

INNOVATIVE LEGAL EDUCATION AND ITS ROLE IN  
DEVELOPING THE STATE BASED ON THE RULE OF LAW:  
ANALYSIS OF THE U.S. LAW SCHOOLS ACADEMIC EXPERIENCE  
AND THE PROSPECTS OF ITS IMPLEMENTATION IN THE  
REPUBLIC OF BELARUS

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I. INTRODUCTION

In reforming and developing a nation's legal systems, one of the prevalent problems faced by the majority of the Post-Soviet countries coming through the period of transition to democracy is global defectiveness and passivity of the sense of justice that had been perceived by their societies over the preceding period of the socialistic history. Obviously, a passive sense of justice in these countries is determined by multiple factors including historical and cultural specificity and mentality. However, one of the main factors is traditional type of social thinking where people take the law (or particular legal rule) for granted as an objective reality, ultimate truth granted them by some superior entity—all-embracing and all-absorbing totalitarian state. Thinking in this way people used to follow and to be afraid to dispute the force of the letter of the law (or its external part), however they failed to understand and recognize justice as an essence of the law (something that is called the spirit of the law or internal part of the law). For example, in former USSR countries for many years people were afraid of the law and treated the law as a formal instrument in the hand of the state dictating the people its will. They neither knew their rights and freedoms, nor did they want to know them. In the common people's mind, the safest way to interact with a totalitarian legal system was to stay far apart.

In order to overcome this “heritage” and put the trust in the law, this type of legal thinking should be converted to more active and creative forms. This reformation of the people's perception of the law should progressively involve different groups of society, although it seems more reasonable and organic to

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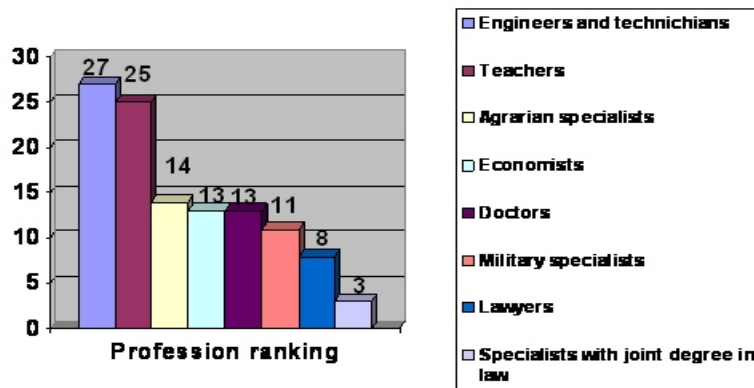
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begin this attempted renovation with academic legal education—the sphere of our society where the leaders of creative and open legal thinking have to be brought up.

In the majority of democratic countries, legal professionals significantly determine the life of society. The lawyers are not simply considered as technical bearers of the legal knowledge, they are creatively involved in the law-making process and in the development of the democratic legal culture. This historical tendency is especially pronounced in the United States. For example, Professor William Burnham states that “[f]rom the very beginning of the republic, a disproportionate percentage of lawyers have occupied positions of power in political circles. Almost 45 % of the Framers of the 1789 Constitution were lawyers. Around 65 % of the Senate and well over half of members of the House of Representatives have been lawyers.”<sup>1</sup>

In dismal comparison to the numbers mentioned above, Diagram 1 analyzes the data from official site of the Parliament of the Republic of Belarus<sup>2</sup> and illustrates professional ranking of the House of Representatives members (based on their resume files):

**Diagram 1: Current Membership in the House of Representatives of the Republic of Belarus—Profession Ranking**



1. WILLIAM BURNHAM, INTRODUCTION TO THE LAW AND LEGAL SYSTEM OF THE UNITED STATES 126 (3d ed., West Group 2002).

2. At <http://house.gov.by/index.php/,1172,,,0,0,0.html#pageBegin>.

This analysis proves that lawyers currently constitute a “minority” in the law-making authority in Belarus. Generally, the role of lawyers in the law-making process of other post-soviet counties is slightly more active and noticeable (for instance, in Kazakhstan up to 15 member of the Parliament were graduates from the law schools and up to 25% of the Parliament members pursued joint degree in law).<sup>3</sup> However, we have to admit that participation of lawyers in the development of democracy and rule of law in the post-soviet countries is still insufficient.

The Belarusian lawyers’ “hands off” position in our civil society development is partly rooted in the archaic and ineffective approaches to the legal education in Belarus which came from the Soviet legal culture. In this article, the author intends to study the U.S. law school academic experience (in particular, academic experience of the University of Pittsburgh School of Law) and some results of its implementation in Belarus conducted by the author at the base of Polotsk State University, Faculty of Law.

Summarizing this introductory part it is necessary to underline the purpose of the present research. It is 1) to examine some retrograde approaches to legal education which are still kept in Belarusian Law Schools; 2) to analyze what relative aspects of the U.S. academic experience might be harmoniously and successfully adopted to Belarusian academic traditions of legal education with the purpose of enriching them and making legal education in Belarus more effective and reflective of legal reality and global standards; 3) to review the results of some experimental approaches implemented by the author in the Belarusian Law School study process from her U.S. legal academic experience.

Theoretical conclusions are supported by practical examples related to a comparative commercial law course taught by the author with application of the described innovative methods (please, refer to Appendix A to this article—Preliminary Syllabus for the course “Comparative Commercial Law—2006”), real activity of legal clinic “SLAS (Students Legal Aid Service)” (please, refer to Appendix B-C to this article) and some other projects of innovative legal education practice organized and conducted by the author at the Polotsk State University Law School. In order to elucidate the students’ feedback on innovations tested by the author at this School, special evaluative questionnaire was formulated. The statistical results of the students’ opinion poll are shown in data graphs “Students’ Poll” disseminated throughout this article.

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3. At <http://www.parlam.kz/News.asp?Recno=834>.

## II. CURRENT SITUATION IN LEGAL EDUCATION IN BELARUS: A NEED FOR REFORMS

Teaching law has always been one of the most conservative branches of education. Classical approaches to teaching lawyers were worked out in Ancient Rome, lecturers' and orators' skills have been polished for centuries. Even to the present day, lawyers have kept the reputation of a "professional class" which is ultimately closed to the radical innovations and upholds, in particular, traditional forms and methods in teaching law courses.

In Belarus, "to be a lawyer" means to be a respected, prosperous, and demanded person. It perfectly explains the hyper-popularity of law schools among young people who plan their successful career and choose one of the ten Belarusian law schools in order to pursue prospective higher education. In its turn, this trend grounds one of the highest rates of competition among university entrants during admission exams. Every year, 50 to 150 happy young lawyers graduate from each of these ten Belarusian law schools ready and eager "to conquer the world," and completely unprepared for the realities of the legal practice in Belarus. Many wind up as the very first graduates to join the unemployed sector of Belarusian society.

This forces the students to decide on whether pursuing a legal education in Belarus is a good idea. Having graduated from Belarusian Law School and being offered the opportunity to compare such experiences with legal education studies in the United States and Europe, the author would ultimately reply she does not recommend that anyone who wants to become a good and demanded legal specialist to study in Belarusian Law School. The reasoning is simple and convincing—no employer is interested in hiring a graduate from Belarusian Law School, or any other top school. Employers know that the graduate is not yet a lawyer and that they were not taught how to function as a practicing lawyer in the workplace.

