

THE LAW SCHOOL'S NEW COMPETENCY MODEL

LEGAL KNOWLEDGE

Lawyers must know the law and law school is the first, and, in many respects, the most important opportunity for them to learn the law. The occasions to learn the law begin in law school but continue throughout a lawyer's career and lawyers who are "life-long learners" are much more successful than

LEGAL KNOWLEDGE	Knows the relevant rules and can assimilate new information into the structure of law	
	Rule Comprehension	Knowledge of Law and Legal Systems
	<ul style="list-style-type: none"> -Knows the rules and can distill rules into their component elements -Knows when he or she needs to do additional research 	<ul style="list-style-type: none"> -Understands the roles of different legal institutions -Knows how to resolve potential conflicts between laws of different jurisdictions -Acquires a foundation of law knowledge needed for practice areas

those who have more limited horizons.

There are several difficulties with acquiring legal knowledge, including the complexity of the doctrines, rules and processes created and used by lawyers; the breadth and reach of law, legal rules and procedure; and the fact that American law is often made in the fact-specific setting of cases in which variations of the facts may dictate a different outcome. The complexity and extensive scope of law, laws and legal knowledge have accelerated the trend of specialization in law practice and, increasingly, lawyers tend to focus their career goals and aspirations in more narrow practice settings.

During law school, students will be exposed to a broad and demanding reach of areas of law, procedure, and practice and they will be expected to acquire both the principles of these areas of law as well as an ability to continue to learn the law throughout their careers. Most state bar examinations test significantly on acquired legal knowledge and legal employers will expect a significant foundation of legal knowledge in their new lawyers.

WRITING

WRITING	Writes in an accurate, well-reasoned, logical, organized, clear and concise manner	
	General Written Expression	Audience- Specific Documents
	<ul style="list-style-type: none"> -Organizes issues in a logical order -Employs syllogistic reasoning when appropriate -Writes clearly and concisely -Edits written work effectively -Uses proper formatting, grammar, spelling and citation form 	<ul style="list-style-type: none"> -Drafts documents common for specific practice areas -Knows the rules and industry norms governing those documents -Writes appropriately for the intended audiences

Effectively communicating through writing is the lawyer's most fundamental, and perhaps most utilized, skill. Virtually every job in the legal field requires some form of writing. Litigation attorneys spend significant time drafting subpoenas, interrogatories, complaints, declarations, motions, briefs, and orders. Transactional attorneys will spend their time drafting deal points, contracts, wills, trusts, and charters. Judicial clerks and judges spend their time drafting bench memoranda, orders, and opinions. In addition, all types of attorneys will draft research memoranda, as well as letters and emails to clients and opposing counsel. In short, good lawyers must be good writers.

Even landing a first legal job will require competency in writing and much of your education is designed to improve your proficiency in writing. SCU students must take several writing classes to graduate. In addition to taking LARAW and Advocacy (both of which require significant writing), students must satisfy the Supervised Analytic Writing Requirement prior to earning their degree. In addition, the certificate programs and journals may also require an in- depth writing assignment to earn the certificate

or join the journal. Your competency in writing is tested on the California Bar Exam where students must write several essays over the course of two full examination days. And nearly every employer - and certainly every law firm, district attorney office, public defender office, or state or federal government agency – will request a writing sample prior to considering an application for employment. As such, strong legal writing proficiency is a skill that must be learned, honed, and showcased throughout law school.

There is often a disconnect between an idea or argument as crafted in one’s mind, and the ability to persuasively and clearly put that thought into writing. Accordingly, the key to becoming a good writer is to practice, practice, and then practice some more. In addition to the required classes mentioned above, several other clinical classes and upper-division seminars will offer the possibility to engage in extensive writing and feedback. Students should also attempt to take advantage of any opportunities to practice writing answers to in-class hypotheticals and practice exams offered in their exam classes. Only through repeated attempts at synthesizing cases, presenting analogical arguments, drafting contractual provisions, etc., will students be able to close the gap between thought and written word. In selecting classes, professors, internship, and externship opportunities, students should consider outlets that will provide opportunities for drafting the widest variety of legal documents.

Critically, students should specifically seek writing opportunities that will generate feedback from professors and supervising attorneys. Such instances necessarily involve critique and judgment, which can be (but does not have to be) an intimidating process. In the law school or internship environment, however, that critique will be delivered constructively, with the goal of preparing students for a legal career.

