

Chapman Law Review

Volume 17 | Issue 1

Article 7

2013

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Recommended Citation

Bradley T. Borden, *Using the Client-File Method to Teach Transactional Law*, 17 CHAP. L. REV. 101 (2013).
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Using the Client-File Method to Teach Transactional Law

*Bradley T. Borden**

INTRODUCTION

For several decades, law, business, and other schools have used different versions of the case method as the basis for teaching and facilitating classroom discussion.¹ In law school, the case method consists of students reading cases and professors asking students questions regarding the cases. This Socratic method, which Christopher Columbus Langdell introduced almost 150 years ago, helps students develop critical reading and analytical skills.² In graduate business schools, the case-study method consists of students reading facts about a particular business or business situation (i.e., a case study or problem) and discussing and analyzing the case study with other students and the professor. The case-study method provides students the opportunity to apply business skills and knowledge to the real-world facts presented in the case study. With the call for law schools to help bridge the gap between legal education and practice, law schools and commentators have begun adapting the business school case-study method to the law school classroom to more closely resemble aspects of the practice of law.³

The client-file method combines the law school case method with the business school case-study method, and provides students an opportunity to study and apply legal doctrine to a real-world problem and analyze those problems as part of an

* Professor of Law, Brooklyn Law School. I thank Steven Dean, Ali Khan, and the participants at *Chapman Law Review's The Future of Law, Business, and Legal Education: How to Prepare Students to Meet Corporate Needs* for comments on earlier drafts of this Article.

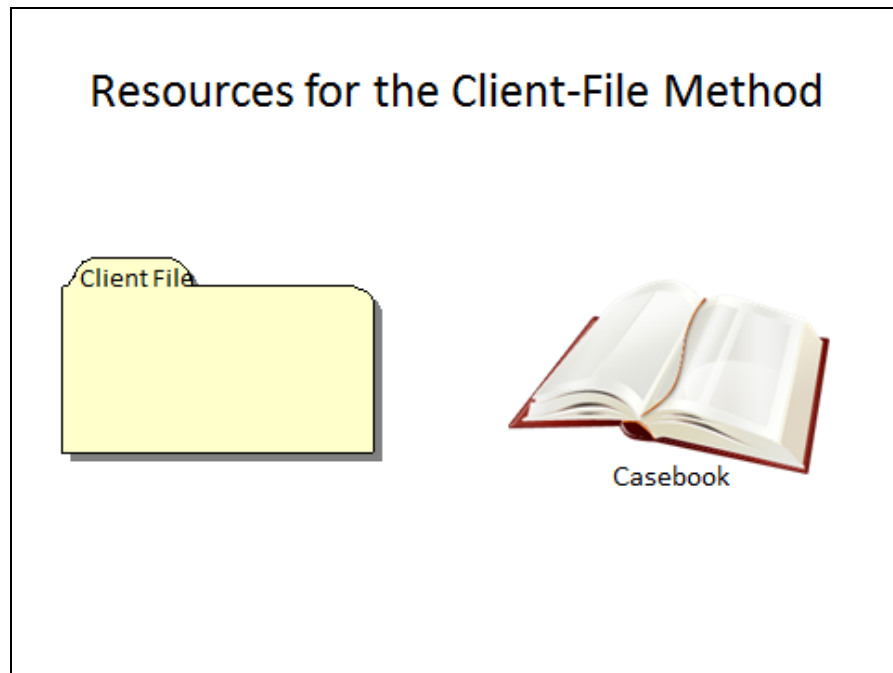
¹ David A. Garvin, *Making the Case: Professional Education for the World of Practice*, HARVARD MAGAZINE, Sept.–Oct. 2003, available at <http://harvardmagazine.com/2003/09/making-the-case.html> (reviewing the history and use of the Langdellian teaching method and the business school case-study method, in addition to the development and use of a case method in medical school).

² See *id.* at 58–60.

³ See Celeste M. Hammond, *Borrowing from the B Schools: The Legal Case Study as Course Materials for Transaction Oriented Elective Courses: A Response to the Challenges of the MacCrate Report and the Carnegie Foundation for Advancement of Teaching Report on Legal Education*, 11 TENN. J. BUS. L. 9, 10–11 (2009).

engaging classroom environment. The term “client-file method” avoids the confusion that the term “case-study” presents in the law school setting. Too often law professors think of the Langdellian teaching method when they hear “case-study method,” even though business professors use it to refer to the business-school model of teaching. The term “client-file method” helps dispel such confusion, and it further distinguishes the analytical methods business managers use from those lawyers must use when they represent clients in the transactional setting.

The client-file method presents students with transactional information that exposes them to real-world legal problems. Students must be familiar with the transactional setting, understand client objectives, and know the relevant law to properly address the problems that materials in the client file raise. The casebook (and related statutes and regulations) that accompanies the client file provides students the resources they need to obtain the legal knowledge required to solve those problems.



The client-file method of study requires two main resources: a client file and legal resources, which can be compiled in a casebook. The client file presents a factual scenario that

requires the content of the casebook to address the questions presented in the client file. A fundamental aspect of the client-file method is that it provides students the opportunity to work with a single baseline fact scenario throughout a semester. As the semester progresses, the set of facts grows in complexity with changes or additions to the original facts as clients face various business transactions. This method therefore helps students begin to understand the scope of complexity that client matters present. For many students this will be the first time they get exposure to such complexity. That exposure will help them anticipate the amount of work that a client engagement will often require and recognize that work they receive in a law firm will often be a small part of a much larger transaction. That understanding should help them better serve clients.

