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Learning by Doing - Preparing Law Students for the Practice of Law: The Legal Practicum

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Learning by Doing - Preparing Law Students for the Practice of Law: The Legal Practicum

Abstract

The MacCrate Report outlined ten skills that are essential for every practicing attorney and should ideally be taught in every law school. The Association of American Law Schools (AALS) concluded that these ten skills cannot be effectively obtained through every law school curriculum because of each school's individual, economic limitations. This article demonstrates how one law school—William Mitchell College of Law, in St. Paul, Minnesota—has, since 1984, incorporated a cost effective Legal Practicum course into its curriculum to help meet the MacCrate Report goal of providing the law student with the opportunity to learn and apply fundamental lawyering skills. Part II of the article defines, describes, and highlights the “learning by doing” philosophy of The Legal Practicum, the course created by William Mitchell College of Law professors. Part III addresses teaching/learning theory and the educational reasons why The Legal Practicum is successful. Part IV outlines the administrative aspects of The Legal Practicum and how it can be added to existing law school curricula. Implementation of The Legal Practicum can help overcome many criticisms of legal education and can assist the law student in achieving the fundamental lawyering skills described by the MacCrate Report.

Keywords

Legal education, legal instruction, curriculum, problem solving, legal reasoning, trial procedure, legal ethics, practical skills

Disciplines

Legal Education | Legal Writing and Research

Comments

This article is co-authored by June Cicero, Resa Gilats, John McLachlan

LEARNING BY DOING: PREPARING LAW STUDENTS FOR THE PRACTICE OF LAW

THE LEGAL PRACTICUM

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with

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Professor Roger S. Haydock and I created and developed The Legal Practicum. Professor Haydock also taught the course with me for several years. Our collaborative efforts form the basis for many of the ideas and approaches that are also reflected in this article. June Cicero was the first Practicum Administrator. Ms. Cicero provided ideas and approaches that are also reflected in this article. Resa Gilats is the current Practicum Administrator. Her work on the management system and budget has made an important contribution to The Legal Practicum and this article. John McLachlan reviewed the entire article and made substantial contributions to the section on educational theory.

^{††} Hundreds of people assisted over the last ten years in the preparation of The Legal Practicum materials. We know as we list the people who have helped us we will inadvertently exclude someone. For that we apologize, for everyone's help was valuable and The Legal Practicum exists because so many were willing to help with the exercises, evaluation materials, and teaching notes.

Stacey Roelofs compiled statistics and provided research and editing assistance. Anne Greenwood Brown conducted the research on teaching and learning theories. The following people assisted with the materials: Judge Ann Alton, Judge Roland Amundson, Lane Ayres, Judge Robert Carolan, Dr. James Cicero, Richard Coleman, Judge Jack Davies, James Deye, Renee Fast, Don Fluegel, Tiffany George, Professor Douglas Heidenreich, Referee William Henschel, Linda Hix, Judge George Hoey, David Hough, Judge Doris Huspeni, Ken Jorgensen, Professor Kenneth Kirwin, Judge Roger Klaphake, Judge Mary Louise Klas, Mark Labine, Judge Robert Lynn, Marie Marino, Douglas McMillan, David Meier, Cathy Middlebrook, Judge Thomas Mott, Professor Robert Oliphant, Virginia Palmer, Dr. Garry Peterson, Dr. John Plunkett, Helen Preddy, Jody Blummer Ramsey, Professor Eileen Roberts, Karen Robinson, Bruce Rubbelke, Lori Schwartz, Steve Smith, Thomas Spence, Scott Swanson, Judith Thomas, Penny Tibke, Dr. Steve Tredal, Kay Tuveson, Nancy Wallrich, Margaret Wanstall, Jean Whitney, Marie Wolf, and Sally Zusan. The support of the Deans and our colleagues at William Mitchell College of Law encouraged us not to give up and to continue to work on the development of the course.

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PRAC.TI.CUM \prak-ti-kem\ n [G *praktikum*, fr. LL *practicum*, neut. of *practicus* practical] (ca. 1909): a course of study designed esp. for the preparation of teachers [read lawyers] and clinicians that involves the supervised practical application (as in a classroom or clinic) of previously studied theory.¹

I. INTRODUCTION

The Report of The Task Force on Law Schools and the Profession: Narrowing the Gap (The MacCrate Report)² defined the ten “Fundamental Lawyering Skills” as:

1. Problem Solving;
2. Legal Analysis and Reasoning;
3. Legal Research;
4. Factual Investigation;
5. Communication;
6. Counseling;
7. Negotiation;
8. Litigation and Alternative Dispute Resolution Procedures;
9. Organization and Management of Legal Work; and
10. Recognizing and Resolving Ethical Dilemmas.³

1. WEBSTER'S NINTH NEW COLLEGIATE DICTIONARY 923 (1989).

2. REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP, ABA SECTION OF LEGAL ED. & ADMIS. TO THE BAR, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT — AN EDUCATIONAL CONTINUUM (1992) [hereinafter THE MACCRATE REPORT]; ABA House of Delegates Mid-Year Meeting, February 12, 1994, Report 8A (adopting the Standards and Goals of THE MACCRATE REPORT).

3. THE MACCRATE REPORT, *supra* note 2, at 138-40.

FUNDAMENTAL LAWYERING SKILLS

Skill § 1: *Problem Solving*

In order to develop and evaluate strategies for solving a problem or accomplishing an objective, a lawyer should be familiar with the skills and

concepts involved in:

- 1.1 Identifying and Diagnosing the Problem;
- 1.2 Generating Alternative Solutions and Strategies;
- 1.3 Developing a Plan of Action;
- 1.4 Implementing the Plan;
- 1.5 Keeping the Planning Process Open to New Information and New Ideas.

Skill § 2: *Legal Analysis and Reasoning*

In order to analyze and apply legal rules and principles, a lawyer should be familiar with the skills and concepts involved in:

- 2.1 Identifying and Formulating Legal Issues;
- 2.2 Formulating Relevant Legal Theories;
- 2.3 Elaborating Legal Theory;
- 2.4 Evaluating Legal Theory;
- 2.5 Criticizing and Synthesizing Legal Argumentation.

Skill § 3: *Legal Research*

In order to identify legal issues and to research them thoroughly and efficiently, a lawyer should have:

- 3.1 Knowledge of the Nature of Legal Rules and Institutions;
- 3.2 Knowledge of and Ability to Use the Most Fundamental Tools of Legal Research;
- 3.3 Understanding of the Process of Devising and Implementing a Coherent and Effective Research Design.

Skill § 4: *Factual Investigation*

In order to plan, direct, and (where applicable) participate in factual investigation, a lawyer should be familiar with the skills and concepts involved in:

- 4.1 Determining the Need for Factual Investigation;
- 4.2 Planning a Factual Investigation;
- 4.3 Implementing the Investigative Strategy;
- 4.4 Memorializing and Organizing Information in an Accessible Form;
- 4.5 Deciding Whether to Conclude the Process of Fact-Gathering;
- 4.6 Evaluating the Information That Has Been Gathered.

Skill § 5: *Communication*

In order to communicate effectively, whether orally or in writing, a lawyer should be familiar with the skills and concepts involved in:

- 5.1 Assessing the Perspective of the Recipient of the Communication;
- 5.2 Using Effective Methods of Communication.

Skill § 6: *Counseling*

In order to counsel clients about decisions or courses of action, a lawyer should be familiar with the skills and concepts involved in:

- 6.1 Establishing a Counseling Relationship That Respects the Nature and Bounds of a Lawyer's Role;
- 6.2 Gathering Information Relevant to the Decision to Be Made;
- 6.3 Analyzing the Decision to Be Made;
- 6.4 Counseling the Client About the Decision to Be Made;
- 6.5 Ascertaining and Implementing the Client's Decision.

Skill § 7: *Negotiation*

In order to negotiate in either a dispute-resolution or transactional context, a lawyer should be familiar with the skills and concepts involved in:

- 7.1 Preparing for Negotiation;
- 7.2 Conducting a Negotiation Session;
- 7.3 Counseling the Client About the Terms Obtained From the Other Side in the Negotiation and Implementing the Client's Decision.

Skill § 8: *Litigation and Alternative Dispute-Resolution Procedures*

The MacCrate Report determined that these ten skills were essential for every attorney and should ideally be taught in every law school.⁴ The Association of American Law Schools (AALS) concluded that these ten skills cannot be effectively obtained through every law school curriculum because of each school's individual, economic limitations.⁵ This article demonstrates how one law school has, since 1984, incorporated a cost effective⁶ Legal Practicum course into its curriculum to help

In order to employ—or advise a client about—the options of litigation and alternative dispute resolution, a lawyer should understand the potential functions and consequences of these processes and should have a working knowledge of the fundamentals of:

- 8.1 Litigation at the Trial-Court Level;
- 8.2 Litigation at the Appellate Level;
- 8.3 Advocacy in Administrative and Executive Forums;
- 8.4 Proceedings in Other Dispute-Resolution Forums.

Skill § 9: *Organization and Management of Legal Work*

In order to practice effectively, a lawyer should be familiar with the skills and concepts required for efficient management, including:

- 9.1 Formulating Goals and Principles for Effective Practice Management;
- 9.2 Developing Systems and Procedures to Ensure that Time, Effort, and Resources Are Allocated Efficiently;
- 9.3 Developing Systems and Procedures to Ensure that Work is Performed and Completed at the Appropriate Time;
- 9.4 Developing Systems and Procedures for Effectively Working with Other People;
- 9.5 Developing Systems and Procedures for Efficiently Administering a Law Office.

Skill § 10: *Recognizing and Resolving Ethical Dilemmas*

In order to represent a client consistently with applicable ethical standards, a lawyer should be familiar with:

- 10.1 The Nature and Sources of Ethical Standards;
- 10.2 The Means by Which Ethical Standards are Enforced;
- 10.3 The Processes for Recognizing and Resolving Ethical Dilemmas.

4. THE MACCRATE REPORT, *supra* note 2, at 135-37.

5. See Carl C. Monk, AALS RESPONSE TO THE REPORT OF THE ABA TASK FORCE ON LAW SCHOOL AND THE PROFESSION: NARROWING THE GAP (MACCRATE REPORT), MEM. 93-32 (Ass'n Am. Law Sch., Wash. D.C.), May 18, 1993. The report expresses concern "that the Statement of Skills and Values not be narrowly construed as the criterion for a standardized curriculum. All curricular planning must take place in the context of a particular school's resources." *Id.* at 3.

6. Assuming that the national average wage for tenured law school faculty is \$87,400 and that the average yearly teaching credit load is 12-14 credits, the following is a breakdown and comparison of the cost/credit ratio for the lecture class, clinic course, and The Legal Practicum.

a) Lecture Class:
 60 students per year at 12 credits = 720 credits
 \$87,400 salary
 $\$87,400 / 720 = \121.39 cost per credit

b) Clinic Course:
 24 students per year at 3 credits = 72 credits

meet the MacCrate Report goal of providing the law student with the opportunity to learn and apply fundamental lawyering skills.

Part II of the article defines, describes, and highlights the "learning by doing" philosophy of The Legal Practicum, the course created by William Mitchell College of Law professors. Part III addresses teaching/learning theory and the educational reasons why The Legal Practicum is successful. Part IV outlines the administrative aspects of The Legal Practicum and how it can be added to existing law school curricula. Implementation of The Legal Practicum can help overcome many criticisms of

\$87,400 salary
\$87,400/ 72 = \$1,213.88 per credit
c) Legal Practicum:
48 students per year at 5 credits = 240 credits
\$43,700 (Legal Practicum is 1/2 teaching load) + \$32,000 (other costs) =
\$75,700
\$75,700/ 240 = \$315.41 per credit

See 1992-93 SALT Salary Survey, 1993 THE EQUALIZER 2-7 (Soc'y Am. Law Teachers, Fort Lauderdale, Fla.), Jan. 1993 (reporting the annual salaries for tenured law professors nation-wide); see also Report of the Committee on the Future of the In-House Clinic, 42 J. LEG. ED. 477, 521, Fig. 3 (1992) (indicating average number of students per clinic).

legal education⁷ and can assist the law student in achieving the fundamental lawyering skills described by the MacCrate Report.

II. THE LEGAL PRACTICUM: WHAT IS IT?

The Legal Practicum simulates many activities of a small, general law practice. It permits the law student to apply theory to legal problem solving, review theory and substance, refresh or improve writing skills, work cooperatively with others in a focused and directed way, improve oral presentation skills, and develop and improve other lawyering skills within a model of a small law firm practice.

The philosophy, materials, course design, and management system of The Legal Practicum incorporate the basic components of successful learning. Through a controlled simulation, the course provides clear objectives, reinforcement and feed-

7. Legal education has failed to identify learning objectives. Andrew J. Pirie, *Objectives in Legal Education: The Case for Systematic Instructional Design*, 37 J. LEGAL EDUC. 576, 577 (1987). "The lecture method is seen as requiring 'little intellectual effort,' reducing student involvement 'to the taking of notes.'" *Id.* at 581. "[T]here is a lack of student motivation, particularly in second or third year. This common phenomenon may have much to do with the perceived irrelevance [unclear objectives] of 'academic' courses, tedious teaching methods or fatigue." *Id.* at 587. Current research shows that intimidation and sarcasm of many traditional socratic classrooms are not productive. See NORMAN A. SPRINTHALL & RICHARD C. SPRINTHALL, *EDUCATIONAL PSYCHOLOGY: A DEVELOPMENTAL APPROACH* 316-32 (4th ed. 1987).

Financial costs are higher for clinical courses than lecture courses because of the extremely low student/faculty ratios, design costs, and necessary resources. William Pincus, *Clinical Training in the Law School: A Challenge and a Primer for the Bar and Bar Admission Authorities*, 50 ST. JOHN'S L.REV. 479, 489 (1976). Limited resources also "prevent the typical clinic from performing important critical functions of legal education." Robert Condolin, '*Tastes Great, Less Filling*': *The Law School Clinic and Political Critique*, 36 J. LEGAL EDUC. 45, 45 (1986); see THE MACCRATE REPORT, *supra* note 2, at 138-40.

