent and dependent variables, the efficacy and prudence of which, no one knows for sure!

A. Goals: Is it “What do you want to do?” or is it “What can be done?”

\textsuperscript{190} See, e.g., Case, supra note \_, at 85 (observing that increased horizontal integration can interfere with vertical integration).
\textsuperscript{191} See, e.g., Morgan, supra note \_, at 4.
\textsuperscript{192} See, e.g., Westcott & Shircore, supra note \_, at 100-01.
\textsuperscript{193} See Aurand, supra note \_, at 28.
Any professional school curriculum reform should start with the question, “What do we want students to know and be able to do” come Graduation day. What comes next is less apparent. Integration makes possible things that were not: in fact, that is a purpose of integration, but perhaps not all things good or possible to do or change are yet known. Identifying and then reaching the desired level and points of integration may take several years, because more integration is so demanding on faculty and administration, an institution is wise to plan on scaling up. Therefore, locking too much into place before teaching any integrated courses risks freezing faculty innovation and standardizing a course before its time. As two innovating medical school professors observed: “Our epiphany in all these experiences was that time spent on developing curriculum maps and objectives was probably useful [to designing and implementing an integrated curriculum,] but directing a major effort and

194 See J.R. Crosby, Curriculum Goals, in Dent, supra note ____ , at ____ , 1-2; Mikyong Minsun Kim et al., Traditional Versus Integrated Preservice Teacher Education Curriculum: A Case Study, 55 J. Teacher Educ. 341, 344 (2004); R. Oliver, Curriculum Structure: Principles and Strategy, 12 Eur. J. Dent. Educ. 74, 76-77 (2008). Meaningful deliberation early may avoid “disillusioned teachers, uncreative approaches to teaching, and bored learners . . . .” Della Fish & Colin Coles, Medical Education: Developing a Curriculum for Practice, at loc. 391-407 (Kindle ed. 2005); see also id. at loc. 344 (“[A] curriculum is more than a simple syllabus, and is not something which can or should be imposed on teachers by others who are not involved in that teaching.”).

195 See, e.g., Fish & Coles, supra note ____ , at loc. 632-49 (“What then are the key areas in which information must be provided, about which discovery needs to occur and within which major decisions need to be made?). The Foundation Coalition schools, a group of engineering programs integrating introductory courses with a major grant from the National Science Foundation discovered to their dismay that “building organizational infrastructure” and “buy in” may have been a far higher priority than they understood. See generally M. Carolyn Clark et al., Evolving Models of Curricular Change: The Experience of the Foundation Coalition, Proc. 2003 Am. Soc. Engn’ng Educ. Ann. Conf & Expo. sess. 2003-1892 (2003).

196 See, e.g., Case, supra note ____ , at 85-89; Ghosh, supra note ____ , at 7 (observing problems because faculty were not trained to teach integrated courses); Jessica H. Muller, Lessons Learned about Integrating a Medical School Curriculum: Perceptions of Students, Faculty and Curriculum Leaders, 42 Med. Educ. 778, 783-84 (2008) (“The ability of the faculty and the curriculum to convey content in instructionally powerful ways that are directly relevant to learners’ developmental level . . . . may take several years to acquire and remains one of the biggest challenges facing an integrated curriculum” and finding that students believed integration enhanced their learning “when instructors made links between different subjects, built on what students knew”); Oliver, supra note ____ , at 81.

197 See Aurand, supra note ____ , at 24-25. THE ENGINEERING ARTICLE WHERE THEY DISCUSS THIS SPECIFICALLY.

198 See Aurand, supra note ____ , at 24 (“Initially, academic institutions may want to keep objectives simple and broad-based when developing cross-functional programs to allow for flexibility in delivery.”); Muller, supra note ____ , at 783 (“Integrating a curriculum is an evolutionary process.”). Cf. Kolluru & Lemke, supra note ____ , at 7.
adequate resources at faculty development to build integrated sessions with highly engaging teaching methods would have saved a great deal of time.”

The FIRSTClass curriculum had its mission and the various sections of Introduction to Civil Litigation had individualized goals in support. Ours were to mold and shape students who will become active, independent learners with a high capacity for higher-level thinking, quality analysis and creative problem solving with sophisticated practice toolkits and prospects for rewarding, successful professional futures. To achieve the goal, the professors’ role was to present a “high level learning experience” that would do the following:

- Guide and inspire students become active, independent learners with solid work habits;
- Create an environment of focused inquiry in which students would produce good writing, high-level analysis and impeccable judgment; and
- Hone students’ capacities for thinking and problem solving, such as,
  - Introduce students to “the art of lawyering” and “using the rules to get things done”;
  - Focus students’ attention on getting the “right result” for the client based on how the law applies to the facts in a given situation; and
  - Teach students the importance of both fact analysis and legal analysis: facts and inferences to be drawn from the facts and the lack thereof that are the essence of the law, and then to apply those facts and inferences to elements of claims and defenses.
- Serve as a foundation for eventual vertical integration into a structured litigation track or concentration for the school’s curriculum.

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200 CITE WEBSITE.
201 The “goals” stayed remarkably similar from the early application to teach the course through the goals we expressed to students on the first day of both semesters. This is a fair synthesis of multiple documents and presentations.
A course alone cannot achieve specific objectives – students also have responsibility for developing their professional capacities – but this one provided an environment conducive to their doing so.\textsuperscript{202}

B. “The Spine” and Its Implications

Decisions at the most pivotal forks in the road were those we made early and decisively, such as that the practicum would simulate one significant litigation experience arising from the same complex set of facts. The next “fork” was the structure of “the Spine”: a small group of topics from each subject that when integrated together and as practicum activities had a high probability of pedagogical benefits. Those meta-choices drove many subsequent decisions such as topical order and coverage, specifically, the architecture of tort substance; and the many “points of integration” between procedure and torts that would radiate out from The Spine.

“The Spine” is a set of integrated learning opportunities that build on each other in a spiral design. It is like a map of the national interstate system: you know that if worse comes to worst it is at least possible to get from point A to point B, so you can worry about other things, and when the time comes, you know how to get started. Settling on “the Spine” served to coordinate planning and practice over the next several months.\textsuperscript{203}

\begin{tabular}{|c|c|c|}
\hline
PROCEDURE & TORTS & INTEGRATION CONCEPT \\
\hline
\end{tabular}

\textsuperscript{202} See Kift, supra note \underline{____}, at 10.
\textsuperscript{203} See Fish & Coles, supra note \underline{____}, at loc. 640-45. Cf. Muller, supra note \underline{____}, at 783 (emphasizing the importance of coordination among those developing and teaching an integrated course).
Long-arm statutes | Concept of tort and injury | “Tortious act”: Gray v. American Radiator, construes “tortious act” in a long-arm statute as a tort, which does not exist until someone is injured. Therefore, a tort is not an “act or omission”; it is a series of events related to and proceeding from the act or omission.

