

Tiered Learning

Tiered Skills Inventory, Instruction and Assessment
Varied according to Law School Mission

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AALS Committee on Curriculum, 2011 Annual Meeting

[N]ot everything that can be counted counts, and not everything that counts can be counted.

William Bruce Cameron,
Informal Sociology: A Causal Introduction to Sociological Thinking 13 (1963)
attrib. Albert Einstein or George Pickering.

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Why we evaluate:

- To assess a student's performed learning
- To assess a student's acquired skills
- To encourage a student's future learning
- To assess a student's fitness to practice
- To compare a student to other students
- To assess a school's quality in sum
- To assess a school's quality for a student

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- Evaluation Forms:
- Class Participation (Socratic)
- Class Performance (Moot Court)
- Class Performance (Trial, Motion, Negotiation)
- Written Task Performance (Paper)
- Written Task Performance (Commonplace)
- Written Task Performance (Contract, Pleading)
- Written Evaluation (Essay)
- Written Evaluation (Multiple Choice)

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- The Form of Evaluation
Reflects its Purpose

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- Tiered Skills Inventory:
 - Foundation
 - Client Representation
 - Prediction of the Law
 - Professional Judgment

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• Goals for Skills

- *Fundamental Goals*

- Fundamental goals represent the essential tasks and knowledge necessary to achieve the minimal understanding of the law of the United States, both to practice law in general and to counsel a client in any matter that may -- ultimately -- be governed by the rules of property. These goals are essential to understanding and practicing the law.

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- **Goals for Skills**

- ***Fundamental Goals***

- **I. Know as much of the vocabulary of the course as possible.**

- **(Refer to list at the end for guidance.)**

- **II. Case Comprehension and Analysis of Authority**

- Read and understand the facts of a case.
- Isolate the legal issue or issues presented by the facts.
- Isolate the mandate of a case.
- Isolate the holding of a case.
- Isolate the facts that are relevant to the decision.
- Read each of the sources of law in a case and understand its influence upon the decision.

- -- If the source of law is an earlier case, determine whether the later court uses the case as controlling, persuasive, illustrative, or distinct.
- ---- Compare the facts of the earlier case to the later case and determine whether you agree with the court's characterization of the earlier case as controlling, persuasive, illustrative, or distinct.
- ---- Formulate reasons to overturn a controlling precedent, based on
 - history,
 - right, and
 - utility.

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• Goals for Skills

• *Client Representative Goals*

- Client representative goals represent knowledge of discrete areas of the law, at the time of the lecture, governing specific questions for which the answers are governed by significant rules of property law adopted by various states. These goals represent the minimum content of this broad practice area and will be examined in most bar exams.

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• Goals for Skills

• *Client Representative Goals*

- In order to both learn the law and to represent or advise clients, you must exercise memory, analysis, and imagination in resolving disputes with the tools of law. For each type of dispute you will only succeed in three steps:
 1. Learn a body of law, either as historical rules or as reasons for decisions applied in resolving historical disputes.
 2. Organize this body of law into a scheme based on the relationships and distinctions among the applications and reasons.
 3. Solve a new problem, using the organization to pick the rules best suited by logical fit to the facts, or by justice or utility, and apply those rules to resolve the problem.
- Each step is necessary to accomplish each of the tasks of client representation listed below:
- **In each of the goals below, consider the word “determine” to mean to counsel or represent a client in a fact-specific situation that presents this issue. Then change the facts.**
 - Determine the limits of exclusion from property on which others work or live.
 - Determine whether someone may claim title to land by discovery.
 - Determine interests in wild animals when pursued, captured, marked or killed.
 - Determine how a land-owner must treat a trespasser.
 - Determine who owns found objects, finder, later finder, loser, property owner.
 - Determine who owns lands usually on which one party has color of title and another possession.
 - Determine who owns lands in Arkansas on which one party has color of title and another possession.

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- **Goals for Skills**

- ***Predictive Goals***

- Predictive goals represent skills and knowledge that are use in analyzing historical precedents and contemporary questions, in order to estimate more accurately the likely future decisions of the courts. These goals represent the minimum understanding of a practitioner in this field of law as a specialty.

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• Goals for Skills

• *Predictive Goals*

- Describe the differences between property law and the law of tort or contract.
- Describe reasons for deciding an issues under property law rather than tort or contract law alone.
- Describe the reasons for selecting a rule to govern some type of dispute.
- Describe the reasons for changing a rule already selected to govern some type of dispute.
- Describe reasons to allow the wishes of prior owners to trump the wishes of current owners of property.
- Describe reasons to allow the current owners of property to trump the wishes of prior owners.
- Describe reasons to imply duties to prior owners of property against their wishes.
- Describe reasons to transfer property from a person to another without the prior person's assent to the transfer.
- Describe reasons for treating certain chattels like land and others not like land, and others sometimes and sometimes not like land.
- Describe reasons for allowing future interests in property.

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• Goals for Skills

• *Professional Goals*

- Professional goals represent the knowledge and judgment arising from the duty of a lawyer to the law, the institutions of law, to the client, and to opposing counsel. This includes the basic humanity and morality essential to employ the law for ends that are not unjust or contrary to the ultimate purposes of the law.

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• Goals for Skills

• ***Professional Goals***

- Recognize the duties of a lawyer to a client in preparing a deed, will, or other instrument.
- Recognize the duties of a lawyer to advise a client of potential liability or criminality in a proposed course of action.
- Consider the duties of a lawyer to advise a client whose conduct risks injury or harm to others.
- Recognize the duties of a lawyer if a client insists the lawyer participate in an illegal course of action.
- Consider the extent of the duty of a lawyer to perform unpaid work for a paid service rendered a client.

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• Goals for Skills

• ***Fundamental Goals:***

• ***Vocabulary***

- Abandonment
- Acceleration of contingent remainders
- Accounting (as a remedy)
- Acquiescence
- Act (of a legislature)
- Actual notice
- Adverse possession
- Adversity of possession
- Affirmative waste
- Alienation
- Alimony
- Ameliorating waste
- Amicus Curiae
- "And his heirs"
- "And the heirs of his body"
- *Animus revertendi*

- Appellant
- Appellee
- Assignees
- Assignment (of lease)
- Bailee
- Bailment
- Bailor
- Barbeyrac
- Blackstone
- Bona fide purchaser (of chattels)
- Bracton
- *Caveat emptor*

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The work of assessment



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Function of Assessment

Assess for future learning

Performance evaluation

Skill Performance

Notebook assessment

Commonplace assessment

“Woodshedding”

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Function of Assessment

Assess for student comparison

Written knowledge assessment.

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Function of Assessment

Assess for school's quality.

Skill performance.

Written knowledge assessment.

Written skill assessment.

Knowledge, Skill, Perspective:

Criteria tied to school mission.

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Function of Assessment

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