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Teaching Transactional Skills and Law in an International Context

Deborah Burand

University of Michigan Law School, dburand@umich.edu

Kojo Yelapaala

University of the Pacific, McGeorge School of Law, kyelapaala@uop.edu

Peter Linzer

University of Houston Law Center, plinzer@uh.edu

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TEACHING TRANSACTIONAL SKILLS AND LAW IN AN INTERNATIONAL CONTEXT

DEBORAH BURAND¹	EARLY LESSONS IN LAUNCHING AN INTERNATIONAL TRANSACTIONS CLINIC
KOJO YELPAALA²	A MULTIDISCIPLINARY APPROACH TO STRATEGY AND PLANNING INTERNATIONAL TRANSACTIONS
PETER LINZER³	INTERNATIONAL CONTRACTING

DEBORAH BURAND

Introduction

Today, we are going to be discussing how we think about transactional skills in an international context. It doesn't surprise me that this is a smaller group. This is a subspecialty, but let me just do a very quick survey of you. How many of you now in this room are teaching an international course? And what are you doing?

SPEAKER

Well I teach international students, and inevitably, there is a disconnect.

DEBORAH BURAND

Okay. Terrific. So is it an LLM program that you're working with?

SPEAKER

Actually I do too. I'm going to be teaching to LLMs in the fall.

DEBORAH BURAND

We've got two that are actually trying to build classes that would be aimed right now at primarily LLM student learning.

SPEAKER

We have a master comparative program for non-U.S. students that I direct and we do a seminar directed toward making writing easier.

¹ Deborah Burand is the founding Director of University of Michigan Law School's International Transactions Clinic. She is currently on leave from the University of Michigan and is serving as the Vice President and General Counsel of the Overseas Private Investment Corporation (OPIC). J.D./M.S.F.S. Georgetown University, 1985; B.A. Depauw University, 1980. She may be reached at Deborah.Burand@opic.gov.

² Kojo Yelapaala is a Professor of Law at the University of the Pacific's McGeorge School of Law. Msc., S.J.D. University of Wisconsin; M.B.A. Bowling Green State University; B.L., LL.B. University of Ghana. He may be reached at kyelapaala@pacific.edu.

³ Peter Linzer is a Professor of Law at the University of Houston Law Center. J.D. Columbia University; A.B. Cornell University. He may be reached at PLinzer@uh.edu.

SPEAKER

Is it transactional international law?

SPEAKER

Comparative.

DEBORAH BURAND

What are the other interests of those of you who are not doing that here? And why did you come to this room as opposed to some of the others?

SPEAKER

I'm going to do an export business simulation with students in China and students in the U.S. and I thought I need to know what we will deal with.

DEBORAH BURAND

It's a simulation.

SPEAKER

They have their own software at the Shanghai Institute of Foreign Trade.

SPEAKER

I actually have a fair number of refugee immigrant clients in a wills drafting clinic, and I'm looking at how we can develop a small business clinic.

DEBORAH BURAND

Interesting topic. We're going to take just a few minutes to go over what each of the panelists is doing in this space so you understand the frame from which our comments are coming. We'll do this for about ten to fifteen minutes. We've each agreed that we're going to keep our talks to five minutes just to tell you what we're doing. If there's something you hear us describe or if there's some kind of burning question or issue you want to make sure that we talk about, note it on your index card. I'll just come up and grab them from you. Just hold them up.

Then we're going to have a dialogue right here among ourselves, because we've all agreed that we're going to embed in our conversation some of the themes and topics we wanted to talk about. Then we're going to stop in the last thirty minutes and it's going to become a dialogue with you. You can frame some of the issues that you want us to talk about, but when you have more specific questions, we'll take that in those thirty minutes.

We have here Kojo Yelapaala, who was telling me that his last name has a wonderful meaning. Why don't you tell them some of your Ghanaian history and ancestry?

KOJO YELPAALA**A MULTIDISCIPLINARY APPROACH TO STRATEGY AND PLANNING
INTERNATIONAL TRANSACTIONS**

My grandmother, when I was born, decided that we were at the dawn of a new era. I don't think it was because I was born. My last name, Yelpaala, is that "yel" means "a thought, an idea, a vision, an era, an occasion." "Paala" means "new." As she said, we're at the dawn of a new era. They sent me off, and that's why I'm here.

I've been teaching international business transactions for a number of years now. I started my first class at the University of Wisconsin when I was a student. I was telling yesterday that the Dean was doing way too much to get me into teaching; he gave me the class, and I've teaching it since then. I came to this country to figure out how lawyers should deal with business clients and business transactions. I worked for the government of Ghana for a couple of years, and we had very difficult transaction issues. We often got bad deals. So as a young lawyer, I wrote a memo to the government explaining why it was necessary as a country to protect the interests of the country, to train new lawyers working in the Justice Department to be able to negotiate better deals. I said, "If we got a bad deal, it is not because we got cheated. It's because we were unprepared, and we should stop blaming people for not doing our homework."

I left Ghana and I went to business school. I got an MBA and then I went to study economics, and then I studied econometrics. I studied development theory and trade theory and spent a lot of time in school. The approach I take in international business transactions is preparing the students how to understand the mindset of the client. As they say, lawyers are notorious for saying, "You can't do this. You can't do that."

I start out by trying to frame the course in terms of the mindset of the client. The course is not strictly legal. It is not about the law itself. It is about the context of transactions. I try to develop a deeper understanding of the context of international transactions. I move on to the strategic mindset of the client. What is the client thinking? Successful enterprises and successful business people are visionary. They always see beyond the horizon and they see the promise land. And it is full of gold. They also have this idea that anything that can be imagined can be done.

I'm from a little village. I was a shepherd. I have the same mindset. If I can think about it, it can be done. The question is, as a lawyer, how do you take your client who has that mindset to where they want to go? It is like going from point A to point B and both are suspended in space. It is not a single line. It is not linear. I tell my students that the way to think strategically is to think flexibly.

The client, I tell them, is disinterested in the negative; otherwise they are not coming to you. As long as the objective is lawful, your question is how, and your job as a lawyer is to map out the how and to do it in the most effective and legally protective way.

I move on to what distinguishes successful enterprises from those that are not so successful. If you look at Microsoft, if you look at Google, if you look at all of these enterprises, they are good models, even for small start-up companies. They have this mindset. They are rule makers; they are not rule takers. They set the pace. They don't wait to receive. They are mostly building industries. They are looking at the vision, and they're

looking at where the competition is taking them. They are less concerned about the competitor, because the competitor may be wrong. They're concerned about the competition. What is it that this is all about? What is at stake? They are architects crafting the future. Hope, not anxiety, is what drives them.

I tell the students, "This is how your client is thinking. Now, you can't go in there and throw cold water on it. No, you'll make it impossible for a client to achieve his objectives." I take it one step further: the strategic architecture of an enterprise. What is the strategic architecture? Is the corporate blue-print for what I call *intercepting the future*. Once you have imagined the future, what steps must you take today to ensure that that future dream can be realized? That's what I call *intercepting the future*, and this strategic architecture helps you identify what must be done right now so that the future goals of the client can be achieved.

I use models and examples. One of the examples I use is NEC, the Japanese company. In the late 1960's, they were looking about twenty-five years ahead. They saw that technology, computers, and telephones would be merged, that you no longer would have telephone switching systems; it will all be computerized. They set out to become the leader in it, and the question was how. They had some competencies, but they didn't have others, so they set out to acquire the competencies they didn't have. They had to do it carefully, because if the competitors knew what was going on, they wouldn't cooperate. That is the setup.

