

The Oregon Method: An Alternative Model for Teaching Transactional Law

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Teachers of business law face a particular challenge not shared by many of their colleagues—few students enter law school with any real sense of what it means to engage in a transactional legal practice. As lifetime consumers of our mass media culture, incoming students are sure to have watched endless hours of courtroom drama, both fictional and real. However, their life experiences and media exposure are likely devoid of even the slightest coverage of the ins and outs of dealmaking. Mergers and acquisitions, it turns out, just doesn't make for very good television.

To its credit, the legal academy has taken important steps toward improving the education of future transactional lawyers. We have added clinics, externships and other skills-based learning opportunities, and even incorporated concepts of finance and risk-management into our doctrinal courses.¹ However, even as we introduce the elements of a deal, we fail to provide students with a comprehensive view of how deals are actually accomplished. Too often, we teach doctrine and skills apart from deal sense.

For most students, preparing for a transactional legal practice is like trying to complete a jigsaw puzzle without the benefit of seeing the box. Even as they master the individual pieces, students don't have a clear picture of what the end result will look like. Asked to translate their legal education into the

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1. *See generally* Roberta Romano, *After the Revolution in Corporate Law*, 55 J. Legal Educ. 342 (2005) (discussing the importance of integrating finance into the traditional business law curriculum).

contours of an actual deal, even most third-year law students wouldn't know where to begin.²

Ultimately, the challenge facing a business lawyer is how to manage and allocate risk in the face of uncertainty.³ The individual skills of planning, negotiation, and drafting are therefore merely tools—the means of a deal lawyer's practice, not the ends. Rather than apply these elements in a mechanistic fashion—as individual tasks that proceed in a linear or even more or less predictable manner—she must creatively utilize whatever means are then at hand to prepare her client for a future that does not yet exist. As the well-known deal lawyer James Freund explained, “to call off a deal is no trouble at all, but it requires some real ability to hold together the pieces of a difficult acquisition and accomplish it in a way that satisfies all parties.”⁴ What seems to be missing from even the best business law programs is therefore a comprehensive appreciation not only for how transactions are planned, negotiated, and drafted, but how dealmakers leverage these skills and other aspects of the lawyer's craft to engage in private ordering aimed at achieving a client's goal.⁵

For the past three years, the University of Oregon has been experimenting with a new course format aimed directly at this informational deficit. In addition to providing a comprehensive program of courses that teach dealmaking skills, we have begun offering a series of one-credit “Transactional Practice Labs” that are taught as add-ons to our traditional business law courses. Thus, for example, students enrolled in a doctrinal course like Mergers & Acquisitions or Real Estate Finance can simultaneously enroll in an associated lab.⁶

2. See Edward Rubin, What's Wrong with Langdell's Method, and What to Do About It, 60 *Vand. L. Rev.* 609, 641 (2007) (“Non-lawyers tend to be astonished to learn that in the well-known first-year course on contracts..., [t]he students never read, draft or negotiate a single contract.”); Victor Fleischer, Deals: Bringing Corporate Transactions into the Law School Classroom, *Colum. Bus. L. Rev.* 475, 478 (2002) (“Indeed, a majority of law students graduate without having once analyzed a prospectus, negotiated a term sheet, drafted a complex agreement, or, for that matter, even once having read a commercial contract from beginning to end.”).
3. See Ronald J. Gilson, Value Creation by Business Lawyers: Legal Skills and Asset Pricing, 94 *Yale L.J.* 239, 253–56 (1984) (describing business lawyers as “transaction cost engineers”).
4. James C. Freund, *Anatomy of a Merger: Strategies and Techniques for Negotiating Corporate Acquisitions 2* (Law Journals Seminar Press 1975).
5. See Karl S. Okamoto, Teaching Transactional Lawyering, 1 *Drexel L. Rev.* 69, 122 (2009) (“It is easier to teach *ex post* legal analysis than to teach *ex ante* legal planning.... We as law professors are well-versed in the methods of legal analysis and argumentation [,however, we] are not as good at providing tools for dealing with uncertainty about the future. And yet that is exactly what transactional lawyers do for a living.”).
6. Though unbeknownst to us at the time, the University of Seattle pioneered a similar program of one-credit add-on courses that they also refer to as “labs.” See Margaret Martin Barry, Jon C. Dubin & Peter A. Joy, *Clinical Education for this Millennium: The Third Wave*, 7 *Clinical L. Rev.* 1, 45–46 (2001). Though similar in overall format, the Seattle labs are taught by clinical faculty and appear to have been adopted as “a measured step in the direction

The foundational courses are taught by tenured faculty and concentrate primarily on traditional notions of doctrine and policy. The associated labs, by contrast, are taught in small groups by teams of practicing attorneys and focus on deal logic and the practical considerations involved with planning and executing a business transaction. The idea behind the labs—what one commentator at a recent conference nicknamed the “Oregon Method”⁷—is to provide students with an early view of how the doctrine and skills they learn in law school can be employed in actual dealmaking. The labs are intended not as a substitute for doctrinal and skills courses, but as a complement—as the picture on the box that provides the context for the puzzle.

When offered as part of a comprehensive business law program, the labs provide students with a sense of how and why deal lawyers think and behave as they do. According to deal lawyer-turned clinical professor Tina Stark, “doing deals is fundamentally different from litigating, in terms of both the skills used and the substantive knowledge required.... Although the academy prides itself on teaching students to think like a lawyer, for the most part we teach students to think like litigators.”⁸ By contrast, students enrolled in a lab see first-hand how deal lawyers solve problems and how the individual pieces of a transaction fit together. Our goal is to teach what Professors Rakoff and Minow refer to as “legal imagination”—the ability, based on experience and intuition, to imagine multiple possible futures and to utilize legal and other tools to direct behavior and solve client problems.⁹

In addition to serving important pedagogical goals, the lab format has also provided a number of side benefits. Thus far, for example, the labs have been extremely cost-effective, are scalable to fit almost any size class, and serve to strengthen the law school’s relationship with alumni and the practicing bar. They are even a boon to our career placement efforts. In our experience, then, the program constitutes more than just a solution to the challenges associated with teaching future dealmakers. It represents a model with potential application to a wide variety of legal disciplines.

of integrating clinical methods throughout the curriculum.” *Id.* at 46. By all accounts, the program has been highly successful.

