

## ENGAGING STUDENTS WITH HAVRUTA STYLE LEARNING

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This workshop will begin with a short participatory example involving the reading beginning on page 6 of these materials. This exercise will allow participants to have a taste of Havruta style engagement. The presentation will then elaborate on the concepts summarized below as well as discuss ways to incorporate Havruta into the law school classroom.

These materials include the following:

- Summary of Havruta, beginning p. 1
- Traditional Havruta Practice, beginning p. 2
- Appropriateness of Havruta to Law Teaching, beginning p. 3
- Tips for using Havruta in the Law School Classroom, beginning p. 4
- Example: Using Havruta, beginning p. 6

### Summary of Havruta<sup>1</sup>

Havruta is a unique form of student centered learning that engages students in the discovery process. A traditional Jewish method of using pairs to closely examine a text, Havruta uses the concept of dispute and resolution and often involves questions with no one right or even best answer. It is not just a dressed up pair and share or other conventional form of collaborative learning. In large part because of its underlying philosophy it encourages students to go well beyond the opportunity for solution-focused brainstorming that is the essence of many commonly practiced cooperative learning techniques. While typically involving students working in pairs, Havruta's basic philosophy can, in appropriate circumstances, be just as effective in a small group situation.<sup>2</sup> In

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<sup>1</sup> For a detailed examination of Havruta style learning, see my forthcoming article *Can Havruta Style Learning be a Best Practice in Law School?* to be published at 18 Willamette J. Int' L. & Disp. Resol. 109.

<sup>2</sup> Indeed, this semester I have an advanced writing class of 10 students in which I have effectively used Havruta based learning throughout the semester as students have examined text, used it to create arguments, and written a persuasive document as a group throughout the semester. The key Havruta aspects of this class have been both my pushing the students to work through the three core practices of Havruta as outlined in these materials, and, perhaps more importantly, my serving as a non-judgmental co-seeker or guide, rather than as a teacher who has the best answer or whose judgment must be deferred to.

addition to making it impossible for students not to be engaged in their learning, Havruta focuses on the thinking process while fostering the independence necessary for functioning as a lawyer.

In its traditional setting Havruta is used to study the Talmud, which is a series of interpretations by biblical scholars. The text and commentaries of the Talmud provide unending dialog about the meaning of the Torah (the body of Jewish law) and their study provide students with a deeper understanding of the underlying principles. A primary objective of Jewish scholars is “to tease out the meaning and purpose of each twist of the argument to learn how to apply the law in new situations – something like the Socratic Method used in contemporary law school classes.”<sup>3</sup>

A key to Havruta style learning is its underlying philosophy. Unlike classical argumentation which has an end point (usually to win or to find the “truth”), Jewish philosophy takes the approach that it is the process of study, including dispute about the meaning of text, that is important and that must continue as the discussion and argumentation push and broaden each individual’s understanding of the text. The focus is the process, not a final end point.

Havruta method, in contrast to typical Western classrooms, removes dependence on a teacher to provide a final or “correct” answer. Instead, the teacher, serving as both a guide and participant in the quest for understanding, becomes another seeker of the “truth.” Questioning is the process by which the seekers tease out pieces of that truth. By probing one another’s understandings, Havruta students go beyond studying text and what others have said about it and, as student and teacher together discover and reconcile subtle distinctions, meanings, and principles within the text, they continue the unending process of learning and understanding.

The Havruta process is a democratic one, at odds with the traditional Western approach to argumentation that asserts that if two people disagree one must be wrong and that once the correct answer is discovered the process may end. Because in Havruta the focus is on the process, while a particular situation may be resolved, the debate and discovery will not end once a “correct” answer is recognized. Rather, the learning continues indefinitely.

