Kill 1L

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Table of Contents

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Introduction

There has been no shortage of critiques of U.S. legal education. A prominent study published in 1992—the American Bar Association (ABA) "MacCrate" Report—was followed by the influential Carnegie Report in 2007, and then the "Best Practices" Report, also in 2007.[1] These studies begat a vast literature criticizing legal education and proposing changes. The result of this deluge of analysis and prescription is that U.S. legal education budged.[2]

This Article argues that meaningful change requires directing our attention to the central pillar on which law school education rests—the first year of law school, the "1L" experience. The scholarship on legal education is prolific, and much of it is brilliant. Very little of it, however, focuses comprehensively on the critical role of 1L in shaping law school. Major studies of legal education either laud 1L or assume it immovable. The most influential of the legal education studies, the Carnegie Report, was sharply critical of legal education, yet generally enthused about the first year. A Summary of the Carnegie Report states that the "research team found unmistakable evidence of the pedagogical power of the first phase of legal education," leading the report authors to conclude that 1L "is an accomplishment of the first order."[3]

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[1] Am. Bar Ass'n, Section of Legal Educ. & Admissions to the Bar, Legal Education and Professional Development—An Educational Continuum, Report Of The Task Force On Law Schools and the Profession: Narrowing the Gap (1992) [hereinafter MacCrate Report]; William M. Sullivan et al., Educating Lawyers: Preparation for the Profession of Law (2007) [hereinafter the Carnegie Report]; Roy Stuckey et al., Best Practices for Legal Education (2007) [hereinafter Best Practices]. Another ABA study preceded these reports, Am. Bar Ass'n, Section of Legal Educ. & Admissions to the Bar, Report and Recommendations of the Task Force on Lawyer Competency (1979).

[2] L. Danielle Tully, *What Law Schools Should Leave Behind*, 2022 Utah L. Rev. 837, 839–40 (2022) ("[T]he 2014 amendments to the ABA Standards on the Program of Legal Education . . . portended seismic changes, but the results have been underwhelming . . . . Law school committees convened, they studied, they reported, they tinkered. Yet, by and large, law school curricula remained stuck in the roundabout, particularly the 1L year."); Martin J. Katz, *Facilitating Better Law Teaching – Now*, 62 Emory L.J. 823, 828-29 (2013) (noting the broad acceptance of the Carnegie Report in the legal academy, but concluding that "surprisingly, American law schools have been slow to implement the recommendations of the Carnegie Report in a broad way."); *see infra* Part I.A (identifying the changes in the 1L curricula since 2010).

[3] William M. Sullivan et al., Educating Lawyers: Preparation for the Profession of Law: Summary 5 (2007).

The Carnegie Report was thorough and insightful, but it erred on this key point. The first year of law school teaches students habits of thought that they must unlearn to use law effectively in any form of practice or professional application of law. 1L conveys to law students, often explicitly and always implicitly, that they are being presented the key knowledge and skills required in the profession. Even if the upper level courses theoretically could fill the gaps and correct the misdirection of 1L, law student time, attention and shared experience decline sharply after the first year, making 1L reform the predicate to any other restructuring of legal education.

The Article proceeds in five parts. Part I examines what law schools teach by providing an empirical look at current 1L curricula. It also examines what law schools say in their learning outcome statements. Part II uses a comparison between the current 1L curricula and the learning objectives to reveal seemingly obvious reforms in what and how we should be teaching.

Part III tackles the bottom line defense of the status quo—that law students, and especially 1L students, are learning to "think like a lawyer." This part identifies the disconnect between the specific habits of thought inculcated in 1L and how attorneys, judges, and lawmakers actually engage with the law. It explains why this disconnect is unlikely to be overcome by reforms to upper level courses that leave the 1L year intact. The need to abolish or fundamentally reform the current 1L presents anew each year as I watch students struggle with their initial clinic case or project, including students who I taught civil procedure in the first year. The transition from classroom to practice is bumpy in any profession. Interviewing a potential client with a problem, drafting a regulation or the like are not tasks for which a student can be fully prepared by classroom instruction, or by a simulation. The 1L year, however, makes this tough transition much more difficult.

Part IV presents one version of a redesigned first year of law school, the "New 1L," as an exemplar counterpoint to the current curriculum. Most traditional 1L courses are eliminated, condensed, or absorbed in a course with a larger context. The civil common law doctrine courses (contract, torts, and property) combine to form a single course. Statutory and regulatory law, and legal research and analysis, are presented on par with common law. Civil procedure or criminal law are taught by integrating classroom instruction with a simulation and writing course.

Many judges and practicing attorneys likely would nod heartily in agreement with the above analysis, and then tell you law school will never change. Part V offers an argument of hope because 1L reform is more practical and achievable than ever before. The coming reforms to the Bar exam and the changes to the dominant if contentious law school ranking process suggest a window is opening for fundamental law school reform that did not previously exist. The oft-repeated opinion that faculty resistance makes law school reform impossible probably is correct if change depends on a national vote of tenured professors, but that is not how fundamental reform will occur. A few successful models of small-scale 1L reform could point the way to a better education for the next generation of law students.

I. The Current Curricula: 1L Courses and Learning Objectives

This Part lays the groundwork for exploring 1L curriculum reform. Subpart A summarizes our empirical study of the 1L curricula in U.S. law schools.[4] Subpart B categorizes the learning outcomes adopted by each law school for insight into what law schools promise students about their legal education.

A. Survey of 1L Curricula

It has been stated that 1L is unchanged over the last century.[5] Our empirical study data qualifies this generally correct observation in two respects. Subpart 1 explains a long-term trend in the 1L curriculum to reduce credits for four traditional courses and allocate them to legal writing and elsewhere. Subpart 2 shows that the last decade has seen a marked increase in new 1L introductory courses that respond to the concerns raised in the Carnegie Report and other studies, and the introduction at a few schools of a required 1L course on legislation and regulation.

1. Evolution of the Traditional 1L Curriculum

Surveys of the 1L curricula in the early twentieth century reveal many of the same courses in today's first year list, but also a variety of other subjects that have disappeared or evolved. A. Z. Reed surveyed seventy-five law schools in 1925-1926.[6] The core of today's curriculum were also common one hundred years ago, with contract and torts almost universally offered, although criminal law was the third most common course. About 92 percent of law schools offered property and 78 percent offered "pleading," a forerunner of civil procedure. Interestingly, 73 percent of law schools had a course in agency law and 33 percent offered a family law course known as "domestic relations." A legal research course and moot court were not unusual, and other courses not common today were offered by most law schools.[7]

In 1950, William Agnor used course catalogs from one hundred law schools to set out the following courses as the "average" first year curriculum: "Agency 2 hours; Contracts 6 hours; Criminal Law 3 hours; Introduction to Law 2 hours; Legal Bibliography 1 hour; Procedure 4 hours; Property 6 hours;

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[4] Prentiss Cox, *1L Curricula in the United States: 2023 Data and Historical Comparison*, Minnesota Legal Studies Research Paper No. 23-08 (May 16, 2023) (available at https://ssrn.com/abstract=4450371 [https://perma.cc/V7VK-6AWK]).

[5] Robert W. Gordon, *The Geologic Strata of the Law School Curriculum*, 60 Vand. L. Rev. 339, 349 (2007) ("The required first-year courses are largely the same today as in 1871 . . . ."); David A. Hyman, Jing Liu & Joshua C. Teitelbaum, *Does the 1L Curriculum Make a Difference?*, 21 J. Empir. Leg. Stud. 375, 376 (2024) ("Leaders in the legal academy often talk about experimenting with the 1L curriculum, but hardly anyone does it."); Erwin Chemerinsky, *The Challenges Facing Legal Education*, 75 Ala. L. Rev. 555, 555 (2024) ("In many ways, law schools are the same as when I began law school in the fall of 1975.").

[6] Alfred Zantzinger Reed, Present-Day Law Schools in the United States and Canada 536–37 (1928).

[7] *Id.*

and Torts 6 hours."[8] By 1975, Donald Jackson and Gordon Gee produced a survey showing further evolution of the 1L curriculum. They set forth "the almost consensus first year curriculum" consisting of seven 1L courses: four courses taught over two semesters each for six credits (contracts, torts, property and civil procedure); two one-semester, three-credit courses (criminal law and constitutional law); and a two-credit legal research and writing course.[9]

Fast-forward to the twenty-first century and the ABA produced data on law school curricula based on survey responses from law schools in 2002 and again in 2010. The ABA surveys found the same seven courses identified by Gee and Jackson remain the center of the 1L curriculum, but that credit allocation for the four six-credit courses shrunk while legal writing increased substantially in number of required credits.[10]

In our survey, three of the four courses identified by Gee and Jackson—contracts, torts and civil procedure—remain almost universally required, with 99 percent or more of law schools putting these courses and legal writing in 1L. Property and criminal law are required by about 94 percent of schools in 1L, while constitutional law is part of 1L in about two-thirds of law schools. Table #1 presents our findings on the percentage of law schools that require the traditional seven courses and the credits allocated for these courses when the course is required by the law school.[11]

Table 1: Median Credits and Mean Credits for Seven 1L Courses

	%1L Required	Median # Credits	Mean # Credits
Contracts	100%	4.0	4.7
Torts	99.5%	4.0	4.2
Civil Procedure	99.5%	4.0	4.5
Property	93.7%	4.0	4.3
Criminal	94.2%	3.0	3.3
Constitutional	68.1%	4.0	3.6
Legal Writing & Research	99.0%	5.0	5.3

The same credit allocation trends noted in the ABA surveys continue in our findings. The mean number of credits once again decreased for contracts,

[8] William H. Agnor, *A Survey of Present Law School Curricula*, 2 J. Legal Educ. 510, 513 (1950).

[9] E. Gordon Gee & Donald W. Jackson, Following the Leader: The Unexamined Consensus in Law School Curricula 15 (1975).

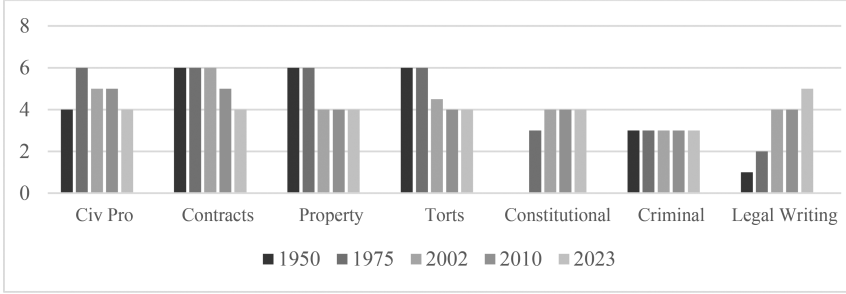
[10] Am. Bar Ass'n, A Survey of Law School Curricula: 1992-2002 (2004) [hereinafter ABA 2002]; Am. Bar Ass'n, A Survey of Law School Curricula: 2002-2010 (Catherine Carpenter ed., 2012) [hereinafter ABA 2010]. The remainder of this article refers to these ABA reports by the year of data collection—"ABA 2002" and "ABA 2010"—rather than the year of publication of the report.

[11] Cox, *supra* note 4, at 5–6.

torts, property and civil procedure. Mean credits for legal writing increased substantially. Legal writing now has the highest median and highest mean number of credits of any course in the 1L curricula of U.S. law schools.[12]

Longer-term trends are harder to pinpoint because older surveys lack precise data. Yet, the available long-term data are consistent with the above finding. Figure 1 compares the "average curriculum" stated by Agnor in 1950, the Gee and Jackson "consensus curriculum" of 1975, the median number of credits in the ABA surveys, and our study. A pattern of shrinking credits for the four high-credit courses, stable credits for constitutional law and criminal, and rising credits for legal writing holds.[13]

Figure 1: Credits in the typical curriculum by course type (1950–2023)



2. The Changing Periphery of the 1L Curriculum

While the bulk of the typical 1L curriculum has been the above seven courses, the periphery of the curriculum has changed noticeably since the 2010 ABA survey. In the 2010 survey, only 17 percent of law schools offered a non-doctrinal introductory course. Our survey found that ninety law schools, or 47.1 percent, now have such a course. These are typically low-credit offerings. When these introductory courses are required, the median credit was 1.0 and the mean credit was 1.8. The courses divide into five types, as noted in Table 2 below.[14]

[12] *Id.* at 18. Credits for constitutional law and criminal law show little change between the ABA surveys and our data. Constitutional law was required for a median of four credits in all three surveys, and criminal law was required at a median of three credits in all three surveys. The mean credits for these courses were only slightly different comparing the ABA 2002 results and our data, dropping from 3.8 to 3.6 credits for constitutional law and rising from 3.2 to 3.3 credits for criminal law. *Id.*

[13] *Id.* at 19.

[14] *Id.* at 7–10.

Table 2: Required Introductory Non-doctrinal Courses

	% 1L Required	Median # Credits	Mean # Credits
Professionalism	15.7%	1.0	1.4
Preparatory	13.1%	1.0	1.1
Practice Skills	11.0%	2.0	2.4
Legal Method	11.0%	2.0	1.6
Perspectives	3.1%	1.0	1.3
Overall[15]	47.1%	1.0	1.8

Many of these changes appear to be a direct response to the Carnegie Report, which included as a key recommendation that "[t]he existing common core of legal education needs to be expanded to provide students substantial experience with practice as well as opportunities to wrestle with the issues of professionalism."[16] The professionalism and practice introductory 1L courses that directly address the concerns raised in the Carnegie Report have increased significantly. Professionalism courses, the most common type of 1L introductory course, teach professional identity formation, a concern at the center of deficiencies noted in the Carnegie Report.[17] Practice skills are usually higher-credit offerings that include simulations introducing students to the skills needed to represent clients, such as interviewing, counseling and negotiation.

Preparatory courses explain the teaching and examination practices students will encounter, and prepare students for successful participation in law school. An introductory course in legal methods is the one introductory course that has long been present in the 1L curricula of many law schools.[18] Legal methods courses examine various sources of law and the process of analyzing law. A few schools offer a perspectives course that frames the teaching of law through a particular social or religious construct.[19]

There also has been strong growth in 1L legislation and regulation courses. These courses introduce law students to statutory construction, rulemaking, and the basics of the administrative state. The 2002 and 2010 ABA surveys did not show any law school requiring such a course in the first year.[20]

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[15] The "overall" category is based on combining all the introductory nondoctrinal courses offered by each law school and thus the numbers in the overall row do not reflect a total of the above five categories. Thus, 47.1 percent of all law schools surveyed require at least one of the above courses during 1L. *See* id. at 7 n.24 for a detailed explanation.

[16] Sullivan, *supra* note 3, at 9.

[17] Carnegie Report, *supra* note 1, at 126–61.

[18] Approximately 23 percent to 46 percent of law schools offered a legal methods course in the 1L year from the 1919 curricula surveys to the ABA 2002 survey. *See* Cox, *supra* note 4, at 16–17.

[19] For a description of the five types of 1L introductory courses, see *id.* at 8–9.

