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Using the Examination as a Teaching Tool

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Two facts are obvious about law school exams: most professors dread preparing them and most students dread taking them. When I was a new teacher, however, I did not dread writing exams. I found them to be a somewhat fun, if obscure, genre of short story writing. Nevertheless, even if I did not dread writing exams, my students still dreaded taking my exams, especially when I got carried away and made my fact patterns too rich in detail. When I was first assigned to teach Corporate Finance, in the spring of 1992 it dawned on me that my penchant for writing detailed exams could be put to good use by creating realistic hypothetical corporations to illustrate the concepts in the course and to test on the material.

I found in teaching Corporate Finance that students generally came to the class without having had any exposure to the transactions discussed in the cases or to the documentation at the heart of the legal controversies. When I planned my course, it occurred to me that my students' understanding of the subject would likely be highly distorted and abstracted if they learned it solely through the medium of appellate cases. To counter the inherent problem of teaching a transaction-based subject through a litigation-based book, I supplemented my casebook heavily with financial material, articles, and documents. In addition, because many of my students are "hands-on" learners, I decided to address their lack of context throughout the course by using hypothetical corporations I created for the class.

I use those hypothetical corporations to illustrate the accounting, valuation, and financial aspects of the course. The class's contact with the hypothetical companies culminates in an exam that I have conceived to be a simulation of an actual corporate finance matter that an associate attorney in a law firm might be assigned to work on.

The simulation starts with a detailed fact pattern about two businesses that were originally family-owned but that merged

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and went public. I call the resulting corporation Consolidated Corn and Tobacco, Inc. (COCOTO). The fact pattern is based on a company my firm once represented (American Maize), which has since been merged out of existence, but is strongly spiced with facts from Nabisco and RJ Reynolds. Toward the end of the term I give my students a document package composed of corporate articles of incorporation, bylaws, SEC filings, a Standard & Poors Company report, financial statements, and a trust indenture. They have a few weeks before the end of the term to digest the material but they understand that in order to answer the take-home exam questions they will have to master the documents.

Obviously, before I distribute the document package, I know what I am going to ask the students on the exam. The exam questions almost always turn on some corporate finance development that has been in the news during the term or on some interesting development in the tobacco industry (because that is one of the major areas of business for COCOTO). I plant appropriate language and numbers in the documents to raise the issues that will be on the exam.

I give students about two weeks to review the documents and to ask questions either in class or during office hours. This serves at two purposes: (1) it allows the students to learn about the documents and (2) it ferrets out the mistakes I made in preparing the document package (I have discovered that the most enthusiastic students quickly focus in on inconsistencies in the presentation). On the last day of class, I give the students the "exam," which consists of additional facts that supplement the already well-developed story of COCOTO, along with perhaps some additional documents or newspaper articles and the questions that need to be addressed. Usually the students will not be able to answer the questions fully without using some data from every included document - including the financial statements.

This examination turns out to be a lot of work for the students, but I have had positive feedback about it every time. Some students have informed me that applying the law to the hypothetical corporation and to the information in the exam document package allowed them to pull all the material together and really understand it.

There are pros and cons to this approach. On the positive side,

I perceive the following benefits:

- An involved, role-playing exam can be a lot of fun to prepare and, I believe, to answer.
- It allows students to engage the problem in a manner more like the way in which lawyers work to solve problems.
- The document package/take home format allows testing on detailed technical subjects, such as accounting and valuation, that might otherwise be inappropriate for timed traditional exams.
- It gives the students the incentive to really read and digest deal documents in a way that merely assigning sample documents as apart of a reading assignment never will.
- It allows a degree of collaboration, but ultimately produces a work product specific to the individual student.
- Allows you to test on how well students separate the wheat from the chaff.
- For students interested in the real world of lawyering, the simulation aspect helps them place the material in context and makes it more intelligible.
- Because it is a take-home, grading can be made more tolerable by imposing presentation requirements and page limits.

On the down side I see the following:

- It takes a lot of energy and creativity to prepare the document package.
- The level of detail involved invites some mistakes that can cause trouble - i.e., the financials must all work out and be consistent with the other documents in the document package.
- It probably works best in relatively small enrollment upper level electives where the students are self-selected and will enjoy being put through the paces in a simulated transaction.
- As with any take-home exam there will be concerns about honor code violations.
- The exam needs to be extensively reworked every year to avoid the possibility that students hand down the answers from year to year.

The conference organizers have requested that the presenters' written materials not exceed five pages in length. Because the document package and fact pattern I have described above are very lengthy, I give below only a listing of the items I hand out to my students. Anyone who would like a complete package of my exam should contact me at egouvin@law.wnec.edu and I will send you a hard copy of a recent exam and document package.

Materials used in Spring 1998 exam:

Handed out two weeks before the end of the term:

- Background material containing the complete history of the COCOTO corporation from its origins in the nineteenth century as two different closely held firms to their merger in the mid-twentieth century through to today.
- SEC Form 10K (selected provisions) - a highly edited version of the 10K that was prepared for the company upon which I based the COCOTO hypothetical. The basic document was downloaded from EDGAR.
- Standard & Poor's Corporate Description for Consolidated Corn and Tobacco Company - again, an actual downloaded report from S&P prepared for the company that served as the COCOTO model.
- Audited Financial Statements for Consolidated Corn and Tobacco Company prepared by Arthur Coopers, Peat Touche and Ernst Price, P.A. - greatly simplified and stylized, but fundamentally appropriate for a publicly traded company, complete with an auditor's letter and footnotes.
- Articles of Incorporation for Consolidated Corn and Tobacco Company - complicated and antiquated articles going all the way back to the original charters granted to the predecessor firms back in the 1800s.
- Corporate Bylaws for Consolidated Corn and Tobacco Company - nothing fancy here, but a good place to look for anti-takeover provisions and the rights of preferred shareholders.
- Debenture Indenture - based on the Simplified Model Trust Indenture, which is downloadable from Business Lawyer, this document can be modified to contain problematic provisions discussed in the context of assigned cases and is also a good place to plant

financial covenants that will require students to use the financial materials.

Handed out on last day of class:

- Additional facts that help set up the questions. I try to make the earlier detailed fact pattern set the stage without giving away what the exam questions will cover. These final facts put a point on the fact pattern.
- Specific examination questions. In order to focus the responses the final handout asks specific questions to be answered. I try to develop questions that cannot be answered properly with first performing the financial analysis that we covered in class.
- Newspaper articles from the Wall Street Journal chronicling problems in COCOTO's core business. These are, admittedly, mostly window dressing, but they were the inspiration for the questions asked and they also lend a feeling of real world relevance to the simulation exercise.