



ARTICLE

Teaching Transactional Skills and Lawyering Values to First-Year Students Through an Affordable-Housing Deal

Laura E. D'Amato

Senior Lecturer

Boston University School of Law

Published: August 2025

With the anticipated launch of the NextGen bar exam next year, transactional lawyering skills are enjoying increased attention in first-year law school curricular development. At the same time, recent amendments to ABA Rule 303 have made it essential for new law students to learn about the profession's core values and responsibilities. While these evolving priorities open the door to pedagogical innovation, incorporating two distinct topics into an already packed curriculum can be challenging. This article explores how a simulated affordable-housing financing deal has served as a cohesive

foundation for introducing first-year students to transactional skills and core professional values.¹

1. Reimagining the Transactional Simulation Paradigm

For faculty looking to incorporate transactional skills into the first-year curriculum, upper-level transactional law clinics can serve as excellent models. For years, transactional clinics have been successfully introducing law students to transactional skills and practice, primarily through business deals involving two for-profit companies.² While this paradigm certainly works well for teaching transactional skills, not all transactional work occurs in a corporate setting. Indeed, transactions can cover a wide range of subjects, including real estate, employment, and estate planning, and can involve all kinds of parties, including government bodies, academic institutions, healthcare providers, and nonprofit organizations pursuing social goals.³ In developing a transactional simulation for first-year law students, many of whom are encountering transactional skills for the first time, there are compelling reasons to think outside the corporate box and focus on transactions that serve the public interest.

One advantage is that a public-interest simulation has the potential to engage a broader range of students, particularly those who might not initially see themselves enjoying transactional work.⁴ Additionally, using a problem that raises broader economic issues provides a well-rounded learning experience and highlights the role transactional lawyers can play in creating social change.⁵ Moreover, as discussed in more detail below, framing a transactional simulation in a public-interest context encourages client-centered, collaborative lawyering.

¹ Thank you to Rob Stigle (Boston University School of Law '24) for his help drafting the problem that is the subject of this article, and thanks to my colleague Claire Abely for her helpful feedback and continued assistance in updating the problem annually.

² See Susan R. Jones and Jacqueline Lainez, *Enriching the Law School Curriculum: The Rise of Transactional Legal Clinics in U.S. Law Schools*, 43 WASH. U. J. L. & POL'Y 85, 75 (2014), https://openscholarship.wustl.edu/law_journal_law_policy/vol43/iss1/9 (observing that students in transactional clinics simultaneously learn business law and professional skills, values, and ethics).

³ See *id.* at 97 (commenting “[m]ost lawyers think of transactional law as ‘doing deals’ in a large corporate law firm and as nonlitigation; but transactions can cover a broad range of matters including zoning, business licensing, commercial real estate leases, labor law compliance, and intellectual property”).

⁴ See Lynnise E. Pantin, *The Economic Justice Imperative for Transactional Law Clinics*, 62 Vill. L. Rev. 175, 177 (2017), <https://digitalcommons.law.villanova.edu/vlr/vol62/iss1/5> (noting that public-interest students tend to be drawn to litigation-oriented clinics).

⁵ See *id.* at 195 (arguing that incorporating discussions of social justice and economic empowerment into transactional skills training enriches the student experience and helps students contextualize their work).

2. Designing a Real-World Affordable-Housing Simulation

In identifying a subject for a public-interest transactional simulation, the affordable-housing crisis quickly stood out as both timely and compelling. As recent media reports have highlighted, the longstanding shortage of affordable housing in the United States has hit critical levels in many cities and towns.⁶ In Massachusetts, the focus has been on the Commonwealth's unique Right-to-Shelter law, which guarantees shelter to families experiencing homelessness.⁷ The growing number of families seeking shelter in recent years has strained the Commonwealth's capacity to meet its legal obligations.⁸ In response, the Commonwealth has enacted a series of emergency legislative and budgetary measures to relieve the immediate burden on the shelter system, including imposing limits on the Right-to-Shelter law.⁹ Many longer-term initiatives are also underway in Massachusetts and around the country to address the systemic challenges contributing to the shortage.¹⁰

