

BUSINESS LAW FORUM EDUCATING THE TRANSACTIONAL LAWYER

INTRODUCTION

by
*Susan T. Felstiner**

Post recession, the economy is taking a new shape.¹ Technology, innovation, and social entrepreneurship are leading the charge forward. The dynamics of the legal market are changing,² and the demand for transactional legal services is growing.³

* Clinical Professor of Law, Small Business Legal Clinic, Lewis & Clark Law School.

¹ Jeremy Ashkenas & Alicia Parlapiano, *How the Recession Reshaped the Economy, in 255 Charts*, N.Y. TIMES, June 6, 2014, <http://www.nytimes.com/interactive/2014/06/05/upshot/how-the-recession-reshaped-the-economy-in-255-charts.html?abt=0002&abg=1>. Growth has occurred in consulting, computing, biotech, health care, internet publishers, electronic shopping and auctions, nail salons, and pet boarding, grooming and training. Losses have occurred in industries connected with construction and real estate, airlines, bookstores, printers, and publishers of newspapers and periodicals. *Id.*

² JAMES W. JONES ET AL., GEORGETOWN LAW CENTER FOR THE STUDY OF THE LEGAL PROFESSION AND THOMSON REUTERS PEER MONITOR, 2015 REPORT ON THE STATE OF THE LEGAL MARKET 1, 8, *available at* https://peermonitor.thomsonreuters.com/wp-content/uploads/2014/01/2014_PM_GT_Report.pdf. Reporting that (1) clients insist on increased efficiency, predictability and cost effectiveness in the delivery of legal services, (2) corporate clients are shifting more legal work in-house, (3) clients are willing to disaggregate services among many different service providers, and (4) non-traditional competitors have a larger market share of the work.

³ *Id.* at 8–9. Noting that the demand for transactional legal services has outpaced the demand for litigation services because more clients opt out of expensive litigation and the use of legal process outsourcers and non-traditional litigation service providers rises.

Law schools are also evolving, with more focus on providing students with experiential learning opportunities.⁴ Recognizing the need to provide students with an opportunity to learn transactional skills, transactional law clinics have proliferated across the country.⁵ These clinics typically provide students with the opportunity to represent, under the supervision of a licensed attorney, real clients in a transactional matter. Clinic design and implementation vary across the country. Clinics are as innovative as their clients in the post-recession economy, but all share a common goal: to teach the next generation of transactional business lawyers the skills needed for a lifetime of practice.

On October 4, 2014, Lewis and Clark Law School held a forum entitled, “Educating the Transactional Business Lawyer.” This forum was a unique opportunity to hear from all stakeholders in legal education: the students, doctrinal and clinical professors, and practicing attorneys. Transactional clinical professors from across the country presented and led robust discussions on clinic design, learning objectives and teaching methods. This edition of the Lewis & Clark Law Review compiles the articles presented at the forum.

The characteristics of a transactional clinic are explored by Patience Crowder in her article, *Designing a Transactional Law Clinic for Life-Long Learning*. She offers a manual for transactional clinic design and illustrates the impact of the design principles on teaching students how to learn the rules and practice of law. She focuses on design principles that foster self-regulated learning to produce lawyers that are “capable of articulating a learning task, motivating themselves through completion of the task, and of simultaneously monitoring their learning as they are learning to assess their comprehension of the material.”⁶

Jay A. Mitchell and Michelle Sonu, in their article *Food Banks and Investment Banks: Clinic Design for Corporate Practice*, examine factors that influence clinic design. In the case of their Organizations and Transactions Clinic at Stanford Law School, those factors include the clinic’s institutional and community setting, the environmental in which most of the school’s graduates will begin their careers, and learning objectives that focus on learning to read and deconstruct documents.⁷

⁴ THE AMERICAN BAR ASSOCIATION (ABA) SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR REVISED STANDARDS FOR APPROVAL OF LAW SCHOOLS (2014), requires law schools to offer a curriculum that requires each student to satisfactorily complete “one or more experiential course(s) totaling at least six credit hours. An experiential course must be a simulation course, a law clinic, or a field placement.” *Id.* § 303(a) (3).

⁵ As of August 1, 2014, ABA accredited law schools offered 188 transactional law clinics. Jennifer S. Fan, *Institutionalizing the USPTO Law School Clinic Certification Pilot Program for Transactional Law Clinics*, 19 LEWIS & CLARK L. REV. 327, 331 n.14 (2015).

