

Teaching Law by Design

*Engaging Students from the Syllabus
to the Final Exam*

Michael Hunter Schwartz

PROFESSOR, WASHBURN UNIVERSITY SCHOOL OF LAW,
CO-DIRECTOR, INSTITUTE FOR LAW TEACHING AND LEARNING

Sophie Sparrow

PROFESSOR, FRANKLIN PIERCE LAW CENTER

Gerald Hess

PROFESSOR, GONZAGA UNIVERSITY SCHOOL OF LAW,
CO-DIRECTOR, INSTITUTE FOR LAW TEACHING AND LEARNING

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Appendices

The following pages provide examples of how we have implemented the various principles discussed in the book. We have organized this Appendix in the same way we have organized the book. (Note: There are no appendices for Chapters 1 and 2.)

Appendix 3-1: Course Goals

Course Goals for Civil Procedure I Course

- A. Affective—Students and teacher will have a challenging and enjoyable learning experience.
- B. Values. Students will:
 - 1. Demonstrate respect for students, staff, and faculty.
 - 2. Develop an attitude of cooperation with students, faculty, lawyers, judges.
 - 3. Understand the multiple roles of a lawyer in civil dispute resolution.
 - 4. Identify ethical issues involved in civil dispute resolution.
 - 5. Begin to formulate his or her version of the moral lawyer.
 - 6. Demonstrate honesty, reliability, responsibility, judgment, self-motivation, hard work, and critical self-reflection.
- C. Skills.
 - 1. Case Analysis. Students will master the following skills:
 - a. Identification of the elements of a reported opinion: procedural facts, issue, holding, rationale, legal rules, policy.
 - b. Synthesis of a line of related opinions.
 - 2. Statutory Analysis. Students will master the elements of statutory analysis:
 - a. Close reading of the words of the statute.
 - b. Identifying the purpose of the statute.
 - c. Fitting the statute into the broader statutory scheme.
 - d. Using legislative history.
 - e. Using cases interpreting the statute.
 - 3. Legal Problem Solving. Students will master these problem-solving skills:
 - a. Identifying legal issues in simple and complex fact situations.
 - b. Identifying the relevant legal authority and policy.
 - c. Identifying potential alternatives to achieve the client's goals.
 - 4. Legal Argument. Students will be able to make effective legal arguments:
 - a. Identifying the legal issues.
 - b. Identifying the relevant facts, authority, and policy.
 - c. Supporting the client's position with facts, authority, and policy.
 - d. Distinguishing unfavorable facts, authority, and policy.
 - 5. Legal Drafting. Students will draft legal documents that communicate clearly, are persuasive, and comply with applicable rules.
 - 6. Critical Thinking. Students will:
 - a. Evaluate cases, statutes, arguments, documents, and attorneys' actions on their effects on (1) clients, (2) the civil litigation system, and (3) society.
 - b. Challenge assumptions made by judges, legislators, attorneys, students, professors, and themselves.
 - 7. Lawyering Skills. Students will experience basic lawyering skills, such as fact investigation and oral argument.
- D. Content. Students will be able to identify:
 - 1. Alternatives to civil litigation to resolve disputes.
 - 2. The basic law and policy of civil procedure: Jurisdiction, venue, pleading, pre-trial motions, and discovery.

Course Goals for Torts Class

My goal is to have you develop solid skills that will help you as lawyers. Accordingly, I have high expectations for your performance in class and on assignments. I have these expectations because I believe you can do the work, and I will coach you through the process. I demand a lot from you because I seek to prepare you as professionals. I seek to work hard, have fun and have you learn as much about understanding, applying and analyzing the law of torts.

At the end of the course, you should be able to show me in writing and orally how lawyers solve problems in the area of torts—what laws they use, how they apply them to new facts, and how they use those facts to make arguments to judges or juries.

Specific goals include the following:

- A. **Affective.** Students and teacher will have a challenging and enjoyable learning experience.
- B. **Values.** Students will:
 1. Demonstrate respect for students, staff, and faculty.
 2. Develop an attitude of cooperation with students, faculty, lawyers, and judges.
 3. Develop on-going investment and monitoring of professional development.
 4. Identify ethical issues involved in tort issues.
 5. Demonstrate honesty, reliability, responsibility, judgment, self-motivation, hard work, and critical self-reflection.
- C. **Skills.**
 1. **Case Analysis.** Students will master the following skills:
 - a. Identifying the elements of a reported opinion: procedural facts, legally relevant facts, issue(s), holding(s), reasons and policies, legal rules, and disposition.
 - b. Synthesizing a line of related opinions.
 2. **Legal Problem Solving.** Students will master these problem-solving skills:
 - a. Identifying legal issues in simple and complex fact situations.
 - b. Identifying the relevant legal authority and policy.
 - c. Identifying potential alternatives to achieve the client's goals.
 3. **Legal Argument.** Students will be able to make an effective legal argument by:
 - a. Identifying the legal issues.
 - b. Identifying the relevant facts, authority, and policy.
 - c. Supporting the client's position with facts, authority, and policy.
 - d. Distinguishing unfavorable facts, authority, and policy.
 4. **Legal Drafting.** Students will draft legal documents that communicate clearly, are persuasive, and comply with applicable rules.
 5. **Critical Thinking.** Students will:
 - a. Evaluate cases, statutes, arguments, documents, and attorneys' actions on their effects on (1) clients, (2) the tort system, and (3) society.
 - b. Evaluate the strategy and ethics of applying different torts causes of action.
 - c. Challenge assumptions made by judges, legislators, attorneys, students, professors, and themselves.
 6. **Lawyering Skills.** Students will experience basic lawyering skills, such as fact investigation and oral argument.

D. **Content.** Students will learn:

1. The basic law and policy of torts: negligence, intentional torts and products liability.
2. Which tort issues are decided by judges, which by juries (or judges sitting as fact finders.)
3. The interrelationship of different torts causes of actions.

Appendix 3-2: Lesson Objectives

Objectives for a Lesson on Express Conditions

By the end of this lesson, you will be able to:

- a. Distinguish contract terms that unmistakably are promises from contract terms that raise an issue as to whether they are express conditions;
- b. Analyze whether possible express conditions are, in fact, express conditions;
- c. Analyze whether an express condition has occurred;
- d. Articulate the rules dealing with the legal significance of the occurrence or non-occurrence of a condition;
- e. Apply the rules dealing with the legal significance of the occurrence or non-occurrence of a condition to the facts of a case;
- f. Draft a contract term that unmistakably would be treated as an express condition;
- g. Draft a contract term that unmistakably would be treated as a promise.

Appendix 3-3: Syllabi

Torts Syllabus

I. GENERAL INFORMATION

Class Meetings: Room __, Tuesday and Thursday 3:00-4:30 p.m.

Office: Room 214

Phone:

Work:

Home:

Mobile:

Email: _____

Office Hours:

Tuesday 10:00-12:00 - and 1:00-2:30 pm (can modify if these times don't work for you)

Anytime by appointment

During the Tuesday times, unless I have notified you otherwise, I will be in my office with free time; I strongly encourage you to come see me if you have any questions about the class.

You should feel free to come by at other times. If I am not busy I will be happy to talk with you. You can also email me or talk to me after class to arrange an appointment. For questions about course material, I encourage you to post them to the Torts TWEN discussion board—you can do so anonymously. I will answer them if one of your classmates doesn't do so first. Chances are that if you have questions, your classmates do too.

Preferred contact: Drop by or email

II. MATERIALS

Course Materials:

Required: Best & Barnes, Basic Tort Law, 2nd ed. (Aspen 2007).

Recommended:

Joseph W. Glannon, The Law Of Torts: Examples And Explanations (Examples & Explanations) (2005)

A Concise Restatement of Torts, (ALI 2000)

There will be some oral and written exercises during the class—some in teams and some individual. These are required. I will do my best to schedule all exercises and written assignments to avoid conflict with Legal Skills deadlines.

Teaching Assistants:

- _____ 2L, _____ 2L, _____ 2L, _____ 2L
- Will hold weekly sessions at times to be announced
- You can also seek assistance from the TAs by contacting them via piercelaw email

Course website - TWEN -

- Please sign up by September 2
- Please use your piercelaw.edu email when signing up
- All electronic written course materials will be on TWEN
- Please post questions to TWEN—you may post anonymously

Mass Media - articles, clips, web pages - materials we find related to torts

Class handouts

During the semester, I will hand out assignment sheets, exercises and supplementary material in class. Whenever possible, copies will also be available online, on the Torts TWEN site. These become part of your course materials. I will provide you with one hard copy; you are responsible for other copies.

CALI - on-line computer exercises and tutorials - I will let you know when you may find these useful.

III. COURSE GOALS

My goal is to have you develop solid skills that will help you as lawyers. Accordingly, I have high expectations for your performance in class and on assignments. I have these expectations because I believe you can do the work, and I will coach you through the process. I demand a lot from you because I seek to prepare you as professionals. I seek to work hard, have fun and have you learn as much about understanding, applying and analyzing the law of torts.

At the end of the course, you should be able to show me in writing and orally how lawyers solve problems in the area of torts - what laws they use, how they apply them to new facts, and how they use those facts to make arguments to judges or juries.

Specific goals include the following:

- A. **Affective.** Students and teacher will have a challenging and enjoyable learning experience.
- B. **Values.** Students will:
 1. Demonstrate respect for students, staff, and faculty.
 2. Develop an attitude of cooperation with students, faculty, lawyers, and judges.
 3. Develop on-going investment and monitoring of professional development.
 4. Identify ethical issues involved in tort issues.
 5. Demonstrate honesty, reliability, responsibility, judgment, self-motivation, hard work, and critical self-reflection.
- C. **Skills.**
 1. **Case Analysis.** Students will master the following skills:
 - a. Identifying the elements of a reported opinion: procedural facts, legally relevant facts, issue(s), holding(s), reasons and policies, legal rules, and disposition.
 - b. Synthesizing a line of related opinions.
 2. **Legal Problem Solving.** Students will master these problem-solving skills:
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 - b. Identifying the relevant legal authority and policy.
 - c. Identifying potential alternatives to achieve the client's goals.
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 - a. Identifying the legal issues.
 - b. Identifying the relevant facts, authority, and policy.
 - c. Supporting the client's position with facts, authority, and policy.
 - d. Distinguishing unfavorable facts, authority, and policy.
 4. **Legal Drafting.** Students will draft legal documents that communicate clearly, are persuasive, and comply with applicable rules.

5. **Critical Thinking.** Students will:
 - a. Evaluate cases, statutes, arguments, documents, and attorneys' actions on their effects on (1) clients, (2) the tort system, and (3) society.
 - b. Evaluate the strategy and ethics of applying different torts causes of action.
 - c. Challenge assumptions made by judges, legislators, attorneys, students, professors, and themselves.
 6. **Lawyering Skills.** Students will experience basic lawyering skills, such as fact investigation and oral argument.
- D. **Content.** Students will learn:
1. The basic law and policy of torts: negligence, intentional torts and products liability.
 2. Which tort issues are decided by judges, which by juries (or judges sitting as fact finders.)
 3. The interrelationship of different torts causes of actions.

IV. TEACHING AND LEARNING METHODS

Tell me,
I forget.
Show me,
I may remember.
Involve me,
And I'll understand.
— Confucius

We will use a variety of teaching/learning methods to achieve the goals of this course, to keep things interesting, and to accommodate various learning styles. I ask for your forbearance when I am using a style that works for others, but not for you.

The methods include:

- A. Teacher and student presentation
- B. Whole class, small group and team discussion and problem solving
- C. Simulations - preparation of legal documents and participation in legal proceedings
- D. CALI
- E. Practice exams and quizzes
- F. Writing assignments
- G. Other

V. ROLES

- A. **Teacher**
 1. Work hard to help students succeed in the course
 2. Share knowledge
 3. Model skills and values
 4. Provide feedback to students
 5. Lead in course and class design
 6. Lead in maintaining a positive, challenging learning environment
 7. Provide feedback to students
 8. Grade student performance
 9. Other

B. Students

1. Work hard to achieve the goals of the course
2. Assist in course and class design
3. Actively contribute to maintaining a positive, respectful, challenging learning environment
4. Share knowledge
5. Provide feedback to teacher and other students
6. Cooperate and collaborate with other students working in teams
7. Other

VI. PROFESSIONAL ENGAGEMENT IN LAW SCHOOL

As you may know, you are creating your professional reputation in the law. Accordingly, please behave as the best attorneys do. This includes paying attention and responding to what others say as well as working with others to collectively learn the material. Please be prepared for class and to be ready to work. Please listen to others, avoid dominating discussion, take the initiative to improve your skills, take risks and be resourceful. Please seek help when you realize you need it or when recommended. Please show up every day on time and stay in class the whole time. If you have questions about this, please contact me.

You will all be working in teams of 6-7 students. I will assign you to your teams on the first day of class. Everyone in the team has the responsibility of making sure that the team works together effectively and efficiently.

If you are unable to attend a class due to illness or other good reason, please notify me and your team in writing **before class**, if at all possible. You may receive an excused absence if you notify me **in writing** why you need to miss class and provide me with sufficient information for me to excuse you. You will automatically be excused for an absence due to religious observation **if you have provided advanced written notice**. Such absence will not count toward your maximum absence total for the semester. If you are not comfortable explaining your reason to me, please contact the Assistant Dean for Student Affairs. Providing notice in writing may be done through email.

If you accumulate 4 or more unexcused absences, you will fail the course and you will be given an “F” in the class.

You are responsible for learning information and getting the handouts provided in class or made available online. If you missed class, talk to classmates to learn what happened and get notes. After talking to classmates, if you have additional questions, talk to TAs and me.

When you are in class, please be *prepared* to participate in the discussion—and to *engage*. Being “prepared” does not mean you have become an expert on the material; it does mean that you will have read (generally more than once for court opinions) and thought about the assigned materials, completed assigned work, and be ready to engage and discuss this work with others. You will not be penalized for asking what you might think are “stupid questions” or letting me know when you are confused. You are responsible, however, for asking questions when you do not understand material.

In class, you are each responsible for participating to an appropriate extent, i.e., neither being silent nor dominating the discussion, but doing your share of the talking.

If you cannot prepare for a class, please notify me that you are unprepared at the beginning of class. Being unprepared counts as an unexcused absence. If you are not prepared for some classes, I may ask you to leave. This would be because we will be discussing

material specific to a graded assignment, and it is only appropriate to have the discussion with students who have already completed the assignment.

Professional engagement includes:

- *Resourcefulness.* If you have a problem, first try to figure out a way to solve it.
- *Taking risks.* For some of you, this means volunteering to speak in a class. For others, it is the risk of being silent and not leading a small group discussion. It may mean admitting that you are off track or that you need help with an aspect of the course.
- *Behavior in class.* Interrupting others, talking while whole class instruction or discussion is going on, or making disparaging remarks about other students is unacceptable. If you have been assigned an in-class exercise and find that you have finished it before others, ask for feedback or work on other aspects of the course. Encouraging and allowing others to talk is as important as your talking. Listening skills are an enormous aspect of effective lawyering.
- *Computer usage.* Because of computer abuses, using a computer in a way that does not support your learning—checking email, surfing the internet, IMing, etc.—will be considered an absence from class.
- *Attitude.* Having a positive approach to working with others is important. You are welcome to voice your questions, concerns, and complaints about the course. You are asked to do so directly to me, in person. If you have a complaint, be prepared to offer a solution.
- *Depth and thoughtfulness of your work.* This includes in-class contributions and written assignments.
- *Investing in your learning and growing from your mistakes.* If you have received feedback on an assignment, try to understand it and use it. If one learning approach has not worked effectively, try another, and reflect on what works. Ask questions about material you don't understand, and struggle with analyzing a problem before giving up. If you sense you are falling behind, based on exercises and class assignments, please ask for help.
- *Effort and perseverance.* This overlaps with some of the other categories but bears repeating. A student who does not give up, but keeps working to develop his or her skills, regardless of where he or she is, is acting professionally.
- *Timeliness.* Completing all assignments on time.

