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## **IMPLEMENTING TEAM-BASED LEARNING IN AN INTRODUCTION TO LAW COURSE**

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### **INTRODUCTION**

Instructors have been using small group learning for hundreds, if not thousands, of years.<sup>1</sup> Appearing under a variety of names, including most prominently collaborative learning and cooperative learning, it is in essence “the instructional use of small groups so that students work together to maximize their own and each other’s learning.”<sup>2</sup> Research shows that, compared to traditional competitive or individualistic learning environments, benefits of small group learning include higher student achievement,<sup>3</sup> greater use of higher level reasoning and critical thinking skills,<sup>4</sup> more positive attitudes toward the subject matter and satisfaction with the class,<sup>5</sup> and better interpersonal relationships among students and between students and instructor.<sup>6</sup>

Small group learning takes a variety of forms,<sup>7</sup> one of which is team-based learning (“TBL”). This article describes my experience implementing TBL in an undergraduate introduction to law course. The article first summarizes the elements of TBL. The second section of the article contains a brief description of the introduction to law course that is the subject of this article and an explanation of why I adopted TBL for the course. Section III describes how I implemented TBL in the course, including detailed descriptions of how each element of the TBL process was operationalized in the course. The fourth section of the article assesses the success of my use of TBL, while Section V contains lessons learned and advice for others wishing to adopt TBL in an undergraduate law course.

### **I. SUMMARY OF TEAM BASED LEARNING**

TBL has been described in the literature<sup>8</sup> and will not be reviewed in detail here. In brief, however, TBL differs from cooperative learning in that

[c]ooperative learning by and large views small groups as a teaching technique that is applied in a series of independent learning activities, each of which is aimed at accomplishing a specific set of learning objectives. In contrast, team-based learning views small groups as the basis of a semester-long instructional strategy in which a sequence of small group activities is designed and linked in such a way that they accomplish two purposes simultaneously: deepening student learning and enhancing team development.<sup>9</sup>

Under TBL a course is divided into four to seven units. Each unit follows the same basic organizational principle: individual students do the assigned reading, take a Readiness Assessment Test on the reading, retake the test with their teammates, and complete a series of

team application exercises that allow the students individually and as a team to explore the more subtle implications of the concepts. This process is repeated for each unit in the course. Students are graded on both their individual and team performance.

TBL is thus a teaching strategy that represents a systematic, coherent approach to an entire course.<sup>10</sup> Instead of using group activities periodically throughout a semester, TBL uses semester-long student teams as the focal point around which all course activities are structured. An instructor using TBL lectures very little, if at all, throughout the semester. Instead, the instructor guides student teams in their learning in order to allow the students themselves to explore and learn concepts.

The four key purposes of TBL are to 1) increase students' understanding of substantive course content, 2) enable students to use course content to solve problems and make decisions, 3) develop students' team skills, and 4) allow students to experience the value of teams.<sup>11</sup> An additional purpose is to increase both student and instructor satisfaction with the course.

## **II. DESCRIPTION OF INTRODUCTION TO LAW COURSE AND REASONS FOR ADOPTING TBL**

I first implemented TBL in two sections of an undergraduate junior/senior level introduction to law course in the fall of 2004, followed by one section in the spring of 2005. The course is taught at the College of Business of a medium-sized (11,000 students) public university in the Rocky Mountain west and is required for all students majoring in business or construction engineering technology. It is also a popular elective for students in other majors who are considering law school.

In a typical year the course is offered in approximately eight sections of 35-40 students each taught by a tenured associate professor (the author) or one of several adjunct instructors. Each section is taught either twice per week for 75 minutes each, or three times per week for 50 minutes each. Although each instructor has flexibility in how he or she teaches the material and develops his or her own syllabus,<sup>12</sup> each section of the course covers the following general topics: ethics; civil procedure; negligence; contracts; product liability; agency; and business organizations. Depending on the instructor, additional topics such as alternative dispute resolution, intellectual property or employment law may be added.

Until the fall of 2004, I had taught the course for seven years using a modified Socratic method in which I directed and moderated class discussion as a means of enlivening lectures. Students typically wrote two or three papers consisting of a legal analysis of a fact situation, and took three exams on the course material. Based on student evaluations and performance the course appeared to be successful for both students and instructor. After having taught the course in this way for seven years, however, I became dissatisfied for several reasons.

The most important reason for switching to TBL was a realization that my teaching method did not adequately allow students to develop and practice their critical thinking and decision-making skills. Although I did model and promote critical thinking in the classroom, many students could and did simply passively observe instead of actively engage in the discussion. Too many students were either unprepared for class or unwilling to participate and so did not engage in critical thinking except when required for assignments. I recognized TBL to be a teaching

strategy that would require students to practice their critical thinking without sacrificing the substantive content of the course.<sup>13</sup>

A second dissatisfaction arose from the fact that much of class time was spent reviewing the basic concepts contained in the textbook rather than exploring the implications and applications of the legal rules. Consequently, many students concluded they did not need to do the reading and could simply allow other more motivated or more extraverted students to carry the burden of the discussions.

Finally, I was dissatisfied with my attempts to use *ad hoc* groups to engage students and help them explore concepts in more depth. Many groups tended to agree on the simplest answer without serious thought and spent the rest of the time allocated for group work discussing their social lives. Even when groups were focused, there was insufficient time to discuss the issues in depth because so much class time had already been spent on basic definitions and concepts. In addition, groups tended to be ineffective because only a few students would have done the reading carefully enough to be able to discuss the question at anything more than a superficial level, so there were always social loafers who contributed little and irritated their more motivated peers. Groups assigned longer term research and/or writing projects also tended to be ineffective not only because of social loafers, but also because students simply divided up the work instead of discussing it with each other. As a result, the students tended not to see the whole picture or to learn from each other and thus did not gain the intended benefits from the project.<sup>14</sup> TBL offered a way to create highly effective student teams as a means to improving both process and content learning.

### **III. REDESIGNING THE COURSE TO IMPLEMENT TBL**

As stated above, TBL is a comprehensive teaching strategy that works best if all elements of the strategy are implemented. The first step is to identify the goals of the course. Thereafter, assuming the instructor believes the goals can be accomplished through TBL, the course is divided into four to seven units, each of which is taught through a specific process in a specific sequence using student teams as the main locus of learning.<sup>15</sup> The teams are created in the first week of the course and remain intact for the entire semester. The sequence for each unit of the course consists of:<sup>16</sup>

- A reading assignment completed outside of class.
- An individual in-class multiple-choice Readiness Assessment Test (RAT) that tests each student's understanding of the basic concepts in the assigned reading.
- The same RAT taken by the team collectively after each member of the team has completed the individual RAT.
- An opportunity for the team to appeal the answer to any question on the RAT.
- Class discussion of any RAT questions that were particularly challenging.
- Several class sessions in which the teams work on exercises that require the application of basic concepts to more complicated situations.
- One or more graded team products showing the team's ability to apply the concepts.
- A grading system that motivates both individual and team effort.

The discussion below describes how I adapted each of these elements of TBL for my Introduction to Law course.

### *A. Course Goals*

Having decided to change the pedagogy for the course in some way, I began by identifying the goals for the course.<sup>17</sup> My guiding principle is that because the students are primarily undergraduates majoring in business, the purpose of the course should not be to cover as many legal topics as possible. Instead, the course should give students the tools they will need in business to recognize a potential legal issue before it becomes a problem, and, equally important, to think through a problem logically and make good business decisions.<sup>18</sup> Hence, the syllabus for the TBL version of the course states the course goals as follows:

The two main and equally important objectives of Bus. 361 are 1) to expose you to some basic legal, social and ethical issues and rules of which you should be aware as citizens and business people, and 2) to help you improve your critical and creative thinking skills. More specifically, by the end of the course I hope you will:

#### *Foundational Knowledge*

- Understand how U.S. law is created
- Appreciate the role of law in U.S. society
- Understand the fundamental concepts of business ethics, the judicial system, civil procedure, negligence, contracts, product liability, business forms and agency law

#### *Application of Learning*

- Improve your critical thinking: recognize potential issues, analyze logically, pay attention to details, analogize from one situation to another, and assess the relative strengths of your own and others' arguments
- Improve your creative thinking: create alternative approaches to avoid or solve legal and ethical problems
- Be confident in your ability to build and communicate a persuasive argument, and make logical, well-supported decisions and recommendations

#### *Integration of Course Material*

- Appreciate the relevance of law to business decisions
- Use "thinking like a lawyer" to help solve personal and professional questions

#### *Personal Development*

- Identify and develop your personal value system
- Improve your ability to see all sides of an issue before judging others
- Respect those who disagree with you
- Accept that the world is ambiguous and become comfortable with (and perhaps even enjoy) making decisions in uncertain environments
- Improve your intellectual discipline – you should be your own harshest critic
- Enjoy rigorous thinking.

Creating this list of goals reinforced the importance of giving students constant opportunity to practice and improve their skills, and strengthened my commitment to TBL as a teaching strategy that could help students achieve these goals.

### *B. Course Units*

Because, as mentioned above, the course is designed not to cover as many topics as possible but instead to enable students to reason through a legal issue, I divided the course into the following units:<sup>19</sup>

1. Ethics
2. Sources of law, court system, civil procedure & legal reasoning
3. Negligence
4. Contracts
5. Product liability
6. Business forms
7. Agency

For each unit the above-described process (assigned readings, individual RAT, team RAT, etc.) is used with some variations as appropriate. For example, the Ethics RAT is a practice test that does not count toward students' grades in the course on the theory that easing the students into TBL slowly enhances their willingness to try this new approach about which they may have some trepidation due to their previous (usually bad) experience with student groups.

### *C. Creating Teams*

TBL teams are created in the first week of the course and stay together throughout the semester.<sup>20</sup> This gives the teams time to establish the trust that is an essential precondition to the creation of effective teams that are willing and able to engage in truly thoughtful discussions without losing their focus, team members who challenge each other appropriately to elevate each person's level of learning and understanding, and teams that produce good decisions, recommendations and analyses.

Teams are created as soon as enrollment in the course has stabilized, typically on the second or third class day. Enrollment in the course is limited to 36 students which enables the creation of six teams of six students each.<sup>21</sup> There are many ways in which one might create teams, ranging from student self-selection to instructor assignment based on grade point average and/or personality type.<sup>22</sup> For the sake of efficiency I create teams by asking all students who are not business or engineering students to line up starting in one corner of the classroom (this typically amounts to approximately six students). Then engineering students (typically about 10) are asked to line up next to the first group, and finally business students (approximately 20) line up next to the engineering students. The students then count off by one through six, and teams are created by grouping all ones in a team, all twos in a second team, and so on. Because there tend to be an approximately equal number of male and female students, and because my classes typically have very few minorities or foreign students given the location of the university, this method creates teams with approximately equal interests and experiential resources.<sup>23</sup>

The members of each newly created team take time to introduce themselves and to start brainstorming a name for their team.<sup>24</sup> After about ten minutes, each individual is given a worksheet that asks him/her to write down three things that have worked well in previous teams in which s/he has been involved, three things that have frustrated him/her in previous team experiences, and three rules s/he would like his/her team mates to follow during the semester. These students then discuss their lists with their teammates, collectively write down five rules by which they all agree to abide during the course, and sign this list. The purpose of this brief exercise is to get the students talking to each other, to allow them to explore each others' values as team members, and to empower the teams to establish and enforce their own rules of conduct. In order to reinforce these rules of team conduct, each individual is asked several times during the course of the semester to evaluate each member of his/her team on observance of the team's five rules.<sup>25</sup>

Although teams tend to work out team problems on their own, a team divorce option is offered because it is possible that a team may simply not be able to function due to personality or other differences, and in order to send a message to skeptical students that their course grade will not be dragged down by an ineffective team. The divorce process requires a team to meet twice with the offending member to discuss the problem and develop specific requirements for the offending member's performance. If after two such meetings there is still a problem, the team is required to meet with me for a mediation session. If thereafter the team still wishes to divorce the offending member, it may do so. The offending member may then try to find another team that will adopt her/him. Failing such adoption, the offending member becomes homeless and receives no points for future team activities, although s/he may continue to complete and earn points on individual assignments such as RATs. Depending on when during the course the divorce occurs, realistically it is very difficult for a team-less student to pass the course because of the weight of team points in each student's final grade.<sup>26</sup> Because the divorce process is onerous and the result draconian, team divorces are expected to be few.

