

ASPEN PUBLISHERS

Strategies and Techniques of Law School Teaching

A Primer for New (and Not So New) Professors

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outline. Through this gradual accumulation of ideas, your teaching outline will grow richer over time.

3. Using "Shadow Sources"

In the next section, we will discuss how to choose a casebook for your course. That process will require you to examine and compare a number of competing titles. Among the books that don't make your final cut, you'll likely find many good qualities. Maybe one of them offers more detailed coverage of certain topics than the book you chose for your class. Or maybe one of them features excellent problems and hypotheticals, but you rejected it for shortcomings in other areas. We recommend that you retain one of those rejected books and use it as a "shadow source" for your course — i.e., a repository of information, elucidation, questions, problems, hypotheticals, and illustrations, all as a personal supplement to the casebook you selected. Each time your students embark on a new chapter in your casebook, pull out your shadow source and examine its treatment of the same subject. Perhaps it will give you ideas on how to introduce the subject, describe its historical development, illustrate its application, or invite student analysis through problems and hypotheticals.

Your shadow source need not be another casebook — it can be the *teacher's manual* from another casebook. Pressed by publishers, more and more casebook authors have written detailed teacher's manuals. Twenty years ago, such manuals were few and far between, and they tended to offer only the most general advice. Nowadays, a teacher's manual accompanies almost every casebook, and many of them serve as a comprehensive guide. Though they vary widely in quality, these manuals can be a fruitful source of questions, hypotheticals, and illustrations. They can give you fresh ideas for how to approach any cases that your book has in common with the shadow source. A good teacher's manual can even give you food for thought on the larger questions posed by your course. Take, for example, the experience that one of us had in teaching Constitutional Law. He selected the Barron & Dienes casebook,²⁹ but used as his shadow source the teacher's manual to Farber, Eskridge & Frickey.³⁰ That teacher's manual provided him with a wealth of ideas, partly because the philosophies behind the two books were different. It gave him a fresh perspective — not only on individual cases, but also on questions of coverage, emphasis, historical context, even the grand themes that run through constitutional law. The fresh perspective furnished by that manual enriched his teaching of the course.

B. CHOOSING A BOOK

We come now to the all-important task of choosing your textbook. This decision looms large because day after day, all semester long, it will constantly affect how

you and the students experience your course. The last thing you need is to spend the semester fighting your book — scrambling to chart a coherent path through its poorly organized chapters, apologizing for its paucity of explication, muffling its ideological slant, straining to counteract its needless complexity, struggling to decipher its maddening “notes.” Since the stakes are high, you need to commence your search at the earliest possible moment and devote significant time to it. Contact all the legal publishers,³¹ tell them about the new course you’ll be teaching, and request a complimentary copy of all their offerings in the subject area. Soon you’ll be inundated with casebooks.³² Now begins the process of examining and comparing them. The time and care that you devote to this process will pay dividends for months, even years, to come.

After selecting a book and teaching a whole semester with it, you will find yourself tied to it in hundreds of small ways — and this can discourage you from trying a new book the next time you teach that course. This is because much of what you do each day in the classroom is connected to the text and structure of the book you have chosen. The questions you ask, the issues you identify, the clarifications you provide are often a response to something in your book. In essence, you carry on a semester-long conversation with your book — or, perhaps more accurately, you use specific passages in your book as a springboard for introducing and examining certain points you want to cover. After you have taught the course several times, you develop a strong familiarity with your book — and this can make you reluctant to abandon it,³³ even though you are all too aware of its flaws. At least those flaws are no longer the hidden landmines that would await you in any new casebook you might select. Since you won’t readily depart from your original choice, you’ll want to make that choice with all due deliberation.³⁴

In the subsections that follow, we offer some advice about making that important choice. But before we proceed to that advice, let’s pause to consider the extent to which your own faculty may influence your choice. The impact of faculty politics on your book choice will vary widely from school to school. On some faculties, it won’t be an issue at all. On other faculties, you may feel pressured to select a particular book. This can happen if someone on your faculty has authored a casebook for your course. It can also happen if one particular book is favored by the other faculty members who teach your course. Every faculty is different, so it will be up to you to gauge how much freedom you have to make an independent choice. Of course it can be *advantageous* to teach out of the same book as one of your colleagues. Throughout the semester, you can go to that person for advice on how to handle particular sections in the book.³⁵ And this is likewise true if the author of that book is on your faculty. Ultimately, we believe that a faculty colleague’s authorship or advocacy of a particular book should be a factor in, but not dispositive of, your choice. Assuming that faculty politics will not force your hand on this question, we recommend that you evaluate every available book on the merits, using the criteria that we have set forth below.

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1. Don't Automatically Choose the Most Popular Book, the Most Interesting Book, or the Book That Your Teacher Used

When you have gathered all of the competing casebooks and stacked them upon your desk, you'll be dismayed by how numerous and thick they are — and you'll feel an impulse to curtail the selection process by abruptly making a "safe" choice. To this end, you may find yourself drawn to the best-selling casebook in its field, or the one that is most widely revered, or the one that *your* teacher selected when you took the course in law school. Resist this impulse. Fight the urge to rush your decision. Try to give every book an equal chance.

