An Active-Learning Approach to Teaching Tough Topics: Personal Jurisdiction as an Example

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I. Introduction

Some topics are harder to teach and understand than others. Personal Jurisdiction (PJ), which determines what state(s) is an appropriate forum for a lawsuit, is one such topic. One story tells of a homeless person who shouted "Pennoyer" to people walking by, hoping that one of them would be a lawyer and take pity on the fact that he too had suffered through a hallmark case[1] that is well-known to cause students great angst.[2] Some teachers, including some of the authors, intentionally do not start their civil procedure course with this topic, even though it is the first topic of many casebooks, for fear that the topic will intimidate students and suppress potential interest in the overall course.[3]

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1. *E.g.*, Josh Camson, *The Case That Almost Kept Me Out of Law School,* LAWYERIST.COM (Aug. 22, 2012), https://lawyerist.com/47110/the-case-that-almost-kept-me-out-of-law-school/; *see also* Pennoyer v. Neff, 95 U.S. 714 (1878).

2. As just one example, a recent post on Reddit concerning *Pennoyer* began with a 1L who stated, "What the s*** am I reading. . . . My brain hurts," with subsequent comments chiming in that the case is "just hazing." *Pennoyer v. Neff*, REDDIT.COM (Aug. 23, 2015), https://www.reddit.com/r/LawSchool/comments/3i5s8g/pennoyer_v_neff/.

3. Indeed, at the AALS symposium at which we presented some of the ideas in this article, Professor Brooke Coleman commented that starting with this case on Day One of the course is a huge disservice to students who have trouble understanding not only the case, but the broader reasons for the importance of civil procedure. We did not know in advance she was going to make this comment, but wholeheartedly agree and, judging by audience reaction, many others do as well. Her point was made as a tangent to her more intuition-based introduction to the class, but is obviously applicable. Of course, we are not suggesting that it is impossible to successfully start this course with the case, but it is likely a major challenge unless students are provided substantial context and support to help read the case. Indeed, one of us has sometimes started the course with this case.

This article suggests how tough topics, such as PJ, can be made more accessible to students and easier to teach. Our approach to making PJ more accessible is based on substantial literature about how students learn. Indeed, although this article focuses on PJ as a topic that most law students and attorneys would agree is tough, the overall recommendations should apply to other tough topics as well.

This article proceeds in three parts. Part II provides fundamental background and context for our particular approach. This part first addresses why PJ is difficult. Then, it turns to how students traditionally study and think they learn versus how to promote optimal learning through active learning before, during and after class. Part III provides the details of our approach to teaching PJ, which explains not only our active-learning approach, but how to provide essential context to a topic that is typically completely foreign to students when they first encounter it. Part IV then turns to implementation issues, including specific suggestions for different ways, including some with minimal time commitment, to enhance how PJ, as well as other tough topics, can be better understood. This Part also addresses challenges to implementation, with specific recommendations for how to address them.

II. Background

A. Why Is PJ Difficult to Learn and Teach?

Understanding the problem is always the first step to properly fixing it. This is generally true, and the "problem" of how to teach PJ is no exception. Accordingly, before addressing the specifics of how we attempt to make PJ more accessible, it is important to first address *why* PJ is difficult to learn and teach.

This section addresses two fundamental reasons PJ is difficult to master: the law and the context. The law of PJ is difficult because it involves mastery of an evolving test in a series of Supreme Court cases where no one case is explicitly overruled. In addition, students fundamentally lack any prior personal or cultural context with PJ. Moreover, in most situations, civil procedure students are attempting to read difficult constitutional opinions before they have taken constitutional law.[4] These issues also become more acute as time allocated to course coverage shrinks.

1. The Constitutional Component of PJ is Unfamiliar and Challenging

Students have difficulty mastering the constitutional component of PJ for two related reasons. The concept of due process critical to PJ is often much less intuitive to students than to teachers. In addition, students are generally unfamiliar with Supreme Court cases, which means that they are particularly

4. Occasionally students will take the two classes concurrently. In addition, although some schools have personal jurisdiction as a second-semester 1L class or even as an upper-level class, those schools are in the relative minority. Most important, some of us teach personal jurisdiction to 2Ls and still find that many of the same issues apply.

unfamiliar with the importance of concurring and dissenting opinions. These issues are compounded by the fact that the Supreme Court cases on the constitutional due process standard feature an evolving test and require a different study strategy than for most other topics in civil procedure.

A major issue with PJ is that the Constitution requires that defendants not be deprived of property (i.e., losing a case and having to pay) without appropriate "due process."[5] However, the Constitution does not define what it means to have "due process."[6] The Supreme Court has notably struggled to define it over time, so it is not surprising that students have trouble. Indeed, the "meaning" of due process generated by Supreme Court cases frequently spawns substantial discussion and disagreement on the Civ-Pro Listserv among veteran teachers, including some who are leading scholars in the area.

a. Constitutional Concepts Are Not Intuitive

PJ is challenging, since it involves constitutional concepts that are familiar to teachers, but not familiar or even intuitive to students. First, many students think of the Constitution as granting absolute rights, rather than providing protection that can be waived. Students typically are also unfamiliar with the state-versus-federal power structure that is part of the Constitution. The idea that states have sovereignty, and the federal government has limited powers to interfere with that sovereignty, is generally not intuitive to students. 1Ls often assume that the federal government is all-powerful without recognizing that states have tremendous autonomy and authority. Accordingly, the idea that a state can decide how much power to exercise through a state "long-arm statute"—a fundamental part of most PJ analyses—may seem particularly elusive. Moreover, the idea that a federal court in a state would follow that state's PJ analysis, including application of its long arm, may also seem counterintuitive.

b. Constitutional PJ Cases Are Tough

1L civil procedure students are generally not familiar with reading constitutional cases and find PJ cases intimidating.[7] Students are perplexed by what, if any, rule exists when there is no majority, but, rather, plurality opinions; alternatively, they may be frustrated to read a dissenting opinion that they are sympathetic to, but which is not current law.[8] Without a clear

5. U.S. Const. amend XIV, § 1.

6. *Id.*

7. Although some students take an undergraduate class in constitutional law, they are unlikely to focus on constitutional due process, which is the sole constitutional issue for this topic. Moreover, even students who have taken constitutional law, or any law school prep class, have not been asked to read the cases with the same level of sophistication expected in a law school class.

8. *E.g.*, Asahi Metal Indus. Co. v. Superior Court of Cal., 480 U.S. 102 (1987) (containing no majority opinion); J. McIntyre Machinery, Ltd. v. Nicastro, 131 S. Ct. 2780 (2011) (dissenting opinion of three Justices is often compelling to students, but not current law).

understanding about how Supreme Court opinions are constructed, or how dissenting or concurring opinions might influence the evolution of the law, students overlook key issues in the opinions. Students also discount the importance of reading concurring or dissenting opinions that later become the majority rule. Although it may be clear to the teacher that there is an evolutionary process, students may instead feel that the cases are inconsistent.

These issues are not common to other topics in civil procedure, or even other classes. In other 1L classes, like torts, there is a general rule and exception, or a majority and minority rule. For PJ, however, each case may have its own majority and minority rules. Moreover, over time, what is the minority view in one case may become the majority view. Students often ask in exasperation "which test" applies, and are frustrated that there is no simple answer. Since these PJ cases are so different, students may come to class less prepared to participate and/or leave feeling frustrated or overwhelmed.

c. Evolving PJ Rules Are Atypical And Hard To Grasp

PJ is also difficult for students because the constitutional PJ test evolves in a nonlinear fashion. For example, the Supreme Court has taken some steps "forward" that appear to better resemble previously abandoned views of the power of courts. A student reading a recent PJ Supreme Court decision is often surprised to see the Court citing to a doctrine or case that had been thought of as "purely historical." Students may assume that older cases, like *Pennoyer*, are overruled, when that is in fact not the case.[9] This is fundamentally different from the vast majority of topics in civil procedure where there are clear rules—either in the Federal Rules of Civil Procedure or in a federal statute. This is partially due to the constitutional context where individual Justices have different views of due process; and since the composition of the Court changes over time, PJ opinions also notably change.

The way in which PJ is traditionally taught may actually exacerbate problems. For example, many casebooks and classes use *International Shoe*[10] to introduce a general framework for evaluating most modern cases, followed by a series of subsequent cases that consistently add more detail to the *International Shoe* framework.[11] This can be very confusing for students. For example, although *International Shoe* provides the framework for most PJ analysis, it does so in one sentence that eventually become a two-part test, each part of which has more factors to consider in subsequent cases. In addition, *International Shoe* is in some ways a terrible case to use in explaining the framework because it actually entails a situation that easily meets the test. Many teachers (and casebooks)

9. For example, recent Reddit posts asserted that ninety-nine percent of *Pennoyer* "isn't even good law," or is "hideously outdated," even though recent Supreme Court decisions have in fact cited *Pennoyer* and explained how it remains quite relevant today, even if it is not the *only* relevant case. *Pennoyer v. Neff*, Reddit.com, *supra* note 2.

10. Int'l Shoe Co. v. Wash., 326 U.S. 310 (1945).

11. In addition, as noted earlier, students can be further confused by classes that begin with *Pennoyer*, which remains good law in some situations.

use this case to illustrate the two main types of PJ: "general"/"all-purpose" PJ,[12] the doctrine that permits suits against the defendant in the forum for any claim, versus "specific" PJ, the doctrine that permits suits against the defendant in the forum only when the claims relate to defendant's contacts in the forum.[13] Yet, while the *International Shoe* Court lays the groundwork for these concepts, it does not use, let alone define, these terms. The case facts do not provide the challenges modern district courts face when determining whether PJ exists in a particular case. Since the *International Shoe* facts easily met the new test,[14] this case often leaves the students ill-prepared to apply the doctrine to new fact patterns—the very task most faculty members want students to master.

d. Typical Learning/Study Strategies Are Unhelpful

Traditional study strategies are unhelpful when students begin to read PJ cases. Students are trained to brief individual cases to extract rules of law. This works well for many topics where each case provides a different rule (or exception to the rule). For many of the constitutional PJ cases, however, it is hard to discern a single clear rule statement. Some cases with no majority opinion may offer multiple rules or arguably the same rule, but with very different analyses that will affect future applications.[15]

In addition, whereas most topics involve cases that provide different rules, the fluid nature of the PJ doctrine has cases that seem to contradict one another. Students generally do not face this task in other 1L classes and have no context for how to deal with this. Accordingly, even students who are able to brief individual cases often struggle with trying to figure out the "big picture" they are supposed to get out of PJ cases. For the few students who can roughly understand how to synthesize the PJ cases, attempting to apply them

12. For decades, "general" PJ has been the key term, although the Supreme Court now refers to "all-purpose," as well. *E.g.*, Daimler AG v. Bauman, 134 S. Ct. 746, 751 (2014) (referring to "general or all-purpose jurisdiction"). We use the phrase general/all-purpose here since they are simply different terms for the same concept. Although we do not necessarily always use this when teaching classes, identifying for students that these terms mean the same thing can help students to appropriately read for concepts, rather than focus on labels, as well as to see how even terminology changes over time. Moreover, regardless of which term a professor uses, referencing that in the initial framework will likely be helpful to preview the concept.

13. *See e.g.*, Richard D. Freer & Wendy Collins Perdue, Civil Procedure Cases, Materials, and Questions 42 (6th ed. 2012).

14. General/all-purpose PJ is based on the idea that if a defendant has continuous and systematic contacts with a state, such as where the defendant lives, he should expect to be sued there for any claim. This seems straightforward. However, in *International Shoe*, the defendant had continuous and systematic contacts with the state in question *and* was sued in the state based on contacts that related to the claim.

15. For example, in *Asahi*, a key case about how to evaluate PJ when a defendant has indirect contacts with the plaintiff and forum state, there is not a majority opinion on how to evaluate this, but instead two plurality opinions. Asahi Metal Indus. Co. v. Superior Court of Cal., 480 U.S. 102 (1987). The Court's more recent attempt to resolve this issue, in McIntyre, was equally divided, and often leaves students confused and frustrated. J. McIntyre Machinery, Ltd. v. Nicastro, 131 S. Ct. 2780 (2011).

may remain difficult. PJ analysis requires comparing the facts of key cases to new scenarios. However, the facts often seem radically different to students, even if the principles are analogous.

