USING MOOT COURT SIMULATIONS AS TEACHING TOOLS: AN IMPLEMENTATION GUIDE FOR BUSINESS LAW INSTRUCTORS

FRANKLYN P. SALIMBENE*

*Franklyn P. Salimbene, M.Div., M.A., J.D., LL.M., Senior Lecturer in Law, Bentley University, Waltham, Massachusetts.

Introduction

We have heard it before— "There's too much to cover; I don't have time to do:_____." Fill in the blank—simulations, service-learning, field trips, guest speakers, and so on.[1] So with much to cover, is there time easily to fit a moot court simulation into a Legal Environment or Business Law course? The answer is a resounding-- yes!

In answering *yes*, this article first provides a brief review of relevant literature regarding experiential learning and moot court. In doing so, it touches upon applicable AACSB standards and textbook goals for business education. It then offers suggestions on organizing a class for a moot simulation including specific roles for students and expected deliverables. Next, the paper provides two ready-to-use sample moot court assignments complete with cases for argument and relevant precedents upon which students can base those arguments. The samples include a products liability case problem and a problem in contract. Finally, to get a student perspective on the learning value of moot court, the paper provides the results of a recent survey of Legal Environment students who participated in moot court simulations during fall semester 2015.

I. Experiential Learning and Moot Court

Writing in the Bulletin of the American Association for Higher Education in 1987, Arthur Chickering and Zelda Gamson identified seven principles of good practice in undergraduate education.[2] One of the seven was using *active learning techniques*.[3] In explaining the principle of active learning, the authors made a profound yet simple observation—"Learning is not a spectator sport."[4] Indeed, it is not! From our own experience during law school whether working at a legal clinic as part of an externship, on law review, or on our law school moot court team, we know this to be true. Perhaps, even as undergraduate instructors, we might agree with Chickering's 1987 assessment that "[s]tudents do not learn much just by sitting in classes listening to teachers, memorizing pre-packaged assignments, and spitting out answers."[5]

---

[1] There is no denying the bulk of material included in the typical Legal Environment course. A cursory internet survey of syllabi at distinctly different universities turns up the same long list of course topics ranging from the dispute resolution system and constitutional law to contracts, torts, criminal law, employment, and business organizations to name only a partial list. *See, e.g.,* Ohio State University, *at* http://fisher.osu.edu/supplements/10/10078/fall15_3500_irvine_term2.pdf (last visited Mar. 12, 2016); University of North Alabama, *at* http://www.una.edu/education/docs-syllabi/syllabus_BL240 (last visited Mar. 12, 2016); University of North Carolina Wilmington, *at* http://www.csb.uncw.edu/people/eversp/classes/BLA361/Basic%20Class%20Materials/BLA%20361%20Syllabus%20Fall%202010.pdf (last visited Mar. 12, 2016).

[2] Arthur W. Chickering & Zelda F. Gamson, *Seven Principles for Good Practice in Undergraduate Education*, AAHE BULL., Mar. 1987, at 2, *available at* http://files.eric.ed.gov/fulltext/ED282491.pdf (last visited Jan. 26, 2016).

[3] *Id.* at 4. The seven principles are: encouraging contacts between students and faculty; developing reciprocity and cooperation among students; using active learning techniques; giving prompt feedback; emphasizing time on task; communicating high expectations; and respecting diverse talents and ways of learning. *Id.* at 3-5.

[4] *Id.* at 4.

[5] *Id.*

Yet, even in 1987, this view of the significance of active learning in education was not new. Going back to and moving forward from Dewey in the early 20th Century, we have seen meaningful discussion about the role that experience can play in undergraduate learning.[6] That discussion thread has been taken up by accreditation agencies of business school programs and by educators of business students. For example, the 2016 update of accreditation standards issued by AACSB International[7] includes several areas of skill development that sprout from experiential learning. These include effective oral and written communication, the ability to translate knowledge into practice, the ability to analyze and frame a problem, and the ability to work in a team environment.[8] Many of us who experienced moot court in law school can easily see the relationship between these skills and moot court.[9]

Not surprisingly, undergraduate business educators have picked up on the AACSB standards and the need to build curricula for business students that enhances skills development. For instance, in their text on management education, Bowditch, Buono, and Stuart [hereinafter Bowditch], highlight the importance of excelling in oral and written communication, thinking

[6] John Dewey is well known for his work on the relation between learning and experience. His writings in the early 20th Century focus on the important role in learning played by experiential education. He explained this belief in such works as DEMOCRACY AND EDUCATION (1918) and EDUCATION AND EXPERIENCE (1938). A number of contemporary educators continue in this vein, further adding to the scope and reach of Dewey's thinking. For example, Alice and David Kolb referencing Dewey and reflecting on common teaching habits note that "…many programs of higher education are much more focused on impressing information on the mind of the learner than on opportunities for the learners to express and test in action what they have learned." *Learning Styles and Learning Spaces: Enhancing Experiential Learning in Higher Education*, 4 ACAD. MGMT. LEARNING & EDUC. 193, 208 (2005). Also, Linda F. Smith in discussing law school externships and service-learning pedagogy cites Dewey's belief that the mere memorization of facts without connection to experience and reflecting on that experience does not promote genuine education. *Why Clinical Programs Should Embrace Civic Engagement, Service-Learning and Community Based Research*, 10 CLINICAL L. REV. 723, 727 (2004).

