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Using Transactional Practice Competitions to Introduce Students to Key Deal-Making Skills

By Ted Becker and Eric Zacks

Law school moot court competitions are everywhere. That is a bit of an exaggeration, to be sure, but not by much. At last count, students with an interest in litigation had more than 60 interschool appellate advocacy competitions to choose from, ranging in topics from admiralty to space law to veterans law.¹ Toss in trial advocacy competitions, and the number of opportunities to hone litigation skills increases significantly.² And seemingly every law school has its own intraschool litigation competitions, ranging from part of a 1L legal writing program to school-wide appellate advocacy competitions whose final rounds attract prominent judges or litigators and which are a résumé highlight for the winning students.³

All that is helpful for students with a litigation bent. But what about transactionally minded students who do not anticipate making a living in a courtroom after graduation? Students with an eye toward developing their transactional skills and testing them out against other students have far fewer opportunities to do so.⁴ For whatever reason, transactional skills competitions have never been as prevalent as litigation-focused events.

That is changing, both nationally and in Michigan law schools. On the national

front, one transactional competition, LawMeets, grew over the span of nine years to include 96 law school teams at regional competitions located across the country, culminating with a final round hosted by a prominent New York City firm.⁵ LawMeets has gone on what we hope to be only a temporary hiatus, but other nationally focused competitions—some old, some new—have helped fill the gap.

Two Michigan law schools have implemented their own intraschool competitions to give students more chances to develop their transactional skills. The University of Michigan Law School, for example, held its fifth annual transactional competition this past fall.⁶ Wayne State University Law School has hosted the Jaffe Transactional Law Competition, a similar intraschool competition, since 2014.⁷ Wayne is also in its second year of hosting a regional competition patterned on the LawMeets model, which this year will include the participation of three Michigan law schools (UM, Wayne, and University of Detroit Mercy).

What do transactional competitions look like?

The UM and Wayne competitions follow the same basic structure: competitors are

assigned to opposite sides of a transaction and tasked with resolving certain issues that have come up as part of that deal. UM's competition is open to all enrolled students, from 1Ls to 3Ls to LL.Ms, while Wayne's competition is open to students after their first year. UM's most recent competition prompt involved the acquisition of an Ann Arbor-based craft brewery, while Wayne's addressed third-party intellectual property litigation that threatened the successful acquisition of a pharmaceutical company. Both sides receive the same basic information about the parties and the deal. Each side also receives confidential information from their clients; students must discern their clients' interests, which goals are most important, and the limits of their negotiating authority. Students also have the chance to ask their clients follow-up questions to clarify any uncertainties.

At this point, students begin drafting, sometimes using a template provided as part of the competition materials and sometimes being asked to amend the existing signed acquisition agreement. To keep things manageable, the prompt excludes many issues that would otherwise be included in a real-world deal, and students have a strict page limit. Students are advised to only draft provisions that respond to the specific

"Future of Law" is a regular column of the *Michigan Bar Journal*. Articles relating to legal education are edited by Ted Becker of the University of Michigan Law School. To suggest a topic or propose contributing an article relating to legal education, please contact Professor Becker at tbecker@umich.edu.

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business issues identified in the prompt and confidential client materials. Once students submit their drafts, the mark-up phase begins. For example, a buy-side team receives a draft from a sell-side team and revises the draft to incorporate new or alternative language reflecting their buyer-client's positions. Meanwhile, another sell-side team is doing the same to the buyer's draft.

Then, it is time for the students to meet to try to resolve their differences and move the transaction forward. Each team participates in two negotiations: one with the team whose draft they marked up, and another with the team that marked up their draft. These live negotiations take place at the law school in front of experienced transactional lawyers, who provide feedback and score the students' performance. As soon as scores are tabulated, the winning buyer and seller teams are announced at a reception immediately following. From a competition standpoint, buyer teams compete against other buyer teams and seller teams compete against other seller teams.

Unlike many litigation competitions, student teams are not necessarily trying to "beat" the other side but instead to negotiate a mutually satisfactory transaction. In fact, in many instances, the transaction problem is set up so that the student teams must figure out that there is *not* a mutually satisfactory deal that can be made *at that point in time* based on the positions of their respective clients.

Pedagogical goals of transactional competitions

Transactional competitions can vary greatly in details and formats, but it is safe

to say that the goal of these competitions is not to provide a few winning students with a framed certificate or a résumé entry. Instead, these competitions are part of a larger trend over the past decade or so of law schools' increasing their transactional course offerings in response to demand from both students and prospective employers. The UM and Wayne competitions' primary goals are pedagogical:

- Introducing students to transactional practice
- Developing students' transactional skills
- Allowing students to learn from experienced practitioners

Transactional practice? What's that?

Many 1Ls enter law school with little or no idea of what transactional lawyers do and what transactional practice entails. Students might have an (often inaccurate) view of what litigators do from TV, movies, and the like, but similar portrayals of deal lawyers in popular culture are few and far between. Most incoming students have never worked with contract language, identified the key business points that a client hopes to achieve in a deal, or structured a transaction. And, of course, most first-year courses are litigation-focused. Transactional competitions can help fill this void by giving many law students their first exposure to transactional practice.

By introducing fledgling students to various components of a deal lawyer's day-to-day work, competitions help open their eyes to a new (that is, new to them) type of law-

ying. As competition organizers, our hope is that some of these students will be interested enough to explore other law school courses that they perhaps would not have considered taking, and to think about pursuing jobs in this field after graduation.

