

## Legal Research? And Writing? In a *Property* Class?

By Diane J. Klein

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Quick—recall your first-year property course. Was it something like this: an old gasbag droning on and on, many rows below you, about the Rule Against Perpetuities, and covenants that run with the land, and inverse condemnation ... interrupted intermittently by moments of terror in which you were asked some inscrutable question about race-notice recording statutes? Maybe livened up with a little takings clause jurisprudence? Or maybe you went to one of those “liberal” schools, where property meant rent control, environmental protection, and protecting the coast?

In any event, for most of us, the property course required studying, not “research” (research what? the Rule in Shelley’s Case?), and the only “writing” was frantic scribbling in a notebook (now, frantic typing on a laptop), followed a few months later by frantic scribbling in a blue book. I teach property, and I teach the Rule Against Perpetuities, covenants that run with the land, inverse condemnation, and race-notice recording statutes—and I require my students to do real research and writing—right there in the property course. I am convinced that legal research and writing can usefully be incorporated into first-year substantive courses, specifically property, benefiting students and professors alike. Let me explain first how, and then why, I am committed to including this component in my courses.

In my year-long property course, the students complete approximately 10 writing assignments,

five each semester. Some of these are straightforward problem sets (for example, involving the Rule Against Perpetuities). Others, however, require actual legal research and writing, typically resulting in a written product limited to 300 words. When institutional rules permit, scores on these assignments may count for up to 10 percent of a student’s grade; otherwise, they are treated as a completion requirement for the course but not graded.

In property, where the law varies so widely by state, a writing assignment often requires students to research the specific law of our jurisdiction (California), after class discussion has focused on casebook cases and “majority rules.” For example, after we completed our unit on the real estate transaction, including warranties of title, students were required to answer one of the following

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## From the Editor: A New Look

With this first issue of volume 14, we unveil a new design for *Perspectives*. Our goal is to continue to provide a balanced forum for a lively exchange of ideas and opinions about teaching legal research and writing, now presented with an updated, fresh, and more readable design.

As always, I welcome your comments and suggestions about the journal—whether about the content or the design.

—Mary A. Hotchkiss

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questions in an essay of no more than 300 words, plus proper case and/or statutory citations:

1. Does California law require disclosure by the seller of real property of the fact that a registered sex offender lives on the same block? If so, under what circumstances (or under all circumstances)? If not, how would you argue that it should? If you believe the law is unclear or undecided, choose a side and support it.
2. What is the current status under California law of “merger by deed”?
3. What is the current status under California law of the implied warranty of quality? Is a disclaimer of this warranty enforceable? If so, under what circumstances?
4. Under California law, does a latent violation of a restrictive land use statute or ordinance, which exists at the time the fee is conveyed, constitute a breach of the warranty deed covenant against encumbrances?
5. Under California law, does the covenant of seisin run with the land? In other words, if A conveys to B, who conveys to C, can C sue A for breach of the covenant of seisin?
6. Does California have an antideficiency statute? If so, please attach it, and summarize its provisions. If not, should it? Why or why not?

Each of these questions is designed (very roughly) to approximate a summer associate-type assignment, and students are given between one and two weeks to complete it (much longer than

they would have at a law firm!). Such an assignment is also “friendlier” to students than a work assignment because it gives students a choice of subject matter, and even the option of switching from one topic to another if the first turns out to be too hard to research.

Still, one of the first things I discovered was that I had to turn back a significant fraction (close to one-third) of the student submissions as nonresponsive. Many of my first-year law students, even after a semester of legal research and writing, still seemed to have the college student’s sense that any words they put on paper (and printed out from a computer), constitute an “answer.” Too few had made the shift to the lawyer’s understanding that you have not yet answered the question under a particular jurisdiction’s law *until you have found the relevant case and/or statute* (even if you have to stay in the library until long after your favorite show comes on!). Many of them gave up entirely too easily, and submitted, not so much memos, but apologies for their failure to write memos (“After six hours of research, I couldn’t find any case that ...”). Others answered a question *close* to the question asked, but not close enough. As unhappy as many of them were to learn that the assignment they thought they had done had to be re-done, I’m convinced that the classroom is a decidedly better place to deal with this misunderstanding than a first job. Helping students avoid that potential pitfall is the first of the reasons why my students write for me all year long.

The second reason also relates to preparation for professional life. Most civil lawyers communicate

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in writing most of the time, and the value of literacy in one’s native tongue (or second language, as the case may be) cannot be overstated. Text-messaging and the ubiquitous instant messaging may have brought back writing—but they have not brought back literacy. As Truman Capote remarked on the three weeks it took Jack Kerouac to write *On the Road*, “That’s not writing, that’s typing.” Only practice and consistent feedback can bring most students to the minimum levels of literacy necessary for the competent practice of our profession. A final exam provides no opportunity for this, first, because students are writing under extraordinary stress, and second, because exam-grading does not provide genuine feedback (from which the student might benefit), but only evaluation.

My third reason is pedagogical, rather than professional. Especially in larger classes (I have taught a property class of more than 100 students), the time I spend grading a student’s written work, even of just one page, may be the only few minutes each week I spend wholly in intellectual communion with an individual student, paying attention to nothing but what that student is saying. I do not rely on “volunteers” in class—everyone gets called on. But even so, questions and answers in class are always subject to that day’s agenda, pressures of coverage, and whether a student prepared. As for office hours, we know that no more than a small fraction of students attend, or even e-mail me with questions. Regular, required written work brings each student into my presence, and inevitably, the most articulate or prepared in class are not always strongest on the page. For that reason among others, nothing can replace reading and grading a paper as the “royal road” to a student’s nascent legal thought processes. (And yes, it is time-consuming. With a class of more than 100, I often spent close to one full day each week drafting, and then grading, assignments.) By writing for me, each student was assured of undivided attention for at least as long as I spent grading and commenting on his or her work, and I think my students deserve that.

The final reason is, in a sense, a selfish one. Because my students do research and write about material I (believe I) have taught, their work provides me with regular feedback about whether anyone is actually learning anything. As a new teacher, I might have anticipated that I would not still need that feedback five years later. I would have been wrong. Some teachers may be able to look out at rows of students and tell by the look in their eyes whether they understand the elements of adverse possession, or the difference between a race and a race-notice recording statute. I lack that power, and don’t see myself acquiring it anytime soon. Until I do, I find I am better served by what is, in effect, an ongoing teaching evaluation, provided by students who either do or do not understand what I have been going on and on about (and can’t fake it by looking attentive). One reason my students write is to help make me a better teacher for them, and for their successors.

To me, most of the foregoing is obvious, even embarrassingly so. It is hard to believe that even now, some regard it as a “radical” strategy to require students in first-year substantive courses to write during the term. One of my older colleagues at another institution, in what was apparently intended to be a decisive condemnation of my practice, asked sneeringly, “Is that the way they taught you at Harvard?” As a matter of fact, it wasn’t, although my property professor, a visitor from another (elite) institution, does require his students in his home institution to write for him on a regular basis. But perhaps it should have been.

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