7. This moniker was first applied to the lab approach by Michael Woronoff of UCLA while commenting on the program at a 2008 conference sponsored by Emory University. See Rachel Arnow-Richman, Lisa Bliss, Sylvia B. Caley & Michael A. Woronoff, Teaching Transactional Skills in Upper-Level Doctrinal Courses—Three Exemplars, *Transactions* 365, 379 (Special Report 2009) (summarizing the proceedings of a May 2008 conference on “Teaching Drafting and Transactional Skills,” sponsored by The Center for Transactional Law and Practice at Emory University School of Law).
8. Tina L. Stark, Thinking Like a Deal Lawyer, 54 *J. Legal Educ.* 223, 223 (2004) (“To teach our students to be deal lawyers, we must teach them to think like deal lawyers.”).
9. See Todd D. Rakoff & Martha Minow, A Case for Another Case Method, 60 *Vand. L. Rev.* 597, 602 (2007) (“What [law students] most crucially lack...is the ability to generate the multiple characterizations, multiple versions, multiple pathways, and multiple solutions, to which they could apply their very well honed analytic skills.”).

The Education of a Litigator

Although we sometimes like to think of law school as a uniquely novel and even transformative experience, few first-year students arrive at our doors with an entirely blank slate. Not only do they have opportunities to study aspects of the Constitution, legal philosophy and similar subjects in high school and college, but our media-intensive culture is infused with legal drama. The classic Hollywood lawyer movies, for example, reflect an awareness that litigation can be gripping and even theatrical.¹⁰ Meanwhile, between network television and cable reruns, it is rare that a determined viewer will be unable to find an episode of *Law & Order* or some quasi-reality show of the *Judge Judy* ilk. Indeed, for many students, it is this very media exposure that led them to consider studying law in the first place.

This is not to suggest, however, that even the best exemplars of the lawyer genre provide anything resembling an accurate or comprehensive legal education. Indeed my litigation-oriented colleagues tell me they must spend a considerable amount of class time clarifying media-induced misconceptions. Still, for better or worse, television and movies do provide students with a shared mental image of the general manner in which litigation is conducted.

Students are exposed, for example, to the notion that each side in a legal dispute is typically represented by a lawyer and that the dispute in question is to be resolved by a third-party neutral, be it a judge or jury. Pre-trial, students see lawyers prepare by investigating the facts, researching the law and interviewing potential witnesses.¹¹ During trial, they watch lawyers follow specific, predetermined rules regarding the introduction of evidence and when and to whom they are allowed to speak.¹² Post-trial, they can even view glimpses of appellate advocacy.¹³ Moreover, at the most rudimentary level, movies and television provide students with an image of such basics as the

10. For a dose of on-screen melodrama, it is hard to beat the jury deliberations in *12 Angry Men* (MGM 1957), or the social injustice of *To Kill a Mockingbird* (Universal Pictures 1962). See generally Nancy S. Marder, *Why 12 Angry Men? (1957): The Transformative Power of Jury Deliberations*, in Rennard Strickland, Tere E. Foster & Taunya Lovell Banks, eds., *Screening Justice—The Cinema of Law: Significant Films of Law, Order and Social Justice* 157 (William S. Hein & Company 2006) (hereinafter, “Screening Justice”); Taunya Lovell Banks, *To Kill a Mockingbird (1962): Lawyering in an Unjust Society*, in *Screening Justice, supra*, at 239.
11. See, e.g., *Erin Brockovich* (Universal Pictures 2000) (following a high-intensity legal assistant as she tracks down the evidence needed to prosecute a toxic tort case); *A Few Good Men* (Columbia Pictures 1992) (depicting a lawyer in a military trial who bets his career on the cross-examination of a hostile witness). See generally Robert Eli Rosen, *A Few Good (and Angry) Men (and Woman) (1992)*, in *Screening Justice, supra* note 10, at 607.
12. In the now-classic film, *My Cousin Vinny* (Twentieth Century Fox 1992), the lead characters are even shown reading and discussing the local rules of criminal procedure.
13. For two quite good depictions of the appellate process, see *Reversal of Fortune* (Warner Bros. Pictures 1990), and *A Civil Action* (Buena Vista Pictures 1998), both of which are based on real cases. See generally Stacy Caplow, *Reversal of Fortune (1990), Affirmation of Ambiguity*, in *Screening Justice, supra* note 10, at 549.

seating arrangements and what constitutes appropriate courtroom attire.¹⁴ And, in the end, viewers understand that there is a winner and a loser. The defendant is sentenced to prison or set free. The plaintiff wins damages in her tort suit or goes home without redress.¹⁵

From a pedagogical standpoint, this suggests that students planning a career as a trial or appellate lawyer generally begin their studies with a shared vision of how the game is played. They have seen the metaphorical jigsaw puzzle box and, though their image of the practice is undoubtedly distorted, they proceed through law school with a common reference point. Students thus approach their studies of litigation not as a blank slate but with a pre-existing framework upon which to build and refine their understanding of trial and appellate practice.

