

Mercer Law Review

Volume 63
Number 3 *Lead Articles Edition - Citizenship
and Civility in a Divided Democracy: Political,
Religious, and Legal Concerns*

Article 17

5-2012

Trusts and Estates Drafting: Avoiding Rigor Mortis in the Law School Curriculum

Karen J. Sneddon
sneddon_kj@law.mercer.edu

Follow this and additional works at: https://digitalcommons.law.mercer.edu/jour_mlr



Part of the [Legal Education Commons](#)

Recommended Citation

Karen J. Sneddon, *Trusts and Estates Drafting: Avoiding Rigor Mortis in the Law School Curriculum*, 63 Mercer L. Rev. 1071 (2012).

This Essay is brought to you for free and open access by the Journals at Mercer Law School Digital Commons. It has been accepted for inclusion in Mercer Law Review by an authorized editor of Mercer Law School Digital Commons. For more information, please contact repository@law.mercer.edu.

Trusts and Estates Drafting: Avoiding Rigor Mortis in the Law School Curriculum

by Karen J. Sneddon*

Every day lawyers sit with fingers curled above keyboards and pens poised above notepads. Lawyers are writers. There may have been a time when the practice of law primarily involved oral communication. However, the practice of law has long since become one of written communication.¹ Although most law schools pride themselves on producing client-ready graduates, few schools actually deliver on this promise, especially as it relates to transactional practice.²

The American Bar Association Standards and Procedures³ requires that each law student receive substantial instruction in, among other categories, “writing in a legal context, including at least one rigorous writing experience in the first year and at least one additional rigorous writing experience after the first year.”⁴ The rigorous writing experience must be evaluated in light of

* Associate Professor of Law, Mercer University, Walter F. George School of Law. Louisiana State University (B.A., summa cum laude, 1999); Tulane Law School (J.D., summa cum laude, 2002). Member, Tulane Law Review (2000-2002); Managing Editor (2001-2002). Thanks to Dean Gary J. Simson for his suggestions on this Essay.

1. See, e.g., Edward D. Re, *Increased Importance of Legal Writing in the Era of “the Vanishing Trial,”* 21 *TOURO L. REV.* 665 (2005).

2. See, e.g., John Burwell Garvey & Anne F. Zinkin, *Making Law Students Client-Ready: A New Model in Legal Education*, 1 *DUKE FORUM FOR L. & SOC. CHANGE* 101, 102 (2009), available at <http://www.law.duke.edu/journals/dflsc/dfltoc1n1/> (stating that “the Langdellian method, as the primary form of instruction, fails to make law students client-ready”).

3. 2011-2012 STANDARDS AND RULES FOR APPROVAL OF LAW SCHOOLS (2011), available at http://www.americanbar.org/groups/legal_education/resources/standards.html.

4. *Id.* § 302(a)(3).

the number and nature of writing projects assigned to students; the opportunities a student has to meet with a writing instructor for purposes of individualized assessment of the student's written products; the number of drafts that a student must produce of any writing project; and the form of assessment used by the writing instructor.⁵

The additional rigorous writing experience after the first year, commonly referred to as the upper-level writing requirement, recognizes the importance of writing to the practice of law and serves to encourage continued instruction in legal writing beyond legal writing coursework required in the first year.⁶

One of the curriculum reforms that the Mercer Law faculty adopted in the spring of 2011 was allowing students to satisfy the upper-level writing required by any one of a variety of options. Previously, students could only satisfy the requirement by taking a seminar. Students may still satisfy the requirement by taking a seminar.⁷ Alternatively, however, students may satisfy the requirement by taking a specifically designated course.⁸ Law schools have traditionally favored a litigation-based approach to courses,⁹ and these designated courses do include courses focused on litigation-based writing, such as Advanced Litigation Drafting and the Habeas Project.¹⁰ However, these designated courses also include courses focused on transactional-based writing, such as Business Drafting and Trusts and Estates Drafting.¹¹ Students also

5. *Id.* Interpretation 302-1.

6. See generally Kenneth D. Chestek, *MacCrate (In)Action: The Case for Enhancing the Upper-Level Writing Requirement in Law Schools*, 78 U. COLO. L. REV. 115 (2007).

7. *Advanced Writing Requirement*, MERCER LAW, <http://www.law.mercer.edu/academics/registrar/advanced-writing-requirement> (last visited Jan. 24, 2012).

