

Introducing Law Students to Transactional Practice: From Using Precedent to Closing the Deal

Ben Fernandez, University of Florida Levin College of Law

PROFESSOR FERNANDEZ: My name is Ben Fernandez. I teach contract drafting at the University of Florida, Levin College of Law, and I'm going to talk about introducing students to transactional practice from using precedents to closing the deal. Basically, what I'm going to describe is things I do to supplement Tina Stark's *Drafting Contracts: How and Why Lawyers Do What They Do*. I'm going to give you a whole bunch of, I hope, useful, teaching ideas on how to do that.

I remember hearing about Tina's book when it first came out. I think it was about twelve years ago. Ironically, I think I was in Atlanta, near where we are now. I was at a conference at John Marshall, and I heard some teachers were starting to teach contract drafting, and somebody had come out with a new book that we could use as a textbook, and I thought, "Well, it's about time." Contract drafting was the writing course I always wanted to take in law school, but it wasn't offered. So, finally, we were recognizing the other half of the lawyers in the United States who go into transactional practice.

Within a year or so I was teaching a Contract Drafting course, using Tina's book. I noticed that the number of chapters roughly corresponded to the number of classes. So, I used to just go through the whole book—chapter one to chapter thirty-two. That's how I taught the course. But then, over time, I noticed two things.

One, I felt like there was a gap between what's in the book and what I did when I practiced. I was teaching students how to draft from scratch following certain conventions. Whereas in my practice I was using pre-drafted forms almost all the time. Back then I was representing banks and finance agencies doing commercial real estate lending. And God knows a commercial mortgage has been drafted before. It would be insane to draft a mortgage like that from scratch. Also, I also was much more focused on substantive issues, making sure the document, fit the deal, than on how the document was drafted (what words were used for various types of

provisions). So, I was constantly taking complex form documents, reading through them, and tailoring the substance for a specific deal or for a specific lender.

Two, I spent my entire class teaching students detailed conventions on how to state various types of provisions, and how to format them in a contract. But I also wasn't teaching any of the ancillary skills I used in practice. For example, the terms of the documents I drafted in practice were always negotiated. There was always another attorney on the other side. We went back and forth with different variations of the language, and we negotiated a resolution of how to word the contract's provisions to satisfy both clients' needs. Also, I was never asked to draft a contract, and not also asked to close the deal and get the money or take title to the property, whatever it was. The attorneys who had the type of practice I had were called "closing attorneys" because we spent most of our time preparing for and conducting closings.

So, I felt like there was a gap between what I was teaching and what I did in practice; and I felt like I was covering a lot of the additional skills that are involved in transactional practice. Also, because I teach legal writing in addition to contract drafting, I couldn't help comparing my drafting class with the other legal writing courses. And I noticed the writing courses didn't have the same gap. For example, in Legal Writing I, we teach students pretty much everything they need to know to work as a young associate in a law firm. We teach them exactly what they're going to do when they work in the law firm. The same thing with Legal Writing II. That's not just a writing course; it's more of an introduction to litigation practice. We have students do oral arguments; and we introduce them to civil or appellate procedure. Again, what we train them to do is exactly what they will be doing if they go into litigation.

So, there were two things. One, there was a gap between what I was teaching and what I did in practice. And two, the scope of what I was teaching was also much narrower than what I did in practice. Both those things were true for the Contract Drafting courses I taught but they were not true for the other Legal Writing courses I taught. To address those issues, I

try to supplement what's in the second edition of the book with some of the things that I did in my transactional practice. I try to make the coverage more closely match what students will likely be doing after they graduate.

These are the types of things I am referring to:

- Becoming Familiar with the Business and Legal Context
- Choosing and Evaluating Precedents
- Tailoring Documents for a Deal
- Revising Documents for the Other Side
- Anticipating Contingencies and Facilitating Provisions
- Negotiating Document Language
- Dealing with Ethical Issues for Transactional Attorneys
- Handling a Closing
- Working with Computers and Online Resources

I'm going to go through each of these and give you some ideas on how to incorporate each topic into a drafting class. For example, I like to teach students about becoming familiar with the business and legal context before they draft. I found that to draft a lot of the documents I worked on, I really had to learn the client's business. I had to learn their terminology so I could understand what the client was saying. And I had a much better feel for what the client's interests were, and what their risks were, when I understood what the client's business.