But compare this to the pre-law school education of a transactional attorney. What movie shows future dealmakers the basics of where they will sit, what they will wear, or when or to whom they will speak? What television show introduces even the rudiments of private law? When and how are future law students exposed to the arts of planning, negotiation or drafting, let alone how they fit together? Brad Pitt—to our great collective misfortune—doesn't do on-screen due diligence.¹⁶

Nor is the situation much remedied by the typical law school curriculum, where the emphasis is on litigation training.¹⁷ Skills courses like Trial Practice & Procedure have been mainstays at most law schools for decades, while negotiation and contract drafting constitute more recent additions. Summer jobs and judicial clerkships generally revolve around legal research and the resolution of disputes, not business or tax planning. Meanwhile, most required legal writing courses teach students the preparation of legal memoranda and appellate briefs rather than contracts, and teach oral advocacy instead

14. In *My Cousin Vinny*, for example, the lead character repeatedly spars with the judge over his clothing and courtroom demeanor. *See supra* note 12.
15. Rare indeed is the jury like that faced by Paul Newman in *The Verdict* (Twentieth Century Fox 1982), that asks for permission to award damages greater than those which the plaintiff requested. *See generally* Richard D. Parker, *The Good Lawyer: The Verdict* (1982), in *Screening Justice*, *supra* note 10, at 455.
16. It is perhaps instructive in this regard that perhaps the best-known deal movie—Oliver Stone's Oscar-winning drama, *Wall Street* (Twentieth Century Fox 1987)—is famous not for being an accurate depiction of how deals are actually negotiated but for its visceral representation of corporate greed and the power and use of information. Indeed, lawyers play almost no part in the story.
17. *See* Rubin, *supra* note 2, at 541-42 (“One consequence of Langdell’s lack of a modern, social science orientation is the absence of transactional law from the traditional law school curriculum....[T]ransactional practice was invisible to Langdell because it is a social science practice, not a set of authoritative rules. He and his compatriots were simply unable to perceive the features of a practice as an appropriate subject for study in a university curriculum.”).

of negotiation.¹⁸ Even law schools' reliance on the case method as the foundation of our pedagogy reinforces lessons regarding the nature and practice of litigation by focusing on the *ex post* role of litigators and judges as resolvers of disputes.¹⁹ Future litigators thus have numerous opportunities to enhance (and correct) their understanding of how trial and appellate work is conducted, while the practical education of tomorrow's dealmakers remains at the margins of most law school curricula. The courtroom, not the boardroom, is the primary subject of law school.

That being said, the academy has in recent years taken serious steps toward addressing the needs of transactional students by offering them an ever-expanding variety of skills courses. More importantly, law schools continue to excel at teaching students the critical reasoning skills that constitute the foundation of every lawyer's practice, whether dealmaker, litigator, or something else. Thus, this Essay does not in any way take issue with the fundamental model of law school education. Rather, its more narrow critique is that the legal academy has yet to identify a satisfactory means for addressing the basic gap in our students' understanding of dealmaking. Nor have we conceived of a course format that comfortably meshes the teaching of transactional dealmaking with legal doctrine and practice skills.²⁰ Not only do we need to broaden and strengthen our teaching of the elements of planning, negotiation and drafting, but we need to expose students to the ways in which these fundamentals interact in practice. We need to teach students not only how to structure a merger, but how to close a deal.

The View from the Other Side

For most law schools, the current state of the art of transactional teaching is to add skills-based coursework on a piecemeal basis. At the University of Oregon, for example, we offer separate courses on contract drafting, negotiation, and business planning. We also offer courses covering certain non-law topics that

18. See Philip Frost, Kenneth Chestek, Lyn Goering, Karen Koch, Karin Milka, John Mollenkamp, Judy Rosenbaum & Jean Rosenbluth, Association of Legal Writing Directors/ Legal Writing Institute, 2008 Survey Results, at 12 (2008), available online at http://alwd.org/surveys/survey_results/2008_Survey_Results.pdf (Question 20).
19. See William Sullivan, Anne Colby, Judith Welch Wegner, Lloyd Bond & Lee S. Shulman, *Educating Lawyers: Preparation for the Profession of Law* (Jossey-Bass 2007) ("The legal-case method, in all its variations, has dominated the first year of most legal education through much of the past century. Its purpose was described to us in straightforward terms: the case-dialogue method, pioneered by Langdell and his Harvard Law School colleagues from the 1870s, is designed to prepare students to 'think like a lawyer.'"); Okamoto, *supra* note 5, at 122 ("While overstating the case to some degree, it is meaningful to say that those involved in law as litigators or judges are standing in an *ex post* position. They are seeking to reach a determination of a legally-determined outcome based on a state of facts that has not yet occurred.").
20. See Barbara J. Busharis & Suzanne E. Rowe, *The Gordian Knot: Uniting Skills and Substance in Employment Discrimination and Federal Taxation Courses*, 33 J. Marshall L. Rev. 303, 304 (2000) (arguing that the academy's current approach to legal education "creates a false dichotomy between 'skills' and 'substance'").

are nonetheless practice-related, such as accounting and finance. However, such courses are usually taught alongside the traditional program of study, and the academy has made little attempt to integrate concepts of dealmaking throughout the curriculum in a more self-conscious manner.²¹

Law schools that take the teaching of dealmaking seriously generally attempt to supplement these basic skills courses with externships and clinical opportunities. Again, using the University of Oregon as an example, we offer an in-house Small Business Clinic that exposes select third-year law students to actual small business clients. As with most business law clinics, the legal work involved is not terribly sophisticated, but the clients and problems are real.²² As a result, students learn professionalism and a range of client relationship skills.²³ In addition, they gain a feel for how legal practice functions at the planning and counseling level and how client problems can take on a life of their own.

Business law externships are also available at most law schools, generally on an *ad hoc* basis depending upon the interests of the particular students and alumni. Although the ABA requires that the sponsoring law school appoint a faculty member to supervise the externships, it is probably fair to say that their quality varies considerably across the academy depending upon the particular personnel involved.²⁴ Time and travel considerations also weigh heavily on the ability of many students to enroll in such programs, especially for law schools located outside of major metropolitan areas. Teaching courses at a distance using teleconferencing equipment can ease this burden but introduces its own set of challenges.²⁵

Another way dealmaking is taught is by infusing traditional business law courses with transactional logic and a focus on the identification, management,

21. Rubin, *supra* note 2, at 610. *But see* Tina L. Stark, My Fantasy Curriculum & Other Almost Random Points, Transactions 3, 4 (Special Report 2009) (arguing that the entire law school curriculum should be reformed to incorporate dealmaking logic and skills into a wide variety of doctrinal courses).

22. *See* Fleischer, *supra* note 2, at 484.

23. For commentary on the importance of teaching professionalism in law school, *see generally* American Bar Association, Report of the Professionalism Committee: Teaching and Learning Professionalism (A.B.A 1996).