Students who struggle with understanding constitutional PJ cases may also find traditional sources of support of little utility. Academic support centers can provide help with briefing cases, but as we just explained, the traditional briefing method is often geared toward other subjects, where the "process" is an afterthought, not the focus of the brief. The typical briefing method is often not well-suited to synthesizing PJ cases that involve abstract rules that evolve over time. Commercial outlines are likely of inadequate help since, although these may spell out rules from individual cases, they generally do not tell students how to *synthesize* the different rules, let alone how to *apply* them.

2. The Students Lack Context for Understanding the Topic

At a fundamental level, students lack prior context for understanding PJ. They generally lack any personal experience to provide context, unlike in torts with battery and negligence, or even a concept like breach of contract that students can intuitively understand as basically breaking a promise. Beyond lack of personal experience, PJ is also not commonly an issue that is discussed in popular culture. While it may be an advantage that students are less likely to refer to misrepresentations from Hollywood, the lack of reference point deprives students of key context that might have improved their understanding. Even for students who have had some exposure to litigation as paralegals, it is still unlikely they will have had any experience with PJ.

The entire course of civil procedure is unusual in that it focuses on processes and not events, things or relationships. It is difficult for students to visualize a process—especially when they have never participated in that process or observed others engaged in it. For other topics, students can at least understand that there need to be rules about what you can and cannot do in court. But PJ is a much tougher concept because it focuses on the defendant's right to be free from litigation in a distant or burdensome forum. In an interconnected and global world, students may have trouble seeing why being sued in a distant forum is an issue when they are always communicating with others at a distance. Moreover, you cannot easily "visualize" personal jurisdiction, and few simple analogies can be drawn to concepts already mastered by the students.

Trying to teach students PJ is further complicated by student perceptions. Students often have heard that PJ is "hard"—one of the hardest topics of civil procedure, or even law school. And, since they have no context for understanding why PJ is important in "real life," they may be particularly resistant to trying to understand it. So far, in our collective years of teaching, we have yet to have a student express an interest in the day they will finally learn about personal jurisdiction. We are much more likely to hear students voice concerns that the topic is difficult or even impossible. We also often hear

students express surprise at their first job or internship that PJ is "actually relevant."

Students often do not have clear expectations about what they will learn in PJ, which negatively affects their receptiveness to learning. When students do not understand what they will learn, they are unlikely to set educational goals for themselves. This leads to a passive approach to learning. The students get frustrated easily and yearn for the day when the professor will just "reveal the test" that they need to know for the exam. Sometimes this passive approach to learning the topic will start to permeate the class. Students are more likely to commit the error of believing that because they did not see the relative importance of the topic, it isn't important. Their erroneous assumption is supported by their classmates, and soon personal jurisdiction is simply "something my civil procedure professor is interested in."

B. Traditional Studying Versus Optimal Learning

Now that the problems with learning PJ have been identified, this section broadens the focus beyond a specific topic to a consideration of how to optimize learning. To lay the groundwork for our active-learning approach to tough topics, we first explain how students traditionally study, including the inadequacies of such methods. We then explain how to promote optimal learning based on empirical studies.

1. Traditional Study Methods

The broad framework of how law students study is similar to how all students study—by highlighting, rereading, and summarizing. This should not be surprising, since law students are generally students who performed well as undergraduates and had used these same techniques. However, studies show that these methods are actually not effective learning tools. Nonetheless, this would be news to students who perceive these techniques to be aiding their understanding. This section aims to explain why these strategies do not work, as well as why they are improperly perceived to work.

a. Highlighting

Most law students consider highlighting a key part of studying. Students highlight initial cases they read, as well as class notes and outlines. Some, in fact, have complex highlighting techniques that involve multiple-color highlights. But is it helpful?

Although highlighting is a pervasive study tool, studies suggest that highlighting alone is not adequate to promote learning. Multiple studies across different populations indicate that highlighting is not effective.[16] Moreover,

16. John Dunlosky et al., *Improving Students' Learning With Effective Learning Techniques: Promising Directions From Cognitive and Educational Psychology*, 14 Psychol. Sci. Pub. Int. 4, 18-21 (2013); *see also* Kenneth E. Bell & John E. Limber, *Reading Skill, Textbook Marking, and Course Performance*, 49 Literacy Research and Instruction 56, 56-68 (2010).

some studies even suggest that highlighting may be harmful in minimizing the ability to make connections and draw inferences.[17]

b. Rereading

Many law students also rely on rereading as a study technique. They reread cases, notes, and even outlines. This should not be a surprise, because this is common among college students. Moreover, many students who excelled as undergraduates consider this their primary study technique.[18]

However, rereading has been found to be a low-utility learning method in terms of *comprehension*, even if it has some value in terms of basic recall. This may explain why this technique works well enough in college, where mere retrieval of information is often all that is required for success. Law school performance, on the other hand, requires not just recall, but a higher level of comprehension so students can apply knowledge to new situations. Accordingly, even reading accurate outlines of the law may not necessarily result in success.

In addition, rereading highlighted portions is another common but ineffective study technique. Studies indicate that students tend to skim previously highlighted items based on the incorrect assumption that the highlighted information is well-understood.[19] Highlighting may, ironically, result in minimizing long-term retention, because students are under the mistaken belief that the highlighted information has been mastered.

c. Summarization

The vast majority of law students also engage in a type of summarization by briefing cases. Students are, in fact, often told that they should study this way. Although case briefing can enable students to distill key concepts from cases, studies actually find that summarization is only minimally helpful in promoting learning.[20] This would suggest that case briefing, which is a structured type of summarization, would similarly not be an optimal learning strategy.

d. The Gap Between Student Perception and Reality

The reason traditional study techniques do not work, yet often *feel* useful to students, can be explained by the cognitive science principle of fluency. Basically, the idea is that if things feel familiar and "fluent" in the present,

17. Sarah E. Peterson, *The Cognitive Functions of Underlining as a Study Technique*, 31(2) Reading Res. & Instruction 49, 54-55 (1992); Carole L. Yue et al., *Highlighting and Its Relation to Distributed Study and Students' Metacognitive Beliefs*, 27 Educ. Psych. Rev. 69, 69-71 (2015).

18. *See e.g.*, Jeffrey D. Karpicke et al., *Metacognitive Strategies in Student Learning: Do Students Practice Retrieval When They Study on their Own*?, 17 Memory 471, 471-74 (2009) (noting that over eighty percent of students at one school with average SAT scores above 1400 reread texts and notes, and that the majority consider this to be their primary study technique).

19. Yue et al., *supra* note 17, at 69, 71.

20. Dunlosky et al., *supra* note 16, at 14-18.

humans falsely presume that they will continue to remain that way.[21] Based on this fallacy, students tend to move away from the topic, assuming that it is permanently part of learning, when, in fact, without further reinforcement, that "learning" is more likely to disappear.[22]

2. How to Promote Optimal Learning

There is substantial literature establishing that providing students with context effectively promotes learning,[23] as do active learning techniques[24] and opportunities for formative assessment.[25] We explain why this is true and provide examples of how to provide context, engage in active learning and accomplish formative assessment in a course.

a. Context

Studies show that students are better able to learn and master concepts that they learn in context, especially when learning in an integrated experience that mimics the professional experience.[26]

Even the most fundamental skills are tough to learn without context to help students not only understand, but be motivated to learn. If students can identify with the material and see how it is relevant to their lives, they are more likely to be motivated to learn.

21. The fluency phenomenon is well-documented in the field of cognitive biases as one that humans all suffer from. *See e.g.*, Daniel Kahneman, Thinking, Fast and Slow 129-35 (2011).

22. *See e.g.*, Yue et al., *supra* note 17, at 71. *See generally* Asher Koriat & Robert A. Bjork, *Illusions of Competence in Monitoring One's Knowledge During Study*, 31(2) J. Experimental Psychol.: Learning, Memory, and Cognition 187 (2005) (noting that, as a result of foresight and hindsight bias, students are overconfident in their performance and think that they have mastered the concept when there is no testing situation to inform them that their assumed mastery is more illusory).

23. *See* Brook K. Baker, *Beyond MacCrate: The Role of Context, Experience, Theory and Reflection in Ecological Learning*, 36 Ariz. L. Rev. 287 (1994) (discussing the need for contextualization in legal education); Deborah Maranville, *Passion, Context, and Lawyering Skills: Choosing Among Simulated and Real Clinical Experiences*, 7 Clinical L. Rev. 123 (2000) (same).

24. *See* Robin A. Boyle, *Employing Active-Learning Techniques and Metacognition in Law School: Shifting Energy from Professor to Student*, 81 U. Det. Mercy L. Rev 1 (2003) (discussing the advantages of using active-learning strategies in law schools); Gerald F. Hess, *Principle 3: Good Practice Encourages Active Learning*, 49 J. Legal Educ. 401 (1999) (same).

25. *See* Carol Springer Sargent & Andrea A. Curcio, *Empirical Evidence that Formative Assessments Improve Final Exams*, 61 J. Legal Educ. 379 (2012).

26. In addition, although not based on empirical data, we found it notable that all the other presenters at the 2015 AALS presentation associated with the articles in this Symposium emphasized the importance of context to improve teaching. David Oppenheimer's full course simulation could be seen as providing maximal context. However, even without a full simulation, other ways provide helpful context. For example, Brooke Coleman explained how she could build on student intuition to develop context for the litigation process. Christine Bartholomew explained how she provided more context, including practice skills, to one particular area of the course that is traditionally challenging to teach. In addition, both Christine and Brooke suggested active-learning techniques as part of context.

There are several components of contextualized learning.[27] First, for students to understand new information, they need to relate it to their existing knowledge, as well as their own lives. This context provides students the backdrop to enable them to initially reflect on these new concepts and then be sufficiently well versed that they can articulate and apply it on their own. So, for example, a student who grew up on welfare in a family without a checking account might lack any context for commercial paper.[28]

Most teachers may implicitly understand the need for contextual learning without being aware of the literature. For example, many teachers provide context in class by beginning with an overview of the topic, or how it relates to the last topic. Similarly, providing students with a detailed syllabus provides students with the context for how individual topics fit within the course overall.

The need for context is supported by something called integrative learning. Integrative learning helps students more readily move from theory to practice and even integrate learning from multiple contexts.[29] Integrative learning can be found in a variety of learning goals, including: "'connecting skills and knowledge from multiple sources and experiences; applying theory to practice in various settings; utilizing diverse and even contradictory points of view; and, understanding issues and positions contextually.'"[30] Often, integrative learning is considered at a curricular level in undergraduate education—where courses are developed that enable students to develop connections from basic concepts through more advanced concepts.[31] However, it is also useful for an individual instructor to consider how she can provide opportunities within a course for students to make connections between concepts and move from understanding of theory to practical application.

Although the term "integrative learning" may not be familiar in the law school context, its goals are inherent in calls for increased experiential learning opportunities in law schools.[32] Experiential learning is commonly associated with externships and direct client experiences.[33] Such experiences would obviously be consistent with the integrative-learning theory of moving students from theory to practice. While some of these opportunities are not realistic for 1L students, who are learning fundamental skills, there can still

27. Baker, *supra* note 23; Gary L. Blasi, *What Lawyers Know: Lawyering Expertise, Cognitive Science, and the Functions of Theory*, 45 J. Legal Educ. 313 (1995).

28. Paula Lustbader, *Teaching in Context, Responding to Diverse Student Voices Helps All Students Learn*, 48 J. Legal Educ. 402, 405-06 (1998).

29. *See generally Integrative Learning: Opportunities to Connect*, Carnegie Foundation, http://gallery.carnegiefoundation.org/ilp/ (last visited Oct. 15, 2015).

30. Mary Taylor Huber et al., *Integrative Learning for Liberal Education*, 7 Peer Rev. 4, 4 (2005).

31. *Id.*

32. Mary Taylor Huber et al., *Leading Initiatives for Integrative Learning*, 93 Liberal Educ. 46, 46-48 (2007).

33. *Id.* at 48.

be integrative-learning opportunities in the 1L year short of the typically experiential opportunities limited to upper-class students.

b. Active Learning

Students' ability to learn is promoted by active rather than passive learning. Before explaining why, it is important to clarify the two different approaches. When students listen to a lecture, or even read a textbook, they are engaging in passive learning. Even though the traditional Socratic method is more interactive than a lecture, since only one student is engaged, the vast majority of the class is engaged in passive learning. Active learning, on the other hand, involves students taking an active, more self-directed role in the learning process. Instead of passively reading text, they apply the reading in the text to a question/problem posed by the teacher. Active learning can involve an entire class responding to a "clicker" question posed by the teacher, or small groups of students working collaboratively.

