

## **The Legal Studies Case Brief Assignment: Developing the Reading Comprehension Bridge to Critical Thinking**

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### **Abstract**

*Many students entering colleges and universities today are underprepared for the academic demands of the higher-level learning experience. Severe deficiencies in reading and critical thinking skills prove to be persistent stumbling blocks for students as they encounter assignments that require application of these imperative skills. In response to this reality, many scholars maintain that instruction in critical thinking and critical reading should be integrated throughout the undergraduate curricula, part and parcel with course content. This paper discusses the integration of both critical thinking and critical reading instruction in legal studies courses. The author offers that the case brief preparation exercise is a multi-purpose pedagogical tool effective for fostering students' critical reading and critical thinking abilities, while concurrently teaching course content. Further, the author suggests reading proficiency is an indispensable prerequisite for students to be able to successfully tackle critical thinking assignments. Finally, instructional methods specific to these objectives are described.*

**Keywords:** Reading skills, reading comprehension, critical reading, critical thinking, case briefs, legal studies

### **1. Introduction**

Many students entering colleges and universities today are underprepared for the academic demands of the higher-level learning experience. Derek Bok, in his book *“Our Underachieving Colleges,”* discussed results of independent studies that showed college students are underperforming in nearly the full range of academic skills assumed to be honed through college studies (McGrath, 2006). Found among these shortcomings are severe deficits in critical reading and thinking skills (Arum & Roksa, 2011; Herbert, 2011), cognitive abilities that are imperative to students' success in their academic pursuits, as well their long-term futures. White (2004) asserted that by “instilling critical thinking in students, students are groomed to become independent lifelong learners – thus fulfilling one of the long-term goals of educational enterprise” (p.42). Regarding deficiencies in critical reading abilities, Horning (2007) has maintained that critical reading skills are important in preparing students “for full participation in our democracy” (p. 2).

The realization of these weaknesses calls for implementation of more effective ways and greater consistency in teaching these invaluable higher-order cognitive skills. Higher education institutions nationwide recognize the need to address these proficiency gaps, the evidence of this being the common-place inclusion of critical-thinking-oriented learning goals in their assessment plans. Despite this well-intentioned effort, practical application of methods geared towards students' critical thinking skills appears to be disproportionately less, relative to that outlined in assessment plans (Zalesne & Nadvorney, 2001). Overwhelmingly, instructors tend to emphasize discipline-specific content (Harreid, 2004), placing only modest focus to teaching approaches that would help achieve the goal of developing students' critical thinking skills. The attention dedicated to teaching reading skills in undergraduate curricula is even more dismal.

Whereas instructors may generally view the goal of helping students develop critical thinking skills as fitting logically alongside course-specific content goals, this is less likely to be so regarding goals focused on the cultivation of students' reading skills.

A commonly held assumption among legal studies educators is that students already possess reading comprehension skills necessary for completing assigned readings. The collection of works on this topic pale in comparison to the ample discussions concerning students' critical thinking and ways to teach it. While emphasis on critical thinking is certainly justified, similar focus needs to be allotted to the issue of reading comprehension deficits among legal studies students and pedagogical approaches for angling content-based assignments to incorporate reading skills development features. Because students who struggle with reading comprehension tend to avoid completing reading assignments (Campos, 2011) or habitually engage in "surface reading" void of comprehension (Roberts & Roberts, 2008), critical thinking learning opportunities integral to reading exercises cannot take full effect. Students' ability to learn course content is likewise impeded. For novice readers, therefore, reading comprehension is the bridge that stands between them and opportunities for critical thinking skills development embedded within assigned reading materials.

The author suggests that student reading comprehension skills development be viewed as prerequisite and integral to the goal of helping students develop critical thinking abilities. This paper focuses on the use of the legal case brief assignment as one of the ideal legal studies instructional tools for enhancing students' reading comprehension skills. It frames the case brief preparation assignment as a multi-purpose exercise useful for developing both critical reading and critical thinking skills, simultaneously with the teaching of content-knowledge.

## **2. Review of the Literature**

Over the last several decades, a wealth of literature stressing urgency to infuse critical thinking instruction into undergraduate curricula has emerged. Within this extensive body of research, which straddles many disciplines, only modest attention has been devoted to critical thinking within the legal studies classroom (Asfour, 2009; Giampetro-Meyer & Kubasek, 1991; Kubasek, 1998; Kubasek & Browne, 1996; Prentice, 2001; Reitzel, 1991). In aggregate, though, the discussions indicate that the great majority of scholars generally agree on the need to make critical thinking an integral part of legal studies courses and offer varying teaching methodologies for accomplishing this effort.

