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## Adaptable Design: Building Multi-Modal Content for Flexible Law School Teaching

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**ADAPTABLE DESIGN: BUILDING MULTI-MODAL CONTENT FOR  
FLEXIBLE LAW SCHOOL TEACHING**

AGNIESZKA McPEAK\*

ABSTRACT

*This essay discusses ways to build course content that can easily toggle between face-to-face and online modes of instruction. It is meant as a quick, practical guide for law professors faced with challenging teaching circumstances due to COVID-19 and campus closures, but with long-term applicability as law schools continue to expand online and hybrid course offerings. This idea for “adaptable design” is based largely on my own experience moving face-to-face courses online. I try to avoid delving too much into technical definitions and pedagogical theory, instead focusing on personal experience and examples. Although COVID-19 has created an immediate need for adaptable design, I hope this essay proves to be a resource beyond our immediate reactions to a global pandemic and can be useful for anyone seeking to innovate in their law school courses.*

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## INTRODUCTION

In 2005, I was one week into my second year at Tulane Law School when Hurricane Katrina struck the city of New Orleans. The entire student body was displaced, and our fall semester had to be canceled outright. While law schools across the country generously took in Tulane students, circumstances prevented some students, like myself, from jumping into in-progress courses at other institutions. Instead, some students found themselves taking credit overloads, relying on summer courses, or delaying law school altogether.

When COVID-19 forced law schools to close in March 2020, I was relieved I could continue teaching my courses remotely. Once again, a crisis uprooted our lives, but despite the disruption caused by the pandemic, modern technology provided new opportunities for professors to support their students' progress towards a law degree. However, for many law professors, the COVID-19 shutdown was their first experience teaching entirely online—and their courses were not actually *designed* to be online.<sup>1</sup> Instead, most professors were teaching traditional face-to-face courses that they suddenly had to transform into a wholly different mode of instruction. The result was that professors lacked the time and resources to design an optimal online course.

What these professors actually experienced has been aptly called emergency remote instruction.<sup>2</sup> No doubt, law faculties should be commended for being nimble and flexible under trying circumstances. But as the pandemic rages on, some law faculties are now expected to teach entirely online again—in either synchronous,<sup>3</sup> asynchronous,<sup>4</sup> or blended<sup>5</sup> formats—before returning to traditional face-to-face instruction in the future. And others are now facing an even more challenging teaching scenario: they are expected to teach in a physically distanced classroom,<sup>6</sup> perhaps with a simultaneous synchronous

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1. See, e.g., Josh Blackman, *Thoughts and Tips on Teaching with Zoom*, REASON: THE VOLOKH CONSPIRACY (Mar. 12, 2020, 5:33 PM), <https://reason.com/volokh/2020/03/12/thoughts-and-tips-on-teaching-with-zoom/> [<https://perma.cc/5H4V-8ZBF>] (discussing law faculty having “less than 24-hours to prepare for distance learning” and professor’s experience teaching classes online via Zoom for the first time).

2. Charles Hodges et al., *The Difference Between Emergency Remote Teaching and Online Learning*, EDUCAUSE REVIEW (Mar. 27, 2020), <https://er.educause.edu/articles/2020/3/the-difference-between-emergency-remote-teaching-and-online-learning> [<https://perma.cc/Z5DE-82VL>].

3. Synchronous online instruction means students and professors meet at the same time using technology but are not in the same physical place. See Michele Pistone, *Law Schools and Technology: Where We Are and Where We Are Heading*, 64 J. LEGAL EDUC. 586, 593 (2015).

4. Asynchronous online courses do not require the student and professor to meet at the same time. *Id.*

5. I use “blended” to refer to an entirely online course that uses an asynchronous model with occasional synchronous sessions as well.

6. Norman Clark, *The Physically Distanced Classroom: A Day in the Life*, INSIDE HIGHER ED (May 27, 2020, 3:00 AM), <https://www.insidehighered.com/digital-learning/views/2020/05/27/envisioning-day-life-physically-distanced-classroom-opinion> [<https://perma.cc/TQ8K-PD4N>].

online audience in a “hyflex” model,<sup>7</sup> while also being ready at a moment’s notice to move entirely online. The result is that law professors across the country now need to figure out how to design course materials that are flexible enough to work in all of these divergent modes of instruction.

The key, then, is to move from emergency remote instruction to what I am calling *adaptable design*: building a framework of course content that can be quickly adapted to work in face-to-face, hyflex, hybrid, and fully online course formats. This idea draws on my experience teaching four subjects in online formats over eight semesters. For every online course I’ve taught, I had a semester of face-to-face instruction during which I was building towards moving the course online. As a result, I have experimented with face-to-face course design that is adaptable to online modes of instruction. This essay thus will focus on ways to build adaptable content, optimized to enhance face-to-face instruction while being well-suited for online formats as well.

As a starting point for adaptable design, it’s important to rethink the traditional face-to-face law school course, which often lacks active learning opportunities and meaningful feedback. I suggest that professors shift away from designing discrete lesson plans for traditional class sessions and instead focus on building asynchronous online active-learning content that forms the framework for the course. By doing so, the online course activities can inform face-to-face time, and face-to-face courses can more seamlessly move fully online on short notice. All courses can benefit from hands-on course activities, and by building active learning opportunities into face-to-face courses, learning objectives can be achieved through multiple modes of instruction. Lastly, in suggesting this approach, I present my process of creating multi-modal exercises for law school courses and include specific examples of adaptable content suitable for both large<sup>8</sup> and small class sizes.

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7. “Hyflex” refers to a high-flexibility or hybrid-flexible course model that allows students to join face-to-face courses virtually. See Edward J. Maloney & Joshua Kim, *Fall Scenario #13: A HyFlex Model*, INSIDE HIGHER ED (May 10, 2020, 9:00 PM), <https://www.insidehighered.com/blogs/learning-innovation/fall-scenario-13-hyflex-model> [<https://perma.cc/QU3C-DYGF>]. One key to teaching well in a hyflex model is building meaningful asynchronous content for all students. Natalie Milman et al., *7 Things You Should Know about the HyFlex Course Model*, EDUCAUSE (July 7, 2020), <https://library.educause.edu/-/media/files/library/2020/7/eli7173.pdf> [<https://perma.cc/2CNT-JMHK>].

8. Although I offer some tips for teaching large sections online, I want to emphasize that small class sizes are best for a successful online course in light of the active learning and feedback required.

## I. RETHINKING FACE-TO-FACE INSTRUCTION

“How do I recreate the in-class experience in an online course?” This is one of the most frequent questions other law professors ask me about online teaching. I have a simple answer to this: you don’t.<sup>9</sup>

Instead, you build a course that is expressly designed to engage in virtual spaces. Online courses can meet the same learning objectives as face-to-face ones but do so using hands-on exercises, formative assessments, and interactions that do not rely on being in the same place at the same time. Face-to-face instruction, on the other hand, benefits greatly from physical presence. An attempt to simply move in-class instruction—that necessarily relies on physical presence—to an online format falls short.

