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In 2013 we set out to re-develop a 3-credit International Business Transactions (IBT) course that takes a deeply experiential approach. We applied experiential pedagogical methodologies—developed initially to train Israeli air force pilots and later adapted to medical training and grounded in theoretical and empirical education research—to serve in a traditional IBT course. The goal was not only to develop legal skills such as negotiation, contract drafting, and client counseling but more importantly to impart knowledge including legal doctrine, legal theory, and policy considerations through the use of a series of structured, in-class experiences. It is a core precept of experiential learning (“EL”) theory that different learners respond best to different combinations of learning by doing, watching, thinking and feeling whether they are acquiring skills or knowledge. (And, indeed, it was particularly gratifying to witness how students who often resist discussions of theory and policy craved it once they experienced their value).

Given that in our experience some of the resistance to EL stems from mere unfamiliarity with it, from a belief that an inordinate amount of work would be required to incorporate such teaching methods into existing courses, and/or from a belief that EL is appropriate only to teach skills but not knowledge, we decided to apply a principle of “show, don’t tell”—i.e. to provide an example of
a traditional IBT course into which EL has been incorporated. In so doing, we hope to contribute to the discussion on EL what we have learned experimenting with teaching IBT experientially by providing an annotated syllabus in the hope that other law professors would find it helpful to see how EL has been implemented in a traditional law course. Specifically, we aim to (i) illustrate some of the ways in which EL can be incorporated into an existing, traditional (doctrinal) course and; (ii) illustrate how EL can be used not only to develop skills but also to impart knowledge; (iii) and in so doing address some common objections to deploying EL approaches in ‘regular’ law school classrooms. The annotations provide information on matters such as available EL methodologies and the andragogical principles underlying certain course-design choices. (Andragogy being the science and practice of educating adult learners). The information is meant to be illustrative not exhaustive and the goal is not here to provide a full scholarly treatment. Given our modest goals, we only provide annotations to a few select experiences—those that we regard the basic building blocks of EL or of this particular course—since our purpose is to demonstrate how to incorporate EL into a traditional course, not to provide a full course plan.

The syllabus provided herein has been modified from the original used in class, and is presented in a somewhat abstract form (e.g., the reading assignments are omitted) for four reasons. One, is that it reflects two versions in which the revised course has now been taught: one is a traditional semester-long 3-credit format and the other in a one-week one-credit format. Second, is that the course and the syllabus are works-in-progress. For example, a key conclusion from the first two runs at the experiential approach is that “flipping” the class room—i.e., in our case assigning pre-taped lectures to be viewed at home before class—would resolve the tension between the class-room time-consuming experiential approach, on the one hand, and coverage requirements, on the other. Third, we want to emphasize that professors need not abandon, or even significantly revise syllabi they have perfected over the course of years. They can simply add or substitute some of the Socratic discussions with one or more experiences. Fourth, due to time constraints, we ended up using only some of the experiences we developed. However, given their innovative nature, we are including them here (and looking forward to using them with our students in the future) by mentioning them in the course outline. In that vein, it is important to note that we recommend transition into EL gradually. For example, a single experience at the beginning of a course or at the conclusion of a subject can transform the course.
The design of this course is premised on the andragogical theory of David Kolb (Andragogy is the study of adult learning). According to Kolb and his progeny, adults learning can be graphed on two axes: one, is the axis of how knowledge is perceived by doing vs. watching. The other, is how knowledge is processed through thinking vs. feeling. Each learner can be represented by a dot on the graph namely we all learn by doing, watching, thinking and feeling however, the emphasis on each differs. (Kolb, DA (1984) Experiential learning: Experience as the source of learning and development. New Jersey: Prentice-Hall). We therefore believe that a well-designed course should appeal to all the different learners in the class room.

**SYLLABUS**

Course Description:

I. The course surveys the key areas of international business law which impact cross-border transactions. These are noted below in blue font. They are:

1) The basic documentary transaction;
2) International investment law;
3) International trade regulation.

II. The course also pursues a number of themes that are interwoven throughout the aforementioned doctrinal areas. These are also noted in blue font below and they include, but are not limited to:

1) Sources of international law;
2) Comparative law;
3) Issues in trans-lawyering e.g., ethics and cultural differences (general and legal);
4) International conflict of laws.

III. The course introduces and provides exposure to a wide variety of lawyering skills. These are noted in blue font below and they include, but are not limited to:

1) The basic documentary transaction;
2) International investment law;
3) International trade regulation.

In this course we chose to focus on three lawyering skills: negotiation, drafting contract clauses, and client counseling. Each skill was taught through a combination of (i) theory, (ii) practice, and (iii) reflection. We selected a different sequence of the three each time, depending on the specific primary and secondary goals of the experience.

