

Illustration I – Research Plan - Rent Control Problem

I. Contexts & Objectives for Illustration I:

A. What does instructor want them to learn? (objectives/outcomes)

Development and implementation of a research plan to address a complex issue involving state regulations and case law using multiple research formats.

B. Why does instructor want them to learn it?

The goal is to force them to begin their research into New York rent laws, and then determine for themselves how the facts they have been provided affect how they should alter their research plan and process.

Part of the overarching goal is the importance of practice-oriented secondary sources (there are two excellent practitioner's sources on New York landlord/tenant law) and the need to use cases not only as precedent but also as sources of information about issues (many of the cases that explain how the regulation is applied are from out of the jurisdiction).

C. How will instructor know if they have learned it? (assessment)

In class discussion, feedback opportunities, building research plan

D. When will this be introduced?

Students have had almost two complete semesters (one credit each) of legal research. They have been introduced to the Research Planning and Process template in the fall and it has been discussed as part of most if not all of their individual topical classes in both semesters.

This drill is used shortly before students receive their final research project because it requires them to. The final project requires them to answer a complex client-based narrative problem in a similar manner although the final project includes a written memorandum to the supervising attorney.

E. How will the students learn it? (discussion, problem, etc.)

i. Context

Using the research plan to approach a complex legal question, using secondary sources and cases to assist in interpreting and applying a regulation to specific facts, recognition of the importance of legal research to early client-attorney interactions.

ii. Resources/materials needed

Secondary sources, cases, regulations, research plan outline

iii. Student Activities (the process for arriving at the product):

a. During class

Research, ask questions of instructor, discussion

b. After class

Completion and delivery research plan

iv. Legal Information Environment (where is student situated):

Open format, no cost restrictions, some time restraints.

v. Student Work Product(s):

Research plan

II. The Activity:

Students are presented with the following directions and a blank copy of the research plan template they will be completing.

You are working for a Queens-based legal services office. The supervising attorney has completed a phone intake with a potential client and scheduled a follow up appointment for a more thorough interview and for the client to bring in documents. The supervising attorney has sketched out the facts below and has asked for a research memo that will assist her in using the interview wisely to ascertain whether or not to take this case. You are to begin researching as if you were writing the memo, using the Research Planning and Process template. In completing the template cite any significant statutes or regulations and provide two or three cases that could bring the attorney “up to speed” in the matter. In addition, provide the citation to one very good secondary source for the attorney to read prior to interviewing the client. Finally, if there is information that you think the attorney should ascertain during the interview or any documents you think the attorney should request the client to bring in, please note that as well.

The supervising attorney has provided you with the following notes:

Terry Brown has lived in the same apartment for the past five years. He lived there with his partner Pat Smith. Pat Smith died unexpectedly two months ago and Mr. Brown has received a notice from the landlord, Queens Realty, to vacate the apartment. The notice claims that Pat Smith was the named tenant on the lease and that Mr. Brown cannot stay after the named tenant has died because he is not a family member. The address is apartment 5C, 43-113, 72d Road, Flushing, New York and it is a rent-stabilized apartment.

Terry Brown and Pat Smith considered themselves “ sort of like family,” often taking vacations together and occasionally celebrating holidays with each other’s family. They did not commingle their finances although they took turns paying monthly bills. Mr. Brown thinks but does not yet have proof that he was named as the sole beneficiary in Pat Smith’s will. Mr. Brown wants to become the tenant of record.

There is a twist (the lack of clarity of the gender of the client’s deceased partner) which while important often gets in the way of students beginning their research. Many attempt to clarify this prior to beginning research (see in class procedures below), which the instructor should refuse to do. This is a very difficult problem because New York rent control laws are actually regulations in New York City, but cases often cite only to the implementing statute that on its face does not address this issue directly.

The class is generally an hour and a half, and during the first 20 minutes or so the students are walked through a review of the Research Plan and Process template and a discussion of where individual legal topics or methods of research fit within the template. The instructor then outlines the in-class process, which is 15 minutes for the students to read the problem and to ask the instructor (in role of harried supervising attorney) questions. They are then told they have 30 minutes to begin their research using any tools they want and working with others if they so choose. If they leave class they must return by a specific time for an in-class discussion. The instructor stays in the class and circulates answering questions about the research process, reminding students of particular approaches they may want to consider, and generally being supportive of their research without providing direct answers.

Potential problems: Often students become fixated on the gender of the potential client’s deceased friend and whether or not that affects the issue. The instructor points out that it was a phone intake and that information isn’t known but if their research indicates that it is important, to please highlight that fact. The goal is to allow the students to experience how the iterative nature of research assists them in resolving uncertainty and lack of specificity in legal problems. In addition the instructor must be willing to grapple with varied levels of student abilities and manage the discussion so that those who have been less successful during the initial research are challenged but not overwhelmed.

There are a series of feedback opportunities within this illustration. The opportunity for students to ask questions from an (in role) supervising attorney allows the instructor (stepping in and out of role) to use the questions as a teaching mechanism. Then once the initial research has begun, the instructor stays in the class and circulates answering questions about the research process, reminding students of particular approaches they may want to consider, and generally being supportive of their research without providing direct answers.

When the initial allotted time for research is up (and at this point they are only 30 minutes into their work) the last part of the class is a discussion of where individual or groups began their research (online/hardcopy, secondary sources, cases, statutes, regulations), what terms they used to begin (either in an index or in a search string), and why they began as they did. The instructor encourages discussion that highlights the varied approaches (and generally there is some success with a variety of approaches) and then the class tries to distill what might be one or two of the better approaches. Because the rest of the drill will be completed outside of class and turned several days later, the instructor tries to bring the class to a common level of understanding around the issues presented prior to releasing the class to finish the drill on their own.

This is a complex problem that as written requires fairly comprehensive legal research skills. However, it could be modified by choosing a simpler fact pattern that does not implicate multiple sources of law or by using the same fact pattern but limiting the source of law or type of research material to be used. Awareness of cost-effectiveness could be layered into the problem by requiring students to use free or low cost databases (and there is useful material on the internet for this problem).

III. Checklists: Teacher's Notes and Reflections:

A. Checklist of Boulder Statement Pedagogical Principles Furthered

Does this lesson provide an opportunity for:

- Iterative and analytical process
- Identification of significant facts
- Determination of legal issues and problems
- Location, evaluation and manipulation of research authorities
- Understanding of legal system in which question arises
- Evaluation of available legal resources
- Synthesis of information about legal system and resources to identify research plan
- Continual re-evaluation of progress and results
- Application of professional and ethical norms implicated by research
- Ongoing examination of professional standards, including ethical responsibilities
- Fulfillment of ethical duty to conduct adequate and thorough research

B. Does this lesson/course :

- Use a range of teaching methodologies
- Use a mix of realistic problem types
- Show relationship of legal structure to legal tools
- Allow students to evaluate the appropriate use of the tools
- provide opportunity to model professional duties and obligations