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# Langdellian Limericks

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# LANGDELLIAN LIMERICKS

D. A. Jeremy Telman\*

## Abstract

*Christopher Columbus Langdell  
Used cases to teach the law well.  
So everyone thought,  
Except for distraught  
Students in Socratic hell.*

*Theirs is no lone cri de coeur.  
Now bashing Langdell's de rigueur.  
Knowing case law alone,  
A young lawyer is prone  
To resemble a high-priced poseur.*

*After a part that rehearses  
Anti-Langdellian curses;  
The Author proceeds  
To attend to the needs  
Of students who learn best through verses.*

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**INTRODUCTION**

In introducing the case method as the core of legal education, Christopher Columbus Langdell assumed the role as an initiator of a discursive practice. Discursive practices are not just ways of producing discourse. Rather they “become embodied in technical processes, in institutions, in patterns for general behavior, in forms for transmission and diffusion, and in pedagogical forms.”<sup>1</sup> Langdell’s case method and the related Socratic approach to legal education illustrate the propensity of discursive practices to adapt and survive long after their original premises have been discarded.<sup>2</sup> As one commentator noted, “One of the strengths of the case-teaching method, and there are many, lies oddly enough in its ability to disprove Langdell’s conception of law.”<sup>3</sup> Langdell’s pedagogy has survived other aspects of his legal thought precisely because the former is an institutionalized discursive practice.<sup>4</sup> Law professors teach using Langdell’s method in part because that is how they learned the law, and in part because the teaching materials most readily available to them facilitate teaching through the case method. But inertia alone does not explain Langdell’s

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<sup>1</sup> Michel Foucault, *History of Systems of Thought*, in LANGUAGE, COUNTER-MEMORY, PRACTICE: SELECTED ESSAYS AND INTERVIEWS BY MICHEL FOUCAULT 199, 200 (Donald F. Bouchard, ed., 1977)

<sup>2</sup> See, e.g., Edward Rubin, *What’s Wrong with Langdell’s Method and What to Do About It*, 60 VAND. L. REV. 609, 610 (2007) (cataloguing changes since the advent of the case method but noting that “we legal educators are still doing the same basic thing we were doing one hundred and thirty years ago”); Russell L. Weaver, *Langdell’s Legacy, Living with the Case Method*, 36 VILL. L. REV. 517, 545 (1991) (observing that Langdell’s method has achieved a dominant position in U.S. law schools despite the fact that Langdell’s justification for his method “has long since been repudiated”).

<sup>3</sup> Eric Mills Holmes, *Education for Competent Lawyering – Case Method in a Functional Context*, 76 COLUM. L. REV. 535, 556 (1976). See also John J. Costonis, *The McCrate Report: Of Loaves, Fishes, and the Future of American Legal Education*, 43 J. LEGAL EDUC. 157, 160 (1993) (observing that Langdell’s vision of the law did not survive Legal Realism but his law school did survive); Thomas C. Grey, *Langdell’s Orthodoxy*, 45 U. PITT. L. REV. 1, 24 (1983) (noting that Langdell’s educational innovations helped undermine his approach to legal doctrine).

<sup>4</sup> See Todd D. Rakoff & Martha Minow, *A Case for Another Case Method*, 60 VAND. L. REV. 597, 599 (2007) (likening the survival of the case method to that of religious traditions that “once embedded in custom and experience, give rise to new rationales when the old ones fade away”).

resilience.<sup>5</sup> Many professors utilize Langdell's approach because they think it is the method best suited to legal education,<sup>6</sup> given the physical, financial and practical constraints within which law schools must operate.<sup>7</sup>

Right from the start, Langdell's method has been subjected to fundamental criticisms, and those criticisms have been remarkably consistent.<sup>8</sup> Many of Langdell's ideas seemed strange to his

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<sup>5</sup> See John C.P. Goldberg, *What Nobody Knows*, 104 MICH. L. REV. 1461, 1496 (2006) (rejecting the notion that the case method's survival can be attributed to "some combination of inertia and faculty inattentiveness").

<sup>6</sup> See, e.g., Rakoff & Minow, 60 VAND. L. REV. at 598 (crediting Langdell's method with meeting the multiple goals of legal education); Ruta K. Stropus, *Mend It, Bend It, and Extend It: The Fate of Traditional Law School Methodology in the 21<sup>st</sup> Century*, 27 LOY. U. CHI. L. J. 449, 50 (1996) (describing Langdell's method as the best means for teaching students to analyze effectively, think independently and express themselves verbally"). However, Rakoff and Minow conclude that Langdell's method is no longer adequate if the aim is to teach 21<sup>st</sup>-century students to think like lawyers. 60 VAND. L. REV. at 600

<sup>7</sup> See ROBERT STEVENS, *LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850S TO THE 1980S* 63 (1983) (noting that the case method permitted law school class sizes to expand to the size of the largest-available lecture halls); Costonis, 43 J. LEGAL EDUC. at 160-61 (contending that the case method is a more significant economic than pedagogical phenomenon, since it facilitates large-class teaching).

<sup>8</sup> See, e.g., STEVENS, *LAW SCHOOL*, at 57 (citing criticisms of Langdell's method going back to 1876); James R. Maxeiner, *Educating Lawyers Now and Then: Two Carnegie Critiques of the Common Law and the Case Method*, 35 INT'L J. LEGAL INFO. 1, 1 (2007) (noticing that the two Carnegie reports on legal education, though separated by three generations, offered materially similar criticisms); Bruce A. Kimball, "Warn Students that I Entertain Heretical Opinions, Which They Are Not to Take a Law": *The Inception of Case Method Teaching in the Classrooms of the Early C.C. Langdell, 1870-1883*, 17 LAW & HIST. REV. 57, 59-61 (1999) (quoting from some of Langdell's students' negative evaluations of his pedagogy) [hereinafter Kimball, *Warn Students*]; Weaver, 36 VILL. L. REV. at 533-537 (detailing the early criticisms of the case method as articulated by Langdell's students, his colleagues and recent Harvard Law School alumni). In 1930, Samuel Williston reviewed J.H. Landman's *The Case Method of Studying Law*, which recommended that the case method be replaced with a problem-based approach and articulated many of the criticisms of the case method that we still hear today. Williston, *Book Review*, 43 HARV. L. REV. 972 (1930). See also Myron Moskowitz, *Beyond the Case Method: It's Time to Teach with Problems*, 42 J. LEGAL EDUC. 241, 241 (1992) (arguing that the problem method is better suited than the case method to the tasks of modern legal education – to train lawyers rather than to develop a "science of law"); Jacob Henry Landman, *Anent the Case Method of Studying Law*, 4 N.Y.U. L. REV. 141, 150-54 (1927) (debunking Langdellian notions of law as science); *id.* at 155-59 (proposing what he calls the "project method" as an alternative to the case method).

contemporaries or near-contemporaries<sup>9</sup> and they seem stranger still today.<sup>10</sup> Langdell's ideas about the nature of law were clearly alien to the Legal Realists,<sup>11</sup> and even Langdell's sympathetic biographer describes him as a "misfit."<sup>12</sup> Yet, the case method and the Socratic style of teaching persist and are still practiced by the vast majority of legal academics, at least in the larger doctrinal courses.<sup>13</sup> There is no reason to think that law schools will

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<sup>9</sup> See, e.g., STEVENS, LAW SCHOOL, at 119-22 (1983) (noting that reports on the state of legal education published in the early 20<sup>th</sup> century found Langdell's case method inefficient and impractical); Rubin, 60 VAND. L. REV. at 611 (observing that, because of the rise of the administrative state, Langdell's approach to education was already out-of-date one hundred years ago); Paul F. Teich, *Research on American Law Teaching: Is There a Case against the Case System?* 36 J. LEGAL EDUC. 167, 169-70 (1986) (noting that most of Langdell's colleagues regarded the case method as an "abomination"); Franklin G. Fessenden, *The Rebirth of the Harvard Law School*, 33 HARV. L. REV. 493, 498-99 (1920) (describing Langdell's first course in contracts and reporting that most students "condemned" Langdell's approach). Karl Llewellyn found it hard to imagine "a more wasteful method of imparting information about subject matter than the case-class." Llewellyn, *The Current Crisis in Legal Education*, 1 J. LEGAL EDUC. 211, 215 (1948).

<sup>10</sup> See John Henry Schlegel, *Between the Harvard Founders and the American Legal Realists: The Professionalization of the American Law Professor*, 35 J. LEGAL EDUC. 311, 314 (1985) (characterizing Langdell's pedagogical ideas as "daft" and contending that they were viewed as odd by Langdell's contemporaries as well).

<sup>11</sup> See Rubin, 60 VAND. L. REV. at 613, n.9 (summarizing the legal realists' passionate antipathy for Langdellian formalism). Jerome Frank dismissed the case method as an expression of Langdell's "peculiar temperament," which Frank regarded as evidencing an obsessive attachment to books and libraries. Jerome Frank, *Why Not a Clinical Lawyers-School?* 81 U. PA. L. REV. 907, 907-08 (1933).

<sup>12</sup> Bruce A. Kimball, *The Langdell Problem: Historicizing the Century of Historiography, 1906-2000*, 22 LAW & HIST. REV. 277, 279 (2004).

<sup>13</sup> See, e.g., ROY STUCKEY, ET AL., BEST PRACTICES FOR LEGAL EDUCATION 207 (2007) ("The principal method for teaching legal doctrine and analytical skills in United States' law schools is the Socratic dialogue and case method."); ELIZABETH MERTZ, THE LANGUAGE OF LAW SCHOOL: LEARNING TO "THINK LIKE A LAWYER" 141-73 (2007) (discussing literature contending that use of the Socratic method is on the wane and concluding that most law professors in the first year still rely on some version of a dialogic method, although classic, strict Socratic teaching is now a rarity); Rakoff & Minow, 60 VAND. L. REV. at 597 (observing that the first-year curriculum "remains remarkably similar" to that invented by Langdell); Steven I. Friedard, *How We Teach: A Survey of Teaching Techniques in American Law Schools*, 20 SEATTLE U. L. REV. 1, 28 (1996) (reporting survey results indicating that 97% of law professors teaching first-year courses employ the case method); Weaver, 36 VILL. L. REV. at 543 (calling the case method "unquestionably the primary mode of instruction in U.S. law schools" and noting that it had been adopted by every U.S. law school).

abandon Langdell's pedagogical model entirely and so there is every reason to make that model as responsive as it can be to the needs of 21<sup>st</sup>-century law students. In part, this goal can be achieved by supplementing Langdell's approach with an eye to addressing the concerns raised by its critics.

The case method survives in part because it is a flexible approach to law teaching. One can always combine Socratic teaching with lectures on doctrine, problems, group work, drafting exercises and other useful approaches. In employing the case method, one can play with Langdell's method in various ways, one of which is the subject of this Article. In my first years of teaching I composed Limericks to memorialize key cases and shared those Limericks with my students during class.<sup>14</sup> I add to the collection of Limericks when I teach new materials or when they seem to require some tweaking. In what follows, I justify this practice as a means of accomplishing some of the goals of the case method and as a means of addressing some of the criticisms of that method.

Part I below outlines the main characteristics of Langdell's case method, highlighting its strengths as an educational approach. Part II summarizes the leading criticisms of Langdell's pedagogy. Finally, Part III provides a sampling of Limericks which summarize some of the cases found in contracts case books and discusses how Limericks can be used to achieve pedagogical goals consistent with Langdell's approach.<sup>15</sup> In addition, I argue that the Limericks help to temper some of the harsher aspects of the Socratic method and thus go some way to addressing the concerns of Langdell's critics.