In a face-to-face course, students feel some social pressure to pay attention and contribute because they are in the presence of their peers and professor.<sup>10</sup> Through the physical act of coming to class, students have already invested some effort into their education. Once physically present, students begin to build community in their interactions with each other and with their professor.<sup>11</sup> Non-verbal communication can occur through eye contact and body language. Informal learning can happen through chatting before and after class.

But professors also over-estimate student understanding in the physical classroom. Students may tune out, daydream, or otherwise lose focus without the professor necessarily observing as much from their faces.<sup>12</sup> And distractions

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9. See also Michele Pistone, *Top 5 Tips for Teaching Law Online*, BEST PRACTICES FOR LEGAL EDUC. (July 17, 2020), <https://bestpracticeslegaled.com/2020/07/17/top-5-tips-for-teaching-law-online/> [<https://perma.cc/52XP-EPVC>] (noting the differences between remote and in-person legal instruction mean the classroom experience cannot easily be replicated in digital form).

10. See L. SCH. SURV. OF STUDENT ENGAGEMENT, 2010 ANNUAL SURVEY RESULTS 11–12 (2010), [https://lsse.indiana.edu/wp-content/uploads/2016/01/2010\\_LSSSE\\_Annual\\_Survey\\_Results.pdf](https://lsse.indiana.edu/wp-content/uploads/2016/01/2010_LSSSE_Annual_Survey_Results.pdf) [<https://perma.cc/93JG-4SLC>] (finding that 30% of law students are motivated by challenging instructors, while approximately 25% are motivated to work hard to avoid embarrassment in front of their peers); THOMSON REUTERS INST., LAW SCHOOLS AND THE PANDEMIC 2–3 (2020), [https://www.thomsonreuters.com/en-us/posts/wp-content/uploads/sites/20/2020/12/Law-Schools-and-the-Global-Pandemic\\_FINAL.pdf](https://www.thomsonreuters.com/en-us/posts/wp-content/uploads/sites/20/2020/12/Law-Schools-and-the-Global-Pandemic_FINAL.pdf) [<https://perma.cc/Q5P2-9RH3>] (noting that difficulties with engagement experienced by students in online classes is due, in part, to a lack of interaction with professors and classmates).

11. See generally Cristina D. Lockwood, *Improving Learning in the Law School Classroom by Encouraging Students to Form Communities of Practice*, 20 CLINICAL L. REV. 95, 95 (2013) (discussing strategies for implementing a “communities of practice” learning model in the law school classroom).

12. Personally, I love the emphatic nodder in class, the student who seems to be enthusiastically following along. And I also appreciate a puzzled look that prompts me to restate a concept. But professors cannot rely on reading faces to gauge understanding; active-learning opportunities and assessments, instead, are key. See Michael Hunter Schwartz, *Good College Teaching Does Not Require Sharing Air with Students*, S.F. CHRONICLE (May 9, 2020), 2020 WLNR 13160400, <https://www.sfchronicle.com/opinion/article/Good-college-teaching-does-not>

abound—students may be messaging with others via apps or reading online content instead of following along in class.<sup>13</sup> The Socratic Method and cold-calling may help draw in students, but once the fear of being called on subsides, students who is not selected to participate may simply become passive observers and not active learners.<sup>14</sup> The reality of disengagement in the physical classroom is aptly illustrated by the debate about banning laptops.<sup>15</sup> We know student engagement in the classroom is far from guaranteed, even though physical presence exists.

Further, traditional face-to-face courses often provide little feedback to students.<sup>16</sup> A single, high-stakes exam may be the only assessment all semester.<sup>17</sup> Without formative assessments along the way, students are left to study on their own and lack meaningful feedback on their progress before the final exam.<sup>18</sup>

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require-sharing-15258419.php [https://perma.cc/8YGGZ-XS4E] (noting how professors' use of physical cues to assess student understanding is inferior to regular short assessments).

13. Brent E. Newton, *The Ninety-Five Theses: Systemic Reforms of American Legal Education and Licensure*, 64 S.C. L. REV. 55, 101 (2012) (noting how large class sizes contribute to students tuning out and turning to apps, social media, or other tech distractions).

14. See Kenneth R. Swift, *The Seven Principles for Good Practice in (Asynchronous Online) Legal Education*, 44 MITCHELL HAMLINE L. REV. 105, 116 (2018) (noting the debate about whether the Socratic Method provides active learning opportunities for all students). Dean Michael Hunter Schwartz criticizes over-reliance on the case- and problem-based Socratic method because it requires students to learn vicariously through others. See Michael Hunter Schwartz, *Teaching Law by Design: How Learning Theory and Instructional Design Can Inform and Reform Law Teaching*, 38 SAN DIEGO L. REV. 347, 351 (2001) (“Vicarious instruction assumes some sort of rebound learning effect; somehow the professor’s comments, questions, and corrections of the selected student not only will help the selected student, but will rub off on all the students in the class. This method also presupposes that the nonselected students know to play along, answering the queries in their heads and learning to think like lawyers by experiencing vicariously what the speaking student actually experiences.”).

15. Kevin Yamamoto, *Banning Laptops in the Classroom: Is it Worth the Hassles?*, 57 J. LEGAL ED. 1, 7–17 (2007) (explaining the reasons for banning laptops and listing examples of laptop bans); Robin Boyle, *Should Laptops Be Banned? Providing a Robust Classroom Learning Experience within Limits*, 20 PERSPECTIVES: TEACHING LEGAL RES. & WRITING 8 (2011) (arguing that laptops should be permitted in the classroom but with some boundaries for minimizing distractions); Ruth Colker, *Universal Design: Stop Banning Laptops!*, 39 CARDOZO L. REV. 483, 485–86 (2017) (accepting the premise that laptops are a distraction in the classroom but advocating against total bans to promote equity and inclusion).

16. Olympia Duhart, *“It’s Not for a Grade”: The Rewards and Risks of Low-Risk Assessment in the High-Stakes Law School Classroom*, 7 ELON L. REV. 491, 494–95 (2015) (criticizing the single, high-stakes summative assessment model that is prevalent in law schools).

17. John O. Sonsteng, *A Legal Education Renaissance: A Practical Approach for the Twenty-First Century*, 34 WM. MITCHELL L. REV. 303, 346 (2007) (“Law school assessment is infrequent, consisting of only one or two exams per semester.... In addition, timed essay exams are almost exclusively the only method of testing.”).

18. Students who are drawn into class discussions may get a false impression of their actual mastery of the subject matter without active-learning experiences. See Colleen Flaherty, *The*

Online courses lack the upsides of physical presence, but they instead achieve engagement with every student through hands-on course activities, regular deadlines, and opportunities for feedback. Quizzes must be completed, discussion board prompts answered, and other projects submitted. The professor can immediately identify disengaged students by checking for missed deadlines, unopened assignments, and unwatched videos. And each student's understanding can be gauged through assessing substantive performance on course activities. What is lost in physical presence is counteracted by active learning experiences and prompt feedback.<sup>19</sup> Even synchronous online courses, if done well, couple real-time sessions with asynchronous work to introduce concepts, test knowledge, and reinforce learning.