Personal jurisdiction | Products liability | “Stream of commerce”: The “stream of commerce” into which a places a product in product liability doctrine and therefore may be a proper defendant is the same stream that may indicate personal jurisdiction in a products liability case, underscoring the impact of products liability on the development of personal jurisdiction doctrine. 204

Subject-matter jurisdiction | Duty | Fraudulent joinder/removal: If the defendant has no duty, the plaintiff has no claim against the defendant. In a multiple-defendant case, if the only non-diverse defendant had no duty to the plaintiff, that defendant may be fraudulently joined and the other defendants may remove.

Causes of action | Intentional injuries | Pleading: Intentional injuries give rise to relatively simple causes of action that lack the complex causation component, so they were good vehicles with which to introduce pleading and ease into the Conley-Twombly standard.

The Spine survived to structure the final syllabus and actual coverage was similar.

**CURRICULUM IN INTRODUCTION TO CIVIL LITIGATION I AND II**

<table>
<thead>
<tr>
<th>UNIT</th>
<th>INTRODUCTION TO CIVIL LITIGATION I</th>
<th>INTRODUCTION TO CIVIL LITIGATION II</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Introduction to Legal Methods</td>
<td>Pleading (plus Erie doctrine and premises liability)</td>
</tr>
<tr>
<td>2</td>
<td>Personal Jurisdiction and Products Liability</td>
<td>Summary Judgment and Causation</td>
</tr>
<tr>
<td>3</td>
<td>Subject-Matter Jurisdiction, Duty, Standard of Care</td>
<td>Affirmative Defenses to Negligence</td>
</tr>
<tr>
<td>4</td>
<td>Intentional Torts and Introduction to Causation</td>
<td>Joinder and Apportionment of Liability</td>
</tr>
</tbody>
</table>

204 See infra text and notes at Part XX.
1. Tort Architecture and Coverage

Integration inevitably means teaching topics in a different order and with different emphasis compared to traditional course presentation. 205

Given the traditional litigation-driven procedure narrative and the congruently modeled practicum, torts would have to give. The $64,000 question:

Could we adjust the order and connections between tort concepts without destroying students’ sense of the material’s structure? Could students learn enough substance in a two or three week methods crash course to support early activities in an authentic and sophisticated simulation? We believed the answer was “yes” to both, 206 but the course needed a clear, holistic torts narrative to scaffold students constructing strands of knowledge so early in law school and from many directions. 207

Whence came “The Universal Tort”: a unifying visual representation of torts’ essential doctrinal structure and relationships between elements. 208 The Universal Tort is a schema,

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205 Morgan, supra note ____, at 3-4.
206 The course squeezed every drop of design efficiency out of the first few weeks in particular. We assigned six tort cases that covered all three basic tort theories plus other useful snippets of law in the first two weeks in order to kill two birds with one stone: training in legal methods such as careful reading, beginning analysis, interviewing clients, and use of authorities as well as introducing as much tort background relevant to the practicum as we could. Perna v. Pirozzi (battery and informed consent medical malpractice), Carlin v. Superior Court (strict liability and negligent failure to warn in drug product liability case), Happel v. Wal-Mart (pharmacist duty to warn), Sherrard v. Smith (respondeat superior), Perez v. Wyeth (failure to warn drug product liability direct to consumer advertising claim), Garratt v. Dailey (battery). The only procedure case in the first unit was Hess v. Pawlowski. See supra text and notes at ____.

208 Cf. Richards, supra note ____, at 7 (“The usefulness of the accounting principle is that it provides a common framework for presenting and applying the fundamental laws of physics routinely used by engineers. Although not
system for classifying snippets of doctrinal and theoretical principles as they emerged during the term. It also forgives some lack of coverage: one day students may come up against a tort not covered in the course and use the chart as a place to start organizing information, and it helps transfer what knowledge students have before it is perfect. Remember: lawyers ask more than “is he liable for negligence?”; more often they ask, “is he liable for anything?” Until students internalize a critical mass of “pharmacist duty to warn” cases, deeper structures and subsequent knowledge transfer are impossible. The Universal Tort may be too generalized to be great jurisprudence, but a very large swathe of tort law is structurally analogous, united by key principles and does raise the same issues over and over: is there an act or omission, is

209 Gantt, Deconstructing, supra note ___, at 450-53 (discussing the “recognition heuristic” and the “representative heuristic”).

210 Richards, supra note ___, at 1-2 (explaining a universal model for engineering problems that creates coverage efficiencies) Consider the hot issue of pharmacists’ duties to warn customers of contraindications and dangers in customers’ drug therapy regimes. But doesn’t the Universal Tort chart say the duty and what you do to satisfy it are separate? Good, since Arizona is a jurisdiction that repeatedly says it agrees. See infra text and notes at ___. Hopefully students will then understand what they are seeing when a jurisdiction amalgamates the two elements.

211 Tying doctrinal knowledge to authentic problems and making explicit connections for students is most likely to facilitate learning and knowledge transfer between analytical skills and doctrine. The Universal tort and an assignment about pharmacists’ duty to warn accompanied by constant reference to them both may achieve the pedagogical objective. Gantt, Pedagogy, supra note ___, at 728-29, 748. See also Lung, supra text and notes at 760-61; Gary Blasi, What Lawyers Know: Lawyering Expertise, Cognitive Science, and the Functions of Theory, 45 J. Legal Educ. 313, 336-56 (1995); Eric A. DeGroff & Kathleen A. McKee, Learning Like Lawyers: Addressing the Differences in Law Student Learning Styles, 2006 B.Y.U. Educ. & L.J. 499, 508 & nn.42-45; Richard R. Skemp, Relational Understanding and Instrumental Understanding, Math. Teaching in Mid. Sch. Sept. 2006, at 88, 84-95.

Next is identifying the deeper structure. Arizona law is highly persuasive but does not control in our fictitious jurisdiction. Most students make factual analogies between the cases and the facts of our problem. Good. The difference between their approach and mine is that I wonder: “Why should Arizona – or any state – recognize any duty for pharmacists to customers? Or allow a generalized warning ever to be necessary to meet the standard of care? The answer ends up with the usual factors considered in duty analysis, but definitely from a different direction.