At the same time, law students should also be honing their own editing and critiquing skills. The ability to read and edit another’s work reinforces writing skills and is dynamically related to improving one’s own written product. Through self-critique and peer-critique development, students will learn that writing is an iterative process that may require several rounds of drafting, feedback, and reformulation. In addition, by developing peer-to-peer constructive criticism skills and providing feedback on another’s writing and organization, students will better recognize those same vulnerabilities in their own writing.

Repeated practice in drafting and in constructive critique should help the law student develop strength in the following areas:

- Organization and logical flow so that a reader easily follows the relationship between sub-arguments and major themes
- Efficiency in structure and verbiage so that ideas are expressed as concisely as possible
- Command of citation requirements, formatting, spelling, and grammar so that the writer is able to convey their authority over the material and their attention to detail
- Persuasive narrative structure
- Ability to serve as a constructive critic for colleagues or supervisees seeking to improve their own writing

LEGAL ANALYSIS

LEGAL ANALYSIS	Uses analytical skills, logic and reasoning to evaluate legal issues.		
	Issue identification	Analysis	Formulate Legal Arguments
	<ul style="list-style-type: none"> - Identifies legal and factual issues in fact patterns - Distinguishes between major, minor and irrelevant issues 	<ul style="list-style-type: none"> - Synthesizes rules from various legal authorities - Applies rules to facts - Analogizes and distinguishes facts and precedents appropriately - Invokes policy considerations and understands broader legal and social context - Understands math concepts necessary for lawyers 	<ul style="list-style-type: none"> - Makes arguments based on precedent, analogy, fact distinctions, policy and legislative history - Identifies authority that is inconsistent and explains why it is not relevant

Legal analysis is one of the core competencies needed by lawyers and taught in law school. The competency includes three essential abilities—issue identification, analysis of the issue(s), and formulation of legal arguments that address and resolve the issue(s). The ability to perform this type of analysis, which is essentially a deductive reasoning process, is tested on the LSAT and forms the most significant aspect of the first year learning experience. Most first year courses include a core focus on introducing and enhancing students’ ability to reason through or analyze legal issues and problems.

The first ability—issue identification—involves the student’s ability to identify key legal and factual issues arising in various factual situations. Once identified, students must then be able to distinguish those issues that are relatively important from those that are relatively unimportant in resolving the client’s legal problem.

Having identified and prioritized the issues, students are then required to perform legal analysis of the key issues that they have identified. This second stage of the analytic process requires proficiency at:

- examining legal authorities (e.g., case law, statutes, etc.) and applying them to a factual situation (real or hypothetical);
- analogizing and distinguishing facts and precedents appropriately (i.e., understanding and being able to explain why the legal rule or policy applied in one factual situation should, or should not be, applied in another, similar situation);
- invoking appropriate policy considerations and understanding how policy considerations affect resolution of particular factual situations;
- understanding the broader legal and social context of legal principles and policies and how they might affect the resolution of issues at hand and, importantly, how to use social or legal context to advocate for a client or desired outcome;
- drawing on other disciplines (such as economics, philosophy, mathematics) to resolve legal and policy issues.

The third stage of the development of analytic skills is the ability to formulate legal arguments. Simply put, this is how lawyers deliver value—often great value—to their clients. This skill includes the ability to make arguments based on precedent, analogy, fact distinctions, policy and legislative history. All lawyers, whatever their practice areas (transactions, litigation, client advising, or group representation), must be able to formulate, and persuade others of the appropriateness of, their arguments based on analysis and reasoning.

It is important to remember that legal analysis skills and abilities are not innate; rather, these are skills and abilities that can be learned and can be taught. Students have an opportunity to develop these skills in most first year courses and then refine and enhance them in doctrinal, skills, and experiential learning courses during the rest of their law school experience.

