From the Experts

**Teaching Transactional Law to New Lawyers**

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As anyone who has considered a legal education has heard, law school aims to teach each student to “think like a lawyer.” More accurately, though, law school teaches its students to think like litigators by teaching the curriculum that law professors, trained by the traditional case method, know best: parsing the holdings of cases, closely reading statutes, performing efficient legal research, spotting issues, arguing about policy and writing clearly to support a position. In short, newly minted J.D.s are fit to thrive as appellate litigators. This article describes the problematic absence of transactional legal education, and suggests that the University of Chicago Law School Corporate Lab and complementary experiential courses (with which the three of us are associated) are helping to fill the educational void. This model is particularly timely in light of recent curricular reforms by the American Bar Association and the state of California, described below, which increase the number of experiential education credit hours required to graduate.

The current educational approach fails to properly educate the many law school graduates—especially from the top schools—who do not go on to practice litigation. In fact, many—if not most—of the attorneys at the largest firms practice in transactional groups. Law school simply does not prepare these students for the tasks that they will encounter early on in their careers as corporate attorneys: evaluating business and legal risk in connection with transactions, drafting contracts, negotiating terms in complex agreements and understanding the greater commercial context in which transactions take place. These are not skills that can be taught through the traditional Socratic Method used in schools today; rather, it is only by “doing”—participating in mock negotiations, drafting actual contracts and reviewing documents—that a young lawyer can start to understand business transactions.

To illustrate the divide between law school and legal practice, it is useful to envision the career trajectory of a typical student at a top law school. During law school, she spends the vast majority of her time in school reading cases, listening to professors and fellow students expound on the legal principles gleaned from these cases and outlining black-letter doctrine to spot issues on a three-hour examination. This same student, when she becomes a corporate associate at a law firm, will go literally months without having a case come across her desk. Instead, she will spend her days (and nights) drafting, reviewing and performing due diligence on transactional documents—tasks that she may not have encountered until her summer
Because of this gap, law firms are being forced to provide young associates with robust training—a cost that clients are loath to bear. At a recent panel, Chester Paul Beach, associate general counsel of United Technologies Corporation, stated that his company simply would not pay for first- or second-year associates because “they’re worthless.” And he is far from alone. In 2011, a survey by the Association of Corporate Counsel revealed that 20 percent of the participating 366 in-house legal departments refused to pay for work done by associates in their first two years. This sentiment, and the underlying data, should serve as a signal to law schools that something needs to be done. Indeed, they may not have a choice: the ABA Council of the Section on Legal Education recently voted to require law students to take at least six credit hours of “experiential learning,” which includes simulation courses, law clinics and field placements. In addition, the state of California is in the process of implementing an even more sweeping 15 credit-hour experiential learning requirement.

Exacerbating the separation between legal pedagogy and practice is a lack of teachers who are qualified and willing to teach integrated transactional law classes. Many law schools barely manage to staff introductory and advanced corporate lectures with tenure-track faculty, who prefer teaching more nuanced, high-level doctrinal classes related to their area of specialization. Additionally, foundational corporate practical skills may be difficult for some research-focused faculty members to teach, as many of today’s law school faculty members practiced decades ago, if at all. Professionally competent faculty members who have significant experience in practice must be brought in to help formulate and teach—with the existing faculty—integrated transactional law programs.

Finally, there are few quality teaching materials on transactional law. Even with the plethora of publicly available deal documents, academics have not been able to develop anything resembling useful materials for planning and implementing practical and doctrinal transactional law study. Very few such materials exist, and the ones in use often resemble step-by-step guides to putting together prototypical transactional documents; instead, the goal should be to develop materials that examine the intellectual underpinnings of why—rather than how—certain steps are taken to draft and negotiate deal documents. For any transactional program to be successful, transactions need to be taught within a context and a coherent plan of study. Not surprisingly, in a field where market deal terms change by the season, this can only be accomplished effectively by a seasoned practitioner.

