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## THE INTEGRATED LAW SCHOOL CURRICULUM

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## I. INTRODUCTION

In January 2014, the American Bar Association’s Task Force on the Future of Legal Education (hereinafter “Task Force”) stated that “[a]n evolution is taking place in legal practice and *legal education needs to evolve with it.*”<sup>1</sup> To this end, the Task Force recommended that the law school curriculum “needs to shift still further toward developing the competencies and professionalism required of people who will deliver services to clients.”<sup>2</sup> In fact, the Task Force emphasized that “[a] graduate’s having some set of competencies in the delivery of law and related services, and not just some body of knowledge, is *an essential outcome* for any program of legal education.”<sup>3</sup> To develop a competency-based program of legal education, legal educators must support “experimentation and innovation”<sup>4</sup> and recognize that the time for fundamental curricular changes has arrived. Importantly, however, responsible curricular reforms will reflect an evolution, not a revolution, from traditional law school pedagogy *and* adopt a careful blueprint for integration, not merely innovation.

To begin with, no law school should abandon the Socratic method. The ability to think analytically and construct logical arguments is the foundation upon which students are able to apply the law to a given set of facts, draft legal documents, and represent a client.<sup>5</sup>

<sup>1</sup> AM. BAR ASS’N, REPORT AND RECOMMENDATIONS: AMERICAN BAR ASSOCIATION TASK FORCE ON THE FUTURE OF LEGAL EDUCATION 29 (2014), [http://www.americanbar.org/content/dam/aba/administrative/professional\\_responsibility/report\\_and\\_recommendations\\_of\\_aba\\_task\\_force.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/report_and_recommendations_of_aba_task_force.authcheckdam.pdf) [hereinafter TASK FORCE ON THE FUTURE OF LEGAL EDUCATION] (emphasis added).

<sup>2</sup> *Id.* at 3.

<sup>3</sup> *Id.* at 26 (emphasis added).

<sup>4</sup> Memorandum from Dennis W. Archer, Chair, Am. Bar Ass’n Task Force on Financing Legal Educ., to Interested Parties (June 17, 2015), [http://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/reports/2015\\_june\\_report\\_of\\_the\\_aba\\_task\\_force\\_on\\_the\\_financing\\_of\\_legal\\_education.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/reports/2015_june_report_of_the_aba_task_force_on_the_financing_of_legal_education.authcheckdam.pdf).

<sup>5</sup> Kirsten A. Dauphinais, *Valuing and Nurturing Multiple Intelligences in Legal Education: A Paradigm Shift*, 11 WASH. & LEE RACE & ETHNIC ANC. L.J. 1, 5–6 (2005).

In short, analytical thinking is the *sin qua non* of effective advocacy. By the same token, students should not simply study legal theory and complete a final examination at the conclusion of each semester. Instead, the curriculum should effectively integrate doctrinal, practical, and clinical instruction to create a competency-based curriculum in which students practice like lawyers.

Responsible integration—and a curriculum in which students acquire core lawyering competencies—requires structural and sequential changes. Regarding structural changes, law schools must re-think the traditional “silo” model of legal education, in which the three pillars of legal education—doctrinal, skills, and clinical courses—are nestled into separate parts of the curriculum, as if one has no relation to the other. For example, traditional doctrinal courses often predominate the first year of law school, while skills courses emerge in the second year and live-client clinical instruction is emphasized in the third year. To some degree, this makes sense; students must learn foundational legal concepts and be trained to think like lawyers before they can apply the law to a set of facts, draft a legal document, or represent a client. But the mistake most legal educators make is not realizing that this paradigm can remain intact while simultaneously integrating doctrine, skills, and clinics across and throughout the curriculum. Simply put, the structural prerequisite for responsible integration involves collapsing the separation between the three traditional pillars of legal education and a commitment to building a bridge from law school to the legal profession.

With respect to sequencing, law schools should adopt a chronological model in which law students draft litigation and transactional documents—and complete real-world simulations—in the order they would in practice. As discussed in detail below, this can be accom-

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Lawyers use logical mathematical intelligence when they construct legal or factual arguments and analyze or strategize about legal situations. Courts and other legal institutions use logic to legitimize and guide their exercise of authority . . . . Law school pays particular attention to logical-mathematical reasoning. Students are required to construct abstract, logical arguments in the classroom and in their examinations. The stress law school places on logical-mathematical reasoning is understandable for at least two reasons. First, this is the intelligence traditionally associated with the single intelligence view. It remains the skill or aptitude most widely measured in traditional intelligence testing and upon which most American educators continue to focus. Second, whether or not it is the general intelligence of traditional theorists, logical mathematical reasoning plays an important role in the law . . . . [L]ogical thinking is a key aptitude every lawyer needs.

*Id.*

plished through a cross-curricular model. Under this approach, students are given a multi-issue fact pattern in the first semester of law school and proceed to litigate a fictional case from beginning to end. In the first semester, students perform a client interview, followed by a retention agreement, research assignment, predictive memorandum, and complaint. In the second semester, students draft a motion to dismiss, answer, discovery, and motion for summary judgment. In the third semester, students also draft an appellate brief. In so doing, students will understand the *context* within which law is practiced, gain experience in drafting multiple real-world documents, and acquire practical skills that can be transferred to other contexts.

Based on these principles, this Article provides a blueprint for a three-year law school curriculum that retains the traditional emphasis on doctrine, skills, and clinics, but also makes structural and sequential changes to ensure that the quality of legal education will build upon the past and prepare students for the future. Part II sets forth the building blocks upon which a truly integrated program of legal education should rest, including competency-driven learning outcomes, the adoption of formative and summative assessments, and a focus on context-based learning and metacognition. Part III includes a proposed three-year curriculum that, among other things, incorporates a cross-curricular model, six-semester required legal writing program, and five-semester clinical program. Ultimately, as the Task Force noted, responsible curricular reforms require “a reorientation of attitudes toward change, including market-driven change, by persons within the law school”<sup>6</sup> and recognition that “[l]aw schools, whatever their individual differences, have a basic societal role: to prepare individuals to provide legal and related services.”<sup>7</sup> Indeed, “fusing practice with theory and doctrinal instruction will best prepare students for the demands of practice in the twenty-first century.”<sup>8</sup>

## II. THE BUILDING BLOCKS OF AN INTEGRATED AND COMPETENCY-BASED CURRICULUM

The law school curriculum cannot be reformed without adopting learning outcomes that are relevant to law practice. To this end, the curriculum should be constructed on a foundation that emphasizes:

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<sup>6</sup> TASK FORCE ON THE FUTURE OF LEGAL EDUCATION, *supra* note 1, at 16.

<sup>7</sup> *Id.* at 26.

<sup>8</sup> Pamela Lysaght et al., *Integrating Theory with Practice at University of Detroit-Mercy*, 77 MICH. B. J. 684, 687 (1998).

(A) competency-based learning outcomes; (B) outcome-based formative and summative assessments; (C) context-based learning; (D) metacognition and skill transferability; (E) repetition of assignments and reflection upon performance; and (F) cohesion throughout doctrinal, skills, and clinical courses. Each is briefly discussed below.

#### *A. Competency-Based Learning Outcomes*

Law schools must establish competency-based learning outcomes and rely on those outcomes to measure the quality, rigor, and efficacy of the legal education program. For example, at the newly created Indiana Tech Law School, the faculty has adopted the following outcomes:

1. **Knowledge of Major Content Areas of Substantive Law:** Graduates will understand the fundamental legal principles from all first-year and upper-level doctrinal courses (required and elective), including courses on bar-tested subjects.
2. **Critical and Context-Based Analytical Skills:** Graduates will demonstrate the ability to think critically, which will include proficiency in, among other things, making logically valid arguments, synthesizing facts and legal principles, applying the law to the facts, distinguishing unfavorable facts and law, gathering and identifying facts, drafting persuasive factual and legal narratives, and analyzing legal issues in a variety of litigation and transactional contexts.
3. **Legal Research Skills:** Graduates will demonstrate the ability to comprehensively, effectively, and efficiently conduct legal research using digital and other media. This will include, but not be limited to, formulating a research plan, understanding the difference between binding and persuasive authority, locating primary and secondary sources, and efficiently researching case law, statutes, and administrative regulations.
4. **Persuasive Writing and Oral Communication Skills:** Graduates will demonstrate the ability to communicate persuasively in oral and written form, which will include proficiency in, among other things, drafting a persuasive factual narrative and legal analysis, rewriting and revision, distinguishing unfavorable facts and law, addressing counterarguments, making strategic concessions, making policy arguments, writing clearly and concisely, applying persuasive writing techniques to a variety of litigation and transactional documents, advocating before trial and appellate courts, and resolving disputes in alternative dispute resolution forums.
5. **Professional and Soft Skills:** Graduates will demonstrate proficiency in professional skills including, but not limited to, client interviewing, advising, counseling, interpersonal communication, negotiation, strategic decision-making, organization and time management, creativity, listening skills, “outside the box” thinking, problem-solving, working collaboratively and efficiently, and interacting with individuals from different cultural and socio-economic backgrounds.

