

Business associations

Writing a Teaching-Oriented Legal Case Study

Prof. Amitai Aviram

Aviram@illinois.edu

University of Illinois College of Law

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Legal Case Study Products

- Case: the material that goes to the students
 - Presents in narrative form, from the perspective of a specific protagonist, a problem that is addressed by applying the material taught in the section
 - Specific documents and detailed information is placed in exhibits
 - Length: main text usually 5-10 pages; exhibits vary widely (from 0 to >100 pp.)
- Teaching notes: goes to the professor teaching the case
 - Case synopsis, teaching objectives, case analysis, teaching process
 - Length: varies widely
- Project statement: goes to me as the person grading your case study
 - Explains what is special about your case (so I can appreciate your efforts) & adds info that is important to evaluate the case but not necessary for students using the case or instructors teaching it
 - Length: usually ½-2 pages

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Suggested structure of a case

- Opening
 - Describes the setting & the protagonist and introduces the case issue/problem
- Case story
 - Typically progresses either chronologically, by problem (if case has multiple problems), by solution (if each solution to the problem needs detailed examination), or by person (if there are multiple protagonists in different roles)
 - In some cases, you might start with a “background” or “context” segment that is in report form (like an exam fact pattern) rather than narrative form
- Conclusion
 - Creates tension and focuses the discussion point(s), options & considerations
 - Sometimes can be followed by assignment questions to direct students to the issues they need to address (if such direction seems artificial inside the case story, and if the teaching goal does not require that students figure out the questions by themselves)

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Suggested structure of teaching notes

- Case synopsis: what is the case about?
 - Usually no longer than half a page
- Teaching objectives: why are we teaching this case?
 - What section & what issues does the case review
 - Case may include issues studied in earlier sections, but should review most issues of the section in which it is placed
- Case analysis: what are we going to teach?
 - “Take away” from the case (main issue(s) that students should remember)
 - Model answer
 - If an element in the answer is not definite, identify the alternatives & their trade-offs
 - Aftermath: what happened after the point the case ends
 - This is a good place to discuss extensions (other issues this case could address)
- Teaching process: how to teach it?
 - Discussion structure (question plan)
 - Discussion flow (suggested opening, transition between issues, closing)
 - Special techniques (if applicable)

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Suggested structure of project statement

- **Methodology:** how did you find the facts about the case?
 - Describe in detail the sources of information you used to research the case (secondary sources, people you interviewed, observation, etc.)
 - You may want to add as an appendix a footnoted version of the case
- **Pedagogy:** why did you structure the case the way you did?
 - Explain your choice of case & setting
 - This is a good place to explain the strengths of your case study
- **Modification notes:** how is the case different from real life?
 - State any places in which you modified (changed, omitted or added) info, compared to what your research revealed about reality
 - Explain the reason for the modifications. Modifications may be done to:
 - Preserve confidentiality
 - Create necessary content that cannot be revealed by research
 - Develop characters or conflicts
 - If you added (fake) info, explain what research you made to ensure the fake info is plausible

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A case's setting

- **Objectives:** what legal issues can the case involve?
 - A good objectives set covers all issues discussed in a specific section
 - An acceptable objectives set covers many/most issues in a specific section
- **Positioning:** what section will the case review?
 - Case shouldn't require addressing issues that appear in later sections or are not taught in BA (if case does, consider a way to resolve that issue externally; e.g., a different actor resolves that issue, or issue is stipulated by parties in litigation)
- **Character:** who is the protagonist? (In whose shoes will the reader be?)
 - A good character has a developed point of view (opinions, traits, environment)
 - An acceptable character is "flat" (just status, e.g., "General Counsel of X")
- **Conflict:** what decision(s) must the protagonist make?
 - A good conflict involves significant trade-offs, so the decision isn't obvious
 - An acceptable conflict is like an "issue spotter", with a "correct" answer
- **Chronology:** when is "now" in the case?
 - Affects what information the protagonist knows & what conflicts s/he faces; dictated by the objectives & positioning

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Developing a case study

1. Decide on the case study
 - Create options by looking for past events involving legal issues taught in BA
 - For each option, note sources of information (e.g., newspapers, case dockets, people you can interview, places you can observe) & options for setting
 - Select the most appealing/viable case study option
 - If a case depends on access to interviewees, contact them at this stage
2. Initial research
 - Read the available secondary sources
 - Conduct the relevant observations (if you haven't already experienced them)
 - Preliminary determination of case's setting
 - Interviewing (only after you've done all other initial research you can on your own)
 - May ask your interviewees if they can share relevant documents
3. Writing a first draft of the case (footnoted) & teaching notes
 - At this point, you may not write the "Teaching process" segment of the TN
 - This is when you decide if/how to enhance objectives, character & conflict
 - This is also where you disguise information (if you promised the interviewees)