The client-file method provides unique opportunities for delivering materials to students. A single author may prepare the client file and the accompanying casebook. An author may, however, create an independent client file that others may use with existing casebooks or treatises. Authors may write casebooks that would be useful generally and nicely complement independent client files and hope for adoptions by professors who have adopted a particular client file. As the supply of client files grows, professors could use a particular casebook but adopt new client files from time to time. They also may develop their own sets of materials and forego assigning casebooks. The client-file method therefore will offer law professors great flexibility as they mix and match client files with other materials.

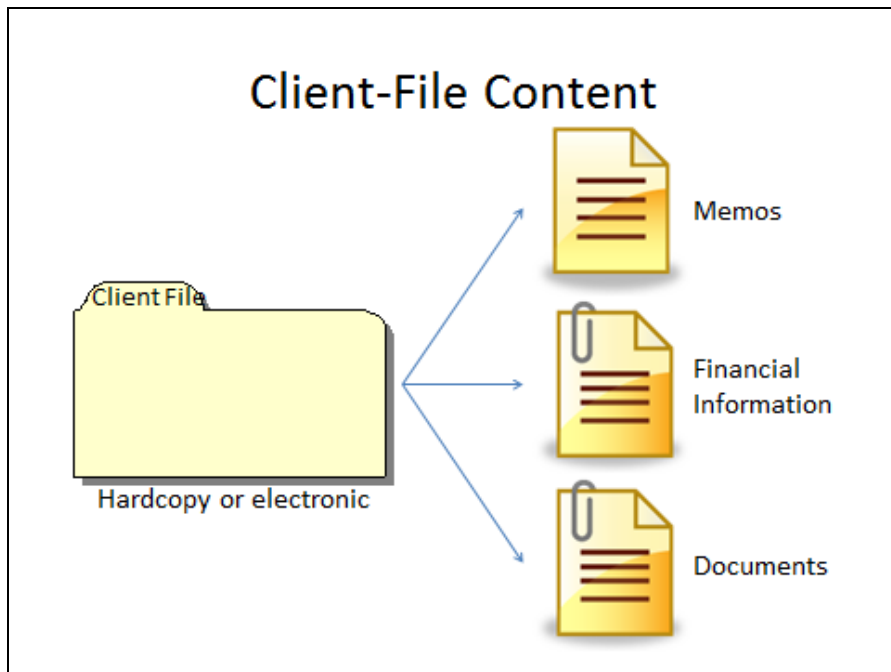
The client-file method is an integral part of several existing and forthcoming books.⁴ Other law professors in the real estate area use a version of the client-file method in their courses.⁵ As more professors experiment with and develop materials, surely the library of client files and supporting materials will grow.

Consider how the client-file method works by first considering the contents of the client file, then considering a progressive casebook format that should work well with the client file, and finally considering how professors can adopt the client-file method for transactional courses.

⁴ See, e.g., BRADLEY T. BORDEN, *TAXATION AND BUSINESS PLANNING FOR REAL ESTATE TRANSACTIONS* (2011); BRADLEY T. BORDEN, *TAXATION OF PARTNERSHIPS AND LLCs* (forthcoming 2014).

⁵ Professors in the real estate area have developed materials that adopt aspects of the case-study method. See Hammond, *supra* note 3, at 37–46 (discussing the use of case-study materials in various courses).

I. THE CLIENT FILE



The client file should include memos that provide factual background and give students legal assignments. The client file will also include financial information and documents that are relevant to the transaction. Professors may choose between presenting the client file in hardcopy or electronically. The client file could be published as a separate book that contains the relevant information and accompanies a casebook,⁶ or it could be incorporated into the book.⁷ The client file could also be a stand-alone product (this appears to be the method that several real estate law professors have adopted).⁸ Experience is revealing that incorporating the client file in a casebook inhibits the ability to return to client materials presented in prior chapters but relevant throughout the course.

⁶ This is the method used in the forthcoming book, BRADLEY T. BORDEN, TAXATION OF PARTNERSHIPS AND LLCs (forthcomintg 2014).

