

**Association of American Law Schools – Section on Clinical Legal Education
Glossary for Experiential Education**

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The ABA Standards for Approval of Law Schools now require that law students take at least six credits in “experiential courses.” ABA Standard 303(a)(3). These standards also define three different kinds of courses that satisfy this requirement: I) “law clinics”, II) “externships”, or “field placements”; and III) “simulations.” ABA Standard 304. While most law schools have each of these kinds of courses, some have also created other courses that do not fit neatly within these definitions, in an effort to diversify student opportunities for experiential education.

These changes have created a confusing welter of names and labels. In some cases, the same name refers to very different courses; in others, different names refer to the same kind of course. Any one course can have features that overlap with but are not identical to the features of similar courses. No one set of terms defines these courses precisely and usefully.

With this document, the Section on Clinical Legal Education of the Association of American Law Schools offers a uniform set of terms and descriptions for the more common forms of experiential education including clinical legal education. The Clinical Section intends this glossary to encourage the development of experiential teaching in law schools and to identify the elements of course design characteristic to the different kinds of experiential courses.

The Clinical Section has the following goals for this taxonomy:

- To foster clarity in discussing different kinds of experiential courses.
- To minimize confusion in describing, comparing, and evaluating courses within and among law schools.
- To help current and prospective students understand the different kinds of experiential education.

The Clinical Section acknowledges the range of different kinds of experiential education offered throughout our community. The Section is also sensitive to the issues underlying the use of certain terms, in particular “clinical” and “experiential”, which historically has meant in-house clinics and externships or field placements, and simulations, respectively. In developing this taxonomy, the Section draws from the expertise of members of the Section and specifically from two sources: Alliance for Experiential Learning in Law, *Experience the Future: Papers from the Second Annual Symposium on Experiential Education in Law*, 7 ELON L. REV. 1(2015) (hereinafter “Alliance Article”); and Deborah A. Maranville, et. al., BUILDING ON BEST PRACTICES: TRANSFORMING LEGAL EDUCATION IN A CHANGING WORLD (Lexis Nexis 2015)(hereinafter, “Building on Best Practices”).

The authors of these two sources compiled and analyzed a list of terms, using similar vocabulary and similar definitions. The Alliance article included more terms, including those that described programs taught by our colleagues in non-clinical programs. For those terms where a difference in usage or definition existed between the two sources, those differences have been pointed out in the following list.

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INTRODUCTION

Within each of these sections, the terms move from general terms (such as “experiential education” or “law clinic”) to more specific ones (such as “practicum” or “hybrid.”) For each term, the document defines the term’s pedagogical features, describes the courses that use this pedagogy, and discusses the programs of which these courses are a part.

This glossary can be used in several ways. At a minimum, it should help clarify distinctions between different kinds of experiential courses. These distinctions are the main reason for Section V. Inclusion of these terms helps to both describe modes of including experience in all parts of the law school curriculum and provides a way to compare the types of experience and pedagogy used in these courses to that of clinical courses. The glossary can also help to highlight certain design features and practical challenges inherent in the development of experiential courses. On occasion, the glossary offers recommendations about how particular terms should be used. Finally, the glossary can help a school make decisions about how to balance different kinds of experiential offerings within the overall curriculum.

TERMS REFERRING TO EXPERIENTIAL EDUCATION GENERALLY

Experiential Learning:

Experiential learning is what happens when we learn from experience. It is nature’s way of learning. Humans depend on experiences, or observations of the experiences of others, to understand the world. We learn from experience on our own, and sometimes, we enlist teachers to help us engage in more directed learning from experience. Another way to describe experiential learning is “incidental learning”: the learning that comes to us as we experience life, with no particular focus or structure. See Sandra Kerka, *Incidental Learning*, TRENDS AND ISSUES ALERT NO.18, 2000 at 3-4.

