

ASSOCIATION OF AMERICAN LAW SCHOOLS WORKSHOP FOR NEW LAW SCHOOL TEACHERS

June 22 - 24, 2017 | Washington, DC



Photos: Destination DC

Program Booklet



Association of American Law Schools

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Exhibitors

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WORKSHOP FOR NEW LAW SCHOOL TEACHERS

June 22-24, 2017
Washington, DC

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IMPORTANT

The evaluation surveys will be emailed to you at the conclusion of the workshops.
Your comments and suggestions will assist the Planning Committee to plan next year's workshops.

Introduction

Welcome to the 2017 AALS Workshop for New Law School Teachers, and to the legal academy! This is an exciting time as you begin to establish your career and identity as a scholar, teacher, mentor, and institutional citizen. This is also a challenging time as legal education and our roles as faculty members are undergoing significant transformations. You are uniquely poised to bring your energy, insights, and leadership to our profession's future.

Over the next few days, the Planning Committee members hope that you will gain some valuable insights and practical information on how to become an effective classroom teacher, a productive scholar, and an active citizen in your law school and beyond. We have recruited an outstanding group of professors with a wide range of experience and expertise. What all our presenters have in common, however, is a generosity of spirit and a commitment to helping you develop your new career. So please ask questions, share your concerns, and take advantage of the opportunities to learn from such a devoted and talented group of colleagues.

This workshop is unique in that it brings together new law school teachers from a multitude of fields, including clinical and legal writing. Our roles are more similar than they are different, and we become even better teachers and scholars when we integrate ideas and pedagogy from other disciplines. But as important as the knowledge that you will gain are the professional relationships and friendships that you will begin to build.

We are all delighted to be with you at the beginning of this journey and look forward to an exciting workshop.

Congratulations!

D. Gordon Smith, Brigham Young University, J. Reuben Clark Law School, and Chair, Planning Committee
for the 2017 AALS Workshop for New Law School Teachers

Welcome

Dear Colleagues,

On behalf of the Association of American Law Schools (AALS) President Paul Marcus and the AALS Executive Committee, it is my privilege to welcome you to the association and to the law teaching profession.

Established in 1900, AALS is an association of 179 law schools committed to promoting excellence in legal education. As the learned society for legal education, we are also very much your organization, and that of your nearly 9,000 law faculty colleagues throughout the nation. Over the years, many of us have benefited from work we have done under the AALS umbrella. Our involvement has connected us to faculty beyond our home law schools and has led to career-enriching collaborations in both scholarship and teaching.

AALS values and expects its member schools and their faculty to value:

1. A faculty composed primarily of full-time teacher-scholars who constitute a self-governing intellectual community engaged in the creation and dissemination of knowledge about law, legal processes, and legal systems, and who are devoted to fostering justice and public service in the legal community;
2. Scholarship, academic freedom, and diversity of viewpoints;
3. A rigorous academic program built upon strong teaching and a dynamic curriculum that is both broad and deep;
4. A diverse faculty and staff hired, promoted, and retained based on high standards of teaching and scholarship and in accordance with principles of non-discrimination; and
5. The selection of students based upon intellectual ability and potential for success in the study and practice of law, through a fair and non-discriminatory process designed to produce a diverse student body and a broadly representative legal profession.

Association activities encompass many areas that may be of interest to you, particularly our professional development programs for law faculty. Detailed information on the professional development schedule for the coming academic year can be found on our website at www.aals.org/aals-events.

The work of AALS is done largely by volunteers through its committees and sections. There are 101 AALS sections representing subject matter areas and other common interests. Becoming involved in one or more sections will connect you to colleagues all over the country. Sections also construct the majority of the Annual Meeting program, and will provide you throughout the year with an ongoing source of information on your fields of interest through the AALS web-based community platform that many sections use.

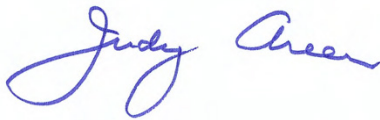
The next AALS Annual Meeting, which will be held Wednesday, January 3 through Saturday, January 6, 2018 in San Diego, will bring together more than 2,500 law faculty and administrators. At the Annual Meeting, each section presents a program of interest to its members. There are also day-long programs and other special programs, including some based on the theme "Access to Justice," selected by AALS President Marcus. Faculty tell us that perhaps the most important part of the Annual Meeting is the opportunity to meet colleagues informally across generations and to develop ongoing interactions with them over the years.

AALS also sponsors a scholarly papers competition for those who have been in law teaching for five years or fewer. The winning author presents the paper at the Annual Meeting. The deadline for the 2017 Scholarly Papers Competition is August 4, 2017, 11:59 p.m. EST. To learn more, the competition announcement is included in this booklet. At the Annual Meeting we will celebrate the previous year's teaching award honorees from member schools.

The Association's Journal of Legal Education, which is published quarterly and distributed to all law faculty, is an excellent platform for the exchange of ideas and information about legal education, legal scholarship, and innovative teaching. The Journal is currently co-edited at Northeastern University School of Law and The University of Washington School of Law. The co-editors are Jeremy R. Paul and Margaret Y. Woo of Northeastern University School of Law and Kate O'Neill and Kellye Y. Testy of University of Washington School of Law. The Association also co-sponsors the Journal of Clinical Legal Education. The AALS Directory of Law Teachers is published annually. Your Dean's office can assist in ensuring that you are included in the Directory listings.

As you begin your career in law teaching and are understandably focused on developing your own courses and advancing your scholarly agenda, I encourage you to become involved in AALS as you begin what we hope will be a long, productive, and satisfying career.

Sincerely,



Judith Areen
AALS Executive Director

Program Schedule

Thursday, June 22, 2017

4 - 8 pm

Registration

Foyer of District Ballroom, Lower Level

6 - 7:15 pm

Small Group Discussions

See your handout for location of your small group meeting room.

7:30 - 8:45 pm

AALS Sponsored Dinner

District Ballroom, Lower Level

Introduction

D. Gordon Smith, Brigham Young University,
J. Reuben Clark Law School and Chair,
Workshop for New Law School Teachers

Relevance of Scholarship to the Practice of Law

Kellye Y. Testy, University of Washington
School of Law

8:45 - 9:30 pm

Dessert and Coffee Reception

District Ballroom, Lower Level

Mingle and enjoy a reception of mini desserts and coffee in a relaxed atmosphere after the opening dinner.

Friday, June 23, 2017

8 - 8:45 am

**AALS Section on Minority Groups Q&A
with Coffee and Breakfast Pastry**

Senate Room, Lobby Level

Co-Moderators:

Khaled A. Beydoun, University of Detroit Mercy
School of Law

Margaret Hu, Washington and Lee University
School of Law

Mariela Olivares, Howard University
School of Law

9 - 9:15 am

Opening Session

District Ballroom, Lower Level

Welcome

Judith Areen, Executive Director, Association of
American Law Schools

Introduction

D. Gordon Smith, Brigham Young University,
J. Reuben Clark Law School and Chair,
Workshop for New Law School Teachers

9:15 - 9:45 am

**Plenary Session: Why Scholarship
Still Matters**

District Ballroom, Lower Level

Speaker: Robin L. West, Georgetown University
Law Center

Moderator: Randy E. Barnett, Georgetown
University Law Center

With all the talk of bar passage rates and the teaching of lawyering skills, some have questioned whether legal scholarship is merely a luxury for faculty that students should not be expected to support with their tuition dollars. Professor West will explain why law schools are

a part of the academic mission of the university and why legal scholarship is integral both to that mission and to the proper education of lawyers.

9:45 -10:45 am

Breakout Sessions: Scholarship

Designing Your Research Agenda from Scratch
Constitution, Lower Level

Pursuing Your Research Agenda
District Ballroom, Lower Level

Legal Research and Writing
Independence, Lower Level

10:45 - 11 am

Refreshment Break

District Ballroom, Lower Level

11 am - 12 pm

Plenary Session: Exploring the Range of Service Opportunities

District Ballroom, Lower Level

Speakers:

Katherine S. Broderick, University of the District of Columbia, David A. Clarke School of Law
Jenny Roberts, American University, Washington College of Law

Moderator: Hari Michele Osofsky, University of Minnesota Law School

In addition to producing influential scholarship and facilitating effective student learning, law professors are also expected to build and manage multiple institutional relationships—both formal and informal—with students, staff, faculty, university officials, community members, alumni, and other practicing lawyers and judges. New law teachers are increasingly called upon to interact with these groups very soon after joining a faculty. Such interactions can present exciting opportunities, but balancing the competing demands on one's time can be difficult.

12:15 - 1:45 pm

AALS Luncheon: The Future of Legal Education

Chinese Room, Lobby Level

Speakers:

Craig M. Boise, Syracuse University
College of Law

Margaret Hagan, Stanford Law School
Andrew M. Perlman, Suffolk University
Law School

Michele R. Pistone, Villanova University Charles Widger School of Law

Moderator: D. Gordon Smith, Brigham Young University, J. Reuben Clark Law School

2 - 3 pm

Plenary Session: Pathways to Tenure: Building Relationships and Distributing Your Ideas

District Ballroom, Lower Level

Speakers:

Eleanor Marie Brown, The George Washington University Law School

Jennifer Daskal, American University, Washington College of Law

Emily C. Hammond, The George Washington University Law School

Moderator: Hari Michele Osofsky, University of Minnesota Law School

In addition to producing scholarship, new law teachers have to find ways to distribute it and build their reputations. Key challenges include deciding which audiences you want to reach, figuring out how to engage with the world outside legal academia, and developing a reputation through your scholarship. Panelists will offer advice on how to think about getting your scholarship out into the world.

3 - 4 pm

Breakout Sessions

Distributing Your Scholarship

District Ballroom, Lower Level

Promoting Your Scholarly Profile

Virginia, Level 2

**Promoting Your Profile Beyond
Other Scholars**

Constitution, Lower Level

Legal Research and Writing

Independence, Lower Level

4 – 4:15 pm

Refreshment Break

District Ballroom, Lower Level

4:15 – 5:30 pm

**Plenary Session: Diversity and Inclusion
Inside and Outside the Classroom**

District Ballroom, Lower Level

Speakers:

Teri McMurtry-Chubb, Mercer University
School of Law

Elizabeth A. Kronk Warner, University of Kansas
School of Law

Moderator: Susan S. Kuo, University of South
Carolina School of Law

All law teachers have to think about ways to teach, mentor, and collaborate effectively in a diverse community. This session will discuss the special challenges diverse faculty members sometimes face in their roles of teacher, mentor and institutional citizen. It will also address the responsibility that all faculty members have to promote the meaningful inclusion of all students and discuss strategies for doing so both within and outside the classroom.

5:30 – 6:30 pm

AALS Reception

Chinese Room, Lobby Level

6:30 – 7:30 pm

**AALS Section on Sexual Orientation and
Gender Identity Issues Informal Gathering**

Constitution, Lower Level

Moderators:

Kris Franklin, New York Law School
Stephen Clark, Albany Law School

Saturday, June 24, 2017

8 – 8:45 am

**AALS Section on Women in Legal
Education Q&A with Coffee and
Breakfast Pastry**

Senate Room, Lobby Level

Speaker: Natalie Nanasi, Southern Methodist
University, Dedman School of Law

Moderator: Okianer Christian Dark, Howard
University School of Law

9 – 9:30 am

Plenary Session: Learning Theory

District Ballroom, Lower Level

Speaker: Michael H. Schwartz, University of
Arkansas at Little Rock, William H. Bowen
School of Law

Moderator: D. Gordon Smith, Brigham Young
University, J. Reuben Clark Law School

Effective teachers understand that what learners bring to the classroom is just as important as what the teachers bring. This plenary session will connect the current academic research on student learning with the teaching strategies that were modeled during earlier sessions. Awareness of this research can help teachers to promote a positive classroom experience.

9:30 – 10:30 am

Plenary Session: Teaching Techniques

District Ballroom, Lower Level

Speakers:

Gerry W. Beyer, Texas Tech University
School of Law

Howard E. Katz, Duquesne University
School of Law

Susan S. Kuo, University of South Carolina
School of Law

Moderator: Nancy J. Soonpaa, Texas Tech
University School of Law

Effective teachers often use a variety of teaching methods to maximize student engagement and learning. In this session, panelists will identify some of the teaching methods they use and discuss how these methods apply to a variety of learning environments, such as large and small classes, podium courses, and clinics.

10:30 – 10:45 am

Refreshment Break

District Ballroom, Lower Level

10:45 am – 12 pm

Small Group Discussions

See your handout for location of your small group meeting room.

12:15 – 1:30 pm

AALS Luncheon

Chinese Room, Lobby Level

1:45 – 3 pm

Plenary Session: Assessment

District Ballroom, Lower Level

Rory D. Bahadur, Washburn University
School of Law

Kris Franklin, New York Law School

Moderator: Randy E Barnett, Georgetown
University Law Center

In this interactive session, participants will learn different methods to evaluate students and provide feedback throughout the semester. The session will also cover exam creation, grading, and post-exam review.

