

Weaving Experiential Law Teaching Elements into an Intellectual Property Management Course

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This study outlines an Intellectual Property Management (IPM) Course incorporating experiential law teaching methods based on the author's experience of experiential law teaching at McGeorge Law School of the University of the Pacific. Firstly, it paints the legal education in China and introduces the experiential law teaching methods in the United States. Then it describes the traditional way of teaching the IPM Course in China, taking Zhejiang Gongshang University as an example. The paper focuses on redesigning the IPM Course by adopting Experiential Law Teaching methods widely used in the U.S.A such as seminar sessions, role play, mini-clinic, crafting legal documents, critique, and reflective journals.

Keywords: legal education, problem-solving skills, experiential teaching methods, intellectual property management, course design

1 Introduction

Skill-based legal education does not mean developing only Advocacy and Clinic Courses. Many traditional academic courses also need to be reformed to incorporate experiential elements so as to meet the social needs of skill-based legal education. The public needs more professionals possessing problem-solving skills rather than those law graduates with only knowledge of legal principles and theories. Law graduates with

problem-solving skills may be better prepared to competently serve clients even if without further training after graduation afresh. Most recently, especially in the United States, there has been a move toward experiential learning.¹ However, they are under-developed and seldom used efficiently in China.

Undoubtedly, legal education before 1949 in China used some advanced teaching methods. Deng Xiaoping's early 1992 "Southern Talks" provided an impetus for new growth in legal education.² Today, the Chinese are devoting themselves to improve their legal education. The experiential law teaching methods taught at Pacific/McGeorge are of great significance and should be incorporated into China's legal education. Redesigning doctrinal courses is an important way, as well as creating advocacy and legal clinics, to incorporate experiential law teaching into China's legal education.

This study is intended to discuss how to develop an Intellectual Property Management (hereinafter, "IPM") course in China by adopting experiential law teaching methods widely used in U.S. law schools. It is an effort to improve legal education in China by focusing on training the students' problem-solving skills even in doctrinal courses. It will also try to answer Pacific/McGeorge's distinguished Professor and Scholar Landsberg's challenging question: To what extent is the American skill-based legal education experience transferable?

This study will not fully develop a syllabus for an IPM course that includes experiential elements. Rather, it is a general introduction to an ideal course adopting experiential law teaching methods with a tentative syllabus attached for reference in the Appendix. It is almost meaningless to establish a fixed ideal class model to be followed. What really counts is that through this study law educators can become aware of the new ideas and instructive methodology, which are important for the pursuit of

¹ See Deborah Maranville, *Infusing Passion and Context into the Traditional Law Curriculum Through Experiential Learning*, 51 *J. Legal Educ.* 51, 72 (2001).

² See *China's Journal Toward the Rule of Law Legal Reform*, 258 (1978-2008) (edited by Cai Dingjian & Wang Chenguang).

skill-based legal education. It is meaningful to provide for reference a much more integrated picture of a redesigned IPM course with experiential elements incorporated. For comparative reasons, it is also meaningful to offer at the outset an explanation of the legal education today in China. I will then briefly explain the experiential law teaching methods in America, of which Pacific/McGeorge School of Law is a shining example. Next, I will discuss the traditional way of teaching the IPM course in China at Zhejiang Gongshang University as an example. Finally, the paper will focus on redesigning the course by adopting experiential law teaching methods.

2 Legal education in China

Modern legal education in China has been practiced over one hundred years since the “law reform” during the last years of the Qing Dynasty. Since then, China has imported rules from civil law countries especially from Germany and Japan. Generally speaking, China has established a legal system closer to the civil law system. The rule of law has been set as a goal for many years but China is still on its way to achieve it. Many laws have been established or modified since 1992 when China decided to develop a socialist market economy instead of a centrally planned economy. Legal education thus became more and more important. Many new law schools were established and more students became law majors. Unfortunately, in recent years many law school graduates have found it difficult to find employment practicing their legal knowledge.

There are at least two basic issues: whether China needs so many graduates from law schools at present and whether the law school graduates are competent enough to serve the public right after their graduation. The answer to the first question is both yes and no. Theoretically, China needs more legal professionals to support the developing market economy. But for some reasons, many corporations, especially small and medium enterprises, do not wish to employ law graduates as regular employees. The

concern is either that the laws are useless or that the law graduates are not competent enough to meet the needs of the business. As to the second question, the answer is definitely no. It remains difficult to convince the public in China that laws are becoming more useful than they used to be. There are many factors contributing to such an embarrassment and one of them may be that many lawyers lack problem-solving skills.

It is therefore the time for Chinese legal education to progress in teaching and learning quality rather than just in quantity. After all, practical skill training in China is underdeveloped. The list of core and elective courses taught in China consists almost entirely of knowledge courses rather than skills courses. Further, Chinese legal educators do know how many of those courses could also have an analytical component, such as the case discussion method. Although Chinese educators frequently talk about the elicitation method, which is quite similar to the Socratic dialogue method, lectures dominate China's classrooms in law schools. Unlike in the United States, where professors ask students questions about their opinions and analysis, getting everyone to join in a discussion, professors in China usually stand at the podium and lecture. Simply put, traditional Chinese legal education focuses on providing legal information to law students. Skill training in China remains an extracurricular activity in most law schools.

Do legal educators not know that it is already the time to reconsider the goal of legal education and reassess its outcome? Do they not know that the purpose of law school education should aim at cultivating the students' overall abilities? Our modern society needs lawyers not only with a good command of legal knowledge but also with a healthy mentality, good communication skills, a spirit of team-work, creative and innovative ability, as well as other problem-solving skills. Are the legal educators not aware that traditional Chinese legal education only focuses on the "learned half" of education for a "learned profession" and pays insufficient attention to the "professional part"? While its goal is to produce professionals,

theory and doctrine alone are not sufficient to produce complete professional lawyers prepared to practice law competently. Undoubtedly, if law schools can provide such professional “products” with high quality to society, society would greatly benefit from those “products” and would therefore be willing to employ more law graduates, which would constitute a virtuous circle.