I represented a client who designed residential space above commercial buildings. He would go to the owners of the buildings and negotiate an option to purchase the air rights above the space, and then design a residential space to be built above the existing buildings. You couldn't really do that without having an idea of what that business involved. My first question to him was, "Aren't you going to crush the buildings?" But then I learned how buildings are constructed and what holds them up, and I was much better able to represent his interests once I had that familiarity.

Another topic I cover is choosing and evaluating precedents. By precedents I mean form documents or sample contracts. In practice, I usually got them from the client or from the firm I was working for. But there are

also some great sources and some not great sources for documents on the Internet. So, I discuss how to find and evaluate proposed precedents in my class. Where do you go to look for a precedent? Do you just Google “lease agreement?” Is a Rocket Lawyer lease agreement a good form to start with? And then how do you evaluate the form once you have it? What type of form is it? Who drafted it? What type of transaction was it used for?

I then have the students simulate the situation where they are representing a bank and working with the bank’s documents. So, their job is to tailor the documents for the deal. In other words, revise them to better fit the type of transactions involved in the lender’s business. I give the students a form of loan agreement and ask them to revise various provisions. And one of the things they learn when they do that is revising a complex form is not as simple as just making changes here and there. You have to be familiar with the document and check to see how a change in one provision may affect other provisions in the form.

And then I do a second simulation where the students are on the other side of the transaction. In other words, they are representing the borrower and revising the bank’s documents. And we talk about how an attorney can change the allocation of risk between the parties to better protect a client’s interests by changing the language that is used in specific provisions. When I practiced, I spent most of my time doing those two things: tailoring a blank form for a transaction and revising completed documents for the other side.

I also felt like it was my role to anticipate contingencies and make sure the client’s interests were protected should they occur; and I worked hard to draft provisions that helped facilitate the transaction. As an example, if a student is drafting an obligation in an agreement, I think they should always think about whether the provision should include a deadline for performing that obligation. And they should consider whether there should be some type of penalty if the deadline is not met.

My class also covers negotiating contract language, which is very different than negotiating the settlement of a lawsuit. You’re not negotiating

about money. You're negotiating about language and the allocation of risk in the document. So, you need a strategy, a rationale for the changes you request, and options for different ways of wording provisions to negotiate effectively.

I also like to talk about ethical issues for transactional attorneys. A law school ethics class, like everything else in law school, tends to be geared more towards litigation. The only topics that might come up are metadata and the reporting and record keeping requirements for transactional attorneys. But there are other ethical issues that come up in transactional practice, like dealing with incomplete documents and scrivener's errors, and it is helpful to talk about strategies for dealing with those issues as well.

And then, lastly, I try to cover some of the latest technology that is out there to assist transactional attorneys with their practice. I feel like computer assisted drafting is more common with transactional practice than with litigation. I can't imagine using a computer to draft a trial brief. But I can imagine using document assembly software to draft a set of loan documents. And wouldn't be surprised if a student were tempted to use ChatGPT to draft a contract. So those are some of the topics I like to cover in addition to the content in Tina Stark's book.

I like to start with a video I found on YouTube. It was apparently produced by Wolters Kluwer and is entitled "A Day in the Life (of a Lawyer) Part 1: Drafting a Contract." The video gives the students a nice example of what transactional practices is like in a law firm setting. The associate in the video meets with a partner and is asked to draft an employment agreement. Then she meets with the client to go over a draft. She uses the partner's documents as a model and encounters various issues with the provisions that are included. And she has to figure out how to handle them with the client and the partner. I think it is a helpful tool to introduce the students to transactional practice.

1. Getting up to Speed

The first topic I cover in my class is getting up to speed. I advise the students there are usually five steps involved in preparing to draft a contract for a transaction.

- Find out what type of document you will be drafting
- Learn about the client's business and the goods or services involved
- Do some research and make sure you are familiar with the applicable law
- Review sample documents and create a list of questions
- Meet with the client to flush out the terms of the deal

For example, for one assignment, I have the students draft an agreement for the purchase of a brewery. Students like beer, at least they did when I was a student, so I thought making the contract about a brewery would help me keep their attention. Also, I chose a brewery because that business has its own terminology. For example, the starting ingredients are called the "mash" and the tank the mash is cooked in is called a "Mash Tun." The next tank in the process is the "Lauter Tun" and the subsequent mixture is referred to as the "Wort."