The students quickly begin to identify with their teams. For example, on one occasion two students who had enrolled in the class but had been absent for the first week unexpectedly appeared in class the day after teams had been created. Despite having only just met their team mates for the first time in the previous class period, no team wanted to add a "stranger." (Eventually two teams did reluctantly volunteer to adopt the newcomers.) Some teams develop a friendly and professional interaction without becoming real friends, while other teams bond well and create an impressive cohesiveness. Although essentially all team work is done in class, it is apparent that most team members do talk with each other outside of class, at the very least to inform each other if they must miss a class, and often to study together.<sup>27</sup> One team enjoyed each other's company so much they began having weekly dinners together.

The work produced by the teams has ranged from acceptable to outstanding. Empirically the quality of the work has appeared to be a function primarily of the equal participation of all team members. In those teams where each member was fully prepared for each class and was willing to challenge the others' ideas, the team's insights and creativity tended to be superior to the results of those teams that contained social loafers, lacked leadership, or that had one or more dominant members who made it difficult for the others to participate effectively. The two least functional teams had opposite problems: one consisted of all introverts none of whom would

willingly even initiate a team discussion, while the other contained two very dominant leaders who did most of the work and did not listen to the other team members. Although TBL is designed to avoid these problems, in my experience it may not be possible to eradicate such occurrences altogether. Interestingly, both “worst” teams still produced acceptable work.

#### *D. Readiness Assessment Tests (RATs)*

One of the keys to the success of TBL is the use of Readiness Assessment Tests (“RATs”). At the beginning of each course unit, students do the assigned reading on their own and take both the individual and team closed-book RAT without the benefit of any lectures on the material. This places the burden of learning on the student and avoids the problem of students coming to class unprepared. It also allows the instructor to not lecture on the basic concepts covered adequately by the text and thus creates time to focus in subsequent classes on the more interesting and subtle issues that are often revealed only in the application of the concepts.<sup>28</sup> Thus, TBL actually allows the instructor to cover more material than she could in a traditional lecture format because she can avoid most discussion of the basic material and skip right to the more complex issues.

It is an art to determine how much reading students can be expected to do and understand for a RAT. I have found that the amount of reading should be assigned based not on the number of pages but on the complexity and detail of the legal concepts covered in the reading.<sup>29</sup> For example, it is entirely reasonable to expect students to read and understand the basic concepts of negligence for a single RAT. On the other hand, I divide the contracts unit into two to three segments because there are simply too many rules to expect a student reasonably to understand and remember for a single RAT. Regardless of the length of the reading assigned prior to a RAT, I always provide students with a “Key Concepts Guide” for each RAT on the theory that it is difficult for a student to judge which concepts in any given reading assignment are “basic” and therefore ripe for the RAT, and which are more complex and thus not appropriate for the RAT.<sup>30</sup> For example, I typically do not test the students’ understanding of cases included in the assigned reading unless they are so straightforward as to need no discussion (although students are told that reading the cases will help them understand the material better, and we do discuss the cases during subsequent class meetings).

On the day of the RAT, before the RAT is distributed, I ask if there are any questions about the material. Depending on the complexity of the material, there are typically a handful of questions requiring anywhere from two to ten minutes of discussion. When there are no more questions, the RAT is distributed to each individual who then completes it alone. The RAT consists of ten to twenty multiple choice questions<sup>31</sup> that test the students’ understanding of the fundamental concepts contained in the reading. The questions are typically approximately 25% recall-type questions, and 75% questions requiring higher order thinking,<sup>32</sup> usually consisting of a brief fact situation followed by one or more questions about how a rule might apply.

Once all members of a team have turned in their individual answer sheets, they complete the same RAT again as a team on a new answer sheet. If the questions on the RAT were good, this team phase of the RAT results in often rambunctious team discussion of the correct answers as team members discover they had different understandings of the relevant rules. I use IF-AT (Immediate Feedback-Assessment Technique) Forms for the team RAT, which are scratch-off

forms that immediately reveal whether the team's answer is correct or not.<sup>33</sup> The immediate feedback on the team RAT means that individuals can calculate their own individual scores even without my scoring their individual answer sheets during class.<sup>34</sup>

The team RAT is an excellent tool for improving both learning and team process. As the students argue with each other over the correct answer, they teach and learn from each other.<sup>35</sup> It is an extraordinary experience as an instructor to hear students argue vigorously over a point of law using correct legal terminology that just three days before they had never even heard of. The team RAT also contributes to the cohesiveness and effectiveness of the teams. The use of the IF-AT Form reveals immediately which are the most valuable members of the team and rewards those who are most prepared by causing teams to listen more closely to them.<sup>36</sup> This in turn motivates members of the team to prepare well for the RATs in order not to let the team down (and, perhaps, to avoid personal embarrassment). In addition, because team RAT scores are an important part of each student's final grade for the course,<sup>37</sup> students are motivated to help their team do as well as possible.<sup>38</sup> Use of the IF-AT Form also causes team members to sit physically closer together as they pore over the form to see whether they answered a question correctly, which seems to produce greater team cohesion. In addition, use of the form creates some competition among the teams as they hear each other cheer when they get an answer right and groan when they make a mistake. Thus, the team RAT is not only an effective learning tool, but is a significant team-building experience as well.

Once a team has finished the team RAT, it turns in its score sheet to me, then considers whether to appeal the answer to any question. Teams may appeal as many answers as they wish as long as they have good grounds to do so. Only teams (not individuals) may appeal an answer, and appeals must be in writing and explain in detail the grounds for the appeal, including references to specific pages in the text that support the appeal (the appeal is an open-book process). Good grounds for an appeal include a relevant legal rule that I had not considered that dictates an answer other than the one I deemed correct, and confusing wording of the question. Appeals are further opportunities for teams to learn about legal concepts and to work together cohesively. They also provide great opportunities for in-class discussions, both within and among teams, about the meaning and applicability of certain rules. If an appeal is granted, each member of the team is given back the points both on the team and their individual RAT scores. Only the members of a team that appealed successfully are rewarded so that other teams can not free ride on the efforts of others.<sup>39</sup>

Although I encourage teams to appeal answers if they believe they have good grounds to do so, it has been my experience that the teams often prefer to argue their case orally to me to test whether they have a good argument before actually writing an appeal. I find this to be yet another very useful teaching/learning opportunity as I can address with each team the specific issue or rule that is confusing to that team. Since different teams tend to focus on different questions and answers, I can tailor my teaching to each individual team as I circulate among them.<sup>40</sup> I collect the written appeals and review them before the next class. Whether I grant or deny the appeal, I write an explanation of my thinking on the paper before I return it to the team. I grant approximately 40% of the appeals filed, usually on grounds that the question or answers were confusing or ambiguous.



Finally, after all teams have written and filed their appeals, if any, I gather the whole class back together to discuss the most difficult questions and concepts. For example, if four out of six teams answered a question wrong, I will ask the two teams who got it right to explain why they chose the correct answer, after which I will add to their explanation if necessary to make sure the concept is clear to everyone. Often the class does not want further discussion, since my visits with individual teams have often already addressed their questions. If discussion seems necessary but there is no time remaining, I will set aside time at the beginning of the next class when I return the graded individual RAT score sheets.

As already noted, the RAT process has many pedagogical advantages to students. Perhaps one of the most attractive aspects of the process for instructors, however, is that it frees them from having to explain concepts in class that can just as easily, and more efficiently, be learned from the text book. In other words, I no longer have to “waste” time in class stating definitions, but can instead spend most class sessions on more interesting issues, as described in the next section.

#### *E. In-Class Team Exercises*

The RAT process is just the beginning of the students’ learning. The true learning occurs during the application exercises which require the students to apply the basic rules they have learned for the RAT to new situations. Depending on the course unit and whether it is a 50 or 75-minute class, I devote approximately between three and five class meetings to team assignments.

Michaelsen and Knight<sup>41</sup> have explained in detail how to create effective team assignments and their analysis will not be reproduced here. However, one of their guidelines is worth a brief discussion because it is particularly helpful in creating good team assignments and because it shows how well-suited a law course is to the TBL method.

Michaelsen and Knight state that

three procedures, fondly referred to as the “3 S’s,” are very effective in creating assignments with the necessary characteristics [of effective team assignments.]<sup>42</sup> These are: (1) all of the students in the class should be working on the *same problem* or assignment, (2) students should be required to make a *specific choice*, and (3) groups should *simultaneously report* their choices.<sup>43</sup>

According to Michaelsen and Knight, teams should work on the same problem because “[h]aving a common task allows for comparison, first between group members, and then between groups, and provides students with important feedback on their own thinking and their performance as a learning team.”<sup>44</sup> Demanding that students make a specific choice forces students to engage in higher level thinking by requiring them to identify more than one option and then to choose among the options based on clear, logical, persuasive reasoning. It also results in high-energy discussions within and among groups as students must support their choice.<sup>45</sup> Finally, simultaneous reporting allows teams to challenge each others’ decisions on the spot and forces teams to defend their reasoning. When teams know they will have to justify their decision before the rest of the class they engage in the process seriously and energetically.<sup>46</sup>

The first (“same problem”) and the third (“simultaneous report”) requirements address process, whereas the second (“specific choice”) criterion involves the substance of the assignment. I will therefore focus first on the “specific choice” requirement for designing effective assignments, then will discuss the implementation process.

An Introduction to Law course lends itself well to TBL because law is all about having to make choices and decisions based on clear, logical reasoning. It is therefore relatively easy to create team assignments that meet Michaelson and Knight’s “specific choice” requirement. For example, in the negligence unit of the course I give the students a brief summary of a real fact situation and ask them to decide who should win. This particular case involves an intoxicated man named Ratliff who stole a car from the Top Hat Car Wash and 90 minutes later ran over Juan Occidor who was riding his bicycle, causing horrendous injuries to Mr. Occidor.<sup>47</sup> Occidor sued the car wash on a negligence theory. The “specific choice” required of the students is to decide who should win the case and why. Discussion naturally revolves around the definition of the car wash’s duty and proximate cause and thus focuses on the foreseeability of the harm.

Because all students already know the basic concepts of duty, breach and proximate cause, and because they are asked to read the facts and decide the case for themselves before coming to class, the students immediately gather in their groups and start discussing the case, sometimes even before class has formally begun. The team discussions of this case can get quite heated with students challenging each other vigorously trying to persuade each other of the correct outcome.