212 The duties for intentional torts and products liability are unorthodox, but not in a jurisdiction that carefully compartmentalizes duty and standard of care in negligence, Markovitz v. Arizona Parks Board, 706 P.2d 364, 367 (1985) (en banc) (“We have previously explained that we disapprove of attempts to equate the concept of duty with specific details of conduct. We there approved Dean Prosser’s postulate that it is ‘better to reserve’ duty” for the problem of the relation between individuals which imposes upon one a legal obligation for the benefit of the other.’”), and focuses sometimes exclusively on public policy to identify legal duties. See Gipson v. Kasey, 150 P.3d 228, 232-34 (2007) (en banc) (rejecting foreseeability, ignoring absence of relevant special relationship, and relying
there fault involved and does the extent of fault matter, did the act cause an injury, etc. The chart reveals connections as well as gaps bridgeable with reason, research, and discovery.

Course design compensated for the unorthodox order of tort topics. The syllabus formally stated an element-by-element structure for the tort topics but also a spiral cause-of-action by cause-of-action-structure as well. As the chart below indicates, after presenting an introduction contrasting “no culpability” (defect), with intentional torts, the course moved onto common elements but those most focused on negligence. The spiral element is that negligence built on the foundation from prior topics, because students had to use prior topics to master the next.

<table>
<thead>
<tr>
<th>UNIT</th>
<th>NEW CONCEPTS</th>
<th>PRIMARY CAUSE OF ACTION</th>
<th>REPRISED CONCEPTS IN NEW AND PRIOR CONTEXTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>All Universal Tort elements but especially act or omission, duty and intent (standard of conduct) at introductory level</td>
<td>All at introductory level in context of basic legal methods (careful reading, use of authorities, fact analysis)</td>
<td></td>
</tr>
</tbody>
</table>

solely on public policy to find duty). Cf. Richard A. Epstein, Toward a General Theory of Tort Law: Strict Liability in Context, 3 J. Tort L. 6, ____, ____ (2010) (observing that a universal duty of forbearance is suitable for property but not personal torts, regardless of strict liability versus negligence categorizations, but not suggesting no duty exists merely because on some occasions it is affirmative).


Cf. Richards, supra note ____, at 1-2 (discussing the challenge for students new to a discipline to see the connections between courses and topics and therefore “miss the underlying concepts and themes” until they reach more advanced levels); Paula Lustbader, Construction Sites, Building Types, and Bridging Gaps: A Cognitive Theory of the Learning Progression of Law Students, 33 Willamette L. Rev. 315 (1997).

See Richards, supra note ____, at 18.

Duty and standard of care are very compartmentalized in Arizona, which invites compare-and-contrast treatment of cases from less doctrinally pure jurisdictions and precision about use of often ephemeral concepts such as “foreseeability.” Compare Gipson v. Kasey, 150 P.3d 228, 232-34 (2007) (en banc) (rejecting foreseeability, ignoring absence of relevant special relationship, and relying solely on public policy to find duty), with ________ (CASE FROM LOUISIANA).
<table>
<thead>
<tr>
<th></th>
<th>Act or omission as defectiveness, duty in strict liability context</th>
<th>Strict – especially products liability (introductory negligence)</th>
<th>Act or omission</th>
</tr>
</thead>
<tbody>
<tr>
<td>3</td>
<td>Duty and standard of care especially as to negligence</td>
<td>Negligence</td>
<td>Act or omission, duty at introductory level</td>
</tr>
<tr>
<td>4</td>
<td>Intentional torts</td>
<td>Intentional torts</td>
<td>Standard of conduct</td>
</tr>
<tr>
<td>1 – 2d</td>
<td>Causation in fact and injury, plus res ipsa loquitor and negligence per se</td>
<td>Negligence, strict products liability, willful and wantonness</td>
<td>All prior</td>
</tr>
<tr>
<td>2 – 2d</td>
<td>Legal causation</td>
<td>All with emphasis on foreseeability elements</td>
<td>All prior (including injury)</td>
</tr>
<tr>
<td>3 – 2d</td>
<td>Defenses</td>
<td>All but primarily negligence as to plaintiff fault</td>
<td>All prior</td>
</tr>
<tr>
<td>4 – 2d</td>
<td>Apportionment</td>
<td>All</td>
<td>All prior (including defenses)</td>
</tr>
</tbody>
</table>

2. Points of Integration

Uncovering points of integration triggered creative juices and intellectual sparks like no other collaboration and were among the most stimulating and rewarding parts of preparing and teaching the course. The challenge was the fun: neither West nor LexisNexis have five Introduction to Civil Litigation casebooks with accompanying teachers’ manuals to choose from!\(^{217}\)

\(^{217}\) Cf. Richards, supra note ____, at 18 (observing difficulty of teaching integrated courses without a standard text).
The subjects present a dizzying array of points integration that fall into four rough categories:\(^{218}\): concepts common to both subjects (conceptual integration);\(^{219}\) using a topic from one subject to make sense or create consequences for decisions about the other;\(^{220}\) extracting doctrine from one subject in cases of the other, which is efficient, because covering only one case presents multiple legal principles from both subjects; and using doctrine and methods from one subject as tools to teach the other subject.\(^{221}\) These also required some new teaching tools and methods.

a. Conceptual Integration: Personal Jurisdiction and Products Liability

Pleading and summary judgment were always fertile for integration with almost any tort topic, but what about the first term? When both we and the students were still learning how to navigate an integrated course, let alone its substance!?! No doubt about it: the difference between –

- Saying “Products liability and personal jurisdiction show up in a lot of cases together”;
- Saying “Let’s assign a personal jurisdiction problem in a products liability case as a litigation assignment”; and
- Actually saying the words “products liability” and “personal jurisdiction” in the same class period, ideally within a few minutes of each other, for the first time

-- is stark.

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\(^{218}\) The examples below are illustrative, not exhaustive. There were many other horizontal points of integration, including some in the practicum.

\(^{219}\) See, e.g., Chester & Alumbaugh, supra text and notes at ____, 59-70 (describing a possible integrated course, Civil Obligations structured around universal themes such as reliance, status and duty).

\(^{220}\) Marion L. Pearson & Harry T. Hubbal, Curricular Integration in Pharmacy Education, 76 Am. J. Pharm Educ. Art. 204, at 3 (2012) (observing that a school might organize integrated courses around disease states as opposed to offering disciplined based science courses).

\(^{221}\) Cf. Zhou, supra note ____, at 131 (science instructor used taught concepts of vibration and resonation to show the scientific side of a music lesson on how pitch depends on the thickness of a string).
But we did!

