

<https://doi.org/10.23913/ride.v11i22.929>

Artículos científicos

Estrategias de enseñanza usadas con estudiantes de abogacía

Teaching strategies for law students

Estratégias de ensino usadas com estudantes de direito

Antonio Márquez Rosales

Universidad de Guadalajara, Centro Universitario de los Valles, México

antwan_marquez@yahoo.com

<https://orcid.org/0000-0002-7170-1707>

Resumen

El objetivo de esta investigación fue emplear con estudiantes de la carrera de abogado del Campus Universitario de los Valles (Universidad de Guadalajara) (específicamente en la asignatura Derecho Civil V, ubicada en el séptimo semestre) dos estrategias pedagógicas que fomentan la participación activa de los alumnos, es decir, el aprendizaje basado en problemas y el análisis de casos. El enfoque metodológico usado fue mixto (cualitativo y cuantitativo). Los resultados demuestran (utilizando el *software* SPSS) que, según el nivel de significancia, el hecho de que el alumno de la carrera de abogado asesore a un testador o presencie el otorgamiento de un testamento público abierto favorece su desempeño como estudiante. En conclusión, se puede asegurar que emplear el aprendizaje basado en problemas y el análisis de casos con estudiantes de la carrera de abogado puede acercarlos a la realidad jurídica con la que se enfrentarán al culminar su educación universitaria. Además, el hecho de preguntarles de manera verbal sobre problemas jurídicos fomenta la habilidad de hablar en público (oratoria), así como el aplicar el derecho positivo al caso concreto fundando y motivando su dicho.

Palabras claves: análisis de casos, aprendizaje basado en problemas, estrategias de enseñanza.



Abstract

The objective of this research was to employ students from the career of lawyer of the University of the Valleys' Campus (University of Guadalajara) (specifically in the subject Civil Law V, located in the seventh semester) two pedagogical strategies that encourage the active participation of learners, namely, problem-based learning and case analysis. The methodological approach used was mixed (qualitative and quantitative). The results show (using the SPSS software) that, depending on the level of significance, the fact that the students of the law career advise a testator or witnesses the granting of an open public will favors their performance as a student. In conclusion, it can be assured that employing problem-based learning and case analysis with law students can bring them closer to the legal reality they will face at the end of their university education. In addition, the fact of asking them verbally about legal problems encourages the ability to speak in public (oratory), as well as the application of positive law to the specific case by founding and motivating its saying.

Keywords: case analysis, problem-based learning, teaching strategies.

Resumo

O objetivo desta investigação fue emplear con estudiantes da carreira de abogado do Campus Universitario de los Valles (Universidad de Guadalajara) (especialmente na assinatura Derecho Civil V, ubicada no sétimo) semestre das estrategias pedagógicas que participan da ativa de los alumnos, es decir, el aprendizaje basado en problemas y el análogo de casos. O enfoque metodológico usado fue mixto (cualitativo e cuantitativo). Los resultados demuestran (using the software SPSS) that, según el level de significancia, el hecho de that el alumno de la carrera de abogado asesore a un testador a presencie el otorgamiento de un testamento público abierto favorece su desempeño como estudiante. En conclusión, se puede asegurar que emplear the aprendizaje basado en problemas y el analisis de cases con estudiantes de la carrera de abogado puede acercarlos a la realidad jurídica con la que se enfrentarán al culminar su educación universitaria. Además, el hecho de preguntarles de manera verbal sobre problemas jurídicos fomenta la habilidad de hablar en público (oratoria), assim como el aplicar el derecho positivo al caso concreto fundando y motivando su dicho.

Palabras claves: análisis de casos, aprendizaje basado en problemas, estrategias de enseñanza.



Introduction

Historically, various teaching methods have been applied in the law career. For example, in the 60s and 70s the unilateral approach prevailed, which conceived the teacher as the only source of information. In the words of León (2010), this was a “traditional model of teaching, eminently theoretical, of a magisterial lesson, in which the teacher is the central element and the student is an almost passive receiver, with little possibility of debate, analysis, of resolution and discussion of practical cases”(p. 5). At present, however, this paradigm has become obsolete, since the information that was previously only obtained in books or through the presentation of the teacher in the class, can now be obtained more easily through any digital device with connection to Internet.

