

Grasp the Subject, the Words Will
Follow: Reinforcing Doctrinal Learning
and Building Skills and Competencies
through Legal Writing Exercises

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Why focus on skills and competencies?

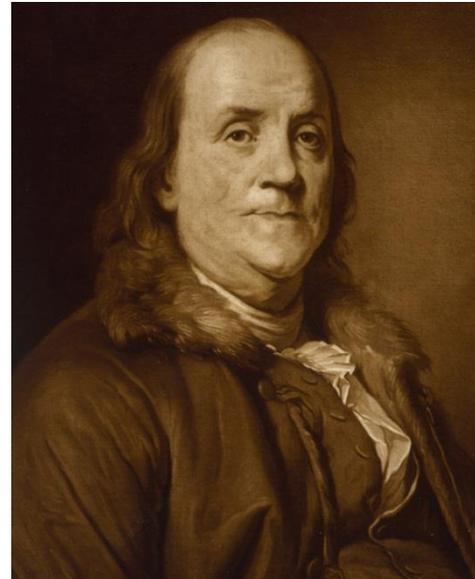
- September 2013 Draft Report of the American Bar Association Task Force on the Future of Legal Education
 - Enhance skill training
 - Ensure students develop competencies necessary for the practice of law
- At many law schools, these competencies are addressed **outside the core curriculum**, primarily through **clinics** and **externships**

Why use an experiential model in doctrinal classes?

- Opportunity to begin developing competencies from the start of law school
- Engage and prepare students
- Reinforce lawyering skills
- Enhances student understanding of the doctrinal material

“Tell me and I forget, teach me and I may remember, involve me and I learn.”

Benjamin Franklin



Common Objections



- Blending experiential learning into doctrinal classes would require a **major overhaul** to the course structure and curriculum
- Experiential learning exercises would require **excessive class time**

A Four-Step Approach

1. **Identify** what specifics **skills and competencies** you will emphasize
2. **Build** your **team**
3. **Design the exercise** and **incorporate it into your** existing **syllabus**
4. **Use the exercise** and provide appropriate **feedback**



Identify Skills

- Although the list of attorney skills and competencies can seem almost endless, many commonly-used attorney skills and competencies fit into one of 11 general categories
 - (1) communication
 - (2) the art of interviewing
 - (3) fact investigation
 - (4) legal analysis
 - (5) problem solving
 - (6) research
 - (7) writing
 - (8) advocacy
 - (9) negotiation
 - (10) ethics
 - (11) practice management



Identify Skills

- In any given case, a practicing attorney may use each of these skills
- Even a routine slip-and-fall the attorney will likely...
 - Communicate with her client about a contingent fee agreement
 - Interview an eyewitness to the fall before drafting the complaint
 - Search public records to determine the owner of the sidewalk
 - Subpoena medical records from the day of the fall
 - Assist her client in arranging transportation to medical appointments

Identify Skills

- Research the applicable state law relating to the elements of negligence
 - Draft a motion for summary judgment
 - Argue that motion
 - Attend a settlement conference
 - Determine she has an obligation to protect client confidences
 - Collect her fee from the client after successfully resolving the case
- **Any one of these actions** or even **parts** of these actions can form the basis of an exercise

Identify Skills

- Start with career services and alumni relations
 - Employers may have already communicated that they seek to hire graduates with specific skill sets
 - If you develop exercises to teach those skills, you can return the favor to the career services department by providing them with information they can use to help market your students

Build Your Team

- Create a network of other law professors and practitioners
 - There are often as many good ways to develop a particular skill as there are practitioners using that skill
 - Students gain value in learning not only from you but from current practitioners and other subject-matter experts.

Build Your Team

- Many first-year doctrinal classes pair nicely with common areas of practice
 - A solo practitioner who handles medical malpractice cases could be a resource for a **torts** class
 - General Counsel for a construction company could be a resource for a **contracts** class
 - A public defender could be a resource for a **criminal law** class
 - A partner from a law firm's real estate group could be a resource for a **property law** class
 - A United States Attorney in the civil division could be a resource for a **constitutional law** class
- Even clerks and judges can serve as resources

Build Your Team

- Where to look...
 - Current adjunct professors
 - Recent graduates
 - Judges
 - Area employers
- Added benefits...
 - Networking for students
 - Relationship/development building for the law school



Build Your Team

- Aim for roughly a 6-12 practitioner-faculty for each class
- Provide them with a copy of the syllabus
- Meet to identify a few times during the semester where you can build an experiential learning exercise into the syllabus

Build Your Team

- Your team members' time commitment can vary
 - Help develop exercises on their own time
 - Agree to evaluate written student work product and provide written feedback out of class
 - Attend a class session to lead exercises, provide demonstrations, and give oral feedback
- With a team of multiple practitioner-faculty members, you can ensure that no individual team member is overly burdened

Develop the Exercise

- Use the real-life experiences of your team members
- Build an exercise around a case
 - You can first cover the case in class and then transition into the experiential learning exercise

OR

- You can cover the case in class and assign the exercise for non-class time

A Sample Legal Writing Exercise

- Course- Property
- Case- Ghen v. Rich, 8 F. 159 (1881)
- Summary- The plaintiff killed a whale which then washed ashore and was claimed and sold by another person to the defendant. The court determined that the plaintiff owned the whale, even if he had not continually had possession.

Exercise

- Provide students with the following hypothetical... Your client recently bought a house in New York, and when he moved in he discovered a large pile of lumber on the outskirts of the property. He would like to know if he can sell the lumber or whether he has some obligation to find out who felled the lumber and left it there. He presumes it was the former homeowner, who willingly left the lumber behind, but he doesn't know that for sure.
- Ask the students to pretend they are an associate of a law firm and the partner has asked for a memorandum outlining the key legal issues facing the client. Instruct them to draft a 3-5 page memorandum addressing what legal hurdles their client may face if he attempts to sell the lumber. In addition to Ghen, the students may cite Citizens Nat'l Bank v. Osetek, 353 F. Supp. 958 (S.D.N.Y. 1973).
- Provide written feedback on the memoranda.



Use the Exercise

- Decide whether the exercise will be graded or ungraded (and how to grade)
- Provide appropriate feedback
 - Good and bad
 - Substantive and skills-based
 - Peer review
 - Demonstrations by team members

Benefits

- One of the impetuses for the ABA Report was the consensus by recent law school graduates that they felt unprepared for the actual practice of law
 - One need only look at the scope of lawyering skills to guess why—being an effective practitioner requires having a diverse array of skills
 - The skill set is too diverse to expect that students will learn all skills through clinics and externships

Benefits

- The classroom setting is, in some ways, more ideal than the clinical setting for teaching lawyering skills
 - Representing a fictional client is **low-risk**
 - Students may feel more **empowered** to try new skills in the classroom



Benefits

- Lawyering skills require **practice** before they become **second-nature**
 - Law schools owe it to students to develop these skills
 - More practice means more facility with skills
 - Combining rather than dividing skills and theory is more reflective of actual practice

Questions/Comments

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