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Following the Herd: Bringing Electronic Casebooks into the Law School

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FOLLOWING THE HERD: BRINGING ELECTRONIC CASEBOOKS INTO THE LAW SCHOOL

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Professor Penny A. Hazelton
to fulfill course requirements for Current Issues in Law Librarianship, LIS 595,
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Following the Herd: Bringing Electronic Casebooks into the Law School

Jeremy J McCabe

Ever since eTextbooks¹ have been offered in one form or another, nearly every poll of higher education students indicates a strong preference for the tried-and-true print textbooks. The top two reasons given for this partiality are that eTextbooks are either difficult to read or cause heavy eye fatigue and that the software does not provide an adequate means of annotating and highlighting. However, with increasing technological improvements with usability and functionality, more students will be willing to move to a digital platform. Moreover, publishers are realizing the financial potential in the eTextbook arena, particularly as a means to thwart the first sale doctrine and the resulting used book market. This article will concisely explain that this migration to eTextbooks is inevitable. The question is not if, but when eTextbooks will become a reality.

Of course, because legal education has deep traditions regarding form and substance of curriculum, law school faculty are slow to adopt eCasebooks. For nearly a century and a half, the casebook has provided the key backbone that has allowed law professors to successfully teach using the Socratic Method. These works are so integral to law school curriculum they represent a rite of passage for incoming first-year students. Nevertheless, the combination of exorbitant costs to attend law school, the recent downturn in the employment outlook for newly minted lawyers, and the increasing clamor that law school graduates are not practice-ready signify that a change is desperately needed. This article will describe how electronic casebooks can aid in promoting a more practice-oriented approach to legal training at a reduced cost to the student. While it should be understood that successfully integrating eCasebooks—even in their most idealistic form—will not solve the law school crisis, this article posits it is a necessary and important step towards ameliorating many unresolved issues within the law school community.

Although there is much scholarship on eTextbooks generally, there is a dearth of writing that pertains to the use of electronic casebooks within the law school environment. The few articles and chapters that have discussed such implementation are now dated regarding technology. Coincidentally, one of the many virtues of eCasebooks is the ability for professors to have the most updated material! This article will not only update and expand previous research in the law school arena concerning digital textbooks, but will also argue law students are finally primed to accept and embrace this medium. Finally, this paper will suggest that law libraries have the unique responsibility to promote a shift towards the eCasebook paradigm.

In order to adequately discuss these issues, the eTextbook landscape must be understood. Part I of the article will differentiate digital textbooks from eBooks and explain how these electronic resources focus on dissimilar consumers. This part will conclude with a brief history of the development of eTextbooks as well as the rise of the legal casebook.

After providing the necessary background information, Part II will highlight the universal trend towards institutional acceptance of digital textbooks. Additional discussion will include publishers' desire to go digital as well as the students' acceptance as true digital learners enter

¹ Whereas “eBooks” is now the most accepted usage in the United States when referring to electronic books, there has been little consistency among scholars or publishers in creating a standardized term for electronic textbooks. Currently, usage includes “e-textbooks,” “e-text,” “eTextbooks,” and “digital textbooks.” Throughout this paper, I will use the terms “eTextbooks” and “digital textbooks” when referring to electronic textbooks in general. When referring to electronic textbooks designed for legal education, I will use the terms “electronic casebooks” and “eCasebooks.”

the classroom. This part will culminate with an analysis of the current situation in legal education and an argument for adoption of the eCasebook platform by law school faculty.

In Part III, the discussion will shift from the general eTextbook market to the specific needs that law students must have met in order to leave print textbooks behind. This part will open with exploration of the various concerns that make law students disinclined to continue using eCasebooks or, as often is the case, to even experiment with eCasebooks. The emphasis will then focus on improvements recently made to digital textbook functionality and usability that will enable students to finally accept this format.

After Parts II and III establish a viable market for electronic casebooks within law schools, Part IV will explain the eCasebooks options for law school professor implementation. This section will begin by describing emerging legal publishers of eCasebooks and current offerings, potential for improvements, and limitations. After this, the section will make an argument for open-source publishing by legal scholars using examples that have been successful within the legal community. This part will conclude with an argument that law libraries will be best equipped to provide access and support to law students' learning through eCasebooks. This section will be succeeded by a summary of the aforementioned topical areas, followed by a general conclusion on the future direction and application eCasebooks within the law school environment.

I. Terminology and History of eTextbooks and Legal Casebooks

A. eBooks and eTextbooks Are Not Synonymous

Before delving into the reasons eTextbooks and eCasebooks are an inevitability, a distinction must be made between these mediums and general eBooks. An eBook is characterized as “a text- and image-based publication in digital form produced on . . . and readable on computers or other digital devices.”² There is little argument that eBooks are now part of the mainstream business market. In fact, eBooks now represent nearly a quarter of all book sales.³ Although there are many arguments on whether electronic books will continue to gain the market share of print books, eBooks already have made a significant impact on both publishers and readers alike. In contrast, eTextbooks are defined as being predominately instructional or educational in nature while being produced in a digital medium.⁴ While eTextbooks do represent a small subset of eBooks, they have not yet garnered a comparatively large market share within the textbook industry.⁵

The difference between eBooks and eTextbooks is that each has different markets and different consumers. For eBooks, the goal of the publishers is to have the most popular print books also offered in a digital format. Through the use of e-readers, such as the Amazon Kindle

² Eileen Gardiner & Ronald G. Musto, *The Electronic Book*, in *THE OXFORD COMPANION TO THE BOOK* 164, 164 (Michael F. Suarez & H.R. Woudhuysen eds., 2010).

³ See, e.g., Jim Milliot, *E-books Still Outsold by Hardcover and Paperback*, PUBLISHERS WEEKLY (Sep. 26, 2014), <http://www.publishersweekly.com/pw/by-topic/industry-news/bookselling/article/64170-e-books-remain-third.html> (explaining that during the first six months of 2014, 23 percent of all books sold were in an electronic format).

⁴ Heather Moorefield-Lang, *An Exploration of E-Textbooks*, LIBR. MEDIA CONNECTION, Mar./Apr. 2013, at 18, 18.

⁵ Reports of eTextbook market share vary widely, from as little as one percent to as much as fourteen percent. See, e.g., Dian Schaffhauser, *What's Next for E-Textbooks?*, CAMPUS TECH., Nov. 2014, at 19, 20. The higher percentage is based not on selling true digital forms of print books, but rather including all digital materials, many of which are software programs that are used as textbooks. *Id.*

and the Apple iBooks, millions of readers can easily access these eBooks via the e-reader itself, a smartphone, a laptop, or an iPad. Kindle and iBooks also have added functionality, including electronic searching, easy bookmarking, some annotating, and the ability to look up words in a dictionary. Nevertheless, the reader's ultimate concerns are whether the words are easy to read using the digital medium and being sure that content of the digital version is substantially similar to content of the printed version. Thus, publishers try to ensure that an eBook is really a direct translation from print form to digital form. Sometimes additional materials, such as timelines, indexes, photos, maps, and appendices are not included in the digital form. However, this is not usually a concern of the average reader. Therefore, an eBook accessible through many mediums, easily readable on the preferred screen, and includes the main text of the work are the only requirements of the average consumer. As long as these needs are met, consumers will continue to consume books in a digital format.

In opposition, textbooks—print or digital—are created primarily so that teachers, professors, and school systems will adopt a teaching tool to be used for an entire class, school district, or university. The focus is on the substantive content offered and the additional tools given to help students learn the material. When publishers try to push the eTextbook, the key selling point is often the additional content accessed or incorporated using the digital textbook that is unavailable using print. For instance, a common addition for eTextbooks is quizzes that can be taken at the end of a chapter which are instantly graded and incorporated into the course grading scheme. Thus, publishers are promoting the differences between the print and digital textbooks as opposed to the similarities highlighted with print books and eBooks.

Additionally, eTextbooks are presented differently than eBooks. In general, non-textbooks are read in a linear fashion with little reference to appendices, supplements, or otherwise extraneous material. Although textbooks can be read linearly, readings are also assigned in a non-linear fashion, often with later chapters being read first. Most textbooks also have many appendices, tables, graphs, and images. Further, the text on any given page includes the main text, but may also include footnotes, additional resources and descriptions near the margins, and vignettes that are related to the subject matter. The result is that simply providing a direct translation digital copy of a textbook on a Kindle or iBooks app would result in a very confusing readout. Thus, within these formats, much of the text that is not considered the main text may be removed. In order to compensate for this, some eTextbooks are created in PDF format, which can be accessed through Adobe Digital Editions while other eTextbooks are created within a completely separate learning technology software. The end result is that it is difficult to easily provide and present all the content of a textbook in its digital counterpart.

Finally, professors decide which textbook is used while the consumers of eTextbooks are ultimately students, not the general public. Students are using eTextbooks not to read, but also as a tool to learn course material. Thus, assuming students are not forced to buy an eTextbook due to additional digital content used by the professor, students require more than the average eBook reader when deciding on whether to use an eTextbook. First, they need all the material that the professor is going to cover within the print textbook to be included in the eTextbook. If it is not, then the eTextbook user is at a disadvantage to learning. Moreover, the eTextbook must have adequate tools for highlighting, annotating, and transferring notes. Because learning using a textbook often involves using different sources within the book, an eTextbook must also have an easy way to flip between the appendices, supplements, and the main text. Ultimately, the students' focus on learning far outweighs the need to simply be able to read text.

Due to the unique needs of the consumers of eTextbooks and the problems in presenting digital textbooks, eTextbooks are not synonymous with eBooks. Therefore, analysis of the eTextbook market and consumers must occur from a perspective independent of eBooks in general. While this segment focused on the differences between eTextbooks and eBooks, eCasebooks are also a subset of eTextbooks. As the market for eCasebooks is limited to law schools,⁶ and the consumers are initially law professors and ultimately law students, eCasebooks will have their own unique issues regarding acceptance and implementation which will be discussed separately later. Nevertheless, whether eCasebooks become a reality is at least tangentially related to the successful use of eTextbooks in general.⁷

B. Brief History of the eTextbook

eCasebooks cannot be a reality without improved eTextbooks. Fortunately, digital textbooks have dramatically improved since their inception in the latter part of the twentieth century. During the 1990s, the predecessor of eTextbooks came in the form of CDs that were packaged with the print textbook.⁸ While these add-ons were promoted as additional tools, in actuality they were often only worksheets or homework assignments provided in digital format.⁹ Publishers found it costly and difficult to create content for a digital platform when there already was a well-established mode of sales through print textbooks. Further, concerns with users reproducing a digital textbook and freely disseminating it resulted in reluctance to enter the market.¹⁰

It was not until 2000 when the first major breakthrough occurred. VitalSource created an entire four-year curriculum for dental students, providing each student with a laptop that included all the digital titles accessible through a digital rights management (DRM) program that protected the content from reproduction.¹¹ The VitalSource platform was a success, and as of March 2015, is the largest seller of eTextbooks.¹² Within the next few years, other companies found niche specializations like VitalSource did with dental students.¹³ In 2007, the big five academic publishers banded together to form CourseSmart, which offered over 90 percent of eTextbooks in higher education¹⁴ before being acquired by VitalSource in March 2014.

Initially, eTextbooks were only available via a poor translation through an e-reader or by computer software. However, CourseSmart really revolutionized the eTextbook market in 2010 by developing software for an iPad app that allowed users to see eTextbooks in their original format, including graphics, tables, and images. Today, CourseSmart, under the umbrella of VitalSource, offers eTextbooks through all major electronic mediums, including Kindle Fire,

⁶ The market may be expanded to include political science and criminal justice fields, but the impact will be so small that considerations for these fields will not be considered here.

⁷ See *infra* Part II.

⁸ Amanda J. Rockinson-Szapkiw et al., *Electronic Versus Print Textbooks: The Influence of Textbook Format on University Students' Self-Regulated Learning Strategies, Motivation, and Text Anxiety*, 27 AM. J. DISTANCE EDUC. 179, 180 (2013).

⁹ William D. Chesser, *The E-textbook Revolution*, LIBR. TECH. REP., Nov./Dec. 2011, at 28, 29.

¹⁰ *Id.* at 29–30.

¹¹ *Id.* at 30.

¹² In part, this is because VitalSource acquired CourseSmart in 2014. Carl Straumsheim, *A New Course*, INSIDE HIGHER ED (Mar. 4, 2014), <https://www.insidehighered.com/news/2014/03/04/course-smart-publishing-industrys-e-textbook-provider-acquired-vital-source>.

¹³ Chesser, *supra* note 9, at 30.