3 – 4 pm

Plenary Session: Navigating Tenure, Long-Term Contracts, and the Road Ahead

District Ballroom, Lower Level

Speakers:

Craig M. Boise, Syracuse University
College of Law

Nancy J. Soonpaa, Texas Tech University
School of Law

Moderator: D. Gordon Smith, Brigham Young
University, J. Reuben Clark Law School

While this workshop has focused on the traditional three requirements of service, scholarship, and teaching, the reality at many schools involves navigating complex institutional history, faculty personalities, and hidden agendas. This session addresses these issues and discusses strategies for managing them effectively.

4 – 4:30 pm

Informal Networking and Refreshment Break

District Ballroom, Lower Level

Committees

PLANNING COMMITTEE FOR 2017 AALS WORKSHOP FOR NEW LAW SCHOOL TEACHERS

Randy Barnett, Georgetown Law Center

Hari M. Osofsky, University of Minnesota Law School

D. Gordon Smith, J. Reuben Clark Law School, Brigham Young University, **Chair**

Nancy Soonpaa, Texas Tech University School of Law

Kimberly A. Yuracko, Northwestern University Pritzker School of Law

AALS EXECUTIVE COMMITTEE

Paul Marcus, William & Mary Law School, **President**

Wendy Perdue, University of Richmond School of Law, **President-Elect**

Kellye Y. Testy, University of Washington School of Law, **Immediate Past President**

Judith Areen, **Executive Director**

Alicia Alvarez, The University of Michigan Law School

Erwin Chemerinsky, University of California, Irvine School of Law

Darby Dickerson, The John Marshall Law School

Camille A. Nelson, American University Washington College of Law

Vincent D. Rougeau, Boston College Law School

Avi Soifer, University of Hawaii, William S. Richardson School of Law

Biographies of Planning Committee Members and Presenters

AREEN, JUDITH Paul Regis Dean Prof. of Law, Georgetown. JD, 1969, Yale; AB, 1966, Cornell University. Mem. of Bd. of Editors, Yale L.J. *Admitted:* DC, 1972; MA, 1971. Exec. Director, AALS, since 2014; Dean Emer., since 2010; Prof., Georgetown Law Center, since 1976; Interim Dean, Georgetown Univ. Law Center, 2010; Exec. V.P. & Dean, Georgetown, 1989-2004; Fellow, Woodrow Wilson Int'l Cntr. for Scholars DC, 1988-1989; Prof., Community & Fam. Med. Georgetown Med. Cntr., 1982-1989; Assoc. Dean, Georgetown, 1984-1987; Gen. Counsel & Domestic Reorg. Coord'r, 1979-1980; Dir., Fed. Leg. Rep. Proj. Pres.'s Reorg. Proj. Off. Mgt. & Budget DC, 1977-1979; Vis. Assoc. Prof., Michigan, 1975-1976; Assoc. Prof., Georgetown, 1972-1976; Fel. & Dir., Educ. Voucher Study Cntr. for the Study of Public Policy Cambridge MA, 1970-1972; Prog. Planner for Higher Educ., Budget Bur. Off. of the Mayor NYC, 1969-1970. *Subjects:* Family Law; Jurisprudence; Educ. Law. *Books:* Higher Educ. and the Law (with Lake), 2d ed., 2014; Cases and Materials on Family Law (with Spindelman and Tsoukala), 6th ed., 2012; Cases and Materials on Law, Sci. and Med. (with King, Goldberg, Gostin & Jacobson), 3d ed., 2005; Educ. Vouchers: A Report on Financing Educ. By Grants To Parents (with Jencks et al.), 1970. *Member:* ALI; ABF (Fellow). *Consultantships:* Gov'r, DC Bar, 1979-1982; Bd. Member, Pro Bono Institute, since 2004; Exec. Com., AALS, 1998-00, 2005-07, Pres., 2006.

BAHADUR, RORY D. Prof. of Law, Washburn. Sr. Articles Editor, St. Thomas L. Rev. *Admitted:* FL, 2003. Associate, Downs & Associates, P.A., 2003-2004. *Subjects:* Admiralty and Maritime Law; Torts; Fed. Courts; Civil Proc. II. *Awards:* West Outstanding Scholastic Achievement Award, 2003; West Outstanding Scholastic Achievement Award, 2001.

BARNETT, RANDY E. Carmack Waterhouse Prof. of Legal Theory, Georgetown. JD, 1977, Harvard; JD, 1977, Harvard; BA, 1974, Northwestern. *Admitted:* DC, 2011; IL, 1977; IL, 1977. Director, Georgetown Cntr. for the Constitution, since 2012; Professor, Georgetown, since 2006; Professor, Boston Univ., 1993-2006; Vis. Professor, Harvard, 2002; Professor, Chicago-Kent, 1988-1993; Vis. Professor, Harvard, 1992; Vis. Prof., Northwestern, 1990-1991; Vis. Scholar, Northwestern, 1988-1989; Professor, Chicago-Kent, 1986-1988; Ass't Professor, Chicago-Kent, 1982-1986; Res. Fellow, Univ. of Chicago, 1981-1982; Ass't St.'s Att'y, St.'s Atty's Off. Cook Cty. Chgo., 1977-1981. *Subjects:* Contracts; Const'l Law; Recent Books on the Const. (S). *Books:* The Struc. of Liberty, 2d ed, 2014; Restoring the Lost Constitution, 2d ed, 2014; Const'l Law: Cases in Context, 2d ed, 2013; Contracts, Cases and Doctrine, 5th ed., 2012; Oxford Introduction to U.S. Law: Contracts, 2010; Perspectives on Contract Law, 4th ed., 2009. *Awards:* Bradley Prize, 2014; Guggenheim Fellowship, 2009. *Member:* Nat'l Exec. Com. 1990-93, Order of the Coif; Member, American Pol. Sci. Association; Member, Law & Soc. Association.

BEYDOUN, KHALED A. Assoc. Prof., Univ. of Detroit Mercy. *Admitted:* MI, 2007. *Subjects:* Torts; Immig. Law; Crim. Law ; Civil Rts..

BEYER, GERRY W. Gov'r Preston E. Smith Regents Prof., Texas Tech. SJD, 1990, Illinois; LLM, 1983, Illinois; JD, 1979, Ohio State; BA, 1976, Eastern Michigan Univ. *Admitted:* TX, 1984; OH, 1980; IL, 1980. Vis. Professor, Boston Univ., since 2016; Professor, Texas Tech, since 2005; Vis. Professor, Boston Univ., 2014; Vis. Professor, Ohio State, 2012; Vis. Professor, La Trobe Univ. Sch. of Law, 2010; Vis. Professor, La Trobe Univ. Sch. of Law, 2008; Professor, St. Mary's, 1987-2005; Vis. Professor, Santa Clara, 1999-2000; Vis. Professor, Southern Methodist, 1997; Vis. Professor, New Mexico, 1995; Vis. Professor, Boston Coll., 1992-1993; Assoc. Professor, St.

Mary's, 1984-1987; Ass't Professor, St. Mary's, 1981-1984; Instructor, Illinois, 1980-1981; Att'y & Clerk, Knisley Carpenter Wilhelm & Nein Columbus, 1980. *Subjects:* Property; Wills & Trusts; Commercial Law (Commercial Paper & Secured Transactions); Estate Planning. *Books:* Wills, Trusts and Estates - Examples and Explanations, 6th ed., 2015; Tchg. Materials on Estate Planning, 4th ed., 2013; Skills & Values: Prop. Law (with Shannon), 2012; Modern Dictionary for the Legal Profession, 4th ed., 2008; Texas Prac. - Texas Law of Wills, vols. 9-10, 3d ed., 2002. *Awards:* President's Acad. Achievement Award -- Texas Tech University, 2015; Outstanding Researcher from the Sch. of Law -- Texas Tech University, 2013; Texas Tech Tchg. Academy, 2012; Chancellor's Coun. Dist. Tchg. Award -- Texas Tech University, 2010; President's Excellence in Tchg. Award -- Texas Tech University, 2007. *Member:* Chair, St. Laws Committee, Am. Coll. of Trust & Estate Counsel (Acad. Fellow); COIF; American Law Institute. *Consultantships:* Admin. & Distrib. of Estates & Trusts Com., Probate & Trust Div., Real Prop., Probate & Trust Law Sect., ABA, V-Chair, 2000-2001; Animal Res. Com., S.W. Fdn. for Biomed. Res., 1986-1992; Editor-in-Chief, REPTL Rptr. -- St. Bar of Texas, since 2014; Ed., Keeping Current-Probate column of Probate & Prop. Mag., Probate & Trust Law Sect., ABA, since 1992.

BOISE, CRAIG M. Dean & Prof. of Law, Syracuse. LLM, 1999, New York Univ; JD, 1994, Univ. of Chicago; BA, 1991, Univ. of Missouri-Kansas City. *Admitted:* OH, 2000; NY, 1998; MO, 1994. Dean and Joseph C. Hostetler-Baker Hostetler Chair in Law, Cleve. St. University, Cleveland-Marshall Coll. of Law, 2011-2016; Professor, DePaul, 2009-2011; Assoc. Professor, Case Western Res., 2007-2009; Ass't Professor, Case Western Res., 2003-2006; Associate, Thompson Hine LLP, 1999-2003; Associate, Akin Gump LLP, 1998-1999; Associate, Cleary Gottlieb LLP, 1997; Associate, Husch & Eppenberger LLP, 1995-1997; Clerk, Judge Pasco M. Bowman II, U.S.C.A. 8th Circuit, 1994-1995. *Subjects:* Int'l Tax; Offshore Financial Centers (S); Fed. Income Taxation; Int'l Bus. Organizations; Corporate Tax; Int'l Tax Policy (S). *Consultantships:* Member, AALS Dean's Forum - Steering Committee, since 2016; Member, ABA Stands. Rev. Committee, since 2013; Member, BARBRI Adv'y Board, since 2012.

BRODERICK, KATHERINE S. Dean and Joseph L. Rauh, Jr. Chair of Social Justice, Dist. of Columbia. MA, 1981, Antioch; JD, 1978, Georgetown; BA, 1973, American. *Admitted:* DC, 1978. Dean, since 1999; Prof., since 1992; Interim Dean, 1998-1999; Clin. Dir., 1996-1998; Acting Clin. Dir., 1995-1996; Assoc. Dean, 1988-1992; Admin'r, Dist. of Columbia, 1987-1988; Prof., 1981-1987; Clin. Fellow, Antioch, 1978-1981. *Subjects:* Prof'l Responsibility; Crim. Justice; Crim. Procedure; Legislation; Evidence; Clin. Legal Education. *Member:* ACLU (Pres. Elect.); Consortium of Legal Serv. Providers; SALT. *Consultantships:* Bd., DC Appleseed, since 2005; Litig. Screening Com., ACLU, since 1995; Bd., ACLU, since, since 1995; Member, DC Access to Just. Commission, 2008-2014.

BROWN, ELEANOR MARIE Assoc. Prof. of Law, Geo. Wash. Notes Dev. Editor, Yale L. J. *Admitted:* CT, 2000. Law Clerk, Chambers of the Hon. Keith Ellison, 1999-2000; Law Clerk, Chambers of the Hon. Patricia Wald, 1999. *Subjects:* Immig. Law; Property. *Awards:* Rhodes Scholarship, 1995.

CLARK, STEPHEN Prof. of Law, Albany. JD, 1995, Yale; BA, 1991, Tennessee. Note Ed., Yale L. & Pol'y Rev. *Admitted:* IL, 1995. Prof., since 2006; Assoc. Prof., Albany, 2003-2006; Ass't Prof., Albany, 2000-2003; Vis. Ass't Prof., Toledo, 1999-2000; Assoc., Winston & Strawn Chgo., 1996-1999; Clerk, Hon. Randall T. Shepard Ch. Just. IN Sup. Ct. Indpls., 1995-1996. *Subjects:* Conflict of Laws; Civil Rts. (Sexuality); Family Law; Labor Law; Const'l Law; Emplymt. Law (Discrimination).

DARK, OKIANER CHRISTIAN Prof. of Law, Howard. JD, 1979, Rutgers - Newark; JD, 1979, Rutgers - Newark; BA, 1976, Upsala College. *Admitted:* PA, 1979; NJ, 1979. Prof., Howard, since 2001; Assoc. Dean, 2005-2012; Ass't U.S. Att'y, Off. of U.S. Att'y Dist. of OR Portland, 1995-2001; Prof., 1990-1997; Assoc. Prof., Univ. of Richmond Sch. of Law, 1987-1990; Ass't Prof., Richmond, 1984-1987; Trial Att'y, Civil Div. DC, 1983-1984; Trial Att'y, Antitrust Div. U.S. Dep't of Just. DC, 1979-1984. *Subjects:* Torts; Health Law (S); ; Advanced Torts (S); Products Liability. *Awards:* ABA Section of Tort, Trial & Ins. Liberty Achievement Award for

Advancing Diversity in the Legal Profession, 2014; Warren Rosmarin Prof. of Law Excellence Award in Teaching and Service, 2005; National Fair Housing Alliance Award of Excellence, 1997; Virginia Women Attorneys Ass'n Fdn. Dist. Fac. Award, 1991; Univ. of Richmond Dist. Educ'r Award, 1990. *Consultantships*: Member, Adv'y Bd. of Montgomery Cty. Primary Care Program, Montgomery County, 2006-2014; Chair, Montgomery Cty. Comm. on Health, 2005-2007.