After approximately ten minutes (or longer if the students need more time) the teams simultaneously report their decisions by holding up previously distributed “Yes” (i.e. Occidor wins) or “No” (Occidor loses) cards. The teams must then justify their decision, which again causes disagreeing teams to challenge each other. I use this discussion as an opportunity to explore the concept of foreseeability with the students, including the disagreement between Justices Cardozo and Andrews in *Palsgraf v. Long Island Railroad Co.*<sup>48</sup> I then tell the students that the jury in *Occidor* awarded the plaintiff \$3 million,<sup>49</sup> which then leads to a very lively discussion of the public policy implications for business generally of finding the car wash liable. Students remember the case and the lessons learned because they became so emotionally involved in the decision.

Another example from the contracts unit of the course is a case involving consideration. A husband and wife agreed in writing after a year of marriage that if he caused a divorce, they would split their assets and his income equally. When he eventually did initiate divorce proceedings 17 years later, the husband argued that the agreement was unenforceable for lack of consideration.<sup>50</sup> As with the car wash case, students read the facts and decide the case on their own before class, then discuss and make a choice in their teams, then simultaneously report their decision, after which we discuss the concept of, and public policy behind, the consideration requirement.

The most difficult part of designing application exercises is figuring out what work product to grade. I find it difficult to grade teams’ reasoning without a written team product to review, but also find it practically difficult to have the teams write something in every class. Therefore, I

have chosen not to grade the teams during the type of short exercises described above. Instead, at the end of each course unit I assign an individual paper that tests whether each student has mastered the concepts and requires the student to demonstrate his/her critical thinking and writing skills. I also assign a one to two page team memo requiring the teams to spend an entire class session analyzing a situation in writing which is then turned in for a grade.<sup>51</sup> These two papers are connected so that the team can not write the team paper unless each student has already written the individual paper.

For example, during the course unit on contracts in fall 2004, the students wrote individual analyses of whether a rafting company's waiver of liability was enforceable against a customer who suffered food poisoning as a result of eating a sandwich supplied by the rafting company.<sup>52</sup> The assignment required students to understand the legal rules governing waivers as well as the public policy behind these rules. On the day the students turned in their individual papers, the teams were given another assignment which asked them to draft a better waiver of liability that would be enforceable and to explain their reasoning.<sup>53</sup> These assignments together required the students not only to understand the law, but also to apply the legal rules in a practical way to create something new. The team assignment also helped the students understand how difficult it is to write a contract provision (let alone an entire contract) that complies with all aspects of the law and still accomplishes all that they want it to. Overall, the assignment worked well as a teaching tool because the individual and team papers required higher-level thinking, critical analysis, good writing, and effective team work.<sup>54</sup>

The semester ends with a team moot court assignment that requires each team to argue its side against another team before a team of judges. A member of each team picks a role out of a hat so that two teams represent the plaintiff, two the defendant, and two teams act as judges. I give each team an identical fact pattern, and give the teams three to four class sessions to prepare their briefs (or, for teams that will be the judges, a draft opinion). Two class sessions are set aside for the actual arguments. On the first day one plaintiff team argues against one defense team before one team of judges. On the second day the other teams make their arguments before the other team of judges. After the argument the plaintiff and defense teams may revise their briefs and the judges may revise their opinion. These written products are then turned in for a grade.

The exercise seems to work well because by the end of the semester the students are so used to preparing for class and identify so deeply with their team that there is no longer a real need to motivate individual effort. They work hard on their arguments because they want very much to beat the other team. The students also have fun with the preparation as well as the actual argument, and particularly enjoy the moment when the team of judges walks into the hearing unexpectedly wearing black robes which I have borrowed from colleagues.

#### *F. Grading System*

It is essential to TBL that students be motivated both to take individual responsibility for their own learning and their contributions to the team. The grading system is therefore an integral part of the strategy because if the grading system provides the correct incentives, students will generally behave in the desired manner.<sup>55</sup>

Personal accountability for individual preparation is ensured both through the social pressure of not letting down the team (as described above) and the percentage of the final course grade that is dependent upon individual work. In my course, 60% of a student's final grade is based on individual work.<sup>56</sup> The individual portion of the final grade is based on the student's individual RAT scores, plus his/her scores on several other individual assignments as shown in Appendix G.

The other 40% of a student's final grade is the total team score, including team RATs and written assignments, moderated by peer evaluations as explained in Appendix G.<sup>57</sup> The team RATs motivate students to add value to the team effort because the average team RAT score is significantly higher than the average individual RAT score.<sup>58</sup> Both the team RATs and team assignments are an important part of the grade, which in turn can be affected by the team members' peer evaluations. The effect is that a student who, in the opinion of her teammates, has added significant value to the team could earn more than the team's actual total points (because, for example, her teammates awarded her 110% for team contribution), while a student who did not contribute much to the team might earn fewer points than the team actually accumulated (because, for example, her teammates evaluated her effort at only 85%). Students are thus motivated to prepare for and contribute to team activities because both the team's accumulated points and the opinions of their teammates have a significant effect on final grades.

#### IV. ASSESSMENT OF TBL VERSION OF COURSE

Although no formal study was done for this paper of whether student performance improved as a result of TBL,<sup>59</sup> the TBL approach appears to have been successful from the perspective of student satisfaction. As shown in the table below, the average numerical student evaluations of the three TBL sections of the course in the fall of 2004 and spring 2005 were significantly higher than those received in the fall 2003 and spring 2004 semesters for three non-TBL sections of the course taught by the same instructor and covering the same material, and significantly higher than average scores for the College as whole.<sup>60</sup>

	<b>TBL Version of Course (Fall 2004 &amp; Spring 2005)*</b>		<b>Traditional Version of Course (Fall 2003 &amp; Spring 2004)**</b>	
	Course average***	College average***	Course average***	College average***
Organization of course	3.82	3.11	3.50	3.18
Clarity of presentation	3.67	3.01	3.53	3.08
Stimulation of interest	3.55	2.89	3.35	2.96
Overall effectiveness	3.75	3.16	3.58	3.23

\* Total of 3 sections; 95 of 106 students responding (90%)

\*\* Total of 3 sections; 89 of 110 students responding (81%)

\*\*\*Based on a 0-4 point scale where 0 is "poor" and 4 is "excellent."

Perhaps more telling is the number and enthusiasm of the qualitative student comments about the TBL version of the course. 95 of the 106 students (90%) who took the course in fall 2004 or spring 2005 returned evaluation forms, and 75 of these wrote comments, representing 71% of all students who took the course. Of these 75 comments, only two could be deemed even somewhat negative about the organization and delivery of the course.<sup>61</sup> Most of the 73 positive comments were some variation on the theme of “this was a fun and interesting class and I learned a lot.”<sup>62</sup> The fact that several students also stated that the grading was strict suggests that they did not give the course high marks because they perceived the course to be easy.<sup>63</sup>

Attendance may be another indicator of student attitudes toward the class. In the spring 2005 semester, in a class of 35 students with 41 class meetings, 15 students had perfect attendance, 14 had three or fewer absences, and six students had between four and eight absences. Moreover, in the fall 2004 and spring 2005 semester, with a total of 106 students, there were a *total* of seven absences during team exercises (RATs and/or graded in-class writing assignments), which seems likely to be an indicator of students’ loyalty to their teams.

Empirically, the students in the TBL version of the course have appeared generally to be far more engaged with and excited by the material than in previous non-TBL classes. As shown by their performance on the RATs, students are entirely capable of mastering basic concepts by reading the textbook without the assistance of a lecture. They often have energetic discussions over the team RATs and appeals. They tend to be very focused on application questions in class and able to articulate and defend their reasoning to other teams with whom they disagree. It is not uncommon for students to continue their discussions well after class is over, in the hallways and often in my office. Overall, therefore, student and instructor satisfaction with TBL as a method for teaching law to undergraduates is very high.

Further research into whether students actually learn more in a TBL introduction to law course compared to a more traditional course would be beneficial. While most researchers have found that team learning does in fact improve learning,<sup>64</sup> Lucas et al. found that teaching law via TBL does not improve student performance, at least in the short term.<sup>65</sup> It would be useful to test the efficacy of TBL in improving student learning not only by replicating in the undergraduate law course others’ studies of student performance, but also by measuring students’ retention of material over the long term. One might design a study, for example, that compares student retention of learning one year after a TBL versus a traditional introduction to law course.

## **V. LESSONS LEARNED**

The following are some practical lessons learned from two semesters of using TBL to teach an introduction to law course.<sup>66</sup>

*Coverage of material.* Because students study basic concepts on their own for the RATs, it is generally unnecessary to review most of these concepts in class. Therefore, instructors using TBL have more time to explore the more interesting applications of legal rules than under the traditional lecture method. It is important, however, not to use TBL simply to cover more topics, as opposed to exploring the deeper implications of a limited number of topics. Attempting to cover more than six or seven general topics in a 15 week semester will result in students (and instructors) feeling that all the students are doing is memorizing vocabulary and rules for the

RATs and will not allow the class time necessary for the team application exercises. Not only will the class turn into a constant series of “tests,” but students are likely to resent the feeling that they are simply teaching themselves and all the instructor is doing is writing and grading RATs. Therefore, although TBL allows deeper coverage of material, it should not be used to cover a broader range of material.

*Length of Class Period.* TBL works very well in 75-minute classes because there is sufficient time for RATs and discussion, and for more complex team application assignments. TBL can be successful in fifty minute classes but the instructor must be realistic about how much work can actually be accomplished in such a short amount of time. For example, it is a real challenge to do an individual RAT, team RAT and an appeals process in only fifty minutes. One solution is to cover less material on a RAT in a 50-minute than in a 75-minute class, and to have more RATs in the 50-minute class to make up for the difference. The danger then, however, is too many RATs which could make the students resentful, as noted above. Therefore, 75-minute class sessions are preferable to 50-minute classes.

*Student Responsibility for Learning.* Students are entirely capable of learning material from a good textbook if they are motivated to do so. The structure of TBL ensures that students are so motivated because their grade depends upon both their individual and team performance. Students will do the reading and work hard to understand it if they see a reason to do so.

*Grading of Team Application Assignments.* This has been the most difficult part of the implementation of TBL. As noted above, it can be very difficult to grade team exercises. One solution is to have teams write short 1-2 page memos/papers in class on a laptop explaining the team’s decision and reasoning, which the instructor can then grade after class. This has worked fairly well, although the team papers have not always been as insightful as one would hope. This may be due to the fact that it is mechanically difficult to write a paper as a team, even when the team is physically gathered around a laptop and has enough time.<sup>67</sup> The solution is to create assignments that require teams to engage in high-level thinking but also allow teams to explain their decision in just a few paragraphs.

*Overall Grades.* Because teams tend to do much better than individuals on RATs and assignments, some low-performing individuals may receive a higher final grade in the TBL course than they would in a traditional course in which a student’s entire grade depends only upon that student’s individual performance. A bigger problem may occur when the median TBL course grade is significantly higher than the median grade in other courses in the instructor’s department or college because the team portion of the grade inflated each individual grade, resulting in artificially high grades and perhaps censure from one’s colleagues.

Although it may be that students in a TBL course really do perform better than students in traditional courses, in which case they should earn higher grades, indiscriminately high grades erode the value of a grading system. Therefore, it is important to ensure that the grading system in fact does reflect individual learning. I address this issue by writing difficult RATs and individual assignments and by grading them rigorously. Not only does this tend to keep individual grades somewhat low and thus counter-balance the effect of team grades, but it also ensures that the teams are challenged on the team RATs and assignments. Another way to

address the issue is not to lock oneself into a grading formula at the beginning of the semester, but instead at the end of the semester to sort final grades into a fair distribution across the grading spectrum.<sup>68</sup>

*Student Objections.* It is helpful to obviate student objections to TBL as much as possible.<sup>69</sup> One objection, naturally, is that it is unfair for a significant portion of the grade to depend on team work because many if not most students have had bad group experiences in the past. The instructor should therefore emphasize from the beginning that the course is designed to avoid the typical problems of student groups (e.g. social loafers, dividing up work, finding time outside class to meet) and will result in higher grades for most students. TBL will not necessarily eliminate all team problems,<sup>70</sup> but does create strong incentives not to engage in counter-productive behavior.