To develop the students’ critical thinking like a lawyer as well as other practical skills, professors need more specific training using experiential law teaching methods. Incorporating experiential elements into doctrinal courses is an indispensable way, perhaps even the most important way to achieve such goals.

3 Experiential law teaching methods in the United States

What are experiential law teaching methods and how do American professors apply them in their courses? After experiencing, both as an observer and participant, the different experiential law teaching methods taught at Pacific/McGeorge for nearly one year, I have developed an understanding of those methods. Experiential law teaching methods are based on the learning theory that students “learn by doing”. Professors are trying to train students’ problem-solving skills by having them do many tasks. The professors are trying to make sure that students are not only learning knowledge but also learning by their experience.

Experiential law teaching method is closely linked to Problem-Based Learning (hereinafter, “PBL”). PBL is an approach reflecting the way people learn in real life, which was developed in the 1960s in Australia, Canada and the United States in medical schools and gradually spread to other disciplines.³ Students solve the problems life presents them, as Boud put it: “The starting point for learning with PBL is a problem, query or puzzle that the learner wishes to solve”.⁴ I

3 <http://www.ukcle.ac.uk/learning-in-law-annual-conference/2004/papers/bailey/>.

4 See supra note 1.

believe using experiential teaching methods to help develop PBL is undoubtedly the ideal mode that we should practice in legal education.

Experiential law teaching method is a comprehensive teaching method. It consists of lecture, demonstration, simulation, practice and critique.⁵ The lecture part providing the theoretical and knowledge base is not so different from that in China. Demonstration is very instructive and makes the lecture more vivid and impressive in a classic skill-based course such as Negotiation or Alternative Dispute Resolution (ADR). Undoubtedly, the Experiential Law Teaching Method Course is the most classic course that demonstrates all the experiential law teaching methods.⁶

Students in China are familiar with demonstrations in the early stages of their education. It is a pity that demonstrations are rare in law schools. However, demonstrations are effective and very much needed, if Chinese legal educators are aiming at training law students' problem-solving skill, not only in those typical skill-based courses such as Negotiation, but also in doctrinal courses. Simulation is to practice with factual information to use. It is perhaps the most important part of the experiential law teaching. While generally applauding this method, I will point out its downside later. Practice means engaging in a skills exercise and then revising and improving performance over time. What is the use of practice without critique? One of Confucius's main worries was not correcting what is wrong.⁷ That is the important role played by critique. The

⁵ See Professor Brian K. Landsberg's Handout in May 2007 in China titled "the role of skills-based legal education" [Copy on file with the author].

⁶ This is a course designed for the LL.M students in experiential law teaching at Pacific/McGeorge. The course includes 4 modules: Module 1 covers learning theory and skills teaching methods generally, and the objectives of legal education; Module 2 covers teaching of clinical education and client representation, including client interviewing and counseling, fact development, and theory of the case; Module 3 covers teaching of dispute resolution; and Module 4 covers teaching of trial and appellate litigation.

⁷ See Professor Brian K. Landsberg's speech handout in MAY 2007 in China titled "the role of skills-based legal education" [Copy on file with the author].

critiques applied at Pacific/McGeorge include the six-step feedback method⁸, which incorporates self-evaluation, and the four-step critique, which includes headline, playback, prescription and rationale. The critique methods are extremely useful for Chinese legal education not only because they show respect for the students but also effectively help students learn and understand their analytical processes and assess their performance.

Pacific/McGeorge provides student advocacy skills training programs, legal clinic education and field placement programs, and also provides doctrinal courses with adequate and sufficient experiential elements. Professors also weave experiential elements into their knowledge-based courses so that students receive training in problem-solving skills while learning the principles and theories of the law. Legal advocacy and legal clinics are, of course, the most typical forms of skill-based legal education. Thus, all legal education can aim at providing skill-based education.

3.1 The advocacy program at Pacific/McGeorge

Under the umbrella of the Advocacy Program are many specific courses such as trial advocacy, appellate advocacy, Global Lawyering Skills (GLS), ADR, and Negotiation and Settlement. “Professors in McGeorge teach advocacy through lecture, example, simulation practice and critique.”⁹ For example, the GLS professor trains the students in the so-called CRAC¹⁰ method of framing a persuasive argument by following all these

⁸ The six-step feedback method is created by Professor Blaustone. Step one: the feedback recipient identifies strengths of the performance; step two: the peers and/or supervisor respond solely to those items raised by the feedback recipient; step three: the peers and/or supervisor identify other strengths of the performance; step four: the feedback recipient identifies difficulties and/or changes to be made; step five: the peers and/or supervisor respond to the identified difficulties; and step six: the peers and/or supervisor indicate additional difficulties.

⁹ See Professor Brian K. Landsberg’s speech handout in MAY 2007 in China titled “the role of skills-based legal education” [Copy on file with the author].

¹⁰ CRAC means the structure of legal argument that is organized in the order of Conclusion, Rule, Analysis and Conclusion.

five steps¹¹, which is so successful that students become very skilled in using such structure to frame their legal analysis. CRAC becomes their habit of structuring their legal analysis. Professors train their students successfully to use this method from the easiest fact pattern to slightly more complex ones and eventually to a challenging case file problem or even a problem designed for a national competition of law students from different law schools. What the students learn most from these kinds of exercises following such methods is the value of practice and revision. Also in GLS, after some basic introduction and guidelines for the points that students are supposed to know, the professor will usually ask the students to practice in class or after class what they have learned—from how to conduct electronic legal research, how to write memos and briefs to deliver oral presentation in class, and eventually to deliver oral argument before a panel of judges. In this way, students are trained, through every stage of a typical litigation, a large number of skills that a qualified lawyer is supposed to possess. GLS is not a doctrinal course, but its experiential elements are applicable for any professor in China with their doctrinal courses, although these elements need to be modified to fit Chinese needs and the Chinese legal and educational system.

