

WORKSHOP

THE FUTURE OF BUSINESSLAW

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NEW TRENDS IN BUSINESS LAW TEACHING & IMPACT

THE TREE METHOD

TEACHING METHODOLOGY DEMONSTRATION PAPER

Lukas Simkus
Durham Law School

Abstract

This paper seeks to present a law learning and teaching technique, successfully used in the academic practice for over a decade. Refined through a series of modifications and methodological adjustments and known as the 'Tree Technique', the method was originally devised as a mind-mapping tool for law problem questions, and subsequently expanded for use on a broader spectrum of legal problem-solving situations. It has been experimentally tested in other scientific fields, where decision-making is based on a fixed set of rules or assumptions, including finance, political science, engineering and computer science. The method was created by Dr Lukas Simkus - the author of this paper - as an explanatory tool in small-group law teaching. Its subsequent adoption by the students and colleagues from other disciplines resulted in a multitude of iterations, each with their own individual application history in the respective occupations of the adopters. This paper briefly introduces the scientific foundations of the method and the core principles of its use in law teaching. It includes a problem question scenario and a step-by-step walkthrough demonstration of the method's application.

1. Background and introduction

Academic literature has consistently confirmed the usefulness and practicality of visual content presentation. A landmark study by Bera and Robinson showed that up to 98 per cent of students can increase their learning effectiveness by using visual aids, with 85 per cent of students yielding statistically significantly improved results.¹ Hattie's² research on 800+ meta-analyses of over 50,000 research articles confirms that allowing students to inquire without structure is generally ineffective. Practice shows that the choice of a sub-optimal structure and lack of deeper understanding can prevent even the most outstanding legal minds from shining, especially in the early stages of their studies. The method presented in this paper is a tool designed to aid the students' quest for structure optimisation, as well as to offer a framework for future legal problem solving. The method introduces several novel features, but also builds upon earlier mind-mapping methodologies used for other forms of writing. Buzan and Buzan distilled a popular mind mapping technique for essays, which has been applied to law by Cantatore and Stevens.³ According to them, mind mapping helps students decide in which order questions should be answered and how much time to spend on each question or its aspect. This is said to enable the students' minds to explore the ramifications and implications of their answers. They stress the importance of a central image, the branches of which aid the answer planning.⁴

The Tree Method serves a similar function, but it is optimised for problem questions. It encourages the student to see the question as one active case, consolidating the events and authorities into a coherent narrative. The method follows a classic system, which is in many ways derived from the IRAC method. It identifies a legal issue and a question that issue poses. It then requires finding a set of legal rules offering an answer to this question, while also reminding the student to consider alternative outcomes, especially where the authorities leave room for ambiguity.

For every legal question the method assumes the existence of at least two outcomes, although it can accommodate more. This is inherent in adversarial legal systems. Something has been legally constituted, or it has not. Something meets a test, or it does not. That is because the law

¹ S. J. Bera and D. H. Robinson, 'Exploring the Boundary Conditions of the Delay Hypothesis with Adjunct Displays', *Journal of Educational Psychology*, vol. 96, no. 2, 2004, p.381

² J. Hattie, *Visible learning: A synthesis of over 800 meta-analyses relating to achievement*, Abingdon, Routledge, 2008.

³ B. Buzan and T. Buzan, *The Mind Map Book: Radiant Thinking*, London, BBC Books, 1993, p.224; and F. Cantatore and I. Stevens, 'Making connections: incorporating visual learning in law subjects through mind mapping and flowcharts', *Canterbury Law Review*, vol. 22, 2016, pp. 153-170, <http://nzlii.org/nz/journals/CanterLawRw/2016/9.pdf>

⁴ *Ibid.*

typically presents us with a dialectic conflict: an act or omission is - or is not - legal. The tree technique then encourages the student to explore the ramifications of each path fully, until the next decision point, where the process is repeated, or a 'dead end' is reached.

The below demonstration will work through a problem question, alongside a developing illustration of a tree, which is – as the name suggests - the visual representation employed for this mind map. For the purposes of this demonstration an offer and acceptance question of contract law is used. Contact the author for examples in other areas.