**EL requires two types of conceptual and practical adjustments:** One, is in how to use classroom time; the other is in how to use out-of-class time. Specifically, out-of-class time is best used to provide students with their first encounter with the subject matter (e.g., the Convention on the International Sale of Goods). This can be done, for example, through reading or through watching pre-taped lectures. In-class time is used for internalizing the knowledge and better grasping its various dimensions through acting, observing, and reflecting back on the experience. For example, through simulation followed by debriefing (discussed here).

**FALL 2013**

**PROF. MAYA STEINITZ**

Note: for the optimal user experience open this document in Adobe.
green font below. The various types of transactions we will explore are noted in red font. Prerequisites: There are no pre-requisites for this course. In particular, there is no need for background in business or business law.

Required Texts:

1. A Reading Packet is available on Icon.
2. Certain international instruments, such as the Convention on the International Sale of Goods, will be assigned throughout. These are available online.
3. Simulations instructions. All simulation materials will be distributed in class prior to the simulation.

Additional reading may be assigned from time to time as the course progresses.

Recommended Texts:

- We may be making reference to current events in class. It is therefore recommended that you keep up-to-date with at least one of the following: the New York Times (especially the business section); the Financial Times, and the Wall Street Journal.
- For those who have not taken a basic course in international law it is strongly recommended that you read chapters 1 and 2 Vaughan Lowe, International Law (Clarendon Law). Chapter 3 is also recommended.
Requirements and Evaluation:

Requirements:
- Attendance: You will be expected to attend class regularly and to have read the assigned material. If you cannot attend a session please email me in advance. Any student who misses more than 4 classes (a 3 hour session counts as 2 classes) will be dropped from the class or subject to another sanction, at my discretion.
- Written assignments: There are a number of written assignments throughout the semester. Timely submission is a prerequisite for completing the course and failure to submit all assignments in time will result in grade reduction.

Evaluation:

1. Participation – 30% Percent. Participation will be evaluated by quality rather than quantity. Factors will include, inter alia, the level of preparation (where tasks are circulated in advance), the ability to incorporate and apply the readings to the hands-on exercises, quality of ungraded written assignments such as observation sheets and journal assignment, and
2. Clause drafting exercises – 30% (2 x 15%). There will be three drafting exercises throughout the semester. The first will not be graded. The second and the third will each be graded and assigned 15% each.

3. Client Counseling Simulation – 40%. Each student will simulate client counseling for 20 minutes. (Prof. Steinitz will be the ‘client’). Knowledge of the law, ability to apply the law to the facts, ability to think on your feet, and the various communication skills called upon in client counseling will be evaluated. The client counseling exercise will be handed out at the last session so that students will have time to prepare. The counseling sessions will take place during the regular scheduled exam time.

Note, the following schedule, and content, is subject to change.

Substantive knowledge appears in blue fonts, skills appear in green fonts and transaction type in red fonts.

1. Course Overview and Introduction
   Goals:
   (1) Understanding the content, structure and learning methodologies of the course.
   (2) Understanding the sources of international law and the interaction between them and U.S. law.

   Reading:
   (1) [xxx]
   Viewing:
   (1) [taped lecture]
2. Introducing the Documentary Sale of Goods Transaction (Safe Babies, Inc. Role Play)

Goals:
(1) Understanding the characteristic challenges and features of the ‘documentary transaction.’
(2) Getting introduced to negotiation dynamics and theory.

3. The Nuts and Bolts of the Documentary Sales Contract (A Human Puzzle)

Goals:
(1) Understanding the ‘anatomy’ of the documentary transaction including introduction to the Bill of Lading, Letter of Credit, and Bill of Exchange.
(2) Understanding commercial terms primarily, FOB, FAS, C&F, CIF.
(3) Becoming acquainted with the ICC Incoterms.
(4) Analyzing the business side of a transaction.


Goals:
(1) understanding the basics of international conflict of laws.
(2) Understanding force majeure in the IBT context.
(3) Introducing the UNIDROIT Principles.
(4) Client counseling.
(5) Comparing legal norms and systems.

