Assessing New Forms of Experiential Education: Which Opportunities for Students to Work in the Community Should We Adopt?

Friday, October 7, 2016
Midwest Clinical Conference
University of Tulsa College of Law

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Assessing New Experiential Offerings

1. Understand the Initial Proposal:
   - What is the general nature of the legal work and what specifically will the student work entail?
   - Who is responsible for developing, organizing, implementing, and monitoring the offering and where will the teaching, learning, and student legal work take place?
   - What is the teacher’s purpose in offering the course?

2. Identify Achievable and Unachievable Experiential Learning Goals:
   - What are realistically achievable experiential learning goals (both general goals and those specific to this offering)?
   - What experiential learning goals are not realistically achievable and, as a consequence, what is lost and what costs and risks arise?

3. Identify Possible Experiential Methods:
   - Who will supervise the student legal work and what will the structure and methods of supervision be?
   - Who will teach the course/seminar and what will the structure and methods of teaching be?
   - How will classroom learning connect with the students’ legal work?
   - What experiential learning methods (e.g. simulations, rounds, discussions, student presentations, journals, reflection papers, etc.) will support the identified learning goals?

4. Evaluate and Decide:
   - Given the risks and benefits, and considering ABA standards, ethical rules, and the overall experiential learning curriculum, should the school develop and offer the course?

5. Continue Developing the Offering:
   - How will the achievable experiential learning goals be prioritized?
   - How will experiential methods be incorporated and what teaching techniques will be used to implement them?
   - How will teaching goals be allocated, integrated, and reinforced across classwork, rounds, legal work, and supervision sessions?
   - What forms of assessment will address the extent to which teaching and learning goals are met?
Goals and Characteristics of Clinics

Goals

• Developing a Professional Identity—assuming the lawyer’s role, exercising professional responsibility for clients, integrating personal and professional identities, assuming responsibility for justice and systemic improvement

• Developing a Contextual Understanding of Client’s Legal Problems—understanding the way legal problems arise and are experienced by clients, understanding the client’s context, seeing through other’s eyes

• Developing a Critical Understanding of Legal Process—understanding facts and their uncertainty, understanding law and its ongoing development through lawyering and interpretation, examining law’s role in creating justice and injustice

• Developing Capacity to Think as a Lawyer—narrative thinking, strategic thinking, contextual thinking, critical thinking, building and applying theory, self-awareness

• Developing Capacity to Act as a Lawyer—exercising judgment, problem-solving, using law as an advocacy tool, building advocacy skills, identifying and naming skills, synthesizing and managing information, developing facts, forming client relationships, collaborating and relating to others

• Developing Capacity to Learn as a Lawyer—reflecting on experiences, identifying lessons and meanings of experiences, developing habits of learning, understanding one’s learning process, transferring skills to new contexts

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1 In the process of planning this session, we have grounded our understanding of experiential learning in the two types of offerings that, with much work over many years, have developed clarity around learning goals, pedagogical structures and methods, and the student experience: clinics and externships. This document focuses on in-house clinics and a parallel document, Goals and Characteristics of Externships focuses on externships. Both are written with an awareness that clinics and externships share many learning goals (even if realized in different ways) and that it is a best practice for law students to participate in both a clinic and an externship during their law school careers.
Characteristics

Student experience doing real legal work

- Clinic is a lived experience for the student. The student acts as a lawyer on a legal matter for a client. The student has ownership over and responsibility for the legal work, the relationship with the client, the decision-making with the client, and the results for the client.

Student experience of learning from doing real legal work

- Develop and use conceptual frameworks before, during and after lawyering tasks.
- Develop an ability to anticipate and act in the face of indeterminacy of law and fact.
- Develop transferable knowledge by generalizing from specific experiences to concepts used in lawyering frameworks. In this process, develop good lawyering habits and the stance of a reflective practitioner.
- Through reflection, naming and connecting experience to frameworks of understanding, begin constructing professional identity.
- Develop critical perspectives on the client’s experience, on lawyering and the profession, and on the institutional systems involved in a legal matter.
- Develop understanding of how contexts, such as relationships and community, matter in the lives of clients, and how societal structures such as culture, race, gender, poverty, inequality, exclusion and marginalization operate throughout the legal system.