¹⁴ Straumsheim, *supra* note 12.

iPhones, Androids, iPads, and computers.¹⁵ Additionally, all CourseSmart eTextbooks are now accessible for those with disabilities, offering voice command, text-to-speech, and magnification options.¹⁶ Combining the ease of accessibility with the continuing improved functionality of eTextbook tools (e.g., annotating, highlighting, and searching functions), eTextbooks are primed for massive acceptance by schools, professors, and students alike.¹⁷

C. *Brief History of the Legal Casebook*

While eTextbooks are being rapidly developed and fine-tuned for the end-user, the legal casebook has remained fairly stagnant in its development for nearly a 150 years since its inception into American legal education. In 1871, Christopher Columbus Langdell created the first major casebook which focused on the subject of contracts.¹⁸ Prior to this, law students were taught using straight black-letter law,¹⁹ much how law students study for the bar exam (albeit without any reference to cases). The case method, as it would soon become known, involved having an entire book that included only cases. By studying the cases using the Socratic Method, students would discuss the various issues before the court and the procedure and rationale used to resolve the issues. Rules and general principles of law could be gained through this intensive process.²⁰ This process of learning the law would eventually become widely accepted, and even today, most current law students would be very familiar with this process!

Of course, there has been some modification to the casebook since it was created. At first, Langdell created a monumental tome because all that was included were case opinions in their complete, unedited form.²¹ Soon thereafter, the casebook was expanded further when authors began to add commentary, short summaries of cases, questions, and example problems to solve.²² However, the biggest change occurred in 1908, when West publishing entered the casebook market with its American Casebook Series.²³ Not only did West create more concise casebooks that had highly edited and abridged cases along with pertinent notes and related materials, but it also tailored the series towards a national market.²⁴ This resulted in developing a unified teaching method and standardized curriculum, while solidifying the casebook as the predominant textbook for all major legal courses.²⁵

While the casebook and its related materials have changed little in the last century, courses often require supplemental material in addition to the casebook. For instance, along with a Contracts casebook, a student may be obligated to have an abridged or even complete edition of the Uniform Commercial Code. Professors may also assign additional cases that were not included in the selected casebook because of new developments in the law or due to special rules in a particular jurisdiction. While a few casebooks are geared towards a particular jurisdiction

¹⁵ *Read Textbooks on iPad, Kindle Fire & Other Mobile Devices*, VITALSOURCE COURSESMART, <http://www.coursesmart.com/go/mobile> (last visited May 6, 2015).

¹⁶ *Accessibility*, VitalSource CourseSmart, <http://www.coursesmart.com/accessibility> (last visited May 6, 2015).

¹⁷ *See infra* Part II.

¹⁸ Matthew T. Bodie, *Open Source and Reinvention of Legal Education*, in *LEGAL EDUCATION IN THE DIGITAL AGE* 34, 35–36 (Edward Rubin ed., 2012).

¹⁹ *Id.* at 35.

²⁰ *Id.*

²¹ *Id.* at 36.

²² *Id.*

²³ *Id.* at 37.

²⁴ *Id.*

²⁵ *See id.*

and most casebooks now have selected statutes relevant to its subject, there are often gaps between the offerings of the casebook and the teaching needs of the professor. As will be discussed shortly, this major limitation of the legal casebook will be rectified through customizable eCasebooks.²⁶

II. Electronic Casebooks Are Inevitable—Law Schools Should Begin to Embrace Them

Whether law school faculty adopt eCasebooks is in part dependent upon the increased usage of eTextbooks within higher education. By seeing success within other fields of education, law faculty will have increased confidence that implementation will be successful within law schools. Additionally, by describing the many forces driving increased usage of eTextbooks, it may be postulated that eCasebooks are the next logical step in legal education.

A. Publishers' Incentives to Increase the eTextbook Market

1. The First Sale Doctrine and the Used Textbook Market

For decades, the publishing industry has maintained a stranglehold on the price point of textbooks. Over the last thirty or so years, the cost of a textbook has skyrocketed over 800 percent; that is significantly more than health care costs and the rising tuition rate!²⁷ In 2013, the U.S. textbook industry accounted for an estimated \$14 billion in sales.²⁸ Roughly half of all revenue—\$7.18 billion²⁹—is geared towards higher education. However, \$1.8 billion of the higher education textbook sales is a direct result of the used textbook market.³⁰ This means that publishers receive no income for over one-quarter of higher education textbook sales. Indeed, the used textbook market has been a boon to college students everywhere, much to the chagrin of the publishing industry. By reselling textbooks, the average college student can sometimes recover as much as 50 percent of the original outlay for a textbook that was bought new at retail. Therefore, because the used textbook market represents a substantial percentage of all textbook sales, the publishing industry has great incentive to limit or eliminate this market.

The existence of the used textbook market must be described before explaining how publishers could circumvent it. In general, publishers and authors own a copyright in the works they create. Under the U.S. Copyright Act of 1976, an owner of a copyright has the exclusive right to distribute copies of the copyrighted work not only by the public sale or other transfer of ownership, but also by rental, lease, or lending.³¹ Thus, publishers and authors who are copyright

²⁶ See *infra* Part III.

²⁷ Mark J. Perry, *The College Textbook Bubble and How the "Open Educational Resources" Movement Is Going Up Against the Textbook Cartel*, AM. ENTER. INST. (Dec. 24, 2012, 7:12 PM), <http://www.aei.org/publication/the-college-textbook-bubble-and-how-the-open-educational-resources-movement-is-going-up-against-the-textbook-cartel/>. Looking at the last three years of data, except for negative inflation at the beginning of 2014, the overall inflation rate of textbooks shows no signs of slowing. See *3-Month Percent Change of College Textbooks*, BUREAU OF LABOR STATISTICS, http://data.bls.gov/timeseries/CUUR0000SSEA011?output_view=pct_3mths (last visited May 6, 2015).

²⁸ Nancy K. Herther, *Technology Meets the Textbook: The Disruption of Education Deepens*, ONLINE SEARCHER, May/June 2014, at 42, 50.

²⁹ See Schaffhauser, *supra* note 5, at 20.

³⁰ *Id.*

³¹ 17 U.S.C. § 106(3) (2012).

holders of the textbook are the only ones entitled to actually distribute the textbook. They may sell it, but they may also rent or lease the textbook, as is becoming more popular.

However, this right to distribute copies of the textbook is not absolute. The Copyright Act creates an exception: the first sale doctrine. The doctrine states that, “the owner of a particular copy . . . lawfully made under this title, or any person authorized by such owner, is entitled, without the authority of the copyright owner, to sell or otherwise dispose of the possession of that copy”³² The U.S. Supreme Court has construed this to mean that if a work has been made with the copyright holder’s consent,³³ and that particular copy has transferred ownership, the owner may do anything with that copy (except reproduce it) that the owner desires.³⁴ While copyright holders³⁵ may contract to lend out or lease that copy, or to limit what the distributor does with the copy, the copyright holder may not contract to sell a copy while subsequently preventing the ultimate owner of that copy from reselling it.³⁶ Thus, a person or entity that purchases a legitimate copy of a textbook becomes the sole owner of that particular textbook copy. At that point, the copyright holder no longer has the exclusive right to distribute because the first sale doctrine is in effect. The end result is that the new owner may sell, distribute, lend out, rent, lease, or even destroy that particular copy of the textbook.

Due to the first sale doctrine, college students who purchase their textbooks may resell them after the semester is over. Additionally, Chegg became the first major purveyor of rental textbooks in 2007,³⁷ and soon thereafter the industry exploded.³⁸ Within the next five years, other companies such as Amazon and Barnes & Noble created rental programs that have also reaped great rewards by buying used textbooks and either reselling them at a profit or renting the textbooks out on a monthly, semester, or yearly basis. Ultimately, this entire secondary market is the one area that textbook publishers had been unable to really invade or thwart until recently.

2. Using eTextbooks to Eliminate the Secondary Textbook Market

Historically, the publishing industry has attempted to limit the reach of the used textbook market by publishing new editions of textbooks every three to five years. Generally, when a new edition is published, publishers notify the universities and professors, highlighting the new material and added features that make the older edition obsolete. This is not only true with textbooks in general, but also within the legal field, where recently decided cases create new law

³² 17 U.S.C. § 109(a) (2012).

³³ The Court has expanded what is considered “lawfully made under this title” to include anything manufactured, whether within the United States or abroad, providing that the work was manufactured with the consent of the copyright holder. Thus, illegally created copies, such as bootleg movies using personal video cameras, would not be included as “lawfully made under this title.” *See Kirtsaeng v. John Wiley & Sons, Inc.*, 133 S. Ct. 1351, 1361 (2013).

³⁴ *Id.* at 1363.

³⁵ If referring to an author’s rights under copyright, the author is assumed to have not transferred the pertinent rights to a third party. If transfer has occurred, the copyright holder only may enforce such rights. It is through this mechanism of transferring rights that many publishers have dual or sole copyright holder status.

³⁶ *See Kirtsaeng*, 133 S. Ct. at 1363.

³⁷ *See* Miguel Hefit, *We Rent Movies, So Why Not Textbooks?*, N.Y. TIMES (July 4, 2009), http://www.nytimes.com/2009/07/05/business/05ping.html?_r=0.

³⁸ In 2008, Chegg generated \$10 million in revenue. *Id.* By 2013, this number had jumped to \$255.6 million! *Chegg Reports Fourth Quarter and Fiscal Year 2013 Results* (Feb. 13, 2014), <http://investor.chegg.com/press-releases/press-release-details/2014/Chegg-Reports-Fourth-Quarter-and-Fiscal-Year-2013-Results/default.aspx>.

or invalidate older laws.³⁹ If a new edition is required, this means that potentially hundreds of new textbooks will need to be bought by students. Because they are brand new, the textbooks must be initially bought from the publisher, thereby cutting out the used book market. Unfortunately for the publishers, after this initial sale, the secondary market takes control again until another updated edition comes out.

This endless loop of publishing new editions of textbooks to circumvent the secondary textbook market could be eliminated through the sale of eTextbooks. Remember, the first sale doctrine is the key to the creation of the used textbook market. However, eTextbooks are not sold or transferred to the buyer. Rather, they are licensed. A license prevents a transfer of ownership, instead giving the licensee certain rights to the content, which are subject to the terms of the license agreement.⁴⁰ Thus, the publishers can provide the content of the eTextbook to the licensee without the licensee having the ability to later put the eTextbook into the secondary market.

Even in the rare event that the licensing agreement was null and void or if the publisher actually sold the eTextbook outright to the owner, the first sale doctrine would only apply to that exact copy of the eTextbook. If the owner sold that copy they would need to somehow transmit that copy to the new owner. However, the transmission, be it by email, Dropbox, torrent, or any other means, actually results in replicating the eTextbook, thereby creating a copy of the copy. While the first sale doctrine allows redistribution of the exact copy that is owned, it does not allow reproduction of that copy.⁴¹ Thus, the law as enforced does not allow for eTextbooks to be resold.

Ultimately, publishers realize that the best way to curtail the secondary used textbook market is to eliminate it as much as possible. In order to accomplish this, a concerted effort must be made to increase the eTextbook market. This is can be achieved in two ways. First, by creating better products with greater functionality eTextbooks will be received with greater acceptance by students. In turn, more digital textbooks will be licensed. Secondly, publishers need to license eTextbooks at prices low enough to entice students to try digital textbooks. Taking a quick look at what is offered on Amazon, it appears that there are many introductory college eTextbooks that are available from fifty percent to eighty percent off the print price.⁴² It is important to note that the higher price reductions are based on renting the eTextbook (usually by month increments up to one year) as opposed to buying it. However, for most students, the need for the textbook rarely goes beyond the semester. Regardless, this discounted pricing must remain central to eTextbook sales, at least until the point where the ease of access and the functionality of an eTextbook are equivalent or better than the same textbook available in print.

3. The Main Publishers Are No Longer the Only Producers of Textbooks

While publishers certainly want to curtail the secondary textbook market, they also need a means to combat a new competitor in textbook creation: open-source and open-access

³⁹ For instance, a textbook published less than two years ago would not include the *Kirtsaeng v. John Wiley & Sons, Inc.*, 133 S. Ct. 1351 (2013) decision, which is vital to understanding how the first sale doctrine currently applies to copyrighted works.

⁴⁰ Kristen M. Cichocki, *Unlocking the Future of Public Libraries: Digital Licensing that Preserves Access*, 16 U. BALT. INTELL. PROP. L.J. 29, 38 (2007–2008).

⁴¹ 17 U.S.C. § 109(a) (2012).

⁴² On Amazon's eTextbook website, <http://www.amazon.com/Kindle-eTextbooks/b?node=2223210011> (last visited May 6, 2015), I searched introductory texts to chemistry, biology, psychology, and business, comparing the eTextbook price to the print price.

publishing. As stated above, the cost of textbooks have skyrocketed over the past few decades. In fact, the average student spends over \$1200 per year on textbooks.⁴³ As most textbooks within the legal field are often between \$150 and \$200, this number seems appropriate for law students as well. In order to combat these costs to make both college in general and textbooks specifically more reasonable, many universities have begun to experiment with alternative forms of publishing.

