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Holdings as Hypotheses: Teaching Contextual Understanding and Enhancing Engagement

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Holdings as Hypotheses: Teaching Contextual Understanding and Enhancing Engagement

Lisa M. De Sanctis*

ABSTRACT

When the Pinball Wizard asked his well-timed question, he not only lit up the 1L classroom with a cacophony of opinions but also illuminated deep confusion about the meaning of, and distinctions between, “rules” and “holdings.”

The practice of both oversimplifying and conflating the parts of a judicial opinion, particularly rules and holdings, is common among law professors, law school success materials, and, to an extent, even legal writing texts. Coupled with the novice law student’s search for right answers and found meaning, 1Ls often find themselves understandably frustrated and confused. This Article argues that the resulting confusion about rules and holdings is an opportunity ripe for introducing contextual understanding and for modeling this metacognitive approach to reading legal texts. Further, it demonstrates how to persuade 1Ls, even the

* Legal Skills Professor, University of Florida Levin College of Law (UF Law). I presented earlier versions of this Article at the 2022 Legal Writing Institute’s Western Regional Conference, held at the University of Oregon, and at the Southeastern Association of Law Schools (SEALS) 2023 Annual Conference. I am deeply grateful to Professors Suzanne Rowe and Elizabeth Frost for their suggestions on earlier drafts and to all conference participants who provided feedback. I am also grateful to Dean Sabrina Lopez and to my UF Law legal writing colleagues for their support and willingness to share course materials on a moment’s notice, to the UF Law administration for funding this writing project, and to the larger legal writing community for being wonderfully welcoming. I am indebted to my research assistants A.J. Fernandez, Ariadna Perez Mendez, and Serina Combs for their helpful suggestions, thorough research, and edits on previous drafts. I am thankful for the detailed editorial and technical support of Jenn Bauer, Faith Anderson, Morgan Ryan, Grace Filohoski, and the rest of their team on the PENN STATE LAW REVIEW. Any errors that may remain are my own. I am grateful to my son, Jake Pingree, for being even more self-reliant than usual during my writing and editing periods, for taking an interest in cooking at just the right time, and for queuing up motivational music when I needed it most. Finally, I am grateful to my husband, Greg Pingree, for sharing his thoughts about legal writing with me some 30 years ago. Thank you, Greg, for your patience then and now, for never tiring of the conversation, and for steadfastly rooting for me in all regards, even under the most challenging circumstances.

doubters, that contextual understanding will enable their early fluency in the logic of judicial opinions.

With buy-in for contextual understanding achieved, this Article next proposes teaching holdings as hypotheses and offers two detailed examples for doing so. Finally, it explains how teaching holdings as hypotheses—itsself an example of contextual understanding—will achieve at least three classroom objectives: (1) focusing 1L attention on constructed meaning and the malleability of law; (2) emphasizing the evolution of law, including how holdings themselves can be fundamentally altered without being overruled or criticized; and (3) enhancing classroom engagement, particularly among Gen-Z students who may otherwise be reticent to participate.

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I. INTRODUCTION: THE PINBALL WIZARD

They were just two weeks old. They had participated in an orientation session about how to brief a case, had read an oft-assigned article about reading legal opinions,¹ and had survived the first two weeks of law school. We met in a small group—about 30 students and me—to discuss their acclimation to law school and to promote self-efficacy in their academic and professional development.²

Toward the end of what had been a rather quiet meeting, a student tentatively asked: “What’s the difference between a rule and a holding, or are they the same thing?” His question was like a particularly well-timed pinball release, sequentially lighting up everything in its path. Among the cacophony of opinions that erupted on the matter, some students buttressed their answers with the names of professors who had used and explained the terms, other students referenced their legal writing text or materials they had read in preparation for law school, a few students proposed that legal writing professors use these terms differently than doctrinal professors do, and the nihilists of the group readily identified themselves by dismissing any effort to reconcile the definitions at all.

The student who had asked the question wore an expression that read one part: “I’m glad to know I didn’t miss something obvious,” to two parts: “Are you people kidding me? There ought to be a straightforward answer here!” The variety of explanations offered by their colleagues shook students who had arrived at the session with confidence. In exasperation, more than one student asked, “Who’s right?”

All sources the students referenced, both oral and textual, were produced and assigned with the intent to help new law students learn how to read and analyze legal opinions. What went wrong? The problem is two-fold. This Article first examines how law professors at times oversimplify and conflate our early explanations of the parts of a legal opinion, thereby unnecessarily confusing first-year law students (“1Ls”) and missing the early and explicit opportunity to introduce students to the concept of contextual understanding.³ Second, 1Ls tend to overestimate the concreteness of the law and approach their early legal reading searching for found meaning and right answers. In the age of multiple-choice

1. Orin S. Kerr, *How to Read a Legal Opinion: A Guide for New Law Students*, 11 GREEN BAG 51 (2007).

2. The question posed in this Article was based on an interaction I had with a cohort of students at the University of Florida Levin College of Law (“UF Law”). In preparing to facilitate meetings for the cohort, I spoke with and am grateful for the advice of Professors Neil W. Hamilton and Jerry Organ of the University of St. Thomas School of Law’s Holloran Center. I am also grateful to Professor Christy H. DeSanctis and former Associate Dean Susan Fine for sharing information about The George Washington University Law School’s Fundamentals of Lawyering and Inns of Court Programs.

3. See *infra* Part IV.

questions and PowerPoint teaching, these two problems may be more pronounced than ever. While law professors generally agree that the “malleability” of law is a “threshold issue,”⁴ we do not always know how to help students understand the concept or integrate it in their learning. What concrete tools do we have to help students move quickly on their journey to becoming expert legal readers capable of constructing meaning, making accurate predictions, and drafting persuasive arguments?

This Article explores opportunities for educating 1Ls about contextual understanding⁵ and for persuading them of its value. First, this Article suggests helping 1Ls untangle their early confusion about how to brief cases by introducing them to contextual understanding. Next, and particularly useful for reaching those 1Ls who may resist the concept of contextual understanding, this Article offers a non-legal example that demonstrates the importance of contextual understanding even with texts that appear immutable. Once professors achieve student buy-in about the importance of contextual understanding, this Article proposes teaching holdings as hypotheses. Finally, this Article concludes with a review of the value in teaching holdings as hypotheses as well as examples for doing so. Framing holdings as hypotheses will further develop students’ appreciation for and use of contextual understanding. Specifically, framing holdings as hypotheses will achieve at least three desirable outcomes. First, acknowledging that holdings are not static or absolute will encourage students to grapple readily with the law and to remain agile in their analyses.⁶ Second, such framing will emphasize to 1Ls that law evolves and that during any legal inquiry, whether we are engaged in objective or persuasive analysis, we are simply a point on an evolutionary line.⁷ Finally, with the documented increase in classroom anxiety among 1Ls in mind,⁸ this Article argues that teaching holdings as hypotheses, a

4. See Melissa H. Weresh, *Stargate: Malleability as a Threshold Concept in Legal Education*, 63 J. LEGAL EDUC. 689, 712–13 (2014) (defining “malleability” as “the latitude a lawyer has in articulating legal principles”; identifying the five “distinguishing characteristics” of a “threshold concept” as “(1) bounded, (2) integrative, (3) irreversible, (4) troublesome, and (5) transformative”; and noting that, in a survey conducted by the Legal Writing Institute, 54 out of 79 legal writing professors identified “malleability” as a “threshold concept” in legal writing).

5. See *infra* Part IV.

6. See generally Weresh, *supra* note 4, at 707–15 (arguing the benefits of early and explicit teaching of the malleability of law).

7. See generally RUGGERO J. ALDISERT, *LOGIC FOR LAWYERS: A GUIDE TO CLEAR LEGAL THINKING* 7–14 (3d ed. 1997).

8. See Laura P. Graham, *Generation Z Goes to Law School: Teaching and Reaching Law Students in the Post-Millennial Generation*, 41 U. ARK. LITTLE ROCK L. REV. 29, 42–44, 65–75 (2018) (referencing many reasons for amplified anxiety among Gen Z and noting that Gen Z is likely more fearful of the Socratic method than previous generations and often has heightened anxiety around reading and comprehension); Kaci Bishop, *Framing Failure in the Legal Classroom: Techniques for Encouraging Growth and Resilience*, 70 ARK. L.

process-over-product framework of constructing meaning from within a range of reasonable predictions, student anxiety will decrease and voluntary student engagement and learning will increase.

This Article offers two in-depth examples for teaching holdings as hypotheses. It includes a legal example for teaching holdings as hypotheses in a 1L orientation or during early class periods. This example is based on *Robinson v. Lindsay*,⁹ an adult standard of care case often included in Torts casebooks and used as a case briefing exercise in *1L of a Ride*.¹⁰ In addition, because non-legal fact patterns—for example the industry-favorite, “The Grocer’s Dilemma,”¹¹—are particularly accessible for 1Ls, the Appendix offers a detailed non-legal example for teaching holdings as hypotheses. Professors can use this non-legal example, which highlights generational differences in language, and is admittedly a bit cheeky, as an entry-point for teaching 1Ls about ambiguity, contextual understanding, holdings as hypotheses, and rule and case synthesis.

II. BOTH SIDES OF THE STREET NEED CLEANING

First, this Article will address how 1Ls commonly become frustrated early in their law school career. This Part explores source material generated both from the law school success industry and from law schools themselves. It also examines how Gen-Z¹² students’ learning characteristics—from anxiety to fixed mindset—exacerbate their learning challenges. In examining the factors contributing to 1L frustrations, this Part takes a first step toward resolving those frustrations.

REV. 959, 961–62 (2018); *Stress in America Generation Z*, AM. PSYCH. ASS’N 1, 4 (2018), <https://perma.cc/2MC3-PAH2>.

9. *Robinson v. Lindsay*, 598 P.2d 392 (Wash. 1979).

10. See ANDREW J. MCCLURG, *1L OF A RIDE: A WELL-TRAVELED PROFESSOR’S ROADMAP TO SUCCESS IN THE FIRST YEAR OF LAW SCHOOL 194–207* (4th ed. 2021).

11. See Kirsten K. Davis, *Take the Lime and the Apple and Mix ‘em All Up*, 20 SECOND DRAFT 13, 13 (2005); William E. Foster & Emily Grant, *Memorializing the Meal: An Analogical Exercise for Transactional Drafting*, 36 U. HAW. L. REV. 403, 410–11 (2014) (citing Charles R. Calleros, *Using Classroom Demonstrations in Familiar Nonlegal Contexts to Introduce New Students to Unfamiliar Concepts of Legal Method and Analysis*, 7 LEGAL WRITING: J. LEGAL WRITING INST. 37, 42–43 (2001)); Jane Kent Gionfriddo, *Using Fruit to Teach Analogy*, 12 SECOND DRAFT: BULL. OF THE LEGAL WRITING INST. 4, 4 (1997) (describing Elisabeth Keller’s fruit in a basket exercise). Other variations have been developed. See, e.g., Suzanne E. Rowe & Jessica Enciso Varn, *From Grocery Store to Courthouse: Teaching Analytical Skills to First-Year Law Students*, 14 SECOND DRAFT: BULL. OF THE LEGAL WRITING INST. 14, 14–16 (2000).

12. “Gen Z” is shorthand for Generation Z, a term used to describe individuals born between 1995 and 2010. Graham, *supra* note 8, at 37. But see Michael Dimock, *Defining Generations: Where Millennials end and Generation Z begins*, PEW RSCH. CTR. (Jan. 17, 2019), <https://perma.cc/67D3-239Z> (explaining that Gen Z are individuals born between 1997 and 2012).

A. *Defining Terms*

In attempting to define terms and explain the parts of a legal opinion, the materials that law professors and the law school support industry¹³ provide to 1L students may leave them exasperated. Many sources offer conflicting definitions. In addition, both introductory material and, to some extent, even legal writing texts oversimplify and conflate terms, contributing to the confusion.

1. Law School Success Materials

What do today's 1L students learn about the parts of a legal opinion, particularly rules and holdings, as they enter law school?

After further discussion with the above-mentioned student cohort,¹⁴ and after reviewing some of the oft-assigned materials 1Ls rely on to prepare for law school, it is easy to spot numerous contradictions among the materials and to understand the confusion that often ensues. Some sources describe a legal rule, a legal principle, and a holding as the same thing. Other sources equate a holding to a legal rationale, and, periodically, sources conflate holdings and dispositions. Some definitions of "rule" unhelpfully include the word "rule." And even sources published by some of the nation's top law schools appear, at least at first blush, to contradict one another as to the basic meaning of these terms—terms that every 1L will need to understand to brief and analyze cases effectively, to answer questions in class when called upon, and to write legal memoranda and law school exams.

In comparing, for example, the Case Briefing Module from Harvard's popular *Zero-L* program,¹⁵ assigned to many incoming 1Ls across the country, to Northwestern's *Introduction to Case Briefing*,¹⁶ the two programs offer similar definitions of legal "rules" but starkly different uses of the term "disposition."¹⁷ In the *Zero-L* module, *How to Read a Case and Understand Precedent* (hereinafter "*Read a Case*"), Glenn Cohen offers a crisp description of the parts of a legal opinion along with illustrations from *Lawrence v. Texas*.¹⁸ When completing the section about

13. By "law school support industry," I am referencing the myriad resources, including websites, books, and other tools, available to students through bar associations, non-profit and for-profit organizations, and on- and off-campus programs promoted as increasing law school academic success.

14. See *supra* note 2.

15. See *How to Read a Case and Understand Precedent*, ZERO-L BY HARV. L. SCH., <https://perma.cc/5H8Z-YLCQ> (last visited Sept. 29, 2023) [hereinafter *Read a Case*].