Faculty role in teaching

- Intentionally chooses learning goals, designs and executes pedagogical structures, and chooses methods most likely to accomplish goals.
- Uses pedagogical structures that enable students to do legal work and to learn from having responsibility.
- Uses supervision frameworks that generate, facilitate, and support student responsibility and learning.
-Teaches a seminar that provides frameworks that draw on and guide student work.
- Leads rounds that facilitate peer learning and focus on reflection, strategic thinking, acting in the face of indeterminacy, transference, and other topics central to learning goals.

Faculty role in choosing legal matters and constructing setting and other environmental factors

- Designs system for selecting cases and/or projects, taking into consideration student capacity and learning goals.
- Teaches (alone or in partnership) all aspects of the clinical course and supervises legal work.
- Chooses, develops, and shapes the setting in which the legal work is done and the supervision framework is implemented.
  - Clients “belong” to the clinic at least for the period in which the students represent the client in the legal matter.
Goals and Characteristics of Externships

Goals

- Developing a Professional Identity—assuming the lawyer’s role, exercising professional responsibility for clients, exercising professional responsibility in a complex workplace; integrating personal and professional identities, and explicitly observing and critiquing the nature of legal practice

- Developing a Contextual Understanding of Client’s Legal Problems—understanding the way legal problems arise and are experienced by clients, understanding the client’s context, seeing through another’s eyes

- Developing a Critical Understanding of Legal Process—understanding facts and their uncertainty, understanding law and its ongoing development through lawyering and interpretation, examining law’s role in creating justice and injustice

- Developing Capacity to Think as a Lawyer—narrative thinking, strategic thinking, contextual thinking, critical thinking, building and applying theory, self-awareness

- Developing Capacity to Act as a Lawyer—exercising judgment, problem-solving, using law as an advocacy tool, building advocacy skills, identifying and naming skills, synthesizing and managing information, developing facts, forming client relationships, collaborating and relating to others, assessing and evaluating lawyering mindsets and styles

- Developing Capacity to Learn as a Lawyer—setting learning goals; reflecting on experiences, identifying lessons from and meanings of experiences, developing habits of learning, understanding one’s learning process, transferring skills to new contexts

2 For the purposes of this document, externships are defined by two salient characteristics: dual supervision and the immersion of students in practice settings, for the purposes of learning, outside the more controlled and scaffolded learning environment of the law school.
Characteristics

Student experience doing real legal work

- Externship is a lived experience for the student. Students assume some or all aspects of a lawyer’s role in a wide variety of practice settings. The student has varying degree of ownership over and responsibility for legal work, but functions at the placement under the immediate direction of a field supervisor (e.g., attorney or judge) rather than a faculty member.

Student experience of learning from doing real legal work

- Develop and use conceptual frameworks before, during and after lawyering tasks.
- Develop an ability to anticipate and act in the face of indeterminacy of law and fact.
- Develop transferable knowledge by generalizing from specific experiences to concepts used in lawyering frameworks. In this process, develop good lawyering habits and the stance of a reflective practitioner.
- Through reflection, naming and connecting experience to frameworks of understanding, begin constructing professional identity.
- Develop critical perspectives on the client’s experience, on lawyering and the profession, and on the institutional systems involved in a legal matter.
- Develop understanding of how contexts, such as relationships and community, matter in the lives of clients, and how societal structures such as culture, race, gender, poverty, inequality, exclusion, and marginalization operate throughout the legal system.