For this reason, a system called dual has emerged, which Rengel and Fach (2012) conceive as follows:

[In this] the teacher is not only the expert who transmits information and knowledge to the students, but also the moderator of an open discussion that through a series of staggered questions manages to bring out different points of view and initiatives around a topic derived from a practical problem (p. 7).

In other words, from this approach it is sought that students assume positive law by applying it to the needs of society, that is, from a practical-legal point of view. In this sense, and in relation to legal clinics, it focuses on a multilateral iuspositivist and legal praxis "based on the teaching of the practical part, the analysis and study of cases, interdisciplinarity and investigative competences" (Almanza , 2010, p. 76). This model is applied in subjects or subjects specifically where social problems are taken into account.

On the other hand, the student who aspires to be a lawyer must know the two nodal positions (iuspositivismo and iusnaturalismo) within the legal field in order to have a general vision not only of the rights that are legislated, but also of those linked to being human. The iuspositivista position refers to the interpretation and application of positive law, while the iusnaturalista position is related to the law that arises from the nature of every human being. Therefore, it can be affirmed that every lawyer must understand social phenomena to understand iuspositivism and iusnaturalism as "the union of a normative formulation and a meaning determined from the corresponding context" (Agüero-San Juan, 2018, p. 41).

Regarding the knowledge that the lawyer must have about the society in which he lives, it should be remembered that positive law starts from assumptions about certain acts that have consequences in law. In this sense, legislation is not born alone, but is the consequence of events in society that can be verified. In this regard, Dei Vecchi (2017) states: "The law is not constituted by abstract entities of any kind, but by empirically verifiable facts" (p. 9). Therefore, the lawyer must be aware of social phenomena and the application of positive law to solve the problems of his client (be it an individual, a legal entity or a government entity). Mendoza de la Rosa (2010) explains it this way:

Therefore, the teaching of the right to knowledge of the norm cannot be limited, nor to the description of the phenomena and their relationships with the circumstances of time, mode and place that condition their appearance, but must be based on the basis that the professional know the phenomena, why they occur, how they are born, what are their sources and thus can understand that such behaviors can transcend by giving answers or solutions that are appropriate for the purposes of society or the State (p. 50).

Therefore, it is not enough for the professor of the law career to be a specialist in the subject he teaches or to know social phenomena, since he must also have the necessary pedagogical knowledge to impart his knowledge. In the words of Ávila (2014), "it is not enough to have an updated domain of the discipline that is taught, but it is necessary that the teacher has pedagogical competence that allows transforming the knowledge to be acquired" (p. 118).

Commonly in law classrooms are the same lawyers (without pedagogical training) who are dedicated to teaching. For this reason, it is essential that the university offers them training so that they can make the best use of the various resources that could enhance student learning. In this regard, Espinoza (2009) explains the following:

The teacher must allow students to learn, promoting and promoting all the explorations, experiences and projects that they initiate or decide to undertake. What it requires to teach is to allow it to be learned. It is a student-centered posture of education.

We understand that, in the humanistic context, students are individual entities, unique and different from others, they are beings with initiative, with personal needs to grow, capable of self-determination and with the potential to develop activities and solve problems creatively.

The teacher must be a facilitator of the students' potential capacity for self-realization. His didactic efforts should be aimed at ensuring that students' activities are self-directed and promote self-learning and creativity. (p. 43).

When the teacher becomes a facilitator, learning becomes multi-directional, since everyone learns from everyone thanks to the teacher's guidance.

On the other hand, regarding the profile of the student of the law career, in the first place he must know the legislation, its regulations and the procedures to apply it. For this reason, for Espinoza (2009) the important thing “is to transcend theoretical learning and put it into practice, allowing the student to become familiar with the context in which he will work as a professional” (p. 46).