Examinations are often inaccurate portrayals of a student's knowledge, for "law teachers are having great difficulty creating evaluations that fairly test what has been taught. This is not surprising when there is also difficulty in clearly stating what is being taught." Pirie, *supra*, at 587. There is no client risk in a simulation and it "may encourage a student to believe that the case is his case, not his client's." Thomas R. Ewald, *Law School Trial Training and the Rest of the Real World*, 57 FLA. BAR J. 569, 571 (1983). Often the objectives in simulations are poorly defined; the lack of clear objectives "result[s] in real concerns about aimlessness, shapelessness, and confusion." Pirie, *supra*, at 589. To administer a simulation course for sixty to one hundred and thirty students "would demand too much time and energy. . . . [I]nstructors must know a good deal about what happens during the simulation if they are to provide feedback to students . . . the instructor will have to critique individual or small-group performances or written products." Philip G. Schrag, *The Serpent Strikes: Simulation in a Large First-Year Course*, 39 J. LEGAL EDUC. 555, 556 (1989).

back, positive learning environments and activities, accommodation of various learning styles, and a consistent lesson cycle. The Legal Practicum has clear, recognizable and achievable objectives. It is both labor and cost effective. It generates enthusiasm in the law student because it is positive and practical. The Legal Practicum recognizes the educational experiences of the students, takes into account the needs of the adult learner, uses readily available learning and teaching resources, and shows demonstrable results.

The Legal Practicum of William Mitchell College of Law is designed around a set of exercises supervised by the Practicum Director and administered by the Practicum Administrator which enable the student to "learn by doing." The exercises incorporate wills, commercial law, civil procedure, criminal law and procedure, professional responsibility, torts, family law and employment law. The exercises require the participant to perform both written and oral work in many different contexts and forums. The forums for oral presentations include appellate, civil, criminal and juvenile court, negotiation, arbitration and mediation. The participants conduct interviews, advise clients, participate in oral and written discovery, prepare billing statements and representation agreements and perform all the writing as would be required in a law firm.

The course design and management materials for The Legal Practicum law firm model demonstrate one way the exercises may be used to assist senior law students in obtaining fundamental lawyering skills. Each participant is assigned to work with another student as a partner. Together they "practice law" as a firm for the duration of a semester. The law firms handle eight cases involving both civil and criminal matters. Because the course is designed to simulate law practice, participants must follow rules for such matters as ascertaining time and place for service of process, determining deadlines, and pursuing rule waivers.

The lesson cycle has a consistent format. Participants attend an introductory seminar taught by an experienced judge or practitioner. Each participant must write a short memorandum setting out a preliminary analysis of the exercise. The firms prepare representation agreements and then all participate in written and oral exercises. The seminars are not intended to be in-depth lectures. The instructors focus on two areas in these

seminars. They explain the practice and procedure in the jurisdiction in which the exercise will take place, and they explain the more difficult substantive problems that may occur in the exercise. In most instances, the participants have taken course work in the relevant areas of law. Students, however, are required to conduct additional independent research in order to fully represent the simulated clients. If participants have questions about legal substance, theory or practice, they are encouraged to use the instructors, the Practicum Director, and others as resources.

The Legal Practicum effectively utilizes experienced and skilled lawyers and judges who act as instructors. The time commitment of each instructor depends on the length and complexity of the exercise with which each is working. For example, one instructor teaches a three hour session each semester on the issues raised by the family law exercise. In addition, that instructor reviews and assesses the family law written work. A second instructor teaches seven hours of torts, reviews and grades written work, and presides over personal injury trials. A third instructor conducts juvenile hearings and critiques negotiation sessions. A writing instructor is assigned to each participant to assist in improving legal analysis and writing techniques. The Director and The Legal Practicum instructors work closely with the participants. They are available for informal consultation to help the participants work through the exercise, understand the problems, and develop solutions.

In a five-credit Legal Practicum, participants must spend at least 235 hours on Practicum work. The hours requirement includes class time, courtroom exercises, preparation, research, writing, and other performance exercises. Just as practicing attorneys keep track of their billable hours, The Legal Practicum participants must account for their time by submitting weekly time sheets and client billing statements.⁸

8. Based on billable hours turned in by participants, The Legal Practicum participants in the fall of 1993 spent an average of 328 hours working on the exercises. The least was 252.4 hours; the highest was 488.4 hours.

Fall 1993 Breakdown of Hours Spent on Each Exercise

<i>Exercise</i>	<i>Lowest</i>	<i>Average</i>	<i>Highest</i>
Tort Law/Personal Injury	46.50	85.61	126.00
Professional Resp./Disbarment	20.00	42.50	91.50
Criminal Law/Juv. Delinquency	17.75	34.93	49.50
Family Law/Dissolution	13.80	32.31	71.00

The Legal Practicum instructors provide written and oral critique and feedback on the students' work. The instructors have received training on providing supportive critique of oral exercises.⁹ In addition to providing oral critique and feedback, the Legal Practicum instructors are required to provide written feedback and evaluations of all participant work. Assessment forms have been developed to provide feedback and consistency combined with flexibility sufficient to address the needs of the individual learner. Oral feedback and brief written assessments are provided immediately after each oral exercise. Assessment and feedback of written work are provided to the participant as soon as possible and usually within two weeks of the completion of activities requiring the submission of written work. The short turn-around time is designed to provide positive support for the continuation of those things done well and to assist in improving skills where needed.¹⁰

There are writing assignments for each exercise designed to provide the participants many opportunities to improve and demonstrate competence in effective written communication to a wide range of readers including clients, judges, opponents and senior partners. While some of the written work must be researched and written separately by each participant, most written assignments are submitted as firm work. When a firm submits an assignment, participants must mark the work in such a way that the instructor who is assessing the work can determine which portions of the work were done by which partner. Page limits are set for most writing projects to assist the participants in developing skills necessary to write short,

Employment Law/Non-Compete	16.40	32.71	46.60
Commercial Law/UCC	16.00	30.76	58.80
Criminal Law/DUI	14.10	22.29	37.70
Will Drafting/Estate Planning	8.30	17.79	39.85

9. The National Institute for Trial Advocacy (NITA) has provided a model for skills training. The NITA guidelines for teaching and the NITA teacher training programs have been the basis for the training of The Legal Practicum instructors. KENNETH S. BROUN ET AL., NATIONAL INSTITUTE FOR TRIAL ADVOCACY, 1 PROBLEMS AND CASES IN TRIAL ADVOCACY (Teacher's Manual) (rev. 4th ed. 1993).

10. See app. B. The assessment forms have been developed to deal with the special requirements of the different exercises. The seven-point scale provides the instructors with sufficient latitude to evaluate performances and space to give individual comments. The scores achieved by the participants are factored into an assessment scheme for the students to provide the academic institution with a method of assessment of the students' performances.

persuasive work. Participants must complete the following writing assignments:

- Eight Representation Agreements
- Eight Client Billing Statements with Explanatory Letter
- Seven 4-page Memoranda to Senior Partner
- Two Interrogatories
- Two Answers to Interrogatories
- One Complaint and Reply or Answer and Counterclaim
- One Petition or Counterpetition
- One Pre-trial Motion (if needed)
- One Dissolution Prehearing Statement
- One Dissolution Joint Disposition Conference Report
- One Dissolution Summary of Position
- One Trial Notebook
- One Mediation Confidential Information Form
- One Motion and Notice of Motion, Affidavits
- One Order with Findings of Fact and Conclusions of Law
- One Arbitration Statement of the Case
- One Will
- One Explanatory Client Letter Accompanying Will
- One 10-page Trial Brief
- One 10-page Appellate Brief
- One 10-page Memorandum of Law

Each of the writing assignments is assessed by the instructor teaching the substantive seminar portion of the exercise. In addition, nine of the assignments are also assessed by writing instructors. The seminar instructors evaluate the substantive work and the writing instructors evaluate the writing.

The assignments assessed by both seminar instructors and legal writing instructors include five individual four-page memos, the tort complaint or counterclaim, the disciplinary brief, the client letter regarding the will drafted by the participant and the motion and long memorandum for the employment problem. Assignments are not redrafted unless there are significant legal errors. Participants are expected to apply what they learn to the next writing assignment. Participants meet with their legal writing instructor at least twice during the semester. Should a participant demonstrate writing difficulties, the writing instructor schedules additional conferences.

The Legal Practicum's small general law practice is an intensive and extensive simulation based on eight exercises. The exercises and substantive areas are:

Commercial Law / Uniform Commercial Code

This commercial law exercise involves the sale of a dental X-ray machine by a dental supplier to a dentist. The transaction results in an alleged breach of express warranty and the warranty of fitness for a particular purpose. The contract for sale requires the parties to submit to binding arbitration if claims or controversies arise. The exercise is designed so that participants can also resolve the matter through mediation. Participants must analyze the accompanying materials in order to draft necessary documents and prepare their client for a mediation and an arbitration.

Criminal Law / Driving Under the Influence of Alcohol

This criminal justice exercise introduces participants to a criminal proceeding associated with a charge of driving under the influence of alcohol. An investigation has produced the police reports. Participants analyze police reports and other information in preparing for meetings with the client, prosecuting attorney and judge. The participants also have to determine how to advise a client about the prospects of winning the case.

Criminal Law / Juvenile Delinquency

This criminal justice exercise involves participants in the juvenile justice system. Participants represent a juvenile on a shoplifting charge. An investigation has produced the police reports and juvenile court records, which are provided as part of the exercise. Participants may interview the juvenile and parent, negotiate settlement options, and represent the juvenile at a court hearing.

Employment Law / Non-Compete Clause

In the employment law exercise participants work with non-compete contracts. The problem requires participants to respond either as Plaintiff or Defendant in an injunction action. Defendant signed a one-year employment agreement with Plaintiff. The contract has expired but Plaintiff alleges Defendant is bound by a restrictive covenant which prevents her from becoming an employee of any of Plaintiff's clients and from providing services in Plaintiff's city. The covenant provides for injunctive relief in the event of a breach by the employee. Plaintiff seeks a permanent injunction which Defendant opposes.

Family Law / Dissolution of Marriage

This family law exercise acquaints participants with issues involved in marital dissolutions. The exercise involves two clients who seek a dissolution, with accompanying issues of spousal maintenance, child custody and visitation, name change and property division. Each firm must prepare all required pleadings and documents to represent their client in the dissolution action.

Professional Responsibility / Disbarment

This professional responsibility exercise introduces participants to attorney disciplinary proceedings, which may occur in a variety of contexts. This problem is designed to occur before a court which has the authority to enter a final disciplinary order. The participants may be asked to represent the director of the office of Lawyer's Professional Responsibility or the attorney. In this problem a referee has recommended to the court that the attorney be disbarred. The participants write briefs in support of the referee's recommendation on behalf of the director, or in opposition to the referee's recommendation on behalf of the attorney. The exercise provides the participants the opportunity to argue their positions before the court.

Tort Law / Personal Injury

This exercise provides the opportunity for participants to represent a client in a lawsuit, beginning with the drafting of pleadings and culminating in a full-day jury trial. The activities include preparation of pleadings, discovery process, investigation, research, pre-trial motions and hearings, witness preparation, and trial preparation and presentation. The case involves personal injuries sustained by both parties to the lawsuit in a car accident. Issues raised include the comparative negligence of the parties and their respective damages.

Will Drafting / Estate Planning

This exercise introduces participants to the drafting of a basic will. There are two clients, a husband and wife, who want to have wills drawn. Previous interviews with the clients have produced detailed information regarding their assets, needs and interests. Participants must analyze this information in order to draft a will representing the desires of the clients.

The number of exercises to be used by a particular Legal Practicum course depends on the desired goals. It is possible,

for instance, to use only one or two exercises and require the participant to delve more deeply into specific areas of law. Use of a greater number of exercises, on the other hand, will help the participant experience some of the actual demands and variety which characterize a small general practice law firm and to experience practical application of theory in a number of substantive areas.

The exercises are of varying duration and overlap. The exercises may be used in a full eight-exercise practicum and in any order. The following graph demonstrates one exercise structure and shows how the exercises overlap.

The Legal Practicum Spring 1994 Time Lines

Work	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
Family Law/Dissolution of Marriage			-----												
Tort/Personal Injuries				-----											
Professional Responsibility/Disbarment				-----											
Criminal Law/DUI					-----										
Commercial Law/UCC							-----								
Employment Law/Non-Compete Clause									-----						
Criminal Law/Juvenile Justice											-----				
Will Drafting and Estate Planning													-----		

Through practice participants develop case and time management skills. Participants must learn to deal with the problems of a small law firm practice. During the week in which the greatest number of exercises overlap, participants are under substantial stress, not only from The Legal Practicum but also from their other courses, employment and personal relationships. The Practicum Director, Administrator and instructors help the participants develop stress management techniques by working with them individually.

The Legal Practicum requires the participants to apply all ten of the MacCrate Report's "Fundamental Lawyering Skills".¹¹ Each of the exercises requires problem solving, legal analysis and reasoning, legal research, factual investigation, oral and written communication, organization and management of legal work and the recognition and resolution of ethical dilemmas.

11. THE MACCRATE REPORT, *supra* note 2, at 138-40.

Seven of the exercises require litigation or negotiation. Two exercises require oral counseling and all require the participants to regularly advise the clients of the posture of the case and of the final disposition through a final client letter and billing statement.

