

Transactional Practice Labs

Robert C. Illig
University of Oregon

rillig@uoregon.edu

I.

For the past three years, the curriculum at the University of Oregon has included two Transactional Practice Labs. One is attached to our basic course on mergers and acquisitions, the other to our course on real estate finance. As the experiment continues, we anticipate expanding the lab format to include topics such as tax, securities, intellectual property and employment law.

Structurally, the concept behind the labs is quite simple. At the most basic level, they are intended to mimic the lab structure of a typical undergraduate chemistry class. As in college, we divide the material between the regular doctrinal course and the labs. The underlying course – take, for this example, Mergers & Acquisitions – focuses on traditional notions of law and policy and is taught by full-time, tenure-track faculty. It carries three hours of credit and meets twice a week for fourteen weeks. Students learn the basics of structuring a corporate acquisition, as well as the tax, accounting and antitrust implications of each deal structure. They are also introduced to various aspects of bankruptcy, labor and employment law, environmental and land use regulation, and international law as each impacts the planning and execution of business combinations.

Students enrolled in Mergers & Acquisitions are also eligible – but not required – to enroll simultaneously in the associated Transactional Practice Lab.¹ The lab meets only five times each semester and does not commence until the semester is well underway (so that students have time to digest a large portion of the material in the underlying course before commencing the hands-on portion of the course). It is taught by a team of two senior associates or junior partners at a well-regarded Portland, Oregon law firm and carries only one hour of credit. Attendance at all classes is mandatory, but grading is pass/fail and based largely upon the students' effort.

As currently conducted, the first meeting of the lab portion of the course is a half-day long introductory class during which students are handed a hypothetical term sheet, provided access to the firm's proprietary database of forms, and asked to draft a relatively straightforward asset purchase agreement. The final meeting is also a half-day session during which students are asked to identify and prepare the appropriate closing documents and then stage a mock closing (with the participation of faculty and, whenever possible, our Dean as clients). Both of these classes meet on location in the offices of the sponsoring firm, and students are required to act professionally and wear formal business attire.

The middle three sessions are more casual and class is held in the law school.² During these sessions, students are presented with examples of the kind of problems that arise between signing and closing a business transaction and asked to solve them. In one class, for example, the students (as a group) find that they must telephone a partner in the sponsoring firm who is an expert on employment law, describe for him the overall deal and the issue at

1. Admittedly, the optional nature of the lab means that not all students are benefitting from the entire experience. However, because the format was introduced on an experimental basis, and because it involves travel outside of the law school, we felt it important to make the lab optional.

2. By holding several of the sessions inside the law school building, we are able to make the adjunct faculty more at home within our community and thus strengthen our ties with these important alumni and friends.

hand, and work together to craft an appropriate solution. The partner in question is aware that this is a simulation, but does not know any of the particulars of the deal. The remaining two classes follow a similar format but address different problems. Each is very similar to the actual process that M&A lawyers engage in when drafting and negotiating deal documents and when moving a transaction toward its completion.

Clearly, the exact content and format of each session could be varied and we expect the course to evolve over time. Indeed, it is by no means perfect and I would anticipate that any school that adopts the format could improve substantially upon its design. More negotiation could be included, for example, and more could be done to simulate client interactions. Over time, we also hope to improve the integration between the lab and the underlying course. Perhaps we could even enlist MBA students as clients. However, the basic model appears to work well and the opportunities for productive experimentation are many.

Reaction to our lab offerings has been both strong and positive. Enrollment in the mergers and acquisitions lab rose from nine the first time we offered it to twenty-four the third time around – so large that we were able to offer a second section sponsored by a different law firm. In fact, the firm sponsoring our original mergers and acquisitions lab was so pleased with its effectiveness that they even floated the idea of including in future labs their new hires from other law schools. Alumni and other friends of the law school appear similarly pleased by our commitment to preparing future dealmakers.³

II.

The structure of the labs has three key elements that make the model both unique and successful. Each, while appearing deceptively simple and, in hindsight perhaps, fairly obvious, is essential to the program's success.

First, in order to improve the integration of the law and practice, we declined to offer the labs as stand-alone courses, and instead require that students be simultaneously enrolled in the associated doctrinal course. Indeed, the labs only work as add-ons to regular doctrinal courses. By associating the two – in both time and substance – we have created a much more satisfying and natural fit between teaching the law and the craft. Our tenure-track faculty are free to focus on their strengths – doctrine and policy – while leaving the teaching of dealmaking to those with the best inside knowledge of the current norms and procedures of practice.

Second, in order to address the cost issue, we were careful to have the course sponsored by a law *firm*, rather than assigned to a specific person. Like most law schools, the University of Oregon hires practicing attorneys to teach various courses as adjunct professors. These tend to be courses in highly specialized areas, such as patents or health law, where ongoing practice experience is highly valued and appropriately skilled full-time faculty scarce. It is also a way to cover courses when a full-time faculty member is on sabbatical or visiting another institution. Generally, these adjuncts are selected by means of a careful screening process and are paid a stipend that is modest by the adjuncts' standards but, when accumulated with stipends for other adjuncts, adds up to a measurable expense for the law school.