Simulation is widely used in many teaching fields. It plays an important role in legal education as well. Although simulation in legal education seems not as workable as it is in some other fields like medical surgery or sports training. Sometimes it may be dangerous to train law students with too much simulation. Simplified simulations may mislead the students about the complexity of legal practice. Simulations that are not interesting or challenging enough may not be taken seriously by the students and could discourage their interest.. Such improperly designed simulations could only mean to the students either just a new but meaningless experience or just one more experience

¹¹ The five steps here refer to the five methods (lecture, example, simulation practice and critique) that are usually used to teach each advocacy skill. The example method is also called demonstration in skill-based education.

that they have already been familiar with. However, simulation could remain indispensable in legal education if properly designed. It is not only useful in courses like trial advocacy, negotiation and settlement, and ADR, but also can be a useful method in a doctrinal course like IPM or a course such as contracts.

3.2 Legal clinic education and field placement at Pacific/McGeorge

Legal clinics are where theory meets practice. What better way to learn than by doing?¹² One Chinese proverb reads: “I hear and I forget; I see and I remember; I do and I understand”.¹³ Pacific/McGeorge is one of the leading law schools in legal clinic education. Through a variety of legal clinics, students enrich themselves both academically and personally. This innovative program provides students a learning environment that promotes real-world education and instills the value of service.¹⁴ In a faculty-supervised law office setting, students strengthen the connection between theory and practice by immersing themselves in practical lawyering skills such as how to interview and represent clients and also begin developing their professional identity as a future attorney.

The clinic is seemingly a much more important way to learn because students bear responsibility to the clients. If the cases are carefully selected and the teachers help the students in appropriate ways, students will likely remember their experiences much longer, regardless whether he or she did a great job or not. This is a very important part of their skills training during law school. People readily agree that it is good

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See

http://www.mcgeorge.edu/Academic_Programs/Experiential_Learning/Pacific_McGeorge_Legal_Clinics.htm

¹³ See *The Global Clinical Movement, Educating Lawyers for Social Justice*, edited by Frank S. Bloch, OXFORD, page 87.

¹⁴

See

http://www.mcgeorge.edu/Academic_Programs/Experiential_Learning/Pacific_McGeorge_Legal_Clinics.htm

idea to incorporate advocacy skills through simulation in doctrinal courses. Why not weave mini-clinics into some academic courses like IPM or contracts? Is it possible to do so? My positive answer is delivered later in this study, which also constitutes one of its contributive points.

To expand the breadth of practice training, the field placement program is also available offering students a broad range of opportunities to engage in supervised legal practice at approved government agencies, courts or non-profit entities to exercise their emerging legal skills in legal research, writing and negotiation.¹⁵ Students interview witnesses and conduct other tasks routinely undertaken by practicing lawyers. This program offers externship opportunities for law school credit. As Dean Elizabeth Rindskopf Parker said, “An internship experience is invaluable, no matter your academic success or career objective. There is simply no better way to enhance classroom learning, demonstrate your ability to future employers.”

3.3 Experiential teaching elements in doctrinal courses at Pacific/McGeorge

Sharing ideas among students themselves and giving feedback by proper critiques plays an important role in the class teaching and learning activities at Pacific/McGeorge. Professors serve as organizers and presiders rather than as lecturers. By interactions, students are supposed to share their ideas and thus are more likely to promote their own learning objectives, which make them active in class. Needless to say, hopefully, the more active they are in participating, the better they learn.

Many professors use Socratic dialogue method as well as simulations in their doctrinal courses. They also provide assigned problems for the students to practice what they have learned. For example, in Evidence, the professor designates each team to perform in class a demonstration relating to the principle and

¹⁵ See

http://www.mcgeorge.edu/Academic_Programs/Experiential_Learning/Field_PlacementExternships.htm

theory taught in class based on their own understanding of the Federal Rules of Evidence. This project enhances not only the understanding but also the practical skill of applying the rule to the specific facts as well as providing a great incentive to learn. Also, each student will be denominated as one of the responsible students for each class meeting. The professor will rely on these students to start out the discussion of each assigned case or problem. And, the professor will continue to call on all class members throughout the class so that students are not lulled into a false sense of security. If anyone is found snoozing, he or she will be deemed losing. By such policies, students are encouraged to prepare well and learn by independent thinking and doing. These are undoubtedly the effective ways of weaving experiential elements into an academic course.

4 The traditional way of teaching the IPM course at Zhejiang Gongshang University

4.1 IPM course description

The basic IPM course is an elective course mainly for undergraduate students not majoring in law who may become the general counsels, administrators or officers in different types of corporations. It is necessary for them to learn something basic about IPM due to the importance of IPM in today's modern economy. This course lasts 14 weeks as a 'long thin unit' with 90 minutes per week. A class may have 40 students enrolled.

4.2 The Pros and Cons of Traditional Teaching of IPM

The class used to consist of lectures with some Socratic questions and also some mini-brainstorming. Now, we teach the students without sufficient interaction not only between students and professors but also among the students themselves. The main downside of the traditional way of teaching the IPM course as it is currently taught is that students do not practice any of their skills. The students just listen to what the professors say in class or watch the video material. It is the way of learning by listening,

not a way of learning by doing. The way of learning by doing may be more effective in teaching students the skills necessary to practice law competently.

