

Lost in Translation: Effective Techniques for Teaching International Law Students and Inter-disciplinary students

Most American law schools have in recent years developed expansive LL.M. programs, which actively recruit international students. This internationalization of American legal education has led to an ever-growing number of non-native English speaking students studying at American universities. Creating a learning environment for these international LL.M. students that recognizes their lack of formal and informal socialization in both the legal and cultural traditions of the United States is therefore of growing importance.

In addition, many international law schools have developed extensive programs whose sole mission is to teach common law topics in English. These programs often aim to give their students not only a high level of legal English training, but to actually mirror the American law school curriculum. Teaching non-native students, entrenched in their own legal system, substantive common law subjects at American law school standards presents its own unique set of challenges.

With the law itself historically being regional, even parochial, this movement of students and faculty across legal traditions often requires a re-assessment of tried and true teaching strategies. For while communicating legal concepts to the new and uninitiated can prove challenging at the best of times, a new layer of difficulty is necessarily added when one is confronted with teaching international, in particular non-native English speakers, legal vocabulary and theory. In such a learning environment; in-class references, analogies and definitions must be consciously crafted in order to make them readily accessible. In addition, exercises to learn and review vocabulary need to be in line with the goals of the learners themselves.

The following discussion will focus on English as Second Language (ESL) law students, particularly European civil law students; however, the challenges discussed, and the tools used to overcome those challenges, would be equally applicable to students from non-legal disciplines such as business, the hard sciences, etc.

The Goals

In order to successfully instruct ESL students, one must be aware of why they are interested in studying American law/the common law in the first place. One reason is simply that English is currently the most important international language, and the vast majority of international students have studied it since an early age as their primary secondary language. Secondly, as law students, they appreciate the impact and importance of the common law tradition on a host of fronts – legal, economic, political, social, etc. Therefore, ESL students want to be able to both develop their English language abilities and their knowledge of the common legal tradition. In order to accommodate both these goals, it is essential to create a dynamic learning environment in which students are allowed to speak and use their newfound legal vocabulary and knowledge of the common law in context.

The Challenges:

- The inability of law to be translated one-to-one into a foreign languages/legal systems.
- The particular challenges of relating common law concepts to civil law students.
- The more general problem of relating complex legal concepts to individuals lacking broad substantive legal knowledge, either non-native speakers or inter-disciplinary students.
- Allowing students to practice and develop their legal English skills

The Methodology:

The problem: Awareness and appreciation of the lack of one-to-one translation/comparison between various legal traditions.

The solution: The avoidance of direct translation and self-referencing definitions in favor of broader legal conceptualization, concrete examples across a wide spectrum and interactive dialog.

The tools:

1. **In-class exercises designed to allow students to apply the common law legal concepts by creating legally “borderline” fact scenarios.**

There is inevitably the temptation to translate terms one-to-one in order to bring a complex legal concept a little closer to the ESL student’s own legal tradition. However, in my experience, such translation of terminology (even if you have a good working command of the language in question) leads to confusion, in the best case scenario, and deep-seated long-term misunderstanding in most cases. For example, the courses I teach are not “foreign language classes”, but rather designed to be substantively the same as a course at an American law school, without any concession made regarding content or, at least on paper, the non-native speaking environment in which the courses are taught. The challenge, of course, in my case is that the students are already deeply engrained in the German civil law tradition, a systems very alien to that of the common law tradition. So while the substance must be the same as the equivalent American law school course, the context in which the materials are taught is, by definition, dramatically different. A professor teaching international LL.M. students at an American university would face much the same challenges.

In presenting specific legal concepts to students from non-common law countries, I have found one of the most effective methods is to frame the issue in a “big picture” context, and then discuss it from various angles with a host of examples.¹ I then break the students into groups and ask them to come up with a “borderline” fact scenario relating to the topic at hand. The goal is for the students to come up with a fact scenario that half the class will conclude violates the law and the other half of the class will conclude does not violate the law. For example, in order to explore the definition of “family”, and the “function over form” approach adopted by many American courts, I ask them to come up with a “functional family” fact scenario that half the class will think would be considered a family based on the criteria discussed in class, and half the class will not. The winning group is the one that splits the voting right down the middle. By defining the grey area, let alone discussing and analyzing the other students’ scenarios, the individual ESL student comes out of the lecture with a much more subtle and comprehensive understanding of “family” than simply marching through a series of cases using the Socratic Method.

