Construction Law Practice Guide

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The sample syllabus for Construction Law Practice contemplates a three-credit simulation course that satisfies the ABA accreditation standards for experiential learning. The core reading assignments are from the American Bar Association Forum on Construction Law textbook, *Construction Law* (2d ed. 2019). The textbook works well in a practice-oriented simulation course because it features chapters on distinct aspects of construction law written primarily by experienced construction lawyers, rather than by academics, although many of the authors teach construction law courses as adjunct professors. In the aggregate, the chapters provide a suitable overview of a construction law practice by covering the fundamentals of representing construction industry clients and addressing construction industry disputes from practical perspectives.

The first portion of this guide describes how I structure my simulation course based on the sample syllabus. The second part explains how the syllabus can be adapted for purposes of a course that satisfies the ABA accreditation standards for an upper-level writing course or for a traditional lecture and discussion course rather than a simulation course.

**Using this syllabus in a simulation (experiential learning) course**

As indicated in the “Learning Objectives” paragraph of the syllabus, I dedicate most class time to a series of exercises and projects that call on the students to undertake tasks that mimic practice experience. This approach resembles the “flipped classroom” model that primarily uses class time to engage the students in applying what they should learn from independently studying assigned readings. Accordingly, I tell the students they must use the textbook chapters to teach themselves much of the relevant law, and I rarely use extended class time to lecture or to discuss the reading assignments. This structure works well as the students are all in their second or third years of law study and because the specialized field of construction law expands on many principles and concepts that other courses have already introduced. Some students, of course, might not glean from the readings as much as they would absorb from traditional classroom lectures and discussions, either because they fail to devote sufficient attention to the reading assignments or because they struggle with some of the material. I administer periodic quizzes to identify any troublesome topics that may require remedial attention in class and to reward those students who independently master the fundamentals of construction law.

The quizzes, a mix of multiple-choice, short-essay, and problem-solving questions, typically allow the students to access the textbook and other resources as they prepare their responses, but relatively tight time limits help distinguish between students who have read the assignments carefully from those who have not. I schedule the quizzes (typically three of them) during the first two-thirds of the term to incentivize students to keep up with the assigned readings. I administer the final quiz shortly after the date of the final reading assignment from the textbook. The quizzes function primarily to reward students who effectively learn most of the relevant law on their own on an accelerated basis.

The syllabus assigns all chapters in the textbook, but it modestly rearranges the order in which the students read those chapters because I want the students to become familiar early during the tern with the industry context in which construction lawyers practice and with core principles and key issues most relevant to the earliest simulations. For example, I assign Chapter 24 (Public Contracts) in conjunction with Chapter 4 (Project Delivery Systems) during the first week of the term, and I defer Chapters 13 (Construction Safety), 17 (Mechanic’s Liens), and 18 (Insurance and Bonds) until later, when they are directly relevant to specific simulations and quizzes. Other minor changes to the reading order group together topics most closely associated with the simulations. What is most significant is that the reading assignments are aggressively front-loaded to expose the students to the full body of law before they start preparing for the most complex simulations and for the final project. Overall, this revised reading schedule provides a more complete introduction to construction law early during the term, gives the students sufficient background for the initial and less complex simulations, and relates closely to the progression of simulations from the relatively limited to the more complex.

I do not, however, leave the reading assignments entirely to students’ independent study. I usually spend significant class time on Chapters 2 (Participants in the Design and Construction Process), 4 (Project Delivery Systems), 5 (Contracting for Construction Projects), 9 (Pricing Construction Contracts), 16 (Termination of Contract), 19 (Dispute Resolution Processes), 20 (Defective Construction); and 22 (Damages). The choice to emphasize these chapters reflects both that some of these topics are most relevant to the earliest simulations and that they all are important throughout the course. I also devote some class time to Chapters 17 (Mechanic’s Liens), 18 (Insurance and Bonds), and 21 (Economic Loss Rule) in connection with the simulations and quizzes for which these topics are directly relevant.

Although I have prepared detailed PowerPoint slides for each chapter, I rarely use the full set of slides when discussing any of the chapters. Instead, I make all the slides available to the students online. For the chapters other than those listed above, I sometimes display a few slides to help the students prepare for an upcoming simulation. At other times, I suggest that students may want to review the slides for certain chapters as part of their private preparation for an upcoming quiz or simulation, and I may use some slides selectively to explain concepts that quiz results suggest several students did not grasp from the assigned readings.

In a course extending over 14 weeks, I typically assign at least 8 simulations. For most, I dedicate some class time to helping the students prepare before they engage in the simulation. Depending on how complex the simulation is and on how far along we are in the term, I may take some portion of a class session or an entire session or even more than one session to help the students prepare. As previously indicated, class preparation sessions may include some review of aspects of assigned readings, but more often I assign small groups of students to prepare for distinct roles or specific issues the simulation involves, and during class I engage those students in discussions of those roles or issues for the benefit of the entire class. In the process, small groups of students have the opportunity and responsibility to apply information and concepts that the assigned readings introduce.

The course concludes with a major exercise, which may involve small group assignments involving efforts to settle a dispute, to negotiate and draft selected contract terms, or to prepare a memo to a client or supervising lawyer about a hypothetical situation. As an alternative to a small group simulation, I have used final projects that require each student to write a paper on a topic the student selects from a list I provide. For example, I have required each student to make a short presentation to the class and to write a review of one or more recent articles from *The Construction Lawyer* or the *Journal of the American College of Construction Lawyers*.

