

# INTERNATIONAL STUDENTS: HOW TO TEACH TRANSACTIONAL SKILLS

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Hi everyone. Thank you for staying with us. I'm Doug Levene. I'm teaching at Peking University School of Transnational Law, and one of the classes I teach is contract drafting, and I thought I'd come here and explain how that is the same and how that's different from what you all do in the United States. And in many ways, it's very similar. So I apologize for the repetition, but some of this you may have heard over the last day or two.

I'll start explaining by what STL is and so, where students come from, and background on the transactional program. The school is brand new. It was started four years ago. We graduated our first class, in the spring. I'm the only one there teaching, on the full-time faculty, teaching transactional classes. Only half of our classes or over half of them are still taught by visiting professors, so it's kind of hard to put together what Emory has, you know, this great sequence of courses that you can take from the capstones because it's just me, you know, and whoever's coming through to teach at any given year.

Our students get two degrees. They get a degree in Chinese. A master's degree in Chinese law. It's taught in Chinese, and they [inaudible] just like every student in the U.S. The first year of curriculum focuses towards contracts and is taught in a Socratic method, and our students are quite bright, extremely bright. Each class seems to be getting stronger as they start to hear about us. Yes.

Audience: So will they have completed a four-year undergraduate degree?

D. Levene: Oh yeah, they all have bachelor degrees

Audience: So it's interesting. It's different than the model you see in a lot of parts of Asia --

Well China has over 600 law schools and almost all of them are undergraduate. Peking University offers both undergraduate and graduate degrees in law. But most of those graduates are -- they have a harder time finding jobs than American law students do, and only 20% of them pass the Chinese bar exam, which is notoriously hard. But everybody graduated last year is employed cause everyone's decided to come here and get an LL.M. Their English language skills -- and that affects a lot of how I teach because most of them have never been outside of China. Almost all of them -- very few of them have ever been

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outside of China before they start school with us, but their English is excellent by a Chinese university standards. And everybody has told them all their lives how great their English is. And it's not. And that's a problem, which I will explain as I go through this.

This is a quick summary of the transactional-related courses that we have. Business associations are required 1L class, and I don't actually have it on here but federal individual tax is also a part of class, and so I don't [inaudible] 1L class.

This year we've added analytic methods, for lawyers, which is -- I don't know if you've seen it, which is a little tax book by about five or six professors at Harvard, that tries to combine -- it's a chapter on decision analysis, a chapter on game theory, a chapter on accounting, a chapter on financing, a chapter on microeconomics, a chapter on contract design, so a one-course introduction -- 30 hours to teach all that you know. Our classes are 30 hours. They're in six week modules, so it's five weeks and a week of exams, so it's six hours a week for five weeks. So it's kind of hard to cram that in, and I just did it for the first time this fall, and they were really good at it.

This is my contract drafting class, which is in many ways -- I'll go through how I structure it, but it's very similar to a lot of what you do, but the students are -- it's a different emphasis -- an upper emphasis on (fluent language). And these are elective classes that come and go depending on who's visiting.

One that's kind of interesting -- this class on ambiguity, that's taught by an adjunct from the University of Chicago, a senior partner of Baker & McKenzie. And he's written books on ambiguity. He's totally fluent in Chinese, and he's real interested in doing problems with ambiguity both in English language ambiguity and in translating contracts. And he tells me that in Chicago, only 7 or 8 students sign up for his class, but at my school, he gets like 30 or 40 students signing up for it, and this question of English language ambiguity is so fascinating to them, and they really are willing to engage dramatically with the problems of ambiguity.

So in the analytical methods class, one of the chapters is contract design. So I start it off with a theoretical overview of contract economics, and they love this. They're all -- you know the English majors find this very easy compared to -- these re 2Ls, so they've all had a year of law school. They all have had the difficulties of grappling with cases, where there's no answer, so they have problems where there might be answers, something that they thrive on. And I find the teaching of contract economics from a theoretical point of view is really helpful when we get into contract design and drafting because then they understand why you're doing what you're doing. [Inaudible] we're talking about the problems of getting students to understand risk. I don't have that problem. My students don't have problems in understanding what risks are and why parties are trying to shift them. That's -- maybe it's just the way we're approaching it, but it doesn't seem to be a problem.

