

ONLINE LEARNING AND TRANSACTIONAL SKILLS COURSES

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INTEGRATING TRANSACTIONAL SKILLS INTO BUSINESS LAW COURSES: CAN THESE BE TAUGHT ONLINE?

Celeste Hammond

I'm Celeste Hammond from John Marshall Law School in Chicago, and I'm delighted to be here. This is my first time at the conference. I've wanted to come, but you know how June is with grading and all of that stuff.

Today, I wanted to talk about what we're doing in terms of integrating transactional skills into business law courses. My colleague, Virginia Harding, and I are doing empirical research on whether that can be done effectively. So let's start with some kind of background on what John Marshall is doing.

We've been in the forefront in offering legal education online. I've provided you with a report of courses that we're currently offering at John Marshall Law School as of May of this year, and it's in the handouts distributed electronically at the conference if you want to take a look at it.

The law school offers J.D. courses online to meet the needs of John Marshall students who often are part-time students and who are living and working at a distance from the campus location in downtown Chicago. Also, the law school offers online courses and higher academic programs for L.L.M. and M.J. students who are enrolled in our specialty programs, including Intellectual Property and Estate Planning, Employee Benefits, International Business and Trade, and Real Estate Law.

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My work at John Marshall Law School over the past 20 years has been as director of one of these centers of excellence. The goal from the beginning has been for our Center for Real Estate Law to emphasize the transactional perspective in courses and other programs. Thus, we have a separate required course called Drafting and Negotiations Workshop. But we also integrate transactional skills into our other courses, including Leasing Ownership and Management, which is a course that Virginia Harding will tell you about after I speak.

Indeed, Virginia and I have been collaborating in the development of the Center, the courses that are included in the Real Estate Law curriculum, the scholarship produced by the center focusing on the role of the transactional lawyer in the areas related to real estate, commercial real estate, the approach to teaching these courses, and teaching these courses online. Both Virginia and I have been fascinated about the technology that's developed to allow us to go teach and learn from a distance. Based upon a recommendation from Dean Judith Wagner, both Virginia and I enrolled in a certificate program at the University of Wisconsin. It's a certificate in distance learning in higher education online. Virginia finished it.

I came close to finishing it. That was back in the '90s. We have collaborated to team-teach several courses including the two we will discuss today. There were some suggestions made this morning about having a real competent, experienced adjunct team teach with you. Virginia and I co-taught the class in real estate transactions and the course in commercial leasing. Having this kind of an experienced practitioner as a co-teacher is a big factor in making courses prepare students for practice.

We experimented with technology early on by videotaping interviews with some guest lecturers who couldn't be on campus to be in a particular class, and then, we developed excellent PowerPoints to support the learning experience. Once the American Bar Association permitted the use of distance learning, we began to hold some of our classes via videotapes and audiotapes with slides. We sort of had what's called a "flipped classroom."

Originally, the ABA limited this to substitution of about 30% of the class meeting time. Thus, I even teach Contracts II that had 45 hours of class time using the approved 9 hours or so. Professors may use an online component even in a first year course under ABA rules. Now, entire courses may be delivered online under ABA rules either in a synchronous or asynchronous format. So we have been experimenting and having a lot of fun. We offered our first real estate course online in 2013, which is the commercial leasing course Virginia will discuss.

Virginia and I also collaborated to teach a course at the University of Louisville, Brandeis School of Law in Fall 2012. We used videoconferencing to meet with our students who were in Louisville while we were in downtown Chicago. Brandeis had asked me to teach my course in leasing as a visitor. When my travelling to Louisville for a semester became impossible, we

creatively set up the class as a distance learning course. Virginia and I travelled down to Louisville once to meet our students in person. She made one more trip down to Louisville. We also engaged a local practitioner to join us in the Louisville classroom when the difficulties with the videoconferencing equipment began to interfere with offering an effective course. That distance learning course, in contrast with the ones we teach at John Marshall, was synchronous. That is, the students and the faculty were meeting at the same time, but in different places. Subsequently, in the fall of 2014, I taught the Real Estate Transactions course completely online. That's a J.D. elective course that you might offer to your students in their second or third year.

So let's look at the online learning at the Real Estate Center at John Marshall. In our attempts to provide the entire curriculum for the LL.M. and M.J. programs, we have developed five online courses: the basic J.D. course, LL.M. courses in Commercial Real Estate Transactions, Real Estate Finance, Leasing Ownership, and Management—all of which are required for our LL.M. students. These courses are also cross-listed so that selected J.D. students may take them.

And in summer 2016, we have our LL.M. course in Climate Change Law, which will be offered online for the first time ever. That course just began this week and so far so good.