2. **Assignment of a specific U.S. state to each student in order for them to give the class weekly feedback on that state’s specific laws during the discussion of more general legal topics – a learning tool I call “State by State”.**

One of the great challenges of teaching ESL students is to make clear to them that there is no such thing as “American law”, but rather that each individual state and the federal government have their own distinct systems. While we discuss major trends and general common law principles, it is essential that the ESL students do not lose sight of this reality.

One very effective way I have found to both make the law more real and personal, yet also stress the diversity of law across the United States, is to assign at the start of the term a U.S. state to each student. The student is then in charge of reporting back to the rest of the class each week regarding the specific law of their assigned state on the legal topic at hand. Thus, in family law typical “state by state” topics would be common law marriage, same-sex marriage, the definition of “family,” prenuptials etc.; the students are normally very enthused to make the law not only more concrete, but also personal. At the end of the semester, each student turns in a summary of their particular “state by state” topics as part of their overall assessment. In this fashion, the ESL students learn not only the general common law trends, but also specific variations on the theme based on both individual and collective research.

¹ As a vast majority of my students speak German and are concurrently studying German law, I have at times encouraged them, as native speakers, to try to “put the square peg in the round hole” as best they can in their own legal context via a discussion in German amongst themselves. However, even in these situations, there is usually much disagreement as to what exactly the correct legal analogous term would be in German. This fact only goes to heighten the need for students to work with the language in English within a common law legal context.

3. **Use “communicative crossword puzzles” to introduce and review vocabulary and theory:**

One of the most effective ways I have found to enable ESL students to develop and demonstrate their command of common law legal concepts in context is through the use of “communication crosswords.” These allow ESL students to not only develop and refine their spoken English, but also allow them to demonstrate their understanding of the word/legal concept itself.

Communication crosswords are a learning technique by which students are given two crossword puzzles, each of which contains half of the relevant words to complete the entire puzzle. The goal is to describe the words that appear on the one sheet to the other participant whose crossword lacks these words. This allows not only for the students to demonstrate their knowledge, but also encourages them to articulate the surrounding principles in order for the other students to understand what word they are attempting to describe.

If a student lacks the knowledge of the legal meaning, or the other student lacks that knowledge, they are encouraged to use “everyday English” to describe the word. This not only often leads to the correct solution, it also demands a degree of creativity and visualization through word association that often results in the ESL student ultimately retaining the legal meaning of the word in question more easily.