If the student comes to understand the scope, interpretation and application of the legislation in a certain case, they will have a broader vision and will be able to exercise the law from different professional perspectives, since it must be remembered that the legislation in many cases is not clear. As mentioned Guastini (2015):

A normative provision is ambiguous (in the broad sense that we have said): it can be understood in two (or more) different senses, it can express the N1 norm or the N2 norm. This is a typical problem of interpretation in the abstract (p. 25).

In summary, the student of the law career must have multiple skills for the study of legal norms, without leaving aside the events that are happening in society and that have not yet been regulated, which can generate negative consequences for all (Rivera, 2017).

For this reason, the objective of this research was to use two pedagogical strategies with students of the Law School of the Campus Universitario de los Valles (University of Guadalajara) (specifically in the Civil Law V course, located in the seventh semester). the active participation of students, that is, problem-based learning and case analysis.

Problem-based learning can be defined as the approach to “a problem situation, where its construction, analysis and / or solution constitutes the central focus of the experience, and where teaching consists of deliberately promoting the development of the process of inquiry and resolution of the problem. problem in question ”(Díaz-Barriga, 2006, p. 62), while the analysis of cases can be understood as follows:

It shares the basic principles and features of the PBL model (...), but presents a particular variant (...). A case offers a story, where - in the most precise and objective way possible - events that pose real (authentic) or realistic (simulated) problem situations are told, so that students experience complexity, ambiguity, uncertainty and lack of certainty that the original beginners faced in the case (Díaz-Barriga, 2006, p. 76).

Research context

On March 17, 2000, the General University Council of the University of Guadalajara created the Los Valles University Campus, which began its courses in the 2000 B cycle (September). Subsequently, that same university governing body approved on December 16, 2004, the conversion of a university campus to a university center.

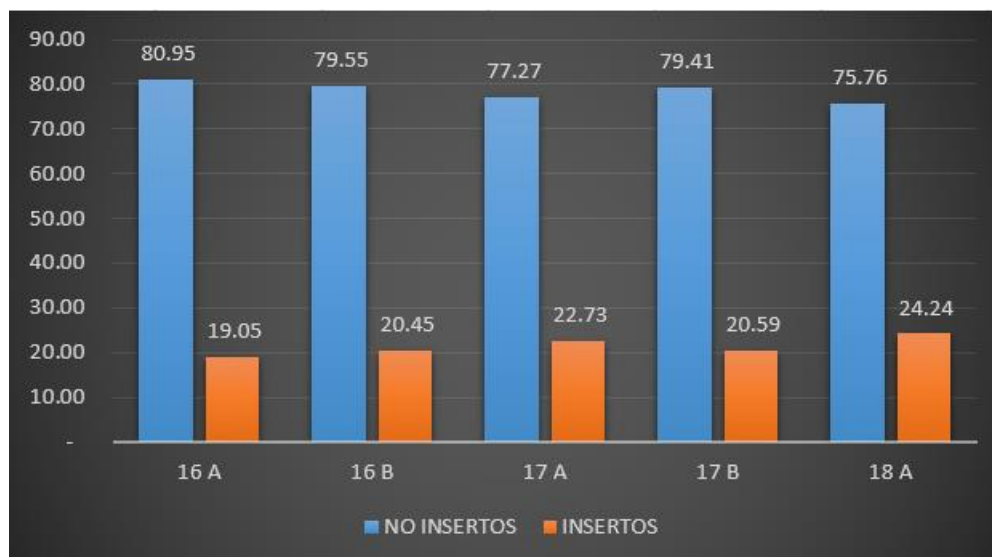
Since its inception, this institution has offered a career as a lawyer (Centro Universitario de los Valles, s. F., P.1). Between 2000 and 2001, students sent their activities to the teacher's email, although later other digital strategies were implemented, such as discussion forums, chats, and mailboxes for sending assignments.

Regarding the educational model, in Cuvalles the "optimized face-to-face" strategy is used, which seeks that "students are proactive, self-managed and responsible for their learning" (Centro Universitario de los Valles, 2014, p. 20). This allows students to attend face-to-face classes only two days a week.

