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EXPERIENCING BUSINESS ASSOCIATIONS IN THE CLASSROOM

ESTHER BARRON*

In the past several years, traditional law school education and its curriculum have been criticized for failing to provide sufficient practical training to future lawyers. Critics complain that the class content in law school courses does not adequately reach students and connect them to their eventual careers in law by providing them with opportunities to learn important skills practicing lawyers need.¹ This criticism can be traced back, in part, to a 2007 report published by the Carnegie Foundation for the Advancement of Teaching on the status of teaching.² The Carnegie Report on Legal Education, as it has come to be known, emphasizes the need to create “practice ready” lawyers and charges law schools to “unite the two sides of legal knowledge: formal knowledge and experience of practice.”³ The Carnegie Report on Legal Education criticizes law schools for giving “only casual attention to teaching students how to use legal thinking in the complexity of actual law practice.”⁴ It sets forth the position that “the first year of law school’s emphasis on well-honed skills of legal analysis should be matched by similarly strong skills in serving clients”⁵ The criticism that has been launched at law schools for failing to adequately prepare their students for practice has been particularly

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1. See, e.g., Gail B. Agrawal, *Symposium: The Future of Legal Education—Foreword*, 96 IOWA L. REV. 1449, 1449–51, 1456 (2011); Eric A. DeGroff, *Training Tomorrow’s Lawyers: What Empirical Research Can Tell Us About the Effect of Law School Pedagogy On Law Student Learning Styles*, 36 S. ILL. U. L.J. 251, 251–54 (2012); Charity Scott, *Collaborating with the Real World: Opportunities for Developing Skills and Values in Law Teaching*, 9 IND. HEALTH L. REV. 409, 412–14 (2012).

2. This criticism was made even earlier in A.B.A. SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM 4–6 (1992).

3. See WILLIAM M. SULLIVAN ET AL., SUMMARY, EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 8 (2007), available at www.ryerson.ca/law/EducatingLawyerssummary.pdf.

4. *Id.* at 6.

5. *Id.* at 4.

vigorous with respect to the curriculum offered to students interested in transactional law.

The concept of experiential learning has become a popular response to such criticisms. Experiential learning may be described as a way to add an element of practical legal skills training to the theoretical concepts discussed in traditional doctrinal law school courses. The relative newness of this evolution in legal training means that the manner in which these skills are taught, and what falls under the “experiential learning” umbrella, has not been uniformly defined. Clinics and externships are generally seen as the classic examples of experiential learning. However, many law schools have been taking a broader approach to the concept of experiential learning and providing opportunities for things like simulated exercises, in-class role-playing, competitions,⁶ elements of peer review, and even games. Experiential learning can include any “portion of the curriculum that involves pedagogies for engaging students in legal work in real-life situations.”⁷

Experiential learning compliments the core theoretical teachings that law schools have traditionally offered students. It seems that students learn better when they are involved in the material and not merely reading or passively listening to it.⁸ There is also a general perception that experiential learning requires a higher level of thinking than sitting and listening to lectures delivered in the Socratic method and that a more collaborative approach to teaching results in students both grasping and retaining the content more effectively.⁹

I am the director of a transactional law clinic at Northwestern University School of Law and have spent the past nine years supervising law students providing transactional legal services to startup ventures and social entrepreneurs—the quintessential experiential learning scenario. I have seen firsthand how law students seem to light up when they apply the concepts governing shareholders’ rights, limitations, and obligations that they learned in their Business Associations course to drafting an actual founders’ agreement for a client. I can almost hear the mental “click” when students draft

6. Karl Okamoto of Drexel University Thomas R. Kline School of Law created a program called The Transactional LawMeet, which is a competition for law students interested in becoming transactional attorneys and focuses on structuring and negotiating a simulated “deal” on behalf of hypothetical clients. See *Transactional LawMeet*, DREXEL U. THOMAS R. KLINE SCH. LAW, http://drexel.edu/law/news/competitions/transactional_lawyering (last visited Oct. 31, 2014) (describing the Transactional LawMeet).

7. Deborah Maranville et al., *Re-vision Quest: A Law School Guide to Designing Experiential Courses Involving Real Lawyering*, 56 N.Y.L. SCH. L. REV. 517, 518–19 (2012).