So this is just an example of one of the problems from the analytical methods. I

give that to them in advance, and then I call on students to try and give answers to what advice they would give this client, and these are the tools. We talk about (enlarging) [inaudible], incentives, verifying performance, risk bearing, and disputes and disputes resolutions. Those are kind of the lenses to which we look at the contract design problem. And when we get into the exercises in my contract drafting classes, it's the same questions. You still have problems that you have in every contract. So, anyway, for my students, at least, for these students, theoretical background is really helpful.

In an ideal world, I would grade each one of these homework assignments and give them back to them. I have 75 students in this class. I can't do that. So when I get back to China, I have 75 final exams to grade with these problems and other types of problems. And it's too bad because I think feedback is critical. The only feedback they get is in class. I don't talk about the book, at all. I give them the book. I say read it. Figure out on your own. All we're doing in class is the problems, so they come to class, with their answers to the problems, and then we go through them in the class. They get whatever feedback they can out of that, and then they usually crowding around me after class with their own, unique answers.

Then I get to my contract drafting class, and I use Charlie Fox's book, which I love. I love this book. Working with -- this -- you know how to do deals, and it's the type of book I wish I had had in law school because it kind of gives an overview of what a business contract looks like, what the elements are, what goes into it, why they're there, what the range of possible solutions are, what's customary, I mean -- as Mike Woronoff said we can't teach expertise. All we can do is expose students. And it takes how many years of practice before you really know what the range of reasonable solutions to a problem is? You know it's the type of thing you learn after you've done -- you know after you've negotiated contracts for five or ten years. So all I can do is give them a taste, and so the first time they walk into an office and the partners says we're doing such and such a deal and I want you to draft resolutions for it, their head doesn't spin around like Linda Blair in the Exorcist. That's my goal.

The key to teaching this class, though, is I have eight teaching fellows, recent American law school grads. The difficulties in the American legal market has made it relatively easy for us to get very talented teaching fellows, and they have small groups, who meet with the students every week. So I talk, give out homework assignments, put student work up on the screen, call on students to criticize it, criticize myself. Then they go off into small groups and do exercises and there's weekly drafting assignments. And the teaching fellows grade those, (so I have them).

I've tried using adjuncts, and I've listened the last two days about how people -- here -- you know at Emory, people actually give classes to adjuncts, who teach them. And I have not been able to do that. I have not been able to really find any adjuncts out there that

I can count on except to show up and talk a little bit about what the deal practice is like. I think we're just too far from Hong Kong. It's two hours to get from Hong Kong to Shungin, and if you're a busy deal lawyer, that's almost heroic. So I don't know. As I've heard the discussions here, I'm thinking gee if I could just get adjuncts into a more significant role, that would really extend what I can do.

So my philosophy is I want to teach kind of basic elements of transactional practice kind of a combination of drafting, skills, as well as some deal skills. The key is the homework. What's different with my students is the emphasis on perfect English. They come from an environment where Chinglish is widely accepted, where leaving out particles or using the wrong he or she the wrong way is just routine, common, and I beat on them from day one that that's unacceptable if you want to practice law in the big leagues. And some of them do rise to the challenge and do produce beautiful work and some of them don't. This is a graded class, so it counts in their GPA, and that helps get a little more attention than if it was a pass-fail class.

This last bullet point here is something that I think is important that other people don't seem to think is important, but I think creating a great contract -- the great deal lawyers have a lot of the same -- it's the same skills that you have -- that law professors have in analyzing a problem and going well how about this, how about this, how about this, coming up with 1,000 hypotheticals and testing the rule of law because when we're drafting a contract, we're creating a rule -- we're creating a law for the parties, and you have to test that law to make sure it works in all possible situations or all reasonably possible situations. And that's hard to teach students to do that, and it's hard to teach them how to read through a contract and see how provisions fit together and then come up with a hypothetical to see if they still work together. I mean those are the things that really good deal lawyers do, and it's hard to teach that. And I don't know if I do that good a job of it, but that's [inaudible].