Method

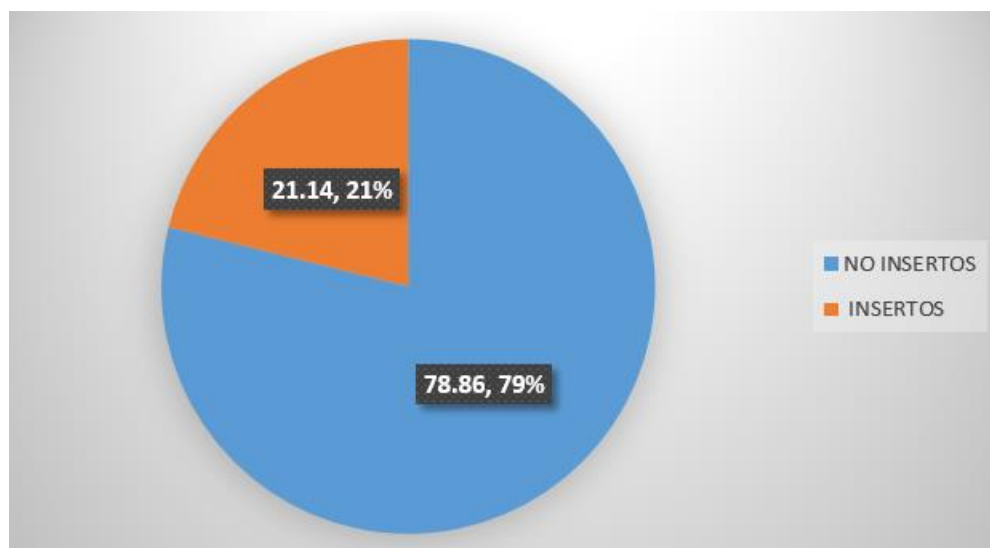
This was a field investigation that relied on a mixed methodological approach (qualitative and quantitative). In principle, surveys were used to find out the workplace of students in school cycles 16-A, 16-B, 17-A, 17-B and 18-A. The results showed that the percentages of students who in each of the previous school cycles were inserted in legal working life were very low (figure 1). In fact, it can be stated that, on average, only 21.4% of students are inserted in work related to their career (figure 2), which constitutes a problem because they cannot put into practice the knowledge acquired in the schools. subjects taken at the university.

Figura 1. Comparativa de alumnos insertos en trabajos relacionados con el campo de la abogacía por ciclo escolar



Fuente: Elaboración propia

Figura 2. Promedio de alumnos que laboran en trabajos vinculados con el campo de la abogacía



Fuente: Elaboración propia

Taking into account the previous data, during the 18-A school year, a qualitative method was used in the face-to-face sessions, since the students were asked verbally about legal problems; Likewise, for the analysis of cases, the inductive-deductive, hypothetical-deductive and analytical methods were taken into account.

At the end of the course, the cross-sectional quantitative method was used with student surveys, which served to compare the grades obtained in the Civil Law course V (located in the seventh semester) with the general average that each one had achieved in the six semesters earlier in the race. The data were analyzed with the SPSS software.

Development of teaching strategies

Next, the teaching strategies used in the subject Civil Law V (Succession Law) are described. Specifically, in the 18-A school year, an attempt was made to diversify the pedagogical methodology used with students of the aforementioned career in order to “recognize that there are different ways and cognitive styles” (De la Cruz, 2016, p. 14). In this sense, two teaching strategies were used: learning based on problems and the analysis of cases approached from the legal and natural law points of view, for which the Civil Code of the State of Jalisco was analyzed (February 18, 2020) (specifically, regarding the chapter on inheritance mortis causa and legal practice).

As indicated, at the Los Valles University Center of the University of Guadalajara, students only attend the classroom for two days in person. In the first face-to-face session of the course, it is the teacher's obligation to deliver the program and planning. The program contains the criteria to be evaluated to comply with article 9 of the General Regulations for the Evaluation and Promotion of Students of the University of Guadalajara, while the planning is divided into 17 weeks, a period in which the activities to be developed are specified. inside and outside the classroom (the latter with Moodle support).