16. See *Introduction to Case Briefing*, NW. PRITZKER SCH. OF L., <https://perma.cc/VMP6-RAU6> (last visited Sept. 29, 2023).

17. See *id.*; see also *Read a Case*, *supra* note 15.

18. See *Read a Case*, *supra* note 15 (referencing *Lawrence v. Texas*, 539 U.S. 558 (2003)).

dispositions and beginning the section about case holdings, Cohen highlights the difference by saying, “students often confuse the disposition of the case, what the court orders to happen, and the holding.”¹⁹ The *Introduction to Case Briefing* used for Northwestern’s orientation program similarly defines the rule of a case as “the statement of the law for which the opinion stands.”²⁰ However, in sharp contrast to the *Read a Case* explanation, Northwestern’s document describes the holding as the *disposition* of the case;²¹ it directs new brief writers to describe the holding of the case as the disposition of the case, including whether the plaintiff in a trial court proved his case and whether an appellate court upheld or overturned the lower court.²²

Similarly, the word “rationale” takes on different meanings within various texts meant to simplify legal reading and reasoning. Regardless of any admonitions their professors may offer, many law students consult commercial brief collections while they are acclimating to law school. In looking at one example, *Casenote Legal Briefs: Property*, the “Rule of Law” for a legal brief is defined as “the general principle of law that the case illustrates.”²³ In defining the holding, while the authors explain that a holding should always include “an application of the general rule or rules of law to the specific facts of the case,” they also describe the holding, as “the *rationale* of the court in arriving at its decision.”²⁴ In contrast, several other well-regarded sources describe the reasoning as the rationale and sometimes the policy considerations used to arrive at a holding, but not as the holding itself.²⁵

Perhaps weightiest are the differences among varying definitions of “rules” and “holdings.” The range of definitions for “rule” and “holding” among 1L study aids is vast. Some offer extremely simplified definitions that may lead to greater confusion; others make meaningful distinctions. Some study aids are more accessible to 1Ls and are easily applied to early legal reasoning and writing contexts; others are more opaque.

One of the most oversimplified explanations for how to “find” the holding or rule for a case comes from a student favorite, *A Weekly Guide to Being a Model Law Student*.²⁶ While the guide acknowledges that the

19. *Id.*

20. *Introduction to Case Briefing*, *supra* note 15, at 2.

21. *See id.* at 3.

22. *See id.*

23. ASPEN EDITORIAL STAFF, *CASENOTE LEGAL BRIEFS: PROPERTY, KEYED TO DUKEMINIER, KRIER, ALEXANDER, SCHILL, & STRAHILEVITZ*, vii (10th ed. 2022).

24. *Id.* at viii (emphasis added).

25. *See, e.g.*, CHRISTINE COUGHLIN ET AL., *A LAWYER WRITES: A PRACTICAL GUIDE TO LEGAL ANALYSIS* 119 (3d ed. 2018) (instructing students to identify the court’s reasoning as distinct from its holding).

26. *See generally* ALEX RUSKELL, *A WEEKLY GUIDE TO BEING A MODEL LAW STUDENT* 21 (2d ed. 2021). *But see* discussion *infra* Part II.

holding “may not always be clearly marked,” it instructs the new law student to “go to the end of the case and scan up from the bottom until you find the line that says ‘we hold’ or ‘the holding is’ or ‘the best rule is’ or something to that effect.”²⁷ The guide further simplifies the concept with the declaration that “[t]his line or text is the holding of the case.”²⁸

Other aids offer a wide variety of definitions regarding rules and holdings. Some describe the holding as an *applied* rule used to reach the answer in the case, and others hint at or even explicitly introduce the concept that a holding is made up of both a rule and legally significant facts. For example, *How to Brief a Case in U.S. Law School* defines a holding as the answer reached after the court relies on a legal principle or an applied rule of law.²⁹ *How to Write a Case Brief for Law School: Excerpt Reproduced from Introduction to the Study of Law: Cases and Materials* defines a holding as “the applied rule of law,”³⁰ and *Law School without Fear: Strategies for Success* describes a holding as a description of “how the court answered the issue . . . consisting of the rule of law applied to the particular facts.”³¹ Finally, while perhaps somewhat less accessible to the novice law student, in *1L of a Ride: A Well-Traveled Professor’s Roadmap*, Andrew McClurg offers a more nuanced and complete explanation when he writes the following: “The rule of the case is often bound up with the court’s ‘holding’ in the case; and, indeed, many people label the rule section of their briefs as the holding section. The holding is the court’s resolution of the issue, which often incorporates the rule.”³²

Some sources, even those that explain the parts of a legal opinion with a great deal of nuance at times use “rule” and “holding” as interchangeable concepts. For example, the oft-assigned *How to Read a Legal Opinion* and *Read a Case* are both well-regarded sources that explicitly teach ambiguity and acknowledge that holdings of cases are not always easily identifiable;³³ however, both sources also use “rule” and “holding” interchangeably without further explanation. In *Read a Case*, Cohen points out that rules and holdings are often *constructed* rather than

27. RUSKELL, *supra* note 26, at 21.

28. *Id.* But see discussion *infra* Part II.

29. See *How to Brief a Case in U.S. Law School*, BARBRI (July 29, 2022), <https://perma.cc/WVW8-TPAA>.

30. Michael Makdisi & John Makdisi, *How to Write a Case Brief for Law School*, in *INTRODUCTION TO THE STUDY OF LAW: CASES AND MATERIALS* 100 (3d ed. 2009).

31. HELENE SHAPO & MARSHALL SHAPO, *LAW SCHOOL WITHOUT FEAR: STRATEGIES FOR SUCCESS* 41 (3d ed. 2009).

32. MCCLURG, *supra* note 10, at 193.

33. See *Read a Case*, *supra* note 15 (“When you are reading an opinion as a student, you need to live in the gray . . . instead of running away from that ambiguity, you need to embrace it.”); Kerr, *supra* note 1, at 60 (“Rather than trying to fill in the ambiguity with false certainty, try embracing the ambiguity instead.”).

found, emphasizing the legal reader's role in framing a holding along a "maximalist" to "minimalist" spectrum.³⁴ However, he defines the holding of a case as "a legal rule announced by the case that could be used in future cases."³⁵ Further highlighting the interchangeability of the terms as he uses them, Cohen states, "More generally, the holding, *the legal rule of the case*, is not always there screaming out at you."³⁶ Similarly, in *How to Read a Legal Opinion*, Orin Kerr acknowledges the complexity of the reader's task when he explains that some cases offer no clear holding and acknowledges that some cases are poorly reasoned or written.³⁷ However, in defining "holdings," Kerr, too, conflates "rule" and "holding," stating that sometimes a court resolves a dispute by "announcing and applying a clear rule of law that is new to that particular case. That rule is known as the 'holding' of the case."³⁸

In sum, students face a multitude of definitions, many of which overlap and conflict.

2. Legal Writing Texts

Many, if not most, 1Ls are assigned a legal writing text in which they are likely to encounter additional direction about how to read a legal opinion and additional definitions for the terms "rule," "holding," and "rationale." Most of these texts also introduce 1L students to subcategories of rules, which can be loosely categorized as follows: (1) principles, general rules, global rules, or rules of general applicability; (2) borrowed, inherited, or imported rules; (3) processed, applied, or complete rules; (4) implicit or embedded rules; (5) explicit rules; (6) subsidiary or sub-rules; and (7) unified or synthesized rules.³⁹ These subcategories can be helpful in differentiating rules from holdings but may also contribute to 1L information overload.

The authors of *Writing and Analysis in the Law* acknowledge that various definitions of "holding" exist but cite first to the holding of a case as "the court's decision on the issue or issues litigated,"⁴⁰ before parsing that definition and favoring this two-part version: "the judgment plus the

34. See *Read a Case*, *supra* note 15.

35. *Id.*

36. *Id.* (emphasis added). *But see infra* discussion in Part II.

37. See Kerr, *supra* note 1, at 60–61. *But see infra* discussion in Part II.

38. *Id.*

39. See, e.g., LINDA H. EDWARDS, LEGAL WRITING: PROCESS, ANALYSIS, AND ORGANIZATION 40–41 (5th ed. 2010) (inherited, processed, and embedded rules); MICHAEL D. MURRAY & CHRISTY H. DESANCTIS, LEGAL WRITING AND ANALYSIS 63–64 (2009) (borrowed and applied rules); RICHARD K. NEUMANN, JR., LEGAL REASONING AND LEGAL WRITING: STRUCTURE, STRATEGY, AND STYLE 41 (6th ed. 2009) (principles, rules of general applicability, implicit rules); HELENE S. SHAPO ET AL., WRITING AND ANALYSIS IN THE LAW 19 (5th ed. 2008).

40. SHAPO ET AL., *supra* note 39, at 18.

material facts of the case.”⁴¹ The authors underscore the critical importance of the material facts by noting that even when the court identifies the holding, that holding must be “read in conjunction with the facts of the case.”⁴² Similarly, the authors of *A Lawyer Writes* give a glossary definition of “holding” as “[t]he court’s answer to a particular legal question in a case that includes both the controlling rule of law and the specific facts of the case pertinent to the legal question.”⁴³

In partial contrast, the authors of *The Complete Legal Writer* describe the holding of a case as the outcome “plus the *reason why*,”⁴⁴ rather than the outcome plus the legally significant facts. This definition appears to be more closely aligned with the *Casenote Legal Briefs: Property* definition of the holding as the rationale⁴⁵ but, in practice, may align with *Writing and Analysis in the Law* as well.⁴⁶ These two approaches can be synthesized because, as a reader delves into the “reason” why a court found as it did, she may need to define and frame, broadly or narrowly, the legally significant facts. In fact, *The Complete Legal Writer* authors elsewhere describe the holding as built of *three* key components: case outcome, determinative facts, and applicable law.⁴⁷

This Article is not the first to note the differences among these key definitions. Several legal writing texts explicitly warn their students that many lawyers and law professors use “holding” and “rule” interchangeably. For example, *The Complete Legal Writer* instructs students to take note “that lawyers (and particularly law professors) may also use the term ‘holding’ to refer to only the rule of general applicability drawn from a particular case,”⁴⁸ not to the reasoning or material facts. In *Legal Reasoning and Legal Writing: Structure, Strategy, and Style*, Richard K. Neumann, Jr. informs his students that “[h]olding and rule have overlapping meanings,” with “rule” similarly defined as that which the case stands for in determining future controversies and “holding” defined by emphasizing procedural outcome: an “answer to the issue before the court” often framed in “*procedural terms*.”⁴⁹

In addition, the authors of many legal writing texts not only define “rule” and “holding” or explain their overlap but, like Cohen in *Read a*

41. *Id.* (citing GLANVILLE WILLIAMS, *LEARNING THE LAW* 72 (8th ed. 1969)).

42. *Id.* at 20.

43. COUGHLIN ET AL., *supra* note 25, at 412.

44. ALEXA Z. CHEW & KATIE ROSE GUEST PRYAL, *THE COMPLETE LEGAL WRITER* 78–79 (2d ed. 2020) (emphasis added) (citing RUTH ANN MCKINNEY, *READING LIKE A LAWYER: TIME-SAVING STRATEGIES FOR READING LAW LIKE AN EXPERT* 25 (2d ed. 2012)).

45. *See* ASPEN EDITORIAL STAFF, *supra* note 23, at vii.

46. *See* SHAPO ET AL., *supra* note 39, at 18–19.

47. *See* CHEW & PRYAL, *supra* note 44, at 79.

48. *Id.* at 78–79 n.1.

49. *Id.* (emphasis added) (aligning more closely with Northwestern’s case briefing material); *see generally* *Introduction to Case Briefing*, *supra* note 15.

Case, also highlight the reader or writer's role in framing them. Linda Edwards in *Legal Writing: Process, Analysis, and Organization* explains that "a legal 'rule' is simply an idea in the mind of the rule-maker. The written version of that idea is merely the rule-maker's attempt to describe the idea in words."⁵⁰ Edwards goes on to describe the lawyer's job as trying to get "inside the mind of the opinion's author."⁵¹ Neumann identifies framing rules as one of the great creative acts of the lawyer.⁵² He notes that by "devising several alternative formulations of a rule," we discover "deeper meaning in an opinion."⁵³ "The art," he says, "is to phrase the rule broadly enough that it has a reasonably general applicability, but not so broadly that it exceeds the principle that the court *thought* it was following. Within these limits, many opinions will afford several different but arguable ways to phrase a particular rule."⁵⁴ Similarly, in *Writing and Analysis in the Law*, the authors explain that the facts—which make up part of the holding, along with the decision or judgment on the issue litigated—can be described narrowly or broadly, thereby changing the meaning *of the holding of which they are a part*.⁵⁵

What is the 1L to make of the inconsistent use of these terms and more generalized versus more nuanced uses of them? Is it true, as some members of the student cohort argued, that legal writing faculty and texts use these terms differently than doctrinal faculty?⁵⁶ Must students simply remember the different ways in which each professor or text employs each term? Or is there a way to synthesize at least many of these definitions by offering a de-simplified but foundationally stronger approach to teaching holdings and rules? Is there a way to more soundly support 1Ls as they learn to read critically, to understand contextually, and to use these skills to become stronger legal writers? This Article proposes such a framework but will first explore how Gen-Z students' search for the "right answer" exacerbates their struggle.

50. EDWARDS, *supra* note 39, at 40.

51. *Id.*

52. See NEUMANN, *supra* note 39, at 41.

53. *Id.*

54. *Id.* (emphasis added).

