DOING WHILE LEARNING: HOW BUSINESS PROGRAMS CAN INTEGRATE BENEFICIAL EXPERIENTIAL LEARNING OPPORTUNITIES FOR PRE-LAW BUSINESS STUDENTS

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ABSTRACT

Experiential learning is at the forefront of pedagogical best practices in undergraduate education. Business schools, which are an increasingly popular choice for future law school applicants, should take steps to enrich the learning experience for these students. Many pre-law programs already implement and utilize successful experiential assignments which should be adopted by business schools. The skills learned in these assignments, which include contract simulations, mock trials, and client interviews, contain components that can benefit both the traditional business student and the law school applicant. By providing opportunities for experiential learning similar to their real-world counterparts, business schools can better position themselves to accommodate the needs of these students.

INTRODUCTION

The mission of many undergraduate legal studies or pre-law programs is to provide the skills and knowledge base to be successful in the legal profession. Pre-law programs make a conscious effort to incorporate student learning outcomes that are specifically tailored for the student aspiring to attend law school. Other undergraduate programs also boast a significant number of law school aspirants and programs with these pre-law students should be acutely aware of the expectations placed on law students. They must take measures to acclimate students to the rigors of their next academic endeavor, as they would with other post-graduate forms of education.

In recent years, law schools have made a noticeable shift away from an entirely lecture-oriented, traditional law school curriculum and towards an emphasis on experiential learning. The traditional approach focuses on the use of the case method to teach legal doctrine. In doing so, it reinforce the notion that students need to think logically and coherently within the bounds of the

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Generally, law schools have relied on the time-tested Socratic Method to generate discussion, introspection, and analysis of cases to illuminate the legal principles found throughout the law. This variety of doctrinal teaching concentrates on identifying, understanding, applying, and critiquing the law in hypothetical settings. Experiential learning, on the other hand, focuses on learning through real-life applications that simulate what the student will encounter in the field. Particularly, experiential learning projects known as high-impact practices (HIPs) efficiently maximize the learning environment. For this reason, undergraduate programs should look to implement HIPs in their curricula that target skills needed for law school success.

Traditionally, business schools do not place a priority on training students for the specific rigors of law school. However, more students are choosing an undergraduate business degree as the preferred field of study prior to applying for law school. The sheer number of future law school applicants enrolled in business programs nationwide suggest that their needs should be addressed at some point in the curriculum. It would be unwise for business programs, presumably seeking to grow and expand their student population, to simply ignore the specific skills needed for law school success. Business schools seeking to accommodate the precise learning needs of their pre-law students should design law courses to provide a foundation for the student’s first-year of law school. The most fundamental courses in a pre-law student’s business curriculum are the Legal Environment of Business or Business Law courses. It is through these courses that business programs can ideally introduce experiential learning concepts used in legal studies programs.

Notably, experiential learning course modules with a pre-law emphasis need not be implemented at the expense of traditional business students; rather, these course artifacts can be integrated within the business law course to prepare pre-law students, while simultaneously providing business students with a wider and more hands-on view of the legal environment within which they will work. For example, a contract negotiation simulation may be more relevant for students planning on becoming attorneys, but business professionals also need to be aware of the process of contract formation to understand how and why compromises are critical for the creation of binding business agreements. And, of course, many businesspersons prefer to negotiate and draft contracts without the assistance of a lawyer. In theory, such practice will help those students as much as pre-law students.

In other words, including such projects will “kill two birds with one stone,” and create a learning environment that is richer and more effective. While one or two law business law courses cannot include the depth of pre-law instruction provided by an entire legal studies curriculum, business law professors can and should borrow course components to augment all students’

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understanding of the legal system. The cornerstone of a quality legal studies program, and an element that business law professors should mimic, is the integrated use within individual courses of experiential learning targeted towards skills needed for the practice of law. To comprehend how to systematically include experiential learning to its audience of future law school entrants, all undergraduate programs should examine the expectations set by law schools.

Part I of this article discusses the importance of including experiential learning in any well-crafted university curriculum. Part II explains why business programs should look to replicate the experiential learning opportunities traditionally offered by legal studies programs as a way to accommodate the growing number of pre-law business students. These program artifacts employ student learning outcomes that can be beneficially applied to all business students, in addition to being particularly relevant to pre-law students. Part III discusses three experiential learning projects that should specifically be adopted in business curricula, including detailed examples of a contract simulation (Appendices A-C) and client interview exercise (Appendix D).

I. EXPERIENTIAL LEARNING LEADS TO STUDENT SUCCESS

Described as the “hottest buzzword in legal education today,” experiential learning focuses on the actual practice of law rather than simply studying it.6 The Clinical Legal Education Association has defined “experiential learning” as the integration of “theory and practice by combining academic inquiry with actual experience.”7 In the law school setting, this entails educational practices such as observing lawyers or impersonating them in simulated or actual legal scenarios.8 Experiential learning of this nature should not be relegated to stand-alone courses taught in a vacuum; rather this method of learning should be integrated throughout the curriculum and eventually be positioned side-by-side with the case dialogue approach in traditional doctrinal courses.9 Without question, experiential learning is needed to “strengthen basic lawyering skills, foster a sense of professional identity and create the ability to learn from self-reflection and feedback.”10 True experiential learning involves not only the experience of role-playing, but also reflection and extrapolation to other legal settings.11

Some law schools have initiated a tidal wave of change, while others are taking a more measured, gradual approach. Either way, what is clear is that the traditional model is being modified to include the integration of experiential learning throughout the three years of law school.12 Critics note a major flaw of the traditional approach is that even if new lawyers know the law, they do not know how to be lawyers.13 Experiential learning is designed to ameliorate this flaw by teaching students how to be lawyers. The practice of law involves far more than the ability to have an encyclopedic inventory of various rules and statutes. Practicing law more often involves

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6Michele Mekel, Putting Theory Into Practice: Thoughts from the Trenches on Developing a Doctrinally Integrated Semester-in-Practice Program in Health Law and Policy, 9 IND. HEALTH L. REV. 503 (2012).
8Id.
10Vande Lune, supra note 1, at 309.
11Stuckey, supra note 7, at 166.
12Martin J. Katz, Facilitating Better Law Teaching –NOW, 62 EMORY L.J. 823, 829 (2013) (noting that while many law schools have increased clinical and field experience opportunities in the recent past, other law school remain slow to implement experiential learning options curriculum-wide).
13Id.
interviewing clients, questioning witnesses, managing and fostering relationships with opposing counsel, and negotiation skills. Employers have observed that students who have had experiential learning courses are better suited for the complexities of the practice of law.14

The literature is replete with support for the benefits of experiential learning. As one scholar noted, “Students do not acquire this deep understanding of the law through passive means of instruction. Students learn by experiencing, and doctrine is no exception.”15 Experiential learning is not a novelty to only be utilized in discrete classes while maintaining the status quo throughout the rest of the curriculum. Indeed, scholars have noted that experiential learning is the best way to teach all material in law schools.16

Experiential learning has a scientific basis for its claim that it is the preferred style of learning. On a physiological level, cognitive scientists have produced research showing that students who are active in the learning environment learn better than those who are not.17 Experiential learning has other benefits beyond simply the ability to retain the material in the course. For example, experiential learning has been shown to improve motivation and attitudes, as well as the willingness to actively participate during class lectures.18

At the undergraduate level, public universities face increasing pressure to meet legislative mandates to produce measureable outcomes. Among others, these outcomes include demonstrating that students are career ready upon graduation. They also include improving student retention rates, as well as persistence and time to degree. More specifically, recent research by George Kuh and others has shown that infusing experiential learning opportunities called HIPs into the undergraduate curriculum can positively impact these outcomes.19 Examples of HIPs for pre-law students include internships, mock or moot court simulations, or pro bono work within the community.20 The other benefits of active learning projects such as HIPs include fostering deeper connections between students and faculty, enhanced student engagement, and more satisfaction with the overall college experience for students.21 Indeed one of the most important factors leading to the success of college students is student engagement.22

Kuh identified several categories of high impact educational practices.23 In addition to defining the categories of HIPs, Kuh discussed the essential qualities that all HIPs must have to make them truly high impact for students. These include requirements such as an effortful educational activity, high expectations from faculty, frequent and meaningful feedback from...