Open-access is a movement to make textbooks and journals freely accessible while open-source is a movement to make textbooks easily adaptable to many situations and needs.⁴⁴ The idea is that a textbook is created, usually by a professor, and is placed in digital format accessible on the Internet. It may be accessed by anyone either for free or for a nominal price. The unique twist to open-source is that the textbook may be edited by other professors with the caveat that derivative works are also available online without additional costs to potential third-parties.⁴⁵ By providing the basic materials with one freely adaptable textbook, professors and educators are able to quickly obtain, change, and update material to their students' needs. Through collaborative efforts, such as the Open Textbook Library⁴⁶ and The Orange Grove,⁴⁷ hundreds of eTextbooks are available free of charge. Additionally, states like California,⁴⁸ Florida,⁴⁹ and Washington⁵⁰ have signed legislation creating funding for open-educational resources and promoting the use of open-access textbooks in the classroom. As universities continue to focus on working together to provide ways to reduce the overall cost of attending college, these open-access and open-source eTextbooks will become more prevalent, as will their usage. The result is proprietary publishers will need to combat this by providing better, more functional eTextbooks that can compete with the price-point (or lack thereof) of open-access eTextbooks.

Indeed, publishers need to increase the eTextbook market in order to compete with the increasing commitment and usage of open-access and open-source eTextbooks. Over the next coming years, the quality and quantity of these inexpensive digital textbooks will far outweigh the extreme prices for print textbooks by the proprietary publishing houses. The only way

⁴³ COLLEGE BOARD, TRENDS IN COLLEGE PRICING 2014 12 (2014), *available at* <http://trends.collegeboard.org/college-pricing> (stating that the average budget for textbooks is \$1,225 for a four-year public university).

⁴⁴ See Brodie, *supra* note 18, at 39.

⁴⁵ *Id.* at 40.

⁴⁶ *Open Textbook Library*, <http://open.umn.edu/opentextbooks/> (last visited May 6, 2015). Ten major universities have created an online library of open-access eTextbooks that have been created by professors, with all major subjects, including law, incorporated into the library.

⁴⁷ *Open Textbooks*, THE ORANGE GROVE: FLORIDA'S DIGITAL REPOSITORY, <http://florida.theorange Grove.org/og/access/hierarchy.do?topic=d37c6ed5-3822-84a6-721c-6d9033a88541&page=1> (last visited May 6, 2015). The Orange Grove focuses on open-access textbooks relating to science, technology, engineering, and medicine.

⁴⁸ CAL. EDUC. CODE §§ 66408–09 (WestlawNext, current through 2014 Reg. Sess.) (calling for the creation of a California Digital Open Source Library which will include digital textbooks developed or acquired for fifty strategically chosen lower division undergraduate courses).

⁴⁹ FLA. STAT. § 1004.085 (2014) (promoting professors and universities to develop and consider adoption of open-access textbooks in curriculum).

⁵⁰ WASH. REV. CODE ANN. § 28B.10.590 (2014) (mandating that faculty and staff of all state universities and community colleges consider using the least costly course material, including open-access textbooks if available and comparable in educational content to more expensive alternatives). Since taking effective in 2006, this law has saved students approximately \$5.5 million. Maria Millard, *How Does Your State Use Open Source Educational Resources*, OPENSOURCE.COM (Mar. 16, 2015), <http://opensource.com/education/15/3/open-textbooks-drive-down-cost-of-college>.

publishers will survive within the textbook field is to create eTextbooks that are far less expensive than print alternatives while allowing for increased functionality not available to the open-source, open-access PDF eTextbooks available.

B. State Initiatives Will Increase eTextbook Acceptance

One of the biggest revolutions in the textbook world is already occurring at the elementary school level. While universities and their students have been reluctant to adopt eTextbooks, state educators and legislators have jumped on the digital bandwagon. For instance, starting in the 2014-15 school year in Florida, legislation requires that 50 percent of all K-12 educational funding for instructional materials be spent on digital or electronic instructional materials.⁵¹ Further, Florida now requires all high school students to take one online course in order to receive a diploma.⁵² After the 44,000 students in Collier County School District in Florida adopted Discovery Education's digital Science Techbook in 2011, fifth through eighth graders had major improvements on standardized test scores for the classes that actually implemented the software.⁵³ Perhaps due to these results, Oklahoma's Textbook Committee recently approved this eTextbook alternative for STEM instruction.⁵⁴ Other school districts, like Chicago's Community Unit District 300 had all AP geography and AP economics students use eTextbooks on pre-loaded iPads during the 2013-14 school year, and due to its success, the program was extended to AP biology, AP Spanish, physics, and 11th grade English.⁵⁵ As is probably no surprise, many school districts in the greater Seattle area have gone completely paperless, issuing laptops to each student in the district with the entire curriculum accessible through digital platforms.⁵⁶ Regardless of the state, there are initiatives that are pushing for learning through digital means. While the initial outlay—providing the iPads and laptops for each student—may be expensive, the results appear positive. With positive results, parents, educators, and the state will continue to back these initiatives.

While this is just a small sampling, the reality is that more elementary and high school students are experiencing learning through technology. Often, that technology is in the form of an eTextbook. Whether it is an actual eTextbook, an online tutorial, a digital game created with educational objectives, or simply accessing a website to learn a concept, students will have more experience and comfort learning through digital means. Not only will these students be used to learning through technology, but the expectation will be continued learning through digital means during college and law school experiences.

Additionally, because students will deal with many continued changes in technology, their ability to adapt to new technology and new and updated functionality of eTextbooks will become second nature, furthering the acceptance of eTextbooks in the near future. While digital natives are still making the transition to formalized learning through digital modes, many

⁵¹ FLA. STAT. § 1006.40(3)(a) (2014).

⁵² FLA. STAT. § 1003.4282(4) (2014).

⁵³ Matt Zalaznick, *The E-textbook Transformation*, DIST. ADMIN. (Aug. 2014), <http://www.districtadministration.com/article/e-textbook-transformation>.

⁵⁴ *Science Techbook Has Been Approved by the State of Oklahoma Textbook Committee for the 2014 Science Adoption*, DISCOVERY EDUC., <http://www.discoveryeducation.com/what-we-offer/techbook-digital-textbooks/k-8-science/ok-state-adoption.cfm> (last visited May 6, 2015).

⁵⁵ Zalaznick, *supra* note 53.

⁵⁶ The area just east of Seattle is where Microsoft is headquartered. Thus, besides having the newest technology available, the school districts are also able to spend more per child than in other areas.

elementary and high school students are now being taught primarily through these means. It is only a matter of time before these students are in college and find print textbooks to be foreign. Therefore, these new consumers will demand eTextbooks. Thus, the law of economics dictates that eTextbooks will be supplied!

C. Student Polls Relating to eTextbooks Focus on the Wrong Data

Based on the previous two sections, it would appear that eTextbooks will be a certainty in higher education within the next ten years. But what about current students? Whenever implementation of eTextbooks is brought up, the counterargument is that students either do not purchase or do not like digital textbooks. Indeed, the statistics on students' acceptance of eTextbooks provides mixed results on the likelihood to transition to using digital textbooks with any regularity. However, these polls focus on the wrong data.

These polls and surveys do not shed a good light on eTextbooks. The general consensus is that about 50 percent of students preferred print textbooks while a much smaller percentage preferred using eTextbooks.⁵⁷ It should be noted that in every poll, there are students who do not have a preference. Thus, a print preference of fifty percent is significant. Based on this statistic alone, the conclusion would be that print textbooks have the clear advantage and will be in demand far more than eTextbooks, even in the near future. However, delving a little deeper into these surveys reveals more information that needs to be analyzed before writing off the eTextbook.

First, some of the surveys do not ask whether the person polled has actually used eTextbooks before. Based on the surveys that do ask this, it appears that only one-third to two-thirds of those polled actually have even experimented with eTextbooks.⁵⁸ This results in skewed data where those that have never tried eTextbooks will more likely state that they prefer print textbooks. Thus, some surveys results may be misleading.

Second, when asked for rationale for making preferences, the ease of reading, the inability to highlight, and the inability to take good notes were the most often cited reasons for preferring print.⁵⁹ However, these types of issues can now be rectified using recent improvements in technology, both in terms of the platform that is used to present the eTextbook, and in additional tools and apps. These advances, which will be discussed at length in Part III, are very new, and thus the average student that has been polled may not have been privy to these upgrades. Thus, the main concerns cited in deterring adopting eTextbooks are no longer relevant.

⁵⁷ See, e.g., *Another Study Points to Advantages of Printed Textbooks*, ROUGH TYPE (June 27, 2011, 6:13 PM), <http://www.roughtype.com/?p=1496> (indicating that forty-four percent preferred print textbooks to thirty-five percent preferring eTextbooks during the University of California Libraries e-textbook pilot program); MINN. ST. U. STUDENT ASS'N, TEXTBOOK SURVEY REPORT JULY 2012 12–13 (2012) (survey of 1,231 students at Minnesota State University indicating that only nineteen percent preferred eTextbooks); Teri Tan, *College Students Still Prefer Print Textbooks*, PUBLISHERS WEEKLY (July 8, 2014), <http://www.publishersweekly.com/pw/by-topic/digital/content-and-e-books/article/63225-college-students-prefer-a-mix-of-print-and-digital-textbooks.html> (survey of 527 students at San Jose State University indicate that fifty-seven percent still prefer print textbooks over eTextbooks or a combination thereof).

⁵⁸ See, e.g., Tan, *supra* note 57 (indicating two-thirds have used eTextbooks).

⁵⁹ See, e.g., CARA GIACOMINI ET AL., UW INFO. TECH., EXPLORING ETEXTBOOKS AT THE UNIVERSITY OF WASHINGTON: WHAT WE LEARNED AND WHAT IS NEXT 12 (Aug. 2013) (indicating that during a eTextbook pilot program during 2012 and 2013, undergraduate students found taking notes and highlighting to be far easier and better using print textbooks).

Once these barriers are removed, students will increase their experimentation with and acceptance of eTextbooks.

Finally, these surveys do not focus on the main impediment to using textbooks: cost. With increasing costs of textbooks, an interesting phenomenon has developed. Many students forego buying a textbook at all.⁶⁰ Ironically, a substantial majority of these students even believe their grades will suffer because of not having access to the textbook!⁶¹ Thus, the reason for not buying a textbook is based on financial hardship, and not because of a lack of perceived value. This coincides with the findings of the University of Washington eTextbook pilot program, where students indicated the amount of a discount on an eTextbook is the determining factor of successful implementation on campus.⁶² Because students are at the point of going without a textbook altogether, an eTextbook that is significantly discounted from the print textbook price will look far more attractive given students realize that having a textbook affects their grades and ability to learn. More surveys need to ask more specific questions about cost. By focusing the amount an eTextbook needs to be discounted in order for students to find value,⁶³ future surveys could indicate a more accurate price valuation.

D. Law School Reform is Needed—eCasebooks Can Drive the Change

1. Law Schools in Crisis

The previous sections posit that publishers will continue to move towards an eTextbook platform while open-educational resources are an avenue to significantly reduce the cost of eTextbooks. Additionally, primary and high school students are being indoctrinated with digital textbooks and will expect this type of learning model when they reach college. Moreover, current survey results of college students' preferences towards eTextbooks are not accurate given the recent improvements in technology. The only rationale conclusion is that eTextbooks will become more prevalent and eventually will rival and perhaps surpass the use of print textbooks. If these were not enough reasons for law school faculty to adopt an eCasebook, changes in legal education also require curricular reform. This section will explain how eCasebooks would be the ideal driver for those changes.

In December 2014, the American Bar Association released figures indicating that enrollment is down 27.7 percent since 2010, which was when enrollment was at an all-time high.⁶⁴ Further, first-year enrollment has not been this low since 1973!⁶⁵ This means that there are nearly 15,000 fewer first-year students in law schools around the country this year as opposed to

⁶⁰ *High Prices Prevent College Students from Buying Assigned Textbooks*, STUDENT PIRGS (Aug. 11, 2011), <http://www.studentpirgs.org/news/ap/high-prices-prevent-college-students-buying-assigned-textbooks> (A report based on a survey indicated that nearly seventy percent of 1,905 students from thirteen campuses decided not to buy at least one required textbook due to the cost, but instead to borrow or share a textbook.).

⁶¹ Seventy-eight percent of those surveyed believed that not having a course book would negatively affect their grade. *Id.*

⁶² CARA GIACOMINI ET AL., *supra* note 59, at 17.

⁶³ *See id.* at 18 (indicating that fifty percent or more discount is the point where students believe eTextbooks become a good value).

⁶⁴ Debra Cassens Weis, *1L enrollment drops nearly 30 percent from 2010 high; when were figures last so low?*, A.B.A. J. (Dec. 16, 2014, 10:27 AM), http://www.abajournal.com/news/article/low_1l_enrollment_rivals_year_when_there_were_53_fewer_accredited_schools.