Regarding research on teaching protocols to strengthen students' reading skills with respect to legal text, scholarly contribution is scant, and the research available focuses primarily on students of law degree programs that offer *juris doctor* degrees. Zalesne & Nadvorney (2011) and Christensen (2006), for example, address cognitive struggles these law students encounter with reading legal text and preparing case briefs, and they offer instructional strategies for helping students through these difficulties.

Finally, the literature is void of discussions pertaining to the use of the case brief exercise as a reading comprehension advancement pedagogical tool in the undergraduate legal studies classroom, in addition to its known value for teaching critical thinking and substantive law. Therefore, this paper serves to introduce the discussion of the pedagogical utility of the case brief exercise as a way to integrate reading skills instruction in legal studies courses.

## **3. Reading Comprehension**

Many college professors assume students possess adequate reading skills and might argue, understandably, that devoting attention to teaching reading skills would lessen already limited time available to teach content (White, 2004). Generally, they perceive the texts of legal studies course materials as being only slightly more challenging than secondary school reading material, and, thus, believe students should be able to tackle the text with reasonable success. However, these views are inevitably capsized by lower-than-expected reading comprehension skills (Roberts & Roberts, 2008) students demonstrate through their responses to exam questions, and the lower-than-expected quality of their contributions to, or abstention from, class discussions surrounding reading assignments. As instructors reflect on these shortcomings and particularly the remarkable extent to which they pervade colleges and universities, they often conclude that students "can't read and don't read" (Horning, 2007, p.5).

Despite reading being a common thread to all academic disciplines (Lei, Rhinehart, Howard & Cho, 2010), research consistently confirms that, in general, collegians are not proficient or critical readers (ACT, Inc, 2006; Roberts & Roberts, 2008).

According to Campos (2011), most are struggling readers who do not apply effective comprehension strategies. This reality is rooted in the fact that reading instruction in most public school system typically ends at fifth or sixth grade (White, 2004; Horning, 2007), the stage by which students would have been taught only the mechanics of reading (Roberts & Roberts, 2008). That is, students at the early-elementary stage are guided toward *learning to read*, rather than *reading to learn*. Defined as reading with understanding and meaning, *reading to learn* is a skill that needs to be sharpened over many years (Roberts & Roberts, 2008). Even though students are “reading to learn” by high-school years, they usually employ a “surface learning” approach by which they read to comprehend and retain factual information to be regurgitated at a later time, as opposed to the “deep learning” alternative of reading to construct meaning (Roberts & Roberts, 2008). Consequently, the skills generally required for college-level reading assignments are ones that most high-school graduates would not have attained or mastered (Roberts & Roberts, 2008). Students with these underdeveloped skills tend to avoid reading material they determine to be beyond their skill levels (Campos, 2011). Against this background, Horning (2007) suggests that reading instruction should be dispersed throughout the various college-level disciplines and be taught in conjunction with course content (Horning, 2007).

Horning (2007) defines reading as getting meaning from print. At a minimum, a reader’s interaction with text must rise to the level of getting meaning from the text in order for the activity to be considered reading (Horning, 2007). Further, to excel at academic literacy and in other areas of life, students must surpass the minimum threshold of just extracting meaning and gaining fluency with printed texts (Horning, 2007). They must employ higher-level cognitive activity that involves “the interaction of readers’ thinking with the language of the text.” In other terms, “it must involve getting meaning, but in addition, it must also entail moving beyond meaning to analysis, synthesis and evaluation” (Horning, 2007, p. 2).

### 3.1 Reading Comprehension Hurdles

Too many students essentially reduce the reading process to the mere decoding of words, void of thirst for comprehension or deep learning, let alone inquisitiveness that should underlie particularly academic reading (Roberts & Roberts, 2008). Beyond the lack of adequate reading skills training through high school, myriad other factors impede students’ progress towards overcoming reading deficits. Some of the theories offered by scholars include:

- (1) *No need to read*. With our information pathways being intensely driven by the Internet and other technologies, too many students have reasoned that it is unnecessary to read the course textbooks and other non-fictional materials instructors generally require them to read. Although students spend extensive amounts of time reading electronic texts, such as text messages, tweets and web-based content (Carr, 2008), these types of readings do not contribute to the development of background knowledge (i.e., “real world” knowledge or experience), let alone discipline-based knowledge, which students can glean by otherwise spending time actively engaging with traditional texts.
- (2) *Lack of background knowledge/experience*. Because most students have histories of being resistant or struggling readers, rather than fervent or avid readers, they lack background experience which plays a critical role in reading comprehension. Research has historically indicated the more one reads the stronger his abilities in all areas of literacy (Campos, 2011). Thus, those who steadily immerse themselves in reading continually gather background knowledge, which serves as the scaffolding – the pre-established framework – readers can use to contextualize new information encountered in reading material.
- (3) *Inability to focus on texts*. Many educators theorize that the Internet and other technologies are the culprits responsible for students’ lackadaisical attitude towards reading course material. Certainly, it seems that the ways in which today’s generation of students interact with printed text is markedly different from predecessor generations of years ago. Earlier generations who attended college during the pre-Internet era were able to read and concentrate on lengthy passages. Today’s students, on the other hand, experience difficulty focusing on text of any significant length. In the article, “Is Google Making Us Stupid?” Carr (2008) suggests the Internet and other technologies that have dominated our information highways have had the effect of reshaping how readers think and process information. For instance, as we surf the Internet, jumping from one web page to another, grabbing snippets of information from each, the habit of staccato-type reading develops. These technology-driven practices operate to cultivate the short attentions spans educators commonly observed among students.

- (4) *Lack of Motivation.* Reading comprehension challenges stifle students' motivation to read. When students are unable to identify the connection between the assigned readings and their personal motivations and mental models, they are disinterested in course readings. To the contrary, students' motivation can be inspired when these relationships become apparent.
- (5) *Cost/benefit strategy.* Many students allow a cost-benefit analysis to drive their decisions on whether to complete course readings and other assignments. This approach is premised on the goal of yielding maximum benefit (highest course grades possible or acceptable) in exchange for minimum investment of time and/or work. Students who operate by this principle avoid completing reading assignments if they will suffer no loss of grade, or if they anticipate the loss or penalty will be negligible.

With reading ability being crucial to students' learning, these barriers to student reading critically impede instructors' efforts to achieve overarching course-specific teaching and learning goals. In order to succeed at teaching and learning goals, instructors must employ strategies to rise above the challenges posed by these hurdles.

### 3.2 Breaking Down Barriers to Reading

Since many students are resistant and struggling readers who lack metacognitive skills and need guidance on how to become more literacy-proficient (Campos, 2011), it is necessary for instructors across the undergraduate disciplines to explicitly address the reading comprehension issue. In this effort, instructors need to be intentional about integrating instructional approaches that bolster students' reading abilities, but they need not curtail time allotted to content-based instruction to do so. Reading instruction can be subtly woven into content-based assignments with the dual-purpose of helping students develop critical literacy (described by Horning (2007) as the ability to analyze, synthesize and evaluate written text) and gain command of content. The case-reading exercise exemplifies such an assignment because it allows instructors to teach substantive law and, at the same time, reading skills.

However, with students perceiving case decisions and other legal text to be "dry" and uninteresting, reading-focused teaching strategies should, in addition to other functions, serve to ignite students' interest in reading the material. Bain (2004) confirms the theory that students' interest and motivation to delve into course material are influenced by their perception that the course and related assignments are relevant to them. When students are able to make these schematic connections concerning course readings they are more motivated to read the course material than if they are unable to identify these relationships. Thus, instructors should devote attention to establishing relevance of legal studies course assignments, not only as they pertain to these courses but also within the broader context of various academic programs within business school curricula.

Even with relevance being established by instructors, if students lack of background knowledge and experience (referred to interchangeable in this paper as, "contextual knowledge" or "real world knowledge") their motivation to read will likely remains stifled. Christenson (2006) has noted students' comprehension of legal text is largely dependent on the extent to which they possess "real world" knowledge for it enables contextualization of new information into pre-existing schema. Instructors can assist students in forming background knowledge, thereby helping to narrow this comprehension gap. In advance of the case readings, instructors may provide an overview of case emphases, using instructional or news-clip videos on the case topics. Another option is to introduce the case topics with a discussion of current event articles. In addition, students should be asked to actively participate in this effort to build background knowledge by identifying and submitting current event articles to be used for class discussions, with the understanding that these articles must connect to course subjects or case decision topics.

Despite instructors' implementation of the teaching strategies described above, students who operate according to the cost-benefit philosophy may nevertheless avoid selected course readings. The key to counteracting this common tendency among students may lie in grading policy. Students are more likely to complete assignments when there is a grade-impact factor associated with the assignments. The potential grade loss or penalty imputed for failure to complete assigned work must be sufficiently detrimental to persuade even students who ascribe to the cost-benefit philosophy to complete course work. This author applies a grading policy that allots a significant percentage of the course grade to a combination of case brief preparations, other course readings, and class participation reflective of students' preparation in advance of class attendance.