Faculty role in teaching

- Intentionally chooses learning goals, designs and executes pedagogical structures, and chooses methods most likely to accomplish goals.
- Uses pedagogical structures that enable students to do legal work and to learn from their work in the field.
- Includes a planned program for student reflection that is explicitly linked to learning goals.
- Teaches a seminar that provides opportunities, within the profession’s ethical parameters concerning communication of information, to reflect on and critique the experience in the field; establishes a sense of community for students; creates a place of peer learning for students, and delivers knowledge, information and classroom experiences that support and assist students in performing their field work.

Faculty role in choosing and shaping placement and working with field supervisors

- Designs system for selecting or screening potential placements, taking into consideration supervisory resources at the site, learning goals and the institutional resources the organization can devote to guiding the student’s experience and facilitating student learning.
- Teaches (alone or in partnership) the seminar and other non-placement related pieces of the externship course, such as other vehicles for reflection.
- Supports learning goals by ensuring that students receive from their placement supervisors appropriate work, instruction, feedback, mentoring and opportunities for reflection.
- Selects learning outcomes suited to the course, and the placements, as well as guides students in setting and pursuing individual goals, personal to their experience and career goals.
- Implements consistent checks to ensure a high quality educational experience.
- Provides information and training to field supervisors about program pedagogy, goals, and techniques in supervision and feedback.
- Solicits student feedback on the placement and field supervisor; seeks insight from field supervisors regarding externship partnership.
Descriptions: New Experiential Models

A. Add-on for additional credit to doctrinal or topical course

1. Nature of legal work – someone else’s legal matter conducted in a practice setting and attached to a course on a related topic

2. Student experience – students work on (or are participant observers of) legal practice in legal institution – could be unitary (everyone does the same work) or varied (students engage in different projects)

3. Educational Settings
   Supervision – by lawyer on site
   Class (seminar) and/or rounds – faculty member integrates student work on (or observations of) legal matter into the doctrinal/topical course (provides framework for understanding experience)

B. Faculty Projects as Courses

1. Nature of legal work – faculty member’s work in the real world, such as commenting on regulations, writing reports, litigating a case; may be at the law school or in a center or organization with which the professor is affiliated

2. Student experience – students “help” faculty member with his/her projects

3. Educational Settings
   Supervision – by faculty member or participant in faculty member’s project
   Class (seminar) and/or rounds – faculty member creates a class with a framework for understanding student work on his/her project in context of broader issues about law, legal system or lawyering

C. Short Legal Experiences (“pop-up”)

1. Nature of legal work -- discrete, short, clearly bounded legal activities (short-time-frame to complete legal tasks or unbundled services, such as advice/referral)

2. Student experience – students work on short legal activities that are responsibility of the legal organization

3. Educational settings
   Supervision – by faculty or lawyer from organization
   Class (seminar) and/or rounds – faculty member creates a class with a framework for understanding how student work on short activities relates to law, legal system, or lawyering
D. External Adjunct Practicums

1. Nature of legal work – legal matters of the organization at which students are placed

2. Student experience – do legal work assigned by lawyers at the placement

3. Educational settings

   Supervision – by lawyers from organization

   Class (seminar) and/or rounds – lawyer/adjunct at placement creates structured settings for teaching students what they need to know for their work at the placement and opportunities to discuss experiences
Provisions of the ABA Standards Affecting Law School Experiential Curriculum

The Council of the ABA Section of Legal Education and Admissions to the Bar is the Department of Education-designated accrediting agency for legal education. In most states, graduation from a Council-accredited law school is a necessary prerequisite to bar admission. The Council decides whether to accredit a law school based on application of the “ABA Standards and Rules of Procedure for Approval of Law Schools.” Law schools submit extensive data to the ABA Section every year and are formally reviewed for compliance with the Standards every seven years.

The Standards include both substantive provisions and “Interpretations,” which are intended to guide both law schools and the accreditors about the application of the Standards to all aspects of legal education. Chapter Three of the Standards governs the law school curriculum.