Now take the lawyer. What is the role of the lawyer? First, the legality of the strategic architecture: if it is not lawful, you can't start. You shouldn't start if it is unlawful. Second, given that it's lawful, then you have to design a strategic map of a road that will take the client to that promise land.

I start by telling the students that transactional lawyers view the law not as a *negative edict*. We are not dealing with prohibitions; we are dealing with the law as an enabling factor, and it is enabling element in our enterprise. Law enables you: transactional law is about enabling the enterprises to achieve lawful objectives. The law is *not an enemy*. If you spend your time seeing it as an enemy, then you will have to fight it. The law is *a friend*; it's a friend that has certain limitations, and you can understand the limitations of the friend. If you see it from that angle, then it permits you to craft.

The most important thing the students get is what is on the slide now. *The law is nothing but a little dot suspended in space*. Period! If you are a good strategist, if you know what you're doing, the law is nothing but a little dot suspended in space. Just think about how many ways you can deal with it. You can go beneath it, you can go around it, and you can go above it. If you want to spend your energy, you can drill through it, but why? Once you understand that the law is one variable in the universe of the transaction—when it is lawful—then the law cannot prohibit you. No one's going to stop you to do something unlawful.

This allows me to introduce the issues of ethics. For a good lawyer who is a good strategist, the ultimate and only check is themselves. Because if you don't have a moral checkpoint, you go over the precipice, and in many ways, that is what happened to Enron. I can see why Jeffrey Skilling believed that he was innocent, because if you know anything about him—or about corporate finance and accounting—you can see why he's defending himself. But I think they reached a point where they should have stopped and they didn't.

That is where I leave it to the students. There are some other things that I'll talk about and I will pick that up later.

PETER LINZER

INTERNATIONAL CONTRACTING

I teach a bunch of different things. First of all, I'm a classroom teacher. I'm not a legal writing teacher or a clinician, but I've taught legal writing, I've taught drafting, and I run a clinic. I also teach Contracts and Constitutional law, and I've now got a thing where it looks like I'll teach Constitutional Law and Contracts this year, as well as run my Transactional Clinic, which is a small business clinic in Houston.

For about ten years, though, I had a Dean named Steve Zamora, who's a very good international finance guy. Steve was in charge—I think it was before he became Dean—and I was looking for a new course. I said, "Well maybe I'll teach IBT." I never did. I don't do commercial law, and IBT's basically a commercial law course. He said, "How about doing international contracting?" I said, "What is it?" He said, "It's whatever you make it into." My then-wife, who is a lawyer, said to me, "What's the difference between an international contract and any other contract?" I said, "I don't know."

What I decided to do with it was turn it into a simulation course, and I had three different adjuncts who worked with me at various times. My third guy was the merger counsel for an oil service company. For a number of years he took them through billions of dollars of mergers. So we put this thing together. We had about twenty-eight students, typically. I tried to get about a third of them to be foreign LLMS because I really wanted, rather than people play-acting cultural differences, I wanted to have them there. It seemed very sensible. It worked fairly well.

Sometimes our American students patronized the foreigners and the foreigners proved to be better. In the old days, it wasn't that way because we used to take LLMS when law was an undergraduate discipline in most countries, so we'd have people who really were just college graduates. But now, we're taking people who are practicing lawyers and they're very good. And some of them get very annoyed when they are patronized by inexperienced J.D. candidates and I don't blame them. I've told the American students off.

To return to the question of how an international contract differs from a domestic one, I started the course by giving out the MCC-Marble case.⁴ That's a case from the 11th Circuit holding that the particular transaction, a sale of tiles from an Italian manufacturer to an American buyer, was covered by the United Nations Convention on Contracts for the International Sale of Goods ("CISG") and that the CISG has no parol evidence rule. Most American lawyers would have assumed that Article 2 of the UCC applied. Then the Association of the Bar of the City of New York's International Law Committee went to a very strange organization, an advisory board that works out of Pace Law School on the CISG, and they wrote an opinion upholding the 11th Circuit. It's a great opinion, and it comes out reading like a restatement with footnotes and everything, a little dedication to Allan Farnsworth, who had just died. It's a very strange looking document, especially since

⁴ MCC-Marble Ceramic Center v. Ceramica Nuova d'Agostino, SpA., 144 F.3d 1384 (11th Cir. 1998).

this advisory board is totally unofficial. It is made up, however, of very distinguished members whose prestige gives it great weight. I gave this case for the first day's class so the students could realize that most American lawyers don't even know what the CISG is and though *MCC-Marble* crossed national lines, the CISG could govern a transaction strictly within the borders of the United States.

Then we turned to legal drafting. For several years I used Thomas Haggard's excellent but small book,⁵ and then switched to Tina Stark's larger book.⁶ In three days I gave them the drafting to do. That is, I basically said, "You're going to learn how to draft quickly, and then we're going on. I'm not spending the whole term teaching you drafting." My view is avoid legalese, avoid ambiguity, write the Queen's English and Keep It Simple, Stupid, and that's how you draft. Mr. Haggard has a little more than that and so does Tina, but after four days we were getting going.

We did some amount of substantive stuff. We had no book. We never had a book in the course, which is one of the problems with it. But we'd have somebody coming in talking about the Foreign Corrupt Practices Act and things like that, and my associate deans gave a very good one-hour talk on letters of credit. Basically we got people going and we simulated deals.

I'm not teaching the course anymore. My adjunct took it over full-time. It was too hard. It was too much work. It was too much work for me because I was getting thirty- and forty-page documents from seven different teams because I'd have two-person teams typically: sometimes we got stuck with three, but typically two-person teams negotiating a deal. One of our deals that I pulled out involved a telephone franchise in China, a joint venture between an American telephone company and China. It was a completely wrong deal because I had forgotten about cell phones, and nobody is stringing wire anyplace in the world anymore.

This thing was all about stringing wire in some province of China near Korea. I don't know how we picked it out, but we had a fellow working in our library, who's now at Saint Mary's, who is Chinese, and he was from there. He came in and told us about Chinese law and told us about the area right near Korea in Manchuria that had been Manchukuo during World War II under the Japanese. It was very useful. At any rate, what I found was there was just too much work. In hindsight, I would teach it with much shorter assignments focusing on some parts of contracts, maybe ending up with them doing one full document.

My basic thought is that most law students have never read a contract from beginning to end. The problem is that most contracts are not worth reading from beginning to end even if they're good. I mean, they're boring. I've been working on these things for ten years, and I still ask, "Why is it forty pages long?" and think, "Why is my LLC company agreement thirty pages long?" I don't know what to take out because I'm afraid it belongs in there.

At any rate, one of the problems we always had was what to use for forms. I would tell the students, as we would all do, that forms are not bad. It's ridiculous to reinvent the wheel. Your client isn't going to pay you \$300 or \$400 an hour to learn how to write a contract. Yet most of the forms are bad. Well, the problem now, of course, is that the

⁵ THOMAS R. HAGGARD, *CONTRACT LAW FROM A DRAFTING PERSPECTIVE: AN INTRODUCTION TO CONTRACT DRAFTING FOR LAW STUDENTS* (West Publishing 2002).

⁶ TINA STARK, *DRAFTING CONTRACTS: HOW AND WHY LAWYERS DO WHAT THEY DO* (Aspen Publishers 2007).

Internet has tens of thousands of forms of any type, and I'd set seven different teams with seven different forms.

I had to read the form and then see what they did with it. I made them eventually bring the form in early, and I limited them. One story I had was that I saw, when I was going over the contracts, a very strange definition. I don't remember what it was, but it was bizarre. It was clearly a typo. I mean, there was no way to read it where it made any sense. Then I went to the second one and I found the same definition. And I found it in three or four out of seven contracts. I came to class, and I said, "Team number 1, where'd you get your form? There's nothing wrong with this; this isn't plagiarism, but where'd you get it?" "Sally got it at her law office." I said, "Team number 2, do you work in Sally's law office?" "No." Everybody in Houston was using the same form with the same typo in it, and no one noticed the typo. It was all over town. It was an amazing thing to look at.