4.3 Why is it so and could it be changed?

Law schools could integrate the teaching of theory, doctrine and practice, and teach professionalism as well. Practice skill and professionalism are essentially important for a legal education. Developing students' practical ability should be the practical goal of legal education during law school. Theoretically, Chinese legal educators have already incorporated all of these core elements into the present Chinese legal education. Yet in fact, even the best law schools in China are focusing too much on lectures of legal principles and theories. Chinese schools do not value practical skills very much. Instead, we highly value students' critical thinking, their ability to learn foreign laws, and their skill at making comparisons of laws so as to make helpful suggestions on how to modify the laws.

The underlying reason is that the Chinese have a long history of devaluing skills in education. Traditionally, the Chinese highly value the philosophy and ideas and thoughts about how to rule the nation or to sustain a family. Today's China is still focusing on remaking the law. Most law professors are good at theoretical criticism rather than practicing law. It is a very interesting phenomenon that in the recent decades every city is busy rebuilding houses, roads and bridges and so forth. Similarly we are remaking statutes, administrative regulations and judicial interpretations. On the other hand, many people as well as law school professors and students are disappointed at the implementation of the law in today's China. If laws cannot be respected, what is the use of training practical skills? Another likely reason may lie in the perception that it is more efficient for the students to practice their skills when they start to work rather than to practice the skill during law school time when students are supposed to focus on their understanding of the law as well as the critical thinking. After all, understanding each part of the

law seems much more important due to the much more logically interrelated civil law system. Accurately understanding the law is deemed as the main goal of legal education. How can law graduates, even those with high quality of practical skills, provide sound legal service to their future clients if they fail to understand the law correctly? The laws are not as easy as they appear. That is why Chinese legal education focuses on understanding the law rather than practicing law skills.

But here is one thing I need to point out: in terms of teaching methods, professors in China are intelligent enough to adopt or even create more efficient ways to teach their students. The main issue is not lack of advanced methods but a lack of incentives. As long as the incentive issue cannot be resolved or at least improved, there is no expectation of producing high quality courses. By comparison, I found no tremendous disparity between the United States and China in terms of teaching methods. But the teaching effects are very much different, which has nothing to do with the teaching skill, but the students' attitude toward learning and the professors' attitude about their teaching. In China, teachers occupy low level of the society, with poor and hard-to-change salaries that are only enough to support their necessities. They are burdened with heavy pressure but they have no pride in their career and do not have much hope of improving their living conditions if they just devote themselves to their teaching jobs. Undoubtedly this is a vicious circle. As long as teachers' social status and their living conditions cannot be changed, there is little hope that the education quality will reach a high level. This is the fundamental issue of improving China's legal education as well as other education in China. Of course, this is not the main topic of this study, but it is an important point. This study is intended to encourage adopting experiential law teaching methods to place students into the doing process rather than just listening or reading as the main learning mode.

I believe students can focus and achieve their goals in law school and that experiential learning may help them develop the

confidence they need to succeed. They will come to understand that each one can help society as well as themselves and promote justice.

5 Redesign of the course by adopting experiential law teaching methods

5.1 IPM course goal

This course is devoted to the examination of Intellectual Property (hereinafter, “IP”) asset exploitation and its legal protection. The course’s goal is to prepare the future managers of IP to deal with the various types of IP issues a corporation is confronted with. Students are supposed to cut their teeth in a hypothetical or even a realistic setting and gain their initial experience of dealing with IP issues based on their understanding of the IP laws. It aims to train the students to be ready for practice. Therefore immersive experiences are expected in this course which will prepare them for success in dealing with IPM problems whether in the courtroom or boardroom. Mainly it is to train the class to apply legal principles and theories to solve specific practical problems and controversies. It also helps develop the students’ skills in legal research, writing, negotiating and planning.

5.2 The holistic approach to student learning

5.2.1 Learning by Effective Doing

I appreciate that “sharpening the axe won’t waste the time for cutting faggot”, which is a Chinese saying similar to the English one as “A beard well lathered is half shaved”. Meanwhile we could not agree more with another Chinese saying that “thousands of miles away can only be covered by one’s steps”. Confucius once said: “Isn’t it a pleasure after all to practice in due time what one has learned?” Most students have the desire to achieve their learning goals by doing with thoughtful and constructive critiques and suggestions from their professors. Accordingly, professors should speak in a very respectful and passionate way. Do not make students

overwhelmed, upset, stressed and frustrated. Try to create a casual way or style for the class learning setting so as to make them feel at ease. Professors' encouragement to students is what gas is to a car. Also, learning by doing does not mean learning by doing as much as possible. Successful teaching means to help reach the set goal by efficient and interesting means rather than just help reach the goal in the end.

5.2.2 Sufficient Energizers Facilitate Teaching and Promote Participation

The theory is: (1) Students learn more when they think through situations and come up with their own answers. (2) It is sometimes easier, and more fun, to think through situations when students have a particular role or identity. (3) Varying the learning format, such as small group work, brief exercises in pairs, fishbowls, games with the professor, drawing on the board, pitting one half of the class against the other and so on, increases energy. (4) Dramatization adds fun and energy as well. (5) Creating visuals from student input increases focus and interest. (6) Humor is a wonderful tool for decreasing inhibition, encouraging learning from mistakes and increasing energy.¹⁶ When the instructor injects energy and humor into a class, it is usually reciprocated.