Although face-to-face and online courses are different in many ways, some course design techniques can help professors move seamlessly between these modes of instruction. The key is to build active learning experiences into face-to-face courses, preferably using a series of parallel online activities. In the next section, I will discuss the general learning objectives for law school courses and how both face-to-face and online courses attempt to meet these objectives. But, ultimately, I critique the shortcomings of traditional face-to-face courses that fail to provide enough active learning opportunities to all students. I therefore suggest ways to add out-of-class active learning opportunities into face-to-face courses. Further, I argue that, by doing so, face-to-face courses can be more easily adapted to online formats on short notice. I then explain my steps for adaptable design, including dividing substantive topics into discrete units, building active-learning opportunities, and adjusting coverage to avoid excessive workloads and allow for more hands-on work.

#### A. *Learning Objectives in Face-to-Face and Online Courses*

Bloom's Taxonomy of Educational Objectives<sup>20</sup> provides a pyramid of learning objectives that students must move through, starting with basic comprehension as the first level, moving on to application and analysis as the middle level, and culminating in higher-order activities like creating new and original work. This taxonomy is useful in thinking about learning objectives in

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*Dangers of Fluent Lectures*, INSIDE HIGHER ED (Sept. 9, 2019), <https://www.insidehighered.com/news/2019/09/09/study-how-smooth-talking-professors-can-lull-students-thinking-theyve-learn-ed-more> [<https://perma.cc/7W77-MPK4>].

19. See Swift, *supra* note 14, at 140–41 (noting that prompt feedback is a good practice in online legal education).

20. BENJAMIN S. BLOOM ET AL., TAXONOMY OF EDUCATIONAL OBJECTIVES: THE CLASSIFICATION OF EDUCATIONAL GOALS: HANDBOOK I: COGNITIVE DOMAIN 18 (Benjamin S. Bloom ed., 1956). Vanderbilt University's Center for Teaching has an excellent summary of Bloom's, including various charts and examples. See Patricia Armstrong, *Bloom's Taxonomy*, VANDERBILT UNIV. CENTER FOR TEACHING, <https://cft.vanderbilt.edu/guides-sub-pages/blooms-taxonomy/> [<https://perma.cc/ATL3-6GRK>].

law school courses as well. Using Bloom's Taxonomy, I like to divide law school pedagogy into three tiers of learning objectives: (1) remembering and understanding, (2) analyzing and applying, and (3) creating and evaluating. These objectives remain the same in both face-to-face and online course formats and can serve as a starting point for adaptable design.<sup>21</sup>

Traditional face-to-face law school courses are known for the casebook and Socratic methods, and many professors still heavily rely on question-and-answer exchanges during class as a key teaching tool.<sup>22</sup> But reading cases and problems and using the Socratic method alone are not enough for achieving all tiers of learning objectives for all students. Online courses, on the other hand, often add complementary exercises to reinforce learning and provide more opportunities for advancing through the tiers of learning objectives. Lastly, for adaptable design, it is best to focus on active-learning exercises in online formats to enhance face-to-face courses and to remain agile if a jump online becomes necessary.

#### 1. Limitations of the Traditional Face-to-Face Course

The first tier of learning objectives, remembering and understanding, encompasses Bloom's lower-order objectives: knowledge and comprehension. As a starting point, students should be able to recall, summarize, and explain the law. In a traditional face-to-face law school course, professors often teach basic understanding by assigning casebook reading and then using lectures and the Socratic method in the classroom. Students may be cold-called to recite the elements of a claim, the facts of a case, or the court's holding. Ultimately, a summative assessment will expect students to accurately recite a rule statement.<sup>23</sup>

The second tier, analyzing and applying, encompasses the middle of Bloom's pyramid. For this tier of learning, professors expect students to apply rules to new scenarios, differentiate between relevant and irrelevant facts, and recognize more nuance in the law. In a traditional face-to-face law school course, professors often rely on the Socratic method again, this time by altering case

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21. Notably, it is possible to follow the same key principles of good practices for learning and engagement across different learning environments, including fully online course formats. See LINDA B. NILSON & LUDWICKA A. GOODSON, *ONLINE TEACHING AT ITS BEST: A MERGER OF INSTRUCTIONAL DESIGN WITH TEACHING AND LEARNING RESEARCH*, 7–14 (1st ed. 2017).

22. See Jamie R. Abrams, *Reframing the Socratic Method*, 64 J. LEGAL ED. 565 (2014) (noting how the Socratic method persists in legal education despite other innovations); see also BUILDING ON BEST PRACTICES: TRANSFORMING LEGAL EDUCATION IN A CHANGING WORLD 101–10 (Deborah Maranville et al. eds., 2015).

23. See generally Russell L. Weaver, *Langdell's Legacy: Living with the Case Method*, 36 VILL. L. REV. 517 (1991) (discussing the traditional law school case method of teaching, introduced by Christopher Langdell at Harvard Law School in 1870, in which “[s]tudents [are] expected to study...cases in an effort to uncover the fundamental rules and principles of law.”).

facts so that students can explain whether an outcome changes when facts change. If a problem-based approach is also used, hypotheticals may be discussed in class to develop students' understanding of how the law applies to different scenarios. Ultimately, a summative assessment will require students to spot legal issues and apply the law to hypothetical fact patterns.

The third tier, creating and evaluating, draws on the highest level of learning objectives, according to Bloom's Taxonomy.<sup>24</sup> For this tier, students are expected to think critically about the law and to create a full legal analysis or work product. At this point, students already understand the law. They are now expected to synthesize the law and craft nuanced answers to complex problems. In a traditional face-to-face law school course, students may be asked to work through more complicated hypotheticals posed by the professor during class. Additionally, students might discuss during class their thoughts on policy points and may be asked by the professor to express some normative judgment on what the law ought to be. But for the most part, students are expected to make the leap from analysis to creation on their own.<sup>25</sup> They are advised to outline on their own as a way to compile and synthesize rules, to locate practice problems or old exams that provide complex fact patterns to work through, and to find study groups for talking through difficult concepts.<sup>26</sup> In many courses, law students will never submit and receive feedback on written legal analysis before a high-stakes final exam. Nonetheless, their summative assessment will require them to provide a comprehensive and nuanced analysis of a complicated fact pattern or policy question, usually containing multiple issues and requiring lengthy essay answers written out under timed conditions.<sup>27</sup>

In many ways, professors in traditional face-to-face courses work through all three tiers of learning objectives, starting with basic concepts and building to higher-order creation and evaluation. However, not all students may achieve these objectives in traditional face-to-face courses when professors overly rely on Socratic exchanges to achieve all tiers of learning, especially in a large section where only a handful of students are called on in a given class session. Additionally, students receive little feedback from the professor on their progress through these tiers of learning over the course of the semester before

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24. See Armstrong, *supra* note 20.

