

## CREATIVE IDEAS AND TECHNIQUES FOR TEACHING RULE SYNTHESIS<sup>1</sup>

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Traditional and nontraditional (otherwise termed creative) techniques exist for teaching nearly every subject and topic. One educator (presumably, but not necessarily, in elementary school) once said, "Give me a room full of children and a telephone book and I will teach them anything."<sup>3</sup> We can see creative approaches all around us. In physics, for instance, Alan Lightman's book *Einstein's Dreams*<sup>4</sup> explains the theory of relativity by sketching people's lives if time were not relative, and Fritjof Capra's book *The Tao of Physics*<sup>5</sup> relates many complex principles of physics to Taoist spirituality as a way to help readers understand them. The beauty of these methods is that they do not try to avoid the complexity in the original topic or simplify the matter to a checklist (both of which do occur in our society and are counterproductive), but rather they provide a bridge between the familiar and the unfamiliar so that anyone can cross over and feel comfortable exploring the other side.

I approach the teaching of legal synthesis, which I consider the backbone of basic legal analysis, with the same fervor and willingness to be creative. I have adopted a number of nontraditional techniques to bring my students from their lives over the bridge to understand legal analysis in general, and synthesizing rules in

particular. I start with creative techniques and build up to very traditional ones, then go back to nontraditional techniques to underscore the importance of certain points and to build further bridges to assist the students in venturing into the next area of legal analysis: analogy and distinction.

I have found these tools to be very effective because they resonate with the students. Even after first semester, perhaps when they are writing their appellate briefs, they can relate a mistake to the beetles or to the fruit. Second- and third-year students fondly recall "the boat" analogy.<sup>6</sup> All of them remember the inequity in the law from the in-class parallel problem that I use. All of this makes me feel that I did find a tool that made their journey far easier than it otherwise would have been. This article will first discuss my perspective on this approach, then address the specifics of my methods for teaching rule synthesis.

### My Perspective

When I teach rule synthesis, I employ six methods, four of which are nontraditional. My use of such a large number of nontraditional methods requires further explanation.

Rule synthesis is the foundation of legal analysis, and unless students have a firm understanding of this, they are likely to be helplessly lost at later stages in the legal analysis process. If a student is unable to fully develop rules, such that they are complete and completely defined in their terminology, then they will not have adequate parameters set for their analogy and distinction. They will not have a definitive benchmark against which to decide what facts are critical and what comparisons matter under the rubric of the rules. Simply, rule synthesis is critical to reading cases, discerning the law, and presenting

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<sup>1</sup> This article is a revised version of material presented by the author at the Central Region LRW/Lawyering Skills Conference, "Hands-On: Teaching LRW and Lawyering Skills in the First Year," held in Kansas City, Missouri, on September 24–25, 1999.

<sup>2</sup> My thanks to Jennifer M. Jendusa for her work on the footnotes.

<sup>3</sup> In fact, at one point in the year, I actually use a telephone book to introduce legal research.

<sup>4</sup> Alan P. Lightman, *Einstein's Dreams* (1993).

<sup>5</sup> Fritjof Capra, *The Tao of Physics: An Exploration of the Parallels Between Modern Physics and Eastern Mysticism* (1975).

<sup>6</sup> For the first several evaluated assignments, whether formally graded or not, I use a boat analogy to lessen the impact of the "first law school grades." I tell my students that the assignment is like trying to catch a boat at a pier. The high end (either a "+" or a numerical grade range) means that you got on the boat, know where it is going and are comfortably sitting on the deck, perhaps eating or drinking something. The mid level (a "-" or a slightly lower numerical grade range) means that you got on the boat, but have that initial uneasy feeling that people have when they are uncertain that they have gotten onto the correct train, bus, etc. The low end (a "--" or a lower numerical grade range) merely means that this time you missed the boat—either because you arrived too late or could not find the pier—but our goal is to make sure that you make the boat the next time.

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the law. Thus, it is essential that *every* student master rule synthesis. However, as more and more students come from more and more diverse backgrounds, the way they learn or relate to a particular teaching method may vary considerably. As teachers, we must be certain that we use methods that reach all of our students. With my six methods, I feel comfortable that I can and will reach *all* of my students.

Creative or nontraditional tools also fulfill basic pedagogical needs in the classroom. The literature is clear that students will learn more when they are interested and engaged in the process. They learn more by doing and they learn better when teaching techniques relate to their lives and bring their lives into the classroom.<sup>7</sup> I have tried to remain true to these methods.