⁶ See, e.g., Jennifer Ludden, *U.S. Homelessness Jumps to Another Record High, Amid Affordable Housing Shortage*, NPR (Dec. 27, 2024), <https://www.knpr.org/npr/2024-12-27/u-s-homelessness-jumps-to-another-record-high-amid-affordable-housing-shortage>; Editorial, *A Hundred Years of Choking Housing Catches Up With Massachusetts*, BOS. GLOBE (Apr. 10, 2023), <https://www.bostonglobe.com/2023/04/10/opinion/hundred-years-choking-housing-growth-catches-up-with-massachusetts/>.

⁷ MASS. GEN. LAWS ch. 23B, § 30 (2024). Emergency amendments and regulations promulgated in response to recent demands on the shelter system have narrowed the reach of the law. *Id.*; 760 MASS. CODE REGS. 67 (2024).

⁸ See Simón Rios, *A Timeline of the Massachusetts Shelter Crisis – and Healey's Changes to the System*, WBUR (Aug. 12, 2024), <https://www.wbur.org/news/2024/08/12/massachusetts-shelter-system-changes-timeline-immigration>.

⁹ See, e.g., Sarah Betancourt, *Mass. Senate Approves Hundreds of Millions in Funding for Shelter System*, WGBH (Mar. 22, 2024), <https://www.wgbh.org/news/politics/2024-03-22/mass-senate-approves-hundreds-of-millions-in-funding-for-shelter-system>; Samantha J. Gross, *As emergency shelter population dips, Healey directs all state hotel shelters to close 'ahead of schedule,'* BOS. GLOBE (Apr. 10, 2023), <https://www.bostonglobe.com/2025/05/19/metro/governor-maura-healey-hotel-shelter-close-massachusetts/>.

¹⁰ For example, the Governor of Massachusetts recently passed the Affordable Homes Act to support “the production, preservation and rehabilitation of more than 65,000 homes statewide over the next five years.” *The Affordable Homes Act: Smart Housing, Livable Communities*, MASS. EXEC. OFF. OF HOUS. AND LIVABLE COMMUNIT., <https://www.mass.gov/info-details/the-affordable-homes-act-smart-housing-livable-communities> (last visited, May 23, 2025). The Healey administration also passed the MBTA Communities Law, which encourages development in towns that host the Massachusetts transit system. *Multi-Family Zoning Requirement for MBTA Communities*, MASS. EXEC. OFF. OF HOUS. & LIVABLE COMMUNITIES, <https://www.mass.gov/info-details/multi-family-zoning-requirement-for-mbta-communities> (last visited, May 23, 2025). The Governor of New York has also signed legislation intended to expand access to affordable housing. *Governor Hochul Signs Legislation to Make Housing More Affordable and Accessible as Part of the FY 2026 Budget*, N.Y.GOV.,

One distinctive approach involves the use of social-innovation financing in the form of pay-for-success contracts. This outcomes-based financing mechanism typically partners government agencies with non-profit organizations and private investors to tackle a pressing social need.¹¹ Over the past fifteen years, these public-private partnerships have been used at the national, state, and local levels to address a range of social problems.¹² They remain in use across the country today, including in response to the housing crisis.¹³

With a decade of successful projects to draw from, social-innovation financing provides an excellent framework for a public-interest transactional simulation. Our simulation—loosely based on an actual transaction—involves a partnership between a state government and a coalition of non-profit organizations dedicated to expanding affordable housing for families experiencing homelessness. Fundamentally a financing transaction, the simulation includes the essential elements of a successful transactional exercise while providing many opportunities for students to reflect on what it means to be a responsible and ethical lawyer.

<https://www.governor.ny.gov/news/governor-hochul-signs-legislation-make-housing-more-affordable-and-accessible-part-fy-2026> (last visited, May 23, 2025).

¹¹ See *What is Pay For Success (PFS)?*, URBAN INST., <https://pfs.urban.org/library-new/content/what-pay-success-pfs.html> (last visited, May 19, 2025).