Why is active learning more effective? Research shows that learning is promoted when students are actively processing information.[34] This is important for not only short term memory, but essential for long term memory, and especially retrieval and use of information from long term memory.[35]

i. Assessment and Feedback

One way to promote active learning is through assessment. Assessment can tell student(s) if they have mastered the material, or identify gaps in their understanding. Although teachers may not traditionally think of assessment as a learning tool, we have all encountered students who did not realize that they did not understand the material until they attempted to apply it in an assessment.

Assessment is helpful not only to students, but also teachers. After all, a teacher who sees how an entire class performs on a given assessment has a better sense of the knowledge of the entire class, so that later focus can be on the concepts on which students need assistance. Accordingly, this "feedback loop" promotes learning by giving critical information to both teacher and student alike.[36]

34. Grunert O'Brien et al., The Course Syllabus: A Learning-Centered Approach 4 (Wiley, 2d ed. 2009) (summarizing active-learning research).

35. *See* Donald L. Finkle, Teaching with Your Mouth Shut 3 (2000) (noting that "[e]ducational research over the past twenty-five years has established beyond a doubt a simple fact: What is transmitted to students through lecturing is simply not retained for any significant length of time.").

36. *See* Diane Donovana and Birgit Loch, *Closing the Feedback Loop: Engaging Students in Large First-Year Mathematics Test Revision Sessions Using Pen-Enabled Screens,* 44(1) Int'l J. Mathematical Educ. in Sci. and Tech. 1 (2013). A "feedback" loop is the process of giving a student feedback so that he can alter his performance. During the assessment, the student also "communicates" to the professor about his understanding. This allows the professor to alter her course to better assist the student in meeting his learning goals.

Assessment is most effective when combined with feedback.[37] To be most helpful, timely feedback must provide an explanation and not just the correct answer.[38] In addition, feedback is most helpful when provided immediately and when it tells the student *what* to do to improve.[39] For example, feedback can explain not only why an answer is wrong, but what incorrect assumptions may have led to that error. Alternatively, feedback can also explain not just the correct answer, but suggest a broader approach to other questions.

ii. Testing to Promote Active Learning, (Formative) Assessment and Feedback

a. Pretesting

Although it may seem counterintuitive, recent research shows that not just testing, but *pretesting* before students learn a topic will promote learning. The basic idea is that early testing helps students think about the information in the questions in a way that improves their ability to process the information. One study found that a single pretest improved final exam performance by an average of ten percent.[40] This seems to especially be the case with multiple choice.[41] It is important to note that pretesting helps students learn *even when they get the answer wrong*. In fact, it is assumed that they will get the answer wrong. However, when they do so, they are better prepared to learn the material than if they never had the pretest.

There is support for this not only in learning theory generally, but even in the law school context. For example, Professor Sparrow has written about giving students multiple-choice quizzes on materials after students have done the assigned reading but before it is officially covered in class, as a way to test students on foundational doctrine.[42] Her approach was done in the context of requiring students to work in teams, but would still seem to support the general idea of testing with multiple choice.

37. How People Learn: Brain, Mind, Experience, and School 139-41 (John D. Bransford, et al. eds., 2000).

38. Robert L. Bangert-Drowns et al., *The Instructional Effect of Feedback in Test-Like Events*, 61(2) Rev. Educ. Res. 213, 232 (1991).

39. James A. Kulik & Chen-Lin C. Kulik, *Timing of Feedback and Verbal Learning*, 58(1) Rev. Educ. Res. 79, 79 (1988).

40. Elizabeth Ligon Bjork et al., *Can Multiple-Choice Testing Induce Desirable Difficulties? Evidence from the Laboratory and the Classroom*, 128 Am. J. Psychol. 229, 236 (2015).

41. Multiple choice is a useful type of assessment for not only pretesting but any testing. Accordingly, we address it in more detail in section (c) of this Part, *see infra*.

42. Sophie M. Sparrow, *Using Individual and Group Multiple-Choice Quizzes to Deepen Students' Learning*, 3 Elon L. Rev. 1 (2011).

b. Multiple Testing

Extensive data indicate that repeated assessment helps learning.[43] Formal studies essentially document the common adage that "practice makes perfect." This can be done through testing, especially testing that is aimed at formative rather than summative assessment. For example, in one study, students were divided into groups to take tests after reading an article.[44] One group was quizzed immediately after studying it, one day later, and then three weeks later. Another group was not quizzed until three weeks later. The repeatedly tested group did twenty percent better on the final exam two months after initially reading the article.[45] In contrast, a single exam has been shown to be detrimental to learning.[46]

Learning theory recommends multiple opportunities for formative assessment (feedback only), rather than summative (graded) assessment.[47] Studies show that assessment done without an associated grade may enable students to learn more effectively by removing any anxiety about grade implications so that they can focus on learning.[48] Not only is this more "fair" to the student, but it also improves learning.[49]

Providing multiple opportunities to test and retest material can accelerate learning. As students receive feedback on what they have mastered and what they need to work on, they are better able to work on their "gaps" in understanding. This allows students to learn at a more rapid pace or in greater depth and scope than they would have without this feedback.[50] Although this

43. Filip Dochy et al., *Assessment Engineering: Breaking Down the Barriers Between Teaching and Learning, and Assessment*, in Rethinking Assessment in Higher Education: Learning for the Longer Term 86 (David Boud & Nancy Falchiko eds., 2007). *See also* Andrea A. Curcio, *Moving in the Direction of Best Practices and the Carnegie Report: Reflections on Using Multiple Assessments in a Large-Section Doctrinal Course*, 19 Widener L. J. 159 (2009) (discussing the literature calling for multiple assessments in legal education and calling for more empirical evidence to examine the impact of multiple assessment in legal education).

44. Herbert F. Spitzer, *Studies in Retention*, 30 J. Educ. Psychol. 641 (1939); *see also* Benedict Carey, *Why Flunking Exams is Actually a Good Thing*, N.Y. Times, Sept. 4, 2014, at MM38 (discussing study).

45. Spitzer, *supra* note 44.

46. Nancy Falchikov & David Boud, *Assessment and Emotion: The Impact of Being Assessed*, in Rethinking Assessment in Higher Education: Learning for the Longer Term 144 (David Boud & Nancy Falchiko eds., 2007).

47. *See e.g.*, Michael Hunter Schwartz et al., Teaching Law by Design: Engaging Students from the Syllabus to the Final Exam 155 (2009) (noting that "students should only earn a grade after having multiple and varied assessments….").

48. *See e.g.*, Paul Black & Dylan William, *Assessment and Classroom Learning*, 5(1) Assessment in Educ: Principles Pol'y and Prac. 7, 23 (1998); V.J. Shute, *Focus on Formative Feedback*, 78(1) Rev. Educ. Res. 153, 156 (2008).

49. This may be helpful to "level the playing field," allowing students with different backgrounds to better understand the material.

50. Dai Hounsell, *Towards More Sustainable Feedback to Students*, in Rethinking Assessment in

approach is less common in higher education, it shares similarities with the popular Web-based testing that the Khan Academy provides for kids.[51]

Indeed, conducting multiple formative assessments is one of the "best practices" to which all law teachers are recommended to aspire.[52] If assessment occurs only once, at the end of the class (i.e. a final exam), students lack the opportunity to improve. There is not only theoretical literature on this, but some empirical data that suggest that formative assessments in fact help law students perform better on cumulative final exams.[53] Of course, there are still implementation issues, which we will address in Part IV.

c. Utility of Multiple-Choice Questions

Although multiple-choice questions are not the mainstay of law school final exams, they can nonetheless be an excellent way to provide individualized assessment and enable timely and effective feedback. After all, it is generally easier for an instructor with a large class to give feedback on multiple-choice questions than on essay answers. Students obviously need to know how to write exam-type essay answers, as well. However, multiple-choice and other objective questions can ensure that students first have the correct foundational knowledge. Without that knowledge, they are not in a position to tackle an exam-type essay. Indeed, multiple-choice questions are noted as a reliable way to evaluate core knowledge in some best practices guides for law schools.[54]

For example, Sophie Sparrow noted that including multiple quizzes within a course at multiple points reduces law student stress and permits more coverage—which is consistent with what we have found as well.[55] Moreover, as she notes, this not only provides teachers and students with opportunities to assess what has been learned, but even helps students prepare for the traditional bar exam that has multiple-choice questions (now covering civil procedure, too). We would agree with this use of multiple choice questions as well.

Although we have not conducted any formal empirical studies on whether students learn better with this approach, this seems to be reflected in better student exam performance, as well as other factors. Admittedly, any "data" we have are anecdotal, since each of us uses the same method for all of our students, without a true control group. However, the fact that current students

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Higher Education: Learning for the Longer Term 101 (David Boud & Nancy Falchiko eds., 2007).

51. *See e.g.*, Clive Thompson, *How the Khan Academy is Changing the Rules of Education*, Wired (Aug. 15, 2011), http://www.wired.com/2011/07/ff_khan/.

52. Roy Stuckey et al., Best Practices for Legal Education 92-3, 175-96 (2007) (multiple formative and summative assessments).

53. *See e.g.*, Carol Springer Sargent & Andrea A. Curcio, *Empirical Evidence that Formative Assessments Improve Law Students' Final Exam*, 61 J. Legal Ed. 379 (2012).

54. Stuckey et al., *supra* note 52, at 175-96.

55. Sparrow, *supra* note 42, at 3.

are performing at least equivalently or better than past students who did not have as any multiple-choice questions—in an era when current students may have weaker academic credentials—suggests that the multiple-testing approach is, in fact, valuable.

One of the most valuable, albeit time-consuming, components is using multiple-choice (and other objective) questions as a pre-class quiz before material is formally taught in class. It is important that these quizzes provide students explanations of not only the correct answer, but also of the reason other answers are not correct. We have required students to complete these quizzes shortly before class so that we can review the data and then focus on the topics that students are most confused by, making class more efficient and more focused on true points of confusion. For one of us who does weekly review quizzes in addition to the pre-class quizzes, students are generally doing either equivalently or better on the review questions than in prior years. This seems to support the efficacy of this method. However, although adding pre-class quizzes was the most substantial change, it is not the only change that was made; a formal casebook was dropped (to help with costs), although students are still reading most of the same cases. So we cannot definitively attribute students' improved performance to the use of pre-class quizzes with explanations.

Another indication of the value of the quizzes is the fact that students in *other* classes decide to join our TWEN courses to take our quizzes. This has always been true in the past. But the number of other students shadowing our classes has definitely increased since we added pre-class quizzes. Beyond 1L students, some 3Ls notably joined our TWEN courses to access quizzes to study for the multi-state bar exam.

d. Pretesting and Multiple Assessment Are Supported by Cognitive Science

Cognitive science not only shows why traditional study techniques promote the illusion of learning that in fact leads to ineffective learning, but also supports a multiple-assessment approach. While students who reread or highlight are promoting the illusion of fluency (thinking they know things better than they do), students who are assessed and get things wrong have that fluency illusion promptly debunked. Once the fluency illusion is debunked, students are then better-positioned to actually learn the material.

Assessment also helps to promote learning in a different way than highlighting and rereading. In particular, assessment requires students to recall and apply information—a fundamentally different process, as well as one that affects how information is stored and subsequently recalled. Pretesting is also helpful to "prime" the brain to absorb new information. Even though students may be simply guessing at the answers in a pretest, the process of pretesting may embed unfamiliar concepts in the brain, such that they are "primed" to better understand those concepts when exposed to them later.

III. Our Approach to Tackling a Tough Topic: PJ

Recognizing the challenges with PJ, we have a multipronged approach that not only addresses the well-recognized problems with learning PJ, but is also consistent with the literature on the importance of context, the use of active learning, and assessment. Essentially, providing context is a critical first step, but this is reinforced with active learning through repeated testing at multiple stages. A critical component of our approach is to be transparent about how to approach difficult constitutional cases and identify the analytical framework for PJ at the outset. Contrary to our initial assumptions, this does not make the topic "too easy," but instead provides students with a proper context to understand key nuances.