On our actual assignments, we would give out a detailed story about what was happening, and then we'd give secret instructions to each side, involving strategy and sometimes embarrassing information. This might raise ethical issues of non-disclosure and certainly laid out negotiating strategy: "This is as much as you can give but don't give more than this." One of the things my partner wanted to do in one of the deals was figure out a way to get away with something, with one company not having to disclose something negative. And I ended up saying to them, "I'm not teaching the damn students how to steal. I'm just not going to do it." We had a great discussion, but I used to say that we have two guys here: good Harry and bad Harry. Good Harry's the sweetest guy in the world; bad Harry's the guy who was working for the years in this oil company and he'll steal your eye teeth. That was a problem. (This is, of course, a great overstatement about a fine lawyer and gentleman.)

We also put in stuff about fair labor standards. We did a thing on that right around the time they wrote the standards for typical clothing manufacturers in Guam. There was a big case in the 9th Circuit and stuff along that line. How do you put that and how do you do some of the ecological stuff? We did try to put that in. But of course the main thing is to just have the students going and doing negotiating and then drafting about a wide range of topics. The problem was that the drafting is just too long and too much, but it was very useful, and the students seemed to like it. They seemed to get something out of it, and it was fun, except when I'd have the contracts backing up from the previous assignment. I think there is really something to be done in this. My partner is still grappling with the problem. I think the answer is shorter and less comprehensive assignments.

I also taught some Mexican students in Monterrey one year when we were doing a program with the University of Monterrey, and I used one of the problems. This summer, my school is doing a program for oil lawyers from Angola—we're in Houston, so everything's oil here—and I'm to teach them contract drafting and to do it in twenty-eight hours of classes over seven days. Four hours a day. I presume English is at least their third language, since they presumably have an indigenous language and then Portuguese and then maybe English. I have no idea if it's going to work. Again, I'm using the Haggard book because I decided I can't overload these people. We're sending it to Africa and telling them to read it before they show up. I have no idea what I'm going to be doing in that course and how I will make it work because I don't know where my students are. (The students were good and we produced decent work.)

Just one last thing: a man got in touch with me. He wanted me and a couple of other people to give a talk to Chinese oil people. At any rate, they were Chinese law

professionals, whatever that meant. I got there, and I said to the man, "Well, how good is their English? I'd like to know before I give the talk." And he said, "They don't speak English." I said, "What?" He said, "We have a simultaneous translator here." I said, "You tell me five minutes before my talk that I'm going to be working with a simultaneous translator?"

I go to the guy, and we shook hands, and I said, "You know, I guess I should stop every couple of sentences." He says, "No, I'm pretty good at doing it." He turned out to be an American lawyer born in China who is perfectly fluent of course in Mandarin Chinese, and also was a first rate lawyer, and he was actually incredibly good. He could go with a whole paragraph with fairly complex ideas and translate them into Chinese. It was really an amazing experience.

DEBORAH BURAND

EARLY LESSONS IN LAUNCHING AN INTERNATIONAL TRANSACTIONS CLINIC

I run an international transactions clinic at the University of Michigan Law School. It is the first of its kind in the United States. We run real cross-border deals with real clients. This idea of complexity is one I think we might want to tease out a little bit in our broader conversation. I'm based out of Ann Arbor, so the key questions I had when I was setting this clinic up were "How international could a Midwestern clinic be? Where could we work? Who could we serve, and what could we do?" These are pretty basic questions, right? And the answer is, "It could be very international." We've had clients in Russia, France, Bangladesh, the Netherlands, Italy, Tajikistan, England, and so on. We've had deals that have taken place in Africa, Central America, the former Soviet Union, and Latin America.

Part of the reason we could do this is because the physical infrastructure needs of an international clinic in today's world are very easy and cheap. I tell my colleagues that all I really need is a computer, a telephone, and an alarm clock, and the only technology that has failed me to date was the alarm clock. If I can run this kind of clinic in Michigan, you can do it anywhere. .

Who can we serve? This was a very interesting question, and part of it went to what the teaching goals of this clinic are. I have given to Emory, for its resource library, the student manual for my clinic. Members of the audience, you also have an excerpt from that manual, which includes our clinic's teaching goals.

Before I launched this clinic, I went around to law firms in New York, because that's where my transactional background started. I interviewed partners there and asked, "What do you wish the international associates knew, those young lawyers who are coming to your firms to do international deals?" It may not surprise you, although it did surprise me, that they were less interested in the students' knowledge of the law and much more interested in their softer skills -- things like: How do you communicate with clients? How do you communicate with other people in the firm? How do you work on teams?

We put our learning goals into three buckets. We have a bucket that goes to legal capabilities and technical skills; we have a bucket for client relationships; and then we have a bucket for teamwork and the personal development. It's the third bucket that has been the hardest for my students in the clinic. They don't know how to work well as teams, and one

of the things I'd love to talk about with this group is this: when you assign students to teams, what are some of the things we can do to help those teams work more efficiently?

Then we stepped back and said, "OK, who could the clinic serve?" We needed clients who would be willing to have students do their work for them. I ended up trading on my own name to get our first clients, by saying to these potential clients, "I promise you the quality of the work of the clinic will be such that I would be willing to put my own name on it."

To find the clinic's first clients, we went to the world I'd been working in for nearly a decade, which is the microfinance sector: small-sized loans and other financial services provided to poor people in developing countries. The first year, 90% of our work came out of that microfinance community. This year, it is closer to 70%. This shift is not because we've done less microfinance, but we've been able to grow the size of the clinic, and there are other types of social enterprises now being served by the clinic, that is, double bottom-line businesses and businesses that are not only trying to generate financial returns but also are trying to address a global problem and generate social impact returns. We are now getting to the point where it's no longer my reputation that's selling the clinic to new clients. These social entrepreneurs have heard that there are students in Michigan who can deliver high quality services to double bottom-line companies and investors. They're coming to the clinic because we have this expertise. That has happened in just a two-year period, which I think is quite extraordinary.

What kinds of things are the students doing in this clinic? We organized the students' assignments according to three major ways that an international deal lawyer works. I did this for a couple of reasons. I wanted the students to experience the broad range of ways that an international transaction attorney works, but I also needed to take a little pressure off of the students. So one bucket of assignments was live deal work. Transacting live deals puts enormous pressure on the students and on the supervisor. You've got time sensitivities, you've got complexity. It doesn't always work, but we try to give every student exposure to a live deal at some point in the academic year.

Then we needed other kinds of assignments for the students that would allow them to conduct "slow motion" lawyering because you don't do slow motion lawyering when you're in the middle of a live deal.

So another bucket was enabling environment work. We started working with clients who asked us to help them think through issues such as, "What are the questions I need to ask my local counsel?" For those clients, the students created local counsel questionnaires. Other clients asked "What are the kinds of things I should know about the enabling legal and regulatory environment in a country that would inform what I want to pursue with local counsel?" From assignments like these, while we weren't practicing the law of another jurisdiction, the students got used to conducting desktop reviews of other countries' laws—determining where would you look for such laws, and then identifying the main issues that you need to focus on that are relevant to your client's needs.