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14Katz, supra note 2, at 47.
15Jessica Erickson, Experiential Education in the Lecture Hall, 6 Ne. U. L.J. 87, 88 (2013).
16Id. at 88. Erickson aptly summarizes this concept by arguing that, “A student who has memorized the rules but who cannot apply them in these ways does not know the law in any satisfactory way.” Id.
18Stuckey, supra note 7, at 167.
19Kuh, supra note 3, at 15-17.
21Kuh, supra note 17, at 8.
22Id.
23Kuh, supra note 3, at 19-21. These categories include first-year seminars, common intellectual experiences, learning communities, writing-intensive courses, collaborative assignments, undergraduate research, diversity or global learning, service learning, capstone courses, and internships. Notably, the experiential learning assignments advocated in this article all fall in one of Kuh’s categories. The contract simulation and mock trial are collaborative assignments, whereas the client interview contains elements of both collaboration and diversity learning.
faculty, and critical reflection by students on the learning experience. Researchers have found that repeated student engagement is an indicator of an educational practice that positively impact students.

Business programs have become adept at including appropriate HIPs to offer targeted experiential learning. One HIP that many business programs are increasingly utilizing are study abroad opportunities. Kuh included study abroad as one of the major categories of HIPs, but recognized that many students are not able to participate in these activities, including minority students and first generation college students. Some researchers have found that longer study abroad experiences have more impact on students, but even relatively short term study abroad experiences can benefit students by improving their cross-cultural competencies and may make the study abroad experience more attainable for those under-represented students who could not typically devote a full semester to study abroad. In order for a study abroad activity to impact students positively, it should be well-designed as an immersive educational experience. Many short term study abroad programs can be as short as two weeks, and they can be discipline specific and faculty-led and tied to courses for academic credit.

Faculty involved in planning the trip can design activities that give students meaningful opportunities to study a different or comparative approach to an area like the legal system or business climate. Given the prospect of an intense and rich learning environment targeted towards specific student learning outcomes, study abroad opportunities rightfully belong in the business curriculum. Particularly, those students who have studied abroad will have a unique advantage in increasingly global workplaces. Experiential learning is no stranger to business programs, and opportunities to expand experiential learning within the curriculum should be wholeheartedly embraced.

Experiential learning should be the vehicle by which professors ensure that student learning outcomes are met rather than a parallel route to achieve those learning outcomes. The Socratic Method may have its place in the legal academy, but its intrinsically passive nature inhibits students’ ability to actually absorb information meaningfully. At the end of the day, students who learn through experiential learning have a greater chance of understanding the material. While this might have real-world effects on bar passage rates, the greater benefit is that the aforementioned transition from law student to attorney is much smoother, less stressful, and decreases the risk of serious malpractice due to incompetence.

II. THE INTERSECTION OF LAW SCHOOL, LEGAL STUDIES, AND BUSINESS PROGRAMS

In order for undergraduate programs to fully ascertain how to cater to the pre-law student, an understanding of the pedagogical approach to law school is necessary. Experts now stress the need for “practice-ready” attorneys who know more than just legal theory upon completion of law

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24Id. at 39.
25Kuh, supra note 17, at 32-40.
30Erickson, supra note 15, at 94.
Legal studies programs and business schools both have a vested interest in producing students who are well-prepared for entering law school. It would be wise for undergraduate programs to incorporate skills that will be necessary for law school success. This includes experiential learning.

The impetus behind the move by law schools to experiential learning is due in part to the influential Carnegie Report promulgated in 2007. This report reinforced the notion that thinking and performing like a lawyer are two disparate skills, and in light of this, law schools need to emphasize skills designed to promote the visibility and importance of practical lawyering. The report noted the dearth of lawyering skills, particularly within the first year of law school, and recommended law schools depart from solely relying on doctrinal analysis. Further, the Report observed that legal doctrine is just one facet of a law school’s tripartite curricular goals. The other two curricular goals – acting with responsibility for clients and professional identity and values - are just as crucial to the legal education of lawyers as they are to graduates of business schools.

A more recent stimulus for change is the new American Bar Association accreditation standards that place specific, concrete requirements for experiential learning within law schools. Adopted in 2014 and effective in the fall of 2016, Accreditation Standard 303, for the first time, requires a minimum number of experiential courses within all law school curricula. In order to maintain critical ABA accreditation, Standard 303 requires a minimum of six hours of “experiential courses” be placed within the law school’s curriculum. In order to qualify as an experiential course, the course must do four things: (1) integrate doctrine into professional skills, (2) develop concepts underlying professional skills, (3) provide multiple opportunities for performance, and (4) provide opportunities for self-evaluation.

Further, Standard 303 mandates that the experiential course fall into one of three categories: (1) A simulation course, (2) A law clinic, or (3) A field placement. Simulations are less costly and less risky given that no real client interests are being affected. Standard 304 defines a simulation as one that requires the student to act as a lawyer representing a hypothetical client in some fictional scenario presented by the instructor. A law clinic, on the other hand, involves the advising or representing of actual clients. However, the ABA standard does not prioritize one form over the other, so long as the curriculum includes at least six hours of any of the three kinds of experiential learning.

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32 Sullivan, supra note 9.
33 Id. at 9.
34 Id. at 4.
35 Id. at 8.
36 Id.
37 Vande Lune, supra note 1, at 309. (observing that the prior standard vaguely required law schools to “offer substantial opportunities for . . . real-life practice experiences” without mandating any real benchmarks.) Id. at 307. This new standard does exactly that.
39 Id.
40 Id.
41 Indeed, the unauthorized practice of law is a felony in many states when a non-lawyer advises or represents clients in legal matters. See generally FLA. STAT. § 454.23 (2016).
This move by the ABA will certainly catalyze the speed at which law schools move towards experiential learning. Currently, many law schools are moving at a glacial velocity. The ABA, as an external motivator, will likely quicken the pace of these reforms that scholars have noted are essential for legal education. While this is certainly just an incremental move, the ABA has signaled its displeasure with schools refusing to make the move on its own. As a result, it is apparent that the move towards experiential learning in law schools is here to stay.

It is important to note that, although the ABA created only broad categories of experiential learning, opportunities for practical learning take many forms. Experiential learning does not, however, include part-time employment in law settings because the learning is not (as it must be) accompanied with some kind of academic inquiry. Instead, experiential learning involves direct supervision from a professor, in real-time, that goes along with the practical experience. For example, the University of California, Irvine requires a six-credit, year-long course in “Lawyering Skills” that focuses on interviewing skills with clients. UCI also requires a first year class named “Legal Profession” that does more than simply require students to memorize by rote the Rules of Professional Conduct. Instead, students use simulation exercises (one of the ABA-approved categories) to illustrate ethical dilemmas in the legal profession.

Other potential uses for experiential learning go beyond the traditional litigation-focused doctrinal course. Therefore, a course in contracts (which has a strong transactional element) might have assignments devoted to drafting or negotiating simulated contracts. Or, other scholars have proposed a three-year experiential legal writing class that requires students to interview clients, argue motions, and consult with partners before writing legal briefs or memoranda. Finally, Loyola University New Orleans College of Law has experimented with a study-abroad course in Turkey and Greece to focus on specific international legal experiences. Although each of these activities differs, the pedagogical goals of each are basically the same: to provide an educational experience that develops essential qualities needed in the workforce by integrating theory with practice.

