As instructors, we all are changing the way our students think about the world, and we are interested in assisting the change in a productive way.

BRIAN P. COPPOLA

I. THE PROBLEM WITH LEGAL EDUCATION

Law schools do not adequately prepare lawyers for practice. In recent years, numerous books and articles have discussed this obvious fact. A study funded by the Law School Admissions Council concluded that “students’ case reading and reasoning skills do not improve as a result of law school instruction.” Similarly, Professor Benjamin Spencer has remarked, “Unfortunately, the law school of today is not optimally designed to prepare students for practice.” In addition, “[T]he Great Recession has led clients and thus law firms to have less capacity to subsidize the on-the-job training of law graduates that they had been expected to provide, revealing deficiencies in the ability of law schools to adequately prepare a sufficient number of their students to handle legal matters for clients.” Students sense the deficiencies in their legal education: The 2011 Survey of Law Student Engagement found that “[f]orty percent of students felt their legal education had contributed only some or very little to their acquisition of job or work-related knowledge and skills.”

Contemporary legal education is a modified version of the method developed by Christopher Columbus Langdell at Harvard University in the nineteenth century. Characteristics of this method include large classes taught by the Socratic method, appellate cases as the major materials of study, professors being drawn from academia rather than practice, an emphasis on doctrine over practical skills, and evaluation of professors
based mainly on their scholarly writings rather than on their teachings. While there have been some modifications in this method, such as adding legal writing courses and clinics to the law school curriculum, law schools are still focused on teaching doctrine and rewarding scholarship.

The Carnegie Report, which criticized traditional legal education, designated three “apprenticeships” for educating today’s lawyers: (1) the “cognitive apprenticeship,” which focuses on expert knowledge and modes of thinking, (2) the “apprenticeship of practice,” which educates students in “the forms of expert practice shared by competent practitioners,” and (3) the “apprenticeship of identity and purpose,” which “introduces students to the purposes and attitudes that are guided by the values for which the professional community is responsible.”

The doctrinal approach of the Langdellian tradition satisfies the cognitive approach, but it does a poor job with the other two approaches. As one scholar has asserted concerning education in general, “Although thinking always occurs within a domain of knowledge, the usual methods that are used for teaching content matter are not optimal for teaching the thinking skills that psychologists and other educators want students to use in multiple domains because instruction in most courses focuses on content knowledge (as might be expected) instead of the transferability of critical-thinking skills.”

II. THE PURPOSE OF THIS BOOK

This book’s purpose is to better prepare law students and lawyers for the apprenticeship of practice by providing them with a firm foundation in legal reasoning, showing them how to apply legal reasoning skills to facts, and teaching them legal problem solving. I will do this by focusing explicitly on the different types of legal reasoning and the types of mini-skills needed to develop the different types of legal reasoning. Traditional legal education has claimed that it teaches students to “think like a lawyer.” However, traditional legal education rarely specifies what thinking like a lawyer means. This book will talk explicitly about what goes into thinking like a lawyer, such as rule-based reasoning (deductive reasoning), synthesis (inductive reasoning), analogical reasoning, distinguishing cases, and policy-based reasoning.
This book will also discuss the mini-skills that are necessary to develop the types of legal reasoning and, thus, create expert legal problem solvers. Daniel Kahneman has observed that the acquisition of expertise in any field requires the acquisition of many mini-skills. Likewise, a group of researchers has noted, “If students lack critical component skills—or their command of these skills is weak—their performance on the overall task suffers.” Professor Kahneman has declared, “Studies of chess masters have shown that at least 10,000 hours of dedicated practice (about 6 years of playing chess five hours a day) are required to attain the highest levels of performance. During these hours of intense concentration, a serious chess player becomes familiar with thousands of configurations, each consisting of an arrangement of related pieces that can threaten or defend each other.” Similarly, a concert pianist must spend years practicing scales, octaves, chords, pedaling, interpretation, etc. The same is true of the law.

To reuse a joke about how to get to Carnegie Hall, how does one develop a skilled lawyer? Practice, practice, practice. To become an expert, a person must “constantly . . . push her- or himself, or be prompted by a coach, beyond current abilities.” Also, to become an expert, the learner must know what to practice. Consequently, this book has many exercises intended to develop students’ legal mini-skills.

In addition, this book has chapters on combining these mini-skills so that the reader can become a complete problem solver. “If the task is highly complex and can be easily divided into component parts [mini-skills], students often learn more effectively if the components are practiced temporarily in isolation, and then progressively combined.” The learners must then also practice the integrated skills in combination to develop fluency.

