

Engaging Students for Transactional Practice

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For more than a decade, organizations such as the Carnegie Foundation, the Clinical Legal Education Association, and the American Bar Association have urged law schools to train more reflective, competent, skilled, and ethical lawyers who have the ability to examine and resolve legal problems effectively and responsibly. Many law teachers, school administrators, and practitioners are questioning whether traditional methods of instruction alone are the most effective methods for accomplishing these goals. When designed and implemented thoughtfully, alternative methods of instruction stimulate student thought and interest, allowing students to more actively engage in the learning process and develop higher order critical thinking skills such as analysis, synthesis, and evaluation.

This workshop will illustrate how short group exercises can teach fundamental lawyering skills while also promoting greater student engagement. While these exercises arose out of a transactional clinical context, the skills they teach are essential across disciplines. This 75-minute workshop will present some of the group exercises we use to teach: (i) problem-solving, (ii) drafting, (iii) value assumptions, and (iv) planning a client interview.

The goals of this workshop are to:

- help participants understand how to use short group exercises to teach lawyering skills while promoting students' active participation in their own learning;
- increase participants' understanding of how short group exercises help students connect broad principles to specific transactional tasks; and
- spark participants' own creative thinking about group exercise design and use to facilitate student engagement and enhance student learning.

This workshop provides practical ideas related to the conference's focus on techniques for generating student engagement to enhance learning. The techniques demonstrated and discussed during this workshop can be easily modified and manipulated to be used in a variety of settings, including upper level courses and clinical courses. By combining interactive elements along with self- and group-reflection, this workshop both facilitates collective learning and models the instructive style we advocate that participants use in their own classrooms.

Because this workshop uses interactive elements, we ask that you **PLEASE DO NOT READ THOSE MATERIALS IN THE FOLLOWING PAGES MARKED "PLEASE DO NOT READ THE FOLLOWING MATERIALS PRIOR TO THE WORKSHOP" UNTIL DIRECTED TO DO SO BY THE WORKSHOP PRESENTERS.**

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Exercise #1: Entity Formation

DESCRIPTION AND PURPOSE OF EXERCISE: In this exercise, intentionally erroneous corporate forms are distributed to the students. The forms are usually the principal organizational document for one of a business corporation, a nonprofit corporation, or a limited liability company. The students are to identify the error and offer a correction using the relevant state business associations statute. The errors are relatively obvious and easy to find once the student has identified the relevant statute. The exercise has three goals:

- To familiarize students with the business association statutes.
- To require students to apply the skill of close reading, both of the statute and the form they are to correct, and to illustrate the attention to detail necessary when preparing legal documents.
- To illustrate how the organizational documents of the various entities differ from one another. This is a springboard to a discussion of why they differ from one another and how those differences reflect the different nature of the entities.

TIMING: Time for Lecture is 50 minutes. Rough breakdown of lecture is:

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|--|------------|
| • Introduction to exercise | 5 minutes |
| • Students complete exercise | 10 minutes |
| • Students present their exercise to the class | 35 minutes |

MATERIALS NEEDED FOR CLASS:

- Introductory lecture notes
- Copies of the relevant business association statutes, if the students are to find the error in class

STUDENT FEEDBACK: My students have preferred to be assigned the exercise before class as opposed to performing the exercise in class. This saves time in class for post-exercise discussion, and saves paper, by avoiding handouts of the required statutes.

ERRORS FOUND IN THE DOCUMENT:

For a Corporation:

- Non-compliant name
- No incorporator statement
- Registered agent is out of state
- Overbroad Indemnity (indemnifies for claims expressly disallowed by statute)
- Correct form (no error)

For an LLC:

- No duration statement
- No statement of professional services for an LLC

For a Nonprofit Corporation

- No statement of members for mutual benefit corporation
- No statement of type of nonprofit corporation

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INSTRUCTIONS FOR ENTITY FORMATION EXERCISE

Attached to this instruction sheet is a hypothetical Articles of Incorporation or Organization, the document that is filed with the Oregon Secretary of State to form one of a corporation, nonprofit corporation or a limited liability company under Oregon law.

Your assignment is to use the relevant sections of Oregon Revised Statutes (O.R.S.) to determine whether the attached document meets the statutory requirements for it.

The relevant statutes for corporations, LLCs, and nonprofit corporations may be found in O.R.S. chapters 60 (corporations), 63 (LLCs), and 65 (nonprofit corporations) respectively.