[20] *Id.* at 18 n.61. The addition of a 1L course on legislation and regulation began, unsurprisingly, with a change to the 1L curriculum at Harvard. Ethan J. Leib, *Adding Legislation Courses*

Our study found 15 percent of law schools now require a course in legislation-regulation in the first year at a median and a mean of three credits. This is a substantially higher percentage than the 9 percent of law schools that require any other subject beyond the traditional seven courses or an introductory course.[21]

B. Law School Learning Outcomes

In this subpart, we examine what law schools aspire to teach their students by looking at the "learning outcomes" each law school has created under a 2014 ABA mandate. Subpart 1 provides the background on the development of this requirement. Subpart 2 provides a categorization of the learning outcomes adopted by law schools into three types, or variants thereof. In Part II, we contrast the existing 1L curriculum identified in Subpart I.A with the learning outcomes identified in this Subpart I.B.

1. ABA Mandate for Learning Outcomes

The Carnegie Report also led to an important change in the ABA accreditation standards in 2014.[22] ABA Standard 301 requires that law schools "establish and publish learning outcomes" that demonstrate how the school is preparing students "for admission to the bar and for effective, ethical, and responsible participation as members of the legal profession."[23] ABA Standard 302 mandates that these learning outcomes include competency goals in four areas:

> (a) Knowledge and understanding of substantive and procedural law; (b) Legal analysis and reasoning, legal research, problem-solving, and written and oral communication in the legal context; (c) Exercise of proper professional and ethical responsibilities to clients and the legal system; and (d) Other professional skills needed for competent and ethical participation as a member of the legal profession.[24]

It may not seem revolutionary to suggest an educational venture identify learning outcomes, but few law schools had done so at the time the ABA adopted the requirement.[25]

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to the First-Year Curriculum, 58 J. Legal Educ. 167–70 (2008). Leib lauds the move, arguing among other things that it will "help cure students of their excessive attention to appellate arguments and judge-made common law in their first-year coursework." *Id.* at 170.

[21] Cox, *supra* note 4, at 7.

[22] Steven C. Bahls, *Adoption of Student Learning Outcomes: Lessons for Systemic Change in Legal Education*, 67 J. Legal Educ. 376, 378–80 (2018) (citing the importance of the Carnegie Report in the development of the Standards).

[23] Am. Bar Ass'n, ABA Standards and Rules of Procedure for Approval of Law Schools 2022-2023 17 [hereinafter ABA Standards] (listing Standard 301).

[24] *Id.* (listing Standard 302).

[25] *See* Anthony Niedwiecki, *Law Schools and Learning Outcomes: Developing A Coherent, Cohesive, and Comprehensive Law School Curriculum*, 64 Clev. St. L. Rev. 661, 667 (2016).

Steven Bahls, who led the drafting committee of the ABA's Standards Review Committee when it began to devise the new standards, stated that:

> The first imperative identified by the Drafting Committee was a matter of consumer protection. Law schools should satisfy student expectations by being clear about what learning outcomes students should expect, construct a curriculum to enable students to achieve those outcomes, measure whether students are achieving the outcomes, and work to increase the number of students achieving them.[26]

Commentators have provided a roadmap for schools to use in identifying outcomes, although these methods assume 1L would look the same at the end of the process.[27]

2. Three Models for Learning Outcomes Adopted by Law Schools

Individual law schools adopt learning outcomes to meet their own interpretation of ABA Standard 301(a), which requires each school to "maintain a rigorous program of legal education that prepares its students, upon graduation, for admission to the bar and for effective, ethical, and responsible participation as members of the legal profession."[28] Variation was inevitable. The vast majority of law school learning objectives, however, fit loosely within one of the three models described in this Subpart: the "302," the "descriptive," or the "comprehensive."[29] No model dominates, and many schools combine the approach of more than one of the three models.

a. The 302 Model

The first model, the 302, refers to the four competencies required under ABA Standard 302. Law schools that adopt the 302 model simply repeat these four items, usually with slightly amended wording or structure.

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[26] Bahls, *supra* note 22, at 381.

[27] *See* Niedwiecki, *supra* note 25, at 661, 665–67 (suggesting a three-step process for creating learning outcomes, assessment, and curricular mapping); Debra Moss Vollweiler, *Don't Panic! The Hitchhiker's Guide to Learning Outcomes: Eight Ways to Make Them More Than (Mostly) Harmless*, 44 U. Dayton L. Rev. 17 (2018) (emphasizing curricular mapping).

[28] ABA Standards, *supra* note 23, at 17 (Standard 301(a)). The Holloran Center at the University of St. Thomas Law School has helpfully collected all available learning outcomes, current as of November 2023. Holloran Center, *Learning Outcome Database*, St. Thomas Sch. of L., https://law.stthomas.edu/about/centers-institutes/holloran-center/learning-outcomes-database [https://perma.cc/8W9L-G53L] (last visited Jan. 5, 2025).

[29] A few schools do not have learning outcomes well-described by any of the three models, including a small number of schools with a particular focus, such as Loyola-New Orleans Law School (teaching the civil law of Louisiana), *Learning Outcomes*, Loy. Univ. New Orleans Coll. of L., https://law.loyno.edu/student-resources/learning-outcomes [https://perma.cc/X4XK-4A5L] (last visited Jan. 10, 2025), and University of St. Thomas-Minnesota (concentrating on professional identity formation), *Student Learning Outcomes: School of Law*, Univ. of St. Thomas, https://www.stthomas.edu/academics/accreditation/learning-outcomes/law/ [https://perma.cc/8Q7G-WHV8] (last visited Jan. 10, 2025).

These statements often are a paragraph long. Harvard Law School follows this model, for example, stating its learning objectives as:

> 1. Knowledge and understanding of substantive and procedural law, and the domestic, international, and transnational institutions that make and apply law; 2. Aptitude for legal analysis and legal reasoning; 3. Appreciation of and commitment to the values and responsibilities of members of the legal profession; 4. Proficiency in the use of professional skills including: research as to law and fact, communication, presentation, and problem solving.[30]

Schools with a 302 model make little effort to state specific obligations for student learning or provide performance criteria or an ascertainable plan for legal education.[31]

b. The Descriptive Model

The key characteristic of the second approach, the Descriptive model, is that learning outcomes are shaped to reflect the existing course load and teaching method. Schools with this model promise to meet the ABA requirements by identifying the 1L curriculum, often specifying the teaching of torts, contracts, property, criminal law and civil procedure as a key learning objective.

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[30] *Harvard Law School Handbook of Academic Policies 2024–2025*, Harv. Law Sch. 15, https://hls.harvard.edu/wp-content/uploads/2022/07/HLS_HAP.pdf [https://perma.cc/7KVR-EJRP] (last visited April 14, 2025). For an example of the longer version of the 302 Model, see *UHLC Mission*, Univ. of Hous. L. Ctr., https://www.law.uh.edu/about/Mission [https://perma.cc/5WY2-TP8H] (last visited Jan. 7, 2025) (stating learning objectives as: "1. Knowledge and understanding of substantive law 2. Knowledge and understanding of procedural law 3. Skill in legal analysis and reasoning 4. Skill in problem solving for situations presented in the practice of law 5. Skill in legal research 6. Skill in written legal communication 7. Skill in oral legal communication 8. Understanding of an attorney's professional and ethical responsibilities 9. Professional self-development.").

[31] Several schools that employ this barebones model add one or two bullet points or clauses generally stating other goals. Florida State University, University of California-Berkeley, and Rutgers simply list the requirements of Standards 302(a) through 302(c) per the 302 model, but then elaborate Standard 302(d) with a phrase listing practice skills drawn directly from ABA Standard Interpretation 302-1. *See, e.g.*, *Mission and Learning Outcomes*, Univ. Cal. Berkeley L., https://www.law.berkeley.edu/about-us/mission-learning-outcomes [https://perma.cc/F8EY-KJM7] (last visited Jan. 7, 2025) (Berkeley also states that its students will learn "[u]sing the law to solve real-world problems and to create a more just society."); *Learning Outcomes*, Fla. St. Univ. Coll. of L., https://law.fsu.edu/academics/academic-resources/learning-outcomes [https://perma.cc/UP8E-78NE] (last visited Jan. 7, 2025); *Student Learning Objectives and Competency Goals*, Rutgers L. Sch., https://law.rutgers.edu/academics/jd-program/curriculum/student-learning-objectives-and-competency-goals [https://perma.cc/F7BR-JPCB] (last visited Jan. 7, 2025). In a few cases, the additions to the ABA list of objectives in Standard 302 may be critical to the law school's program of instruction, but that is difficult to discern only from the learning objectives. For instance, George Mason simply adds that "[g]raduates will be able to apply basic economic concepts to enhance their understanding of the law and legal outcomes," and Loyola-Los Angeles states that "students will understand the law's relationship to systemic inequality based on race, gender, gender identity, sexual orientation, religion, national origin, disability, immigration status and/or socioeconomic status." *JD Curriculum*, Geo. Mason Antonin Scalia L. Sch., https://www.law.gmu.edu/academics/degrees/jd/#JD_Program_Learning_Outcomes_3 [https://perma.cc/54WG-A5AB] (last visited Jan. 7, 2025); J.D. Program Learning Outcomes, LLS, https://www.lls.edu/academics/officeoftheregistrar/jdprogramlearningoutcomes [https://perma.cc/V78J-WZ4A] (last visited Jan. 7, 2025).

These courses are commonly referred to as the "foundational common law subjects" (e.g., Idaho), or "core substantive law" (e.g., Duke), or the like.[32]

Descriptive model learning outcomes for Section 302(b) often include statements that learning will occur through use of the Langdellian case class.[33] The University of Massachusetts Law School provides an example of this part of the Descriptive model, identifying performance criteria that reflect a summary of what the case method is designed to achieve, including that "[g]raduates will analogize to and distinguish from the facts of relevant cases; [g]raduates will apply the pertinent rules and standards to the relevant facts; [g]raduates will assess the policy implications of the applicable rules and standards to the relevant facts; [g]raduates will identify and evaluate potential counterarguments."[34]

c. The Comprehensive Model

The Comprehensive model promises something different. These learning outcome statements are lengthy, sometimes several pages long, and they usually contain multiple goals with sub-objectives. The key characteristic of the Comprehensive model is that the law school promises to train students in a wide range of skills and knowledge. The Comprehensive model includes a commitment to at least two and often all three of the following learning outcomes:

(1) *Teaching a variety of sources of law*. For example, the University of Illinois Law School identifies five "performance criteria" for its goal that "[g]raduates will use legal reasoning and legal analysis effectively," including the skill of "[a]nalyzing and synthesizing principles, doctrines, and arguments from a diverse body of legal materials, including statutes, regulations, judicial opinions, and transactional documents."[35]

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[32] *Mission and Learning Outcomes*, Univ. of Idaho Coll. of L., https://www.uidaho.edu/law/about/mission-and-learning-outcomes [https://perma.cc/RT2E-YH8G] (last visited Jan. 7, 2025); *Duke Law School Mission and Learning Outcomes*, Duke L. Sch., https://law.duke.edu/sites/default/files/news/March%202019%20-_Approved_learning_outcomes.pdf [https://perma.cc/P3S8-2P5P] (last visited Jan. 7, 2025). The Descriptive Model often includes a mention of meeting the knowledge of law requirement in Standard 302 by learning in 1L required courses, upper-level required courses and electives; i.e., a description of the existing curriculum. *See, e.g.*, *Assessment: Ahead of the Curve*, Tex. Tech Sch. of L., https://www.depts.ttu.edu/opa/networkingandawards/ie_award/winnerapplications/2021-2022_IE_Application.pdf [https://perma.cc/WNL8-CY6M] (last visited Jan. 8, 2025) (stating that knowledge of law includes the following outcomes: "Criterion 1: Identify and describe key legal concepts and rules in the required curriculum. Criterion 2: Identify and describe key legal concepts and rules in the elective curriculum.").

[33] *See* Part II.B (explication of the Langdellian teaching method that has long dominated legal education).

[34] *Learning Outcomes*, UMass L., https://www.umassd.edu/law/about/learning-outcomes [https://perma.cc/ZLK5-Y5NJ] (last visited Jan. 7, 2025).

[35] *Mission & Learning Outcomes*, Ill. Coll. of L., https://law.illinois.edu/about/mission-learning-outcomes [https://perma.cc/G32F-JEFW](last visited Jan. 7, 2025). *See also Learning Outcomes*, Case W. Rsrv. Univ. Sch. of L., https://case.edu/law/our-school/aba-disclosures/learning-outcomes [https://perma.cc/W2Q3-W5ZD] (last visited Jan. 7, 2025).

(2) *The ability to recognize and manage factual uncertainty, and to complete fact investigations*. The fourth sub-objective of the twelve objectives in the first goal of the Loyola-Chicago Law School statement provides this example:

> Graduates should be able to plan, direct, and (where applicable) participate in factual investigations. a. They are able to determine when a factual investigation is needed. b. They are able to plan a factual investigation. c. They are able to implement an appropriate investigative strategy. d. They are able to memorialize and organize information gathered in an accessible form. e. They are able to evaluate the information that has been gathered.[36]

(3) *Fundamental legal practice skills, including the capacity for developing legal strategies and drafting legal documents to resolve client problems*. For example, Baylor law graduates should be able to "identify workable alternative legal and equitable, or if appropriate, extra-legal strategies, considerations, and solutions,"[37] while Case Western Reserve law students are to be trained in "[c]oncisely drafting contract provisions using a common vocabulary, avoiding ambiguity, and devising provisions and details that the parties had not specifically addressed but that are needed to protect the client," among a variety of other drafting skills.[38] Schools with the Comprehensive model usually include the teaching of key practice skills, such as interviewing and counseling clients, and negotiating with opposing parties.[39]

II. The Twin Pillars of the 1L Problem

The 1L year fails law students by what it teaches and how it teaches. Subpart A presents the case for changing what we teach in the first year. It compares the learning outcome models with the subjects actually taught in the first year. The 1L year, as portrayed in the broadly accurate Descriptive model, teaches courses that are disconnected from most of the actual knowledge employed by attorneys in any form of legal practice or lawmaking. The Comprehensive model, which lays out a legal education consistent with the vision here, exists alongside curricula that can't possibly deliver on that promise. The notion that the 1L curriculum need not consist of subjects central to learning outcomes is addressed in Part III.B.

Subpart B focuses on how we teach. It observes that appellate case reading—the Langdellian case class—is a useful education device, but

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[36] *Learning Outcomes and Competencies*, Loy. Univ. Chi. Sch. of L., https://www.luc.edu/law/about/abarequireddisclosures/learningoutcomesandcompetencies/ [https://perma.cc/4ZZ8-PQY2] (last visited Jan. 7, 2025) (emphasis omitted).

[37] *Learning Outcomes*, Baylor Univ. L. Sch., https://law.baylor.edu/why-baylor-law/about/learning-outcomes [https://perma.cc/C5YP-DJR5] (last visited Jan. 7, 2025).