5.2.3 To be Creative is More Important

As legal educators, we should be more creative in training the students to be more creative lawyers. This requires the necessary steps of reform and creation of new curricula as well as the teaching methods. People, especially those who are running the business or planning to run the business, need more legal knowledge than ever before. High quality lawyers are very much needed to help take any necessary steps to gain advantages such as exclusivity and avoid any likely disadvantages and legal risks rather than just to deal with the disputes that happened. Lawyers

¹⁶ The author attributes the theory to Professor Gregory S. Weber's handouts in ADR class.

should play roles similarly like doctors, which mean they should not only be able to cure the patients' diseases but also be able to provide good advice on how to keep them healthy and much stronger before diseases catch them. Simply put, lawyers cannot be just trained as judges. In a sense, lawyers mean more than judges in terms of creative work. Lawyers are supposed to produce more creative products than judges are usually supposed to do. If this theory is admissible, what have law schools done to develop the students' most important problem-solving skill—the creative ability to produce specific advice and useful tools to those who are presently legally healthy but need more measures to warrant their future health? Legal educators could conduct creative teaching to promote the creative legal services by training students' creative thinking.

5.2.4 Less Overwhelming, More Incentives and Define Learning Success Personally

Many times students are trained to meet all kinds of format requirements, which is of course important for anyone who wants to practice their law in the future. But do we need to train these kinds of professional habits so seriously while we have so many other important things for us to learn? Students today are much busier than ever before and they bear much more competitive pressure. Professors should focus on important skills and knowledge and also should care about the students' personal life problems and creative thoughts. Can grades alone serve as an actual substantive incentive to the students' learning? I believe idea sharing and appreciation as well as encouragement serve as the most efficient and effective way of incentive especially for the adult-student. The assessment of the students' learning outcome should be more flexible than grades so as to be workable and reasonable for those students with different difficulties or different personal learning plans. Students are different from one another. How can we assess them or define success for them by the same standard? After all, the final exams of different courses as well as the study should not be assessed in

the same way as Bar Examinations assess students. The reason is that the goal of education is to encourage and help students' learning instead of qualification assessment.

5.3 Class Policy

Based on the course goal set as well as my learning theory, I would set forth the class policy as follows.

- a) Buy or borrow required reading materials and other recommended materials.
- b) Register for the site created on school's electronic network¹⁷ for this course and have an active email account associated with the electronic network.
- c) Class preparation and participation during class are required. Besides reading and listening to class discussions, students own active engagement in working through the material in a group setting is encouraged, which will greatly inure to their own benefit not only in the short-term, but also in later years. Extraordinary participation in terms of quality, not quantity, may result in higher final grade. Unprepared passes, inadequate participation, lateness and/or poor/inadequate preparation may affect the final grade or even lead to the denial of the right to sit for the final exam.
- d) One could be exempted if he/she is able to answer the professor's questions satisfactorily or show his/her own learning plan at the outset, and persuade the professor that the learning outcome is satisfied.

¹⁷ Recently, my university (Zhejiang Gongshang University) has started to use a teaching network online called blackboard, the purpose of which is to facilitate the teaching and learning so as to promote the efficiency of the interactions between the professors and the students. The website address is: <http://eol.zjgsu.edu.cn>. Professors now can post not only the syllabus but also the other course materials like assignments forums and so forth through this website. It is an equivalent to the TWEN or SAKAI used at Pacific/McGeorge.

- e) Everyone must participate in a mini-clinic during the semester and provide a report about it briefly before the final exam.
- f) The syllabus may need to be adjusted depending on the pace of class coverage.
- g) The grades will be given in three ways: an individual reflective journal (30%); an oral presentation (30%); a written assignment (30%); and the creation of good questions or creative solutions (10%).

5.4 IPM class

I will not dwell too much on the IP law aspects of the unit. Instead, I will endeavor to describe the techniques I propose using for this class oriented to learning by doing. Typically the 90 minute class time each week would be described as a lecture. However, it would be much more effective to let the students engage in such a setting so they learn by doing. “As all the indications are that when students attend a lecture they put themselves into a certain mindset which precludes interaction.”¹⁸

Simply put, this course will be redesigned from a traditional lecture to a problem-based learning process with experiential law teaching methods.

5.4.1 Goals

The immediate goals of this course are to develop:

- a) Students’ understanding of the basic IP concepts and categories as well as how IP can be acquired, exploited and protected;
- b) Students’ ability to establish and reflect on their own learning plan as qualified independent learners of learning by doing;
- c) Students’ thinking skills through experiential teaching such as working collaboratively in groups and problem solving;

¹⁸ <http://www.ukcle.ac.uk/resources/teaching-and-learning-practices/solent/>

- d) Students' writing skill by practicing crafting legal documents;
- e) Students' problem-based learning skills.

5.4.2 Materials

Students will be given factual pattern material to prepare for the questions and classroom performance. They will analyze four types of materials. Two of these types are assigned readings: (1) IP statutes, and (2) handouts of case materials and samples of relevant legal documents. The remaining two types of materials will be presented through a lecture and discussion format, and do not require prior reading: (3) recently passed statutory materials and judicial interpretations as well as IP cases published by the supreme court of the People's Republic of China and (4) supplementary DVD cases and three official websites. Towards the end of the semester, students are expected to complete the assigned reading in advance, and are called upon to answer questions.

5.4.3 Problems

The following hypothetical fact pattern will be used as the basic context throughout the entire course for the experiential teaching purpose. More detailed materials will be provided accordingly.

SBH is a female clothing company. It has been 10 years since the company was founded. Its trademark Shanbohu, which was registered seven years ago, now is well known to many young girls in the local market. The owner of the company is ambitious and wants to enhance the development of his company in a much more efficient and safer way and the company aims to be a listed company on the stock market in the not too distant future.

Recently, quite a few things have happened to SBH and the owner felt it is important to deal with these problems correctly and professionally. A management meeting has been scheduled during which the owner/director of the board will listen to each of the board member to give their opinions as to solve the

problems. Suppose you are the member of the board, please prepare your remarks for the meeting.

The first event is that one employee, during his duty as a technician, created the software which the company has been using for a quite a few years. It has been confirmed that the employee has provided the software to some other competitive corporations.