[7] The mission of AACSB International (The Association to Advance Collegiate Schools of Business) as stated on its website is to advance "quality management education worldwide through accreditation, thought leadership, and value added services." For this and more information about AACSB, go to its website *at* http://www.aacsb.edu (lasted visited Mar. 14, 2016).

[8] AACSB's standards for business school accreditation list these and other general student skills that should be developed through accredited programs. *Eligibility Procedures and Accreditation Standards for Business Accreditation*, Standard 9 (2016), *available at* http://www.aacsb.edu/accreditation/standards/2013-business (last visited Mar. 20, 2016).

[9] A number of commentators indicate goals of moot court pedagogy that mirror AACSB standards. *See* Becky K. da Cruz & John Kearns, Mooting as Pedagogy 5 (Feb. 18, 2006)(affirming that moot court enhances student ability to think critically and to refine rhetorical skills)(unpublished manuscript, *at* http://citation.allacademic.com/meta/p_mla_apa_research_citation/1/0/1/3/6/pages101364/p101364-1.php) (last visited Mar. 20, 2016); Michael V. Hernandez, *In Defense of Moot Court: A Response to "In Praise of Moot Court—Not!,"* 17 R. LITIG. 69 (1968)(arguing that moot court aids in the development of public speaking skills and professional objectivity); Charles R. Kneer & Andrew Sommerman, Undergraduate Moot Court in American Colleges and Universities 17 (Nov. 8, 2000)(indicating that moot court promotes improved analytical skills, improved oral communication skills, and increased self confidence) (unpublished manuscript *at* http://files.eric.ed.gov/fulltext/ED449747.pdf) (last visited Mar. 20, 2016); William J. McDevitt, *Active Learning through Appellate Simulation: A Simple Recipe for a Legal Environment of Business Course*, 26 J. LEGAL STUD. EDUC. 245, 246-247 (2009) (arguing that moot court polishes oral communication skills and helps students think more clearly).

critically and analyzing situations, influencing others, and identifying legal issues.[10] In promoting such skills development, Bowditch recommends using an experiential teaching model, a model that moves students to a greater understanding of business management by taking a *how-to* approach.[11] Again for lawyers, both the skills Bowditch identifies and the experiential teaching model he suggests parallel the moot court experience. And just what is that experience?

In a nutshell, as all lawyers know, moot court is a simulated appellate court argument that engages students in oral and written advocacy. As a pedagogical tool in undergraduate education it has been amply described in a number of academic papers.[12] It begins with a fact pattern that raises one or two specified legal issues in the form of questions for argument. A team of students is then assigned to argue each side of the question or questions posed. The assignment entails researching the issues, preparing a written brief, and then presenting an oral argument before a panel of judges.

Thinking law school, one might be inclined to react that this is all too much to accomplish with undergraduates within the confines of a Legal Environment or Business Law course. On the contrary, however, it is not. First, because we are not teaching students to be lawyers, but rather to spot legal issues that they may encounter as business professionals, we can afford to be flexible in the design of an undergraduate moot court simulation. Second, we can design the simulation so that it takes place within one class meeting that involves far more students than just the usual four advocates who argue against each other in law school moots. Third, we can opt to provide our students in advance with the precedent cases that they are to use in fashioning their respective arguments, in effect creating a *closed case*.[13] These adjustments not only reduce student anxiety, but also reduce the amount of work with which an instructor might otherwise be confronted if students researched an open problem and incorporated cases unknown to the instructor from all over the judicial landscape. Finally, the written briefs need not follow the minutia of *Bluebook* criteria, but rather be written as two- or three-page persuasive essays similar to what undergraduates write in their English courses. As explained in what follows, these briefs may be either individual submissions or, where class size is large and instructor grading time is limited, group submissions. So, taking a flexible approach, how does one organize a class for a moot court simulation?

---

[10] JAMES L. BOWDITCH ET AL., A PRIMER ON ORGANIZATIONAL BEHAVIOR 2 (2008) The full list of skills includes: 1) strong functional expertise: technical proficiency and cross-functional awareness; 2) ability to work in unstructured, team environment; 3) interpersonal competency and diversity-related skills; 4) excellent negotiating and influencing skills; 5) outstanding information technology skills; 6) global/transnational perspective; 7) exceptional written and verbal communication skills; 8) ethical awareness and legal sensibilities; 9) critical thinking and analysis capabilities; 10) change agent skills and leadership capabilities. *Id.*

[11] *Id*. at 1-2.

