

A Litigation Support Course in the Finance and Accounting Curriculum

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Abstract

Teaching with real world examples creates an exciting and innovative learning environment. The University of Baltimore developed its cross-disciplinary litigation support course at the graduate as well as the undergraduate level and to service the certificate in forensic accounting. This note outlines the course, its projects, its pedagogical setting and possible future improvements.

KEYWORDS: Litigation support, damage calculations, forensic accounting, forensic finance, valuation, lost income analyses

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Forensic accounting and forensic finance:

The word *forensic* means "relating to legal matters." These legal matters may include law enforcement, criminal proceedings, civil litigation, personal injury adjudications, business disputes and a host of other situations that are concerned with discounting future cash flows from human endeavor and property.¹ According to US News & World Report, forensic accounting has become one of the "20 hot job tracks of the future."² Actuaries, finance professionals, and economists all contribute to solving these problems. Forensic science and the work of lawyers is chronicled in television shows, and recognition of the importance of forensic accounting and finance has also boomed in the last decade due to the debacles of Enron, Tyco, WorldCom, Bear Stearns and others.

Forensic services involve the application of special skills in accounting, auditing, finance, quantitative methods, certain areas of the law and research, and investigative skills to collect, analyze and evaluate evidential matter interpret and communicate findings, and may involve an attestation or consulting engagement.³ More specifically, the forensic specialist may be an expert witness, a consultant or a support person for actual, pending, or potential legal or regulatory proceedings before a trier of fact in disputes between parties.

In response to the need for forensic services in the workplace, the University of Baltimore developed a graduate level certificate in forensic accounting which consists of four courses: Forensic Accounting Principles, Dissecting Financial Statements, Litigation Support, and Investigative Accounting and Fraud Examination. The litigation support course is the subject of this article. The course serves the accounting certificate, as well as undergraduate and graduate students in finance, accounting and quantitative methods.

¹ <http://www.forensic-accounting-information.com/forensic-accounting-faqs.htm>

² <http://www.masters-in-forensic-accounting.com>

³ Forensic Procedures and Specialists: Useful Tools and Techniques, pg. 2.

Course outline:

The course objective is to introduce the student to litigation support and forensic damage analysis through the use of lectures, guest speakers, assigned readings, a class project and a final examination. At the completion of the course the student will be able to create, review and present forensic damage analysis, as well as serve as either support or supervisory staff. The student will be able to provide intellectual, procedural and document management support for testifying experts, be familiar with MS Word, PowerPoint, Excel, collaborative software, archive management and off-site storage of documents, be able to understand the legal environment within which negotiation and litigation activity arises and to understand the crucial role of confidentiality in litigation-related work.

Due to the paucity of traditional textbooks on litigation support and damage estimation, we used a classic RAND Corporation study Computing Economic Loss in Cases of Wrongful Death by Elizabeth M. King and James P. Smith⁴. This book details the process of calculating economic loss in wrongful deaths of in airline accidents. For the litigation support course, it was used as an archetypal tutorial to calculate damages in a personal injury case. The topics in the book included base year income, salary growth, work life expectancy, nonmarket loss, personal consumption offset, taxes and discount rates. Each of the chapters was covered in detail during a class lecture and attorney guest speakers were brought in to supplement the chapters and to provide practical insight.

The guest attorneys discussed how they used expert witnesses in their practice and shared insights about their personal injury cases and their use of forensic experts. As confirmed by our institution's student evaluations, the guest speakers were very informative and the classroom discussions that ensued gave the course the real world edge that it needed to help students understand the litigation environment. In addition to the guest speakers, the class also included a visit to the Circuit Court for Baltimore City to observe a case in progress.

The rest of the semester was spent learning the tools that a forensic financial economist or accountant would use to value the equity of a non-public business. Students were introduced to various websites and reference tools to aid in developing a framework within which to estimate the value of a business. The tools included

⁴ Computing Economic Loss in Cases of Wrongful Death, by Elizabeth M. King and James P. Smith, RAND INSTITUTE, 1988, ISBN 0-8330-0888-9.

discounted cash flow models, projection of future cash flows, choice of appropriate discount rates, market "comparables" methods and other asset valuation methods. In addition to the lectures, the students were given additional reading materials about valuation methods which would later be used to complete the class project. Some students also took advantage of the instructor's web-accessible video-streaming demonstration of Hyperion Strategic Finance⁵, an enterprise-class financial software application that is used to produce projections of future cash flows and other financial data.

By requiring frequent verbal contributions the class stressed that a very important job of the expert witness is to communicate effectively. A list of expert witness "behaviors," both good and bad, was developed and reviewed frequently during the semester.

The culminating activity of the course was a project that involved either the valuation of a closely held business or the estimation of the monetary award to be given to a claimant or survivors in a personal injury context. Relying on real world data and examples as much as possible, students used the set of tools learned in class to develop a business valuation or a personal injury, wrongful death, or medical malpractice economic loss analysis. In grading classroom presentations, the methodology and presentation rather than the actual "expert opinion" were stressed. Students learned to communicate a logical thought pattern and to communicate orally using presentation software, with subsequent written submissions in litigation format. Thumbnail sketches of student projects are presented in the following section.