6. **Professional Responsibility and Appreciation of Diversity:** Graduates will demonstrate cultural competencies, respect for diversity, and respect for the ethical requirements of the profession. Furthermore, graduates will gain an understanding of and incorporate into their practice the values, attitudes, and behaviors as reflected in the relevant rules of professional conduct, the policies of the American Bar Association, and the expectations of the profession.
7. **Self-Sufficiency and Entrepreneurship:** Graduates will demonstrate the ability to be self-sufficient and entrepreneurial, and possess the business, financial, and technological skills to establish a solo practice, attract and retain clients, manage and record costs, and practice competently, efficiently, and ethically.<sup>9</sup>

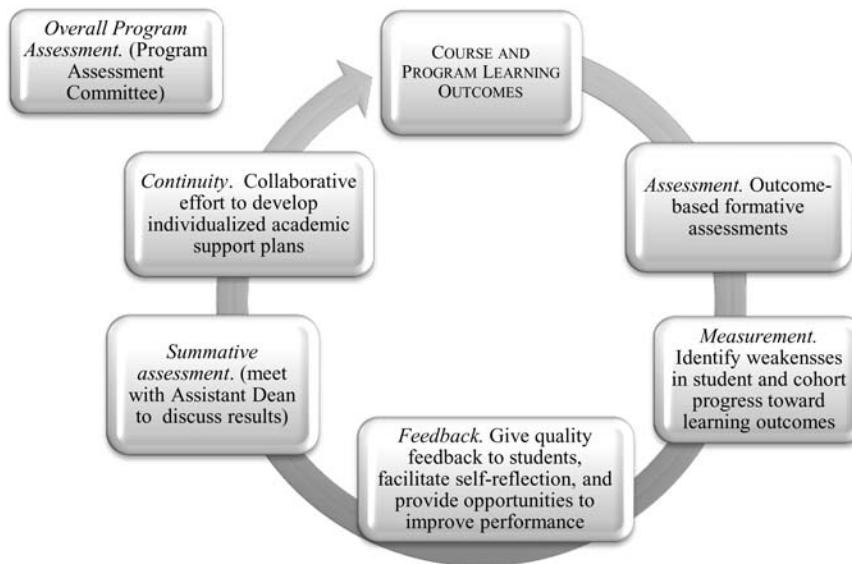
Simply put, the assignments students complete in law school should resemble the tasks they will perform in practice.

#### *B. Outcome-Based Formative and Summative Assessments with Feedback*

Formative and summative assessments should be used in most courses and be tied to the achievement of one or more learning outcomes. These assessments should be used to monitor student progress, identify areas in which students (and the class) require additional instruction, and evaluate the effectiveness of such assessments in achieving one or more stated outcomes. Additionally, faculty members should provide individualized feedback to students in a manner that permits students to reflect on their performance and to repeat assignments (e.g., re-draft a complaint or brief), based on that feedback. For example, feedback loops can be used to effectively coordinate assessments, feedback, reflection, and repetition. The diagram below provides a typical feedback loop.

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<sup>9</sup> Curriculum, IND. TECH LAW SCH., <http://law.indianatech.edu/academics/curriculum/> (last visited Jan. 25, 2016).



### C. Context-Based Learning

Students must understand the context within which law is practiced, the interrelatedness among different legal doctrines, and the interconnection between skills assignments and the lawyering process. As such, context-based learning focuses not merely on specific litigation tasks, but on the role and purpose of these tasks when representing a client in real-time conditions.<sup>10</sup> As one scholar explains, “[O]ne cannot effectively envision and reach one’s audience, understand the purpose of a document and its constraints, as required by the process view, unless one understands the discourse community of which one’s audience is a part and the context in which the document will be used.”<sup>11</sup> For example, it is one thing to draft an appellate brief in a first or second-year writing course. It is quite another (and far more useful) to draft an appellate brief after first drafting the litigation documents that precede it (e.g., complaint, motion to dismiss, answers, discovery, motion for summary judgment) and to do so under the time constraints that lawyers face on a daily basis. Context-based learning includes, but is not limited to:

- Drafting and understanding the role and purposes of common litigation documents, including the persuasive writing techniques that apply

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<sup>10</sup> See, e.g., Kathryn M. Stanchi, *Resistance is Futile: How Legal Writing Pedagogy Contributes to the Law’s Marginalization of Outside Voices*, 103 DICK. L. REV. 7, 14 (1998).

<sup>11</sup> *Id.* at 14–15.

to specific documents and the strategic judgments that lawyers make when crafting a legal argument, filing a counter-claim, or developing a theory of the case;<sup>12</sup>

- Learning how to work with “messy facts” when formulating a persuasive narrative;<sup>13</sup>
- Drafting documents under the time constraints that lawyers face on a daily basis;<sup>14</sup>
- Managing multiple cases simultaneously; and<sup>15</sup>
- Effectively communicating with clients and the court.<sup>16</sup>

By adopting a context-based approach to legal education, students will acquire real-world lawyering skills under the conditions that lawyers face on a daily basis.

#### D. *Metacognition and Skill Transferability*

Law schools should strive to develop metacognitive thinkers, which involves a focus not merely on attaining learning outcomes, but on the learning process by which students achieve those outcomes.<sup>17</sup> For example, in a legal writing course, faculty should focus on the writing process (i.e., drafting, re-writing, and revision), not simply the techniques needed to draft a specific legal document, and on the processes by which students drafted a quality legal document. By providing students with substantial instruction in metacognition, law schools can equip students with the tools to apply their skills to different factual and legal contexts and develop in each student an awareness of how he or she learns. This approach enables students to become self-sufficient learners and efficient problem solvers. As one scholar notes, “Students without metacognitive approaches are essentially learners without direction or opportunity to plan their learning,

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<sup>12</sup> See *id.* at 12.

<sup>13</sup> Adam Lamparello & Charles E. MacLean, *A Proposal to the ABA: Integrating Legal Writing and Experiential Learning Into a Required Six-Semester Curriculum that Trains Students in Core Competencies, ‘Soft’ Skills, and Real-World Judgment*, 43 CAP. U. L. REV. 59, 72 (2015).

<sup>14</sup> FIONA BOYLE ET AL., *A PRACTICAL GUIDE TO LAWYERING SKILLS* 157 (3d ed. 2005) (advising lawyers on how to draft under time constraints).

<sup>15</sup> Wallace Mlyneic & Haley Etchison, *Conceptualizing Student Practice for the 21st Century: Educational and Ethical Considerations in Modernizing the District of Columbia Student Practice Rules*, 28 GEO. J. LEGAL ETHICS 207, 257 (2015).

<sup>16</sup> Lamparello & MacLean, *supra* note 13, at 71.

<sup>17</sup> See, e.g., Scott Fruehwald, *How to Help Students from Disadvantaged Backgrounds Succeed in Law School*, 1 TEX. A&M L. REV. 83, 105–06 (2013).

monitor their progress, or review their accomplishments and future learning directions.”<sup>18</sup>

#### *E. Cohesion throughout Doctrinal, Skills, and Clinical Courses*

To design a curriculum in which assignments mirror law practice, faculty members must, among other things, collaborate on the nature and timing of such assignments. For example, litigation documents should be chronologically sequenced to mirror law practice, and students should receive the same (or substantially similar) instruction from legal writing faculty.

Likewise, assignments should not be unnecessarily duplicative, as this lacks pedagogical value and can compromise a curriculum’s effectiveness in teaching students a comprehensive set of lawyering competencies. For example, students should not be required to draft five complaints, three appellate briefs, three memorandums, one answer, one motion for summary judgment, and one appellate brief. Instead, they should draft two memorandums, two complaints, two motions to dismiss, two answers, two sets of interrogatories and document requests, two motions for summary judgment, and two appellate briefs. In so doing, the curriculum will give students a wider exposure to the documents they will encounter in practice while providing opportunities for feedback, reflection, and revision. Finally, and as discussed in detail below, doctrinal, practical skills, and clinical courses should not be disconnected or isolated from each other. Instead, students must understand the “big picture” of lawyering, which includes an appreciation of the interrelatedness among different legal doctrines and of the interconnection practical skills and the litigation (and transactional) process.

#### *F. Course and Program Evaluation*

Law schools should continuously monitor and assess their program of legal education to assess whether students are acquiring core lawyering competencies, including persuasive writing skills, strategic decision-making skills, and interpersonal skills. The framework below, which is based on a synthesis of three studies examining lawyering competencies, is an effective benchmark by which to evaluate whether a program of legal education is preparing students for law practice.

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<sup>18</sup>J. MICHAEL O’MALLEY & ANNA UHL CHAMOT, LEARNING STRATEGIES IN SECOND LANGUAGE ACQUISITION 8 (1990).