Participants have an on-going opportunity to critique the course, its administration and instructors. The course evaluation form is similar to the assessment forms used by the instructors. Critiques from participants allow The Legal Practicum to grow and change. In participant evaluations of The Legal Practicum, participants consistently rank the learning-by-doing format as being the most helpful, and give high marks for the hands-on experience of handling "actual" cases and being critiqued by judges and lawyers. The following are the course evaluations from fall 1992, spring 1993, fall 1993, and spring 1994:

(Seven point scale: 1 = Strongly Disagree; 4 = Average; 7 = Strongly)

	Fall '92	Spr. '93	Fall '93	Spr. '94
The course was helpful at this stage of my career	6.76	6.77	6.64	6.78
The opportunity to perform as counsel was helpful—learning by doing was helpful	6.86	6.95	6.68	6.83
The oral and written critique of my performance by the faculty was helpful	5.90	5.86	5.23	5.56
Overall, the Legal Practicum was a valuable learning experience	6.70	7.00	6.59	6.72
There was good interaction between the faculty and students	5.73	6.44	5.59	6.21
There was a supportive and helpful learning environment and helpful learning environment	6.05	6.54	6.05	6.53
I would recommend the course to others	5.91	6.79	6.36	6.79

(Seven point scale: 1 = Much Less Satisfaction; 4 = Satisfaction; 7 = Much Better)

	Fall '92	Spr. '93	Fall '93	Spr. '94
Rate the Legal Practicum in comparison with any other learning-by-doing skills courses you have taken	6.57	6.71	6.29	6.61
Rate the Legal Practicum in comparison to other law school courses you have taken	6.23	6.92	6.23	6.58

(The participants were asked to respond to the following inquiries)

	Fall '92	Spr. '93	Fall '93	Spr. '94
The time devoted to learning-by-doing performance was:				
About right	16	17	20	17
Not enough	1	4	0	0
Too much	4	3	2	1
No response	3	0	2	2
The time devoted to critique by the faculty was:				
About right	16	16	13	14
Not enough	5	0	8	4
Too much	0	6	1	0
No response	3	2	2	2
The number of exercises assigned was:				
About right	10	18	16	17
Not enough	0	0	0	0
Too much	9	6	6	1
No response	5	0	2	2

III. EDUCATIONAL THEORY: WHY DOES THE LEGAL PRACTICUM WORK?

Education theorists have identified six essential elements of successful education. They are: (1) objectives, (2) reinforcement and feedback, (3) positive learning environment, (4) active classroom, (5) learning styles, and (6) lesson cycle.¹² The Legal Practicum incorporates these elements in its philosophy, materials, design, and management system, thereby creating an effective educational program.

A. *Objectives: The desired learning outcomes.*¹³

The Legal Practicum has specific objectives that are clearly communicated to the participants. The exercises of the Legal Practicum list the objectives students will master. Each objective is designed in conjunction with educational theory. For example, the Commercial Law/UCC exercise lists the following objectives:

OBJECTIVES

By the conclusion of this exercise participants will be able to:

- (1) Demonstrate in writing an analysis of a commercial contract containing an arbitration clause.
- (2) Demonstrate orally and in writing a basic understanding of the Uniform Commercial Code.
- (3) Prepare for and participate in both an arbitration and mediation.
- (4) Develop objectives and methods of presentation for an arbitration and mediation and compare the differences.
- (5) Interview client to determine the client's needs and expectations.
- (6) Prepare client for the mediation and arbitration processes.
- (7) Demonstrate persuasive, appropriate advocacy skills in arbitration and mediation.

12. LEONARD H. CLARK & IRVING S. STARR, *SECONDARY AND MIDDLE SCHOOL TEACHING METHODS* 54, 87, 38, 86, 36, 175 (5th ed. 1986); Mark S. Caldwell, *Educational Architecture: Constructing Courses to Meet Learner's Needs and Expectations*, 11 J. PROF. LEGAL EDUC. 1, 4 (1994).

13. CLARK, *supra* note 12, at 54.

- (8) Write a four page memorandum to be used as a position paper/ internal memorandum within the law firm summarizing the necessary facts, issues and relevant rules for this arbitration and mediation.
- (9) Prepare the appropriate documents for the arbitration and mediation.¹⁴

The starting block for any lesson and curriculum is the objective. Objectives are the basis for the chosen content, instructional approaches, and activities of the particular course; “[i]nstruction can be effective only when the teaching methods and content are aimed directly at objectives.”¹⁵ Educational objectives are usually statements designed to identify clearly what the participant will be able to do in order to demonstrate that learning has taken place. The identification of objectives allows teachers to have a clear perception of what is to be achieved during a learning event.¹⁶ When writing an objective for a course or curriculum, an educator should use action verbs such as show, define, recite, perform, calculate, etc., thereby giving a basis for evaluation. Teachers and facilitators are not able to observe directly the accumulation of knowledge or acquisition of values stated by objectives, as these are internalized by individual participants but are able to seek evidence of changes of behavior. Objectives are, therefore, stated in behavioral terms. For instance, “[s]tudents will demonstrate proper trial advocacy techniques.” The objective should also include an introductory phrase (“After this unit”), a statement of who (“the student”), and a statement of action (“will be able to offer an exhibit into evidence”). Objectives may also include a statement indicating the level of acceptable performance (i.e., “After completion of this unit, the student will conduct a direct and cross examination without reading from prepared notes”). Objectives fall into three domains: cognitive, affective, and psychomotor.¹⁷

14. See app. A at 1.

15. CLARK, *supra* note 12, at 54.

16. ROBERT F. MAGER, PREPARING INSTRUCTIONAL OBJECTIVES 24 (1962).

17. CLARK, *supra* note 12, at 56.

1. *The Cognitive Domain: Objectives where the desired learning outcome is a student's ability to recall information and use it effectively.*¹⁸

Bloom's taxonomy¹⁹ describes the steps of cognitive understanding. Those steps are: (1) the ability to define a problem, (2) the ability to select pertinent information for the solution of that problem, (3) the ability to recognize stated and unstated assumptions, (4) the ability to formulate and select relevant and promising hypotheses, and (5) the ability to draw valid conclusions and to judge the validity of inferences.²⁰

Cognitive objectives emphasize recalling facts from memory and applying them to problem-solving exercises.²¹ Cognitive objectives range from "simple recall of material learned to highly original and creative ways of combining and synthesizing new ideas and materials."²² Cognitive domain objectives are studied as a hierarchy, and the classifications of that hierarchy are as follows (from most simple to most complex): knowledge, comprehension, application, analysis, synthesis, and evaluation.²³

18. *Id.*

19. SPINTHALL, *supra* note 7, at 316-32. Benjamin Bloom was an eminent psychologist and scholar and an Instructor of Educational Psychology at the University of Chicago. *Id.* His interest in learning processes led to the now famous taxonomy for educational objectives, known as Bloom's Taxonomy, which revolutionized lesson planning. *Id.*

Bloom's Taxonomy:

1. Goal—To define educational goals for teachers.
2. What the Taxonomy Does—The taxonomy answers the problem of identifying teaching objectives by classifying educational objectives and relating each objective to specific classroom procedures and activities.
3. How It Works—The taxonomy presents six stages of objectives which are matched to six assessment strategies: Basic Knowledge, Comprehension, Application, Analysis, Synthesis, and Evaluation.
4. Effect—The taxonomy forces teachers to articulate their classroom goals and the way they will achieve them.

Id.

20. PAUL L. DRESSEL & LEWIS B. MAYHEM, GENERAL EDUCATION: EXPLORATIONS IN EVALUATION 179-81 (1954).

21. SPINTHALL, *supra* note 7, at 317.

22. DAVID R. KRATHWOHL ET AL., TAXONOMY OF EDUCATIONAL OBJECTIVES, HANDBOOK II: AFFECTIVE DOMAIN 6 (1964).

23. SPINTHALL, *supra* note 7, at 317-20; CLARK, *supra* note 12, at 57.

- 1) Knowledge: On this level one may know a contract requires an offer and an acceptance, but may not necessarily understand why.²⁴
- 2) Comprehension: On this level of the cognitive process, one knows what an offer and acceptance are and why each is necessary.²⁵
- 3) Application: On this level one can apply the learned knowledge to legal problem-solving. For instance, one can analyze behavior to determine if a contract exists or to draft a contract to fit a client's needs.²⁶
- 4) Analysis: On this level one can break down complex ideas, see relationships, understand cause and effect and thereby come to a more sophisticated understanding.²⁷
- 5) Synthesis: On this level, the most creative, one can put old ideas or previously learned knowledge together to come up with new ideas or concepts.²⁸
- 6) Evaluation: On this level one can place judgment on something based on one's understanding of it and its ideal. Evaluation is the highest level because it depends upon a complete understanding.²⁹

2. *The Affective Domain: Objectives where the desired learning outcome emphasizes a student's "feeling tone, an emotion, or a degree of acceptance or rejection."*³⁰

Affective objectives use words like "appreciate" and "value."³¹ For instance, an objective for a course in alternative dispute resolution might read: After completion of the course, students will appreciate the efficiency and practicality of the mediation and arbitration processes. The mastery of affective objectives is difficult to evaluate. The hierarchy of the affective domain is as follows: receiving, responding, valuing, organizing, and forming a personal hierarchy of values.³²

24. SPRINTHALL, *supra* note 7, at 317; CLARK, *supra* note 12, at 57.

25. SPRINTHALL, *supra* note 7, at 317; CLARK, *supra* note 12, at 57.

26. SPRINTHALL, *supra* note 7, at 317-18; CLARK, *supra* note 12, at 57.

27. SPRINTHALL, *supra* note 7, at 318-19; CLARK, *supra* note 12, at 57.

28. SPRINTHALL, *supra* note 7, at 319; CLARK, *supra* note 12, at 57.

29. SPRINTHALL, *supra* note 7, at 320; CLARK, *supra* note 12, at 57.

30. KRATHWOHL, *supra* note 22, at 7.

31. CLARK, *supra* note 12, at 56.

32. *Id.* at 57-58.

- 1) Receiving: On this level one is aware of the affective stimulus but does not have any reaction to or feeling about that stimulus.³³
 - 2) Responding: On this level one responds to the stimulus, takes interest, responds favorably, and enjoys it.³⁴
 - 3) Valuing: On this level one values the stimulus, prefers it, and eventually commits to it.³⁵
 - 4) Organizing: On this level one organizes and prioritizes values.³⁶
 - 5) Forming a Personal Hierarchy of Values: On this level the values are so organized that the subsequent attitudes shape the individual's behavior.³⁷
3. *Psychomotor Domain: Objectives where the desired learning outcomes are determined by the student's "manipulation of materials and objectives or some act which requires a neuromuscular co-ordination."*³⁸

Although psychomotor objectives are rare in law school curriculum, an example of a psychomotor objective could be geared toward courtroom movement, gesture, and mannerism.

Psychomotor objectives determine the improvement of physical skills, and the hierarchical steps progress from unskillful to most skilled: familiarization, fundamentals, development, adjusting and adapting, and perfection and maintenance.³⁹

- 1) Familiarization: On this level one observes the skill to be learned.⁴⁰
- 2) Fundamentals: On this level one develops basic skills.⁴¹
- 3) Development: On this level one develops the skill through guided practice.⁴²
- 4) Adjusting and Adapting: On this level one perfects the skill and learns to adjust to new situations (e.g., an

33. *Id.*

34. *Id.* at 58.

35. CLARK, *supra* note 12, at 58.

36. *Id.*

37. *Id.*

38. KRATHWOHL, *supra* note 22, at 7.

39. CLARK, *supra* note 12, at 58-60.

40. *Id.* at 58-59.

41. *Id.* at 59.

42. *Id.*

outfielder learns to adjust to the wind when catching fly balls).⁴³

- 5) Perfection and Maintenance: On this level one stays in practice so as not to lose the skill.⁴⁴

Each Legal Practicum exercise sets out a number of activities which address the cognitive, affective and (occasionally) psychomotor domains and assists the student in achieving all the objectives of the exercise. For example, the Commercial Law/UCC exercise lists the following activities:

ACTIVITIES

(To be assigned at instructor's option)

- (1) Participate in seminars which address the conflict management processes of mediation and arbitration, the Uniform Commercial Code and contract law.
- (2) Research applicable sections of the Uniform Commercial Code and case law.
- (3) Interview clients to obtain necessary background information and details for preparing all needed documents.
- (4) Prepare a representation agreement setting out all necessary terms of the attorney-client relationship including fees, and addressing any ethical issues raised by the attorney-client relationship and the work to be performed.
- (5) Prepare a preliminary internal memorandum addressed to a senior partner. The memo should summarize the necessary facts, issues and initial research, and should detail the relevant rules and procedures. The memo should follow this format:
 - a) 8 1/2 x 11 white paper
 - b) typed, double spaced
 - c) 1" margins (top, bottom, right, left)
 - d) separate headings and subheadings, such as "Client's Position" or "Strategy"

43. *Id.*

44. CLARK, *supra* note 12, at 60.

- e) NO MORE THAN 4 PAGES IN LENGTH
- (6) Prepare a short list of creative options for mediation. For each option identify:
 - a) why the option is viable
 - b) how it serves the needs of your client
 - c) whether it would be acceptable to other party
- (7) Prepare client for mediation.
- (8) Represent the client at the mediation. Prepare a three-minute opening presentation outlining facts, issues and options.
- (9) Prepare a brief Statement of the Case which sets out a summary of the facts and the issues. Participants may use a standardized form for this purpose.
- (10) Prepare the client for arbitration.
- (11) Represent the client at arbitration.
 - a) Make opening and closing statements.
 - b) Conduct direct and cross examination.
- (12) Establish and maintain a client file, documenting all work on this project.

NOTE

Briefs and memoranda of law **MAY NOT EXCEED 10 PAGES** and shall follow this format:

- i) 8 1/2 x 11 white paper
- ii) Typed, double spaced
- iii) 1" margins (top, bottom, right, left)
- iv) Separate headings or subheadings where needed
- v) 10-page limit is exclusive of table of contents and citations⁴⁵

The activities provide a variety of learning experiences which include lecture, discussion, team work, focused and problem-based research, written and oral presentations requiring preparation, team building and rehearsal, client representation, advocacy exercises, and cooperative problem-solving.

45. App. A at 2-3.

*B. Reinforcement and Feedback: Praise, criticism, and any other verbal or written forms of critique which enable the student to understand their own level of mastery and thereby improve.*⁴⁶

In order to master the given material one must get feedback in a timely fashion.⁴⁷ Feedback delivered too early can be confusing. However, feedback given too late is almost worthless because it is the motivating force which pushes learners to move forward.⁴⁸ "The knowledge that one has accomplished a certain amount is often sufficient motivation to go further."⁴⁹

The Legal Practicum provides feedback through a variety of means which encourages the participants to improve and implement the skills learned from previous exercises. The use of assessment forms to critique oral and written work is one such tool. Additionally, class lectures, small group exercises and oral presentations are designed to reinforce what the student is doing well, while suggestions and constructive criticism are used to modify participants' problem areas. For example, after each oral activity, the instructors provide an immediate verbal critique of the participant's performance. The instructors give advice, suggestions, praise, and the opportunity for the participant to ask questions.

*C. Positive Learning Environment: A place where one is empowered to learn.*⁵⁰

Positive learning environments are characterized by "feelings of cohesiveness, satisfaction, goal direction [a.k.a. clear objectives], and student perceptions of a friendly atmosphere. . . ."⁵¹ This means that the teacher has created an environment where students feel free to ask questions, express opinions, and share their results without being ridiculed. Positive learning

46. CLARK, *supra* note 12, at 87-90.

47. SPRINTHALL, *supra* note 7, at 244.

48. *See id.*

49. *Id.*

50. *See generally id.* at 242 (stating that education occurs in "an appropriate stimulus situation").