In consideration of conserving time, instructors may choose to grade a sampling of case briefs, rather than all, of students' work, using grading options deemed most time-efficient. Examples include scoring assignments using grading rubrics or a simplified "4, 3, 2, 1" scale, both of which can later be converted to points or percentages, as dictated by the instructor's grading system. Considering that the typical classroom comprises students with varying skill levels, students would benefit if course readings consisted of multiple types of printed and electronic texts, including, for example, websites, books, journal articles, newspaper articles, discussion boards, and videos. Lenters (2006) posits that "when classrooms only use textbooks at one level, students miss out on valuable text experiences that could increase comprehension and generalization" (p. 137). In legal studies courses, an additional advantage to diversifying texts is to allow students to observe discussions and debates of legal topics in media forms other than textbooks. This places legal topics in real world context and, in the case of electronic texts, in media forms that students are more inclined to read.

#### **4. Active Reading through Case Briefing Exercises**

The case study method widely used today in teaching undergraduate legal studies is based on the pedagogical model used in law schools since 1870 (Garner, 2000). This style of teaching largely supplanted the lecture-style approach and fundamentally reformed legal education (Garner, 2000). Whereas the lecture-style of teaching law involves instructors feeding students legal principles that instructors themselves distilled from case decisions (the original sources), the case study method emphasizes *teaching students to learn the law*, as students critically interpret, analyze, synthesize and evaluate patterns of facts, judicial reasoning, rules of law and holdings.

Beyond prompting students to adopt and employ an investigative and forensic approach to learning law, a key aspect of the case study method is the requirement that students prepare written case briefs of selected cases throughout the course. A case brief could be described as succinct summary notes of a case, specifying the procedural history, essential facts, legal issue(s) in question, rule(s) of law, and legal reasoning that supports a court's decision, and the decision of the case. The action of drafting a case brief requires application of critical reading skills, both generally and as applicable to legal text. In addition, successful preparation of the brief is a function of students' critical thinking abilities. Thus, integration of case brief exercises in legal studies courses aligns with teaching and learning goals directed at fostering students' development of these cognitive skills.

In reality, though, most students are resistant to briefing cases, failing to understand the merits underlying the process. Moreover, students – especially novice case readers – find briefing to be particularly challenging. They frequently comment that the case decisions are confusing, difficult to read, not written in "English," and hard to understand. Despite these complaints, the reading complexities characteristic of case decisions can, in fact, be instrumental in guiding novice readers towards adopting techniques customarily used by expert readers.

Legal studies instructors who frame their courses around critical thinking, using case readings/briefing as one of the catalysts for achieving that goal, should inform students of this course emphasis at the start of the semester. Although the critical thinking and critical reading are inherent components of legal studies courses, many of us would agree that this fact is not necessarily obvious to undergraduate students. Reviewing the dimensions of Bloom's Taxonomy with students is one way instructors can vividly illustrate the concepts of critical thinking and critical reading, while supporting the rationale for building the course framework around critical thinking and critical reading. Integral to that discussion, instructors may contrast the benefits in fostering these cognitive skills against the limitations of learning styles that encourage rote memorization and regurgitation. We should also explain how the case reading and case briefing components of the course study specifically correspond to student learning objectives stated on the course syllabus.

Concerning this goal, students need to be made aware of the various metacognitive skills conventionally used by expert readers as they move through text. When acquainting students with how to read case decisions, a point worth emphasizing is that legal texts comprise a genre of their own (Christensen, 2006). The combination of factors such as unusual text format and structure, complex sentence structure, seemingly awkward grammatical usage, unfamiliar vocabulary and new legal terminology contribute to uniqueness of these texts. Christensen (2006) agrees that "a new reader could easily become confused by the usual structure of a judicial opinion" (p. 8). Despite case decisions being distinct from other categories of texts, students can achieve reading comprehension proficiency in relation to the material if they apply the metacognitive skills associated with expert readers. Instructors should therefore aim to guide students through the reading of cases, teaching them to mirror these meta-cognitive strategies.

## 4.1 Metacognitive strategies of expert readers

Metacognition is a higher order cognitive process that involves a reader's awareness of his/her own thinking and comprehension strategies evoked during reading, as well as the monitoring of those strategies used to construct meaning from text (Ghaith, 2003). Expert readers employ a range of meta-cognitive strategies while reading to help them efficiently tackle text and maximize reading comprehension. By contrast, less able readers do not apply these strategies, and, as expected, gain less comprehension from text. The discussion that follows reviews how students reading case decisions may apply metacognitive strategies to strengthen their own critical reading skills.