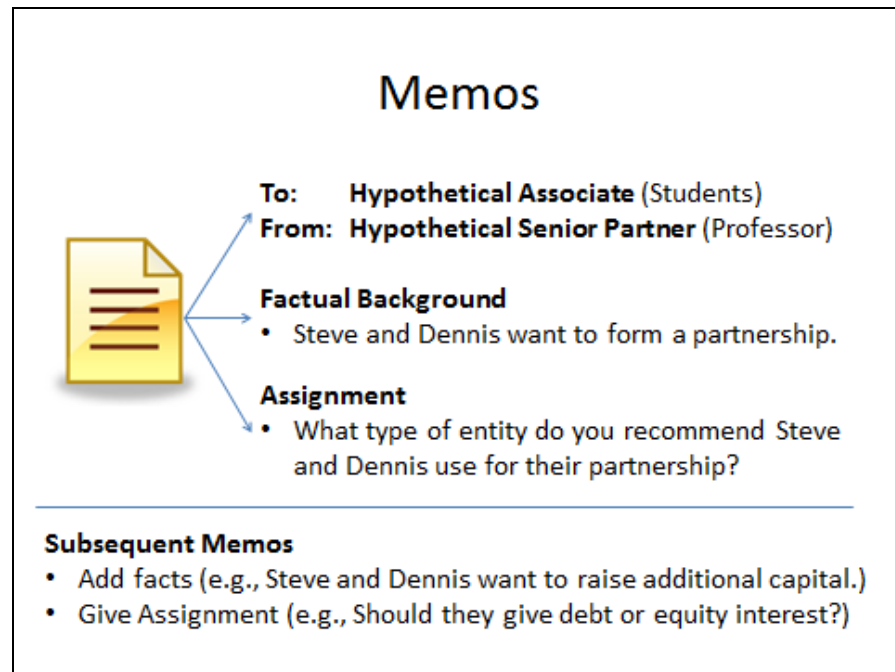
⁷ This is the method used in the first edition of BRADLEY T. BORDEN, TAXATION AND BUSINESS PLANNING FOR REAL ESTATE TRANSACTIONS (2011), but subsequent editions will most likely spin off the client file as a result of the evolving process of developing the method.

⁸ See *supra* note 5.

The client file could either be web-based or distributed by email or through a class website. The electronic format would permit the professor to control the distribution of memos and other information. A controlled distribution would keep students from seeing the entire file at the beginning of the semester. That may help dispel anxiety to some extent, but has the disadvantage of preventing students from anticipating the extent of the work they will do throughout the semester and appreciating the magnitude of the transaction at the beginning of the semester.

A single client file may be appropriate for more than one course, with slight tweaking. For example, a client file that works for a partnership tax course might also work for a course on limited liability entities (i.e., unincorporated entities such as limited liability companies, limited partnerships, and limited liability partnerships).

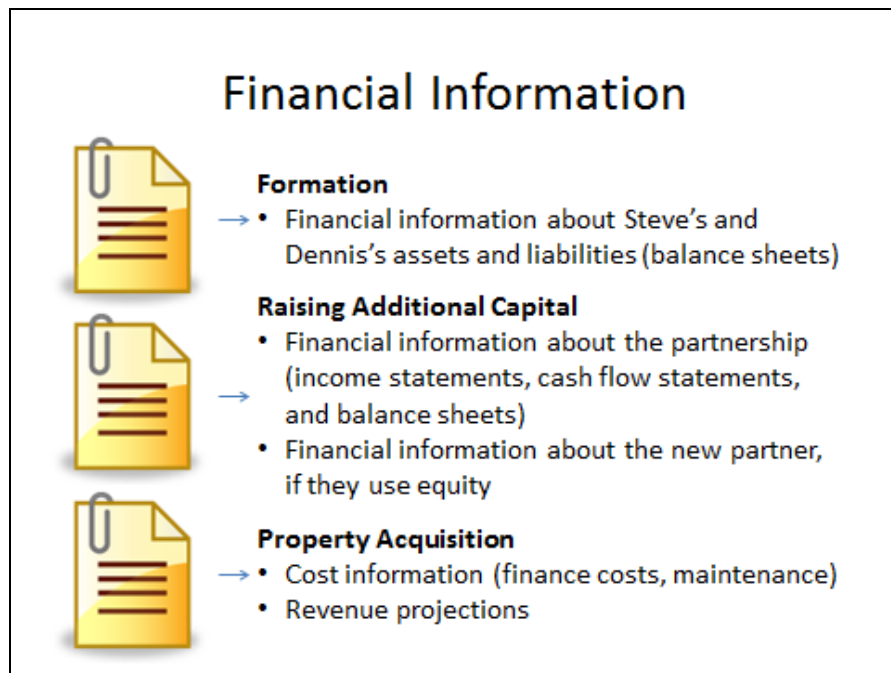
Because the client file-method will be new to many people, each component of the client file deserves specific attention.



The client file will generally include several assignment memos addressed to students. The memos will replicate types of memos that senior partners write to associates regarding project assignments. Each memo will present facts and give the students

an assignment. For example, in a partnership tax course, the first memo may introduce the parties that have approached a law firm seeking legal help in forming a tax partnership. The memo could assign students the task of considering what type of legal and tax entities would be most appropriate for the arrangement.