The third bucket, which is where I've seen the greatest growth in my students, has been in the development of form documentation. When you have to develop a form—and you're not just pulling it off the internet—you really have to understand it. For example, one client of the clinic asked us to develop some of its forms of loan documentation for lending to microfinance providers. Another client asked us to annotate its form of equity documentation so as to describe the meaning of contractual provisions in plain English in a

way that even a non-native English speaker could understand. Most recently, a client retained the clinic to look backwards at his deals. He shipped to us documentation for twelve transactions that his company has done and said, “I am focused on getting the next deal closed, but I’m really worried about whether we have been consistently looking at legal risk in our prior transactions. Please review these deals and show me where the land mines are.”

Those are my three buckets: live deals, enabling environment, and then documentation development or analysis. The students touch on each of the three areas during their two semesters in the clinic. I usually have the students working on two to three things at a time because the live deal work is so variable in its timing. Today it can be really slow and the next day it may be “Speed up, I needed it yesterday.” This approach also allows the clinic to keep students busy even when deals are quiet. That’s a quick summary of what I’m doing in my clinic.

QUESTION AND ANSWER SEGMENT

DEBORAH BURAND

Now, if there are major themes that you want us to talk about, we’re going to take the next twenty or twenty-five minutes and have a conversation right here, and then we’re going to open it up for you to throw other questions at us. I thought this way might be more efficient, but if there are topic areas that you want to make sure that we reach, just put your hand up with an index card and let us know.

PETER LINZER

How many credits do the students in your international transactions clinic get?

DEBORAH BURAND

I’ve shifted around on this one. The first year I gave too few credits, this year I gave too many, next year I hope to be like Goldilocks and get it just right. I am going to give three credits for the first semester and four for the second.

A real big question for any of these classes—and I’d love to hear you all respond to this—is how do you build foundational knowledge that’s strong enough to support the international overlay that we brought in to it? The first year of the clinic, we just jumped. Held our noses, jumped, and then went, “Wow! This was hard for all of us.”

This year, we started the year with a seven-week boot camp. We actually did not introduce the students to clients until we were seven weeks into the first semester. We tried to teach to the kinds of matters clients were likely to bring to the clinic. This was possible because we knew each likely clinic client because all but one of our clients returned to the clinic after the first year. Based on our prior work for these clients, I knew that it was likely that the clinic would be asked to support debt deals, equity deals, and credit enhancements. So these were three areas of focus in the boot camp. The first semester of the clinic is a little less time-intensive for the students because of the boot camp. It’s the second semester where the students are running a hundred miles an hour trying to meet clients’ needs, and so that’s why we had to boost the credits.

PETER LINZER

Do they get a grade?

DEBORAH BURAND

First year it originally was pass/fail. Students came to me the second semester, however, and said, “We really would like to have a grade the second semester,” and some of the advanced clinics give grades. I was naïve, so I said, “Sure, it’s a pilot. Let’s do that.” Then I saw some inappropriate behavior within the students, with some students saying things like, “[Student XX] is not doing his job. I just want you to know I drafted that.” The teamwork I was trying to build among the students dissolved, so I’m trying to keep mine pass/fail. How do you feel?

PETER LINZER

Well my clinic—remember, I’m doing a small business clinic, so it’s not exactly like this—I expected I was going to get guys doing taco stands in factory parking lots. That’s what I expected to get, but in fact we get more sophisticated transactions, domestic and international. It’s fair, people trying to earn a living. About how many students do you have?

DEBORAH BURAND

First year was nine, second year was fourteen. Next year will be sixteen.

PETER LINZER

Literally, the first client I had, I took my four students and we packed into a car and drove down to this company that was selling heavy equipment to Nigeria. This was my first small business clinic, and it was rather interesting: they’re relatively sophisticated people. Because I had been doing the international thing, I was talking about things like the Incoterms⁷ with them and stuff along that line. At any rate, we got some guidance trying to sell surplus medical equipment in Guam or the Philippines, and that gets into questions about export controls. We pick these things up, but most of our clinic is more domestic stuff.

In my other course, in the international contracting, at every turn, I had some behavioral problem or somebody who was a problem. Someone either dropped out or never was around because he had a job and he was missing assignments, or somebody who just couldn’t get along with the team. Out of twenty-eight people, there’d be one almost every term, and this was a problem.

The real problem was when I said to them at some point, “Look. If your partner’s pulling you down or if the other side is pulling you down, it’s going to affect your grade.” Now we did pass/fail for a while, and the Dean didn’t like it, and I wasn’t happy because they didn’t work that hard at the end. That grading was very difficult to do because we have a curve, and I’d have to give some people lower grades than I would like.

I said to them, “Look. Here’s what you do. You have a problem with somebody, first of all, you talk to them about it. You confront them. If that doesn’t work, you call me up. I’m the boss. Understand that if you’re working at a law firm and you’re calling the

⁷ International Chamber of Commerce, Incoterms® 2000. The Incoterms® rules are an internationally recognized standard and are used worldwide in international and domestic contracts for the sale of goods.

partner all the time on your fellow associate, you're both going to get canned. It's really up to you to try and work these things out, but I don't want to hear about them the day the papers are due, the day the contracts are due, that we couldn't get it done." We had that happen, at least one time, where one side turned in their draft of the contract and the other side had never negotiated with them!

DEBORAH BURAND

Do you have your students do anything in teams or are they individually working in your class?

KOJO YELPAALA

Because I have done this for such a long time, I've experimented with every single one of those things. When I started out, I was an oddball at this, and at McGeorge, nobody gave projects. I gave projects in my first year of teaching there, in groups. I collected their student profiles and then I deliberately mismatched the students so that I could force them to learn how to work with each other.

They were doing group projects, and the same issues that Peter's talking about came up. After a while, I would get a report. A student would say, "Well, this guy didn't do his work. There's too much free riding." So I switched. I would give a project at the beginning of the semester, and the students would create a strategic structure and explain to the client why this was good strategy for the business the client had. Then I would grade them, and then we would have a client discussion. What are the different options? What are different ways in which the client could achieve its objective? Then I would give them the last project. I would grade them again, and we'd have another class discussion.

It turned out that after the first project, some students got really uptight when they saw the red ink. I told them, "Look. There is a learning curve. All of this will wash out at the end. At the beginning you are trying to figure out how to write an explanation to the senior partner that you're working with that this is workable for the client. You need some feedback." I did that for a while, and then the class changed. After they get their papers back, it got very tense, so I switched again. Now I give them a forty-eight hour take-home and three projects or a forty-eight hour take-home and three alternatives. Then I grade them. Last year I switched again. Dealing with their emotions is a very tough way to teach.

QUESTION

How do you work with students whose English may not have the same level of competency as your working language in the classroom?

DEBORAH BURAND

Here's an example of something that happened with us. I deliberately try to get LLMs into my clinic because I think an important part of being an international lawyer is effectively managing local counsel. In doing this, however, we quickly discovered how challenging dealing with different language competencies can be.

One LLM that participated in the clinic had limited English language skills. It was a lesson to me—I had selected this student based on a written application. I had not interviewed the student in person. I won't ever do that again. Clinical teaching, simulation teaching, or anything that involves a lot of conversation, and not a lot of textbooks, requires students to have very strong listening and speaking skills, as well as writing skills.

At some point other students in the clinic complained about this LLM. I responded by saying, “We must have this conversation as a group, not behind the student’s back.” So not unlike what you did, Peter, I drew some boundaries. I said, “You first need to have a conversation with the LLM student. If you can’t work it out among yourselves, then you can bring me in, but it should be a conversation among all of us, not tattletale behavior.”

This became a conversation with the LLM where we said something like: “You will be going back to your homeland someday, and you will be local counsel. You’ll be dealing with people over the phone often. How can you develop communication skills that draw on your strengths, which include your ability to read and write English extremely effectively?” We came up with this strategy—after every team meeting, the LLM would write an email to the other students on the deal team. The LLM would say: “I hear this is what you want me to do.” And if the LLM student got it wrong, the other students could offer corrections or clarifications. While this was messy, while there was tension, I think it was a learning opportunity for everyone.