III. GENERAL PRINCIPLES OF MASTERING LAW

The first step in mastering law is to become an engaged learner. Professor Kahneman distinguishes between engaged and lazy thinkers. He asserts: “Those who avoid the sin of intellectual sloth could be called ‘engaged.’ They are more alert, more intellectually active, less willing to be satisfied with superficially attractive answers, more skeptical about their intuitions.”
He asserts that laziness is “a reluctance to invest more effort than is strictly necessary.” A goal of this book is to develop engaged learners.

An engaged learner is a self-regulated learner. “Self-regulated learning refers to one’s ability to understand and control one’s learning environment.” Self-regulation is a self-directive process and set of behaviors whereby learners transform their mental abilities into skills and habits through a developmental process that emerges from guided practice and feedback.” Self-regulated learning “involves the active, goal-directed, self-control of behavior, motivation, and cognition for academic tasks by an individual student.” Similarly, “self-regulated learners “are intrinsically motivated, self-directing, self-monitoring, and self-evaluating.” Self-regulated learners are inquisitive, are open to new ideas, and take risks. They do not settle for the first answer, but always consider alternatives. They “recognize when a skill is needed and [they have] the willingness to apply it.” Self-regulated learners know themselves. They admit when they are confused, and they try to clear up their confusion before proceeding. Most important, self-regulated learners have learning strategies, and they focus more on mastery than on grades.

Self-regulated learning involves three recursive stages: forethought, performance, and reflection. In other words, think about doing the task, perform the task, and reflect on what you have done. Most students only do the performance stage. However, legal employers expect law school graduates to be self-regulated learners.

Self-regulated learners have developed their inner voice (inner critic). The inner voice is the “voice people hear when they are engaged in the learning process—the voice that will tell them what they have to do to accomplish a task, what they already know, what they do not know, how to match their previous learning to the new situation, when they don’t understand what they are reading or learning, and how to evaluate their learning. It is this internal reflection and conscious control of the learning process that goes to the heart of metacognition.” Stated differently: “Metacognition refers to the self-monitoring by an individual of his own unique cognitive processes.” Imagine a concert pianist using his inner voice while performing.

Another way to become an engaged learner is to develop certain habits. The first is to become an engaged reader.
engaged reader is to always read with a purpose. The second habit you should develop is to be a self-reflective learner (part of being a self-regulated learner). Self-reflective learners can learn on their own, and they develop the ability to reflect on what they have learned and analyze ideas, their own and others’. I will present other habits and skills that you can use to become an engaged learner throughout this book.

**IV. USING THIS BOOK**

The chapters in this book will present the different types of legal reasoning, the mini-skills that are related to those types of legal reasoning, and how to use these mini-skills in combination. Chapter One discusses the types of legal reasoning. In Chapter Two, I will teach you how to be an engaged reader and analyze cases—skills that are needed before you can learn the other mini-skills in detail. Chapter Three concerns reasoning by analogy, which involves showing how your case is like a precedent case. Chapter Four examines rule-based reasoning and its connection to syllogisms. Chapter Five involves synthesizing cases, which is an important skill in establishing the law. Chapter Six investigates statutory interpretation, which is a type of rule-based reasoning that fills in the details with analogies. Chapter Seven brings the prior chapters together by demonstrating how the different types of legal reasoning relate to the small-scale paradigm (how to organize a simple analysis). Chapter Eight fills in this paradigm by examining how to respond to opposing arguments and distinguish cases. Finally, Chapter Nine serves as a capstone to this book with its presentation of advanced problem solving and creative thinking.

I have written this book for several audiences. First, law students can use this book independently to learn legal mini-skills. I have written it so that students can progressively build their reasoning and analytical skills. Second, it is intended as a text for legal methods and legal writing courses. Third, doctrinal professors can use it in any first-year courses as a supplement on legal reasoning. Fourth, I hope it is valuable to academic support professors. Fifth, I intended it for lawyers who want to improve their legal reasoning and analytical skills. Finally, I hope that this book can help law students and lawyers become lifelong, self-regulated learners.
While I have written the chapters to be read sequentially, a teacher using this book may want to focus on individual chapters. While there are cross-references among chapters for clarity, the chapters are mainly self-contained so that they can be used individually.

Note: It is important that you have a legal dictionary by your side when you read this book. Engaged learners look up all words they do not know.

Note on the exercises: One of the purposes of this book is to allow law students to learn legal skills independently. I want students to be able to get immediate feedback on their learning. Consequently, I have put answers to some of the exercises at the end of each chapter. Please don’t look at the answers until you have completely thought through an exercise. Be an engaged learner, not a lazy one! (Note: I have not given answers to all the exercises.)

**EXERCISE PREFACE-1**

Learning requires self-reflection and self-assessment. Keep a journal as you read through this book and do the exercises. Record what you have learned about legal reasoning and legal analysis. Do you understand these concepts fully? Write about how your thought processes have changed. Note the problems you have had in doing the exercises, and think about how you would help others learn legal reasoning. At the end of each chapter, evaluate your progress in developing your legal reasoning skills. (The purpose of this exercise is to develop your self-evaluation skills and your inner voice.)