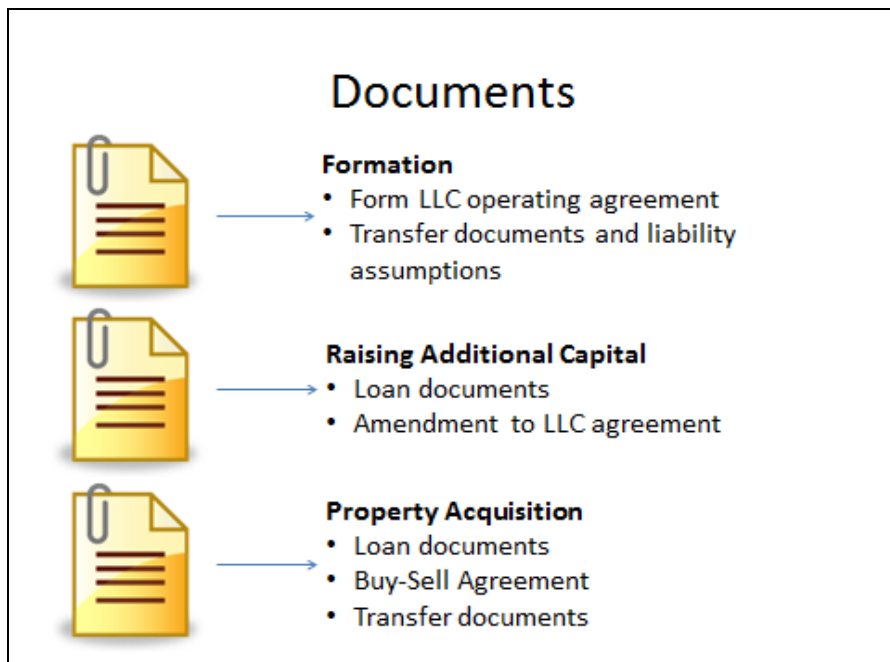
Subsequent memos could build upon the facts of the first memo. For example, subsequent memos could reveal that some time after forming the arrangement, the original members are considering raising additional capital. The subsequent memo could present relevant facts and assign students to recommend whether the clients should raise capital through borrowing or admitting additional partners. Memos could also anticipate problems that may arise, such as the death of a partner, which would require students to reexamine decisions that they made earlier in the course. For instance, if an earlier memo asked students to consider an LLC operating agreement that contained buy-sell provisions, students could test those provisions with real-life events, such as the death of a partner, which the memos reveal later in the semester.



The client file could also include financial information that supports the facts and the assignment in the memo. For example, if the first memo covers the formation of a partnership, the file

should include financial information about the assets that each partner will contribute and the liabilities of the partners that the partnership will assume. If a subsequent memo considers raising capital, the client file should include financial information that students may need to consider to answer questions asked in the memo. For example, a lender may require certain financial information from the partnership and partners before it provides a loan. Attorneys should be familiar with that information and be able to help a client obtain information or provide appropriate information as the case may be. Furthermore, a partnership's liabilities can affect the tax situation of the partners, so an attorney must be prepared to give advice with respect to such effects.

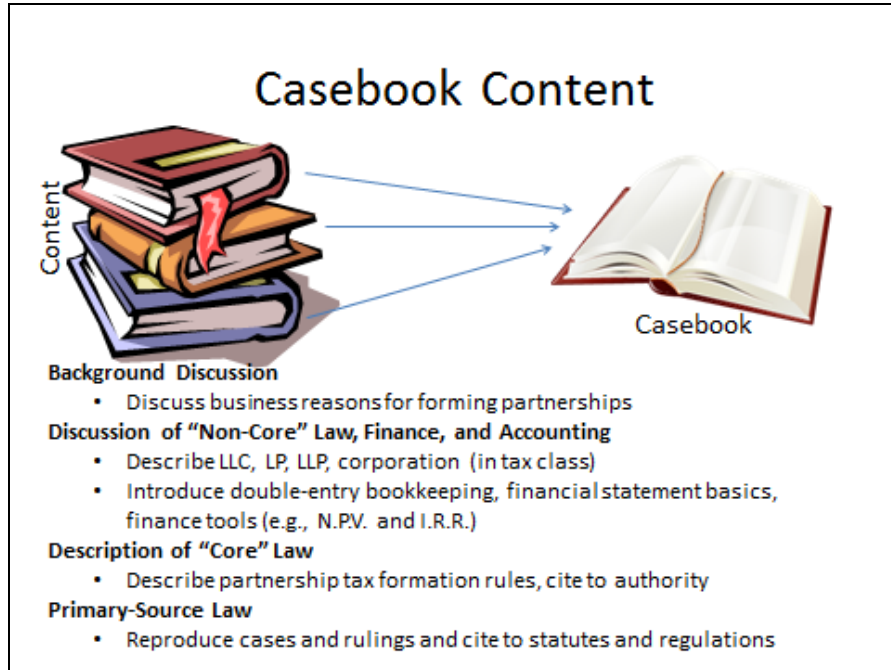
If the partners wish to admit a new partner, they may require the partner to provide some financial information to avoid the headaches of having a bankrupt partner and to ensure the partner can provide the required capital. If a memo presents facts about a property acquisition, the file may include financial information about the property. Even if the information is not critical to the legal analysis, exposure to such information will help students appreciate the type of information that clients consider when making business decisions, which will help the students begin to think about how business people make decisions.



The client file should also include transaction documents. A significant part of the law governing transactions exists in documents. For example, an operating agreement generally governs many aspects of the relationships that members of a limited liability company have with each other, with the limited liability company, and with third parties. Similarly, loan documents contain the law that determines many of the rights and obligations of borrowers and lenders. Not only do provisions in documents affect the rights and obligations of parties to the agreement, they may also determine tax consequences. By gaining exposure to documents in a transactional law course, students begin to appreciate the importance of good drafting and how documents affect the analysis of other areas of law. Documents contained in a client file may be models of good drafting, but they may also contain flaws. Either way, they provide students an opportunity to consider the documents, discuss strengths and weaknesses of provisions in the documents, consider how those provisions affect the application of other laws (e.g., tax consequences of the parties), and recommend changes or improvements as needed.

