

substitute for the richness and complexity presented by real cases. But ideally a student should have both experiences: the opportunity to use writing as a means of learning and the opportunity to learn the clinical practice through writing as well.

It is certainly possible to teach advanced legal writing without a particular substantive context. This model either requires the analytical issues to be very simple or recognises that the students will merely skim the surface of the substantive law. This approach works in a highly sophisticated writing course focusing on technique but risks superficiality if the students are expected, primarily, to be learning basic drafting skills. It also fails to give students an opportunity to learn a substantive area through writing in and about it.

Bankruptcy is a generalist field in specialist clothing: a bankruptcy practitioner must cope not only with the contracts, secured transactions and debt collection issues that one would expect, but also with the not-so-occasional family or estates law problem, landlord-tenant issues, environmental law issues, tax law, pawnshop disputes, mental health issues, property ownership disputes and difficult jurisdictional and procedural concerns.

One of the goals is to have the students work with forms - choosing them, adapting them, and being thoughtful about necessary changes. They need to recognise the essential economic value of using forms but the professional need to use them with care. With each submission throughout the semester, the student turns in a cover memo identifying the audience for the document, its purpose, any forms used, alterations made to the form, other available forms, and why he selected the chosen form. The student also evaluates the assignment and provides a list of authorities relied on for each assignment other than the memo, the pre-trial statement and the brief. The documents are to be in professional form, ready for court filing.

The students' first job is to engage in fact gathering. They have to conduct an interview to get the documents and information necessary to write an opinion let-

ter and to prepare a bankruptcy petition and supporting documents. After the in-class interview is complete, the students have to advise the client in writing about her options. Writing this first letter requires the student to consider his audience carefully and to think about how to communicate the key information. It is essential for the student to perform adequate research to provide accurate and ethical advice to the client.

The student's next assignment is to research and write an office memo about the client's exemption issues. Next the students prepare the bankruptcy petition and schedules. This process requires them to research the local rules, to use complicated forms, and to think about how the information in the schedules may affect the course of the client's bankruptcy. They must take a global view of the entire bankruptcy process and consider how the petition and schedules will affect the direction of the case.

Once the petition is filed, the students turn to the job of sorting out what creditors can still do despite the bankruptcy filing and what the debtor can do to stop creditors from violating the protections the bankruptcy was supposed to give her. The final segment of the course focuses on litigation of the discharge ability of the debtor's student loan obligations.

After the students complete the interrogatory assignment, they turn to the joint pre-trial statement. This forces the students to think through the entire case and to work together with their opponent to produce a joint document. Finally, the students prepare a trial brief.

It has been said that all of the other identified MacCrate skills are encompassed within the skill of 'problem-solving'. Certainly problem-solving is the context of this course. In order to identify and diagnose the client's problems, to generate solutions and strategies, to develop and implement a plan of action, and to remain open to new information and ideas, the students must develop expertise in the bankruptcy law governing the client's problems, and they must be able to analyse the law and communicate their analysis to oth-

ers. The end result should be students who have improved their skills by using those skills in context: learning writing through the substance of consumer bankruptcy and learning consumer bankruptcy through writing about it.

### **The impact of student GPAs and a pass/fail option on clinical negotiation course performance**

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Practising attorneys negotiate constantly. Litigators resolve the vast majority of legal disputes through negotiated settlements rather than through costly and unpredictable arbitral and judicial determinations. Transactional representatives formulate the basic terms of all business arrangement through bargaining interactions. It thus should be apparent that the possession of negotiation skills should enhance substantially one's ability to practise law.

Students who maintain consistently high grade point averages (GPAs) usually are considered, by both academics and practising attorneys deciding which recent graduates to hire as associates, as intelligent, industrious, organised, and articulate. Would these personal attributes carry over to skills courses and positively influence student performance on negotiation class exercises or course papers? If so, there should be a statistically significant positive correlation between student GPAs and legal negotiating class achievement.