### **Traditional Havruta Practice**

Because all students are all concurrently involved, Havruta classrooms are noisy and may even appear chaotic. Havruta Learning involves three core

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<sup>3</sup> Mark Miller, *Something to Argue About*, Wall St. J., Feb 25, 2005.

practices: listening and articulating; wondering and focusing; supporting and challenging.<sup>4</sup> Traditional Havruta often begins with students reading the actual text to one another; in this way they engage with the text as they hear its actual words. The students then begin to articulate the meaning of this text as they engage not only with the material but with one another. They must listen both to one another and to the language of the text.

As they begin to articulate their understanding of the text one partner must listen in order to understand the other partner's ideas. To fully grasp those ideas one must ask questions that further the understanding; these questions may go beyond mere clarification and expose critical weaknesses in the thinking, forcing the partner to further develop her understanding of the material as she seeks to correct her position or bolster it with a deeper understanding and interpretation of the text.

The Havruta students must articulate their thinking out loud as they explore the text and then seek to define it and their ideas that are supported by their reading of the material. As this process moves forward the partners wonder at and explore their own ideas, their partner's ideas, and the text itself. They ask each other open ended questions about the meaning of specific portions of the text and the connections between different pieces. They focus on specific details of the text along with their interpretations and this focus leads to further wondering as they continue to probe the text itself along with their own ideas about it. Throughout this process, the partners both support and challenge one another as they build and expand on one another's ideas.

The Havruta process develops both a method for interpretation and intellectual rigor. It values dissenting and diverse views, requiring participants to listen and step outside their own point of view. It fully engages all students in the classroom simultaneously and it fosters independence in the learning and thinking process.

### **Appropriateness of Havruta to Law Teaching**

Consider the possible similarity and usefulness of much of the above to the law. Not only is the law ever evolving, but even when the interpretation of a particular black letter rule is fairly certain in the abstract, each specific fact situation, whether hypothetical or real, involves a new understanding of that rule

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<sup>4</sup> Orit Kent, A Theory of Havruta Learning, available at: [http://www.brandeis.edu/mandel/pdfs/A\\_Theory\\_of\\_Havruta\\_Learning.pdf](http://www.brandeis.edu/mandel/pdfs/A_Theory_of_Havruta_Learning.pdf); see generally [http://www.brandeis.edu/mandel/projects/beitmidrashresearch/beitmidrash\\_biblio.html](http://www.brandeis.edu/mandel/projects/beitmidrashresearch/beitmidrash_biblio.html)

as it is applied to specific and unique facts. With each such application, the rule is further developed and its nuances are further defined and understood. While there may be a final resolution to a specific situation, there is not a final resolution to the ultimate meaning and understanding of the rule.

Much of the Havruta approach is similar to the goals and effects of Socratic learning. However, there are two key differences. First, even the very best Socratic discussion between teacher and student engages only one student at a time. Second, traditionally the law teacher is seen as holding the answer (the “truth”) and thus the student is seeking not simply a deeper understanding but to acquire the answer held by the teacher. When the focus is on obtaining the answer, students focus less on the process and less on developing their own critical thinking and judgments. Instead, the student looks to the teacher as holding superior knowledge and judgment. The student becomes dependent on the teacher rather than an independent thinker.

The law student, like the lawyer must, of course, deal with specific questions that require a certain and final answer. Yet, these final answers are only steps along the way of the process of truly deep learning about the law. Havruta fosters that deep learning and can only make the “final” answers to individual questions, whether in class, on exams, in a written memo, brief, or scholarly paper, better because the student will have thoroughly examined the relevant law and its many implications in the specific case at hand. In this way Havruta style learning can be fundamental in helping students to acquire the independence necessary to function well as a lawyer.

### **Tips for using Havruta in the Law School Classroom**

Teachers wishing to employ Havruta style learning must understand that their role will change from one who dispenses information to one who facilitates the discovery of information. The teacher must be willing to hold back on judgments not only of right or wrong answers, but also of pronouncements of better or worse. Instead, the teacher must be prepared to ask questions intended to probe why a student has arrived at a particular answer and push the student to arrive at his or her own judgment of better or worse. If students believe that ultimately the teacher will make that judgment for them, they have lost the incentive to arrive at and support their own judgment, thus losing much in the development of their own critical thinking that is fostered by the Havruta process in which the teacher does not hold the answer.