Just because a book is widely used or highly respected doesn't mean that it will be a good fit for *you*.^{*} Maybe its organizational structure conflicts with your sense of how the topics should be ordered. Maybe its editing of the cases seems heavy-handed. Maybe its notes are more baffling than helpful. Maybe it goes into far more detail than you could ever hope to cover. Or maybe it employs an approach to the subject that you find unfeasible. Let's use this last point as an example. One of us has been teaching Evidence since 1995. His experience as a student left him convinced that reading appellate opinions is no way to learn the rules of evidence — that a problem approach is essential to gaining a grasp of the rules. Years later, when he found himself a professor, this conviction guided his choice of a textbook. Among many competing titles at that time, three books stood out as enormously popular and respected. But each of those books relied heavily on appellate cases, interstitial notes, and law review excerpts as the principal means of teaching Evidence. Notwithstanding their well-deserved acclaim, these books were simply wrong for his course — because they were bereft of problems, and he was committed to using problems every single day in his classroom. So, pushing the best-sellers aside, he turned his attention to the few (and relatively new) books that employed a problem approach.³⁶ Among these, he was deeply impressed by and finally chose the Mueller & Kirkpatrick book,³⁷ which was then in only its second edition and just beginning to achieve acclaim.³⁸ That selection comported with his vision of the course, even though it rejected the pre-eminent titles of the time. The lesson to be learned here is that zeroing in on the most popular or respected book in its field is no short cut to finding the book that is best for you.

Likewise, don't automatically go with the book your own professor used. It can be tempting to pick that book because you already have some familiarity with it. You've seen at least one model of how that book can be organized into a course. And if your teacher was effective, your class notes as a student may be very helpful.³⁹ But you don't know why your professor chose that book or whether your professor was happy with it. For all you know, your professor abandoned that book the very next year. But let's assume that he or she went on using it. Sticking with one book, even for many years, is not necessarily a ringing endorsement of that book. Law

^{*} Moreover, the best-seller is not necessarily the best book to teach from — because pedagogical soundness and student accessibility are not, for many professors, the decisive factors in choosing a casebook.

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professors have to invest so much time and effort in building a course around their chosen book that many will not readily switch to a new one, even if they are less than happy with it.⁴⁰ Plenty of new casebooks have entered the marketplace in the years since your professor selected that book. You owe it to yourself to examine all the available titles. The best book for the approach you want to take may not have been written yet when your professor made his or her choice. The main advantage of choosing the book your professor used — namely, your class notes — may well be offset by a good teacher's manual accompanying a rival casebook.

Finally, be cautious about selecting the book that you personally find most interesting. Remember — your *students* are the real audience for the book that you're selecting. The book that you find most stimulating may leave your students utterly perplexed. Think about what would cause you to regard a casebook as particularly interesting. Maybe it's because the book delves deeply into one of your favorite topics, lavishing extended treatment upon cases that are too obscure even to be cited in other books.⁴¹ Admittedly, the detailed treatment of that particular topic and the inclusion of those particular cases could be regarded as an encouraging sign that the authors of this book are right on your wavelength. But what about your students? Do *they* need those cases? Do *they* need such in-depth exposure to a topic that other casebooks barely cover? This is the danger of the "interesting" book. It may lack a sense of balance and proportion. Maybe its treatment of this particular topic is part of an overall effort to be *encyclopedic* — furnishing far more detail than you can comfortably handle and saddling you with the type of editing problems that we discuss below.⁴² Or maybe it follows each case with pages and pages of "provocative" questions — thought-provoking to you, but opaque to your students.⁴³ Or maybe it lacks an appropriate sense of emphasis — treating peripheral topics as if they were important, and vice versa. Or maybe it probes the subtleties of its subject in ways that are satisfying to an expert like you, but will be lost on newcomers to the field like your students.⁴⁴ In our experience, it is often a mistake to choose a book because it includes a favorite case, or because it strives to be encyclopedic, or because it has an "intellectual depth" that appeals to the scholar in you. Though such a book may initially strike you as intriguing, be careful to ensure that its coverage is balanced and that it maintains an appropriate level of analysis and detail throughout.

2. Don't Base Your Decision on the First Few Chapters of a Book

Faced with the task of comparing so many different casebooks, you'll be tempted merely to examine the first few chapters of each book. This is understandable, but it's a mistake. Sometimes a casebook will get off to a great start only to grow muddled in its later chapters. If you adopt the book without venturing beyond its early chapters, you may be in for a rude surprise. Halfway through the semester, when you're covering an important section of the course, it will seem as if your casebook has been hijacked by new authors. Suddenly the book will be plagued by odd case selections, clumsy organization, or poorly written notes. The same book that you found so impressive in its opening chapters will seem transformed into a

liability. Obviously, it's better to uncover those problematic chapters in July, when you're deciding which book to adopt, than in November, when you've got seventy students dissecting that book each night.

