

# DEBUNKING THE SOCRATIC METHOD?: NOT SO FAST, MY FRIEND!\*

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## I. INTRODUCTION

Thanks to both Professor Scott Taylor and *Phoenix Law Review* for the opportunity to comment on Professor Taylor's observations on the Socratic method and the problem method. I have a great deal of respect for Professor Taylor's experiences and accomplishments; as a result, I take his opinions about legal education quite seriously. I agree with Professor Taylor that legal educators must be thoughtful about what we do, and that the stereotypical model of legal education is insufficient.

However, I think that Professor Taylor's call to abandon the Socratic method goes too far. I do not believe that delivering functional legal education and using the Socratic method are mutually exclusive propositions. I believe that the Socratic method is a tool whose results depend on its proper application. The same is true of the problem method.

In this article, I posit that the Socratic and problem methods are tools that law professors use to achieve a single goal: teaching and training a new generation of lawyers. These tools are not mutually exclusive from an existential standpoint—that one professor uses the problem method does not prevent another from using the Socratic method. In fact, a single professor using one does not prevent her from using the other. The point is less about the choice of tool as whether the individual using the tool can do so effectively.

I agree with Professor Taylor that the stereotypical application of the Socratic method is not particularly useful as a strategy for teaching and training. However, small adjustments can turn the Socratic bludgeon into a precise learning instrument.

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\* Credit for the catchphrase "Not so fast my friend" goes to Lee Corso, an analyst on ESPN's *College GameDay* football show. Lee Corso (Biography), (*ESPN MediaZone* October 28, 2009).

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## II. RETHINKING THE SOCRATIC METHOD

Proponents of the problem method, including Professor Taylor, argue that, compared to the Socratic method, the problem method engages the students in the learning process more, interests them more, and approximates their future lives as lawyers more closely.<sup>1</sup> That may be true with regard to stereotypical Socratic teaching, but does not have to be true with regard to the Socratic method generally.

Let's begin with the archetypal Socratic law professor. Although a fictional creation, Professor Kingsfield is, for many, the enduring image of legal education.<sup>2</sup> John Houseman begins his portrayal of the brilliant, sometimes inhumane, Kingsfield with a brief exposition of the Socratic method's importance to legal education.<sup>3</sup> In Kingsfield's view, which finds support in the real-life view, the Socratic method's primary benefit is that the students "learn to teach [them]selves the law," while the professor "train[s] [the student's] mind."<sup>4</sup> The result is that despite starting with, in Kingsfield's words, "a skull full of mush," the student ends up "thinking like a lawyer."<sup>5</sup>

I agree, and I suspect that Professor Taylor agrees, that law professors should train students to think about legal problems and craft solutions in ways that competent lawyers would. I also agree that law students must develop the skill of learning the law, as lawyers do, through self-directed study. I do not agree, however, that law professors can neatly confine their responsibility to "training the mind," while leaving the responsibility for teaching and learning the law to the students.

Part of a law professor's responsibility should include teaching students how to manage their self-directed study to ensure that they learn and apply the law accurately. Students should begin to explore the law on their own, and then engage in a professor-directed process of investigation, input, as-

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<sup>1</sup> Scott Taylor, Phoenix School of Law, Ruth McGregor Distinguished Chair of Teaching Excellence & Visiting Professor, Inaugural Address at the Phoenix School of Law McGregor Lecture: Bang Goes the Theory—Debunking Traditional Legal Education (Nov. 5, 2009) (transcript available from Phoenix School of Law); Myron Moskowitz, *Beyond the Case Method: It's Time to Teach with Problems*, 42 J. LEGAL EDUC. 241, 249 (1992); MICHAEL HUNTER SCHWARZ, SOPHIE SPARROW, & GERALD HESS, *TEACHING LAW BY DESIGN* 31 (Carolina Academic Press 2009) (recognizing concerns students have about the Socratic method, but not advocating for the problem method or any other).