For rule synthesis, I use four creative techniques that are integrated with two traditional tools. The accompanying chart summarizes all of the tools I use, and identifies their purpose or relation to rule synthesis. Each tool will be addressed in the context of a week-by-week discussion of how I use these tools.<sup>8</sup> One final note about these techniques. In addition to their great value in learning, they bring a tremendous amount of fun and joy into both teaching and learning in my class. They take the edge off difficult material, provide nice transitions after seemingly endless discussions of certain matters, and build a strong rapport between students and between the students and me. Finally, many allow us to laugh while we learn.

Creative Ideas and Techniques for Teaching Rule Synthesis (*indicates creative/nontraditional tools)	
Ideas and Techniques	Purpose/Relation to Synthesis
Nonlegal synthesis*	<ul style="list-style-type: none"> <li>• Bridge gap from case brief to rule synthesis</li> <li>• Introduce creative techniques</li> <li>• Relate current work to not-so-distant past (high school)</li> <li>• Emphasize potential simplicity of task</li> <li>• Reinforce nontraditional pedagogy</li> </ul>
Basic legal synthesis	<ul style="list-style-type: none"> <li>• Continue work with simple rules</li> <li>• Emphasize basic consistency of skill</li> <li>• Continue transition</li> </ul>
How to ... essay *	<ul style="list-style-type: none"> <li>• Bridge gap between real-world rules and legal rules</li> <li>• Show how rules are all around us</li> <li>• Begin to identify basics of good, clear, organized writing</li> <li>• Continue work on peer review</li> </ul>
Beetles *	<ul style="list-style-type: none"> <li>• Show the basic need for rules</li> <li>• Show the necessity of clear rules</li> <li>• Show the importance of clear communication</li> <li>• Introduce/work on group projects</li> <li>• Provide a visual aid to learning</li> </ul>
Parallel (ungraded) synthesis problem	<ul style="list-style-type: none"> <li>• Instill the skills/process of legal synthesis</li> <li>• Practice every graded assignment in advance, in a real context, with feedback, and without grading pressure</li> <li>• Work on peer review</li> </ul>
Plastic fruit *	<ul style="list-style-type: none"> <li>• Review rules</li> <li>• Make transition to analogy and distinction</li> <li>• Provide a visual aid to learning</li> </ul>

<sup>7</sup> See, e.g., Lilia I. Bartholome, *Beyond the Methods Fetish: Toward a Humanizing Pedagogy*, 64 Harv. Educ. Rev. 173 (1994) (involving students and their lives in teaching); Henry A. Giroux, *Teachers as Transformative Intellectuals*, Soc. Educ., May 1995, at 376 (getting to know students, working that into class, and doing so in a meaningful way); Luis C. Moll et al., *Funds of Knowledge for Teaching: Using a Qualitative Approach to Connect Homes and Classrooms*, 31 Theory Into Prac. 132 (1992)

(understanding and incorporating students' cultural backgrounds into the classroom to maximize learning); Paul Skilton Sylvester, *Elementary School Curricula and Urban Transformation*, 64 Harv. Educ. Rev. 309 (1994) (actively engaging students).

<sup>8</sup> Anyone wanting copies of the materials I distribute in class can reach me by e-mail at [czimmerm@wppost.depaul.edu](mailto:czimmerm@wppost.depaul.edu).

## Week 1—Case Briefing and Transition to Rule Synthesis

### The Nonlegal Synthesis

During the first week of class,<sup>9</sup> after discussing case briefing ad nauseam, the nonlegal synthesis provides a wonderful segue into synthesizing rules from a variety of cases. The problem involves a high school student who wants to know the rules for how often he can go out and how late he can stay out at night.<sup>10</sup> Thus, the students have to provide counsel to a high school student who does not understand his parents' limitations on his social life. To do so, they are given five scenarios from the high school student's life, including how often and how late he went out and his parents' reactions. Marvelously, from the five scenarios the students can create a statement of rules off the tops of their heads. The rule synthesis created follows a clear pattern in which subsequent rules define terms in the previous rules.

This problem has several wonderful aspects. First, all students can relate to the experience, either because high school is not so distantly past for them or because they have children of their own. Next, this problem bridges case briefing and rule synthesis, moving the students gently into a very tough area. In this way, synthesis is identified early on as a manageable task. Finally, this builds their confidence in their analytical abilities as I inform them that they have now proven themselves ready to move on to rule synthesis. For the second week of class, the students must write a "How to" essay, basically explaining how to do something ... anything.