The Standards, and their Interpretations, have recently been amended in significant ways. Of particular importance to clinical and externship teachers are changes in the standards governing experiential education, all of which became effective as of fall, 2016. These new provisions require law schools to better insure that their graduates have some of the skills necessary for law practice.

The complete ABA Standards for Approval of Law Schools, as amended in August, 2016, are available on a link from the ABA Section of Legal Education homepage (http://www.americanbar.org/groups/legal_education.html) or directly at:
http://www.americanbar.org/groups/legal_education/resources/standards.html

Included here are excerpts from three of the accreditation standards that regulate the law school curriculum. These require that every law student receive six credits of experiential education and prescribe the content and methods of those experiential courses.

The standard that requires that students acquire some “professional skills:”

Standard 302. LEARNING OUTCOMES
A law school shall establish learning outcomes that shall, at a minimum, include competency in the following:

(a) Knowledge and understanding of substantive and procedural law;
(b) Legal analysis and reasoning, legal research, problem-solving, and written and oral communication in the legal context;
(c) Exercise of proper professional and ethical responsibilities to clients and the legal system; and
(d) Other professional skills needed for competent and ethical participation as a member of the legal profession.
The Standard that requires that each student take six credits in simulation courses, clinics, and/or externships ("field placements") and the common requirements for each of these courses:

Standard 303. CURRICULUM
(a) A law school shall offer a curriculum that requires each student to satisfactorily complete at least the following: …

   (3) 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. To satisfy this requirement, a course must be primarily experiential in nature and must:
   (i) integrate doctrine, theory, skills, and legal ethics, and engage students in performance of one or more of the professional skills identified in Standard 302;
   (ii) develop the concepts underlying the professional skills being taught;
   (iii) provide multiple opportunities for performance; and
   (iv) provide opportunities for self-evaluation.

The Standard that sets out the specific additional individual requirements for simulation courses, clinical courses, and externships:

Standard 304. SIMULATION COURSES, LAW CLINICS, AND FIELD PLACEMENTS
(a) A simulation course provides substantial experience not involving an actual client, that (1) is reasonably similar to the experience of a lawyer advising or representing a client or engaging in other lawyering tasks in a set of facts and circumstances devised or adopted by a faculty member, and (2) includes the following:
   (i) direct supervision of the student’s performance by the faculty member;
   (ii) opportunities for performance, feedback from a faculty member, and self-evaluation; and
   (iii) a classroom instructional component.

(b) A law clinic provides substantial lawyering experience that (1) involves advising or representing one or more actual clients or serving as a third-party neutral, and (2) includes the following:
   (i) direct supervision of the student’s performance by a faculty member;
   (ii) opportunities for performance, feedback from a faculty member, and self-evaluation; and
   (iii) a classroom instructional component.
(c) A field placement course provides substantial lawyering experience that (1) is reasonably similar to the experience of a lawyer advising or representing a client or engaging in other lawyering tasks in a setting outside a law clinic under the supervision of a licensed attorney or an individual otherwise qualified to supervise, and (2) includes the following:

(i) direct supervision of the student’s performance by a faculty member or site supervisor;

(ii) opportunities for performance, feedback from either a faculty member or a site supervisor, and self-evaluation;

(iii) a written understanding among the student, faculty member, and a person in authority at the field placement that describes both (A) the substantial lawyering experience and opportunities for performance, feedback and self-evaluation; and (B) the respective roles of faculty and any site supervisor in supervising the student and in assuring the educational quality of the experience for the student, including a clearly articulated method of evaluating the student’s academic performance;

(iv) a method for selecting, training, evaluating and communicating with site supervisors, including regular contact between the faculty and site supervisors through in-person visits or other methods of communication that will assure the quality of the student educational experience. When appropriate, a school may use faculty members from other law schools to supervise or assist in the supervision or review of a field placement program;

(v) a classroom instructional component, regularly scheduled tutorials, or other means of ongoing, contemporaneous, faculty-guided reflection; and

(vi) evaluation of each student’s educational achievement by a faculty member; and

(vii) sufficient control of the student experience to ensure that the requirements of the Standard are met. The law school must maintain records to document the steps taken to ensure compliance with the Standard, which shall include, but is not necessarily limited to, the written understandings described in Standard 304(c)(iii).
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SMALL GROUP EXERCISE WORKSHEET

Make a List of Achievable Goals:

Make a List of Unachievable Goals:

Identify Possible Methods:

- What Experiential Learning Methods Will Support the Achievable Goals?

