

Anecdotes from A Collaborative Classroom: Teaching the Intersection of Litigation and Transactional Law

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Teaching a law school class can be an isolating experience, and that was true well before COVID-19. There might be other people in the classroom with you, but the whole point of the classroom setting is to convey information from the brain of the professor to the brains of the students. More often than not, it is a one-way transmission of knowledge. Sure, there are situations where a student asks a pointed question that fosters an intelligent discussion of the subject matter, but the knowledge comes from a single source. For anyone that did not start off in academia, it is clear that this unilateral exchange is nothing like the practice of law in the real world where a more collaborative approach is required. To better replicate a practical law office setting, we set out to create a class that would allow for collaboration, over pontification. Our objective was to show the students how bouncing ideas off one another and relying on both professors' and students' expertise allows for better critical analysis of legal issues, problem solving, and a more realistic application of the theory that they are tasked with learning in law school.

Aside from a love for teaching, we have few overlapping similarities. Professor Steadman teaches contracts and sales, has an extensive background in international cross-border commercial transactions, and wants to talk and write about contract drafting ad nauseum. Prior to his teaching position in Charleston, South Carolina, Professor Paskan worked at a medical malpractice defense firm in Ohio, where the Rules of Civil Procedure were appreciated for their sword/shield dual purpose. The two of us exemplify the age old "paths" that most law students think they need to decide to walk: transactional law or litigation. However, perfecting each of these skillsets in a bubble or vacuum does not make for a well-rounded practitioner; we wanted to see if there was a way to create an engaging course to highlight the reality that these tracks are not always parallel and separate, but frequently intersect.

How then can we get the students to appreciate that these areas of law are both opposing forces and symbiotic? The solution was simple, contracts are not always performed perfectly or properly because not everyone does what is legally required; if everyone upheld their end of the bargain, there would be no need for liquidated damages, indemnification and

limitation of liability, dispute resolution provisions, and eventual litigation. If the first half of a summer session, ten-weeks with eighteen classes and two sessions for non-proctored exams, was primarily dedicated to creating the contract, the second half of the session could focus on working through the wreckage of the ensuing breach of contract. Simply put, this class could answer the age-old question of, “what happens when a contractual agreement goes to hell?”

LAYING THE GROUNDWORK

The paradox of “two professors, one podium” needed to be addressed because this was a novel class with an unorthodox approach, and there were bound to be questions from administration. We decided to build the class as satisfying the “skills/drafting” curriculum requirement because we knew that there would be ten writing assignments throughout the two halves of the course, and the focus of the class was to develop practical skills that would make students more practice ready. We also knew that in order to properly replicate the collaborative working experience, the assignments would need to provide feedback and an opportunity for revision and improvement. We all learn from our mistakes, and we wanted to give our students the opportunity to do the same.

Specifically, the students would be working as legal teams and engage in active negotiations with the counterparty’s legal counsel to come up with foundational documents that are typical in the negotiation, drafting, and litigation processes. Having two sides to the transaction and two professors to serve as “clients” during the practical exercises of the class allowed for realistic simulations. These ideas were packaged into a proposal for the Curriculum Committee and approved by the faculty.

HYPOTHETICAL CREATION

Summer school for a law student can be a tough sell and this could not just be Contracts or Civil Procedure 2.0. Luckily, we both teach 1L students and each of us was able to develop a professional rapport with the students. We recognize that Contracts and Legal Writing might not be the most “thrilling” subjects, but each of us try to make the subject matter approachable, engaging, and enjoyable. Additionally, we both try to go above and beyond for our students by being on campus for extended office hours, reviews, writing workshops, and extracurricular activities. Being available to frequently engage with the students provides insight to what they are watching on television or what pop culture references would land. The binge-watching of shows with cult followings during the pandemic also assisted in creating our hypothetical.

This year, we went with an interview format TV show focusing on vampires as the basis of our problem and we reverse engineered the contract and litigation issues. Last year, we developed the scenario and gave the

parties generic identifiers. Both methods of creating our hypotheticals worked, but we found that there was greater buy-in when the students could visualize the parties and had some familiarity with the content. Going forward, we will likely opt for a theme and then walk through a fact pattern and brainstorm the potential legal issues that might arise or how the contractual relationship between the parties will arrive at its natural falling out and subsequent litigation. The students' appreciation creates an added value by increasing the realism and contributing to the students' posturing throughout the semester.

FIRST HALF: GET TO THE CONTRACT

During the first half of the class, the students were assigned a client to represent. They began by getting their professional "feet wet" by assessing their client's business needs and legal risks. They formulated a series of corporate structures, contract recommendations, and prepared a negotiation strategy. Overlapping with their communications with the client and counterparty, the student-attorneys began protecting and advancing their clients' interests by drafting Non-Disclosure Agreements, Memoranda of Understanding, and Letters of Intent. The student-attorneys were also tasked with marking up the counterparty's proposed preliminary agreements to help them focus on specific issues as negotiations progressed.

The Associate Dean for Information Resources guest lectured, providing the students with a master class in legal research focusing on contract law. The students were guided through the use of targeted legal research tools to find boilerplate language, model contracts, checklists, and sample contract databanks. The students were encouraged to explore all of these legal resources available to them and to begin the process of building databanks that they can carry into their eventual practice of law.