51. *Id.* at 291.

environments promote learning⁵² because “[w]hen a person is seriously threatened [as in a negative learning environment], he seems to turn off the cerebrum and downshifts to operating on the limbic brain system—the old prehuman mammalian brain. This means that as long as the threat seems serious or frightening the person cannot use the higher mental processes well.”⁵³ A positive learning environment also provides an understanding of how the new knowledge relates to real life situations.⁵⁴

Malcolm Knowles, an educational theorist, posited that much of the educational theory previously available to trainers and educators was based on the study of children and rodents.⁵⁵ Knowles considered flawed the traditional pedagogical view of learners being dependent on teachers, and having little or no influence about the shape and direction of their learning.⁵⁶ Even the word pedagogy was anathema to Knowles, and he suggested that a different view of learning should be considered from the adult perspective—that of andragogy: a process of learning which considers the needs of adults and which allows learning to be much more self directing with the learners in control of their own learning.⁵⁷

Carl Rogers also theorized that learning would be enhanced by the ability of the learner to take command and control of their own learning at their own time, at their own pace, and in their own place.⁵⁸ Rogers wished to see the role of the teacher moving from one of the font of all knowledge to one which allows the learner or group of learners to acquire skills and knowledge through total involvement with the learning process.⁵⁹ Being provided with a variety of experiences and media

52. See generally SPRINTHALL, *supra* note 7, at 216-17 (stating that “[e]nvironment — and only environment — controls behavior . . . [and is the] true and only prime mover”).

53. CLARK, *supra* note 12, at 38.

54. See generally MIHALY CSIKSZENTMIHALYI, *BEYOND BOREDOM AND ANXIETY* 138-39 (1975) (theorizing that learning becomes enjoyable when it is thought of in the context of “play” and that the fear of failure is not a hindrance to learning when it is considered a positive challenge).

55. See MALCOLM S. KNOWLES, *ANDRAGOGY IN ACTION* 5 (1984).

56. *Id.* at 8-13.

57. *Id.* at 6.

58. See CARL R. ROGERS, *FREEDOM TO LEARN FOR THE 80S* 68-69 (1984).

59. *Id.* at 70 & 81.

through active learning creates opportunities for self assessment and external critique as well as the motivation to learn.⁶⁰

The Legal Practicum provides a positive learning environment through use of constructive feedback, positive role models, easily accessible resource persons who encourage students to ask questions, and the opportunity for students to work together in objective problem-solving. The exercises explain to the participant what is expected and the language and terms are positive and non-threatening. The word "considerations" is used instead of "checklist," law students are referred to as "participants" rather than "students," the term "instructor" is used instead of "professor," "exercise" instead of "problem," and "assessment" instead of "evaluation" or "grading."

The Legal Practicum Handbook provides participants with complete information about the course and what is expected. The Handbook is an important administrative tool and provides answers to most questions the participants have about the course. The Handbook introduces the participants to the Practicum Director, Course Administrator, and instructors by including their names, telephone numbers, availability, and what their role in the course will be. It also includes samples of the Assessment Forms⁶¹ and the form participants use to record their hours.⁶²

*D. Active Classroom: A teaching style where lecture is not emphasized and students are allowed to talk, move, experiment and debate.*⁶³

The active classroom, or (more commonly) "learning by doing," is crucial to cognitive growth on any level of education:

Anthropological studies . . . have indicated that our brain power increased after the invention of tools. The manipulation of tools . . . induced the brain to grow. . . . The effect of rising to the challenge posed by this activity . . . increased our capacity to understand and become more sophisticated cognitively—the activity developed our mind.⁶⁴

60. *Id.* at 69-70.

61. *See* app. B.

62. *See* app. C.

63. CLARK, *supra* note 12, at 86.

64. SPINTHALL, *supra* note 7, at 108-09.

David Kolb, of Case Western University, has provided a great deal of insight into the way we learn by developing the work of Kurt Lewin, John Dewey, and Carl Jung.⁶⁵ He has produced a model of experiential learning, i.e. "learning by doing" in a practical or practically-based environment, which shows that learning and development are made easier when the processes are integrated.⁶⁶ Kolb describes a learning cycle which has four phases:

- (a) Experience which involves learning by doing, by being involved and which leads to,
- (b) Reflected observation, thinking about the experience which the learner has just gone through; analyzing the new information and making sense of it which in turn leads to,
- (c) Coming to a conclusion or new idea or concept based on phases (a) and (b) and in turn leading to,
- (d) The application of the new experience, information and concepts in fresh situations—active experimentation.⁶⁷

Kolb's experiential learning phases suggest that even advanced practice-based forms of teaching and learning are not in themselves sufficient.⁶⁸ Merely doing something is not enough. Reflecting on "the doing" and testing out the reflection must follow for learning to be effective.⁶⁹ Facilitators and learners alike must ensure that theory is applied to practical experience in a realistic learning environment which allows

65. Lewin suggested that learning was composed of four cyclical elements of concrete experience which could be observed and reflected upon, which allowed a formation of abstract concepts and generalizations, which could be tested in new situations, and then which would form another concrete experience. KURT LEWIN, *FIELD THEORY IN SOCIAL SCIENCE* 65-82 (1951). Dewey produced a similar model to Lewin's but developed the nature of learning described by Lewin into a process of feedback. JOHN DEWEY, *EXPERIENCE AND EDUCATION* 67-68 (1938). Jung's work is also assimilated into Kolb's learning theory with psychological types representing different modes of adaptation to environment. See C. G. JUNG, *PSYCHOLOGICAL TYPES* 412-16 (1923).

66. See generally DAVID A. KOLB & RONALD FRY, *Towards an Applied Theory of Experiential Learning*, in *THEORIES OF GROUP PROCESS* 33, 33-56 (1975) (discussing the experiential learning model).

67. DAVID A. KOLB, IRWIN M. RUBIN, & JOYCE M. OSLAND, *ORGANIZATIONAL BEHAVIOR: AN EXPERIENTIAL APPROACH* 59 (1991).

68. John R. McLachlan, *Learning the Rules by Playing the Game: Is a Simulation a Valid and Equitable Method of Teaching for Masters Level Litigators?* 22 (1995), unpublished masters education dissertation, University of Sheffield.

69. *Id.*

learners to experiment, take that experience back into the workplace, reflect on it, apply it, and then reflect again, thereby producing highly effective learning techniques tailored to individual needs.⁷⁰

Kolb's approach is holistic and he does not view learning as "the special province of a single specialized realm of human functioning such as cognitive or perception. It involves the integrated function of the total organism—thinking, feeling, perceiving and behaving."⁷¹ He considers that the key is to understand the relationship between the learning and the learning environment.⁷² Learning from experience is a complex process. To a large extent, the learning outcomes depend on the cognitive and affective responses of the individual concerned and the context in which that person is learning.⁷³

The Legal Practicum is designed around the active classroom. The small class size, interactive lectures, exercises, opportunities for students to reflect, experiment, and apply what has been learned to new situations enable the students to learn by doing.

*E. Learning Styles: Individual differences in the way students learn.*⁷⁴

Some students learn verbally; some aurally; some physically; and some visually.⁷⁵ To reach all students, a teacher cannot rely on one teaching method.⁷⁶ Lecture alone will reach only a small percentage of students.⁷⁷

"The adversary method, the audio-visual method, programmed learning, clinical instruction, computer-aided instruction, games, role plays, and simulations are all argued to be the

70. See, e.g., SPRINTHALL, *supra* note 7, at 108-09 (stating that intellectual growth depends upon activity).

71. DAVID A. KOLB, EXPERIENTIAL LEARNING 31 (1984).

72. *Id.* at 31-36.

73. *Id.* at 36-37.

74. CLARK, *supra* note 12, at 36-37.

75. *Id.* at 37. "[A]dults bring to the learning process a complex web of experiences, knowledge, skills, and mindsets regarding themselves, the teacher, and the topic at hand. This includes such things as their learning styles, childhood experiences . . . , cultural influences, and their own developmental stages." MARGIE CARTER & DEB CURTIS, TRAINING TEACHERS: A HARVEST OF THEORY AND PRACTICE 3 (1994).

76. CLARK, *supra* note 12, at 36-37.

77. *Id.*

superior alternative method. . . . [However,] [t]he major barrier is the failure of pedagogy to take into account ‘individualized learning styles and capacities.’”⁷⁸ Like fingerprints, learning styles are unique to the learner.⁷⁹ To reach all students, teachers must use different teaching techniques to accommodate learning differences.⁸⁰

The Legal Practicum combines a variety of methods to accommodate different learning styles. The course provides interactive lectures, general and specific reading assignments, individual work and large and small group work, focused problem-solving, written and oral exercises, individual and group responsibilities, obligations to clients, immediate responses to general and specific questions, audio-visual aids, observations, and oral and written feedback and critique. Even the course calendar is designed to accommodate different learning styles by being given to participants in two formats: a chronological-linear format, and the traditional calendar layout.⁸¹ By requiring participants to work in pairs as a “law firm,” and requiring the firms to remain together for the entire semester, participants learn to accommodate differences, work through problems and design alternatives to meet their respective needs.

*F. Lesson Cycle: A planned lesson which incorporates the educational theories involving objectives, reinforcement, positive learning environment, activity, and learning styles.*⁸²

One of the most well known lesson cycles is Madeline Hunter’s seven step cycle. Her lesson cycle includes: the

78. Pirie, *supra* note 7, at 581-82.

79. CLARK, *supra* note 12, at 37.

80. DONALD A. SCHON, EDUCATING THE REFLECTIVE PRACTITIONER: TOWARD A NEW DESIGN FOR TEACHING AND LEARNING IN THE PROFESSIONS 14 (1987). Donald A. Schon is one three leading American academic authorities on experiential learning. According to Schon, traditional legal education epitomizes technical rationality. *Id.* To “think like a lawyer” is to formulate legal arguments, clarify issues by adversarial process, and deduce answers to particular questions from judicial precedents. *Id.* However, “the most eminent law schools . . . develop competencies that go beyond thinking like a lawyer—for example, skills in trial work, client relations, negotiation, advocacy, and legal ethics.” *Id.* In essence, the truly great legal education is the one which goes beyond Socrates and enlists a variety of learning styles. *Id.*

81. See apps. D and E.

82. See CLARK, *supra* note 12, at 175-76.

anticipatory set, the objective(s), input, modeling, checking for understanding, guided practice, and independent practice.⁸³

- 1) Anticipatory Set: A statement or proposal which "increase[s] the students' interest in and motivation to learn the material." Hopefully, in college level and graduate level courses the anticipatory set is already present in the student.⁸⁴
- 2) Objective: The desired learning outcome and the clear communication of that objective to the students.⁸⁵
- 3) Input: Method of instructing or informing.⁸⁶
- 4) Modeling: Method of demonstrating the task to accommodate different learning styles and ensure proper understanding. According to Hunter, modeling is not going through the motions but demonstrating the task with a verbal description of what the students should do.⁸⁷
- 5) Check for Understanding: Ask questions of the students and create a positive learning environment so that students will not refrain from asking their own questions for fear of asking a "dumb" one.⁸⁸
- 6) Guided Practice: Supervise the students as they first attempt the task.⁸⁹
- 7) Independent Practice: Give independent practice (sometimes known as homework) so as to evaluate their mastery.⁹⁰

The Legal Practicum curriculum and course description follow Hunter's cycle and are consistent with Ralph W. Tyler's *Basic Principles of Curriculum and Instruction*, which synthesizes the commonality of curriculum literature to outline the four fundamental questions imperative for writing curriculum: (1) What should be taught? (2) What experience should be provided? (3) How should the experiences be organized? and (4) How do we evaluate the achievement of the experiences?⁹¹

83. SPRINTHALL, *supra* note 7, at 328-32.

84. *Id.* at 328-29.

85. *Id.* at 329.

86. *Id.*

87. *Id.* at 329-30.

88. SPRINTHALL, *supra* note 7, at 330.

89. *Id.* at 330-31.

90. *Id.* at 331-32.

91. See generally RALPH W. TYLER, BASIC PRINCIPLES OF CURRICULUM AND INSTRUCTION (1971) (proposing these steps as basic to a curriculum, but conceding that the method for studying these questions and forming curriculum which fulfills

The Legal Practicum answers the question of what should be taught, for it has clearly designed objectives, and communicates those objectives to the students. The Legal Practicum exercises list each objective students are responsible for mastering, and each objective is designed in conjunction with education theory. For example, "At the culmination of this exercise participants will have enhanced client interviewing skills."⁹² The activities are structured to build on themselves. Instructors describe what the participants should do, modelling is incorporated whenever possible, and guidance is provided continuously as participants engage in the written and oral activities. Written and oral assessments from multiple sources permit the participants to measure their achievements. The student evaluations of the course provide a means of determining if the objectives of The Legal Practicum have been met.

In conclusion, while most law school classes meet at least some of the essential elements of successful education, The Legal Practicum strives to meet all six. Objectives, feedback, learning environments, active classroom, learning styles, and lesson cycles are the backbone of The Legal Practicum. The incorporation of these six elements makes The Legal Practicum an example of successful education in general as well as a model of state of the art legal training.

IV. THE PROGRAM: HOW DOES THE PRACTICUM WORK?

A. *Materials*

The participants receive extensive materials for each exercise. For example, the Tort Trial/Personal Injury exercise is nearly ninety pages long. It contains simulated physician reports, hospital bills, fact summaries, police reports and other documents necessary to support the case. The other exercises are also extensively supported, although not quite as lengthy.

Each exercise is divided into eight parts: introduction, objectives, activities, instructions, case file, procedural and factual history, considerations and substantive information. The *introduction*⁹³ is a preface followed by the *objectives*⁹⁴ of the

them varies depending upon the level of education).

92. See app. A.

93. See app. A at 1.

exercise. These objectives are stated in a positive way, in effect guaranteeing the participant the objectives will be achieved if the exercise is carried through to completion. Each exercise is designed so the number of objectives may be reduced in order to meet particular class needs. For instance, if an exercise is used as a supplement to a substantive course, the objectives may be narrowed to highlight the specific needs of the course at the time.