At George Washington University, students who take the Legal Negotiating course may elect a conventional grade or a pass/fail alternative. In this simulating course, the students engage in a series of negotiation exercises, with their bargaining results determining two-thirds of their final grades. The other one-third is based on the scores they earn on class papers. In conventional law school courses, student grades are only indirectly affected by the performance of other students. In Legal Negotiating class, however, stu-



dents' grades are directly affected by their bargaining interactions with classmates. They are assigned partners for some exercises and must interact directly with opponents on all exercises. Personal conflicts with partners or adversaries may adversely affect their performance on particular exercises, with those difficulties being recognised in their final course grades.

There was a statistically significant difference between graded and pass/fail students with respect to negotiation exercise performance, with graded students achieving substantially higher average results than their pass/fail cohorts. Although graded students achieved slightly higher paper scores than their pass/fail cohorts, the mean differences were of only marginal statistical significance.

Class members negotiate on a one-against-one or a two-against-two basis. On some occasions, students are assigned partners to assist them with complex issues and to demonstrate the difficulties negotiators may encounter with respect to individuals on their own side. The students learn that in practice opposing counsel often achieve tentative accords with minimal difficulty and thereafter encounter problems when they try to convince their respective clients to accept the reasonable terms negotiated. For each exercise, participants randomly are assigned different opponents and, when relevant, different partners.

Each student is also required to prepare a 10 to 15 page paper exploring the negotiation process. The writers are instructed to analyse their bargaining interactions based on the concepts covered throughout the term. Students are told that if they participate in the assigned negotiation exercises and prepare acceptable papers, they are guaranteed grades of 'C/C+' or better, and individuals taking the class on a pass/fail basis are guaranteed 'Pass' grades. They also are informed that the law school evaluation curve precludes the awarding of grades of 'A-' and above to more than 25 percent of class members.

Class participants will engage in openly competitive exercises that will influence their final grades. Risk adverse individuals might find this experience discomforting and prefer to diminish the competitive aspect by opting for pass/fail evaluations.

During the first half of the semester, we explore theoretical and practical concepts pertaining to the negotiation process. Students are assigned chapters from texts. The class considers the psychological factors that influence negotiation interactions along with the impact of verbal and nonverbal communication. Students evaluate the effectiveness of cooperative/problem-solving and competitive/adversarial bargaining styles. The manner in which the personal needs of clients and attorneys and the different types of legal problems and relationships may affect bargaining encounters are discussed.

The availability of the pass/fail option enables individuals who fear that grade anxieties may undermine their learning experiences to take the course without having to worry about their final grades. On the other hand, the right of students to take the course for a traditional grade provides individuals with the opportunity to strive for optimal performances that will enhance their grades and heighten the seriousness with which graded participants approach the simulation exercises. If all students took the class on a pass/fail basis, few would be inclined to work as hard as they would if their negotiation results affected course grades. The traditional grading option enables students to experience and learn to deal with the competitive pressures associated with most legal negotiations.

The findings obtained in this study lend support to the following three statistically significant hypotheses: (1) the absence of any meaningful correlation between student GPAs and negotiation exercise performance; (2) the absence of any meaningful correlation between student GPAs and Legal Negotiating course paper scores; and (3) the presence of a statistically significant correlation between student GPAs and the grading option

they selected in the course, with higher GPA students being more likely than lower GPA students to take the class on a pass/fail basis.

It would be beneficial for Legal Negotiating teachers at other law schools who use bargaining exercises in their courses to engage in similar research to determine if they also would find no correlation between student GPAs and exercise or paper performance. It also would be informative if teachers of other clinical skills courses, such as client counselling and trial practice, would compare the practical performances observed in their respective classes with student GPAs. If they were to find a similar absence of any relationship between student GPAs and clinical course performance, this would support further the conclusion that traditional academic performance and clinical course performance are unrelated.

If there is no correlation between overall law school performance, based upon student GPAs, and one's ability to achieve beneficial results in clinical negotiation settings, and other clinical class situations, law firms might wish to reconsider the degree of reliance they place upon student class standing during the hiring process. Because the capacity of practising attorneys to counsel clients, to negotiate, and to engage in litigation is crucial to their ability to be effective legal counsellors, hiring committees might want to place greater emphasis on the performance demonstrated by applicants in clinical courses than in more traditional courses. They should review student transcripts carefully to determine which applicants have demonstrated the ability to achieve successful results in clinical courses and give more thorough consideration to those individuals.