The second event is that one salesman who left the corporation 9 months ago established his own private business and began to sell female clothing to many who used to be the important customers of the corporation. It is confirmed that part of the volume of the clothes that the new company is presently selling is from SBH, the clothes were resold, and the Shanbohu mark had been changed into Shanzhu, which is the new company's trademark. However, their trademark is just in the process of application for registration.

The third event is that SBH received a notice from an in-house counselor of DC (a company located in another province) claiming that they have learned that several machines that SBH bought from a local trader are products that infringe its patent right because they are made by a manufacturer without permission.

5.4.4 Methods

a) Seminar sessions

The class will start with introductory concepts and move toward more specialized or complex concepts. Usually students are put in large group sessions, where the groups meet together and participate in class lectures and Socratic discussions with the professor. After that, the groups may be required to meet separately for further discussion on the assigned problems. Occasionally, after a mini-lecture, the groups may be asked to do Road Maps¹⁹, which is always an appropriate and interesting way for the students to demonstrate their understanding of the

¹⁹A Road Map is a good way to figure out the relationship among different concepts by thoughtfully putting each element into a relationship network.

concepts as well as developing their own thoughts. The seminar session will address the practicalities of dealing with IP management problems under IP laws. The success of the large group session as well as the Socratic dialogue depends on reading that has been completed before the session so that students are ready to present responses to the assigned hypotheticals. Also, professors should avoid maximizing anxiety in students by calling on only one student at a time in the Socratic Dialogue, as they are used to a structured delivery. As to the question that really matters: What could a professor do to have the students prepared fully for their participation in China? My suggestion is: simplify the assignments by specifying the questions; do not bore the students by announcing format requirements; get them committed and pay attention to their concerns and thoughts so as to sympathize with them and provide proper encouragement as well.

Class lectures and discussions will often refer to cases relevant to the topics of this course. Most cases are in the form of DVD, which is a vivid way for the students to learn the facts of the cases. They are produced by CCTV²⁰ or some other authoritative organizations. I used to play these cases in class. The students are absorbed by these cases. But it is too time-consuming and they just learn by watching. They lack of doing by themselves. So now I will reduce the times of playing the DVD in class. Instead, I will only pick up the teachable segments and have the students watch the DVD before class.

b) Role play

The class will role-play the Board of Directors of the SBH Company a few times. When doing role play like this, each team will deal with various IP difficulties and novel situations during the whole semester. The difficulties and situations the Board will have to face range from an IP audit, a license agreement negotiation with the manufacturer, a license agreement for end-

²⁰ CCTV: the central TV station of China.

users, a negotiation on an assignment agreement, the creation of a policy for employees to disclose patentable ideas, a debate on whether to obtain international protection, a debate on cross-licensing with another company, a debate to make software publicly available in some way to serve as a defensive publication, and eventually a negotiation in the process of a litigation of various IP disputes. In particular, the Board will discuss and deal with the three events that I designated earlier. It will be necessary to figure out the solutions based on their IP knowledge either learned or researched. Minutes of meetings are recorded and debriefed at subsequent meetings and action points are checked and updated. The chair and the minute secretary positions will rotate. The pattern for the Board meetings would be to brainstorm the issues, including prioritizing the solutions. The students need to be motivated, which is good for active attendance, and must be enthusiastic for formative feedback. It is also possible for groups of students to develop at their own speed and to a certain extent develop a deep engagement with topics of their choice within the syllabus, concentrating on some in greater depth than others. This encourages them to take more responsibility for their own learning.

Students will also role play a negotiation in Week 12 to settle an IP dispute during the litigation. The role play will be recorded for review by the students themselves and the professor.

c) Mini-clinic

Legal clinic education is at a formative stage in China. One of the main problems is that not every student can have the opportunity to experience a specific type of case in their particular field under a qualified supervisor with sufficient instruction as well as guidance. My view is to incorporate a so-called mini-clinic into many doctrinal courses such as the IPM course. Students are required to find a real client to communicate with and provide possible legal advice as well as some other help with the clients' IP problems. The client may be a fellow schoolmate whose major is not law, a relative or family member,

one class of a particular major, or a small corporation. Students should be encouraged to come up with their own ideas and discuss the pros and cons of the idea compared with the idea from the supervisor or other fellow students in this class rather than just do as the supervisor tells them to do. Of course, there could be some liability issues associated with this model such as malpractice. In this IPM course, this type of mini-clinic is designed for the purpose of problem-solving training and is required at the very beginning of the course. The students should report on their mini-clinics in class at Week 13 as scheduled in the syllabus.

d) Crafting legal documents

“Writing to learn,” is an approach with which Zinsler is associated, which suggests that both the process and product of writing can produce cognitive benefits.²¹ A modest body of literature recognizes that writing-to-learn may be more effective when the writing projects are oriented to problem-solving rather than to displays of knowledge.²²

Students are required to practice crafting corresponding legal documents such as a trade secret nondisclosure agreement, website content license agreement, employment agreement, trademark license agreement, and possibly a business plan involving IP issues. When crafting the legal documents arising from the simulation, students will receive feedback only from their classmates, which is also good practice in critiquing and learning from each other. While crafting legal documents for their real clients during the IP mini-clinic, the drafts should be reviewed and then approved by the supervisor/professor. I will also provide samples of such documents after the students have turned in their drafts.