VI. EVALUATION AND GRADES

A. Principles (not negotiable)

1. Multiple (more than one evaluation)
2. Varied (different methods of evaluation)
3. Fair (opportunity for practice and feedback; clear directions and criteria)

B. System (negotiable)

Your grade in the course will be based on the total number of points you earn each semester. Points will be awarded for a variety of written assignments (documents, short essays, quizzes) and exams (part essay, part multiple choice). In addition, there may be in-class writing throughout the semester.

C. Graded Performances

There will be up to six short, multiple choice Readiness Assessment Quizzes (RAQs) given during the course—one *toward the beginning* of each unit. (The

same RAQs will be given to individuals and to teams.) There will be one final take home open book exam, and two team open book application assessments.

D. Grading Criteria:

Scores in three major performance areas will determine the grades in this class: Individual performance, team performance, and team contribution.

Grade weights*	Within Area	% of Total
1. Individual performance		<u>45%*</u>
Individual Readiness Assessment Quizzes (0–50%)	50%*	
Individual Final Exam Open Book (50–100%)	50%*	
2. Team Performance		<u>40%*</u>
Team Readiness Assessment Quizzes	34%	
Team Assessment I	33%	
Team Assessment II	33%	
3. Team Contribution (Evaluated by Peers)		<u>15%*</u>

*As decided by Torts students, Class 1, Tuesday, August 26, 2008

Environmental Law Syllabus

I. GENERAL INFORMATION

Office: Faculty Suite 427

Phone: _____

Office Hours:

Tuesday 11:00-4:00

Thursday 10:00-11:00

Anytime by appointment

Email: _____

Faculty Assistant

Faculty Suite

_____ (assistant's phone number)

_____ (assistant's e-mail address)

II. MATERIALS

A. Course Books

1. Percival, Schroeder, Miller, Leape, ENVIRONMENTAL REGULATION: LAW, SCIENCE, AND POLICY (5th. ed. 2006)
2. ENVIRONMENTAL LAW STATUTORY AND CASE SUPPLEMENT WITH INTERNET GUIDE (Aspen, 2008-2009)
3. Hess, ENVIRONMENTAL LAW - SPRING 2009 SUPPLEMENT (available on TWEN)

B. Mass Media

C. Documents

D. TWEN

E. Internet

G. Video

H. CALI

III. GOALS

A. Teacher and students will have an enjoyable and challenging learning experience.

B. Content. Students will learn the overview and most important details of the following:

1. Environmental Law Perspectives (personal, ecological, economic, philosophical, historical, risk)
2. Administrative agency actions and judicial review
3. National Environmental Policy Act
4. Clean Water Act
5. Endangered Species Act
6. Clean Air Act

C. Skills. Students will:

1. Refine statutory analysis skills through standard of review, statutory language, statutory purpose and policy, overall statutory scheme, legislative history, regulations applying the statute, cases interpreting the statute.

2. Analyze problems involving environmental law in real life.
3. Develop presentation skills relevant to working with environmental law issues in real life.

IV. COURSE DESIGN

We will spend part of the first class session engaging in course design. We will make collaborative decisions regarding course goals, methods, roles, responsibilities, and evaluation. In particular, we will address the following design issues.

Goals (What do you hope to get out of the course? What content and skills do you hope to learn?)

Teaching and Learning Methods (What methods should we use to achieve the goals of the course?)

Student Role and Responsibility (What do you expect of yourself and your fellow students?)

Teacher Role and Responsibility (What do you expect of me?)

Evaluation. (See the next page for a proposed evaluation system. Do you have suggestions for changes in the proposal?)

V. EVALUATION

- A. Principles
 1. Multiple
 2. Varied
 3. Fair (clear directions and criteria)

- B. Methods. Your grade will be based on your performance in the following areas:
1. Paper (30-50%). The purpose of the paper is to assess your ability to critically analyze a real-world situation based on the content and skills you learned in this course. You must choose a subject related to the coverage of this course. The paper cannot exceed 10 pages, double spaced.
 2. Exam (30-50%). The purpose of the exam is to assess your knowledge of the course content and statutory analysis skills. The final will be a three-hour open book exam. The format will be part essay and part multiple-choice.
 3. Participation (20%) Successful completion of all of the following would earn the full 20% for this portion of the grade. Successful completion of less than all of the following would earn a lower percentage, based on my judgment.
 - Prepare for, attend, and be actively involved in all class sessions
 - Complete five short writing/research/presentation assignments. Each project is limited to one page, single-spaced. Brief descriptions of these projects follows:

Web site review. The purpose is to locate and review a Web site related to environmental law covered in this course. For example, there are applicable Web sites maintained by federal and state agencies, public interest groups, and industries. The paper should give the site's URL, describe the site, explain its usefulness, and include your reflection on what you learned from the site.

Public comment. The purpose is to make public comment in a proceeding relating to a portion of environmental law covered in this course; for example, a proposed rule, a permit application, or an EIS. The paper should contain the text of your written or oral comment and your reflection on what you learned from the comment process.

One of these:

NEPA document. The purpose is to locate and describe an environmental assessment, environmental impact statement, finding of no significant impact, or other NEPA document. The paper should describe the document, explain its usefulness or applicability, and include your reflection on what you learned from the document.

ESA recovery plan or guidance. The purpose is to locate and describe a recovery plan, listing decision, USF&WS guidance document, or other comparable ESA document. The paper should describe the document, explain its usefulness or applicability, and include your reflection on what you learned from the document.

One of these:

CAA emission limit, permit, or guidance. The purpose is to locate and describe an emission limit for an industry, a permit for an industry, an EPA guidance document related to the CAA, or a comparable CAA document. The paper should describe the document, explain its applicability or usefulness, and include your reflection on what you learned from the document.

CWA effluent limit, water quality standard, NPDES permit, or guidance. The purpose is to locate and describe an effluent limit for an industry, an NPDES permit for an industry or municipality, a state water quality standard, an EPA guidance document related to the CWA, or other comparable CWA document. The paper should describe the document, explain its applicability or usefulness, and include your reflection on what you learned from the document.

One of these:

Interview. The purpose is to report on an interview with a person involved with some portion of the environmental law covered in this course. For example, the interview could feature an environmental lawyer, a regulator, or a person subject to regulation. The paper should describe the person's views of environmental law in practice and include your reflections on what you learned from the interview.

Field trip. The purpose is to see an industry, business, governmental facility, or site affected by environmental law covered in this course; for example, a wastewater treatment facility, industrial facility, or a farm. The paper should describe how the site or facility is governed by some aspect of the law we covered in this course and your reflection of what you learned from the trip.

SPRING 2009 SCHEDULE

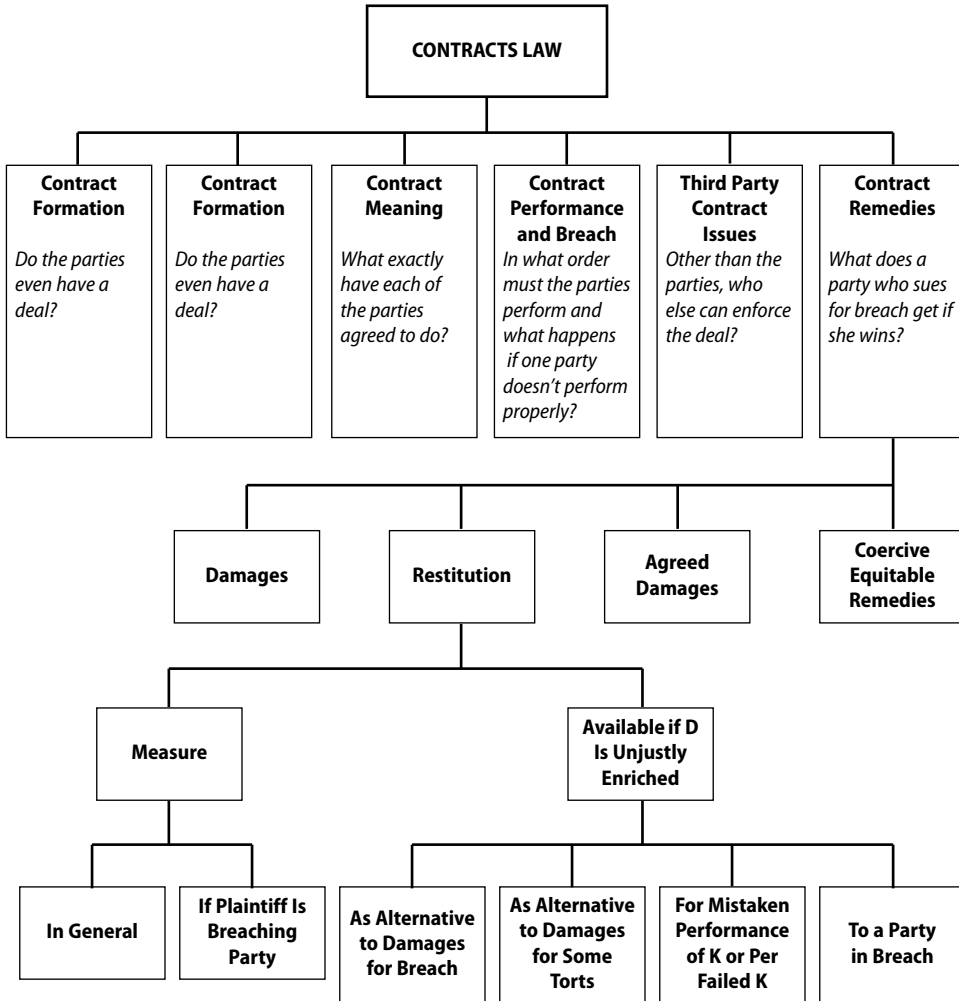
<u>Week</u>	<u>Unit</u>
January 12	1
January 19	2
January 26	3A, B
February 2	doc, 3C, D
February 9	3E, 4A, B
TFebruary 16	4C, D
February 23	4 E, F, G
THMarch 2	4H, I, J
March 9	Spring Break
March 16	5A, B
March 23	5C, D, E
March 30	6A, B
April 6	6C, D
April 13	6E, F, G
April 20	6H
April 27	Papers
Papers due in class on April 24 .	
Final Exam on May 11 at 1:30.	

Appendix 4-1: Charts, Tables, and Diagrams

Dismissal under FRCP 41 Chart

Type of Dismissal	Subsection of FRCP 41?	Which party uses this type?	When is this type used?	With or without prejudice?
Voluntary Notice of Dismissal				
Voluntary Stipulation for Dismissal				
Voluntary Order for Dismissal				
Involuntary				

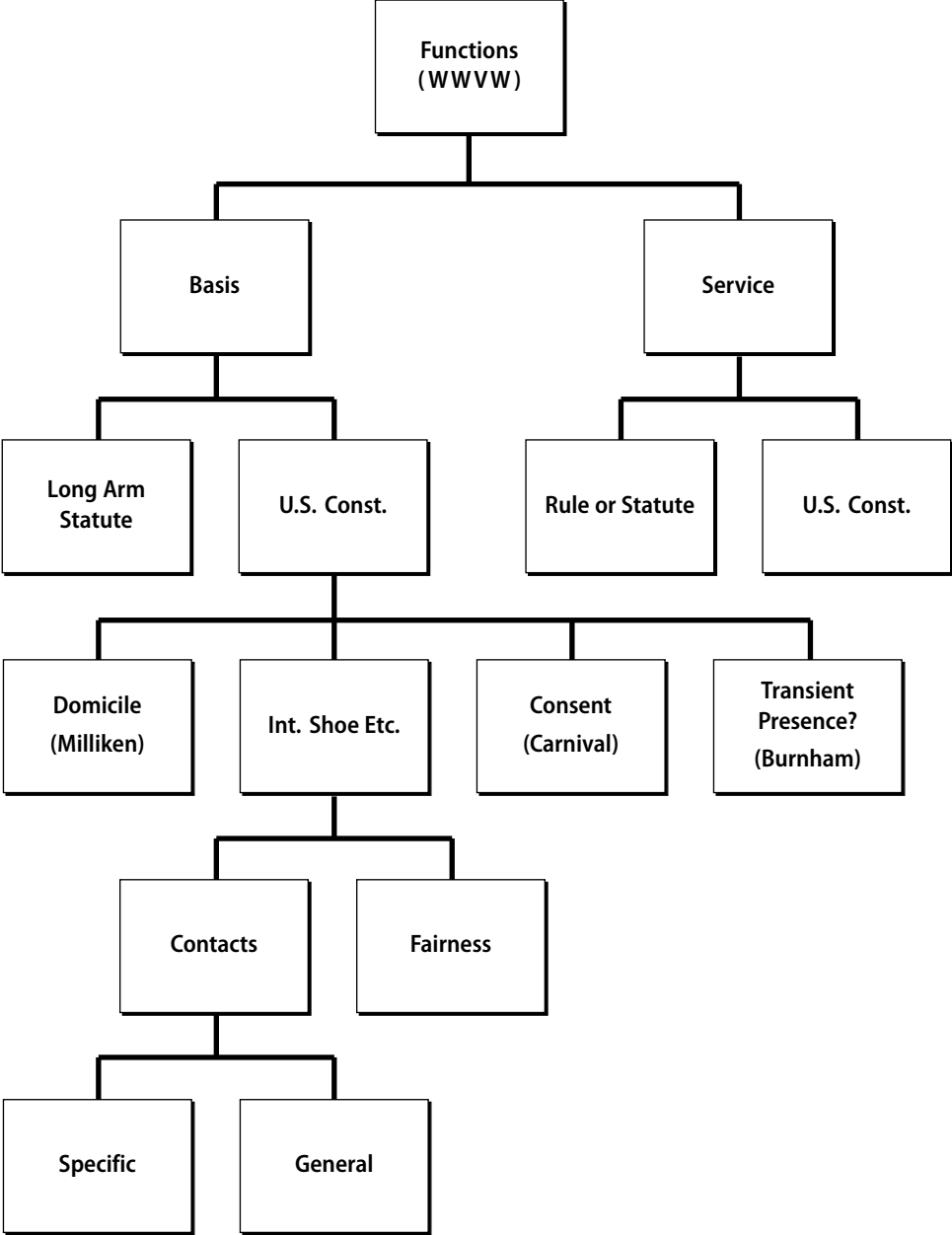
Chart Depicting Restitution in the Context of a Contracts Course