How does the transition towards experiential learning in law schools affect the mission or goals of business programs? Students will benefit from being exposed to the skills, content, and knowledge required in law schools, as these students will not only be better equipped to cognitively assimilate the information, but will also have a comparative advantage over those students without

42Katz, supra note 12, at 829. See also Robert Kuehn, Pricing Clinical Legal Education, 92 DENVER U.L. REV. 2, 37 (2014) (noting that only 22 law schools require a clinic or externship). On the other hand, Parker and Schechter observed that 30 percent of all ABA-approved law schools do over field placement opportunities, suggesting that experiential learning may not be as rare as has been otherwise suggested by others. Parker, Robert A. and Schechter, Sue, The Ugly Duckling Comes of Age: The Promise of Full-Time Field Placements (July 15, 2011), http://ssrn.com/abstract=1886509 or http://dx.doi.org/10.2139/ssrn.1886509.
44Carrie Hempel, Writing on a Blank Slate: Creating a Blueprint for Experiential Learning at the University of California, Irvine School of Law, 1 UC IRVINE L. REV. 147, 150 (2011). See also Katz, supra note 2, at 46 (noting that a similar course is offered by the University of Denver’s College of Law called “Lawyering Process”, which is also offered year-round in the first year of law school).
45Id. at 150-51.
this kind of instruction. Business schools currently utilize experiential learning opportunities, but those may not be focused on skills needed for law school success.\textsuperscript{49} So, undergraduate business programs should be keenly attuned to the foci and curricula of law schools and should vigorously attempt to align their own student learning outcomes and modes of instruction with those of law schools.

Specifically, a sample of mission statements from U.S. undergraduate legal studies programs illustrates concepts that could just as easily be translated to a business program. Quinnipiac University offers a BA in legal studies that focuses on developing thinking and writing skills for the legal professional.\textsuperscript{50} Their legal studies mission statement states, “Our students are often interested in continuing with their education. Many graduates go directly to law school; others work for a year or two before applying.”\textsuperscript{51} Similarly, the BS in legal studies from Roger Williams University emphasizes critical thinking and legal reasoning skills.\textsuperscript{52} The mission statement for that program provides, “The Legal Studies program also provides students with the kind of analytical skills, writing proficiency, and academic discipline necessary to future success in law school.” Finally, the mission statement for the legal studies program at the University of West Florida takes a similar approach to preparation for law school education by selectively concentrating on “provid[ing] a foundation for law school.”\textsuperscript{53} While not making business law its main mission, business programs could certainly incorporate law in general as a part of their mission statements as a way to accommodate pre-law students.

Undergraduate business programs have already begun the process of incorporating legal-based experiential learning in their courses. The accreditation standards for the Association to Advance Collegiate Schools of Business identifies business law as one of the core traditional business subjects crucial to the overall business curricula.\textsuperscript{54} Business law courses are ideal to include these types of learning projects. Georgia State University’s College of Business requires students to take a course in the Legal and Ethical Environment of Business.\textsuperscript{55} As a component of the course, students must complete a “Business Court Project” that demands students attend an actual court proceeding and then reflect on their observations.\textsuperscript{56} Another scholar noted the value of moot court, or appellate simulations, within business law classes as a way expose students to

\textsuperscript{49}See generally Debra Burke, \textit{Service Learning: Opportunities for Legal Studies in Business}, 24 J. LEGAL STUD. EDUC. 129, 156 (2007) (noting that service learning is an important kind of experiential learning that can boost civic responsibility for students, but may have some limitations in the legal field due to statutory unauthorized practice of law issues); Claudia Hart, et al, \textit{Experiential, Collaborative and Team Projects: Communication Audits in the MBA Communication Course}, 8 AM. J. OF BUS. EDUC. 289 (2015) (noting that that service-learning projects are invaluable tools to teach marketable business skills that are attractive to future employers).


\textsuperscript{51}Id.

\textsuperscript{52}Roger Williams University, \textit{Legal Studies}, http://www.rwu.edu/academics/schools-colleges/sjs/degree-offerings/legal-studies/undergraduate/ (last visited May 3, 2016).

\textsuperscript{53}University of West Florida, \textit{Legal Studies}, http://catalog.uwf.edu/undergraduate/legalsudies/ (last visited May 23, 2016).


\textsuperscript{56}Id. at 176.
the intricacies of a well-defined and narrow issue. These are only isolated examples, however, and a much more systematic inclusion of legal-based experiential courses is crucial to augmenting pre-law instruction.

### III. TRANSFERABLE EXPERIENTIAL OPPORTUNITIES

A wide variety of experiential learning projects or HIPs are available to cater to the pre-law student. Experiential learning opportunities can arise both from within assigned coursework and from pre-law university organizations and community partnerships. The institution can determine on its own whether the course artifact should be required as part of the core curriculum, but what is important is to ensure that pre-law business students have the option to take advantage of these even as electives. Faculty should actively encourage students to take advantage of all of the possibilities offered by the program. Three distinct items can be easily assimilated into business programs. They are:

1. Contract Simulations
2. Mock Trial Competitions
3. Client Interviews

While other opportunities for experiential learning should be pursued, these three offer great returns on investment, given that all business students can benefit from these regardless of their intent to pursue a career in law. Contract simulations and client interviews allow business students to practice interpersonal interactions that are vital to business success, while mock trials provide students the opportunity to practice forming cogent and logical arguments.

#### A. CONTRACT SIMULATION

While it is common for legal studies curricula to contain self-contained classes on Contracts, business law courses also cover contractual formation and remedies for breach in great detail. This creates a learning environment where a contract simulation is an ideal method of experiential learning and allows future business leaders and pre-law students to obtain valuable experience in the process of drafting a contract. Contract simulations afford the instructor the opportunity to assess two distinct skills – oral advocacy in the form of negotiation and written communication in the form of the draft contract. Both of these skills are of paramount importance in a traditional business law course.

Of course, contract simulations are not inherently a creature of pre-law or legal studies programs. Scholars have previously noted that contract simulations are useful in business law

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57William McDevitt, *Active Learning through Appellate Simulation: A Simple Recipe for a Business Law Course*, 26 J. LEGAL STUD. EDUC. 245, 262 (2009). Although McDevitt’s article involves business students not necessarily planning to choose law as an ultimate career, the same rationale would apply to pre-law business students.

courses to increase exposure to problem-based learning. Marsnik and Thompson, justifiably, placed emphasis on the need to develop business skills as the impetus behind including this type of exercise. Considering the number of pre-law students in business law courses, a greater weight can be put on the legal terminology within the document. As Professor Robson notes, an understanding of legal, boilerplate language is crucial to effective contract drafting. The strategic difference that this article proposes is that a greater focus can and must be placed on the role of the attorney and business leader in deciphering legal terminology to proactively resolve potential future litigation. While the terms of the deal are certainly important, items such as assignment or severability clauses should not be “thrown in” merely because a form found on the Internet contains them. The ability to critically examine the need to employ a severability clause, for example, allows the student to analytically work through the legal ramifications of each and every part of the contract. Some scholars have noted that the emphasis on legal methodology should differ based upon if the class is a law course or a non-law course; however, this article proposes that no such differentiation is necessary. Furthermore, Bruce Klaw has argued for the dismissal of pre-law elements in contract simulations, arguing that business students are not future lawyers. This article takes the opposing view – the number of pre-law business students indicates that business programs are in fact training significant numbers of future lawyers.

A contract simulation allows students to negotiate and then memorialize the agreement in writing. Before the assignment begins, an instructor should give guidance on contract style and format, giving tips such as avoiding legalese, opening the contract with basic recitals, and using headings as a way to logically organize the individual clauses within the contract. After the instructor has prepared the class on the fundamentals of contract drafting, the students should proceed with the in-class portion of the assignment.