DASKAL, JENNIFER Assoc. Prof., American. Ed'l Board, Harvard Civil Rights-Civil Liberties Law Review. Adj. Prof. & National Security Fellow, Georgetown Univ. Law Center, 2011-2013; Counsel to the Ass't Att'y Gen. for National Security, Dep. of Justice, 2009-2011; Sr. Counterterrorism Counsel, Human Rts. Watch, 2005-2009; Staff Attorney, Public Defender Serv. for DC, 2002-2005; Law Clerk, Hon. Judge Rakoff, 2001-2002. *Subjects*:Crim. Procedure; Crim. Law; National Security Law.

FRANKLIN, KRIS Prof., Dir. Academic Initiatives & Co-dir., Initiative for Excellence in Law Teaching, NYLS. BA, 1989, Yale Univ. Ed.-in-Ch., N.Y.U. Rev. of L. & Soc. Change. *Admitted*: NY, 1993. Prof., since 2006; Dir., Acad. Skills Prog., since 2002; Assoc. Prof., New York L.S., 2002-2006; Legal Res. & Writing Instr., New York Univ., 1996-2002; Staff Att'y, Legal Aid Soc. Civil Div. NYC, 1992-1996.*Subjects*: Lesbian & Gay Studies (S); Lawyering Theory (S); Contracts; Clin. Teaching; Torts. *Member*: AALS (Past Chair, Sect. on Acad. Support); SALT. *Consultantships*: Lesbian & Gay Rts. Com., 2000-2002; Sex & Law Com., Ass'n of the Bar of NYC, 1996-1999.

HAGAN, MARGARET Dir. of the Legal Design Lab, Stanford Law School. JD, Stanford, 2013; Ph.D., 2008, Queens University Belfast; MA, 2004, Central European University; AB, 2003, Univ. Of Chicago. Fellow, d.school, 2013-2014.

HAMMOND, EMILY C. Assoc. Prof. & Assoc. Dean of Academics, Assoc. Director, Law Center, Geo. Wash. Sr. Notes Ed., Ga. L. Rev. *Admitted*: OK, 2008; GA, 2002. Assoc. Prof., Univ. of Oklahoma, since 2007; Vis. Ass't Professor, Univ. of Georgia Coll. of

Law, 2006-2007; Associate, Bondurant, Mixon and Elmore, 2004-2006; Law Clerk to Hon. Richard W. Story, U.S. Dist. Ct. for the Northern Dist. of Georgia, 2002-2004. *Subjects*: Risk, Public Policy, and Law (S); Torts; Admin. Law; Water Law; Energy Law. *Books*: West Pub. Co. Award for Outstanding Acad. Achievement, 2002; Nat'l Ass'n of Women Lawyers Outstanding Law Grad., 2002. *Awards*: Order of the Coif, 2003; Order of the Barristers, 2001. *Member*: American Ass'n for the Advmt. of Science.

HU, MARGARET Vis. Ass't Professor, Wash. & Lee. *Admitted*: CA, 2000; CA, 2000. Ass't Prof. of Law, Washington and Lee Univ. Sch. of Law, since 2013; Vis. Ass't Professor, Duke Law School, 2011-2013; Sr. Lecturing Fellow, Duke Law School, 2010-2011; Spec. Policy Counsel, U.S. Dept. of Justice, Civil Rts. Division, 2006-2010; Sr. Trial Attorney, U.S. Dept. of Justice, 2001-2006. *Subjects*: Civil Rts. Practicum (S); American Public Law Process; Fed. Civil Rts. Law & Policy (S); Cybersurveillance & Privacy Law (S); Const'l Law; Intersection of Immig. Policy & Civil Rts. Law (S).

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Nygren), 2011; Strategies and Techniques of Law Sch. Teaching: A Primer for New (and Not So New) Professors (with O'Neill), 2009. *Awards*: Knight Fdn. Fellowship in Community Building, 2003. *Member*: Cong. for the New Urbanism. *Consultantships*: Sr. Fellow, Am. Architectural Fdn., 2005; Developmental Consult. to and Series Ed. for the Focus Casebook Series, Wolters Kluwer, since 2015.

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Exhibitors

Take the opportunity during refreshment breaks to visit the display tables of the exhibiting companies to view and discuss products, teaching methods and new technologies that can enhance your teaching and career. The display tables are located in District Ballroom, Lower Level.

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Presentation Outlines and Materials

Workshop speakers were invited to submit discussion outlines for those in attendance.
These outlines and other materials are presented in sequence of the program.

Legal Education in the 21st Century

Andrew Perlman
Suffolk University Law School

I argued in an [earlier post](#) that Richard and Daniel Susskind's predictions in *The Future of the Professions: How Technology Will Transform the Work of Human Experts* are likely to be pretty close to the mark. In that post, I left open the question of how law schools should respond to this emerging new reality. I argue below that we should adapt by updating the law school curriculum to ensure that our graduates are better prepared for professional success in the coming decades.

How many lawyers?

The Susskinds' forecast raises one obvious preliminary question for legal educators that is unrelated to the curriculum: if automation is poised to displace a portion of the work currently performed by lawyers, how many students should law schools be admitting?

There is a robust debate elsewhere about the appropriate size of the lawyer pipeline, and I am not going to resolve it here. I will simply note that, if the Susskinds are right, we may need fewer lawyers per capita in the future than we needed (say) ten years ago. Of course, U.S. law schools are already on pace to graduate far fewer students than in the recent past – nearly 30% fewer students – because of both planned and forced enrollment reductions over the last few years. Whether further reductions will be necessary to ensure that law students have professional and financial outcomes equivalent to the past is still an open question.

Of course, the same could be said about nearly every other form of professional education. As the Susskinds' book makes clear, many professions are seeing (and will continue to see) marked transformations in the coming decades. The point is that it is very difficult to predict with any precision what the size of the legal market will be in 10 or 20 years or determine whether the recent 30% decline in the new-lawyer pipeline is too much, too little, or just right.

What should law students learn?

What *is* clear is that tomorrow's lawyers will need additional skills that law schools traditionally have not taught. This means that, in addition to asking how big the future market for new lawyers will be, we also need to ask a different question: for those who *do* enroll in law school, are they getting the education that they need?

* Published on Prawfsblawg, <http://prawfsblawg.blogs.com/prawfsblawg/2017/02/legal-education-in-the-21st-century.html>, February 21, 2017

My answer is yes and no. There are many features of the traditional law school curriculum that serve law students quite well in a rapidly changing world. Legal analysis, a close reading of texts, clear writing and thinking, and an ability to discern good arguments from bad are all valuable skills and will continue to be so. Law schools (particularly through experiential education) also help students to develop essential law practice skills in the areas of fact investigation, negotiation, oral and written advocacy, document drafting, and client counseling.

These skills are important and necessary, but they are no longer sufficient. If you think the Susskinds' predictions are accurate, students should also be able to identify how technology and other innovative methods can be used to deliver legal services better, faster, and cheaper. Put simply, students will still need to “think like a lawyer,” but they will need to “think like 21st century lawyers.”

What does this mean specifically? The answer varies depending on the school, but at my own school (Suffolk), it means exposing students to concepts like [legal project management and process improvement](#), [legal design](#) (accompanying story [here](#)), [automated legal document assembly](#), [expert system tools](#), [electronic discovery](#), and [other areas as well](#). We're also teaching students how to [innovate the operations of a law practice](#) to make legal services more affordable for currently underserved clients, and we are giving students [paid opportunities to learn about new delivery options](#).

We're certainly not the only ones pushing the envelope. A growing number of law schools (and universities) have developed an expertise in this area and have emphasized a range of related skills, such as legal analytics. Here's a partial list of such schools. (Please feel free to email me I have overlooked a relevant program.)

Columbia Law School – [Lawyering in the Digital Age Clinic](#)

Duke University School of Law – [Law Tech Lab](#)

Georgetown University Law School – [The Program in Legal Technologies](#)

Harvard – [Center on the Legal Profession](#) and [LawLab](#) (housed at Harvard's Berkman Center for Internet & Society, but with many collaborators)

Hofstra University School of Law – [Law, Logic, and Technology Research Laboratory](#)

IIT Chicago Kent College of Law – [Center for Access to Justice & Technology](#) and [The Law Lab](#)

University of Miami School of Law – [Law Without Walls](#)

MIT – [Computational Law Research and Development](#)

Michigan State University College of Law – [Legal RnD](#)

Northeastern University School of Law – [NuLawLab](#)

Northern Kentucky University Chase College of Law – [Lunsford Academy for Law, Business, and Technology](#)

Northwestern Pritzker School of Law – [Technology, Innovation, and Entrepreneurship Concentration](#)

University of Pittsburgh School of Law – [Innovation Practice Institute](#)

Stanford – [CodeX The Stanford Center for Legal Informatics](#) and the [Legal Design Lab](#)

Suffolk University Law School – [Institute on Law Practice Technology & Innovation and Concentration](#)

Vanderbilt University Law School – [Program on Law & Innovation](#)

Vermont Law School – [Center for Legal Innovation](#)

These innovations are paying off. Students are getting jobs that did not even exist a few years ago, such as in legal project management, knowledge engineering, and legal solutions architecting. For example, when my law school graduated its first group of students with some coursework in these new areas, employers specifically reached out to recruit them. (See, e.g., [here](#).) Granted, this is hardly an empirical study (the sample size is still small), but the available evidence suggests that legal employers are increasingly looking for students who have learned the skills taught at the schools referenced above.

Anticipating Objections

One objection to updating the curriculum in the way that I have outlined here is that law schools should not try to teach all of the knowledge and skills that students need for professional success. Legal education is premised on the idea that considerable learning takes place on the job, so one could argue that the new areas of study, even though important, should be learned later.

I agree that considerable learning needs to take place on the job, but we should want our students to have learned enough in law school so that, when they see a particular problem or issue in practice, they have a reference point for how to deal

with it. They need to be able to “issue spot.” The new skills and knowledge described above are simply giving students the ability to engage in a new kind of issue spotting. That is, students should know these new concepts sufficiently well to identify when they can be deployed to deliver services more effectively and efficiently.

A more important reason to offer this kind of education in law school is that students will not necessarily develop the skills in practice. Although the industry is rapidly evolving, many law school graduates will join practices where few people have these new skills. Put another way, the knowledge that I have described is less likely to be learned on the job than traditional practice skills and doctrinal subjects, because the knowledge is so new and most lawyers are not expert in these areas. In this sense, junior lawyers will not be learning these new concepts on the job; rather, they may be educating their *superiors*.

The flipping of the traditional information flow has another benefit: it increases the relevance of junior lawyers. At a time when the value of a young associate is increasingly questioned, law schools have an opportunity to give their graduates a knowledge base and skillset that clients increasingly demand and that most legal employers lack. In short, teaching these new skills will position law schools and their graduates as leaders of a profession at the cusp of significant change.

A second possible objection to this new curriculum is that the skills will be quickly outdated. This argument, however, proves too much. In law school, we regularly teach students about doctrines that have changed or are likely to change. When we teach an area of law (say an older, but now discarded, doctrine), we do so to convey both a conceptual point and a way to think about an issue. In much the same way, teaching law practice technology and innovation is designed to help students think in new ways about legal services. The technology will change, but the mindset will serve graduates well throughout their careers by giving them the conceptual tools they need to improve how legal services are delivered and accessed. This will make them more competitive and better able to serve their clients and the public. It is hard to think of a better reason to update the law school curriculum than that.

