

Case Study Workshop Method for J.D./LL.M. Transactional Courses

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I. Introduction: Rationale for the Case Study Workshop Method

Transactional business courses can be difficult to teach because the subject matter may appear dry and inaccessible to those unfamiliar with the area. International and comparative business courses that attract large enrolments of foreign LL.M. students raise additional challenges. Where foreign LL.M. students and local J.D. students are together in the same class, divergent experience levels and cultural and language barriers can often hamper meaningful student interactions in traditional Socratic classes. This paper describes a case study workshop method for addressing some of these challenges in the context of a transactionally focused International Business Transactions (IBT) course. The focus is largely anecdotal as the paper is based on the author's own classroom experiences.

One of the challenges the author faced when initially asked to teach an IBT course was that the class typically comprised a combination of J.D. and foreign LL.M. students in proportions ranging from 60/40 to 50/50 over the years. The LL.M. contingent varied in its cultural background and in the English proficiency of the students. Additionally, students in the LL.M. program typically already held a law degree from an institution in their home country, which led to significantly divergent practical experiences between the LL.M. and J.D. contingents. While this is undoubtedly an asset in terms of a rich classroom environment, finding practical ways to bring out the wealth of knowledge residing within the classroom can be difficult.

In particular, where a class is about 50% J.D. students with fairly traditional backgrounds, and the other 50% is a widely diverse group in many respects, an initial question becomes: "Who should the class be pitched to?" Many of us face this question in classes comprised solely of J.D. students. A frequent topic of discussion at the author's school is whether to pitch classes at the "top half" or the "bottom half" of a J.D. class. Different professors understandably have different opinions on this question. When you add an extremely diverse LL.M. contingent into the mix, the "pitching" question becomes even more difficult: "Do I pitch to the LL.M.s or to the J.D.s, particularly if the LL.M. contingent makes up around half of the class?" This question relates both to substantive focus of the course,¹ and also the level at which a professor might expect students to master any given topic.

The author is fortunate to have a colleague who also teaches the IBT course. This colleague has had many years of experience as an international business lawyer. He is

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¹ At least in a course like IBT where the professor generally has significant leeway about the substantive focus and topics covered in the class over the course of a semester.

uniquely able to deal with these challenges by drawing on his own practical experiences of lawyering in different countries. He is thus able to tailor class discussions specifically to each individual student's experiences, moving from one student to another within each class session to illustrate differences in attitudes to negotiations, drafting, arbitration etc. However, most of us do not have such a large bank of private experience of our own to draw on in order to fully engage all students, no matter what their background may be.

II. Structure of the IBT Workshop Course

This paper describes the author's attempt to create a workshop method for teaching IBT to a mixed group of local J.D. and foreign LL.M. students that does not require substantive personal experience of lawyering or transacting in other countries. The author's method is the result of a gradual transition from teaching IBT in a traditional Socratic format to developing a series of weekly workshops involving group projects that culminate in individual writing exercises for assessment purposes. The course comprises a single 2-3 hour class session per week. Each week focuses on a hypothetical problem that relates to assigned reading materials for that week. Each class session is broken down into three components: (a) introductory mini-lecture; (b) small group break-out sessions; and, (c) large group discussion and summary. Each component is described in more detail below.

(a) Introductory Mini-Lecture

This component was added to the teaching method over the years largely at the students' request. The author's original plan for teaching in the case study workshop format started with what is now part (b) – below - which involves students working on problems based on pre-assigned readings in small break-out groups. Over time, it became apparent that even with the pre-assigned readings, not all students felt comfortable jumping directly into small group workshopping without some common grounding facilitated by the professor. Thus, the “mini lecture introduction” was born.

The introduction of each class now basically comprises a 20-30 minute session in the traditional Socratic format, based on the pre-assigned readings for the relevant week. It introduces the issues raised in the hypothetical problem to be addressed in the small group break-out sessions. It also touches on relevant materials that students will need to refer back to in workshopping the problem.

The professor might answer some general questions about specific facets of the problem the students will be workshopping, without being overly prescriptive. The aim of the workshopping is to allow students an opportunity to be engaged and gain confidence in attacking a problem from the ground up largely on their own, as well as to use classmates as colleagues in assisting to develop solutions to the problem. These are the kinds of skills students will ultimately need to develop and master in the real world as transactional lawyers. Thus, the professor should introduce the issues in general terms, highlighting any particularly difficult technical problems students may have to grapple with in the context of the assigned problem. The professor should not, however, do all of the issue-raising and exposition of relevant legal principles at this early stage of the class. Students should be required to take a first cut at the issues themselves in the break-out sessions, and the professor can help them put all their ideas together both in

the break-out sessions and in the larger group summary discussion that follows.²

(b) *Small Group Break-Out Sessions*

After the introduction, the students spend approximately an hour working in small break-out groups of 4-5 students each. J.D. students are mixed with LL.M. students in roughly the proportions that exist in the class overall. Thus, if the class overall is 50/50 J.D. to LL.M. students, a break out group of four should include two LL.M. students and two J.D. students. Breakout groups often further divide into sub-groups, representing the different parties in the hypothetical case study assigned for the week. While the students are workshopping the problem, the professor moves from group to group to discuss each group's individual approaches to the problem. This enables the professor to have more in depth one-on-one time with each student than in a traditional Socratic class even within the large classroom setting. It also encourages LL.M. students to participate more actively, particularly those who are less comfortable speaking up in a larger group setting because of, say, concerns about their spoken English abilities.