CRITICAL THINKING AND JUDGMENT	SERVICE ORIENTATION WITH CLIENTS	WORKING WITH OTHERS	COMMUNICATIONS	VIRTUES AND DISPOSITIONS
1. Core understanding of the law 2. Analysis and pragmatic problem solving 3. Strategic thinking 4. Creativity and innovation	1. Client rapport and strong relationships 2. Client commitment 3. Demonstrated value to client responsiveness	1. Effective teamwork 2. Effective planning and organization of work 3. Self-assurance	1. Listening 2. Persuasive speaking, writing and negotiation	1. Proactive initiative 2. Integrity and honesty 3. Self-awareness and reflection 4. Commitment to self-development toward excellence 5. Resilience and perseverance

In conducting this evaluation, law schools should monitor whether instructor feedback leads to improved performance and whether formative and summative assessments are successfully maximizing student-learning outcomes. In doing so, law schools should examine, among other things, the following: drafting exercises in the cross-curricular hypothetical (or other exercises); grading rubrics; course and teaching evaluations; formative, reflective, and summative assessments; and recording of simulations and practical skills exercises. With these foundational elements, legal educators can design an innovative curriculum that trains students to think, reason, write, and practice like lawyers. As the Task Force explained, an essential ingredient for a principled evolution in legal education requires “a framework for the *continual assessment of strengths and weaknesses and of conditions affecting legal education, and for fostering continual improvement.*”<sup>19</sup> Below is one approach that strives to accomplish these objectives.

### III. THE CURRICULAR BLUEPRINT: ASSIGNMENT, PRACTICAL SKILLS, COMPETENCY, AND PROGRAM SEQUENCING

Designing a fully integrated, competency-based, and experiential program of legal education requires *structural* and *sequential* changes to the curriculum.<sup>20</sup> Concerning *structural* changes, law schools must re-

<sup>19</sup> TASK FORCE ON THE FUTURE OF LEGAL EDUCATION, *supra* note 1, at 29 (emphasis added).

<sup>20</sup> KATIE FORD, COMPETENCY-BASED EDUCATION: HISTORY, OPPORTUNITIES, AND CHALLENGES, UMUC CTR. FOR INNOVATION IN LEARNING AND STUDENT SUCCESS (CILSS) 15

think the traditional “silo” model of legal education, in which doctrinal courses dominated the first year, followed by skills instruction in the second year, and live-client clinical experiences in the third year.<sup>21</sup> Although the three silos, or pillars of legal education, are indispensable components of the curriculum, they have largely remained independent of one another, with little collaboration among doctrinal, skills, and clinical faculty regarding pedagogy, assignments, and learning outcomes.<sup>22</sup> This has to change. Instead of being separated from one another, doctrinal, skills, and clinical courses should be fully integrated into all three years of the curriculum. After all, in law practice, there are no silos. The competent attorney knows that thinking, writing, and advocating are interdependent and inextricably linked.

Meaningful integration also requires careful and intentional *sequencing*.<sup>23</sup> Curricular sequencing has four components: (1) assignment sequencing; (2) practical skills sequencing; (3) competency sequencing; and (4) program sequencing.<sup>24</sup> *Assignment sequencing* refers to the chronological order in which exercises, problem sets, and skills exercises are incorporated into doctrinal courses. *Practical skills sequencing* involves the order in which real-world assignments and simulations, such as client interview and drafting of a complaint, are integrated into the first-year and upper-level curriculum. *Competency sequencing* refers to the manner in which students develop core lawyering competencies, including “soft” skills, such as strategic judgment and interpersonal communication. *Program sequencing* is the most challenging part of designing the curriculum, requiring law schools to carefully integrate assignment, practical skills, and competency sequencing in a manner that maximizes student and cohort learning outcomes. Below is a comprehensive blueprint for a curriculum that

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(2014), <https://www.umuc.edu/innovatelearning/upload/cbe-lit-review-ford.pdf> (quoting MATTHEW PRINEAS & MARIE CINI, ASSESSING LEARNING IN ONLINE EDUCATION: THE ROLE OF TECHNOLOGY IN APPROVING STUDENT OUTCOMES, NAT'L INST. LEARNING OUTCOMES ASSESSMENT 10 (2011), <http://www.learningoutcomeassessment.org/documents/OnlineEd1.pdf>).

<sup>21</sup> See generally Steven I. Friedland, *Adaptive Strategies for the Future of Legal Education*, 61 LOYOLA L. REV. 211, 216–17 (2015) (discussing the different styles of law school teaching).

<sup>22</sup> See *id.* at 221–22.

<sup>23</sup> *Id.* at 223–24; see generally Gerald Hess, *Heads and Hearts: The Teaching and Learning Environment in Law School*, 52 J. LEGAL EDUC. 75, 87–110 (2002) (providing suggestions about requiring careful and intentional sequencing).

<sup>24</sup> See COMM. ON DEVs. IN THE SCI. OF LEARNING, HOW PEOPLE LEARN: BRAIN, MIND, EXPERIENCE, AND SCHOOL 131–54 (John D. Bransford et al. eds., expanded ed. 2000).

integrates all four sequencing components in first-year and upper-level doctrinal courses.

#### A. Assignment Sequencing: *Incorporating Targeted Skills Exercises into Doctrinal Courses*

In doctrinal courses, students learn how to “think like lawyers” by studying foundational legal doctrines, such as personal jurisdiction in civil procedure and negligence in torts.<sup>25</sup> Grading is typically determined on the basis of an end-of-the-semester summative assessment, most likely an essay examination.<sup>26</sup> Although this approach is valuable to test knowledge of substantive law and application of that law to specific facts, it does not teach students how legal doctrines relate to the lawyering process. Furthermore, this approach does not give students the opportunity to receive individual feedback, reflect on their performance, and improve their skills.

For these reasons, doctrinal faculty should incorporate relevant skills and drafting assignments into their courses. For example, in Contracts, as students are studying principles of contract formation, they should re-draft a portion of a poorly written (and unenforceable) contract. Importantly, practical skills assignments should be carefully tailored to target the types of skills that are most relevant to a particular course, to ensure that faculty can cover all relevant doctrinal topics, and to avoid overburdening students. The chart below provides an example of how practical skills assignments can be incorporated into doctrinal courses.

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<sup>25</sup> Michael C. Dorf, *The Five-Minute Law School: Everything You Learn In Your First Year, More or Less*, FINDLAW (Aug. 3, 2005), <http://writ.news.findlaw.com/dorf/20050803.html>.

<sup>26</sup> Jeremy Byellin, *Law School Survival Tips: Secrets to Success on Essay Exams*, LEGAL SOLUTIONS BLOG (Sept. 24, 2015), <http://blog.legalsolutions.thomsonreuters.com/law-school-1/law-school-survival-tips-secrets-success-essay-exams/>.

COURSE	TOPIC	ASSIGNMENT
Criminal Law	Actus Reus; Mens Rea	Draft potential questions to ask a client charged with manslaughter
Contracts	Principles of contract formation (e.g., offer and acceptance, defenses)	Re-draft a poorly written contract
Civil Procedure	Pleading requirements ( <i>Iqbal-Twombly</i> ); personal jurisdiction; subject matter jurisdiction; venue	Draft the jurisdictional and fact sections of a complaint
Legal Writing I	Different types of legal reasoning; predictive writing techniques	Draft the discussion section of a predictive memorandum

By incorporating such assignments into first-year doctrinal courses, students will be forced to apply the law to a given set of facts and to analyze the law by drafting a real-world document.<sup>27</sup> This approach also lays the groundwork for building upon these skills in the cross-curricular hypothetical, which is described below.

#### B. Practical Skills Sequencing: *Building on the Assignments Completed in Doctrinal Courses*

Students must attain a minimum level of competency in a variety of lawyering skills. For example, a recent survey by BarBri® reported that 41% of attorneys and 51% of law school faculty believe that writing is the most important skill needed to practice law competently.<sup>28</sup> Furthermore, in a 2015 survey by LexisNexis®, partners at law firms throughout the United States criticized the skills of recent law gradu-

<sup>27</sup> See e.g., Christine M. Venter, *Analyze This: Using Taxonomies to ‘Scaffold’ Students’ Legal Thinking and Writing Skills*, 57 MERCER L. REV. 621, 633–34 (2006) (“The process of writing is usually the process whereby lawyers’ reasoning becomes apparent to students. This process is not unique to law. In response to a writing study conducted at the University of Hawaii, Manoa, about the relationship between writing and thinking, one student responded ‘as you write you have these epiphanies.’ The student was referring to seeing connections, linking ideas, and making sense of concepts while in the process of writing—connections that the student had been unable to make until the actual writing process. These situations exemplify the epistemic view of writing where writing comes to be no longer a product of thought, but becomes an integral part of thought.”)

<sup>28</sup> THE BARBRI GROUP, STATE OF THE LEGAL FIELD SURVEY 5 (2015), [http://www.thebarbrigroup.com/files/white-papers/220173\\_bar\\_research-summary\\_1502\\_v09.pdf](http://www.thebarbrigroup.com/files/white-papers/220173_bar_research-summary_1502_v09.pdf).

ates, particularly graduates' lack of familiarity with the litigation process:

Newly graduated law students and young associates have mastered basic research skills, however, employers are increasingly seeking specific advanced research and other practical skills that allow the newest members of their firms to participate in client matters more quickly. *Attorneys particularly noted that new attorneys' lack of understanding of how a litigation or transactional matter actually happens in real life requires them to review this foundational knowledge to increase associates' immediate value.* These skills allow new attorneys to immediately address real-world client matters and to more quickly bridge the gap between legal concepts and doctrines and practical application. In short, they would enter the practice of law armed with the skills they need to be of immediate value to their employers and to their clients.<sup>29</sup>

As described below, the cross-curricular model addresses this problem by requiring students to litigate a fictional case from start to finish in the order they would in practice.