[38] *Learning Outcomes*, Case W. Rsrv. Univ. Sch. of L., https://case.edu/law/our-school/aba-disclosures/learning-outcomes [https://perma.cc/PXK5-FQGV] (last visited Jan. 7, 2025).

[39] *E.g.*, *JD Program*, Pace Univ. Elisabeth Haub Sch. of L., https://www.pace.edu/law/academics/jd-program [https://perma.cc/KS9H-ZTYP] (last visited Jan. 7, 2025).

overreliance on this single method suffocates all the other knowledge that should be transmitted and results in an inefficient system of learning.

A. Law in 1L Versus Law in Practice

The Descriptive model is laudable for its honesty. It promises that the law school will teach what it teaches—the well-known 1L courses and upper level electives. Subpart 1 discusses the obvious challenge for this model, which is that law school as it now exists doesn't remotely reflect the reality of how law is used in courts, in transactional practice, in crafting legislation or regulation, in business or personal planning, or in any other professional pursuit involving law. Subpart 2 looks at the distorting effect of organizing 1L around selected doctrinal subjects rather than sources of law. Subpart 3 argues that law school reliance on legal writing and the alternative courses that have proliferated recently on the curricular periphery of 1L cannot accomplish the task of teaching law as it presents to judges, attorneys, legislators and others engaged in law.

1. The Unjustified Dominance of Common Law Courses

Over forty years ago, Guido Calabresi declared "we have gone from a legal system dominated by the common law, divined by courts, to one in which statutes enacted by legislatures, have become the primary source of law."[40] Even when this was written in the 1980s, the notion that statutory law had displaced common law was hardly new. For instance, a 1955 study of New Jersey judicial decisions showed interpretation of legislation was three times more common than cases dealing wholly with common law.[41] Nothing in the passing decades has lessened this conclusion. As J. Lyn Entrikin puts it, "[f]or the legal academy to claim that the American legal system of today is a common law system is to perpetuate a legal fiction."[42]

Consider the practice sections of state bar associations. The list of topical sections reads like the headings of the U.S. Code or a collection of state statutes, with committees for taxation, administrative law, antitrust, intellectual property, family law, labor and employment, bankruptcy, consumer law, environmental law and more. [43] Almost every subject on the list is a field of legal practice with a controlling statutory regime, often with a strong regulatory

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[40] Guido Calabresi, A Common Law for the Age of Statutes 1 (1982). Calabresi adds in a footnote that "[a]ll agree that modern American law is dominated by statutes." *Id.* at 183 n.1.

[41] Dallas Sands, *Developments in the Field of Legislation*, 10 Rutgers L. Rev. 2, 14–15 (1955).

[42] J. Lyn Entrikin, *The Death of Common Law*, 42 Harv. J.L. & Pub. Pol'y 351, 361 (2019).

[43] *See, e.g.*, *Our Sections*, Cal. Laws. Ass'n, https://calawyers.org/cla/our-sections/ [https://perma.cc/UVW4-RXY8] (last visited Jan. 7, 2025) (listing practice sections in California); *Sections*, Minn. State Bar Ass'n, https://mnbars.org/?pg=sections [https://perma.cc/38HB-SALS] (last visited Jan. 7, 2025) (listing practice sections in Minnesota); *see also* Philip P. Frickey, *From the Big Sleep to the Big Heat: The Revival of Theory in Statutory Interpretation*, 77 Minn. L. Rev. 241, 242 (1992) ("statutory interpretation [is] . . . what a great many lawyers did for a good deal of their time.").

component. Even the ostensibly common law doctrine subjects that shape 1L exist alongside statutory schemes that govern conduct in the field.[44] This doesn't make common law doctrine irrelevant, but it makes it at best co-equal, depending on the specific field of law.

A curriculum dominated by common law doctrine doesn't even square with what law professors teach beyond the first year. The upper-level courses in which most law professors spend most of their teaching time include mostly courses structured around statutory schemes.[45] Not surprisingly, legal scholarship reflects these topical interests and examination of the legal issues that arise under these statutory schemes more than traditional common law doctrine concerns.[46] The claim in the Descriptive model that the subject matter of common law courses is the foundation of law in the United States, and thus should form the basis of key learning outcomes and the 1L curriculum, is hard to square with the reality that attorneys no longer are primarily common law practitioners, and law professors are no longer primarily common law theorists.

Remarkably, none of the Descriptive Model learning outcomes include a justification for the commitment to a particular set of common law courses that overwhelm the first year. Because the traditional common law courses have been in place for more than one hundred years, and the law clearly has massively shifted toward concerns of public law, it seems incumbent on the proponents of the Descriptive Model to provide a rationale for teaching a 19th century curriculum in the 21st century.

This reliance on tradition alone to defend the antiquated 1L curricula is pervasive in legal education. In 2025, the ABA Standards Committee proposed doubling the number of required experiential learning credits from six to twelve, yet excluding any experiential credits earned in the first year. The ABA gave short shrift to its explanation of this seemingly important

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[44] Roderick M. Hills, Jr. & David Schleicher, *Planning an Affordable City*, 101 Iowa L. Rev. 91, 135 (2015) ("Because the common law has been increasingly subsumed as a minor subset of the constitutional, administrative, and statutory rules governing land, modern property theory should focus on how those rules are shaped by the institutions and processes that govern legislatures, courts, and agencies."); *see* Gerald T. McLaughlin, *The Evolving Uniform Commercial Code: From Infancy to Maturity to Old Age*, 26 Loy. L.A. L. Rev. 691 (1993) (explaining the evolution of the UCC into a national commercial code); Mark A. Geistfeld, *Tort Law in the Age of Statutes*, 99 Iowa L. Rev. 957 (2014) (analyzing the relationship of tort law to statutory law).

[45] *See, e.g.*, ABA 2010, *supra* note 10, at 70 (describing upper level specializations that include international law, business law, tax law, environmental law, and other areas of law defined by statutory-regulatory schemes); *see also* Edward Rubin, *What's Wrong with Langdell's Method, and What to Do About It*, 60 Vand. L. Rev. 609, 610 (2007) (observing that courses on more recent developments in the law "rarely have penetrated the sacrosanct first year.").

[46] Rubin, *supra* note 45, at 640–43 (arguing that public law concerns dominate legal research and that "legal scholarship has largely, if not fully, come to perceive social science as the most relevant analogy for law and the most productive source of methodological tools for its investigation."); Hills & Schleicher, *supra* note 44, at 135 ("The most promising work in property scholarship already has taken that turn, merging private- and public-law concepts to focus on how different institutions and processes from overlapping jurisdictions, public and private, govern land."); Gregory Scott Crespi, *The Influence of A Decade of Statutory Interpretation Scholarship on Judicial Rulings: An Empirical Analysis*, 53 SMU L. Rev. 9, 9–11 (2000) (noting the "significant increase in the number of scholarly articles published that examine basic principles of statutory interpretation" and concluding in an empirical study that these articles are more likely to be cited by courts).

restriction, invoking only the usual bromides that "the traditional first-year doctrinal courses and legal writing courses – lay the foundation for lawyering work."[47]

It doesn't bolster the argument for continuing to exclude intensive study of statutory and regulatory law that the Langdellian course alignment was used by its early Twentieth century proponents to ward off attempts to have law school teach the content of social reform movements of the Progressive era. James Barr Ames, Dean of Harvard Law School from 1895 to 1910, referred to common law doctrine courses as "pure law" in contrast to the "polluting presence" of public law concerns, and worked to exclude from law school study the social and intellectual reforms of the period.[48] That law schools produce young attorneys with an understanding of the law amenable to the work of law firms representing corporate interests can be seen as the likely result of teaching "foundational" common law courses that have a "tendency to favor the status quo and conservative interests."[49]

Nor is it obvious that the particular subject matters selected for inclusion in the 1L curriculum should be favored and labelled as "foundational." Surveys of the 1L curricula at law schools in 1919, 1925 and 1939 showed between 62 percent and 73 percent of law schools required a 1L course in agency law and the "average" 1L curriculum of 1950 included an agency course.[50] Knowing the basics of a breach of fiduciary claim against an agent likely would be more useful for most attorneys today than learning the intricacies of the Rule

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[47] Memorandum, American Bar Association Standards Committee 9 (May 14, 2025), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/may25/25-may-experiential-learning-memo-notice-comment.pdf [https://perma.cc/96D4-ZPLU] (last visited August 8, 2025). The ABA later retreated and proposed allowing 1L experiential courses to count for three of the required 12 experiential learning credits. Memorandum, American Bar Association Standards Committee 3 (August 15, 2025) https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/2025/council-meeting/2025-august-experiential-learning-standards-notice-comment-memo-to-council.pdf [https://perma.cc/E87X-N8LM].

[48] Gordon, *supra* note 5, at 346–50 (2007). *Id.* at 347 ("Ironically then, just as Progressivism was beginning to provide careers and motivation for 'social' lawyers, and as an ancillary discipline in institutional economics was starting to give their work intellectual content, the law schools were seized by internal reform movements that sought to expel or exclude all of those ideas as irrelevant to the study of 'pure law.'"); *see also* Robert W. Gordon, *The Case for (and Against) Harvard,* 93 Mich. L. Rev. 1231, 1259 (1995) (observing that "the decision of Harvard and schools like it to remain in their bare cell of 'technical' appellate doctrine, while all around them leading lawyers were busily transforming law practice and legal institutions, was a decision to avoid teaching and writing about all the great issues of the time—labor-capital warfare, the administrative revolution in government, the regulation of common carriers and public utilities, the 'trust' problem, the doomed attempt at Reconstruction of the defeated South, the populist agrarian revolts, and the progressive institution-building and regulatory responses to industrialization, urbanization, and immigration.").

[49] Brian H. Bix, *George W. Liebmann, the Common Law Tradition: A Collective Portrait of Five Legal Scholars*, 48 Am. J. Legal Hist. 457, 458 (2006) (book review); *accord* J.M. Balkin, *Too Good to Be True: The Positive Economic Theory of Law The Economic Structure of Tort Law*, 87 Colum. L. Rev. 1447, 1457–58 (1987) (describing in book review how common law generally supports property rights and is favored by those with a conservative ideology who view majoritarian legislation suspiciously); *see* Asad Rahim, *The Legitimacy Trap*, 104 B.U. L. Rev. 1, 29 (2024) (explaining how the Langdellian approach of common law study used Darwinism as an inspiration).

[50] Cox, *supra* note 4, at 2–3.

Against Perpetuities in a property course.[51] The same could be said for remedies, corporate governance, evidence and a range of other topics not in the 1L curricula.

2. The Organization of Learning by Doctrinal Subject

A second problem with the enshrinement of particular common law doctrine courses as foundational law is the organization of the curriculum by particular common law subjects. Even if we imagine that the first year of law school should primarily be devoted to the study of common law doctrine, organization by doctrine prioritizes selected doctrinal knowledge over an understanding of the common law process. Common law doctrine courses focused on doctrinal content teach only implicitly how common law functions. Judicial opinions enunciate the topic of the law for a given class, but the theory of when courts are (or should) be constrained in elaborating new doctrines, the limits of using judicial opinions to reshape statutory commands, the role of intermediate courts in common law development, or the like is rarely presented at a conceptual level. Similarly, law students leave the first year, and often law school, with no understanding of the distinction between a common law system based on the accrual of judge-made law and code-based civil law regimes that dominate global law in non-Anglophone nations.

Organizing courses by doctrinal subject teaches students to see their 1L mission as mastering the details of these doctrines. In courses segregated by subject, students learn (slowly) the elements of various claims and how they are applied, but typically do not learn how the law of torts, contracts, property and other common law developed similarly or differently, or how they relate to each other. For example, studying causation in torts and causation as a limiting principle for damages in contract law can illuminate how this concept is applied similarly and differently in various contexts.[52]

Goal-oriented law students will ascertain fairly quickly that grading on the almost inevitable issue-spotting exam in a doctrinal subject matter course

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[51] Interestingly, the T14 law schools (*the fourteen highest law schools in the U.S. News rankings*) show a unique propensity to shun a first year property course. Only eight of the fourteen T14 schools require property, or 57.1 percent, whereas 96.6 percent of all other schools require property in 1L. *Id.* at 11.

[52] Contract damages based on expectation of gain from the contract differ from loss compensation in torts, but a claim for breach of contract requires showing the alleged damages were caused by the breach just as a claim sounding in tort law requires showing proximate causation to damages, as generations of law students have learned for negligence claims by studying Palsgraf v. Long Island R. Co., 248 N.Y. 339, 162 N.E. 99 (1928). Yet the causation doctrines differ in important ways and in subtle ways. "Courts have traditionally required greater certainty in the proof of damages for breach of a contract than in the proof of damages for a tort." Restatement (Second) of Contracts § 352 cmt. a (Am. L. Inst. 1981). And, "the principle that a party's liability is not reduced by payments or other benefits received by the injured party from collateral sources is less compelling in the case of a breach of contract than in the case of a tort." Restatement (Second) of Contracts § 347 cmt. e (Am. L. Inst. 1981). Unlike tort law, nominal damages are awarded for a breach of contract even in the absence of damage causation. Restatement (Second) of Contracts § 346 (Am. L. Inst. 1981). Exploring the many similarities and differences in causation would reveal conceptual differences in the underlying doctrines in ways not readily apparent by studying common law in doctrinal silos.

follows from application of the elements of the substantive doctrine rather than from a broader understanding of how common law functions. A look through law school 1L preparation guides will remedy any confusion on this point.[53]

Law students first need to understand how common law does, and does not, shape the law that resolves disputes and controls society. Leslie Bender describes this problem as follows:

> Because the courses are named in ways that focus on categories of law, particularly categories of private civil law, those categories seem definitive, fixed, and crucial to any analysis. . . . The hidden messages of the first year curriculum about categories of organizing legal problems and doctrinal analysis probably limit our students' creative impulses more than anything else we do.[54]

Of course, all common law doctrine courses teach somewhat, and some common law doctrine courses teach substantially, how common law develops and the interrelationship of the various doctrines. Yet any such learning is necessarily haphazard, unless the school coordinates across courses, which is antithetical to the nature of law school education. Students may see two or three examples of the development of common law over time, or none; they may see two or three developed cross-course comparisons, or none.[55]

Note the contrast between common law doctrine courses separated into subject matters versus other 1L subjects organized by the skill or sources of law being taught. Legal writing is about the skills of legal research, reasoning and writing across all subjects.[56] Legislation and regulation ("leg-reg"), for the relatively few schools where this course is required in the first year, introduces students to the entirety of statutory and regulatory law in one course.[57] The clear message is that meaningful law is the designated common law subjects, plus perhaps these ancillary sources of law that may or may not be studied in the crucial first year.

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[53] For example, one of the best 1L guides, *Open Book*, describes how to succeed on the usual law school "issue-spotting" exam. The authors tell 1Ls that the key preparation item is a list of subjects studied in the course that the student then compares to the fact pattern, leading the student to ask: "Do these facts call for the application of this rule, or that principle, that was on my subject list?" They provide examples from a contracts class, such as issue spotting a contract formation issue that requires application of the elements of offer, acceptance and consideration. Barry Friedman & John Goldberg, Open Book: The Inside Track to Law School Success 111–12 (2016).