Unfortunately, our law schools currently produce specialists who are not ready to practice the law. They neither think of the sense of the laws, nor analyze them in the relation to particular factual circumstances. All that they were taught is how to read the Codes and repeat this information to the client. It is obvious that the system of legal education in Belarus needs a reforming and renovating process that can bring new innovative approaches to the methods of the legal study and help to overcome the problem of the lack of qualified, practicing lawyers.

An analysis of the academic work at law departments in the Republic of Belarus shows that, in general, teaching is based on the classical scheme: a

lecture—a monologue of a professor who is an absolute authority in the discussed problem and whose opinion is indisputable and out of comments; a seminar—students’ report on the obtained information at the lecture and solving practical problems.

In light of the apparent tendency to reduce the number of class hours in the academic curricula on legal subjects, the “classical approach” only provides students with a general and superficial knowledge of the problems potentially arising in such a multifaceted field as law. However, it does not give an opportunity to obtain stable skills of implementation of their theoretical knowledge. The setting in Belarus seems to be primed for a significant reform of the traditional system of legal education.

### III. INNOVATIVE APPROACHES TO THE ACADEMIC FORMS OF LEGAL EDUCATION

This article will use a comparative approach to suggest a possible method for reforming Belarusian legal education. I will analyze and provide descriptions of detailed recommendations for the mentioned leading academic forms. It is necessary to note the undisputable multi-beneficial effect that occurs for any party during the study process when a student who chooses to study particular law course has a clear understanding of the reasons and motivations for study. Therefore, this student should be completely aware of the following: the subject of the course, How this subject will benefit his or her legal practice, what question should be emphasized during this study, how this course is structured, etc. Detailed and well-composed course syllabus prepared by the lecturer and distributed among the students in advance can essentially facilitate the students’ efforts to reach such understanding and motivation for studying (for preliminary example of relative parts of syllabus, refer to Section II and Section V of Appendix A attached to this article).

#### *1. Lecture*

The first principal difference in the technique of giving a lecture lies in the fact that a contemporary Belarusian law student comes to a lecture representing, figuratively speaking, a “tabula rasa” on which a professor must inscribe his knowledge about the subject of the lecture. In contrast, a student at a U.S. law school masters the skill of independent work with a book as well as with other sources of information including the capabilities of the internet in their first year.

Prior to arriving at a lecture, a U.S. student must have definite knowledge on the subject of the lecture in order to correspond at least relatively to the level of the discussion proposed by the professor. That is why, in addition to the topic of the lecture, the professor works out a page-by-page list of sources with which a student must get acquainted while preparing for each lecture. This method was attempted by the author when teaching comparative commercial law for fifth year students. The author noticed that, as a consequence of implementation of this technique, the lecture time spent on learning one topic was reduced by as much as 30%. Moreover, there was an extra time for a more detailed examination of particular questions and for practical application of obtained theoretical knowledge.

Generally, a curriculum in a U.S. law school includes a description of the obligatory formal requirements for students. Thus, on the basis of this experience, in the curricula of the taught law subjects, the author usually applies following recommendations. Attending classes and participating in training discussions are strongly recommended for all students. References to particular tasks and literature sources, recommended for studying for each lecture, will be distributed in the form of a special print-out on the first lecture of the course. Students should read recommended material before attending the lecture and be ready for the discussions. Each student is included in a group which will be responsible for a profound preparation of educational material for a particular lecture (the list of groups will be worked out and given to students before the beginning of classes). A participant of the workgroup is accountable for the higher level of preparation for the lecture on the appointed days (in comparison with the other students) and will take the most active part in the discussion (for more practical example, refer to Sections III & VII of Appendix A to this article).

Very often the additional literature suggested for the lecture represents a considerable amount of information. Because of this, the students' skill in creating a synopsis of the reading becomes very important. A student is expected to come to the lecture with a prepared outline with quotations and theses, which will be supplemented during the lecture and later on be used together while preparing for the exam.

The main difference of American legal teaching methods consists in the fact that a law lecture is not delivered on the principle of the monologue of a professor. On the contrary, it proceeds in a creative informal atmosphere of a dialogue when the audience is encouraged by the lecturer to actively participate in the discussion of the problem. Therefore, the author attempts to hold her lectures according to the following scheme:

- 1) setting the problem which is the subject of the lecture;
- 2) connecting the lecture with the studied material;
- 3) connecting the lecture topic with the sphere of practical application of knowledge;
- 4) setting the aims of the lecture;
- 5) indication of the lecture questions;
- 6) main discussion (intermediate conclusions and generalizations are accepted);
- 7) reflexive part of the lecture (the audience's apprehension of the discussion results and general assessment of understanding of the main theses of the lecture);
- 8) time for additional questions of the audience.

The author would like to draw attention to the fact that the main discussion in U.S. law schools is held with the application of variations based on the Socratic method of instructions and a problem approach to teaching. Pure Socratic method, which forces students to participate in class discussions by answering progressively difficult questions of lecturer on the basis of prior readings before class, was widely criticized by some researches and, of course, lazy students. For instance, Burnham notes that

Socratic interrogation often exposes inadequacies in the student's preparation or thinking and, if conducted aggressively by domineering teacher, can be emotionally painful experience for the student. Because of the "Socratic" method of instruction and the heavy workload associated with reading cases and preparing for class, students generally report that the law school experience, at least in the first year, is difficult and trying one somewhat akin to military training.<sup>4</sup>

However, this method proves its effectiveness and still remains the leading method of instructions in the first years at the law school in its slightly modified and simplified into "a gentler form of questioning, which some have called "avuncular" Socratic method—questioning conducted as your uncle might do it."<sup>5</sup> Later this method can be partly substituted by "problem approach" to teaching where a teacher "hand(s) out realistic written problems for students to prepare answers to before class and then conduct a class discussion of those problems."<sup>6</sup>

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4. See BURNHAM, *supra* note 1, at 131.

5. See *id.*

6. See *id.* at 132.

In her teaching practice, the author chose a synthesis of both methods that combined some of their elements in close relation to the topic and particular purpose of the lecture. For example, the lecturer, using a practical situation, defines a number of problems and proposes to the students that they find on their own the most efficient solution corresponding to the nature of legal relations. During the process of debate of different points of view, the lecturer corrects and guides the discussion and uses the students' contributions to formulate a solution which is valid in accordance with the existing legislation. Meanwhile, the lecturer explains and justifies the logic of the legislator, gives relevant examples from the practice of law enforcement. It is also considered necessary to embed in the lecture structure the elements of a comparative analysis of the different legal approaches the topic being considered by reference to foreign legislation.

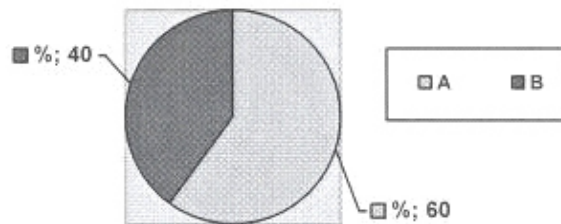
Unfortunately, the following graph shows ascertains that this innovative approach to the lecture instruction method is still hardly accepted by the majority of students who prefer to remain as "typists" of the professors' monologue during the lecture.

### Students' Poll: Graph 1

**Question:** What form of lecture do you prefer?

- Choice set:** A. Making notes during the lecturer's monologue.  
B. Lecture-polilogue with preparatory readings and class discussions.