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Developing a case study

4. Supplemental research, remaining first drafts, interviewee clearance
 - Do whatever research (secondary & follow-up interviewing) you need to clarify inconsistencies or enhance objectives, character & conflict
 - Clear first draft of the case with the interviewees (if applicable)
 - Write the teaching process segment of TN, and the methodology & pedagogy segments of the project statement
5. Final draft
 - Incorporate interviewee comments/supplemental research
 - Write modification notes of project statement
 - Attach footnoted case to statement & drop footnotes from student version of the case (if applicable)
 - Get final clearance from interviewees (if you promised them this)

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Dealing with confidentiality issues

- Case & setting choice
 - Discuss cases that concluded, not ongoing cases that are affected by publicity
 - Interviewees can suggest less sensitive cases are more comfortable discussing
 - Identify what information is already publicly available (e.g., court briefs, transcripts, opinions, news articles), and what information is confidential
 - Modify setting to reduce need for confidential information (eliminate objectives & conflicts that require much confidential information; interviewees are most useful to develop the character, which tends not to be confidential)
- Commit to interviewee clearance after (s)he sees the written case
 - Interviewee can tell you what information they want modified
 - If there are multiple interviewees, you face need to protect lawyer A from a quote that, on second thought, she prefers that lawyer B won't see she made
 - To address this, you may have two tiers of clearance: first, when you write a first draft you send each interviewee only portions including quotes or other information that is attributable to that person; second, you send the final draft for clearance to one contact person at the firm (or to all interviewees)
- Modifications
 - See next slide

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Dealing with confidentiality issues

- Modifications
 - In many cases you can **drop the information** that is deemed sensitive
 - If the info is needed, provide the **info without attribution** to a particular person (e.g., “one lawyer involved in the case saw this as...”) or masking the source the lawyer used to get the information (e.g., “plaintiffs lawyers were informed from a credible source that...”)
 - If that’s not enough, **disguise the client**: if there are many similar clients, you can just come up with different names for the client, counterparties and individuals involved, without changing any substantive info
 - When the clients are obvious from the facts, **disguise the entire industry** in which they work, and use excerpts of their key documents that are in the exhibits (e.g., agreements, charter, bylaws), with section numbers intentionally changed, in order to prevent identifying the firms through the documents
 - Normally, you would mention in the modification notes of project statement the true info that you omitted (so only I see if). If even this is a problem, you may simply mention in the modification notes what you changed (e.g., changed client, counterparties & individual names), without specifying the real info

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Additional information

- On the process and content of cases
 - HBS 9-901-055 Developing a Teaching Case (21p.)
 - HBS 9-391-026 Writing Cases: Tips & Pointers (7p.)
 - HBS 9-399-077 Writing Cases & Teaching Notes (11p.)
 - HBS 9-291-042 25 questions to ask as you begin to develop a new case study (5p.)
- On teaching notes
 - HBS 9-793-105 Teaching Notes: Communicating the Teacher's Wisdom (11p.)
- Website of environmental law case studies
 - <http://www.law.stanford.edu/organizations/programs-and-centers/environmental-and-natural-resources-law-policy-program-enrlp/case-studies>

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Grading the case study

- Satisficing criteria (“pass/fail”)
 - Positioning (case didn’t require addressing issues that appear in later sections or aren’t taught in BA)
 - Consistency
 - Issues, character & conflict were consistent with the time you chose for the story to take place
 - Issues, character & conflict were consistent with each other (e.g., character would plausibly face the conflict they did, and the conflicts address the issues they are supposed to)
 - Sufficient information (case included all info needed to analyze the conflict in a way that exercises the objectives)
 - This doesn’t require the case to include all info relevant to the analysis, since character might not have all info they would want. Case should include all info needed for character to realize what relevant info they don’t have, this info shouldn’t be plausibly obtainable before character must act, and character must be able to make an informed choice without this info
 - Accurate information (anything that isn’t real is specified in modification notes)
- Maximizing criteria (spectrum from bad to excellent)
 - Objectives (how many of section’s issues covered + how well conflicts covers each issue)
 - Conflict (analysis quality in “case analysis” portion of TN + level of dilemma conflict creates)
 - Immersion & methodology (depth of character/environment + plausibility of elements that you modified + ingenuity in acquiring info)
 - Pedagogy (guidance in “teaching process” portion of TN + quality of teaching methods)