John Marshall has offered online real estate courses since 2013, and we have been surveying students since 2014 about their learning experiences. As I said before, the format for our online courses, including this J.D. course, is asynchronous interactivity between the professor and the students and among the students. There is a Best Practices Report, which I have included. It's a thick, thick Best Practices Report from a consortium of legal educators who are focusing on online legal education. You might want to take a look at it. This report indicates that the best part about asynchronous distance learning is that students may participate whenever it's convenient for them. My experiences in Louisville with a synchronous online course support that conclusion, and also, the asynchronous technology that we used is less expensive, less complicated, and more reliable. Plus, when you have a problem in a synchronized classroom online, some students may miss the entire class, which is a problem.

In my online Real Estate Transactions course, we use short videotapes that may be similar to the lectures I would give in a regular classroom. Because there are no interruptions by students with questions or comments, these lectures are much quicker than the time you would use in a traditional class. But producing the videos without any audience of students takes away from what's always been an important part of teaching: how engaged are the students? I get no feedback from looking at their faces or seeing them squirming to get out of the class. Therefore, interactivity becomes very important both to ward off feelings of isolation in the students and to guarantee that the class is more than a correspondence course of the type I witnessed when I traveled to South Africa twenty years ago.

We use the discussion forum feature on Moodle. We use Moodle for this program to have students talk about issues that are difficult to understand if they're only passive learners listening to the lecture and doing their individual reading for the course. We may even have students interview a client or negotiate aspects of a transaction where they use either email, Skype, or telephone conferences. Yet, I continue to be amazed when students, who are so competent with technology, claim they have no idea how to interact outside of the classroom without being in direct physical contact in person. I tell them that attorneys spend less time in personal meetings with clients or even others with whom they collaborate in Chicago, as we see law firms make decisions about leasing and renewing office leases. The firms are choosing smaller offices even for the partners. They have no reception areas, and the conference room is out of fashion.

The typical classes of 30 to 40 students in an online course using teams, as I do, in a traditional class makes a lot of sense, and feedback from the students is very positive about using teams—even online. Nevertheless, I still miss seeing my students, and I am really taken by surprise when they see me on campus and act as though we know each other well. I've never seen some of them.

So let's consider how the learning goes in my elective J.D. course. I've been happy using Malloy and Smith's casebook for teaching the course in the traditional classroom for many years. Both Jim Smith and Robin Malloy are in the forefront of providing legal education with an emphasis on the transactional lawyer. The book is direct. It emphasizes problems rather than appellate cases, and it provides a useful teacher's manual. So I assign the same casebook for my online course. As I mentioned before, the discussion forum and also the Ask the Professor feature on Moodle provides a place for my students to comment and engage in discussion. I provide the problems before the module for a week. Usually, each team of four to six students is responsible for two discussion forums over the period of the semester. All students are welcome to join any of the discussions though few do so. In an effort to get the students to at least review the discussions, I remind them that the final exam will assume that they have reviewed the discussions on particular topics.

Three multiple choice quizzes that students take online and get automatic feedback on reflect the new goal of legal education to provide self-assessment to the students throughout the semester, rather than just the old traditional final exam. I emphasize doctrinal law in those quizzes, especially what I expect will be tested on the bar exam, because the property component of the bar exam is all real property from what I understand.

Finally, I find that the transactional documents employed by Malloy and Smith are very useful in this course. I call them "Experiential Exercises" at a time when experiential learning is all the rage in legal education. They are a simple version of basic forms used in a residential real estate transaction and include things like the broker's listing agreement and the documents that would be used at the settlement or the closing itself. Each form has a list of questions

about the document based on kind of a virtual client. I use seven of those forms to provide students the opportunity to read and review the documents in a way that they never can if you just give them a document with blanks in it. Reviewing the forms by responding to questions about the forms in the context of the situation, goals and needs of the virtual client is much more effective than simply reading a form document with blanks.

They answer the questions posed based on what they are learning for a given class through reading in the text and paying attention to the video lecture. Whereas the discussion forum is worked in a team, the experiential exercises are performed individually. After the submission date is past, I post my own comments about the experiential exercises. I do not grade them. I do not give individual comments. In a class of 50, I wouldn't even begin to do that.

It turns out that I am able to use these documents much more effectively online than I do in a traditional class. I have a place to make my comments online, and I don't have the time constraints that I have in a traditional classroom.

So let's see if this is going to work. I thought you might want to see one of my video lectures.

[Playing video lecture]

Now that you know something about at least part of my online course, I want to talk about the empirical research that Virginia Harding and I are doing to answer the question posed in our presentation today, which is can students learn the transactional perspective of lawyering and develop transactional skills in an online format? I'm committed to developing information about transactional lawyering that is based on reality. Empirical research responds to that goal. What really is happening becomes the focus rather than what should happen, which is the focus of a lot of traditional legal scholarship.

Of course, much traditional legal scholarship is about what the rule of law is and, how it can be improved. The research to determine how students can become familiar with the doctrine and how students can prepare for practice is likely to be empirical research. When giving attention to teaching, non-traditional empirical legal research may be more appropriate.