[54] Leslie Bender, *Hidden Messages in the Required First-Year Law School Curriculum*, 40 Clev. St. L. Rev. 387, 392 (1992).

[55] Ronald Chester & Scott E. Alumbaugh, *Functionalizing First-Year Legal Education: Toward A New Pedagogical Jurisprudence*, 25 U.C. Davis L. Rev. 21, 25 (1991) (describing the 1L common law courses as "based on the nineteenth century model, the courses are taught as doctrinally separate areas of study, each with its peculiar set of black letter rules and exceptions, to be memorized and spouted back at a superficial level on a high-pressure test at the end of the semester.").

[56] *See, e.g.*, Andrew McClurg, 1L of a Ride 59–60 (2017) (describing legal writing as a "different- and important-beast" from the doctrinal courses).

[57] Cox, *supra* note 4, at 7.

The focus on specific types of common law doctrine in 1L is a disservice regardless of one's view of the purpose of law school. While most actors with a stake in law school agree that it exists to prepare students for the practice of law, there has long been disdain among many law professors for practice education as a déclassé program to teach a trade.[58] The argument here sidesteps this debate and the related dispute about the relative balance legal education should strike between teaching law and teaching practice. Even if law school is meant primarily to study law conceptually, there is no reason to organize that study around a particular set of common law doctrines rather than how various sources of law are interpreted and used in our courts as a means of governing our society.

3. The Comprehensive Model and Curricular Reality

The Comprehensive model promises something much more than the traditional 1L course line-up. These schools emphasize the importance of understanding the interrelationship between these various sources of law. Law students should "be able to analyze, synthesize, and apply legal principles drawn from judicial, statutory, administrative, and other sources" (e.g., Connecticut); they should "understand the relationship between statutes, case law, and regulations in terms of the formation and development of rules" (e.g., Santa Clara); and they should be able to draft documents for administrative proceedings in addition to courts and transactional matters (e.g., Kentucky).[59] All the Comprehensive model law schools that use the phrase "common law" do so only in connection with all other forms of law, often including not just statutory law and constitutional law, but also administrative regulations and treatises.

The existence of the Comprehensive model bodes well for reform efforts. The problem, of course, is that the Comprehensive model has little in common with the actual 1L curricula of law schools, even those schools adopting the model. The 1L curricula includes five courses (contracts, torts, property, criminal law, and civil procedure) at a mean of 21.0 credits in our

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[58] A. Benjamin Spencer, *The Law School Critique in Historical Perspective*, 69 WASH. & LEE L. REV. 1949, 1956–58 (2012) (describing the competing visions for the purpose of law school and aversion to skills training in legal education); Jason G. Dykstra, *Keeping Up with A Kardashian: Shedding Legal Educations' Vestigial Trade School Anxiety and Replacing the Dated Casebook Method with Modern Case-Based Learning*, 48 HOFSTRA L. Rev. 81, 119–25 (2019) (discussing the "vestigial trade school anxiety" in legal education); Carnegie Report, *supra* note 1, at 91–93 (discussing the "stigma of trade school"). For an excellent series of articles on the pernicious effect of the doctrine-skills and theory-practice dichotomies on legal education, *see* Linda Edwards, The Doctrine-Skills Divide: Legal Education's Self-inflicted Wound (2017).

[59] *Learning Outcomes*, UConn L., https://law.uconn.edu/academics/learning-outcomes [https://perma.cc/6PBH-8F6R] (last visited Jan. 7, 2025); *Learning Objectives*, Santa Clara Univ. Sch. of L., https://law.scu.edu/academics/laraw/laraw-learning-objectives/ [https://perma.cc/XZM4-5Q5S] (last visited Jan. 7, 2025); *Learning Outcomes - ABA Standard 302*, Univ. of Ky. Rosenberg Coll. of L., https://law.uky.edu/current-students/academic-resources/learning-outcomes-aba-standard-302 [https://perma.cc/B68H-UW7M] (last visited Jan. 7, 2025).

survey, or 70 percent of the typical 30 credits in the 1L year.[60] It is difficult to see where the above-stated learning in the rich and interrelated sources of law occurs here.

Leg-reg courses were non-existent in every 1L law school curricula survey through the 2010 ABA report.[61] The increase from no 1L leg-reg courses to 15 percent of schools requiring leg-reg in our survey is a welcome sign of interest for diversifying the sources of law taught in 1L.[62] When required, leg-reg is offered at a mean, median and mode of three credits, or about one-seventh of the twenty-one credits for the common law doctrinal courses that dominate the 1L curriculum. A three-credit course dealing with the whole of statutory and regulatory law stacked up against multiple subjects that usually have four to five credits each conveys a clear message about the relative importance of the sources of law employed in courts and governing our society. Constitutional law fares better than statutory law, but it lags way behind the standard curriculum courses in both uptake and credits.[63]

Consider an example of the contrast between the Comprehensive model of learning outcomes and an actual 1L curriculum. The University of Missouri Law School has established the following learning outcome as to "knowledge and understanding of substantive and procedural law…by: (a) [i]dentifying and applying foundational concepts in a variety of areas of legal practice; (b) [g]rasping the organization, hierarchy, and relationships of legal systems; [and] (c) [i]dentifying the sources of law, the ways they relate to one another, and how the law evolves."[64] The 1L curriculum at Missouri consists of 30 credits as follows: twenty-two credits in contracts, torts, property, criminal law and civil procedure; six credits of legal research-writing, and a two-credit introductory practice course.[65] Absent a wildly atypical approach to these doctrinal courses, this 1L curriculum does not reflect well the stated learning objectives as to sources of law.

The explosion of new 1L courses reaching beyond legal doctrine is a direct response to the challenge issued in the Carnegie Report and other studies to include study of fact development, practice skills and professional identity in legal education. These new courses constitute an important step forward for 1L reform. Yet they cannot deliver on the promise of the Comprehensive model for two reasons—scale and isolation.

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[60] Cox, *supra* note 4, at 5 ("Law schools with semester credits had a mean, median, and mode of thirty credits for the 1L year."); *Id.* at 5–6 (listing mean credits for the five courses).

[61] *Id.* at 18.

[62] Although, leg-reg is only slightly more popular at the thirty-six law schools with the clearest form of the Comprehensive model, with seven schools (19 percent) requiring a 1L leg-reg course. *Id.* (data in possession of author).

[63] Each of the standard doctrine courses are required in 1L by well over 90 percent of law schools. Constitutional law, however, is required in the first year by only 68 percent of law schools. When it is taught in 1L, constitutional law is offered at a mean of 3.6 credits. Among the 1L courses taught by a majority of law schools, only constitutional law and criminal law are allocated a mean of under four credits across all schools in our survey. *Id.* at 5–6.

[64] *Consumer Information (ABA Required Disclosures)*, Univ. of Mo. Sch. of L., https://law.missouri.edu/about/consumer-information-aba-required-disclosures/ ([https://perma.cc/4PPA-7FBZ] last visited Jan. 7, 2025).

[65] *JD in Law*, Univ. of Mo. Sch. of L., https://catalog.missouri.edu/schooloflaw/law/jd-law [https://perma.cc/M578-2PG5] (last visited Jan. 7, 2025).

As with 1L leg-reg courses, but more so, introductory non-doctrine courses are tiny nuggets in the 1L curriculum. Practice skills courses are offered by 11 percent of law schools at a mean of 2.4 credits. All other introductory courses are allotted a mean of 1.1 to 1.6 credits.[66] The impact on student learning will be limited by the credits allotted. Even when the introductory courses are combined with legal writing, they form exactly 20 percent of 1L curricula.[67] Comparing this credit allocation to the learning objectives of the Comprehensive model demonstrates that these courses are expected to lift a weight far greater than their credit allocation suggests possible.

This reality becomes apparent when looking at law schools with the Comprehensive model of learning outcomes that also have the most ambitious non-doctrinal 1L courses. Elon Law School, for example, has an extensive and thoughtful set of non-doctrine 1L courses. It identifies learning outcomes for each year, and it correlates those learning outcomes to learning in specific courses. Elon's 1L curriculum requires 27 (trimester) credits of doctrinal courses and 13 (trimester) credits for the following non-doctrine courses: a legal writing course that includes simulations (7 credits), an introductory law-legal analysis course (3 credits), an introductory professionalism course (2 credits) and "criminal lab" simulation practice course (1 credit).[68] Elon's 32.5 percent share for these non-doctrine course credits in the 1L curriculum is the highest of any law school in the nation.[69] The learning outcomes identified for the 1L curriculum at Elon are divided as follows: cognitive skills with five learning objectives, lawyering skills with eleven learning objectives, and context and values with four learning objectives.[70] As shown in the following table, Elon lists the non-doctrine courses as solely responsible for 75 percent of the learning objectives, including half of the "cognitive skill" learning objectives, despite constituting slightly less than one-third of the 1L course

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[66] Cox, *supra* note 4, at 7. Introductory preparatory courses are less relevant to the goals set forth in the Comprehensive model, but practice skills, professionalism, and legal methods are directly on-point.

[67] Legal writing and introductory course credits together are a mean of 19.9 percent and a median of 20.0 percent of total 1L credits. Based on data collected for the 1L Curricula study reported in Cox, *supra* note 4 (data in possession of author).

[68] *Curriculum for Students Entering in 2018 and Following*, Elon Law, https://www.elon.edu/u/law/academics/progression-of-learning/curriculum [https://perma.cc/FBY6-FWRT] (last visited Jan. 8, 2025). The doctrine courses are contracts, torts, property, criminal law, civil procedure and either BA/Corps or Evidence. The legal writing course includes a one-credit legal research course and six credits for "legal method and communication," which includes the standard legal writing functions putting students "in the role of law clerk, lawyer or judge" and presenting assignments "via a series of simulations during which students watch client interviews, provide research and objective advice to a supervisor, maintain client files and time sheets, prepare written and oral progress reports for a supervising attorney, write and orally argue motions on behalf of a client, write a brief to an appellate court and deliver a formal oral argument to a panel of judges." *Legal Method & Communication Program*, Elon Law, https://www.elon.edu/u/law/academics/programs-centers/legal-method-communication-program [https://perma.cc/Z3HF-AVTZ] (last visited Jan. 8, 2025).

[69] Based on data collected for the 1L Curricula study reported in Cox, *supra* note 4 (data in possession of author).

[70] *Learning Outcomes*, Elon Law, https://eloncdn.blob.core.windows.net/eu3/sites/996/2020/07/Elon-Law-Learning-Outcomes.pdf [https://perma.cc/W4TA-EGAQ] (last visited Jan. 8, 2025).

credits. By contrast, the doctrinal courses constituting over two-thirds of the 1L credits are solely responsible for just 15 percent of the learning objectives.

Table 3: Allocation of Learning Objectives by Course Type in Elon 1L Curriculum

	Doctrine Courses Teach Objective	**Non-Doctrine Courses Teach Objective**	**Both Types of Courses Teach Objective**
Cognitive Skills	2	2	1
Lawyering Skills	0	10	1
Context & Values	1	3	0
TOTAL	3 (15%)	15 (75%)	2 (10%)

A similar imbalance can be seen in other law schools with a Comprehensive model and higher-credit non-doctrine introductory courses.[71]

The other problem with relying on these one-off courses is that they are a curricular island, which creates isolation from the dominant curriculum. A. Benjamin Spencer explains the limitation of the add-on approach to 1L curricular reform as follows:

> [L]aw school, as it exists today, is an artifact of its past, with a structure and tradition that is rooted in history more so than being founded on rational design. As a result, although many innovations characterize the modern approach to law school, these adjustments tend to be more superstructure than substitute, supplementing traditional law school education rather than supplanting it.[72]

Suzanne J. Schmitz and Alice M. Noble-Allgire describe how "skills development in the first year has been segregated into a stand-alone legal writing or lawyering skills course."[73] Sitting below the traditional curriculum marks

[71] The University of Minnesota Law School, for example, requires four credits of legal writing and three credits in a simulation-based course that provides "conceptual knowledge and professional skills needed to master the iterative process of discovering new facts, refining legal research objectives and managing the relationship with the client." The author was the co-creator of this 1L course. *Law in Practice*, Minn. L., https://law.umn.edu/academics/experiential-learning/law-practice#:~:text=Law%20in%20Practice%20(LiP)%20is,the%20actual%20practice%20of%20law [https://perma.cc/A8PF-AQLC] (last visited Jan. 8, 2025). Minnesota has adopted a Comprehensive model of learning objectives with five outcomes and twenty-three sub-outcomes. At best, the standard 1L curriculum directly addresses about six of the sub-outcomes, while legal writing and the introductory course fulfill the vast majority of the sub-outcomes. *Minnesota Law Learning Outcomes*, Minn. L., https://law.umn.edu/sites/law.umn.edu/files/2020/01/02/learning_outcomes_slides.pdf [https://perma.cc/KVU8-EXU3] (last visited Jan. 8, 2025); *see also* Carnegie Report, *supra* note 1, at 34–43 (describing the CUNY and NYU 1L simulation programs).

[72] Spencer, *supra* note 58, at 1960–61.

[73] Suzanne J. Schmitz & Alice M. Noble-Allgire, *Reinvigorating the 1l Curriculum: Sequenced "Writing Across the Curriculum" Assignments As the Foundation for Producing Practice-Ready Law Graduates*, 36 S. Ill. U. L.J. 287, 288 (2012).

these courses as "other," creating an initial barrier to student acceptance or prioritization.

B. An Excess of Excerpted Appellate Cases

The typical 1L class is familiar to those with even passing acquaintance with a U.S. law school. At its heart is the "case." Not just any case, but rather a particular type of judicial opinion read for a particular type of meaning. An appellate case; a case that is excerpted to present the exact issue of study for the day; and one that enunciates a discernible rule of law. This type of case reading as the core of 1L learning—as the core of legal education generally—is the legacy of the reclusive librarian and Dean of Harvard Law School in the 19th century, Christopher Columbus Langdell.[74] The Carnegie Report labelled this teaching method the "signature pedagogy" of law school.[75]

Langdell's case class method had two important purposes. First, Langdell believed that law consisted of scientific principles that could be discerned from carefully selected appellate cases.[76] Almost no law professor would subscribe to this view today. And yet, 1L students line up each year to pay hundreds of dollars to purchase books for almost every course filled with reprinted, excerpted appellate cases.[77] The reason is that the case class now reflects primarily a reliance on the second part of the Langdellian method—the case-dialogue process, better known as the Socratic method.[78] Well-executed, the case class offers an education in rigorous and careful analysis that helps law students understand one important way that the legal profession frames and resolves issues of law.[79]

Thoughtful critiques of the Langdellian case class abound, but the concern in this Subpart is more specific.[80] The case class crowds out other ways

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[74] Alfred Zantzinger Reed, Training for the Public Profession of the Law 354-88 (1921); Spencer, *supra* note 58, at 1973–80; *see* Rahim, *supra* note 49 (describing the development of the Langdellian method and its triumph as the model for U.S. legal education).