Our approach helps students better see connections between concepts and be better prepared to work through application of PJ problems in a real-world context. In addition, it mirrors real-life practice. After all, a practicing lawyer would not attempt to learn a new area of law by simply reading individual cases without any context. Rather, lawyers typically start by looking at a treatise or at least being told some background information about the issue. By helping students see the process of fleshing out the nuanced rules of personal jurisdiction as an aspect of lawyering, they should be less frustrated and more invested in trying to master this skill.

A. Providing Key Context

1. Providing an Introduction to PJ

We do several things to introduce PJ with appropriate context to reduce confusion. Although we focus on PJ, these steps can be taken in any class where the students will be expected to master a large analytical framework.

a. The Importance of Explicit Goals and Context

We believe that PJ can be more successfully tackled by being transparent about the goals and challenges. We begin our discussion of PJ by putting it in a broader context. In particular, we tell students how the broader topic of "jurisdiction" is important to help decide where a case can be properly heard. We also show students a visual flowchart of other jurisdictional topics to see how PJ, together with subject matter jurisdiction and venue, help to narrow down the possible places where a case can be heard; the diagram mirrors the order in which we teach the topics and also how we analyze where a plaintiff can bring suit in federal court.[56] Students tell us that seeing this diagram repeated in each of the jurisdiction topics, including PJ, helps them place PJ in the larger jurisdictional context.[57] In addition, we use analogies to introduce

56. A copy of this simple diagram is included in the Appendix, Part I.

57. Indeed, for one of us who teaches jurisdiction before joinder rules, students often comment that they prefer the jurisdiction material because this one diagram helped bring coherence to the topics.

the overall topic of jurisdiction and show them that, at least in an analogous situation, their intuition should lead them to understand the importance of PJ. For example, we ask whether they think that a professor from a different section would have power to give them a grade and tell them that although they are correct in their likely gut instinct that this is "wrong," the rules are quite a bit more complex.[58]

We all provide some introduction to PJ concepts, whether through an initial handout or with an introductory video (including a few interactive questions) to provide some background about the basic themes and issues in PJ. For example, we not only discuss why constitutional due process is relevant and the importance of this, but also introduce key concepts such as different types of PJ (general/all-purpose versus specific, as well as in personam versus other types). Even if students may not fully grasp the material the first time, the introduction seems to help them prepare for more details on these topics.

b. Providing Tips on Tackling PJ cases

We also give initial tips on reading constitutional cases through a handout. This handout explains how to handle fractured Supreme Court opinions.[59] For example, we explain the difference between a majority and plurality opinion (for some or all of a case) and tell them they may be asked to consider which Justices signed on to which opinions over time. We also note that since casebooks are edited, any dissenting or concurring opinion is considered relevant, and that in the PJ context, this could be because the reasoning in the dissent of one case could become influential and possibly the majority in a later case.

2. Providing the Analytical Framework at the Outset

An important part of the context that we provide before the first class on PJ is the overall analytical framework for how PJ is analyzed in practice, as well as on exams. This is shown in our flowchart in the Appendix. The flowchart provides a visual illustration to students that they should always begin with the easiest type of PJ to satisfy. In addition, it shows that within the typical type of (specific in personam) PJ, they need to first address state long-arm statutes before addressing a two-part constitutional test. One of us presents a very condensed version of the flowchart so that it can easily be included and reinforced with each additional case; students can be prompted to identify "where" on the flowchart each case is focused.[60] Another possibility is to

58. This example is for a jurisdiction-related topic with which students are unlikely to have prior context, subject matter jurisdiction. We also have analogies for related topics such as venue and service. These will be included in our book: Angela Upchurch, et al., A Click and Learn Guide to Civil Procedure (forthcoming Carolina Academic Press 2017).

59. Our handout can be used to help students address constitutional cases in PJ, as well as in studying another notoriously difficult area—the "Erie" doctrine.

60. Two condensed versions of the flowchart we have used are also shown in the Appendix after the detailed version. We base our structure on the predominant approach taken by the

provide students with a partially completed flowchart so that they can fill in the chart when they discover where each new case fits in the overall analytical framework.

Notably, although our flowchart mirrors how a lawyer would analyze the question in practice, it is different from how most casebooks and classes cover the material. Many classes discuss the constitutional cases chronologically, some starting with the *Pennoyer* case from the 1800s and then discussing state long-arm statutes only after all the constitutional cases. Although we have each used this traditional approach at one time, we found students would sometimes forget that the state statutes were relevant, or think that they should be addressed only after the constitutional analysis. In addition, this approach does not mimic real-life lawyering. In practice, a lawyer would always check whether the state long-arm statute applied *before* delving into the thorny issue of constitutionality. We explain this to the students upfront when introducing the framework and then cover the long-arm statutes before the series of key cases on constitutionality.

In addition to providing the overall analytical framework at the outset, we explicitly note that they will read a series of cases that are *all* relevant to the analytical framework. We also suggest that the framework should help guide their understanding of how each case fits in, so that the usual case briefing approach is less frustrating. Students are told that there is a two-part constitutional test that evolves from the modern PJ watershed case of *International Shoe* before they read that case or any others. This helps reduce frustration with the *International Shoe* opinion which, as we explained above, is a key but incomplete foundation to modern analysis, since subsequent cases further define its skeletal foundation.

Providing students with an analytical framework of PJ analysis is consistent with every teacher's effort to provide context.[61] For example, syllabuses aim to tell students what will be covered in class. However, unlike other topics, PJ may need a more explicit and detailed foundation than can be spelled out in the syllabus. This is particularly true because PJ is often not taught in the same order as it is analyzed; in such a situation a more explicit introduction of the framework may be helpful.

In essence, we attempt to show them the PJ "forest" before they start examining individual "trees" (such as the historical cases and the cases that show the development of the law). Although we agree that it is important to show students how PJ evolves, our experience is that explicitly telling students what to expect and focusing their attention on what they should be

federal appellate courts, but there are, of course, several ways to present the structure of PJ. We are not suggesting you should simply present students with our flowchart. Rather we are suggesting that each faculty member share, and repeatedly discuss with students, the faculty member's own concept of the analytical structure of PJ.

61. It is also consistent with Brooke Coleman's intuition-based timeline of litigation, which she revisits throughout the semester to remind students that, even when approaching a "new" topic, they can see where it fits in and also have some prior familiarity.

looking for minimizes their frustration and increases their understanding. This approach does not necessarily require that cases be taught in a particular order. One of us still uses *Pennoyer* as the first PJ case. However, students seem to better understand PJ when given the initial context of the overall analytical framework. Accordingly, we use this same approach in our forthcoming interactive supplement.[62]

3. Clarifying How to Use the Analytical Framework in Reading Cases

Another important issue at the outset is that in conjunction with providing the analytical framework, we tell students how to effectively use that framework in reading cases. We, of course, remind students that they should be able to identify how each case "fits" on the PJ analytical framework, including not only its location, but whether it modifies any aspect of the framework from the first modern case—*International Shoe*. We also explicitly tell them that, unlike some other topics in civil procedure, the facts of constitutional PJ cases are essential to understanding the PJ rules and how to apply them in the future.

We recommend students use a two-part approach in their reading; we encourage them to first skim the case, looking for key PJ facts, and then do a second, deeper read to better understand what aspect (or aspects) of the framework the case discusses, as well as what the case adds to their understanding of the concepts on the framework. For the initial read, we tell them to look for key facts, such as the forum state, who is challenging personal jurisdiction, and the claim(s) asserted. We strongly recommend that they "map" each claim when reading the case to indicate where the claim arose, the defendant's citizenship, and the forum state. We also tell students to note whether the case discusses general/all-purpose PJ, a state long-arm and/or any aspect of the *International Shoe* test for a closer reading. This way, they know "where" on the framework the case is focused. Then, for the second read, we guide them to focus on how the Court explains one or more of these issues. In other words, we are guiding them to not simply master one case, but see how that case fits into or modifies the overall PJ analytical framework.

4. Provide Helpful Examples of the PJ Framework in Action

Over time, we have found two case-based examples helpful to promoting student learning. One is to introduce students to a recent district court opinion that goes through the entire PJ analytical framework. Another is to introduce students to a PJ case involving a real-life celebrity, which seems to pique their interest and make them more invested in understanding the material. Of the two, we believe the full analysis of a district court opinion is most important, although a case that involved both elements would be ideal.

Although we still teach most of the traditional Supreme Court PJ cases, we have found that students better understand these if they *first* read a current

62. Because we know faculty members may differ in how they tell students to analyze PJ on an exam, we intentionally present two main "paths" and expressly tell students to listen to their professor.

district court PJ case.[63] Unlike the landmark Supreme Court cases, the lower court opinion goes through most of the analytical framework we have just introduced them to.[64] We emphasize the framework with multiple questions about it. For example, when the opinion begins its PJ analysis with general/all-purpose PJ, we prompt students to consider what this term means based on their introductory materials and ask them to consider *why* the court addresses this first, to reinforce that this is the first step of the analytical framework, even if generally not part of Supreme Court opinions. Similarly, we ask why the court discusses state long-arm statutes before the constitutional analysis, which some students might think should be addressed first if they fail to remember the analytical structure.

To promote integrative learning, we assign and discuss this district court opinion on PJ toward the beginning of PJ coverage. This mimics real-life lawyering where attorneys may begin with relevant recent cases and then look at the cited historical or foundational cases for additional support. Consistent with the theory on integrative learning, this seems to help promote student understanding, as the students see the connections between this case and the constitutional *International Shoe* test. Although there are many important Supreme Court cases on PJ that must be covered, those cases generally each address a specific type of claim, such that students may have trouble understanding the big picture and making connections without such an introduction. Notably, we have used an opinion that includes PJ principles to which students have not yet been introduced in depth, such as stream of commerce.[65] We have found that this is not a problem so long as students are told we will get to the details later and focus them instead on how the case illustrates the overall analytical process. It is also possible, of course, to edit out the details of any part of the case.

Another illustration that could be used is a PJ issue in a familiar cultural context. For example, we have used a case addressing whether there is PJ (as well as venue) over Angelina Jolie in Illinois for allegedly violating the copyright of a book by making a movie.[66] Using a case involving a well-known celebrity seems much more accessible than older cases involving a shoe

63. Some of us use both a district court and appellate court decision that highlight different issues. The cases we have used are Irizarry v. East Longitude Co., 296 F. Supp. 2d 862 (N.D. Oh. 2003) and Illinois v. Hemi Group LLC, 622 F.3d 754 (7th Cir. 2010). *Hemi* has the advantage of involving a defendant with solely Internet contacts such that PJ through Web contacts can be considered without a separate case on that.

64. *Irizarry* first considers general/all-purpose PJ, and why it does not exist, then evaluates whether there is specific PJ, which involves two steps: whether the defendant's activity falls within the state's long-arm and, only if it does so, then whether application of that long-arm is constitutional. Unlike most Supreme Court cases that address only the constitutional issue (since the Supreme Court can hear only federal but not state issues), this case is able to explain all components of the analytical test.

65. Irizarry v. East Longitude Co., 296 F. Supp. 2d 862 (N.D. Oh. 2003).

66. Braddock v. Jolie, 103 U.S.P.Q.2d 1344 (ND. Ill. 2012).

company with traveling salesmen. Although we are not suggesting jettisoning key Supreme Court cases, supplementing student learning with some familiar context seems to promote interest in topics that are otherwise not relatable.

In addition, multiple variations can be adopted. For example, if the teacher has more time, the actual motions (with evidence) can be included as part of the reading, with prompts for students to consider why the parties select certain facts to support PJ.[67] Alternatively, if faculty members lack the time to assign another case, presenting just the facts (and a picture) of a modern case with a high-profile defendant may still help provide relatable context. One of us has found using the Angelina Jolie case a useful review of PJ as well as proper venue and transfer of venue. This case has also offered a great segue into pleadings, since pleadings featuring a well-known cultural icon are also available, which students seem to enjoy.

Yet another possibility is to do an in-class exercise using an opinion that addresses the full analytical framework, rather than simply assigning the case to be read. One of us provides the students with the framework and an example appellate court decision to read before class. During class, the students work through a previously unassigned district court opinion to identify the components of the analytical framework. The district court opinion has been printed on paper and cut into strips containing the components of the framework. The strips are placed out of order and a number is assigned to each strip. The students are asked to put these strips back into order. They are also asked to identify the components of the framework. At the end of the ordering, the professor reveals the correct order of the opinion and leads class discussion. This exercise reinforces the framework and enables the students to identify aspects of the framework that are clearly distinct from one another and aspects of the framework that share overlapping considerations. Further, because the opinion can cover a new application of the framework, it can be used to preview future classes. Time permitting, this interactive exercise is one the students seem to enjoy.