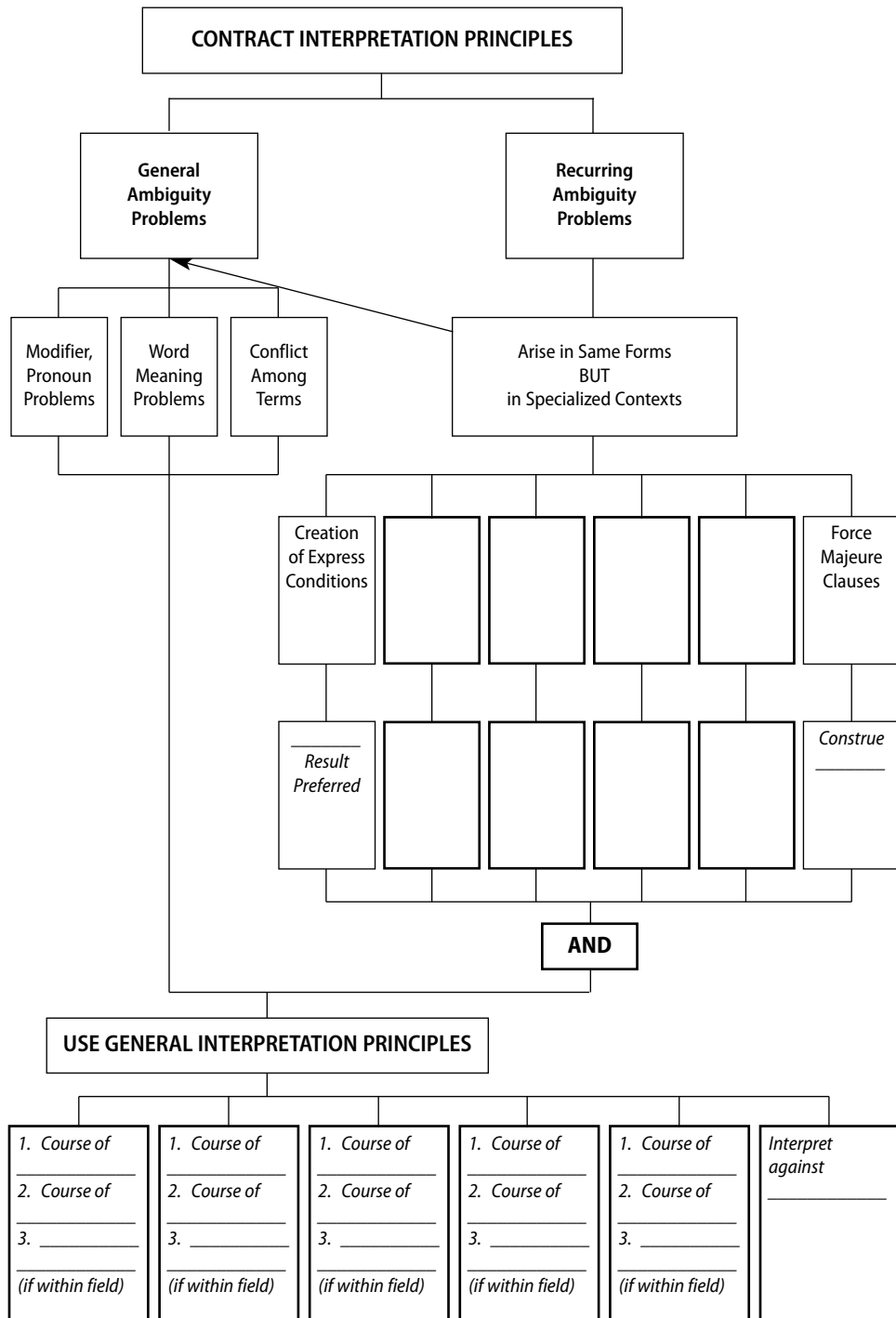
Common Contract Terms Chart

Name of Clause	Goal of Clause
Covenants not to compete	<i>Communicates that an employee or a seller of a business cannot compete (for a specified period of time and within a specified locale) with the employer or buyer.</i>
Liquidated damages	<i>States an amount one or both parties should be awarded by a court if the other party breaches the contract.</i>
Merger	<i>Communicates that the written document contains all of the terms to which the parties have agreed and that, therefore, prior agreements that are not reflected in the written document are not part of the parties' contract.</i>
No oral modification	<i>Indicates the parties only can modify the contract in writing and not orally.</i>
Force majeure	<i>Lists circumstances, usually natural disasters and wars, under which a party can avoid having to perform the contract without penalty.</i>
Time is of the essence	<i>Uses the words "time is of the essence" to communicate an expectation about timely performance of the parties' contract promises.</i>
Choice of law	<i>States the body of law that will govern any dispute between the parties. May also limit the state or city in which either party may file suit. (Lawyers may refer to this latter provision as a jurisdiction clause.)</i>
Arbitration	<i>States an agreement that disputes under the contract will not be decided by a court but, rather, by an arbitrator. Usually includes details about the selection process for arbitrators.</i>
Indemnification	<i>Communicates that, if one party is sued for a matter relating to the contract, the other party will pay for the costs of defending the suit and will pay any award of damages ordered by the court.</i>
No assignments	<i>States that the rights conferred under the contract (and, in some instances, the duties imposed under the contract) cannot be transferred to someone else.</i>
Savings	<i>Indicates the parties have agreed that, if a court invalidates a particular term of the parties' contract, the rest of the contract will remain enforceable.</i>

Personal Jurisdiction Analytical Framework



Partially Completed Graphic Organizer Synthesizing Contract Interpretation Principles



Appendix 5-1: Role Plays

Civil Procedure I Oral Argument Role Play

The arguments will be based on the problem on the next page.

With a partner, prepare a short oral argument. You and your partner will have a total of 10 minutes for your arguments (5 minutes each). Limit your argument to specific jurisdiction. One partner should argue the contacts analysis and the other partner should argue the convenience/fairness analysis. Your arguments should focus on the applicable U.S. Supreme Court cases/analysis/policy. You may address the Fifth Circuit's opinion in *Revell* if you think it is appropriate.

You and your partner will be opposed by two other students. Defendant's lawyers argue first. Neither side gets rebuttal time.

Do not spend your time doing any research for this argument. All the law you will need is contained in the cases we covered in Unit 2B. To prepare for your argument, I recommend the following:

- Review the handout "Playing to the Bench" at pages 33-36 of the Fall, 2008 Civil Procedure I Hess Supplement.
- Review the oral argument rubric (see page three).
- Take notes and ask questions on my short lecture on oral argument.
- Observe the demonstration arguments in class on September 18 and 19.
- Outline, but don't memorize, your argument.

Four students will argue in class on September 18 and four more on September 19. If you (or you and a partner) would like to volunteer for the in-class arguments, please email me. All other arguments will take place outside of class from September 20-23. The signup sheets for the arguments are posted on the glass case outside of classroom 143 beginning Tuesday, September 16. Be sure to sign up on the sheet for your section (2 or 3).

After you complete your argument, fill out a self-assessment on the rubric. The rubric is posted in the Handouts section of our TWEN site. Address each of the four major categories (Structure/Substance, Communication, Responding to Questions, and Overall Reflections). You do not need to address every sub-point in each category. Your assessment/reflections must not exceed the one page rubric form. Your response is due in class on Tuesday, September 30. Put your midterm exam number at the top of the rubric.

This assignment is worth ten points. You will receive ten points if you complete the argument and the rubric, including your correct midterm exam number.

Good luck!

Oral Argument Problem - Fall 2008

Defendant, Timothy Dent, is a resident of Syracuse, New York, who does business as “mrlister.” Dent operates a warehouse in Syracuse, New York. Dent sells items through internet auctions on the website www.eBay.com (“eBay”). Dent uses the Syracuse warehouse as part of the online business and lists the warehouse address as the location of his store.

Plaintiff, Maria Paz, is a resident of Portland, Oregon. Paz is an art collector, who specializes in 19th century Spanish sculpture. Paz successfully bid for sculptures in two auctions that Dent conducted through eBay. These two auctions involved the sculptures “Suzanne” and “Iguana” by artist Pedro Menna. Paz alleges that she believed she was bidding on the original artwork because the online auctions identified the sculptures as “Menna sculptures” and included close-up photographs of what appears to be the artist’s signature. The auctions in question took place over several weeks, and during the auctions, Paz regularly received updates via email regarding the bidding, Paz regularly logged onto the website to monitor the progress of the auctions, and regularly participated in the auction by raising her bid. After winning both auctions, Paz and Dent exchanged several emails, to verify payment terms and shipping arrangements. Paz’s emails to Dent contained her Portland, Oregon address and she arranged for Dent to ship the sculptures to that address. Paz sent a check for \$7,000 to Dent’s listed address in Syracuse, New York. Dent accepted this payment and cashed Paz’s check.

Dent informed Paz via email that the sculptures were copies authorized by Menna, not Menna originals. Dent never shipped the sculptures, but offered, via email, Paz an apology for the misunderstanding and a full refund. Paz refused this refund and demanded the original sculptures or the fair market value of the originals, which Paz alleged to be \$40,000. Paz filed this action in state court in Portland, Oregon on June 10, 2008 alleging Breach of Contract and Fraud. Paz requested compensatory damages of \$40,000 and punitive damages of \$500,000.

Paz provided printed copies of the computer screen displays from the two auctions in question. The auction screen displays information about the item up for bid, the status and progress of the auction, other bidders, the seller, the seller’s rating on eBay, and the seller’s shipping terms. Under the heading “Seller Information,” these screen printouts identify the seller as “mrlister” and display a “Feedback Score” showing “Positive Feedback” of 99.5%, and indicating that “mrlister” has been a “Member since Sep-10-00 in United States.” In addition, “mrlister” is identified as an eBay “Power Seller.” This information appears to come from eBay. The “Seller Information” includes a promotion to “Visit this seller’s eBay Store!” and provides a link to an “eBay store” identified as “MrLister.” The “eBay store” for “MrLister” provides headings and links for “Antiques & Collectibles,” “Jewelry & Watches,” “Clothing Other & SPECIALS,” “Computers & Electronics,” and “Other.” Just below this listing, the site prominently displays a “Mr. Lister” logo that includes the phrase “100% Satisfaction Guaranteed.”

Dent provided an affidavit regarding his business. Over the past eight years, he has auctioned over \$4,000,000 worth of merchandise on eBay via thousands of auctions. He has made “modest” profits. He has two employees; both work at the warehouse in Syracuse, NY. Dent does not advertise his business. Successful bidders have come from over 40 states, including Oregon. Dent has never been to Oregon for business or pleasure.

Dent responded to the complaint with a motion to dismiss for lack of personal jurisdiction. Neither side is arguing about subject matter jurisdiction, venue, the long-arm statute, or service of process, so do not address those issues in your oral argument.

Civil Procedure Oral Argument Rubric - Fall 2008

Midterm Exam # _____

<p>Structure and Substance</p> <p>Introduction - roadmap</p> <p>Substance</p> <ul style="list-style-type: none"> Law - elements Policy Application of facts <p>Conclusion - relief requested</p>	
<p>Communication</p> <p>Verbal</p> <ul style="list-style-type: none"> Clarity Pace Passion Respectful tone <p>Nonverbal</p> <ul style="list-style-type: none"> Eye contact Posture Gestures 	
<p>Responding to Questions</p> <p>Listen to question</p> <p>Answer directly</p> <p>Transition to argument</p>	
<p>Overall Reflections</p> <p>What you learned</p> <p>Assessment of performance</p> <p>Value of assignment</p> <p>Other</p>	

Client Counseling and Insurance Policy Analysis Exercise

For the purposes of this assignment, assume you are an associate attorney with the law firm of Smith & Smith. Attached to this instruction sheet is a memorandum from the senior partner in the law firm asking you to write a letter to the firm's biggest client. Below, I describe the rules and standards applicable to this assignment. The purposes of this assignment are twofold and reflect the course objectives: (1) to enhance your client counseling and legal writing skills; and (2) to continue your development of the skill of reading and analyzing insurance policies.

1. **Points available on the assignment.** The assignment is worth 25% of your course grade. There will be 100 points available on this assignment.
2. **Deadline.** The assignment is due at 5:30 pm on the last regular day of class, which is Wednesday, April 21, 2006.
3. **Draft feedback.** You may turn in a draft of your paper one time for feedback no later than 5:30 pm on Wednesday, April 5, 2006. I will need one week to complete such feedback. Please submit your draft electronically and in Microsoft WORD to my secretary, Jessica Johnson at _____.
4. **Format of paper.** The attached memorandum asks you to write a letter to a client. I expect you to use a formal letter format for your paper. You therefore must include the date, the name of the recipient, the name of the company client and your law firm, the job title of the recipient and the business addresses of both the law firm and the client. Also include a line indicating the subject of the letter (i.e., "Re: ..."). Fully justify your letter left. Do not indent paragraphs but do skip a line between paragraphs. You must type your paper, use one inch (1") margins, and use Times New Roman, 12 point size font. Your paper also must be single-spaced and no more than six pages long. I will deduct points (up to a maximum of 10) from your score for each failure to comply with any of these instructions.
5. **Use Your Exam Number, Not Your Name.** Do not place your name anywhere on your paper. Use your exam number. Sign your letter, *Associate # _____* (insert your exam number).
6. **Standards to be applied in grading the assignment.** I plan to assign the following weights to what I regard as the three aspects of this assignment: Analysis of the Policy - 50%, Client letter-writing skill - 20%, Grammar, usage, Word Choice, Organization, etc. - 30%. I describe each of these categories in more detail below.

Analysis of the policy. I will evaluate your analysis in terms of the sophistication of your reading and explanation of the policy and degree to which your analysis reflects an understanding of the policy and the legal authorities we have discussed in class. The letter from your client asks you to explain the policy and to address three issues. I will assign points to each of these four tasks based on each task's difficulty.

Client letter-writing skill. I will evaluate your client letter-writing skills in terms of the standards set forth in the PowerPoint slideshow posted to the course web-page.

Grammar, usage, etc. I expect to find no errors in your papers that could be caught by using the grammar and spell check features on most word processing software. Students who fail to correct such errors will receive especially heavy point deductions from their scores. I also will deduct significant points for other grammar, usage, word choice and organization errors.

7. **Work alone. YOU CANNOT WORK WITH ANY OTHER PERSON ON THIS ASSIGNMENT IN ANY WAY.** Do not discuss this assignment or your paper with anyone, including, but not limited to, any student, tutor, law professor, proofreader, attorney, friend, relative, spouse, significant other or child.
8. **Library for assignment.** This assignment is a closed library assignment. You may rely only on cases actually reprinted in your casebook. This assignment takes place in the fictional state of Columbia. Columbia is a new state that has not yet decided any insurance law cases. Consequently, all of the cases in your casebook are, at most, persuasive authority.
9. **Examples.** Attached to this document you also will find examples of the various possible sections of a client letter to an attorney based on the *Atwater Creamery Company v. Western National Insurance Company* case on page 55 of the Abraham Insurance Law and Regulation text.
10. **Questions about assignment.** Please post all questions about this assignment to the course webpage forum designated for such questions. I will only answer questions that would be appropriate for a junior associate to ask a senior associate.

SMITH & SMITH, ATTORNEYS AT LAW

MEMORANDUM

Date: February 27, 2006
To: Associate Exam # _____
From: Senior Partner Samantha Leigh Smith
RE: Client Request for Advice Letter

I attach to this memorandum a copy of a letter from Kendra Lynn, vice president and in-house counsel to All Medical Testing Laboratories, Inc. ("AMTLI"), the largest medical testing laboratory in Columbia City, Columbia.

Ms. Lynn has asked us to evaluate the policy form AMTLI received from RA&MCO, the largest insurer doing business in the state of Columbia. Although Lynn is an attorney, she has served in a business role with AMTLI for the past fifteen (15) years, and she has no background whatsoever in insurance law. She also may show this letter to Stacey Hunter, the president of AMTLI. Consequently, while you can assume Ms. Lynn is a sophisticated reader, you need to be careful to respond to her queries in plain and, mostly, non-legal language.

Please prepare a detailed response to Lynn's letter. Please keep in mind that AMTLI is a new client and already is the firm's largest client. I trust you will make a good impression.

ALL MEDICAL TESTING LABORATORIES, INC.

11111 SOUTH STATE UNIVERSITY AVENUE, COLUMBIA CITY, COLUMBIA 11111-1111

February 27, 2006

Samantha Leigh Smith, Esq.
Smith & Smith, Attorneys at Law
22222 Peter, Paul & Mary Street, Suite 1000
Columbia City, Columbia 11111-1111

Re: RA&MCO's Testing Laboratories Professional Liability Insurance Policy

Dear Ms. Smith:

I enclose a copy of the above-referenced insurance policy. As I mentioned to you last week, we are in the process of switching insurance companies. RA&MCO has submitted the lowest bid of all the insurers we contacted. The policy, however, seems very different from our prior policy from a different insurer. To assist our evaluation of the policy, please address the issues described below.