8. *Id.*

9. See, e.g., Jon W. Bruce, *A Critique of the Litigation Emphasis of Legal Education*, in MAXIMIZING THE LAW SCHOOL EXPERIENCE: A COLLECTION OF ESSAYS 35, 38 (Michael I. Swygert & Robert Batey eds., 1983) ("Most lawyers do very little litigation work, and even fulltime litigators devote a substantial portion of their time to trial preparation. The vast majority of lawyers spend the bulk of their workdays counseling clients, drafting documents, and negotiating with other attorneys."). For suggestions on how to incorporate transactional practice into legal education, see Karl S. Okamoto, *Teaching Transactional Lawyering*, 1 DREXEL L. REV. 69 (2009); Lisa Penland, *What a Transactional Lawyer Needs to Know: Identifying and Implementing Competencies for Transactional Lawyers*, 5 J. ASS'N LEGAL WRITING DIRECTORS 118 (2008); Louis N. Schultz, Jr., *Transactional Law in the Required Legal Writing Curriculum: An Empirical Study of the Forgotten Future Business Lawyer*, 55 CLEV. ST. L. REV. 59 (2007); Anita Bernstein, *On Nourishing the Curriculum with a Transactional Law Lagniappe*, 56 J. LEGAL EDUC. 578 (2006).

10. *Advanced Writing Requirement*, *supra* note 7.

11. *Id.*

have the option of satisfying the requirement by writing a law review casenote or comment or by “completing an individually authored work of rigorous intellectual effort under the active and regular supervision of a full-time faculty member as part of an independent research project or in conjunction with a course that does not typically involve a writing project.”¹²

The formulation and implementation of the revised upper-level writing requirement acknowledge the importance of instruction in legal writing beyond the core required writing curriculum. The formulation and implementation also recognize the need to facilitate student exposure to genres of legal writing beyond the office memorandum and the appellate brief.¹³ According to James Boyd White, “‘Legal writing’ is in fact the center of what one learns: how to read and understand the literature of law—the cases, statutes, books, and general understandings that are our common heritage; and how to make compositions of one’s own, oral and written, out of that material.”¹⁴ Mercer Law School has long taken a similar view.¹⁵ In addition, as a recognized leader in skills training, Mercer Law School for a number of years has offered a variety of advanced writing experiences.¹⁶

The remainder of this essay is devoted to a course that I have developed, Trusts and Estates Drafting, that I believe embodies the spirit behind the expansion of the upper-level writing requirement. The many current influences on curriculum reform include the changing dynamics of the practice of law,¹⁷ influx of millennial students,¹⁸ the

12. *Id.* In addition to completing this project, the student must submit a form to the Registrar’s Office that “includes the faculty member’s certification that the proposed project will satisfy the Advanced Writing Requirement if successfully completed.” *Id.*

13. See also SEC. OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, AM. BAR ASS’N SOURCEBOOK ON LEGAL WRITING PROGRAMS 171 (Eric B. Easton, ed., 2d ed. 2006) (“Offering a variety of upper-level research and writing courses may allow students to choose courses that reflect their areas of interest.”).

14. JAMES BOYD WHITE, FROM EXPECTATION TO EXPERIENCE: ESSAYS ON LAW AND LEGAL EDUCATION 31-32 (2002).

15. *Course Descriptions*, MERCER LAW, <http://www2.law.mercer.edu/courses/index.cfm?blockid=9> (last visited Jan. 24, 2012).

16. See, e.g., Linda H. Edwards, *Certificate Program in Advanced Legal Writing: Mercer’s Advanced Writing Curriculum*, 9 NO. 3 PERSP.: TEACHING LEGAL RES. & WRITING 116 (Spring 2001).

17. See generally Neil J. Dilloff, *The Changing Cultures and Economics of Large Law Firm Practice and Their Impact on Legal Education*, 70 MD. L. REV. 341 (2011); Larry E. Ribstein, *The Death of Big Law*, 2010 WIS. L. REV. 749 (2010); Quintin Johnstone, *An Overview of the Legal Profession in the United States, How That Profession Recently Has Been Changing, and Its Future Prospects*, 26 QUINNIPIAC L. REV. 737 (2008).

18. For an examination of the impact of the Millennial Generation on Law, see Steven K. Berenson, *Educating Millennial Law Students for Public Obligation*, 1 CHARLOTTE L.

ABA's *MacCrate Report*,¹⁹ Carnegie's *Educating Lawyers*,²⁰ and CLEA's *Best Practices*.²¹ These and other influences informed the design and implementation of the Trusts and Estates Drafting Course.