Other student complaints may be that the students are simply teaching themselves because the instructor does not impart information through lecture,<sup>71</sup> and/or that the instructor is not an expert in the subject matter because he or she does not demonstrate his/her knowledge through lecture. One way to avoid such student perceptions is to engage them frequently in discussions that evolve from the RATs and team application exercises. Through TBL there are opportunities in every class meeting for the instructor to impart his or her knowledge of a subject without lecturing, because every class consists of discussion to which the instructor should be adding value.<sup>72</sup>

*Instructor Organization.* Because TBL is a carefully designed, integrated teaching strategy, it must be implemented deliberately. Instructors must therefore be willing to devote a great deal of time to redesigning a course according to the principles of TBL. Students will understand the assigned reading for the RAT better if the instructor provides a Key Concepts Guide for each RAT.<sup>73</sup> RATs work best (and are fairest) if the instructor has written each question with the Key Concepts Guide in mind, but also if the questions are hard enough to spur vigorous team discussion. Each in-class team application exercise must be designed for a particular purpose, whether to illustrate a point of law or to increase team cohesiveness. Students will rightly object if they perceive the exercises as random make-work. Each exercise, and each unit of the course, should build on the previous exercises and units so that students experience an accumulation of knowledge. For example, the last unit of my course consists of agency law, which requires the students to recall and use what they learned during the semester about torts, contracts and business organizations. In other words, the course should be tied together into a coherent whole, rather than appear to be a series of unrelated topics. All of this requires the instructor to plan out every element of the course before the semester even begins. TBL should not be attempted without investing the time in advance to make it work.

On the other hand, although detailed organization is required for designing and implementing TBL, the instructor must also be flexible enough to cede much of the control of the daily classroom experience to the students. Because TBL is student-centered, the instructor must step aside and let the students learn on their own with guidance, not lecture, from the instructor. An instructor who enjoys being the center of attention in the classroom, or who believes that his/her sole job is to impart knowledge to the students, may not enjoy or be successful at using TBL.

TBL demands that the instructor be both organized and flexible, a combination that may not be comfortable for every instructor.

*Instructor's Time Requirements.* Because I want to make sure students develop their own individual thinking and writing skills, I require a significant amount of individual work in addition to the team work. While I believe this is pedagogically sound, it is very time-consuming to grade as many individual assignments as I do in my course. I have no solution for this, other than to reduce the number of individual assignments, which I am reluctant to do for the above-mentioned pedagogical reasons.

*Organizational Culture.* For many students, instructors and administrators, TBL is a radical departure from their comfort zone. Therefore, it is important during the planning process to take into account students', colleagues' and administration's likely reactions to TBL. For example, one may receive fewer student complaints if the student culture tends to be respectful of authority and receptive to innovation rather than if students tend to be headstrong, disrespectful or unwilling to take responsibility for their own learning. There will probably always be some students who do not like TBL no matter how well it is implemented, but it is possible to reduce if not eliminate student complaints through careful planning in light of the organizational culture. Because of the likelihood of some initial student resistance, it is also important to consider the supportiveness of one's academic department. It may be easier to implement TBL where the culture of the department or college encourages, supports and rewards experimentation in the classroom than where innovation is questioned or teaching quality is not highly valued and rewarded.<sup>74</sup>

## **CONCLUSION**

An undergraduate introduction to law course is well-suited to TBL because it is easily divided into units, legal rules lend themselves well to RAT questions, and it is relatively easy to create team application exercises that require students to develop and practice the higher level thinking necessary for decision-making in an uncertain legal environment. TBL has worked well in relatively small (34-38 students) classes of juniors and seniors who were willing to try a new way of learning in a college with very supportive colleagues and administrators. Students engage in the desired type of individual and team behaviors, perform well, and enjoy themselves. As the instructor, I have been re-energized by the collaborative effort with the students. If implemented properly with adequate preparation and dedication to the entire TBL concept, both students and faculty will be rewarded by adopting TBL in the introduction to law course.



## APPENDICES

- A Excerpts from Syllabus, Spring 2005
- B Sample Key Concepts Guide
- C *Occidor v. Devel Automotive Inc. dba Top Hat Car Wash* (duty and proximate cause case & assignment)
- D *Bratton v. Bratton* (consideration case & assignment)
- E Sample Individual Paper #2 Assignment
- F Sample Team Paper #2 Assignment
- G Grading System

## Appendix A Excerpts from Syllabus

BUSINESS 361, SECTION 02  
INTRODUCTION TO LAW  
SPRING 2005

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\* \* \*

**Required text:** Mallor, Barnes et al, *Business Law: The Ethical, Global, and E-Commerce Environment* (12<sup>th</sup> ed. 2004) and additional material as assigned

### INTRODUCTION

Business 361 has a reputation for being a hard course, so expect to work at it! I think it is hard for many people because it requires you to learn to think like a lawyer, which does not come easily to all people. Thinking like a lawyer requires scrupulous attention to detail and a very logical progression from one idea to the next. It also requires comfort with ambiguity and an understanding that there is rarely a right answer in law. There is, however, a right way to approach any legal issue. In some ways, Bus. 361 requires you to master a new language and world view, which is not easy. Once mastered, however, this new language and world view will serve you well in every decision you have to make for the rest of your life. So work hard, be patient, ask lots of questions, and have fun!

### COURSE GOALS

The two main and equally important objectives of Bus. 361 are 1) to expose you to some basic legal, social and ethical issues and rules of which you should be aware as citizens and business people, and 2) to help you improve your critical and creative thinking skills. More specifically, by the end of the course I hope you will:

#### *Foundational Knowledge*

- Understand how U.S. law is created
- Appreciate the role of law in U.S. society
- Understand the fundamental concepts of business ethics, the judicial system, civil procedure, negligence, contracts, product liability, business forms and agency law

#### *Application of Learning*

- Improve your critical thinking: recognize potential issues, analyze logically, pay attention to details, analogize from one situation to another, and assess the relative strengths of your own and others' arguments
- Improve your creative thinking: create alternative approaches to avoid or solve legal and ethical problems
- Be confident in your ability to build and communicate a persuasive argument, and make logical, well-supported decisions and recommendations

#### *Integration of Course Material*

- Appreciate the relevance of law to business decisions
- Use "thinking like a lawyer" to help solve personal and professional questions

### *Personal Development*

- Identify and develop your personal value system
- Improve your ability to see all sides of an issue before judging others
- Respect those who disagree with you
- Accept that the world is ambiguous and become comfortable with (and perhaps even enjoy) making decisions in uncertain environments
- Improve your intellectual discipline – you should be your own harshest critic
- Enjoy rigorous thinking

As you can see, only one of the four headings listed above addresses the specific substantive content of the course. That is because law is dynamic and there is often no “right” answer to a legal issue. Therefore, the key to understanding law is understanding how to apply existing legal rules to new situations. This requires mastery of all the other goals listed above, especially critical thinking and respect for other arguments. In fact, however, these skills are valuable well beyond the realm of law. If you can develop your ability to analyze a problem carefully and rationally to reach a persuasive conclusion, you will be well-equipped to handle almost any problem that comes your way in your professional or personal life.

### **TEAM-BASED LEARNING STRATEGY**

Because of the nature of the goals for the course and because it has been shown over and over again that most people learn far better by “doing” rather than by reading or listening, I have adopted a “team-based learning” approach to the course that places heavy emphasis on your applying concepts in discussion with your classmates. The fundamental principal of team-based learning is that you will learn the course material far more effectively (and will have much more fun) by actively discussing, applying, arguing about, and defending your understanding of the material than by passively listening to a lecture. Working with the same team for the entire semester will allow you to trust your teammates which will lead to often intense debates, far higher levels of understanding than would occur working on your own, and satisfaction with your and your team’s efforts to solve complex and challenging problems.

The basic approach is as follows:

- We will create teams in the second week of class. You will remain in your team for the entire semester unless the team “divorces” (you’ll receive more information on how that might happen when we create the teams).
- You will do the assigned reading before every class.
- At the beginning of each segment of the course, you will take a 10-question multiple-choice Readiness Assessment Test (RAT) to ensure that you understand the basic concepts in the assigned reading (there will be 7 RATs during the semester). Each individual RAT will take about 15 minutes. I will give you a study guide for each RAT outlining the key concepts you should know for the RAT but will not lecture on the material before you take the RAT. In other words, you are responsible for studying the assigned reading. You will receive an individual grade for your performance on each RAT.
- After you have turned in your answers to the RAT, you will immediately retake the test with your team. At this point you should discuss your answers with your teammates and collectively decide on the correct answer for each question. This will take about 15 minutes. You will also receive a team grade for each RAT. Typically, team scores are significantly higher than individual scores on RATs.
- Once all teams have turned in their RAT answer sheets, we will discuss the answers in class to make sure everyone understands the basic concepts. This RAT system allows you to master the key concepts without passively listening to a lecture that simply explains again what the book already says.

- After the RAT, we will spend several class sessions working on questions and solving problems with your team. Since you already know the basic concepts, these class days allow you to explore the subtleties of the legal concepts. There will be assigned readings for each day, accompanied by a reading guide to help you understand the reading and prepare for class discussions.
- At the end of the segment, you will both individually and in your team produce a memo analyzing a legal situation. This memo will allow you to show what you have learned so far both about the legal rules and critical and creative thinking.
- Then we will start a new segment with another RAT, and so on.

For those who have had bad experiences working in groups, don't panic! Both the intensity of the team experience and the grading structure (see below) will ensure that 95% of the students in the class will contribute value to their teams. In fact, your final grade will probably be *higher* because of the team work than it would be if you were always working alone. Moreover, because all team work occurs in class, you will not experience the frustration of trying to find a time when all team members can meet. The course is designed to help you build highly functioning and satisfying teams with a minimum of aggravation.

### **GRADING SYSTEM**

I have attached an explanation of the grading system for the course to this syllabus. In brief, there are a total of 1000 points available in the course:

600 points (or 60%) are earned through your individual performance on RATs and other assignments

400 points (or 40%) are allocated to team performances on the RATs and other projects.

As explained in the attachment, your personal team points will be adjusted by evaluations by your teammates of your contributions to the team during the semester. The effect of the grading system is that you could very well earn a higher grade than your individual grade might suggest if you contribute significant value to your team during the course of the semester. On the other hand, if your team mates feel that you did not contribute to the team, your grade may be lower than your individual performance would indicate. Bottom line: you need to participate actively in your team!

Your final grade for the course will be based on the following point scale out of a total of 1000 available points:

<b>Points</b>	<b>Grade</b>	<b>Points</b>	<b>Grade</b>
940-1000	A	740-769	C
900-939	A-	700-739	C-
870-899	B+	670-699	D+
840-869	B	630-669	D
800-839	B-	< 630	F
770-799	C+		

### **POLICIES**

#### Missed RAT

If you know ahead of time that you will be absent on a RAT day, please let your teammates know and arrange with me to take the RAT early. That way your team will have the benefit of your answers. If on a RAT day you are sick or some other emergency unexpectedly prevents you from coming to class, let me know by phone or email *before* class time that you will be absent and we will schedule a time for you to take a make-up RAT as soon as possible. Even if you are absent you will receive credit for your team's RAT score as long as you notified me in advance of your impending absence. If you simply do not show

up for a RAT without notifying me you will receive a 0 for both the individual and team score for that RAT.

