



## ARTICLE

# *Contracting Hoop Dreams: Using Sports Law to Teach Transactional Practice*<sup>\*</sup>

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One of the places I find the most joy in teaching legal writing is problem development—writing compelling factual scenarios that give students interesting legal issues to work through is rewarding and fun. The best prompts will motivate students to really jump into their role representing their client and encourage them to think about the “big picture”—how the law ties into social, political, and economic structures in society at large. Much has been written about the best ways to do this in the context of litigation assignments (briefs, memos, etc.),<sup>1</sup> but there has been less discussion about problem creation in the context of transactional assignments.

This is likely to change quickly as transactional practice skills become more regularly integrated into first-year legal-writing courses. As many have recognized, despite the traditional focus of the first-year legal-writing curriculum on litigation, a significant number of our students will end up becoming transactional

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<sup>\*</sup> I very much appreciate my colleague, Jarrod Reich’s helpful feedback on this piece. I also want to thank the many people who provided helpful input and contributions on the problem this piece describes including my colleagues, Jarrod Reich, Naomi Grace “Gigi” Hodo Walker, Marni Goldstien Caputo, Jasmine Gonzalez Rose, and BU’s talented law librarians Brian Flaherty and Jenna Fegreus.

<sup>1</sup> See, e.g., Elizabeth E. Berenguer, *Designing Problems to Enhance Student Learning*, 28 LEGAL WRITING: J. LEGAL WRITING INST. 77, 77-79 & n.4 (2024).

attorneys rather than going into litigation.<sup>2</sup> As the legal writing community adjusts to this reality by incorporating more transactional instruction, the need for more transactional problems, is likely to grow. There are many variations on how these skills can be taught, but at my school—Boston University School of Law—we teach these skills through a multi-week transactional simulation that culminates in the students negotiating a contract on behalf of their “client.”<sup>3</sup>

This past semester, I taught this simulation using a problem I developed that concerns a contract negotiation between a professional women’s basketball team and a basketball player.<sup>4</sup> I’ll be honest—my initial motivation for developing the problem was simply my WNBA fandom,<sup>5</sup> but it turned out to be an excellent pedagogical tool across a number of dimensions that could easily be adapted to other sports-law contexts as well. There were a myriad of positives that came from teaching this problem but I’m going to highlight a few of the biggest ones (along with a few challenges that came up) below:

- the opportunity to teach students to read and deeply understand a complex, real-world contract (a collective-bargaining agreement);
- the ease of adding complementary assignments in the same “world”;
- the ability to integrate issues of racial consciousness into a transactional problem; and
- the high level of interest in the subject-matter among students.

## I. The Collective-Bargaining Agreement: A Challenge & An Opportunity

While all 1L students take contracts, some will not actually look at a contract—or at least look deeply at one—until they get into a 1L summer job or upper-level

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<sup>2</sup> See, e.g., Adam Eckart, *Big Deal: Using Transactional Assignments to Teach Persuasion in the Legal Writing Curriculum*, 36 SECOND DRAFT 2 (Spring 2024). Moreover, with the NextGen Bar including contract negotiation and drafting skills, the momentum towards adding these skills to the first-year curriculum is likely to grow.

<sup>3</sup> Prior to this year, BU taught these skills through a week-long, one-credit course between the first and second semesters. Last year, the faculty voted to incorporate this instruction (and the credit) into our regular lawyering-skills course in recognition of the growing importance of these skills.

<sup>4</sup> I’m happy to share the problem materials on request via e-mail at [cjacobs2@bu.edu](mailto:cjacobs2@bu.edu).

<sup>5</sup> Although I think as a profession, we ought to take our enjoyment of the pedagogical tools we choose more seriously as a metric for evaluating them, it is well documented how difficult this job is, and we are likely to be a lot more effective if we are having fun.

transactional skills course.<sup>6</sup> Any transactional simulation usually *ends* with students producing a written contract, but learning to read and understand a contract is a necessary pre-requisite to writing one. This can be taught in many ways including through in-class and out-of-class exercises where students read and understand simplified contracts. This problem took it a step further by requiring students to read and understand a complex real-world contract up front—a collective-bargaining agreement (CBA)—in order to understand the parameters for the simpler contract they were tasked with negotiating.

All major American professional sports leagues have players' unions and, therefore, are governed by CBAs between players and team owners.<sup>7</sup> I was fortunate in developing this problem that the WNBA's collective-bargaining agreement was readily available online to use as a starting point.<sup>8</sup> Even for a seasoned attorney, the WNBA's CBA is a daunting document, clocking in at 350 pages with 41 articles and 9 exhibits.<sup>9</sup> One of the questions I faced early on in developing this assignment was whether working within the framework of this agreement would simply be an insurmountable barrier for 1L students. I ultimately decided, however, that the CBA could be a teaching opportunity rather than a barrier.