I've been an active arbitrator with the American Arbitration Association. In 2003, I published my empirically based findings about how well transactional lawyers understand the law about arbitration. My interest in that question was piqued by the routine inclusion of binding arbitration clauses in many documents drafted by transactional attorneys both in commercial real estate and in other business settings. Yet when I spoke with respected attorneys about arbitration, I soon realized many did not know that parties give up their right to a trial by executing documents with binding arbitration clauses in them. These lawyers did not seem to know that parties submitting disputes to arbitration also give up the right to have the arbitration award determined by

the rule of law. With very few unusual exceptions, the parties in arbitration give up the right to an appeal. Arbitrators have lots of power.

I wondered whether my personal experience and conclusions as to a lack of understanding of arbitration by the transactional attorneys who provided for that dispute resolution process in their documents was widespread. So I created an old-fashioned survey, and I asked members of the Chicago Bar Association committees on business transactions and commercial real estate to answer it. It was in the old days before Survey Monkey, which Virginia and I are using today for our empirical research of the question whether transactional skills can be taught/learned through online courses. I had an excellent response rate. The results supported my thesis that commercial transactional lawyers did not know the basic law about arbitration, and yet they regularly recommended to their clients that arbitration clauses be included in documents, and they drafted “such documents” regularly although they use the standard AAA clauses most of the time. Those are drafted by the provider, AAA, not by the lawyers.

It did not seem to matter whether the respondent attorneys went to a top law school, practiced for a long period of time, were with a large firm, or were solo practitioners. The only difference seemed to be based on whether they’d ever represented a client in an arbitration. Even those who’d taken ADR courses and CLE programs on arbitration didn’t seem to know the basic stuff that I was just mentioning. They were all equally clueless.

The empirical study that we published has led to greater attention to the law of arbitration when ADR courses and seminars are offered and inclusions of warnings to transactional attorneys in CLE programs that are labeled traps for the unwary.

The research that Virginia and I have undertaken to determine whether law students can learn transactional skills when they take online courses is based on a survey of students in all of our online real estate courses and one online course named International Business Transactions, which is offered by Professor Karen Cross in the International Business and Trade program.

The survey itself has evolved due to the contributions of our student research assistant, who himself has undergone a totally online degree program—not in law—at DePaul University. He shares our curiosity about online legal education, and he brings skills, statistics, and survey building to our team. More importantly, Mike Dvorczak does not graduate until May 2017, so he’s committed to finishing the research before he goes off into practice. I’ve included the current version of the survey we use in the packet.

To get better student response, I require students to complete the Survey Monkey before the grades are sent out. This has resulted in a better response rate than we normally get for faculty evaluations, which are voluntary.

So here are the results of that survey. We learned about the demographics of the survey—my students. Most had some prior or current

relevant experience in the field. This is not unusual for John Marshall students. Many are nontraditional. Chicago is a big real estate town, and students interested in real estate are attracted to our law school over others because of our Center. Students generally live in the city, but we do not have a campus in any traditional sense. The south loop where we are located, on the other hand, is now the largest college campus in the United States because we have many universities in the downtown area within a mile of where we're located.

The graphic shows more full-time than parttime students in the on line classes. Still many of those full-time students are likely to have jobs as well. We did not set up this Survey Monkey to solicit that kind of information. In terms of the age distribution, a high percentage seem to be under age 35, but there is a group of students over age 35. Given the flexibility of the online education, I'm surprised that it's only 35%. I had several parents of young children in that class, including one whose baby was born during the semester, and having the course available online made it so much easier for her to participate. When I held an in-person class review at the end of the semester, we all got to meet Baby Vinny, but Mom had to bring a huge stroller up the stairs to achieve that accomplishment.

We have someone in his 70s right now among our students—not in that class. I'm worried that such older students may be concerned about their computer skills and whether they're competent to take an online course. I don't know.

Now, for the most important part of the research: was this transactional skill covered in the class? Notice the teamwork, which develops collaboration, seems to have been effective for this large group of nearly 50 students. Virginia will tell you more about teamwork.

Document review also got high scores—I assume because of the experiential exercises. The relatively low drafting score is appropriate. With such a large class, I did not assign much in the way of drafting exercises in the spring session.

Because Virginia and I agreed with recent reports about legal education, including the one that's critical for failing to teach students how to collaborate, we will continue and increase our attention to using teams in both in-class and online courses. When you look at this graph, I can't help but wonder whether MBA students, who typically learn in teams, would supply the same likes and dislikes of working in teams as our students did. The world of work and lawyering depends on the ability to work together with clients, other attorneys, and other professionals. Perhaps the weak student approval of working in teams is due to their lack of familiarity with the process of collaboration and/or to their having bought into the law school expectation that lawyering is all about confrontation and hard attacks on the other side.

The response to our questions about teamwork makes me wonder why such negativity? We may need to insert some more questions to follow up on these points.