Experiential Education:

Experiential education is an active method of teaching that integrates theory and practice by combining academic inquiry with actual experience. It encompasses many methodologies in which educators purposefully engage with learners in direct experience and focused reflection in order to increase knowledge, develop skills, clarify values, and develop people’s capacity to contribute to their communities. Experiential education methods in legal education include both simulated practice experiences, in which students assume the role of a lawyer in a simulated setting, and clinical legal education experiences, in which students assume the role of a lawyer, either in support of others as a mentee or as a student lawyer with a high level of direct responsibility as lead counsel or member of a lawyer team.

An **experiential course** is a credited course in which experiential education occurs.

ABA Standard 303(a)(3) defines an experiential course as follows:

“An experiential course must be a simulation course, a law clinic, or a field placement. To satisfy this requirement, a course must be primarily experiential in nature and must:

- (i) integrate doctrine, theory, skills, and legal ethics, and engage students in performance of one or more of the professional skills identified in Standard 302¹;
- (ii) develop the concepts underlying the professional skills being taught;
- (iii) provide multiple opportunities for performance; and
- (iv) provide opportunities for self-evaluation.”

In this document, experiential education includes **law clinics**, **externships**, and **simulations**, addressed more fully in the sections that follow. The term does not include **pro bono** opportunities, which are often uncredited activities in which experiential or incidental learning may occur.

Clinical Legal Education:

Clinical legal education is a particular form of experiential education that engages students in addressing real-world legal matters in interaction with others through supervised practice experience. Under the supervision of either a faculty member or a field supervisor who is accountable to the law school, students assume the role of a lawyer either in support of others as a mentee or as a student lawyer with a high level of direct responsibility as lead counsel or a member of a lawyer team.

A **clinical legal education program** is a collection of courses offered by a school in which a significant part of the learning involves supervised practice experiences in which students assume the role of a lawyer, either in support of others as a mentee or as a student lawyer with a high level of direct responsibility as lead counsel or a member of a lawyer team. The shape and size of these programs vary greatly in response to many influences: social justice, client and community need, clinical faculty interest and motivation, funding, and teaching goals. Some law schools mandate clinical education for students and others guarantee a clinical experience for any student who wants one. Some law schools require all students to take one or more courses in the school’s clinical legal education program. The most common clinical courses are **law clinics** and **externship courses**.

The ABA recently added Standard 303(b)(1) to require that law schools “provide substantial opportunities to students for...law clinics or field placements.”

¹ The skills in Standard 302 are:

- (a) Knowledge and understanding of substantive and procedural law;
- (b) Legal analysis and reasoning, legal research, problem-solving, and written and oral communication in the legal context;
- (c) Exercise of proper professional and ethical responsibilities to clients and the legal system; and
- (d) Other professional skills needed for competent and ethical participation as a member of the legal profession.

Self-Evaluation:

The ABA's new definitions of experiential courses, law clinics, externships, and simulations courses require that each include "opportunities for self-evaluation." The ABA has not yet provided guidance on the meaning of "self-evaluation" nor is there a commonly accepted definition of the term. We recommend that the term "self-evaluation" be read to include two inter-related aspects: the capacity to assess a specific lawyering performance and make appropriate changes; and the capacity to reflect on experience more generally so as to improve insight, broaden understanding, and develop decision-making ability.

I. LAW CLINICS

Law Clinic:

A course in which a significant part of the learning involves students assuming the role of a lawyer representing actual clients, or performing other lawyering roles, under the supervision of an attorney who is a member of the law school faculty member (full-time, part-time, or adjunct), fellow, or staff attorney. Law clinics have a low student to faculty ratio in order to allow faculty to rigorously supervise legal work, provide on-going and cumulative opportunities for student self-evaluation and provide on-going, individualized feedback to students on their performance, both distinguishing features of law school clinics.² Law clinic courses include a classroom seminar that may address substantive or procedural areas of law, ethical rules, lawyering skills and theory, and case rounds. The law clinic seminar employs signature pedagogies such as simulations, role plays, case rounds and opportunities for students to reflect on the larger social and political context in which they practice. Law clinics also require students to engage in self-evaluation and other reflection, through individual supervision, journals and other formats. Many law clinics also incorporate social justice concepts.

