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Integrating Legal Research Skills into Commercial Law

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TEACHING THE LAW SCHOOL CURRICULUM

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using my car or some piece of art as collateral. I ask some students, working in pairs, to draft the promissory note and others, also working in pairs, to draft the security agreement. I give them only five minutes. The goal is not to write a complete security agreement, but the minimum that would suffice. This brief exercise does several useful things. First, it really brings home the different function of the security agreement and the note. Second, it helps them appreciate how minimal the requirements of a valid security agreement are. Third, it prompts a discussion of whether the security agreement needs to identify the secured obligation, even though the Code is silent on that point. Fourth, it helps them understand the composite document rule. Finally, it leads into a useful, albeit brief, discussion about whether a security agreement more closely resembles a contract or a deed.

Another very useful technique for understanding complex statutory text is to redraft the provision using your own language. The act of doing this often aids comprehension to a significantly greater degree than almost anything else the reader could do. In dealing with Article 9's priority rules, one of the simplest ways to do this is to “flip” the provision: if the statute as written indicates when the secured party wins, rewrite it to explain when the competing creditor wins; conversely, if the statute as written indicates when the competing creditor wins, redraft it to explain when the secured party wins. I assign my students the task of “flipping” the first priority rule we discuss: the one expressed in § 9-317(a)(2). I have them prepare their version in advance of class and turn it in for review. Later, I have my students “flip” the rules of § 9-323(b) and (d). This helps them compare the two rules much more easily because the difference ends up being, mostly, simply the difference between “and” and “or.”

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Integrating Legal Research Skills into Commercial Law

Teachers of substantive law (and employers) often lament the disjuncture between what is learned in the law school classroom and what happens in real-life law practice. Those who specialize in legal research lament that their teaching sometimes strikes students as acontextual. Students often comment that it is hard to engage fully in and appreciate the importance of hypothetical legal research exercises. We believe that law students who see the contextual connection between the theory and the practice of law will be more prepared to engage completely in the practice of law. It is out of these experiences that we have crafted both an in-class research discussion and a graded research exercise (“scavenger hunt”). Taken together, these exercises enable students to improve their legal research skills in the context of a substantive law course. (While we are using Commercial Law, the basic four-credit course that covers the U.C.C., as our exemplar, our faculty has conducted similar exercises in Contracts, Bankruptcy, Property, Wills, Tax, Corporations, and Securities Law, in classes with 25 to 100 students.)

The research experience we propose requires that the substantive law professor give up valuable class time for “non-substantive” material for several reasons. Many students tell us that the class discussion and the accompanying scavenger hunt were the first time they actually saw the need for legal research and perceived their own research shortcomings. Further, since the material is directly related to the course, it is not a matter of foregoing material; rather, it is addressing substance differently. Even if we shortchange substance for a day, the benefits of learning to do contextualized research outweigh the substance that goes uncovered.

The exercise requires collaboration between the librarians and the substantive law professor. A librarian joins the professor in the classroom for the in-class discussion. We think it is useful and important for students to see two professionals communicating and sharing insights (particularly when they disagree), as a good deal of lawyering is collaborative. Moreover, it shows students that librarians care about substance and that substantive professors and practicing lawyers respect and need quality research. The library's reference staff also provides a critical teaching component by providing assistance to students as they complete the assignment. The librarians reinforce the important elements discussed in class. One final note: the experience requires a willingness to be
flexible; computers do not always work, websites do not always function, and the best-designed scavenger hunt can have glitches. All said, this type of teaching experience is certainly worthwhile and a recommended complement to the syllabus.

To provide a structure to the in-class component, students are given a legal research guide and a bibliography tailored to Commercial Transactions. (Feel free to email us; we can send samples of any of the materials discussed in this article.) The research strategy outline covers the basic steps of a research project: (1) finding and updating statutory/administrative law, (2) finding and updating case law, and (3) finding and using secondary sources. In addition, sections are included on (a) building a research bibliography and (b) contacts and networks. Both of the handouts are useful for the scavenger hunt and serve as reference guides for future projects. In addition to the handouts, we compile a chart of relevant primary and secondary paper sources and provide online access during class.

Using the research strategies outline to help structure our discussion, we lead the class through a review of important research steps. We start with finding relevant laws and the importance of updating them. We comment on methods of approaching particular tasks and on what we find using different sources. We banter back and forth about not just HOW to find something, but the VALUE of what we find. We talk about which case reporting services are best and most complete, which classification system is most useful and why, which hornbooks/secondary sources are most current and provide the best overview when someone is completely at a loss for where to begin, which looseleaf service is most beneficial, which commercial research database—Lexis or Westlaw—works best for a particular kind of question, which listserv is the best, and which organization produces the most thoughtful Web presence. Students actually see the books and watch us using the online services. The students learn how to join a listserv, they trace a piece of pending commercial legislation, they find a U.C.C. 1 that is filed, and they search for liens (using students' names). The goal is to teach Commercial Law research in such a way as to alert students to the richness of legal research.