55. See SHAPO ET AL., *supra* note 39, at 20 (emphasis added).

56. The cohort members used "doctrinal" as it often is used in legal academia, to contrast skills professors with doctrinal and procedural professors. While I adopt the cohort members' use, I also note that the framing is problematic in that legal writing is itself doctrinal. See generally Linda H. Edwards, *Legal Writing: A Doctrinal Course*, 1 SAVANNAH L. REV. 1 (2014); Harold Anthony Lloyd, *Why Legal Writing Is "Doctrinal" and More Importantly Profound*, 19 NEV. L.J. 729 (2019); Michael A. Blasie, *The Rise of Plain Language Laws*, 76 U. MIAMI L. REV. 447 (2022) (exploring plain language, in part, as a legal doctrine).

B. *The Search for Right Answers*

Despite longstanding criticisms, most law schools still use Christopher Columbus Langdell's case method as the primary teaching method for case analysis.⁵⁷ Langdell's method originated out of his desire to study law as a science—to use something akin to the “scientific method”—with appellate opinions serving as “the raw material of a new science.”⁵⁸ The Association of American Law Schools has criticized the impact of Langdell's case method on student learning since 1942 when it noted that “students too often regard the cases [from a casebook] as authoritative solutions which they need only read and absorb; each case becomes an end in itself, and the educative process stops at the very threshold of its most significant stage.”⁵⁹ Many present-day legal academics argue that nothing has changed.⁶⁰

While law students have been struggling for generations with the case method and Socratic teaching,⁶¹ some learning characteristics specific to Gen Z intensify their search for the perceived “right answer.”⁶² Gen-Z students, raised with smartphones in their pockets, are accustomed to “finding” information quickly and easily.⁶³ Additionally, regardless of how the deficit developed, many professors consider Gen Z's critical reading and analysis skills weaker than that of previous generations.⁶⁴ Moreover, because Gen-Z students are less equipped to analyze complex

57. See Myron Moskowitz, *Beyond the Case Method: It's Time to Teach with Problems*, 42 J. LEGAL EDUC. 241, 245 (1992); Russell L. Weaver, *Langdell's Legacy: Living with the Case Method*, 36 VILL. L. REV. 517, 526–27 (1991) (describing the “case method” as not lecturing students about judicial decisions, but rather asking students themselves what the decisions mean).

58. Moskowitz, *supra* note 57, at 242.

59. *Id.* at 245 (citing *Report of the Committee on Teaching and Examination Methods*, HANDBOOK OF THE ASS'N OF AM. L. SCHS. 85, 87–88 (1942)).

60. See, e.g., *id.* at 245; David A. Garvin, *Making the Case*, HARV. MAG., Sept.–Dec. 2003, <https://perma.cc/6PYK-SXMP> (explaining that in the “case method,” “students often leave class puzzled or irritated, uncertain of exactly what broad lessons they have learned”).

61. See, e.g., Jeannie Suk Gersen, *The Socratic Method in the Age of Trauma*, 130 HARV. L. REV. 2320, 2320 (2017) (describing her negative reaction to the Socratic method as a “terrified” 1L as well as her evolution to ultimately “treasur[ing]” the approach as a “way of life” and now seeking to “cultivate [this way of life] in [her] students”).

62. See generally Graham, *supra* note 8, at 42–43, 65–66 (noting high levels of anxiety and insecurity, deep fear of being called upon, and difficulty sustaining effort when revision is required).

63. See *id.* at 64.

64. See *id.* at 39, 44–46, 57–60 (explaining that Gen Z's emphasis on standardized testing, STEM classes, and increased smartphone use has led to a decline of critical thinking and problem-solving, and Gen Z's tendency to be “tethered to their parents,” combined with their insecurity and anxiety, has delayed adulthood); see also Megan Kuhfeld et al., *The Pandemic Has Had Devastating Impacts on Learning. What Will It Take to Help Students Catch up?*, BROOKINGS (Mar. 3, 2022), <https://perma.cc/UT8H-DMEM> (explaining the detrimental effects COVID-19 has had on learning).

issues *and* commonly have a fixed-mindset,⁶⁵ their inability to produce what they perceive to be a “right answer” is more likely to cause them to internalize such an experience as an immutable failure.⁶⁶

When working with 1L Gen-Z students, the last thing law professors want is for students to get stuck before they get started.⁶⁷ With pressure looming to resolve 1L confusion and frustration about the parts of a legal opinion, professors may be inclined to hand their students hard and fast definitions. This Article argues instead for embracing the teachable moment by introducing students to the metacognitive concept of contextual understanding.

III. WHAT WE ALREADY KNOW: CONTEXT MATTERS

The sooner students become expert legal readers and appreciate the malleability of law, the sooner they will be able to tackle more sophisticated legal analysis and legal writing.⁶⁸ Is it possible, then, to use early conversations about how to brief a case, including the parts of a judicial opinion and the inevitable rule-holding confusion, to introduce 1Ls to these key concepts? This Article argues that it is but will first discuss why reading like an expert and understanding malleability are critically important to the 1L’s journey.

A. Expert Readers

Empirical studies about legal reading development, including those by Mary Lundenberg,⁶⁹ Laurel Currie Oates,⁷⁰ and Leah M. Christensen,⁷¹ have consistently shown significant differences in how novice and expert legal readers process information.⁷² In all of these studies, the expert readers were more likely to seek context about the opinion, even if just

65. See Graham, *supra* note 8, at 57–60; Bishop, *supra* note 8, at 968–70.

66. See Graham, *supra* note 8, at 60; Bishop, *supra* note 8, at 978.

67. See Bishop, *supra* note 8, at 987–88.

68. See generally Elizabeth Fajans & Mary R. Falk, *Against the Tyranny of Paraphrase: Talking Back to Texts*, 78 CORNELL L. REV. 163 (1993); Weresh, *supra* note 4.

69. See generally Mary A. Lundenberg, *Metacognitive Aspects of Reading Comprehension: Studying Understanding in Legal Case Analysis*, 22 READING RSCH. Q. 407 (1987); see also JANE BLOOM GRISÉ, CRITICAL READING FOR SUCCESS IN LAW SCHOOL AND BEYOND 192 (2d. 2022) (examining Lundenberg’s study).

70. See generally Laurel Currie Oates, *Leveling the Playing Field: Helping Students Succeed by Helping Them Learn to Read as Expert Lawyers*, 80 ST. JOHN’S L. REV. 227 (2006).

71. See generally Leah M. Christensen, *The Paradox of Legal Expertise: A Study of Experts and Novices Reading the Law*, 2008 BYU EDUC. & L.J. 53 (2008).

72. See Lundenberg, *supra* note 69, at 409–10; Oates, *supra* note 70, at 230–32; Christensen, *supra* note 71, at 85–86.

from the case caption.⁷³ Expert readers were more likely to evaluate the cases as they read—questioning, testing, and making determinations as to when they agreed with the outcome and reasoning of the opinion and when they did not.⁷⁴ Finally, expert readers were more likely to read the parts of an opinion as an integrated unit by determining how the facts, rules, and reasoning worked together.⁷⁵

In advocating for a close-reading method, authors Elizabeth Fajans and Mary Falk in *Against the Tyranny of Paraphrase: Talking Back to Texts* and Ruth Ann McKinney in *Reading Like a Lawyer: Mastering the Art of Reading Law Like an Expert* emphasize being deliberate about one's reading purpose.⁷⁶ Fajans and Falk situate legal readers along a three-stage scale.⁷⁷ They describe stage-one readers as focused on found meaning—meaning that is fully expressed by the court or that which the court “says it is saying.”⁷⁸ They warn that while students must begin with stage one, a “mechanistic” or “consumer level” approach to reading and briefing cases,⁷⁹ a “too rigid or superficial schematization of what they are reading[,] blinds students to a text’s indeterminacies and openness to interpretation.”⁸⁰ Fajans and Falk describe “stage-two” reading as an “open-ended process of unselfconscious response and self-reflection,” and explain that students achieve “stage-three” legal reading only when the following occur: (1) purpose informs the reading and (2) the reader looks to synthesize the found or constructed meaning within her framework.⁸¹ Similarly, McKinney prioritizes reading with a purpose, devoting a full chapter to it and titling it with dramatic emphasis: “*Always (Always!) Read with a Clear Purpose.*”⁸²

While one challenge of teaching new law students is to move them from novice to expert readers as quickly as possible, seasoned attorneys do not need to be told to read with purpose; in sharp contrast, they may find themselves unable to read without it.⁸³ In *Helping Students Read Like*

73. See Lundeberg, *supra* note 69, at 412; Oates, *supra* note 70, at 233; Christensen, *supra* note 71, at 67.

74. See Lundeberg, *supra* note 69, at 414–15; Oates, *supra* note 70, at 233; Christensen, *supra* note 71, at 79–82.

75. See Lundeberg, *supra* note 69, at 414; Oates, *supra* note 70, at 235; Christensen, *supra* note 71, at 79–82.

76. See Fajans & Falk, *supra* note 68, at 163 (“[Students] ought to be able to read between the lines and to link texts to larger contexts.”); see also MCKINNEY, *supra* note 44, at 94.

77. See Fajans & Falk, *supra* note 68, at 190–91.

78. See *id.* at 190.

79. *Id.* at 188–89.

80. *Id.* at 171–72.

81. *Id.* at 190–91.

82. MCKINNEY, *supra* note 44, at 93.

83. See Weresh, *supra* note 4, at 690, 711, 713 (noting that 54 of 79 legal writing professors included malleability as a threshold concept and defining threshold concepts in

Lawyers, author Laurel Currie Oates hits an early “crisis” in her study when her professor-participant indicates being unable to complete the task that Oates assigned her.⁸⁴ Oates had instructed all participants, including the professor, to “think aloud” as they read so that their thought processes could be recorded and coded as a data set.⁸⁵ After completing the training, the professor indicated she could not complete the task because she had not been told *why* she was reading the case—that is, she had not been assigned a “purpose.”⁸⁶ While the professor could have read the words on the page and offered, at a minimum, some thoughts akin to her stream of consciousness, the professor perceived little to no value in such reading; her practice of actively reading with purpose was so ingrained that she framed her ability to participate in the study in stark terms, announcing that she “couldn’t do the task.”⁸⁷ Once Oates indicated a purpose, the professor was able to contextualize her understanding of the case and complete the reading and thinking-aloud exercise.⁸⁸

Although many have made the case for explicit and early critical reading instruction for law students,⁸⁹ including reading with purpose,⁹⁰ it is worth noting that the legal reader is in a unique position partly because of the textual medium itself—the judicial opinion. While purpose is critically important for all readers regardless of the medium, the judicial opinion bears inherent limits or constraints upon the author that in turn trigger a demand for greater reader involvement.⁹¹ For example, while there may be endless debate as to the meaning of statutory language, the reader can generally rest assured that the author’s goal in writing the statute was to articulate a rule as clearly as possible⁹² and that nothing in the nature of the textual medium—statutory writing—prevented the author from doing so.⁹³ In contrast, a judge writing an opinion must prioritize the resolution of the specific disputes set forth by the parties before her.⁹⁴ Bound generally by the dispute as it is presented, the judge cannot exceed

part as “irreversible”—that is, once learned, the concept cannot be “unlearned” and is unlikely to be forgotten); Oates, *supra* note 70, at 232.

84. Oates, *supra* note 70, at 232; *see also* GRISÉ, *supra* note 69, at 191–92 (describing Oates’ study).

85. Oates, *supra* note 70, at 231.

86. *Id.* at 232–35.

87. *Id.* at 232.

88. *See id.* at 233.

89. *See, e.g.*, MCKINNEY, *supra* note 44, at 96–97; Graham, *supra* note 8, at 54.

90. *See* MCKINNEY, *supra* note 44, at 93–97; Oates, *supra* note 70, at 232–33; Fajans & Falk, *supra* note 68, at 191.

91. *See* Fajans & Falk, *supra* note 68, at 165.

92. *See* EDWARDS, *supra* note 39, at 39–40.

93. *See id.* at 39 (noting that at a minimum, the language goes through a critical review process by outside readers).

94. *See id.* at 40.

this scope.⁹⁵ Because the textual medium dictates a narrowness the author must respect, the judicial-opinion reader must take a more active role in constructing meaning.⁹⁶ The reader must strive to understand what existed “inside the mind of the opinion’s author,”⁹⁷ but even more importantly, how future judges will interpret the opinion when applying it to resolve similar, or not so similar, disputes in the future.⁹⁸

Thus, to fulfill their legal reading task, legal readers must understand *why* they read as well as the limits of their texts; they need to be aware of their analytic purpose and be willing to engage fully with their texts.⁹⁹ Once students recognize that there is always a purpose in reading a legal text, they will be in a better position to label, or more often construct, both holdings and rules. In addition, reading with purpose and being explicit about the ways in which they construct both holdings and rules will lead to a deeper understanding of the relationships between and among them. For example, students will be in a better position to recognize how a holding becomes a rule and how a later holding can alter an earlier one, even without overruling or criticizing it.¹⁰⁰

B. Malleability

“The concept of malleability, or, put another way, the latitude a lawyer has in articulating legal principles, is a threshold concept” in a student’s legal education.¹⁰¹ Melissa Weresh explains that a threshold concept is more than foundational; rather, a threshold concept must be (1) “bounded with the discipline”; (2) “integrative”—bringing together various concepts within it; (3) “irreversible”—once learned, the “concept cannot be unlearned”; (4) “troublesome”—“conceptually difficult for students”; and (5) “transformative.”¹⁰² Weresh argues that malleability

95. *See id.*

96. Though, in constructing meaning, even the reader is bounded by reasonability. *See generally* Jane Kent Gionfriddo, *The ‘Reasonable Zone of Right Answers’: Analytical Feedback on Student Writing*, 40 *Gonz. L. Rev.* 427, 433 (2005).

