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Transfer of Learning

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C. TRANSFER OF LEARNING

By Deborah Maranville¹

1. Introduction

A key characteristic of effective education is that students are able to retain and build on the information, skills, and values they learn in their work in later courses and in the world. Doing so is known as transfer of learning. Ultimately, for law students, that means they are able to transfer what they learn into the work they do as professionals. BEST PRACTICES FOR LEGAL EDUCATION did not delve deeply into the educational literature on transfer of learning. Underlying its preparation for practice theme,² however, was an implicit recognition that both individual law teachers and law schools as institutions must educate students in a manner that facilitates transfer.³

Law teachers know all too well the challenges of achieving transfer: students often deny having encountered a legal doctrine that was unquestionably covered in another class session or course. While this phenomenon raises other important questions, such as to what extent and for how long do students retain information conveyed in the classroom, it also potentially raises the question of transfer of learning. Even if students remember the information in its initial context, can they draw on it in a new one?

Transfer is a core issue for effective teaching and learning, especially in the context of professional education where students are expected to be able to use their skills — even if the skills in question are solely the analytical ones supposedly taught in the conventional law school classroom⁴ — when they encounter new problems. Yet, until recently, how to create conditions that will lead to transfer has been a neglected question in legal education.

Transfer of learning is critical if law schools intend to educate skilled professionals, but the research suggests that achieving transfer is neither easy nor automatic.⁵

¹ Readers for this section were Laurel Currie Oates and Judith Welch Wegner.

² ROY STUCKEY AND OTHERS, BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP (2007) [hereinafter BEST PRACTICES], text at notes 103 and 104. The heading for the first goal of the program of instruction was “Be Committed to Preparing Students for Practice.”

³ The term “transfer” appears at least five times in BEST PRACTICES, all in quotations from other sources. The first reference noted the value of “curricular and co-curricular mapping” for ensuring that students have “ample opportunities to reflect on and practice desired outcomes” in order to transfer learning. *Id.*, text at note 269. A second suggested that attention to the overall curriculum could improve “knowledge transfer.” *Id.*, text at note 272. A third touted cooperative learning as improving transfer. *Id.*, text at note 367. A fourth emphasized the importance of context for transferring learning from classroom to practice. *Id.*, text at note 455. The final one noted the importance of debriefing simulations in order to “achieve a transfer of the acquired knowledge for reality.” *Id.*, text at note 589.

⁴ The term “supposedly” is intentional, given research that casts doubt on the extent to which law students’ analytical skills in fact improve during law school. See Todd E. Pettys, *The Analytic Classroom: Loosening the Langdellian Link: Toward a Renaissance in Legal Education*, SOCIAL SCIENCE RESEARCH NETWORK http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2139432, archived at <http://perma.cc/TAQ2-CN2U>.

⁵ See generally HOW PEOPLE LEARN: BRAIN, MIND, EXPERIENCE, AND SCHOOL (John D. Bransford et al., eds.,

Thus, for both the individual teacher and law schools responding to the call to either improve or truncate legal education, it is a best practice to attend to educational strategies to improve transfer of learning, both from individual courses and the curriculum as a whole.

2. Teaching for Transfer: What, Why, and How

An extensive literature from brain science and educational theory addresses teaching for transfer.⁶ Only in the last decade, however, has the challenge of teaching for transfer of learning captured the attention of legal educators or been addressed in any depth in the law school literature, as a small number of legal writing,⁷ academic support,⁸ and clinical teachers⁹ converged on the subject.

One 2010 article addresses transfer in detail, providing a teaching framework the author described as “offer[ing] legal educators a comprehensive approach to the transfer of learning across the entire curriculum.”¹⁰ The article reviews the extensive literature from other disciplines and traces the disciplinary divides. It briefly “connects [legal education’s history] to the prevailing transfer theories of the time,”¹¹ arguing that modern transfer theory “can be used to support both traditional and innovative law teaching”¹² and can bridge current divides between doctrinal and experiential learning.¹³ It highlights current common defects in curricular design, and sets out the author’s own teaching materials that are designed to facilitate transfer of students’ learning.

The author does not, however, consider in detail the question of transfer from a broader curriculum design perspective, beyond saying generally that law schools:

- provide “little to no discussion of common themes across the law school experience,”

2000) [hereinafter BRANSFORD, ET AL., HOW PEOPLE LEARN].

⁶ *Id.*

⁷ Laurel Currie Oates, *I Know that I Taught Them How to Do That*, 7 LEGAL WRITING: J. LEGAL WRITING INST. 1 (2001); Susan E. Provenzano & Lesley S. Kagan, *Teaching in Reverse: A Positive Approach to Analytical Errors in 1L Writing*, 39 LOY. U. CHI. L.J. 123, 158–59, 173–75 (2007).

⁸ Michael Hunter Schwartz, *Teaching Law by Design: How Theory and Instructional Design Can Inform and Reform Law Teaching*, 38 SAN DIEGO L. REV. 347, 366 (2001).