Activities outside the classroom

These activities included summaries, concept maps, synopses, etc., that the same student had to develop according to their learning abilities. To avoid plagiarism (Diez-Martínez, 2015), handwritten texts were required and the following evaluation criteria were taken into account: originality (the student writes what he understood, as well as his point of view) and bibliographic citations (according to the norms Chicago, APA and ISO 690 to give credit to the consulted authors; at least the student had to use three bibliographic sources, as well as the Civil Code of the State of Jalisco). The activity was sent to the mailbox of the Moodle course before the established term. In this way it was sought that the student took the initiative in their learning process.

Classroom activities

In the classroom, we worked mainly with the formulation of questions, exams and case analysis. During the face-to-face session, the teacher asked the students a direct question, posing a legal problem, which the student had to answer, founding and motivating his saying. In this way, an attempt was made to comment on the applicable legislation and the logical legal reasoning. Logically, the student could answer correctly or incorrectly, hence the teacher had to point out the application of positive law to legal practice, as well as indicate the concerns of the students' legal assumptions. It is important to highlight that the student was intended to develop an inductive, deductive and analytical legal logic when speaking in public.

Inheritance law is the last link in civil law, so it is important that students have notions about property and real rights, family law, obligations, as well as civil contracts.

Regarding the exams, two were written in writing: the first in the middle of the semester and the second near the end. In these, legal problems were raised that the student had to solve.

Finally, regarding the case analysis, this was divided into two moments: analysis of a format of an open public will and analysis of a real open public will (the teacher's testament).

Analysis of a format of an open public will

The objective of this was to make known to the student of the law career the structure of an open public will; first, the elements that make up the legal act with the articles referenced to the applicable legislation (positive law) to avoid its invalidity; later, the format for the student to identify the distribution of the elements that comprise it.

Regarding the elements that make up the open public will established in a public deed, the notary public does not invent anything: he is only subject to the legal provisions of the Civil Code and the Law of Notaries, both of their respective state.

As regards the open public will, after presenting its parts, a format was then offered to reinforce the student's disciplinary literacy capacity, based on the assumption that the testator was of legal age, knew how to read and write, had identification and he did not need witnesses for any special cause. With this activity the student identified the positive right to legal practice.

Analysis of a real public will

The main objective was to analyze a real case showing the students a true will, which was granted by the teacher. Given the legal impossibility of doing so from a will granted before his faith as a notary public and due to the obligation of professional secrecy (Law of the Notary Public of the State of Jalisco, April 2, 2020, article 43), in the face-to-face session carry out the following activities:

1. 5 groups of students were organized; Each one was given a physical open public will (real) of the teacher, which was read by a member of the group.
2. During the reading of the will, the students were reviewing the applicable legislation; once finished, there were comments between them.
3. Space was given for questions and answers from the students to the teacher (the testator).

The questions were the following:

Why do I revoke the old will?

Teacher's reply (testator): The revocation of the will was carried out for two reasons: the first, in 2012 I only had two daughters, but in 2014 my third daughter was born; therefore, if it continues in force and I pass away, the will would be inoficious. Second reason: in the will I bequeath to my mother the patrimonial rights of a musical work; but with her death in 2015 the clause would expire, although it is true that it would not remain intestate because I named her heirs. The intention is that the economic rights belong to my father.

Why do you grant the patrimonial rights of musical works and literary works?

Teacher's reply (testator): From a legal point of view, musical works consist of moral rights and economic rights (Federal Copyright Law, July 1, 2020, article 11), which can belong to two different people. Moral rights belong to the author (Federal Copyright Law, July 1, 2020, article 18), while economic rights are the rights to exploit the musical work, which allows obtaining royalties for the communication or transmission of the work (Federal Copyright Law, July 1, 2020, Article 24). For this reason, I only lay down the economic rights.

What is the legal effect of bequeathing the life usufruct and the bare property to different people?