97. EDWARDS, *supra* note 39, at 40.

98. *See* Jane Kent Gionfriddo, *Thinking Like A Lawyer: The Heuristics of Case Synthesis*, 40 *TEX. TECH L. REV.* 1, 5 n.13 (2007) (citing Ronald Dworkin, *Law as Interpretation*, 60 *TEX. L. REV.* 527, 543 (1982)); Gionfriddo, *supra* note 96; Fajans & Falk, *supra* note 68, at 180; Weresh, *supra* note 4, at 715 (citing Gionfriddo, *Thinking Like A Lawyer*, *supra* at 5 n.13).

99. *See, e.g.*, Oates, *supra* note 70, at 232–33; Fajans & Falk, *supra* note 68, at 191; MCKINNEY, *supra* note 44, at 93–97.

100. *See* discussion *infra* Section IV.A.

101. Weresh, *supra* note 4, at 710, 713 (indicating that 54 of 79 legal writing professors surveyed agreed that malleability is a threshold concept in law; only case synthesis received a higher score, though Weresh argues that case synthesis must be preceded with understanding the availability and limits of the law’s malleability).

102. *Id.* at 690, 711.

meets this five-part definition and transforms students by changing the way they “view the law . . . [and] appreciate the role” of advocates.¹⁰³

In response to Weresh’s seminal article, legal writing professors throughout the country have begun to define various threshold concepts for the discipline of legal writing.¹⁰⁴ One working draft of these threshold concepts includes writing that “*construct*[s] arguments that will persuade an audience about the *meaning* of language,” “reflects facts that are *constructed* and determined,” and “involves ethical and persuasive choices about what constitutes good arguments.”¹⁰⁵ Interestingly, constructing meaning, which is also associated with expert-level legal reading skills, plays a central theme in legal writing threshold concepts.

Weresh explains that identifying threshold issues within a discipline helps students to navigate the challenging terrain quickly and more easily.¹⁰⁶ With the case forcefully made as to the importance of both malleability as a threshold concept and the development of expert legal reading skills, this Article argues for embracing teaching opportunities geared toward that end and proposes that we meet 1Ls where they are—deep in exasperation about rules and holdings, clamoring for right answers.

IV. CREATING EARLY BUY-IN FOR CONTEXTUAL UNDERSTANDING

Generating early buy-in for contextual understanding will help students cross the malleability threshold and advance more quickly through the legal reading stages. “Contextual understanding” of texts can surely be defined in many ways; as used in this Article, the term refers to a metacognitive approach for reading texts, encompassing (1) the author’s intent; (2) any confines determined by the textual medium itself; and (3) everything the reader brings to bear on her text, including personal experience, knowledge, biases,¹⁰⁷ and reading purpose.¹⁰⁸ For legal

103. *Id.* at 711.

104. See David I. C. Thomson, *What We Do: The Life and Work of the Legal Writing Professor*, 228–29 (U. Denv. Sturm Coll. L. Legal Rsch. Paper Series, Working Paper No. 21-33, 2021) (citing MELISSA WERESH & KRISTEN KONRAD ROBBINS-TISCIONE, THRESHOLD CONCEPTS IN LEGAL WRITING (forthcoming 2022) (“1.1: Legal Writing creates and recreates the law; . . . 2.2: Legal writing reflects facts that are constructed and determined; . . . and 3.2: Legal writing is a synthetic process that typically requires a multi-layered approach, multiple revisions, ongoing internal dialogue, and ideally, time.”)).

105. *Id.* at 228 (emphasis added).

106. See Weresh, *supra* note 4, at 716.

107. Although this Article does not explore the biases the reader brings to a text, it would be incomplete to attempt to discuss contextual understanding without noting the area.

108. See generally MCKINNEY, *supra* note 44; Oates, *supra* note 70; Fajans & Falk, *supra* note 68; Gregory C. Pingree, *Rhetorical Holy War: Polygamy, Homosexuality, and the Paradox of Community and Autonomy*, 14 AM. U. J. GENDER & SOC. POL’Y & L. 313, 323–30 (2006).

readers, purpose takes on heightened importance—both because the medium of a judicial opinion bears inherent limitations and because lawyering on behalf of clients requires the identification of a clear analytic purpose.¹⁰⁹ Engaging students early in this metacognitive approach to reading caselaw will give them a better understanding of the ways in which lawyers, including professors, label the parts of a judicial opinion. Students will also be better able to label, and more importantly construct, both holdings and rules themselves. In addition, reading with purpose and being explicit about how to construct both holdings and rules will lead to a deeper understanding of the relationship among holdings and rules and the evolutionary lines that connect them. For example, these concepts should help students determine when a holding becomes a rule and when the evolution of a rule changes the understanding of a holding from a previous case.

A. *A Ripe Teaching Opportunity*

Law professors can introduce students to contextual understanding—in this case, primarily the author’s and reader’s purpose—by using it to unpack why attorneys, and often law professors, at times use “rule” and “holding” interchangeably.¹¹⁰ Early in the 1L year, students are often confused by the myriad definitions and explanations they have received about these legal terms, and they are looking for solutions. While contextual understanding may not be the quick fix students desire, in helping them untangle the definitions and uses of “rule” and “holding,” the concept of contextual understanding is likely to make an impression.

Consider the Cohen and Kerr pieces mentioned above.¹¹¹ While each piece is written with a novice-law-student audience in mind, the authors nonetheless encourage law students to read closely, grapple with nuance, and engage with the idea that holdings are often constructed by the reader rather than simply “found” within an opinion.¹¹² How, then, do these same authors so casually conflate their use of rules and holdings? If we look closer at the moments when Cohen and Kerr conflate “rule” and “holding,” we see that the authors are distinguishing both rules and holdings (together) from dicta.¹¹³ The authors’ purpose is to teach students to distinguish parts of an opinion that will carry precedential value from dicta

109. See, e.g., Oates, *supra* note 70, at 232; Fajans & Falk, *supra* note 68, at 191; MCKINNEY, *supra* note 44, at 93–97; Leah M. Christensen, *Legal Reading and Success in Law School: An Empirical Study*, 30 SEATTLE U. L. REV. 603, 603–04 (2007).

110. See CHEW & PRYAL, *supra* note 44, at 78–79 n.1.

111. See discussion *supra* Section I.A.; see generally *Read a Case*, *supra* note 15; Kerr, *supra* note 1.

112. See *Read a Case*, *supra* note 15; Kerr, *supra* note 1, at 60.

113. See *Read a Case*, *supra* note 15 (“This is to be contrasted with obiter dictum.”); Kerr, *supra* note 1, at 60 (“Holdings are often contrasted with ‘dicta’ found in an opinion.”).

or comments a court may make that are not binding on future courts because they are made “by the way” and were “not necessary for the opinion.”¹¹⁴ Given the authors’ purpose, it was not necessary for them to parse the fine points between holdings and rules.

Rather than dismissing Cohen and Kerr’s interchangeable use of “rule” and “holding” as merely a different way to use the terms, the conflation is an early opportunity to demonstrate to students that considering the author’s intent may help the reader gain a deeper understanding of the text, including its limitations. While 1Ls would understandably prefer authors to flag these moments, authors, including judges, will not always do so. Instead, legal readers must explore an author’s intent as a key component of their critical reading task when seeking to understand a legal text, including a judicial opinion. Neither Cohen’s nor Kerr’s point was negatively impacted by conflating “rule” and “holding.”¹¹⁵ However, students should also be aware that there can be a meaningful difference between a holding and its rule, and that the difference will become critical when they seek to apply the law, particularly by analogical reasoning. Even a few quick examples can prime students to understand and make use of these differences in their analyses.

Just as Cohen and Kerr did not need to distinguish rules from holdings when explaining how rules and holding, together, are different from dicta,¹¹⁶ there are times, in law school and in lawyering, when professors may not need to do so—for example, when reading a case without attempting to apply it, or when intending to apply a case in a rule-based argument. A quick, fictional example demonstrating when students can use “rule” and “holding” interchangeably is helpful.

Consider the fictional case of *Salty Neighbor v. Foster Failure*, in which the court *held* that a person fostering a dog for more than one week is the “owner” of the dog as the term is used in the local dog-bite statute. Assuming a lawyer’s client was recently bitten by a dog who had been fostered for ten days by one of his next-door neighbors, the lawyer could use the holding as the rule in a rule-based analogy to prove that the neighbor fostering the dog was the “owner” of the dog for purposes of the lawyer’s dog-bite case. Similarly, whether a professor asked a student for the “holding” of this case or the “rule” from this case, the student’s answer would look quite similar: a person who fosters a dog for more than one week is the “owner” for purposes of the dog-bite statute. In this fictional case, the simplicity of the facts and the rule-based use of the case allow

114. *Read a Case*, *supra* note 15; see Kerr, *supra* note 1, at 60.

115. See generally *Read a Case*, *supra* note 15; Kerr, *supra* note 1.

116. See *Read a Case*, *supra* note 15 (conflating the holding with the legal rule of a case); Kerr, *supra* note 1, at 60 (“[A] clear rule of law . . . is known as the “holding” of the case.”).

the reader to use the “holding” interchangeably with the “rule,” or what this case will stand for in future cases.

However, when lawyers, including skills and doctrinal professors, engage in analogical, rather than rule-based, reasoning, they are likely to use “rule” and “holding” in distinct ways.¹¹⁷ Therefore, understanding the difference between a rule and holding is critical to delivering high quality legal writing when analogical reasoning is required. Flagging this difference early in the term will help 1Ls understand that the difference in how “rule” and “holding” are used rests not with whether the user is a doctrinal or legal writing professor, but rather with the context in which that “holding” or “rule” will be used.¹¹⁸

When possible, it is helpful to teach new legal readers to frame both rules and holdings from each of their assigned cases. *Robinson v. Lindsay* is a ready example.¹¹⁹ One can articulate the *Robinson* rule as follows: When a child engages in an inherently dangerous activity, the child should be held to an adult standard of care.¹²⁰ If the reader is looking at this case in isolation or engaging in a rule-based analysis, that rule might stand equally well for the holding. However, if the reader is using *Robinson* in an analogical reasoning context, a stronger holding would include additional legally significant facts and could be framed something like this: Driving a snowmobile, a powerful motorized vehicle, is an inherently dangerous activity for which a child should be held to an adult standard of care.¹²¹

Robinson lends itself to an accessible debate about how to frame a holding, including which facts are legally significant enough to be considered inextricable from or “baked into” the holding. Professors can prompt their students to consider whether they should frame the 13-year-old boy as a “child” or a “teenager”; whether they should further define “powerful motorized vehicle” according to weight or top-speed of the vehicle; and whether they should include the specific vehicle name, “snowmobile,” at all? Furthermore, professors can engage students by

117. For those who want definitions, see COUGHLIN, *supra* note 25, at 411–15 (providing glossary definitions).

118. See sources and accompanying text *supra* note 56.

119. *Robinson v. Lindsay*, 598 P.2d 392 (Wash. 1979). This case is also used in Andrew McClurg’s *1L of a Ride* to demonstrate case briefing. See MCCLURG, *supra* note 10, at 195–207.

120. See *Robinson*, 598 P.2d at 393–94. While one might also include in the rule statement the general rule—the typically applied child standard of care—from which this rule stands as an exception, the child standard of care is not necessary to illustrate the arguments made here, and thus this Article limits the *Robinson* rule statement to the exception defined by *Robinson*. Cf. MCCLURG, *supra* note 10, at 206–07 (including typically applied child standard of care).

121. See *Robinson*, 598 P.2d. at 414; see also MCCLURG, *supra* note 10, at 195–207 (analyzing three top-student briefs of *Robinson*).

having them consider how the *Robinson* holding might differ in an objective versus a persuasive document. In exploring *Robinson*, professors can both introduce the construction of meaning as well as the “reasonable zone” of interpretation and application.¹²²

When unpacking the different definitions and uses of “rule” and “holding,” rather than trying to remember the exact phrasing used by each professor or text, students would be wise to think about the context in which the question is asked. While students likely need to be able to articulate the rule of each case—the proposition for which the case will stand to all future, factually similar cases—being able to identify the legally significant facts and to frame a holding is particularly useful when engaging in analogical reasoning. Deepened contextual understanding of rules and holdings will allow 1Ls to see the relationship between rules and holdings more easily and will increase 1Ls’ confidence when briefing cases, drafting case illustrations and applications, and answering questions in class.

Returning to some of the oversimplifications and conflated definitions this Article began with and unpacking them with contextual understanding, many, though certainly not all,¹²³ of the issues and contradictions that once seemed intractable can be resolved. In the effort to keep our side of the street clean, professors can also benefit from a reminder about context. For example, while there is certainly strong student demand for directives and oversimplified explanations for how to label the parts of a judicial opinion,¹²⁴ law professors may cringe at the thought of students relying on oversimplifications.¹²⁵ Professors may reject these oversimplifications believing that such simplifications miss the opportunity to teach 1Ls how readers participate in constructing holdings by framing the scope of facts that give rise to and are inextricably woven into those holdings. We may also worry that oversimplifications will leave students woefully unprepared to analyze opinions in which the author has not included a clear holding.

However, just as we teach our students to do, we, as professors, should acknowledge the contextual understanding of such simplifications—including an author’s intent and the limits of his text. For

122. See *infra* Section V.B.; see Gionfriddo, *The ‘Reasonable Zone of Right Answers’*, *supra* note 96, at 431–33 (explaining that legal “analysis must fall within a ‘reasonable zone of right answers’ in order to be useful” (footnotes and citations omitted)).

123. See, e.g., discussion *supra* Section I.A on the different uses of disposition.

124. See Bishop, *supra* note 8, at 961 (“Students may not try a new skill or a new argument or even give an answer in class if they are unsure or uncertain that they will get it right—or are afraid they will get it wrong.”).