Is it really possible for a casebook's quality to veer markedly from chapter to chapter? Yes — particularly with books that have multiple authors. Often different chapters of a casebook are the responsibility of different authors, so that there may not be a uniformity of quality or approach. Thus, no matter how impressed you are by the opening chapters of a given book, do not adopt it until you've examined any subsequent chapters that are critically important to your course.

3. Remember That It's Easier to Add Material Than to Subtract It

Most casebooks include more material than you can comfortably cover in a single course. This is by design — to give each professor flexibility in tailoring his or her course. But it presents problems. If you're new to the subject, you may not have a good grasp of which sections or chapters are the best candidates for omission. All things being equal, then, it is preferable to choose a casebook that is shorter — because you won't have to edit the book as heavily. The more you have to edit a book, the greater will be the likelihood that you give your students a flawed perspective on the subject. If the book omits a case or topic that you believe is important, it's easy enough to *give* that material to your students. But the book that omits nothing can be a real headache to reshape.

Take, for example, the experience that one of us had the first time he ever taught Property. He initially chose the Dukeminier casebook,⁴⁵ the most popular title then and now. But that choice proved problematic because he had to teach the entire course in only four semester hours,⁴⁶ and Dukeminier is not a compact book. After trimming whole chapters, he found that, even within the topics that remained, the book went into far greater detail than he had time for. The level of detail was more than he would have desired even if he had been given five or six semester hours. At first, he believed that he could edit out chunks of the remaining chapters, either case by case or note by note. This is not something you want to get into if you can avoid it. If you are new to the course, there is a good chance that you will botch the job, eliminating something that's important or throwing the coverage out of balance. Well-edited casebooks tend to avoid redundancy — so if you skip a long case to save time, there may be no other mention of the basic rule that the case was included to illustrate. Now you'll have to *add* something shorter to correct the omission. And the notes that appear on subsequent pages, offering observations that you feel are valuable, may be rendered useless if the lead case is no longer assigned.

Rather than trimming an overly detailed casebook, some professors simply assign all the surplus material, resolving not to spend any class time covering the pages that could have been omitted. This is a serious mistake. First, you are asking the students to read material that you really don't value. That is a breach of their trust. Second, if something falls within their reading assignment, students are going to ask questions about it whether you bring it up or not. Now you're faced with a

choice. You can answer those legitimate questions, consuming class time that you had allocated for something else, or you can brush the questions off. The latter tactic sends a clear message to students that not everything you assign is important. And that can undermine their commitment to reading the whole assignment later on, when it really *is* important to you.⁴⁷

Because of these problems, we tend to prefer a more compact book if forced to choose between equally attractive alternatives. By picking a book that is not quite so comprehensive, one that raises slightly fewer subtle points,⁴⁸ you at least give yourself the chance to cover it carefully and thoroughly in class. We believe that this is better than choosing a longer and more detailed book, one that must either be trimmed considerably or covered by means of gargantuan reading assignments — vast stretches of text that your students can never fully absorb and that you can only skim in class. In the end, it is easier and safer to supplement a shorter book with cases and articles of your own choosing than to race breathlessly through a longer book or crudely cut it down to size.

4. Is the Book Organized in a Way That Will Confuse Students or Conflict with Your Vision of the Course?

When comparing rival casebooks, one of the first things to focus on is how they organize the material. Take each competing text and scrutinize its table of contents. Are different topics lumped together without adequate demarcation? Are related topics dispersed? Are topics arrayed in a progression that makes them difficult to digest? Do the authors make clever but ultimately strained and unhelpful connections? Do they employ an organizational scheme that obscures current doctrine? Does the book deviate significantly from the traditional organization of the course (as evidenced by the Restatement or by hornbooks and commercial outlines)? If so, is there any advantage to this deviation? And does the gain outweigh the loss? If you have serious concerns about the grouping and ordering of topics in a book, if you feel that the book is organized in a way that will confuse students, or if the structure of that book cannot be reconciled with the structure of your course, you should strongly consider rejecting it. This is because a poorly organized book can undermine your performance of two important tasks: helping your students to see the big picture, and preventing them from blurring discrete topics and doctrines.

Part of being an effective law teacher is helping your students to see the big picture — helping them to form a mental map of the topics that comprise your course.⁴⁹ This is hard enough to do even when you are in sync with the organizational structure of your book. But if you have to fight your book's structure, reshaping it through reading assignments that ricochet from chapter to chapter and case to case, your students will have a terrible time seeing how it all fits together. Don't forget that many students *rely* on the structure of their casebook to gain an overarching sense of the subject you're teaching them. Many of them use the book's table of contents as the starting point in creating their course outlines. These tools for seeing the big

picture will be lost to your students if you give them a book whose structure you reject.