B. An Active-Learning Approach to Teaching and Reinforcing PJ Concepts

We employ a strategy that learning theory and studies discussed earlier show is effective: frequent testing, including pretesting. We require students to answer questions before class, in class (through traditional Socratic method, in small groups or interactive "clicker" questions), and after class (including exam-type essay questions, as well as quizzes).

1. Pre-class

We provide students with online interactive questions before class to help their reading of the cases and prime them to key concepts we will focus on in class. Since many Supreme Court PJ cases are challenging, we may include

67. Two of us have done this with six credits total of civil procedure.

questions on the holding and rationale.[68] Sometimes we base questions (and red-herring answers) on issues that confused the students in prior classes. It's important to note that we provide not only answers, but also explanations for both the correct answer and the reasons why other answers are incorrect. Students receive an explanation for each question as soon as they submit an answer.[69] These explanations begin the learning-through-feedback process before students even step foot in the first class on PJ. Additionally, students are able to identify areas that they have mastered and areas that they need to work through. This enables them to be more self-directed in their learning.

By providing students questions beforehand *and* reviewing data on which questions students had trouble with, we can close the "feedback loop." We can make informed decisions about how to use class time, spending time on topics that the majority of students are struggling with and not retreading topics they have already mastered. Without a pre-class assessment, we would be only guessing at what students know and what they do not know. The data we obtain from quizzing provide information on how the class overall performed on each question (the number of students who got each question correct as well as the number who chose the incorrect options);[70] we can also determine the total number of questions correct for each student.[71] Class time is thus more efficient and productive, since we can address only the questions that a significant number of students struggled with.

We have found this helpful even though we each organize our coverage of the material differently. Students find it very helpful, and definitely not too easy. Some students seem to appreciate seeing how they performed relative to others in the class on the quiz overall, or even on individual questions. In addition, the data on individual student performance can be used to provide targeted assistance; this is especially true for students who repeatedly seem to have trouble.

2. In-class

During class we aim to not only address confusion from pre-class questions, but build upon those principles. We also repeatedly present (on PowerPoint slides) the analytical PJ flowchart during classes to show students "where" we are on the flowchart. Sometimes we present the flowchart in a slightly different fashion, such as a simple diagram of different types of categories that lead to PJ—general/all-purpose versus specific PJ, for example.

68. For example, we sometimes select several different quoted portions from a case and ask students to determine the correct statement of the legal test.

69. The Appendix includes a number of screen shots showing how these appear using the TWEN quizzing function, including the fact that students are provided explanations both when they get the answer correct and when they don't.

70. This is shown in the Appendix, Part II.

71. This is shown in the Appendix, Part II (last graphic).

Although we all use some aspect of the Socratic method for discussing cases, we also all use "clicker" questions to actively engage the entire class and evaluate the class as a whole. Although we use different brands of "clicker" devices, any device that polls the students in class is effective.[72] Students consistently note that the clicker questions help them identify points of confusion so that they can improve their learning. It can also embolden them to ask a question when they see that a larger percentage of the class also made an error, since each of us uses technology that shows a graph of student responses to each question.

We also use group work during class as a different type of active learning. We have tried a variety of different exercises to reinforce knowledge of concepts and improve written analysis. Sometimes small groups can briefly work through a short hypo in class on a topic before discussing it in class. Some of us provide a short (one-paragraph) fact pattern and then have students work in teams of two during class to apply their existing knowledge.[73] During the exercise, the PJ analytical framework is displayed, as well as the tasks to focus on, such as assessing the major issue(s) to discuss and identifying the relevant rules. After giving the students a short period to work through this, we discuss the problem, usually beginning with a clicker question prompting the students to identify what issues they should have discussed.[74] This not only reinforces the analytical framework, but enables students to more easily segue to writing out a full analysis on their own, including more complex questions. A similar exercise using a more difficult question can be repeated after students have been introduced to all the cases.[75] Alternatively, students might not need in-class guidance to do such a problem on their own after the initial in-class exercise. This approach should better prepare students for tackling an essay question on an exam, and also promote their writing skills as budding lawyers.

Other in-class exercises help promote integrative learning through problem-solving in a real-world-based simulation. Before tackling the modern *International Shoe* line of cases, students are provided a basic fact pattern involving injuries arising out of a car accident. They are asked to represent the plaintiff and make a plan for establishing personal jurisdiction over the defendant in a selected forum using traditional methods for establishing PJ (e.g., "at home" jurisdiction and tag). Through the exercise, the students discover how to establish PJ under predictable methods (such as choosing the forum where the defendant is domiciled) and become aware of the limitations of such methods (e.g., a desired forum may not be available through these PJ routes). Finally, the exercise provides the students with an opportunity to think about how they would go about obtaining the information necessary

72. For example, we have used i>clicker as well as TopHat questions. Other versions are also available, such as the Turning Point ones used at AALS, and free options, including "Socrative" and "Instapoll" on TWEN.

73. This is provided before class, but can also be shown as a slide.

74. A screen shot of an actual question is included in the Appendix, Part VII.

75. One of us does this with an actual PJ essay question from an old exam.

to determine whether PJ could be established in their selected forum. In addition, one of us has students negotiate a forum selection clause. These types of exercises provide opportunities for students to make connections between the PJ concepts and practice.

3. Post-class

We have used two types of formative assessment to help students better understand PJ: exam-type essay questions and post-class quizzes.

Exam-type essay questions offer multiple ways of providing formative assessments. As mentioned earlier, students can be introduced to approaching exam-type essay questions in class and thereafter be encouraged to write out answers on their own for individual feedback. Alternatively, students can be provided with answers of differing quality and be asked how these answers could be improved (without a grade being assigned). When reviewing such an answer, students may be better able to see what is "wrong," as they are not attached to the writing in the same way they are in their own drafted answers.

One of us has also implemented post-class quizzes throughout the semester to help reinforce issues that students seem to struggle with in class. This obviously provides yet another opportunity for students to retrieve information and apply it. In addition, these quizzes can include some older topics, which research indicates is helpful to ensure that students retain material.[76] Students seem to generally recognize the value of these quizzes in closing the feedback loop. Some have commented that they thought they understood the material until they had trouble with the quiz. In addition, faculty can use data from the quiz to revisit the material in class again.

IV. Implementation Issues

This Part tackles the thorny challenge of how to implement this feedback-focused approach in teaching and learning. We provide three principal suggestions of how to implement more context and active learning to make a tough topic more accessible. We then take an honest look at the challenges of implementation.

While we aim to provide a comprehensive variety of approaches, we do not suggest or recommend anyone attempt to adopt all of the changes immediately. Our suggestions were developed over a number of years and with one another's assistance. Notably, none of us has adopted every suggestion in this article. Nonetheless, we have found that even modest changes have resulted in better student understanding and better performance on our final exams.[77] Notably, this has happened at a time when entering law students are

76. Doug Rohrer & Harold Pashler, *Recent Research on Human Learning Challenges Conventional Instructional Strategies*, 39(5) Educ. Researcher 406 (2010).

77. Although we have not embarked on a rigorous empirical study of the active-teaching methods we advocate, we nonetheless have some observations that may still be of value. Over the years, we have been tracking student performance on in-class clicker questions. When we have provided some pre-class assistance, we have noticed improvement on the in-

on paper "weaker" (based on LSAT and undergraduate grades) than in prior years. Accordingly, we are hopeful that others can benefit from some of the lessons that we have learned—and continue to learn.

A. Three Suggestions

Although we make many suggestions in this article, we aim to focus on three overarching takeaways for implementation. To us, the key suggestions involve (1) providing the analytical framework upfront, (2) adding an accessible illustration, and (3) incorporating an active-learning/assessment mode.

We will primarily focus on PJ, as in the rest of the article, but will briefly address other tough topics. Our suggestions should work for a cross section of teachers, since we teach at three different schools, with differing credit unit and coverage and different organization of PJ topics. So, here are our recommendations for where to start.

1. Top Tip: Provide the Analytical Framework Up Front

The most important yet easiest component to incorporate would be simply providing students with greater context and transparency before they begin. For example, in PJ, we suggest providing students with the analytical framework before you have the students read the personal jurisdiction cases.

This should entail a minimal investment of time, since most teachers have a framework they already teach—a framework of some form in their notes and/or in their exam grading rubric. To convert this into a chart for students should be straightforward. There are, of course, decisions to be made in terms of how detailed to make it. When in doubt, less may be more in terms of having an easy structure that can be shown to students repeatedly throughout the entire PJ section.

We think that giving students an analytical model *before* reading cases not only reduces frustration, but substantially increases learning. Notably, some of us previously gave students a flowchart, but only at the conclusion of PJ cases. This was premised on the idea that telling them too early would result in students not actually learning from the cases. However, we now realize that when the framework is presented only at the end, many students never actually understand key topics. The cases are sufficiently challenging that there is still plenty for students to learn even when they have a road map of where they are going at the beginning. Knowing the analytical framework in advance helps students understand nuances of individual cases better. In class, students can better see how cases evolve because the analytical framework primes them to do so. Since we adopted this approach, we no longer see bizarre structures of PJ analysis that either are in orders that don't make sense or are missing key components.

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class questions even when the students' entering statistics may not have been as strong as in prior years.

Although our focus has been on PJ, context can help with any tough topic. For example, one of us teaches intellectual property and finds that students struggle when an invention is "obvious" and thus not patentable. As with PJ, this topic is hard for students, teachers, and courts. In recent years, one Supreme Court Justice referred to an earlier version of the test as "gobbledygook;"[78] although the Court has since modified it, application can still be tricky.[79] Like PJ, the analysis has multiple prongs, with subtle issues to analyze within each topic. Accordingly, the analytical framework is emphasized at the beginning and with discussion of each case.

Notably, although our approach to tackling PJ focuses on the difficulties in teaching a topic with a tough analytical framework, some of our suggestions are equally applicable to broader topics that are viewed as hard. One of us has similarly tried in a survey class on intellectual property law to address the perception that, unless one has a science background, patent law is not manageable. This perception can be rebutted, or at least some fear can be alleviated, by using accessible illustrations of patented material such as a Koosh ball or a Pez candy dispenser. Students are also provided with other context. They are told upfront how analysis of patent issues mirrors what they already know about analyzing IP issues covered earlier in the class.[80] In addition, for each type of patent analysis discussed, students are provided a handout that they can fill in during class as an easy guide to analyzing key issues on their own.

2. Tip Number Two: Add an Accessible Illustration

Another relatively easy method to promote better learning of a tough topic is to provide an accessible illustration of how to properly analyze the tough topic. So, for example, with PJ, we incorporate a district court case early on to illustrate the framework of PJ analysis that no single Supreme Court opinion fully explains. You can find a very short district court or state trial court decision from your own jurisdiction.

We recommend you choose an opinion that both illustrates the framework and makes students realize that PJ is very much alive and well in the courthouse down the street! This can then be reinforced with another opinion or hypo that perhaps features someone whom students are familiar with. Hollywood icons actually periodically have PJ issues. For example, just last year a PJ opinion was issued involving Katy Perry.[81] Even if no judicial opinions exist, we have

78. *See e.g.*, Timothy C. Meece & Charles L. Miller, *Is Federal Circuit Law "Gobbledygook?"*, Intell. Prop. Today, Dec. 2006, at 12.

79. KSR Int'l Co. v. Teleflex Inc., 550 U.S. 398 (2007).

80. For example, although the topic seems hard, they are told that the analytical framework is similar to what they have seen before in terms of a plaintiff's needing to establish a valid patent (or other IP right) and then shown that the defendant violated this right.

