

Drexel Launches Transactional Lawyering Meet

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"Let's build one ourselves." That was the answer I gave my students when they couldn't find a law school competition that would test their deal-making skills. If you are looking for a law school competition, there are many options for would-be litigators, but none for future transactional lawyers. "Why isn't there a moot court for those of us who want to negotiate agreements rather than argue cases?" they asked. When we found that no one had offered an answer to that question, we decided to fix that. Thus was born the inaugural Transactional Lawyering Meet.

Held last spring at the Earle Mack School of Law at Drexel University in Philadelphia, the first Meet drew 12 teams from ten schools from around the country. Each team drafted and negotiated a letter of intent for an acquisition. In doing so, each grasped the legal and business issues at hand, exhibited a facility with the provisions of a complex legal agreement, interacted effectively with a client and conducted several negotiating sessions with opposing counsel. As one senior partner judging the competition put it, "I only wish many of our associates could be so polished."

Several months before the Meet, each participating school selected teams of two students each. A faculty member at each school was designated to make these selections using any method they wished. One school held its own intramural competition. Others used interviews, class performance or other criteria. Once selected, each team was assigned to represent either WanderWagen, Inc., a public company in distress and looking to raise cash, or Chestnut Hill Capital Partners, a private equity firm looking to acquire one of WanderWagen's divisions. Each team was given a basic description of the context, including all publicly available information on both the seller and the buyer. In addition, each team received a video recording of an interview with their respective client that provided answers to the kind of basic questions a lawyer would ask before beginning to draft a proposed letter of intent. Obviously, the seller's views on certain issues (like the scope of the assumed liabilities or the purchased assets) differed from those of the buyer. Armed with this "private" information, each side set out to draft their version of the proposed agreement.

Teams obtained client input into the drafting by posing questions by email to the "client"—played by me—during the course of the drafting phase of the competition. Teams were free to consult any other resources or to seek help from anyone they could. One team went so far as to ask the *New York Times* "Deal Prof" for advice. (Little did they know he would appear as a judge.) But just like typical associates,

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teams were left more or less alone to ferret out their own background materials on letters of intent and acquisition agreements.

Having submitted their proposed drafts, the teams gathered at Drexel in Philadelphia for a two-day Meet. The buyer and seller teams with the highest scores after three rounds of negotiations would compete in a final round. All rounds were judged by expert practitioners from Philadelphia's elite M&A bar. The final round's judges included senior partners from four of the city's largest firms. Teams were judged on their drafting skills, their professional demeanor, their understanding of the issues, their ability to interact with their counterparts and their overall effectiveness. In the end, Indiana and Georgia tied for the top prize. But more than defeating their law school peers, the true victory for these teams came when one of the judges made this comment at the end of the final round: "I would not have known how to do that when I graduated from law school."

Law schools have made great strides in skills education by offering richer clinical and other experiential learning opportunities to enable law students to begin their careers more "practice ready." But most of these efforts have focused on the work of the future litigator. Most practitioners and academics alike agree that there is a fundamental difference between the work of a litigator and a transactional lawyer. It is overly simple to say that litigators deal with disputes while deal lawyers work to bring parties together. Nevertheless, there is a difference in approaching a legal problem when the challenge lies in addressing events that have transpired (such as the circumstances underlying a lawsuit) versus events that may or may not transpire in the future (such as the circumstances one must anticipate in crafting a well-drafted agreement). The skills required are different. They are certainly different to teach.

Why is there only one Meet when there are so many Moots? The answer, I believe, comes from this difference. Providing students with a taste of what it feels like to deal with disputed facts or competing views of a past event is relatively simple when compared with simulating the drama of anticipating future uncertainty. Pulling a case from the headlines or last year's court files works to provide the fodder for role-playing litigation. The drama of a deal, on the other hand, depends on the myriad "what if" scenarios presented by a given circumstance. What if another buyer comes along? What if an undisclosed liability materializes? What if our valuation assumptions prove unfounded? Unknowns and unknowable's. Uncertainty and risk. These are concepts that lie at the center of the dealmaker's art. Portraying them, making them real for students is a challenge.

More and more members of the legal academy are coming to realize that the traditional approach to law school teaching does not meet this challenge. Teaching transactional lawyering by reading and analyzing appellate court decisions is like teaching flying by studying crash reports. The difficulty, however, lies in developing rich contexts that offer the iterative contingencies that simulate the real deal environment. We want to give a young deal lawyer the chance to see what a deal "feels like" just like we give young litigators a taste of the courtroom. That is the goal of the Transactional Lawyering Meet.

Next Spring, 30 teams (3 times last year's number) will be coming to the Earle Mack School of Law in Philadelphia to look for that feeling. Teams are once again being

selected by designated faculty members from around the country. The response to last year's Meet has been overwhelming, and we know many interested students will not be able to participate. Our ambition for future years is to expand the Meet to include both school-level and regional competitions to broaden the opportunity to participate. We even have interest in an international competition!

In the end, however, our goal is to see some of what we do in the Meet spill over into the classroom. As we become better at designing meaningful simulations, we are developing a new approach to teaching transactional lawyering. This new approach brings some of the conference room into the classroom and teaches our students how to "think like a *deal* lawyer." While the Meets are wonderful and exciting events, their success is best measured by how they serve to improve law school curricula around the country to better prepare the future generation of business lawyers.

For more on the upcoming Transactional Lawyering Meet, go to http://www.earlemacklaw.drexel.edu/news/events_calendar/transactional_lawyering/ or contact Professor Okamoto at ko54@drexel.edu.

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