RESEARCH

RESEARCH	Knows how to find appropriate legal and factual information	
	<u>Legal Research</u>	<u>Factual Investigation</u>
	<ul style="list-style-type: none"> - Knows what sources to research - Knows how to research those sources efficiently - Updates research to ensure citations are current 	<ul style="list-style-type: none"> - Identifies sources of relevant factual information - Evaluates the credibility/reliability of information sources - Develops coherent research design and appropriate investigative techniques - Documents and preserves factual information

The ability to conduct research – both legal research and factual investigation – is an essential and core competency required for the practice of law. Almost every aspect of lawyering, from ascertaining the facts of your client’s situation, to locating favorable legal authority, to preparing for interviews with

potential witnesses, experts, and contacts involves doing research. If 99% of genius is perspiration, much of that should properly be allocated to “doing your homework” which, in the current era of increasing amounts of digital information, requires as well as locating and sifting through information, or in other words, research. Below are some examples of how research skills, in addition to helping you complete the legal research aspects of the curricula, can enhance your academic and professional careers.

One advantage of SCU law is its Silicon Valley location and location on the Santa Clara campus. But to make connections with those in the community who have interests that are similar to you and can you help you advance your interests requires doing some background research.

Many job connections are made through informal connections and work of mouth. Plumbing the SCU alumni network and doing informational interviews with those within the community can help you build your network and position you to take job opportunities. Preparing for these interviews and the ones with prospective employers as well is very important, reflecting initiative, intelligence, and perceptiveness

Professors are often interested in cultivating connections with and hiring as RAs students that have interests aligned with theirs. Research the professionals with whom you have an affinity to surface opportunities to connect or find out more about their knowledge of certain employers, topics, or opportunities

Becoming an expert on a particular area is a very good way to distinguish yourself from others. This requires researching and following a particular topic closely and faithfully, and trying to understand it closely and from different perspectives.

PROFESSIONAL RESPONSIBILITY

PROFESSIONAL RESPONSIBILITY	Knows the legal rules and ethical obligations of being a lawyer	
	Rules Governing the Legal	Transitioning into the Profession
	<ul style="list-style-type: none"> -Knows and complies with Rules of Professional Responsibility -Recognizes and addresses potential ethical issues. 	<ul style="list-style-type: none"> -Understands the business of the legal industry -Provides client services to advance client interests -Develops relationships within the legal profession -Understands need to maintain and enhance the reputation of the profession -Demonstrates professional courtesy

The rules of professional responsibility govern the work of all lawyers and violating them can result in losing one’s license to practice law. They are centrally important in all realms of practice and lawyers will confront professional responsibility issues almost weekly. Because of their pervasiveness in practice and the stakes involved in violating them, students should develop as strong a grasp as they can of the rules and how they apply while they are in law school.

All students must take our Legal Profession course. But one course cannot cover all the ground: different kinds of practices raise different professional responsibility issues and the more you see professional responsibility issues in the contexts in which they arise, the better prepared you will be to enter practice with the tools you need. It is often the case that early recognition of these issues (such as potential conflicts of interest) permit you to avoid larger problems later.

Beyond the basic Legal Profession course, many courses at Santa Clara introduce, reinforce, or permit you to understand and practice the skills you will need to practice ethically. Teachers vary in their coverage of these issues within substantive courses and you should consider this when you are choosing courses. A list of courses and the extent to which they introduce, reinforce, or practice the skills involved is available at .

Clinical experiences and externships, where you will be exposed to actual clients, are the best way to “practice” identifying professional responsibility issues and learn how to resolve or manage them. Our various “advocacy” courses and many legal writing courses will expose you to these issues and require you to resolve them as well.

The Legal Profession course is the primary source for a comprehensive overview of rules governing the profession. Courses that “introduce” or “reinforce” these skills will identify the primary rules that are in play in their contexts and can supplement the substantive learning you acquire from the Legal

Profession course.

Smooth transitioning into the profession requires more than simple familiarity with the formal rules; it also requires some understanding of the business of the legal industry. While we like to think of law as a “profession” (which it is), it is also a business that generates income for lawyers. Students ought to have a reasonably well-formed idea of how that business works and the limitations professional responsibility rules place on that business. Thus, it is important for those entering the profession to be familiar with

- the different ways lawyers contract for services with clients (and the legal requirements for so doing),
- the limitations on engaging clients whose interests conflict with other clients (and strategies in managing potential and actual conflicts),
- the special rules governing what lawyers may and may not do for clients, and some of the methods lawyers use to protect client confidences.

These issues will come up in different courses (depending on the professor) and are important in building sophistication and easing the transition from law school to practice.