With my English as a second language to students, I use detailed PowerPoint slides. I don't use little bullet points. I tell them -- in this class, at least I tell them to print them out in advance, bring them to class, take notes on them, so they can listen to me instead of writing down the slide. Whenever I find myself using a colloquial expression, I write it on the white board and explain it. Deal talk, as you know, is filled with colorful colloquial expressions, and I think it's important that my students learn those, so I don't shy away from them. But I always -- I always highlight them and explain what it is. Homerun, they had no idea what that is. You know if you say it was a homerun, not a single. You know you have to stop and explain that. So I have to stop and listen to myself talk and be aware of idiomatic expressions or terms of art. Always stop and explain terms of art.

But I have noticed that sometimes not being an English speaker is an advantage. I get so confused by the way accountants use credit and debit because it's contrary to customary English language usage. My students don't have any problem with it at all. They

just learn that one side of the balance sheet is a debit and the other side is a credit, and there's no problem. That comes up sometimes.

I'm just going to flip through this. This all comes with the Fox book, Charlie's book -- different lecture topics. I try to go through it in some detail and explain, as I said, what the customary provisions are, what the range of possible agreement might be if it's a credit agreement or an asset purchase agreement. For Chinese students that want to go into -- my students, they all dream of working for (Milbang Tweed) in Hong Kong. Actually one is now working for Kirkland & Ellis in Hong Kong, but only the best of them will have that opportunity. But that's what they all want to do and even the ones that don't -- aren't going to do that, they're going to work for Chinese law firms or for Chinese companies that are doing business with American companies or representing American companies. And so choice of law, choice of form, jury waiver, arbitration, things that American students might think of as just boilerplate and not really worthy of a lot of attention, are really important, so I spend a lot of time on those.

The other area of practice that they want to go into is international arbitration. The court system in China is flawed, that would be the way to put it. But the arbitration system in China, which is much more important for international business, is booming.

Now I've also discovered over -- this is my third year, and I started off with just talking about the substantive law and then drafting exercises, and I didn't go that much into grammatical rules, but I have discovered over the past two years that they need the grammatical rules. I'm using Tina Stark's book and some other books to try to add that stuff into my lectures and just giving them the rules, guidelines, checklists, things to use, and that seems to -- I think that they really need that. These are other topics that I talk about. Everybody talks about these.

And then this is more the deal skill or context training explaining the role of junior lawyers, due diligence, where the term due diligence came from, use of precedent forms, what a mark-up is, just the kind of things that no one ever told me when I was in law school.

That last quote there, "never assume a god damn thing," is what Judge Lombard use to drill into his clerks, good advice for young lawyers. Most of us, most transactional educators, seem to have some significant practice experience, so I assume that all of you are trying to give practice tips, as you go along, on the same thing.

Then I talk about deal process. Again, this is the same idea of explaining context and the types of agreements that they might see. I don't have time in this class to do all these. I think we work on a couple of definitive agreements and some closing documents, and that's it, but at least I can explain what these are and what the process is so if they can go off to an internship or graduate and go to a law firm they'll have some idea what they're doing.

The first project is an intake memo, and I orally describe the terms of a sale of a medical practice, which I deliberately pick as something outside of their realm of experience. And then they have to do a memo to the partner or to me describing the deal, and they have to write it and rewrite it until they get it perfect. And that's where my teaching fellows come in. They correct it. They hand it back, and they can rewrite it, and it's an opportunity to talk to them about how all these little mistakes that they've gotten away with for so many years are no longer acceptable.

