

QUESTIONS, ANSWERS, AND LAW SCHOOL TEACHING

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Walk into a typical law school classroom and you are likely to see a professor at the front of the room talking (perhaps with a visual aid on the chalkboard, overhead projector or computer slide show). Stick around for a few moments, and the professor is likely to ask a question, either directed to a single student in the class or flung to the air for a willing student to raise their hand and grasp. This is the so-called Socratic method in law schools today and questions are the key to its practice. Along with pure lecture, the overwhelming majority of law school classes are taught by a dialogue method.²

Sometimes, of course, this teaching method is really simply lecture. Questions are used merely as punctuation marks, occasional breaks from the action to keep the students alert or to check their understanding. Lecture may be precisely the teaching method called for: when providing an overview of a subject or explaining an overall theory or method, for example, lecture is one of the most efficient methods of conveying information available. Students will leave the classroom with pages of notes and the warm glow of having learned much. When you need to cover some doctrinal ground and you don't expect your students to achieve much more than familiarity with that territory, use lecture.

Lecture has significant drawbacks as a teaching method, however. It is often a relatively passive experience for the students, resulting in superficial, rote learning. It does little to develop critical analytical skills, nor is it particularly effective in helping students explore their attitudes and perspectives on an issue. Some rare few have lecture skills so finely honed that they can reach these learning goals in the classroom. The rest of us look to those teaching techniques better designed for active, critical and reflective learning. One of those techniques is dialogue or discussion -- asking and answering questions.

Most attorneys are comfortable using questions as a teaching method both because this is the way they were taught law and because questioning is a skill attorneys use on a regular basis. So, for example, law-trained teachers know the importance of using open-ended rather than closed-ended questions to elicit much more thinking and information. Thus, a law professor is far less likely to engage in a cross-examination of students ("Is the rule X? Must you plead Y? Would you argue Z?") than they are to ask the student to generate the response ("What is the rule? How would you plead / argue?")

Even having these basic questioning skills under our belts, however, teaching by questioning in law can have mixed results. At its best, it can create active, engaged, exciting learning of both analytical skill and course substance. At its worst it creates resentment, fear, confusion and numbed passivity. To achieve the best side of questions requires only some thoughtful planning.

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² Steven I. Friedland, How We Teach: A Survey Of Teaching Techniques In American Law Schools, 20 SEATTLE U. L. REV. 1 (1996).

We must know why we are asking a question in order to assess what kinds of questions will best achieve our goals. This essay reviews some ideas on why to use questions, types of questions to develop, whom to ask, and how to get answers.

WHY TO USE QUESTIONS

In any teaching task, whether preparing a syllabus, outlining a lecture, or devising questions for classroom discussion or testing, one must begin with the learning objectives for the task. What is it you want the students to know, think, do or feel? Bloom's Taxonomy of Educational Objectives³ is a time-tested tool for clarifying educational goals. The following summary of the Cognitive Domain taxonomy may be helpful in identifying the specific objective of questions you might ask.⁴

Knowledge

Sometimes we ask questions simply to test or discipline students to develop knowledge of terminology, specific facts, elements and doctrines. Our questions demand only that students remember previously learned information. In law school, we generally expect that students will come to class with the basic knowledge in hand, based on their class preparation. Thus, we ask students for simple rote recitation as a method of assessing and encouraging preparation for class. Questions that ask about knowledge might begin with verbs such as "define, describe, list"

For example

"Mr. Jones, what are the facts in this case?" (Asked about a case in which facts are relatively straightforward)

"How did the trial court rule?"

"What are the elements of X?"

These types of questions should be sparingly used, as they tend to waste time for those students who are prepared and the shaming of those who are not prepared often creates a negative climate for learning for all students. Rather, faculty can facilitate student preparation for class by providing them with clear instructions on what and how they are to prepare for class along with clear notice that you expect all students will have achieved this minimal level of preparation before each class.

³ B.S. BLOOM, ET. AL, ED., TAXONOMY OF EDUCATIONAL OBJECTIVES: THE CLASSIFICATION OF EDUCATIONAL GOALS (1956).

⁴ The summary is provided by Professor Gunter Krumme, University of Washington, Seattle, at <http://faculty.washington.edu/gkrumme/guides/bloom.html> (with permission)(last visited June 8, 2001).

Comprehension:

Questions can be used to develop and assess student the student's understanding of basic legal materials as well as to develop student skill in close, analytic reading and clear communication of understanding. Questions asking for comprehension might ask students to classify, give examples, paraphrase or summarize a legal doctrine, case or statute.