PETER LINZER

I think that the email strategy was a very good idea. You know what kind of TOEFL⁸ score Michigan has? We have a 600 TOEFL, which is pretty high. Our attitude is if people don’t have English, they shouldn’t be in our school. We can’t do it. That doesn’t solve the problem because this is a technical problem of oral versus writing skills. In some cultures, I think particularly Asian cultures, their written English is excellent and their oral or conversational English is not. I have found that a person who doesn’t have the best conversational skills can write beautifully. I think that Deborah’s email answer was a very good one.

DEBORAH BURAND

Another issue, of course, is how clients engage with students whose conversational English seems to be weaker. What I’ve found is that clients—and I had to be very sensitive to this—tended to give more deference to students who had non-accented [e.g. American-sounding] English. This most often happened with the clinic’s American-based clients, but sometimes even the European-based clients would too. At times, I’ve had to draw attention back to the student who had a heavier accent in order to showcase his or her work. I’ll show a lot of deference to that student in front of the client. And I will say things like: “Kojo, tell me more.” Or, I will say, “Peter, that’s a great idea.” I want to show that this student has a lot to offer that the clients may have been missing.

KOJO YELPAALA

I have a different angle on this. Most of the students in the class have good English skills. My class, over the years, draws a certain class of students: people who are looking to step out of the boundaries, people who are willing to be challenged. My job is to provide them with the economic and business background which influences the way deals are made. You have to have that background in order to properly structure a deal. When the deal is properly structured, it is easy to draw up the agreement. But until you have that background, you are just lost in the forest. The job for me is to teach business analysis. I teach them how to look for the vulnerabilities in a deal, to look for points of friction where the deal is likely to fall apart and how to identify the unspoken, unstated objectives. If you gave me a

⁸ TOFEL stands for Test of English as a Foreign Language.

proposal, I could tell immediately what the other side's business goals are, even if you didn't tell me. My job is to teach the students how to listen, how to see.

DEBORAH BURAND

I'll go with that if you don't mind. That relates to one of these other questions that we got, which is: How do you help students understand different cultural norms and build relationships, not just contracts? What does one do? Particularly, we're talking about what makes us a little different than a domestic transaction. What do you do? How do you help a student really hear a client when, in fact, there's a cultural barrier too?

KOJO YELPAALA

I have simulations during the year before the finals. In one of the examples in my materials⁹ I had a Professor Epstein, a fictitious person, from Berkeley, who was a friend of the president of Mali. He went to the desert to work with the Berbers to understand the oasis. He figured out how to develop what I call a "Miracle Compost." This Miracle Compost really can transform the desert into arable, green land. At the urging of the government of Mali and other African governments, Professor Epstein decides to build a fertilizer factory to produce the Miracle Compost. He got a lot of help from the Berbers, and some money from the Food and Agriculture Organization and the World Health Organization.

Then I ask the students: How would you put this deal together? You have this professor who was adopted by the Berbers as one of their own. Now he has a patentable invention that has incredible potential for the environment in the desert. How would you put this deal together? There are so many parties with so many interests. It compels them to put themselves in Africa, to deal with an American inventor, to deal with the health issues, to deal with three governments.

DEBORAH BURAND

Let me probe this because one of the risks of the simulation is that you're pretty clear about what everybody's saying to each other, but that's not how the real world works. The beauty of my clinic is that some of the clinic's clients are inarticulate. We will get off the phone from a client and then we all will look at each other and say, "Well, what did the client just ask us to do?" Trying to be active listeners—how do you address that in a simulation? Peter, have you had this issue come up?

PETER LINZER

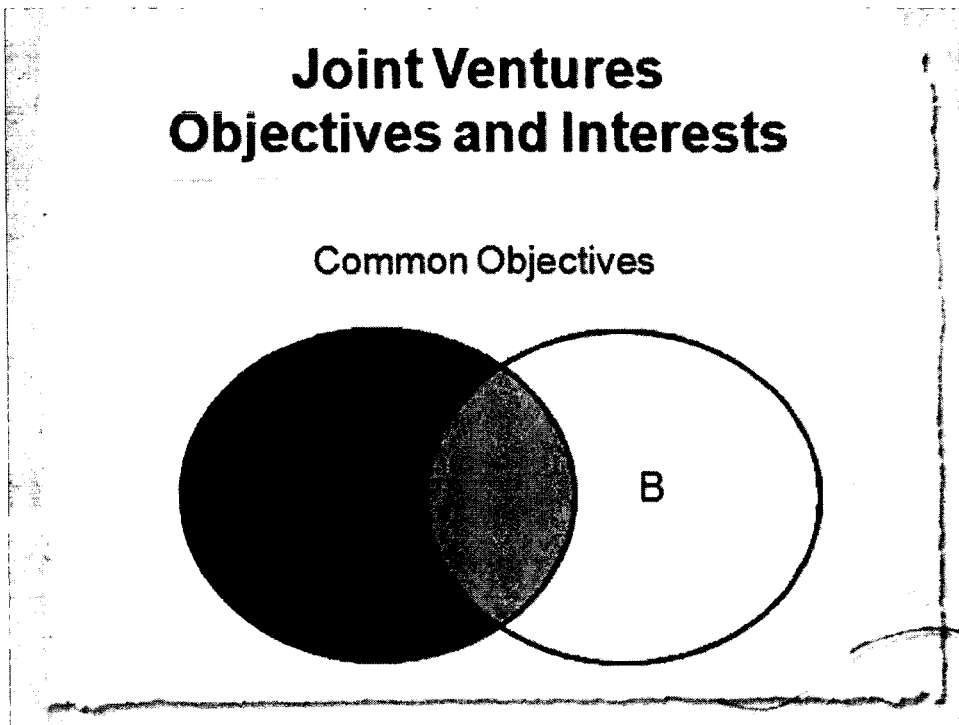
Well, not so much in the international contracting class, but in the transactional clinic, it happens all the time. First of all, I always go to the first meeting with the students and I always wave my bar card. I want the students to be in charge, but at the same time, nothing's going out that I don't approve because it's going on my bar card. I usually wave my bar card at the client and the students know that. We do have the kind of problem where we lose focus sometimes and things get unclear. We have things that drag on. We often have trouble with clients trying to start non-profits.

KOJO YELPAALA

⁹ See Kojo Yelapaala, *Conference Handouts*, EMORY LAW: MORE THAN PRACTICE: CONFERENCE MATERIALS, <http://www.law.emory.edu/centers-clinics/center-for-transactional-law-practice/2010-conference/conference-program-schedule.html>.

It seems to me, in a simulation context, things can come up that are not clear. For example, later on in the course, when I talk about joint ventures, I'll create a situation where we have joint ventures: two parties that seem to have some common objective. Let's say it will be to develop a new computer program involving some sort of platform technology. The parties may have some common interests in the middle. They'll also have competing interests that are outside of the middle. This is best illustrated in Diagram 1 below depicting a two-party joint venture negotiation.