Diversity and Inclusion Inside and Outside the Classroom

Teri McMurtry-Chubb
Mercer University Law School

Part I: Addressing Issues of Difference, Bias, and Discrimination in the Law School, Law, and Legal System

Part II: Strategies for Handling Difficult Discussions About Difference, Bias, and Discrimination Inside and Outside the Classroom

Part III: Curricular Design Examples and Interactive Vignettes to Facilitate Classroom Instruction & Discussion About Difference, Bias, and Discrimination

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Diversity and Inclusion Inside and Outside the Classroom

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Part I: Addressing Issues of Difference, Bias, and Discrimination in the Law School, Law, and Legal System

Part II: Strategies for Handling Difficult Discussions about Difference, Bias, and Discrimination Inside and Outside of the Class

- A. Don't Remain Silent! Results of 2016 KU Law Climate Survey indicated that faculty silence in the face of racist, sexist, derogatory, etc. statements was of concern to students. Faculty, however, expressed trepidation about speaking up for fear of saying the "wrong thing."
- B. As a result, brainstorming ahead of time how to handle these situations can be very helpful. Some strategies I have used include:
 - a. Setting the stage – over the years, I have been much more willing to discuss my own privilege and implicit biases with students. For example, I regularly discuss my educational privilege in class, and frame the discussion in terms of how I may relate to my clients that do not possess this privilege. I also use this point to demonstrate how one can be privileged in one regard but not in another. Explaining how these points potentially impact prospective client hiring can also be very powerful to engage some students that might not otherwise engage in such topics. I also discuss my results from the Harvard Implicit Bias tests to demonstrate how everyone has bias. My students are more willing to engage in discussions about privilege and bias when I have established this foundation.
 - b. "What did you just say?" or similar utterance – sometimes drawing attention to the statement with a simple utterance will make the speaker realize that the statement was offensive. Example: Student statement – "That is so gay."
 - c. "Let's unpack that." – By forcing the student to evaluate his or her statement and recognize the incorrect assumptions that it may contain, an ignorant or biased statement can become a valuable learning tool. Example: Discussion of sanitation strike in NYC.
 - d. "How do you think that statement would make [someone with the appropriate characteristics] feel?" – By asking the student to empathize, it may encourage compassion. This can be very powerful when put into the context of the

attorney-client dynamic. Example: Women wearing revealing clothes are asking to be raped.

- e. Don't be afraid to revisit topics – sometimes something will happen in class and it is so startling or happens so quickly that you may not appropriately respond. Use the start of the next class to address the issue after you have had time to develop the appropriate response. Example: Colleague arrested for domestic violence.

C. Professional and Ethical Implications

- a. In extreme situations, comments and actions may violate a school's code of conduct. Example: Discrimination, harassment, and intimidation violate the KU Code of Student Rights and Responsibilities.
http://policy.ku.edu/sites/policy.ku.edu/files/Code%20of%20Student%20Rights%20and%20Responsibilities_8.12.16_10.6.16.pdf
- b. As part of character and fitness reviews, many bar associations are now asking questions to whether the student has ever exhibited discriminatory or derogatory behavior. Example: Missouri.
- c. ABA Model Rule 8.4 states:

It is professional misconduct for a lawyer to:

- (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- (d) engage in conduct that is prejudicial to the administration of justice;
- (e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law;
- (f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law; or
- (g) engage in conduct that the lawyer knows or reasonably should know is harassment or discrimination on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, marital status or socioeconomic status in conduct related to the practice of law. This paragraph does not limit the ability of a lawyer to accept, decline or withdraw from a representation in accordance with Rule 1.16. This paragraph does not preclude legitimate advice or advocacy consistent with these Rules.

Comment on Rule 8.4 is available at:

http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_8_4_misconduct/comment_on_rule_8_4.html

- d. Remind students that clients are increasingly demanding DEI sensitivity and inclusion from attorneys as part of the hiring process.
- D. Outside of the classroom:** These strategies may work outside of the classroom as well. Further, it can be incredibly helpful to have one-on-one conversations with students. Remind students that they are establishing their professional reputations now, and that their reputation will follow them throughout their careers. I have also found one-on-one conversations to be mostly effective with my colleagues. These intimate conversations avoid public shaming, which can sometimes result in defensiveness. If you are not comfortable engaging in one-on-one conversations with

Note-Taking Guide: Learning Theories and Teaching Theory

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- I. What is a learning theory?

- II. Constructivist Learning Theories
 - A. Gist of the theory

 - B. The teacher's role according to this learning theory

 - C. Implications for teaching

 - D. Other core precept: _____

- III. Cognitive Learning Theories
 - A. Student Focus

 - B. Memory

 - C. Moving Between the Two Types of Memory

- D. Teaching implications of the information processing cognitive theory
- E. Theory explanation for card catalog and computer document storage systems

IV. Adult Learning Theory

- A. Key terminology
- B. Overlap with constructivist theory
- C. Role of learning goals
- D. Role of students' prior knowledge in learning process
- E. Other aspect of students' role in the learning process

V. Teaching Theory

- A. High expectations
- B. Respect
- C. Enthusiasm
- D. Active learning

E. Other core teaching theory principles

VI. Potpourri

A.

B.

C.

D.

E.

Teaching Techniques

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A. COURSE DESIGN

1. **Sequencing**
2. **Time as a precious commodity**
3. **Coverage**

B. TEACHING

1. **Classroom Conduct**
 - Engagement
 - Moving away from podium
 - Enthusiasm – make each class fun for students
 - Clear plans
 - Use of humor
 - Use of “war stories”

- Apolitical discourse
- High expectations
- Careful word choice
- Avoid “know-it-all” syndrome
- Repairing errors
- Fear of pandering
- “The show must go on.”

2. Classroom culture

- Persona or metaphor
- Student learning styles
- Understanding and relating to students
- Interpreting your students reactions and evaluations
- Signaling and way finding

3. Technology

- Computers OK
- Computers not OK
- PowerPoint – The good, the bad, and the ugly
- TopHat and similar attendance/immediately feedback/quiz programs

C. OUTSIDE THE CLASSROOM

1. With Students

- Boundaries

- E-mails and texts
- Social media, especially Facebook and LinkedIn

2. Class preparation

3. Reflection and elaboration

- After-class debriefing
- Enhancing the next class
- Recognizing how you view students (especially if you are a parent with similarly-aged children)
- Recognizing how students view you (e.g., peer, parent, grandparent)

D. RESOURCES

- HOWARD E. KATZ & KEVIN FRANCIS O'NEILL, STRATEGIES AND TECHNIQUES OF LAW SCHOOL TEACHING: A PRIMER FOR NEW (AND NOT SO NEW) PROFESSORS (2009).

Available free from your Wolters Kluwer representative

- *The Strategies and Techniques Series*

Teaching advice on specific courses:

- Academic Support
- Administrative Law
- Civil Procedure
- Constitutional Law
- Contracts
- Criminal Law
- Criminal Procedure
- Evidence
- Family Law
- Federal Income Tax

- Legal Analysis and Writing
- Professional Responsibility
- Property
- Torts

Available free from your Wolters Kluwer representative

- Kent Syverud, *Taking Students Seriously: A Guide for New Law Teachers*, 43 J. LEG. ED. 247 (1993).
- Douglas J. Whaley, *Teaching Law: Advice for the New Professor*, 43 OHIO ST. L.J. 125 (1982).
- MICHAEL HUNTER SCHWARTZ, GERALD F. HESS, & SOPHIE M. SPARROW, *WHAT THE BEST LAW TEACHERS DO* (2013).
- AALS Teaching Materials Network

<https://secure.stetson.edu/law/teaching-network/login.php>

Teaching Techniques

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Strategy precedes tactics, and tactics precede implementation

Implications

Approach

Not the professor against the students

Rather, the professor and the students together against the material

Sequencing

Logical isn't necessarily pedagogical

The "Marbury Gap"

Returning to a topic

Wayfinding and Signaling

Linking classroom discussion to assessment

Preview and Review

Different purposes, different methods

Situating the material

Wayfinding during class discussion

An aside: Over-reliance on inductive learning

Time

- Being mindful about time (but not rushing)
 - Compression and Expansion
 - Avoiding the temptation of introductory material
 - Offloading (and flipping)
- Making difficult coverage choices
 - Message discipline
- A caution about PowerPoint

A final thought

“To give anything less than your best, is to sacrifice the gift” – Steve Prefontaine (1951-1975)

Resources:

Strategies and Techniques of Law School Teaching: A Primer for New (and Not So New) Professors, by Howard E. Katz and Kevin Francis O’Neill

Available free from your Wolters Kluwer representative

The Strategies and Techniques series (teaching advice on specific courses):

Torts, Contracts, Property, Civil Procedure, Constitutional Law, Legal Analysis and Writing, Criminal Law, Criminal Procedure, Family Law, Evidence, Professional Responsibility, Administrative Law, Federal Income Tax, Academic Support

Available free from your Wolters Kluwer representative

AALS Teaching Materials Network:

<https://secure.stetson.edu/law/teaching-network/login.php>

Course Sequencing and Design

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The basic premise: strategy precedes tactics, and tactics precede implementation.

“The job is to figure out what to say and when and how to say it. First, you have to get your audience’s attention. Once you’ve done that, you have to present your message in a clear, logical fashion – the beginning, then the middle, and then the end. You have to deliver information the way people absorb it, a bit at a time, a layer at a time, and in the proper sequence. If you don’t get their attention first, nothing that follows will register. If you tell too much too soon, you’ll overload them and they’ll give up. If you confuse them, they’ll ignore the message altogether.”

from *Why We Buy: The Science of Shopping* by Paco Underhill

The following excerpts are adapted from *Strategies and Techniques of Law School Teaching: A Primer for New (And Not So New) Professors* by Howard E. Katz and Kevin Francis O’Neill:

Ordering the Progression of Topics: Logical Isn’t Necessarily Pedagogical

A very important question is whether there are any topics to which the students must first be exposed in order to understand certain other topics. Not every foundational concept must be *mastered* before proceeding. If students would not be ready to tackle such a concept at the semester’s outset, simply *introduce* the concept, proceed to less challenging topics, and then circle back to it later in your course. Another way of dealing with a foundational concept is to identify it for your students and then, before proceeding onward, ask them to make an *assumption* about it. More generally, you should be asking yourself how the topics may be sequenced so as to give your students the best opportunity to understand the material.

Ordering your topics in a seemingly logical progression is not always pedagogically sound. It’s often true that you can greatly enhance your students’ understanding of the material by arraying the topics in the sequence that would seem logical to someone who is already familiar with the topic. But there are at least two situations where logical is not pedagogical.

First (and this is a point that does not only apply to first-year, first-semester students) you don’t want to begin the semester with an exceedingly difficult, recondite, or abstract topic. This can leave a large number of students confused and demoralized at the very outset. It’s better to begin the semester with a doctrinal overview of your subject, or to present an introductory hypothetical that foreshadows themes or doctrines central to your course. Then, to give them a sense of confidence and to get them accustomed to your classroom methods, begin with material that is comparatively less difficult and less important.

For example, if you’re teaching Torts, it might occur to you that negligence is the most important and central topic, and therefore the right one with which to start the course. Once students have learned this material, you might think to yourself, you can breeze through intentional torts at the very end of the semester or year. But if you think about the perspective of a student in the first weeks of law school, it may be better to *begin* with intentional torts. In contrast to the murky waters of negligence, the law of intentional torts is comparatively easy to grasp. The

elements are clearer and the material is more straightforward. Though it may not be the *logical* place to start, it's *pedagogically* advantageous for being less likely to overwhelm your students when they are first learning how to study, how to conduct themselves in class, and how to gauge your expectations. Justiciability in constitutional law is another example. It logically precedes deciding the case on the merits. But it is extremely difficult for students to understand what is at stake when they haven't yet studied any of the substantive areas of the course.

Second, you don't want to leave a key section of the course until the very end of the semester. The danger of doing this is that you may not reach the final reading assignment in your syllabus. Thus, you'll come to the end of the semester without having covered a key section of your course. Or, in order to reach that final section, you'll hurry through the preceding sections and leave your students confused and dismayed. Do this even if it means departing from a logical progression of topics. Students are capable of understanding a topic encountered out of order, particularly if care is taken to explain where that topic fits in the larger scheme of your course. Then, develop a list of new topics or elaborations of earlier topics that can be introduced in the final week or two of the semester. It can actually be an advantage to come back to a topic for greater depth of coverage, or to explore a sub-topic that relates to material previously covered, as it provides a good vehicle for review. In this way, you can take the awkward problem of how to end the semester and turn it to your advantage by making it an opportunity for review.

A word of caution about how to begin your course: Don't get trapped into spending *too* much time on introductory material. Instead of spending two or three weeks, keep it short. Then, five weeks into the semester, *comeback* to those introductory themes and your students will get more out of them. Once you spend that second or third week, it's gone — and you may be sorry in Week 13 when you're trying not to rush the end of your course.

One thing to keep in mind more generally about *any* sequence you decide on is to constantly "situate the material" – explain to the students what you are covering and how it relates to what has gone before and what will come after.

Avoiding the "Marbury Gap"

By exhorting you to avoid the "Marbury Gap," here is what we mean: When charting the sequence of your reading assignments, try to avoid long passages that provide background rather than conventionally-tested material. The classic example relates to the famous case of *Marbury v. Madison*. It is typical of many Constitutional Law books to present the case and then follow it with extended textual material on the decision's validity and implications. Logically, the issue of *Marbury's* "correctness" comes up at this point in the course. But a careful examination of *Marbury* and the follow-up material can easily consume two or three weeks of class time or more. Thus, a "Marbury Gap" is a long stretch of textual material, often theoretical or historical, that is so basic, or so remote, or so abstract as to be unlikely to be tested in a conventional manner, thus causing problems in the parceling out of assignments.

You need to consider what the reading assignments during this portion of the course will look like, and what sort of class discussion you can expect to generate if the assignment for the day is simply textual reading. This same concern arises in other law school courses. In Criminal Law, for example, many casebooks devote a long section to theories of punishment.