Quite simply, the work completed in the classroom setting is vital to the success of the assignment. Students are divided into partnerships and are given a description of their client’s demands for completion of the contract. Each partnership is grouped with an opposing partnership to form the contract group. The contract assignment requires students to negotiate up to ten clauses, and each side is told how important each clause is to that client. The importance of the clauses ranges from “low” to “medium” to “high” importance.” This takes into account that real-world clients have different demands for different clauses. Some items are indispensable, while others

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60 See supra note 5 for the pre-law enrollment numbers in business programs.
61 Robson, supra note 59, at 438.
62 Susan Denbo, Contracts in the Classroom – Providing Undergraduate Business Students with Important “Real Life” Skills, 22 J. LEGAL STUD. EDUC. 149, 156 (2005).
63 Bruce Klaw, Deal Making 2.0: A New Experiential Simulation in Contract Negotiation and Drafting for Business Students in the Global and Digital Age, 33 J. LEGAL STUD. EDUC. 37, 28 (2016).
64 See infra Appendix A for an example of common instructions for contract formation.
65 See infra Appendix B & C for an example of a contract simulation exercise.
are luxuries that are not “deal breakers.” Neither team knows the demands of the other side. The instructor should observe the students in class and be present to offer a mediated approach should the students reach an impasse. At least two full class days should be allocated to the experiential aspect of this assignment, with the first day devoted to the negotiation process and the second day covering drafting the contract itself.

During that first class, the groups are adversaries and attempt to gain the best possible contract for their clients within the constraints of ethics and professionalism. It should be stressed that this is not a “war”; both hypothetical clients want a deal to be completed, and it is critical that each side bargain in good faith. Unreasonably failing to bargain in an attempt to wage a war of attrition cannot be tolerated and the instructor must address this situation with the groups, should it arise. Students must understand that in order to gain a beneficial concession, something must be given up in return. Engaged students quickly realize that the process of negotiation takes several proposals and counterproposals before a final deal is reached. Ideally, the first day of the assignment should fall on the last day of the week to allow students to continue the negotiation process over a weekend.

This approach requires students to do much of the work outside of class and be fully prepared on the details of the contract before negotiating and drafting in class. Also known as a “flipped classroom,” this kind of project has several key advantages, including freeing up valuable class time to focus on the contract. It also allows students to avoid distractions commonly seen during traditional lectures. The instructor should not lecture or review, in class, the details of the contractual terms themselves. Students must be expected to familiarize themselves with the prospective deal and their client’s demands as a pre-requisite to negotiating in class. This approach differs from the simulation recommended by other scholars, where most, if not all, of the work is done outside of class. Flipping the classroom maximizes the benefits from the experiential project and allows the instructor to maintain a hands-on approach to immediately ameliorate or mediate any confusion or dispute.

Once a deal is struck, the dynamics of the four-person group must dramatically change. The teams must switch from an adversarial to a collaborative role and drafting the contract in line with the terms of their oral agreement. The second class date allows the teams to discuss general themes of contract drafting and give the instructor the opportunity to dispel any general misconceptions from the outset. After this class period ends, students are expected to take what they have learned and craft a clear and coherent document that unambiguously outlines the terms of the deal reached. Students should be given at least two weeks to work outside of class to draft the contract. Once the draft is submitted, a reflective paper should be assigned that, in accordance with experiential learning theory, allows the student to assimilate what is learned. The reflective paper can also fulfill a more pragmatic goal: getting a sense of each student’s level of active participation in the assignment.

Students quickly realize that there is a reason standard form contracts frequently run multiple pages, and even the most unassuming of residential lease agreements can extend to five or six pages in length. Students gain a greater appreciation for the need to eliminate ambiguity and loopholes by doing a contract simulation rather than simply viewing form contracts. Contract

69Id. at 256-58. Specifically, Marcum and Perry note the applicability of a flipped classroom model to an undergraduate Legal Environment of Business course. Id.
70Marsnik, supra note 59; Robson, supra note 59; Denbo, supra note 63.
simulations improve critical thinking skills by becoming engaged in the law.\textsuperscript{71} It is the “doing” that enriches the understanding of contract drafting. This element cannot be replicated with a standard instructor’s lecture. This kind of experiential learning simulation also illustrates that interpersonal skills can be just as valuable, if not more so, than knowing the doctrinal rules of contracts.

\textbf{B. MOCK TRIAL}

Numerous researchers have explored the use of a mock trial as an effective pedagogical tool to help students improve critical thinking and to enhance their interest in their class materials.\textsuperscript{72} Many undergraduate institutions offer students the opportunity to participate in an organized mock trial team experience outside of the classroom or as a co-curricular activity. The American Mock Trial Association (AMTA) governs intercollegiate mock trial competitions across the country. There are now over 400 universities who have organized mock trial teams that participate in AMTA tournaments.\textsuperscript{73} AMTA asserts that participation in mock trial increases a student’s critical thinking skills, public speaking ability, and knowledge of court processes and rules.\textsuperscript{74} At some universities, the interest generated by having a mock trial team has helped to revitalize student interest in pre-law academic disciplines.\textsuperscript{75} For business programs seeking to capitalize on pre-law interest within the program, mock trial competitions provide an excellent outlet for experiential learning.

An AMTA mock trial team is open to all undergraduate students who are in good academic standing. As expected, the team generally attracts pre-law students who are anticipating gaining important skills that will serve them well in law school. While mock trial teams are routinely sponsored by legal studies programs, business schools can and should take a major role in organizing a team. Courtroom simulations are well suited to convey business law principles to students.\textsuperscript{76} In courtroom simulations, students learn to construct arguments and are able to appreciate the complicated process of litigation adjudication from a range of perspectives.\textsuperscript{77} The experience of exploring a contentious legal issue is valuable for both the pre-law and business student and thus is a perfect kind of experiential learning opportunity in a well-organized business program.\textsuperscript{78}

Under Kuh’s categories of HIPs, a mock trial qualifies as a collaborative assignment or project. As described by Kuh, collaborative learning includes two primary goals: “learning to work and solve problems in the company of others, and sharpening one’s own understanding by listening

\textsuperscript{71}Klaw, supra note 64, at 41.
\textsuperscript{73}AMERICAN MOCK TRIAL ASSOCIATION, AMTA Member Schools, http://www.collegemocktrial.org/about-amta/member-schools/ (last visited May 3, 2016).
\textsuperscript{75}John Vile & Thomas Van Dervort, Revitalizing Undergraduate Programs Through Intercollegiate Mock Trial Competition, 27 J. CRIMINAL JUSTICE EDUC. 712-15 (1994).
\textsuperscript{76}McDevitt, supra note 57, at 250.
\textsuperscript{77}Id.
\textsuperscript{78}Id. at 254.
seriously to the insights of others, especially those with different backgrounds and life experiences. 79 One recent empirical study found that while most HIPs positively impact students, collaborative learning HIPs were among the most beneficial to them. 80

On the mock trial team, students assume the roles of witnesses and attorneys as they develop a hypothetical criminal or civil case to present to a jury. Team members develop the entire case including preliminary matters, opening statements, direct and cross examination for witnesses, and closing arguments. The student attorneys must have a strong understanding of the Federal Rules of Evidence, as the fictional jurisdiction follows the federal rules. Witnesses must also know the rules as they develop their testimony to make sure their presentations will be admissible and effective. Students spend a considerable amount of time developing, testing, and critiquing each other’s presentations. A faculty coach guides the students through their preparation of the case by providing considerable feedback. The time spent analyzing the arguments and presentations of the opposing side is enormously beneficial to business students as a way to hone their critical thinking skills, even if the case itself involves a non-business related issue.

In addition to refining critical thinking skills, public speaking ability, and mastery of court rules, mock trial benefits students in several other ways. As a result of its time-intensive nature, mock trial clearly increases student engagement with peers, faculty, and course content. In order to optimize the benefits from the mock trial experience, a reflective observation where the student assimilates their observations into abstract conclusions is recommended for all participants. 81 This critical reflection exercise is intended to help deepen their learning experience, and given that mock trial generally spans both the fall and spring semesters, packs more of a punch than a one-time, in-class moot court project.

C. CLIENT INTERVIEWS

The classroom offers an opportunity to provide experiential learning through reality based role-playing exercises. As in business, one of the foundational interpersonal relationships in the practice of law is the attorney/paralegal-client relationship. Before an attorney can argue the merits of a case, investigate the facts, or proceed to settlement discussions, there must be an open and honest line of communication with the client. The handling of a case starts first with the information gleaned from the client, and from that point, the attorney and client can determine an appropriate strategy to pursue. The level of trust between the two is of paramount importance, and to some extent is determined by their respective personalities. Each client is different, and the lawyer must be aware of the potential sensitivities of each to maximize the potential for success.