<sup>2</sup> THE PAPER CHASE (Twentieth Century Fox 1972); Christine Haight Farley, *Confronting Expectations: Women in the Legal Academy*, 8 YALE J.L. & FEMINISM 333, 343 (1996).

<sup>3</sup> THE PAPER CHASE, *supra* note 2.

<sup>4</sup> *Id.*; Lynn C. Herndon, *Help You, Help Me: Why Law Students Need Peer Teaching*, 78 UMKC L. REV. 809, 814 (2010).

<sup>5</sup> THE PAPER CHASE, *supra* note 2.

assessment, and feedback. The point of that process is to convey knowledge, build skills, and increase confidence in the students' legal analysis and application. The question Professor Taylor's discussion raises is whether the Socratic method is an appropriate tool in that process.

Professor Taylor says no, and he points to two problems with the Socratic method as evidence. First, the skills it teaches—case reading and case briefing—are not, despite their utility, part of the assessments the student will encounter in law school and on the bar exam.<sup>6</sup> Second, the Socratic method creates a sense that cases are the primary source of legal authority, at the expense of statutes and other sources like regulations or treaties.<sup>7</sup>

I agree with Professor Taylor that neither law school examinations nor the bar examination directly assess the students' skills in reading, briefing, and remembering specific cases. Rather, the examinations require students to recognize the legal issues that a certain set of facts present, choose the appropriate legal rules or principles governing those issues, and apply the governing rules or principles to those facts.<sup>8</sup> Although the skills required for success on the examinations are not necessarily the same as those required to succeed in a traditional Socratic experience, I believe that the Socratic method can play an important role in preparing students for the demands of both their law school examinations and the bar exam.

Consider the dialogue from Professor Kingsfield's interaction with a student, an example of traditional Socratic teaching. The student, named Hart, has just admitted that he had not read the case, so Kingsfield summarizes the facts before beginning to question him:

KINGSFIELD: *Hawkins v. McGee* is a case in contract law, the subject of our study. The boy burned his hand by touching an electric wire. A doctor who was anxious to experiment in skin grafting asked to operate on the hand, guaranteeing that he would restore it 100%. He took a piece of skin from the boy's chest and grafted it onto the unfortunate boy's hand. The operation failed to produce a healthy hand. Instead, it produced a hairy hand. A hand not only burned,

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<sup>6</sup> Taylor, *supra* note 1.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*; John Lande & Jean R. Sternlight, *The Potential Contribution of ADR to an Integrated Curriculum: Preparing Law Students for Real-World Lawyering*, 25 OHIO ST. J. ON DISP. RESOL. 247, 272 (2010) (recognizing the bar exam's emphasis on testing legal doctrine); David M. Skover, *Electrified Law: A Brief Introduction to the Workshop on the Future of the Legal Course Book*, 33 SEATTLE U.L. REV. 287, 287 (2010); Philip C. Kissam, *Law School Examinations*, 42 VAND. L. REV. 433, 440-41 (1989).

but also covered with dense, matted hair. Mr. Hart, what damages do you think the doctor should pay? What did the doctor promise?

HART: There was a promise to fix the hand back to the way it was before it was burned.

KINGSFIELD: And the result of the operation?

HART: The hand was much worse than before he went to the doctor.

KINGSFIELD: How should the court measure the damages? What should the doctor pay the boy?

HART: The doctor should pay for what he did, and he should pay for the difference between what the boy had—a burned hand—and what the doctor gave him—a burned and hairy hand?<sup>9</sup>

I agree with Professor Taylor that this type of interaction will not do much for Hart beyond etching *Hawkins v. McGee* into his memory. However, that same tool, applied differently, could do much more for Hart. Imagine the same discussion, conducted a bit differently:

PROFESSOR: In *Hawkins v. McGee*, a boy burned the palm of his hand by touching an electric wire. Nine years later, a doctor who was experimenting with skin grafting asked to operate on the hand, guaranteeing that he would make the hand 100% healthy. The doctor removed the scar tissue from the boy's palm and grafted a piece of skin from the boy's chest in its place. Instead of healing the hand, the grafting made the already burned hand hairy as well. Assuming that the doctor and patient formed a contract, and that the doctor breached it, what damages should the doctor pay? What options, if any, exist?