Missed Class

If you have to be absent on a class day, let me *and* your team know ahead of time that you won't be there, and do your best to make up for your absence in some way. Otherwise, your team mates might penalize you for your absence on their peer evaluation, particularly if you are often absent without notice to your team. In addition, I reserve the right to lower your grade by anywhere from 1/3 of a grade (e.g. B to B-) to one full grade (B to C) for excessive absenteeism (typically three or more absences during the semester).

\* \* \*

## COURSE SCHEDULE

Unless otherwise noted, page numbers refer to Mallor, Barnes et al, *Business Law: The Ethical, Global, and E-Commerce Environment* (12<sup>th</sup> ed. 2004). “Key Concepts Guide” and “Reading Guide” both refer to handouts I will distribute in class and/or make available electronically.

DATE	ASSIGNMENT	TOPIC/ACTIVITIES
Jan. 12 W		Introduction to course
Jan. 14 F	Pp. 99-101 & Pulliam, “Ordered to Commit Fraud, A Staffer Balked, Then Caved . . .,” Wall Street Journal, 6/23/03 (attached to Reading Guide) & Ethics Reading Guide (handout)	<u>Ethics</u> Class discussion
Jan. 17 M	<b>No Classes -- Martin Luther King Jr. Day</b>	
Jan. 19 W	You <b>must</b> be in class today. If you miss class you will not be part of a team which is essential for the course.	Form teams
Jan. 21 F	Pp. 74-98 & Ethics Key Concepts Guide (handout)	<u>Ethics</u> Practice RAT
Jan. 24 M	Handout: Ethics Reading Guide & Bogdanich & Koli, “2 Paths of Bayer Drug in 80’s,” New York Times, 5/22/03 (attached to Reading Guide)	<u>Ethics</u> Team & class discussion <b>Court Observation Paper assigned</b>
Jan. 26 W	Study pp. 2-6; 10-11; 22-23; 26-39 ( <u>not</u> <i>Lewis v. Abbott Labs</i> , p. 28, or <i>Blumenthal v. Drudge</i> , pp. 33-35) & Key Concepts Guide for RAT #1	<u>Sources of law, court system, civil procedure</u> <b>RAT #1</b>
Jan. 28 F	Study with Reading Guide: <i>Cyberlaw in Action</i> readings pp. 4, 29	<u>Sources of law, court system, civil procedure</u> Team & class discussion of readings

DATE	ASSIGNMENT	TOPIC/ACTIVITIES
Jan. 31 M	<i>Blumenthal v. Drudge</i> , pp. 33-35	<u>Sources of law, court system, civil procedure</u> Team & class discussion of readings <b>Briefing assignment distributed</b>
Feb. 2 W	Study pp. 10-13; 18-19; Study with Reading Guide: <i>Hagan v. Coca-Cola</i> , pp. 11-13	<u>Legal Reasoning</u> Briefing a case: Team & class discussion of <i>Hagan v. Coca-Cola</i>
Feb. 4 F	Prob. 1, pp. 19-20 (do not need to write out your answer but be prepared to discuss); handout on briefing a case v. writing an opinion (attached to Reading Guide)	<u>Legal Reasoning</u> Writing a legal opinion
Feb. 7 M	<b>Briefing assignment due</b>	Legal reasoning continued
Feb. 9 W	Study pp. 138-39, 167-182 (not <i>Carman v. Dunaway Timber Co</i> , p. 175 or <i>Davenport v. Cotton Hope Plantation</i> , p. 183) & Key Concepts Guide for RAT #2	<u>Negligence</u> <b>RAT #2</b>
Feb. 11 F	Study with Reading Guide: <i>Gaff v. Johnson Oil</i> , p. 169-70 & <i>Harris v. Traini</i> , p. 172-74	<u>Negligence</u> Duty & breach: Team & class discussion of readings <b>Paper #1 Assignment distributed</b>
Feb. 14 M	Study with Reading Guide: <i>Ethics in Action</i> , p. 171, & <i>Interim Personnel v. Messer</i> , p. 177-179	<u>Negligence</u> Duty & breach continued Causation
Feb. 16 W	Study with Reading Guide: <i>Occidor v. Devel Automotive ("Top Hat")</i> & <i>Cutler v. Jim Gilman Excavating, Inc.</i> (both cases attached to Reading Guide)	<u>Negligence</u> Causation & defenses: Team & class discussion of readings
Feb. 18 F		<u>Negligence</u> Damages: Team & class discussion of readings
Feb. 21 M	<b>No Classes -- Presidents' Day</b>	

DATE	ASSIGNMENT	TOPIC/ACTIVITIES
Feb. 23 W	<b>Paper #1 due</b> <b>Team Paper #1 due at end of class</b>	Work on Team Paper #1, due at end of class
Feb. 25 F	Study pp. 222-232; 240-247, 250-255 (not <i>MCarthy v. Kylberg</i> , p. 242 or <i>Reardon v. Lautner</i> , p. 253) & Key Concepts Guide for RAT #3	<u>Contracts – Intro &amp; Offer</u> <b>RAT #3</b>
Feb. 28 M	Study with Reading Guide: <i>Leonard v. Pepsico</i> , pp. 244-247; analyze practice "offer" question in Reading Guide	<u>Contracts – Intro &amp; Offer</u> Team & class discussion
Mar. 2 W	Study pp. 259-268 (not <i>Reilly Foam Corp. v. Rubbermaid Corp.</i> , p. 263); pp. 279-284, 295-303, & Key Concepts Guide for RAT #4	<u>Contracts -- Acceptance, Consideration &amp; Defenses</u> <b>RAT #4</b>
Mar. 4 F	Study with Reading Guide: <i>Keller v. Bones</i> pp. 251-52; <i>Cantu v. Central Educ. Agency</i> , pp. 267-68	<u>Contracts -- Acceptance</u> Team & class discussion <b>Individual Paper #2 Assigned</b>
Mar. 7 M	Study with Reading Guide: <i>Bratton v. Bratton</i> (attached to Reading Guide); <i>Stambovsky v. Ackley</i> , pp. 297-98; <i>Estate of Nelson v. Rice</i> , pp. 301-02	<u>Contracts -- Consideration &amp; Defenses</u> Team & class discussion
Mar. 9 W	Study pp. 322-323 (not <i>Straub v. BMT</i> ), 332-339, 345-347, 352-353, 384, 389 (bottom right, Performance of Contracts)-392, 397-405 (not <i>Woytowicz</i> , p. 402) & Key Concepts Guide for RAT #5	<u>Contracts -- Defenses, Performance &amp; Remedies</u> <b>RAT #5</b>



DATE	ASSIGNMENT	TOPIC/ACTIVITIES
Mar. 11 F	Study with Reading Guide: <i>Leon v. Family Fitness Center</i> , pp. 332-334; <i>Lucier v. Williams &amp; Cape France</i> (both attached to Reading Guide)  <b>Last day to turn in court observation paper</b>	<u>Contracts -- Defenses, Performance</u> Team & class discussion
Mar. 14-18	<b>No Classes -- Spring Break</b>	
Mar. 21 M	Decide Prob. 9, p. 407	<u>Contracts -- Performance &amp; Remedies</u> Team & class discussion
Mar. 23 W	<b>Individual Paper #2 due</b> <b>Team Paper #2 due at end of class</b>	Write Team Paper #2 in class, due at end of class
Mar. 25 F	<b>No Classes -- University Day</b>	
Mar. 28 M		In class negotiation of settlement based on Paper #2
Mar. 30 W	Study pp. 431-439, 440-446 (not <i>Hernandez v. Tokai Corp.</i> , p. 446), 449-453, 455-456 (not material on non-privity defense), 463-64 & Key Concepts Guide for RAT #6	<u>Product Liability</u> <b>RAT #6</b>
Apr. 1 F	Study with Reading Guide: <i>Felley v. Singleton</i> , pp. 435-436; <i>Yong Cha Hong v. Marriott Corp.</i> , p. 437; <i>McAlpine v. Rhone-Poulenc</i> (attached to Reading Guide)	<u>Product Liability</u> Team & class discussion <b>Paper #3 Assigned</b>
Apr. 4 M	Study with Reading Guide: <i>Jarvis v. Ford Motor Co.</i> , pp. 441-44; <i>Wise v. Ford Motor Company</i> (attached to Reading Guide)	<u>Product Liability</u> Team & class discussion

DATE	ASSIGNMENT	TOPIC/ACTIVITIES
Apr. 6 W	<b>Individual Paper #3 due Team Paper #3 due at end of class</b>	Write Team Paper #3 in class
Apr. 8 F	Read text pp. 818-823; 824-26, 831-34, 836-47, 854-55, 861-63 (partnerships)	<u>Business Forms: Partnerships</u> Class discussion
Apr. 11 M	Read pp. 870-75 (LLCs); 892-95, 901-06, 912-14, 918, 922-25, 928-40, 944-48, 951-53, 955-59, 961-63, 966-67, 974-75, 979-80 (corporations)	<u>Business Forms: LLCs and Corporations</u> Class discussion
Apr. 13 W	Study pp. 784-795, 800-804, 806-807, 810-814 & Key Concepts Guide for RAT #7	<u>Agency</u> <b>RAT #7</b>
Apr. 15 F		<b>Moot court project assigned</b> Work with team on project in class
Apr. 18 M		Work on moot court project in class
Apr. 20 W		Work on moot court project in class
Apr. 22 F		Work on moot court project in class
Apr. 25 M	<b>Brief or draft opinion due for Group A</b>	<b>Moot Court for Group A</b> Members of Group B may not attend this hearing
Apr. 27 W	<b>Draft brief or opinion due for Group B</b>	<b>Moot Court for Group B</b> Members of Group A are invited to attend the hearing
Apr. 29 F		Course wrap-up <b>Peer evaluations completed in class</b>
May 4 W 10:00 am	<b>Final brief or opinion due for both Group A and B</b>	

## Appendix B

### NEGLIGENCE KEY CONCEPTS FOR RAT #2 Wed. Feb. 9, 2005

Study pp. 138-39, 167-182 (not *Carman v. Dunaway Timber Co*, p. 175 or *Davenport v. Cotton Hope Plantation*, p. 183). You should read all cases included in the reading assignment to help you understand the legal concepts, but I will not ask you about the cases specifically.

#### Tort Law

What is a tort?

#### Civil v. Criminal Liability

Know key differences:

- Who brings the case
- Standard of proof
- Remedies

#### Elements of Negligence Analysis

Know the definition and basic application of each element of a negligence analysis.

- Duty
  - What is “duty”
  - To whom is it owed
  - Do *not* need to memorize definitions of invitees, licensees, trespassers
  - Do need to know basic duty of landowner is to take reasonable precautions against foreseeable harm
- Breach
  - What is definition of breach of duty
- Actual Cause
  - What is it?
  - “But for” test
- Proximate Cause
  - Understand concept
  - Importance of foreseeability of harm
  - How different from “actual cause”
- Injury & damages
  - Plaintiff must have suffered injury to win negligence case
  - Compensatory damages – medical expenses, lost wages, pain & suffering, property damage, lost profits
  - Punitive damages – designed to punish outrageous conduct – very rare in negligence cases
- Defenses
  - Understand definitions and application of:

- Comparative negligence – pure v. mixed system (MT is a mixed system)
- Assumption of risk

## APPENDIX C

***Occidor v. Devel Automotive Inc. dba Top Hat Car Wash*** , Fla. Circuit Court, 2001

*Please read the following summary of facts and decide the case:*

The Top Hat Car Wash, like many car washes, conducted its business by taking the keys to the cars to be washed from the customers, leaving the keys in the cars= ignition while the cars were washed, then returning the keys to the customers as the car was being wiped down. Top Hat was located in a high crime area in West Palm Beach, Florida. There had been 300 car thefts in the area in the last year, but none from the car wash.