Law clinics may operate within the law school or in the community, with or without community partners. Students typically work part-time in a law clinic and receive credit for the casework and seminar while taking other law school courses. In some cases a school might offer a full-time clinic experience, where students work longer in a clinic and thus receive a higher number of credit hours.

² As long ago as 1991, the Clinical Section indicated that the recommended maximum ratio for a live client in-house clinic was 10 students to 1 faculty member when the faculty member has no other responsibilities and students receive at up to four (4) credit hours for their casework. Peter Joy, "Report of the Committee on the Future of the In House Clinic" 42 *Journ. Leg. Educ.* 508, 567 (1992). The report went on to indicate that the average ratio at that time was closer to 8 to 1. 42 *Journ. Legal Educ.* at 567 and that ratios would have to be higher (ie less students to faculty) if supervising faculty had scholarship, service and/or other teaching obligations. More recently, authors have indicated that a maximum of 8 student per term allows for the most effective supervision of students. See, Lisa Radtke Bliss and Donald C. Peters, *Delivering Effective Education in In-House Clinics*, BUILDING ON BEST PRACTICES: TRANSFORMING EDUCATION IN A CHANGING WORLD at p. 210 (Maranville et al. eds. LexisNexis 2015)

The ABA defines a law clinic in Standard 304(b):

A law clinic provides substantial lawyering experience that (1) involves advising or representing one or more actual clients or serving as a third-party neutral, and (2) includes the following:

- (i) direct supervision of the student's performance by a faculty member;
- (ii) opportunities for performance, feedback from a faculty member, and self-evaluation; and
- (iii) a classroom instructional component.

For ABA purposes, to qualify as an **experiential course**, a law clinic must meet the requirements of both Standard 303(a)(3) and Standard 304(b).

In-House Clinic:

A law clinic operated by the law school in which faculty members supervise students to provide law-related services. An in-house clinic need not be physically located within the law school building.

II. EXTERNSHIPS/FIELD PLACEMENTS

Externship or Field Placement

A course in which a significant part of the learning relies on students either representing clients or performing other lawyering roles under the supervision of practicing lawyers or other qualified legal professionals who are not members of the law school faculty, in practices outside the law school. Common kinds of practices include governmental, judicial, non-profit, and for-profit placements; site supervisors can include attorneys, judges, mediators, and legislators. Site supervisors share supervision of students with a faculty member. Site supervisors agree to provide direct feedback and guidance to the students and maintain ultimate responsibility for the client or legal matter. Faculty have overall responsibility for assuring the educational value of the learning on site and the academic inquiry at the law school. In particular, faculty prompt students to engage in the guided reflection that is a defining characteristic of externships, often but not necessarily through a seminar associated with the course.³

Externship courses usually involve students working part-time at the placement, while taking a related seminar and other courses at the law school. However, **semester-in-practice** or **immersion externships** have become increasingly common. In these courses, students work close to full-time, and may also take a related seminar and a more limited pool of other courses.

The ABA Standards refer to these programs as "field placements" (See e.g., Standard 303(a)(3),

³ Carolyn Wilkes Kaas, et.al., *Delivering Effective Education in Externship Programs*, BUILDING ON BEST PRACTICES: TRANSFORMING EDUCATION IN A CHANGING WORLD at p. 216 (Maranville et al. eds. LexisNexis 2015)

Standard 303(b)(2) and Standard 304(c). The term “externships” is not used by the ABA in Standard 303 but represents the nearly universal label for these courses in law schools and the national community of clinicians. This document uses the terms interchangeably.

An **externship program** refers to the collection of externship courses within a law school’s **clinical legal education program**. Many externship programs organize externships into specialties, which then may have topic-specific companion courses, such as criminal, civil, and judicial practice.