Role play (often erroneously referred to as a simulation) involves two or more students who play different roles in an interactive situation. For example, students may play the roles of two attorneys negotiating an international business transaction. The goal is defined for the students but the process is not. The key benefit of the role play is that it allows application of knowledge. Role play also allows “doers” and “watchers” to best absorb knowledge while acquiring a skill. A simulation, conversely, involves a professional actor who plays out a script s/he was trained to perform and the student is required to engage in real time with the actor. [Gaba, D. M. (2004) The future vision of simulation in health care. Qual Saf Health Care, 13(1): i2–i10.]
5. Financing – Letters of Credit
(“Fishbowl” Client Counseling Simulation)

Goals:
(1) Understanding the purpose, characteristics and principles of letters of credit including (a) the independence principle and; (b) the strict compliance rule;
(2) Understanding enjoining payment of letters of credit due to fraud.
(3) Analyzing and diagraming deals.
(4) Effectively explaining difficult and/or legal concepts to clients.
(5) Learning by actively observing other attorneys.

6. Financing – Standby Letters of Credit (Presenting Case-law to Supervisors at Steinitz & Associates “Fishbowl” Role Play)

Goals:
(1) Understanding the characteristics and uses of the standby letter of credit and contrasting it with the letter of credit.
(2) Understanding the fraud exception to the independence principle.
(3) Analyzing and diagraming deals.
(4) Effectively communicating research findings and case analysis to a supervisor.

The professor will want to strike a balance between repeating a methodology more than once to allow students to get comfortable with it, on the one hand, but not to repeat it so much that the students get bored, on the other hand. However, the sequence of action and reflection, it should be noted, is the bedrock of EL taking different guises in different methodologies but present in all.
7. Anatomy of a Contract (Safe Babies, Inc. First Drafting Exercise)
   Goals:
   (1) Understanding the generic structure of contracts.
   (2) Understanding the relationships between business concepts, legal concepts and contract language.
   (3) Working with sample/standard contracts.
   (4) Drafting contract clauses.
   (5) Teamwork (drafting in pairs).

8. Non-establishment Forms of International Business: Distributorships /Agents (Safe Babies, Inc. Negotiation, Term Sheets and Second Drafting Exercise)
   Goals:
   (1) Becoming familiar with the non-establishment forms of international business, with an emphasis on distributorships and agencies; being able to compare and contrast the pro's and con's of each and the different legal regimes that may apply to them.
   (2) Becoming familiar with term sheets; understand the relationship between oral understandings, terms sheets and a final contract.
   (3) Drafting a contract clause.
   (4) Marking up (critiquing) contract language.

9. Non-establishment Forms: Distributorships /Agents Cont’ed

10. Non-establishment Forms: Joint Ventures and Trans-lawyering (“MedLee” Negotiation Role Play)

Of course, individual feedback was possible because of a small class size. For large classes, if resources are available, a professor may use teaching assistants or legal writing instructors. More generally, however, it is important to note that counter-intuitively many of the EL methodologies can be adapted to very large classes. For example, a role play can be conducted by two students with the rest of the class acting as active observers. Similarly, where a school is willing to invest in some equipment, students can be videotaped and debriefing or feedback can be provided in plenary based on the video.


This is the first of three drafting exercises. First, students were requested to draft—in pairs, in class—a first draft of a few clauses (preamble, recitals, choice of law, choice of forum) of an international sale of goods contract based on the term sheet they have reached in the first “Safe Babies” role play. Second, each pair was then requested to mark up and provide feedback to another pair on its draft. Third, each pair received the feedback, discussed it, and decided whether and how to revise its draft clauses. Fourth, at home, the students had to draft the final version of the clauses and email to the professor. Feedback was provided in two ways: first, each pair received a markup from the professor and second, in the next session general feedback based on repeated mistakes was provided in plenary. In an example of the connection between EL and knowledge-acquisition (in addition to skills-acquisition) it was striking to see how requiring students to draft choice of law and choice of forum clauses highlighted their mis/understanding of choice of law and forum principles and doctrines.
Note, this simulation takes 2 – 3 hours.

Goals:
(1) Getting a general understanding of a joint venture.
(2) Understanding overarching themes in international business dealings including:
   a. Cultural differences;
   b. Comparative law and the major legal systems of the world;
   c. Transnational legal ethics.
(3) Deepening negotiation skills.
(4) Drafting term sheets.

UNIT 2 - FOREIGN DIRECT INVESTMENT ("FDI") AND ECONOMIC DEVELOPMENT


Goals:
(1) Understanding the decision to invest abroad.
(2) Understanding the characteristics of FDI including:
   a. FDI’s political nature and the controversies surrounding it;
   b. FDI, human rights, the environment & labor protection;
   c. Working in developing countries;
   d. Working with foreign governments;
   e. The relationship between FDI and diplomacy.
(3) The problem of “the obsolescing bargain.”
(4) Long term deals and
“relational contracts.”

(5) Bargaining in the shadow of transnational dispute resolution.

(6) The (deal) lawyer as trusted advisor.

(7) The (deal) lawyer and corporate social responsibility (CSR).

