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**EXPERIENTIAL TEACHING IN THEORY AND
PRACTICE: AN ANNOTATED INTERNATIONAL
BUSINESS TRANSACTIONS SYLLABUS**

Maya Steinitz

University of Iowa, College of Law

&

Orit Shalomson

Independent

&

Naomi Steinitz-Edelman

Independent

EXPERIENTIAL TEACHING IN THEORY AND PRACTICE: AN ANNOTATED INTERNATIONAL BUSINESS TRANSACTIONS SYLLABUS

MAYA STEINITZ

ORIT SHALOMSON

NAOMI STEINITZ - EDELMAN

INTRODUCTION

In 2013 we set out to re-develop a 3-credit International Business Transactions (IBT) course that takes a deeply experiential approach. We applied experiential pedagogical methodologies—developed initially to train Israeli air force pilots and later adapted to medical training and grounded in theoretical and empirical education research—to serve in a traditional IBT course. The goal was not only to develop legal skills such as negotiation, contract drafting, and client counseling but more importantly to impart knowledge including legal doctrine, legal theory, and policy considerations through the use of a series of structured, in-class experiences. It is a core precept of experiential learning (“EL”) theory that different learners

respond best to different combinations of learning by doing, watching, thinking and feeling whether they are acquiring skills or knowledge. (And, indeed, it was particularly gratifying to witness how students who often resist discussions of theory and policy craved it once they experienced their value).

Given that in our experience some of the resistance to EL stems from mere unfamiliarity with it, from a belief that an inordinate amount of work would be required to incorporate such teaching methods into existing courses, and/or from a belief that EL is appropriate only to teach skills but not knowledge, we decided to apply a principle of “show, don’t tell”—i.e. to provide an example of

1. Professor of Law at the University of Iowa College of Law. A full bio available at <http://www.law.uiowa.edu/faculty/maya-steinitz.php>. Professor Steinitz can be contacted at maya-steinitz@uiowa.edu.

2. Founder and Executive Director, Simulation and Training Center, Ono Academic College, Israel. Associate Professor of Interpersonal Communication, Faculty of Health Professions, Ono Academic College. Training and Development Instructor, Faculties of Law and of Business Administration, Ono Academic College. PhD, Sackler Faculty of Medicine, Department of Medical Education, Tel Aviv University. Dr. Shalomson can be contacted at Orit.shalomson@gmail.com.

3. BA, Hebrew University of Jerusalem; MA, Hebrew university of Jerusalem. Instructional designer, training developer, organizational consultant & trainer. Adjunct professor at the Ono Academic College, teaching interpersonal communication skill using experiential learning methods. Has past experience in conducting simulation-based training to caregivers in the national healthcare systems. Ms. Steinitz - Edelman can be contacted at n.steinitz@gmail.com.

a traditional IBT course into which EL has been incorporated. In so doing, we hope to contribute to the discussion on EL what we have learned experimenting with teaching IBT experientially by providing an annotated syllabus in the hope that other law professors would find it helpful to see how EL has been implemented in a traditional law course. Specifically, we aim to (i) illustrate some of the ways in which EL can be incorporated into an existing, traditional (doctrinal) course and; (ii) illustrate how EL can be used not only to develop skills but also to impart knowledge; (iii) and in so doing address some common objections to deploying EL approaches in 'regular' law school classrooms. The annotations provide information on matters such as available EL methodologies and the andragogical principles underlying certain course-design choices. (Andragogy being the science and practice of educating adult learners). The information is meant to be illustrative not exhaustive and the goal is not here to provide a full scholarly treatment. Given our modest goals, we only provide annotations to a few select experiences—those that we regard the basic building blocks of EL or of this particular course—since our purpose is to demonstrate how to incorporate EL into a traditional course, not to provide a full course plan.