Further, our research shows that students, at least those already in an online course, value the flexibility of the asynchronous format when we teach. What surprised me is the report that the students found the online instructor more accessible than a professor in a regular class. Really, there should be no difference. We tell our students, as part of Best Practices, that we will respond within 24 hours to any request.

In a good survey, there should be a place for suggestions more than merely answering the questions. In our survey on whether law students can learn transactional skills online, we solicited other thoughts, comments, etc., and many students indicated they would like to incorporate synchronous meetings for all or parts of the class. Actually, I tried to include such meetings in real time where all the students would be present as in the Louisville course at the Brandeis School of Law where Virginia Harding and I co-taught the class on Real Estate Transactions from Chicago while our students were in a Louisville classroom. I used Google something and Hang-Up, but there were technical problems—people were shaking their heads—and many students did not bother to show up. Yet my attempts at a synchronous meeting for the my John Marshall based online course was only for a review session at the end of the semester in preparation for the final exam, which is a traditional final exam for this course, and attendance was about the same as I would get for a review session at the end of a traditional course—maybe 30% of the students were involved.

If I scheduled a regular class session far in advance, perhaps attendance would be better, but the technology needed to support synchorous online learning is still a problem that needs attention, and at John Marshall, synchronous learning is all that is supported at this time. The future of our research over the next year is exciting. I want to compare results between the regular classroom and the online classroom for the Real Estate Transaction class. I am scheduled to teach the course online in the Fall and probably will teach it in a traditional classroom in the spring. For both courses, I use the same assignments and case books, and I have the same basic expectations on learning transactions and the doctrinal law. So I intend to make some comparison of the results in learning. If I can get a smaller section in my online course, with fewer than the 50 students I had this Spring, I would like to try more negotiations and more drafting and reviewing of documents than I've been able to do so far. There is a learning curve to teaching online, no question about it, but I think I have the hang of it now, and you will be among the first to know what I learned when we publish our results of the empirical research within the next year or so.

We've decided to leave questions until after the three of us have spoken, so now I'll hand over the show to Virginia Harding, a practicing attorney and adjunct professor at John Marshall Law School.

***TEACHING PROFESSIONAL SKILLS IN AN
ONLINE SUBSTANTIVE COURSE
FROM THE PERSPECTIVE OF AN ADJUNCT PROFESSOR***

Virginia M. Harding

For the past few years, I have been teaching professional skills in an online course titled “Leasing, Ownership & Management,” which is offered by the John Marshall Law School in Chicago. The Leasing Course, which I team-teach with John Marshall Professor Celeste Hammond, is an advanced real estate course open to students that have taken Real Estate Transactions.

The Leasing course is taught from a transactional perspective using an innovative casebook entitled *Commercial Leasing Management A Transactional Primer* 2d edition (Carolina Academic Press), which Celeste Hammond co-authored.

Unlike the materials I used in law school, this casebook includes the complete text of an office building lease. Thus our students have the opportunity to do something that few attorneys let alone law students have actually done: read and examine an office lease clause by clause.

The Leasing course was first taught in a classroom with lectures covering the substantive aspects of the course. The development of professional skills was an essential element of the course because successfully completing a lease transaction requires many professional skills. Students were assigned to groups, which today we call TEAMS, to discuss problems and to negotiate some lease provisions. We also had individual writing assignments and a final take-home exam.

Today the Leasing Course is taught online with audio-taped lectures posted on the Moodle Class Site. Class size is limited to 20 students. Students include: JD students, attorneys seeking an LLM in Real Estate Law and real estate professionals seeking an MS in Real Estate Law. Some JD students come to John Marshall Law School with years of work experience—often in the real estate industry.

Professor Hammond and I developed the on-line version of the Leasing course that we now teach. We included activities to develop professional skills and made sure that working in groups, or what we now call TEAMS, would be an important part of the course. A Final Project has replaced the take-home exam.

When we first developed the Leasing course for the classroom, we made sure that we responded to ABA Standard 302(d) which requires that legal education include opportunities for law students learn those “other professional skills” needed for competent and ethical participation as a member of the profession. ABA Interpretation 302-1 suggests that the term “other professional skills” means: interviewing, counseling, negotiation, fact development and analysis, trial practice, document drafting, conflict resolution,

organization and management of legal work, collaboration, cultural competency and self-evaluation.

Since we are transactional attorneys and teach from a transactional perspective, many of these “other professional skills” are essential if one wants to be a successful transactional attorney. When developing the Leasing course to be taught online rather than in a classroom, we faced the challenge of how would we include “other professional skills” in a substantive course.

Organization and management of legal work is a critical skill for a practicing attorney. It is also a critical skill for students who are enrolled in an online course that gives them the freedom to listen to lectures and do activities and assignments at times that work into their schedules.

Just as there are consequences for the attorney who fails to meet a client deadline, there are consequences for failing to timely complete activities and assignments. Activities and assignments count toward the final grade. Students who are too busy to timely complete an activity such as a discussion forum or an assignment discover that this impacts adversely on their final grade.