¹² For example, the Obama administration used pay-for-success contracts to “help connect veterans with jobs, build brighter futures for at-risk youth, support English language learners, increase access to high-quality pre-K, reduce childhood asthma, support at-risk moms and their children, reduce homelessness and recidivism, and even promote natural resources conservation.” *Pay for Success: An Opportunity to Find and Scale What Works*, THE WHITE HOUSE, PRESIDENT BARACK OBAMA, OFFICE OF SOCIAL INNOVATION AND CIVIC PARTICIPATION, <https://obamawhitehouse.archives.gov/administration/eop/sicp/initiatives/pay-for-success> (last visited, May 19, 2025). The Commonwealth of Massachusetts has similarly used pay-for-success contracts to increase employment opportunities for English-language learners, assist at-risk youths in the juvenile justice system, support veterans with post-traumatic stress disorder, and—pertinent to this article—to address chronic homelessness. *Social Innovation Financing*, MASS. EXEC. OFFICE FOR ADMIN. AND FIN., <https://www.mass.gov/info-details/social-innovation-financing> (last visited May 19, 2025).

¹³ For example, pay-for-success contracts are being used to address the housing shortage in Denver and Rhode Island. See *Report Shows Good Results in Denver’s Pay for Success Housing Model*, THE DENVER FOUND., June 20, 2024, <https://denverfoundation.org/2024/06/pay-for-success-housing-model-report/>; *Rhode Island pay for Success: Permanent Supportive Housing*, STATE OF RHODE ISLAND EXEC. OFFICE OF HEALTH AND HUMAN SERVS., <https://eohhs.ri.gov/initiatives/pay-success?language=en> (last visited, May 19, 2025).

3. Integrating Transactional Skills and Lawyering Values

Through their engagement with the legal and business terms of the deal, students develop core competencies in key NextGen bar exam topics, including client counseling and advising, negotiation, and contract drafting. Additionally, in helping clients tackle the affordable-housing shortage, students are introduced to foundational lawyering values, such as client-centered counseling, collaborative negotiation, and ethically responsible representation.

3.1 Client-Centered Counseling

The simulation begins with teams of two or three student-attorneys advising their clients—either the government or the affordable-housing non-profits—about the various financing options available to them.¹⁴ Before the client meeting, students review background information about the client’s goals and priorities in pursuing the financing deal, as well as details about various financing options, including a pay-for-success contract. During the meeting, students explain each option and recommend the one that best aligns with the client’s objectives. Students then summarize their advice and the client’s decision in writing, typically in the form of a client letter, but an email would also work.¹⁵

This phase of the transaction corresponds with Topics 13, 14, and 23 of the Next Gen Bar Exam, which collectively require exam takers to determine and explain the best strategy for achieving a client’s goals.¹⁶ Moreover, the complex fiscal and social issues surrounding the housing crisis facilitate discussions about the importance of cultural

¹⁴ The format of the simulation is drawn heavily from the curriculum for Boston University School of Law’s Lawyering Lab, which was developed by a group of experienced clinical and doctrinal faculty over a decade ago.

¹⁵ Students also prepare an email to their supervising attorney summarizing a relevant housing regulation, such as the Massachusetts Right to Shelter Law or the MBTA Communities Law. The subject of the client letter and email assignments can vary from year to year, making them adaptable and preventing students from copying submissions from previous class years.

¹⁶ *NextGen Content Scope Outlines*, NAT’L CONF. OF BAR EXAM’RS (NCBE), 2, 4, May 2023, https://www.ncbex.org/sites/default/files/2024-11/NCBE-NextGen-Content-Scope-May-24-2023_0.pdf.