Personal jurisdiction and products liability combined are the gate to a luscious garden of conceptual integration points and World-Wide Volkswagen v. Woodson[^222] was the place to sniff the flowers.

World-Wide is nothing if not a compelling product liability litigation story. The Oklahoma Supreme Court had just recognized a strict liability cause of action against a manufacturer of a defective product when the Robinson family brought Robinson v. Volkswagen of Am., Inc., an early crashworthiness suit, against all of the sellers in the chain of distribution[^223]. On their way to a new home in Arizona (!), a drunk driver going at least seventy-five miles per hour collided with his clients’, Robinson family’s, Audi vehicle[^224]. The Audi’s fuel tank exploded on impact, and both Kay Robinson and her two children were horribly burned[^225]. High-quality trial evidence included an Audi vehicle cut in half to show the allegedly defective location of the gas tank and films of the manufacturer’s rear-end crash tests, raising early questions about how to prove products liability cases, and especially causation, that would return in the class litigation[^226]. Which raised a useful reflection point: what would have been the practical implications – such as transporting exhibits and witnesses (doctors no less!) – for the plaintiffs to sue in a New York state court? Then, the integration point: what does that mean for the gloss we should give traditional notions of fair play and substantial justice?[^227]

[^224]: Adams, supra note ____, at 1122-23.
[^225]: Id. at 1123-26.
[^226]: The judge apparently drew the line at a demonstration that would have involved lighting a fire in the courtroom. Adams, supra note ____, at 1145-46.
During the personal jurisdiction unit, we compared the innocent seller statute from our fictitious practicum jurisdiction to Oklahoma law, which permits suit against all sellers in the distribution chain.\textsuperscript{228} The question of who may be sued spirals back during diversity jurisdiction and the fraudulent joinder assignment in the practicum: had the fictitious statute been Oklahoma’s, there would have been no Supreme Court World-Wide Volkswagen decision.\textsuperscript{229} The dealer and the local distributor were non-diverse defendants, and Audi paid Seaway’s and World-Wide’s attorney fees to present their personal jurisdiction arguments to the Supreme Court; if Seaway and World-Wide were dismissed from the suit, the other defendants could remove to federal court.\textsuperscript{230} During personal jurisdiction, the students are still only three weeks into school!

The next connection was a phrase students had seen before: “The forum State does not exceed its powers under the Due Process Clause if it asserts personal jurisdiction over a corporation that delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State.”\textsuperscript{231} Placing a product into the “stream of commerce” also a sub-element of duty in negligence and strict liability products cases?\textsuperscript{232} So the concept is the same in products liability and personal jurisdiction, because the justices

\textsuperscript{228} The statute was a slightly edited version of Kentucky’s. See Ky. Rev. Stat. 411.340; Kirkland v. General Motors Corp., 521 P.2d 1353, 1363 (Okla. 1974).
\textsuperscript{229} The Robinsons sued the dealer and local distributor of their Audi vehicle as well as the manufacturer and international distributor, World-Wide Volkswagen, 444 U.S. at 289-90, but the Robinsons and the dealer and local distributor were all citizens of New York. Adams, supra note ____ at 1130.
\textsuperscript{230} Id. at 1134-36
\textsuperscript{231} World-Wide Volkswagen, 444 U.S. at 297-98.
\textsuperscript{232} See 72A C.J.S. § 52; 6 Thomas D. Sawaya, Proper Parties, Florida Practice, Personal Injury & Wrongful Death Actions § 13:7 (2014-15) (duty in negligence to place only safe products in the stream of commerce); Coffman v. Keen Corp., 628 A.2d 710, 718 (N.J. 1993); Voss v. Black & Decker Manuf. Co., 450 N.E.2d 204, 208 (N.Y. Ct. App. 1983); Nagy, supra note ____ , at § 5:9 (“It is necessary, however, that the defendant be in the business of placing the allegedly defective product into the stream of commerce, since a defendant who places the product in the stream of commerce is in a position to control the risk of harm the product might cause.”).
borrowed stream of commerce to clarify the extent of a court’s personal jurisdiction over a non-resident products liability defendant.\(^{233}\) World-Wide actually turns on what the products liability “stream of commerce” concept means when the “product” at issue is a vehicle.\(^{234}\)

Foreseeability, however, is the crown jewel of products liability and personal jurisdiction integration. World-Wide Volkswagen’s primary contribution to personal jurisdiction is to reject the notion that just because a defendant placed a product into the stream of commerce that defendant “foresees” that may “reach the same State because a consumer, using them as the dealer knew the customer would, took them there” without more, would be subject to the state’s jurisdiction.\(^{235}\) Instead, the Court endorsed a “different foreseeability”: “the foreseeability that is critical to due process analysis is not the mere likelihood that a product will find its way into the forum State. Rather, it is that the defendant’s conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there.”\(^{236}\)

The class had already considered “foreseeability” as key component of a duty in a negligent failure to warn action – creating a risk of a “foreseeable” harm to a “foreseeable” person.\(^{237}\) In the prior sub-unit, foreseeability had reemerged on the consumer expectations

\(^{233}\) The justices could not have used “chain of distribution,” because “stream of commerce” captures the notion that the seller in the chain of distribution must actually be in the business of selling products, which would take the Robinsons and others out of the stream of commerce. Charles J. Nagy, Jr., Strict Liability – Stream of Commerce, Am. L. Prod. Liab. 3d § 5:9 (2014).

\(^{234}\) In the parts of World-Wide Volkswagen edited out of civil procedure casebooks, the “other” (not Justice Brennan) dissenting justices are clear and critical of “restrict[ing] the concept of the ‘stream of commerce’ to the chain of distribution from the manufacturer to the ultimate consumer.” World-Wide Volkswagen, 444 U.S. at 316 (Marshall, J., dissenting).


\(^{236}\) See World-Wide Volkswagen, 444 U.S. at 297.

\(^{237}\) See, e.g., Happel v. Wal-Mart, 766 N.E.2d 1118, 1124 (Ill. 2002); Dobbs et al., supra note ____ , at § 256 (such a “duty” is better considered as an element of the standard of care).
test for a product’s defectiveness\textsuperscript{238} and the availability of a reasonable alternate design,\textsuperscript{239} which are breaches of the duty to place only safe products in the stream of commerce.\textsuperscript{240}

The significance and extent of these connections was not apparent to me until later, but by then, more foreseeabilities had cropped up: in negligence\textsuperscript{241} and legal causation.\textsuperscript{242} There will be many chances to perfect the “foreseeability” presentation. As thorny as students find the “two foreseeabilities” in personal jurisdiction, at least the Supreme Court seems to have a handle on them.\textsuperscript{243} The same is not so clear of state supreme courts and the “three foreseeabilities” of duty-breach-causation.\textsuperscript{244} Wishing everyone many happy spirals!