The *activities*⁹⁵ to be completed are described generally in order to provide flexibility for the instructor and to permit the participant to proceed independently with broad discretion. When the objectives are reduced, the number of activities is reduced. The writing component of the activities has specific directions as to format and length. The goal of the specific writing directions is twofold. First, it makes the participant comfortable with particular formats often required by courts and administrative agencies. Second, it requires participants to do focused writing to help them discern key issues, eliminate what is unnecessary, and write efficiently.

The *practicum instructions for use*⁹⁶ are important. They permit the exercises to be used at any time and in any jurisdiction. The exercises have been tested and the dates needed to make each exercise work determined through experimentation. The dates were adjusted to make the exercises work within a limited period of time, to fit the objectives of The Legal Practicum and the needs of law school semester scheduling.

The National Institute for Trial Advocacy model of indicating years by Year -1, Year -2 or Year +1, Year +2 to indicate previous or future years⁹⁷ is very helpful but does not work when the dates are days, weeks, or months in the past or future and participants need to refer to actual days and dates. The instructions direct how to insert appropriate dates and the exercises provide clear signals in bold print when dates are to be inserted. They also describe how and where to insert locations and ages of people appearing in the exercise. In each of the exercises the places where locations or ages are to be inserted

94. *Id.*

95. *See app. A at 2-3.*

96. *See app. A at 4-6.*

97. BROUN, *supra* note 9.

are also indicated with simple signals set out in bold print with an appropriate line for that purpose.⁹⁸

With one brief five to ten minute introduction, participants are able to make the appropriate insertions at the indicated places within a few minutes without errors. Once the participant masters the instructions they do not have to be referred to again and the instructor can simply indicate the starting date for that exercise and the jurisdictional locations.

The actual substantive part of each exercise is introduced by a *case file*⁹⁹ title page followed by the *procedural and factual history*.¹⁰⁰ The history assists participants in understanding an unfamiliar substantive area and explains why the matter is in its current posture.¹⁰¹

The *considerations*¹⁰² are designed to focus the participants' work and to highlight introductory seminars that may be conducted as the participants begin their work. They are called "considerations" rather than "check lists" because the participants should think about the areas and make independent determinations as to the value of pursuing an area. The considerations are designed to provoke thought and to stimulate independent thinking.

Each exercise then contains the appropriate *substantive* information, statements and documents¹⁰³ for participants to carry out the project and achieve the exercise objectives. The substantive materials appear as realistic as possible and may be used in most jurisdictions. Some of the materials may require minor adjustments to fit particular jurisdictional requirements.

Some of the exercises require participants to interview clients who are hired to play specific roles. When this occurs the teaching materials contain information to be provided to the role-playing client or "secret" information to be provided to each side of the negotiation. If the instructor chooses to conduct a particular exercise without using a witness or "secret" information, such material may be provided to the participants directly.

98. See app. A at 15, 16, 17, 21, 28, 29.

99. See app. A at 7.

100. See app. A at 9-10.

101. *Id.*

102. See app. A at 11-14.

103. See app. A at 15-29.

Each of the Legal Practicum exercises deals with two to five substantive areas and requires participants to be involved in different forums. The exercises permit participants to work with other participants in the Legal Practicum who represent, in simulation, a client with opposing interests. All arguments, hearings, arbitrations, and mediations are presented to actual judges, arbitrators, and mediators. The exercises may be used individually in conjunction with a substantive course, in tandem with clinics or other simulation exercises, or together as an entire course simulating a small law firm practice.

B. Management: Practicum Director and Course Administrator.

The course has a full-time faculty member acting as the Practicum Director who oversees the course and one staff member who administers it. Administering the course requires approximately sixty percent of the staff member's time. There are twenty-nine lawyers and judges who participate in the program as part-time instructors. In addition, about twenty role players participate as medical doctors, experts and clients.

The Practicum Director directs the philosophy of the course, is responsible for course and material development and for initiating changes. The time commitment of the faculty and administration will be substantially greater the first few times the Legal Practicum is offered. Recruiting and training instructors, learning and implementing the scheduling scheme, management of paper flow, and grading will require a full-time commitment for the first year. If published materials are not available, it will take substantial time to develop original exercises and administrative materials. Some exercises require a full year to develop and test.

The time the Practicum Director spends depends on the amount of teaching, critiquing and administrating the Director wishes to take on. However, the minimum time requirement is approximately ten hours each week. Inherent in the concept of the course is a management model which intentionally transfers all administrative tasks to the Course Administrator thereby freeing up the Practicum Director to carry a significant teaching load outside The Legal Practicum and to participate fully in faculty responsibilities. The Director advises the Administrator continuously throughout the semester and in the planning stages prior to each semester.

The Practicum Director is responsible for recruiting, training and supervising instructors and uses personal contacts as well as recommendations from others to select them. Some of the instructors have been involved for a long time with skills programs, most notably with the Trial Advocacy and Advanced Trial Advocacy courses offered at William Mitchell College of Law. There is no formal resume review, although resumes for all instructors are kept on file. The instructors are very involved with The Legal Practicum. The success of the course depends upon the participation of experienced judges and attorneys. Their lectures and critiques provide practical information that assists the students with the exercises and prepares them for actual practice. The students receive practical feedback on how well they have applied theory to legal problem-solving. The instructors provide advice on the materials, exercises and management, and work with the Director and Administrator to improve the course. The Practicum Director trains the instructors, keeps in regular contact with them and continuously reviews the exercises and course expectations with them.

The instructors are evaluated primarily by use of an extensive student evaluation form developed specifically for The Legal Practicum. The students rate both the exercise and the instructor and typically give numerous comments. While the Director observes lectures and oral exercises, there are no other formal reviews. The Administrator has informal input into the evaluation process and advises the Director if difficulties with scheduling, absenteeism or personality conflicts occur. In addition, the Practicum Director and the Administrator encourage and receive oral feedback from students and instructors.

A number of administrative models have been used during the twelve years of The Legal Practicum's existence. The current and most effective administrative model has an experienced Administrator working closely with the Practicum Director. The management system moves twenty-four participants and twenty-nine instructors through a series of complex exercises while the Administrator handles over 1200 pages of documents, briefs, and memoranda each semester. The system is constantly being evaluated and improved, but it currently has the capacity to manage effectively a voluminous paper flow in a manner that provides each student with relevant feedback.

The management model is based on a group of twenty-four participants to keep lecture classes small, permit interaction and personal relationships between students and instructors, and to maintain an eight-to-one student/instructor ratio. Participants are admitted to the course in groups of four (i.e., two two-person law firms). If the number of participants is increased, the volume of paper work, scheduling problems, additional classes, instructors and role players, and conflicts increase substantially. A significant increase in enrollment increases the work for the Administrator and Director. However, if one accepts twenty-four as an ideal Legal Practicum size, the management model permits the enrollment size to accommodate forty-eight or seventy-two students without doubling or tripling costs and administration time. We have estimated that with seventy-two students 100 percent of the Administrator's time would be devoted to the Practicum. The Director would have to double the time spent and the actual cost for instructors, roleplayers, and miscellaneous resources would increase by about two-thirds.

The amount of time the Administrator spends on the course also depends on the number of exercises. For example, if participants were involved in only one exercise at any given time, the Administrator would be required to spend ten percent of work time, or about four hours, on average, each week.

There are five areas of responsibility for the Administrator: acting as liaison and information source for course participants, planning the course schedule and handling scheduling matters, managing participants' written work, preparing the budget, and computing and recording interim and final grades. In addition, the Administrator is actively involved in proofreading and revising course materials.

The Administrator has contact with the Director on most days, informs the Director about comments, suggestions or requests from instructors and participants, and communicates responses to them. The Administrator also acts as a conduit for information flowing between the participants and the Director, and between participants and instructors. While participants are encouraged to contact the Director and the instructors directly, they often turn first to the Administrator for assistance. The Administrator suggests to participants resource options in these situations but does not give substantive advice.

The Administrator and Director are present for some portion of each class meeting to take attendance, introduce the instructor, distribute materials, make announcements and answer participant questions. In addition, the Administrator meets informally with participants whenever participants need procedural questions answered or simply seek reassurance that work has been received and is on time. The Administrator advises participants about The Legal Practicum instructor availability, the location of their offices and any special instructions instructors have asked the Administrator to relay.

The Legal Practicum Administrator makes sure the flow of paperwork is unimpeded. The participants must have access to a central, secure area that will serve as their Practicum office. It is in this office that the participants hand in their assignments, file documents, serve documents on their opponents, "mail" letters to their clients, receive information, and have their own confidential case files and exercise assessments. Assignments, with appropriate assessment forms and instructions, are mailed to the instructors. The Administrator also receives work when it is returned by the instructor, tallies and records the assessments and files the work in participant files.

The Administrator drafts correspondence to instructors, obtains teaching commitments for the semester, and keeps instructors abreast of current events in the course. The Administrator does the same for the client role players and medical experts that are needed for some exercises.

Each semester the Director and Administrator design a course schedule to accommodate changes in course materials or differences between fall and spring semester schedules. The course calendars are mailed to participants a week before the first class.¹⁰⁴ The calendars indicate which topics will be covered in a particular class meeting, assignment due dates, the instructors for each unit, and the holidays that occur during the semester. Participants receive calendar information in two formats. The first is a month-by-month grid similar to calendars used for keeping track of appointments. The second is a chronological calendar list. Both are used to assure the participants understand their scheduling obligations. The Administrator plans the schedule for the participants' oral

104. See apps. D and E.

exercises and resolves scheduling conflicts. The Administrator also helps participants with partner selection for the semester.

The Administrator collects, computes, and records all assessments of participant work for the course. To accomplish these tasks, the Administrator must tally approximately 350 firm and 170 individual assessment forms, plus 150 writing assessment forms, for a total of 670 assessments each semester. The exercises are assigned points according to the amount of work required for the exercise. For example, the Tort/Personal Injury exercise is the most complex and runs approximately the entire semester. The work on this exercise is worth twenty percent of the total grade, while the eight representation agreements are worth a total of four percent of the final grade.

A letter grade is based on a combination of two systems. The participants are ranked according to the number of points they received overall and according to how they scored in each exercise. There are differences in how students are assessed among the twenty-nine instructors. However, when all the assessments are tallied there is a clear pattern upon which an accurate letter grade may be based. The letter grade acts as a final assessment comparing a participant's performance in The Legal Practicum with the other participants.¹⁰⁵

C. *Budget.*¹⁰⁶

Each year, the Administrator and Director prepare a budget for the course. The budget is submitted for approval to the Academic Dean. The costs are predictable, and the budget requires only minor adjustments each year, and is accurate to within \$100.

The budget is based on a series of assumptions. Instructors and roleplayers receive minimal compensation. Their stipend does, however, provide recognition of their contributions and permits the Director to set standards of performance that would be more difficult to enforce without some compensation.¹⁰⁷ The first assumption is that The Legal Practicum instructors should be paid on the same hourly basis as part-time adjunct teachers who have full responsibility for a two or three credit

105. *See app. B.*

106. *See app. F.*

107. *Id.*

semester course. The second assumption is that adjunct faculty who are responsible for a full semester course receive \$25 per in-class hour of teaching, plus an additional \$25 per hour for two hours preparation and grading time for every class hour. Therefore, a Practicum instructor who teaches one class hour and grades some written work will be compensated for three hours. A Practicum instructor who grades a substantial amount of written work, e.g., twenty-four short memos and packets of several documents for twelve law firms such as in the dissolution or employment exercises, will be paid an additional amount for additional grading time. A Practicum instructor who teaches in class but does not grade any written work will receive compensation for one hour of preparation for every in-class hour. Finally, judges, mediators and arbitrators who do not assess written work or lecture are paid \$75 per hearing, mediation or arbitration they conduct and critique.

The 1994-95 five-credit Legal Practicum course has an annual budget for instructors, roleplayers, and miscellaneous of \$32,000. The cost allocated to the Administrator and Director depends on the extent of each person's involvement in the course, their base salary, and benefits as employees of the law school. The actual cost of The Legal Practicum also depends on the number of exercises offered each semester and the number of students involved.

V. CONCLUSION

The American Bar Association and the Association of American Law Schools agree that legal education should prepare students for the practice of law by teaching practical skills and professional ethics, developing programs which require "learning by doing," using trained instructors from academia and the legal community, and giving students concurrent feedback and evaluation.¹⁰⁸ The Legal Practicum achieves these ambitious goals in a cost-effective way. There is no reason why all law schools cannot adopt their own Legal Practicum, to help meet the recommendations of the MacCrate Report, and begin to prepare law students to "hit the ground

108. Carl C. Monk, ABA HOUSE OF DELEGATES' ACTION REGARDING THE MACCRATE REPORT, MEM. 94-9 (Ass'n Am. Law Sch. Wash. D.C.), Feb. 14, 1994; *see also* Monk, *supra* note 5.

running.”

APPENDIX A
COMMERCIAL LAW/UCC PROBLEM

COMMERCIAL LAW / UNIFORM COMMERCIAL CODE

CONFLICT MANAGEMENT-MEDIATION / ARBITRATION

Meyers v. Bixbee Dental Supply Company

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COMMERCIAL LAW/UCC

CONFLICT MANAGEMENT - MEDIATION/ARBITRATION

This commercial exercise involves the sale of a dental X-ray machine by a dental supplier to a dentist. The transaction results in an alleged breach of express warranty and the warranty of fitness for a particular purpose. The contract for sale requires the parties to submit to binding arbitration if claims or controversies arise. The exercise is designed so that participants can also resolve the matter through mediation. Participants must analyze the accompanying materials in order to draft necessary documents and to prepare their client for a mediation and an arbitration.

OBJECTIVES

By the conclusion of this exercise participants will be able to:

- (1) Demonstrate in writing an analysis of a commercial contract containing an arbitration clause.
- (2) Demonstrate orally and in writing a basic understanding of the Uniform Commercial Code.
- (3) Prepare for and participate in both an arbitration and mediation.
- (4) Develop objectives and methods of presentation for an arbitration and mediation and compare the differences.
- (5) Interview client to determine the client's needs and expectations.
- (6) Prepare the client for the mediation and arbitration processes.
- (7) Demonstrate persuasive, appropriate advocacy skills in an arbitration and mediation.
- (8) Write a four page memorandum to be used as a position paper/internal memorandum within the law firm summarizing the necessary facts, issues and relevant rules for this arbitration and mediation.