There is another aspect to this, and *Marbury* again serves as an example. In the pages following *Marbury*, most casebooks raise the question of whether or not judicial review is a good idea. But at this point in the course, your students probably haven't read a single substantive decision of the Supreme Court other than *Marbury* itself. Thus, your debate on judicial review takes place in a vacuum. Such material may be better handled by raising the broad question and themes, but returning to the particulars later, once the students have more of the course

under their belts.

How do you deal with a Marbury Gap? Consider breaking up the background or theoretical material into smaller pieces and turning it into a recurrent theme — one that you briefly introduce and later return to from time to time, tying it (if you can) to what your students are currently learning. Let's again look at *Marbury*. Use it initially to introduce the concept of judicial review. Come back to it later, especially when examining the separation of powers and the Supreme Court's role in construing individual liberties and the scope of federal legislative power. Viewed from those perspectives later in the semester, the legitimacy of judicial review and its crucial role in our system of checks and balances will have more meaning for your students. On those later occasions, you can assign some of the note material following *Marbury* to explore questions of theory or policy that your students would have been less able to appreciate at the semester's outset.

Waiting for the Right Time to Address Theory or Policy

The proper *sequencing* of the information you convey is critical to effective teaching. We must be sensitive to sequencing on both the micro level (ordering the progression of ideas when introducing a new topic or doctrine) and the macro level (ordering the progression of topics or doctrines over the span of a whole semester). When it comes to sequencing, be particularly careful about when to expose your students to theory or policy.

Students are much more receptive to discussions of theory or policy if they have first been exposed to some concrete examples of the *context* in which that theory or policy will play out. Thus, when charting the sequence of materials you will cover, our advice is this: Don't front-load theory or policy without first giving the students a real case to sink their teeth into. Particularly with any first-year course, you risk losing your students if you start out with abstractions. Let them see some facts and rules first. Then, after two weeks or so, go back over the same material and tease out the strands of theory and policy. Your students will be better equipped to grasp such material then.

The following is from *Best Practice for Legal Education* by Roy Stuckey and others:

Particularly given the intellectual demands of the skills and values law students are learning, law professors should sequence instruction so that students have early success and therefore build self-efficacy. In other words, law professors interested in teaching students case analysis skills would order their syllabi so that the students start with easier cases and build to more difficult ones. Likewise, all law professors should consider the order in which they teach the concepts under study. Perhaps, highly theoretical and difficult concepts such as estates in property law, personal jurisdiction in civil procedure, and consideration in contract law are not good places to start for new law school learners.

Agreed Damages

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Exercise 8-1: Chapter Problem

You are a new associate in a law firm. The senior partner in your law firm has just dropped a project in your lap. She told you that the firm represents a small motorcycle manufacturing company and she asked you to draft what she calls a “bullet-proof liquidated damages clause.”

By using the term “bullet-proof liquidated damages clause,” the partner means that she wants you to draft a clause that is so unquestionably enforceable that no rational lawyer would challenge the clause. The partner told you that the assignment of drafting the entire contract has been divided up among several associates. Your only task is to draft the liquidated damages clause.

The clause will be used as part of a contract between your client and a construction company that is building the client a new manufacturing factory. The partner provided you with the following additional information about the deal:

- The contract will have a construction completion date of July 1, 2015.
- The client wants the project finished on time and, therefore, wants the clause to address what will happen if the construction company does not complete construction on time.
- The client estimates that the new plant will save the client \$4,000,000 per year over the fifteen-year useful life of the plant. These savings stem from a number of factors; specifically, the new factory will allow the client to reduce its number of employees because it will automate more of the client’s manufacturing processes, and the new machinery will require less power to operate than the machinery in the existing factory.
- The client also believes that the new factory will allow the client to produce better, more reliable motorcycles—thereby increasing the client’s profits, although the client has stated that it cannot determine how much its profits will increase.

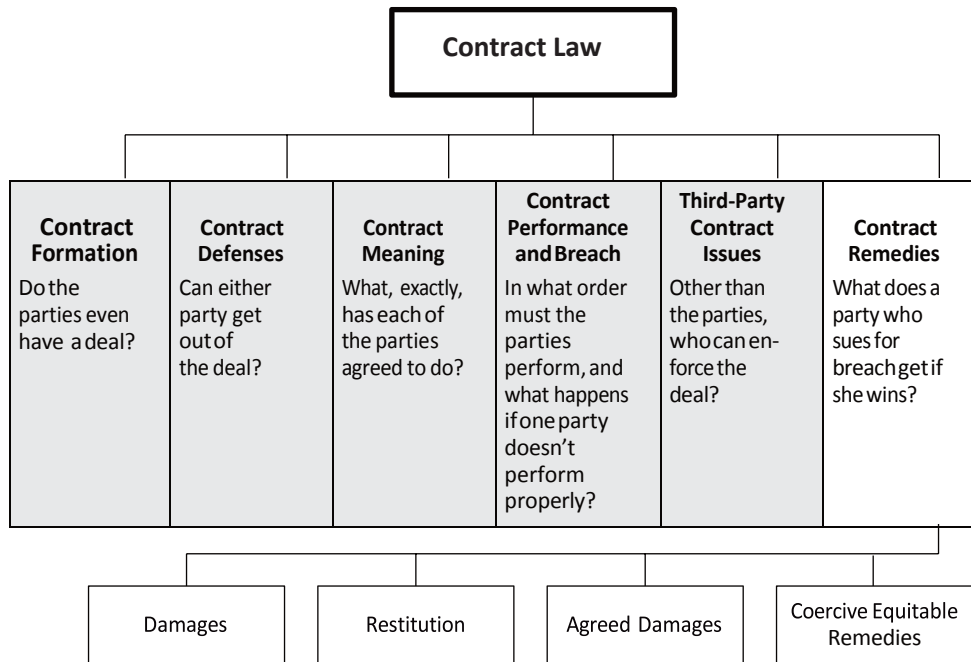
Introduction to Agreed Damages

You are about to learn about a particular type of contract clause frequently included in contracts: “agreed” or “liquidated” damages clauses. Lawyers use these two terms interchangeably and so will we in this chapter.

Diagram 8-1 depicts where this topic fits within the bigger picture of contract law. As you

will see, “Agreed Damages” is the third box under the sixth major contract subject, “Contract Remedies.”

Diagram 8-1: Contract Law Graphic Organizer



You need to learn about liquidated damage clauses because they are a common type of clause that lawyers draft and use. There are also many other types of commonly used contract clauses. For example, earlier in this text you were introduced to covenants not to compete and damages waiver clauses. To give you more insight into commonly used clauses, Table 8-1 on the next page provides a non-exhaustive list of common contract terms and a summary explanation of each type of clause. As you work your way through your study of contract law, look for all of these clauses and make sure you understand the effect of each.

Introduction to the Validity of Liquidated Damages Clauses

Courts use a set of specialized rules to determine the validity of liquidated damages clauses, although courts vary greatly in how they frame their tests. Liquidated damages clauses are generally enforceable, but courts strike down such clauses if they are found to be a “penalty.” “Penalty” is just a label attached by a court when it concludes that a clause is unenforceable. The “penalty” label does not provide a rule.

Courts generally use a two-part test to determine if a liquidated damages clause is valid (not a “penalty”):

Table 8-1: Common Contract Clauses

Name of Clause	Goal of Clause
Covenant not to compete	Communicates that an employee or a seller of a business cannot compete (for a specified period of time and within a specified locale) with the employer or buyer
Liquidated damages	States an amount a party should be awarded by a court if the other party breaches the contract
Merger	Communicates that the written document contains all of the terms to which the parties have agreed and that prior agreements that are not reflected in the written document are not part of the parties' contract.
No oral modification	Indicates the parties only can modify the contract in writing.
Force majeure	Lists circumstances, usually natural disasters and wars, under which a party can avoid having to perform the contract without penalty.
Time is of the essence	Uses the words "time is of the essence" to communicate an expectation about timely performance of the parties' contract promises.
Choice of law	States the body of law that will govern any dispute between the parties. May also limit the state or city in which either party may file suit. (Lawyers may refer to this latter provision as a "jurisdiction clause.")
Arbitration	States that disputes under the contract will not be decided by a court but, rather, by an arbitrator. Usually includes a specified process for the arbitration (<i>i.e.</i> , what rules will be followed and how the arbitrator will be selected).
Indemnification	Communicates that, if one party is sued for a matter relating to the contract, the other party will pay for the costs of defending the suit and will pay any award of damages ordered by the court
No assignments	States that the rights conferred under the contract (and, in some instances, the duties imposed under the contract) cannot be transferred to someone else.
Savings	Indicates the parties have agreed that, if a court invalidates a particular term of the parties' contract, the rest of the contract will remain enforceable.

1. Were the damages difficult to ascertain when the contract was made; and
2. Is the amount stated as liquidated damages reasonable in light of the actual and/or anticipated damages?

In the second prong of the test, the terms "and/or" reflect the fact that courts are split in their articulations of the rule. Also note that the two prongs tend to have an inverse relationship; the more difficult damages are to ascertain, the more leeway courts give parties' efforts to estimate damages (and, conversely, the easier damages are to ascertain, the less leeway courts give parties' efforts to estimate damages). The cases and materials below illustrate the application of these principles.

Overview of Chapter 8

In this chapter, you will learn the tests used to evaluate liquidated damages clauses and how courts apply those tests. You will also learn how to draft a valid and enforceable liquidated damages clause.

Evaluating the Enforceability of an Agreed Damages Clause

Leeber v. Deltona Corp.

546 A.2d 452 (1988)

[... Text of case and accompanying reinforcement questions omitted for AALS New Law Teachers' Conference.]

Summary: Contract between Florida condo developer and condo buyer. Agreed price for purchase of the unit was \$150,200 with 15% down-payment (\$22,530), to be retained as liquidated damages if buyers breach. Upon building completion two years later buyers do breach, and developer resells unit for \$167,500. Since developer benefitted from breach buyers sue to recover their deposit. Court finds liquidated damages clause enforceable, concluding that Florida law general favors liquid damages clauses where damages not ascertainable at the time the contract was made (as was the case here), the 15% figure was reasonable and not a penalty, and was not unconscionable.]

United States v. Hayes

633 F. Supp. 1183 (1986)

[... Text of case and accompanying reinforcement questions omitted for AALS New Law Teachers' Conference.]

Summary: Defendant physician entered a contract as a medical student to accept \$29,000 in tuition assistance in exchange for working for two years after graduation in a government program designed to provide medical services to underserved locales. Standardized for contract provided for treble damages of \$90,000 in event of breach. Court finds damages clause enforceable because calculating the damages to the government would be "virtually impossible," thus the treble damages clause had a direct relationship to the actual damages as a fair and reasonable attempt to set damages in advance.]

[Material omitted for AALS New Law Teachers' Conference]

Chapter Problem Revisited

Exercise 8-1 at the beginning of this chapter asked you to draft a liquidated damages clause. To do so, use what you have learned about liquidated damages clauses in this chapter and the drafting guidance below:

1. Implement your client's goals: Your client wants to encourage the contractor to complete the job on time; to maximize its recovery if the contractor delays completion; to have a court, if necessary, affirm the enforceability of the clause; and to have a clause that is so clearly enforceable that the contractor would not even litigate the issue.
2. Be explicit about the effect you want the contract term to have.
3. Use clear and simple language. Ineffective lawyers draft obscure contract terms, which often become the subjects of litigation.
4. Carefully edit your work product. Your work product will reflect on your level of professionalism and effectiveness as a lawyer. Ensure that any work product you produce is polished.

In addition, it may be helpful to review some sample liquidated damages clauses in formbooks and to read some articles about liquidated damages. Both are available in your law school library. For example, one article that is useful for understanding drafting principles is *How to Draft and Enforce a Liquidated Damages Clause* by Henry Luepke. While we encourage you to read the entire article, below we are providing some key points and excerpts from the article:

1. Express your client's intent. As Luepke states, "If the parties intended the clause to serve as compensation for the damages likely to result from a breach, the court will uphold the clause and enforce it as written. If, on the other hand, the clause was intended to serve as punishment for a breach, the court will refuse to enforce it." Thus, "when drafting a liquidated damages clause, counsel should use language demonstrating that, at the time of contracting, the parties intended the liquidated amount to fully compensate, but not punish, for a breach of the contract." Luepke specifically advises:

The simplest way to demonstrate that the intent of a provision for liquidated damages is compensatory rather than punitive is to explicitly state this intent in the clause itself. Specifically, the clause should provide that the liquidated amount to which the parties have agreed is intended as compensation and is not intended as punishment.

2. Label the clause as a "liquidated" or "agreed" damages clause. As Luepke notes,

It is true that labeling a liquidated damages provision as either one for compensation or as one for a penalty is not conclusive on the issue of whether it will or will not be enforced. Nevertheless, courts are generally constrained to give effect to the parties' intention as expressed by the plain terms of the contract.