[75] Carnegie Report, *supra* note 1, at 50.

[76] Dennis Patterson, *Langdell's Legacy*, 90 Nw. U. L. Rev. 196, 196–97 (1995). Willian LaPiana provides the historical context on the innovations Langdell brought to legal education of the late 1800s, and offers a general defense of Langdell's innovations. Logic and Experience: The Origin of Modern Legal Education (New York, 1994).

[77] *See* Tim Wu, *How Professors Help Rip Off Students*, N.Y. Times (Dec. 11, 2019), https://www.nytimes.com/2019/12/11/opinion/textbook-prices-college.html# [https://perma.cc/MLU7-WB26].

[78] Elizabeth Mertz, The Language of Law School: Learning to "Think Like a Lawyer" 141–73 (2009) (reporting on a study of seven law school classrooms and finding that six of the seven relied extensively on the Socratic method); McClurg, *supra* note 56, at 97 ("the Socratic style does indeed remain the dominant teaching methodology in U.S. law schools, at least in the first year.").

[79] *See generally* Donald G. Marshall, *Socratic Method and the Irreducible Core of Legal Education*, 90 Minn. L. Rev. 1 (2005).

[80] *See* Rahim, *supra* note 49; Mertz, *supra* note 78; Susan McMahon, *Teaching Legal Analysis*, 107 Minn. L. Rev. 2511 (2023); Sherri Lee Keene, *Teaching Dissents*, 107 Minn. L. Rev. 2619 (2023); Beth Hirschfelder Wilensky, *Dethroning Langdell*, 107 Minn. L. Rev. 2701 (2023); Rachel Gurvich et. al., *Reimagining Langdell's Legacy: Puncturing the Equilibrium in Law School Pedagogy*, 101 N.C. L. Rev. F. 118 (2023); Spencer, *supra* note 58; Jeremiah A. Ho, *Function, Form, and Strawberries: Subverting Langdell*, 64 J. Legal Educ. 656 (2015); Kristen Holmquist,

that legal issues present and need to be understood. Repeating the same formula in each course as to each topic for an entire year (and beyond) produces diminishing returns, which makes it inefficient.[81] More than a few law school graduates have left the first week of a bar review course wondering why it took so long to cover the same material in law school.

An alternative is to drastically reduce case reading and substitute a direct explication of the law together with other forms of learning, such as participating in simulations, becoming more expert in legal research through open-ended research assignments, and actively producing evaluated written work product.[82] If the goal is to impart the ability to apply a particular legal doctrine to a set of given facts, laying out of the elements of claims and defenses, then asking students to work through problems applying these elements to fact patterns is a more efficient learning method. As laid out in Part IV, substantially reduced case reading loads and more engaged forms of learning can lead to a smaller number of classes. Fewer repetitive readings combined with other types of learning material means learning more in less time (i.e., more efficient learning).[83] Shifting the 1L workload also may help alleviate the stress of law students.[84]

The disconnect between the case class and the law school evaluation process aggravates the inefficiency. The typical 1L class identifies a topic of doctrinal learning, presents excerpted appellate opinions focusing on that topic and involves discussion of how the court used the facts it states as relevant to derive the holding on the identified topic. The typical law school exam requires a completely different set of reasoning. The student is presented with an undifferentiated set of facts and asked to "issue spot" from the topics studied

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Challenging Carnegie, 61 J. Legal Educ. 353 (2012); Jeannie Suk Gersen, *The Socratic Method in the Age of Trauma*, 130 Harv. L. Rev. 2320 (2017); Bender, *supra* note 54; Carnegie Report, *supra* note 1, at 100–24; Deborah L. Rhode, *Missing Questions: Feminist Perspectives on Legal Education*, 45 Stan. L. Rev. 1547 (1993); Russell L. Weaver, *Langdell's Legacy: Living with the Case Method*, 36 Vill. L. Rev. 517, 518 (1991).

[81] Best Practices, *supra* note 1, at 97–104 (2007) (describing over-reliance on the case class in the first year and the many alternative learning methods).

[82] *See, e.g.*, Carnegie Report, *supra* note 1, at 104–05 (describing student experience of learning more effectively through work product that is reviewed); Daniel Schwarcz & Dion Farganis, *The Impact of Individualized Feedback on Law Student Performance*, 67 J. Legal Educ. 139 (2017) (demonstrating the positive impact of periodic graded feedback).

[83] *See* Part IV.B.

[84] Law students suffer sharp increases in anxiety, depression, and other forms of psychological distress during the first year. Kennon M. Sehldon & Lawrence S. Krieger, *Does Legal Education Have Undermining Effects on Law Students? Evaluating Changes in Motivation*, 22 Behav. Scis. & L. 261, 262 (2004) (summarizing prior studies of law students' psychological health); *id.* at 271 (reporting on a survey at two schools finding "law students appeared quite happy and healthy at the beginning of their career . . . and that any later distress among the law students is not an effect of pre-existing distress or problematic personality traits."); *id*. at 280 (summarizing findings that reported subjective well-being of law students drops substantially during the first year); *see also* David Jaffe, Katherine M. Bender & Jerome Organ, *"It Is Okay to Not Be Okay": The 2021 Survey of Law Student Well-Being*, 60 U. Louisville L. Rev. 439 (2022) (describing and reporting surveys of law student mental health). One of the primary contributors to law student stress is the overwhelming reading load. *Id*. at 445–47 (2022) (describing a study that found law school workload a primary contributor to student mental health distress); *see also* Edward Rubin, *Curricular Stress*, 60 J. Legal Educ. 110 (2010) ("[T]he psychological damage that law school inflicts on some of its students, and the excessive stress that it imposes on nearly all of them, is partially the product of its outdated curriculum and pedagogic strategy.").

in the course. While issue-spotting is directly analogous to an important skill exercised by practicing attorneys, it has little in common with the case class based on an announced topic for the day. Instead, students learn how to issue-spot when they are graded. One of the most unfair aspects of law school evaluation is that students less attuned to the informal networks of success are more likely to encounter issue-spotting for the first time when they open a law school exam.[85]

Just to underscore the key point for this Subpart, 1L students unquestionably should learn to read appellate cases, identify issues and be able to articulate how the court applies a rule of law to reason its way to an outcome. Students should read the seminal decisions known to all attorneys and law students that provide a common understanding of the development of the common law and constitute a liberal education in the law, such as *Palsgraf* in torts or *Hawkins* in contracts.[86] And the Socratic case-dialogue class should continue in some form and quantity. Yet just not nearly as much. The following Part III explores why the overuse of the case class and the emphasis on common law doctrine—this monocultural of 1L learning—results in a misdirected legal education.

III. Unlearning 1L

The guardian of traditional 1L likely would dismiss all this criticism because it misses the essence of 1L. The magic of the common law case class is not the content being taught; it is that 1Ls are learning to "think like a lawyer."[87]

This Part makes the argument that the monoculture of 1L—the repetitive and narrow nature of learning—instills habits of thought that impede understanding of law. Neither judges, nor litigators, nor transactional attorneys, nor anyone else with a law degree thinks in ways that can be absorbed by

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[85] The Carnegie Report offers a perceptive explanation of the deficiencies in the current law school system of evaluation. Carnegie Report, *supra* note 1, at 162–84*; see also* Schwarcz & Farganis, *supra* note 81, at 143 (reporting on an empirical study showing "individualized feedback in a single first-year doctrinal class can improve the quality of students' exams in all other traditional law school classes during the first year of law school," with a "stronger effect on below-median students") (emphasis in original omitted); Joan M. Rocklin, *Exam-Writing Instruction in A Classroom Near You: Why It Should Be Done and How to Do It*, 22 Legal Writing: J. Legal Writing Inst. 189, 190 (2018) (explaining thoughtfully "why law professors should teach exam-writing skills in the doctrinal classroom."); William M. Sullivan, *Align Preparation and Assessment with Practice A New Direction for the Bar Examination*, 85 N.Y. St. B.J. 41, 41 (2013) (describing assessment in the innovative upper level Daniel Webster Scholar Honors (DWS) Program at University of New Hampshire Law School); Tully, *supra* note 2, at 859 ("Law professors, particularly in the first year, continue to assess students using methods that are backed by little-to-no evidence that they successfully prepare students to practice law competently."); Rogelio Lasso, *A Blueprint for Using Assessments to Achieve Learning Outcomes and Improve Students' Learning*, 12 Elon L. Rev. 1 (2020); Jennifer E. Spreng, *Suppose the Class Began the Day the Case Walked in the Door: Accepting Standard 314's Invitation to Imagine A More Powerful, Professionally Authentic First-Year Learning Experience*, 95 U. Det. Mercy L. Rev. 421 (2018).

[86] Palsgraf v. Long Island R. Co., 248 N.Y. 339, 162 N.E. 99 (1928); Hawkins v. McGee, 84 N.H. 114, 146 A. 641 (1929).

[87] *See, e.g.*, Bahls, *supra* note 22, at 382 ("Traditional legal curriculum, which helps students think like lawyers, should remain at the center of most law schools.").

mostly reading excerpted appellate cases to discern a rule of law. The problem is not just the absence of teaching about how law actually functions, but that students need to discard assumptions formed in 1L to apply law; they have to "unlearn" 1L.

A lengthy Subpart A makes this point by describing five types of learning in 1L that create this misdirection. Subpart B takes a critical look at the option of leaving 1L alone and reforming the upper level curriculum to correct for these deficiencies in the curriculum.

A. Misdirection in 1L Learning

Below are six ways that students who complete 1L misunderstand the task before them in attempting to apply law to solve real world problems. The common denominator in these situations, and countless permutations thereof and additional items, is that the dominant learning method of 1L chafes against, and serves as a barrier to acquiring, the habits of thought needed to resolve problems with a legal dimension.

1. The starting point: seeing legal certainty and uncertainty

One of the most fundamental, and important, legal skills is to apply known or presumptively true facts to the elements of a possible claim or defense. Matching facts to the required elements allows for identification of certain outcomes (e.g., we don't need to worry about meeting the scope requirements of this statute) from uncertainty (e.g., the plaintiff will have a hard time proving causation). Once uncertain issues are spotted, fact development and legal research can be brought to bear to wrestle the uncertainty into a litigation strategy, client advice in transactional matters, the proper language to construct in a statute or regulation and other applications of law. In litigation, for instance, this process can present as a proof plan. Something like: identify the elements of the claim, match the fact record gathered to date to the elements to identify the proof in hand to prove a claim or defense and identify the legal research and fact development plans for uncertain issues.

The Langdellian case class also involves matching facts to law, but the focus of this learning is on the particular legal issue identified as the subject matter for the day. The case is typically excerpted to focus on that issue. 1L students read these appellate cases, and manipulate the case holding based on hypotheticals, to learn how the law can be stretched and made uncertain by taking it past some logical limit. Students often are led to debate whether the court reached the "right" result. A case class is an excellent tool to achieve a narrow learning goal of teaching how legal reasoning tools can be focused on an application of law to a specific, isolated issue.

Real world problems calling for the application of law almost never so present. Even if the facts are fully collected and the client goals are fully understood (an assumption rarely true in the wild), the attorney starts by searching for issues. The attorney asks questions like: what law can help address the

client's problem?; what elements of that law appear fulfilled by the known facts?; or is there uncertainty about the meaning of the law as applied in this situation? Common to all these questions and related tasks is distinguishing certainty from uncertainty, and using the distinction to build research plans or decide if such plans are worth the cost.

The contrast here—between the narrow focus of the Langdellian case class and identifying certain versus uncertain legal outcomes on a blank piece of paper—is not a difference between useful versus unhelpful learning. Both tasks have their place in advancing understanding of the application of law. The problem, again, is monoculture. 1L students are learning that what happens in the Langdellian case class is the essence of law, what the Descriptive learning outcome models call the core or foundational knowledge of law. That the case class method repeats over and over drives the point home.

Unsurprisingly, then, students usually search for the kind of problems that present in a 1L class when they are confronted with actual legal problem-solving. Law students have sharpened their skill at case analogic legal reasoning, and thus gravitate to turning client problems into this narrow form of case law application. It is like spending months learning to conjugate verbs in Latin and then being handed a novel written in a Romance language, say, Spanish. The verb conjugation practice has value. But it won't do much good if the goal is to understand the novel, even just reading for basics of the plot. And it will be a net negative if you spend a lot of time looking through the book to find cognates you can identify because you believe this is the essence of the language.

2. Closely reading statutory and regulatory language

Upper level courses add content in specific fields of law that lean heavily toward statutory and regulatory concerns, such as tax law, bankruptcy, securities regulation, etc. Even more so than with 1L courses, the purpose of the upper level course is to teach the subject matter, not general principles of how statutes are interpreted, applied and interact with common law. This means students are unlikely to know essential introductory skills for how to comprehend a statutory scheme even when enrolled in a class dealing with statutory law.

To return to the above proof plan example, if students are not taught to closely read statutes, discerning required elements of proof for a statutory claim or defense is not a familiar skill. If you are not comfortable with this starting point for developing a proof plan, you won't be comfortable building the facts and conducting the legal research that will point out the strength or weakness of your client's position.

Otto Hetzel neatly sums up this problem as follows:

> By the second year, students have developed habits regarding research that impel them to go first if not exclusively to court decisions regarding a statute; many will simply never read the statute directly unless no decision appears in the annotations, relying instead on

> a court's description of the statute. Thus, it often is necessary to emphasize to students that they read the statute first, try to ascertain its meaning, and then look at the cases. This predilection for relying on case law is reflected in the woeful look and confusion that occurs when students are forced to interpret a statute without the guidance of a court's analysis.[88]

Students of my colleague Jean Sanderson presented her a mug imprinted with "did you read the statute?" because she uttered the phrase so often in her clinic supervision.

3. Beyond given facts

Law students learn from the case class not to jump to legal conclusions. And they also learn through hypotheticals that a legal result can change with seemingly small alterations in the given facts. Law students are not taught the same as to developing relevant facts or case strategies. While facts are manipulated in class hypotheticals for the purpose of illuminating the law, practice happens in reverse. The attorney typically begins the case by gathering facts. The job is to collect facts or imagine possible fact development to determine the likely validity of a possible claim or defense.

Because the concept of fact investigation usually is foreign to 1L, the best outcome is that these classes are a non-sequitur—that students know or assume nothing, and learn after the 1L year how to engage in fact investigation. Yet 1L can be a barrier to learning here, too. Students sometimes assume the facts presented to them at the outset of the case are true. They do not inquire about how to verify facts given at the outset or how to gather more. Why would they when facts laid in the appellate opinion are presumed true?

This leads students to assume a fact is true because it is asserted as true by the client or on some summary document given to them, and they launch into a detailed legal analysis that may (in most cases, likely will) look totally different after a bit more factual inquiry. Or they miss opportunities to ask the key questions, find the key documents or carefully examine the key evidence because of a habit of assuming facts are as given. Similarly, there is usually little or no time allotted in the case class to probing the strategic development of facts.