Trusts and Estates Drafting is a two-credit course open to students who have taken the Law of Wills and Intestate Succession. Limited to twenty-four students, Trusts and Estates Drafting is offered in the spring semester. Students generally take the course in their final semester of law school, which allows them to draw upon all their classroom, clinical, and work experience since starting law school.

Although drafting is a skill that cannot be completely mastered in law school, a drafting course can provide students with a stronger foundation for practice. The Trusts and Estates Drafting course centers on the design and drafting of the typical documents of an individual client representation in the area of estate planning: Engagement Letter, Will, Codicil, Irrevocable Inter Vivos Trust, Advance Directive, Financial Power of Attorney, and Disengagement Letter. The academically rigorous classroom environment couples substantive discussions with practical applications.²² Each document is created in the context of a specific client with particular needs. Care is given to the audience and purpose of each document to ensure that documents produced are substantively accurate and operative. Issues of professionalism and ethics are likewise infused throughout the course.²³ Exercises in role-

REV. 51 (2008); Joan Catherine Bohl, *Generations X and Y in Law School: Practical Strategies for Teaching the "MTV/Google" Generation*, 54 LOY. L. REV. 775 (2008); Leslie Larkin Cooney, *Giving Millennials A Leg-Up: How to Avoid the "If I Knew Then What I Know Now" Syndrome*, 96 KY. L.J. 505 (2007-2008); *Keeping Current: Diversity*, 5 NO. 2 PARTNER'S REP. 12 (Feb. 2005).

19. ROBERT MACCRATE ET AL., AM. BAR ASS'N, LEGAL EDUCATION & PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM: REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP (1992); see also Russell Engler, *From 10 to 20: A Guide to Utilizing the MacCrate Report over the Next Decade*, 23 PAGE L. REV. 519 (2003); Arturo Lopez Torres, *MacCrate Goes to Law School: An Annotated Bibliography of Methods for Teaching Lawyering Skills in the Classroom*, 77 NEB. L. REV. 132 (1998).

20. WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (2007).

21. ROY STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP (2007), available at http://law.sc.edu/faculty/stuckey/best_practices/; see also Roy Stuckey, "Best Practices" or Not, *It Is Time to Re-Think Legal Education*, 16 CLINICAL L. REV. 307 (2009).

22. From spring 2008 to spring 2011, the required course text was THOMAS L. SHAFFER ET AL., THE PLANNING AND DRAFTING OF WILLS AND TRUSTS (2d ed. 2007). However, in spring 2012, the required text will be KEVIN D. MILLARD, DRAFTING WILLS, TRUSTS, AND OTHER ESTATE PLANNING DOCUMENTS (2006).

23. The course draws from the work of Thomas Shaffer. See, e.g., THOMAS L. SHAFFER, DEATH, PROPERTY, AND LAWYERS: A BEHAVIORAL APPROACH (1970). The course also draws

playing, research, counseling, and drafting are used to cultivate an active learning environment that challenges students to think beyond the boilerplate of form documents.²⁴

Throughout the semester, students prepare drafts of each assigned document for individualized professor review. In total, six assignments are submitted for purposes of individualized assessment by the professor. Throughout the drafting process, however, students use guided self-assessment forms and structured peer review worksheets to receive additional formative feedback. To ensure that students process the various methods of feedback, the professor requires that each assigned document be revised and compiled in a course Form File. The Form File is then submitted for individualized assessment at the end of the semester. Ultimately, by the time the students complete the course, they each have a file of documents ready to be placed on his or her office shelf as a reference tool.

By expanding the options to satisfy the upper-level writing requirement, Mercer Law School continues to foster a dynamic educational environment. Courses like Trusts and Estates Drafting implement the intent of the Woodruff Curriculum while ensuring that the curriculum is responsive to the needs of students and the demands of the practice of law.

from the work of Joseph Trachtman. See, e.g., Joseph Trachtman, *Maxims for Estate Planners*, 1963 U. ILL. L.F. 123, 127 (urging attorneys to “[h]ave high standards of draftsmanship. Be not an innovator nor a copier of the embalmed errors of others.”). The future of estate planning also shapes the coursework. See, e.g., Jeffrey N. Pennell, *The Joseph Trachtman Lecture—Estate Planning for the Next Generation(s) of Clients: It’s Not Your Father’s Buick, Anymore*, 34 ACTEC J. 2 (2008).

24. For an examination of legal forms, see Kirsten K. Davis, *Legal Forms as Rhetorical Transaction: Competency in the Context of Information and Efficiency*, 79 UMKC L. REV. 667 (2011).
