INSTITUTE FOR LAW TEACHING AND LEARNING

Teaching Law Practice Across the Curriculum

Workshop 1C

Incorporating Practical Exercises to Develop Students' Consultation Skills

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PRR 410
CONSULTAION SKILLS
2010

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Questioning

- Open
- Closed
- T funnel technique
- Biased / loaded
- Reflective
- Process controlling
- Persuasive

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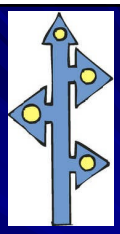
Advising



Taking of instructions

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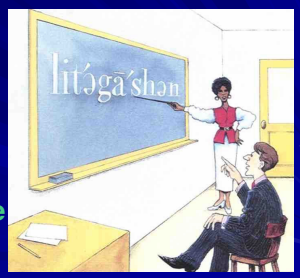
Back to basics

- Locus standi
- Cause of action
- Jurisdiction
- Form of procedure
- Time limits



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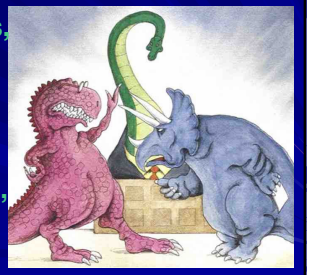
The parties:

- Plaintiff's full names, gender, occupation and address
- Defendant's name by which he is known, address (gender and occupation if known)



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Locus standi:
Interest in the matter

Jurisdiction
Finding the correct court

Cause of action

Legal facts ➡ Obligations
➡ Liability

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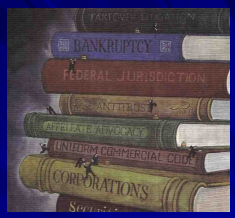
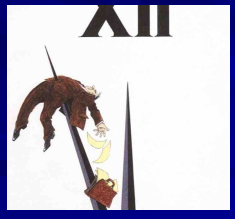
Statutory requirements





Prescription

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- Who
- What
- When
- Where

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Locus standi & citation or parties

Who

- Who is the plaintiff?
- Who is the defendant?
- Do they have the capacity to sue / be sued?
- Do they have an interest in the right forming the subject of the litigation?

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Cause of action

What

- What are the facts of the case?
- Do these facts constitute a cause of action?
  - Is there a cause of action?
  - What is the cause of action?
- Which are the essential facts to be proved to constitute the cause of action?

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Prescription and statutory requirements of prior notice

When

- When must / should have action be instituted
- When was action instituted i.e. summons received?
- Are there any common law / statutory requirements re prior notice or time periods within which action should be instituted?

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Jurisdiction

Where

- Which court/s has the capacity to adjudicate the matter re person / cause of action / monetary value?

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CLIENT ASSESSMENT FORM

For questions 1-10, please indicate how much you agree or disagree with each statement about the interviewer who worked with you. For each item, you may enter a "x" in the appropriate box

THE INTERVIEWER	STONGLY DISAGREE	DISAGREE	DON'T KNOW	AGREE	STONGLY AGREE
1. Made me feel comfortable					
2. Said things I didn't understand					
3. Treated me with respect					
4. Didn't understand what was most important to me					
5. Listened to me					
6. Didn't explain what he or she would do next for me					
7. Was interested in me as a person					
8. Asked confusing questions					
9. Was someone I could trust					
10. Understood why I needed legal help					
For questions 11-13, please indicate how much you disagree with each statement					
11. I didn't say everything I wanted to say					
12. I know what I need to do next					
13. If I came back to this clinic with a different need for legal help, I'd want the same interviewer to help me.					
14. I will recommend the clinic to my friends.					

PEER ASSESSMENT FORM

Rate each member of your team as to:

4 - All of the time
3 - Most of the time
2 - Some of the time
1 - Seldom

_____ Attended/participated in all group activities and meetings

_____ Shared responsibilities for assigned tasks

_____ Provided effective and efficient assistance

_____ Exerted a significant effort to achieve project goals

_____ Acted in a trusted way

_____ Motivated other group members

_____ Controlled temper during group activities

_____ Good listener

_____ Contributed positively to problem solving

_____ Thoroughly researched the project problems

_____ Criticized ideas, not people

_____ Worked with the given timetable

_____ Offered positive input

_____ **Total**

SELF ASSESSMENT FORM	
Rate yourself on a scale from 1-5, 5 being good, 3 average and 1 poor.	
Attitude to client - How well did I:	**Rating**
1. Introduce myself to the client?	
2. Introduce my colleagues to the client?	
3. Introduce my supervisor to the client? (if applicable)	
4. Make the client feel at ease?	
5. Listened attentively?	
6. Noticed any problems of understanding?	
7. Give the opportunity to ask questions?	
8. Explain clearly?	
9. Allow client to make decisions?	
Evidence of preparation - How well did I:	
1. Demonstrate that I prepared a structured interview?	
2. Understand any documents produced?	
3. Show familiarity with law and procedure?	
Obtaining information - How well did I:	
1. Allow client to explain problems in own way?	
2. Ask questions at the appropriate time which were: ▪ Open e.g. what happened next? ▪ Focused e.g. what was the date on which that happened?	
5. Accurately obtain available details of: ▪ the factual situation? ▪ the client's main concerns and wishes?	
6. Obtain or ask for relevant documents?	
7. Identify where further information was needed and how to obtain it?	
8. Use time effectively?	
Imparting information – How well did I:	
Explain legal terms and procedures?	
Avoid giving premature advice?	
Explain next steps to be taken by attorney and client?	
Documenting the interview - How well did I:	
Document the client's personal information, e.g. full names, occupation, addresses, telephone and fax numbers?	
Summarise the factual issues?	
Identify legal issues such as: ▪ locus standi ▪ cause of action ▪ jurisdiction	
Summarise accurately advice given and instructions received?	
Clearly identified the next step for adviser and client (including dates)?	