- (9) Prepare the appropriate documents for the arbitration and mediation.

ACTIVITIES

(To be assigned at instructor's option)

- (1) Participate in seminars which address the conflict management processes of mediation and arbitration, the Uniform Commercial Code and contract law.
- (2) Research applicable sections of the Uniform Commercial Code and case law.
- (3) Interview clients to obtain necessary background information and details for preparing all needed documents.
- (4) Prepare a representation agreement setting out all necessary terms of the attorney-client relationship, including fees, and addressing any ethical issues raised by the attorney-client relationship and the work to be performed.
- (5) Prepare a preliminary internal memorandum addressed to a senior partner. It should summarize the necessary facts, issues and initial research, and should detail the relevant rules and procedures. The memo should follow this format:
 - a) 8½ x 11 white paper
 - b) typed, double spaced
 - c) 1" margins (top, bottom, right, left)
 - d) separate headings and subheadings, such as "Client's Position" or "Strategy"
 - e) **NO MORE THAN 4 PAGES IN LENGTH**
- (6) Prepare a short list of creative options for mediation. For each option identify
 - a) why the option is viable
 - b) how it serves the needs of your client
 - c) whether it would be acceptable to other party

- (7) Prepare the client for mediation.
- (8) Represent the client at the mediation. Prepare a three-minute opening presentation outlining facts, issues and options.
- (9) Prepare a brief Statement of the Case which sets out a summary of the facts and the issues. Participants may use a standardized form for this purpose.
- (10) Prepare the client for arbitration.
- (11) Represent the client at arbitration.
 - (a) Make opening and closing statements.
 - (b) Conduct direct and cross examination.
- (12) Establish and maintain a client file, documenting all work on this project.

NOTE

Briefs and memoranda of law **MAY NOT EXCEED 10 PAGES** and shall follow this format:

- i) 8½ x 11, white paper
- ii) Typed, double spaced
- iii) 1" margins (top, bottom, right, left)
- iv) Separate headings or subheadings where needed
- v) 10-page limit is exclusive of table of contents and citations

VERY IMPORTANT

**DIRECTIONS FOR DETERMINING DATES, AGES,
LOCATIONS AND APPLICABLE LAW**

In order to keep this exercise current and workable for any time and place, dates, ages, locations, and statutes MUST be inserted where indicated by a blank line and a bold instruction in parentheses.

DATES

Use a current calendar. Dates are to be calculated from the date the exercise is assigned.

Should an event occur on a holiday, the holiday should be ignored unless specifically indicated by the exercise or the instructor.

Dates are **NOT** an issue in an exercise unless specifically indicated by the instructor.

The following formula will permit correct dates to be inserted where necessary.

- * All dates following the assignment of the exercise are indicated by a "plus" (+) sign, followed by the number of days, weeks, months, or years to be counted:

(day+1), (week+1), (month+1), (year+1)
- * All dates preceding the assignment of the exercise are indicated by a "minus" sign, followed by the number of days, weeks, months, or years to be counted:

(day-1), (week-1), (month-1), (year-1)
- * The date the exercise is assigned is:

(day 0), (week 0), (month 0) and (year 0).
- * **NEVER** count the current day, week, or month when calculating the dates.

The following examples show how to calculate and insert the dates.

Example 1:

- * The exercise is assigned on Friday, October 27, 1989.
-

DIRECTIONS continued

- * Before the date is inserted, the exercise reads as follows:

We purchased the stock on _____ (Wednesday, week -3).

- * Do not count the current week. Count back three weeks. The date that must be inserted is October 4, 1989.

- * After inserting this date, the exercise will now read:

We purchased the stock on Oct. 4, 1989 (Wednesday, week -3).

Example 2:

- * The exercise is assigned on Monday, March 5, 1990.

- * Before the date is inserted, the exercise reads as follows:

I bought the house on _____ (1st Wednesday, month -28).

- * Do not count the current month. Count back 28 months. The date that must be inserted is Wednesday, November 2, 1987.

- * After inserting this date, the exercise will now read:

I bought the house on Nov. 2, 1987 (1st Wednesday, month -28).

AGES

The ages of clients and other people may be found throughout the exercise.

Example:

I was born on April 18, year [-48].

This indicates that the person would be 48 years old.

DIRECTIONS continued

LOCATIONS

Locations such as your city or state must also be inserted as indicated in the exercises. Assume that the exercise occurs in your own city and state unless specifically instructed otherwise by the exercise or instructor.

APPLICABLE LAW

Unless otherwise indicated by the exercise, the law of your jurisdiction will apply.

Example:

- * Before the current statutory reference is inserted, the exercise reads as follows:

The above-named juvenile is alleged to be delinquent pursuant to _____ (state statute) because the juvenile has violated a state/local law as follows ...

- * After inserting the current statutory reference, the exercise will now read:

The above-named juvenile is alleged to be delinquent pursuant to Minn. Stat. 609.015 (state statute) because the juvenile has violated a state/local law as follows ...

CASE FILE

Meyers v. Bixbee Dental Supply Company

MEYERS V. BIXBEE DENTAL SUPPLY COMPANY**PROCEDURAL AND FACTUAL HISTORY**

The client has retained your firm to represent his/her interests throughout this civil litigation. You will be involved in two separate exercises. The first, a mediation where the mediator will attempt to resolve the dispute on a basis acceptable to both parties. You will have an opportunity to exercise your skills in dealing with the mediator, whose ultimate goal will be to have both parties compromise their positions. Regardless of the outcome of the mediation, you will then be involved in a second exercise, arbitration. Here you will have an opportunity to test your skills in presenting an actual case to the arbitrator, opening and closing statements, direct and cross of witnesses, etc. In preparing for each exercise, give careful thought and consideration to the different goals and objectives, the different format that will be involved, and the different approach that you will make to the mediator and arbitrator to accomplish your objective on behalf of your client.

This dispute centers around the purchase of an X-ray processor by Dr. Lee Meyers. Dr. Meyers shares the processor with an orthodontist, Dr. Dale Norton. The processor that was purchased was a used developer, about one year old. Dr. Meyers and Dr. Norton did not use their regular dental supply company, which had advised against the purchase of used equipment. Instead, Dr. Meyers had contacted Bixbee Dental Supply after seeing the company's ad in the Business-to-Business Yellow Pages.

Dr. Meyers had agreed to be responsible for making all arrangements to purchase the developer for the two dentists and met with the representative of Bixbee Dental Supply, Chris Mueller, on Friday afternoon. During that meeting, the following items were discussed:

- a) whether the developer had a daylight loader
- b) whether it included a chemical replenishment kit
- c) the necessary maintenance steps
- d) the price (\$1,600)
- e) repair warranty
- f) delivery and installation
- g) payment

A contract was then signed by both parties, and a copy of the contract has been included. After arriving back at the office, Dr. Meyers sent the check for the full amount. The developer was installed the next day, Saturday. When the two dentists arrived at the office on Monday, they discovered that the developer did not process the type of X-ray films that are used in orthodontic practice, and consequently was worthless for Dr. Norton's purposes.

The dentists then bought a new developer for \$4,100 from their regular dental supplier, Northern Dental Supply. This developer meets all of the two dentists' requirements. Northern Dental Supply installed a "loaner" developer for the two dentists on Tuesday morning.

Dr. Meyers and Chris Mueller talked again on Wednesday. At that time, Dr. Meyers was told that the only remedy under the contract was repair or replacement, that the contract had been signed, that the goods were paid for, and that the goods installed under the contract belonged to Dr. Meyers.

Fact summaries of the parties, witnesses and experts may be supplemented with limited, realistic, background information consistent with the case file. Substantive facts may not be added. Only oral testimony will be permitted for this exercise.

CONSIDERATIONS

- I. **CONFLICT MANAGEMENT - Mediation/Arbitration**
 - A. **Definitions**
 1. **Conflict Management**
 2. **Mediation**
 3. **Arbitration**
 - B. **How does it work?**
 1. **Voluntary**
 2. **Mandatory**
 - C. **How is third-party neutral chosen?**
 1. **Court appointed**
 2. **Consent of parties**
 3. **Contract**
 4. **Statute**
 5. **Other**
 - D. **Who is third-party neutral?**
 1. **Lawyer**
 2. **Non-lawyer**
 3. **Judge**
 4. **Specialization/background considerations**
 5. **Expert/non-expert**
 - E. **Number of mediators/arbitrators**
 - F. **Role of participants**
 1. **Role of neutral**
 2. **Role of attorneys**
 3. **Role of party**
 4. **Role of others**

- G. Rules of evidence
 - 1. Applicability/flexibility
 - 2. Foundation
 - 3. Exhibits
 - 4. Objections
 - H. Is it binding?
 - 1. Court ordered
 - 2. Contract specifies
 - I. How is it enforced?
 - 1. Court order
 - 2. Other
 - J. What are the differences between mediation and arbitration in terms of attorney presentation and client expectation?
 - K. What are the advantages or disadvantages of mediation and arbitration; why would one method be preferable to the other in this factual setting?
 - L. Mediation techniques
 - 1. Private meetings (caucus)
 - 2. Joint session
 - a) definition of
 - b) when used
 - c) advantages/disadvantages
 - d) brainstorming
 - M. Arbitration procedure
- II. PROFESSIONAL RESPONSIBILITY
- A. Role of attorney
 - 1. Settlement discussions
 - 2. Presenting options
 - 3. Persuading client to settle
 - B. Attorney/client privilege

- C. Confidentiality
- D. Conflict of interest
- E. Authority to settle
- F. Representation agreements
 - 1. Billing time - How to bill and what to bill
 - a. Phone calls
 - b. Research
 - c. Legal assistant/law clerk time
 - d. Drafting/reviewing documents
 - e. Court time/appearances
 - 2. Fees - Model Rules of Professional Responsibility
 - a. Contingency
 - b. Straight time (hourly)
 - c. Price per project

III. EVALUATION OF CLIENT POSITION

- A. Sale of goods contract
- B. Parties to contract
- C. Statute of Frauds
- D. Parol Evidence Rule
- E. Warranties
 - 1. Express
 - 2. Warranty of Fitness for a Particular Purpose
 - 3. Validity of claims
- F. Limitations of remedies clauses
 - 1. Failure of essential purpose
- G. Modifications
 - 1. Basis of bargain

- H. Damages
 - 1. Measure
 - 2. Mitigation
- I. Unjust enrichment
 - 1. 1-103 principles to supplement UCC
- J. Mutual mistake
- K. Fraud
- L. Misrepresentation
 - 1. Basis of bargain

BIXBEE DENTAL SUPPLY
CONTRACT FOR SALE OF EQUIPMENT

Lee Meyers _____ (Friday, week -5)
 NAME DATE

4750 Acme Boulevard
 _____ (city/state)

 _____ (Saturday, week -5)
 INSTALLATION DATE

INSTALL AT: above address, between Meyers' and Norton's dental offices

SPECIAL INSTRUCTIONS:

<u>QUANTITY</u>	<u>MANUFACTURER</u>	<u>MODEL</u>	<u>COLOR</u>	<u>DESCRIPTION</u>	<u>PRICE</u>
1	SS Developer			Used	\$1,600

SUBTOTAL PRICE:	\$1,600.00
SALES TAX:	\$ 96.00
TOTAL PRICE:	\$1,696.00
LESS DOWN PAYMENT:	-0-
NET:	\$1,696.00

BIXBEE DENTAL SUPPLY MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, OF ANY KIND, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE EQUIPMENT SOLD HEREUNDER.

FOR THE PERIOD OF NINETY (90) DAYS FOLLOWING INSTALLATION, BIXBEE DENTAL SUPPLY WILL REPAIR OR REPLACE WITHOUT CHARGE, ANY EQUIPMENT WHICH FAILS TO OPERATE PROPERLY, EXCEPT WHEN CAUSED BY MISUSE, NEGLIGENCE, ACCIDENT OR WHEN THE EQUIPMENT HAS BEEN REPAIRED OR SERVICED BY ANYONE OTHER THAN AUTHORIZED PERSONNEL OF BIXBEE DENTAL SUPPLY.

Contract
 Page 1 of 2

CONTRACT FOR SALE OF EQUIPMENT continued

THE PARTIES AGREE TO ARBITRATE ANY CONTROVERSY OR CLAIM RELATING TO OR ARISING OUT OF THIS CONTRACT IN ACCORDANCE WITH THE COMMERCIAL ARBITRATION RULES OF THE AMERICAN ARBITRATION ASSOCIATION (AAA). THE ARBITRATION SHALL BE CONDUCTED BY ONE ARBITRATOR APPOINTED BY THE AAA. THE PARTIES SHALL AGREE TO LIMIT DISCOVERY TO THE EXCHANGE OF CONCISE STATEMENTS OF THEIR RESPECTIVE CASES. JUDGMENT UPON THE AWARD RENDERED MAY BE ENTERED IN ANY COURT HAVING JURISDICTION THEREOF.

THIS AGREEMENT CONSTITUTES THE SOLE OBLIGATION OF BIXBEE DENTAL SUPPLY WITH RESPECT TO THE EQUIPMENT BEING SOLD HEREUNDER, AND IN NO EVENT SHALL BIXBEE DENTAL SUPPLY BE RESPONSIBLE OR LIABLE FOR ANY COSTS OR DAMAGES, INCLUDING CONSEQUENTIAL OR INCIDENTAL DAMAGES WHICH MAY ARISE IN ANY WAY FROM THE PURCHASE OR INSTALLATION OF THE EQUIPMENT SOLD HEREUNDER.

TERMS OF SALE AND PAYMENT:

- Cash through local bank financing
 Cash from existing funds on hand
 Installment contract - Bixbee
 Other -- Check for full amount to be received before delivery

PURCHASER HEREBY AUTHORIZES BIXBEE DENTAL SUPPLY TO DELIVER THE EQUIPMENT ABOVE; PURCHASER UNDERSTANDS THAT PAYMENT FOR THIS ORDER IS DUE ON OR BEFORE DELIVERY OF THE EQUIPMENT AND PERSONALLY REPRESENTS PLAN FOR PAYMENT TO BE AS SHOWN ABOVE.

THIS ORDER IS SUBJECT TO THE TERMS AND CONDITIONS APPEARING HEREON AND ON THE REVERSE SIDE THEREOF, AND PURCHASER AGREES TO BE BOUND THEREBY.