The Leasing course provides opportunities to develop the “other professional skills” of: interviewing, counseling, negotiation, fact development and analysis, document drafting and collaboration. These transactional professional skills fall into two categories: individual professional skills and group professional skills.

Transactional attorneys utilize individual professional skills when working alone or when meeting one on one with a client. This subset of professional skills includes: interviewing, counseling, fact development and analysis and document drafting.

Transactional attorneys utilize group professional skills when working with others to complete a transaction. This subset of professional skills includes: negotiation, organization and management of legal work and collaboration. From my years as a transactional attorney representing developers, the most important group professional skill is collaboration.

Individual professional skills are incorporated in the online Leasing course through the use of two role-play exercises.

The first role play exercise incorporates: interviewing, fact development & analysis and document drafting. Since the skill of interviewing clients is often neglected, we wanted to give students an opportunity to use this skill.

For this exercise student plays the role of the law firm associate assigned a by the partner to review and revise a Use Clause in an office building lease for a new client. Since the partner is leaving for a conference, the associate is working alone.

In the exercise, the client's Vice President of Real Estate – an experienced real estate professional—is traveling but is very concerned that the Landlord's form of Use Clause will not allow the client to use the space for all of their required needs.

For this exercise the associate must e-mail the Vice President and ask questions to learn more about the client's proposed uses for the space. I play the role of the Vice President of Real Estate and answer the questions asked by the students by e-mail.

Asking the right questions is a difficult task. To help students—especially JD students—tackle this, some directions are provided. Students are told to first determine what facts you know—the memo sent by the Vice President and the landlord's Use Clause are the resources for this exercise.

Next they are told to review the landlord's Use Clause to what language might prohibit the new client from carrying out all of its proposed uses in the premises as outlined in the Vice President's memo. The final step is for students to determine what they do not know but should know in order to revise the Use Clause. This is the information their questions need to obtain from the client.

The Exercise Instructions also remind the students that the e-mail to the Vice President is a client communication and thus is an opportunity to make a good impression on a new firm client. Sending an e-mail that begins: "Hi, Professor! Here are my questions," is not acceptable.

To keep the exercise manageable, students may only ask three questions but may send a second e-mail asking to have one answer clarified. Limiting the number of questions helps the students focus on what information they must obtain from the client. I learn a lot about students based on the questions they ask and way they communicate with this important client.

The facts developed about the client's proposed use of the space are the basis upon which the associate can then analyze the landlord's Use Clause and then draft a revised Use Clause. The student who fails to complete the client interview will not have enough information to prepare a revised Use Clause addressing the client's concerns.

The second role play exercise incorporates: counseling plus fact development & analysis. For this exercise, students play the role of an attorney who is consulted by a new client—the owner of a new business who is about to lease space for the first time. Students are given information about the client's plans and hopes for the business and a copy of the lease that the landlord uses to lease space in its industrial park. The Class Site also includes a resource that gives students instructions on how to write a business letter.

The ultimate goal of the exercise is for the students to counsel the client about the potential deal-killer issues in the landlord's lease before the final deal terms are negotiated.

For this exercise, the student works alone to review the landlord's form of lease, analyzing the facts and then preparing a letter addressed to the client (the "Client Letter") counseling the client about deal-killer issues which would need to be resolved in order for the lease transaction to be concluded.

To successfully complete both of the role-play exercises, students must utilize their individual professional skills and must understand substantive legal issues when preparing the revised Use Clause and the Client Letter.

The Leasing course uses TEAMS to discuss and report on problems from the casebook and uses transactional teams for the Final Project but more importantly to help students develop their collaboration skills which the ABA's 1990 Report *McCrate Report* identified as a fundamental skill for effective lawyering.

The ability to collaborate with others is one of the most important professional skills for an attorney to have because it requires that one is able to "work well with others." The term "others" from the transactional perspective is broadly defined because it encompasses: attorneys in one's own firm, the attorneys representing the other side of a transaction, as well as all the other professionals whose services are needed in order to complete and close a transaction.

The Leasing course is a good venue to foster the skill of collaboration because the students vary in levels of education and experience, the age range of the students is wide and students can be located in other time zones.

An Explanatory Memo about TEAMS is posted on the Class Site before the term begins. The Memo advises students that the goal of working in TEAMS is to enhance their learning about Leasing and Lease Transactions and to further their development of collaborative skills.

All students are assigned to a TEAM. The size and number of TEAMS depended on the number of students in the class but the goal is always to have 4 students on each TEAM—if practicable. During the first week, all students are required to post a short bio on a Class Site Forum entitled "Introduce Your Self to the Class." These postings are useful when TEAM assignments are made.

Twenty percent of the Leasing course grade is based on work done with the TEAMS. The Explanatory Memo states that when the Leasing course ends that students will be required to submit an assessment of the other members of their TEAM to the faculty using the assessment form posted on the class site. The component of the final grade for work within the TEAMS is based solely on the assessments submitted by other members of the TEAM. To insure that all assessment forms are submitted, the Explanatory Memo advises that NO grades will be submitted to the registrar until all assessment forms have been received.