### 4.1.1. SQR3 Reading Method

To promote effective reading and foster comprehension, expert readers rely on self-regulating approaches such as the SQR3 reading method. The SQ3R method is one of several self-regulating techniques students may use to monitor their own reading skills (White, 2004). The SQ3R method can promote students' active and critical reading of case decisions as they perform the following actions with respect to the text: (1) *survey* the reading by quickly reviewing the reading assignment (for example, the case decision), observing the main points and its layout; (Notably, this action encompasses observation of organizational structure of text.) (2) *pose questions* with anticipation of getting answers during the reading process; (3) *read* the material, aiming to comprehend it; (4) *recite* answers to questions posed during step 2, and perhaps write summaries; and (5) *review* to determine reading comprehension and ability to recall (White, 2004).

### 4.1.2. Understanding Structure of Text

Students seeking to become expert readers in a particular subject area need to understand "the genres and conventions of that discipline" (Horning, 2007, p. 14). Therefore, understanding text structure aids readers in their comprehension of text. Christensen (2006) confirms "comprehension comes more quickly if the reader understands the organizational structure of text" (p. 4). Thus, instructors should deliberately teach student readers of case decisions how to identify the organizational structure of those texts. In addition, they should point out that the standard FIRAC (*Fact, Issue, Rule of Law, Analysis, and Conclusion*) organizational structure unique to case decisions is a powerful built-in schema that guides and assists cognitive processing of this legal text.

### 4.1.3. Questioning

Students using the SQ3R or other similar reading technique should be encouraged to actively converse with the text. They should not view the text as just words on paper, but rather as one side of a two-way conversation in which they are participants with liberty to respond. The *questions* aspect of SQ3R may, for instance, involve students' questioning the meanings of phrases, a court's interpretation of a rule or a court's legal analysis. Using the U.S. Supreme Court decision of *Kelo vs. City of New London* (545 U.S. 469 (2005)) as an example, students, after previewing the text, may pose questions along the following lines: How does the court differentiate between the terms "public use" used in one paragraph and "public purpose" used in another? Is this difference significant? Does the Constitution use the term "public use" or "public purpose?" Is one of these terms broader than the other? How did the court reason that the taking of privately-owned property for economic development by a private entity is constitutionally valid? As students move to the next phase of SQ3R, reading to comprehend, this line of questioning should be more reflective of specific information gained from the reading. These questions might, for example, challenge judicial reasoning, seek clarification of a doctrine or its application, or suggest an expansion of a view or doctrinal application expressed in the opinion. Holding on to this attitude of automatic deference can restrict critical thinking. Instructors should assure students that it is acceptable to question judicial opinions and even offer their own.

### 4.1.4. Annotations

Annotating is another self-regulating action students can practice to improve their understanding of written discourse in legal studies. Zywica and Gomez (2008) define annotation as "a structured way to mark up text so it is more manageable" (p. 156). This literacy strategy involves "highlight[ing] important information like main ideas (argument or claim), supporting ideas (evidence), key content vocabulary words, definitions, and transitions within the text (Zywica & Gomez, 2008, p. 156)." The practice of annotating causes students to adjust their reading speed and pay close attention to how writers structure and defend arguments (Zywica & Gomez, 2008). It also enables students to observe how writers skillfully use words and phrases and their definitions to convey meaning (Zywica & Gomez, 2008). Further, it guides students towards interacting with text analytically.

Annotation activities can be categorized as those performed before reading, during reading and after reading. The following summary contains an abridged list of annotation steps described by Porter-O'Donnell (2004).

<i>Before Reading:</i>	Examine titles and subtitles
<i>During Reading:</i>	Examine parties to the case, court, state or federal jurisdiction, citation, year of decision, vocabulary, important information; writing in margins; summarize, make predictions, formulate opinions; make connections; ask questions; analyze author's craft; write reflections/reactions/comments; look for patterns/repetitions
<i>After Reading:</i>	Re-read annotations and draw conclusions; re-read introductions and conclusion (re-read issue question and conclusion); examine patterns/repetitions and determine possible meaning.