The syllabus provided herein has been modified from the original used in class, and is pre-sented in a somewhat abstract form (e.g., the reading assignments are omitted) for four reasons. One, is that it reflects two versions in which the revised course has now been taught: one is a traditional semester-long 3-credit format and the other in a one-week one-credit format. Second, is that the

course and the syllabus are works-in-progress. For example, a key conclusion from the first two runs at the experiential approach is that "flipping" the class room—i.e., in our case assigning pre-taped lectures to be viewed at home before class—would resolve the tension between the class-room time-consuming experiential approach, on the one hand, and coverage requirements, on the other. Third, we want to emphasize that professors need not abandon, or even significantly revise syllabi they have perfected over the course of years. They can simply add or substitute some of the Socratic discussions with one or more experiences. Fourth, due to time constraints, we ended up using only some of the experiences we developed. However, given their innovative nature, we are including them here (and looking forward to using them with our students in the future) by mentioning them in the course outline. In that vein, it is important to note that we recommend transition into EL gradually. For example, a single experience at the beginning of a course or at the conclusion of a subject can transform the course.

CLASS HOURS: *Monday, Tuesday 10:20-11:50 AM*
 CLASS ROOM: *Room 125*
 OFFICE: *Room 475*
 E-MAIL: maya-steinitz@uiowa.edu
 OFFICE HOURS: *By email appointment*

INTERNATIONAL BUSINESS TRANSACTIONS

FALL 2013

PROF. MAYA STEINITZ

Course Description:

I. The course surveys the key areas of international business law which impact cross-border transactions. These are noted below in **blue font**. They are:

- 1) The basic documentary transaction;
- 2) International investment law;
- 3) International trade regulation.

II. The course also pursues a number of themes that are interwoven throughout the aforementioned doctrinal areas. These are also noted in **blue font** below and they include, but are not limited to:

- 1) Sources of international law;
- 2) Comparative law;
- 3) Issues in trans-lawyering e.g., ethics and cultural differences (general and legal);
- 4) International conflict of laws.

III. The course introduces and provides exposure to a wide verity of lawyering skills. These are noted in

green font below. The various types of transactions we will explore are noted in red font. Prerequisites: There are no pre-requisites for this course. In particular, there is no need for background in business or business law.

Required Texts:

1. A Reading Packet is available on Icon.
2. Certain international instruments, such as the Convention on the International Sale of Goods, will be assigned throughout. These are available online.
3. Simulations instructions. All simulation materials will be distributed in class prior to the simulation.

Additional reading may be assigned from time to time as the course progresses.

Recommended Texts:

- We may be making reference to current events in class. It is therefore recommended that you keep up-to-date with at least one of the following: the New York Times (especially the business section); the Financial Times, and the Wall Street Journal.
- For those who have not taken a basic course in international law it is strongly recommended that you read chapters 1 and 2 Vaughan Lowe, International Law (Clarendon Law). Chapter 3 is also recommended.

- Tina L. Stark, Drafting Contracts: How and Why Lawyers Do What They Do (2007).
- Roger Fisher, William Ury & Bruce Patton, Getting To Yes: Negotiating Agreements Without Giving In (2011).
- Corchran et al., the Counselor-at-Law: A collaborative Approach to Client Interviewing and Counseling.

Requirements and Evaluation:

Requirements:

- Attendance: You will be expected to attend class regularly and to have read the assigned material. If you cannot attend a session please email me in advance. Any student who misses more than 4 classes (a 3 hour session counts as 2 classes) will be dropped from the class or subject to another sanction, at my discretion.
- Written assignments: There are a number of written assignments throughout the semester. Timely submission is a prerequisite for completing the course and failure to submit all assignments in time will result in grade reduction.

Evaluation:

1. Participation - 30% Percent. Participation will be evaluated by quality rather than quantity. Factors will include, inter alia, the level of preparation (where tasks are circulated in advance), the ability to incorporate and apply the readings to the hands-on exercises, quality of ungraded written assignments such as observation sheets and journal assignment, and

insightfulness.

2. Clause drafting exercises - 30% (2 x 15%). There will be three drafting exercises throughout the semester. The first will not be graded. The second and the third will each be graded and assigned 15% each.

3. Client Counseling Simulation - 40%. Each student will simulate client counseling for 20 minutes. (Prof. Steinitz will be the 'client'). Knowledge of the law, ability to apply the law to the facts, ability to think on your feet, and the various communication skills called upon in client counseling will be evaluated. The client counseling exercise will be handed out at the last session so that students will have time to prepare. The counseling sessions will take place during the regular scheduled exam time.

Note, the following schedule, and content, is subject to change.