2. Example Problem Question

Richard & Mortimer Ltd, place an advert in 'Bloody Bureaucrats', a weekly trade online periodical for rogue scientists, stating that they will award a contract worth £100,000 for transporting a rare quantum energy source from Newcastle upon Tyne to Durham, to the first vessel to arrive at their laboratory in Newcastle. Beth reads the advert while sitting in a lorry driver café in Manchester and immediately departs to Newcastle. However, while she is still an hour's drive from Newcastle, Rick & Morty Ltd sends an announcement to a local radio station called 'The Lost Dimension' that they are no longer looking for a courier. It is read on live air by DJ Summer, when Beth is still 20 minutes away from her destination. She listens to the announcement. Nonetheless, she continues to Newcastle and on arrival Richard & Mortimer Ltd argue that, although Beth's lorry was the first to arrive, they are not bound to award her the contract.

3. The Analysis – Applying the Tree Method



Step 1. Identifying the first split

An adversarial legal system tends to present dichotomies. Therefore, the tree branches out. All branches have some viability, but some are more capable of bearing fruit than others. In this scenario the first decision to make is whether the advertisement is a unilateral offer or an invitation to treat. An advertisement is generally regarded as an invitation to treat (*Partridge v Crittenden* (1968)), but there are exceptions (e.g. *Carlill v Carbolic Smoke Ball Company* (1893). *Warwickshire County Council v Johnson* (1993) can help us make the decision and likely proceed with unilateral offer. However, we cannot be certain, so it is worth exploring invitation to treat option. In a different scenario, where the invitation to treat is followed by a valid offer, this could be the most promising path to take.



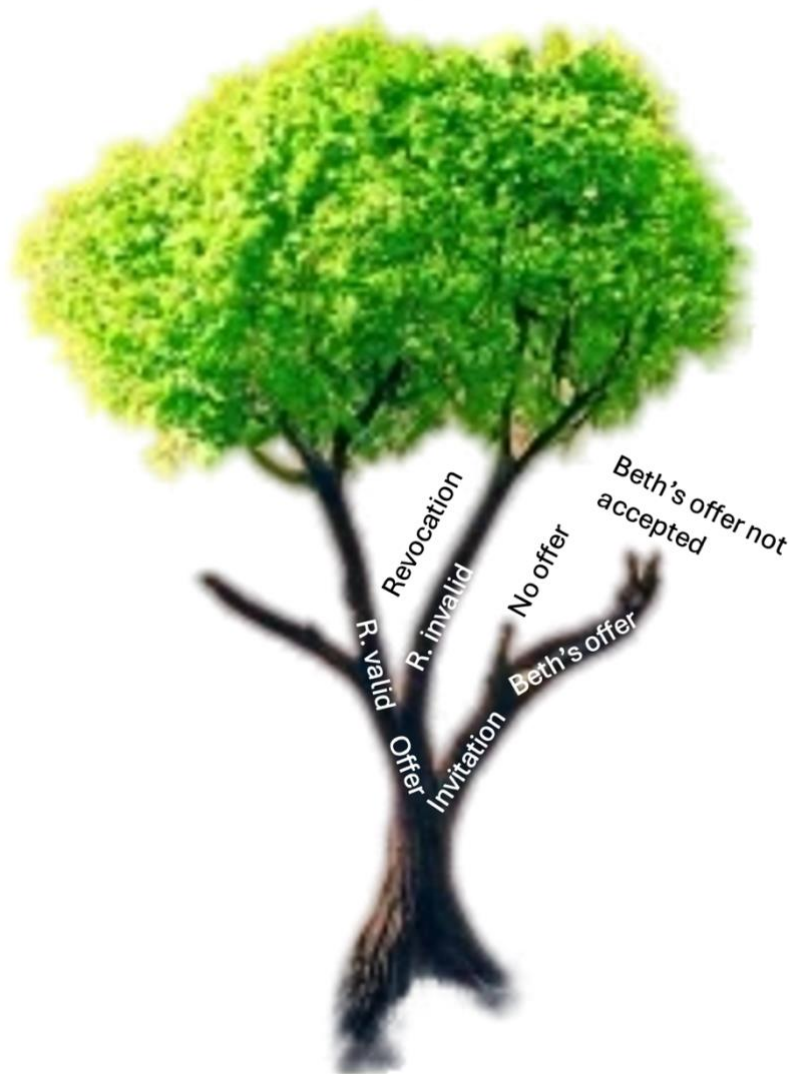
Step 2. Invitation to treat: exploring the alternative