### 1. The Cross-Curricular Model in the First-Year and Upper-Level Curriculum

A cross-curricular model is an innovative pedagogical tool that is designed to familiarize students with the lawyering process, including the skills needed to advocate effectively and ethically on a client's behalf.<sup>30</sup> On the first day of classes, students receive a multi-issue fact pattern that includes issues from all first-year doctrinal courses, and over the course of three semesters litigate a hypothetical case from start to finish.

The cross-curricular model is based on two principles: *horizontal* and *vertical* integration of doctrine and skills.<sup>31</sup> *Horizontal integration* simply means that assignments in the cross-curricular hypothetical are sequenced chronologically to mirror the order in which they are drafted in law practice.<sup>32</sup> Thus, in the first semester, students perform

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<sup>29</sup> LexisNexis, *Hiring Partners Reveal New Attorney Readiness for Real World Practice* 1 (2015), [https://www.lexisnexis.com/documents/pdf/20150325064926\\_large.pdf](https://www.lexisnexis.com/documents/pdf/20150325064926_large.pdf) (emphasis added).

<sup>30</sup> See Kirsten A. Dauphinais, *Using An Interviewing, Counseling, Negotiating, And Drafting Simulation In The First Year Legal Writing Program*, 15 TENN. J. BUS. L. 105, 111 (2013).

<sup>31</sup> Cf. Shahid Hassan, *Concepts of Vertical and Horizontal Integration As an Approach to Integrated Curriculum*, 5 EDUC. MED. J. e1, e2 (2013), <http://www.eduimed.com/index.php/eimj/article/view/163> (explaining that experiential clinical cases are key in creating vertical and horizontal integration for medical students).

<sup>32</sup> Cf. David G. Brauer & Kristi J. Ferguson, *The Integrated Curriculum in Medical Education: AMEE Guide No. 96*, 37 AMEE GUIDE 312, 314 (2015), <https://medicine.hofstra.edu>

an initial client interview, conduct legal research, and draft a retention agreement, predictive memorandum, and complaint. In the second semester, students draft a motion to dismiss, answer, first set of interrogatories and document requests, motion to compel discovery, and motion for summary judgment. The second semester concludes with an oral argument before a panel of fictional district court judges. In the fall semester of their second year, students review the fictional district court's decision on the motion for summary judgment, draft an appellate brief, and perform oral arguments before a fictional appellate court. The chart below sets forth the assignment sequencing for all first year courses.

Vertical integration simply means that assignments in the cross-curricular hypothetical are timed to coincide with specific topics that are being covered in doctrinal courses.<sup>33</sup> For example, in Contracts, students study contract formation principles (offer, acceptance, and consideration) immediately before drafting a retention agreement for their fictional client. In Civil Procedure, students study personal jurisdiction, subject matter jurisdiction, venue, and pleading rules immediately before drafting a complaint. Below is the cross-curricular hypothetical used at Indiana Tech Law School in the 2015–2016 academic year.

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Shannon Smith, a resident of Portland, Maine, has had a difficult year. In the past year alone, Shannon separated from her high school sweetheart and husband of five years, Mark Savage, who is now a resident of Pierre, South Dakota. They have one child, Aurora, who is two years old.

The divorce stems from Shannon's discovery that Mark was having an extramarital affair for the past eleven months with her stepsister, Scarlet, who resides in Pierre with Mark. Shannon also discovered that Mark had been withdrawing money from the their joint checking account, which Shannon and Mark opened five years ago at *Blue Fish Savings*, a regional bank with its primary office in Portland, and satellite offices in Concord, New Hampshire, and Providence, Rhode Is-

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.edu/pdf/faculty/facdev/facdev\_The%20integrated%20curriculum%20in%20medical%20education.pdf (explaining how horizontal and vertical integration are applied in the medical school context).

<sup>33</sup> *Id.*

land. Shannon and Mark opened the account primarily to obtain a mortgage in the amount of \$275,000 to purchase a new home in Portland. Currently, Mark and Shannon still owe *Blue Fish Savings* \$167,238.00, although they are currently in the process of trying to sell their house. Mark withdrew a total of \$22,897.00 from their joint checking account, all of which was without Shannon's knowledge.

After their separation, Shannon returned to her hometown of Belfast, Maine. Shannon lived in Belfast until the age of eighteen, but left after graduating from *Fort Wind High School*, where she was a star on the women's rugby team. Shannon always dreamed of attending college outside of Maine, but after Mark proposed at their senior prom and presented her with a 1.5 carat diamond ring, Shannon decided to get married and have a family.

Beset by grief, Shannon contacted her best friend, Kelly Marks, who had moved from Belfast to Buffalo, New York, several years ago to take a job as a personal trainer for the Buffalo Bills football team. Shannon asked Kelly if she could stay with her indefinitely while dealing with the divorce and transitioning to a new life. Having been divorced three times, the most recent of which was with the Buffalo Bills' third-string quarterback, Kelly understood and welcomed Shannon into her home.

After a few days in Buffalo, Shannon contemplated her future and decided that it was time to attend college to pursue a degree in quantum physics. Shannon took the Scholastic Admissions Test and received an average score of 790 on each section, which placed her at the 99th percentile. Based on her score, Shannon applied to some of her 'dream' schools, including *Kale University*, which was ranked by *U.S. News and World Report* as the top undergraduate institution in the United States. After a two-month wait, Shannon went to her mailbox and saw a large envelope from *Kale University*. Shannon ripped open the letter and, to her amazement, received an offer to matriculate in the fall 2015 entering class.

There was only one problem. Shannon was broke. Not only did Mark take thousands of dollars from their joint checking account, but she discovered that Mark had opened two credit card accounts in both of their names, each of which had a credit line of \$10,000.00. Mark quickly reached the limit on both cards, and proceeded to default on his payments. When Shannon checked her credit score, it was 495, which is considered very poor.

Shannon needed a way to get money, as no bank would lend her money for college, and the Federal Government, having recently revised its federal student loan program, could only fund one-quarter of her education. Shannon contacted *Kale University*, but the Financial Aid Office informed Shannon that the estimated value of her home in Portland rendered her ineligible for financial aid. Unable to obtain funding for her education, Shannon resigned herself to the fact that her educational goals would be delayed indefinitely.

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A few nights later while surfing the Internet, Shannon discovered the following advertisement:

*Free Money! You'll Get More the Lower Your Score!*

Shannon clicked on the advertisement and was taken to a webpage operated by *Nadoff Financial Services*, a credit union based in Tupelo, Mississippi.

On the upper right corner of the screen in bright yellow letters was the following statement:

*Everyone Approved! Apply Now and Get a Decision in Three Minutes!*

Shannon clicked on a link that took her to a one-page application that asked for basic information such as her name, address, income, marital status, reason for needing the loan, and the amount requested. Shannon typed, "To fulfill my dream of getting a college degree," and requested \$250,000.00, to the approximate cost of attending *Kale University* for four years.

After clicking on a link that said *Get My Money Now*, a song began to play in the background, which Shannon immediately recognized as *The Impossible Dream*, popularized by Elvis Presley. Shannon almost fell off of her chair when the following words appeared on her screen: *Shannon, Dreams Do Come True! You're approved for \$250,000.00! See below for payment terms!*

On the next page, Shannon reviewed the payment schedule, which was for a term of fifteen years at 2.9 percent interest, with monthly payments of \$1,725.00. Amazingly, Shannon would not be required to begin making payments until the fall of 2019, after she completed her degree at *Kale University*.

Shannon's mouse hovered over a link at the bottom of the screen that said, *Accept Loan and Get Your Funds in 24 Hours*.

Something told her to hesitate.

*Maybe this is too good to be true*, she thought.

Shannon decided to call *Nadoff Financial Services* and speak to a financial services representative. After speaking with a representative for about ten minutes, a man named "Tom," who identified himself as the company's Chief Operating Officer, joined the call.

"I'm just worried that there's some catch to this whole thing," Shannon said. "By the way, what's your full name Tom?"

"People just call me Tom," he said in a cheery voice. "No catches here Shannon. We're all about helping the underdogs to achieve their impossible dreams, and we want to make your dream come true."

"Yes, but I—"

"No need to worry," Tom said. "Good people live in Tupelo!"

"Not in Portland," she said. "Or Pierre."

Shannon was slightly reassured by the phone call but remained skeptical. Before accepting the loan, Shannon did a Google search of *Nadoff Financial Services* on Google and discovered two reviews. The first stated:

*You really do get free money! I was able to buy a house, two new cars, and a boat for my son's sixteenth birthday! There are not many good people left in the world, but you'll find them in Tupelo at Nadoff's Financial Services.*

*A Believer*

*Uyo, Nigeria*

The second review stated:

*If there's ever an argument against capitalism, this company is it. I've never seen such a blatant scam that takes advantage of vulnerable people at difficult times in their lives. I hope the feds shut this thing down before more people's lives are ruined.*

*A Concerned Citizen*

*New York, New York*

This review startled Shannon, but when her eyes met the *Kale University* view book lying next to her computer, Shannon knew she had to

take a risk. She accepted the loan, celebrated with Kelly that night at *The Impossible Dream Bar and Grill*, and prepared for a bright future.