3. Be cognizant of the enforceability test your clause will have to pass. As Luepke states:

[A] court will have to answer two threshold questions, *i.e.*, 1) is the liquidated amount a reasonable forecast of just compensation in the event of a breach?; and 2) is the liquidated amount for a harm that was incapable or very difficult of accurate estimation at the time the contract was made?

Because the intent of the parties is to be ascertained from the plain language of the contract, the answers to these questions should be made explicit in the terms of the liquidated damages clause. For example, the liquidated damages clause might state explicitly and explain why the damages to be suffered in the event of breach are very difficult of accurate estimation and, for this reason, the parties have agreed that the amount fixed by the clause is a reasonable forecast of just compensation in the event of breach.

4. Specify the type of breach for which the liquidated amount is intended as compensation. Luepke explains:

All breaches are not alike, and a liquidated damages clause should not treat them as if they were. . . . Where a liquidated damages clause applies equally to multiple types of breaches, regardless of the significance or magnitude of the breach, the scope of the clause is overly broad, and a court will likely find that the intent of the provision is punitive, regardless of statements indicating a contrary intent.

The terms of the clause, therefore, should specify the types of breaches to which it applies and should clearly show that it is intended to provide compensation only for the type of breach that would result in the damages that are difficult or impossible to calculate.

5. Specify the type of harm for which the liquidated amount is intended as compensation. As Luepke notes, "the anticipated harm for which a liquidated damages clause is intended to compensate may not always be obvious to a court." Accordingly, parties to a "liquidated damages clause . . . would do well to specify the types of difficult-to-quantify harm for which the clause is intended to provide compensation." For example, "where breach of a contract may result in a loss of profits . . . the clause should state that the liquidated amount is intended to compensate for the difficult-to-calculate loss of anticipated profits that the parties agree would result from the type of breach in question."
6. Provide a formula for calculating the liquidated amount. A formula is preferable to a lump sum because the amount of damages will vary with the type and duration of breach. For example, a clause could state that a certain amount is to be added to a base liquidated amount for each day contract performance is delayed. Or, where the anticipated harm is lost profits, the liquidated sum could be set as a percentage of the gross amount yet to be paid under the contract. The advantage in using a formula is that it ensures "that the liquidated amount will be adjusted according to the relative degree or magnitude of the breach." Accordingly, a court is more likely to find that "the amount to be recovered as liquidated damages is intended to bear some relationship to a reasonable forecast of the probably damages and, therefore, is intended to compensate, not punish, for a breach. On this basis, a liquidated damages clause will likely be enforced."

Class 2

Working Group Problem

Reading effectiveness quiz: *Leonard v. Pepsico*

1. Does the procedural posture of this particular case affect the outcome or the court's reasoning?
2. What legal issue(s) is the court is deciding?
3. What facts support Leonard's contention that he is owed a Harrier jet? (list all)

What facts suggest that he is not? (list all)

4. Where in the case does the court state the rule(s) of law to be applied?

Restate the rule(s) in your own language.

5. Why do the defendants win here, but not in *Lefkowitz* or *Carlill*?
6. What contracts policy concerns support the court's holding in this case?

MIDTERM GRADING SHEET

POINTS
POSSIBLE

POINTS
EARNED

CONTRACT FORMATION

8

<p>Applicable Law</p> <ul style="list-style-type: none"> This is primarily a contract for the services of renovation. Any materials purchased are probably ancillary to the work, so under the predominance test, common law should apply. 	<p>1.5</p>	
<p>Mutual Assent</p> <ul style="list-style-type: none"> Not clear from facts who made offer and who accepted. Original offer seems to be Joe for 35K, but that was clearly rejected. Both parties act as if they have a deal for the three specified parts of the job at \$25K. A deposit was given and accepted. Probably enough to show that both had a present intent to form a contract at the time the deal was struck. <p>Terms and Type</p> <ul style="list-style-type: none"> Sufficient certainty of terms likely requires price and scope of the work. There aren't a lot of details here, but the basics seem covered enough that lack of certainty will not defeat a determination of mutual assent. Bilateral or Unilateral? <ul style="list-style-type: none"> ✓ Contract for services could be unilateral because S wants the work actually done, not just a promise to do it. ✓ But no specific language here suggests offer for unilateral, and default rule is bilateral unless specifies otherwise, so probably bilateral. ✓ Classification matters b/c if unilateral than contract not formed until perfect performance. So under classical rule S could still revoke. But R.2d §45 makes unilateral K irrevocable if performance has begun, which here it has. ✓ Chances are, then, whether deemed bilateral or unilateral Joe will be able to show that he has a contract. <p>Consideration</p> <ul style="list-style-type: none"> No question of consideration in original deal. Bargained-for exchange of money for work. Did Joe have a pre-existing duty to repair all of the electricity? Unlikely. The parties' discussions back and forth about this seem pretty clear that he was supposed to fix identified problems but was not obliged under the contract to remove and replace all wiring in affected rooms. Sarah could claim that there was no consideration for the contract modification of extra money for unplanned electrical work. Hold up game when she's living in a torn up house and needs work done ASAP? But illusory promise means one party doesn't get anything. Here she'd get all new wiring, which is probably a substantial benefit. And there's at least a suggestion that this is required to bring her home into compliance with building codes. 	<p>5.5</p> <p>5=<i>amazing</i> 4=<i>strong</i> 3=<i>fine</i> 2=<i>some problems</i> 0-1=<i>lacking analysis</i></p> <p>average = 3</p>	
<p>If no contract</p> <ul style="list-style-type: none"> If by any chance Joe loses on the question of whether there was a binding contract, he would have a decent claim for compensation for his work so far under a promissory estoppel theory, because he justifiably relied on Sarah's promises to pay for work done to her house. 	<p>1</p>	

DEFENSES & DAMAGES

POINTS
POSSIBLE

POINTS
EARNED

10

<p>Breach</p> <ul style="list-style-type: none"> • Sarah breached by locking Joe out of the job and calling in someone else. • Did Joe breach by changing the plan for wiring work? Very unlikely. Seemed necessary, and both parties indicated assent. <p>Defenses</p> <ul style="list-style-type: none"> • W/o consideration modification wasn't enforceable, or economic duress for modification. <ul style="list-style-type: none"> ✓ Both illusory promise and duress are doubtful because added work seems necessary, Sarah got a benefit in exchange, and had an opportunity to bargain. Anyway, these defenses would go to price owed when work completed. Wouldn't give Sarah the right to cancel the job. • Mistake <ul style="list-style-type: none"> ✓ Seems like both parties thought they didn't need to entirely replace the wiring, but turned out they did. If mistake, then probably mutual. ✓ Scope and price of job drastically changes with wiring, so likely basic to K, and definitely material to parties' exchange because they talked about this back and forth. ✓ If mistake, could void contract. Arguably that's what the parties did when Joe said another \$16K and Sarah said go ahead. If so, though, new K now in force. • Illegality <ul style="list-style-type: none"> ✓ Not an issue since Joe was going to correct the illegal wiring. If anything, Sarah's <i>new</i> contract may be illegal. 	<p>6</p> <p>6=<i>amazing</i> 5=strong 4=fine 3=some difficulties 2=problems 0-1=lacking analysis</p> <p>average = 3.5</p>	
<p>Damages</p> <ul style="list-style-type: none"> • Partial payment, so defective performance, not non-performance. • Joe will probably want BoB of his expected profit on the job. Calculated as "get" (\$25K or \$37K?) minus "give" of cost of labor and materials to complete the work, expected to be \$4K (but was that for original deal or including added electrical work?), less the deposit already paid. • Joe will also ask for reliance damages of \$6K, calculated as \$3K in materials and \$3K in labor. • Joe may instead ask for damages as expected profit on the basement job he passed up, but since he wouldn't be able to do both jobs, can't get both this and the BoB for Sarah's job. One or the other. • Sarah should counterclaim for \$4K deposit. Chances are this will get swallowed by what she owes Joe, so just deducted from amt. to be paid. • Depending on what the market would bear (as evidenced by her deal with new contractor?), Sarah may instead argue that Joe made a bad bargain and damages should be calculated as FMV-K price if less. No specific facts support this, though. 	<p>4</p> <p>4= excellent 3=strong 2=fine 1=problems</p> <p>average = 2.5</p>	

Contracts Section 1C

Franklin, Fall 2015

Midterm

Please respond to the attached question as thoughtfully as you can within the time allotted, **explaining and supporting your reasoning** for all important points. If any parts of the question are not clear, or if you believe there is a mistake or typo in the question, please just state the assumptions you are working with and I will grade your paper with that understanding.

If you handwrite your response, please write on only one side of the page, preferably in ink, and make your answer as legible as possible. You are welcome to skip lines if that will make your response easier to read.

You can make any notes you wish on the test itself or on scrap paper. These will be collected, but your markings will not be read or scored. However, you **may not** write on the Restatement/UCC supplement because they will be checked and reused for future exams.

Sarah's 100-year-old brownstone badly needed some updates. She began talks with Joe, a fully-licensed contractor, about the possibility of undertaking a significant renovation to her home. Initially Joe suggested that Sarah do a few minor cosmetic upgrades to the kitchen and bathrooms but focus primarily on bringing all of the plumbing and electrical equipment up to date. He estimated that he could do all that work for about \$35,000. This was too much money for Sarah. And though she understood the importance of Joe's attention to what was going on behind the walls, didn't want to devote too much of her limited budget to things she couldn't see or appreciate.

The two continued their conversations and eventually decided they'd aim for a compromise consisting of:

- a new kitchen island and refaced cabinets;
- replacing the tile and building a new walk-in shower in the main bathroom; and
- repairs to the plumbing and electricity, but not full-scale rebuilding of those systems.

This could be done for Sarah's maximum budget of \$25,000. Sarah gave Joe a deposit of \$4,000 to get started.

The following week Joe and his crew began the project by removing an agreed-upon wall, taking the fronts off of the kitchen cabinets, and tearing out the bathroom down to the studs. It was at that point that Joe noticed the bathroom wiring consisted of consisted of "knob and tube" fittings that these days are considered genuinely dangerous.

Joe went back and explained to Sarah that there was now no way to do the job as they had previously outlined. Leaving the knob and tube wiring wasn't legal, so in addition to running new lines in the demolished bathroom, he would have to investigate, and probably end up replacing the wiring in every room he was working in. The expected electrical work, and the repairs to the walls that would have to be broken into to complete it, would likely cost \$16,000 more than projected.

Sarah was shocked and upset. Faced with a house in shambles and few other options, she tearfully told Joe to proceed. Joe's crew spent the next few days rewiring the bathroom, removing the debris from their demolition work, and bringing in the materials they would need for the next phases of their work.

The following Monday, Joe went to Sarah's house and found that the key she had given him no longer worked. When he called her cell phone she explained that she had located another builder who was willing to make the cosmetic repairs she wanted without worrying about the problematic wiring. She thanked Joe for what he had done so far, but indicated she would no longer need his services.

Joe couldn't believe what he was hearing. His crew's labor so far already added up to \$3000, and they had brought in another \$3000 in materials. He was out money, time, the \$4000 profit he had expected from Sarah, as well as the chance to take on a \$10,000 basement renovation job that he had passed up because he was committed to working on Sarah's place.

If Joe sues Sarah what will he claim, and what counterclaims or defenses should he expect? Who is likely to win, and what damages, if any, might be awarded?

Supplemental Materials

Call for Scholarly Papers for Presentation at 2018 AALS Annual Meeting

To encourage and recognize excellent legal scholarship and to broaden participation by new law teachers in the Annual Meeting program, the association is sponsoring a call for papers for the 32nd annual AALS Scholarly Papers Competition. Those who will have been full-time law teachers at an AALS member or fee-paid school for five years or less on July 1, 2017, are invited to submit a paper on a topic related to or concerning law. A committee of established scholars will review the submitted papers with the authors' identities concealed.

Papers that make a substantial contribution to legal literature will be selected for presentation at the AALS Annual Meeting in San Diego, California, in January 2018.

Inquiries: Questions should be directed to scholarlypapers@aals.org.

Deadline: To be considered in the competition, an electronic version of the manuscript and a cover letter (described below) should be emailed to scholarlypapers@aals.org no later than August 4, 2017, 11:59 p.m. EST.

Anonymity: The manuscript should be accompanied by a cover letter with the author's name and contact information. The manuscript itself, including title page and footnotes, should not contain any references that identify the author or the author's school. The submitting author is responsible for taking any steps necessary to redact self-identifying text or footnotes.

Form and Length: Each submission should be prepared using Microsoft Word or otherwise should be submitted in rich text format. There is a maximum word limit of 30,000 words (inclusive of footnotes) for the submitted manuscripts. The manuscript should be double-spaced in 12-point (or larger) type with ample (at least 1") margins on all sides. Footnotes should be 10-point or larger, single-spaced, and preferably on the same page as the referenced text.