STUDENT: The doctor could pay the difference between the burned hand the boy had when they formed the contract and the worse hand he had after the operation. Or the doctor could pay the difference between the perfect hand he promised and the hairy hand the boy ended up with.

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<sup>9</sup> THE PAPER CHASE, *supra* note 2.

PROFESSOR: What do we call those two different measurements? The difference between the “burned hand” and the “even worse hand”?

STUDENT: That’s restitution.

PROFESSOR: And the difference between the promised perfect hand and the burned hand?

STUDENT: Expectation.

PROFESSOR: How had the lower court measured Hawkins’ damages?

STUDENT: The lower court awarded him damages for the pain he endured from the operation and the additional injury beyond the original burn.

Though Socratic, that discussion is different from the traditional Socratic discussion in which Kingsfield engaged. The second discussion can easily move into the nature of the differences between expectation and restitution as a measure of contract damages, and why the New Hampshire Supreme Court decided that the proper measure of Hawkins’ damages was, in fact, expectation.<sup>10</sup> From there, moving the discussion into the modern bases for the differing measures of contract damages,<sup>11</sup> and how to present the competing arguments in a similar or slightly different case is easy.

That type of discussion enables the student to see the links between the cases assigned for class and the problems likely to appear on the final exam and bar exam. At the same time, it emphasizes the importance of case study (more on that in a moment), and affords an opportunity for students to practice applying the law to different sets of facts—which, as noted above, is what they must do both for law school examinations and for the bar exam. Perhaps most importantly, that kind of discussion helps students understand the interaction between cases and other sources of law, if incorporated into the discussion, aiding their development as lawyers.

Ultimately, critics of the Socratic method should realize that the problem is not in the method itself, but rather in its application. When the focus strays from aiding the development of skilled, competent lawyers, to the exercise itself—when the dialogue, not the training, becomes the “star”—the criticisms of Socratic teaching are justified.

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<sup>10</sup> *Hawkins v. McGee*, 146 A. 641, 643–44 (N.H. 1929).

<sup>11</sup> RESTATEMENT (SECOND) OF CONTRACTS §§ 344–56, 370–77 (1981).

### III. WHAT ARE WE REALLY HERE FOR, ANYWAY?

Developing new lawyers should be the law professor's primary function. The primary areas in which schools generally evaluate professors—teaching, scholarship, and service—all work together to help professors turn legal neophytes into lawyers. That being the case, let's look at the system within which lawyers in the United States work.

The Anglo-American legal tradition is a common law tradition based largely in the expression and development of the law through reported cases.<sup>12</sup> Even when the primary source of law is a constitution or statute, development of that law through cases is vital.<sup>13</sup> Unlike the civil law tradition, in which legislative codes and constitutions form practically the sole basis for decision in a given dispute, the common law tradition relies on, and largely adheres to judicial interpretation as expressed in reported cases.<sup>14</sup> The bottom line is that a lawyer simply cannot hope to function successfully in practice without the ability to read, analyze, and use cases.<sup>15</sup>

In the first-year curriculum, I teach primarily Civil Procedure. Despite the fact that the vast majority of the relevant law comes from the Federal Rules of Civil Procedure and provisions of the United States Code, case law is indispensable to understanding the subject matter. For example, the Federal Rules provide that proper service of process establishes a federal court's personal jurisdiction over a defendant who is subject to jurisdiction in the forum state's courts.<sup>16</sup> Determining the existence of personal jurisdiction under that rule requires investigation of both the forum state's jurisdictional statutes, and the federal Constitution's due process requirements.<sup>17</sup>

The constitutional requirement is deceptively simple, prohibiting the government from depriving "person[s] of life, liberty, or property, without due process of law . . . ."<sup>18</sup> However, understanding what process is "due process" with regard to personal jurisdiction is difficult, perhaps impossible,

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<sup>12</sup> Noone v. Chalet of Wichita, L.L.C., 96 P.3d 674, 678-79 (Kan. Ct. App. 2004) ("The fundamental characteristic of the common law is its continuously developing jurisprudence. . . . [The judiciary has a duty] to consider, modify, and thereby redirect the course of our evolving common law."); RUGGERO J. ALDISERT, *LOGIC FOR LAWYERS: A GUIDE TO CLEAR LEGAL THINKING* 7 (3d ed., 1997).