First, please explain the coverage provided by the policy. I am not particularly familiar with "claims" policies. What is the significance to us of this policy's focus on "claims" as opposed to "occurrences" as a basis for insurance liability?

Second, detail what we should do if someone complains about our services. We have a regular business practice of redoing for free any test about which there is any question. Our referral sources (doctors, clinics and hospitals) appreciate this "customer is always right" policy.

Third, the first exclusion worries us. Our contracts with medical providers include indemnification clauses requiring us to indemnify the providers and hold them harmless for claims alleging negligent testing. Does this exclusion wipe out our coverage?

Thank you for your assistance. We look forward to your prompt reply.

Very truly yours,

Kendra Lynn, Esq., Vice President and General Counsel

encl.

Example Sections of a Client Letter

(Assuming client was the owner of the creamery warehouse in the *Atwater* case in our text and had asked outside counsel to evaluate its coverage claim and assuming the state had neither adopted nor rejected the reasonable expectations rule)

Introduction:

Thank you for referring this matter to us. I enjoyed our lunch last week and believe we will work well together.

You have asked us to assess Atwater Creamery Company's chances of prevailing in a lawsuit against Western National Mutual Insurance Company seeking insurance coverage for the recent burglary of Atwater's warehouse.

Issue:

To assess Atwater's likelihood of success in a coverage suit, we have analyzed the following legal question, which is the key issue in your dispute with Western National and the only stated basis for its denial of your claim:

Under a policy providing coverage for burglary if the burglar leaves "evidence of forcible entry," does the policy cover a burglary where the only evidence of the burglary was missing property, two open doors, both of which are usually locked, and two missing padlocks but where the police have concluded that the burglary was not an "inside job"?

Short Answer:

The question is a close one, but you are likely to prevail. On the one hand, the absence of damage to the doors or to the padlocks presents a potential barrier to coverage. The requirement of "evidence of forcible entry" seems to suggest that the policy does not cover situations, like Atwater's, where the burglar did not damage the windows, doors or walls and the locks are simply missing, as opposed to being broken. On the other hand, most courts have found coverage under similar circumstances. Some courts have held that the "evidence of forcible entry" requirement is met in cases like this one because the problems the requirement was designed to address, "inside jobs" and failures to use due care to secure the premises, are not implicated; the police determined that Atwater's loss was not an inside job and Atwater did secure the warehouse. Other courts have found evidence of forcible entry in the fact that locks are missing or opened. Still other courts have applied a fairly new concept of insurance law in which courts find coverage if a reasonable insured would have expected it. In this context, a court applying reasonable expectations law would find coverage by reasoning that a reasonable company would be shocked to discover that the burglary insurance it had purchased provided no coverage simply because the burglar broke in without damaging the building and successfully disposed of the locks. Accordingly, based on one or more of the above theories, a court probably would find coverage for Atwater's loss in this case.

Statement of Facts:

Prior to April 1977, Atwater had purchased \$20,000 in burglary insurance from Western National. The policy defined burglaries to include only those burglaries in which the burglar leaves "evidence of forcible entry." According to Western National, the purpose of this clause is to discourage Atwater from burglarizing itself just to get the insurance proceeds and to encourage Atwater adequately to secure the premises.

Sometime between April 9 and April 11, 1977, one or more persons entered your warehouse without permission and stole chemicals worth \$15,587.40. You discovered the theft on the 11th. You found two unlocked doors that you had left locked and discovered that the padlocks on those doors and the chemicals had disappeared. There was no other evidence other than the evidence described above. The police who investigated the crime determined that no one affiliated with Atwater was involved in any way.

Atwater filed a burglary claim with Western National. Western National denied the claim, citing the “evidence of forcible entry” clause as the basis for its decision.

Discussion:

[The discussion would use many of the ideas addressed in the case and in our class discussion of the case but would translate those ideas into simpler language, would delete citations and the long policy discussion and would be shorter.]

Conclusion:

Although the question is a close one and Atwater will lose its lawsuit if the court narrowly interprets Western National’s policy, Atwater is likely to prevail in its claim. The fees and costs of bringing the lawsuit and pursuing it to final judgment, however, almost certainly will exceed the approximately \$15,600 loss Atwater has have sustained. The trickiness of the policy language at issue means the losing party may even choose to appeal, thereby increasing the expense of pursuing a claim. We therefore suggest that Atwater communicate an analysis of the merits of this claim in a demand letter to Western National and work towards a compromise. We propose drafting such a letter. If Western National continues to deny coverage, we can discuss whether filing suit makes sense, but we suspect Western National can be made to recognize that it may lose if Atwater sues and, even if Western National were to win, it would spend more money defending the suit than Atwater is claiming.

I look forward to hearing from you regarding this letter and our suggested next steps.

Environmental Law Role Play—Philosophical Perspectives

Read pages 8-18 and 53-57 in the text. Those pages describe a variety of perspectives on environmental law and provide a factual background for a current environmental dispute - whether to open the Arctic National Wildlife Refuge to oil exploration and drilling.

Assume that a Senate Committee is holding hearings on whether to open 1.5 million acres of ANWR for oil exploration and drilling. For one of the following groups, you will be assigned to create a single slide with an image and text (one to three points) to support 60 seconds of testimony the group would give to the Senate Committee regarding ANWR:

- Thoughtful Use of Tundra (human-centered)
- Tundra First! (Leopoldian ecologists)
- Dino Oil (sensible economic development)
- Catholic Church (“Peace with All Creation”)
- Wilderness Society (preservationists)
- Alaska Governor’s Office (state sovereignty)
- Arctic Village (environmental justice)
- Inupiat Eskimos (economic opportunity)
- Caribou Caretakers (animal rights)

Appendix 5-2: Experiential Professionalism Instruction

Lucy Lockett Professionalism Problem

You are two years out of law school, practicing in a small law firm not far from where we are now. The firm does general litigation.

It is now evening. You are at home, enjoying a relaxed dinner. The telephone rings. The distraught voice on the other end belongs to your friend Carl Lockett.

Carl is calling about a disaster that has just befallen his 23-year-old daughter Lucy. According to Mr. Lockett, Lucy had been working part-time at Tropics North Inc., an exotic pet store on Sherrill Avenue in Bethesda, Maryland. Last Saturday, she was bitten on the wrist by a poisonous snake. The accident occurred as she was trying to remove the snake from its case to sell it to a customer.

The store manager, Mr. McConnell, assured her that the snake was not poisonous; indeed, Lucy knew that the store did not carry any poisonous animals. The customer, a Mr. Adams, wanted to buy the snake despite its having bitten her, and she completed the sale. Her wrist hurt a little, but the pain diminished rapidly.

About an hour later, however, her arm began to hurt. After another hour, it had begun to swell. Mr. McConnell drove her to the emergency room at Community Hospital.

The emergency room resident observed her for several hours. Her arm continued to swell and to become more painful. Treatment of the arm with benadryl did not help. By late Sunday morning, the arm had swelled to twice its normal diameter. Lucy was in excruciating pain. After X-raying the arm and discovering that the swelling was threatening to kill the muscle tissue, the doctors decided that the snake must have been poisonous and that they needed to operate to save Lucy's arm. They operated the same day, cutting her arm open from wrist to elbow to drain fluids from it. They say that a further operation will be necessary in a day or two and that plastic surgery to reduce the scar will be desirable in several months. They hope that there will be no long-term damage, but they can't be sure.

Just before he called you, Mr. Lockett spoke again with Mr. McConnell. McConnell reported that he had just called Mr. Adams and told him what had happened to Lucy. He'd offered Mr. Adams his money back, an offer Adams had accepted. Adams said that he would call his local police department and ask them to take the snake away and kill it.

McConnell says that he doesn't have any insurance but he feels terrible about what happened and would like to pay half of Lucy's hospital bill, which is expected to be about \$4,000.

What questions do you have for Mr. McConnell?

[This problem is adapted from an extensive set of simulation materials developed by Professor Philip G. Schrag of Georgetown. Gerry uses this problem on the first day of Civil Procedure for first semester, first year law students. He ends the class with a 10-15 minute discussion of this problem. As students volunteer questions, he writes them on

the board and asks each volunteer to explain why the question is important. With two minutes to go in class, he tells the students that they have generated an impressive list of “lawyer questions.” However, they have omitted the first question that he would ask Mr. McConnell. He then writes on the board in huge letters “HOW’S LUCY?”

Gerry uses this problem for on the first day of Civil procedure for several reasons. First, it gets many students to participate on the first day of class, which begins a course-long dynamic of active engagement in class. Second, it sends the message that students will apply what they learn in this course to real-life problems. Most importantly, it allows Gerry to make a dramatic point about professionalism. After writing “HOW’S LUCY?” on the board, he comments that when we are in our role as lawyers, lawsuits do not walk into our offices. People do. It is easy for students to lose sight of that as they begin law school. But our effectiveness as lawyers depends in large part on our humanity. That ends day one in Civil Procedure.]

Handout for Small Group Public Service Experiential Learning Exercise

As you know, you have been placed in a small, six-person group led by an upper-division student.

You need to do the following to complete your small group public service experiential learning obligation:

1. On Friday, you will be attending a luncheon to welcome you to the law school. The guest speaker, Judge _____, will discuss your obligations, as a lawyer to your community. Afterwards, you will have the opportunity to hear from and talk to the various student organizations at this law school that have, as at least part of their mission, providing service to the community.
2. You will then have 30 minutes to begin to work in your small group to decide on a group public service project. Try to pick something that is personally meaningful to the members of your group.
3. Your project must be selected by September 15. In 200 words or less, describe your project and post it to the public service TWEN course webpage set up by Dean _____. To honor your choice, the law school will be publicizing all of the projects.
4. After you complete your group project, each member of the group must write at least a 250-word essay describing what he or she learned from this experience.

Professionalism/Values Exercise Arising out of a Class Incident

Introduction to four stories. My goal: focus on professional values.

Cluster of three stories and then tell fourth story and connect it to an issue in this class.

First three stories.

Story 1: Produced privileged document. Mistakes in law practice.

Story 2: Story of anesthesiologists. History of malpractice. Policed themselves, learned value of apologies and paying for patients' out-of-pocket losses.

Story 3: Client who said, "What should I say happened?" when asked what facts led to his lawsuit against a former partner.

Fourth Story.

When I was in law school, I never told anyone my grades. One day, a group of four people grilled my then-girlfriend for 30 minutes to try to get her to tell them my grades.

Relationship of stories to this class.

I have been told that a few students in this class have violated the privacy of other students by looking at how the students did on the midterm I handed back this week. Part of the problem was my mistake—I should have placed the exams in sealed envelopes. I am sorry. Those who looked let law school competitiveness overwhelm their sense of what they know is right—respecting others. They made a mistake. I believe those whose privacy rights were violated would appreciate an apology.

Exercise. Take out a blank sheet of paper. Write down what you want lawyers to say about you when you retire from law practice. Place it in the envelope I have given you. Seal the envelope. I will arrange for this envelope to be mailed to you when you graduate from this law school.

Questions?

Identifying Criteria for Successful and Positive Interactions with Classmates

Background and goals:

At the beginning of the semester, you were all clustered in diverse teams of 5-7 people. The goal was to have each of you learn from each other and develop the attributes and skills of working with others, skills and attributes essential to practicing law.

Each team identified the written criteria upon which you would evaluate each other's participation and contribution to the team's success. These criteria may overlap but are individual for each team and will be used to evaluate your classmates at the end of the course.

Many of you identified criteria that included points like the ones below:

Criteria for evaluating team contributions:

- Listening to team members
- Being receptive to and respectful of others' thoughts/input
- Being patient with others' process and learning
- Being prepared - good faith effort
- Contributing to discussions
- Communicating with teammates about absences and other team-related tasks
- Having a sense of humor
- Being on time

Now you have been working with your team for several weeks, including taking team quizzes, brainstorming problems in class, and completing a team assessment. The goal here is to honestly and professionally check in with your teammates and determine if there things you can do to enhance your team's effectiveness in contributing to each student's learning, and, if so, how you might accomplish them.

Please take the next 10 minutes to:

1. Review the initial criteria your team developed;
2. Discuss among your teammates whether you want to revise your criteria;
3. Check-in and discuss with your teammates how well the team is succeeding in meeting the criteria; and
4. Discuss any additional points about working together as a team. (One effective team-building technique is to have each person identify one positive thing about the team.)

[Before students engage in this exercise, Sophie spends a few minutes reminding students about the need to provide honest and respectful feedback, the difficulty of acting with civility when under stress, the power of positive social emotional interactions, and the connection between effective interactions and professional performance.]

Appendix 5-4: Post-Assessment Reflection Exercises

General Post-Assessment Reflection Exercise

Select an exam, legal writing paper or exercise on which you have received feedback and then answer the following questions. Keep in mind that the key to learning in general and to learning from examinations in particular is being open to feedback and to change.

- How well did you think you had learned the material before you took the test/quiz/exercise/paper? (check the item that best describes your perception of the degree to which you achieved mastery)

<input type="checkbox"/> Excellence	<input type="checkbox"/> Mastery	<input type="checkbox"/> Competence
<input type="checkbox"/> Approaching competence		<input type="checkbox"/> Poor
- How well did you do on the test/quiz/exercise/paper? (check the description that best describes your outcome)

<input type="checkbox"/> Excellence	<input type="checkbox"/> Mastery	<input type="checkbox"/> Competence
<input type="checkbox"/> Approaching Competence		<input type="checkbox"/> Poor
- Given your results on the test/quiz/exercise/paper, how accurately did you self-assess your learning? (check the description that best describes your outcome)

<input type="checkbox"/> Very accurately	<input type="checkbox"/> OK	<input type="checkbox"/> Poorly
--	-----------------------------	---------------------------------

If you did not check “very accurately” in response to the above question or if you “very accurately” predicted a poor outcome, discuss why your self-assessment was inaccurate or why you predicted a poor outcome.

- Given your results, discuss how efficient and effective your learning strategies were.

5. If you did not perform as well as you would have liked to have performed or if you believe that your learning process, while effective, was inefficient, identify the cause of your performance issue. Below is a checklist of possible causes. Check all that apply.

Possible problems in the forethought phase

- Failure to set appropriate goal (you set no goal or set an improper one)
- Incorrect assessment of the learning task (you erroneously classified the task)
- Failure to invoke self-efficacy (you failed to identify past success in similar learning enterprises)
- Failure to develop intrinsic interest in the learning task (you did not determine why you needed to learn the material)
- Poor motivational strategy choices (you could not stay motivated)
- Poor environmental choices (you made bad location, timing, rest sequence choices)
- Poor cognitive strategy choices (the strategy choices proved unsuited to the learning task or you also should have used additional strategies)

Possible problems in the performance phase

- Incorrect implementation of strategy choices (you incorrectly used the strategies)
- Failure to maintain focused attention (you were unable to focus during implementation)
- Failure to self-monitor (you failed to recognize a breakdown in the learning process while it was ongoing)
- Insufficient persistence (learning task simply requires multiple learning cycles)

Possible problem in the reflection phase

- Failure to pursue opportunities for self-assessment (you did not take advantage of or create opportunities for practice and feedback)

6. How did you do on this test / quiz / exercise / paper in comparison to tests / quizzes / exercises / papers you took before law school?

How did you do on this test / quiz / exercise / paper in comparison to other tests / quizzes / exercises / papers you have taken in law school? Why did you do better or worse on this test / quiz / exercise / paper?

7. What were the most common comments your professor made on your answer to this test/quiz/exercise/paper (or on all my law school tests/quizzes/exercises/papers)?

What did the professor(s) mean by these comments?

8. Based on your outcome and your response to the above questions, how do you feel about yourself and your law studies and why do you feel that way?