Topic 13 asks “In a matter in which a client has multiple stated objectives, explain why a legal rule or principle, as applied to the client’s situation, may make one of those stated objectives unattainable.” Topic 14 instructs “Determine the best strategy for identifying a client’s needs and interests underlying the client’s stated objectives, in order to aid the client in setting goals in a matter.” Topic 23 provides “Draft or edit correspondence to a client explaining the legal implications of a course of action, updating the client on the status of the client’s matter, and/or providing advice on the next steps to be taken in the matter.”

competence and the use of respectful language, as required by ABA Rule 303(c).¹⁷ Students read articles on these topics and discuss key takeaways in class, including how judging people through our own “cultural lens” may lead to errors and assumptions.¹⁸ Students also learn to take a client-centered approach to counseling, which prioritizes the client’s own goals and interests, rather than what the lawyer believes the client needs.¹⁹ Thus, as they develop their counseling and advising skills, students learn how to engage with clients in a collaborative, respectful, and culturally aware manner.

3.2 Collaborative Negotiation and Contract Drafting

After the clients choose the pay-for-success option, students prepare to negotiate the terms of the deal. To ensure the simulation is developmentally appropriate for first-year law students, the negotiation focuses on three straightforward deal terms that only involve the two main parties: funding amount, housing targets, and termination rights.²⁰ These carefully selected terms, which involve negotiating hard numbers as well as nuanced contract language, allow students to practice the foundational negotiation and contract-drafting skills contemplated by Topics 10, 11, 12, and 26 of the NextGen Bar Exam Content Scope Outlines.²¹ Negotiating these terms in the context of a public-

¹⁷ See ABA Revised Standards and Rules of Procedures for Approval of Law Schools 303(c) (February 2022), <https://www.americanbar.org/content/dam/aba/administrative/news/2022/02/midyear-hod-resolutions/300.pdf>.

¹⁸ For more on multicultural lawyering see STEFAN H. KRIEGER, ET AL., *ESSENTIAL LAWYERING SKILLS*, 35-38 (Aspen Publ’g, 7th ed. 2025).

¹⁹ See *id.* at 95-104 for a helpful discussion of client-centered lawyering.

²⁰ Pay-for-success contracts typically involve many parties and tend to be long and complicated. While a simpler deal might seem preferable for a first-year simulation, the pay-for-success contract serves as a good example of the kinds of complex agreements students will likely encounter in practice. It also illustrates how those contracts are structured—with a formal table of contents, a separate defined terms section, and multiple appendices. Introducing a simpler contract first (for example, a liability waiver or employment agreement) helps get students ready to work with a more complex agreement during the simulation. Limiting the simulation to three key provisions also helps make the negotiation manageable. However, some additional explanation is required upfront to explain how these provisions fit into the overall deal.

²¹ *NextGen Content Scope Outlines*, NAT’L CONF. OF BAR EXAM’R (NCBE), 2, 4 May 2023, https://www.ncbex.org/sites/default/files/2024-11/NCBE-NextGen-Content-Scope-May-24-2023_0.pdf.

Topic 10 instructs “Identify two factors that favor a client’s position or two factors that favor an opposing party’s position in a matter.” Topic 11 says “Identify two benefits or two drawbacks of a proposed resolution of a dispute, consistent with a client’s objectives, interests, and constraints.” Topic 12 provides “Identify potential terms of an agreement that could lead to a negotiated resolution of a dispute.” Topic 26 says “Given draft provisions of a contract, identify language that should be changed, and make suggestions for how that language should change, consistent with the facts, the relevant legal rules and standards, and the client’s objectives, interests, and constraints.”

interest transaction has the added benefit of encouraging students to bring a problem-solving rather than adversarial approach to the bargaining table.

Students begin this phase of the simulation by preparing a negotiation plan. This involves identifying their client's interests, rights, and powers going into the negotiation, as well as whether they plan to take a problem-solving, adversarial, or hybrid approach to the discussion.²² As part of the problem-solving approach, students brainstorm options that address both sides' interest in expanding access to affordable housing instead of focusing on ways to leverage their own bargaining power.²³ Students must also identify which "tricks of the trade" they will use during the negotiation, such as asking good questions, bargaining with packages, and finding common ground.²⁴

During the negotiation itself, students often realize that things do not always go according to plan. Even with the best intentions and humanitarian goals, discussions can become tense, depending on team members' personalities and communication styles. Students have used creative problem-solving to overcome these challenges. For example, some students have prepared detailed spreadsheets breaking down the per-unit cost of housing to help explain the reasoning behind their financial priorities. Others have "bargained with packages," tying critical wraparound services for families receiving housing to overall funding commitments. And one group tapped into a member's prior experience in non-profit procurement to highlight the mutual benefits of maximizing the government's funding commitment.

