

AALS Workshop on Transactional Law
Integrating Transactional Law in the Traditional Courses
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- I. Transactional Skills Training.
 - A. Must do more than import the traditional litigation skills constructs of interviewing, negotiating, and counseling.
 - B. Transactional skills include the following:
 - 1. Thinking like a deal lawyer, which differs from the classical understanding of thinking like a lawyer.
 - (a) Litigators apply the law to the facts to create a persuasive argument.
 - (b) Deal lawyers translate the business deal into contract concepts. (They take each aspect of the business deal and determine which contract concept or concepts best memorialize a specific business term.) This involves bargaining in the shadow of the law to assure the desired results.
 - 2. Having a deal sense.
 - 3. Ability to analyze, draft, and negotiate a contract (inextricably intertwined).
 - 4. Ability to
 - (a) work collaboratively;
 - (b) communicate effectively;
 - (c) interview and counsel;
 - (d) problem solve;
 - (e) look at a contract from the client's business perspective; and
 - (f) analyze risk proficiently.
- II. Two of Many Approaches to Teaching Transactional Skills.
 - A. One shot wonders.
 - 1. Characteristics.
 - (a) Can be taught by the course professor or a guest lecturer.
 - (b) No or minimal preparation by students.
 - (c) No review or grading by professor.
 - 2. Some of the achievable goals.
 - (a) Enhance the learning of doctrinal material.
 - (b) Teach a transactional skill.
 - (c) Teach the business and legal issues recumbent within a specific agreement.
 - (d) Expose students to material that goes beyond the textbook.
 - (e) Give students context for how discipline specific material arises in a transaction.
 - (f) Demonstrate how transactional practice requires the integration of knowledge from multiple areas of the law.
 - 3. Examples.
 - (a) Business Associations.

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- (i) Go beyond the cases in the textbook to the underlying agreements.
 - (ii) Contract analysis.
 - (iii) Understanding of business issues.
 - (iv) Stockholder Agreement analysis.
 - (b) Contracts.
 - (i) Teach the translation skill.
 - (ii) Reinforce doctrinal knowledge through contract analysis.
 - (c) Intellectual property.
 - (i) Give students a taste of practice.
 - (ii) Teach students a five-prong framework for discerning business issues.
 - (iii) Through an IP-specific hypothetical, have students apply the framework to learn some of the typical business issues that arise in an IP transaction.
 - (d) Tax.
 - (i) Give students context for the work they will be doing as tax lawyers.
 - (ii) Teach tax students
 - (A) what a representation and warranty is;
 - (B) what constitutes a fraudulent misrepresentation;
 - (C) how an in-house counsel and outside counsel third-party opinion differ; and
 - (D) the golden rules of ethics.
 - (iii) Demonstrate through an exercise why tax lawyers need to know the preceding information.
- B. An integrated transactional curriculum.**
1. Series of courses, each of which is a building block, each of which is progressively more sophisticated.
 - (a) Parallels litigation curriculum (civil procedure and legal writing in the first year; evidence in the second year; and advanced skill courses in the third year).
 - (b) As each course builds on the one before it, students see material more than once; critical for effective learning.
 2. First-year: an introduction to transactional practice. This would give students an understanding of how businesses operate, how to understand financial statements (the language of business) and an introduction to how to translate a deal into an agreement.
 3. Second year.
 - (a) Contract Drafting.
 - (b) Deal Skills.
 - (i) Skill – a proficiency that lawyers use in multiple contexts.
 - (ii) Task – specific work that a lawyer does, generally requiring the use of one or more skills.

- (iii) Skills, tasks, and other material taught include the following:
 - (A) Letters of intent and term sheets; clarifying whether the parties intend to be bound.
 - (B) Due diligence (requires ability to analyze contracts and perform risk analysis; both taught in contract drafting).
 - (C) Third-party opinion letters.
 - (D) Drafting of board resolutions.
 - (E) Indemnity agreements, guaranties, escrows (risk reduction mechanisms that deal lawyers use in almost every transactional practice).
 - (F) Interviewing and counseling.
 - (G) Transaction management.
 - (H) Contract negotiation (based on contract analysis).
- 4. Third year.
 - (a) Capstone simulation courses.
 - (i) Sophisticated semester-long role-plays, requiring students to apply knowledge from required doctrinal courses and earlier skills courses. (By once again revisiting material from earlier courses, students reinforce what they have learned.)
 - (ii) Each course based on a specific transaction or type of practice.
 - (iii) General counsel.
 - (iv) Intellectual property.
 - (v) Life cycle of a corporation.
 - (vi) Mergers and acquisitions.
 - (vii) Private equity.
 - (viii) Venture capital.
 - (b) Field placements.