125. When presenting an earlier version of this Article at the LWI Regional Conference at the University of Oregon in October of 2022, some participants groaned in response to Ruskell’s directive for finding a holding. See RUSKELL, *supra* note 26, at 21.

example, the author of the quote, “go to the end of the case and scan up from the bottom until you find the line that says ‘we hold’ or ‘the holding is’ or ‘the best rule is’ or something to that effect,”¹²⁶ is quite well-regarded in the academic legal community, has directed an academic success program for more than 15 years, and works for a top-notch legal writing program consistently recognized by U.S. News for its exceptional work.¹²⁷ As critical readers ourselves, professors can acknowledge that the author’s directive appears in *Chapter One, Week One* of the guide; that the author has in mind an audience of 1Ls; and that the author expects his advice to be used within the *first week* of a student’s law school career.¹²⁸ To be fair, were something critical to depend on a brand-new law student properly articulating a case holding during the first week of law school, most of us would be pleased to know that the student had this guide in hand. Once we acknowledge the value of even an oversimplified directive as a starting point for understanding what a holding is and how to recognize it, we can extract value from the directive without accepting it in full. We can find meaning in the directive without allowing our students to accept it as a full or final word about how to read judicial opinions critically or frame holdings. In fact, the directive is so clear that new law students should not need to practice this type of reading for long. As soon as they see a few examples of opinions to which the directive can be applied, they will be ready to think more deeply about the construction and meaning of holdings. Thus, in reaching for a contextual understanding, professors can appreciate the value of even an oversimplified directive without allowing our students to remain in this early “consumer [reading] stage”¹²⁹ for any longer than necessary.

B. *Converting the Doubters*

After professors introduce students to contextual understanding by using it to unpack rule-holding confusion, some students will embrace the practice and return to it throughout the year, but others may continue to favor a “right answer” to the exclusion of reading with contextual understanding.¹³⁰ To this end, a quick non-legal example, with a text that

126. *See id.*

127. Professor Alex Ruskell has served as the Director of Academic Success at the University of South Carolina for over 15 years and now serves as a visiting professor at the William S. Boyd School of Law at the University of Nevada, Las Vegas, which is currently ranked second among legal writing programs in the country. *See Best Legal Writing Programs*, U.S. NEWS & WORLD REP., <https://perma.cc/NPS2-RMZ9> (last visited Oct. 9, 2023).

128. *See* RUSKELL, *supra* note 26, at 11 (“You’re going to have to do a lot of new things in the first few weeks.”).

129. *See* Fajans & Falk, *supra* note 68, at 188–90.

130. *See* Bishop *supra* note 8, at 961.

many would think of as largely immutable proves useful for demonstrating why contextual understanding is important.¹³¹

Enter—the nutrition and ingredient label. When reading an ingredient label without a purpose, people take in only certain information as they process the text. That is, they bring their personal experience, previous knowledge, preferences, and even biases, to bear on the text. If they have experience restricting calories or avoiding certain ingredients, they may be more attentive to that related content. If they are followers of the Paleo Diet, they will be more concerned about the sugars and carbohydrates and less attentive to fat content. In contrast, those who follow a strict daily caloric intake may be solely concerned with calories per serving. If the reader believes eggs should be avoided at all costs because of their cholesterol levels, regardless of whether this is scientific fact or an unfairly earned reputation, consumers' beliefs impact their label reading and possible use of the product. Alternatively, if readers have a background in graphic design they may notice the typeface, font, size, color, and layout of the nutrition and ingredient label. If they have regulatory or food-labeling experience, they may look to see if required content or warnings are present.

As an experiment, consider that after asking a few students to share what they look for when reading labels, students are given this purpose: *You are a babysitter caring for a child with life-threatening nut allergies.* Students will immediately understand that their engagement with the label must change substantially. Students may suddenly wonder whether nutmeg actually contains nuts, what “natural flavors” are, and what the potential for cross-contamination is when the label includes the warning: “Made in a facility with nuts.” They may also wonder whether the absence of such a warning can be relied upon or is otherwise meaningful.

Changing the experiment demonstrates that students engage differently with the label when given a different purpose. Given a final purpose: *You are the proofreader for the food packaging company,* students become attuned to the inconsistent spacing after each of the colons on the label. They may recognize when slightly different fonts are used, notice that a word is abbreviated in one place but spelled out in another, and so on. With a heightened appreciation for how personal experience, previous knowledge, and reading purpose impacts ability to process information, students are better prepared to read legal opinions.

When students are persuaded of the value of contextual understanding, they are better prepared to read and use judicial opinions. After teaching contextual understanding explicitly, professors can easily

131. See Calleros, *supra* note 11, at 39 (arguing the benefits of using non-legal examples to introduce students to new legal skills).

return to it as a foundational concept when helping students become expert legal readers and in helping them cross the malleability threshold.¹³² Moreover, we can build upon this introduction to contextual understanding by teaching *holdings as hypotheses*—a unique framework for further enabling 1L fluency in the logic of judicial opinions.

V. HOLDINGS AS HYPOTHESES

While some judicial opinions read more like a “paint by numbers,” allowing little room for creativity, many, intentionally or not, leave various creative choices for the reader—particularly when the reader’s purpose is to frame a holding for analogical reasoning. Many law professors already explicitly teach students that the facts determinative to a holding can be framed narrowly or broadly,¹³³ thereby changing the meaning of the holding of which they are a part.¹³⁴ Explicitly exploring how a holding can be framed narrowly or broadly furthers our students’ appreciation of the law’s malleability.¹³⁵ Professors can deepen this appreciation by acknowledging that when we ask students for holdings of cases, we are asking students to make use of that creative space.¹³⁶ Building upon this approach, this Article proposes teaching *holdings as hypotheses*. This proposal, itself an example of contextual understanding, will deepen students’ understanding of the malleability of law and enable early 1L fluency in the logic of judicial opinions.

A. *The Benefits of Teaching Holdings as Hypotheses*

1Ls can be introduced to holdings as hypotheses as early as a summer pre-law class, law school orientation, or class periods within the first few weeks of their first term. In addition, they can be introduced with legal or non-legal material. Teaching holdings as hypotheses accomplishes at least three classroom objectives: (1) focusing 1L attention on constructed meaning and the malleability of law; (2) emphasizing the evolution of law, including how holdings themselves can be fundamentally altered without being overruled or criticized; and (3) enhancing classroom engagement, particularly among Gen-Z students who may otherwise be reticent to participate.¹³⁷

132. See Weresh, *supra* note 4, at 690.

133. See *Read a Case*, *supra* note 15 (“[A] holding could be stated very broadly or narrowly.”).

134. See SHAPO ET AL., *supra* note 39, at 19–20.

135. See *generally* Weresh, *supra* note 4.

136. This would be one answer to Weresh’s call to teach the malleability of law more explicitly throughout the 1L curriculum. See *id.* at 690.

137. See *infra* Section IV.A.

1. Malleability and Constructed Meaning

Because the facts of a case can be described narrowly or broadly,¹³⁸ and readers approach judicial opinions with varied contextual purposes, readers are likely to disagree as to what was “inside the mind of the opinion’s author”¹³⁹ at the time of the writing. Stated another way, readers are likely to disagree as to whether, and to what extent, particular facts are legally significant.¹⁴⁰ While the disposition of a case (used as *Read a Case* uses it, as the outcome or the action taken by the court at the conclusion of the case¹⁴¹) is an objective, static fact,¹⁴² both the rule and the holding are malleable.¹⁴³ This malleability may be an uncomfortable truth for students,¹⁴⁴ however, tackling this discomfort early in the 1L year allows students to progress more quickly through the developmental stages of legal reading and writing.¹⁴⁵

This Article is not the first to note that the rule a legal reader believes a case stands for cannot be relied upon as a legal *principle* until and unless it is applied in a series of cases that are factually similar yet distinct enough

138. See *Read a Case*, *supra* note 15; SHAPO ET AL., *supra* note 39, at 19.

139. EDWARDS, *supra* note 39, at 40.

140. See SHAPO ET AL., *supra* note 39, at 19.

141. See *Read a Case*, *supra* note 15.

142. See *id.*; SHAPO ET AL., *supra* note 39, at 19 (“Not everyone will agree to any one formulation of a holding of a case.”)

143. See Weresh, *supra* note 4, at 710 (defining malleability as “the latitude a lawyer has in articulating legal principles”); *id.* at 713–15 (discussing malleability as a threshold issue that precedes case synthesis and describing case synthesis as ensuring that expressed legal principles make sense in “relationship to the *facts* and results” of prior cases (emphasis added)).

144. See *id.* at 689 (citing Linda Ross Meyer, *When Reasonable Minds Differ*, 71 N.Y.U. L. REV. 1467, 1468 (1996) (describing the starkly varying responses of legal theorists, 1Ls, and lawyers to the idea that “[t]wo reasonable minds, both analyzing the same set of legal materials, may differ as to their proper application”)).

145. See, e.g., Oates, *supra* note 70, at 229–30, 235, 239, 245–46 (explaining that in contrast to new legal readers, the expert legal readers in the study paid more attention to textual clues and context, including reading purpose, and to their own internal dialogue, including analysis, synthesis, and evaluation) (citing Mary A. Lundeberg, *Metacognitive Aspects of Reading Comprehension: Studying Understanding in Legal Case Analysis*, 22 READING RSCH. Q. 407 (1987) (demonstrating that expert readers engaged in “synthesis by trying to reconcile statements made in the opinion or by thinking about hypotheticals” at rates twice as high to four times as high as novice readers did)); see generally Linda L. Berger, *Applying New Rhetoric to Legal Discourse: The Ebb and Flow of Reader and Writer, Text and Context*, 49 J. LEGAL EDUC. 155, 170–71 n.97 (1999) (explaining the difference between novice and expert legal readers by reviewing various legal reading studies and analyses including Mary A. Lundeberg, *supra*; Dorothy H. Deegan, *Exploring Individual Differences Among Novices Reading in a Specific Domain: The Case of Law*, 30 READING RSCH. Q. 154 (1995); Laurel Currie Oates, *Beating the Odds: Reading Strategies of Law Students Admitted Through Alternative Admissions Programs*, 83 IOWA L. REV. 139 (1997); James F. Stratman, *Investigating Persuasive Processes in Legal Discourse in Real Time: Cognitive Biases and Rhetorical Strategy in Appeal Court Briefs*, 17 DISCOURSE PROCESSES 1 (1994); and Fajans & Falk, *supra* note 68).

to stress, test, and ultimately illuminate the boundaries of the rule.¹⁴⁶ Only with the results of such a series of “judicial inclusion[s] and exclusion[s]”¹⁴⁷ can legal readers look back to evaluate whether their rule, as postulated or framed, has withstood more recent caselaw.¹⁴⁸ The longer the line of cases observed, the greater the number of data points—points of “judicial inclusion and exclusion”¹⁴⁹—the greater the readers’ confidence in their rule will be. At some point, the breadth of cases they observe and the consistency with which an outcome is applied will give them the requisite confidence to call the initial postulation a rule; and with even greater evidence, and a greater number of data points, they may comfortably identify this rule as a legal principle.¹⁵⁰ With their confidence at its highest, legal readers and writers can justly breathe the words: “It is [well] settled that”¹⁵¹

Similarly, other authors have made the case for teaching “malleability” to students early and explicitly.¹⁵² However, this Article proposes that law professors should teach malleability not only as it relates to rules or principles but also as it relates to case holdings. Teaching *holdings as hypotheses* is a rich framework for doing so. Teaching

146. See ALDISERT, *supra* note 7, at 12 (“[A] single court decision cannot give birth to an all-inclusive principle.”); see generally Sonya G. Bonneau & Susan A. McMahon, LEGAL WRITING IN CONTEXT 56–61 (2017).

147. See ALDISERT, *supra* note 7, at 13 (citing Rosco Pound, *Survey of Conference Problems*, 14 U. CIN. L. REV. 324, 330–31 (1940) (describing that judicial principles are preceded by a long series of cases, “of what Mr. Justice Miller used to call judicial inclusion and exclusion” that ensure the universality of the “starting point for legal reasoning in all analogous cases.”)).

148. See *id.*

149. See, e.g., *id.* (discussing the fallacy that results when a single “naked” case decision or holding is argued or accepted as worthy of elevation to the “dignity” of a legal principle). Nonetheless, while lawyers would be wise not to call such a naked holding a rule of general applicability or a principle, they may encounter situations in practice when they need to make the best analogy possible from a single case or from a small pool of cases because there is a dearth of additional relevant authority at the time their argument must be made.

150. See *id.*

151. See *id.* at 13–14 (citing Pound, *supra* note 148, at 330–31 (1940) (describing that when courts attempt to formulate a “principle,” the court will engage in “judicial inclusion and exclusion”)). Of course, principle or rule creation by judicial inclusion and exclusion is, itself, just a construct—not an objective truth. For example, within a single court or single jurisdiction, over time the composition of the court changes, and even when judges dutifully adhere to the principle of stare decisis, the judges may or may not be fully accurate when they attempt to peer into the mind of the previous judicial author(s). Other times, judges may less dutifully adhere to the principle of stare decisis, and the result may be the development of an evolutionary line that looks distorted. Lawyers may find themselves wondering whether they are witnessing judicial inclusion and exclusion according to a neutral developing principle or simply the effect of the changing composition of a court made up of different and sometimes, at least seemingly, political viewpoints.