Consider an example case known to many 1L students, *Beeck v. Aquaslide 'n' Dive Corporation*, which is often read in civil procedure courses.[89] The opinion presents straightforward facts. Jerry Beeck "was severely injured" on a

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[88] Otto J. Hetzel, *Instilling Legislative Interpretation Skills in the Classroom and the Courtroom*, 48 U. Pitt. L. Rev. 663, 688 n.78 (1987).

[89] Beeck v. Aquaslide 'n' Dive Corporation, 562 F.2d 537 (8th Cir. 1977). One reason this opinion is widely included in civil procedure casebooks is that pleading amendment is a matter within the discretion of the trial court and reviewable only after a final judgment, and thus there are not that many appellate cases on the topic. Stephen C. Yeazell, *The Misunderstood Consequences of Modern Civil Process*, 1994 Wis. L. Rev. 631, 666 (1994). Casebooks generally are averse to using trial court opinions, even on matters like application of the Federal Rules of Civil Procedure for which trial court discretion is paramount.

water slide at a company picnic.[90] The defendant, Aquaslide, admitted manufacture of the slide in its answer, but then the President of the company visited the waterslide in question before his deposition and determined it was a counterfeit not manufactured by Aquaslide. By this point, the limitations period had run and thus the personal injury claims by Beeck and his wife against possible defendants were time-barred.[91]

The legal issue in the case was whether the trial court abused its discretion by granting Aquaslide the right to deny that it manufactured the slide by amending its answer under F.R.C.P. 15(a), which provides that pleading amendment shall be "freely given" when "justice so requires." The Eighth Circuit noted the typical factors used by trial courts in this situation—weighing bad faith or dilatory conduct by the party seeking amendment against possible prejudice to the party opposing amendment. The appellate court found that the trial court did not abuse its discretion in allowing amendment because the company relied on statements by multiple insurance adjusters that it was an Aquaslide product and there was no evidence of bad faith by Aquaslide.[92] The Eight Circuit also upheld the trial court's decision to try the question of whether Aquaslide manufactured the slide first, and then try separately the remainder of the case if the Beecks prevailed in the first trial. The first trial resulted in a verdict for the company, which ended the lawsuit. That's that; tough luck for the Beecks; and 1Ls learn how Rule 15(a) should be applied.

Except, the Beecks prevailed. While the Eight Circuit appeal was pending, the Beecks filed a complaint in Iowa state court grounded in fraud and misrepresentation because of Aquaslide's false admission in its federal court answer.[93] The Beecks presented evidence that Aquaslide dominated the manufacture of waterslides and was besieged with counterfeits being sold as its products. Aquaslide President Carl Meyer, who discovered in a pre-deposition inspection in the federal court case that the slide was not made by the company, had "ordered that in each (injury) in which an Aquaslide was said to be involved, photographs from particular angles were to be taken and sent to him," and that Meyer would determine whether it was an Aquaslide product, which he was uniquely qualified to do. As to the Beeck's injury, however, "[i]nstead of following his own procedures or taking reliable substitute steps," Meyer allowed Aquaslide to admit in its answer that it manufactured the slide. The Iowa Supreme Court upheld a jury verdict for the Beecks based on the reckless disregard for truth in this pleading admission. Jerry Beeck, who had fractured his neck on the waterslide and become a quadriplegic (the vaguely described injury of the Eighth Circuit opinion), and his wife recovered over $3 million in 1980s dollars.[94]

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[90] *Aquaslide*, 562 F.2d at 538.

[91] *Id.* at 539.

[92] The Eighth Circuit also affirmed the trial court's holding that the Beecks claim of prejudice from the expiration of the limitations period did not support denying amendment because the prejudice was speculative and the Beecks retained the right to sue people other than Aquaslide. *Id.* at 541 n.7. The fact that culpable defendants other than Aquaslide would likely be fraud purveyors and judgment-proof was not mentioned by the courts.

[93] Beeck v. Aquaslide 'N' Dive Corp., 350 N.W.2d 149 (Iowa 1984).

[94] *Id.* at 163–64.

1L students study *Aquaslide*, like other appellate cases, to discern the "rule of law" enunciated in the opinion. For the federal *Aquaslide* case, it is something like the following: when a party conducts a reasonable investigation, such as here relying on multiple insurance adjusters, Rule 15(a) allows amendment absent a showing of counter-balancing prejudice. The key lesson from the entirety of the *Aquaslide* litigation, however, is different. It is about how to build a persuasive fact record on the issue of the purported reasonableness of the reliance on the statements by the adjusters. The starting point is to recognize factual uncertainty; to ask, is reliance on the adjusters' reports the whole story? It also is about strategic concerns like: how fact investigation and conduct of litigation will vary based on the amount of money at stake, the importance of contingency fees and jurisdictional arbitrage arising from the difference in perspective between these particular federal and state courts.

The disparity between the well-known federal court *Aquaslide* opinion and the obscure state court *Aquaslide* opinion would have been no surprise to the legal realists. Jerome Frank wrote in 1933 that "[s]tudents trained under the Langdell system are like future horticulturists confining their studies to cut flowers, like architects who study pictures of buildings and nothing else."[95] Edward Levi, Dean of the University of Chicago Law School, offered a similar view in 1951: "It is to the credit of the law schools that they emphasize both fact and theory; it is too bad that frequently they do not know what the facts are. It is for this reason that it can be said that to some extent the law schools are out of touch with reality."[96] Decades have passed since Frank and Levi made these observations, yet the role of factual uncertainty, fact development and case strategy make little appearance in 1L. Modern law school critics have added further insight on this point.[97]

The core problem of the case class in this regard is that the facts picked out by the appellate court for presentation in its opinion typically are a selection of the facts that fit neatly with the result reached by the court. They likely are not the facts identified, sorted and sequenced by the attorneys litigating the case, and may not even be very similar to how the trial court shaped the fact record. As Levi put it, "facts thrown away, the lines of inquiry not pursued, are as much a test of the lawyers' skill as any court presentation."[98]

As with the suggestion in this Article to move from teaching centered on common law to teaching statutory and other sources of law, the argument here

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[95] Jerome Frank, *Why Not a Clinical Lawyer-School?*, 81 U. Pa. L. Rev. 907, 910–13 (1933). Frank also wrote that in the practice of law, "[t]he major 'guesswork' relates to the facts, not to legal rules." Jerome Frank, *A Disturbing Look at the Law Schools*, 2 J. Legal Educ. 189, 191 (1949). Frank was a frequent and harsh critic of the removal of law school from the realities that shape judicial outcomes. Most legal realists other than Frank held similar views on legal education. *See generally* Rahim, *supra* note 49; Laura Kalman, Legal Realism at Yale 1927-60 (1986).

[96] Edward H. Levi, *What Can the Law Schools Do?*, 18 U. Chi. L. Rev. 746, 749 (1951).

[97] *See, e.g.*, Bender, *supra* note 54, at 392–93 ("the devotion to appellate cases underscores the traditional curriculum's hidden messages, about the near irrelevance of attention to specific facts, contexts, and the people involved, by stressing the search for abstract rules of law and governing principles."); Gordon, *supra* note 48, at 1238–40 (describing the "long search for the 'facts' that will predict legal results in the positivist tradition is a fascinating sort of striptease, in which one veil of illusion after another is ripped off to reveal, in the end, only more veils.").

[98] Levi, *supra* note 96, at 750.

is not simply that we should teach students about fact development because it is needed for legal practice. It is that we can do a much better job of teaching students to understand how law is used by teaching about fact uncertainty and development. A commentator who expressly rejects the Carnegie conclusion about the success of the law school case class in teaching students to think like a lawyer, Kristen Holmquist, describes a meeting of "lawyers, judges and mediators who had come together to serve as the UC Berkeley School of Law Professional Skills Advisory Board." Consistent with the argument here, the participants in the meeting did not emphasize the doctrine-practice divide in discussing legal education, but rather lamented how new lawyers think about legal problems.[99] Holmquist summarizes this deficiency as "an over-reliance on neatly edited cases to the exclusion of working with messy, human facts, in ways that real lawyers might . . . obscures the inter-dependence of knowing and doing that is at the heart of thinking like a lawyer."[100]

4. Finding and using case law

Most fair observers would concede that 1L courses do not make a serious effort to engage with fact gathering and uncertainty, but learning case law is where the defender of traditional 1L will take a stand. Law school isn't meant to teach about the messiness of practice; it isn't "fact school." This Subpart examines why the study of pre-packaged, excerpted and presumptively binding appellate opinions make for a woefully inadequate introduction to how case law is found and used by attorneys and judges. Carrying the case class archetype into legal research is another form of misdirection.

First, the value of the case class for learning how to use case law is substantially diminished by the narrowness of the case law studied in the first year. 1L casebooks typically present cases that are excerpts from appellate decisions that are presumptively controlling law on a specific topic that is identified as the matter of study for a particular class. The difficulty with this form of case law learning is that it has not much in common with how most legal research of case law appears in practice.

The problems that result from the absence of statutory law in 1L reappears in thinking about how the case class misdirects student understanding of legal research. Students see how courts use their common law authority to enunciate law for the jurisdiction, but few students learn how case law has a different role and rhythm when the legal issue involves a matter of statutory or regulatory interpretation in which the court's role (usually) is more circumscribed. Even when the course involves statutes or regulations, such as studying procedural rules or the Uniform Commercial Code, the focus tends

[99] Holmquist, *supra* note 80, at 353–54.

[100] *Id.* at 357. In one of the most insightful critiques of the case class learning method, Holmquist also examines how the case class is at odds with theories of effective learning. *Id.* at 362–67; *see also* Edwards, *supra* note 58, at 36 ("[D]espite the dominance of legal realism for more than half a century now, the pedagogy of formalism remains the signature pedagogy of legal education."); Keene, *supra* note 80 (arguing that reading only appellate opinions creates a false sense of certainty about the application of law to the dispute).

to be on the doctrinal problem rather than how case law is being used in this context.

More generally, case law research conducted to resolve real-life problems likely will produce persuasive rather than controlling authority, including an undifferentiated mix of appellate and district court cases and of published and unpublished opinions. The typical case class, as purposefully designed by Langdell, involves carefully selected appellate decisions presumed to be controlling authority for purposes of the discussion.[101] What to make then of a district court case, an appellate decision from another federal circuit, or an opinion on federal law from a state court in a case venued in federal court (or vice versa)? An uncertain legal issue that requires legal research is much more likely to present one of these scenarios than an appellate decision in the same jurisdiction on a nearly identical set of facts; i.e., the type of controlling authority that students expect to find based on a year of 1L case law reading.

Similarly, learning to read through a case with multiple procedural and substantive issues to isolate the matter of concern is a key legal research skill removed from the case class experience.

Legal research to resolve real world problems does not result in cases that edit out the "extraneous" material unrelated to the specific topic of interest. Searching for the "rule of law" in appellate case law often sends students down the wrong path when confronted with a real situation. There might be a case venued in state court with vaguely similar facts to a mid-level appellate court decision in that state, but for which the context raises substantial questions about how courts might apply that precedent. For instance, the appellate decision may be about a private right of action brought by a wealthy professional against a small electrical company while the case at hand is a matter of public enforcement in which the possible defendant has defrauded thousands of consumers.

The disconnect between the static appellate case world and the demands of legal practice can be frustrating. Young lawyers repeatedly trained to search for the rule of law in an appellate case as the key to being an attorney can be bewildered by the shift to legal uncertainty, to the task of combining cross-cutting law and uncertain facts to guide legal research and fact investigation.

5. Creating narrative

Most law students quickly learn how to sound dispassionate. Asked to present a case in class, a student will learn to start with something like: "The plaintiff was injured and seeks damages under product liability law. The defendant argues that the plaintiff cannot show causation because the injury was caused by intervening factors." Law school class usually does not ask the student to describe the case in a way that frames the dispute simply and which evokes an empathetic response.

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[101] Frank, *supra* note 95, at 910–13 (1933) (describing the limits of the Langdellian reliance on purportedly controlling holdings in appellate cases as "hopelessly oversimplified.").

Judges and attorneys know better. For example, in *J. McIntyre Mach., Ltd. v. Nicastro*, a well-known U.S. Supreme Court opinion concerning personal jurisdiction, Justice Kennedy writing for the Court majority introduces the case as follows:

> This case arises from a products-liability suit filed in New Jersey state court. Robert Nicastro seriously injured his hand while using a metal-shearing machine manufactured by J. McIntyre Machinery, Ltd. (J. McIntyre). The accident occurred in New Jersey, but the machine was manufactured in England, where J. McIntyre is incorporated and operates. The question here is whether the New Jersey courts have jurisdiction over J. McIntyre, notwithstanding the fact that the company at no time either marketed goods in the State or shipped them there.[102]

The dissent by Justice Ginsburg presents a much lengthier and evocative factual description, including the plaintiff's injury: "On October 11, 2001, a three-ton metal shearing machine severed four fingers on Robert Nicastro's right hand."[103] The dissent presents a very different narrative about the issue before the Court:

> A foreign industrialist seeks to develop a market in the United States for machines it manufactures. It hopes to derive substantial revenue from sales it makes to United States purchasers. Where in the United States buyers reside does not matter to this manufacturer. Its goal is simply to sell as much as it can, wherever it can. It excludes no region or State from the market it wishes to reach. But, all things considered, it prefers to avoid products liability litigation in the United States. To that end, it engages a U.S. distributor to ship its machines stateside. Has it succeeded in escaping personal jurisdiction in a State where one of its products is sold and causes injury or even death to a local user?[104]

The competing narratives here are more than just difference in style. Narrative drives fact development and legal research by identifying what matters in legal decision-making. The facts deemed relevant, and the facts driving the decision on the legal issue, usually can be gauged by the narrative created by the parties or the court. As Caroline Grose and Margaret Johnson explain in skillfully breaking down the creation of narrative in legal matters, "story and narrative are how people communicate with themselves and each other."[105]

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[102] J. McIntyre Mach., Ltd. v. Nicastro, 564 U.S. 873, 878 (2011).
[103] *Id.* at 894.
[104] *Id.* at 893.
[105] Carolyn Grose & Margaret E. Johnson, Lawyers, Clients and Narrative: A Framework for Law Students and Practitioners 6 (2017); *see also* Jerome Bruner, *The Narrative Construction of Reality*, 18 Critical Inquiry 1, 11 (1991) (a ten-step analysis of story-telling); Anthony Amsterdam & Jerome Bruner, Minding the Law 113–14 (2000) (a five step "austere" definition of narrative). For a summary of various perspectives on story-telling and law, see Toni M. Massaro, *Empathy, Legal Storytelling and the Rule of Law: New Words, Old Wounds?*, 87 Mich. L. Rev. 2099, 2104–07 (1989).

The case class that focuses on discerning a rule of law through the modern version of Langdellian legal reasoning typically devotes little or no time to helping students construct competing narratives or see how these narratives shape the dispute.