Students have trouble grasping transitions and distinctions between discrete topics, recognizing the boundary lines between separate but related doctrines. In a poorly organized book, those transitions and distinctions will be blurred, those separate but related doctrines will be lumped together in a congealed mass or shuffled and scattered into several far-flung chapters. In an effort to rectify such problems, you'll be forced to concoct convoluted reading assignments that send your students bouncing all over the book. Even if your syllabus displays those reading assignments with carefully constructed subheadings — all in an effort to make the necessary connections and draw the necessary distinctions — you can never fully overcome the organizational flaws that you inherit from your casebook. It may not be logical, but when a syllabus significantly deviates from the book's own table of contents, students perceive this as confusing — and they will let you know about it in their course evaluations.

5. Is the Book Written from an Ideological or Pedagogical Perspective with Which You're Uncomfortable?

Depending on the subject you're teaching, you may feel it appropriate to expose your students to a generous sampling of ideological and analytical perspectives. Getting your students to look at the law through different lenses — feminist theory, critical race theory, and law and economics, among others — is arguably part of giving them a well-rounded education. But if a casebook manifests a distinct political or ideological emphasis, and you are uncomfortable with that emphasis, you'll want to find a different book. This is because you don't want to spend the semester muffling your authors — suppressing their biases or counteracting their preoccupations.

Likewise, you should scrutinize the competing casebooks to see whether any are written from a *pedagogical* perspective with which you're uncomfortable. Does the book focus too much or too little on theory, too much or too little on history, too much or too little on the black-letter rules? Does it supply an abundance of problems and exercises, or does it feature the conventional montage of cases, notes, and miscellany? Does the book provide long passages of doctrinal explication, or do the interstitial notes contain more questions than answers? Which of the foregoing characteristics *should* a book possess? To answer these questions, you'll have to arrive at some definite conclusions about how law students should be taught and what they need from their casebook. As your students endeavor to distill the black-letter rules, how much help should they receive from their casebook? How deeply should it immerse them in history, theory, or policy? Will they learn best from a problem approach, or will a traditional casebook suffice? By answering these questions clearly and honestly, your own pedagogical perspective will come into focus. Let it guide you during the selection process — and you'll avoid spending the semester in pedagogical conflict with your book.

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Here is a concrete example of a pedagogical conflict that can very easily arise. Some books deliberately include a number of cases that were wrongly decided or that represent a minority rule. Some professors welcome the inclusion of such cases, using them as an opportunity to explore a variety of issues.⁵⁰ But other professors may strongly oppose the inclusion of wrongly decided or minority-rule cases, having witnessed the abject confusion that such cases trigger in students. If you are pedagogically opposed to the inclusion of such cases, you'll need to screen the available casebooks to identify the offending passages.

If an otherwise promising book falls short of matching your pedagogical perspective, do not automatically reject it — but do recognize that this is a portent of trouble. Adapting the book to your approach may prove a real struggle. Let's say, for example, that you plan to teach your course with a heavy emphasis on problems, but the book you've selected doesn't employ a problem approach. If you like the book enough, you could decide to supply the problems by writing them all yourself.⁵¹ But doing this may be a lot more trouble than the book is worth. First, you will pay a steep price in class preparation time. Though the task may seem manageable in the quiet days of summer when you first undertake it, you will likely be scrambling during the semester to conceive the problems, fashion them into a student-friendly format, and then distribute them (in hard copy or on the Web). Second, given the strain of trying to create a full set of problems during a single semester, you may wind up with a product that is uneven in quality and not well integrated with the other course materials. Had you selected a problem-oriented book in the first place, you probably wouldn't be facing such concerns.⁵² Finally, if the book doesn't have the thing you want (problems, in this example), it may be because the book is written from a teaching philosophy that is alien to yours. And this means that when you try to fill the void in that book by creating supplemental materials, the book's divergent teaching philosophy may well clash with your materials, thwarting their integration into your course. Normally, as we've said,⁵³ it's easier to add to a book than subtract from it. But if you're planning to add problems to a book whose focus or approach is incompatible with yours, the book may prove resistant to the integration of any new materials that you might create.⁵⁴

6. Are You a Long-Case Teacher or a Short-Case Teacher?

When selecting a book, another question to ask yourself is: Are you a long-case teacher or a short-case teacher? Most law professors, whether or not they realize it, fall into one of these two camps. Do you want a book that reprints the cases with very little editing, preserving their factual complexity to allow a deeper look at the underlying characters and events? Or do you prefer a streamlined account, one that trims the procedural history, eliminates the secondary arguments, and condenses or summarizes the facts? It is well worth your time to think carefully about where you stand on this question — because many casebooks reflect a long-case or short-case philosophy.⁵⁵ If you select a book whose philosophy conflicts with yours on this question, you will find yourself saddled with a constant source of frustration. A

long-case teacher using a short-case book will repeatedly complain that important passages in each case have been edited out. A short-case teacher using a long-case book will be exasperated by having to assign twenty pages “just” to cover one or two rules.