152. See, e.g., Weresh, *supra* note 4, at 690.

holdings as hypotheses means that rather than asking our students what “the” holding of a case is, professors should instead acknowledge that many judicial opinions present the opportunity for framing a variety of reasonable holdings. While one version of a holding may stand out as most reasonable,¹⁵³ lawyers cannot rest on the belief that they *know* the holding of a case until the judicial process tests the hypothesis through a series of additional cases that stress and stretch the lawyer’s understanding and ultimately illuminates a set of boundaries that supports or contradicts the lawyer’s best determination of which facts were indeed legally significant.¹⁵⁴ A future holding could demonstrate that lawyers over- or under-reached in their assessment. Until a line of cases develops illuminating those boundaries, a lawyer’s construction of the holding is simply the most reasonable (or at least *a* reasonable), yet untested, hypothesis.¹⁵⁵

Finally, teaching holdings as hypotheses guards against some of the noted shortcomings of Langdell’s case method.¹⁵⁶ Framing holdings as hypotheses will prevent students from reading caselaw only for *found* meaning because framing holdings as hypotheses requires case readers to more consciously make decisions about which facts to include in their proposed case holding. Additionally, remembering the reading purpose and seeking a contextual understanding of a case holding underscores the creativity that lawyering demands and will prevent students from viewing each case as an “authoritative . . . end in itself.”¹⁵⁷

2. Evolution of Law

While many authors have written about rule creation through inductive and deductive reasoning,¹⁵⁸ less attention has been given to how the holdings underlying those rules are retrospectively susceptible to the process of judicial inclusion and exclusion. The petrification process is a

153. See Gionfriddo, *supra* note 96, at 430–33 (explaining the limits on the scope of reasonable legal analysis).

154. Cf. ALDISERT, *supra* note 7, at 9–10; *id.* at 32 (describing rule development as the process of “[c]onnecting the dots” or inductive reasoning as used in common law with the “dots” representing the “holdings,” each announcing an outcome from a particular “*set of facts*” (emphasis added)); see also Bonneau & McMahon, *supra* note 147, at 57–58 (explaining that in rule synthesis, legal readers determine which facts are legally significant by looking for facts that consistently appear in cases that reach the same outcome and by hypothesizing the next application). Here, I argue that the same is true at the micro level of articulating any particular case holding prior to the development and acceptance of a clear rule or principle.

155. For an accessible legal example, see, e.g., *supra* Section IV.B.

156. See Moskovitz, *supra* note 57, at 245 (citing *Report of the Committee*, *supra* note 59).

157. See *id.*

158. See, e.g., ALDISERT, *supra* note 7, at 9–10; Bonneau & McMahon, *supra* note 147.

useful analogy to help students visualize a holding's evolution—how a holding is shaped or reshaped by future caselaw. In petrification, organic matter, such as wood, is slowly replaced in whole or in part by one or more minerals until it ultimately becomes something new. Similarly, the original hypothesized holding of a case can be slowly refined, or even replaced, until it must be recognized as something new. This can occur even without the hypothesized holding being overruled or criticized.

Teaching holdings as hypotheses in the legal writing classroom also leads to greater student appreciation of the challenges lawyers experience. For example, in an objective legal writing assignment involving analogical reasoning, students must advise clients of the likely outcome of their legal issue; students must determine whether their facts and legal issues are likely to fall within or outside a particular rule. In determining the contours of that rule, students must examine many case holdings, and regardless of where upon the evolutionary line the student finds herself—whether armed with a well-settled principle or merely a tentative rule based on a few holdings—she nonetheless must create hypothesized holdings and synthesized rules to advise and advocate for her client. A client will not be comforted to know that her lawyer will not be able to determine the holding with certainty until her lawyer looks back on that holding years from now. However, acknowledging the size of the data set, or the length of the evolutionary line that precedes the case, will assist students in assigning the most accurate degree of certainty to their predictions.

Similarly, in a persuasive legal writing setting or, even more importantly, in a live-clinic setting, students who are acutely aware of the evolution of rules and the hypothetical nature of holdings—hypothetical until a relatively large and varied data set of judicial opinions accrues—will be better able to advise clients about the potential risks and benefits of pursuing litigation. When submitting documents to a court, a student with this understanding will be better prepared to correlate her arguments to, and set her tone in accordance with, the strength of her hypothesized holdings, as informed by her position along the evolutionary line of caselaw.

In sum, if professors teach our 1Ls to hypothesize holdings as they read and analyze case law, we are teaching students to recognize the malleability of every case holding they read and how that malleability and the evolution of caselaw can impact the logic and strength of arguments. In teaching students to hypothesize holdings, we just might prevent the oft-committed rookie error of believing that “[a] single court decision” can “give birth to an all-inclusive principle.”¹⁵⁹

159. *Id.* at 35.

B. *How to Teach Holdings as Hypotheses*

In the Legal Research and Writing Bootcamp, part of the UF Law 1L Orientation Program,¹⁶⁰ legal writing professors introduce incoming students to judicial opinions by debriefing an annotated opinion. Professors deconstruct the case caption, show students where the opinion begins and how to find the author of the opinion, and identify how reporter page numbers appear in electronic databases. For the last few years, *Robinson v. Lindsay* has been used for this demonstration.¹⁶¹

As noted above, *Robinson v. Lindsay* is a well-loved adult-standard-of-care case appearing in many Torts casebooks.¹⁶² In *Robinson*, an 11-year-old girl sustained a permanent thumb injury from a snowmobile driven by a 13-year-old boy.¹⁶³ The trial court did not instruct the jury to hold the boy to an adult standard of care, and, deciding its previous instruction was erroneous, the Washington Supreme Court ordered a new trial; the defendants appealed.¹⁶⁴ The *Robinson* case lends itself well not only to teaching the parts of an opinion but also to teaching about the progression and formation of rules and to teaching holdings as hypotheses.

In *Robinson*, the court defined the single issue on appeal as whether a child driving a snowmobile should be held to an adult standard of care.¹⁶⁵ In determining the appropriate standard, the court first described the reasonable person standard of care and the special exception generally applied to children—the reasonable child standard of care.¹⁶⁶ The *Robinson* court then examined how other jurisdictions had applied the exception to the reasonable child standard of care in cases when children engaged in an activity that “is normally one for adults only.”¹⁶⁷ However, rather than inheriting or borrowing a rule from another jurisdiction, the *Robinson* court adopted its own version of the exception to the reasonable child standard of care.¹⁶⁸ The *Robinson* court identified the inherent dangerousness of an activity as the critical triggering factor rather than whether an activity is one normally engaged in only by adults.¹⁶⁹ Thus, in determining when to hold children to an adult standard of care, the

160. The UF Law Orientation Legal Writing Bootcamp Segment was reintroduced and redesigned by Professor Sabrina Lopez in 2021.

161. See *Robinson v. Lindsay*, 598 P.2d 392 (1979).

162. See *supra* notes 9–10 and accompanying text; *supra* Section IV.A. *Robinson* appears in VICTOR E. SCHWARTZ ET AL., *TORTS, CASES AND MATERIALS* 187 (14th ed. 2020), MARSHALL S. SHAPO & RICHARD J. PELTZ, *TORT AND INJURY LAW* 293 (3d ed. 2006), and other textbooks.

163. See *Robinson*, 598 P.2d at 392.

164. See *id.* at 392–93.

165. See *id.* at 393.

166. See *id.* at 393–94.

167. *Id.* at 393.

168. See *id.* at 393–94.

169. See *id.*

Robinson court rule includes only those activities in which a child engages that are “inherently dangerous.”¹⁷⁰ While one might articulate the *Robinson* rule as follows: A child should be held to an adult standard of care only when the child is engaged in an inherently dangerous activity, one could also add the explanatory language of the court: A child should be held to an adult standard of care only when the child is engaged in an inherently dangerous activity as in “the operation of powerful mechanized vehicles.”¹⁷¹

If asked in the abstract to articulate the *holding* from *Robinson*, one could use the rule and holding interchangeably and articulate either of the above as the holding. However, the second articulation is preferable as a holding because it incorporates a legally significant fact. By articulating that the “operation of powerful mechanized vehicles” as an example of “inherently dangerous activity,”¹⁷² the court identified at least that much as legally significant. Whether additional facts are also legally significant or whether an alternative set of facts could be equally significant is a task for the reader to determine according to her context.

In the opinion’s concluding paragraph, the *Robinson* court states: “Because petitioner was operating a powerful motorized vehicle, he should be held to the standard of care and conduct expected of an adult.”¹⁷³ While a reader might be tempted to identify this as “the” holding, she should consider components of contextual understanding: (1) the author’s intent; (2) any confines determined by the textual medium; and (3) everything the reader brings to bear on her text, including personal experience, knowledge, preferences and biases, and, most importantly, her reading purpose or how she hopes to use that text. As to the *Robinson*’s author’s intent and the confines determined by the textual medium, because this is a judicial opinion, the author was confined to answering the legal question before him. The author of *Robinson* was also confined by his place in history—Chief Justice Utter was writing in 1979.¹⁷⁴ While other aspects of what a reader brings to her text may impact her contextual understanding of the text, her legal purpose most certainly will. For example, the reader’s purpose could include the need to predict how the next court will rule on a similar or not-so-similar set of facts, or the need to convince a court to rule in a client’s favor. Thus, it is also reasonable to frame the holding to include *additional* facts from the opinion that the

170. *Id.* at 393.

171. *Id.* at 393–94.

172. *Id.*

173. *Robinson*, 598 P.2d at 394.

174. *See id.* at 392, 394 (reasoning that children would still be free to enjoy “traditional childhood activities”).

legal reader reasonably understands to be legally significant—facts that appear to have impacted the legal outcome.

With a persuasive legal purpose, a reader can take a maximalist or minimalist view of the holding,¹⁷⁵ and her selected view can emphasize or deemphasize particular facts. For example, if she wants to narrow the instances in which the adult standard of care will apply to children, she might express the holding of *Robinson* to include the following facts, all of which can reasonably be described as legally significant: *Driving a snowmobile, a powerful motorized vehicle capable of traveling at 65 miles per hour, is an inherently dangerous activity for which a 13-year-old child should be held to an adult standard of care.*¹⁷⁶ If instead she wants to broaden the instances in which the adult standard of care will apply to children, she might express the holding of *Robinson* to include the following facts, all of which also can reasonably be described as legally significant: *Operating a powerful motorized vehicle, even at low speeds of 10 to 20 miles per hour, is an inherently dangerous activity for which a child should be held to an adult standard of care.*¹⁷⁷

Even with an objective purpose to predict the outcome in a similar, or not-so similar, case, the reader would likely need to look beyond what the *Robinson* court articulated as the rule or the holding. In *Robinson*, the following statement is the court's closest direct statement of a rule:¹⁷⁸ “[W]hen the activity a child engages in is inherently dangerous, as is the operation of powerful mechanized vehicles, the child should be held to an adult standard of care.”¹⁷⁹ The court's closest direct statement of a holding is: “Because petitioner was operating a powerful motorized vehicle, he should be held to the standard of care and conduct expected of an adult.”¹⁸⁰ These limited articulations do not serve the reader's needs if, for example, her client is the family of an 8-year-old who accidentally started an aluminum-framed electric go-kart capable of traveling 12 miles per hour that collided with another go-kart at 10 miles per hour causing injury. Instead, the reader would need to hypothesize whether and to what extent other facts from *Robinson* may have been legally significant.

175. See *Read a Case*, *supra* note 15 (“[T]aking either a minimalist or maximalist reading of a holding can ‘generate different results.’”).

176. See *Robinson*, 598 P.2d at 394.

177. See *id.*

178. While this appears to be the clearest rule statement, the *Robinson* court refers to this sentence as “rationale,” which underscores the fluidity with which the terms are used and how interdependent they can be. See *id.* at 393. Of course, it is only in understanding a court's reasoning or rationale that the reader can appropriately determine which facts were legally significant and should thus be considered part of the court's holding.

179. *Id.* at 393–94.

180. *Id.* at 394.

Legal readers must consider the reasoning offered throughout the opinion to assess accurately whether and to what extent facts mentioned in the opinion are legally significant and should be considered “baked into” the holding itself. In *Robinson*, readers would use the court’s reasoning to consider, for example, the following: (1) the speed the vehicle is capable of traveling; (2) the age of the child engaged in the activity; (3) the experience level of the child engaged in the activity; (4) whether the act was an intentional or accidental operation; (5) the power of the vehicle, as some combination of material, weight, and speed; and (6) whether go-karting is a “traditional childhood activit[y].”¹⁸¹ The court’s rationale for the holding and the policy issues raised give the reader reason to understand these facts as within the zone of legal significance.¹⁸²

For the *Robinson* litigants, all that mattered was the disposition—a new trial was granted—and that this boy, in this instance, should be held to the adult standard of care. However, for future litigants, the critical aspect of the *Robinson* opinion will be the *holding* as it existed in the mind of the *Robinson* court and, even more importantly, as the next court *believes* the holding existed in the mind of the *Robinson* court. Assuming strict adherence to *stare decisis*, the new court will use its best judgment to determine the *Robinson* holding as it existed in the mind of the *Robinson* court. Taking a more cynical view, a new court could instead use its powerful position to choose to emphasize or de-emphasize a fact as legally significant, regardless of whether the new court believes the fact existed in the mind of the original court as legally significant. Moreover, the new articulation occurs at a time when the original court is no longer able to speak for itself.¹⁸³ Either way, by emphasizing certain facts as legally significant, the new court speaks not only for itself but for anything the original court may have left unarticulated. In so doing, the new court thereby confirms or alters the hypothesized holding as framed by a reader of the original *Robinson* text. The reader can either rest assured that her hypothesis was correct or must recalibrate her hypothesis. It is only from this retrospective position that readers can judge the accuracy of their earlier hypotheses.

Of course, even this retrospective vantagepoint will not reveal whether a reader’s hypothesis was “right” as to what was in the mind of the opinion’s author. However, whether her hypothesis was “right” is as irrelevant to her as the objective, static disposition of that case. Rather, what will be relevant is whether her hypothesized holding closely aligns with the next court’s understanding of the holding. What will matter is

181. *Id.*

182. Cf. Gionfriddo, *The ‘Reasonable Zone of Right Answers’*, *supra* note 96.

183. A court can speak only through judicial opinions and only about the legal issues brought before it.

whether the reader has accurately predicted what the new court will say about which facts were—and therefore are—legally significant.