Then the next big project is I give them the precedent. It's a stock purchase agreement, but the precedent to that form I give them is an asset purchase agreement, so I give them a form agreement for this. They mark it up. I give them an archaic one, you know witnesseth, whereas, ask them to put it in a modern format, and then they change that to get it to work. I give them some new provisions to add, give them the financing condition for the buyer and then ask them to figure out how that affects the other provisions in the agreement. This is a short agreement. It's only 4 or 5 pages long, so it's not that hard. I want to get them -- force them to start thinking about how agreements fit together cause it's so easy to take a contract form and just mark it up to what you think the deal is and not think about anything else.

Then we get to the next big assignment, which is our stock purchase deal, which is an asset purchase agreement, as a precedent form. Now, as I give them the drafting assignment, I encourage the students to look for precedents on the web and West Law and so on. And what the more clever ones do is they'll just go find stock purchase agreements and basically mix up wholesale substitutions. And I don't mind. If they want to do that, as long as it all fits together and everything's in the same format, it's all consistent, that's okay. But there's an opportunity for me to explain substantively what the difference is between a stock purchase and an asset purchase agreement, and I was kind of surprised. These kids have all had business associations, but this is a difficult topic for most of them probably. I spent a lot of time drawing little charts on the blackboard and trying to explain what a stock purchase is over a (massive purchase). I don't know why. It seems simple to me.

So I have them to do another intake memo. It's a much more complicated transaction, and that gets graded and corrected and rewritten and rewritten and rewritten. And then this agreement is kind of lengthy. It's in here. You can take a look at it. It's based on a real deal that (Conklin Williams) did I think in North Carolina, and I changed all the names to protect the guilty and the innocent. So it gives me an opportunity to apply theory to fact -- to apply all the theories we talk about, in terms of contract economics and contract design, to this deal. And this is also -- in both contracts they're drafting on, I have them focus on the difference between a buyer's draft and a seller's draft.

Now I was an MNA lawyer. I was a young lawyer, so that's what I do. You can just easily do this with a lease. It might be easier with a lease or a little rental agreement or a loan

agreement or something like that, but I just do what I know best. And it's also -- the practices they're going to go into they're going to be doing MNA deals, and they're going to be doing license agreements, supply agreements, so any of those would work.

Precedent forms -- for deal lawyers, plagiarizing is good right. It's okay. You're supposed to go out and find a form that saves you some time, so I talk about how it's okay to do that but how I don't want them to become each other's [inaudible]. And it's taken a while, but I think they get that now, and -- but it's different. And for Chinese students, it's different. In Chinese undergraduate schools, generally plagiarism is widespread and accepted. Even a lot of Chinese professors plagiarize articles. It's the old communist system again. You're expected to produce a certain number of articles per year and they weigh them to see how well you've done, and so you get a lot of plagiarism. So we have to -- we don't tolerate any of that. And once I explain what's okay and what isn't okay, it's not a problem, but I do have to explain though.

And we do a closing, checklist. I prepare that from the agreement. I tell them to go off onto the web and find examples of closing checklists, and if we have time this year, I'll add in some secretary certificates and other stuff like that.

The small group sessions are -- I sit in on them. I observe one each week, and then I give feedback to my teaching fellows. Most of them are right out of law school. They've never done deals, so I have to teach them. I go through the whole course with them before school starts, and I meet with them once a week to kind of get them up the curve a little bit. But they only need to know a little bit more than the students, and I try to have them focusing more on the English language stuff than the deal stuff, but it would just be impossible to teach this class, especially with ESL students without them because you really do need to have that constant correction and rewriting and rewriting and rewriting. And I can't do 75 students weekly. That just would not be possible.

After two years, this is what I think. They've started to learn to think like lawyers. They've learned how to identify [inaudible] law and to think about it hypothetically and to test it, which is the key attribute that we teach. That's what we teach students the first year. And I have found, at least, for me combining some economic theory with substantive law is effective in helping students to understand the context for business agreements and the structure of business agreements. And, as I'm sure you all know, the most important thing is feedback, and if I didn't have my teaching fellows, I'd have probably 15 to 20 students in the class and it'd be structured differently.

So that's it, very similar to what you all do but some differences.