ABA Standard 304(c) defines a field placement course as follows:

“A field placement course provides substantial lawyering experience that (1) is reasonably similar to the experience of a lawyer advising or representing a client or engaging in other lawyering tasks in a setting outside a law clinic under the supervision of a licensed attorney or an individual otherwise qualified to supervise, and (2) includes the following:

- (i) direct supervision of the student’s performance by a faculty member or site supervisor;
- (ii) opportunities for performance, feedback from either a faculty member or a site supervisor, and self-evaluation;
- (iii) a written understanding among the student, faculty member, and a person in authority at the field placement that describes both (A) the substantial lawyering experience and opportunities for performance, feedback and self-evaluation; and (B) the respective roles of faculty and any site supervisor in supervising the student and in assuring the educational quality of the experience for the student, including a clearly articulated method of evaluating the student’s academic performance;
- (iv) a method for selecting, training, evaluating and communicating with site supervisors, including regular contact between the faculty and site supervisors through in-person visits or other methods of communication that will assure the quality of the student educational experience. When appropriate, a school may use faculty members from other law schools to supervise or assist in the supervision or review of a field placement program;
- (v) a classroom instructional component, regularly scheduled tutorials, or other means of ongoing, contemporaneous, faculty-guided reflection; and
- (vi) evaluation of each student’s educational achievement by a faculty member; and
- (vii) sufficient control of the student experience to ensure that the requirements of the Standard are met. The law school must maintain records to document the steps taken to ensure compliance with the Standard, which shall include, but is not necessarily limited to, the written understandings described in Standard 304(c)(iii)[sic]”

For ABA purposes, to qualify as an **experiential course**, an externship course must meet the requirements of both Standard 303(a)(3) and Standard 304(c).

Cooperative Education Program:

A structured educational strategy integrating classroom studies with learning through work experiences in a field related to a student’s academic or career goals. Unlike in an **externship**, students in a Cooperative Education Program, also called Co-op Program, typically do not receive academic credit for the fieldwork. Law schools enhance learning from fieldwork in Co-op Programs in a variety of ways, such as course/fieldwork sequencing, vetting of field supervisors, assessments of student work, student journals, and pre- or co-requisite companion courses. *Compare* “semester-in-practice” or “immersion” courses, in which students receive credit.

Internships:

The term “internships” is often used interchangeably with “externships” or “field placements.” We suggest that term should be read to refer only to experiences in outside law practices, paid or unpaid, for which students do not receive credit.

III. EMERGING EXPERIENTIAL MODELS

The terms “law clinic” and “externships” refer to long-standing models of clinical course design that the definitions in the previous two sections describe. At the same time, emerging models of clinical education have arisen that combine aspects of law clinics, externships, and other courses in new ways.⁴ For ABA purposes, to qualify as an **experiential course**, any of these emerging clinical models must meet the requirements of both Standard 303(a)(3) and Standard 304(b).

Given the diversity of forms these clinical models take, there is no one set of widely recognized terms that describes each model or the differences between the models. Terms for certain models, such as **law practicums** and **law labs**, have relatively stable meaning and are separately defined in this glossary. Terms for many other models do not have a commonly shared meaning. These include a “**hybrid clinical education course**” (or “**hybrid**”); “**external clinics**”; or “**practitioner-supervised clinics.**”

In the absence of consensus about these terms, this glossary does not attempt to establish precise definitions or distinctions between these terms. Instead, it identifies some of the most common differences in design that characterize these alternative models. Three overarching parameters exist:

⁴ In BUILDING ON BEST PRACTICES, Deborah Maranville refers to these as “alternative clinical models.” While this glossary does not use that terminology, much of the discussion which follows benefits from Maranville’s analysis. See *Ensuring Effective Education in Alternative Clinical Models*, BUILDING ON BEST PRACTICES: TRANSFORMING EDUCATION IN A CHANGING WORLD (Maranville et al. eds. LexisNexis 2015).

-- *the identity of the teacher and law practice supervisor*: is the person charged with teaching the course also the person who supervises student legal work? Who employs the person or persons in these roles: the law school, a law practice outside the law school, or some combination of the two?

-- *the primary purpose of the law practice*: is the law practice designed primarily to provide an educational experience for students or primarily to provide service to clients? Is the primary professional role of the law practice supervisor to educate students, to provide legal representation, or some combination of the two?