24. American Bar Association, Section of Legal Education and Admission to the Bar, 2008-2009 Standards for Approval of Law Schools § 305(c) (2009), *available online at* <http://www.abanet.org/legaled/standards/20082009StandardsWebContent/Chapter%203.pdf> (“Each student’s academic achievement [in studies or activities away from or outside the law school] shall be evaluated by...a member of the full-time or part-time faculty.”).

25. For a discussion of the issues involved in videoconference-based distance education, *see generally* Catherine Arcabascio, The Use of Video-Conferencing Technology in Legal Education: A Practical Guide, 6 Va. J.L. & Tech. 5 (2001); Stephen M. Johnson, Legal Education in the Digital Age, 2000 Wis. L. Rev. 85 (2000); Helen Leskovac, Distance Learning in Legal Education: Implications of Frame Relay Videoconferencing, 8 Alb. L.J. Sci. & Tech. 305 (1998).

and allocation of risk.²⁶ In my course on venture capital, for example, we have discarded the traditional case method and instead rely on a practitioner's hornbook.²⁷ Discussion is not focused on how to find or interpret the law, nor on what the law should be, but on how deal lawyers apply the law to structure solutions that address identifiable client needs. As a result, a great deal of attention is given to the importance of understanding a client's industry and business objectives as a precursor to providing legal advice. Gaining an understanding of basic finance is also an important course element.

That the teaching of such issues is becoming ever more prevalent in traditional business law courses can be seen by the increasing number of textbooks that are structured around dealmaking rather than the case method. For example, Therese Maynard and Dana Warren of UCLA are preparing a casebook on business planning that rejects the traditional case method in favor of "a simulated deal format that is designed to integrate theory with practice."²⁸ Using an integrated learning model, their casebook relies on a series of simulations to expose students to the life cycle of a typical early-stage financing transaction.²⁹

Still, this approach can only be undertaken by faculty who are well versed not only in business law theory but also in the art of doing a deal. Also, there are limits to the number of new approaches that can be integrated into the traditional curriculum. Already, the academy has called upon doctrinal courses and faculty to integrate more international law, finance, critical legal studies, and other important topics. I am afraid we might be asking too much were we to demand that they also take on the primary responsibility for teaching transactional skills.

At a select few law schools—in particular those located in large money-center cities—the state of the art has gone a step further and includes true dealmaking courses. At Drexel University, for example, Karl Okamoto offers a course in which he takes students to meet and interview the various players in a particular high-profile deal.³⁰ As a result, they learn the roles and perspectives of the bankers, lawyers, entrepreneurs, etc. who structured and negotiated the particular transaction and thus gain an understanding of how the deal

26. See Romano, *supra* note 1, at 352; Stark, *supra* note 8, at 229 ("To be effective, [a deal lawyer] must assess the probability that a risk will occur and, if it is significant, find a way to limit it.").

27. The text is James M. Schell, *Private Equity Funds: Business Structure and Operations* (Law Journal Seminars Press 2009).

28. Robert C. Illig, Therese H. Maynard, Cherie O. Taylor & Irene Kosturakis, *Teaching Transactional Skills Through Simulations in Upper-Level Courses—Three Exemplars*, *Transactions* 15, 23 (Special Report 2009); Therese H. Maynard, *Business Planning: Financing the Start-Up and Venture Capital Financing* (Aspen forthcoming in 2009).

29. *Id.* at 12.

30. See Okamoto, *supra* note 5, at 74-108.

was planned and executed.³¹ Similarly, at Columbia, students enrolled in its flagship Deals Program—created by Ron Gilson and Victor Goldberg—spend the first half of a semester in the classroom studying “how lawyers can manage deal-related problems” and the second half reviewing actual deal documents and interviewing the lawyers who drafted and negotiated them.³² Several other highly ranked law schools have similar programs.³³

Such courses, however, while unquestionably laudable in their own right, rely on a unique subset of faculty with strong connections to the uppermost-echelon of the business community. Close proximity to major financial markets also appears to be critical. As a result, these courses are difficult for most law schools to emulate and appear to represent more of an ideal than a reproducible instructional model.

A variation on this approach is to offer a year-long course on practice skills for all first-year students. A typical example is the Lawyering course taught at the University of Missouri which, according to its website, “is designed to provide students an introduction to critical lawyering skills,” including “an introduction to Interviewing, Counseling, Negotiation, Mediation, Arbitration, mixed dispute resolution processes and ways to choose or build a dispute resolution process.”³⁴ Another example is William Mitchell, whose Legal Practicum “simulates many activities of a small, general law practice.”³⁵ While these approaches clearly have the potential to help fill the gap in transactional learning, their ultimate impact on future dealmakers will depend upon which lawyering skills are emphasized and whether faculty members teaching any particular course section are familiar with the art of dealmaking.

Perhaps the holy grail of transactional training would be a true, semester-long simulation.³⁶ It is not difficult to imagine a course in which students are divided into teams—ideally with M.B.A. students participating as clients—and assigned a role in a hypothetical deal. Teams would then be handed a term sheet that outlines the basic contours and economics of the transaction and asked to spend the semester negotiating and drafting the appropriate documents. Unlike a clinic, the clients would not be real and so the situation would in many ways remain artificial. However, the legal and practical problems

31. *Id.* at 79–87.

32. For a description of the Deals program, see Fleischer, *supra* note 2, at 490–92.

33. Among these appear to be Harvard and the University of Colorado.

34. See <http://www.law.missouri.edu/academics/curriculum.html#5095>.

35. John Sonsteng, with June Cicero, Resa Gilats, Roger Haydock & John McLachlan, Learning by Doing: Preparing Law Students for the Practice of Law, 21 Wm. Mitchell L. Rev. 111, 116–17 (1995).

36. See Okamoto, *supra* note 5, at 108–21 (describing his experiences teaching a deal simulation class); See also Christine A. Corcos, Melvyn R. Durchslag, Andrew P. Morriss & Wendy E. Wagner, Teaching a Megacourse: Adventures in Environmental Policy, Team Teaching, and Group Grading, 47 J. Legal Educ. 224, 225–26 (1997) (discussing a two-semester environmental law course structured around two simulation exercises).

could theoretically be made quite sophisticated and students would gain an understanding of the practice of law as it relates to dealmaking. Such a course would also be an enjoyable alternative to the usual classroom experience and would give students an incentive to work diligently at certain prerequisite coursework in order to prepare for the experience.