⁶ Patience Crowder, *Design Principles for Transactional Law Clinics*, 19 LEWIS & CLARK L. REV. 413, 434 (2015).

⁷ Jay A. Mitchell & Michelle Sonu, *Food Banks and Investment Banks: Clinic Design for Corporate Practice*, 19 LEWIS & CLARK L. REV. 267 (2015).

The learning objectives of each clinic reflect its belief of what is a transactional business lawyer and how to prepare students to become a great transactional business lawyer. Praveen Kosuri, in his article *Beyond Gilson: The Art of Business Lawyering*, analyzes what great transactional business lawyers look like. He then lays out a framework for a progressive tiered approach to educating great transactional business lawyers. This approach transcends teaching technical lawyering skills to provide students with the greatest opportunity to engage in the art of business lawyering.⁸

Transcending technical lawyering skills includes going beyond learning and understanding a client's business and industry. Lawyers need to also understand their clients' values and appetite for risk. Alicia E. Plerhoples, in her article *Risk, Goals, and Pictographs: Lawyering to the Social Entrepreneur*, compares the risk tolerances of the social entrepreneur and the student attorney. The social entrepreneur may be more comfortable with novel transactions and innovative solutions than the student attorney. Professor Plerhoples explores how client-centered lawyering and the counseling tool of a pictograph can assist the student attorney in objectively presenting and framing the advantages and disadvantages of a client's options in relation to the client's goals, without the student's risk tolerance clouding the presentation.⁹

Learning goals consistent among clinics include teaching communication and collaboration skills. Cynthia L. Dahl, in her article *Teaching Would-Be IP Lawyers to "Speak Engineer": An Interdisciplinary Module to Teach New Intellectual Property Attorneys to Work Across Disciplines*, explores interdisciplinary communication in the context of a teaching module that pairs law students with engineering students in the drafting of patent claims.¹⁰ Deborah Burand, in her article *Crossing Borders to Create Value: Integrating International LL.M.'s into a Transactional Clinic*, shares her experiences integrating foreign-trained lawyers into the work of an international transactions clinic, thereby teaching students cross-cultural communication and collaboration and building a clinic community across borders.¹¹

In addition to the articles sharing methods of clinic design and implementation of learning objectives, the article by Jennifer S. Fan, *Institutionalizing the USPTO Law School Clinic Certification Program for Transactional Clinics*, explores the advantages and drawbacks of a transactional clinic

⁸Praveen Kosuri, *Beyond Gilson: The Art of Business Lawyering*, 19 LEWIS & CLARK L. REV. 463 (2015).

⁹Alicia Plerhoples, *Risks, Goals, and Pictographs: Lawyering to the Social Entrepreneur*, 19 LEWIS & CLARK L. REV. 301 (2015).

¹⁰Cynthia L. Dahl, *Teaching Would Be IP Lawyers to 'Speak Engineer': An Interdisciplinary Module to Teach New Intellectual Property Attorneys to Work Across Disciplines*, 19 LEWIS & CLARK L. REV. 361 (2015).

¹¹Deborah Burand, *Crossing Borders to Create Value: Integrating International LL.M.'s into a Transactional Clinic*, 19 LEWIS & CLARK L. REV. 441 (2015).

participating in the United States Patent and Trademark Office's Law School Clinic Certification Program.¹² Esther Barron and Stephen F. Reed, in their article *A Closer Look at Distance Learning: The Law and the Entrepreneur MOOC*, share their experiences creating a Massive Open Online Course (MOOC), a new innovation in distance learning that has potential to transfer to doctrinal and clinical legal education.¹³

Together, these articles provide comprehensive analyses of the competencies required of the next generation of transactional business lawyers, and insightful and candid reflections on methods for teaching those competencies. I thank the authors for their valuable contributions to transactional clinical pedagogy.

¹² Jennifer S. Fan, *Institutionalizing the USPTO Law School Clinic Certification Program for Transactional Clinics*, 19 LEWIS & CLARK L. REV. 327 (2015).

¹³ Esther Barron & Stephen F. Reed, *A Closer Look at Distance Learning: The Law and the Entrepreneur MOOC*, 19 LEWIS & CLARK L. REV. 395 (2015).