

## Workshop 5A

# Building a Bridge to Everywhere: Improving Transfer of Learning from Legal Writing Programs to Other Contexts

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## WORKSHOP DESCRIPTION

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THE INSTITUTE FOR LAW TEACHING AND LEARNING

### **Building a Bridge to Everywhere: Improving Transfer of Learning in Law School**

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Research in “transfer of learning” offers the legal academy tools to help students “bridge” newly-acquired legal writing skills throughout their law school experience and beyond. This workshop will draw from the relevant educational literature and the presenters’ own experiences in putting theory into practice and provide workshop participants hand-on experience in developing appropriate techniques for their own classrooms. After an introduction to transfer of learning theory, workshop participants will design a plan to increase transfer, focusing on problems they believe are important in their own classrooms or institutions.

## Sample Transfer Exercises

### Building a Bridge to Everywhere: Improving Transfer of Learning in Law School

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#### All-Purpose Transfer Exercise

*Referenced in:* Tonya Kowalski, *True North: Navigating for the Transfer of Learning in Legal Education*, 36 Seattle U. L. Rev. \_\_ (Fall 2010).

#### Instructions

Sometimes it is difficult to digest all the different topics and assignments in law school in such a way that you can “encode” them for future use. This exercise draws upon research in the science of “transfer of learning” to help you use your work not just to succeed in school, but to develop into a prepared and engaged professional. The purpose of this exercise is to help you to draw upon previous instruction and experience in order to complete an assignment in law school, or perhaps even in a clerkship or externship. It is also designed to help you learn from the assignment in such a way that you can eventually transfer your experience to law practice. Finally, the exercise also encourages the development of motivation around “big picture” concerns beyond grades, in order to make the learning deeper and easier to access later, when you are practicing law. As you get used to using these methods for “transfer thinking,” eventually, you should no longer need to use this formal exercise every time. Instead, when you feel stuck, you can read it occasionally as a refresher.

#### Understanding Expectations

- What are the goals of this task or assignment? What instructions were provided? Is it clear what you are supposed to learn from it? If not, reflect on the content of the chapter you are reading or on the material you have discussed in class, and see if you can connect it to the task at hand.
- Take a moment also to look at the Core Skills Compass and the list of skills it contains in each of the four quadrants. While you are in “big picture,” brainstorming mode, what kinds of skills seem to be called for in this task?

#### Drawing upon General Knowledge

- Whatever type of project you are working on, it is designed to help you process and deepen your understanding of the topic you are studying in class. Whether you are taking a course or working in a practice environment, your current task likely also builds upon knowledge you learned earlier, perhaps even in other courses.
- What doctrinal area is implicated by your problem, and does it intersect with any other areas of law? Do you see any familiar legal concepts or terminology that you have also

noticed in your other courses? Are you supposed to be looking at the law for a particular jurisdiction, or the general blackletter law (note that the blackletter law is sometimes divided into majority and minority views)?

- ❑ Usually problems on exams, in books, or in law practice look different from the cases and materials studied in class. Every case is different, so working on problems that don't exactly fit with what you already know is great experience for new lawyers. Looking back over the material you have studied, what general rules or principles can you extract from the cases and statutes you studied? You probably studied cases and hypotheticals that applied those principles in varied situations. How is your current fact pattern similar or different to those situations?

### **Drawing upon Lawyering Skills**

- ❑ Now take a look at the Applied Skills Guides for skills clusters on the Core Skills Compass. If the skills for one of the quadrants seem strongly implicated by the assignment, for example, a memo calling for mostly formal analysis, or a textbook exercise calling for critical reasoning about history and policy, how should you likely apply that skill in the given context?
- ❑ What past opportunities have you had in law school to practice these skills? For example, if you are doing a simulation for a depositions class, think about how your experience with formal analysis in legal writing and other classes have prepared you to think about problems in terms of the elements of a cause of action. If you are preparing for a simulated client counseling session, think not only about the elements of the claim, but about how professionalism and ethics are implicated by how you communicate with the client, and how critical thinking skills, like the ability to solve problems and see non-legal solutions, plays into your counseling approach.