⁶⁵ *Id.*

four years ago.⁶⁶ Even if enrollment increases in 2015, it will not be enough to cover the outgoing 3Ls which comprise much larger class sizes. Thus, law schools are feeling financial constraint, which in turn has resulted in major budget cuts, loss of faculty, and less diverse course selection.

There are multiple causes for this decrease in law student matriculation. First, the cost of a legal education has become an extreme barrier to entry. New textbooks for first year law students cost over \$1,400.⁶⁷ These costs contribute to the average private law school student having over \$125,000 in student loan debt after receiving their J.D., while public law school graduates have over \$75,000.⁶⁸ Given that the after graduation job market has been sluggish for the past few years, it makes sense that fewer potential law students would want to undertake such a massive amount of debt. Luckily, with an increase in the economy since the 2009 recession, combined with fewer law students graduating in the near future, the job prospects should improve again.

Beyond the bloated cost of legal education, the actual education and curriculum is being attacked. One of the greatest criticisms of current law school teaching is that graduates are not practice-ready.⁶⁹ Judges and lawyers often remark that while students might know the law itself, the ability to practice law alludes them.⁷⁰ This makes perfect sense since the creator of the casebook, C.C. Langdell, did not want to create practitioners, but rather thought that law schools should produce law professors.⁷¹ Indeed, for many years, the focus has been on learning the theoretical approach to law. Unfortunately, doctrinal knowledge can only take a law graduate so far. Practical and applied knowledge is vital to being successful once actually in a job. Law schools are finally starting to accept this, and over the past decade, have made great strides in increasing experiential programs that actually require the law student to meet clients and work through legal transactions and the general litigation process.⁷² Despite increasing this practice-based approach, the reality is that mainstream core courses still utilize print casebooks because there is no alternative. While print casebooks are beginning to evolve, many of the additional features of an eCasebook would further assist in continuing to change the pedagogical teaching methods, allowing greater focus towards application. As an added incentive, eCasebooks should be less expensive than print versions; this is especially true if an open-source eCasebook is adopted, where the fee for the eCasebook would be nominal, if anything.

⁶⁶ See *id.*

⁶⁷ This is based on having six substantive subjects (Civil Procedure, Constitutional Law, Contracts, Criminal Law, Property, and Torts), with each related textbook costing an average of \$180. Additionally, this includes each subject having one supplement priced at \$40. Finally, Legal Research & Writing has a dual purpose book that costs \$150. If these are separate courses with separate books, the overall cost would be even greater.

⁶⁸ Debra Cassens Weis, *Average Debt of Private Law School Grads is \$125K; It's Highest at these Five Schools*, A.B.A. J. (Mar. 28, 2012, 10:29 AM), http://www.abajournal.com/news/article/average_debt_load_of_private_law_grads_is_125k_these_five_schools_lead_to_m.

⁶⁹ See ABA, ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2014-2015 303 (2014), available at http://www.americanbar.org/groups/legal_education/resources/standards.html (requiring law students to take one or more experiential courses totaling six credit hours in order to graduate, perhaps in retort to these criticisms).

⁷⁰ See Gregory Silverman, *Law Games: The Importance of Virtual Worlds and Serious Video Games for the Future of Legal Education*, in LEGAL EDUCATION IN A DIGITAL AGE 130, 132 (Edward Rubin ed., 2012).

⁷¹ See James E. Moliterno, *The Future of Legal Education Reform*, 40 PEPP. L. REV. 423, 426 n. 20 (2013).

⁷² See Michael M. Martin & Ian Weinstein, *Harmonizing the Forces Buffeting the Legal Profession*, N.Y. ST. B.J., Sep. 2013, at 58, 60.

2. Using eCasebooks to Consolidate Course Material

One of the great features of an eCasebook is the ability to have all the necessary information in one place. As it currently stands, most casebooks come with at least one if not numerous supplements. Usually the supplements are an update of new case opinions, but sometimes it is also transactional problems, additional commentary, legal stories, and theoretical and practical questions.⁷³ Besides each of these supplements adding additional costs to the law student, they also add thousands of pages, many of which are irrelevant to the particular course and the particular instructor.⁷⁴ Beyond the casebook and its supplements, the subject itself may require even more codes and statutes that are necessary to fully comprehend the opinions that lie therein. For instance, it seems nearly impossible to understand Commercial Papers or Sales without the Uniform Commercial Code. Moreover, to gain a good grasp on Federal Civil Procedure and Evidence, the Federal Rules for both subjects need to be referenced and likely studied at great detail. It is a wonder that law students can carry all these books from class to class!⁷⁵

Instead of having to lug around ten to fifteen books each semester—four to five casebooks and the related supplements, codes, and rules—eCasebooks could greatly reduce the number of books that need to be carried to each class. Instead of a large backpack full of books, a student would only need to bring the preferred eCasebook reading device and something for note-taking. For many that would be a laptop, but iPads would also work well. Additionally, all the required books for a class could be integrated into one eCasebook.⁷⁶ Because eCasebooks are highly customizable, a professor could cherry-pick the most relevant information for each individual course, thereby eliminating the hundreds of additional pages that will not be covered.

In any event, all the material will be available in one eCasebook, as opposed to three or four different books in print. This would also lead to a convenient learning alternative that could be accessible at anytime, anywhere by students. While it is very easy to spread out multiple books in an open library setting, the same cannot be said about a bus ride to and from school or even in large first-year classes with limited table space. Ultimately, the integration of the supplemental materials into one eCasebook would allow students to easily access all class materials wherever they have an e-reading device handy. Overall, this should increase student study and learning opportunities.

3. eCasebooks Aid in Developing Practice-Ready Students

One of the best features of using an eCasebook is the ability to integrate material that promotes learning the actual practice of law. For instance, while many Contracts casebooks include portions of a modern contract, few actually include an entire contract.⁷⁷ While some

⁷³ Ronald K. L. Collins & David M. Skover, *The Digital Path of the Law*, in LEGAL EDUCATION IN A DIGITAL AGE 13, 13–14 (Edward Rubin ed., 2012).

⁷⁴ *See id.* at 13.

⁷⁵ With the average casebook weighing four pounds and the average supplement weighing one to two pounds, a student who has five courses has over thirty pounds of textbooks to carry throughout the semester! *See* Eugene Volokh, *Foreword: The Future of Books Related to the Law*, 108 MICH. L. REV. 823, 825 (2010).

⁷⁶ Professors could even reduce course reserves to one eCasebook with all integrated additional reading materials.

⁷⁷ Lawrence A. Cunningham, *Digital Evolution in Law School Course Books: Tradeoffs, Opportunities, and Vigilance*, in LEGAL EDUCATION IN A DIGITAL AGE 81, 95 (Edward Rubin ed. 2012).

casebooks do offer this, the casebooks are limited in physical size.⁷⁸ Since many Contracts casebooks are over one thousand pages, and this is after being heavily edited, publishers do not want to add contract examples, form contracts, and the like because this increases the printing costs. However, this problem is eliminated when using an eCasebook. The page limit is no longer a factor because there are neither print costs to contend with nor students complaining of additional paper weight to carry.

Additionally, the interactive potential allows for a better learning experience that will develop the skills necessary for practicing law. For example, the class may be provided a draft of a contract and have five minutes to find the three major errors. By doing this using the eCasebook, students would be able to interact by instantly sharing their findings with everyone in the class. Thus, the professor could easily assess if the class is able to apply the principles learned for that lesson to an actual contract. If a large percentage of a class missed a particular error, the professor can review the principles pertaining to that issue. Overall, this method of actually integrating real-life examples and using them to engage the students with transactional application would be an invaluable improvement over the few methods employed with current print casebooks.

Electronic casebooks would also be useful for providing context to cases. Often, casebooks provide severely abridged cases that often lack the context needed to fully understand the opinion.⁷⁹ Having the complete opinion might be beneficial, as would having easy access to all the relevant laws and statutes used by the court for analysis. Further, it is often necessary to understand the social, cultural, legal, and economic context in which an opinion occurs in order to understand why the case was decided a particular way. In general, students who appreciate that every fact and law relating to a case, along with the outside influences, may be important considerations when building arguments will be more thorough and successful when practicing law. Despite this being true, the casebook itself seems to inherently teach the opposite to students.

This can be rectified through the use of eCasebooks. Again, there are no length restrictions with an eCasebook. If a professor would like to include a seventy page opinion, they may do so. More likely included within an eCasebook would be a multitude of hyperlinks to allow a student to fully dissect a case. Easy inclusions would be links to all the relevant laws. Simply clicking a link would take a student to the appropriate WestlawNext or Lexis Advance annotated code. Additional links will lead students to websites and videos that provide insight into the worldly context when a case was taking place. For instance, when reading about the Voting Rights Act,⁸⁰ there could be links to the video footage of the “Bloody Sunday” attack as demonstrators attempted to cross the Selma, Alabama bridge. By reminding students of the many factors that go into deciding a case or creating legislation, eCasebooks would assist students in considering all the variables when creating arguments and advocating for their clients. Further, longer case opinions and extraneous materials will help students to discern the important facts and relevant laws from those that are irrelevant. Currently, the heavily edited casebooks lead to law students being spoon-fed the most relevant material, thereby removing the need for deep analysis; eCasebooks is an elegant solution to this issue.

Finally, eCasebooks can promote the use of state-specific materials that are often overlooked or dealt with in an ad-hoc basis. Casebooks are generally geared towards a national

⁷⁸ *Id.*

⁷⁹ *See id.* at 96.

⁸⁰ 52 U.S.C. § 10101 (2012).

audience. Even though there are multiple Torts casebooks, nearly all of them will have the major seminal cases, such as *Palsgraf*⁸¹ and *Carroll Towing*,⁸² with each case standing for a general principle in the field. Unfortunately, many cases no longer represent good law while other cases provide currently enforced law, but not in the jurisdiction in which the course is being taught. For this reason, students might learn the majority view, but often do not understand the law as it applies to the state where they are likely to practice. eCasebooks would again be able to solve this issue because law professors could choose cases which accurately reflect jurisdictional state law. Additionally, links to relevant state statutes would be able to be added. Furthermore, publishers would begin to tailor eCasebooks to specific jurisdictions as similar requests for material were incorporated by each state's legal educators. Ultimately, this would lead to a denationalized system of learning that would focus less on theory, and more on being able to successfully practice in a given location.

4. eCasebooks May Reduce Students' Legal Education Costs in the Future

One of the most contentious issues within the eCasebook market will be whether there will be savings for law students. Currently, the answer appears to be no. As of April 2015, there are not that many legal casebooks that are available in electronic form. However, they vary as to whether savings are passed along to students. For instance, Professor Randy Barnett's *Contracts: Cases and Doctrine* (5th ed. 2012) is currently selling on Amazon for \$176.53 in digital form, but only costs \$185.82 in print.⁸³ By purchasing this book in print, a law student will initially spend \$9.29 more than buying the digital version, but should easily recoup that investment through reselling the book after the semester unless a new edition is quickly published. Additionally, if a purchaser spends \$2.99 more than the print price, they will also be provided with the eCasebook edition.⁸⁴ Similar price points and arbitrary eCasebook discounts can be found by searching the Amazon eTextbook website for any major legal subject area offered as an Aspen Casebook, published by Wolters Kluwer.⁸⁵

Nevertheless, buying some textbooks directly from Lexis and Wolters Kluwer lead to greater savings. For instance, Lexis offers Professors Aman & O'Byrne's *Administrative Law and Process* (3d ed. 2014) is available for \$109.99 in epub format while the print copy is \$182.⁸⁶ This forty percent discount appears to be fairly standard for most eCasebooks on Lexis, and some of can be found on Amazon with similar discounts. Wolters Kluwer offers its Connected Casebooks for a 20-25 percent discount off the standard print price.⁸⁷ This price includes lifetime access to the eCasebook in addition to print edition that is rented to the student for the semester.

⁸¹ *Palsgraf v. Long Island R.R. Co.*, 248 N.Y. 339, 344, 162 N.E. 99, 100 (1928).

⁸² *United States v. Carroll Towing Co.*, 159 F.2d 169 (2d Cir. 1947).

⁸³ *Contracts: Cases and Doctrine, Fifth Edition (Aspen Casebooks)*, http://www.amazon.com/Contracts-Cases-Doctrine-Fifth-Casebooks-ebook/dp/B00AAIV6FA/ref=sr_1_2?s=digital-text&ie=UTF8&qid=1427654807&sr=1-2&keywords=contracts (last visited May 6, 2015).

⁸⁴ *Id.*

⁸⁵ On Amazon's eTextbook website, <http://www.amazon.com/Kindle-eTextbooks/b?node=2223210011> (last visited May 6, 2015), I searched for Contracts, Torts, Constitutional Law, Criminal Law, and Civil Procedure, and all major casebooks had nominal savings, which I have defined as less than 10 percent.

⁸⁶ *LexisNexis Store*, <http://www.lexisnexis.com/store/catalog/booktemplate/productdetail.jsp?pageName=relatedProducts&prodId=prod12750449> (last visited May 6, 2015).