To learn that terminology, I might give the students those terms and ask them to find out what they refer to. I have also had the class watch a brief video on the topic. I remember when I did the Brewery Equipment purchase agreement, we watched a short video on the process and equipment involved in brewing beer. I think doing that helped give the students a better understanding of what was in the agreement.

In addition to becoming familiar with the client's business, I also have the students get an overview of the relevant law before they meet the client and start drafting. If the class is going to draft a contract that involves the sale of goods, I might have them go over some basic Article 2 concepts to prepare for drafting the contract. And if the contract is going to be a

residential lease, I will assign some brief research of the state statutory requirements for residential leases as part of their preparation.

We will then take a quick look at some sample documents, not to use them as models but rather to see what information will be needed to draft the type of contract they are going to draft. And I will have the students put together a list of questions or an outline of the information they will need to get from the client conference to draft the document.

After that what I normally do is pretend to be the client and have the students interview me to get the information they need to draft the agreement. I'll devote a class period to that and have the students do the intake by asking me the questions from their outlines. So, instead of giving the students a prompt or an assignment memo I try to make the process more realistic by simulating preparing for and conducting a client conference.

2. Choosing and Evaluating Precedents

In addition to drafting from scratch I also cover drafting with precedents. I break that topic up into three classes: one on choosing and evaluating precedents, one on tailoring form documents for a transaction, and one on revising completed documents for the other side.

When you choose a sample or form document for a deal the one thing you don't want to do is what a lot of students are inclined to do, and that is to just Google the type of agreement you want. If you do that, you will get a lot of consumer-oriented forms, many of them being sold online to nonlawyers. I'll explain to the students that not only do you not want to use those documents, but, as a practical matter, you must be able to draft agreements that are much better than what you can buy online. The lease agreement you draft must be better than what a client could have purchased from RocketLawyer.

Then we look at some of the commercial sites that are out there and are more appropriate for attorneys, like Practical Law, Edgar, Law Insider, and OneCle. I have the students look at the documents available at each of

those sites and make a list of the pros and cons of each site. For example, I start with the SEC site Edgar, which I consider the “old school” method for locating precedents. Edgar is great for some things, but not so great for other things. The site contains agreements submitted with SEC filings. Some of them are very high quality and very current. But there are some types of agreements you won’t find there because they aren’t the type of agreement a company would be filing with the SEC.

A more modern source for precedents is Westlaw’s Practical Law. One of the pros of Practical Law is that it has sample contracts and sample clauses. Also, it gives you the law applicable to a contract or provision along with relevant cases. Another newer source that I like is Law Insider. That site has agreements and clauses, as well as an instructional video series called the Contract Teardown Show. The videos are informative and entertaining. In fact, I have used some of them to take a “deeper dive” into some types of contract provisions in my drafting class.

After we look at some sources for documents, I give the students a framework for evaluating specific agreements, including considering the following issues:

- Who is the author of the form you’re looking at? Who wrote the document?
- Which side did they represent? Is it at least written from the landlord’s perspective, or from the tenant’s perspective?
- What jurisdiction was it used in? What state law applied?
- Was it used in a large transaction or a smaller transaction? Is it a “long form” or a “short form”?
- Was it used for a consumer transaction or a commercial deal?

There’s a huge difference between consumer forms and commercial forms. A short form is usually appropriate for a smaller transaction, but a long form will make more sense for a larger transaction. The content of a form may vary depending upon the state it is used in. A form drafted for a landlord will likely not be in a tenant’s best interests to use. And a sample document put together by an attorney who didn’t know what he was doing is not of use

to anyone. So, it is important to get precedents from a reliable source, and it is also necessary to evaluate the documents before you use them.

3. Tailoring Documents for a Deal

The next step in the process is to tailor the form or sample for specific types of deals (i.e. changing a Massachusetts form to work in Florida, or changing an agreement for a deal that involves a ground lease to use in deals where the owner will have a fee simple interest in the property). There are three steps I think are essential to modifying a complex form or sample contract:

- Read the document to familiarize yourself with the substance and structure
- Draft any revisions the same way the document was drafted (or redraft the entire document)
- Read closely the rest of the document to see if any other provisions are affected by the changes you made
-

The first step is to read the document and make sure you understand it. That takes time and students often don't want to do it, but they must realize they need to understand the entire document before they try to change any specific provision. The second is, when you make the revisions to a document you didn't draft, depending upon the circumstances, you often have to make the revisions conform to the rest of the document (e.g. use the existing defined terms and follow the same conventions for the words to use that are followed in the rest of the document). For example, if you're involved in a transaction and there are multiple attorneys, and you are proposing changes to somebody else's documents, you usually want to draft your proposed language the same way the original document was drafted. So, if the document uses "will" for covenants, even though you were taught to use "shall," you can either insist that the other attorney redraft the entire document (which I would not recommend doing) or you should draft the covenant you propose to add using "will."