9. Based on your outcome and your response to the above questions, how will you change your approach to studying similar material in the future?

Cognitive Protocol

At the end of this course, you will have completed at least 6 assignments in which you have read, analyzed, selected, and cited to authorities, applied facts to law, and organized complex material:

- **Memo 1 - Is an advertisement an offer?**
- **Memo 2 - Was Rienzo a licensee or invitee? Who decides? What duty of care did Montshire Law owe her? (draft and final)**
- **Memo 3 - Was the Corrow/Michaud Prenuptial agreement enforceable? How could it be validated?**
- **Memo 4 - Does South Dakota have personal jurisdiction over PPR? (draft and final)**

Altogether, this constitutes a significant body of work—between 25-30 pages of written legal analysis. Congratulations!

Take a few minutes to skim through Memo 1.

If you wish, skim over Memos 2 and 3.

Reviewing your portfolio, over this semester, what have you learned about researching, analyzing, and writing about legal issues?

Appendix 6-1: Discovery Sequence Exercises

Duty to Disclose Discovery Sequence Exercise

Instructions:

The general rule is that contracting parties do not have a duty to speak regarding the subject of a contract; in other words, there is no general duty to disclose material facts to the other party. Below you will find 17 hypotheticals. For each one, I have stated whether the seller would have a duty to disclose. Your task is to determine the four principles governing when a seller does have a duty to disclose based on reviewing the hypotheticals and conclusions and then deriving the principles. Write your four principles in the space provided.

Exercise:

1. Sophie Seller entered into negotiations with Betty Buyer to sell Seller's house to Buyer. If Seller knows a murder was committed in the house five years ago, must Seller disclose that fact to Buyer? (**Answer: No, Seller would not have a duty to disclose under these circumstances**).
2. Assume the facts are the same as in hypothetical # 1 except Seller also is Buyer's regular lawyer. Must Seller disclose the fact to Buyer? (**Answer: Yes, Seller would have a duty to disclose under these circumstances**).
3. Assume the facts are the same as in hypothetical # 1 except Seller also is Buyer's mother. Must Seller disclose the fact to Buyer? (**Answer: Yes, Seller would have a duty to disclose under these circumstances**).
4. Assume the facts are the same as in hypothetical # 1 except Seller had raised Buyer since she was a child and had been Buyer's chief advisor with respect to all matters since Buyer was fifteen years-old. Must Seller disclose the fact to Buyer? (**Answer: Yes, Seller would have a duty to disclose under these circumstances**).
5. Assume the facts are the same as in hypothetical # 1 except Seller also is a friend of Buyer, although Seller never has rendered any advice or help to Buyer. Must Seller disclose the fact to Buyer? (**Answer: No, Seller would not have a duty to disclose under these circumstances**).
6. Assume the facts are the same as in hypothetical # 1 except Seller also is Buyer's employee, although Seller never has rendered any advice or help to Buyer. Must Seller disclose the fact to Buyer? (**Answer: No, Seller would not have a duty to disclose under these circumstances**).
7. Sophie Seller entered into negotiations with Betty Buyer to sell Seller's house to Buyer. If Seller knows that Buyer does not know the house is riddled with termites, must Seller disclose that fact to Buyer? (**Answer: Yes, Seller would have a duty to disclose under these circumstances**).
8. Sophie Seller entered into negotiations with Betty Buyer to sell Seller's house to Buyer. If Seller knows the neighbors are noisy on Saturday nights, must Seller disclose this fact to buyer? (**Answer: No, Seller would not have a duty to disclose under these circumstances**).
9. Sophie Seller entered into negotiations with Betty Buyer to sell Seller's house to Buyer for \$350,000. If Seller knows that the building and safety department has issued a

- warning to Seller that Seller must enclose Seller's septic tank (at a cost of \$2,000) or face substantial fines (as much as \$500 per day), must Seller disclose that fact to Buyer? (Answer: *No, Seller would not have a duty to disclose under these circumstances*).
10. Sophie Seller entered into negotiations with Betty Buyer to sell Seller's restaurant to Buyer for \$75,000. If Seller knows that the health department has issued repeated warnings to Seller that Seller must make expensive improvements to the restaurant (at a cost of as much as \$50,000) or the health department will close the restaurant, must Seller disclose that fact to Buyer? (Answer: *Yes, Seller would have a duty to disclose under these circumstances*).
 11. Sophie Seller entered into negotiations with Betty Buyer to sell Seller's house to Buyer for \$350,000. If Seller knows that the house has a well-established reputation for being inhabited by ghosts, must Seller disclose that fact to Buyer? (Answer: *No, Seller would not have a duty to disclose under these circumstances*).
 12. Sophie Seller, seeking to induce Betty Buyer to purchase Seller's house and land, tells Buyer that the house "has no problems." Unknown to Seller, all of the electrical wiring in the house is a fire hazard and needs to be replaced. If Seller then learns of the electrical wiring problem, must Seller disclose that fact to Buyer? (Answer: *Yes, Seller would have a duty to disclose under these circumstances*).
 13. Sophie Seller, seeking to induce Betty Buyer to purchase Seller's house and land, tells Buyer that Gary Frank, a world-renowned architect, designed Seller's house. After escrow closes and Buyer takes possession, Seller learns that Frank's daughter actually designed the house after Frank died. Must Seller disclose that fact to Buyer? (Answer: *No, Seller would not have a duty to disclose under these circumstances*).
 14. Sophie Seller, seeking to induce Betty Buyer to purchase Seller's house and land, tells Buyer that the house "has only a few problems" and gives Buyer a list labeled "Problems With Betty's House." If Seller knows that, in addition to the problems she listed, the house needs a new roof, must Seller disclose that fact to Buyer? (Answer: *Yes, Seller would have a duty to disclose under these circumstances*).
 15. Assume the facts are the same as in hypothetical # 14 except Seller did not tell Buyer that the house had any problems at all. If Seller knows that the house needs a new roof, must Seller disclose that fact to Buyer? (Answer: *No, Seller would not have a duty to disclose under these circumstances*).
 16. Sadie Spouse entered into negotiations with Crafty Creditor to pay off her husband's debts. If Creditor knows that Creditor, without expressly saying so, has given Spouse the incorrect impression that Spouse's husband will be arrested imminently if Spouse does not agree to Creditor's demands, must Creditor disclose the true facts to Spouse? (Answer: *Yes, Seller would have a duty to disclose under these circumstances*).
 17. Assume the facts are the same as in hypothetical # 16 except Creditor did nothing to give Spouse the impression that Spouse's husband would be arrested imminently. Must Creditor disclose the true facts to Spouse? (Answer: *No, Seller would not have a duty to disclose under these circumstances*).

The Four Circumstances in Which Parties Have a Duty to Disclose

1. _____

2. _____

3. _____

4. _____

Binding vs. Persuasive Authority Discovery Sequence Exercise

Instructions:

Review each of the hypothetical questions and answers below. Each hypothetical question involves a question of whether, assuming both courts were addressing the same legal question based on facts that were identical in every non-trivial way, the first court decision would be binding on the second court decision. The answers are in parentheses. After you have reviewed all the questions and answers, try to derive the legal rules that explain all of the questions and answers.

Exercise:

- Hypo 1: A decision of the Kansas Supreme Court on a decision of a trial court sitting in the Kansas 7th Judicial District (located in Douglass County). (**binding**)
- Hypo 2: A decision of a trial court sitting in the Kansas 3rd Judicial District (located in Shawnee County) on a decision of the Kansas Court of Appeals. (**not binding**)
- Hypo 3: A decision of the United States Tenth Circuit Court of Appeals made by judges sitting in Denver, Colorado on a decision of a United States District Court, District of Kansas court. (**binding**)
- Hypo 4: A decision of the United States Tenth Circuit Court of Appeals on another decision of the United States Tenth Circuit Court of Appeals. (**binding**)
- Hypo 5: A decision of the United States Ninth Circuit Court of Appeals on a decision of the United States Tenth Circuit Court of Appeals. (**not binding**)
- Hypo 6: A decision of a trial court sitting in the Kansas 7th Judicial District on a decision of another trial court sitting in the Kansas 7th Judicial District. (**not binding**)
- Hypo 7: A decision of a court sitting in the Jefferson City, Missouri location of the United States District Court, Western District of Missouri on another decision of a court sitting in the Jefferson City, Missouri location of the United States District Court, Western District of Missouri. (**not binding**)
- Hypo 8: A decision of the Kansas Court of Appeals on a decision of a trial court sitting in the Kansas 3rd Judicial District. (**binding**)
- Hypo 9: A decision of the United States Ninth Circuit Court of Appeals on a decision of a United States District Court, District of Kansas court. (**not binding**)
- Hypo 10: A decision of the Kansas Supreme Court on a decision of the United States Supreme Court as to a question of whether a provision of the Kansas Constitution violates the United States Constitution. (**not binding**)
- Hypo 11: A decision of the United States Supreme Court on a decision of the Kansas Court of Appeal as to whether a contract for the sale of land located in Kansas must be in writing to be valid. (**not binding**)

Appendix 7-1: Assessment Instruments

Peer Feedback Formative Assessment Exercise

Observations and details about conducting a peer feedback class on writing client letters.

- Students found writing a client letter was harder to do than they thought.
- It was hard **not** to just cut and paste their memo.
- Very helpful to read and apply the rubric to classmate's letter.
- It was hard for them to keep their client audience in mind.
- They realized that they had learned more than they thought.
- Writing a letter after a memo was like writing an executive summary.
- It is hard but ok to give the client bad news.
- At the end of the day, almost everyone said, "I have to rewrite the whole letter."
- Got some requests for more assignments like this, including having letters to opposing counsel.

Here is how class went today:

- Each student picked a card from a group of 8 - they matched up with corresponding card- sat together.
- Took out their client letters.
- Gave them a blank client letter rubric - had them put their name, followed by "consultant" or "senior analyst" or any other term they liked that was similar.

Ask them to put themselves in the context of the busy smart client:

- You are a dental surgeon.
- Picked up your mail after a long day at the office fixing people's teeth.
- In the mail are some catalogs, bills, requests for donations, and this letter from your attorney.
- You still have to do laundry, make a meal, etc.
- You are tired and hungry.
- You don't have a legal background.
- This is who you are when you read this draft.
- Pay attention: what confused you? What made sense?

Give "reader-based feedback" — the reader, like the customer, is always right.

- If the reader is confused, the letter needs clarity.
- If the reader can't follow the information, the letter needs clearer organization.
- This letter should be at the level of writing the directions for the game of Monopoly: Steven Stark says, "9 year olds can mortgage real estate by following those directions." And they don't need to know about fixed and variable rates of interest.

Write on the rubric and the partner's letter — these will be returned to your classmates. 10 minutes: read each other's complete rubric.

I circulated after the first 10 minutes to answer questions or pose my own.

Put on the board: as they read each other's

- Salutation - Dear ____: [should be Dr. Rienzo]
- What is the likely outcome of her claim- known or unknown? [unknown; likely need more legal research and factual investigation]
- What is the status regarding settlement? [Montshire unlikely to settle without filing a complaint]
- Who decides whether to pursue this claim? [the client]
- Legalese? [discussed whether client needs to know the terms "licensee" or "invitee" or "matter of law" - my view: probably not]
- Further action - discussed the need to gather more evidence and do more research - probably want her to come in and have a follow-up conversation.

Midterm/Peer Feedback, Reflection Assessment

Guidelines for Mockterm Phase II (Review of Peer Essay) and Phase III (Reflection)

Introduction

In the last class session (Phase I of this midterm experience), you wrote an essay in response to a hypothetical question. As I announced in class, the process for this midterm has two additional phases. In Phase II, you anonymously will be providing feedback to one of your peers in the class. In Phase III, you will be reviewing your own essay, and the feedback from your peer and from me and then reflecting on what you have learned from the entire process. I will be evaluating all three phases in assigning you a grade for this midterm. Please review the syllabus for the relative weight and grading criteria I will be using in evaluating your work and assigning you a grade.

Guidelines for Phase II: Review of Peer Essay:

General Guidelines.

- ✓ *Note: There is no reason for you to hold back on any critique you feel is appropriate because I intend to exercise my own, independent judgment in evaluating your peer's work.*
- ✓ Be sure to mix positive and negative comments.
- ✓ Be concrete and specific. Rather than saying “too conclusory,” say, “this failed to explain why fact X was important in resolving the issue.”
- ✓ Pay attention to details. Did the student identify *all* of the relevant facts? Did the student explain the significance of each fact the student stated? Did the student quote or paraphrase the rule correctly (either is fine) or did the student paraphrase the rule in a way that changed its meaning?
- ✓ Provide feedback on the student's time management. Did the student devote more time (more bluebook space) to the major issues and less time to the minor issues? Did the student state unnecessary law? Did the student address non-issues?
- ✓ If you encounter a paper that addresses a matter or argument not addressed below, acknowledge that fact and use your common sense in evaluating whether the issue is really an issue and how well the student did in analyzing it.

Guidelines re issues on exam.

- ✓ There was no parole evidence issue (PER) on the exam. In fact, there was no even possible basis for thinking there was a PER issue.
- ✓ There was no statute of frauds issue—the contract was written and signed.
- ✓ The first issue was a pure ambiguity/interpretation issue. Here's what students should have been discussing regarding this issue:
 - Students **MUST** have explained, in depth, what aspect of the contract is ambiguous and what the parties' arguments were about that ambiguity: Here, the ambiguous word was “ethically.” Students needed to explain that the word could *only* refer to the ethical standards stated in the state's applicable statute, which seems to require only disclosure or could refer to compliance with statutes and a broader concept of moral behavior so that refusing to meet with persons for whom the SCAM deals would be foolish is not a breach of contract.

- Excellent papers also would attempt to resort to an English dictionary and quote from it. My dictionary, however, cuts both ways. On the one hand, it states that ethically refers to “conforming to accepted and especially professional standards of conduct” but also “of or relating to ethics” which it defines as “a discipline dealing with moral duty . . . , moral principles or practice.”
- Students then must apply the contract interpretation principles to try to resolve the ambiguity. Principles students could have discussed were:
 - Trade usage—Whether the statute created a trade usage was debatable at best—I don’t think it really was a trade usage because there were no facts indicating the trade had adopted the statute as a usage or was otherwise using it (many students will recognize this fact and simply not address trade usage—I wouldn’t have addressed trade usage)
 - Interpret the contract to be consistent with itself (i.e., reconcile the various provisions) (Note: I did not expect every student to see every argument below):
 - The provision re making the contract consistent with all applicable statutes
 - D may argue that this statute suggests the parties intended ethical to have its technical, statutory meaning.
 - P may argue that the clause really isn’t on point because the interpretation that ethical includes moral obligations and *not just* statutory obligations is entirely consistent.
 - P’s best argument in the whole case is that the word “ethically” would be unnecessary, given the comply with law clause, if it only referred to technical rules of professional behavior.
 - The provision re SCAM advertising “encouraging all GREEDS residents to consider SCAM deals” probably does help a little because it suggests SCAM was not permitted to decide which residents with which to meet. There was a decent counter-argument here—the clause really only addresses who hears about SCAM’s services, not who must receive them
 - Interpret to be reasonable (this argument goes both ways):
 - Could argue that it is reasonable to not take a paternalistic approach because some residents would want the comfort of secure lifelong care, even if it is a poor investment decision and SCAM cannot know for certain how long each resident will live, how much each resident values security or whether each resident has any relatives worthy of giving an inheritance
 - Could argue it is reasonable to save residents and SCAM time and effort where a SCAM deal would be a terrible decision
 - Contra proferentem was not a viable argument because we cannot charge either party with being the drafter.
- ✓ The second issue was a pure specific performance issue.
 - There really wasn’t a 13th Amendment issue because the parties are corporations and therefore the fact that services were being rendered by individuals doesn’t matter (I wouldn’t deduct points from students if they raised the issue as long as they immediately dismissed it).