It is only the beginning, because “foreseeability” is one of the rhythms of the law.

\textbf{b. Using Torts to Make Sense of Procedure: Erie and Premises Liability}

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\textsuperscript{239} See Rest. 3d Torts: Products Liability, § 2(b) (“A product is defective in design when the foreseeable risks of harm posed by the product could have been reduced or avoided by the adoption of a reasonable alternative design . . . and the omission of the alternative design renders the product not reasonably safe.”).


\textsuperscript{241} Dobbs et al., supra note ____ , at § 159 (“negligence entails an unreasonable risk of foreseeable harm”); see also United States v. Carroll Towing Co., 159 F.2d 169, 173 (2d Cir. 1947).

\textsuperscript{242} Dobbs et al., supra note ____ , at § 199 (“The defendant is not liable merely because he could foresee harm; the harm must be the kind that he should have avoided by acting more carefully.”); see, e.g., Schooley v. Pinch’s Deli Market, Inc., 951 P.2d 749 (Wash. 1998) (en banc).

\textsuperscript{243} J. McIntyre Machinery, Ltd. v. Nicastro, 131 S.Ct. 2786, 2788 (2011).

\textsuperscript{244} See, e.g., Schooley v. Pinch’s Deli Market, Inc., 951 P.2d 749, 752-56 (Wash. 1998) (en banc) (“It is quite possible, and often helpful, to state every question which arises in connection with ‘proximate cause’ in the form of a single question: was the defendant under a duty to protect the plaintiff against the event which did in fact occur?” (quoting William L. Prosser, The Law of Torts 244045 (4th ed. 1971)); Bigbee v. Pacific Telephone & Telegraph Co., 665 p.2d 947, 951 (Cal. 1983), criticized in Cabral v. Ralphs Grocery Co., 101 Cal. Rptr 3d 474, 865-86 (Cal. Ct. App. 1983) (stating that duty is a matter of fact and “what is required to be foreseeable is the general character of the event or harm” on a motion for summary judgment stating lack of duty and legal causation as grounds explaining that “[e]ach involves this question — was the risk that a car might crash into the phone booth and injury the plaintiff reasonably foreseeable in this case?”); Nicolas Terry, Collapsing Torts, 25 Conn. L. Rev. 717, 768-74 (1993) (discussing Bigbee).
Erie v. Tompkins\(^{245}\) is a case that with a different edit might have fit into a torts casebook. Connected to complementary premises liability cases, it completes a pedagogical triple play. It is the first in the choice of law line that bears its name. It is a reasonable stand in for a duty to foreseeable trespassers case.\(^{246}\) Not only that, it is an example of the operation of *respondeat superior*; in an integrated course, a professor must take the topical opportunities where she finds them.\(^{247}\) Most exciting is that its tort foundations illuminate an additional dimension to the choice of law dispute in context.\(^{248}\)

To boil *Erie* down to irrelevance, it is a premises-liability-case-gone-wrong. It is also an excellent follow up to a case explaining and abolishing the distinction between licensees and invitees.\(^{249}\) The railroad defendant argued that under Pennsylvania law, plaintiff Tompkins was merely a trespasser when he injured by a train.\(^{250}\) Tompkins claimed that under Pennsylvania law, he was a licensee, because he had been walking on a commonly used beaten footpath.\(^{251}\) The trial judge held the law permitted recovery, and the Second Circuit applied the “general” law and held that a railroad owes a duty of reasonable care to a person using a permissive

\(^{245}\) 304 U.S. 64 (1938).
\(^{246}\) *Erie*, 304 U.S. at 69-71.
\(^{247}\) *Erie*, 304 U.S. at 70.
\(^{248}\) Another example that benefits learning the tort rather than the procedure topic is pairing a DES market share liability case, *Hymnowitz v. Eli Lilly & Co.*, 539 N.E.2d 1069 (1989) with Celotex v. Catrett. That market share liability did not attach in asbestos cases humanizes Louise Catrett’s failure to come up with more causation evidence. Celotex is also a stark reminder of other tort principles: the difference between general and specific causation and the imperative of that the defendant sued caused the injuries. From this point, taking the Celotex facts as a hypothetical, it is possible to use the Celotex facts, organize what the law “must” be, and law, Asbestos plaintiffs had general causation evidence as well as evidence that asbestos Celotex seems analogous to Hymnowitz, but market share liability did not apply in asbestos cases, presenting a compare-and-contrast opportunity.

\(^{250}\) *Erie*, 304 U.S. at 70-71.
\(^{251}\) Id. at 70
pathway on a railroad right of way. Because respondeat superior applied, the courts reasoned that Erie breached its duty when the open train door hit Tompkins.

Most know Erie as the landmark case that interprets the Rules of Decision Act to mean that state common law applies in federal court diversity cases, however and it is oft-cited for the proposition that state substantive law and federal procedure apply in such cases. But its “twin aims,” to avoid forum-shopping and inequitable administration of the laws, are difficult to apply. State law was uncertain, so naturally, Tompkins forum shopped and brought the case in federal court where under the “general law” he only had to prove the railroad’s negligence and not that it had engaged in willful and wanton conduct. The analysis’s transparency increased when students truly understood the parties’ substantive law incentives. Teaching Erie as both a follow-up premises liability case and as its own introduction to the choice of law question uses both subjects to achieve important doctrinal course objective in both.

c. Extracting Tort Doctrine from Civil Procedure Cases: Willful and Wanton Conduct

Like Erie, Alderman v. Baltimore & Ohio R. Co. is a crossover procedure-torts case. In Alderman, a dispute over substantive personal injury law led to defendant’s motion for

\[\text{\textsuperscript{252}}\text{Id.}\]
\[\text{\textsuperscript{253}}\text{Id.}\]
\[\text{\textsuperscript{254}}\text{Id. at 71, 79.}\]
\[\text{\textsuperscript{255}}\text{Incorrectly. John Hart Ely, The Irrepressible Myth of Erie, 87 Harv. L. Rev. 693, 707-08 (1974). Of course, the Federal Rules of Civil Procedure have been promulgated pursuant to an Act of Congress. 28 U.S.C. § 2072; see id. at 78.}\]
\[\text{\textsuperscript{256}}\text{Hanna v. Plumer, 380 U.S. at 467-68.}\]
\[\text{\textsuperscript{257}}\text{See Erie, 304 U.S. at 69-71.}\]
\[\text{\textsuperscript{258}}\text{See Linder, supra note \textsuperscript{...}, at 437 (“Two activities are integrated for a learning objective when students produce behaviors and outcomes in both activities that indicate progress toward that objective.”).}\]
\[\text{\textsuperscript{259}}\text{113 F. Supp. 881 (S.D. W. Va.).}\]
summary judgment. The Plaintiff had filed a negligence claim against the railroad after being injured when the train she was riding derailed. She had been riding on her “trip pass” that allowed her to travel for free. But it had an assumption of the risk provision. Therefore, the district judge ruled she had to prove the railroad’s conduct that caused her injuries had been willful and wanton to defeat the motion for summary judgment.