8. Paula Lustbader, *From Dreams to Reality: The Emerging Role of Law School Academic Support Programs*, 31 U.S.F. L. REV. 839, 854–55 (1997).

9. Robin A. Boyle, *Employing Active-Learning Techniques and Metacognition in Law School: Shifting Energy from Professor to Student*, 81 U. DET. MERCY L. REV. 1, 3–4 (2003).

resolutions and by-laws and remember the relevant and controlling case law they previously learned. I feel a sense of excitement myself, as a teacher, when I listen to my clinic students explain to new entrepreneurs the risk of losing the much desired and important limitation on personal liability if they take certain actions that could lead to corporate veil piercing. This is all to say that my own personal experiences with law students in the clinical context confirms many of the positions set forth by others—that experiential learning connects law students to legal doctrine in a way that case analysis alone does not.

My clinical experience has colored and shaped the manner in which I teach other classes, including Business Associations, and has influenced my perceptions and views on law school pedagogy generally. My own experiences, both as a law professor and as a former practitioner at a Chicago law firm, have convinced me that experiential learning in law schools, both as standalone opportunities, such as clinic, as well as introducing experiential learning into doctrinal courses offers better training for future lawyers.

Therefore, it is not surprising that I think a Business Associations course can be taught most effectively by blending doctrinal learning with some experiential learning opportunities. In other words, in my Business Associations course, I supplement the traditional case analysis with exercises designed to provide skills training to my law students.

My goal is to introduce legal concepts and ideas to my students through real world examples. In this context, students are better able to understand the legal principles and connect them to the practice of law outside of the classroom. In many respects, it makes the case law seem more relevant to them and gets them more excited about learning and understanding the theories and supporting case law. Importantly, it seems to help them gain confidence in their own abilities to become effective and competent lawyers.

There are many different possibilities and ways to integrate experiential learning into the traditional classroom setting. I have experimented with a few and am constantly evaluating and seeking to expand such opportunities. Simulations are one way to provide skills training in a Business Associations course. For example, when I teach the body of law covering fiduciary duties of directors and officers to a corporation, I have my students conduct a mock board meeting in the classroom. I choose seven students to play the roles of the board of directors and give them each a different set of facts. Some of the students/board members will have a conflict of interest with an issue that will be voted on at the meeting. Some students have facts that might encourage them to vote in a particular direction. I give the independent director facts that could make them less than independent on a particular issue. The students that have not been selected to actively participate in the board meeting are given all of the sets of facts and then observe the meeting. I call the board meeting to order and present the issues to be voted on and the students assume their roles and begin presenting and advocating different positions. We then have a lively

discussion after the meeting. This serves as an effective way of getting students to examine and consider fiduciary duties in a more dynamic way than just reading cases.

An exercise that I have not yet tried in Business Association, but that has worked well in another class that I teach, Entrepreneurship Law, is to have students assume the role of founders of a hypothetical company and negotiate the terms of a founders' agreement. Prior to the in-class exercise, we discuss certain provisions that could be included, such as drag-along provisions, tag-along provisions, non-compete agreements, assignments of intellectual property, voting mechanisms, etc. The students are then given different sets of facts that influence which provisions would be most helpful and then are asked to negotiate with another "founder" to create the term sheet for a founders' agreement. After the exercise, the students understand the concepts on a deeper level and also have a much better sense of how different provisions may affect one another and how the provisions work together in an agreement.

I also find bringing guest speakers to class who can describe real world experiences they faced in business that match or involve legal topics that the students are studying to be a meaningful way to connect doctrine to practice. When students hear directly from business leaders how a particular legal issue impacted a real business, the legal issue seems more relevant. We had a founder of a company describe his efforts to sell his company to Google and how antitrust claims almost thwarted his efforts. Unlike during most law school antitrust lectures, the students here were literally on the edge of their seats and delighted that this founder's lawyers successfully navigated through the antitrust claims and helped reach a multimillion dollar sale of the company.