**NOTES**


5. Id. at 1955.


8. Id. at 1973–79.

9. Id. at 2015–54.


11. Id. at 25, 79.

13. This book will employ principles of cognitive psychology. As Professor Halpern has argued, “It is clear that a successful pedagogy that can serve as a basis for the enhancement of thinking will have to incorporate ideas about the way in which learners organize knowledge and internally represent it and the way these representations change and resist change when new information is encountered. Despite all of the gains that cognitive psychologists have made in understanding what happens when people learn, most teachers do not apply their knowledge of cognitive psychology.” Halpern, supra note 12, at 451. Much of the learning theory in this book is based on Duane F. Shell et al., The Unified Learning Model: How Motivational, Cognitive, and Neurobiological Sciences Inform Best Teaching Practices (Springer 2010).


17. Susan Ambrose et al., How Learning Works: & Research-Based Principles for Smart Teaching 100 (Jossey-Bass 2010). These authors added, “[E]ven a small amount of focused practice on key component skills had a profound effect on overall performance.” Id. at 101.


19. As Best Practices points out, “It takes time to develop expertise in legal problem-solving. Problem-solving skills can be developed only by actually working
through the process of resolving problems. Developing problem-solving expertise requires repetitions of ‘training’ as against the hard world of consequences, of repeated success and failure, and some inductive efforts at understanding what works and what does not, what seems important and what does not.” Best Practices, supra note 2, at 142. See also Timothy W. Floyd, Oren R. Griffin & Karen J. Sneddon, Beyond Chalk and Talk: The Law Classroom of the Future, 38 Ohio N. U. L. Rev. 257, 266 (2011) (“Practicing or rehearsing improves retention, especially when it is distributed practice. By distributing practices, the learner associates the material with many different contexts rather than the one context afforded by mass practice.”).


21. Id.
22. Ambrose et al., supra note 17, at 102.
24. Id.

25. Id. at 31. Similarly, Halpern writes, “It is important to separate the disposition or willingness to think critically from the ability to think critically. Some people may have excellent critical-thinking skills and may recognize when the skills are needed, but they also may choose not to engage in the effortful process of using them. This is the distinction between what people can do and what they actually do in real-world contexts.” Halpern, supra note 12, at 452.


27. Id.
28. Barry J. Zimmerman, Developing Self-Fulfilling Cycles of Academic Regulation: An Analysis of Exemplary Instruction Models, in SELF-REGULATED LEARNING: FROM TEACHING TO SELF-REFLECTIVE PRACTICE 1 (Dale H. Schunk & Barry J. Zimmerman eds., Guilford Pubs. 1998); see also Floyd et al., supra note 19, at 268; Niedwiecki, Lawyers and Learning, supra note 14, at 41–42; JUST WRITE! GUIDE, supra note 26, at 29 (“Specifically, self-regulated learning consists of three components: cognition, metacognition, and motivation.”). The JUST WRITE! GUIDE states, “The cognition component includes the skills and habits that are necessary to encode, memorize, and recall information as well as think critically. Within the metacognition
component are skills that enable learners to understand and monitor their cognitive processes. The motivation component surfaces the beliefs and attitudes that affect the use and development of both the cognitive and metacognitive skills.” *Id.*


32. *Id.* at 453–54, 471. Professor Schwartz’s article is worth reading in detail. Of course, an engaged learner would look at sources cited in the footnotes without being told.

33. *Id.* at 454. I will give more details on becoming a self-regulated learner in Chapter Two.

34. *Id.* at 471. In addition, minorities and immigrants who are self-regulated learners are successful, while those who are not self-regulated learners are not. *Id.* at 474–75.


36. Niedwiecki, *Lawyers and Learning*, *supra* note 14, at 35. The authors of the *Just Write! Guide* explain, “Metacognition refers to awareness of one’s own knowledge—what one does and doesn’t know—and one’s ability to understand, control, and manipulate one’s cognitive processes. It includes knowing when and where to use particular strategies for learning and problem solving as well as how and why to use specific strategies. Metacognition is the ability to use prior knowledge to plan a strategy for approaching a learning task, take necessary steps to problem solve, reflect on and evaluate results, and modify one’s approach as needed.” *Just Write! Guide*, *supra* note 26, at 32. They continue: “The metacognitive component is comprised of declarative knowledge (knowledge about oneself as a learner—the factors that influence performance), procedural knowledge (knowledge about strategies and other procedures), and conditional knowledge (knowledge of why and when to use a particular strategy). Adults often struggle to articulate their knowledge or to transfer domain-specific knowledge to a new setting. The goal of self-regulated learning is for these strategies to first become visible and eventually automated for the adult learner.” *Id.* at 30.