



ESSAY

# Integrating an Oral Presentation Assignment into a Course on Drafting Contracts

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Law schools have a critical responsibility to train students in effective oral communication skills. Indeed, the American Bar Association's Standard 302 requires that law schools establish learning outcomes that include student "competency" in, among other things, "[l]egal analysis and reasoning, legal research, problem-solving, and written and *oral communication* in the legal context."<sup>1</sup> Yet, apart from clinical and externship offerings, where students can regularly interact with clients, lawyers, judges, and others, and courses like trial or appellate advocacy, which focus on essential courtroom communications, students generally have limited opportunities to practice oral communication skills in a traditional law school classroom.

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<sup>1</sup> ABA STANDARDS AND RULES OF PROCEDURE. FOR APPROVAL OF LAW SCHOOLS 2022-2023 (AM. BAR ASS'N 2022), [https://www.americanbar.org/groups/legal\\_education/resources/standards/](https://www.americanbar.org/groups/legal_education/resources/standards/) (last visited May 9, 2023) (emphasis added).

While class participation, whether voluntary or part of traditional Socratic instruction or some modified version of it,<sup>2</sup> can be useful for developing confidence in public speaking, the primary goal of class participation, even if graded, is typically not to teach students the art of oral communication.<sup>3</sup> Rather, it aims to encourage students to stay engaged and participate in classroom discussions and debates in order to learn the law and its historical development, understand its nuances, appreciate its implications, test its boundaries, and apply it to future situations. This goal is distinct from providing students with a structured opportunity to research and present an idea to an audience, then explain, support, and defend it, and ultimately answer questions about it—all of which are vital skills for mastering oral communication.

Therefore, to address this gap, I have sought ways to integrate structured oral presentation experiences into my classes.<sup>4</sup> My most successful integration occurred in my Drafting Contracts course, a limited-enrollment, upper-level advanced legal writing class, that teaches contemporary commercial contract drafting using Tina Stark’s exceptional text on the topic.<sup>5</sup> The original idea for the exercise, admittedly, was not my own. Jane Scott, a former Associate Professor of Legal Writing at my institution, taught the course previously and generously shared a wealth of material with me, including an assignment that required a brief oral presentation. Over time, I modified the assignment, making it a fixed component of my course—effectively advancing the goal of developing student competency in oral communication.

## 1. Background: Ambiguity as a Topic for Oral Presentation Exercises

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<sup>2</sup> For example, a modification to the traditional Socratic method could involve informing students that they will be called upon to speak in the next class or assigning a panel of students to answer questions, instead of relying solely on one individual.

<sup>3</sup> See Jane Korn, *Teaching Talking: Oral Communication Skills in a Law Course*, 54 J. LEGAL EDUC. 588, 588 (2004) (noting that “calling on students [using Socratic method] may not even teach them oral communication skills”). In fact, as Korn notes, law schools currently rely on “an eclectic hodgepodge of opportunities” for students to engage in discussions as the prevailing approach to imparting these oral communication skills. *Id.*

<sup>4</sup> See Eric J. Gouvin et al., *Teaching Communication Skills in Transactional Simulations*, 20 TENN. J. BUS. L. 429, 429 (2019) (advocating for more oral communication exercises in transactional settings and noting that “carefully constructed simulation exercises can help students find their voices and become more confident in their communications, learn how to address different audiences, improve writing skills, including grammar and accuracy, and learn to speak clearly and effectively.”).

<sup>5</sup> See Tina L. Stark, *Drafting Contracts: How and Why Lawyers Do What They Do* (Wolters Kluwer 2d ed. 2014).

Ambiguity poses a persistent and expensive problem for contract drafters. Word meanings are not always clear or unequivocal, as they can change over time and vary from person to person. Therefore, even the most careful drafters can encounter ambiguity problems where the contract is reasonably subject to more than one legitimate interpretation. This often leads to disputes over the contract's meaning, forcing parties to either renegotiate or litigate, both burdensome and costly outcomes.

Thus, to best equip students in avoiding these outcomes, my course devotes an entire class period to the topic of ambiguity.<sup>6</sup> Since ambiguity has different sources, and legal cases involving ambiguity problems are replete with teachable drafting moments, the topic of ambiguity forms the basis for my research and oral presentation assignment. In short, the students must find a case involving ambiguity in a contract, identify the source of that ambiguity, and present the case to the class, proposing a solution that could have prevented the ensuing litigation.