-- *the sources of financial and other support*: does the law school provide all of the funding for staff and the other costs of the law practice or does an outside legal service provide some or all of those costs?

Different handling of these three parameters leads to the large diversity in models mentioned earlier.⁵

IV. SIMULATIONS

Simulation Course.

Simulation courses teach students particular competencies using simulated fact patterns rather than real time, real world problems. ABA Standard 304(a) defines a simulation course as:

A simulation course provides substantial experience not involving an actual client, that (1) is reasonably similar to the experience of a lawyer advising or representing a client or engaging in other lawyering tasks in a set of facts and circumstances devised or adopted by a faculty member, and (2) includes the following:

- (i) direct supervision of the student's performance by the faculty member;
- (ii) opportunities for performance, feedback from a faculty member, and self-evaluation; and
- (iii) a classroom instructional component.

For ABA purposes, to qualify as an **experiential course**, a simulation must meet the requirements of both Standard 303(a)(3) and Standard 304(c). In addition, a simulation course "must be primarily experiential in nature . . . "Primarily" is used to indicate the main purpose of something. The experiential nature of the course should, in this sense, be the organizing principle of the course, and the substantive law or doctrinal material that is part of the course should be incidental to it, not the other way around." *Managing Director's Guidance Memo, Standards 303(a)(3), 303(b), and 304* (March 2015).

Simulations thus represent a distinct category of courses focused on the student's practice of well-defined lawyering competencies in a variety of contexts. This category does not include courses which may require

⁵ For a discussion of the ethical, pedagogical, and supervisory challenges posed by these alternate models, see Maranville, *id.*, at 246-252.

occasional exercises but in which the primary method of assessment occurs through an exam or a paper.

Simulation courses can address a wide range of difference practice abilities and competencies. The following represents a non-exclusive list of the more common categories of simulation courses:

Litigation and advocacy: trial practice, pre-trial practice, discovery, arbitration advocacy, appellate advocacy.

Transactional practice: drafting of contracts, wills, or similar documents; business formation; business negotiations.

Neutral practice: mediation (as mediator); arbitration (as arbitrator)

General skills: interviewing; counseling; negotiation; law practice management.

Two special categories of simulation experiences deserve mention. In **lawyering skills competition programs**, students assume the role of lawyer in simulated exercises culminating in intramural or intermural competitions. These courses may award credit to students if they meet the requirements of Standard 305; to count as **experiential courses**, they would need to satisfy the requirements of Standard 303(a)(3) and 304(a).

In **legal writing, research, and analysis courses**, students developed the fundamental skills of research, analysis, and writing through simulated exercises. Under Standard 303(a)(2), all laws schools must provide such a course in the first year; and all must offer an **advanced legal writing experience** in the upper-class curriculum. Note that a law school cannot designate one course to satisfy more than one requirement. Interpretation 303-1. For example, a course that satisfies the advanced legal writing requirement or the professional responsibility requirement cannot also satisfy the experiential course requirement.

V. OTHER EXPERIENTIAL EDUCATION TERMS

The inclusion of these terms in this section does not indicate that all of these models would satisfy the ABA requirements for being considered an experiential course. For each of these models, the requirements of ABA Standard 303(a)(3) would have to be met before the course could be counted as an experiential course.

Service Learning:

Service learning is a teaching and learning strategy that integrates meaningful community service with instruction and reflection to enrich the learning experience, teach civic responsibility, and strengthen communities. In law schools, service learning can include **law clinics** and **externships**. The term does not encompass **simulations**, which typically do not include community service.

Social Justice Education:

Social justice education teaches students how the laws, policies, and practices of institutions and communities further injustices in society at large. Within experiential education, social justice education incorporates the development of skills necessary for students to challenge subordination of, and create systemic change for, underserved populations, often in partnership with the affected

communities. A significant number of **law clinics** and **externships** use social justice education methods, either explicitly or implicitly. **Simulation courses** may also be designed to use social justice education methods.