Good lawyers identify the services clients need and provide them efficiently. Succeeding in law school requires students to efficiently organize work; these are skills that are equally important in practice as clients are entitled to the best services they can get without undue expense. Efficient work habits extend to the lawyer’s work of

- interviewing clients and witnesses,
- understanding the client’s goals, and
- creating strategies to meet them without undue complexity and expense.

One must also develop efficient work habits to in creating successful settlement strategies and in negotiating effectively on behalf of the client. Clinical offerings, externships, and simulation courses that put students into the lawyer’s role are excellent vehicles for developing an understanding how to make your work as a lawyer as effective as it can be.

Developing competency as a legal professional will require you to develop good relationships within the legal profession. One’s law school classmates form one’s “network” while in law school and many will remain professional colleagues on entering practice. Students begin building their reputation for honesty and ethical behavior in law school and continue building it in practice. To do so, one needs to acquire the norms of appropriate behavior when appearing before tribunals, negotiating with adversaries, or working collaboratively with other lawyers on transactions. Working with other lawyers in bar associations and doing one’s share of pro bono work exposes new lawyers to more experienced lawyers and offers opportunities to build a strong reputation. Because lawyers are sought after in various civic groups (school boards, advisory boards, boards of directors, etc.), opportunities abound to demonstrate one’s legal and personal skills to lawyers and non-lawyers alike. Law school offers entry-level opportunities in many of these areas (student memberships in bar associations, volunteer and pro bono work, etc.) and taking advantage of them will build your competencies in this area.

Competency in professional responsibility also requires individual lawyers to work to maintain and enhance the reputation of the profession to which they belong. As members of a learned profession whose work is central to the functioning of modern society, lawyers occupy a privileged role which exposes the profession to regular critical scrutiny. It is each lawyer’s responsibility to think beyond her own reputation to the reputation of the profession as a whole and to work at enhancing that reputation. Volunteer and pro bono work should become part of one’s work, both as a law student and later as a lawyer. Volunteering one’s skills in civic and pro bono work builds lawyering skills, can effect positive good for those who otherwise cannot afford a lawyer and enhances the reputation of lawyers more generally.

Learning to treat other lawyers with professional courtesy is also part of developing one’s competency in professional responsibility. Different areas of practice have different “norms” that informally regulate how lawyers relate to one another. In some places, for example, granting an opponent an extension of time when needed is an expected “courtesy.” Discovery and negotiation are examples of other areas where local norms of behavior may be in place. Successful lawyers learn and understand local norms of

professional courtesy. Much of this is learned in actual practice following law school, but one can begin the process during law school by working on actual legal matters, either in clinical courses or in externships.

INTERPERSONAL SKILLS

INTERPERSONAL SKILLS	Understands how to communicate and work effectively with others		
	Self-Awareness	Working with Others	Communication
	<ul style="list-style-type: none"> -Understands his or her own personal values and how those values might influence his or work -Develops awareness of his or personal weaknesses -Develops strategies to compensate for weaknesses, including asking for help 	<ul style="list-style-type: none"> -Interacts professionally and respectfully -Develops ability to see and understand opposing points of view -Works well in teams -Builds consensus -Works well with professionals from other disciplines 	<ul style="list-style-type: none"> -Listens actively -Chooses appropriate means to communicate with different audiences -Demonstrates effective presentation skills -Initiates difficult conversations

Good interpersonal skills are central to the functioning of a competent lawyer and it is important that students work to improve their competency in this essential set of skills. Strong self-awareness, the ability to work well with others, and excellent communication skills are all components of this essential competency.

Legal employers cite self-awareness as one of the most critical skills for young attorneys. Including this skill within the competency model has the goal of emphasizing its importance to students. In addition, it conveys to them that their legal education, both doctrinal and experiential, provides them an invaluable opportunity to explore and understand their values, weaknesses, and strengths, and to develop strategies for improvement.

Working well with others very often involves the ability to communicate effectively. Communication with clients often challenges interpersonal skills because both legal service providers and clients have filters through which they interpret verbal and nonverbal communication. These filters come from what one has learned and what expectations one is raised with and self-awareness is essential to understanding one's own filters.

Cross-cultural communication is not just limited to ethnic and national perceptions, but also socio-economic, gender, age and environmental factors. To understand cross-cultural communication, one needs to recognize and understand the filters through which clients see and interpret the world. Lawyers need to recognize and interpret non-verbal signals, and understand how clients recognize and interpret non-verbal signals. Learning cross-cultural communication requires exploring and understanding gender and cultural norms.