81. Gray v. Hudson, 115 U.S.P.Q.2d 1916 (E.D. Mo. 2015); *see also* Julia Lissner & Ira Sacks, *"California Gurl" Katy Perry Not Subject to Personal Jurisdiction in Missouri*, JDSupra Business Advisor (July 29, 2015), http://www.jdsupra.com/legalnews/california-gurl-katy-perry-not-subject-15318/.

found students seem more interested in hypos involving characters they are familiar with from popular culture, such as TV shows and films.[82]

Moving beyond our PJ focus, a teacher could adopt an accessible illustration in any area. So, for example, one of us sometimes avoids landmark Supreme Court opinions in the patent area if they have inaccessible topics such as plow shanks[83] in favor of cases that involve baseball card holders. Similarly, even without a case, a tough topic can be made more accessible by using an item in students' cultural context. Students seem able to consider whether the "Uncrustable" sandwich is obvious in light of calzones and pies, as well as whether elliptical machines are obvious (or not) in light of prior treadmills and stair climbers. Also, in teaching a topic that students think is too technical, a student research assistant with no technical background can be employed to find a simple case illustrating the issue at hand. The student research assistant can be a useful proxy for what is accessible to students in the class while simultaneously minimizing instructor time.

Moreover, students can be challenged to find their own accessible illustration. Two of us have asked students to find a class action from the news and analyze what "type" it is. Outside civil procedure, one of us has asked students to check products in their daily life that are noted as patented to help provide further examples of the types of common products that are patented and as a basis for then embarking on an analysis of issues within their own context. Asking individual students in the class to do this involves no additional time on the part of the faculty and has the benefit of ensuring that students find topics that are in fact their context.

3. Tip Number Three: Adopt an Active-Learning and/or Assessment Piece

We believe that what is most helpful to student learning is more opportunities to actively engage in learning. Active learning can simultaneously provide a form of assessment, although for our purposes, we focus on *formative* assessment such that students are not worried about the impact on their final grades. Notably, we require students to complete the active-learning component by including timely completion as a component of class participation. They generally get credit for timely and professional completion, but not on whether they got the "right" answer.

Introducing or expanding the assessment opportunities is perhaps the most challenging change you can make (as discussed below). But, as with many endeavors that are tough, there can be rich rewards. If you're up for the challenge, we advocate you pick one topic where you have seen students struggle and try one form of assessment (MC or essay practice) in one context (pre-, in-, or post-class).

82. Students have expressed unsolicited thanks for hypos that include characters with whom they are familiar from shows such as "House of Cards" and "The Good Wife."

83. Graham v. John Deere Co., 383 US 1 (1966).

You can do multiple types of assessment depending on your goals and preferences. For example, MC questions can be good at promoting better student substantive knowledge of discrete areas, whereas issue-spotting exam-type essays are helpful to see if students can put multiple discrete areas together for analysis.

Students can be provided with assessment before class if they are taking an online quiz, or provided assessment during class. For example, "clicker" questions are a great way to change the pace of class and give students feedback on whether they are "getting" the material being introduced. It takes relatively little time to incorporate a simple MC or even T/F question in class. This can be easily based on notes (or even simple recall) of what students have previously struggled with. Students can be provided feedback on both how the class as a whole responds when student answers are displayed, and why an answer is correct or incorrect when the faculty member reviews the question.

Another type of in-class assessment can entail discussion of student submissions of an exam-type hypothetical for which they must have previously submitted an answer.[84] We are notably not necessarily suggesting that faculty must actually assess each student submission (more suggestions in the "Challenge" section below), which would be admittedly highly time-intensive. We would like to make an important observation here. We have found that *when students are required to write out essay answers, student performance improves even without individual feedback*. Although we have not done any formal studies, this finding seems consistent with studies showing that simply taking a test can increase exam scores because students are "primed" to better understand the material and are more actively applying their knowledge than simply reading cases. Our motivation for doing this, although consistent with these studies, came from our own teaching experience. Essentially, we noticed that although most students would not take advantage of our offer to provide optional feedback on exam-type essay answer, those who did excelled on the final.

B. The Challenges

1. Time

Of course, adding anything requires consideration of time constraints. However, there are multiple ways that this can be addressed. First, it is possible that providing students with an analytical framework initially will reduce the amount of time necessary to cover all the traditional material. In addition, this step does not necessarily take much time since it can be just a single power point slide or chart on the board; alternatively, it can be provided before class so that no extra time is required during class. Second, you do not necessarily need to spend more class time on some of the new materials. For example, it is possible to assign an illustrative district court case, but assign little time to it

84. Students can be "required" to do this by including timely and professional completion as part of their class participation. This seems adequate to have virtually all students complete these even when it is worth as little as five percent of their final grade.

in class.[85] For some subjects, including civil procedure, recent casebooks seem to aim to streamline reading by using more summaries and excerpts of cases, which could enable more time to discuss a case not in the casebook. Finally, we have found that introducing pre-class quizzes decreases the amount of time you need to spend on basic material.

2. Multiple-Choice (and Other Short Answer) Questions

Easy technological solutions are available for teachers who are interested in experimenting with interactive questions, although admittedly challenges still exist. We'll start by addressing the relatively easy question of what technology can promote this and then tackle the tougher issues that require more time investment, such as question (and answer) creation.

From the technological perspective, TWEN provides an easy and free mechanism to create quizzes with multiple-choice (as well as true/false, fill-in-the-blank and short-answer) questions. Indeed, all of the examples in our Appendix illustrate this approach. In addition, clicker questions can be incorporated in class in a variety of ways.[86]

The toughest challenge is to create the actual questions and answers. Most faculty members may not have any existing multiple-choice questions, or may use them only on exams. However, though commercial study guides and even bar exams offer a wealth of questions that can be used as models, it will still take additional time to convert them for use in class.[87] Or, for faculty members who have used multiple-choice questions in the past on finals, the same basic format with a slightly different pattern can still help streamline the creation process.

Notably, not all uses of multiple-choice questions are equally challenging. The easiest way to incorporate multiple-choice questions with feedback is to do this only in class so feedback can be done orally. On the other hand, for pre- and post-class quizzes, drafting explanations involves a substantial investment of time. Although students can be provided with a quiz with only answers and no explanations, we strongly discourage this approach. This may seem like a good time-management strategy for the teacher, but it does not close the feedback loop.

Faculty members can take a variety of approaches to incorporate pre- or post-class review through testing. A commercial study guide that has questions and answers that the teacher likes could be adopted as course material, with parts of it assigned to students, thus resulting in no extra class time at all. However, most commercial study guides are not interactive, and students

85. However, we do not recommend simply assigning the case and never discussing it, since students would be unlikely to fully grasp the value of the case. Worse yet, they might improperly conclude that if not discussed in class, it's irrelevant to their PJ analysis.

86. *See supra* note 72, and accompanying text.

87. For example, the concept tested in a short-answer question can be used to create a multiple-choice question in class.

have a tendency to not do questions on their own and instead simply read the answers.[88] Recognizing this problem, we are developing an interactive Web-based guide to civil procedure that teachers can use to obtain feedback on both overall and individual student performance.[89]

We also have recommendations for how to address the work involved with drafting essential explanations for questions before or after class. For example, the quiz need not be long. Moreover, once that is done, questions from prior years can be reused. They can also be shared with other colleagues who use TWEN—not only those at the same school, but even at different schools. Accordingly, teachers of the same subject who want to collaborate on writing and sharing quizzes could reduce the burden of each individual teacher.

While we believe immediate feedback is optimal, a less time-intensive approach would be to provide students with questions that guide their reading and provide answers only orally in class. Indeed, this was the approach that we initially used before we created question banks with explanations. Alternatively, the correct answers can be provided to students before class with an answer key. Many students in prior years have asked for these, but we resisted on the theory that if they existed, some students would not attempt to answer the questions on their own. Requiring students to do an online quiz obviates this problem.

3. Implementing Exam-Based Essay Practice

We recognize that individual feedback on exam-type essay questions may also present serious time challenges. Multiple ways exist to minimize the potential time sink.

One way is to incorporate practice with exam-type essay questions during class and simply provide students with the overall answers during class. This would involve the least amount of additional time, although an equally challenging task is carving out class time to do this. We believe that carving out time can be an important investment if students will better understand the material.

Another way to provide feedback is to provide it to only a limited number of students. Some of us have done this on an anonymous basis to a handful of students (three to five) and then made faculty comments available for the entire class to see, in addition to discussing them in class. This actually also benefits the teacher in that she can see problems students are experiencing before giving students the correct answer in class. Notably, we have found that students sometimes have different errors from year to year.

88. CALI lessons are obviously an exception to this. Lessons, CALI, http://www.cali.org/lesson (last visited Mar. 9, 2016). However, the utility of these lessons is mixed. Sometimes the questions are too easy or too hard. Moreover, they are generally not updated as regularly as commercial study guides, such that the law may not be accurate. Moreover, even if there were a good CALI lesson, such lessons do not (at least currently) provide data directly to the teacher to help indicate how to best use class time.

89. Upchurch et al., *supra* note 58.

Feedback can also be provided in ways that are less time-consuming than offering it to each student individually. For example, students can be required to submit a group answer that would easily reduce the number of papers to read. Another approach would be to have students submit only an outline of issues/analysis, without doing a full essay.[90] We recommend this more for upper-class students who at least know the proper structure of an essay and are more likely to face a class where they need to spot and address multiple complex issues.

Another way to provide individual feedback without using faculty time is to have excellent upper-class students help as formal or informal teaching assistants. Some schools have programs where students serve as teaching assistants for credit. Many 1Ls love having the assistance of a peer. This can also be a great learning experience for upper-class students to further reinforce their understanding through teaching others. Even at schools without a system for using teaching assistants, a faculty member could easily use a traditional student research assistant to perform this task, as long as a careful and detailed grading rubric is provided for feedback purposes and the assignment is graded just for completion.

4. Student Reaction/Resistance

A final challenge lies not with the teacher, but with students who may resist a "different approach." While our students have generally completed all the assigned materials, that does not mean that they are all convinced by the methodology. Anticipating potential student resistance, we did try to explain our methodology upfront, including that it is supported by empirical data. In addition, one of us explicitly estimated how much time a student can expect to spend on pre-class quizzes.[91] We each also consciously tried to reduce the amount of reading to adjust for the additional time necessary for pre-class quizzes.[92] We emphasize that they should focus on learning from the overall process rather than on whether they happen to get a question right the first time.

90. One of us has tried this for an upper-level class and provided either full-class participation credit for any timely submission, or slightly varied (i.e., check, check-plus, check-minus) but still minimal credit depending on the accuracy and depth of analysis. What is most time-consuming is providing specific feedback to students, although this is not strictly necessary, since feedback can be provided to the whole class

91. One of us includes a link to an accessible news article that explains how taking exams—and even failing them—can help improve learning. *E.g.*, Benedict Carey, *Why Flunking Exams is a Good Thing*, N.Y. Times, Sept. 4, 2014.

92. Sometimes we reduced the reading by more aggressively editing a previously assigned case. Other times, we took the more radical approach of presenting a concept as a series of questions based on a "hypothetical" in a pre-class quiz. In light of this plan, we did not use a traditional casebook and instead provided our own edited cases to students, although no aspect of our approach requires this. Nonetheless, students greatly appreciated the reduced cost of one fewer casebook.

Fall 2015 was the first semester in which we all have done pre-class quizzes, and although it has made class much smoother, with fewer major points of confusion, there were some issues. Some students think that there should be fewer questions. These students seem to not understand that the questions are not gratuitous—that they are asked to help students better understand the material. However, in an informal poll, this was a minority of the class (slightly less than a third), and even those who wanted fewer questions did not entirely object to pre-class quizzes. They just wanted less questions so that they could focus on a smaller subset of material to master.[93] By contrast, an equal number thought that the number of questions was fine, and a few actually wanted more.

Our experience has been generally positive with the pre-class quizzes. Many students have commented that they appreciate them as a way to better prepare for what to focus on in class. Although it is theoretically possible that a student could quickly complete a quiz to get full credit, we are generally grading on completion and not accuracy, so that has not been an issue. Students seem to understand the benefit of the quiz as a learning tool. In rare cases, a student has rushed through the quiz and has actually emailed to apologize for potentially messing up overall class "data." Notably, while a small minority fails to complete the quizzes on time, in one of our classes, all but one student eventually completed all quizzes, even though there was no grade incentive to do so.

One issue that some students have is the workload involved with our approach. Some students complain that the work required for our class exceeds that in other classes. However, the majority recognize that the work is valuable to their learning, with some even wishing for other faculty members to adopt a similar approach. In addition, even though some students complain, the vast majority of them timely complete all of the quizzes and practice essays. We believe receiving some minor complaints are worth the effort, since even students who don't immediately see the value of our methodology still benefit from it long after the class has concluded. For example, one former student recently noted she did much better on civil procedure questions than on any other topic while preparing for the bar and attributed this to the many multiple-choice questions during class, as well as in weekly review quizzes.