On July 14, 1999, Top Hat customers complained to Top Hat managers about Henry Ratliff, who was loitering on the busy street in front of the car wash, holding his head and moaning. As a Pontiac Grand Prix came out of the car wash, Ratliff jumped into the car and drove off, running a stop light. Ninety minutes after stealing the car from Top Hat, during which time Ratliff consumed alcohol, Ratliff veered off the road in Delray Beach, hitting Juan Occidor, an immigrant Haitian landscaper who was riding his bicycle. As a result of the accident, Occidor suffered brain damage, his face had to be rebuilt, he needed a knee replacement, and lost all the muscle and tendons in his right arm, rendering it useless. The arm was so painful that Occidor asked doctors to amputate it. Occidor will never be able to return to work as a manual laborer.

Ratliff had been released from jail 7 days earlier and had spent most of that time under the influence of drugs and alcohol. The last memory Ratliff had of events before the accident was stealing a different car at 2:00 am the day before. Somehow Ratliff lost track of that car and ended up in front of Top Hat Car Wash.

Occidor sued Top Hat Car Wash for negligence arguing that Top Hat=s policy of leaving the keys in the cars being washed caused his injuries. Should Occidor win?

This case was reported in Genevieve E. Haas, *Foreseeability is Key to Bizarre Auto Accident Verdict*, LAWYERS WEEKLY USA, May 28, 2001, at B9.

## APPENDIX D

### BRATTON V. BRATTON

The parties, Cynthia Lee Bratton (Ms. Bratton) and Michael Wayne Bratton (Dr. Bratton), were married on June 26, 1982. At the time of the marriage, Dr. Bratton had completed his first year of medical school, and Ms. Bratton was employed as a research technician. Ms. Bratton had a child from a previous marriage. At the time of the trial, the parties had two minor children, ages sixteen and thirteen.

On June 27, 1983, Dr. Bratton handwrote and signed the following letter:

I, Michael W. Bratton, being of sound mind and being married to Cynthia L. Bratton hereby promise never to be the cause of a divorce between us. In the event that I do not fulfill my promise, I will give Cindy 50% of my present belongings and 50% of my net future earnings.

A more formal "property settlement agreement" was signed by both parties on August 26, 1983. That agreement provided in pertinent part:

WHEREAS, the parties are husband and wife and desire to provide for the future division and distribution of property and support of the Wife in the event of a future divorce; and

WHEREAS, the parties desire that their respective rights and interests in and to all future property to be accumulated be expressly set forth herein and established in accordance with the terms and provisions hereof.

NOW, THEREFORE, IN CONSIDERATION OF THE PREMISES, the mutual benefits accruing to the respective parties and other good and valuable consideration, received or to be received by each of the parties hereto, it is agreed as follows:

1. In the event the Husband is guilty of statutory grounds for divorce under the statutes of the state the parties are domiciled and the Wife institutes divorce proceedings in the state courts of such state, all property jointly owned by the parties, real, personal, or mixed, shall be divided equally between the parties.
2. In the event the Husband is guilty of statutory grounds for divorce under the statutes of the state the parties are domiciled and the Wife institutes divorce proceedings in the state courts of such state, the Husband shall pay to the Wife, one-half (1/2) of all of the Husband's net gross income (after deduction for state and federal income taxes).

The parties' versions as to the events surrounding the execution of the agreement differ substantially. Ms. Bratton testified that prior to their marriage, she and her husband discussed

the fact that she would forgo a career as a dentist to stay at home and raise a family if Dr. Bratton would provide one-half of his income to her in the event of a divorce. No written agreement was ever entered into prior to the marriage. One year after the parties married, Ms. Bratton again voiced an interest in dental school to her husband, at which time Dr. Bratton offered to formalize their prior agreement if she would give up the pursuit of a career. Ms. Bratton testified that it was her husband who had the agreement prepared by an attorney and then brought it to her to sign.

Dr. Bratton testified that there had been no discussion of his wife's interest in dental school prior to their marriage or at any time during the marriage. Instead, he testified that one year into their marriage, Ms. Bratton told him that the doctors with whom she worked warned her that he was likely to leave her once he graduated from medical school and that she needed a legally binding agreement to protect herself from that possibility. After arguing about this with his wife, Dr. Bratton handwrote the letter of July 1983, promising not to leave her and promising that if he did, she would get one-half of his property and future earnings. Dr. Bratton testified that it was Ms. Bratton who contacted an attorney to have the agreement drafted and brought it home for him to sign. At first he refused, but then he relented when she threatened to leave him if he did not sign it. Both parties testified that at the time the agreement was signed, they were not having any marital difficulties.

Ms. Bratton never enrolled in dental school, never took the dental school admissions tests, nor did she take any other steps necessary to the pursuit of a career as a dentist. Shortly after signing the agreement, Ms. Bratton enrolled in nursing school (although she did not complete more than one semester), and later pursued a career as a real estate agent, which was unsuccessful.

On March 15, 2000, Ms. Bratton filed for divorce alleging adultery by her husband. Dr. Bratton filed a motion for partial summary judgment to have the Property Settlement Agreement declared invalid for lack of consideration.

In the year 2000, Dr. Bratton, who was an orthopedic surgeon, had a gross annual income of \$551,521.00.

Dr. Bratton argued the Property Settlement Agreement was unenforceable for lack of consideration.

**Was there consideration for the Property Settlement Agreement? Why or why not?**

## APPENDIX E

### INDIVIDUAL PAPER #2 ASSIGNMENT

Please write this paper individually and turn it in on [date]. You are encouraged to talk with others about the paper, but the work you turn in must be your own. In class on the day your paper is due I will give you a related but different assignment to be completed by your team in class on that day (I will supply laptops in class). Your individual paper is worth 150 points and the team paper is worth 30 points.

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#### FACTS

Having learned his lesson from the Orville Little affair,<sup>75</sup> Bobby, the manager of Bobcat Rafting Company (BRC), decided to require all participants in BRC trips to sign a waiver of liability before getting into a raft. The waiver, which is printed on a single sheet of paper with no additional text, reads as follows:

#### RELEASE FROM LIABILITY

**The undersigned understands that rafting can be dangerous, and that serious injury or even death can result. The undersigned also understands that no one can fully control river conditions or the behavior of others while on the river. Therefore, the undersigned does hereby knowingly and voluntarily assume the risk of, and releases Bobcat Rafting Company from all liability for, any injury suffered while participating in a rafting trip guided by Bobcat Rafting Company.**

Signed: \_\_\_\_\_  
(name of participant)

In early September of this year, Wilbur Large, who had never been on a raft before, showed up at BRC to take an all-day whitewater rafting trip on the Gallatin River. Bobby fitted Wilbur with a correctly sized life vest, introduced him to his very large and muscular guide, had Wilbur read and sign the release, and collected \$150 from Wilbur in payment for the trip.

Wilbur had a great morning on the river and was ready for a big lunch when the rafts pulled over at 12:30. The guide distributed the sandwiches, egg salad, fruit, cookies and juice provided by BRC for lunch. Wilbur ate heartily and was ready to get back in the boat at 1:30. An hour later, however, Wilbur began to feel queasy. Pretty soon, everyone in the boat, including Wilbur, was retching over the side, violently ill. They managed to get to the take-out point from which they were driven directly to the hospital where they were diagnosed with food poisoning from e-coli bacteria in the egg salad. Wilbur spent a horrible three days in the hospital and lost 20 pounds.



When he had recovered, Wilbur wrote BRC an email describing the horror he had been through and demanding that BRC pay him \$2,000 to compensate him for his medical bills and pain and suffering. Bobby believes that the waiver Wilbur signed protects BRC from liability for Wilbur's suffering.

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## QUESTION

### Do you agree with Bobby? Why or why not?

Please organize your answer using the IRAC organizational principle:

- a) Issue: What exactly is the legal issue to be decided?
- b) Rule(s): State all relevant legal rules and define their meanings. Be sure to state and define each legal rule that is relevant to deciding the case, including relevant rules contained in *Leon v. Family Fitness Center* (p. 332 of the text). Assume that BRC is not "a party who owes a duty to the public" as mentioned on p. 332 of the text.
- c) Analysis: Analyze the facts in light of each rule. In your analysis, *be sure to address any counterarguments to your position* and show why they are unpersuasive.
- d) Conclusion: What is your decision? Summarize your reasoning briefly.

Your paper should be double-spaced and in 12 pt type with 1 inch margins on all sides. It should be as long as it needs to be to do a thorough job – probably between 3-5 pages, perhaps longer, depending on your writing style. Unlike some other instructors, I want to see your ability to recognize and address arguments against your position, so I am not looking for the briefest, most concise memo possible, but instead the most thorough and thoughtful. I will grade your paper on the following criteria:

- Thoroughness, thoughtfulness and persuasiveness of your answers
- Organization and clarity of your paper, including use of IRAC
- Quality of your writing, including spelling and grammar

## APPENDIX F

### TEAM PAPER #2 ASSIGNMENT

You have the full class period today (i.e. 75 minutes) to complete this assignment. This paper is worth 30 team points.

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#### ASSIGNMENT

**1. Please draft for Bobcat Rafting Company a release from liability that is as comprehensive as possible but will still be enforced by a court.**

By “*as comprehensive as possible*” I mean that the release will protect BRC from as much liability as possible. For example, many of you may have concluded in your individual papers that the release Wilbur signed does not protect BRC from liability for Wilbur’s suffering because the release would be interpreted by a reasonable person only to cover injuries suffered due to river conditions or the behavior of others, not due to BRC’s conduct that is unrelated to the dangers presented specifically by rafting. I want you to try to draft a release that would cover such injury as Wilbur suffered, as well as the kind of injury Orville suffered (i.e. falling overboard and hitting a bridge piling), and any other injury for which someone might sue BRC.

By “*will still be enforced by a court*” I mean that the release you draft must comply with all rules governing exculpatory clauses described in your text (p. 332) and in *Leon v. Family Fitness Center* (pp. 332-34). For example, as the text notes, courts have been known to invalidate exculpatory clauses that contain very broad language, such as those that purport to release a party from “all liability.”

The challenge, therefore, is to draft a release carefully so that it anticipates all manner of injury but is not so broad that it will not be enforceable.

In drafting your release, you are welcome to use any language of the release quoted in your individual paper assignment that you think is useful.

**2. Please explain in one or two paragraphs why you drafted the release as you did.**

In other words, write one or two paragraphs explaining to BRC why the clause you have written will protect BRC and will be enforceable. If the law prevents you from writing as comprehensive a release as you would like, explain what is not covered and why.