Clients are people with many different personalities, past experiences, and needs. Some are needy and/or distressed and one needs to explore strategies for working with clients who are needy and/or distressed. Appropriate office policies and procedures can form a basis for supporting requests to clients. Setting expectations and boundaries early avoids miscommunication and misunderstandings with clients, and preserves the ability of the legal services provider to competently represent his/her clients.

Similarly, clients who are survivors of trauma present many interpersonal challenges to attorneys. In order competently represent survivors of trauma, it is important for attorneys to understand the impact of trauma on client recall and their linear recollection of events. Memory has an impact on ability to testify, and has a physiological basis deriving from the trauma experience. In addition, it is essential that a lawyer communicate with such clients in a way that avoids re-traumatization of their clients. Training clients in self-care techniques allows law students and attorneys to provide access to justice for trauma survivors over a longer period of time.

Communication with clients may require the use of an interpreter – spoken or sign language and

working with an interpreter also requires interpersonal skills. It requires that students understand the importance of verbal as well as non-verbal language, the use of first- person references, and the pace of interpreting in order not to miss important information.

Finally, effective communication with clients requires lawyers to understand the importance of documenting communications in written form, both to memorialize and to demonstrate work done.

Competency in interpersonal skills also underlies effective communication with colleagues and supervisors, including those who work as a team on clients' cases. Those skills might involve clear and timely updates,

resolution of professional disagreements on strategy and approach, and common messaging to clients.

Competency in interpersonal skills also lies behind effective presentation skills, for example presenting a case for acceptance by a firm for representation, or information sharing during case rounds. The ability to present a case concisely to colleagues and supervisors also translates to the courtroom when judges ask for a summary of the key points/issues of the case.

Learning to receive and respond to constructive criticism is also an important aspect of one's competency with interpersonal skills.

Somewhat different interpersonal skills are involved in communicating with opposing parties and, in particular, in negotiation skills. Knowing when and how to reach an agreement with opposing parties while zealously advocating for one's client is critical to the practice of law. One learns in this context that maintaining a focus on the facts and law of a case is a more successful strategy than being drawn into opposing counsel's personal attacks. Professional communication also sets the tone for future dealings with opposing counsel. Competency in this arena also involves understanding the importance of documenting conversations.

The interpersonal skills involved in communicating effectively with judges and fact- finders center on development of oral presentation skills. These skills include the ability to listen to and answer the questions posed by judges, as well as the ability to summarize salient points of the case.

In addition to the technical aspects of written communication, learning the intricacies of tone in letters and oral communications, especially when dealing with bureaucracies, is an aspect of developing strong interpersonal skills in this arena.

Communicating with partner individuals and organizations challenge one's interpersonal skills. Within the context of inter-disciplinary work with (for example) attorneys and law enforcement, psychologists, physicians, and social workers lie the interpersonal skills of role definition, collaboration, clear communication and persuasion.

Sound interpersonal skills also enable one to develop strategies for dealing with difficult clients, opposing counsel, fact-finders. This includes effective and sensitive communication of one's conclusions that the law offers little to help the client. Sound preparation, maintaining a focus on the facts and the law in the case, and retaining a professional tone, again with a focus on the case at hand, is a skill that can be practiced by law students.

INITIATIVE

INITIATIVE	Takes responsibility and proactively manages work		
	Leadership	Ownership and Accountability	Professional Development
	<ul style="list-style-type: none"> -Works with drive and determination -Is innovative and entrepreneurial -Establishes credibility and integrity -Builds relationships -Thinks strategically 	<ul style="list-style-type: none"> -Takes personal responsibility for getting things done -Knows how and when to delegate and engage others -Takes pride in his or her work -Manages time efficiently and meets deadlines 	<ul style="list-style-type: none"> -Demonstrates intellectual curiosity and commitment to life-long learning

It is essential for students and lawyers to develop the competency to take initiative. Initiative can mean the difference between getting an A or B in a law school class, or more importantly passing or not passing the bar exam. Behaviors that show initiative can lead to superior employment opportunities, better case outcomes, faster promotion, and financial rewards. Initiative in *law school* leads to efficient time management in law school and better enjoyment of life beyond law school. Students who master this competency are able to maintain a work-life balance by setting a schedule that allows for adequate time for work and play, and can avoid cramming for finals because reading, reviewing and outlining is far more effective if done throughout the semester. This leads to better mental and physical health, which leads to higher quality work product. In addition, the students with greater initiative win the respect of professors and superiors by being prepared and engaged in class.

