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# Online Learning and Transactional Skills Courses, 18 Tenn. J. Bus. L. 521 (2016)

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## ONLINE LEARNING AND TRANSACTIONAL SKILLS COURSES

- Celeste Hammond<sup>1</sup> *Integrating Transactional Skills into Business Law Courses: Can These Be Taught Online?*
- Virginia Harding<sup>2</sup> *Teaching Professional Skills in an Online Substantive Course from the Perspective of an Adjunct Professor*
- Cynthia Adams<sup>3</sup> *Connecting and Engaging Students Online: Designing Interactive Asynchronous Transactional Drafting Exercises in the Age of Tech Wizardry*

### *INTEGRATING TRANSACTIONAL SKILLS INTO BUSINESS LAW COURSES: CAN THESE BE TAUGHT ONLINE?*

**Celeste Hammond**

I'm Celeste Hammond from John Marshall Law School in Chicago, and I'm delighted to be here. This is my first time at the conference. I've wanted to come, but you know how June is with grading and all of that stuff.

Today, I wanted to talk about what we're doing in terms of integrating transactional skills into business law courses. My colleague, Virginia Harding, and I are doing empirical research on whether that can be done effectively. So let's start with some kind of background on what John Marshall is doing.

We've been in the forefront in offering legal education online. I've provided you with a report of courses that we're currently offering at John Marshall Law School as of May of this year, and it's in the handouts distributed electronically at the conference if you want to take a look at it.

The law school offers J.D. courses online to meet the needs of John Marshall students who often are part-time students and who are living and working at a distance from the campus location in downtown Chicago. Also, the law school offers online courses and higher academic programs for L.L.M. and M.J. students who are enrolled in our specialty programs, including Intellectual Property and Estate Planning, Employee Benefits, International Business and Trade, and Real Estate Law.

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My work at John Marshall Law School over the past 20 years has been as director of one of these centers of excellence. The goal from the beginning has been for our Center for Real Estate Law to emphasize the transactional perspective in courses and other programs. Thus, we have a separate required course called Drafting and Negotiations Workshop. But we also integrate transactional skills into our other courses, including Leasing Ownership and Management, which is a course that Virginia Harding will tell you about after I speak.

Indeed, Virginia and I have been collaborating in the development of the Center, the courses that are included in the Real Estate Law curriculum, the scholarship produced by the center focusing on the role of the transactional lawyer in the areas related to real estate, commercial real estate, the approach to teaching these courses, and teaching these courses online. Both Virginia and I have been fascinated about the technology that's developed to allow us to go teach and learn from a distance. Based upon a recommendation from Dean Judith Wagner, both Virginia and I enrolled in a certificate program at the University of Wisconsin. It's a certificate in distance learning in higher education online. Virginia finished it.

I came close to finishing it. That was back in the '90s. We have collaborated to team-teach several courses including the two we will discuss today. There were some suggestions made this morning about having a real competent, experienced adjunct team teach with you. Virginia and I co-taught the class in real estate transactions and the course in commercial leasing. Having this kind of an experienced practitioner as a co-teacher is a big factor in making courses prepare students for practice.

We experimented with technology early on by videotaping interviews with some guest lecturers who couldn't be on campus to be in a particular class, and then, we developed excellent PowerPoints to support the learning experience. Once the American Bar Association permitted the use of distance learning, we began to hold some of our classes via videotapes and audiotapes with slides. We sort of had what's called a "flipped classroom."

Originally, the ABA limited this to substitution of about 30% of the class meeting time. Thus, I even teach Contracts II that had 45 hours of class time using the approved 9 hours or so. Professors may use an online component even in a first year course under ABA rules. Now, entire courses may be delivered online under ABA rules either in a synchronous or asynchronous format. So we have been experimenting and having a lot of fun. We offered our first real estate course online in 2013, which is the commercial leasing course Virginia will discuss.

Virginia and I also collaborated to teach a course at the University of Louisville, Brandeis School of Law in Fall 2012. We used videoconferencing to meet with our students who were in Louisville while we were in downtown Chicago. Brandeis had asked me to teach my course in leasing as a visitor. When my travelling to Louisville for a semester became impossible, we

creatively set up the class as a distance learning course. Virginia and I travelled down to Louisville once to meet our students in person. She made one more trip down to Louisville. We also engaged a local practitioner to join us in the Louisville classroom when the difficulties with the videoconferencing equipment began to interfere with offering an effective course. That distance learning course, in contrast with the ones we teach at John Marshall, was synchronous. That is, the students and the faculty were meeting at the same time, but in different places. Subsequently, in the fall of 2014, I taught the Real Estate Transactions course completely online. That's a J.D. elective course that you might offer to your students in their second or third year.