One scholar performed an extensive review of the texts used in Legal Environment of Business courses and found an undisputed need to promote analysis of legal and ethical issues and development of critical thinking skills in business school law courses. 82 Importantly, the study concluded that the textbooks largely failed to address the attorney-client relationship and a realistic

79 Kuh, supra note 3, at 20.
81 Nees, supra note 55, at 176.
understanding of the legal profession. This deficiency can be addressed through the use of a mock client interview.

Mock client interviews in the classroom can help encourage students to explore their own interviewing styles. Students have reported gaining a superior understanding of the significance of interviewing skills and recognizing that interviews involve both maximizing information gathering, as well as developing an empathy for the client. Simulation exercises in client interviewing can lead to more effective interviewing skills for both pre-law undergraduate and law school students.

Law schools frequently offer courses that allow students to engage in the experience of role-playing an attorney-client relationship. For example, Texas Tech Law School offers a “Legal Practice” course that centers on a mock client interview simulation. George Mason University School of Law incorporates instruction on client interviewing in a Legal Clinic designed to assist active-duty military members obtain legal representation. Further, Georgetown Law School incorporates a mock client interview during its first-year mandatory Legal Research & Writing course, thus illustrating the importance the law school places on this fundamental area within the practice of law.

In response, many undergraduate legal studies programs now offer client interviewing opportunities. The skills attained from such projects are just as important and useful for businesspersons dealing with their own clients or customers. Utilizing a mock client interview allows the business student to acquire and adapt the same skills that an attorney needs when communicating with a client. Interpersonal relationships share the same level of paramount importance in the business world as in the legal world, and thus incorporating such a project would help students with varied career plans. While it is apropos for a legal studies class to simulate an attorney-client relationship, a business instructor could adjust the scenario to include a potential customer or a new vendor. Pre-law students would still gain the necessary experience that such simulations provide.

An example of one kind of mock interview simulation can help to illustrate their value to both business and pre-law students. In a course on family law, the experience of conducting an initial interview with a client can be daunting and challenging. The initial client interviews are a valuable exercise that can put the students in the position of thinking on their feet and relying upon

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83 Id. at 249 (noting that, “One can draw as a primary observation from this study that the attention devoted to the general attorney-client relationship topic is quite small.”)
84 Carla MacDonald and Amy Biegel, Using Role-Play to Teach Competencies for Acquiring Behaviors as a Social Worker, NORTH AMERICAN ASSOCIATION OF CHRISTIANS IN SOCIAL WORK (October 2012), http://www.nacsw.org/Publications/Proceedings2012/MacDonaldCUsingRoleFINAL.pdf.
the substance and procedure that they have learned in class. The instructor of the course solicits faculty, theater students, or local attorneys and members of the community to come to class to serve as the hypothetical clients. The instructor provides the clients with a “client script” that sets out some basic demographic information and outlines a major legal issue or concern of that client. Following the model set forth for the contract simulation, the assignment requires a flipped classroom where students are expected to be prepared for the interview before arriving in class. The interviews themselves occur during a regularly scheduled class, with the instructor available to resolve any confusion.

The student is required to greet and establish a rapport with the client. The next step requires the student to set the bounds of the attorney or paralegal relationship so that all sides understand the exact contours of the obligations and responsibilities each side assumes. The goal of the interview is for the student to identify the client’s main legal concerns and ask probing questions to elicit facts that the attorney will need in order to represent that client. For example, if the client’s foremost concern is alimony/spousal support, then the student is expected to ask the client questions about the employment history of both spouses and how the standard of living was maintained during the marriage. At the conclusion of each interview, the students and client engage in a debriefing session to identify strengths and potential alternatives to the interview. The debriefing sessions tend to demonstrate what the students learn from verbal and non-verbal cues, the importance of language, the value of empathy and how to apply the text of a statute to the problems of ordinary people.

Through the assignment, students must identify the real legal issues facing the client and the ethical issues confronting the attorney. They must evaluate the strengths and weaknesses of the case in light of the client’s wishes and expectations. This exercise requires upper-level cognitive skills, effective oral communication, strong critical thinking and reasoning. It also promotes collaboration and responsibility for learning that the students will need as they begin their careers. An added benefit is that in-class experiential learning provides realism that forces creative thinking and the management of uncertainty that exists in everyday life. This is an engaging classroom experience that promotes positive student feelings about learning and class participation.

**IV. CONCLUSION**

Undergraduate legal studies programs focus primarily on preparing students for the rigors of law school. With that mission in mind, legal studies curricula design learning opportunities to mimic those the student will experience at law school and in real life. Business programs, on the other hand, are not generally designed to put a laser focus on skills necessary for the practice of law. But, business schools can no longer afford to relegate or even ignore the needs of pre-law students, given the number of students who are increasingly choosing business as an undergraduate degree.

There is a better way. Business law courses, already built into most business curricula, provide an excellent outlet for inclusion of important skills without doing so at the expense of traditional business pedagogy. Business programs should borrow artifacts from legal studies programs and adjust them accordingly so as to benefit both the pre-law and non-law student.

The next frontier for law schools pedagogy involves a stronger emphasis on learning by doing. With that premise in mind, experiential learning projects such as the contract simulation or

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90See infra Appendix D for an example of a hypothetical client interview scenario.
client interview are efficient ways of utilizing limited classroom time to provide exposure to law
school skills. Or, year-long mock trial cohorts can provide repeated exposure to legal simulations
that can deliver longer-lasting effects. Importantly, employing these kinds of classroom projects
do not detract from the overall mission of a business program – these skills are just as useful in an
entrepreneurial setting as they are in law school.
Appendix A

Contract Drafting Principles

1. **Headings**

   Use clear headings throughout the document so that the reader can easily locate provisions within the document. You can use either a number or letter system to order your headings and subheadings. Make sure the document looks organized and readable.

2. **Page numbers**

   Be sure to number each page on the bottom. It is also useful to indicate the total number of pages in the document, and to include that in your numbering system (i.e., “Page 2 of 5.”).

3. **Identify the Parties and the nature of the agreement at the Beginning of the Document**

   An introductory paragraph at the beginning of the contract should be clearly worded to identify the document, the parties, and the date. Be sure to check for correct spelling, of course. Here’s an example:

   “This Stock Purchase Agreement (the “Agreement”) is made and entered into as of June 1, 2004, by Billie Brown (the “Purchaser”) and Stacy Smith (the “Seller”).”

   After identifying the parties, you can use their titles instead of their names throughout the rest of the document. Be consistent.

4. **Recitals**

   These clauses are used at the beginning of a contract to state the purpose of the agreement and the intentions of the parties. They appear before the provisions of the document in order to explain the reason for the contract and in order to provide background facts and statements. These are often quite helpful as well in order to state that valid consideration for the agreement exists, although it is not necessary to state that consideration exists as long as mutual promises exist. This is a traditional clause in contracts that most attorneys continue to use. Avoid using legalese in this section especially (“Witnesseth”) and write these in complete sentence form.

   Here is an example of a recitals section of a contract:

   “Company operates an industrial chemical business and wishes to hire Contractor as an independent contractor to sell chemicals on behalf of the Company.

   Contractor is willing to perform sales services for the Company as an independent contractor.

   In consideration of the mutual covenants set forth below, the parties hereby agree as follows:”

5. **Contract Provisions**
Strive to put these into logical order in your contract. The most important provisions (related to duties of parties, payment/compensation, time for performance) usually appear at the beginning of the document. The “housekeeping” provisions usually appear at the end of the document. Use headings and a consistent numbering or lettering system throughout your document.

6. **Damages Clause**
   You should include provisions that spell out exactly what will happen in the event that one party fails to perform. This should be clearly stated, and will likely be one of the important parts of your negotiating. Also decide whether arbitration will be mandatory, and determine how attorney’s fees will be paid and include these provisions.