 DATE (Friday, week -5)

 DATE (Friday, week -5)

ss/Lee Meyers
 PURCHASER

ss/Chris Mueller
 BIXBEE REPRESENTATIVE

**COMMERCIAL LAW/UCC
CONFLICT MANAGEMENT - MEDIATION/ARBITRATION
STIPULATED FACT SUMMARY OF DR. LEE MEYERS**

Dr. Dale Norton and I have offices located in the Dental Association Building at 4750 Acme Boulevard, _____ (city/state). We share a room between our offices that contains a casting laboratory and an X-ray film processor.

On _____ (Friday, week -5), the film processor broke down. Dale Norton called a repairperson who came out immediately. After inspecting the machine, the repairperson announced that several major parts needed replacing. Dale asked if the machine was worth repairing. The repairperson replied "Heck, no! This thing is dated; the parts are hard to get and they are expensive. We don't have the ones you need in stock and it could take weeks to get them." After that, Dr. Norton and I talked to our hygienists about the processor and all agreed it was time to replace it.

Dr. Norton and I discussed our options. We decided it would be best to purchase a used developer since we are both planning to retire within the next ten years. We can't be without a developer without losing large sums of patient income.

I offered to take care of the purchasing arrangements. First I called our regular sales representative, Marty Girard, at Northern Dental Supply. Marty said Northern doesn't deal in used goods and cautioned that I should not purchase a used developer. I told Marty that Dr. Norton and I had already decided to buy a used one, and I asked Marty to recommend a supplier. Marty apologized, but would not recommend anyone as there were too many horror stories about used dental goods.

Using the Business-to-Business Yellow Pages, I contacted about five suppliers. None of them dealt in used goods. Then I saw the ad for Bixbee Dental Supply Company and called them. The receptionist referred me to the owner, Chris Mueller. I told Chris that I shared the film processor with an orthodontist in the office next to mine and that we wanted to buy a used processor. Chris said they had a developer in stock. I decided to go right out and meet with Chris.

When I arrived at Bixbee I met with Chris, who told me about this machine that was

FACT SUMMARY OF DR. LEE MEYERS continued

a "wonderful deal." The processor was manufactured by SS Developers, was about one year old, and had been sold to Bixbee by a retiring dentist. Chris also told me that Bixbee reconditions all of its used equipment before displaying it, and the developer was in the adjacent workroom at that moment.

I asked Chris a few more questions about the developer. "Does it have a daylight loader?" Chris replied "Yes." "Does it include a chemical replenishment kit?" Again, Chris replied "Yes." I also asked about maintenance. Giving me a sheet which listed the steps, Chris explained the developer's maintenance program. I lost the sheet, but it was similar to the maintenance required on our old developer. Then I asked Chris what the price was. Chris quoted me \$1,600 and told me it was not negotiable. I asked for 15 minutes to think it over.

I left Bixbee and walked to the phone booth at the street corner. I called Dr. Norton and gave Dale all the details: "They have a developer for \$1,600. It's one year old, has a chemical replenishment kit and a daylight loader. All of that would cost about \$4,000 new. What do you think?"

Dr. Norton said to go ahead if the deal included a repair warranty. Dale thought the price sounded fair.

I returned to Bixbee and asked Chris whether the developer was warranted for repairs. Chris said the deal included a 90-day repair and replacement warranty, got out the contract and showed it to me. Chris pointed out the repair warranty. There were some other clauses about damages and arbitration. I have brought a copy of the contract with me for you. Chris filled in the blanks and then we both signed the contract. I had agreed to pay the whole price at once. Chris said the machine would be installed the next day, even though it was Saturday. I thanked Chris and left.

On the way back to the office, I realized that I had not made sure the machine would develop panoramic X-rays. I had assumed it would because I had told Chris about sharing the machine with an orthodontist, and any dental supplier should know that orthodontists require panoramic X-ray processors. I stopped the car at the nearest phone

FACT SUMMARY OF DR. LEE MEYERS continued

booth, called Bixbee, and talked to Chris. I asked if the developer would process panoramic films. Chris answered, "Yes, I'm quite sure it does."

I told Chris that we had no use for the machine if it didn't, and Chris assured me "I'm positive it handles panoramic films." Relieved to have confirmed this matter with Chris, I returned to the office, told Dr. Norton that the machine had everything we needed and that I was going to send the check to purchase it.

On Saturday, we had our maintenance person let the Bixbee representative in the office to install the developer. On Monday, we got to the office and discovered the developer did not process panoramic X-rays. Naturally, I was furious. I called Bixbee and was told that Chris was not in.

Unfortunately I had already mailed the check for \$1,696 to Bixbee when I returned to the office on Friday afternoon. I tried to reach Chris several times on Monday and Tuesday. Each time, the receptionist told me that Chris wasn't available. Chris had either just left, was with a customer, at lunch or in conference. I left messages every time, asking that my calls be returned as soon as possible.

Dr. Norton called our regular supplier (Northern Dental Supply) on Monday to obtain another developer. The representative came out that day. Dale and I decided to purchase a new developer for \$4,100. The company was able to install a "loaner" developer on Tuesday.

I had to cancel my patients on Monday afternoon to meet with the supplier and select a new machine. I also had to cancel my Tuesday morning patients because they were scheduled for X-rays, but the Northern service person was putting in the "loaner" developer. I bill my time at \$60 an hour.

On Wednesday, I finally reached Chris. Chris told me that I had signed the contract to purchase the developer that was installed and that was all I had paid for. Chris also said that they did not have any used developers in stock which processed panoramic X-ray films, so Bixbee could not replace the developer with one of those. According to Chris, my only remedy under the contract was repair or replacement, and so I was stuck.

**COMMERCIAL LAW/UCC
CONFLICT MANAGEMENT - MEDIATION/ARBITRATION
STIPULATED FACT SUMMARY OF CHRIS MUELLER**

I own Bixbee Dental Supply Company. We specialize in selling new and used dental equipment. I have been in the business for five years. Before that I went to a technical school to learn about dental equipment. I have always been intrigued by the gadgets at the dentist's office and I wanted to be a sales representative, so I decided to sell dental supplies.

Bixbee is the only local supplier that sells used dental equipment. All of our used equipment is reconditioned before it is sold. In addition, we warrant our used equipment for ninety (90) days. During that time, we repair it or replace goods at no charge, unless, of course, the purchaser has done something to damage it. Used X-ray film processors are relatively rare because they don't last as long as some other dental equipment, such as dental chairs, lights and sinks. We only accept used processors for resale if they are less than two years old.

On _____ (Friday, week -5), the receptionist referred a call to me. A dentist, Dr. Lee Meyers, asked if I had any used processors. I told Meyers that we had one in stock. Dr. Meyers sounded delighted and said "I'll be right over." Meyers mentioned that the developer would be shared with an orthodontist.

A short while later, Dr. Meyers arrived. I told Meyers about the developer we had. It was an SS brand processor, about a year old. We had bought it along with a lot of other equipment that a dentist sold us because of planned retirement. The processor was in the back room being reconditioned when Dr. Meyers arrived. I said it was there, but Dr. Meyers never asked to see it.

Dr. Meyers asked me several questions about the developer, but nothing about whether it developed panoramic films. People specify when they want a processor that develops panoramic. Since Dr. Meyers did not ask for a panoramic developer, I, like any dental salesperson, assumed that Dr. Meyers wanted an intraoral developer.

FACT SUMMARY OF CHRIS MUELLER continued

Dr. Meyers asked whether the developer had a daylight loader and a chemical replenishment kit, and also asked about the maintenance program. We went through the maintenance program together and I gave Dr. Meyers the instruction sheet on the processor maintenance.

I thought I could get a good sale price because Dr. Meyers seemed to want the machine badly, so I asked \$1,600 and said the price was not negotiable. Dr. Meyers seemed to accept that price without objection. It was a fair price because used processors are hard to come by.

I was worried that I had lost the sale because Dr. Meyers asked for some time to think it over and left. Meyers reappeared about ten minutes later, asking about a repair warranty. I told Dr. Meyers about our ninety day warranty, got out the contract, and pointed out the repair clause. Dr. Meyers decide to buy the processor. I filled in the blanks on the contract and we both signed it. I brought a copy of it for you.

Dr. Meyers promised to send us a check for the full amount that afternoon. Since they wanted the developer right away, I promised to arrange to install it the next day, even though we aren't usually open on Saturday. I was hoping to attract Dr. Meyers as a regular customer so I wanted to provide good service.

We received Dr. Meyer's check for \$1,696 on Saturday morning. As soon as I got the check, I sent the delivery person to Meyer's office with the machine.

The next week was really hectic because we were training in some new salespeople and many of the manufacturer's representatives had scheduled appointments with me to demonstrate new equipment. Unfortunately, I was lax in returning Dr. Meyer's calls.

Dr. Meyers reached me on Wednesday and I was shocked to discover that the dental office had wanted a panoramic film developer. This was the first I had heard about it. Meyers was furious and I don't understand why. It doesn't seem fair; I should have been told that they wanted a panoramic developer.

I told Meyers we did not have any used panoramic developers. Dr. Meyers did not want to buy a new developer from us and asked for the money back. I figured Meyers had

FACT SUMMARY OF CHRIS MUELLER continued

already bought another one. I gave up trying to get Meyers as a regular customer.

I told Dr. Meyers that the contract was signed, the goods were paid for and that Meyers was stuck with them. Dr. Meyers kept saying that I had promised the processor would develop panoramic X-rays. I never said that. Dr. Meyers claims that we had talked about it later that Friday afternoon when Meyers called me again. But that's not true. The only call I got from Dr. Meyers was the first one asking about used processors.

I don't think we should have to let people like Meyers get away with getting everything they want from us. If Meyers was a regular customer, I would have been more cooperative, but here is this crazy person who insists I made these promises and thinks there shouldn't be any obligation to the signed contract.

STIPULATED INFORMATION ABOUT X-RAY PROCESSORS**Average Retail Prices****NEW EQUIPMENT:**

Panoramic Processor	\$3,150.00
Panoramic Daylight Loader	\$ 300.00
Chemical Replenishment Kit (either kind of processor)	\$ 700.00
Intraoral Processor	\$1,250.00
Intraoral Daylight Loader	\$ 200.00

The distinction between a panoramic and an intraoral processor is obvious on sight. The latter is smaller than the former. Panoramic processors are capable of developing X-rays of the full jaw as well as the smaller teeth X-rays that intraoral processors can develop. Developers last from five to seven years. The large dental suppliers generally discourage trade-ins. Prices of used processors are pretty low - about half the price for a developer only a year or two old. Anything higher than half-price is a poor deal for a purchaser.

DEMAND FOR ARBITRATION

DATE: _____ (Monday, week -3)

TO: Bixbee Dental Supply Company
(Name of Party upon whom demand is made)1000 Crestview Drive

(city/state)FROM: Lee Meyers, D.D.S., Named Claimant, a party to an arbitration agreement
contained in a written contract, dated _____ (Friday, week -5)
providing for arbitration.

The parties agree to arbitrate any controversy or claim relating to or arising out of this contract in accordance with the Commercial Arbitration Rules of the American Arbitration Association (AAA). The arbitration shall be conducted by one arbitrator appointed by the AAA. The parties agree to limit discovery to the exchange of a concise statement of their respective cases. Judgment upon the award rendered may be entered in any court having jurisdiction thereof.

Chris Mueller, manager of the Bixbee Dental Supply Company, delivered and installed a different developer than what was requested and paid for.

Chris Mueller and Bixbee Dental Supply Company were immediately notified of the error. Dr. Meyers, buyer, requested the machine be picked up and the money refunded. Mueller refused the request.

CLAIM OR RELIEF SOUGHT: (amount, if any) \$2,766.00

SS Developer	\$1,696.00
Cancellation 16 patients	\$ 350.00
1 and 1/2 days office shut down	\$ <u>720.00</u>
	\$2,766.00 TOTAL

Fact Summary — Chris Mueller
Page 3 of 3

DEMAND FOR ARBITRATION continued**TYPE OF BUSINESS:**Claimant: Dentist Respondent: Dental Supply Company

HEARING LOCALE REQUESTED: _____ (city/state)

You are hereby notified that copies of our arbitration agreement and of this demand are being filed with the Arbitration Association at its regional office, with the request that it commence the administration of the arbitration. Under the Commercial Arbitration Rules, you may file an answering statement within seven days after notice from the administrator.