<sup>13</sup> ALDISERT, *supra* note 22, at 7; Jacob Scott, *Codified Canons and the Common Law of Interpretation*, 98 GEO. L.J. 341, 376-77 (2010) (emphasizing reliance on prior judicial interpretation in statutory construction).

<sup>14</sup> ALDISERT, *supra* note 12, at 7-8.

<sup>15</sup> MARK HERRMANN, *THE CURMUDGEON'S GUIDE TO PRACTICING LAW*, 18-24 (2006).

<sup>16</sup> FED. R. CIV. P. 4(k)(1)(A).

<sup>17</sup> *See, e.g., Best Van Lines, Inc. v. Walker*, 490 F.3d 239, 243-44 (2d Cir. 2007).

<sup>18</sup> U.S. CONST. amend. XIV, § 1.

until you read and analyze the relevant cases. Without reading and analyzing cases, you cannot understand how to determine the propriety of jurisdiction when a defendant receives service of process while in the forum state,<sup>19</sup> as compared to a situation in which the defendant entered into a contract with a forum citizen but never physically entered the forum,<sup>20</sup> as compared to a variety of other circumstances.<sup>21</sup> Without that basis for factual application and comparison, the law in the Federal Rules and the Constitution has little meaning.

Similarly, contract law, the specialty of the Socratic method's founder, Professor Langdell, relies heavily on two non-case sources, the Restatement (Second) of Contracts<sup>22</sup> and the Uniform Commercial Code.<sup>23</sup> However, you cannot understand the meaning of important words and phrases in those sources without cases. For example, the first step in the process of creating a contract is an offer, defined as "the manifestation of willingness to enter into a bargain, so made as to justify another person in understanding that his [or her] assent to that bargain is invited and will conclude it."<sup>24</sup>

But what, precisely, does that mean? How do you distinguish between statements like, "I guarantee to make your hand 100% perfect," (offer),<sup>25</sup> "I will make you more beautiful," (offer),<sup>26</sup> and "You will return to work in

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<sup>19</sup> *Burnham v. Superior Court*, 495 U.S. 604 (1990).

<sup>20</sup> *Burger King Corp. v. Rudzewicz*, 471 U.S. 462 (1985).

<sup>21</sup> *See, e.g., Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770 (1984) (jurisdiction based on selling magazines in the forum); *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980) (jurisdiction over a defendant after the plaintiff took the defendant's product into the forum); *Shaffer v. Heitner*, 433 U.S. 186 (1977) (jurisdiction over defendants who owned property in the forum); *Rio Props., Inc. v. Rio Int'l Interlink*, 284 F.3d 1007 (9th Cir. 2002) (jurisdiction based on operating an Internet site available in the forum).

<sup>22</sup> The Restatement, although not a primary source of law, is a highly persuasive source of law analogous to a statute. *See, e.g., Powers v. Taser Int'l, Inc.*, 174 P.3d 777, 782 (Ariz. Ct. App. 2007); *Standard Oil Co. v. Oil, Chem. & Atomic Workers Int'l Union*, 100 Cal. Rptr. 354, 356 (Ct. App. 1972); *Gallimore v. Washington*, 666 A.2d 1200, 1214 (D.C. 1995); *Am. Heritage, Inc. v. Nevada Gold & Casino, Inc.*, 259 S.W.3d 816, 821 n.2 (Tex. App. 2008) (recognizing that Nevada and Texas both follow the Restatement generally).