Arguably, a shorter and simpler contract would have been a better starting point for this, but I was able to do a couple of things that made the process smoother for students. First, I simplified the CBA itself by removing sections that were irrelevant to negotiating a player contract<sup>10</sup>—while the document was still large, this cut the size of the CBA by nearly 60%. Second, I created an exercise that we worked through together in class where students were tasked with working in

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<sup>6</sup> This isn't a criticism of podium contracts professors—the pressure to teach black-letter law is strong in those sorts of classes and there is quite a bit to cover in a semester, especially while students are still learning basic “think like a lawyer” skills like how to read a case.

<sup>7</sup> Obviously, CBAs and labor relations are not limited to the sports world, and the aspects of this assignment built around the CBA could work in many industries.

<sup>8</sup> See Women's National Basketball Players Association, *Collective Bargaining Agreement 2020*, <https://wnbpa.com/cba/> (last visited May 13, 2024). The problem I developed is set in a fictional “Women's Basketball Association” rather than in the actual WNBA. This allowed me to freely invent fictional teams and players.

<sup>9</sup> And this is actually mercifully short as these agreements go—the NBA's CBA is nearly twice as many pages. See National Basketball Association, *Collective Bargaining Agreement (CBA)*, <https://nbpa.com/cba> (last visited June 24, 2024).

<sup>10</sup> For example, I deleted content like the section related to union dues. I left the section headers in the document so the students were able to see what other pieces would go into a CBA like this but then noted that the actual text of the section had been omitted. I left in some sections that, while not directly relevant to the problem, were helpful for students to see as boilerplate parts of a contract, such as the choice of law provision.

groups to find the answers to questions under the CBA and explain what provisions governed those questions. Working through this exercise proved really helpful in demystifying the CBA. By the end of the deal, students were very familiar and comfortable with the various provisions of the CBA and how they fit together, and I hope this will help them have confidence when they go into practice and are tasked with looking at a complex contract for the first time.

Working within the confines of the CBA also had another advantage—it nicely cabined the subjects that were available for negotiating in the simulation. An open-ended assignment to just create an employment contract for a basketball player could have quickly gotten out of hand with all the different topics that creative students could come up with to negotiate about and include in the contract—different types of job security, dispute-resolution processes, media obligations, etc. The CBA organically<sup>11</sup> settles most of these issues at the outset and even provides a standard player contract template that students must use as a starting point. This made the simulation much easier to teach and to grade.

## 2. The Women’s Basketball “Extended Universe”

While the CBA successfully cabined the negotiation, the problem’s setting of a professional basketball league lent itself very well to creating supplemental assignments to teach other skills at the same time the students were moving through the simulation. We were able to create:

- A regulatory research assignment that asked students to use trademark databases to explore marketing opportunities for the player in the negotiation.<sup>12</sup>
- An industry research assignment that asked students to look into different companies that the player might enter into a shoe deal with.<sup>13</sup>

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<sup>11</sup> Of course, it is possible to artificially limit the subjects for negotiation in any simulation by simply incorporating restrictions into the assignment just as we often do with other assignments. However, students may be more resistant to artificial restrictions in a transactional simulation context than in other assignments since cutting out issues gives them fewer points of leverage and fewer options to work with as opposed to cutting out, say, unpublished cases in a research assignment which just gives them less work to do. Having the limitation “explained” by the real world CBA provides a better explanation for students and invites them to consider the larger implications of the benefits and drawbacks of CBAs for workers and employers.

<sup>12</sup> This assignment was developed primarily by BU law librarian Brian Flaherty. The exercise was based on the fact that professional athletes often secure (or attempt to secure) trademarks on phrases and nicknames such as Miami Heat star Jimmy Butler’s trademark on the phrase “Jimmy Buckets.”

<sup>13</sup> This assignment was developed in collaboration with BU Law librarian Jenna Fegreus.

- An in-class exercise focusing on empathetic client counseling where students reflected on the biases and challenges they might encounter counseling people from different backgrounds associated with the team.<sup>14</sup>

There is no reason that all the assignments in a transactional curriculum need to be tied together, but the ability to do that did help maintain buy-in from students and add some color and realism to the negotiation itself. For example, in negotiating salary, students had some context from these assignments about the other ways the player might make money off the court.