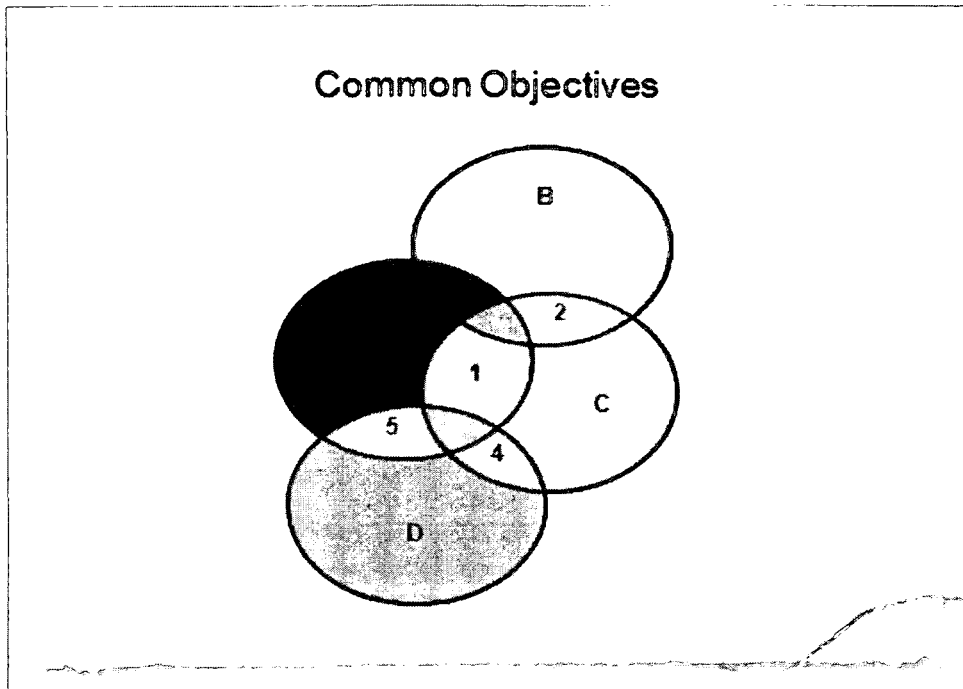
Diagram 1



With regard to the common objectives, there are some that are stated and some that are unstated. People who are getting into the joint venture are not going to tell you the real reason why they're getting into the joint venture. This is where your conflicting objectives come in. I focus a lot on these: How do you, from the deal, identify the real reason, which is not stated? How do you identify the real reason, as opposed to the one stated to be used as a hook for you to take the bait?

Then you have the motives. Some are good, some are mixed, some are mutual, and some are unilateral or based on mutual suspicion. In any deal that you put together, you have these mixed motives. When you increase the number of parties in a joint venture to three the area of common interest gets smaller. If the number of joint venture partners goes up four as captured in Diagram 2 below there is hardly any overlapping common interest to all the parties.

Diagram 2



As can be seen from the diagram, there is no middle common to all the parties. You have common interests limited to specific groups of the parties. You have these other overlapping interests between some of the parties, but not all the parties. Then I ask the students: “When you have this situation, what is the best way to construct the deal in such a way that you isolate problems? How do you stabilize the transaction?”

For instance, the first joint venture is between A and C. And then, maybe another joint venture between D and C. You have a pyramid of joint ventures. By doing this, you isolate the parties based upon their common interests. This way, if there’s a problem, they have to fix it themselves. They have to fix it before they deal with the other side of the joint venture. This is how I approach the simulation. It is not that clear how the pairing of partners will ultimately work out.

DEBORAH BURAND

I like what you’re doing here; it’s interesting. It’s not quite the same as what I’m doing, but I think it’s got the same objective: helping the students to recognize cultural differences and to discover the unstated expectations or motivations of clients. Whether you map it in a simulation or in a clinic, you say, “What do we think is really happening here? We heard this. Are we hearing the client well? What’s a tool we can use to make sure we truly understand the direction that we’re being pointed in?”

There are books available on this topic, but I think part of the teaching challenge is to get the student to internalize this kind of learning. The beauty of a simulation and a clinic is that you can give readings to the students, which we do—intercultural negotiation readings—but then you have the students either role play it or actually live it.

If you don't mind me switching slightly, I want to go to another comment that has come up, and Peter, you made reference to this in using practitioners as adjuncts. I'd love you to talk a little bit about the strengths and weaknesses of that.

PETER LINZER

I've had three different partners. The first year my partner was a woman who, if I remember correctly, had a practice in Houston that did international trade with Mexico. There was a guy I knew who had been general counsel to the second or third biggest rig company in the world. He worked with billion dollar rig companies. Rigs cost about a hundred million dollars apiece. He was a very nice, very smart guy. At one point, he put an exchange rate into a contract that was absolutely unintelligible. He'd been a math major in college; he was very, very good. After some point, he decided to go into the Chinese furniture business. He opened a gallery and disappeared. He got me into the third guy, who was a friend of his, who worked out beautifully.

The problem is that there certainly are some adjuncts who have the same kind of mentality as law professors, but most of them don't. They're not into grading. I'm sure some of them are the kind of senior partner who goes over drafting with the junior. When I grade, there's a lot of red ink. I don't use track changes in Word. I sometimes use it, but I write all over these things. I don't write it promiscuously. If it's good, that's great, but most of the time they're going to learn.

First of all, the way you learn to write—any kind of writing—is through feedback from the instructor and redoing it and so forth. You've got to do that. I found my partner didn't do it as thoroughly as I did and didn't like the idea of giving out grades. This unfortunately meant that the hardest work in the job—going over the documents—was all mine. I think that this is a problem with using adjuncts: they can't always be counted on for some of the most important stuff.

DEBORAH BURAND

Using adjuncts is the way I've gotten to expand my clinic to sixteen students as I'm the only full-time supervisor in my clinic. Using adjuncts has had both advantages and disadvantages.

The advantage has been that the clinic can take on matters that I myself am not an expert in. I've got this broad range of people who can say, "Oh, well I can take care of that sales contract." I'm a finance lawyer. I can do the cross-border financings that come to the clinic, but I haven't done as much in the sales area. One of my adjuncts is very strong in equity, so when the clinic gets that kind of work, she comes in. We've also had the law firms of some of these adjuncts backing us up. When a clinic client had a tax issue or needed an English law analysis, we were able to reach into the firms to handle those aspects of the deal. That has broadened the breadth and scope of what we can do in the clinic.

The disadvantages of using adjuncts go to your point, Peter. While adjunct supervising attorneys know how to practice law, some don't know how to teach students to learn how to practice law. This is actually a problem I am wrestling with too because I've been a practitioner longer than I've been a teacher. I've realized that I have to invest in my adjuncts' own learning. And, at times, I need to spend time reminding them that "This [student] is not just an associate in your law firm. You've got to take a different approach."

Let's take it from the other side. I ask the students, "What is the difference between the adjuncts and the full-time faculty?" One of the things that I saw happening, which we

then also had to correct for, was that some of the students quit looking at the client as the real client. The “client” in the eyes of these students sometimes became the partner in the law firm who was reviewing the students’ work, and the students lost sight of the actual client. In contrast, I found that when I was the supervising attorney, the students did a better job of remembering who the actual client was. So we had to get in front of this issue when using adjuncts and keep the students focused on serving the real client.

PETER LINZER

When I was in law school, my dad came to something and asked Allan Farnsworth why he became a law professor as I cringed in the corner. Allan said, “Because when I was in practice, I didn’t have time to think about things, to think about problems.” I saw that when I was a practitioner a long time ago, we were going to bring in a young kid who just finished his six months in the army and law school, and the partner said to me, “Let’s start him in the managing clerk stuff. Let’s give him a month there. Let him read the New York Law Journal. We’ll start him slowly.” The only problem was that an order to show cause came in an hour later and the whole project went up in smoke. You just can’t do that in law firms. You don’t have the time and you can’t afford it. As a result, that’s why there are no teachers in law firms. There are some great lawyer-teachers, but if you’re charging the client \$500 an hour, you can’t charge him for correcting a second-year associate’s drafting. You can do it on your own time, and that’s very nice, but these guys don’t have any time.