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Unfortunately, in the midst of her excitement, Shannon forgot to read the small print that was located under payment schedule on *Nadoff Financial Services*' website. The small print stated:

As part of the loan application process, you will be assessed a \$1,500 processing fee. In addition, as a show of good faith, you agree to pay the first installment of this loan within 30 days of receiving your funds. Failure to timely make the "good faith payment" will result in immediate default, and entitle *Nadoff Financial Services* to employ all efforts necessary to collect the loan, including, but not limited to, demanding payment via telephone, email, facsimile, and in-person meetings, and commencing legal action to recover all amounts due, including costs and attorneys' fees. **The borrower agrees that all legal proceedings will take place in Tupelo State Court before the Honorable Rosemary Nadoff.**

One month before Shannon was to begin classes at *Kale University*, she received a letter in the mail from *Nadoff Financial Services* that stated:

*Dear Shannon,*

*We hope you're excited to begin pursuing your impossible dream. However, we must inform you that you are in default on your loan. Please see the attached document, which describes the "good faith" payment that was required within thirty days of signing the loan.*

*As a result of your failure to comply with the loan's express and unambiguous terms, the entire amount of your loan is due immediately. To avoid legal action, please remit a total amount of \$271,500.00, which reflects the total loan amount, the \$1,500 processing fee, and a \$20,000 penalty for acting in "bad faith."*

Shannon was stunned, and began sobbing. Kelly rushed into Shannon's room.

"What's wrong, did that jerk call you from Pierre?"

"No," Shannon sobbed. "I got scammed in Tupelo."

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Two days later, Shannon received a second letter, this time from Arnold Myers, III, Esq., a partner in the prestigious Tupelo law firm of *Myers, Jackson, Biloxi, Edwards, & Golden, LLP*. Inside the envelope was

a complaint filed in Tupelo State Court, and a notice that a lien had been placed on Shannon's house in Belfast, Maine.

Shannon also received a letter from the chambers of the Honorable Rosemary Nadoff. The letter was very brief, and stated as follows:

*Dear Shannon:*

*Tupelo is a proud community of patriotic, law-abiding citizens. We don't like being scammed by people from the North. See you in court.*

*Some dreams are impossible,*

*Rose*

Shannon threw the letters into the air and screamed at the top of her lungs. Kelly ran onto the porch to comfort Shannon and reassure her that everything would be alright.

"Listen to me," Kelly said. "You are going to start classes at *Kale*, and I am going to get you the best attorney in the world. I know a firm in Concord that loves exposing people like those folks in Tupelo. You'll get that jerk in Pierre too."

"You don't understand," Shannon said. "A divorce, bad credit, scam artists . . . my life is ruined. Not even *Kale* can make it better."

"Just go," Kelly said. "You can't give up on your dreams."

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After days of introspection, Shannon decided to move forward and attend *Kale*. Before driving to Blue Haven, Connecticut, where *Kale's* main campus was located, Shannon returned to her home in Portland to retrieve several pieces of furniture that she and Mark had left behind. Shannon intended to use the furniture for an off-campus apartment that she had reserved a few blocks from *Kale's* campus.

As Shannon struggled to put a small sofa into the back of a U-Haul truck that she had rented, a midnight blue Porsche sped up and stopped abruptly in front of the house.

The door opened. Mark emerged, shouting and waving his hand in Shannon's face.

"Some jerk put a lien on our house because of you," he said. "Now I cannot get my black American Express card!"

“You mean you can’t get another diamond ring for Scarlet,” Shannon quipped.

Mark inched closer to Shannon.

“Fix it or I’ll fix you,” he said with a resolute voice.

Shannon began to fear for her safety, and ran inside of their house.

Mark followed her, screaming so loudly that the neighbors came out of their homes and walked toward the front door.

When Mark stepped inside of their house, Shannon was nowhere to be found.

“Come here, Shannon, I promise I won’t hurt you,” Mark said in a calm and reassuring voice.

Shannon emerged from a closet next to the kitchen, and Mark immediately grabbed both of her arms and began to shake her violently, screaming that Shannon “would pay for this.” After a brief struggle, Shannon managed to free herself from Mark’s grasp and race into the kitchen, where she opened a drawer and took out an ice pick that she and Mark had purchased on their honeymoon five years earlier in Sweetwater, Texas. When Mark saw Shannon grab the ice pick, he panicked and sprinted toward the door. Shannon followed him and hurled the ice pick at Mark as hard as she could.

Unfortunately, the ice pick only grazed Mark, but it struck an elderly woman who had come out of her home in response to the altercation between Mark and Shannon. The ice pick struck the elderly woman in the chest. An ambulance arrived thirty-one minutes later and the elderly woman was rushed to *Portland General Hospital*, where she underwent emergency surgery.

During the surgery, however, the anesthesiologist, a young man who had recently graduated from *Kale University Medical School*, injected the woman with an excessive dose of Propofol, which caused her to go into cardiac arrest and die on the operating table.

The next day, Shannon was arrested by the *Portland Police Department*, and later freed on \$25,000 bail.

When Shannon returned to Concord, Kelly informed her that she had just spoken with Juliette Sanders, a managing partner in the Concord, New Hampshire law firm of *Waldorf, Vanderbilt, Rockefeller, & Baldwin*.

*win, LLP.* The firm, which specializes in family law, litigation, and criminal defense, is comprised of approximately 150 attorneys, and has satellite offices in Los Angeles, California, Chicago, Illinois, and Pierre, South Dakota. In fact, a few months earlier the firm had represented Mark in a criminal proceeding, where he pled guilty in Pierre Municipal Court to one count of driving while under the influence of alcohol.

Ms. Sanders indicated that the firm would be willing to represent Shannon: (1) in connection with her divorce; and (2) the lawsuit involving *Nadoff Financial Services*. Ms. Sanders stated that they would need more facts about Shannon's incident with Mark to determine if representation in the matter would be appropriate.

"I don't think any lawyer can help me," Shannon said. "But I guess I have no choice. I'm going to be spending the foreseeable future in courtrooms in Belfast, Pierre, and Tupelo."

"Don't give up on your dreams," Kelly said, reassuringly. "They really do come true."<sup>34</sup>

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#### FIRST SEMESTER SEQUENCING

COURSE	ASSIGNMENT AND DUE DATE
Criminal Law	Client Meeting (Sept. 8)
Contracts	Retention Agreement (Sept. 17)
Legal Research	Research—Fraud, Personal Jurisdiction (Sept. 24)
Experiential Legal Writing I	Predictive Memorandum (Oct. 8)
Civil Procedure	Complaint by <i>Nadoff Financial Services</i> (Nov. 10)

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<sup>34</sup> Cross-curricular hypothetical from Ind. Tech. Law Sch. (2015–2016) (on file with author).

## SECOND SEMESTER SEQUENCING

COURSE	ASSIGNMENT AND DUE DATE
Experiential Legal Writing II	Motion to Dismiss (Feb. 9)
Property	Answer (Feb. 18)
Torts	First Set of Interrogatories and Document Requests (Mar. 11)
Foundations of legal Analysis II	Motion to Compel Discovery (Apr. 1)
Experiential Legal Writing II	Motion for Summary Judgment (Apr. 15)

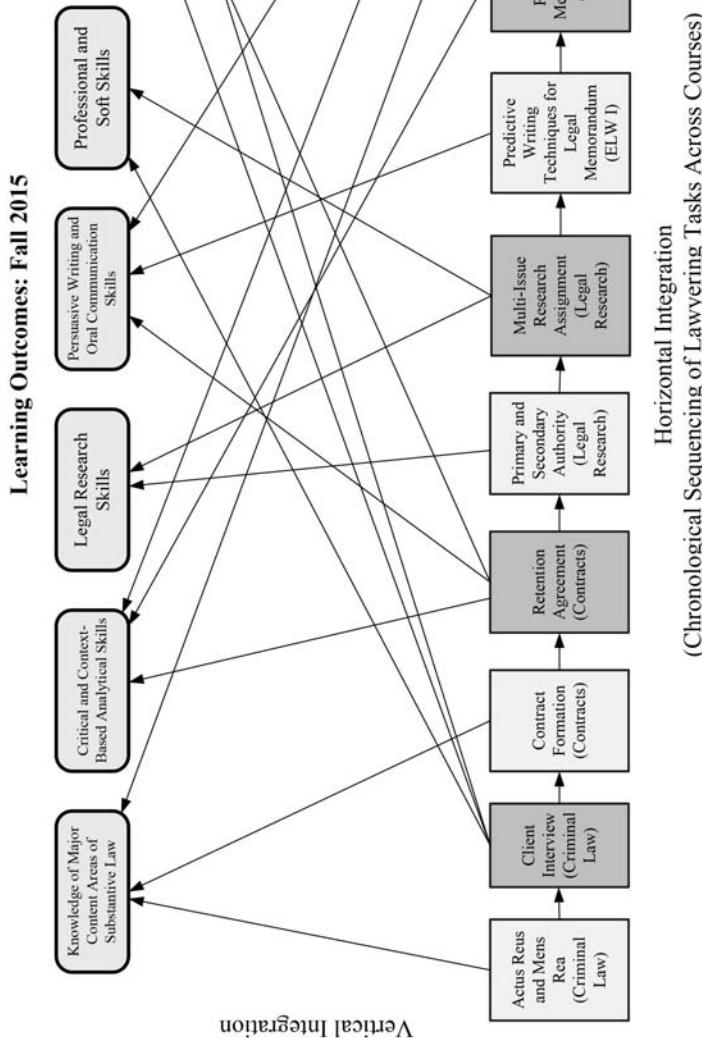
The chart below demonstrates how topics and assignments are sequenced across first-year courses.