To be truly effective, however, simulations require professors to have extensive dealmaking experience and to maintain their connections to the ins and outs of practice while simultaneously pursuing their scholarly interests.³⁷ If we are honest with ourselves, we must admit that the longer most professors remain in academia—myself certainly included—the further removed we become from the day-to-day practice of law. Additionally, faculty enter the academy through a variety of different routes, and so many have little or no prior experience as practicing transactional lawyers.

At the University of Oregon, we offer law students a variation on this model through our Technology Entrepreneurs Program. A select group of law students is teamed with M.B.A. students during the summer and given access to technology the university has developed.³⁸ In return for a modest stipend, the law and business students then work together to prepare a business plan that attempts to commercialize the technology and create potential revenue streams for the university. On the plus side, law students gain a direct understanding of the business considerations at issue in a start-up venture as well as how their business colleagues think.³⁹ The program has also led to the formation of several viable enterprises. On the minus side, the lessons are mostly business-oriented as legal issues play a relatively minor role in the overall endeavor.

A final approach to teaching business law is through joint degree programs such as the J.D./M.B.A. Many law schools also offer one-semester “pocket M.B.A.” courses in order to teach business fundamentals to law students.⁴⁰ Such programs are clearly beneficial in teaching finance and accounting and introducing students to both the law regulating business and the underlying business activities that are the subject of such regulation.⁴¹ However, they

37. See Fleischer, *supra* note 2, at 479 (“There is a limited supply of law professors with the experience and inclination to teach transactions.... Of those who do have relevant practice experience, many may prefer to focus on advanced or specialized doctrinal courses rather than on laying the foundation for general corporate practice.”).

38. For a discussion of another skills-based legal education program that successfully collaborates with a business school, see generally Jill I. Gross & Ronald W. Filante, Developing a Law/Business Collaboration Through Pace’s Securities Arbitration Clinic, 11 *Fordham J. Corp. & Fin. L.* 57 (2005).

39. See Stark, *supra* note 8, at 252 (“As simple-minded as this might sound, in order to think like a deal lawyer, a lawyer must understand business and the business deal. For a deal lawyer, not knowing about business is akin to a litigator’s not knowing civil procedure and evidence.”)

40. See *id.* at 232–34 (describing Fordham’s course on “Business Essentials”).

41. See Romano, *supra* note 1, at 353–56 (arguing the benefits of such programs, especially when they can be completed in as few as three years).

generally aren't geared specifically towards teaching dealmaking. Coursework in operations, marketing and management, for example, cannot serve as a substitute for lessons in planning, negotiation, and drafting. Thus, these and other joint degree programs, while beneficial in many respects, do little to address the gap in student experience that is the subject of this essay.

Challenges and Opportunities

As the previous discussion demonstrates, the legal academy has taken important steps toward improving the education of future dealmakers. However, the model remains incomplete in at least three important respects. First, existing skills courses tend to be expensive and logistically challenging, and so are generally not available to many students. Second, existing skills courses, at least in the transactional area, bear an awkward relationship to the teaching of doctrine. Third—and most important from a pedagogical standpoint—without appropriate context, students lack a clear image of how various dealmaking skills impact and interact with each other.

It is no secret that experiential learning opportunities, including clinics, simulations and other hands-on skills courses, are expensive. In order to provide appropriate feedback, they must be taught in small-group settings, meaning that they consume a disproportionate share of faculty resources. In addition, especially where the offering is in-house, they often require specialized space within the law school as well as dedicated support staff.⁴² Thus, on a per-student basis, the expense involved with such courses is incompatible with the overall financial model of the legal academy.⁴³ As a result, they make up only a relatively small percentage of the typical law school's course offerings, and it is likely that fewer students are able to enroll in all that they would wish.

In addition to requiring actual outlays of capital, experiential skills courses also impact another scarce resource—faculty time. To sponsor a deals course like that offered at Drexel or Columbia, for example, a professor must devote considerable out-of-the-office time developing and maintaining non-academic connections within the business community. Meanwhile, reviewing and providing feedback on drafting and negotiation exercises takes time away from scholarship, travel, and other teaching opportunities. Finally, to teach a simulation or similar planning exercise not only involves significant preparation and planning, but requires a faculty member to stay current with developments in the day-to-day practice of law. Not only must such faculty follow and understand new court decisions and statutory and regulatory changes, but they must keep track of new technologies and changing norms of practice, a subject that resides beyond the interests of a great many legal scholars.

42. See Suzanne Valdez Carey, *An Essay on the Evolution of Clinical Legal Education and Its Impact on Student Trial Practice*, 51 U. Kan. L. Rev. 509, 528 (2003).

43. See Barry et al., *supra* note 6, at 21 (“Since the early 1970’s, commentators have questioned the viability of in-house clinical legal education due to its high cost per student.”).

Because they are more expensive in terms of time and money than traditional doctrinal courses, hands-on learning opportunities are thus the exception rather than the rule. Deans are forced to limit enrollments and, even at the most progressive and well-endowed law schools, most students are likely to graduate without significant exposure to transactional skills education.⁴⁴ Thus, to reach a greater portion of the student body, either the fundamental financial model of legal education needs to change—which is undoubtedly a non-starter, especially in the current economic climate—or a more cost-effective model must be developed. What is needed, then, is a course structure that can provide an integrated transactional experience without exhausting a law school's resources or unduly sapping its faculty's time.