Teacher's reply (testator): Real estate has two characteristics: bare ownership - also called direct domain (the owner or owner) - and usufruct (the one who has the power to use and enjoy the property). Both can belong to different people. In the case of the will, my wife - to whom I bequeath the life usufruct - may have the right to use and enjoy the property during her lifetime, while my daughters - to whom I bequeath the bare ownership or direct domain - will be the owners of the same. When the beneficial owner dies, they may consolidate the property. At any given time, the usufructuary and the two owners may sell the property, provided they establish a common agreement.

Why do you give the wife the obligation to give alimony to her daughters?

Teacher's reply (testator): At this moment my daughters are minors; In the event of the undersigned's death and my daughters are not of legal age, the mother may rent the property as beneficial owner, hence the obligation to provide maintenance.

If you are a notary public, why didn't you execute and authorize your own will?

Teacher's reply (testator): In the previous Law of the Notary Public of the State of Jalisco it was possible, but in the current one we do not have that power, so we resorted to another notary colleague for its granting.

With this activity, it was intended that the student - who generally has not granted his will - knew its structure and knew how it is drawn up in accordance with the legal situation of the testator and at his will, as long as he does not contravene legal provisions that cause the nullity relative or absolute of the will.

Results

At the end of the 18-A school year of the Civil Law V (Succession Law) subject, surveys were applied in order to know the opinion of the students who had advised a testator or who had witnessed the execution of an open public will, which which allowed them to implement the theoretical-practical knowledge of the course in legal life. In fact, these same students were compared with the grade obtained in the referred subject (located in the seventh semester) with the general average that they had achieved in the previous six semesters of

their career. The results show (using the SPSS software) that, according to the level of significance, the fact that the student of the law career advises a testator or witnesses the execution of an open public will favors his performance as a student (Table 1).

Tabla 1. Resultados de encuestas

Coefficientes					
Modelo	Coefficientes no estandarizados		Coefficientes Estandarizados	t	Sig.
	B	Desv. Error	Beta		
1 (Constante)	87.689	22.645		3.872	.002
Asesorado a Testador	3.956	5.055	.227	.783	.449
Ha Presenciado Testamento	-5.600	9.927	-.163	-.564	.583

a. Variable dependiente: Calificación de la Asignatura 2

Fuente: Elaboración propia

Conclusions

Employing problem-based learning and case analysis with law students can bring them closer to the legal reality they will face upon completing their college education. In fact, making the program and planning available at the beginning of the school year allowed students to study at their own pace (according to their personal needs). In addition, the fact of asking them verbally about legal problems promoted the ability to speak in public (oratory), as well as the application of positive law to the specific case, founding and motivating their saying.

In this regard, it should be noted that the analysis of the parts in the format of an open public will and its legal basis allowed the students to clearly know the elements of existence and validity that prevent nullity.

Regarding the case analysis, this strategy allowed the students to witness a legal assumption applied to reality. In other words, the students had in their hands a real legal act and were able to ask the testator their concerns about each of the clauses.

In short, the students were offered strategies to face the legal reality within inheritance law; However, as a challenge, they will have to develop the ability to listen to the client, solve his legal problem and materialize it in his will.

Future lines of research

Getting students to apply their theoretical and practical knowledge of the subject to legal life favors their performance as students, a nodal point for the future lawyer. However, it should also be noted that comparing the grades obtained in the Civil Law V (Succession Law) subject with their general averages achieved in the previous semesters can only offer a vague idea of the advantages of including problem-based learning in teaching and in case analysis. For this reason, future studies can delve into the efficiency of traditional law teaching and compare the results of this methodology with those that can be achieved with a problem-based learning strategy and case studies.