**Answers:**



Nevertheless, the author deems it appropriate to continue her practice of innovative approaches to law lecturing. Indeed, these approaches allow one to solve the problem of the effective learning of the material by students with the best results, as modern psychology has come to the following conclusions in assessing the efficiency of man's arbitrary memory while using different

teaching methods (so-called Pyramid of Comprehension based on the principles of the Bloom's Taxonomy<sup>7</sup>):

- 10% - reading;
- 26% - listening comprehension;
- 50% - if the audience sees and listens to the material simultaneously;
- 70-80% - discussion based on experience;
- 90% - "speaking through" the material and teamwork;
- 95% - teaching others to the learned material.<sup>8</sup>

It is also worth noting that most lectures in U.S. and European law schools are being delivered with the application of multimedia technologies. Electronic courses on law subjects become more and more popular abroad. The main idea of these courses is ultimately the independence of students when preparing for their classes. Implementation of the electronic courses in comparative commercial law and family law of Polotsk State University Law School for introduction next year is the current project of the author.

## *2. Practical Training*

At the present stage of the academic process, a special emphasis is made on strengthening practical training of students. The forms of assessment of their theoretical knowledge, such as questioning, test, solving hypothetical cases related to the topic of the previous lecture, etc., are widely spread in the system of Belarusian national legal education, but in practice they are not used by the U.S. law schools during ordinary practical class work. Instead, the main forms of work at the U.S. law school are the project method and the legal clinic.

In addition, information study visits are commonly used. This method is in great request in the system of Belarusian legal education. However, usually course supervisors organize these visits in a very formal and declarative manner or even try to skip this type of educational work in their course curriculum. In the author's opinion, study visits as a form of effective demonstration of the legal practice for students cannot be underestimated. For

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7. For details on the theory of this famous American educational psychologist, see BENJAMIN BLOOM, *TAXONOMY OF EDUCATIONAL OBJECTIVES: THE CLASSIFICATION OF EDUCATIONAL GOALS* 201-07 (B.S. Bloom ed., Susan Fauer Company, Inc. 1956).

8. GALINA KSENDZOVA, *PROSPECTIVE EDUCATIONAL TECHNOLOGY* 96 (Pedagogical Society of Russia, Moscow 2000).

instance, in the curriculum of the course housing law, the author includes at least three obligatory students' study visits to the specialists in the Technical Inventory Bureau, the Housing division of the local executive committee, and to the firms providing realtor services in the sphere of housing. In the framework of such visits, the specialists can share their experience with the students and discover their secrets of practical skills.

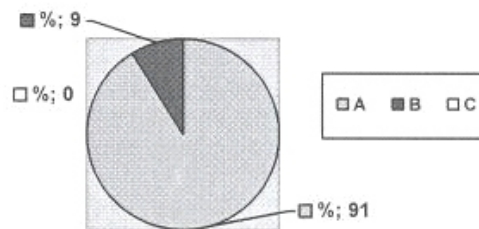
The following graph illustrates that students unanimously give positive assessment of the study visits:

### **Students' Poll: Graph 2**

**Question:** Whether you find that study visit to practicing lawyers and legal authorities is effective and useful form of study process at the law school?

- Choice set:**
- A.** Yes, it is definitely useful in order to get acquainted with practical work of lawyers. Every course curriculum should implement study visits.
  - B.** It is useful but only for the purpose to determine my prospective specialization in law (one-two visits in a term is sufficient).
  - C.** It is useless, waste of time.

**Answers:**



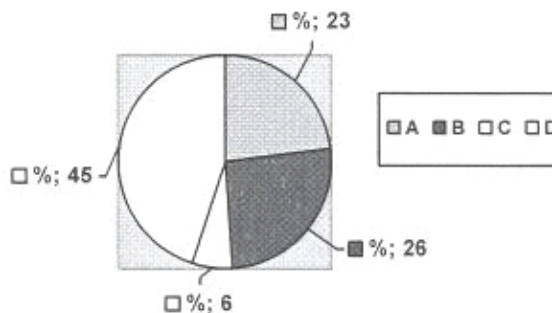
Belarusian law students also gave a high credit to many innovative methods of practicing legal knowledge which have been introduced and tested by the author at Polotsk State University. The following graph reflects their choice regarding the forms of the academic practical training at the law school:

**Students’ Poll: Graph 3**

**Question:** What are the most effective forms of practical training in the law school?

- Choice set:**
- A. Theory questioning—professor asks a question, student gives an answer.
  - B. Collective work of study group solving hypothetical cases.
  - C. Individual work of student solving hypothetical cases.
  - D. Collective work of study group with a “project.”

**Answers:**



*2.1. Project Method*

The theoretical basis for the realization of the project method, which appeared in American schools in the second half of the 19th century, was grounded by the American educators John Dewey and William Heard Kilpatrick.<sup>9</sup> Unconditionally recognized as “a genuine product of the American progressive education movement,”<sup>10</sup> in present day the project method of education is one of the most demanded approaches to study process and constitutes “the assignment of a purposeful activity that is intended to stimulate the student’s wholehearted interest.”<sup>11</sup>

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9. For details on historical and theoretical origins of the project method, see J. DEWEY, *THE SCHOOL AND SOCIETY* (1899, rev. ed. 1943, repr. 1961), *SCHOOLS OF TO-MORROW* (1915, repr. 1962), and *DEMOCRACY AND EDUCATION* (1916, rev. ed. 1944, repr. 1966); W.H. Kilpatrick, *The Project Method*, 319-35 *TEACHERS COLLEGE RECORD* 19.

10. Michael Knoll, *The Project Method: Its Vocational Education Origin and International Development*, 3 *JOURNAL OF INDUSTRIAL TEACHER EDUCATION* 34 (1997), at <http://scholar.lib.vt.edu/ejournals/JITE/v34n3/Knoll.htm>.

11. At <https://www.csupomona.edu/~jkirkpatrick/Papers/ProjectMethod.pdf>.

Any project should be created on an active basis, taking into account students' personal interests in the knowledge which can and must find its implementation in their career and life. For the realization of this kind of training it is essential to apply real life problems that are familiar or significant for the learner. The course supervisor's aim is to propose to the students such a problem which they must solve relying on the obtained theoretical knowledge as well as on the new information that they should get on their own. The project should include a chance for students to engage in a mock practice situation.

As a rule, preparation of the project takes several lessons (explanation of tasks, working out strategies of behavior by the participants of the project, collecting and exchanging the materials between the participants, project defense and its discussion).<sup>12</sup> Meanwhile, the project presentation is not limited to a formal report. Students are recommended to prepare a presentation of the project results, to present drafts of the documents, to elaborate descriptive materials and handouts, or in some other way to express their creativity. Obviously, the structure of the project class may be varied by the lecturer according to its specificity.

Returning back to the author's experience in the sphere of teaching the course comparative commercial law, it might be interesting for the readers to get acquainted with the elaborated example of the project which can be widely used in the structure of practical training on many legal courses. The idea and structure of this project was studied and developed from the teaching experience of Professor K. Heidt who taught the course "Negotiations" at the University of Pittsburgh School of Law.

***Project "Negotiation of Commercial Transaction":***

*Students will be divided in 2 groups of counsels representing their clients ("Buyer" and "Seller") and will negotiate a problem involving commercial sale transaction. Both groups will be provided with general and confidential information about the proposed situation.*

*Students are supposed to discuss the style and strategy of negotiation inside of each group and plan their actions. Process of negotiation will take place in class and will be videotaped. Instructor will form a negotiating pair (one*

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12. A. Bratennikova & E. Vasilevskaya, *Method of projects: history and reality*, 3 NARODNAYA ASVETA 23-24 (2004).