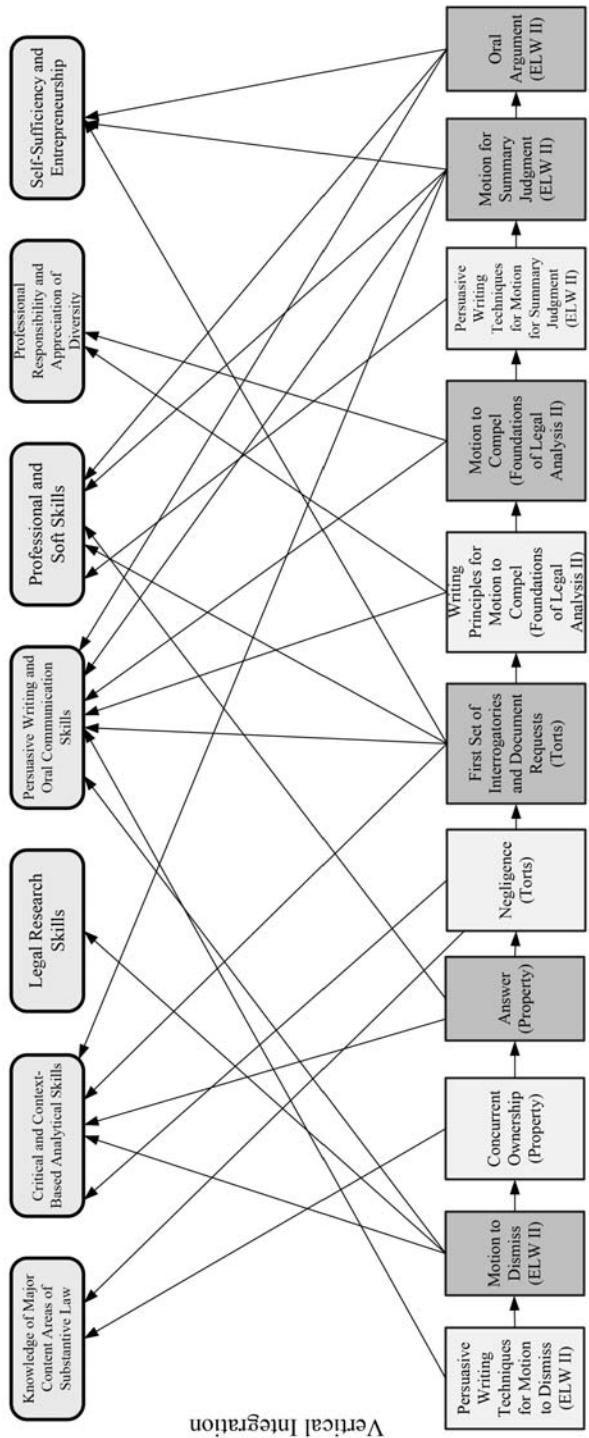
**INDIANA TECH LAW SCHOOL**  
**1L INTEGRATION OF THE CROSS-CURRICULAR MODEL**

Fall 2015 Semester	Criminal Law	Contracts	Legal Research Component	Experiential Legal Writing I	Civil Procedure
Aug 24-Aug 28	Intro, INFO & Justifying Punishment	Basis of Contractual Obligation	Relative Weights of Authority	Courts, Precedents, Rule & Pre-Assessment	Due Process; Notice & Opportunity
Aug 31-Sep 5	Actus Reus	Basis and Consideration	Case Law	Rule Structure & Synthesis	Due Process; Hearing & Access
Sep 7-Sep 11	Client Interview	UCC	Binding and Persuasive Authority	Rule Explanations & IRAC/CRAC	Due Process; Personal Jurisdiction
Sep 14-Sep 18	Rape & Intentional Homicide	Promissory Estoppel & Restitution	Research Design and Planning	Rule Applications and Organization	Due Process; Contracts, Cyberspace
Sep 21-Sep 25	Intentional & Unintentional Homicide	Retainer Agreement	Electronic Legal Research & Citation	Fact Gathering & Selection	Subject Matter Jurisdiction & Venue
Sep 28-Oct 2	Felony Murder & Homicide Review	Statute of Frauds & Parole	Multi-Issue Research	Question Presented, Brief Answer & Facts	Subject matter Jurisdiction & Venue
Oct 5-Oct 9	Homicide & Midterm Review	Interpretation, Implied Terms & Warranties	Bluebook Citation Continued	Legal Analysis Section	Complex Litigation, Venue & Forum
Oct 12-Oct 16	Midterm & Harm-Causation	Avoiding Enforcement	Secondary Sources	Predictive Memo - Discussion Section	Rule 8: Allegations
Oct 19-Oct 23	Attempts	Avoiding Enforcement & Justification for Non-Enforcement	Statutes & Citators	Predictive Memo Feedback loop	Rules 8 & 11: Policing the Proceeding
Oct 26-Oct 30	Conspiracy	Justification for Non-Performance	State Statutes	Discussion Section revisited	Rule 20: Discovery Tools & Scope
Nov 2-Nov 6	Capital Punishment & Self-Defense	Third Parties & Consequences of Non-Performance	Identifying Relevant Law	Writing and Rewriting: Macro and Micro	Complaint
Nov 9-Nov 13	Defense of Property & Law Enforcement	Consequences & Expectation Damages	Memo 3 Research, Research Planning	Brainstorming Memo 3	Rule 20: Discovery Tools & Scope
Nov 16-Nov 20	Duress, Insanity & Intoxication	Expectation Damages & UCC Alternative	Pull it all together	Memo 2 Feedback loop	Judge, Jury, Joinder, Class Actions
Nov 23-Nov 27	Theft & Related Offenses	Alternative to Expectation Damages	Citation Review	Effective Oral Presentations	Joinder & Class Actions
Nov 30-Dec 4	Review	Alternatives to Expectation Damages & Review	Review	Oral Presentations and Memo 3	Repose & Precluding Claims & Issues

Spring 2015 Semester-->	Experiential Legal Writing II	Property	Torts	Foundations of Leg Analy II	Experiential Legal Writing II
Jan 11-Jan 15	Persuasive Writing Overview	Introduction to Property	Assault and Battery	Reviewing First Semester Exam Performance	
Jan 18-Jan 22	Drafting Motions to Dismiss, Part I	Life Estates & Defeasible Estates	Intentional Infliction and False Imposition	Reviewing First Semester Exam (cont'd)	
Jan 25-Jan 29	Drafting Motions to Dismiss, Parts II & III	Future Estates	Trespass to Land	Know your audience & Rule statements	
Feb 1-Feb 5	Drafting Motions to Dismiss, Parts IV & V	Rule Against Perpetuities	Trespass to Property and Conversion	Facts, Inferences & Analysis	
Feb 8-Feb 12	Motion to Dismiss	Concurrent Ownership	Negligence-Duty	Analysis: Reasoning & Counterarg.	
Feb 15-Feb 19	Drafting Discovery & Answer	Recording & Title Searching	Negligence-Special Duties	MC Assessment: Property & Torts	
Feb 22-Feb 26	TO RIGHTMOST COLUMN-->	Answer	Negligence-Breach & Cause in Fact	Critical Thinking: MC Assessment	Motions in Limine, Parts I & II
Feb 29-Mar 4		Selling Property	Negligence - Proximate Cause	Critical Thinking: MC Assessment	Discovery & Motion for Summary Judgment
Mar 7-Mar 11		Restraints on Alienation	Discovery	Reviewing Torts/Property Midterms	Motion for Summary Judgment & Motion in Limine
Mar 14-Mar 18		Spring Break	Spring Break	Spring Break	Spring Break
Mar 21-Mar 25		Eminent Domain	Contributory Negligence	Cross-Curricular: Designing Motion to Compel	Motion for Summary Judgment & Draft Feedback
Mar 28-Apr 1		Nuisance	Comparative Negligence	Motion to Compel	The Rewriting Process
Apr 4-Apr 8		Landlord-Tenant	Joint & Several Liability & Contribution	Motion for Summary Judgment	Revision & Oral Argument, Part I
Apr 11-Apr 15		Adverse Possession	Assumption of the Risk	Practice Exam	Revision & Oral Argument, Part II
Apr 18-Apr 22		Zoning and Takings	Age, Intoxication, Other Defenses	Practice Exam Review	Motion for Summary Judgment (with oral assessments)

At the conclusion of the first year, faculty members draft a fictional decision on the summary judgment motion, and in Legal Writing III (discussed below), students draft an appellate brief. The sequencing of assignments in the cross-curricular hypothetical furthers the foundational components of a real-world curriculum by maximizing learning outcomes, ensuring cohesion, context-based learning, emphasizing repetition and skills transferability, and providing feedback through *practical* formative and summative assessments. The diagrams below summarize how each assignment in the cross-curricular hypothetical corresponds to one or more of Indiana Tech Law School's learning outcomes.