Again, the Introduction to Civil Litigation professor takes her efficiencies where she finds them, and Alderman explains willful and wanton conduct and provides a detailed explanation sub-elements. The case provides the detailed list of sub-elements of a concept that a unit a few weeks earlier had introduced but not explored generally as well as a list of plaintiff’s proffered items of evidence. Therefore, Alderman facilitates an early simple demonstration of an important schema: process of matching elements to evidence with a simple chart in light of the plaintiff’s theory of the case. The results of matching elements, evidence and plaintiff’s theory, reveal gaps in the evidence justifying summary judgment trial as well the sorts of facts that either are or are not probative of the elements from a more authentic different perspective than a tort casebook would likely provide.

d. Using One Subject to Teach the Other: Summary Judgment, Pleading and Cause-in-Fact

______________________________
260 Id. at 882.
261 Id.
262 Id. at 883. A summary judgment case must provide students with some framework of the substantive law at issue or they cannot appreciate application of the standard.
263 Id. at 882-33.
264 See Lung, supra note ____, at 760-65.
265 See Cappalli, supra note ____, at 416-32.
Another gift that just keeps giving is Rogers v. Missouri Pacific Railroad. Co., normally a civil procedure case that applies the summary judgment standard to a complicated cause-in-fact chain and throws in an introduction to legal causation for good measure.\textsuperscript{266} The plaintiff’s case may have supported two cause in fact theories stemming from two not-wholly separate and independent acts or omissions that are not easy to identify.\textsuperscript{267} Better yet, the defendant moved for summary judgment on the basis of what comes off as a muddled causation-slash-comparative-negligence theory.\textsuperscript{268}

The negligence claim with a detailed list of evidence on both sides provides excellent practice for application of the summary judgment standard. The process of identifying all material facts and applying the summary judgment standard requires that students understand the plaintiff’s theory of the case on causation and the evidence that supports it to be sure the plaintiff did not miss a link in the causal chain. Best of all, one missing link in the cause-in-fact chain must be filled with an inference, and since every link in the chain is a material fact, whether plaintiff satisfied his burden of production requires evaluating the strength of that interest seen from the light most favorable to the plaintiff – an intellectual challenge sometimes for students.\textsuperscript{269} The Supreme Court seems to play fast and loose: it links the two

\textsuperscript{266} One danger of using civil procedure cases such as Rogers to teach tort concepts is that sometimes they do not state current or relevant law. Rogers is a FELA case, with a different cause-in-fact standard than the common law. See 45 U.S.C. \$ 51 (“Every common carrier by railroad . . . shall be liable in damages to any person suffering injury while he is employed by such carrier . . . for such injury or death resulting in whole or in part from the negligence of any of the officers, . . . .); Rogers, 352 U.S. at 507-08 (“whether negligence of the employer played any part, however small, in the injury or death which is the subject of the suit.”).

\textsuperscript{267} They are in essence, unsafe workplace and contradictory directions about duties from his supervisor that had the effect of putting him in harm’s way; the case is not clear whether the plaintiff actually pursued the latter. Rogers, 352 U.S. at 502-04.

\textsuperscript{268} Id. at 503-04.

\textsuperscript{269} Id. at 503.
pieces of chain with the throwaway comment that “[c]ommon experience teaches . . .”270 It probably does, but how just how large can a link be before the genuine dispute of material fact disintegrates?271 A similar issue arises concurrently in the practicum litigation.

Integration requires new methods and new materials, and summary judgment calls for a Summary Judgment Chart. Each rows represents one element or sub-element of the plaintiff’s claim, which should be listed in column farthest to the left. In each of the three columns to the right, a student can record the theory of the case (material fact) of the party with the burden of production; the actual evidence adduced as to each material fact favorable to the non-moving party; and the permissible inferences from that evidence.

The chart is a useful schema.272 It captures the process of evaluating or preparing for a motion for summary judgment273; if a blank box remains after filling in the information, the moving party is entitled to summary judgment.274 The chart is also a better tool for organizing the law and facts than a traditional case brief, because its structure makes the salient connections between bits of information visually.275 It facilitates class discussion by keeping all

270 Id.
271 Despite being a FELA case, it is possible at this stage to offer the facts as a common law cause-in-fact problem, which makes the case a much closer call. See Zuchowicz v. United States, 140 F.3d 381 (2d Cir. 1998) (where symptoms became manifest soon after taking large overdoses by prescription plaintiff’s experts excluded all causes of injury except
272 The chart is also a forward-looking, planning tool for the class litigation. In its iteration as a Pleading Chart, the columns help build the well-pleaded complaint from plaintiff’s general theory of the case to specific allegations. Afterwards, the third and fourth columns contain evidence the parties will seek in discovery and the reasonable inferences they hope can be drawn from it. After discovery, students can sort the evidence actually produced, read it in the light most favorable to the party with the burden of production, make the permissible inferences, and if any box is empty, know the court should enter summary judgment.
273 See Lung, supra note ____ , at 750-58.
274 See Gantt, Pedagogy, supra note ____ , at 728-29 (“legal instructors must ensure that they explicitly discuss with their students how to make those connections between analytical skills and doctrinal understanding.”). This need not create a passive, spoon-feeding sort of classroom atmosphere, but instead, scaffold students to do analysis themselves. Id.
275 Lung, supra note ____ , at 761-62; Gantt, Deconstructing, supra note ____ (discussing need for coherence and “the challenge of creating order out of chaos . . . .”).
information together as students sort and discuss, box by box and demonstrates the discipline needed to do this precise analysis.\textsuperscript{276} It is also a spiral-in-a-tool; it can be used over and over while covering many of the second trimester’s topics.\textsuperscript{277}

V. \textsc{Integrating Practicum: Suppose the Class Began the Day the Case Walked In the Door}

Meet Lee Taylor. Her husband, George.