- Inadequacy
 - Ability to collect really was not an issue
 - Inability to calculate: Can find what another company would charge to work with the people SCAM is not seeing but cannot know how many such residents would have signed up, what those residents' assets would have been upon death and how much their care would have cost GREEDS so cannot estimate at all GREEDS' damages
 - Inability to replace (D will argue that they are not the only company that provides such services and the fact that SCAM is the largest and most highly-respected firm doing this work doesn't make it difficult to find another company to do it; P will argue that, with D already advising most residents, having someone else come in will be seen as an obvious scam against the wealthy residents and the length of the contract (10 years) and the benefit to D of using the most highly-respected company doing these services, which may increase sign-ups with SCAM deals, cannot be replaced)
- Discretionary considerations
 - Undue burden on the D—given that the contract required this per the call, there is NO extra burden at all so this really is not an issue
 - Undue burden on the court: Excessive supervision because complicated interactions between SCAM employees and residents may generate complaints about how SCAM employees are counseling the residents at issue [e.g., are they using body language cues and negative phrasing of the options to discourage such residents] plus long-term length of contract
 - Unfair K is NOT an issue
 - Public interest (some students may make other arguments):
 - Pro: Enforce contracts
 - Con: SCAM deals are usually unfair and SCAM was working to minimize the most egregious abuses so ordering specific performance would make the most abusive contracts more possible and encouraging professionals to think about ethics as meaning more than just doing what is legal is a good thing!

Guidelines for Phase III: Reflection

Part I: Complete Exercise 16-2 from EXPERT LEARNING FOR LAW STUDENTS WORKBOOK (below):

This exercise focuses in on the recommended approach to learning from examinations addressed both in Chapter 16 and in Chapter 8. Select an exam, legal writing paper or exercise on which you have received feedback and then answer the following questions. Keep in mind that the key to learning in general and to learning from examinations in particular is being open to feedback and to change.

1. How well did you think you had learned the material before you took the test/quiz/exercise/paper? (check the item that best describes your perception of the degree to which you achieved mastery)

Excellence Mastery Competence
 Approaching competence Poor

2. How well did you do on the test/quiz/exercise/paper? (check the description that best describes your outcome)

Excellence Mastery Competence
 Approaching competence Poor

3. Given your results on the test/quiz/exercise/paper, how accurately did you self-assess your learning? (check the description that best describes your outcome)

Very accurately OK Poorly

If you did not check “very accurately” in response to the above question or if you “very accurately” predicted a poor outcome, discuss why your self-assessment was inaccurate or why you predicted a poor outcome.

4. Given your results, discuss how efficient and effective your learning strategies were.

5. If you did not perform as well as you would have liked to have performed or if you believe that your learning process, while effective, was inefficient, identify the cause of your performance issue. Below is a checklist of possible causes. Check all that apply.

Possible problems in the forethought phase

- Failure to set appropriate goal (you set no goal or set an improper one)
- Incorrect assessment of the learning task (you erroneously classified the task)
- Failure to invoke self-efficacy (you failed to identify past success in similar learning enterprises)
- Failure to develop intrinsic interest in the learning task (you did not determine why you needed to learn the material)
- Poor motivational strategy choices (you could not stay motivated)
- Poor environmental choices (you made bad location, timing, rest sequence choices)
- Poor cognitive strategy choices (the strategy choices proved unsuited to the learning task or you also should have used additional strategies)

Possible problems in the performance phase

- Incorrect implementation of strategy choices (you incorrectly used the strategies)
- Failure to maintain focused attention (you were unable to focus during implementation)
- Failure to self-monitor (you failed to recognize a breakdown in the learning process while it was ongoing)
- Insufficient persistence (learning task simply requires multiple learning cycles)

Possible problem in the reflection phase

- Failure to pursue opportunities for self-assessment (you did not take advantage of or create opportunities for practice and feedback)

6. How did I do on this test/ quiz/ exercise/ paper in comparison to tests/ quizzes/ exercises/ papers I took before law school?

How did I do on this test/ quiz/ exercise/ paper in comparison to other tests/ quizzes/ exercises/ papers I have taken in law school? Why did I do better or worse on this test/ quiz/ exercise/ paper?

7. What were the most common aspects of feedback you received from your peer and from your professor on this test/quiz/exercise/paper?

What did they mean by these comments?

8. Based on your outcome and your response to the above questions, how do you feel about yourself and your law studies and why do you feel that way?

9. Based on your outcome and your response to the above questions, how will you change your approach to studying similar material in the future?

Part 2: Reflective Essay

On separate sheets you attached hereto, reflect thoughtfully on what you have learned from grading your peer's paper and what you have learned about exam-taking strategies from the entire process of taking this midterm, reviewing your peer's essay, and reviewing your peer's and my feedback on your essay. Use two pages *at most*.

International Environmental Law Quiz

Treaties (True/False) (Explain why and/or your support for your answer)

1. Treaties create specific legal obligations on parties through their express consent.
2. The United States is not a party to and does not comply with the Vienna Convention on the Law of Treaties.
3. Treaties governed by the Vienna Convention on the Law of Treaties must be between states and in writing.
4. Adoption of the treaty by 2/3 of the states present at an international conference makes the treaty provisions binding on all states that participate in the conference.
5. Ratification of treaties by the U.S. requires either the signature of the president or the 2/3 vote of the Senate.
6. Accession allows states that were not involved in treaty negotiation to be bound by the treaty by their consent.
7. A state may agree to be bound by only part of a treaty, unless the treaty prohibits reservations.
8. The U.S. is not bound by a treaty until the treaty enters into force and the U.S. ratifies the treaty.
9. Treaties can be updated by amendments, protocols, and technical annexes, all of which require unanimous consent of the parties to the treaty.
10. A treaty should be interpreted beginning with the ordinary meaning of the treaty terms in context and in light of the treaty's purpose.

Treaties (short answer)

Explain the roles the following play in treaty development, negotiation, and/or administration.

Secretariats

Conference of the parties

IGOs (such as UNEP)

NGOs (such as public interest groups or corporations)

Custom, General Principles, and Judicial Opinions (short answer)

1. Identify the two elements to establish customary international law.
2. On what states is customary international law binding?
3. How can treaties contribute to the creation of customary international law?
4. Identify potential sources of general principles of international law.
5. On what states are general principles of international law binding?
6. In the *Gaabcikovo-Nagymaros Project* case, the ICJ characterizes sustainable development as a “concept” that the parties must consider in their negotiations. Identify at least three ways Judge Weeramantry characterizes sustainable development in his separate opinion.
7. Compare and contrast the ICJ opinion in the *Gaabcikovo-Nagymaros Project* case to a typical opinion from the U.S. Supreme Court.

Soft Law

1. What is it?
2. Identify sources of “soft law.”
3. How does “soft law” contribute to the development of binding IEL?
4. Give examples of “soft law” principles of IEL.

Civil Procedure – Reflections on Civil Litigation

Court Field Trip and *A Civil Action*

The purpose of this document is to describe two activities and the Litigation Perspectives Assignment that take place after Spring Break.

Court Field Trip

Between Monday, March 8 and Friday, March 19, please review a civil file and observe a hearing at the United States District Court for the Eastern District of Washington, the Spokane County Superior Court, or both. For either court, leave cell phones, laptops, and cameras at home. Bring a picture ID. No hats in court. Please be quiet entering and leaving the courtroom.

United States District Court for the Eastern District of Washington

The court is located at 920 West Riverside. The Clerk's office is in room 840.

File Review. The Clerk has selected five closed files. To review one, go to the Clerk's office, identify yourself as a student in my class, and request a file. The clerk will select one for you to review. The files will be available during business hours (8:00-5:00); the Clerk requests that you arrive before 4:00.

Hearing. Trials and motion hearings will take place throughout the week. Check the schedule in the Clerk's office or the court's Web site – www.waed.uscourts.gov. Please do not call the Clerk to check on scheduling for hearings.

Spokane County Superior Court

The court is located at 1116 West Broadway. The Clerk's office is on the third floor.

File Review. You can review civil files at any time during normal business hours (8:00-5:00). To review a file, go to the Clerk's office, identify yourself as a student in my class, and ask to see one of the files the clerk has selected for you to review. If the person at the desk appears not to know what you are talking about, ask to speak with Tom Fallquist, the Clerk of the Court, or one of the supervisors. They will direct you to a table and to files they have selected for you to review.

Hearing. At any time, there are motions and trials going on at the Superior Court. In the Clerk's office you will see signs that tell which case each judge is hearing that day. Pick one!

A Civil Action

The week of March 15 will be devoted to Unit 12, which explores civil litigation in the context of *A Civil Action*. Please finish reading the book by the beginning of the week. There is a movie based on the book. The movie is so-so. The book is not only a gripping story it is an outstanding device for understanding civil procedure in real life. Do not cheat yourself by seeing the movie instead of reading the book.

Litigation Perspectives Paper

The court field trip and *A Civil Action* are designed to give you some experience with civil litigation in real life. One important element of experiential learning is for the learner to reflect on the experience. Consequently, reflection is the focus of this assignment.

Court Field Trip.

- What did your observations of the file and hearing teach you about civil litigation?

- About the practice of law?
- About law school?
- About yourself as a future lawyer?

A Civil Action.

- What did you learn about the process of civil litigation (pleading, motions, discovery, trial, appeal) from the book?
- What did you learn about ethics that you believe may be important for you as an attorney?
- *A Civil Action* paints quite a picture of the practice of law. What are your personal views and feelings about the implications the book has for your future as an attorney?

Your assignment is to write an essay reflecting on your field trip and your reading of A Civil Action. Your essay must include your reflections on both the field trip and A Civil Action. You need not address all of the questions above—they are intended merely to start your thinking. Your essay is due in class on Tuesday, March 23. Your response is limited to no more than one page, single-spaced, on 8.5"x11" paper, with one-inch margins on all four sides, and type size no smaller and no more compressed than the type on this page. Please put your exam number at the top of the first page. You will receive 10 points for your response if you hand in a good-faith effort that complies with all of the directions on this page and your exam number is correct. I encourage you to discuss this assignment with your classmates. Your written work, however, must be your own.

Appendix 7-2: Rubrics

Torts Rubric

Given to students before they take the assessment.

	Exemplary	Competent	Developing
Law 25%	Accurately identifies all elements/factors and sub-issues.	Accurately identifies all elements – 1 factor or sub-issue missing.	Accurately identifies all elements – 2 factors or sub-issues missing.
Facts – applying facts to the law 65%	Thoroughly applies specific facts and makes reasonable inferences from facts to legal elements, factors and sub-issues.	Applies facts and reasonable inferences from facts to legal elements, factors and sub-issues – a few minor areas are not thorough.	Applies facts and reasonable inferences from facts to legal elements, factors and sub-issues – 2 or more areas are not thorough.
Writing and format 10%	Writing is clear, concise, and precise. Paragraphing and sentence structure coherent. Follows requested format. Uses headings.	Writing has minimal minor errors. Or may have minor organization or format errors.	Has a few minor errors or 1-2 major errors with formatting, organization or writing.

Rubric/Scoring Sheet

Completed and given to students as feedback after they complete the assignment.

Damien's Duty to Patrick - 20

- Conclusion** – Damien's definitely owes a duty to Patrick as either a business or public invitee. Exact status as invitee unknown without more facts.
- Business relationship – Patrick could be a business invitee because he is a customer or potential customer of Damien's skating rink. Assumes that Damien's is a privately owned business.
- Statute § 343 and § 343(a) refers to public places, with skating rinks being a kind of public place. Patrick's status would then be a public invitee. In addition, Damien's could be an enterprise that public officials lease to provide recreation.
- Accurate facts, e.g. unknown if Patrick paid fee, if Damien's private

Standard of Care Damien's owed Patrick – as invitee - 10

- Damien's had duty to exercise ordinary care to protect Patrick from
- Risks that Damien's knew of if not open and obvious
- Risks Damien's should have known of
- Duty to use reasonable care to discover risks
- Duty to warn Patrick of risks if not open and obvious

Damien's breach of care - 45

Conclusion

- Statute has been violated by Damien's but not relevant so not proof of breach
May be other ways to prove breach – would need additional evidence
- Relevance of statutory breach – ID statute and language**— Montshire Criminal Code § 343(a)— prohibits children under 16 years to be unaccompanied by a parent or adult at public places—including skating rinks.
- Damien's violated** statute by allowing Patrick, age 15, into skating rink without adult supervision.

Apply 2 part test:

- Is Patrick in the group of people meant to be protected by the statute?** Group identified in § 343(a) is children under 16
 - Yes, Patrick, a 15 year-old is in the group meant to be protected
- Is Patrick's broken ankle's kind of harm the kind of harm that was meant to be prevented by § 343 and § 343(a)?**
 - NO. § 343 and § 343(a) are focused on “protecting children's morals and good habits” and engaging in certain “public activities at late hours” because it of its potential harm to children's school work.
 - While the statute relates to harm to children as a result of being out late, Patrick has a broken ankle, which is unrelated to his school work, morals or good habits.

Other ways to prove breach

No evidence present that Damien's breached its duty of care – would need to further investigate basis for Patrick's claim of breach of care

Damien's breach being the factual cause of Patrick's injury - 10

Conclusion

- Need additional evidence of breach to determine whether Patrick has a valid claim for causation.
- Assuming some kind of breach—liquid on the floor or other dangerous condition—Patrick would have to prove that Damien's factually caused Patrick's broken ankle – Patrick would have to prove that “but for” the dangerous condition on Damien's premises Patrick would not have broken his ankle, or that Damien's breach otherwise contributed to Patrick breaking his ankle

Policy - 5

- Can be woven into the analysis in different places

Writing and organization - 10

- Organization overall – separates headings or uses signposts to convey different areas
- Concise – very few extra words
- Precise – accurate grammar, punctuation and word choice
- Paragraph structure – coherent and organized
- Format – follows all directions

Score: _____

Remedies Peer Review Rubric

Please focus on categories 1-3 first	Practice ready performance	Comments
1. Identifies basic legal issues and ambiguities in legal issues – 25%	<input type="checkbox"/> Identifies major kinds of remedies available <input type="checkbox"/> Identifies which remedies definitely available <input type="checkbox"/> Identifies which remedies <i>may</i> be available <input type="checkbox"/> Accurately uses terms recognized by legal sources	
2. Uses law and reasoning – 25%	<input type="checkbox"/> For major kinds of remedies available, identifies and analyzes tests, rules and authorities <input type="checkbox"/> Explains basics about designing or measuring remedies <input type="checkbox"/> Explains other considerations in designing remedies, such as identifies weaknesses in the analysis	
3. Applies facts from problem – 40%	<input type="checkbox"/> Identifies and applies key facts <input type="checkbox"/> Draws reasonable inferences from facts <input type="checkbox"/> Names assumed facts	
4. Responsiveness to questions asked and organization – 10%	<input type="checkbox"/> Responds to assigned task <input type="checkbox"/> Organizes writing so easy to follow <input type="checkbox"/> In beginning of memo, provides a coherent and accurate summary <input type="checkbox"/> Uses headings and subheadings to help the reader follow content <input type="checkbox"/> Virtually error free grammar and spelling	

Client Letter Rubric

Levels of Quality			
	Exemplary Advanced work for first year law student in LS I at this time in the course – on a job, the work would need very little revision for a supervising attorney to use.	Competent Proficient work for a first year law student in LS I at this time in the course – on a job, the work would need to be revised with input from supervising attorney.	Developing Work needs additional content or skills to be competent – on a job, the work would not be helpful and supervising attorney would need to start over.
<p>SUMMARY PARAGRAPH</p> <p>The purpose of the summary is to let the client know the most essential points of the analysis. This is what you might want the client to read as the client is waiting to meet with you.</p>	<ul style="list-style-type: none"> <input type="checkbox"/> Clearly communicates most important legal analysis in layperson's terms. <input type="checkbox"/> Includes recommended course of action. <input type="checkbox"/> Applies law to facts to show support for the recommended course of action. 	<ul style="list-style-type: none"> <input type="checkbox"/> Analysis is generally clear; may contain portions where there is too much legalese or where the language is too formal. <input type="checkbox"/> Includes somewhat clear recommended course of action. <input type="checkbox"/> Somewhat applies law to facts to show support for the recommended course of action but may lack clear connections. 	<ul style="list-style-type: none"> <input type="checkbox"/> Analysis is unclear because of legalese or language or writing mechanics and grammar make it too difficult to follow. <input type="checkbox"/> Refers to course of action but client would be confused about what she is being counseled to do. <input type="checkbox"/> Minimally applies law to client facts OR relies too much on law OR relies entirely on facts to summarize the explanation.
<p>FACTS</p> <p>Facts should be stated specifically in letters to avoid confusion by the client.</p> <p>Facts that are unknown, but critical to the case, are often identified.</p>	<ul style="list-style-type: none"> <input type="checkbox"/> Clearly states dispositive facts in an organized way, notes absence of necessary facts (if applicable). <input type="checkbox"/> States that opinion was formed based on facts in letter. <input type="checkbox"/> Asks client to review closely and report any discrepancies. <input type="checkbox"/> Clearly identifies additional facts that might be helpful or facts that need further development. 	<ul style="list-style-type: none"> <input type="checkbox"/> Facts are identified but may include minimal irrelevant facts or omit a couple dispositive facts. <input type="checkbox"/> States that opinion was formed based on facts in letter. <input type="checkbox"/> Asks client to review facts. <input type="checkbox"/> Some reference to developing facts additional facts. 	<ul style="list-style-type: none"> <input type="checkbox"/> Facts are identified but include several irrelevant facts or omit several dispositive facts or overly general. <input type="checkbox"/> Omits that opinion was formed based on facts in letter. <input type="checkbox"/> Does not ask client to review facts closely and report any discrepancies. <input type="checkbox"/> Little reference to developing facts additional facts.