Students generally give frank assessments about those on their TEAMS—identifying those whose participation failed to meet expectations,

those who failed to follow the agreed upon procedures and those who failed to timely respond to e-mails—often due to personal or work related issues. The assessments submitted by TEAM members are surprisingly consistent with the faculty’s perceptions of the students.

The Explanatory Memo tells students that they are responsible for contacting the other members of their TEAM and then determining how they will “meet” to answer TEAM problems. We have had TEAMS who realized that they were all on campus on the same day and established a regular meeting time. This is an exception rather than the norm. Other TEAMS have used conference calls, e-mail exchanges, G-Chat and Google Hangout. We make clear to the students that the members of each TEAM are responsible for deciding how and when they will meet to discuss, answer and report on TEAM Problems assigned during the semester.

TEAMS are also responsible for setting rules and procedures for their TEAM and for making sure that all members serve as Reporter for a TEAM Problem at least once. The Reporters are responsible for submitting their TEAMS’ answer to a TEAM Problem to the faculty. During the term, each TEAM is required to discuss and answer 4 TEAM Problems.

A second order effect of our decision to use TEAMS was to increase the amount of interactivity between students enrolled in an online course and thus insure that students had an opportunity to work and interact with others in an online course.

Rather than giving students a final exam, the Final Project gives students an opportunity to apply the substantive knowledge they have learned and to utilize their professional skills in a role-play exercise, which requires negotiation and finalization of an office building lease.

Students are assigned to work in Transaction Teams comprised of 2 or three students to represent either the building owner/landlord or the prospective tenant. The members of each Transactional Team were previously members of the same TEAM. While the members of each Transactional Team will have been members of the same TEAM, they will be working with a Transactional Team comprised of students that *were not* members of their TEAM.

If the landlord’s Transactional Team is comprised of students from TEAM A, then the tenant’s Transactional Team will be comprised of students from TEAM B. Members of each of the Transactional Teams will have had experience with working and collaborating with the other members of their Transactional Team but not with those on the other Transactional Team.

This is an effort to duplicate the world of practice where the attorneys representing the landlord come from one law firm and those attorneys representing the tenant come from another law firm. Attorneys are used to collaborating with those from their law firm and should be able to utilize their collaboration skills to complete the lease transaction.

The Final Project begins when the Transactional Team assignments are posted on the Class Site. The Landlord's Form of Lease and Term Sheet about the Lease is posted on the class site. The Terms Sheet contains information that is common to both the Landlord's Transactional Team and the Tenant's Transactional Team. Students on the Landlord's Transactional Teams are e-mailed the Landlord's confidential information while students on the Tenant's Transactional Teams are sent the Tenant's confidential information.

Then it is up to the Transactional Teams to start working. Typically the Transactional Team representing landlord starts the process by contacting the tenant's Transactional Team because that is what is done in practice.

The professional skill of negotiation—a profession skill not previously used in the Leasing course—is essential to complete the Final Project. A negotiation planning resource is posted on the class site to assist the Transactional Teams plan for their upcoming negotiation to complete the Final Project. The confidential client information given to both Transactional Teams gives their respective Teams their client's limitations and directives that provide a framework for resolving the final issues.

Some Teams quickly reach agreement on the final issues consistent with their client's desires. Other Teams can spend significant amounts of time reaching agreements. The parties always reach agreement on all issues. Occasionally, when one of the Transactional Teams is trying to find a creative solution, an e-mail comes to the faculty asking if a proposal is feasible or practicable.

The Final Project requires the submission of a fully completed form of lease that has been signed off by the attorneys for both the landlord and the tenant. Thus, reaching agreement on the open issues is only the beginning because now students must draft lease provisions that incorporate the agreements reached and then incorporate those provisions into the lease. It is not unusual for several drafts to be exchanged before both sides “sign off” on the new provisions.

In addition to the joint submission of the Final Project, each student is also required to submit a short reflections paper.

“Leasing, Ownership and Management” has now been taught online multiple times. Each time it is offered gives us additional opportunities to make further improvements. I foresee an even larger role for the TEAMS in the future to enhance students understanding of both the substantive law and professional skills development.