In the large, lecture type, class, Havruta can be employed by designating partners and providing prompts as the students simultaneously carry on

essentially the same discussion that would be accomplished by a Socratic style dialog between teacher and one student. The teacher must carefully prepare prompts to provide to the students and must circulate the classroom engaging as a co-participant with various partners' discussions, pushing and probing as needed.

More possible scenarios exist in the small seminar type class. One such possibility is to create one Havruta style discussion among the entire group. Another would be to have students take the role of "teacher" providing specific text for discussion and prompts based perhaps on the paper that a student is writing for the seminar. The size of the seminar as well as its topic will likely suggest many other possibilities.

In a writing or practice related class, in addition to the above suggestions, student pairs can address both sides of a particular problem for which students are writing a memo or brief. If students representing opposing sides are paired, the ensuing Havruta discussion will help them to achieve a deeper understanding of their own position and how to support it in writing.

These are but a few suggestions; the creative teacher will find many more ways to integrate Havruta into the teaching repertoire. In introducing Havruta to students, the teacher may want to provide students with some minimal background explaining that this method assumes that by discussion each partner will gain a greater understanding and that this discussion requires not only active expression of ideas, but also active and open-minded listening to the ideas of another. The teacher might further explain that the goal is to move together towards a deeper understanding that may allow resolution of a particular point but that does not necessarily resolve all questions that might be raised by particular text. Further, students should understand that there is no one true or correct answer and that the teacher will enjoy gaining further understanding along with the students.

The first step, choosing partners, needs to be carefully thought through along with for how long students will retain the same partner. Generally, if partners remain together for some period of time they will strengthen their learning process as their trust and understanding of one another deepens. This must be balanced with the need to periodically reassign students in order to expose them to other approaches and views.

The teacher also must carefully think through the text, topic, and questions to be covered on any given day and must carefully prepare prompts that can be provided to the students. Students will likely need to read the text or problem to be addressed in advance of class or otherwise prepare for class in much the

same way as they do now. However, because their partner is relying on their preparation and because they are always in the “hot seat,” students are less likely to avoid preparation than they may be in other circumstances. During class the teacher must be able to circulate the room and connect and disconnect with various partners prompting and probing their individual discussion to push them both forward and deeper in their thinking.

Finally, the teacher must determine how much time to give to the process and when and how much time to devote to returning together as a class to further discuss the material. At this time, again, it is crucial that the teacher not then give the “answer”; to do so means that the next time Havruta is used the students, rather than fully engaging in the quest, will be awaiting the teacher’s pronouncement of the proper end of that quest.

Used effectively, Havruta style learning can be fundamental in helping students to acquire the independence necessary for functioning as a lawyer. It will also keep students engaged in the learning process.

### **Example: Using Havruta**

*This exercise is designed to give participants a sense of a Havruta approach. Because of time limitations this experience will be brief. It will be helpful though not necessary if you can read the following prior to the presentation. You do not need to have any understanding of the below topic beyond what is presented in these materials. Indeed, they were chosen on the assumption that most participants will have little familiarity with this topic.*

Please read the following excerpts regarding a portion of the Indian Child Welfare Act. You will be presented with a question and guided prompts so that you and your Havruta partner can begin to examine the text and its usefulness in resolving the posed question.

#### **25 U.S.C. § 1901 Congressional findings**

Recognizing the special relationship between the United States and the Indian tribes and their members and the Federal responsibility to Indian people, the Congress finds--

. . . .