21 See *Writing to Learn Law and Writing in Law: An Intellectual Property Illustration*, by Michael J. Madison, *Sait Louis University Law Journal* vol.52. no.3

22 See *supra* note 23.

e) Critique

At the feedback stage, either the six-step feedback method or the four-step method²³ will be used. It depends. For example, when critiquing on the negotiation performance, the four-step feedback method should be used so as to “playback” the recipients’ verbal performance. Note that feedback in doctrinal courses such as IPM will definitely be different from that in Advocacy or Clinic Courses, although with the same critiquing methods. In IPM, critiquing will mainly focus on the understanding of IP law as well as the appropriateness of their solutions rather than advocacy and clinic skills. Of course, it is always good to comment on their verbal or non-verbal communication skill as well as their tactical solutions²⁴, which are also important problem-solving skills. The students will have a comparative analysis between the samples given and their own works, which is an instructive way to help improve their work and encourage additional revision. Also, students are required to critique their fellow classmates’ drafts as mentioned above.

f) Reflective journals

Students are encouraged to develop their personal learning plans. They are required to keep individual reflective journals and submit their self-evaluation through reflection in each person’s journal. I would be non-prescriptive in the format of the journals. The flexibility is to encourage motivation and deep learning. These account for 30% of their grades. The students will also undergo a personal interview at the end of the semester with questions based on their own reflective logs. This is to

²³The Six-step feedback method is the same as explained by footnote 3; the four-step method refers to the critique method which includes Headline, Playback, Prescription and Rationale.

²⁴In China, tactics is a little bit different from solutions. By tactics, people usually emphasize on the process of a plan, while solutions are the substance part of plans. For example, the most well-known tactics are the 36 tactics, (<http://blog.nationmultimedia.com/print.php?id=6274>), all of which are just abstract processes of a specific solution. Tactical solution is the combination of tactic and solution.

check their understanding of what they have written and to identify their creative thoughts as well. I will allot 10% for those who demonstrate they have been creative.

Example no. 1: Teaching IP Audit

The IP audit will be covered in week 3. Students are required to read the articles on the handouts previously provided and prepare the assigned problem, which is relatively simple. (Each student is required to create a form with possible assets covered by IP. i.e., as an IP manager, each is supposed to design an IP Audit form to be given to their employees) in advance so that they have some basic ideas about it. A mini-lecture will be delivered at the outset. Then a short period of Socratic dialogue will be conducted, during which some students will be called on to answer instructive questions such as: what is an IP audit to you? What is the purpose of the IP audit? How should it be conducted? Which IP in this case do you think allows you to lower costs and offer a lower price to your consumer thus giving you a competitive advantage and hopefully more sales than your competitor? Whom do you talk to in the company, i.e. which employees? A brainstorming session is also applicable at this time. Following this, I would provide the class with more detailed information of SBH (the same company as in the basic problem), especially information about the company's different assets including those that it does not presently exploit, such as its recently designed software for accounts/receivable for its manufacturing company, or other potential IP. Now, the class will be divided into groups. Each group is required to conduct a complete and thorough IP audit collaboratively using an audit form designed by each group. The professor will visit each group during this period of time. Students are encouraged to conduct thorough brainstorming among the team members. For example, how do they value each item they identified? Should they attempt to exploit it? What is the best way to exploit it? Does it give the company an in-house competitive advantage in what it manufactures? Through brainstorming, each student will

contribute his or her thoughts to the group he or she belongs to. Each group will produce an IP Audit Form filled with all the items that the members of the group contributed. Eventually, the representative of each group will report/debrief their audit form to the class within 5 minutes. The professor will help display the outcomes by computer or other devices so that the whole class can understand exactly what each group's form looks like. Once one group finishes its report, the next group will take the responsibility to give critiques on the reported outcome displayed by the professor. The members of the next group shall critique the fellow group's audit form by dissecting which part is good and which could be improved with brief reasons. This is also a way of learning from peers. Eventually the professor will invite the class to work out the ultimate ideal form incorporating each group's contribution, during which the professor may also provide his own feedback. When giving feedback, it is important to strive for student input into the academic underpinning of the forms they created. Feedback could be recorded on a whiteboard, and concessions are made so that the development of understanding of the topic should become apparent.

Example no. 2: Teaching patent infringement

The students are required to read Patent Law of PRC and some other relevant regulations and judicial interpretations on patent dispute resolution to understand the ways of resolving a patent infringement dispute as well as the case theory of the hypothetical facts (SBH case event 3) before the relevant class meeting.

A mini-lecture would be delivered at the very beginning of the class. Some students will be called on to answer Socratic questions such as: what are the functions of patent administrative authorities? How do they work? Must a patent dispute be reviewed first by the patent administrative department? Is any level of court entitled to hear a patent case? What kinds of legal measures can be taken by the patentee before filing the complaint to a court?

Then students will be put into small groups for quick discussion sessions on various aspects of dealing with the SBH event 3. Each group will be required to provide a 5 minute presentation on the pros and cons of the three basic ways of resolving the dispute: negotiation between parties; turning to patent administrative authority; or litigation. Some responsible students on that day will be called on to critique each group's presentation or even lead the discussion among the whole class.

After the mini-lecture and Socratic questions, the small group discussion and the large session, the class will start the simulations as such: negotiation between two parties, mediation with the mediator representing the administrative department, and negotiation in the process of litigation. The negotiation in the process of litigation will be recorded for review purposes. Meanwhile, in each type of role play, students are also required to craft the agreements. They are required to hand in their drafts in a week. The professor will comment on the recorded negotiation as an example in class while replaying the teachable segments. Also, a DVD regarding patent litigation will be played. Lastly, the professor will give written feedback on each student's draft and encourage the students to revise one more time. Several samples will be provided after their revision.

g) Additional suggestions for the IPM Class

I anticipate that I need to give the students more input on how to work with the PBL approach under my experiential teaching. This must be reinforced regularly via presentations through the semester.

As mentioned in my learning theory part, it is vital to add sufficient energy to the class so as to make it more meaningful and interesting. For example, besides the SBH problem, I will also prepare a variety of well-known and less well-known mini-exercises and approaches to teaching that encourage participation.

It is also important to encourage students' creative thinking. Students should be encouraged to create and refine many do's and don'ts for their hypothetical or mini-clinic clients,

particularly to figure out ideal solutions to exploit their IP assets as well as maximize its protection.