B. Law School Change Depends on 1L Change

The major studies of law school curricula and pedagogy are sharply critical of the education offered, but they pull a punch when it comes to 1L. As noted above, the otherwise superb Carnegie Report concludes that 1L is a major achievement.[106] The Best Practices report encourages less use of Socratic teaching and better assessment in the first year, but also does not suggest any changes to the traditional course list and agrees that the first year should be devoted to learning how to think like a lawyer, conventionally defined.[107] Law school reforms since the publication of these reports have not touched the core of 1L, as described in Part I.[108]

Psychologists use the term "anchor" to explain the power of an initial offer or framing in the outcome of negotiations.[109] 1L is the anchor offer of law school. The Descriptive model presents the existing 1L courses and pedagogy as "foundational."[110] Law students absorb this message.[111] The University of South Carolina Law School, for example, tells its students that the familiar 1L courses "provide the foundation on which most second and third year work is based."[112] As Randal Picker of University of Chicago Law School puts it: "[T]he 1L year is the one that law students remember forever."[113] Law school reform faces a very steep climb when it cedes a 1L year that dominates the student experience and imagination.

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[106] Sullivan, *supra* note 3.

[107] Best Practices, *supra* note 1, at 156–57 (describing the first year as primarily aimed at learning to think like a lawyer, defined as "including the grounding of analysis in facts, the comprehensive spotting of relevant issues and concerns, the search for governing rules, principles, or standards by which to make decisions, the weighing of competing policy considerations in light of their consequences, the value placed on consistency and deference to past decisions, the utility of reasoning by analogy, the importance of reasoned justification . . . .").

[108] For commentators who have focused specifically on 1L reform, *see* Bender, *supra* note 54; Rubin, *supra* note 45; Chester & Alumbaugh, *supra* note 55.

[109] *See* Katie Shonk, *What is Anchoring in Negotiation?*, Harv. L. Sch.: Program on Negot. (Dec. 31, 2024), https://www.pon.harvard.edu/daily/negotiation-skills-daily/what-is-anchoring-in-negotiation/ [https://perma.cc/6KYK-BGJH].

[110] *Supra* note 32.

[111] Bender, *supra* note 54, at 391 ("By the organization of the curriculum, we tell them that these values (or their absence) animate doctrine and process, rather than the reverse."); Jennifer M. Fernandez, *The Time Is Now: ABA Standard 303(c) As the Impetus for A Truly Inclusive 1l Classroom*, 73 Wash. U. J.L. & Pol'y 78, 80 (2024) ("The 1L year sets the tone for the trajectory of students' legal careers.").

[112] *Section III - Degree Requirements*, Univ. of S.C. L. Sch., https://sc.edu/study/colleges_schools/law/internal/current_students/handbook/section_003.php [https://perma.cc/NL52-UPT9] (last visited Jan. 8, 2025).

[113] Randal C. Picker, *Revised First-Year Curriculum Allows for New Courses and Smaller Classes*, Univ. Chi. L. Sch. (Oct, 13, 2020), https://www.law.uchicago.edu/news/revised-first-year-curriculum-allows-new-courses-and-smaller-classes [https://perma.cc/E47F-D6UH].

The first year dominates in a more technical sense, too. 1L is the last chance at most schools to set a floor of common knowledge. Most law schools have a few required upper-level courses, but the general rule is that courses after 1L are ad hoc selections by each student.[114] Unless a law school has a 1L leg-reg course, or the law school requires this course in the upper level, students may or may not encounter the basics of statutory interpretation in law school, the interplay between common law and statutes, the structure of the administrative state, the use of and limits on regulations as law and many other concepts that are key to most areas of legal practice.

The first year also consumes much more than one-third of student bandwidth in the law school building and coursework.[115] Students spend a substantial amount of time in the latter two years outside of the law school classroom. Participation in law clinics and externships, working on legal journals and moot court and credit for independent research projects necessarily means less time studying in a classroom.[116] A change in 2016 to an interpretation of ABA Standard 305 allows students to be paid while earning course credits, which gives students even more incentive to spend time working at law offices.[117] Of course, leaving the law school building to engage with practicing attorneys should be strongly encouraged. It just means that upper-level law school courses are now even less likely to resolve learning gaps left by the current 1L curricula of law schools.

The deficiencies of 1L can deepen the learning problem for the substantial percentage of students demoralized by the law school business model that sorts 1L students by grades. Many important job applications, including summer jobs after the 2L year and prestigious clerkships and fellowships, are based on 1L grades. For law students in the bottom percentage by grade average (the number varies by law school), 1L grading can shape—at least initially—career opportunities.[118]

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[114] *See* ABA 2010, *supra* note 10, at 67 (reporting half—81 of 162 law schools—require constitutional law and the same number require evidence in the upper level, but no other upper level course is required at more than 46 of the 162 schools).

[115] As a starting point, 1L eats up more than one-third of the credits needed to graduate. ABA Standard 311(a) requires 83 credits to graduate, although across all law schools the median number of credits required to graduate has long been 88. ABA 2010, *supra* note 10, at 26. The current median and mean 1L course load is thirty credits, Cox, *supra* note 4, at 5, which means 1L consumes slightly more than one-third of the total required course credits.

[116] *See* ABA 2010, *supra* note 10, at 77 (breaking down field placements into eight types and showing a substantial direct line increase in the number of field placements in all eight categories from 1992 to 2002 to 2010).

[117] Memorandum from Barry A. Currier, Managing Director of Accreditation and Legal Educ., Am. Bar Ass'n, on Adoption and Implementation of Revised Standards and Rules of Procedure for Approval of Law Schools (Aug. 31, 2016) (accessed at https://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/standardsarchive/2016-August-Standards-Revisions-Memo.pdf) (explaining that the 2016 changes "eliminate(s) the Interpretation that prohibits the granting of credit to a student for participation in a field placement for which the student receives compensation.").

[118] Beth Hirschfelder Wilensky brilliantly describes the story of three of her students at Michigan Law School for whom the 1L year "makes many of them feel like they don't belong here—in law school, and, as a result, in the legal profession. And if our pedagogy makes them feel that way, our pedagogy is wrong." Wilensky, *supra* note 80, at 2702–03.

A carefully constructed upper-level program, which exists in very few law schools, might remedy many deficiencies in the 1L curriculum.[119] Yet it makes no sense to say that we should keep teaching the first year in its traditional form because we can teach something totally different in the upper-level curriculum. More importantly, as explained in Part III.A, even if a law school abandons the current model of ad hoc upper-level curriculum, it would not solve the problem that 1L misdirects student understanding of the law so as to create learning obstacles, not just deficiencies.

It is fair to ask at this point how one can reasonably expect the 1L year to do so much more when 1L law students already are overwhelmed with reading and pressure. The 1L year is an introductory year, but we have come to accept that the introduction will focus overwhelmingly on one narrow form of learning. If we retain teaching the case analogic thinking of the Langdellian method, but do it much less, we will create the space for more diverse learning. Case study itself can occur with attention to fact development, strategic concerns and narrative creation. The following Part IV takes this argument further by constructing an example 1L year.

IV. A New 1L

Fundamental 1L reform is possible. Subpart A provides an example of a New 1L curriculum that is bold yet practical. Subpart B ties the reforms in the New 1L to the problems in the current 1L articulated in this Article.

A. The New 1L

Imagine a different 1L. The Fall semester consists of three courses for fifteen credits, as follows:

Common Law Doctrine and Process (5 credits). This course introduces students to the identification and development of law in the common law process by the study of contract and tort law. The first part of the course will briefly ground students in the elements of oft-used claims and simple applications of these doctrines. Students then will read case law, including seminal appellate cases in these fields, that demonstrate how courts employ legal reasoning to resolve less certain situations. A key component of this course is learning how common law process develops legal principles over time. Students will study two examples of case development of the law—product liability and noncompete clauses in contracts. The course will contrast key principles of these doctrines, showing similarities and differences in how contract law and tort law regulate society and markets.

Statutory-Regulatory Law and Interpretation. (5 credits). This course introduces students to statutes as a source of law. Students will learn the

[119] For example, William Sullivan, the principal author of the Carnegie Report, suggests the University of New Hampshire Law School Daniel Webster program as a model of a well-conceived upper level integrated learning program. Sullivan, *supra* note 85, at 41.

following: how statutes are structured and how to closely read a statute; discerning elements of proof in a statute required for a valid claim or defense; distinguishing rules from standards and the use of factors and balancing tests; how case law is used in statutory interpretation; the principles of statutory interpretation; an introduction to delegated authority to administrative agencies and rulemaking; and understanding the relationship between statutes, regulations and sub-regulatory guidance. Students will learn how case law operates differently than common law in the context of statutory interpretation, and how common law interacts with statutory law when courts interpret statutes. One unit of the course will focus on exemplar federal and state laws on wage and hour regulation as an example of how courts and agencies develop law through legislative interpretation and administrative actions. Finally, students will engage in a problem-solving exercise that focuses on drafting a statute or regulation, or similar task, and then applying that law to a set of social or market regulation problems.

Legal Research, Writing and Analysis (5 Credits). This course introduces students to the critical skills of legal research, analysis and writing used by all attorneys. Students initially will engage in legal research to gain an understanding of a narrowly defined area of law, then conduct a simulated client interview to identify legal issues that must be resolved to achieve the client's goals for the representation. The classroom portion of this course also will teach the structure of the court system, the distinction between controlling and persuasive cases, and the hierarchy of case law authority. Students will produce work product similar to that required for a young attorney, including an analytical research memo, a client letter, a demand letter to opposing counsel and a dispositive motion brief.

The Spring semester consists of three courses for thirteen credits, as follows:

Constitutional Law (3 credits). This course introduces students to the United States Constitution. Students will review the powers of the federal government embodied in the constitution, and will learn the allocation of powers of the federal government and decision-making authority among government institutions, including both federalism and separation of powers. Students will study seminal cases in constitutional law and examine alternative approaches to constitutional interpretation, including differing views of how constitutional mandates interact with statutory and common law. A case file will be presented that demonstrates the development of a well-known case in constitutional law from the planning stage of litigation through the lower court briefs and judicial opinions.

Law in Practice (8 credits) (Civil or Criminal Option). Students choose to participate in either the Civil or Criminal section of this course.

Civil Litigation. This course combines a study of civil procedure with simulation and legal writing experiences designed to help students master the iterative process of discovering and evaluating facts, refining legal research objectives, making persuasive written and oral arguments and managing the relationship with the client to achieve their goals. The initial part of the semester will focus on learning the basics of civil procedure rules and standards.

Students then will engage with two simulated case files. The *first case file* involves litigation based on the documents and testimony from an actual case, either a dispute between private parties or a public enforcement action. Classroom sessions will explore more difficult applications of the civil procedure rules to developments in the case file. Students also will examine doctrinal and strategic issues raised in the case, including the use of narrative and the application of distributive negotiating theory. Students perform the following simulations in small sessions led by practicing attorneys: client interview, witness interviews, a deposition, a "meet and confer" negotiation with opposing counsel and client counseling. The *second case file* is the negotiation of a contract. The classroom portion focuses on the knowledge needed to draft contract terms, teaches integrative negotiating theory and how to be an effective transactional attorney. This course has two simulations: a client counseling session, and negotiation with opposing counsel. Students draft a proposed contract prior to the negotiating session. Students will produce written products as part of both case files, including a motion in support or opposition to a pretrial dispute (e.g., joinder of a party or a discovery dispute) that will be argued before an actual trial court judge, and a memo in support of the merits of the client's claims or defenses that will be used in a mediation before a neutral.

Criminal Prosecution and Defense. This course parallels the Civil Litigation course, but with a focus on criminal prosecution and defense. The classroom learning, and the simulation and writing experiences, focus on fundamental principles of criminal law and procedure. Students complete two simulated cases—one as prosecutor and one as defense attorney. The simulation experiences include a client or police officer interview, prosecutorial charging meeting or defense client counseling session and a simulated trial. Students will engage in two other simulations that require production of written work product, including a motion in support or opposition to suppression of evidence that will be argued before an actual trial court judge, and a memo in support of a sentencing recommendation.

Overview of Civil or Criminal Practice (2 credits). Students enrolled in the Civil section of Law in Practice will take Introduction to Criminal Law, a doctrinal overview of how criminal law and procedure differs from civil law. Students enrolled in the Criminal section of Law in Practice will take Introduction to Civil Procedure, a doctrinal overview of how civil litigation occurs in U.S. courts. These courses begin after Spring Break and are graded on a pass/fail basis using objective tests.

B. The Principles of the New 1L

Three core principles underlie the proposed New 1L: (1) students should learn in the first year the breadth and interrelationship of the key sources of law; (2) the 1L education should be efficient, which is to say student workload should be planned to maximize different types of learning across the courseload; and (3) students should have a grasp after the 1L year of the core legal reasoning skill of integrating law and facts to solve problems.

Breadth of Sources of Law. 1L students should understand the development and use of sources of law roughly in proportion to their importance in courts and society. As described in Part II.A and Part III.A.2, one of the key opportunities for 1L reform lies in bringing statutory and regulatory law into the core of the 1L curriculum. The New 1L presents statutes (and administrative law), common law and constitutional law on equal footing. A five credit leg-reg course will mean time to examine how the common law process works in statutory interpretation, and how common law interacts with statutory law. The increase in attention to legal research and writing in the Fall semester, and the focus on integrated learning in the Spring, offers more opportunities to use constitutional and statutory law in problem-solving applications.

Efficiency. The good news for the reform-minded is that the current law school curriculum and pedagogy is inefficient. We can do more effective teaching with the same resources, and with less but more engaging and illuminating work for students.

The New 1L reduces course burdens more than it adds. The reduction of core common law courses into a single five credit course frees up about one-fourth of the credits in the typical first year. The Law in Practice option selected by the student—civil law or criminal law—melds civil procedure or criminal law into a larger experiential course. Overall course credits drop from the current thirty credits to twenty-eight credits.[120] Instead of four or more courses per semester in the first year, the New 1L has three courses per semester, allowing for better control of overall reading and workloads, and better coordination between courses.

Integration of Law and Facts for Problem-solving. Fact development and strategic problem-solving are elevated in importance in the New 1L, but more importantly, they are presented as inseparable parts of a whole of learning law. The beginning of judgment and deeper professional wisdom lie in the spaces where legal analysis, fact development, and practice skills intersect. The New 1L is designed to move students much more quickly along this learning curve.

The centerpiece of this transition is the Law in Practice course. By allowing students to select between a criminal law and civil law of this course, the New 1L also presents the opportunity for students who know they want to study criminal law to have a curriculum that will provide a grounding in that area of law that otherwise is covered fairly superficially in the current 1L curriculum.

Of course, the New 1L is just one example of how to apply these principles to create a new education experience for law students. Law schools with different visions for how to meet the needs of their students could implement these principles differently. Yet, a specific alternative vision of 1L helps make visible the "hidden messages" in the current 1L curriculum, as Leslie Bender puts it.[121]

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[120] The mean, median, and mode 1L course load is thirty credits. Cox, *supra* note 4.
[121] Bender, *supra* note 54.