One can also develop initiative in effectively engaging with others and building relationships. A student's initiative aids in forming and participating in study groups, thereby enhancing understanding of the subject matter engaging classmates in working through the material together. Showing initiative also leads to one's credibility with professors and classmates, some of whom will be important to one's professional network in the future.

Initiative lies behind setting expectations with professors or classmates, and gaining a reputation for meeting or exceeding those expectations.

Initiative in the *workplace* (internships, externships, clinical work, and working as a lawyer) allows individuals to distinguish themselves because they will be innovative and entrepreneurial in nature. For example, when working with a client, one learns to take time to understand client objectives, and evaluate all options to achieve the objectives. One then can define and consider the universe of solutions to a client's problems, and suggest multiple alternative courses of action and the pros/cons of each. In addition, developing initiative leads to the ability to take personal responsibility, which is an essential skill for employees of all types. Lawyers and law students are more valuable if they eagerly look for opportunities to volunteer for additional projects, tasks, or assignments when appropriate, and are able to say "no" when it is not realistic to take on another assignment. Well-balanced initiative helps set expectations to ensure one gains a reputation for meeting or exceeding those expectations. Those who are strong in initiative will be viewed as a leaders because they are able to think strategically. This leads to better understanding in how to engage with particular clients in meaningful and efficient ways and to better understand a client's goals and expectations.

Initiative leads to sound evaluation of the short- and long-term effects resulting from legal work product, thereby improving its quality. The goal is to become adept at finding holistic solutions to problems, and approaching one's legal advocacy or negotiation style in a manner that works for the particular situation and personalities involved.

Initiative is also important in *success on the Bar Exam*. Studying for the bar requires focus, determination, time management, and leadership. As one improves one's competency in initiative, one advances the prospects of a successful bar preparation. Successful bar takers show initiative by taking advantage of all reasonable tools to assist with bar preparation, dedicating ample time to studying, but maintaining a work-life balance by setting a schedule that allows for adequate time for work and play and avoids cramming. One can reduce stress relating to bar prep by taking the initiative to engage with other students to enhance understanding of the subject matter.

Initiative is also essential to one's own *professional development* which includes finding new opportunities, finding new clients, building a personal brand, and networking. Lawyers exhibiting initiative stand out as trusted and respected leaders, because they have committed themselves to intellectual curiosity and lifelong learning. They seek opportunities to learn new skills, e.g. through volunteering, continuing legal education (CLE), or helping colleagues on a different case or project. Mastering the skills and behaviors of this competency will reap lasting benefits.

CONSCIENCE AND COMPASSION

CONSCIENCE AND COMPASSION	Demonstrates concern for others
	<ul style="list-style-type: none"> -Is empathetic -Acts with integrity and honesty -Understands the ways in which the rule of law improves the world -Is committed to making the world a better place -Develops an ethic of service

Another group of essential lawyering competencies includes conscience and compassion. These attributes and abilities are derived from important contributions of sociologists working in the area of “emotional intelligence.” They have found that men and women who have high levels of emotional intelligence are more effective leaders, managers, and professionals. They have higher levels of ability to persuade others to follow them and support their vision for the organization or the case.

An aspect of this competency is the duty of lawyers to advance the legal profession as a “public calling” and to use law and legal process to the betterment of our society and our communities. The development of personal attributes such as integrity, honesty, and service for others is essential to one’s personal success and to the long-term health and reputation of the legal profession.

Some of the key attributes and abilities of emotional intelligence and public and professional service important for lawyers are:

- Is he or she empathetic? Does she have the ability to understand and respond to other people’s (whether opposing counsel or a client) challenges, unhappiness, or conflicting emotions?
- Does he or she appreciate the importance of law and legal process in addressing clients’ problems and is committed to using law to solve collective, societal and individual clients’ problems?
- Does he or she understand and advance the role of lawyers as community servants and the role of law in advancing societal goals and betterment?