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<sup>14</sup> This Article contains only a sampling of the Limericks. The complete collection of my Langdellian Limericks can be found in the appendix. Those interested in seeing more Limericks can find both Contracts and Business Associations Limericks on the ContractsProf Blog (the official blog of the AALS Section on Contracts): [http://lawprofessors.typepad.com/contractsprof\\_blog/limericks/](http://lawprofessors.typepad.com/contractsprof_blog/limericks/).

<sup>15</sup> A discussion of Limericks about contracts cases is especially appropriate here, because Langdell introduced his Socratic method in a contracts course. HARVARD LAW SCHOOL ASS'N, CENTENNIAL HISTORY OF THE HARVARD LAW SCHOOL 1817-1917 34-35 (1918) (describing Langdell's first use of the Socratic method, in a discussion with his students of the contracts case, *Payne v. Cave*). Moreover, Langdell's first case book was designed for his course on contracts law. CHRISTOPHER COLUMBUS LANGDELL, A SELECTION OF CASES ON THE LAW OF CONTRACTS (1871). In addition, there is precedent for scholarly presentations of Limericks devoted to contracts cases. Douglass G. Boshkoff, *More Selected Poems on the Law of Contracts: Raintree County Memorial Library Occasional Paper No. 2*, 91 NW. L. REV. 295 (1996); Boshkoff, *Selected Poems on the Law of Contracts*, 66 N.Y.U. L. REV. 1533 (1991).

## I. ELEMENTS OF LANGDELL'S PEDAGOGY

Langdell's pedagogy was an inductive method based on the natural sciences.<sup>16</sup> Langdell regarded the status of "science" as necessary in order to justify the study of law as an academic discipline and as a graduate course of study. If law were not a science, wrote Langdell, it would "best be learned by serving an apprenticeship to one who practices it."<sup>17</sup> The notion that an understanding of law could best be won through apprenticeship to a practicing attorney was precisely the model of legal education that Langdell strove to overcome.<sup>18</sup> Langdell regarded the case method as a form of inductive science because he believed that legal principles could only be appreciated in the context in which they arose. As a result, Langdell famously and somewhat notoriously proclaimed that the laboratory in which legal science was to be conducted was the law library, in which appellate decisions were collected.<sup>19</sup>

Langdell's conception of law as a science was not very richly developed. In order to master law, Langdell encouraged his students to discover basic legal principles or doctrines, which Langdell believed to be relatively few in number.<sup>20</sup> Langdell believed that these principles were best to be discovered in appellate court decisions.<sup>21</sup> Students educated according to Langdell's method discovered for themselves the development of legal rules through an intensive study of case law.<sup>22</sup> Langdell

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<sup>16</sup> Early defenses of the case method can be found in William A. Keener, *Methods of Legal Education II*, 1 YALE L.J. 143 (1892); Christopher Columbus Langdell, *Teaching Law as a Science*, 21 AM. L. REV. 123 (1887).

<sup>17</sup> C. C. LANGDELL, HARVARD UNIVERSITY, A RECORD OF THE COMMEMORATION, NOVEMBER FIFTH TO EIGHT[H], 1886, ON THE TWO HUNDRED AND FIFTIETH ANNIVERSARY OF THE FOUNDING OF HARVARD COLLEGE 97-98 (Cambridge, Mass., 1887).

<sup>18</sup> See STEVENS, LAW SCHOOL, at 51-64 (describing the struggle between Langdell's followers and those who wanted to continue to employ practitioners as law professors).

<sup>19</sup> Christopher Columbus Langdell, *Harvard Celebration Speeches*, 3 LAW Q. REV. 123,124 (1887).

<sup>20</sup> LANGDELL, LAW OF CONTRACTS at vii.

<sup>21</sup> STEVENS, LAW SCHOOL, at 52.

<sup>22</sup> See WILLIAM P. LAPIANA, LOGIC AND EXPERIENCE: THE ORIGIN OF MODERN AMERICAN LEGAL EDUCATION (New York, Oxford: Oxford University Press, 1994), at 3 ("In Langdell's formulation, legal education is the study of a few fundamental principles that are found in the original sources –

further believed that, through rigorous development of the case-law approach to legal science, he and his followers could eliminate jurisdictional deviations from ideal legal practices and thus establish a “unitary, self-contained, value-free and consistent set of principles” that could be applied to any case that might arise.<sup>23</sup> Langdell thus aimed to use his scientific approach to legal education to train a generation of lawyers and legal reformers who could perfect the law as a system of neutral, predictable, practical, efficient rules.

An unstated assumption of Langdell’s method was that law was synonymous with judge-made law; that is, the common law.<sup>24</sup> Langdell developed his approach to the law before the rise of the administrative state in the United States.<sup>25</sup> As the 20<sup>th</sup>-century progressed, the limitations of Langdell’s notion that casebooks could be used as primary sources of law grew increasingly obvious, as did the limitations of the analogical reasoning that the case method helped students develop.<sup>26</sup> It thus has become relatively easy to enumerate aspects of Langdell’s pedagogy that have become anachronistic. But law professors should not lose track of the advantages of the case method, as it remains a central feature of legal education. Legal scholars owe it to their students and to their students’ future clients to make the case method as responsive as possible to the needs of law students and the legal profession.

To that end, it is important to keep in mind the strengths of the case method, which have been a reason for its survival<sup>27</sup> even

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cases – and, by implication, are derived from those cases by the process of induction. Thus the student thinks for himself rather than merely accepts the secondhand formulation of some treatise writer.”).

<sup>23</sup> STEVENS, *LAW SCHOOL*, at 53. Langdell was aware that not all legal opinions could be reconciled, but he believed he could identify cases that proceeded “from an erroneous principle” and therefore must “be regarded as anomalous.” Kimball, *Warn Students*, 17 *LAW & HIST. REV.* at 68 (quoting from Langdell’s lecture notes).

<sup>24</sup> Rubin, 60 *VAND. L. REV.* at 616.

<sup>25</sup> *Id.* at 617-20.

<sup>26</sup> *See id.* at 622 (concluding that Langdell’s method does not train students “to think like lawyers in the contemporary administrative state”).

<sup>27</sup> Previous scholarship has identified five main strengths associated with Socratic teaching: It helps students to develop analytical skills; it forces them to think on their feet, it encourages intellectual rigor, teaches students about legal process and helps them learn about the lawyer’s role or function. Cnythia G. Hawkins-León, *The Socratic Method-Problem Method Dichotomy The Debate Over Teaching Method Continues*, 1998 *BYU EDUC. & L. J.* 1, 5 (1988) (citing



though Langdell himself may not have been recognized those advantages.<sup>28</sup> As we shall see, each strength of the case method can also be a weakness.<sup>29</sup> That is, all aspects of the case method have come under attack and there is clearly room for improvement in the way law professors teach through cases and through the Socratic method.

The primary advantage of Langdell's method is that it promotes active learning.<sup>30</sup> Because students come to class knowing that they will be called upon and that they risk appearing foolish if they are unprepared, they have an incentive to work hard on their own (or in groups) to gain at least a rudimentary grasp of the material rather than expecting to be told its significance.<sup>31</sup> Through their exposure to case law, students learn to distinguish

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Weaver, 36 VILL. L. REV. at 549-61). In what follows, I have organized the discussion of the strengths of Langdell's method a bit differently in order to situate the strengths of the Langdellian method in the context in which they arise.

<sup>28</sup> Langdell's pedagogy was consistent with some of the groundbreaking educational reforms of the late 19<sup>th</sup> century, but there is no evidence that Langdell was aware of his intellectual kinship with the leading educational reformers of his day. Charles Eliot, who as Harvard's President appointed Langdell to be Dean of the Harvard Law School, believed that Langdell had no familiarity with the likes of Pestalozzi, Froebel, Seguin and Montessori but nonetheless implemented their ideas. Charles Eliot, *Langdell and the Law School*, 33 HARV. L. REV. 518, 523 (1920). In general, Langdell seems to have developed his pedagogical strategy by intuition, without the aid or support of any empirical evidence or immersion in educational theory. See Michael L. Richmond, *Teaching Law to Passive Learners: The Contemporary Dilemma of Legal Education*, 26 CUMB. L. REV. 943, 946-47 (1996) (finding no indication in Langdell's writings that he believed the case method to be more effective than lectures).

<sup>29</sup> See Costonis, 43 J. LEGAL EDUC. at 160 (remarking that the strengths of the case method are also weaknesses).

<sup>30</sup> See JOSEF REDLICH, *THE COMMON LAW AND THE CASE METHOD IN AMERICAN UNIVERSITY LAW SCHOOLS: A REPORT TO THE CARNEGIE FOUNDATION FOR THE ADVANCEMENT OF TEACHING* 12 (1914) (observing that, through the case method, "the intellectual labor . . . is to be performed by the students, quite independently" even though under the teacher's guidance); Richmond, 26 CUMB. L. REV. at 943 (1996) ("Legal education depends on the active involvement of students in the learning process."); Stropus, 27 Loy. U. Chi. L. J. at 466 (observing that Langdell's method "encourages preparedness as a necessary component of analysis").

<sup>31</sup> Weaver, 36 VILL. L. REV. at 552-53. Karl Llewellyn acknowledged the "obvious" value of the case method, including its ability to "enlist active participation from many, and also silent participation of a whole group." Llewellyn, *Current Crisis*, 1 J. LEGAL EDUC. at 211.

relevant from irrelevant facts, to identify the significant issues raised in the case and should come to distinguish among levels of argumentative rigor in legal opinions. Langdell developed his method in order to combat the passivity of legal education as he had experienced it, in which students sat, listened, and perhaps took notes as the instructor lectures them on legal doctrine.<sup>32</sup> While contemporary legal reformers would like to go beyond Langdell in promoting active education, few have argued that a return to lectures on legal doctrine would benefit students.<sup>33</sup> To this extent, Langdell's revolution must be accounted a step in the right direction.

Of almost equal importance, Langdell's method is designed to help students think like lawyers.<sup>34</sup> It does so by replicating many of the mental tasks the students will be asked to perform once they become attorneys.<sup>35</sup> Here, the fact that the case method requires active learning is crucial, since once they get into practice, students cannot expect the legal issues to be identified in advance, nor can they approach legal material knowing in advance what they are looking to find there.<sup>36</sup>

The case method trains students to think like lawyers in at least four areas. First, the case method can be used to encourage students to make the best possible arguments for their clients given the facts of the case and the legal doctrines in play.<sup>37</sup> The Socratic

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<sup>32</sup> See Anthony Chase, *The Birth of the Modern Law School*, 23 AM. J. LEGAL HIST. 329, 336-37 (1979) (remarking that the lecture method, the standard mode of teaching before the advent of the case method, "often left the majority of students in dazed incomprehension").

<sup>33</sup> See Richmond, 26 CUMB. L. REV. at 950 (noting that legal educators developing alternatives to the case method have all "proceeded from the same assumption: that law students would learn best when they took an active role in the process").

<sup>34</sup> See, e.g., MERTZ, at vii (2007) (noting that students in the first year of law school are reputed to undergo an intellectual transformation in which they learn to think like a lawyer); Chase, 23 AM. J. LEGAL HIST. at 342 ("In the popular reference, the case method sought to teach the uninitiated law student how to think like a lawyer.").