*representative of Seller v. one representative of Buyer). After the negotiation students should take a look at negotiations tape, eliminate some mistakes and submit the report on negotiation.*

*The report should contain the following information:*

- 1) Analysis of the planning section of the negotiations (the exchange of information, the choice of the strategy).*
- 2) Did the negotiations follow the outlined plan? Problems and the ways of their solution.*
- 3) What should have been done in a different way? (Analysis of the mistakes).*
- 4) The results of the negotiations (if the bargain was concluded, on which conditions was it made and which formalities must be completed to prove its lawfulness and validity).*
- 5) One copy of the project of the prepared purchase and sale contract.*

***Note:*** *The implementation of the project will be under threat if one of the students does not appear on the corresponding lesson. That is why the attendance of this lesson is obligatory unless the student timely notifies the lecturer about his absence one week in advance.*

Another example of the project method realization in academic environment of the law school can be found in Section VI, Project 2 of Appendix A.

## *2.2. Legal Clinic*

The most comprehensive summary commenting the history and essence of clinical education phenomenon, which appeared in the law schools of the U.S. in the 1960s, can be found in Burnham's study.

Borrowing the word and idea of a clinic from the medical schools, law schools have established law offices at the law school so students can work as lawyers under the supervision of teachers. Students do everything that a lawyer would do, from consultation with clients to handling trials. The clients in clinics are poor people who otherwise would not be able to afford a lawyer. Clinics provide a valuable service to poor people and teach students how to practice.<sup>13</sup>

The legal clinic represents the best application of law school subjects to the legal practice. This method has received global recognition as the most

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13. See BURNHAM, *supra* note 1, at 139.

efficient way to acquaint law students with the realities of their profession, to get them engaged in the specifics of legal work, and to make them to apply their “bookish” knowledge in relation to particular life situations.

The author’s research of worldwide academic experiences of legal clinical education leads to a division of legal clinics into two types.

- 1) general legal clinics (clinics dealing with any law questions and application regardless the law topics specialization);
- 2) specialized clinics (clinics dealing with one particular specialized fields of law—a clinic on health questions, a clinic on family disputes, etc.).

Usually, a legal clinic starts as a general clinic. But as time goes by and the clinic becomes more developed and demanded in its region, specialization takes place and divides the clinic into several separate branches. However, there are many methods for directly establishing a specialized clinic and bypassing the need for a general clinic.

For instance, at present, the University of Pittsburgh School of Law has already arranged five legal clinics successfully implemented in its academic process.

- 1) Tax Clinic—the students under supervision of experienced tax practitioners represent low- or moderate income taxpayers in disputes with the IRS and the Tax Court;
- 2) Environmental Law Clinic—the students consult the clients who are community organizations and individuals involved in environmental litigation;
- 3) Family Law Clinic—the students can represent selected clients in the Allegheny County Family Court Division (focusing on custody mediation, custody and support litigation);
- 4) Community Economic Development Clinic—the students gain experience in business and tax law consulting the individuals who are starting small businesses, but are unable to afford legal representation;
- 5) Civil Practice Clinic—the students mainly focus on Health Law or Elder Law (disability claims, health insurance complaints, problems with Medicare or medical assistance, competency hearings, denial of SSI benefits, guardianship problems, age discrimination and legal capacity in

connection with medical treatment, mental health law, estate planning, contractual relations, and property management).<sup>14</sup>

Students are eligible to enroll in the legal clinic of the University of Pittsburgh School of Law beginning the second semester of the second year of law school. Their study and work in such legal clinic is considered to be a part of academic educational process providing them certain amount of credits and significantly benefiting their academic transcripts with examples of their practical skills as lawyers.

After carrying out the analysis of U.S. law schools' experiences and having prepared the plan for its adaptation in the national system of law education, the author suggested organizing a legal clinic on the basis of the academic process of the Law faculty of Polotsk State University in 2001. This legal clinic, the Students' Legal Aid Service (SLAS), was meant and designed to function as a public consulting office for rendering legal assistance for the students and other population of the city, acting as a general law clinic and performing other activities oriented towards the popularization of legal knowledge and the strengthening of the public sense of justice. The SLAS is a university organization with the elements of the student self-government which is interrelated with other bodies of the University and the faculty of law (please, refer to Appendix B to this article in order to understand the SLAS role in the University social and administrative life).

At this point, the legal clinic of Polotsk State University has been working for about five years and was essentially reformed in 2004. The clinic has inquiries on different legal spheres including family law, civil law, labor law, and land law. Law students who have passed a qualification exam and work in SLAS do so on a voluntary basis. When it is necessary, the teaching staff of the law department renders its aid (especially with complicated cases).

Currently, the SLAS organizes and provide the following services:

- Legal consulting to the students and other socially unsecured levels of citizens who apply for such free legal aid (thus, the SLAS acts as "pro bono publico" legal clinic);
- Educational lectures in law for the students and for the children at the secondary schools of our city (meaning, the SLAS also performs function of "Street Law" clinic);

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14. At <http://www.law.pitt.edu/academics/programs/clinic.php>.

- Recommendations for the students of “non-juridical” schools and departments (the SLAS members advise how to prepare for the classes in the law subjects, considering that elementary law course is always obligatory course in curricula of any University faculty or school);
- Support and development of the student scientific legal research;
- Co-operation with practicing lawyers of our region;
- Training seminars for the law student on varied law practical matters;
- Assistance for the law faculty students in employment issues;
- Arrangement of international cooperation in the field of legal education.

Structurally, the SLAS is comprised of three levels of members:

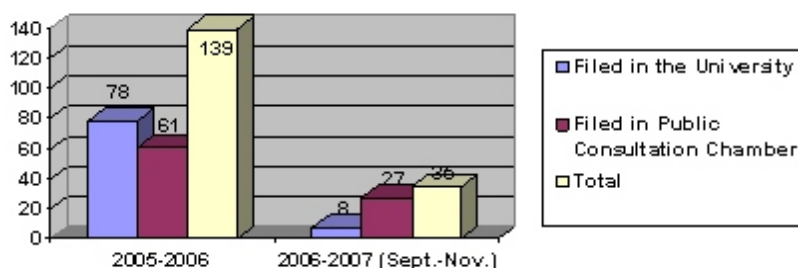
- 1) consultants—senior law students (from the third through fifth year of their studies) who directly receive visitors and consult them;
- 2) assistant consultants—junior law students (from the first and second years of their studies) who perform support functions and assist the consultant;
- 3) supervisors—teaching staff of the Law faculty who supervise the work of the duty consulting groups and coordinate the running of the academic process and practical training on the basis of the legal clinic.

Generally, there are about 20 to 25 members of the SLAS. Every “consulting team” consists of two consultants, two assistants, and one supervisor, and works in compliance with the SLAS schedule. The SLAS as a consulting body works on a daily basis (at least two 30-minute consulting sessions during two main breaks occurred between the classes).

Two years ago, the SLAS started cooperation with the local Novopolotsk Municipality Council and extended its consulting activity to the territory of municipal administrative buildings (the Municipal Council provided the SLAS with a public consultation chamber). The opening of this public consultation chamber widened the clients’ circle and improved the SLAS advertising efforts.