12. Introducing FDI and Economic Development – Cont’ed

13. Overview of International Investment Law

   Goals:

   (1) Becoming familiar with international investment law, including:
       a. Bilateral Investment Treaties (“BITs”).
       b. The core principles of FDI including Non-discrimination, National Treatment.
       c. The International Center for the Settlement of Investment Disputes (“ICSID”) regime.

14. Expropriation (U.S. State Dep’t and China’s Foreign Ministry BIT Negotiation Role Play)

   Goal:

   (1) Understanding expropriation as the ultimate and paradigmatic threat to a foreign investor.

   (2) Further deepening the understanding of BITs and Investor protection.

   (3) Understanding features of public international law (the rights and obligations of states).

   (4) Stepping into the shoes of the government lawyer; understanding the
treaty-making process.
(5) Multi-round and multi-issue negotiation.

15. Project Finance (Safe Babies, Inc. Multi-issue Negotiation)
Goals:
(1) Becoming familiar with the key features of project finance deals.
(2) Understanding relational contracts, renegotiation and stabilization.
(3) Become familiar with multi-issue negotiation and parallel negotiations by multiple teams.
(4) The lawyer as manager and coordinator.

16. Foreign Corrupt Practices Act; The Alien Tort Claims Act and Corporate Social Responsibility (Preparing a Continuing Legal Education (CLE) Presentation)
Goals:
(1) Understanding corporate tort liability abroad and at home; the domestic regulation of American investment overseas.
(2) Becoming familiar with the Corporate Social Responsibility movement / rhetoric.

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UNIT 3  – INTERNATIONAL TRADE REGULATION

17. Introduction to International Trade Regulation (PACRIM Trade Negotiation Role Play)

Note, this simulation takes approximately 3.5 hours.

Goals:
(1) Understanding the ‘big picture’ politics and macro-economics of trade relations.
(2) Understanding the multilateral nature of the trade regime.
(3) Multi-party, multi-round negotiations.

18. Overview of International Trade Regulation

Goals:
(1) Become familiar with the framework of the trade regulation regime including the WTO, the GATT and the DSB.

19. Overview of International Trade Regulation – Cont’ed

20. Nontariff Barriers (NTBs) and the WTO (Trade Department Role Play Part I)

Goals:
(1) Understanding the concept and the international law of NTBs.
(2) Deepening the understanding of the GATT.
(3) Deepening the understanding of the relationship between international law, diplomacy and domestic politics.
(4) Teamwork and collaboration.
(5) ‘Reading’ institutions and players.

Ericka Gray, Negotiation Role Play – Pacrim Dispute, available through Harvard’s Project on Negotiation at http://www.pon.harvard.edu/shop/pacrim-dispute/
21. Subsidies and Countervailing Duties (Trade Department Role Play Part II)

Goals:

(1) Understanding the concept and the international law of subsidies and CVD.

(2) Deepening the understanding of the GATT.

(3) Deepening the understanding of the relationship between international law, diplomacy and domestic politics.

(4) Teamwork and collaboration.

(5) ‘Reading’ institutions and players.

22. Antidumping Duties (Trade Department Role Play Part III)

Goals:

(1) Understanding the concept and the international law of antidumping.

(2) Deepening the understanding of the GATT.

(3) Deepening the understanding of the relationship between (public) international law, diplomacy and domestic politics.

(4) Teamwork and collaboration.

(5) ‘Reading’ institutions and players.

23. Drafting a Clause in a Trade Treaty

Third drafting exercise.
In this short piece we provide an interactive, annotated International Business Transactions (IBT) syllabus. The introduction and annotations seek to connect the current discourse on experiential legal education to andragogy—the study of adult learning.

In 2013 we set out to re-develop a 3-credit IBT course. We applied various experiential pedagogical methodologies—developed initially to train Israeli air force pilots and later adapted to medical training and grounded in theoretical and empirical education research—to serve in a traditional IBT course. The goal was not only to develop legal skills such as negotiation, contract drafting, and client counseling but more importantly to impart knowledge including legal doctrine, legal theory, and policy considerations through the use of a series of structured, in-class experiences.

The piece includes embedded links as part of the interactive reading experience. It is therefore best viewed in Adobe.

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If you find this short piece useful you may also wish to view a short youtube video in which Orit and Maya walk through the recently launched Simulation and Training Center at the Ono Academic College, Israel, and discuss how high-quality experiential learning, based on andragogical studies, can be scaled up to provide meaningful experiences to high volumes of students. The video is elegantly titled “Prof. Maya Steinitz and Dr. Orit Shalomson in a Conversation About Providing High Quality, High Volume Experiential Learning in Law School” and available here.