For example, where facts in a case are complex, asking for summary of the facts can reinforce the importance of active, close reading of materials. In reading statutes and rules, students often neglect conditional statements at the beginning of the section, or do not note whether terms are conjunctive or disjunctive. Questions can be used to reinforce the importance of attention to these areas of reading. Thus, one might ask:

"Do you need both A and B in order to establish X?" or

"Is this a subjective or objective test?" (Where one can find the answer by reference to particular parts of a section or the commentary accompanying a rule or code).

One again, the more students are encouraged to active, close reading in their class preparation by providing these questions in study guides before class, the better class time can be used for other, higher-level skills.

Sometimes, we ask for recitation of facts, rules, or holdings in order to provide opportunities for students to practice the skill of concise and clear translation of legal complexity. Thus, for example, in a first year class, one of my standard questions for students in case study is "Who is suing whom?" Students learn quickly that this question is to be answered not by "Mr. Pepper is suing ABC Corporation" or "Plaintiff is suing defendant" but by "An employee who was injured while driving between jobs sites is suing his employer" or any other appropriate translation of the facts into relevant legal categories. Other questions might teach students to deduce the general rules of law from cases, to parse the elements of a rule or statute, to identify basic argumentation techniques of analogy, categorization, purposive interpretation, etc. Much of the first year of law school is spent at this level and questions often reflect these goals. The set of standard case briefing questions used in many first-year classes are well suited to many of these skills:

Here is one version of the stock set of first-year case briefing questions:

The Case Briefing Drill

"Who is suing whom for what on what basis?"

"What was the decision of the court below?"

"Articulate the primary issue in this case."

"What did the appellant argue? ... the appellee?"

"What rule did the court apply?"

"What was the court's holding?"

"Upon what source of authority did the court rely?"

Application and Analysis

Bloom's taxonomy lists these two levels as separate objectives. In law school, we tend to aim at both objectives simultaneously so often, that I have grouped these two objectives together. Application is the use of previously learned information in new and concrete situations to solve problems that have single or best answers. Analysis is the breaking down of informational materials into their component parts, examining (and trying to understand the organizational structure of) such information to develop divergent conclusions by identifying motives or causes, making inferences, and/or finding evidence to support generalizations. The questions that best develop the skills of analysis and application of knowledge are divergent questions.

The questions described for knowledge and comprehension, goals have a fairly narrow range of answers (convergent questions) and students can be right or wrong. However, faculty must also ask divergent questions as well-- questions for which there are endless variants of more- or-less correct responses. Divergent questions are critical in the law school curriculum. These questions can be used to help students discover ideas, use critical thinking, and understand different perspectives.

Students are not exposed to divergent thinking in most undergraduate programs nearly so much as they are convergent thinking. Students have a wide range of tolerance for ambiguity and their plea of "But what is the answer?" is a plea for a return to convergent thinking. If students are constantly trying to provide the "correct" answer, they will not be developing analytical skills. Consider the analytical jousting questions used by faculty to help students test a theory, explore implications, or support or extend an interpretation. The teacher asks a question "Was that fact critical to the outcome?" The student answers. The teacher challenges the student's answers with questions based on alternative interpretations. The student, believing this is an indication that the answer is wrong then changes their answer. The faculty member then shifts gears and comes back with another question. And so it goes. For many students, questions of this type bewilder rather than challenge if the students do not understand the purpose of the exercise.

Describing the purpose of your questions can smooth the way to more student engagement. In the first year, students should be oriented early to the process of divergent thinking. They should be encouraged to work toward clear predictable rules, but they should equally understand that much of the law is open-textured and subject to interpretation. Of course, they will still ask for "The Answer" from time to time but less often with the desperate tones otherwise heard.

Particularly if you have asked a series of convergent questions to test student's knowledge and preparation and are then moving to divergent questions to deepen their understanding of key concepts, flag the transition for the students. A prefatory remark such as "Good, now let's test out that interpretation some" can provide the "en garde" that allows students to enter more fully into the intellectual exercise.

There are several variations on these divergent questions you can craft. Unlike questions

requiring recitation, which often require little more than a stock set of "what is...?" directives, divergent questions require more careful planning. There is no class that goes so badly as the class in which an off-the-cuff hypothetical turns into a confused and wide-ranging volley of position, with no clear structure or purpose.

Before class, choose those portions of the materials you will explore through divergent questions. Often the authors of your textbook have provided a launching pad for these questions and you may want to be guided by their notes. Generally, you can ask only a limited number of these questions in a class, so you must select carefully. By planning key questions, you provide structure and direction to the lesson. Spontaneous questions that emerge are fine, but the overall direction of the discussion should be largely planned.