Over time, the author has varied the approach to the composition of the break-out groups. This can be done in consultation with the class, reflecting to an extent what students feel comfortable with and what they feel is the most productive approach. Many of the LL.M. students want to meet and learn from a variety of J.D. students so it can help to require students to work in different groups from week to week. Also, the professor can assign students to groups each week or can allow groups to form voluntarily. However, where groups form voluntarily, the professor should be alert to ensure that no one is being left out and that cliques are not forming that are non-inclusive of other groups.

(c) *Large Group Discussion and Summary*

The final 45-60 minutes of the class involves a full class discussion of the hypothetical problem where the professor solicits reports on specific issues from each break-out group. This discussion can be much more in depth and focused than a traditional Socratic class because the professor knows in advance what the different groups have emphasized in their small group discussions. This enables the professor to draw out relevant issues much more efficiently than if she was coming in cold to a discussion of a problem without knowing the students' perspectives on the issues in advance.

III. Assessment Issues

Assessment is based on a combination of class participation and written responses to several of the problems workshopped in class. Because the students have already had the benefit of discussing the problems with the professor and their classmates, they can create written responses at a much higher level than they might if working from scratch. In this format, it is also clear that they are being graded on analytical skill rather than on issue spotting, which can be important in upper level courses. If the students know the issues well, and know that the professor is aware that

² See Part II.(c) *infra*.

they all know the issues, they have no choice but to focus on developing their analytical skills in attacking those issues as there will be no marks assigned for issue-spotting.

The author has generally required two to three written assignments throughout the semester comprising between 60 and 80 per cent of each student's overall grade. Students are given feedback on each assignment well before the next assignment is due to be submitted. This assessment method is beneficial for those who are less comfortable with examinations because of concerns about written English expression under time pressure. This may be the case for many foreign LL.M. students as well as some J.D. students. The written assessments are done on an individual basis and students do not collaborate with each other on the written work. It is important that students learn the appropriate relationship between collaborating in group discussions to develop responses to a given problem, and writing their own individual approach to the problem. Their approach will naturally incorporate issues that arose in the group discussion, but they will have to express the issues in their own words and defend their personal opinions on the issues, whether these opinions accorded with those of others in the group or not.

The written assignments can involve advising clients on how to resolve a dispute, or structure a transaction. Additionally, they can include specific drafting elements. This is a good way to give students a chance to differentiate their own personal written work from the group discussions. Often a transactional lawyer will be asked to draft a contract based on a set of group negotiations. Thus, including group discussions in class while, requiring each individual student to later attempt drafting some key contract terms can be a good assessment strategy. However, because this course is not a pure skills course, the author has typically not required individual students to draft entire contracts, but has rather chosen a particular contractual issues or small set of related issues and asked students to try and draft a handful of relevant contract terms. Another way to incorporate specific contract drafting skills into the class is to ask each breakout group to draft a small set of terms as they are workshopping a problem, and then collect the terms from each group for copying, distribution, and discussion in a subsequent class.

The author has often added short answer policy questions in the written assignments that extend on the problem workshopped in class. This is another way in which individuals can distinguish their personal written work product from the group work. By assessing a student's overall performance on a basis of oral group work in class, and written work which includes elements that have been workshopped in class and some new issues, students end up being graded on a variety of important skills – collaboration, oral expression, written expression, verbal and written analytical skills, and some drafting skills.

IV. Summary and Conclusions

Overall, the author has found that there are a number of advantages to this method, particularly to an audience comprised of significant numbers of foreign LL.M. students alongside J.D. students. This method facilitates greater interaction between J.D. and LL.M. students. It also enables more one-on-one interactions between the professor and the students, even in the context of a large class setting. This, in turn, enables students to feel that the professor is more accessible and approachable outside

of formal class sessions. Some students who may otherwise be reticent to approach the professor outside of class may be eased into doing so by the increased one on one contact in the classroom from week to week. The workshop method also increases opportunities for students to have ongoing feedback throughout the semester, both orally in the break-out class sessions, and in writing, on the written assignments. There is also less frustration between the LL.M. and J.D. students in approaching problems from their different perspectives – because in this new format they are working together and learning directly from each other’s experiences. However, they are largely being graded on their own individual contributions.

One significant disadvantage of this teaching method is that it can be particularly time intensive for the professor. Both the preparation of course materials, and the need for timely feedback on written assignments are more burdensome in this respect than in a typical Socratic class assessed by an examination. However, by the same token, these exercises can be much more rewarding for the professor as well as the students. Also, once the class preparation is done for the first year, it pays off in large dividends in future years. Of course, problems and materials have to be updated as they do in any other class, but the updates can be more effective and more fun as they will often be the direct result of issues that came up in class workshops involving the problems.

A possible limitation of this method is that it may ultimately prove to be better suited to areas of law that involve problems between parties, rather than those that are more about learning rules: for example, issues of incorporation of companies may not lend themselves to this approach, whereas transactional elements of business courses are a better fit. In this context, the workshop method can be a very effective and low-cost/low-tech way to engage students of diverse backgrounds in a common learning enterprise.