**(3)** that there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children and that the United States has a direct interest, as trustee, in protecting Indian children who are members of or are eligible for membership in an Indian tribe;

**(4)** that an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children from them by nontribal public and private agencies and that an alarmingly high percentage of such children are placed in non-Indian foster and adoptive homes and institutions; and

(5) that the States, exercising their recognized jurisdiction over Indian child custody proceedings through administrative and judicial bodies, have often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families.

#### **25 U.S.C. § 1902. Congressional declaration of policy**

The Congress hereby declares that it is the policy of this Nation to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture, and by providing for assistance to Indian tribes in the operation of child and family service programs.

#### **25 U.S.C. § 1911. Indian tribe jurisdiction over Indian child custody proceedings**

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##### **(b) Transfer of proceedings; declination by tribal court**

In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child not domiciled or residing within the reservation of the Indian child's tribe, the court, in the absence of good cause to the contrary, shall transfer such proceeding to the jurisdiction of the tribe, absent objection by either parent, upon the petition of either parent or the Indian custodian or the Indian child's tribe: *Provided*, That such transfer shall be subject to declination by the tribal court of such tribe.

### **Bureau of Indian Affairs (BIA) Recommended Guidelines for State Courts-Indian Child Custody Proceedings**

#### **C.3. Determination of Good Cause to the Contrary**

- a. Good cause not to transfer the proceeding exists if the Indian child's tribe does not have a tribal court as defined by the Act to which the case can be transferred.
- b. Good cause not to transfer this proceeding may exist if any of the following circumstances exists:
  - i. The proceeding was at an advanced stage when the petition to transfer was received and the petitioner did not file the petition promptly after receiving notice of the hearing.
  - ii. The Indian child is over twelve years of age and objects to the transfer.
  - iii. The evidence necessary to decide the case could not be adequately presented in the tribal court without undue hardship to the parties or the witnesses.
  - iv. The parents of a child over five years of age are not available and the child has had little or no contact with the child's tribe or members of the child's tribe.
- c. Socio-economic conditions and the perceived adequacy of tribal or Bureau of Indian Affairs social services or judicial systems may not be considered in a determination that good cause exists.

In deciding whether there is good cause not to transfer a custody proceeding to tribal court, some states include a consideration of best interests of the child, while some stick specifically to the BIA

recommended guidelines and indicate that best interests should not be a factor in the determination. Thus the New Mexico Court of Appeals noted that

Although these [inadequacies and imprisonment of parents] may be good reasons to appoint the [proposed] guardians, they have nothing to do with whether transferring the proceeding to tribal court was appropriate. See *In re Armell*, (“best interests of the child” standard not to be applied when determining whether good cause not to transfer exists; “best interests of the child” standard is used to ascertain placement, not to determine jurisdiction).

Other states hold that the court may or should consider best interests of the child when determining good cause. Thus the Supreme Court of Nebraska stated:

The Indian Child Welfare Act does not change the cardinal rule that the best interests of the child are paramount, although it may alter its focus. The legislative history of the act states explicitly that the use of the term “good cause” was designed to provide state courts with flexibility in determining the disposition of a placement proceeding involving an Indian child.

**Using only the above material, you and your partner must try to resolve the following question: Should best interests be a part of the inquiry in determining whether there is good cause not to transfer a case to tribal court?**

- 1. With your partner look at the text and articulate its essence;**
- 2. Determine the meaning of the text, focusing specifically on how it addresses the question posed;**
- 3. Support your position, questioning and challenging your and your opponent’s statements, using the text to question and to answer;**
- 4. Be prepared to discuss your resolution to the question and how your interpretation of the text supports that resolution, as well as discussing points on which you and your partner continue to disagree and the basis for that disagreement.**

*Notes on this exercise: This problem just as easily could have been presented in the context of a fact specific hypothetical. It could also have been presented in a way in which individuals would have a client for whom one position or the other would be desired and the discussion could have been designed around partners trying to convince one another of why their position is superior. These are just some examples of differing ways that Havruta might be employed in various classroom or teaching situations.*