### Week 2—Rule Synthesis

In that next class,<sup>11</sup> the students first work alone or in groups on a basic legal synthesis problem involving vehicles in a park.<sup>12</sup> The

problem involves a statute and four "case briefs" for which the students must generate a set of rules that covers and reconciles all five sources of law. Many of them find they are able to do this in their heads as well, but organizing and presenting the rules, as well as providing examples or explanations of the rules, is not as easy. The synthesis involves general rules and a purpose, as well as definitional rules and an exception. Once the syntheses are completed and discussed, I distribute a "good" and a "bad" sample rule synthesis.<sup>13</sup> We then discuss why they are labeled as such through the application of new sets of facts to the rules derived.

### The Beetles

In that same class, I ask the students to divide into groups. I distribute one package of 12 beetles to each group of students.<sup>14</sup> These are Tessera ("The Perpetual Puzzle") beetles, which come in different shapes and colors.<sup>15</sup> I give them 90 seconds to "put the beetles together." Typically, the students find many different ways to put them together: some interlock them (connecting legs and antennae as the puzzle is intended to be constructed) and some construct three-dimensional shapes, while others sort them by traits (color, type, etc.). This provides us with a great opportunity to discuss what happens when rules are unclear, unrefined, and subject to the varied interpretation of others. We translate this into the legal context by considering an ill-defined rule that the reader interprets differently than the author and the consequences of continuing to read beyond a vague rule.

The beetles provide a straightforward visual way of showing the need for clarity in rules, in particular, and clarity in communication, in general. Little I could say focuses the potential for divergent interpretations as much as seeing that

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<sup>9</sup> At DePaul, our first week of class is actually two one-hour sessions during orientation.

<sup>10</sup> The particular nonlegal synthesis that I use was adapted from the text discussion in Charles Calleros, *Legal Method and Writing* 52–53 (3d ed. 1998).

<sup>11</sup> At DePaul, Legal Writing I meets for 75 minutes per week. I inform my students in advance that the second and third class sessions, both addressing rule synthesis, will meet for an additional 30 minutes.

<sup>12</sup> This problem was provided to me, without attribution, when I started teaching in 1990.

<sup>13</sup> I tell my students that a "good" sample is not perfect and does not necessarily cover all possibilities or all permutations, particularly those that arise from class discussion. Rather, the good sample is structurally sound and shows good method in its presentation. A "bad" sample, on the other hand, is to be avoided like the plague.

<sup>14</sup> I first experienced the beetles in a different way at a presentation by Paula Lustbader at an Institute for Law Teaching conference in Spokane, Washington, in 1998. My thanks to her for the inspiration.

<sup>15</sup> I do not tell them they are called "Tessera" beetles, as the name would give too much direction.

another group put the beetles together differently. The students work in groups, see the results, and it sticks with them, providing a reference point for related discussion later in the year on rules in memoranda or briefs. Finally, this works well because it is just plain fun!

### The “How to” Essay

Also in this second class, the students exchange their “How to” essays and review them. First we discuss whether the readers think they can do what is explained in the essay. Then we discuss what the essays are (essentially a set of instructions or rules) and why some are clearer than others. Finally, they produce, on the board, a list of the positive attributes of a clear essay (or what would make the unclear essay clear). This list they create includes the key foundations for clarity (and strength) in all writing. It typically includes the following:

- Clear and straightforward prose
- Definitions of all terms
- Logical organization of tasks and steps
- Reader’s ability to visualize the task
- Ease of understanding
- Readability

The composition of this essay demonstrates to the students that rules are not unique to law school or problems that I present to them—they came up with these topics, many of which are everyday things (usually involving the preparation of food). This allows the students to learn the importance of rules in a context unique to them and of their choosing. This also brings their lives into the classroom as an important element of the process. Recent topics included how to acclimate marine fish into an aquarium; how to throw a right hook punch (from a female student); how to make guacamole; how to make Korean-style barbecued beef (Bulgogi); how to make a Chicago-style hot dog (a hometown favorite); how to make an Oreo cookie milkshake; how to wash an obese, elderly dog; and how to inject insulin. At the same time, the students learn about each other’s life. I also learn a tremendous amount about them.<sup>16</sup> The process includes peer review and places it in a familiar context. Finally, I

<sup>16</sup> The students submit two copies of the essay. One is redistributed to a peer; the other I retain and read after class.

cannot overstate the impact of the list that we create. Typically, a hush comes over the class as they realize the valuable insights they found in their essays.