⁸⁷ *Connected Casebooks*, WOLTERS KLUWER, <http://www.barristerbooks.com/wk> (last visited May 6, 2015).

As was explained in the survey section,⁸⁸ the tipping point for students to believe that eTextbooks are a good value appear to be around a fifty percent discount from the print version. This makes sense considering that students have the ability to resell print versions, thus lowering the actual cost of the print textbook. As it currently stands, the price discount for eCasebooks will neither entice law students to experiment with an eCasebook nor will it save students money.

However, eCasebooks developed as open-source, open-access projects could save law students hundreds of dollars. For instance, eLangdell⁸⁹ is an open-access electronic casebook project created by the Center for Computer-Assisted Legal Instruction in 2010. Currently, it boasts forty-four freely accessible and adaptable eLangdell books, some of which are eCasebooks. Many of the books offered are supplements, such as the Federal Rules of Evidence for 2015, but others, such as *Land Use*, authored by Professor Christian Turner, act as a comprehensive eCasebook which can be directly used in a classroom. Whether a supplement or complete eCasebook, the cost remains the same: entirely free! Anyone can simply download the books directly to a laptop in PDF or Microsoft Word format, or the books are also available via e-readers, such as iPad, Nook, and Kindle. While this seems ideal for students, the reality is that currently there are too few eCasebooks to truly immerse law students in the digital format. However, as the costs of casebooks continue to rise and legal education reform continues to occur, eCasebooks created in an open-source model will continue to be developed at an increasing rate. With time, law students will have more low cost alternatives through these types of eCasebooks.

This section has indicated that law schools remain in crisis, but eCasebooks are one mechanism that can drive change in legal education. Not only will eCasebooks facilitate practice-ready professionals, but ideally will do so as a low-cost alternative. This is particularly true if law schools incentivize faculty to create open-source eCasebooks. Of course, this all moot if law students are unwilling to actually accept eCasebooks. The following section will focus on the technology improvements that make acceptance and preference more likely.

III. Improvements in Technology Will Draw Law Students to eCasebooks

Technology has vastly improved over the past few years. Amazon introduced the Kindle in 2007, and less than five years ago the first iPad was available to the public. Nevertheless, now eBooks have become second nature to a large minority of the population, and this number keeps growing. However, the eTextbook scene has not increased at the same rate. As stated in Part II, this is primarily because the technology and means of providing eTextbooks were not tailored to students' learning needs. This section specifically focuses on the needs of law students when learning, and how the tools available for students' use of eCasebooks now solve many of these issues. This section will also discuss some improvements that still need to occur before widespread adoption of eCasebooks is a reality.

A. Complaints About eTextbooks Now Mitigated by Technological Improvements

Law students are unique learners. Perhaps more than any other discipline, someone learning the law needs to be able to read and synthesize information into their own words. Why is this so important? Although some schools are beginning to change the requirements, the great

⁸⁸ See *supra* Part II.C.

⁸⁹ *eLangdell*, <http://www.cali.org/elangdell/about> (last visited May 6, 2015).

majority of law schools still employ a gruesome gauntlet that every law student must pass in order to graduate: the first-year of law school final semester exams. As opposed to many graduate level courses that have multiple assignments due throughout the quarter, group projects, participation points, and often a final paper that is worth twenty to forty percent of a the total grade, first-year exams in law school often represent 100 percent of the grade!⁹⁰ Even in law courses with assignments,⁹¹ the final exam still represents over half of the basis for a grade. What is even more disconcerting is that the grades from the first semester of law school are often determinative of the quality of summer internship that a student may be able to secure. Thus, doing well in the first-year of law school is extremely important, and receiving good grades is often tied to the ability to read and analyze well, synthesize large amounts of information, take notes, and create organized outlines that may be used to study and taken into open book exams.

1. Highlighting

Unsurprisingly, the most common complaint about eTextbooks in general is that they do not offer easy ways to take notes. Note-taking involves highlighting and annotating. Highlighting in books is an extremely easy and visceral process. The user picks up a highlighter and simply highlights the words that are important for the purpose at hand. For law students, highlighting may consist of pointing out important facts of a case, the court's holding and rationale, the procedural posture, and the winning and losing arguments. While each student has their own style, many students use multiple highlighters for each of these sections of the case. Even if using multiple highlighters, a student only needs to pick up the highlighter of choice and start marking up the opinion.

Unfortunately, highlighting has not translated seamlessly to eTextbooks. For instance, many Kindle versions require that a user move to the desired location of the beginning of the highlight through multiple clicks of buttons.⁹² Many of the digital rights management (DRM) platforms also require multiple mouse or button clicks in order to simply highlight a paragraph. Historically, this has further been complicated because the only option for highlighting has been one color (yellow) or monochrome for the older Kindles. It is no wonder that highlighting a digital textbook has been seen as a difficult venture until recently!

Nevertheless, highlighting has become much easier recently. For example, users of the Kindle Fire and the iPad—both of which have touch functionality—can simply touch the screen and move up or downward with their finger or stylus to cover all the words they want to highlight. No longer are there multiple clicks involved in highlighting a passage. Further, with one additional click, the highlighter can change colors. The Kindle platform allows for up to four different colors, while iBooks has five different colors. Within iBooks, it is also possible to switch to underlining, as opposed to direct highlighting. Additionally, highlighting and note-taking apps can further add functionality by allowing custom-made colors, thus creating an

⁹⁰ In contrast to the author's first-year of law school which included eight exams that were worth 100 percent of the final grade, only one of the seven graded classes in the author's MLIS program even had a final exam. That exam was only worth fourteen percent of the final grade! In addition, only one final paper was worth more than thirty percent of the final grade (thirty-five percent).

⁹¹ Legal Research and Writing are outliers here, as both often have much greater weight placed on papers and homework assignments.

⁹² See Volokh, *supra* note 75, at 827.

unlimited assortment of colors that should fit every user's needs.⁹³ Working from a Mac or a PC, the process is still pretty seamless, but does require an additional mouse click to indicate that the user action was meant to be a highlight and not a bookmark, search, or note. Even so, the process is greatly improved and more versatile than the clunky mechanisms found in older models and DRM platforms.

Now the act of highlighting also has additional value not possible in print textbooks. For instance, Kindle users can look up all of their highlights and notes through a tab bar or through the Kindle website. From the Kindle website, all highlights and notes can be copied to another program, such as Evernote or Microsoft OneNote. For iPad users, all highlights and notes are easily searchable in one location, and can be sent to email. This exportability makes highlighting more useful than in print books because it allows students to resynthesize highlights into a useful manner not previously possible through print.

Overall, highlighting with newer technology, such as Kindle Fire and the iPad, is an extremely easy and intuitive process. Law students who use multiple highlighters will feel that the tactile motion is at least equivalent to using actual highlighters. While the process is slightly more complex on a laptop (one additional click), the ability to export all highlights will make eCasebooks a better tool for beginning outlines and helping to focus note-taking on synthesis and not simply regurgitation of highlights. Further, for law students who learn better through multiple readings of important material, the ability to extract good, concise highlighting from an eCasebook will be a greater benefit than having to skim through print materials for the pertinent information. Additionally, because both Kindle and iBooks are based on cloud technology, law students will have a seamless experience of using multiple devices to truly have access on the go, which should improve studying highlighted material. Therefore, highlighting is no longer an issue for eCasebook acceptance as technology has improved to a point of making highlighting features a benefit and not a deterrence to using eCasebooks.

2. Annotating

Along with highlighting, students who have used eTextbooks have stated that the ability to take notes is unwieldy and difficult. As stated earlier, law students have unique needs when it comes to note-taking and creating outlines. Indeed, the main problem with note-taking is the DRM platforms are not usually conducive to creating extensive notes nor of organizing those notes. This is a greater problem than highlighting because highlights in a print textbook have never been organized, they simply exist. However, creating and organizing notes is essential to synthesizing information and actually learning the material.

Ironically, the actual software within the DRM platforms (Kindle, iBooks, and Adobe Digital Editions) has not improved much in the last few years. On the one hand, the Kindle Fire and iPad boast touch screen technology that has allowed users to pin-point where a note should be added, which is a significant improvement over older e-reader platforms. Additionally, some Adobe Digital Edition eCasebooks allow a limited amount of copying, so passages can be lifted directly into a word document or note app. Even so, for all three platforms, the notes cannot be rearranged or organized in any manner. Instead, they can only be viewed through a tab that disjointedly provides the page number and location before each note. Certainly, this would be a poor choice for creating an outline. Even worse, Adobe Digital Editions does not have an easy

⁹³ See, e.g., *iAnnotate PDF*, <https://itunes.apple.com/us/app/iannotate-pdf/id363998953?mt=8> (last visited May 6, 2015).

way to export notes as the information is stored as XML coding. Thus, it would appear that note-taking is extremely limited.

Fortunately, there are ways around these limitations. There are multiple note-taking apps and programs that are great for taking notes and outlining. For example, while Microsoft OneNote have been around for many years on the iPad, the Kindle Fire has only just fully integrated its use within the past year,⁹⁴ so students now have greater functionality in creating outlines and deep levels of organizational note-taking. Additionally, Evernote is available through Kindle Fire, iPad, Mac, and PC.

Still, the biggest limitation to the DRM materials is that moving from one app to another on a Kindle Fire, iPad, or iPhone has traditionally been a laborious process. For the Kindle Fire, switching between apps involves swiping down from the top of the screen, then picking the desired app to open. The iPad and iPhone involve clicking twice on the home button, then swiping through the various apps to find the app needed. This process is not seamless, takes much more time than using a taskbar on a laptop, and creates disconnect from reading materials to the writing of notes. However, this can now be solved with the Kindle Fire through the purchase of an app that creates a taskbar, such as the Smart Taskbar V2.⁹⁵ This taskbar app allows users to have one click switching between DRM material like the Kindle reader and note-taking apps like Evernote and Microsoft OneNote. This recreates the laptop multitasking that is necessary for in-depth outlining. While the iPad does not currently have a similar app with positive reviews, it is posited that the iOS 9 software that is expected to come out by the end of 2015 will include true multitasking and possibly even split-screen technology.⁹⁶ This is now a much stronger possibility because Microsoft recently launched the Surface 3, a hybrid laptop-tablet for \$499 which has true multitasking, and will directly compete with the iPad.⁹⁷ The reality is that switching between the DRM platform and note-taking programs will be seamless and no longer make the process onerous, unwieldy, and unused.

Beyond this, at least one DRM program is being created specifically for the needs of law students in mind. Within the past year, Wolters Kluwer created Connected Casebooks, which is an eCasebook platform designed for law students' outlining needs.⁹⁸ Not only does the Connected Casebook allow for highlighting in up to six colors and creating notes directly in the e-reader, but it also imports those highlights and notes into an outline apparatus which can be edited and exported into Microsoft Word and printed as desired.⁹⁹ This is a monumental step forward, as it actually allows for the automatic creation of an outline through the process of highlighting and "writing" in the margins. Law students can now begin outlining by making

⁹⁴ OneNote Team, *OneNote Available for Kindle Fire and Fire Phone*, OFFICE BLOGS (July 24, 2014), <http://blogs.office.com/2014/07/24/onenote-available-for-kindle-fire-and-fire-phone/>.

⁹⁵ *Smart Taskbar V2*, <http://www.amazon.com/Kiumiu-ca-Smart-Taskbar-V2/dp/B00ES78ROC> (last visited May 6, 2015).

⁹⁶ See, e.g., David Price, *iOS 9 Release Date Rumours: iOS 9's 'Huge' Amount of Speed Tweaks, and Apple's Patent for Revealing Contacts' Availability Status*, MACWORLD (Apr. 17, 2015), <http://www.macworld.co.uk/feature/iosapps/ios-9-new-release-date-rumours-features-wishlist-iphone-ipad-3585031/> (indicating split-screen technology is a possibility); Matt Swider & James Rogerson, *iOS 9 Release Date, Features and Rumors*, TECH RADAR (Apr. 14, 2015), <http://www.techradar.com/us/news/software/operating-systems/ios-9-what-we-want-to-see-1253732/2> (stating that multitasking is on many users' wish lists).

⁹⁷ Richard Devine, *Considering the Price Point of the Microsoft Surface 3*, WINDOWS CENT. (Mar. 31, 2015, 6:44 PM EST), <http://www.windowscentral.com/considering-price-point-microsoft-surface-3>.

⁹⁸ *Master the Law with the Connected Casebook*, WOLTERS KLUWER, <https://www.casebookconnect.com/learnmore> (last visited May 6, 2015).