How can you tell whether you’re a long-case or a short-case teacher? A long-case teacher would think nothing of spending one or two class sessions on a single case — reviewing its procedural posture, exploring the evidentiary record, dissecting the analytical method employed by the court, perhaps even speculating why that case wound up in court in the first place and how it affected the parties. A short-case teacher will use a case as the setting for a surgical strike — to make a few specific points, to accomplish a few targeted objectives, and then move on. Long-case teachers want their students to be confronted with a richness of factual detail, so that they can learn to separate the relevant from the irrelevant, and to zero in on the facts that are pivotal. Short-case teachers want cases that are stripped down to their essential facts, and they use those cases almost like hypotheticals — to train their students how to identify the issue and apply the governing doctrine to new situations. Short cases lend themselves more readily to variations of the basic fact pattern, which can be used to demonstrate the limits of the doctrine at hand. For long-case teachers, a case is a springboard for exploring a broad range of topics: the real-world aspects of litigating a case, the structuring of arguments to the court, the process of judicial decision making, the impact of political pressures and institutional traditions on the behavior of judges, and any other topic the material might suggest.⁵⁶ For short-case teachers, the potential uses of a case are not so open-ended. A case will be used to make one or two doctrinal points, perhaps to situate those points in a larger theoretical or policy perspective, and, before moving on to the next case, to give the students practice applying the rules they’ve learned.

Consider, for example, the topic of future interests in the first-year Property course. If you want a case that is sufficiently rich in facts that it can serve as a springboard for analyzing the interests of the various family members, for inquiring into their motivations, and for considering the harmful impact of such litigation upon their relationships, all woven into a discussion of the rules, you’re a long-case teacher. If you plan to use the case mainly as a vehicle for introducing the rules, allocating the great bulk of your presentation to the rules themselves, with only a passing reference to the foregoing themes (e.g., “These issues often come up in the context of intra-family disputes. . .”), you’re a short-case teacher.

If you fall decisively into the long-case or short-case camp, then try to find a book that is compatible with your preference. At the very least, be sure to avoid any book that reflects the extreme opposite perspective.

7. Will Students Find the Text or Notes in the Book to Be Unintelligible?

A good way to antagonize your students is to select a casebook that they will find incomprehensible. Watch out, in particular, for those after-the-case “notes,” where the authors emerge from the montage of materials they’ve assembled and speak

directly to the reader. Many authors use these passages not to explain, not to clarify, not to provide historical or doctrinal context, but simply to ask questions. And these questions elicit very different reactions from professors than from students. Professors often regard them as a rich source of ideas, suggestions, and insights, believing that they will stimulate the reader. Most students find them unintelligible — not just unhelpful but downright inscrutable, like the queries of the Sphinx. As they accumulate, these questions can become deeply irritating to the students. Eventually, they stop reading them. And once they have tuned out your book, they won't be all that receptive to you.

Bear this in mind when selecting a book. Try to steer clear of books that are bereft of expository passages, books that will not deign to explain, books that are filled with questions that the authors never even try to answer. Such a book — if *you* find it sufficiently intriguing — might serve you well as a “shadow source,”⁵⁷ furnishing raw material that you can reshape into a form that is more accessible to your students. It's better to use a recondite book in this fashion than to foist its obscurity directly upon your students.

Some law professors voice concern that casebooks with *clear* notes leave them with little to do as classroom teachers. We find this implausible. First, we wonder why a teacher would ever prefer obscurity to clarity in selecting a casebook. But even if your casebook *is* guilty of containing many lucid passages, you'll still face the daunting task of teaching your students how to dissect a judicial decision and how to apply its holding to new fact patterns. In accomplishing these objectives, you'll likely be more efficient if the casebook hasn't left your students irritated and bewildered. And that will give you extra time to pursue the secondary goals⁵⁸ you've targeted for the course. It is not too much of an overstatement to observe that even if you gave your students a summary and the attendant hornbook excerpts for every case and topic you cover, you could still find plenty of things to discuss in class and plenty of confused students in need of your guidance.

In the modern casebook, you are as likely to find *before*-the-case notes as *after*-the-case notes — and the former can be just as problematic as the latter. Introductory notes are at their best when they simply set the stage for the case that follows, providing students with historical or doctrinal context and giving them a few basic points to watch for.⁵⁹ But some authors try to accomplish objectives with their *before*-the-case notes that are best reserved for *after*-the-case notes. For example, zeroing in on the finer points of a lawyer's argument is something best pursued in *after*-the-case notes because the student will not be able to appreciate it until the details of the case are freshly in mind. But some authors make the mistake of loading their introductory notes with so much minutiae or miscellany that their value to the student is lessened. Here, then, is another flaw to be watchful for when selecting a casebook: Does the book contain *before*-the-case notes that are so clogged with detail or digression that they hinder, rather than enhance, the student's ability to understand the context or significance of the case that follows?