25. Schwartz, *supra* note 14, at 352 ("for the most part, law professors expect students to figure out on their own what the students need to know and what they need to be able to do to succeed in the class.").

26. See, e.g., *20 Tips for Success in Law School*, CHAPMAN UNIV. FOWLER SCH. OF L., <https://www.chapman.edu/law/student-resources/achievement-program/20-tips-success.aspx> [<https://perma.cc/8C2B-58JC>] (advising students to prepare an outline, consider forming study groups, and to take practice exams).

27. See Debora L. Threedy & Aaron Dewald, *Re-Conceptualizing Doctrinal Teaching: Blended Online Videos with In-Class Problem-Solving*, 64 J. LEGAL ED. 605, 605 (2014) (noting that law school courses teach reading and analysis but ultimately only test problem-solving).

their high-stakes summative assessment. Instead, they receive a single letter grade—usually well after the course is completed.

To be fair, the above summary assumes face-to-face courses follow a basic model of the Socratic method as the primary teaching tool and a single summative assessment. No doubt, many professors already enhance their face-to-face courses with active learning experiences in and out of class, with activities like small-group exercises, quizzes, minute papers, or other work. But as law professors are asked to engage students in multiple modes of instruction at once in a hyflex model—or to switch between modes mid-semester—the best approach is to build online active-learning activities into all courses now.

## 2. Achieving Learning Objectives in Online Courses

In Spring 2020, many professors understandably attempted to recreate the in-class experience via distance learning tools, perhaps relying on long Zoom sessions with Socratic cold-calling similar to that which occurs in face-to-face sessions. And many professors had already committed to a single high-stakes exam with no formative assessment, so when they moved to online formats, they provided few opportunities for meaningful feedback. But, in an ideal world, online courses include a series of active learning opportunities that move each student through learning objectives.

The first tier of learning objectives, remembering and understanding, can be achieved in synchronous courses through casebook reading and Socratic questioning via Zoom. But while physical presence happens naturally in the classroom, online environments require additional tools to achieve presence.<sup>28</sup> Live Zoom sessions should be supplemented with short video lectures, polls or surveys, minute papers, and quiz questions. In asynchronous online courses, discussion boards can be used as a substitute for real-time discussion, and quizzes and other exercises should be regularly used. For the second tier, applying and analyzing, students can be asked to write out and submit essay answers to hypotheticals or to answer bar-style multiple-choice questions that require them to apply the law to fact patterns. Feedback can be given throughout the course as well, either globally or individually. Some of this work can be graded, providing additional incentive to complete the work and new opportunities for feedback along the way.<sup>29</sup> The third tier, creating and evaluating, can be achieved through discussion boards or Zoom sessions, but also through submitting answers to more complex hypotheticals, writing

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28. See Marvin Krislov, *The Importance Of Presence Offline And Online In Higher Education*, FORBES (Sept. 25, 2019, 12:14 PM), <https://www.forbes.com/sites/marvinkrislov/2019/09/25/the-importance-of-presence-offline-and-online-in-higher-education/?sh=3375ff372329> [<https://perma.cc/JB6P-4PRN>].

29. See Schwartz, *supra* note 14, at 405 (noting that designers should match learning objectives with assessment, across a range of difficulty).

response papers, engaging in group work, or performing experiential activities. As a whole, well-designed online courses integrate multiple hands-on experiences to reinforce all tiers of learning.

### B. *Adaptable Design*

Adaptable design requires creating active-learning activities that work in multiple modes of instruction. My suggestion for building multi-modal course content begins with organizing course coverage around substantive topics or units rather than around discrete face-to-face sessions. Once the course is divided into substantive units, asynchronous course activities should be built for each unit and for each tier of learning objectives. Thus, a substantive unit will include course activities that first test basic understanding, that next allow students to apply and analyze the law, and that eventually provide opportunities to create and evaluate. All of these activities should be suitable for asynchronous online teaching.

Face-to-face courses should include these activities to supplement the in-class experience. By doing so, professors can better engage all students, especially those attending remotely in a hyflex model.<sup>30</sup> Class time can then be used more effectively. And, if a move to a completely online mode of instruction becomes necessary, professors have already built a framework of active learning activities for each unit of the course. This section will provide some guidance for building online active-learning activities, incentivizing engagement, and adjusting course coverage.

#### 1. Building Online Active-Learning Exercises

Active-learning exercises include anything that requires students to perform some activity, beyond reading and listening to a lecture, relating to the substantive content being taught.<sup>31</sup> Quizzes, minute papers, essay answers, response papers, document drafting, and group exercises are all great examples. These active-learning exercises should be housed in a robust course website,<sup>32</sup> even for face-to-face courses.

The course website can be organized by substantive units. Early on in a unit, activities to test basic understanding should be assigned outside of class. These

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30. See *supra* note 7 (defining hyflex instruction).

31. See CHARLES C. BONWELL & JAMES A. EISON, ACTIVE LEARNING: CREATING EXCITEMENT IN THE CLASSROOM, at 2 (ASHE-ERIC Higher Education Report No. 1, 1991), <https://files.eric.ed.gov/fulltext/ED336049.pdf> [<https://perma.cc/PTV3-9366>] (defining active learning as “anything that ‘involves students in doing things and thinking about the things they are doing.’”).

32. I use the term “course website” to refer to any platform that provides an online space for course activities. Typically, these platforms are called “learning management systems” or LMSs. Examples include Blackboard, Canvas, and D2L. See generally LMS, PC MAG ENCYCLOPEDIA, <https://www.pcmag.com/encyclopedia/term/lms> [<https://perma.cc/5GXV-4QVS>].

activities can include true/false quizzes, minute papers, or similar tools for testing lower-order objectives. In asynchronous online courses, multiple activities may be used throughout the unit, coupled with video lectures, discussion boards, or other content. In face-to-face, hyflex, and synchronous online courses, professors can assign these activities before class, and the results of those activities can guide the professor on the most effective uses of in-class time when teaching that topic. For example, if a simple true/false quiz shows that a large portion of the class misunderstands a basic rule, the professor can go over the rule again or work through more examples to better illustrate the concept before moving on to new content. Similarly, minute papers can quickly reveal students' muddiest point and provide an opportunity for in-class clarification.<sup>33</sup>

For mid-level learning objectives that require analysis and application, course activities can include bar-style multiple choice questions or single-issue hypotheticals. The course website can require students to take quizzes or draft essay answers to hypotheticals. For feedback, students can be provided with answers and explanations of multiple-choice questions or with rubrics and model answers to self-assess their own essay answers. Professors can view quiz statistics, spot-check essay answers to get a sense of how students are doing, or provide individualized feedback if feasible. For face-to-face and synchronous courses, class time can again be informed by how well students analyze and apply the law in these out-of-class course activities.

Lastly, for higher-order learning objectives, the course website can again provide meaningful active learning experiences when a unit is wrapping up. These activities can involve group work, response papers, or longer essay questions. Higher-order course activities may be more substantive, but once again, professors can provide global feedback, self-assessment tools, and other guidance on how well students are doing. Based on the results, in-class time can then be spent reviewing and clarifying concepts as necessary.