Pro Bono Program:

A program designed to inspire and to enable students to engage in pro bono service, while in law school. The primary purpose of these programs is to teach students why pro bono service is an important professional value and to introduce them to the ways in which they can contribute in their practice as attorneys.

Traditionally, this term has referred to legal work uncompensated by credit or pay. The term now includes for-credit clinical opportunities, where explicit education and reflection teach why pro bono service is an important professional value. This definition comports with both the ABA rules and new requirements implemented by the New York Bar. *See*, Interpretation 303-3 of ABA Standard 303(b)(2); New York Bar. N.Y. COMP. CODES R. & REGS. tit. 22, § 520.16 (2012)

ABA Standard 302(b)(2) indicates that a law school “shall provide substantial opportunities to students for...student participation in pro bono legal services including law related public service activities.” Interpretation 303-3 of Standard 303(b)(2) indicates that a student may use hours worked in a **law clinic** or **externship** to meet the pro bono requirement as long as that is not the only way that students can meet the requirement. (*See* Interpretation 303-3 of Standard 303(b)(2): “Standard 303(b)(2) does not preclude the inclusion of credit-granting activities within a law school’s overall program of law-related pro bono opportunities so long as law-related non-credit bearing initiatives are also part of that program.”)

Integrated Lawyering Program:

A sequence of required experiential courses or activities integrated into the curriculum and coordinated to progressively teach students lawyering skills and values. The program may be required of all students or of students in a specialized field of study. Through a series of courses, the student would move through a continuum of roles: from simulated practitioner, to supporting mentee, to student lawyer with a high level of direct responsibility as lead counsel or member of a lawyer team. Such a program would normally include **simulations**, **law clinics**, and **externships**.

Experiential Module:

An experiential education activity that can be inserted into a law school course, that is not a clinic, externship, or simulation. The activity is used to enhance learning of substantive material and to introduce students to real world lawyering experiences. Examples include role-plays, drafting exercises, and planned, reflective observation of real lawyering activities. Building on Best Practices adds that experiential modules would include observation of student performance, reflection on their work, and a real world assignment. *See* definitions of **law lab** and **law practicum** for examples of courses that typically include experiential modules.

The addition of an experiential module to a doctrinal course does not necessarily convert that course to an experiential course. To qualify as an experiential course, “a course must be primarily

experiential in nature . . . “Primarily” is used to indicate the main purpose of something. The experiential nature of the course should, in this sense, be the organizing principle of the course, and the substantive law or doctrinal material that is part of the course should be incidental to it, not the other way around.” *Managing Director’s Guidance Memo, Standards 303(a)(3), 303(b), and 304* (March 2015).

Law Practicum:

This term is used to refer to a wide range of classes that focus on a particular legal topic and include experiential components. This glossary uses the term to refer to a single course focused on a discrete area of law that integrates a requirement that students engage in practical fieldwork or complex simulations on the topic of study. Experiential education is an integral part of the class but not the only method of instruction. Where students work on real world problems or for real clients under the supervision of a faculty member, the course shares characteristics with **law clinics** and may in fact meet the ABA’s definition of a law clinic in Standard 304(b). Where students work on real world problems or for real clients under the supervision of practitioners who are not faculty members, the course shares characteristics with **externships** and may in fact meet the ABA’s definition of a field placement course in Standard 304(c). . The latter courses have also been called a “field placement incorporated into a law school course” or “integrated externship,” a usage that may in some cases conflict with the ABA definition of field placement courses. *Compare* “Law Lab,” in which experiential education occurs in a separate related course.

Law Lab:

A course in which students work with faculty on real world projects with either actual or simulated clients to deepen student learning through application of knowledge gained in a related but separate non-experiential course, which is either a pre- or co-requisite. The lab may or may not be taught by the professor of the non-experiential course. If work on real legal problems or with real clients is not supervised by a faculty member, compare externships generally and hybrids specifically. *Compare* “Law Practicum,” in which experiential and non-experiential learning occur in a single course.