⁹⁹ *Id.*

highlights and notes within the e-reader, then export those notes into MS Word for further editing and additions, then print this outline for studying and exam purposes. With this type of program, eCasebooks are far more versatile than print books regarding organization and synthesis because the highlights and notes in print need to be referenced again and rewritten for the creation of an outline. Certainly, a student using the Connected Casebook could reference and rewrite if that is their studying technique, but for others, the time spent rewriting can now be spent on further synthesis, memorization, and application through study aids. This technological improvement in outlining and note-taking will greatly increase the acceptance of eCasebooks, as it not only eliminates the previous complaints about note-taking, but also increases the ability to learn and organize that is simply not available through the use of print textbooks.

3. “Feeling” Like a Print Textbook

The final issue that is often cited for lack of acceptance of an eTextbook is that digital textbooks do not “feel” like print textbooks. This can be attributed to either eye fatigue from looking at screens, the inability to actually write in the margins, and the difficulty in flipping through digital textbook pages. However, new technology does help with some of these issues.

Eye fatigue and eye strain often result from reading on a computer screen, LCD screen, or e-readers for any significant length of time.¹⁰⁰ Low resolution and glare from the screens are factors that impact reading through digital mediums.¹⁰¹ Fortunately, there have been some improvements in this area over the past few years. The Kindle Paperwhite¹⁰² was created specifically with a front-lit e-Ink screen so that light would not shine in the user’s eyes like LCD screens. Additionally, the iPad Air 2 was created with special anti-reflective coating which reduces glare up to 3 times as much as the typical tablet, and resolution is now extremely crisp, thereby eliminating flicker and making words easier to read.¹⁰³

Even with these advances there are still problems. For instance, the Paperwhite truly provides reading similar to print, but users are relegated to the Kindle note-taking and highlighting framework as this device does not have the ability to download additional apps like the Kindle Fire and iPad. In contrast, the iPad does have these abilities, but it also is an LCD screen that is backlit, which means that no matter how superb the anti-reflective coating and resolution, there will still be some eye fatigue. Ultimately, this is the one area where technology has improved greatly, but there are still limitations that will keep some law students from acceptance. Nevertheless, as technology continues to improve, the eye fatigue issue will become less of a problem. Also, it is important to remember that using extensive reading, often due to complex, lengthy, and poorly edited cases results in eye fatigue when using print books as well; it simply is not as dramatic.

¹⁰⁰ See, e.g., Mark Rosenfield, *Computer Vision Syndrome: A Review of Ocular Causes and Potential Treatments*, 31 *OPHTHALMIC PHYSIOL. OPTICS* 502, 502–03 (2011); Jill U. Adams, *How Bad for Your Eyes Are Computer Screens?*, WASH. POST (Jan. 20, 2014), http://www.washingtonpost.com/national/health-science/how-bad-for-your-eyes-are-computer-screens/2014/01/17/985b90cc-7c98-11e3-93c1-0e888170b723_story.html.

¹⁰¹ Debra Moss Curtis & Judith R. Karp, *In a Case, on the Screen, Do They Remember What They’ve Seen? Critical Electronic Reading in the Law Classroom*, 30 *HAMLIN L. REV.* 247, 253 (2007).

¹⁰² *Kindle Paperwhite, 6" High Resolution Display with Next-Gen Built-in Light, Wi-Fi - Includes Special Offers*, <http://www.amazon.com/Kindle-Paperwhite-E-reader/dp/B00AWH595M> (last visited May 6, 2015).

¹⁰³ See Dr. Raymond M. Soneira, *iPad 2014 Display Technology Shoot-Out*, DISPLAYMATE, http://www.displaymate.com/iPad6_ShootOut.htm (last visited May 6, 2015) (study indicating that the iPad Air 2 is the best tablet for reduction of reflection).

While eye fatigue will remain an issue with law students using digital casebooks, amazing strides have been made to make eCasebooks more like print books. First, when using open-source, open-access eCasebooks, there is now the ability to actually handwrite information directly into the digital materials! With apps like iAnnotate PDF¹⁰⁴, Notability,¹⁰⁵ and ezPDF Reader,¹⁰⁶ any iOS, Android, or Kindle Fire product can be used to actually annotate PDFs directly. For instance, iAnnotate PDF allows the user to use a stylus or finger to draw or handwrite directly onto a PDF, including in the margins. Previously, most DRM platforms allowed notes to be added, but these were more like textboxes that had to be opened once on the desired page in order to be read. This new ability truly increases the feel of an eCasebook as it leaves the markings and handwriting as the user created them, without collapsing them into a tab or square that had to be opened. Further, some of these apps also allow for handwriting recognition so that a student may handwrite notes, then transfer the notes to text which can be exported for outline purposes.

Secondly, the iBooks app and many of these PDF apps also allow for browsing of the pages. Usually this is accomplished by providing thumbnails of each page which can be quickly scrolled through and selected. Besides increasing ease of use, this feature mimics rifling through a print book when trying to find material. This is large technological leap from having to move slowly page by page to get to information. This is particularly important for law students as they are often jumping from one page to another to get information. With these great innovations, the rationale for using print is weakened. Combined with the new highlighting and note features, eCasebooks will be embraced by law students who can quickly organize and edit outlines in a fluid process not afforded to students who use print casebooks alone.

B. eCasebook Technology Also Enhances Law Students' Learning Process

Beyond the many improvements in technology which will influence law students' acceptance and preference towards a digital platform, there are also added features which make eCasebooks more desirable. First, the ability to search through an eCasebook is much easier than searching a print casebook. For instance, if the professor wants users to go to a particular page, a print user will have to rifle through the book to find the correct page, but an eCasebook user can simply input the page number into the e-reader and automatically be transported to that page. Far more important, if law student wants to find a particular word, phrase, statute, code, or citation within the casebook, an eCasebook user would merely need to type in the relevant term and be instantly given each instance of the term for easy viewing. By combining this search feature with bookmarks, it will be extremely easy to switch between multiple pages within the same eCasebook.

However, the print casebook user does not have this additional searching ability, and would be required to have additional cues, such as highlighting and notes—both available in digital format as well—to find instances of the desired terms. Additionally, if there are more than a few pages that need to be flipped between, the print user would need multiple colored tabs,

¹⁰⁴ *iAnnotate PDF*, <https://itunes.apple.com/us/app/iannotate-pdf/id363998953?mt=8> (last visited May 6, 2015).

¹⁰⁵ *Notability*, <http://www.gingerlabs.com/> (last visited May 6, 2015).

¹⁰⁶ *ezPDF Reader PDF Annotate Form*, http://www.amazon.com/Unidocs-Inc-ezPDF-Reader/dp/B004R13U6Y/ref=pd_sim_mas_1 (last visited May 6, 2015).

which can get unwieldy.¹⁰⁷ Because law professors are constantly referring to multiple cases, new terms, and important statutes, the eCasebooks searching and bookmarking abilities allow for easy access and reference that is not readily available and functional in print.

Second, some eCasebooks have integration of video and audio. For instance, the Connected Casebook series helps to explain complex ideas, such as the Rule Against Perpetuities, through an additional video tutorial. Additionally, open-access eCasebooks may have links to CALI lessons so that students can receive additional instruction if needed or desired. Moreover, eCasebooks can have additional access to interactive quizzes, tests, flashcards, and exercises, all of which would provide feedback to law students. As this is the method that is used by Barbri, Kaplan, and Themis for reviewing for bar exams, this method has proven to be effective in assisting law students in learning the law. Law students can now use eCasebooks as means to increase understanding similar to reviewing for bar exams. Finally, some eCasebooks may offer a way for law students to listen to materials in audio form as opposed to having to read the print casebook. This is particularly important for commuters who would be able to listen to the material on the way to and from school.

These additional digital features will decrease the time it takes to navigate a casebook, thereby increasing the time available to actually learn material. Further, additional activities, instructional videos, checkpoints for understanding, and exercises will give law students the ability to further absorb and apply the knowledge they are learning. Again, due to the intense exams law students are required to pass, these additional tools will be a great benefit to solidify information in a meaningful and long-term capacity. Therefore, law students will eventually embrace this learning mechanism and decrease sole use of print casebooks.

C. Improvements Still Needed for Complete eCasebook Acceptance

Despite the many innovations in eCasebook platforms and additional features that augment learning by law students, there are still a few issues that need to be resolved before there is widespread acceptance of eCasebooks. First, it is not easy to move between two eCasebooks on either the Kindle Fire or the iPad. For the Kindle, four clicks are needed to get from one eCasebook to another. For the iPad, three clicks are needed. While this is not a significant concern when only one casebook is being used in a class, it becomes troublesome when there are supplements involved. In this circumstance, there is a high inconvenience compared to print counterparts where a casebook and a supplement can be opened at the same time in front of the user. Because these supplements are often integral to analysis and understanding, it is important for law students to have quick availability to both. If the process to get from one to the other is laborious, then there is disconnect with the learning process which results in dissatisfaction with the digital medium.

There are three possible a few ways to solve this issue, but some involve further innovations with the e-reader and tablet book apps. The simplest solution is to have open-access eCasebooks because these would allow for multiple PDFs to be open simultaneously. This method is best achieved on a laptop or hybrid tablet where there is a taskbar for easy switching.

¹⁰⁷ During a first-year Civil Procedure course, the author tabbed every rule referenced by the professor as the open book final was completely based off applying the rules. Halfway through the semester, there were so many tabs that the author gravitated towards the most used tabs as a starting point. Then, the author would browse nearby pages to find the correct rule as this was quicker than finding the proper tab. For the final, many of the tabs were actually removed for ease of use.

A second approach is for the iBook or Kindle apps to either have their own taskbar for quick switching or for the app itself to be open and running multiple times, thereby allowing quick access to multiple eCasebooks simultaneously. With improvements in multitasking,¹⁰⁸ this would be ideal for accessing eCasebooks by tablet and phone. Additionally, with split screen technology, it would be possible to actually look at both eCasebooks at the same time, which would be very similar to print materials open on a desk. Another option is to have multiple devices (e.g., a laptop, iPad, and smartphone) available, each with a different eCasebook open. For instance, the Kindle for laptop can have a Sales eCasebook while the Kindle for iPad has the Uniform Commercial Code (UCC) accessed during class. A final option is for eCasebook platforms to allow for materials from two books to be merged into one file that is run simultaneously. In the above example, the Sales eCasebook and UCC supplement would be merged so that searching and bookmarking will be based on the merged version.

A second issue specific to law students is having multiple pages of an eCasebook open at one time. Due to the nature of law, having a code section and an opinion available simultaneously is advantageous for understanding the reasoning of a court. Additionally, applying the law to an exercise or problem is much easier when both the facts and documents of an exercise are available with easy reference to the relevant law. While this is not something that can be completed in print, this is an easy implementation that could help propel the digital platform ahead of print. As stated above, this could be accomplished with multiple devices having the same eCasebook, but with different pages open, or via the eCasebook platform allowing the same eCasebook to be open multiple times simultaneously on one device. Currently, only the former option is available, but this would require law students to have two applicable devices.

This section has indicated the three main concerns which most students state as the reason for preferring print (i.e., highlighting, annotating, and “feeling” like a book) have been sufficiently overcome by new technology. Due to the increased attempt to cater specifically to law students, the gap between students who prefer print casebooks and those that prefer eCasebooks should close over the next few years. However, this closure will only come to fruition if the casebooks used in the law school courses have an eCasebook alternative.

IV. Implementation of eCasebooks: Making the Transition a Reality

The previous sections indicate that eTextbooks and eCasebooks will increase in usage and acceptance over the next coming years. The final step is explaining how this implementation can occur. This section covers options that are already available, as well as a discussion of open-access eCasebooks. Finally, the role of the law library in this new digital medium will be explained.

A. Proprietary eCasebook Platforms

From a proprietary standpoint, the main eCasebook offerings are from LexisNexis, Wolters Kluwer, Carolina Academic Press, and West Academic.¹⁰⁹ LexisNexis offers a multitude

¹⁰⁸ See *supra* Part III.A.2.

¹⁰⁹ See Lydia Pallas Loren, *The Viability of the \$30 Casebook: Intellectual Property, Voluntary Payment, Open Distribution, and Author Incentives*, 22 J. INTELL. PROP. L. 71, 80–83 (2014) (providing additional coverage of these eCasebook publishing options).

of law eBooks as well as some eCasebooks. While there is a good selection, one of the main downfalls is that it relies on Adobe Digital Editions for use with PC laptops.¹¹⁰ Adobe Digital Editions has one of the worst configurations for note-taking, as there is no easy way to export notes outside of the platform. However, it does allow minimal copying and printing of pages (10 at a time),¹¹¹ of which other platforms, such as Kindle and iBooks, do not allow. Additionally, if using an iOS system, Android, or Kindle, both the Kindle app and iBooks may be used, which allow for exporting of notes. Further, all available eCasebooks have been marked down to about sixty percent of the print counterpart. While this is still less than ideal, it is approaching the point where students believe the digital version of the book is a true value.