A second drawback of existing approaches to transactional practice education is that they do not fit comfortably with the teaching of legal doctrine.⁴⁵ Just as it can be difficult for doctrinal faculty to incorporate skills training in their courses, it can be difficult for clinical and adjunct faculty to incorporate the teaching of doctrine in theirs. For example, it is common for business transactions to implicate a wide range of legal issues, including anything from tax and environmental compliance to antitrust, employment law or even national security concerns. Thus, before they can master the craft of transactional lawyering, students need to be exposed to a large and varied body of doctrinal law.⁴⁶

In order to address this concern, transactional skills courses generally attempt to include a significant element of doctrinal learning. Many small business clinics, for example, require attendance at a series of mini-lectures on doctrinal topics in addition to the actual client representation.⁴⁷ While this is probably a necessary response to the students' collective lack of knowledge, treating doctrine as a secondary consideration seems like a poor way to teach the law. Indeed, the limited time allocated to such classes risks rendering them insufficient, while time spent reviewing basic doctrine means time away from the primary experience of the clinic.

A third fundamental challenge with the current approach is that existing skills courses tend not to be well-integrated with one another. At the University

44. See Sullivan et al., *supra* note 19, at 98.

45. See *id.* at 92 (noting that prior concern for the teaching of legal skills “did not close the traditional theory-versus-practice divide. It simply pushed law schools to add more practical skills education, with no attention to the relation of these practices with theory.”).

46. This challenge can be partially addressed by courses like Mergers & Acquisitions, which are designed around a practice area rather than a doctrinal or theoretical construct. Such courses typically introduce students to a wide range of legal issues, thus at least partially filling in the gaps in some students' education. However, in doing so, they must sacrifice depth for breadth and many students are left with only a superficial understanding of the applicable law. This trade-off can be seen by reviewing the table of contents of a typical casebook. See, e.g., Dale A. Osterle, *The Law of Mergers and Acquisitions xi-xxiv* (West, 3d ed. 2006).

47. See, e.g., Dina Schlossberg, *An Examination of Transactional Law Clinics and Interdisciplinary Education*, 11 Wash. U.J.L. & Pol'y 195, 227-28 (2003).

of Oregon, for example, our courses on contract drafting, negotiation and business planning are taught by three separate faculty members whose research and scholarly interests overlap only tangentially. No attempt is made to coordinate the lessons of the courses, let alone the particular problem sets or case studies on which they are based. Indeed, our course on negotiation is as much focused on pre-trial litigation settlements as on dealmaking.

This is not to suggest that any blame be laid on the particular faculty, however, or even that these courses should be taught differently than they are. Indeed, a significant lack of integration is likely inevitable. For one thing, faculty at most law schools tend to be organized—or at least oriented—along doctrinal lines. Faculty also change over time, with sabbaticals, visitorships, and retirements interfering with attempts to coordinate lesson plans. Most importantly, the differing pedagogical challenges involved in the teaching of drafting, negotiation, and planning mean that, even in an ideal world, too much integration of course content might in some situations be counterproductive for the students. Thus, while deans may want to exhort their faculties to work more collaboratively, in reality individual skills courses are likely to remain the norm.

That being said, however unavoidable the lack of curricular integration across transactional courses may be, it nonetheless creates a significant gap in students' educations. Even assuming that a particular student is able to gain enrollment in multiple skills courses, she probably won't be exposed to their interplay. The resulting risk is that the student will experience each separate skill the way the blind men experienced an elephant in the famous parable.⁴⁸ Like the blind men who could not understand the connections that unite the elephant's trunk, leg, and tail, students risk missing the relationship between planning, negotiation, and drafting.⁴⁹

What these three shortcomings with the existing model suggest is that the current state of the art seems to be missing a critical component. Instead of just adding more or different skills courses, we need an alternative class format that builds on existing offerings by teaching the connections and the craft.⁵⁰ Students need to glimpse the jigsaw puzzle box (or, now that I've mixed my

48. See John Godfrey Saxe, *The Poems of John Godfrey Saxe 77-78* (James R. Osgood and Co. 1873). Saxe's poem is based on a famous parable that appears to have originated in China during the Han dynasty.

49. To take a simple but concrete example, if a seller's attorney prepares the first draft of a purchase agreement in a manner that aggressively favors the seller's interests, she is setting the stage for contentious and potentially lengthy negotiations, but with the hope of squeezing out a better deal for her client. On the other hand, if she prepares the draft in a more balanced fashion, she may hasten the completion of the negotiations but risk obtaining a materially less favorable result. The drafting and the negotiation are thus intertwined with each other as well as with the client's objectives.

50. See Sullivan et al., *supra* note 19, at 95 ("With little or no direct exposure to the experience of practice, students have slight basis on which to distinguish between the demands of actual practice and the peculiar requirements of law school.").

metaphors, a picture of the elephant). At the University of Oregon, we believe we have identified just such a model—Transactional Practice Labs.

A Third Way

For the past three years, the curriculum at the University of Oregon has included two Transactional Practice Labs. One is attached to our basic course on mergers and acquisitions, the other to our course on real estate finance. As the experiment continues, we hope to expand the lab format to include topics such as tax, securities, intellectual property, and employment law.

Structurally, the concept behind the labs is quite simple. At the most basic level, they are intended to mimic the lab structure of a typical undergraduate chemistry class. As in college, we divide the material between the regular doctrinal course and the labs. The underlying course—take, for this example, *Mergers & Acquisitions*—focuses on traditional notions of law and policy and is taught by full-time, tenure-track faculty. It carries three hours of credit and meets twice a week for fourteen weeks. Students learn the basics of structuring a corporate acquisition, as well as the tax, accounting, and antitrust implications of each deal structure. They are also introduced to various aspects of bankruptcy, labor and employment law, environmental and land use regulation, and international law as each impacts the planning and execution of business combinations.

Students enrolled in *Mergers & Acquisitions* are also eligible—but not required—to enroll simultaneously in the associated Transactional Practice Lab.⁵¹ The lab meets only five times each semester and does not commence until the semester is well underway (so that students have time to digest a large portion of the material in the underlying course before beginning the hands-on portion of the lab). It is taught by a team of two senior associates or junior partners at a well-regarded Portland, Oregon law firm and carries only one hour of credit. Attendance at all classes is mandatory, but grading is pass/fail and based largely upon the students' effort.