I use the example of a \$20,000,000,000 stock purchase agreement the Obama administration used in 2009 when the government bailed out Bank of America. The document violates several rules taught in Tina Stark's book. Among other things, the author uses legalese in the background section. But if I were involved in that transaction, would I go and cross out the legalese? No, I would not do that. I teach the conventions in Tina's book, but I also tell my students they must be able to adapt and work with documents that are drafted differently. I think that's part of practicing in the real world.

Also, when you revise a complex document, you can't just, for example, delete a defined term because it doesn't apply and then think you're done. You must read through the rest of the document and see how that change affects other provisions in the document. If that term was used in other provisions, you will have to delete it there too. And you may also have to revise the language in those provisions to accommodate the change. A change in one part of a document often reverberates through the rest of document. When you revise a complex document, you must understand how the change you are making affects the rest of the document. And you usually find one small change here necessitates other changes elsewhere.

I have exercises I assign to demonstrate these concepts. To get the students to read a sample form and become familiar with the substance, I have them read a residential purchase and sale agreement and draft a timeline for the transaction. I also give the students a loan agreement form and have them make specific changes to the form. When they do that, they find the changes they made affect other provisions, and those other provisions need to be revised as well. So, I have them try making the revisions at home, and then we go through the changes, as well as the other provisions affected, in class.

4. Revising Documents for the Other Side

The next topic I go over is revising documents for the other side. What are some of the things you can do to a form document tailored by the other side to change the allocation of risk, so it better protects your client's interests. Here is a partial list:

- Qualify the Language (using words like reasonable, material, best efforts)
- Impose Conditions (providing for advance notice, a time period to perform)
- Narrow the Scope of client's obligations, prohibitions
- Expand the Scope of client's rights
- Create exceptions
- Modify defined terms
- Increase or decrease time periods

I like to start this topic something I think a lot of lawyers go through when they graduate from law school. Your friends hear that you just graduated and one of them is buying a house. He hands you a purchase agreement and wants to know what you think of it. You read the document and see that it is drafted to protect the seller not the buyer. So, what can you do to fix that? What are the sorts of things you do when you revise somebody else's document and make it better protect the other side? You can qualify the language. You can impose conditions. You can narrow the scope of obligations. Those are some of the things you can do to change the allocation of risk between one party and another.

To demonstrate this, I have the students revise a detailed financial covenant in a loan agreement. We go through the provision sentence by sentence and talk about how the language could be changed to better reflect the borrower's interests. For example, if the document says the Borrower shall provide financial information "promptly following the request of the Bank" you could propose changing that to the Borrower shall provide such information "no later than 90 days" following the "reasonable written" request of the Bank. In other words, you can change the allocation of risk and better protect the borrower by imposing a condition on (sufficient advance notice) and qualifying the bank's right to request financial information.

5. Anticipating Contingencies and Facilitating Provisions

We also talk about what I think is one of the primary functions of a transactional attorney, and that is anticipating contingencies and facilitating provisions. Part of the attorney's job is to think through each of the steps of the transaction, anticipate how things could go wrong and add provisions or revise the existing language to ensure the transaction or the relationship process proceeds as planned. These are some examples of what I'm referring to:

- Adding Deadlines
- Requiring a Writing
- Adding Notice
- Defining Receipt
- Dealing with Delays
- Death and Destruction
- Mediation
- Attorney's Fees
- Exclusion of Implied Warranties, Consequential Damages
- Indemnity, Insurance, Release

Addressing these types of issues is one of the ways the attorney adds value to the deal. For example, you know you're going to require payment at closing. First, how should you require the payment to be made? You don't really want cash. So, think that through. What should you require? You probably want to wire transfer. And then think that through too. To do the wire, what will you need? You will need wire instructions. So, in addition to requiring the party to pay by wire transfer, you also need to draft a covenant obligating the other party to provide wire instructions. And when do you need the instructions? You're going to need them before the closing. You don't want the party showing up with instructions on the day of closing. You will need that information ahead of time so you can set up the wire before the payment is to be made. So, you are also going to need to give the party providing the instructions a deadline, so that you have time to set up the wire before the closing takes place.