Substantive knowledge appears in blue fonts, skills appear in green fonts and transaction type in red fonts.

1. Course Overview and Introduction

Goals:

(1) Understanding the content, structure and learning methodologies of the course.

(2) Understanding the sources of international law and the interaction between them and U.S. law.

(3) Introducing the Convention on the International Sale of Goods (CISG).

Reading:

(1) [xxx]

Viewing:

(1) [taped lecture]

INTERNATIONAL SALES AND SHIPMENT CONTRACTS (THE DOCUMENTARY TRANSACTION)

2. Introducing the Documentary Sale of Goods Transaction (Safe Babies, Inc. Role Play)

Goals:

(1) Understanding the characteristic challenges and features of the 'documentary transaction.'

(2) Getting introduced to negotiation dynamics and theory.

3. The Nuts and Bolts of the Documentary Sales Contract (A Human Puzzle)

Goals:

(1) Understanding the 'anatomy' of the documentary transaction including introduction to the Bill of Lading, Letter of Credit, and Bill of Exchange.

(2) Understanding commercial terms primarily, FOB, FAS, C&F, CIF.

(3) Becoming acquainted with the ICC Incoterms.

(4) Analyzing the business side of a transaction.

4. Conflict of Laws & Force Majeure (Safe Babies, Inc. Client Counseling "Fish-bowl" Simulation)

Goals:

(1) understanding the basics of international conflict of laws.

(2) Understanding force majeure in the IBT context.

(3) Introducing the UNIDROIT Principles.

(4) Client counseling.

(5) Comparing legal norms and systems.

5. Financing – Letters of Credit (“Fishbowl” Client Counseling Simulation)

Goals:

(1) Understanding the purpose, characteristics and principles of letters of credit including (a) the independence principle and; (b) the strict compliance rule;

(2) Understanding enjoining payment of letters of credit due to fraud.

(3) Analyzing and diagramming deals.

(4) Effectively explaining difficult and/or legal concepts to clients.

(5) Learning by actively observing other attorneys.

6. Financing – Standby Letters of Credit (Presenting Case-law to Supervisors at Steinitz & Associates “Fishbowl” Role Play)

Goals:

(1) Understanding the characteristics and uses of the standby letter of credit and contrasting it with the letter of credit.

(2) Understanding the fraud exception to the independence principle.

(3) Analyzing and diagramming deals.

(4) Effectively communicating research findings and case analysis to a supervisor.

7. Anatomy of a Contract (Safe Babies, Inc. First Drafting Exercise)

Goals:

- (1) Understanding the generic structure of contracts.
- (2) Understanding the relationships between business concepts, legal concepts and contract language.
- (3) Working with sample/standard contracts.
- (4) Drafting contract clauses.
- (5) Teamwork (drafting in pairs).

8. Non-establishment Forms of International Business: Distributorships /Agents (Safe Babies, Inc. Negotiation, Term Sheets and Second Drafting Exercise)

Goals:

- (1) Becoming familiar with the non-establishment forms of international business, with an emphasis on distributorships and agencies; being able to compare and contrast the pro's and con's of each and the different legal regimes that may apply to them.
- (2) Becoming familiar with term sheets; understand the relationship between oral understandings, terms sheets and a final contract.
- (3) Drafting a contract clause.
- (4) Marking up (critiquing) contract language.

9. Non-establishment Forms: Distributorships /Agents Cont'd

10. Non-establishment Forms: Joint Ventures and Trans-lawyering ("MedLee" Negotiation Role Play)

Note, this simulation takes 2 - 3 hours.

Goals:

- (1) Getting a general understanding of a joint venture.
- (2) Understanding overarching themes in international business dealings including:
 - a. Cultural differences;
 - b. Comparative law and the major legal systems of the world;
 - c. Transnational legal ethics.
- (3) Deepening negotiation skills.
- (4) Drafting term sheets.

UNIT 2 - FOREIGN DIRECT INVESTMENT ("FDI") AND ECONOMIC DEVELOPMENT

11. Introducing FDI and Economic Development ("Enco" Client Counseling Exercise)

Goals:

- (1) Understanding the decision to invest abroad.
- (2) Understanding the characteristics of FDI including:
 - a. FDI's political nature and the controversies surrounding it;
 - b. FDI, human rights, the environment & labor protection;
 - c. Working in developing countries;
 - d. Working with foreign governments;
 - e. The relationship between FDI and diplomacy.
- (3) The problem of "the obsolescing bargain."
- (4) Long term deals and

“relational contracts.”