I often ask my students to find current news articles that involve topics that we are discussing in class. I ask them to lead a class discussion on the article connecting it to case law we have covered in class. Because the articles involve current situations and oftentimes well-known companies and individual actors, the students are excited to engage in dialogue. An article we recently discussed involved accusations of insider trading in connection with hostile takeover efforts. Allergan brought suit in the United States District Court of California against hedge fund manager William A. Ackerman, the hedge fund Pershing Square Capital Management, and Valeant Pharmaceuticals claiming they failed to disclose legally required information, violated securities laws, and engaged in insider trading.¹⁰ My students engaged in a heated discussion of the merits of the claim, as well as an evaluation of the public policy of requiring certain conduct and prohibiting other actions in this context. They discussed whose interests were being protected and why such legally required protections are appropriate.

10. David Gelles, *Botox Maker Allergan Sues Valeant and Ackman, Claiming Insider Trading*, N.Y. TIMES, Aug. 2, 2014, at B2.

I have also asked my students to prepare and lead discussions on substantive topics that we cover in class. By requiring my students to be responsible for teaching a topic to their peers, I believe they obtain a deeper understanding of the material. In preparing to teach other students, they read more carefully and question their own understanding of the material more critically than when preparing to listen to a lecture. This is similar to the exercise many junior associates at law firms undertake when they are asked to teach an area of the law to a group of clients, sometimes referred to as a “lunch and learn.” The risk of embarrassment in front of clients or peers is clearly one motivating factor in learning material, but also the sense of responsibility to teach effectively motivates us to do our best and be honest with ourselves when a concept is less than clear or even confusing.

My goal in the future is to take experiential learning one step further and actually integrate the traditional Business Associations course with the transactional legal clinic. One obvious obstacle to this is that what unfolds in a live client clinic is somewhat unpredictable and therefore difficult to carefully and neatly integrate into a doctrinal course plan. However, clinical faculty could guest lecture in doctrinal courses and share (non-confidential, of course) information about prior, real cases that tie nicely into the substantive law topic being taught.¹¹ I believe that involving clinics directly in doctrinal classes could be one of the most effective ways to blend learning and provide students with opportunities for the immediate application of case law to real world scenarios.

Sharing the perspective of a student who took a Business Associations course at Northwestern Law (although not my course) that integrated experiential learning components may be the best way to describe some of the benefits of this comprehensive learning approach.

For me, and for a subject as nuanced as Corporations/Business Associations, experiential learning is a natural and hugely benefi[cial] fit . . . [A]nything that takes the theoretical material on the page and puts it into a real world context is immensely valuable. Doing so allows me as a learner to see the payoff from what I am learning immediately, not just a sense that maybe a few years down the road, this might come in handy. Through simulation activities and discussions of articles, I also had to put myself in the position of those making decisions around these legal issues, which is something I would not have done had I just read the text. This forced me to think about the issues

11. See Susan E. Provenzano & Sarah O'Rourke Schrup, *The Conscious Curriculum: From Novice Towards Mastery in Written Legal Analysis and Advocacy*, 108 NW. U. L. REV. COLLOQUY 80, 81, 89 (2013) for a helpful guide as to how this approach can be applied.

much more carefully and become more aware of where the tensions and grey areas that the text alluded to actually exist and how they might play out.¹²

It is a very exciting time to be a law professor, as we have a terrific opportunity to innovate and develop the traditional curriculum to provide students with additional tools and skills to prepare them for their future legal careers. Experiential learning in Business Associations, as well as other doctrinal courses, is well worth exploring, and I have found it to be a valuable endeavor in my Business Associations course. Even what may seem like small adjustments to a traditional Business Associations class (such as discussing current articles, inviting guest speakers, and even collaborating with clinical faculty) can make the material more accessible to students and help them understand how the doctrines and case holdings are relevant to a transactional attorney's practice. Providing additional experiential learning opportunities to law students both as standalone opportunities and also as integrated components of their doctrinal courses is, in my opinion, key to the future of legal education.

12. Memorandum from Matthew Hasten, Law Student at Northwestern University School of Law, to Esther Barron, Director of the Entrepreneurship Law Center at Northwestern University School of Law and Clinical Professor 4 (July 27, 2014) (on file with author).