## APPENDIX G

### GRADING SYSTEM

#### **Individual Assignments (60% of grade)**

##### RATs

#1 Civ Pro	20
#2 Negligence	20
#3 Contracts A	20
#4 Contracts B	20
#5 Contracts C	20
#6 Product liability	20
#7 Agency	20
TOTAL RAT Score	140 pts
Briefing assignment <sup>76</sup>	90
Court observation <sup>77</sup>	60
Paper #1 (negligence analysis)	120
Paper #2 (contracts analysis)	130
<u>Paper #3 (product liability)</u>	<u>60</u>
TOTAL INDIVIDUAL POINTS	600

#### **Team Assignments (40% of grade)**

##### RATs

#1 Civ Pro	20 pts
#2 Negligence	20
#3 Contracts A	20
#4 Contracts B	20
#5 Contracts C	20
#6 Product liability	20
#7 Agency	20
TOTAL RAT Score	140 pts
Paper #1 (negligence analysis)	50
Paper #2 (negotiation strategy)	50
Paper #3 (product liability analysis)	70
<u>Moot court</u>	<u>90</u>
TOTAL TEAM POINTS	400

#### **Peer Evaluations**

The Peer Evaluations serve as a multiplier of your Team Points. Each member of each team allocates a total of 100 points to the other members of the team based on each member's contribution to the team during the semester. The total score for each person will then serve as a percentage multiplier of the team score resulting in a personal team score for each member of the team.

For example, assume Students A through F are members of the same six-person team. At the end of the semester, the peer evaluations produce the following ratings:

Student Evaluated	Evaluator						
	A	B	C	D	E	F	TOTAL
A		20	20	20	20	20	100
B	21		22	21	19	22	105
C	22	23		22	23	20	110
D	17	20	18		19	21	95
E	22	20	23	18		17	100
F	18	17	17	19	19		90
<b>Total</b>	100	100	100	100	100	100	

Assume that at the end of the semester, the team has achieved a total of 350/400 team points. Also assume that Students A, C and F have each earned a total of 500/600 individual points which is the equivalent of approximately a B-. The students' final grades would be as follows:

#### Student A

Initial team score: 350  
Peer eval score: 100%  
Adjusted team score: 350 (i.e. 100% x 350)  
Individual score: 500  
Final score: 850 (i.e. adjusted team score + individual score) = B

#### Student C

Initial team score: 350  
Peer eval score: 110%  
Adjusted team score: 385 (i.e. 110% x 350)  
Individual score: 500  
Final score: 885 (i.e. adjusted team score + individual score) = B+

#### Student F

Initial team score: 350  
Peer eval score: 90%  
Adjusted team score: 315 (i.e. 90% x 350)  
Individual score: 500  
Final score: 815 (i.e. adjusted team score + individual score) = B-

Thus, given the same individual and initial team scores, **the peer evaluation multiplier can make a real difference to your final grade in the class.**

## NOTES

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<sup>1</sup> DAVID W. JOHNSON ET AL., COOPERATIVE LEARNING: INCREASING COLLEGE FACULTY INSTRUCTIONAL PRODUCTIVITY 4 (1991). Formal academic research into such learning began in the 1970s. ROBERT E. SLAVIN, COOPERATIVE LEARNING: THEORY, RESEARCH, AND PRACTICE 2 (1990).

<sup>2</sup> JOHNSON, *supra* note 1, at 3. For literature reviews of group learning, *see id.*; Carolyn Birmingham & Mary McCord, *Group Process Research: Implications for Using Learning Groups*, in LARRY K. MICHAELSEN ET AL., TEAM-BASED LEARNING: A TRANSFORMATIVE USE OF SMALL GROUPS IN COLLEGE TEACHING 73 (2002); David W. Johnson et al., *Cooperative Learning Returns to College: What Evidence Is There That It Works?*, CHANGE, July/Aug. 1998, at 26; Gary D. Kopenhaver & Charles B. Shrader, *Structuring the Classroom for Performance: Cooperative Learning with Instructor-Assigned Teams*, 1 DECISION SCIENCES J. INNOVATIVE EDUC. 1, 2-4 (2003); Carolyn Strand Norman et al., *Cooperative Learning: Resources from the Business Disciplines*, 22 J. ACCT. EDUC. 1 (2004); SLAVIN, *supra* note 1.

<sup>3</sup> *See, e.g.*, Peggy A. Hite, *An Experimental Study of the Effectiveness of Group Exams in an Individual Income Tax Class*, 11 ISSUES IN ACCT. EDUC. 61 (1996); Nen-Chen Richard Hwang et al., *An Empirical Test of Cooperative Learning in a Passive Learning Environment*, 20 ISSUES IN ACCT. EDUC. 151 (2005); JOHNSON, *supra* note 1, at 38-39; Johnson et al., *Cooperative Learning Returns to College*, *supra* note 2, at 31 (over 168 studies “indicate that cooperative learning promotes higher individual achievement than do competitive approaches . . . or individualistic ones”); Linda I. Nowak & Stephen W. Miller, *Team Testing Increases Performance*, 71 J. EDUC. FOR BUS. 253 (1996); Susan P. Ravenscroft et al., *Incentives in Student Team Learning: An Experiment in Cooperative Group Learning*, 10 ISSUES IN ACCT. EDUC. 97 (1995) (team testing plus basing grade in part on team performance improved individual performance); SLAVIN, *supra* note 1, at 18 (analysis of 60 studies of elementary and secondary school classes shows effects of cooperative learning on achievement are positive). Others, however, have not found such an effect. *See, e.g.*, J. Gregory Kunkel & William E. Shafer, *Effects of Student Team Learning in Undergraduate Auditing Courses*, 72 J. EDUC. FOR BUS. 197 (1997) (team learning does not improve academic performance); Kathryn A.S. Lancaster & Carolyn A. Strand, *Using the Team-Learning Model in a Managerial Accounting Class: An Experiment in Cooperative Learning*, 16 ISSUES IN ACCOUNTING EDUCATION 549, 561-62 (2001) (“classroom format had no statistically significant impact . . . on final exam performance”); Laurie A. Lucas et al., *Team Learning Versus Traditional Lecture: Measuring the Efficacy of Teaching Method in Legal Studies*, 19 J.LEGAL STUD. EDUC. 63 (2001) (TBL in a lower-level undergraduate introduction to law course does not significantly increase students’ verbal or intellectual skills compared to a traditional lecture method, although TBL is at least as effective as lecture); Susan P. Ravenscroft et al., *Student Team Learning – Replication and Extension*, 2 ACCT. EDUC.: J. OF THEORY, PRACTICE & RESEARCH 151 (1997) (team learning does not consistently improve exam performance).

<sup>4</sup> JOHNSON, *supra* note 1, at 41. *See also* James L. Cooper, *Cooperative Learning and Critical Thinking*, 22 TEACHING OF PSYCH. 7, 8 (1995) (“In examining the appropriateness of cooperative learning relative to traditional lecture and lecture-discussion methods of instruction, we should ask “Who does most of the complicated, difficult thinking in the classroom?” In properly structured cooperative learning, students perform most of the active, critical thinking with continuous support and feedback from other students and the teacher.”)

<sup>5</sup> JOHNSON, *supra* note 1, at 42 & 47; Mary Beth Caldwell et al., *The Effect of Cooperative Learning on Student Perceptions of Accounting in the Principles Courses*, 14 J. ACCT. EDUC. 17 (1996). *But see* Lancaster & Strand, *supra* note 3, at 562 (no difference in student perception of cooperative learning versus traditional learning environment); SLAVIN, *supra* note 1, at 48-49 (studies of elementary and secondary school students are inconsistent on effect of cooperative learning on liking of class, school or subject matter).

<sup>6</sup> JOHNSON, *supra* note 1, at 42-43. *See also* SLAVIN, *supra* note 1, at 50 (studies of elementary and secondary school students show “cooperative learning promotes positive relationships between students”).

<sup>7</sup> *See, e.g.* JOHNSON, *supra* note 1; PHILIP RACE, 500 TIPS ON GROUP LEARNING (2000); SLAVIN, *supra* note 1; ROBERT E. SLAVIN, A PRACTICAL GUIDE TO COOPERATIVE LEARNING (1991); RUTH FEDERMAN STEIN, USING STUDENT TEAMS IN THE CLASSROOM: A FACULTY GUIDE (2000).

<sup>8</sup> LARRY K. MICHAELSEN ET AL., TEAM-BASED LEARNING: A TRANSFORMATIVE USE OF SMALL GROUPS IN COLLEGE TEACHING (2004) (hereinafter MICHAELSEN, TEAM-BASED LEARNING). *See also* Lucas, *supra* note 3; Larry K. Michaelson et al., *Problems with Learning Groups: An Ounce of Prevention . . .*, 17 J.LEGAL STUD. EDUC. 91 (1999); Deborah Britt Roebuck, *Using Team Learning in Business and Organizational Communication Classes*, 61

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BUS. COMM. Q. 35 (1998); Catherine M. Schaffer, *The Use of the Team Learning Approach in Selected Marketing Courses*, 5 MARKETING EDUC. REV. 41 (1995).

<sup>9</sup> L. Dee Fink, *Beyond Small Groups: Harnessing the Extraordinary Power of Learning Teams*, in MICHAELSEN, TEAM-BASED LEARNING, *supra* note 8, at 3, 13.

<sup>10</sup> *Id.* 8-9.

<sup>11</sup> *Id.* at 19.

<sup>12</sup> In fall 2004, the author taught two sections of the course using TBL while two adjuncts taught a total of three additional sections using the more traditional lecture approach. In spring 2005, the author taught one section of the course using TBL, an adjunct professor taught another section using TBL, and two additional adjuncts taught one section each using a traditional approach.

<sup>13</sup> *Cf.* Fink, *supra* note 9, at 23 (“Team-based learning can be especially helpful to anyone who wants to emphasize the development of students’ thinking skills in their courses.”); *see also* Cooper, *supra* note 4, at 8.

<sup>14</sup> These experiences are typical of dysfunctional groups. *See* Larry K. Michaelsen & Arletta Bauman Knight, *Creating Effective Assignments: A Key Component of Team-Based Learning*, in MICHAELSEN, TEAM-BASED LEARNING, *supra* note 8, at 51, 51-54 & 58-59 for a description of what tends to go wrong in student groups; *see also* JOHNSON, *supra* note 1, at 15-16.

<sup>15</sup> *See generally* MICHAELSEN, TEAM-BASED LEARNING., *supra* note 8.

<sup>16</sup> *See* Larry K. Michaelsen, *Getting Started with Team-Based Learning*, in MICHAELSEN, TEAM-BASED LEARNING, *supra* note 8, at 27, 41-44 (hereinafter Michaelsen, *Getting Started*).

<sup>17</sup> L. DEE FINK, CREATING SIGNIFICANT LEARNING EXPERIENCES: AN INTEGRATED APPROACH TO DESIGNING COLLEGE COURSES 73-81 (2003) was extremely helpful in this goal-identification process.

<sup>18</sup> *Cf.* John Collins, *Learning to Make Business Decisions in the Shadow of the Law*, 17 J. LEGAL STUD. EDUC. 117, 118 (1999) (“in business schools students should learn about the legal system and law in a way that better enhances their abilities as business decision makers”).

<sup>19</sup> These are essentially the same units covered under the former Socratic questioning/lecture method of teaching.

<sup>20</sup> *See* Michaelsen, *Getting Started*, *supra* note 16, at 30, for an explanation of why TBL teams should be permanent. *See also* Kopenhagen & Shrader, *supra* note 2, at 13 (“[t]he primary determinant of high team performance . . . is the lack of team membership change during the semester.”) Teams may divorce should it become necessary (*see infra* this section for a description of the divorce process).

<sup>21</sup> In reality the final enrollment number may range from approximately 34 up to 38 students, with the result that teams may actually vary in size from five to seven. Different researchers recommend different sizes for groups, but TBL is based on the expectation that groups will consist of five to seven members. *See* Birmingham & McCord, *supra* note 2, at 74-75; *see also* Larry K. Michaelsen, *Frequently Asked Questions about Team-Based Learning*, in MICHAELSEN, TEAM BASED LEARNING, *supra* note 8, 209, 218 (hereinafter Michaelsen, *Frequently Asked Questions*) (“Historically, we have found that if teams have at least five members, they usually have the intellectual resources to complete the team assignments. On the other end of the spectrum, we have found that groups larger than seven tend to have difficulty in the team-development process. Hence the optimum size for team-based learning is five to seven students.”) I not only agree with this conclusion, but also prefer teams of six to seven because if a team is small to begin with that team will be at a disadvantage should one of its members withdraw from the course during the semester.