7. **Signature Section**
   At the end of the document, you should provide signature lines for the parties. The signature lines may be preceded by a statement like: “The parties have executed this agreement on the effective date listed above and hereby agree to these provisions.”

8. **Venue Provision**
   You should indicate that the laws of the State of Florida govern the agreement.

9. **Severability Clause**
   You may want to include one of these clauses, which indicates that in the event that one contract provision fails, the other provisions will not be affected by that.

10. **Time is of the Essence**
    Many contracts include language that states that time is of the essence. You might want to include this language in one of your provisions.

11. **Modification Clause**
    The contract should indicate how the parties can modify the agreement. Typically, most contracts state that the agreement can be modified only in a writing signed by both parties.

12. **Avoid Legalese**
    Many contracts which you will find online still include legalese. You must avoid legalese in your contracts by rewriting the language in plain English. Avoid such words as: “Hereinafter,” “Wherefore,” “Witnesseth,” “Aforementioned,” etc. Most of these words can either be eliminated or rewritten for clarity. You will lose points for including this language in your contract. Strive for clarity and readability.

13. **Proofread, proofread, proofread**
Appendix B

Contract Drafting Assignment

AppServe Demand List

You represent AppServe, Incorporated, a computer software design firm specializing in the production, design, and implementation of mobile apps. A mobile app is a program running on iOS (Apple devices, such as the iPad or iPhone) or Android devices rather than traditional PC software. AppServe is in the business of taking ideas from third party customers and manufacturing, designing, and implementing the proposed application (or app) for the third party. AppServe receives a 15% royalty for their services – in other words, AppServe receives nothing upfront for the app, but instead receives 15 percent of all revenue generated by the sales of the app forever. If the app is unsuccessful, doesn’t sell, is broken, or never hits the market, AppServe receives nothing from its customer. For iOS apps, there is an extensive “quality control” procedure that requires the app to meet certain minimum standards in order to be sold in Apple’s App Store.

AppServe is looking to expand. Currently, it is based in Pensacola, Florida and has upwards of 20 total employees, 12 of which are actual App designers. The demand for its services has skyrocketed from potential customers nationwide. Nearly half of AppServe’s customers are from out-of-state, with nearly 35 percent of their customer base either in California, Texas, or New York. The 12 designers simply cannot keep up with the demand, and so AppServe’s CEO (John Moneymaker) has decided to hire three new mobile app designers.

AppServe prides itself on its high quality work – therefore, it will only hire experienced, well regarded designers. No one straight out of college will be hired. AppServe maintains a 99 percent satisfaction rate and that is one big part of their tremendous success. AppServe uses traditional means to market and advertise, but by and large, most of their customers come from repeat business or word-of-mouth advertising by its clients. AppServe is currently valued at over 15 million dollars, with an annualized profit averaging $1.5 million dollars per year. The proposed expansion could result in another $1 million dollar increase in profit.

AppServe has patented a new process for quickly making apps. This process, called AppWeaver, is a patented, secret process whereby the same code can be used to make a wide variety of apps, thus greatly reducing the design time for making apps. Instead of having to start from scratch for every app, the foundation and underlying work for the code is the same, and cuts nearly 10-15 percent of the normal app-design time off.

AppServe posted an advertisement through traditional online channels, such as monster.com, and wanted a nationwide search. After an exhaustive interview and application process, three designers were selected for hire. One of these, represented by your opposing counsel, is Jennifer Williams. Ms. Williams’ resume shows that she worked at Dell Computers in Austin, Texas for 12 years and came highly recommended by her previous employer. We do not know how much money she made at Dell, but we do know she was very excited about the possibility of moving to Pensacola with her family. She earned a Master’s Degree in Computer Science at Duke University, where she had a 4.0 GPA. At Dell, she worked extensively in their app department making apps for Android devices. In sum, Mr. Moneymaker was VERY impressed with Ms. Williams and desperately wants to hire her.

As part of the hiring process, all terms and conditions of employment are on the table, including salary and working hours. One thing that Mr. Moneymaker demands that all of his employees sign is a non-compete and non-solicitation agreement – this is non-negotiable. Given
the secret nature of his patented AppWeaver and the time and resources he will pour into Ms. Williams’ work, he finds it necessary to have a loyal employee base that he can trust.

As a result, AppServe wants as strict of a non-compete/non-solicitation agreement as it can force upon its employees. Additionally, they want to control and manage employee salaries. Here is a list of AppServe’s demands and wants:

1. The average designer at AppServe makes $75,000 per year. The salaries range anywhere from $60,000 to $95,000. Given Ms. Williams’ resume and experience, AppServe knows that it might have to pay her more to entice her to come to work. Therefore, AppServe is willing to offer $70,000 in an initial offer. It is willing to go as high as $105,000, but no more. AppServe is concerned about giving a new employee more than any current employee and what that might do for morale, so AppServe would strongly prefer that Ms. Williams’ salary be no more than $90,000. This is a MEDIUM priority.

2. AppServe believes in a collegial and networked work environment. That said, it wants all of its employees to work a standard 8-5 work day Monday-Friday, with occasional weekend work shifts when deadlines approach. On the other hand, this is not a high priority – there are currently 2 designers that have “remote offices” where the designers work from home 2 days per week. AppServe would be willing to allow Ms. Williams to work away from home up to 3 days per week, but the ideal situation would be to have her in the office 5 days per week. This is a LOW priority.

3. As for the non-compete agreement – AppServe does not want its former customers working for competitors after they leave the company. They are concerned about the secrecy of AppWeaver as well as the possibility that designers, who closely work with the customers, might “steal” those customers away based on their previous working relationships. Therefore, AppServe wants a 2 year non-compete/non-solicitation agreement. The lowest time the company would agree to is 1 year. The length of the agreement is a HIGH priority.

4. AppServe wants the non-compete agreement to cover all areas where it currently has customers, to prevent former employees from using their knowledge in the places where these customers live. Therefore, AppServe wants the non-compete to cover all of Northwest Florida and South Alabama. This is a HIGH priority. Additionally, AppServe wants the agreement to cover all of Florida, California, Texas, and New York, since they have a huge customer base in those states. This is a MEDIUM priority. Finally, AppServe’s ideal preference would be to have the non-compete agreement cover all 50 states, just to be sure they have full protection. This is a LOW priority.

5. AppServe certainly wants to prevent Ms. Williams from working for a competing software company. The theory behind this is that AppWeaver is so important to its business and does not want it used by competitors. Secondly, AppServe will be extensively training Ms. Williams on successful and proven app design strategies that have been shown to work in AppServe’s business. AppServe does not want these strategies to be used by its competitors. Those that design or do any kind of work with apps are the most important to be covered by the non-compete clause. Although Ms. Williams will only be designing, and not testing or implementing apps, AppServe wants the agreement to cover ALL aspects of mobile app development. This is a HIGH priority.

6. AppServe is considering expanding into other areas of computer technology. Specifically, 18 months from now, AppServe will launch a new PC program called OfficeWeaver that will be a new word processing program that will be downloadable onto PCs. Later, a tablet version of the program will also be released. Even if Ms. Williams does not work on this
project, AppServe wants to prohibit her from working for a competing software design firm that specializes in all software design. This is a HIGH priority.

7. AppServe wants a non-disclosure agreement that prevents Ms. Williams from ever releasing any details about AppServe’s products, processes, programs, or customers. This is a HIGH priority.

8. AppServe would prefer if Ms. Williams did not start up and own a competing business against them. Interestingly, though, AppServe isn’t concerned about former employees directly competing against them, despite the fact that they would have important information about how AppServe works. They highly doubt that anyone could effectively compete with them and gain the reputation they have. Plus, AppServe thinks they could easily “squash” such new competition by convincing customers that she is an inferior worker with an inferior product. This is a LOW priority.

9. Finally, in order to justify the non-compete agreement, AppServe wants to require extensive training on apps in general from external conferences and then undergo an extensive in-house training program on its products and design. Specifically, AppServe wants Ms. Williams to undergo 4 months of external and internal training before starting any real app design for the company. AppServe will call this a “probationary” period. The company would be willing to only accept 1 month of training, but 4 months is the ideal amount. This is a MEDIUM priority, except that having at least 1 month is a HIGH priority.