Although students are encouraged to get creative in their discussions, they are instructed to focus their efforts on the three key terms identified in the materials. Having an upper-level Lawyering Fellow act as a negotiation facilitator helps keep students on track and all groups ultimately reach agreement by the end of the three-hour session. After reaching agreement, students finish the simulation by drafting contract language to memorialize the agreed-upon terms. They then present those terms and describe how the negotiation went to the class. These presentations confirm that the experience enhances students' understanding of transactional practice and fosters a positive view of collaborative lawyering.

²² See KRIEGER, *supra* note 18, at 363-70 (describing various negotiation contexts and approaches).

²³ See *id.* at 368.

²⁴ Robert Burdick, "Tricks of the Trade" (2016) (unpublished paper) (on file with author). Professor Burdick taught in the Boston University Civil Litigation Program for many years. For more about his incredible career as a lawyer and as a teacher, see Mary Connaughton, *Some Special Words for Robert Burdick*, 101 B.U. L. REV. 851 (2021), https://scholarship.law.bu.edu/faculty_scholarship/1159.

3.3 Ethically Responsible Representation

As students build client-focused and collaborative transactional skills, they also learn about the formal ethical rules that govern their work through class discussions and exercises. These include the following ABA Model Rules of Professional Conduct:

Rule 1.1 – Competence (emphasizing the importance of preparation in providing competent representation);

Rule 1.2 – Scope of Representation (affirming duty to abide by the client’s decisions);

Rule 1.4 – Communication (highlighting the duty to communicate clearly and effectively so that clients can make an informed decision);

Rule 2.1 – Advisor (stressing the importance of offering candid, honest advice based on the lawyer’s professional judgment); and

Rule 4.1 – Truthfulness in Statements to Others (prohibiting attorneys from making false statements of material fact or law).²⁵

Given their central role in a lawyer’s ethical responsibilities, it is no surprise that most of these rules are included in the NexGen Content Scope Outlines, including as part of the planned client counseling and negotiation assessments.²⁶

Learning about the Rules of Professional Conduct within the context of a multifaceted housing deal allows students to engage with realistic ethical situations and dilemmas. For example, students must figure out how to explain complex financing models in plain language so the client can make an informed decision. They may also grapple with whether they are ethically required to disclose their client’s bottom-line (for example, the lowest amount the non-profits can accept to make the project work) if asked during negotiations, especially considering the contract’s public-interest focus.

²⁵ Model Rules of Pro. Conduct r. 1.1, 1.2, 1.4, 2.1, 4.1 (Am. Bar Ass’n, Discussion Draft 1983), https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/

²⁶ *NextGen Content Scope Outlines*, NAT’L CONF. OF BAR EXAM’R (NCBE), May 2023, p. 2-3 https://www.ncbex.org/sites/default/files/2024-11/NCBE-NextGen-Content-Scope-May-24-2023_0.pdf (noting that because several listed Rules of Professional Responsibility are relevant to client counseling and negotiation sessions, knowledge of the Rules may be assessed as part of the Group B Foundational Skills components of the NextGen Bar Exam).

These scenarios spark lively simulations and thoughtful debrief discussions afterward, giving students the chance to reflect on their ethical and strategic choices.

Conclusion

After two years of using an affordable-housing problem in my Lawyering Skills class, I am pleased to report that it has been an effective, engaging, and enriching way to teach both transactional skills and professional values. To put it in transactional terms—using a public-interest transactional problem is a win-win solution for integrating core NextGen Bar transactional skills and ABA Rule 303 lawyering values into the first-year curriculum.²⁷

²⁷ Please reach out to me at ledamato@bu.edu to learn more about the affordable-housing problem or to get tips on developing your own public-interest transactional simulation.