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The Holy Grail? Designing and Teaching an Integrated Doctrine and Drafting Course

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I've long considered teaching doctrine and skills together in a single course to be the holy grail of legal education. If we could do so successfully, we might make significant strides in providing a legal education that better prepares our students to be practicing lawyers. In spring 2016, my colleague Professor April Cherry and I took the plunge, and collaboratively offered a course entitled Estates and Trusts: Doctrine and Drafting at our institution, Cleveland-Marshall College of Law. This essay describes our experience and lessons learned pursuing the holy grail.[1]

THE GREAT DIVIDE

In law school, it's not unusual for doctrinal and skills courses to have little to do with one another. The traditional Socratic law school class pushes students to examine, understand, and apply legal doctrine. But that class may not require students to apply the law outside of a hypothetical question or a final exam essay. Students rarely negotiate a contract in Contracts class or draft a will in Estates and Trusts. In many instances, students emerge little prepared to practice in the area of law they've spent a semester or a year studying.

In contrast, in the typical skills course, instruction focuses on developing practice skills such as legal research and analysis, trial advocacy, and transactional drafting. Since students must know the law to effectively analyze and argue legal issues or draft enforceable documents, some coverage of the substantive law is indispensable. Still, the law remains a secondary aspect of the skills-focused course. Students may gain relevant practice skills but only have an incomplete understanding of the underlying body of law.

These are broad generalizations, and fortunately there are exceptions.[2] However, the Great Divide was certainly more the rule than the exception at my institution when I began teaching legal writing and even as I embarked on this collaborative project many years later.

SILOS, STATUS, AND HISTORY

The siloing of doctrinal and skills courses is often accompanied by status differences between tenured and tenure-track "casebook" faculty and lower status (often long- or short-term contract) skills faculty. These status inequalities complicate the prospect of collaboration. Some lower status skills professors feel trepidation at the prospect of collaborating with a higher status colleague unless there is absolute trust and mutual respect.[3] Otherwise, the lower status professor runs the risk of becoming the sole or primary workhorse in the partnership.

Furthermore, the tension between doctrine and skills in the curriculum reflects a longstanding historical tension in legal education itself.[4] In the years following the Carnegie Report and as the profession has increasingly demanded law graduates to be practice ready rather than ready to learn, we remain largely attached to the old ways. I knew I wanted to move toward more integrated instruction, but short of overarching curricular reform, I wasn't sure where to begin.

STARTING SMALL

I finally found my inspiration when I taught my school's Legal Drafting course for the first time. My version of the course focused on transactional drafting, including drafting a contract and a will. While all my students had studied contracts, only some were familiar with estate planning law. I had to teach the law of wills in our jurisdiction in order to advise them on their will drafting assignment. While I incorporated a research component and the assignment was a success overall, I realized there had to be a better way.

I decided that Estates and Trusts would be a good laboratory for integrating doctrine and skills. I preferred to attempt integration in an upper level course because students would enter with the foundational skill set from their first-year experience. It seemed more feasible to attempt integration in an individual course rather than within the relatively fixed first-year curriculum. I wanted to start small, offering students the option to take a traditional subject in a non-traditional way. With my expertise in drafting but not in estate planning, I needed to find the right partner willing to embark on a co-teaching adventure with me.

CHOOSING THE RIGHT COLLABORATOR

In light of the need for compatibility and a relationship of equals, I knew I had to approach the right potential partner. I reached out to my colleague Professor April Cherry, who had taught Estates and Trusts as a traditional doctrinal course. I didn't know April very well at the time, but what I knew, I liked a lot. She's an accomplished scholar[5] and teacher without an ounce of off-putting egoism. She speaks up when it's important, and she supports both students and colleagues. I knew we both had quirky, artistic kids. Most importantly for me, she had always treated contract status faculty as equal and valued colleagues. I invited April to meet me for breakfast. We discussed the idea of an integrated course, and I asked if she would consider co-teaching with me.