10. AppServe wants Ms. Williams to begin work as soon as possible, but is willing to work with her on the timetable for moving to Pensacola. Assume today is April 1, 2016. Ideally, she would begin work immediately, but the company is willing to wait to have her start for up to three months from now. However, she must start work no later than July 1, 2016. This is a LOW priority.
Appendix C

Contract Drafting Assignment
Jennifer Williams Demand List

You represent Jennifer Williams, a prospective new employee at AppServe, Incorporated. AppServe is a computer software design firm specializing in the production, design, and implementation of mobile apps. A mobile app is a program running on iOS (Apple devices, such as the iPad or iPhone) or Android devices rather than traditional PC software. AppServe is in the business of taking ideas from third party customers and manufacturing, designing, and implementing the proposed application (or app) for the third party. AppServe receives a 15% royalty for their services – in other words, AppServe receives nothing upfront for the app, but instead receives 15 percent of all revenue generated by the sales of the app forever. If the app is unsuccessful, doesn’t sell, is broken, or never hits the market, AppServe receives nothing from its customer. For iOS apps, there is an extensive “quality control” procedure that requires the app to meet certain minimum standards in order to be sold in Apple’s App Store. Currently, AppServe is based in Pensacola, Florida and has upwards of 20 total employees, 12 of which are actual App designers.

Jennifer was working at Dell Computers in Austin, Texas at the time she applied to work for AppServe. Her annual salary at Dell was $68,000. Jennifer graduated from Duke University with a degree in computer science, where she had a 4.0 GPA. At Dell, she worked extensively in their app department making apps for Android devices for the last 5 years. Prior to that, Jennifer worked in PC software design where she made products that eventually were used by Microsoft and Cisco Systems. Jennifer’s boss, Pete Cameron, highly valued Jennifer’s work and believed her to be the best designer in the department. Jennifer, however, grew more unhappy with her time at Dell. Jennifer wanted to move to the iOS Department and design apps for Apple products, simply because that was where the growth in the industry was occurring. Jennifer wanted to get out of working on Android devices, but the iOS Department at Dell had no openings. She was promised a chance to transfer, on several occasions, when a job opening came up, but there was always some reason or excuse someone else was promoted or hired. Pete understood Jennifer’s decision to relocate elsewhere and fully supported her decision.

Jennifer has a husband and two children – ages 8 and 6. Her family life is very important to her and she regrets having to spend so much time apart from them the last five years. She is determined to make her children more of a priority in balancing her home life with her work life.

As a result, Jennifer begin looking for potential jobs beginning in December of 2014. She primarily checked monster.com for openings. On January 5, 2016, AppServe posted an advertisement on monster.com for an iOS/Android designer. Jennifer had heard of AppServe – they were a highly respected, up-and-coming company that was leading the industry in terms of designing apps for customers. She was very excited at the job prospect and applied for the job. She stressed her Android experience in her resume, and noted her willingness and even eagerness to begin work on iOS products as well. After an exhaustive interview process with the CEO of AppServe – John Moneymaker – she was selected for hire. The interviews were held in-person in Pensacola, and Jennifer believed John liked her from the start. He seemed very impressed with her resume and they seemed to immediately develop a professional chemistry. Mr. Moneymaker discussed the job requirements, which would be to design apps for third-party customers on both Android and iOS. Mr. Moneymaker also told her that AppServe uses a top secret programming code called AppWeaver that uses the same code that can be used to make a wide variety of apps,
thus greatly reducing the design time for making apps. Instead of having to start from scratch for every app, the foundation and underlying work for the code is the same, and cuts nearly 10-15 percent of the normal app-design time off. Mr. Moneymaker asked Jennifer if she thought learning a new code would be difficult for her, and she responded that she was very familiar with learning new codes, especially one as fascinating and groundbreaking as AppWeaver. Mr. Moneymaker is desperate to ensure that AppWeaver is only used by AppServe and never by any of his competitors.

Two days after the interview, on March 20, 2016, Mr. Moneymaker personally called Jennifer to offer her the job, subject to certain terms and conditions being negotiated. Jennifer immediately accepted right there on the phone.

Jennifer is very excited about the job. She feels that she will make more money (since she’ll be doing a variety of tasks and a profitable company, and she deserves more money based on her credentials). She also thinks the move will be better for her family, in a location near the beach for the kids. She also hopes that the workload will not be as strenuous as it was at Dell. She really wants this job to be her “dream job.”

When Mr. Moneymaker offered Jennifer the job, he stressed to her that, as part of the hiring process, all terms and conditions of employment are on the table, including salary and working hours. One thing that Mr. Moneymaker demands that all of his employees sign is a non-compete and non-solicitation agreement – this is non-negotiable. Given the secret nature of his patented AppWeaver and the time and resources he will pour into Ms. Williams’ work, he finds it necessary to have a loyal employee base that he can trust.

Mr. Moneymaker tells Jennifer to hire a lawyer to hammer out the details of the employment contract. He finds it easier when others deal with the negotiating so that there will be no personal hurt feelings from the beginning. Mr. Moneymaker tells Jennifer that the lawyers will begin hammering out the details on April 1, 2016. Assume today is April 1, 2016.

As a result, Jennifer knows that she will be required to sign a non-compete agreement. She wants it to be as least restrictive as possible. She’s not 100 percent sure that AppServe will work out for her and she wants to have some flexibility in future employment in case, for whatever reason, the AppServe position is not right for her. Importantly, she is very concerned about being to get some sort of job in her field if she leaves AppServe.

Here is a list of Jennifer’s demands and wants:

1. Jennifer wants a raise from her prior job. She knows that the average app designer in the nation makes around $82,000. She believes she is worth at least that much and that is the absolute minimum that she will accept as salary. However, Jennifer also feels that she is more qualified that the average designer and strongly believes she should make at least $95,000. She truly believes, even if it is unlikely, that she is worth $115,000 per year. This is a MEDIUM priority.

2. Jennifer really wants to spend more time with her kids, and is interested in the possibility of “telecommuting” to work. Since most of the design work can be done from home, she sees no reason why she couldn’t work from home some days as a way to spend more time with the children and out of the office. She knows that working full-time away from AppServe’s office isn’t practical, though. She would prefer to be able to work Monday, Wednesday, and Friday from home and go to the office on Tuesday and Thursday. But, she’d be willing to accept even just one day at home, since that would be an improvement on her former work life. This is a HIGH priority.

3. Jennifer has a family life and not having gainful employment for too long would quite simply lead to financial problems. She understands that a non-compete agreement is
important for AppServe and in fact she had to sign one at Dell (the Dell non-compete didn’t cover Florida). She’d prefer a shorter time limit, maybe closer to 8-9 months. She thinks 18 months is the most fair, but understands that it is fairly standard practice to have a 2 year non-compete agreement. This is a MEDIUM priority.

4. Jennifer is willing to sign a non-compete agreement to cover Escambia and Santa Rosa Counties in Florida, plus all counties in and around Mobile, Alabama – she understands AppServe’s demands in those areas and thinks that’s fair. Jennifer does not have roots here and if fired or if she quits, she wouldn’t continue to live in Pensacola anyway. However, she does not want any nationwide non-compete agreement because a nationwide non-compete agreement would freeze her out of the job market totally. She especially wants to exclude Texas from the agreement, since she is from there and has contacts there who would hire her back quickly. Texas is a HIGH priority. As for the other areas other than northwest Florida, South Alabama, and Texas, it is a MEDIUM priority to allow her to work in any of those areas. She simply does not want to limit any future employment opportunities.

5. Jennifer knows that the noncompete agreement will cover competing businesses; that is, those businesses that do the same kind of work as she would be doing. Although she will only be working on the design phase of apps, AppServe as a whole also implements, tests, and coordinates app development. She would prefer that the non-compete agreement only cover working for competing businesses that also DESIGN mobile apps, since that would be her sole job at AppServe. She would still like the option to work as a tester for a mobile app company, especially since she would not be doing the testing at AppServe. This is a HIGH priority.