To staff the labs, however, we tried a different approach. Rather than identifying particular individuals to serve as adjuncts, we instead approached three prominent law firms to serve as sponsors. This has had several positive affects on the program. For one thing, the firms view the sponsorship as a sort of charitable donation of firm hours. As a result,

3. Typical student comments in the year-end evaluations included: "This course was hands-on and practical. It was a great opportunity to put the things we learned into practice." and "The lab was great. We learned how to draft documents and how to close a deal."

they have not asked to be paid the usual stipend (although we did treat all those involved to a fairly lavish dinner). Thus, the entire lab program has been rolled out at close to zero cost. We have also avoided many of the personnel problems that sometimes arise when a particular adjunct loses interest in teaching or becomes too busy with practice to do the high-quality job she intended. Because the teaching responsibility was taken on as a firm rather than individual priority, we had the full attention of the two senior associates/junior partners who led the class. Moreover, these designated instructors then pulled other attorneys in to assist at various points, thereby expanding the universe of expertise that is brought to bear, as well as expanding the exposure of our students to law firm personnel (and vice versa). As an added bonus, the instructors were chosen by their firms due to their status as future stars, meaning that we are able to enlist the help – and trigger the interest – of the best of the next generation of lawyers without engaging in our usual intensive screening process. Overall, because of our decision to take a firm-based approach, we now have a closer relationship with those firms than in the past, and we are each more supportive – not to mention aware – of the other’s needs and capabilities.

The third key element of the lab program has been the decision to structure the courses as mini-simulations. As we designed the course, we resisted the temptation to attempt a more full-scale, lengthy and involved simulation. Thus, the program is more manageable and represents less of a time commitment by both the students and the sponsoring firms. In this way, we believe we have achieved our educational objective without unduly stretching our resources.

More importantly from a pedagogical standpoint, however, by simulating the processes of an actual deal, we have achieved our goal of providing students with a glimpse of their future and an opportunity to learn early on in their careers how the different pieces fit together. To take an easy example, if a student understands not just how negotiation operates in isolation but how negotiation relates to the structuring and execution of a deal, her educational experience will be enhanced on two levels. On the one hand, she will progress more rapidly as an overall dealmaker as she will be better able to combine and exploit her skills (including negotiation) in order to accomplish client goals. On the other hand, she will achieve a higher level of mastery at negotiation because she will understand its function within the context of a deal and practice it with an eye on its ultimate purpose. Thus, we believe the labs will help our students be better able to both learn the individual skills of planning, negotiation and drafting, and progress more rapidly toward a partner’s level of skill in executing an actual transaction.

III.

In addition to being pedagogically significant, the lab structure has provided the law school with a number of side benefits. For example, requiring students to interact more frequently with practicing lawyers has elevated for them the importance of professionalism. As mentioned above, the labs have also enhanced our relations with prominent members of the practicing bar and may have a positive impact on our career placement efforts.

A particular benefit for the University of Oregon has also been geographical. Eugene, where we are located, is home to a relatively small legal market. Thus, most of our students seek employment after graduation in larger cities such as Portland, Seattle and San Francisco. The lab format we have adopted requires our students on two occasions to make the two-hour drive north to Portland, and also requires the instructors on three occasions to make the drive south to Eugene.⁴ These trips help bring us closer to Portland and its large alumni base and also remind everyone involved that such distances are easily overcome. The significance

4. Whenever possible, and for obvious reasons, we schedule the Eugene-based class sessions on home football weekends.

of this message will resonate particularly among law faculties located outside of major metropolitan areas.

The lab format – including both its structure and cost – is also scalable. When the Mergers & Acquisitions lab became oversubscribed in the fall of 2008, for example, we simply recruited a second law firm and offered the lab as two sections, thus doubling our capacity at essentially no cost in terms of time or treasure. In fact, part of the elegance of the model arises because the lab instructors are really only being asked to do for our students what they already do for their own associates. The only significant difference is that we are asking them to do so more self-consciously and on a more concentrated time horizon. The express goal of the labs is to expose students to the ebb and flow of legal practice, something that comes naturally by merely throwing them into the firm's mix. Therefore, once their initial set of problems is created, the instructors' actual preparation time for any given class session is relatively minimal (and so the impact on their ability to balance teaching and practice is likewise minimal). At the same time, because dealmaking is being taught alongside the underlying course, rather than as part of it, relatively little effort is required on the part of the doctrinal faculty member sponsoring the course. As a result, we have found it fairly easy to recruit both interested firms and interested faculty.

The labs are also scalable horizontally. In other words, it is not difficult to imagine expanding the experiment to other transactional courses. For example, certain tax, securities and intellectual property courses seem tailor-made for the lab format, as do courses on bankruptcy and commercial law. With a little imagination, other courses could also be adapted to the lab format. Thus, through further experimentation, we may be able to substantially increase the number and type of students participating in our lab program.

- The above is an excerpt from a longer essay on teaching transactional business law that has been accepted for publication in the fall of 2009 in the *Journal of Legal Education*.