V. Conclusion

We hope that this article has provided some useful concepts in approaching how to teach and learn challenging topics. We have each learned a great deal about how to improve our teaching of a tough topic in the past few years and we know this is an ongoing journey. We are pleased with the interim results

93. In particular, rather than have around thirty questions in a pre-class quiz, students suggested twenty-five or twenty questions instead. Alternatively, some students do not focus so much on the number of total questions, but rather prefer shorter quizzes on discrete topics, even if the total is the same.

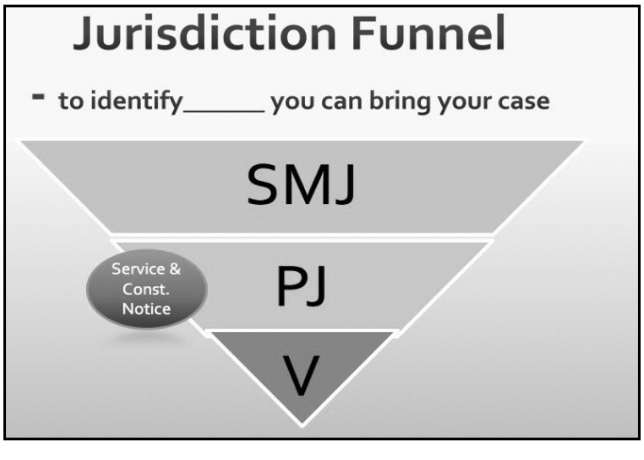
and look forward to further expanding some of the lessons we have learned. We also hope that we are part of a burgeoning interest in how to improve law teaching so that, in the not-too-distant future, more empirical studies will be conducted on how to promote the best law teaching.

Appendix

This appendix contains sample personal jurisdiction materials that we provide to students before, during, or after class. Because student needs and course learning objectives will vary from class to class, we selected a variety of sample questions and text. However, aside from the initial jurisdiction funnel and PJ Framework, the materials we offer here focus primarily on *Burger King v. Rudzewicz*,[94] the key case involving personal jurisdiction analysis in a contract action, to show different ways of using an active-learning approach to the same basic topic. These examples can serve as templates for the construction of materials for other topics, including in courses other than civil procedure. This appendix illustrates part of our forthcoming book, *A Click and Learn Guide to Civil Procedure* (Carolina Academic Press 2017).[95] That online book will also provide data to adopting teachers on how individual students as well as the class as a whole performs on the questions.

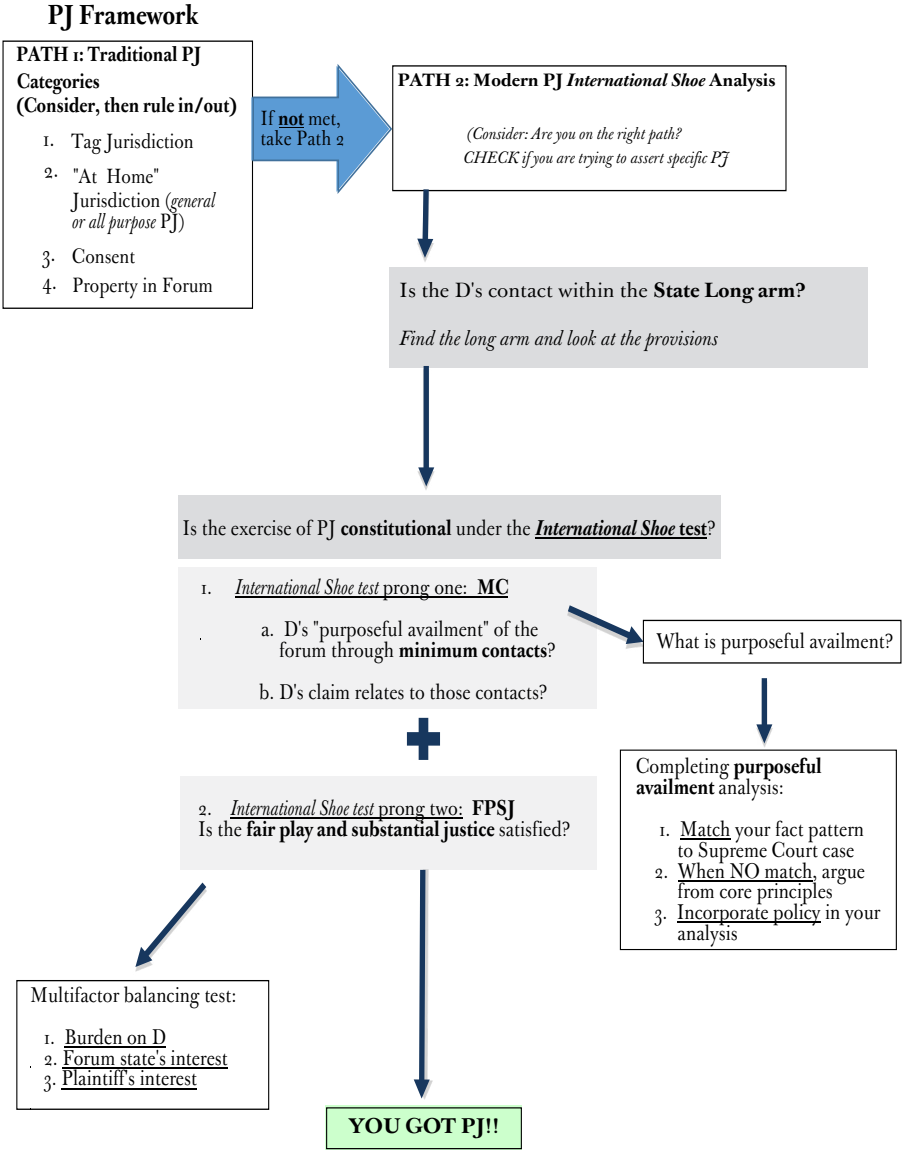
I. Jurisdiction Funnel & PJ Framework

This is a slide shown to students at the beginning of each jurisdictional topic including personal jurisdiction so that they can better visualize how the topics all relate to the important issue of where you can bring your case. This diagram focuses on where a case can be brought in federal court in the United States. It starts from the broadest category, subject matter jurisdiction that would exist in all federal courts, then moves on to increasingly narrow categories. In addition, service and constitutional notice are noted as a bubble in relation to personal jurisdiction, since these issues do not necessarily dictate where a case is filed but are related to PJ.



94. Burger King Corp. v. Rudzewicz, 471 U.S. 462 (1985).

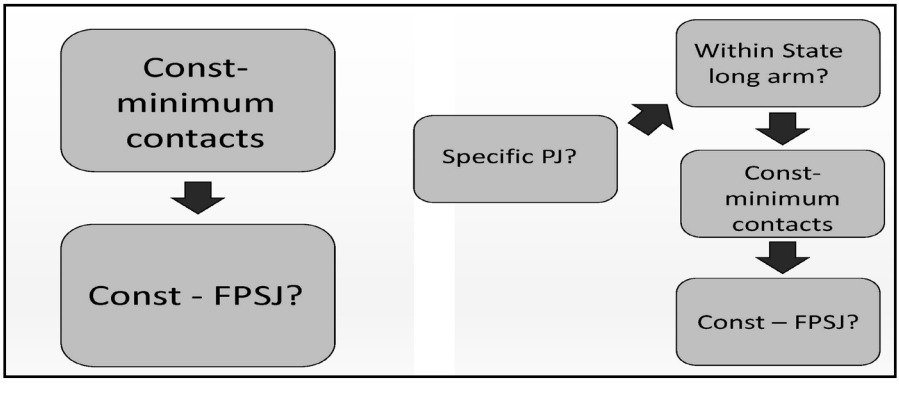
95. *Supra* note 58.



This is the portion of our PJ Framework that represents the *International Shoe* test we provide to students before they start to read the constitutional cases applying to *International Shoe*. Here are the features that we think work best:

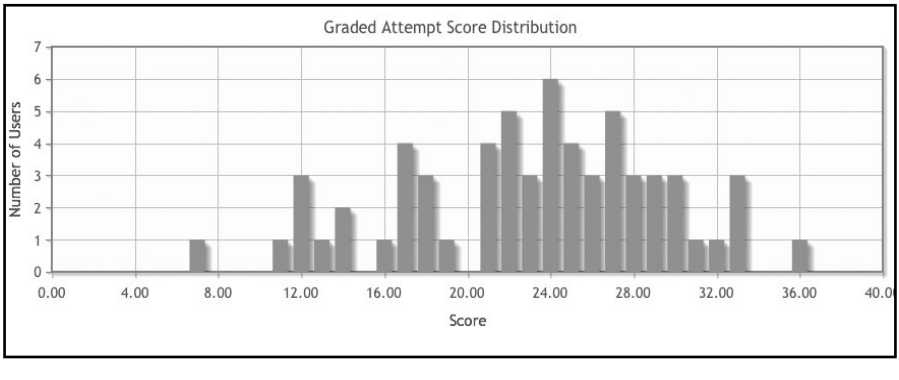
- **The visual flowchart.** This helps provide students a different way to work with the content.
- **Multiple steps in separate boxes.** By seeing the test broken up into separate boxes, the student can focus on each portion of the test. It is easy to refer to the box during class and make sure everyone is working together.
- **Main points distinguished from subpoints and suggestions.** The different-shaded boxes help the student distinguish from the main test and the refined points and suggestions. This allows you to include more content on the flowchart without creating additional confusion.

We then refer to this framework for each PJ case we discuss, although for class discussion one of us condenses the framework to either a two or three-step focus in analyzing specific PJ that can be part of any slide discussing a PJ case to remind students to consider which part of the framework the case is addressing. The simple two or three step approaches to specific PJ are shown below:



II. Useful Data from Quizzes

The following is an example of data available from a TWEN quiz. Adopters of our book will get comparable data. The first two graphs indicate overall class performance whereas the last one indicates individual student performance (with student names omitted here, although available)



Question	Type	Answers			
1	True/False	True: 5	False: 57*		
2	True/False	True: 31	False: 31*		
3	True/False	True: 12	False: 50*		
4	True/False	True: 8	False: 54*		
5	True/False	True: 2	False: 60*		
6	Multiple Choice	A: 27*	B: 6	C: 5	D: 24

Attempts	Final Score	
1	19/28	Give Retake Results
1	21/28	Give Retake Results
1	18/28	Give Retake Results

III. Examples of Pre-class Questions Designed to Assist Students in Reading Cases

The following example text and questions are designed to be given to students before class—to be worked through as they read the assigned case, Burger King v. Rudzewicz. The students are provided an edited opinion and some introductory text.

> **A. Teasing Out Rules:** *In the first set of example questions we attempt to help the students tease out the rules for when the relevant contacts in the forum arise out of a business relationship.*

The *Burger King* Court also offers us a multifactor test to use when we are looking for minimum contacts in a contract dispute. Here's how it works:

To start with, you need to make sure that the defendant entered into a contract with a forum resident.

Q. True or False? Entering into a contract with a forum resident is evidence of purposeful availment of the forum.

Answer: True

Explanation: This is evidence of purposeful availment. It shows that the defendant is reaching out to deal with a person in the forum state—rather than simply contracting with another person in defendant's home state.

Now consider what the Burger King Court tells you about how to apply minimum contacts analysis to a contract dispute:

> Para 17: "At the outset, we note a continued division among lower courts respecting whether and to what extent a contract can constitute a 'contact' for purposes of due process analysis. If the question is whether an individual's contract with an out-of-state party alone can automatically establish sufficient minimum contacts in the other party's home forum, we believe the answer clearly is that it cannot. The Court long ago rejected the notion that personal jurisdiction might turn on 'mechanical' tests, or on 'conceptualistic ... theories of the place of contracting or of performance.'"

Q. True or False? Proving that the defendant entered into a contract with a forum resident is enough, by itself, to establish that the defendant has purposefully availed himself of the forum and meets minimum contacts.

Answer: False

Explanation: The *Burger King* Court made it clear that having a contract with a forum resident was NOT enough on its own to meet the minimum-contacts test. How much more do you need to show? Consider the next following questions to see the other "contacts" related to the contract that a plaintiff would need to identify to show purposeful availment of the forum by the defendant.

Q. If you represented the defendant, based on the quote above, what questions would you ask your client to help you decide if your client is subject to PJ in the forum state?