Please check the attached document against its requirements set forth in the O.R.S.
If necessary, correct the document.

In class this Friday you will discuss with the class your document and the error, if any, it possesses.

When you refer to the table of contents for the chapter relevant to your document, you will see that it is divided into sections. Each chapter usually has sections titled "Incorporation," (or "Organization" in the case of an L.L.C.), "Purposes and Powers," "Name," "Office and Agent," and "Filing Documents." The error in your document will be found using one of these sections.

Note: Each student has been given a different document with a different error or mistake. One document satisfies the statutory requirements for it and is correct.

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**ARTICLES OF ORGANIZATION
OF
STEVENSON BUSINESS FORMS, LLC**

ARTICLE I

The name of this limited liability company (the "Company") is Stevenson Business Forms, LLC.

ARTICLE II

The street address and mailing address of the Company's initial registered office are 123 Easy Street, Portland, OR 97204; and the name of the Company's initial registered agent at that address is Scott Stevenson.

ARTICLE III

The mailing address to which notices, as required by the Oregon Limited Liability Company Act, may be mailed until the principal office of the Company has been designated in an annual report is 123 Easy Street, Portland, OR 97204.

ARTICLE IV

The name and address of the sole organizer of the Company are Scott Stevenson, 123 Easy Street, Portland, OR 97204.

ARTICLE V

The Company will be managed by one or more managers.

DATED: September 17, 2009.

Scott Stevenson
Organizer

Person to contact about this filing:
Scott Stevenson
503-123-4567

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O.R.S. § 63.047

63.047. Articles of organization

(1) The articles of organization shall set forth:

(a) The name of the limited liability company which satisfies the requirements of ORS 63.094;

(b) The address, including street and number, and mailing address, if different, of the limited liability company's initial registered office and the name of its initial registered agent at that office;

(c) A mailing address to which notices, as required by this chapter, may be mailed until an address has been designated by the limited liability company in its annual report;

(d) If the limited liability company is to be manager-managed, a statement that the limited liability company will be manager-managed or a statement that the limited liability company is to be managed by a manager or managers;

(e) The name and address of each organizer;

(f) The latest date on which the limited liability company is to dissolve or a statement that its existence is perpetual; and

(g) If a limited liability company is to render professional service or services, as defined in ORS 58.015, the professional service or services to be rendered through the limited liability company.

(2) The articles of organization may set forth any other provisions, not inconsistent with law, for the regulation of the internal affairs of the limited liability company, including any provision that is required or permitted to be included in any operating agreement of the limited liability company under this chapter.

(3) The articles of organization need not set forth any of the powers enumerated in this chapter.

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Exercise #2: What is the Best Way?

DESCRIPTION AND PURPOSE OF EXERCISE: In this exercise, students are divided into groups and are given a street-level map with two locations circled. The students are told to confer within their group to answer this question: What is the best way for me to get from _____ to _____? The students are permitted to consult the map and to talk freely within their groups. I generally do not allow them to ask questions of me during this portion of the exercise.

After the students have determined their answer to my question, I ask each group to give its answer and to explain why it chose that particular answer. During this portion of the exercise, I generally don't comment on the answers provided, except to: (i) clarify any answers which seem unclear to me; and (ii) ask follow-up "why" questions to illicit more explanation as to why a particular answer was given.

We then move into a discussion and some lecture from me. The discussion and lecture vary, depending on my goals for that particular class, but we usually cover some or all of the potential discussion/lecture points listed below.

TIMING: The time needed for this exercise can vary, depending on how much time I am able to devote to the exercise and discussion. Generally, the time breaks down as follows:

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|--|---------------|
| • Introduction to exercise | 5 minutes |
| • Students work to determine answer | 10-15 minutes |
| • Presentations by students of answers | 5-10 minutes |
| • Discussion and lecture (can vary widely, depending on goals) | 10-25 minutes |

MATERIALS NEEDED FOR CLASS:

- Introductory notes to introduce exercise
- Copies of street-level maps for student use
- Discussion/Lecture slides or notes to follow exercise

POSSIBLE DISCUSSION/LECTURE POINTS:

- What criteria did you use for deciding what was "best"?
 - Did you try to think about what I would think was best? What you thought was best? What some "objective" third person would think was best? What the "average" person would think was best?
 - Goal: Introduce idea of client-centered counseling and help students recognize that there are many ways of interpreting a value such as "best."
 - Note: In this discussion, it might come out that my objective may have been one or all of the following: (i) speed, (ii) scenic route, (iii) most "green" option, (iv) going a certain way so that I could stop somewhere along the way, (v) most direct route, or (vi) the route that would result in least stop-and-go.