## 2. Sources of Ambiguity Explained

By way of background, there are three types of ambiguity: semantic, syntactic, and contextual.<sup>7</sup> Semantic ambiguity occurs when “a word has multiple dictionary meanings.”<sup>8</sup> For example, a well-known federal case involved a Swiss company that ordered two sizes of frozen chickens from a New York poultry wholesaler.<sup>9</sup> When the shipment arrived in Europe, the buyer discovered that the larger birds were all “stewing” chickens, not “broilers” and “fryers,” as they had expected.<sup>10</sup> The parties argued over the meaning of the word “chicken” with the buyer asserting that the word meant a “young chicken, suitable for broiling and frying,” while the defendant seller insisted that the term “chicken” encompassed “any bird of that genus that meets contract specifications on weight and quality, including what it calls ‘stewing chicken.’”<sup>11</sup> Given the word’s susceptibility to two different and equally reasonable meanings, the court found the word “chicken” to be ambiguous in the contract.<sup>12</sup>

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<sup>6</sup> Part 3, Chapter 21 of Stark’s text, which serves as the foundation for my instruction, is devoted exclusively to the topic of ambiguity, delving deeply into the “common causes of ambiguity and how to prevent them.” *Id.* at 295. Earlier chapters in Part 3 provide guidance on drafting with clarity and precision, encompassing ideas on how to “replace legalese with ordinary words; format provisions to make complicated material easier to assimilate; and redraft long, dense sentences into shorter, simpler ones.” *Id.* at 255.

<sup>7</sup> *Id.* at 295.

<sup>8</sup> *Id.*

<sup>9</sup> *Frigalment Importing Co. v. B.N.S. Int’l Sales Corp.*, 190 F. Supp. 116 (S.D.N.Y. 1960).

<sup>10</sup> *Id.* at 117.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 118 (“Since the word ‘chicken’ standing alone is ambiguous, I turn first to see whether the contract itself offers any aid to its interpretation.”).

In contrast, a syntactic ambiguity arises “when it is unclear what a word or phrase refers to or modifies.”<sup>13</sup> In a different case (also remarkably involving chickens), a dispute arose over whether the phrase “fast-food” included in a land sale contract’s restrictive covenant modified only the word “restaurant” or both “restaurant” and “restaurant facility.”<sup>14</sup> In that case, the plaintiff wished to lease a parcel of land to a company that planned to open a “Buffalo Wild Wings” restaurant, claiming that the restaurant was not “fast-food” and that the covenant restricts only *fast-food* restaurants that primarily sell chicken.<sup>15</sup> The defendant, owner of a “Kentucky Fried Chicken” restaurant, objected, arguing that the restrictive covenant was broader and prevented the plaintiff from leasing land to *any* other business serving chicken.<sup>16</sup> The pertinent contract language was as follows:

Seller will not after the date of this agreement sell, lease[,] or permit to be occupied any real estate which [s]eller owns, manages[,] or otherwise controls within one mile of the [l]and for the purpose of constructing, or having conducted thereon, any fast[-]food [ (quick service restaurant) ] restaurant or restaurant facility whose principal food product is chicken on the bone, boneless chicken[,] or chicken sandwiches.<sup>17</sup>

Because the phrase “fast-food” could be read to modify *either* the word “restaurant” alone or both the word “restaurant” and phrase “restaurant facility,” the court found that there was an ambiguity, requiring that it examine both the language of the contract as well as parol and extrinsic evidence to resolve it.<sup>18</sup>

Lastly, contextual ambiguity arises “when two provisions are inconsistent” and are thus susceptible to more than one reasonable interpretation when read together.<sup>19</sup> For example, in a case involving an agreement between an insurance company and a broker, and this time not chickens, conflicting provisions regarding the timing of termination of the contract created a contextual ambiguity.<sup>20</sup> In the “Termination” provision, it stated, in relevant part:

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<sup>13</sup> Stark, *supra* note 5, at 295.

<sup>14</sup> *Regency Com. Assocs., LLC v. Lopax, Inc.*, 869 N.E.2d 310 (Ill. 2007).

<sup>15</sup> *Id.* at 313–14.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 313–14.

<sup>18</sup> *See id.* at 316–24.

<sup>19</sup> Stark, *supra* note 5, at 296.

<sup>20</sup> *Life Plans, Inc. v. Security Life of Denver Ins. Co.*, 800 F.3d 343 (7th Cir. 2015).