In the legal studies classroom, it is advantageous to isolate the annotation activity from the case-brief writing process. In so doing, students may first devote their mental energy to deep reading required for writing annotations onto the text at hand, without being distracted by the pressures of formal writing required for case briefing. As students annotate, their reading experience will be active and purpose-driven, as they are caused to spend focused time closely examining, analyzing, interpreting and aiming to comprehend the material. Also encapsulated in the purpose is the goal of making appropriate or "correct" annotations. Students should be asked to write annotations directly onto a case opinion as they read it. They should be instructed to write distinct categories of annotations. For case briefs, students may begin by writing notations of the "issue", "rule(s) of law", "analysis" and "conclusion". As they work to translate legal jargon to plain English, they can write their own paraphrasing in the margins. Other ideas for annotations include writing definitions of legal terminology, questions of intrigue, questions that challenge the judicial decision, and questions to introduce during class discussions. Annotations should also entail students writing summaries of the text in their own words. Since students often annotate incorrectly, they would benefit from their instructors modeling correct annotations.

#### **4.1.5. Think-Aloud Protocols**

Studies have indicated that think-aloud strategies are effective reading comprehension enhancement tools (Ghaith, 2003; Campos, 2011). As the term suggests, a "think-aloud" involves verbalizing, while reading, the cognitive processes employed and the thoughts triggered by the text (Gaith, 2003). As a teaching method, Block and Israel (2004) define it as "a metacognitive technique or strategy in which a teacher verbalizes thoughts aloud while reading a selection orally, thus modeling the process of comprehension" (p.154). As instructors model think-aloud protocols, students are able to observe higher-order reading practices in action, including processes of interpretation, analysis, synthesis and evaluation. This metacognitive strategy compels readers to monitor their comprehension by pausing at intervals to reflect on how they are processing text and to orally express the reading actions being used to understand the text (Bauman, Jones, & Kessell, 1993). Further, it allows readers to self-regulate their comprehension strategies. When properly practiced, this strategy permits development of a breadth of comprehension-enhancing skills and aids successful tackling of complex text (Bauman, Jones, & Kessell, 1993).

Think-aloud protocols are inclusive of the following steps: "(1) overview of the text; (2) look for important information; (3) connect to an author's big idea; (4) activate relevant knowledge; (5) put myself in the [text]; (6) revise prior knowledge and predict; (7) recognize an author's writing style; (8) determine word meanings; (9) ask questions; (10) notice novelty in text; (11) relate the [text] to my life; and (12) anticipate use of knowledge" (Block & Israel, 2004, p. 156). The table below illustrates how these think-aloud routines directly translate to the case reading exercise.

	<i>Think-Aloud Routines (Block &amp; Israel, 2004)</i>	<i>Corresponding Actions Applicable to Case Reading Exercise</i>
1	overview of the text	Review text to understand FIRAC structure of case decisions.
2	look for important information	Identify FIRAC components (facts, issue in questions, rule(s) of law applied, analysis/rationale leading to conclusion; and court's conclusion).
3	connect to an author's big idea	Identify main law, legal principles or doctrines represented or confirmed by the case.
4	activate relevant knowledge	Draw connection between knowledge of law, legal principles and doctrines learned from course-book chapters, and lectures/discussions to case reading. Organize new information from case readings into other pre-existing schema.
5	put myself in the [text]	Place the case information into real world situations.
6	revise prior knowledge and predict	Correct any prior misunderstanding of law, or legal principles and doctrine. Correct any prior misunderstanding of their applications.
7	recognize an author's writing style	Pay attention to writer's skillful use of words, phrases, or grammar.
8	determine word meanings	Seek understanding of legal terminology and legal jargon.
9	ask questions	Read with inquisitiveness. Question rationale underlying laws, legal principles and doctrine. Question judge's interpretations and applications of the same. Question legal outcomes.
10	notice novelty in text	Observe nuances particular to the written decision.
11	relate the [text] to my life	Place the case in context or real world situations. Ask: Have I been in a similar dispute or do I know of someone who has been? Consider legal implications of the case to the legal interests of oneself or others in society.
12	anticipate use of knowledge	Consider the significance of case readings in terms of other course work, and how this knowledge promotes functioning with better awareness in future professional and personal lives.

#### 4.1.6. Recitation (Written Summaries): Case Briefing

The case brief preparation parallels the recitation step of SQR3, representing a reader's written recitations of essential information culled from readings. The written brief embodies the close integration of reading and writing, a merger that Horning (2007) has declared to be important to the attainment of critical literacy. That is, the case brief is ideally the culmination of reading and writing processes that reflects the reader's demonstrated ability to analyze, synthesize and evaluate readings and not just simplistically summarize main ideas.