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- I did not tell you what method of transportation I planned to use to get to _____. Did you assume I would drive a car? Take the bus? Take a cab? Ride my bike? Take the metro? Get a ride from a friend? I also did not tell you for what purpose I was going to _____. Did you make any assumptions about why I was going? Did that factor into what you thought was best?
 - Goal: Continue discussion of client-centered counseling and help students recognize that their own assumptions, values, and habits influence their work as lawyers.
 - Note: This seems to work especially well if _____ is an airport. Was I going to catch a flight (might have lot of luggage)? Pick someone up (bike impractical)? Going to work (I work at airport)? Dropping someone off? Was I running late?
- What role did your own experience play during this exercise? If you have been to _____ before, did that help you decide your answer? If you had no prior experience, how did you decide? To what extent did you rely on the advice of others in your group? Were you more likely to trust their answer if they seemed to have been to _____ before?
 - Goal: Discuss impact of experience in drafting and counseling situations. If you lack experience with the particular type of transaction, how do you compensate for this?
- What other possible answers did you consider before reaching your ultimate recommendation? Did your group members all initially agree with each other? If not, how did you decide which answer to choose?
 - Goal: Introduce problem-solving principles.
- What questions would you have asked me if you could? How would this have helped you?
 - Goal: Help students learn to identify categories of interview questions.
 - Note: If there is time, I write these questions on the board and we categorize them using a who/what/where/when/why/how rubric that I find helpful for interviewing.
- Now that we've talked about this a little, think back to the start of the exercise. What assumptions did you make – probably without even really thinking about them as assumptions?
 - Goal: Return to client-centered counseling principles and emphasize again the reality that assumptions guide us all of the time. We have to be aware of our assumptions in order to see the problem from the client's perspective. This will help us plan, counsel, and draft in ways that are "best" for the client.

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Exercise #3: Interview and Interview Planning Exercise

DESCRIPTION AND PURPOSE OF EXERCISE: This exercise is planned to take place during the first or second class session of the semester. It involves a role play of an initial client meeting and the student attorneys' planning session for the meeting. The student attorneys are a team of two students who will be meeting a new client for the first time. The role of the client may be played by another student in the class or by the professor. The client is coming to the clinic for help in starting a new business. Details of the client's business will raise a variety of substantive law and professional responsibility issues, depending on the situation.

The students will have only a minimal amount of information about the client before the interview starts, e.g. Mr. Julio Sanchez has been operating a house painting business and wants to set his business up as a legal operation. His wife will accompany him to the interview because he speaks limited English.

The purposes of the exercise are 1) to have the students demonstrate the thinking and planning process that they will go through as they prepare for the interview; 2) to have the students demonstrate the actual conduct of the first part of the interview; 3) to give the role players feedback on their performance in the exercise, and 4) to engage the class in a discussion of the issues raised by the role play.

TIMING: I do this exercise as the second half of a one and a half or two hour class session. The first part of the class is a class discussion of client interviewing that includes an introduction to client-centeredness, problem-solving techniques, active listening, etc. My notes for the first part of class are on the next page. The timing for the role play exercise is approximately as follows:

- | | |
|---|---------------|
| • Requesting volunteers, setting the scene | 5 minutes |
| • Students plan for the interview out loud, in front of class | 5-10 minutes |
| • Role play of client interview | 15 minutes |
| • Feedback and discussion | 15-20 minutes |

RESOURCES NEEDED FOR CLASS:

- Teacher's notes on interviewing
- Intake sheet with client's name and contact information
- Volunteers for roles of student attorneys and client

AREAS FOR FEEDBACK AND DISCUSSION:

While still in role:

- How was that experience for the student attorneys?
- How was that experience for the client?