[12] HOW TO PLEASE THE COURT (Paul I. Weizer ed., Peter Lang Books 2004); Kimi King et al., *Making Moot Court Matter: How to Get the Most out of Moot Court Simulations*, 39 ACJS Today 1 (2009); Charles R. Kneer et al., *Undergraduate Appellate Simulation in American Colleges*, 19 J. LEGAL STUD. EDUC. 27 (2001); William J. McDevitt, *supra* note 9; Franklyn P. Salimbene & Amanda C. Mongell, *It's Not Just for Law School Anymore: Moot Court and the Enhancement of Business Student Skills,* 40 ACAD. OF L. STUD. BUS. NAT'L PROC. __ (2009).

[13] da Cruz and Kearns describe the advantage of a closed case as one that saves students time in preparing for the moot simulation. They also indicate the advantage of an "open case" (one in which students must do research to find their own precedential support) as one that improves research skills. da Cruz & Kearns, *supra* note 9, at 8.

II. Organizing An Undergraduate Moot Simulation

The place to begin is to find a case that lends itself to a moot.[14] Some have suggested that such cases can be found on the United States Supreme Court website by searching the Court's docket.[15] This is one useful avenue, of course, particularly for constitutional cases, but for cases with the usual business law implications my experience is that the state courts provide a much more fertile ground. State courts deal daily with tort and contract issues that make up much of the curricula of Legal Environment and Business Law courses. Nonetheless, conducting a cold word search online whether at the Supreme Court's website, a specific state court website, or via a random Google search for unknown cases to use in a moot simulation can be both frustrating and time consuming. There is an easier approach, however—use the class textbook.[16]

At the end of each chapter, and also in footnotes within the chapters, textbook authors often reference cases that can be adapted for moot court simulations. For example, in their Legal Environment text Frank Cross and Roger Miller[17] provide six business case problems at the end of their chapter on product liability. The case problems include a brief summary of the facts with the relevant case citation and one or two thought questions.[18] Other texts also include similar end-of-chapter problems and citations.[19] Although the citations are to appellate decisions, which might indicate that the legal issues in the case are already settled, the facts can nevertheless be adapted for a classroom moot so that the case is balanced thereby giving each side a fair opportunity to win the argument. There almost always remain two sides to the issue, even after the appellate judges have had their say—certainly the trial court judges who were reversed on appeal likely think so, and appellate courts in other states also might think so.

Once a case problem that suits the learning objective[20] of the moot is found, there are a few preliminary organizational matters for the instructor to consider. First, should fictitious proper names be used in place of the actual names identified in the selected case decision? Preferably, yes. Here the reference is not only to the names of the parties, but also to place names and any

---

[14] Those case decisions that can be most useful in undergraduate moot simulations are those where the court's opinion includes excerpts or reformulations from the trial court transcripts. In such instances the opinion can provide students with useful additional factual background information that will contribute to their understanding of the case problem and their arguments. For example, one such case that I have used in my Legal Environment course is *Jablonski v. Ford Motor Co*., 955 N.E.2d 1138 (Ill. 2011)(involving a products liability claim arising out of injuries sustained in an automobile accident). In its opinion the court provided an expansive overview of expert testimony at trial. *Id.* at 1143-1154.

[15] McDevitt, *supra* note 9, at 253.

[16] In addition to the texts we actually use in class, sample texts from publishers that end up on our shelves are also good sources for moot case problems.

[17] FRANK B. CROSS & ROGER LEROY MILLER, THE LEGAL ENVIRONMENT OF BUSINESS (9TH ed. 2015).

[18] *Id.* at 318-319.

[19] See HENRY CHEESEMAN, LEGAL ENVIRONMENT OF BUSINESS 136-137 (8th ed. 2016) and GERALD R. FERRERA et al., THE LEGAL AND ETHICAL ENVIRONMENT OF BUSINESS 634-635 (2014) for other examples of texts with useful end-of-chapter case problems in product liability.