So let's look at the online learning at the Real Estate Center at John Marshall. In our attempts to provide the entire curriculum for the LL.M. and M.J. programs, we have developed five online courses: the basic J.D. course, LL.M. courses in Commercial Real Estate Transactions, Real Estate Finance, Leasing Ownership, and Management—all of which are required for our LL.M. students. These courses are also cross-listed so that selected J.D. students may take them.

And in summer 2016, we have our LL.M. course in Climate Change Law, which will be offered online for the first time ever. That course just began this week and so far so good.

John Marshall has offered online real estate courses since 2013, and we have been surveying students since 2014 about their learning experiences. As I said before, the format for our online courses, including this J.D. course, is asynchronous interactivity between the professor and the students and among the students. There is a Best Practices Report, which I have included. It's a thick, thick Best Practices Report from a consortium of legal educators who are focusing on online legal education. You might want to take a look at it. This report indicates that the best part about asynchronous distance learning is that students may participate whenever it's convenient for them. My experiences in Louisville with a synchronous online course support that conclusion, and also, the asynchronous technology that we used is less expensive, less complicated, and more reliable. Plus, when you have a problem in a synchronized classroom online, some students may miss the entire class, which is a problem.

In my online Real Estate Transactions course, we use short videotapes that may be similar to the lectures I would give in a regular classroom. Because there are no interruptions by students with questions or comments, these lectures are much quicker than the time you would use in a traditional class. But producing the videos without any audience of students takes away from what's always been an important part of teaching: how engaged are the students? I get no feedback from looking at their faces or seeing them squirming to get out of the class. Therefore, interactivity becomes very important both to ward off feelings of isolation in the students and to guarantee that the class is more than a correspondence course of the type I witnessed when I traveled to South Africa twenty years ago.

We use the discussion forum feature on Moodle. We use Moodle for this program to have students talk about issues that are difficult to understand if they're only passive learners listening to the lecture and doing their individual reading for the course. We may even have students interview a client or negotiate aspects of a transaction where they use either email, Skype, or telephone conferences. Yet, I continue to be amazed when students, who are so competent with technology, claim they have no idea how to interact outside of the classroom without being in direct physical contact in person. I tell them that attorneys spend less time in personal meetings with clients or even others with whom they collaborate in Chicago, as we see law firms make decisions about leasing and renewing office leases. The firms are choosing smaller offices even for the partners. They have no reception areas, and the conference room is out of fashion.

The typical classes of 30 to 40 students in an online course using teams, as I do, in a traditional class makes a lot of sense, and feedback from the students is very positive about using teams—even online. Nevertheless, I still miss seeing my students, and I am really taken by surprise when they see me on campus and act as though we know each other well. I've never seen some of them.

So let's consider how the learning goes in my elective J.D. course. I've been happy using Malloy and Smith's casebook for teaching the course in the traditional classroom for many years. Both Jim Smith and Robin Malloy are in the forefront of providing legal education with an emphasis on the transactional lawyer. The book is direct. It emphasizes problems rather than appellate cases, and it provides a useful teacher's manual. So I assign the same casebook for my online course. As I mentioned before, the discussion forum and also the Ask the Professor feature on Moodle provides a place for my students to comment and engage in discussion. I provide the problems before the module for a week. Usually, each team of four to six students is responsible for two discussion forums over the period of the semester. All students are welcome to join any of the discussions though few do so. In an effort to get the students to at least review the discussions, I remind them that the final exam will assume that they have reviewed the discussions on particular topics.

Three multiple choice quizzes that students take online and get automatic feedback on reflect the new goal of legal education to provide self-assessment to the students throughout the semester, rather than just the old traditional final exam. I emphasize doctrinal law in those quizzes, especially what I expect will be tested on the bar exam, because the property component of the bar exam is all real property from what I understand.