Each simulation places the students in a problem-solving role. When I assign a simulation, I usually include supplemental materials, which may include articles from practical journals, cases, or materials from professional conferences that are available on databases or for which the authors have given consent. I usually bring in experienced lawyers or industry experts to work with the students on three or four simulations. I always explain to my guests as well as to the students that our visitors are not guest speakers but guest practitioners who come to class primarily to work with the students on the simulations rather than to make presentations. Typically, a guest practitioner will spend a few minutes at the start of the session sharing professional background information and offering advice about working with clients on construction industry transactions or disputes. The guest then functions as a senior lawyer, a client, or a consultant meeting with the students who assume pre-assigned roles on distinct issues or from specific perspectives as junior lawyers working with the guest. For simulations not featuring a guest, I cover any need for input from a senior lawyer, a client, or other special perspective. While I maintain, revise, and supplement a growing list of simulations, a few examples here of some that have proven to be most effective over the years will serve to conclude this overview of how I use the sample syllabus. The “Problems/Exercises/Simulations” section of the website includes materials and supplemental information about these simulations and others.

* Residential Rebuild Project: This exercise works well early during the term to engage students in a few common issues that a relatively simple construction project presents. The exercise involves a lawyer recently admitted to the bar who agrees to advise a friend who is about to hire a small builder to reconstruct a fire-damaged residence using only the proceeds of available from the homeowner’s insurance policy. I play the client role and assign small groups of students to represent the owner, the builder (who submits a one-page, handwritten proposal), and the mortgage lender that will hold and disburse the insurance proceeds.
* Express Warranty Drafting. After reviewing a series of cases establishing and refining the implied warranty doctrine for new residential construction, students meet in small groups to propose express warranties to recommend to a builder client.
* Construction Loan Agreement exercise. The students receive a copy of a lender’s construction loan agreement that is annotated to show proposed changes, questions, and concerns raised by the borrower’s counsel. The ideal arrangement for this simulation is to divide the class into lender and borrower groups to work with two guest lawyers to prepare for and then to conduct negotiations of the final loan terms.
* Chemical Plant Relocation Dispute. In this exercise, one group represents the project owner and a second group represents the EPC contractor to attempt to resolve a dispute over problems discovered during performance testing of newly installed equipment in a processing plant. Among other contested issues, the students must address scope of work ambiguities, the superior knowledge doctrine, application of a liquidated damages provision, and procedural issues under the contract’s claims terms.
* Contested Lien Exercise. The students apply a specific jurisdiction’s construction lien statutes to a lien claim filed by a subcontractor on a commercial project. One group represents the lien claimant, another represents the general contractor who disputes the subcontractor’s entitlement to payment for claimed extra work, and a third group rules on substantive and procedural challenges to the lien’s validity. For this simulation, I have sometimes used documents from local court records.
* Delay Claim Litigation. This simulation uses pleadings, motions, trial transcripts, an expert report, trial court orders, and an appellate decision taken from a lawsuit over extensive delays on a commercial project. Comprehensive filings from the trial available on Westlaw make this a literal case study in prosecuting and defending a complex construction industry dispute.

Finally, instructors should monitor the ABA accreditation standards for simulation courses that qualify for experiential credit. Anyone who wishes to use the sample syllabus for a course providing experiential learning credit should be certain to confirm that the syllabus includes sufficient details to comply with the latest version of the relevant ABA standards as well as any additional requirements of the institution at which the course is to be offered.

**Adapting this syllabus for an upper-level writing course or a standard lecture and discussion course**

A few adjustments to the grading policy and the assigned readings can easily convert this course to satisfy the ABA accreditation requirements for an upper-level writing course. One option is to assign all the chapters in the order they appear in the textbook (or with minor reordering of the chapters) but to relax the front-loading at least somewhat. An alternative is to decide which chapters should be the basis for the graded writing assignments and to assign those during the first half or two thirds of the term. Depending on the length of the term, it may still be feasible to cover all chapters during the concluding weeks. Yet another plan would omit a few chapters on more specialized topics.

I recommend two or three relatively short writing assignments on discrete topics, as well as a final, major writing assignment. Selected problems at the ends of the chapters or from the website’s “Problems/Exercises/Simulations” can serve as the basis for all or some of these assignments. Some instructors may choose to allow each student to propose undertaking a research topic for the final writing assignment. For this approach to the major writing assignment, I suggest providing to the students a list of approved topics and supplemental reading assignments for those topics. My experience with a seminar or paper-based course in construction law suggests that, because students are still new to the specialized nature of construction law and the construction industry, they typically require detailed guidance in selecting and refining a research topic. As is the case with a course intended to qualify for experiential credit, anyone offering a construction law course for upper-level writing credit should be certain to confirm that the syllabus includes sufficient details to comply with the latest version of the relevant ABA standards as well as any additional requirements of the institution at which the course is to be offered.

For a traditional lecture and discussion course, the reading assignments can be distributed more evenly throughout the term. The chapters could be assigned in the order they appear in the textbook, although I would still suggest assigning Chapter 23 (Public Construction Contracting) along with the introductory chapters. Selected problems from the end of the chapters can serve as class discussion topics, and periodic quizzes can provide formative assessment opportunities. A traditional final examination or a take-home final examination can provide the basis for a summative assessment at term’s end. The “Courses” section of the website includes a modified sample syllabus and a separate guide for instructors who wish to use the textbook for a lecture and discussion course.