These attributes and abilities are often shaped before a student arrives at law school, through their families, church or religious affiliation, and early educational experiences. However, law school, through the modeling of professors and staff, clinical experiences with clients, and the use of hypothetical learning experiences, enhances and reinforces their attributes and abilities and permits students to understand their great importance in lawyers’ work in client representation, public and community service, and other roles that lawyers play in our society.

CREATIVE PROBLEM SOLVING

CREATIVE PROBLEM SOLVING	Comes up with innovative solutions to problems		
	Problem Diagnosis	Evaluation of Options	Action Plan
	-Analyzes the situation and identifies the legal and non-legal problems -Identifies who can help resolve the problems -Identifies the possible causes of the problems -Identifies the roles, interests, and objectives of key stakeholders	-Develops a comprehensive list of options to address the problems -Evaluates the costs and benefits of each option -Explains the options and how to prioritize options in a way that clients can understand	-Recommends options to client -Implements the selected option -Evaluates the efficacy of the attempted solution

Creative problem solving is essential to effective lawyering. Lawyers must be forward thinking, flexible, able to apply and interpret law, proactive and reactive. The American Bar Association created the Lawyer as Problem Solver Award to recognize individuals and organizations that use their problem-solving skills to forge creative solutions. To prepare students for the rigor of law practice, Santa Clara Law identified creative problem solving as a core competency that should be introduced, practiced, or reinforced in each course.

Santa Clara Law’s rich curriculum allows many opportunities for students to practice creative problem solving. Traditional law school courses provide the substantive knowledge that informs creativity – the classroom provides the perfect space to analyze situations; translate positions into interests; generate and assess both conventional and novel options to address the problem; and to build consensus around an option. Clinical and skills courses, along with externships, where students engage with real-life clients and legal matters are perhaps the best way for students to “practice” diagnosing problems, evaluating options, and executing an action plan.

Competency in creative problem solving requires, first, problem diagnosis. This requires learning how to analyze the situation and identify and sort the legal and non-legal problems implicated by the facts. One then learns how to identify who (courts, legislatures, other parties, etc.) can help resolve the problems, the range of possible causes behind the problems, and the roles, interests, and objectives of key stakeholders. Who has an interest in, or is affected by the problem, and how strong are their interests in the resolutions that might be considered?

Having identified the problems, their sources and causes, and those affected by the problem, one then begins the process of considering and evaluating the potential options for resolution. In this step, one learns to develop a comprehensive list of different options which are then to be evaluated. What are the costs and benefits of each option and how do those costs and benefits affect the different stakeholders?

Since the options for resolution must eventually be chosen by the client, the lawyer’s job then becomes creating an intelligent and accessible explanation of the options so the client may choose from among them. Lawyers learn to add value by prioritizing the options and, perhaps, recommending which, in the lawyer’s judgment, will best serve the client’s expressed interests remembering that, always, that the choice of which to pursue is the client’s decision, not the lawyer’s.

Having created an accessible range of options and consulted with the client about which best serve the client’s interests, one then learns to formulate an action plan for implementing a resolution to the problem. This too requires close collaboration with the client and, before a plan is implemented, the client must consider the efficacy of the chosen option, its costs (relative to other possible plans), how the plan will affect other stakeholders, and the risks of pursuing the chosen option. When the client understands the costs, benefits, and risks of the plan and chooses that plan, the lawyer then sets out to implement it efficiently and without unnecessary expense.

Opportunities to develop or strengthen competency in creative problem solving are present in even the most traditional law school courses. How could a party on the losing end of a classroom case

avoid the problem in the future? How might a transaction have been restructured to avoid or minimize a negative outcome that is before the class?

Clinical offerings and externships perhaps offer the best opportunities to develop creative problem solving ability. Real clients with real problems challenge students to pursue solutions that often implicate many areas of law. With the guidance of a mentor or clinical professor, these settings allow the student to uncover the relevant facts and develop a structured approach to legal problem solving. In this real-life setting, students learn directly to uncover all the options, make appropriate evaluations and recommendations, effectively communicate the range of solutions to the client, and collaborate with the client in implementing the chosen action plan.

Developing competency in creative problem solving is a lifelong learning process and one's competency improves as one encounters more clients and their problems. But the process begins in law school and attention to this essential competency while in law school will pay strong dividends once one enters practice.