When the SLAS began, it could handle about 60 application a year. The number of processed applications has been constantly increasing ever since. The following diagram shows number of applications filed by the SLAS clients in the 2005-2006 academic year and within the three months of the Fall term in the 2006-2007 academic year:

**Diagram 2: Number of the clients' applications filed with the SLAS**



The structure and internal communications of the SLAS inside the Faculty of Law are graphically reflected in Appendix C to this article. The SLAS supervisors are appointed by the Dean of the faculty (the list of candidates for vacancy of supervisor is to be prepared by the Administrator of the SLAS). The Administrator is also appointed by the Dean, provided that the Faculty Council should approve administrator's candidacy. Once a month, the SLAS calls the general meeting of its members, the Consultative Council, where the most important aspects of the SLAS activity are discussed.

As for nomination and election procedure of the SLAS student staff members, the admittance to the work in the SLAS is allowed to the law students who have passed a qualification exam and obtained a special license. This license is awarded by the Qualification Commission which consists of representatives of the teaching staff of the Law faculty and experts. The members of the Qualification Commission are elected at the meetings of the faculty departments (two representatives from each department). The Chairman of the qualification commission is the Dean of the Law faculty (or the Vice-dean). The qualification exam is held by the collegiate body once a term.

Any law student is able to apply for admittance to the qualification exam no later than three days before the date of the exam. The information about the date, time and place of the exam is disseminated among the law students no later than ten days before the date of the exam. The SLAS "student-employees" are enrolled in the vacant positions based on their exam results on a competitive basis.

The exam consists of three modules aimed at checking applicants' different skills. Each module has a fixed maximum amount of points within the limits of which an applicant can get his or her score:

<b>Organization module (maximum score—10):</b>	<b>Information and law module (maximum score—15):</b>	<b>Communication module (maximum score—5):</b>
<p><b><u>Part 1:</u></b> Checking the knowledge based on the contents of the Statute on the SLAS, that is:</p> <ul style="list-style-type: none"> <li>● purposes and aims of the Service;</li> <li>● organizational units of the Service;</li> <li>● competence of different organizational units of the Service;</li> <li>● functional responsibilities of the Service employees;</li> <li>● regulations of work with citizens in the public reception for rendering law assistance to the population.</li> </ul> <p><b><u>Part 2:</u></b> Checking the knowledge of the University local acts (including those which regulate the activities of other organizational units, for instance, the students' trade union, the students' service for the maintenance of order, as well as the acts which regulate the University academic process, for example, the procedure of passing exams, credits, the procedure of employment support).</p>	<p><b>For applicants for the Service consultants—</b> Checking the knowledge of the basics of civil, family, labor, criminal, administrative legislation (within the limits of the requirements of the curricula of the corresponding subjects).</p> <p><b>For applicants for the assistant consultants—</b> Checking the knowledge of the basics of the Theory of State and law, of the skill to orientate well in the system of law sources of the Republic of Belarus.</p>	<p>Assessment of the applicants' communicative skills, their psychological abilities and the level of the culture of communication with potential clients by his/her solving a definite communicative and practical situation proposed by the examiners (i.e. by modeling a correct line of an consultant's conduct in a difficult psychological situation).</p>

During the qualification exam procedure, each member of the Qualification Commission has a right to ask an applicant one question from organization and communication modules and two questions from an information and law module. The Chairperson of the Qualification Commission also has the right to ask two additional questions from any blocks of his or her choice in order to verify the assessment of the applicant's score.

The members of the Commission assess the applicant's skills according to their opinion and write a definite score (within the limits of the maximum

amount of points) on each module in the qualification list. Qualification lists are handed over to the secretary of the Qualification Commission, who counts the average score of each applicant and forms a qualification list of applicants according to which the applicant with the greatest score has a priority right to enroll in a vacant position in the Service.

In accordance with the results of the competition the applicants receive permission to work in the Students' Legal Aid Service as a consultant. The permit, ratified by the Dean of the faculty, is granted for one academic term, and it may be declared void in case of a student's presentation to the disciplinary body, a violation of the SLAS Statute, an unsatisfactory mark at a legal subject exam, as well as in any other case following presentation by the Supervising Commission. The permit may be prolonged for the next term without the qualification exam if a student has passed all the exams at the end of the previous term with excellent marks, as well as in any other case on presentation of the Supervising Commission. The decision on cancellation of the permit must be taken by the special majority of the votes of the members of the qualification commission.

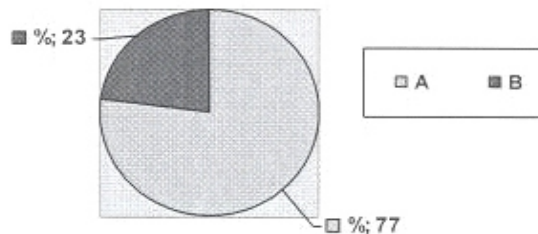
Summarizing this review on the legal clinic activity the author can only add that analysis of the performance of students involved in activity of the legal clinic "SLAS" shows that participation in this work enhances students' knowledge, raises their legal consciousness and the level of responsibility, and forms important practical and communicative skills necessary for the following successful work in their chosen profession. The most convincing way to prove this effect is to refer to the following "Students' Poll" graph:

#### **Students' Poll: Graph 4**

**Question:** Whether it is effective for a student to be involved in legal clinic work in order to get reliable and deep knowledge in law?

**Choice set:** **A.** Yes, it is effective form of study.  
**B.** No, it is senseless activity.

**Answers:**



As for the difficulties which may arise while using the technique of clinical education, it is important to note that in the world participation in the work of a law clinic is a part of the academic process for the students; they receive marks, the activity is recorded in their diplomas, and the lecturers' participation in the activities of the clinic is calculated by the number of hours in their academic workload. Unfortunately, the only thing to encourage the SLAS students to work in the legal clinic is a letter of recommendation issued by the Faculty of Law and signed by the Dean and the SLAS administrator. This letter confirms that student was involved in practice of law in the legal clinic, describes briefly his or her experience in practice, and recommend this student for priority employment. That is why it is quite reasonable to consider a possibility of introduction of the elective course "Legal Clinic" among other courses of the law cycle at Polotsk Sate University.

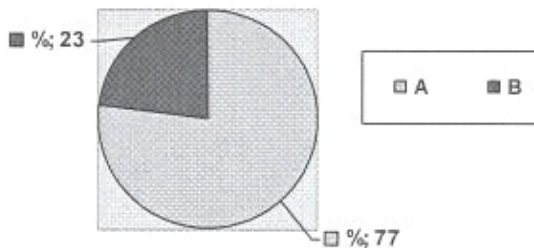
The author also advocates the idea of developing the general legal clinic "SLAS" into several specialized clinics. First of all, a majority of students voted for reforming of the SLAS.

#### **Students' Poll: Graph 5**

**Question:** What type of legal clinic is more interesting for you and helpful in gaining of practical skills in the law application?

