

Using an Extended Simulation Model to Teach Law Students to be International Transactional Lawyers



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OUTLINE

- Background and Context
- The Teaching Model and Dynamics
- Response and Next Steps

Background and Context

The Perfect Storm



- Law School Curriculum has historically undervalued Transactional Practice
- Growing interest in international law and practice in the global economy
- New ABA Accreditation Criteria require courses in “professional skills generally regarded as necessary for effective and responsible participation in the legal profession” Standard 302(a)(4)
- Legal Market Upheaval: Law firms can no longer afford extensive training programs and clients will no longer pay for them



A Course to Address Core Issues

- A practical – not theoretical – approach
- Teaching students to use the law rather than teaching legal concepts and theories
- Develop a better understanding of law by applying it
- Teaching them to “act” as a lawyer and negotiator by putting students in the “first chair” position
- Learning by doing, but in a controlled environment, guided by a professor, where every step in a transaction can be analyzed
- Mistakes become lessons, not disasters

Opportunities



- ***Opportunity*** to see the entire transactional process unfold by participating from beginning to end
- ***Opportunity*** to analyze a transaction completely, from all perspectives, and to comprehend the relevance of each aspect
- ***Opportunity*** to allow students to explore alternatives, even ill-advised ones, and to provide the guidance to understand why and how they should be avoided
- ***Opportunity*** to let students learn to think and react in real time through extended negotiation process
- ***Opportunity*** to transform students from theoretical understanding of law to practical application of law
- ***Opportunity*** to create a framework for future approach to transactions

The Teaching Model and Dynamics



The Model



- KJH Inc. is a U.S., multinational pharmaceutical company seeking to acquire a secure supply of a raw material for a new patented drug from MCC, a government-owned, agricultural cooperative in a developing African country that has surplus supply of the needed raw material.
- The students enter the transaction after the business team has reached tentative conclusions that a deal may be viable, but without agreement on a specific structure.
- The transaction can take the form of a joint venture, a technology license, or a supply contract.
- Each party in the simulation is introduced with narrative and financial information, including detailed information on key objectives, constraints and conditions, and strengths and weaknesses. The market for the new drug, costs of production, and the potential profit model are set forth.

The Model, continued

- Each party also has certain problems and concerns to address, some of which can be alleviated by a successful negotiation and some of which are impediments to an agreement (e.g., the U.S. pharmaceutical has recently been cited for certain environmental, bribery, and drug testing violations; the African country has a growing unemployment problem, a need for foreign exchange to cover growing imports and the need to access new technology to diversify its economy).
- The students become the legal team charged with structuring and documenting the transaction.
- The goal is to reach an agreement on the terms of a letter of intent for a transaction between the two parties, although the failure to reach agreement presents as useful a learning experience as does success in reaching an agreement.
- No predetermined outcome

The Teaching Dynamics

- Two classes and two professors teach in tandem at two law schools: American University (DC); University of Dundee (Scotland)
- A true international negotiation - each class represents one party to the transaction
- Each class has international students, many from developing countries in Africa, Asia and South America
- American University class has JD and LLM candidates



The Teaching Dynamics, cont.

- Two introductory lectures (introduction of negotiation theories/techniques/strategies and analysis of factual model)
- Thereafter, entire course is taught in real time to address issues (both substantive and strategic) presented during course of actual negotiation
- Final lecture: A retrospective analysis of the entire process

The Negotiation

- Use all methods of negotiation:
 - Written communications
 - Live video conferencing
 - Teleconferencing
 - “Back channel” email communications
- Use of various negotiation strategies and tactics and analysis of those used by other side
- Each student communication/live interaction is discussed in detail, analyzed based on objectives of both parties, and new strategies considered
- Entire spectrum of negotiations: Planning, Anticipation, Frustration, Realization
- Transformation of students is visible as they grow more comfortable in their roles during course of semester





Embedded Issues

- Sensitivities of cross-cultural negotiation
- Awareness of impact of tone, body language, gestures, and choice of words
- Impact of reputation
- Who has the power in the negotiation
- Perspective and Perception – the problem of the “ugly American”
- Economic v. non-economic objectives
- Impact of social/economic objectives of developing nation – value of externalities
- Issues of dealing with a government-owned enterprise



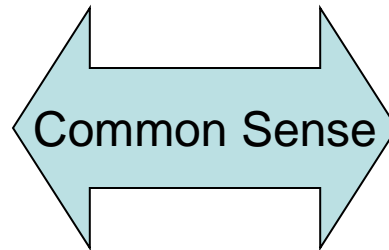
Embedded Issues, cont.