[20] Considering the value of moot court simulations for students generally, my learning objectives encompass not only reinforcing student understanding of course material, but also giving students the experience of public speaking, fashioning logic argument, and thinking on their feet. As already noted in this paper these are included in the oft cited benefits of moot court. Note, *supra* note 9.

other names that could lead an adept student *Googler* to find the actual decision.[21] This is an important consideration for the obvious reason that one team's finding the actual decision gives it an unfair advantage over the other. Second, should the case be *open* or *closed*? Preferably-- closed. A closed case is easier to manage. It allows the instructor to choose and limit the precedents upon which the teams are to argue their cases. These precedents can come right from the relevant chapters in the class textbook and may be supplemented by others specified in the assignment and either distributed to the class electronically or obtained by the students through an online LEXIS, WESTLAW, or Google citation search. Third, should all students in the class be engaged in some aspect of the moot court simulation? Preferably again-- yes. It is best not to have any student play the role of mere spectator; everyone should have some part in the simulation.[22] Obviously, this is easier to accomplish with smaller classes of 18 or 20, but it can also be done with classes of 30 or 35.

A sample assignment sheet that I give to students prior to the moot simulation appears in the appendix. It explains both the role that each student is to play and each student's expected work product. I try to ensure that all students have a role, even those in large classes.[23] Three specific roles that I assign include lawyers, judges, and *amici curiae*. In preparing for their roles, students work in teams.[24] Lawyer teams usually consist of four students organized in two teams to prepare and argue the case for the parties to the suit. At oral argument all members of the team present to the court on some aspect of their party's case. For instance, in the sample product liability case which is included in this paper, there are four questions to be decided, each of which can be argued by a member of the team— Was the product defectively designed? Were the warnings adequate? Was the manufacturer negligent or grossly negligent? And was the damage award excessive? As for the court, nine or eleven students act as judges with one student appointed as chief judge; for obvious reasons an odd number works best, but is not critical. The judges together review the case problem and assigned precedents outside of class prior to the hearing and come prepared to ask questions of the lawyers during oral argument. At the conclusion of the argument, the judges are assigned to write the decision in the case. The remaining students, divided in teams of three or four, act as *amici*. In many actual appellate opinions, courts will

[21] Several years ago I adapted a Massachusetts product liability case for a moot simulation and was very careful to change the names of the plaintiff and the defendant company. The case involved an injury caused by a milling machine. After the simulation a student came to me to say proudly that he had found the case. Dismayed, I asked how. He told me that he had Googled the name of machine, which in the case was identified only as "VMC 150." I realized that I had to redouble my efforts to protect against similar occurrences in the future so a few years later when I used the case again, the VMC 150 became the JLX 250. That seemed to solve the problem. The adapted case in this scenario was *Simmons v. Monarch Machine Tool Co.*, 596 N.E.2d 318 (Mass. 1992).

[22] In keeping with the principles enunciated by Chickering and Gamson, all students are given a role. See *supra* text accompanying notes 2, 3, and 4.

[23] Whether the class is large or small, the setting in which the simulation is held is important. The goal should be to mimic as closely as possible a real appellate courtroom. This adds to the drama and the fun of the simulation. For instance, consider moving the simulation out of the classroom and into another space on campus that can be set up like a courtroom with tables, chairs, a podium, and a flag. Also, require advocates to dress formally and, if available, consider robes for the judges. Ask fellow faculty or the registrar if they have robes you can borrow. I asked our university registrar and she happily provided nine robes from her graduation day collection.

[24] The ability of students to work in teams is another necessary skill identified in the AACSB accreditation process and seconded by Bowditch. AACSB, *supra* note 8, and BOWDITCH, *supra* note 10.

reference *amici* or other interested parties.[25] Teams of three or four students each can be assigned these and other instructor-selected *amici* to represent and prepare briefs on their behalf. To add some context to their briefs, the *amicus* teams should be required not only to review the case problem and assigned precedents before writing, but also to visit the website of their respective *amici* to determine what position they should argue in their brief.[26]

The written work product, both briefs and court decisions, can either be team submissions or individually written papers.[27] Also, as previously noted, they can be written in a simple persuasive essay style with brief parenthetical references to the precedents used. The lawyers' and *amicus* briefs are due on the day of argument while the court's opinion or opinions should be due at the next class meeting. The student judges who write the majority and dissenting opinions should be given several minutes during that subsequent class to announce their decisions. This also gives the instructor an opportunity to correct any misunderstanding of the material included in the opinions or the arguments.

III. Sample Case Problems[28]

Over the years in adapting actual case decisions for moot court simulations, I have used topics that have included employment discrimination, commercial speech, equal protection, products liability, and contract issues. In the Legal Environment course, I have come most recently to rely on issues related to products liability, primarily because there are many such issues within the student frame of reference, and contract, particularly public policy issues such as covenants not to compete and releases of liability. The two sample cases that follow are from these areas. The precedents that I assign students to use as support material for these samples are found in the endnotes.