Once this framework of active-learning opportunities is built in an asynchronous online format, face-to-face time can then be used for activities that most depend on physical presence. Socratic questioning, class discussions, and similar tools can be saved for live sessions. But by building parallel online active learning opportunities into face-to-face courses, professors can better engage all students, especially those that are not cold-called during class, refrain from volunteering in group discussions, miss class, or perhaps attend class remotely in a hyflex model. Additionally, regular deadlines for coursework help ensure

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33. Minute papers ask students to answer a simple question in sixty seconds that reflects their learning so far. It provides professors the opportunity to quickly gauge student progress and address gaps in understanding. See Savannah Cox, *8 Questions to Ask Students While Completing the Minute Paper*, TEACHERREADY (Mar. 22, 2017), <https://www.teacherready.org/minute-paper/> [<https://perma.cc/RN4S-WXWS>] (defining minute papers and suggesting some basic prompts).

students are engaging with the course materials. Professors can easily see if a student misses work and thus have an opportunity to reach out and intervene for those who are falling behind. By using this type of coursework as part of a face-to-face course, professors can better reach and teach all students.

Further, if a move to entirely online modes of instruction becomes necessary, these course activities, built into the course website, already provide the shell of an online course. To fill in the rest, professors can record short lectures to post in lieu of delivering lectures live, move in-class discussions to online discussion boards, and reframe Socratic questions as a response paper, discussion board prompt, or Zoom session. Ultimately, it becomes easier to move these additional pieces online because the course website already provides a framework and activities.

## 2. Incentivizing Engagement

For grading, course activities should be worth a percentage of the overall grade. In a traditional face-to-face course, my supplemental, online course activities usually amount to about 20% of the course grade. In entirely online courses, the course activities typically amount to up to 50% of the final grade. Depending on assignment, I may assign completion points instead of actually scoring and calculating totals as part of the final grade. This means that students get all-or-nothing credit for each activity. My standard typically is “good-faith, timely completion” for full credit, which my syllabus defines as “submitting the assignments on time and achieving adequate performance.” My goal is to make sure students are doing the work and giving it an honest effort, not to penalize them for missing concepts or making mistakes in the process.<sup>34</sup> Another benefit of assigning completion points is the ability to reuse questions and problems freely and to make correct or model answers visible to students upon submission.

Other times, I grade work for an actual score. For quizzes, the course website quiz feature can automatically calculate scores. But this also means I wait until a due date has passed to display correct answers, which takes away an opportunity for providing immediate feedback. For essay answers and other activities, grading each assignment individually can be time-consuming. It also means rubrics and sample answers cannot be posted until after the deadline and I cannot reuse questions as easily. I also make clear to students that frequently missed questions may appear on the final exam and have, in fact, repeated quiz questions as part of my summative assessment before. This helps incentivize students to pay attention to their quiz performance and review quiz concepts when they study for the final exam.

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34. See Duhart, *supra* note 16, at 497–98.

### 3. Adjusting Coverage

By building active learning experiences into all courses, professors can better achieve their learning objectives. But each activity that students are expected to perform outside of class adds to their workload. One issue with online courses is unrealistic workload expectations,<sup>35</sup> and professors should plan to remove some reading or substantive coverage to make room for active learning experiences. This is not always an easy proposition. Professors may feel they run out of time to cover everything they want to cover, and they are tempted to cram in as much substance as possible into a course. But what professors who scale back coverage sacrifice in breadth they make up for in depth. Active learning experiences allow students to achieve deeper understanding of core course concepts and reinforce their learning.

In some courses, I adjust coverage by eliminating an entire topic and spreading out the time I spend on each unit. This means that I may entirely cut an advanced topic that I would like to get to, but that is not a core concept for the course. For bar-tested courses, the frequency with which a topic is tested on the bar also may guide my decision on what to cut. In other courses, I adjust what I assign in a given unit rather than cutting topics entirely. This may mean I eliminate introductory material for some topics, like no longer assigning an older case that provides general background information about an area of law. Or I may cut an additional case that only covers a subtle variation on a rule, introduces a minor sub-rule, or only serves as another example of how courts apply a rule.

Finally, in some face-to-face courses, I have also opted to eliminate class meetings to adjust workloads rather than eliminate substantive coverage. In other words, I adopt a hybrid model in which I cancel some live class sessions and substitute them with online active learning activities.<sup>36</sup> This way, I am not piling on work on top of class meetings but replacing some class meetings with asynchronous online work.

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35. See generally Tanya Chen, *A College Student's Viral Tweet About the Stress of Online School Shows How Education is Being Impacted by the Coronavirus*, BUZZFEED NEWS (Apr. 28, 2020), <https://www.buzzfeednews.com/article/tanyachen/students-say-theyre-struggling-with-online-classes-in> [<https://perma.cc/KBT5-9WJ2>] (discussing student struggles with online learning, including keeping up with class workloads).

36. ABA Standard 306 defines distance education courses as “one in which students are separate from the faculty member or each other for more than one-third of the instruction.” *2019-2020 Standards and Rules of Procedure for Approval of Law Schools: Chapter 3: Program of Legal Education*, AM. BAR ASS’N, [https://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/standards/2019-2020/2019-2020-aba-standards-chapter3.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/standards/2019-2020/2019-2020-aba-standards-chapter3.pdf) [<https://perma.cc/LK9W-A94J>]. Thus, up to one-third of live class meetings can be replaced with comparable online work without converting the course to a distance education one for ABA purposes.

While it can be difficult to cut back on substantive coverage in a course, the addition of active learning opportunities is worth the shift. In traditional face-to-face courses, professors already expect students to seek out learning opportunities on their own, through outlining, reviewing sample problems, and working with study groups. In an adaptable design model, professors are building these opportunities expressly into the course and holding students more accountable for completing these active learning exercises by set deadlines. By creating asynchronous online work, professors can more meaningfully guide students through the tiers of learning with opportunities for feedback and intervention along the way.

## II. SPECIFIC EXAMPLES OF COURSE ACTIVITIES

Building active learning opportunities into traditional face-to-face courses can take considerable effort, both in designing the course and teaching it. Teaching manuals for casebooks can provide some ideas that are adaptable to hands-on exercises.<sup>37</sup> Blogs, listservs, and other online resources also present some ideas.<sup>38</sup> Considerations as to class size and type of course should be taken into account as well.

In this section, I include some specific examples that I have used in doctrinal courses and in an upper-level experiential learning course. I organize these examples by tiers of learning objectives, and I also note ideas that can work for large class sizes in which extensive individual grading of assignments is not feasible.

### A. *Quizzes and Minute Papers for Understanding and Remembering*

For the first tier of learning objectives, I provide examples of the following assignments: (1) true/false quizzes, (2) ordering questions, and (3) minute papers.