One set of questions asks students to focus on single aspect of a case or statute and discuss their interpretations. Some of these lead off questions might be:

"Why did the court decide this way?"

"How do you reconcile this case with a prior case?"

"What essential policies are at tension here?"

"What is the impact of this doctrine on behavior, decision-makers, or other doctrines of law?"

Discussion of these questions requires a set of planned follow up questions:

"Why do you think that?"

"What support do you have for that argument?"

"What other arguments or reasoning can you add?"

"What would be the strongest argument on the other side?"

Often these questions can be framed first as a yes or no question, to be followed by support for the position taken. For example, "Did this decision overrule the prior case?" might be a better question than the more open-ended "How did this decision affect prior law?" The advantage of this formulation is the organization and focus it provides for class discussions.

Another important question tool is the hypothetical. Hypotheticals are one of the best tools for students to work achieve mastery of legal doctrine, but they must be carefully crafted. Make sure that your problem or hypothetical is focused at the optimal level for learning. Do you want your hypothetical to help students understand a doctrine, integrate two concepts, discover ambiguities, consider exceptions or extend applications to new factual contexts? Craft your hypotheticals and questions to build knowledge and skill incrementally. Ordinarily, you should not rely on the problems to convey content. The students should already have a firm foundation in the basics of the doctrine before they begin working through application problems.

Hypotheticals can be created based on the case itself: "Would this case have been decided the same if we changed X fact?" Alternately, one can create entirely new sets of facts. Again, the text itself may provide problems or additional cases in the notes, which can be used for analysis and argumentation. Other sources for easy problem drafting include: other textbooks, student

study guides or illustrations in restatements. The latter source is especially useful as these illustrations focus on one discrete element of the doctrine, often with graduated layers of complexity.

Simplified versions of current cases from the jurisdiction are another excellent source for hypotheticals. Problems drawn from these sources have the additional advantage of reinforcing the currency of the issues and filling out the student's substantive knowledge of local law. The more complex the facts you provide, the richer the analysis demanded of the students.

Finally, to the extent you can build problems or hypotheticals on news stories or even movie scenes, you will be able to gain student interest and engagement more easily if questions reflect their backgrounds and experiences. For better analysis, provide the facts of the discussion problem or hypothetical well before class so that students need not spend class time on (getting the story.)

These types of questions are also the most typical form of law school exam. If your final exam will be testing the ability of students to apply doctrine, it seems only fair that you give the students opportunities for practice!

Synthesis and Evaluation

Bloom's highest levels of educational objectives are those of synthesis and evaluation. Synthesis is the process of creatively or divergently applying prior knowledge and skills to produce a new or original whole, while evaluation asks students to judge the value of material based on personal values/opinions, resulting in an end product, with a given purpose, without real right or wrong answers.

To develop synthesis and evaluation questions, one can simply ask: "do you agree?" or "what do you think?"

To develop problem-solving skills, hypotheticals can be framed as something other than adversarial exercises. For example, rather than asking a student, "What argument would you make?" ask

"How would you decide this case?"

"What would you tell a client who brought you this case?"

"How would you solve this problem?"

"If you were a legislator, how would you change or improve the law to address this type of case?"

When you are asking questions to explore perspectives, make predictions and imagine solutions, students will respond more actively and creatively if you let them know that you don't have the answer and are asking them to explore the issue with you. One of the best types of questions for

these learning goals is brainstorming. Brainstorming questions work best if one separates out the process of generating ideas from the critique of those ideas. The first time I work through a brainstorming session with students, I provide ground rules -- any idea is welcome, ideas needn't be clearly articulated or well-thought out, while one can elaborate on other's ideas, one may not express judgment (positive or negative) on any of the ideas generated. Obviously one will want to follow up with evaluation of the answers provided, but separating out this task for a "second stage" of questions makes thinking clearer and allows you to organize the discussion much more effectively.

Faculty should strive to spend as much class time in upper-level classes as possible on divergent questions. While students can continue to learn throughout law school by responding to the first-year "case briefing drill," by the middle of their second year, most students are simply weary of the same learning goals and are ready to move on to higher-level thinking skills. We must clearly communicate our expectation that their class preparation be sufficiently consistent and thorough to allow them to do so.

When questions go wrong

Students are sometimes rightfully frustrated by questions. Many students report feeling as though the professor is playing a game of "read my mind" with them. Often this occurs when the professor does indeed have a particular answer in mind -- or a particular format for that answer -- and is asking the students to provide that answer. For example, "What is the key element of this doctrine?" "What do we call that principle?" Other times, questions are simply vague, confusing or poorly phrased. When you expect particular answers and are not getting them, stop and re-group. Never belabor questions that aren't working. You can simply provide the expected response and move on.