To illustrate, the core of partnership tax is the allocation rules, and a significant portion of most limited liability company operating agreements is allocation provisions. Tax law often influences the allocation of economic items (such as cash flow and gains and losses) of an LLC, and the application of tax law often depends upon the structure of the allocation provisions. Examples of allocation provisions can help students understand how tax rules affect the allocation provisions in an operating agreement and how those rules affect members' rights and obligations. In the corporate context, the terms of an acquisition—including the type of consideration used—can determine whether the transaction qualifies for “tax-free” treatment. By providing students with an example of a stock purchase agreement describing the type of consideration used, the client file can help them to see how important the details of transaction structures can be.

II. AN ACCOMPANYING, PROGRESSIVE CASEBOOK



The legal and other instructional materials that accompany the client file are a critical part of the client-file method. An innovative, progressive casebook could be the most effective form of materials that could accompany a client file. One function of the casebook that becomes a part of the client-file method is to provide information that students should obtain outside of class. That information will provide them with background knowledge that they will need to solve problems that the client file presents. Students and the professor can then use class time to discuss issues, analyze problems, and find solutions to those problems. The classroom thus becomes a discussion and problem-solving forum, instead of a place where one person disseminates information to a passive audience.

Background material in such a casebook may include discussions of why parties form a partnership, factors that contribute to a decision to buy or sell property, and the need to raise additional capital. Often, students must have some knowledge of other areas of the law to tackle problems that arise in a course's particular niche. For example, the partnership tax rules distinguish between recourse and nonrecourse liabilities.

To know whether a liability is recourse to a partnership and to the partners, students must understand concepts such as subrogation, indemnification, limited liability, and guarantee. Instead of imposing numerous prerequisites on students or requiring them to study the source of such laws, a partnership tax casebook could simply discuss those concepts to provide students the framework they need to analyze the tax consequences of borrowing at the partner or partnership level. The discussion of such “non-core” law in a tax course facilitates the learning of tax law and the discussion and analysis of tax problems that the fact scenario raises.

Practitioners often look to secondary sources to know which primary sources to consider. A casebook can provide similar guidance by striking a balance between describing the law and citing to relevant primary sources. Its discussion of the “core” law will provide background and lead students to the primary source of the law, which students will have to master to deal with the problems that client files present.

Casebook Format: Discussion of “Non-Core” Law

Background discussion to establish context.

Examples apply concepts.

Diagrams illustrate transactions.

Discussion of “non-core” law.

Treatise-like footnotes.

Page extracts are from BRADLEY T. BORDEN, *TAXATION AND BUSINESS PLANNING FOR REAL ESTATE TRANSACTIONS* (2011).

The casebook should include a discussion of “non-core” law. “Non-core” law is not the core law of the course. For example, the law governing limited liability companies is not core to a course on partnership taxation. It is, however, relevant to the application and analysis of partnership taxation. The casebook

that accompanies the client-file should include relevant discussions of non-core law. Those discussions should include a background discussion to establish context. For example, a discussion about legal entities might explain types of legal entities and why business owners might consider using a particular type of business entity. The discussion should then include a brief discussion of the legal aspects of business entities. Such a discussion might cover the legal attributes of business entities, issues an attorney should consider when drafting an entity's governing documents, and laws governing transfers to and from entities. More specific topics could include liability protection, transferability of interests, and management flexibility. The casebook will use treatise-like footnotes, which practitioners encounter in practice.

The discussion of non-core law should also include examples that apply concepts and diagrams that illustrate transactions. Discussion of basic concepts, such as contributions to a limited liability company, helps students appreciate the difference between a sale and a contribution and that such transactions require proper documentation. The discussion of non-core law in the casebook enables students to focus on learning the core law from primary sources and doing the relevant analysis, instead of devoting class time to extensive discussion of such law or requiring additional research.

Discussions of non-core law in a transactional text must also include ethical issues. The transactional lawyer provides advice in a setting that implicates ethical rules. Because the client-file method requires students to apply the law in a transactional setting, it provides an excellent opportunity to discuss ethical issues that arise in transactional law.

Casebook Format: Description of Finance Concepts

estimated that the property would sell after four years for \$1,200,000, the investor could estimate that the property's internal rate of return would be 6%.¹⁴ If that amount is less than the investor would earn purchasing bonds or other investments, the investor may decide to not purchase the property but instead to invest in bonds.

2. Net Present Value

Another useful financial tool is the net present value of an investment. The net present value of an investment allows an investor to compare present outlays to the present value of an investment's future cash flows. To compare present outlays with future cash flows, the investor must discount the future cash flows to account for the time value of money. Recall that when computing the internal rate of return, the investor used outlays and future returns to determine the rate of return. The internal rate of return reflects the annual return that an investor would have to realize to obtain the future dollar returns. To compute net present value, the investor must assume some rate of return (referred to as a discount rate) and be able to estimate the amount and timing of outlays and receipts. Using the discount rate, the investor can compare the amount of present outlays to the value of future cash flows in present-value terms. If the present value of the future cash flows does not exceed the amount of current outlays, the investor may decide not to proceed with an investment. These concepts generally only make sense when applied to examples.