<sup>23</sup> Article 2 of the Uniform Commercial Code ("UCC") specifically governs contracts for the sale of goods. UCC § 2-102 (2000). States that use it have adopted Article 2 into their body of statutory law. *See, e.g., ARIZ. REV. STAT. ANN. §§ 47-2101 to -2725* (2010); *FLA. STAT. ANN. §§ 672.101 - .725* (West 2010); *HAW. REV. STAT. §§ 490:2-101 to -725* (West 2009); *KAN. STAT. ANN. §§ 84-2-101 to -725* (West 2009); *N.Y. U.C.C. LAW §§ 2-101 to -725* (McKinney 2010); and *TEX. BUS. & COM. CODE ANN. §§ 2.101 - .725* (West 2009).

<sup>24</sup> *RESTATEMENT (SECOND) OF CONTRACTS § 24* (1981).

<sup>25</sup> *Hawkins v. McGee*, 146 A. 641, 643 (N.H. 1929).

<sup>26</sup> *Sullivan v. O'Connor*, 296 N.E.2d 183, 184-86 (Mass. 1973).

just a few days with a good hand," (statement of opinion, not an offer)?<sup>27</sup> One has to read and analyze cases to make that distinction!

To Professor Taylor's first point, then, that the Socratic method's emphasis on case reading and analysis does not fit with the assessment process that law students will encounter, I agree to the extent that students will not have to remember specific cases. However, the case method offers an opportunity to see the law in action, and the Socratic method, used appropriately, can help students learn to apply the law in precisely the manner that they must on law school examinations and the bar examination. And in turn, the Socratic method can help students learn to apply the law as they will need to apply it in practice, which helps them, their future employers, and their future clients.<sup>28</sup>

Professor Taylor's second criticism of the Socratic method is that it creates the false impression that cases are "the law," at the expense of statutes, regulations, and other primary sources.<sup>29</sup> I agree that the potential for such an outcome exists with the Socratic case method, but the question is less about the method, and more about the way in which the professor leads the discussion.

Let us go back to Professor Kingsfield's class discussion for just a moment. This time, the case before the class is about a woman, Ms. Carlill, who purchased an over-the-counter medical product guaranteed to prevent people from catching a cold, the flu, or related diseases.<sup>30</sup> Of course, Ms. Carlill contracted the flu after using the product.<sup>31</sup> The company refused to pay the money it guaranteed in its advertisement, and Ms. Carlill sued.<sup>32</sup> The company defended its decision not to pay based on three arguments: 1) it did not direct the promise in the advertisement to a particular person or people, so it was not an offer; 2) even if the promise was an offer, Ms. Carlill did not tell the company that she had accepted it, so her acceptance was void; and 3) even if the promise was an offer, and Ms. Carlill accepted it, the promise was not binding because it lacked consideration.<sup>33</sup>

Very briefly, and without turning this into an exposition of the finer points of contract law, consideration is a concept requiring the contracting

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<sup>27</sup> *Hawkins*, 146 A. at 642-43.

<sup>28</sup> HERRMANN, *supra* note 15, at 18-24 (discussing the importance of researching, reading, and analyzing case law to a lawyer's development).

<sup>29</sup> Taylor, *supra* note 1.

<sup>30</sup> *Carlill v. Carbolic Smoke Ball Co.*, 1 Q.B. 256, 257 (Ct. App. 1893).

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.* at 257-58.



parties actually bargain for whatever they are exchanging.<sup>34</sup> One of the first lessons that students learn about consideration is that it can take the form of a sacrifice on one party's part, even if that sacrifice does not directly benefit the other party.<sup>35</sup>

In *Ms. Carlill's* case, the court found that the advertisement was definitive enough to be an offer, and that the advertisement's wording indicated that the company did not require notice of acceptance before the time that a customer sought the reward.<sup>36</sup> With regard to consideration, the court found that the customer's inconvenience of having to use the product in a particular way was sufficient consideration to make the company's promise to pay binding.<sup>37</sup>

This is the discussion as it proceeded in Professor Kingsfield's class:

KINGSFIELD: The facts of *Carbolic Smoke Ball*. Miss Farranti?