In contrast, the many Wolters Kluwer casebooks are available in electronic format via the Kindle reader application, but are not available in epub format. A unique aspect is that many of these eCasebooks are exact copies of the print version. While this does not provide additional features often available through the digital medium, it does guarantee that important appendices, images, and graphs appear just as they would in print. But as stated previously,¹¹² Wolters Kluwer provides only minimal discounts to electronic counterparts, so it is difficult to see law students resort to them if they have not experimented with digital learning previously.

Of course, Wolters Kluwer has also come out with the Connected Casebook series which offers the best DRM-restricted platform to learn for law students. As has already been explained,¹¹³ this platform provides rich outlining tools that are exportable and printable. Further, this eCasebook integrates Aspen Publishing study aids into the digital platform, including selections from *Examples & Explanations*, *Emanuel CrunchTime*, *Law in a Flash*, and *Glannon Guides*.¹¹⁴ While these are not the complete versions of these study aids, they do represent additional content to master learning. Moreover, these eCasebooks have lifetime access at a 20-25 percent discount from the print price, but also come with a print rental for the semester. This appears to be a reasonable way to entice law students to try digital learning while still providing a print alternative if the student wants to revert back to using paper only or at least some of the time. While this appears to be the best eCasebook platform that is not DRM-free, currently there are only eleven books offered.¹¹⁵ The titles and selections need to increase to make this a more feasible option for widespread adoption by law professors.

Carolina Academic Press offers few eCasebooks, and it appears that the format available varies considerably. For instance, *Civil Claim Settlement Laws: An Electronic Casebook* by Professor Jeffrey Parness is available via Kindle or as a direct PDF download.¹¹⁶ Although the pages are digitally watermarked and the content of the PDF cannot be modified or redistributed,¹¹⁷ these types of PDFs may be imported into note-taking apps, much like open-source eCasebooks. It should be noted that the terms of use do not indicate if the material may be printed, but there do not appear to be any restrictions on the PDF which prevent printing. Other

¹¹⁰ *Frequently Asked Questions*, <http://www.lexisnexis.com/ebooks/questions/> (last visited May 6, 2015).

¹¹¹ *Id.*

¹¹² *See supra* Part II.C.4.

¹¹³ *See supra* Part III.A.2.

¹¹⁴ *Master the Law with the Connected Casebook*, WOLTERS KLUWER, <https://www.casebookconnect.com/learnmore> (last visited May 6, 2015).

¹¹⁵ *Connected Casebooks*, WOLTERS KLUWER, <http://www.barristerbooks.com/wk> (last visited May 6, 2015).

¹¹⁶ *Civil Claim Settlement Laws: An Electronic Casebook*, CAROLINA ACAD. PRESS, <http://www.cap-press.com/books/isbn/9781594607783/Civil-Claim-Settlement-Laws> (last visited May 6, 2015).

¹¹⁷ *Conditions of Use*, CAROLINA ACAD. PRESS, <http://www.cap-press.com/osc/catalog/conditions.php> (last visited May 6, 2015).

books, such as *Contracts, an Electronic Text: Cases, Text and Problems* (2014 ed.) by Professor Charles Calleros and Judge Stephen Gerst, are available in PDF, epub (iOS), and mobi (Kindle) versions.¹¹⁸ Furthermore, for five dollars more, the user can obtain all three types of downloads. Overall, many titles are still not available in an eCasebook format, but the cost of both print and electronic materials tends to be rather reasonable, which is a welcome change from other publishers.

Finally, West Academic provides the Interactive Casebook Series and a Study Aid subscription service. The Interactive Casebook Series is a collection of 30 eCasebooks that are accessible through an online platform which provides some note-taking and annotation tools as well as a multitude of hyperlinks to other West materials.¹¹⁹ The main marketing features of the series is that there are blue textboxes which provide additional context, links to video and audio, and further questions to consider. The Study Aid subscription service allows law students to use Adobe Flash to have online access to over 470 study aid titles, such as Hornbooks, Nutshells, and Gilbert Law Summaries.¹²⁰ Currently, the cost of this service is \$25 per month or reduced rates if longer subscriptions are licensed,¹²¹ and there some printing and copying allowances. However, the service is not available through typical e-readers, which is a major drawback.

Ultimately, there are a variety of proprietary eCasebooks available, which is integral to implementation. If a law professor wants to use a particular casebook, it is important that there is an eCasebook counterpart for law students to potentially purchase. Unfortunately, the best eCasebook platforms, such as the Connected Casebook by Wolters Kluwer, only offer a few digital casebooks currently.

Ideally, these types of eCasebooks will be incorporated at a greater rate so as to propel publishers to add features similar to this platform. There has been at least some traction in this arena, as Professor Alfred Brophy of the University of North Carolina just incorporated the Connected Casebook as the required material for one of his law courses.¹²² If these types of trials prove successful, more law professors will join on the digital bandwagon, and law students will have greater experiences with eCasebooks designed with their needs in mind. In turn, publishers will continue to focus on law students' specific needs, thereby improving the means and method of reading, annotating, and accessing eCasebook material. As long as there is also a significant price reduction, these digital casebooks will eventually sell themselves.

B. Open-source, Open-access, and Low-Cost eCasebook Alternatives

Whereas the mainstream publishers have many more titles that are marketed to the average law professor, the true way to create cost savings for law students is via open-source and open-access materials. Currently, there are many ventures that have had varying amounts of success.¹²³ First, TeachingLaw.com offers nearly 100 different eCasebooks on a variety of topics,

¹¹⁸ *Contracts: Cases, Text, and Problems* (2014), Calleros and Gerst, CAROLINA ACAD. PRESS, http://www.cap-press.com/osc/catalog/product_info.php/products_id/43 (last visited May 6, 2015).

¹¹⁹ *Interactive Casebook Series*, WEST ACAD., <http://www.interactivecasebook.com/> (last visited May 6, 2015).

¹²⁰ *West Academic Study Aids Subscription – Monthly*, <http://store.westacademic.com/s.nl/it.A/id.4594/f> (last visited May 6, 2015).

¹²¹ *Id.*

¹²² Jessica Kennedy, *UNC Uses Connected Casebook to Turn Law School Digital* (October 30, 2014), http://www.higheredtechdecisions.com/article/connected_casebook_solution_turns_law_school_learning_digital.

¹²³ See Loren, *supra* note 109, at 94–96 (discussing some of the ventures explained here as well as self-published law professors).

all for \$75.¹²⁴ While this material is not open-source, it is included here because it is a low-cost alternative and has been successfully integrated into legal research & writing courses, including at Georgetown University. These eCasebooks are a collection of content, including texts, notes, interactive exercises and quizzes, and additional study aids that are accessible from one platform. These eCasebooks were designed to engage students in a way to promote flipped classrooms, where learning occurs outside the classroom and application occurs during instructional time.¹²⁵

Another low-cost alternative is Semaphore Press.¹²⁶ This profit entity provides eCasebooks on a rather unique model as it is suggested that a law student pays \$30 for the initial PDF download.¹²⁷ However, the student may elect to pay more, less, or nothing at all if they so desire. Either way, the student can download a PDF that is DRM-free. Nevertheless, the license states that the material can neither be redistributed nor remixed, but personal copies may be printed.¹²⁸ Amazingly, a survey indicated that over eighty percent of law students actually paid the suggested \$30 when this eCasebook was required in class.¹²⁹ Additionally, these eCasebooks were used by twenty-six law professors and over 600 students during Fall 2012, indicating relatively wide acceptance.¹³⁰ While this seems like a very viable option, the one major drawback is that Semaphore Press currently only offers four books, all relating to property and intellectual property.

A true, open-source, open-access option exists with CALI's eLangdell bookstore.¹³¹ There are currently forty-four eCasebooks and each of them can be downloaded, remixed, redistributed, and printed as the user desires.¹³² Although many of the digital casebooks are supplements, there are a few true casebooks as well. One great feature of eLangdell is that each eCasebook can be downloaded via Kindle, iPad, Nook, DRM-free PDF, and even in Microsoft Word for easy manipulation and editing. In lieu of royalties, CALI also provides direct funding to law professors, giving them \$500 per written chapter.¹³³ While this might not sound like a lot, it is guaranteed since there will be no additional income through future sales.

The last open-source, open-access option that should be discussed is Harvard's H2O project.¹³⁴ This project is unique from the other eCasebook options already discussed because H2O provides the means for creating digital content instead of having the actual content in one concise eCasebook. Material can be uploaded, downloaded, cloned, and collected and organized into playlists. Material currently on this digital repository includes cases, PDFs, annotated notes, images, audio files, videos, and links to more of the same. This platform creates a ready-reference for creating an eCasebook specifically or course packets which will in effect act like an eCasebook. Either way, this is a great resource for law professors to add information to an open-source eCasebook or to create an eCasebook from scratch.

¹²⁴ *About TeachingLaw.com*, <http://www.teachinglaw.com/Home/About> (last visited May 6, 2015).

¹²⁵ *Id.*

¹²⁶ *Semaphore Press*, <https://www.semaphorepress.com/index.html> (last visited May 6, 2015).

¹²⁷ *FAQs*, <https://www.semaphorepress.com/FAQs.html> (last visited May 6, 2015).

¹²⁸ *Id.*

¹²⁹ Loren, *supra* note 109, at 86.

¹³⁰ *Id.*

¹³¹ *The eLangdell Bookstore*, <http://www.cali.org/the-elangdell-bookstore> (last visited May 6, 2015).

¹³² *About eLangdell Permissions & Creative Commons*, <http://www.cali.org/elangdell/permissions> (last visited May 6, 2015).

¹³³ CALI, *The Future Of The Legal Casebook CALI's ELangdell Project*, YOUTUBE (May 21, 2010), https://www.youtube.com/watch?feature=player_embedded&v=vuFqdoYaVRo.

¹³⁴ *H2O*, <https://h2o.law.harvard.edu/> (last visited May 6, 2015).

Although there are other self-published law professors and eCasebook initiatives,¹³⁵ what has been described here presents the foundation for low-cost or no-cost alternatives to publisher's print casebooks and discounted eCasebook options. Besides truly bringing savings to law students, these eCasebooks tend to be DRM-free, which means that all the technological advances with note-taking, writing directly onto a PDF, and having the "feel" of a print book will be available for students who use these eCasebooks. Additionally, the ability to quickly change, delete, or add material to these open-source options make these eCasebooks ideal for law professors to adopt.

The two most difficult aspects of the open-source eCasebook implementation is the investment in initial creation and the lack of prestige that is garnered through such creation. The actual means of creating these books has been thoroughly dealt with previously,¹³⁶ so the only point to be reiterated here is that collaboration and organization is vital to success. The time necessary to create an eCasebook from the ground up is rather time consuming if there is no underlying framework to begin creation.¹³⁷ The H2O project is a good starting point where material can be filtered to a location that is easily accessible to all involved. However, there needs to be more structure than the H2O currently offers. For instance, the materials should be split not only by format type (e.g., cases, images, and links), but also by subject and specialization (e.g., contracts, securities, and sales). Currently, it appears more as a giant collection of legal materials which are not easily filtered. By organizing the material a generalized framework can emerge that would allow quicker implementation.

Further, the actual creation of an eCasebook should involve many hands, not the standard one to three that most print casebooks use. By dissecting an eCasebook into several chunks, multiple authors can work to create sections of a book in a relatively short amount of time. Then, all that would be needed is one or two editors to ensure that the information flows well and is in a similar voice.

The second issue, that there is a lack of prestige, is more difficult to overcome. As law professors have become self-publishers or have developed eCasebooks for open-source, open-access, or low cost alternative platforms, there is continual evidence that these digital alternatives hold little weight in the legal community and are not trustworthy.¹³⁸ Further, many legal educators and administrators do not even believe that creating a casebook is considered scholarly work useful for reaching tenure.¹³⁹ It appears that junior law professors are better off writing law review articles to gain notoriety and maintain the scholarship status needed to make tenure. This is particularly problematic when the collaborative nature of open-source eCasebook creation is dependent on having many authors available to develop the material. While there is no quick solution, law school administration need to consider a paradigm shift which puts the onus on professors to develop casebooks more than scholarly articles. This is a difficult decision to make because the prolificacy of faculty publication in renowned journals is a significant factor in deciding the all-important U.S. News & World Ranking. Nevertheless, if there is a shift by the

¹³⁵ See Loren, *supra* note 109, at 95–96.

¹³⁶ See Bodie, *supra* note 18 (presenting an entire chapter devoted to this topic).

¹³⁷ *Id.* at 48.

¹³⁸ See Joseph Scott Miller & Lydia Pallas Loren, *The Idea of the Casebook: Pedagogy, Prestige, and Trusty Platforms*, 12 WASH. J. L. TECH. & ARTS (forthcoming 2015)(manuscript at 11–16), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2577391.

¹³⁹ *Id.* at 14–15 (giving examples of those in the legal field who believe casebook writing is no longer as respected as it has been historically).

entire legal community, the effect will be that this factor will focus on casebook creation as opposed to article publication.