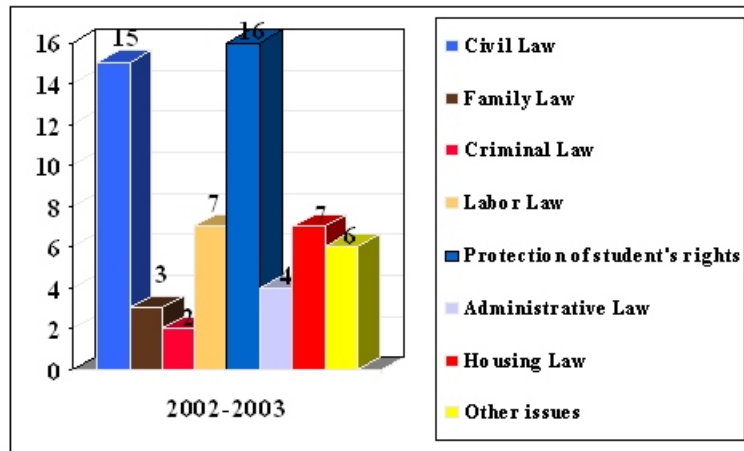
- Choice set:** **A.** General legal clinic without specialization.  
**B.** No, it is senseless activity.

**Answers:**



In addition, it is obvious that when the SLAS started its practice in 2002-2003, the clients' application were rather dispersed into multiple spheres of the law (refer to Diagram 3 below):

**Diagram 3: The SLAS clients' Applications by topic:**



In comparison to these statistics, in the 2005-2006 academic year, the main interest of the clients' application was focused in the three fields of the civil law (housing law, family law, and inheritance law). It gives us serious motivation to think about converting the SLAS to one specialized legal clinic, a civil law clinic.

### *3. Examination and Evaluation of Knowledge*

A typical Belarusian law school final exam is a sort of lottery where a student draws lots (three to four questions chosen by chance from up to 150-200 questions prepared by the professor who taught this subject). Then, he or she spends up to 30 minutes preparing the answers and reporting to the professor orally. The author deems this approach to be lacking credit because of its inefficiency and argues that it is a useless waste of time both for students and professors.

In contrast to this archaic form of the students' knowledge examination, it is highly recommended that the law school implement and combine in the academic evaluation process progressive U.S. law school approaches. In accordance with this approach, evaluation of knowledge usually consists of a number of factors, such as a student's performance during the term, success in defending projects, test results, and the final exam. The lecturer defines the percentage of these criteria for the student's final mark. For example, the final mark on the course will be defined on the basis of the following criteria:

- Attendance and participation in discussions—10 %.
- The project work—20 %.
- The exam (in written form with possible use of literature)—70 %.

For another example of the students' knowledge grading approach, refer to Section IV of Appendix A to this article.

The system of exams applied in American law schools is characterized by some important peculiarities. Oral exams on theoretical questions, which are typical for our national system, have almost completely been abolished abroad. This practice is justified as a student has a chance to express his or her opinion in the written form. All students work on one and the same task during the same period of time. And the assessment of his or her knowledge will not be influenced by the lecturer's subjectivity: all written works are coded, the lecturer is absent from the exam, and the process of writing is supervised by special coordinators from the technical staff of the faculties.

According to the structure, in the author's academic practice the final exam normally consist of three parts:

- 1) multiple choice test—a student is given a question with multiple choice of answers;
- 2) essay—a composition on a given topic with references to the normative acts and to the practice of law enforcement;
- 3) solving a practical problem—a student is given a disputable law situation; he or she has to give legal estimation of the facts, produce possible arguments in favor of the parties, and render a rough decision.

After the exam is finished, the works are handed over to the lecturer for checking which may take up to one week (depending on the contents of the exam). Every student also has a right to address the lecturer for the explanation of the exam mark.

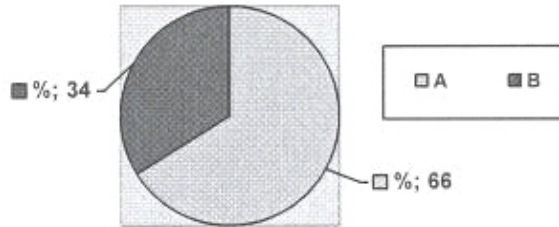
Towards the end of this chapter, there is some entertaining moments for our readers summarizing the students' opinion regarding their preferable forms of exam. These results cannot be treated too seriously of the respondents, but their answers still contain some curious aspects:

**Students' Poll: Graph 6**

**Question:** What form of final exam do you prefer?

- Choice set:** A. Oral examination.  
 B. Written form of exam.

**Answers:**

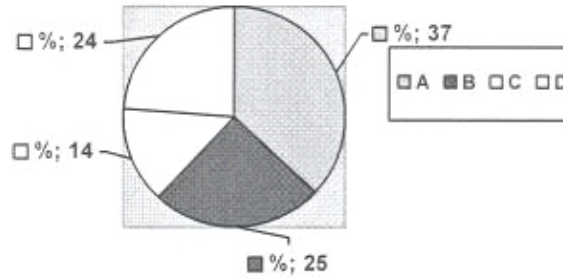


**Students' Poll: Graph 7**

**Question:** What forms of work should be preferably included in final examination?

- Choice set:** A. Oral answers of student.  
 B. Multiple choice test.  
 C. Essay.  
 D. Solving practical hypothetical situation.

**Answers:**



## IV. CONCLUSION

The results of the modern research on the problems of reformation of the system of higher education, supported by the studies of teaching experiences of legal subjects held by the author on the basis of her own foreign legal training at the Pitt Law in Pittsburgh, Pennsylvania; the Swedish Royal Institute of Technology, in Stockholm, Sweden; and the Department of International and Comparative Law in Genoa, Italy, prove that in legal education a shift of teaching methods towards students' "self-instruction" is visible. The role of a professor is mainly reduced to the function of an observer and a supervisor who guides and corrects an academic process. It should be noted that the latter approach is not new for the history of Eastern European education as well because it found its theoretical grounding in the school of Russian pedagogy. For instance, in the 19th century, the famous Russian educationalist K. Ushinsky proclaimed this axiom: "Independence in a student's head is the only strong foundation for any fruitful study."<sup>15</sup>

Moreover, specialists admit that "on the modern stage of the society development in the conditions of humanization and humanitarization of education the primary role is devoted not to the questions of transferring and receiving of a definite amount of knowledge, but to the mastering of the ways, methods and skills of their practical implementation."<sup>16</sup> Therefore, the classical post-soviet approach can not cope efficiently with this task and needs to be reformed.

Finally, the corner-stone idea of innovative approach to legal education reform should be focused on the shift to self-development of the student. The purpose of effective legal education is not just to "stuff" the student's head with the current laws and precedents, but to teach the student how to discover and study the law independently, explain the student how to understand and feel the sense of the law, provide the student with reliable means by which he or she develops independence and responsibility as a professional, and to guide the student how to practice active social and democratic modes of behavior.

In conclusion, the author expresses her hope that some elements of these recommended teaching techniques implemented and adopted in Polotsk State University from foreign universities practice and analyzed in the present

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15. Cited from [http://www.biblioclub.ru/book/demo/pdf/8183/Pages\\_from\\_4809\\_to\\_4817.pdf](http://www.biblioclub.ru/book/demo/pdf/8183/Pages_from_4809_to_4817.pdf).

16. P. Scott, *Reform of Higher Education in Central and Eastern Europe Countries: Attempt of Analysis*, 8 ALMA MATER 11 (2004).

research will be applied by the teaching staff of law schools in Belarus and other post-soviet countries as well, as they liberalize academic experience of broad-minded professors who are ready to apply effective and creative methodic innovations in their teaching practice, and that, in its turn, this will exert a beneficial effect on improving the system of Belarusian legal education.