- Relevance and subjectivity of “Fair”
- Hidden agendas
- Element of “Surprise”
- What has value to other party but minimal cost to offering party
- Building rapport and cooperative environment for transaction – living v. static agreements
- Impact of external forces – absent parties and the media
- Growing comfort of teams as they pursue their roles over entire semester
- Importance of compromise
- Ethics in negotiation

Legal/Business Areas Utilized

Legal:

- Organizational Structure
- Corporate Finance
- Contracts
- International Law
- Tax
- Labor
- IP/Trade Secret
- Environmental
- Regulatory
- Import/Export
- Non-competition
- Choice of Law
- Dispute Resolution



Business:

- Operation of JV
- Product transportation/storage
- Risk allocation
- Use of IP
- Market allocation
- Secondment
- Commodity Pricing
- Training of labor
- Cash flows
- Director/Management allocation and veto powers

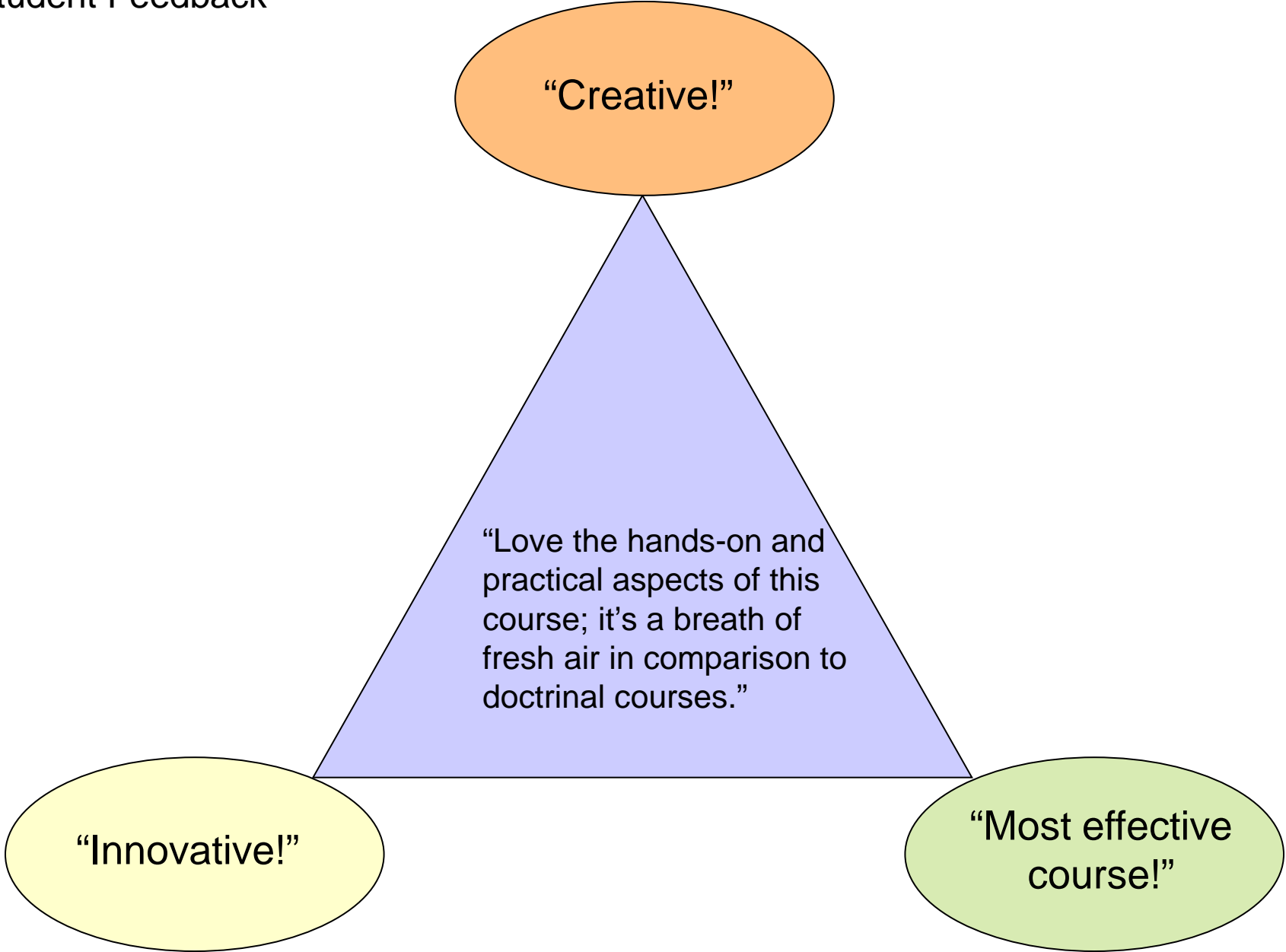
Response and Next Steps

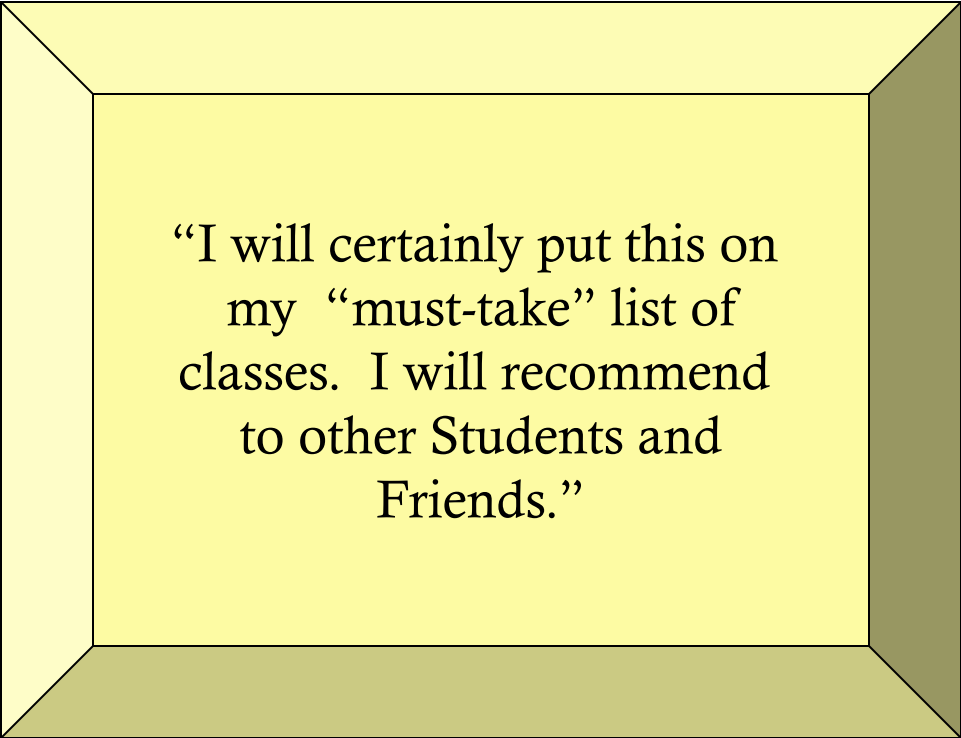
Student Feedback

“Very interesting experience!
The setup of the course was great.
Probably one of my favorite courses
In law school.”

“I very much enjoyed the
format of the class.