While you can simply abandon questions in class, never leave the episode unexamined. You need to diagnose what went wrong. If the cause of the confusion is not your question but rather the student's inability to discover or articulate the answer, you have diagnosed the need for more teaching. Either immediately after you have provided the answer, or at the end of that class or the beginning of the next, take some time to explain any particular form in which you want answers of this sort and model for the students how to arrive at the answer.

Sometimes, we realize we simply haven't arrived at the way to ask the question clearly. Poorly worded questions can be improved for future classes by a bit of thoughtful preparation. Make a note when questions didn't work and spend some time immediately after class trying to improve the question and then save your work! Place a red flag in the margin of your text or notes ("tread carefully"). Don't expect that the memory of a question that went awry will be sufficient to prevent an occurrence.

WHOM TO ASK THE QUESTIONS

Once you have decided what questions to ask, you need to decide whom to ask. Faculty generally ask only a few students in the class to respond to any given question. The assumption is that other students will be generating answers, even if not asked to respond. The problem with relying on only a few students to carry the weight of dialogue each class may not be the best method for ensuring active learning by all the students in the class. Some simple modifications to this method can encourage greater engagement by all students.

Develop protocols for calling on students or inviting comments from the class that ensure even-handed treatment and equal opportunities for participation. Thus, for example, while the "rolling ball" method of calling on students in each class by seat order may create some disincentives for students who are not "on" to be fully prepared, it does have significant advantages in avoiding any negative differential treatment in opportunities for output, gives students an opportunity to show their best efforts in class preparation and participation, and avoids the oppressive climate that many students feel from being a random target.

Another easy way to broaden dialogue is to simply poll the class for agreement or disagreement with a particular student's response. There are important reasons why one would not want to call on (or accept the volunteering) of a student to engage in a dialogue, knowing that the student's answer would be subject, not only to your critique, but to a vote of peers. In the competitive and often stressful law school classroom, such a technique could quickly destroy class rapport and alienate students from one another. The same effect, however, could be obtained by placing yourself in the "hot seat" - responding to a question or posing an analysis of a particular problem and then asking the students to vote - "Am I right?" Students can vote by raising hands, displaying cards or signs you have distributed ahead of time, or - if the classroom is equipped - providing electronic "votes." Using methods that do not require students to display their answer to others may provide more accurate assessment. You can require participation ("Everybody has to play") or not, depending on your goal.

If the vast majority of the class answers correctly, you can simply provide a brief explanation and then move on. If, however, the majority of the class is incorrect, you can backtrack, address the misconception (to a more an audience whose attention has been sharpened by being "wrong") and then move forward again. If the class is divided, you can also provide explanation and move ahead or, for more active learning for all participants, ask students to turn to someone who gave a different answer and convince that person of the "correct" response. The ensuing dialogue will, often as not, replicate the one-on-one dialogue you would be having with the student who did not understand.

Another approach to asking questions is to ask the class as a whole to respond, but to each other, rather than to the front of the room. Rather than asking a single student to present arguments or analysis or articulation of knowledge, ask the class as a whole, invite the class to then break into

small groups or pairs and discuss their answer, and then have groups report back. This "think-pair-share" technique is a cornerstone of cooperative learning, but can also provide an efficient method for assessing the learning of the class as a whole. In the reporting of each team or group's answers, the instructor can assess student learning and proceed as is appropriate to that feedback. For example, after the first one or two groups have responded, the instructor can ask if another group has come up with something different or additional. The safety of a group response will often encourage students to risk answering incorrectly. This is especially so if the instructor minimizes any sense of competition among groups to get the "right" answer and provides students positive reinforcement for their participation. For some discussions, groups might be asked to write out their answer on an overhead transparency to be shown anonymously to the class.

HOW TO GET ANSWERS

Asking carefully framed questions to individual students or to the class as a whole is not enough to ensure meaningful responses. Faculty must learn to encourage answers. As we well know, the most powerful tool for encouraging communication is silence. Yet, research into wait time indicates that most teachers wait "one second or less" for a student to reply to a question and an equally brief period before they react to the student's answer.⁵ (Despite solid research supporting this statistic at all levels of teaching, I found it difficult to believe until I watched videotapes of my own teaching, with stopwatch in hand.)