Finally, I find that the transactional documents employed by Malloy and Smith are very useful in this course. I call them "Experiential Exercises" at a time when experiential learning is all the rage in legal education. They are a simple version of basic forms used in a residential real estate transaction and include things like the broker's listing agreement and the documents that would be used at the settlement or the closing itself. Each form has a list of questions

about the document based on kind of a virtual client. I use seven of those forms to provide students the opportunity to read and review the documents in a way that they never can if you just give them a document with blanks in it. Reviewing the forms by responding to questions about the forms in the context of the situation, goals and needs of the virtual client is much more effective than simply reading a form document with blanks.

They answer the questions posed based on what they are learning for a given class through reading in the text and paying attention to the video lecture. Whereas the discussion forum is worked in a team, the experiential exercises are performed individually. After the submission date is past, I post my own comments about the experiential exercises. I do not grade them. I do not give individual comments. In a class of 50, I wouldn't even begin to do that.

It turns out that I am able to use these documents much more effectively online than I do in a traditional class. I have a place to make my comments online, and I don't have the time constraints that I have in a traditional classroom.

So let's see if this is going to work. I thought you might want to see one of my video lectures.

[Playing video lecture]

Now that you know something about at least part of my online course, I want to talk about the empirical research that Virginia Harding and I are doing to answer the question posed in our presentation today, which is can students learn the transactional perspective of lawyering and develop transactional skills in an online format? I'm committed to developing information about transactional lawyering that is based on reality. Empirical research responds to that goal. What really is happening becomes the focus rather than what should happen, which is the focus of a lot of traditional legal scholarship.

Of course, much traditional legal scholarship is about what the rule of law is and, how it can be improved. The research to determine how students can become familiar with the doctrine and how students can prepare for practice is likely to be empirical research. When giving attention to teaching, non-traditional empirical legal research may be more appropriate.

I've been an active arbitrator with the American Arbitration Association. In 2003, I published my empirically based findings about how well transactional lawyers understand the law about arbitration. My interest in that question was piqued by the routine inclusion of binding arbitration clauses in many documents drafted by transactional attorneys both in commercial real estate and in other business settings. Yet when I spoke with respected attorneys about arbitration, I soon realized many did not know that parties give up their right to a trial by executing documents with binding arbitration clauses in them. These lawyers did not seem to know that parties submitting disputes to arbitration also give up the right to have the arbitration award determined by

the rule of law. With very few unusual exceptions, the parties in arbitration give up the right to an appeal. Arbitrators have lots of power.

I wondered whether my personal experience and conclusions as to a lack of understanding of arbitration by the transactional attorneys who provided for that dispute resolution process in their documents was widespread. So I created an old-fashioned survey, and I asked members of the Chicago Bar Association committees on business transactions and commercial real estate to answer it. It was in the old days before Survey Monkey, which Virginia and I are using today for our empirical research of the question whether transactional skills can be taught/learned through online courses. I had an excellent response rate. The results supported my thesis that commercial transactional lawyers did not know the basic law about arbitration, and yet they regularly recommended to their clients that arbitration clauses be included in documents, and they drafted “such documents” regularly although they use the standard AAA clauses most of the time. Those are drafted by the provider, AAA, not by the lawyers.

It did not seem to matter whether the respondent attorneys went to a top law school, practiced for a long period of time, were with a large firm, or were solo practitioners. The only difference seemed to be based on whether they’d ever represented a client in an arbitration. Even those who’d taken ADR courses and CLE programs on arbitration didn’t seem to know the basic stuff that I was just mentioning. They were all equally clueless.

The empirical study that we published has led to greater attention to the law of arbitration when ADR courses and seminars are offered and inclusions of warnings to transactional attorneys in CLE programs that are labeled traps for the unwary.

The research that Virginia and I have undertaken to determine whether law students can learn transactional skills when they take online courses is based on a survey of students in all of our online real estate courses and one online course named International Business Transactions, which is offered by Professor Karen Cross in the International Business and Trade program.

The survey itself has evolved due to the contributions of our student research assistant, who himself has undergone a totally online degree program—not in law—at DePaul University. He shares our curiosity about online legal education, and he brings skills, statistics, and survey building to our team. More importantly, Mike Dvorczak does not graduate until May 2017, so he’s committed to finishing the research before he goes off into practice. I’ve included the current version of the survey we use in the packet.

To get better student response, I require students to complete the Survey Monkey before the grades are sent out. This has resulted in a better response rate than we normally get for faculty evaluations, which are voluntary.