As currently conducted, the first meeting of the lab portion of the course is a half-day long introductory class during which students are handed a hypothetical term sheet, provided access to the firm's proprietary database of forms, and asked to draft a relatively straightforward asset purchase agreement. During this process, students make their first attempt to marry their legal knowledge and analytical expertise to the practical needs of their client. Their efforts are then immediately critiqued in a group setting and the adjuncts share with the students the "correct" answer which they drafted. All the while, the students and adjuncts discuss how their drafting is likely to impact, and be impacted by, the regulatory landscape, issues related to business planning, and the likely flow of negotiations.

51. Admittedly, the optional nature of the lab means that not all students benefit from the entire experience. However, because the format was introduced on an experimental basis, and because it involves travel outside of the law school, we felt it important to make the lab optional.

The final meeting is also a half-day session during which students are asked to identify and prepare the appropriate closing documents and then stage a mock closing (with the participation of faculty and, whenever possible, our dean as clients). By completing the transaction in this way, the students experience first-hand how the parties' deal is actually effectuated and how previously conceptualized ideas of risk management become concrete and are given legal effect. Additionally, they must explain to our dean—who does not have a transactional background—why and how each document impacts the closing. Both the first and last of these classes meet on location in the offices of the sponsoring firm, and students are required to act professionally and wear formal business attire.

The middle three sessions are more casual and class is held in the law school.⁵² During these sessions, students are presented with examples of the kind of problems that arise between signing and closing a business transaction and asked to solve them. In one class, for example, the students (as a group) find that they must telephone a partner in the sponsoring firm who is an expert on employment law, describe for him the overall deal and the issue at hand, and work together to craft an appropriate solution. The partner in question is aware that this is a simulation, but does not know any of the particulars of the deal. The remaining two classes follow a similar format but address different problems. Each is very similar to the actual process that M&A lawyers engage in when drafting and negotiating deal documents and when moving a transaction toward its completion. Each is also designed to help students understand how lawyers leverage their legal and analytical skills—as well as their common sense, life experiences, and business savvy—to manage risk and solve client problems.

Clearly, the exact content and format of each session could be varied and we expect the course to evolve over time. Indeed, it is by no means perfect and I would anticipate that any school that adopts the format could improve substantially upon its design. More negotiation could be included, for example, and more could be done to simulate client interactions. Over time, we also hope to improve the integration between the lab and the underlying course. Perhaps we could even enlist M.B.A. students as clients. However, the basic model appears to work well, and we view the many opportunities for productive experimentation as constituting a strength rather than a weakness.

Reaction to our lab offerings has been both strong and positive. Enrollment in the Mergers & Acquisitions lab rose from nine the first time we offered it to twenty-four the third time around—so large that we were able to offer a second section sponsored by a different law firm. In fact, the firm sponsoring our original Mergers & Acquisitions lab was so pleased with its effectiveness that they even floated the idea of including in future labs their own new hires from

52. By holding several of the sessions inside the law school building, we are able to make the adjunct faculty more at home within our community and thus strengthen our ties with these important alumni and friends.

other law schools. Alumni and other friends of the law school appear similarly pleased by our commitment to preparing future dealmakers.⁵³

The Keys to Success

The structure of the labs has three key elements that make the model both unique and successful. Each, while appearing deceptively simple and, in hindsight perhaps, fairly obvious, has been essential to the program's success.

First, in order to improve the integration of the law and practice, we declined to offer the labs as stand-alone courses and instead require that students be simultaneously enrolled in the associated doctrinal course. Indeed, the labs only work as add-ons to regular doctrinal courses. By associating the two—in both time and substance—we have created a much more satisfying and natural fit between teaching the law and the craft. Our tenure-track faculty are free to focus on their strengths—doctrine and policy—while leaving the teaching of dealmaking to those with the best inside knowledge of the current norms and procedures of practice.

Second, in order to address the cost issue, we were careful to have the course sponsored by a law *firm*, rather than assigned to a specific person. Like most law schools, the University of Oregon hires practicing attorneys to teach various courses as adjunct professors. These tend to be courses in highly specialized areas, such as patents or health law, where ongoing practice experience is highly valued and appropriately skilled full-time faculty scarce. It is also a way to cover courses when a full-time faculty member is on sabbatical or visiting another institution. Generally, these adjuncts are selected by means of a careful screening process and are paid a stipend that is modest by the adjuncts' standards but, when accumulated with stipends for other adjuncts, adds up to a measurable expense for the law school.

To staff the labs, however, we tried a different approach. Rather than identifying particular individuals to serve as adjuncts, we instead approached three prominent law firms to serve as sponsors. This has had several positive effects on the program. For one thing, the firms view the sponsorship as a sort of charitable donation of firm hours. As a result, they have not asked to be paid the usual stipend (although we did treat all those involved to a fairly lavish dinner). Thus, the entire lab program has been rolled out at close to zero cost. We have also avoided many of the personnel problems that sometimes arise when a particular adjunct loses interest in teaching or becomes too busy with practice to do the high-quality job she intended. Because the teaching responsibility was taken on as a firm rather than individual priority, we had the full attention of the senior associates/junior partners who led the classes. Moreover, these designated instructors then pulled other attorneys in to assist at various points, thereby expanding the universe of expertise that is brought to bear, as well as expanding the exposure of our students to law firm personnel

53. Typical student comments in the year-end evaluations included: "This course was hands-on and practical. It was a great opportunity to put the things we learned into practice." And, "The lab was great. We learned how to draft documents and how to close a deal."

(and vice versa). As an added bonus, the instructors were chosen by their firms due to their status as future stars, meaning that we are able to enlist the help—and trigger the interest—of the best of the next generation of Oregon lawyers without engaging in our usual intensive screening process. Overall, because of our decision to take a firm-based approach, we now have a closer relationship with those firms than in the past, and we are each more supportive—not to mention aware—of the other’s needs and capabilities.

The third key element of the lab program has been the decision to structure the courses as mini-simulations. As we designed the course, we resisted the temptation to attempt a more full-scale, lengthy and involved simulation. Thus, the program is more manageable and represents less of a time commitment by both the students and the sponsoring firms. In this way, we believe we have achieved our educational objective without unduly stretching our resources.