April, very graciously, agreed. I later learned that she was hesitant at first, because estates and trusts wasn't her preferred teaching area, but one she had been pulled into when other faculty departed. Those faculty had since been replaced, and she had not taught the course in several years. At the same time, she was interested in trying something new, and she had had a previous positive experience co-teaching a course with several colleagues. In addition, lucky for me, she was interested in getting to know me better. I was thrilled to have April on board as a collaborator. Our next step was to design the course and propose it to our Curriculum Committee.

DESIGNING THE INTEGRATED COURSE

We decided at the onset that we wanted to give the doctrine and skills components of the course equal weight. We chose to use both a traditional doctrinal textbook[6] as well as a skills-focused textbook from the Skills & Values series.[7] Grading would be equally weighted between exams and writing assignments. We proposed a 5-credit course, compressing the 4-credit Estates and Trusts course with the 2 credits typically assigned to upper-level writing courses, as we anticipated that the drafting assignments would help to reinforce the underlying legal concepts. Because of the intensive teaching and grading requirements, we capped enrollment at 20 students.

We planned to be in the classroom together for the duration of each class session, to share instruction and contribute to the discussion. We would cover the traditional estates and trusts syllabus as well as incorporate a selection of research and drafting assignments, so that students could learn doctrine and then apply the law in a realistic and practical way.

TEACHING THE INTEGRATED DOCTRINE AND DRAFTING COURSE

As the semester of our first collaboration began, April and I developed a routine. We met on Fridays at a local coffee shop to review the previous week and plan the next week's classes. April shared how

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much she expected to cover of the doctrinal material, and I proposed coordinated research and drafting assignments. In addition, we both planned in-class active learning exercises for the class sessions. Most weeks we devoted approximately 60% of class time to doctrinal instruction and 40% to drafting, with some overlap for discussion.

Our teaching styles evolved as we taught this collaborative course. In a traditional course, April would have used a combination of lecture, Socratic discussion, case and statutory analysis, and group work, the latter to review the material she had covered. With our smaller class and reduced time for doctrine, she wasn't sure how to fit in all of the material. Over time, she moved from relying primarily on lecture and PowerPoint slides to also incorporating active learning techniques such as in-class problem sets designed to teach content in the first instance.

My challenge was that I almost always gave the second presentation in our lengthy class session.[8] While I might have relied on some lecture, I knew I couldn't keep the students' attention that way for long. I needed to incorporate more in-class activities to keep the students engaged. Some of these I could draw from the Skills & Values textbook, and others I created. As a result, in every class, students were actively learning both law and relevant practical skills. They engaged in such exercises as drafting descriptions of inheritance schemes in plain English, revising a poorly drafted durable power of attorney, and completing a graphic organizer to outline the distribution of trust assets in preparation for drafting trust provisions.

April and I each had a clear role in teaching the course, particularly with respect to graded assignments and exams. April prepared and graded the midterm and final exam based on the doctrinal content of the course,[9] and I prepared and graded the research and drafting assignments. The assignments, governed by state law, included completing probate filings, drafting a will and a cover letter to the client, preparing a durable power of attorney, and drafting a set of trust provisions. Since it would be impracticable to have a writing assignment to accompany every doctrinal subtopic, we relied on the in-class work to fill the gaps.

One of the most valuable aspects of co-teaching was being able to contribute throughout the class session. If April was discussing a subject that suggested a drafting challenge, I raised it. If we needed to clarify a difference between Ohio law and the same subject's treatment under the Uniform Probate Code, April chimed in. We were comfortable asking questions of each other, and that contributed to the students' comfort level in discussion as well.

TEACHING THE ADD-ON VERSION OF THE COURSE

April and I were both happy with the experience of teaching the integrated course for the first time. It was a great deal of work, however, as well as more time in the classroom for both of us. After learning what worked well and what could be improved, we wanted to teach the course again soon, so we could continue to apply lessons learned. However, personal and professional circumstances intervened, and we agreed the following spring would not be the best time for us to teach the course again. Our administration, though, felt strongly that students should have the opportunity to take our class, and we were asked to offer the course.