Another point that is worth emphasizing is not to overwhelm the class and treat “troublesome” students with care. I would reduce a lot of formal requirements for the students to follow. Generally, I will follow the set rubric of final assessment and successful completion of assignments as a prerequisite to pass this course. I will also create some special standards for those who either have done their best or who have been creative enough and have met their own personal learning plan.

Lastly, helping the students with their time management skill is also rewarding. Many students seem addicted to procrastination. Many students prioritize their time just in an opposite way as they are supposed to do. Although prioritization is a personal issue, the skill can be improved once they really appreciate the significance and benefits of an ideal prioritization suggested by their professors, which is totally different to their ordinary management. It may also be of great help for the professors to act as a supervisor to check the students’ time management. Based on my own experience of the amazing encouragement of prioritization suggestions from professors at Pacific/McGeorge, I would also encourage my students to keep working on their assignments, to finish any project one step at a time, to spend more time on study, and to avoid delaying work on assignments to the last minute.

6 Conclusion

The teaching skills in the United States as well as the teachers’ social status and the teacher-student relationship are generally much better than those in China. Maybe many professors including myself will argue that the teaching methods are not new to Chinese professors at all. We seem to have known and even already have adopted those methods thousands of years before. Admittedly we are not at all specific enough when adopting such methods. The simplest answer, if asked about what

I have learned at Pacific/McGeorge, is that I learned to be specific. It is true that detail is the key to success or the devil is in the detail.

My answer to the question to what extent is the American skill-based legal education experience transferable is that it is basically transferable on the condition that: (1) more professors as well as deans of law schools could be exposed to experiential law teaching method in different ways; (2) professors could be encouraged to adopt experiential law teaching method by adjusting the assessment standard and providing more facilitators as well as enhancing their salary levels. Undoubtedly, it would take time to have this method deeply rooted in China's legal education. It would be promising and a great success in the long run.

In China, we have ambitious educational goals, which include knowledge of legal principles and doctrines, practical skills and professionalism or ethics as well. The issue is how to reach such goals. Experiential law teaching methods help develop self-directed learning skills and lifelong learning. In a sense, it focuses on the PBL approach and is characterized as student-centered teaching. It increases motivation for learning because students are placed in a context that requires their immediate and committed involvement. It needs a lot of organizing and very good facilitation skills. It needs courage to back off from being content driven. It is also true that implementation needs to be realistic within the constraints of the available resources. In particular, it is a challenging to make sure students are fully prepared for the scheduled meetings so as to make both the large group sessions and small group sessions more interactive and meaningful. Nevertheless, it is of great significance to improve the quality of legal education in China.

In conclusion, well-organized classes and other useful teaching programs are very much needed. The traditional class mode should be greatly changed and be tailored and reorganized in great detail, weaving experiential elements to meet the specific needs of problem-solving skills teaching and of learning

objectives. I believe this will ultimately improve the rule of law in China.

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Appendix: Proposed Tentative Syllabus of IPM Course

1. Required reading materials and websites:

Trademark law of PRC

Patent law of PRC

Copyright law of PRC

Anti-Unfair Competition law of PRC

TRIPS

WIPO Copyright Treaty of 1996

Berne Convention

Paris Convention for the Protection of Industrial Property

www.sipo.gov.cn

www.ncac.gov.cn

www.sbj.saic.gov.cn

2. Recommended Books and Supplemental DVD Cases

a. Own it by Jon M. Garon , Carolina Academic Press

b. Intellectual property by Paul Goldstein, the Penguin Group

c. DVD Cases to be provided

3. Assignments of simulations such as role playing, document crafting and mini-clinic

Students in this course will conduct a substantial amount of role

plays. The class will role-play the Board of Directors of the SBH Company for a few times. When conducting role plays, each team will deal with various IP difficulties and novel situations during the whole semester. The class will also be required to conduct an IP audit, a license agreement negotiation with the manufacturer, a discussion concerning the creation of a policy for employees to disclose patentable ideas, a negotiation on an assignment agreement, a debate on whether to obtain international protection, a debate on cross-licensing with another company, a debate to make software publicly available in some way to serve as a defensive publication, and a negotiation in the process of a litigation of the IP disputes. In particular, the Board will discuss and deal with the three events that will be designated at the very beginning of class. Each student will be required to craft legal documents, which is also part of the role play as well.

Students are also required at the very beginning to find a real client to communicate with and provide possible legal advice as well as some other help with the clients' IP problems. The client may be a fellow classmate whose major is not law, a relative or family member, or a small corporation. The mini-clinic should be reported in class at Week 13 as the syllabus scheduled.

Week 1:

Course Description, Course Goal, Class Policy, Office Hours, Contact Information, Required reading materials and websites, Recommended books, Handouts, Assignment and Assessment, etc.

1. What is IP (Patent / Copyright / Trade mark / Trade secret/ Rights of Publicity)
 - a. Definition
 - b. How is IP categorized?

Week 2:

- c. The difference between industrial property and Copyright and rights related to copyright
- d. Intellectual property law and social, economic, and cultural development (Origins and Rationale for Intellectual

Property Laws)

Week 3: 2. How to acquire IP?

a. IP audits

Week 4: b. Ongoing protection and maintenance

Week 5: c. Purchase license /merger and acquisitions /Freedom to Operate

Week 6: d. International

Week 7: 3. How to exploit IP?

a. Sales and licensing

Week 8: b. Mergers and acquisition

Week 9: c. International

Week 10: 4. How to protect IP?

a. Litigation- International Protection and Choice of Law

Issues

Week 11: b. Request the Administrative Authority to handle the matter

Week 12: c. ADR (negotiation, mediation, arbitration); Negotiation Role Play

Week 13: IP MINI-CLINIC REPORT

Week 14: Review

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