***CONNECTING AND ENGAGING STUDENTS ONLINE: DESIGNING
INTERACTIVE ASYNCHRONOUS TRANSACTIONAL DRAFTING
EXERCISES IN THE AGE OF TECH WIZARDRY***

Cynthia Adams

Good morning. I'm Cynthia Adams from Indiana University, McKinney School of Law. Today I will be sharing with you ideas for creating online, synchronous exercises to use either in a classroom course, in a blended course, or in a fully online course. Let me quickly preface my comments by noting that although I have designed and taught a blended course—meaning, part online and part “live” classroom—in Negotiations and a fully online course in Contract Drafting, I often find myself missing the day-to-day “live” interaction with my students. Online courses cannot, and should not, fully replace the wonderful spontaneity and learning moments of a face-to-face experience. Nevertheless, we're riding a big wave here, the demand for more online experiences. And I decided a few years back that I either ride that wave or get drowned by it. So I chose to ride the wave and now find myself at the forefront of developing quality online experiences for teaching transactional skills at my law school. In turn, I have found that developing these online experiences has greatly enhanced my teaching “live” courses, giving me the confidence and wherewithal to provide effective and engaging online exercises that supplement the “live” classroom. By sharing some of my experiences with you today, I hope that you will take away a few ideas for creating constructive online exercises for your own courses.

First, a little background about my online courses: I teach the blended Negotiations course during the summer term and the fully online Contract Drafting course during the regular academic semester. The blended Negotiations course consists of three weeks of online modules followed by a two-week intense simulation. For this course, I have been using Bradlow and Finkelstein's *Negotiating Business Transactions*, published by Aspen, for the simulation. The fully online course is taught during a regular fourteen-week semester, and I use *Drafting Contracts in Legal English: Cross-border Agreements Governed by U.S. Law*, also published by Aspen and which I co-authored.

When designing these courses, I worked closely with experts from my university's Center for Teaching and Learning (“CTL”) and e-Learning Design Services (“LDS”). The CTL advisor helped ensure an experience that would provide quality learning value to my students by meeting the course's learning objectives and competencies. The LDS course designers helped ensure ease of use while promoting active learning and student engagement. If you have

similar resources at your school, I strongly encourage you to seek expert advice when creating an online experience.

One other point to mention: When creating online exercises and courses, I also rely on the excellent rubrics from “Quality Matters,” a nationally recognized and respected peer-review process designed to assure quality control of online and blended courses. I have attended workshops on QM rubrics and have applied the QM rubrics to assess my courses and online materials. I have also had my fully online course peer-reviewed by a colleague who applied the QM rubrics, and in turn, I have applied the QM rubrics to peer review another colleague’s course. I found it an invaluable experience, especially peer-reviewing someone else’s course using the QM rubrics. I noticed more clearly where I was lacking in my own online course, and right now I’m tweaking my fully online course and will be submitting it for formal QM certification.

In my online courses, lessons are organized into modules. Each module begins with a front page. The front page provides an overview of the learning goals for that lesson and outlines the steps students must take to complete the lesson. The front page begins with a bullet-point list of the learning objectives for that module, followed by a list of activities. The activities typically begin with a reading assignment and then a brief videotaped lecture (not more than 10-15 minutes in length) that emphasizes and elaborates on the key points of the reading. Beyond that, there are various exercises that provide students with opportunities to immediately apply what they have learned. These “exercises” may include discussion boards, quizzes with immediate feedback, peer-reviewed drafting exercises, and independent drafting exercises with model answers automatically available upon a student’s submission of the completed exercise.

The two exercises that I am sharing with you today, I conceptualized and designed on my own. I mention this only because I want to assure you that you don’t have to be a tech wizard to create engaging online exercises. These exercises are simple to implement because both use free software. The software is user-friendly and needs little time to understand how it works; therefore, it is easy for you to create exercises and easy, even fun, for students to use. My students enjoyed both exercises and found that they were of great help in deepening their understanding of the concepts covered in the modules.

My first exercise uses a video, designed for interactive learning, on a web-based application called Zaption.⁴ When creating an exercise in Zaption, you can either upload your own video or use a YouTube or Vimeo video. Once uploaded, you may insert questions or comments at various points in the video timeline. The questions and comments highlight key “takeaway” concepts introduced in the lesson module. They also engage the students in active listening. You can also create a discussion thread, right in the video timeline. This is a great way for students to interact online with the professor, with the material, and with each other. Zaption also allows you to track students’ responses.

For use in my Contract Drafting course, I uploaded to my Zaption account a YouTube excerpt from the movie “True Grit,” the scene where Mattie Ross is negotiating with Colonel Stonehill. As part of the module on negotiations, I asked students to view the video after they reviewed my videotaped lecture. At various points in the “True Grit” excerpt, I embedded questions that introduced discussion threads designed to get students analyzing and discussing the negotiation within the context of what they had learned from the lecture.

The next exercise that I’m sharing with you today is a mind-mapping exercise. For those of you unfamiliar with mind-mapping, it is a non-linear graphic tool that uses diagrams, instead of traditional outlines, to “draw” information. Mind-mapping imitates the way the brain functions by bouncing ideas off each other, drawing connections from the interplay of these ideas, and thereby giving rise to new or novel thoughts and deeper understandings.

Mind-mapping can be used for various purposes, such as for brainstorming ideas for articles and books, for planning a class, or for planning a workshop or a conference, such as the one we are attending today. You can even use mind-mapping to create presentations. Stop and think about it; the Prezi that I am using for this presentation is a form of mind-mapping. But, most importantly for our purpose here today, mind-mapping can be used as a learning tool.