**Appendix A: Preliminary Syllabus “Comparative Commercial Law”****Comparative Commercial Law***Preliminary Syllabus, Fall Term 2006***I. General information:**

Instructor: Tatsiana Seliazniova,  
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Room 216  
Office hours: By appointment  
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**II. Course overview:**

In the former USSR countries today's popular conservative approach to legal education has one obvious and serious problem—our graduated lawyers are unable or unwilling to participate in any exchange activities. Therefore, in practice, our national lawyers face many problems, especially if any aspects of international or foreign legal issues are involved. They cannot successfully correspond with requirements of modern business market.

This experimental course provides our students with an opportunity to study the basic rules and principles of different legal cultures in relations with commercial activity and to compare them with their own legal system.

Comparative law should be considered as a method of legal analysis which is applied to foreign and international substantive and procedural law per se. It can also allow discovery of some economical and social underpinnings of law, advantages and weak aspects of different legal regulations. As a result, this course gives a clear understanding of the most appropriate ways for harmonization of law at the national level.

The proposed course is divided into 4 parts. *Part I* deals with introduction to foreign legal education systems, with basic concepts and principles of comparative law. *Part II* describes the European countries commercial law study. *Part III* focuses on the USA approach to the regulation of business transactions (the course is emphasized in this part because of bright specificity, diversity and complexity of US Commercial Law). *Part IV* covers main aspects of international commercial practice (CISG, INCOTERMS, Brussels Convention, international arbitration etc.) which are the most demanded in international legal practice and cause many problems with application of the law.

This course also gives the students opportunity to participate in 2 practical projects and to apply theoretical knowledge in reality as well as to consult with leading practical specialists in International Commercial Law (2 study visits).

The lectures can be delivered in Russian, English or Belarusian (depending on the choice of students). Class is limited up to 12 students.

### **III. Formal requirements:**

Attendance and class participation are strongly recommended for all students. Each class member will be placed on a panel and each panel will be responsible for the material to be covered on particular class days (panel membership list will be distributed in class). Panel member is expected to be prepared especially (in comparison with ordinary students) for the assigned days and actively participate in class discussion.

### **IV. Grading:**

The final grade for the course will be based upon:

- Class attendance and participation in discussions—10 %.
- Project 1 “Negotiation of Commercial Transaction”—10 %.
- Project 2 “Workshop on Multi-cultural Attempt to submit draft to CISG provisions proposals”—10%.
- Final exam (3 hours, open-book, multiple-choice questions and essay)—70 %.

**V. Course structure:*****Part I:***

**Class 1**—Introduction to foreign systems of legal education: Common Law v. Continental Law, Statues v. Cases, Deduction v. Induction, differences and similarities, problems and perspectives.

**Class 2**—Introduction to Comparative Law (subject, legal methodology, role of comparative lawyer).

**Class 3-4**—Main legal systems: overview (Common Law system, Continental Law system, Scandinavian Law system, Post-soviet countries Law system, Traditional Law systems).

***Part II:***

**Class 5-6**—The basics of Commercial Law in France and Italy.

**Class 7-8**—The basics of Commercial Law in Germany.

**Class 9**—English Sale of Goods Act (ESGA) as a basis of the Commercial Law in the United Kingdom.

**Class 10**—Specificity of some Scandinavian countries Commercial Law.

**Class 11**—Eastern Europe countries: review of changes and tendencies.

**Class 12**—CIS countries—what is different and common (Model Civil Code, the Ukrainian dualism—Commercial Code v. Civil Code; perspectives of legal unification)?

***Part III:***

**Class 13**—Brief introduction to the American legal system (history, sources, governmental structure, jury trials, procedure, review of main branches of law).

**Class 14**—Business Law (organization and maintenance of business).

**Class 15**—Contracts and Commercial Law (general features, common law, selected statutes review:

- Uniform Commercial Code,
- Uniform Enforcement of Foreign Judgments Act,
- Uniform Foreign Money-Judgment Recognition Act,
- Foreign Sovereign Immunities Act,
- Foreign Corrupt Practice Act).

**Class 16-17**—Article 2 of the UCC (Sales) in details (scope, contract formation, warranties, disclaimer, anticipatory repudiation, performance, allocation of risk, remedies).

**Class 18**—The role of negotiations, mediations and other alternative dispute resolution methods in the commercial practice in the USA (introduction, strategy, planning, opening, bargaining, ethical consideration, preparations for **Project 1 “Negotiation of commercial transaction”**).

**Class 19**—Students presentations on **Project 1 “Negotiation of commercial transaction.”**

*Part IV:*

**Class 20**—Phenomenon of International Commercial Law as a result of multi-cultural legal compromise (from *lex mercatoria* to WTO).

**Class 21-22**—Vienna Convention on International Sales of Goods (1980)—history, applicability, structure, formalities, general principles, contract formation, gap filling, rights and obligations of parties, risk of loss, warranties, rejection of goods, avoidance, prospective non-performance, remedies).

**Class 23-24: Project 2 “Workshop on Multi-cultural Attempt to submit draft to CISG provisions proposals”** (preparation and students presentation)

**Class 25**—INCOTERMS 2000 as contemporary *lex mercatoria* and UNIDROIT Principles of International Commercial Contracts—history, role in commerce, structure.

**Class 26**—Role of Letter of Credit and the ICC Uniform Customs and Practice for Documentary Credits (UCP) in financing the Export-Import Transaction.

**Class 27**—Dispute resolution in international trade (European Convention on Jurisdiction and Judgments “Brussels Convention,” U.N. Convention on Recognition and Enforcement of Foreign Arbitral Awards “New York Convention” (including practice on drafting of arbitration clause), Hague Conventions on Service Abroad and on Taking Evidence).

**Class 28**—**Study visit 1** (or visiting lecturer, it depends on personal circumstances of the lecturer)—invitation of acting judge of the Belarusian Chamber of Commerce and Industry International Court of Arbitration (Minsk). Topic of lecture: “Application of foreign Commercial Law in practice of the Court of Arbitration.”

**Class 29**—**Study visit 2**—visit to the legal department of international transactions of the oil refinery corporation JSC “NAFTAN” (Novopolotsk), discussion on main “pitfalls” in practical legal service for international trade.

**Class 30**—Conclusion, recitation, course evaluation.

## **VI. Projects description:**

### **Project 1 “Negotiation of Commercial Transaction.”**

Students will be divided in 2 groups of counsels representing their clients (“Buyer” and “Seller”) and will negotiate a problem involving commercial sale transaction. Both groups will be provided with general and confidential information about the proposed situation.

Students are supposed to discuss the style and strategy of negotiation inside of each group and plan their actions. Process of negotiation will take place in class and will be videotaped. Instructor will form a negotiating pair (one representative of Seller v. one representative of Buyer). After the negotiation students should take a look at negotiations tape, eliminate some mistakes and submit the report on negotiation.

The report has to illustrate the following aspects:

- Planning section (info, choice, substance, procedure, getting/giving up information).
- Did negotiations follow your planning? Where there any surprises?

- What would you do differently?
- Results.

Notice: A planned negotiation will fail if a student does not show up, to the detriment of the class. Therefore, attendance is required unless you give one week notice of an absence.

**Project 2 “Workshop on Multi-cultural Attempt to submit draft to CISG provisions proposals.”**

This workshop is based upon the idea of Professor Mark S. Walter (comparative lawyer, University of Pittsburgh, School of Law). It is designed to give students a feel for experience of representing a legal culture in the drafting of an international convention combining the interest of different legal cultures.