#### 1. True/False Quizzes

For testing rules, I use true/false questions right after I finish teaching a rule. This means that, in a face-to-face course, I will assign the quiz to be taken online

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37. For example, the teacher's manual for my Privacy & Data Security book has wonderful suggestions for active-learning activities that work in multiple modes of instructions. See WILLIAM MCGEVERAN, *PRIVACY AND DATA PROTECTION LAW* (Foundation Press 2016).

38. See, e.g., *Resources for Law Faculty on Remote Teaching Due to Coronavirus/COVID-19*, CTR. FOR COMPUTER-ASSISTED LEGAL INSTRUCTION (Mar. 31, 2020), <https://www.cali.org/corona> [<https://perma.cc/TPH8-XNV9>]; *Section on Technology, Law & Legal Education*, ASS'N OF AM. LAW SCHOOLS (Aug. 17, 2016), <https://www.aals.org/sections/list/technology-law-and-legal-education/> [<https://perma.cc/LAW3-QUA5>]; Dan Markel, *Designing an Inclusive and Supportive Classroom Environment—Preparing for Fall Teaching in Physically Distanced, Hybrid, or Remote Courses*, PRAWFSBLAWG (Aug. 21, 2020), <https://prawfsblawg.blogs.com/prawfsblawg/remote-physically-distanced-teaching/> [<https://perma.cc/G77Z-MFF2>].

outside of class, after I teach the rule and before our next in-class meeting. Then, I start the next class with a quiz review before moving on to new content. My policy, generally, is to review in class any quiz questions that more than twenty percent of the students miss.<sup>39</sup> During the review, I use Socratic questioning to ask students to explain the answer, and I make sure to cite specific rules and open to exact page numbers to show where the answers can be found in our materials. I typically post a PDF of quiz statistics on the course website so students can use it to assess their own performance against the class average. In an entirely online class, I also refer to quiz statistics, but may use email to send an explanation to students or will include a quiz review in the next online module.<sup>40</sup>

Here is a sample question from Torts, a large doctrinal first-year course:

*True or False: In order to establish intent, the plaintiff must show that the defendant acted with the purpose of producing the consequence or with knowledge of an obvious risk that the consequence will result.*

The correct answer displays after students submit their answers to the quiz:

*False. Restatement Section 1 states that intent requires purpose or knowledge to a substantial certainty, not knowledge of an obvious risk.*

After the quiz due date, I check to see which students failed to complete the quiz and sometimes reach out to them. I also pull the statistics for the whole class to see how students did on each quiz question. Here is what the statistics looked like from a recent semester<sup>41</sup>:

**Question 1: True/False**

Average Score 0.59375 points

In order to establish intent, the plaintiff must show that the defendant acted with the purpose of producing the consequence or with knowledge of an obvious risk that the consequence will result.

Correct	Answers	Percent Answered
	True	40.625%
<input checked="" type="checkbox"/>	False	59.375%
	Unanswered	0.00%

39. Most learning management systems allow professors to build quizzes and later check aggregated statistics to see class performance. *See, e.g., Test and Survey Results*, BLACKBOARD HELP, [https://help.blackboard.com/Learn/Instructor/Tests\\_Pools\\_Surveys/Test\\_and\\_Survey\\_Results](https://help.blackboard.com/Learn/Instructor/Tests_Pools_Surveys/Test_and_Survey_Results) [<https://perma.cc/5L2N-PJQL>] (how to see “attempts statistics” in Blackboard).

40. I also use true/false questions more frequently in asynchronous online courses as basic reading quizzes: students are expected to read casebook pages, watch a video lecture, and answer a short true/false quiz that tests basic reading comprehension.

41. This example shows how “attempts statistics” appear in Blackboard. Most learning management systems have a way to view quiz statistics. *See, e.g., Olga Kokoulina, Understanding LMS Reports: 12 Things to Look at in Your eLearning Statistics*, ISPRING: ELEARNING BLOG (July 13, 2018), <https://www.ispringsolutions.com/blog/lms-reports> [<https://perma.cc/5E4V-9VKS>].

Because more than twenty percent of the class missed the problem, I began the next face-to-face class session by reviewing the problem and clarifying the legal concept tested.

## 2. Ordering Questions

Another type of quiz question that is appropriate for this tier of learning objectives is the ordering question. Ordering questions require students to place answers in a specific order to earn full points. In doctrinal classes, I find that students sometimes fail to closely read hypotheticals and lose points on assessments because they mix up characters or chronologies. In experiential courses, students may be given extensive facts to work with across multiple assignments. Keeping facts straight becomes even more crucial and is an important lawyering skill. By using ordering questions, I hope to motivate students to create chronologies and pay attention to details when organizing facts.

Here is an example from Social Media Discovery, an experiential-learning seminar with a smaller class size. Students first read a case file which includes a police report, hospital record, and civil complaint. They are then told to perform informal discovery by locating the Plaintiff's public Facebook profile (which is a fake profile I created for use in the course). An ordering quiz question would then ask:

*After reading the case file and locating the public portions of Plaintiff's Facebook page, place the following facts in chronological order, starting with the earliest event and ending with the latest event:*

- (A) The manager of the grocery store arrived in the parking lot;*
- (B) Plaintiff was hit by the forklift;*
- (C) Defendant yelled at Plaintiff;*
- (D) Defendant started his shift at the grocery store;*
- (E) Plaintiff dropped her groceries; and*
- (F) Plaintiff checked in on Facebook to a theatre in Pittsburgh, PA, where she was attending a performance of Hamilton.*

The purpose of the ordering quiz is to nudge students to read closely, create chronologies, and synthesize facts from multiple sources. For example, I want the students to see that it may be significant that the manager was on the scene only after the forklift hit Plaintiff, but also that Plaintiff attended the Hamilton show the day after she was purportedly injured at the grocery store.

## 3. Minute Papers

Aside from quizzes, minute papers can be a useful tool for assessing students' basic understanding. In face-to-face courses, minute papers consist of

asking students to spend sixty seconds writing out an answer to one question. The question can test a substantive topic, or it can ask more generally what students need to know. Students write their answers on a piece of paper and hand it in. The professor can then quickly flip through the answers to get a sense of how the class is doing or what issues students are having with the materials. In online courses, minute papers can be assigned within a learning module. I like to use the quiz tool in my course website again, this time as a short-answer question with a comment box. For anonymous minute papers, I tend to use survey software outside of the course website, like Qualtrics or SurveyMonkey.<sup>42</sup>

Minute-paper prompts can include the following:

- *What was the key takeaway from today's lesson / from this week's online module?*
- *Without looking it up, what is the rule for intent?* (for use in Torts)
- *What questions do you have about the materials covered in today's class / in this online module?*
- *What example did you find most helpful from this week's Confidentiality module?* (for use in Professional Responsibility)

Minute papers take only a few minutes to review, whether written on paper or submitted electronically. The key, however, is to incorporate minute-paper feedback into subsequent face-to-face lessons or online activities. For non-anonymous minute papers, individual responses and clarifications may be warranted. For anonymous ones, global feedback and review of murky topics should be incorporated into future coursework.