### 3. Bringing Racial Consciousness to Transactional Work

Our profession has, rightfully, become more concerned than ever recently with incorporating social-justice topics and diverse perspectives into our problems,<sup>15</sup> but as with other aspects of problem development, the focus has largely been on how to do that in the context of litigation assignments. But social justice can and should be a part of transactional work as well and presents unique opportunities for learning how social consciousness can make students better attorneys.

This problem was particularly well positioned in that regard because women's basketball—and professional women's basketball in particular—is at the center of issues of race, gender, and LGBTQ+ rights.<sup>16</sup> Since this problem involved a negotiation between a player and team, I chose to focus on the racial dynamics of a league that relies heavily on the labor of Black women with teams that are largely owned by white men. Mirroring this dynamic, the player in the problem was a Black woman and the team owner was a white man. The facts presented the students with a dilemma that forced students to confront the different views and experiences their clients may have regarding the criminal-justice system and racial

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<sup>14</sup> This exercise was developed primarily by my colleague, Naomi Grace “Gigi” Hodo Walker.

<sup>15</sup> See, e.g., Sha-Shana Crichton, *Incorporating Social Justice into the 11 Legal Writing Course: A Tool for Empowering Students of Color and of Historically Marginalized Groups and Improving Learning*, 24 MICH. J. RACE & L. 251, 290-94 (2019). This is even more true since the adoption of ABA Standard 303(c) which requires law schools to “provide education to law students on bias, cross-cultural competency, and racism.” American Bar Association, *2023-2024 Standards and Rules of Procedure for Approval of Law Schools*, Standard 303(c), available at [https://www.americanbar.org/groups/legal\\_education/resources/standards/](https://www.americanbar.org/groups/legal_education/resources/standards/) (last updated February, 2024).

<sup>16</sup> See Jonathan Abrams and Natalie Weiner, *How the Most Socially Progressive Pro League Got That Way*, N.Y. TIMES (Oct. 16, 2020), available at <https://www.nytimes.com/2020/10/16/sports/basketball/wnba-loeffler-protest-kneeling.html>.

profiling.<sup>17</sup> To lay the groundwork for this aspect of the problem, students completed the in-class exercise mentioned above where they practiced empathetic lawyering that takes into account different lived experiences. Ultimately, working through this was well received by students, with many reflecting afterwards on how the experience forced them to consider other perspectives and to re-examine assumptions they may have had when they first learned the facts. Of course, these are critical lawyering skills that are transferrable across many contexts.

#### 4. Interest in Basketball (and More) Driving Engagement

We always try to create problems that students will find interesting since we know that keeps them more engaged. Sometimes a problem is interesting because it touches on issues that students are familiar with from day-to-day life. Other times, a problem captures students' interest because it deals with timely topics that are in the news and students are passionate about. This problem and topic were able to do both.

Many students are familiar with sports as fans. Whether they are interested in women's basketball specifically or not, concepts like salary caps, trades, and attracting free agents are not new to many students. Students with these interests found it really exciting to see where lawyering work can intersect with these aspects of the sports that they follow.

That said, it was important for me to recognize in developing this problem that not everyone is interested in sports. I wanted to make sure that students who may be learning about this world and its terminology for the first time didn't feel lost or even at a disadvantage. To address this, I created an assigned pre-reading with a few pages on the history of women's basketball, the definitions of some basic terminology (like "salary cap" and "free agency"), and even links to a couple of YouTube videos covering the basic rules of basketball. In addition to providing this background, there was also a lot of simple reassurance involved—letting students know that they wouldn't need to be able to draw up plays or fill out a draft board to complete this negotiation. Of course, getting familiar with a new industry is often an important part of transactional practice, so the process of "getting up to speed" is an important experience in itself.

This problem also had the added benefit of being tied to several timely and important societal topics including labor organizing, gender pay-equity, and the role of sports in society. In fact, the problem ended up being timelier than I could

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<sup>17</sup> The player was arrested and released in what turned out to be an incident of racial profiling that the player's attorneys learn about through the client-counseling simulation and then decide how (and whether) to communicate about it in the negotiation process.

have anticipated when I was developing it over the prior summer. The students were completing their negotiations at the same time that Caitlin Clark was drafted first overall in the 2024 WNBA draft. Clark's record setting senior season in college and much anticipated entry into the WNBA have brought unprecedented attention—and scrutiny—to women's basketball. While much of the country was baffled to learn that Clark would only earn a five-figure salary annually, my students already knew what her pay range would be from their knowledge of the CBA.

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As transactional practice skills become more integrated into the 1L curriculum, and our profession grapples with how to apply our problem-based approach to teaching those skills, I hope professors will consider the value that sports law-based problems like this one can bring to this challenge.