To begin the examination of net present value, consider an investment of \$100,000 that has a 5% return, compounded annually. For example, an individual could purchase a five-year certificate of deposit (CD) that provides for 5% annual compound interest. At the end of the first year, the CD would have a \$105,000 balance (the original \$100,000 deposit plus \$5,000 of interest). The CD would earn 5% interest on the \$105,000 balance during the second year (\$5,250), so the balance at the end of the second year would be \$110,250. Thus, a \$100,000 investment with a 5% compounded annual return would be worth \$110,250 after two years.

Effect of Compound Interest	
Original investment	\$100,000
Year 1 interest (5% of \$100,000)	\$5,000
Balance at the end of Year 1	\$105,000
Year 2 interest (5% of \$105,000)	\$5,250
Balance at the end of Year 2	\$110,250

Net present value reverses that process. In computing net present value, one asks what a future dollar amount would be worth in present value terms. For example, one could ask what \$110,250 received two years from now would be worth in today's dollars assuming a 5% discount rate. The example above illustrates that if a person invests \$100,000 today compounded annually at 5%, the \$100,000 would be worth \$110,250 in two years. Thus, the net present value of \$110,250 to be received two years from now must be worth \$100,000 today. The net present value

¹⁴ See the Practice Materials at the end of this chapter.

Background discussion and description of concept.

Example applies the concept.

Liberal use of numeric presentations.

Page extract is from BRADLEY T. BORDEN, *TAXATION AND BUSINESS PLANNING FOR REAL ESTATE TRANSACTIONS* (2011).

The casebook should also explain basic finance and accounting concepts. The transactional attorney invariably encounters financial and accounting concepts. Attorneys generally do not provide financial or accounting advice, so they do not need expert skill in these disciplines. Nonetheless, the clients of transactional lawyers use financial and accounting information to understand and communicate business concepts and make business decisions. Furthermore, legal concepts and contractual terms often include financial and accounting concepts. For example, a partnership agreement could use internal rate of return to determine partners' rights to distributions. Consequently, the transactional attorney must be familiar with such concepts to understand transactions and provide competent advice. The casebook should include discussions that provide general background and understanding.

The casebook should also include specific topics that are relevant to the course material. For example, partnership tax requires some understanding of basic accounting and time-value-of-money concepts. The casebook should therefore provide enough discussion of such topics to enable students to better understand the tax concepts. The discussions in the casebook push the learning of finance and accounting concepts out of the classroom, freeing up classroom time for analysis of the

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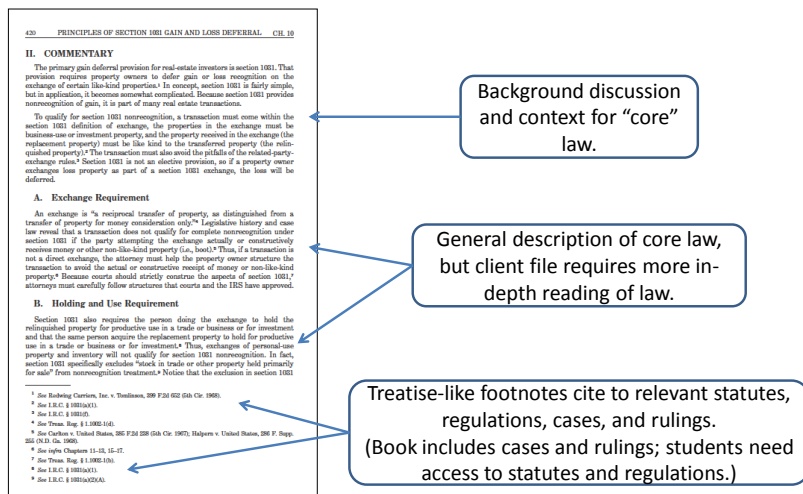
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specific legal issues that the transaction, as described in the client-file memos, creates. Armed with tools and background knowledge included in the casebook, students can approach the core legal problem with requisite finance and accounting knowledge.

The casebook could use visual tools, such as example boxes or other techniques, to offset examples, discussions of non-core law, and financial and accounting topics.