FARRANTI: This is a case where the defendants entered an advertisement in the *Pall Mall Gazette*—November 1891—stating that a £100 reward would be paid by the Carbolic Smoke Ball Company to any person who contracted influenza or a cold, or any disease caused by taking cold after using the ball three times daily for two weeks according to the directions. Now, on the strength of this advertisement, a Mrs. Carlill bought a smoke ball, used it according to the directions, until she developed influenza.

KINGSFIELD: What were the reasons for the court's finding in favor of Mrs. Carlill?

FARRANTI: She had fulfilled the conditions of the offer. The bargain was complete.

KINGSFIELD: Was there a bargain? Was there in fact communication between the parties? Was she not obligated to notify the company that she had accepted their offer? Mr. Hart.

HART: It's obvious that notice is not important here. The offer requires no notice, it requires no personal communica-

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<sup>34</sup> RESTATEMENT (SECOND) OF CONTRACTS § 71 (1981).

<sup>35</sup> See, e.g., *Hamer v. Sidway*, 27 N.E. 256 (N.Y. 1891) (uncle's promise to pay enforced even though the consideration—nephew's abstinence from gambling, alcohol, tobacco, and swearing—did not benefit the uncle, because nephew gave up his right to do those activities).

<sup>36</sup> *Carlill*, 1 Q.B. at 262-63.

<sup>37</sup> *Id.* at 264-65.

tion. What is important is consideration. Question—did Mrs. Carlill give anything to the company? The company argues that Mrs. Carlill, in using the ball, did absolutely nothing for them. All they were interested in was the sale itself. The answer to that is obvious. Of course, they benefit from the sale itself, but beyond this, consideration does not necessarily in all cases, have to pass to the other party. Mrs. Carlill suffered the inconvenience of having to use the ball. She gave something up, even if it didn't pass to the other party. So, you can only have a binding contract when each party gives something to the other, or suffers an inconvenience by or from the other party.<sup>38</sup>

Imagine that you had gone to class having read the *Carbolic Smoke Ball* case, and now your professor expects you not only to understand this case, but also to use the principles you have gleaned from it on an examination. Neither is a very easy task; despite Mr. Hart's confidence, the principles are anything but obvious, and unless you had the kind of insight that Hart *obviously* had, this discussion will not add much to the learning experience. Even if you were able to keep up with this discussion, it does not add much to your education in Contracts generally, but you would certainly understand what happened in that particular case.

A discussion like this one is what I am sure Professor Taylor had in mind as a typical example of the Socratic method. The discussion certainly supports his conclusion that Socratic teaching emphasizes cases over other sources of law. Where in that discussion do you learn the modern bases of the court's or Hart's conclusions? Where would you find support for the principles expressed in that discussion to support an argument for a current Contracts problem? Other than by analogy to this particular case, how would you analyze other problems?

The answer is to change the discussion. The *Carbolic Smoke Ball* case presents a scenario useful for illustrating several principles of contract law, but the professor better serves the pedagogical goal by drawing those principles out differently from the way that Kingsfield did. Consider this discussion:

PROFESSOR: Let's turn to *Carbolic Smoke Ball*. Who filed suit, and for what?

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<sup>38</sup> THE PAPER CHASE, *supra* note 2.

STUDENT: Ms. Carlill sued the Carbolic Smoke Ball Company for breach of contract.

PROFESSOR: Why did Ms. Carlill think she had a contract with Carbolic?

STUDENT: She saw their advertisement offering to pay a sum of money to anyone who caught a cold or flu while using their product. She bought it, used it, and caught the flu, but Carbolic refused to pay.

PROFESSOR: Did they have a contract? What do you need to form a contract?

STUDENT: You need an offer, an acceptance, and some consideration.