	Exemplary	Competent	Developing
<p>LEGAL ANALYSIS (EXPLANATION)</p> <p>Client letters must include the relevant legal analysis necessary to answer the client's question.</p>	<ul style="list-style-type: none"> <input type="checkbox"/> Identifies all relevant steps in legal analysis in a way that the client can easily understand. <input type="checkbox"/> Clearly articulates applicable rule. <input type="checkbox"/> Client's facts are woven into analysis so that client can clearly understand how lawyer made prediction. <input type="checkbox"/> Notes any uncertainty or unsettled aspects of the law, weaknesses, and resolves them. 	<ul style="list-style-type: none"> <input type="checkbox"/> Identifies the most relevant steps in legal analysis in a way that the client can understand. <input type="checkbox"/> Articulates applicable rule somewhat clearly. <input type="checkbox"/> Client's facts are woven into analysis but may have one area where relationship between law and fact is unclear. <input type="checkbox"/> Notes some uncertainty or unsettled aspects of the law, as well as weaknesses, but may not resolve them. 	<ul style="list-style-type: none"> <input type="checkbox"/> Identifies some of the legal analysis but omits important points. <input type="checkbox"/> Rules and/or tests are unclear or inaccurate. <input type="checkbox"/> Client's facts are woven into analysis but relationship between law and fact is unclear or client's facts not woven into analysis. <input type="checkbox"/> Lacks noting uncertainty or unsettled aspects of the law, as well as weaknesses or notes them but ineffectively resolves them.
<p>ORGANIZATION</p> <p>Like all legal writing, client letters require organization around central points of analysis.</p>	<ul style="list-style-type: none"> <input type="checkbox"/> Large-scale organization is evident in clearly written, plain English, concise topic sentences. <input type="checkbox"/> Organization within paragraphs is evident in clear, concise sentences logically ordered. <input type="checkbox"/> Headings are effective. 	<ul style="list-style-type: none"> <input type="checkbox"/> Large-scale organization is somewhat evident in clearly written, plain English, concise topic sentences. <input type="checkbox"/> Organization within paragraphs is mostly evident but some sentences' sequence may be difficult to follow. <input type="checkbox"/> Headings somewhat effective. 	<ul style="list-style-type: none"> <input type="checkbox"/> Large-scale organization is hard to follow; topic sentences mostly lacking. <input type="checkbox"/> Organization within paragraphs is confusing. <input type="checkbox"/> Headings mostly ineffective.
<p>WRITING MECHANICS</p>	<ul style="list-style-type: none"> <input type="checkbox"/> Uses correct grammar, punctuation, and spelling. 	<ul style="list-style-type: none"> <input type="checkbox"/> There are some errors to fix, but generally uses correct conventions. 	<ul style="list-style-type: none"> <input type="checkbox"/> Errors distract the reader and make letter difficult to read.

Clinical Rubric –Performance Competencies

LEVELS OF QUALITY			
	<p>Exemplary – Practice Ready</p> <p>Excellent work for a law student – on a job, this student could perform well with minimal supervision.</p> <p>Score 2 for each exemplary criterion met</p>	<p>Competent</p> <p>Proficient work for a law student– on a job, the student would need some input from a supervising attorney before the student was ready to represent clients.</p> <p>Score 1 for each competent criterion met</p>	<p>Developing</p> <p>Work needs additional content or skills to be competent – on a job, the work would not be helpful and a supervising attorney would need to start over or fix mistakes.</p> <p>Score 0 for each developing criterion met</p>
PROFESSIONAL RELATIONSHIPS (8 criteria)			
<p>Clients Adversaries Staff Classmates Supervisor</p>	<ul style="list-style-type: none"> <input type="checkbox"/> Keeps clients advised of case developments <input type="checkbox"/> Helps clients make well-informed decisions <input type="checkbox"/> Communicates effectively and respectfully with clients without using legalese <input type="checkbox"/> Interacts effectively and respectfully with adversaries <input type="checkbox"/> Interacts effectively and respectfully with clinic, court and other staff <input type="checkbox"/> Interacts effectively and respectfully with classmates <input type="checkbox"/> On time and prepared for all meetings with supervisor <input type="checkbox"/> Open and honest with supervisor; keeps supervisor informed of all pertinent case developments 	<ul style="list-style-type: none"> <input type="checkbox"/> Usually keeps clients advised of case developments <input type="checkbox"/> Usually helps clients make well-informed decisions <input type="checkbox"/> Mostly communicates effectively and respectfully with clients without using legalese <input type="checkbox"/> Usually interacts effectively and respectfully with adversaries <input type="checkbox"/> Usually interacts effectively and respectfully with clinic, court and other staff <input type="checkbox"/> Usually interacts effectively and respectfully with classmates <input type="checkbox"/> Almost always on time and prepared for all meetings with supervisor <input type="checkbox"/> Open and honest with supervisor; keeps supervisor informed of all pertinent case developments 	<ul style="list-style-type: none"> <input type="checkbox"/> Sometimes keeps clients advised of case developments <input type="checkbox"/> Sometimes helps clients make well-informed decisions <input type="checkbox"/> Sometimes communicates effectively and respectfully with clients without using legalese <input type="checkbox"/> Sometimes interacts effectively and respectfully with adversaries <input type="checkbox"/> Sometimes interacts effectively and respectfully with clinic, court and other staff <input type="checkbox"/> Sometimes interacts effectively and respectfully with classmates <input type="checkbox"/> Sometimes on time and prepared for all meetings with supervisor <input type="checkbox"/> Not always open and honest with supervisor; does not keep supervisor informed of all pertinent case developments

PROBLEM SOLVING (6 criteria)			
Issue Spotting Generating alternatives Planning Executing	<input type="checkbox"/> Identifies and diagnoses legal problems <input type="checkbox"/> Generates alternative solutions and strategies <input type="checkbox"/> Thoroughly assesses alternative strategies <input type="checkbox"/> Develops a detailed plan of action <input type="checkbox"/> Reliably implements a plan of action <input type="checkbox"/> Regularly seeks out and keeps the planning process open to new information and ideas	<input type="checkbox"/> Identifies and diagnoses legal problems <input type="checkbox"/> Generates some alternative solutions and strategies <input type="checkbox"/> Assesses alternative strategies <input type="checkbox"/> Develops a coherent plan of action <input type="checkbox"/> Implements a plan of action <input type="checkbox"/> Keeps the planning process open to new information and ideas	<input type="checkbox"/> Identifies and diagnoses some legal problems <input type="checkbox"/> Generates few alternative solutions and strategies <input type="checkbox"/> Somewhat assesses alternative strategies <input type="checkbox"/> Somewhat develops a plan of action <input type="checkbox"/> Somewhat implements a plan of action <input type="checkbox"/> Somewhat keeps the planning process open to new information and ideas
DEVELOPING PROFESSIONAL IDENTITY AND INDEPENDENT LEARNING (6 criteria)			
Taking initiative Learning from experience Contributing to others' growth Self-reflection and evaluation Developing independence	<input type="checkbox"/> Takes the initiative to be resourceful, raise issues, strategize <input type="checkbox"/> Takes responsibility for actions and consequences <input type="checkbox"/> Learns from feedback, critique, observations and experience <input type="checkbox"/> Reflects critically and honestly about own performance <input type="checkbox"/> Helps classmates improve their performance <input type="checkbox"/> Experiments and tries new ways of doing things – willing to take risks	<input type="checkbox"/> Sometimes takes the initiative to be resourceful, raise issues, strategize <input type="checkbox"/> Usually takes responsibility for actions and consequences <input type="checkbox"/> Usually learns from feedback, critique, observations and experience <input type="checkbox"/> Usually reflects critically and honestly about own performance <input type="checkbox"/> Usually helps classmates improve their performance <input type="checkbox"/> Sometimes experiments and tries new ways of doing things – willing to take risks	<input type="checkbox"/> Infrequently takes the initiative to be resourceful, raise issues, strategize <input type="checkbox"/> Sometimes takes responsibility for actions and consequences <input type="checkbox"/> Sometimes learns from feedback, critique, observations and experience <input type="checkbox"/> Sometimes reflects critically and honestly about own performance <input type="checkbox"/> Occasionally helps classmates improve their performance <input type="checkbox"/> Rarely experiments and tries new ways of doing things – willing to take risks

ETHICAL PRACTICE (4 criteria)			
Issues Rules Communication Performance	<input type="checkbox"/> Identifies and analyzes ethical issues <input type="checkbox"/> Observes client confidentiality <input type="checkbox"/> Informs supervisor about ethical issues as they arise <input type="checkbox"/> Follows ethical rules	<input type="checkbox"/> Usually identifies and analyzes ethical issues <input type="checkbox"/> Observes client confidentiality <input type="checkbox"/> Usually informs supervisor about ethical issues as they arise <input type="checkbox"/> Follows ethical rules	<input type="checkbox"/> Sometimes identifies and analyzes ethical issues <input type="checkbox"/> Usually observes client confidentiality <input type="checkbox"/> Sometimes informs supervisor about ethical issues as they arise <input type="checkbox"/> Sometimes follows ethical rules
ORGANIZING AND MANAGING LEGAL WORK (5 criteria)			
Case monitoring Files Office Procedures Time management	<input type="checkbox"/> Tracks case developments and meets all deadlines <input type="checkbox"/> Follows office procedures <input type="checkbox"/> Keeps files organized and updated <input type="checkbox"/> Asks for guidance about unsettled case management issues <input type="checkbox"/> Manages time effectively	<input type="checkbox"/> Tracks case developments and meets deadlines but needs reminders <input type="checkbox"/> Generally follows office procedures <input type="checkbox"/> Usually keeps files organized and updated <input type="checkbox"/> Usually asks for guidance about unsettled case management issues <input type="checkbox"/> Usually manages time effectively	<input type="checkbox"/> Ineffectively tracks case developments and deadlines <input type="checkbox"/> Does not follow office procedures <input type="checkbox"/> Sometimes keeps files organized and updated <input type="checkbox"/> Sometimes asks for guidance about unsettled case management issues <input type="checkbox"/> Sometimes manages time effectively

Appendix 8-1: Principles for Enhancing Student Learning – Faculty Inventory

Principles for enhancing student learning in law school include:

- Promote Student-Faculty Contact
- Articulate Clear, High Expectations
- Use Time Effectively
- Respect Differences Among Students
- Foster Cooperation Among Students
- Provide Prompt Feedback
- Encourage Active Learning

The following inventories assess the extent to which your teaching incorporates these principles. These inventories are based in part on inventories found at 49 J. OF LEGAL EDUC. 462-466 (1999).

Asses your teaching by responding to each of the statements in the following inventories with:

- (1) very often, (2) often, (3) occasionally, (4) rarely, or (5) never.

Promote Student-Faculty Contact

- ___ I advise my students about career opportunities.
- ___ I invite students to drop by my office to ask questions or to talk.
- ___ I share my past experiences, attitudes, and values with students.
- ___ I attend events sponsored by student groups.
- ___ I know my students by name.
- ___ I serve as a mentor or informal adviser to students.
- ___ I employ one or more research assistants each year.
- ___ I create opportunities for students to get to know me and other faculty.
- ___ I am an advisor to student groups or organizations.
- ___ I learn about my students' backgrounds, experience, and professional aspirations.

Identify one aspect of promoting student-faculty contact that you commit to improve during this academic year.

Articulate Clear, High Expectations

- (1) very often, (2) often (3) occasionally, (4) rarely, or (5) never.

- ___ I articulate specific goals (content, skills, values) for each class and my course as a whole.
- ___ I clearly communicate my expectations to students for each class, each graded event, and the course as a whole.
- ___ I involve students in setting expectations for themselves and the course.
- ___ My expectations for students are reasonable and achievable.

- _____ I provide feedback on students' performance so that they understand the expectations.
- _____ I make myself available to help students achieve my expectations.
- _____ I publicly and privately call attention to student success.
- _____ I provide clear, specific evaluation criteria to students before a graded performance, paper, or exam.
- _____ I model for students by setting and achieving high expectations for my own performance.
- _____ I elicit from students their expectations of me and I try to meet reasonable student expectations.
- _____ I provide examples of diverse legal professionals who establish and meet high expectations.

Identify one aspect of articulating clear, high expectations you commit to improve this year.

Use Time Effectively

(1) very often, (2) often, (3) occasionally, (4) rarely, or (5) never.

- _____ I expect my students to complete their assignments promptly.
- _____ I facilitate student preparation for class by providing questions, hypotheticals, and problems to consider before class.
- _____ I underscore the importance of regular work, steady application, sound self-pacing, and scheduling.
- _____ I monitor student attendance and explain the consequences of nonattendance.
- _____ I meet with students who are having difficulty to discuss their study habits, schedules, and other commitments.
- _____ Through midcourse quizzes, examinations, papers, and exercises, I provide students with an opportunity to determine the effectiveness of their course preparation.
- _____ I spend class time addressing the material and skills upon which students ultimately will be evaluated.
- _____ I model effective use of time by beginning and end class on time, by keeping appointments with students, and by promptly reviewing/grading student work.
- _____ I help students understand the importance of time management in law practice.
- _____ I facilitate effective use of time outside of class through reasonable assignments and clear directions.

Identify one aspect of using time effectively that you commit to improve during this year.

Respect Differences Among Students

(1) very often, (2) often, (3) occasionally, (4) rarely, or (5) never.