Casebook Format: Description of “Core” Law

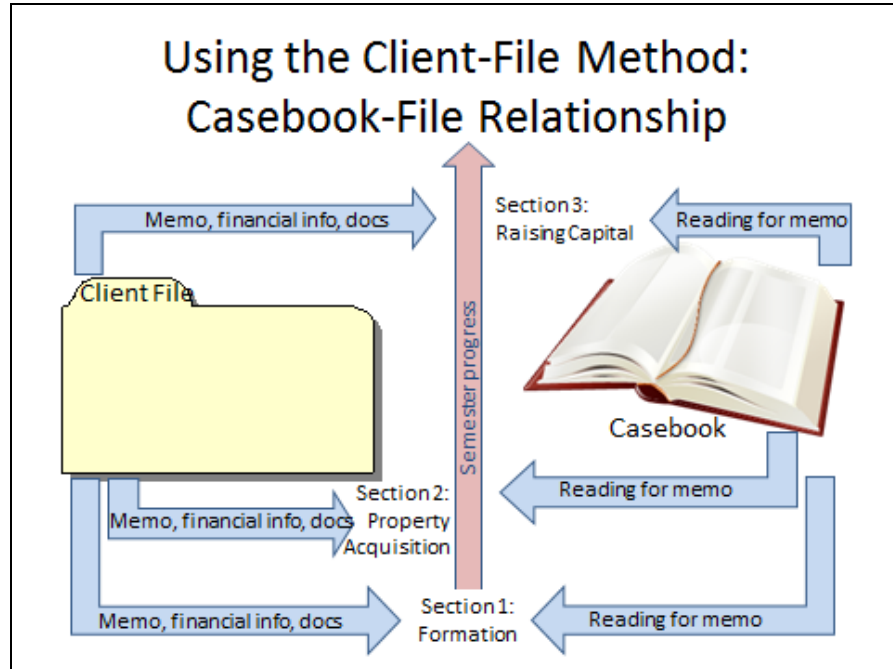


Page extract is from BRADLEY T. BORDEN, *TAXATION AND BUSINESS PLANNING FOR REAL ESTATE TRANSACTIONS* (2011).

The casebook should focus primarily on helping students learn and apply the law that is at the heart of the course—the core law. The casebook must strike a balance between spoon-feeding descriptions of the core law and requiring students to develop the skills they need to read and understand the law from primary sources. The casebook will provide background discussion of the core law and describe parts of it. It will cite to primary authority to support the discussions. The memos will require students to have a better understanding of the law and its nuances than appear in the discussions. Consequently, students will have to resort to the primary authority to fully analyze the problems. The casebook will reproduce cases and rulings at the end of chapters that first cite such material. It will not, however, reproduce the relevant statutes or regulations. Instead, it will cite to specific provisions, and students will need

access to the primary-source material either through a supplement or on the Internet.

One potential hazard of using the client-file method is the temptation to focus exclusively on practice skills that may appear to maximize a client's position. Even though that is often what attorneys do (as mandated by rules of professional ethics), the law school classroom provides an opportunity to explore the effects of a law and whether outcomes reflect sound policy. Consequently, the casebook and classroom discussion should include broader policy issues that examine the effects of attorney actions and the effects of laws as applied to particular facts. Facts raised by the client file provide such opportunities, but professors must be disciplined enough to include broader discussions throughout the course of the semester.

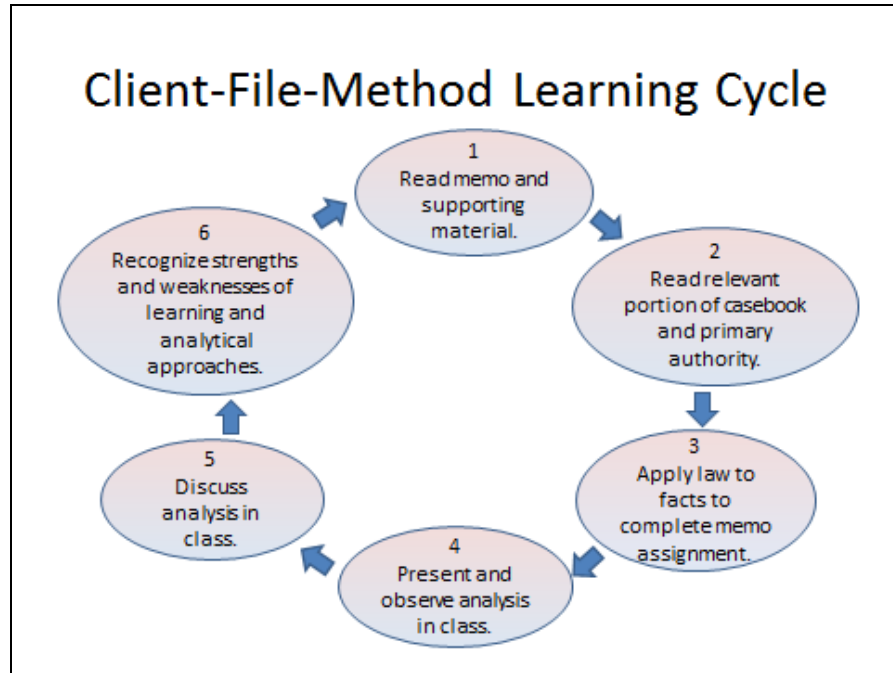


The client file and the appropriate materials, such as a progressive casebook, empower professors to use the client-file method to teach transactional law courses. The client-file method will be new to many law school professors, but the idea is fairly straightforward and intuitive for transactional attorneys. A common practice in law firms is for senior attorneys to give junior attorneys research assignments. Often those assignments require the associate to examine a discrete area of law. In firms

that focus on associate training, the assigning partner will review the associate's work product and provide feedback. The feedback helps the associate know how to improve work on subsequent assignments. The feedback can focus on the thoroughness of research, strength of analysis, and presentation of material. The client-file method provides an opportunity to replicate that process in the classroom.

At the start of a semester, the professor gives or assigns students the first memo and relevant information. Students use the relevant portion of the casebook to obtain the information needed to do the analysis that the memo requires. As students present their analyses in the classroom, the professor can join the discussion and provide feedback. The feedback can address the students' knowledge of the facts, relevant law, and other concepts; their analytical approaches; and their conclusions. After completing the assignment in the first memo, the professor assigns another memo, which leads students to any supporting material in the client file and the relevant portion of the casebook. Some memos could present issues that require multiple chapters of study and several class periods to complete. A memo could break such projects down into more discrete segments to narrow the focus of the reading.