This [ ] Agreement will continue indefinitely, until terminated by either party upon thirty (30) days written notice, delivered by certified mail.<sup>21</sup>

Yet, in another provision, titled “Commitments,” the contract stated in relevant part:

The Company agrees to accept at least \$100,000,000 of premium per twelve-month period [ ] from July 1, 2011 until June 30, 2014.<sup>22</sup>

These two provisions conflicted with each other; they clearly were incompatible.<sup>23</sup> The first provision gave either party the right to terminate *at any time*, upon thirty days’ notification, whereas the second one obligated the insurer for a period of three years. In the end, this inconsistency created an ambiguity problem.<sup>24</sup>

Cases involving ambiguity and the problems that they create for the affected parties are both unusual, interesting, and captivating. They also generate engaging discussions about how the lawyers might have drafted differently, which is crucial in helping students “develop[] a sensitivity to ambiguities” so that they, as future lawyers, “do not draft them, and so that [they] can recognize them.”<sup>25</sup> Thus, ambiguity lends itself to be a perfect topic for students to research and present orally.

### 3. The Assignment

For the assignment, students, using the open web, Lexis, or Westlaw, are required to research and locate a case from any federal or state court where ambiguity in the contract was a principal issue. The case should be new to them, not previously studied in Contracts or any other class. They then must prepare a brief oral presentation (about five to seven minutes duration) about the case, delivered in front of the class.

During their presentation, students identify the name, court, and date of the decision and provide an overview of the parties involved and the nature of the contract (e.g., insurance agreement, employment contract, lease agreement). Next, the students must describe the ambiguity in the contract, identifying the source of the ambiguity, and categorizing it as either semantic, syntactic, or contextual, or a

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<sup>21</sup> *Id.* at 350.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* (“The problem is how to harmonize these two provisions.”).

<sup>24</sup> *Id.* (“The agreement is ambiguous. These two provisions conflict with one another and do not refer to one another. They are fairly susceptible to both interpretations.”).

<sup>25</sup> Stark, *supra* note 5, at 296.

combination thereof. Students must also articulate how the court resolved the ambiguity, discussing the court's reasoning, its use of extrinsic or parol evidence, and application of canons of construction.

Most importantly, students thoroughly analyze the ambiguity problem in depth and brainstorm potential fixes. Ultimately, they must propose alternate ways the contract could have been drafted to avoid ambiguity. At the end, the class then critiques the proposals, offers alternative solutions, and asks questions. Students must defend, elaborate, answer, and clarify their ideas as part of the discussion. They are instructed to speak professionally, clearly, and deliberately, organizing their presentation in a logical sequence. I encourage the students to show the text of the contract provisions in dispute, especially if they are lengthy or complex. Visual aids can also be used as needed to enhance clarity for the audience.

After all presentations are complete, students reflect and comment on two aspects of the assignment: (1) the effectiveness of their own oral presentations and those of their classmates, noting strengths and weaknesses, including any areas of needed personal growth; and (2) the contract drafting issues, explaining common ambiguity themes and lessons learned for avoiding these types of problems in practice.<sup>26</sup> We then discuss these reflections together as a class and identify common threads and themes. Based on what I observe and read, I provide feedback on the substance and delivery of their presentations. This assignment, from start to finish, offers an excellent opportunity for students to practice and improve their oral communication skills while deepening their understanding of contract ambiguity and enhancing their drafting abilities.

#### 4. The Benefits

This oral presentation assignment benefits students enormously. First, each requirement mirrors the practical work lawyers engage in daily. Students learn to conduct research, analyze cases critically, and articulate their findings in a succinct and clear manner. They learn how to synthesize and organize complex material and present it within time constraints, requiring time management, initiative, and creative thinking. Also, they must actively listen to others' critiques, feedback, and questions about their ideas and, in turn, present thoughtful responses and coherent answers. These skills are essential for future lawyers.

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<sup>26</sup> I post prompts for these reflections as a Discussion thread on Canvas—the online class management platform I use for the course. I also make the responses public, enabling students to access and benefit from each other's feedback, thereby fostering a richer learning experience.

Substantively, the assignment deepens students' understanding of the different types of ambiguity and their sources. Through their own research and their classmates' presentations, students see firsthand the types of mistakes or issues that lead to ambiguity, enabling them to identify problems and be primed on their solutions. Evaluating how the contract could have been drafted differently, or how the clients should have been advised differently given the risks of ambiguity, students are challenged to hone their critical problem-solving, drafting, and counseling skills.

Finally, the assignment's summative and reflective components ensure that the students evaluate their own presentation skills and those of their peers so that they can emulate what was successful and avoid what was lacking in the future. By recognizing patterns and themes in student responses to the discussion prompts, students gain confidence in what they are learning and become more capable of applying those lessons to their next research and presentation project. Class discussions reinforce these positive effects to be long-lasting.

## 5. Conclusion

Designing an assignment that combines research and oral presentation provides a unique opportunity for students to practice, reflect upon, and get feedback on their oral communication skills. This practice builds confidence and fosters more effective oral communication. From my experience, I have learned that integrating a research and oral presentation assignment into a drafting contracts class can be effective in developing student competency in oral communication.