### **Finding and Working with Models**

- ❑ When faced with a new assignment, it is natural to want to see samples of a successful product, and perhaps even an unsuccessful product for comparison. Sometimes your professor will be able to provide models, but it is not always feasible. For some things, you can also find models in other places.
- ❑ What sample models are available from your professor or from secondary sources? Your library probably contains video tutorials of depositions and trial technique. Your professor may have old exams or briefs on reserve or on your course website. Large legal research databases like Westlaw and Lexis often contain sample complaints, briefs, and motions, as do litigation forms series like Moore's Federal Practice and Am. Jur. Pleading and Practice. Similar series contain transactional forms for different practice areas.
- ❑ Both in law school and in practice, models are typically imperfect, and rarely well-tailored to a new case or problem. Instead of searching in vain for the perfect model, try to adapt from the naturally flawed examples you find after a reasonable search. What are the potential pitfalls in the model I am using? Are there places where I could improve upon the technique, explain something better, or tailor it to my facts and jurisdiction? Is the language in a sample form archaic, and in need of a plain-English overhaul?

## **Drawing upon Analogous Experience**

- ❑ If this is the very first time you have done this kind of assignment, for example, your first memo, you can expect to struggle with it. But you can still draw upon your previous experiences. What writing habits, research habits, scheduling, and editing processes have worked well for you in the past? What classroom or textbook exercises helped you practice the components of the task you are doing now?
- ❑ What life experiences, moral and political questions, and other areas of law might come to bear on this problem? Be careful to make sure that your task calls for analysis outside of the blackletter law. Consult your assignment instructions, models, professor, and Applied Skills Guides to anticipate how to use your knowledge and skills appropriately for the given context.

## **Anticipating Future Applications**

- ❑ The main goal of law school is to develop knowledge and skills that you can carry into any kind of practice. If you envision some likely future applications now, it is more likely that you will be able to “encode” your knowledge for access later.
- ❑ Can you envision a case in which you might use the type of legal knowledge you are studying? Even seemingly archaic rules like those in property come into play surprisingly often in certain kinds of practice. Consider talking to a lawyer-mentor. If you have trouble imagining a case, remember that any practice you get in legal problem-solving builds your repertoire for practice.

## **Cultivating Internal Motivation**

- ❑ Research shows that relying solely on performance-based motivators, like grades and class rank, tends to inhibit the ability to transfer skills and knowledge to a new problem. On the other hand, emphasis on “mastery”-based motivations, like becoming a competent advocate and helping others, tend to enhance that ability.
- ❑ What was your primary motivation for coming to law school? If it was to get a secure job in an interesting field, how might you relate this assignment to that goal? If you like mathematical problems and issues with clear rules attached, does it help to think of your task as a puzzle to be solved? If your primary motivation centered on concerns like justice or a particular cause, how might you think of this assignment as a stepping stone toward your goal? Can you relate the particular skills and knowledge to part of your plan for becoming a lawyer competent to carry out that mission?

## **Tailored Transfer Exercise 1A: Writing Self-Assessment 1A**

*Referenced in: Aida M. Alaka, The Phenomenology of Error in Legal Writing, 28 Quinnipiac L. Rev. 1 (2009).*

### **Instructions**

Last semester, you began the process of finding, reading, and analyzing the law. In LARW I, you started applying these new skills in “legal writing.” You spent a great deal of effort doing so. This exercise is designed to help you maximize those efforts by asking you to reflect on what you did well and what you can improve on in LARW II. There are no right or wrong answers. Please answer the following questions in as little or as much space as you choose. Please turn in one copy and keep a copy for yourself. As you work on your brief this semester, think about your answers to these questions and reflect on whether you are taking the necessary steps to maximize your strengths and overcome your weaknesses.

### **Reflecting on Legal Writing**

- a. What is “legal writing”?
- b. How is legal writing different from other academic or occupational writing you have done?
- c. How is it similar?

### **Reflecting on Your Study Skills and Habits**

- d. When you began the semester, how did you approach the task of legal writing?
- e. Was that approach the same or different from the approach you used in college or graduate school?
- f. Was it effective?
- g. Did your approach change over the course of the semester? If so, how and why?
- h. Do you plan to change your approach to this course this semester? Why or why not?