<sup>35</sup> See STEVENS, LAW SCHOOL, at 56 ("[T]he student is practically doing, under the guidance of an instructor, what he will be required to do without guidance as a lawyer.").

<sup>36</sup> See Richmond, 26 CUMB. L. REV. at 944 (highlighting the challenges of teaching "contemporary students who do not know how to learn by doing").

<sup>37</sup> See MERTZ, at 59 (acknowledging the parallels between Socratic dialogue and courtroom discourse, as well as the suitability of Socratic teaching to a legal

method facilitates such role-playing – the instructor simply asks a student to identify each party’s best arguments, or best arguments with respect to a certain issue. If such questioning produces only puzzlement, the instructor can attempt further gentle, Socratic prodding by asking which facts are especially helpful or harmful to either party and which legal theories appear most promising. Such exchanges might also range into policy discussions if, for example, neither the facts nor the law are especially helpful to one side or the other, students can be encouraged to draw on policy considerations to formulate arguments on behalf of that party.<sup>38</sup>

Second, the case method introduces law students to the concept of precedent.<sup>39</sup> It provides not only an introduction to the doctrine but also provides ample opportunities for students to experience the complexities of precedent. This aspect of the case method relates to the first in that, in deciding whether or not a particular precedent applies to the case at hand, students must consider the peculiar facts of the case and determine whether the precedent really applies or whether the facts are distinct enough to fall outside of the precedent or even to raise separate legal issues that remove it from the doctrinal realm of that precedent entirely.

Third, the case method introduces and gives students exposure to the canons of both contractual and statutory construction. While the case method introduces students to canons of construction in the litigation context, knowledge of such canons can also be of use to them in drafting courses and thus can contribute to training in transactional work and even can prepare them for careers in legislation or law reform.

Fourth, the case method trains students in critical reading and thinking. The case method does not encourage students to take the holding of a case as a given. Rather, students are encouraged to

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system in which “both parties get their day in court, represented by attorneys who will engage in vigorous linguistic combat on their behalf”).

<sup>38</sup> Dennis Patterson provides the example of a popular casebook that begins with a case about the termination of an at-will employment agreement. The casebook provides questions about the case for the students to consider, including questions that invite students to consider whether the common law of contracts is efficient and to consider the case from the perspectives of critical legal studies and feminism. See Dennis Patterson, *Langdell’s Legacy*, 90 NORTHW. U. L. REV. 196, 202 (1995) (citing CHARLES L. KNAPP & NATHAN M. CRYSTAL, *PROBLEMS IN CONTRACT LAW: CASES AND MATERIALS* 16 (3d ed. 1993)).

<sup>39</sup> Weaver, 36 VILL. L. REV. at 553-58.

question the reasoning underlying the decision and even to question whether the case truly stands for the principle for which it is supposed to stand.<sup>40</sup> Here, a professor can expect considerable resistance coming from two directions. First, students often emerge from their undergraduate educations with a form of reverence for textual authority. Encouraging such respect for authors is an important step in the educational process – one ought first to appreciate Shakespeare’s gifts before proceeding to a denunciation of his phallogocentrism. Still, by law school, students ought to be able to both appreciate and criticize. Second, many students see law school as a professional training program. They are practically-minded and want to take away from each class period only useful information. Questioning a legal rule does not seem much to the purpose for students who think that law school is an opportunity to learn the law, understood as a body of rules.

Finally, because of its flexibility, the case method provides ample opportunity to introduce students to aspects of the law aside from doctrine. While the cases that are the focus of the case method are almost invariably appeals, that does not mean that the procedural history through which they get to the appellate courts is not a proper subject for class discussion. In fact, the important differences between appellate review of motions for dismissal or summary judgment and appellate review of trial court decisions following trial are often much easier for students to grasp when they see the play of doctrines learned in civil procedure courses at work in other doctrinal courses.

The case method also provides myriad opportunities to raise questions of legal strategy, including questions of settlement or alternative dispute resolution.<sup>41</sup> Most casebooks include at least one case in which the amount in controversy is so small as to raise questions about why the parties went to the trouble to appeal. Casebooks also often include examples of cases in which potentially winning legal issues were not raised by the parties. Related to questions of strategy and settlement are also issues of legal ethics. One can raise such issues with respect to nearly every case and thus one challenge of teaching using the case method is

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<sup>40</sup> See STUCKEY *ET AL.*, BEST PRACTICES at 214 (encouraging law professors to use hypotheticals in the context of Socratic discussion to “demonstrate complexity and indeterminacy of legal analysis”).

<sup>41</sup> See *id.* at 558-61 (explaining that the case method can help students understand the lawyer’s function in both the litigation and non-litigation contexts, and can teach them to develop arguments and their own advocacy skills).

picking the right opportunity to introduce students to particular questions of legal ethics.

Similarly, no semester of case method teaching passes without some occasion to discuss issues of legal theory and adjudication. When students are called upon to address the policy implications of a certain legal rule or of a challenge to that rule, they inevitably must consider the purposes of the law and justify their preferences for certain rules with respect to their own perhaps inchoate notions of the relationship of legal rules and social justice, economic efficiency or morality. Nor does the semester pass without several occasions in which a court does not give the legislature or administrative agency the deference theoretically due to it or in which a federal court decides an issue of state law in a manner arguably at odds with evidence of the state supreme court's views on the matter. Such cases provide an opportunity to raise a different set of policy questions, relating to the role of courts and of institutional competence more generally.

The facts of cases themselves provide an additional opportunity to enlighten students (or remind them) that many if not most legal practices are businesses in which knowledge of other businesses assists attorneys in advising and guiding their clients. Cases often include fascinating details that are in fact slices of commercial life, exposing students to the sort of commercial interactions with which they are going to have to get comfortable if they are going to develop a thriving commercial practice. As two of Langdell's more insightful critics have acknowledged, Langdell's method:

...was constructed to address simultaneously several different questions, each of which must be answered for a professional school curriculum to succeed with all of its constituencies and in all of its domains. The Langdellian case method afforded a way to communicate information; to cultivate a style of reasoning and questioning that was intellectually respectable, yet also well-suited to the paradigmatic law practice of adjudication; and to engage the attention and interests of large numbers of students at relatively little expense for instruction and materials.<sup>42</sup>

In short, Langdell's innovation was a tremendous improvement over the modes of instruction that preceded it, and it survives

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<sup>42</sup> Rakoff & Minow, 60 VAND. L. REV. at 598.

because of it still responds to the demands of the legal academy. But that does not mean that Langdell's method is without its weaknesses.

## II. LANGDELL'S CRITICS

From today's perspective, it is rather difficult to grasp why or in what way Langdell thought the case method was "scientific."<sup>43</sup> He conflated notions of science associated with Baconian induction<sup>44</sup> with German notions of science (*Wissenschaft*) as a self-contained body of knowledge deduced from fundamental principles.<sup>45</sup> Grant Gilmore thus famously concluded that Langdell must have been an "essentially stupid man."<sup>46</sup> Gilmore's judgment is harsh in part because it is ahistorical. Langdell developed his method prior to the advent of the social scientific models that have now come to dominate theories of legal method.<sup>47</sup> Fortunately, one does not have to buy into Langdell's positivistic hokum to appreciate the value of having students come to their own understanding of how legal rules arise through the seeming chaos of the common law process.<sup>48</sup>

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<sup>43</sup> See Rubin, 60 VAND. L. REV. at 635 (concluding that Langdell's notions that law is a natural science or should follow the methodologies of the natural sciences "no longer makes sense"); John Henry Schlegel, *Langdell's Auto-da-fé*, 17 LAW & HIST. REV. 149, 149 (1999) (providing a post-Realist critique of Langdell's idea of science).

<sup>44</sup> See STEVENS, LAW SCHOOL, at 52 ("Although Langdell talked of science in a nineteenth-century way, his vision of legal science would have been acceptable to Bacon); Howard Schweber, *The "Science" of Legal Science: The Model of Natural Sciences in Nineteenth Century American Legal Education*, 17 LAW & HIST. REV. 421, 459 (1999) (describing Langdell's approach as "Protestant Baconism"). Others think Langdell's notions of inductive science more indebted to Darwin (Marcia Speziale, *Langdell's Concept of Law as Science: The Beginning of Anti-Formalism in American Legal Theory*, 5 VT. L. REV. 1, 2-4 (1980)), or to Louis Agassiz. Rubin, 60 VAND. L. REV. at 633-34.

<sup>45</sup> See Laura A. Appelman, *The Rise of the Modern American Law School: How Professionalization, German Scholarship, and Legal Reform Shaped Our System of Legal Education*, 39 NEW ENG. L. REV. 251, 274-89 (2005) (explaining the German idea of *Wissenschaft* and its influence on Langdell and on U.S. legal education more generally); STEVENS, LAW SCHOOL, at 53 (noting that Langdell viewed himself as trying to put American law faculties in the position of such faculties in continental Europe).

<sup>46</sup> GILMORE, THE AGES OF AMERICAN LAW 42 (1977).

<sup>47</sup> Rubin, 60 VAND. L. REV. at 636.

<sup>48</sup> See, e.g., Schlegel, *Langdell's Auto-da-fé*, 17 LAW & HIST. at 153 (praising Langdell for engaging his students while conceding that Langdell did not himself understand what he was doing); Stropus, 27 LOY. U. CHI. L. J. at 466

Other critics have articulated more fundamental criticisms of the case method.<sup>49</sup> Such critics challenge each of the claimed benefits of the Langdellian method: it does not really promote active learning; it does not adequately teach students to think like lawyers; and thus it is ultimately not nearly as practical or useful as are rival approaches, such as problems, simulations or clinical legal education.

According to such critics, Langdell's method is based on an outmoded pedagogy, already superseded in the early 20<sup>th</sup> century by Dewey's pragmatic theory of education.<sup>50</sup> Langdell's approach assumes a pre-existing body of law that students passively learn rather than learning to think of the law as something that they will have a hand in shaping.<sup>51</sup> Students read cases with an eye to learning a rule of law rather than analyzing cases to learn legal methods.<sup>52</sup> Moreover, the case method and Socratic questioning do not really promote active learning because Socratic method "humiliates, intimidates and silences students."<sup>53</sup> Because a student's success at answering a law professor's questions may

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("The successful Langdellian dialogue goes beyond the rule of law and challenges students to probe the legal consequences of the argument, to make distinctions, and to place an order on things."); John Chipman Gray, *Letter to the Editors of the Yale Law Journal*, reprinted in *Methods of Legal Instruction*, 1 YALE L. J. 139, 159 (1892) (describing how reading cases heightens student interest in legal material).

<sup>49</sup> Bruce Kimball has uncovered extensive evidence that at least some of these criticisms should not apply to the teaching style of Langdell himself. Kimball, *Warn Students*, 17 LAW & HIST. REV. at 66-77. Kimball also attempts a historical reconstruction of Langdell's class sessions to illustrate his conception of Langdell's method in practice. *Id.* at 91-131. But the critics are less interested in Langdell's practice than in the case method and Socratic teaching more generally, which in many instances fall short of Langdell's practice, as reconstructed by Kimball.

<sup>50</sup> Rubin, 60 VAND. L. REV. at 646.

<sup>51</sup> *Id.* at 649; see also Llewellyn, *Current Crisis*, 1 J. LEGAL EDUC. at 212 (faulting the case method for providing solutions to the problems posed in advance and thus not encouraging students to develop their own powers of reasoning and problem-solving).