Eligibility: Faculty members of AALS member and fee-paid schools, including visiting faculty whose "home" school is also an AALS member or fee-paid school, and VAPs are eligible to submit papers. Fellows and adjuncts are not eligible, nor are visiting faculty whose "home" school is not a member or fee-paid school. The competition is open to those who have been full-time law teachers for five years or less as of July 1, 2017 (for these purposes, one is considered a full-time faculty member while officially "on leave" from the law school). Time spent as a visiting faculty member will be counted toward the five-year maximum, but time as a fellow or away on family or medical leave will not be included. Co-authored papers are eligible for consideration, but each of the co-authors must meet the eligibility criteria established above. Authors are limited to one submission each. A co-authored submission is treated as an individual submission by each author, and precludes additional submissions by either author. AALS Scholarly Papers Competition winners are not eligible to compete again, though past Honorable Mention recipients are eligible.

Papers are expected to reflect original research. Papers are not eligible for consideration if they will have been published before February 2018. However, inclusion of a version of the paper on the Social Science Research Network (SSRN) or similar pre-publication resource does not count as "publication" for purposes of this competition. Submitted papers, whether or not selected for recognition, may be subsequently published as arranged by the authors. Papers may have been revised on the basis of review by colleagues.

Statement of Compliance: The cover letter accompanying each submission should include a statement verifying:

1. The author holds a faculty appointment at a member or fee-paid school;
2. The author has been engaged in full-time teaching for five years or less as of July 1, 2017;
3. All information identifying the author or author's school has been removed from the manuscript;
4. The paper has not been previously published and is not committed for publication prior to February 2018; and
5. The author agrees to notify the AALS if the submitted paper will be published before February 2018.

Each author is to indicate up to four subject categories from the list below that best fit the paper. In the event that none of the listed categories captures the essence of the paper, the author should write-in one topic under "other."

Subject Categories: Administrative Law; Admiralty; Agency/Partnership; Agricultural Law; Alternative Dispute Resolution; Animal Law; Antitrust; Arts and Literature; Aviation and Space Law; Bank and Finance; Bankruptcy and Creditor's Rights; Bioethics; Civil Procedure; Civil Rights; Commercial Law; Communications Law; Community Property; Comparative Law; Computer and Internet Law; Conflict of Laws; Constitutional Law; Consumer Law; Contracts; Corporations; Courts; Criminal Law; Criminal Procedure; Critical Legal Theory; Disability Law; Dispute Resolution; Domestic Relations; Economics, Law and; Education Law; Elder Law; Election Law; Employment Practice; Energy and Utilities; Entertainment Law; Environmental Law; Estate Planning and Probate; Evidence; Family Law; Federal Jurisdiction and Procedure; Foreign Relations; Gender Law; Health Law and Policy; Housing Law; Human Rights Law; Immigration Law; Insurance Law; Intellectual Property; International Law – Private; International Law – Public; Jurisprudence; Juveniles; Labor; Law Enforcement and Corrections; Legal Analysis and Writing; Legal Education; Legal History; Legal Profession; Legislation; Local Government; Mergers and Acquisitions; Military Law; National Security Law; Native American Law; Natural Resources Law; Nonprofit Organizations; Other; Organizations; Poverty Law; Products Liability; Professional Responsibility; Property Law; Race and the Law; Real Estate Transactions; Religion, Law and; Remedies; Science, Law and; Securities; Sexuality and the Law; Social Justice; Social Sciences, Law and; Society, Law and; State and Local Government Law; Taxation – Federal; Taxation – State & Local; Technology, Law and; Terrorism; Torts; Trade; Trial and Appellate Advocacy; Trusts and Estates; Workers' Compensation.

AALS Statement of Good Practices by Law Professors in the Discharge of their Ethical and Professional Responsibilities

American law professors typically are members of two professions and thus should comply with the requirements and standards of each. Law professors who are lawyers are subject to the law of professional ethics in force in the relevant jurisdictions. Non-lawyers, in turn, should be guided by the norms associated with their disciplines. In addition, as members of the teaching profession, all law faculty members are subject to the regulations of the institutions at which they teach and to guidelines that are more generally applicable, such as the Statement of Professional Ethics of the American Association of University Professors.

This statement does not diminish the commands of other sources of ethical and professional conduct. Instead, it is intended to provide general guidance to law professors concerning ethical and professional standards both because of the intrinsic importance of those standards and because law professors serve as important role models for law students. In the words of the American Bar Association's Commission on Professionalism, since "the law school experience provides the student's first exposure to the profession and . . . professors inevitably serve as important role models for students, . . . the highest standards of ethics and professionalism should be adhered to within law schools."¹

Law professors' responsibilities extend beyond the classroom to include out of class associations with students and other professional activities. Members of the law teaching profession should have a strong sense of the special obligations that attach to their calling. They should recognize their responsibility to serve others and not be limited to pursuit of self interest. This general aspiration cannot be achieved by edict, for moral integrity and dedication to the welfare of others cannot be legislated. Nevertheless, a public statement of good practices concerning ethical and professional responsibility can enlighten newcomers and remind experienced teachers about the basic ethical and professional tenets—the ethos—of their profession.*

Although the norms of conduct set forth in this Statement may be relevant when questions concerning propriety of conduct arise in a particular institutional context, the statement is not promulgated as a disciplinary code. Rather, the primary purpose of the Statement— couched for the most part in general aspirational terms—is to provide guidance to law professors concerning their responsibilities (1) to students, (2) as scholars, (3) to colleagues, (4) to the law school and university at which they teach, and (5) to the bar and the general public.

1 " . . . In the spirit of Public Service": A Blueprint for the Rekindling of Lawyer Professionalism 19 (1986).

I. RESPONSIBILITIES TO STUDENTS

As teachers, scholars, counselors, mentors, and friends, law professors can profoundly influence students' attitudes concerning professional competence and responsibility. Professors should assist students to recognize the responsibility of lawyers to advance individual and social justice.

Because of their inevitable function as role models, professors should be guided by the most sensitive ethical and professional standards.

Law professors should aspire to excellence in teaching and to mastery of the doctrines and theories of their subjects. They should prepare conscientiously for class and employ teaching methods appropriate for the subject matters and objectives of their courses. The objectives and requirements of their courses, including applicable attendance and grading rules, should be clearly stated. Classes should be met as scheduled or, when this is impracticable, classes should be rescheduled at a time reasonably convenient for students, or alternative means of instruction should be provided.

Law professors have an obligation to treat students with civility and respect and to foster a stimulating and productive learning environment in which the pros and cons of debatable issues are fairly acknowledged. Teachers should nurture and protect intellectual freedom for their students and colleagues. If a professor expresses views in class that were espoused in representing a client or in consulting, the professor should make appropriate disclosure.

Evaluation of student work is one of the fundamental obligations of law professors. Examinations and assignments should be conscientiously designed and all student work should be evaluated with impartiality. Grading should be done in a timely fashion and should be consistent with standards recognized as legitimate within the university and the profession. A student who so requests should be given an explanation of the grade assigned.

Law professors should be reasonably available to counsel students about academic matters, career choices, and professional interests. In performing this function, professors should make every reasonable effort to ensure that the information they transmit is timely and accurate. When in the course of counseling a law professor receives information that the student may reasonably expect to be confidential, the professor should not disclose that information unless required to do so by university rule or applicable law. Professors should inform students concerning the possibility of such disclosure.

Professors should be as fair and complete as possible when communicating evaluative recommendations for students and should not permit invidious or irrelevant considerations to infect these recommendations. If information disclosed in confidence by the student to the professor makes it impossible for the professor to write a fair and complete recommendation without revealing the information, the professor should so inform the student and refuse to provide the recommendation unless the student consents to full disclosure.

Discriminatory conduct based on such factors as race, color, religion, national origin, sex, sexual orientation, disability or handicap, age, or political beliefs is unacceptable in the law school community. Law professors should seek to make the law school a hospitable community for all students and should be sensitive to the harmful consequences of professorial or student conduct or comments in classroom discussions or elsewhere that perpetuate stereotypes or prejudices involving such factors. Law professors

should not sexually harass students and should not use their role or position to induce a student to enter into a sexual relationship, or to subject a student to a hostile academic environment based on any form of sexual harassment.

Sexual relationships between a professor and a student who are not married to each other or who do not have a preexisting analogous relationship are inappropriate whenever the professor has a professional responsibility for the student in such matters as teaching a course or in otherwise evaluating, supervising, or advising a student as part of a school program. Even when a professor has no professional responsibility for a student, the professor should be sensitive to the perceptions of other students that a student who has a sexual relationship with a professor may receive preferential treatment from the professor or the professor's colleagues. A professor who is closely related to a student by blood or marriage, or who has a preexisting analogous relationship with a student, normally should eschew roles involving a professional responsibility for the student.

II. RESPONSIBILITIES AS SCHOLARS

A basic responsibility of the community of higher education in the United States is to refine, extend, and transmit knowledge. As members of that community, law professors share with their colleagues in the other disciplines the obligation to discharge that responsibility. Law schools are required by accreditation standards to limit the burden of teaching so that professors will have the time to do research and to share their results with others. Law schools also have a responsibility to maintain an atmosphere of freedom and tolerance in which knowledge can be sought and shared without hindrance. Law professors are obligated, in turn, to make the best and fullest use of that freedom to fulfill their scholarly responsibilities.

In teaching, as well as in research, writing, and publication, the scholarship of others is indispensable to one's own. A law professor thus has a responsibility to be informed concerning the relevant scholarship of others in the fields in which the professor writes and teaches. To keep current in any field of law requires continuing study. To this extent the professor, as a scholar, must remain a student. As a corollary, law professors have a responsibility to engage in their own research and publish their conclusions. In this way, law professors participate in an intellectual exchange that tests and improves their knowledge of the field, to the ultimate benefit of their students, the profession, and society.

The scholar's commitment to truth requires intellectual honesty and open-mindedness. Although a law professor should feel free to criticize another's work, distortion or misrepresentation is always unacceptable. Relevant evidence and arguments should be addressed. Conclusions should be frankly stated, even if unpopular.

When another's scholarship is used—whether that of another professor or that of a student—it should be fairly summarized and candidly acknowledged. Significant contributions require acknowledgement in every context in which ideas are exchanged. Publication permits at least three ways of doing this: shared authorship, attribution by footnote or endnote, and discussion of another's contribution within the main text. Which of these will suffice to acknowledge scholarly contributions by others will, of course, depend on the extent of the contribution.

A law professor shall disclose the material facts relating to receipt of direct or indirect payment for, or any personal economic interest in, any covered activity that the professor undertakes in a professional capacity. A professor is deemed to possess an economic interest if the professor or an immediate family member may receive a financial benefit from participation in the covered activity. Disclosure is not required for normal academic compensation, such as salary, internal research grants, and honoraria

and compensation for travel expenses from academic institutions, or for book royalties. Disclosure is not required for funding or an economic interest that is sufficiently modest or remote in time that a reasonable person would not expect it to be disclosed. Disclosure of material facts should include: (1) the conditions imposed or expected by the funding source on views expressed in any future covered activity and (2) the identity of any funding source, except where the professor has provided legal representation to a client in a matter external to legal scholarship under circumstances that require the identity to remain privileged under applicable law. If such a privilege prohibits disclosure the professor shall generally describe the interest represented.

A law professor shall also disclose the fact that views or analysis expressed in any covered activity were espoused or developed in the course of either paid or unpaid representation of or consultation with a client when a reasonable person would be likely to see that fact as having influenced the position taken by the professor. Disclosure is not required for representation or consultation that is sufficiently remote in time that a reasonable person would not expect it to be disclosed. Disclosure should include the identity of any client, where practicable and where not prohibited by the governing Code or Rules of Professional Conduct. If such Code or the Rules prohibit a professor from revealing the identity of the client, then the professor shall generally describe the client or interest represented or both.

Covered activities include any published work, oral or written presentation to conferences, drafting committees, legislatures, law reform bodies and the like, and any expert testimony submitted in legal proceedings. A law professor should make, to the extent possible, all disclosures discussed in this policy at the earliest possible time. The earliest possible time should be when the professor is invited to produce the written work for publication or to make a presentation or when the professor submits the written work for publication or delivers the presentation.

III. RESPONSIBILITIES TO COLLEAGUES

Law professors should treat colleagues and staff members with civility and respect. Senior law professors should be particularly sensitive to the terms of any debate involving their junior colleagues and should so conduct themselves that junior colleagues will understand that no adverse professional consequences would follow from expression of, or action based upon, beliefs or opinions contrary to those held by the senior professor.

Matters of law school governance deserve the exercise of independent judgment by each voting member of the faculty. It is therefore inappropriate for a law professor to apply any sort of pressure other than persuasion on the merits in an effort to influence the vote of another member of the faculty.

Law professors should comply with institutional rules or policies requiring confidentiality concerning oral or written communications. Such rules or policies frequently will exist with respect to personnel matters and evaluations of student performance. If there is doubt whether such a rule or policy is in effect, a law professor should seek clarification.