The *reading to write* aspect of the case briefing process encourages active and deep reading, compared to that which is likely to occur when a reading assignment is not paired with a writing assignment or with some other tangible purpose. Because students must distill their comprehension and case analyses into writing, the reading process becomes purpose-driven, a factor influencing a reader's interest in and retention of the material. In a study designed to assess the impact that reading with a specific purpose has on a reader's interest and recall ability, Schraw and Dennison (1994) determined that "focusing readers' attention on selected text information increases what the researchers term purpose-driven interest and that text segments that are relevant to a readers' purpose are recalled better than those that are not" (p. 14). Therefore, as students read case decisions bearing in mind the purpose of drafting case briefs, they tend to read the texts with particular focus on elements pertinent to the brief. This aligns with Schraw and Dennison's (1994) conclusion that both "reading interest and retention of text material are heightened" (p. 14) when reading takes place under such circumstances.

### 5. Intersection of Critical Reading and Critical Thinking

The critical literacy skills that students work towards mastering through the reading practices discussed above are essential tools students must extend to content-based assignments that call on critical thinking. Thus, students who have experienced notable improvement in their reading comprehension abilities are likely to be more prepared to meet the critical thinking challenges distinct to case brief preparation as well as those embedded in other course assignments. As stated earlier, this author believes the case brief exercise, in addition to being a reading improvement pedagogical tool, is an ideal instrument for helping to foster students' critical thinking abilities. Reflecting on the pedagogical utility of case brief preparation, Zalesne and Nadvorney (2001) likewise maintain that this exercise is "the vehicle for two related pedagogic goals: learning the doctrine, certainly, but also developing the students' ability to read and analyze cases" (p. 273). Although myriad definitions of the term "critical thinking" can be found in the literature, for purposes of this paper, this author relies on the definition of "critical thinking" offered by Prentice (2001), which is: "the ability to question, evaluate, reevaluate, reason in graduated terms, defend positions, and decide in the midst of uncertainty" (p. 627).



John Dewey, in 1933, asserted that this type of “reflective thinking, the careful collection and evaluation of evidence leading to a conclusion” (p. 167) should be a pivotal goal of education (King, Wood, & Mines, 1990). Researchers continue to support this position and furthermore suggest that critical thinking exercises should be introduced at all levels of education (Halpern, 1999). Beyond this, however, the infusion of critical thinking teaching needs to be across all disciplines. This realization is apparent among scholars representing a broad spectrum of disciplines, as they argue for integration of this cognitive skill within their respective disciplines. For example, Prentice (2001) expresses the need for accounting students to solidify critical thinking skills, while White (2004) advocates the same position for nursing students, and Asfour (2009) the same for legal studies students.

In the context of the case brief exercise, legal studies students engage and practice critical thinking skills as they attempt to analyze facts, identify issues, isolate relevant laws, and analyze judicial reasoning, culminating in the court’s decision. At first glance, it may seem students should be able to write the “facts” section of the case brief, consisting of a succinct summary of the relevant facts of the case, without stumbling. To the contrary, students usually find it difficult to discriminate between facts that should be included in their summaries versus those that should not. Success in achieving an appropriately balanced summary of the facts is dependent on the use of critical thinking skills. This entails reliance on comprehension attained from reading the case decision and on the ability to understand how all the main FIRAC components of the case interrelate with each other. In fact, many students may not be keenly aware that after breaking the case decision apart by its FIRAC sections, in the end they must be able to observe the interrelationship between the parts. The case briefing process creates an opportunity for instructors to reinforce for students, not only the fact of the standardized FIRAC structure common to case decisions, but also the reality that each element of the FIRAC framework ties together with the other.

Students can then leverage this understanding to draft better case briefs. In drafting an ideal “facts” section, students would benefit from knowing that the relevant facts to be included are those that are central to the case decision and ones that connect to issue, the rule of law and analysis. Students face perhaps even tougher challenges as they attempt to draft the “issue,” “rule of law,” and “analysis” sections of the case brief. Again, a solid understanding of FIRAC sections of the case decision is a key to correctly drafting these parts of the brief. Asfour (2009) likewise notes that successful drafting of the “facts” and of the “issue,” the legal question to be resolved by the court, are interrelated, and thus students should be encouraged to engage in what this author calls “crisscross” critical thinking between the two. “Once the issue is identified and properly framed in the form of a question, students are better able to pinpoint those facts relevant to the court as it answers the question(s) posed (Asfour, 2009, p. 100).” Speaking on the importance of recognizing this interrelationship, Zalesne and Nadvorney (2001) reiterate that students must understand, specifically, that “facts trigger issues” and that “issues live in the interaction among law, policy, and facts (p. 276).