References

- Agüero-San Juan, S. (2018). ¿Cómo encontrar normas jurídicas? Una revisión a la ontología desde la identificación. *Isonomía*, (49). Recuperado de <http://www.isonomia.itam.mx/index.php/revista-cientifica/article/view/21/1>
- Almanza, M. (2010). Las clínicas jurídicas y su pertinencia en la formación de abogados. *Justicia*, 15(18). Recuperado de <http://revistas.unisimon.edu.co/index.php/justicia/article/view/923>
- Ávila, M. G. (2014). Enseñar a aprender derecho: la importancia de la formación docente del formador. *Academia*, 12(24), 111-128. Recuperado de <https://dialnet.unirioja.es/descarga/articulo/5126614.pdf>
- Centro Universitario de los Valles [Cuvalles] (2014). *Plan de Desarrollo Cuvalles 2014-2030*. Recuperado de <http://cuvalles.udg.mx/sites/default/files/pdi2030.pdf>
- Centro Universitario de los Valles [Cuvalles] (s. f.). *Historia del Cuvalles*. Recuperado de http://www.web.valles.udg.mx/acerca_de/historia
- Código Civil del Estado de Jalisco (18 de febrero de 2020). Periódico oficial El Estado. Guadalajara, Jalisco, México: Congreso del Estado de Jalisco. Recuperado de <https://congresoweb.congreso.jal.gob.mx/BibliotecaVirtual/legislacion/C%C3%B3digo%20Civil%20del%20Estado%20de%20Jalisco.doc>

- De la Cruz, G. (2016). Justicia curricular: significados e implicaciones. *Sinéctica*, (46), 1-16.
Recuperado de <https://sinectica.iteso.mx/index.php/SINECTICA/article/view/616/640>
- Dei Vecchi, D. (2017). ¿Profundización o caída del realismo jurídico como teoría descriptiva de normas? *Isonomía*, (47). Recuperado de <http://www.isonomia.itam.mx/index.php/revista-cientifica/article/view/45/47>
- Díaz-Barriga, F. (2006). *Enseñanza situada: vínculo entre la escuela y la vida*. México: Mc Graw Hill.
- Diez-Martínez, E. (2015). Deshonestidad académica de los alumnos y profesores. Su contribución en la desvinculación moral y corrupción social. *Sinéctica*, (44).
Recuperado de <https://sinectica.iteso.mx/index.php/SINECTICA/article/view/161/154>
- Espinoza, F. (2009). Métodos y estrategias para la enseñanza-aprendizaje del derecho. *Daena: International Journal of Good Conscience*, 4(1), 31-74. Recuperado de [http://www.spentamexico.org/v4-n1/4\(1\)%2031-74.pdf](http://www.spentamexico.org/v4-n1/4(1)%2031-74.pdf)
- Guastini, R. (2015). Interpretación y construcción jurídica. *Isonomía*, (43), 11-48.
Recuperado de <http://www.isonomia.itam.mx/index.php/revista-cientifica/article/view/71/74>
- León, J. (2010). Intercambio, revista de la universidad latina de Costa Rica. (32). Recuperado de <https://revistas.ulatina.ac.cr/index.php/intercambio/article/view/88>
- Ley del Notariado del Estado de Jalisco (2 de abril de 2020). Periódico oficial El Estado. Guadalajara, Jalisco, México: Congreso del Estado de Jalisco. Recuperado de <http://congresoweb.congreso.jalisco.gob.mx/BibliotecaVirtual/legislacion/Leyes/Ley%20del%20Notariado%20del%20Estado%20de%20Jalisco.doc>
- Ley Federal del Derecho de Autor (1 de julio de 2020). Diario Oficial de la Federación. México Distrito Federal, México: Congreso de la Unión. Recuperado de http://www.diputados.gob.mx/LeyesBiblio/pdf/122_010720.pdf
- Mendoza de la Rosa, J. (2010). La epistemología jurídica, un concepto crítico para la formación del abogado. *Justicia*, 15(17). Recuperado de <http://revistas.unisimon.edu.co/index.php/justicia/article/view/615>

- Rengel, A. y Fach, K. (2012). Estrategias de innovación en la enseñanza del derecho en España: el ejemplo de las Law Schools. *Jornada de Innovación Educativa 2012*. Recuperado de https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2030348
- Rivera, E. (2017). El derecho y el silencio. *Isonomía*, (47), 181-206. Recuperado de <http://www.isonomia.itam.mx/index.php/revista-cientifica/article/view/47/50>