The class will be broken into groups representing a group of nations with diverse legal and cultural traditions and economic requirements (for example—USA, UK, Germany, India, Ukraine etc.). The goal of the exercise is the analysis and possible redrafting of some particularly vague provisions of the CISG (usage of trade, the need for a writing, open price terms, the notice requirement for non-conforming goods, and a force majeure provision).

The groups will be given the following tasks:

1. Create an outline of the needs, limitations and interests of your assigned country that are relevant to the five topics listed above.
2. Draft provisions that would be in your country’s best interest.
3. As a group of the represented nations, draft compromise provisions.
4. Prepare a presentation of their interim and final results (Power Point presentations are highly encouraged!).

**VII. Recommended course books and articles:**

*(will be available in the Library of the Faculty of Law,  
Comparative Law Section)*

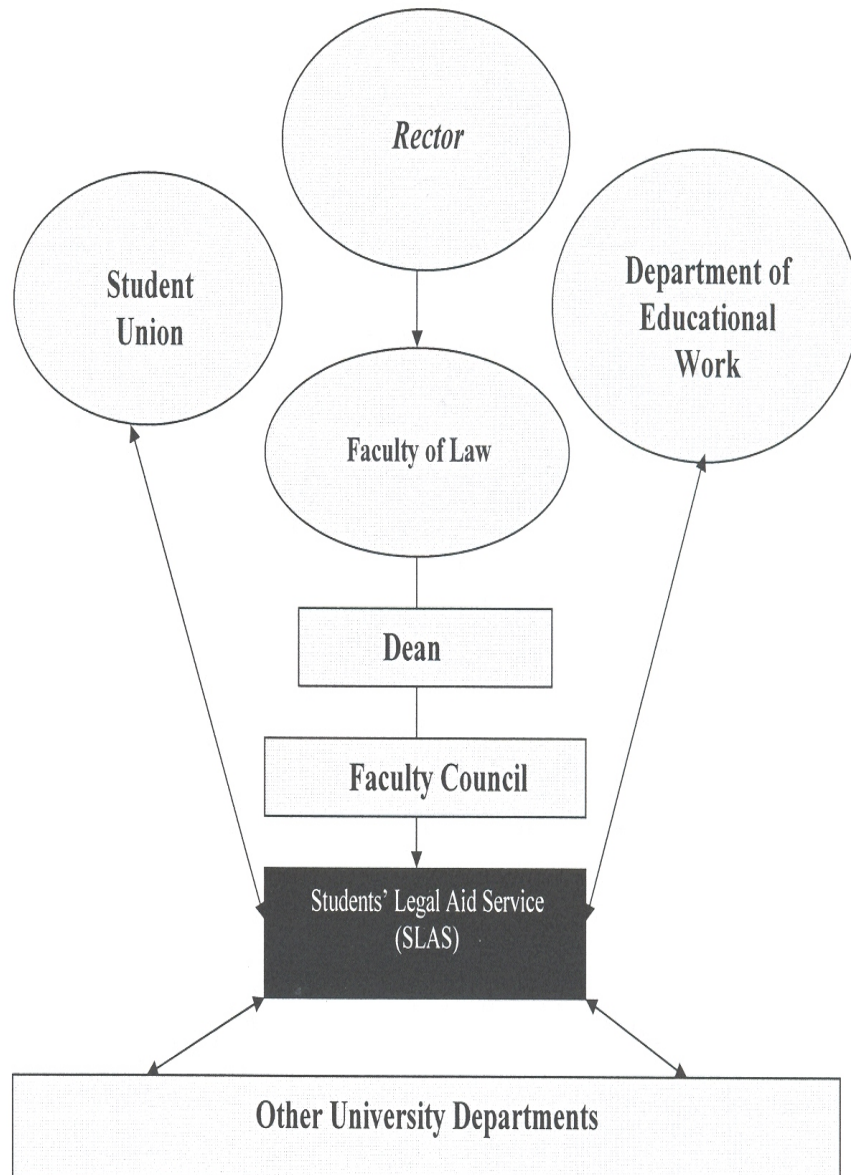
1. KONRAD ZWEIGERT & HEIN KÖTZ, INTRODUCTION TO COMPARATIVE LAW (3d edition, Oxford University Press Inc., 1998).
2. ALEXEI EGOROV, THE BASICS OF COMPARATIVE LAW (PSU Publishing Co, 2000).

3. WILLIAM BURNHAM, INTRODUCTION TO THE LAW AND LEGAL SYSTEM OF THE UNITED STATES (3d edition, West Publishing Co, 2002).
4. RONALD BRAND, FUNDAMENTALS OF INTERNATIONAL BUSINESS TRANSACTIONS (Kluwer Law International, 2000).
5. RONALD BRAND, FUNDAMENTALS OF INTERNATIONAL BUSINESS TRANSACTIONS: DOCUMENTS (Kluwer Law International, 2000).
6. JOHN E. MURRAY & HARRY M. FLECHTNER, SALES, LEASES AND ELECTRONIC COMMERCE: PROBLEMS AND MATERIALS ON NATIONAL AND INTERNATIONAL TRANSACTIONS (2d edition, 2003).
7. COMMENTARY ON THE DRAFT CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS, Prepared by the Secretariat, Official Records 14, at 55, U.N. Document A/CONF.97/5 (1979), reprinted in JOHN O. HONNOLD, DOCUMENTARY HISTORY OF THE UNIFORM LAW FOR INTERNATIONAL SALES (1989).
8. JOHN HONNOLD, UNIFORM LAW FOR INTERNATIONAL SALES (3d edition, 2000).
9. SELECTED COMMERCIAL STATUTES (West Group, 2002).
10. ROGER FISHER & WILLIAM URY, GETTING TO YES (Penguin Book, 2d edition, 1991).
11. DONALD GIFFORD. LEGAL NEGOTIATION: THEORY AND APPLICATIONS (West Group, 2003).
12. THOMAS GUERNSEY, A PRACTICAL GUIDE TO NEGOTIATION (NITA, 1996).
13. Harry M. Flechtner, *Remedies under the New International Sales Convention: The Perspective from Article 2 of the UCC*, 8 JOURNAL OF LAW AND COMMERCE 53, 53-108 (1988).
14. Alejandro M. Garro, *Reconciliation of Legal Traditions in the U.N. Convention on Contracts for the International Sale of Goods*, 8 THE INTERNATIONAL LAWYER, ABA 23 (1989).

15. Date-Bah, *The Convention on the International Sale of Goods from the Perspective of the Developing Countries*, LA VENDITA INTERNAZIONALE, 28 (1980).
16. Katharina Pistor, *The Standardization of Law and Its Effect on Developing Economies*, 50 AM. J. COMP. L. 97.
17. John Henry Merriman, *The Loneliness of the Comparative Lawyer* (Handout).
18. Paul B. Stephan, *The Futility Of Unification And Harmonization In International Commercial Law: The Fifteenth Sokol Colloquium on Private International Law: Unity and Harmonization in International Commercial Law*, 39 VA. J. INT'L L. 743 (Spring 1999).

**N.B.:** References to the assignments for every class will be given in handouts distributed during the first class meeting. You are supposed to read all the materials and be ready to discussion.

**Appendix B:  
“Legal Clinic “SLAS”: cooperation with the University  
Departments and Services”**



**Appendix C:  
 “Legal Clinic “SLAS”: structure and internal communications  
 inside the Faculty of Law”**