Class projects:

Business valuation projects:

The business valuation project used an actual company with whom the instructor had consulted. All confidential information was deleted from the financial information given to the students, who received several years of incomplete financial data, a rudimentary business valuation prepared by an accounting firm and some corporate history and industry background information.

The resulting business appraisals varied in their assumed purpose, and thus in their quantitative outcomes. Some students chose to assume that the business was being sold in an arms-length

⁵ "Beyond spreadsheets and silos: enriching financial planning using Hyperion Strategic Finance," Journal of Global Business Issues, Vol.1, No.2, Summer, 2007, 115-120.

transaction and others assumed that the business was being valued for estate tax purposes. To manage this diversity, frequent meetings with the instructor were encouraged.

Personal injury projects:

In contrast to the business valuation projects, where the instructor provided a specific assignment, students were encouraged to describe hypothetical tort and bring forward either the plaintiff case or the defense rebuttal. For those who preferred a more specific assignment, the instructor provided actual cases, with identifying information redacted. The cases ranged from a wrongful termination suit to a case against a hospital for negligent treatment of a newborn. The hospital malpractice case was presented by a student who was the child's mother. In several instances, students had personal or professional connections to the subject matter of the case, surely a motivating factor.

As with the business valuations, students were encouraged to work closely with the instructor, as well as with each other. When possible, the instructor endeavored to place a student on either side of a case, which led to some interesting, even emotional class presentations.

Critical thinking, creativity and in a few instances teamwork skills were imperative and linked well with our school's professional focus.⁶

Pedagogical context for the course:

In 1956, Benjamin Bloom developed a classification of levels of intellectual behavior. In the 1990's a former student of Bloom, Lorin Anderson, revised the list to make it relevant to 21st century pedagogy. The revised list is shown with the highest level of learning first to the lowest level last:⁷

<i>Level</i>	<i>Description</i>
Creating	Can the student create new product or point of view?
Evaluating	Can the student justify a stand or decision?

⁶ This skillset was emphasized by the executive committee of the National Center on Education and the Economy, which stated that the best employers look for the most competent, most creative and most innovative people on the face of the earth and will be willing to pay them top dollar for their services. See "Tough Choices, Tough Times," National Center on Education and the Economy, p. 7ff, 2006.

⁷ http://www.odu.edu/lischult/blooms_taxonomy.htm

Analyzing	Can the student distinguish between the different parts?
Applying	Can the student use the information in a new way?
Understanding	Can the student explain ideas or concepts?
Remembering	Can the student recall or remember the information?

The top levels are those areas encouraged in the litigation support course. The top level, creating, represents the learning level we hope students experienced in the litigation support course. In addition to structuring the course to focus on the higher levels of Anderson's learning hierarchy, the course also promoted the skill set needed by 21st century financial analysts and forensic accountants.

According to an article in *The CPA Journal*, today's successful CPA needs a multidisciplinary perspective in analyzing, defining, and diagnosing problems, as well as the ability to effectively communicate results.⁸ In fact the new CPA examination is structured so that candidates cannot just memorize material, but must be able to apply their knowledge to simulations of real world settings. These simulations require the candidate to use electronic databases for research, spreadsheets for analyzing and word processors to communicate findings. All of these skills were required to successfully complete the litigation support course, which included both aspiring financial analysts and accountants.

Another reason that the structure of the litigation support course is relevant to students is detailed in a book written by Elizabeth Jones, Preparing Competent College Graduates: Setting New and Higher Expectations for Student Learning. Dougherty and Fantaske, co-authors of one of the articles in the book, assert the need for improved problem solving is a result of the increasingly diversified requirements of the modern work environment. Well-educated workers have greater input into organizational decisions and are asked to contribute to improving the organization as a whole rather than simply completing one-dimensional tasks.⁹ Effective problem solving in the classroom is best accomplished by assigning students real world problems that potentially have alternate solutions, so they can be ready for the complex work environment in which they will have to

⁸ King, Chula B., *The Computerized CPA Examination What You Should Know*, p. 4 ff.

⁹ Dougherty, Christopher and Fantaske, Patti, "Defining Expectations for Problem-Solving Skills", in King, *op cit*, p. 62ff.

function. The real world projects assigned to students in the litigation support course forced the students to experience the frustration of not knowing the "right answer", while encouraging creative, innovative and disciplined work as they assembled their presentations and papers.

Possible future course improvements:

In future offerings of the course, we hope to capture some of the content in web-streaming and audio format for re-cycling in shorter courses, inter-institutional offerings and online classes. The use of *Macromedia Captivate*, a software package that facilitates flash-type "movies" of screen shots accompanied by audio and text annotations is envisioned. In addition, another software package, Hyperion Strategic Finance¹⁰, a component of Oracle Corporation's business intelligence suite, will be used to enable sophisticated business valuation and cash flow forecasting.

¹⁰ *Op.cit.*

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