#### B. *Questions and Prompts for Applying and Analyzing*

Three examples of activities that can help meet the second tier of learning objectives include: (1) multiple-choice questions, (2) partial essay-answer questions, and (3) discussion board exercises and prompts.

##### 1. Multiple-Choice Questions

By now, students should understand the basic rules underpinning a course's subject matter, and my quiz questions evolve to include hypotheticals and more challenging legal concepts to apply in a multiple-choice format. This type of question also mimics the bar exam, MPRE, or other common styles of law school assessment.

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42. See SURVEYMONKEY, <https://www.surveymonkey.com> [ <https://perma.cc/5HX9-8JW2>]; CoreXM Survey Software, QUALTRICS, <https://www.qualtrics.com/core-xm/survey-software/> [ <https://perma.cc/NPM4-EYM8>].

Here is an example from Professional Responsibility:

*Lawyer represents Client in a divorce proceeding. During a meeting to discuss the divorce, Client tells Lawyer, in confidence, that Client is so fed up with this messy divorce that he has hired a hitman who will kill the wife on her way to work the next morning. Lawyer is certain Client is telling the truth. May Lawyer tell the police that Client plans to have someone murdered?*

- A. Yes, because the lawyer is allowed to disclose under the exception pertaining to death or substantial bodily harm.*
- B. No, because the lawyer was not used in furtherance of the crime.*
- C. Yes, because the lawyer has implied authority to reveal the information.*
- D. No, because the information is confidential.*

After the student submits the quiz, the following answer explanation appears:

*Option A is the correct answer. The exception to confidentiality for death or substantial bodily harm allows lawyers to disclose confidential information to prevent the harm, and this hypo contemplates a reasonably certain future death or substantial bodily harm. See ABA Model Rule 1.6(b)(1) & cmt. [6]. Option B is incorrect because the death or substantial bodily harm exception does not require that the lawyer be used in furtherance of the harm. Option C is incorrect because implied authority only applies when disclosure is appropriate to carry out the representation. Here, it is hard to argue that telling the police about a future crime is part of carrying out the representation. See MR 1.6 cmt. [5]. Additionally, disclosures that adversely affect the client are presumptively not within implied authority. See generally MR 1.8(b) & cmt. [5]. Option D is basically true because the information was learned in the course of the representation and relates to the representation, so it is confidential, but it is not the most correct answer because an exception applies here. See MR 1.6(b).*

As with my true/false question to test lower-order learning, this multiple-choice question allows me to review quiz statistics to see how the class as a whole performed. If more than twenty percent of students missed the question, I will go over the question and legal principles tested again.

## 2. Partial Essay Answers

At this point, students should be able to answer a prompt to apply a single rule. This can be tested with a hypothetical essay prompt asking students to draft a full IRAC-format essay answer. Alternatively, particularly in large class sections, a prompt asking students to draft only a partial IRAC answer helps make the feedback easier to manage. Here is an example of one such partial IRAC prompt, from Torts:

*Below is a fact pattern for an animal strict liability question. The issue and rule portions of an essay answer are provided for you. In 300 words or less, write the analysis/application section of the essay answer. Upload your answer in Word or PDF format by the deadline.*

*FACT PATTERN: David is a fan of exotic animals and has a pet named Marko. Marko is a wolfdog, a rare cross-breed between a shepherd dog and a wild timber wolf. David has owned Marko since Marko was a puppy. Although Marko is a loving pet to David, Marko regularly kills small woodland creatures when let loose in the yard. And one time several years ago, David witnessed Marko killing a neighbor's small dog without provocation. One day, Star is walking down the street wearing her favorite fur coat. At the same time, David is taking Marko for a walk on a leash. Star sees David walking Marko and, intimidated by Marko's wolf-like appearance, screams and begins to turn around to walk in the other direction. Marko jumps on Star and bites her in the arm, causing physical harm.*

*CALL OF THE QUESTION: Under the Restatement approach, can Star state a strict liability claim against David?*

*ISSUE AND RULE: Star likely can state a claim for strict liability for personal injury caused by animals. Strict liability applies to owners or possessors of two categories of animals: (1) wild animals or (2) abnormally dangerous animals. (See Restatement ("RS") Sections 20-23). First, for wild animals, owners or possessors are strictly liable for physical harm caused by the wild animal, defined as one that belongs to a category of animals not generally domesticated and that are likely to cause personal injury unless restrained. (RS 22) Second, strict liability may also apply when the animal is abnormally dangerous. (RS 23) Under this category, the owner or possessor must know or have reason to know that the animal has dangerous tendencies abnormal for the animal's category, and physical harm ensues from that dangerous tendency. (RS 23) Causation and damages must still be shown.*

*Here, \_\_\_\_\_ (complete the application in 300 words or less; you can break up the rule statements above into smaller IRACs if you'd like).*

By asking students to focus only on the application portion of the answer, I am able to emphasize the importance of detailed analysis in exam answers. Further, by providing the rule, I do not need to closely assess students' ability to restate the details of basic rules. Instead, I can hone in on the depth and accuracy of their application. Additionally, the word cap on this assignment allows me to click through and review answers easily. I can then either provide individualized feedback to each student, flag and comment only on the answers that are most deficient, and/or provide global feedback to the whole class. I also provide a sample answer and rubric to allow for self-assessment. In a face-to-face class, I will use class time to go over what I expected to see in a top answer.

### 3. Discussion Prompts

For face-to-face courses, students are often asked to apply or analyze the law through questions posed by the professor. But it can be helpful to provide some of these questions in writing before class so that students can better prepare for class discussion. Providing questions in advance can be particularly helpful in synchronous online courses to ease lag time or lack of participation during

Zoom sessions. Further, by preparing discussion prompts in advance of class sessions, it is easy to use the prompts as online activities if face-to-face sessions are cancelled.

In asynchronous online courses, discussion boards are a great tool for mimicking some of the discussions that happen in a face-to-face class. But discussion boards can be tedious if students feel they do not have enough to say in response to the prompt, fail to see the connection between the discussion and the class concepts, or find prompts repetitive or boring. I, thus, aim to write detailed and clear discussion board prompts that provide enough opportunity for meaningful, individual contributions. I also keep the number of participants manageable by limiting each discussion board to no more than twenty-four students each, which means I sometimes split a class into subgroups and run concurrent boards at once. Otherwise, repetition in student responses is inevitable, and engagement suffers. Sometimes, I use a feature on my course website that hides discussion board posts from students until they have made an initial post to the discussion. This is helpful to avoid repetition among responses; however, a poorly designed prompt will not foster subsequent interaction regardless of whether the initial post avoids repetition.

I usually require students to submit an initial post by a certain day of the week, with a minimum number of responses due a different day of the week (at least two days later than the initial post due date). I check the discussion board almost daily to skim posts for appropriateness. This is all it takes for me to “monitor” a board, and if a student’s tone or substance is inappropriate, I address it right away via email. I only comment in an active board when I have the time and substantive content to comment on every single post. Whenever I comment in an active board, I am mindful of the fact that what I say heavily steers the rest of the discussion (I’ve seen gems like “I agree with everything our wise professor said above!”).