A. Products Liability Sample Case: Rembert Martin v. Bradford Tire, Inc.[29]

[25] For instance, in the Bradford Tire case that I used this year, and which is reproduced in this paper as one of the sample cases, the opinion of the court included references to the Rubber Manufacturers Association and the Tire and Rim Association. The case involved injuries sustained by plaintiff during the inflation of an automobile tire. These two associations and two other entities, the American Automobile Association and the National Highway Traffic Safety Administration, were assigned to *amicus* teams. The Bradford case was adapted from *Uniroyal Goodrich Tire Co. v. Martinez*, 977 S.W.2d 328 (Tex. 1998).

[26] To engage *amici* more fully in the simulation, ask each *amicus* team to submit a copy of its brief to the court for its consideration in rendering a decision or alternatively select one member of the team to argue following the arguments of the lawyers representing the parties.

[27] The general outline that I ask students to follow in organizing their briefs and decisions includes stating the issue, identifying the rule from the assigned precedents, and applying the rule to the facts to reach a conclusion. To assure that the students are learning the material, I ask that they include specific references to the assigned precedents. This pattern of issue, rule, application, and conclusion is basic to oral advocacy. *See, e.g.*, DAVID S. ROMANTZ & KATHLEEN ELLIOTT VINSON, LEGAL ANALYSIS: THE FUNDAMENTAL SKILL (2d ed. 1998). The authors propose that advocates follow the CREAC construct in organizing argument—state the desired Conclusion, identify the applicable Rule, Explain the rule, Apply the rule to the case at bar, and restate the Conclusion. *Id.* at 119-142.

[28] Instructors are encouraged and should feel free to use the two case problems provided here in any way deemed suitable for conducting their own moot simulations.

[29] The Bradford Tire case is adapted from *Uniroyal Goodrich Tire Co. v. Martinez*, *supra* note 25. The cases assigned as precedents for this moot simulation include: *Palsgraf v. Long Island. R.R. Co.*,162 N.E. 99 (N.Y. 1928)(holding that duty in negligence cases is determined by foreseeability); *Weirum v. RKO General Inc.*, 539 P.2d 36 (Cal. App. 1975)(discussing foreseeable risk in assessing liability for

Rembert Martin sued Bradford Tire, Inc., manufacturer of the tire at issue, for personal injuries he suffered when he was struck by an exploding 16" Bradford tire that he was mounting on a 16.5" wheel rim. Attached to the tire on a white 5”x3” plastic adhesive label was a warning in red and yellow type and a separate small pictograph of a worker being thrown into the air by an exploding tire. The label stated:

> Danger! Never mount a 16" size diameter tire on a 16.5" rim. Mounting a 16" tire on a 16.5" rim can cause severe injury or death. While it is possible to pass a 16" diameter tire over the lip or flange of a 16.5" size diameter rim, it cannot position itself against the rim flange. If an attempt is made to seat the bead by inflating the tire, the tire bead will break with explosive force. Never inflate a tire which is lying on the floor or other flat surface. Always use a tire mounting machine with a hold-down device or safety cage or bolt to vehicle axle. Never inflate to seat beads without using an extension hose with gauge and clip-on chuck. Never stand, lean or reach over the assembly during inflation. Failure to comply with these safety precautions can cause the bead to break and the assembly to burst with sufficient force to cause serious injury or death.

Martin, who had been hired six months earlier, did not see the warning label. While leaning over the assembly, he attempted to mount a 16" tire on a 16.5" rim without a tire mounting machine, a safety cage, or an extension hose. Martin testified that he knew he had removed a 16" tire from a 16.5" rim, but that he thought he was mounting the new 16" tire on a 16" rim. Moreover, the evidence revealed that Martin's employer failed to make an operable tire-mounting machine available to him at the time he was injured, and there was no evidence that the other safety devices mentioned in the warning were available.

In his suit, Martin claimed that the warnings were inadequate. He also alleged that Bradford, was negligent and strictly liable for designing and manufacturing a defective tire and failing to warn of its dangers. Martin claimed that the tire manufactured by Bradford was defective because it failed to incorporate a safer alternative bead design that would have kept the tire from exploding. This defect, he asserted, was in part the cause of his injuries. Further, he alleged that Bradford's failure to adopt this alternative bead design was negligence that proximately caused his injury.

The bead[30] is the portion of the tire that holds the tire to the rim when inflated. It consists of rubber-encased steel wiring that encircles the tire a number of times. When the tire is placed inside the wheel rim and inflated, the bead is forced onto the bead-seating ledge of the rim and

---

negligence); *Costa v. Boston Red Sox Baseball Club*, 809 N.E.2d 1090 (Mass. App. 2004)(involving the “open and obvious” defense to a negligence claim); *Wilson Sporting Goods Co. v. Hickox*, 59 A.3d 1267 (D.C. App. 2013)(involving a defectively designed product in a strict liability case); *Crosswhite v. Jumpking, Inc.*, 411 F.Supp.2d 1228 (D. Ore. 2006)(discussing the adequacy of warnings in a strict liability case); *Grimshaw v. Ford Motor Co.*, 119 Cal. App.3d 757 (1981)(defining “malice” for the purpose of awarding punitive damages); and *Buell-Wilson v. Ford Motor Co*., 160 Cal. App.4th 1107 (2008) (discussing the amount of a punitive damage award in the context of due process).