### **Using Feedback**

Review the graded versions of your Closed Memo, Open Memo, and Final Open Memo and:

- i. determine whether you received any consistent praise and/or criticism over the course of the semester; and

- j. determine whether you fully understand the praise and/or criticism you received.
- k. Do you think you used the comments you received on your work as effectively as you could have? Why or why not?

### **Understanding Strengths and Weaknesses**

- l. List ways in which your legal analysis, research and writing improved.
- m. List ways in which your legal analysis, research, and writing can still improve.
  - i. These lists can include *technical aspects* of writing, such as grammar, punctuation, and citation, *substantive aspects* of legal writing, such as thoroughness in research, use of facts and law, and appropriate depth of support for your conclusions, formal *aspects* of writing, such as headings and umbrella paragraphs, and/or *other aspects* of legal writing, such as transitions and use of quotations.
  - ii. These lists can also include critical reading and analysis skills, attention to detail and any skill we discussed in class last semester.
- n. If you improved certain aspects of your writing, provide insight into *why* you think you improved in those ways.
- o. For areas in which you feel you did not make sufficient progress, identify some of the hurdles you need to overcome to address the issues.
- p. Identify two goals you have for improving your legal writing, analysis, and research this semester.

## **Tailored Transfer Exercise 1B: Writing Self-Assessment Follow-up**

*Referenced in: Aida M. Alaka, The Phenomenology of Error in Legal Writing, 28 Quinnipiac L. Rev. 1 (2009).*

### **Instructions**

At the beginning of the semester, you were asked to reflect on your experiences in LARW last semester. Please review what you wrote and answer the following questions.

1. If you planned to change your approach to the course this semester, did you in fact do so?
  - a. If you did:
    - i. How did your approach change?
    - ii. Do you feel like your approach has been effective so far?
    - iii. Why or why not?
  - b. If not, why not?
2. If you identified ways in which your legal writing can improve, describe any steps you have taken this semester to improve your writing.
3. If you identified hurdles that you would need to overcome to improve your legal writing skills, describe any steps to have taken to overcome those hurdles.
4. Do you feel like the steps you have taken to improve your writing skills or to overcome hurdles have been successful? Why or why not?
5. Have you met the goals you set for yourself at the beginning of the semester? Why or why not?
6. List two or more goals you have for improving specific aspects of your performance in legal analysis, research and/or writing between now and the end of the semester.
7. Identify any concrete acts you think could help you to achieve those goals.

## **Tailored Transfer Exercise 2: Legal Writing to Clinic (Client Advice Letter)**

*Referenced in:* Tonya Kowalski, *True North: Navigating for the Transfer of Learning in Legal Education*, 36 Seattle U. L. Rev. \_\_ (Fall 2010).

### **Instructions**

The purpose of this exercise is to help you to recall legal analysis and letter-writing skills that you learned in your first-year legal writing class. Your supervising attorney may wish you to use it as a checklist, or, if you are new to the clinic, you may be asked briefly to answer these questions and turn them in with your first draft letter. You may also have business letter writing experience in your employment history. If you did not work on client letters in your legal writing course, this exercise will ask you to locate and study instructional resources before undertaking this project.

### **Locating Resources**

- What textbooks and legal writing guidebooks do I already own that could help me get started on this task? Are there any relevant instructions in the clinic manual?
- Using the law library catalog, are there any other legal writing textbooks or guides that would help me develop a good set of criteria for a client letter?
- What sample letters are available in the clinic bank, or in previous client files? Are they good samples? From my research, what criteria should I use to evaluate the quality of a sample letter?

### **Formal Components**

- What style letterhead does my clinic use, and how do I locate it on the computer network? Should I try to incorporate the letterhead myself, or does the clinic prefer that our support staff perform that function?
- What typographical formatting style does my clinic prefer, for example, margins and alignment? Do we use block style, modified block style, or semi-block style (see <http://owl.english.purdue.edu/owl/resource/653/02/>)? What about the font type and size?
- Should anyone else other than the client file receive a copy of this letter? Normally, no one but the client gets a copy of the client letter, due to ethical considerations for client confidentiality. But in a rare case, such as where the client has a guardian, those names should appear on the cc: line under the signature block. Does my clinic note copies to the client file on the cc: line?
- Who will sign the letter, me or my supervising attorney?