If we choose to follow *Partridge v Crittenden* (1968) and assume that this is an invitation to treat, no agreement is reached at that stage. For a contract to exist Beth would need to subsequently issue an offer. If she does not, there is no contract and the exploration of this thread of reasoning ends. If the offer is issued, Richard and Mortimer Ltd. would need to accept it. However, in this scenario, even if we interpreted Beth's actions as an offer (which is highly implausible), Richard and Mortimer never accepted such offer, and therefore there is still no agreement and no contract. Here the answer reaches a dead end. However, in a different scenario this branch could bear fruit, so it is important to train the students to work every path until they bump into an immovable obstacle.

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Step 3. Re-examination of the question

This method helps the students understand that almost every sentence in a problem question is written for a reason, giving them opportunities to demonstrate additional knowledge. Re-examining the question can also confirm (or put into question) the choices made previously, thus guiding the user of the method. In this scenario, the impression that the choice of invitation to treat leads to a dead end is confirmed by the question. If this option is chosen, a significant proportion of the question remains unexplored (marked in red). The route through the choice of invitation to treat does not allow access this part. That should prompt the students to turn around and explore what the offer branch could grow into. Students should generally be encouraged to always look for another path, if two or more consecutive sentences remain unaddressed. This is an important skill. Every detail can be important in a real case.



Step 4. Revocation attempt

As a general rule, the offeror can withdraw an offer at any point before it is accepted (*Financings Ltd v Stimson* [1962]), as long as they do it properly. That leads us to the next split, where two separate branches can grow. One develops towards the possibility of a valid revocation, and one towards an invalid one.

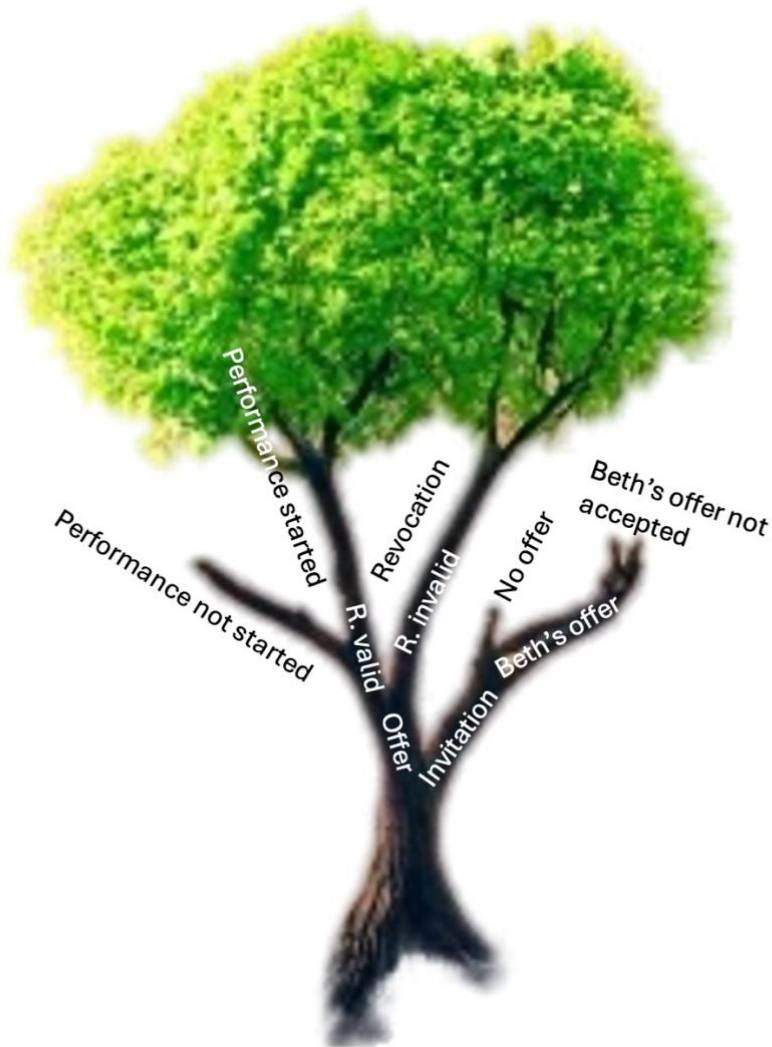
Here we might want to examine the event of attempted revocation itself. The withdrawal must be communicated (*Dickenson v Dodds* (1876) *Byrne v van Tienhoven* (1880)).