- _____ I learn about my students' backgrounds and motivations at the beginning of each course.
- _____ I create a safe learning environment by not embarrassing students or tolerating sarcasm or degrading comments.
- _____ I provide extra materials and exercises for students who lack essential background or skills.
- _____ I make special efforts to be available to students of a culture or race different from my own.
- _____ I help students understand the importance of dealing with diverse clients, lawyers, and judges in law practice.
- _____ I include material and assignments that reflect diverse perspectives.
- _____ I build on students' prior knowledge and experience to help them learn new concepts and skills.
- _____ I use a variety of teaching/learning methods (Socratic dialog, lecture, discussion, writing, simulation, experiential, etc.)
- _____ I assess student achievement more than once in the course through a variety of evaluation methods (essay tests, objective tests, papers, skill performance, etc.)

Identify one aspect of respecting differences among students that you commit to improve this year.

Foster Cooperation Among Students

(1) very often, (2) often, (3) occasionally, (4) rarely, or (5) never.

- _____ I ask students to tell each other about their interests and backgrounds.
- _____ I encourage students to prepare together for classes and exams.
- _____ I structure out-of-class team projects.
- _____ I ask my students to provide feedback on each other's work.
- _____ I ask my students to explain difficult ideas to each other, including to other students whose backgrounds and viewpoints are different from their own.
- _____ I encourage students to join at least one campus organization.
- _____ I use small group discussions and exercises in class.
- _____ I model cooperation and collaboration in my dealings with administrators, staff, and faculty members.
- _____ I help students understand the value of cooperation and collaboration in law practice.

Identify one aspect of fostering cooperation among students that you commit to improve this year.

Provide Prompt Feedback

(1) very often, (2) often, (3) occasionally, (4) rarely, or (5) never.

- _____ I use quizzes (mock or graded) and practice exams during the course.
- _____ I give feedback on quizzes by posting answers and reasoning or by discussing them in class.
- _____ I give feedback on essay questions (mock or graded) by distributing model answers, sample student responses, and score sheets, by discussing them in class, or by writing individual comments.
- _____ I provide written feedback on draft and final papers.
- _____ I provide timely, specific, positive, and corrective feedback on student performance of skills.
- _____ I invite students to sign up for one or more conferences to discuss their performance.
- _____ I make appropriate adjustments in my teaching during the course according to feedback from students and after the course based on student evaluations.

Identify one aspect of providing prompt feedback that you commit to improve this year.

Encourage Active Learning

(1) very often, (2) often, (3) occasionally, (4) rarely, or (5) never.

- _____ I design exercises that require students to organize, apply, and synthesize concepts.
- _____ I involve students in making significant decisions concerning course goals, teaching and learning methods, assignments, evaluation criteria, and classroom procedures.
- _____ I involve all students in responding to questions during each class.
- _____ I use discussion to help students discover ideas, use critical thinking, and understand different perspectives.
- _____ I use writing exercises in and out of class to help students develop thinking skills, apply concepts in new situations, and explore their attitudes.
- _____ I use simulations and role-playing to help students apply concepts, solve problems, develop skills, and articulate values.
- _____ I use computer exercises and electronic discussions to help students apply concepts, practice skills, and receive feedback.
- _____ I provide opportunities for my students to apply course content and skills in real life through clinics, externships, field trips, service learning, etc.
- _____ I use videos and documents so students can apply their learning to real life in the classroom.
- _____ I use games that require students to understand and apply concepts and skills.

Identify one aspect of encouraging active learning that you commit to improve this year.

Appendix 8-2: Reflection Prompts

The prompts below all appear in Gerald F. Hess, *Learning to Think Like a Teacher: Reflective Journals for Legal Educators*, 38 GONZ. L. REV. 1129 (2002-2003) and are based on the work of Stephen Brookfield, Susan Wilcox, and Parker Palmer.

The first set of reflection prompts are from Stephen Brookfield's *BECOMING A CRITICALLY REFLECTIVE TEACHER* (1995).

Questions to spur free-writing:

- What was the moment (or moments) this week when I felt most connected, engaged, or affirmed as a teacher—the moment(s) I said to myself, “This is what being a teacher is really all about”?
- What was the moment (or moments) this week when I felt most disconnected, disengaged, or bored as a teacher—the moment(s) I said to myself, “I’m just going through the motions here”?
- What was the situation that caused me the greatest anxiety or distress—the kind of situation that I kept replaying in my mind as I was dropping off to sleep, or that caused me to say to myself, “I do not want to go through this again for a while”?
- What was the event that most took me by surprise—an event where I saw or did something that shook me up, caught me off guard, knocked me off my stride, gave me a jolt, or made me unexpectedly happy?
- Of everything I did this week in my teaching, what would I do differently if I had the chance to do it again?

Teaching and learning audits: Please think back over the past term/year in your life as a teacher and complete the following sentences as honestly as you can

- Compared with this time last term/year, I now know that ...
- Compared with this time last term/year, I am now able to ...
- Compared with this time last term/year, I could now teach a colleague how to ...
- The most important thing I’ve learned about my students in the past term/year is ...
- The most important thing I’ve learned about my teaching in the past term/year is ...
- The most important thing I’ve learned about myself in the past term/year is ...
- The assumptions I had about teaching and learning that have been most confirmed for me in the past term/year are that ...
- The assumptions I had about teaching and learning that have been most challenged for me in the past term/year are that ...

Role model profiles. This exercise asks you to think about the colleagues with whom you work or have worked, or those you know who work in other institutions and settings. Please answer the following questions about these colleagues:

- As you look back over your career, which colleagues ... best represent what a teacher should be?
- What characteristics have you observed in these people that ... make them so admirable?

- As you think about how these people work, which of their actions most encapsulates and typifies what it is that you find so admirable about them?
- As you think about what these people do well, which of their abilities would you most like to be able to borrow and integrate into your own teaching?
- As you read your responses to these questions, remember that those we regard as heroes and heroines are often people who embody talents and characteristics that we feel are glaringly absent from our own practice and being. Rightly or wrongly, we view as heroic those who can do easily the things with which we struggle the most.

The next set of prompts are from an unpublished manuscript from Susan Wilcox, *Critical Self-Reflection and Self-Evaluation: Learning from Practice*.

EDUCATIONAL GOALS and STRATEGIES

1. What are the chief goals you have for your students? What content knowledge and process skills, including career and lifelong goals, need your students achieve?
2. In your experience, what teaching/learning strategies and experiences BEST help students achieve the above learning goals?
3. What goals do you have for your own development and improvement as a teacher?

CONSIDERING THE LEARNING CLIMATE

1. It's difficult for me to learn when ...
2. My students seem to find it difficult to learn when ...
3. Things that make it difficult for me to build a positive learning climate:
4. Things students might say about a class or teacher that would make me worry about the learning climate in that course:
5. A personal story (arising from my experience as a teacher or student) about learning climate and the way it affects learning:

ARTICULATING AN EDUCATIONAL PHILOSOPHY

1. What beliefs do you have about [law] students as learners?
2. What do you believe is the overall or primary purpose of [legal] education?
3. What do you believe is the role of content or subject matter in [legal] education?
4. How do you believe [law] students learn best?
5. What do you believe is the primary role of the [law] teacher?

The third set of prompts come from Rachel C. Livsey & Parker J. Palmer's *THE COURAGE TO TEACH: A GUIDE FOR REFLECTION AND RENEWAL* (1999).

- Think of a moment when you were teaching at your best. Then fill in the blank: "When I am teaching at my best, I am like a _____." [Explain] what [this metaphor] reveals about [your] gifts and limits as a teacher.
- What are some of your fears in the classroom? In relation to colleagues? In relation to your professional career? How have you dealt with them? What have you learned about yourself and about fear as a result?
- What sorts of fear are healthy for our students? Are those same fears healthy for ourselves? If they are healthy, can they be used more fully in the educational process? Should we do so?

- Draw three columns. In the first column, list some negative images of today's students. In the second column, list some of the fears faced by young people in today's society. In the third column, list the positive attributes that you've observed in today's students. How do these lists relate? How might this profile inform your teaching?
- Name some of your key gifts or strengths as a teacher. Now name a struggle or difficulty you commonly have in teaching. How do you understand the relation between your profile of giftedness and the kind of trouble you typically get into in the classroom?
- Write a personal statement trying to express what is at the heart of your life as a teacher. Consider the following questions: Why did I become a teacher? What do I stand for as a teacher? What do I want my legacy as a teacher to be?

Selected Resources – Books, Articles, Newsletters, Videos, and Websites

The print and electronic literature on teaching and learning in higher education and law school is enormous. Excellent resources addressing both theory and practice abound for teachers who want to know more and to improve their skills. Below we have collected the books, articles, newsletters, videotapes, and websites on which we relied in writing this book (along with a few others that we just couldn't resist including). We encourage you to sample these and other resources as you seek to enhance your teaching and your students' learning. And we apologize to the authors of the many wonderful resources that are not listed here.

Books

THOMAS A. ANGELO & K. PATRICIA CROSS, *CLASSROOM ASSESSMENT TECHNIQUES: A HANDBOOK FOR COLLEGE TEACHERS* 3 (2d ed. 1993).

KEN BAIN, *WHAT THE BEST COLLEGE TEACHERS DO* (2004).

CHARLES C. BONWELL & JAMES E. EISON, *ACTIVE LEARNING: CREATING EXCITING IN THE CLASSROOM* (1991).

JOHN BRANSFORD ET. AL., *HOW PEOPLE LEARN: BRAIN, MIND, EXPERIENCE, AND SCHOOL* (National Academies Press, 2000) (available online at <http://www.napedu/books/0309070368/html>).

STEPHEN BROOKFIELD, *BECOMING A CRITICALLY REFLECTIVE TEACHER* (1995)

STEPHEN BROOKFIELD, *THE SKILLFUL TEACHER* (2d ed. 2006).

STEPHEN BROOKFIELD & STEPHEN PRESKILL, *DISCUSSION AS A WAY OF TEACHING: TOOLS AND TECHNIQUES FOR DEMOCRATIC CLASSROOMS* (1999).

PATRICIA CRANTON, (ED.) *AUTHENTICITY IN TEACHING* (2006).

BARBARA GROSS DAVIS, *TOOLS FOR TEACHING* (1993).

WALTER O. DICK, LOU CAREY & JAMES O. CAREY, *THE SYSTEMATIC DESIGN OF INSTRUCTION* (6th ed. 2005).

L. DEE FINK, *CREATING SIGNIFICANT LEARNING EXPERIENCES* (2003).

DONALD L. FINKEL, *TEACHING WITH YOUR MOUTH SHUT* (2000).

STEVEN FRIEDLAND & GERALD F. HESS, *TEACHING THE LAW SCHOOL CURRICULUM* (2004).

- FRANK HEPPNER, *TEACHING THE LARGE COLLEGE CLASS* (2007).
- GERALD F. HESS & STEVEN FRIEDLAND, *TECHNIQUES FOR TEACHING LAW* (1999).
- LARRY KEIG & MICHAEL D. WAGGONER, *COLLABORATIVE PEER REVIEW: THE ROLE OF FACULTY IN IMPROVING COLLEGE TEACHING* (1994).
- JOSEPH LOWMAN, *MASTERING THE TECHNIQUES OF TEACHING* (2d ed. 1995).
- ROBERT MACCRATE, *REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP*, 1992 A.B.A. Sec. Legal Educ. & Prof. Dev.
- PEGGY L. MAKI, *ASSESSING FOR LEARNING: BUILDING A SUSTAINABLE COMMITMENT ACROSS THE INSTITUTION* (2004).
- WILBERT J. MCKEACHIE, *TEACHING TIPS: STRATEGIES, RESEARCH AND THEORY FOR COLLEGE AND UNIVERSITY TEACHERS* (12th ed. 2005).
- LARRY K. MICHAELSEN, ARLETTA BAUMAN KNIGHT AND L. DEE FINK, *TEAM-BASED LEARNING* (2002).
- GREGORY S. MUNRO, *OUTCOMES ASSESSMENT FOR LAW SCHOOLS* 57 (2000).
- LINDA NILSON, *TEACHING AT ITS BEST* (2d ed. 2003).
- MICHAEL B. PAULSEN & KENNETH A. FELDMAN, *TAKING TEACHING SERIOUSLY: MEETING THE CHALLENGE OF INSTRUCTIONAL IMPROVEMENT* (1995).
- MICHAEL HUNTER SCHWARTZ, *EXPERT LEARNING FOR LAW STUDENTS* (2d ed. 2008).
- PATRICIA L. SMITH & TILLMAN J. RAGAN, *INSTRUCTIONAL DESIGN* (3d ed. 2005).
- DANNELLE D. STEVENS & ANTONIA LEVI, *INTRODUCTION TO RUBRICS* (2005).
- ROY STUCKEY ET AL., *BEST PRACTICES IN LEGAL EDUCATION* (2007).
- WILLIAM M. SULLIVAN ET AL., *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* (2007).
- LINDA SUSKIE, *ASSESSING STUDENT LEARNING* (2004).
- BARBARA E. WALVROOD, *ASSESSMENT CLEAR AND SIMPLE: A PRACTICAL GUIDE FOR INSTITUTIONS, DEPARTMENTS, AND GENERAL EDUCATION* (2004).
- BARBARA E. WALVROOD & VIRGINIA JOHNSON ANDERSON, *EFFECTIVE GRADING: A TOOL FOR LEARNING AND ASSESSMENT* (1998).
- MARYELLEN WEIMER, *IMPROVING COLLEGE TEACHING* (1990).
- MARYELLEN WEIMER, *IMPROVING YOUR CLASSROOM TEACHING* (1993).
- MARYELLEN WEIMER, *LEARNER-CENTERED TEACHING: FIVE KEY CHANGES TO PRACTICE* (2002).

Articles

- Susan B. Apel et. al., *Seven Principles for Good Practice in Legal Education*, 49 J. LEGAL EDUC. 367 (1999) (eight articles applying the seven principles to legal education).
- Gerald F. Hess, *Collaborative Course Design: Not My Course, Not Their Course, But Our Course*, 47 WASHBURN L. REVIEW 367 (2007).
- Gerald F. Hess, *Heads and Hearts: The Teaching and Learning Environment in Law School*, 52 J. Legal Educ. 75 (2002).

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<http://bestpracticeslegaled.albanylawblogs.org> This blog contains postings on legal education curriculum, teaching, reform, and assessment, providing a web-based source of information on current reforms in legal education arising from the publication of Roy Stuckey's Best Practices for Legal Education and the Carnegie Foundation's Educating Lawyers.

<http://idd.elon.edu/blogs/law/> is a blog hosted by Professor Steven Friedland of the Center for Engaged Learning at Elon School of Law. The blog is intended to contribute to the discourse on teaching and learning in law, from the inspirational to the whimsical, to the mechanical. It includes the varying perspectives of teachers, administrators, learners, and practitioners.

www.law.gonzaga.edu/ilst The Institute for Law School Teaching serves as a clearing-house for ideas to improve the quality of education in law school. It publishes an on-line newsletter and its website contains helpful materials and links to law school and higher education resources.

www.law.umkc.edu/faculty/profiles/glesnerfines/bgf-edu.htm is Professor Barbara Glesner Fines' "Teaching and Learning Law" website which contains helpful materials for law students and teachers.

<http://www.washlaw.edu/> This site contains links to over 100 topical sites. The sites – ranging from law schools, to legal books, women in the law, and even every state in the union – are alphabetically organized. The Study Law link, for example, connects the user to links concerning outlines, study aides, other resource guides, and examinations. The Teaching Methods link, on the other hand, connects the user to Web site addresses enabling law school professors to subscribe to educational periodicals.

www.podnetwork.org The Professional and Organizational Development Network in Higher Education (POD) supports a network of nearly 1,800 members - faculty and teaching assistant developers, faculty, administrators, consultants, and others who perform roles that value teaching and learning in higher education. Contains valuable links to university teaching and learning centers.

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