[30] Often in products liability cases it helps student understanding if a diagram or picture of the product is included with case materials. For the Martin case simulation I was able to locate a cut-away drawing of a tire showing the bead *at* http://www.hstextil.com/tire.html (last visited Apr. 26, 2016).

pressed against the lip of the rim. When the last portion of the bead is forced onto this ledge, the tire has "seated," and the air is properly sealed inside the tire.

At trial Martin's expert, Alan Metner, a metallurgical engineer, testified that a tape bead, like the one in this case, is prone to break when the spliced portion of the bead is the last portion of the bead to seat. This is commonly called a "hang-up." Metner testified that an alternative bead design, a single strand "programmed bead," would have prevented Martin's injuries because its strength and uniformity make it more resistant to breaking during a hang-up. Metner explained that the single strand programmed bead is stronger because it is 0.013" thicker than the tape bead and that it is uniform because it is wound, or programmed, by a computer, eliminating the spliced portion of the bead that can cause the tire to explode during a hang-up. Metner also testified that Bradford's own testing department was aware by at least 1976, that a 16" tire mounted on a 16.5" rim would explode during a hang-up. Metner explained that the computer technology required to manufacture the *programmed bead* was developed in 1972, and available by 1975. Based upon this evidence and his expert opinion, Metner testified that the tire manufactured by Bradford with a tape bead was defective and unreasonably dangerous.

Bradford's principal argument regarding the warning label was that there is no evidence that supports Martin's contention that the tire was defective. First, "the tire bore a warning which was unambiguous and conspicuously visible; the tire was safe for use if the warning was followed; and the cause of the accident was mounting and inflating a tire in direct contravention of those warnings." Second, Bradford argued that redesigning the tire with a programmed bead would have introduced other risk factors not present with its tape bead. For instance, Bradford's expert witness, Tim Connor, a forensic scientist, testified that while a tire with a programmed bead might not fail when inflated on a mismatched rim, it would definitely fail when driven on the road and likely cause far more injuries to those in the vehicle and other road users than would a failure during inflation of the tire in a repair shop. Third, Bradford introduced evidence that converting its manufacturing process to adopt the programmed bead design would have cost approximately $50 per tire during the first year of production, resulting in a cost increase to consumers.

At the close of trial, the jury found that the tire manufactured by Bradford was defective and that Bradford was grossly negligent. It allocated 100% of the cause for Martin's injuries to the acts and omissions of Bradford. The jury awarded Martin $ 5.5 million in actual damages and $25.5 million in punitive damages.

Bradford filed this appeal arguing that as a matter of law the tire was not defectively designed and otherwise included adequate warnings as to inflation. Further Bradford appealed the gross negligence verdict and the punitive damages award.

Bradford's appeal raises the following questions:

1) Was Bradford's tire defectively designed?
2) Did the tire have adequate warnings?
3) Was Bradford negligent or grossly negligent in designing and labeling the tire?
4) Should punitive damages have been awarded? Were they excessive?

B. Contracts Sample Case: Bobby Blue, by Patricia Blue v. Town of Lincoln[31]

In August 2013, Patricia Blue registered her eleven-year-old son, Bobby Blue, for football activities with Lincoln Town Football Club ("Club"), for the 2013-2014 season. The Club is a town-sponsored organization that provides children in the greater Lincoln area with the opportunity to learn and play football and related field activities. The Club is managed by town officials and primarily composed of parents and other volunteers who provide their time and talents to help fulfill the Club's mission. The Club's registration form, signed by Patricia Blue, contained the following release language:

> Release: Recognizing the possibility of physical injury resulting from negligence associated with football and other activities, and in consideration for the Lincoln Town Football Club accepting my child(ren) into its football and activities program, I hereby release the Lincoln Town Football Club, the Town of Lincoln, their employees, volunteers, and associated personnel from any claim by me or by my child that may result from my child's participation in any and all football activities sponsored by the Lincoln Town Football Club.

On October 7, 2013, Bobby attended football practice. During practice, the boys participated in an intra-league game. Bobby's team won. Excited by the victory, Bobby and all 25 of his teammates, jumping up and down, piled onto each other on the field. Bobby landed at the bottom of the pile with most of his teammates on top of him. He sustained a broken ankle, torn knee cartilage, and a laceration to his thigh requiring 17 stitches. He has experienced continuing leg pain since.