Law school academics must realize that these skills are a necessary component to a strong legal education, and take action to rectify the present structural breakdown. For guidance, they might look to the few schools that have taken action. We suggest that the “laboratory” approach, established in 2009 at the University of Chicago Law School, provides a template for the future of corporate legal training. The Corporate Lab at the University of Chicago provides students with a clinical setting to showcase their knowledge (gleaned from the school’s introductory transactional courses) to in-house counsel at for-profit and not-for-profit corporations. Beyond the lab, Professors David Zarfes (clinical professor of law and director of the corporate lab at the University of Chicago Law School) and Michael Bloom (formerly of the University of Chicago Law School and currently clinical assistant professor of law at the University of Michigan Law School, where he runs a similarly hands-on transactional clinic) have developed a casebook-style text for a Contracts and Commercial Transactions course that teaches students how to think like a corporate lawyer. Together, these courses work to produce better-prepared transactional attorneys.
Although many schools have developed courses ostensibly designed to train would-be corporate attorneys, the programs often suffer from being highly “classroom-based.” To truly teach practical legal skills, a hybrid course—one that brings transactional teaching to the clinical setting—is necessary. Allowing students to collaborate with real clients working in the legal community to whom the students are accountable provides the students with an opportunity to learn client-facing skills while in school (where the stakes are presumably lower) and, simultaneously, test the students’ transactional training in the real world.

This hybrid style of teaching is demonstrated by the popular transactional course offerings at the University of Chicago. The transactional course offerings start with Contracts and Commercial Transactions. Within the course, students use the aforementioned textbook to study “real-world” executed contracts and familiarize themselves with the basic “language of contracts.” By using executed contracts in the same way that decided cases are used as precedent, the course allows students to use skills learned under the traditional casebook method in a more practical manner. Rather than teaching contracts from a drafting perspective, the class forces students to sit down and read a contract in its entirety. This is an improvement on the building-block approach, as it accords with a truth any practitioner knows—that no contract provision can be understood in isolation. The course instead tries to teach students how provisions interact with each other and work to serve a party’s position and interest.

If Contracts and Commercial Transactions is the gateway, the Corporate Lab is the foundational course of the transactional curriculum. Building on the success of clinical education, the Lab provides students with actual, real-world work. Beginning in 2007 with Microsoft Corp. (the Lab's anchor "client" and an invaluable resource since the program's inception), University of Chicago Law School students have worked on projects with both Fortune 500 companies such as Accenture plc, Baxter International Inc., IBM, Northern Trust Corp. and Nike Inc.; and nonprofits such as the Lincoln Center for the Performing Arts and the Chicago Symphony Orchestra. Projects have ranged from drafting bylaws and commercial agreements to conducting due diligence on small acquisitions. By using this setup, the Corporate Lab is able to establish the valuable conventions found in ordinary law firm work while also teaching students in a unique educational setting where students have the time and resources to thrive.

While the lab model may not fit every school’s needs, it provides a pedagogically sound and effective method for narrowing the gap between law school and legal practice in the corporate world. Even for those schools that decline to emulate the lab model for one reason or another, it is critical to recognize that the gap cannot be narrowed through the current system of legal education. The traditional case method of law school expands students’ minds and prepares them to learn and apply new skills throughout their careers. When this method is used exclusively, though, it becomes problematic. The case method must be integrated with another curriculum that provides training in the nuts and bolts of corporate practice, in addition to client-facing skills. Developing such an integrated curriculum will not be a simple or effortless process; rather, it will require faculty to more fully draw on their own experiences and to collaborate creatively with their colleagues and members of the private sector. Moreover, as with any underdeveloped area of the law or legal education, transactional training could open the door for young faculty to develop their careers in novel ways—both directly, by creating new methods of teaching, and indirectly, by writing and publishing materials about integrated curricula.

With or without this added personal incentive, legal educators must remember their calling: to prepare future professionals with enough substantive knowledge, skills and judgment to service
the vast legal market—including the transactional domain. To fulfill this duty, it is incumbent
upon the legal education system to develop a more integrated curriculum that creates proficient
professionals equipped to use their "thinking like a lawyer" to meet the needs of their clients.

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