This communication has to use the same or more efficient method. In our scenario the method is not the same, so unless the radio message is more efficient, the revocation would not be valid, in which case Beth would have a claim. This is a possible outcome of the case, and the analysis *could* end there, but that would be sub-optimal.

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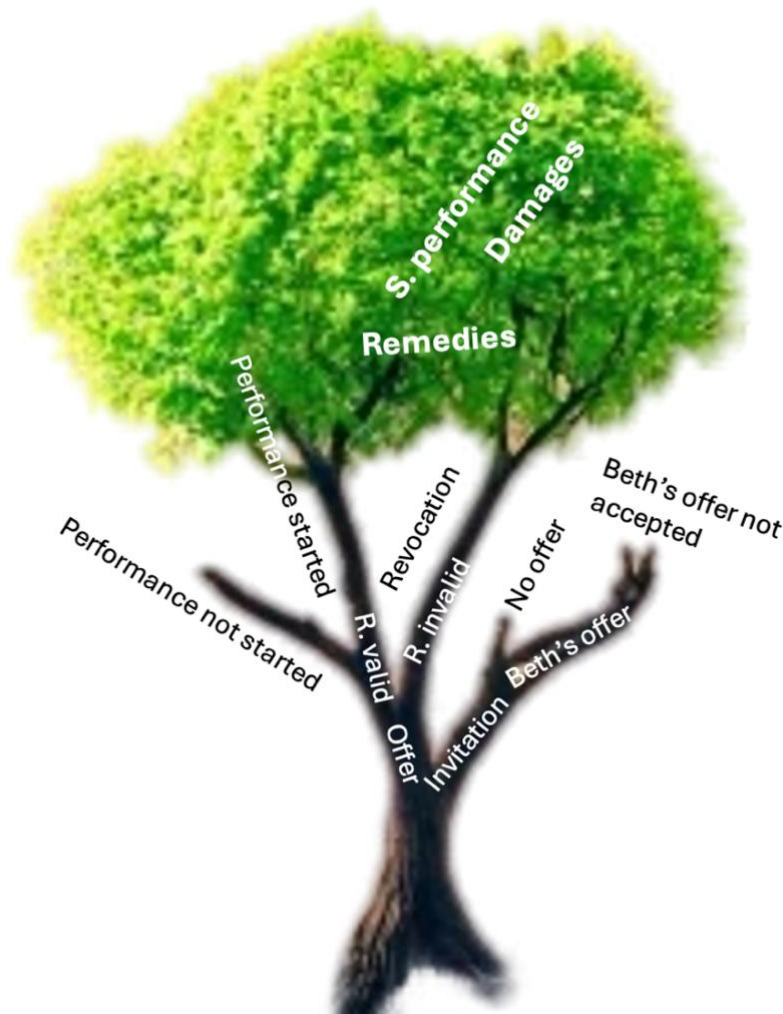
Step 5. Re-examination of the question

While the choice of the revocation being communicated improperly leads to a claim for Beth and ensuing remedies, that again leaves some aspects of the question unexplored (in red). We thus need to explore an alternative path, allowing for the possibility that a more efficient method was used for the revocation. In that case timing would be crucial.