Learning by doing provides
great opportunities for
learning.”

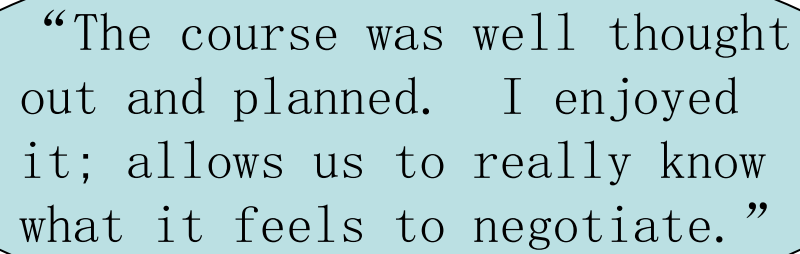
Student Feedback





“I will certainly put this on my “must-take” list of classes. I will recommend to other Students and Friends.”

Student Feedback



“The course was well thought out and planned. I enjoyed it; allows us to really know what it feels to negotiate.”

Student Feedback

“This is by far the best law class I have taken. It’s interesting, it’s engaging and it gives students real skills that are used in transactional law.”

“One of the most valuable experiences a student could get in law school”

A Variation

- Teaching the Lamb to negotiate with the Lion - Use of the model to train lawyers in developing countries how to approach international negotiations to improve results



- Experience at Addis Ababa University Law School – the condensed course

The Next Chapter

- Expand the use of this form of experiential learning focused on international and transactional practice
- Teaching the course between two US law schools
- Incorporate face-to-face negotiations where geography permits

Questions/Comments/Inquiries

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