Finally, a word about transitions. We have already stressed⁶⁰ that students have trouble recognizing the boundary lines between separate but related topics. Depending

on how it is written, a casebook can exacerbate or alleviate this problem. So it is well worth your time, when comparing rival books, to look carefully at how the authors navigate the sensitive interval between the end of one topic and the beginning of the next. An artful transition will point out, where appropriate, any common history or function that unites the adjoining topics. But the most important function of a transition is to draw a clear dividing line between discrete topics. It should establish an unmistakable separation between the topics, so that students are less likely to blur them or blend them. Avoid the book that follows the pattern common to many of the last generation and still evident in some today — a lead case, a note case, two rhetorical questions, a horizontal line, and on to the next topic.

8. Does the Book Have a Teacher's Manual — and, If So, Is It Any Good?

One factor to consider in selecting a book is whether it has a useful teacher's manual. This can be especially important if you are teaching the course for the first time and you are less than fully familiar with the subject matter. Due to the strange nature of law school casebooks — their pastiche of judicial opinions, statutes, law review fragments, and other miscellany, punctuated by abstruse musings and questions, with no real expository thread to bind it all together — any direct communication from the authors is welcome.

For law school casebooks, the teacher's manual is a relatively recent phenomenon. Twenty years ago they were quite rare, and they offered little more than a few supplemental cases or problems. We're not sure exactly how and when the teacher's manual as comprehensive guide caught on. But we do know that the Dukeminier⁶¹ casebook was one of the first. Thanks in large part to its superb teacher's manual, Dukeminier has been very successful in the marketplace. One of us recalls a rueful tribute to that manual by a former colleague. This professor began his career at a very prestigious law school, but his teaching evaluations were less than sterling and he was now employed at a lesser (but still quite good) school. Looking back on his career, he once said: "If I had used Dukeminier, with that teacher's manual, I'd still be teaching at [his former school]."

How can you tell whether a teacher's manual is any good? A manual will be helpful if it explains *why* the authors put a particular case or statute or article into their book. What were they thinking? What were they trying to accomplish? When *they* are teaching out of this book, what points or questions or hypotheticals do they pursue when focusing on this particular passage? This information will be invaluable to you not only when preparing for each classroom session but even earlier, when you are deciding which passages in the book to include in your reading assignments. When determining whether a particular passage may be safely excluded from your syllabus, it will certainly be helpful to know why the authors put it there in the first place.

One indication of the usefulness of a teacher's manual is how well it addresses the comments and questions in the book. In an ideal world, you would have time to formulate your own answers to the author's questions and your own reflections

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on their comments. In the real world, your time is valuable and you may sometimes be scrambling to prepare for class — particularly your first time through the course. Beware, then, of any teacher's manual that fails to disclose how the authors themselves respond to the comments and questions in their book.

Another thing to look for is the depth of explanation in the manual. Even if you know the subject well and are not teaching it for the first time, the authors of the teacher's manual may offer perspectives or insights on a particular case that you haven't considered. Some manuals merely provide a case squib and a sentence or two; others go on and on with additional material. All other things being equal, more is better in judging a teacher's manual — and, all other things being equal, choosing the casebook with the better manual makes sense.

Nowadays some publishers will give you the teacher's manual in *electronic* form. Often this option is available, but only if you know to ask. This can certainly be very helpful, enabling you to incorporate passages from the manual directly into your lecture notes, but a word of caution is necessary. Avoid pouring long stretches of the manual straight into your notes. Try instead to be extremely selective in what you adopt from the manual. The danger here is that you'll incorporate so much material that you'll wind up covering points that are too obscure to warrant extended attention, rather than building your notes based on your own sense of priorities.

C. DESIGNING A SYLLABUS

Now that you've selected a casebook, you'll have to determine the length and sequence of your reading assignments, setting them forth in a syllabus. Those reading assignments are critically important because they reflect the content, structure, and pace of your course. Accordingly, we offer extensive advice on how to construct your reading assignments. After that, we provide suggestions on what else to include in your syllabus.

1. Constructing Your Reading Assignments

a. Don't Try to Cover Too Much Ground

Don't imagine that your students will digest the material with the same level of understanding regardless of how many pages of reading you assign each night. The more ground you attempt to cover, the more superficial will be their comprehension. When determining your reading assignments, your biggest challenge will be to strike a proper balance between achieving adequate coverage of the key topics in your course and giving your students a manageable number of pages each night to allow comprehension. It is important to realize that understanding will be lessened if you try to stretch the coverage too far.

If all you care about is coverage, then it's simple enough to march through the casebook, assigning every page. But that will probably require you to race through forty or fifty pages of text per every class hour. Covering the whole book may make

issues start popping up — when fielding questions from students or working through your day-to-day preparation for class.