<sup>52</sup> See Hawkins-León, 1998 BYU EDUC. & L. J. at 6 (citing a 1942 report of the AALS committee on teaching and examination methods).

<sup>53</sup> James R. Beattie, Jr., *Socratic Ignorance: Once More Into the Cave*, 105 W. VA. L. REV. 471, 472 (2003); see also Stropus, 27 LOY. U. CHI. L. J. at 456 (citing critics who claim that the Socratic method causes psychological scarring).

only lead to further questioning until the student cracks,<sup>54</sup> some student respond to the Socratic method by refusing to play along.<sup>55</sup> They prefer to pass or to play the role of genuine stooge rather than that of Socratic stooge.<sup>56</sup>

In terms of training students to think like lawyers, critics of Langdell's method contend that it "does little to orient students to the reality of unfolding problems with facts still to be enacted, client conduct still to take place, and procedural settings still to be chosen and framed."<sup>57</sup> In the case method, lawsuits are ripped from their historical and social contexts and thus sterilized so that students cannot understand the full ramifications of legal decisions.<sup>58</sup> In any case, the case method exposes students almost exclusively to appellate decisions and thus provides students with very limited opportunities to develop practical skills related to the development of litigation strategies at the pre-trial or trial stages, which constitutes the focus of the vast majority of litigation practices.<sup>59</sup> As a result the case law falls short in the practical area for which it is best suited: it does not adequately train lawyers even in the skills necessary to litigation-oriented law practices.<sup>60</sup>

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<sup>54</sup> See Andrew S. Watson, *The Quest for Professional Competence: Psychological Aspects of Legal Education*, 37 U. CIN. L. REV. 93, 123 (1968) (noting that students perceive the Socratic method as offering few rewards for good performance, as the professors response to every answer is simply another question).

<sup>55</sup> See B.A. Glesner, *Fear and Loathing in the Law Schools*, 23 CONN. L. REV. 627, 627 (1991) (contending that students respond to the stress of the first year of law school by "refusing to play the game" through passivity or aggression or by simply dropping out).

<sup>56</sup> See Stropus, 27 LOY. U. CHI. L. J. at 459 (observing that some students opt out of the Socratic game by passing or claiming to be unprepared, while others attempt to beat the professor at her own game by humiliating fellow students).

<sup>57</sup> Rakoff & Minow, 60 VAND. L. REV. 600.

<sup>58</sup> See Moskowitz, 42 J. LEGAL EDUC. at 245-47 (arguing that the problem method better mirrors what practicing lawyers do and thus prepares students to "think like lawyers better than the case method can do"); Karl Llewellyn, *On the Problem of Teaching "Private" Law*, 54 HARV. L. REV. 775, 779 (1941) (advocating a greater focus on problem solving after the first year of law school).

<sup>59</sup> See Stropus, 27 LOY. U. CHI. L. J. at 461 (noting that students might conclude based on their law school experiences that practical litigation skills are of little value or consequence); Moskowitz, 42 J. LEGAL EDUC. at 244-45 (criticizing the case method for failing to train lawyers or prepare them for practice).

<sup>60</sup> ALBERT J. HARNO, LEGAL EDUCATION IN THE UNITED STATES 146 (1953)



More obviously, the case method overemphasizes case law and underestimates the importance of statutes and rules promulgated by administrative agencies.<sup>61</sup> The case method exaggerates the adversarial role of the attorney and does not prepare students for transactional or legislative careers,<sup>62</sup> nor does it adequately introduce students to alternative modes of dispute resolution. Thus a report conducted on behalf of the Clinical Legal Education Association described the “unfortunate reality” that “law schools are simply not committed to making their best efforts to prepare all of their students to enter the practice settings that await them.”<sup>63</sup>

In addition to this immanent critique of Langdell’s method, critics contend that Langdell’s method is especially off-putting for women and minority students and thus stacks the deck against non-traditional students at the very start of their legal careers.<sup>64</sup> From a “relational feminist”<sup>65</sup> perspective, associated with Carol Gilligan<sup>66</sup> and Lani Guinier,<sup>67</sup> the Socratic method has been described as a

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<sup>61</sup> See REDLICH, *THE COMMON LAW AND THE CASE METHOD*, 41 (noting that the case law encourages an analysis of separate cases but does not offer students the opportunity to appreciate the law as a whole); Rubin, 60 *VAND. L. REV.* at 631 (“[T]he first-year curriculum remains captive to the refuted glorification of the common law.”).

<sup>62</sup> See HARNO, at 140-44 (arguing that law school instruction does not prepare students for the problems they will have to address in practice); Rubin, 60 *VAND. L. REV.* at 641 (observing with regret that transactional law is virtually absent from the traditional law school curriculum).

<sup>63</sup> STUCKEY *ET AL.*, *BEST PRACTICES* at 18.

<sup>64</sup> Andrea Kayne Kaufman, *The Logician Versus the Linguist – An Empirical Tale of Functional Discrimination in the Legal Academy*, 8 *MICH. J. GENDER & L.* 247 (2002) (arguing that law school education functionally discriminates against women); Stropus, 27 *LOY. U. CHI. L. J.* at 462-65 (summarizing scholarship that contends that the case method reflects “white male” ways of thinking and encourages students who are “assertive, argumentative, confrontational, controlling, impersonal, logical and abstract”).

<sup>65</sup> See e.g., MARTHA CHAMALLAS, *INTRODUCTION TO FEMINIST LEGAL THEORY* 53-60 (2d ed. 2003) (describing the impact of Carol Gilligan’s “cultural feminism” or “relational feminism” on the law); Pamela S. Karlan & Daniel R. Ortiz, *In a Diffident Voice: Relational Feminism, Abortion Rights and the Feminist Legal Agenda*, 87 *NW. U. L. REV.* 858, 860 (1993) (identifying Gilligan as the scholar who has “most notably” developed the relational feminist perspective).

<sup>66</sup> CAROL GILLIGAN, *IN A DIFFERENT VOICE: PSYCHOLOGICAL THEORY AND WOMEN’S DEVELOPMENT* (6<sup>th</sup> ed. 1993).

<sup>67</sup> LANI GUINER, MICHELLE FINE AND JANE BALIN, *BECOMING GENTLEMEN: WOMEN, LAW SCHOOL AND INSTITUTIONAL CHANGE* (1997).

form of “ritualized combat” in which women are not socialized to engage.<sup>68</sup> Guinier and her co-authors argue that the Socratic method “devalues and distorts those characteristics traditionally associated with women such as empathy, relational logic and non-aggressive behavior.”<sup>69</sup> By contrast, the Langdellian method is alleged to reflect “white male values” by encouraging students to be assertive, argumentative, confrontational, impersonal, logical and abstract.<sup>70</sup> As this summary indicates, such criticisms of law school pedagogy seem indebted to essentialist notions of womanhood that many feminists have now rejected.<sup>71</sup> However, Guinier and her co-authors provide strong evidence that men far outperform women in law school, as measured by grades and membership in prestigious extracurricular activities such as law review.<sup>72</sup> They argue that the Socratic method, in which professors may intimidate or belittle students, contributes to a hostile learning environment for women,<sup>73</sup> and the women law students interviewed for their study self-reported feeling intimidated and belittled by their professors and by their peers.<sup>74</sup>

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<sup>68</sup> Lani Guinier, *et al.*, *Becoming Gentlemen: Women’s Experiences at One Ivy League Law School*, 143 U. PA. L. REV. 1, 62 (1994).

<sup>69</sup> *Id.* at 80.

<sup>70</sup> Stropus, 27 LOY. U. CHI. L. J. at 463.

<sup>71</sup> See e.g., ELIZABETH SPELMAN, *INESSENTIAL WOMAN: PROBLEMS OF EXCLUSION IN FEMINIST THOUGHT* ix-x (1988) (criticizing Western feminist thought for treating the experiences of White, middle-class women as representative of all women’s experience); Karlan & Ortiz, 87 NW. U. L. REV. at 860 (characterizing relational feminism as “somewhat dangerous and misguided”); Deborah L. Rhode, *The “No-Problem” Problem: Feminist Challenges and Cultural Change*, 100 YALE L.J. 1731, 1786 (1991) (acknowledging the contributions of “relational” feminism inspired by Gilligan’s work but noting that its emphasis on the contrast between male-associated abstract rationality and female-associated interpersonal relationships “reinforces longstanding stereotypes that have restricted opportunities for both sexes”); Joan C. Williams, *Deconstructing Gender*, 87 Mich. L. Rev. 797, 807 (1989) (accusing relational feminists of attempting to “reclaim the compliments of Victorian gender ideology while rejecting the insults”).

<sup>72</sup> Guinier, *et al.*, 143 U. PA. L. REV. at 59.

<sup>73</sup> *Id.* at 46-47; see also *id.* at 63 (arguing that the performative aspects of Socratic teaching also discourage women’s participation); Taunya Lovell Banks, *Gender Bias in the Classroom* (2), 14 SOUTH. ILL. U. L. J. 527, 531-33 (1990) (describing behavior by professors that discourages participation by women).

<sup>74</sup> *Id.* at 51-52; see also Banks, *Gender Bias in the Classroom* (2), 14 SOUTH. ILL. U. L. J. at 533 (identifying hostility from male students as a challenge that women law students face); Taunya Lovell Banks, *Gender Bias in the Classroom*, 38 J. LEGAL EDUC. 137, 146 (1988) (concluding based on a

Others have reported on similar responses among law students intending to pursue careers in public interest law,<sup>75</sup> working-class students<sup>76</sup> and minority students.<sup>77</sup> While the latest studies indicate that fewer law students express dissatisfaction with their law school experience, students of color and women continue to be disproportionately represented among the deeply dissatisfied students.<sup>78</sup> Unfortunately, there is no evidence that legal educators have hit upon a pedagogy that disadvantages women and minority students any less than does the Socratic method.<sup>79</sup>

All of these criticisms need to be taken into account by those committed to a legal pedagogy best suited to the task of preparing law students for the challenges they will face after they graduate. Still, too often in the feeding frenzy of self-criticism, legal scholars have been remiss in failing to recognize the advantages of

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survey of 753 law students that women feel excluded in the law school classroom environment and that it makes them feel inferior).

<sup>75</sup> See ROBERT GRANFIELD, *MAKING ELITE LAWYERS: VISIONS OF LAW AT HARVARD AND BEYOND* 106 (1992) (concluding that women who entered law school “with a commitment to social justice tended to experience [Harvard Law School as a sexist and dehumanizing institution”).

<sup>76</sup> See *id.* at 109-22 (finding that working class students at Harvard reported more anxiety and stress than did more affluent students and that working class students often succeeded in law school by abandoning any commitment to their working class identities).

<sup>77</sup> See Nancy Dowd, *et al.*, *Diversity Matters: Race, Gender and Ethnicity in Legal Education*, 15 U. FL. J. L & PUB. POL’Y 11, 34 (2003) (concluding, based on data gathered from surveys, that race, ethnicity and gender significantly affect students’ experiences with legal education); Banks, 14 SOUTH. ILL. U. L. J. at 536 (1990) (finding African American students were far more likely than white students to find their professors disrespectful of their comments and likely to embarrass or put down their students). Unfortunately, there have been very few empirical studies of the impact of Socratic teaching and the case method on minority students. See MERTZ, at 174 (“Indeed, with few notable exceptions, there has been little systematic empirical attention to the effects of race . . . on students’ experiences.”). The empirical studies that do exist as to the law school experience of students of color are all based on students’ self-reporting. *Id.* at 178 Still, these studies routinely show that students of color respond disproportionately negatively to Socratic teaching. *Id.* at 178-79.