Once a discussion board is closed (i.e., all initial posts and responses come due), I then grade the discussion board activity. Students receive a general discussion board rubric in advance, which I explain the first week of the class. Each discussion board activity is worth some points to incentivize timely completion. I only take off points for substantially deficient answers that fail to address all parts of the prompt or that lack real substance in responses to peers.

In large class sections, however, discussion boards are too cumbersome to monitor and grade, so I opt to use response papers instead of discussion boards. A response paper can be short and is only visible to me, so no replies or student interactions occur. Thus, these papers can be reviewed quickly and require no monitoring of active discussion boards; however, they lack the added benefit of peer-to-peer engagement.

Here is an example of a discussion board prompt in my Privacy and Data Security course, a small-section doctrinal course usually taught in an asynchronous online format:

*Go to Overstock.com, Amazon.com, or another major online retailer. Read their instructions on how to disable cookies. What are your options for getting the online retailer to stop placing cookies on your computer? How easy / hard is it stop the website from tracking you?*<sup>43</sup>

In this exercise, students receive hands-on experience in how cumbersome or impossible it is to disable cookies for individual websites. In their posts, they often express how frustrating it was to lack an easy way to opt out of tracking or otherwise maintain some privacy online. Or, alternatively, some students expressed how little they cared about being tracked online or how they rely on other software to block cookies. This array of responses provides some useful groundwork as we study how the law handles online tracking and fosters some great exchanges and debates among the students.

### C. Exercises for Creating and Evaluating

For higher-order learning objectives, I use the following activities: (1) drafting multiple-choice questions, (2) engaging in an experiential activity, and (3) finding and critiquing real-world examples.

#### 1. Multiple-Choice Question Drafting

In doctrinal courses, I divide the class into groups of three and make them draft a bar-style multiple-choice question on an assigned rule or subject. Students are expected to draft the text of the question, create four answer options, and provide a detailed explanation for each answer option. Here is a sample prompt for this exercise:

*In your small groups, draft one multiple choice question testing the rules assigned to your group. Your question should mimic a law school or bar exam question and should include a hypothetical fact pattern with four options, labeled A through D, with only one correct answer. When drafting your question, feel free to draw inspiration from case facts or hypotheticals in the book, but be sure to make the work your own. It is not sufficient to ask a true/false question or to phrase your question as a simple recitation of a rule (“i.e., what are the factors considered under the consumer expectations test in Tincher?”). In addition to drafting your multiple-choice question with four answer options, include a paragraph that explains why the wrong answers are wrong and the right answer is right.*

*This is a group project, so be sure to work together, either in person or electronically. You can divide the labor and plan your work around each other’s schedules, but all group members are expected to contribute in some meaningful way—and should be given an opportunity to do so. Only one member of each*

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43. This prompt draws on suggested activities found in the McGeveran text. See McGeveran, *supra* note 37.

*group will serve as “scribe.” The scribe is responsible for turning in your final product via the course website by the deadline.*

Because this is a group project, I am able to use this activity in large section sizes and still individually review the results. Sometimes, I provide detailed feedback to each group, but, at a minimum, I post some of the results on the course website as practice questions for all students to use as they study for the exam.

## 2. Experiential Activity

In Social Media Discovery, my students draft discovery requests as part of their graded written assignments in the course. For some assignments, I require students to draft a complete discovery request that they submit in Word or PDF format. But, as an alternative, I sometimes use discussion boards for students to practice drafting just the text of one request. Here is a sample prompt for a discussion board exercise on interrogatory drafting:

*The cases assigned this week analyzed the specific text of interrogatories. Now it's your turn to draft your own interrogatory for social media content and to critique your classmates' work.*

*For this interrogatory discussion board post and replies, you will again be split into your law firms / divided into two groups by client. I would like you to write the text of a single interrogatory requesting some information relating to your opposing party's Facebook account. Post only the text of your one interrogatory to the Discussion Board - you don't need definitions, instructions, a header, caption, signature block, or certificate of service. Please note that you will not see anyone else's post until you post your own interrogatory. Be sure to post by Thursday night.*

*Return to this discussion board by Sunday night to comment on at least two classmates' interrogatories. In your comments, note any ambiguity in their interrogatories, specific things you think work well, and/or possible responses or objections.*

Students do a great job drafting their requests and engaging with each other in their replies. I typically grade the results with little individualized feedback unless a student veers completely off course. I instead provide global feedback and usually pick a top example to highlight via email or in a later online module. In a face-to-face version of this course, I have asked students to work in small groups to draft discovery requests together during class. I then project and analyze results in class as a large group. Alternatively, I have students complete their interrogatories on their own in advance, and I use class time to go through student samples and provide global feedback. Although I do this particular activity in an experiential course, similar exercises can work in doctrinal courses. Further, to minimize grading burdens, assignments can be done in groups or can be peer-reviewed.

### 3. Locating Real-World Examples

In a face-to-face Torts course, I used to wrap up my unit on warning defects with a slideshow of examples I found online, which provides some comic relief and segues into a nice discussion of real-world implications of products liability law. When I moved Torts online in Spring 2020, I asked students to hunt for such examples instead. Here is the prompt for this exercise:

*For your exercise this week, please upload a PowerPoint slide containing a photo or text of an interesting product warning you found in your house or, alternatively, online. Include a sentence or two about why you picked this particular example and whether you think the warning is legally sufficient under the Pennsylvania approach. The best slides will make a guest appearance in next week's online module.*

This exercise allowed me to do a similar presentation via a short video lecture, but with more student engagement, because the students are the ones who found the images (and are then more engaged with the video lecture to see if I use their sample). Students told me they enjoyed hunting around their homes and actually reading labels. Some students also included government-mandated warnings, which gave me a good opportunity to explain the interplay between tort law and government regulation. By making this assignment an upload/submission instead of a discussion board post, it became easier to review the results and turn them into a presentation, rather than monitoring and grading discussion boards.

All of the above examples, from simple quizzes to more detailed hands-on exercises, are adaptable to multiple modes of instruction. While they are written in a way that works in an asynchronous online course, several items (like discussion board prompts and group exercises) can be done via Zoom or in a face-to-face course. Additionally, Zoom or face-to-face time can be shaped by how students perform on these parallel online activities. Lastly, if a move to entirely online formats becomes necessary, the above ideas already provide a framework for online modalities.

### CONCLUSION

Our current reality requires law professors to be nimble and flexible. In order to be effective in light of so much uncertainty, we cannot simply rely on the traditional approaches taken in face-to-face law school courses, which can fall short in hybrid, hybrid, or online modes of instruction. Instead, active learning exercises and opportunities for feedback should be built into all courses. Active learning enhances face-to-face courses and also provides the framework for an entirely online course, making it easier to make the shift between different modalities when circumstances beyond our control necessitate it.