For example, if the same court that decided *Robinson* later held in the fictional case of *SloMo* that a child driving a motorized vehicle should be held to an adult standard of care, despite the vehicle's top speed being only 12 miles per hour, the reader would need to recalibrate the minimalist hypothesized holding to align with the newly issued *SloMo* opinion, despite her desire to articulate the holding narrowly. While, when the court first issued *Robinson*, it may have been reasonable to hypothesize that the court viewed the snowmobile's capability of traveling at 65 miles per hour as legally significant,¹⁸⁴ the reasonability of that hypothesis would have evaporated after *SloMo*. Instead, the reader would need to reframe the holding by dropping that fact from the hypothesized holding. Thus, even when reading *Robinson* with a persuasive purpose of narrowing the holding, post-*SloMo*, the reader would edit her hypothesized holding and strike language as shown: Driving a snowmobile, a powerful motorized vehicle ~~capable of traveling at 65 miles per hour~~, is an inherently dangerous activity for which a 13-year-old child should be held to an adult standard of care. Moreover, after the court issues the *SloMo* opinion, the accuracy of the original hypothesis would become irrelevant—that is, what was inside the mind of the judge who wrote the *Robinson* opinion would become irrelevant. The *SloMo* holding would forever alter the *Robinson* holding,¹⁸⁵ and any new articulations of the *Robinson* holding would need to so reflect.

Initial instruction on holdings as hypotheses will require an investment of time, whether it is taught in a pre-law summer course, in a 1L orientation, or in one or more early class periods. However, it is a worthwhile endeavor. In teaching holdings as hypotheses, students are introduced to critical reading skills and to contextual understanding. Professors can help them internalize the evolution of the rule of law and situate opinions and holdings within that framework. Finally, professors can acknowledge that there is a range of reasonability in making legal predictions and arguments, and they can highlight for students how that range can change over time. Once we have taught holdings as hypotheses, we can reinforce students' understanding with quick examples throughout the term. When drafting a case illustration¹⁸⁶ or case synthesis,¹⁸⁷ or discussing the strength of an analogy, professors can refer to earlier

184. See *Robinson*, 598 P.2d at 394.

185. See *supra*, Section V.A.2 (analogizing the petrification process).

186. See COUGHLIN ET AL., *supra* note 25, at 113 (“While rules explain how courts determine whether a particular standard is met, ‘case illustrations’ show how those standards were met in actual cases.”).

187. See GRISÉ, *supra* note 69, at 223–45 (“We synthesize information when we get data from a variety of sources to construct our own version of an event.”).

lessons about holdings as hypotheses and how future opinions can alter a case holding, even when the case has not been overruled or criticized. Additionally, teaching holdings as hypotheses helps us prepare students to study and practice law by giving students encouragement to engage and permission to take risks in the classroom.

C. *The Bonus: Enhanced Engagement*

The word “hypothesis” is defined by Merriam Webster as “a *tentative assumption* made in order to draw out and test its logical or empirical consequences.”¹⁸⁸ One bonus for framing holdings as *hypotheses* is increasing Gen-Z students’ willingness and ability to engage in the classroom. With Gen Z having high levels of anxiety, particularly about in-person performance,¹⁸⁹ fear of the Socratic method,¹⁹⁰ high levels of “memeophobia,”¹⁹¹ and fear of being “canceled,”¹⁹² voluntary engagement in the 1L classroom can be challenging to cultivate, particularly early in the year.

Teaching holdings as *hypotheses* signals two stress-reducing messages to students: (1) the target is larger than one might expect¹⁹³ and (2) the process is more important than the product. After being taught holdings as hypotheses, students begin to understand that there is a range of reasonable answers. They become less fearful that their answer will be

188. *Hypothesis*, MERRIAM-WEBSTER’S ONLINE DICTIONARY, <https://perma.cc/6LG2-SAMV> (last visited Oct. 6, 2023) (emphasis added).

189. See generally Graham, *supra* note 8, at 42–43, (referencing many reasons for amplified anxiety and fearfulness among Gen Z); *id.* at 65, 72 (noting that (1) Gen Z as a generation may be more uncomfortable with Socratic method than previous students and (2) novice law students have a “deep insecurity and anxiety” about reading); Bishop, *supra* note 8, at 961–62 (“Law students will likely face academic and intellectual challenges in law school and have to work harder than they have previously, and this struggle or getting things ‘wrong’ may make students feel like they are failing.”).

190. See generally Graham, *supra* note 8, at 65, 65 n.241 (citing M.H. Sam Jacobson, *Paying Attention or Fatally Distracted? Concentration, Memory, and Multi-Tasking in a Multi-Media World*, 16 LEGAL WRITING: J. LEGAL WRITING INST. 431, 458–59 (2010) (arguing that some students are unable to absorb new information in a Socratic classroom and instead can focus only on the hope that the professor will not call on them)).

191. See *Memeophobia*, URBAN DICTIONARY (Mar. 28, 2015), <https://perma.cc/H4UC-38FD> (User sunsetblvd describes Memeophobia as: “A distinct, 21st century fear that a photograph or video posted on a social network medium will go viral and you will forever be immortalized in the internet infamy.”).

192. This Article uses “fear of being canceled” as it has been expressed by some 1L students—a fear that they will inadvertently misstep or offend another with their speech, and that in doing so they will be ostracized from the insular legal community of law school. This phrase is not used to encompass the belief that freedom of speech extends to being free from experiencing the natural consequences of that speech.

193. See generally Weresh, *supra* note 4, at 711, 711 n.136 (citing a survey which found that, after eight weeks in their first semester of law school, some students noted that the law was “not as concrete as they thought”).

so “off-base” that they will be humiliated in front of their peers.¹⁹⁴ Additionally, even when students offer answers outside the zone of what a professor deems reasonable, the professor can emphasize process over product and, whether through Socratic or other dialogue, easily encourage the students to continue to grapple with their answers. In short, under the holdings as hypotheses framework, testing the hypothesis according to the reasoning of the opinion and remaining agile enough to reconstruct it become expected steps in the process rather than an embarrassment to be avoided.

What is “right” as to a judicial holding may not be knowable until courts issue additional opinions clarifying the scope of the holding.¹⁹⁵ Because caselaw is always evolving, there are times when previously held understandings of a holding will be disproven.¹⁹⁶ Importantly, just as in science,¹⁹⁷ disproving such a hypothesis should not be viewed as blameworthy¹⁹⁸ but rather as a legitimate advancement in understanding the law. For students struggling with anxiety about classroom performance, this should come as welcome relief.

VI. CONCLUSION

Introducing contextual understanding early can help 1Ls more smoothly and quickly achieve fluency in the logic of judicial opinions. As previously demonstrated, professors can model contextual understanding for students in a variety of ways, including helping them to make sense of the varied uses of legal terms like “rules” and “holdings.” After modeling its use and giving students the opportunity to practice reading with contextual understanding, professors can deepen students’ appreciation for contextual understanding by adopting the unique framework of teaching holdings as hypotheses.

As educators, we face the ongoing pedagogical challenge of considering when to best introduce, model, and reinforce contextual understanding for law students. In the classroom, framing holdings as hypotheses illuminates the transformative “jewel in the curriculum”¹⁹⁹—the malleability of law—and helps students acquire the expert legal reading strategies foreign to most 1Ls. Teaching holdings as *hypotheses*—as something that is tentative and must be tested further—delivers an

194. See Bishop, *supra* note 8, at 988 n.179.

195. See discussion *supra* Section IV.A.

196. See *id.*

197. See, e.g., James Clear, *Treat Failure Like a Scientist* (last visited Oct. 3, 2023), <https://perma.cc/JR57-XRNW> (explaining that failure for scientists is treated as just another data point).

198. See Bishop, *supra* note 8, at 966, 973–75 (“[C]ontextualizing failures as spanning a spectrum from blameworthy to praiseworthy.”).

199. *Weresh*, *supra* note 4, at 690.

additional bonus of enhanced engagement. The holdings-as-hypotheses framework fosters a classroom culture of exploration in which students take risks to test the limits of their understanding and the reasonableness of their arguments. Moreover, this framework encourages students to embrace the mindset that no effort is wasted when they seek to understand.

APPENDIX: A SOMEWHAT INSOUCIANT NON-LEGAL EXAMPLE

Non-legal examples can be a non-threatening way to introduce legal concepts to 1Ls and to encourage participation early in the 1L year or even before the academic year begins. Many of us are familiar with some version of The Grocer's Dilemma²⁰⁰ and the Burrito as a Sandwich problem²⁰¹ and enjoy using these exercises as early illustrations of analogical reasoning, rule formation, and more. What follows is a non-legal exercise that can be used to teach holdings as hypotheses. These examples can also be adapted to teach students how to construct rules and how to synthesize both rules and cases, but the focus here is on teaching holdings as hypotheses.

To begin, this problem examines assumptions we might make when reading case law and constructing holdings and acknowledges that we must construct meaning with the best data we have available at the time. The problem demonstrates that when we get new data, we might have to revise our initial holding construction; the facts we understood to be legally significant, to be woven into a holding, may not be legally significant at all. In addition, we may learn there were legally significant facts we missed in our initial construction of a holding.

This problem asks students to peer into the mind of the professor-decision maker. It asks students to think about how rules are shaped by judicial—or in this case, professorial—inclusion and exclusion.²⁰² This problem helps students examine their assumptions and think about how their advice (or hypothesized holdings) might vary based on their contextual understanding, including personal experience and reading purpose. Finally, the problem asks students to acknowledge that a holding in a new case might require them to revisit and amend their hypothesized holding from a previous case.

The following problem can be used with the full class, or students can be broken into smaller groups to discuss how they might offer advice in each of the scenarios.

200. See, e.g., Foster & Grant, *supra* note 11, at 410–11.

201. See, e.g., Marjorie Florestal, *Is a Burrito a Sandwich? Exploring Race, Class, and Culture in Contracts*, 14 MICH. J. RACE & L. 1, 3 (2008) (explaining that a superior court in Massachusetts interpreting “sandwich” to not include a “burrito” created a “firestorm of media attention”).

202. See ALDISERT, *supra* note 7, at 12–14.

Exercise: Part I—Rule Formation

You have Legal Writing with Professor Dank,²⁰³ and your class meetings are held in a small seminar room. Professor Dank has a strict policy prohibiting eating or drinking in class. Professor Dank's rule, which will be considered a statutory rule for purposes of this exercise, is stated on the first page of his short syllabus and reads in full:

Students shall not eat or drink in class unless they have a documented, University-approved accommodation. Students who have such accommodations must meet with me prior to the first class in which they wish to eat or drink.

Professor Dank did not include his reasoning or rationale. You have no idea why Professor Dank imposed the rule; you know simply that it is a rule that applies to his classroom. You are not aware of any examples demonstrating Professor Dank's application of the rule.

Day One: Professor Dank reviews the syllabus with your class.

Day Two: A new student joins the class. She does not have access to yesterday's recording and has not seen the syllabus. She slips into her seat just as class is starting, leans over to you, and says, "I had an appointment during the lunch hour, and I'm about to pass out from hunger!" She goes on to ask for your prediction: "Do you think Professor Dank will care if I quietly eat my lunch during class?" You can think of this question as a request for a prediction of how Professor Dank will apply his rule and a recommendation of how the "client" should proceed.

203. Here, I shamelessly indulge in attempting to use Gen-Z slang, a pastime I picked up primarily to see my Gen-Z teenager cringe. My attempts, and more so my failures, to use "insider" terminology have been a great reminder to me of the challenges students experience, albeit in a far higher-stake setting, when attempting to use newly acquired legal terms. Additionally, students seem to enjoy correcting my usage when I err and coaching me through new phrase acquisition. Finally, incorporating use and misuse of Gen-Z slang in classroom examples provides natural in-class opportunities to discuss audience and generational preferences and expectations in the workplace as well as the evolution of language more generally.

You look over and see that your colleague has deviled eggs, a peanut butter and jelly sandwich, and a bag of salt and vinegar kettle chips. You may choose any of the following actions:

- a. Tell her she should not eat anything because Professor Dank has a strict no eating or drinking policy.
- b. Suggest that she quietly eat the peanut butter and jelly sandwich by taking small bites when the Professor turns his back to the class to write on the whiteboard.
- c. Tell her you think it will be just fine. (You have a rather twisted sense of humor and hope to use the ensuing classroom drama to develop content for your new social media channel, *Big Yikes, IL!*)

Once you have selected an option, examine your assumptions and how you made your decision. For example, did you think about any of these questions?

- Do you know anything about how risk-averse your client is?
- Does your client use hyperbolic language?
- Would your client prefer to pass out in front of classmates or get reprimanded by a law professor?

Also, what level of confidence do you have in your advice?

Sample Debrief for Option (a):

You can offer option (a) to your colleague with a fairly high degree of confidence—both because the rule appears to be straightforward and because the question as framed, “Do you think Professor Dank will mind if . . . ,” does not contemplate the negatives that might come from not eating in class. In this situation, you would have a high-level of confidence in telling the new student that you think the Professor *would* mind and that you recommend she *not* eat or drink in class based on the rule in the syllabus and Professor Dank’s comments on day one.

However, the student did say that she is so hungry she is about to pass out. If the student intended her comment literally, you may be underestimating the potential negative consequences of the student following your advice.