Because of our individual time constraints, we compromised and offered the course in a different configuration. In this version, April taught all of the enrolled students a traditional estates and trusts class. I then taught an add-on drafting section to about half of the class. April had the full 4 hours (100 minutes each class, twice a week) of the traditional doctrinal class. The add-on drafting section was only one additional hour per week, so I now faced the issue of reduced time for coverage. We adjusted grading accordingly, weighing students' grades in the drafting section 70% on exams and only 30% on writing assignments. We weren't in the classroom together. I didn't have the benefit of hearing April's lectures and discussions, and she wasn't present for my explanations and discussions of the assignments and in-class exercises. We still met regularly to coordinate the course.

We concluded that this divided class was far from the ideal integrated course we had envisioned. Half of the students weren't part of the drafting course at all. On the surface, drafting appeared to be a lesser component. I struggled to fit in-class work into one short session each week. I missed being in class for April's instruction, both for the interplay of ideas and for her expertise on doctrine. Similarly, April felt less equipped to answer questions regarding how the doctrine and drafting fit together. We had lost the in-class interaction that eased the connection of theory and practice for students and for ourselves.

STUDENT EXPERIENCE

Overall, we received positive feedback from students on both versions of the course. Students were excited for the opportunity to learn doctrine and skills together. Our first course was fully subscribed, and it was a challenge for our associate dean to direct some students into the doctrine-only section the second year. We consistently found students to be very engaged in the material because they had to grapple with it more practically. In the integrated course, we had ample time for in-class exercises to reinforce specific concepts, enhancing student learning. Despite the shortcomings of the divided course, we saw benefits. April found that students who were enrolled in the drafting section "asked better, more insightful questions about the law" and outperformed their peers on exams.[10]

There were difficulties, as well. Students embraced the 5-credit integrated course at first, but having one grade for 5 credits ultimately caused anxiety for some.[11] They found the lengthy class sessions tiring, and some expressed a preference for moving the drafting portion to another time in the week; however, I expect this would have reduced some of the benefits from the interplay of teaching doctrine and drafting in the same class session.

ADMINISTRATIVE MATTERS AND OTHER CHALLENGES

Some challenges arose outside of the classroom. We didn't anticipate the need to clarify prospectively how much teaching credit each of us would individually receive for the 5-credit course. While our law school doesn't follow a strict credit banking system, there is a procedure for obtaining a reduced course load after teaching an overload of credits. We discovered later that the administration took a different view than we did of the credits we each taught, despite the extra preparation and classroom time inherent in our innovative new course. We also had the sense of being victims of our own success when we tried to postpone teaching the course the second year, but were assigned to teach it nonetheless.

Resources may also be a concern. The full-time legal writing faculty at Cleveland-Marshall is responsible for teaching all sections of the first-year legal writing course. In any given semester we may lack sufficient numbers of full-time legal writing faculty to teach more than a course or two in our upper level writing curriculum.[12] Innovation requires resources of both time and personnel, and those can be in short supply in the current law school climate.

In addition, while this type of innovation is celebrated by many of our colleagues, it makes others uneasy. A legal writing colleague expressed concern that my activities would lead to all legal writing faculty being required to teach combined courses with doctrinal faculty. In the broader historical context of the place of legal writing in the legal academy, my colleague's concern is not entirely unfounded. There's a recurring temptation in law schools to "innovate" via their legal writing programs, in ways that burden lower status legal writing faculty and largely absolve their tenured colleagues of the hard work of embracing curricular change.[13] But forced partnerships run the risk of lacking the compatibility, shared commitment, and mutual respect that were essential to our successful collaboration.

LESSONS LEARNED

Through this experience, April and I learned how important it is to collaborate with a compatible partner. We anticipated that we would work well together, and we were right. We were also fortunate to become great friends in the process.

We learned that it's a lot of work to innovate, and the commitment to do so should be encouraged and rewarded institutionally. Professors planning to engage in such a collaboration should work with their deans ahead of time to reach an understanding regarding the efforts involved and how they will be acknowledged and credited by the institution.