> A. Did you purposefully reach out to the forum state <u>prior</u> to forming the contract—for instance, during the negotiations?
>
> B. Did you think that the contract would cause you to have <u>future contacts</u> with the forum state?
>
> C. Did the contract itself have <u>terms</u> that referred to the forum state?
>
> D. Did your <u>actual conduct</u> (after entering into the contract) involve contacts with the forum state?
>
> E. Was adequate consideration given for the contract?

Answer: A, B, C and D

Explanation: Notice that the Court's highly "realistic approach" does not focus ONLY on the terms of the contract, but on the <u>entire business relationship between the parties</u>. So you want to know what contacts the

defendant had with the forum prior to the contract, during performance (and breach) of the contract, as well as the terms of the contract itself. Choice E is incorrect because—remember—our focus is not on whether there was a valid contract (which is what consideration will tell us), but on whether the defendant purposefully availed himself of the forum state when he entered into the contract.

The following is an alternative way to focus students on how to properly read the case. Instead of giving them the key portion of the opinion, this question helps them better identify which part of the opinion has the specific test to apply in future situations.

Q: Which of the following quotes provides the most precise "test" for minimum contacts that the U.S. Supreme Court uses to analyze constitutional PJ over the defendant's breach-of-contract claim? (*Note: You don't need to memorize this language going forward and should, in fact, always put rules in your own words, but this question is meant to help you identify the key holding*)

> A. "[C]onstitutional touchstone remains whether the defendant purposefully established 'minimum contacts.'" (para 6)
>
> B. "The Due Process Clause protects an individual's liberty interest in not being subject to the binding judgments of a forum with which he has established no meaningful 'contacts, ties, or relations.'" (para 3)
>
> C. "Where a forum seeks to assert specific jurisdiction over an out-of-state defendant who has not consented to suit there, this 'fair warning' requirement is satisfied if the defendant has 'purposefully direct' his activities at residents of the forum and the litigation results from alleged injuries that 'arise out of or relate to' those activities." (para 4)
>
> D. "If the question is whether an individual's contract with an out-of-state party *alone* can automatically establish sufficient minimum contacts in the other party's home forum, we believe the answer clearly is that it cannot. . . . Instead, we have emphasized the need for a 'highly realistic' approach that recognizes that a 'contract' is 'ordinarily but an intermediate step serving to tie up prior business negotiations with future consequences which themselves are the real object of the business transaction.' It is these factors—prior negotiations and contemplated future consequences, along with the terms of the contract and the parties' actual course of dealing—that must be evaluated in determining whether the defendant purposefully established minimum contacts within the forum." (para 9)

Answer: D

Explanation: Choices A and B are definitely true, but they don't really establish the most precise test for breach-of-contract cases. Choice A is correct that minimum contacts are relevant. But it does not say how to apply these to a

contract claim. Choice B correctly summarizes what the due process protects, but does not provide a test for specific PJ—other than to let you know that having zero contacts would be unconstitutional. Choice C is the best incorrect answer in that it talks about how relevant contacts must be purposefully directed and also that the claim must arise out of those contacts. But it still says nothing about contract claims.

Only choice D focuses on the test for contract claims and explains that there are multiple possible contacts in the forum state that should be considered for contract claims: (1) prior negotiations, (2) contemplated future consequences, (3) contract terms, and (4) parties' actual course of dealings. If these activities occurred in and/or are directed toward the forum state, they would be relevant contacts. Do not worry right now if you do not know what these phrases mean.

> **B. Focusing on the Court's reasoning**: *In the next series of example questions, the students are asked to work through the Court's reasoning by identifying the portion of the opinion that contains the application of each minimum-contact factor they identified. These questions help students stay focused when they read the opinion and encourage them to return to the language of the actual opinion (rather than jump to a summary or study aid too soon).*

Let's look back at the facts of *Burger King*. Remember that **Defendant Rudzewicz** and his partner McShara were setting up a BK restaurant in Michigan. They signed a **franchise** contract with Burger King (BK), headquartered in Florida, and BK now wants to sue them in Florida for breach of the franchise agreement.

We already know that there is **one indication of purposeful availment: Rudzewicz signed a contract with a resident of Florida—BK**. But, this alone is not enough to meet the minimum-contact test, so let's look to **how the additional factors are applied in *Burger King*.**

In *Burger King*, BOTH the majority and the dissenting opinions provide some especially helpful information to law students—the majority and dissent split over how to view the facts. When you read the majority and dissent, try to focus on how they view the same facts in different ways.

In each of the following quotes, the majority and dissent apply the minimum-contacts test to the facts of this breach-of-contract claim. ***For each of following questions, match the quote to the factor being analyzed. Then identify if the majority/dissent believes it evidences purposeful availment of Florida by defendant Rudzewicz ("R").***

Majority Opinion

Q. Quote: "Eschewing the option of operating an independent local enterprise, Rudzewicz deliberately reached out beyond Michigan and negotiated with a Florida corporation."

A. D purposeful availed during prior negotiations

B. D purposeful availed because the contemplated future consequences linked him to the forum

C. D purposeful availed by the terms of the contract

D. D purposeful availed by his actions during the actual course of dealing

Answer: A

Explanation: The quote focuses on Rudzewicz's efforts to start the business relationship with BK.

Q: Does this show purposeful availment of Florida by defendant Rudzewicz? **Yes/No**

Answer: Yes

Explanation: Do you see that if we look at the defendant Rudzewicz's actions before the contract was even formed we see him purposefully availing of Florida by choosing to negotiate with a Florida corporation?

Q: Quote: "Upon approval, he entered into a carefully structured 20-year relationship that envisioned continuing and wide-reaching contacts with Burger King in Florida. In light of Rudzewicz' voluntary acceptance of the long-term and exacting regulation of his business from Burger King's Miami headquarters, the quality and nature of his relationship to the company in Florida can in no sense be viewed as random, fortuitous, or attenuated."

A. D purposeful availed during prior negotiations

B. D purposeful availed because the contemplated future consequences linked him to the forum

C. D purposeful availed by the terms of the contract

D. D purposeful availed by his actions during the actual course of dealing

Answer: B

Explanation: Here by entering the contract, R was contemplating that for 20 years in the future he would be dealing with Florida over multiple details of his restaurant time and time again. This is evidence of purposeful availment of Florida.

Here's another example, which takes a slightly different approach in the explanation by walking through incorrect answers that students note as helpful.

Q: Quote: "Eschewing the option of operating an independent local enterprise, Rudzewicz deliberately reached out beyond Michigan and negotiated with a Florida corporation."

A. D purposeful availed during prior negotiations

B. D purposeful availed because the contemplated future consequences linked him to the forum

C. D purposeful availed by the terms of the contract

D. D purposeful availed by his actions during the actual course of dealing

Answer: A

Explanation: Choice A is correct because this quote is talking about an action before the contract was signed that indicate D purposefully availed himself of the Florida company.

Choice C is incorrect because this quote does not refer to any contract terms and is actually about a situation before any contract exists.

Choice B may be tempting if you are thinking that he can contemplate future consequences from a contract with a company in Florida; but there is no contract yet here. But, if you chose it, you should not obsess too much, since the key is still that the defendant is contemplating, albeit in the prior negotiation phase, a long-term relationship with the forum state. And on an exam you will be asked not to categorize at which stage a defendant's actions are, but just to explain what actions constitute relevant contacts.

The "actual course of dealings" in Choice D is not accurate because this is about actions after the agreement.

IV. Examples of Pre-class or In-class Questions Designed to Help Students Apply the Law

These example questions are designed to get students to work through choice-of-law and choice-of-forum provisions—a difficult subtopic in Burger King. These types of questions could be given to the students before or after class.

Instructions: Read the following contract provisions and answer the questions that follow.

Q. "Any dispute between the parties to this agreement concerning this agreement shall be adjudicated in any state or federal court in Cook County, Illinois." **Fill in the blank**

A. This provision is a [choice of law/choice of forum/both] (circle one)

B. This provision selects [the law to be applied in the dispute/the forum for the dispute/ both] (circle one)

C. Does this provision constitute consent to PJ? Y/N

Q. "Any dispute between the parties to this contract shall be adjudicated in any state or federal court in Cook County, Illinois. The parties to this contract further agree that the laws of the state of Ohio will apply to the interpretation of the terms of the contract." **Fill in the blank**

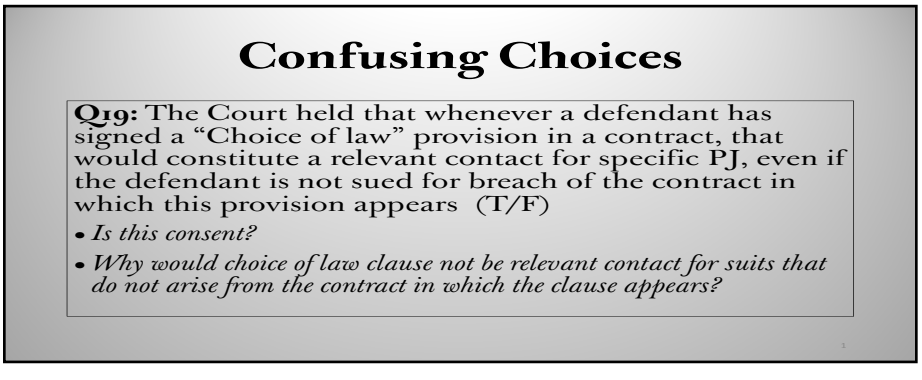
A. This provision is a [choice of law/choice of forum/both] (circle one)

B. This provision selects [the law to be applied in the dispute/the forum for the dispute/both] (circle one)

C. Does this provision constitute consent to PJ? Y/N

V. Examples of Review of Pre-class Quizzes in Class

Here is an example of how a question that students had trouble with in a pre-class quiz is used for class discussion. The actual questions the students answered are in blue font. The information in italics contains prompts of what you want students to try to now articulate in their own words after previously reading the explanation to these questions.



VI. Examples of Post-class Review Questions, and How They Can Also Be Reviewed in Class

The following are sample post-class review questions about Burger King, showing how things look to students after they have submitted their answer on TWEN.

The shaded box (above the actual question) tells students whether they got the answer correct and provides the explanation. In one case there is also a related question discussed in class for something that more students had trouble with on the recap quiz.

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1.0 Points

Correct: This question is about a choice of forum (not choice of law) clause. Basically, this is express consent to PJ - but, only regarding the loan (contract) at issue. Even though you are consenting to PJ, you are importantly only consenting for PJ regarding disputes on this particular loan/contract an not all other possible disputes. There is nothing in this hypo to suggest that CA substantive law must apply - just where there is PJ.

If you sign a student loan that says you consent to have all disputes regarding that loan decided in CA courts, which of the following is true?

✓ ⊙ 1. You have agreed that PJ is proper over you in CA for any COA arising from that loan.

○ 2. You have agreed that CA courts have PJ over you for any and all disputes, including ones that do not arise from the loan.

○ 3. You have agreed that the company issuing the loan can sue you in CA, but you are not required to sue the company in CA courts if you have a COA.

○ 4. You have agreed that CA courts will have PJ over you and that only CA law will be relevant.

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Incorrect:
You always apply the long arm of the forum state. So, if the forum state is not California, California's long arm would not apply.

The clause about California law applying is about California substantive *contract* law and has nothing to do with the law for evaluating PJ.

SO, this is false.

If Amy signs a contract that says CA law applies to all disputes arising from the contract, that means that the CA long arm applies to all cases stemming from that contract even if the case is not filed in CA.

⊙ TRUE

✓ ○ FALSE

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If a substantial number of students have trouble with the question, the identical question can be reviewed in class, but students already know what the answer is. So slightly modifying the question may be better to promote student learning. Below is an example of how to review the same material in the review question in class.

Q 23 variant - which is true if Amy signs a contract with this clause: *This agreement shall be interpreted under the laws of the State of California.*

A. She has consented to being sued in California for any claim arising from that agreement.
B. If sued in IL, the IL court would use the California state long arm to assess whether IL has PJ over her.
C. Both A & B are true.
D. This does not establish consent to be sued in California for breach of the agreement, but it is a relevant Constitutional contact if she is sued in California.
E. I don't know.

VII. Easy Active Learning with Essay Questions

This is an example of an actual question from class about what issue(s) to discuss in a short exam-type essay question on whether there is PJ.