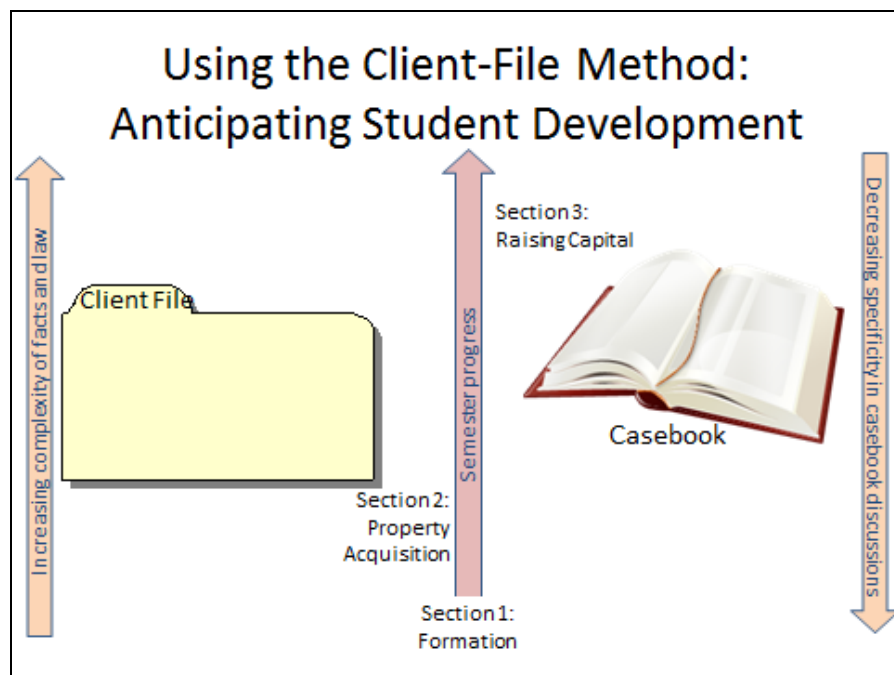
By working with a file throughout the semester, students can begin to appreciate that client work is often complex and requires a significant amount of time to complete. They can also witness the types of issues that generate transactional law work.



In addition to presenting students with a practice setting for learning, the client-file method facilitates a rigorous learning cycle.⁹ The cycle generally works most effectively in classes of no more than twenty-five students, so the client-file method may not be appropriate for large classes. Using the client-file method empowers students to learn by doing the analysis and receiving feedback. The cycle begins with a memo (similar to the transactional practice setting where learning often begins with a set of facts and a question). Students read the memo to learn the facts and receive an assignment. They then read the relevant portion of the casebook and primary authority. Then they apply the law to the facts to complete the memo assignment. The cycle then requires students to present their analyses to the class. A method that has proven successful generally for the author is to have students (in classes of more than ten students) divide into groups of two to prepare analyses and present them to the class. Specific assignments to students afford them the opportunity to thoroughly prepare the material.

⁹ This simple learning cycle is not too far removed from the learning cycle identified by the accounting academy. See generally MARLENE C. FRANCIS, TIMOTHY C. MULDER & JOAN S. STARK, INTENTIONAL LEARNING: A PROCESS FOR LEARNING TO LEARN IN THE ACCOUNTING CURRICULUM ch. 2 (1995), available at <http://aaahq.org/AECC/intent/index.htm>.

All students and the professor should join in the discussion of an analysis in class. The discussion allows the professor, in particular, and students, more generally, the opportunity to probe the analysis by questioning the conclusions that students reach. Such questions should help students realize that an appropriate analysis requires a thorough understanding of the law and facts. Students must learn to question their conclusions, recognize weak spots in analyses, and strengthen them prior to presenting in class. Questions can occur in a respectful and encouraging manner with the end result being improvement throughout the semester. Expecting thorough preparation helps students realize that subsequent assignments require greater effort in particular areas. The presentations and discussions of analyses provide students the opportunity to recognize strengths and weaknesses in their approaches and make the necessary changes in subsequent assignments.



The client-file method anticipates that students will develop knowledge and skills throughout the semester. Consequently, the method allows for increasing complexity of facts and law as the semester continues. The projects that students work on may become more complex, or the complexity of a transaction may increase as the semester continues. Students' skills reading the

law should also increase, so the background discussion and explanations of the law in the casebook could decrease as the semester progresses and as students gain confidence reading and applying primary source material. The client-file method thus helps law students gain independence and prepare to be transactional lawyers.

CONCLUSION

The client-file method combines the Langdellian case method and the business school case-study method to reflect the practice of a transactional attorney and helps students gain experience in the classroom that resembles real-world practice. It allows students to learn and apply knowledge and skills that they will use on a daily basis as transactional lawyers. The legal profession demands that law school graduates be ever closer to practice-ready upon graduation. The client-file method will fill an important role in the changing landscape of legal education by creating practice-like settings in doctrinal transactional courses and offering more students skills-based opportunities.