<sup>22</sup> *See, e.g.*, Michaelsen, *Frequently Asked Questions*, *supra* note 21, at 217 (ways to create teams). For analyses of predictors of team success, *see, e.g.* Donald R. Bacon et al., *Exploring Predictors of Student Team Project Performance*, 20 J. MARKETING EDUC. 63 (1998); Birmingham & McCord, *supra* note 2, at 73; Brenda S. Gardner & Sharon J. Korth, *A Framework for Learning to Work in Teams*, J. EDUC. IN BUS. 28 (Sept./Oct. 1998); Kopenhagen & Shrader, *supra* note 2; Norman, *supra* note 2.

<sup>23</sup> In other words, each team will consist of one non-engineering/non-business student, one or two engineering students, and three or four business students, and an approximately equal representation of men and women. *See* Michaelsen, *Getting Started*, *supra* note 16, at 28-30 & 39-40 for recommendations on forming teams. The author does not allow students to create their own teams and does not create the teams herself for the reasons given by Michaelsen.

<sup>24</sup> Some teams invent a name quickly, while others may take several class sessions to settle on a name. During this brainstorming session I take a digital photo of each team to help me learn names quickly and to make the group feel like a team from the very first moments.

<sup>25</sup> *See infra* Section III.F for an explanation of how peer evaluations are used to determine each student's grade.

<sup>26</sup> *See infra* Section III.F for a discussion of the grading system.

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- <sup>27</sup> See *infra* Section III.D & E for a discussion of how such team cohesiveness is created through TBL.
- <sup>28</sup> See Michaelsen, *Getting Started*, *supra* note 16, at 41-44 for a more detailed description of the RAT process.
- <sup>29</sup> See Appendix A for excerpts from a sample syllabus showing the reading assigned for each RAT.
- <sup>30</sup> See Appendix B for a sample Key Concepts Guide.
- <sup>31</sup> The author used 15 questions in her 75-minute sections, but next time will increase it to 20 because there is sufficient time. In her 50-minute sections the author used ten questions, and increased the total number of RATs in order to cover the material sufficiently. See *infra* Section V for a discussion of the challenges of using TBL in a 50-minute class.
- <sup>32</sup> See generally BENJAMIN S. BLOOM, *TAXONOMY OF EDUCATIONAL OBJECTIVES: THE CLASSIFICATION OF EDUCATIONAL GOALS* (1956).
- <sup>33</sup> IT-AT forms are available from Epstein Educational Enterprises at <http://www.epsteineducation.com>.
- <sup>34</sup> Not having access to a Scantron machine, I simply use my own answer sheet that I can score by hand after class.
- <sup>35</sup> Overall, for the three sections of the course in which I have used TBL, 89% of teams have outscored the highest scoring individual on the team on the RATs.
- <sup>36</sup> As Larry Michaelsen has said, “the loudmouth is only one scratch away from having to eat crow.” Larry K. Michaelsen, Address to the Faculty of the College of Business, Montana State University (Feb. 5, 2005).
- <sup>37</sup> See *infra* Section III.F for a discussion of grading.
- <sup>38</sup> See Michaelsen, *Getting Started*, *supra* note 16, at 43-44 for a more detailed discussion of the benefits of the team RAT.
- <sup>39</sup> See *id.* 42-43, and Michaelsen, *Frequently Asked Questions*, *supra* note 21, at 222 for a description of the appeals process.
- <sup>40</sup> This is, of course, only possible in a class with relatively few teams.
- <sup>41</sup> See Michaelsen & Knight, *supra* note 14.
- <sup>42</sup> These characteristics are promotion of a high level of individual accountability; close physical proximity of team members; motivation of a great deal of discussion among team members; immediate and meaningful feedback; and explicit rewards for team performance. Michaelsen & Knight, *supra* note 14, at 53.
- <sup>43</sup> *Id.* at 61-62.
- <sup>44</sup> *Id.* at 62.
- <sup>45</sup> See *id.* at 63-66, for a more detailed explanation of the “specific choice” requirement.
- <sup>46</sup> See *id.* at 66-68.
- <sup>47</sup> Genevieve E. Haas, *Foreseeability is Key to Bizarre Auto Accident Verdict*, *LAWYERS WEEKLY USA*, May 28, 2001, at B9. See Appendix C for the description of the facts and the assignment given to students
- <sup>48</sup> 162 N.E. 99 (N.Y. 1928). Justice Cardozo held that a defendant owes a duty only to those within the “range of apprehension” of risk of harm, whereas Justice Andrews, in dissent, argued that a defendant is liable for injuries caused to another through negligence regardless of the manner in which the injuries were caused as long as some injury was foreseeable to the defendant.
- <sup>49</sup> Haas, *supra* note 47.
- <sup>50</sup> *Bratton v. Bratton*, 136 S.W.3d 595 (Tenn. 2004). See Appendix D for the complete facts of the case. The Tennessee Supreme Court found the agreement was unenforceable for lack of consideration.
- <sup>51</sup> See *infra* Section III.F for a discussion of grading.
- <sup>52</sup> The facts of the case are entirely fictional. See Appendix E for the actual assignment. The assignment followed up the previous assignment, which had asked the students to analyze the rafting company’s liability for injuries caused to a customer arguably due to the negligence of others on the river, the rafting guide and the customer himself. Many students had suggested in their papers that the rafting company require customers to sign a waiver of liability so the company could not be sued by injured customers. It was an obvious step, then, to have the students to explore their own recommendation in the contracts unit of the course.
- <sup>53</sup> See Appendix E.
- <sup>54</sup> The teams wrote their papers on laptops and saved their documents to my file through a wireless internet connection.
- <sup>55</sup> See Birmingham & McCord, *supra* note 2, at 84-86; Michaelsen, *Getting Started*, *supra* note 16, at 30-32.
- <sup>56</sup> See Appendix G for an explanation of the grading system. Michaelsen allows the students themselves to determine the relative weight of individual and team work, see Larry K. Michaelsen, *Setting Grade Weights: A Team-Building Exercise*, in MICHAELSEN, *TEAM-BASED LEARNING*, *supra* note 8, at 241. I have chosen to set the weights myself because I want to be sure the individual work is weighted sufficiently to motivate all students to take responsibility for their own work, and to reassure those who have had bad group experiences in the past that they

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can do well in the class despite the team component (because they do not believe me when I tell them at the beginning of the semester that their grade is likely to be higher, not lower, than they expect because of the team component).

<sup>57</sup> This use of peer evaluation scores is based on a system used by L. Dee Fink. See Larry K. Michaelsen & L. Dee Fink, *Calculating Peer Evaluation Scores*, in MICHAELSEN, TEAM-BASED LEARNING, *supra* note 8, at 230, 232-34.

<sup>58</sup> For example, in spring 2005, in a class of 35 students, the average cumulative individual RAT score was 109/140 whereas the average cumulative team RAT score was 133/140. Moreover, for the three sections of the course in which I have used TBL, 89% of teams have outscored the highest scoring individual on the team on the RATs.

<sup>59</sup> While there is much evidence that small group learning increases student achievement, see *supra* note 3, some researchers have not found this connection. See, e.g., Lucas et al., *supra* note 3 (TBL in a lower-level undergraduate introduction to law course does not significantly increase students' verbal or intellectual skills compared to a traditional lecture method, although TBL is at least as effective as lecture); see also other sources cited *supra* note 3.

<sup>60</sup> The other items on the student evaluation form (mastery of subject matter, impartiality of grading, availability and concern for students) measure perceived attributes of the instructor rather than the course itself and so are not included here, although it is interesting to note that scores on each of these measures also improved under TBL over the previous non-TBL evaluations.

<sup>61</sup> One somewhat negative comment stated that the student had on occasion learned incorrectly from his/her classmates "as a consequence of the absence of lecturing." Another complained about having to write team papers. Both comments are addressed *infra*, Section V. Several students made generally positive comments about the course but complained that the grading was difficult, a complaint I do not attribute to the use of TBL.

<sup>62</sup> Some representative comments include the following: "She made the class fun & I really learned a lot – AND it stuck!" "Always excited to come to class. Everyone always wants to participate. Keeps the class fresh and fun." "This course was very informative and stimulating. I like the team set up; it really helped in learning the concepts." "Weekly quizzes (RATs) are so much better than mid-terms." "This was one of the most well-organized and productive classes I have taken." "I like the way class was taught. . . . I learned a lot that I will be able to apply in the future." "It was a demanding class and the grading was difficult, but I learned a lot and really enjoyed the course."

<sup>63</sup> For example, one student commented, "I wasn't looking forward to this class, but [the instructor] made it very interesting and I enjoyed myself even though I may have a C+." Another stated, "I think the grading could have been a bit more lenient at times, but overall I enjoyed the course and the content of it."

<sup>64</sup> See *supra* note 3.

<sup>65</sup> *Id.*

<sup>66</sup> See also MICHAELSEN, TEAM-BASED LEARNING., *supra* note 8, at 27-50 & 209-48 for practical advice on implementing TBL.

<sup>67</sup> As one student noted, "It's impossible to write "team" papers and have it come out as anything remotely coherent."

<sup>68</sup> Michaelsen, *Frequently Asked Questions*, *supra* note 21, at 219-20.

<sup>69</sup> Despite the positive experiences reported in this article, students do not uniformly like small group learning. One study, for example, showed that only 48% of student respondents perceived cooperative learning positively, see Maurice Phipps et al., *University Students' Perceptions of Cooperative Learning: Implications for Administrators and Instructors*, 24 J. EXPERIENTIAL EDUC. 14 (2001). See *id.* for a discussion of why students might react negatively to cooperative learning.

<sup>70</sup> One student, for example, wrote in his/her course evaluation: "I liked the content of the class, but I hate working in teams. I always end up doing most of the work. . . ." In my experience students with this complaint in a TBL class tend to be students who do not easily let others do any work.

<sup>71</sup> A student commented that "I liked course organization because it made studying law more interesting (group work). However, the grading scale was tough given the negligible amount of lecturing. I often learned from classmates – sometimes incorrectly as a consequence of the absence of lecturing."

<sup>72</sup> Student evaluation of the instructor's "mastery of the subject matter" was actually slightly higher in the TBL version of the course in fall 2004 and spring 2005 (average 3.81/4.00) compared to the non-TBL version in fall 2003 and spring 2004 (3.79/4.00).

<sup>73</sup> See *supra* Section III.D.

<sup>74</sup> See Phipps et al., *supra* note 69, at 21 ("A campus climate that stresses the importance of student involvement in the learning process and supports professors trying new techniques is essential to encourage higher levels of learning such as the use of cooperative learning").



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<sup>75</sup> This is a reference to Paper #1 which involved a customer named Orville Little who fell out of a raft and was injured.

<sup>76</sup> This assignment, done early in the semester, requires students to read a case and brief it in writing. The purpose is to let students see what cases really look like (in contrast to the heavily edited cases in the textbook) and to expose them to legal reasoning.

<sup>77</sup> This assignment requires students to attend a real court hearing for at least 45 minutes and report on their observations. The purpose is to make the legal system relevant to the students by allowing them to see how it affects real people.