V. A New 1L is Achievable

This final Part argues that 1L reform is practical and possible. Seedlings of change advocated in this Article have already been occurring in U.S. law schools. Our survey of current 1L curricula and the historic development of the first year shows that law school has been inching toward the basic principles of the New 1L since the typical 1970s curriculum of four six-credit courses in contracts, torts, property and civil procedure. A required 1L course in statutory and regulatory law did not exist at any law school in 2010, and now 15 percent of law schools require this subject in 1L.[122] Law schools have begun to add introductory low-credit, non-doctrine courses at a furious pace. The required development of learning outcomes provides further support for a transformation of law school. Dozens of law schools responded to the 2014 ABA mandate by adopting a Comprehensive model that synchs quite well with the New 1L.[123]

Sarah Valentine wrote in 2015, "outside regulators, be they accrediting bodies or state licensing authorities, are compelling curricular and pedagogical change."[124] Subpart A discusses two recent changes—the NextGen Bar exam and the change to U.S. News rankings—that may provide the outside push needed to transform a late 19th century 1L education to a curriculum that synchs with the 21st century. Subpart B addresses long-standing objections to 1L reform rooted in law school resources and management.

A. The Opening for 1L Reform

Changes to the bar exam and the dominant law school ranking methodology constitute the most concerted external push for law school teaching reform in decades, perhaps ever. The mid-2020s are looking like an opportunity for substantial 1L reform.

The bar examination is changing. Starting with a few states in 2026, students will be given a "NextGen" bar exam. The National Conference of Bar Examiners described its goal as creating "[a]n integrated exam [that] permits use of scenarios that are representative of real-world types of legal problems that newly licensed lawyers encounter in practice and provides an authentic assessment of lawyering skills."[125] The new exam will frame its questions in four "skills" groups: (a) issue spotting and analysis, investigation and evaluation; (b) client counseling and advising, negotiation and dispute resolution, client relationship and management; (c) legal research; and (d) legal writing

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[122] Cox, *supra* note 4, at 10.

[123] See *supra* Part I.B.2.c.

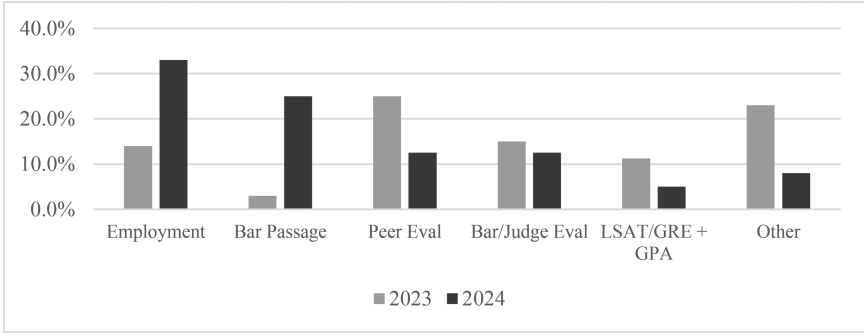
[124] Sarah Valentine, *Flourish or Founder: The New Regulatory Regime in Legal Education*, 44 J.L. & EDUC. 473, 475–76 (2015).

[125] Cynthia L. Martin et al., National Conference of Bar Examiners Testing Task Force, *Overview of Recommendations for the Next Generation of the Bar Examination*, 3 (2021), https://nextgenbarexam.ncbex.org/themencode-pdf-viewer/?file=https://nextgenbarexam.ncbex.org/wp-content/uploads/TTF-Next-Gen-Bar-Exam-Recommendations.pdf#zoom=auto&pagemode=thumbs [https://perma.cc/A28W-FXF4].

and drafting.[126] Although much remains unknown about the new exam, there is no doubt that it aligns quite well with the subject matter of the Law in Practice course that dominates the Spring semester of the New 1L, the legal research and writing focus in New 1L and the integrated learning methods on which the New 1L is grounded.

If U.S. News rankings continue to dominate evaluation of law school prestige, a substantial revision in ranking criteria that occurred for the 2024 rankings (released in May 2023) also will provide an impetus for 1L reform.[127] Bar passage increased from a minor 3 percent weight to the second most important criteria, now counting for 25 percent of a law school's total score.[128]

Figure 2: Changes to Criteria for U.S. News Law School Rankings



The weight given to employment outcomes went from 14 percent of a law school's ranking to 33 percent of the school's ranking, making employment outcomes the single most important factor in the ranking.[129] These changes in rankings methodology directly supports adoption of a 1L curriculum like the New 1L. Moving the curriculum to equal attention between common law and statutory law brings law school education much closer to the law that animates practice. Focusing on integration of law, fact development and skills through the 1L year should undoubtedly better prepare law students for

[126] National Conference of Bar Examiners Testing Task Force, *Bar Exam Content Scope: First Administration July 2026* (May 2023), https://www.ncbex.org/sites/default/files/2024-11/NCBE-NextGen-Content-Scope-May-24-2023_0.pdf [https://perma.cc/KDT5-TNQK].

[127] *See* Robert Morse & Eric Brooks, *Methodology: 2024 Best Law Schools Rankings*, U.S. News (Apr. 8, 2024), https://www.usnews.com/education/best-graduate-schools/articles/law-schools-methodology [https://perma.cc/5H9H-PYWH].

[128] The weight for initial bar passage increased from 3 percent to 18 percent, and a new criterion of "ultimate bar passage" was added and given a weight of 7 percent of the total law school score. *Id.*

[129] *Id.*

practice. Whether these changes will actually move the hiring market toward law schools with such a reformed curriculum is speculative, but it seems a reasonable bet.[130]

B. Internal Constraints Are Not Insurmountable

Two oft-stated obstacles to law school reform are that it will cost too much to implement and the current faculty can't teach it. Subparts 1 and 2 address each of these objections, respectively.

1. Cost Should Not be an Obstacle to Adopting The New 1L

It won't cost too much to teach the New 1L because the current 1L is inefficient. The New 1L will incur costs, but it also will create savings which should outweigh the costs, at least on an operating basis without regard to transition costs. Unlike many of the laudable 1L reforms since the Carnegie Report, the New 1L eliminates and replaces, or reshapes, 1L courses rather than piling new subjects on top of the existing curriculum. The New 1L saves teaching resources compared to the existing 1L curriculum, particularly in the doctrine faculty.

Compare the New 1L teaching requirements to the current average 1L curriculum in our survey on the assumption that the 1L curriculum consists of the traditional seven courses. Doctrine faculty time shifts to new courses and is reduced overall, while legal writing faculty have an expanded role and adjuncts are introduced into the 1L teaching roster.

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[130] Georgetown is one of the very few law schools that has shuffled the doctrinal content of the 1L curriculum into different boxes and labels, and somewhat increased the presence of statutory and regulatory law in its Curriculum B that some 1L students can elect in lieu of the traditional 1L courses. A study of the graduates of this alternative curriculum shows no statistically significant difference between students enrolled in the alternative and traditional curricula (e.g., overall law school grades, bar passage, or employment at ten months), except that students in the alternative curricula tend to find jobs in the public sector and, unsurprisingly, make less money compared to employment weighted toward the private sector for traditional curriculum graduates. Hyman, Liu & Teitelbaum, *supra* note 5, at 3. This study doesn't tell us much about the likely outcomes of a fundamental shift in 1L as proposed in this Article. It is based on a Georgetown alternative curriculum that has not much in common with the New 1L; it looks only at bar passage outcomes under the Bar exam prior to implementation of NextGen and employment outcomes for graduates of a T-14 school; and it makes no attempt to evaluate whether the graduates of the alternative curriculum understand law differently, practice differently, or even perceive their training differently after some period of practice. The study findings, however, might relieve some anxiety about any potential downsides of fundamental 1L reform.

Table 4: Required Teaching Credits by Faculty Type-Current versus New 1L[131]

	Doctrine Credits Current	Doctrine Credits New 1L	LW Credits Current	LW Credits New 1L	Adjunct Credits New 1L
Contracts/Torts/Prop	13	5	0	0	0
Constitutional Law	3.5	3	0	0	0
Statutory Law	0	5	0	0	0
Civ Pro/Criminal	8	2	0	0	0
Legal Writing	0	0	5.5	5	0
Law in Practice	0	4	0	2	2
Total Current (30)	24.5		5.5		
Total New 1L (28)		19		7	2

Doctrine faculty credits are reduced by five and one-half credits overall in the New 1L. Two of these credits reflect the lower overall credit level in the New 1L.[132] The remaining three and one-half credits reflect a shift to other types of faculty for teaching in the Law in Practice course, resulting in a net increase of one and one-half credits in legal writing faculty in 1L and the addition of two credits for adjunct faculty to teach small groups in the Law in Practice courses.

The cost proposition for the New 1L assumes the existence of teaching material for the New 1L. Much of this material already exists. There are already 1L legislation and regulation courses to canvas for materials, and the alternative 1L curriculum at Georgetown has a course substantially similar to the proposed Fundamentals of Common Law course.[133] Simulation and case-file materials exist, as do problem-solving exercises.[134] The expansion of

[131] For the current curriculum, the chart shows mean credits rounded to the nearest half credit from our survey of 1L curricula for each course type. Cox, *supra* note 4, at 5–6. For the New 1L, it is assumed that the eight credit Law in Practice course requires the following allocation of faculty teaching credits: four doctrine faculty credits, two legal writing faculty credits and two adjunct credits. The two doctrine credits for civil procedure/criminal law in the New 1L doctrine teaching credit column represents the credits required for the teaching of the introduction to civil procedure for students taking the criminal law in practice course or for teaching of the introduction to criminal law/procedure for students taking the civil law in practice course.

[132] The average first year currently has more than one-third the number of credits required to graduate, and most law schools require more than the ABA-mandated number of credits to graduate. *See supra* note 114. Accordingly, a law school adopting the New 1L could either require two fewer credits or shift the two credits into the upper level curriculum.

[133] Hyman, Liu & Teitelbaum, *supra* note 5, at 36 (providing a course description for "Bargain, Exchange and Liability" in the Georgetown Curriculum B).

[134] *See, e.g.,* Katz, *supra* note 2, at 835–38 (describing simulation options); Kris Franklin, Legal Reasoning Case Files: A Contemporary Approach to Lawyers' Methods (2023) (teaching legal concepts through review and drafting of legal documents); Prentiss Cox & Laura Thomas, Law in Practice (2019) (text and simulation materials for 1L integrated

New 1L courses will create an incentive for law professors and publishers to produce more such teaching material.

2. Law Professors Can't Teach It

Commentators have suggested that the lack of practice experience and orientation of existing faculty is a serious obstacle to law school reform.[135] Law schools developed on the Langdellian model explicitly rejected the approach of medical school and some other professional schools where faculty are active members of the profession that they teach.[136] There is little doubt that law school faculties typically are a hierarchy, and that the faculty at the top of that hierarchy are tenured professors who are more likely to lack substantial experience in the profession.[137] The New 1L, however, does not require broad practice experience among the doctrine faculty. One purpose is to shift from the steady diet of common law subjects to a balanced presentation of sources of law. Current faculty are capable of teaching courses about statutory law that form the basis of most of upper level teaching and much of legal scholarship.

The use of more legal writing faculty time, placing clinical faculty in 1L teaching, and using adjunct faculty to run simulations is an incremental change for most law schools. Fortunately, civil procedure and criminal law are intensely practical courses and thus more likely to consist of faculty with extensive practice experience. To the extent that the teaching demands of Law in Practice require cooperation among the different parts of the faculty and complementary teaching groups to form, and if the New 1L places pressure on law school hiring to fill teaching positions with people who understand the profession for which they are preparing students, so much the better.

It is a safe bet that a majority of law professors want to keep the status quo. Fortunately, 1L reform does not depend on a general faculty vote.

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learning course); Eduardo R.C. Capulong, et al., The New 1L: First-year Lawyering with Clients (2015) (identifying numerous examples of 1L courses that include non-doctrinal training); Sullivan, *supra* note 85 (describing the University of New Hampshire Daniel Webster program). Jason Dykstra makes a strong argument for case-based learning of the type used in medical school or business school, which was explicitly rejected by the early propagators of the Langdellian method. Dykstra, *supra* note 58, at 125–30.

[135] R. Michael Cassidy, *Beyond Practical Skills: Nine Steps for Improving Legal Education Now*, 53 B.C. L. Rev. 1515, 1531 (2012) ("[A] fully integrated approach to teaching professional skills (such as the medical school model) will require major resource reallocations, realignment of teaching responsibilities."); Brent E. Newton, *Preaching What They Don't Practice: Why Law Faculties' Preoccupation with Impractical Scholarship and Devaluation of Practical Competencies Obstruct Reform in the Legal Academy*, 62 S.C. L. Rev. 105, 107 (2010) (arguing "that it will not be possible to implement such proposed curricular and pedagogical reforms if law schools continue their trend of primarily hiring and promoting tenure-track faculty members whose chief mission is to produce theoretical, increasingly interdisciplinary scholarship for law reviews rather than prepare students to practice law.").

[136] Rahim, *supra* note 49, at 41 (in the Langdellian law school, "[n]o longer did experience practicing the law make one capable of teaching it. Instead, it was experience *studying* the law."). Yet Langdell also imagined that he was imitating medical school, just substituting book study for laboratory time and patient interaction. *Id.* at 33–34

[137] *See* Newton, *supra* note 135. *But see* Richard E. Redding, *The Legal Academy Under Erasure*, 64 Cath. U. L. Rev. 359, 364 (2015) ("Contrary to popular claims, engaged scholars are better teachers.").

A reform-minded law school dean with a small cadre of faculty interested in creating an experimental section would suffice. Reflecting on how law school change occurs, Robert Gordon stated:

> [O]ne factor in curricular change that is invisible to the reader of catalogues and casebooks, but nonetheless of paramount importance, is the presence on a law faculty of a critical cabal who are willing to band together and take the time to rethink traditional subjects and prepare new course materials.[138]

The New 1L is perfectly suited to change by cabal.

Conclusion

This Article focuses on the first year that dominates the curriculum and culture of the United States law school experience. It compares newly collected data about the 1L curricula at U.S. law schools with learning objectives adopted by law schools to show how law school curricula stand at odds with the use of law by attorneys and others. It contrasts the current 1L curricula with the more ambitious learning outcomes adopted by some law schools to show the chasm between those promises and a 1L program dominated by common law courses. It identifies how the current 1L misdirects student learning, leaving law students with habits of thought that impede learning how law actually functions in courts, legal practice and other settings where law is employed. Most importantly, it presents a specific exemplar 1L curriculum that illuminates the distinction between what 1L is and what 1L could be, including achievable alternatives to the current subject matters and pedagogy.

If we are going to change law school, we need to kill 1L. Law schools have been able to resist fundamental reform for generations. Yet change happens in all institutions, often in a sudden rush after a long period of stasis. Knocking on the central pillar of the law school experience is the best way to build new models of legal education in the United States.

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[138] Gordon, *supra* note 5, at 368.