As the class negotiations progressed and the hypothetical contractual relationship came into focus, the class studied the anatomy of a contract, i.e., all of the practical elements of a contract. We started with the title of a contract and progressed through all of a contract's components: recitals; definitions; covenants; conditions; representations; warranties; discretionary authority; permissions; and boilerplate or general provisions. The students were exposed to not only the formatting process of a contract, grammar, and drafting techniques unique to binding agreements, but they also drafted and reviewed specific common contract provisions.

The midterm consisted of a contract drafting assignment, building on all of the students' negotiations of the class hypothetical. This year, the students were tested in their drafting skills in creating a joint venture contract. The students were able to utilize all available research tools and were tasked with understanding which provisions to include, which to omit, and which to customize. In brief, they were asked to represent their client by drafting a contract that accomplished the client's unique business goals.

SECOND HALF: WORKING TO TRIAL

With the student-attorneys' contracts drafted and breached, the parties progressed toward litigation. Most of our students will be taking the Bar Exam in South Carolina, even if they contemplate transferring their UBE score. Most students we work with intend on practicing within the state, or will, at the very least, find themselves in an externship in Charleston during their law school career. Therefore, the natural choice for our litigation foundation is the South Carolina Rules of Civil Procedure ("SCRCP").

The SCRCP mostly follow the Federal Rules, with some exceptions, just as the state of Ohio. Focusing on the differences in the language establishes the existence of jurisdictionally specific discrepancies that must be considered. The natural breakdown of the SCRCP and the flow of a case made for an easy identification of the most common documents for the student-attorneys' burgeoning brief banks.

The student-attorneys were ultimately required to draft a Complaint, an Answer, Discovery, Mediation Statements, and a Motion before drafting Jury Instructions as their final project. The student-attorneys were tasked with reading the applicable SCRCP for each topic before class, and we discussed the language of the individual rules, what they meant, and how they applied in practice. All PowerPoints with practical information were provided to the students after we completed the class lecture and discussion.

As a means of putting the student-attorneys into practice mode, different hypothetical scenarios were used as examples along the way and student input with respect to a plan or a response was solicited. The students really enjoyed engaging in lawyering tasks. Rather than simply providing "war stories" in discussing our glory days of actual practice, we required the student-attorneys to think through their recommendations like lawyers. As part of this role, they were tasked with forecasting the likely response from the opposition, as well as the ultimate outcome.

Going through the process and drafting the documents made this real for the student-attorneys, as evidenced by their creative attempts to resolve the case during mediation, which would have worked had it not been for their "difficult" clients. In reaching this point, we accomplished the goal of getting the student-attorneys to appreciate that a certain level of creativity exists within the plain, and often overlooked, language of the procedural rules. Stated differently, the student-attorneys developed the necessary professional skills and left with a brief bank of their own creation for the litigation component to match their transactional documents.

MOVING FORWARD

We look forward to teaching this class over the summer semester, and we will likely offer it again if our schedules allow. Before we begin working through our next hypothetical, we will carefully review the course evaluations completed by the students. The student feedback is taken into

consideration because we are always looking to improve the delivery of the information. For example, between year one and year two, we allowed the students to pick their partners after assigning partners the previous summer. Also, being able to teach this class in person after a year on Zoom allowed for greater collaboration and allowed us to better circulate around the room during the team exercises.

PROFESSOR PERSPECTIVE: JEAN STEADMAN

After students complete the academic year of mostly doctrinal courses, this class is a welcomed change. The course material enables them to put into practice what they have studied, and it can be considered the payoff for all of their hard work during the year. After studying contract law and civil procedure, now the students can actually see how their newly gained knowledge physically manifests in contract form and in complaints, answers, and motions. By offering the students both academic and practical skill opportunities, we are providing a glimpse of the 360° view of the practice of transactional law and litigation. As we help foster well-rounded law students, they find greater success in internships, externships, and first jobs. As a professor, I enjoy the comradery of co-teaching a class and learning new teaching skills from my colleague as well as having the opportunity to have a front row seat in a Civil Procedure/Litigation class that I would not otherwise have. I know that my teaching has improved through this experience, and our students have received an extraordinary opportunity.

PROFESSOR PERSPECTIVE: JAY PASKAN

I am a firm believer that you cannot win the game if you do not know the rules, and this is the type of class that shows students that rule-based classes are incredibly important for their future careers. More than that though, it demonstrates that a one-size fits all approach is ineffective, and that the practice of law requires a certain level of creativity within the confines of the set boundaries. Rather than talk about these concepts in the abstract, I enjoy teaching this class because it forces the students to address issues head on and contemplate how their actions will affect the end result.

Working with Professor Steadman to create this class has been an unexpected bright spot in my relatively brief time in academia. What started out as two office neighbors chatting about the possibility of a new class, ultimately led to the creation of a fun course that makes me look forward to our ten-week summer program.

I also like the periodic reinforcement of contract drafting principles, most of which I had not used since my time in law school. To bring things full circle, the fact that I can learn different aspects of the law helps make me a better professor and practitioner.