PROFESSOR: And Ms. Carlill thought that she and Carbolic had all of those, right? Why did Carbolic believe that it didn't have to pay?

STUDENT: Carbolic said that the advertisement wasn't an offer, that even if it was an offer, Ms. Carlill never told them that she accepted, and that even if it was an offer that she accepted, she provided no consideration.

PROFESSOR: Okay, let's start with the offer. What is an offer?

STUDENT: An offer is the offeror's contractual intent communicated to an offeree that needs only the offeree's agreement to form a bargain.

PROFESSOR: You know this because . . . ?

STUDENT: That comes from Restatement section twenty-four.

PROFESSOR: But this was just an advertisement, wasn't it? Is an advertisement an offer?

STUDENT: Probably not usually, I don't think. But this was more than just "you should buy a smoke ball because it's great." Carbolic's ad specified that the company "would pay" the money, and that the company had deposited money with a bank to show its "sincerity in the matter."<sup>39</sup> The advertisement was detailed—nothing was left to argue or negotiate about. A customer only had to use the

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<sup>39</sup> *Carlill*, 1 Q.B. at 257.

product, catch a cold or the flu, and then collect the money. That sounds like an offer.

PROFESSOR: Okay, good. That's consistent with what courts have said about advertisements. An ad is generally just an invitation to make an offer, but it can be an offer if it is specific enough, leaving nothing to negotiate—you have to look at the circumstances.<sup>40</sup>

That discussion could easily continue to draw out similar points about why the company did not have to direct the offer to Ms. Carlill specifically to make it effective, why she did not have to notify them of her acceptance, and why consideration supported the exchange. Just as the professor drew out the relevant reference to the Restatement for the discussion of offer, the professor could also draw out the relevant references for the discussions of acceptance,<sup>41</sup> and consideration.<sup>42</sup>

A Socratic discussion, properly guided, can demonstrate the importance of all relevant sources of law that a student needs to perform the analysis: the basic rule (as articulated in statutes, regulations, or even cases), any interpretation of the rule (for example, if a court interprets something into a rule beyond what exists on the rule's face),<sup>43</sup> and how the rule works in different factual scenarios. To do so, however, you must use cases.

Professor Taylor wanted to provoke thought and make us ask questions.<sup>44</sup> I think he succeeded. As I see it, however, the question is not so much about the relative benefits of the Socratic method, problem method, or any other pedagogical tool that a professor sees fit to use. The question is not even about categorizing the tools as "Socratic," "problem," or otherwise. Rather, the question is about proper use.

A scalpel is a life-saving instrument in the hands of a competent surgeon, and a destructive instrument in the hands of another person with insufficient knowledge or skill. Similarly, Socratic teaching, problem-based teaching, or any other kind of teaching will fail to achieve what it should in

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<sup>40</sup> See, e.g., *Lefkowitz v. Great Minneapolis Surplus Store, Inc.*, 86 N.W.2d 689, 691 (Minn. 1957).

<sup>41</sup> RESTATEMENT (SECOND) OF CONTRACTS § 50 (1981).

<sup>42</sup> *Id.* § 71.

<sup>43</sup> E.g., Federal courts have jurisdiction over claims between "citizens of different States." 28 U.S.C. § 1332(a)(1) (2010). Though nothing in the statute requires it, the United States Supreme Court has interpreted the statute to mean that, in cases with multiple parties, jurisdiction is improper unless no plaintiff is a citizen of the same state as any defendant. *Strawbridge v. Curtiss*, 7 U.S. 267 (1806).

<sup>44</sup> Taylor, *supra* note 1.

the hands of a person without the skill and perspective required to use it appropriately. If a person fails to use a tool effectively, he or she can either train to use it properly, or select a different tool. An individual's success or failure with a particular tool, however, does not mean that others should rush to use or discard the tool without regard to whether they can use it successfully themselves. Michelangelo used marble and Calder used steel plates, but they both created valuable works of art. Similarly, a skilled Socratic professor and a skilled problem-based professor can both produce well-trained, competent lawyers.