<sup>78</sup> Mitu Gulati, *et al.*, *The Happy Charade: An Empirical Examination of the Third Year of Law School*, 51 J. LEGAL EDUC. 235, 266 (2001).

<sup>79</sup> See Linda Whiteman, *Women in Legal Education: A Comparison of the Law School Performance and Law School Experiences of Women and Men* 113 (Law School Admission Council, 1996) (concluding that women law students performed no better in courses taught by alternative methods than they did in courses taught using the Socratic method).

Langdell's approach over the traditional lecture. Having taught history on the undergraduate level, I am most appreciative of the Socratic requirement that students come to class prepared and engaged. The experience may not always be pleasant for students who are shy or otherwise reluctant to speak in class, but on the whole, the case method promotes a brand of active learning that is often sadly lacking on the undergraduate level.<sup>80</sup> Indeed, one of the greatest challenges I have experienced in legal education is to get the students to transcend the rote repetition of information imparted during class time and to engage in the constructive play with legal concepts and strategies that is the stuff of real advocacy. Too many students sail through their undergraduate educations without ever being really challenged to engage with difficult material in a creative and yet disciplined manner.

### III. THE PEDAGOGY OF LANGDELLIAN LIMERICKS<sup>81</sup>

This Part illustrates how one can supplement the case method with legal Limericks in a way that tempers the naive scientism, formalism, intimidation of students and other-worldliness that can characterize Socratic courses. Limericks are not a panacea. There are innumerable other ways in which Langdell's method can be – and has been – improved upon. This Part consists of a presentation of legal Limericks, most of which summarize a case, with an explanation of how each Limerick can be used to achieve a pedagogical goal in connection with the case method.

The Limericks are first and foremost little jokes and pokes that reduce the anxiety that the Socratic method can induce. Often, the joke is on the professor. This is intentional. The Limericks can have a leveling effect that suspends the adversarial nature of the Socratic method. The suspension is temporary, but its effects spill over and contribute to a more collaborative learning environment. The Limericks level because Limericks are silly and also because

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<sup>80</sup> See generally Richmond, 26 CUMB. L. REV. 943.

<sup>81</sup> A colleague objected that my poems are not really Limericks because Limericks are supposed to be bawdy and mine generally are not. Research suggests that Limericks, while often colorful, need not be lubricious. For example, the celebrated nonsense poet Edward Lear is among the most prolific of limericists, and his Limericks are quite tame. See EDWARD LEAR, THE COMPLETE VERSE AND OTHER NONSENSE 328-82 (Vivien Noakes, ed. 2002). Some students have objected to my Limericks on the ground that Limericks are supposed to be funny, or at least clever, and mine, they tell me, are neither. *But see id.*

they don't all work. Sometimes there are obvious metrical stumbles, comic inversions or absurdly forced rhymes. More often, they present only the most simple-minded renditions of the facts and law of the case. When the students laugh at the Limerick, they are in effect laughing at the professor, and perhaps to some extent at the case method, the legal profession and their careerist selves, but the laughter is not malicious.

For example, many contracts professors use *Ricketts v. Scothorn*<sup>82</sup> to introduce the doctrine of promissory estoppel. The *Ricketts* court enforced a grandfather's gratuitous promise to his granddaughter, Katie, to set aside \$2000 for her.<sup>83</sup> In reliance on this promise, Katie quit her job. The case teaches well, but the award of full expectation damages is troubling, given that Katie resumed work after her grandfather stopped paying her an annuity on the principal he had set aside for her.<sup>84</sup> If the purpose of damages in such a case is to permit Katie to recover her reliance interest, the award of expectation damages in this case is extravagant.<sup>85</sup> The Limerick reflects the difficulty of fitting the doctrine of estoppel into contracts law:

This was the start of estoppel:  
Said Grandpa to Katie, "Poppop'll  
Set you up nice."  
She took his advice,  
And left her old job in the shop-pel.

Such imperfections may reflect poorly on the poet, but they are intended to indicate that often in law, we cannot get the cases to do exactly what we want them to do. They do not always stand for clear rules or thoughtful legal reasoning. Often the best response to a case really is bemusement or befuddlement. Students should not always be too concerned if they cannot make sense of a case, nor should they always treat cases as authoritative statements of the law to be passively absorbed and obeyed. The Limericks thus help cultivate a healthy skepticism regarding the law.

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<sup>82</sup> 77 N.W. 365 (Neb. 1898).

<sup>83</sup> *Id.* at 367.

<sup>84</sup> *See id.* at 366 (finding that plaintiff was out of work for about a year and then found a position with the consent and assistance of her grandfather).

<sup>85</sup> Lon L. Fuller & William R. Perdue, Jr., *The Reliance Interest in Contract Damages*, 46 YALE L.J. 52, 53 (1936).

Another example of a perhaps usefully unsuccessful Limerick is this attempt at an explication of Judge Cardozo's opinion in *Allegheny College v. National Chautauqua County Bank*.<sup>86</sup> In his virtuoso opinion, Judge Cardozo found a way to hold a woman to her charitable pledge despite the fact that as Leon Lipson described it, he could not really base his decision on the solidly established doctrine of consideration, because the facts did not really support such a conclusion. Nor could he base his decision on the doctrine of promissory estoppel, which the facts might have supported, because the doctrine was not yet firmly established.<sup>87</sup> Lipson likened Cardozo's opinion to a thaumatrope, in which two images are depicted on different sides of a card – for example, a bird on one side and a cage on the other. When the card is twirled, we see an image of a bird in a cage.<sup>88</sup> Cardozo's opinion thus arrives at a fair resolution through a sort of sleight of hand. This Limerick imitates that trick by merging two words into one forced rhyme:

Although her estate was inheritable,  
 Ms. Johnston chose to be charitable.  
 A bargain was struck;  
 Her heir's out of luck:  
 To the College, Cardozo was fairitable.

Perhaps Cardozo attempted to do what he considered fair and equitable to the college in the case; perhaps he was just being charitable. Paint both options on a thaumatrope and spin it: students might see "fairitable."

### A. Limericks as Aides-Memoires

One advantage of the case method is that the cases often involve colorful facts, which can serve as a sort of memory hook on which to hang an article of legal doctrine. However, students learn in different ways,<sup>89</sup> which is, by the way, also a reason to use

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<sup>86</sup> 159 N.E. 173 (N.Y. 1927).

<sup>87</sup> Leon Lipson, *The Allegheny College Case*, 23 YALE L. REV. 8, 11 (1977).

<sup>88</sup> *Id.* But see Curtis Bridgeman, *Allegheny College Revisited: Cardozo, Consideration and Formalism in Context*, 39 U.C. DAVIS L. REV. 149, 161-62 (2005) (arguing that the parties did not really brief the issue of promissory estoppel and that the doctrine played little role in the opinion).

<sup>89</sup> See, e.g. Benjamin V. Madison, III, *The Elephant in Law School Classrooms: Overuse of the Socratic Method as an Obstacle to Teaching Modern Law Students*, 85 U. DET. MERCY L. REV. 293, 312-15 (2008) (noting the increasing recognition on the part of law school professors of the need to

PowerPoint in the classroom. Reading a case, and even listening as others engage in Socratic dialogue with the professor, may not be sufficient to lodge the facts of the case, along with the attendant rule, in each student's mind. The Limericks attempt to reinforce the legal rules by presenting the facts and the rules of the cases in a format that will be more likely to survive the other batteries to which the 1L mind is subject. Students who have an ear for meter and rhyme – or who develop such an ear through exposure to scores of legal Limericks – may find that the Limericks aid them in remembering which cases are associated with which rules.

*Ray v. William G. Eurice Bros.*,<sup>90</sup> illustrates both the objective theory of contracts with respect to intent to be bound and the nature of contracts damages. The Eurice Brothers signed an agreement to build a house for Mr. Ray.<sup>91</sup> But when the Eurice brothers took a closer look at Mr. Ray's specifications, they realized that their company could not possibly build the house to Mr. Ray's specifications for the contract price.<sup>92</sup> They refused to perform, and the trial court was inclined to take pity on these humble builders, whom the trial judge described as "hatchet and saw men,"<sup>93</sup> but the appellate court would not permit them to escape the contract.<sup>94</sup>

Ray's specs were enough to confound  
 These "hatchet and saw" men, whose ground  
 For breaching the pact  
 Was mistake of fact,  
 But they signed it and so they are bound.

The Limerick reinforces the simple rule of the case: absent fraud, duress, incapacity or mistake, a party is bound by what she signs.<sup>95</sup>

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accommodate students' differing learning styles); Paul L. Caron & Rafael Gely, *Taking Back the Law School Classroom: Using Technology to Foster Active Student Learning*, 54 J. LEGAL EDUC. 551, 565 (2004) (proposing an approach to legal education that students "come into the classroom with multiple forms of intelligence acquired in different ways").

<sup>90</sup> 93 A.2d 272 (Md. 1952).

<sup>91</sup> *Id.* at 275.

<sup>92</sup> *Id.* at 275-76.

<sup>93</sup> *Id.* at 276.

<sup>94</sup> *Id.* at 279.

<sup>95</sup> *Id.* at 278.

Few cases are more Limerickworthy than *Mills v. Wyman*,<sup>96</sup> in which Seth Wyman stiffes Daniel Mills, a good Samaritan who nursed Seth's son Levi in what the court believed to be Levi's last hours.<sup>97</sup>

Seth Wyman's interior forum  
Is not the law's *sanctum sanctorum*  
With this none would quarrel:  
Seth's conduct's immoral.  
Still, he breaches not law but decorum.

The *Mills v. Wyman* Limerick summarizes the rule of the case, but it also invites discussion and reflection on the relationship of law and morality, a theme to which it is important to return throughout the course.<sup>98</sup>

*Lenawee County Board of Health v. Messerly*<sup>99</sup> illustrates the difficulty of using the doctrine of mistake to excuse performance of a contract. The case turned on the court's assessment of which party bore the risk of mistake.<sup>100</sup> *Messerly* involved a transfer of a residential property that had an insufficient sewage disposal system, a fact discovered only after the transfer to Carl and Nancy Pickles had taken place.<sup>101</sup> Ordinarily, one would expect the seller to be the party best positioned to discover such an imperfection in the property and thus we would expect the assumption of risk to favor the buyer. But this transfer provided for delivery of the property in an "as is" condition and that language defeated the buyer's excuse of mistake.<sup>102</sup>

The waste leaked in torrents, not trickles.

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<sup>96</sup> 20 Mass. (3 Pick.) 207 (1825).

<sup>97</sup> The court turned out to be wrong about that, as Geoffrey R. Watson has shown in his wonderful law story, *In the Tribunal of Conscience: Mills v. Wyman Reconsidered*, 71 TUL. L. REV. 1749 (1997).

<sup>98</sup> There has been a recent revival of scholarly interest in the relationship of contract law to morality. See, e.g., Seana Shiffrin, *The Divergence of Contract and Promise*, 120 HARV. L. REV. 708 (2007) and three responses thereto published in Harvard Law Review's online Forum: Barbara H. Fried, *What's Morality Got to Do with It?* 120 HARV. L. REV. F. 53 (2007), Liam Murphy, *Contract and Promise*, 120 HARV. L. REV. F. 10 (2007), Charles Fried, *The Convergence of Contract and Promise*, 120 HARV. L. REV. F. 1 (2007). This is a topic that strikes a chord with many students.

