

Natural resources

Help is here for transactional training

By Tina L. Stark

In the old days, transactional lawyers learned their skills by watching experienced lawyers work and working with them. This kind of training, unfortunately, is slow, very expensive and haphazard. Litigators figured this out many years ago and developed a far more structured approach. The “learn by doing” approach, now taught as “trial advocacy” everywhere from law schools to law firms, is structured, efficient and doesn’t require actual clients (and their cases) for experimentation.

Professional training of this kind for *transactional* lawyers has lagged far behind, but has finally begun to penetrate the profession. Whether the reason is economics (one-on-one teaching is *very* expensive) or comprehensiveness (what one learns in on-the-job training tends to be incomplete and somewhat random), it is clear that skills training is the new frontier of professional development for lawyers doing deals.

The demand for professionals to deliver this kind of training in law firm, government and corporate settings, and the demand for materials

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for the courses might well be outstripping supply. The field remains nascent, and materials are not abundant. Professors trade materials on list serves, while law firms create programs from scratch or hire consultants.

There is, however, a trove of materials that are commercially available to everyone, most of which are excellent. What follows is a partial list of those materials. The URL following the description of the materials is a link that will take you to the Web site where you can buy or review the resource. A full bibliography of transactional training materials is available at www.starklegaled.com.

Robert N. Anthony and Leslie Pearlman Breitner, *Essentials of Accounting* (2003). This “self-teaching, self-paced,” workbook can introduce both students and lawyers to financial accounting. It covers balance sheets, income statements and statements of cash flows. The Fuqua School of Business at Duke University has assigned this textbook as summer reading for entering students. Lawyers will understand it.

<http://vig.prenhall.com/catalog/academic/product/0,1144,0131025716,00.html>

Computer-Assisted Legal Instruction (CALI). CALI provides e-learning exercises. Although the exercises were originally created for law students, some of the exercises are appropriate for junior lawyers. Access is limited to member law schools and law firms. The exercises available include the following:

- *Drafting Contracts Using “Shall,” “May” and “Must”* — Debra Cohen
- *Drafting with “And” and “Or”* — Marjorie McDiarmid
- *Letters of Intent and Other Formal Preliminary Agreements* — Jennifer Martin
- *Punctuation and Grammar Basics for Law Students* — Wayne Schiess.

www.cali.org. E-mail: info@cali.org.
Phone: 612/627-4908.

Conducting a Due Diligence Review offers training in corporate due diligence. It was developed by ALI-ABA, the Practising Law Institute, and Continuing Education of the Bar (California) in collaboration with U.S. and Canadian law firms. The materials simulate a due diligence investigation in connection with the acquisition of an operating subsidiary. Lawyers review a due diligence request list, minute books, a corporate stock book and contracts. In working through the exercises, lawyers learn how to apply their analytical and reasoning skills to a due diligence investigation, as well as the salient substantive issues that should be explored in a due diligence investigation. These materials are excellent.

<http://207.103.74.122/aliaba/b751.asp>

Harvard Business School is a terrific resource for teaching materials. Its course materials are available for purchase online. Problem sets are available, for example, on the statement of cash flows and financial analysis. Also available are HBS professors’ “Notes” on such topics as auditors’ reports, venture capital, bank loans, mergers and acquisitions, and ethics in business transactions.

http://harvardbusinessonline.hbsp.harvard.edu/b02/en/academic/edu_home.jhtml;jsessionid=AECKQ5QTVC3CECTEQENSELQ

Negotiating and Drafting the Acquisition Agreement is a set of materials that offers training in this area. The materials were developed by ALI-ABA, the Practising Law Institute, and Continuing Education of the Bar (California) in collaboration with U.S. and Canadian law firms. The interactive exercises are based on the same hypothetical as the due diligence previously described: an acquisition of a wholly owned subsidiary. Through these exercises, lawyers gain an understanding of representations and warranties, covenants, conditions precedent, purchase price adjustments and indemnification.

<http://www.ali-aba.org/aliaba/B776.asp>

NITA. *Transactional Practice: A Friend in Need — Forming a Nonprofit Corporation* (1999). These materials examine the documents and the issues involved in establishing a nonprofit corporation to help the homeless. Among the topics covered are retainer agreements, corporate organizational documents (certificate of incorporation and bylaws), tax exempt status and fund-raising contracts.

<http://www.nita.org/bookorder.asp?Action=Show&Part=1-55681-614-6>

NITA. *Transactional Practice: Quality Paper Products — Purchasing a Closely Held Business* (1999). The exercises in these materials include the negotiation of the sales price and the drafting of an asset-purchase agreement, an employment agreement and a consulting agreement. The exercises also raise various ethical issues.

<http://www.nita.org/bookorder.asp?Action=ProductTypeSecondPass&SearchType=User&Part=Legal+Practice+Skills>

Social Science Research Network (SSRN). The SSRN disseminates scholarly materials, including working drafts. In addition, it disseminates case studies that law and business professors use in their courses. New case studies are added on a regular basis. Several of the case studies available follow. Many more are available, generally at no charge.

SSRN. Susan Chaplinsky and April Triantis, *SecureNet, Inc.: Series A Round* (2004). This case study involves an entrepreneur who is trying to secure a first round of venture capital financing.

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=567521

SSRN. Victor Fleischer, *Streetwatch* (May 12, 2003). This case study concerns Streetwatch, a startup company that must choose between two investment offers. Lawyers must weigh the pros and cons of the offers and decide which is most advantageous.

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=407140

SSRN. Victor Fleischer and Geoffrey W. Smith, *Columbia Venture Partners-Medtech Inc.* (June 2003). In this case study, Columbia Venture Part-

SSRN. Thomas F. Hellmann, *Symantec Corporation: Acquiring Entrepreneurial Companies*. This case study looks at how a company manages an

VC Experts sponsors a Web site devoted to venture capital. It features self-paced online courses, a research data bank, form agreements with

Which offer is better for the company?

ners, a venture capital fund, considers an investment in MedTech Inc., a developer of medical devices for the heart. While working through these materials, lawyers learn about the salient issues that must be addressed when negotiating and drafting a venture capital agreement.

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=417520

acquisition: how it finds a target, performs due diligence, and structures the transaction.

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=79279

commentary and hyperlinks to other sites devoted to venture capital. One professor teaches an entire course on venture capital using this site.

www.vcexperts.com