### **Purpose**

- What is the goal or purpose of this letter? Is it to provide advice in the form of a prediction, such as the likelihood of success on the merits? Or perhaps the advantages and disadvantages of taking a certain course of action? Will it require legal analysis, or more of a pragmatic assessment such as financial or emotional costs and time requirements? If unsure, you may need to talk to your supervising attorney again.

- Is the purpose of the letter clearly stated in the opening paragraph?
- Are there any secondary purposes to the letter, such as to create a record of attorney/client communication, or even a series of difficult communications with the client? If so, be sure to include that information in a diplomatic way so as to protect yourself, your supervisor, and the clinic.

### **Audience and Tone**

- What is the client's level of education or business experience?
- What is the client's level of familiarity with the legal process and legal terminology?
- If working with a child client, is he or she so young that the audience is truly an adult reader, such as a guardian? Should the letter be addressed to that person instead? Or is he or she old enough that the letter should be written with her education and developmental level in mind?
- Is there a language barrier?
- Is the client in emotional distress? If there is bad news, how can it be stated accurately but compassionately?
- Would this client benefit from statements of empathy? If so, what is an appropriate amount of empathetic tone and language given the client's age, emotional state, personality, and familiarity with you and the law clinic?
- If the client has experienced frustration due to delays in court proceedings, difficulties obtaining evidence, and so on, what kind of reassurance or sympathy can you provide without providing false hope?
- If the client is frustrated with the clinic's legal representation, or likely to become frustrated with the nature of the advice rendered, what diplomacy might you exert in the letter to help assuage the situation?
- Have you taken into consideration this letter's future or unknown audience? If the client ever entered into a dispute with the clinic, would you feel comfortable about an outside attorney or judge reading this letter?

### **Factual Basis**

- What underlying assumptions does the legal advice make about the facts of the case?
- Would any additional information or clarity affect the analysis or advice given?
- Have you protected the clinic by asking the client to verify the facts, to identify inaccuracies, or to provide new information?

### **Legal Analysis**

- Given the client's level of legal sophistication, should you cite authority in your explanation of the law? Even if your client would be overwhelmed by formal citations, should you identify your authorities for the future or unknown reader mentioned above? If not, are the authorities well documented elsewhere in the client's file, such as in an internal memo?
- Does the analysis follow a basic IRAC structure for each issue, providing an issue-specific topic sentence, legal rule, comparison and contrast to authority, and a conclusion?

- Is enough information provided that the client could, without any further information, make a meaningful, potentially life-altering decision based on what he has read?

### **Advice**

- Given the letter's purpose, identified above, is the advice to the client clearly stated? Is it stated both in the early paragraphs of the letter and then clarified and re-stated at the end?
- Does the letter state a clear position, rather than an open-ended "it depends" answer? If the advice centers on the likelihood of a certain outcome, is it phrased in terms of probability rather than possibility (almost anything is "possible," but is it likely to occur)? If an "it depends" answer is necessary, are the different variables and outcomes established in "if/then" form, so that the client can assess the outcomes?
- Does the advice follow with an offer to clarify information or establish a time to meet and discuss it? If the letter's purpose is to memorialize a recent meeting on the same topic, does the opening paragraph establish the date of that meeting and what was discussed?
- Have you considered the non-legal factors that should inform your advice, such as emotional or financial costs, or non-legal solutions like public services?

### **Submission and Filing**

- What is the deadline for this draft, and what is a reasonable amount of time to produce the final letter, given its purpose and the standards of professional conduct within the legal community?
- Should I print my draft on a special color of paper (see clinic manual)? Which versions need to be placed in the client file?
- Do I need to turn in a memo or checklist with my draft letter?
- What is my plan for seeing this letter through to completion and taking responsibility for meeting deadlines and making sure that the letter is carefully proofread, processed and mailed in a timely manner?

## **Tailored Transfer Exercise 3: Casebook Topic to Exam Answer (Generic)**

*Referenced in:* Tonya Kowalski, *True North: Navigating for the Transfer of Learning in Legal Education*, 36 Seattle U. L. Rev. \_\_\_ (Fall 2010).