6. Since AppServe deals in mobile apps, she understands that will be the focus of the non-compete and is willing to accept that aspect of the deal. Although she would prefer to keep the scope of the agreement as limited as possible, she has no desire to ever work in any other field other than mobile apps. So, if the agreement covers other aspects of computing, such as PC software design for example, she is fine with it. This is a LOW priority.

7. Jennifer would like some money for moving expenses. It will cost roughly $1,500 to move her from Austin to Pensacola as cheaply as possible (this would require her to actual load and unload her stuff). The average in the industry for moving expenses is anywhere from $1,000-$2,000. She would accept $1,000, but would really prefer upwards of $2,000-$2,500. This is a MEDIUM priority.

8. Jennifer has always had the idea of opening up her own business one day. She believes that if she ever left AppServe, one thing she might consider is opening up her own business instead of working for yet another competing business. So, Jennifer would love to keep the non-compete agreement limited to restricting her from working at another business and to not restrict her from actually opening up her own business. This is a MEDIUM priority.

9. Mr. Moneymaker informed Jennifer in the interview that there will be an initial probationary training period where Jennifer will receive extensive training on apps in general from external conferences and then undergo an extensive in-house training program on its products and design. Plus, Jennifer will need to learn the ins and outs of AppWeaver before actually starting. AppServe will call this a “probationary” period. She wants to get to work on real projects as soon as possible. She thinks she can pick up AppWeaver knowledge quickly, and she has enough experience to hit the ground running. Making mobile apps for iOS really excites her from a personal fulfillment perspective, so
she certainly doesn’t want to wait too long to get going. She wants to forego all training – that is a MEDIUM priority. But, she understands that AppServe might insist on some training. Having no more than 2 months of training is a HIGH priority.

10. Finally, Jennifer knows AppServe wants her to begin work as soon as possible after the agreement is signed on April 1, 2016. However, she would prefer to start working in June so that her children can finish the school year in Austin and not be taken out of a class mid-year. She’s more than happy to start June 1, 2016, since the school year in Austin ends May 28, 2016. This is a MEDIUM priority.
Appendix D

Instructions for Client Interviews for Student Interviewing Teams

You work as a Paralegal in a medium sized law firm with a variety of specializations, including family law. You are employed as a student intern for Jane Smith, Esq., whose practice is 95% family law, and you assist in annulment, divorce, separate maintenance, custody, child support, paternity, adoption, and related family law matters. A prospective client is coming to the office for an initial interview. The client will meet with you first for an initial interview to determine the client's legal problem and Ms. Smith will join the interview at the end.

Your assignment is to gain as much information about the client's legal problem as possible by asking the client to provide you with facts necessary to represent them. The client has already completed the intake form which contains all the basic demographic data. This is important information that may be relevant to your interview but do not ask questions that are already answered on this sheet. Keep notes on your interview. Do not spend excessive time on completing the mundane details of the client's life at the expense of getting the details of the client's primary legal problem. You should be focusing on what questions to ask in order to help the attorney solve the client's legal problem. Be thorough but sensitive in your questioning as well as collecting the factual information that is not on the intake sheet but that is needed to help solve the client's legal problem. Do not be afraid to ask hard questions, but ask them with sensitivity and awareness of feelings that may be involved.

Beware of committing UPL! Therefore, you are not authorized to give legal advice or discuss legal fees with the client, even though you know what hourly fees the office charges for you and the attorney, and that the client will be asked to sign a fee agreement.

After the interview, the interviewing team, the client and the class will discuss:
- what you experienced as an interviewer/client/observer
- what you think was done well and what you could have been done better
- information that was not obtained from the client, but which needs to be obtained from this client in order to solve the legal problem
- what you learned about yourself as an interviewer, client, observer

CLIENT INTAKE INFORMATION

CLIENT'S NAME: Courtney Turner Stafford
Address: 1345 E. Jordan Street, Pensacola, FL 32503
Employment: Cosmetologist, Betty’s Curl Up N’ Dye
9140 N. Ninth Avenue, Pensacola, FL 32503

SPOUSE’S NAME: Frank Benjamin Stafford, Sr.
Address: 4261 Johnson Avenue, Apt. 24, Pensacola, FL 32504
Employment: Licensed Plumber, Roger’s Plumbing
3214 Alcaniz Street, Pensacola, FL 32502
Attorney for Spouse: Gayle Ryba

DATE/PLACE OF MARRIAGE: November 15, 2000/Pensacola, Florida

DATE OF SEPARATION: January 3, 2016

HUSBAND AND/OR WIFE MEMBER OF MILITARY? No
IS WIFE CURRENTLY PREGNANT? No

GROUNDs FOR DISSOLUTION OF MARRIAGE? Irretrievably broken

ASSETS AND LIABILITIES
There is no written agreement between the parties regarding division of marital assets or liabilities. The trial court will have to make this determination at final hearing. Title to the marital home (1345 E. Jordan Street) is held as Tenants by the Entireties
2008 Honda Accord and 2007 Ford F-150
Savings Account
Master Card and Visa credit cards
All other Personal Property (H+W divided when they separated)

**SPOUSAL SUPPORT INFORMATION**
Spousal Support:
Our client does want spousal support but, leave the amount, frequency, type and explanation blank when you fill out the forms until your supervising attorney can discuss this in detail with the client.
Life Insurance:
H should continue to carry life insurance on his life to secure the spousal support if he dies before spousal support terminates.
H+W met in high school and married soon after.
Wife: Earned her high school degree and has taken some college classes. Wife has always relied primarily upon H for financial support. She was a stay at home Mom until the kids started first grade but has worked continuously since then at the same job. However, she needs continued financial help from H after the dissolution.
Husband: He has always been the primary bread-winner (superior ability to pay support). He has worked continuously during the marriage at the same employer.

**DEPENDENT/MIÑOR CHILDREN BORN OF THIS MARRIAGE:**

<table>
<thead>
<tr>
<th>NAME</th>
<th>PLACE OF BIRTH</th>
<th>BIRTH DATE</th>
<th>SEX</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kayleigh Stafford</td>
<td>Pensacola, FL</td>
<td>April 1, 2004</td>
<td>F</td>
</tr>
<tr>
<td>Frank Stafford, Jr.</td>
<td>Pensacola, FL</td>
<td>Aug. 4, 2000</td>
<td>M</td>
</tr>
</tbody>
</table>

There are no other children of either party.

There are no prior or current proceedings involving these children.

**RESIDENCE ADDRESSES OF CHILDREN:**
1345 E. Jordan Street, Pensacola, FL 32503 – Nov. 15, 2000 to Jan. 3, 2016 with both parents
1345 E. Jordan Street, Pensacola, FL 32503 - Jan. 3, 2016 (date of separation) to date with just Mom.
2101 E. Lakeview Street, Pensacola, FL 32503 – Aug. 4, to Nov. 14, 2000 (with maternal grandparents, Margie and Norman Turner and both parents)

**PARENTING INFORMATION**
Children are currently residing with W at marital home.
The parties have agreed and signed a Parenting Plan.
H has been exercising regular visitation without any problems.

**CHILD SUPPORT INFORMATION**
See Financial Affidavits that were prepared and filed by each party.
Child Support:
The parties have been unable to agree on a child support amount so the court will need to determine the amount.
Our client would like the child support to be retroactive to the date of separation.
No deviation from the guidelines is being requested.
Child’s Health Insurance/Expenses:
The father should continue to pay for health insurance for the children through his employer.
H + W have agreed to split non-covered medical/dental expenses based on Child Support Guideline Worksheet percentage.

Life Insurance:
The father should continue to carry life insurance on his life to secure the child support if he dies before child support terminates.

NAME CHANGE?
W does not want to change her name at this time

ATTORNEY FEES AND COURT COSTS
The husband should be required to pay the wife’s attorney’s fees and court costs as “other relief.”