And what if the party misses the deadline? What if the payment is an installment payment or a monthly payment in a lease? You have included a deadline but what happens if the payment is made late? Should you add some type of late fee, so that if the person misses the deadline, the parties will have a way to deal with the situation other than by filing a lawsuit. What would be better, a flat fee or a percentage of the payment? Should it just be a one-time payment, or should the amount be per day, so that it increases the later the payment is made?

If there is a dispute, what can you do to facilitate the handling of the dispute? A purchase agreement often includes a deposit, and that is often what the parties end up fighting over if there is a problem. That's a perfect situation, in my mind, for adding a mediation requirement because the last thing you want to do is have to go to court to fight over a \$5,000 deposit. So, anticipating that and thinking of adding a mediation provision is something the transactional attorney should do to add value to the transaction.

Another example is attorney's fees. The prevailing party is not entitled to them unless the attorney thought to put an appropriate clause in the agreement. Death and destruction are also examples. What happens if one of the parties dies or the subject matter of the agreement is destroyed? It's up to the lawyer to think of all the things that could go wrong and make sure the client is protected should any of those contingencies occur.

6. Negotiating Contract Language

When I practiced transactional law I not only worked almost exclusively with forms and samples, but also the language in the documents I used was almost always negotiated between the parties. I never just drafted something that was accepted and signed as is. The other party always had their own attorney, the attorney reviewed the document and requested various changes to the language, and we would have to negotiate to come to come up with language both parties could live with. So, I also try to cover the negotiation of contract language in my drafting class. First, I talk

generally about how to prepare for and conduct the negotiations, including the following:

- Negotiate with the client first
- Get authority for a range of outcomes
- Scope out the other attorney
- Meet on neutral grounds
- Develop a strategy
- Figure out which requests are disputed and which are not
- Have a rationale for requested changes
- Have alternate language available
- Create some give a ways to exchange for what you want
- Consider involving the client(s)
- Be the good cop or the bad cop, or the devil's advocate
- Always be a deal maker, never a deal breaker

I think it's very important to meet with the client first, and to negotiate with the client to get a range of authority. It is usually also a good idea to try to find out what I can about the other attorney. Ideally, you would want to meet at your office to do the negotiation, but the other attorney usually wants to meet at her office. That means nobody typically meets at anybody's office. The negotiations are usually done on the phone. But if the other side calls and you aren't ready, don't try to negotiate the contract on the fly. Find some reason to hang up and call back when you are ready.

When you negotiate contract language you usually need a strategy for accomplishing your objectives. You might think, "This is what I want. Maybe I should ask for more and, if that is rejected, hopefully we can settle for what I really want." Or you might think "Maybe I'll ask for five things that I don't really want, or I don't really care about, but then use those as giveaways to try to get what I really do want." Regardless, you usually need a rationale for why you want that revision, and you also need alternate or backup language you can live with in case you don't get your first choice.

So, I try to give the students some advice on how to handle the negotiations, then have them pair up and do an in-class negotiation. The students seem to enjoy doing that. I give half the class a memo addressed to the lender's counsel, and the other half the class a memo addressed to the borrower's counsel. The instructions for each side are different. The exercise involves changes to the provisions of a loan agreement, like the default provisions, or something like that. For each provision I'll tell the lender's counsel this is what the lender wants. And I'll tell the borrower's counsel this is what the borrower wants. Then I'll have the students negotiate the language in class and submit a revised document based on whatever agreement they came to.

AUDIENCE MEMBER: Do you mind if I ask a question?

PROFESSOR FERNANDEZ: No, sure. Go ahead.

AUDIENCE MEMBER: So, do you grade a negotiation assignment?

PROFESSOR FERNANDEZ: No, I haven't been grading the assignment. If I thought they weren't taking it seriously, I would want to grade it. But they do take it seriously, and they do put a lot of effort into it. So, I haven't felt the need to grade. Plus, I want them to understand that in this context, the process is not adversarial, it's more cooperative. And both sides really want to make a deal. It's not like litigation where you can tell the other guy to go to hell and walk away. Both parties' attorneys understand they are paid to make deals not break them. The attorneys get paid out of the closing proceeds, so everybody has a strong incentive to be a deal maker. So, I don't want the students to be competitive and focus on "winning." I want them to work together to come to a deal.