After coming out of role, all (including the players) should provide feedback on some or all of the following areas:

- | | |
|--|-------------------------------------|
| • Attorneys' demeanor and presentation | • Identification of legal issues |
| • Organization of the interview | • Identification of business issues |
| • Information and fact gathering | • Next steps |
| • Establishing rapport | |

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TEACHER'S NOTES ON INTERVIEWING CLIENTS

**Interviewing as the Beginning of the Attorney-Client Relationship
Conducting the First Meeting**

Purposes of the Interview - Problem Solving: Beginning the Diagnosis

- Establish an attorney-client relationship
- Understand the client's goals
- Learn the facts from the client's perspective
- Allay anxiety about the problem (establishing rapport, trust, reassuring the client about your role, making sure that the client is listened to)

Stages of the Interview

- Opening – introductions, small talk
- Information gathering – curiosity, interest, excitement
- Goal identification
- Preliminary strategy
- Conveying info to client – next steps
- Closing

Establishing the Attorney-Client Relationship

- Practical tips: dressing professionally; being on time; being respectful of your client's time and business operation
- Introducing yourself: business cards; explain your role and status. Answer questions. Establishing rapport.
- What if the client brings someone with him to the interview?
- Case acceptance: be aware, and explain the process to client
- Be careful what you agree to, and don't answer questions too soon. It's fine to say, "I'll do research on that or check into it, and get back to you."

Understanding the Client's Goals

- Develop your listening skills. Active listening. Body language. Reflecting back what the client is saying.

Learn the Facts from the Client's Perspective

- Let the client tell the story. Non-verbal active listening is best at the beginning. Later asking questions that are supportive and show understanding.
- Be careful about interjecting "OK." That can mean to the client "That's good."
- Taking notes.

Allay Anxiety about the Problem

- Establishing rapport, trust; reassuring the client about your role; making sure that the client is listened to

Additional Ideas

The following are additional ideas for group exercises that you may adapt to your own use:

- **Technical Drafting:** Distribute an archaically drafted short contract. Ask the students to apply Plain English concepts from an assigned reading to redraft the contract.
- **Technical Drafting:** Distribute a long, dense, and poorly organized contract section (perhaps addressing unrelated contract concepts). Ask the students to apply tabulation, formatting, and logical organization concepts from an assigned reading to logically and clearly redraft the section to make it more reader-friendly and clear.
- **Strategic Drafting:** Distribute a contract clause on a topic covered by a state statute. Ask the students to redraft the clause to both favor their client's interest AND bring the clause into compliance with the applicable law.
- **Strategic Drafting:** Distribute 2 different LLC purpose clauses, one of which is broad and one of which is narrow and specific. Ask the students to determine which one they think is better. Discuss their conclusions and the reasons for their conclusions. Use this exercise to discuss the different possibilities and the strategic reasons for choosing one over the other.
- **Strategic Drafting:** Use the game of Jenga to illustrate risk allocation in commercial transactions.
 - Describe a set of facts concerning a proposed deal between 2 parties and tell the students to assume they represent a certain party in the deal. Ask the students to brainstorm a list of the tasks the parties will need to complete as part of this transaction (list on board).
 - Ask the students to individually write down all of the specific risks that their client faces as part of this transaction. Then, one at a time, have the students name a risk and remove a Jenga block. Repeat this process until there are no more risks to identify or the tower falls.
 - If the tower falls, discuss that the falling tower is like a transaction impacted by risk realization. You can discuss the nature of the risk associated with the last block pulled (could be major or minor risk; either way, tower fell; depends on realization of prior risks and their impact).
 - If the tower does not fall, discuss that the still standing (but wobbly) tower is like a transaction with some unrealized risk (risk is present, but circumstances are such that tower has not yet fallen; with each block pulled, the risk of the tower falling grows greater, and a block pulled for even a minimal risk could cause the whole thing to fall).
 - Either way, you can also discuss (i) that this is a visual representation of the world in which our clients operate, (ii) the importance of understanding the client's tolerance for risk and how that may differ from one's personal tolerance, (iii) the importance of drafting in ways to minimize risk for the client, and (iv) legal and non-legal tools for shifting risk.
- **Interviewing:** Early in the semester (perhaps the first class meeting), pair students off and have each student interview the other student to get their background and interests. Then, ask the interviewer to introduce the other student to the class. This can be used to introduce the concepts of client-centeredness and interviewing. The exercise allows for the framing of questions such as: Who determines what is relevant? How do different people bring their own ideas of what is important to an interview? How could this help or hurt our goal of learning information relevant to the client's goals?