The interdependency between FIRAC elements of court decisions is itself exemplary of the critical thinking definition Prentice (2001) suggests, because they contain footprints of how the authors (i.e., judges) themselves exercise critical thinking: their “ability to question, evaluate, reevaluate, reason in graduated terms, defend positions, and decide in the midst of uncertainty” (Prentice, 2001, p. 627). Judges’ critical thinking is evident, for example, as they form the connection between their conclusions and the bases for those conclusions. Kubasek (1998) suggests that a hallmark of critical thinking is emphasis on evaluation that reveals the connection between a claim and the rationale that supports a claim. Because many students enter legal studies courses not being accustomed to applying logical, well-calculated reasoning and analysis to a set of facts to support a conclusion, they tend to overlook that this is the approach judges use in deciding cases. This oversight is often noted in students’ case briefs, practice problems, and research papers, for example, wherein students form conclusions based on emotions, while abandoning structured reasoning approaches anchored in relevant laws and established principles or doctrines. Therefore, it is necessary for instructors to highlight for students the critical thinking lessons that lie within judges’ skillfully crafted case decisions and to persuade them to emulate the critical thinking practices therein observed.

Kubasek and Browne (1996) believe the case briefing exercise is capable of stretching students’ critical thinking efforts beyond that required for summarizing the case according to its FIRAC components.

In addition to addressing FIRAC aspects, instructors may ask students to append to their briefs responses to the following questions: “(1) Does the argument contain any ambiguity? (2) What ethical norms are fundamental to the judge’s reasoning? (3) How appropriate are the legal analogies? (4) Is there relevant missing information?” (Kubasek & Browne, 1996, p. 38). As students pursue answers to these questions, they must put in practice evaluation skills, the highest level of cognitive skills according to Bloom’s Taxonomy. Regarding question one, for example, Kubasek and Browne (1996) point out that by identifying and considering ambiguities found in case decisions, students must employ evaluative skills as they contemplate the appropriateness of the court’s interpretation of pivotal words and perhaps the need for greater clarity of terms. Through this line of inquiry, students can come to recognize how interpretation can drive decisions, as well as how ambiguities can compel enactment of new or revised laws (Kubasek & Browne, 1996). Kubasek and Browne’s (1996) third question allows students to gain practice identifying and evaluating analogies used in case decisions, as they attempt to pinpoint parallels and distinctions between the case being studied and other possible precedents, “weighing the relative importance of those differences and similarities” (Kubasek & Browne, 1996, p. 42).

Finally, another way of enhancing the critical thinking aspect of the case brief exercise is to ask students to write a critique disagreeing with the court’s decision at the end of their briefs (Asfour, 2009). Students should be asked to formulate the strongest dissenting argument they can against the decision. To do this successfully, students must rely on comprehension that they would have achieved only through close, critical reading of the case. In drafting the critique, students activate and sharpen critical thinking skills as they structure well-reasoned rationales that they clearly link to their legal arguments. For this exercise, instructors may again remind students to take note of the critical thinking footprints modeled by judges in case opinions.

## 6. Conclusion

The parable “Give a man a fish and you feed him for a day. Teach a man to fish and you feed him for a lifetime” is metaphoric of the notion that undergraduate courses across disciplines should not be limited to the teaching of discipline-based content, but rather they should reflect, with due emphasis, wide integration of higher-order thinking skills instruction. The latter position is consistent with the common consensus among educators that the ultimate goal of a college education should be to teach students how to learn, thereby empowering them with cognitive tools they can call on for a lifetime, beyond the conclusion of their college studies. Reading comprehension and critical thinking skills are paramount to propelling students towards functioning optimally in all facets of their academic and future lives.

Certainly, the process of formulating teaching plans and instructional endeavors that capture all these elements demands considerable thought, time and effort on the part of instructors (Essounga-Njan, Morgan-Thomas, & Zheng, 2010). Despite this fact, the urgency to ensure cross-disciplinary critical reading and critical thinking skills proficiency – traditional cornerstones of academic success – in our colleges and universities is compelling. Achieving this feat requires deliberate and uniformed integration of critical thinking and reading skills instruction across the disciplines, including legal studies courses. Within the legal studies arena, the case brief preparation exercise is one of the several ideal instruments for use in aiding students’ growth in these skill sets. As a pedagogical tool, it is inherently efficient, allowing simultaneous teaching of critical thinking, reading, and substantive law. While the discussion of this paper contributes to the discourse on ways to leverage the pedagogical value case briefing brings to instruction pertaining to these skills, the academic community would further benefit from additional research and discussion of this topic.

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