Step 6. Has performance begun?

Timing is crucial because unilateral offers can only be revoked before the performance of the other party begins. (*Dahlia v Four Millbank Nominees* (1978), *Errington* (1952); *Luxor v Cooper* (1941)). Once performance has begun, the party must be permitted to complete the task, otherwise damages might be payable. Here the students should identify another split, one branch grows towards the outcome of performance not having started, the other – towards the opposite conclusion. In fact, Beth has certainly taken some steps. The question itself also suggests an outcome. If performance had not started by the time the radio message was communicated, with the revocation itself being valid and communicated, there is no agreement. This would be another dead end.



Step 7. Remedies

Students often forget to proceed to remedies, even having established liability. Such answers lack conclusiveness and typically do not attract very good marks. The leaves (or fruits) of the tree are a good metaphor. If the tree remains leafless and fruitless – something might be missing. When several remedies are available that leads to one final branching out. In this case students would observe that there are two paths to remedies.

- A) The advertisement is a unilateral offer, which has not been revoked, as the withdrawal was not done properly. We therefore have an agreement, and - assuming the presence of other elements of contract - both parties have obligations to one another.
- B) The advertisement is a unilateral offer, which Richard and Mortimer Ltd. tried to revoke using the proper means, but did not manage to do it before the start of Beth's performance. We therefore have an agreement, and - assuming the presence of other elements of contract - both parties have obligations to one another.

4. Application and further development

The Tree Method can be seen in two ways. Some users view it as an ‘organic’ concept, ensuring that every branch grows out of something underneath it. That ensures narrative consistency in the answer, as skipped step would immediately manifest as a branch appearing out of a thin air. In rare case, for example where one of three rules could apply, the tree can branch out into multiple branches, which does not preclude the method’s further use.

Other users see it as a visualisation of ‘true’ and ‘false’ clauses in some programming languages, (e.g. java). To that end the author of this paper has developed a simplified language for creation of such trees, which will be used for an application creating tree visualisations. Blending the technical logic of programming and the verbal logic of law application, the code for the first few steps of the example shown above would look like this:

```
>If [Offer] false run [invitation treat]
> If [Offer] true run cmd split 2
Prev split 2 = Revo [valid]/[invalid]
>If [valid] true run [remedies]
>If [invalid] run split 2
Prev split 2 = Perf [started]/[notstarted]
```

The development of this application will enable teachers to use the tree method as a visual tool in slides and video presentations. The less technologically enthusiastic teachers can nevertheless demonstrate using a hand drawing on a projected sheet of paper, an interactive touch screen, or a whiteboard.

Table of cases

Dickenson v Dodds [1875] 2 Ch D 463

Byrne v van Tienhoven [1880] 5 CPD 344

Carlill v Carbolic Smoke Ball Company [1893] 1 QB 256

Luxor (Eastbourne) Ltd v Cooper [1941] AC 108; [1941] 1 All ER 33

Errington v Errington [1952] 1 KB 290

Financings Ltd v Stimson [1962] 3 All ER 386

Partridge v Crittenden [1968] 2 All ER 421

Dahlia v Four Millbank Nominees [1978] Ch 231

Warwickshire County Council v Johnson [1993] AC 583

Bibliography

Bera, S. J., and Robinson, D. H., 'Exploring the Boundary Conditions of the Delay Hypothesis with Adjunct Displays', Journal of Educational Psychology, vol. 96, no. 2, 2004, pp.381-388

Buzan, B. and Buzan, T., The Mind Map Book: Radiant Thinking, London, BBC Books, 1993

Cantatore, F. and Stevens, I., 'Making connections: incorporating visual learning in law subjects through mind mapping and flowcharts', Canterbury Law Review, vol. 22, 2016, pp. 153-170, <http://nzlii.org/nz/journals/CanterLawRw/2016/9.pdf>

Hattie, J. Visible learning: A synthesis of over 800 meta-analyses relating to achievement, Abingdon, Routledge, 2008