More importantly from a pedagogical standpoint, however, by simulating the processes of an actual deal, we have achieved our goal of providing students with a glimpse of their future and an opportunity to learn early on in their careers how the different pieces fit together. To take an easy example, if a student understands not just how negotiation operates in isolation but how negotiation relates to the structuring and execution of a deal, her educational experience will be enhanced on two levels. On the one hand, she will progress more rapidly as an overall dealmaker as she will be better able to combine and exploit her skills (including negotiation) in order to accomplish client goals. On the other hand, she will achieve a higher level of mastery at negotiation because she will understand its function within the context of a deal and practice it with an eye on its ultimate purpose. Thus, we believe the labs will help our students be better able to both learn the individual skills of planning, negotiation, and drafting, and progress more rapidly toward a partner’s level of skill in executing an actual transaction.

The Cherries on Top

In addition to being pedagogically significant, the lab structure has provided the law school with a number of side benefits. For example, requiring students to interact more frequently with practicing lawyers has elevated for them the importance of professionalism. As mentioned above, the labs have also enhanced our relations with prominent members of the practicing bar and may have a positive impact on our career placement efforts.

A particular benefit for the University of Oregon has also been geographical. Eugene, where we are located, is home to a relatively small legal market. Thus, most of our students seek employment after graduation in larger cities such as Portland, Seattle, and San Francisco. The lab format we have adopted requires our students on two occasions to make the two-hour drive north to Portland, and also requires the instructors on three occasions to make the drive south to Eugene.⁵⁴ These trips help bring us closer to Portland and its large alumni base

54. Whenever possible, and for obvious reasons, we schedule the Eugene-based class sessions on home football weekends.

and also remind everyone involved that such distances are easily overcome. The significance of this message will resonate particularly among law faculties located outside of major metropolitan areas.

The lab format—including both its structure and cost—is also scalable. When the Mergers & Acquisitions lab became oversubscribed in the fall of 2008, for example, we simply recruited a second law firm and offered the lab as two sections, thus doubling our capacity at essentially no cost in terms of time or treasure. In fact, part of the elegance of the model arises because the lab instructors are really only being asked to do for our students what they already do for their own associates. The only significant difference is that we are asking them to do so more self-consciously and over a more concentrated time horizon. The express goal of the labs is to expose students to the ebb and flow of legal practice, something that comes naturally by merely throwing them into the firm's mix. Therefore, once their initial set of problems is created, the instructors' actual preparation time for any given class session is relatively minimal (and so the impact on their ability to balance teaching and practice is likewise abated). At the same time, because dealmaking is being taught alongside the underlying course, rather than as part of it, relatively little effort is required on the part of the doctrinal faculty member sponsoring the course. As a result, we have found it fairly easy to recruit both interested firms and interested faculty.

The labs are also scalable horizontally. In other words, it is not difficult to imagine expanding the experiment to other transactional courses. For example, certain tax, securities, and intellectual property courses seem tailor-made for the lab format, as do courses on bankruptcy and commercial law. With a little imagination, other courses could also be adapted to the lab format. Thus, through further experimentation, we may be able to substantially increase the number and type of students participating in our lab program.

Conclusion

With the publication of the most recent Carnegie report in 2007, the teaching of skills in law school has once again become a hot topic among legal educators.⁵⁵ At the same time, huge increases in starting salaries at major law firms—coupled with a substantially weakened economy—have placed graduates under increased pressure to immediately produce high-quality billable hours.⁵⁶

55. See Sullivan et al., *supra* note 19, at 105 (noting that “the question of the place of practice-centered subjects and courses, including clinical legal education as well as writing, has been a subject of intense debate in law schools for more than four decades”). In the wake of the report, several universities have sponsored conferences on the teaching of transactional skills, and the topic was a major theme at the 2009 mid-year meeting of the AALS section on business law. See, e.g., Emory University School of Law, Teaching Drafting and Transactional Skills (May 30–31, 2008); University of Washington School of Law, Legal Education at the Crossroads (Sept. 5–7, 2008); American Association of Law Schools, Mid-Year Conference on Transactional Law (June 10–12, 2009).

56. Indeed, among the largest private-sector firms, median starting salaries jumped almost 80 percent between 1994 and 2000. See 18 NALP Bulletin 8 (July 2005). After remaining fairly

Thus, the notion that law schools can exclusively focus on critical thinking, while one's associate years amount to a sort of on-the-job apprenticeship, has long been anachronistic. According to the authors of the 2006 edition of *Best Practices for Legal Education*, law students "cannot become effective legal problem-solvers unless they have opportunities to engage in problem-solving activities in hypothetical or real legal contexts" during law school.⁵⁷

By all accounts, the legal academy appears to have embraced the need to offer students more in the way of dealmaking. Although we should be wary of allowing the pendulum to swing too far, transactionally oriented skills-based courses, clinics, externships, and even some exotic fare have become commonplace in most law schools. Still, a significant gap remains. The current state of the art teaches the elements of dealmaking, but not how they fit together. We teach students to interpret the law and draft contract language, but leave them ignorant as to how to close a deal.

By adopting a lab format for teaching the craft of transactional lawyering alongside our doctrinal business law courses, the faculty of the University of Oregon has developed a low-cost, scalable model that allows teachers to seamlessly blend the teaching of law and practice while allowing students to catch a glimpse of how planning, negotiation and drafting combine in the real world to create a deal. The result, we believe, is that our students graduate both better prepared to quickly enter a transactional legal practice and better able to develop their craft efficiently and effectively once on the job.

Though seemingly simple, the lab format offers a meaningful, alternative approach to the teaching of transactional logic and problem solving. Indeed, taken to its logical extreme, the format promises to do more than simply improve the teaching of mergers and acquisitions. It represents a model that can in theory be adapted to various other aspects of the curriculum, possibly introducing students of all stripes to the interplay of theory, doctrine, and practice.

steady for several years, big-firm salaries again grew in 2008, by over \$15,000. Association for Legal Career Professionals, Press Release (Aug. 21, 2008).

57. Roy Stuckey and Others, *Best Practices for Legal Education* 109 (Clinical Legal Educ. Ass'n 2007).