### **Introduction**

The purpose of this exercise is to help you to focus what you have learned in this module on \_\_\_\_\_ [example: anticipatory repudiation] and apply it to your upcoming examination. Recall that classroom discussion designed to develop not only blackletter rules and theoretical applications, but also critical thinking about the legal system, public policy, and even the moral implications of different legal rules and applications. In contrast, timed, in-class law school exams are designed to test almost exclusively the blackletter rules and their range of potential applications to different fact scenarios.

Sometimes, take-home exams ask for more policy-oriented discussion because of the greater time allowed. They typically do not call for advocacy because they require objective analysis rather than persuasive. For purposes of exams, professionalism comes into play in terms of your preparation and competence, quality of presentation (dependent on test conditions, of course), and adherence to honor code rules, including plagiarism concerns. Be sure to clarify these expectations with your professor.

### **Type of exam and expectations**

- Is the exam a timed, in-class exam or a take-home exam? Multiple-choice or essay? Open or closed-book?
- Depending on the length of time permitted and whether the exam allows notes or books to be open, does the professor expect citations to authority?
- If the exam is a longer one, such as an open-book take-home exam, should I discuss policy and philosophical considerations in addition to the blackletter analysis?

### **Compiling the rules and exceptions**

- What are the primary sources of law for this subtopic? Do they come from a uniform or model code, like the UCC, then further explained and modified by case law? Exclusively from the common law? Does my professor rely on the Restatement in this area of law as a source of common-law rules? If so, how do the Restatement and case law rules compare and contrast?
- Does my outline clearly list each major rule in this section and identify its exceptions? Have I drawn rules from the different sources identified above? Where they contrast, do I explore under what circumstances they apply, or how the changes in the rule can affect the outcome?
- Which cases provide examples of the application of each rule and exception? What is the basic fact/holding/rationale description for each major case?
- Did my professor discuss cases that were not covered in the textbook? Are they woven into my outline now? Do I need to go download and read those cases to understand what was discussed in class?

- Does the textbook discuss cases that we did not cover in class? (Unless the professor states otherwise, assume that any material in the assigned reading will be covered on the exam.) If so, have I also digested those rules and applications for my outline?

### **Spectrums of application**

- For each rule, what are the various applications represented by the relevant cases (and possibly the model code or restatement comments)?
- Using a linear outline, flowchart, or a continuum line (spectrum line), mark which cases identify *positive* examples of [anticipatory repudiation] and which cases provide examples where a court or commentator felt the situation was *not* an example of [anticipatory repudiation]. What made the difference in each case? If the courts applied different rules, be sure to identify the split in authority and learn the difference (e.g. the Third Circuit approach versus the Restatement approach).
- Compare and contrast the positive outcomes versus negative outcomes. What were the determinative facts and rules that decided when [a party's actions] qualified as [an anticipatory repudiation]?
- Identify the hypothetical scenarios discussed in class and in the text. Given what you now know about how the rules have been applied in past factual contexts, how would they probably apply in these hypothetical situations? Where does the hypothetical scenario fall along the spectrum of applications between ["anticipatory repudiation"] and ["not anticipatory repudiation"]? Be sure to concretely compare and contrast to existing cases or commentary.

### **Organization and presentation for essay exams**

- After considering the expectations above, complete some practice exam answers and consider how to make grading easier for your professor:
- Use IRAC formula.
- In a longer, take-home exam, have I clearly identified a topic sentence for each paragraph so that the issue (I) can be matched to the grading rubric? Does the professor want a conclusion/prediction or an open-ended issue statement?
- Have I clearly identified the rule (R) so that it can be matched to the rubric? If there are competing rules, have I identified them and their sources, and analyzed each one? What about exceptions and sub-rules?
- Have I mentioned the names of key cases so that they also can be identified for grading?
- If permitted, have I underlined key legal terms of art and case names to make checklist-style grading easier?
- If my handwriting is terrible, is there an option to type? Can I use print-style handwriting efficiently?
- If typing, be sure to use an appropriate font type, size, and margins, and determine whether your professor prefers double or single spacing.

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