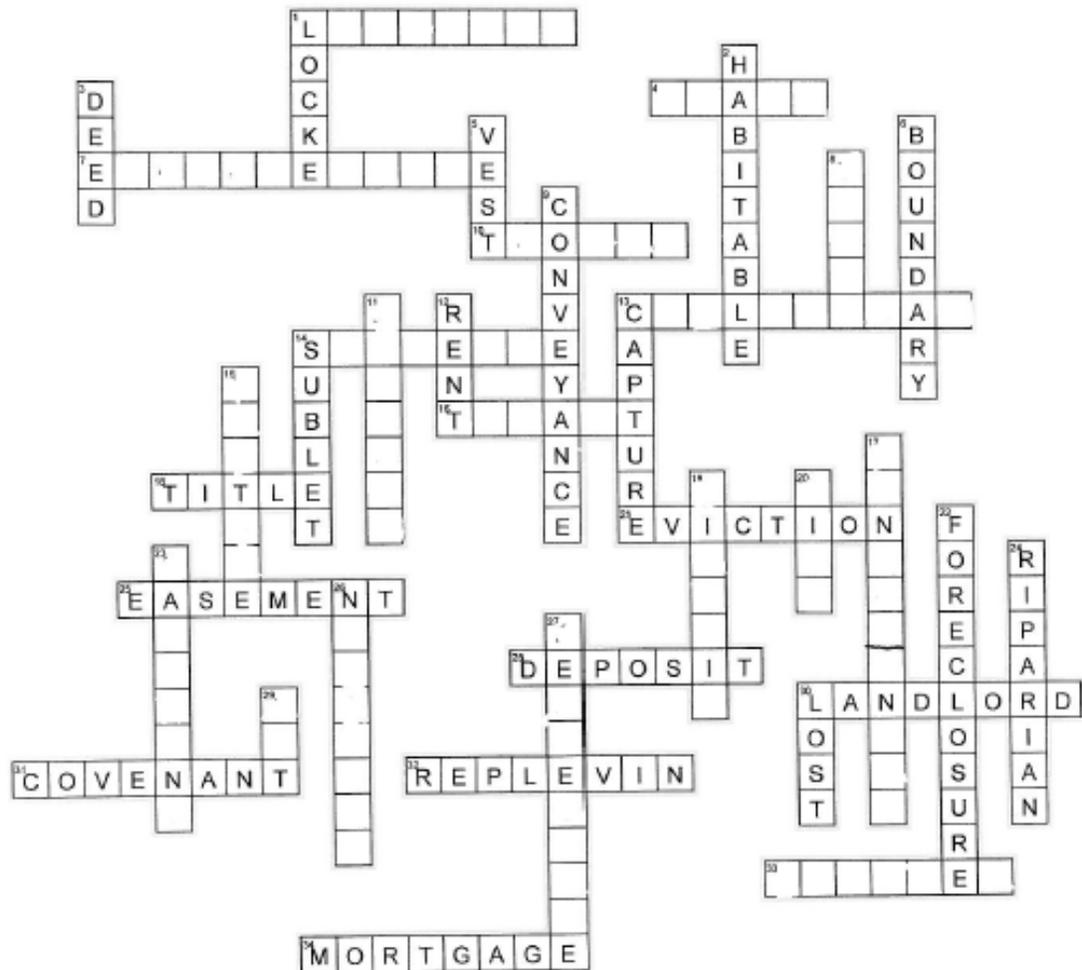
The vocabulary can be of any complexity of course, though I normally try to give the students a range of difficulty so that they can gain confidence by presenting easier words early on, and then strive to articulate more difficult words and legal concepts as the exercise progresses. Ordinarily I do not circulate at the beginning of the exercise, as the students obviously first select the words they know best at the start; this lack of initial contact also allows them to build their confidence and familiarity with their partners. However, as the exercise progresses, I move from group to group and ask them whether they need any help, are struggling with any of the words, or needed to break the word down into syllables and use “ordinary” rather than “legal” meanings to solicit the correct answer. In the latter case, I then explain what the legal meaning is for them and clarify the etymological association, or lack thereof, between the legal and common English meaning of the word.

A sample communication crossword puzzle:



Property Law Communication Crossword

AA Legal Consulting

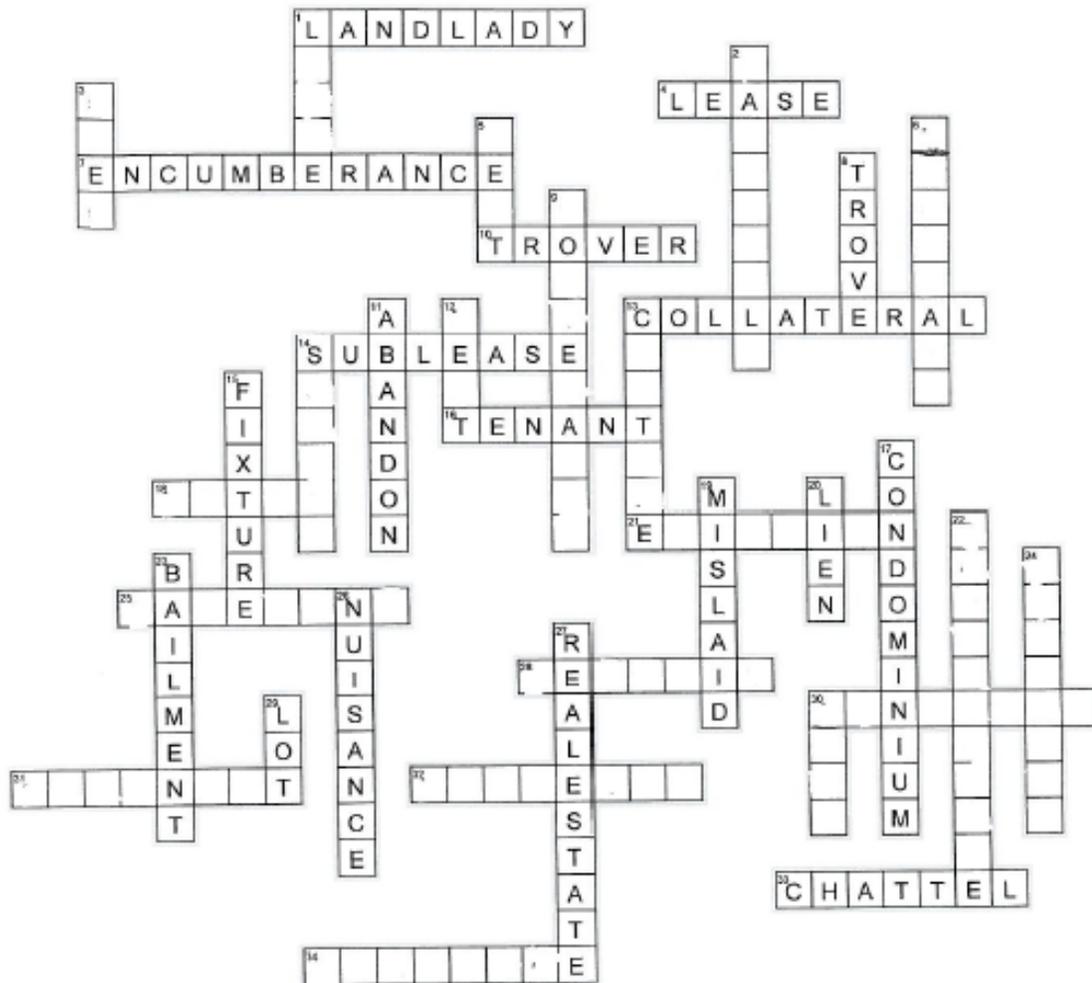


EclipseCrossword.com



Property Law Communication Crossword

AA Legal Consulting



I use communication crossword puzzles in a number of ways:

1. At the start of the course: I sometimes utilize a communication crossword the first day of a course, after the initial introduction. Having discussed the formalities of the course, and with many students lacking the materials to begin substantive study on the first day, a communication crossword not only establishes a positive learning environment from the start, but also allows me to see the depth of the students' existing knowledge of the topic in a "state of nature." This method might be of particular interest to cross-disciplinary educators. Also, reviewing the terms as I work around the groups or together at the end, it allows me to give the students an overview of the topics of interest we will explore over the course of the semester, rather than marching through a standard syllabus.
2. Periodically throughout the course: In order to review materials or vocabulary after discussing a specific topic, I often construct a short communication crossword that takes 20 minutes or so to complete at the start of the lecture. This allows the students not only to review, but also to realize how much of the material they do, or do not, naturally retain as the course progresses.
3. At the end of the course: At the end of the semester I often give a more comprehensive communication crossword puzzle to once again give the students an idea of the key words and concepts I would like them to take away from the course. It also allows students to establish for themselves how well they have mastered the subjects discussed in the lead up to the exam.

For ELS students in particular, the communication crossword puzzles are particularly popular because they fulfill the goals discussed earlier – speaking, practicing and learning – in an enjoyable and effective manner. Through this method, the entire class can be engaged in an intense one-on-one experience, actively speaking and developing their ability to articulate complicated legal concepts in English.

In order to create a communication crossword, I utilize software known as "Eclipse Crossword," which is a free program available on the internet. Rather than typing out answers, I simply generate a word list, and then print the "complete answer" page twice. I then lay them side by side and use white-out to eliminate the answers from the alternate sheets. This program therefore allows you to tailor a communication crossword for any set of vocabulary words you wish.