<sup>99</sup> 331 N.W.2d 203 (Mich. 1980).

<sup>100</sup> *Id.* at 210-11.

<sup>101</sup> *Id.* at 205.

<sup>102</sup> *Id.* at 209-10.



Now the property ain't worth two nickels.  
 When "as is" you take,  
 You eat your mistake,  
 So *bon appetite*, Mr. Pickles.

*Carroll v. Beardon*<sup>103</sup> is a case about the sale of a brothel. The general rule is that illegal contracts are void,<sup>104</sup> but this case illustrates an exception to the rule: the contract is enforceable if the party seeking enforcement is not a party to the wrongdoing.<sup>105</sup> This Limerick recites the rule while implying some skepticism as to its application in this case:

In Montana arose a dispute  
 O'er a house of doubtful repute.  
 The seller madame,  
 Not in on the scam  
 May partake of her share of the loot.

The Limerick, like the majority's holding in *Carroll*, is in some tension with the details of the transaction, which make it clear that what the court treated as a property sale was actually the sale of an on-going business.<sup>106</sup> The deal was structured with higher payments due during the months when the brothel was likely to have more business; thus, the seller was clearly implicated in the transaction. Why did the court ignore these facts? Perhaps because the brothel was a familiar institution of some importance to the local economy.<sup>107</sup> Its business might have been notorious but tolerated by the authorities. The case invites discussion about the interactions of local politics, institutional competence and the law. While the Limerick mimics the court's representation that the seller was not a beneficiary of the brothel's business, the word "loot" expresses skepticism.

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<sup>103</sup> 381 P.2d 295 (Mont. 1963).

<sup>104</sup> See *id.* at 296 (noting that many courts will not aid either party to an illegal contract).

<sup>105</sup> *Id.* at 296-97.

<sup>106</sup> See STEWART MACAULEY, *et al.*, CONTRACTS: LAW IN ACTION 386-87 (The Concise Course, 2d ed., 2003) (providing details from deposition testimony indicating that the sale price was far in excess of the value of the property and that payments were structured to reflect the seasonal rhythms of the prostitution business).

<sup>107</sup> See *id.* at 387 (suggesting that the court might have been hesitant to shut down an illegal business that law enforcement had not shut down, though its operation was likely widely known)

In *Marvin v. Marvin*,<sup>108</sup> the court ruled that promises made in the context of a long-term, non-marital relationship can be enforced if they were express or can be safely implied. I offer two Limericks on the subject:

The Marvin court's ruling's propitious  
 For relationships non-meretricious.  
 Michelle can recover  
 From Lee, her ex-lover,  
 If his promises weren't capricious.

Michelle and Lee lived in sin,  
 A fact once viewed with chagrin.  
 Now she can recover  
 From her ex-lover  
 If he promised to keep her in gin.

Sometimes you really can sum up a case in five lines, as this Limerick pretty much exhausts the story of *Normile v. Miller*<sup>109</sup> and serves to remind students that communication of a sale to another suffices to revoke an offer:

As if sensing what lay ahead,  
 The counterofferor said,  
 "You snooze, you lose!"  
 That's enough to excuse  
 Her for selling to Segal instead.

I don't even assign *Krell v. Henry*. I just recite this Limerick and save my students some reading:

Was Henry's whole purpose frustrated  
 When the King burst appendix dictated  
 That the crown must delay  
 It's coronation day?  
 Yes! So contract doctrine's updated.

Recognizing the element of truth in Karl Llewellyn's contention that it is hard to imagine a less efficient mechanism for the communication of useful information than the case method, one can supplement that method with some lectures on doctrine. The method can be very efficient if it is interesting. A summary of

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<sup>108</sup> 18 Cal.3d 660 (1976).

<sup>109</sup> 326 S.E.2d 11 (NC 1985)

legal doctrine punctuated with Limericks can be diverting enough to increase the likelihood that students will follow.

## B. Limericks as Illustrations of Types of Judicial Reasoning

Legal Realism arose after the case method and to some extent as a reaction against the formalistic approaches associated with Langdell and his approach to pedagogy.<sup>110</sup> Today, we recognize that one very important task of first-year courses is to introduce students to different approaches to the law. Law students must understand that different judges will bring different jurisprudential values to the cases over which they preside and that those values can affect outcomes. Limericks can help to illustrate this aspect of the judicial process.

For example, first-year contracts courses often have a narrative component. We trace, over the course of the semester the development of the law from its more formalistic bent in the 19th century into the modern era of the Restatement (2d) and the Uniform Commercial Code. Part of the process involves familiarizing students with the differing approaches represented by Samuel Williston and Arthur Corbin. Their differences on the parol evidence rule are illustrated in *Sherrodd, Inc. v. Morrison-Knudsen*.<sup>111</sup> *Sherrodd, Inc.* was a small business that contracted with Morrison Knudsen to do some earthmoving work. *Sherrodd* agreed to do so for a fixed price, but the job turned out to be far bigger than expected.<sup>112</sup> Morrison-Knudsen allegedly gave oral assurances that *Sherrodd* would be paid based on the work done, rather than the flat fee indicated in the parties' written agreement.<sup>113</sup> The court sided with Morrison-Knudsen, finding that *Sherrodd's* allegation of fraud was not the sort that could overcome the parol evidence rule.<sup>114</sup>

Behold, parol's bitter fruit:  
Sherrodd's claim was deemed moot!

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<sup>110</sup> See Rubin, 60 VAND. L. REV. at 613, n.9 (describing the intense criticism to which legal realists subjected the case method).

<sup>111</sup> 815 P.2d 1135 (Mont. 1991).

<sup>112</sup> *Id.* at 1136.

<sup>113</sup> *Id.*

<sup>114</sup> *Id.* at 1137.

If he only knew,  
The great Corbin would spew  
To see Williston's rule win repute.

The case never ceases to outrage at least some students and thus leads to a very fruitful discussion of the pitfalls of oral agreements. In addition, it shows that a formal approach to contracts law is still with us.

Karl Llewellyn is another key figure in the first-year contracts narrative. Students should understand that Article 2 of the Uniform Commercial Code deviates from the common law in ways that are best understood in terms of Karl Llewellyn's more general goal of making commercial law more responsive to the actual practices of the people engaged in commercial transactions.<sup>115</sup>

There once was a man named Llewellyn  
Commercial contracts' Megellyn  
All stand in awe  
Of his modernized lawe . . .  
Hey! He modernized contracts, not spellyn!

This Limerick is intended to solidify the character of Llewellyn in the students' consciousness and to help them overcome the feeling that his thought must be as impenetrable as is the correct spelling of his name (to people not of Scottish extraction).

In *Market Street Associates Ltd. Partnership v. Frey*,<sup>116</sup> Judge Posner labored to explain how one could understand the need for the contracts doctrine of "good faith" without resort to moral principles.<sup>117</sup> Judge Posner attempts to understand the doctrine of

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<sup>115</sup> See Allen R. Kamp, *Uptown Act: A History of the Uniform Commercial Code, 1940-49*, 51 SMU L. REV. 275, 282 (1988) (describing Llewellyn's primary aim as "enforcing trade norms in commercial law).

<sup>116</sup> 941 F.2d 588 (7th Cir. 1991).

<sup>117</sup> See *id.* at 595 (noting that "despite its moralistic overtones," the concept of good faith does not inject moral principles into contract law but merely helps to minimize the costs of performance). Todd D. Rakoff provides a thorough and thoughtful discussion of the case in *Good Faith in Contract Performance: Market Street Associates Ltd. Partnership v. Frey*, 120 HARV. L. REV. 1187 (2007).

good faith as a mechanism for preventing post-contractual opportunistic behavior that could increase transactions costs.<sup>118</sup>

“Don’t get moralistic with me,”  
Said Judge Posner to trustee, GE.  
“Though when I hear ‘good faith,’  
I reach for my [Ring]wraith,<sup>119</sup>  
Opportunists ain’t my cup o’ tea.”

This Limerick, is intended to lend a sort of poetic grandeur to Judge Posner’s campaign against the conflation of moral and legal norms.

In addition to introducing first-year students to different judicial philosophies, the case method does provide opportunities to introduce students to the challenges of statutory construction and to acquaint them the complex relationship between the courts and legislatures. Giving effect to the will of the legislature can be a challenge, as illustrated in the classic lost-volume case, *Neri v. Retail Marine Corp.*<sup>120</sup> The Court of Appeals’ ruling seems to accord with the legislative intent of UCC § 2-708(2), which was supposed to be designed to permit the recovery of lost profits.<sup>121</sup> In order to give effect to that intent, the court had to ignore the last phrase of the provision: “due credit for payments or proceeds of resale.”<sup>122</sup> *Neri* illustrates the dilemma courts may face when confronted with statutory language clearly at odds with the drafters’ stated intent.<sup>123</sup> While it may seem bold – or even

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<sup>118</sup> See 941 F.2d at 595 (“The office of the doctrine of good faith is to forbid the kinds of opportunistic behavior that a mutually dependent, cooperative relationship might enable in the absence of rule.”).

<sup>119</sup> When I show this Limerick to my students on a PowerPoint slide, it is accompanied by a richly detailed artist’s rendering of a Ringwraith from Tolkien’s *Lord of the Rings*. The image never fails to produce an appreciative gasp from the class nerds. Because I can rely on the image when I show the Limerick in class, in that context “Ring” is omitted from the rendition of the poem, which makes the line work better metrically.

<sup>120</sup> 285 N.E.2d 311 (NY 1972).

<sup>121</sup> JAMES J. WHITE & ROBERT S. SUMMER, UNIFORM COMMERCIAL CODE §8-9, n.2 (6<sup>th</sup> ed. 2010) (citing Official Comment 2 to the UCC, which indicated the drafters’ intent to “permit the recovery of lost profits” in a lost-volume case).

<sup>122</sup> *Neri*, 285 N.E. at 313-315.

<sup>123</sup> See Shanker, *The Case for a Literal Reading of UCC § 2-708(2)* 24 CASE W. L. REV. 697, 697-98 (1973) (contending that a literal reading of UCC § 2-708(2) would deny recovery for lost-volume).

illegitimate for a court to ignore statutory language, most courts have followed *Neri* and judicially “fixed” what appears to be a clear drafting error.<sup>124</sup>

In *Neri*, New York’s highest court  
 Offered lost volume sellers a port.  
 They’d still be at sea  
 If New York’s UCC  
 Weren’t lopped off a half-sentence short.

The Limerick invites discussions of both statutory interpretation and institutional competence. Students often arrive at law school with the notion that legislatures and not judges should make law – a rather peculiar prejudice that three years of studying judge-made common law often does little to cure. After the students consider the *Neri* opinion, it is useful to ask students how likely they think a state legislature would be to “fix” the working of a section of the UCC so as to more accurately reflect the drafters’ meaning. That discussion can then lead into a more general conversation about the processes that lead to law-making and law reform.

### C. Limericks as Jurisprudential Critique

Legal Limericks are a serious business but not a solemn one. Limericks can pack a punch and raise serious challenges to legal reasoning. One of the purposes of the case method is to encourage students to develop their skills at questioning judicial opinions or distinguishing opinions that do not serve their clients’ purposes. Limericks can provide a reminder and an example of some of the techniques for doing so.