AUDIENCE MEMBER: I'm wondering this, do you require them to draft the language and redraft the language based on what they would read too?

PROFESSOR FERNANDEZ: Yes.

AUDIENCE MEMBER: Okay, yes. So, you don't grade that, either?

PROFESSOR FERNANDEZ: No.

AUDIENCE MEMBER: The way you're saying that I'm just curious. Would I grade it? When I was at Northwestern I took negotiations, and I graduated before you. So, you're not old. We were taking course where you have points, if you won certain things for your client.

PROFESSOR FERNANDEZ: I'm not interested in grading the negotiation, but I do like to see the language that the parties agreed to put in the document. So, I have them submit a joint document and I review it after it is submitted.

7. Dealing with Ethics for Transactional Attorneys

I also try to cover some ethical issues that transactional attorneys deal with. These are some examples:

- Metadata
- Unenforceable Provisions
- Emails Sent by Mistake
- Correcting Scrivener's Errors
- Attorney Trust Accounting
 - Reconciling accounts
 - Record retention

One issue is metadata. Most students know what that is, but they also have to learn how to “scrub” a document before they submit it to the other attorneys in a deal. Another common issue in transactional practice is including provisions in a document that are likely not enforceable. Is it unethical to include an unenforceable provision in a document?

What do you do when you receive a confidential attorney client email by mistake. That happens all the time. It's probably in your client's interest to read it, but would it be unethical to do that? And more importantly, how should you handle that situation? What if you are the one that sent the email? What should you do?

If you accidentally send out a document that hasn't been scrubbed of metadata, should you tell the recipients to delete the document and replace it with a scrubbed version? Should you ask them to send it back? Are they more likely to look if you call their attention to the mistake? Would it be better not to say anything?

Everybody makes mistakes, but it's often about how you handle them that is most important. To discuss this, I'll create a hypothetical and give it to the class, and then ask them to write an email to a partner with their proposed resolution of the issue. So, for example, suppose they handled a closing, and they were back at the office going through the documents and they realized one of the parties forgot to initial one of the pages. Or something was left blank. Or the wrong version of a document was signed. What do you do? Keep your mouth shut and hope no one else notices the mistake? Or fix the problem on your own time and then report what happened?

Ethical issues also come up in negotiation, so the negotiation exercise creates another opportunity to discuss them. What are the rules for what you can and cannot say in negotiations? Can you lie to the other side? Is it a lie if I say, my client demands X when you know the client will settle for much less? Can you threaten to file a lawsuit if your client really has no intention of doing so?

8. Handling a Closing

The last topic in contract drafting I like to cover in my classes is handling a closing. As I said, I don't think I ever drafted a contract that wasn't negotiated, and I also don't think I was ever asked to just draft an agreement without also being asked to get it signed and close the deal. But how can you cover the closing process in a drafting class? What I try to do is cover the basics in a sort of "show and tell" where I show the students a complex agenda and explain the items listed including:

- Legal Documents
 - Revisions, Negotiation

- Title Documents
 - Title search, Taxes
 - Insurance
- Authority Documents
 - Articles, Bylaws
 - Clerk Cert, Resolutions
 - Authority Opinion
- Project Documents
 - Plans, Specs, Budget, Schedule
 - Zoning Opinion

But then I'll also have them prepare a clerk's certificate for a corporate signer. I think it is important for anyone who drafts contracts to know how to do that. I've seen practitioners skip that step, just because there isn't a closing, but it is almost always appropriate when the signer of the contract is someone who's signing for an entity.

Also, I'll walk through with the students some of the online websites you can use to do some basic due diligence, including the tax assessor's website, the website for real estate deeds, the site for UCC filings, and the site for corporate records including articles of organization, annual reports, and other filings. To demonstrate how to use those sites, I'll give the students the name of a party or the address of a local property, and then have them go online to find out as much information as they can to prepare for a closing involving the sale of the property.

Those things are very simple to do but they are also very important. If the person who signs your document is not authorized, or if the property your client is buying is subject to a prior lien, then all that work you did, tailoring, revising, and negotiating provisions and handling the closing, is all for naught. The document is not enforceable if it is not properly authorized. And the buyer is not buying the property but only the remaining equity if there is a prior lien. So, the due diligence can be every bit as important as the drafting.