So here are the results of that survey. We learned about the demographics of the survey—my students. Most had some prior or current

relevant experience in the field. This is not unusual for John Marshall students. Many are nontraditional. Chicago is a big real estate town, and students interested in real estate are attracted to our law school over others because of our Center. Students generally live in the city, but we do not have a campus in any traditional sense. The south loop where we are located, on the other hand, is now the largest college campus in the United States because we have many universities in the downtown area within a mile of where we're located.

The graphic shows more full-time than parttime students in the on line classes. Still many of those full-time students are likely to have jobs as well. We did not set up this Survey Monkey to solicit that kind of information. In terms of the age distribution, a high percentage seem to be under age 35, but there is a group of students over age 35. Given the flexibility of the online education, I'm surprised that it's only 35%. I had several parents of young children in that class, including one whose baby was born during the semester, and having the course available online made it so much easier for her to participate. When I held an in-person class review at the end of the semester, we all got to meet Baby Vinny, but Mom had to bring a huge stroller up the stairs to achieve that accomplishment.

We have someone in his 70s right now among our students—not in that class. I'm worried that such older students may be concerned about their computer skills and whether they're competent to take an online course. I don't know.

Now, for the most important part of the research: was this transactional skill covered in the class? Notice the teamwork, which develops collaboration, seems to have been effective for this large group of nearly 50 students. Virginia will tell you more about teamwork.

Document review also got high scores—I assume because of the experiential exercises. The relatively low drafting score is appropriate. With such a large class, I did not assign much in the way of drafting exercises in the spring session.

Because Virginia and I agreed with recent reports about legal education, including the one that's critical for failing to teach students how to collaborate, we will continue and increase our attention to using teams in both in-class and online courses. When you look at this graph, I can't help but wonder whether MBA students, who typically learn in teams, would supply the same likes and dislikes of working in teams as our students did. The world of work and lawyering depends on the ability to work together with clients, other attorneys, and other professionals. Perhaps the weak student approval of working in teams is due to their lack of familiarity with the process of collaboration and/or to their having bought into the law school expectation that lawyering is all about confrontation and hard attacks on the other side.

The response to our questions about teamwork makes me wonder why such negativity? We may need to insert some more questions to follow up on these points.

Further, our research shows that students, at least those already in an online course, value the flexibility of the asynchronous format when we teach. What surprised me is the report that the students found the online instructor more accessible than a professor in a regular class. Really, there should be no difference. We tell our students, as part of Best Practices, that we will respond within 24 hours to any request.

In a good survey, there should be a place for suggestions more than merely answering the questions. In our survey on whether law students can learn transactional skills online, we solicited other thoughts, comments, etc., and many students indicated they would like to incorporate synchronous meetings for all or parts of the class. Actually, I tried to include such meetings in real time where all the students would be present as in the Louisville course at the Brandeis School of Law where Virginia Harding and I co-taught the class on Real Estate Transactions from Chicago while our students were in a Louisville classroom. I used Google something and Hang-Up, but there were technical problems—people were shaking their heads—and many students did not bother to show up. Yet my attempts at a synchronous meeting for the my John Marshall based online course was only for a review session at the end of the semester in preparation for the final exam, which is a traditional final exam for this course, and attendance was about the same as I would get for a review session at the end of a traditional course—maybe 30% of the students were involved.

If I scheduled a regular class session far in advance, perhaps attendance would be better, but the technology needed to support synchorous online learning is still a problem that needs attention, and at John Marshall, synchronous learning is all that is supported at this time. The future of our research over the next year is exciting. I want to compare results between the regular classroom and the online classroom for the Real Estate Transaction class. I am scheduled to teach the course online in the Fall and probably will teach it in a traditional classroom in the spring. For both courses, I use the same assignments and case books, and I have the same basic expectations on learning transactions and the doctrinal law. So I intend to make some comparison of the results in learning. If I can get a smaller section in my online course, with fewer than the 50 students I had this Spring, I would like to try more negotiations and more drafting and reviewing of documents than I've been able to do so far. There is a learning curve to teaching online, no question about it, but I think I have the hang of it now, and you will be among the first to know what I learned when we publish our results of the empirical research within the next year or so.

We've decided to leave questions until after the three of us have spoken, so now I'll hand over the show to Virginia Harding, a practicing attorney and adjunct professor at John Marshall Law School.