Limericks allow instructors to adopt a strong critical voice that they need not commit to as their own. So, for example, in *Izadi v. Machado (Gus) Ford, Inc.*,<sup>125</sup> plaintiff attempted to get \$3000 in credit on a vehicle, which the court assumed to be worth significantly less than \$3000 based on an allegedly misleading advertisement.<sup>126</sup> The case turned on whether the advertisement

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<sup>124</sup> See e.g., *Famous Knitwear v. Drug Fair, Inc.*, 493 F.2d 251, 254 (4<sup>th</sup> Cir. 1974) (following *Neri*’s interpretation of UCC § 2-708(2)); *National Controls, Inc. v. Commodore Bus. Machines, Inc.*, 163 Cal.App.3d 688, 697-98 (Cal. App. 1<sup>st</sup> Dist. 1985) (noting that courts have uniformly followed *Neri*’s interpretation of UCC § 2-708(2)).

<sup>125</sup> 550 So.2d 1135 (Fla. 3d DCA 1989).

<sup>126</sup> *Id.* at 1138 & n.2.

was specific enough to constitute an offer directed at Izadi.<sup>127</sup> The court, displeased at the misleading nature of the advertisement, found various justifications for holding that an offer had been alleged.<sup>128</sup> Arguably, Izadi was not misled, he was merely opportunistic:

Want to make a used-car dealer weep?  
 Try to trade in your rusting junk-heap.  
 Then pretend that you're mad  
 On account of his ad,  
 And seek justice not blind but asleep.

Similarly, the resort to estoppel in *Katz v. Danny Dare, Inc.*<sup>129</sup> is open to criticism. In that case, an employer named Shopmaker offered his 67-year-old brother-in-law, Katz, a pension in order to lure him into retirement.<sup>130</sup> However, shortly after the retirement, Katz returned to work part-time for another company and for Danny Dare. Shopmaker then first cut Katz's pension payments in half and then cut them off completely on the ground that Katz was employed elsewhere.<sup>131</sup> Overturning the trial court's finding that Katz had done nothing in reliance on Shopmaker's promise to pay him a pension, since Katz was an at-will employee and could have been fired without a pension, the court found that Katz was entitled to the full payment based on promissory estoppel.<sup>132</sup>

Shopmaker could have fired Katz.  
 Instead, they held family chats.  
 Now a pension is due,  
 Though Katz' work days aren't through.  
 Estoppel here seems a bit bats.

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<sup>127</sup> *Id.* at 1138-39.

<sup>128</sup> *See id.* at 1139 (reinstating plaintiff's breach of contract claim based on the court's characterization of the offer as a "bait and switch"); *id.* at 1140-41 (reinstating plaintiff's statutory claims for violations of Florida's Deceptive and Unfair Trade Practices Act).

<sup>129</sup> 610 S.W.2d 121 (Mo. Ct. App.1980).

<sup>130</sup> *Id.* at 123. Katz also had some physical and mental impairments because he was struck in the head while trying to impede a robbery at Danny Dare. *Id.* at 122.

<sup>131</sup> *Id.*

<sup>132</sup> *Id.* at 124-26.

The case and the Limerick provide an opportunity to discuss litigation strategies. It seems clear that Danny Dare breached a promise to Katz. Why was that promise not treated as a contractual obligation? Why did the court focus on promissory estoppel, which seemed a stretch in this case?

In *Fitzpatrick v. Michael*,<sup>133</sup> the court found itself unable to provide a remedy for plaintiff, Marie Fitzpatrick, who had taken care of an elderly man at a very low wage in return for a promise that she would inherit his property upon his demise. Although the court first announced that “[t]here can be no possible doubt that upon these facts the plaintiff should be entitled to some relief against the defendant,”<sup>134</sup> it was unwilling to compel the defendant “to accept the personal services of an employee against his wish and his will.”<sup>135</sup> This Limerick imagines a judge less bound by convention:

I now pronounce you and Marie  
 To be bound by this solemn decree:  
 She will be your nurse,  
 ‘Til you leave in a hearse;  
 You owe that to your promisee.

I suggest to my students that if the judge explained to Mr. Michael that Ms. Fitzpatrick would live in his house, cook for him, care for him and nurse him in illness *until the day he died*, Mr. Michael would likely negotiate a settlement that would benefit both parties and not leave Ms. Fitzpatrick uncompensated for her labor.

This prediction is then undercut by the next case we discuss, *Brackenbury v. Hodgkin*,<sup>136</sup> in which Mr. and Mrs. Brackenbury sought the specific performance of a promise from Mrs. Brackenbury’s mother, Sarah Hodgkin that, if they would care for her, she would let them live in her house and take possession of it after her death.<sup>137</sup> The court granted the relief sought, essentially ordering Mrs. Hodgkin to continue to live with her daughter and son-in-law.<sup>138</sup> One might expect that some sort of settlement would result, especially since Mrs. Hodgkin’s son Walter was a co-

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<sup>133</sup> 9 A.2d 639 (Md. 1939).

<sup>134</sup> *Id.* at 641.

<sup>135</sup> *Id.* at 643.

<sup>136</sup> 102 A. 106 (Me. 1917).

<sup>137</sup> *Id.* at 107.

<sup>138</sup> *Id.* at 108.



defendant in the case, as she had sought to transfer title of her home to him.<sup>139</sup> The transfer could now proceed with appropriate compensation being paid. As even Mrs. Hodgkin's great grandson described her as "irascible," one would expect that the Brackenbury family would be eager to accept payment and leave.<sup>140</sup> But Mr. and Mrs. Brackenbury and Mrs. Hodgkin decided to tough it out. According to one of Mrs. Hodgkin's sons, at meal times, food was not passed to Mrs. Hodgkin but thrown, and she was forced to eat with an old iron fork with two tines broken off,<sup>141</sup> a fact that inspired the following Limerick:

I'd sooner kiss a chimera  
 Than put up with my in-law, Old Sarah,  
 Now whenever she dines,  
 Her fork has but two tines,  
 And her home ain't no French Riviera.

One last example: in *Nanakuli Paving & Rock Co. v. Shell Oil Co.*,<sup>142</sup> the Ninth Circuit used trade usage and course of performance evidence to override the express terms of an asphalt provision agreement, stating that Nanakuli would pay Shell's posted price on the date of delivery.<sup>143</sup> The court manufactured a new standard in justifying its practice, stating that such evidence could be used to "cut down" but not to contradict an express price term.<sup>144</sup> It provided, as an example of an interpretation that would contradict the express price term, one in which Nanakuli's price rather than Shell's would govern.<sup>145</sup>

Was the Ninth Circuit snorting patchouli  
 Letting parol in to help Nanakuli?  
 Shell Oil was brought low

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<sup>139</sup> *Id.* at 107.

<sup>140</sup> *See* MACAULEY, et al. at 284 (citing Douglas I. Hodgkin).

<sup>141</sup> *Id.* (citing Mrs. Brackenbury's younger brother). The casebook recounts other litigation involving the family. Not surprisingly, Mrs. Hodgkin's will was contested. *Id.*

<sup>142</sup> 664 F.2d 772 (9th Cir. 1981).

<sup>143</sup> *Id.* at 780-806.

<sup>144</sup> *Id.* at 805.

<sup>145</sup> *Id.*

As if by a blow  
From the club of a trade-use Gillooly.<sup>146</sup>

The opinion certainly provides ample justification for the court's decision to protect the price Nankuli paid for asphalt. However, it also provides an opportunity for a drafting exercise. One can first ask the students to try to redraft the price term of the agreement between Shell and Nanakuli so as to make clear that there would be no price protection. There can follow a discussion of why the parties might not have made their intentions with respect to price protection clearer in the original version.

## CONCLUSION

Even Langdell's critics have acknowledged that the case method has its advantages. One such advantage is the method's flexibility. The case method can be supplemented with lectures and problems or with technological aids that promote more active, in-class engagement with case law. Legal Limericks are a handy tool that a contracts professor can have in her bag as a means of enhancing the case-law approach to legal education. Langdell's nineteenth-century methodology can be made more relevant to twenty-first century legal training through this humble eighteenth-century poetic form.

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<sup>146</sup> Jeff Gillooly pleaded guilty to having taken a club to the knee of figure skater Nancy Kerrigan at the 1994 U.S. Olympic Trials. A PowerPoint slide showing Nancy Kerrigan forcing a smile while seated next to Tonya Harding is usually enough to jog students' memories.

## Appendix

### Langdellian Limericks

### The Complete Collection

#### Part I: Formation

***Hurley v. Eddingfield***

Though his patient's pallor was green  
The doctor would not intervene.  
This no-house-calls sort  
Was indulged by the court,  
Which considered his conduct obscene.

***Ray v. William G. Eurice & Bros., Inc.***

Ray's specs were enough to confound  
These "hatchet and saw" men, whose ground  
For breaching the pact  
Was mistake of fact,  
But they signed it, and so they are bound.

***Park 100 Investors v. Kartes***

The Karteses signed the "lease papers,"  
A guaranty hidden in vapors.  
The court found this coarse  
And would not enforce  
A contract procured through such capers.

***Lefkowitz v. Great Minn. Surplus Store***

Mo Lefkowitz made his career  
Finding ads explicit and clear.  
He's the first to the store;  
Now he's got furs galore,  
And the price that he pays isn't dear.

***Izadi v. Machado (Gus) Ford, Inc.***

Want to make a used-car dealer weep?  
Try to trade in your rusting junk-heap,  
Then pretend that you're mad

On account of his ad  
And seek justice not blind but asleep.

***Leonard v. Pepsico***

Intent to be bound was a barrier  
To Leonard's acquiring a Harrier.  
Now he only drinks Coke,  
And he gets every joke  
But I would not say he's much merrier.

***Doe v. One America Productions***

Some guys who got drunk during "Borat"  
Signed releases with terms they're now sore at.  
Though they waived every right,  
They sued claiming false light,  
Giving students a claim they can roar at.

***Normile v. Miller***

As if sensing what lay ahead,  
The counterofferor said  
"You snooze you lose."  
That's enough to excuse  
Her for selling to Segal instead.

***Fischer v. Union Trust***

Consideration provision is tough:  
One dollar isn't enough.  
Has this court grown weary  
Of peppercorn theory  
Or is the transaction a bluff

***Hamer v. Sidway***

Did dissolute William fulfill  
A promise to rich Uncle Will?  
Yes, forbearance from vice,  
Said the court, will suffice  
As performance, and so it is still.

**Intro to the UCC**

There once was a man named Llewellyn,  
Commercial contracts' Meggellyn.  
All stand in awe  
Of his modernized lawe.  
Hey! He modernized contracts, not spellyn!

**Battle of the Forms Limerick**

To rhyme on the battle of forms  
Would intrude upon poetic norms.  
2-207 in verse  
Might even be worse  
Than an ode to the new tax reforms.

***Hill v. Gateway***

Could a problem with contract formation  
Save the Hills from forced arbitration?  
No, the court will compel,  
And consign you to Dell.  
It ain't court, but it sure beats damnation.

***Klocek v. Gateway***

UCC Section 2-207  
Provided the unlikely leaven.  
Ralph Nader is smiling  
And consumers are filing  
In Kansas, the new plaintiff's' heaven.

***Colonial Dodge v. Miller***

Before you purchase a good,  
It's best to look under the hood.  
The good here is a dodge,  
The case, a hodgepodge,  
And the law not well understood.

## Part II: Promissory Estoppel and Charitable Subscriptions

### *Kirksey v. Kirksey*

From a house to a hut to the street  
 Was the course of Ms. Kirksey's retreat  
 She could not recover  
 From her in-law (her lover?)  
 Who'd nakedly promised a suite.