9. Working with Computers and Online Resources

Finally, I also like to cover the topic of working with computers to draft contracts. When I say computers, I don't just mean word processing software like Word, which is now pretty much universal, or even software designed to catch spelling, or grammar or other mistakes, like Grammarly or PerfectIt. I mean document assembly programs like HotDocs and NetDocuments that help attorneys put together a set of form documents for a transaction. To use a document assembly program, you first create a template for each document. Then you take each piece of information and tell the computer where to put it in the document. You also create a series of "if / then" commands that tell the computer what language to insert or delete, depending on the information you input. So, if you tell the computer the borrower is a corporation, then the computer will add the representations for a corporation instead of the representations for an LLP or whatever. When you are documenting a lot of similar transactions, like you do when your practice involves something like commercial real estate lending, a document assembly program like HotDocs or NetDocuments is very helpful to create an initial draft of documents for a deal.

LegalSifter is an online service that not only helps lawyers draft documents with the advice of well-known contract expert Ken Adams, but also assists them in reviewing the content of contracts they administer. As part of the service, you get access to a series of algorithms Adams has created for different types of contract provisions. If you've ever read Adam's book on contract drafting, it is like an encyclopedia of every possible contract provision you could imagine. And it contains his insights on how each type of provision is best drafted. By using the program, you get the benefit of those insights applied to the contracts you create. In other words, you could think of the service as giving you Adam's feedback on your own documents.

Everyone knows about Zoom because of the pandemic. Before there was Zoom, I used a similar service called Uberconference. In the old days you would prepare for a closing by participating in a conference call with the other attorneys. Now that happens much more efficiently by having an online conference. Back then documents were signed in a conference

room at the attorney's office. But now you can use programs like DocUSign to sign documents online. In many states, the filing of deeds and security agreements can be completed online as well. There are even payment programs like PayPal that can transfer payments without having to write out and send checks after the closing is completed.

And then, of course, there are "artificial intelligence" programs the students should be aware of like ChatGPT. You can use AI to draft a contract from scratch, but it won't do the drafting the way it is taught in Tina Stark's book unless you give the program a lot of specific training. If you just give ChatGPT the relevant information like the facts for the car purchase agreement in Stark's book, ChatGPT will draft a contract based on that information, but it won't do it the way students are taught to do it in the book. If you put the contract information in little by little, one section at a time, and give the program sample language to use as a model from something like the Purchase Agreement at the end of the book, then the program will perform much better. You must be very explicit about what you do and don't want the program to do, but if you do all that and go one step at a time, then the program can do a good job of drafting the contract the way the book teaches. The problem is, if you must do all that to get ChatGPT to draft the way you want it to draft, it would be easier to just do the drafting yourself.

Still, it is only a matter of time before someone comes up with a program like ChatGPT that is specifically trained to follow the conventions in Tina Stark's book, or Ken Adams book, or Bryan Garner's book. Someone will eventually create an AI service that is trained to draft contracts following the conventions in one or more of the drafting texts available to attorneys (or a program that can be permanently trained to do that). I wouldn't be surprised if companies like Westlaw or Lexis are working on that now. And when that happens, it will have a dramatic effect on how we teach contract drafting. It seems to me the class can't just consist of training students to do what a computer can do even more effectively.

Those are examples of the things I do to try to supplement what is in Tina Stark's textbook. I cover those topics to try to make the class closer

to what is involved in real life, and more like a third semester Legal Writing class. I tell the students we're going to go through the Contract Drafting textbook to learn how to draft an agreement from scratch. But I also want them to get an idea of what transactional practice is like. They may like it, or they may not like it. But at least they will get an introduction to that type of practice in the same way they got an introduction to litigation practice in their second semester Legal Writing class.

You might ask, "Well, how do you fit all that in one semester?" The answer is I only go through the first seventeen chapters of the book in full, and then I pick topics to cover from the other chapters. Chapters one through seventeen cover the basics: the preamble through the signatures. I counted all the rules and guidelines in those chapters and came up with about 175 rules, so that is plenty for the students to try to absorb in one semester. I cover that and then I move on to the topics I just described. And I think doing it that way better prepares the students for life as a transactional lawyer.

