

INTEGRATING THE THREE APPRENTICESHIPS – THINKING, PERFORMING, AND BEHAVING --IN AN INSURANCE PRACTICE COURSE

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Summary:

This workshop will describe and illustrate active learning techniques I've used in an upper level practicum on insurance law and practice to give students a contextual exposure to handling a complex insurance claim. The workshop is organized around the concepts of two books: SULLIVAN, ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (2007); and JULIE MACFARLANE, THE NEW LAWYER: HOW SETTLEMENT IS TRANSFORMING THE PRACTICE OF LAW (2008).

It will also discuss some of the ideas and goals of a new ABA taskforce focused on integrating ADR skills and theory into doctrinal courses. It will invite workshop participants to consider partnering with ADR faculty at their schools in this curricular innovation. See Legal Education, ADR, and Problem-Solving (LEAPS) Task force, <http://legal-ed-adr-prob-solving.org/>.

Goals of Workshop:

- To provide one example of how professors can integrate in a doctrinal course student learning about skills of the expert practitioner (whether as a litigator, negotiator, mediator, or arbitrator) in the context of a real case file.
- To provide one example of how a professor can integrate in a doctrinal course student learning about professional behavior, identities, and purpose.
- To provide one example of how a professor can integrate in a doctrinal course student learning about a variety of dispute resolution processes.

Resources Used:

- A NITA case file on an excess insurance coverage dispute arising from damage to two apartment complexes caused by termite infestations.
- A treatise-like summary of the relevant doctrine.
- A book on legal strategy and client counseling.
- Independent legal research of state law cases and statutes.
- Three or four guests – an insurance agent, a claims adjuster, an insurance lawyer who specializes in termite claims, and a mediator who handles insurance coverage disputes.

- Law practice treatises on Library Reserve relating to the litigation of an insurance coverage claim.
- A course TWEN website.
- Wikis on TWEN.

Teaching Methods:

- Students play the role of law firm associates representing a party in the dispute.
 - Early in the semester, I ask students which side of the dispute they want to represent.
- I play the role of senior partner in the firm who supervises their work and assignments.
- Students take a portion of the file and develop a timeline of events on one of the Wikis.
- They also identify on another Wiki the “players” in the dispute, along with the person’s position, and general role in the dispute.
- The professor sets up other Wikis tied to each legal issue in the dispute and encourages students to post on the Wikis information they find during their research, even if the information relates to an issue assigned to another student group.
- We identify the legal issues they need to research in the relevant state law after getting an overview of each topic using the treatise.
- Students develop and post outlines of the treatise chapters on the course TWEN site.
- Students, working in groups of two students, research and write a legal memo to the partner on the assigned legal issue.
 - Students submit two drafts of the memo for the professor’s review and feedback.
 - Students use a number of library resources designed for practicing attorneys to research their assigned legal issue and draft the legal memo.
- Students analyze and digest three types of documents: case law, statutes, and insurance contracts. They also consider the public policy relating to insurance, the economics of the industry, its structure and regulation, and the role insurance plays in our society.
- We also discuss the dispute in the broader context of the interests, economic situation, goals, emotions, psychological needs, and other concerns of the client, witnesses, and opposing party.
- Students, in role, interview two of the client’s representatives, one of whom has a bad memory and is feeling blamed and incompetent.

- Students, in role, interview the insurance agent and the claims adjuster, raising questions relating to the file and the legal theory.
- Students can supplement the depositions included in the NITA case file through deposition questions posed on a TWEN discussion board (with the professor playing the role of each deponent).
- Students discuss the legal theories and relevant facts during class.
- We discuss how new concepts introduced in their readings or the short class lecture relate to the dispute.
- Students, in role, interview a lawyer who practices specifically in the context of termite infestations.
- The professor teaches 6 hours on techniques for bargaining over money damages, using visual aids, videos, and short role-play exercises.
- We talk about the ethics of negotiation in this context, the ethos of effective negotiators, along with the risks of bad faith on the part of the insurer.
- Students spend at least two class hours trying to negotiate a resolution of the multi-million dollar dispute. We spend at least an hour in class de-briefing the exercise.
- Students, most of whom are trained mediators, interview a mediator who handles insurance disputes.
- Students review and discuss the statutes governing arbitration of insurance claims or of adhesion contracts.
- Students also consider the role neutral fact-finding or early neutral evaluation could play in the dispute.
- Students learn and discuss several techniques for assessing the best dispute resolution strategy to adopt to meet the client's interest and goals.