NOTE: PLEASE DO NOT READ THE CONTENT OF THIS DOCUMENT PRIOR TO THE WORKSHOP

CONSULTATION SKILLS
Role Play Exercise - Divorce

Instructions:
Students are divided into groups (ideally not more than 6 students in a group). They will consult with Sarah Shepard who wants to divorce her husband, Michael Shepard. It is important that the person playing the role of Sarah, memorise the set of facts. She should not volunteer all the facts but give the students the opportunity to draw the information from her.

Set of Facts:
Sarah Shepard is the client. She is married to Michael Shepard and wants a divorce. Sarah is 32 and Michael is 54. They have been married for 10 years. They have three children: Clark Shepard, who is 14 years of age and Michael's son from a previous marriage and the twins Katelyn and Joshua Shepard who are 7 years of age.

Sarah separated from Michael and recently moved from New York to Kansas to be closer to her mother. She has been living in Kansas for a month.

Sarah wants to divorce Michael because he cheated on her with an ex-convict, Lavern. Lavern was imprisoned for aggravated assault. Lavern moved in after Sarah moved out.

Sarah wants custody of all the children. Sarah took the twins with her but Clark is still staying with Michael. She wanted him to come with her but he did not want to move to Kansas.

Sarah wants maintenance from Michael for 10 years.

Sarah wants child support for the twins.

Sarah owns a Jeep Cherokee, and a beach house in California which she inherited from her father. She left her career in acting and is now working in her mother's salon as a hair dresser. She earns $3,500 per month. Michael is a very successful lawyer and earns $35,000 per month. He owns a Jaguar and a Harley Davidson. They both own an apartment on 15th Avenue in Manhattan New York which is furnished with a leather lounge suite, LCD TV, kitchen appliances, a valuable dining room set from Scotland, 2 desk top computers and 4 laptops, intendo wii and bedroom furniture for them and the children. Both have a pension plan.

Points to consider:
Students must take the following into consideration during the consultation:

Residency
The petitioner or respondent in an action for divorce must have been an actual resident of the state for 60 days immediately preceding the filing of the petition.

Grounds
One of the grounds for divorce is failure to perform a material martial duty of obligation.

Child custody

- the court will take a number of factors into consideration, amongst others: the fact that Lavern is an ex-convict found guilty of aggravated assault;
- the fact that Clark is not Sarah's biological son;
- the fact that Clark does not want to move to Kansas.

Maintenance

The court may not award maintenance for a period of time in excess of 121 months. The court may order that subsequent motions for reinstatement of maintenance may be heard.

Child support

The court will make provisions for the support and education of the minor children. As a golden rule the Court may order the child support and education expenses to be paid by either or both parents for any child less than 18 years of age, at which age the support shall terminate. There are however some exceptions.

Property

The court will take into consideration the age of the parties; the duration of the marriage; the property owned by the parties; their present and future earning capacities; the time, source and manner of acquisition of property; family ties and obligations; the allowance of maintenance or lack thereof; dissipation of assets; the tax consequences of the property division upon the respective economic circumstances of the parties; and such other factors as the court considers necessary to make a just and reasonable division of property.

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CONSULTATION SKILLS
Role Play Exercise – The Bad Attorney

Instructions:
This exercise demonstrates the conduct to be avoided during a consultation. One presenter will play the role of the client and the other the role of the consulting attorney. The attorney will purposefully behave inappropriately towards the client, where after the attendees will be asked at strategic intervals to criticise the consultation. Once the mistakes have been identified the attorney will correct the said mistakes and the consultation will resume.

For this exercise you will need the following role players:

Attorney
Client
Receptionist
The Facilitator
A panel of four attorneys. They can give their opinion and share their experiences.

Set of facts:
Any set of facts could be created. The focus will however be on the mistakes the attorney make.

The attorney could make the following mistakes:

- Instead of meeting the client at reception, the attorney summons the client to his/her office
- Leaving the desk and consultation area messy
- Use incorrect body language
- Checking his/her watch constantly
- Interrupting the client
- Jumping to conclusions
- Making empty promises to the client – such as we are going to win this case and sue the other party into the ground…
- Taking a personal call during the consultation
- Telling the friend on the phone of another client (breaching client attorney privilege and confidentiality)
- Acting unsympathetic when the client gets emotional
- Not controlling the conversation
- Chewing bubble gum
- Using Latin and legal terms when speaking to the client