Our course demonstrated that student demand exists for integrated courses. I believe the best pedagogical innovations arise through individual and joint initiatives within an atmosphere of academic freedom. "Top down" innovation likely would be less successful. At the same time, a successful experiment suggests further experiments and applications should follow. We learned that we will expand our students' experiences and opportunities when we continue to enjoy the freedom to try new pedagogical approaches.

Finally, is collaboration necessary? Could one professor teach the integrated course on her own? Certainly one well versed in both doctrine and drafting could do so with success. But collaboration itself holds inherent value. We found that the more we taught together, the more opportunities we had to learn from one another and enhance the overall educational experience for our students. Collaboration brings a richness of expertise and perspective to the classroom beyond what one faculty member can accomplish alone.

NOTES

1. This essay draws liberally from the presentation by April Cherry & Claire Robinson May, *The Holy Grail? Designing and Teaching an Integrated Doctrine and Drafting Course*, Southeastern Regional Legal Writing Conference, Stetson University College of Law, April 22, 2017. I am grateful to Professor Cherry for her invaluable contributions to the course, our teaching partnership, and this essay.

2. *See, e.g.*, Sherri Lee Keene, *Legal Writing Professors Without Borders: Exploring the Benefits of Integrated Teaching of Legal Writing, Doctrine, and More*, Second Draft, Fall 2016, at 36; Michelle S. Simon, *Teaching Legal Writing Through Substance: The Integration of Legal Writing With All Deliberate Speed*, 42 DePaul L. Rev. 619 (1992).

3. The hesitation to collaborate may be mutual. *See* J. Christopher Rideout & Jill J. Ramsfeld, *Legal Writing: A Revised View*, 69 Wash. L. Rev. 35, 82 (1994): "Creating a joint assignment is not a venture between equals in many schools, and that may cause problems. Some professors may not wish to work with legal writing professionals or may make them too keenly aware of their lower status."

4. *See generally* Linda H. Edwards, *The Trouble with Categories: What Theory Can Teach Us About the Doctrine-Skills Divide*, 64 J. Legal Educ. 181, 197-204 (2014).

5. *See, e.g.*, April L. Cherry, *Shifting Our Focus from Retribution to Social Justice: An Alternative Vision for the Treatment of Pregnant Women who Harm their Fetuses*, 28 J.L. & Health 7 (2015); April L. Cherry, *The Rise of the Reproductive Brothel in the Global Economy: Some Thoughts on Reproductive Tourism, Autonomy, and Justice*, 17 U. Pa. J.L. & Soc. Change 257 (2014).

6. Jesse Dukeminier & Robert H. Sitkoff, Wills, Trusts, and Estates (9th ed. 2013).

7. Roger W. Anderson & Karen Boxx, Skills & Values: Trusts and Estates (2009). The texts in this series are designed to help professors incorporate practical skills into their courses. The Skills & Values text has an accompanying web course that we were able to adapt as our comprehensive course page.

8. Because April taught another class immediately after ours, she generally presented first though she stayed for the entire class.

9. We considered incorporating a practice section into the final exam (similar to the Multistate Performance Test on the bar exam), but decided against it as too labor intensive for our first time teaching the course.

10. Cherry & May, *supra* note 1.

11. In some cases, the stress affected students' professionalism. We once came to class to find an anonymous note on the board requesting that we move either the midterm or the current drafting assignment's deadline.

12. Typically, Cleveland-Marshall hires adjunct legal writing faculty when needed to teach additional sections of upper-level writing courses. Adjunct faculty are less likely than full-time faculty to develop or teach a collaborative integrated course, due to time constraints.

13. In some instances, this approach may reflect a misapprehension regarding the academic freedom of non-tenure track faculty. Tenure is a means of protecting academic freedom, but not a prerequisite for holding it. *See* American Association of University Professors, *Recommended Institutional Regulations on Academic Freedom and Tenure*, https://www.aaup.org/report/recommended-institutional-regulations-academic-freedom-and-tenure, (2013 revision) at § 9(a) ("All members of the faculty, whether tenured or not, are entitled to academic freedom as set forth in the 1940 Statement of Principles on Academic Freedom and Tenure, formulated by the Association of American Colleges and Universities and the American Association of University Professors.").