### *Greiner v. Greiner*

At wheat-sowing time, in a bank,  
 Maggie promised some acreage to Frank.  
 "He did nothing for me!"  
 Averred Maggie, with glee.  
 For his land Frank has Corbin to thank.

### *Rickets v. Scothorn*

This was the start of estoppel:  
 Said Grandpa to Katie, "Poppop'll  
 Set you up nice."  
 She took his advice,  
 And left her old job in the shop-pel.

### *Hoffman v. Red Owl Stores*

Hoffman moved from Wautoma to Chilton  
 And his finances were slowly wiltin'.  
 Because legal science  
 Protects sound reliance,  
 He recovered from Red Owl's jiltin'.  
*or*  
 He's more popular than Paris Hilton

### *Katz v. Danny Dare*

Shopmaker could have fired Katz,  
 But instead they had family chats.  
 Now a pension is due,  
 Though Katz' work days aren't through.  
 Estoppel here seems a bit bats.

### *James Baird Co. v. Gimbel Bros.*

When they offered a bid to James Baird,  
 Gimbel Brothers egregiously erred.  
 They were in deep shinoleum  
 For not laying linoleum,  
 But Judge Hand, their bottoms he spared.

### *Drennan v. Star Paving*

After reading the views of Judge Hand,  
 Star Paving could not understand  
 What the fuss was about.  
 Bidders used to bail out;  
 Now all bow to estoppel's command.

### *Allegheny College*

Although her estate was inheritable,  
 Ms. Johnston chose to be charitable.  
 A bargain was struck,  
 Her heir's out of luck:  
 To the College Cardozo was fairitable.

### *King v. Boston University*

Coretta Scott King's defiance  
 Could not overcome legal science.  
 The gift is a fact  
 Because it was backed  
 By consideration (or reliance).

### Part III: Restitution and Moral Consideration

#### *Credit Bureau Enterprises, Inc. v. Pelo*

Does the doctrine of restitution  
Provide for a fair resolution?  
It keeps doctors secure  
Though consent is obscure  
And thus may prevent self-execution.

#### *Oliver v. Campbell*

Campbell wasn't unjustly enriched  
By the lawyer whose contract he'd ditched.  
Counsel could have earned more  
If he'd been fired before  
Or claimed Campbell's wife was bewitched.

#### *Mills v. Wyman*

Seth Wyman's interior forum  
Is not the law's *sanctum sanctorum*  
With this none would quarrel:  
Seth's conduct's immoral.  
Still, he breaches not law but decorum.

#### *Webb v. McGowin*

After giving the pine block a toss,  
Webb spotted McGowin, his boss.  
Preventing the harm  
Cost a leg and an arm  
The estate must extinguish Webb's loss.

## Part IV: Statute of Frauds and Parol Evidence

### *Thompson v. Libby*

A plan to buy logs fit for yule  
Met up with the “four-corners” rule;  
The parties, they feuded  
But the court, it excluded  
Parol. How Grinchy! How cruel!

### *Sherrodd v. Morrison-Knudsen*

Behold, parol’s bitter fruit:  
Sherrodd’s claim was deemed moot.  
If he only knew,  
The great Corbin would spew  
To see Williston’s rule win repute.

### *Winternitz v. Summit Hills*

Hard cases result in bad laws.  
But there’s a solution because  
The court can resort  
To a sort of a tort  
To remedy equity’s flaws.

### *Alaska Democrats v. Rice*

This just in from our anchor, Ted Koppel:  
The Statute of Frauds just may topple.  
Politicians are snarky,  
And yet their malarchy  
Is binding if backed by estoppel.

### *Buffaloe v. Hart*

Acceptance of “goods” was the start  
Of Buffaloe’s barn deal with Hart.  
A torn check was the end,  
Evincing a trend  
To bind through Llewellyn’s black art.

### *Brookside Farms v. Mama Rizzo’s, Inc.*

Addressing the judge as “Coxcomb-a,”  
Mama Rizzo flew back to Roma.  
In rejecting her Answer,  
This judge has cured cancer,  
The dread basil sale carcinoma.

### *Fitzpatrick v. Michael*

I now pronounce you and Marie  
To be bound by this solemn decree:  
She **will** be your nurse,  
‘Til you leave in a hearse;  
You owe that to your promisee.

### *Brackenbury v. Hodgkin*

I’d sooner kiss a chimera  
Than put up with my in-law, Old Sarah,  
Now whenever she dines,  
Her fork has but two tines,  
And her home ain’t no French Riviera.

## Part V: Incomplete Contracts and Interpretation

### *Raffles v. Wichelhaus*

In Peerless, a contract for cotton  
Was found by the court to be rotten.  
To Liverpool sailed  
Two ships that so hailed  
No *consensus ad idem* was gotten.

### *Dunnebacke v. Pittman*

Mrs. Gilligan was not in thrall;  
No agreement could she recall.  
Pittman may lose his biz,  
But something there is  
That doesn't love a wall.

### *Frigaliment v. B.N.S.*

Of Judge Friendly's great chicken coup,  
Shakespeare's witches could make much ado  
With Defendants they'd howl,  
"Foul is fair, fair is fowl"  
That is, *chickens* fit only for stew.

### *Nanakuli Paving v. Shell Oil*

Was the Ninth Circuit snorting patchouli  
Letting parol in to help Nanakuli?  
Shell Oil was brought low  
As if by a blow  
From the bat of a trade-use Gillooly.

### *Wood v. Lucy, Lady Duff-Gordon*

The Titanic's wreck, that was rough,  
But nothing could sink Lady Duff!  
Lucy's couture  
Is now de rigueur;  
But Wood gets to market her stuff.

### *Clark v. West*

Was Clark due six dollars a page  
For his work as a bibulous sage?  
Yes, be West's own volition  
It waived the condition  
Of temperance for the man it engaged.



## Part VI: Excuse

### *Balfour v. Balfour*

Balfour gave in to his *id*,  
 And stopped paying his wife thirty quid.  
 His word has no force,  
 For, before their divorce,  
 The pair did not *think* that it did.

### *Marvin v. Marvin*

The Marvin court's ruling's propitious  
 For relationships non-meretricious.  
 Michelle can recover  
 From Lee, her ex-lover,  
 If his promises weren't capricious.  
*or*  
 Michelle and Lee lived in sin,  
 A fact once viewed with chagrin.  
 Now she can recover  
 From her ex-lover  
 If he promised to keep her in gin.

### *Borelli v. Brusseau (Majority)*

Is only the one in the blouse  
 Expected to care for her spouse?  
 No, the same law applies  
 To the gals and the guys  
 Who must care for their partners in-house.

### *(Dissent)*

Is only the one in the blouse  
 Expected to care for her spouse?  
 Love, Honor, Cherish  
 And clean bed-pans – that's marriage!  
 A housewife's still wed to a house.

### *Carroll v. Beardon*

In Montana arose a dispute  
 O'er a house of doubtful repute.  
 The seller madame,

Not in on the scam  
 May partake of her share of the loot.

### *In re Baby M*

"Illegal, criminal and void!"  
 Cried the court, more than slightly annoyed.  
 "Let's put a lid  
 On this sale of a kid."  
 But who'll pay for her sessions with Freud?

### *Totten v. United States*

The President gamely employed  
 But then stiffed an agent named Lloyd.  
 Abe knew Lee's plan  
 Because of this man,  
 But the court found his legal claims void.

### *Sherwood v. Walker*

Because of a mutual mistake,  
 Poor Rose was thought of as steak.  
 But the court did discover  
 Her essence was "lover"  
 So Sherwood made do with milk shake.

### *Lewanee County v. Messerly*

The waste leaked in torrents, not trickles.  
 Now the property ain't worth two nickels.  
 When "as is" you take,  
 You eat your mistake,  
 So *bon appetite*, Mr. Pickles.

### *Market Street Associates v. Frey*

"Don't get moralistic with me,"  
 Said Judge Posner to trustee, GE.  
 "Though when I hear 'good faith,'  
 I reach for my wraith.  
 Opportunists ain't my cup o' tea."

***Locke v. Warner Brothers***

There once was an actress named Locke  
 Whose Ratboy was thought to be schlock.  
 Old Clint and Warner  
 Thought they could scorn her  
 But bad faith they neglected to grok.

***Donahue v. FedEx***

Plaintiff, an employee at will,  
 Thought his boss had a hand in the till.  
 FedEx is correct;  
 “Bad faith” won’t protect  
 Those whose policy contentions are nil.

***Syester v. Banta***

In the shallow end of the gene pool:  
 Met a widow and a young dancing fool  
 Who had to teach her for squat  
 How to waltz and foxtrot  
 Because misleading widows is cruel.

***Selmer v. Blakeslee-Midwest***

In *Selmer v. Blakeslee-Midwest*,  
 Judge Posner creates a new test.  
 Mere business stress  
 Does not make duress.  
 Thus breaching parties are blessed.

***Williams v. Walker-Thomas Furniture***

When he learned of Ms. Williams’ plight,  
 “Unconscionable!” said Skelly-Wright  
 If you sell door-to-door  
 The court may abhor  
 You and void all your contracts in spite.

***Burch v. Second Judicial District***

If you don’t think to file for mandamus,  
 Your client may shout, “Ignoramus!”  
 Now after appeal,  
 The Burches can squeal  
 “We may not be rich but we’re famous!”

***Taylor v. Caldwell***

Taylor rented a hall like the Met’s  
 For the purpose of concerts and fetes  
 When fire the hall downed  
 The court kindly found  
 A way to excuse Caldwell’s debts.

***Krell v. Henry***

Was Henry’s whole purpose frustrated  
 When the King’s burst appendix dictated  
 The crown must delay  
 Its Coronation Day?  
 Yes! So contracts doctrine’s updated.

***Transatlantic Financing v.  
United States***

His passage through Suez foreclosed,  
 Plaintiff sailed ‘round the horn and supposed  
 He’d find some utility  
 In impracticability  
 But Skelly Wright found he gets hosed.

## Part VII: Remedies

### *Parker v. 20<sup>th</sup> Century Fox*

The studio's conduct was terrible  
 And the actress's damage repairable  
 Only with a lead part  
 In a great work of art:  
 A film that is at least comparable.

### *Neri v. Retail Marine Corp.*

In Neri, New York's highest court  
 Offered lost volume sellers a port.  
 They'd still be at sea  
 If New York's UCC  
 Weren't lopped off a half-sentence short.

### *Hadley v. Baxendale*

Foresee that things can end badly.  
 And keep that in mind, or else sadly,  
 A life of regret  
 Is all you will get  
 If your harm's consequential – poor Hadley!

### *Evergreen Amusement Corp. v. Milstead*

If drive-ins were all ever green,  
 Lost profits would be routine,  
 Though the business be new,  
 And the picture askew,  
 Showing Michael Moore naked on screen.

### *Peevyhouse v. Garland Coal*

Before you let Garland Coal  
 Turn your backyard into a hole,  
 Make sure that your land  
 Is worth 25 grand  
 Or your state Supreme Court has a soul!

### *Jacob & Youngs v. Kent*

Kent called for beheading or stripes  
 When his builder eschewed Reading pipes.  
 There was no harm financial;  
 The court found substantial  
 Performance, ignoring Kent's gripes.

### *Sullivan v. O'Connor*

Assessing a botched operation  
 Requires tort-like harm calculation.  
 Suffering and pain  
 Invade *contracts* domain  
 Both as reliance and expectation.