For the next week, the students must begin work on a parallel problem that mirrors, in advance by at least one week, their graded assignments. These four cases also raise critical issues of justice and fairness in society as a whole. The law relates to the Illinois Tort Immunity Act, which immunizes local governments from tort liability for the negligence of their employees. The cases outline the law for the sole exception to the immunity in a four-part test. The test, which requires that municipal officials “create or initiate a position of peril” for the victim, is very difficult to meet, resulting in troubling ramifications for societal expectations of the conduct and obligations of municipal officials in general, and for police and fire protection in particular.<sup>17</sup>

### Week 3—More Rule Synthesis

For the third week of class, the students bring to class a rule synthesis for the parallel problem. These cases have a clear organizational pattern (a four-part test) but necessitate particular rule development within two of the four elements. In class, the students exchange, discuss, and critique these (more peer review). We then discuss the process by which students created them and the attributes of good ones, and, eventually, we produce the skeletal outlines of a good synthesis on the board. In the end, I provide them with a sample parallel problem synthesis.

### Week 4—Transition to Analogy and Distinction

For the fourth week of class, the students must create a synthesis from the cases for the fall semester closed problem. As before, the students exchange and discuss these and we produce a skeletal outline of a good synthesis on the board.<sup>18</sup>

<sup>17</sup> By this point in time, I have also distributed several handouts to the students: *The Nature of Rules*, *Peer Review*, and *The Basic Structure of Legal Analysis*.

<sup>18</sup> I do not provide my students with a sample of work when discussing cases or law that is the substance of a graded assignment. The only other textual material I use is David S. Romantz & Kathleen Elliott Vinson, *Legal Analysis: The Fundamental Skill* (1998).

The class ends with the transition from writing solely about rules to adding analogies and distinctions to the synthesis framework.

### The Plastic Fruit

For this transition, I use plastic fruit, specifically a bunch of green grapes, a bunch of purple grapes, and a purple plum. First, we address the green grapes and the purple plum and discuss the importance of knowing why the green grapes are in one section and the purple plum is in another.<sup>19</sup> Was it color, type of fruit, size of the pit, or something else that led to this designation? Then we address where the purple grapes belong and how to explain why they belong there. We discuss the insufficiency of just saying grapes are grapes (if the rule is grapes vs. plums) or purple is purple (if the rule is green vs. purple). We address the subtlety of analogy if the rule is pit size. Finally, we discuss the relative ease of distinction (pushing facts apart) vs. analogy (pulling facts together). When I set a rule (the size of the seed or pit), the fruit provides a beautiful segue into analogy and distinction. I tell them that the purple grapes are the kind that have a bigger seed, the ones that some people spit out and others eat even if they do get caught in your teeth. We then discuss where the purple grapes go. There is no single correct answer, as this depends on whether the seeds are more like the small ones in the green grapes (that everyone eats) or like the big pit in the plum (that no one eats).<sup>20</sup>

The plastic fruit gives the students a nice review of rules and their importance and provides a clean and clear transition to analogy and distinction that links the two inextricably. Absent a clear rule, the analogy and distinction will be impossibly vague. The visual, both for rules and analogies, really stays with the students. Many students come back (even years later) to see the fruit sitting in a basket on my desk. The greatest advantage of this method is that it truly ingrains the need, when making an analogy or distinction, to explain in detail. As I often tell my students, “nothing is self-evident.”

<sup>19</sup> Many others use plastic or real fruit in class, albeit in different ways. I have seen and heard different explanations, first by Jane Gionfreddo at an LWI Conference in Chicago and later by Charles Calleros at an LWI Conference in Ann Arbor.

<sup>20</sup> I explain that this is like a math problem, where it is most important to show your work leading up to the answer.

### Conclusion

Not all creative methods are for everyone. However, everyone needs to find effective teaching methods to reach all our students. I developed, tested, and integrated this panoply of methods over several years. I stay with them because I find them to be extremely effective for me.

The nontraditional tools in this process—the nonlegal synthesis, the “How to” essay, the beetles, and the plastic fruit—are powerful tools. Much of their power comes from the rapport and atmosphere that they set in the class. This rapport includes starting cooperative and collaborative work in the classroom,<sup>21</sup> relating prior knowledge and experience to law school, establishing a comfort zone for learning, allowing us to have fun in the process, making difficult matters easy to understand and apply, and including the students and their lives. Further, the tools also directly address the particular skills at issue and facilitate the transition between legal skills. Finally, the tools resonate with the students for a long time after their use. All in all, these creative ideas and techniques for teaching rule synthesis enhance students’ ability to understand, retain, and apply the critical analytical skills associated with rule synthesis.

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<sup>21</sup> See Clifford S. Zimmerman, “Thinking Beyond My Own Interpretation”: Reflections on Collaborative and Cooperative Theory in the Law School Curriculum, 31 *Ariz. St. L.J.* 957 (2000).