Signed: Kim Yamanaka
Kim Yamanaka
Attorney at Law

Name of Claimant: Dr. Lee Mevers
Home/Business Address: 4750 Acme Boulevard
(city/state)

APPENDIX B:
ASSESSMENT FORMS

LEGAL PRACTICUM
Arbitration/Final Trial Assessment

Date: _____

Instructor: _____ Students: _____

ASSESSMENT SCALE

1	Unacceptable; does not meet minimal requirements
2	
3	
4	Acceptably fulfills requirements
5	
6	Exceptional; exceeds all requirements
7	
N/A	Not Applicable

Student Names: _____

OPENING STATEMENT:

Explanation of legal theory and case _____

Explanation of facts to be proved _____

Overall performance _____

DIRECT EXAMINATION:

Proved prima facie case, under any legal theory (survive directed verdict motion or motion to dismiss) _____

Sufficiently detailed and orderly line of questioning _____

Use of understandable questions and avoidance of objectionable questions or responses _____

Development and communication of interest in story being told by witness _____

Proper foundation and identification questions for introduction of exhibits _____

Proper reference to and handling of exhibits _____

Overall performance _____

CROSS EXAMINATION:

Proper question forms: Simple and clear and not unnecessarily open-ended or "how" or "why" questions _____

Listened to witness and flexibly adapted to other areas of vulnerability _____

Controlled witness' responses and maintained proper attitude toward witness _____

Brought out facts to buttress own case and facts to weaken opponent's case _____

Attempted impeachment _____

Overall performance _____

REDIRECT/REBUTTAL:

Brought out information to clarify or rebut cross examination information or other information (award full points if student does not redirect if redirect not necessary) _____

EVIDENTIARY OBJECTIONS:

Objections: Proper under the rules _____

Appropriate as a tactic and timely _____

Overall performance and use and understanding of objections _____

CLOSING ARGUMENT:

Clear, concise and appropriate summary _____

Persuasive and reasoned explanation of facts and law _____

Overall performance _____

COURTROOM DELIVERY:

Proper eye contact, pace, tone and physical gestures _____

Courtroom demeanor and presence _____

OVERALL GRADE _____

**LEGAL PRACTICUM
Mediation Assessment**

Date: _____

Name: _____ Exercise: _____

ASSESSMENT SCALE

- 1 Unacceptable; does not meet minimal requirements
- 2
- 3
- 4 Acceptably fulfills requirements
- 5
- 6
- 7 Exceptional
- N/A Not Applicable

SUBSTANTIVE PRESENTATION

Realistic assessment of client's interests/options	1	2	3	4	5	6	7	N/A
Understanding strengths and weaknesses	1	2	3	4	5	6	7	N/A
Initial option appropriate	1	2	3	4	5	6	7	N/A
Preparation of creative options	1	2	3	4	5	6	7	N/A
Portrayed interests of clients as complementary not competitive	1	2	3	4	5	6	7	N/A
Sought appropriate concessions	1	2	3	4	5	6	7	N/A
Outcome satisfied primary interest of client	1	2	3	4	5	6	7	N/A
Resulted in mutually satisfactory agreement	1	2	3	4	5	6	7	N/A

PERFORMANCE SKILLS

Cooperative, avoided confrontation/polarization	1	2	3	4	5	6	7	N/A
Fostered atmosphere of mutual respect among participants	1	2	3	4	5	6	7	N/A
Avoided excessive personal, emotional involvement	1	2	3	4	5	6	7	N/A
Communicated clearly	1	2	3	4	5	6	7	N/A
Did not fabricate facts or legal authority	1	2	3	4	5	6	7	N/A
Steered clients rather than inappropriate/excessive control of clients	1	2	3	4	5	6	7	N/A
Used imaginative ideas to keep process moving	1	2	3	4	5	6	7	N/A
Proper eye contact, pace, tone and physical gestures	1	2	3	4	5	6	7	N/A

CRITIQUE: _____

 Evaluator

APPENDIX C:
LEGAL PRACTICUM TIMESHEET

APPENDIX D:

CALENDAR

FEBRUARY 1994 LEGAL PRACTICUM CALENDAR PLANNER

TBS = To Be Scheduled
* Graded Oral Exercise

¹ Legal Writing Assignments
² To be scheduled by participant/law firm

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
Legal Writing Meetings This Week TBS ²		1	2 Disciplinary Research Refresher	3	4 DUI <u>Due: Timesheet--Week 4</u>	5
6	7 <u>Due: Tort Defendant's Answer & Counterclaim; Disciplinary Rep. Agreement & Four-Page Memo¹</u>	8	9 DUI	10	11 DUI <u>Due: Timesheet--Week 5 Tort Plaintiff's Reply</u>	12
13 DUI Client Interviews This Week TBS ²	14	15	16 Tort Pre-Trial Litigation	17	18 Dissolution <u>Due: Timesheet--Week 6</u>	19
20 *DUI Negotiation and Hearing This Week TBS ²	21 <u>Due: Dissolution Petitioner's Summons & Petition; Tort Interrogatories; DUI Rep. Agreement & Four-Page Memo¹</u>	22	23 Conflict Management <u>Due: Disciplinary Respondent's Brief¹</u>	24	25 UCC <u>Due: Timesheet--Week 7</u>	26
27 Mediation & Arbitration Client Meetings This Week TBS ² Legal Writing Meeting This Week TBS ¹	28 <u>Due: Dissolution Respondent's Counterpetition; Tort Answers to Interrogatories; CM/UCC Rep. Agreement & Four-Page Memo¹</u>					

APPENDIX E:
CHRONOLOGICAL CALENDAR LIST

LEGAL PRACTICUM

Spring 1994

Assignments and Due Dates
(All Written Assignments and Oral Exercises)

Friday, January 17	Timesheet — Week 1
Week of January 17	Legal Writing Conference 1
Wednesday, January 19	Tort Representation Agreement
Friday, January 21	Timesheet — Week 2
Monday, January 31	Dissolution Representation Agreement
	Dissolution Four-Page Memo (Legal Writing)
	Tort Plaintiff's Summons & Complaint (Legal Writing)
Friday, January 28	Timesheet — Week 3
Week of January 31	Legal Writing Conference 2
Friday, February 4	Timesheet — Week 4
Monday, February 7	Tort Defendant's Answer and Counterclaim (Legal Writing)
	Disciplinary Representation Agreement
	Disciplinary Four-Page Memo (Legal Writing)
Friday, February 11	Tort Plaintiff's Reply
	Timesheet — Week 5
Week of February 14	DUI Client Interviews TBS by law firm
Friday, February 18	Timesheet — Week 6
Week of February 21	DUI Negotiation and Hearing TBS by law firm
Monday, February 21	Dissolution Petitioner's Summons and Petition
	Tort Interrogatories
	DUI Representation Agreement
	DUI Four-Page Memo
Wednesday, February 2	Disciplinary Respondent's Brief (Legal Writing)
Friday, February 25	Timesheet — Week 7
Week of February 28	Mediation and Arbitration Client Meetings TBS by law firm
	Legal Writing Conference 3
Monday, February 28	Dissolution Respondent's Counterpetition
	Tort Answers to Interrogatories
	Conflict Management/UCC Representation Agreement
	Conflict Management/UCC Four-Page Memo (Legal Writing)
Wednesday, March 2	Disciplinary Board Brief (Legal Writing)
Friday, March 4	Mediation Confidential Information Form
	Timesheet — Week 8
<u>SPRING BREAK!</u>	
Week of March 14	Disciplinary Oral Arguments TBS by Administrator
	Mediations TBS by Administrator
Monday, March 14	Dissolution Interrogatories
	Arbitration Statement of the Case
	Employment Representation Agreement
	Employment Four-Page Memo (Legal Writing)
Wednesday, March 16	DUI Billing Statement
Friday, March 18	Timesheet — Week 9
Saturday, March 19	Depositions — Group 1

Week of March 21	Arbitrations TBS by Administrator Juvenile Interviews TBS by Administrator
Monday, March 21	Dissolution Answers to Interrogatories
Wednesday, March 23	Disciplinary Billing Statement
Friday, March 25	Timesheet — Week 10
Saturday, March 26	Depositions — Group 2
Week of March 28	Juvenile Court Observations TBS via Sign Up in Practicum Office Juvenile Negotiations TBS via Sign Up in Practicum Office
Monday, March 28	Juvenile Representation Agreement Juvenile Four-Page Memo
Wednesday, March 30	Will Four-Page Memo (Legal Writing) Depositions — Group 3
Friday, April 1	Conflict Management/UCC Billing Statement
Week of April 4	Timesheet — Week 11 Dissolution Negotiations TBS by law firm Juvenile Hearings TBS by Administrator
Monday, April 4	Legal Writing Conference 4 Tort Group 1 Pre-Trial Motions
Wednesday, April 6	Tort Group 1 Trial Brief Employment Plaintiff's Motion, Notice of Motion, Memo- randum of Law, Affidavits and Order with Findings of Fact and Conclusions of Law (Legal Writing)
Friday, April 8	Dissolution Summary of Position Dissolution Joint Disposition Conference Report Dissolution Pre-Hearing Statement
Weeks of April 11 and April 18	Timesheet — Week 12 Dissolution Settlement Conference TBS by Administrator
Monday, April 11	Tort Groups 2 and 3 Pre-Trial Motions Tort Groups 2 and 3 Trial Brief
Wednesday, April 13	Tort Practice Opening Statements 6:30 p.m. to 8:30 p.m. Employment Defendant's Motion, Notice of Motion, Memorandum of Law, Affidavits, and Order with Findings of Fact and Conclusions of Law (Legal Writ- ing)
Thursday, April 14	Will Client Letter and Will (Legal Writing)
Friday, April 15	Tort Group 1 Pre-Trials 5:30 p.m. to 6:20 p.m. Timesheet — Week 13
Weeks of April 18 and April 25	Employment Oral Arguments TBS by Administrator
Wednesday, April 20	Tort Group 2 Pre-Trials 6:30 p.m. to 7:30 p.m. Tort Group 3 Pre-Trials ____ p.m. to ____ p.m. Juvenile Billing Statement
Friday, April 22	Tort Group 1 Final Trials 8:00 a.m. to 4:30 p.m. Timesheet — Week 14
Thursday, April 28	Tort Group 2 Final Trials 8:00 a.m. to 4:30 p.m.
Friday, April 29	Dissolution Billing Statement Tort Group 3 Final Trials 8:00 a.m. to 4:30 p.m. Timesheet — Week 15
Monday, May 2	Tort Trial Notebook Tort Billing Statement Employment Billing Statement Will Billing Statement Final Timesheet, if you have one

APPENDIX F:

BUDGET

William Mitchell College of Law
Legal Practicum
Proposed 1994-95 Budget

FACULTY	<u>Fall 1994</u>	<u>Spring 1995</u>
1. TORT EXERCISE		
Instructor 1 (Judge) grading written work for 6 firms 7 hrs. in-class 14 hrs. prep/grading 27 hrs. pre-trials/trials 48 hrs. total @ \$25/hr.	1,200	1,200
Instructor 2 (Judge) same justification as Instructor 1	1,200	1,200
2. JUVENILE EXERCISE		
Instructor (Defense Attorney) For fall semester: grading written work fall semester for 12 firms, 24 students 3 hrs. in-class 6 hrs. prep/grading 9 hrs. total @ \$25/hr. =	225	
For spring semester: 3 hrs. in-class 3 hrs. prep/no grading 6 hrs. total @ \$25/hr. =		150
Instructor (Referee) 12 hearings 6 hrs. @ \$25/hr. =	150	150
Instructor (Prosecutor) For fall semester: same justification as defense attorney for spring semester	150	
For spring semester: grading written work spring semester for 12 firms, 24 students same justification as defense attorney for fall semester		225

	<u>Fall 1994</u>	<u>Spring 1995</u>
Instructor (Prosecutor) 12 negotiations (6 hrs.) 12 hearings (6 hrs.) 12 hrs. @ \$25/hr. =	300	300
3. DISCIPLINARY EXERCISE		
Instructor (PR Board) grading written work for 6 firms, 12 students 2 hrs. in-class 4 hrs. prep/grading 6 hrs. total @ \$25/hr. =	150	150
Judge 2 oral arguments 2 hearings @ \$75/hearing =	150	150
Judge 2 oral arguments 2 hearings @ \$75/hearing =	150	150
Instructor (same as instructor only in-kind)		
Judge 2 oral arguments 2 hearings @ \$75/hearing =	150	150
4. DISSOLUTION EXERCISE AND SMALL FIRM PRACTICE		
Instructor (Solo Practitioner) grading written work for 12 firms, 24 students 3 hrs. in-class 6 hrs. prep/grading 4 hrs. additional grading—dissolution documents 13 hrs. total @ \$25/hr. =	325	325
Judge 6 pre-trials 6 hours @ \$25/hr. =	150	150
Instructor (1 hour in-class in-kind)		

	<u>Fall 1994</u>	<u>Spring 1995</u>
5. COMMERCIAL LAW/MEDIATION/ARBITRATION		
Arbitrator		
2 arbitrations		
2 hearings @ \$75/hearing	150	150
Instructor (UCC expert) (1 hour in-class in-kind)		
Instructor (Mediator/Arbitrator)		
grading written work for 12 students		
2 hrs. in-class		
6 hrs. mediations/arbitrations		
4 hrs. prep/grading		
12 hrs. total @ \$25/hr. =	300	300
Instructor (Mediator/Arbitrator)		
same justification as Instructor	300	300
Mediator		
2 mediations		
2 hearings @ \$75/hearing =	150	150
6. DUI EXERCISE		
Instructor (Public Defender)		
grading written work for 12 firms, 24 students		
3 hrs. in-class		
6 hrs. prep/grading		
9 hrs. total @ \$25/hr. =	225	225
Judge		
6 hearings		
6 hrs. @ \$25/hr. =	150	150
Judge		
6 hearings		
6 hrs. @ \$25/hr. =	150	150
Instructor (Prosecutor)		
1 hr. in-class		
1 hr. prep/no grading		
12 negotiations (3 hrs.)		
12 hearings (12 hrs.)		
17 hrs. total @ \$25/hr. =	425	425

	<u>Fall 1994</u>	<u>Spring 1995</u>
7. EMPLOYMENT EXERCISE		
Judge		
3 oral arguments		
3 hearings @ \$75/hearing =	225	225
Judge		
3 oral arguments		
3 hearings @ \$75/hearing =	225	225
Instructor (Employment Law Practitioner)		
grading written work for 12 firms, 24 students		
2 hrs. in-class		
4 hrs. prep/grading		
4 hrs. additional grading—employment documents		
10 hrs. total @ \$25/hr. =	250	250
8. WILL EXERCISE		
Instructor (Will Expert Attorney)		
2 hours in-class (in-kind)		
Instructor (Will Expert-Paralegal)		
grading written work for 12 firms, 24 students		
2 hrs. in-class		
4 hrs. prep/grading		
4 hrs. additional grading—will documents		
10 hrs. total @ \$25/hr. =	250	250
9. REPRESENTATION AGREEMENTS		
Instructor (PR Board)		
grading 24 representation agreements		
1 hr. in-class		
2 hrs. prep/grading		
3 hrs. total @ \$25/hr. =	75	75
10. LEGAL WRITING COMPONENT		
Instructors		
24 students @ \$200/student	4,800	4,800

	<u>Fall 1994</u>	<u>Spring 1995</u>
Legal Writing Coordinator Developing grading guidelines, training, implementation of legal writing component 40 hrs./semester @ \$25/hr. =	1,000	1,000
SUBTOTAL:	\$12,975	\$12,975
ROLEPLAYERS AND MISCELLANEOUS		
Medical Experts 12/semester @ \$75 =	900	900
Juveniles and Mothers 24 @ \$50/law firm =	1,200	1,200
Anna James—DUI 12 @ \$20/law firm =	240	240
Jurors 36 @ \$5 (for lunch) =	180	180
Miscellaneous Donuts for jurors, X-ray photographs, plastic for diagrams, lunches for extra jurors, etc.	530	530
SUBTOTAL:	\$ 3,050	\$ 3,050
TOTAL:	\$16,025	\$16,025
TOTAL FY:	\$32,050	