An evaluation made of any colleague for purposes of promotion or tenure should be based exclusively upon appropriate academic and service criteria fairly weighted in accordance with standards understood by the faculty and communicated to the subject of the evaluation.

Law professors should make themselves reasonably available to colleagues for purposes of discussing teaching methods, content of courses, possible topics of scholarship, scholarly work in progress, and related

matters. Except in rare cases and for compelling reasons, professors should always honor requests from their own law schools for evaluation of scholarship in connection with promotion or tenure decisions. Law professors should also give sympathetic consideration to similar requests from other law schools.

As is the case with respect to students (Part I), sexual harassment, or discriminatory conduct involving colleagues or staff members on the basis of race, color, religion, national origin, sex, sexual orientation, disability or handicap, age, or political beliefs is unacceptable.

IV. RESPONSIBILITIES TO THE LAW SCHOOL AND UNIVERSITY

Law professors have a responsibility to participate in the governance of their university and particularly the law school itself. Although many duties within modern universities are assumed by professional administrators, the faculty retains substantial collective responsibility to provide institutional leadership. Individual professors have a responsibility to assume a fair share of that leadership, including the duty to serve on faculty committees and to participate in faculty deliberations.

Law professors are frequently in demand to participate in activities outside the law school. Such involvement may help bring fresh insights to the professor's classes and writing. Excessive involvement in outside activities, however, tends to reduce the time that the professor has to meet obligations to students, colleagues, and the law school. A professor thus has a responsibility both to adhere to a university's specific limitations on outside activity and to assure that outside activities do not significantly diminish the professor's availability to meet institutional obligations. Professors should comply with applicable laws and university regulations and policies concerning the use of university funds, personnel, and property in connection with such activities.

When a law professor resigns from the university to assume another position, or seeks a leave of absence to teach at another institution, or assumes a temporary position in practice or government, the professor should provide reasonable advance notice. Absent unusual circumstances, a professor should adhere to the dates established in the Statement of Good Practices for the Recruitment of and Resignation by Full-Time Faculty Members of the Association of American Law Schools.

Although all law professors have the right as citizens to take positions on public questions, each professor has a duty not to imply that he or she speaks on behalf of the law school or university. Thus, a professor should take steps to assure that any designation of the professor's institution in connection with the professor's name is for identification only.

V. RESPONSIBILITIES TO THE BAR AND GENERAL PUBLIC

A law professor occupies a unique role as a bridge between the bar and students preparing to become members of the bar. It is important that professors accept the responsibilities of professional status. At a minimum, a law professor should adhere to the Code or Rules of Professional Conduct of the state bars to which the law professor may belong. A law professor may responsibly test the limits of professional rules in an effort to determine their constitutionality or proper application. Other conduct warranting discipline as a lawyer should be a matter of serious concern to the professor's law school and university.

One of the traditional obligations of members of the bar is to engage in uncompensated public service or pro bono legal activities. As role models for students and as members of the legal profession, law professors share this responsibility. This responsibility can be met in a variety of ways, including direct client

contact through legal aid or public defender offices (whether or not through the law school), participating in the legal work of public interest organizations, lecturing in continuing legal education programs, educating public school pupils or other groups concerning the legal system, advising local, state and national government officials on legal issues, engaging in legislative drafting, or other law reform activities.

The fact that a law professor's income does not depend on serving the interests of private clients permits a law professor to take positions on issues as to which practicing lawyers may be more inhibited. With that freedom from economic pressure goes an enhanced obligation to pursue individual and social justice.

Adopted by the Executive Committee, November 17, 1989

Amended May 2003

Section Chairs and Chairs-Elect for 2017

ACADEMIC SECTIONS

ADMINISTRATIVE LAW

Linda D. Jellum, Mercer University School of Law, **Chair**
Louis J. Virelli, III, Stetson University College of Law, **Chair-Elect**

ADMIRALTY AND MARITIME LAW

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Special Message from the Officers of the AALS Section for New Law Professors

Congratulations on becoming a law professor! We write merely to inform you that support for new law professors does not end at the conclusion of this Workshop. The AALS Section for New Law Professors exists to provide advice, guidance, and support to professors in their first seven years of law teaching. We offer informative panels, networking opportunities, teaching assistance, and scholarship opportunities for our members. We would love to have you join the section.

Before you can join the section and access the resources it provides, you must first ask your law school dean's office to have you added to the law school roster with your position, whether it is a tenure track, contract, visiting, fellow, or adjunct. Once added to the roster, you will need to log into the AALS website. Passwords are not automatically assigned, therefore you will need to select "forgot your password" and follow the appropriate steps to have a temporary password sent to you. Only your dean's office can add you to the law school's AALS roster.

You can use the following procedure to check and see if your school has already added you the law school's AALS roster:

- Go to www.aals.org/login/
- Click the 'forgot password' link on the bottom of the page
- Type your e-mail address and click the 'go' button
 - If you get the message 'E-mail address not found in database.' Then you have not been added by your school to your law school's roster.
 - If your e-mail address was found, then you have already been added by your school's roster. Your password will be e-mailed to you, which will allow you to log in. After logging in, you can change your password under the 'My Information' link.
 - If you need assistance, contact dltsupport@aals.org

TO JOIN AND ENGAGE WITH AALS SECTIONS:

Email support@aals.org to have an AALS team member sign you up for one or more AALS sections, including the Section for New Law Professors. To see a complete list of all 100 AALS sections, please visit www.aals.org/sections/. Please note there is a special process and a \$15 registration fee to join the Section on Clinical Legal Education.

After joining a section, log into the section website to find the listserv email address, view past discussions, and share files.

TO UPDATE YOUR BIOGRAPHY IN THE AALS DIRECTORY OF LAW TEACHERS:

Each year law schools and tenured, tenure-track, and long-term contract faculty members are asked to update their AALS profile for the *Directory of Law Teachers*. The Dean's office at each school updates their faculty roster, providing AALS with basic status and demographic information on these particular individuals. Additional information is collected directly from the faculty members. The information collected from the dean and faculty is combined to form the biographies that appear in the Directory of Law Teachers. For more information about the Directory please visit www.aals.org/about/publications/directory-law-teachers/.

Finally, if you have any questions or ideas for the Section for New Law Professors, please feel free to contact any of the Section Officers. For 2017, the officers are:

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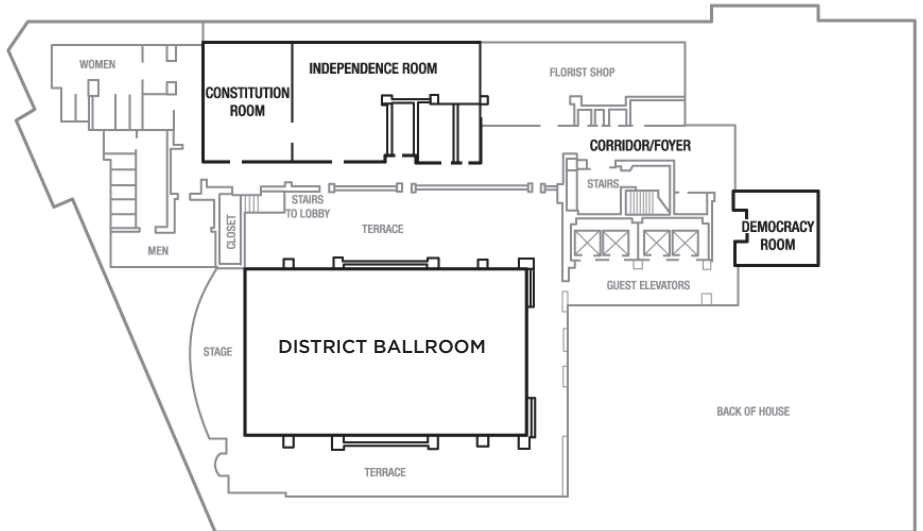
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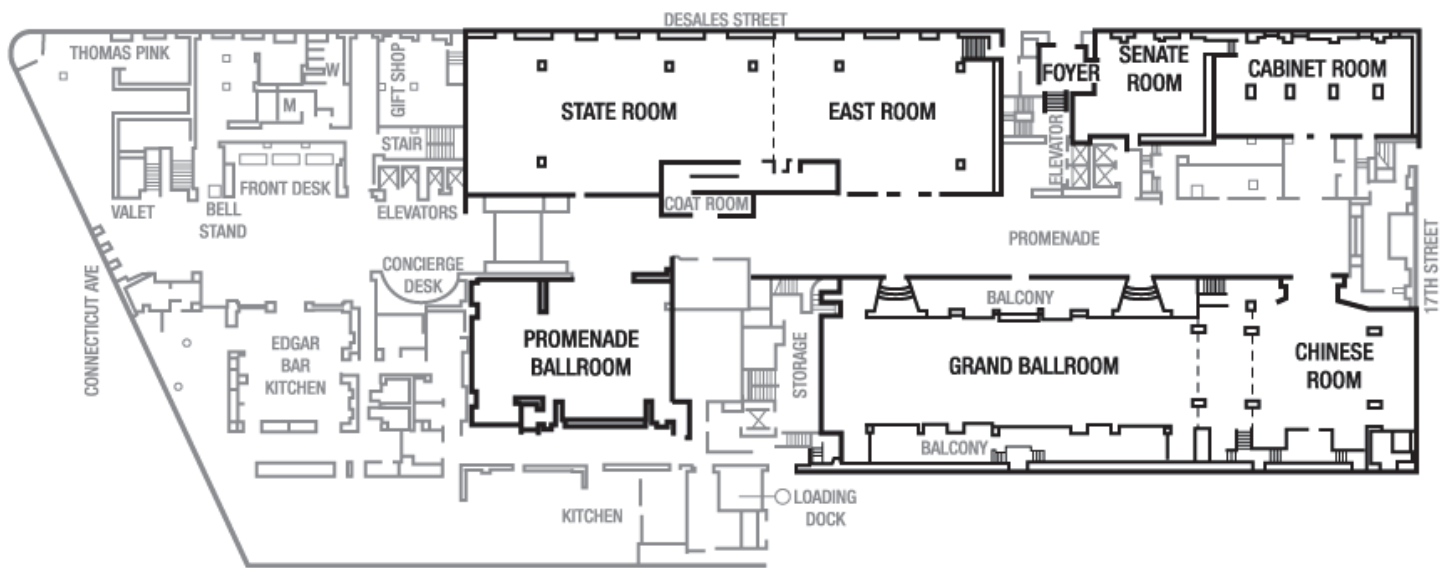
Congratulations again!

The Mayflower Hotel Floor Plan

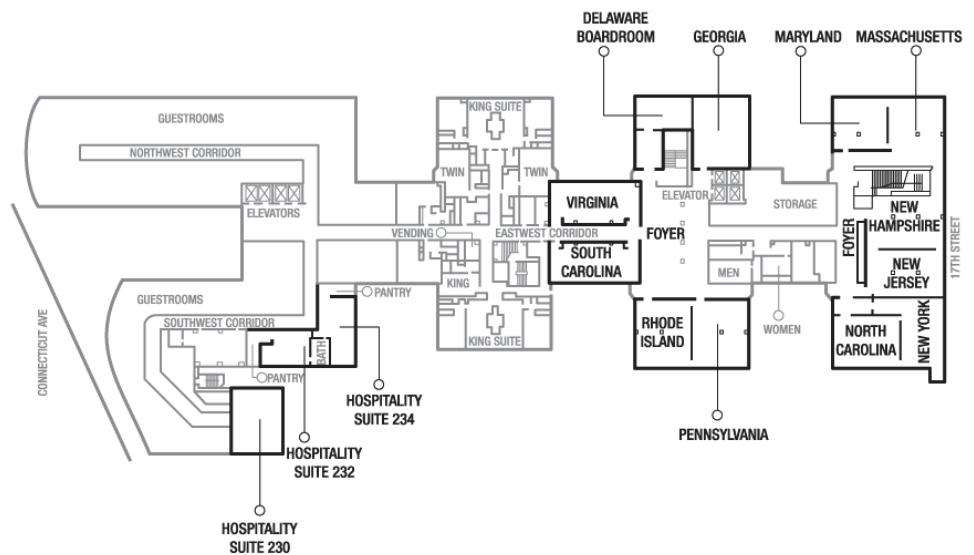
Lower Level



Lobby Level



Second Level



2017

WORKSHOP FOR NEW LAW SCHOOL TEACHERS

Thursday, June 22 – Saturday, June 24

Washington, DC

FACULTY RECRUITMENT CONFERENCE

Thursday, November 2 – Saturday, November 4

Washington, DC

2018

ANNUAL MEETING

Wednesday, January 3 – Saturday, January 6

San Diego, CA

CONFERENCE ON CLINICAL LEGAL EDUCATION

Sunday, April 29 – Wednesday, May 2

Austin, TX

WORKSHOP FOR NEW LAW SCHOOL TEACHERS

Thursday, June 7 – Saturday, June 9

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Thursday, October 11 – Saturday, October 13

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2019

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Wednesday, January 2 – Sunday, January 6

New Orleans, LA