- How Will Classroom Learning Connect with the Students’ Legal Work?
LAND USE AND COMMUNITY LAWYERING: ADD-ON EXTERNAL PLACEMENTS

Nature of legal work & educational experience:

A professor teaches a 3-credit Land Use and Community Lawyering seminar, which focuses on issues related to urban redevelopment, such as the state’s power of eminent domain, municipal rent-regulations, and local land use planning. The seminar class meets once a week for two hours, addressing a variety of substantive law topics. Additionally, students work one day a week at a placement, such as in the state attorney general’s real estate bureau, a legal services housing unit, or a community lawyering non-profit organization.

For the seminar, students work in small groups on case studies to generate knowledge about, and potential approaches to, a contested local land use issue. Each student writes a final report based on her contribution to the small-group project. In connection with their placements, students assist practicing attorneys on client matters and complete journal entries and an end-of-semester reflection addressing connections between the seminar and the work of the placement. Some placement attorney supervisors come to the class as guest speakers on specific topics for individual classes.

1. Nature of Legal Work

   Varies based on the individual student’s placement and the needs of placement supervisor

2. Student Experience

   a. Research and writing in connection with the placement supervisor’s cases

   b. Observation of lawyering process with placement supervisor in client meetings, negotiations with opposing counsel, oral advocacy in court, and office meetings with colleagues

3. Educational Settings

   Supervision – by placement attorney

   Class (seminar) – by faculty member who works to integrate student observations from journals into discussions on land use and community lawyering topics covered in the class and by occasional guest speakers from the placements.
SMALL GROUP OPTIONAL PROBLEM 2
REPRESENTING JUVENILES AFTER DISPOSITION: EXTERNAL ADJUNCT PRACTICUM

Nature of legal work & educational experience:

An adjunct professor has proposed a practicum entitled “Representing Juvenile Clients after Disposition,” which includes a classroom and a fieldwork component. The fieldwork is at Advocates for Youth, a non-profit that provides services to and advocacy for delinquent youth from the time kids are charged through release from custody. The adjunct is a staff attorney at Advocates for Youth. She and other attorneys at the organization represent juveniles in delinquency proceedings and provide continued representation post-disposition, drawing on the mentoring and other re-entry services provided through Advocates for Youth. In the two-credit fieldwork component, twelve students would work as “mentor-advocates” with lawyers representing incarcerated clients of the organization. Students would identify and secure re-entry services for the clients assigned to them.

1. Nature of the Legal Work

   Mentoring and informal advocacy regarding release planning, and services

2. Student Experience

   a. Interview and meet weekly with a client of the organization; develop and implement a re-entry plan

   b. Advocate within facility and with outside agencies for services to help during incarceration and after release

   c. “Shadow” the adjunct professor/staff attorney and other staff attorneys at Advocates for Youth in their cases

3. Educational Settings

   Supervision – A staff attorney at Advocates for Youth is assigned as placement supervisor to help each team with its re-entry plan. The adjunct professor/staff attorney is available for ad hoc meetings. All students and placement supervisors meet in a group every other week at Advocates for Youth to de-brief developments in cases.

   Class (seminar) – The adjunct professor/staff attorney teaches a two hour class at the law school using readings and discussion of substantive law and policy regarding juvenile detention and re-entry. There are also have outside guest panel presentations. The assignment for the course is a research paper on a topic related to post-Disposition and re-entry issues in juvenile delinquency proceedings