After the class session students are given a scavenger hunt comprised of six questions that will take about three hours of research and one hour of writing. Students are given several days to complete the scavenger hunt. They can work in groups of two or three, but every student must turn in his or her individual results. Times are arranged when librarians are available to work with students in the library. Computer labs are reserved at this time for class use. The librarians can demonstrate the use of paper sources and indexes, as well as work with the students on online search techniques.

Each item on the scavenger hunt is selected to illustrate a particular research point. Some questions cannot be answered using online sources (at least not easily). Students need to look at paper sources and sometimes make phone calls. Another question (or two) asks the students to find material that relates directly to what is covered in class. Then, there is something practical to find—similar to what a partner in a firm would be looking for in a hurry.

A few examples from recent scavenger hunts are:

• Your client is in the business of breeding and selling race horses. The client has heard of a recent case from somewhere in the mid-western USA in which a buyer brought a cause of action against the seller of a race horse for breach of both an express warranty and an implied warranty of fitness for a particular purpose. Apparently the horse had some defect. According to rumors in the horse business, the buyer lost on both counts (which would be nice for your client). Find the case to which the client is referring and assess whether the rumor mill correctly described the outcome of the case.

• I recently heard that the Supreme Court granted certiorari in a case called Russell v. Capital One, which involves credit cards, breach of promise, and due process. Is this accurate and, if so, when is oral argument scheduled?

• You represent a bank in New York that is considering a loan to Alice and Ben Greene, who live in New York. You heard that another bank has taken a security interest (perfected under Article 9) in some of their property located in Vermont. Please determine whether any lender has taken a security interest in any property of the Greene’s and, if they have, identify the lender by name, describe the collateral in which they have taken an interest, and when the interest was obtained.
• Freddie Mac recently completed a controversial study on credit use and credit ratings. Apparently the study found that different borrowers (depending on gender, age, ethnicity, income levels) had different repayment behavior and different credit problems. I want to see the complete study. Is it available and how can I get a copy of same?

The student papers are then “graded” by research assistants or librarians. The grading process is not intended to be an onerous one. It is more a matter of finding the better papers so that they can be reviewed by the substantive law professor to determine the prize winners. We usually award a first prize (bottle of wine, book) and several lesser prizes (commonly items donated by Lexis and Westlaw). The “awards” day is usually fun too. It takes only a few minutes, but the students like seeing who won and applauding their good efforts.

We have found the experience to be remarkably worthwhile. Students learn more about what lawyers do—and the value of legal research in that enterprise—and we, as teachers, enjoy sharing a different type of knowledge and skill with our students. To top it off, we enjoy the pleasure of working in the classroom with a colleague, itself an uncommon but exhilarating experience.

Camille Broussard and Karen Gross, New York Law School

Interest Group Negotiations

In Secured Transactions, a mid-semester, large-group exercise allows students to integrate the materials and review and critique the current system. This exercise occurs after we learn attachment, perfection, and scope, but before priority. Students must sign up for an interest group a few weeks before the exercise. Interest groups may include large institutional lenders, small and specialized lenders such as factors, large borrowers, small borrowers, state filing system officials, unsecured lenders such as trade creditors, neutral academics and law reformers, and secondary markets such as asset-backed securitization. The groups you use will depend upon your objectives. Sign-up is first come, first served. Limit the number of students in each group so that each group has approximately the same number of students. Groups of more than eight are difficult to coordinate. For example, if your class has 80 students you can use 10 interest groups (if you find that many that serve your purposes), or you can use eight interest groups, with two teams of five students each representing each interest group. Students work in these interest groups outside of class and hand in a short report answering a series of questions about the current law and proposed reforms. Review these reports the day before the in-class exercise, identify areas of accord and discord, and prepare a simple “issues list” that notes the areas of discord. In class, the interest groups send delegates to negotiating sessions with students from the other groups to see if they can reach accord on the areas of discord. Each negotiating group has a few blank transparencies and pens, which they use to present their conclusions. Devote about half the class to the negotiation and half to the presentations.

Karen M. Gebbia-Pinetti, University of Hawaii William S. Richardson School of Law

Sale/Lease Distinction

Article 9 applies to any transaction regardless of its form, which creates a security interest. §9-109(a)(1). To explore this rule, I give students several problems involving the sale/lease distinction and requiring detailed analysis of the rules of sections 1-201(35) and 1-203 (formerly 1-201(37)). Unfortunately, over the years it has become apparent that students then try to use these rules to analyze all §9-109(a)(1) issues. In other words, they try to force these rules into answering whether other transactions—not in the form of a secured transaction—should nevertheless be recharacterized as such. To deal with this, I now give students another problem immediately after tackling the sale/lease distinction. I ask them when is a sale with an option to repurchase really a security device