DEBORAH BURAND

One of the questions that came up—and it actually has to do with something Kojo alluded to, but maybe we can take it on directly—is dealing with complexity. As you know, we’re taking on varying jurisdictions, varying cultural norms, varying legal systems, and varying objectives. I know you said this actually got too hard and too complex with the students. How do we manage that?

PETER LINZER

I think that’s a very serious problem and I add another problem to it, which is that I don’t do international deals. I don’t come from ten years of doing it in practice. I do these things and I say, “I don’t know what the hell I’m doing here.” I can write a contract, but past the drafting stage, you’ve got no substance. You have got to know about the business, and you have got to know about the law of the business. The law of oil and gas is obviously different from the law of electronics.

We once had to do a lease for a dentist. Afterwards he said, “My landlord charged me \$1500 for a heavy-duty cable because I needed it for my drills.” I didn’t know he needed the heavy-duty cable, but I should have. I learned to ask global questions like that. You have got to know your client’s business, but you also have to know the substance of whatever you are working on.

There’s one other point that I’ve heard about, back somewhat to the adjuncts. A lot of big law firms—and I’m in Houston, so we’ve got big law firms—are retiring partners at sixty-five. I think there’s some tax reason for it, as I understand it. They’re having them do pro bono stuff. It’s been suggested that we could use them in our transactional clinics because these guys could do that in their sleep. They could take on two or three students. So instead of my limit being four if I have another course or eight if I don’t—and eight is too many I’ve decided because then there’s like thirty clients—give them three or four students apiece. I could bring in some adjuncts that way, and I’m just thinking that in other

areas you might be able to do the same. Some of those people aren't interested in retiring. They're really interested in working hard and it could be a kick-start for them and they could enjoy it.

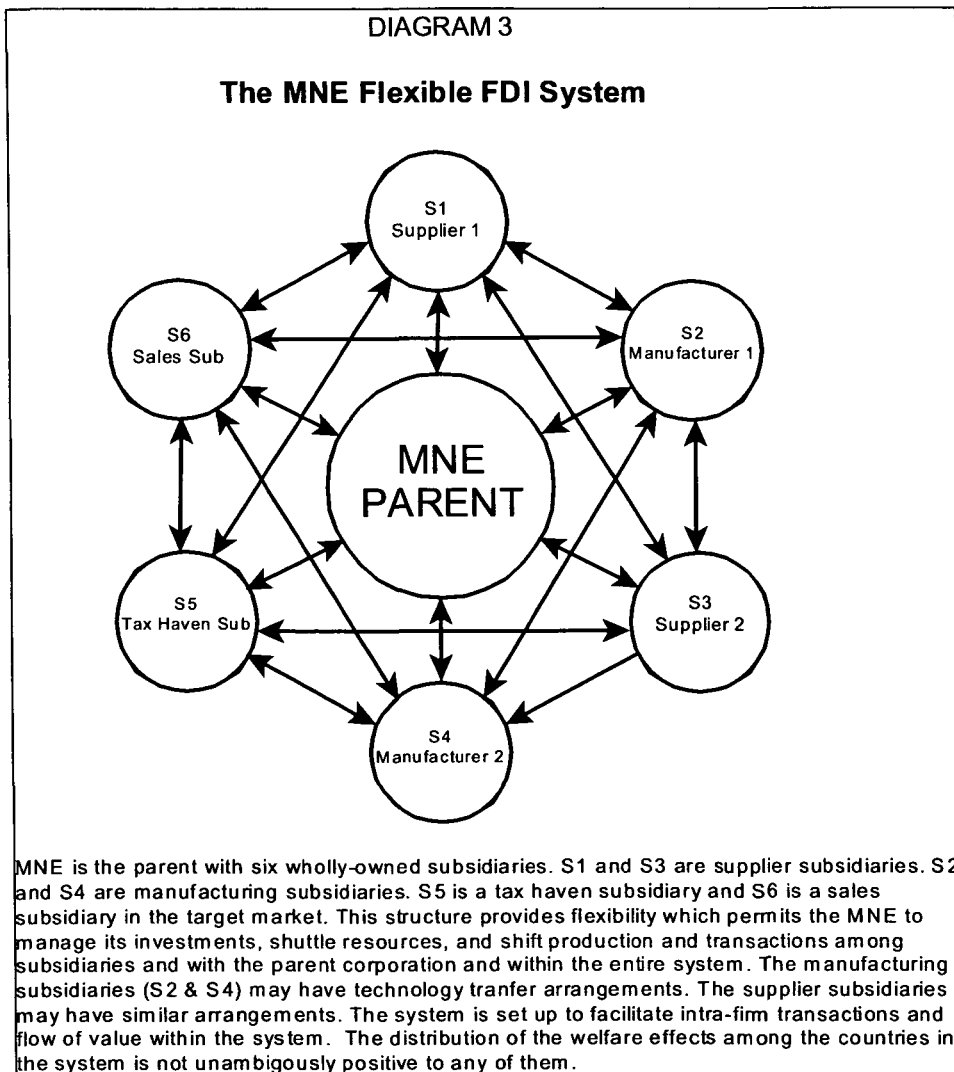
DEBORAH BURAND

What I hear you talking about is how you manage complexity at the faculty level. You have been taking, by definition, very complex deals to the students. How do you help the students deal with complexity?

KOJO YELPAALA

About the second or third week of class, this is where the students are at. Now, if you like the multinational enterprise ("MNE"), it can be used as a technique for teaching, because the MNE is a very complex entity. This is captured in Diagram 3 below:

Diagram 3



It also has all kinds of issues coming out of it. If you look at the reasons for the existence of the multinational enterprise, you will find that they are essentially related to the failure of the law of contract. If the enterprise could license your technology to somebody in Mexico and that person would pay you the royalties that you deserve. You will have an easy way of negotiating that licensing agreement and wouldn't need a subsidiary.

But because the information markets are imperfect, MNEs are faced with the Arrow's Paradox in any transaction involving information they need to establish a wholly-owned subsidiary as the licensee instead of using a local licensing. The wholly-owned subsidiary is under of the control of the parent MNE, and because the subsidiary is under its control, the subsidiary is also an instrument for transfer pricing transactions. If you look at the system in Diagram 3 it is internally consistent. It creates its own internal market for shuttling resources within the system. That creates value in tax haven subsidiaries, these days described as finance corporations. When you look at the system captured in Diagram 3 there are so many things going on simultaneously. Some of it is tax driven, some of it is limited liability, some of it is addressing problems with the law of contract, and others creating the flexibility that you need as a group of enterprises. This gives you flexibility. If for example you've got two manufacturing subsidiaries in different jurisdictions as shown in the Diagram, you can play a negotiation game with the government. When the government tries to play a political game with you, you may threaten to close the subsidiary in that country. If you succeed, you reduce the workforce in that country.

DEBORAH BURAND

Kojo, what I see you saying here is that one of the things that you're doing very early on in your semester is teaching the students to diagram the complexity of transactions. Is that where you're headed?

KOJO YELPAALA

Exactly, and to see what is going on. To see what each line represents. Each line represents a transaction. There's a transaction between one subsidiary and the other.

DEBORAH BURAND

You're making the students follow the money, you're making them identify all the different parties, and then you're helping them to start to understand what the issues are between those parties. I knew that we got this right one day when I walked into my clinic. We have a clinic workroom with a big white board. Some students had been in there and had diagrammed a deal on the white board. I was in heaven. I'm not sure they got it right, but they were trying. That is something a practicing attorney always does, but I like the fact that you're introducing that concept so early.