Ultimately, there are already a multitude of proprietary options for eCasebooks that can easily be implemented by law professors with very little additional effort (i.e., ensure that the casebook has an electronic alternative and decide if the additional digital features will be required). Even so, the overall savings and malleability of open-source, open-access, and low cost alternatives make these types of eCasebooks far better for learning while mitigating the high cost of a legal education. The upcoming section will discuss the role of the library, including assisting faculty in creating these alternative eCasebooks.

C. The Role of the Law Library

The final piece of this digital puzzle is what the law library can do to make eCasebooks succeed. Before discussing the proactive steps that can be taken, it is important to realize one major limitation: the ability of acquiring an eCasebook for library purposes. Historically, academic libraries in general have not had the resources to buy copies of textbooks that are required for the curriculum. “With students’ need for multiple textbooks for classes, high prices, the frequent appearance of new editions, and the tendency of textbooks to be stolen from academic library collections, the purchase of textbooks . . . has been too cost-prohibitive for many libraries.”¹⁴⁰ Nevertheless, some law libraries can afford and do acquire selected casebooks, but policies and coverage differ. This is unfortunate because having complete coverage at each law school would provide a major alternative to students buying their own copies.

It appears that the cost to acquire an eCasebook is even more than print casebooks. For example, the University of Washington generally has to pay the same cost as a hardcover (cloth) edition to acquire a general eBook, even though the university prefers acquiring paperback print materials.¹⁴¹ Further, most eTextbooks are not offered by the publishers for library use.¹⁴² While there are many factors that affect the cost differential, the premium on eBooks is shrinking, but becomes much wider if the library is acquiring multi-user or DRM-free access.¹⁴³ In fact, multi-user access may be twice as expensive as single-use models!¹⁴⁴ Additionally, looking specifically at law school eCasebooks, Wolters Kluwer (which produces the most eCasebooks and the best eCasebook platform), does not currently offer any type of eCasebook for library use.¹⁴⁵

Outside of coordinated lobbying, there is little reason to believe that eTextbooks or eCasebooks will be priced lower than print counterparts for library use when general eBooks are not discounted by universities. More importantly, it appears that even if a law library had the funding and policies to acquire eCasebooks or if publishers lowered the eBook price, publishers

¹⁴⁰ Charles Lyons & Dean Hendrix, *Textbook Affordability: Is There a Role for the Library?*, 66 SERIALS LIBR. 262, 263 (2014).

¹⁴¹ See E-mail from Linda Di Biase, Collection Development Librarian, U. Wash. Librs., to author (Apr. 23, 2015, 8:03 PST) (hereinafter, Di Biase, Initial Email) (on file with author).

¹⁴² *Id.*

¹⁴³ E-mail from Linda Di Biase, Collection Development Librarian, U. Wash. Librs., to author (Apr. 24, 2015, 8:27 PST) (on file with author).

¹⁴⁴ Di Biase, *supra* note 141.

¹⁴⁵ E-mail from Jill Moore, Senior Account Manager, Wolters Kluwer L. & Bus. (Apr. 24, 6:04 PST) (on file with author).

do not uniformly offer these digital materials for library use. With this type of increased access currently not an option, the question remains: What is the role of the law library?

There are four specific roles that the law library can play. First, the law library will remain a critical third place. For many years, the law library has been transformed from a place where law students go to interact with the physical collections to a place to convene for study, learning, relaxing, and socialization.¹⁴⁶ The law library provides a neutral ground and is a safe haven where learning can occur.¹⁴⁷ One of the special features of the law library is that it has an innately academic purpose; coming to the law library often means there is an intention to focus on studies in an atmosphere conducive to learning.¹⁴⁸ As we move to the eCasebook era within law schools, the library should remain a beacon for law students to continue their daily study rituals.

As physical collections continue to shrink and library space is being taken over for law school office and student organizational use, it should be remembered that moving to eCasebooks does not mean that less student space is required. While a student will not have five books open simultaneously, the student will assuredly have at least one electronic device, such as a laptop. Additionally, students might have an iPad or Kindle as well. These could be used in tandem with the laptop where the tablet or e-reader is used as the surrogate for the print casebook and the laptop is used purely for note-taking. Students might also use multiple devices so as to mimic having multiple eCasebooks and digital supplements open as well. Finally, students might access multiple devices but also need room for taking notes the old-fashioned way via a notebook. The point is that law students' need for ample space will be just as important during the transition from print casebooks to eCasebook counterparts. The law library should be aware of this and continue to focus on providing great physical resources (i.e., study rooms, desk space, comfortable couches and chairs, and lounge areas) that law students can use to accomplish their many daily tasks.

Second, law librarians are often in the unique position to experiment with new technology, including eCasebooks, before it is adopted by law faculty who teach doctrinal courses. There are even emerging technology librarians whose job duties focus in part on doing just that! Law librarians often teach basic legal research courses or specialized legal research. Additionally, many law librarians work in tandem with legal writing instructors to teach legal writing when legal research and writing is merged into one course. These law librarians should utilize eCasebooks to show how they can successfully be implemented into the curriculum. This method has already proved successful at Boston College and Georgetown University through flipped classroom teaching and use of laptops which lead to richer and more dynamic learning experiences.¹⁴⁹ Due to this early adoption and experimentation with technology before other law faculty and staff, there is a great ability for these law librarians to usher in this evolving way of learning by digital means. Moreover, while law libraries may not be able to increase access by

¹⁴⁶ See Penny A. Hazelton, *Law Students and the Law Library: An Old Paradigm*, in *LEGAL EDUCATION IN THE DIGITAL AGE* 158, 159–160 (Edward Rubin ed., 2012) (providing a list of the many reasons that law students use the law library that has nothing to do with the physical collection).

¹⁴⁷ *Id.* at 161.

¹⁴⁸ *Id.*

¹⁴⁹ See generally Laurel Davis, Mary Ann Neary, and Susan E. Vaughn, *Teaching Advanced Legal Research in a Flipped Classroom*, 22 *PERSPECTIVES: TEACHING LEGAL RESEARCH AND WRITING* 13 (2013) (discussing the positive aspects of creating a flipped classroom using video tutorials); Diana R. Donahoe, *An Autobiography of a Digital Idea: From Waging War Against Laptops to Engaging Students with Laptops*, 59 *J. LEGAL EDUC.* 485 (2010) (discussing how electronic media can engage students in a classroom setting).

obtaining eCasebooks, the law librarians can accomplish increased access through adoption of open-source and open-access eCasebooks. By using these low- or no-cost alternatives, legal research instructors can pave the way for decreased barriers to learning materials and increased options for law students to meet their learning needs.

The third focus of the law library should be to direct law students to the best ways to maximize their learning through eCasebooks. Research guides and blogs should be created which explain the value of using eCasebooks in general as well as providing examples of which apps to use given the DRM-restrictions or lack thereof. When law professors adopt an eCasebook for the first time, the law library should provide a presentation which explains methods of note-taking and integrating these materials into other mainstream software, such as Evernote and Microsoft OneNote. By providing students and professors with software support, the law library can increase the probability that eCasebooks will be used to their maximum capability, which in turn, should ease the implementation process.

The final role of the law library is to provide support for creating open-source, open-access eCasebooks. Currently, there are calls to support and facilitate open access through preservation and curation of scholarship materials,¹⁵⁰ but the law library can also have an active role in the creation of content as well. For instance, when one or more law faculty are working on an open-source eCasebook, the law librarians should assist in adding the value content which makes eCasebooks uniquely better than print counterparts.¹⁵¹ For instance, the law librarian can embed video to add the proper context to a case, add audio of oral arguments, or provide links to CALI lessons that further explain a legal issue or process. Additionally, the law library might be responsible for integrating quizzes with instant feedback.¹⁵² By shouldering the load of actually acquiring the enhanced content or access to that content, the open-source author is able to focus on the main text, much as if it were a print casebook. With proper collaboration between multiple authors on one eCasebook, the workflow integrates the law library to create excellent learning materials in significantly less time. For open-source and open-access eCasebooks to be truly successful, the law library and its extremely capable staff need to be involved in the creation process. Thus, this is the most important role of the law library moving forward.

V. Conclusion

Over the next five to ten years, there will be a dramatic increase in the usage of eTextbooks due to a variety of factors. One of the strongest drivers is that publishers want to eliminate the used textbook market. Moving from print textbooks to licensing eTextbooks is the means to accomplish their goal. Additionally, with the advent of open-source and open-access publishing, students and professors will have more options to use eTextbooks at significantly reduced rates. To facilitate this market shift, many states are allocating funding for digital materials and implementing eTextbook programs into the primary and secondary education curriculum. Thus, younger students whose learning styles are more malleable will be able to

¹⁵⁰ See D.R. Jones, *Locked Collections: Copyright and the Future of Research Support*, 105 L. Libr. J. 425, 457 (2013).

¹⁵¹ See *supra* Part II.D.3.

¹⁵² Integrating does not necessarily mean creating the actual quizzes. Rather, the law librarians would be responsible for creating the mechanism to allow for rapid answer and results or used as a resource for input about the best technology to use for such a process.

experience and adapt to truly digital learning. This will result in greater acceptance and an increased expectation that eTextbooks and eCasebooks will be used in higher education.

Moving to the law school environment, eCasebooks can help improve legal education while lowering the cost to receive instruction. Electronic casebooks, particularly those that are not from proprietary publishers, may be purchased at a small fraction of the price of a typical print textbook. In addition, implementing eCasebooks would result in having twenty-five fewer pounds of material that a law student would have to carry during any given semester. Finally, the additional content that eCasebooks have—interactive exercises, hyperlinks, videos and audio, and the like—will aid in developing more practice-ready students.

Law students will now accept eCasebooks because technology has advanced to a point to make eCasebooks a truly value-added product as opposed to a hindrance compared to print counterparts. Both the iPad and Kindle Fire allow for multiple ways of highlighting in a multitude of colors. Annotating is also much improved because notes can be exported for creation of outlines. New eCasebook platforms, like the Connected Casebook, actually use highlighting and notes to assist in creating law student outlines. Better multitasking functions also allow for seamless switching between DRM eCasebooks and note-taking applications. Furthermore, the gap between the “feel” of a print casebook and a digital casebook has shrunk tremendously due to digital browsing of pages, excellent search mechanisms, and the ability to handwrite and highlight directly onto the eCasebook using a finger or a stylus. While there still needs to be improvements with showing multiple pages and eCasebooks at one time, current technological advances make eCasebooks an attractive option for law students.

Law professors now have a multitude of proprietary options for implementing eCasebooks. LexisNexis and Wolters Kluwer (as Aspen) offer the most casebooks in a digital format, and the Connected Casebook series is actually designed from the ground up for law students’ outlining needs. This series also offers generous additional content, such as flash cards, quizzes, and exercises to enhance learning. Carolina Academic Press also provides many eCasebooks, many of which can be directly ported into note-taking apps. Finally, West Academic has its Interactive Case Series that focuses on highlighting contextual issues which promote deeper discussion while providing hyperlinks to all relevant West materials. With so many options, law professors should attempt to use materials that are available in eCasebook format and ideally have greater flexibility and mechanisms for learning, such as the Connected Casebook and Carolina Academic Press digital casebooks.

While the open-source, open-access, and low cost alternative markets are still in their infancy, using these types of eCasebooks significantly reduce law students’ spending on instructional materials. Additionally, these options are usually DRM-free, which means that students can use enhanced tools for taking notes, highlighting, and even writing directly onto the PDFs. Currently, the two most prominent players in this arena are Semaphore Press and CALI’s eLangdell. Semaphore Press asks for law students to pay \$30 for each eCasebook, but does not require them to do so. Statistics indicate this is actually a viable model, as over 80 percent of law students do pay. CALI’s eLangdell is completely free and now offers many digital supplements and a few doctrinal eCasebooks.

In order to maximize the utility of these unique eCasebook platforms, more open-source, and open-access eCasebooks need to be created. This is best accomplished through collaborative engagement by many authors to split up the work. Additionally, repositories of digital material, like the H2O project, need to continue to collect digital material in a highly organized fashion so that adding, deleting, and editing an eCasebook becomes extremely easy. Moreover, there needs

to be a paradigm shift by law school administration and professors which have junior faculty focus more on aiding in eCasebook creation as a means of getting tenured.

Finally, as eCasebooks are implemented into law schools, the law library needs to maintain its role as a critical third place for law students to learn, study, and even congregate. Law librarians that teach or assist in legal research classes should lead the charge towards eCasebook implementation by becoming first-adopters. Additionally, law librarians should raise current awareness of techniques and technology for note-taking and organizing study materials when using eCasebooks through development of research guides, blog entries, and presentations. Most importantly, as masters of legal research, law librarians are in a unique position to assist and support the creation of open-source and open-access authors. By adding enhanced content, law librarians can improve the quality and prestige of these types of eCasebooks. Because this process will lead to increased access for law students, this is a vital role that is directly in keeping with the mission of the law library.