Building deal-making skills from the ground up

Some students do not need an introduction to deal practice. They enter law school with work experience that gives them relevant background. Or they might already know they want to do deals after graduation, have taken one or more relevant courses, and may even have done transactional work in summer internships. For these students, competitions help further develop their nascent drafting, negotiating, and counseling skills and allow them to develop new ones.

For example, a doctrinal course may familiarize students with what an acquisition contract is supposed to look like and the content it should contain. But they might never have had the opportunity to draft provisions to serve a client's interests or negotiate with counsel whose client might have widely differing views on whether or how to address a particular deal point. Transactional competitions help students understand how the law—and contract law in particular—provides a backdrop against which parties plan for the future through negotiated transactions and agreements. Competitions also can give these students their first opportunity to begin putting into practice what they might only have been exposed to in the abstract, or continue building skills they have only just started to develop.

Learning from experts

Finally, competitions help students learn from the best: experienced transactional lawyers who judge the students' written work and negotiations. Many of the UM and Wayne competition judges have practiced for decades, and many have repeatedly given their time and know-how to our students in multiple competitions. Their participation is invaluable. Put simply, our competitions

could not work without them. Students take away numerous lessons from the judges' comments on written work product, ranging from advice about word choices in a contractual provision to larger issues such as whether a particular business issue should have been raised (or not raised), and how students might have done so most effectively. After negotiation sessions, judges meet individually with student teams to provide personal feedback on their performance.

Through constructive criticism, judges help students identify what they are doing well and where they need to continue developing their skills. Judges can point out mistakes students may have overlooked, such as ineffective negotiation techniques, missed opportunities to address a counterparty's position, or inefficient/unrealistic takes on underlying business points, and provide guidance about where and how students might have approached things differently. And because judges may have differing views on some issues based on individual experience, students are exposed to the range of possibilities that creative deal lawyers should be aware of in any transaction. Depending on timing, students can immediately put these tips into play. For example, many students have said that they incorporated their judges' feedback after the first negotiation session into the second session later that afternoon.

The pedagogical purpose of giving judges such a key role is straightforward: through immediate and targeted feedback, students learn from their successes and missteps, and thus can continue to strengthen what they are already doing well while also devoting more attention to resolving any weaknesses and avoiding similar missteps in future work. Hands-on learning with experts is one of the most effective teaching methods for adult learners. Participants have many opportunities to do exactly this as the competition proceeds from the written to negotiation stages.

Conclusion

Transactional competitions are a pedagogically valuable—not to mention fun—

way to allow students to develop important lawyering skills that many of them will need in practice. Many students report that their participation in these unique competitions is often raised by prospective employers during interviews and can give students a jumping-off point to highlight their transactional interest and skill development. We also are aware of several instances where students so impressed judges during the competition that they received a job interview as a result.

Of course, not every student will experience immediate and tangible results. And not all students who participate will “win,” if by that we only mean being named “best drafter” or receiving a similar award. Still, every student competitor will have been able to work on transactional skills that may prove important to their future work and employers, learning from expert lawyers along the way. In our view as competition organizers, that result is a win for everyone. ■



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ENDNOTES

1. *List of National Moot Court Competitions*, LSU Law Center (May 29, 2019) <<https://www.law.lsu.edu/advocacy/resources/list-of-national-moot-court-competitions/>> (listing 65 national appellate advocacy competitions sponsored by law schools in the United States and other countries). All websites cited in this article were accessed January 8, 2020.
2. *List of National Trial Advocacy Competitions*, LSU Law Center <<https://www.law.lsu.edu/advocacy/resources/list-of-national-trial-advocacy-competitions/>> (listing 33 trial advocacy competitions sponsored by American law schools).
3. All Michigan law schools provide internal moot court opportunities. See, e.g., University of Michigan Law School's 1L Oral Advocacy Competition <<https://www.law.umich.edu/journalsandorgs/Pages/1L-Oral-Advocacy-Competition.aspx>> and Henry M. Campbell Moot Court Competition <<https://www.law.umich.edu/currentstudents/student-services/Pages/campbell.aspx>>; Wayne State University Law School's Fall 2019 Moot Court In-House Competition <<https://law.wayne.edu/news/fall-2019-moot-court-in-house-competition-35041>>; Michigan State University College of Law's Moot Court <<https://www.law.msu.edu/academics/moot-court.html>>; Western Michigan University Cooley Law School's Competitions <<https://www.cooley.edu/academics/experiential-learning/competitions>>; and University of Detroit Mercy School of Law's Moot Court <<https://lawschool.udmercy.edu/academics/moot-court.php>>.
4. *List of National Dispute Resolution & Transactional Competitions*, LSU Law Center <<https://www.law.lsu.edu/advocacy/resources/list-of-national-dispute-resolution-competitions/>> (identifying 16 “dispute resolution and transactional competitions,” several of which are not transactionally focused).
5. LawMeets <<http://www.lawmeets.com/>>.
6. University of Michigan Law School's Transactional Law Competition <<https://www.law.umich.edu/events/Pages/Transactional-Law-Competition.aspx>>. Professor Ted Becker is the faculty organizer of this competition. Professor Michael Bloom also played a key part in helping to start and then run this competition for several years.
7. Wayne State University Law School's Jaffe Transactional Law Competition <<https://law.wayne.edu/academics/co-curricular/#definition-64063>>. Professor Eric Zacks is the faculty advisor for this competition, which is structured as a one-credit pass/fail course and is funded in part with support from the law firm Jaffe Raitt Heuer & Weiss, PC. The Business Law Section of the State Bar of Michigan also provides awards and educational/networking opportunities for the winners of the competition.