Increasing wait time has extraordinary benefits. The increase need not be dramatic; increasing wait time to only five seconds can result in different student and teacher behavior. Consistent use of increased wait time results in more students responding more often, with more complex and better-supported answers, and with greater confidence in those answers.⁶ Teachers who wait longer after student responses ask more complex and better articulated-though fewer-follow-up questions. Those questions exhibit more flexibility in making use of the student's response.⁷ On the other hand, the "rapid reward" response to a student's answer ("Yes, right. [restate

⁵ The leading researcher on this subject is Mary Budd Rowe, who has devoted much of her research career to this subject. See, e.g., Mary Budd Rowe, Wait time: Slowing Down May Be a Way of Speeding Up, *II AM. EDUCATOR* 3 8-43(1987).

⁶ COURTNEY B. CAZDEN, *CLASSROOM DISCOURSE: THE LANGUAGE OF TEACHING AND LEARNING* 94 (2001).

⁷ *Id.*

student answer, go on to next topic]”) can often stifle learning.⁸ Increasing wait time is accomplished by simply watching the clock.

Two caveats are worth repeating here. First, wait time increases the quality of responses only if the questions asked are clearly constructed. Let students know they can always ask for rephrasing or clarifications, rather than sit in confusion trying to puzzle over the question instead of the answer.

The second caution regards the negative effect of wait time if students perceive it as oppressive. Long periods of silence are uncomfortable for most people. Increasing wait time works best if students are informed of your purpose in the teaching technique, have an opportunity to ask for help or be excused from answering in some consistent fashion that does not undermine overall expectations, and have an opportunity to truly think during the wait time.

When the silence is broken by a student response, listen. Avoid the urge to interrupt to clarify, expand or further question. Look at the student who is answering (not your notes, not the chalk board, not other students) so that the students know where to direct their attention. Listen not only for content, but also for underlying understandings, assumptions, and perspectives. Most importantly, if you truly are asking a divergent question, listen for fresh perspectives.⁹ Just because an answer is unexpected does not mean it is inaccurate or unworthy of follow-up.

Besides waiting in silence, faculty can encourage answers by their response. Again, some silence is important. Wait a moment before responding to student questions. Often a breath or two of silence may be all a student needs to be encouraged to elaborate on their answer.

Assess the quality of the response and make sure your feedback encourages students to respond but sets clear standards for the quality of response expected. Excellent responses should be given positive feedback. Listen for opportunities to provide students an "Excellent analysis!" or a "Nicely stated!" Then, encourage other students to listen. "Did everyone hear Mr. Jones?" Many times faculty respond with "Right" and then restate the answer. The problem with this response, in my opinion, is that the student is given very little credit for their work and the other students in the room are not given any responsibility for listening to one another. Obviously, classroom acoustics sometimes make restating student responses necessary, but if at all possible, faculty should resist the temptation to restate every student response. Importantly, if students have provided a complete and well-articulated response, faculty should not that their restatement

⁸ Douglas Duncan and Amy Singel Southon, *Six Ways to Discourage Learning*, Teaching at Chicago at <http://teaching.uchicago.edu/handbook/tacI5.html> (last visited July 30, 2002).

⁹ Gerald F. Hess, *Seven Principles for Good Practice in Legal Education- Principle 3: Good Practice Encourages Active Learning*, 49 J. LEGALEDUC. 401 (1999).

or chalkboard recordation is merely a paraphrase or summary of an excellent and complete analysis.

Responses that are accurate but incomplete should also be given positive response, but also some assistance in elaboration. A response as simple as, "Good. Can you elaborate?" may be sufficient feedback to both encourage more response and set a standard for better answers. Elaboration might be requested of the student responding, or of the class as a whole. Faculty should beware of differential treatment here, however. Sometimes, faculty presume that a student's brief response is the best that student can provide, and so will not press for elaboration or explanation. But this short-changes the student depriving them of the opportunity to develop their analytical and communication skills, and sending a message that the poorer performing students will not be required to participate at the same level as other students. This lowers expectations for learning for the class as a whole.

Where answers are confused or reflect misunderstanding, faculty should provide feedback that identifies the problem. "I don't understand." "I think you may be confused about that doctrine" One should not simply ignore student errors. Even the most confused and inaccurate responses should be given some positive feedback by acknowledging the student's efforts ("Thank you" or "Nice try") before correcting the error ("No"). Follow up can assist the student to identify where the reasoning went wrong, acknowledge that the error is a common misstep, or simply identify the response as creative, even though ineffective. Follow-up should include clear and repeated invitations for further discussions outside of class.¹⁰

¹⁰ STEPHEN D. BROOKFIELD, THE SKILLFUL TEACHER: ON TECHNIQUE, TRUST AND RESPONSIVENESS IN THE CLASSROOM 140-41 (1990).