PETER LINZER

My second partner, the guy from the oil rigs, showed us a deal that he'd done in Mexico. One problem was that you can't do those things directly in Mexico because you have to have a Mexican company doing it. You can't just put your company down there; the Mexicans don't let you do that. It got very complex and I said, "Wait a minute. You got this one, giving money to this one, giving money to this one. They're just passing money down; they're not doing anything."

It was all a complex thing and it involved a company that would lend money to those further down the food chain if they couldn't pay an amount due. Then they realize

because of different interest rates, the American company was bankrolling the people in Mexico because the rates were so much lower. They just could turn to the Americans and get it at a much better rate, since this was back in the seventies when the rates were very high. All these things got incredibly complex and sometimes people got really burned on them. That's certainly a very useful thing to know.

QUESTION FROM JANE SCOTT¹⁰

What do students who take your courses in international transactions gain from the clinic if they don't end up doing international work for whatever reason, despite their obvious interest in it? I would think that everything they learned through the clinic would still be applicable to a domestic practice. What would they get from it internationally?

DEBORAH BURAND

It goes back to Peter's question, which is: What makes international different? I think we've started to tease some of this out in our conversation. There's the intercultural overlay that may or may not be there, or it could be in a domestic transaction. There are the different legal jurisdictions, which are not just a matter of another common law jurisdiction, like New York or Delaware. It's New York law and perhaps civil law. It's also starting to figure out which law applies to which part of the deal. There is the local counsel aspect of "you're only as good as your local counsel" and managing that relationship. Of course, there are different remedies and different risks in international deals, so we use different risk mitigants. For example, we focus a lot on political risk insurance and offshore vehicles where you're trying to limit or mitigate risk.

PETER LINZER

I also pointed out that, just in practical terms, an international deal involves distance. Shipping becomes a big thing. It involves foreign exchange. It involves language. There are three practical differences right there without even getting into the sublevels.

DEBORAH BURAND

The risk of not having another jurisdiction respect the enforceability of the contract really comes up strong. If you're trying to contract in a place where you don't really know the rules, that also shapes how people work.

JANE SCOTT

I'm struck by how useful these courses would be in teaching the kinds of skills that you've outlined, Deborah, for any future lawyer.

DEBORAH BURAND

I think they are, but I think there is an additional overlay too.

KOJO YELPAALA

One of the first points I make in class is that to be a successful international strategist, as a lawyer, the most essential subject is civil procedure. Period. I say, "Your job is to make your client lawfully invisible in any jurisdiction." If you can't be sued, there's no substantive liability, and therefore, let them chase you. I say that you need to understand

¹⁰ Jane Scott is an Associate Professor of Legal Writing at St. John's University School of Law. J.D., Columbia University; B.A., Yale University. She may be reached at scottj@stjohns.edu.

your civil procedure. The diagram that I showed you has a lot of civil procedure work going on there (Diagram 3). The subsidiaries are not put there at random.

PETER LINZER

There's also international arbitration.

KOJO YELPAALA

That's right. That is where I start. So it works out that way.

PETER LINZER

It's certainly easy to work with Anglophone former British colonies because almost everybody's willing to litigate in London. Everybody trusts the British courts and they trust the British arbitration system, and for example, the Pakistanis don't want to go to Texas. They've all heard about Texaco Pennzoil, and I'm in Harris County, Texas. Everybody will go to London, but that doesn't do you any good if it's an East Asian company.

QUESTION

What is the value of teamwork beyond just having fewer papers to grade, as Peter was saying? To what extent is the student's analysis of their teamwork sufficiently self-conscious so that there may be some allocation of responsibility based on their skills, whether it's language skills or otherwise? To what extent do they fall back and begin to appreciate the value of the team by the way you assess their work rather than trying to make each one of them masters of every aspect?

DEBORAH BURAND

Going back to the fact that we all often are working in teams with the students, how do you help the students think about strengths and weaknesses within the team? How do you work those strengths into the way the teams of students function and give them the kind of feedback that encourages role allocation? I think it's easier to do in a clinic because it's necessary. I had students who had limitations on the amount of time they could give a transaction because they were running off for a job interview or having a baby. So right up front, before we end our meetings, we say, "Who's going to do what? Who can carry the ball forward this week?" The first couple of assignments are really messy, but I've noticed enormous improvement over the course of the academic year.

In my evaluations, I don't have the students give peer reviews to each other, but I do have them give me feedback generically about how well they thought the teams worked. I do this with the idea of using that information to try and embed more teamwork skill-building earlier into the initial boot camp training. That was the first big criticism of the clinic from the students, who said: "You focus so much on the substantive law; please teach us how to work as a team early in the semester. Then we'll be able to hit the ground running faster."

PETER LINZER

I was just thinking about this myself. The first thing I learned on Wall Street is that when you're negotiating with somebody else, always volunteer to be the drafter. Of course, that's what almost every decent deal lawyer knows. Always do it yourself. Well, obviously the other guy read the book too. It's like everybody wants the sunlight in the other guy's eyes. So the answer was to split it up. That's what I told them to do. I would make them tell me who drafted which part of which deal, and which team carried the ball. But I said,

“All four of you are responsible for the final product, so it’s in your interest to work with that person, not knock them down. You need to help make the deal better. I still don’t know who started it, but I will say if it comes out lousy, I will think the other three of you failed in your job, which was to make it better.” It was a combination of that. That’s very hard to do, especially when grades depend on it. The grades issue is somewhat artificial, and I may have focused too much on the bad ones, but the good ones worked very well together. They enjoyed helping each other and trying to do it, which is a wonderful skill to build up.

QUESTION

Related to this discussion and your conversation about grading earlier, have you considered giving a grade to the team?

PETER LINZER

The problem there was that somebody works hard, the other person doesn’t, and the first person gets pulled down. I basically started fragmenting it when I felt that I couldn’t do it right that way.

DEBORAH BURAND

I have a built-in motivator, which is a live client. I have found that grades are not necessary for clinic students to be motivated. That’s why pass/fail works for me. But in a simulation, it might be different.

KOJO YELPAALA

When I started I had too much difficulty with this because nobody was doing this. I was the only one. I had a fight with the Dean about this. If you have a team that produces an excellent paper, even if one of them was a free rider, that free rider got an A. It just threw the curve off and the team wasn’t really happy about that. And I said, “Well, this is a technique that made you over-reward some people and under-reward others.” Later I had to do away with it, partly because I couldn’t figure out how to deal with this free riding problem.

DEBORAH BURAND

I also shift my teams. You may be on this team for one deal, and then I’ll move you over to join that other team for another deal. I watch the dynamics so that I can understand what’s situational and what might be more reflective of the person.

PETER LINZER

I taught the course one time at night, and I had some LLMs who were American. One of them was a partner in a big firm in Houston. He was getting an LLM, and he came up to me and said, “Look. All I need is a C in this course to get the degree. I don’t need anything better than that.” Well the guy was in the oil business, so he knew all his stuff. Whoever got on his team got an A. The guy couldn’t write anything that wasn’t an A. He was a first-rate partner, and everything he wrote was an A, and whoever got lucky to be on his team got a boosted grade!

KOJO YELPAALA

I have just one more thing. Transactional Education: What’s Next? What must transactional educators do to intersect the future? Should we, as a group, seek affirmation? The answer should be yes. Should we seek validation? Yes. But given where I come

from—I come from a little village—we should take our own destiny in our own hands. In other words, we must do the things that would make the group indispensable in this whole process and which cannot be ignored.

How do we do that? We should start an annual transactional competition as soon as possible. We should get a group of law schools together and start developing competition problems so that the next time we are having this conference, it is not just a conference. The time is right. A lot of lawyers are not in the courtroom. They are transaction lawyers. That is the proposal that I have.

DEBORAH BURAND

Kojo, I'm delighted that you have offered the last word of our panel. You're living up to your name.