**Learning Outcomes: Spring 2015**

**Horizontal Sequencing of Lawyering Tasks Across Courses**  
**Vertical Integration**

## 2. A Six-Semester Required Legal Writing Program

Proficiency in predictive and persuasive writing is critical to success as an attorney. There exists overwhelming evidence that law school graduates struggle to write effectively—or persuasively—in a variety of contexts.<sup>35</sup> As stated above, 41% of attorneys and 51% of law school faculty believe that writing is the most important skill needed to practice law competently.<sup>36</sup> Indeed, in a recent National Law Journal article, Supreme Court Justice Elena Kagan implored law schools to focus more heavily on legal writing instruction.<sup>37</sup>

U.S. Supreme Court Justice Elena Kagan thinks American law schools—including those in the top tier—need to “think in a deep way” about how to help their students become better writers. In an interview conducted last month by legal writing expert Bryan Garner, Kagan, who once taught at the University of Chicago Law School and was dean of Harvard Law School, said that for “too many students,” even at the schools she worked at, “nobody taught them” writing skills. She acknowledged that “writing is one of the hardest things to teach.”<sup>38</sup>

Despite the importance of training students to be capable legal writers, most law schools dedicate less than six credits to required legal writing instruction, and legal writing faculty often receive less secure positions (and salary) than traditional doctrinal instructors.<sup>39</sup> That should change—and so should the legal writing curriculum. No law school can claim to be experiential unless it makes a commitment to developing one of the most important lawyering skills.

A comprehensive legal writing curriculum that spans the entire curriculum will accomplish three things: comprehensiveness, context, and metacognition.<sup>40</sup> Regarding comprehensiveness, students have the opportunity to write and re-write many of the litigation and transactional documents that they will encounter in practice, such as plead-

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<sup>35</sup> See LexisNexis, *supra* note 29, at 3–5.

<sup>36</sup> THE BARBRI GROUP, *supra* note 28, at 5.

<sup>37</sup> Tony Mauro, *Kagan: Law Schools Must Do More to Boost Student Writing Skills*, NAT'L L.J. (Aug. 27, 2015), <http://www.nationallawjournal.com/id=1202735839548/Kagan-Law-Schools-Must-Do-More-to-Boost-Student-Writing-Skills?slreturn=20160028194402#ixzz3sKNqO01m>.

<sup>38</sup> *Id.*

<sup>39</sup> See, e.g., Kristen Konrad Robbins, *Philosophy v. Rhetoric in Legal Education: Understanding the Schism Between Doctrinal and Legal Writing Faculty*, 3 J. ASS'N LEGAL WRITING DIRECTORS 108, 108 (2006).

<sup>40</sup> Cf. Roy Stuckey et al., Best Practices for Legal Education 6, 28, 31, 192, 199 (2007) (discussing various best practices for legal education, including ideas such as comprehensiveness, context, and metacognition).

ings, discovery, pre-trial motions, appellate briefs, contracts, and wills. In doing so, students can compile an effective portfolio that shows employers the skills and competencies they have acquired.

Concerning *context*, students gain an understanding of the context in which these documents are drafted, including the persuasive writing techniques that apply with particular force to specific litigation documents.<sup>41</sup> For example, when drafting a complaint, lawyers need only set forth the facts with sufficient specificity to state a cognizable cause of action and survive a motion to dismiss.<sup>42</sup> The statement of facts in an appellate brief, however, is perhaps the most important part of the brief, in which lawyers must craft a compelling narrative that effectively uses the trial record and considers the standard of review.<sup>43</sup> To attain competency in drafting the most common litigation *and* transactional documents, law students require time, frequent feedback, and opportunities to *re-write*.<sup>44</sup>

With respect to *metacognition*, students receive extensive instruction in the *process* by which quality writing is produced.<sup>45</sup> Specifically, students must develop proficiency with the writing *process* (drafting, re-writing, and revision), so that those skills can be transferred to different contexts and legal problems, and develop self-awareness of how they learn and process information.<sup>46</sup> However, successfully training students to be metacognitive thinkers requires time and repetition, which students receive through a writing program that spans six semesters.<sup>47</sup> Moreover, law schools cannot possibly require students to draft and re-draft the most common litigation and transactional documents and master the writing techniques that apply to different documents in two or three courses (or semesters).<sup>48</sup> For these and other reasons, law

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<sup>41</sup> See Cheryl B. Preston et al., *Teaching “Thinking Like a Lawyer:” Metacognition and Law Students*, 2014 BYU L. REV. 1053, 1077 (2014).

<sup>42</sup> See FED. R. CIV. P. 8(a)(2).

<sup>43</sup> See FED. R. APP. P. 28(a)(6).

<sup>44</sup> See Patricia Grande Montana, *Better Revision: Encouraging Student Writers to See through the Eyes of the Reader*, 14 LEGAL WRITING: J. LEGAL WRITING INST. 291, 319 (2008).

<sup>45</sup> See Robin A. Boyle, *Employing Active-Learning Techniques and Metacognition in Law School: Shifting Energy from Professor to Student*, 81 U. DET. MERCY L. REV. 1, 8 (2003).

<sup>46</sup> See Carol McCrehan Parker, *Writing Throughout the Curriculum: Why Law Schools Need It and How to Achieve It*, 76 NEB. L. REV. 561, 585 (1997) (“Exercises that encourage students to reflect on their writing processes may help them find ways to make those processes more efficient.”).

<sup>47</sup> Lamparello & MacLean, *supra* note 13, at 89–90.

<sup>48</sup> *Id.* (“Students must also draft litigation and transactional documents, understand that writing techniques are document-specific, and learn the art of re-writing.”).

schools should commit to legal writing as a cornerstone of the curriculum, as inseparable from the analytical and practical skills they obtain in other courses, and as tied to the achievement of competency-based learning outcomes. After all, writing enhances thinking (and vice versa), and law students should be drafting real-world litigation and transactional documents. The chart below provides an example of how legal writing courses could be incorporated into and throughout the curriculum.

COURSE	EMPHASIS
Legal Writing I	Basic writing techniques and predictive writing
Legal Writing II	Persuasive writing techniques and pre-trial document drafting
Legal Writing III	Appellate brief writing
Legal Writing IV	Transactional drafting
Legal Writing V	Re-writing and editing
Legal Writing VI	Narrative storytelling

### C. Competency Sequencing: *Integrating Clinical Instruction Throughout the Curriculum*

Competency sequencing requires law schools to properly sequence the order in which practical skills are acquired in doctrinal, skills, and clinical courses.<sup>49</sup> An effective—and innovative—way to do so is by integrating clinical instruction throughout five semesters of law schools, beginning in the second semester of the first year.

#### 1. An Innovative, Five-Semester Clinical Program

Students can responsibly participate in live-client clinics beginning in the second semester of the first year. Importantly, however, clinics must be carefully integrated into the curriculum to ensure that students: (1) have *already* performed relevant skills exercises in doctrinal courses and in the cross-curricular hypothetical; and (2) will complete assignments for clients in a manner commensurate with their experience.<sup>50</sup> Thus, clinics can be a vehicle by which law schools gradually increase the complexity of assignments and levels of responsibility

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<sup>49</sup> *Id.* at 79.

<sup>50</sup> See generally Tonya Kowalski, *Toward a Pedagogy for Teaching Legal Writing in Law School Clinics*, 17 CLINICAL L. REV. 285, 292 (2010) (discussing clinic integration with curriculum through clinicians and legal writing faculty communication to provide writing skills in doctrinal courses and memo-writing experiences).

given to students. Under this approach, students will have the opportunity to represent clients (under close faculty supervision) throughout their law school careers and refine skills that were previously learned in doctrinal courses, the cross-curricular hypothetical, and the legal writing program. This model for clinical instruction builds repetition and reflection into the curriculum and forces students to transfer skills to different legal contexts.

## 2. The Five Live-Client Clinics: Carefully Integrating Clinics to Coincide with Previously-Completed Practical Skills Assignments

Below is a description of how clinics can be integrated into the curriculum in a manner consistent with the principles enunciated above.

### a. *Law Center I*

Law Center I would not begin until the second semester of the first year. In the first semester, as noted above, students would complete practical skills instruction in doctrinal courses and the cross-curricular hypothetical, which would give students a foundation of experience that could be refined in the first clinical course. For example, in the first semester, students would perform an initial client interview, conduct book and electronic research, and draft a predictive memorandum, client letter, and complaint.

At the beginning of the second semester of the first year, a select group of high-performing students would be chosen to participate in Law Center I, and assignments would be consistent with the assignments completed in the first semester. Thus, in Law Center I, students would interview and screen potential clients and perform research. In doing so, Law Center I provides students with the opportunity to transfer skills learned in the prior semester to a new legal context and on behalf of a real client.<sup>51</sup> This approach would be followed in each subsequent semester, with students building upon the skills acquired in doctrinal and skills courses, and faculty gradually increasing the complexity of work and level of responsibility.

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<sup>51</sup> Apart from the pedagogical value in this approach, students would have the opportunity to interact with a real client and begin to develop a familiarity with all of the elements that client representation entails. This would also give clinical students the opportunity to reflect on their experiences and begin to develop their professional identities.