The release language was included in a two-sided document. Except for the heading written in 12 point font, the document was single-spaced and written in 10-point font. On the front side, the document contained the heading:

> Lincoln Town Football Club
> Parental Agreement
> Please Read Carefully

It was followed by a 500-word historical narrative of the Lincoln Town Football Club. The front side also included space for the name, address, and other contact information of the family enrolling its child or children in the Club's activities. There was also a space at the bottom for the signature of the parent(s) who enrolled their children in the Club. This section was in red-color type. The text fully filled the page. There was nothing else written on the front side except

[31] The Town of Lincoln case is broadly adapted from *Sharon v. City of Newton*, 769 N.E.2d 738 (Mass. 2002). The cases assigned as precedents for this moot simulation include: *Hamer v. Sidway*, 27 N.E. 256 (N.Y. 1891)(explaining the concept of consideration); *Lucy v. Zehmer*, 84 S.E.2d 516 (Va. 1954) (explaining the concepts of offer, acceptance, mental assent, and capacity); *Vokes v. Arthur Murray, Inc*., 212 So. 2d 906 (Fla. Dist. Ct. App. 1968)(discussing generally unfairness in the bargaining process); *Chauvlier v. Booth Creek Ski Holdings*, 35 P.3d 383 (Wash. App. 2001) (discussing clarity and conspicuousness of language in upholding the validity of a release clause as not violative of public policy); and *Calarco v. YMCA of Greater Metropolitan Chicago*, 501 N.E.2d 268 (Ill. App. 1986) (discussing the express negligence doctrine in invalidating a release clause).

at the very bottom of the document beneath the margin was written. "This is a 2-sided document." This note, printed in black, was in 10-point font similar to the rest of the page.

The back side, which is where the release language was located, was also written in 10-point font. The first section included a listing of the officers of the Club and their contact information. That was followed by a single-spaced 300-word description of the football activities offered by the Club and of the playing field. The next paragraph included the 74-word release, which was written in bold 10-point font. The page ended with the schedule of Club activities for 2013-2014. The text filled the back side fully. There was nothing else written on the back side.

Patricia Blue is a caring single-parent. She works 40 hours per week. While physically strong, she has very poor eyesight and suffers from migraine headaches. On August 15, 2013, the day she signed the registration form that included the release statement at the Club headquarters, she had a severe migraine. Earlier that day for her migraine she had taken a prescription medication that left her glassy-eyed, light-headed, and slurring her words. For example, during her visit to the Club headquarters when speaking with the volunteer to sign the form, she repeatedly mispronounced the word "Lincoln" to sound like "London" and also became slightly dizzy during her meeting with the volunteer, who brought her a glass of water to comfort her. She asked if she could return the next day, August 16, when she would likely be feeling better to sign the form, but was told that the town deadline for registering children for the 2013-2014 season was at 5:00pm on the 15th. Barely able to read her watch, it was already 4:15pm. Feeling pressure she decided she should not delay signing.

In giving her the registration form to sign, the volunteer did not explain it, but told Patricia if she had any questions she should ask. Patricia read the front side of the document, signed at the bottom where indicated, and returned it to the volunteer at the desk. She did not see or read the back side.

On September 5, 2015, Patricia Blue filed a complaint against the Lincoln Town Football Club for injuries sustained by Bobby. The complaint alleged negligence on the part of the Club for its failure to supervise the children, to have a medic available on the field, and otherwise to take precautions to assure the safety of the children.

In its answer to the complaint the Club not only denied all the allegations, but also filed a motion for a declaratory judgment that the release language, which appeared on the registration form that Patricia Blue signed, is enforceable as a matter of law against plaintiff and her son barring all claims by either of them now and in the future. [**Note that there is no applicable governmental immunity statute in this case.]

A hearing on the Club's motion is scheduled for Tuesday, October 21. The questions before the court are the following:

1) Is the release a valid contract?
2) Is the release voidable or unenforceable under theories relating to capacity, unconscionability, and public policy?

IV. Student Survey Results Summary[32]

During fall 2015, thirty-three honors freshmen[33] in two sections of a Legal Environment course participated in several moot court simulations. To gauge the impact of these simulations

[32] The complete survey results are available upon request to the author.

on their learning they were asked to respond to a survey. The survey was conducted anonymously during February 2016, using Perseus software. Twenty-five of the 33 students responded. Accepting that the survey results represent a self-assessment of the student experience, they are nonetheless a useful indication of student reaction to the moot as a teaching tool.

The surveyed freshmen included 22 males and 11 females. Two-thirds of respondents (68%) had some prior public speaking experience in high school, including speaking at a public meeting, running for student government, and debating. Despite this prior experience, 21 respondents (88%) identified their moot court experience as a moderate to significant challenge. The challenges they identified related primarily to the delivery of the oral argument, answering judges' questions, and researching the cases.[34] In one response a student wrote, "I would say the moot was like running a marathon; it was a drag to prepare for it and dreadful doing it in front of my peers, but the experience overall was positive because it helped me improve and I felt good about doing it afterward." Another said, "Prior to moot court I was uneasy with my public speaking. Now although I am not 100% confident in my public speaking I know that I am good at it which helps to quell the nerves."