- 25 Law review articles can be very helpful, but they do have their limitations as an aid to teaching. They are best at helping you to see the nuances of your subject and the major areas of contention within it. But bear in mind that most of what you'll learn from law reviews will be useful to you only as background. Unless your course is a very specialized one, or unless your objectives include a rather sophisticated level of analysis, you will traverse many pages in a law review article before finding something that can be brought directly into your classroom.
- 26 When looking for useful questions, illustrations, and hypotheticals, remember to consult the teacher's manuals of casebooks in your subject area. For a general discussion of teacher's manuals, see *infra* § III(B)(8). For a discussion of teacher's manuals as a "shadow source," see *infra* § III(A)(3).
- 27 When imposing an initial structure upon your teaching outline, you may find it useful to adopt the same order of presentation as that employed by the casebook from which you'll be teaching.
- 28 See *infra* § VI(G) (where we advocate taking notes, immediately after each class session, about what worked and what didn't work — so that you can benefit from these observations the next time you teach the course).
- 29 JEROME A. BARRON, C. THOMAS DIENES, WAYNE MCCORMACK & MARTIN H. REDISH, CONSTITUTIONAL LAW: PRINCIPLES AND POLICY, CASES AND MATERIALS (7th ed. 2006) (LexisNexis).
- 30 DANIEL A. FARBER, WILLIAM N. ESKRIDGE, JR. & PHILIP P. FRICKEY, CONSTITUTIONAL LAW: THEMES FOR THE CONSTITUTION'S THIRD CENTURY (4th ed. 2009) (Thomson West).
- 31 The major legal publishers include Aspen, Thomson West, Foundation Press, LexisNexis, and Carolina Academic Press.
- 32 Hoping to influence your decision, the publishers will send you any teacher's manual that accompanies a given casebook. They will also send you a number of secondary sources, mainly hornbooks and treatises, in the hope that you'll select one of them as a required or recommended text. Normally they will not send commercial outlines — Emanuel, Gilbert, Sum & Substance — unless you specifically request them.
- 33 Switching to a different book is easier in some courses (e.g., Contracts or Constitutional Law) where there is common agreement about some or all of the classic or leading cases. Those cases will be in *all* the books.
- 34 Finding the right book is more art than science, and even some experienced teachers will admit that they don't have it completely figured out. The difficulty for a new teacher is that you've never used a casebook as a *teaching tool*, so you don't know exactly what to look for. But you did spend thousands of hours poring over casebooks as a student — and if there were any casebook characteristics that you found particularly helpful or unhelpful, you can use those recollections to inform your decision.
- 35 You might ask, for example, if any passages are particularly troublesome for students and, if so, how best to navigate them. You might also ask if there are any passages that your colleague does not assign as being redundant or straying too far afield.
- 36 One option, of course, was to adopt a conventional casebook and supplement it with problems and exercises of his own creation. But he wasn't confident that he could cook up an adequate supply of his own problems prior to the start of classes, or that he could maintain the quality of those exercises if he tried to craft them as the semester went along. While his long-range goal was to draft many such problems, he envisioned doing so over a period of years, not weeks — guided in large part by the experience of *teaching* Evidence to many students over several semesters. For now, at least, he wanted a text that shared his commitment to the problem approach.

- 37 CHRISTOPHER B. MUELLER & LAIRD C. KIRKPATRICK, *EVIDENCE UNDER THE RULES* (6th ed. 2008) (Aspen).
- 38 This points up the danger of focusing on best-sellers. It can cause you to ignore new and innovative books that are just starting to attract attention. That danger is greater now than ever before — because the consensus over how and what to teach has broken down, prompting a host of new titles to enter the marketplace. One modern (and laudable) trend is to develop books that are more accessible to students.
- 39 Those notes can function as a type of “shadow source.” For our discussion of shadow sources, see *supra* § III(A)(3).
- 40 See *supra* § III(B).
- 41 One of us succumbed to this temptation the first time he taught Constitutional Law. Among the available casebooks, the BARRON & DIENES book (*supra* note 29) caught his eye — in part because it was then the only casebook that included *Miami Herald Publishing Company v. Tornillo*, 418 U.S. 241 (1974). The central question in the *Miami Herald* case — whether newspapers can be compelled by statute to provide a “right of reply” to candidates whom they criticize — was particularly interesting to him. That BARRON & DIENES stood alone among the major casebooks as the only one to include *Miami Herald* was a factor that favorably impressed him — and it contributed to his adoption of that book. In retrospect, this was not a sound basis for making the decision. By placing far too much emphasis on a relatively minor detail, it could easily have led him astray. Fortunately, BARRON & DIENES turned out to be a very good casebook. But it’s a good casebook for reasons that have nothing to do with the myopic criteria he used in selecting it. In retrospect, the presence or absence of a single case should not be a factor in choosing a book. It’s easy enough to supply a missing case by giving it to the students yourself or having them access it electronically.
- 42 See *infra* § III(B)(3).
- 43 See *infra* § III(B)(7).
- 44 You should select a book not because it is likely to entertain you, but because it is the best available teaching tool — the book that is most likely to promote your students’ understanding. A close cousin of the professor who selects the book that he personally finds most stimulating is the professor who staves off boredom by deliberately *changing* books every two or three years. While such energy and commitment are admirable (and certainly preferable to the professor who never modifies or rethinks his course), changing books on a frequent basis is not beneficial to your students unless there are several books on the market having equal value *as teaching tools*. If one book is clearly paramount, your students deserve to read it. Each student only takes the course once; to subject her to an inferior teaching vehicle cannot be justified if the main purpose in selecting that book is to fend off the professor’s boredom. There are other ways — incorporating new exercises, creating new hypotheticals, adding new illustrations of traditional doctrines — to stay fresh.
- 45 JESSE DUKEMINIER, JAMES E. KRIER, GREGORY S. ALEXANDER & MICHAEL H. SCHILL, *PROPERTY* (6th ed. 2006) (Aspen).
- 46 Many law schools devote five or six semester hours to the Property course.
- 47 If you assign it, students *will* ask questions about it — and that means you’ll have to spend time immersing yourself in material that you’ve already decided does not warrant coverage. Fending off an occasional question about note material is fully justified, whether in the interest of time or out of concern that delving into it will leave too many other students confused. But remember this about blowing off student questions: Do it too often and you will appear to lack knowledge of your subject. You may even create the impression that you harbor a general unwillingness to answer student questions.