(5) Bargaining in the shadow of transnational dispute resolution.

(6) The (deal) lawyer as trusted advisor.

(7) The (deal) lawyer and corporate social responsibility (CSR).

12. Introducing FDI and Economic Development – Cont’ed

13. Overview of International Investment Law

Goals:

(1) Becoming familiar with international investment law, including:

a. Bilateral Investment Treaties (“BITs”).

b. The core principles of FDI including Non-discrimination, National Treatment.

c. The International Center for the Settlement of Investment Disputes (“ICSID”) regime.

14. Expropriation (U.S. State Dep’t and China’s Foreign Ministry BIT Negotiation Role Play)

Goal:

(1) Understanding expropriation as the ultimate and paradigmatic threat to a foreign investor.

(2) Further deepening the understanding of BITs and Investor protection.

(3) Understanding features of public international law (the rights and obligations of states).

(4) Stepping into the shoes of the government lawyer; understanding the

treaty-making process.

(5) Multi-round and multi-issue negotiation.

15. Project Finance (Safe Babies, Inc. Multi-issue Negotiation)

Goals:

(1) Becoming familiar with the key features of project finance deals.

(2) Understanding relational contracts, renegotiation and stabilization.

(3) Become familiar with multi-issue negotiation and parallel negotiations by multiple teams.

(4) The lawyer as manager and coordinator.

16. Foreign Corrupt Practices Act; The Alien Tort Claims Act and Corporate Social Responsibility (Preparing a Continuing Legal Education (CLE) Presentation)

Goals:

(1) Understanding corporate tort liability abroad and at home; the domestic regulation of American investment overseas.

(2) Becoming familiar with the Corporate Social Responsibility movement / rhetoric.

UNIT 3 - INTERNATIONAL TRADE REGULATION

17. Introduction to International Trade Regulation (PACRIM Trade Negotiation Role Play)

Note, this simulation takes approximately 3.5 hours.

Goals:

- (1) Understanding the 'big picture' politics and macro-economics of trade relations.
- (2) Understanding the multilateral nature of the trade regime.
- (3) Multi-party, multi-round negotiations.

18. Overview of International Trade Regulation

Goals:

- (1) Become familiar with the framework of the trade regulation regime including the WTO, the GATT and the DSB.

19. Overview of International Trade Regulation - Cont'd

20. Nontariff Barriers (NTBs) and the WTO (Trade Department Role Play Part I)

Goals:

- (1) Understanding the concept and the international law of NTBs.
- (2) Deepening the understanding of the GATT.
- (3) Deepening the understanding of the relationship between international law, diplomacy and domestic politics.
- (4) Teamwork and collaboration.
- (5) 'Reading' institutions and players.

21. Subsidies and Countervailing Duties (Trade Department Role Play Part II)

Goals:

- (1) Understanding the concept and the international law of subsidies and CVD.
- (2) Deepening the understanding of the GATT.
- (3) Deepening the understanding of the relationship between international law, diplomacy and domestic politics.
- (4) Teamwork and collaboration.
- (5) 'Reading' institutions and players.

22. Antidumping Duties (Trade Department Role Play Part III)

Goals:

- (1) Understanding the concept and the international law of antidumping.
- (2) Deepening the understanding of the GATT.
- (3) Deepening the understanding of the relationship between (public) international law, diplomacy and domestic politics.
- (4) Teamwork and collaboration.
- (5) 'Reading' institutions and players.

23. Drafting a Clause in a Trade Treaty

Third drafting exercise.

If you find this short piece useful you may also wish to view a short youtube video in which Orit and Maya walk through the recently - launched Simulation and Training Center at the Ono Academic College, Israel, and discuss how high-quality experiential learning, based on pedagogical studies, can be scaled up to provide meaningful experiences to high volumes of students. The video is elegantly titled “Prof. Maya Steinitz and Dr. Orit Shalomson in a Conversation About Providing High Quality, High Volume Experiential Learning in Law School” and available [here](#).