Selecting from a list of perceived benefits provided by the moot simulation, 21 students responded that the moot enhanced their confidence in their oral communication skills. Twenty-two students also responded that the moot enhanced their learning about the law and legal process. One student stated, "I learned way more about the law than I ever thought I would. It was very interesting to see how the legal process plays out and even more interesting to role play it." Other categories of learning benefits indicated by students included enhancing analytical skills (14 students), improving public speaking skills (14 students), and improving writing skills (8 students).

In responding to questions seeking an overall assessment of their experience with moot simulations as a learning tool, 10 students (40%) responded that the moot was an extremely positive tool.[35] Likewise, in asking students to compare the moot as a learning tool to learning assignments, projects, and simulations used in all other courses they had taken, 10 students (40%) responded that it was one of the two best experiences they had had and two students (8%) responded that it was their best experience. There were seven other students (28%) who indicated that it was a good learning experience.[36] In response to this question, one student wrote, "It was a challenging way to exercise the skills learned in class while still leaving room for individual creativity." Another said, "Even though the moot court presented a lot of challenges and work, I think I got even more skills and experience out of it."

---

[33] I do not mean to imply by referring to this surveying of honors students that moot simulations are only for honors students. They are not. I have used moot simulations with both honors and non-honors freshmen. It is merely coincidental that my most recent use of moots was during fall 2015, when I taught honors students.

[34] During the fall semester I conducted three moot simulations. Two were closed cases which required no outside research. The final moot was an open case, which I assigned following a basic LEXIS tutorial for finding precedents relevant to the case problem. The fact that the final moot was an open case likely accounts for survey responses indicating that students were challenged by researching cases. As already noted, researching is unnecessary in closed cases.

[35] The remainder of students responded to this question as follows: 7 students identified it as moderately positive; 4 as slightly positive; 2 as neutral; 1 as moderately negative; and 1 as extremely negative.

V. Conclusion

While this article has been about infusing some interest, challenge, and fun into the student experience, it also is about the instructor experience. Teaching a Legal Environment or Business Law course can be onerous. There is indeed much to cover, but there are opportunities to lighten the load, if not in terms of material, at least in terms of the delivery of that material. Moot court simulations engage students in the delivery dynamic. Students teach themselves and they learn from each other. Instructors who share in that student-centered dynamic will find it to be a rewarding and enlivening way of teaching material in a Legal Environment or Business Law course.

VI. Appendix: Sample Assignment Handout

Moot Court Assignment: Tuesday, October 21, Back Bay Room 125C

Lawyers—Each team has 20 minutes for its argument. Rebuttal for appellants should be about 2 minutes of the 20, but will come after argument for appellee. Each side should:

- explain the facts—what happened?
- explain the law to be applied
- discuss the relevant precedents and how your teams uses them. (If a precedent goes against you, try to distinguish it from your case; if a precedent supports your argument, analogize it.)
- be persuasive in your argument explaining why the court should find in your favor
- give me a copy of your written argument. I should receive one from each member of the team. (While you will likely only argue a portion of the case, your written argument must discuss the whole case.)
- to begin, each advocate will say: "May it please the court, I am _____, and I represent _____." Also remember to address judges during argument as "Your Honor."

Judges—You must meet as a group to discuss the issues before hearing argument. Be sure that you know the issues and have questions ready to be asked during argument.

- each judge is to come into the argument with at least one or two written questions that you want answered by the lawyers. This means that you will ask the questions of the lawyers during the argument. This is extremely important.
- you must schedule a meeting to discuss the case and hear each other's views within a day or two of the argument. This may not be logistically easy, but do your best to attend.
- by 3pm on Wednesday afternoon either at a meeting or by email, you must let the Chief Judge know how you vote on the case. The Chief will tally the vote and get back to you so that you know whether you are writing the majority opinion, which the Chief Judge will assign (volunteering is ok), or a concurring or a dissenting opinion. You've been reading case decisions since early September so the format should be obvious to you. Your written opinion in due on Thursday, Oct 23. We will set aside some time that day to discuss the outcome.

Amici—Your amicus brief is due on the day of the hearing. Each member of the team is to submit a written brief to me. Also select one brief from your group to submit to the court for its consideration in deciding the case. While the lawyers' arguments are key, amicus briefs can be helpful to the court in reaching its decision.

Finally to everyone, this is your first experience with a moot. We won't get it perfect so I'll be flexible. My objective is that you know how to apply strict liability and negligence analysis to a products liability case.