⁹ Paul Bergman, *Reflections on U.S. Clinical Education*, 10 INT’L J. LEGAL PROF. 109 (2003) (proposing that clinics should be organized around discrete types of lawyering skills to ensure transfer of learning, rather than around discrete types of legal problems); David A. Binder & Paul Bergman, *Taking Lawyering Skills Training Seriously*, 10 CLINICAL L. REV. 191, 198 (2003); David A. Binder, Albert J. Moore & Paul Bergman, *A Depositions Course: Tackling the Challenge of Teaching for Professional Skills Transfer*, 13 CLINICAL L. REV. 871, 872, 882–88, 896–98 (2007).

¹⁰ Tonya Kowalski, *True North: Navigating the Transfer of Learning in Legal Education*, 34 SEATTLE U. L. REV. 51, 53 (2010).

¹¹ *Id.* at 77.

¹² *Id.* at 83.

¹³ *See id.* at 82–85.

- fail to “even disclose to their students that law schools want them to learn to generalize knowledge,”
- typically do not present “law school problems . . . [in] a community-oriented context . . . [connected to students’] life experience” in a way that best promotes learner motivation, and
- often fail to reach out to students not from the dominant culture.¹⁴

Research into the best methods for achieving transfer of learning is ongoing, and final answers are not yet available. Tentative answers from the research, however, suggest the following:

1. Students need a broad and deep fund of knowledge about their discipline to most effectively transfer learning and need to organize their knowledge around conceptual frameworks in ways that facilitate retrieval and application.¹⁵
2. Educators should identify the foundational concepts needed to understand more advanced concepts and ensure that students have an opportunity to master them.
3. Teaching metacognitive skills — awareness of one’s own learning process — can assist learning:¹⁶ “[L]earning is most effective when people engage in ‘deliberate practice’ that includes active monitoring of one’s learning experience . . . [with] attempts to seek and use feedback.”¹⁷
4. Students are more likely to retain knowledge if they understand the conditions in which it is used, the connections among different contexts, and how knowledge is likely to recur in other contexts.¹⁸
5. Students are more motivated to learn when “they can use . . . information to do something that has an impact on others — especially their local community”¹⁹ and are more likely to transfer knowledge if they have an opportunity to apply it.²⁰

Based on these research findings, the best practices for effective ways to achieve transfer in legal education are likely to include the following:

1. Individual teachers should be explicit that transfer is one of their goals and identify how learning in a course may transfer to other contexts.²¹ A teacher might refer forward to upcoming units in the course, to other classes the students are currently taking, or are likely to take, and to how the knowledge, skills, or values are encountered in practice.

¹⁴ *Id.* at 84.

¹⁵ See BRANSFORD, ET AL., *HOW PEOPLE LEARN*, at 16–17, 53–55, 136–139.

¹⁶ *Id.* at 21.

¹⁷ *Id.* at 58–59.

¹⁸ *Id.* at 42–46, 55–60, 62–63.

¹⁹ *Id.* at 61.

²⁰ *Id.* at 42–46, 55–60, 62–63.

²¹ *Id.* at 60.

2. Individual teachers, with law school support, should ensure that students are absorbing the necessary disciplinary knowledge by providing conceptual frameworks, engaging in outcomes assessment,²² and making effective use of technology, where applicable.²³
3. Teachers and law schools should provide opportunities for students to apply their knowledge and do so in a variety of contexts, emphasizing service to the community.²⁴

Accordingly, law schools should emphasize experiential education,²⁵ as it provides opportunities to apply knowledge in a variety of contexts; make clinical legal education²⁶ widely available to students, especially in forms that provide service to the community and the law school, and offer strong pro bono programs.²⁷ Throughout those experiences, students should be encouraged and guided to reflect on their experiences and what lessons to draw from them.

4. Law schools should include transfer as a goal and facilitate it through thoughtful integration and sequencing of the currently disparate parts of the law school curriculum. Numerous ideas on how to integrate and sequence the curriculum are discussed elsewhere in this volume.²⁸

3. Conclusion

In order for students to master skills and knowledge, they must be able to transfer concepts they learn and apply them to new situations. Transfer of learning is a critical component of effective legal education. While more research must be done, some best practices have emerged. Ways for teaching law students for transfer include providing students with multiple opportunities for application of learning, and emphasizing service to the community and experiential education.

²² See Chapter 4, Section D, *Outcomes Assessment for Student Learning*, below.

²³ See Chapter 5, Section C, *Use of Technology in Teaching*, below.

²⁴ BRANSFORD, ET AL., *HOW PEOPLE LEARN*, at 61–63.

²⁵ This volume uses the term “experiential education” broadly to encompass “both simulated practice experiences, in which students assume the role of a lawyer in a simulated setting, and supervised real practice experiences, in which students assume the role of a lawyer.” See Chapter 5, Section F, Subsection 1, *Incorporating Experiential Education Throughout the Curriculum*, below.

²⁶ This volume uses “clinical legal education” to encompass the full range of supervised practice experiences, including what are commonly known as law clinics and externships, and variations on those forms. *Id.*

²⁷ See Chapter 6, Section B, *Pro Bono as a Professional Value*, below.

²⁸ See, e.g., Chapter 3, Section B, *Pathways, Integration, and Sequencing the Curriculum*, above.