**b. *Law Center II***

Law Center II, which would occur in the first semester of the second year, would be available to incoming second-year students as an elective course. At this point in the cross-curricular hypothetical, students will have performed a client interview; conducted legal research; drafted a predictive memorandum, client letter, complaint, motion to dismiss, answer, discovery, and a motion for summary judgment; and performed an oral argument. Thus, Law Center II would focus on client interviewing and screening and drafting pleadings and pre-trial motions. Law Center II can also introduce students to the concept of litigation “teams,” which exist at most law firms. Under this model, doctrinal faculty would serve as “partners” and supervise third-year students who were completing assignments in the faculty member’s area of expertise. Thus, if a student is drafting a Last Will and Testament on behalf of a client, the student would receive guidance from both the clinical professor and a faculty member teaching Wills, Trusts, and Estates. In addition, to train students in soft skills, such as collaboration, interpersonal communication, and teamwork, third-year clinical students would supervise second-year students. During this semester, students will also be enrolled in Legal Writing III, which will focus on appellate brief-drafting and conclude the litigation process in the first-year cross-curricular hypothetical.

**c. *Law Center III***

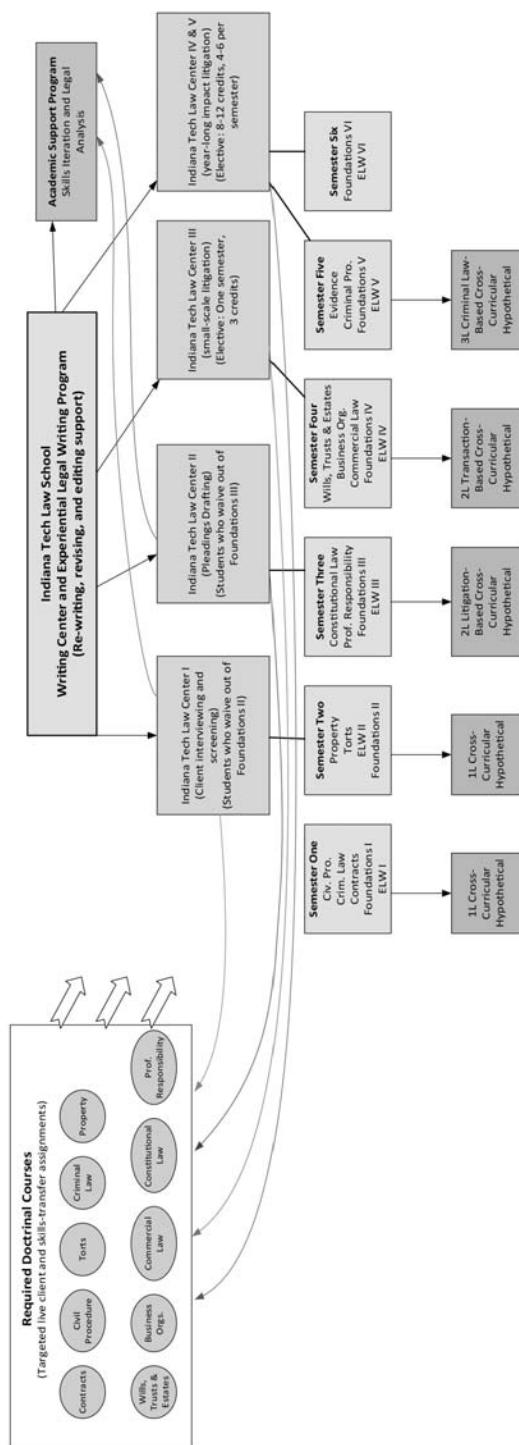
Law Center III would occur in the second semester of the second year. At this point, all students will have performed client interviews and completed an entire fictional litigation in which they drafted common litigation documents and argued before fictional district and appellate courts. Additionally, students who enrolled in Law Center II would have interviewed and screened real clients and drafted pre-trial documents. Given the breadth of the students’ experience at this juncture, in Law Center III, students will represent clients in targeted, small-scale litigations, such as in landlord-tenant or small claims courts, and these cases will not extend past the semester. During this semester, all students will be enrolled in Legal Writing IV, which focuses on transactional drafting techniques and requires students to draft common transactional documents, such as a partnership and LLC Agreement, Last Will and Testament, and Power of Attorney.

d. *Law Center IV & V*

In the third year, Law Center IV & V would build upon the students' experiences in Law Center III and span the entire year, in which students represent clients on complex matters at the trial and appellate level, have a greater level of responsibility (e.g., arguing before a trial court, cross-examining witnesses), and supervise second-year students.<sup>52</sup> Law Center IV & V is the culmination of the students' practical skills instruction and would serve as the capstone course where they assume a primary role in client representation. Below is a diagram displaying the full integration of clinical courses over five semesters of the curriculum.

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<sup>52</sup> A law school's legal writing and academic success program (if it exists) can collaborate with the clinical program to provide feedback and assessment and re-enforce skills. For example, professors in the legal writing program could edit and revise litigation documents completed in Law Clinic II & III and give students targeted instruction in re-writing and revision. The academic success program can also coordinate with clinical and legal writing instructors to provide individualized support to students in specific areas where the student needs improvement *and* to assist students with development of a *portfolio* that includes the real-world drafting and skills assignments students completed in their law school careers. This would enhance a student's marketability and develop the law school's reputation as a hub for integrated experiential education.



**D. Program Competency: *Integrating Assignment, Practical Skills, and Competency-Based Sequencing***

The above discussion illustrates how doctrine, skills, and clinics can be effectively integrated throughout the curriculum to produce a competency-based program of legal education. The diagram below provides examples of the types of assignments that law schools could incorporate under each type of sequencing and a description of how individual assignments are sequenced across doctrinal, skills, and Law Center I in the first year.

DOCTRINAL COURSE	SUBSTANTIVE TOPICS COVERED	IN-COURSE EXERCISE	CROSS-CURRICULAR HYPOTHETICAL	CLINIC
Criminal Law	Mens rea; actus reas (these issues must be included cross-curricular hypothetical)	Client interviewing (Fact gathering, identifying questions that will elicit responsive answers)	Simulated client interview	
Contracts	Principles of contract formation	Drafting a portion of a contract	Retention agreement for fictional client	
Legal Writing I	Legal research skills; basic legal reasoning and organization (IRAC)	Drafting the "Discussion" section of a memorandum	Predictive memorandum on a contested legal issue	
Civil Procedure	Personal jurisdiction; subject matter jurisdiction; <i>Iqbal-Twombly</i>	Drafting a portion of a complaint	Complaint on behalf of the fictional client	
Legal Writing II	Persuasive writing techniques	Drafting point headings and one legal argument section	Motion to dismiss	(Law Center I) (one-credit for top 10% of students after the first semester) Live-client screening and interviewing screening and interviewing
Property	Easements; servitudes (these issues must be included cross-curricular hypothetical)	Responding to property-related allegations in a complaint	Answer (with counter-claims)	
Torts	Negligence; proximate cause (these issues must be included cross-curricular hypothetical)	Discovery drafting exercises (students draft a set of non-objective questions designed to elicit relevant information)	Discovery (interrogatories and document requests)	
Legal Writing II	Principles for drafting a motion for summary judgment; identifying undisputed facts	Drafting a statement of undisputed material facts	Motion for summary judgment	
Legal Writing III	Appellate brief drafting (e.g., the standard of review, reviewing the record for legal error; considering policy)	Drafting the statement of facts	Appellate Brief (skills applied in Law Center IV & V)	Law Center II (pleadings drafting)

#### IV. CONCLUSION

Law schools have an ethical responsibility to provide students with the skills to successfully practice law, and to do so without imposing the crushing—and non-dischargeable—student loan debt that can make access to the legal profession more, not less, difficult and make it harder, not easier, for lawyers to serve underrepresented populations.<sup>53</sup> As the Task Force concluded, to do so, legal educators must explore “new ways of balancing responsible curricula and pedagogies, cost effectiveness, and alternative revenue streams by strongly encouraging and supporting experimentation and innovation among law schools.”<sup>54</sup> Part of this experimentation requires “a greater willingness of law schools and other entities which deliver legal education services to experiment and take thoughtful risks.”<sup>55</sup> This Article sets forth a comprehensive approach to curricular reform that balances necessary innovation with responsible evolution and recognizes that, as the legal profession is changing, “legal education needs to evolve with it.”<sup>56</sup> The time for that evolution is now.

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<sup>53</sup> See Cynthia Batt, *A Practice Continuum: Integrating Experiential Education into the Curriculum*, 7 ELON L. REV. 119, 120–22 (2015).

<sup>54</sup> AM. BAR ASS’N, AMERICAN BAR ASSOCIATION TASK FORCE ON THE FINANCING OF LEGAL EDUCATION REPORT 3 (2015), [http://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/reports/2015\\_june\\_report\\_of\\_the\\_aba\\_task\\_force\\_on\\_the\\_financing\\_of\\_legal\\_education.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/reports/2015_june_report_of_the_aba_task_force_on_the_financing_of_legal_education.authcheckdam.pdf)

<sup>55</sup> TASK FORCE ON THE FUTURE OF LEGAL EDUCATION, *supra* note 1, at 27.

<sup>56</sup> *Id.* at 29.

