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Simulated Legal Education: A Template

Thomas A. Robinson

Law schools are under increasing pressure to include skills training in their curricula. For many years I have taught an Estate Planning simulation course which teaches well, is sparing of professorial time, and is adaptable to other subject areas.

The central approach of the course is similar to practice: learn by doing. I have had students take the class without a background in income taxation, trusts, estates, or estate taxation. The student simulates practice by learning the subject area to solve the problem presented. Two key features of the course are having students prepare their own problems within the scope of given parameters, and having students critique each other's work at the end of the course. By the end of the course, each student has produced one plan, critiqued two others in depth, and prepared a searching question for all plans presented.

Course Description

Initial six weeks. During this period students absorb the elements necessary to create an estate planning problem, construct an estate plan, and draft its major instrument. Four things occur simultaneously.

First, I lecture on the overall estate planning process, the reshaping in light of the estate tax, the reshaping in light of the income tax, the use of various instruments in the estate plan, and the postmortem planning process.

Second, the students read on their own in the library.

Third, students complete small assigned projects, including filling out a gift tax form, doing a simple will, and (perhaps) redrafting a sample paragraph from an instrument.

And fourth, each student creates an estate planning problem. Each problem must result in a taxable estate (at least when the second spouse dies), involve a handicapped person, have two sources of income (labor and capital), and include a closely held business, partnership, professional corporation, or other suitable estate planning setting. It may also present a double-domicile problem.

Thomas A. Robinson is Professor of Law, University of Miami School of Law. A handout for the course described in this article is available directly from Professor Robinson. The author gratefully acknowledges the advice he received from many quarters—especially from Professor John Scott—when he first started teaching the Estate Planning course.

In general, the student constructs the planning problem with a family tree, a set of assets, and a series of objectives. For purposes of later discussion, each plan must have some special twist that will provide an interesting, novel, or difficult estate planning problem for class discussion.

As in diving, students receive points not only for their skill in execution, but also for the difficulty of the attempt. The novel twist makes it impossible to go to form books for a pat solution or to crib from other plans. It also ensures that students think through their problems. Novel twists over the years have included a bubble boy, Mafia clients, and cryonics.

The students must make appointments to see me at least once during the fifth week of class for consultation about their problems. By that time, each is required to have a tentative plan in mind.

Next four weeks. During this period, students discuss their problems with me. By setting the critical facts for the problems in advance, I am able to handle many of the questions by phone, while giving each student adequate time. Students can, and often do, reach me at home at nights and weekends. The completed estate plan is due at the end of the third week.

The major estate planning instrument is due one week later, so that students have time to work on the instrument separately.

Pick-up day. At noon on the Tuesday following the Friday when the major estate planning instrument is due, students pick up a photocopied package of all the students' problems, plans, and instruments. I ask students to purchase the package in lieu of a book for the course. The package includes the schedule of critiques, and I organize the package according to that schedule.

Critiques. In the last weeks of the course we hold critique sessions. Two students are designated to critique each person's problem, plan, and instrument in depth, and everyone is required to have at least one searching question or comment about each student's work. Each critique session takes about an hour. In general, the author of the problem/plan/instrument is not permitted to respond to critiques; the document speaks for itself.

I make tentative grading notes when I prepare for the critiques, weighing the problem about 25 percent, the plan about 40 percent, and the instrument about 25 percent. The student's critiques of other plans, including the "searching question," account for the final 10 percent.

Application to Other Courses

The class works exceedingly well. When it is limited to twelve students the workload is manageable, roughly comparable to a regular course of three semester-hours. Students find they become quite adept at doing what lawyers do. They are also frequently surprised at what they didn't learn in their substantive classes, and they are shocked at what they would have had to bill a real client for their work product: at \$150 per hour, a \$5,000 total is typical.

The format is easily adaptable to any simulation skills-training course. For example, in a divorce course, the parameters fixed by the teacher might be two children, \$1 million in combined assets, and no prenuptial agreement. Each student would then create a unique problem, produce a plan, and draft

the property settlement agreement. In a real estate course the instructor might say that the transaction had to involve more than \$5 million, include a lender, and so on. The student could be required to prepare a letter to the client outlining the appropriate solution, and to draft the appropriate agreement, such as a lease or contract of sale. In a movie contract course, the students might be required to come up with the kind of deal that they believe is typical in producing a film; draft a plan or a letter to the principal actor or director discussing the appropriate methods (including tax shelter) for the actor, director, and producer; and then prepare the major instrument, presumably a contract.