So, how do you create a mind-map? For those of you who aren’t familiar with mind-mapping, you typically create a mind-map by starting in the center of a page with a concise statement of a central idea. From that central idea, you expand outwards in any and all directions, drawing connectors from

⁴ Zaption was acquired by Workday, and the site was taken down on September 30, 2016. I am currently looking at EDpuzzle as a replacement. EDpuzzle is similar to Zaption in that it permits you to annotate videos, embed questions into the video timelines, and track students’ progress.

the central idea to other ideas that flow from it. You can further refine these secondary ideas by creating connectors to tertiary ideas flowing from the secondary ideas, and so on. You can even use different colors and shapes to group or categorize ideas, which can further spark imagination, creativity, and understanding.

In your transactional skills classes, use mind-mapping to inspire students to think more deeply about complex contract provisions. For example, you might ask students to create a mind-map of a complex indemnification provision, an earn-out provision, or a confidentiality provision. Another effective exercise is to ask students to mind-map a pre-negotiation strategy plan. Have students create mind-maps to identify each party's important goals, essential goals, and desirable goals. Then have them identify the issues for negotiation by drawing connectors between diverse goals. Once students have identified the issues, they can bundle together issues that might more productively be negotiated at the same time.

The mind-mapping exercise that I'm presenting is a pass/fail assignment that I created for my Contract Drafting course. The exercise encourages students to think more deeply about the inter-relatedness of various contract provisions. In the learning modules or classes leading up to the exercise, students are introduced—through readings, class discussions and lecture videotapes—to provisions commonly found in contracts. Different types of contract provisions, particularly complex ones, such as indemnification, warranty, confidentiality, non-compete, and force majeure, are explained in turn, including their respective purposes, possible negotiation points, and suggested drafting guidelines. Students are repeatedly warned that provisions can impact other provisions in a contract and therefore must be carefully drafted to avoid substantive ambiguities. Nevertheless, I find that when students draft provisions into a contract, they often wind up drafting them “in silos,” that is, without considering whether, and how, the drafted provisions might interact with other provisions in the contract. For these students, the “transfer of learning” from reading and discussion to application is unsuccessful. My goal in creating the mind-mapping exercise was to spur students to think more deeply about how certain provisions might interrelate with others, thus underscoring the importance of vigilant attention to detail when drafting in order to avoid ambiguities.

The mind-mapping exercise begins with a short narrative about an athletic sporting goods company that is negotiating a licensing agreement with a soccer superstar to use the athlete's name and likeness on its soccer equipment. The background narrative follows with a bullet-point summary of key agreed

points for a royalty payment, a morals clause, a non-compete, a confidentiality, an indemnification, a force majeure clause, and a severability clause. The senior partner of the law firm representing the sporting goods company has asked the student to review the agreed terms and report on how the proposed clauses might affect or relate to each other. Students are asked to create a mind-map to illustrate the interrelatedness of these provisions and briefly summarize their findings.

As part of the exercise instructions, students are provided a mind-map template to get them started. They may construct the mind-map diagram by handdrawing the diagram on paper, which they can then scan and upload to the assignment dropbox on the course website. Alternatively, students can create and upload a mind-map using Word, PowerPoint, or any mind-mapping software. I suggest to my students a free mind-mapping software, LucidChart,⁵ which is easy to use, encourages creativity with lots of shapes and colors, and allows the user to download as a .pdf their finished mind-map without charge. I also embed in the exercise a short videoclip, produced by LucidChart, that shows the nuts and bolts of using the software. Most of my students opt to create their diagrams on mind-mapping software, such as LucidChart.

To construct the diagram, students create a box for each proposed contract provision, and inside each “provision” box, the students note the agreed terms for that provision. Next, students draw lines or arrows flowing from one “provision” box to another, stating on the connector how the provision is related to or impacts the other provision. Students are advised that there can be, and often will be, more than one connector going from a “provision” box to other “provision” boxes in the diagram, and vice versa.

I assign the mind-mapping exercise shortly before students turn in their last drafting assignment for the semester. The last assignment is always a challenging contract, such as a cross-border product distribution agreement, that includes many of the types of provisions used in the mind-mapping exercise. After implementing the mind-mapping exercise in my course, I found significant overall improvement in the last drafting assignment. Gaps and conflicts due to poor drafting and insufficient thought were dramatically reduced. As an added bonus, student feedback about the exercise was quite positive. They enjoyed mind-mapping and thought it was a good learning experience.

⁵ XMind, FreeMind, and Coggle also offer free subscriptions. Caution students that if they choose to use free mind-mapping software that they ensure prior to creating their maps that they can also download their completed projects without charge.

If you are interested in any of these exercises, I'd be pleased to share them with you. Also, I continue to create new types of online exercises. Contact me if you are interested in discussing the exercises presented today or any works-in progress.