- 48 If a point is worth making, it doesn't have to be in your casebook; you can always raise it yourself. And even if the point is contained in your casebook, there's no guarantee that your students will understand it. If the point is important, you need to spend *class time* to ensure that they grasp it.
- 49 See *infra* note 90 and accompanying text (stressing the need to "situate" the topic you're covering in its larger doctrinal context).
- 50 Wrongly decided or minority-rule cases can be used to explore any number of issues — the competing policy concerns that produced a split in the case law; factual variations that may have prompted divergent outcomes; judicial myopia in the stubborn adherence to outdated precedent; or errors of judicial analysis that betray a flawed understanding of the governing doctrine.
- 51 Another option is to borrow problems from other books.
- 52 See *supra* note 36.
- 53 See *supra* § III(B)(3).
- 54 While bearing these concerns in mind, don't let us discourage you from supplementing a casebook with problems or exercises of your own creation. Such a project is by no means doomed to failure. One of us has successfully integrated nearly 100 problems into his First Amendment course, while using a casebook that is not problem-oriented: GEOFFREY R. STONE, LOUIS M. SEIDMAN, CASS R. SUNSTEIN, MARK V. TUSHNET & PAMELA S. KARLAN, *THE FIRST AMENDMENT* (3d ed. 2008) (Aspen) [hereinafter STONE SEIDMAN]. He uses STONE SEIDMAN to immerse his students in a particular First Amendment topic (e.g., prior restraint) and then tests their understanding by asking them to analyze certain fact patterns that are based on lower-court opinions. Far from conflicting, the casebook and the problems actually complement one another in contributing to the students' understanding.
- 55 Dobbs, for example, is a classic short-case book. DAN B. DOBBS & PAUL T. HAYDEN, *TORTS AND COMPENSATION — PERSONAL ACCOUNTABILITY AND SOCIAL RESPONSIBILITY FOR INJURY* (6th ed. 2009) (Thomson West). Barnett, on the other hand, exemplifies the long-case tradition. RANDY E. BARNETT, *CONTRACTS: CASES AND DOCTRINE* (4th ed. 2008) (Aspen). An echo of the long-case/short-case dichotomy may be found in books that employ a problem approach. Crandall and Whaley, for example, feature problems that are short and compact. THOMAS D. CRANDALL & DOUGLAS J. WHALEY, *CASES, PROBLEMS, AND MATERIALS ON CONTRACTS* (5th ed. 2008) (Aspen). Knapp and Crystal utilize problems that are much longer. CHARLES L. KNAPP, NATHAN M. CRYSTAL & HARRY G. PRINCE, *PROBLEMS IN CONTRACT LAW: CASES AND MATERIALS* (6th ed. 2007) (Aspen).
- 56 One disadvantage of being a long-case professor is that it's harder to figure out the pacing of your assignments, because each case can be the occasion for an extended class discussion on a variety of points, and it can be difficult to predict or control how long that discussion will take.
- 57 See *supra* § III(A)(3).
- 58 See *supra* §§ II(A) & II(B).
- 59 See, e.g., BARNETT, *supra* note 55.
- 60 See *supra* § III(B)(4).
- 61 DUKEMINIER, *supra* note 45.
- 62 It might well take a toll on you, too, since you'll have to prepare to teach all those pages.
- 63 These pacing problems can be especially acute if a short-case teacher adopts a long-case book. For our discussion of long-case versus short-case teachers, see *supra* § III(B)(6).
- 64 See *supra* § III(B)(3).