Lee is a forty-something mother of two who decided to “lose that extra twenty pounds I’d been carrying around for years” before her daughter’s wedding. She joined Weightbusters, and a doctor associated with the club prescribed “Aspire,” a blockbuster weight-loss drug, to help her progress.

Lee lost the weight, but she did not attend the wedding. A few days prior, she suffered a heart attack as a result of severe mitral valve regurgitation. The culprit: Aspire. The peculiar injuries to Lee’s heart valves were precisely the same as those depicted in a disturbing \textit{New England Journal of Medicine} article by doctors at Confusion Clinic a few months earlier describing case histories of patients never previously diagnosed with heart valve damage who had taken Aspire for more than six months. Later, the University of San Marino Hospital released a report of a study on the drug, pessimiscin, which is chemically very closely related to optimiscin, and its association with heart valve damage; in the report, the San Marino doctors called for immediate research about Aspire’s possible association with heart valve damage. Neither Aspire’s label nor package insert indicate that Aspire causes or is associated with heart valve damage.

\textsuperscript{276} Lung, supra note \____, at 754-56.
\textsuperscript{277} See Richards, supra note \____, at 17-18.
A. Integration with the Rest of the Syllabus

Taylor v. McDaniel, Introduction to Civil Litigation’s a year-long guided litigation practicum, animates the course. Lee and George Taylor bring a drug defect case against Aspire’s and its active ingredient’s manufacturers in the state of Euphoria Circuit Court, with additional claims for medical malpractice and failure to warn claim against other health professionals for injuries Lee claims are the result of taking Aspire. This factual background was familiar to us, within the students’ grasp, and sufficiently rich to accommodate the Spine as well as regular references in class at a higher level of sophistication than an isolated case or hypothetical would permit. Oh, and ideally, to support a spiral, year-long course structure, which it did.

In Taylor v. McDaniel, half of the class represents Lee Taylor in groups of four-student law firms. They interview Lee and George while defendants interview their own potential clients, all “played” by upper-class students. Who should the Taylors sue? Surely Kimberly-Robb, the multinational corporation with an exclusive license to sell “optimiscin,” the only ingredient in Aspire, must be a defendant. What about the doctor who prescribed Aspire, Dr. Jacqueline McDaniel? The Taylors’ pharmacist, Harry Prendergast, Pharm.D., who filled more than a year’s prescriptions for Aspire? Is that all? How might we find out? Potential defendants consult with counsel and negotiate a joint defense agreement, hoping beyond hope that the plaintiffs’ firms will not think of them.

And who is that shadowy figure, Gary Bamberger, the president of “Andorran-America,” a lobbying and consulting firm in Washington, D.C. that seems to have only one client . . . .
Few personal injury attorneys would miss the fact pattern’s litigation-rich potential, far beyond that which any one course could accommodate. Drug product liability cases often give rise to both strict and negligence products liability design and warning defect claims. There were potential parties and witnesses firms did not interview and both novel and mundane claims the students in this course simply did not pursue. Both individual and corporate defendants might realistically be citizens of multiple states and countries, presenting fertile soil for a range of choice of court considerations, as well as service and discovery, which are also integrated with tort concepts. Manufacturers have defenses and other legal shields from liability that give rise to burden-shifting complexities that are necessarily integrated with procedure topics. Causation is especially thorny in drug cases. Taylor v. McDaniel served to illustrate issues in-class discussion of all but one of those topics. Procedurally, both personal and subject matter jurisdiction questions, discovery disputes, service simulations, amendments of pleadings, and joinder of claims and parties with apportionment questions can be switched in and out to correlate with a professor’s preferred coverage. Plus change a few facts, create a few additional items of evidence, and all of a sudden, the legal landscape is very different and therefore, different assignments and activities become appropriate.

The litigation tracked doctrinal coverage carefully and touched on most doctrinal topics. After hints and secondary source readings to preview issues, law firm assignments went out at the mid-point of a unit and integrated the two topics covered in the unit or matters covered directly in Friday practicum “Workshops.” To maximize the pedagogical power of integration, practicum activities usually required solving a problem in one subject area that led to a solution
– or another problem – in the other. To maximize efficiency, the practicum provided the sole coverage of some topics.

Moreover, while this article is mostly about the benefits of first-year course integration, the litigation also presents the disadvantages of siloing. Some students recognized and even did research on contractual issues and wanted to know if they could litigate them. Did others miss them because “this is a procedure and torts course.” Few needed a Professional Responsibility course to ask questions about the propriety of tactics; when would the joint defense agreement have to be abandoned, for example. Potential defendants not sued sought legal advice.

But those only touched the surface of the issues crying out from other fields and might not have required significant factual tweaking to bring front and center. Practicing attorneys would not have missed arguments or disputes arising from other fields of law; just because Lee Taylor did not have a claim against a person or entity did not mean defendants did not, whether in this or separate actions. Nor does every “issue” have to produce litigation. Planning to avoid litigation or resolving disputes outside the courtroom equally appropriate for such a course.

Herein lies the potential for tight vertical integration and spiraling over the course over six-trimesters. Introduction to Civil Litigation could not range so widely. It was a doctrinal course with a practicum attached. But those types of issues would be de rigueur in a second year practicum course with a doctrinal component attached.

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278 No – I would have had to create more evidence!
B. Conduct of the Litigation

Introduction to Civil Litigation had two separate tracks of class meetings and activities.

On Mondays and Wednesdays, the class covered the “doctrinal” topics in the context of improving students’ analytical capacities. On Fridays, the class transformed into a series of Workshops on a separate schedule to address doctrinal and methodological issues related to the litigation:

- Two workshops on case reading and other introductory legal skills
- Simulation of Client Interviewing (special Saturday Workshop)
- Reading and Analysis of Statutes and Rules
- Elementary Drafting I and II
- “Using the Rules to Get Things Done”
- Creative Problem Solving I, II and III
- Application of Discovery Rules
- Pleading and Discovery I and II
- Responses to Discovery Requests and Summary Judgment
- Research, Analysis, Outlining and Drafting the Legal Memorandum that Converts to a Legal Brief I and II

Each plaintiff’s law firm was matched with opposing counsel from the defendants’ law firms.

Team teaching the course allowed us to divide the class into Plaintiffs’ and Defendants’ law firms for the Workshops and adjourn to separate classrooms to avoid breaches of confidentiality.

Students participated in the following litigation activities during the year.