Sample Debrief for Option (b):

The new student, who is your “client,” is hungry, and you may have a strong desire to help her navigate the situation in a way that allows her to eat something and avoid passing out in front of her classmates. Despite your desire to deliver good news, the suggestion in option (b) is high-risk. By choosing answer (b), you are assuming the professor created the rule because eating in class is in some way distracting or annoying. You are

also assuming that the student meant her comment, about being so hungry that she is about to pass out, literally. Additionally, you may be assuming that your fellow student is willing to risk the likelihood of being reprimanded by a law professor on the second day of school to avoid the possibility (with an unknown likelihood) of passing out in class.

If you are correct in thinking that Professor Dank created the rule because he finds eating in class distracting, your suggestion might be apt for this client. That is, if the student follows your suggestion, Professor Dank might not notice her eating in class, or he might be more inclined to overlook the quiet nibbling of small sandwich bites. Nonetheless, this is a high-risk hypothesis! You have no idea why Professor Dank created the policy because he offered no rationale for the rule. If it turns out he is severely allergic to peanut butter and has an anaphylactic reaction, your hypothesis would have turned out to be wrong and would lead to severe consequences for all.

Sample Debrief for Option (c):

This is plain evil.

Overall Debrief:

While we know Professor Dank's rule, we are not privy to any reasoning that would help us apply the rule to future situations with any level of confidence. Some reasons that might underpin Professor Dank's rule are as follows: He is sensitive to smells and worries students may bring food he considers malodorous. He has misophonia (in his case, chewing sounds create a fight-or-flight response). He loves food so much that he is distracted by its presence in his classroom. He adheres to intermittent fasting and is envious when he sees students eating during his fasting hours. He believes food and drink detract from the professional atmosphere he attempts to maintain. He has severe food allergies. He simply enjoys his power to make and enforce rules.

Any of these underlying reasons, if made explicit, would give you greater certainty in the quality of your advice when answering the new student's question. When the decision maker does not make the reasoning explicit, the reader's contextual understanding—some combination of personal experience and reading purpose—will likely fill in the blank. *Driving this process with self-awareness, rather than unexamined assumptions, can help.* Does the reader herself have misophonia? Smell sensitivity? Food allergies? If so, the reader's personal experience may make her more likely to impute her reasoning to the decision maker, thereby classifying related facts as legally significant and "baked into" the holding. Examining our assumptions can help keep these personal experiences in check. Thinking about our reading purpose (or advice-

giving purpose) is likely to more closely align us with the needs and preferences of our client.

Had Professor Dank offered us reasoning for his rule or offered any sub-rules, we could flesh out the rule or synthesize it to create a more comprehensive and nuanced rule, increasing our degree of certainty when applying it. Similarly, if Professor Dank offered no reasoning for his rule, but we observed Professor Dank accept and reject eating and drinking in class under a variety of circumstances, we could think of each of these circumstances as cases with holdings, and we would gather data points to help us better understand the contours of his rule and each holding in his data set.

If we observe Professor Dank choose to follow or break his rule in different scenarios, we might have to amend our original hypothesized holding. We may have believed certain facts to be legally significant and therefore part of the decision (the decision being the holding—which we acknowledge is merely a hypothesis) only to find out a few applications later that there were fewer legally significant facts involved in Dank’s rule creation. This discovery would likely require us to amend some of our previously hypothesized holdings. In contrast, a variable that we did not consider may turn out to be legally significant. Knowledge of this legally significant variable would also likely require us to amend some part of our previously hypothesized holding.

Exercise—Part II, Hypothesized Holdings

Unlike Professor Dank, Professor Forthememes’s syllabus does not address her eating and drinking policy.

Day One: Professor Forthememes sweetens the first day of her class with her famous oatmeal chocolate chip cookies, which she sends around the classroom with a stack of napkins. She comments that there should be “plenty for all of you” and asks that you “dispose of your napkins after class.” You love oatmeal chocolate chip cookies but regret taking a large bite right before she asks you about the pronunciation of your last name.

Day Two: Another new student joins the class. Like the new student from Professor Dank’s class, this student does not have access to yesterday’s recording and has not seen the syllabus. He slips into his seat just as class is starting, leans over to you, and says, “I learn better when I’m eating. Do you think Professor Forthememes will care if I snack quietly during class?”

You may choose as many of the following actions as you like:

- a. Tell him Professor Forthememes is drippy²⁰⁴ and that you are sure she would be cool with him eating in class.
- b. Tell him you have no earthly idea.
- c. Tell him the syllabus did not mention anything about eating or drinking in class.
- d. Tell him Professor Forthememes served cookies to everyone during class yesterday.
- e. Suggest he ask Professor Forthememes for left-over cookies from the last class, even though, if you are being real, you thought they were mid.²⁰⁵

Once you have selected the advice you will give, examine your assumptions about your “client,” and the professor:

- What do you know about the professor’s eating and drinking policy?
- Do you have any personal experiences, preferences, or biases that might impact your analysis?
- Do you know anything about your client’s needs or preferences?

Also, what level of confidence do you have in your advice?

Debrief:

You could answer (b), (c), or (d) with a high-level of confidence, and your answer would be most complete if all three answers ((b), (c), and (d)) were delivered together—dare I say, “synthesized.” However, even if you deliver all three answers together, you may have left out a material fact that impacts the operation of Professor Forthememes’s underlying rule. Can you think of one?

While answer (e) may not be high-risk, it is not particularly helpful unless Professor Forthememes had left-over cookies (perhaps because they were indeed “mid,” and thus no one had seconds) and she brought them to class again. If this were true, you could give your advice with a high degree of confidence because you would be suggesting that your colleague eat the very same food, and in the very same way, that you witnessed food being eaten without objection from the Professor during the last class. Your confidence is high because of the high degree of similarity; that is, you are not being asked to hypothesize much.

204. See *Drip*, URBAN DICTIONARY (Oct. 19, 2020), <https://perma.cc/WW5F-U2TD> (User condombanana described Drip as: “very swag and cool.”).

205. See *Mid*, URBAN DICTIONARY (Jan. 27, 2022), <https://perma.cc/S67F-EQVH> (User Airman the 4th explained that “mid” “is used to describe something that is not good but not bad[;] in the middle.”)

While you may think Professor Forthememes is drip or drippy, as is written in answer (a), you have no way of knowing that Professor Forthememes is comfortable with students eating in class other than in the very situation in which you witnessed it yesterday. You cannot frame a generally applicable rule (or principle or doctrine) from an isolated case and be confident in the parameters of that rule.²⁰⁶ But we do it all the time in life—we make assumptions and “fill in gaps” even when we do not realize we are doing it. Typically, it is only when our assumptions turn out to be wrong that we realize we filled in the gaps at all. In the end, when making a decision, some information is typically better than no information. If you are trying to help the other student decide whether to eat in class, the facts that the professor said nothing relevant in her syllabus and then brought and served cookies in the first class are likely something you would share. However, simply delivering a list of facts is not the same thing as giving advice, so on their own, the facts would not be satisfactory.

While you cannot *confidently* state a general rule of applicability when answering your colleague’s question, you can give a holding (a rule as applied to a particular set of facts). Additionally, because your professor did not elaborate on her reasoning or give clues about her policy considerations, you must decide which facts to frame as critical to and, therefore, part of the holding. A mental shortcut for framing the holding according to the critical facts is to think of the holding as an untested hypothesis created from the best information you have available at the time of its creation.

One such formulation of the Day One holding would be: *Students were allowed to eat in class because Professor Forthememes provided the food and napkins*. Other possible legally significant facts that could be deemed part of the holding would be: *Students were allowed to eat in class because*

- *there was enough for everyone;*
- *napkins were available;*
- *it was the first day of class;*
- *oatmeal chocolate chip cookies slap²⁰⁷ so hard;*
- *she baked the food herself; or*
- *Professor Forthememes found the smell of the food agreeable.*

It would also be reasonable to combine several of these facts to create a hypothesized holding: *Students were allowed to eat in class because Professor Forthememes provided the food and there was enough for everyone*. Or, *Students were allowed to eat in class because there was enough for everyone, and Professor Forthememes found the smell of the*

206. See ALDISERT, *supra* note 7, at 13–14 (citing Pound, *supra* note 148, at 330–31).

207. See *Slaps*, URBAN DICTIONARY (Apr. 20, 2020), <https://perma.cc/4A3K-BTC6> (User Frikkin Hecc :) described Slaps as “something that is really good/desirable”).

food agreeable. To test these hypothesized holdings, we would have to collect data points demonstrating how Professor Forthememes reacts in a variety of situations.

Suppose that the following week, Jeff, a ravenous law student, ordered pizza for himself, carefully requesting napkins as well. The pizza was delivered in the middle of class, Spicoli-style,²⁰⁸ and the delivery service identified Jeff. To Jeff's great shock, Professor Forthememes sternly said, "This ain't it chief," and threw Jeff out of class without further explanation.

In light of Jeff's misstep, you might begin to feel more confident in this version of your hypothesized holding from day one: *Professor Forthememes allows students to eat during her class only when she provides the food*. Still, your hypothesized holding requires you to make some assumptions.

However, suppose that during week three, Chad, who loves to take care of his small-section fam,²⁰⁹ sets up a burrito bar at the back of Professor Forthememes's classroom. Professor Forthememes helps herself to a burrito with all the fixings, encourages other students to help themselves, reminds students to throw their napkins and plates out after class, and then begins class by clearing her throat and dramatically announcing, "Yesterday I wanted a burrito. Today I am eating a burrito."²¹⁰ She continued, "1Ls, I implore you: Follow your dreams!"

At that point, in addition to learning that Professor Forthememes loves burrito memes,²¹¹ you also better understand the boundaries around which she allowed eating in class on day one. Even though you reasoned the best you could after day one and carefully crafted the holding, after witnessing Professor Forthememes embrace Chad's burrito bar, it would no longer be reasonable to say that who brought the food on day one was legally significant or determinative. Thus, your "holding" from day one would have to be amended if you were articulating it after the day Chad set up the burrito bar. While Professor Forethememes's burrito-bar decision did not contradict (or overrule) her decision from day one or day two, it provided clarifying information regarding which facts were significant enough to the decision that they were indeed part of the "holding" itself.

208. Referencing Sean Penn's character, Jeff Spicoli, ordering a pizza to his high school classroom in *Fast Times at Ridgemont High* (Universal Pictures 1982).

209. See *Fam*, URBAN DICTIONARY (Nov. 7, 2003), <https://perma.cc/T8SW-8SBQ> (User Chris uses Fam as "a word . . . to describe your peoples")

210. See, e.g., MatPat (@MatPatGT), TWITTER (July 10, 2017, 2:55 PM), <https://perma.cc/4ZQB-C6H2>.

211. See *Meme*, MERRIAM-WEBSTER, <https://perma.cc/U87T-UG9Q> (last visited Nov. 14, 2023) ("[A]n amusing or interesting item (such as a captioned picture or video) or genre of items that is spread widely online especially through social media.").

In addition, you may have initially wondered whether other factors, such as how messy the food was likely to be and how aromatic the food was, were determinative on day one. However, with guacamole and extra garlic salsa now strewn about the classroom, you can see, through “judicial”—or in this case professorial—“inclusion and exclusion”²¹² that messiness and strong aroma also are not determinative factors for Professor Forthememes’s food and drink policy.

With more data points, you might learn that the Professor allows food only on Fridays—a factor you had not realized was present both on the first day of class and on the day of Chad’s burrito bar. The more data points you have, the more confident you can be in relaying both the holding from the first day and ultimately a synthesized rule that addresses determinative facts from different days (or cases).

Finally, suppose that halfway through the term the professor says, “*Hey folks, there seems to be a lot of confusion about when you are allowed to eat in my classroom. To clarify, you may eat in my classroom only on Fridays and only if you bring enough food for everyone; however, you may not eat anything containing fish.*”

The professor has clarified quite a lot with this statement—we can think of her statement as a newly drafted statute, or a seminal opinion issued from the highest court in the jurisdiction. After her announcement, we could feel quite confident relaying her statement as a rule: *In Professor Forthememes’s class, students may eat only on Fridays and only if they bring enough food for everyone; however, students may not eat anything containing fish.*

However, because the Professor still did not offer any reasoning about her rule, fine points of application may still be unclear. For example, because we do not know if the fish prohibition arose from the professor’s or a student’s allergy, or instead because many people are bothered by the smell of fish, we will not know how the rule’s application might be extended or altered. If indeed the professor’s fish prohibition is because of the smell of the fish, the prohibition might be extended to other extremely strong-smelling foods like egg-salad sandwiches. Similarly, the application of the “Friday only” aspect of the rule will depend on the reason that underpins it. Does it stem from the custodial schedule, which includes room cleaning on Friday afternoons, or is it because the Professor is in a more relaxed mood on Fridays? If it is about the custodial schedule and the schedule changes, her rule would also change. If the “Friday only” aspect of the rule is about the Professor’s mood and she is testifying before Congress Friday after class, her rule would likely change for that particular Friday class.

212. See ALDISERT, *supra* note 7, at 13–14 (citing Pound, *supra* note 148, at 330–31).

With the help of Professor Dank and Professor Forthememes, students are introduced to contextual understanding and become more self-aware of how their own experiences, knowledge, and preferences may impact their analyses. The problem also offers opportunities for new law students to construct holdings, to understand holdings as hypotheses, to consider the evolution of law, and to begin to discuss rule synthesis in the familiar context of classroom syllabi and classroom rules. In short, these exercises help law students have a major glow up.²¹³ With that, this somewhat insouciant example is complete, and its Gen-Z terminology will undoubtedly be outdated before this goes to print.

213. See *Glow Up*, URBAN DICTIONARY (Apr. 5, 2020), <https://perma.cc/UZB4-ACCC> (user Werewolf_Girl defining “Glow Up” as “a mental, physical, and an emotional transformation for the better”).