CHART XX: PRACTICUM LITIGATION ACTIVITIES (** indicates graded assignment)

<table>
<thead>
<tr>
<th>INTRODUCTION TO CIVIL LITIGATION I</th>
<th>INTRODUCTION TO CIVIL LITIGATION II (Spring 2014)</th>
<th>INTRODUCTION TO CIVIL LITIGATION II (Summer 2014)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Joint Defense Agreement (D)</td>
<td>Ticket to Top Gun School (all)**</td>
<td>Ticket to Top Gun School (all)**</td>
</tr>
<tr>
<td>Elementary Complaint (P)</td>
<td>Answer (D)**</td>
<td>Complaint (P)** with consolidation</td>
</tr>
<tr>
<td>Service of the Complaint (P)</td>
<td>Complaint consolidation (P vols)</td>
<td>Answer (D)** with consolidation</td>
</tr>
<tr>
<td>INTRODUCTION TO CIVIL LITIGATION I</td>
<td>INTRODUCTION TO CIVIL LITIGATION II (Spring 2014)</td>
<td>INTRODUCTION TO CIVIL LITIGATION II (Summer 2014)</td>
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<td>-----------------------------------</td>
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<td>-----------------------------------------------</td>
</tr>
<tr>
<td>Motion to Dismiss for Lack of Personal Jurisdiction and Memoranda in Support/Response (all)**</td>
<td>Answer consolidation (D vols)</td>
<td>Motion/Memoranda in Support/Response to Dismiss for Failure to State a Claim**</td>
</tr>
<tr>
<td>Notice of Removal (D)</td>
<td>Rule 26(f) Report (firms negotiating among themselves with one document produced)</td>
<td>Rule 26(f) Report (firms negotiating among themselves with one document produced)</td>
</tr>
<tr>
<td>Motion to Remand (P)</td>
<td>Initial Disclosures (all)</td>
<td>Discovery Requests (P) and Responses (D)</td>
</tr>
<tr>
<td>Memoranda in Support/Response to Motion to Remand (all)**</td>
<td>Discovery Requests (P) and Responses (D)</td>
<td>Motion/Memoranda in Support/Response for Summary Judgment (all)**</td>
</tr>
<tr>
<td>Throughout, firms had small particularized assignments related to issues specific to different defendants related to discovery, new clients, joining parties and claims, and theories of liability.</td>
<td>Motion to Dismiss and in the Alternative, for Summary Judge and Memoranda in Support/Response (all)**</td>
<td>Motion/Memoranda in Support/Response for Summary Judgment (all)**</td>
</tr>
<tr>
<td>Trial Notebooks</td>
<td>Trial Notebooks</td>
<td>Trial Notebooks</td>
</tr>
</tbody>
</table>

C. Authenticity of the Litigation’s Substance and Process

Top priority: make *Taylor v. McDaniel* as authentic as possible. So to start, the materials had to look realistic and be information rich. Evidence readily available to students was sleek, including a Kimberly-Robb ad campaign, the Aspire FDA new drug application cover sheet, some of Lee’s health care records, and “medical journal articles.” Drug product liability attorneys would not be unfamiliar with the form and types of content in Aspire’s label or its accompanying documents.
An important priority for the course had been developing fact investigation and analysis capacities. Therefore, the onus had to be on students to determine what information or items they needed and vehicles had to be available to deliver it in realistic ways (no discovery before filing the complaint!). First source: the attorneys had clients. The term started by interviewing potential clients and witnesses, all played by upper-class students armed with ten page “scripts” explaining their significance to the case, their personal history, and how to interact with the attorneys and each other. Defendants had sophisticated clients with most evidence in their files for the asking, including some information about the plaintiff. Confidentiality did matter: some defendants arrived at their initial consults with witnesses neither plaintiffs nor other defendants knew and surely would have liked to!

Maintaining a flow of information to the plaintiffs’ attorneys, however, was more difficult. The Taylors did not know some of the most important information for the complaint, such as jurisdictional facts, potential defendants, or information for service of process. The normal sources (e.g., online databases) were not available. Ultimately, trade publications and membership in the American Association for Justice facilitated the fact-finding process or inspired more focused questions. Rarely, however, was information presented as plaintiffs’ attorneys expected to find it; careful reading counted.

Both sets of counsel banged their heads against the reality that lawyers do not always have all the information they might wish and must make due. Plaintiffs were convinced defendants had done more studies of Aspire’s safety than they disclosed. Defendants were could not believe Lee Taylor did not have a heart condition in her history somewhere.
The “logistics” were also as realistic as possible. The class was “Introduction to Civil Litigation” to shift the sole focus from traditional doctrinal civil procedure and toward more process-driven activities in law practice. The state of Euphoria had its own relevant law as to the substance of the claims, procedural statutes and local rules. The class’s course management site (“TWEN”) contained the entire record of the case – pleadings, motions and memoranda, exhibits. Law firms did not “turn in” assignments: they filed them by electronic mail and a filing letter sent to the clerk of court and then served them on opposing counsel with a service letter attached. Firms responded with answers, memoranda in opposition to motions and discovery to their assigned opposing counsel. The school’s notary did the honors for affidavits. One firm filed a motion for an extension of time, which was granted. Another filed a motion to compel, which was heard in closed session and also granted. Students had access to sophisticated models for pleading, paper discovery, motions and memoranda, and numerous forms of correspondence. Several “Directives” provided guidance for the substance and style of memoranda and correspondence. Sometimes non-compliant documents were returned.

Authenticity comes with a price in time and other resources. If direct-to-consumer advertising claims are lurking on the horizon, the advertising campaign must conform to federal regulations unless there is a reason it does not. A fictitious jurisdiction such as the state of

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279 One unrealistic logistic is that “the judge” never ruled on assignments. I never figured out how to make that work in the context of the litigation itself so that students did not groan that the decision only came down as it did to make the problem work, even if that was not necessarily true! While I considered having one of the former judges on faculty issue rulings during the second trimester I taught Introduction to Civil Litigation II, not every assignment was perfectly weighted on the law, so the disputes were not necessarily fair fights, which would no doubt provoke irritation. What if the judge’s decision was different from my grading? If I just “told” the judge what to do, why bother with the exercise? A wiser colleague will no doubt have solutions.

280 Which would not necessarily be a bad thing – if the professor is planning on that or has the freedom to be that flexible. The institution’s expectations for doctrinal coverage were not especially demanding so diversions were not impossible.
Euphoria must have law, and though Arizona law often did apply, it was not always convenient or sufficient. Then does that mean Ninth Circuit law applies for federal issues? Think carefully: Arizona has a manageable body of case law, but the same cannot be said of the Ninth Circuit’s.

VI. CONCLUSION: WHAT I SAW AT THE REVOLUTION\(^\text{281}\)